



June 27, 2019

Washington State Department of Ecology
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Dear Washington Department of Ecology:

These comments are submitted on behalf of Columbia Riverkeeper, Citizens for a Healthy Bay, Puget Soundkeeper Alliance, RE Sources for Sustainable Communities/North Sound Baykeeper, and Spokane Riverkeeper (collectively, "Commenters"). As you know, several of these organizations have been very actively involved in the development, implementation, and enforcement of the Industrial Stormwater General Permit ("ISGP") since 2000, and have inspected and reviewed compliance issues in detail at dozens of permittee facilities in this period. Commenters consider regulation of industrial stormwater to be of great importance and public interest.

We appreciate the attention and work that Ecology has put into the ISGP. However, there are particular weaknesses and loopholes in the ISGP that impede its effectiveness, and Commenters continue to believe that an approach based on requirements to meet numeric effluent limitations would be superior overall.

Additionally, in our work to enforce the terms of the ISGP through citizen suits, we have noted problems resulting from an inadequate inspection and regulatory regime implemented by Ecology. These problems include the lack of inspections for years at some permittee facilities, including large facilities that have reported consistent and grossly elevated pollutant levels inspection reports that gloss over or ignore significant compliance issues, and instructions or advice to permittees that is inconsistent with ISGP requirements. We have noted these problems across Washington. This is not necessarily an issue about the draft ISGP and may be adequately addressed by additional training or guidance to Ecology inspectors, but it leads

Commenters to heightened concern over portions of the draft ISGP that are unclear or susceptible to multiple interpretations. Specific examples include:

- In 2011, Ecology granted SSA Terminals Inc a wholly unwarranted waiver of the Level 3 Treatment requirement. Puget Soundkeeper appealed the decision and prevailed before the Pollution Control Hearings Board. Ecology then went on to grant another extension before finally approving an Engineering Report that would have SSA treating a mere 3% of its 200 acre facility. Soundkeeper ultimately achieved a 2015 consent decree requiring the site to treat 95% of its footprint within 5 years—a goal the company is now in the process of completing.
- In 2014 Puget Soundkeeper sued Rainier Petroleum’s Pier 15 Seattle facility for ISGP violations including violation of S3.B.4.b.i.4 secondary containment requirements for the six onsite 11,000-gallon lubricating oil tanks. Ecology had inspected the site in 2007 and observed the single-walled lube oil tanks resting on gravel surface mere feet from the shoreline of Elliott Bay, but had not noted the basic and egregious secondary containment violations putting Elliott Bay at severe risk. Puget Soundkeeper’s 2016 consent decree required the necessary corrections that Ecology could have remedied a decade earlier.
- In 2014, an Ecology inspector approved a “Conditional No Exposure (CNE)” exemption at the Whitley Evergreen Marysville facility despite ample evidence of the operation’s use and storage of material handling equipment outdoors, outdoor material production, exposure of waste material to precipitation, and visible deposits of residue on the pavement surrounding the site. Puget Soundkeeper’s 2016 consent decree required the business to withdraw its unjustified CNE, reapply for ISGP coverage, and begin monitoring and controlling its stormwater as it should have been doing under agency direction.

In addition, Ecology has demonstrated an alarming lack of scrutiny in evaluating and approving permit modifications for Level 3 waivers and extension. We urge Ecology to reserve such compliance tools for rare situations in which installation of treatment BMPs is truly infeasible or not necessary (S8.D.5), and stop providing hall passes to corporations seeking to use these modifications to maximize profits. Such unjustified use of permit modifications consumes nonprofit resources in appeals to achieve the ends Ecology could and should have compelled in the first place. Further, Ecology’s current track record of liberal extension approval has created a harmful business norm within some industry sectors who now request extensions as a matter of course, regardless of justification. Ecology must actively work to undo this norm and protect water quality threatened by toxic and other pollution from industrial sites.

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I. ECOLOGY SHOULD INCORPORATE NUMERIC EFFLUENT LIMITS

We continue to believe that Ecology should adopt an approach based on requirements to meet numeric effluent limitations. Indeed, the time has come for Ecology to embrace numeric effluent limits in its stormwater permits. Numeric effluent limits will provide the clarity and certainty that all interested parties want out of a permit. For the regulated community, permittees will know precisely what is expected of them, but they will be given the flexibility on how best to comply with the permit's requirements. For the public, numeric limits will provide certainty that, if a permittee complies with the permit, water quality will be protected. In addition, numeric effluent limits will allow Ecology and citizens to: 1) monitor permit compliance, and 2) take the appropriate steps when a permittee violates the permit and, in turn, protect water quality and designated uses. For Ecology, moving to numeric effluent limits will simplify the permit and the oversight obligations.

Over the past two decades, Ecology and the regulated community have gained considerable expertise in managing stormwater. As Ecology notes under the previous iterations of the permit, many industrial facilities regularly meet the benchmarks. It is incumbent on Ecology to analyze the technologies used to achieve those results and distill that information into numeric effluent limits. Commenters urge Ecology to consider the process currently underway in the State of Oregon to evaluate the potential for numeric effluent limits. See Oregon Dept. of Env'tl. Quality, 1200-Z Industrial Stormwater Permit Renewal, <https://www.oregon.gov/deq/Regulations/rulemaking/Pages/r1200Z.aspx> (stating "DEQ is working with an advisory committee of technical experts to investigate the feasibility of putting new limits on certain contaminants. DEQ will also evaluate if it's feasible to set discharge limits based on impaired waterbodies.").

The permit fact sheet states that Ecology believes it is infeasible to derive numeric technology-based effluent limitations for permittees because of the range of pollution sources and BMPs at different facilities. What is the basis for Ecology's position that it is infeasible to derive water-quality based numeric effluent limitations for the protection of aquatic life? Commenters believe it is feasible to derive numeric water quality-based (aquatic life) effluent limitations for metals, especially for discharges to marine waters, and that it is feasible to derive numeric technology-based effluent limitations using a combination of industry-sector monitoring data and existing permit benchmarks.

Numeric water quality-based effluent limits for metals.

It is our understanding that there are established methods Ecology could use to derive numeric water quality-based effluent limitations for copper, lead, and zinc.

One method is the standard method of Ecology's "Limit Calc" spreadsheet, which is based on EPA's Technical Support Document. Application of this method to facilities that discharge to marine waters and do not have a mixing zone authorization simply results in a

numeric effluent limitation at or below the acute aquatic life criteria for copper, lead, or zinc. See *Puget Soundkeeper All. v. Dep't of Ecology*, No. 48267-3-II, 2017 Wash. App. LEXIS 448, at *25 (Ct. App. Feb. 22, 2017). Since marine water quality criteria for metals does not vary across facilities, would it not be feasible to apply numeric effluent limits equal to the copper, lead, and zinc criteria to all ISGP permittees that discharge to marine waters?

We understand that Ecology has recently taken the position that Ecology's "Limit Calc" spreadsheet method requires a log normal dataset and the fact sheet states that the last four years of ISGP permittee DMR data is not a normal dataset when parsed at the industry sector level. Why did Ecology conduct this analysis at the industry-sector level? It is our understanding that: 1) the typical industrial facility's stormwater effluent data follows a log normal distribution, and 2) the log normal distribution is what is relevant in applying numeric water quality based effluent limits, even in the context of a general permit. Has Ecology reviewed literature on this topic and/or examined the issue at the facility level? Has Ecology reviewed the ISGP DMR dataset to determine whether it is log normal across all facilities in Western Washington or Eastern Washington? Or for a particular class of pollutants, such as metals? Related to this, Appendix C of the fact sheet appears to contain erroneous DMR data that should be scrubbed before further statistical analysis is done. Specifically, the dataset appears to contain metals concentrations that were reported in incorrect units, as the data are well below EPA Method 200.8's quantitation level and less than half of the "reporting limit." See *e.g.*, Appendix C at 69-79 (minimum concentrations of metals reported at and below 0.001 µg/L for most industry sectors).

Another method is dynamic modeling. EPA's Technical Support Document states that dynamic modeling has been used since the 1980s to establish effluent limitations and can be applied to establish limitations for toxics in stormwater-related discharges. Has Ecology considered using dynamic modeling to derive numeric water-quality based effluent limits for the ISGP?

Numeric technology-based effluent limits.

Ecology has stated, and the Pollution Control Hearings Board has held, that the current ISGP benchmarks are technology-based. In our experience, facilities in any industry can meet—and out-perform—the ISGP benchmarks through application of AKART. Would it not be feasible to convert the numeric benchmarks into numeric technology-based effluent limitations? There are several instances where AKART BMPs consistently result in stormwater discharges below the benchmarks. In these instances, Ecology should establish numeric technology-based effluent limitations that are more stringent than the existing benchmark concentrations. For example, in our experience, AKART BMPs keep lead concentrations below the existing 81.6 µg/L benchmark, as well as the proposed 64.6 µg/L benchmark, so the technology-based effluent limit should be lower than current or proposed benchmarks. See Fact Sheet, Appendix C average and median lead concentrations.

II. COMMENTS BY DRAFT ISGP CONDITION

S1, Permit Coverage

Commenters strongly support the addition of new industries, including “Construction, Transportation, Mining, and Forestry Machinery and Equipment Rental and Leasing” and “Marine Construction,” in S1.A. Table 1.1. We recommend Ecology consider additional industrial categories that are significant contributors of pollutants to waters of the state, and can reasonably be expected to cause violations of water quality standards. The following industrial categories should be included in the permit under Ecology’s residual authority:

- Commercial and Industrial Machinery and Equipment Repair and Maintenance (NAICS 811310);¹
- Auto Repair Shops (NAICS 811111, 811112, 811113, 811118, 811121, 811122, and 811198);
- Commercial truck maintenance and system installation facilities;
- Auto impound yards, auction yards and towing operations; and
- Metals service centers.

We are also concerned by the removal of several industries:

- Measuring, Analyzing, and Controlling Instruments; Photographic, Medical, and Optical Goods; Watches and Clocks;
- Refrigerated storage; and
- General storage.

Will these types of facilities now be covered under a different NAICS code? If not, please explain Ecology’s rationale for removing them.

Commenters support the revisions in S1.E, Discharges to Ground. Ecology should consider additional language to clarify that permittees with discharges to ground must conduct representative sampling for the pollutants of concern and report those results on DMRs.

Overall, Commenters support Ecology’s revisions to the S1.F, Conditional “No Exposure” Exemption. Commenters have seen instances of facilities simply saying “no” to all eleven questions, when they should have answered “yes.” Ecology should consider clarifying that “certified” means under penalty of perjury, and that Ecology inspectors will verify the truth of those assertions before granting a CNE.

¹ Ecology added NAICS 53241X Construction, Transportation, Mining, and Forestry Machinery and Equipment Rental and Leasing, which Commenters support. We merely point out that this category should include facilities that perform maintenance on such equipment as well as facilities that rent/lease such equipment.

S2. Application for Coverage

In S2.D., Transfer of Permit, Commenters believe additional clarification is needed about the obligations of a new permittee who takes over a facility with Corrective Actions pending under Condition S8. Ecology should clarify that any new permittee who takes over a facility with incomplete corrective actions is responsible for completing those corrective actions, regardless of the mechanism by which the new permittee obtained ISGP coverage. Specifically, the new permittee should be responsible for the incomplete corrective actions whether the new Permittee obtains permit coverage through a Transfer of Permit under S2.D or it obtains coverage under S2.A after the prior permittee terminates its ISGP coverage.

Commenters are aware of an instance where all the conditions of S2.D were met for a “transfer” of coverage, but because a Level Three Corrective Action had been recently triggered but not implemented, the old permittee and new permittee schemed to have the old permittee terminate its permit and for the new permittee to apply for a new permit. The companies saw this terminate/reapply process as a loophole in the ISGP that would allow both companies to evade its Corrective Action obligations. Under the companies’ theory, when the ISGP permit number reset, the Corrective Action obligations reset. Such an outcome is obviously not how the ISGP is designed to operate and would encourage strategic permit terminations and reapplications to avoid Corrective Actions. A simple clarification from Ecology that confirms Corrective Action obligations carry over to a new permittee with substantially similar industrial activities, whether or not the permit was “transferred,” and whether or not a new permit number is issued, would put this issue to bed.

S3. Stormwater Pollution Prevention Plan (SWPPP)

S3A.2 requires that BMPs be consistent with the SWMM or “other stormwater management guidance documents or manuals which provide an equivalent level of **pollution** prevention” which is confusing in the case of industry sector-specific manuals which act as a supplement to the SWMM. We suggest that the permit specify that BMPs be consistent with the applicable SWMM, including any industry sector-specific guidance documents incorporated into the SWMM by reference.

In S3B.1, we suggest retaining the requirement that the SWPPP map assign a unique identifying number to each discharge point (not only monitoring points) for clarity. We also suggest that the SWPPP map identify any areas which the permittee believes infiltrate stormwater.

S3.B.1.c. requires the location and extent of significant structures and impervious surfaces to be identified. Does this requirement mean “significant impervious surfaces,” or “all impervious surfaces”?

S3.B.4.b.i.3, which addresses preventive maintenance as a generally required operational source control BMP, is unclear and internally inconsistent. S3.B.4.b.i.3 states that the SWPPP “shall include the schedule/frequency for completing each [stormwater system] maintenance task.” Commenters support this requirement because without a specific maintenance schedule or frequency identified in the SWPPP, it becomes likely that proper maintenance will be deferred. In our experience, inadequate maintenance of stormwater systems, equipment, and BMPs is a common and major cause of stormwater contamination and benchmark exceedances.

The proposed language in S3.B.4.b.i.3.b, concerning this requirement for stormwater drainage/treatment facilities, references maintenance conducted “in accordance with the Maintenance Standards set forth in the applicable Stormwater Management Manual (SWMM) or other guidance documents or manuals approved in accordance with S3.A.3.c.” Rather than specifying a schedule or frequency for maintenance, these guidance documents or manuals may use other criteria. The permit should clarify that the SWPPP must always specify a maintenance schedule or frequency even if the manual used by the permittee provides other criteria instead.

S3.B.4.b.i.7 concerns illicit discharges. It emphasizes that “[w]ater from washing vehicles or equipment, steam cleaning and/or pressure washing is considered process wastewater.” We suggest that “water from washing pavement” be included in this provision.

S3.B.5.b For clarity, the permit should specify that all six of the enumerated criteria for “substantially identical discharge point” should be documented in the SWPPP.

S4, General Sampling Requirements

S4.B proposes to continue the requirement for collection of stormwater grab samples on a quarterly basis. While quarterly monitoring may be appropriate for permittees that usually meet benchmarks due to proper application of BMPs, it is inadequate for many dischargers. Ecology should revise the permit to require monthly grab sampling for some categories of permittees, if not all of them. In particular, more frequent monitoring is important to provide more real-time feedback on the effectiveness of new or changed BMPs implemented in response to benchmark exceedances. Perhaps permittees could be required to do monthly monitoring for one year following the implementation of a Level 2 or 3 response to better evaluate the effectiveness of the response and allow additional adaptive management. Alternatively, or in addition, permittees could be required to commence monthly sampling upon triggering Level 2 to better evaluate pollutant sources, effluent variation, and appropriate corrective actions.

S4.B.3 uses the term “Substantially identical outfalls” whereas the defined term is “substantially identical discharge point.” The defined terms should be used consistently. S4.B.3 states “The Permittee shall sample each distinct point of discharge off-site except as otherwise exempt from monitoring as a ‘**substantially identical discharge point**’ per S3.B.5.b.”

(emphasis in original). We believe this applies to transportation facilities in the same manner as it applies to all facilities regulated by the permit. Does Ecology agree? We further believe that this applies to over-water facility lands, such as piers, docks, and wharfs, in the same manner as it applies to upland areas of permittee facilities. Does Ecology agree?

In S4.B.7, we support the addition of an annual monitoring requirement to the consistent attainment provision for reduced sampling. As we have explained before, Commenters believe that eight consecutive quarterly samples meeting benchmarks remains an inadequate statistical basis for suspending monitoring. Permittees that achieved a consistent attainment monitoring exception under the current permit should restart monitoring to demonstrate their effluent quality. This will ensure that changed conditions and practices have not resulted in discharge quality problems since the last monitoring event. In the response to comments, we request that Ecology explain why the annual sample for consistent attainment is required in the 4th quarter, rather than the first fall storm event or first sample collected after September 1?

S5, Benchmarks, Effluent Limitations and Specific Sampling Requirements

Commenters are dismayed that the draft permit proposes to keep visible oil sheen as the benchmark and basis for the monitoring requirement in S5.A, Table 2. We believe that permittees do not properly or fairly report the presence of visible oil sheen because it appears so infrequently on DMRs in comparison to our observations. We urge Ecology to require TPH monitoring at all facilities, as is required for certain industrial sectors. If Ecology insists on retaining the visible oil sheen benchmark, we urge it to require permittees to submit photos to verify that no sheen was present.

Footnote a to Table 2, footnote a to Table 3, footnote d to Table 4, footnote c to Table 5, footnote c to Table 6, footnote b to Table 7, and footnote a to Table 8 would allow a permittee to use a method for sample analysis that is less sensitive than the 40 CFR 136-approved methods identified in the table. This is inappropriate and inconsistent with state and federal regulations. WAC 173-201A-260; 40 CFR 122.44(i)(1)(iv) and 40 CFR 136.1(b). Furthermore, the possibility that permittees are using alternative test methods makes it more difficult to identify instances when permittees report discharge concentrations in the wrong units (mg/L rather than µg/L for example), which is still a fairly common problem in our experience.

Finally, given the well-documented presence and impacts of microplastics in Washington waters, Commenters recommend that Ecology evaluate requiring facilities to sample for microplastics.

S6, Discharges to Impaired Waters

The crucial definition of “303(d)-listed waterbody,” used throughout S6, is unclear. Appendix 2 defines this term as “waterbodies as listed as Category 5 on Washington State’s Water Quality Assessment.” Washington State’s Water Quality Assessment typically identifies

303(d)-listings by “waterbody segments,” corresponding to rectangular areas, corresponding to the section of the township and range containing the relevant sampling station. Ecology has recognized the arbitrariness of this practice. Specifically, Ecology announced a policy to change this practice to have listings correspond to segmentation indicated by the National Hydrology Dataset. WQP Policy 1-11 (July 2012) at 5. Does Ecology intend to continue to use the obsolete and arbitrary grid-based designation system for ISGP purposes, or to implement its 2012 policy in the ISGP?

S6.C and Table 6 omit a numeric benchmark for fecal coliform, *E. coli*, and Enterococci concentrations in discharges to waterbodies that are bacteria-impaired. Commenters urge the inclusion of fecal coliform, *E. coli*, and Enterococci numeric benchmarks here. Commenters request that Ecology answer the following questions:

- What is the basis for the 30 mg/L total suspended solids effluent limit for discharges to sediment cleanup sites or waters with sediment 303(d)-listings? Why is the limit not 10 or even 5 mg/L?
- Has Ecology considered the reasonable potential characterization factors identified at WAC 173-204-400(6) for ISGP-authorized discharges?
- What is the basis for Ecology’s determination that no ISGP permittee need apply for a sediment impact zone?

S6.C.1, Table 6, note g provides that site-specific effluent limitations for phosphorus, ammonia, copper, lead, zinc, and pentachlorophenol “will be assigned at the time of permit coverage.” However, we have encountered multiple permittees that discharge to 303(d)-listed waters that are impaired for one of these parameters, but were not assigned a site-specific effluent limitation at the time of permit coverage due to an oversight or a mistake in the permit application. The permit should specify the water quality criteria as the default numeric effluent limitation for these dischargers, rather than relying on a site-specific letter process that is not applied consistently. What is the utility of a site-specific numeric effluent limit for these discharges which are not subject to a mixing zone?

S6.C.2.d. addresses the removal of accumulated solids from storm drain lines at facilities that discharge to sediment cleanup sites. Commenters recommend that Ecology revise the permit to require removal early in the permit term, e.g., June 30, 2020, rather than anytime during the permit term. This will avoid ten years’ worth of sediment accumulation since the current permit required this removal to occur prior to October 1, 2016. Accordingly, Ecology should move up the deadline for waiver and storm drain solids sampling extension requests.

In addition, Commenters are concerned that the storm drain cleaning and solids analysis requirement is limited to “storm drain lines (including inlets, catch basins, sumps, conveyances lines [sic], and oil/water separators) *owned or controlled by the permittee.*” (emphasis added). Many of the largest permittee facilities presenting the most significant water quality risks are tenants, including cargo terminal operators and lessors of port property, which may attempt to

avoid this requirement by asserting that they do not own or control the storm drain lines and facilities. Commenters do not believe that ownership interest is an appropriate basis to limit the application of this important provision. Ecology should impose the requirement on all qualifying permittees regardless of ownership status, making tenant permittees responsible for negotiating arrangements with their landlords that will result in permit compliance and appropriate safeguards for water quality.

S6.D.5 allows discharges under the ISGP to waters with approved TMDLs that establish no ISGP-designated wasteload allocation, but that do not exclude ISGP discharges. This appears to conflict with the requirement that water quality-based effluent limitations be “consistent with the assumptions and requirements of any available wasteload allocation for the discharge” in an approved TMDL. 40 CFR 122.44(d)(1)(vii)(B). If an approved TMDL provides no wasteload allocation for ISGP discharges and does not consider them in its specification of allowable daily loads, an ISGP permittee’s additional loading of a pollutant of concern to an impaired waterbody is generally not allowed. These discharges should be prohibited unless and until the TMDL is amended to account for them.

In S6.C.2, Commenters suggest adding the following for dischargers to the Puget Sound Sediment Cleanup Site that requires the following:

“If Permittees detect PCBs in their storm drain solids under Condition S6.C.e, the Permittee must add total PCBs to its stormwater discharge monitoring plan, analyze its discharges for total PCBs using Method 8082, and report PCB concentrations on its quarterly DMRs.”

Ecology should also consider language from Seattle Iron & Metals permit, which states :

“[T]his permit prohibits discharge of stormwater contaminated by the Permittee's activities from areas beyond the Permittee’s processing area and stormwater collection and treatment system. Polluting materials from solids tracked out on vehicle wheels (trackout), airborne dust, spills from transport vehicles, and any other source of solids carrying pollutants generated by the Permittee’s activities must be controlled to prevent transport to neighboring public or private areas and their discharge to Seattle's stormwater conveyance system. The Permittee must immediately control and clean up any fugitive emissions from its metals processing area onto neighboring properties to prevent fugitive solids from reaching the public storm drain system and waters of the State.”

S8. Corrective Actions

S8.C.4.e and S8.D.5.e (which state “For the year following the calendar year the permittee triggered a Level 2 [or 3] corrective action, benchmark exceedances (for the same parameter) do not count towards additional Level 2 or 3 Corrective Actions”) should be revised

to make it clear that they only apply to permittees that are in fact implementing Level 2 or Level 3 Corrective Actions and only during the time they are actually implementing the Corrective Actions. This is the obvious intent of the provisions, but that intent should be explicit in the permit language so that permittees ignoring the corrective action requirements are not rewarded with a “free” year of benchmark excursions. We suggest permit language such as “Benchmark exceedances (for the same parameter) prior to the Level 2 [or Level 3] deadline do not count towards additional Level 2 or 3 Corrective Actions if the Permittee is implementing a Level 2 or Level 3 Corrective Action.”

Commenters suggest that all Level 3 responses involve at least submission of a certified justification by an engineer or qualified stormwater management professional for the expectation that the additional treatment BMPs will result in benchmark attainment—not just Level 3 responses that involve treatment BMPs which require site specific engineering. Requiring this certified justification would ensure the involvement of a qualified specialist in all Level 3 corrective actions and prevent permittees from short-changing their Level 3 obligations without Ecology review.

In addition, Commenters urge Ecology to clarify that catch basin and roof downspout filtration constitute Level 2 structural source control BMPs, or be included in a new “pre-treatment BMPs” definition, and excluded from Level 3. The use of catch basin and downspout filters is a basic BMP that is identified as “applicable” in the SWMMWW for many ISGP permittees. This type of easily installed filtration should be implemented by and required of permittees before they reach three benchmark exceedances in a single year (the Level 3 trigger).

Finally, Commenters urge Ecology revise the arbitrary “calendar year” delineation in the permit. We recommend that the conditions triggering Level Two and Level Three Corrective Actions be determined by benchmark exceedances in a 12-month period, regardless of the calendar year. For example, Condition S8.D should say:

“Permittees that exceed an applicable benchmark value in Table 2, Table 3, and/or Table 7 (for a single parameter for any three quarters in any 12-month period shall complete a Level 3 Corrective Action... The 12-month period need not be in one calendar year.”

With this language, a permittee must complete a Level 3 Corrective Action if it exceeds a benchmark in, for example, Quarter 2 2020, Quarter 4 2020, and Quarter 1 2021, because that would be three exceedances in a 12-month period. Furthermore, if a facility fails to sample in a quarter when there was a discharge, it should be presumed that there was an exceedance for the purposes of determining Level 2 and Level 3 triggers. We have seen too many examples where the pattern of exceedances obviously requires Level 3, but because a facility skipped a wet quarter, they evaded the requirement.

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S9, Reporting and Recordkeeping

In S9.G.3, we appreciate Ecology's efforts to encourage digital records but are concerned that relying on permittees to frequently update online copies of their SWPPP may lead to confusion and mistakes, and that the URL provided in an NOI may not be readily accessible to Commenters who regularly request and rely on permittees' SWPPPs. We suggest that S9.G.3 be revised to read: "Provide a URL to your current SWPPP within 14 days of receipt of the written request."

Appendix 2 – Definitions

Commenters offer the following questions and comments on definitions in Appendix 2.

- "Discharge." Why is "discharge [of a pollutant]" defined in terms of discharges to waters of the United States rather than waters of the State?
- "Facility". The draft permit defines "Facility" to mean "any establishment (including land or appurtenances thereto) that is subject to regulation under this permit. See Special Condition S1." Ecology modified the definition of "facility" slightly, substituting the word "establishment" where the current permit uses the word "source." Is this intended to change the meaning of the term "facility," and if so, how?

Does Ecology intend for the term "facility" to include, but not be limited to, plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites (including storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, by-product or waste product) ; refuse sites; sites used for the application or disposal of process waste waters; sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and final products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water? Some permittees, especially permittees in the transportation sector such as ports, have expressed confusion as to whether the definition of "facility" applies to their facility. We believe that permit's definition of "facility" applies equally to all industry sectors —does Ecology agree?

In its "frequently asked questions" document for a prior iteration of the ISGP, Ecology stated that "Once a transportation facility has permit coverage, the permit conditions for sampling, inspection and stormwater management practices are required in all areas of industrial activity, rather than only those areas where vehicle maintenance, equipment

cleaning and airport de-icing occur.” Does Ecology interpret the new draft permit the same way?

- “Industrial Activity.” The definition of “industrial activity” may benefit from more consistent formatting, such as:

“Industrial Activity means (1) the 11 categories of industrial activities identified in 40 CFR 122.26(b)(14)(i-xi) that must apply for either coverage under this permit or no exposure certification, (2) any facility conducting any the activities described in Table 1, and (3) the activities occurring at any facility identified by Ecology as a significant contributor of pollutants. Table 1 lists the 11 categories of industrial activities identified in 40 CFR 122.26(b)(14)(i-xi) in a different format.”

- “Stormwater Discharge Associated with Industrial Activity.” The definition of “Stormwater Discharge Associated with Industrial Activity” is confusing in that it references 40 CFR 122(b)(14) but not the permit’s more particular definition of “industrial activity” which includes activities that are not listed in 40 CFR 122(b)(14). Wherever the permit uses the term “Stormwater Discharge Associated with Industrial Activity,” it appears that the permit’s definition of “industrial activity” is actually intended. We suggest that Ecology delete the separate definition of “Stormwater Discharge Associated with Industrial Activity” to reduce confusion. If Ecology is using the term “Stormwater Discharge Associated with Industrial Activity” to intentionally reference a more limited set of activities for certain permit provisions, please explain.

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II. Conclusion

Thank you for your work on the ISGP and consideration of these comments. Please direct response to comments to Lauren Goldberg, Legal & Program Director, Columbia Riverkeeper, at lauren@columbiariverkeeper.org.

Sincerely,

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