



29 June 2019

Ms. Heather Bartlett
Mr. Travis Porter
Washington State Department of Ecology
Water Quality Program
P.O. Box 47696
Olympia, WA 98504-7696

Dear Ms. Bartlett and Mr. Porter:

Thank you for the opportunity to comment on the 2020 Draft Industrial Stormwater General Permit (ISGP). Managing stormwater discharges and protecting local receiving waters are critical goals for the Northwest Seaport Alliance (NWSA), and the Port of Tacoma. In today's competitive economic climate, the ISGP has a major economic impact on Washington ports, port customers and related businesses. These comments are submitted with the aim of providing environmental protection and regulatory predictability while also considering the economic needs of local and regional businesses.

The genesis of the ISGP was regulating the discrete activities defined by U.S. Environmental Protection Agency (EPA) as associated with industrial stormwater discharges. The NWSA and Port do not support Washington Department of Ecology's (Ecology's) expansion of the ISGP to reach activities and discharges exempt from the federal National Pollutant Discharge Elimination System (NPDES) program. This includes adding industries not defined by EPA as industrial, requiring ISGP coverage beyond those portions of facilities identified by EPA as industrial, and requiring ISGP coverage for groundwater discharges not subject to the Clean Water Act. These changes will have significant operational and economic impacts on local and regional businesses with no identified benefit to or improvement in water quality.

The comments submitted by NWSA and the Port through Ecology's on-line form and attached matrix generally fall into five categories as follows:

1. The need to explicitly announce when Ecology is proposing to expand the ISGP's scope to allow for a truly transparent public process;
2. Using science to justify the expansion of the ISGP to new activities, areas, and industries and provide a public process;
3. Acknowledging those provisions of the ISGP that Ecology regards as subject to citizen enforcement under the Clean Water Act, and those Ecology has adopted under state authority alone;
4. Eliminating or clarifying definitions that inject uncertainty into the ISGP, increasing the likelihood of third-party lawsuits; and

5. Providing additional time for level three corrective actions for complex facilities consistent with what is already typically necessary for large facilities with large treatment projects.

NWSA and the Port also propose better communication between Permittees and Ecology. As permit holders, we have direct experience implementing the ISGP that should inform subsequent permit drafts. Better communication would help ensure consistency between Ecology regions in their interpretation of the ISGP. Consistency is critical, particularly for Permittees with operations in multiple Ecology regions. NWSA and the Port support and would be willing to help organize a permit workgroup for mutual benefit.

Thank you in advance for your consideration of our comments. We believe the state can continue a strong, consistent, science-based stormwater regulatory framework to improve water quality without negatively impacting the state economy.

Respectfully,

A handwritten signature in cursive script that reads "Deanna Seaman".

Deanna Seaman
Senior Manager, Water Quality
Northwest Seaport Alliance
Port of Tacoma

Attach: Comment Matrix

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Page / Condition	Permit Language	Proposed Language / Comment
Global Comment	Clarity of language and definitions	Many of the comments in this document stem from a desire for additional clarity about how the permit works and is implemented on a specific site. Where a condition injects uncertainty, there is opportunity for different interpretations. These interpretations show up in 60 Day notices of intent to sue. Because of the interpretive variances, there is no route to attain compliance before a lawsuit is filed. It is important for Ecology and the facilities it regulates to work in partnership for water quality benefit. Deciding how the permit should be interpreted in a court of law or in one-off settlement agreements is expensive and wasteful of time and treasure better spent on treatment and BMPs.
General Comment		<p>Overall, the Port is supportive that Permit language is being maintained in many areas of the Permit, including core benchmarks. The Port is also supportive of significant new Permit language added in the draft Permit, including:</p> <ul style="list-style-type: none"> • Clarification of multiple sampling events per day and per quarter, • The addition of the electronic SWPPP option to provide public availability.
All Pages	Document headers	Insert Permit Condition Number in the header, that is very helpful tracking where in the permit the reader is looking
Page 1/S1	PERMIT COVERAGE, Table 1	Replace Table 1 with the table provided in Appendix N of the EPA MSGP, and do not add the Construction, Transportation, Mining, and Forestry Machinery and Equipment Rental and Leasing, and Marine Construction Sectors to be consistent with definition of industrial activities at 40 CFR 122.26.
Page 1-3/S1, Table 1	Table 1 and definitions for industrial activity	<p>Comment: For the purposes of coverage under the NPDES permit program, 40 CFR 122.26(b)(14)(viii) defines industrial activity for transportation facilities as: “Transportation facilities classified as Standard Industrial Classifications 40, 41, 42 (except 4221-25), 43, 44, 45, and 5171 which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations, or which are otherwise identified under paragraphs (b)(14) (i)-(vii) or (ix)-(xi) of this section are associated with industrial activity;”. Clarifying language should be added to this permit to be consistent with 40 CFR 122.26.</p> <p>Suggested Revision:</p> <p>1) In Table 1, under Industrial Activities In the Transportation Facilities cell, add "Those portions of" at the beginning of the cell to read "<u>Those portions of</u> transportation facilities¹ which have vehicle maintenance activity..."</p> <p>2) Add a footnote #1 to Table 1 stating that “Only those portions of transportation sector facilities that are either involved in vehicle maintenance, equipment cleaning operations, or airport deicing operations are covered under this permit.”</p>
Page 1-3/S1, Table 1	Table 1 Marine Construction Facilities ECY003 and new NAICS 53241X	<p>Comment: Table 1 includes the addition of two new industrial sectors covered under this permit: Construction, Transportation, Mining, and Forestry Machinery and Equipment Rental and Leasing, and Marine Construction. The justification for including these two sectors is not clear in the permit or Fact Sheet. These sectors do not appear to meet the definition of Industrial activities in 40 CFR 122.26, or if Ecology has designated these sectors as “significant contributors” of pollutants, and if so, how/why the determination was made. There is no discussion in the draft ISGP, Fact Sheet or Small Business Economic Impact Analysis of how Ecology determined that these sectors should be covered under the ISGP. The Port and other affected industry entities were not notified of any prior determination or formal process that was followed when Ecology made this determination. Forestry Machinery and Equipment Rental and Leasing and Marine Construction should be removed from the scope of the ISGP until a formal designation process has been completed by Ecology that includes public input.</p> <p>Suggested Revision: Remove Forestry Machinery and Equipment Rental and Leasing and Marine Construction and NAICS Code ECY003 from Table 1.</p>

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Page 3/S1.B.1 and S1.C.3	Is a <i>significant contributor of pollutants</i> ...	<p>Comment: The Clean Water Act (CWA) establishes the basic structure for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters . The United States Environmental Protection Agency (USEPA) recently issued an interpretive statement concluding that releases of pollutants to groundwater are categorically excluded from the CWA’s permitting requirements because Congress explicitly left regulation of discharges to groundwater to the states and to USEPA under other statutory authorities. Based on the USEPA’s analysis and careful consideration of public input, USEPA concluded that releases of pollutants to groundwater are excluded from the CWA’s permitting requirements, regardless of whether that groundwater is hydrologically connected to a surface water . Discharges to groundwater are more appropriately regulated through the Safe Drinking Water Act (SDWA), the Resource Conservation and Recovery Act (RCRA), and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). As such, the CWA NPDES permit program does not apply to discharges to groundwater.</p> <p>In addition, how would Ecology determine whether a facility is a significant contributor of pollutants to groundwater? Fact Sheet page 25 briefly summarizes what Ecology would consider when making a determination on whether a facility is a significant contributor of pollutants to groundwater but does not identify or define a specific process that would be followed, including how a facility would appeal a significant contributor of pollutants determination by Ecology.</p> <p>Suggested Revision: The language in S1.C.3 referring to significant contributor of pollutants under S1.B.1 and the language referring to groundwater under S1.B.1 should be removed from the final version of the ISGP.</p> <p>S1.C.3: Industrial facilities that discharge stormwater only to groundwater (e.g., on-site infiltration) with no discharge to surface waters of the State under any condition, provided the facility doesn’t meet the requirements of S1.B.1.</p> <p>S1.B: Ecology may require a facility to obtain coverage under this permit if Ecology determines the facility:</p> <ol style="list-style-type: none"> 1. Is a significant contributor of pollutants to waters of the State, including groundwater.

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Page 5/S1.E.1	For sites with a <i>discharge point</i> to groundwater the terms and conditions of this permit shall apply.	<p>Comment: The Clean Water Act (CWA) establishes the basic structure for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters . The United States Environmental Protection Agency (USEPA) recently issued an interpretive statement concluding that releases of pollutants to groundwater are categorically excluded from the CWA's permitting requirements because Congress explicitly left regulation of discharges to groundwater to the states and to USEPA under other statutory authorities. Based on the USEPA's analysis and careful consideration of public input, USEPA concluded that releases of pollutants to groundwater are excluded from the CWA's permitting requirements, regardless of whether that groundwater is hydrologically connected to a surface water . Discharges to groundwater are more appropriately regulated through the Safe Drinking Water Act (SDWA), the Resource Conservation and Recovery Act (RCRA), and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). As such, the CWA NPDES permit program does not apply to discharges to groundwater, and specifically to releases of a pollutant from a discharge point or point source to groundwater. Ecology should consider developing a sister program to the Underground Injection Control (UIC) Program under the authority of the SDWA to address point source discharges to groundwater that could impact drinking water sources.</p> <p>Suggested Revision: The language in S1.E.1 should be deleted in the final version of the ISGP.</p> <p>S1.E Discharges to Ground</p> <p>1. For sites with a discharge point to groundwater, the terms and conditions of this permit shall apply. 2-1. Facilities with a discharge point to groundwater through an underground injection control well shall comply with any applicable requirements of the Underground Injection Control (UIC) regulations, Chapter 173-218 WAC.</p>
Page 7 S1F	Industrial materials and activities include, but are not limited to, material handling equipment or activities, industrial machinery, raw materials, intermediate products, byproducts, and final products, or waste products.	The second definition of Industrial activities is confusing. This does not sync up with what is in the definition section of the permit page 71. Propose striking this definition in favor of 40 CFR 122.26(b)(14)(1)-(vii) or (ix)-(xi) as associated with industrial activity. Recommend the Conditional No Exposure section mirrors the MSGP section 1.4 with its citation to 40 CFR 122.26(g).
Page 7 S1F.2	The language states: "To determine if you qualify for a CNE, eleven questions must be answered and certified that none of the following materials or activities are, or will be in the foreseeable future, exposed to precipitation. To view the eleven questions, go to the Industrial Stormwater General Permit webpage.	Recommend deleting this language and staying with the language in the current permit. This gives the legal basis for the CNE and is in line with the Federal Program. Further the 11 questions in the guidance document are not line line with 40 CFR 122.26(g)(1)(i) which specifically addresses industrial materials and activities. Alternatively, reference EPA's Guidance Manual for Conditional Exclusion from Stormwater Permitting Based on "No Exposure" of Industrial Activities to Stormwater (EPA 833-B-00-001, June 2000).
Page 10, S3.A	SWPPP, A. General Requirements "qualified personnel."	Please either define "qualified personnel" or suggest changing the language to, "... developed by a person who (1) possesses the knowledge and skills to assess conditions an activities at the facility that could impact stormwater quality; (2) can evaluate the effectiveness of best management practices required by this permit for this specific facility and its unique operations and; (3) is familiar with site operations and practices with sufficient authority to commit the organization to the BMPs and actions detailed in the SWPPP. "
Page 11, S3A.3(a)	"local regulatory authority"	To whom is Ecology referring? By removing the word "applicable" a permittee may not be able to challenge the applicability of a "local regulatory authority" to require a SWPPP update. The ISGP is a state-issued NPDES permit and Ecology's delegation of permit enforcement responsibilities to undefined local regulatory authorities creates confusion and possible conflicting requests. This increases the risk to the permittee from 3rd party entities. The word "applicable" should be retained in S3A.3(a)
Page 12 S3B.1.(e)	"Locations of all structural control measures."	This term is not defined. However, on page 70 of the permit, "Structural Source Control BMPs are defined. Suggest changing the language here to "Locations of all Structural Source Control BMPs."

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Page 12 S3B.1.(j)	"Locations of actual and potential pollutant sources"	<p>Comment: This is an ambiguous request specifically the "potential" pollutant sources.</p> <p>Suggested Revision: Recommend adding "with exposure to stormwater that are associated with industrial activities" at end of bullet.</p> <p>S3B.1.(j): "Locations of actual and potential pollutant sources <u>with exposure to stormwater that are associated with industrial activities</u>"</p>
Page 13 S3B.1.(p)	"Locations and sources of run-on to your site from adjacent properties that may contain pollutants."	Request Ecology return to the previous language. Permittees are responsible for water quality at the point of discharge, if an adjacent property is causing a problem, it is up to the permittee to work with the adjacent property owner. Also, the permit does not define sources. If sources means the activities resulting in a discharge, it may be impossible to identify the "sources" from an adjacent property. The condition, if included, should not be mandatory.
Page 15 S3B.4.b.i.2.d	"...storm proof..."	EPA discusses a "storm resistant" cover, we don't know of a "storm proof" cover. Please remove this requirement.
Page 16 S3.B.4.b.i.4.c.i	"Spill prevention, containment, and countermeasures plan (scup)..."	We think Ecology means Spill Prevention Control and Countermeasures Plan SPCC plan which is a different regulatory program. Propose this language, "Where your SWPPP refers to procedure(s) in other facility documents, such as a Spill Prevention, Control and Countermeasure (SPCC) Plan, the spill kit must contain sufficient absorbent materials to absorb the minimum anticipated spill amount identified in that plan."
Page 17/S4.B.1.a, S4.B.1.b, S5.A.3	Sample Timing and Frequency	<p>B. Sampling Requirements</p> <p>1. Quarterly Benchmark and First Fall Storm Event Sample Timing and Frequency</p> <p>a. The Permittee shall sample the discharge from each designated location at least once per quarter for comparison to benchmarks as described in Part S5.A.3:</p> <p>1st Quarter = January, February, and March 2nd Quarter = April, May, and June 3rd Quarter = July, August, and September 4th Quarter = October, November, and December</p> <p>b. In addition to the benchmark sampling required at S4.B.1.a, Permittees shall sample the stormwater discharge from the first fall storm event each year. "First fall storm event" means the first time on or after September 1st of each year that precipitation occurs and results in a stormwater discharge from a facility. Results of the first fall storm event sampling shall be reported on a separate DMR. If the Permittee is not able to collect a benchmark sample during the quarter in which the first fall storm event sample is collected, the first fall storm event sample analysis result will also be used for the benchmark sample DMR for that quarter.</p>
Page 22 S4.B.1.f	Sampling Requirements	NWSA appreciates the clarifications for the multiple sampling events per day and per quarter. This is helpful.
Page 21 S4B2(c)	"Adverse Conditions"	Recommend definition for "adverse conditions" as "those conditions that are unfavorable or danger such as those that require confined space entry, sampling in high traffic areas, place samplers in physical danger." In the FAQ Ecology explains "Ecology will only require sampling locations to be moved if the current location is inaccessible due to unsafe conditions frequently and if the new location will still be representative. While Ecology recognizes that safety and security are issues for many facilities, it is not an acceptable reason to alter the sampling required by the Permit. The access issues will have to be resolved and staff will have to plan accordingly so that samples can be obtained." We request that "adverse conditions" be defined to match the above explanation of why Ecology might request a change in sampling locations and that this is the only reason Ecology may request / demand a change in location.

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Page 21 S4B2(c)	Sampling location	In the event that Ecology requests a sampling location that is not representative, it makes sense to have a process to negotiate the new location. We recommend adding language that allows for the permittee and Ecology to negotiate the sampling location to ensure the proposed location is still representative of flows on the site.
Page 21 S4B2	Section called "Sample Location"	Recommend changing this section to "Steps to Identify Sample Locations". Then S4B2 makes more sense.
Page 22 S4B.2.d.		This language is redundant and thus is not needed.
Page 22 S4.B.3	Substantially identical outfalls	Outfall in the title should be changed to "discharge point" for consistency of language.
Page 22 S4.B.4.d	Ecology uses the word, "it"	We guess this means permittee. Ecology should clarify this section to replace "it" with "permittee."
Page 19/S.4.B.7	Consistent attainment annual sample	Comment: Ecology should clarify that the consistent attainment annual sample does not include the first fall sample to remove any confusion about sampling requirements for those who have achieved consistent attainment. Suggested Revision: c. The annual sample must be taken during the 4th quarter. A facility may average the annual sample with any other samples taken over the course of the 4th quarter. <u>The annual sample does not include sampling the first fall storm event.</u>
Page 24 S4.D.2	Clarity needed	Clarify expectation for permittee to sample turbidity and pH in the field with what instruments and methods.
Page 25 S5A.3		There is duplicative language after the first sentence. Recommend striking the duplicative language as it is already stated in S4.B.1.f
page 25 S5B table 2	Footnote dropped the following sentence: If the Permittee is unable to obtain the required QL due to matrix effects, the Permittee must report the matrix-specific method detection level (MDL) and QL on the DMR.	Recommend restoring this sentence or clarifying why it was dropped as it does not show up on the redline nor is it discussed in the Fact Sheet.
Page 26 S5.B.2		There is duplicative language after the first sentence. Recommend striking the duplicative language as it is already stated in S4.B.1.f
Page 29, footnote a to table 3	Footnote dropped the following sentence: If the Permittee is unable to obtain the required QL due to matrix effects, the Permittee must report the matrix-specific method detection level (MDL) and QL on the DMR.	Recommend restoring this sentence or clarifying why it was dropped as does not show up on the redline nor is it discussed in the Fact sheet.
Page 29	Footnote to Table 3 d. Report only reporting may not be applied to consistent attainment.	Please define "report only" in the glossary to the permit.
Page 30, footnote F. to table 4		No annotation in the table referring to f. What is the link here?
Page 30 Table 4		Many QL's changed and it is not clear why. Please clarify why these changes were made.
Page 45 S8D 5.	Level 3 Deadline	We propose the following: "a. For facilities treating 10 acres and fewer, the deadline shall not be later than September 30th of the following year. For Facilities treating more than 10 acres or incurring a design and construction cost greater than \$1M, the deadline shall not be later than September 30th two years after triggering the requirement."
Page 44 S8D 5.	"...as soon as possible, but no later than September 30th the following year."	We propose the following: "... the deadlines for installation shall be calculated from the date Ecology approves the engineering report. "
page 48 S9E	"notify local jurisdiction an.."	Clarify the purpose for reporting to the local jurisdiction as follows: "1. b. Immediately notify the local MS4 permit holding jurisdiction and appropriate Ecology regional office of the failure to comply:"

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Page 49 S9G	Electronic Posting of SWPPP	Request Ecology clarify this section to read, "...To remain current, you must post any SWPPP modifications, records, and other reporting elements required for the permit term at the same URL as the main body of the SWPPP unless such records are already posted to PARIS via the Water Quality Portal. "
Page 50 S10	Propose new section D	We propose the following: "A Permittee remains in compliance with S10.A when the Permittee notifies Ecology in writing within 30 days of becoming aware, based on credible site-specific information that a discharge from the facility is causing or contributing to a known or likely violation of Water Quality Standards in the receiving water. Written notification provided under this subsection shall, at a minimum, identify the source of the site-specific information, describe the nature and extent of the known or likely violation in the receiving water, and explain the reasons why the discharge is believed to be causing or contributing to the problem. For ongoing or continuing violations, a single written notification to Ecology will fulfill this requirement.
Page 50 S10	Propose New Section E	In the event that Ecology determines, based on a notification provided under S10D or through any other means, that a discharge by the Permittee is causing or contributing to a violation of Water Quality Standards in a receiving water, Ecology will notify the Permittee in writing that corrective action in accordance with S8 is required, unless: (1) Ecology also determines that the violation of Water Quality Standards is already being addressed by a Total Maximum Daily Load (TMDL) or other enforceable water quality cleanup plan; or (2) Ecology concludes the Permittee's contribution to the violation will be eliminated through implementation of other permit requirements.
Page 65	Definition of Industrial Activity	We request definition (2) be deleted from the definition. We request definition (3) be modified as follows: "(3) identified by Ecology as a significant contributor of pollutants by written notification to the facility. " Further, we would like to see a letter describing the reasons for and process by which Ecology made this determination. Can this be referenced and posted somewhere?
Page 65	On page 7 of the permit, it reads "Industrial materials and activities include, but are not limited to, material handling equipment or activities, industrial machinery, raw materials, intermediate products, by-products, and final products, or waste products."	This is an expansion of "industrial activities" not supported in 40 CFR 122.26. In addition, "industrial activities" is already described in the definitions section of the permit. Delete this section.