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RE: Comments to Draft Industrial Stormwater General Permit

Waste Connections (WC) is an integrated solid waste services company that provides non-hazardous waste collection, transfer and disposal services, including by rail, along with resource recovery primarily through recycling and renewable fuels generation. WC operates 11 facilities permitted under Washington State's Industrial Stormwater General Permit ("Permit").

The following comments on the Draft Permit are being submitted to the Washington State Department of Ecology (Ecology) for consideration in the Final Permit.

Comments & Suggestions

1. Conditional "No Exposure" Exemptions (CNE) (S1.F.3)

Based on the proposed changes within this section of the Permit, Ecology is no longer required to respond to a permittee's written application requesting approval of a CNE determination for exemption for permit coverage within 90 days (as previously stated in the current Permit). Given the proposed language, Ecology now has no timeline as to when they must respond to such an application, and Permittees must continue complying with the requirements of the permit until they receive written approval of the CNE.

We recognize that Ecology's staff has limited capacity to review and approve CNE applications within the current 90-day timeframe. However, we disagree with a complete deletion of any timeframe for consideration and approval or denial of such applications.

Permittees often invest significant resources to meet the requirements of a CNE, including investing in facility improvements, engaging with engineers and consultants to gain concurrence and demonstrate CNE conditions are met, training staff to abide by policies and procedures to maintain CNE conditions. These efforts are made with the expectation that Ecology will concur, and the regulatory burden of permit coverage will be eased. It is only reasonable that Ecology provides some assurance that these applications will be reviewed and ruled upon in a timely manner.

Rather than an absolute removal of a timeline for responding to permittees, we propose Ecology inform applicants in writing or electronically within 180 days that it has denied or approved the request.

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2. Discharges to Ground (S1.E; S4.B.2b.; S5.B)

Based on the proposed changes within this section of the Permit, a discharge point to groundwater may be deemed by Ecology to constitute a functional equivalent to a point source discharge to surface waters.

We request additional clarification on how Ecology would determine a discharge point to groundwater to constitute a functional equivalent to a point source discharge to surface waters. For many years, low impact development (LID), such as infiltrating swales and similar structures, have been encouraged as an approved method for managing stormwater. As written, this language provides no assurance that Permittees who have invested in infiltration measures to reduce the regulatory and financial burden of sampling a point source discharge will not face that ultimate determination.

We recommend criteria be included within the Permit for how Ecology would make such determinations, and that Ecology provide guidance to facilities who currently infiltrate stormwater on how they can avoid their infiltration facilities being deemed a point source discharge to surface waters.

Based on discussion during the workshops held by Ecology, the intent is that only existing permittees with surface water discharge points will be required to monitor discharge points to groundwater. In addition, facilities that infiltrate 100% of stormwater will not be required to seek Permit coverage under the new Permit. We request that additional details regarding this intent be added to the Permit.

3. Stormwater Pollution Prevention Plan Revisions (S3.A.3.c)

Based on the proposed changes within this section of the Permit, Ecology will require Permittees to update and implement their Stormwater Pollution Prevention Plan (SWPPP) to be consistent with the 2025 ISGP on or before March 1, 2025.

Significant effort is required to update existing SWPPPs given the number of substantial changes proposed in the Permit. SWPPPs are a vital component for facilities' compliance with the Permit and must be carefully prepared. Waste Connections and its consultants need additional time to update SWPPPs for multiple permitted facilities.

To allow for additional time, WC requests that a SWPPP update deadline of May 15, 2025 be given to coincide with the existing final Permit issuance, or that Ecology releases the final Permit language by November 1, 2024.

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4. Clarification on Acceptable Covers for Dumpsters: (S3.B.2.d)

Based on the proposed changes within this section of the Permit, Ecology has clarified that Poly tarps are not considered storm resistant (Poly is underlined for emphasis as the new addition in language). We understand this distinction to mean that other, more durable forms of tarps, such as vinyl tarps, are acceptable under the permit.

WC supports the allowance for vinyl tarps as acceptable covers. Removing the use of all tarps is problematic for many industrial facilities. When properly utilized, temporary covers such as durable tarps provide significant protection from stormwater exposure. Building permits, engineering, or alterations to land use permit entitlements may be needed to allow for construction of roofs or buildings, which will require considerable time and capital investments from a Permittee and may not result in significantly better protection of stormwater quality.

The existing requirement for dumpsters to be closed when not in use will pose operational challenges for our customers. Many locations do not have the space to allow for a lid to open. Many construction companies specifically request boxes without lids so they can be loaded from any side on the project site. Lids can also pose a danger to customers if improperly used, and to many of our elderly customers who are not strong enough to lift or open lidded containers.

In specific situations, customer material is bulky and can cause damage to a lid when being loaded. The lids of a drop box are the most easily broken component because they are a moving part. Repairs and replacement can be extremely costly, and these costs are passed on to the ratepayer. Temporary tarps are a fraction of the cost and have none of the repair costs associated with a permanently installed lid.

More generally, the dumpster requirements make operational sense for most facilities with an "in-service" dumpster that is actively used for waste collection but is unnecessarily burdensome on solid waste facilities. Waste facilities regularly store large numbers of empty, not-in-use dumpsters for the purpose of storage or maintenance prior to providing them to customers. Waste containers take up large volumes of space and it's not feasible to store large amounts indoors. Empty not-in-use containers do not produce litter or leachate. WC requests that the Permit includes language allowing empty, not-in-use waste containers to be acceptably stored unlidded and uncovered at permitted facilities.

5. Drip Pans for Leaking Vehicles (S3.B.4.h.)

Based on the proposed changes within this section of the Permit, drip pans must be used under leaking vehicles, including inoperative vehicles and equipment, and managed to prevent overfilling and the contents disposed of properly.

The requirements to use drip pans are challenging, and the language within the permit is unnecessarily restrictive. Properly used and maintained absorbents, including absorbent pads, appropriately target and absorbed leaked oils. These often are more appropriate than drip pans, which can be tipped, spilled, and collect rainwater.

We suggest revising the Permit to state that drip pans "or other effective measures" be allowed for use to mitigate leaking vehicles and equipment.

6. Spill Log Clarification: (S3.B.4.i.)

Based on the proposed changes within this section of the Permit, "any liquid chemical release onsite regardless of size or flowability is considered a spill and must be logged and addressed." (Underlined for emphasis as the new addition in language).

These additional requirements are not practical for our industry to comply with. Given the Permit language, any size spot, drip, or stain noted on the ground would constitute a spill. Depending on the size of a facility, Permittees could require dedicated staff to log and address "spills" given this new definition. Furthermore, it is unreasonable to suggest that any tiny stain on the pavement requires "addressing" by the Permittee. This language leaves significant liberty for interpretation by an inspector, providing no assurance to a Permittee with even the most robust spill response program that they will be considered compliant with the Permit. Discussion in the Ecology workshops suggested that this language would require professional judgement, but Permit language needs to be clarified to allow for professional judgement to be a consideration as written.

At some facilities, historical staining may exist from leaks or spills that have been cleaned and addressed. Staining is often permanent without fully resealing or resurfacing asphalt or concrete. We have concerns that the broad proposed new language could enable an inspector to erroneously attribute an old existing stain as an undocumented spill and assign a violation.

Permittees currently are required to maintain a spill log and address spills. Our facilities have thorough spill response programs and procedures in place. This should be sufficient to meet the requirements of the Permit.

We suggest removal of the additional language under this section, or a significant revision to allow for reasonable implementation and that defines a reasonable spill volume to be logged.

7. Training requirements for contractors and vendors: (S3.B.5)

Based on the proposed changes within this section of the Permit, SWPPP training will now be required for all employees, contractors, and vendors, unless the contractor/vendor is supervised by a SWPPP trained employee at all times. (Underlined text for emphasis).

As written, it would be impossible for a Permittee to fully comply with these new training requirements. Any delivery of goods to a facility, any repair contractor servicing office equipment, or any IT technician would constitute a vendor or contractor who requires training. The only alternative provided to Permittees within the proposed language is to have a SWPPP trained employee supervise these vendors at all times. Depending on the size of a facility, Permittees could require dedicated staff to do nothing other than stop and train contractors and vendors before they access premises.

Additionally, the requirement to train all employees is unnecessary. Employees who are touring a facility for example should not require SWPPP training, nor should office workers who have no potential for interaction with industrial activities or source control measures.

We suggest that training only be required for personnel, contractors and vendors who have the potential to significantly impact stormwater pollution.

8. Transportation Facilities Required to Analyze Discharge Samples for 6PPD-quinone (S5.B; Table 3)

Based on the proposed changes within this section of the Permit, Transportation Facilities listed in Table 3, Section 1 of the Permit will be required to sample stormwater discharge for 6PPD-quinone beginning on January 1, 2028.

WC appreciates the lead time provided within the permit before sampling for 6PPD-quinone is required, but questions limiting this requirement only to the transportation sector.

Since no benchmark or limitation value is proposed within the Permit, it is assumed that DOE's intent by adding this pollutant to the Permit is to better understand its prevalence in stormwater discharge. As the primary source of 6PPD-quinone is tire wear, it would stand to reason that automotive facilities, auto dealerships, locations where crumb rubber has been utilized for ground cover, and even our highways and any facility with a parking lot would serve as a source of stormwater contamination.

Furthermore, the geographic location of a facility and its receiving waterbody may be more important in terms of managing 6PPD-quinone rather than the sector of industry being required to test for the compound, given a permittee's proximity to waterbodies known to provide coho salmon habitat.

WC's suggests that Ecology remove 6PPD-quinone monitoring from the Permit and focus efforts on evaluated water bodies where this parameter may have significant impact.

9. Solid Waste Facilities Required to Analyze Discharge Samples for PFAS (Table 3)

Based on the proposed changes within this section of the Permit, facilities operating under the NAICS code range 562xxx are required to sample stormwater discharge for PFAS. This NAICS code range includes transfer stations and material recovery facilities (MRFs), as well as landfills. WC proposes to exclude transfer stations and MRFs from PFAS monitoring or expand PFAS monitoring to all permitted facilities to be in line with the ubiquitous nature of PFAS in the environment.

The recent designation of perfluorooctanoic acid (PFOA) and perfluorooctane sulfonic acid (PFOS) as "hazardous substances" under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) grants authorities the power to investigate and remediate PFAS releases. It also allows private actions for cost recovery and contribution.

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Solid Waste Facilities are essential public service providers that are not involved in the manufacture or use of PFAS. Waste haulers, material recovery facilities (MRFs), composters, and landfills are passive receivers of media containing PFAS that are ubiquitous in the water supply, wastewater treatment process, stormwater, biosolids management, and solid waste streams.

Collecting and reporting such data, with no understanding of an appropriate compliance benchmark, could potentially result in claims for contribution against solid waste facilities. This in turn could generate significant litigation costs for lawful operations going back decades, which could then conceivably lead to significant cost increases on essential public service providers and the communities and residents they serve.

While WC recognizes that PFAS is a pollutant of concern to be addressed in the environment, we believe that adding it now as a requirement for stormwater analysis needs further discussion. It will have negative impacts to industry; and these impacts may be all for nothing, as the quality of the data gathered while sampling techniques are still not widely understood and could yield unreliable data, painting an inaccurate picture of the true presence of PFAS in the environment.

If Ecology proceeds with requiring PFAS sampling for Solid Waste Facilities within this ISGP permit cycle, we suggest this be added in year 3 or 4 of Permit coverage, rather than immediately. Additionally, we suggest the requirement to sample for PFAS be extended to all Permittees, not just those within the 562xxx NAICS Code range. In the interim between permit issuance and sampling requirements becoming effective, we request that DOE provide resources for the regulated community on proper sampling techniques and methodologies, a list of laboratories capable of analyzing these samples and reporting the data reliably, and feasible and implementable source control and treatment measures for PFAS.

Summary

As written in the Draft Permit, the proposed changes will increase our operating expense to adopt, monitor, and maintain the additional practices. WC is concerned with the impact that these changes will have on our rate payers. We appreciate the opportunity to be able to provide comments for Ecology's consideration on the Draft Permit.

Sincerely,

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