



July 15, 2024

Washington State Department of Ecology
Lucienne Banning
PO Box 47696
Olympia, WA 98504-7696

RE: PORT OF LONGVIEW COMMENTS ON DRAFT REVISED INDUSTRIAL
STORMWATER GENERAL PERMIT

Dear Ms. Banning:

The Port of Longview (Port) thanks you for the opportunity to provide public comment on the draft revised Industrial Stormwater General Permit.

GENERAL COMMENTS

The revised Industrial Stormwater General Permit (ISGP) fundamentally changes the requirements set forth in the National Pollutant Discharge Elimination System (NPDES) permit for industrial stormwater discharges by adding significant new requirements under the State Waste Discharge authority. While that is within the purview of the Washington State Department of Ecology (Ecology), it is critical to current and future permittees that Ecology expressly delineate in the permit the difference between NPDES authorized discharges and State Waste Discharge authorization for the purpose of protecting permittees from citizen suits for all requirements that extend beyond the NPDES program requirements. This applies to the changes to Table 1 relating to transportation facilities where Ecology clearly expands the coverage beyond the bounds of federal law to include material handling areas. In addition, Ecology includes language that extends the coverage of the revised ISGP to discharges to roadside ditches and other water bodies that are no longer considered Waters of the United States following the 2023 SCOTUS decision in *Sackett v. EPA*. Clarity in identifying this expanded state-only coverage would be helpful to all permittees that may face challenges from third parties in the future.

Throughout the revised ISGP, Ecology eliminates important response timelines for Ecology to respond to requests from permittees for approvals of time extensions, waivers, and other important permit obligations. For example, the automatic granting of requests for Conditional No Exposure (CNE) exemptions if Ecology does not respond within 90 days of the request has been eliminated. Not only does the revised ISGP remove the concept of automatic approval, it also

removed Ecology's obligation to respond to any request within 90 days. Under the revised ISGP, Ecology has no obligation to respond to such requests, potentially leaving the permittee in limbo forever. If automatic CNE approval is unacceptable, at least the revised ISGP should retain a reasonable time frame for Ecology to act on a permittee's request to ensure that decisions are made in a timely manner.

Ecology also removes important response timelines from multiple waiver decisions and requests for time extensions related to Corrective Action implementation that will potentially put permittees in the position of having to act under unreasonable time frames and incur potentially unnecessary costs. Because the permittee must comply with the permit requirements pending decisions from Ecology on waivers and time extensions, it is imperative that Ecology have express response timelines to avoid having the permittee incur additional costs for compliance that may be unnecessary based on Ecology's decision on these requests. Plus, it is equitable to require Ecology to act within set deadlines just as the permittees must do so.

Additionally, the Port feels as if a majority of the additional language in the revised ISGP creates overly burdensome and costly revisions that increase the administrative burden on permittees while failing to promote better management or understanding of their facilities and stormwater controls. Plus, these unnecessary additional paperwork requirements will open the door for more third-party lawsuits that force responsible permittees to divert their attention from permit compliance to defending themselves in costly litigation.

SPECIFIC COMMENTS BY SECTION

Section S1:

Section S1.E. contains confusing new language regarding when discharges to ground are required to be sampled and when treatment/infiltration BMPs are required to be designed, installed, and maintained. The revised ISGP states that sampling is only required when "a discharge point to groundwater is deemed by Ecology to constitute a functional equivalent to a point source discharge to surface waters."¹ There is no further definition, however, of what constitutes a "functional equivalent to a point source discharge," and therefore there is no basis for a permittee to understand when these new provisions apply.

Equally confusing is the requirement that all "facilities discharging to ground (e.g. infiltration, Class V UIC wells, etc.) must have all treatment/infiltration BMPs designed, installed, and maintained in accordance with Special Condition S3.A.2." This appears to suggest that any and all infiltration points on a facility may require treatment/infiltration BMPs whether they are designed and engineered or natural infiltration locations. The two examples in this sentence are significantly different, and it therefore leads to more questions about the reach of this new provision. In one case, the example is a designed and engineered discharge point (Class V UIC wells), while the other example (infiltration) can be a naturally occurring low point on a facility, a roadside ditch, or a designed detention facility that has minimal infiltration capacity. The Port believes that potentially requiring sampling of and/or treatment associated with any and all

¹ This concern is further highlighted by the complicated court decision in *County of Maui v. Hawaii Wildlife Fund*, discussed in Section S4 of the revised ISGP.

possible infiltration points on a facility is vague and overly burdensome. The better approach is to define “functional equivalent to a point source discharge” to include only those point source discharges to ground that are intentional and engineered to be key components of a site’s stormwater management system.

Section S3:

Additional language in Section S3.A.3.c. requires permittees to not only update their SWPPP, but also “implement” the updates on or before March 1, 2025. Given some of the significant changes to the revised ISGP, the requirement to not only identify updates to a facility’s SWPPP but to also require them to be implemented within 60 days of the permit becoming effective is unreasonable, unduly burdensome, and potentially impossible. For example, the revised ISGP could require a facility to implement treatment technologies associated with infiltration areas that meet the new definition of “functional equivalent to a point source discharge.” The process for considering, engineering, and implementing treatment technologies will take considerably longer than 60 days, and could therefore put a permittee out of compliance with the revised ISGP on March 1, 2025.

At a minimum, permittees should have at least 180 days in which to implement all of the changes required by the revised ISGP. In certain cases, it may be appropriate to allow a permittee to seek an extension of this new deadline so that it is not out of compliance when it is unable to implement a change required by the revised permit within the 60-day (preferably 180-day) period.

Section S3.B.1. adds significant requirements for additions to the SWPPP maps that are burdensome, expensive, and in some cases, unnecessary and duplicative, especially for large facilities like the Port of Longview. Adding flow arrows for all surface and conveyance flows could require extensive surveying of a large site and make SWPPP maps busier and harder to read. Plus, with the apparent expanded definition of “discharges to ground” (as explained above), requiring the SWPPP map to identify all areas where some infiltration might occur, even if those areas are naturally occurring, could be extremely burdensome on a large site. It would be preferable to limit identifying discharges to the ground to only those areas where new permit conditions require some form of stormwater management or specific BMPs.

Additionally, revised Section S3.B.1.p. states that the SWPPP map should include “[a]reas where industrial activity is conducted.” This revision is unnecessary and duplicative since the permit coverage area is intended to delineate where industrial activity is conducted since areas with no industrial activity do not have to be included in the permit coverage area. What additional information is expected with this addition to the SWPPP map? These additional SWPPP map requirements are unnecessary and overly burdensome.

Ecology’s addition of “etc.” in Section S3.B.2.b.vii. potentially opens up a permittee to third-party challenges because of its broad interpretation of what needs to be included in the inventory of industrial activities. It would be extremely burdensome for a facility the size of the Port to try to anticipate and identify all potential sources of stormwater pollutants. Accordingly, Ecology

should be specific and not open-ended if it is requiring permittees to include certain features in its inventories.

In Section SE.B.4.b., Ecology modified the language requiring any alternative BMP to be “demonstrably equivalent” to BMPs in the SWMMWW. Given the new measurement standard included in the definition of “demonstrably equivalent,” it will be very burdensome to meet this standard and will discourage innovation and testing of potentially effective new methods that may not be included in the SWMMWW.

Section S3.B.4.b.i.3. adds a requirement that each permittee must maintain a “maintenance log for completing each maintenance task.” What is not clear is what is considered a “maintenance task” that must be recorded in the newly required maintenance log. Is Ecology expecting the permittee to maintain a maintenance log for any maintenance to any and all “plant equipment and systems” or is it limited to maintenance of site BMPs, including structural source controls and treatment systems? The former is overly burdensome, time-consuming, and not feasible for a facility of the Port’s size.

Regardless, there is no real purpose for this requirement, other than to require additional unnecessary paperwork that must be maintained with the permittee’s SWPPP. This is especially burdensome without some context of the scope or magnitude of the maintenance that occurs with every BMP on a facility. For example, the Port maintains hundreds of BMPs throughout its 470-acre facility. Requiring it to maintain a log for every minor maintenance task would be unreasonably burdensome. Plus, if this “maintenance log” must be kept with the Port’s SWPPP, it could trigger constant updating of the SWPPP, including requiring certifications each time any maintenance occurs. This is unduly burdensome and will not result in any environmental benefit.

Section S3.B.4.b.i.4.h. now requires the use of drip pans below any leaking vehicle and eliminates other effective BMPs for leaking vehicles, including absorbent (oleophilic hydrophobic) pads. The Port has effectively used other methods for capturing drips from leaking vehicles and does not understand why Ecology has chosen to limit its choice of effective BMPs to drip pans only. Plus, drip pans require constant monitoring during rain events to ensure that they do not overflow with excessive rainwater. When absorbent (oleophilic hydrophobic) pads are securely deployed they have a lower potential to (re)release the captured oils in a rain event like drip pans can do if they overflow with stormwater. Permittees should retain the ability to choose effective BMPs based on site-specific constraints.

The revisions to Section S3.B.4.b.i.4.i. unnecessarily expand the requirement to log releases of any liquid chemical, regardless of size or flowability. It is unduly burdensome to require the logging of the most miniscule release of a liquid chemical (i.e., a single drop). It has always made sense to allow the permittee to log those releases that constitute a “spill” that requires immediate attention. Again, given the size of the Port’s coverage area, logging every drip would require an extraordinary effort and achieve no benefit to the environment.

The revisions to Section S3.B.4.b.i.5. make a substantive change to the training requirements for a permittee by adding the requirement to train all “contractors/vendors” that enter the permit coverage area. For a small facility, this may be an insignificant addition. But for a large facility

like the Port, which often has in excess of 50 contractors/vendors (e.g., truck drivers, stevedores, longshoremen, vessel representatives, etc.) entering its coverage area every day, this new provision is extremely burdensome and nearly impossible to implement without causing a significant impact on the daily operations at the Port and force the Port's stormwater compliance employees to focus on training instead of their normal duties of protecting water quality and doing required inspections and maintenance of the Port's stormwater management systems.

Additionally, the requirement to individually train part-time and seasonal employees would pose an unreasonable burden on the Port. As with vendors and contractors, the Port has many workers (primarily ILWU longshoremen) that are assigned to work at the Port on an occasional basis. These workers are not necessarily known to the Port before they are scheduled to work at the Port, and therefore cannot be individually trained prior to their working shift. Often these workers are scheduled for swing-shift or night-shift activities associated with lines hauling or cargo handling that occurs at hours outside the Port's regular business hours. Accordingly, it would be overly burdensome for the Port to provide individualized training for these occasional workers.

The only way that the Port could comply with this provision is to either allow training to be achieved through a written summary page provided to each vendor/contractor or occasional worker who enters the Port or allow the Port to post relevant information at Port entrances that vendors/contractors and occasional workers are required to read prior to entering the Port's ISGP coverage area. Accordingly, it would be less burdensome to require annual comprehensive training for permanent employees while allowing the use of handouts or postings in key areas for training of vendors, contractors, or seasonal and part-time workers. If individual training is required of all vendors/contractors or occasional workers entering the Port, the flow of trade would be significantly delayed while achieving no appreciable benefit to the environment.

Section S4:

Section S4.B.2.b. adds language suggesting that discharges to ground may need to be sampled if they are a "functional equivalent to a point source discharge." There is no definition or other explanation of functional equivalency or how it is to be determined. While this section refers to a relatively recent court decision, it is unreasonable to expect facility operators to have to interpret how that complicated decision may impact their facilities. This language should be eliminated until such time as Ecology can clearly define the criteria and process for evaluating functional equivalency (*see* Section S1 comment above regarding discharges to ground).

Section S4.B.2.e. inserts an unnecessary new process of considering sampling point waivers that also fails to provide any criteria to assess whether such a request will be granted. Permittees should be afforded latitude to establish "representative" sampling locations without unnecessary administrative processes.

Additionally, the new language does not establish any time frame for Ecology to respond to such modification requests, thereby leaving the permittee in limbo as to whether it must try to sample areas that are unsafe or otherwise not feasible. This is a prime example where a delay in Ecology's response to the waiver request could force a permittee to continue to sample unsafe or

infeasible discharges or require it to assume unnecessary costs to try to make sampling safe while awaiting Ecology's decision. Ideally, there should either be a 60-day time limit for Ecology's decision or a provision to suspend the sampling while the waiver request is pending.

Section S5:

Section S5.B. adds significant new sampling requirements to Marine Transportation facilities that will require the Port to start sampling for 6PPD-quinone as of January 1, 2028. Even though this new sampling requirement is a "report-only" obligation, it places an unfair burden on such facilities just so Ecology can gather additional evidence to then apply future regulatory restrictions on the transportation industry.

Currently, it is expected that laboratory fees for testing for 6PPD-q will be approximately \$625 per sample. With five existing sampling points, this new sampling requirement will cost the Port \$12,500 per year to merely generate data to give Ecology further information to potentially apply stricter regulations on the Port in the future. That is an unreasonable and unfair burden on the Port and other transportation facilities. Accordingly, Ecology should conduct a cost-benefit analysis as required under the Administrative Procedures Act prior to adding this onerous and expensive new sampling requirement to the transportation industry.

Given that the primary source of 6PPD-q is from tire wear, which is not solely industrial in nature, it is fundamentally unfair to place such a disproportionate burden on a single sector of the transportation community when tire wear is prevalent throughout the urban environment. If Ecology wants to gather data on this new pollutant, it should fund a study rather than place that burden on a specific industry type. Doing so will ensure that Ecology gets data on all types of industries so that future decisions regarding benchmarks or other regulatory restrictions could be fairly applied to all potential sources of 6PPD-q, and not just transportation facilities.

The addition of "illicit connections" to Section S5.E.2. appears to make any illicit connection an immediate violation when discovered. Given that such connections can be buried or hidden due to historical site use, Ecology should allow a permittee some leeway for discovery and elimination of the illicit connection prior to considering it a violation.

Section S8:

In Section S8.C.4.c. and S8.D.5.c., Ecology removed its own requirement to approve or deny a request for time extension or waiver related to a Level 2 or Level 3 Corrective Action within 60 days of receipt of the request. By eliminating Ecology's obligation to act in a timely manner, Ecology could potentially leave the requestor in limbo as to whether its request is approved or denied. It is inequitable to require a permittee to meet specific deadlines while removing Ecology's requirement to meet any deadline for making decisions related to critical permit compliance activities. Additionally, given that Level 3 Corrective Actions can require extensive testing and engineering, any delay in approving such requests could force the permittee to expend funds that might not be necessary if extended time periods were granted early on by Ecology.

Section S9:

In Section S9.C., Ecology expands the information it is requesting to be included in the Annual Reports. By adding the requirement to include significantly more information in the Annual Report, including audits conducted by consultants or providers of technical assistance, Ecology will likely put a chilling effect on a permittee's conducting studies outside its express permit requirements. It is not uncommon for facility operators to hire consultants to study site conditions and evaluate options for stormwater management that are conducted outside the facility's permit compliance obligations. Doing so assists the facility operator in determining whether additional changes need to be made to its stormwater management plan. By requiring all the information gathered in such studies to be included in the Annual Report, facility operators may curtail these studies for fear that the information gathered may be used against the facility in permit enforcement or citizen suits.

In Section S9.F.1.d., Ecology provides the permittee with the opportunity to seek a waiver of the required five-day written report and requires the permittee to obtain a written confirmation of the waiver from Ecology but does not include any time frame for Ecology to either grant or deny the waiver. As we have pointed out numerous times in the revised ISGP, Ecology fails to set reasonable time frames for its own actions under the ISGP. By failing to establish a reasonable response time for Ecology to make its waiver decision, Ecology is effectively denying the request because the permittee cannot wait to prepare the report pending Ecology's decision. Here, Ecology should be required to respond within 48 hours of the waiver request, or the permittee should be allowed to postpone filing the written report until it receives Ecology's waiver decision.

Appendix 2 – Definitions

Ecology adds significant additional definitions to the revised ISGP. The most troublesome revised/added definition is Ecology's revised definition of "industrial activity" in which Ecology fundamentally alters federal lawmakers' intent for areas at industrial plants where stormwater is directly related to manufacturing, processing, or raw material storage to be covered, while clearly excluding cargo-handling areas at transportation facilities from regulation unless those areas involve vehicle fueling, equipment maintenance, or airport deicing. Cargo handling is not manufacturing, processing, or storage of raw materials, but is a critical element of international trade that was never intended to be subject to the Clean Water Act stormwater regulations except where the specific activities identified above occur.

Ecology also added vague and unnecessary language to the definition of "reasonable potential" by adding the terms "loss of sensitive and/or important habitat" without any definition of what constitutes a "loss" and what is considered "sensitive or important habitat." These vague, undefined terms are subject to varied definitions that will leave the permittee without any idea of how to interpret whether its discharge has the reasonable potential to cause a loss to sensitive or important habitats.

Interestingly, however, is the fact that the term "reasonable potential" occurs only once in the document (other than the defined term) in the definition of "significant amount." In that

definition, “reasonable potential” expressly applies to causing “a violation of surface or ground water quality standards or sediment management standards” and not the loss of sensitive and/or important habitat. This raises the question as to whether there needs to be a separate definition of “reasonable potential” in the revised ISGP. Should Ecology deem that a definition of “reasonable potential” is necessary, Ecology should clearly define what constitutes a “loss” in this context and what it means by “sensitive and/or important habitat.”

Thank you again, and if you have any questions regarding our comments please contact Lisa Hendriksen, Director of Planning and Environmental at lhendriksen@portoflongview.com or 360-703-0207.

Best,

A handwritten signature in blue ink that reads "Dan Stahl". The signature is written in a cursive, flowing style.

Dan Stahl
Chief Executive Officer