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July 15, 2024

Mr. Jeff Killelea
Ms. Lucienne Banning
Ms. Heather Bartlett
Washington State Department of Ecology
P.O. Box 47696
Olympia, WA 98504-7696

Re: Comments on Washington's Draft National Pollutant Discharge Elimination System (NPDES) and State Waste Discharge General Permit for Stormwater Discharges Associated with Industrial Activities

Dear Mr. Killelea, Ms. Banning, and Ms. Bartlett:

BNSF Railway Company (BNSF) appreciates the opportunity to provide comments on Washington's draft NPDES Industrial Stormwater General Permit (Permit, ISGP) released May 15, 2024. Given the substantive and expansive changes being proposed in the draft, BNSF urges further engagement and collaboration between Ecology and interested parties including the regulated community.

BNSF is committed to protection of the environment as it relates to stormwater discharges associated with industrial activities through implementation of a comprehensive program of Best Management Practices (BMPs). BNSF supports the efforts to improve stormwater quality put forth in the draft ISGP and appreciates that this draft maintains important water quality benchmarks and includes new language providing needed clarifications:

- Clarified definitions.
- Additional time to submit extension requests or waivers for Level 2 and Level 3 corrective actions.
- Additional time for implementation of Level 3 corrective actions when an engineering report is required.
- Additional time for "grace period" when benchmark exceedances do not count towards additional Level 3 corrective actions when an engineering report is required.

BNSF does not support expansion of required permit coverage beyond the existing framework of the National Pollutant Discharge Elimination System (NPDES) program. Ecology's proposed expansions include requiring permit coverage for businesses without industrial activity as defined per 40 C.F.R. § 122.26 (e.g., material handling/storage for transportation facilities), adding discharges to groundwater as covered activities, and expanding the definition for "reasonable potential." In addition, the draft ISGP does not provide Permittees with multiple facilities enough time to adequately evaluate how changes in the ISGP will affect their facilities. These changes carry significant operational and economic impacts to transportation sector businesses with no clear benefit or improvement to water quality.

Specific comments that BNSF has regarding the draft Permit are included below. Under the "Suggested Revision" sections, strikethrough text indicates text to be removed from the ISGP and underline text indicates to be added to the ISGP.

Comment 1 – Use of "Directly or Indirectly" to Describe Requirements for ISGP Coverage

Permit Reference:
S1.A: Permit Coverage, Facilities Required to Seek Coverage Under This General Permit

This statewide permit applies to facilities conducting industrial activities that directly or indirectly discharge stormwater to ~~a~~ surface ~~waterbody waters~~ water of the state, ~~including but not limited to roadside ditches or dry waterways, or to a storm sewer system that drains to a surface waterbody~~ water ~~of the state~~ which includes but is not limited to roadside ditches and storm sewer systems. Beginning on the effective date of this permit and lasting through its expiration date, the Permittee is authorized to discharge stormwater and conditionally approved non-stormwater discharges to waters of the State. All discharges and activities authorized by this permit shall be consistent with the terms and conditions of this permit.

The permit requires coverage for private entities, state, and local government facilities, and includes existing facilities and new facilities. Facilities conducting industrial activities listed in Table 1 or referenced in S1.A.3 shall apply for coverage under this permit or apply for a Conditional No Exposure exemption, if eligible (Condition S1.F). The Department of Ecology (Ecology) may also require permit coverage for any facility on a case-by-case basis in order to protect waters of the State (Condition S1.B).

Comment:
In Special Condition S1.A, use of the terms "directly and indirectly" to qualify stormwater discharges is not necessary, causes confusion for permittees and potential permittees, and conflicts with other ISGP language on discharges to groundwater. The applicability of the ISGP to direct and indirect stormwater discharges is clearly defined in other parts of the ISGP, and including the ambiguous reference to indirect stormwater discharges at the beginning of the ISGP is likely to lead to confusion among the regulated community about the overall applicability of the ISGP. The ISGP applies to point source discharges to surface waters, and in proposed ISGP language in Special Condition S1.E.1, Ecology proposes to determine if a discharge point to groundwater is functionally equivalent to a point source discharge to surface waters in accordance with *County of Maui v. Hawaii Wildlife Fund*

(2020). This is a very specific instance of when a facility would be indirectly discharging stormwater to surface waters of the state. As such, the references to facilities indirectly discharging stormwater to surfaces waters of the state should be removed.

After the references to indirect stormwater discharges are removed, the references to direct stormwater discharges are not necessary. All references to "directly or indirectly" in Special Condition S1.A should be removed.

Suggested Revision:
Remove the reference to "directly or indirectly" in the first sentence of Special Condition S1.A and in bullet #1 above Table 1.

S1.A
"This statewide permit applies to facilities conducting industrial activities that ~~directly or indirectly~~ discharge stormwater to surface waters of the state, which includes but is not limited to roadside ditches and storm sewer systems."

"Facilities engaged in any industrial activities in Table 1 shall apply for coverage if stormwater from the facility discharges ~~directly or indirectly~~ to surface waters of the state…"

Language or a footnote should be added 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."

Comment 2 – Addition of Material Handling/Storage to the Definition of Industrial Activity for Transportation Facilities

Permit Reference:
S1.A: Permit Coverage, Facilities Required to Seek Coverage Under This General Permit, Table 1

Transportation facilities which have vehicle maintenance activity, equipment cleaning operations, material handling/storage, or airport deicing operations:
• Railroad Transportation 482xxx, 488210
• Transit and Ground Passenger Transportation 485xxx, 488490, 487110
• Truck Transportation 484xxx, 562111
• Postal Service 491xxx
• Water Transportation 483xxx, 487210, 4883xx, 532411
• Air Transportation 481xxx, 487990
• Petroleum Bulk Stations and Terminals 4247xx

Comment:
Adding material handling/storage to the definition of industrial activity for transportation facilities significantly expands the scope/applicability of the ISGP. The term "material handling" (defined as "storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, by-product or waste product") is vague and

overly broad. Including the term "material handling/storage" as part of the definition of industrial activity for transportation facilities goes beyond the Clean Water Act as it would require ISGP coverage for activities that are not industrial in nature. This coverage is unnecessary and not in the overriding public interest.

For example, a transportation facility where the only potential triggering activity is receiving FedEx/UPS deliveries could be considered to be engaging in loading/unloading of a final product and required to seek coverage under the ISGP. Using such a broadly defined term as a triggering activity for transportation facilities will create significant uncertainty within the transportation sector as to what should be covered or not covered under the ISGP. Requiring ISGP coverage may drive transportation-sector businesses out of Washington to other states or countries (e.g., British Columbia) and would not be in the overriding public interest considering the broader economic impacts for the Pacific Northwest.

Ecology has failed to identify a reasonable basis for a state-wide expansion of ISGP requirements to include "material handling." After extensive study of national stormwater data, EPA adopted its Phase II Regulations in 1999. 64 Fed. Reg. 68,722 (Dec. 8. 1999). EPA added only discharges from small municipal sewer systems and discharges associated with small construction activity and no other "CWA-grounded permit requirement." *Ecological Rights Foundation v. Pacific Gas and Elec. Co.,* 874 F.3d 1083, 1094 (9th Cir. 2017). As recently as 2010, Ecology rejected the need for coverage of material handling at transportation facilities. Ecology told the Pollution Control Hearings Board that it eliminated "material handling" from the list of activities at transportation facilities that required ISGP coverage "in order to make the permit term consistent with the applicable definition in federal regulations. 40 C.F.R. § 122.26(b)(14)(viii)." *Copper Dev. Assoc., Inc. v. State of Washington*, PCHB Nos. 09-135 through 09-141, Order on Summ. J., 2011 WL 62915, *4 (Jan. 5, 2011).

State and federal laws require Ecology provide "technical grounds for the draft permit determination." 40 C.F.R. § 124.8; WAC 173-200-060(1)(e). Yet on page 35 of the Draft 2024 ISGP Fact Sheet merely states that "*The draft ISGP includes a modification for the transportation category, and now includes all material handling areas as well. Ecology is using its State Authority under Chapter 90.48 RCW to require ISGP coverage for these areas. Ecology has determined that these areas are significant contributors of pollutants due to the increased tire wear and material exposed to stormwater which cause solids, zinc, and other pollution to leave the facility. This is supported in part by the Department of Ecology's Brief to the Court of Appeals, Division II of the State Court of Appeals. This is intended to bring all areas of industrial activity at transportation facilities under permit coverage and not just the vehicle maintenance, equipment cleaning and airport deicing areas. This does not include areas that are administrative and not comingled with industrial stormwater.*" This cursory explanation does not include reference to any data, analysis, or other objective grounds for a determination that moving goods requires ISGP coverage.

Material handling activity at a transportation facility cannot be considered a "significant contributor of pollutants" by default, regardless of the volume, frequency or intensity of the material handling activities. Using this blanket determination to state that any material handling/storage activity at any transportation facility is a "significant contributor of

pollutants" is an overreach of Ecology's authority, not supported by technical evidence, and does not meet the definition for "significant contributor of pollutants" in the ISGP. ISGP Appendix 2 defines "Significant Contributor of Pollutant(s)" to mean a facility determined by Ecology to be a contributor of a significant amount(s) of a pollutant(s) to waters of the State. As such, this term cannot be applied to an activity, it must be applied to a facility as described below.

The determination that a facility is a "significant contributor of pollutants" must be made on a case-by-case basis (i.e., for a single facility at a time or a category of discharges within a geographic area). The definition of "material handling" includes a wide range of activities and includes facilities with very different frequency and intensity of material handling activities. Accordingly, a determination that material handling activities is a significant contributor of pollutants must be based on facility-specific evaluation. The evaluation should include the type and level of activities occurring at a site, BMPs in place, receiving water conditions, and the quality of stormwater runoff being discharge from the facility. For example, one facility could have five instances of "material handling" per day while another facility could have 1,000 and the type of equipment used could be different, resulting in a significant difference in the quality of stormwater runoff from each distinct facility.

In Ecology's Brief to the Court of Appeals cited on page 35 of the Fact Sheet, it states that Ecology determined that transportation facilities are significant contributors of pollutants because "DMR (discharge monitoring report) data from all transportation collected since 2009 demonstrates that activity on these sites…" However, no information is provided on what activities were monitored, receiving water impacts, how many transportation sector facilities were meeting benchmarks, or what the size and scale of transportation sector facilities were evaluated. Further, this data was collected from facility areas that were already engaged in vehicle maintenance and equipment cleaning, so the data does not represent material handling/storage activities. Ecology needs to identify the basis for this determination in a clear and understandable format, including specific references to each facility's DMR data that was used to make this determination, and inclusion of all data for transportation facilities from 2009 that identifies what types of transportation facilities were meeting benchmarks and complying with ISGP requirements.

Further, the process for determining when a facility is considered a "significant contributor of pollutants" is not adequately defined. For a term with such significant ramifications for the regulated community, Ecology must establish a well-defined process with clear standards for making a "significant contributor of pollutants" determination and this process must be vetted through the public review process. Ecology should define this process in writing in an appendix to the ISGP and release for public review and comment.

Facilities with minor amounts of material handling/storage cannot be considered to be "significant contributors of pollutants" and including the term "material handling/storage" as a blanket term for coverage is not supported by technical evidence. Thresholds need to be established as to what type of or what level of material handling/storage would be considered as an industrial activity for transportation facilities requiring coverage under the ISGP. More time is needed to evaluate if and where these thresholds should be set and would

establish/strengthen the technical basis for making this significant change. Ecology should initiate a study in collaboration with the transportation sector to be completed during the 2025-2029 ISGP cycle so that the types and levels of material handling/storage that have the most potential to contribute a significant amount of pollutants to waters of the state are better understood, and specific material handling/storage thresholds can be established. Ecology is using information from the largest and most active transportation facilities to establish a blanket standard for any transportation facility, regardless of size or level/type of activity. There are many options to better define the thresholds of material handling/storage that would require coverage under the ISGP such as the scope (e.g., acreage), type, or level of activity of material handling/storage. The time must be taken to evaluate these options before implementing such a significant change in the ISGP.

With potential applicability of anti-backsliding provisions,[1] significant changes such as including "material/handling storage" as an industrial activity for transportation facilities under the ISGP cannot be taken lightly, and must be thoroughly vetted with a solid technical basis. We are all in agreement that the protection of water quality is an important goal. The transportation sector has spent millions of dollars implementing BMPs, installing and maintaining stormwater treatment systems, and taking other measures to improve the quality of stormwater runoff from transportation facilities. However, including "material/handling storage" as a blanket requirement for transportation facilities to obtain ISGP coverage would create an unnecessary burden on both private and public sector resources with questionable water quality benefit results for certain types of transportation facilities (e.g., smaller facilities or facilities that only have minor amounts of material handling/storage).

For the reasons described above, the term "material handling/storage" should be removed from Table 1 as a defined activity for ISGP coverage for transportation facilities.

Suggested Revision:
Remove proposed language from Table 1 for "material handling/storage" as an industrial activity requiring coverage under the ISGP for transportation facilities.

S1.A Table 1
"Transportation facilities which have vehicle maintenance activity, equipment cleaning operations, ~~material handling/storage~~, or airport deicing operations"

[1] State law requires that Ecology provide the legal grounds for a draft permit determination. WAC 173-200-060(1)(e). Ecology has stated that its authority to expand the permit is provided by state, not federal, law. If Ecology considers the ISGP's scope of coverage that is broader than federal CWA coverage requirements to be subject to federal NPDES permit requirements, including anti-backsliding provisions, Ecology is required to explain the basis for that determination.

Comment 3 – Timing for Applicability of ISGP

Permit Reference:
S1.C Facilities Not Required to Obtain Coverage

Comment:
Ecology's proposed expansion of the applicability of the ISGP will have far-reaching implications in the transportation sector as well as for NAICS 562111 Solid Waste Collection. No grace period is provided for these facilities which have previously not been required to obtain coverage under the ISGP, and immediately on January 1, 2025, these facilities which are newly required to obtain coverage under the ISGP will become "unpermitted existing facilities" with the potential for Notices of Violation and third-party lawsuits. A grace period must be provided for the regulated community to evaluate the implications of any new requirements in the final ISGP, consult with Ecology as needed, and take action. Given the scope of the proposed changes for the transportation sector, two years is a reasonable period of time to allow for a thorough and proper evaluation of each facility which may have the potential to be required to obtain coverage under the new requirements of the ISGP that are planned to go into effect on January 1, 2025.

A new condition should be added to Condition S1.C to provide for this grace period.

Suggested Revision:
Include a new Condition S1.C.10: "Coverage requirements in the 2025 ISGP for transportation facilities beyond those provided in 40 C.F.R. § 122.26(b)(14) become effective on January 1, 2027."

Comment 4 – Clarification on Permit Applicability and Applicability of Permit Conditions to Discharges to Ground

Permit Reference:
S1.E: Permit Coverage, Discharges to Ground

1. The terms and conditions of this permit apply to sites with a discharge point to groundwater. ~~For sites with a discharge point to groundwater, the terms and conditions of this permit shall apply.~~ However, permittees are not required to sample on-site discharges to ground (e.g., infiltration), unless 1) the facility is subject to PFAS sampling per condition S5B~~5c~~), 2) is specifically required by Ecology (Condition G12), or 3) ~~area~~ discharge point to groundwater is deemed by Ecology to constitute a functional equivalent to a point source discharge to surface waters.

2. 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.

~~2~~.3. Facilities discharging to ground (e.g., infiltration, Class V UIC wells, etc.) must have ~~infiltration~~ all treatment/infiltration BMPs designed, installed and maintained in accordance

with Special Condition S3.A.2 ~~implemented and built in a way that is demonstrably equivalent to the Stormwater Management Manuals~~.

Comment:
Read on its own, Condition S1.E could be interpreted that all discharges to groundwater are required to obtain coverage under the ISGP. However, Condition S1.C.3 Facilities Not Required to Obtain Coverage states that "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."

For clarity, a specific reference to Condition S.1.C.3 should be included in Condition S1.E that facilities discharging stormwater only to groundwater are not required to obtain coverage. This would provide clear instruction/guidance to permittees and the public when requirements of ISGP apply to discharges to groundwater.

Suggested Revision:
Update Condition S1.E.1 to: The terms and conditions of this permit apply to sites with a discharge point to groundwater that are otherwise required to obtain coverage under this General Permit (e.g., facilities with industrial activities that discharge stormwater to surface water of the state). However, the terms and conditions of this permit do not apply to facilities that discharge stormwater only to groundwater and these facilities are not required to obtain coverage under this General Permit unless deemed on a facility-specific basis to be a significant contributor of pollutants – see Condition S1.C.3. Permittees are not required to sample on-site discharges to ground (e.g., infiltration), unless…

Comment 5 – Process Not Established for Determining if Discharges to Ground are Deemed to be Functionally Equivalent to Point Source Discharges to Stormwater

Permit References:
S1.E: Permit Coverage, Discharges to Ground

1. The terms and conditions of this permit apply to sites with a discharge point to groundwater~~.~~ ~~For sites with a discharge point to groundwater, the terms and conditions of this permit shall apply.~~ However, permittees are not required to sample on-site discharges to ground (e.g., infiltration), unless 1) the facility is subject to PFAS sampling per condition S5B5~~c~~), 2) is specifically required by Ecology (Condition G12), or 3) ~~area~~ discharge point to groundwater is deemed by Ecology to constitute a functional equivalent to a point source discharge to surface waters.

S4.B.2.b Sampling Requirements, Sampling Locations
b. The Permittee is not required to sample on-site discharges to ground (e.g., infiltration) or sanitary sewer discharges, unless 1) the facility is required to sample PFAS in discharges to groundwater per Special Condition S5B), or 2) specifically required by Ecology (Condition G12), or 3) a discharge point to groundwater is deemed by Ecology to constitute a functional equivalent to a point source discharge to surface waters in accordance *with County of Maui v. Hawaii Wildlife Fund*, 140 S. Ct. 1462 (2020) (Maui).

Comment:
Ecology has not defined a process for determining if a discharge point to groundwater is functionally equivalent to a point discharge to surface waters. Given the significant ramifications of potentially requiring a facility with discharges to groundwater to obtain Permit coverage or comply with Permit conditions, any process that Ecology proposes to use to make this determination must be in writing and released for public review and comment. Best professional judgment is not an acceptable process to be used when making critical determinations regarding the applicability for requirements of the ISGP, as this can vary from person to person and will result in inconsistent application of the ISGP to different facilities. Ecology provides no basis or background for making this determination in the Fact Sheet except for a reference on page 39 of the Fact Sheet that "the rationale for requiring monitoring of certain discharges to ground, if they constitute a functional equivalent of a point-source discharge, is based on the Supreme Court case known as County of Maui v. Hawaii Wildlife Fund, 140 S. Ct. 1462 (2020) (Maui)."

The current guidance memorandum associated with *County of Maui v. Hawaii Wildlife Fund* does not clearly outline how to apply the seven factors identified for determining when a discharge point to groundwater would be considered functionally equivalent to a point source discharge to surface waters, nor does it include thresholds for making this determination. A well-defined process is not identified or established for making the determination described above. As such, a scientific and standardized process for this determination is needed to 1) ensure the process is based on sound scientific and technical evidence (i.e., empirical data), not best professional judgment and 2) to ensure that this requirement will be applied consistently for all permittees and potential permittees. This process should clearly define the steps to follow and factors to evaluate when completing this analysis of functional equivalency, and establish metrics or thresholds to facilitate making accurate and consistent determinations across facilities and geographies. As no such process is proposed or described, the inclusion of any language in the Permit for "discharge point to groundwater is deemed by Ecology to constitute a functional equivalent to a point source discharge to surface waters" needs to be removed, including in Section S1.E.1 and S4.B.2.b.

Considerations that should be incorporated into the process include:

- Transit time from discharge point to groundwater to surface water(s)
- Distance from discharge point to groundwater to surface water(s)
- Geology of the area

Suggested Revision:

Update Condition S1.E.1 to remove reference to "discharge point to groundwater is deemed by Ecology to constitute a functional equivalent to a point source discharge to surface waters":

1. The terms and conditions of this permit apply to sites with a discharge point to groundwater. However, permittees are not required to sample on-site discharges to ground (e.g., infiltration), unless 1) the facility is subject to PFAS sampling per condition S5B5c), or

2) is specifically required by Ecology (Condition G12). ~~or 3) discharge point to groundwater is deemed by Ecology to constitute a functional equivalent to a point source discharge to surface waters.~~

Update Condition S4.B.2.b to remove reference to "discharge point to groundwater is deemed by Ecology to constitute a functional equivalent to a point source discharge to surface waters":

b. The Permittee is not required to sample on-site discharges to ground (e.g., infiltration) or sanitary sewer discharges, unless 1) the facility is required to sample PFAS in discharges to groundwater per Special Condition S5B), or 2) specifically required by Ecology (Condition G12).~~, e County of Maui v. Hawaii Wildlife Fund, 140 S. Ct. 1462 (2020) (Maui).~~

Comment 6 – Removal of Ecology Response Timeframe

Permit Reference:
S1.F.3.a: Permit Coverage, Conditional "No Exposure" Exemption

3.a Ecology will respond to all CNE exemption requests in writing, either approving or denying the request. A Permittee is ~~automatically~~ granted a No Exposure exemption ~~90 days from Ecology's receipt of a complete and accurate No Exposure Certification Form, unless~~ after Ecology informs the applicant in writing or electronically ~~within 90 days~~ that it has ~~denied or~~ approved the request.

Comment:
Ecology has an obligation to provide timely responses to permittees that have changed operations or implemented BMPs to qualify for a CNE exemption. Failure to respond in a timely manner results in continued expenditure of resources such as staff labor to meet permit requirements. In addition, the ISGP does not include any language stating that Ecology even needs to response to a CNE exemption request and could leave permittees in limbo indefinitely without resolution. During this period, the permittee must comply with full ISGP requirements even if they have adequately met the criteria to quality for a CNE. The 90-day timeframe for Ecology to respond should be retained in the permit if the automatic granting of a CNE is removed.

Suggested Revision:
Add timeframe for 90-day response to Condition S1.F.3.a:

Ecology will respond to all CNE exemption requests in writing within 90 days, either approving or denying the request. A Permittee is granted a No Exposure exemption after Ecology informs the applicant in writing or electronically that it has approved the request.

Comment 7 – NOI Timeframe for Proposed Expansion of ISGP Applicability

Permit Reference:
S2.A: Application for Coverage, Obtaining Permit Coverage

1. Unpermitted facilities that require coverage under this permit shall submit to Ecology, a complete and accurate Notice of Intent (NOI) using Ecology's Water Quality Permitting Portal – Permit Coverage Notice of Intent form as follows:
a. Existing Facilities
i. Unpermitted existing facilities that require coverage under this permit shall submit a complete and accurate permit application to Ecology.
ii. Existing facilities are facilities in operation prior to the effective date of this permit, January 1, 2025~~0~~.

Comment:
Ecology's proposed expansion of the applicability of the ISGP will have far-reaching implications in the transportation-sector as well as for NAICS 562111 Solid Waste Collection. No grace period is provided for these facilities which have previously not been required to obtain coverage under the ISGP, and immediately on January 1, 2025, these facilities which are newly required to obtain coverage under the ISGP will become "unpermitted existing facilities" with the potential for Notices of Violation and third-party lawsuits. The current timeline proposed by Ecology renders the public notice and comment period on the draft completely inadequate to meet the purposes of evaluating and incorporating comments received by Ecology into the final version of the ISGP. Further, with the expected release of the final ISGP in December 2024 and an effective date of January 1, 2025, permittees are not provided with adequate time to evaluate new Permit requirements before these new requirements go into effect. A grace period must be provided for the regulated community to evaluate the implications of any new requirements in the final ISGP. Given the scope of the proposed changes for the transportation sector, two years must be provided to allow for a thorough and proper evaluation of each facility which may have the potential to be required to obtain coverage under the new requirements of the ISGP that are planned to go into effect on January 1, 2025.

Suggested Revision:
S2.A
A. Obtaining Permit Coverage
1. Unpermitted facilities that require coverage under this permit shall submit to Ecology, a complete and accurate Notice of Intent (NOI) using Ecology's Water Quality Permitting Portal – Permit Coverage Notice of Intent form as follows:
a. Existing Facilities
i. Unpermitted existing facilities that require coverage under this permit shall submit a complete and accurate permit application to Ecology.
ii. Existing facilities that are now required to obtain ISGP coverage due to the expanded definition of industrial activity under the 2025 ISGP, including transportation-sector facilities and NAICS 562111, shall submit an NOI by January 1, 2027.

iii. Existing facilities are facilities in operation prior to the effective date of this permit, January 1, 2025.

Comment 8 – Additional Time to Complete SWPPP Updates

Permit Reference:
S3.A.3.c: Stormwater Pollution Prevention Plan, General Requirements

If a Permittee covered under the 2020~~15~~ ISGP needs to update their SWPPP to be consistent with the 2025~~0~~ ISGP, the update shall be completed and implemented on or before ~~by January 30~~ March 1, 2025~~0~~.

Comment:
We appreciate the additional time to complete the SWPPP update after the reissued ISGP goes into effect. Ecology typically releases the final version of the ISGP within 30 days of the ISGP going into effect, leaving little time for permittees to evaluate updated requirements and update the SWPPP, let alone implement new requirements. Changes to the ISGP can be significant and allowing only two months (59 days) to implement new requirements such as additional BMPs is not reasonable, particularly during the winter months. Additional time should be allowed for completing the SWPPP update. No timeframe should be specified for implementation of the SWPPP. Permittees are bound by the ISGP to implement the BMPs identified in the facility's SWPPP, and while some BMPs can be implemented quickly, others may take more time depending on what is required.

Suggested Revision:
Change SWPPP update to be completed on or before June 30, 2025.

S3.A.3.c
If a Permittee covered under the 2020 ISGP needs to update their SWPPP to be consistent with the 2025 ISGP, the update shall be completed ~~and implemented~~ on or before June 30 ~~March 1~~, 2025.

Comment 9 – Additional Terms Included in SWPPP Site Map Requirements

Permit Reference:
S3.B.1: Stormwater Pollution Prevention Plan, Specific SWPPP Requirements

d. Direction of surface and conveyance stormwater flow (use arrows).
e. Locations of all structural source control BMPs.
f. Locations of all receiving water (including wetlands, discharges to ground, and drainage ditches) in the immediate vicinity of the facility.
i. Location of all stormwater conveyances including ditches, pipes, catch basins, vaults, ponds, swales, UICs, etc.
o. Locations of fueling and vehicle maintenance areas, and areas where equipment cleaning is conducted.
p. Areas where industrial activity is conducted.

Comment:
Including the terms "surface and conveyance" prior to stormwater flow is not necessary as this is already covered by existing ISGP language. Some site maps may become illegible when showing all surface and conveyance flow based on the size of the facility and amount of stormwater infrastructure. For paved facilities with extensive subsurface stormwater systems, showing surface flows would make the SWPPP maps largely unreadable with many surface flow arrows pointed to the nearest catch basin (would not be value-added to show surface flow arrows in this scenario).

The term "discharges to ground" is not defined and it is not clear if this would include localized low spots at a site where stormwater may temporarily collect on-site. If Ecology will include discharges to ground in this instance, then it should be identified as "discharges to groundwater that are functionally equivalent to a point source discharge to surface waters" as the reference to discharges to ground here is associated with the discharge to ground being a receiving water. If Ecology is going to require that discharges to ground be included on the site maps, then this needs to be clarified as "engineered discharges to ground" and that this requirement excludes low spots at a site where stormwater may collect and infiltrate.

Drainage ditches should be removed from "f" as this indicates that a drainage ditch is a receiving water which is not accurate and drainage ditches are included under "i.".

Including a generic reference to "areas where industrial activity is conducted" for identification on the SWPPP map will not provide the specificity that Ecology is looking for. If there are specific types of industrial activity that should be included on the SWPPP map, that should be specified. If any new requirements are added to the SWPPP map requirements, this should be released for public review and comment.

Suggested Revision:
Remove "surface and conveyance" from S3.B.1.d
Remove "discharges to ground" from S3.B.1.f
Remove "areas where industrial activity is conducted" from S3.B.1.p
Add "engineered discharges to ground" to S3.B.1

S3.B.1

d. Direction of ~~surface and conveyance~~ stormwater flow (use arrows).
e. Locations of all structural source control BMPs.
f. Locations of all receiving water (including wetlands, ~~discharges to ground, and drainage ditches~~) in the immediate vicinity of the facility.
i. Location of all stormwater conveyances including ditches, pipes, catch basins, vaults, ponds, swales, UICs, etc.
o. Locations of fueling and vehicle maintenance areas, and areas where equipment cleaning is conducted.
p. Locations of engineered discharges to ground
~~p. Areas where industrial activity is conducted~~

Comment 10 – Addition of the Term "Cargo"

Permit Reference:
S3.B.2.b: Stormwater Pollution Prevention Plan, Specific SWPPP Requirements

The inventory of industrial activities shall identify all areas associated with industrial activities (see Table 1) that have been or may potentially be sources of pollutants, including, but not limited to, the following:
i. Loading and unloading of cargo, dry bulk materials or liquids.

Comment:
This is the only instance of the term "cargo" in the entire ISGP. The term "cargo" is overly broad and not defined in the ISGP, and in many instances the simple act of loading and unloading cargo would not have an impact on the quality of stormwater runoff from a facility. In essence, the loading and unloading of cargo is not an industrial activity. For example, cargo could include materials that are ubiquitous in society and meant to be utilized outdoors where stormwater will be encountered. There needs to be more specificity in the types of cargo that would be considered a potential pollutant (e.g., hazardous materials) as most cargo is containerized and would not be considered a potential stormwater pollutant, even if spilled onto the ground (e.g., many solid items). Targeting loading and unloading of some dry bulk materials or liquids makes sense as dry bulk materials that are spilled could, in some instances, be mobilized during a storm event, and spills of some bulk liquids also could have the potential to impact surface waters if a spill occurs, either during a storm event or when it is dry. In many instances, cargo is covered and containerized from start to finish during the loading or unloading process and would not be exposed to precipitation. As the handling of most types of cargo would not impact the quality of stormwater runoff from a site, even if a spill occurred, this should be removed from the inventory of industrial activities. Further, cargo can include final materials that are designed for outdoor use. Specific types of cargo need to be identified for inclusion on the inventory of industrial activities, not just a general reference to the term "cargo" itself. This is already accomplished through the inclusion of dry bulk materials or liquids.

Suggested Revision:
Remove reference to "cargo" under S3.B.2.b.i

The inventory of industrial activities shall identify all areas associated with industrial activities (see Table 1) that have been or may potentially be sources of pollutants, including, but not limited to, the following:
i. Loading and unloading of ~~cargo,~~ dry bulk materials or liquids.

Comment 11 – Added Specificity Requiring a Maintenance Log

Permit Reference:
S3.B.4.i.3: Stormwater Pollution Prevention Plan, Specific SWPPP Requirements

Preventive Maintenance: The SWPPP shall include BMPs to inspect and maintain the stormwater drainage, source controls, treatment systems (if any), and plant equipment and systems that could fail and result in contamination of stormwater. The SWPPP shall include the schedule/frequency and a maintenance log for completing each maintenance task.

Comment:
Making the maintenance log part of the SWPPP is a large administrative burden without demonstrated value or protection of human health / environment. Permittees should be provided with flexibility on methods to demonstrate compliance with preventive maintenance requirements for BMPs and show maintenance records upon request. Many organizations have systems for maintenance work orders in place which can be queried to provide maintenance records to demonstrate compliance with the ISGP. Requiring a separate BMP maintenance log to be included in the SWPPP will be redundant for many permittees and create an unjustified administrative burden as the maintenance log would need to be continually updated to remain current and in compliance, as maintenance tasks occur frequently (daily at some facilities). This would also put permittees at unwarranted risk of noncompliance due to a maintenance log that is not kept current (even though maintenance work is being performed and tracked in a separate system). If a permittee does not have maintenance records available upon request, then Ecology can take enforcement action on permittees who are not conducting or tracking required ISGP-related maintenance

Suggested Revision:
Update language in S3.B.4.b.i.3:

S3.B.4.b.i.3
Preventive Maintenance: The SWPPP shall include BMPs to inspect and maintain the stormwater drainage, source controls, treatment systems (if any), and plant equipment and systems that could fail and result in contamination of stormwater. The SWPPP shall include the schedule/frequency ~~and a maintenance log~~ for completing each maintenance task. BMP maintenance records do not need to be maintained with the SWPPP, but must be made available upon request by Ecology or the local jurisdiction.

Comment 12 – Added Language Classifying Any Liquid Chemical Release a Spill

Permit Reference:
S3.B.4.b.i.4.i: Stormwater Pollution Prevention Plan, Specific SWPPP Requirements

Maintain a spill log that includes the following information for chemical and petroleum spills: date, time, amount, location, and reason for spill; date/time cleanup completed, notifications made and staff involved. Any Liquid chemical release onsite regardless of size or flowability is considered a spill and must be logged and addressed.

Comment:
The additional language that "any liquid chemical release onsite regardless of size or flowability is considered a spill and must be logged and addressed" is redundant in that existing ISGP language already indicates that a spill log needs to be maintained for chemical and petroleum spills. All liquids are chemicals so theoretically, even a spill of Gatorade or coffee would require logging and reporting. Thresholds/criteria for a spill to be logged in the SWPPP need to be established that aim to protect stormwater quality while balancing operational burden and staying within the purpose of the ISGP. Spills that are not exposed to stormwater (e.g., inside a building) should not be required to be maintained in the SWPPP spill log as they are not related to stormwater and are outside the purview of the ISGP. For example, spills can occur inside a building, within secondary containment, or in areas that drain to an on-site industrial wastewater system and discharged to sanitary sewer. If a person is washing a window inside a building and spills four ounces of glass cleaner, would that need to be logged in the SWPPP spill log? Based on the proposed language in the ISGP, it would seem that it would need to be logged, but this would be left to the interpretation of each permittee with inconsistency in application and likewise in enforcement. The language proposed to be added to S3.B.4.b.i.4.i is not necessary and should be removed.

In addition, the requirement to maintain a log with the SWPPP is becoming antiquated as many organizations maintain electronic records and have systems in place for tracking and responding to spills.

Suggested Revision:
Remove proposed language in S3.B.4.b.i.4.i:

Maintain a records of spills ~~log~~ that includes the following information for chemical and petroleum spills: date, time, amount, location, and reason for spill; date/time cleanup completed, notifications made and staff involved. Spill records do not need to be maintained with the SWPPP, but must be made available upon request by Ecology or the local jurisdiction. ~~Any Liquid chemical release onsite regardless of size or flowability is considered a spill and must be logged and addressed.~~

Comment 13 – Added Language Classifying Any Liquid Chemical Release a Spill

Permit Reference:
S3.B.4.b.i.4.i: Stormwater Pollution Prevention Plan, Specific SWPPP Requirements

Maintain a spill log that includes the following information for chemical and petroleum spills: date, time, amount, location, and reason for spill; date/time cleanup completed, notifications made and staff involved. Any Liquid chemical release onsite regardless of size or flowability is considered a spill and must be logged and addressed.

Comment:
This requirement is overly broad because all liquids are chemicals so theoretically, even a spill of Gatorade or coffee would require logging and reporting Thresholds/criteria for a spill to be

logged in the SWPPP need to be established that aim to protect stormwater quality while balancing operational burden and staying within the purpose of the ISGP. Spills that are not exposed to stormwater (e.g., inside a building) should not be required to be maintained in the SWPPP spill log as they are not related to stormwater and are outside the purview of the ISGP. For example, spills can occur inside a building, within secondary containment, or in areas that drain to an on-site industrial wastewater system and discharged to sanitary sewer.

Including reference to only "any liquid chemical release" conflicts with other sections of the ISGP where dry materials or petroleum products are called out. It is already understood that a liquid chemical release would need to be included on a spill log and reported appropriately. The language proposed to be added to S3.B.4.b.i.4.i needs to be revised to provide clear direction on when certain spills do not need to be recorded (e.g., de minimis spills).

Requiring permittees to record all spills, even those that are of a de minimis amount such as small vehicle/equipment drips and leaks, will become an impossible compliance task to track at many facilities that have vehicle traffic from many sources. If a permittee identifies a few drips of oil or small softball sized stain on the pavement from an unknown source (e.g., vehicle owned/operated by a third-party vendor or the public), this should be considered a de minimis amount and not be required to be recorded. Permittees understand the importance of preventing spills, and quick cleanup and reporting. Logging and tracking a drip on a site is neither feasible nor reasonable. Industrial facilities currently have requirements to respond to, clean up and report all spills.

This proposed change could open permittees up to costly third-party lawsuits over activities that have been cleaned up and do not pose a threat to water quality.

The way the proposed language is written puts the same level of importance on 2 drops of motor oil as for 2 drops of deleterious material (e.g., mercury). Ecology's spill guidance (F-TC-95-608 Department of Ecology Guidance for Reporting Spills and Overfills of Petroleum) provides clear guidance on de minimis amounts of petroleum spills. We recommend adding the option of de minimis, and following Ecology's "Department of Ecology Guidance for Reporting Spills and Overfills of Petroleum" definition of de minimis as "A de minimis amount of petroleum" is now defined as an amount that either: (1) immediately evaporates or (2) has been sufficiently recovered or contained so that it will not pose a threat to human health or the environment."

For spills of dangerous waste or hazardous substances, as defined in WAC 173-303-145, we recommend that Ecology reference the reporting requirements as referenced under their Spill Reporting requirements located at the following website (Spills - If you spill - Washington State Department of Ecology).

In addition, the requirement to maintain a log with the SWPPP is not administratively feasible as many organizations maintain electronic records and have systems in place for tracking and responding to spills.

Suggested Revision:
Change language in S3.B.4.b.i.4.i.

Maintain ~~a~~ records of spills ~~log~~ that includes the following information for chemical and petroleum spills: date, time, amount, location, and reason for spill; date/time cleanup completed, notifications made and staff involved. ~~Any Liquid chemical release onsite regardless of size or flowability is considered a spill and must be logged and addressed.~~ Chemical and petroleum releases that are exposed to precipitation or create the potential for stormwater pollution are considered a spill and must be logged and addressed. Spills that are inside a building, within secondary containment, in an area that discharges to combined or sanitary sewer, or that are a de minimis amount do not need to be recorded. Spill records do not need to be maintained with the SWPPP, but must be made available upon request by Ecology or the local jurisdiction.

Comment 14 – Language Specifying a Spill "Log"

Permit Reference:
S3.B.4.b.i.4.i: Stormwater Pollution Prevention Plan, Specific SWPPP Requirements

Maintain a spill log that includes the following information for chemical and petroleum spills: date, time, amount, location, and reason for spill; date/time cleanup completed, notifications made and staff involved…

Comment:
A "log" is defined as "an official record of events." Common application for maintaining a spill log is to have a table listing out the spills which have occurred at a facility. Based on permittee roundtable feedback with the Washington Stormwater Center, there was much confusion and concern as to what would be accepted as a "spill log" and what would need to be maintained to demonstrate compliance with the ISGP. Maintaining a spill log with the SWPPP is not administratively feasible because electronic recordkeeping and systems are used by many organizations to track, respond, and document spills and associated responses. Permittees should be afforded the flexibility to demonstrate permit compliance by producing spill records upon request, and this language should be clarified in the ISGP.

Suggested Revision:
S3.B.4.b.i.4.i
Maintain ~~a~~ records of spills ~~log~~ that includes the following information for chemical and petroleum spills: date, time, amount, location, and reason for spill; date/time cleanup completed, notifications made and staff involved. Spill records do not need to be maintained with the SWPPP, but must be made available upon request by Ecology or the local jurisdiction.

Comment 15 – Removal of Absorbent Option Beneath Leaking Vehicles

Permit Reference:
S3.B.4.b.i.4: General Sampling Requirements, Sampling Requirements

h) Use drip pans below leaking vehicles (including inoperative vehicles and equipment) in a manner that catches leaks or spills. Drip pans must be managed to prevent overfilling and the contents disposed of properly ~~drip pans and absorbents under or around leaky vehicles and equipment or store indoors where feasible.~~ Drain fluids from equipment and vehicles prior to on-site storage or disposal if feasible.

Comment:
Ecology removed the option to use absorbents beneath leaking vehicles. The intent of this BMP is to prevent fluids leaking from vehicles from impacting stormwater runoff. This can be accomplished using a variety of methods including drip pans, duck ponds, five-gallon buckets, loose absorbents, absorbent pads, etc. Permittees must be provided with the flexibility to determine specific types of BMPs that work best at their facility. The language in Condition S4.B.4.b.i.4.h needs to be made more general as to the types of BMPs that can be used and not be so prescriptive as to limit permittees to only using drip pans.

Suggested Revision:
S4.B.4.b.i.4.h
h) Use containment methods such as drip pans, buckets, duck ponds, absorbents or similar methods below leaking vehicles (including inoperative vehicles and equipment) in a manner that catches leaks or spills. Drip pans/containers must be managed to prevent overfilling and the contents disposed of properly. Absorbent materials must be managed to prevent impacts to stormwater runoff during storm events. Drain fluids from equipment and vehicles prior to on-site storage or disposal if feasible

Comment 16 – New Requirement to Train Contractors and Vendors

Permit Reference:
S3.B.4.b.i.5: Stormwater Pollution Prevention Plan, Specific SWPPP Requirements

Employee Training: The SWPPP shall include BMPs to provide SWPPP training for all employees and contractors/vendors who have duties in areas of industrial activities subject to this permit. (Contractors/vendors may be excluded if the permittee has an employee who has been trained on the SWPPP supervising the activity at all times.) At a minimum, the training plan shall include:
a) The content of the training.
i) An overview of what is in the SWPPP, who is responsible for maintaining the SWPPP, and its location onsite.
ii) How employees make a difference in complying with the SWPPP ~~and~~, preventing contamination of stormwater, and their role in ensuring BMPs are properly maintained and in place.

iii) Spill response procedures, good housekeeping, maintenance requirements, and material management practices.
b) How the Permittee will conduct training.
c) The frequency/schedule of training. The Permittee shall train all employees annually, at a minimum. All employees must be trained within 30 days of hire regardless of full, part, or seasonal time.
d) A log of the dates on which specific employees received training. This log must be kept with the SWPPP and made available upon request.

Comment:
Adding the word "all" before employees creates ambiguity in this permit requirement where the updated requirement could be understood as "all employees" and also "contractors/vendors who have duties in areas of industrial activities subject to this permit" or it could be read as "all employees who have duties in areas of industrial activities subject to this permit" and "all contractors/vendors who have duties in areas of industrial activities subject to this permit." This needs to be clarified so the requirement is clear. The word "all" should be removed and requirements related to employee training and contractor/vendor training should be identified separately.

Requiring permittees to train contractors and vendors (e.g., delivery drivers) creates risk and liability on permittees for training employees of other companies, and in many situations, it will not be possible for a permittee to impose training requirements on another company/organization. With proposed changes in the draft ISGP such as those related to material handling, it is not clear where the proposed requirement to train contractors/vendors would begin and end. For example, would a contractor/vendor be a company or organization, or an individual within a company/organization? Would a delivery driver need to be trained? Would this delivery driver need to be trained on every site that they deliver to which has coverage under the ISGP? Bounds need to be identified for the applicability of contractor/vendor training as a delivery driver who may only be on-site for 15 minutes per month should not be required to receive training on the ISGP. On the other hand, a contractor/vendor who is on-site the majority of the time at a facility covered under the ISGP and performing functions in areas of industrial activities subject to the ISGP, should be provided industrial stormwater training by the company/organization they are employed by, with the company/organization providing training records to permittees for verification.

The onus to complete training should be on each individual company/organization, and the permittee can verify training related to industrial stormwater has been completed for contractors/vendors rather than requiring permittees to train third parties themselves. In addition, contractors cannot be supervised or escorted at all times, this would be an unnecessarily costly and inefficient use of staff labor and is not feasible. We recommend striking the requirement of training all vendors and contractors, and instead include a topic in employee training that when working with vendors or contractors in areas of industrial activity on-site, to ensure that they are aware of the importance of stormwater management.

With the proposed requirement to train new employees within a certain number of days of hire, maintaining a training log with the SWPPP will become a redundant administrative exercise.

Companies often track employee training through an electronic system with training records maintained in electronic format. Permittees should be afforded the flexibility to demonstrate permit compliance by producing training records upon request.

Suggested Revision:
S3.B.4.b.i.5
Employee Training: The SWPPP shall include BMPs to provide SWPPP training for ~~all~~ employees ~~and contractors/vendors~~ who have duties in areas of industrial activities subject to this permit. The SWPPP shall include BMPs that when working with vendors or contractors in areas of industrial activity on-site, to ensure that they are aware of the importance of stormwater management. (Contractors/vendors may be excluded if the permittee has an employee who has been trained on the SWPPP supervising the activity at all times.) At a minimum, the training plan shall include:
a) The content of the training.
i) An overview of what is in the SWPPP, who is responsible for maintaining the SWPPP, and its location onsite.
ii) How employees make a difference in complying with the SWPPP preventing contamination of stormwater, and their role in ensuring BMPs are properly maintained and in place.
iii) Spill response procedures, good housekeeping, maintenance requirements, and material management practices.
b) How the Permittee will conduct training.
c) The frequency/schedule of training. The Permittee shall train all employees annually, at a minimum. All employees must be trained within ~~30~~ 90 days of hire regardless of full, part, or seasonal time.
d) A ~~log~~ record of the dates on which specific employees received training or the location where training records are maintained. ~~This log must be kept with the SWPPP and made available upon request.~~ Training records do not need to be maintained with the SWPPP, but must be made available upon request by Ecology or the local jurisdiction.

Comment 17 – Addition of Requirement to Add Sampling Structures

Permit Reference:
S4.B.2.c: General Sampling Requirements, Sampling Requirements

Ecology may require sampling points located in areas where unsafe conditions prevent regular sampling be moved or add sampling structures to areas where regular sampling can occur through an administrative order or permit modification (Condition G12).

Comment:
The requirement to add sampling structures should be removed. Ecology can indicate which discharge points need to be sampled under the ISGP, but the permittee must be allowed the flexibility to determine how the sampling should be conducted to ensure that the monitoring point facilitates the collection of stormwater samples that are representative of the industrial activities occurring at the site, do not include areas of run-on or commingling of stormwater

from off-site sources or areas of non-industrial activity, and are in locations where it is safe to conduct sampling.

Any changes to sample points or discharge points should continue to be administered by Ecology through the ISGP Discharge/Sample Point Update Form

Suggested Revision:
S4.B.2.c
Ecology may require sampling points located in areas where unsafe conditions prevent regular sampling be moved ~~or add sampling structures~~ to areas where regular sampling can safely occur. ~~through an administrative order or permit modification (Condition G12).~~

Comment 18 – Newly Outlined Sampling Point Waiver Process

Permit Reference:
S4.B.2.e: General Sampling Requirements, Sampling Requirements

Sampling Point Waiver Request Process

i. If a permittee believes that the sampling location requirements of this section are not feasible, Ecology may authorize case-by-case waivers from and/or adjustments to sampling locations by approving a Modification of Permit Coverage.
ii. To request a sampling point waiver from Ecology, a Permittee shall submit a detailed explanation of why it is making the waiver request (technical basis), the BMPs implemented in the areas draining to the sample points requested to be waived, and a Modification of Coverage form to Ecology in accordance with Condition S2.B. Ecology will approve or deny the request and notify the permittee in writing
iii. Approvals for sampling point waiver requests will be processed as a modification of permit coverage and approved through the issuance of an administrative order to the requestor.
iv. All sampling location requirements of the ISGP remain in effect and enforceable unless and until a waiver/modification is approved by Ecology.

~~If sampling is infeasibility due to conditions beyond the permittees control, a sampling waiver can be requested. Permittees must submit a modification request to Ecology. The modification request must go through public notice and include the following information: Reason why sampling cannot be conducted in that location or any other location that is substantially identical. Ecology may require sampling points to be moved as described above. (eg. Personal Safety)~~
~~All BMPs implemented by the facility in the area that drains to the sampling point(s).~~
~~A written plan to evaluate and update BMPs on an annual basis to ensure the permittee is at AKART for the portion where sampling cannot occur.~~

Comment:
There is no deadline for Ecology to respond to a Sampling Point Waiver Request. As the regulatory authority, Ecology has an obligation to permittees to respond to requests in a timely manner. We understand that Ecology would like more time to review requests and submittals

related to the ISGP, and as such, propose a 90-day review period for Ecology to approve or deny a Sampling Point Waiver Request.

The sampling point waiver approval should be processed as a permit modification and not as an administrative order. This reduces administrative burden on Ecology and saves time for both Ecology and the permittee.

New sampling locations that would be in effect due to proposed changes should be allowed a grace period for the sampling point waiver process to be fully reviewed and completed before the new sampling requirements take effect. Sampling requirements should not go into effect while a waiver is under review by Ecology or the courts.

Suggested Revision:

S4.B.2.e Sampling Point Waiver Request Process

i. If a permittee believes that the sampling location requirements of this section are not feasible, Ecology may authorize case-by-case waivers from and/or adjustments to sampling locations by approving a Modification of Permit Coverage.

ii. To request a sampling point waiver from Ecology, a Permittee shall submit a detailed explanation of why it is making the waiver request (technical basis), the BMPs implemented in the areas draining to the sample points requested to be waived, and a Modification of Coverage form to Ecology in accordance with Condition S2.B. Ecology will approve or deny the request and notify the permittee in writing <u>within 90 days of receipt of a complete Modification of Permit Coverage request.</u>

iii. Approvals for sampling point waiver requests will be processed as a modification of permit coverage ~~and approved through the issuance of an administrative order to the requestor.~~

~~iv. All sampling location requirements of the ISGP remain in effect and enforceable unless and until a waiver/modification is approved by Ecology.~~

<u>Comment 19 – Addition of 6PPD-Quinone Parameter</u>

Permit Reference:

S5.B.3: Benchmarks, Effluent Limitations and Specific Sampling Requirements, Additional Sampling Requirements for Specific Industrial Groups

<u>For the Transportation Facilities listed in Table 3, Section 1, the sampling requirements for 6PPD-quinone go into effect on January 1, 2028. These requirements do not apply to any facilities that meet the definition of a "small business."</u>

Table 3: Additional Benchmarks and Sampling Requirements Applicable to Specific Industries.

<u>1. Transportation Facilities: Railroad Transportation (482xxx, 488210); Transit and Ground Passenger Transportation (485xxx, 488490, 487110); Truck Transportation (484xxx); Postal Service (491xxx); Water Transportation (483xxx, 487210, 4883xx, 532411); Air</u>

Transportation (481xxx, 487990); Petroleum Bulk Stations and Terminals (4247xx); and Warehousing and Storage Facilities (493xxx, 531130)

6-PPD-quinone, ng/L, Report Only, EPA or Ecology-approved Method, 2.0 ng/L,1/ quarter

Comment:
The requirement to sample 6PPD-quinone (6PPD-q) should be removed until more information on fate and transport, human health, and other aquatic health issues have been researched and identified. Ecology has the capability to conduct further research to better understand the items listed above, and the ability to include new requirements related to 6PPD-q in the next draft ISGP. Including these requirements in the current ISGP is getting ahead of the data, lab capabilities to analyze samples, unknown costs associated with sampling/lab analyses, and what is known about 6PPD-q. For example, EPA has not established proper sampling methods, laboratory analytical methods, and the cost for a lab to analyze stormwater samples for 6PPD-q is unknown. Further, it is not clear what labs would be able to process stormwater samples for 6PPD-q and whether approved labs will be able to process collected samples. With anti-backsliding provisions, each regulatory agency has the obligation to carefully consider each new requirement and fully understand and provide the basis for each proposed change.

The EPA has cited evidence that shows 6PPD-q affects fish in freshwater ecosystems and does not specify marine waters (https://www.epa.gov/newsreleases/epa-grants-tribal-petition-protect-salmon-lethal-chemical). The requirement to sample for 6PPD-q should be removed or limited to freshwater only. Many industrial and municipal facilities discharge to marine waters and there is not scientific data/evidence to support the requirement to sample for 6PPD-q in marine waters. Further, requiring 6PPD-q sampling for transportation-sector facilities that discharge to marine waters puts these permittees at risk and undue harm for litigation for a topic that doesn't have the scientific background to prove that it is an issue in marine waters.

It is not clear why 6PPD-quinone (6PPD-q) monitoring is limited to only transportation-sector facilities. Other industries also have vehicle traffic and other activities that could lead to 6PPD-q in stormwater. For example, manufacturing facilities can have a significant amount of vehicle and truck traffic. Ecology has administrative authority to collect 6PPD-q data when and where it can provide benefit to further evaluate the fate and transport of 6PPD-q (e.g., establish a QAPP that identifies specific locations for 6PPD-q monitoring).

Ecology removed the footnote indicating that "Ecology will use the data collected during this permit term to determine if the pollutants listed will need to be included in the next permit, and if so, develop benchmarks based on the data received and water quality criteria. What is Ecology's intended use for the 6PPD-q monitoring data that is collected under this new permit requirement? Page 31 of the Fact Sheet states:
The reported sampling data will allow Ecology to characterize 6PPD-q in stormwater discharges from these sectors, assess the effectiveness of BMPs and other permit requirements to reduce 6PPD-q, and it may also help identify certain discharges and/or sites for further investigation and/or corrective action.

As a Report Only parameter, it is not clear why or how Ecology would use the collected 6PPD-q monitoring data to "identify certain discharges and/or sites for further investigation and/or corrective action." We request that Ecology remove the requirement to sample for 6PPD-q and take more time to study the issue first before moving forward with any potential changes to the ISGP, as 6PPD-q is an emerging contaminant of concern, with much to be figured out regarding effective BMPs, etc.

Suggested Revision:
Remove the requirement to sample for 6PPD-q.

Comment 20 – Remove the Terms "Directly or Indirectly"

Permit Reference:
S6.C.1: Discharges to Impaired Waters, Additional Sampling Requirements and Effluent Limits for Discharges to Certain Impaired Waters and Puget Sound Cleanup Sites

1. Permittees discharging to a 303(d)-listed waterbody (Category 5), either directly or indirectly through a stormwater drainage system, shall comply with the applicable sampling requirements and numeric effluent limits in Table 6. If a discharge point is subject to an impaired waterbody effluent limit (Condition S6.C) for a parameter that also has a benchmark, the effluent limit supersedes the benchmark. Permittees discharging to a 303(d) – listed waterbody (Category 5) that was not 303(d)-listed at the time of ~~2015~~2020 permit coverage shall comply with the applicable sampling requirements and numeric effluent limits in Table 6 as soon as possible, but no later than January 1, 2027~~2~~.
~~a. Facilities subject to these limits include, but may not be limited to, facilities listed in Appendix 4. B.~~
~~b.~~a. For purposes of this condition, "applicable sampling requirements and effluent limits" means the sampling and effluent limits in Table 6 that correspond to the specific parameter(s) the receiving water is 303(d)-listed for at the time of permit coverage, or total suspended solids (TSS) ~~if the waterbody is 303(d)-listed (Category 5) for sediment quality at the time of permit coverage.~~

Comment:
For consistency and clarity, the reference to "directly or indirectly" should be removed and replaced with a reference to "outfall." In ISGP Appendix 2 Definitions, "outfall" means the point where a discharge from a facility enters a receiving waterbody or receiving waters.

Suggested Revision:
S6.C:
Additional Sampling Requirements and Effluent Limits for Discharges to Certain Impaired Waters and Puget Sound Sediment Cleanup Sites
1. Permittees discharging to an outfall for a 303(d)-listed waterbody (Category 5), ~~either directly or indirectly through a stormwater drainage system,~~ shall comply with the applicable sampling requirements and numeric effluent limits in Table 6.

Comment 21 – Newly Added Marine Waters Effluent Limits

Permit Reference:
S6.C: Discharges to Impaired Waters, Additional Sampling Requirements and Effluent Limits for Discharges to Certain Impaired Waters and Puget Sound Cleanup Sites

New Marine Waters Effluent limits.
Copper – ~~g~~ 5.8 ug/L
Zinc – ~~g~~ 95.1 ug/L
Pb – ~~g~~ 220.8 ug/L
Pentachlorophenol – ~~g~~ 13 ug/L

Comment:
Previously, site-specific effluent limitations were assigned at time of permit coverage except for turbidity, TSS, and mercury which have specified effluent limitations both freshwater and marine water. The ISGP Fact Sheet states that numeric effluent limits will be derived at the time of permit coverage based on receiving water type, hardness and a translator factor. Ecology provides no basis in the Fact Sheet or otherwise for adding predetermined effluent limits for copper, zinc, lead and pentachlorophenol for marine waters. Marine waters have a much higher hardness than freshwater (typically 6,000+ mg/L compared to less than 250 mg/L for freshwater).

What is the basis for the proposed effluent limits for copper, zinc, lead and pentachlorophenol for marine waters? What is the justification that effluent limits are prescribed for marine waters and not fresh waters? We acknowledge that metals benchmarks are often the same for discharges to marine waters, but it is not clear how or why pentachlorophenol is not being determined on a case-by-case basis. Again, no background or reasoning was provided in the Fact Sheet for how any of the effluent limits for copper, lead, zinc, and pentachlorophenol were established.

As no basis is provided for making these changes, the existing ISGP language should be retained to assign site-specific effluent limits at the time of permit coverage.

Suggested Revision:
Remove proposed changes.

Copper, Total	ug/L	g	~~5.8~~ g
Lead, Total	ug/L	g	~~220.8~~ g
Mercury, Total	ug/L	2.1	1.8
Zinc, Total	ug/L	g	~~95.1~~ g
Pentachlorophenol	ug/L	g	~~13~~ g

Comment 22 – Removal of Ecology Response Deadline

Permit Reference:
S8.C.4: Corrective Actions, Level Two Corrective Actions – Structural Source Control BMPs

c. To request a time extension or waiver, a Permittee shall submit a detailed explanation of why it is making the request (technical basis), and a Modification of Coverage form to Ecology in accordance with Condition S2.B, ~~by May 15th~~ prior to Level 2 Deadline. Ecology will approve or deny the request ~~within 60 days of receipt of a complete Modification of Coverage request~~ and notify the permittee in writing.
d. While a time extension is in effect, benchmark exceedances (for the same parameter) do not count towards additional Level 2 or 3 Corrective Actions.
e. During the period of time after a facility triggers a Level 2 corrective action but prior to the corresponding Level 2 corrective action implementation due date~~, For the implementation year (the year following the calendar year the Permittee triggered a Level 2 corrective action),~~ benchmark exceedances (for the same parameter) do not count towards additional Level 2 or 3 Corrective Actions.

Comment:
The deadline for Ecology to respond to a Level 2 corrective action extension or waiver was removed from the permit. As the regulatory authority, Ecology has an obligation to permittees to respond to requests in a timely manner. We understand that Ecology would like more time to review requests and submittals related to the ISGP. However, given the significant implications that Ecology's decision has on permittees, the 60-day review period is necessary. Additional language should be added to the permit to address the time period when Ecology is reviewing a request/submittal with this review period potentially overlapping with the identified deadline.

The Level 2 deadline is August 31 of the year after a Level 2 corrective action is triggered. With the updated permit language, extension requests can be submitted at any time prior to this August 31 deadline. Language needs to be added to the ISGP to address the time period after an extension request is submitted to Ecology because there is potential for the Level 2 deadline to pass when Ecology is reviewing the request, but has not yet responded to the permittee. For example, if a Permittee submits an extension request on July 30, Ecology may not respond until September or October. If Ecology denies the request after the deadline has passed, then the permittee would be in violation of the ISGP. Language needs to be added to the ISGP for the time when an extension request is submitted to Ecology, but Ecology has not yet responded to the permittee as to whether the extension request is approved or denied. This will clearly define the process and when a permittee is or is not in compliance with the ISGP.

Suggested Revision:
S8.C.4
c. To request a time extension or waiver, a Permittee shall submit a detailed explanation of why it is making the request (technical basis), and a Modification of Coverage form to Ecology in accordance with Condition S2.B, prior to the Level 2 ~~D~~deadline. Ecology will approve or

deny the request and notify the permittee in writing within 60 days of receipt of a complete Modification of Coverage request. The deadline for implementation of the Level 2 corrective action will be automatically extended after a permittee submits a complete Modification of Coverage request and Ecology has yet to respond to the request in writing. Should Ecology deny the time extension or waiver request, the permittee shall have 90 days from receipt of Ecology's written response to implement the Level 2 corrective action.

Comment 23 – Tier 2 Corrective Action Benchmark Exceedance Waiver

Permit Reference:
S8.C.4.e: Corrective Actions, Level Two Corrective Actions – Structural Source Control BMPs

During the period of time after a facility triggers a Level 2 corrective action but prior to the corresponding Level 2 corrective action implementation due date~~, For the implementation year (the year following the calendar year the Permittee triggered a Level 2 corrective action),~~ benchmark exceedances (for the same parameter) do not count towards additional Level 2 or 3 Corrective Actions.

Comment:
If a time extension is not requested for a Level 2 corrective action, then this is shortening the "grace period" where benchmark exceedances do not count towards additional Level 2 or Level 3 corrective actions (end of "grace period" would be moved from December 31 to August 31 of the year following the calendar year in which a Level 2 corrective action was triggered). Permittees could potentially trigger an additional Level 2 corrective action in the year following the calendar year in which a Level 2 corrective action was triggered if: sampling results exceed benchmarks in September (third quarter exceedance) and then sampling results exceed benchmarks in the fourth quarter. As the intent of the ISGP includes adaptive management, the permittee should be allowed to evaluate the effectiveness of an implemented Level 2 corrective action for the remainder of the calendar year, from September 1 to December 31. During this time, adjustments or modifications could be made to the implemented Level 2 corrective action after evaluating its effectiveness when in operation. Note this would only be applicable when a time extension for Level 2 corrective action is not requested.

Suggested Revision:
S8.C.4
e. For the year following the calendar year the Permittee triggered a Level 2 corrective action, or during the period of time after a facility triggers a Level 2 corrective action but prior to the corresponding Level 2 corrective action implementation due date, whichever is longer, benchmark exceedances (for the same parameter) do not count towards additional Level 2 or 3 corrective actions.

Comment 24 – Removal of Ecology Response Deadline for Level 3 Corrective Actions

Permit Reference:
S8.D.5.c: Corrective Actions, Level Three Corrective Actions – Treatment BMPs

To request a time extension or waiver, a Permittee shall submit a detailed explanation of why it is making the request (technical basis), and a Modification of Coverage form to Ecology in accordance with Condition S2.B, ~~by May 15th~~ prior to the Level 3 Deadline. Ecology will approve or deny the ~~request within 60 days of receipt of a complete Modification of Coverage request~~ and notify the permittee in writing.

Comment:
The deadline for Ecology to respond to a Level 3 corrective action extension or waiver was removed from the permit. As the regulatory authority, Ecology has an obligation to permittees to respond to requests in a timely manner. It is essential to the regulated community that Ecology provide prompt input on proposed Level 3 corrective actions particularly when those corrective actions involve complex treatment systems or emerging contaminants of concern such as 6PPD-q. We understand that Ecology would like more time to review requests and submittals related to the ISGP, however, a 60-day review period is warranted given the significant implications that Ecology's decision has on permittees, and recommend additional language be added to the permit to address the time period when Ecology is reviewing a request/submittal with this review period potentially overlapping with the identified deadline.

Suggested Revision:
S8.D.5
c. To request a time extension or waiver, a Permittee shall submit a detailed explanation of why it is making the request (technical basis), and a Modification of Coverage form to Ecology in accordance with Condition S2.B, prior to the Level 3 deadline. Ecology will approve or deny the request and notify the permittee in writing within 60 days of receipt of a complete Modification of Permit Coverage request. The deadline for implementation of the Level 3 corrective action will be automatically extended after a permittee submits a complete Modification of Coverage request and Ecology has yet to respond to the request in writing. Should Ecology deny the time extension or waiver request, the permittee shall have 180 days from receipt of Ecology's written response to implement the Level 3 corrective action. Should Ecology deny an engineering report submittal for a Level 3 corrective action, Ecology shall provide a reasonable time extension for the Level 3 corrective action implementation deadline.

Comment 25 – Hardcopy Record Requirements

Permit Reference:
S9.D.1: Reporting and Record Keeping, Records Retention

The Permittee shall retain the following documents onsite for a minimum of five years:
a. A copy of this permit.
b. A copy of the permit coverage letter.
c. Records of all sampling information specified in condition S4.B.3.

d. Inspection reports including documentation specified in Condition S7.
e. Any other documentation of compliance with permit requirements.
f. All equipment calibration records.
g. All BMP maintenance records.
h. All original recordings for continuous sampling instrumentation.
i. Copies of all laboratory reports as described in Condition S3.B.4.
j. Copies of all reports required by this permit.
k. Records of all data used to complete the application for this permit.
2. The Permittee shall extend the period of records retention during the course of any unresolved litigation regarding the discharge of pollutants by the Permittee, or when requested by Ecology.
3. The Permittee shall make all plans, documents, and records required by this permit immediately available to Ecology or the local jurisdiction upon request; or within 14 days of a written request from Ecology.

Comment:
Permit language in S9.D implies that hardcopy records need to be maintained onsite. This is not feasible because most of these records (e.g., laboratory reports) are obtained and stored electronically. There are multiple instances of language in the ISGP that require permittees to submit documents to Ecology electronically, but no language in the permit that explicitly allows permittees to maintain the SWPPP and associated documents/records in an electronic format. This needs to be clarified in Condition S9.D and can be accomplished with the proposed language in this comment.

Condition S9.3 identifies that
3. The Permittee shall make all plans, documents, and records required by this permit immediately available to Ecology or the local jurisdiction upon request; or within 14 days of a written request from Ecology.

As long as permittees are able to produce the SWPPP and associated documents/records upon request from Ecology or the local jurisdiction, this meets the intent of the ISGP and permittees must be afforded this flexibility. The requirement to maintain hardcopies onsite is not feasible and would require printing of electronic records, which is not a sustainable practice and is contrary to Ecology's mission.

Further, electronic recordkeeping is more environmentally friendly than maintaining hardcopies and will reduce administrative burden on permittees.

In addition, for unstaffed facilities, permittees need to be allowed time to coordinate a site visit with Ecology or the local jurisdiction, and provide the SWPPP and associated documents/records. The 14-day response timeframe to provide these documents is recommended to be consistent with the existing requirement to respond to a written request.

Suggested Revision:
1. The Permittee shall retain the following documents, either as hardcopies onsite or electronically, for a minimum of five

years:
a. A copy of this permit.
b. A copy of the permit coverage letter.
c. Records of all sampling information specified in Condition S4.B.3.
d. Inspection reports including documentation specified in Condition S7.
e. Any other documentation of compliance with permit requirements.
f. All equipment calibration records.
g. All BMP maintenance records.
h. All original recordings for continuous sampling instrumentation.
i. Copies of all laboratory reports as described in Condition S3.B.4.
j. Copies of all reports required by this permit.
k. Records of all data used to complete the application for this permit.
2. The Permittee shall extend the period of records retention during the course of any unresolved litigation regarding the discharge of pollutants by the Permittee, or when requested by Ecology.
3. The Permittee shall make all plans, documents, and records required by this permit immediately available to Ecology or the local jurisdiction upon request; or within 14 days of a written request from Ecology; or within 14 days of request for unstaffed facilities.

Comment 26 – Reporting Requirements for Violations

Permit Reference:
S9.F.1: Reporting and Record Keeping, Reporting Violations

The Permittee must take the following actions when it violates or is unable to comply with any permit condition~~: In the event the Permittee is unable to comply with any of the terms and conditions of this permit which may endanger human health or the environment, or exceed any numeric effluent limitation in the permit, the Permittee shall, upon becoming aware of the circumstances:~~
a. Immediately take action to minimize potential pollution or otherwise stop the noncompliance and correct the problem.
~~a.~~b. The Permittee must report the following to the Ecology regional office at the telephone numbers listed below within 24 hours from the time the Permittee becomes aware of any of the following~~: Immediately take action to minimize potential pollution or otherwise stop the noncompliance and correct the problem.~~
i. Any noncompliance that may endanger health or the environment.
~~b.~~ Any violation of a maximum daily discharge limit in this permit. ~~Immediately notify the local jurisdiction and appropriate Ecology regional office of the failure to comply:~~

Comment:
Ecology reorganized Condition S9.F Reporting Permit Violations where the text for "immediately take action to minimize potential pollution or otherwise stop noncompliance and correct the problem" was put before the reference to "any noncompliance that may endanger health or the environment and any violation of a maximum daily discharge limit in this permit. As Condition S9.F is for Reporting Permit Violations, it does not make sense to reorganize this

section in the way that Ecology proposes, as it indicates it is for any noncompliance even those that do not need to be reported. Condition S9.F is for reporting specific types of permit violations so including permit language in this condition that applies to any noncompliance does not make sense. The existing ISGP language for Condition S9.F should be retained.

Suggested Revision:
Remove proposed changes and retain existing ISGP language for S9.F.

S9.F
~~The Permittee must take the following actions when it violates or is unable to comply with any permit condition:~~ In the event the Permittee is unable to comply with any of the terms and conditions of this permit which may endanger human health or the environment, or exceed any numeric effluent limitation in the permit, the Permittee shall, upon becoming aware of the circumstances:
~~a. Immediately take action to minimize potential pollution or otherwise stop the noncompliance and correct the problem.~~
~~a.~~b. ~~The Permittee must report the following to the Ecology regional office at the telephone numbers listed below within 24 hours from the time the Permittee becomes aware of any of the following:~~ Immediately take action to minimize potential pollution or otherwise stop the noncompliance and correct the problem.
~~i. Any noncompliance that may endanger health or the environment.~~
~~b. Any violation of a maximum daily discharge limit in this permit.~~ Immediately notify the local jurisdiction and appropriate Ecology regional office of the failure to comply…

Comment 27 – Presumed Compliance with Water Quality Standards

Permit Reference:
S10. Compliance with Standards

Comment:
In *PUD No. 1 of Jefferson County v. Washington Department of Ecology*, 511 U.S. 700 (1994), the Supreme Court concluded that the Clean Water Act provides for protection of water quality by translating water quality standards into specific limits tailored to individual permittees. Ecology describes the ISGP as a Clean Water Act Permit. The requirement in ISGP Condition S10.A to meet water quality standards does not provide Permittees with specific direction or limits. That ambiguity is not consistent with the Clean Water Act's requirements and Congress' intent.

The federal district court in *PSA v. APMT*, concluded that the statement in Condition S10.B that "Ecology will presume compliance with water quality standards" does not describe a presumption that is beneficial to Permittees in the context of third-party lawsuits because it refers only to a presumption applicable to Ecology. *Puget Soundkeeper Alliance v. SSA Terminals, LLC*, 561 F.Supp.3d 1113, 1119 (W.D. Wash. 2021). The presumption of compliance should apply for Permittees regardless of whether the entity enforcing the Permit is Ecology or a citizen.

The requirement in Condition S10.C. to meet AKART by applying "applicable and appropriate BMPs, including the BMPs necessary to meet the [water quality] standards identified in Condition S10.A" is unreasonable and inconsistent with the Clean Water Act by failing to provide Permittees with specific direction or limits to which discharges must conform. A discharge's impact on water quality is a function of many variables, so this language does not provide clarity around what is required for Permit compliance.

The Permit lacks an express process for clarifying when the factors that gave rise to the presumption of compliance in Condition S10.B.1 again apply following a temporary or exceptional event. For example, a facility operating an advanced stormwater treatment system might experience a one-time benchmark exceedance that is resolved by maintenance or repair. Irrespective of whether the event constituted a Clean Water Act violation, performing this maintenance or repair should mean the facility is again presumed to be in compliance with the Permit.

Suggested Revision:

Remove Conditions S10.A and S10.C.

Revise Condition S10.B to state that "A Permittee is presumed to be in compliance with water quality standards" when meeting permit conditions:

A Permittee is presumed to be in compliance with water quality standards ~~Ecology will presume compliance with water quality standards, unless discharge monitoring data or other site-specific information demonstrates that a discharge causes or contributes to violation of water quality standards,~~ when the Permittee is:
1. In full compliance with all permit conditions, including planning, sampling, monitoring, reporting, and recordkeeping conditions.
2. Fully implementing stormwater best management practices contained in stormwater technical manuals approved by the department, or practices that are demonstrably equivalent to practices contained in stormwater technical manuals approved by Ecology, including the proper selection, implementation, and maintenance of all applicable and appropriate best management practices for on-site pollution control.

Alternative Revision:
Alternatively, should Ecology retain Conditions S10.A and S10.C, then the following changes should be incorporated into the final version of the ISGP.

Revise Condition S10.B to state that "A Permittee is presumed to be in compliance with water quality standards" when meeting permit conditions:

A Permittee is presumed to be in compliance with water quality standards ~~Ecology will presume compliance with water quality standards, unless discharge monitoring data or other site-specific information demonstrates that a discharge causes or contributes to violation of water quality standards,~~ when the Permittee is:

1. In full compliance with all permit conditions, including planning, sampling, monitoring, reporting, and recordkeeping conditions.
2. Fully implementing stormwater best management practices contained in stormwater technical manuals approved by the department, or practices that are demonstrably equivalent to practices contained in stormwater technical manuals approved by Ecology, including the proper selection, implementation, and maintenance of all applicable and appropriate best management practices for on-site pollution control.

Add a Condition S10.D and Condition S10.E as follows:

D. A Permittee is again in compliance with S10.A despite any discharges prohibited by 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 caused or contributed to a potential 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 potential violation in the receiving water, explain the reasons why the discharge is believed to have caused or contributed to the problem, and the steps taken by the Permittee to address the issue. For ongoing or continuing discharges, a single written notification to Ecology will fulfill this requirement.

E. In the event that Ecology determines, based on a notification provided under S10.D or through any other means, that additional actions are required, Ecology will notify the Permittee in writing that the presumption of compliance in Condition S10.A will resume following specific corrective action in accordance with S8, unless:
    1. Ecology also determines that the potential 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 will be addressed through implementation of other permit requirements.

Comment 28 – Third Party Contractors Included Under Right of Entry and Inspection

Permit Reference:
G3: Right of Inspection and Entry

The Permittee shall allow an authorized representative of Ecology or an authorized representative (including an authorized contractor acting as a representative of the Administrator), upon the presentation of, ~~upon the presentation of~~ credentials and such other documents as may be required by law.

Comment:
Ecology is proposing to use environmental consultants/ contractors to conduct site visits/inspections related to the ISGP. In order for ISGP-related site visits and inspections to be fair and objective, it is imperative that only authorized employees of the Department of

Ecology be allowed entry. The use of third-party contractors to conduct compliance inspections on behalf of Ecology will:

- create more inconsistency in the application of the ISGP to different facilities,
- result in unknown individuals requesting access to facilities covered under the ISGP – many of which have safety and security protocols in place to protect employees and critical infrastructure,
- create more uncertainty for permittees as to whether individuals seeking access to their facility are legitimate or not, and
- ultimately end up in conflicts of interest occurring.

The Fact Sheet does not provide any information on the use of "authorized contractors" or details on how third-party contractors would be vetted for safety, security, and conflicts of interest. The proposed language allowing an authorized representative or contractor to be allowed entry to ISGP facilities needs to be removed.

Suggested Revision:

G3:

The Permittee shall allow an authorized representative of Ecology ~~or an authorized representative (including an authorized contractor acting as a representative of the Administrator),"~~ upon the presentation of credentials and such other documents as may be required by law A. To enter upon the premises where a discharge is located or where any records shall be kept under the terms and conditions of this permit. B. To have access to and copy, at reasonable times and at reasonable cost, any records required to be kept under the terms and conditions of this permit. C. To inspect, at reasonable times, any facilities, equipment (including sampling and control equipment), practices, methods, or operations regulated or required under this permit. D. To sample or monitor, at reasonable times, any substances or parameters at any location for purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act

Comment 29 – Changed Definition of Industrial Activity

Permit Reference:
Appendix 2 - Definitions

Industrial Activity means industrial 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 a facility; material handling sites; 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. For the purposes of this definition, material handling activities include storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, by-product or waste product. The term excludes areas located on a site separate from the facility's industrial activities, such as office buildings and accompanying parking lots as long as the

drainage from the excluded areas is not mixed with storm water drained from the above described areas. ~~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 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.~~

Comment:
Changing the definition of industrial activity as proposed creates ambiguity regarding what activities are subject to the monitoring requirements in Condition S4.B.2 and the inspection requirements in S7.B.1. The proposed definition refers to "immediate access roads and rail lines" but does not explain what activity the roads or rail lines must be immediate to. The definition fails to explain what constitutes a "shipping and receiving area[]." The definition includes "material handling sites," and defines material handling to include transportation of final products. Ecology should not regulate "sites" used for transporting final products, a scope that is unreasonable in its reach, not supported by any science or data, and would include areas that do not constitute fixed industrial spaces. For example, any facility engaged in storing raw materials, intermediate products, or final products, regardless of NAICS code (e.g., Home Depot), would be required to obtain ISGP coverage (again, regardless of NAICS code). This conflicts with the requirements in Special Condition S1.A.

In addition, finalization of the proposed 2025 ISGP is premature given ongoing litigation in the state of Washington related to existing Permit language. Ecology and Permittees should have and consider the Washington Supreme Court's and Pollution Control Hearings Board's rulings regarding the 2020 ISGP before finalizing proposed changes to the definition of "industrial activity."

Suggested Revision:
The existing definition for "Industrial Activity" should be retained.

~~Industrial Activity means industrial 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 a facility; material handling sites; 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. For the purposes of this definition, material handling activities include storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, by-product or waste product. The term excludes areas located on a site separate from the facility's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas~~. 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 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.

Comment 30 – Scope of ISGP Coverage is for Fixed Facilities

Permit Reference:
Appendix 2 Definitions

Comment:
The intent of the ISGP is to regulate fixed facilities, in particular manufacturing plants. Rights-of-way, such as roadways and rail lines, should be explicitly excluded from any definition of " industrial activity."

Suggested Revision:
Any revised definition for "industrial activity" must include an exclusion for rights-of-way, including but not limited to, roadways and rail lines.

Comment 31 – Definition of Material Handling

Permit Reference:
Appendix 2 - Definitions

Material Handling means storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, by-product or waste product.

Comment:
Material handling/storage is proposed to be added as a trigger for ISGP coverage for transportation sector facilities. If this proposed change is carried through to the final version of the ISGP, clarification needs to be added to the Condition S1.A and the definition for "material handling" to clarify when "material handling" activities at a transportation-sector facility would trigger the applicability of the ISGP to the areas of a transportation-sector facility where the defined "material handling" activities occurs above a defined threshold.

Applying Ecology's definition of material handling, material handling at railroad facilities typically involves final products intended for outdoor use such as track materials, rail, ties, and ballast/rock materials. Smaller portions of the facility involved in vehicle maintenance can include activities related to fueling, aboveground storage tanks, and waste material storage. At transportation-sector facilities, this must be incorporated into the definition and bounds that Ecology is proposing for when "material handling" would be a triggering activity that would require ISGP coverage at a transportation-sector facility. For transportation facilities, the EPA Industrial Stormwater Fact Sheet identifies that material handling refers to the handling of material used in vehicle maintenance, equipment cleaning operations, or airport deicing operations. For example, final products intended for outdoor use should be explicitly excluded

from the definition of material handling that would require a transportation-sector facility to obtain coverage under the ISGP.

In addition, temporary material handling/storage locations which are not typical of ongoing operations at the facility and are temporary in nature should be explicitly excluded from the definition of material handling that would require a transportation-sector facility to obtain coverage under the ISGP. Likewise, materials used for on-site construction or facility maintenance are not part of ongoing operations and are temporary in nature, and should also be explicitly excluded from the definition of material handling that would require a transportation-sector facility to obtain coverage under the ISGP. In many instances, construction-related activities would be covered by the Construction Stormwater General Permit and not the ISGP, but there needs to be a clear distinction made for smaller construction projects that do not require coverage under the Construction Stormwater General Permit.

Suggested Revision:
Material Handling means storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, by-product or waste product. The following types of materials are specifically excluded for the purposes of identifying whether "material handling" activities at transportation-sector facilities trigger the applicability of the ISGP:

- final products intended for outdoor use
- areas where materials may be temporarily handled or stored for 180 days or less
- materials used for on-site construction or facility maintenance
- areas designated to the transport of railcars, shipping containers and other containers that are in transit

Comment 32 – Updated Definition of Reasonable Potential

Permit Reference:
Appendix 2 - Definitions

Reasonable Potential means the likely probability for pollutants in the discharge to cause or contribute to a water quality violation in the receiving waterbody, or loss of sensitive and/or important habitat ~~exceed the applicable water quality criteria in the receiving waterbody.~~

Comment:
Reasonable potential is not referenced in the main text of the ISGP and is only referenced in several definitions. Updating the definition for "reasonable potential" to include "loss of sensitive and/or important habitat" is vague and leaves much to be interpreted. This expands the scope of the ISGP beyond what is required in the Clean Water Act by including reference to "loss of sensitive and/or important habitat." Ecology does not provide a basis for making this change in that: 1) no clear process for determining when a stormwater discharge would be considered to have a likely probability to cause or contribute to loss of sensitive and/or important habitat is provided, 2) an explanation for this change is not provided in the Fact Sheet, and 3) Ecology does not identify that this is an expansion of the scope of the ISGP.

In the Fact Sheet, Ecology identifies that 40 CFR § 122.44 requires the permit to contain effluent limitations to control all pollutants or pollutant parameters which are, or may be, discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any water quality standard. Water quality standards are developed to protect loss of sensitive and/or important habitats so this language is unnecessary in addition to being vague / ambiguous and subject to interpretation. The definition for "reasonable potential" needs to be limited to referencing water quality criteria in the receiving waterbody, with the reference to "loss of sensitive and/or important habitat" removed from the definition.

Suggested Revision:
The existing definition for "Reasonable Potential" should be retained.

Reasonable Potential means the likely probability for pollutants in the discharge to ~~cause or contribute to a water quality violation in the receiving waterbody, or loss of sensitive and/or important habitat~~ exceed the applicable water quality criteria in the receiving waterbody.

Comment 33 – Updated Definition of Substantially Identical Discharge Points

Permit Reference:
Appendix 2 - Definitions

One new criteria added for substantially identical discharge point: and 5) discharges to the same surface waterbody or waterbodies with demonstrably similar water quality, or to the same segment of a storm sewer.

Comment:
Ecology proposes to establish a fifth criteria for substantially identical outfalls in the definitions: 5) discharges to the same surface waterbody or waterbodies with demonstrably similar water quality, or to the same segment of a storm sewer.

This new criteria for a substantially identical discharge point should be removed as it is not supported by a technical basis and goes beyond the established definition at the federal level. Qualification for substantially identical outfalls is based on the quality of the stormwater discharge at the facility based on industrial activities, BMPs, exposed materials and type of impervious surface. Including this fifth criteria goes well outside the purview of what constitutes a substantially identical discharge point. For example, including the requirement for a substantially identical discharge point to be to the same segment of a storm sewer does not make sense as different segments of a storm sewer can discharge to the same surface waterbody.

Further, if an outfall is subject to effluent limits, then it must be sampled and is not eligible to be a substantially identical discharge point for the parameters which have an effluent limit.

Suggested Revision:
The definition for Substantially Identical Discharge Point in Appendix 2 should remain the same. The added language in this definition should be removed: *5) discharges to the same*

surface waterbody or waterbodies with demonstrably similar water quality, or to the same segment of a storm sewer.

Substantially Identical Discharge Point means a discharge point that shares the following characteristics with another discharge point: 1) the same general industrial activities conducted in the drainage area of the discharge point, 2) the same Best Management Practices conducted in the drainage area of the discharge point, 3) the same type of exposed materials located in the drainage area of the discharge point that are likely to be significant contributors of pollutants to stormwater discharges, and 4) the same type of impervious surfaces in the drainage area that could affect the percolation of stormwater runoff into the ground (e.g., asphalt, crushed rock, grass). ~~and 5) discharges to the same surface waterbody or waterbodies with demonstrably similar water quality, or to the same segment of a storm sewer.~~

Thank you for this opportunity to comment on the draft Permit Modifications. If you have any questions concerning the contents of this letter, please contact me at (253) 591-3072.

Sincerely,

Ryan Hibbs
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