

JUL 09 2024

WATER QUALITY PROGRAM



July 2, 2024

Lucienne Banning
Washington State Department of Ecology
P.O. Box 47696
Olympia, WA 98504-7696

RE: Port of Vancouver USA Comments on the Draft NPDES Industrial Stormwater General Permit

Dear Lucienne Banning:

The Port of Vancouver USA would like to provide comments on the draft 2025 NPDES Industrial Stormwater General Permit released for comment May 15, 2024. The port takes environmental stewardship seriously, and it is our commitment to strive for programs and policies that allow nature and industry to successfully coexist. Thank you for the chance to review and comment on the draft permit. We look forward to your response to the following comments for clarification:

- (1) Cover page: "A National Pollutant Discharge Elimination System (NPDES) and State Waste Discharge General Permit for Stormwater Discharges Associated with Industrial Activities".

Comment: Ecology needs to provide clarification to delineate the difference between NPDES authorized discharges and State Waste Discharge authorization for the purpose of protecting permittees from 3rd party actions for all requirements that extend beyond NPDES program requirements.

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

Comment: Ecology needs to provide clarification that considers facilities with discharges not covered by NPDES regulation (e.g. roadside ditches, wetlands without continuous surface connection, etc.) and whether coverage under Ecology's combined NPDES/State Waste Discharge permit is appropriate. The new definition of WOTUS excludes "roadside ditches" and may not be covered under NPDES authority.

- (3) S1.A.1: "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, including but not limited to roadside ditches or storm sewer systems."

Comment: This section may also require facilities not required to be covered under NPDES regulations to apply for an NPDES/State Waste Discharge combined permit. Refer to comments 1 and 2 above.

- (4) S1.A.1-Table 1-Industrial Activities: “Transportation facilities which have *vehicle maintenance* activity, equipment cleaning operations, material handling/storage, or airport deicing operations.”

Comment: If Ecology has authority to expand coverage to these types of facilities, doing so under its State Waste Discharge authority, those facilities are not subject to the 3rd party provisions of the Clean Water Act, and are protected under 40CFR 122.1(j)(2) that states; “If an approved State program has greater scope of coverage than required by Federal law the additional coverage is not part of the Federally approved program.” This distinction should be clarified as in comment 1 above. Also, the addition of material handling/storage will now require expanded coverage and new coverage for facilities resulting in high costs and uncertain benefit. Ecology should conduct a cost benefit analysis as required under the Administrative Procedures Act for this additional requirement.

- (5) S1.A.2: “Any facility that has an existing *National Pollutant Discharge Elimination System (NPDES)* permit which does not address all stormwater discharges associated with industrial activity shall obtain permit coverage.

Comment: It appears that Ecology has removed reference to the federal definition of industrial activity, presumably to avoid exclusion language for transportation facilities by removing the reference to [40 CFR §122.26(b)(14)]. This means transportation facilities fall under the State Waste Discharge permit definitions and not the NPDES program. This distinction should be clarified as in comment 1.

- (6) S1.A.3: “Any inactive facility where any industrial activity listed in Table 1 was previously conducted where significant materials remain onsite and are exposed to stormwater shall obtain permit coverage.”

Comment: See comment 5.

- (7) S1.E.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 S5B, 2) is 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.”

Comment: Ecology needs to define the term “functional equivalent” so permittees are able to understand the potential applicability at their facilities. Would this apply to infiltration facilities in the vicinity of surface waters? Scope of impacts to permittees coverage areas is difficult to determine as this is currently written.

- (8) S1.E.3: “Facilities discharging to ground (e.g., infiltration, Class V UIC wells, etc.) must have all treatment/infiltration BMPs designed, installed, and maintained in accordance with Special Condition S3.A.2.

Comment: How will this apply where infiltration occurs naturally (e.g. gravel parking lots with no installed drainage infrastructure)? How does this new requirement apply to existing infiltration

areas not designed in accordance with recent standards? As written, retrofitting of the existing system may be required.

- (9) S1.F.2.b: “b. Are there material or residuals on the ground or in stormwater inlets from spills/leaks?”

Comment: The terms “material” and “residual” should be defined. “Material” in particular appears throughout the permit and understanding what the term represents is critical to adequately define areas of permit coverage and proper stormwater management procedures.

- (10) S1.F.2.f: “f. Are materials or products stored outdoors (except final products intended for outside use, e.g., new cars, where exposure to storm water does not result in the discharge of pollutants)?”

Comment: This question would indicate that final products intended for outdoor use (e.g. new cars) are not considered “materials or products” for designation as pollutant sources. The use of materials in this paragraph furthers the need for providing a definition for this term, see comment 9 above. Also, for consistency, “storm water” is two words here and one word in other places in the permit.

- (11) S1.F.3: “Ecology will respond to all CNE exemption requests in writing, 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: A timeline for an Ecology decision on a CNE exemption request should be included in the permit as previous permits have provided.

- (12) S2.B.1: “Apply for modification of coverage at least 60 days before implementing a significant process change; or prior to a Corrective Action deadline, if requesting a Level 2 or 3 time extension or waiver request per Condition S8.B-D.

Comment: The May 15th deadline should be retained, with Ecology’s commitment for review decision. Permittees could end up in a position where no decision on the request for an extension is provided, and the deadline for a corrective action is exceeded. A timeline for an Ecology decision as stated in comment 11 should be added.

- (13) 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 by March 1, 2025.”

Comment: The addition of implementation to this condition could be very problematic to meet the timeline if retrofits, expanded coverage areas, new sampling locations, adding infiltration systems, additional BMPs (structural and treatment BMPs), etc. are required. More time needs to be allocated for implementation as it takes time to secure funding, purchase resources and install equipment and new BMPs.

- (14) S3.B.1.f: “Locations of all receiving water (including wetlands, discharges to ground, and drainage ditches) in the immediate vicinity of the facility.”

Comment: Ecology should further define how permittees address areas where infiltration occurs naturally (e.g., gravel parking lots with no installed drainage infrastructure, pervious areas, etc.).

- (15) S3.B.2.b.i: “Loading and unloading of cargo, dry bulk materials or liquids.”

Comment: Cargo is not always a source of pollutants. What if your cargo is a final product intended for outside use, e.g., new cars, where exposure to storm water does not result in the discharge of pollutants? Is Ecology referring to tire wear associated with cargo loading/unloading? Tire wear occurs everywhere in the urban environment, it is not industrial in nature or limited to industrial activities.

- (16) S3.B.2.b.vii: “Roofs or other surfaces composed of materials that may be mobilized by stormwater (e.g., galvanized roofs, galvanized fences, etc.).”

Comment: The new addition of “etc.” creates a gray area that potentially opens permittees up to 3rd party challenges.

- (17) S3.B.2.c.ii: “A short narrative for each material describing the potential of the pollutant to be present in stormwater discharges. The Permittee shall update this narrative when data become available to verify the presence or absence of these pollutants.

Comment: What “materials” need to be included? Are final products for outdoor use (e.g., new cars) considered “materials” for the purposes of this requirement?

- (18) S3.B.4.b: “The Permittee shall include each of the following mandatory BMPs in the SWPPP and implement the BMPs. The Permittee may omit individual BMPs if site conditions render the BMP unnecessary or infeasible and the Permittee provides alternative and demonstrably equivalent BMPs. The Permittee must justify each BMP omission in the SWPPP.”

Comment: Changing this to “demonstrably equivalent”, considering the new measurement standard included in the definition, will be very burdensome and discourages innovation and testing of new methods that may not be prescribed in the SWMMWW yet may still be effective.

- (19) 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. The Permittee must:”

Comment: Clarification should be provided. Is the intent to have a template log for facility use included in the SWPPP or is there an expectation that a continuously updated log of all maintenance performed at the facility will be kept in the SWPPP? Some facilities covered by this ISGP perform maintenance on a daily basis. Updating the SWPPP daily is an unduly burdensome

requirement unnecessary to improve water quality and significantly increases permittee vulnerability to 3rd party challenges.

- (20) S3.B.4.b.i.4.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.

Comment: Permittees should be free to select the most effective BMPs for their specific use. This requirement would seem to restrict the use of oleophilic pads that may be more appropriate.

- (21) S3.B.4.b.i.4.i: "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 addition of "Any liquid chemical release onsite regardless of size or flowability is considered a spill and must be logged and addressed" is an overly burdensome requirement that is unnecessary to improve water quality where most permittees already have other source control, structural and treatment BMPs in place to deal with very small releases. Having to log any and all spills regardless of size subject's permittees to violations if they are missed.

- (22) 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. 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:"

Comment: Some facilities have hundreds of contractors (e.g., truck drivers), customers, vendors, etc. that visit their facility. Full SWPPP training as described for many permittees will be nearly impossible.

- (23) S3.B.4.b.i.5.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.

Comment: This is an overly burdensome requirement to be trained within 30 days, all new employees are supervised by personnel who already have the training. This puts an overly burdensome requirement on our stormwater compliance employees to be constantly training staff instead of doing their job of protecting water quality and doing inspections.

- (24) S3.B.4.b.i.5.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: This is an overly burdensome requirement with the changes proposed above in (23).

- (25) S4.B.2.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: “functional equivalent” should be clearly defined. It is unreasonable for Ecology to expect facility operators to seek and interpret complicated legal decisions such as “*County of Maui v. Hawaii Wildlife Fund*, 140 S. Ct. 1462 (2020) (Maui)”. If there are specifics from this decision that Ecology wants permittees to be in accordance with, they should be stated instead of referencing a court decision in a General permit.

- (26) S4.B.2.e.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.”

Comment: This seems overly burdensome in many cases. For example, where an outfall discharges beneath a wharf and facility collects samples from an upstream manhole as “representative”. Permittees should be afforded latitude to establish “representative” sampling locations without process requirements.

- (27) S4.B.5.g: “Sampling Narrative”

Comment: The term “Sampling Narrative” needs to be defined. Is the sampling narrative being required the sampling narrative that is included on lab reports by the lab who conducted the analysis, or is Ecology looking for a separate sampling narrative from the stormwater professional collecting the samples?

- (28) S5.B.3: “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**”.

Comment: This requirement puts an unfair burden on a single sector of the industrial community representing a very minor contribution of the larger tire wear universe in Washington state. 6PPD-quinone has a very expensive analytical cost at over \$600 per sample, per sampling point location, per quarter. Ecology should conduct a cost benefit analysis as required under the Administrative Procedures Act for this additional requirement.

- (29) S5.E.2: “Illicit discharges and connections are not authorized by this permit. Conditionally authorized non-stormwater discharges in compliance with Condition S5.D are not illicit discharges.”

Comment: The addition of illicit “connections” would seem to indicate that an illicit connection is now an automatic permit violation. Illicit connections that exist from historical site uses should be corrected when discovered but should not constitute a permit violation.

- (30) S.6.C – Table 6: “Sampling and Effluent Limits Applicable to Discharges to 303(d) – listed Waters”.

Comment: Ecology should publish an easily accessible and understandable map to the areas subject to these requirements to assist permittee evaluation.

- (31) 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 15 to Ecology in accordance with Condition S2.B, prior to Level 2 Deadline. Ecology will approve or deny the request and notify the Permittee in writing.”

Comment: The May 15th deadline should be retained, with Ecology’s commitment for review decision. Permittees could end up in a position where no decision is provided and deadline for corrective action is exceeded. The 60-day deadline for modification of coverage requests should also be retained. Ecology should commit to a timeline for review and determination. Having this open ended with no agency deadline could threaten permittee compliance and impact timely decision making.

- (32) S8.D.3.b: “The engineering report shall be submitted no later than 6 months after the last day of the calendar year in which the Level 3 was triggered, i.e., due June 30th; unless an alternate due date is specified in an administrative order.”

Comment: The additional 45-day allowance will not be enough time for most facilities needing to submit an engineering report. Most will still need to submit a modification request. This change does nothing to reduce the number of administrative orders that Ecology must create for Permittees who cannot comply with the June 30th deadline.

- (33) 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 18 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.”

Comment: The May 15th deadline should be retained, with Ecology’s commitment for review decision. Permittees could be in a position where no decision is provided and deadline for corrective action is exceeded.

- (34) S9.C.2: “The annual report shall include stormwater pollution issues that were identified by review of visual means, such as (but not limited to): SWPPP reviews, audits made by consultants or providers of technical assistance, inspection reports or other notification made by federal/state/local authorities, visual observations, and/or your facilities monthly site inspections (self-inspections). These issues do not include benchmark or numeric effluent limit exceedances discovered by routine compliance stormwater sampling.”

Comment: This is an unnecessary requirement as this language is already included on the Ecology Annual Report form.

- (35) S9.F.1.c.i: “A description of the noncompliance and its cause, including exact dates and times.”

Comment: Unnecessary requirement to add “and its cause”. This may require speculation and/or misreporting issues that may require additional evaluation to accurately determine outside of the 5-day reporting requirement.

- (36) Appendix -2 DEFINITIONS: “**Industrial Activity** mean 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.

Comment: This revision of the definition of “Storm water discharge associated with industrial activity” included in 40CFR 122.26(b)(14) excludes the important first sentence; “means the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials, storage areas at an industrial plant.” The revision also replaces the term “plant” at other locations in the definition. As originally defined, Permittees would easily be able to identify areas considered to contain industrial activity at their “industrial plant”. Transportation facilities and others will have a difficult time assessing the extent of covered areas (e.g., “intermediate access roads and rail lines traveled by carriers...”) access roads and rail lines traveled by carriers extend from coast to coast and are typically operated and traveled by multiple parties.

- (37) 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.”

Comment: The changes to this definition are too subjective, not measurable, and open to interpretation. It is overly broad providing too much latitude for definition of “Significant Amount” and Significant Contributor of Pollutants.”

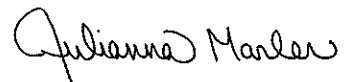
- (38) Appendix 2-DEFINITIONS: “**Significant Amount** means an amount of a pollutant in a discharge that is amenable to available and reasonable methods of prevention, control, or treatment; or an amount of a pollutant that has a reasonable potential to cause a violation of surface or ground water quality standards or sediment management standards.”

Comment: The definition of “Significant Amount” is the only use of the term “Reasonable Potential” beyond its own definition. See comment 37.

Washington Department of Ecology
RE: Port of Vancouver USA Comments on the Draft NPDES Industrial Stormwater General Permit
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Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in cursive script that reads "Julianna Marler".

Julianna Marler
Chief Executive Officer
Port of Vancouver USA