



WASHINGTON REFUSE & RECYCLING ASSOCIATION

July 12, 2024

Lucienne Banning
Department of Ecology
Air Quality Program
PO Box 47696
Olympia, WA 98504-7696

RE: Draft Industrial Stormwater General Permit Comments from WRRA

Dear Lucienne Banning:

The Washington Refuse and Recycling Association (WRRA) is the oldest Solid Waste Trade Association operating on the West Coast of the United States, founded over 77 years ago. WRRA represents the private sector solid waste and real recycling industry in Washington, from curbside collection service and state of the art recycling facilities to landfills. WRRA member companies and the solid waste industry serve a vital role in public health, safety, and environmental protection.

Our members provide essential services in their communities every day. Washington's solid waste system is a successful public-private partnership. Washington's regulated and municipal solid waste collection system provides for excellent service, has consistently exceeded the national recycling rate by double digits, and maintains family wage jobs in every community in which we operate—all at a transparent and affordable price. We have an obligation to serve and to provide universal service as directed by the state and local governments.

We appreciate the opportunity to comment on the Draft Industrial Stormwater General Permit ("Permit"). The Permit contains many changes specific to both the transportation and waste sectors. WRRA respectfully offers the following comments for consideration as we partner with the state to promote environmentally and economically sustainable policies. In addition, WRRA has encouraged our individual members to submit comments separately, specifically on the more technical issues that require additional attention.

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

Based on the proposed changes within this section of the Permit, the Department of Ecology (Ecology) is no longer required to respond to a permittee's written application

requesting approval of a CNE determination for exemption for permit coverage within 90 days (as previously stated in the current Permit). Given the proposed language, Ecology now has no timeline as to when they must respond to such an application, and Permittees must continue complying with the requirements of the permit until they receive written approval of the No Exposure exemption.

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

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

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

2. Discharges to Groundwater Constituting a Functional Equivalent to a Point Source Discharge to Surface Waters (*S1.E; S4.B.2b.; S5.B*)

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

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

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

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

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

For entities with multiple facilities covered under the ISGP, this is an unreasonable timeline. Even for single facilities covered under the ISGP, the changes proposed within the draft Permit are extensive enough that it will take more than 2 months to update the SWPPP thoughtfully and accurately and site maps and train staff. Furthermore, we understand that many consulting firms will be overwhelmed with requests for support from their clients to assist in the completion of these updates.

Rather than a deadline of March 1, 2025, we propose that permittees are given a deadline of May 15, 2025, to coincide with the first quarter Discharge Monitoring Report and 2024 Annual Report due dates.

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

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

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

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

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

More generally, the dumpster requirements make operational sense for most facilities with an “in-service” dumpster that is actively used for waste collection but is unnecessarily burdensome on solid waste facilities. Waste facilities regularly store large numbers of empty, not-in-use dumpsters for the purpose of storage or maintenance prior to providing them to customers. Waste containers take up large volumes of space and it is not feasible to store large amounts indoors. WRRRA requests that the permit be made an allowance for waste facilities that store not-in-use waste containers on-site.

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

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

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

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

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

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

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

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

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

We suggest removal of the additional language under this section.

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

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

As written, it would be impossible for a Permittee to fully comply with these new training requirements. Any delivery of goods to a facility, any repair contractor servicing office equipment, or any IT technician would constitute a vendor or contractor who requires training.

The only alternative provided to Permittees within the proposed language is to have a SWPPP trained employee supervise these vendors at all times. Depending on the size of a facility, Permittees could require dedicated staff to do nothing other than stop and train contractors and vendors before they access premises.

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

We suggest that training only be required for personnel, contractors and vendors who work directly with or may meaningfully impact industrial activities, those responsible for the storage and handling of chemicals or other significant materials, and those responsible for conducting or documenting monitoring, inspections, or corrective actions. For the same reasons, supervision requirements should apply only during work related to the scenarios discussed above.

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

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

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

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

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

WRRRA suggests that DOE consider whether requiring sampling of 6PPD-quinone by industry or NAICS code is appropriate, whether limiting this requirement to only Transportation Facilities is sufficient, or if geographic sampling requirements based on receiving water bodies and their proximity to salmon habitat may result in collecting more reliable data throughout this permit cycle.

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

Based on the proposed changes within this section of the Permit, facilities operating under the NAICS code range 562xxx are required to sample stormwater discharge for PFAS.

Ecology has not established a benchmark but requires a Laboratory Quantitation Level of 2.0 ng/L (parts per trillion).

Given the ubiquitous nature of PFAS and its prevalence in the environment, including in ambient precipitation (background), WRRRA questions why Ecology has limited sampling requirements only to the solid waste industry? Our members are extremely concerned about the addition of this requirement to the Permit, the implications of collecting and reporting this data, and the practicality of requiring sample collection for PFAS at our facilities.

WRRRA members and their operations neither manufacture nor sell PFAS containing products. WRRRA members do receive waste containing PFAS from the communities and industries they serve. The most effective way to manage PFAS in the environment is to reduce the presence of PFAS in products in the first place. Upstream reductions targeted at the producers of PFAS-containing products will always be the most effective means to reduce public exposure to PFAS. Initiatives that help PFAS industries reduce use of these chemicals are the most effective means of reducing PFAS in the waste stream. Crucially, though, state policy must be grounded in an understanding that PFAS cannot be completely eliminated from the waste stream so long as it persists in products that enter the waste stream.

The requirement to test for PFAS broadly should be clarified in the draft Permit. The Environmental Protection Agency (EPA) recently designated two specific types of PFAS as “hazardous substances” under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA): perfluorooctanoic acid ((PFOA)) and perfluorooctanesulfonic acid ((PFOS)). Meanwhile, the draft language in the stormwater permit is much broader. The proposed language in the Permit does not specify which PFAS will need to be analyzed. PFAS are a group of nearly 15,000 chemicals according to the EPAs chemicals database. The draft permit suggests use of EPA Test Method 1633 (Method 1633) for use in analyzing PFAs in stormwater discharge. Method 1633 tests for 40 PFAs compounds. *With the current language, is Ecology suggesting that permittees must analyze all 40 PFAs compounds?*

WRRRA requests that DOE explicitly outline which PFAs compounds are required for analysis by permittees. Given that Method 1633 includes 30 plus PFAS compounds, many of which have not been researched for the toxicity, WRRRA recommends that the focus of this initial data gathering effort be on 6 PFAS compounds with developed surface water quality standards in others states. The recommended 6 PFAS are perfluorooctanoic acid (PFOA), perfluorooctanesulfonate (PFOS), perfluorononanoic acid (PFNA), perfluorohexanesulfonic acid (PFHxS), perfluoroheptanoic acid (PFHpA), and perfluorodecanoic acid (PFDA).

Solid Waste Facilities are essential public service providers that are not involved in the manufacture or use of PFAS. Waste haulers, material recovery facilities (MRFs), composters, and landfills are passive receivers of media containing PFAS that are ubiquitous in the water supply, wastewater treatment process, stormwater, biosolids management, and solid waste streams. Collecting and reporting such data, with no understanding of an appropriate compliance benchmark, could potentially result in claims for contribution against solid waste facilities. This in turn could generate significant litigation costs for lawful operations going back decades, which could then conceivably lead to significant cost increases on essential public service providers and the communities and residents they serve.

Collecting samples for PFAS analysis is problematic for even an experienced environmental professional. Due to the widespread use of PFAS, many materials normally used in field and laboratory operations contain PFAS, as well as many consumer goods brought to a sampling site that may also contain PFAS that can contaminate samples. If the environmental professional community at large is still gaining an understanding of correct sampling methodology, it is unreasonable for Ecology to expect that industrial facility workers can gain this understanding by January 1, 2025.

WRRRA members have recently contacted the laboratories who currently analyze their stormwater samples. Members have reported that these labs state that they do not currently have the equipment, staff, or training to analyze PFAS in stormwater. Furthermore, there is uncertainty that labs who do have this equipment and training do not have the capacity to run the increased number of samples anticipated by this new requirement.

PFAS is everywhere on our planet. It is in the rainwater. PFAS is a major priority for WRRRA Members. From collection and transportation to our Material Recovery Facilities, our Composting Facilities to our Disposal Facilities (including landfills), we are passive receivers of the materials we handle, and take our stewardship and handling of these materials with utmost responsibility. While WRRRA recognizes that PFAS is a pollutant of concern to be addressed in the environment, we believe that adding it now as a requirement for stormwater analysis needs further discussion. It will have negative impacts to industry; and these impacts may be all for nothing, as the quality of the data gathered while sampling techniques are still not widely understood and could yield unreliable data, painting an inaccurate picture of the true presence of PFAS in the environment.

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

If you have any questions, please feel free to contact Rod Whittaker, at rod@wrra.org or myself, Brad Lovaas, Executive Director, or brad@wrra.org

Respectfully submitted,

A handwritten signature in black ink that reads "Brad Lovaas". The signature is written in a cursive, slightly slanted style.

Brad Lovaas
Executive Director