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https://wq.ecology.commentinput.com/?id=tx2Ba6krSR

SUBJECT: COMMENTS ON THE DRAFT 2025 INDUSTRIAL STORMWATER GENERAL PERMIT

Dear Lucienne Banning:

SSA Terminals, LLC ("SSAT") appreciates this opportunity to comment on the Washington State Department of Ecology ("Ecology") draft 2025 Industrial Stormwater General Permit ("Draft Permit"). SSAT is the largest marine terminal operator in Washington State and more than $70 million dollars has been invested to install 17 end-of-pipe treatment systems at the four Washington state container terminals it operates, where the systems require approximately $1 million dollars in upkeep and maintenance each year. Consistent with the ISGP, SSAT has also iteratively improved and expanded upon its operational and source control best management practices ("BMPs") to continually reduce the potential for pollutant contact with stormwater at its facilities. Together, SSAT's combination of BMPs and state-of-the-art treatment systems consistently reduces copper and zinc concentrations in stormwater discharge by more than 85%. Additionally, SSAT has implemented a variety of voluntary sustainability measures in recent years that have substantially reduced energy consumption and diesel and carbon dioxide emissions at its Washington State terminals. In this spirit of continual improvement and environmental stewardship, SSAT provides the following comments on the Draft Permit for Ecology's consideration.

A. Discharges to Impaired Waterbodies

The Draft Permit S6.C would require permittees discharging to a 303(d)-listed waterbody (Category 5) that was not 303(d)-listed at the time of 2020 permit coverage to comply with Table 6 sampling requirements and effluent limits as soon as possible, but no later than January 1, 2027.

Ecology's water quality atlas website currently displays the 2018 water quality assessment ("WQA"), although the 2020 ISGP defines impairment status based on the 2012 WQA. SSAT

suggests adding a clarifying footnote that impairment status during the 2020 permit cycle is based on the 2012 WQA.

B. Substantially Identical Discharge Points

The Draft Permit would require current permittees to perform additional monitoring for impaired parameters on a site-specific basis using the WQA that is in effect at the time of permit coverage (Draft Permit Condition S6.C.1.a.); or, for sediment, the WQA that is in effect on January 1, 2025, or when the facility obtains permit coverage, whichever is later (Draft Permit Condition S6.C.2 and footnote 12). The Draft Permit would also redefine "substantially identical discharge points" to add that substantially identical discharge points are points that discharge "to the same surface waterbody or waterbodies with demonstrably similar water quality, or to the same segment of a storm sewer."

The proposed change in definition of "substantially identical discharge points" introduces uncertainty with respect to sampling requirements for large facilities with multiple discharge points and is ambiguous as to whether the phrase "demonstrably similar water quality" refers to the water quality of the discharges or to "the same surface waterbody or waterbodies."

SSAT does not believe the new provision is needed, as existing practice (to apply the more stringent effluent limits based on the water quality assessments across the substantially identical group) is protective of water quality. If Ecology proceeds with this change, SSAT requests making the permit language explicit that "demonstrably similar water quality" is based on designated uses (as defined in Washington Administrative Code [WAC] 173-201A-602 for fresh waterbodies and WAC 173-201A-612 for marine waterbodies) and does not require identical 303(d) listings. If Ecology's intent is for impairment status to be used to determine demonstrably similar water quality, SSAT suggests that permit language clarify that permittees need only consider those 303(d) listings corresponding to additional monitoring requirements under Draft Permit Conditions S6.C and S6.D when determining whether two waterbodies have demonstrably similar water quality.

Additionally, given that the U.S. Environmental Protection Agency-approved WQA is expected to be updated at least once during the 5-year duration of the Draft Permit, SSAT suggests clarifying Draft Permit Condition S6.C.1.a to state that 303(d)-listing status is based on the WQA that is current as of January 1, 2025.

Finally, SSAT suggests adding clarification that if a permittee receives coverage under the Draft Permit via Draft Permit Condition S2.D (Transfer of Permit Coverage), then monitoring requirements in Draft Permit Conditions S6.C and S6.D are based on the WQA that are in effect on January 1, 2025, rather than the WQA that are in effect at the time of permit transfer.

C. 6PPD-quinone Monitoring Requirement

The Draft Permit would require transportation industry facilities (except those that qualify as a "small business") to begin quarterly sampling and reporting for 6PPD-quinone on January 1, 2028 (Draft Permit Condition S5.B.3).

SSAT recognizes the importance of information-gathering before setting any additional BMP or benchmark requirements for 6PPD-quinone in future stormwater permits. But current analytical capabilities are limited for this compound; no public laboratories in Washington State currently perform analysis for 6PPD-quinone. SSAT is aware of two laboratories outside of Washington currently performing 6PPD-quinone analysis, though neither of these labs—Eurofins (Sacramento) and SGS (AXYS-Canada)—currently have Ecology accreditation. Analytical costs range from $400 to $535 per sample, which adds significant expense to analytical programs at facilities that sample multiple points of discharge. For example, SSAT could expect to spend between $19,000 to $25,000 annually to perform quarterly analysis at its Washington State container terminal facilities if it were required to collect samples from all currently sampled discharge monitoring locations. Further, SGS's current analytical turnaround time is "over 3 months" – meaning that sample results would rarely if ever be available to report before the discharge monitoring report ("DMR") due date for each quarter, resulting in an automatic violation of the ISGP.

SSAT's analytical laboratory for stormwater sampling currently recommends that its clients ship 6PPD-quinone samples directly to Eurofins for analysis. This means that SSAT's environmental staff would need to prepare two separate chain of custody forms and arrange sample delivery with two separate laboratories during each quarterly sampling event. By 2028, it is possible that some of these analytical challenges will be resolved, but at present this is wishful thinking. Moreover, it is likely that increased analytical demand could cause further delays in results reporting.

Rather than requiring larger transportation facilities to collect and report 6PPD-quinone samples from every sampled discharge point, SSAT suggests that Ecology require these permittees to collect and analyze samples from up to two facility discharge points that are selected to represent the expected range of facility discharge concentrations. For example, the permit could require permitted transportation facilities with multiple discharge points to sample one discharge point representing a high traffic facility area, and another representing a low traffic facility area.

Additionally, Ecology should modify its online webDMR portal so that permittees are not penalized for any delays in 6PPD-quinone reporting caused by long analytical turnaround times. Alternatively, because this new monitoring is informational, 6PPD-quinone sampling results could be reported on a calendar year basis before the end of the first quarter of the following year.

D. Annual Gross Revenue Form

The Draft Permit would require permittees to submit an ISGP Annual Gross Revenue Form to Ecology (Draft Permit Condition S11.C) and would require transportation facilities to sample for

6PPD-quinone unless they qualify as a "small business" (Draft Permit Condition S5.B.3). The Draft Permit defines small businesses based on the number of employees, without consideration of gross revenue. It is not clear how the information on the Annual Gross Revenue Form is used, since it is not used to define businesses that qualify as "small businesses."

SSAT suggests either removing the requirement to submit an Annual Gross Revenue Form or requiring the form only for businesses that self-designate as "small businesses."

D. Definition of Industrial Activity for Transportation Facilities

Ecology's 2024 Industrial Stormwater General Permit focus sheet ("Focus Sheet") describes Ecology's intent to propose a new definition of industrial activities to "make clear where the permit applies." The Focus Sheet states that the Draft Permit proposes to clarify the definition of industrial activity to include areas where material is handled and stored, stating that these areas encompass three general categories of cargo: shipping containers, bulk materials, and break-bulk cargo. The Draft Permit's definition of "industrial activity" was updated to clarify that industrial activity means "material handling activities include storage, loading and unloading, transportation, and conveyance of any raw material, intermediate product, final product, by-product or waste product." On its face, this definition does not appear to include containerized or break-bulk cargo. Ecology's Focus Sheet also recognizes ongoing litigation regarding the definition of "industrial activities" at transportation facilities.

Relatedly, Table 1 of the Draft Permit now requires permit coverage for transportation facilities that perform material handling/storage operations, even if they do not perform any other federally defined "industrial activities" (such as fueling, vehicle maintenance, or equipment cleaning operations). Expansion of the definition of "industrial activity" to capture what are likely hundreds of additional transportation facilities that exclusively perform material handling/storage operations to obtain permit coverage, even if they do not perform any other industrial operations, is a profound expansion of the scope of the ISGP and creates an inconsistency with both U.S. Environmental Protection Agency regulations and the federal multisector general permit regarding transportation facilities required to obtain coverage. Under Ecology's Draft Permit, drayage and break-bulk storage terminals and distribution centers across the state would be required to obtain permit coverage for the first time. This could have significant unintended implications on supply chain logistics and related transportation costs, increasing costs to businesses and consumers in an economy that is increasingly reliant on e-commerce. It would also put these facilities at a significant economic disadvantage to similar facilities in other states, none of which have similar regulatory requirements to those proposed in the Draft Permit.

SSAT urges Ecology to retain the same definition of "industrial activities" at transportation facilities as in the current ISGP until ongoing litigation is resolved. If Ecology expands the definition of "industrial activities" to include handling of containerized and break-bulk cargo, SSAT suggests unifying the Draft Permit's definition of "industrial activity" consistent with the plain text definition described in the Focus Sheet. Ecology should also make clear that, consistent with

40 C.F.R. 123.1(i)(2), any greater scope of coverage is based on Ecology's independent authority under RCW 90.48 et. seq.

E. Updated Employee Training Requirements

The Draft Permit updates employee training requirements to include a requirement to train all employees "and contractors/vendors who have duties in areas of industrial activities subject to this permit," unless contractors/vendors are always supervised by an employee who has been trained on the Stormwater Pollution Prevention Plan (SWPPP; Draft Permit Condition S3.B.4.i.(5)).

SSAT supports an increased focus on employee training as an integral part of pollution-reduction programs. But the Draft Permit introduces both infeasible and unduly burdensome requirements at facilities with external contractors or vendors. Simply put, the training requirements as presently written are impossible to comply with.

Additionally, bulk fueling vendors refilling bulk oil storage tanks at a facility may follow their own standard operating procedures ("SOPs") for these operations, making use of spill kits kept on board their truck to prevent and respond to any spills during fueling operations. Requiring SSAT to provide training to the vendor would not increase environmental protection, because the vendor already receives training on applicable spill prevention and response practices in accordance with its SOP; nor would it be efficient for the vendor to attempt to learn and attempt to follow protocols that differ at each industrial facility, rather than following its own SOP. Rather than requiring permittees to provide training to vendors providing these types of services, SSAT expects its vendors to follow their SOPs, which SSAT has verified are appropriate for the operations being performed. Similarly, at transportation facilities where fueling stations are unattended by a trained person during operating hours, the Stormwater Management Manual for Western Washington contains a BMP requiring the spill plan and spill kit to be visible to customers and untrained employees using the fueling station.

Finally, due to the language used and because the intent of the Draft Permit is to define "industrial activities" to include cargo handling, this provision as drafted appears to require permittees to provide training to parties performing these operations who are contractors or vendors of third parties (i.e., not contractors/vendors of SSAT). This poses a unique challenge for SSAT and other container terminal operators who rely on external truck drivers, who are contracted by non-permittee third parties, to perform container drayage operations. As many as 3,200 to 3,500 trucks drive onto SSAT-operated terminals each day to deliver or pick up containers. SSAT has no contractual relationship with the truck drivers performing these operations on SSAT facilities, nor would it be reasonable to provide ISGP training to all truck drivers as they enter the facility to perform these container-handling operations. Simply put, SSAT does not have a mechanism by which to perform this training. Moreover, requiring the permittee to provide additional training to these operators would provide little additional value, as these truck drivers already receive training relevant to their duties before obtaining their Commercial Driver's License.

In sum, the proposed new language is not practical or workable and should be deleted. At a minimum, the proposed language should be clarified to make clear that a permittee is required to provide training for only those contractors/vendors hired by the permittee.

F. Sampling Point Waiver Request

The Draft Permit adds new provisions for sampling points located in areas that are unsafe to sample (Draft Permit Condition S4.B.2.c). Specifically, as an alternative to requiring the permittee to move the sampling location, Ecology may require permittees to "add sampling structures to areas where regular sampling can occur via an administrative order or permit modification." If a permittee believes that it is not possible to move a sampling point or add a sampling structure such that regular sampling can occur, the Draft Permit includes a new Sampling Point Waiver Request provision (Draft Permit Condition S4.B.2.e). The Fact Sheet describes the intent of this provision "to help with safety and logistical issues of sampling wharves and piers at marine cargo handling facilities."

While SSAT appreciates the intent of this additional permit language, it is not clear what rationale Ecology will use to approve these waiver requests or how consistently Sampling Point Waiver Requests will be granted. Further, the Draft Permit states that "until the permittee receives an approved waiver/modification, all sampling location requirements of the ISGP remain enforceable and in effect" without providing any timeline for Ecology review and approval of the request. This means that at facilities where operating conditions prevent safe sampling under any circumstance—a condition the Draft Permit recognizes as a basis for a waiver—the permittee would be in violation of its permit for failing to collect a sample in unsafe conditions while waiting for Ecology to approve its Sampling Point Waiver Request.

Additionally, even if samples representative of piers and wharves could be collected using a sampling structure or alternative sampling location, at many facilities it is unlikely that sample collection would result in a greater degree of pollutant reduction. Region- and industry-specific analyses have shown that installation of stormwater treatment at existing piers and wharfs at marine cargo facilities is economically infeasible both in terms of absolute cost and impacts to facility operations, meaning that if runoff from these areas exceeded benchmarks, many marine transportation facilities would likely submit Modification of Permit Coverage forms requesting a waiver for Level 2 or Level 3 Corrective Action requirements. If SSAT requested a treatment waiver request that was not granted, the costs to install treatment would directly reduce its ability to fund other pollution-reducing and sustainability initiatives and affect SSAT's (and the Northwest Seaport Alliance's) ability to compete with other port facilities along the West Coast, all of which operate under the far more limited "industrial activity" definition in 40 C.F.R. § 122.26(b)(14)(viii). Moreover, the need to retrofit wharves and install treatment will significantly affect the operations of a terminal and either completely shut down or significantly limit its capacity for an extended period of time. In other words, the disproportionate costs of installing treatment on a wharf or pier at a marine cargo facility and the interruption to trade would have a net result of increasing pollution by forestalling planned sustainability measures

that benefit the environment and the local community by reducing greenhouse gas emissions and improving air quality.

SSAT urges Ecology to revise the Draft Permit language to allow for automatic approval of Sampling Point Waiver Requests for suspension of sampling if the technical basis for the request includes legitimate safety concerns, consistent with permit condition S4.B.1.e ("Permittees need not sample outside of regular business hours, during unsafe conditions...").

Additionally, if Ecology retains the Draft Permit language requiring sampling of piers and wharves, SSAT urges Ecology to consider economic feasibility, based on reasonable consideration of financial costs, when evaluating a permittee's Modification of Permit Coverage forms requesting a waiver for Level 2 or Level 3 corrective actions.

G. Sampling Nonindustrial Areas

The Draft Permit definition of "industrial activity" clarifies that "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 [industrial] areas."

SSAT supports the clarification that administrative areas and parking lots are not "industrial" areas. But the proposed definition implies that commingled discharges containing runoff from administrative areas and industrial areas must be sampled and BMPs implemented throughout both these areas, even if the design of the facility's stormwater conveyance system separately conveys administrative and industrial drainage to a combined conveyance or detention structure before discharge. In these cases, sampling the combined discharge has the effect of diluting industrial discharge with nonindustrial discharge, meaning sampling results would not be representative of industrial stormwater discharge quality.

SSAT suggests that the permit clarify that sampling administrative area runoff is not required unless it is not possible to collect a sample representative of "industrial" drainage areas without including commingled contributions from administrative areas.

Additionally, SSAT suggests that the permit clarify that if Level 2 or 3 Corrective Actions are triggered based on commingled discharge concentrations, permittees are only required to implement source control and treatment BMPs for the defined industrial areas and not the administrative areas and parking lots. This would allow permittees the option to design a treatment system sized appropriately for the industrial drainage area, bypassing nonindustrial discharge. If a permittee installs treatment for the industrial drainage area, bypassing nonindustrial drainage, stormwater samples could then be collected from the outlet of the installed industrial stormwater system; alternatively, if an installed treatment system treats discharge from both areas, permittees would continue to sample the commingled discharge and could implement additional BMPs in either the industrial area or both areas until commingled discharge meets the applicable permit benchmarks or effluent limits.

H. Liquid Chemical Release

Draft Permit Condition S3.B.4.b.i.(4)(i) adds new clarification that "any liquid chemical release onsite regardless of size or flowability is considered a spill and must be logged and addressed." SSAT recognizes that some chemicals, like mercury, are dangerous if released in any quantity, and understands that a universal minimum quantity for reporting cannot be specified in a general permit. But very minor releases of heavy oil, such as a few drips from an oil pan, do not warrant the same level of concern. Because the current Draft Permit language makes no distinction of the type of chemical, the amount, or its potential environmental impact, the language is overly broad and creates an unreasonable reporting standard, particularly when the Draft Permit does not define what is considered a "release."

The new language is unnecessary. But if this new language is kept, SSAT suggests adding a clarifying sentence stating that permittees can use the facility SWPPP to define site-specific release-reporting practices based on the nature of liquid chemicals stored, used, and handled at the facility.

As an alternative, the language of the draft could be modified (to say, for example, "any liquid chemical release that could reasonably contribute to an exceedance of a benchmark or contribute to a water quality violation is considered a spill and must be logged and addressed") and thereby incorporating the potential for harm as a factor.

In closing, SSAT recognizes and shares Ecology's goal to reduce pollution in industrial stormwater discharge. We appreciate the opportunity to comment on the Draft Permit, in hopes of finding solutions that achieve environmental protection goals without creating undue burdens on industry. Should you have any questions regarding our comments, please contact me via phone (206) 696-2058 or email Dan.Skurski@SSAMarine.com. I would be happy to discuss our comments further with you.

Sincerely,

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