

July 12, 2024

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

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

Dear Ms. Banning:

The purpose of this letter is to provide comments on the Washington Department of Ecology's (Ecology) draft *National Pollutant Discharge Elimination System (NPDES) Industrial Stormwater General Permit (ISGP)*, released May 15, 2024.

The Port of Seattle supports the efforts to improve stormwater quality put forth in the draft ISGP. Managing stormwater discharges and protecting Washington's receiving waters is a critical goal for the Port and has been reflected in our Century Agenda goals since 2012. Over the years, the Port has successfully managed ISGPs and Phase I municipal stormwater permits for our 1,000 acres of maritime properties, with the goal to meet or exceed permit compliance for stormwater discharges and improve regional water quality. The Port of Seattle as well as The Northwest Seaport Alliance (NWSA) and tenants have invested heavily in stormwater improvements, including \$3.6 million by the Port's Marine Stormwater Utility at marine container terminals since 2019. Beyond that, our remediation and habitat programs have direct impacts on improving water quality in the region by helping to remove or contain historic contaminants in the Duwamish Basin and Elliott Bay, and expanding critical aquatic habitat to support salmon runs and other marine species along the shores of our facilities.

In today's economic climate, changes to the ISGP can have a major economic impact on Washington ports, Port of Seattle customers and related business's ability to compete with other ports in North America. An expansion of the ISGP, without clear scientific basis or justification, will not necessarily lead to improved water quality and will divert scarce public funds from other programs that do improve the Salish Sea ecosystem, and negatively impact Washington's transportation sector's ability to compete with other regional transportation hubs. These comments on the draft ISGP are submitted with the aim of achieving environmental protection and regulatory predictability and supporting the economic needs and priorities of Washington's local and regional communities and businesses.

The Port of Seattle appreciates that this draft maintains important water quality benchmarks and includes new language addressing the following:

- Clarified definitions
- Increased time to submit extension requests or waivers for Level 2 and Level 3 corrective actions
- Increased time to implement Level 3 corrective actions when an engineering report is required
- A “grace period” during which benchmark exceedances do not count toward additional Level 3 corrective actions

The Port does not support expansion of permit coverage beyond the Federal NPDES Program when there are no compelling and science-supported reasons to do so. Ecology’s proposed expansions add industries beyond those federally defined as industrial, require permit coverage for areas without industrial activity as defined in 40 CFR 122.26, and add discharges to groundwater. These changes will cause significant operational and economic impacts to local and regional businesses with no clear benefit or improvement to water quality.

Further, many of these changes are beyond the scope of Ecology’s delegated authority under the Clean Water Act. To the extent Ecology seeks to impose more stringent state requirements, Ecology should clarify that these new requirements are pursuant to the State Water Pollution Control Act (RCW Chapter 90.48).

The Port of Seattle’s highest priority concerns in the draft ISGP include the following:

1. Expanding the ISGP to cover any material handling and storage activities at all transportation facilities is a sweeping inclusion of activities that are not traditionally considered industrial and not likely significant contributors of pollution. We request that Ecology provide a scientific, data-supported justification to expand the ISGP for these new activities, and if no specific supporting data exist, do not expand the permit until further study can be completed.
2. Existing facilities newly added due to changes to ‘Table 1, Activities Requiring Permit Coverage and the Associated NAICS Groups,’ need a grace or transition period. It takes time to assess new industrial activities and develop the required documents for ISGP compliance. It is unreasonable to expect facilities that have so far not had ISGP coverage to comply on January 1, 2025. We recommend a 2-year grace period to allow careful assessment and development of the needed ISGP documents.
3. Expanding the ‘reasonable potential’ definition by adding pollutants that cause or contribute to ‘loss of sensitive and/or important habitat’ will increase confusion and ambiguity for permit compliance. We recommend that this new language be removed and maintain water quality criteria as the basis for the ‘reasonable potential’ determination.

4. Requiring ISGP permittees to train all vendors or contractors that access their facilities and perform duties in industrial areas is an unreasonable burden and unlikely to improve stormwater quality beyond the current best management practices and training for a business's employees. We recommend revisions to make vendors or contractors aware of the importance of stormwater management.
5. Adding 'any liquid chemical release onsite regardless of size or flowability ... must be logged and addressed' to spill section is too expansive and ignores that fact that Ecology has spill guidance that ISGP permittees must follow. We recommend that you rely on existing spill guidance rather than adding possibly conflicting language to the ISGP.
6. Requiring 6PPD-quinone sampling by transportation facilities imposes a burden on that sector without a science basis. Current research on detrimental impacts of 6PPD-q on salmon involves freshwater streams only, with little or no information on fate and transport in the marine environment. While we support the need for better information on impacts and possible solutions to this newly identified chemical that has serious impacts on salmon populations, we recommend that Ecology pursue this research using other avenues of investigation.

We believe the state can continue a strong, consistent, science-based stormwater regulatory framework to improve water quality without negatively impacting the state economy. We include Attachment A with this letter, which contains specific and detailed comments on permit sections. Thank you in advance for considering our comments.

If you have any questions concerning the contents of this letter or attachment, please contact Port of Seattle Senior Manager Marine Stormwater Utility, Jane Dewell at: (206) 475-8079.

Sincerely,



Stephen P. Metruck
Executive Director

cc: Stephanie Jones-Stebbins, Managing Director Maritime Division and Director Marine Stormwater Utility – Port of Seattle
Sandra Kilroy, Senior Director Environment and Sustainability – Port of Seattle
Sarah Ogier, Director, Maritime Environment and Sustainability – Port of Seattle
Elizabeth Black, Deputy General Counsel – Port of Seattle
Jane Dewell, Senior Manager, Marine Stormwater Utility – Port of Seattle