

## Northwest Seaport Alliance

Thank you for the opportunity to review and comment on the Draft 2025 ISGP. Comments from the Northwest Seaport Alliance are attached. Thank you.

2025 Draft Industrial Stormwater General Permit Comments  
Northwest Seaport Alliance  
July 15, 2024

Comment No.	Section/Draft Language	Comment	Recommended Change to ISGP
1	<b>Summary of Permit Reports and Submittals Table</b>	Update Summary of Permit Reports & Submittals Table S8.D. May 15 is still listed as deadline for Level 3 deadline.	Confirm that Table matches permit requirements.
2	<p><b>S1, Table 1.</b> Addition of “material handling/storage” as activities triggering ISGP coverage requirements: “Transportation facilities which have vehicle maintenance activity, equipment cleaning operations, <b>material handling/storage</b>, or airport deicing operations”</p> <p>Appendix 2: Definition of “Material Handling”</p>	<ul style="list-style-type: none"> <li>• EPA does not consider the transportation or handling of general products at a transportation facility as requiring NPDES permit coverage. EPA regards material handling at transportation facilities as the handling of material associated with vehicle maintenance and equipment cleaning. EPA-Factsheet Q: Water Transportation Facilities with Vehicle Maintenance Shops and/or Equipment Cleaning Operations (EPA-833-F-06-32) identifies BMPs for “material” handling at water transportation facilities as involving products used in vehicle maintenance or equipment cleaning including anti-freeze, batteries, solvents, etc.</li> <li>• In the proposed 2025 ISGP, Ecology selectively used the following language regarding material handling activities from 40 C.F.R. § 122.26(g) to define the term “Material Handling”: <i>Material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product or waste product.</i> This is not consistent with EPA’s NPDES program. The full text of the Federal rule does not purport to regulate any handling of any material: Conditional No exposure exclusion: <i>“No exposure” means that all industrial materials and activities are protected by a storm-resistant shelter to prevent exposure to rain, snow, snowmelt, and/or runoff. Industrial materials or activities include, but are not limited to, material handling equipment or activities, industrial machinery, raw materials, intermediate products, by-</i></li> </ul>	<ul style="list-style-type: none"> <li>• Eliminate material handling/storage as a triggering activity in Table 1 and clearly define “industrial activity” and “material handling” consistent with EPA’s regulation.</li> <li>• If Ecology elects to go beyond EPA’s triggering activities of vehicle fueling, equipment maintenance, and airport deicing and add the proposed triggering activity of material handling/storage for transportation facilities in Table 1, add as Condition S1.A.4 “Discharges from areas of transportation facilities that are not defined as <b>associated with industrial activities</b> under the federal Clean Water Act (40 C.F.R. § 122.26(b)(14)(viii)) are authorized under this Permit only under state authorities, Chapter 90.48 RCW, the Water Pollution Control Act.</li> </ul>

2025 Draft Industrial Stormwater General Permit Comments  
Northwest Seaport Alliance  
July 15, 2024

Comment No.	Section/Draft Language	Comment	Recommended Change to ISGP
		<p><i>products, final products, or waste products. Material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product or waste product.)</i> This section of the EPA’s rule defining storm water discharges goes on to provide qualifications including: <i>Industrial materials and activities not requiring storm resistant shelter. To qualify for this exclusion, storm resistant shelter is not required for: (i) Drums, barrels, tanks, and similar containers that are tightly sealed, provided those containers are not deteriorated and do not leak (“Sealed” means banded or otherwise secured and without operational taps or valves); (ii) Adequately maintained vehicles used in material handling; and (iii) Final products, other than products that would be mobilized in storm water discharge (e.g., rock salt).</i></p> <ul style="list-style-type: none"> <li>By not using the full text of EPA’s rule and deviating from the triggering activities identified in the EPA’s rule defining discharges associated with industrial activity (40 C.F.R. § 122.26(b)(14)(viii)), Ecology has changed the Permit’s regulation of “Material Handling/storage.” The resulting permit is not an NPDES permit. Ecology clearly states the following on page 35 of the fact sheet: “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 should clearly identify in the ISGP itself that any scope of permit coverage broader than described under EPA’s definition in 40 C.F.R. §</li> </ul>	

2025 Draft Industrial Stormwater General Permit Comments  
Northwest Seaport Alliance  
July 15, 2024

Comment No.	Section/Draft Language	Comment	Recommended Change to ISGP
		<p>122.26(b)(14)(i)-(xi) is imposed exclusively under state authorities, Chapter 90.48 RCW, the Water Pollution Control Act, and not part of the Federally approved program, provided that the facility does not meet the requirements of S1.B.1.</p>	
3	<p><b>S1.B.1-3:</b> Significant Contributors of Pollutants: Ecology may require a facility to obtain coverage under this permit if Ecology determines the facility:</p> <ol style="list-style-type: none"> <li>1. Is a significant contributor of pollutants to waters of the State, including groundwater;</li> <li>2. May reasonably be expected to cause a violation of any water quality standard; or</li> <li>3. Conducts industrial activity, or has a NAICS code, with stormwater characteristics similar to any industrial activity or NAICS code listed in Table 1 in S1.A.1.</li> </ol>	<p>As the permit language is currently written, it could be interpreted that a facility must obtain coverage if they are SCOP AND could cause a violation of water quality standards. This is in opposition to Ecology’s proposed update to the definition of Reasonable Potential which includes “<i>cause or contribute to a water quality violation</i>” and then goes on to add “<i>or loss of sensitive or important habitat.</i>” The disconnect in these requirements is confusing and could open up permittees to wasteful third party “enforcement” actions. Decisions such as who is required to obtain permit coverage must be based on sound science and, as Ecology has written, the <i>reasonable</i> potential to violate water quality standards.</p> <p>We request that Ecology develop an official SCOP policy, as required in the March 15, 2022 Settlement Agreement. Having terms in definitions with significant risk and implications for coverage and not having a clear policy, or appealable option, places</p>	<p><b>S1.B.1-3:</b> Request keeping current permit language and not accepting proposed changes to “Reasonable Potential” definition.</p> <p>Request the following definition for <b>Reasonable Potential</b> means the likely probability for pollutants in the discharge to <del>cause or contribute to a water quality violation in the receiving waterbody, or loss of sensitive and/or important habitat</del> exceed the applicable water quality criteria in the receiving waterbody.</p>

2025 Draft Industrial Stormwater General Permit Comments  
Northwest Seaport Alliance  
July 15, 2024

Comment No.	Section/Draft Language	Comment	Recommended Change to ISGP
		<p>permittees in significant risk for conduct that Ecology does not consider a violation.</p>	
4	<p><b>S1.C. Facilities Not required to Obtain Coverage</b></p>	<p>With the proposed addition of material handling as a trigger for transportation facilities and NAICS 562111 Solid Waste Collection facilities needing permit coverage, a grace period must be provided for the regulated community to identify and comply with new requirements in the final ISGP. Given the scope of the proposed changes for the transportation sector, a minimum of two years is required 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 will otherwise go into effect on January 1, 2025.</p>	<p>Add new Condition <b>S1.C.10: Coverage requirements in the 2025 ISGP for transportation facilities beyond those provided in 40.CFR.122.26(b)(14) shall become effective on January 1, 2027.</b></p>
5	<p><b>S1.E1 Discharges to Ground</b>  <del>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.</del> 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 S5B5e), 2) is specifically required by Ecology (Condition G12), or 3) <del>area 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).</del></p>	<p>Ecology needs to clearly define a process in writing for determining if a discharge point to groundwater is functionally equivalent to a point discharge to surface waters. Ecology should define this process in an appendix to the ISGP and release it 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 that determination can vary from person to person and will result in inconsistent application of the ISGP to different facilities.</p> <p>The current guidance memorandum associated with <i>County of Maui v. Hawaii Wildlife Fund</i> 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</p>	<p>Recommend update language to:</p> <p>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 S5B5e), 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 <u>in accordance with the process defined in Appendix 4.</u></p>

2025 Draft Industrial Stormwater General Permit Comments  
Northwest Seaport Alliance  
July 15, 2024

Comment No.	Section/Draft Language	Comment	Recommended Change to ISGP
		<p>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 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.</p> <p>Considerations that should be incorporated into the process include:</p> <ul style="list-style-type: none"> <li>- Transit time from discharge point to groundwater to surface water(s)</li> <li>- Distance from discharge point to groundwater to surface water(s)</li> <li>- Geology of the area</li> </ul>	
6	<p><b>S1. E: Discharges to Ground</b></p> <p>1. <del>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.</del> However, permittees are not required to sample on-site discharges to ground (e.g., infiltration), unless <u>1) the facility is subject to PFAS sampling per condition S5B5e, 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 in accordance with County of Maui v. Hawaii Wildlife Fund, 140 S. Ct. 1462 (2020) (Maui).</u></p>	<p>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 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.”</p> <p>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</p>	<p>Update Condition <b>S1.E.1</b> to: The terms and conditions of this permit apply to sites with a discharge point to groundwater <u>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).</u> However, <u>facilities that discharge stormwater only to groundwater are not required to obtain coverage under this General Permit unless deemed to be a significant contributor of pollutants – see Condition S1.C.3.</u> Permittees are not required to sample on-site discharges to ground (e.g., infiltration), unless...</p>

2025 Draft Industrial Stormwater General Permit Comments  
Northwest Seaport Alliance  
July 15, 2024

Comment No.	Section/Draft Language	Comment	Recommended Change to ISGP
	<p>2. Facilities with a discharge point to groundwater through an Underground Injection Control well shall comply with any applicable requirements of the <b>Underground Injection Control (UIC)</b> regulations, <u>Chapter 173-218 WAC.</u></p> <p><del>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.</del></p>	<p>clear instruction/guidance to permittees when requirements of ISGP apply to discharges to groundwater.</p>	
7	<p><b>S1.F.3.a:</b> Conditional No Exposure Approvals <u>Ecology will respond to all CNE exemption requests in writing, either approving or denying the request.</u> A Permittee is <del>automatically</del> granted a No Exposure exemption <del>90 days from Ecology's receipt of a complete and accurate No Exposure Certification Form, unless after</del> Ecology informs the applicant in writing or electronically <del>within 90 days</del> that it has <del>denied or</del> approved the request.</p>	<p>Removal of 90-day automatic approval and that Ecology will respond in writing instead, leaves permittees with uncertainty as to if they will be approved for a CNE or not. If Ecology does not respond in writing within a reasonable time frame this proposed change could require permittees who currently have an approved CNE to apply for a permit. Recommend adding a requirement that within 90 days of receiving a complete application, Ecology will respond to the permittee with a written determination.</p>	<p><b>S1.F.3.a</b> Proposed language: <u>Ecology will respond to all CNE exemption requests in writing, either approving or denying the request, within 90 days of receiving a complete No Exposure Certification Form.</u></p>
8	<p><b>S2.A Facilities required to obtain coverage</b></p>	<p>With the proposed addition of material handling as a trigger for transportation facilities and NAICS 562111 Solid Waste Collection facilities needing permit coverage, a grace period must be provided for the regulated community to identify and comply with new requirements in the final ISGP. Given the scope of the proposed changes for the transportation sector, a minimum of two years is required 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 will otherwise go into effect on January 1, 2025.</p>	<p><b>S2.A.1.a.</b> Proposed Language</p> <p>ii. <u>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.</u></p>
9	<p><b>S3.A.3.c SWPPP Update and Implementation</b></p>	<p>There was confusion during the Public Hearing sessions held on June 20 and 24, 2024 with Ecology</p>	<p><b>S3.A.3.c</b></p>

2025 Draft Industrial Stormwater General Permit Comments  
Northwest Seaport Alliance  
July 15, 2024

Comment No.	Section/Draft Language	Comment	Recommended Change to ISGP
	<p>If a Permittee covered under the 2020<del>15</del> ISGP needs to update their SWPPP to be consistent with the 2025<del>0</del> ISGP, the update shall be completed <u>and implemented on or before</u> <del>by January 30</del> <u>March 1, 2025<del>0</del></u>.</p>	<p>regarding if SWPPPs needed to be updated AND implemented by March 1, 2025. With the magnitude of proposed changes to the ISGP as well as potential new sites, it is not feasible to expect permittees to update and implement SWPPPs within 60 days, especially during the winter months. In order to adhere to proposed changes, a minimum of 2 years should be provided for permittees to update and implement SWPPP requirements.</p>	<p>Proposed language: <u>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 January 1, 2027.</u></p>
10	<p><b>S3.A.3.c</b> If a Permittee covered under the 2020<del>15</del> ISGP needs to update their SWPPP to be consistent with the 2025<del>0</del> ISGP, the update shall be completed <u>and implemented on or before</u> <del>by January 30</del> <u>March 1, 2025<del>0</del></u>.</p>	<p>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. Recommend changing this language to indicate SWPPP update is required to be completed on or before June 30, 2025.</p>	<p><b>S3.A.3.c</b> Proposed Language: 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 <u>and implemented</u> on or before June 30, 2025.</p>
11	<p><b>S3.B.i.5:</b> SWPPP Training– addition of “all employees and contractors/vendors”</p>	<p>Permittees cannot be held responsible for training non-employees.</p> <p>Request clarification on which contractors/vendors Ecology intends to be trained. Is the intention to train delivery (i.e. Amazon, Fed Ex, UPS, food service, etc.) or contractors who are doing work specifically in industrial areas of the site? Many facilities are very large and have a number of contractors or</p>	<p><b>S3.B.i.5:</b> Request change to: <i>“The SWPPP shall include BMPs to provide SWPPP training for all employees <del>and contractors/vendors</del> who have duties in areas of industrial activities subject to this permit. <del>Contractors/vendors may be excluded if the permittee has an employee who has been trained on the SWPPP supervising the activity at all times.</del>”</i></p>



2025 Draft Industrial Stormwater General Permit Comments  
Northwest Seaport Alliance  
July 15, 2024

Comment No.	Section/Draft Language	Comment	Recommended Change to ISGP
		<p>vendors coming on site during a single day. It is infeasible to expect a permittee to provide stormwater training on the SWPPP for a vendor who may only be coming on site to deliver office supplies, for example. Permittees strive to be in compliance with all aspects of the ISGP, and unclear requirements can make that difficult.</p> <p>We recommend striking the requirement of training all vendors and contractors, and instead include 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.</p> <p>If Ecology retains this proposed change, more clarification is needed as to which contractors/vendors must be trained, how often training must be conducted for these vendors and contractors, and what this training should include. Currently, language indicates what is required for employee training. Is the intent to have the same training requirements for vendors and contractors as is listed for employees? Permittees understand the importance of stormwater protection, including the requirement for training in proper BMP maintenance and installation.</p> <p>If training remains required for vendors and contractors, we recommend adding a separate section specifying which vendors/contractors must be trained, topics required to be covered in this training, and the frequency of required training.</p> <p>In addition, is there an opportunity to streamline this training, for instance a pamphlet or guide that could be made available?</p>	

2025 Draft Industrial Stormwater General Permit Comments  
Northwest Seaport Alliance  
July 15, 2024

Comment No.	Section/Draft Language	Comment	Recommended Change to ISGP
12	<b>S3.B.5.a.ii:</b> Addition of “and their role in ensuring BMPs are properly maintained and in place.”	Training vendors/contractors regarding BMP installation and maintenance is infeasible. If the intent is for this section to only apply to employee training for employees with duties in areas of industrial activities, please clarify. If the intent is to train all vendors and contractors on proper installation and maintenance of BMPs at a site -this will be a difficult requirement for permittees to meet and, for vendors and contractors who work at multiple locations throughout Washington State, it is imposing a major obligation on contractors and vendors. We understand the importance of BMPs and proper installation and maintenance of said BMPs, however expecting vendors and contractors to meet this requirement at multiple facilities is difficult.	<b>S3.B.5.a.ii:</b> Request change to: “ <i>How employees make a difference in complying with the SWPPP and preventing contamination of stormwater.</i> <del>and their role in ensuring BMPs are properly maintained and in place.</del> ”
13	<b>S3.B.5.d:</b> Training Log d) <u>A log of the dates on which specific employees received training.</u> This log must be kept with the SWPPP and made available upon request.	Many permittees keep training logs electronically, and as such it is unrealistic to expect permittees to print out training records each time a new employee is trained and add this individual record to the SWPPP. The SWPPP is a living document and being expected to update the training log each time a new employee is onboarded is unrealistic. Permittees strive to be in compliance with all requirements of the SWPPP, and in order to maintain compliance request changing this provision to provide that “This log must be made available upon request.”	<b>S3.B.i.5.d:</b> Request change to “A log of the dates on which specific employees received training. This log must be <del>kept with the SWPPP</del> <b>and</b> made available upon request.”
14	<b>S3.B.5.c: Employee Training Frequency</b> The frequency/schedule of training. The Permittee shall train <u>all</u> employees annually, at a minimum. All employees must be trained within 30 days of hire regardless of full, part, or seasonal time	In order to ensure compliance, please clarify if only employees with duties in industrial areas are required to receive SWPPP training (as listed in S3.B.i.5) or if all employees are required to receive SWPPP training (as listed in S3.B.i.5.c). For clarity, we request consistent language between S3.B.i.5 and S3.B.i.5.c regarding which employees (all or only those with duties in areas of industrial activity) are required to receive SWPPP training.	<b>S3.B.5.c Recommend language change to:</b> “The frequency <del>or</del> schedule of training. The Permittee shall train all employees <b>who have duties in areas of industrial activities</b> annually, at a minimum. All <b>affected</b> employees must be trained within 30 days of hire, regardless of full, part, or seasonal time.

2025 Draft Industrial Stormwater General Permit Comments  
Northwest Seaport Alliance  
July 15, 2024

Comment No.	Section/Draft Language	Comment	Recommended Change to ISGP
15	<b>S3.B.i.4.h:</b> require only drip pans and remove option of using absorbents under vehicles/equipment	This is unreasonable and against AKART. Absorbents are a known, readily available, form of BMP to manage cleanup of small spills. Permittees must be allowed to use best professional judgment regarding what BMPs will work best on their sites. Request maintaining the option to use absorbents when cleaning up spills.	<b>S3.B.i.4.h:</b> Request change to: <i>“Use drip pans <u>and absorbents</u> under or around leaky vehicles and equipment or store indoors where feasible.”</i>
16	<b>S3.B.2.b.i:</b> Addition of ‘cargo’ to mapped areas	The term cargo is not used in any other part of this permit, the stormwater management manuals, the source control BMPs for loading and unloading S412, or the federal regulations.	<b>S3.B.2.b.i:</b> Remove cargo from the following sentence: “Loading and unloading of <del>cargo</del> , dry bulk materials, or liquids.”
17	<b>S3.B.4.b.i.4.i</b> – Addition of “Any Liquid chemical release onsite regardless of size or flowability is considered a spill and must be logged and addressed.”	<p>Permittees understand the importance of preventing spills, and quick cleanup and reporting should a spill occur and threaten environmental health. Logging and tracking a drip on a site is not feasible nor reasonable. Industrial facilities currently have requirements to respond to, clean up and report all spills.</p> <p>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.</p> <p>The way the proposed language is written puts the same level of importance on 2 drops of motor oil as for 2 drops of mercury. Ecology’s spill guidance (F-TC-95-608 <a href="#">Department of Ecology Guidance for Reporting Spills and Overfills of Petroleum</a> 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.”</p>	<p><b>S3.B.4.b.i.4.i:</b> Remove the following proposed language: <del>“Any liquid chemical release onsite regardless of size or flowability is considered a spill and must be logged and addressed.”</del></p> <p>Propose the following language in S3.B.4.b.i.4.i: “If Ecology retains the proposed addition to S3.B.4.b.i.4.i, revise to say: “Any Liquid chemical release onsite that is not de minimis as defined in Department of Ecology Guidance for Reporting Spills and Overfills of Petroleum at Section F-TC-95-608 is considered a spill and must be logged and addressed.”</p>

2025 Draft Industrial Stormwater General Permit Comments  
Northwest Seaport Alliance  
July 15, 2024

Comment No.	Section/Draft Language	Comment	Recommended Change to ISGP
		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 ( <a href="#">Spills - If you spill - Washington State Department of Ecology</a> )	
18	<b>S3.B.4.b.i.3 Preventative Maintenance:</b> <b>Preventive Maintenance:</b> 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 <u>and a maintenance log</u> for completing each maintenance task.	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 which can be queried 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 as maintenance tasks are performed (daily at some facilities). This would also put permittees at unnecessary risk of noncompliance for a requirement that has no environmental benefit. 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.	<b>S3.B.4.b.i.3</b> Recommend updated language: <b>Preventive Maintenance:</b> 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 <del>and a maintenance log</del> for completing each maintenance task. <u>BMP maintenance records shall be provided upon request.</u>
19	<b>S4.B.2.b</b> The Permittee is not required to sample on-site discharges to ground (e.g., infiltration) or sanitary sewer discharges, unless 1) <u>the facility is required to sample PFAS in discharges to groundwater per Special Condition S5B</u> , or 2) specifically required by Ecology (Condition G12), or 3) <del>a discharge point to groundwater is deemed by Ecology to constitute a functional equivalent to a point source discharge to</del>	Ecology needs to clearly define a process in writing for determining if a discharge point to groundwater is functionally equivalent to a point discharge to surface waters. Ecology should define this process in writing in an appendix to the ISGP and release it for public review and comment. This will ensure this requirement will be applied consistently for all permittees and potential permittees. Best professional judgment is not an acceptable process	<b>S4.B.2.b:</b> Recommend updated language: 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 <del>Appendix 4. County of Maui v. Hawaii Wildlife Fund, 140 S. Ct. 1462 (2020) (Maui).</del>

2025 Draft Industrial Stormwater General Permit Comments  
Northwest Seaport Alliance  
July 15, 2024

Comment No.	Section/Draft Language	Comment	Recommended Change to ISGP
	<p><u>surface waters in accordance with County of Maui v. Hawaii Wildlife Fund, 140 S. Ct. 1462 (2020) (Maui).</u></p>	<p>to be used when making critical determinations regarding the applicability or requirements of the ISGP, as this determination can vary from person to person and will result in inconsistent application of the ISGP to different facilities.</p> <p>By confusing the scope of coverage required by federal law with the ambiguous “deemed by Ecology to constitute a functional equivalent” scope of coverage Ecology is demanding, Ecology is making it harder for federal courts tasked with enforcing the NPDES program to determine the limits of the NPDES program, including whether federally enforceable permit conditions are “in effect”</p>	
20	<p><b>S4.B.2.c.</b> Ecology may require sampling points located in areas where unsafe conditions prevent regular sampling be moved <u>or add sampling structures to areas where regular sampling can occur through an administrative order or permit modification (Condition G12).</u></p>	<p>Can Ecology point permittees toward a type of sampling structure that would be safe and feasible for an engineered wharf at an international container terminal with unsafe sampling locations? Ecology should not require permittees to install “sampling structures” that do not currently exist and therefore have not been shown to result in safe, accurate, reliable, and representative samples in order for the permittee to remain in compliance with federal and state laws.</p> <p>The Legislature found that “(c) Developing and implementing water quality protection measures based on credible water quality data ensures that the financial resources of state and local governments and regulated entities are prioritized to address our state’s most important water quality issues.” RCW 90.48.570(1)(c). Ecology has an obligation to demonstrate that “sampling structures” are in fact available and produce credible water quality data before requiring their use.</p> <p>Page 49 of the Fact Sheet references Ecology’s willingness to move Sampling Locations due to</p>	<p><b>S4.B.2.c:</b> We request Ecology maintain the current language.</p>

2025 Draft Industrial Stormwater General Permit Comments  
Northwest Seaport Alliance  
July 15, 2024

Comment No.	Section/Draft Language	Comment	Recommended Change to ISGP
		unsafe conditions, however does not address Ecology’s proposal to add sampling structures.	
21	<p><b>S4.B.2.e</b> Waivers for Sample Locations:</p> <p><u>e. Sampling Point Waiver Request Process</u> i. <u>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.</u></p> <p>ii. <u>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></p> <p>iii. <u>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.</u></p> <p>iv. <u>All sampling location requirements of the ISGP remain in effect and enforceable unless and until a waiver/modification is approved by Ecology.</u></p>	<p>We appreciate Ecology offering a waiver for infeasible sampling locations. The way the draft permit is written, there is no phase-in period for either facilities with new sample location requirements, or new facilities obtaining permit coverage, to request a sampling waiver. We request a phase in period of at least 2 years for current facilities that will have new sample locations, and facilities with new permit coverage to apply for a sampling waiver for infeasible sample locations rather than needing to sample starting day 1 of permit coverage. Ecology is requiring sampling from locations under wharfs that will expose the person or people taking sampling to dangerous conditions, including waves, being ejected into the water, debris, ship traffic, dark locations, and more. Permittees should not be required to choose between exposing staff to dangerous conditions or violating the Permit. A reasonable phase in process also gives Ecology time to develop appropriate criteria for approving waivers.</p> <p>In addition, currently 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 including a 90-day review period for Ecology to approve or deny a Sampling Point Waiver Request.</p> <p>The sampling point waiver approval should be processed as a permit modification and not as an administrative order. This reduces administrative</p>	<p><b>S4.B.2.e</b> Sampling Point Waiver Request Process</p> <p>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.</p> <p>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></p> <p>iii. Approvals for sampling point waiver requests will be processed as a modification of permit coverage and sampling will not be required while the waiver is being processed and during any administrative appeal. <del>and approved through the issuance of an administrative order to the requestor.</del></p> <p>iv. <del>All sampling location requirements of the ISGP remain in effect and enforceable unless and until a waiver/modification is approved by Ecology.</del></p>

2025 Draft Industrial Stormwater General Permit Comments  
Northwest Seaport Alliance  
July 15, 2024

Comment No.	Section/Draft Language	Comment	Recommended Change to ISGP
		<p>burden on Ecology and saves time for both Ecology and the permittee.</p> <p>New sampling locations in effect due to proposed changes should be allowed at least two-year grace period for the sampling point waiver process to be fully reviewed and completed before the new sampling requirements take effect. In addition, sampling requirements should not go into effect while a waiver is under review by Ecology or the courts.</p>	
22	<b>S4.B.5.g Sampling Narrative</b>	<p>It is unclear what Ecology is intending with the proposed new requirement of including a sampling narrative with laboratory documentation. Please provide clarification regarding what Ecology is requesting. Is it the case narrative from the analytical laboratory indicating that the samples were received within hold time, proper sample amount etc. (similar to case narrative) or is Ecology requesting a narrative from permittees regarding how the sample was collected?</p>	<p>Request clarification of what is expected, and required, for sampling narratives.</p>
23	<p><b>S5.B.3 6ppD Sampling</b> <u>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”.</u></p>	<p>Ecology has not identified a basis for imposing widespread and costly monitoring requirements for 6PPD-q, including any information about its presence in marine environments; fate and transport in marine environments; or impacts on species. We strongly advocate that Ecology resolve these issues before introducing generalized monitoring requirements. Available resources include Stormwater Action Monitoring (SAM) funding for an independent study specifically focused on 6PPD-q, conducted by established water quality scientists in Washington.</p> <p>In addition, Ecology should address and resolve questions regarding the accuracy of its proposed water quality criteria before imposing widespread monitoring. In Ecology’s own words, “<i>The common</i></p>	<p>Remove requirement for transportation facilities and Warehousing and Storage Facilities to sample for 6PPD-q in the ISGP, and instead gather this data with a SAM study.</p>

2025 Draft Industrial Stormwater General Permit Comments  
Northwest Seaport Alliance  
July 15, 2024

Comment No.	Section/Draft Language	Comment	Recommended Change to ISGP
		<p><i>EPA methodology for developing criteria primarily relies on toxicity data from eight taxonomic families. We currently have freshwater acute toxicity data for five out of eight families for 6PPD-q and very limited chronic data.” (Ecology, 2024). Ecology goes on to explain how Ecology is going to use an alternative method by using a single species, rather than the Environmental Protection Agency eight taxonomic family requirements standard methodology, to get a freshwater acute value for 6PPD-q into the Code.</i></p> <p>We are very concerned that Ecology is not following the common EPA methodology to propose new 6PPD-q criteria. Ecology’s reliance on limited data is inconsistent with direction of Legislature to develop criteria and other “protection measures” with data sufficient to ensure that resources of governments and regulated entities are spent on the most important water quality issues: “The Legislature finds that: . . . (c) Developing and implementing water quality protection measures based on credible water quality data ensures that the financial resources of state and local governments and regulated entities are prioritized to address our state’s most important water quality issues.” RCW 90.48.570(1)(c). Credible water quality data means, in part, that “[t]he data consists of an adequate number of samples based on the objectives of the sampling, the nature of the water in question, and the parameters being analyzed;” RCW 90.48.585(1)(c). Here it appears that Ecology is not collecting sufficient data to make this decision based on credible water quality data.</p> <p>Even if EPA recognizes that research has been done in the freshwater environment only, and their proposed action levels are only for freshwater. Before implementing costly sampling, and potential</p>	



2025 Draft Industrial Stormwater General Permit Comments  
Northwest Seaport Alliance  
July 15, 2024

Comment No.	Section/Draft Language	Comment	Recommended Change to ISGP
		<p>liability to transportation facilities, especially those who discharge to marine environments, more science and data is needed to determine an appropriate benchmark.</p> <p>With no benchmark, how will ECY determine sites that need corrective action? How will ECY assess effectiveness of BMPs when this information is not included in DMRs? Will permittees be required to install treatment for 6PPD-q? How would this be determined? How will ECY be able to determine permit requirements to reduce 6-ppdQ? It seems that this data will show that 6PPD-Q is everywhere, and potentially set up permittees in these sectors for CWA lawsuits. Will this be covered under State authority and therefore protect permittees from CWA lawsuits?</p> <p>We request that Ecology ensure laboratories are certified and capable of handling sample analysis and a SAM study to better understand the potential impacts to our receiving waters and aquatic life; how to control sources through best management practices; and identifying strategies for design/redesign of infrastructure to support source control.</p> <p>The EPA has cited evidence that shows 6PPD-q affects fish in freshwater ecosystems and does not specify marine waters (<a href="https://www.epa.gov/newsreleases/epa-grants-tribal-petition-protect-salmon-lethal-chemical">https://www.epa.gov/newsreleases/epa-grants-tribal-petition-protect-salmon-lethal-chemical</a>).</p> <p>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</p>	

2025 Draft Industrial Stormwater General Permit Comments  
Northwest Seaport Alliance  
July 15, 2024

Comment No.	Section/Draft Language	Comment	Recommended Change to ISGP
		<p>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.</p> <p>Should Ecology wish to collect data for 6PPD-Q, this study should be funded by Ecology and not solely by requiring the transportation and warehouse/storage sectors to pay for this research. Ecology has the ability to use its 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).</p>	
24	<b>S5.B.3 Table 3:</b> Additional Monitoring Requirements	Currently, requirements for the Transportation sector (6-ppdQ and petroleum hydrocarbons) are listed in separate sections of Table 3. All sector specific requirements should be in the same section for each sector.	<b>S5.B.3 Table 3:</b> For clarity to permittees, request reformatting Table 3 so that additional monitoring requirements for each sector are grouped together.
25	<b>S5.B Table 3 Footnote d:</b> Removing: 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	By removing this footnote, it is unclear what Ecology will be using this report only data for. Page 31 of the Fact Sheet references using this report only data to allow Ecology to characterize 6PPD-q in stormwater discharges from these sectors, assess the effectiveness of BMPs and other permit requirements to reduce 6-PPD-q, and it may also help identify certain discharges and/or sites for further investigation and/or corrective action. With no benchmark, how will Ecology know if permit requirements are working, or how to require corrective action? Permittees understand and are concerned about 6PPD-q and its effect on both	<b>S5.B, Table 3 Footnote:</b> If Ecology intends to retain the proposed 6PPD-q sampling requirement, clearly identify in permit language how Ecology will use 'report only' data.

2025 Draft Industrial Stormwater General Permit Comments  
Northwest Seaport Alliance  
July 15, 2024

Comment No.	Section/Draft Language	Comment	Recommended Change to ISGP
		environmental and human health, however, adding this requirement without a clear plan and use of the data gathered could place permittees in a position of liability to control a chemical without the needed science.	
26	<b>S6.C.1.b, and Table 6:</b> Ecology deleted language specifying that effluent limits are based on Category 5 listing for sediment quality. Ecology further deleted from Table 6 footnote g providing for site-specific effluent limits to be assigned to Marine waters at the time of permit coverage for copper, lead, zinc, and pentachlorophenol. Ecology proposes effluent limits for copper, lead, zinc and pentachlorophenol for discharges to 303(d) listed water bodies.	Ecology should retain the current language stating that site specific effluent limitations will be assigned at the time of permit coverage. Ecology’s 303(d) listings are not regularly updated to reflect current conditions. Moreover, monitoring results above the specified effluent limits may not be characteristic of the discharge at the point of addition to the listed waterbody. Facility discharges are often combined with stormwater from other sources resulting in surface water discharges that are below effluent limits. Accordingly, a sample result at facility boundaries above the effluent limit may not indicate a discharge that results in an exceedance of water quality standards. The current Permit language is consistent with science, the law, and gives Ecology appropriate discretion to imposed reasonable requirements.  The deleted the text from Condition S6.C.1.b conditioned and explained the reference to “applicable sampling requirements and effluent limits” for total suspended solids (TSS) as applicable “if the waterbody is 303(d) listed (Category 5) for sediment quality at the time of permit coverage.” Deleting this text is confusing and unnecessary.	<b>S6.C:</b> Recommended change: Continue to provide site-specific effluent limits for copper, lead, zinc, or pentachlorophenol discharges to 303d-listed water bodies. Site specific criteria are more protective of receiving water quality as they are determined based on site-specific information.
27	<b>S6.C.2, Footnote 12:</b> NEW The Washington State Water Quality Assessment Category <b>4A-C</b> (Sediment) and Category 5 (Sediment) portions of Budd Inlet (Inner), Commencement Bay (Inner), Commencement Bay (Outer), Duwamish Waterway (including East and West Waterway), Eagle Harbor,	Ecology has proposed to significantly expand the definition of Puget Sound Sediment Cleanup Site by adding Category 4A, 4B, and 4C portions of several waterbodies. Ecology’s change to current requirements will likely confuse regulated entities and generate wasteful third-party lawsuits without benefit. Ecology should issue site specific sampling	<b>S.6.C.2 Footnote 12</b> –For clarity, recommend the proposed language change below:  Category 4B (Sediment) portions of Budd Inlet (Inner), Commencement Bay (Inner), Commencement Bay (Outer), Dalco Passage and East Passage, Duwamish Waterway (including East and West Waterway), Eagle Harbor, Elliot Bay, Hood Canal (North), Liberty

2025 Draft Industrial Stormwater General Permit Comments  
Northwest Seaport Alliance  
July 15, 2024

Comment No.	Section/Draft Language	Comment	Recommended Change to ISGP
	Elliot Bay, Everett/Port Gardner, Hood Canal (North), Liberty Bay, Port Gamble Bay...	<p>requirements only when with a specific, identifiable need.</p> <p>Category 4a waters are already subject to an EPA-approved TMDL plan that is in place and implemented. Category 4b waters already have pollution control program in place that, by law, is expected to solve the pollution problem that caused the listing. Category 4c waters are impaired by causes that cannot be addressed through a TMDL plan such as low water flow, stream channelization, and dams – that is, problems other than pollutants.</p> <p>According to the Fact Sheet, “[t]he requirements for discharges to Puget Sound Sediment Cleanup Sites will: 1) reduce concentrations of sediment and other pollutants in stormwater discharges, and reduce the potential of discharges to cause or contribute to contamination or recontamination of Puget Sound Sediment Cleanup Sites; 2) Allow Ecology to screen for site-specific issues not adequately addressed by the ISGP, and determine if additional sampling, source control, and/or treatment is necessary; and 3) Gather baseline information that will inform the next version of the ISGP.” Fact Sheet at 58.</p> <p>Imposing widespread and confusing new requirements will increase wasteful third-party lawsuits without commensurate identifiable benefits. These areas are already subject to TMDLs and pollution control program or are listed for reasons unrelated to stormwater discharges, Ecology should use its existing authority to add site-specific requirements only when those requirements are based on credible data or identified needs.</p>	<p>Bay, Rosario Strait, Sinclair Inlet, and Thea Foss Waterway; Category 5 (Sediment) portions of the Duwamish Waterway; Category 4A (Sediment) portions of Bellingham Bay (Inner); and the Everett/Port Gardner, Oakland Bay/Shelton Harbor, and Port Angeles Harbor sediment cleanup areas, as mapped on Ecology’s ISGP website. All references to Category 4A, 4B, and 5 pertain to the EPA-approved Water Quality Assessment that is in effect on January 1, 2025, or when the facility obtains coverage under this permit, whichever is later.</p>
28	DMR Updates for Impaired Waterbodies	Currently, the 2020 DMR is not consistent with permit language and requirements. Confirm 2025 DMRs will match permit requirements and language.	Provide proposed DMR for review and comment.

2025 Draft Industrial Stormwater General Permit Comments  
Northwest Seaport Alliance  
July 15, 2024

Comment No.	Section/Draft Language	Comment	Recommended Change to ISGP
29	<p><b>S8.C.4.c:</b> 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, <del>by May 15th</del> prior to Level 2 Deadline. Ecology will approve or deny the request <del>within 60 days of receipt of a complete Modification of Coverage request and notify the Permittee in writing.</del></p>	<p>This is a change of language that removes a 60-day timeline to complete the request. By removing this language, it suggests Ecology cannot adhere to such a timeline and respond to permit inquiries within a reasonable timeframe.</p> <p>Not having a deadline for Ecology to respond to a Permittee's proposed response to the Permit's treatment requirement leaves Permittees in limbo when deciding how to address, and pay for, treatments. That uncertainty often results in wasteful third-party lawsuits and is not consistent with the Congress' and the Washington Legislature's intent. Recommend removing automatic approval, and instead adding that Ecology will respond to permittees request in writing and within 60 days of receipt of report.</p>	<p>Proposed language: <b>S8.C.4.c:</b> 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 form15 to Ecology in accordance with Condition S2.B, <del>by May 15th</del> prior to Level 2 Deadline. Ecology will approve or deny the request <u>within 60 days of receipt of a complete Modification of Coverage request and notify the Permittee in writing.</u></p>
30	<p><b>S8.D.5.c:</b> 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, <del>by May 15th</del> prior to Level 3 Deadline. Ecology will approve or deny the request <del>within 60 days of receipt of a complete Modification of Coverage request and notify the Permittee in writing.</del></p>	<p>This is a change of language that removes a 60-day timeline to complete the request. By removing this language, it suggests Ecology cannot adhere to such a timeline and respond to permit inquiries within a reasonable timeframe.</p> <p>Not having a deadline for Ecology to respond to a Permittee's proposed response to the Permit's treatment requirement leaves Permittees in limbo when deciding how to address, and pay for, treatments. That uncertainty often results in wasteful third-party lawsuits and is not consistent with the Congress' and the Washington Legislature's intent. Recommend removing automatic approval, and instead adding that Ecology will respond to permittees request in writing and within 60 days of receipt of report</p>	<p><b>AND S8.D.5.c:</b> 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 form15 to Ecology in accordance with Condition S2.B, <del>by May 15th</del> prior to Level 3 Deadline. Ecology will approve or deny the request <u>within 60 days of receipt of a complete Modification of Coverage request and notify the Permittee in writing.</u></p>
31	<p><b>S8.D.5.e:</b> <u>During the period of time after a facility triggers a Level 3 corrective action but prior to the corresponding Level 3 corrective action</u></p>	<p>We appreciate this proposed change as it will allow permittees the ability to install treatment without wondering how long they may have until benchmark</p>	<p>Agree with this change.</p>

2025 Draft Industrial Stormwater General Permit Comments  
Northwest Seaport Alliance  
July 15, 2024

Comment No.	Section/Draft Language	Comment	Recommended Change to ISGP
	<p><del>implementation due date. For year following the calendar year the Permittee triggered a Level 3 corrective action</del>), benchmark exceedances (for the same parameter) do not count towards additional Level 2 or 3 Corrective Actions.</p>	<p>exceedances could trigger additional corrective actions.</p>	
32	<p><b>S9.C.2:</b> Annual Reports: <i>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 of other notification made by federal/state/local authorities, visual observations, and/or your facility’s monthly site inspections (self-inspections). These issues do not include benchmark or numeric effluent limit exceedances discovered by routine compliance stormwater sampling.</i></p>	<p>Reporting issues identified during inspections, etc. This information is currently required in the Annual Report. The requirement to include “stormwater pollution issues” is vague and could lead to wasteful allegations of violations. Items requiring corrections discovered during inspections are often corrected at that time (i.e. open dumpster lids, etc.). The ISGP is an adaptive management permit and permittees should be allowed to implement as such when complying with inspections and corrections that are implemented following inspections.</p>	<p><b>S9.C.2:</b> Remove proposed language: <i>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 of other notification made by federal/state/local authorities, visual observations, and/or your facility’s monthly site inspections (self-inspections). These issues do not include benchmark or numeric effluent limit exceedances discovered by routine compliance stormwater sampling.</i></p>
33	<p><b>S9.F.1.a,b:</b> Reporting Permit Violations <del>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:</del>  <del>a. Immediately take action to minimize potential pollution or otherwise stop the noncompliance and correct the problem.</del>  <del>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.</del></p>	<p>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. The existing ISGP language for Condition S9.F should be retained.</p>	<p>Remove proposed changes and retain existing ISGP language for S9.F.</p> <p>S9.F The Permittee must take the following actions when it violates or is unable to comply with any permit condition:</p> <ul style="list-style-type: none"> <li>a. Immediately take action to minimize potential pollution or otherwise stop the noncompliance and correct the problem.</li> <li>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: <ul style="list-style-type: none"> <li>i. Any noncompliance that may endanger health or the environment.</li> <li>ii. Any violation of a maximum daily discharge limit in this permit.</li> </ul> </li> </ul>

2025 Draft Industrial Stormwater General Permit Comments  
Northwest Seaport Alliance  
July 15, 2024

Comment No.	Section/Draft Language	Comment	Recommended Change to ISGP
	<p>i. Any noncompliance that may endanger health or the environment.</p> <p>b. Any violation of a maximum daily discharge limit in this permit. Immediately notify the local jurisdiction on and appropriate Ecology regional office of the failure to comply:</p>		
34	<p><b>S.10 Compliance with Standards</b></p>	<p>In <i>PUD No. 1 of Jefferson County v. Washington Department of Ecology</i>, 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 to which discharges must conform. That ambiguity is not consistent with the Clean Water Act’s requirements.</p> <p>The federal district court in <i>PSA v. APMT</i>, concluded that the statement in Condition S10.B that “<b>Ecology</b> 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. The presumption of compliance should apply for Permittees regardless of whether the entity enforcing the Permit is Ecology or a citizen.</p> <p>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</p>	<p>Remove Conditions S10.A and S10.C.</p> <p>Revise Condition S10.B to state that “A Permittee is presumed to be in compliance with water quality standards” when meeting permit conditions.</p> <p>Ecology will presume compliance with water quality standards, <del>unless discharge monitoring data or other site-specific information demonstrates that a discharge causes or contributes to violation of water quality standards</del>, when the Permittee is:</p> <ol style="list-style-type: none"> <li>1. In full compliance with all permit conditions, including planning, sampling, monitoring, reporting, and recordkeeping conditions.</li> <li>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.</li> </ol>

2025 Draft Industrial Stormwater General Permit Comments  
Northwest Seaport Alliance  
July 15, 2024

Comment No.	Section/Draft Language	Comment	Recommended Change to ISGP
		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.	
35	<b>G3:</b> 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	This language is not in the Fact Sheet. Please provide more information on the basis for this change and how it will be implemented in the 2025 ISGP.	We request clarification on this proposed change and how this will affect Industrial permittees. Specifically, will Ecology be contracting out inspections and how will permittees know who is an authorized representative of Ecology?
36	<b>G8:</b> Duty to Reapply: Added: <u>If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit.</u> The permittee shall apply for permit renewal at least 180 days prior to the expiration date of this permit.	It is not clear how this will affect facilities with a Conditional No Exposure Certification, as these are not on the same 5-year timeline as the permit.	G8: Request clarity on how this proposed change will affect facilities with approved CNE that overlap ISGP reissuance dates.
	<b>DEFINITIONS</b>		
37	Definition: <b>Industrial Activity:</b> 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 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	<p>The federal definition clarifies in the first two sentences that the NPDES program regulates specific areas and discharges: – the discharge from any conveyance that is used for collecting and conveying stormwater and <b>that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant.</b></p> <p>By removing the first two sentences of the federal definition from the ISGP definition, Ecology has introduced confusion regarding the Permit’s scope.</p> <p>Ecology needs to be clear, in its permit language, as to which specific activities require coverage and which do not include where coverage ends for activities like transportation that occur on roads, highways, vessels, and rail lines throughout Washington State.</p>	<ul style="list-style-type: none"> <li>We request that Ecology maintain the 2020 definition of Industrial Activities: <u>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.</u></li> <li>In addition to retaining this definition, Ecology should clarify that for activities identified in EPA’s definition in 40 C.F.R. § 122.26(b)(14)(i)-(xi), the discharges subject to coverage are only those discharges identified in EPA’s definition. The adoption of the federal definition must also include adoption of federal definition for terms used within the definition including: “material”, “material handling sites”, etc.</li> </ul>



2025 Draft Industrial Stormwater General Permit Comments  
Northwest Seaport Alliance  
July 15, 2024

Comment No.	Section/Draft Language	Comment	Recommended Change to ISGP
	<p>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 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. <del>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.</del></p>	<p>Ecology also replaced “plant” and “plant yard” with “site” and “facility”. These seemingly benign changes could have unintended consequences for current and future permittees related to area of permit coverage. Again, the language in the federal definition has clear and defined intent on coverage areas for transportation facilities.</p> <p>When referencing 6. Conditionally Authorized and Prohibited Discharges on Page 57 of the Fact Sheet, Ecology states: <i>Ecology based this permit condition on an identical condition in the MSGP.</i> Ecology’s decisions to pick and choose which aspects of the federal regulations fit with the state narrative is confusing and places permittees in a legally vulnerable position. It is confusing as to why Ecology insists some aspects of the Federal regulations are sufficient for protecting water quality, however others are not (i.e. material handling, industrial definition...). Ecology should not pick and choose to use federal definitions only when it is convenient for the agency. This subjectiveness makes the permit, and coverage of said permit, subjective to Ecology’s whims. This makes it very difficult for permittees who want to comply with the regulations to understand and implement environmentally protective actions on their sites.</p>	<ul style="list-style-type: none"> <li>Should Ecology instead decide to move forward with the currently proposed piecemeal definition of “Industrial Activity”, we request Ecology clarify that any scope of permit coverage broader than authorized under EPA’s definition in 40 C.F.R. § 122.26(b)(14)(i)-(xi) is imposed exclusively under authority provided by state law and not subject to the federal NPDES program provided that the facility does not meet the requirements of S1.B.1. This clarification must be clear in permit language and clearly explained in the Fact Sheet.</li> </ul>
38	<p><b>Definition: Operator:</b> Operator (1) the entity has operational control over industrial activities, including the ability to make modifications to those activities; or (2) the entity has day-to-day operational control of activities at a facility necessary to ensure compliance with the permit (e.g., the entity is authorized to direct works at a facility to carry out activities required by the permit). Remove means</p>	<p>Positive change – adds clarity.</p>	<p>Agree with proposed change as it adds clarity for permittees.</p>

2025 Draft Industrial Stormwater General Permit Comments  
Northwest Seaport Alliance  
July 15, 2024

Comment No.	Section/Draft Language	Comment	Recommended Change to ISGP
	any entity with a stormwater discharge associated with industrial activity.		
39	<b>Definition: Substantially Identical Discharge Point:</b> add: and 5) discharges to the same surface waterbody or waterbodies with demonstrably similar water quality, or to the same segment of a storm sewer.	Circular reference in S4.b.3 and S3.b.5.b and definition. Clarify circular reference. It is confusing to have a definition that is a permit header and also part of the definitions.	Request clarity in sections S4.b.3, S3.B.5.b, and definitions.
40	Definitions: <b>Reasonable Potential:</b> means the likely probability for pollutants in the discharge to <del>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</del>	<p>This term is used in the Fact Sheet and definitions, but not in the permit sections.</p> <p>To find where this term applies in the permit is confusing. In order to determine where this term applies, permittees must review S1 Significant Contributor, which leads to Significant Amount, which is where Reasonable Potential is listed. Requiring permittees to search for definitions that have significant impact within other definitions, is confusing and goes against the intent of the Washington Governor’s requirement for Ecology to use plain language standards.</p> <p>Due to the subjectiveness of this proposed change, the proposal to remove "exceed" and replace with "cause or contribute" could lead potentially lead to 3<sup>rd</sup> Party litigation for permittees, especially with the proposed 6ppdQ report only monitoring requirement.</p> <p>This proposed language would make the determination subjective to Ecology employees, with no appeal process currently proposed for permittees who may disagree.</p> <p>This proposed change may expose permittees to third party litigation. Being forced to pay for legal fees to defend such suits uses permittee resources that could instead be used to help mitigate other environmental and water quality issues.</p>	<ul style="list-style-type: none"> <li>• Request keeping original language: <b>Reasonable Potential means the likely probability for pollutants in the discharge to exceed the applicable water quality criteria in the receiving water body.</b></li> <li>• If Ecology insists on changing this definition as proposed to make it more subjective, we request including Reasonable Potential in permit language under S1 so that permittees are clearly aware of this proposed subjective change and how it will affect current and future permittees.</li> </ul>

2025 Draft Industrial Stormwater General Permit Comments  
Northwest Seaport Alliance  
July 15, 2024

Comment No.	Section/Draft Language	Comment	Recommended Change to ISGP
		<p>Finally, there is a lack of discernable standards for the determination that “the likely probability for pollutants in the discharge to cause or contribute to . . . loss of sensitive and/or important habitat.” What is “likely probability” as opposed to probability? What is sensitive habitat? What is important habitat? How would Ecology measure “loss”?</p>	



**THE NORTHWEST**  
SEAPORT ALLIANCE

SEATTLE + TACOMA  
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July 15, 2024

Lucienne Banning  
General Permit Unit Supervisor  
Washington State Department of Ecology  
PO Box 47696  
Olympia, WA 98504-7696

Re: Draft 2025 Industrial Stormwater General Permit Comments

Dear Ms. Banning,

The Northwest Seaport Alliance (NWSA) appreciates the opportunity to submit comments on the 2025 Industrial Stormwater General Permit (Permit). The NWSA, the marine cargo operating partnership of the Ports of Tacoma and Seattle, prides itself on being an environmental steward for port industries both within the state of Washington and internationally. Since 2016, we have spent over \$97 million to protect and enhance environmental quality through habitat restoration, innovative water quality improvements and shore power in both Tacoma and Seattle.

The NWSA is very concerned that Ecology is making numerous changes to the ISGP without explaining those changes or their justification, including changes that are not supported by a scientific basis to establish an improvement to water quality. The Permit already regulates over 1200 facilities in Washington, yet, in 2025, Ecology proposes to completely alter major definitions and requirements that are expected to greatly increase the number of businesses and public agencies subject to permit coverage. In addition, Ecology is adding numerous requirements to an already rigorous, complex and protective permit. Ecology has not provided data or science to explain the rationale for the proposed changes, despite a duty to do so. Compliance with these new requirements, which are unique to Washington, will add significant capital costs to the detriment of other planned environmental projects of proven efficacy. These proposed new requirements will increase cost to port operations, which poses risks to the Washington economy and our region's competitiveness without providing commensurate environmental benefits.

Ecology must provide clear and implementable regulations based on sound science and which demonstrate consideration of reasonable alternatives. Lack of clarity in permit requirements puts Washington businesses and public agencies at risk of not being successful, making investments without identifiable benefits, and renders these entities vulnerable to costly and time-consuming third-party

litigation. We acknowledge the value of clear and implementable regulation in safeguarding our natural environment.

Our attached comments provide recommendations to update the Draft ISGP permit in order to make it more implementable while still maintaining permit requirements to protect and enhance Washington's surface waters. We urge Ecology to consider these comments as you finalize the 2025 Industrial Stormwater General Permit.

Respectfully,



John Wolfe  
Chief Executive Officer  
The Northwest Seaport Alliance