



July 15, 2024

Lucienne Banning  
Washington Department of Ecology  
Water Quality Program, General Permit Unit  
Delivered electronically via the online comment form web portal

Dear Lucienne Banning,

Thank you for the previous opportunities to participate in informational sessions and discussions with the Department on the draft 2025 Industrial Stormwater General Permit (ISGP). The WPPA and many of our port members attended these sessions to better understand some of the impacts of the proposed draft permit. We appreciate the insight provided and submit the following comments as a part of the public process.

The Washington Public Ports Association (WPPA) is a coordinating agency that represents Washington's 75 port districts across the state to help manage some of the state's most valuable assets in promoting trade, economic development, and environmental stewardship. We carry out our mission through advocating, educating, and connecting to serve our port members.

WPPA places a priority on practices that can benefit the environment and be implemented in ways that minimize negative impacts on our state's global trade competitiveness, basic port competitiveness, and local economic development opportunities in our port communities. The proposed draft 2025 ISGP has changes that will be financially and practically burdensome to many of our port members. With its potential for significant implications on the function of our state's port facilities, there are several proposed changes that are a matter of utmost importance and concern for our member ports.

We would hope to see a final 2025 ISGP that correctly balances the protection of our environment, the preservation of public funds, and the continued economic viability of the activities subject to the permit. However, given the extent of the permit expansion and the financial cost and infeasibility of compliance with some of these measures, we are dubious that many of the proposed changes will lead to meaningful water quality improvements.

**Concern: Definition change of Industrial Activity (page 83)<sup>1</sup>**

The definition of *Industrial Activity* in this proposal is significantly expanded to include material handling, loading and unloading of products. We understand that it is similar to the EPA

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<sup>1</sup> All page references are to the 2025 Draft Industrial Stormwater General Permit found on Ecology's website here; [ISGP\\_2024\\_DraftPermit.pdf \(wa.gov\)](#)



definition of "[Stormwater Discharges associated with Industrial Activities](#)" but removes language that limit that to industrial activities.

- Under this proposed definition, transportation facilities and others will have a difficult time assessing the extent of covered areas leading to increased uncertainty EX: intermediate access roads and rail lines travelled by carriers.
- We suggest further clarification of the definition in consideration of the below listed concerns with additional material handling/storage language added to the draft permit.

**Concern: Addition of material handling/storage as transportation industrial activity (page 10)**

Expanding the existing transportation triggers (maintenance, cleaning, deicing) to include "material handling/storage" for ISGP coverage and increasing Ecology's oversight would create a vast, regulatory expansion under the updated permit resulting in a large, new sector of coverage.

- This change would greatly impact the number of permits needed, leading to large operational changes, and increased costs for ports and all their tenants.
- The definition (page 84) for *material handling* appears so broad as to incorporate any part of any product being moved and therefore regulated under the permit. Whereas "storage" is left undefined and open to interpretation when added as a transportation trigger.
- If this is not clarified further, at best it is incredibly ambiguous, only leading to additional regulatory uncertainty. At worst, this change could be interpreted as a huge regulatory expansion over brand new permit holders putting supply chain operations in jeopardy.
- We are concerned with such a broad definition of what constitutes material and/or storage and suggest additional clarity on this definition and its application or complete removal of the new trigger.

**Concern: PFAS Sampling Requirements (pages 40-41)**

The permit proposal adds a new, quarterly, report-only PFAS sampling requirement that would apply to landfills, transfer stations, open dumps, and land application sites and would take effect in the following reporting period.

- Although it is report-only, this will certainly inform future corrective action and is targeted on only a portion of the industry, specifically some that are typically receivers of the pollutant which will not help with targeted prevention solutions.
- EPA and Ecology recommend the use of [method 1633](#), which is for 40 PFAS compounds. Of which, there are only a handful of these PFAS compounds that have proposed standards associated with at the federal and state level. The permit does not specify if all 40 PFAS compounds will be required to be tested quarterly, or if it is only those with standards associated them. We recommend testing PFAS compounds with associated water quality standards annually as an initial first step.
- There is a high cost to test and analyze for PFAS and additional uncertainty of procedure to sample discharges into ground.
- Resources will need to be made available for proper training of sampling personnel, for accurate sample collection, and there are additional measures that must be taken by sampling staff. We would like to see additional guidance for the feasibility of those measures.

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- We recommend clarification that small airports, that do not use de-icer (footnote c) and are therefore exempted from five other sampling parameters would or would NOT be exempted from PFAS sampling.
- There is currently a lack of accredited labs that are still going through the approval process. It is almost guaranteed that there will be a high demand for testing if this proposal goes into effect. We are concerned that this will require significant sample processing resulting in delays and price increases. How does Ecology plan to ensure there is no significant backlog and continue to require testing quarterly?

**Concern: PFAS sampling functional equivalent reference (page 34)**

The permit proposal gives Ecology the authority to require sampling if a facility has a discharge point to groundwater if it constitutes “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).

- It is concerning that a court case is referenced in a general permit specifically tied to new agency authority. It is not typically done in the ISGP and opens this section up to further scrutiny.
- The Maui case specifically references a wastewater treatment facility and it is unclear how this case may be applied industry wide in this state general permit.
- Due to the unusual nature of this inclusion, we recommend removal of the reference to the court case completely.

**Concern: 6PPD-q Sampling Requirements (page 39)**

The permit proposal adds 6PPD-quinone quarterly, report-only sampling requirements starting in year 3 of the permit (Jan 1, 2028) of certain listed transportation facilities. Facilities that meet the “small business” definition (50 or less employees) would be exempt.

- Although the sampling requirements would start in year 3, there are currently many unknowns when it comes to 6PPD-q, including how to sample and the cost to sample and analyze. There are no benchmarks, no standards anywhere in the world associated with this sampling. There is currently only one lab certified to analyze 6PPD-q in Washington. We have similar concerns to those associated with the PFAS sampling relating to increased demand and ability to keep up with something as rigorous as quarterly sampling for an emerging contaminant like 6PPD-q.
- Unless something drastically changes, this will be a financial burden on permit holders. Currently, cost estimates of a single PFAS or 6PPD-q sample is between \$550-\$700 each, using the recommended method. No soil or sediment or other material accreditation testing is available at this time.
- 6PPD-q is a new emerging chemical, using this permit to essentially gather information, conduct a study and collect data should be done separately and should be paid for by the agency. A subset of transportation facilities seem to be paying for Ecology to characterize 6PPD-q in stormwater discharges from these sectors, assess the effectiveness of BMPs, and other permit requirements to reduce 6PPD-quinone, and possibly identify certain discharges and sites for further investigation. This data may then be used to regulate the community that provided the information to Ecology. In no way is this an inclusive way to

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collect enough data to make informed regulatory determinations on something as new as 6PPD-q.

- When Ecology recently proposed 6PPD-q standards for aquatic life toxics criteria a “species sensitivity distribution” was used because it was found that coho salmon was more acutely impacted in comparison to other species. EPA has no recommendations for this chemical, and it cannot meet minimum data requirements that EPA sets to include 8 different genera of species. In this case, Ecology came up with a separate method to recommend standards. We understand that 6PPD-q adversely impacts coho salmon and hope to support meaningful solutions. However, a chemical that has acute impacts on a specific species should not be a statewide, industry specific requirement for sampling in a general permit. At a minimum, sampling requirements should be considered regionally, where coho salmon are located, and outside of the general permit process. Studies to date have focused only on freshwater environments, and there have been no studies on the fate and transport of 6PPD-q in marine environments in Washington.
- Tire wear occurs everywhere in the urban environment, it's not industrial in nature and should not be solely focused on the ISGP to manage the larger issue and provide the data. This puts a disproportionate burden on a single sector of the transportation community representing a small contribution from the larger tire wear universe.
- Because there are so many unknowns we do not believe that this sampling requirement is appropriate to be included in something like the ISGP and recommend its complete removal at this time.

#### **Concern: Ends automatic approval and timeframe for CNE exemption (pages 15-16)**

The permit proposal ends automatic approval for Conditional ‘No Exposure’ (CNE) exemption and would only be granted after an inspection to confirm that there is no possible exposure to pollutants, done in writing, and removes the 90-day timeframe.

- We have concerns about pending backlogs and the lack of any requirement for Ecology to process CNEs within a certain timeframe. Not having a time frame will make it incredibly difficult for permittees to plan ahead.
- Will facilities that currently qualify for a CNE now be required to obtain full ISGP coverage, and comply with all the new permit requirements, while waiting for the approval process?
- Regarding final products intended for outside use, e.g., new cars, where exposure to stormwater does not result in the discharge of pollutants – would this include shipping containers? Does Ecology intend to inspect and allow a CNE for all these items? How will this workload potentially be managed?
- If it is the case to continue to meet the 90-day timeframe, we recommend keeping the mention of that in the permit for approval.

#### **Clarification Needed: SWPPP training requirement for all employees and contractors/vendors (page 28)**

The permit proposal adds SWPPP training requirements for all employees and contractors/vendors who have duties in areas of industrial activities subject to the ISGP and requires all employees must be trained within 30 days of hire regardless of full, part, or seasonal time.

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- This may be a significant financial burden on permit holders if it requires additional logistical considerations, training support, or requires bringing in outside support. This will require time and resources dedicated to recordkeeping with no specifics on what this may look like e.g. should records be kept in software, or do they need to physically be in the SWPPP?
- Training all contractors and vendors would take resources away from other priorities or in many cases be completely infeasible depending on the requirements, number of staff, and limited capabilities. The level of intrusion that may be required from the port into tenants' private business operations would be unacceptable. Is there an opportunity to streamline this somehow, or does Ecology have a situation in mind of what this training would look like? EX: a webinar, guide or pamphlet that can be made available in advance?
- We have concerns about logistics in conducting this training and recordkeeping and how that may vary and be interpreted. Many permittees are seeking clarity for the threshold for that training requirement.

#### **Concern/Clarification Needed: Sampling waivers (page 34)**

The permit proposal allows for a sampling waiver to allow facilities to adjust where they sample stormwater discharge to help with safety and logistical issues. Ecology would process, on a case-by-case basis waivers as a modification of permit coverage with a public notice.

- We are concerned about the lack of any phase-in period with the significant changes to the permit being proposed and many potential new coverage areas. It is not realistic to require all these changes and permit holders to come into compliance by the following reporting period. This is an incredible financial and resource burden.
- A part of the sampling waiver allows for the addition of sampling structures through an administrative order or permit modification, how will this be done in a timely manner? What are the requirements and would this be done as a condition of the waiver?
- It is a priority for our members to be in regulatory compliance, however with the numerous changes in the draft 2025 ISGP, requiring compliance Jan 1, 2025, and sampling the following quarter is concerning. This will not only be burdensome on permit holders but regulatory agencies as well.
- We recommend some consideration of a phase-in period for those seeking sampling waivers or clarification on how this will be processed and on what timeframe.

#### **Concern/Clarification Needed: Spill logs/spill thresholds (page 28)**

The permit proposal adds that any liquid chemical released onsite regardless of size or flowability is considered a spill and must be logged and addressed.

- This requirement is broad and undefined, leaving it up to considerable scrutiny. We have concerns about the time commitment/utility of documenting every drip of potentially any liquid across all permit holders or site wide.
- We recommend additional clarity or definition on what constitutes a spill that needs to be logged e.g. would a drip of water condensation from a vehicle count?

#### **Support: Level 3 Corrective Action Engineering Report Timeline Change (page 59)**

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This proposal extends deadlines for engineered treatment systems and simplifies the due date for everyone involved, which should also reduce the need for a modification of permit coverage to extend deadlines.

**Clarification Needed: Operator definition (page 85)**

Clarifies the entity is authorized to direct workers at a facility to carry out activities required by the permit. However, we would recommend further clarification that this new definition include "direct operational control" which would exclude landlords leasing to a tenant.

It is still unclear how far this expansion would go for some of our smaller port members that may not have previously required coverage under an ISGP. These changes further result in extraordinary financial and operational impact on both the ports and port tenants. This presents a potential business disadvantage in placing new, burdensome requirements and additional expenses on port tenants. Ports are already substantially into budgeting for the upcoming year, and this is a significant consideration that will be difficult to implement on this timeline.

Ports do innovative work and have successful stormwater management practices. Without knowing the specific desired environmental benefits, expanding the ISGP this way may not be the best option to move forward to achieve certain environmental goals. In some instances, there is more learning and understanding required regarding how to achieve those goals in a measurable, effective way. It is important that new requirements are achievable, done in a holistic approach, and produce the desired beneficial environmental outcome through partnership.

Thank you for the opportunity to provide comments on the draft 2025 ISGP. We hope our concerns and recommendations are considered, and the final permit balances the protection of our environment, the preservation of public funds, and the continued economic viability of the activities subject to the permit.

Please reach out if there are questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Carly Michiels".

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