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July 15, 2024

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Submitted via online comment portal

RE: Comments on Washington Ecology's 2024 Draft Industrial Stormwater General Permit

Dear Supervisor Banning,

Please accept these comments on behalf of Columbia Riverkeeper regarding the Washington Department of Ecology's (Ecology) Draft Industrial Stormwater General Permit (ISGP). Columbia Riverkeeper's mission is to protect and restore the Columbia River and all life associated with it, from its headwaters to the Pacific Ocean. We are committed to clean water, strong salmon runs, and healthy communities. Columbia Riverkeeper represents roughly 16,000 members and supporters in Oregon and Washington and regularly engages in decisions and policies impacting the water quality of the Columbia River Basin.

Stormwater runoff is a significant threat to Washington's waterways. In addition to carrying "conventional" pollutants (e.g., increased temperature, pH, low dissolved oxygen, and turbidity), stormwater runoff also contains large loads of toxic pollutants such as heavy metals, oil and grease, pesticides, and organic compounds. This permit provides an important opportunity to achieve real improvements in the state's water quality by implementing protective conditions and terms that direct how industrial facilities manage stormwater runoff. Proper and effective stormwater management to protect water quality is both necessary and attainable in Washington.

Columbia Riverkeeper strongly urges Ecology to adopt a permit that recognizes and reduces stormwater runoff's considerable contribution to water pollution. While portions of the Draft Permit may positively impact Washington's water quality, other conditions fall short. Below are general comments centering on how Ecology can improve permit conditions to be clearer, more timely, and more protective of environmental health and water quality standards.
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I. Ecology Should Require Discharge Monitoring and Sampling More Than Once Quarterly to Reflect Regional Rainfall Patterns.

The Draft Permit's quarterly monitoring schedule does not reflect the reality of rainfall in the region and environmental pollution associated with wetter seasons. The current schedule requires the Permittee to sample discharge "at least once per quarter."[1] In Western Washington, a vast majority of precipitation occurs in just two quarters, during the late fall and winter. For samples taken during drier months, where there could be little to no rainfall, discharges could be greatly reduced if not nonexistent. This results in the drier-quarter samples being considered equally with samples taken in the wetter seasons. This skews the data towards drier months when pollutant entries into the environment are more infrequent and less severe. It also potentially allows Permittees to claim "no discharge" for certain quarters and thus evade corrective action.

Columbia Riverkeeper urges Ecology to require that Permittees collect more samples during the wetter quarters to have more complete data sets reflective of discharge conditions. This will ultimately protect the environment and demonstrate a more realistic picture of pollution so Ecology can implement meaningful enforcement actions.

II. Ecology Should Not Encourage Limited Monitoring.

Condition S4(B)(7), allowing Permittees to limit monitoring, is harmful and should be removed from the Draft Permit. This provision states a Permittee "can reduce monitoring to once a year for a permit of three years (12 consecutive quarters) based on a consistent attainment of benchmark values" when certain conditions are met. This language is dangerous and could allow for pollution to go unmonitored.

Ecology should incentivize more data collection and monitoring, not less. This Draft Permit condition could significantly reduce monitoring throughout the life of the General Permit and result in increased environmental and public health harm. Ecology should not encourage Permittees to rest on their laurels for past "good behavior." Facilities in attainment should still be required to maintain sampling and discharge monitoring to provide accountability and assurance that Permittees meet benchmarks. Columbia Riverkeeper urges Ecology to remove Condition S4(B)(7) from the Draft Permit entirely.

III. Ecology Should Revise the Process for Sampling Point Waiver Requests.

The Draft Permit's Sampling Point Waiver Request Process is overly broad and could have unintended environmental consequences. The Draft Permit states that Ecology may authorize waivers or adjustments to sampling locations on a case-by-case basis "[i]f a permittee

[1] Draft Permit at 33.

believes that the sampling location requirements . . . are not feasible."[2] To be considered for a waiver, the Permittee must state the technical basis for the waiver request and Best Management Practices (BMPs) implemented in the areas where the waiver is requested.[3] This language goes beyond granting a potential waiver for sampling in "unsafe conditions," defined as more temporary circumstances like localized flooding, storms, or icy conditions.[4] Instead, the language could allow Permittees to bypass sampling for any reason it deems infeasible. There is no definition of what determines an "infeasible location" nor any parameters on how this language applies. This provision potentially allows facilities to bypass sampling requirements and thus be exempt from corrective actions, shirking compliance.

Instead of using this overly broad language, Columbia Riverkeeper urges Ecology to either clarify that this Sampling Waiver Request applies *only* in defined "unsafe conditions" or explicitly define and provide criteria describing what makes a sampling location "infeasible." Doing so will ensure that Ecology does not grant sampling waivers to the detriment of the environment, aquatic species, and public health. It will also ensure that Permittees remain beholden to water quality standards in a majority of circumstances.

IV. Ecology Should Revise Certain Corrective Action Conditions to be More Protective.

A. Level 2 Corrective Actions Should Require Assurance They Address Pollution.

The Final Permit should require more assurances that new Level 2 Corrective Action structural source control BMPs will result in meeting benchmarks. The purpose of Corrective Action requirements is to reduce pollutants in stormwater discharge and bring samples below benchmark values and, thus, in compliance with water quality standards. While the Draft Permit requires structural source control BMPs to limit future violations,[5] it does not require scientific confirmation that the structural BMPs are actually protective of the environment and will address the benchmark exceedances. There is no mechanism to provide a scientific basis for selecting the proper BMP to address exceedances; assurance the BMPs mitigate the pollution at issue must be taken at face value.

To remedy this, Ecology must add a review process for any proposed Level 2 Corrective Actions. The added language should explicitly require review by a professional engineer and confirmation from a trained Ecology inspector that the newly installed structural source control BMPs are legitimate and will adequately address the benchmark exceedances. This will give

[2] Draft Permit at 34.
[3] *Id.*
[4] *See id.* at 89 (defining "unsafe conditions" in Appendix 2 – Definitions).
[5] *Id.* at 57.

more assurance violations of water quality standards will be addressed and minimized through installing the chosen structural source control BMPs.

B. The Final Permit Should Require Faster Implementation of Level 2 Corrective Actions.

Columbia Riverkeeper requests that the Final Permit require swifter implementation of Level 2 Corrective Actions. Implementing Level 2 structural source control BMPs does not have to be time-consuming, too costly, or overly difficult. Examples of structural source control BMPs include the construction of berm to prevent stormwater runoff or installing permeable pavement. Allowing Permittees until August 31st of the following year to implement a structural BMP is a large time period, particularly when the Draft Permit has overly generous extension and waiver language.

Columbia Riverkeeper urges Ecology to lessen the time period for implementing Level 2 BMPs, making the deadline within two quarters of the triggering benchmark exceedances. Instead of giving well over a year for compliance, this change will ensure Permittees timely address pollution without undue burden.

C. The Final Permit Should Clarify Under What Circumstances Level 2 Corrective Actions are Not "Feasible."

The Draft Permit's criteria for extensions and waivers based on the feasibility of implementing Corrective Actions is ambiguous and will lead to continued unwarranted delays in reducing stormwater pollution. Generally, the Draft Permit allows Ecology to extend the time for compliance with the Level 2 Corrective Action requirements—or waive those requirements entirely—if implementing those Corrective Actions would not be "feasible."[6] However, the Draft Permit does not include meaningful guidance on what feasibility means in these circumstances.

Columbia Riverkeeper strongly urges Ecology to define and put guardrails on what circumstances qualify as "not feasible" for installing BMPs, as well as define what it means to provide a detailed "technical basis" for an extension or waiver request. These clarifications will make Permittees' extension and waiver requests more specific and helpful. They will also make Ecology's decisions more transparent and understandable. The Draft Permit's "feasibility" standard for granting time extensions and waivers is undefined, over-broad, and open to too much interpretation. Improving this language will ensure greater environmental protections and reduce needless delays in implementing BMPs to improve water quality.
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[6] Draft Permit at 57 (Section S8(C)(4) states that if installing necessary structural source control BMPs is not feasible by August 31st of the following year after a benchmark exceedance, then Ecology may grant a time extension).

D. Waivers Should Not Be Available Any Time a Discharge May Not Violate a Water Quality Standard.

Permittees should be required to implement Level 2 and Level 3 Corrective Actions regardless of the water quality status of the receiving waterway. Accordingly, the Draft Permit's language allowing Ecology to waive Corrective Action requirements if control BMPs are "not necessary to prevent discharges" contributing to water quality standard violations[7] is deeply problematic. Columbia Riverkeeper fears this language could create a significant loophole for compliance with the Corrective Action requirements because it is not usually clear whether a facility's stormwater is causing or contributing to water quality violations. Even if it were clear whether a particular discharge contributes to a water quality standard violation, that is fundamentally at odds with the theory and structure of the Clean Water Act—and, potentially, Washington's "all known, available, and reasonable" (AKART) anti-degradation water quality standard—for pollution reduction requirements apply *after* a water quality standard is violated.

The point of the Clean Water Act and Washington's AKART standard is to apply all feasible technological pollution control measures to reduce harmful discharges *regardless* of whether the discharge or receiving water meets water quality standards. In that way, the Clean Water Act and its implementing rules are designed to prevent pollution in America's waterways from approaching levels that impair beneficial uses like fishing, swimming, and drinking. Columbia Riverkeeper strongly suggests entirely removing this language from the Final Permit.

E. Extension Language Should Not Protect Polluters and Reward Further Degradation.

The Draft Permit should remove any language that could potentially shield Permittees further Corrective Actions during extensions. Under the draft language, the Permittee will face no consequences while the extension is in effect, as "benchmark exceedances (for the same parameter) do not count towards additional Level 2 or Level 3 Corrective Actions."[8] This language encourages slower implementation of BMPs and allows pollution to continue without consequence. Even more concerning is the potential for this language to stretch unnecessarily far. If read correctly, this could be interpreted to mean that benchmark exceedances during an extension for a Level 2 Corrective Action cannot trigger a Level 3 Corrective Action. Ecology should remove this language entirely from the Final Permit in order to encourage Permittees implementing BMPs as soon as possible.

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[7] *Id.*

[8] *Id.*

F. Ecology Should Require Corrective Action Completion Certification on PARIS.

The Final Permit should include language requiring that certification for completing all Corrective Actions (Levels 1, 2, and 3) be uploaded to PARIS. Doing so will increase transparency and make verification of compliance easier for both Ecology staff and interested members of the public. This should be done regardless of compliance dates or any changes to the Corrective Action conditions.

V. Ecology Should Require Annual Reports to be Submitted Earlier Than May 15th.

The May 15th deadline for Annual Reports is unnecessarily delayed, and the usefulness of Annual Reports would be greatly improved by moving up the due date. The final Discharge Monitoring Report (DMR) for an annual cycle is due February 14th,[9] meaning the entire year's monitoring data is complete by that date. Instead of having months between the final DMR submission and the Annual Report, Ecology should require Permittees to submit Annual Reports to PARIS at the same time as the fourth quarter DMR. This requirement would still provide Permittees with sufficient time to submit all the required documentation for Annual Reports and allow Ecology staff more time for review, thus making it a more useful document. Earlier submission would also increase the likelihood of Permittees more timely implementing BMPs, thus making them a more protective measure for water quality.

VI. Columbia Riverkeeper Supports Ecology's Change to Conditional No Exposure Exemptions.

Ecology's decision to remove the automatic approval of an application for a Conditional No Exposure Exemption (CNE) is a necessary, positive change. Requiring Ecology to make a clear approval or denial of a CNE application is an improvement from the previous system where CNEs were automatically approved through Ecology's lack of action. While this is a positive change, facilities granted CNEs should continue to undergo inspection during the term of their exemption. Further, Ecology should track the expiration of their exemption so it is clear when facilities must re-apply for CNE at the end of their granted term. These additional parameters will make the CNE provisions stronger and more protective of environmental health and water quality standards.

VII. Columbia Riverkeeper Supports the Updated Training Requirements.

We support Ecology's common-sense decision to require that all employees, contractors, and vendors with duties in industrial areas subject to the Permit receive training on implementing

[9] *Id.* at 61.

the facility's Stormwater Pollution Prevention Plan (SWPPP).[10] This Draft Permit condition will ensure better BPM compliance, stronger SWPPP implementation, and more timely Corrective Actions, all leading to better water quality. Columbia Riverkeeper strongly urges Ecology to keep this requirement in the Final Permit and to offer ample resources and technical support to facilitate its implementation.

VIII. Columbia Riverkeeper Supports New Sampling Requirements for PFAs and 6PPD-quinone.

The Draft Permit's requirements under Condition S5B (Additional Sampling Requirements for Specific Industrial Groups) are a step in the right direction to limit discharge from two extremely harmful pollutant compounds, Per- and polyfluoroalkyl (PFAs) and 6PPD-quinone (6PPD-q). PFAs are a contaminant of particular concern to Columbia Riverkeeper. PFAs, or "forever chemicals," do not easily break down in the environment making them long-lasting and extremely prevalent.[11] Today, more than 97% of the U.S. population has PFAs in their bloodstream.[12] While the science unpacking the numerous impacts of this pollutant is ever-evolving, PFAs exposure has been widely linked to a range of serious health impacts including but not limited to kidney and testicular cancer, endocrine disruption, and immune system suppression.[13] On July 11, 2024, the U.S. Environmental Protection Agency (EPA) issued updated recommendations under the Clean Water Act for contaminants the states, Tribes, and territories should consider monitoring in locally caught, freshwater fish.[14] PFAs were added to this list for the first time, with a recommendation to monitor for twelve PFAs to better protect communities and reduce exposure through fish consumption.[15] These recommendations highlight the importance of gathering local data to address PFAs contamination and protecting communities—particularly those having high rates of fish consumption.

Elevated levels of PFAs are also a huge concern at landfills across the United States—particularly in landfill leachate (or landfill liquid waste), which poses a severe threat to

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[10] *See* Draft Permit at 28 (detailing employee training requirement).
[11] *See* U.S. EPA, PFAs Explained, https://www.epa.gov/pfas/pfas-explained (last accessed July 9, 2024).
[12] Earthjustice, Breaking Down Toxics PFAS (May 14, 2024), https://earthjustice.org/feature/breaking-down-toxic-pfas?sourceid=1045710&ms=230313_paid_advacq_gg_pfas_embed&gad_source=1&gclid=CjwKCAjwqMO0BhA8EiwAFTLgIEZh2zU7NNT-QuCmvs2SokThEEldqQQcMMFUEbrtHFJ_hE3sOVJ3cBoCRVgQAvD_BwE (last accessed July 12, 2024).
[13] *Id.*
[14] Press release: EPA Releases New Science-Based Recommendations to Help More States, Tribes, and Territories Reduce Exposure to PFAs in Fish (July 11, 2024), https://www.epa.gov/newsreleases/epa-releases-new-science-based-recommendations-help-more-states-tribes-and-territories (last accessed July 12, 2024).
[15] *Id.*

groundwater and drinking water. Roosevelt Regional Landfill, Washington's largest private landfill, is located in the Columbia River Basin and takes much of Western Washington's garbage.[16] In Washington specifically, researchers found elevated levels of PFAs in 17 sampled landfills.[17] The Draft Permit requiring PFAs sampling for facilities in the air transportation and waste management sector is a good first step to addressing concerns around this pollutant.[18] However, this Draft Permit only requires "report only" benchmark values for both 6PPD-q and PFAs[19] and will only add sampling for 6PPD-q in year 3 of the permit for some transportation facilities.[20] This is the bare minimum; Ecology should institute more protective conditions in light of the harm these pollutants pose to the environment, public health, fish, and other aquatic species. The Final Permit must include BMPs to mitigate PFAs and 6PPD-q pollution and require the elimination of these pollutants, to the extent practicable, from covered entities and their discharges. This will go beyond the "report requirement" of the Draft Permit and ultimately take strides towards meaningful environmental protection. This will also align with growing Federal guidance to increase PFAs monitoring and reduce community harm.

While Columbia Riverkeeper does not oppose these Draft Permit conditions, we strongly urge Ecology to prioritize eliminating PFAs and 6PPD-q pollution in Washington's waters and take stronger action in the near future.

Conclusion

In re-issuing the ISGP, Ecology has the opportunity to take a meaningful step towards reducing the substantial impact of stormwater runoff on Washington's streams and rivers. The Draft Permit does contain some positive changes, including increased monitoring for hazardous pollutants in the transportation and waste management sectors. However, several portions of the Draft Permit contain imprecise or overbroad language that will not lead to continued reductions in industrial stormwater pollution.

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[16] *See* Tom Banse, *Competing for Your Trash: The Huge, Hidden Landfills of the Columbia River Gorge*,, NWNews (Sept. 21, 2017, 5:13 PM), https://www.nwnewsnetwork.org/economy-business-finance-and-labor/2017-09-21/competing-for-your-trash-the-huge-hidden-landfills-of-the-columbia-river-gorge (last accessed July 9, 2024) ("[Roosevelt Regional Landfill] takes much of Western Washington's trash, along with trash from smaller communities in British Columbia including Whistler, southeast Alaska and incinerator ash from Spokane.").

[17] *See generally* Staci L. Capozzi et al., *PFAS in municipal landfill leachate: Occurrence, transformation, and sources*, Vol. 334 Chemosphere 138924 (2023), https://www.sciencedirect.com/science/article/abs/pii/S0045653523011918?via%3Dihub.

[18] *See* Draft Permit at 40–41.

[19] *Id.* at 39–41.

[20] *Id.* at 39 ("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.'").

Reducing pollutant loads is essential to meeting the goals of the Clean Water Act and achieving safe, fishable, and swimmable waters in the Columbia River Basin and across Washington. Columbia Riverkeeper strongly urges Ecology to revise the Draft Permit to reflect these and similar public comments to better protect environmental and public health, salmon recovery, and water quality.

Sincerely,

Teryn Yazdani
Staff Attorney
Columbia Riverkeeper