

May 9, 2025

Kendra Henderson
Construction Stormwater General Permit Writer
Washington State Department of Ecology
PO Box 47696
Olympia, WA 98504-7696

Dear Kendra Henderson,

Subject: Comments on the Draft 2026 Construction Stormwater General Permit (CSWGP)

I am writing to provide formal comments on the Draft 2026 Construction Stormwater General Permit (CSWGP) on behalf of the Port of Tacoma. We have reviewed the proposed changes and respectfully submit the following feedback for your consideration:

1. Permit Reference: S3.A

- **Comment:** Our organization supports the removal of the text under former S3.A. As determined in the March 4, 2025, Supreme Court decision in *City and County of San Francisco v. Environmental Protection Agency*, Section 1311(b)(1)(C) of the Clean Water Act does not authorize “end-result” provisions in NPDES permits. End result requirements mean that a discharger that complies with all permit conditions could still be exposed to liability, a result inconsistent with the permit shield provided by Congress. Consistent with the expectation that an NPDES permit specify the requirements that, if met, results in a permit shield, Port of Tacoma suggests that Ecology revise the subsequent condition (formerly Condition S3.B, currently proposed as the new Condition S3.A) to specify what constitutes AKART.
- **Proposed Language:** No change requested to former S3.A. Regarding former Condition S3.B, Port of Tacoma suggests the following edit: “Prior to the discharge of stormwater and non-stormwater to waters of the State, the Permittee must apply All Known, Available, and Reasonable methods of prevention, control, and Treatment (AKART). This requires preparation and implementation of an adequate SWPPP, with all appropriate BMPs installed and maintained in accordance with the SWPPP and the terms and conditions of this permit.”

2. Permit Reference: S8.C

- **Comment:** We suggest updating the title of the section to reflect the proposed addition of low dissolved oxygen.
- **Proposed Language:** Sampling and Numeric Effluent Limits for Discharges to Water Bodies on the 303(d) List for Turbidity, Fine Sediment, *Low Dissolved Oxygen*, or Phosphorous.

3. Administrative Process for Contaminated Site Review

- **Comment:** We request a written procedure and Ecology timeline in the permit and shared on the website regarding the administrative process Ecology follows when issuing administrative orders for contaminated sites. This should include how sampling and treatment requirements are determined for contaminated sites without an aquatic life water quality standard (WAC 173-201A-210). It is not reasonable to default to human health drinking water standards for construction sites that are entirely within a marine environment. It is not clear how Ecology determines which water quality standards apply. When expecting a time frame of 45-60 days, as is common with other NPDES general permits, Permittees may miss critical in-water work windows due to the absence of clear up-front application requirements, a lengthy Ecology review timeframe, and timelines within the permit.

We appreciate the opportunity to provide feedback on the Draft 2026 CSWGP and look forward to continued collaboration with the Washington State Department of Ecology to ensure the protection of our water resources.

Sincerely,

Mindi Kellar

Mindi Kellar
Senior Manager – Water Quality