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Via e-mail (industrialstormwatercomments@ecy.wa.gov)

Jeff Killelea

Department of Ecology

P.O. Box 47600

Olympia, WA 98504

Re: Comments on May 2014 draft Industrial Stormwater General Permit

Dear Mr. Killelea:

Board of Directors

Cheryl Greengrove

Lee Roussel

Kathleen Hasselblad

Sheri Tonn

Angie Thomson

Melissa Nordquist

Bonnie Becker

Marco Pinchot

Thank you for the opportunity to submit comments on the draft Industrial Stormwater General Permit. This letter presents the issues and concerns of Citizens for a Healthy Bay (CHB) subsequent to our review and analysis of the above referenced Draft Permit. CHB is a community based, non-profit environmental organization working with community stakeholders to cleanup, restore and protect Commencement Bay, the Puyallup River Watershed and surrounding waters and habitats. As such, CHB is an active voice for citizen stakeholders by advocating for the sustainable environmental stewardship within our watershed and Puget Sound. (The following comments were drafted by/with Puget Soundkeeper Alliance.)

Condition S1

1. Ecology has broad discretion under S1.B. of this permit to require permit coverage for a facility it determines to be a "significant contributor of pollutants to waters of the state" which "may reasonably be expected to cause a violation of any water quality standard", and "conducts industrial activity, or has a SIC code, with stormwater characteristics similar to any industrial activity or SIC code listed in Table 1 in S1.A1" (page 8). This provision (known as residual authority) allows Ecology to require permit coverage for harmful industrial stormwater discharges from facilities not specifically called out in Table 1 in S1.A1.

There are strong policy reasons to equalize permit coverage. A successful program requires a level playing field. In the interest of efficiency, certainty, fairness

A tax-exempt
Nonprofit organization with
501(c)(3) status

and the protection of surface water quality, the following groups should be added to Table 1 in S1.A1:

A. Heavy Construction Equipment Maintenance, Rental and Repair

Heavy construction equipment requires the use of fuel, oil, antifreeze, hydraulic fluids, and other harmful pollutants. Facilities that maintain, rent and repair heavy construction equipment and machinery engage in sharpening, grinding, welding, lubing, painting, fueling, storage, display and transport, amongst other activities. As a result of these activities, these sites pose inherent risks of pollutant spills, leaks and residual discharges from the equipment to ground surfaces, resulting in a high risk of contaminated stormwater discharges to surface water. Heavy Construction Equipment Rental (SIC 7353) should be added to Table 1 in S1.A1.

B. Marine Construction

Marine construction facilities engage in the design, construction, repair, salvage and demolition of marine structures. These sites include shore side construction staging areas for pile driving operations, bulkhead work, and marine salvage and demolition projects as well as facilities hosting the construction of docks and other marine structures. Marine construction activities require substantial volumes of equipment, including specialty heavy marine and excavation gear, and often require high concentrations of materials in large paved storage yards in close proximity to surface waterways.

The following SIC codes should be added to Table 1 in S1.A1 of the ISGP: Piles, foundations & marine construction (SIC 2491) and Marine construction, general contractors (SIC 1629).

C. Auto Repair Shops

As the name suggests, auto repair businesses fix cars, trucks and other motorized vehicles. And, these facilities are ubiquitous in Washington state – with 62 separate entities accredited by the Better Business Bureau in the City of Seattle alone. Auto repair shops deal in high volumes of oil and grease, heavy metals and toxic chemicals and parts, including petroleum-based solvents, paints and paint thinners, antifreeze, scrap metal, batteries, lubricants and oil filters, fuels of various types, acids and alkalis, and contaminated rags and towels. Auto repair facilities range in type and specialty, with most utilizing some sort of outdoor work area and/or outdoor material storage. These sites are numerous, collectively covering a vast industrial footprint, and each site poses a high risk of stormwater contamination.

Coverage under the ISGP should be required for all auto repair shops including all facilities engaged in: general auto repair and auto maintenance, auto electrical repair, auto transmission repair, auto glass replacement, tire retreading, auto exhaust

repair and top and body repair and paint shops. The permit should also expressly include auto shops engaged in radiator repair and replacement.

Permit coverage is currently required for transportation facilities that conduct “vehicle maintenance” because of the inevitable pollution exposure inherent in vehicle maintenance activities. Wouldn’t auto repair shops, which are engaged in vehicle maintenance as a full-time business, pose an even greater risk of stormwater contamination? Auto repair shops should be covered by this permit unless they can demonstrate that all activities occur indoors and/or are otherwise not exposed to stormwater. Auto Repair Shops (SIC 753x) should be added to Table 1 in S1.A1.

Condition S6

1. The crucial definition of “303(d)-listed waterbody,” used throughout S6, is unclear. Appendix 2 defines this term as “waterbodies as listed as Category 5 on Washington State’s Water Quality Assessment.”

Washington State’s Water Quality Assessment typically identifies 303(d)-listings by “waterbody segments,” corresponding to rectangular areas, corresponding to the section of the township and range containing the relevant sampling station. Recognizing the arbitrariness of this practice and the resulting nonsense of having, for example, only sections of a river containing sampling stations be included on the 303(d) list to the exclusion of sections between those containing sampling locations, Ecology has announced a policy to change this practice to have listings correspond to segmentation indicated by the National Hydrology Dataset rather than the arbitrary grid currently used. WQP Policy 1-11 (July 2012) at 5.

Does Ecology intend to continue to use the obsolete grid-based designation system for ISGP purposes, or to implement its new policy in the ISGP?

2. S6.C and Table 6 omit a numeric benchmark for fecal coliform concentrations in discharges to waterbodies that are bacteria-impaired. CHB and Soundkeeper urges the inclusion of fecal coliform numeric benchmarks here. The monitoring/benchmark/adaptive management scheme lies at the heart of the ISGP, and there is no reason that it cannot or should not be used for discharges to waters 303(d)-listed for fecal coliform. While the 2012 amendment to RCW 90.48.555 prohibited numeric effluent limitations for fecal coliform, it leaves open the possibility of numeric benchmarks. There is no basis to believe that implementation of the mandatory fecal coliform BMPs (at footnote j to Table 6), which are mostly identical to the standard BMPs required of all permittees, provide assurance that fecal coliform discharges will not cause or contribute to fecal coliform water criteria violations in waters already 303(d)-listed for fecal coliform. Just as they are needed to ensure that authorized discharges do not cause or contribute to in-stream violations of copper or turbidity criteria, numeric benchmarks for fecal coliform are necessary for this subset of permittees.

In addition, item 5 of footnote j, which requires permittees discharging to fecal coliform 303(d)-listed waters to include a mandatory BMP in SWPPPs and “conduct additional bacteria-related sampling and/or BMPs, if ordered by Ecology on a case-by-case basis,” is an illegal permit condition. A condition such as this, requiring that a permittee “do what Ecology later tells you to do” is both inadequate to ensure compliance with water quality standards and contrary to the requirements of WAC Ch. 173-226 essentially mandating that a general permit spell out the necessary conditions. WAC 173-226-070(2) (water quality-based effluent limitations must be incorporated into general permits when necessary); -070(6) (general permit must specify effluent limitations); WAC 173-226-080(1)(a) (discharges must be consistent with the “terms and conditions of the permit”); *see also* WAC 173-201A-510(1) and (3)(d). Ecology should eliminate this requirement and replace it with numeric benchmarks and Level 1, 2, and 3 requirements.

3. What is the basis for the 30 mg/L total suspended solids effluent limit for discharges to sediment cleanup sites or waters with sediment 303(d)-listings?

The concern here is proper implementation of source control to ensure that discharges do not cause or contribute to violations of sediment management standards. The sediment management standards provide a process for evaluation of a discharge’s potential to cause or contribute to such violations. WAC 173-204 Part IV. Has Ecology considered the reasonable potential characterization factors identified at WAC 173-204-400(6) for the ISGP? What is the basis for Ecology’s determination that no ISGP permittee need apply for a sediment impact zone?

4. Footnote e to Table 6 refers to S6.C.1.c and so appears to be mistaken. There is no S6.C.1.c.

5. S6.C.2. CHB and Soundkeeper is concerned that the storm drain cleaning and solids analysis requirement is limited to “storm drain lines (including inlets, catch basins, sumps, conveyances lines [sic], and oil/water separators) *owned or controlled by the permittee.*” (Italics added.) Many of the largest permittee facilities presenting the most significant water quality risks are tenants, including cargo terminal operator lessors of Port property, may attempt to avoid this requirement by asserting that they do not own or control the storm drain lines and facilities. CHB and Soundkeeper do not believe that ownership interest is an appropriate basis to limit the application of this important provision. Ecology should impose the requirement on all qualifying permittees regardless of ownership status, making tenant permittees responsible for negotiating with their landlords arrangements that will result in permit compliance and appropriate safeguards for water quality.

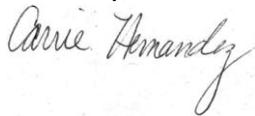
CHB and Soundkeeper is also concerned about the lack of standards for waivers from storm drain system solids sampling and analysis and cleaning requirements. No waivers to the cleaning requirement should be available unless a permittee can show to

Ecology's satisfaction that cleaning is not necessary to prevent stormwater contamination, and the ISGP should set forth this criteria. No waivers to the sampling and analysis requirements should be available because sampling and analysis are the only objective means to determine that there is no risk of stormwater contamination. A cleaning requirement waiver request should be based on the results of the sampling analysis results.

6. S6.D.5 allows discharges under the ISGP to waters with approved TMDLs that establish no ISGP-designated wasteload allocation, but that do not exclude ISGP discharges. This appears to be inconsistent with the requirement that water quality-based effluent limitations be "consistent with the assumptions and requirements of any available wasteload allocation for the discharge" in an approved TMDL. 40 CFR 122.44(d)(1)(vii)(B). If an approved TMDL provides no wasteload allocation for ISGP discharges and does not consider them in its specification of allowable daily loads, an ISGP permittee's additional loading of a pollutant of concern to an impaired waterbody is generally not allowed. These discharges should be prohibited unless and until the TMDL is amended to account for them.

Thank you for your consideration of our remarks.

Sincerely,

A handwritten signature in cursive script that reads "Carrie Hernandez". The signature is written in black ink and is positioned above the typed name.

Carrie Hernandez
Stormwater Project Manager
Citizens for a Healthy Bay