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July 11, 2014

Mr. Jeff Killelea
Department of Ecology
PO Box 47696
Olympia, WA 98504-7696

BOEING

Subject: Draft Industrial Stormwater General Permit

Dear Mr. Killelea:

The Boeing Company appreciates the opportunity to provide comment on the May 07, 2014 Draft Industrial Stormwater General Permit (ISGP). We appreciate Ecology's efforts in providing several public workshops that achieved better understanding of the proposed changes.

Our technical comments on specific sections of the permit are provided in Attachment 1.

A summary of our key concerns are:

- **Condition S6 Discharges to Impaired Waters:** Ecology's proposals to extend a numeric effluent limit for total suspended solids (TSS) to discharges to water bodies beyond those listed per section 303(d) of the Clean Water Act is unsupported by legal authority and, in any event, not properly designed to address stormwater pollution. For example, the Draft Appendix 4 includes water body segments designated Category 4A and 4B on Ecology's water quality assessment. It also appears that the permit is intended to cover discharges to "Puget Sound Sediment Cleanup Sites" that are not listed on Appendix 4.

  There are several reasons why the limits and monitoring for discharges to Puget Sound Sediment Cleanup Sites should not be regulated under the ISGP. Washington's Model Toxics Control Act and the Comprehensive Environmental Response, Compensation and Liability Act establish regulatory requirements for cleanup of contaminated sites that include source control. Similarly, many facilities adjacent to cleanup sites are already subject to coordinated source control efforts under state and federal laws specifically targeted to prevent sediment recontamination. The addition of the TSS requirements for permittees discharging to Puget Sound Sediment Cleanup Sites therefore adds an unnecessary layer of complexity and presents a significant risk of (in the best case scenario) redundant, and (at the worst) inconsistent, regulatory requirements for permittees.
  In addition, while we reiterate that the addition of requirements for discharges to Puget Sound Sediment Cleanup Sites should be removed from the ISGP, if Ecology were retain this requirement, we disagree with Ecology's proposal to remove the phased implementation approach and the availability of compliance schedules that was provided to facilities that first became subject to 303(d) limits in the 2010 permit. Ecology should retain and adjust these provisions for facilities that are subject to condition S6 for the first time under this permit.

- **Condition S9 Reporting and Record Keeping**

  Ecology should retain the deadline from the 2010 ISGP for written reporting of conditions that "endanger public health or the environment." The Fact Sheet states that Ecology is proposing to revise this condition to reduce the deadline from 30 to 5 days to be consistent with 40 CFR 122.41(l)(6). However, that provision of EPA regulations is limited by its terms to noncompliance with permit conditions that "may endanger public health or the environment." In addition, Ecology is expanding the reporting requirement to include exceedances of "any numeric effluent limitation" even though such events do not necessarily endanger public health or the environment. First, this reporting requirement should be limited to those situations involving danger to human health or the environment to be consistent with the regulations. Second, in those situations where there is the potential for endangerment, the permit should allow permittees 5 business days to report.

Please address any questions regarding Boeing's comments time to me at (425) 237-1940 (terry.m.mutter@boeing.com) or Amy Bann at (206) 766-2633 (amy.j.bann@boeing.com).

Sincerely,

Terry Mutter, Director
Enterprise Strategy
Environment, Health and Safety
Engineering, Operations and Technology

Enclosures

Attachment 1: May 2014 Draft Industrial Stormwater General Permit Technical Comments

ATTACHMENT 1

I. Ecology Must Revise Condition S6. Discharges to Impaired Waters.

Boeing supports source control efforts to avoid recontamination of sediment cleanup sites. The approach in the draft ISGP is, however, not well considered or targeted to achieve this objective. It is not clear what discharges are subject to the new limits and additional permit conditions. If the discharges are to water bodies that are not listed as Category 5 under section 303(d), numeric limits are not lawful. For those facilities that discharge to a Category 5 listed waterbody the ISGP should also provide flexibility where facilities are already subject to source control obligations as part of ongoing cleanup efforts or already employing treatment or Best Management Practices (BMP) equivalent to the BMPs proposed in the draft permit. Ecology should also remove limits for listings based on sediment bioassay absent some demonstration that stormwater is a potential source of pollutants that resulted in the bioassay results. Finally, Ecology is expanding the number of outfalls subject to limits and should afford a reasonable compliance schedule for facilities to monitor and adapt to the new limits.

A. Section 6.C. Should Not Impose Additional Requirements on Dischargers to Puget Sound Sediment Cleanup Sites.

Ecology's proposed changes to Condition S6.C. significantly and inappropriately expand the scope of the ISGP by including additional requirements for permittees who discharge to Puget Sound Sediment Cleanup Sites. These additional requirements are without precedent or any regulatory basis by virtue of the fact that there is no nexus between the regulatory requirement and the observed environmental harm. The imposition of these requirements is not supported by sufficient information or rationale and has not received adequate discussion by the public and regulated community. If Ecology is going to include these requirements in the ISGP, Ecology should explain the rationale for this extensive expansion and allow for additional public comment.

1. Ecology is Prohibited by Law from Imposing Numeric Limits on Puget Sound Sediment Cleanup Sites and Category 4A and 4B Water Body Segments.

Under State law, RCW 90.48.555, Ecology is prohibited, with one exception, from imposing numeric effluent limits in the ISGP absent site specific information that a discharge will cause or contribute to a violation of water quality standards. The only exception to this prohibition is for discharges to 303(d) listed waters. The May 7, 2014 draft Fact Sheet properly references RCW 90.48.555 in numerous locations. The statute is cited, for example, as the basis for not allowing mixing zones under the permit. Fact Sheet at 20. It is also cited as the basis for requiring numeric effluent limits for discharges to 303(d) limited waters. *Id.* at 21-22. It is also cited as the basis for removing numeric limits for bacteria in the 2013 modification of the permit. *Id.* at 26. Ecology has not, however, provided site specific information to justify the additional numeric effluent limits as required under RCW 90.48.555.

The exception to the prohibition on numeric limits absent site specific information is provided in RCW 90.48.555(7) for "discharges to water bodies listed as impaired according to 33 U.S.C. Sec. 1313(d) (Sec. 303(d) of the federal clean water act, 33 U.S.C. Sec. 1251 et seq.)." Only those waters listed as Category 5 are within the scope of the statute. Ecology policy 1-11 makes clear that '[o]nly one category, Category 5, represents the 303(d) listed waters." Ecology, Water Quality Program Policy 1-11 (July 2012) at 3.

As such, it is inappropriate under the statute to expand the provisions of condition S6 to discharges to Puget Sound Sediment Cleanup Sites that are not separately listed as Category 5 segments or Category 4A and 4B segments.

2. Imposing Requirements on Sediment Cleanup Sites through the ISGP is Unnecessary and Ill Advised Where Other State and Federal Laws Are More Targeted to Address Source Control.

If Ecology does not modify the permit to remove the provisions related to Puget Sound Sediment Cleanup Sites, Ecology should revise the provisions in condition S6.C.2 to reflect the potential conflict with preexisting cleanup and source control efforts as well as treatment BMPs that have been installed under the current ISGP. Many facilities adjacent to cleanup sites are already subject to coordinated upland cleanup efforts and source control efforts under state and federal laws specifically targeted to prevent sediment recontamination. The addition of generalized and unfocused conditions in the ISGP is not necessary and of no additional benefit.[1]

There is a significant risk that in some cases the proposed limits for discharges to Puget Sound Sediment Cleanup Sites will conflict with ongoing cleanup efforts. Current source control efforts include extensive active and passive stormwater treatment systems that have been installed pursuant to separate legal authority such as the Model Toxics Control Act or CERCLA. These treatment systems are designed to remove specific chemicals of particular concern in the cleanup efforts rather than TSS. They are proving to be successful in meeting the design objectives, but are not likely to meet the proposed TSS limit in the ISGP. In some cases the source control efforts include managing stormwater flow and treatment through settling and bio-filtration. During peak flows these facilities have the potential to exceed the proposed TSS limit but are not likely to re-contaminate sediment.

For several facilities, the source control and treatment best management practices (BMP) implemented under cleanup efforts have been approved by Ecology as Level 3 corrective actions under the current ISGP. It is undoubtedly the case that there are many other Level 3 treatment BMPs that Ecology has approved for discharges to Puget Sound Sediment Cleanup Sites. These corrective actions were designed to meet current ISGP benchmarks and not necessarily the

[1] It is inappropriate to leave the resolution of these questions to a waiver process where the limits in the proposed permit are in effect and binding on a site on the effective date of the permit. Facilities should not be subject to unnecessary permit conditions pending the resolution of an application for waiver. This is especially true where the waiver application requires a "detailed technical basis." It is completely unclear what that means in the context of facility that has already installed source measures under federal and state cleanup programs or installed treatment under the terms of the current permit.

proposed TSS limit. There has not been any analysis to evaluate whether treatment systems designed to meet the permit's turbidity benchmark will meet the proposed TSS limit.

The ISGP should also provide flexibility for large sites that already incorporate storm drain cleaning as part of the facility BMPs. These are ongoing and phased efforts. It should not be necessary in these circumstances for all storm drains to be cleaned again within the first two years of the permit cycle. It should also be unnecessary where the storm drain sediment monitoring does not indicate an exceedance of applicable cleanup standards. The sediments which remain may no longer have pollutants of concern exceeding relevant cleanup levels. Expecting permittees to conduct additional stormwater cleaning in these instances is redundant and unnecessary.[2]

B. There is no technical or scientific basis for imposing the TSS numeric limit on Dischargers to Category 5 Water Bodies Listed for Sediment Bioassay.

1. No causal link exists between stormwater and listings for Sediment Bioassay.

Ecology needs to provide a reasoned analysis and explanation before imposing conditions on industrial stormwater discharges to sediment bioassay listed water bodies. A substantial portion of the new listings in the draft Appendix 4, at least 104 facilities, are included on the basis of 2012 Category 5 listings for sediment bioassay. Like temperature, dissolved oxygen and bioassessments, there is no apparent causal relationship between stormwater discharges and sediment bioassay listings. The toxicity of sediments may be related to characteristics of the sediments that have nothing to do with stormwater runoff, such as historical contamination with chemicals that are not associated with stormwater.

2. Ecology has not provided a technical or scientific basis for a TSS limit of 30 mg/L.

Furthermore, the TSS limit itself is of dubious provenance. It was clear from the litigation involving the 2010 ISGP that there was little technical or scientific basis for the 30 mg/L limit other than it corresponds to the secondary treatment standard for publicly owned treatment works. In developing the 2010 permit Ecology concluded that TSS could be a surrogate for a specific compound causing contamination even though there is no real basis for correlating TSS levels in any consistent way with sediment concentrations. Ecology should explain in response to these comments how it has verified the appropriateness of the TSS limit for 303(d) discharges under the 2010 permit, how it is related to Sediment Bioassay listings and to Puget Sound Sediment Cleanups Sites.

[2] Footnote f to Table 6 states that discharges to sediment impaired waters must clean out storm drains "per S6.C.1.c." The footnote should be revised to reference only discharges to Puget Sound Sediment Cleanup Sites and the correct sections of the permit for such discharges.

3. Sediment sampling should be limited to appropriate parameters and test methods

Ecology should explain the basis for the parameters listed in Table 7 and provide quantification levels for each parameter. The requirement for sediment testing should correspond directly to and be limited to those chemicals that are subject to sediment cleanup actions. Ecology should also provide flexibility including waivers for facilities that are already monitoring as part of source control efforts under cleanup actions.

C. The Applicability of Section 6.C. Requirements to a Particular Site is Unclear.

Ecology should also clarify that only outfalls from a facility that discharge to a particular waterbody quarter section listed for sediment are subject to the condition S6 limits. The current Appendix 4 reliance on a PARIS database search can result in the improper inclusion of all outfalls at a facility even though some outfalls do not discharge to 303(d) listed waters.

Ecology should not, in any case, include discharges to Puget Sound Sediment Cleanup Sites where facilities subject to this requirement have not been fully identified in the draft Appendix 4. It is not clear from the Draft Appendix what facilities are subject to the new limits and monitoring for these discharges, and there is no readily available means to determine if a facility is discharging to a Puget Sound Sediment Cleanup Site. There are no maps or database information that can be accessed to determine or verify the application of the proposed new limits. No facility should have to guess as to whether it is subject to these permit conditions and Ecology should not impose numeric limits on any facility that has not had specific public notice and opportunity to comment on the proposed limits.

Ecology should revise the permit to clarify that only those facilities listed on Appendix 4 are subject to the additional sampling requirements and effluent limitations. Under the 2010 permit Ecology improperly modified Appendix 4 on an ad hoc basis and ultimately entirely replaced Appendix 4 with what appeared to be a search result from its PARIS database. It is very difficult, if not impossible, for a covered facility and the public to understand whether a facility, and what outfalls at a facility, are covered under this scheme. There is no description in the permit, for example, as to what constitutes a discharge to a listed waterbody for waters listed as impaired for sediments. Ecology should explain if this is determined on the same basis as for listing sediments as impaired under Category 5. The listing policy, for example, lists water column parameters on the basis of a township and range section while sediment parameters are listed on the basis of quarter sections. If a facility is subject to condition S6 limits, those limits should be disclosed in the draft Appendix 4 or the permit should clearly describe how that coverage is to be determined.

D. Condition S6.C. Should Allow For Compliance Schedules and Phased Implementation.

Ecology should retain and adjust the provisions of Condition S6.C. for facilities that first become subject to the condition under the 2015 ISGP. Condition S6.C sets forth sampling and effluent limits for discharges to 303(d) waters and Puget Sound Sediment Cleanup Sites. Ecology is proposing to remove the phased implementation approach and the availability of

compliance schedules previously provided to facilities subject to 303(d) limits for the first time in the 2015 permit. For new facilities and listings the limits should apply no earlier than July 1, 2015, and facilities should have a compliance schedule, where appropriate, of at least twenty-four (24) months from issuance of the permit as provided in the 2010 permit. It would be unreasonable for Ecology to impose new limits, including substituting substantial narrative limits for best management practices, for the first time on the effective date of the permit. Facilities new to Appendix 4 or listed for a new parameter on Appendix 4 should have a reasonable period of time to monitor their stormwater, to determine the need for a compliance schedule and to implement new best management practices required for discharges to listed water bodies.

E. Ecology Should Clarify the Scope of the Limitation in Condition S6.B as It Applies to New Dischargers.

Ecology should clarify the scope of the limitation in condition S6.B as it applies to *new dischargers*. There are multiple bases for 303(d) listings, including fish tissue and sediment bioassessments. The relevant listings for regulating existing dischargers are limited, however, to the parameters set forth in Table 6 in the draft permit. Ecology should clarify that *new dischargers* are subject to the terms of condition S6 for only those discharges to waterbodies listed for the parameters in Table 6 or sediment listings other than bioassessments. As described in the Fact Sheet, pages 22-23, the Table 6 parameters are the only parameters associated with industrial stormwater discharges. Condition S6.B should also provide that *new dischargers* are allowed to discharge to waters listed for bacteria as long as the facility implements the mandatory best management practices for bacteria provided in the permit.

Ecology should not include *applicable TMDL* (Category 4A) without clarification as to what TMDLs are applicable to industrial stormwater discharges. Attachment A is a list of all Category 4A listings. The list includes many parameters that are not associated with industrial stormwater discharges including tissue, habitat, temperature, pesticides and dissolved oxygen. *New dischargers* should not be precluded from coverage under permit because of TMDLs for parameters that are not associated with stormwater discharges.

Condition S6.B.3.b describes discharges to an "EPA approved or established TMDL." It is not clear what is meant by "established TMDL" in this phrase. Ecology should clarify that this phrase is meant to apply to an Ecology-prepared TMDL approved by EPA or a TMDL independently issued by EPA for a waterbody in Washington.

Condition S6.B.3.b authorizes coverage under the ISGP where a TMDL has been approved or issued by EPA, provided the applicant can demonstrate that there "are sufficient remaining wasteload allocations [in the TMDL] and that existing dischargers…are subject to compliance schedules designed to bring the waterbody into attainment with water quality standards." Ecology should explain how this language applies to TMDLs where stormwater discharges are addressed under load allocations rather than wasteload allocations or where wasteload allocations for stormwater are based on compliance with applicable permits and best management practices. Ecology should also explain how this applies to TMDLs where wasteload allocations are based on concentrations rather than mass loadings, such as the 1999

Spokane River Metals TMDL (where the wasteload allocations are expressed as the aquatic life criteria adjusted for hardness at the point of discharge).

II. The Requirement to Submit Written Reports of Violations within Five (5) Days Should Be Limited to Violations That Endanger Human Health or the Environment.

Ecology should limit the requirement for immediate reporting and written reporting to violations of the permit that endanger human health or the environment. The Fact Sheet states that Ecology is proposing to revise this condition to reduce the deadline for written reporting from 30 to 5 days to be consistent with 40 CFR 122.41(l)(6). However, this proposed expansion of the reporting requirement goes beyond what is required under 40 CFR 122.41(1)(6). The EPA regulation is limited by its terms to noncompliance with permit conditions that "may endanger public health or the environment." The proposed permit replaces the 24-hour requirement with a vague requirement for "immediate" reporting and expands the requirement to include "exceed any numeric effluent limitation" even though such events do not necessarily endanger public health or the environment. This reporting requirement should be limited to those situations involving danger to human health or the environment. Furthermore, to allow adequate time to assess the potential violation, the Permit clarify that a report to Ecology is required with five (5) business days.