

July 11, 2014

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Re: Comments on Washington's Draft National Pollutant Discharge Elimination System (NPDES) and State Waste Discharge General Permit for Stormwater Discharges Associated with Industrial Activities

Dear Mr. Killelea:

The purpose of this letter is to provide comments from the Port of Seattle on Washington's draft NPDES Industrial Stormwater General Permit (Permit, ISGP) released May 7, 2014.

In general, the Port of Seattle supports the efforts to improve stormwater quality put forth in the ISGP. Managing stormwater discharges and the protection of local receiving waters is a critical goal for the Port of Seattle. However, the ISGP has the ability to create a major economic impact to ports, port tenants and other businesses, particularly in today's economic climate. These comments are submitted in an attempt to achieve environmental improvements while balancing the economic need of local and regional businesses. We appreciate the opportunity to submit these comments.

## **General Comments**

### **Comment 1 – Washington's Competitive Disadvantage**

As Washington stormwater regulations become increasingly more stringent than regulations in other states, a competitive disadvantage is created between Washington and other locations. The end result is that businesses can ultimately be driven out of Washington to locations with more favorable regulatory environments.

For example, the underlying intent of the California draft industrial stormwater permit is to achieve stormwater improvements and industrial permit compliance through the use of low-technology, cost-effective solutions. On the other hand, in Washington, the underlying intent is to require ISGP Permittees to install active stormwater treatment systems to comply with the Permit. As stated in the Fact Sheet for the Washington's 2009 draft ISGP,<sup>1</sup> "*Ecology has determined that in order to meet the proposed copper [and zinc] benchmarks, permittees will be required to meet AKART, and*

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<sup>1</sup> <http://www.ecy.wa.gov/programs/wq/Stormwater/industrial/permitdocs/ISWGPdraftfs060309fin.pdf>

*many will be required to install active stormwater treatment systems.*” This is reflected in the difference between the escalation timeframe and flexibility for corrective action responses between the California and Washington permits. In California, after triggering Corrective Action Level 1, industrial stormwater Permittees have a full year to evaluate operational Best Management Practices (BMPs) before they can be required to install structural or treatment BMPs. In Washington, industrial stormwater permittees are not given the opportunity to implement this type of adaptive management. A facility can go from being in compliance (i.e., baseline status) to Corrective Action Level 3 in less than one year. This timeframe and approach does not allow for adaptive management with a linear progression of Corrective Actions (i.e., baseline to Level 1, Level 1 to Level 2, then Level 2 to Level 3) and places an undue burden on ISGP Permittees in Washington.

Targeting industrial facilities with increasingly stricter stormwater regulations is a strategy with diminishing returns. In general, industrial sources are no longer the primary contributor of pollutants discharged into receiving waters, but are being singled out with increasingly stricter regulations, while other pollutant sources are not being required to control pollutants. For example, Ecology’s November 2011 *Assessment of Selected Toxic Chemicals in the Puget Sound Basin*<sup>2</sup> found that 87% of zinc discharged into Puget Sound is from rooftops. The Environmental Protection Agency’s (EPA) National Urban Runoff Program (NURP) found that residential runoff contains 15% more copper than industrial runoff and results indicated no significant difference in pollutant concentrations in runoff from different land use categories.<sup>3</sup> Former EPA Administrator William Ruckelshaus stated “85% of water quality impairments in 1970 were attributed to point source pollution, such as industrial and wastewater discharge, with the remaining resulting from nonpoint discharges, including agricultural and urban stormwater runoff. By 2010, these figures had reversed: 85% of water quality impairments now come from nonpoint discharges<sup>4</sup>.” Lastly, industrial facilities account for a small percentage of total land use, with industrial stormwater discharges already monitored and controlled. For example, a review of facilities covered under the ISGP identified that these industrial facilities represent only 0.39% of the total land area within King County.

Rather than primarily focusing on industrial sources, a more holistic approach should be adopted in an effort to reduce the overall contribution of pollutants into the environment and improve the quality of our local receiving waters. A clear understanding of all stormwater pollutant sources, and a strategy for managing these sources, is needed before adding to the already significant burden of the ISGP.

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<sup>2</sup> <https://fortress.wa.gov/ecy/publications/publications/1103055.pdf>

<sup>3</sup> [http://water.epa.gov/scitech/wastetech/guide/stormwater/upload/2006\\_10\\_31\\_guide\\_stormwater\\_usw\\_b.pdf](http://water.epa.gov/scitech/wastetech/guide/stormwater/upload/2006_10_31_guide_stormwater_usw_b.pdf)

<sup>4</sup> [http://www.wef.org/publications/page\\_wet.aspx?id=12884903451&page=top](http://www.wef.org/publications/page_wet.aspx?id=12884903451&page=top)

## **Comment 2 – Existing and New Permit Language**

Overall, the Port of Seattle is supportive that Permit language is being maintained in many areas of the Permit, including core benchmarks, extension options for the corrective action waiver process, and timing for first flush sampling.

The Port of Seattle is supportive of significant new Permit language added in the draft Permit, specifically at:

- S8.C.4.d and S8.D.5.d – While a time extension is in effect, benchmark exceedances (for the same parameter) do not count towards additional Level 2 or 3 Corrective Actions.
- S8.D.3.a – Clarification on Engineering Report submittals.
- S8.D.3.b – Requiring the Operation and Maintenance Manual to be submitted 30 days after construction/installation of a treatment BMP.

## **Specific Comments**

### **Comment 3 – Definition of Facility**

#### **Permit Reference: Appendix 2 – Definitions**

*Facility means any establishment (including land or appurtenances thereto) that is subject to regulation under this permit. See Special Condition S1.*

#### **Comment:**

The definition of *Facility* in the ISGP has been significantly changed, for no logical reason, and with potentially serious consequences. The draft ISGP includes a revised definition for *Facility* which deviates from the definition in 40 CFR 122.2 and the federal Multi-Sector General Permit. This revised ISGP definition for *Facility* uses the term “establishment” which is broad, vague, and has no connection to known terms used in the Clean Water Act.

The 2010 ISGP defined *Facility* as a point source subject to regulation under the NPDES program:

*Facility means any NPDES "point source" (including land or appurtenances thereto) that is subject to regulation under the NPDES program. See 40 CFR 122.2.*

The definition for Facility in 40 CFR 122.2 and the Draft 2015 Fact Sheet are similar, and also define a Facility as a point source.

#### 40 CFR 122.2

*"Facility or activity" means any NPDES "point source" or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the NPDES program. See 40 CFR 122.2.*

#### Draft 2015 Fact Sheet

*Facility means any NPDES "point source" or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under this permit.*

“Point source” is a known defined term under the Clean Water Act and associated case law. See, e.g. 40 CFR 122.2<sup>5</sup> and the Draft 2015 Fact Sheet. A Permittee can use these legal resources to understand what a *Facility* is.

The Draft 2015 Permit contains a definition of *Facility* that removes entirely the reference to point sources – and the NPDES program and 40 CFR – and introduces the entirely new concept of "establishment":

*Facility means any establishment (including land or appurtenances thereto) that is subject to regulation under this permit. See Special Condition S1.*

Special Condition S1, in turn, is the provision that states that the ISGP "applies to *Facilities* conducting *industrial activities that discharge stormwater* to a surface waterbody or to a storm sewer system that drains to a surface waterbody." It also states that *Facilities* conducting activities set forth in Table 1 must obtain ISGP coverage. As explained in the definition of "industrial activity" in the 2015 Draft ISGP, Table 1 summarizes the 11 categories of industrial activities identified in 40 CFR 122.26(b)(14)(i-xi).

The definition for *Facility* in the Draft 2015 Permit is inappropriate, since the ISGP is a NPDES permit, and a NPDES permit can apply only to point sources of pollution.<sup>6</sup>

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<sup>5</sup> *Point source* is defined in 40 CFR 122.2 any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff. (See § 122.3).

<sup>6</sup> 33 U.S.C § 1342.

**Justification:**

Definitions in the ISGP should be specific to provide clarification to Permittees, and should be consistent with federal regulations.

The conflicting and confusing definitions create ambiguity and uncertainty that will only feed future litigation. What is an establishment? Does Ecology now maintain that the ISGP applies to non-point sources of pollution? Is Ecology embarking on a new path separate and apart from what the EPA regulates under the federal NPDES program? If so, where is this explained, and where is the statutorily mandated economic analysis associated with this change?

Overall, the change from the 2010 ISGP and CFR definition is confusing and unnecessary. Ecology should retain the 2010 definition for *Facility*.

**Suggested Revision:**

The definition in ISGP Appendix 2 should be changed to match the definition in 40 CFR 122.2: *Facility or activity* means any NPDES “point source” or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under this permit (See Special Condition S1).

If the new Permit uses the proposed definition for *Facility* in the draft ISGP, the Permit and/or Fact Sheet should provide the basis and justification for deviating from federal regulations, include a definition for “Establishment” in Appendix 2, and explain how the definition in the ISGP is different from 40 CFR 122.2. An economic impact analysis for this change must also be provided.

**Comment 4 – Sampling at Substantially Identical Outfalls**

**Permit Reference: S4.B.2.c**

*The Permittee shall sample each distinct point of discharge off-site except as otherwise exempt from monitoring as a “substantially identical outfall” per S3.B.5.b. If applicable, the Permittee is only required to monitor benchmark parameters at one of the “substantially identical outfalls”. However, Permittees subject to numeric effluent limits must sample those parameters at each distinct point of discharge off-site.*

**Comment:**

The current permit does not require permittees to monitor at every discharge location, provided the sampling point is “substantially identical” per Ecology’s definition. The Port of Seattle believes

that the existing standard is appropriate for all discharges including those subject to numeric effluent limits.

**Justification:**

There are many practical and safety related barriers to implementing this change, including lack of access under piers and tidal action that may preclude sampling during the winter months. This requirement does not justify jeopardizing the health and safety of Port personnel or port tenants.

In addition, on large sites with multiple outfalls it's difficult to impossible to sample all the outfalls in the appropriate time period.

**Suggested Revision:**

Allow permittees to conduct all sampling requirements (benchmarks and effluent limit parameters) at locations identified by the permittee subject to approval by Ecology, as appropriate to comply with the meaning of “substantially identical”.

S4.B.2.c should be revised to read:

*The Permittee shall sample each distinct point of discharge off-site except as otherwise exempt from monitoring as a “substantially identical outfall” per S3.B.5.b. If applicable, the Permittee is only required to monitor benchmark parameters or numeric effluent limits at one of the “substantially identical outfalls”. ~~However, Permittees subject to numeric effluent limits must sample those parameters at each distinct point of discharge off-site.~~*

**Comment 5 – Definition for Puget Sound Sediment Cleanup Sites**

**Permit Reference: S6.C**

*Additional Sampling Requirements and Effluent Limits for Discharges to Certain Impaired Waters and Puget Sound Cleanup Sites*

***Puget Sound Sediment Cleanup Site means: Bellingham Bay, Budd Inlet (Inner), Commencement Bay (Inner), Commencement Bay (Outer), Dalco Passage and East Passage, Duwamish Waterway, Eagle Harbor, Elliot Bay, Everett/Port Gardner, Hood Canal (North), Liberty Bay, Port Angeles Harbor, Rosario Strait, Sinclair Inlet, and Thea Foss Waterway***

ISGP Fact Sheet page 46

*The draft permit also proposes numeric and narrative effluent limitations for dischargers to sediment impaired water bodies defined as a Puget Sound Sediment Cleanup Sites. These sites are, or will be, undergoing cleanup under the authority of the Model Toxics Control Act (MTCA)*

and/or the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), commonly known as Superfund.

**Comment:**

The introduction of *Puget Sound Sediment Cleanup Sites* into the ISGP is a significant change from the current ISGP and needs clarification. The *Certain Impaired Waters* (Category 5) are clearly defined in the 303(d) listings, and GIS layers delineating the extent of Category 5 waters are available on Ecology's Website. Additional ISGP requirements should be limited to discharges to 303(d) listed impaired waters, rather than including the much more nebulous concept of "Puget Sound Cleanup Sites" from a different program. The extent of cleanup sites is not well defined, and requirements related to those sites should be imposed through MTCA and the Sediment Management Standards, rather than approaching sediment remediation as a piecemeal, permit-by-permit exercise. This is especially inappropriate in the context of a general permit that applies to a limited number of dischargers who have not been demonstrated to be a significant source of sediment contamination. If Ecology is unwilling to remove this requirement, then at a minimum, the ISGP should be revised to:

- The definition of *Puget Sound Sediment Cleanup Sites* should be linked to formal listings or other regulatory determinations that define the current geographic extent of the site. It should not include areas that "will be" undergoing cleanup at some unknown time in the future.
- Clearly define the geographic extent of each *Puget Sound Sediment Cleanup Site* (e.g., publicly available GIS layers similar to 303(d) listings), and how facilities are identified as "discharging" to these sites.
- Allow Permittees to verify in their SWPPP the information provided by Ecology in Appendix 4, including which discharge points discharge to a *Puget Sound Sediment Cleanup Site* or *impaired waterbody* based on the GIS mapping above.
- Ecology should notify all potential facilities on the Appendix 4 list that they are on the list allowing the facilities to verify that it should be on the list.
- Clearly describe the process for determining which discharge points discharge to a *Puget Sound Sediment Cleanup Site* or *impaired waterbody*.
- Include an easy, straight forward process for evaluating and removing Facilities from Appendix 4 in the ISGP. As an example, the Port of Seattle provided email notification to the Permit Writer with an attached map showing that a facility that was on the Appendix 4 list was improperly listed.

**Justification:**

As proposed in the draft ISGP, *Puget Sound Sediment Cleanup Sites* lack defined boundaries and a clear definition of which Permitted facilities are subject to the requirements under S6.C.

Permittees cannot adequately comment on the proposed requirements without a clear understanding of whether the requirements apply to their facility or not. Providing the recommended mapping and clear definition of *Puget Sound Sediment Cleanup Sites*, and allowing Permittees to verify which discharge points discharge to a *Puget Sound Sediment Cleanup Site* or *impaired waterbody* will allow Permittees to clearly identify which facilities and discharge points are subject to the new requirements under Special Condition S6.C. Allowing Permittees to verify information in Appendix 4 is a recommended approach because Permittees will have more accurate information regarding their outfalls and discharge locations. A process using permittee information will eliminate many of the errors that now exist in Appendix 4 and associated mapping.

**Suggested Revision:**

Part S.6.C.1.a. should be revised to read:

Facilities subject to these limits include facilities with outfall(s) discharging directly to, or discharging to an MS4 or other pipe or conveyance that discharge directly to a 303(d) Category 5 impaired waters or *Puget Sound Sediment Cleanup Site*.

The definition in ISGP Appendix 2 should be changed to read:

*Puget Sound Sediment Cleanup Site* means those listed sites within Bellingham Bay, Budd Inlet (Inner), Commencement Bay (Inner), Commencement Bay (Outer), Dalco Passage and East Passage, Duwamish Waterway, Eagle Harbor, Elliot Bay, Everett/Port Gardner, Hood Canal (North), Liberty Bay, Port Angeles Harbor, Rosario Strait, Sinclair Inlet, and Thea Foss Waterway classified as Sediment Category 4B. Bellingham Bay, Duwamish Waterway, Everett/Port Gardner, and Port Angeles Harbor include more broadly defined areas which are identified on the maps in Appendix XX. These maps are also available on the Ecology website at:  
<http://xxxxxx.xxxxx.xxxxxx>.

And,

- Clearly describe the process for determining which discharge points discharge to a *Puget Sound Sediment Cleanup Site* or *impaired waterbody*.
- Include an easy, straight forward process for evaluating and removing *Facilities* from Appendix 4 in the ISGP.

## **Comment 6 – Effluent Limit for Total Suspended Solids**

### **Permit Reference: S6.C.1 and Table 6**

*Permittees discharging to a 303(d)-listed waterbody (Category 5) or a Puget Sound Sediment Cleanup Site shall comply with the applicable sampling requirements and numeric effluent limits in Table 6. If an outfall is subject to an impaired waterbody effluent limit (Condition S6.C) for a parameter that also has a benchmark (Condition S5), the effluent limit supersedes the benchmark.*

### **Comment:**

S6.C.1 creates a numeric effluent limit for Total Suspended Solids (TSS) of 30 mg/L for any facility discharging to a *Puget Sound Sediment Cleanup Site*. This change significantly and inappropriately expands permit requirements and liability for many permittees. Some of the permittees who will be affected under the proposed expansion of the rule are unaware of the new risks and concerns due to lack of appropriate stakeholder involvement. Using an effluent limit rather than benchmarks and best management practices is a fundamental change to how stormwater discharges are regulated that Ecology has not justified on either a technical or policy basis.

In the draft ISGP, Ecology has not provided a sufficient technical basis for establishing the 30 mg/L TSS effluent limit for *Puget Sound Sediment Cleanup Sites*, or for how this effluent limit will prevent recontamination of sediments above remedial action levels for a given site. Ecology provides no technical support or justification in the record for the 30 mg/L TSS effluent limit. There does not appear to be a full understanding or mass balance evaluation to justify this numeric effluent limit on a small population of contributors (ISGP permittees). Given anti-backsliding law, setting a numeric effluent limit at this time is premature. At most, a **narrative** standard for TSS should be established similar to the fecal coliform effluent limit established in the 2012 ISGP.

### **Justification:**

Nothing in the draft ISGP or Fact Sheet provides a rational or legally sufficient basis for the implementation of a numeric effluent limit; especially since use of an effluent limit rather than a benchmark opens up the possibility of citizen suits for enforcement of a standard that dischargers may not be able consistently meet despite the implementation of AKART. The probable exceedences of standard and resulting violations of the Permit will create significant additional burdens on local and regional businesses and increase the incentive for companies to relocate outside of Washington.

Corrective Action Level 3 required treatment systems that have been installed (or are currently being installed) were designed to meet the turbidity requirement in the current permit. These systems were not designed to meet the new TSS effluent limit and therefore it is unreasonable to

expect that they would meet this new, additional requirement. Failure of new Corrective Action Level 3 systems because of new permit requirements not anticipated during design continues to create uncertainty for businesses and results in increased cost. These facilities may find themselves in violation of the Permit as early as the first quarter of 2014, less than one year after spending hundreds of thousands or millions of dollars on stormwater upgrades. Permittees have not had the chance to evaluate operations or collect sampling data to support the development of effective BMPs to address the proposed TSS effluent limit. This uncertainty and unpredictability makes it difficult for businesses to comply with the ISGP despite expending significant capital outlays, and will ultimately drive businesses out of Washington.

Discharges from municipal sources and roadways contribute sediment and other pollutants to the water bodies identified as *Puget Sound Sediment Cleanup Sites*, and these sources must be considered through a mass balance evaluation as they are much larger sources of sediment than industrial facilities. For example, industrial facilities are already monitored and controlled, and the land area covered under the ISGP only covers 0.39% of the total land area within King County. Requiring industrial facilities to meet a TSS effluent limit of 30 mg/L places an undue burden on these facilities, and will have a limited impact on the ultimate goal of preventing recontamination of sediment cleanup sites as industrial facilities represent such a small percentage of total land area and stormwater discharge volume.

**Suggested Revision:**

When considering future changes to the Permit, Ecology should limit any inclusion of a TSS standard to a benchmark rather than including TSS as an effluent limit. And prior to including a TSS benchmark, Ecology must first develop an understanding of all sources (including municipalities), not just the conveniently available ISGP permittees. And, if a TSS benchmark is considered, a compliance schedule should be included. The current benchmark used by Ecology of 100 mg/L for specific industries (2012 ISGP Table 3) seems to be more appropriate than the proposed standard.

If the Permit must require an effluent limit for TSS, the proposed numeric effluent limit for TSS should be changed to a narrative effluent limit for TSS that includes a required set of BMPs such as:

- Quarterly Monitoring for TSS
- Increased sweeping
- Additional inspections
- Line cleaning if indicated by inspections
- Sampling for waste disposal only

## **Comment 7 – Requirement for Storm Drain Line Cleaning and Sampling**

### **Permit Reference: S6.C.2**

*Permittees discharging to a Puget Sound Sediment Cleanup Site shall implement additional storm drain line cleaning BMPs, solids sampling, and reporting, in accordance with this section:*

ISGP Fact Sheet page 46 states:

*The new requirements for discharges to Puget Sound Sediment Cleanup Sites will: 1) reduce concentrations of sediment and other pollutants in stormwater discharges, and reduce the potential of discharges to cause or contribute to contamination or recontamination of Puget Sound Sediment Cleanup Sites; 2) Allow Ecology to screen for site-specific issues not adequately addressed by the ISGP, and determine if additional sampling, source control, and/or treatment is necessary; and 3) Gather baseline information that will inform the next (2020) version of the ISGP.*

### **Comment:**

While line cleaning is an effective Operational BMP at many facilities, Ecology has not adequately justified this requirement. There does not appear to be a full understanding or evaluation to justify requiring on a small population of contributors (ISGP permittees) in addition to the many mandatory BMPs already in the permit. Given anti-backsliding law, setting a requirement for line cleaning and sampling at this time is premature and risky. The separate requirement for line cleaning and sampling of storm drain system solids should be deleted. Any materials removed from stormwater system during cleaning are already required to be sampled to meet disposal requirements per Ecology's Dangerous Waste Regulations.

If the Permit must require sampling of storm drain system solids under S6.C.2 in the reissued ISGP:

- Given that any materials removed from stormwater system during cleaning are already required to be sampled to meet disposal requirements per Ecology's Dangerous Waste Regulations, the requirement to sample under S6.C.2 should be eliminated except for what is required for disposal.
- Singling out industrial Permittees does not adequately address the issue Ecology is trying to manage – preventing recontamination of sediments above remedial action levels for a given site. First, Ecology must understand from a holistic approach if these requirements are needed, *e.g.* conduct a reasonable potential analysis on the affected water body.

**Justification:**

This is another example of ISGP Permittees being singled out. Many of the sites covered under the ISGP receive run-on from adjacent roads and properties, and are also subject to aerial deposition from nearby highways and bridges.

A clear understanding of all stormwater pollutant sources, and a strategy for managing these sources, (*e.g.* a reasonable potential analysis) is needed before adding to the already significant burden of the ISGP.

**Suggested Revision:**

The separate requirement for line cleaning and sampling of storm drain system solids should be deleted, with line cleaning required under the evaluation period or the narrative TSS effluent limit described in Comment 6 above. Any materials removed from stormwater systems during cleaning are already required to be sampled to meet disposal requirements per Ecology's Dangerous Waste Regulations.

**Comment 8 – Sample and Analyze Storm Drain System Solids**

**Permit Reference: S6.C.2.b**

Permittees shall sample and analyze storm drain system solids in accordance with Table 7 at least once prior to October 1, 2017.

**Comment:**

The proposed solids sampling is not representative of what actually makes it out of the pipe so requiring sampling won't really answer the question of recontamination. Sampling of storm drain system solids should be limited to what is required for disposal.

In addition, Ecology has no information on how this data would be used and how it would prevent recontamination of sediments.

**Justification:**

Ecology should provide a detailed technical basis for requiring storm drain system solids sampling.

**Suggested Revision:**

Table 7 should be deleted, and the requirement for sampling and analysis of storm system solids should be limited to what is already required for disposal.

If the Permit must require more expanded sampling and analysis of storm system solids, under S6.C.2.b.ii, the word “waivers” should be added after “Requests for storm drain system solids sampling and analysis”.

**Comment 9 – Level 1 Correction Action Timeline**

**Permit Reference: S8.B**

***B. Level One Corrective Actions – Operational Source Control BMPs***

*Permittees that exceed any applicable benchmark value(s) in Table 2 or Table 3, shall complete a Level 1 Corrective Action for each parameter exceeded in accordance with the following:*

- 1. Within 14 days of receipt of sampling results that indicate a benchmark exceedance:
  - a. Conduct an inspection to investigate the cause.*
  - b. Review the SWPPP and ensure that it fully complies with Permit Condition S3, and contains the correct BMPs from the applicable Stormwater Management Manual.*
  - c. Make appropriate revisions to the SWPPP to include additional Operational Source Control BMPs with the goal of achieving the applicable benchmark value(s) in future discharges.**
- 2. Summarize the Level 1 Corrective Actions in the Annual Report (Condition S9.B)*
- 3. Level One Deadline: The Permittee shall sign/certify and fully implement the revised SWPPP according to Permit Condition S3 and the applicable Stormwater Management Manual as soon as possible, but no later than the DMR due date for the quarter the benchmark was exceeded.*

**Comment:**

In the draft ISGP listening sessions, Ecology identified that a Level 1 Corrective Action was required within 14 days of receipt of sampling results that exceed a benchmark value, but that if the Permittee was able to collect additional samples within that quarter and “average down” below the benchmark values for the quarter, then no Level 1 Corrective Action would be required.

As Permittees are allowed to collect multiple samples in a given quarter to meet ISGP benchmark values, the actual benchmark exceedance does not occur until the end of the quarter when all sampling results have been considered.

The timeline for implementing Level 1 Corrective Actions should be revised to take into account the potential to “average down” sampling results within a given quarter.

**Justification:**

The requirement is ambiguous and puts Permittees who are attempting to “average down” at risk of missing a Level 1 Corrective Action deadline. On the other hand, Permittees who are able to successfully “average down” may unnecessarily implement Level 1 Corrective Actions if action is taken with the existing 14-day Level 1 Corrective Action window.

**Suggested Revision:**

Incorporate changes into S8.B as identified below. Please note that added language is underlined. Recommended deletion is noted as strike out. Existing language is in italics.

***B. Level One Corrective Actions – Operational Source Control BMPs***

Permittees that exceed an applicable benchmark value for any quarter shall complete a Level 1 Corrective Action in accordance with S8.B for each parameter exceeded. A Level 1 Corrective Action is required for each quarter that an applicable benchmark value is exceeded.

~~Permittees that exceed any applicable benchmark value(s) in Table 2 or Table 3, shall complete a Level 1 Corrective Action for each parameter exceeded in accordance with the following:~~

1. When sampling results indicate a benchmark exceedance, the Permittee shall take the following actions within 14 days of receipt of all sampling results for a given quarter, or the end of the quarter, whichever is later: ~~that indicate a benchmark exceedance:~~
  - a. *Conduct an inspection to investigate the cause.*
  - b. *Review the SWPPP and ensure that it fully complies with Permit Condition S3, and contains the correct BMPs from the applicable Stormwater Management Manual.*
  - c. *Make appropriate revisions to the SWPPP to include additional Operational Source Control BMPs with the goal of achieving the applicable benchmark value(s) in future discharges.*
2. *Summarize the Level 1 Corrective Actions in the Annual Report (Condition S9.B)*
3. **Level One Deadline:** *The Permittee shall sign/certify and fully implement the revised SWPPP according to Permit Condition S3 and the applicable Stormwater Management Manual as soon as possible, but no later than the DMR due date for the quarter the benchmark was exceeded.*

## **Comment 10 – Reporting Permit Violations**

### **Permit Reference: S9.E.1**

1. *In the event the Permittee is unable to comply with any of the terms and conditions of this permit which may endanger human health or the environment, or exceed any numeric effluent limitation in the permit, the Permittee shall:*
  - a. *Immediately take action to minimize potential pollution or otherwise stop the noncompliance and correct the problem.*
  - b. *Immediately notify the appropriate Ecology regional office of the failure to comply.*
  - c. *Submit a detailed written report to Ecology within 5 days unless Ecology requests an earlier submission. The Permittee's report shall contain:*
    - i. *A description of the noncompliance, including exact dates and times.*
    - ii. *Whether the noncompliance has been corrected and, if not, when the noncompliance will be corrected.*
    - iii. *The steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.*

### **Comment:**

On Page 55 and 56 of the draft ISGP Fact Sheet, Ecology identifies that S9.E was updated to be consistent with 40 CFR 122.41(l)(6). However, S9.E.1 is not consistent with 40 CFR 122.41(l)(6).

40 CFR 122.41(l)(6) reads:

#### **(6) *Twenty-four hour reporting.***

*(i) The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.*

*(ii) The following shall be included as information which must be reported within 24 hours under this paragraph.*

*(A) Any unanticipated bypass which exceeds any effluent limitation in the permit. (See § 122.41(g).)*

*(B) Any upset which exceeds any effluent limitation in the permit.*

*(C) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Director in the permit to be reported within 24 hours. (See § 122.44(g).)*

*(iii) The Director may waive the written report on a case-by-case basis for reports under paragraph (l)(6)(ii) of this section if the oral report has been received within 24 hours.*

**Justification:**

Clarification should be added to S9.E and the waiver provision should be added to make this condition fully consistent with 40 CFR 122.41(l)(6).

**Suggested Revision:**

S9.E should be revised to be fully consistent with 40 CFR 122.41(l)(6), and read as follows:

1. *In the event the Permittee is unable to comply with any of the terms and conditions of this permit which may endanger human health or the environment, or exceed any numeric effluent limitation in the permit, the Permittee shall, upon becoming aware of the circumstances:*
  - a. *Immediately take action to minimize potential pollution or otherwise stop the noncompliance and correct the problem.*
  - b. *~~Immediately~~ notify the appropriate Ecology regional office of the failure to comply within 24 hours.*
  - c. *Submit a detailed written report to Ecology within 5 days unless Ecology requests an earlier submission. The Permittee's report shall contain:*
    - i. *A description of the noncompliance, including exact dates and times.*
    - ii. *Whether the noncompliance has been corrected and, if not, when the noncompliance will be corrected.*
    - iii. *The steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.*
3. Ecology may waive the written report on a case-by-case basis for reports under S9.E.1.c if the oral report has been received within 24 hours.

Thank you for this opportunity to comment on the Permit Modifications. If you have any questions concerning the contents of this letter, please contact Marilyn Guthrie for the Port of Seattle at (206) 787-3378.

Sincerely,

A handwritten signature in blue ink, appearing to read "Marilyn Guthrie". The signature is fluid and cursive, with the first name being more prominent than the last.

Marilyn Guthrie  
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Port of Seattle  
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cc: Susan Ridgley – Port of Seattle  
Stephanie Jones Stebbins – Port of Seattle