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Water Quality Program
P.O. Box 47600
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Submitted by Email at: industrialstormwatercomments@ecy.wa.gov

Re: Comments on Draft 2015 Industrial Stormwater General Permit

Dear Mr. Killelea:

The purpose of this letter is to provide comments on Washington State Department of Ecology's (Ecology) draft Industrial Stormwater General Permit (ISGP), which was released for public comment on May 7, 2014. We appreciate the efforts that Ecology has taken to ensure that the proposed changes to the ISGP are well communicated to the public and permittees and that Ecology has afforded us this opportunity to provide comments.

SSA Marine, Inc. (SSA) is a third generation Washington family closely-held business headquartered in Seattle. For 65 years, we have provided stevedoring services, first in the Pacific Northwest and now also internationally. Our subsidiaries operate Terminal 18 on Seattle's Harbor Island and Terminals 25 and 30 on Seattle's East Waterway. Like all shipping lines and marine terminal operators, we function within a highly competitive business environment throughout the West Coast of the United States. Competition is particularly acute on the Puget Sound, where containers are very price sensitive, and costs influence how and where those containers are routed. There are fewer (but much larger) ships in the marketplace, the operators of those vessels are consolidating, and, as the ships become larger, they are making fewer port calls and demanding very competitive services. As a result, many Puget Sound terminals are struggling to survive.

The Washington State maritime industry generates thousands of direct and indirect family wage jobs. Maritime wages average \$70,800 per annum, greatly exceeding the average state median wage of \$51,000. Many Washington manufacturers and exporters rely upon the supply chain and terminals at the Port of Seattle and Port of Tacoma (among others) to efficiently reach overseas markets and thereby maintain their competitive edge. In fact, last year Washington exported \$81.9 billion in goods from marine terminals. But despite this robust and meaningful contribution made by the maritime industry to the State, the market share for Washington's two largest ports has been in decline and the industry's future threatened as more-and-more container traffic is diverted to Canada, California, and East Coast ports.

Like other Washington marine terminal operators, we must keep our costs competitive with other West Coast terminals in order to maintain our business in Washington State and preserve the significant economic benefit that it brings to our communities. While our industry prides itself on environmental stewardship and continues to find ways to improve its performance, we have been struggling for years with the difficulties and uncertainty surrounding stormwater runoff requirements under the ISGP. The requirements are one of the biggest regulatory challenges facing the shipping and logistics industry because they directly impact our competitiveness. Ecology's stormwater requirements are the most severe in the country, and the delta of

added costs associated with complying with these strict requirements creates competitive disadvantages for Puget Sound marine terminals. Hence, Ecology's decisions regarding storm water regulation will have a powerful influence on determining whether or not there is a continuing viable maritime presence on the Puget Sound.

The ISGP was written to define requirements for typical industrial and manufacturing sites – relatively small properties on which intensive manufacturing and industrial activities are conducted, often in discrete and isolatable areas. Marine terminals are very different; they are extremely large, transportation-focused properties on which only very small areas are utilized for traditional “industrial” uses. At Terminal 18, for example, the vast majority (about 95%) of the approximately 200-acre facility is no different from a highway or a large parking lot.

At marine terminal facilities, it is already almost impossible for operators to comply with the current Washington ISGP while maintaining competitive terminal economics. In order for us to implement the stormwater management practices that protect Puget Sound water quality, the ISGP requirements must be achievable and reasonable. The escalating costs associated with increasingly stringent requirements of the ISGP significantly affect our ability to continue to provide import and export opportunities for Washington businesses and critical family-wage jobs in Washington's maritime industry.

The 2015 draft ISGP includes proposed changes that, if implemented, will continue to increase costs and uncertainties for our operations. The changes also threaten to make obsolete the new treatment system investments that we and others have made to comply with the current permit. Accordingly, the comments provided below focus on those elements of the draft permit that significantly affect the balance between the ability of marine terminal operators to provide meaningful stormwater quality improvements and our ability to stay in business.

The following comments are presented in order of Permit section, not in order of importance.

Section S4.B.2.c, Permit Language, Suggested Modification

The language of Permit Condition S4.B.2.c has been changed to include the following language:

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.

This new language suggests that a Permittee subject to a numeric effluent limit at one outfall would be required to sample for the parameter at all outfalls at a facility, rather than exclusively at the locations where the numeric effluent limit applies. This interpretation would impose a significant increase in sampling and analysis costs associated with permit compliance since, given the large size of marine terminal facilities and the way that 303(d) listings are defined, numeric effluent limits frequently only apply to a portion of the facility. ***The language should be clarified as follows:***

“...Permittees subject to numeric effluent limits must sample those parameters at each distinct point of discharge off-site where the numeric effluent limit applies.”

Section S5.B Table 3 Additional Benchmarks and Sampling Requirements Applicable to Specific Industries

The current ISGP requires a visual inspection for oil/sheen during routine inspections and sampling. While the proposed addition of a TPH-dx benchmark and sampling at transportation facilities theoretically makes sense, transportation facilities are already required to have numerous BMPs in place to address the increased presence of petroleum at their facilities related to fueling,

maintenance, and/or increased truck traffic. These BMPs are effective. Accordingly, ***the draft ISGP requirement should be changed to require sampling of TPH-dx ONLY IF visible oil or sheen is observed during a routine inspection or sampling.*** TPH will not likely be detected in a water sample at a concentration of 10 mg/L or greater if there is NOT a visual or olfactory indication that petroleum is present.

Importantly, sampling for TPH-dx is particularly burdensome, as it cannot be accomplished with automatic sampling devices and requires additional manpower. Moreover, we are in the process of evaluating installation of automatic sampling devices at our terminal, which would be able to generate better, more consistent data. The proposed sampling requirement for TPH would be extremely counter-productive to this initiative.

Section S6.C Additional Sampling Requirements and Effluent Limits for Discharges to Certain Impaired Waterbodies and Puget Sound Sediment Cleanup Sites

Several new requirements were added to Section S6.C that are very problematic and significantly increase our operating costs. Simply put, industrial waterfront facilities (including the majority of marine terminals in the state) are being targeted for additional monitoring that imposes a significant cost burden and feasibility concerns and that ultimately will not provide environmental benefit. ***We strongly request that these items be removed from the permit prior to issuance or significantly modified, as discussed below.***

Total Suspended Solids (TSS) Sampling with 30 mg/L Maximum Daily Limit:

The requirement to sample TSS as an effluent limit at all points of discharge to a Puget Sound Sediment Cleanup Site imposes a significant and disproportional financial and operational burden to marine terminal operators and other operators of large industrial facilities. ***Requirements for implementation of TSS as a numeric effluent limit should not be expanded. We strongly recommend that in your proposed framework, TSS be changed to a narrative effluent limit, with required sediment-management BMPs.*** This would confirm that facilities are protective of marine sediments and would allow us to focus our expenditures on the BMPs that provide this protection. ***We also strongly recommend that sampling for both benchmarks and effluent limits be able to be performed at “substantially identical” representative outfalls.*** Specific concerns and recommendations are provided below.

- Though not clearly stated in the draft permit, based on Ecology description at the ISGP workshops, we understand that the TSS effluent requirement will be required for all outfalls that discharge into a waterbody that is 303(d)-listed for any sediment parameter as Category 5 or Category 4B within a Puget Sound Sediment Cleanup Site. Under the current permit, this TSS requirement is already triggered for Category 5 listings but not for 4B listings. Adding 4B within Sediment Cleanup Site areas means that this requirement will apply to all individual outfalls that discharge to most urban waterbodies.
- As written, the permit would require quarterly sampling of every individual outfall (not “substantially identical” outfalls) and would not allow averaging of results across the quarter. Different from manufacturing facilities, marine terminals have a significant number of individual outfalls. If TSS is defined as an effluent limit as proposed and if the “substantially identical” exemption would not apply, then we would need to sample every outfall on a quarterly basis. For Terminals 18, 25 and 30, the new rule could require that we sample 24 outfalls during a qualifying storm event! This is not practical or useful or possible. The manpower and disruption to terminal operations that would be necessary to meet this

requirement is fully disproportionate to any potential benefit this data could have. Additionally, if TSS is defined as an effluent limit under Permit Condition S4.B.8, facilities could not discontinue sampling based on the consistent attainment clause set forth in in Permit Condition S4.B.6 – we would have to do this forever. We invite you to visit Terminal 18 so that you can appreciate first-hand the level of difficulty and cost that this requirement will impose at a 200-acre site with significant terminal traffic and container movement.

- The current permit, which allows sampling at “substantially identical” representative locations, is reasonable, appropriate, and protective. ***Ecology should allow permittees to conduct all sampling requirements (both relative to benchmarks and effluent limits) at locations agreed to by the permittee and Ecology as representative, using the “substantially identical” rationale.*** The rationale to allow sampling at substantially identical representative locations is sound for the benchmark parameters. If it makes sense for the benchmark parameters, it should also make sense for those parameters with numeric effluent limits.
- The small tide windows and specific requirements for qualifying storm events, coupled with the large size of marine terminal facilities and substantial number of outfalls, have a combined effect of reducing the number of samples it is feasible to collect within a single storm event. Therefore, if the requirement to sample TSS at all outfalls is included in the 2015 ISGP, samples for TSS are likely to be collected across several storm events for large facilities, which would affect data representativeness and comparability. As concentrations of TSS entering the storm drain from different storm events are expected to vary, single samples may not be representative of average TSS discharge from a particular outfall. Moreover, Table 6 (and footnote A of Table 6) has been revised to explicitly preclude a facility from collecting multiple samples to determine an average concentration of TSS in stormwater effluent. The implications of this change are significant: As TSS is an effluent limit, an exceedance at a single outfall during a single quarter constitutes a permit violation and would both require immediate corrective action and open the facility to liability from citizen suits.
- The technical rationale for applying a stringent TSS numeric effluent limit of 30 mg/l to discharges into “Puget Sound Sediment Cleanup Sites” is very weak. Puget Sound Sediment Cleanup Sites defined under MTCA and CERCLA are overwhelmingly associated with legacy contamination, not ongoing sources. In most cases, the 303(d) sediment listings are for “sediment bioassays,” which are not tied to specific particulate loading. Hence, it is inappropriate to use TSS at 30 mg/l as an effluent limit in the manner that effluent limits were designed to be associated with a specific water quality criteria. Indeed, the Fact Sheet for the 2015 draft ISGP permit itself describes why numeric effluent limits are not applied to waterbodies that are 303(d) listed due to contaminated fish tissue or bioassessment – namely, because it is “extremely difficult to show a direct relationship between stormwater discharges and impairments due to contaminated fish tissue or bioassessment.” ***The same rationale should apply to waterbodies that are listed due to “Sediment Bioassay” – numeric effluent limits should not be applied in these locations.*** It is extremely difficult, or impossible, to show a relationship between TSS in stormwater discharges and benthic toxicity.
- ISGP permittees are already required to implement BMPs that are designed to minimize the amount of sediment and turbidity in the stormwater system. The stormwater BMPs and treatment systems that target ISGP benchmark parameters, including turbidity, significantly reduce the risk that the level of TSS discharged would contain pollutants at levels that would pose a recontamination risk. At most Puget Sound Cleanup Sites, the primary pollutants of concern for sediment are not those that are generated by terminal operations. Hence, requiring facilities to sample for TSS increases financial burden and liability for terminal

operators without providing any known benefit to the receiving waterbodies. ***Instead of including TSS as a numeric effluent limit at these terminals, define TSS as a narrative effluent limit and increase inspection and reporting requirements to ensure that mandatory sediment BMPs are being implemented. This approach is consistent with Ecology's recent permit modification regarding fecal coliform.*** With consistent implementation, these BMPs are protective of sediments. The narrative limit with required BMPs makes much more sense for the loose association between sediment listing and the proposed TSS indicator.

- If the TSS effluent limit and its associated sampling and compliance requirements are imposed on industrial permittees adjacent to Sediment Cleanup Sites, it MUST also concurrently be placed on all stormwater dischargers to Sediment Cleanup Sites, including municipalities and all associated dischargers up-the-pipe or up-tributaries that are distant from the water body. It is a proven fact that ISGP permittees contribute an extremely small proportion of the stormwaters discharged. It is inequitable and inappropriate to single out industrial permittees for this significant and oppressive new requirement.
- Terminal operators, including our companies, have already invested millions of dollars designing and building Ecology-approved stormwater treatment systems based on Level 2 and Level 3 benchmark exceedances. These systems were not designed to address TSS, as TSS has not been a required analyte. With the addition of TSS as a new analyte, operators could be forced to modify or abandon existing or already-designed systems and/or spend hundreds of thousands of dollars on additional equipment or modifications to remove TSS to the new defined value. This would be a significant and unfounded setback. These costs would be particularly unjustified if they must be incurred based on a single stormwater result that may not be representative of average conditions (particularly since the TSS itself does not likely carry contaminants of concern for the adjacent Puget Sound Sediment Site).

Storm Drain Line Cleaning, Solids Sampling, and Reporting:

Inspection, cleaning, and repair of storm drain lines is already a mandatory BMP required by the Stormwater Management Manual for Western Washington. Under the existing ISGP, Ecology can work with permittees to confirm that this action is included in site SWPPP documents and is performed on a regular basis.

Accordingly, ***all requirements for solids sampling and reporting under the proposed Special Condition S6.C.2. should be deleted.*** Requiring ISGP permittees to sample and analyze storm drain system solids for the parameters listed in Table 7 is excessive, costly, and unfounded. Unfortunately, this is another inappropriate example of ISGP permittees being unfairly targeted. If such a requirement is imposed on ISGP permittees, it should, in fairness and equality, apply fully to municipalities and all upstream contributors that discharge to the water body.

Moreover, sampling of storm drain system solids is not representative of materials discharged to the waterbody, and the Draft ISGP does not describe how the data collected is intended to be used, or define standards or protocols for data collection or evaluation.

ISGP Relationship to AKART and use of Draft WPPA Washington State Marine Terminal AKART and ISGP Corrective Action Guidance Manual

As you know, PMSA and associated MTOs worked closely with the WPPA in their development of the Draft WPPA Washington State Marine Terminal AKART and ISGP Corrective Action Guidance Manual (AKART Manual), which was also released for public comment on May 7, 2014. We applaud Ecology's

work with the WPPA and other stakeholders to prepare the Draft AKART Manual. We believe this document will be very helpful to efficiently assist marine terminal ISGP permittees and Ecology to reach agreement on what actions are determined to be AKART --“all known, available and reasonable methods of prevention, control and treatment”-- at an individual marine terminal. This process as laid out in the new draft AKART Manual is designed to result in agreement between a permittee and Ecology regarding the types and levels of BMPs and treatment that should be considered AKART. AKART is, by definition, all that can be reasonably expected to be implemented, given the physical and operational characteristics of the terminal.

Our concern is that, as the ISGP is currently written, this AKART determination does not have much value. If a permittee installs the BMPs and treatment determined to be AKART following the process defined in the new manual with Ecology approval, optimizes the performance of these BMPs and treatment technologies, but is still not meeting benchmarks, Ecology should be able to issue a modification of permit coverage confirming that what has been done is “all that is reasonable” and that the permittee is in compliance with the ISGP. This is the whole point of an AKART determination. But the way the draft permit language is written, this is not the case.

The existing permit reads: Section S8.D.5.b. *“If installation of [additional] Treatment BMPs is not feasible or not necessary to prevent discharges that may cause or contribute to violation of a water quality standard, Ecology may waive the requirement for Treatment BMPs by approving a Modification of Permit Coverage”.*

Although not included in the permit definitions, we understand that Ecology has defined “feasible” as physically possible regardless of the cost. If so, “feasible” is not the same as AKART, which uses the term “reasonable” and takes cost into account. ***The term “feasible” should be clarified, re-interpreted, or re-defined so that it takes costs and implementability concerns into account, consistent with the AKART determination.***

This clarification would be consistent with AKART – which by definition is “all known, available and reasonable methods of prevention, control and treatment” – and is all a permittee should reasonably expect to implement. This change would make the whole process internally consistent and respectful of a permittee’s real-world constraints and Ecology’s technical evaluations. Without this change, the process is inconsistent, unrealistic, punitive (in-as-much as terminals could use all conceivable means to be in compliance and still fail), and puts Washington’s ports at a significant competitive disadvantage to California’s ports, which operate under a much more reasonable permitting process.

The Environmental Impact Analysis Is Incorrect

While a secondary issue, SSA notes that the Environmental Impact Analysis for the Draft ISGP is markedly wrong in its conclusions. Most notably, the Analysis’ conclusion that annualized cost of compliance with the new revisions should range from \$1,000 - \$2,500 for large businesses is incorrect by orders of magnitude. For SSA, if the proposed new monitoring requirements go into effect, it will cost us additional tens of thousands of dollars annually for monitoring alone. Other marine-based industrial facilities – both large and small – are also facing tens of thousands of additional monitoring costs that, as set forth above, provide little to no economic benefit. **SSA encourages Ecology to take a more realistic look at the compliance-cost issue so that the Environmental Impact Analysis has some legitimacy.**

Support for Comments Provided by Washington Public Ports Association

WPPA has submitted a comment letter to you that includes several suggestions for improvements to the Draft ISGP permit relative to the issues that have been posed above. We support the comment letter that has been submitted by WPPA and endorse its suggestions.

Support for Comments Provided by Brad Jones of Gordon Thomas Honeywell

Attorney Brad Jones of Gordon Thomas Honeywell LLP has also submitted a comment letter to you that focuses on concerns regarding the inconsistent and confusing definitions of “facility,” “industrial activities,” and “transportation facilities.” We also support his comment letter and share his concerns regarding the scope of ISGP coverage at transportation facilities. This is a key issue for our company and its subsidiaries, as there is a stark difference between how transportation facilities have recently been regulated in Washington versus California, where the California general industrial stormwater permit specifies that only those portions of transportation facilities involved in industrial operations are subject to the permit.

In California, the ISGP is only applied to those portions of a marine terminal where vehicle maintenance and other “industrial activities” are performed, not the whole terminal. This is consistent with the Clean Water Act and EPA’s own general permits. In Washington, however, Ecology personnel have chosen to interpret the current permit to apply to the entire footprint of the facility. In other words, only 10 acres of a container terminal might be dedicated to “industrial activities” that are a stormwater source, yet Ecology personnel have maintained that the acreage devoted to container storage and truck access – which is roughly 190 acres at Terminal 18 – should have to comply with ISGP parameters as well. We believe that such an interpretation is inconsistent with both the current permit and the 2015 draft ISGP. Moreover, container storage and roadway areas on marine terminals are similar to a highway or large parking area in terms of pollution characteristics. Accordingly, we believe these areas should be regulated under the local MS-4 permit, where rigorous BMPs are still applied. This would be consistent with EPA’s position as well as practices in California and could help keep the industry competitive. Importantly, this is a simple change in “interpretation” and can be accomplished without any modification to the ISGP permit.

Responsibility for Non-Industrial Sources Including Air Deposition

There is one other primary difference between the Washington ISGP and California regulations that significantly affects us. In California, permittees are not held liable for non-industrial pollutant sources, including run-on from adjacent properties, aerial deposition from man-made sources, or aerial deposition from on-site non-industrial sources (e.g. birds and other wildlife). The California ISGP includes a process for “Non-Industrial Pollutant Source Demonstration” (SWRCB Industrial General Permit, Section XII D.2.b). Under this process, permittees exceeding Numeric Action Levels (NALs, similar to benchmarks) are able to implement an evaluation to determine the extent to which pollutant sources that are out of their control are influencing their discharge quality. This process is logical and practical. While it is appropriate to hold industrial permittees to strict standards that govern those sources that are under their control, targeting and penalizing specific entities for ubiquitous sources that are present in the urban environment is an unfair and ultimately unsustainable public policy. ***We strongly recommend that Ecology consider adoption of a process within the ISGP that allows for a Non-Industrial Pollutant Source Demonstration similar to that used in California.*** This action would assist to level the playing field and would be extremely meaningful to maintain Washington state economic competitiveness in maritime trade.

This is a very meaningful issue for us. Our terminals are immediately adjacent to both the West Seattle Bridge and Highway 99. We believe that a significant percentage of the pollutant loading to our facilities is from air deposition of particulates originating from these roadways and other urban sources. Indeed, Ecology's recent storm water loading study (Control of Toxic Chemicals in Puget Sound) concludes that the second biggest source of zinc to Puget Sound is from car tires/driving and associated tire wear, estimated by Ecology to have an average annual loading to Puget Sound of 80 metric tons. Pollutant loading in air and rainfall is a non-industrial source that we cannot control. The levels of non-industrial, off-site sources that create our baseline conditions should be taken into account when determining regulatory requirements, and we should not be liable for those urban sources. We encourage Ecology to utilize a tool similar to California's "Non-Industrial Pollutant Source Demonstration" in regulating industrial permittees such as ourselves. We also encourage Ecology to look to WSDOT, the local municipalities, and the Chemical Action Plan process to reduce these ambient levels in the urban environment.

Economic Competitiveness and Parity with California

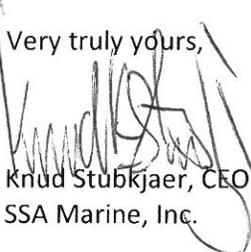
Overall, stormwater management costs for container terminals in California are significantly less than in Washington due to differences between the California and Washington ISGP permit requirements. In California, ISGP compliance is only required at the specific "industrial" use areas at the terminal where vehicle maintenance and equipment cleaning activities are conducted. In addition, California uses higher (less restrictive) benchmark values, requires less frequent sampling, focuses sampling on representative outfalls, and allows for the "Non-Industrial Pollutant Source Demonstration" described above.

In stark contrast, the Washington State ISGP contains the most stringent requirements in the country and arguably the toughest in the world. While seemingly meritorious, these added requirements create an additional and significant competitive disadvantage for Washington MTOs with operations in other ports on the West Coast and around the country, often with little to no environmental benefit. Compliance is near impossible with sufficient container volume necessary to maintain jobs, particularly when common sources for failure are not controlled by terminal operators, yet the cost of non-compliance is staggering and, in some cases, there is no way to reach Ecology's standards even despite using every reasonable means possible.

As described at the opening of this letter, terminal revenues cannot be increased to cover added costs. Terminal revenue is earned on per-container-moved basis, and fees per container must be maintained within a very tight, highly competitive range. Shippers have significant flexibility to move their business, as we have recently witnessed, and fees per container cannot be increased to cover ISGP compliance costs. The effect of increased fees for service is that shippers relocate their business and terminal economics are further eroded, providing significant risk of facilities closing.

Thank you for your attention to these comments. These are challenging issues that could impact thousands of family-wage jobs in Washington State. It is worth the time and attention to develop a permit that provides certainty, reasonableness, and a basis to continue to improve on the water quality gains already achieved in Washington State.

Very truly yours,


Knud Stubkjaer, CEO
SSA Marine, Inc.