

Independent Business Association

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Jeff Killelea
Department of Ecology
PO Box 47600
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Dear Mr. Killelea:

On behalf of small businesses participating in the Independent Business Association, please consider the following comments with respect to the draft General Industrial Stormwater Permit the Department of Ecology is proposing.

General Comment

1. As drafted, this permit will be very challenging for most small business people to follow. The bill drafting requirements for legislation do not allow so many sub-levels. A Permittee can easily get lost trying to find a section listed something like: S3B3b(i)(4)(b) We urge the Department to consult with the Code Reviser's office to simplify the draft to make it more readable for Permittees.
2. We find the Small Business Economic Impact Analysis to be totally inadequate and a totally unrealistic representation of likely costs to be experienced by a small business required to be covered by this permit. The SBEIA grossly understates likely costs and thus is effectively of no real value to the Department or to small business likely to be covered by this proposed permit. For example, this SBEIA:
 - Fails to quantify the cost of the new requirement that the person conducting the monthly inspections having to be Certified Industrial Stormwater Manager. Instead it uses the average cost for an average – non-Certified – employee to conduct these inspections.
 - Understates the time it takes to conduct a visual inspection by at least one-half because it fails to consider the time the person doing the inspection must take to prepare an inspection report.
 - Fails to quantify any costs related to the additional BMP requirements listed in S3B3b such as vacuum sweeping parking lots, installing or upgrade berming or curbing, installing oil-water separators, booms skimmers to eliminate or minimize oil and crease contamination.
 - Fails to quantify costs for applying for waivers from these requirements by Permittees.
 - Fails to quantify the costs for active stormwater treatment that can exceed \$225,000 per acre as the Fact Sheet state “..many will be required to install active stormwater treatment systems.”
 - The math on the wage inflation rate was incorrectly calculated using the data presented in the SBEIA
 - The data for the wage inflation was grossly understated and was based on an Implicit Price Deflator, not real wage inflation as reported by the U.S. Department of Labor Bureau of Labor Statistics. The wage inflation factor used in the SBEIA was 4.7% total over 2009 – 2009. According to the Bureau of Labor Statistics the average wage rate inflation over that

same period of time was actually 17.2%, not 4.7%. Thus the wage calculations in the SBEIA were significantly understated.

Before the Department moves ahead with approving this Permit, it must complete a realistic Small Business Economic Impact Analysis to truly reflect the impacts on small businesses.

Major Policy Issues

3. S1 E – No Exposure Why is this permit applying to **“all ground water discharges?”** There are different regulations for ground water discharges under the Department’s UIC rules and this requirement that this permit applies to ground water discharges is extremely confusing and unfair to Permittees as proposed. What is a Permittee to do when the provisions of this permit conflict with the requirements of the UIC rules? The current permit much more appropriately addresses this issue through the following provisions:

.B. When is Coverage under the Industrial Stormwater General Permit Not Required?

The types of facilities listed below are not required to obtain coverage. However, coverage is not categorically prohibited and these facilities may request coverage if applicable.

3. *Industrial facilities that discharge all of their stormwater to the ground and have no point source discharge to surface water or a municipal storm sewer unless determined to be a significant contributor of pollutants to ground water. Discharge to ground includes infiltration basins, dry wells, drain fields, and grassy swales. Facilities that discharge to a drywell, drainfield, or an infiltration system that uses perforated pipe to discharge to the subsurface must comply with the Underground Injection Control Program (UIC) regulations, 173-218 WAC.*

IBA strongly urges the Department to revise the permit and to include language such as that contained in the current permit to exempt ground water discharges from the scope of this permit.

This provision should be revised as follows: *“For sites that discharge to both surface water and ground water, the terms and conditions of this permit shall apply to all **surface ground** water discharges*

4. There are firms otherwise required to be covered by this permit but that do not have any surface discharge from their property. The Department has historically given firms otherwise required to have coverage under the permit but that has now discharge off-site a letter stating they had no need to be covered under the permit. This has been an acceptable process and IBA recommends the Department continue this letter approach.
5. S2 A There is a conflict between S2 A that provides for automatic coverage under this permit for those covered under the current permit, and S9 B1b that requires that the Permittee retain the following documents onsite, *“A copy of the permit coverage letter”* S9 B1b must be modified to read, *“A copy of the permit coverage letter **unless the Permittee was automatically covered under provision S2 A of this permit.**”*
6. S2 C1a This provision sets up a critical timing element in the coverage under the permit and is based on *“...receipt by Ecology of a completed application...”* But this provision does not provide any feedback to the permit applicant that the Department received the application or that the application was complete. This must be modified to provide a confirmation by the Department that these two significant requirements have been met by the permit applicant, that a complete application was received by the Department. The Department has a responsibility to send a confirmation to the applicant for this provision to have the intended effect. It is only a common courtesy to the Permittees and provides increased assurances of protecting the environment.
7. S3 A3c Identifies *“...manuals...”* or *“guidance documents....that are approved by Ecology...”* This needs to be revised and refer to a new appendix to this Permit that references those manuals or documents. Otherwise, Permittees are left almost guessing which manuals and documents are approved

and which ones are not. This element of the permit should be dynamic as the Department develops new manuals and guidance documents and adds them in the new appendix to this permit.

8. S3A3di Calls for the Permittee to provide “*The technical basis for selection of all stormwater BMPs...*” This **must** be clarified that providing the “*technical basis*” is not required if the Permittee relied on one of the Department’s approved manuals.

We support the “presumptive approach” contained in the current permit.

9. S3 A3dii Calls for the Permittee to provide “*An assessment of how the BMPs will satisfy AKART...*” This **must** be clarified that this assessment is not required if the Permittee relied on one of the Department’s approved manuals.

We support the “presumptive approach” contained in the current permit.

10. S3 A4a Calls for the Permittee to “*...modify the SWPPP if,it is determined that the SWPPP is, or would be ineffective....*” This is extremely problematic for IBA. What does, “*or would be ineffective*” mean? Ineffective in what situation? In all situations? In 100 year storm events? In 10 year storm events? After an earthquake? This is a permit provision that no one can comply with. This permit is a legal document that will be litigated in the future, and this provision **must** be struck.
11. S3 B1d Calls for the Permittee to identify each “*...stormwater discharge point off-site...*” and goes on to say “*...(including discharges to groundwater)..*” IBA very strongly recommends the (including discharges to ground water) be stricken as it is regulated under separate UIC regulations.
12. S3 B1g Calls for the Permittee to “*Identify areas of pollutant contact (actual or potential)...*” The “*or potential*” element of this statement is excessively onerous for a small business required to be covered by this permit and **should** be dropped. This is a requirement that is totally beyond the capability of most small business owners that must apply for this permit to comply with this permit as there is no knowledge of what potential pollutant many will come into contact with, i.e. recycling facilities. This adds an insurmountable requirement that could easily become the basis for costly litigation that could easily force businesses to close, and eliminate jobs and revenues to the state. At a minimum, the Department should replace the word “potential” with the word “likely” to provide more clarity to Permittees.
13. S3 B1j Calls for the Permittee to “*Identify areas of existing or potential soil erosion (in a significant amount).*” The “*or potential*” element of this statement is excessively onerous for a small business person required to be covered by this permit and **should** be dropped. This is a requirement that is totally beyond the capability of most small business owners that must apply for this permit to comply with. They would all need to be soils engineers or hire soils engineers in order to comply with this requirement. The provision (*in a significant amount*) is extremely subjective. Significant to one person may not be significant to another person. These provisions add insurmountable requirements that could easily become the basis for costly litigation that could easily force businesses to close, and eliminate jobs and revenues to the state. At a minimum, the Department should replace the word “potential” with the word “likely” to provide more clarity to Permittees, and clarify (*in a significant amount* **likely to exceed the benchmark for turbidity**).
14. S3 B2 Calls for the Permittee to prepare an “*...inventory of facility activities and equipment that could contribute to have the potential to contribute.... or have the potential to contribute to pollutants to stormwater.*” The “*or potential*” element of this statement is excessively onerous for a small business person required to be covered by this permit and **should** be dropped. This requires Permittees to become visionaries (IBA knows of no state recognized visionaries) and is totally beyond the capability

of most small business owners that must apply for this permit to comply with as there is no knowledge of what potential pollutant many will come into contact with, i.e. recycling facilities. This adds an insurmountable requirement that could easily become the basis for costly litigation that could easily force businesses to close, and eliminate jobs and revenues to the state and yet provide no value to water quality. At a minimum, the Department should replace the word “potential” with the word “likely” to provide more clarity to Permittees.

15. S3 B2b Calls for the Permittee to identify “...*industrial activities...that have been or may potentially be sources of pollutants...*” The “*may potentially*” element of this statement is excessively onerous for a small business person required to be covered by this permit and **should** be dropped. This requires Permittees to become visionaries (IBA knows of no state recognized visionaries) and is totally beyond the capability of most small business owners that must apply for this permit to comply with as there is no knowledge of what potential pollutant many will come into contact with, i.e. recycling facilities. This adds an insurmountable requirement that could easily become the basis for costly litigation that could easily force businesses to close, and eliminate jobs and revenues to the state and yet provide no value to water quality. At a minimum, the Department should replace the word “potential” with the word “likely” to provide more clarity to Permittees.
16. S3 B2c Calls for the Permittee to “...*inventory of material...that potentially may be exposed to precipitation...*” The “*that potentially may be exposed to precipitation*” element of this statement is excessively onerous for a small business person required to be covered by this permit and **should** be dropped. This requires Permittees to become visionaries (IBA knows of no state recognized visionaries) and is totally beyond the capability of most small business owners that must apply for this permit to comply with as there is no knowledge of what potential pollutant many will come into contact with, i.e. recycling facilities. This adds an insurmountable requirement that could easily become the basis for costly litigation that could easily force businesses to close, and eliminate jobs and revenues to the state and yet provide no value to water quality. At a minimum, the Department should replace the word “potentially” with the word “likely” to provide more clarity to Permittees.
17. S3 B3b requires Permittees to install a significant number of BMPs “...*unless site conditions render the BMP unnecessary or not plausible, and the exemption is clearly justified in the SWPPP.*” IBA recommends that there be a footnote added for each of the BMP requirements in S3 B3b(ii), S3 B3b(iii), and S# B3b(iv) that reverences the exemption to minimize confusion by Permittees.
18. S3B3(b)(i)(3)(a) requires Permittees to “...*vacuum paved surfaces with a vacuum sweeper to remove accumulated pollutants a minimum of once per quarter.*” This is an extraordinary requirement that is extremely unreasonable and detrimental to small businesses. It is a BMP that has no clear nexus to the release of any pollutant yet it can prove to be extremely costly. This is a totally unreasonable requirement that should be struck from the permit.
19. S3 B3bi(1) Calls for “*Operational Source Control BMP’s listed as ‘applicable’ in Ecology’s SWMM.*” Ecology has prepared several industry specific guidance documents that should also be allowed to meet this same requirement without the Permittee having to also go through the SWMM. This should be modified to read, “*Operational Source Control BMP’s listed as ‘applicable’ in Ecology’s SWMM or other approved manual or guidance document as listed in appendix -- of this permit.*”
20. S3 B3bi(3)(b) Calls for the Permittee to identify “...*all sources of dust...*” This is a requirement that is totally beyond the capability of most small business owners that must apply for this permit. Dust comes from both on-site and off-site sources. This **must** be rewritten to read something like, “*All source of **on-site dust (i.e. bag houses, sand blasting operations, or similar)** shall be identified*” for this to be a reasonable requirement. Otherwise, it could easily become the basis for costly litigation that could easily force businesses to close, and eliminate jobs and revenues to the state.

21. S3 B3bi(5)(h) Requires the Permittee to maintain a “...spill log.” There must be the addition of language to not require the logging of de minimis spills so that this provision reads something like, “*A spill log shall be maintained for other than de minimis spills. A de minimis spill is one that is cleaned up and is unlikely to pose a risk to human health or the environment) that includes*” See Dept of Ecology Focus Sheet 92-119.
22. S3 B3bii(1) Calls for “*Structural Source Control BMP’s listed as ‘applicable’ in Ecology’s SWMM’s.*” Ecology has prepared several industry specific guidance documents that should also be allowed to meet this same requirement without the Permittee having to also go through the SWMM. This should be modified to read, “*Structural Source Control BMP’s listed as ‘applicable in Ecology’s SWMM or other approved manual or guidance document as listed in appendix -- of this permit.’*”
23. S3 B5a Requires the Permittee to include a sampling plan that includes “...discharge to surface water, storm sewers, or discrete ground water infiltration locations, such as dry wells or detention ponds.” This appears to be a major expansion of this permit by including “or discrete ground water infiltration” Discharges to ground are covered by a totally different regulation under the UIC rules. The inclusion of “discrete ground water infiltration” is an unnecessary expansion of this permit and should be stricken.
24. S3 B5b Requires the Permittee to “*Include a discussion of representative sampling...*” The definition of “representative sampling” appears to conflict with S4 B2c that calls for, “...sample only the discharge point with the highest concentration of pollutants.” IBA believes the term “representative sample” is the correct term and the language in S4 B2c should be stricken for a number of reasons. How does a Permittee know which discharge point has the “highest concentration of pollutants?” Requiring a Permittee to identify the discharge point with the highest concentration of pollutants is clearly NOT representative. What process would the Permittee use to identify the point of “highest concentrations of pollutants?” What if there are two discharge points and multiple substances to sample for, and the concentration of one substance is highest at one sampling point while the concentration of another sample is highest at another sampling point? Which sampling point is the Permittee required to sample at? The requirement to sample at the “highest concentration of pollutants” is unworkable and **must** be stricken.
25. S3 B5d Requires the Permittee to “...determine the differences in exposure to pollutants, pollutants likely to be in each discharge, and a relative comparisons of probable pollutant concentrations.” First, this provision does not really make sense to IBA. What does, “...differences in exposure to pollutants...” mean? We at IBA cannot understand what is being asked for here to be included in the Permittee’s SWPPP. What does, “...pollutants likely to be in each discharge...” mean? Specific sites are directed by the permit to sample for specific substances, so what other “pollutants” should be they concerned about besides those they are required to sample for? What does, “...relative comparisons of probable pollutant concentrations...” mean? How is a small business person to make this determination? What is the importance of the “...relative comparison of probably pollutants...?” Why is this requirement here? This is a wide open-ended requirement with no clear way to comply. This entire provision, S3 B5d(ii), MUST be struck as it is impossible to comply with. At a minimum, we believe language similar to that contained in the EPA MSGP that contains language like “...the rationale for any substantially identical outfall determinations...” is superior and more workable for small businesses as compared to the proposed language in S3 B5d as now proposed.
26. S3 B5i What does “*Identify parameters for analysis, holding times and preservatives, laboratory quantification levels, and analytical methods*” is unnecessarily obscure. We suggest the following language instead, “*Identify parameters for analysis, holding times and preservatives, laboratory quantification levels, and analytical methods. (NOTE: In most cases this information will be provided by the laboratory the Permittee uses to analyze their stormwater samples).*”

27. S4 B1b Calls for *“The Permittee shall obtain representative samples....”* This then conflicts with S4 B2a that requires *“The Permittee shall designate sampling locations ... with the greatest exposure to significant sources of pollution.”* IBA believes the term *“representative sample”* is the correct term and the language in S4 B2a **must** be struck for a number of reasons. How does a Permittee know which discharge point has the *“greatest exposure?”* Requiring a Permittee to identify the discharge point with the greatest exposure to pollutants is clearly NOT a representative sample. What process would the Permittee use to identify the point of *“highest concentrations of pollutants?”* What if there are two or more discharge points and multiple substances to sample for (which there usually are), and the concentration of one sampling substance is highest at one sampling point while the concentration of another sampling substance is highest at another sampling point? Which sampling point is the Permittee required to sample at? The requirement to sample at the *“greatest exposure to significant sources of pollution.”* is unworkable and **must** be stricken.
28. S4 B2c Requires a Permittee to *“... the discharge point with the highest concentration of pollutants.”* This appears to conflict with S4B2a that references a *“representative sampling location.”* Please see our comments for S3 B5b.
29. S4 C Requires the Permittee to *“...ensure that analytical methods used to meet the sampling requirements ... conform to the latest revisions ...contained in 40 CFR Part 136.”* This is a grossly unreasonable expectation to impose on small business Permittees. How in the world are small business Permittees expected to comply with this requirement? Clearly, the Department knows who the Permittees are and the Department has a responsibility to inform Permittees of any changes in the analytical methods used to meet the sampling requirements contained in 40 CFR Part 136. Plus, the laboratories are approved by the Department to do stormwater sample analysis and the laboratories are responsible for the *“analytical methods.”* IBA strongly believes this provision **must** be struck as it relates to Permittees.
30. S5 A Table 2 Sets *“No Visible Oil Sheen”* as a benchmark value. This is unreasonable as a visible sheen can come from many non-petroleum sources including vegetation. In addition, in S5 Table 3 sets a benchmark value for *“total Petroleum Hydrocarbons (THC)”* at 15 mg/L which is far more appropriate and based on a reliable scientific analysis. IBA suggests two options to address this:
1. Eliminate any requirement for doing a test for Total Petroleum Hydrocarbons THP for any industry in Table 4 if there is a *“no visible sheen”* discharge, or
 2. Eliminate the *“visible sheen”* benchmark in Table 2
31. S5 Table 3 Sets a benchmark for Copper at 14 parts-per-billion in Western Washington and 32 parts-per-billion in Eastern Washington. This is an extremely low level for copper and will put many small Permittees out of business, destroy the jobs they now provide, and eliminate major beneficial environmental facilities in Washington State. This will hit particularly hard on the recycling industry (for products they do not produce but instead waste they manage for environmental benefit for the general population) at risk of failing this extremely low benchmark value as compared to the 63.6 benchmark value and the 149 action level in the current permit. A 77% decrease in this benchmark value that is also 94% lower than the action level in the current permit is extreme and **must** be reevaluated and reset at a higher level. Otherwise, there will be very high new costs to taxpayers and serious environmental damage to the state resulting from the elimination of most recycling facilities in Washington State.

The Fact Sheet for the draft permit states that the mean concentration for copper from vehicle recycling firms is 26, meaning at least half of the vehicle recycling firms in western Washington are exceeding the proposed copper benchmark by about 185%. The Fact Sheet incorrectly states, *“Potential Sources of Pollutants: Outdoor storage of engines, transmissions, radiators, batteries, brakes, power steering*

units, and differential gears which contain fluids.” One of the most common BMP’s for the vehicle recycling industry is to keep hoods or other covers in place over engine compartments to avoid contamination of stormwater. This is already a common practice in the industry. The Fact Sheet goes on to state for vehicle recycling firms “...many will be required to install active stormwater treatment systems. This is based upon *Boatyard Stormwater Treatment Study – Final Report*, March 2008 (Taylor Associates, Inc.), and Noling 2009, comments on preliminary draft ISWGP, via email May 8, 2009.” The Boatyard Stormwater Treatment Study estimated the cost of active stormwater treatment for copper at \$225,000 per acre. For the vehicle recycling industry, this will destroy any such facility required to do active stormwater treatment for copper.

In the Department of Ecology report, “**Control of Toxic Chemicals in Puget Sound Phase 2: Improved Estimates of Loadings from Surface Runoff and Roadways**, August 2008, Publication Number 08-10-084, it states that the copper in stormwater runoff from public highways is 18.7 micrograms per liter – significantly above the benchmark the Department is proposing for this permit. The 14 microgram per liter benchmark proposed for this permit is grossly unfair and inequitable to those covered by this permit. The exposure to highway stormwater runoff is millions of times greater than the runoff from the facilities covered by this permit.

In a report of public drinking water systems in Washington State, the Environmental Working Group reports in its National Tap Water Database, that public drinking water in Washington State between the years of 1998 and 2003, the highest level of copper was 1718 parts-per-billion of copper to a low of 170.5 parts-per-billion out of 237 public water supplies in Washington State. Those values are 12300% times and 1700% of the proposed copper level for the new permit for Western Washington. See the attachment to these comments for part of that report. Setting a level of 14 part-per-billion for stormwater in this permit is simply ludicrous. The same report goes on to say the major sources of copper are: “During the year 2002, 345,120,802 pounds of copper and copper compounds were released, according to a Toxics Release Inventory (TRI) report released in 2004. Industries releasing over 9 million pounds during the year included solvent recovery (nearly 10 million pounds), electric utilities (17 million pounds), metal mining (93 million pounds) and primary metals (209 million pounds). The recycling industry was not mentioned as a source. The Department of Ecology can view this 24 page report on the Internet at:

http://www.ewg.org/tapwater/statereports/state_contaminant.php?state=WA&contam=1022

32. S5 F1 Requires Permittees to manage stormwater to prevent the discharge of: “*Synthetic, natural or processed oil identified by an oil sheen...*” This is unreasonable as a visible sheen can come from many non-petroleum sources including vegetation. In addition, in S5 Table 3 sets a benchmark value for “total Petroleum Hydrocarbons (THC)” at 15 mg/L which is far more appropriate and is based on reliable scientific analysis. IBA suggests two options to address this:
 1. Eliminate this requirement for S5 F1, or
 2. Eliminate the “visible sheen” benchmark in Table 2
33. S5 F2 Requires Permittees to manage stormwater to prevent the discharge of: “*Trash and floating debris*” This is extremely unreasonable as every year in the fall months of the year, leaves fall from trees and are often floating on stormwater discharges. Also, during the year, evergreen trees shed their needles which also float on stormwater. This prohibition is unworkable and unreasonable and **must** be removed.
34. S6 This section is very confusing and IBA cannot understand what a small business Permittee must do to comply with this section. A great deal of work must be done to make this section understandable, especially to small business Permittees.

35. S7 A2 Requires Permittees to have a Certified Industrial Stormwater Manager, Certified Professional in Stormwater, or Professional Engineer conduct inspections of their facility relative to stormwater. This is a totally unacceptable requirement for small business Permittees and imposes a HUGE and disproportionate economic hardship on small business Permittees as compared to larger business Permittees. RCW 19.85 directs agencies to minimize disproportionate economic impacts of agency requirements on small businesses. The Department of Ecology own small business economic impact statement for this permit states, "...Ecology assumes a staff wage of \$22.57 per hour." Ecology also estimates the time it taxes for the inspection is ½ hour each month for a total annual cost of \$90. This estimate is ludicrous given the requirement of the person doing the inspection having to be a Certified Industrial Stormwater Manager, Certified Professional in Stormwater, or Professional Engineer. As written, this requirement is in violation of RCW 19.85 and **must** be revised. The delay in implementation date for smaller firms is an unacceptable mitigation of this provision. The Department has failed to demonstrate any need for this certification and has not even developed any criteria for this proposed certification. This certification requirement **must** be eliminated.
36. S7 B2 Requires the Permittee to make visual inspections for "...presence of floating materials, visible sheen..." As stated previously, these two requirements are extremely unreasonable and unreliable in protecting stormwater quality as they result in far too many observations that provide no net benefit to protecting stormwater contamination. As stated previously, a visible sheen can come from many non-petroleum sources including vegetation. In addition, in S5 Table 3 sets a benchmark value for "total Petroleum Hydrocarbons (THC) at 15 mg/L which is far more appropriate and based on a reliable option using scientific analysis. Plus, every year in the fall months of the year, leaves fall from trees and are often floating on stormwater discharges. Also, during the year, evergreen trees shed their needles which also float on stormwater. These two requirements **must** be removed.
37. S8 B and C Permittees will be allowed to request a waiver to implementing BMPs "at least 90 days prior to the applicable Corrective Action Deadline". Ecology then has 60 days to respond. If denied, the Permittee will be out of compliance for at least 30 days. Timelines should be provided so the Permittees can maintain compliance.
38. S8 – B, C and D Four and one-half months (about 135 days) are allowed from DMR submittal triggering the corrective action status and the requirement to install structural or treatment BMPs. This is an unreasonably short timeframe to research, secure funding, design, apply for and get permits, arrange construction, and install appropriate methods in most cases.
39. S8 – B, C and D Each of these corrective action levels allow for "...a time extension or waiver..." Given the fact that the benchmarks in this permit will likely result in a business having to go out of business because it cannot afford to install and operate the required BMP and continue to operate profitably, the waiver should clearly allow the Permittee to request a waiver from having to meet the benchmark for particular parameters due to infeasibility. This concept is supported in the Fact Sheet on page 38 where it states,
"Courts have recognized that there are circumstances when numeric effluent limitations are infeasible and have held that EPA may issue permits with conditions (e.g., Best Management Practices or "BMPs") designed to reduce the level of effluent discharges to acceptable levels:
40. S8 C3 Requires a Certification Form "...stamped by a professional Engineer..." This requirement discriminates against small business Permittees in that the cost for a stamp by a professional Engineer will be many times the percentage of sales or net profit for a small business as compared to a larger business. Getting a professional Engineer's stamp is likely to cost \$10,000 to \$50,000 depending on the issues involved. For most small business Permittee's, such a cost will put them out of business, destroy the jobs they provide and eliminate the taxes they pay to the State of Washington. This is in violation to RCW 19.85 and is totally unacceptable to IBA. The Department has a responsibility to provide small

businesses with technical assistance in meeting the requirements of S8 C in lieu of requiring a professional Engineers stamp. RCW 19.85 requires the Department of Ecology to mitigate the disproportionate cost impact of requiring a professional Engineer's stamp.

41. S8 D1a(i) Requires a small business Permittee to “*Submit a receiving water study....*” This requirement discriminates against small business Permittees in that the cost for a receiving water study will be many times the percentage of sales or net profit for a small business as compared to a larger business. Getting a receiving water study is likely to cost \$20,000 to \$70,000 depending on the issues involved. For most small business Permittees, such a cost will put them out of business, destroy the jobs they provide and eliminate the taxes they pay to the State of Washington. This is in violation to RCW 19.85 and is totally unacceptable to IBA. The Department has a responsibility to provide small businesses with technical assistance in meeting the requirements of S8 D1a(i) in lieu of requiring an engineering report. RCW 19.85 requires the Department of Ecology to mitigate the disproportionate cost impact of requiring an engineering report.
42. S8 D1a(ii) Requires a small business Permittee to “*Submit an engineering report....*” This requirement discriminates against small business Permittees in that the cost for an engineering report will be many times the percentage of sales or net profit for a small business as compared to a larger business. Getting an engineering report is likely to cost \$20,000 to \$70,000 depending on the issues involved. For most small business Permittees, such a cost will put them out of business, destroy the jobs they provide and eliminate the taxes they pay to the State of Washington. This is in violation to RCW 19.85 and is totally unacceptable to IBA. The Department has a responsibility to provide small businesses with technical assistance in meeting the requirements of S8 D1a(ii) in lieu of requiring an engineering report. RCW 19.85 requires the Department of Ecology to mitigate the disproportionate cost impact of requiring an engineering report.
43. S8 D1c, d and e Each of these provisions allows the Department to require the Permittee to get an individual permit, impose new permit requirements, or terminate coverage. None of these provisions allow for an appeal which is otherwise required by state law. Each **must** be made subject to an appeal process if sought by a small business Permittee, and that process should be referenced within each of these sections such as, “*The Permittee has a right to appeal such an order to the Pollution Control Hearings Board*”
44. S8. It appears to us that most facilities that trigger a Level 3 requirements will likely not be able to get treatment facilities designed and installed before triggering a Level 4 Corrective Action. The timing here is unreasonably short and must be extended.
45. S8.D.1.Table 6 – Ecology should allow a temporary suspension of monitoring requirements while Level 2 and 3 activities are performed. Under the current scenario those trigger a Level 2 or Level 3 response could be well on their way to triggering a Level 3 or Level 4 response before they are able to show results from their Level 2 or Level 3 corrective actions.
46. S9 A5 Requires electronic DMR reporting. About 25% to 33% of small businesses currently are not proficient with using the Internet and IBA estimates that holds true for the small businesses required to be covered by this Permit. Thus, imposing this Internet reporting requirement discriminates against small business Permittees and will result in significantly higher costs for small businesses that are not currently Internet proficient. RCW 19.85 requires agencies to mitigate disproportionate costs imposed on small businesses. The Department has a responsibility to provide small businesses with an alternative to Internet reporting of DMRs. RCW 19.85 requires the Department of Ecology to mitigate the disproportionate cost impact of requiring Internet DMR reporting. IBA stands ready to assist the Department in defining appropriate mitigation options.

47. S9 A6a This provision for reporting a DMR with “...no stormwater sample was obtained...” should be modified to allow for the reporting of “**no discharge during the quarter**” as there are numerous small business Permittees that do not have any discharge during some quarters of the year. It is VERY important for the Department to have correct information about why no sampling was done and “no sample obtained” is not the only appropriate and singular option.
48. S9 E Requires the Permittee to make the SWPPP, etc. available to the Department and the local jurisdiction. This permit is between the Department and the Permittee and this provision offers no protection to the Permittee if the “local jurisdiction” should remove or otherwise revise or deface any of the permit documents referenced. IBA recommends “**or the local jurisdiction**” be removed from this section to protect the Permittee.
49. S9 E1 (Very Important Technical Revision) Requires “*A copy all plans and records shall be provided to Ecology within 14 days of receipt of written request for the SWPPP from Ecology*” There are 3 very important problems here:
- Did the Permittee ever receive the “written request”
 - What if the Permittee is unavailable during that 14 day period, like gone on vacation or is in a hospital undergoing care, etc.
 - The provision does not make sense, it talks about all plans and records and then it states a “...written request for the SWPPP...” Plans and records and the SWPPP may well be two different sets of information and documents.
- This provision **must** be revised to read something like: “***A copy ~~all plans and records~~ of the SWPPP and associated requested documents shall be provided to Ecology within 14 days of receipt of written request (either personally served on the Permittee with signed receipt or mail delivery with signed receipt) except the 14 day requirement may be extended in cases where the Permittee has a reasonable cause for not being able to meet the 14-day production of requested plans and records...***”
50. S9 E2a Requires the Permittee to provide plans and records “...to the requestor within 14 days...” There are 4 very important problems here:
- Did the Permittee ever receive the “written request”
 - What if the Permittee is unavailable during that 14 day period, like gone on vacation or is in a hospital undergoing care, etc.
 - The provision does not make sense, it talks about all plans and records and then it states a “...written request for the SWPPP...” Plans and records and the SWPPP may well be two different sets of information and documents.
 - What if the requestor does not choose to receive or review the records within the 4 remaining days of the original 14 days of providing the requested SWPPP, etc. Is the Permittee in violation of this permit?
- This provision **must** be must be rewritten to read something like the following: “***Notify the requestor within 10 days of receipt of the written request (except the 10 day requirement may be extended in cases where the Permittee has a reasonable cause for not being able to meet the 10-day notification response requirement) of the location and times within normal business hours when the Permittee’s SWPPP and associated requested documents plans and records may be viewed and ...***” .
51. S9 E2b Requires the Permittee to “*Notify the requestor within 10 days of receipt of the written request of the location and times ... when the plans and records may be viewed...*” There are three very important problems here:
- What if the Permittee is unavailable during that 10 day period, like gone on vacation or is in a hospital undergoing care, etc.,

- The provision does not make sense, it talks about all plans and records and then it states a “...*written request for the SWPPP...*” Plans and records and the SWPPP may will be two different sets of information and documents, and
 - If the requestor does not choose to receive or review the records within the 4 remaining days of the original 14 days, is the Permittee in violation of this permit?
52. S9 E3 Requires the Permittee to “...*provide reasonable access to copying services...*” This is a totally unacceptable and unworkable requirement for many small business Permittees because many of them do not have coping equipment at their businesses. This provision must be struck.
53. S10 S 10 sets forth compliance standards for the permit. It is CRITICAL for the entire purpose of this permit that the following provisions be added to S 10 from the current permit. Otherwise, the Permittee has little to no protection from allegations that they are in violation of the permit. **“Compliance with water quality standards shall be presumed under this permit when the Permittee is:**
- 1. In full compliance with all permit conditions, including planning, sampling, monitoring, reporting, and recordkeeping conditions; and**
 - 2. Fully implementing storm water best management practices contained in storm water technical manuals approved by the department, or practices that are demonstrably equivalent to practices contained in storm water technical manuals approved by the department, including the proper selection, implementation, and maintenance of all applicable and appropriate best management practices for on-site pollution control.**
54. S 13 sets forth the conditions for a Notice of Termination. In the past, small firms have applied for coverage under the permit and sought to comply with the permit. Upon seeking technical assistance from the Department of Ecology, the Department advised the Permittee that they had no discharge and thus had no need to be covered by the permit. S13 must be revised to allow a Notice of Termination for such a situation.
55. S13 A1 This sets a condition for approving a Notice of Termination of the permit as requested by a Permittee. Clarification is needed as follows:
1. *All permitted stormwater discharges **to surface waters from the permitted facility** associated with industrial activity that are authorized by this permit ~~cease because the industrial activity has have~~ ceased, and no significant materials or industrial pollutants remain exposed to stormwater **that will be discharged to surface waters.***
- This clarification is critically important because this permit applies to stormwater discharges to surface waters. There are other existing state regulations for stormwater discharges underground and there should not be confusion or conflicts between this permit and those underground discharge regulations now in place.
56. G1 Defines a violation of the permit as, “*Any discharge of any pollutant more frequently than, or at a level in excess of that indentified and authorized by the general permit, shall constitute a violation of the terms and conditions of this permit.*” This is a totally unacceptable provision of this draft permit. The basic concept behind this permit is adaptive management if the Permittee exceeds a benchmark. Yet this provision immediately defines any Permittee that exceeds a benchmark to be in violation of the permit. This provision must be changed to recognize the adaptive management element of this permit. Consider language such as, “*Any discharge of any pollutant more frequently than, or at a level in excess of that indentified and authorized by the general permit, shall constitute a violation of the terms and conditions of this permit except when the facility is in compliance with the provisions of S8 of this permit.*”
57. G3 C Allows a representative of the Department of Ecology to enter upon the premises where the discharge is located and inspect. This **must** be revised to ensure proper safety requirements are met. An inspector must not be allowed to wander around a facility without proper safety precautions. This

provision must be revised to read something like: *“To inspect, at reasonable times, any facilities, equipment required under this permit, **provided the representative has received all necessary safety briefings and is using all required personal protective safety equipment**”* This is required under both federal and state safety laws (RCW 49.17.070 and WAC 296-800-14005). Why would the Department of Ecology put its inspectors in harms way to enter a facility not knowing what equipment may be used, .i.e. a forklift or hoists where the inspector could be injured. Why would the Department of Ecology put its inspectors in harms way to enter a facility not knowing what equipment may be used, .i.e. a forklift or hoists where the inspector could be injured, and break another state law for worker safety?

58. G3 D Allows a representative of the Department of Ecology to enter upon the premises where the discharge is located and do sampling or monitoring. This **must** be revised to ensure proper safety requirements are met. An inspector must not be allowed to wander around a facility without proper safety precautions. Ecology, as an employer, has a statutory responsibility to protect its employee’s safety. This provision must be revised to read something like: *“To sample or monitor.....at any location.....authorized by the Clean Water Act, **provided the representative has received all necessary safety briefings and is using all required personal protective safety equipment**”* This is required under both federal and state safety laws (RCW 49.17.070 and WAC 296-800-14005). Why would the Department of Ecology put its inspectors in harms way to enter a facility not knowing what equipment may be used, .i.e. a forklift or hoists where the inspector could be injured, and break another state law for worker safety?
59. G5 B Revocation of Coverage Under The Permit Ecology can require a discharger to apply for and obtain an individual permit. Requiring a small business to apply for and get an individual permit is an extremely onerous requirement for small businesses. The Department failed to even evaluate this requirement in its small business economic impact statement. This provision should either be dropped entirely or provide an exception for a small business with 50 or fewer employees.
60. G 13 Penalties for Violating Permit Conditions This provision coupled with the provision in G1 that. *“Any discharge of any pollutant more frequently than, or at a level in excess of that indentified and authorized by the general permit, shall constitute a violation of the terms and conditions of this permit.”* Is unacceptable as written and fails to recognize one of the key concepts in this permit, adaptive management. The recommended revision to G1 is critical to correct this issue.

Primarily Technical Issues

61. S2 C IBA suggests you split the *“Permit coverage or Permit Modification Timeline”* as they are significantly different and as written are likely to confuse many smaller businesses required to be covered by this permit
62. S3 A6 Calls for the Permittee to *“...sign and certify all SWPPP’s, inspection reports....”* IBA recommends you provide references such as, *“inspection reports (see S9), Level 1, 2, and 3 SWPPP Certification Forms (see S8)...”* to make the permit easier for Permittees to read.
63. S4 B2a The reference to Sc B5 appears to be incorrect
64. S9 B1b Requires that the Permittee retain the following documents onsite, *“A copy of the permit coverage letter”* There is a conflict between S9 B1b and S2 A that provides for automatic coverage under this permit for those covered under the current permit. Thus, S9 B1b must be modified to read something like, *“A copy of the permit coverage letter **unless the Permittee was automatically covered under provision S2 A of this permit.**”*
65. S9 B1f Requires a Permittee keep records of *“All equipment calibration records”* Clearly, this is intended to apply to only stormwater equipment calibration records and not calibration records for other

equipment for other purposes. IBA recommends this be revised to read, “*All equipment calibration records for equipment required **to comply with this permit, if any**”*”

66. S9 B1h Requires a Permittee keep “*All original recordings for continuous sampling*” Clearly, this is intended to only apply to those who have done or been required to do continuous sampling. IBA recommends this be revised to read, “*All original recordings for continuous sampling, **as required, if any**”*”
67. S9 B1k Requires a Permittee keep “*Records of all data used to complete the application for this permit*” Clearly, this is intended to only apply to those who have used some records to complete this application. IBA recommends this be revised to read, “*Records of all data used to complete the application for this permit, **if any**”*”
68. S9 D1b Requires a Permittee to notify the Department immediately of the Permittee’s inability to comply with any terms of the permit. The Department needs to include the appropriate phone number and address in this part of the permit for making that notification. IBA strongly recommends this information be in the permit and not in a permit coverage letter or other such document.
69. S9 D1c Requires a Permittee to submit a detailed written report to the Department of the Permittee’s inability to comply with any terms of the permit. The Department needs to include the appropriate address in this part of the permit for where that written report is to be sent. IBA strongly recommends this information be in the permit and not in a permit coverage letter or other such document.
70. G8 Duty To Reapply There is a blank between “at least __ days...” that needs to be filled in.
71. Appendix 2 Definitions There is no definition for “adaptive management” and there should be as the term is used in the permit and is a key concept in the design of this permit.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Gary Smith', with a stylized flourish at the end.

Gary Smith
Executive Director