



July 15, 2009

Jeff Killelea  
Washington State Dept. of Ecology  
Water Quality Program  
P.O. Box 47600  
Olympia WA 98504-7600

**RE: Draft Industrial Stormwater NPDES and State Waste Discharge  
General Permit**

Dear Mr. Killelea:

The purpose of this letter is to provide comments from the Port of Seattle and the Washington Public Ports Association (WPPA) on the Draft Industrial Stormwater NPDES and State Waste Discharge General Permit (the "Permit").

As you know, I have represented the Port of Seattle and WPPA as an active participant in Ecology's Industrial Stormwater External Stakeholder Workgroup. We applaud Ecology's use of this group as well as its decision to hire a facilitator to resolve the complicated issues associated with this permit. We believe that this workgroup has been a positive and constructive endeavor.

In general, the ports support the efforts to improve stormwater put forth in the permit. Improvement to stormwater discharges and the associated protection of waters of the State is a critical goal for Washington's ports. However, environmental regulations have the potential to create significant economic impact to businesses.

The Industrial Stormwater NPDES permit has the ability to create a major economic impact to ports, port tenants and other businesses, particularly in today's economic climate. While we are supportive of this permit, there is one significant part that remains fundamentally unworkable. This concerns the requirements and timelines provided for implementing treatment technologies in Section 8. We agree that treatment of stormwater discharges is often necessary and appropriate, where such treatment is reasonably achievable. However, we do not believe that the timing for implementation of treatment is reasonable or that the technology to achieve the proposed benchmark is affordable.

These comments are submitted in an attempt to achieve environmental improvements while balancing the economic need. We appreciate the opportunity to submit these comments.

## Overall Comments

### ***Permit Organization***

We appreciate the effort that Ecology made in reorganizing this permit. It will certainly help permittees understand what is required. In addition, many have commented on how much easier it is to find what's needed in the permit.

## Specific Comments

*Comment #1: S8. CORRECTIVE ACTIONS - Table 6: Corrective Action Timelines*

### ***Background and Comments***

Section S8.C contains the Corrective Actions that are required for specified facilities that exceeded benchmarks for a specified period of time. Once a facility is at Level Three, it must incorporate treatment technologies into its stormwater system. Under subsection (4), the permittee must “fully implement” the treatment BMPs by the deadlines listed in Table 6. There are three problems with these requirements.

The first is that the new permit requires that Corrective Actions be triggered when ***any*** benchmark is exceeded, as opposed to the same benchmark being exceeded multiple times. This significantly increases the likelihood of Corrective Actions being triggered when compared that of a single pollutant benchmark being exceeded multiple times.

The second is that Section S8 requires these technologies to be implemented in an unreasonably short period of time.

The third is that, while Ecology has proposed a solution to these problems in the form of a *Modification of Permit Coverage* to handle this potential scenario, there is little to no information on how a permittee goes about or stays in compliance with the permit during the period of *Modification*. The term *Modification of Permit Coverage* is not even defined in the permit. What's involved in a *Modification of Permit Coverage* and what steps are needed is unclear.

To demonstrate, the following example is provided.

### ***Example Facility***

This facility has five outfalls. The facility starts sampling in January while attempting to implement operational, structural and treatment BMPs at the same time. If the facility then exceeds the benchmarks for eight consecutive quarters, the facility would be required to install treatment technology for five outfalls by the end of the first 2 years and 6 months of the permit (see attached permit schedule).

It is estimated that each outfall treatment structure would cost from \$500,000 to \$1,000,000 each. The total cost for this facility to stay in compliance with the permit would be \$ 2.5 to 5 million dollars. Given the permit schedule, this money would have to be budgeted, spent and capital improvements implemented in six months after triggering the Level 3 corrective action. For most organizations, whether public or private, this timeframe is completely unrealistic. In addition, such timing doesn't make sense because the permittee would not have had time to evaluate the operational or structural BMPs implemented in Level 1 and Level 2 (structural BMPs would not have a complete set of 4 quarters of sampling before Level 3 would be triggered). In summary, the facility would have to pour millions of dollars into its facility without completely understanding what was working and what was not. In reality, most or potentially all organizations do not have the contracting, purchasing or construction capabilities that would be required to meet this demand.

## ***Proposal***

### *Problem 1 – What triggers Corrective Actions*

Exceedances of **any** benchmark (as opposed to exceedances of the constituent four times) will move permittees quickly and potentially prematurely through the Corrective Action Levels to treatment and beyond. Different and unrelated problems that could be potentially fixed by operational bmp adjustments (sweep the site more frequently, for example) will push permittees into expensive treatment installations. A much better approach would be to continue to use the individual constituents (for example Zinc) and trigger Corrective Action once that constituent benchmark had been exceeded for four, eight or twelve times.

### *Problem 2 - Timing*

WPPA proposes the timing of Corrective Action implementation be changed to an achievable approach. Given the high likelihood that many permittees will head quickly to Corrective Action Level 3 and potentially Level 4, it is critical that the corrective action level implementation be realistic. Once a level is triggered, permittees should be allowed one full year to implement the Corrective Action (see attached schedule). Sampling should continue to be done during the implementation period, but should not trigger the next level until full implementation of the current triggered level is completed, one year later. Sampling that would trigger the next level or verify that additional corrective action is not needed would begin after the implementation period. If one year is insufficient, the permittee could negotiate a *Modification of Permit Coverage*. If additional time is allotted, it is hoped that this would significantly reduce the need for Ecology resources.

### *Problem 3 - Modification of Permit Coverage*

Guidance, realistic timelines and permit language needs to be provided to allow permittees to understand what's required to obtain a modification of permit coverage. If the permit is going to require expenditures in the levels outlined in

the permit, permittees need to be able to negotiate a reasonable compliance schedule with Ecology.

***Comment/Proposal Intent***

The intent of this proposal is to allow the permittee time to implement corrective actions and then sample to determine effectiveness of the new installed BMPs before moving the permittee to the next corrective action level. Particularly in this economy, money for these improvements is likely not available. Design, permitting, bidding and construction will also take time beyond six months. Many port properties are along the shoreline and require extended permit timeframes. Twelve months should be the minimum amount of time to implement a corrective action. Sampling should continue during implementation to begin the evaluation of actions, but not trigger the next Corrective Action for a year to allow completion of implementation. This is critical, given the variability of stormwater sampling and the extremely low level benchmarks, to allow the permittee to complete an action and assess its effectiveness before being forced to implement additional corrective actions.

In addition, a negotiated schedule that would allow small business with extremely limited resources to create a schedule that would allow these businesses to avoid a devastating financial blow.

***Comment #2: Summary of Permit Reports and Submittals (page 5)***

S3.A.4.c.	SWPPP, if requested by Ecology	Per Ecology request	Within 2 weeks of request
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This appears to be an incorrect reference.

***Comment #3: S1. B. 3.***

Under S1.B.3, a facility may be deemed to be a “significant contributor of pollutants” if it “conducts industrial activity, or has a SIC code, with stormwater characteristics similar to any industrial activity or SIC code listed in S1.A. “

***Comment/Proposal***

Information on activities associated with SIC Code is unclear. It would be most helpful if Ecology could provide guidance on this in an associated guidance manual.

***Comment/Proposal Intent***

In working with businesses located on port properties, a better understanding of which activities Ecology expects to be covered would aid businesses and Ports in facilitating compliance.

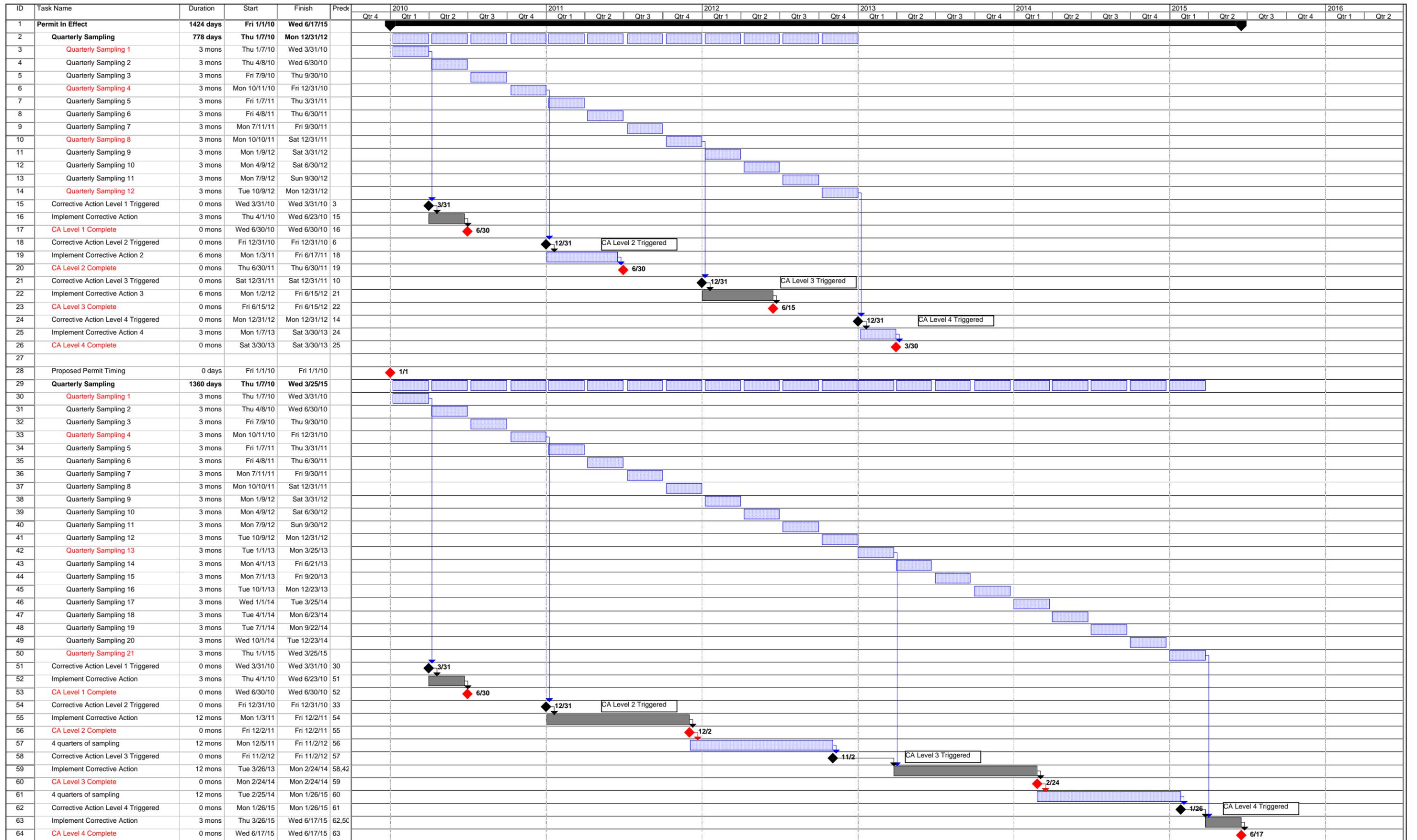
Thank you for this opportunity to comment on the Permit Modifications. If you have any questions concerning the contents of this letter, please contact Marilyn Guthrie for the Port of Seattle (206) 787-3347.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Marilyn Guthrie', written in a cursive style.

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Susan Ridgley – Port of Seattle



Project: Draft Permit Corrective Action  
 Date: Wed 7/15/09

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