DEPARTMENT OF ECOLOGY

MAR 13 2012

WATER QUALITY PROGRAM

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue, Suite 900
Seattle, WA 98101-3140

OFFICE OF
WATER AND
WATERSHEDS

MAR 12 2012

Reply to Attn of: OWW-130

Mr. Jeff Killelea
Water Quality Specialist
State of Washington Department of Ecology
P.O. Box 47600
Olympia, WA 98504-76005

Re: Comments concerning the Industrial Stormwater National Pollutant Discharge Elimination System and State Waste Discharge General Permit (WA ISGP)

Dear Mr. Killelea:

The U.S. Environmental Protection Agency Region 10 appreciates the opportunity to review and comment on the proposed modification to the WA ISGP. The purpose of the modification is to respond to the April 25, 2011 Pollution Control Hearings Board ruling. We hope you will consider the EPA's comment as you finalize this important permit.

As you may be aware, there has been some confusion in the past over the definition of *federal facility*. The Washington Department of Ecology has written storm water general permits that contain the same definition of *federal facility* that the EPA's permits contain. The EPA would like to bring to your attention the fact that the EPA intends to adjust the definition of *federal facility* in its storm water general permits as they are reissued. To ensure consistency and clarity for the regulated community, the EPA encourages Ecology to adjust the *federal facility* language in Ecology's storm water general permits as well.

The EPA has revised the definition of *federal facility* in the recently reissued Construction Storm Water General Permit (CGP) and plans on making the same revision at the time the EPA's Multi Sector Storm Water General Permit (MSGP) is reissued. Specifically, the definition of *federal facility* has been replaced with the term, *federal operator* which has been defined as an entity that meets the definition of "Operator" in the permit and is any department, agency, or instrumentality of the executive, legislative, and judicial branches of the Federal Government of the United States, or another entity, such as a private contractor, performing a construction activity for any such department, agency, or instrumentality. (See also, Page 5, Appendix A of the EPA CGP *@http://www.epa.gov/npdes/pubs/cgp2012_appendixa.pdf)*

The purpose of this change is to clarify who needs to obtain coverage under a storm water general permit in a situation where the State does not have permitting authority for federal facilities. The revised definition makes clear that where the operator is a department, agency or instrumentality of the Federal government (a "federal entity") or another party engaging in a construction activity for any such federal entity, the operator is a *federal operator* that must obtain coverage under the EPA permit. For example:

- Where a federal entity is conducting a construction activity, whether on land owned or leased by the federal government or otherwise, and that federal entity meets the definition of an "operator," the federal entity is a *federal operator* and must obtain permit coverage under the EPA permit.
- Where a federal entity has hired a contractor to complete the day-to-day activity on a construction site, but retains control over the project (e.g., site design/specifications, construction, oversight) the federal entity is a *federal operator* and must obtain coverage under the EPA permit. The contractor should determine whether it meets the definition of "Operator" under this permit and, if it does, should obtain permit coverage.
- Where a federal entity has hired a contractor to complete the day-to-day activity on a construction site and does not retain control over the project, the contractor should determine whether it meets the definition of "Operator" under this permit and, if it does, should obtain state permit coverage. The federal entity in this case must determine whether it meets the definition of *federal operator* under the EPA permit and, if it does, should obtain permit coverage.
- Where a private party is independently conducting a construction activity on federal land or property (e.g., developing an oil and gas lease, grazing lease, or ski resort lease) the private party should determine whether it meets the definition of "operator" under the corresponding state construction general permit and, if it does, should obtain coverage under the state construction general permit.

The EPA encourages Ecology to modify the WA ISGP such that it will be consistent with the revised definitions of *federal facility* and *federal operator*. If you have any questions regarding this comment, please feel free to contact Margaret McCauley of my staff at (206) 553-1772.

Sincerely,

Michael J. Lidgard, Manager
NPDES Permits Unit