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Mr. Jeff Killelea  
Washington State Department of Ecology  
PO Box 47600  
Olympia, Washington 98504-7600

**BY E-MAIL ONLY**

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**RE: COMMENTS ON DRAFT REVISIONS OF THE 2015 INDUSTRIAL  
STORMWATER GENERAL PERMIT**

Dear Mr. Killelea:

BNSF Railway Company (BNSF) has prepared this letter to provide comments on the Washington State Department of Ecology (Ecology) Draft National Pollutant Discharge Elimination System (NPDES) and State Waste Discharge General Permit for Stormwater Discharges Associated with Industrial Activities (Industrial Stormwater General Permit [ISGP]) dated November 19, 2014. The *Industrial Stormwater General Permit–Fact Sheet Public Comment Draft* dated May 7, 2014, prepared by Ecology, also was reviewed, and is referenced in the comments provided as the ISGP Fact Sheet.

The proposed revisions to the ISGP are listed in **bold font** followed in *italics* by BNSF comments regarding the proposed change.

**1. Ecology's proposed revision to Special Condition S3.B.4.i. 4): c) Locate spill kits within 25 feet of all stationary fueling stations, fuel transfer stations, and mobile fueling units, and used oil storage/transfer stations. At a minimum, spill kits shall include:**

*BNSF Comment. The addition of "and used oil storage/transfer stations" to this Special Condition requires that spill kits located at used oil storage/transfer stations contain the items specified in the ISGP even if the items are not necessary. For example, many used oil storage/transfer stations are located within buildings or in storage units and are not in the vicinity of storm drains; thus, there is no need for "a storm drain plug or cover kit" as listed as a minimum requirement in the ISGP. A preferred statement is "At a minimum, spill kits shall include oil absorbents capable of absorbing 15 gallons of fuel or oil and other materials as appropriate to protect stormwater from spilled materials."*

**2. Ecology's proposed revision to Special Condition S3.B.4.v. The SWPPP shall describe the include BMPs necessary to prevent the erosion of soils and other earthen materials (crushed rock/gravel, etc.) and. The SWPPP shall include BMPs to prevent off-site**

**sedimentation and violations of water quality standards. The Permittee shall implement and maintain:**

- 1) Sediment control BMPs such as detention or retention ponds or traps, vegetated filter strips, bioswales, or other permanent sediment control BMPs to minimize sediment loads in stormwater discharges.**
- 2) Filtration BMPs to remove solids from catch basins, sumps, or other stormwater collection and conveyance system components (catch basin filter inserts, filter socks, modular canisters, sand filtration, centrifugal separators, etc.).**

*BNSF Comment.* The proposed edits change the original option to use Sediment Control and/or Filtration BMPs necessary to prevent erosion, and now imply that both Sediment Control and Filtration BMPs are required to be implemented. It would be more appropriate to allow either BMP as needed to accomplish the stated goal of preventing off-site sedimentation and violation of water quality standards.

**3. Ecology's proposed revision to Special Condition S4.B.2.c: ~~The exception to sampling each point of discharge in S4.B.2.c does not apply to any point of discharge~~<sup>2</sup>. However Permittees subject to numeric effluent limitations (Conditions S5.C, S6.C, & S6.D). limits must sample those parameters at each distinct point of discharge off-site.**

*BNSF Comment.* Clarification of this statement is needed with regard to required sample analysis. This Special Condition does not address a site that discharges to more than one water body, of which one water body may have a numeric effluent limit and the other water body may not have a numeric effluent limit. This statement should be clear and state, "...only the discharge to an impaired water body with a numeric effluent limit requires analysis of the specified effluent limit; analysis of stormwater discharged from the same site into a water body without a numeric effluent limit is not required."

This Special Condition also requires sampling of each distinct discharge off-site and does not allow for elimination of a sampling point even if the outfall is considered "Substantially Identical" to another outfall on the site. This requirement would be extremely burdensome for sites with multiple discharges, and does not take into account the multitude of reasons that discharge locations are not sampled when another outfall is "Substantially Identical." A few of the reasons that a discharge location is not or cannot be sampled include:

- 1) Access issues related to facility operations;
- 2) Access issues related to personal safety;
- 3) Discharge locations affected by tidal influences; and
- 4) Discharge locations impacted by off-site activities or influences.

The provision for determining whether discharge points are Substantially Identical should apply to benchmark parameters as well as numeric effluent limits. When outfalls are considered Substantially Identical, the outfalls share similar characteristics, and therefore have substantially identical pollutant concentrations in stormwater discharge. The outfalls must have similar general industrial activities, implement the same BMPs, have the same type of materials exposed to stormwater, and have similar types of impervious surfaces. There is no reason to

*assume that a constituent would have different concentrations in a Substantially Identical outfall; therefore, it is not necessary to require permittees to sample parameters with numeric effluent limits at all outfalls if some of the outfalls are Substantially Identical.*

*In addition, based on the comment noted on page 40 of the ISGP Fact Sheet, “The Board concludes that the general sampling requirements of the ISGP are valid, both with respect to the amount of required sampling, and the provisions that allow averaging of such samples.”*

**4. Ecology’s proposed revision to Special Condition S5.B.1. In addition to the requirements in ~~Table 2~~, Table 2, all Permittees identified by an industrial activity in ~~Table 3~~ Table 3 shall sample stormwater discharges as specified in Condition S4 and in ~~Table 3~~. Table 3.**

**Proposed revision to Table 3      6. Transportation (40xx – 44xx, except 4221 -25) Petroleum Bulk Stations and Terminals (5171) And requires sampling for Petroleum Hydrocarbons (Diesel Fraction) or NWTPH-Dx.**

*BNSF Comment. Addition of NWTPH-Dx analysis to the Transportation Sector is not necessary. Ecology is proposing analysis of petroleum hydrocarbons for the Transportation Sector based on a statement in the ISGP Fact Sheet that states that it is in “Ecology’s best professional judgment that these transportation-related pollutants are reasonably likely to be exposed to stormwater with the potential for discharge to surface waters.” There is no quantitative documentation provided by Ecology that Transportation facilities contribute petroleum to stormwater at higher concentrations than do other operations. On the contrary, page 42 of the ISGP Fact Sheet contains a notation that the Herrera Evaluation recommended elimination of sampling and analysis of oil and grease from the permit due to limited exceedance of the oil and grease benchmark, and instead recommended implementation of assessment of petroleum contamination using visible oil sheen. Ecology followed the recommendation, and visible oil sheen was added as a benchmark to the 2010 ISGP.*

*One fact to consider regarding facilities that store more than 1,320 gallons of petroleum is that the facilities are required to comply with Federal Oil Pollution Prevention regulations (Part 112 of Title 40 of the Code of Federal Regulations), which include implementation of Spill Prevention, Control, and Countermeasures (SPCC) Plans. Facilities with SPCC Plans follow and implement inspection schedules to ensure that storage and handling of oil is properly conducted and controlled. Due to this extra level of attention, these facilities are potentially less likely to expose stormwater to petroleum than facilities that may have smaller quantities of oil and are not required to implement SPCC Plans.*

**5. Ecology’s proposed revision to Special Condition S6.C. Additional Sampling Requirements and Effluent Limits for Discharges to ~~Certain 3030(d)~~ listed Impaired Waters and Puget Sound Cleanup Sites.**

*BNSF Comment. Implementation of this type of modification requires additional research and data, and should be delayed until the next permit cycle in 2020 at a minimum. A number of issues associated with the changes proposed to this section of the ISGP will be commented on here, specifically, the definition of Puget Sound Sediment Cleanup Sites, and the fact that at this time, permittees do not know what effluent limits will be imposed on their facility.*

*Puget Sound Sediment Cleanup Sites are stated in the ISGP Fact Sheet as sites that are, or will be, undergoing cleanup under the authority of the Model Toxics Control Act and or Comprehensive Environmental Response, Compensation, and Liability Act. The phrase “are, or will be” is extremely open-ended, and would potentially allow addition of numeric or narrative effluent limits to a permittee’s individual permit at any time during the permit cycle without regard to the permittee’s current status or ability to comply. Until Ecology specifically defines the locations, specific contaminants of concern, and site-specific effluent limitations of Puget Sound Sediment Cleanup Sites, there should not be requirements for additional sampling and analysis in the 2015 ISGP.*

*This Special Condition allows for the modification of an individual permittee’s ISGP, and is counter to the concept of a **General** Industrial Stormwater Permit, described on page 3 of the ISGP Fact Sheet:*

*Ecology has determined that the general permit approach to regulate industrial stormwater is appropriate for the following reasons:*

- A general permit is the most efficient method to handle the large number of industrial stormwater permit applications;*
- The application requirements for coverage under a general permit are far less rigorous than individual permit application requirements and more cost effective;*
- A general permit is consistent with EPA's four-tier permitting strategy, the purpose of which is to use the flexibility provided by the Clean Water Act in designing a workable and reasonable permitting system; and,*
- A general permit is an efficient method to establish the essential regulatory requirements that are appropriate for a broad spectrum of industrial facilities with similar pollutant-generating activities.*

*In most cases, the draft general permit will provide sufficient and appropriate stormwater management requirements for discharges of stormwater from industrial sites.”*

*By modifying this Special Condition in this manner, Ecology is not allowing the permitted community time to conduct evaluations of facility operations and discharges with regard to new parameters prior to implementing effluent-based limitations that may lead to potential violations. At this time, Ecology has not provided evidence that the permittees are sources of contamination to the Puget Sound Sediment Cleanup Sites; however, by implementing compliance of an effluent limit, there is an assumption that the facility is a source, and is required to share in the cleanup of the impacted waterway.*

**6. Ecology’s proposed revision to Special Condition S6.C 1. b For purposes of this condition...or Total Suspended Solids (TSS) if the waterbody is 303(d)-listed a Puget Sound Sediment Cleanup Site or Impaired (Category 5) for any sediment quality parameter at the time of permit coverage.**

*BNSF Comment. The Total Suspended Solids (TSS) effluent limit of 30 milligrams per liter (mg/l) is too low, and again, Ecology is not allowing the permitted community time to conduct evaluations of facility operations and discharges prior to implementing effluent-based limitations that may lead to potential violations. An effluent limit of 30 mg/l TSS is extremely*

low, and can be exceeded even if the facility is passing the current Turbidity benchmark of 25 nephelometric turbidity units, the current measurement of sediment in stormwater. If a TSS effluent limit is implemented in the next 2015 ISWGP, facility upgrades currently underway or planned for installation in 2014 and 2015 to address current benchmarks may not be adequate, or may be delayed until permittees can confirm that the upgrades will meet future numeric effluent limit.

A tiered and phased implementation strategy based on known and defined parameters would be a preferred approach. Ecology should identify specific impaired water bodies with clear boundaries, establish discharge parameters for them, and allow a reasonable timeline for compliance. The proposed revision should not be implemented in the 2015 permit issuance.

**7. Ecology's proposed revisions to Special Condition S6.C.2. Permittees discharging to a Puget Sound Sediment Cleanup Site shall implement additional storm drain line cleaning BMPs, solids sampling, and reporting, in accordance with this section:**

*BNSF Comment.* The addition of this Special Condition is unnecessary. Cleaning of catch basin sumps is required under S3.B.a of the ISGP, and maintenance of oil-water separators and conveyance systems is an Applicable Operational Source Control BMP in Section 2.1 of Volume 4 of the February 2005 Western Washington Stormwater Manual. These BMPs should already be included in Stormwater Pollution Prevention Plans and conducted at permitted facilities.

To meet the reduced benchmarks of the 2010 ISGP, most if not all permittees have cleaned stormwater conveyance systems, and are continuing to maintain systems on a regular basis. They should not be subjected to additional cleaning, reporting, sampling, and expense beyond what is already required. In addition, for those maintaining their stormwater conveyance system, the additional expense and complication of requesting a waiver through a permit modification to prove the system is clean are not warranted.

If a permittee is maintaining a clean system, it is difficult to collect enough solids for analysis for all of the analytes listed in Table 7. The list includes parameters beyond those generally necessary to profile the sediments for disposal, and again, is an additional cost to the permittee.

Catch basins, sumps, grit chambers, and oil-water separators are designed to remove contaminants from stormwater prior to discharge. Contaminants found in sediment collected from these structures do not necessarily mean that the facility is a source of the contaminant to a water body. On the contrary, it implies only that the structures are working as designed.

**8. Ecology's proposed revision to Special Condition S9.E.1.c. Submit a detailed written report to Ecology within ~~30~~ 5 days unless Ecology requests an earlier submission.**

*BNSF Comment.* The 30-day reporting requirement should not be changed. In accordance with S9 E, Ecology must be immediately notified if the permittee is unable to comply with any terms and conditions of the permit that may endanger human health or the environment or exceed a numeric effluent limitation in the permit. A detailed written report must then be submitted to Ecology. Submission of a detailed report within 5 days is unreasonable. The permittee may not have time to fully identify the reason for the exceedance within that time frame, and the 5-day requirement does not allow for weekends and holidays. A detailed report often will be generated

*by an outside consultant, provided for internal review, and reviewed by a number of individuals prior to submittal. The 5-day limit to generate the report is not necessary or realistic.*

**9. Ecology's Special Condition S4. B. 6. The Permittee may suspend sampling for one or more parameters based on consistent attainment of Benchmark values when:**

- a. Eight consecutive quarterly samples, collected after the effective date of this permit, demonstrate a reported value equal to or less than the benchmark value.**

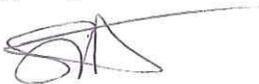
*BNSF Comment. Permittees who suspended sampling based on consistent attainment of benchmarks prior to issuance of the 2015 permit should not be required to resume sampling for eight consecutive quarters. Eight consecutive quarters is excessive for a facility that has already shown that BMPs and operations implemented at the facility are protective of stormwater discharge. Four quarters of consistent attainment is adequate to reestablish proof that facility operations consistently meet benchmark values.*

*If facility operations and BMPs do not change over the course of time that the ISGP is reissued, there is no reason that the concentration of contaminants in stormwater would change. In addition, by this time in the ISGP cycle, many facilities have implemented or constructed treatment facilities, many of which do not discharge quarterly (e.g., a retention pond). Because the permittee cannot count quarters of no discharge toward the consecutive attainment calculation, there is a potential that the permittee may never reach a point in the permit cycle when sampling may be suspended. Therefore, requiring a facility with a proven record of compliance to sample for eight consecutive quarters (a minimum of 2 years) is excessive, and should be changed to a maximum of four quarters.*

As a general comment, Ecology should have taken the opportunity to modify the permit language and incorporate the *Industrial Stormwater General Permit Frequently Asked Questions* into the 2015 ISGP to clarify many of the questions that still remain in the body of ISGP text. The modifications that have been made do nothing to clarify or provide additional guidance to the permittee, and likely will only add further "Frequently Asked Questions" to a document that is considered only "guidance and does not modify or otherwise change the permit requirements in the Industrial Stormwater General Permit".

BNSF appreciates the opportunity to provide comment on the Draft ISGP.

Regards,



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