



July 10, 2014

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

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), released for public comment on May 7, 2014. We appreciate the efforts that you have taken to ensure that the proposed changes to the ISGP are well communicated to the public and permittees, and that you have afforded us this opportunity to provide comments.

The Pacific Merchant Shipping Association (PMSA) represents container marine terminal operators (MTOs) and shipping lines that call the West Coast. MTOs are tenants of the port authorities, and it is the MTOs who are typically the permittees under the ISGP. While our industry prides itself on environmental stewardship and continues to find ways to improve our performance, we have been struggling for years with the uncertainty surrounding stormwater runoff requirements under the ISGP. This is one of the biggest regulatory challenges facing the shipping and logistics industry and how it impacts port competitiveness.

The ISGP was written to define requirements for typical industrial and manufacturing sites – relatively small properties on which intensive manufacturing activities are conducted. Marine terminals are very different, they are extremely large transportation-focused properties on which only very small areas are used for traditional “industrial” uses. At these facilities, it is almost impossible for marine terminal operators to comply with the Washington ISGP while maintaining competitive terminal economics. Our members take their responsibilities regarding protection of water quality very seriously. However, it is obvious that in order for them to implement the stormwater management practices that protect Puget Sound water quality, the ISGP responsibilities must be achievable and reasonable within their business contexts. The costs associated with increasing requirements of the ISGP significantly affect their ability to continue to provide import and export opportunities for Washington businesses and critical living-wage jobs in Washington's maritime industry.

Pacific Merchant Shipping Association

World Trade Center 2200 Alaskan Way, Suite 160, Seattle, WA 98121 phone (206) 441-9700 fax (206) 441-0183

The 2015 proposed ISGP includes more proposed changes that, if implemented, would continue to increase costs and uncertainties for permittees, and in some cases would make brand new treatment system investments obsolete.

The comments provided below are focused 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 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 would imply 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. It should be understood that 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

While the addition of TPH-dx at transportation facilities theoretically makes sense, transportation facilities are 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. The current ISGP requires a visual inspection for oil/sheen during routine inspections and sampling. ***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. Sampling for TPH-dx is particularly burdensome as it cannot be accomplished with automatic sampling devices, and requires additional manpower.

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 problematic. Industrial waterfront facilities (including the majority of marine terminals in the state) are being targeted for additional monitoring with significant cost burden and feasibility concern 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. 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.

- Based on Ecology description at the ISGP workshops, we understand that the TSS effluent requirement would 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. This is not clearly stated in the draft 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 outfalls that discharge to most urban waterbodies.
- As written, the permit would require quarterly sampling of each 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 the “substantially identical” exemption would not apply, terminal operators would need to sample all discharge points on a quarterly basis. In some cases this could be 10-20 sampling locations at one facility. This is not practical or useful. 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, facilities could not discontinue sampling based on the consistent attainment clause, as stated in Permit Condition S4.B.8. 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, why should it not 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 this requirement to sample TSS at all outfalls was

promulgated 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. Table 6 (and footnote A of Table 6) have 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 many cases, the 303(d) sediment listings are for “sediment bioassays” that are not tied to specific particulate loading. 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. The fact sheet for the 2015 ISGP permit describes why numeric effluent limits are not applied to waterbodies that are 303(d) listed due to contaminated fish tissue or bioassessment, 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 which target ISGP benchmark parameters including turbidity, significantly reduce the risk that that 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. 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.*** 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 this TSS effluent limit, with associated sampling and compliance requirements, is to be placed 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 who 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 fully inappropriate to single out industrial permittees for this requirement.

- Terminal operators 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. Many facilities are in the process of installing systems by September 2014. With the addition of TSS, operators could be forced to modify existing or already-designed systems and/or to 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 unjustified, particularly 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.

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 was to be instituted for ISGP permittees, it should apply fully to municipalities and all upstream contributors that discharge to the water body.

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 may 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 confirming that the permittee is in compliance with the ISGP. This should be the whole point of an AKART determination. However, the way the 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 – at any cost. With this definition, “feasible” is not the same as AKART, which uses the term “reasonable” which 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 documentation of AKART – which by definition is “all known, available and **reasonable** methods of prevention, control and treatment” – all that can be reasonably expected for a permittee to implement. This change would make the whole process internally consistent and respectful of permittee real-world constraints and Ecology’s technical evaluations. Without this change, the process is inconsistent, unrealistic, and puts Washington’s ports at a significant competitive disadvantage to California’s ports which operate under a much more reasonable permitting process.

Support for Comments Provided by Washington Public Ports Association

WPPA has submitted a comment letter to you, which includes several suggestions for improvement to the Draft ISGP permit. We support the comment letter that has been submitted by WPPA, and endorse their suggestions.

Support for Comments Provided by Brad Jones of Gordon Thomas Honeywell

Attorney Brad Jones, of Gordon Thomas Honeywell, has also submitted a comment letter to you, which focuses on concerns regarding the definitions of “facility”, and “industrial activities” at “transportation facilities”. We additionally support his comment letter and share his concerns regarding the scope of ISGP coverage at transportation facilities. This is a key issue for our membership, as there is a stark difference between how this issue is 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. This is a significant issue for Washington state economic competitiveness in maritime trade.

Responsibility for Non-Industrial Sources Including Air Deposition

There is one other primary difference between the Washington ISGP and California regulations that significantly affects our membership. 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 as generated by on-site non-industrial sources. The California ISGP includes a process for “Non-Industrial Pollutant Source Demonstration” (SWRCB Industrial

General Permit, Section XII D.2.b). 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 and consistent with Governor Inslee's statements on July 9, 2014 focusing "upstream" where pollutants are initially introduced (see his example on a Washington state newspaper recycling company). It is appropriate to hold industrial permittees to strict standards that govern those sources that are not under their control. It is inappropriate to penalize businesses for ubiquitous sources that are present in the urban environment. ***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.

Thank you for your attention to these comments. The men and women of the maritime community care greatly about the marine environment where they live, work, fish and play. These are challenging environmental and economic 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.

Sincerely,

A handwritten signature in blue ink that reads "MR Moore". The letters are stylized and connected.

Captain Michael Moore
Vice President