

July 13, 2014

Mr. Jeff Killilea, Water Quality Specialist  
Washington State Department of Ecology  
P.O. Box 47696  
Olympia WA 98504-7696

Sent electronically to <mailto:industrialstormwatercomments@ecy.wa.gov>

Dear Mr. Killelea,

Thank you for the opportunity to review and comment on the 2015 – 2020 Draft Industrial Stormwater General Permit (ISGP). The Washington Public Ports Association (WPPA) appreciates the State of Washington Department of Ecology (Ecology)'s efforts to limit changes to the existing ISGP because many of our members and their tenants are in the process of implementing Level 3 Corrective Actions. Extensive revisions at this time would result in chaos and undermine Ecology's water quality goals.

As you know, ports are sub-divisions of the State of Washington, directed by locally-elected officials and most often located immediately adjacent to historically-impacted water bodies. These factors have shaped our members' long commitment to environmental stewardship and water quality at the facilities we operate. We are proud of our environmental track record and reputation for pragmatic action in the context of our mission to create jobs in Washington, helping to maintain our economic competitiveness with other regions of the country while limiting environmental impacts.

We respectfully offer the following comments on the Draft ISGP for Ecology consideration and recommendations where we see improvements can be made to both enhance the environment and support Washington trade. Our comments are listed in the order of our concern, beginning with the most important.

**Section S6.C. Additional Sampling Requirements and Effluent Limits for Discharges to Certain 303(d)-listed Impaired Waters and Puget Sound Cleanup Sit**

The Model Toxics Control Act (MTCA) provides the Toxics Cleanup Program the authority to regulate sediment cleanup actions for waters measured to exceed Washington Sediment Management Standards. An existing and robust regulatory process is in place to ensure that hazardous waste sites are identified and restored by the responsible parties. WPPA is concerned with the Section S6.C. provisions of the Draft ISGP because a linkage between these two complex programs serves neither Ecology nor regulated parties effectively.

The ISGP is a discharge permit. WPPA does not see a nexus between the "release to the environment of a hazardous substance (MTCA)" and "discharge of stormwater runoff (ISGP)" unless all stormwater runoff is to be defined as a release of a hazardous substance. By the logic of the Draft ISGP, ports would not need a stormwater discharge permit; they would need an

open-ended Agreed Order or Consent Decree for a cleanup action. It is hard to imagine that this is Ecology's intent.

As a matter of record, unless an industrial facility is currently subject to an EPA established TMDL, TSS has not been sampled at most industrial facilities. It is a leap from no regulatory requirements to setting an effluent limit under the Clean Water Act. As a result WPPA expects substantial confusion among permittees regarding effluent limits. Many simply will not be able to distinguish the difference between the timelines for corrective actions required by exceeding benchmarks and the immediate actions required for exceeding of an effluent limit.

It is especially important in the context of Puget Sound Cleanup sites to note that any re-contamination that may occur is largely due to upstream municipal sources. Ecology's own published science makes this point clear. The expenditure of public and private resources demands that the actions taken are likely to have the greatest impact on clean water. The Draft ISGP is not transparent in its analysis of this issue.

The new Total Suspended Solids (TSS) effluent limit proposed in Ecology's Draft ISGP (Section S3.B.4.b.v.) is a significant departure from the existing ISGP, and from previous policy concerning the management of stormwater generally, that would significantly impact Washington's port community and all others regulated by the ISGP. We do not believe that departing from an approach to stormwater regulation based on benchmarks and best management practices (BMPs) can be justified as either beneficial to water quality or as a prudent policy decision. In any event, both the change to use of an effluent limit, and the effluent limit itself, appear arbitrary as Ecology has not provided data to justify a radical departure from the current approach.

Even if Ecology were to demonstrate that an approach to stormwater regulation based on effluent limits rather than benchmarks and BMPs was warranted, it would be far more logical to gather data on TSS impacts on sediment health prior to establishing an effluent limit for facilities that have never been asked to monitor for this parameter. In addition, the Environmental Impact Statement developed for this permit does not appear to have incorporated an analysis of this element. As a result, we ask for an open discussion of the data underpinning this permit requirement prior to including the in the ISGP.

WPPA would like to know the extent to which industrial sources are responsible for sediment contamination relative to non-point sources, especially in comparison to other sources. In an AKART-based regulatory scheme, establishing a new effluent limit prior to having a firm grasp on both how much it would cost dischargers to meet that limit and how much good it would do in receiving water sediments, cannot be legally justified. Moreover, we are interested in Washington's strategy to address the full spectrum of sediment contamination from all sources, to the extent that it exists. Finally, we would like Ecology to engage in a policy discussion concerning the use of effluent limits instead of BMPs and benchmarks, as effluent limits bring with them a variety of new concerns, including the prospect of citizen suits to enforce limits that may not be reasonably achievable.

Controlling sediments and solids in stormwater discharges from port facilities is currently required to be implemented through several applicable (mandatory) operational and structural

source control best management practices (BMPs). With these requirements in place, it is not clear why additional permit requirements are necessary.

Given the fact that sediment cleanup levels for certain hazardous substances such as PCBs are invariably set at levels that cannot be met in urban areas (e.g., “natural background” standards for PCBs), no matter how much cleanup and source control is provided, a requirement that all sediment contamination be prevented will itself be impossible to achieve. Again, in a regulatory system that is fundamentally based on the imposition of available and reasonable technologies, imposing a requirement that is likely impossible to achieve is both bad policy and legally unsupportable.

WPPA requests that Ecology step back from the proposed TSS effluent limits, and work with stakeholders to better explain the regulatory rationale and scientific basis for this new requirement, and to allow appropriate stakeholder input. In addition, to avoid differences in interpretation and to address the fact that it is impossible to “prevent” all off-site sedimentation, please replace all instances of “prevent” with “limit” or “minimize.”

### **Section S6.B. Limits on Eligibility for Coverage for of New Discharges to TMDL or 303(d)-listed Impaired Waters**

This proposed change to the permit does not provide guidance necessary for permittees attempting to identify whether their facility discharges to an impaired water body. Ecology’s mapping tool provided on the Water Quality Assessment for Washington website (<http://apps.ecy.wa.gov/wats/>) does not provide adequate guidance on what information should be used to determine facility discharges. Ecology must provide the information or tools to permittees so to clearly and easily identify those sites that trigger additional permit requirements.

WPPA requests Ecology to provide the necessary mapping tools and make them readily available for permittees prior to inserting this requirement into the permit or drop the proposed requirement. Alternatively, Ecology could be responsible for providing clear and verifiable information to permittees regarding the site-specific status of discharges from permitted facilities as part of the permit Cover Letter issued by Department of Ecology.

### **Section S6.C.2. Permittees discharging to a Puget Sound Sediment Cleanup Site shall implement additional storm drain line-cleaning BMPs, solids sampling, and reporting....**

Inspection and cleaning of facility conveyance systems is already required as an “applicable operational BMP” under BMP S417 (BMPs for Maintenance of Stormwater Drainage and Treatment Systems) in Chapter 2 of Volume IV of the SWMM.

It is reasonable to believe that most, if not all, of the impairments to the Ecology-identified water bodies were caused by historical use and legacy polluting prior to environmental regulation. There has been no scientific correlation between sediments found to be present in catch basins (CB)s and other facility conveyance systems and required cleanups.

Permittees are further exposed to potential liabilities related to sediment analysis related to third-party lawsuits and future cleanup efforts for materials that were captured in the CBs, not discharged, to surface water. Finally, CB sediments, proven to be retained onsite, are not representative of facility discharges and sampling captured sediments will only document the characteristics of material retained onsite. The cost of collecting and analyzing for COCs is very high for all facilities in Washington.

WPPA requests Ecology remove the chemistry/analytical requirement related to CB sediments. Our members are a source for a thorough technical discussion and suggested practices that may address Ecology's concerns in a different manner.

#### **Section S4.B.2.c. Point of Discharge**

As a practical matter, WPPA believes that the existing standard is appropriate for all discharges including those subject to numeric effluent limits. Ecology will receive many specific comments from our members that detail practical and employee safety related barriers to implementing this change, including lack of access under piers and tidal action that may preclude sampling during the winter months.

WPPA recommends that permittees be allowed to conduct all sampling requirements (benchmarks and effluent limit parameters) at locations identified by the permittee subject to approval by Ecology, as appropriate to comply with the meaning of "substantially identical".

#### **Section S8.D.3 Submitting engineering reports to Ecology prior to installation of treatment facilities.**

Permittees making multi-million dollar investments in stormwater treatment facilities have a vested interest to ensure the selected systems will result in compliance with the ISGP. The proposed change to the ISGP submitting the engineering report to Ecology is redundant and unnecessary given the typical process the Port is legally bound to follow to develop and redevelop new infrastructure.

Ecology should eliminate this requirement.

#### **Section S9.E Reporting Violations**

With regard to the revised reporting timeline, detailed reports take time to develop and most organizations require review of all permit related documentation. Permittees will simply require more than five days prepare and approve a detailed report that includes the steps planned to reduce, eliminate, and prevent future recurrence of noncompliance.

WPPA requests that Ecology not revise the existing permit-required notification language or timeline.

## **Conclusion**

WPPA appreciates the opportunity to provide comments to Department of Ecology on the Draft Industrial Stormwater General Permit. We further appreciate the effort Ecology has made to work on the Marine Terminals AKART Guidance Manual with our member ports. We look forward to engaging in the reissuance of the ISGP with the agency in the future.

Sincerely,

Gerald J. O'Keefe  
Assistant Director for Environmental Affairs