

SMITH & LOWNEY
— PLLC —
ATTORNEYS AT LAW

December 5, 2024

Via U.S. Mail, Email, and Electronic Filing

Honorable Scott S. Harris
Clerk of the Court
Supreme Court of the United States
1 First Street, NE
Washington, DC 20543

Re. *Port of Tacoma et al. v. Puget Soundkeeper Alliance*, Case No. 24-350

Dear Mr. Harris,

Respondent Puget Soundkeeper Alliance submits this notice of supplemental authority in support of its brief in opposition to the petition for certiorari. On December 2, 2024, the State of Washington Department of Ecology (“Ecology”) reissued the Clean Water Act permit governing this case. Ecology, 2025 Industrial Stormwater General Permit (effective Jan. 1, 2025), https://fortress.wa.gov/ecy/ezshare/wq/permits/ISGP_2025_FinalPermit.pdf. The fact sheet issued along with the permit explains the State’s basis for regulating Petitioners’ Wharf:

Ecology has determined that stormwater discharges from areas of transportation facilities where industrial activity occurs 1) contribute to a violation of water quality standards and 2) are significant contributors of pollutants. Ecology is therefore continuing to use its authority, pursuant to 33 U.S.C. § 1342(p)(2)(E) and 40 C.F.R. § 122.26(a)(9)(i)(D), to maintain the ISGP’s expansion of coverage beyond the scope identified in 40 C.F.R. § 122.26(b)(14)(viii). . . . The factual basis for Ecology’s determination includes: Ecology’s Fact Sheet for the 2009 ISGP included a characterization of stormwater discharged by the industrial groups . . . The high levels of copper and zinc in stormwater discharges from water transportation facilities represent a significant source of pollutants that contribute to a violation of the copper and zinc water quality standards.


Ecology, Industrial Stormwater General Permit Addendum to Fact Sheet: Appx. C, 11 (Dec. 2, 2024) https://fortress.wa.gov/ecy/ezshare/wq/permits/ISGP_2025_ResponseToComments.pdf

Pertinent excerpts of the new permit and fact sheet are attached to this letter.



Sincerely,

SMITH & LOWNEY, PLLC

By: 

Claire E. Tonry
Counsel for Respondent

CC: Counsel for Petitioners

Issuance Date: December 2, 2024
Effective Date: January 1, 2025
Expiration Date: December 31, 2029

INDUSTRIAL STORMWATER GENERAL PERMIT

A National Pollutant Discharge Elimination System (NPDES) and State Waste Discharge General Permit for Stormwater Discharges Associated with Industrial Activities

State of Washington
Department of Ecology
Olympia, Washington 98504-7600

In compliance with the provisions of
Chapter 90.48 Revised Code of Washington
(State of Washington Water Pollution Control Law)

and

Title 33 United States Code, Section 1251 et seq.
The Federal Water Pollution Control Act (The Clean Water Act)

Until this permit expires, is modified or is revoked, Permittees that have properly obtained coverage under this general Permit are authorized to discharge in accordance with the special and general conditions that follow.



Vincent McGowan, P.E.
Water Quality Program Manager
Washington State Department of Ecology

SPECIAL CONDITIONS

S1. PERMIT COVERAGE

A. Facilities Required to Seek Coverage Under This General Permit

This statewide permit applies to **facilities** conducting **industrial activities** that discharge **stormwater** to **surface waters of the State**. Beginning on the effective date of this permit and lasting through its expiration date, the Permittee is authorized to **discharge** stormwater and conditionally approved non-stormwater discharges to **waters of the State**. All discharges and activities authorized by this permit shall be consistent with the terms and conditions of this permit.

This permit requires coverage for new and existing point source discharges of stormwater to surface waters of the State that are associated with industrial activity identified under the coverage sections contained in S1.A.3 or listed in Table 1. This includes private entities, state and **local government facilities, and new facilities and existing facilities**. Facilities conducting industrial activities listed in Table 1 or referenced in S1.A.3 shall apply for coverage under this permit or apply for a Conditional No Exposure exemption, if eligible (Condition S1.F). The **Department of Ecology (Ecology)** may also require permit coverage for any facility on a case-by-case basis in order to protect waters of the State (Condition S1.B).

1. Facilities engaged in any industrial activities included in Table 1 shall apply for coverage if stormwater from the facility discharges to surface waters of the state. The North American Industry Classification System (NAICS) groups generally, but not always, associated with these activities are listed in Table 1.

Table 1: Activities Requiring Permit Coverage and the Associated NAICS Groups

Industrial Activities	NAICS Groups
Metal Ore Mining	2122xx
Coal Mining	2121xx
Oil and Gas Extraction	2111xx
Nonmetallic Mineral Mining and Quarrying, except Fuels (except facilities covered under the Sand and Gravel General Permit)	2123xx
Food, Beverage, and Tobacco Manufacturing	311xxx-312xxx
Textile and Textile Products Mills	313xxx-314xxx

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Industrial Activities	NAICS Groups
Apparel Manufacturing	315xxx
Wood Products Manufacturing	321xxx, 113310 ^a
Furniture and Related Product Manufacturing	337xxx
Paper Manufacturing	322xxx
Printing and Related Support Activities	323xxx, 5111xx
Chemicals Manufacturing (including Compost Facilities)	325xxx
Petroleum and Coal Products Manufacturing (except facilities covered under the Sand and Gravel General Permit)	324xxx
Plastics and Rubber Products Manufacturing	326xxx
Leather and Allied Product Manufacturing	316xxx
Nonmetallic Mineral Product Manufacturing (except covered under the Sand and Gravel General Permit)	327xxx
Primary Metal Manufacturing	331xxx
Fabricated Metal Product Manufacturing	332xxx
Machinery Manufacturing	333xxx
Computer and Electronic Product Manufacturing	334xxx
Electrical Equipment, Appliance, and Component Manufacturing	335xxx
Transportation Equipment Manufacturing (except NPDES regulated boatyards)	336xxx
Miscellaneous Manufacturing	339xxx
Warehousing and Storage	493xxx, 531130
Recycling facilities involved in the recycling of materials, including but not limited to, metal scrap yards, battery reclaimers, salvage yards, auto recyclers, and automobile junkyards.	42314x and 42393x

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Steam Electric Power Generation (Not covered under 40 CFR § 423)	N/A
Industrial Activities	NAICS Groups
Waste Management and Remediation Services, including, but not limited to, landfills, transfer stations, open dumps, and land application sites, except as described in S1.C.6 or C.7.	562xxx
Hazardous waste treatment, storage, and disposal (TSD) facilities, and recycling facilities regulated under Chapter 173-303 WAC.	562211
Treatment works treating domestic sewage, or any other sewage sludge, or wastewater treatment device or system, used in the storage, recycling, and reclamation of municipal or domestic sewage (including land dedicated to the disposal of sewage sludge that are located within the confines of the facility) with the design flow capacity of 1 million gallons per day (MGD) or more, or required to have a pretreatment program under 40 CFR §403.	22132x
Transportation facilities which have vehicle maintenance activity, equipment cleaning operations, or airport deicing operations:	
<ul style="list-style-type: none"> Railroad Transportation 	482xxx, 488210
<ul style="list-style-type: none"> Transit and Ground Passenger Transportation 	485xxx, 488490, 487110
<ul style="list-style-type: none"> Truck Transportation 	484xxx
<ul style="list-style-type: none"> Postal Service 	491xxx

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<ul style="list-style-type: none"> • Water Transportation 	483xxx, 487210, 4883xx, 532411
<ul style="list-style-type: none"> • Air Transportation 	481xxx, 487990
<ul style="list-style-type: none"> • Petroleum Bulk Stations and Terminals 	4247xx
Construction, Transportation, Mining, and Forestry Machinery and Equipment Rental and Leasing	53241x
Marine Construction	ECY003

a. Facilities in this category that are rock crushing, gravel washing, log sorting, or log storage facilities operated in connection with silvicultural activities defined in 40 CFR 122.27(b)(2)-(3) are considered industrial activity. This does not include the actual harvesting of timber.

2. Any facility that has an existing **National Pollutant Discharge Elimination System (NPDES)** permit which does not address all stormwater discharges associated with industrial activity shall obtain permit coverage.
3. Any **inactive facility** where any industrial activity listed in Table 1 was previously conducted and where **significant materials** remain onsite and are exposed to stormwater with a discharge to surface waters of the state shall obtain permit coverage.

B. Significant Contributors of Pollutants

Ecology may require a facility to obtain coverage under this permit if Ecology determines the facility:

1. Is a **significant contributor of pollutants** to waters of the State, including **groundwater**;
2. May reasonably be expected to contribute to a violation of any **water quality standard**; or
3. Conducts industrial activity, or has a NAICS code, with stormwater characteristics similar to any industrial activity or NAICS code listed in Table 1 in S1.A.1.

C. Facilities Not Required to Obtain Coverage

Ecology does not require the types of facilities listed below to obtain coverage under this permit, unless determined to be a significant contributor of pollutants.

1. Industrial facilities that submit an **application** and qualify for a Conditional “No Exposure” Exemption. (Condition S1.F)

First Fall Storm Event means the first time on or after September 1st of each year that precipitation occurs and results in a stormwater discharge from a facility. This storm event tends to wash off and discharge pollutants that accumulate during the preceding dry months.

General Permit means a permit which covers multiple dischargers of a point source category within a designated geographical area, in lieu of individual permits being issued to each discharger.

Groundwater means water in a saturated zone or stratum beneath the land surface or a surface waterbody.

Groundwater Discharge Point (or Discharge to Groundwater) means the location where stormwater associated with industrial activity enters a stormwater infiltration structure that is used, intended or designed to infiltrate water into the ground

Hazardous Substance means any liquid, solid, gas, or sludge, including any material, substance, product, commodity, or waste, regardless of quantity, that exhibits any of the physical, chemical, or biological properties described in WAC 173-303-090 or 173-303-100.

Illicit Discharge means any discharge that is not composed entirely of stormwater except (1) discharges authorized pursuant to a separate NPDES permit, or (2) conditionally authorized non-stormwater discharges identified in Condition S5.D.

Illicit Connection means any infrastructure connection to a public or private stormwater collection or conveyance system that is not intended, permitted, or used for collecting and conveying stormwater or non-stormwater discharges allowed as specified in this Permit. Examples include sanitary sewer connections, floor drains, channels, pipelines, conduits, inlets, or outlets that are connected directly to public or private stormwater collection or conveyance system.

Inactive Facility means a facility that no longer engages in business, production, providing services, or any auxiliary operation.

Industrial Activity means (1) the 11 categories of industrial activities identified in 40 CFR 122.26(b)(14) (i-xi) that must apply for either coverage under this permit or no exposure certification, (2) any facility conducting any activities described in Table 1, and (3) the activities occurring at any facility identified by Ecology as a significant contributor of pollutants. Table 1 lists the 11 categories of industrial activities identified in 40 CFR 122.26(b)(14)(i-xi) in a different format. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with stormwater drained from the above-described areas. The term includes areas at intermodal transportation facilities where material handling occurs.

Land Application Site means an area where wastes are applied onto or incorporated into the soil surface (excluding manure spreading operations) for treatment or disposal.

Landfill means an area of land or an excavation in which wastes are placed for permanent disposal, and which is not a land application site, surface impoundment, injection well, or waste pile.

Leachate means water or other liquid that has percolated through raw material, product or

**FACT SHEET FOR THE DRAFT
2025 INDUSTRIAL STORMWATER
GENERAL PERMIT**

**National Pollutant Discharge Elimination System (NPDES)
and State Waste Discharge General Permit for
Stormwater Discharges Associated with Industrial
Activities**

May 15, 2024

Washington State Department of Ecology

INTRODUCTION

The Federal Clean Water Act (CWA, 1972, and later modifications, 1977, 1981, and 1987) established water quality goals for the navigable (surface) waters of the United States. The National Pollutant Discharge Elimination System (NPDES) permit program is one of the mechanisms for achieving the goals of the CWA. The NPDES Permit program is administered by the Environmental Protection Agency (EPA). The EPA has delegated responsibility to administer the NPDES permit program to the state of Washington on the basis of Chapter 90.48 RCW. Chapter 90.48 RCW defines the Department of Ecology's authority and obligations in administering the wastewater discharge permit program.

State regulations specify procedures for issuing general permits (Chapter 173-226 WAC), water quality criteria for surface and ground waters (Chapters 173-201A and 173-200 WAC), and sediment management standards (Chapter 173-204 WAC). These regulations require that Ecology issue a permit before allowing discharge of wastewater to waters of the state. The regulations also establish the basis for effluent limitations and other requirements which are to be included in the draft permit. WAC 173-226-110 requires the preparation of a draft permit and an accompanying fact sheet before issuing a general permit under the NPDES permit program. The fact sheet and draft permit are available for review (see Appendix A—Public Involvement of the fact sheet for more detail on the Public Notice procedures).

After the public comment period has closed, The Department of Ecology (Ecology) will summarize the substantive comments and respond to each comment. The summary and response to comments will become part of the administrative record. Parties submitting comments will receive a copy of Ecology's response. Ecology will summarize comments and the resultant changes to the draft permit in Appendix D—Response to Comments.

RESPONSE TO COMMENTS

Industrial Stormwater General Permit Addendum to Fact Sheet: Appendix C

The Washington State Department of Ecology (Ecology) received public comments on the draft Industrial Stormwater General Permit (ISGP) that was released for public comment on May 15, 2024. Ecology also accepted oral testimony provided by participants at the two (2) public workshops and hearings held virtually (via Zoom) on June 20, 2024, and June 24, 2024. Public comments were submitted by a wide range of stakeholders and interested parties, prior to the close of the public comment period on July 15, 2024.

Ecology has assembled summaries and excerpts from public comments into this document and organized them by topic and/or permit condition. Ecology has provided a written response to comments on proposed permit conditions and indicated where revisions were made to the ISGP. Underlined language is used to indicate new final ISGP language compared to the draft 2024 ISGP. When multiple parties commented on the same subject matter, Ecology grouped the summarized and/or excerpted comments into a “Summary of the Range of Comments.” This allowed Ecology to respond to the range of comments collectively.

Copies of all public comment letters, emails, and oral testimony are posted on Ecology’s [Industrial Stormwater General Permit](#)¹ website.

Comments can be viewed here: [Industrial Stormwater Draft General Permit - Formal Comment Period \(commentinput.com\)](#)².

Ecology thanks all participants for their suggestions and taking the time to comment on the ISGP draft permit.

¹ <https://ecology.wa.gov/regulations-permits/permits-certifications/stormwater-general-permits/industrial-stormwater-permit>

² <https://wq.ecology.commentinput.com/comment/extra?id=tx2Ba6krSR>

Certain municipally owned/operated aggregate mines and/or processing facilities may also require coverage under Ecology's Sand and Gravel General Permit.

Commenter: Nisqually Environmental

Comment: Please clarify if holding ponds, retention ponds, channeling ditches that are within a permitted site are defined as surface waters of the state. It is unclear, based on the definition of "Surface Waters of the State" in the appendix, and the re-write of S1 A, if they are defined as surface waters of the State. Further, with the new changes in S1 A, which includes "storm sewer systems" as defined as surface waters of the State, would the permit holder be list the storm sewer system as the receiving waters and not the location where that sewer discharges too?

Ecology's Response: Yes, these are all technically waters of the state but not considered "Surface waters of the State" that would trigger permit coverage if stormwater entered those features but did not leave the facility boundary and enter another water of the state. If stormwater entered man-made onsite features with no outlet (and only infiltrated into the groundwater), it would not automatically trigger the permit. The permittee would list the receiving waterbody on the NOI and not the storm sewer system or roadside ditch or outlet that drains to it. Ecology has revised S1.A and the definition of "Surface Waters of the State" in Appendix 2, Definitions.

S1. Table 1, Definitions: Definition change of Industrial Activity, Material Handling/Storage added to Transportation Industrial Activities

Commenters: Washington Maritime Federation, Port of Seattle, Pacific Merchant Shipping Association, Port of Grays Harbor, Washington Public Port Association, Port of Skagit County, BNSF Railway Company, Northwest Seaport Alliance (Port of Tacoma, Port of Seattle), United States Bakery, ConGlobal Industries, Skagit River Steel and Recycling, Pierce County, Federal Stormwater Association, Washington Trucking Association, Port of Vancouver, SSA Terminals LLC., Simplot, Pierce County, Port of Port Townsend, Port of Longview, Shane Latimer

Summary of the Range of Comments:

- Adding material handling/storage to the definition of industrial activity for transportation facilities significantly expands the scope/applicability of the ISGP. The term "material handling" (defined as "storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, by-product or waste product") is vague and overly broad. Including the term "material handling/storage" as part of the definition of industrial activity for transportation facilities goes beyond the Clean Water Act as it would require ISGP coverage for activities that are not industrial in nature. This coverage is unnecessary and not in the overriding public interest. For example, a transportation facility where the only potential triggering activity is receiving FedEx/UPS deliveries could be considered to be engaging in loading/unloading of a final product and required to seek coverage under the ISGP. Using such a broadly defined term as a triggering activity for transportation facilities will create significant uncertainty within the transportation sector as to what should be covered or not covered under the ISGP. Requiring ISGP coverage may drive

transportation-sector businesses out of Washington to other states or countries (e.g., British Columbia) and would not be in the overriding public interest considering the broader economic impacts for the Pacific Northwest. Suggested Revision: Remove proposed language from Table 1 for “material handling/storage” as an industrial activity requiring coverage under the ISGP for transportation facilities.

- The definition (page 84) for "material handling" is broad to the point that any type of item could be considered a material, whereas "storage" is left undefined and open to interpretation when added as a transportation trigger. If this is not clarified further, it will lead to regulatory uncertainty, and this change could be interpreted as a huge regulatory expansion with significant impacts to port operations.
- The new definition of industrial activity is vague and overly broad. Keep current definition.
- SSAT suggests that the permit clarify that sampling administrative area runoff is not required unless it is not possible to collect a sample representative of "industrial" drainage areas without including commingled contributions from administrative areas. Additionally, SSA T suggests that the permit clarify that if Level 2 or 3 Corrective Actions are triggered based on commingled discharge concentrations, permittees are only required to implement source control and treatment BMPs for the defined industrial areas and not the administrative areas and parking lots. This would allow permittees the option to design a treatment system sized appropriately for the industrial drainage area, bypassing nonindustrial discharge. If a permittee installs treatment for the industrial drainage area, bypassing nonindustrial drainage, stormwater samples could then be collected from the outlet of the installed industrial stormwater system; alternatively, if an installed treatment system treats discharge from both areas, permittees would continue to sample the commingled discharge and could implement additional BMPs in either the industrial area or both areas until commingled discharge meets the applicable permit benchmarks or effluent limits.

Ecology's Response:

Ecology has determined that stormwater discharges from areas of transportation facilities where industrial activity occurs 1) contribute to a violation of water quality standards and 2) are significant contributors of pollutants. Ecology is therefore continuing to use its authority, pursuant to 33 U.S.C. § 1342(p)(2)(E) and 40 C.F.R. § 122.26(a)(9)(i)(D), to maintain the ISGP's expansion of coverage beyond the scope identified in 40 C.F.R. § 122.26(b)(14)(viii). The permit applies to all areas of industrial activity at transportation facilities. The permit is not limited to areas of transportation facilities where vehicle maintenance, equipment cleaning operations, or airport deicing operations occur.

The factual basis for Ecology's determination includes:

Ecology’s Fact Sheet for the 2009 ISGP included a characterization of stormwater discharged by the industrial groups required to obtain an NPDES Permit for stormwater discharges, including water transportation facilities, SIC Code 44xx. Id. at 097. The median concentration of copper in stormwater discharges from water transportation facilities was 36.3 µg/L. Id. at 097, Table 37. The median concentration of zinc in stormwater discharges from water transportation facilities was 244 µg/L. Id. The acute marine water quality criteria for copper is 4.8 µg/L and the acute marine water quality criteria for zinc is 90 µg/L. WAC 173-201A-240(5), Table 240. The high levels of copper and zinc in stormwater discharges from water transportation facilities represent a significant source of pollutants that contribute to a violation of the copper and zinc water quality standards.

- In response to Ecology’s decision in 2009 to expand the scope of permit coverage at transportation facilities required to obtain an NPDES industrial stormwater permit under EPA’s regulations, a significant number of water transportation facilities at ports began to monitor stormwater discharges from marine cargo handling and storage areas. The results of this monitoring demonstrate that stormwater discharges from marine cargo handling and storage areas at Port facilities exceeded the copper and zinc benchmarks in the ISGP that Ecology established to protect water quality. These exceedances triggered Level 2 and 3 Corrective Actions. This monitoring data confirms that stormwater discharges from water transportation facilities continue to represent a significant source of pollutants that contribute to a violation of Washington’s copper and zinc water quality standards.
- Most of the acreage at large water transportation facilities is used for material handling and storage.
- The overwater structures at water transportation facilities typically discharge stormwater directly to surface waters, including Puget Sound.
- Material handling and storage activities are sources of 6PPDQ and tire wear chemicals, sediment, copper, petroleum, and zinc to waters of the state.

Activity	Pollutant Source	Pollutant
Material handling/storage	degraded pavement, potholes, dirt, and dust	Sediment
	brake pads, pesticides, vehicle washing, bulk materials	Copper
	fuel, lubricants, hydraulic fluid	Petroleum
	tire wear, motor oil, hydraulic fluid, galvanized metal surfaces/products, exterior paint	Zinc
	tire wear particles	6PPDQ

Ecology has also determined that stormwater discharges from areas of industrial activity at transportation facilities constitute disposal of solid or liquid waste material into waters of the state, within the meaning of RCW 90.48.160. Ecology is therefore relying on its state authority, in addition

to its authority under 33 U.S.C. § 1342(p)(2)(E) and 40 C.F.R. § 122.26(a)(9)(i)(D), to require a permit for these discharges.

The ISGP is a combined permit that is issued in compliance with the provisions of the state Water Pollution Control Act, RCW 90.48, and the Federal Water Pollution Control Act (Clean Water Act), Title 33 U.S.C., Section 1251 et seq. See WAC 173-226-010 (“Permits issued under this chapter are designed to satisfy the requirements for discharge permits under sections 307 and 402(b) of the federal Water Pollution Control Act (33 U.S.C. §1251) and the state law governing water pollution control (chapter 90.48 RCW)”). Ecology is designated as the state water pollution control agency for all purposes of the Clean Water Act. 33 U.S.C. 1342(b); RCW 90.48.260. The ISGP does not distinguish between NPDES provisions and state waste discharge provisions.

The change proposed in the draft permit to the definition of “Industrial Activity” is no longer warranted due to the Court of Appeals decision in *Puget Soundkeeper All. v. Pollution Control Hearings Bd.*, 30 Wn. App. 2d 360 (2024), *review denied sub nom. Puget Soundkeeper All. v. Pollution Control Hearings*, 554 P.3d 1222 (Wash. 2024). The court interpreted the definition of “Industrial Activity” under the 2020 ISGP. The court held:

“The second category of industrial activities require permit coverage for “any facility conducting any activity described in Table 1.” “Facility” means “any establishment (including land or appurtenances thereto) that is subject to regulation under this permit.” Table 1 includes transportation facilities that conduct vehicle maintenance, equipment cleaning, or airport deicing operation. Reading these two provisions together, it is plain that the second category requires coverage for the land and appurtenances at any transportation facility that conducts vehicle maintenance, equipment cleaning, or airport deicing operations—that is, the entire footprint of the transportation facility. A facility may be subject to coverage under the permit because it belongs to one of the “categories” of facilities listed in the C.F.R. or, because the facility—including its land and appurtenances—conducts one of the “activities” described in Table 1 which does not specifically limit transportation facility industrial activity to any one area of the facility. . . . [I]f a transportation facility requires coverage under the 2020 permit because it conducts vehicle maintenance, equipment cleaning, or airport deicing operations, coverage under the permit applies to the entire transportation facility, not just limited areas. . . . We reverse the PCHB’s order on summary judgment on legal issue 11 and instead hold that the 2020 permit applies to all areas of industrial activity at covered transportation facilities, not just the limited areas specified in EPA’s regulation.”

Puget Soundkeeper All., 30 Wn. App. 2d at 382–86.

Ecology is retaining the definition used in the 2020 permit. Based on comments received, Ecology is adding clarifying permit language. Specifically, Ecology is clarifying that the term Industrial Activity “excludes areas located on plant lands separate from the plant’s industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with stormwater drained from the above-described areas.” Ecology is also clarifying that the term

Industrial Activity “includes areas at intermodal transportation facilities where material handling occurs.”

The latter revision clarifies that although Ecology has decided not to add “Material handling/storage” as a trigger for permit coverage, a facility covered due to a different trigger must apply the permit to all areas of industrial activity—including but not limited to areas at intermodal transportation facilities where material handling occurs. Examples include areas where ship-to-shore cranes load and unload cargo, areas where heavy machinery and trucks are used to perform cargo handling, and areas used for container storage. These examples are not exhaustive.

The definition and application of “material handling” still applies to this permit.

Pertaining to SSAT comment, Ecology will retain the language in the permit. If industrial stormwater comingles with stormwater runoff from administrative areas and parking lots, it must be included in the SWPPP and sampling plan.

Commenter: Puget Soundkeeper Alliance, Columbia Riverkeeper, Spokane Riverkeeper, Waste Action Project, North Sound Waterkeeper/RE Sources, Communities for a Healthy Bay, Sound Action, Orca Network, Friends of the San Juans, Deschutes Estuary Restoration Team, and Surfrider Foundation

Comment: Expanded Industrial Activities. Given Ecology’s clear awareness of 6PPD-q dangers, and the Fact Sheet’s conclusion that “motorized equipment, cars, trucks, and heavy equipment are typically used at industrial sites ... [and] represent a source of contamination by petroleum products and metals that are common to most facilities with coverage under this permit,” we are concerned there are a host of facilities not included in Table 1’s list of activities covered by this permit. For example, parking lots, commercial sites with high levels of impervious surface coverage, warehouses (especially those with heavy industrial, commercial, and small-vehicle traffic, such as fulfillment centers), short and long-term vehicle and boat storage facilities, stadiums, or auto repair shops are not included in this permit. Ecology should consider adding these industries to this ISGP, at the very least if those facilities contribute stormwater to salmon-bearing watersheds.

Ecology’s Response: Comment noted. Please see response to BNSF. Ecology has not added new sectors to Table 1 but may use S1.B (Significant Contributor or Pollutants) to require permit coverage at facilities within sectors not included in Table 1.

S1.A: Roadside Ditches

Commenter: Pierce County

Comment: Does roadside ditches include only ditches in the MS4 or all ditches irregardless of where it drains to?

Ecology’s Response: Thank you for your comment. Roadside ditches are both a water of the state and a surface water of the state, whether they are in an MS4 area or not.