# Construction Stormwater General Permit

# Addendum to Fact Sheet: Appendix D

# Response to Public Comments on the Draft Permit

# November 18, 2015

The Washington State Department of Ecology (Ecology) received 26 public comment letters on the draft Construction Stormwater General Permit (CSWGP) that was released for public comment on July 1, 2015. Ecology also accepted oral testimony provided by Jenn Stebbings of the Port of Tacoma on July 29, 2015 at the Pierce County Environmental Services Building in University Place. Public comments were submitted by a wide range of stakeholders and interested parties, prior to the close of the public comment period on August 10, 2015.

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 CSWGP. Underlined language is used to indicate new final CSWGP language compared to the draft 2015 CSWGP. 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.

Numerous commenters provided introductory statements and general comments along with more detailed questions and comments on specific permit conditions. These statements and comments provided important perspective and context that ultimately helped Ecology finalize the CSWGP. Due to the volume of background statements and general comments, Ecology limited written responses to specific comments on the draft permit, and did not provide written responses to background statements and general comments.

Copies of all public comment letters, emails, and oral testimony are posted on Ecology's Construction Stormwater General Permit website:
http://www.ecy.wa.gov/programs/wq/stormwater/construction/index.html

## Public Comments on the July 2015 Draft Construction Stormwater General Permit

The following comments on the Draft Construction Stormwater General Permit have been submitted to Ecology during the public comment period.

| Commenter | Comment |
|---|---|
| City of Anacortes | Letter |
| Anchor QEA, LLC | Letter |
| The Boeing Company | Letter |
| Building Industry Association of Washington | Letter |
| CPM Development Corporation | Letter |
| CalPortland | Letter* |
| City of Fife | Letter* |
| Gary Merlino Construction Company* | Letter* |
| King County | Letter<br>Attachment |
| Miles Resources | Letter |
| Miles Sand & Gravel Company | Letter |
| Okanogan County | Email |
| City of Olympia | Letter |
| O'Neill Service Group | Email |
| Port of Seattle | Letter |
| Port of Tacoma | Letter |
| Port of Tacoma2 | Hearing Testimony |
| Port of Vancouver | Letter |
| Puget Sound Energy | Letter<br>Attachment |
| City of Renton | Letter |
| Peter Rinallo, Jr. | Email |
| Seattle City Light | Email |
| Stoneway Concrete* | Letter* |

| | |
|---|---|
| City of Sumner | Letter |
| Washington Public Ports Association | Letter |
| Washington State Department of Transportation | Letter |
| Widener & Associates* | Letter* |
| Yakima County | Email |

*Comment submitted after the close of the comment period.

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# General Comments and Process

## Economic Impact

### *Economic Impact Analysis Inadequate*

**Commenters:** Port of Vancouver, Yakima County

Summary of the Range of Comments:

- The cost of compliance is now even more disproportionate to business size for contaminated sites. Many projects may become cost prohibitive because of the restrictions Ecology will put on a Permittee, when controlling turbidity should be sufficient to control the pollutants.
- The mitigation features provided in the Fact Sheet do not address the additional costs for retention, testing, treatment and disposal that would be required for contaminated sites. If Ecology wants to include contaminated sites, the Economic Impact Analysis should include additional costs incurred by Permittees on these sites. These costs have not been properly captured by Ecology.
- In recent discussion with Ecology Headquarters staff, the Economic Impact Analysis is an update of the old report mainly updating amounts to present values. I don't think the study included all costs from new requirements especially those that are required by the Municipal Stormwater General Permit.

Response to the Range of Comments:

Ecology takes economic issues into consideration when implementing state and federal laws and regulations. However, Ecology is specifically prohibited from including certain compliance costs in an Economic Impact Analysis (EIA) per WAC 173-226-120:

Excerpt from WAC 173-226-120(4):

(4) The following compliance costs associated with a general permit shall not be included in the economic impact analysis:

(a) The costs necessary to comply with chapters 173-200, 173-201, 173-204, and 173-224 WAC; and

(b) The costs associated with requirements of the general permit which result from conformity or compliance, or both, with federal law or regulations.

The specific compliance costs related to contaminated sites were correctly excluded because they are necessary to comply with Chapter 173-201A WAC (Surface Water Quality Standards), Chapter 173-200 WAC (Ground Water Quality Standards), and Chapter 173-204 WAC (Sediment Management Standards); and result from conformity and/or compliance with federal law or regulations.

The EIA for the CSWGP analyzes a new permit compared to a baseline of no permit and zero compliance costs. The analysis does not require an examination of the costs of other general permits.

## Benchmarks

### *Need for Development of Benchmarks*

**Commenter:** Anchor QEA

Comment:

With recent proposed language, Ecology is increasingly bringing the monitoring and control of priority pollutants into the scope of the stormwater general permits. This includes both recent proposed changes to the Industrial Stormwater General Permit as well the current proposed changes to the Construction Stormwater General Permit. However, to date, permit benchmarks are only available for a limited number of chemical constituents.

- Recommends that prior to developing permit requirements or other stormwater requirements relating to priority pollutants in stormwater discharges, Ecology invest the resources necessary to develop scientifically sound and technically appropriate benchmarks for management of these priority pollutants. The availability of these scientifically and technologically based benchmarks will ensure clarity and consistency during implementation of the stormwater permitting programs.

Response:

Discharges must comply with Chapter 173-201A WAC (Surface Water Quality Standards), Chapter 173-200 WAC (Ground Water Quality Standards), Chapter 173-204 WAC (Sediment Management Standards), and human health-based criteria in the National Toxics Rule (40 CFR Part 131.36). Application of the surface water quality criteria to a discharge requires site-specific analysis of the discharge and the receiving water. Development of benchmarks for 126 priority pollutants for a broad range of construction activities is not within the scope of a National Pollutant Discharge Elimination System (NPDES) general permit.

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## Public Process

### *Response to Comments*

**Commenter:** Port of Tacoma

Comments:

- Who will be reviewing and responding to comments submitted?
- It was brought to the Port's attention during one of the workshops that only one person would review all the comments submitted to Ecology for the draft CSWGP. The only reviewer is also the permit writer. This appears to be a conflict of interest. Comment review should have an objective perspective for a permit that has statewide implications. Section 6.3 of the Permit Writer's Manual indicates that a team of people should review comments:
  - Schedule time for review of the RTC by an internal team who contributed to the permit, your supervisor, and legal review if necessary.

Response:

The response to comments are subject to an internal team, supervisory, and legal review.

### *Stakeholder Advisory Group*

**Commenters:** Port of Tacoma, Port of Seattle

Comment:

Section 6.3 (Public Process) of the Permit Writer's Manual lists several options to engage the public during the permit writing stage. The third bullet reads as follows:

- *Stakeholder advisory group – Consider the need for stakeholder involvement (e.g. technical, implementation issues). Discuss these with your supervisor and PIO.*

Ecology should clarify why there was no stakeholder group formed during the permit update process. The Fact Sheet should specify why Ecology did not think a stakeholder group was necessary. This permit update was made in a vacuum. There were no stakeholder groups, or review panel discussions or meetings available to interested parties prior to the draft permit being issued for public comment.

- Requested that Ecology set up a stakeholders working group. The stakeholder working group should include industry, impacted businesses, and other key stakeholders.

Response:

Ecology hosted four Listening Sessions during the development of the draft CSWGP in Mt. Vernon, University Place, Vancouver, and a statewide Webinar. The Listening Sessions presented proposed changes to the permit, provided discussion time, and encouraged stakeholder participation.

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## General Comments

### *Electronic PDF Version of Permit*

**Commenter:** King County

Comment:

The PDF of the permit on Ecology's website is not searchable with Adobe Reader. Please post a searchable version.

Other helpful tools for the future: Mobile version of the DOE website, CSWGP, or SWMMWW. These would be great when hardcopies are not within the immediate vicinity.

Flowcharts for processes with more than a few steps.

Response:

The current and draft permits available on Ecology's website are searchable using Abobe Reader XI. Ecology appreciates your suggestions for future helpful tools and flowcharts and will be exploring these options.

### *Emergency Related Projects*

**Commenter:** Washington State Department of Transportation

Comment:

WSDOT recommends Ecology outline their process and expectations for emergency projects to ensure consistency statewide. WSDOT understands that Ecology is following the federal requirements for emergency related projects. However, the federal requirements do not provide a lot of detail. As a result, it has been WSDOT's experience that Ecology's regional permit administrators may have different expectations and procedures for emergency projects.

Response:

Ecology agrees that statewide consistency is important and will continue to develop uniform statewide procedures and implementation guidance.

### *Minor Utility Adjustments*

**Commenter:** Puget Sound Energy

Comment:

As the current permit is written and enforced, utilities must apply for coverage for any construction activities needed to correct utility conflicts. This one-size-fits-all approach binds utilities to a permit process that takes a minimum of 65 days to complete; which is typically longer than the total time necessary for utilities to complete their work. In the case of projects that require minimal utility adjustments or short notice to complete the relocation, a more flexible approach is needed. PSE requests that further consideration be given to this issue and that Ecology develop a streamlined approach for "de minimis" utility work performed as part of a common plan of development.

- Consider adding a definition in the CSWGP for Public Improvement project, which can be the basis for a more streamlined process for coverage. The public agency responsible for the road improvement may choose to grant a partial transfer to utilities. Otherwise,
- Consider developing a programmatic or blanket permit for utility work, similar to the Georgia approach which identifies primary, secondary and tertiary Permittees.
- Publish an FAQ for utility relocation work on public improvement projects.

Response:

Ecology appreciates your comment. We chose not to add the proposed definition and will explore your other suggestions further.

### *Pollutants*

**Commenters:** Port of Tacoma, Port of Seattle

Comment:

The majority of pollutants that are encountered during construction projects are tied to sediment. By controlling the turbidity, a Permittee is effectively controlling the pollutants. Additional Administrative Orders and other restrictions should not be issued simply by the presence of a pollutant. Ecology's approach to controlling contaminants in surface water

runoff in the Industrial Stormwater General Permit is to control the solids – which is monitored through benchmarks of turbidity and total suspended solids. The CSW group should use the same approach so Permittees that have multiple permits on one site can rely on one standard in which to plan and implement their BMPs.

Potential water quality violations cannot be determined simply by what is present in the soil. Ecology cannot reasonably make a correlation between pollutant(s) in the soil with what will actually mobilize when coming into contact with stormwater. At the very minimum, it can be determined that only a fraction of what is in the soil may mobilize during a storm event. This means that even if pollutant concentration levels are above a cleanup standard in the soil, a water quality violation is unlikely if a Permittee is implementing the proper BMPs.

Response:

Ecology acknowledges that a primary pollutant encountered during construction projects is sediment and; therefore, turbidity is one of the core parameters in the CSWGP. However, factors such as historical soil or groundwater contamination may contribute other pollutants to stormwater. Examples may include, but are not limited to, pesticides, heavy metals, polychlorinated biphenyls (PCBS), volatile organic compounds (VOCs), petroleum hydrocarbons, polycyclic aromatic hydrocarbons (PAHs), and carcinogenic polycyclic aromatic hydrocarbons (cPAHs). While correlations may exist between turbidity and certain contaminants, specific correlations are unknown and may vary depending on site-specific conditions and stormwater chemistry. Because the management of turbidity and total suspended solids (TSS) may not adequately control or treat all pollutants present, certain contaminated construction sites may be issued an Administrative Order requiring additional monitoring for the known constituents of concern in order to prevent discharges that may cause violations of water quality standards. Condition G13 (Additional Monitoring) is based on Section 308 of the Clean Water Act, and 40 CFR 122.41(h); and allows Ecology to cover contaminated construction sites without the need for a site-specific individual NPDES permit. Administrative orders issued by Ecology may be appealed (Chapter 43.21B RCW).

**Commenter:** Port of Tacoma

Comment:

Ecology must create consistent criteria for establishing constituents of concern. If there is not a previously known source of a contaminant (i.e., historical land uses, etc.) on a site, there should be no reason to arbitrarily create restrictions. Natural fluctuations of pollutants occur throughout the region. Pollutants naturally occur in elevated "hot spot" concentrations and should not necessarily be regulated simply because they are present.

The permit writer(s) have been unresponsive when asked direct questions surrounding the definition of contaminated sites, and the new language in the permit is vague and highly

subjective. Consistent, quantifiable (where appropriate) definitions and justifications should be mandatory as part of a permit update.

Response:

Ecology recognizes contaminants, pollutants, and hazardous substances as constituents of concern based on site/project-specific information supplied by Applicants on their NOI; or as determined by Ecology using a database of known Contaminated Sites (Facility/Site Database and Integrated Site Information System). Contaminants, pollutants, or hazardous substances as defined in the draft CSWGP are either not naturally occurring or occur at greater than natural background levels. Discharges under the permit must not cause or contribute to a violation of surface water quality standards, ground water quality standards, sediment management standards, and human health-based criteria in the National Toxics Rule. Construction activity that discharges stormwater to waters of the State and are reasonably expected to cause a violation of any water quality standard are not authorized under the permit. Ecology reserves the right to order additional monitoring per General Condition G13 for constituents of concern that are identified by site-specific information. Arbitrary restrictions are not imposed.

**Commenter:** Port of Tacoma

Comment:

Ecology's CSW Group is interjecting influence into an arena already regulated by MTCA and TCP. If there are concerns regarding stormwater quality on "contaminated" sites, the two groups should work together during the planning process and incorporate stormwater conditions into the DCAP. Applicants and Permittees should not be forced to duplicate efforts for the same agency because of a lack of internal communication between groups.

Response:

Ecology's Water Quality Program regulates water quality, including point source discharges from construction sites under the authority of the Clean Water Act and state Water Pollution Control Act. By contrast, the Toxics Cleanup Program (TCP) is responsible for implementing and enforcing laws and rules relating to the cleanup of contaminated sites and the management of underground storage tanks under the authority of the Model Toxics Control Act (MTCA). A Draft Cleanup Action Plan (DCAP) describes the selected cleanup method(s) and specifies cleanup standards. Permits needed to implement the cleanup action are identified and NPDES permits are not covered under RCW 70.105D.090 Remedial Actions—Exemption from Procedural Requirements. Therefore, management of construction stormwater discharges is regulated by the Water Quality Program. The Water Quality Program regulates the CSWGP, an NPDES permit.

**Commenter:** Anchor QEA

Comment:

We recommend that prior to developing permit requirements or other stormwater

requirements relating to priority pollutants in stormwater discharges, Ecology invest the resources necessary to develop scientifically sound and technically appropriate benchmarks for management of these priority pollutants. The availability of these scientifically and technologically based benchmarks will ensure clarity and consistency during implementation of the stormwater permitting programs.

Response:

The CSWGP does not authorize the discharge of pollutants that cause or contribute to a violation of surface water quality standards, ground water quality standards, sediment management standards, and human health-based criteria in the National Toxics Rule. The development of benchmarks for priority pollutants is not within the scope of the permit. If Ecology believes that the CSWGP monitoring is not adequate to prevent discharges of priority pollutants, it may require additional monitoring in accordance with Condition G13 (Additional Monitoring). This condition is based on Section 308 of the Clean Water Act, and 40 CFR 122.41(h); and allows Ecology to cover contaminated construction sites without the need for a site-specific individual NPDES permit. Administrative orders issued by Ecology may be appealed (Chapter 43.21B RCW).

### *Process Wastewater Task Force*

**Commenters:** King County, Washington State Department of Transportation

Comment:

Recommends the formation of an Ecology-led intergovernmental Process Wastewater Task Force to fully identify the issues and potential solutions regarding process wastewater management and disposal. [We] appreciate the improvements made to the draft permit for managing uncontaminated water-only based shaft drilling water, and encourages Ecology to pursue similar management options for other sources of uncontaminated process wastewater. Though House Bill 1695 relates to the reuse of aggregate and concrete, Section 1 (e) recognizes the environmental value in reducing truck trips. The ability to manage uncontaminated process wastewater on-site can certainly reduce truck trips, especially in rural areas where viable disposal locations can be many miles from the construction site.

Response:

Comment noted.

### *Process Water*

**Commenter:** O'Neill Service Group

Comment:

The approach to process water should be reevaluated. Water treatment technology has advanced to a point where removal of contaminants and adjustments of water quality parameters is attainable and cost effective. There are times when discharge to sewer is not an option, and water treatment could be more cost effective than trucking the water offsite. Even if the water quality requirements were concerns, having the option could be valuable

to projects, and could reduce the environmental impact when you consider the carbon/pollution footprint of trucking water.

Response:

Comment noted.

### *Public Notice*

**Commenter:** Puget Sound Energy

Comment:

In most instances state and local road improvement projects will go through environmental review under the State Environmental Policy Act, which includes a public comment period. In addition, public notice is required under WAC 173-226-130(5) to cover the road construction activities under the CSWGP. There is little value added in providing further public notice by multiple utility companies – each requiring separate coverage under the CSWGP – when they adjust their facilities to accommodate the road construction. We encourage the Department of Ecology to review the number of instances that public comments have been submitted [for] utility relocation that is part of a common plan of development, and reconsider the requirements accordingly.

PSE recommends Ecology provide guidance on how noticing requirements apply to common plan of development work, with an emphasis on eliminating the need for additional notice on projects that have overlapping disturbance limits and where the potential for additional stormwater runoff is low.

Response:

Ecology appreciates your comment and will explore your suggestions further.

### *Self-Contained Construction Projects*

**Commenter:** City of Olympia

Comment:

Consider clarifying language for construction projects identified as self-contained. These should immediately receive coverage under the permit once a discharge is triggered at the site. We believe this is an ongoing issue occurring throughout the construction community. Applicable language within the permit will help municipalities ensure appropriate coverage under the Construction Stormwater General Permit as well as Municipal Stormwater General Permits.

Response:

Construction projects that do not discharge stormwater to surface waters of the State are not required to seek coverage under the permit. Coverage under the CSWGP requires a 30-day public comment period per WAC 173-226-130. Construction activities that have not completed the required 30-day public comment period can't receive immediate coverage if operations or stormwater management changes and stormwater is discharged from the site.

Some Operators of construction activities seek coverage on sites in which no discharge is planned as a mitigation measure to insure an unexpected discharge is in compliance.

### *Water Quality Permitting Portal*

**Commenter:** Washington State Department of Transportation

Comment:

WSDOT recommends that the Water Quality Permitting Portal accommodate our internal signature delegations for signing NOIs and Notice of Terminations (NOTs). It is WSDOT's understanding that Ecology considers NOIs and NOTs to meet the signatory requirements of G2.A, however WSDOT disagrees and believes that NOI and NOT signature authority can be delegated in accordance with G2.B. After a review of 40 C.F.R. section 122.2 and section 128, it is clear to WSDOT that the NOI is not an "application" for a "permit" under the federal rules; there is a difference between applying for a permit (such as WSDOT's Municipal Stormwater Permit) versus requesting coverage under a general permit for a project. It makes sense that the original application for a permit must be signed by the principal executive officer, since the application likely reflects some policy choices by the agency applicant. However, the NOI and NOT process is simply implementation of the general permit and must be able to be delegated to the individuals having personal knowledge who are competent to sign the certificate. The certificate states that the application was prepared under the signer's direction or supervision; that is never going to be true or either the Secretary of Transportation or a regional administrator. Our principal executive officers do not have the detailed knowledge of or involvement in, a project to the degree necessary to be able to attest to the requirements listed in the signature block certification in the NOI and NOT forms.

Response:

The municipal stormwater and construction stormwater general permits are based, in part, on the same state and federal regulations (WAC 173-226-200 and 40 CFR 122.22, respectively), and therefore have the same signatory requirements for applications, including Notice of Intent (NOI) forms. Per WAC 173-226-200 “all dischargers who desire to be covered under the general permit [CSWGP] shall notify the department [Ecology] of that fact on a form prescribed by the department”. The prescribed form for the CSWGP is the Notice of Intent (NOI). 40 CFR 122.28(b)(2)(ii) states that the NOI must be signed in accordance with 40 CFR 122.22, which is consistent with the draft CSWGP, General Condition G2. While the 40 CFR is vague on the specific signatory requirements for NOTs and other non-NOI applications (e.g., transfer forms, erosivity waiver requests, etc.), they are clearly not “reports” and, since in all cases, the operator is seeking Ecology’s approval for *something*, Ecology considers them a type of “application”. Ecology will continue to apply Condition G2.A to NOIs, NOTs, Modification of Coverage forms, Erosivity Waiver forms, and Transfer forms. This is consistent with the implementation of the NOT at the federal level. The final CSWGP was not revised as a result of this comment.

# Comments on Special Conditions

## Condition S1. Permit Coverage

### *S1.B.1.a. Operators Required to Seek Coverage Under this General Permit*

**Commenters:** Port of Tacoma, Washington Public Ports Association

Comment:

Clearing is removing vegetation to ground level; it should not be considered ground disturbance. Often vegetation (e.g., bushes, forbs, etc.) has to be removed to create staging areas but the ground itself isn't disturbed.

The addition of "including off-site disturbance acreage" is superfluous since it is already covered in S1.C.2. Staging areas, material storage areas, etc. are already supposed to be part of the project site, regardless of location. "Off-site disturbance acreage" could have implications for Permittees who use property not associated with the project but may stockpile soil or other materials for other projects.

- Change permit language from "clearing" to "grubbing" because grubbing indicates ground disturbance, or define "clearing" in "Appendix B - Definitions" to specify that "clearing" must include soil disturbance to qualify as disturbance acreage.
- Remove "*(including off-site disturbance acreage authorized in S1.C.2.)*" from the Permit.

Response:

Clearing is included in the list of potential ground disturbing activities that may disturb the ground surface and expose soil to erosion. The term "clearing" is appropriate.

Ecology added off-site disturbance acreage to the draft CSWGP in S1.B.1.a. to clarify that the disturbed acreage calculation must include acreage from support activities that also involve ground disturbance and discharge of construction stormwater. S1.C.2. does not clearly state that such off-site activities must be included in the disturbed acreage calculation. S1.C.2. is a list of provisions defining when stormwater associated with construction support activity is authorized under the CSWGP. Ecology maintains that S1.B.1.a. is the appropriate place for the inclusion of off-site disturbance acreage as this section speaks directly to ground disturbance acreage.

### *S1.B.1.b.i. and S1.B.1.b.ii. Operators Required to Seek Coverage Under this General Permit*

**Commenters:** Port of Tacoma, Washington Public Ports Association

Comment:

Ecology should clearly identify what criteria the Department will use to determine a

"significant contributor of pollutants" and define the individuals or agency contact who is responsible [for] making the determination.

Ecology is also obligated to make notifications to a property owner that their site is considered a "significant contributor of pollutants" prior to an applicant submitting a NOI.

Define what a reasonable expectation is, that a project may cause a violation of ***any*** water quality standard. Recommend to replace "any" with "appropriate".

If the project is less than an acre and/or stormwater will not be discharged to surface waters or a storm system, a NOI typically will not be submitted. Ecology must clarify how the Department declares a "significant contributor of pollutants" if no NOI is submitted.

- Recommended language for S1.B.1.b.i.: *"Has previously declared the site to be a known significant contributor of pollutants to waters of the State of Washington."*
- *Recommended language for S1.B.1.b.ii.: "Expects to cause a violation of a previously established site-specific water quality standard."*

Response:

Listing Ecology personnel in the CSWGP is outside the scope of the permit.

Ecology issues written notification when a construction activity has been determined to be a significant contributor of pollutants to waters of the State of Washington and/or reasonably expects to cause a violation of any water quality standard.

Ecology has considered the comment and suggested revision to the language in S1.B.1.b.i and S1.B.1.b.ii, but has decided to retain this current permit language without revision.

### *S1.B.2.c. Operators Required to Seek Coverage Under this General Permit*

**Commenter:** Port of Vancouver

Comment:

The port suggests including geotechnical and archaeological investigations with activities that are not required to seek coverage under the draft permit. These types of investigations need to happen early in the design phase before construction begins and typically have minimal impacts and therefore should be exempt.

Response:

Ecology has considered the comment and suggested revision, but has decided not to revise the list of activities that are not required to seek coverage under the permit. Geotechnical and archaeological investigations require permit coverage if the activities meet the conditions of the permit under S1.B. Geotechnical and archaeological investigations that do not meet the requirements of S1.B, do not need to seek coverage.

### *S1.C.2. Stormwater Associated with Construction Support Activity*

**Commenters:** Gary Merlino Construction Company, Stoneway Concrete

Comment:

It appears that on-site portable rock crushers have been redlined within the examples of authorized stormwater discharges from support activities related to permitted construction sites. Gary Merlino Construction Company and Stoneway Concrete questions why an onsite portable rock crusher has been removed from this example list? Are stormwater discharges associated with onsite portable rock crushers still authorized under this permit? If not, what is Ecology's justification for this change?

Response:

Ecology agrees with the suggestion and has revised the draft permit accordingly. On-site portable rock crusher has been retained in the permit as an example of support activities. Discharges from the support activities must be in compliance with all aspects of the CSWGP and process wastewater discharge is not authorized. Portable rock crushing operations may be subject to the Sand and Gravel General Permit.

### *S1.C.3.i. Non-Stormwater Discharges*
### *Dust Control*

**Commenters:** CPM Development Corporation, Gary Merlino Construction Company, Stoneway Concrete, Miles Resources, CalPortland

Summary of the Range of Comments:

- The word "Uncontaminated" has been added to water used to control dust. Why has this word been added? What will be required to show that the dust control water is uncontaminated? Do not use the term uncontaminated as it will lead to confusion.
- This permit authorizes "Uncontaminated water used to control dust. Permittees must minimize the amount of dust control water used." However, the supporting paragraph at the bottom of 51.C.3 states," ...At a minimum, discharges from potable water...must undergo the following: dechlorination to a concentration of 0.1 parts per million (ppm) or less, and pH adjustment to within 6.5-8.5 standard units (su), if necessary. The dechlorination requirement should not be required for dust control water. If dust control is necessary, conditions are certainly hot and dry enough to a point where there is not a significant threat for the release of large amounts of chlorine to waterbodies from dust control water. Moreover, potable water from municipal sources contains a residual level of chlorine to control bacterial growth. The residual level is extremely low and not a concern to water quality. Potable water is most often the only source of water available at jobsites and it is unrealistic to impose significant restrictions on this use of this water.
- The language related to chlorinated potable water should be removed from the permit.

- Additionally, S9.C.1 Stormwater Best Management Practices (BMP) states that "BMP's must be consistent with: Stormwater Management Manual for Western Washington (most current approved edition at the time this permit was issued,) for sites west of the crest of the Cascade Mountains." In the 2012 version of Stormwater Management Manual for Western Washington there is no requirement and/or mention of dechlorinating the water used for application of this BMP. The language related to chlorinated potable water should be removed from the permit.

Response:

Ecology has considered the comments and suggested revisions, but has decided not to revise the requirement. Suggestions to delete the dechlorination requirement is in conflict with the anti-backsliding provisions of the Clean Water Act. The dechlorination requirement for authorized non-stormwater discharges is in compliance with the illicit discharge section of the municipal stormwater general permits that require discharges into the municipal storm system to also comply with the dechlorination to a concentration of 0.1 parts per million (ppm) or less, and pH adjustment to within 6.5-8.5 standard units (su), if necessary.

The word "uncontaminated" in S1.C.3.i clarifies that the discharge of water used to control dust must not cause or contribute to a violation of water quality standards and is consistent with the word usage in S1.C.3.e – h (uncontaminated air conditioning or compressor condensate, ground water or spring water, excavation dewatering water, and discharges from foundation or footing drains).

The Construction Stormwater Pollution Prevention Best Management Practices (BMPs) included in the stormwater management manuals (Volume II in the Western manual and Chapter 7 in the Eastern manual) focus on managing stormwater impacts associated with construction activities. The manuals provide a range of tools that can be used to maintain compliance with the permit and do not contain all of the regulatory requirements found in the permit.

### *S1.D.4. Prohibited Discharges – Shaft Materials and Waste from Shaft Drilling*

**Commenter:** King County

Summary of the Range of Comments:

- Please consider including more inclusive language because shaft drilling occurs on other projects (e.g. tunnel portals, underground transportation and wastewater facilities, etc). Please consider adding tunnel portals, underground transportation and wastewater facilities.
- Please clarify that the only process wastewater that can be managed per Special Condition S9.D.9 is uncontaminated water from water only based shaft drilling. It is not clear that slurry materials and waste can be managed per S9.D.9. Perhaps if it were worded as follows, it would provide clarity:

  *Slurry materials and waste from shaft drilling, ~~including~~ <u>except</u> process wastewater from <u>water-based</u> shaft drilling for construction of, <u>including, but not limited to, tunnel</u>*

*portals; underground transportation and wastewater facilities; and building, road and bridge foundations ~~unless managed according~~ may be managed pursuant to Special Condition S9.D.9.j.*

Response:

Ecology has considered the comments and suggested revisions, but has decided not to revise the prohibited discharge to include tunnel portals, underground transportation and wastewater facilities. These activities are outside the definition of water-only based shaft drilling. Ecology; however, agrees that the reference to S9.D.9 should be revised to S9.D.9.j.

Revision:

Revise S1.D.4: Slurry materials and waste from shaft drilling, including process wastewater from shaft drilling for construction of building, road, and bridge foundations unless managed according to Special Condition S9.D.9.j.

### *S1.D.7. Prohibited Discharges – Wheel Wash Wastewater*

**Commenters:** Port of Tacoma, Washington Public Ports Association

Comment:

Replace "*discharged*" with "*managed*" to remain consistent with language in S1.D.4.

Response:

Ecology agrees with the suggestion and has revised the draft permit accordingly.

Revision:

Revise S1.D.7: Wheel wash wastewater, unless managed ~~discharged~~ according to Special Condition S9.D.9.

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## Condition S2. Application Requirements

### *S2.A.1.b. Notice of Intent Form/Timeline*
### *Link to the CSWGP Website*

**Commenters:** Port of Tacoma, Washington Public Ports Association

Comment:

The Port recommends moving the link to earlier in the paragraph. It could easily be interpreted that applicants who can't submit electronically must go to the website to obtain a waiver.

Response:

Ecology agrees with the suggestion and has revised the draft permit accordingly.

Revision:

Revise S2.A.1.b: Operators must apply using the electronic application form (NOI) available on Ecology's website http://www.ecy.wa.gov/programs/wq/stormwater/construction/index.html. Permittees

unable to submit electronically (for example, those who do not have an internet connection) must contact Ecology to request a waiver and obtain instructions on how to obtain a paper NOI.

Department of Ecology
Water Quality Program - Construction Stormwater
PO Box 47696
Olympia, Washington 98504-7696

### *S2.A.1.c. Notice of Intent Form/Timeline*
### *Complete Application Notification and Issuance Timeline*

**Commenter:** Miles Resources

Comment:

This section is now unclear as so much has been deleted. This now just states "as required by WACI 73-226-200(2). The "as" is lower case and appears to start in the middle of a sentence.

Response:

S2.A.1.c was deleted in the draft permit. The redline version of the draft permit may have been misleading, but the clean version showed that the language had been removed and S2.A.1 had been renumbered.

### *S2.A.1.c. Notice of Intent Form/Timeline*
### *Complete Application Notification and Issuance Timeline*

**Commenters:** Port of Tacoma, Port of Vancouver, Port of Seattle, Miles Resources, Washington Public Ports Association

Summary of the Range of Comments:

- Currently, applicants are not notified if the application is complete. If an applicant does not hear from Ecology within 31 days of the second public notice, they assume they are covered under the permit and start work. If Ecology deems the application incomplete, the applicant is subsequently out of compliance without knowing it. Ecology should establish a response time to inform the applicant whether the NOI is considered complete or not, particularly given that NOIs are now required to be submitted electronically. PARIS is not a reliable source to determine if Ecology deems the application complete.
- Establish a response time that requires Ecology staff to inform each applicant regarding the status of the NOI in a timely manner.
    - Recommends that Ecology shall respond to the applicant within seven (7) days to notify whether the application is considered complete. Unless Ecology responds to the complete application in writing, based on public comments, or any other relevant factors, coverage under the general permit will automatically commence on the thirty-first day, unless Ecology specifies a later date in writing within the 30-day comment period.
    - Ambiguity and uncertainty, intentional or otherwise, undermines public support for the system as a whole.

Response:

Ecology agrees that a permit becomes effective on the thirty-first day following receipt of a complete application unless otherwise notified. This coverage date begins on the first day following the end of the 30-day public comment period required by WAC 173-226-130(5)(b)(iv) and RCW 90.48.170 or on the 31st day following receipt by Ecology of a completed application for coverage. Ecology should notify the Applicant within 30-days of receipt of the NOI if the application is incomplete. Ecology has established an internal implementation goal to notify applicants if their NOI is incomplete within two weeks of receipt.

### *S2.A.1.f. Notice of Intent Form/Timeline*

**Commenters:** CPM Development Corporation, Miles Resources, Miles Sand & Gravel, CalPortland

Summary of the Range of Comments:

- The construction stormwater general permit is a NPDES permit that regulates water quality. This permit is not a solid waste permit and Ecology is attempting to regulate solid waste through a water quality permit. The Agency is setting an undefined threshold when requesting information related to soils "contamination" on a jobsite. This entire section of permit should be removed as it is not feasible, it is burdensome, and will have significant impacts on contractors and construction jobs.
- This requirement has been added to the permit. "Applicants must notify Ecology if they are aware of contaminated soils." At permit application time, the applicant would not know if there is contaminated soil or have developed any TESC, SWPPPS, dewatering plans, etc. This is a STORMWATER PERMIT not a contaminated soil permit. Ecology has other requirements for handling contaminated materials. S2.A.1.f should be deleted from this permit.
- This section should be removed.

Response:

Ecology agrees that the CSWGP is not a solid waste permit and Condition S2.A.1.f does not regulate solid waste. The CSWGP is both a National Pollutant Discharge Elimination System (NPDES) and State Waste Discharge General Permit that authorizes discharges to both surface and groundwater (collectively "waters of the state"). Ecology has determined that construction stormwater associated with contaminated soils could violate water quality standards. Condition S2.A.1.f requests information on the nature and extent of known contamination associated with construction activity and the pollution prevention and/or treatment BMPs proposed to control the discharge of contaminants. Such information is necessary to determine if the construction activity is eligible for the CSWGP, or if a site-specific individual NPDES is necessary. Ecology has considered the comments and suggested revisions, but has decided not to revise this section of the permit.

### *S2.A.1.f. Notice of Intent Form/Timeline*
### *Review process and timeline for contaminated sites*

**Commenter:** Port of Vancouver, Boeing

Comment:

The draft permit does not include an Ecology timeframe for the new review process of applications of construction sites with known contamination. This failure to establish a proper review time for Ecology could result in major unnecessary delays (i.e. it recently took Ecology over 5 months to review a construction application for a rain garden). The port also suggests an expedited review process for sites that have already gone through an Ecology-approved clean-up process or have approved Restrictive Covenant Master Plans.

**Commenter:** Boeing

Comment:

Notify the applicant in writing within 15 days of receiving the NOI Application.

Response:

The review time required for an NOI that is associated with contamination varies from site to site. Projects that provide detailed information with the NOI are generally processed more quickly. Slow process times may result when information is not supplied with the NOI to support **Section VI Existing Site Conditions** on the NOI. Ecology has established an internal implementation goal to review supporting documentation within two weeks of receipt. An Ecology-approved clean-up process is generally silent on the management of stormwater as clean-up action plans and Restrictive Covenant Master Plans have no stormwater management requirements and are not regulated by Ecology's Water Quality Program. Ecology will continue to explore ways to make permitting decisions as expeditiously as possible, including the timely review of supporting documentation for contaminated sites.

### *S2.A.1.f. Notice of Intent Form/Timeline*
### *Contaminated sites*

**Commenters:** Port of Tacoma, Port of Vancouver, Anchor QEA, City of Anacortes, City of Fife, City of Renton, City of Sumner, Washington Public Ports Association, Widener & Associates, Gary Merlino Construction Company, Stoneway Concrete, Seattle City Light, King County

Summary of the Range of Comments:

- The expansion of the permit is appropriate and reflects existing Ecology procedures. However, the threshold is not as clearly defined as it needs to be.
- Define "contaminated soils" and "contaminated groundwater".
    - Without a quantifiable definition of what Ecology considers contaminated, any site with above natural background levels of a contaminant could be considered contaminated (i.e. urban area within Puget Sound and many other regions).
    - Ecology must determine what sites should be deemed "contaminated" prior to submitting a NOI. It should not be left up to the applicant to make the determination as to whether a site should be considered contaminated.

- The term “contaminated” is vague.
  - Recommends that Ecology amend the use of “contaminated” to include only those hazardous substances that are above Model Toxics Control Act (MTCA) cleanup levels. As Ecology’s searchable databases provide data on whether or not known contaminated sites are above MTCA cleanup levels, this would provide a more concrete benchmark for what sites of known contamination should be reported with the NOI.
- Provide clear thresholds for the use of these definitions.
  - Clarify when projects require additional notifications related to contaminated soils and/or groundwater.
  - To only apply if the contaminated soils are “expected to be exposed to stormwater discharged under this Permit” and/or if contaminated groundwater “is expected to be comingled with stormwater to be discharged under this Permit”.

- Requiring applicants to list ***all*** known contaminants, regardless of concentration is excessive and unnecessary. This reinforces the ideology that presence equates contamination. “Contaminant” has not been properly defined.
- Define “readily available”.
  - What if data exist but are not “readily available”?
  - What if contamination is suspected but there are no data?
- Contamination may be present within the project area but located outside the ground disturbance area (e.g. an already stabilized staging area, etc.); Ecology should only need to be informed of contamination that is within the soil disturbance area.
- In the 2014 Industrial Stormwater Permit update, Ecology added TSS as a benchmark, essentially saying “control the solids, control the pollutants.” Since the Construction Stormwater General Permit is considered a temporary, short term permit, why is the construction stormwater group not using the same approach on sites that are considered contaminated?
- Ecology has not defined a threshold as to what is/isn't considered contaminated soils. Will MTCA Method A be the trigger? Contamination is present on 80+ percent of all urban jobs. Contractors are well versed in handling these materials **in** a manner that is efficient and protective of waters of the state. Why is Ecology now emphasizing its regulation of these materials? Is there any scientific basis or justification indicating that the remediation ofcbntami natioi1 is a significant source of pollutants to waters of the state? Gary Merlino Construction Company respectfully requests that this section of the regulation should be removed.
- Contractors/owners generally do not have detailed information available at the time of application. Contractors generally receive sampling results and devise a plan and move forward with excavations within a matter of days if not hours. As such, Ecology's timelines for reviewing and processing the information regarding contaminated materials is unreasonable. Thus, if the S2.A.1.f requirement remains as a part of the application process; it has the potential to create significant problems in the form of further complicating and delaying an already long and over burdensome process.

- Please elaborate on the detail of additional information required.
    - What is the extent of the requirements in the NOI if a SWPPP, TESC plan, and/or Dewatering plan aren't developed during the NOI application?
- Clarify expectations for site review and how much pre-sampling constitutes due diligence.
- A process flowchart or additional details explaining how a permittee proceeds once contamination is identified on a site would be incredibly helpful.
- The proposed draft permit language in this section goes beyond the intent of Ecology's construction stormwater mandate. In addition, the proposed language only adds to existing confusion, potential legal liabilities, and project delays. We read the draft language to mean Ecology could issue Administrative Orders prior to any proof that water quality standards have been violated – or an immediate concern that they could be violated due to a permittees' neglect.
    - Issuing additional parameters to treat and sample when the majority of contaminants can be controlled by controlling the turbidity takes away from the intent of having a General Permit.
    - If this the correct reading, the language should be deleted from the permit.
- Modify S2.A.1.f to require:
    - Detailed information with the NOI on the contaminants, contaminant locations, contaminant concentrations, and contaminant depth (if known and readily available).
    - Pollution prevention and/or treatment BMPs proposed to control the discharge of soil and/or groundwater contaminants in stormwater
    - The information should also include related portions of the Stormwater Pollution Prevention Plan (SWPPP) that describe how contaminated and potentially contaminated construction stormwater and dewatering water will be managed
    - Additional information may include the following:
        i. Map identifying location of contaminants;
        ii. Temporary Erosion and Sediment Control Plans;
        iii. Cleanup order(s) and oversight agency contact information that apply to the construction site.

### Response:

Ecology agrees with the suggestion to define "contaminated soils and contaminated groundwater" and has included definitions in the final permit. Contaminated is defined as soil and/or groundwater that contains contaminants, pollutants, or hazardous substances that do not occur naturally or occur at levels greater than natural background. Ecology does not require soil or groundwater characterization or testing in order to submit an NOI; however, Ecology recognizes that Applicants are knowledgeable about their construction activity and the relative condition of the soil and groundwater that they will be working in. If contaminated soils and/or groundwater are known, Applicants are obligated to provide information about the nature and extent of the contamination as well as the proposed pollution prevention and treatment BMPs that will be used to control the discharge of contaminants in stormwater. Applicants may indicate on the NOI if contamination is

suspected, provide an explanation as to how they came to this conclusion, and what stormwater management BMPs are proposed as a contingency if the contamination is encountered. If data exist, but are not readily available a summary of the data may be substituted. Information about contamination that is not associated with the construction activity (adjacent land) may be helpful to Ecology, but not mandatory. Information on contamination that is present within the project area but located in areas that will not be disturbed can be important in developing contingency plans maintaining construction limits.

Ecology acknowledges that a primary pollutant encountered during construction projects is sediment and; therefore, turbidity is one of the core parameters in the CSWGP. However, factors such as historical soil or groundwater contamination may contribute other pollutants to stormwater. Examples may include, but are not limited to, pesticides, heavy metals, polychlorinated biphenyls (PCBS), volatile organic compounds (VOCs), petroleum hydrocarbons, polycyclic aromatic hydrocarbons (PAHs), and carcinogenic polycyclic aromatic hydrocarbons (cPAHs). While correlations may exist between turbidity and certain contaminants, specific correlations are unknown and may vary depending on site-specific conditions and stormwater chemistry. Because the management of turbidity and total suspended solids (TSS) may not adequately control or treat all pollutants present. Certain contaminated construction sites may be issued an Administrative Order requiring additional monitoring for the known constituents of concern, in order to prevent discharges that may cause violations of water quality standards. Ecology maintains that monitoring for the known constituents of concern is more informative than using turbidity as a surrogate.

The development of Model Toxics Control Act (MTCA) cleanup standards did not include an assessment of pollutant mobilization to surface waters and MTCA cleanup standards do not correlate to water quality standards. Discharges under the CSWGP must not cause or contribute to a violation of water quality standards. Core parameters, such as turbidity and pH benchmarks, do not accurately characterize the pollutant levels in construction stormwater discharge from a contaminated site. Therefore, additional monitoring for site specific pollutants may be required to verify compliance with water quality standards. Additional monitoring is required only at those construction sites that have been issued an Administrative Order. Administrative Orders list additional parameters in addition to the core permit parameters of pH and turbidity that are known constituents of concern at the construction site.

The definition of contaminant is appropriate and no revisions are proposed.

Ecology appreciates the suggestion for a flowchart and will continue to improve implementation guidance.

Revision:

Definitions for contaminated soils and contaminated groundwater were added to the permit. See Definitions.

### *S2.A.1.f. Notice of Intent Form/Timeline Notification and Detailed Information*

**Commenters:** City of Anacortes, Boeing, City of Fife, King County, City of Renton, City of Sumner, Widener & Associates

#### Summary of the Range of Comments:

- Clarify the statement "[Applicants must notify Ecology if they are] aware of contaminated soils and/or groundwater associated with the construction activity". The word "aware" is vague in this instance.
- Modify S2.A.1.f to require:
  - Detailed information with the NOI on the contaminants, contaminant locations, contaminant concentrations, and contaminant depth (if known and readily available).
  - Pollution prevention and/or treatment BMPs proposed to control the discharge of soil and/or groundwater contaminants in stormwater
  - The information should also include related portions of the Stormwater Pollution Prevention Plan (SWPPP) that describe how contaminated and potentially contaminated construction stormwater and dewatering water will be managed
  - Additional information may include the following:
    - iv. Map identifying location of contaminants;
    - v. Temporary Erosion and Sediment Control Plans;
    - vi. Cleanup order(s) and oversight agency contact information that apply to the construction site.
- The word "aware" is vague in this instance. It is unclear what constitutes awareness of contamination.
  - Recommends to Ecology that S2.A.1.f. be modified to require notifying Ecology of any sites currently listed on any of Ecology's searchable databases.
- The phrase "associated with the construction activity" is not susceptible of a clear interpretation.
- Section S2.A.1.f. should be revised to track the language in the NOI.

#### Response:

Ecology has considered the comments and suggested revisions, and agrees that the language should be revised to include only those related portions of the [Stormwater Pollution Prevention Plan] SWPPP that describe how contaminated and potentially contaminated construction stormwater and dewatering water will be managed. However, Ecology does not agree that cleanup orders and oversight agency contact information should be listed as examples of detailed information to provide with the NOI. Cleanup orders and agency contact information does not provide details on the nature and extent of the contamination or pollution prevention and/or treatment BMPs proposed to control the discharge of soil and/or groundwater contaminants in stormwater. The Applicant may send copies of the cleanup orders and agency contact information if they feel this provides detailed information as required in S2.A.1.f. The list of additional information in the permit is a non-exhaustive list of examples.

To clarify, the term “aware” means “conscious”, “realizing”, and “knowing” and is appropriate for this section of the permit. While the permit does not require soil or groundwater sampling or characterization, many applicants may be aware of existing contamination from other means. Ecology searchable databases are also an excellent source for information; however, contamination frequently occurs at sites not listed in the databases.

Ecology also agrees that the permit and NOI should contain the same language in Section VI Existing Site Conditions and S2.A.1.f.

### Revision:

Revise S2.A.1.f.iv. as follows: Related portions of the Stormwater Pollution Prevention Plan (SWPPP) ~~modified to~~ that address the management of contaminated ~~soils and/or groundwater~~ and potentially contaminated construction stormwater and dewatering water,

Revise the NOI as follows: If you answered yes to Questions 1- 3, please provide detailed information ~~on~~ with the NOI (as known and readily available) on the nature and extent of the contamination (concentrations, locations, ~~contaminants, and contaminant concentrations (if known)~~ and depth), ~~and~~ as well as pollution prevention and/or treatment Best Management Practices (BMPs) proposed to control the discharge of soil and/or groundwater contaminants in stormwater. This ~~information~~ should include information that would be included in related portions of the Stormwater Pollution Prevention Plan (SWPPP) that describe how contaminated and potentially contaminated construction stormwater and dewatering water will be managed.

## *S2.A.1.f.i. Notice of Intent Form/Timeline*
## *MTCA*

**Commenters:** Port of Tacoma, Washington Public Ports Association

### Summary of the Range of Comments:

- Sites that have contaminants at concentrations higher than the appropriate cleanup level should already be on Ecology’s radar (i.e. MTCA cleanup sites, etc.). Ecology programs should coordinate with one another during DCAP development so stormwater considerations can be addressed during the implementation of the plan and the CSWGP can remain a “general permit”.
- Ecology decision-makers would be wise to separate water quality objectives and regulatory prescriptions from those more properly related to the Model Toxics Control Act (MTCA). Even the perception of MTCA liability can have a profound effect on the viability of development projects that otherwise make good environmental and economic sense. The extent to which the agency has permitted these issues to become conflated in internal discussions and policy proposals is detrimental to the interests of the state.
- Remove S2.A.1.f.i.

Response:

The Water Quality Program regulates water quality, including point source discharges from construction sites under the authority of the Clean Water Act and state Water Pollution Control Act. By contrast, TCP is responsible for implementing and enforcing laws and rules relating to the cleanup of contaminated sites and the management of underground storage tanks under the authority of MTCA. A Draft Cleanup Action Plan (DCAP) describes the selected cleanup method(s) and specifies cleanup standards regulated under MTCA. Management of construction stormwater discharges is not part of the DCAP and is not required by the Cleanup Action Plan rule (WAC 173-340-380). In the past, Ecology used the MTCA exemption to NPDES permitting for discharges to surface waters at and from sites being cleaned up pursuant to MTCA. However, on July 14, 2008, Ecology determined that the permit exemption is not applicable to the NPDES permit program per RCW 70.105D.090(2) as only the US Congress can create exemptions to the federal Clean Water Act's (CWA) mandate that discharges to can only occur pursuant to a permit. The Water Quality Program regulates the CSWGP, an NPDES permit.

The commenters raise a very good point that the CSWGP is a general permit. The requirements in S2.A.1.f.i are necessary to determine if a construction activity is eligible for coverage under a general permit, or if an individual NPDES Permit will be required.

### *S2.A.1.f.ii. Notice of Intent Form/Timeline*

**Commenter:** Port of Tacoma

Comment:

Please clarify the purpose of the map with sample locations. If contaminants are onsite in areas of soil disturbance, a map showing sample locations should not influence Ecology's review of the NOI.

- Recommends Ecology remove S2.A.1.f.ii from the Permit.

Response:

Ecology has considered the comment and suggested revision, but has decided not to revise S2.A.1.f.ii. Submittal of a map with sample locations is not mandatory. The map is an example of the level of detail that the Applicant may submit with their NOI to provide additional information on the nature and extent of contamination.

### *S2.A.1.f.iii. S2.A.1.f.iv. and S2.A.1.f.v. Notice of Intent Form/Timeline*

**Commenters:** Port of Tacoma, Port of Seattle

Comment:

Public entities (agencies, municipalities, etc.) are generally required to obtain all permits prior to going to bid. Pollution prevention and/or treatment BMPs and/or TESC plans and/or SWPPPs and/or dewatering plans cannot be dictated to contractors because it is up to them

to determine work means and methods. It is also the contractor's liability in how work is performed. Public contracting in particular is outcome-based. That is to say, there is an outcome required in the contract (in this case be in compliance with water quality standards and the permit) and it is up to the contractor to determine how that outcome will be achieved and to bid the project appropriately. Prescription of how work will be performed or changes to project requirements after the bidding process is complete will greatly increase costs to both public and private owners. A NOI cannot be considered complete and accurate and a permit issued when the information provided may not be the methods implemented. Please clarify if it is Ecology's expectation that plans have been finalized when submitting a NOI. This is not feasible for public entities, and could create long delays and increased project costs.

- Recommends Ecology remove S2.A.1.f.iii, iv, and v. from the Permit.

Response:

Ecology has considered the comment and suggested revision, but has decided not to revise S2.A.1.f.iii, S2.A.1.f.iv, or S2.A.1.f.v. Submittal of a TESC plan, SWPPP, or dewatering plan is not mandatory. These are examples of the level of detail that the Applicant may submit with their NOI to provide additional information on the pollution prevention and/or treatment BMPs proposed to control the discharge of contaminants in stormwater. It is not Ecology's expectation that plans have been finalized at the time the NOI is submitted. Ecology recognizes that public contracting generally does not include dictating means and methods to contractors; however, the Permittee is responsible for meeting the conditions of the permit. This includes providing information on the nature and extent of known contamination and an indication that stormwater will be managed to control the discharge of contaminants in stormwater.

### *S2.A.1.f.v. Notice of Intent Form/Timeline*

**Commenter:** Yakima County

Comment:

Addition of dewatering plan will add costs and will require complete submittal of a new stormwater pollution prevention plan.

Response:

Ecology has considered the comment and suggested revision, but has decided not to revise S2.A.1.f.v. Submittal of a dewatering plan and/or dewatering contingency plan is not mandatory. The dewatering plan is an example of the level of detail that the Applicant may submit with their NOI to provide additional information on the pollution prevention and/or treatment BMPs proposed to control the discharge of contaminants in stormwater.

### *S2.C.2.b.iii. Erosivity Waiver Link*

**Commenter:** Port of Tacoma

Comment:

The link should read: http://www.ecy.wa.gov/programs/wq/stormwater/construction/resourcesguidance.html because the Construction Stormwater main page is not where the link to the Average Annual Precipitation is located.

Response:

Ecology agrees with the suggestion and has revised the draft permit accordingly.

### *S2.C.4. Erosivity Waiver*

**Commenters:** Port of Tacoma, Washington Public Ports Association

Comment:

The terms (significant contributor of pollutants, and construction activity that could reasonably expect to cause a violation) are not defined in S1.B.1.b. or S1.B.1.b.ii. They are referenced but a definition of what these terms mean is not provided. See comments for S1.B.1.b.i and ii. Please define these terms.

Response:

Ecology issues written notification when a construction activity has been determined to be a significant contributor of pollutants to waters of the State of Washington and/or reasonably expects to cause a violation of any water quality standard.

Ecology has considered the comment and suggested revision to the language in S1.B.1.b.i and S1.B.1.b.ii, but has decided to retain the current permit language without revision.

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## Condition S3. Compliance with Standards

### *S3.B. Compliance with Standards*

**Commenter:** Port of Tacoma

Comment:

The SWPPP acronym has already been defined earlier in the Permit. Ecology does not need to define it again here.

Response:

Ecology agrees with the suggestion and has revised S3.B accordingly.

### *S3.C. Compliance with Standards*

**Commenter:** Port of Tacoma

Comment:

Please clarify this sentence. The wording is confusing and can be misinterpreted. Is the Permittee complying with water quality standards when they comply with the "following conditions" or are they out of compliance if a discharge causes or contributes to a violation,

regardless of whether they comply with the conditions?

Response:

Discharges are out of compliance if the discharge causes or contributes to a violation of water quality standards. Compliance with water quality standards is presumed unless other site-specific information indicates the discharge causes or contributes to a water quality standard violation.

### *S3.D. Compliance with Standards*

**Commenters:** Port of Tacoma, Port of Seattle

Comment:

Many sites use infiltration to manage stormwater. This condition appears to conflict with S1.2.a which states that operators are not required to seek a permit if discharging to groundwater, etc. as long as there is no point source discharge to surface water or a storm sewer system that drains to surface waters of the State. Please clarify.

Response:

Some permitted sites discharge to groundwater and/or a combination of groundwater and surface water. This special condition is a reminder to Permittees that discharges to groundwater through an injection well must also comply with Underground Injection Control (UIC) regulations and is not in conflict with S1.2.a.

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## Condition S4. Monitoring Requirements, Benchmarks, and Reporting

### *S4.B. Site Inspections*

**Commenter:** BIAW

Comment:

BIAW objects to removing the less than one acre sampling exemption in **S4.B.1**. Removing this sampling exemption will add cost and delays to small projects with little to no water quality impact.

Response:

The exemption language was moved to S4.C.2.a. Sampling Frequency. It was not Ecology's intent to remove this sampling exemption.

### *S4.B. Site Inspections*

**Commenter:** Port of Tacoma

Comment:

"Permittees" should read "Permittee's".

Response:

Ecology agrees with the suggestion and has revised S4.B accordingly.

### *S4.B.2. Site Inspections*

**Commenter:** Port of Vancouver

Comment:

The port requests clarification for reduced inspection frequency. Does the reduced frequency begin upon the day of stabilization or does the permittee need to wait until the Permit Fee Activity Status Change form has been processed by the fees department?

Response:

The reduced inspection frequency begins on the day of temporary stabilization. There is no need to wait until a Permit Fee Activity Status Change form has been processed by the fees unit.

### *S4.C.2.a. Sampling Frequency*

**Commenter:** Port of Tacoma

Comment:

Only sites that are considered "a significant contributor of pollutants" or "reasonably expected to cause a violation of water quality standards" are required to obtain a permit for projects that disturb less than an acre. If an Operator has no way to demonstrate that they are in compliance with water quality standards, then they should not be required to apply for a permit.

Response:

This section of the permit does not address application requirements.

### *S4.C.2.g. Sampling Frequency*

**Commenter:** King County

Comment:

Please better clarify what "stabilized" means.

Response:

Temporary stabilization is defined in the definitions in Appendix A and means that the ground surface has been temporarily covered and will not erode during rain events or when exposed to wind.

### *S4.C.2.g. Sampling Frequency and S4.C.3.b. Sampling Locations*

**Commenters:** Port of Tacoma, Port of Seattle

Comment:

These two conditions appear to conflict with one another. If discharge points that drain areas are stabilized and inactive, why would a Permittee continue to sample in that area? Please clarify.

- Recommends Ecology remove S4.C.2.g from the Permit.
- Recommends S4.C.3.b be changed to the following:

- The Permittee may discontinue sampling at discharge points that drain areas of the project that are inactive and stabilized to prevent erosion.

Response:

These two sections are not in conflict. S4.C.2.g allows a Permittee to reduce sampling frequency at a temporarily stabilized inactive site to once every calendar month. The reduced sampling frequency for an inactive site applies to all discharges from the inactive site. The reasoning was that an inactive site that has undergone temporary stabilization is unlikely to have a turbid discharge. The entire construction project must have undergone temporary stabilization to qualify as inactive.

S4.C.3.b allows a Permittee to discontinue sampling at discharge points that drain areas of the project that are fully stabilized. A Permittee may stop sampling individual discharge points that drain fully stabilized areas; however, they must continue to sample discharge points that drain from areas that have not been stabilized.

### *S4.C.3.e. Sampling Locations*

**Commenter:** Port of Tacoma

Comment:

The Port agrees with this inclusion to the permit. It provides needed clarification that the Permittee is not responsible for sampling discharge points where they have no operational control.

Response:

Comment noted.

### *S4.D. pH Sampling Requirements – Significant Concrete Work or Engineered Soils*

**Commenters:** Port of Tacoma, Miles Sand & Gravel, CalPortland

Summary of the Range of Comments:

- Please confirm that the trigger for pH sampling stormwater for the use of recycled concrete and/or engineered soils is also 1000 cubic yards. Currently, there is no quantifiable amount listed.
    - Recommends Ecology use the following language:…(*significant concrete work means greater than 1000 cubic yards poured concrete, recycled concrete or engineered soils used over the life of the project)…*
    - A standard similar to significant concrete work should be implemented before testing is required.
- Adding monitoring when "recycled concrete is first exposed to concrete" is a term that is very broad. Does exposed mean monitoring as soon as the material is placed? Or does it mean when the recycled concrete has had precipitation fall on it?

Response:

The 1,000 cubic yard threshold applies to significant concrete work only and includes concrete work that uses recycled concrete aggregate in new concrete.

There is no quantity threshold for engineered soils and recycled concrete. Monitoring must be done weekly when the recycled concrete and/or engineered soils are first exposed to precipitation.

### *S4.D.1. pH Sampling Requirements – Significant Concrete Work or Engineered Soils*

**Commenters:** Port of Tacoma, Port of Seattle

Comment:

pH sampling is supposed to occur weekly during pours and curing. If the pH is within range after the initial pour, the pH will continue to neutralize while the concrete cures. A Permittee should not be required to sample for pH after the active pour and/or during the curing period if pH is within range. Some concrete can take years to fully cure.

- Recommends Ecology use the following language:…when the concrete is first poured and exposed to precipitation, and continue weekly until stormwater pH is in the range of 6.5 to 8.5 (su).

Response:

Ecology has considered the comment and suggested revision to the language in S4.D.1, but has decided to retain the current permit language without revision. Sampling is required until stormwater pH is in the range of 6.5 to 8.5 su. This may occur during or after the curing period.

### *S4.D.2. pH Sampling Requirements – Significant Concrete Work or Engineered Soils*

**Commenters:** Port of Tacoma, Port of Seattle, CPM Development Corporation, Gary Merlino Construction Company, Stoneway Concrete, Miles Resources, Miles Sand & Gravel, CalPortland

Summary of the Range of Comments:

- Define “fully stabilized” for recycled concrete.
- What proof does Ecology have to show this requirement is needed?
    - Any requirements within this permit for recycled concrete should be eliminated as Ecology lacks Best Available Science.
- Concrete from a demolition should not be considered to be “recycled concrete”. Recycled concrete is often in rubble form and is used as a stabilizer for soft ground, etc. Recycled concrete should be considered fully stabilized when stormwater discharge is within range. Concrete from a demolition should not be considered to be “recycled concrete”.
    - Recommends Ecology use the following language:…the Permittee must begin the weekly pH monitoring period when the recycled concrete is first exposed to precipitation and continue until stormwater pH is in the range of 6.5 to 8.5 (su).

Response:

Fully stabilized means the establishment of a permanent vegetative cover or equivalent permanent stabilization measures which prevent erosion. An example is if recycled concrete

or soil amendments used as a stabilizer for soft ground have been covered by topsoil, vegetation has been established, and the pH of the stormwater discharge is in the range of 6.5 to 8.5. Ecology considers concrete in rubble form from concrete demolition as recycled concrete. As cited in the Fact Sheet, the median pH runoff values from fine concrete were found to be 9.3 to 9.8 for course concrete stockpiles in a 1996 Minnesota Department of Transportation study (Sadecki et al 1996). In addition, the American Concrete Pavement Association stated that the friability of recycled concrete has the ability to alter the pH in runoff until the source material is fully stabilized (ACPA 2009).

### *S4.D.1. and S4.D.2. pH Sampling Requirements – Significant Concrete Work or Engineered Soils*

**Commenters:** Port of Tacoma, Port of Seattle, Boeing

Summary of the Range of Comments:

- Make consistent with the ISGP pH range of 6.0 to 9.0 (su). The ISGP is a longer term permit; it does not make sense to have a temporary, short term permit be more restrictive.
- Ecology has proposed changes to the CSWGP that specify a pH range of 6.5 to 8.5 su. These proposed revisions fail to take into account the fact that the pH range for stormwater permits was previously addressed in the ISGP. Specifically, the benchmark pH range in the ISGP was revised in 2009 to take into consideration the pH of Washington rainfall. Ecology's decision to set the pH benchmark range at 5.0 – 9.0 su was upheld in the 2011 PCHB No. 09-135 through 09-141.
    - Recommends Ecology use the pH range of 5.0 – 9.0 su.

Response:

The CSWGP carries forth the pH benchmark of 6.5 – 8.5 su from the previous permit. This benchmark is water quality based and is not new. Please refer to the pH criteria in Chapter 173-201A WAC in Table 200 (1)(g) for fresh water standards and Table 210(1)(f) for marine water standards. The permit carries the pH benchmarks forward from the 2010 permit per the anti-backsliding rules in 40 CFR 122.44(l).

The Industrial Stormwater General Permit (ISGP) pH benchmark is 5.0 – 9.0 su (not 6.0 – 9.0 as indicated in the comments above). The PCHB ruling upheld the benchmarks in the ISGP which replaced a dual benchmark/action level approach in which the action levels became the benchmarks. The CSWGP pH benchmarks were not included in this PCHB ruling.

### *S4.D.1., S4.D.2., and S4.D.3. pH Sampling Requirements – Significant Concrete Work or Engineered Soils*

**Commenter:** Washington State Department of Transportation

Comment:

Recommends changing the word "monitoring" to "sampling" to be consistent with the other changes in S.4.D. If Ecology feels this recommendation is not appropriate because it changes the intent, WSDOT recommends defining the expectations for "pH monitoring" on page 22 or in the definitions section.

Response:

Ecology agrees with the suggestion and has revised S4.D.1, S4.D.2, and S4.D.3 accordingly.

### *S4.D.5. pH Sampling Requirements – Significant Concrete Work or Engineered Soils*

**Commenters:** Port of Tacoma, Port of Seattle

Comment:

This condition states that pH sampling locations are supposed to be different than stormwater discharge locations where turbidity is measured. However, this is not specified in "sampling locations" listed in S4.C.3. Please clarify. If sampling locations for pH are supposed to be different than turbidity sampling points, add pH sampling location-specific criteria in S4.C.3, otherwise modify language in S4.D.5 to have discharge points be the sampling locations for both parameters.

Response:

pH sampling should be conducted prior to stormwater discharge to allow for pH adjustment if necessary. The pH sampling requirements are not in conflict with S4.C.3 as sampling for both turbidity and pH is required prior to discharge. The sampling requirements in S4.D.5 clarify that pH sampling must be done in only those areas where stormwater runoff is associated with work that has the potential to affect the pH of the stormwater.

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## Condition S5. Reporting and Recordkeeping Requirements

### *S5.A. High Turbidity Reporting*

**Commenter:** Port of Tacoma

Comment:

The website provided is not the WQWebPortal. It is the Construction Stormwater main page.

Response:

There was a typographical error in S5.A that has been corrected. High turbidity reporting through the WQWebPortal may be submitted when this form becomes available. The website link takes you to the main CSWGP website where links to the ERTS website and the WQWebPortal may be found.

Revision:

Revise S5.A. as follows: Anytime sampling performed in accordance with Special Condition S4.C indicates turbidity has reached the 250 NTUs or more (or transparency less than or equal to 6 cm) high turbidity reporting level, the Permittee must either call ~~Ecology's Regional office~~ the applicable Ecology Region's Environmental Report Tracking System (ERTS) number by phone within 24 hours of analysis or submit an electronic ERTS report (or submit an electronic report through Ecology's Water Quality Permitting Portal (WQWebPortal) – Permit Submittals when the form is available). See the CSWGP web site ~~is~~

for links to ERTS and the WQWebPortal: http://www.ecy.wa.gov/programs/wq/stormwater/construction/index.html. Also, see phone numbers in Special Condition S4.C.5.b.i.

### *S5.F. Noncompliance Notification*

**Commenters:** Port of Tacoma, Port of Seattle, King County, Washington State Department of Transportation

Comment:

- The CSWGP does not include effluent limitations. Effluent limitations would typically be associated with additional restrictions such as an Administrative Order. Noncompliance notifications associated with effluent limits should be specified in the Administrative Order, not the CSWGP. If effluent limits are referring to 303(d)-listed waters, then the intent should be specified clearly.
    - Remove "exceed numeric effluent limitations" from S5.F.
- Please clarify specifically what effluents and what limits.
- Reference S8. after the new wording "or exceed numeric effluent limitations" to ensure the understanding that numeric effluent limits are used to evaluate discharges to outfalls in impaired receiving waters, while benchmark values are used to evaluate discharges to outfalls in non-impaired waters.
- Add examples of noncompliance that may cause a threat to human health or the environment, such as spills of fuels or other materials, pond or slope failure which discharge significant amounts of sediment to fish bearing surface waters, and discharges that violate water quality standards.

Response:

The numeric effluent limits do refer to the 303(d)-listed waters. A reference to Special Condition S8. Discharges to 303(d) or Total Maximum Daily Load (TMDL) Waterbodies has been added. Examples of threats to human health or the environment have also been added.

Revision:

Revise S5.F. as follows: In the event the Permittee is unable to comply with any part of the terms and conditions of this permit, and the resulting noncompliance may cause a threat to human health or the environment (such as but not limited to spills of fuels or other materials, catastrophic pond or slope failure, and discharges that violate water quality standards), or exceed numeric effluent limitations (see S8. Discharges to 303(d) or TMDL Waterbodies), the Permittee must, upon becoming aware of the circumstance:

### *S5.F.1. Noncompliance Notification*

**Commenter:** BIAW

Comment:

BIAW appreciates the change from "immediately" to "within 24 hours" to notify the applicable regional office, this ensures notice of noncompliance happens in a reasonable

amount of time and clearly states the timeframe.

Response:

Comment noted.

### *S5.F.3. Noncompliance Notification*

**Commenter:** King County

Comment:

In terms of when are you supposed to prepare / submit written reports to Ecology for "non-compliance," clarify what it means / when is this triggered.

Response:

Noncompliance notification requirements are detailed in S5.F. Written noncompliance notification reports are required within five days of when the Permittee becomes aware of the circumstances. The report must contain a description of the noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue, and the steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. Examples of noncompliance are exceeding effluent limitations for discharges to 303(d)-listed waterbodies and activities that may cause a threat to human health or the environment (such as spills of fuels or other materials, catastrophic pond or slope failure, and discharges that violate water quality standards).

### *S5.F.3. Noncompliance Notification*

**Commenter:** Port of Tacoma

Comment:

The Port agrees that using the electronic submittal system will streamline and simplify the reporting process.

Response:

Comment noted.

### *S5.G.1.e. Access to Plans and Records*

**Commenter:** Port of Tacoma

Comment:

While the Port agrees that it is a good idea to keep an Erosivity Waiver onsite to prevent any confusion, it should not be a permit requirement since the waiver is not covered under the permit.

Response:

Ecology agrees with the suggestion and has removed S5.G.1.e. There are instructions on the Erosivity Waiver to keep a copy of the Erosivity Waiver on site, or within reasonable access to the site, for use by the operator or for on-site review by Ecology or the local jurisdiction.

### *S6. Permit Fees*

**Commenter:** Yakima County

Comment:

S6 below is not a change but I question why the fees are still high and increased in 2015 when more requirements are being passed on to permit holders of the Municipal Stormwater General Permit (MSGP). I question why the fees in 2016 and 2017 are also being increased when more requirements are being passed on to county and city governments. The new MSGP requires the permittee to review SWPPP, inspect construction site at least one time during construction, inspect at completion, recordkeeping, responding to calls within 24 hours, inspection of stormwater facility every 5 years, etc.

Response:

The fee system for state waste discharge and NPDES permits is established under Chapter 173-224 WAC pursuant to RCW 90.48.160, 90.48.162, or 90.48.260. RCW 90.48.465 authorizes Ecology to base fees on factors related to the complexity of permit issuance and compliance and to charge fees to fully recover, but not exceed the costs of the permit program based on expenses incurred in the issuance and comprehensive administration of state waste discharge and NPDES permits. Fees are not based on permit requirements, but rather on Ecology's administrative cost of permit issuance and administration.

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## Condition S8. Discharges to 303(d) or TMDL Waterbodies

### *S8.A.1. Conduct Water Quality Sampling for Discharges to Waterbody Segments Impaired for Turbidity, Fine Sediment, High pH, or Phosphorus*

**Commenter:** Peter Rinallo Jr.

Comment:

An NPDES NOI received an inquiry from a Ecology Permit Administrator on the plan to control construction stormwater discharge to a waterbody impaired by temperature? It was explained to the Ecology representative, temperature is not listed as a parameter we need to be concerned with per section S8.A.1. To satisfy Ecology request, the applicant was able to plug the outfall location for the project duration to ensure no discharge from the site. With this improvement, the applicant requested their NPDES NOI be rescinded since the project would not discharge construction stormwater to surface waters. The rescinded request was granted by Ecology. Recommend that even though the current NPDES permit identifies additional monitoring requirements for construction stormwater discharges to impaired waterbody listed for fine sediment, high pH, turbidity or phosphorous that temperature be added to that list. Plus, more guidance should be added to help the applicant be aware that other water quality impairments may be applicable to a project.

Response:

Discharges to impaired waterbodies must provide Ecology with data indicating the discharge is not expected to cause or contribute to an exceedance of a water quality standard. This includes all impairments, not just those with effluent limits. The operator must provide data and other technical information that sufficiently demonstrates that the discharge of the pollutant will meet in-stream water quality criteria at the point of discharge to the waterbody. For discharges to waters with an Environmental Protection Agency (EPA) approved or established TMDL, the operator must demonstrate that there is sufficient remaining wasteload allocation in the TMDL.

Ecology appreciates your suggestions for guidance and will continue to improve our outreach.

### *S8.A.2. Sampling and Numeric Effluent Limits For Certain Discharges to 303(d)-listed Waterbodies*

**Commenter:** Port of Tacoma

Comment:

Update the date to reflect the upcoming permit cycle.

Response:

Ecology agrees with the suggestion and has revised S8.A.2 accordingly.

### *S8.E.1. Sampling and Limits for Sites Discharging to Waters Covered by a TMDL or Another Pollution Control Plan*

**Commenter:** Washington State Department of Transportation

Comment:

Add clarification that Ecology will inform permittees of the applicable TMDL requirements, rather than a permittee needing to determine applicable TMDL requirements using the link provided.

Response:

It was not Ecology's intent to imply that the Applicant or Permittee had the responsibility of determining if their discharge is subject to a TMDL. Ecology sends a Proposed New Discharge to an Impaired Waterbody form to Applicants who propose a discharge to a TMDL waterbody. The link in S8.E.1 is for provided for reference so users can read the water clean-up plans and get additional information regarding TMDLs.

### *S8.E.2. Sampling and Limits for Sites Discharging to Waters Covered by a TMDL or Another Pollution Control Plan*

**Commenter:** Port of Tacoma

Comment:

Update the date to reflect the upcoming permit cycle. Capitalize "administrative order".

Response:

Ecology agrees with the suggestion to correct the date and has revised S8.E.2 accordingly.

Ecology has considered the comment and suggested revision to the language in S8.E.2, but has decided to retain administrative order without revision.

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## Condition S9. Stormwater Pollution Prevention Plan

### *S9. Stormwater Pollution Prevention Plan*

**Commenter:** Port of Tacoma

Comment:

The SWPPP acronym has already been defined earlier in the Permit. Ecology does not need to define it again here.

Response:

Ecology has considered the suggested revision, but has decided to retain the language defining SWPPP for clarity.

### *S9.A.1. The Permittee's SWPPP Must Meet the Following Objectives:*

**Commenter:** Port of Tacoma

Comment:

The BMP acronym has already been defined earlier in the Permit. Ecology does not need to define it again here.

Response:

Ecology has considered the suggested revision, but has decided to retain the language defining BMP for clarity.

### *S9.B.1.f. General Requirements*
### *Engineering Calculations*

**Commenter:** Peter Rinallo Jr.

Comment:

Recommend further information be added in the permit to what is expected to be included for the engineering calculations? Do the calculations need to be stamped by a Professional Engineer and included in the SWPPP or TESC plan?

Response:

The engineering calculations must be included in the SWPPP, not in the TESC plan. The permit does not regulate the design requirements of the engineering calculations nor does the permit require the calculations be stamped by a Professional Engineer. However, it is recommended that the calculations comply with local and/or state design criteria and specifications.

### *S9.C.1. Stormwater Best Management Practices (BMPs)*

**Commenter:** Okanogan County

***Comment:***

Shouldn't the Stormwater Management Manual for Eastern Washington be used for sites east of the crest of the Cascade Mountains?

Response:

The BMPs must be consistent with the Stormwater Management Manual for Eastern Washington for sites east of the crest of the Cascade Mountains. This is specified in S9.C.2.

### *S9.D.1. SWPPP – Narrative Contents and Requirements*

**Commenter:** Port of Tacoma

Comment:

Formatting: "Preserve Vegetation/Mark Clearing Limits" should have its own heading.

Response:

There was a formatting error in S9.D.1 and Ecology has corrected this section accordingly.

### *S9.D.5. Stabilize Soils*

**Commenter:** Port of Vancouver

Comment:

The port recommends Ecology consider alternative stabilization requirements for fill sites. Fill projects that are phased over several years due to coordination of favorable weather conditions and availability of local fill make scheduling and stabilization much more dynamic than planned construction projects. For example, a recent port fill project received fill from different local projects at various times so even though the project may have appeared inactive at times additional fill was scheduled to be delivered shortly thereafter; therefore, continuously spending time and money to stabilize when additional fill is scheduled to be received is neither applicable nor practical especially where there aren't any discharges leaving the site. The port suggests fill sites have a stabilization schedule of completion of fill or if discharge above benchmarks.

Response:

Soil stabilization must follow the conditions of S9.D.5 regardless of the project schedule or type. Exposed soil at fill sites/projects has the potential to erode and an exception to S9.D.5 is not appropriate.

**Commenter:** Peter Rinallo Jr.

Comment:

I have seen many construction sites where construction stormwater ponds [go] up onsite and remains there with nowhere to go but infiltrate without a means of entering surface waters of the State. With these sites, plastic cover is the typical temporary BMP of choice to

cover disturbed soils to satisfy either the 2 or 7 day coverage rule. The use of plastic cover can be helpful, but at the same time it is harmful to the environment especially in large quantities in our landfills where it ends up not decomposing for a very long time. Instead of covering exposed soils with plastic cover, I recommend Ecology inspect only the outfalls to where construction stormwater discharges to. If compliant with the permit, but a mud bath or eroding within its construction perimeter (for example), that condition should not be regulated under the permit. The construction stormwater discharge points where construction stormwater enters surface waters of the state should be the inspected regulated points of compliance. If this sustainable recommendation is considered, at a minimum a temporary perimeter BMP should be in place unless treatment through native vegetation is selected as the bests BMP strategy of choice.

Response:

The permit does not require the use of plastic to stabilize soils. S9.D.5.a provides a list of applicable BMPs used to stabilize soils including, but not limited to: temporary and permanent seeding, sodding, mulching, plastic covering, erosion control fabrics and matting, soil application of polyacrylamide (PAM), the early application of gravel base on areas to be paved, and dust control.

**Commenter:** Washington State Department of Transportation

Comment:

Clarify that the soil covering timelines in S9.D.5.d. apply to exposed and unworked soils including stockpiles. It has been WSDOT's experience that some Ecology inspectors have expectations that all stockpiles be covered at the end of every day; even if the stockpiles are being worked, are located away from discharge points, are protected with sediment trapping measures, and there is no rain in the forecast (comply with S9.D.5.e, and f.). If covering stockpiles daily is the expectation, please clarify that expectation in S9.D.5.f.

Response:

The timelines in S9.D.5.d for covering soil apply to exposed and unworked soils including stockpiles. Soil stockpiles are subject to all the conditions in S9.d.5, including stabilizing the stockpiles with the application of effective BMPs as well as stabilization of soils at the end of the shift before a holiday or weekend if needed based on the weather forecast.

### *S9.D.6.c.i. Protect Slopes*

**Commenter:** Port of Tacoma

Comment:

The Port agrees with the change in terminology.

Response:

Comment noted.

### *S9.D.9.b. Control Pollutants*
### *Cover, Containment, & Protection*

**Commenter:** King County

Comment:

Secondary containment: if possible, add clarification that secondary containment should be made of material that can withstand the chemical / pollutant it is intended to contain (and for an appropriate duration). Without more distinct guidelines, the consequences are that the cheapest options are often purchase (e.g., kiddie pools). Cheaper options might ensure containment for the short term. However, the unintended consequence is increased containment failure and plastic disposal, which is not environmentally friendly.

Response:

Secondary containment must provide cover, containment, and protection and be of an impervious structure capable of containing 110% of the volume contained in the largest tank within the containment structure. Ecology has considered the suggested revision, but has decided to retain the language in the permit.

### *S9.D.9.f. Control Pollutants*
### *pH Modifying Sources*

**Commenters:** Gary Merlino Construction Company, Stoneway Concrete

Comment:

This requirement is overly burdensome on permittees and unnecessary. Permittees should not be required to prevent contamination of stormwater runoff by pH-modifying sources. There are many common best management practices (BMPs) currently implemented in the field such as containment by berms, grade/elevation changes, portable storage tanks, treatment devices as well as sewer discharge permits, which are used to manage and contain stormwater that has come in contact with such materials to prevent a discharge that does not the meet benchmarks values set forth by this permit. As long as stormwater is managed in such a way that it successfully meets these benchmarks, permittee should not be subjected to a requirement to prevent stormwater runoff water from coming into contact with sources of pH.

Response:

Source control is an important component of stormwater management and prevention of contamination of stormwater by pH-modifying sources. Ecology has considered the suggested revision, but has decided to retain the language for clarity.

### *S9.D.9.g. Control Pollutants*

**Commenters:** Port of Tacoma, Port of Seattle, CPM Development Corporation, Gary Merlino Construction Company, Stoneway Concrete, Miles Resources, CalPortland

Summary of the Range of Comments:

- The language in this section refers to a permittee managing the pH of water to protect surface and ground water. The CSGP does not regulate ground water discharges and the

use of the word Groundwater should be removed in this section. The CSGP should be consistent with the regulations and not allow language that doesn't reflect the rules in the permit.

- The permit has historically discussed surface waters or waters of the state; it does not specifically regulate nor discuss ground water. It is inappropriate and unprofessional for Ecology's permit writer to insert the reference to groundwater solely "because she wanted to" (Ms. Moon's comment during South Seattle Community College Information Session). This language should be removed and the existing permit should be retained.
- Stormwater that does not leave the site (i.e., infiltrated) does not require sampling; therefore a Permittee will only adjust pH if their stormwater or authorized non-stormwater is discharged to surface waters of the state or a storm conveyance system.
    - Recommends Ecology use the following language: Adjust the pH of stormwater or authorized non-stormwater if discharged and necessary to prevent an exceedance of groundwater and/or surface water quality standards.

### Response:

The CSWGP is both a National Pollutant Discharge Elimination System (NPDES) and State Waste Discharge General Permit for stormwater discharges associated with construction activity and regulates the discharge of water to waters of the State, both surface and groundwater. Discharges must comply with both Chapter 173-201A WAC (Surface Water Quality Standards) and Chapter 173-200 WAC (Ground Water Quality Standards). The phrase “groundwater and/or surface” was added to S9.D.9.g to clarify that pH adjustment must be done if necessary to prevent violations of both groundwater and surface water quality standards. Testing and treatment of stormwater or authorized non-stormwater that will be discharged should be conducted prior to discharge when there is a potential of pH modification from construction activity to insure regulatory compliance.

Ecology has considered the comments and suggested revisions, but has decided not to revise this section of the permit.

## *S9.D.9.h. Control Pollutants*
## *Concrete Washout*

**Commenters:** CPM Development Corporation, Gary Merlino Construction Company, Stoneway Concrete, Miles Sand & Gravel, CalPortland

### Summary of the Range of Comments:

- This requirement is not consistent will what is stated in the most current 2012 version of the Stormwater Management Manual for Western Washington for BMP C154: Concrete Washout Area. Under the conditions of use, it states that "if less than 10 concrete trucks or pumpers need to be washed out on- site, the wash water may be disposed in a formed area awaiting concrete...." The ability to washout concrete truck chutes is a critical function of jobsites. There are limited options for washing out concrete truck chutes and the option of washing into formed areas is critical to ensure smooth jobsite operation. Areas which are formed and set to be paved, receive very

little washout water. The small amount of washout water (which has an elevated pH) has no proven impact on groundwater. GMCC requests that this provision be re-written to maintain the established protocols for jobsite washout.

- Concrete washout water is allowed onto the ground in areas that are formed and set to receive concrete paving within a short period of time (1 to 2 days). This is information which the Industry has received directly from Ecology and this should be maintained in the proposed permit. There are limited options for washing out concrete truck chutes and the option of washing into formed (i.e contained) areas is critical to ensure smooth jobsite operation. Areas which are formed and set to be paved and where a truck washes out receive very little washout water. The permit should be revised to allow this practice to continue.
- The amount of water used to wash the mixer hopper and chutes are minimal and the area that has been washed into will soon be covered up by impervious material (with the exception of pervious concrete). This would not contribute in any significant way to pollution and would allow for better site management and more efficient use of time and materials.

Response:

The discharge of concrete wastewater is prohibited per S1.D.1. Water used in the clean-up of concrete or concrete products and water used for rinsing or washing of concrete trucks, mixers, pumpers, tools, and chutes is considered *concrete wastewater* (see Concrete Wastewater definition in the CSWGP Appendix A). Assuring that washout of concrete trucks is performed off-site or in designated concrete washout areas is consistent with the prohibition of the discharge of concrete wastewater. The Construction Stormwater Pollution Prevention BMPs included in the stormwater management manuals (Volume II in the western manual and Chapter 7 in the eastern manual) focus on managing stormwater impacts associated with construction activities. The manuals provide guidance and a range of tools that can be used to maintain compliance with the permit and do not contain all of the regulatory requirements found in the permit. The purpose of BMP C154 is to prevent or reduce the discharge of pollutants to stormwater from concrete waste by conducting washout off-site, or performing washout in a designated concrete washout area. The BMP implementation clearly states “do not wash out concrete trucks onto the ground”. The note in BMP C154 indicates that wash water from the washout of less than 10 concrete truck and pumpers may be disposed of in a formed area or upland area where it will not contaminate surface or groundwater. This note has been problematic as it implies that the volume of washout water from less than 10 concrete trucks or pumpers will not contaminate surface or groundwater. However, this may not be in compliance with the permit. The permit takes precedent over the manual.

Ecology has considered the comments and suggested revisions, but has decided not to revise this section of the permit. S9.D.9.h is not a new condition and suggestions to delete the requirement is in conflict with the anti-backsliding provisions of the Clean Water Act.

### *S9.D.13. Protect Low Impact Development (LID) BMPs*

**Commenter:** Port of Tacoma

Comment:

The LID acronym is already defined in the heading. Do not need to define it again here.

Response:

Ecology agrees with the suggestion and has revised S9.D.13 accordingly.

### *S9.D.13. Protect Low Impact Development (LID) BMPs*

**Commenter:** Miles Resources

Comment:

Why is there a requirement for Low Impact Development (LID) BMPs? Requirements for LID are a local government's permitting requirement. Ecology should not be involved with permits issued by other government's authorities. Please delete this requirement.

Response:

The EPA Effluent Limitations Guidelines in 40 CFR Part 450 and the EPA Construction General Permit (CGP) require the minimization of soil compaction where infiltration practices will be installed. Element 13 is in compliance with the federal requirements to minimize soil compaction. Although protection of LID facilities could be achieved by following the other 12 Elements, Ecology determined that protection of LID facilities would be better understood and more successful if presented as its own Element.

Ecology has considered the comments and suggested revision, but has decided not to revise Element 13 of the permit.

### *S9.D.13.b. Protect Low Impact Development (LID) BMPs*

**Commenter:** BIAW

Comment:

The use of the word "excluding" makes this portion difficult if not impossible to physically comply with on certain sites. BIAW acknowledges that low impact development (LID) areas do need care not to over work the soils, create stockpiles on LID areas, or stage/park or cycle heavy equipment on an LID area. The wording could be clearer to ensure the LID areas are treated differently, but minor equipment and foot traffic use are inevitable. There is a need to protect these areas so they continue to function by not over compacting the area. We recommend changing it to the following wording:

- Permittees must prevent compacting Bioretention and Rain Garden facilities by ***restricting unnecessary use*** of construction equipment and foot traffic. Protect completed lawn and landscaped areas from compaction due to construction equipment.

*Or:*

- Permittees must *maintain porosity of* ~~prevent compacting~~ Bioretention and Rain

Garden facilities by *protecting against compaction by* ~~excluding c~~onstruction equipment and foot traffic. Protect completed lawn and landscaped areas from compaction due to construction equipment.

Response:

Ecology agrees with your comments and has revised the language.

Revision:

Revise S9.D.13.b as follows: Permittees must maintain the infiltration capabilities of Bioretention and Rain Garden facilities by protecting against compaction by construction equipment and foot traffic. Protect completed lawn and landscaped areas from compaction due to construction equipment.

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## Condition S10. Notice of Termination

### *S10.B. When the Site is Eligible for Termination*

**Commenter:** Port of Tacoma

Comment:

Ecology should specify how a Permittee will be notified that the NOT is considered complete and accurate. If Permittee submits a NOT and does not hear from Ecology for 31 days, the CSWGP should be considered terminated.

Response:

Permit terminations are effective on the thirty-first day following receipt of a complete NOT unless otherwise notified that the termination has been denied. Ecology provides written notification to the Permittee when an NOT is denied. An NOT is considered complete when all fields on the form have been filled out and the form has a valid signature. Ecology notifies the Permittee within 30 days of receipt if the NOT is not complete.

### *S10.B. When the Site is Eligible for Termination*

**Commenters:** Port of Tacoma, BIAW

Comment:

- The Port agrees that having an electronic version of the NOT is a good idea. It will streamline the termination process and eliminate the risk of NOTs getting lost in the mail, etc.
- Allowing the Notice of Termination (NOT) to be submitted electronically is also a welcome change. This will help streamline the various reporting requirements as the NOI is required to be an electronic submission, it makes sense to allow the NOT to also be electronic. BIAW encourages DOE to quickly update the website to make electronic submission available sooner rather than later.

Response:

Comments noted.

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## Comments on General Conditions

### *G2. Signatory Requirements*

**Commenter:** King County

Comment:

Please provide an option for permittees to submit paper copies of NOIs. Some agencies have an internal process requiring a formal hardcopy signature process from a high-ranking official; it would not be practical for this person to have a signatory account.

Response:

Permittees unable to submit electronically may contact Ecology to request a waiver and obtain instructions on how to obtain a paper NOI as indicted in S2.A.1.b.

### *G2.B. Signatory Requirements*
### *Reports*

**Commenter:** Washington State Department of Transportation

Comment:

Recommends editing the first sentence to, "All reports required by this permit and other information requested by Ecology (including Notices of Intent, Notices of Termination, and Transfer of Coverage forms) must be signed by a person described above or by a duly authorized representative of that person."

Response:

Ecology agrees with your comments and has revised the language.

Revision:

Revise G2.B as follows: All reports required by this permit and other information requested by Ecology (including NOIs, NOTs, and Transfer of Coverage forms) must be signed by a person described above or by a duly authorized representative of that person.

### *G3.C. Right of Inspection and Entry*

**Commenter:** Port of Vancouver

Comment:

The port requests clarification of Ecology's "Right of Entry" and Ecology's proper regulatory inspection notification procedures. From a safety point of view, the port is a heavy industrial area with large equipment, rail traffic, and other industrial activities along with complex national security requirements. An unescorted visitor, no matter his/her level of experience, may not be aware of the danger inherent in some areas of the port. The port requests that Ecology inspectors notify port staff or port tenants

upon entry to ensure safe working conditions.

Response:

Ecology is also concerned about safety. Ecology is committed to adhering to the safety rules and guidelines of a facility and/or construction site. Although site inspections may be unannounced, Ecology checks-in with the on-site contact and/or site office to insure safety of Ecology personnel.

### *G6. Reporting a Cause for Modification*

**Commenters:** Port of Tacoma, Port of Vancouver, Port of Seattle, Gary Merlino Construction Company, Stoneway Concrete, King County

Summary of the Range of Comments:

- Define "contaminated". Presence of "contaminated" material does not necessarily mean stormwater discharge for construction activities will be impacted.
    - The reporting trigger is unclear (Method A levels? Anything above background levels? Any staining or odor?
- Who makes the determination that discovered contamination may impact discharge? The Permittee? Ecology?
- Contractors should not have to report to Ecology every time there is a discovery of contaminated soils and/or groundwater that may impact the discharge.
- If an application needs to be submitted 60 days prior to proposed changes, it is not practical to do so if contaminated material is discovered. Is the Permittee supposed to stop work for 60 days while Ecology reviews a modified permit application? The potential economic impacts associated with delays; work that was originally scheduled for the dry season could get pushed into the wet season, etc.
- Reduce the time frame to 30 days.
- This process should also clarify what the permittee should do if contamination is discovered when construction is underway and a CSWGP has been issued to the site.
- Clarify the process for submitting a new application or supplemental information and the compliance expectations for a project that is in construction.
    - Concerned about how this process will affect construction timelines.
    - It is understood that this condition does not require that work stop in the vicinity of the cause for modification until the existing permit is reissued or modified.
    - If a stop work order is a possibility, clarify under what conditions that might occur.

Response:

Ecology agrees that definitions for contaminated soils and contaminated groundwater should be included in the permit and these have been added. The reporting trigger/threshold for contaminated soils and/or groundwater is the same as is indicated on the NOI (i.e. contaminants, pollutants, and hazardous substances that are either not naturally occurring or occur at greater than natural background levels). Discharges under the permit must not cause or contribute to a violation of surface water quality standards, ground water quality standards, sediment management standards, and human health-based criteria in the National Toxics Rule. Construction activity that discharges stormwater to

waters of the State and are reasonably expected to cause a violation of any water quality standard are not authorized under the permit. Ecology reserves the right to order additional monitoring per General Condition G13 for constituents of concern that are identified by site-specific information. Additional monitoring may be ordered during construction if information indicates the discharge is reasonably expected to cause a violation of water quality standards.

General Condition G6 (Reporting a Cause for Modification) was carried forward from the 2010 permit. The addition of reporting the "discovery of contaminated soils and/or groundwater that may impact the discharge" was added to clarify that the discovery of contaminants on site during construction may constitute a material change to the discharge and may be subject to public notice (WAC 173-226-130(5)). However, Ecology has removed this language as the requirement to report new, corrected, and relevant information is included in General Condition G21 Reporting Other Information.

Written notification to Ecology reporting new, corrected, or other relevant facts must be submitted when the Permittee becomes aware of such information.

Revision:

Definitions for contaminated soils and contaminated groundwater were added to the permit. See Definitions.

### *G8. Duty to Reapply*

**Commenter:** Yakima County

Comment:

G8 is not a change but I am requesting relief for projects that will not be completed by December 31, 2015. The relief is to grandfather the current pollution prevention plan to not include the dewatering plan until 2017 or later.

Response:

Dewatering plans are not a condition of permit renewal.

### *G11. Duty to Provide Information*

**Commenter:** Port of Tacoma

Comment:

Please quantify "reasonable amount of time".

Response:

A good rule of thumb for "reasonable amount of time" is 14 days as required by the reporting and recordkeeping requirements in S5.G.2.a. However, requests from Ecology generally define the time expectation for submitting information on a case-by-case basis.

### *G13. Additional Monitoring*

**Commenters:** Port of Tacoma, Port of Seattle, Washington Public Ports Association

### Summary of the Range of Comments:

- Administrative Orders are becoming increasingly more common. As a result, providing more specifics about Administrative Orders, e.g. what triggers them, would be useful to the regulated community.
- Issuing Administrative Orders to projects where controlling turbidity will control pollutants defeats the purpose of having a general permit.
- Having contaminants onsite does not automatically qualify a site to be considered a "significant contributor of pollutants", nor will discharging stormwater from a site with contaminants automatically create a violation of water quality standards.
    - Do not support a system under which the mere presence of contaminants is the determining factor in issuing an Administrative Order.
- Having contaminants onsite should not be the determining factor in issuing an Administrative Order. The Permittee should also have demonstrated that they are not complying with the intent of the permit through the improper/inadequate implementation of BMPs.
- Recommends that Ecology set up a stakeholders working group to discuss this issue. The stakeholder working group should include industry, impacted businesses and other key stakeholders.

### Response:

Ecology acknowledges that a primary pollutant encountered during construction projects is sediment and; therefore, turbidity is one of the core parameters in the CSWGP. However, factors such as historical soil or groundwater contamination may contribute other pollutants to stormwater. Examples may include, but are not limited to, pesticides, heavy metals, polychlorinated biphenyls (PCBS), volatile organic compounds (VOCs), petroleum hydrocarbons, polycyclic aromatic hydrocarbons (PAHs), and carcinogenic polycyclic aromatic hydrocarbons (cPAHs). While correlations may exist between turbidity and certain contaminants, specific correlations are unknown and may vary depending on site-specific conditions and stormwater chemistry. Because the management of turbidity and total suspended solids (TSS) may not adequately control or treat all pollutants present, certain contaminated construction sites may be issued an Administrative Order requiring additional monitoring for the known constituents of concern in order to prevent discharges that may cause violations of water quality standards. Condition G13 (Additional Monitoring) is based on Section 308 of the Clean Water Act, and 40 CFR 122.41(h); and allows Ecology to cover contaminated construction sites without the need for a site-specific individual NPDES permit. Administrative orders issued by Ecology may be appealed (Chapter 43.21B RCW). Additional sampling provides information on the nature of the discharge to facilitate AKART and demonstrate compliance. Administrative Orders are not issued based solely on the presence of contaminants. BMPs, stormwater management, and construction plans also play a vital role.

Ecology agrees that guidance on permitting contaminated construction sites is important

and will continue to develop public guidance and outreach opportunities.

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# Comments on Appendices

## *Appendix A. Definitions*

### *Benchmark*

**Commenters:** Port of Tacoma, Port of Vancouver

Comment:

Please define the term "indicator value" and its intended use.

Response:

An Indicator Value is a term used predominantly in Administrative Orders as a threshold value for a pollutant concentration that the Operator uses to determine if the discharge is likely/not likely to cause a water quality violation. Indicator Values are derived from water quality standards, laboratory quantitation levels for specific laboratory methods, and the human health-based criteria in the National Toxics Rule.

### *Contaminant*

**Commenters:** Port of Tacoma, Port of Vancouver

Summary of the Range of Comments:

- WAC 173-340-200 is not helpful in defining what contaminant means. It is a regurgitation of what is written here. More thought – and stakeholder input – is needed before this definition can be incorporated into the CSWGP.
- Prepare a guidance document that includes most commonly encountered "contaminants" and concentrations that would trigger "contaminated" soil/groundwater.

Response:

The definitions of contaminant and hazardous substances are provided in the permit and in WAC 173-340-200. Neither of these terms are new to the permit.

Ecology agrees that guidance on permitting contaminated construction sites is important and will continue to develop public guidance and outreach opportunities.

### *Contaminated*

**Commenters:** Port of Tacoma, Port of Vancouver, Anchor QEA, Washington Public Ports Association

Comment:

Please define the term "contaminated soils and/or groundwater".

Response:

Definitions for contaminated groundwater and contaminated soil have been added to Appendix A – Definitions.

Revision:

Add definitions as follows: **Contaminated groundwater** means groundwater which contains *contaminants*, *pollutants*, or *hazardous substances* that do not occur naturally or occur at levels greater than natural background.

**Contaminated soil** means soil which contains *contaminants*, *pollutants*, or *hazardous substances* that do not occur naturally or occur at levels greater than natural background.

### *Hazardous Substance*

**Commenters:** Port of Tacoma, Port of Vancouver

Comment:

This term is defined by reference and not helpful. Please see comment regarding "contaminant".

Response:

Comment noted. Please see response to "contaminant".

### *Numeric Effluent Limit*

**Commenter:** Washington State Department of Transportation

Comment:

Add a definition for numeric effluent limit.

Response:

Section 502(1) of the Clean Water Act defines effluent limitation as *any restriction established by a state or the Administration on the quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into navigable waters, the waters of the contiguous zone, or the ocean, including schedules of compliance*. This is stated in the permit Fact Sheet in the Proposed Permit Limits section.

### *Process Wastewater*

**Commenter:** Washington State Department of Transportation

Comment:

Recommends leaving the word "water" and not changing it to "non-stormwater." Changing the word to "non-stormwater" creates a potential loophole in which stormwater or groundwater could be collected and then used as part of a construction process, but not be considered process wastewater. Disregard this recommendation if that was the intent of the change.

Response:

Ecology agrees with your comments and has retained the word "water".

### *Recycled Concrete*

**Commenter:** Washington State Department of Transportation

Comment:

Recommends adding a definition for recycled concrete to prevent potentially hazardous cementitious waste from being incorporated on-site as recycled concrete. The definition should be consistent with the current draft of the NPDES Sand and Gravel General Permit and include examples of what can and cannot be incorporated as recycled concrete. WSDOT would like to propose the following definition for recycled concrete: Hardened structural concrete material such as, demolished structures, roads, sidewalks. Concrete waste such as, drilling slurries, concrete mix truck washout, and material from washout containers, cannot be incorporated on-site as recycled concrete.

Response:

The CSWGP does not prescribe construction material, but rather regulates construction stormwater. Ecology has considered the suggested revision, but has decided not to include a definition of recycled concrete.

### *Significant Concrete Work*

**Commenter:** Port of Tacoma

Comment:

Recommends Ecology use the following language: Significant Concrete Work means greater than 1000 cubic yards of poured concrete, recycled concrete, or engineered soils used over the life of a project.

Response:

Ecology has considered the comment and suggested revision, but has decided not to revise the definition of significant concrete work to keep the definition consistent with S4.D.

### *Uncontaminated*

**Commenters:** Port of Tacoma, Port of Vancouver, Washington Public Ports Association

Summary of the Range of Comments:

- This definition is not helpful, nor consistent with previous experience with Ecology on projects containing "contaminants". MTCA is not necessarily used to determine whether a site is "contaminated" or "uncontaminated". If Ecology intends to use MTCA standards for the definition of uncontaminated, they need to also use the appropriate MTCA cleanup action levels according to land use (i.e., industrial, unrestricted, etc.) and clearly state in the permit this is the standard Ecology is using.
    - The conflation of water quality and MTCA goals are not in the long-term interest of the State of Washington.

Response:

Ecology agrees that the MTCA reference is confusing and has removed this from the definition.

Revision:

Revise Definition as follows: **Uncontaminated** means free from any contaminant~~, as defined in MTCA cleanup regulations~~. See definition of "contaminant" and WAC 173-340-200.

### *Water-only Based Shaft Drilling*

**Commenter:** King County

Comment:

Please consider adding the following language:

- Water-only Based Shaft Drilling is a shaft drilling process that uses water only and no additives are involved in the drilling of shafts for construction of*, including, but not limited to, tunnel portals; underground transportation and wastewater facilities; and building, road, or bridge foundations.*

Response:

Ecology has considered the comment and suggested revision, but has decided not to revise the definition of water-only based shaft drilling to keep the definition consistent with S1.D.4 and S9.D.9.j.

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## Comments on the Fact Sheet

**Commenters:** Port of Tacoma, Port of Vancouver

Summary of the Range of Comment:

- Fact Sheet language was modified from the 2010 Fact Sheet:
  - 2010: "This Fact Sheet explains the nature of discharges from construction activities, Ecology's decisions on limiting pollutants in stormwater and non-stormwater from construction activities, and the regulatory and technical basis (sic) for those decisions".
  - 2015: "This fact sheet (sic) explains the nature of authorized discharges (emphasis added), the decisions on limiting pollutants in those discharges (emphasis added), and the regulatory and technical bases for those decisions."
- "Authorized discharges" is a broad term and implies that Ecology could attempt to regulate discharges outside the intent of this permit. It is important to note that the previous version specifically states that discharges are associated with construction activities. This language should remain in the current Fact Sheet as well, so as to not tempt Ecology to regulate outside parameters set by the CSWGP.
- The 2015 Fact Sheet does NOT explain the changes to the permit, nor the regulatory or technical bases for those decisions. The Fact Sheet does not explain why the new

language surrounding “contaminated sites” is included.

Response:

Please refer to the above responses for *General Comments and Process*, *Comments on Special Conditions*, *Comments on General Conditions*, and *Comments on Appendices*.

**Commenter:** Port of Tacoma

Comment:

The draft CSWGP includes minor changes overall is not a true statement. While not many words were changed/added to the CSWGP, the implications and the potential impacts of those words to the construction and development industries will be significant.

Response:

Comment noted. Without specifics on the “implications” or “potential impacts”, no clarification can be offered.

**Commenter:** Port of Tacoma

Comment:

The Fact Sheet states that the cost of compliance with the draft general permit is disproportionate to business size. This is now even more accurate with the inclusion of the "contaminated sites" language into the permit. Many projects may become cost prohibitive because of the restrictions Ecology will put on a Permittee, when controlling the turbidity should be sufficient to control the pollutants. The mitigation features provided in the Fact Sheet do not address the additional costs for retention, testing, treatment and disposal that would be required for "contaminated sites". If Ecology wants to include contaminated sites, the Economic Impact Analysis should include additional costs incurred by Permittees on these sites. These costs have not been properly captured by Ecology.

Response:

Please refer to the response to *Economic Impact Analysis Inadequate*.

**Commenter:** Port of Tacoma

Comment:

By issuing Administrative Orders on top of the CSWGP, Ecology has demonstrated that it is not following its own rationale for non-numeric technology-based effluent limits. If a Permittee is implementing the requirements in the permit (SWPPP, 13 Elements, BMPs, etc.), establishing numerical effluent limits are not necessary unless the Permittee demonstrates otherwise.

Issuing Administrative Orders before a Permittee has the opportunity to execute BCT and BAT through BMPs is not consistent with the intent of the permit.

Response:

Administrative Orders are for additional monitoring and do not establish effluent limits.

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## Comments on the Notice of Intent

### *Section I. Site Information*

**Commenter:** Port of Tacoma

Comment:

Please clarify the necessity to differentiate the types of soil disturbance? The type of construction activity is already specified. Ecology should not need this information to review the NOI.

Response:

The list of soil disturbance types provides important information on the nature of the construction project that is helpful to Ecology and serves as a prompt to Applicants for calculating the soil disturbance acreage. Ecology has removed the check boxes and provided a non-exhaustive list of types of soil disturbance that should be included in the calculation of the total area of soil disturbance.

Revision:

Revise the NOI, Section I. Site Acreage as follows: Total area of soil disturbance for **your** site/project over the life of the project:_____acres. Include grading, equipment staging, excavation, borrow pit, material storage areas, dump areas, haul roads, side-cast areas, off-site construction support areas, and all other soil disturbance acreage associated with the project. *(Note: 1 acre = 43,560 $ft^2$.)*

~~Type of Soil Disturbance (*check all that apply*):~~

- ☐ ~~Grading~~
- ☐ ~~Equipment Staging~~
- ☐ ~~Excavation~~
- ☐ ~~Borrow Pit~~
- ☐ ~~Material Storage Areas~~
- ☐ ~~Dump Areas~~
- ☐ ~~Other (specify):_____~~

**Commenter:** Washington State Department of Transportation

Comment:

Recommends adding a check box to identify emergency projects.

Response:

Ecology has considered the comment and suggested revision, but has decided not to revise the NOI to include a check box for emergency projects. The permit doesn't have an emergency mechanism to issue a permit on an expedited schedule without meeting the public notice requirements.

### *Section VI. Existing Site Conditions*

**Commenter:** Port of Tacoma

Comment:

"Contaminated" and "contamination" are not well defined. Definition by reference to the WAC does not provide enough information. The inclusion of "occurs at greater than natural background" is too vague and inclusive and could lead to multiple issues. See comments regarding S2.A.1.f.

Response:

Please refer to the responses in the *Definitions* section above and S2.A.1.f.

### *Section VI. Existing Site Conditions*

**Commenter:** Port of Tacoma

Comment:

The SWPPP is not required to be developed until after the permit is issued, as long as it is prior to starting construction (See NOI VII.). This language implies that a SWPPP must be written prior to the NOI being submitted. See comments regarding S2.A.1.f.iii, iv, and v.

- Recommends that Ecology remove this language from the NOI.

Response:

Please refer to the response to *Comments on Special Conditions* for S2.A.1.f.

Revision:

Revise the NOI as follows: If you answered yes to Questions 1- 3, please provide detailed information ~~on~~ with the NOI (as known and readily available) on the nature and extent of the contamination (concentrations, locations, ~~contaminants, and contaminant concentrations (if known)~~ and depth), ~~and~~ as well as pollution prevention and/or treatment Best Management Practices (BMPs) proposed to control the discharge of soil and/or groundwater contaminants in stormwater. This ~~information~~ should include information that would be included in related portions of the Stormwater Pollution Prevention Plan (SWPPP) that describe how contaminated and potentially contaminated construction stormwater and dewatering water will be managed.

### *Section IX. Discharge/Receiving Water Information*

**Commenter:** Port of Tacoma

Comment:

The language added to this sentence (…even if the risk of discharge is low or limited to periods of extreme weather) is not needed. All known discharge points should be included in the NOI already. If extreme weather creates a new discharge point, the WQWebDMR system allows for new discharge points to be added if need be. This should be sufficient in the event of extreme weather.

Response:

WQWebDMR allows for the addition of new outfalls, but not the addition of a new receiving waterbody. The language on the NOI is to help Applicants capture all receiving waterbodies.

### *Section IX. Discharge/Receiving Water Information*

**Commenter:** Port of Tacoma, BIAW

Summary of the Range of Comments:

- This [if the site discharges to a stormwater conveyance system that in turn flows to a surface waterbody, include the surface waterbody name and location] could be misinterpreted if not familiar with what Ecology is requesting. The language indicates Ecology requests both the conveyance system and the waterbody.
    - Recommends Ecology use the following language: If the site discharges to a stormwater conveyance system that in turn flows to a surface waterbody, use the surface waterbody name and location, not the conveyance system.
- Creating a distinction between initial discharge point into a conveyance system that leads to a water body versus the same downstream water body indirectly impacted is a positive change. This has been a small point of contention and the new language offers needed clarification lacking in the previous version. BIAW encourages Ecology to keep this valuable change in the final NOI.

Response:

Ecology is interested in both the conveyance system and the surface waterbody name.

### *Section XI. Other Ecology National Pollutant Discharge Elimination System (NPDES) and/or State Waste Discharge Permits*

**Commenter:** Port of Tacoma

Comment:

This is not necessary to issue a CSWGP. Additionally, Ecology should use their own database (PARIS) if they want to know whether a site has coverage under another Ecology-issued permit.

Response:

This section was used by the Fees Unit, but has been deleted from the NOI.

### *Section XIII. Certification of Permittees*

**Commenter:** BIAW

Comment:

Revising the signatory requirements from “vice president” to a “responsible corporate

officer" is a welcome and appropriate change.

Response:

Comment noted.