

Comment #1

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PUBLIC SUBMISSION

Docket: EPA_FRDOC_0001
Recently Posted EPA Rules and Notices from FR Feed.

Comment On: EPA_FRDOC_0001-26029
Proposed CERCLA Administrative Settlement: Spokane Recycling Company

Document: EPA_FRDOC_0001-DRAFT-1267
Comment on EPA_FRDOC_0001-26029

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Submitter Information

General Comment

they want money from them, they need to leave people alone.trump and admin.

Attachments

takingawayproprty

One attachment titled takingawayproperty. PDF attached to email.

Comment #2

PUBLIC SUBMISSION

As of: 11/9/20 6:02 PM Received: November 02, 2020 Status: Draft Tracking No. kh1-1ik2-j6xd Comments Due: November 02, 2020 Submission Type: Web

Docket: EPA_FRDOC_0001

Recently Posted EPA Rules and Notices from FR Feed.

Comment On: EPA_FRDOC_0001-26029

Proposed CERCLA Administrative Settlement: Spokane Recycling Company

Document: EPA_FRDOC_0001-DRAFT-1274

Comment on EPA_FRDOC_0001-26029

Submitter Information

Email: pwhidbee@perkinscoie.com

Organization: Kaiser Aluminum Investments Company

General Comment

Attached please find comments submitted on behalf of Kaiser Aluminum Investments Company in opposition to the proposed CERCLA Administrative Settlement between EPA and Spokane Recycling Company. Also attached are the Exhibits cited in the comments.

Attachments

KAIC Comments in Opposition to Proposed Settlement Agreement Between EPA and Spokane Recycling

Ex. A (May EPA Action Memo)

Ex. B (Easement Agreement)

Ex. C (KAIC Administrative Settlement Agreement and Order on Consent for Removal Actions CERCLA Docket No. 10-2020-0152)

Ex. D (Prior NPDES Permit)

Ex. E (Current ISGP Permit)

Ex. F (Corrections Required)

Ex. G (KAIC Notice of Intent to Sue Under CWA)

Ex. H (July EPA Action Memo)

Ex. I (Inspector Letter 2018)

Ex. J (Notice of Penalty Letter 2019)

Ex. K (PCHB Settlement Agreement)

Ex. L (Notice of Violation Letter 2016)

Ex. M (EPA Policy Memo 1997)

Ex. N (KAIC FOIA Request)

15 attachments included with email.

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6 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
7 REGION X

8
9 IN THE MATTER OF:

10 Former Kaiser Smelter Site
11 Mead, Spokane County, Washington,

12 Spokane Recycling Company, LLC
13 SETTLING PARTY

CERCLA Docket No. 10-2020-0142

**KAISER ALUMINUM INVESTMENTS
COMPANY'S COMMENTS IN
OPPOSITION TO PROPOSED
SETTLEMENT AGREEMENT
BETWEEN EPA AND SPOKANE
RECYCLING COMPANY, LLC**

14
15 **INTRODUCTION**

16 Kaiser Aluminum Investments Company ("KAIC") submits these comments in
17 opposition to the Proposed Settlement Agreement ("Proposed Agreement") between the U.S.
18 Environmental Protection Agency ("EPA") and Spokane Recycling Company, LLC ("Spokane
19 Recycling"). As currently drafted, the Proposed Agreement would provide Spokane Recycling
20 with contribution protection for "matters addressed", which currently covers costs incurred by
21 any party for what EPA characterizes as the Former Kaiser Smelter Site ("Site"). But the Site
22 covers three separate, non-contiguous parcels of property with different owners and
23 circumstances:
24

- 25
26 (1) **Spokane Recycling Smelter Property:** Spokane Recycling owns the former smelter
property ("Smelter Property") where EPA is undertaking an emergency removal

1 action and incurring costs. Although Spokane Recycling created and failed to address
2 the site conditions leading to the necessity of this emergency removal action, Spokane
3 Recycling has not participated in the removal action and its payment under the
4 Proposed Agreement would cover only a tiny portion of EPA's costs for the Smelter
5 Property.

6 (2) **Spokane Recycling Outfall Property:** Spokane Recycling also owns the property
7 containing an outfall to Deadman Creek ("Outfall Property"). Spokane Recycling is
8 making no payments and has conducted no removal or response actions regarding this
9 property.

10 (3) **KAIC Property:** KAIC owns a property downstream from Spokane Recycling's
11 Smelter Property containing two settling ponds ("KAIC Property," aka "Parcel
12 36096.9063"). Spokane Recycling has an easement for the use and maintenance of
13 the settling ponds on the KAIC Property, and stormwater from Spokane Recycling's
14 Smelter Property drains to these ponds. Spokane Recycling has discharged
15 contaminated materials to and failed to maintain the ponds. As a result, KAIC is
16 undertaking response actions under its Administrative Settlement Agreement and
17 Order on Consent with EPA ("KAIC ASAOC") to address contamination in the
18 ponds on the KAIC Property caused by Spokane Recycling and for which Spokane
19 Recycling is responsible. Spokane Recycling is making no payments under the
20 Proposed Agreement or otherwise to cover any portion of costs incurred by KAIC or
21 any other party, nor has it conducted any removal or response actions at the KAIC
22 Property.

23 KAIC makes one objection here: that the Proposed Settlement should not provide
24 contribution protection to Spokane Recycling for costs incurred by KAIC (or any other party, for
25 that matter) relating to the KAIC Property. Kaiser proposes a revision to the Proposed Agreement
26 to make this change. See page 14 of these comments. If EPA makes the revision, KAIC would
27 withdraw its objection to the Proposed Agreement.

28 KAIC does not seek to interfere with EPA's efforts to settle with Spokane Recycling with
29 respect to Spokane Recycling's CERCLA liability to EPA for Spokane Recycling's own
30 properties at the Site. But KAIC objects to the Proposed Agreement as written because it
31 purports to provide contribution protection to Spokane Recycling for response costs at the KAIC
32 Property at the Site. Due to Spokane Recycling's failure to clean up its properties at the Site,

1 failure to prevent contaminated materials from discharging to ponds on the KAIC Property, and
2 failure to maintain the ponds despite its clear legal obligations to do so, KAIC has been required
3 to remove contaminants and treat water in the ponds, incurring significant costs. Spokane
4 Recycling has not taken any action or contributed to the costs of addressing its contamination at
5 the KAIC Property. Consequently, Spokane Recycling is not entitled any contribution protection
6 for response costs at the KAIC Property. The Proposed Agreement must be revised so that the
7 “matters addressed” includes *only* Spokane Recycling’s properties at the Site, not the entire Site
8 including the KAIC Property. Having done no work at the KAIC Property and contributed
9 nothing to the costs incurred to perform that work, Spokane Recycling is not entitled to
10 contribution protection as to the KAIC Property and the work performed by KAIC.
11

12 **FACTS**

13
14 The Site includes three separate, non-contiguous parcels of property owned by two
15 distinct owners. *See* Proposed Agreement, App’x C (Site Map showing location of three separate
16 parcels). Spokane Recycling owns the 170-acre Smelter Property containing the former
17 aluminum smelter facility. *See* Ex. A (EPA Action Memorandum, May 28, 2020) (“May EPA
18 Action Memo”), at 1-2. The Smelter Property contains dozens of large industrial buildings, a
19 baghouse, administrative buildings, a network of stormwater catch basins, sumps, storage tanks,
20 a rail spur, and other features common to industrial facilities. *Id.* at 2.
21

22 KAIC owns a 405-acre undeveloped parcel containing settling ponds that is downstream
23 of the Smelter Property owned by Spokane Recycling (“KAIC Property”). *Id.* Spokane
24 Recycling has an easement for the use and maintenance of a water drainage system for
25 stormwater generated at its property that includes the settling ponds on the KAIC Property. *See*
26 Ex. B (Easement Agreement) ¶ C (easement for “the use and maintenance of an existing water

1 drainage system that includes an access road, two settling basins, underground utilities, and an
2 underground pipeline (collectively, the ‘Drainage System’)). The system of catch basins and
3 storm sewers on Spokane Recycling’s Smelter Property collects and diverts stormwater through
4 a half-mile long aqueduct flowing north from the Smelter Property to the settling ponds on the
5 KAIC Property. *Id.* Among other requirements, the Easement Agreement expressly requires
6 Spokane Recycling to comply with all applicable governmental laws, rules, regulations and
7 orders in connection with the settling ponds, acquire the necessary permits for its activities
8 related to the settling ponds, and maintain the settling ponds in good condition and repair. *Id.*

9 ¶¶ 2, 3.

10
11 Finally, a pipe at the northern end of one of the settling ponds then transfers water from
12 the ponds into a second aqueduct that runs approximately 1.25 miles to Spokane Recycling’s
13 Outfall Property, where an outfall discharges Spokane Recycling’s stormwater into Deadman
14 Creek. *See* Ex. A, at 2.

15
16 Spokane Recycling owns the former smelter, has failed to clean up the smelter, failed to
17 implement best management practices, and failed to prevent contaminated materials from
18 discharging from its property into the settling ponds on the KAIC Property.

19
20 KAIC has worked diligently under the KAIC ASAOC to remove contaminated sediment
21 and water from the settling ponds and is required to either reconstruct the settling ponds or
22 construct an alternative stormwater management system. *See* Ex. C (KAIC ASAOC for Removal
23 Actions, CERCLA Docket No. 10-2020-0152). This work is the responsibility of Spokane
24 Recycling. Had Spokane Recycling complied with its legal obligations, KAIC would not be
25 undertaking this work.
26

1 Spokane Recycling has been, and continues to be, a significant obstacle to efforts by
2 KAIC, EPA, and the Washington Department of Ecology (“Ecology”). Since it purchased its
3 properties in 2014, Spokane Recycling has repeatedly violated numerous environmental laws and
4 regulations, the Easement Agreement, and its permit regarding its discharges to the settling
5 ponds.¹ For example, Spokane Recycling has completely neglected its duty to maintain the
6 settling ponds. Its previous National Pollutant Discharge Elimination System (“NPDES”) Permit
7 for the Property required Spokane Recycling to remove and dispose of sediments from the
8 settling ponds by September 1, 2016. *See* Ex. D (NPDES Permit No. WA0000876), § S.10.1.
9 Spokane Recycling never performed this work. As a result, KAIC is now undertaking that work
10 at its own expense.
11

12 Spokane Recycling has also repeatedly failed to maintain best management practices, in
13 violation of its current Industrial Stormwater General Permit (“ISGP”) (No. WAR304975)
14 (“Permit”). *See* Ex. E (ISGP Permit No. WAR304975). If anything, Spokane Recycling’s
15 practices are the *opposite* of best management. In August 2018, an Ecology inspector found
16 “[s]everal piles of waste and product [] exposed to the elements” with “direct access to
17 stormwater drains” on Spokane Recycling’s Smelter Property, along with several other issues.
18 *See* Ex. F (Water Quality Program Corrections Required, Nov. 20, 2018). The inspector found
19 Spokane Recycling in violation of its permit and ordered it to remove or cover the waste piles.
20
21 *Id.*
22
23

24 ¹ KAIC is not asking for EPA to address in the Proposed Settlement Spokane Recycling’s responsibility for
25 these breaches and violations. Instead, KAIC presents these facts to show that Spokane Recycling caused
26 contamination on the KAIC Property through its repeated and varied violations. As EPA explained in the May EPA
Action Memo: “An overarching factor that magnifies the threats posed by this Site is the demonstrated past
noncompliance with environmental regulatory requirements by the owner of the facility parcel and outfall parcel
[Spokane Recycling], as recently as March 2020.” *See* Ex. A, at 19 (emphasis added).

1 As has been its practice, Spokane Recycling responded to the inspector's report by
2 ignoring it. Over two years have passed since the inspection, and Spokane Recycling still has not
3 removed the waste piles from the Property. *See* Ex. G (KAIC Notice of Intent to File Suit Under
4 the Clean Water Act Letter to Spokane Recycling) (describing this violation and several others).
5 The waste piles have caused significant harm in the meantime. EPA's recent July 2, 2020 Action
6 Memorandum ("July Memo") determined that the "[n]umerous waste piles and deteriorating
7 building materials on [Spokane Recycling's Property] have been found to contain elevated
8 concentrations [of] several hazardous substances and serve as a primary source of contamination
9 at the Site." *See* Ex. H (EPA Action Memorandum, July 2, 2020), at 2. Many of the waste piles
10 are "uncontrolled, "without secondary containment," and "outside and exposed directly to the
11 elements." *Id.* at 5. And "[m]any of these hazardous substances . . . are also migrating through
12 the stormwater system where they have and continue to accumulate in the settling ponds." The
13 accumulation of these materials in the settling ponds also violates Washington's Surface Water
14 Quality Standards (Chapter 173-201A WAC) and Spokane Recycling's Permit. *Id.*
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Figure 1: Picture from Smelter Property



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Figure 2: Picture from Smelter Property



1 **Figure 3: Picture and caption of Smelter Property excerpted from May EPA Action Memo**



12 *Dilapidated Robertson Siding contaminated with PCBs and asbestos moving to storm*
13 *drain*

14 **Figure 4: Picture and caption of Smelter Property excerpted from May EPA Action Memo**



25 *"Green coke" waste piles containing high levels of carcinogenic PAHs. One example*
26 *of uncontrolled waste material.*

1 The waste piles are not Spokane Recycling's only continuing irresponsible practice.
2 Spokane Recycling has also continually failed to implement a stormwater pollution prevention
3 plan ("SWPPP"). Spokane Recycling has been required to maintain and implement an SWPPP
4 ever since it received its first permit in November 2014. *See* Ex. I (Inspector Letter to Paramjit
5 Hothi, Nov. 19, 2018). But even today—almost 6 years later—Spokane Recycling has not yet
6 implemented or even drafted an SWPPP. This failure is despite Ecology finding Spokane
7 Recycling in violation of its Permit based on the lack of an SWPPP in October 2018, *see id.*;
8 Ecology penalizing Spokane Recycling's principal Paramjit Hothi for the continued lack of the
9 SWPPP in June 2019, *see* Ex. J (Notice of Penalty Letter to Paramjit Hothi, June 19, 2019); and
10 a Settlement Agreement between the Pollution Control Hearings Board ("PCHB") and Mr. Hothi
11 whereby Mr. Hothi agreed to submit an approvable SWPPP by March 31, 2020,² *see* Ex. K
12 (PCHB Settlement Agreement, Nov. 20, 2019). In other words, rather than comply with its legal
13 obligations to maintain SWPPP, Spokane Recycling has repeatedly chosen to ignore it.
14

15
16 In addition, Spokane Recycling exceeded multiple benchmarks in its ISGP Permit in July
17 2018, but then failed to complete the required Corrective Actions to address those exceedances.
18 And Spokane Recycling may have exceeded benchmarks on other occasions as well, but it is
19 impossible to tell because, more often than not, Spokane Recycling fails to submit its required
20 Discharge Monitoring Reports ("DMRs"). In 2016, Ecology fined Mr. Hothi for failing to submit
21 27 required submittals under Spokane Recycling's prior permit. *See* Ex. L (Notice of Violation
22 Letter to Paramjit Hothi, Jan. 23, 2016). The same pattern of behavior continued after Spokane
23 Recycling obtained coverage under its ISGP Permit, as Spokane Recycling failed to submit even
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25

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² No plan was submitted.

1 a single DMR in 2017 or the first three quarters of 2018. After receiving a second notice for
2 failure to report DMRs in late 2018, Spokane Recycling appears to have temporarily paid
3 attention and submitted a few DMRs. But then Spokane Recycling quickly returned to its old
4 habits, as it has failed to submit any DMRs throughout 2019 and 2020.

5
6 In sum, Spokane Recycling has violated multiple laws, regulations, permits, and
7 agreements regarding the Site. Its standard response to violations and environmental issues is to
8 ignore them. And its chief compliance strategy is to fail to meet its monitoring and reporting
9 obligations. Through these acts and omissions, Spokane Recycling has significantly harmed the
10 environment, including the KAIC Property, and required the expenditure of substantial costs by
11 EPA and, separately and concerning the KAIC Property, by KAIC.

12 **OBJECTIONS TO THE PROPOSED AGREEMENT**

13
14 In light of these circumstances, the Proposed Agreement, without the revision proposed
15 by KAIC in these objections, is both inequitable and unlawful.

16 First, KAIC has gone to great lengths—and incurred significant expense—to work
17 closely with EPA and Ecology to address the issues on the KAIC Property caused by Spokane
18 Recycling. KAIC takes pride in its commitment to addressing environmental issues and its
19 history of engaging productively with government agencies to achieve that goal.

20
21 Meanwhile, Spokane Recycling has engaged in no such effort, and has in fact shirked its
22 legal obligations and further contributed to issues at the Site. A proposed settlement amounting
23 to the lesser of \$325,000 or 50% of the net sales proceeds of the sale of the Property, as set forth
24 in the Proposed Agreement, is entirely insufficient to address Spokane Recycling's impacts on its
25 own properties, much less on the KAIC Property. This settlement amount fails to account for the
26 significant harm Spokane Recycling's irresponsible acts and omissions have caused, especially

1 in areas outside its own property such as the settling ponds on the KAIC Property. The Proposed
2 Agreement, as currently drafted, is particularly inequitable given that KAIC's expenses—such as
3 the cost to remove sediment from the settling ponds—are Spokane Recycling's to bear. EPA
4 should not reward Spokane Recycling, through a broad "matters addressed" provision in the
5 Proposed Settlement, for its failure to comply with its legal obligations for years by allowing it to
6 obtain contribution protection with respect to the entire Site for a disproportionately low amount
7 now, especially when doing so would penalize KAIC for its willingness to clean up after
8 Spokane Recycling in cooperation with EPA and Ecology by providing contribution protection
9 to Spokane Recycling against KAIC claims.
10

11 Second, the Proposed Agreement, in its current form, is both unlawful and contrary to
12 EPA policy, as it is not fair, reasonable, or consistent with the goals of CERCLA. CERCLA
13 settlement agreements must be "fair, reasonable and adequate—in other words, 'consistent with
14 the purposes that CERCLA is intended to serve.'" *United States v. Akzo Coatings of Am., Inc.*,
15 949 F.2d 1409, 1435 (6th Cir. 1991) (citation omitted). "Fairness should be evaluated from the
16 standpoint of signatories *and nonparties* to the decree," and "[t]he effect on non-settlers should
17 be considered." *Id.* at 1435 (citations omitted) (emphasis added). EPA issued its own policy in
18 1997 that similarly requires administrative settlement agreements to be "fair, reasonable, and
19 consistent with the goals of CERCLA." *See* Ex. M (Memorandum from Bruce Gelber and Sandra
20 Connors, Mar. 14, 1997) ("1997 Policy"), at 4.
21

22 The Proposed Agreement is neither fair nor reasonable. As an initial matter, the Proposed
23 Agreement does not appear to calibrate the settlement amount with the projected costs at the Site
24 in any way. Instead, the settlement amount appears arbitrarily selected, as EPA offers no
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26

1 explanation for the amount other than that EPA believes Spokane Recycling has limited financial
2 ability to pay for response costs.

3 The settlement amount also fails to take into account the fact that future costs associated
4 with the entire Site are uncertain, but will be substantial. EPA estimated that the cost of just the
5 emergency portion of cleanup at the Smelter Property owned by Spokane Recycling will be
6 almost \$6,000,000. *See* Ex. A, at 1. Total costs associated with addressing the other properties at
7 the Site—the KAIC Property, and Spokane Recycling’s Outfall Property—are unknown.

8 In such cases where future costs are uncertain but likely to be substantial, the 1997 Policy
9 instructs that the settling party should pay a premium to account for the risk associated with that
10 uncertainty that the remaining non-settling parties will be left to bear. *See* Ex. M, at 7 (stating
11 that items whose costs cannot be estimated may be included in the “matters addressed” only “if
12 the settlors pay a *premium* that reflects the risk that such costs will ultimately be incurred”
13 (emphasis added)). Stated differently, Spokane Recycling should pay *above* the expected
14 amounts given that the amount of work yet to be done at the Site is uncertain. *See, e.g., United*
15 *States v. Cannons Eng’g Corp.*, 899 F.2d 79, 85 (1st Cir. 1990) (noting that EPA demanded that
16 de minimis settlors pay 160% of the amount of their share of responsibility). But the Proposed
17 Agreement does not calibrate the settlement amount to reflect Spokane Recycling’s
18 responsibility at the Site at all, much less require that Spokane Recycling pay the premium that
19 EPA’s own 1997 Policy states that it should.³

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25 ³ The Proposed Agreement claims that based upon the financial and insurance information submitted by
26 Spokane Recycling, “EPA has determined that Settling Party has limited financial ability to pay for response costs
incurred and to be incurred at the Site.” *See* Proposed Agreement, ¶ 12. KAIC has submitted a FOIA request to
obtain the information EPA relied on to reach this conclusion. *See* Ex. N (KAIC FOIA Request). EPA has not yet
responded to the FOIA request.

1 The Proposed Agreement provides that Spokane Recycling will receive contribution
2 protection for “matters addressed” and that “matters addressed” does not include response costs
3 incurred by Ecology, which is not a party to the Proposed Agreement. This exception for
4 Ecology costs reflects the fact that Ecology has taken action and incurred costs due to Spokane
5 Recycling’s unlawful acts and it would be inappropriate for Spokane Recycling to receive
6 contribution protection for Ecology’s claims. Similarly, KAIC has taken action and incurred
7 costs due to Spokane Recycling’s unlawful acts, and it would be inappropriate for Spokane
8 Recycling to receive contribution protection for KAIC’s claims.
9

10 In addition, the Proposed Agreement defines the “matters addressed” overly broadly,
11 thereby unfairly interfering with the legitimate right of parties like KAIC to seek contribution for
12 the amounts it has spent to correct Spokane Recycling’s problems *on KAIC’s own property*. The
13 “matters addressed” in the Proposed Agreement includes the entire 600-acre Site rather than just
14 Spokane Recycling’s properties, even though the Proposed Agreement does not address or
15 consider the significant impact of Spokane Recycling’s acts and omissions on the KAIC Property
16 or the costs incurred by KAIC. EPA’s 1997 Policy emphasizes that the amount to be paid in
17 settlement must be fair in light of the overall scope of the “matters addressed.” *See* Ex. M, at 5.
18 A broad definition of “matters addressed” is typically appropriate only where work is mostly
19 complete, the contribution of other PRPs to the total cleanup is ascertainable, and costs are
20 calculated to include all areas of property falling within the “matters addressed.” Conversely,
21 such broad protection is not appropriate where, as here, EPA cannot fairly conclude that the
22 settling party is “paying an appropriate portion of *all* costs.” *Id.* at 8 (emphasis in original).
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PROPOSED REVISIONS

For the foregoing reasons, KAIC opposes EPA entering into the Proposed Agreement in its current form. However, KAIC will withdraw its objections if EPA makes the following revisions:

1. In paragraph 34 of the Proposed Agreement, delete the word “Site” and replace it with the word “Property”, which is defined in the Proposed Agreement as the properties owned by Spokane Recycling. This revision would confine the “matters addressed” in the Proposed Agreement to those connected with Spokane Recycling’s Smelter Property and Outfall Property, and not the KAIC Property.

2. Alternatively, if EPA will not make this change, it could address the deficiency in the Proposed Agreement by adding, in paragraph 34, the phrase “or for Kaiser Aluminum Investments Company” following the phrase “except for the State”. This revision would preclude Spokane Recycling from receiving contribution protection against KAIC claims that arise from Spokane Recycling’s numerous violations of laws, regulations, permits, and agreements.

Accordingly, the Proposed Agreement should be revised to contain either (or both) of the revisions shown below:

34. The “matters addressed” in this Settlement Agreement are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the PropertySite, by the United States or any other person, except for the State or Kaiser Aluminum Investments Company

1 **CONCLUSION**

2 EPA should not enter the Proposed Agreement in its current form with Spokane
3 Recycling, a company that has repeatedly ignored its legal obligations and caused significant
4 harm through its irresponsible acts and omissions. The Proposed Agreement must be revised to
5 narrow the scope of the “matters addressed” to Spokane Recycling’s property rather than the
6 entire Site so as to exclude the KAIC Property and the costs incurred by KAIC.
7

8
9 DATED: November 2, 2020

By: s/ Mark W. Schneider
By: s/ Paige L. Whidbee
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**TIFFANY
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P.A.

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Financial Services Eviction Department
(602) 255-6000

NOTICE OF REMOVAL OF PERSONAL PROPERTY

March 31, 2020

VIA REGULAR MAIL AND POSTING

Tandy J. Hamilton
AND/OR OCCUPANTS
3003 West Madison Street
Phoenix, AZ 85009

RE: Seattle Bank vs. Hamilton
Our File No.: 20-01054

Notice is hereby given that a Trustee's sale of the property located at 3003 West Madison Street, Phoenix, AZ 85009 was held on March 11, 2020 at which sale Seattle Bank became the owner of the property. The Trustee's Sale terminated any right you may have had to possession of the property.

Seattle Bank, has secured the Real Property. At the time of the securing of the Real Property, it was learned that personal property was left by you on the premises. The personal property serves as a nuisance, and interferes with the Owner's right to the enjoyment of the premises.

Should you wish to reclaim your personal property, you are instructed to contact the Owner's agent, A.Z. Araujo at 602-690-9838. Should you fail to make arrangements for the retrieval of the personal property within thirty (30) days from the date of this letter, the personal property will be considered abandoned and will be disposed of accordingly. You will receive no further communication regarding the personal property.

Property Type
VACANT LAND
SINGLE-FAMILY
CONDOMINIUM
APARTMENT
COMMERCIAL
MANUFACTURED
All exempt property removed from process

Dear Property Owner,
Enclosed you will find your annual 2021 Property Assessor's office has valued approximately 1.8 million development means we continue to show a property values as shown below.
Year. This year, we continue to show a property values as shown below.

Maricopa County Assessor
301 W. Jefferson
Phoenix, AZ 85003
602-506-3406
<http://mcaassessor.maricopa.gov>





**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

1200 Sixth Avenue, Suite 155
Seattle, WA 98101-3188

SUPERFUND &
EMERGENCY
MANAGEMENT DIVISION

May 28, 2020

MEMORANDUM

SUBJECT: Request for Approval and Funding for a Time-Critical Removal Action at Former Kaiser Smelter, Mead, Spokane County, Washington, **ACTION MEMORANDUM**

FROM: Brooks Stanfield, On-Scene Coordinator
Spill Prevention and Removal Section

THRU: Calvin Terada, Director
Superfund and Emergency Management Division

TO: Chris Hladick, Regional Administrator
EPA Region 10

I. PURPOSE

The purpose of this Action Memorandum is to request and document approval to expend to up to \$5,990.350 in direct extramural costs to mitigate threats posed to human health and the environment from an ongoing release of hazardous substances and the potential for a catastrophic release of hazardous substances from an industrial property described herein as the Former Kaiser Smelter Site located at 2111 East Hawthorne Road, Mead, Spokane County, Washington (Site). The Site is made up of three parcels and owned by two owners, both of whom are identified as potentially responsible parties (PRPs).

This selected Time-Critical Removal Action meets the criteria for initiating a removal action under the National Contingency Plan (NCP), 40 C.F.R. § 300.415. The total cost of the selected Removal Action is expected to exceed the \$2 million statutory limitation established in Section 104(c) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and therefore this Action Memorandum requests an emergency exemption from this limit with statutory criteria further discussed in Section V below.

II. SITE CONDITIONS AND BACKGROUND

The SEMS ID No: WAN001020091

The Site includes three separate tax parcels owned by two distinct owners. One parcel covers approximately 170 acres and includes the former aluminum smelter facility. The “facility parcel”

is owned by Spokane Recycling, LLC and is zoned for heavy industrial use. This parcel contains dozens of large industrial buildings, a baghouse, administrative buildings, a network of stormwater catch basins, sumps, storage tanks, a rail spur, and other features common to industrial facilities.

The former facility's system of catch basins and storm sewers collects and diverts stormwater through a half-mile long aqueduct flowing north from the facility to a pair of settling ponds, referred to as the upper pond and lower pond. The ponds are located on a second 405-acre undeveloped parcel owned by Kaiser Aluminum Investments Company (KAIC). At the northern end of the lower pond, a pipe transfers the water into a second aqueduct that runs approximately 1.25 miles to a third parcel, owned by Spokane Recycling, LLC, where an effluent outfall discharges stormwater into Deadman Creek (Figure 1).

The smelter facility was constructed by the Defense Plant Corporation, which began plant operations in 1942 during World War II. The property was purchased in 1946 by Kaiser Aluminum & Chemical Company (KACC). KACC operated the facility from 1946 until 2000, when the company ceased smelting operations. A portion of the former smelter property was placed on the National Priorities List (NPL) in 1983. The NPL Site, known as the Kaiser Aluminum – Mead Works Potliner Superfund Cleanup Site, is owned by a trust, which is responsible for carrying out a long-term remedy that is being overseen by the Washington Department of Ecology (Ecology). The 50-acre NPL Site consists of spent potliner solid waste, a 25-acre wet scrubber sludge bed, and a plume of groundwater contaminated with cyanide and fluoride, which flows in a northwest direction and away from the Site features discussed in this memorandum. Since its listing on the NPL, Ecology has overseen the consolidation of potliner waste into one pile, the covering of the pile with an engineered cap, and the maintenance of a system of sumps and piping around the pile. In fall of 2020, Ecology will be overseeing the installation of a groundwater pump and treatment system to address contaminated groundwater flowing from the pile. No records indicate that environmental data was available or considered for purposes of including other components of the facility within the scope of the original NPL listing.

The facility parcel and the outfall parcel (located to the north by Deadman Creek) have been sold together to three separate owners since 2004 following close of KACC's operations. The current owner, Spokane Recycling, LLC, acquired the facility and outfall parcels in 2014. The undeveloped 405-acre parcel with the settling ponds was originally acquired by KACC from the United States of America in 1976 while the company still owned and operated the smelter. The parcel was not sold with the facility parcel and outfall parcel but rather transferred to Kaiser Aluminum Fabricated Products in 2006 and then later transferred to KAIC in 2010. As part of the sale of the plant and outfall parcels in 2004, KACC granted an easement to the purchaser to provide ongoing access to the stormwater aqueducts and settling ponds located on the 405-acre undeveloped parcel.

The vicinity of the Site is comprised of a mix of residential, educational, commercial, and industrial development. The closest surface water body is Deadman Creek, which is located approximately 1.5 miles north of the site's industrial buildings. Deadman Creek is a tributary of the Little Spokane River, which subsequently flows into the Spokane River.

A. Site Description

1. Removal site evaluation

EPA received a formal written request for assistance from Ecology and the Spokane Regional Clean Air Agency (SRCAA) concerning the release of polychlorinated biphenyls (PCBs), asbestos and other contaminants¹. A summarized list of concerns identified in the request for assistance from Ecology and SRCAA includes:

1. The amount and types of contaminants present that are highly toxic to humans and ecosystems;
2. Building conditions and illegal trespass, including an increase in homeless encampments, on the property, which are likely to result in exposure;
3. Threat of fire or explosion, particularly because the property currently does not have water service available with which to fight fires;
4. Migration of hazardous substances such as PCBs and metals into waterways that are already heavily challenged by these contaminants; and
5. A current owner that is failing to meet basic regulatory requirements.

An abbreviated Preliminary Assessment was completed for the site on February 12, 2019, pursuant to Section 104(b)(1) of CERCLA, which provided background information included in the previous section of this memorandum. Three other previous investigations are known to have taken place at the facility:

- An environmental consultant conducted a due diligence investigation on behalf of a potential buyer of the property in April 2010. A report documenting the investigation reported elevated concentrations of PCBs, including the PCB Aroclor 1268, present in siding material on buildings, soil and sediment samples, and sediment in settling ponds. This report also documented that other contaminants, including diesel-range organics and polycyclic aromatic hydrocarbons (PAHs), were present in catch basins at the facility;
- An asbestos abatement contractor, IRS Environmental, completed a cost estimate for abatement of the known asbestos throughout the facility in June 2015. The cost estimate refers to over 30 facility buildings and structures that contain asbestos-containing material (ACM²); and
- Sampling activities performed by Ecology's National Pollution Discharge Elimination System (NPDES) program staff starting in March 2018 confirmed the presence of PCBs in sediments in stormwater catch basins, the two settling ponds, and water discharging from the stormwater outfall into Deadman Creek. Ecology reported total PCB concentrations in surface water as high as 236,000 picograms per liter (pg/L) at the stormwater outfall entering the lower settling pond, while surface water concentrations in

¹ Kaiser Mead Request. March 6, 2019. Letter from Brook Beeler, Director of Washington Department of Ecology's Eastern Region to Wally Moon, Chief of the U.S. Environmental Protection Agency Region 10 Spill Prevention and Removal Section.

² ACM is defined under the Clean Air Act regulations as material containing more than 1 percent asbestos. See 40 CFR Part 61 §61.141.

the lower settling pond itself were 44,300 pg/L. PCB concentrations in surface water collected at the outfall to Deadman Creek were 7,460 pg/L. Ecology compared the surface water results to the Model Toxics Control Act (MTCA) human health screening level for fresh water in the Spokane River Basin (7 pg/L) and the Spokane Tribe of Indians human health screening level for fresh water in the Spokane River Basin (1.3 pg/L). The total PCB concentrations in surface water were several orders of magnitude greater than these screening levels.

EPA conducted a Removal Site Evaluation (RSE) pursuant to 40 C.F.R. § 300.410 to assess the presence, concentrations, and migration pathways of hazardous substances at the Site to determine risks of exposure. The RSE sampling effort, conducted in May 2019, focused on the potential migration pathway of hazardous substances from the facility buildings through the catch basins and settling ponds to the outfall at Deadman Creek. Several PCB congeners were detected in various sampling locations during this effort. The PCB Aroclor 1268 was detected in samples collected from each of these sampling areas, which helped trace the connection between the source, sample locations along the pathway, and the outfall at Deadman Creek.

EPA observed at least 13 facility buildings that appeared to have walls constructed with Robertson Siding (often referred to incorrectly by another trade name: Galbestos), which is a formerly used building material containing PCBs and asbestos (Figure 2).³ The Robertson Siding panels were noted to be weathered and damaged, with multiple pieces observed to be on the ground around the buildings (Figure 3). Chrysotile asbestos was detected in most of the Robertson Siding samples at concentrations of approximately 20%. Additionally, the analytical results confirmed the presence of high concentrations of Aroclor 1268 in siding material ranging from 70,000 to 39,000,000 micrograms per kilogram (µg/kg). The regulatory limit for PCB concentrations in any substance under the Toxic Substances Control Act (TSCA) is 50,000 µg/kg as a baseline concentration to protect human health.

Aroclor 1268 was detected in soils and solids on the ground near exterior walls with Robertson Siding at concentrations as high as 170,000 µg/kg and sediments accumulated on top of facility catch basins at concentrations as high as 220,000 µg/kg. All three soil and sediment samples collected in the area of Building 34 (referred to as the Baghouse Building) significantly exceeded the TSCA cleanup standard of 25,000 µg/kg for unrestricted use at low occupancy areas and the Removal Management Level⁴ (RML) of 94,000 µg/kg for total PCBs in industrial soil. In stormwater settling ponds where facility stormwater sediments were transported (Figure 4), Aroclor 1268 concentrations in sediment ranged upwards of 12,000 µg/kg. Total PCB concentrations exceeded Washington State sediment screening level of 2,500 µg/kg in all three

³ An asbestos survey conducted by the abatement contractor in 1992 estimated that portions of at least 30 buildings were constructed with Robertson Siding, adding up to an estimated 978,553 square feet of material. It is believed that approximately 488,000 square feet of Robertson siding are still remaining after a demolition effort undertaken in 2013 by a previous owner.

⁴ Regional Removal Management Levels (RMLs) are chemical-specific concentrations for individual contaminants in tap water, air, and soil that may be used to support the decision for EPA to undertake a removal action. Generic RMLs are based on default exposure parameters and factors that represent Reasonable Maximum Exposure (RME) conditions for long-term/chronic exposures. <https://www.epa.gov/risk/regional-removal-management-levels-chemicals-rmls>

samples. Aroclor 1268 was also detected in the surface water of the settling ponds at concentrations ranging from 10,803 to 23,821 pg/L, while total PCB concentrations ranged from 23,489 to 44,447 pg/L. These concentrations exceeded the Washington State (7 pg/L) human health screening levels for the Spokane River by 3,000 times or more in each case. Finally, where stormwater discharged to Deadman Creek, Aroclor 1268 was again detected in stormwater effluent (793 pg/L) and total PCB concentrations for this sample were 1,875 pg/L, which exceeded the Washington State (7 pg/L) human health screening levels for the Spokane River.⁵ PCBs were detected in sediment at the outfall at trace concentrations and were below Washington State sediment cleanup goals.

These results document a pathway for migration of PCBs from the facility buildings with Robertson Siding through the catch basins and stormwater system to the settling ponds and then to Deadman Creek. Additionally, total PCB concentrations in several of these samples, including Robertson Siding, soil/solids on the ground, and catch basin sediment, exceeded the RML for industrial soil.⁶ In addition to the PCBs, samples from the sediment in catch basins and settling ponds also contained elevated concentrations of other compounds, including PAHs, metals, and petroleum hydrocarbons (diesel- and heavy oil-range organics), indicating that these contaminants are also migrating off site in a manner similar to PCBs. The presence of petroleum hydrocarbons collocated with PCBs increases the solubility and thus mobility of PCBs, which are otherwise hydrophobic. The presence of these hydrocarbons with PCBs could be contributing to the mobility observed in PCBs moving from the Site to Deadman Creek.

In the rafters of the Baghouse Building and exterior piping throughout the facility, Thermal System Insulation (TSI) material was observed to be visibly deteriorating from the pipelines and had fallen onto the ground. The results of the asbestos sampling indicated some of the TSI on the pipelines contained both amosite and chrysotile asbestos at total concentrations of approximately 20% and thus were ACM. Within the Baghouse Building there were approximately 5,500 linear feet of TSI in the rafters. On observed exterior pipelines throughout the facility, EPA estimated approximately 750 linear feet of suspect ACM TSI, however it is believed that upwards of 15,000 linear feet may be present throughout the facility in addition to what was documented in the Baghouse Building (Figure 5).

EPA observed numerous piles of waste materials and former products. Many of these materials were uncontrolled and without secondary containment. They were either outside and exposed directly to the elements, or inside unsecured and open buildings. Within Building 52, commonly called the Green Mill Building, there were approximately 4,500 cubic yards of a material labeled “Green Coke” in numerous piles and containers (Figure 6). Samples collected from the Green Coke contained elevated concentrations of PAHs in comparison to the RML for industrial soil. For instance, the carcinogen benzo(a)pyrene was detected at 560,000 µg/kg, which is over two-times higher than the RML of 210,000 µg/kg for this contaminant. Metals were also detected but were below action levels. In and near the Baghouse Building were several large piles of baghouse dust. One large pile (approximately 1,000 cubic yards) was located inside a large open and unsecured building (Building 35), and another large pile (approximately 220 cubic yards)

⁵ Sampling occurred during base flow conditions.

⁶ <https://semspub.epa.gov/work/HQ/199688.pdf>

was located outside and to the north of the Baghouse Building. There was visual evidence that material from this pile was being moved by wind and/or rain. Samples from the baghouse dust contained concentrations of PCBs that ranged from 1,080 µg/kg to 2,690 µg/kg (including Aroclor 1268), PAHs, and metals. There were three above ground storage tanks (ASTs) containing coal tar pitch in a small tank farm area. Several yards of coal tar were spilling out of one open AST. The coal tar sample contained multiple carcinogenic PAH compounds whose concentrations exceeded RMLs, most notably benzo(a)pyrene, which was detected at 3,400,000 µg/kg compared to the RML of 210,000 µg/kg. The quantity of coal tar remaining inside the tanks is unknown, however the maximum capacity of each tank is 1,485 cubic yards or 100,000 gallons.

2. Physical Location

The Site is located at 2111 East Hawthorne Road, Mead, Spokane County, Washington, approximately 8 miles north of downtown Spokane, Washington. The precise location is 47.753089 north latitude, 117.378199 west longitude. The Site is located within an area comprising a mix of residential, educational, commercial, and industrial development. An elementary school is located 0.3 miles southwest and an RV campground is located less than 0.2 miles due west of the Site with at least seven additional active commercial properties located within 0.25 of the Site. An estimated 1,220 residents live within a one-mile radius of the site.⁷ The closest residence sits 0.25 miles northwest of the Site. The area is experiencing increased development following the completion of a new bypass for State Highway 395, which runs along the eastern boundary of the undeveloped parcel for approximately one mile. Local agencies are seeing the new bypass bringing with it increases in traffic and pressure to develop land for more commercial and residential use. A Costco Wholesale store was recently constructed on a 25-acre portion of the undeveloped parcel, less than 500 feet northwest of the sediment ponds. In response to this growth, local agencies such as the Mead School District are also making plans to expand in order to serve the growing local population.⁸

During the field sampling event in 2019, EPA observed evidence of uncontrolled access to the facility. Although there is a front gate that was sometimes staffed by security personnel, EPA observed multiple visitors entering and driving throughout the property unaccompanied. EPA also observed graffiti, clothing, and several mattresses at the property. Additionally, several online videos show members of the public driving and/or walking throughout the former facility and documenting their visit with video cameras without any apparent knowledge of potential risk of exposure. Due to the availability of services for homeless people nearby, the Site has become an attractive location for homeless encampments. The security guard told EPA that he finds and documents new graffiti on a weekly basis. In addition to unauthorized visitors, one business is currently leasing a building on-Site and running a metal fabrications shop located near the eastern boundary. This business is located approximately 300 feet from the Baghouse Building

⁷ This estimate is based on a count of 508 living units using aerial images to count single-occupancy homes plus the number of units in the Deer Run at North Pointe apartment complex (<https://www.securityproperties.com/our-locations>) and multiplying this number by the average number of persons per household (2.41) in the Spokane/Mead area as reported by the United States Census. (<https://www.census.gov/quickfacts/fact/table/spokanecitywashington.meadcdpwashington.US/PST045219>).

⁸ Mike LaScoula – Spokane Regional Health District, personal communication, March 10, 2020.

and the nearest known source of contaminants described in this memorandum. The property owner is actively marketing leasing opportunities for other portions of the property and EPA has been contacted by one company actively pursuing a lease to start an operation that would transload butane from rail cars to trucks. The exact extent of this proposed operation is not final, but the company anticipates utilizing the rail line that runs parallel to and within 40 feet of the Baghouse Building while operations would potentially be focused in an area 500 feet west of the Green Mill Building. Given the presence of friable asbestos and several known carcinogenic contaminants in an uncontrolled state which significantly exceed RMLs, the presence of authorized workers and unauthorized visitors accessing the Site establishes a second potential pathway for exposure.

Local weather conditions are characterized by two main seasons: hot dry summers and cooler wetter winters. The period between late October and early June is characterized by cooler, wetter weather where average daily temperatures typically range in the 30s and 40s and average monthly rainfall ranges between 1.5 and 2.5 inches. Precipitation in the form of snowfall is most common between early November and early March. A hotter drier season spans between mid-June and mid-September where average daily temperatures range in the upper 70s and upper 80s and average monthly rainfall is about 0.5 inches.⁹ The area is known to have strong seasonal winds, especially during the months of March through June.¹⁰ Contaminants of concern (COCs) at the Site are susceptible to mobilization by moderate to heavy rainfall and winds.

The closest surface water body is Deadman Creek, which is located approximately 1.5 miles north of the Site's industrial buildings. Deadman Creek is a tributary of the Little Spokane River, which subsequently flows into the Spokane River. There are no known federally-listed threatened or endangered species on the Site. Numerous species of birds listed as Birds of Conservation Concern under the Migratory Bird Treaty Act of 1918 and Bald and Golden Eagle Protection Act of 1940 are listed as potentially present in Spokane County, however no observations of species of concern birds have been reported on the Site and only one observation of one subject species has been documented within 1.5 miles of the Site.¹¹

Although no excavation of previously undisturbed subsurface soil is planned under this Time-Critical Removal Action, due to the age and contributions the facility has had in supporting the country's war efforts and the regional economy, there are potential structures of historical significance on the facility parcel. EPA has contacted the State Historic Preservation Office to determine if any of the buildings on-Site sided with Robertson Siding would be considered historically significant and what, if any, steps should be taken to comply with substantive requirements of the National Historic Preservation Act during the course of cleanup.

Several tribes have interests in the area of the facility. EPA has notified interested tribes of the planned Removal Action and is prepared to work with tribes to address any concerns related to potential impacts to natural and archeological resources.

⁹ <https://weatherspark.com/y/2019/Average-Weather-in-Mead-Washington-United-States-Year-Round#Sections-Wind>

¹⁰ <http://alltowntodata.com/living-in/Spokane-Washington>

¹¹ <https://ebird.org/map/>

3. Site characteristics

Currently, authorized commercial activities at the facility parcel are limited to one small business which is leasing a 10,000-square foot building on the eastern boundary of the property to run a metal fabrications shop. With no sources of water or power available, this company is using generators and imported water to support its operations. Several dozen buildings remain on the property. These buildings are open and are not actively maintained. Making use of the abandoned and dilapidated appearance of the facility, a local film production company filmed a zombie movie on the Site in the recent past. Although the facility parcel is fenced and has a gate at its main entrance, site security for the 170-acre property has been intermittent and limited. There is ample evidence of frequent trespassing by homeless populations and others in the form of graffiti, mattresses, and online videos documenting the explorations of curious visitors. Debris from weathered building materials and waste piles can be seen accumulating in areas with soil, clogged storm sewer drains, and other places where stormwater accumulates. The on-Site buildings are in various states of disrepair. A previous property owner specialized in salvage and demolition and began to demolish several buildings, including a project to remove fifteen 700-foot by 50-foot potliner buildings.¹² EPA noted evidence of the demolition during its field event. Some buildings were partially torn down, others were left with only the foundation, some had caved-in ceilings with ponded water inside, while others appeared to be structurally sound. No demolition activities of the remaining several dozen buildings has been documented since Spokane Recycling, LLC took ownership of the facility parcel in 2014. Although the facility owner has a stormwater NPDES general permit, Ecology reports that the current owner has not complied with or met any regulatory obligations under this permit for stormwater management and violated the terms of a recent settlement agreement addressing compliance issues in March 2020.

The undeveloped 405-acre parcel where the settling ponds reside is largely dedicated to agricultural use. One 25-acre portion of this parcel was recently developed into a Costco Wholesale store. The two lined settling ponds on this parcel are enclosed by a locked chain link fence. The lower pond has a non-functioning pumphouse and a series of catchment locks where stormwater exits the ponds into the second aqueduct en route to Deadman Creek. The upper pond, which was used to hold water and sediment during maintenance of the lower pond is largely full of sediment, water, and marsh vegetation. In general, the ponds and associated infrastructure show no sign of recent maintenance, are in disrepair, and are overgrown by vegetation. It is unknown whether the pond liners are still serving to prevent stormwater from infiltrating into ground water.

The outfall parcel borders Deadman Creek. The parcel is characterized by a mixture of deciduous trees and shrubs and tall grasses typical of marshes and riparian areas in this region. The only noteworthy features are the stormwater outfall, Deadman Creek, and a footpath that provides access to the outfall from a nearby road.

No previous CERCLA removal actions have occurred at this Site.

¹² “The next phase: Kaiser’s Mead smelting plant undergoes Demolition” The Spokesman-Review, October 6, 2013.

4. Release or threatened release into the environment of a hazardous substance, or pollutant or contaminant

Based on the information available at this time, the principal hazardous substances or pollutants or contaminants that are being released or for which there is threat of release are listed below.

Media	Estimated Quantity	Hazardous Substances, Pollutants or Contaminants	Concentrations detected	Action Level
Building siding material	488,500 square feet	PCBs	39,000,000 µg/kg	50,000 µg/kg ¹³
		ACM	20% chrysotile	1%
TSI pipe insulation	20,666 linear feet	ACM	20% amosite and chrysotile	1%
Waste piles: Green coke	4,500 cubic yards	Benzo(a)pyrene	560,000 µg/kg	210,000 µg/kg ¹⁴
Coal Tar Pitch ASTs	≤ 300,000 gallons	Benzo(a)pyrene (and multiple other PAHs)	3,400,000 µg/kg	210,000 µg/kg ¹⁴
Soil ¹⁵	Unknown	PCBs	170,000 µg/kg	94,000 µg/kg ¹⁴
		Benzo(a)pyrene	480,000 µg/kg	210,000 µg/kg ¹⁴
Sediment in lower settling pond	1,000-1,700 cubic yards	PCBs	12,000 µg/kg	2,500 µg/kg ¹⁶
		PAHs	177,000 µg/kg	30,000 µg/kg ¹⁶
Surface water	432,000 gallons	PCBs	44,000 pg/L	7 pg/L ¹⁷

These substances are hazardous substances, pollutants, or contaminants as defined by sections 101(14) and 101(33) of CERCLA, 42 U.S.C. §9601(14) and (33). Other hazardous substances may also be present on the Site.

Primary COCs at the Site include several human carcinogens, namely PCBs, PAHs, and friable asbestos. These substances – in addition to other secondary COCs – are emanating from deteriorating building materials and waste piles that are exposed to the elements and being

¹³ The regulatory limit for PCB concentrations in any substance pursuant to TSCA regulations.

¹⁴ Applicable Removal Management Level (RML).

¹⁵ The term “soil” describes detritus found in several areas of accumulation such as at the foot of buildings with Robertson Siding and caught in sediment traps around storm drains.

¹⁶ Washington State sediment screening level.

¹⁷ MTCA Human Health Fresh Water for the Spokane River.

spread throughout the Site by way of wind and rain creating immediate exposure risks to any visitors that may come in contact with these substances. Primary and other secondary COCs were also found in extremely elevated concentrations migrating through stormwater into a tributary of the Little Spokane River, a waterbody that has been included on the State's listing of impaired waters under Section 303(d) of the Clean Water Act due to the presence of PCBs in fish tissue.¹⁸ The presence of petroleum hydrocarbons in soils and sediments along the stormwater migration path creates an added risk, due to the ability of these constituents to increase the solubility, and thus the mobility of PCBs originating from the Site.

As previously stated, the lack of consistent site security enables frequent trespassing by homeless populations, who have used the property to locate encampments, and by curious locals who frequently document and publicize their illegal visits on social media, thus potentially attracting more unauthorized visitors. The local fire marshal expressed concern that this trespassing activity, in combination with a lack of available water service on the 170-acre property, creates an added risk of fire.¹⁹

5. NPL Status

The Site is not listed on the National Priorities List (NPL) nor has it been proposed for listing. A 50-acre portion of the former smelter property, known as the Kaiser Aluminum–Mead Works Potliner Superfund Cleanup Site, is located immediately north of the facility parcel. The Site was placed on the NPL in 1983 to address a groundwater plume contaminated with cyanide and fluoride originating from a repository of potliner waste generated on the former facility. No records indicate that environmental data was available or considered for purposes of including other components of the facility within the scope of the NPL listing. The RSE was conducted in close coordination with EPA's Site Assessment program and all removal actions taken will be conducted in a manner that supports any future remedial activities, should they occur.

6. Maps, pictures, and other graphic representations

¹⁸ Washington State Water Quality Assessment. Listing ID 9051.

¹⁹ Christian Linecchi, Spokane County Fire District 9, personal communication, May 2019.

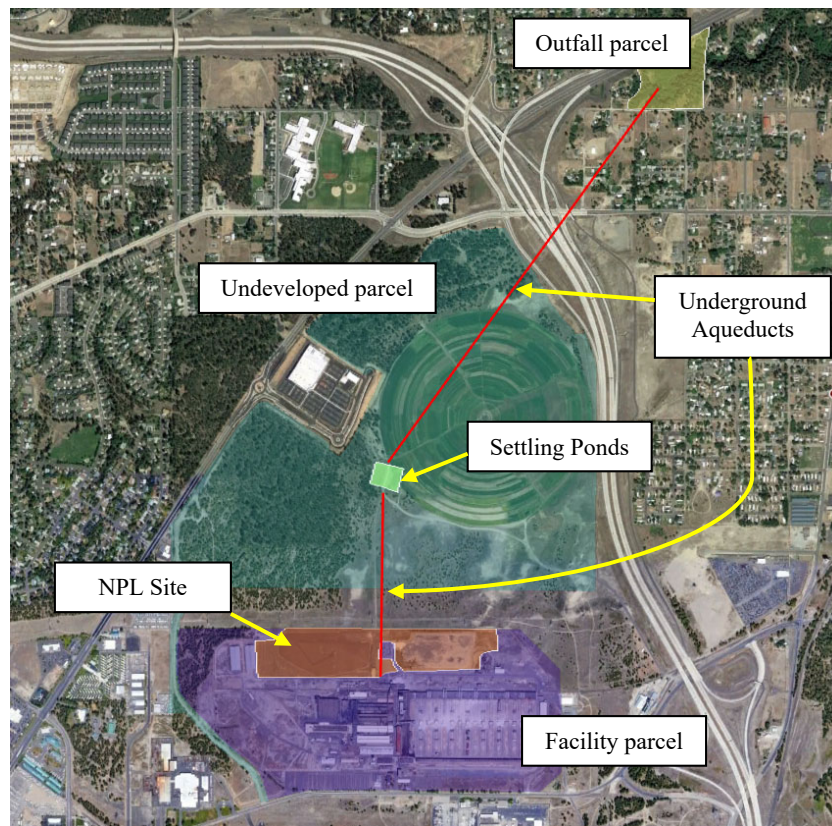


Figure 1: Overview of site features



Figure 2: Highlighting of buildings identified as having PCB and asbestos-containing Robertson Siding.



Figure 3: Dilapidated Robertson Siding contaminated with PCBs and asbestos moving to storm drain



Figure 4: Lower settling pond.



Figure 5: Asbestos containing pipe wrap found in a deteriorated condition and falling to the ground in several locations.



Figure 6: "Green coke" waste piles containing high levels of carcinogenic PAHs. One example of uncontrolled waste material.

B. Other Actions to Date

1. Previous Actions

As previously discussed, a privately conducted building demolition project was undertaken on the facility parcel approximately eight years ago, which led to the demolition and removal of 15 potliner buildings. This project occurred prior to the sale of the property to its current owner. Since this time, no known demolition or cleanup actions have been taken on the facility parcel by its owner or other authorities. No cleanup or maintenance activity is known to have occurred on the undeveloped settling pond parcel nor the outfall parcel during this same period.

2. Current actions

Because of the nature of the source contamination which includes ACM and other contaminants releasing from building siding, State and local authorities have been limited in their ability to address contaminated source material directly or to compel such actions on the part of property owners through enforcement tools.

EPA is coordinating with Ecology and SRCAA to ensure the planned Removal Action is supportive of the longer-term site management approach taken by these agencies.

C. State and Local Authorities' Roles

1. State and local actions to date

As previously stated in section II.A.1 of this memorandum, Ecology and SRCAA sent EPA a letter on March 6, 2019, formally requesting EPA assistance to conduct an emergency removal action. Under its NPDES authority, Ecology is conducting periodic sampling of stormwater at the point of discharge into Deadman Creek to monitor the extent of ongoing release of PCBs into the watershed. Ecology has been attempting to use its NPDES enforcement authority to compel compliance with requirements of the general permit under which the facility is covered. However, to date, NPDES regulatory requirements have not been met since the most recent sale of the facility parcel in 2014. Furthermore, the property owner recently violated a settlement agreement with Ecology that addressed some of the non-compliance issues. SRCAA has attempted to establish a cooperative working relationship with the owner of the facility parcel in order to guide the owner through the proper regulatory steps for demolition activities that involve abatement of ACM. To date, the owner has not initiated any regulatory actions with SRCAA for the abatement of ACM although several demolition projects are believed to have taken place on the property under previous owners.

2. Potential for continued State/local response

EPA has initiated discussions for a Memorandum of Understanding (MOU) with Ecology to delineate actions EPA will take under CERCLA removal authority and what roles Ecology will have under MTCA authority in conducting or overseeing longer-term cleanup of soil and management of any ongoing stormwater treatment that may be needed.

III. THREATS TO PUBLIC HEALTH OR WELFARE OR THE ENVIRONMENT, AND STATUTORY AND REGULATORY AUTHORITIES

The current conditions at this Site meet the following factors which indicate that the Site is a threat to the public health or welfare or the environment, and a removal action is appropriate under Section 300.415(b)(2) of the NCP.

1. Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances or pollutants or contaminants (40 C.F.R. § 300.415(b)(2)(i)).

The conditions at the Site have created at least two primary exposure pathways to human populations, animals and the food chain: (1) on-Site exposure and (2) off-Site migration through stormwater.

As described in section II.A.1, there at least 13 buildings on site that have siding (Robertson Siding) constructed of materials that contain asbestos and PCBs, both of which are human carcinogens. The siding was shown to contain concentrations of the PCB Aroclor 1268 ranging from 70,000 to 39,000,000 µg/kg with the upper range exceeding the TSCA regulatory limit by over 700 times. PCBs were detected in soil and sediments on the ground surface near these buildings in concentrations that were approximately two times the applicable RML. The siding was also shown to contain chrysotile asbestos at concentrations upwards of 20% and EPA also noted the presence of over 20,000 linear feet of asbestos-containing pipe insulation. Pipe insulation was also found to contain approximately 20% asbestos and much of what was observed was exposed to the elements and left in a deteriorated and friable condition. Finally, carcinogenic PAHs, most notably benzo(a)pyrene, were found in several uncontrolled waste piles at concentrations exceeding the EPA RML by over 16 times.

Asbestos affects the lungs and the membrane that surrounds the lungs. Breathing high levels of asbestos for a long time may result in scar-like tissue in the lungs and in pleural membrane (lining) that surrounds the lung causing mesothelioma. PCBs are chlorinated compounds that are extremely persistent in the environment and are resistant to chemical and biological degradation. PCBs bioaccumulate in fatty tissues and are known to increase in concentration as they migrate up the food chain. Acute or chronic exposure to large amounts of PCBs can cause harmful effects to the eyes, liver, and reproductive system in humans. PCBs are carcinogens and have been shown to cause tumors of the pituitary gland and liver as well as leukemia. PAHs, including those present on Site, are linked to increased incidences of skin, lung, bladder, liver, and stomach cancers in laboratory animals and oven coke workers, the latter which have been shown to experience disproportionately high mortality rates due to these diseases. The presence of uncontrolled carcinogenic PCBs and PAHs along with asbestos fibers is a concern given the presence of current commercial activity on Site and ongoing trespassing by curious locals, vandals, and homeless populations, presumably none of whom are aware of the health risks.

The migration of persistent, carcinogenic contaminants such as PCBs and PAHs along with other contaminants from materials on Site through a stormwater system that discharges into a tributary

of the Little Spokane and Spokane River watersheds presents an exposure pathway to aquatic organisms, including fish, and human consumers of those fish. The pathway of PCBs from source material to soil, sediment and finally surface water leads to concentrations that are at times several thousand times the applicable water quality standard in a watershed that, because of the presence of PCBs in fish, is already designated as impaired under section 303(d) of the Clean Water Act.

2. Actual or potential contamination of drinking water supplies or sensitive ecosystems (40 C.F.R. § 300.415(b)(2)(ii)).

Carcinogenic contaminants such as PCBs and PAHs were detected in effluent discharging into Deadman Creek from the stormwater aqueduct originating at the Site. Deadman Creek is a tributary of the Little Spokane and the Spokane Rivers, both of which are waterbodies that are listed as “impaired” under Section 303(d) of the Clean Water Act due to the high concentrations of PCBs found in fish tissue. The local aquatic ecosystem supports fish populations of rainbow trout, northern pikeminnow, and bridgelip suckers and the watershed is part of the greater Lake Coeur d’Alene ecosystem which also supports chinook salmon and bass fish. The Spokane River Regional Toxics Task Force is actively working on activities “[to] further analyze the existing and future data to better characterize the amounts, sources, and locations of PCBs and other toxics as defined above entering the Spokane River.”²⁰

The Site is also located above the Spokane Valley-Rathdrum Prairie Aquifer, which has been a federally designated sole-source aquifer since 1978. The aquifer is the only affordable source of drinking water in a bi-state region serving drinking water to more than 500,000 people. Although many of the primary COCs are not highly soluble in water, the added presence of petroleum hydrocarbons in soils, sediments, and surface water on Site creates a potential risk to the aquifer, due to the ability of these hydrocarbons to increase the solubility, and thus the mobility of PCBs to migrate through surface or groundwater.

3. Hazardous substances or pollutants or contaminants in drums, barrels, tanks, or other bulk storage containers, that may pose a threat of release (40 C.F.R. § 300.415(b)(2)(iii)).

EPA observed numerous piles of waste materials and former products on Site. Many of these materials were uncontrolled and without secondary containment. They were either outside and exposed to the elements, or inside unsecured and open buildings. Mobilization of waste material by wind and rain was visible and PAHs emanating from waste piles were detected in surface water sampled in settling ponds. Within the Green Mill Building, there were approximately 4,500 cubic yards of a material labeled “Green Coke” in numerous piles and containers. Samples collected from the green coke contained elevated concentrations of PAHs and metals. In and near the Baghouse Building were several large piles of baghouse dust. One large pile (approximately 1,000 cubic yards) was located inside a large open and unsecured building (Building 35), and another large pile (approximately 220 cubic yards) was located outside to the north of the Baghouse Building. Samples from the baghouse dust contained elevated concentrations of PCBs

²⁰ <https://srtrtf.org/>

(including Aroclor 1268), PAHs, and metals. There were three coal tar ASTs at the coal tar tank farm, and several cubic yards of coal tar were spilling out of one open AST. The coal tar sample contained elevated concentrations of PAHs, including multiple PAH compounds with concentrations greater than 1,000,000 µg/kg. The maximum capacity of each tank is 1,485 cubic yards or 100,000 gallons. Based on the analytical data from samples collected from the containers and the environment, the bulk storage containers on Site are currently releasing hazardous substances and present an ongoing threat to continue to do so in the future.

4. High levels of hazardous substances or pollutants in soils largely at or near the surface that may migrate (40 C.F.R. § 300.415(b)(2)(iv)).

One PCB congener, Aroclor 1268, was detected at concentrations as high as 220,000 µg/kg in surface soils and in sediment accumulated near stormwater drains adjacent to buildings with Robertson Siding. Half of the samples exceeded the RML for total PCBs in industrial soil (94,000 µg/kg). In addition to PCBs, sediment samples from the catch basins and settling ponds also contained elevated concentrations of other compounds, including PAHs, metals, and petroleum hydrocarbons (diesel- and heavy oil-range organics). The carcinogenic PAH, benzo(a)pyrene, was detected in samples collected near the Green Mill Building at concentrations up to 480,000 µg/kg and two of three samples exceeded the RML for industrial soil (210,000 µg/kg) by more than two times. Pipe insulation containing approximately 20% asbestos was found in large quantities, outside and exposed to the elements, and in a friable state. All of these COCs are susceptible to aerial migration due to the seasonally windy conditions this area experiences and PCBs and PAHs were found to be migrating off Site through stormwater into Deadman Creek. Removal of primary source material on the facility parcel will be a primary focus of this Action Memorandum, as described below in section VI. Removal of the secondary source, which is sediment in the stormwater system on the undeveloped parcel, including in the settling ponds, will be completed through a separate but coordinated Action Memorandum and Settlement Agreement being negotiated with KAIC.

5. Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released (40 C.F.R. § 300.415(b)(2)(v)).

The RSE documented presence of friable ACM in a deteriorated condition and waste piles left outside in the elements or in structures that are open and affected by the elements. The area where the Site is located is known for seasonally high winds. EPA documented visual evidence of mobilization of material from waste material inside and outside buildings from wind and outside buildings from rain. When dust settles onto PCB-contaminated material, including intact siding material, dust particles sorb PCBs causing PCBs from soil and the Robertson Siding to mobilize away from the building when the wind or rain move the newly contaminated dust off the siding.

PCBs were detected in the lower pond at concentrations as high as 12,000 µg/kg which exceeds the Washington State sediment screening level of 2,500 µg/kg by one order of magnitude. Due to the lack of maintenance of the stormwater settling ponds, the volume of sediment in the lower pond has accumulated and is at or near the level of the point of exit where a second aqueduct conveys stormwater from the pond to its point of final discharge in Deadman Creek. PCB

detections in stormwater effluent discharging into Deadman Creek confirm that, even in base (low volume) flow conditions, PCBs are migrating through stormwater from the settling ponds to the watershed. The potential capacity of this system to mobilize large volumes of PCB-contaminated sediment during storm (peak flow) conditions presents a significant and immediate threat to the local aquatic ecosystem and human consumers of organisms living in that system. As outlined above in section III.5 of this memorandum, removal of primary source material on the facility parcel will be a primary focus of this Action Memorandum. Removal of the secondary source, which is sediment in the stormwater system on the undeveloped parcel, including in the settling ponds, will be completed through a separate but coordinated Action Memorandum and Settlement Agreement being negotiated with KAIC.

6. Threat of fire or explosion (40 C.F.R. § 300.415(b)(2)(vi))

During the RSE and during the weeks following, EPA was contacted by an inspector from Spokane County Fire District 9. Among the concerns provided by the local fire authorities included the lack of water service on the facility parcel that would be needed in the event of a fire. The local fire department has responded to several fires caused by homeless encampments in the surrounding area and the previously cited increase in homeless encampments on the facility parcel and lack of consistent security increases the risk of fire on the Site. If PCBs are burned, dioxin is formed, thus potentially creating a new, more toxic, contaminant of concern. Uncontrolled fires coming in contact with building materials containing ACM could create a large-scale release of asbestos fibers that would impair the air quality throughout the surrounding area.

7. The availability of other appropriate federal or state response mechanisms to respond to the release (40 C.F.R. § 300.415(b)(2)(vii)).

Ecology is currently regulating contaminant issues on the Site through its NPDES program. The property owner has not complied with regulatory requirements under this permit since acquiring the property in 2014, and in 2020 it violated a settlement agreement with Ecology that addresses some elements of non-compliance. Ecology's MTCA statute may be able to regulate some contaminants that are confirmed to be migrating off Site. However, Ecology has stated it does not have authority or resources to address immediate threats of release in a time-critical fashion, and that MTCA does not provide authority to address releases of ACM or PCB sources that are present in building materials.

The SRCAA regulates management of ACM during demolition and abatement activities. The SRCAA has limited staff to provide oversight of permitted projects. It has stated it has no resources available to conduct cleanup of ACM and that its enforcement authority is limited to situations where an entity does not comply with SRCAA administrative actions such as notices of violation and penalties.

EPA is working cooperatively with the Ecology and SRCAA to use all the available and appropriate regulatory tools in order ensure threats from the release of hazardous substances are properly mitigated within appropriate timeframes.

8. Other situations or factors that may pose threats to public health or welfare of the United States or the environment. (40 C.F.R. § 300.415(b)(2)(viii)).

An overarching factor that magnifies the threats posed by this Site is the demonstrated past non-compliance with environmental regulatory requirements by the owner of the facility parcel and outfall parcel, as recently as March 2020.

IV. ENDANGERMENT DETERMINATION

Actual or threatened releases of hazardous substances from this Site may present an imminent and substantial endangerment to public health, or welfare, or the environment.

V. EXEMPTION FROM STATUTORY LIMITS

This Action Memorandum requests an emergency exemption from the \$2 million limit for fund-financed removal actions as outlined in Section 104(c) of CERCLA. This exemption is warranted and the statutory criteria in Section 104(c)(1)(A) of CERCLA are met as outlined below:

1. Continued response actions are immediately required to prevent, limit, or mitigate an emergency.

As outlined in previous sections of this Action Memorandum, EPA has documented as part of its RSE that there is an ongoing release of hazardous substances including, but not limited to PCBs, PAHs, and asbestos from this Site that create a current risk of exposure to these contaminants. The RSE also documents the potential of a catastrophic release of highly contaminated sediment from the 1,700 cubic yards of sediment that have accumulated in a sediment pond to Deadman Creek.

2. There is an immediate risk to public health or welfare or the environment.

As outlined in previous sections of this Action Memorandum, the contaminants currently being released from the Site include but are not limited to PCBs, PAHs, and asbestos all of which are known human carcinogens. Due to the ongoing presence of commercial activity and illegal trespassers on the Site, there is an immediate risk to human health from on-Site exposure. The documented migration of PCBs through stormwater into watersheds that are already designated as impaired waterbodies because of the presence of PCBs present an immediate risk to the health of the local environment and human health among populations that consume fish from this river system.

3. Such assistance will not otherwise be provided on a timely basis.

As outlined in section III(7) of this Action Memorandum the State of Washington's cleanup statutes do not provide authority to address contaminants in building materials, which represent the primary and largest source of contamination at the Site. Additionally, there are no state or local authorities that can order removal of ACM. While it has been determined that the risks described in this memorandum require immediate action, no state or other federal cleanup authorities can provide a response

within a near-term timeframe and likely will require at least a year of planning and procedural steps to initiate cleanup activities.

VI. PROPOSED ACTIONS AND ESTIMATED COSTS

A. Proposed Action

1. Proposed Action Description

a. Robertson Siding

There is an estimated 488,500 square feet of Robertson siding on at least 13 buildings on-Site. The siding on these buildings contains PCBs at concentrations as high as 39,000,000 µg/kg and chrysotile asbestos at concentrations as high as 20%. Based on the best information available at this time, EPA will:

1. Survey and establish safe site control, including exclusion, contaminant reduction, and support zones. Because workers will be using boom lifts (or an equivalent), all surficial debris that may interfere with use of this equipment must be removed before operations may commence. A spotter shall be used at all times when personnel are using boom lifts.
2. Personnel will secure each segment of siding prior to detaching the segment from the building structure. The segment will be secured using load-appropriate rope or chains with hooks, clamps, or other means of securing the segment to a forklift.
3. Once the segment is secured to the forklift, personnel will detach the segment from the building structure using saws, torches, and/or hand tools.
4. After clearing all personnel from under the detached segment, the segment will be slowly lowered to the ground as gently as possible to prevent release of asbestos or PCBs.
5. A ground crew will detach the segment from the rope/chain and carry the segment to a prepared (lined and cushioned) roll off box.
6. The segment will be carefully stacked to maximize the amount of segments in the roll off box as efficiently as possible. Cardboard or other padding will be used as necessary to prevent the siding segments from puncturing the liner.
7. This process will continue repetitively until the roll off box is full or the maximum weight for legal transportation is achieved, whichever occurs first.
8. When the roll off box is full, the liner will be sealed in a manner that prevents release of dust during transportation.
9. The roll off box will then be sealed, secured, and placarded for transportation to an appropriately licensed disposal facility.

b. Siding Detritus on the Ground Surface

There is an unknown amount of detritus that has sloughed off of the buildings clad with Robertson siding due to weathering. This material is located on the

ground surface adjacent to the buildings and has migrated into the storm water drains, the settling ponds, and Deadman Creek. Samples of this material contained PCBs at concentrations as high as 170,000 µg/kg and the carcinogenic PAH, benzo(a)pyrene, at concentrations as high as 480,000 µg/kg. Based on the best information available at this time, EPA will conduct the following actions on paved and unpaved ground surfaces:

Removal of Siding Detritus from Paved Surfaces

1. Personnel will plug nearby storm water drains.
2. Personnel will use heavy equipment (excavators, backhoes, vacuum trucks, etc.) or manual equipment (brooms, shovels, shop vacuums, etc.) to collect, contain, and dispose of sloughed siding detritus from paved surfaces that threaten storm water drains.
3. After accumulations of detritus have been removed, paved surfaces will be pressure washed to direct the residual detritus into the plugged storm water drains.
4. The liquid and sediment collected into the plugged storm water catch basins will be pumped into settling tanks.
5. After the sediment has settled, water will be removed, treated and discharged into the storm water system.
6. The sediment that has settled out will be removed, dried, and placed into a lined roll off box.
7. This process will continue repetitively until the roll off box is full or the maximum weight for legal transportation is achieved, whichever occurs first.
8. When the roll off box is full, the liner will be sealed in a manner that prevents release of dust during transportation.
9. The roll off box will then be sealed, secured, and placarded for transportation to an appropriately licensed disposal facility.
10. Plugs will be removed from surface water drains.

Removal of Siding Detritus from Unpaved Surfaces

1. Personnel will plug nearby storm water drains.
2. Personnel will use heavy equipment (excavators, backhoes, vacuum trucks, etc.) and/or manual equipment (shovels, etc.) to excavate soil contaminated with siding detritus that is located adjacent to building clad with Robertson siding.
3. An initial lift of 0.5 feet will be removed and placed into a lined roll off box.
4. Confirmation samples will be collected to ascertain that PCB-contaminated soil has been removed. If PCBs concentrations are below the cleanup level, the excavated area will be backfilled with clean material and compacted.

5. If analytical results of soil samples indicated PCB concentrations greater than the cleanup level, an additional 0.5-foot lift will be excavated and placed into a lined roll off box.
6. In areas excavated to a depth of 1 foot, confirmation samples will be collected for documentation purposes only. Because the primary concern for PCBs in surface soil is direct human exposure and contamination or the storm water system, excavation will not proceed beyond 1.0 feet below ground surface and the fill material will be considered a sufficient cap to reduce those exposure pathways. The excavated area will be backfilled with clean material and compacted.
7. When the roll off box is full, the liner will be sealed in a manner that prevents release of dust during transportation.
8. The roll off box will then be sealed, secured, and placarded for transportation to an appropriately licensed disposal facility.
9. Plugs will be removed from surface water drains.

c. TSI Pipe Insulation

There is an estimated 20,666 linear feet of friable TSI pipe insulation observed in poor, deteriorated condition throughout the Site. This TSI pipe insulation is located within building rafters, in large pieces having detached and fallen to the ground, and outside of buildings exposed to the weather. The TSI pipe insulation contains concentrations of amosite and chrysotile asbestos at concentrations as high as 20%. Based on the best information available at this time, EPA will:

1. Survey and establish safe site control, including exclusion, contaminant reduction, and support zones. When workers are using boom lifts (or an equivalent), all surficial debris that may interfere with use of this equipment must be removed before operations may commence. A spotter shall be used at all times when personnel are using boom lifts.
2. Personnel will wrap various lengths of pipe using a glove bag that prevents the release of asbestos to the environment.
3. Personnel will then attach a second glove bag to sections of the pipe to be detached.
4. Working within the glove bag to eliminate the release of asbestos, personnel will remove the TSI and expose a section of pipe to be cut.
5. Personnel will use a saw, hand tools, or a hydraulic shear to cut the pipe and detach that section from the remaining pipe.
6. After clearing all personnel from under the detached pipe, the pipe will be slowly lowered to the ground as gently as possible to prevent release of asbestos.
7. A second crew will receive the detached pipe and transport the pipe to a prepared (lined and cushioned) roll off box.

8. The pipe will be carefully stacked to maximize the amount of material in the roll off box as efficiently as possible. Cardboard or other padding will be used as necessary to prevent the pipes from puncturing the liner.
9. This process will continue repetitively until the roll off box is full or the maximum weight for legal transportation is achieved, whichever occurs first.
10. When the roll off box is full, the liner will be sealed in a manner that prevents release of dust during transportation.
11. The roll off box will then be sealed, secured, and placarded for transportation to an appropriately licensed disposal facility.

d. Waste Piles/Green Coke

There is an estimated 4,500 cubic yards of waste material/green coke in several stockpiles and drums within the Green Mill Building and other stockpiles on Site. This material ranges in particulate size from fine sand or silt to medium gravel. The waste material contains the carcinogenic PAH benzo(a)pyrene at concentrations as high as 560,000 µg/kg. The waste piles exhibit clear evidence of exposure to wind and PAHs have been detected above allowable limits in water samples collected from the storm water retention ponds. Based on the best information available at this time, EPA will:

1. Use a water mist or a tackifier to control dust emissions during removal of the waste piles.
2. Use a front-end loader to direct load waste material into the selected transportation vessels.
3. Line and seal transportation vessels with polyethylene, wet the waste material, or apply a tackifier, and then cover prior to transportation off Site to prevent the release of dust during transportation.
4. The transportation vessel will be sealed, secured, and placarded for transportation to an appropriately licensed disposal facility.

e. Coal Tar Pitch

There is an unknown amount of solidified coal tar pitch in the three 100,000-gallon ASTs on Site. If full, each tank would contain approximately 1,000 tons of material. The access flange was removed from the base of one of the ASTs and approximately 3-5 cubic yards of material has spilled out. A sample of that material was collected, submitted for analysis, and the material contained the carcinogenic PAH benzo(a)pyrene at concentrations as high as 3,400,000 µg/kg. Based on the best information available at this time, EPA will:

1. Reattach the flange cover to the AST to prevent further release of coal tar pitch to the environment.

2. Use an excavator or hand shovel to remove the previously spilled material and place it into drums, waste wranglers, or a lined dump truck.
3. Dump truck or drums/waste wranglers will be sealed, secured, and placarded for transportation to an appropriately licensed disposal facility.

Post Removal Site Controls

Responsibility for Post Removal Site Controls will be addressed in a pending Settlement Agreement with the owner of the facility parcel and MOU with Ecology. For the work described in this Action Memorandum, EPA anticipates Post Removal Site Controls to be limited to periodic monitoring of removal actions completed by EPA.

The Site is not listed or proposed to be listed on the National Priorities List. The work described in this Action Memorandum should not impede any future removal or remedial activities at the Site.

2. Description of alternative technologies

There are no viable alternative technologies that have been identified for the Site. Removal of waste, soil, and sediment is standard technology for a site in which the primary COCs include PCBs, PAHs, and ACM.

3. Engineering Evaluation/Cost Analysis (EE/CA)

This proposed action is for time-critical removal action and, therefore, an EE/CA is not required.

4. Applicable or relevant and appropriate requirements (ARARs)

Removal actions conducted under CERCLA are required to attain Applicable or Relevant and Appropriate Requirements (ARARs) to the extent practicable. In determining whether compliance with ARARs is practicable, the On-Scene Coordinator may consider appropriate factors, including the urgency of the situation and the scope of the removal action to be conducted. EPA also requested a list of ARARs from the State of Washington. EPA has developed the following list of ARARs and the removal action will comply with these ARARs to the extent practicable.

FEDERAL ARARs

Toxic Substances Control Act (TSCA), 15 U.S.C. §§ 2601 *et seq.*, 40 C.F.R. Part 761. TSCA and its implementing regulations specifically at Part 761 address the manufacture,

processing, distribution in commerce, and use prohibitions applicable to polychlorinated biphenyls (PCBs), which are applicable to EPA's handling of waste material at the Site contaminated with PCBs.

- a. Subpart D, at Section 761.50-761.79, addresses specific PCB waste handling and disposal procedures.
- b. Subpart N, Section 761.260-761.274, addresses cleanup site remediation sampling for PCB remediation waste in accordance with Section 761.61(a)(2).

Clean Air Act (CAA), 42 U.S.C. § 7412, 40 C.F.R. Part 61, Subpart M. The CAA and its implementing regulation for National Emissions Standard for Hazardous Air Pollutants (NESHAP), specifically at Subpart M, addresses asbestos milling, manufacturing, and fabricating operations, demolition and renovation activities, waste disposal issues, active and inactive waste disposal sites, and asbestos conversion processes. Subpart M is applicable to the handling, packaging, labeling, transportation, and disposal of waste material at a site contaminated with asbestos-containing material.

- a. Section 61.145 "Standard for demolition and renovation" is likely applicable because some of the work EPA will do may require some demolition. The structures on the Site are damaged and dilapidated, and though not anticipated, EPA may need to demolish portions of structures.
- b. Section 61.150 "Standard for waste disposal for manufacturing, fabricating, demolition, renovation, and spraying operations" is likely applicable because EPA will be collecting and disposing of asbestos waste from the Site.

Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6921-6939g, 40 C.F.R. Parts 260-279. Hazardous waste regulations in Subtitle C of RCRA specify hazardous waste identification, management, and disposal requirements. Because the State of Washington is authorized to operate its state hazardous waste program, the Hazardous Waste Management Act (RCW 70.105) and its Dangerous Waste Regulations (Chapter 173-303 WAC), in lieu of the federal RCRA program, this removal action will comply with the State HWMA standards to the extent practicable. Substantive requirements of RCRA Subtitle C (or the state's HWMA equivalent) may be satisfied by off-Site disposal, consistent with the CERCLA Off-Site Rule at 40 C.F.R. § 300.440. RCRA Subtitle C and the HWMA also provides treatment standards for debris contaminated with hazardous waste ("hazardous debris"), 40 C.F.R. § 268.45, although the lead agency may determine that such debris is no longer hazardous, consistent with 40 C.F.R. § 261.3(f)(2), or equivalent state regulations. While two primary contaminants of concern, PCBs and asbestos, are addressed by other ARARs, there will likely be additional hazardous waste at the Site that will be addressed under RCRA. Given the status of the state authorization in Washington, it is unlikely that federal RCRA regulations will apply; however, should new information be made available, EPA will reassess whether federal RCRA regulations

should be designated as ARARs.

Clean Water Act (CWA), 33 U.S.C. § 1342. The National Pollution Discharge Elimination System (NPDES) requires permits for discharge of stormwater. The State Department of Ecology has been delegated the authority under the CWA to carry out the NPDES program in the State of Washington. If response activities at the Site involve clearing, grading, excavating, or other response activities that will disturb more than one acre of land resulting in storm water discharges, such activities should comply with the substantive requirements for a Construction Stormwater General Permit to prevent or minimize the discharge of pollutants in storm water runoff from the disturbed areas to waters of the United States.

Endangered Species Act (ESA), 16 U.S.C. §§ 1531 – 1544, 50 C.F.R. Parts 17 and 402. The ESA protects species of fish, wildlife, and plants that are listed as threatened or endangered with extinction, along with designated critical habitat for those listed species. The ESA outlines procedures for federal agencies to follow when taking actions that may jeopardize listed species, including consultation with resource agencies. EPA conducted an evaluation of the Site and the area surrounding the Site and found that while there are some protected species in the County, the habitat range and listed species themselves are not located within or near the Site. However, if any listed species are identified in the vicinity of removal work, and the removal work may affect such species and/or their habitat, EPA will consult with the U.S. Fish and Wildlife Service, to the extent practicable, to ensure that response actions are conducted in a manner to avoid adverse habitat modification and jeopardy to the continued existence of such species.

Migratory Bird Treaty Act (MBTA), 16 USC §§ 703 *et seq.* The MBTA makes it unlawful to “hunt, take, capture, kill” or undertake various other actions adversely affecting a broad range of migratory birds without prior approval by the U.S. Fish and Wildlife Service. The mortality of migratory birds due to ingestion of contaminated sediment is not a permitted “take” under the MBTA. EPA conducted an evaluation of the area and potential migratory birds that may have access to contaminated sediment at the Site and determined that there are no known migratory birds in the vicinity of the Site. However, should a protected migratory bird be observed during removal activities, EPA will consult with the U.S. Fish and Wildlife Service, to the extent practicable, to ensure that the Removal Action will be carried out in a manner that avoids the taking or killing of protected migratory bird species, including individual birds or their nests or eggs.

National Historic Preservation Act (NHPA), 16 U.S.C. § 470f, 36 C.F.R. §§ 60, 63, and 800. Section 106 of the NHPA requires that federal agencies take into account the effects of their undertakings on historic properties and seek ways to avoid, minimize, or mitigate any adverse effects on those properties. The Section 106 process seeks to accommodate historic preservation concerns with the needs of federal undertakings through consultation

among the agency official and affected parties, commencing at the early stages of project planning. While consultation with the State Historic Preservation Officer (SHPO) is considered by EPA to be an administrative, rather than substantive, element of the NHPA, and therefore not required for ARAR compliance, EPA has already engaged the SHPO on the planned removal activities. To the extent practicable, EPA will continue to communicate with the SHPO and provide the SHPO with a reasonable opportunity to comment on activities that may impact historic properties when practicable.

STATE ARARs

Washington State Model Toxics Control Act (MTCA), RCW 70.105D, Chapter 173-340 WAC. MTCA addresses cleanup of hazardous waste sites and establishes cleanup standards. Contaminated soil across the Site should be addressed in accordance with industrial cleanup standards at WAC 173-340-745.

Hazardous Waste Management Act and Dangerous Waste Regulations, RCW 70.105, Chapter 173-303 WAC. The Act and regulations address the handling and disposition of dangerous waste, including identification, accumulation, storage, transport, treatment, and disposal. While two primary contaminants of concern, PCBs and asbestos, are addressed primarily by other ARARs, there will likely be additional waste at the Site that will be addressed under the state authorized Subtitle C RCRA program.

- a. WAC 173-303-070 addresses the process for determining whether a waste is dangerous or extremely hazardous.
- b. WAC 173-303-141 addresses treatment, storage, and disposal of dangerous waste.
- c. WAC 173-303-145 addresses spills and discharges into the environment.
- d. WAC 173-303-190 addresses preparing dangerous waste for transport.

Solid Waste Handling Standards, Chapter 173-350 WAC. The Solid Waste Handling Standards apply to management of solid waste. The regulations set minimum functional performance standards for proper handling and disposal of solid waste, describe responsibilities of various entities, and set requirements for solid waste handling facilities. Management of excavated soil or debris, not categorized as hazardous, that is generated during Site cleanup can be addressed using the standards at WAC 173-350-021, 173-350-025, 173-350-300, and 173-350-320.

General Regulations for Air Pollution Sources, Chapter 173-400 WAC. These regulations establish technically feasible and reasonably attainable standards to control or prevent the emission of air contaminants. There is the potential to generate fugitive dust during the Removal Action which can be addressed by the precautions to prevent fugitive dust from becoming airborne and the requirements to maintain and operate the source to minimize emissions standards in WAC 173-400-040(9).

Best Management Practices

Best management practices (BMPs) will be utilized to the extent practicable. The sequence of cleanup actions will commence in a manner that prevents re-contamination of areas where removal activities have already taken place. Surface water/storm water control measures (storm drain plugs, straw wattles, filter fabric, etc.) will be used to prevent the release of sediment and contaminants through the aqueduct system and Deadman Creek. Caution tape, signs, and security personnel will be used to prevent non-essential personnel or the public from becoming exposed during cleanup actions. Temporary construction-related BMPs will be employed for control of fugitive dust and stormwater. Air monitoring will be conducted to verify the effectiveness of air-related BMPs. During asbestos material removal, fugitive dust will be suppressed by wetting the Site. Upwind and downwind air monitoring for particulate, including asbestos fibers, will continue to be conducted in order to monitor dust suppression effectiveness. Air samples will also be collected and analyzed for asbestos fibers. All sample results will be compared to the general public health base action level of 0.01 fiber per cubic centimeter of air (f/cc) or structure per cubic centimeter of air (s/cc), to determine the effectiveness of EPA's dust control activities. Traffic control procedures will be implemented at the Site to minimize the impact of increased trucking to the neighboring businesses and residential areas.

5. Project Schedule

It is expected that project implementation will begin in July 2020 and will take approximately 18 weeks to complete.

B. Estimated Costs

The EPA extramural costs are shown below.

Emergency and Rapid Response Services (ERRS)	\$4,721,622
Superfund Technical Assessment and Response Team (START)	\$724,149
Contingency (10%)	\$544,579
Total Removal Action Project Ceiling	\$5,990,350

Direct Costs include direct extramural costs and direct intramural costs. Indirect costs are calculated based on an estimated indirect cost rate expressed as a percentage of site-specific direct costs, consistent with the full cost accounting methodology effective 2 October 2000. These estimates do not include pre-Judgment interest, do not take into account other enforcement costs, including Department of Justice costs, and may be adjusted during the course of a removal

action. The estimates are for illustration purposes only and their use is not intended to create any rights for responsible parties. Neither the lack of a total cost estimate nor deviation of actual total costs from this estimate will affect the United States' right to cost recovery.

VI. EXPECTED CHANGE IN THE SITUATION SHOULD ACTION BE DELAYED OR NOT TAKEN

If the proposed Removal Action should be delayed or not taken, COCs will continue to be released on Site creating ongoing potential exposures to cancer-causing contaminants for authorized and unauthorized visitors of the Site. COCs will continue to migrate through stormwater into Deadman Creek with an increasing risk of catastrophic release of these contaminants as a result of a storm event. Even without a catastrophic release in the short-term, the risk of stream sediment becoming contaminated and requiring cleanup increases with time. Finally, it is currently unknown whether COCs are migrating from source material through stormwater into groundwater. Given that the Site sits atop a federally designated sole source aquifer, an uncontrolled pathway to groundwater could result in a greatly expanded scope for needed cleanup operations.

VIII. OUTSTANDING POLICY ISSUES

In consultation with the Office of Emergency Management (OEM), it was determined that the removal does not involve any nationally significant and precedent-setting issues. While removal of ACM where it is the primary contaminant of concern does fall within that category, OEM believes that category does not apply to this removal action because ACM is not the primary contaminant of concern. The Office of Site Remediation Enforcement (OSRE) reviewed the Action Memorandum and Confidential Enforcement Addendum because the cost of the removal action will exceed the \$2 million threshold. OSRE completed this review and provided concurrence via email on May 21, 2020.

IX. ENFORCEMENT

See the attached “Confidential Enforcement Addendum” for enforcement details.

X. RECOMMENDATION

This decision document represents the selected Removal Action for the Former Kaiser Smelter Site, located at 2111 East Hawthorne Road, Mead, Spokane County, Washington, developed in accordance with CERCLA, and not inconsistent with the NCP. This decision is based on the administrative record for the Site. Pursuant to EPA Delegation 14-2, the Region 10 Regional Administrator has authority to sign Action Memoranda where the costs do not exceed \$6 million. Pursuant to EPA Region 10 Redelegation R10 14-2, this authority has been further redelegated to the Division Director, Branch Chief, Section Chief, and OSC, in certain

circumstances. However, the 2009 Superfund Removal Guidance for Preparing Action Memoranda states that when an exemption to the statutory \$2 million cost threshold is applied in a removal action, only Regional Administrators are authorized to sign the Action Memorandum. Therefore, the Region 10 Regional Administrator has authority to sign this Action Memorandum applying the emergency exemption to exceed \$2 million in costs.

Conditions at the Former Kaiser Smelter meet the criteria in Section 300.415(b)(2) of the NCP for a removal action and I recommend your approval of the proposed Removal Action. The total project ceiling if approved will be \$5,990,350. Of this, as much as \$5,990,350 comes from the Regional Removal Allowance.

XI. APPROVAL / DISAPPROVAL

APPROVAL:

Chris Hladick, Regional Administrator
EPA Region 10

DISAPPROVAL:

Chris Hladick, Regional Administrator
EPA Region 10

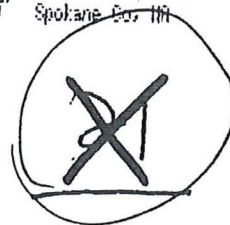


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**FILED FOR RECORD AT THE REQUEST OF
AND WHEN RECORDED RETURN TO:**

CDC Mead, L.L.C.
1650 Des Peres Road, Suite 303
St. Louis, Missouri 63131
Attn: Michael J. Roberts

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S-1183424

Document Title:	Easement Agreement
Grantor:	Kaiser Aluminum & Chemical Corporation, a Delaware corporation
Grantee:	CDC Mead, L.L.C., a Missouri limited liability company
Legal Description (Abbreviated):	Portion of Section 9, Township 26 North, Range 43 East Willamette Meridian, lying southeasterly of P.S.H. No. 6 and Portion of the North Half of Section 16, Township 26 North, Range 43 East Willamette Meridian in Spokane County, Washington
Additional Legal Description:	See Page A-1, Page B-1, Page C-1 of the document
Assessor's Tax Parcel No.:	36165.9001; 36161.9009; 36095.9022
Reference No. of Documents Released or Assigned:	N/A

R. L. Tax Exempt
Date June 02 2004
Spokane County Treas.
By [Signature]



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THIS EASEMENT AGREEMENT (the "Agreement") is made as of June 2, 2004, by and between KAISER ALUMINUM & CHEMICAL CORPORATION, a Delaware corporation ("Grantor"), and CDC MEAD, L.L.C., a Missouri limited liability company ("Grantee"), with reference to the following facts:

- A. Grantor is the owner of that certain parcel of real property located in Spokane County, Washington and legally described on Exhibit A attached hereto ("Parcel 6"), the servient estate.
- B. Concurrently herewith, Grantor is conveying to Grantee that certain parcel of real property located in Spokane County, Washington and legally described on Exhibit B attached hereto ("Parcel 1"), the dominant estate, together with an additional parcel of real property located in the vicinity of Parcel 1 (the "Outfall Parcel").
- C. In connection with the conveyance of Parcel 1 and the Outfall Parcel to Grantee, Grantor has agreed to create a perpetual easement for the use and maintenance of an existing water drainage system that includes an access road, two settling basins, underground utilities and an underground pipeline (collectively, the "Drainage System"), over, under, across and through the portion of Parcel 6 described on Exhibit C and as depicted on Exhibit C-1 attached hereto (the "Easement Area") to serve Parcel 1. The Drainage System ultimately empties into the Outfall Parcel.
- D. The parties desire to set forth their understanding regarding the establishment, operation, use and maintenance of the Easement Area.

NOW, THEREFORE, in consideration of the foregoing recitals and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Drainage Easement. Grantor does hereby confirm, establish and grant to and for the benefit of Parcel 1, its owners, successors and assigns, subject to all easements, covenants, conditions, restrictions, reservations, encumbrances and liens, whether or not of record, a perpetual, non-exclusive easement for use of the Drainage System over, under, across and through the Easement Area (the "Drainage Easement"). The establishment of the Drainage Easement shall not prevent the owner of Parcel 6 from using the Easement Area for any use or purpose not inconsistent with the Drainage Easement. Grantor and Grantee acknowledge that the Drainage System may carry water that originates on Parcel 6 or on other property in the vicinity of Parcel 1.

2. Use of Easement Area; Compliance with Laws. The owners of Parcels 1 and 6 and any tenant, employee, agent, licensee, invitee or contractor of either party shall use the Easement



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SPOKANE, COUNTY TITLE CO LRS \$33.00

Area in a reasonable manner and shall avoid disturbing the other parties to the extent reasonably possible. The owner of Parcel 1 and its agents, contractors, and employees shall comply with all applicable governmental laws, rules, regulations and orders in connection with the use of the Drainage Easement and the performance of all obligations and exercise of all rights under this Agreement, including activities described in Paragraph 3. The owner of Parcel 1 shall be responsible for obtaining and complying with all necessary permits for the activities of the owner of Parcel 1 and its agents, contractors, and employees related to the Drainage Easement, including, without limitation, the National Pollutant Discharge Elimination System ("NPDES") Permitting Program.

3. Maintenance Responsibilities; Work in Easement Area. The owner of Parcel 1 shall maintain the Easement Area. Such maintenance activities shall include inspecting, repairing and replacing all components of the Drainage System and such other activities as shall be necessary to preserve the Easement Area in good condition and repair. The owner of Parcel 1 shall give the owner of Parcel 6 not less than thirty (30) days' advance written notice of any work to be performed in the Easement Area. If any work to be performed in the Easement Area has the potential to interfere with the use or enjoyment of Parcel 6 by the owner of Parcel 6 or any of its tenants, licensees or invitees, the owner of Parcel 1 shall not commence such work without the prior written consent of the owner of Parcel 6. Upon completion of work in the Easement Area, the owner of Parcel 1 shall provide to the owner of Parcel 6 as-built drawings or other information or documentation relating to such work as reasonably requested by the owner of Parcel 6. The owner of Parcel 6 may require that the owner of Parcel 1 or any tenant, employee, agent, licensee, invitee or contractor of the owner of Parcel 1 that will access the Easement Area or perform any work in the Easement Area first provide to the owner of Parcel 6 a certificate of insurance demonstrating that such person has obtained a policy of commercial general liability insurance insuring against all liability, including bodily injury and death and property damage, arising from the use or maintenance of the Easement Area with limits and an insurer reasonably acceptable to the owner of Parcel 6, and naming the owner of Parcel 6 and any other party designated by the owner of Parcel 6 as additional insureds.

4. Indemnification. The owner of Parcel 1 shall indemnify, defend and hold the owner of Parcel 6 and its successors and assigns, harmless from and against any and all liability, loss, damage, expense, action or claim, including reasonable attorneys' fees and costs, asserted or arising directly or indirectly on account of or out of acts or omissions of the owner of Parcel 1 or the tenants, employees, agents, licensees, invitees or contractors of the owner of Parcel 1 in the exercise of the rights or the performance of the obligations under this Agreement; provided, however, that this paragraph does not purport to indemnify the owner of Parcel 6 or its successors and assigns, against liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the negligence or intentional misconduct of the owner of Parcel 6, or its tenants, employees, agents, licensees, invitees or contractors.



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5. Rights Not Separately Assignable. The rights granted under this Agreement are appurtenant to Parcel 1. The owner of Parcel 1 shall have no rights to transfer any of the rights granted under this Agreement except in direct proportion to any transfer of the ownership of Parcel 1.
6. Governing Law. This Agreement shall be construed under and enforced in accordance with the laws of the State of Washington without regard to any conflicts of laws principles.
7. Successors and Assigns. All of the terms and conditions of this Agreement shall run with the land and shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto, including without limitation, all subsequent owners of Parcel 6 and Parcel 1 and all persons claiming through or under them.
8. Attorneys' Fees. In the event any action or proceeding is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to recover, as a part of the prevailing party's costs, reasonable attorneys' fees.
9. Final and Complete Expression. This Agreement constitutes the final and complete expression of the parties with respect to the transactions contemplated herein and may not be modified, amended, altered, superseded or terminated except by an agreement in writing signed by all of the then owners of Parcel 6 and Parcel 1.
10. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

[signatures appear on next page]



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IN WITNESS WHEREOF, Grantor and Grantee have executed this Agreement as of the date first set forth above.

Grantor:

KAISER ALUMINUM & CHEMICAL
CORPORATION, a Delaware corporation

By: 

Name: Joseph A. Fisher, III

Its: Assistant General Counsel
Authorized Representative

Grantee:

CDC MEAD, L.L.C., a Missouri limited liability
company

By: _____

Name: _____

Its: _____



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IN WITNESS WHEREOF, Grantor and Grantee have executed this Agreement as of the date first set forth above.

Grantor:

**KAISER ALUMINUM & CHEMICAL
CORPORATION**, a Delaware corporation

By: _____
Name: _____
Its: _____

Grantee:

CDC MEAD, L.L.C., a Missouri limited liability company

By: Michael J. Roberts
Name: Michael J. Roberts
Its: Member



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STATE OF WASHINGTON)
)ss.
COUNTY OF SPOKANE)

On this 2nd day of June before me, the undersigned, a Notary Public in and for the State of WASHINGTON, duly commissioned and sworn, personally appeared Joseph A. Fischer III to me known to be the person who executed the within instrument and on oath stated that he is authorized to execute said instrument as Assistant General Counsel and Authorized Representative for Kaiser Aluminum & Chemical Corporation, the corporation that executed the within instrument, and acknowledged said instrument to be the free and voluntary act and deed of said limited corporation, for the uses and purposes therein mentioned.

WITNESS my hand and official seal.



(SEAL)

KEITH S. NEWELL
Print Name
Keith S. Newell
NOTARY PUBLIC in and for the State
of Washington, residing in
Spokane
My commission expires: July 1, 2007

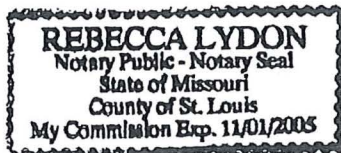


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STATE OF Missouri
COUNTY OF St. Louis) ss.

On this 1 day of June, 2004, before me, the undersigned, a Notary Public in and for the State of Missouri, duly commissioned and sworn, personally appeared Michael Roberts to me known to be the person who executed the within instrument and on oath stated that he is authorized to execute said instrument as Member for CDC Mead, L.L.C., the limited liability company that executed the within instrument, and acknowledged said instrument to be the free and voluntary act and deed of said limited corporation, for the uses and purposes therein mentioned.

WITNESS my hand and official seal.



(SEAL)

REBECCA LYDON
Print Name
Rebecca Lydon
NOTARY PUBLIC in and for the State
of Missouri residing in
St. Louis
My commission expires: _____

REBECCA LYDON
Notary Public - State of Missouri
County of St. Louis
My Commission Expires Nov. 1, 2005



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EXHIBIT A

(Description of Parcel 6 – Servient Estate)

That portion of Section 9, Township 26 North, Range 43, East of the Willamette Meridian, lying Southeasterly of P.S.H. No. 6;

EXCEPT the South 500 feet of said Section 9;

AND EXCEPT that portion condemned by the State of Washington by Spokane County Superior Court Cause No. 86200900-5;

AND EXCEPT that portion condemned by the State of Washington by Spokane County Superior Court Cause No. 01204180-5;

Situate in the County of Spokane, State of Washington.

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EXHIBIT B

(Description of Parcel 1 – Dominant Estate)

Surveyor's Note:

Data in brackets [] is record data per description shown on the Quitclaim Deed, recorded February 13, 1976, as Auditor's File No. 7602130461.

A parcel of land in Section 16, Township 26 North, Range 43 East of the Willamette Meridian, Spokane County, Washington, being a portion of that certain tract of land acquired for the United States of America Bonneville Power Administration, shown in a Judgment on a Declaration of Taking in the District Court of the United States for the Eastern District of Washington, Northern Division, Civil Action No. 228 in said court, dated November 12, 1941, more particularly described as follows:

BEGINNING at a point on the North line of Section 16 and which bears S89°43'12"E 427.10 feet [South 89°45' West 427.1 feet] from the Northeast corner of said Section; thence S00°05'06"E 499.95 feet [South 00°37' East 500.1 feet]; thence N44°29'08"W 704.15 feet [North 45°00' West 704.2 feet] to the North line of said Section 16; thence S89°43'12"E [North 89°45' East], along the North line of said Section, 492.68 feet [492.6 feet] to the Point of Beginning.

TOGETHER WITH a parcel of land lying in the North half of Section 16, Township 26 North, Range 43 East, W.M., Spokane County, Washington described as:

Surveyor's Note:

Data in brackets [] is record data per description shown on the Quitclaim Deed, recorded December 16, 1949, as Auditor's File No. 923278A

BEGINNING at the northwest corner of said Section 16; thence S89°33'04"E [North 89°56' East], along the north line of said Section 16, a distance of 2,613.41 feet [2613.2 feet] to the quarter section corner on the north line of said Section 16; thence S89°43'12"E [North 89°45' East], along the north line of said Section 16, a distance of 1727.49 feet [1728.2 feet]; thence S44°29'08"E 704.15 feet [South 45° East 704.2 feet]; thence S00°45'39"W 1337.81 feet [South 00°14' West 1338.2 feet]; thence S45°44'21"W 352.93 feet [South 45°14' West 1338.2 feet] to the northerly right-of-way line of the Graves Road (now known as Hawthorne Road); thence S89°15'08"E [South 89°46' East], along the Northerly right-of-way line of said road, 477.78 feet [478.5 feet]; thence on a 924.93 foot [924.9 foot] radius curve to the left (the long chord of which bears N83°48'01" East 223.75 feet [North 83°16' East 224.1 feet]), 224.30 feet to the East line of said

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Section 16; thence S00°05'31"E [South 00°39' East], along the East line of said Section 16, a distance of 87.07 feet [87.1 feet] to a point on the Southerly right-of-way line of said County Road, said point being N00°05'31"W 500.00 feet [N00°39' West a distance of 500 feet] from the quarter section corner on the East line of said Section 16; thence N89°15'08"W [North 89°46' West], along the Southerly right-of-way line of said road, 2171.72 feet [2,172 feet]; thence S00°45'39"W 189.94 feet [South 00°14' West 190 feet]; thence N89°15'24"W 2216.97 feet [North 89°46' West 2,217.2 feet] to a point on the Northwestern right-of-way line of said Graves Road (now known as Hawthorne Road); thence N52°49'18"W 1102.21 feet [North 53°20' West a distance of 1,103.1 feet] to the West line of said Section 16; thence N00°10'27"E 1651.20 feet [North 00°21' West a distance of 1,651.2 feet] along the West line of said Section 16, to the Point of Beginning;

EXCEPT that portion thereof conveyed to Spokane County for Graves Road (now known as Hawthorne Road) by deed recorded December 19, 1942, under Auditor's File No. 569878A.

AND EXCEPT that portion of the N1/2 of Section 16, Township 26 North, Range 43 East, W.M., Spokane County, Washington, described as follows:

Beginning at the northwest corner of the NE1/4 of said Section 16; thence S89°43'12"E, along the north line of said NE1/4, 1434.06 feet; thence S00°16'48"W 282.18 feet; thence N89°33'44"W 113.58 feet; thence S77°05'46"W 36.12 feet; thence S52°17'25"W 39.40 feet; thence S14°29'52"W 38.03 feet; thence S01°12'06"W 94.75 feet; thence S07°38'50"W 51.71 feet; thence S15°55'21"W 17.49 feet; thence S38°09'37"W 17.43 feet; thence S50°42'00"W 20.27 feet; thence S59°31'40"W 20.34 feet; thence N88°42'33"W 726.66 feet; thence N01°17'27"E 11.00 feet; thence N88°42'33"W 15.00 feet; thence S01°17'27"W 11.00 feet; thence N88°42'33"W 94.37 feet; thence N87°44'02"W 47.70 feet; thence S82°38'28"W 36.46 feet; thence N05°56'23"W 17.41 feet; thence N52°01'54"W 93.74 feet; thence N16°26'32"W 92.27 feet; thence S88°30'33"E 16.98 feet; thence N01°56'24"W 184.84 feet; thence S83°47'26"W 52.25 feet; thence N11°03'37"W 52.72 feet; thence S81°14'41"W 87.18 feet; thence S18°34'20"W 131.33 feet; thence S00°00'00"W 87.95 feet; thence S88°30'33"E 158.37 feet; thence S16°26'32"E 103.88 feet; thence S45°16'16"E 96.10 feet; thence S82°40'40"W 172.41 feet; thence S54°17'07"W 100.89 feet; thence N88°56'22"W 632.94 feet; thence S83°26'27"W 48.69 feet; thence S88°47'23"W 68.36 feet; thence N88°34'23"W 743.22 feet; thence N03°09'30"W 463.21 feet; thence S89°16'07"E 215.19 feet; thence N38°52'22"E 194.44 feet to a point on the north line of the NW1/4 of said Section 16; thence S89°33'04"E, along said north line, 1193.06 feet to the Point of Beginning.

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EXHIBIT C

(Description of Easement Area)

That portion of Section 9, Township 26 North, Range 43 East, W.M., Spokane County, Washington, described as follows:

Beginning at the southeast corner of the SW1/4 of said Section 9; thence N89°33'04"W, along the south line of said SW1/4, 25.00 feet; thence N11°29'38"W 256.37 feet; thence N00°21'19"E 249.18 feet to a point on the north line of the south 500 feet of said Section 9 and the TRUE POINT OF BEGINNING; thence continuing N00°21'19"E 731.20 feet; thence N14°48'06"E 612.94 feet; thence N76°05'34"W 136.43 feet; thence N24°24'14"W 28.05 feet; thence N14°50'00"E 217.19 feet; thence N62°15'03"E 18.52 feet; thence S75°53'43"E 121.89 feet; thence N14°50'00"E 83.80 feet; thence S75°10'00"E 33.45 feet; thence N14°51'08"E 93.02 feet; thence S74°53'05"E 15.00 feet to POINT "A"; thence continuing S74°53'05"E 15.00 feet; thence S27°46'59"E 150.26 feet; thence S14°50'50"W 11.75 feet; thence S75°09'10"E 82.99 feet; thence S14°51'33"W 361.27 feet; thence N75°14'40"W 82.91 feet; thence S14°45'20"W 27.49 feet; thence S59°45'20"W 143.64 feet; thence S14°56'09"W 309.20 feet; thence S00°17'44"E 834.86 feet to a point on said north line of the south 500 feet of Section 9; thence along said north line the following two (2) courses: 1) N89°43'12"W 4.14 feet; 2) N89°33'04"W 77.72 feet to the TRUE POINT OF BEGINNING;

TOGETHER WITH a strip of land, thirty feet (30') wide, across portions of said Section 9, being fifteen feet (15') wide on each side of the following described centerline:

Beginning at the aforesaid POINT "A"; thence N15°06'55"E 988.21 feet; thence N14°59'38"E 801.16 feet; thence N14°43'15"E 301.76 feet; thence N76°30'45"E 560.48 feet to POINT "B"; thence N53°44'00"E 364.25 feet; thence N75°14'05"E 301.31 feet to the point of terminus on the southwesterly line of that portion of said Section 9 condemned by the State of Washington by Spokane County Superior Court Cause No. 01204180-5, from which the northeast corner of said Section 9 bears N51°28'02"E 1023.05 feet; lengthening and shortening the sidelines of said strip to terminate on said southwesterly line of that portion of said Section 9 condemned by the State of Washington by Spokane County Superior Court Cause No. 01204180-5;

AND ALSO TOGETHER WITH a strip of land, thirty feet (30') wide, across portions of said Section 9, being fifteen feet (15') wide on each side of the following described centerline:

Beginning at the aforesaid POINT "B"; thence N76°28'41"E 686.63 feet to the point of terminus on the southwesterly line of that portion of said Section 9 condemned by the State of Washington by Spokane County Superior Court Cause No. 01204180-5, from which the northeast corner of said

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Section 9 bears N43°01'26"E 1051.92 feet; lengthening and shortening the sidelines of said strip to terminate on said southwesterly line of that portion of said Section 9 condemned by the State of Washington by Spokane County Superior Court Cause No. 01204180-5;

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EXHIBIT C-1

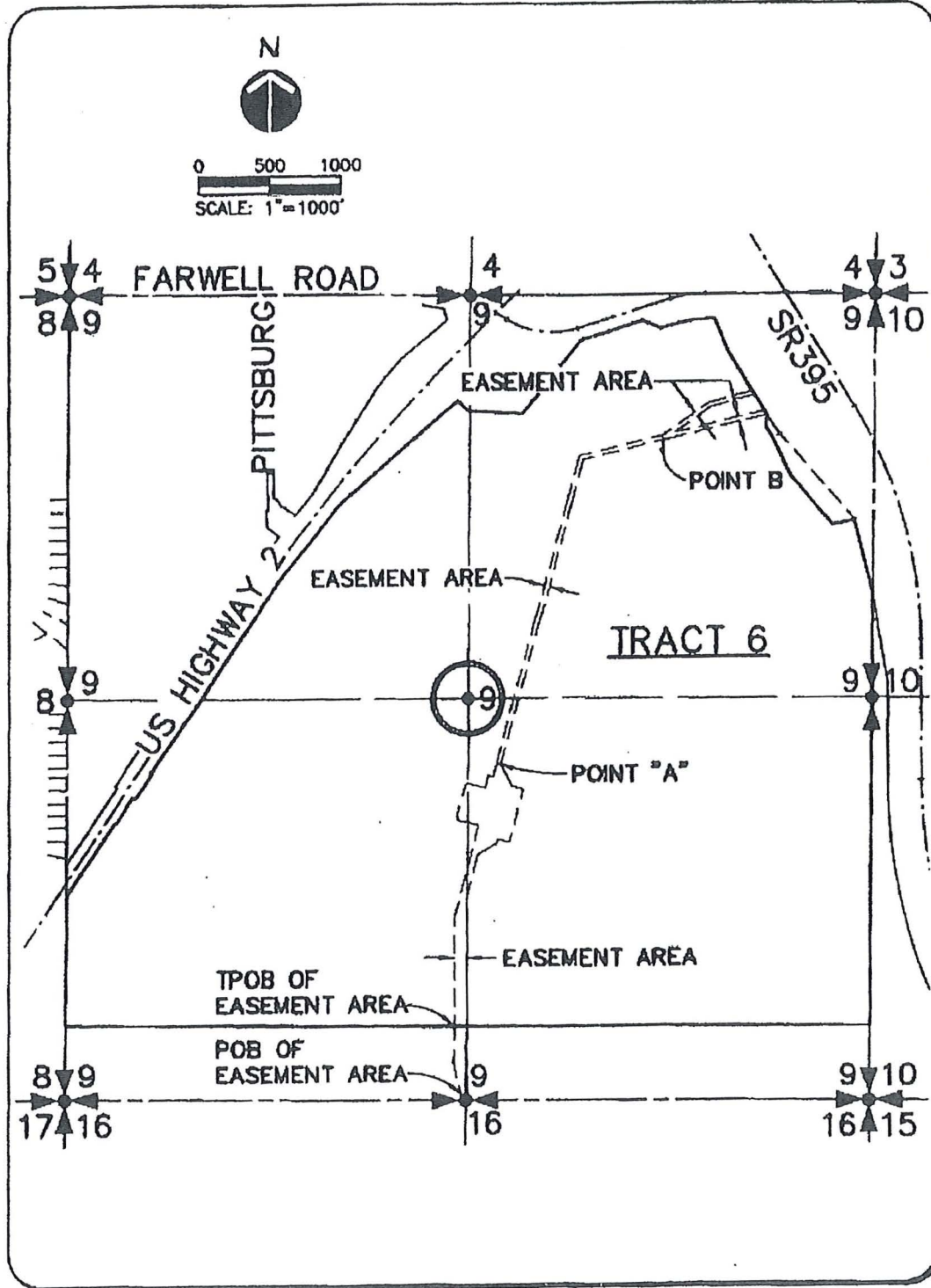
(Depiction of Easement Area)

[see next page]

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Issue Date: August 7, 2014
Effective Date: September 1, 2014
Expiration Date: August 31, 2019
Amendment Date: November 14, 2014

**National Pollutant Discharge Elimination System
Waste Discharge Permit No. WA0000876**

State of Washington
DEPARTMENT OF ECOLOGY
Olympia, Washington 98504-7600

Eastern Regional Office
4601 North Monroe Street
Spokane, Washington 99205-1295

In compliance with the provisions of
The State of Washington Water Pollution Control Law
Chapter 90.48 Revised Code of Washington
and
The Federal Water Pollution Control Act
(The Clean Water Act)
Title 33 United States Code, Section 1342 et seq.

Spokane Recycling, LLC.
2111 E. Hawthorne Road
Mead, WA 99021-9517

is authorized to discharge in accordance with the Special and General Conditions that follow.

<u>Facility Location:</u> 2111 E. Hawthorne Road, Mead, WA 99021-9517	<u>Receiving Water:</u> Deadman Creek
--	---------------------------------------

<u>Treatment Type:</u> Settling Basin	<u>SIC Code:</u> 3624
<u>Industry Type:</u> Former aluminum reduction plant with idled carbon anode production line	<u>NAICS Code:</u> 335991
	<u>Categorical Industry:</u> No

James M. Bellatty
Water Quality Section Manager
Eastern Regional Office
Washington State Department of Ecology

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Summary of Permit Report Submittals

Refer to the Special and General Conditions of this permit for additional submittal requirements.

Permit Section	Submittal	Frequency	First Submittal Date
All permit required submittals must be submitted electronically through the WQWebPortal.			
S3.A	Discharge Monitoring Report	Monthly	October 15, 2014
S3.E	Reporting Permit Violations	As necessary	-
S3.F	Other Reporting	As necessary	-
S4.D	Annual Stormwater Benchmark Compliance Report	1/year	March 15, 2015
S5.	Stormwater Pollution Prevention Plan	1/permit cycle	September 1, 2015
S5.A	Stormwater Pollution Prevention Plan Update	As necessary	-
S7.A	Operations and Maintenance Manual	1/permit cycle	September 1, 2015
S7.A	Operations and Maintenance Manual Update or Review Confirmation Letter	1/year	January 15, 2015
S7.B	Reporting Bypasses	As necessary	-
S8.	Application for Permit Renewal	1/permit cycle	August 31, 2018
S10.1	Scope of Work for the Removal and Disposal of Sediments in the Settle Pond System	1/permit cycle	September 1, 2015
S10.1	Letter Confirming the Removal of Sediments within Settling Pond System	1/permit cycle	September 1, 2016
S10.2	PCB Sources Identification Study	1/permit cycle	September 1, 2016
S10.3	PCB Best Management Practices Plan	1/permit cycle	September 1, 2018
S11. Item 1	Schedule of Compliance, Annual Status Reports	1/year	January 15, 2015
S11. Item 2	Schedule of Compliance, Scope of Work for Mixing and Receiving Water Study	1/permit cycle, if necessary	at least two (2) years prior to the commencement of any new process wastewater discharge from the site
S11. Item 3	Schedule of Compliance, Mixing and Receiving Water Study Results/Engineering Report	1/permit cycle, if necessary	at least one hundred and eighty (180) days prior to the commencement of any new process wastewater discharge from the site
G1.	Notice of Change in Authorization	As necessary	-

Permit Section	Submittal	Frequency	First Submittal Date
G4.	Permit Application for Substantive Changes to the Discharge	As necessary	-
G5.	Engineering Report for Construction or Modification Activities	As necessary	-
G7.	Notice of Permit Transfer	As necessary	-
G10.	Duty to Provide Information	As necessary	-
G13.	Payment of Fees	As assessed	-
G21.	Compliance Schedules	As necessary	-

Special Conditions

S1. Discharge limits

S1.A. Stormwater and Process Wastewater discharges

All discharges and activities authorized by this permit must be consistent with the terms and conditions of this permit.

The discharge of any of the following pollutants more frequently than, or at a level in excess of that identified and authorized by this permit violates the terms and conditions of this permit.

Beginning on the effective date of this permit, the Permittee is authorized to discharge stormwater and process wastewater to Deadman Creek at the permitted location subject to complying with the following limits:

Effluent Limits: Outfall # 001			
Latitude 47.77757 Longitude -117.36420			
	Interim Limits ^a	Final Limits ^b	
Parameter	Maximum Daily ^c	Monthly Average ^d	Maximum Daily ^c
Total Suspended Solids (TSS)	15 mg/L	4 mg/L	---
Fluoride	---	---	35 mg/L
Aluminum	6.11 mg/L	---	0.75 mg/L
Chlorine	---	---	0.018 mg/L
Free Cyanide	---	---	0.008 mg/L
Oil & Grease	---	---	10 mg/L
Temperature	(1)	---	(2)
Fecal Coliform Bacteria	100 # per 100 mL	---	(3)
Total PCBs	PCB Best Management Plan, see Permit Condition S10	--	--
		Minimum	Maximum
pH	---	6.5 standard units	8.5 standard units
(1) After April 30, 2016, when the Permittee has collected sufficient stormwater temperature data, Ecology will set a performance based interim numeric effluent limit for temperature. Any permit modification to include a performance based temperature limit will be subject to normal factual and public review process prior to the final modification.			

<p>(2) Zero load, unless effluent temperatures do not increase receiving water temperatures more than 0.3 °C immediately downstream of the outfall.</p> <p>Ecology will set revised final effluent limits after the Permittee completes a Mixing Study, Receiving Water Study and Engineering Report according to Section S11, Schedule of Compliance.</p>	
<p>(3) Extraordinary primary contact criteria at end of pipe - fecal coliform organism levels must not exceed a geometric mean value of 50 colonies/100 mL, with not more than 10 percent of all samples (or any single sample when less than ten sample points exist) obtained for calculating the geometric mean value exceeding 100 colonies/100 mL; and not raise Fecal Coliform Bacteria more than 2 cfu/100 mL over background.</p> <p>Ecology will set revised final effluent limits after the Permittee completes a Mixing Study, Receiving Water Study and Engineering Report according to Section S11, Schedule of Compliance.</p>	
a	Interim limits apply to stormwater discharges only.
b	If production resumes, final limits apply to stormwater and process wastewater discharges. See Section S11 for the Schedule of Compliance for TSS, Aluminum, Temperature, and Fecal Coliform Bacteria.
c	Average Monthly effluent limit means the highest allowable average of daily discharges over a calendar month. To calculate the discharge value to compare to the limit, you add the value of each daily discharge measured during a calendar month and divide this sum by the total number of daily discharges measured.
d	Maximum Daily effluent limit is the highest allowable daily discharge. The daily discharge is the average discharge of a pollutant measured during a calendar day. For pollutants with limits expressed in units of mass, calculate the daily discharge as the total mass of the pollutant discharged over the day. This does not apply to pH or temperature.

S1.B. Stormwater discharge benchmarks

If a Permittee's discharge exceeds a *benchmark* listed below, the Permittee must take the actions specified in Condition S4. Compare sampling results on a quarterly basis for each parameter to the *benchmark* for determining an exceedence. If sampling occurs more than once per quarter, use the average results for the comparison, except for “visible oil sheen”.

Benchmark Values: Outfall # 001 Latitude 47.77757 Longitude -117.36420	
Parameter	Benchmark Value
Turbidity	25 NTU
Oil Sheen	No Visible Oil Sheen
Copper, Total	0.032 mg/L
Zinc, Total	0.117 mg/L

S1.C. Mixing zone authorization

Mixing zone for Outfall # 001

The permit does not authorize a mixing zone. The concentration of pollutants at the end-of-pipe (dilution factor of 1.0) must meet acute and chronic aquatic life criteria.

S2. Monitoring requirements

S2.A. Monitoring schedule

The Permittee must monitor in accordance with the following schedule and the requirements specified in **Appendix A**, except for PCBs as noted below.

Parameter	Units & Speciation	Minimum Sampling Frequency	Sample Type
(1) Stormwater Outfall # 001 (overflow from settling pond)			
Flow	gallons per day (gpd)	2/month ^a	Estimated
Rainfall	inches	Daily	Rain Gauge
Total Suspended Solids (TSS)	mg/L	2/month ^a	Grab ^b
Fluoride	mg/L	"	"
Aluminum	mg/L	"	"
Chlorine	mg/L	"	"
Free Cyanide	mg/L	"	"
Oil & Grease ^c	mg/L, visible sheen	"	"
Temperature	Degrees Farenheight (°F)	"	"
Fecal Coliform Bacteria	#/100 mL	"	"
pH	standard units	"	"
Turbidity ^c	NTU	2/month ^f	"
Copper ^c	mg/L	"	"
Zinc ^c	mg/L	"	"
Total PCBs ^d	pg/L	1/year ^e	"
(2) Permit Renewal Application Requirements – Stormwater			
See Appendix A to identify the specific pollutants in the priority pollutant groups listed below. The Permittee must submit priority pollutants results: within two years after the effective date of this permit; and with the Permit Application monitoring with the permit application by August 31, 2018			
Cyanide	µg/L	Twice	Grab ^b

Parameter	Units & Speciation	Minimum Sampling Frequency	Sample Type
Total Phenolic Compounds	µg/L	“	“
Priority Pollutants (PP) – Total Metals	µg/L; ng/L for mercury	“	“
PP – Volatile Organic Compounds	µg/L	“	“
PP – Acid-extractable Compounds	µg/L	“	“
PP – Base-neutral Compounds	µg/L	“	“
PP - Dioxin	pg/L	“	“
PP – Pesticides/PCBs	µg/L	“	“
(3) Receiving Water Study			
As specified in Special Condition S13.			
a	The Permittee must sample two discharging stormwater events each month, one event from the 1 st through the 15 th day of the month, and the second from the 16 th through the end of the month. The Permittee must perform this sampling if a stormwater discharge occurs during the sampling period.		
b	Grab means an individual sample collected over a fifteen (15) minute, or less, period.		
c	Parameters that have stormwater discharge benchmarks: Oil and Grease (visible sheen), Turbidity, Copper and Zinc. Compare results for these parameters on a quarterly basis to the stormwater discharge benchmarks in Condition S1.B. If sampling occurs more than once per quarter, use the average results for the comparison, except for “visible oil sheen”. Quarters are defined as follows: January through March, April through June, July through September, and October through December.		
d	The Permittee must test for total PCBs using a method that achieves detection levels (DL) for PCB congeners at, or lower than, those listed in EPA Method 1668C (EPA-820-R-10-005).		
e	Beginning on January 1, 2016.		
f	Permittee must sample Turbidity, Copper and Zinc 2/month and report the daily values from each sampling and average quarterly value over each quarter. Quarters are defined as Quarters are defined as: 1 st Quarter (January – March); 2 nd Quarter (April – June); 3 rd Quarter (July – September) and 4 th Quarter (October – December).		

S2.B. Sampling and analytical procedures

Samples and measurements taken to meet the requirements of this permit must represent the volume and nature of the monitored parameters, including representative sampling of any unusual discharge or discharge condition, including bypasses, upsets, and maintenance-related conditions affecting effluent quality.

Sampling and analytical methods used to meet the monitoring requirements specified in this permit must conform to the latest revision of the *Guidelines Establishing Test Procedures for the Analysis of Pollutants* contained in 40 CFR Part 136 (or as applicable in 40 CFR subchapters N [Parts 400–471] or O [Parts 501-503]) unless otherwise specified in this permit. Ecology may only specify alternative methods for parameters without limits and for those parameters without an EPA approved test method in 40 CFR Part 136.

S2.C. Stormwater sampling requirements

The Permittee must sample the stormwater discharge from the first fall storm event each year. “First fall storm event” means the first time after October 1st of each year that precipitation occurs and results in a stormwater discharge to Deadman Creek.

The Permittee must collect samples within the first 12 hours of stormwater discharge events. If it is not possible to collect a sample within the first 12 hours of a stormwater discharge event, the Permittee must collect the sample as soon as practicable after the first 12 hours, and keep documentation with the sampling records (Condition S4.B.3) explaining why they could not collect samples within the first 12 hours; or if it is unknown (e.g., discharge was occurring during start of regular business hours).

The Permittee need not sample outside of regular business hours, during unsafe conditions, or during sampling periods where there is no discharge.

S2.D. Flow and field measurements

The Permittee must:

1. Select and use appropriate flow measurement, field measurement and methods consistent with accepted scientific practices.
2. Install, calibrate, and maintain these devices to ensure the accuracy of the measurements is consistent with the accepted industry standard and the manufacturer’s recommendation for that type of device.
3. Calibrate continuous monitoring instruments weekly unless it can demonstrate a longer period is sufficient based on monitoring records. The Permittee:
 - a. May calibrate apparatus for continuous monitoring of dissolved oxygen by air calibration.
 - b. Must calibrate continuous pH measurement instruments using a grab sample analyzed in the lab with a pH meter calibrated with standard buffers and analyzed within 15 minutes of sampling.

- c. Must calibrate continuous chlorine measurement instruments using a grab sample analyzed in the laboratory within 15 minutes of sampling.
4. Use field measurement devices as directed by the manufacturer and do not use reagents beyond their expiration dates.
5. Calibrate these devices at the frequency recommended by the manufacturer.
6. Calibrate flow-monitoring devices at a minimum frequency of at least one calibration per year.
7. Maintain calibration records for at least three years.

S2.E. Laboratory accreditation

The Permittee must ensure that all monitoring data required by Ecology for permit specified parameters is prepared by a laboratory registered or accredited under the provisions of chapter 173-50 WAC, *Accreditation of Environmental Laboratories*. Flow, temperature, settleable solids, conductivity, pH, and internal process control parameters are exempt from this requirement. The Permittee must obtain accreditation for conductivity and pH if it must receive accreditation or registration for other parameters.

S2.F. Request for reduction in monitoring

The Permittee may request a reduction of the sampling frequency after twelve (12) months of monitoring. Ecology will review each request and at its discretion grant the request when it reissues the permit or by a permit modification.

The Permittee must:

1. Provide a written request.
2. Clearly state the parameters for which it is requesting reduced monitoring.
3. Clearly state the justification for the reduction.

S3. Reporting and recording requirements

The Permittee must monitor and report in accordance with the following conditions. Falsification of information submitted to Ecology is a violation of the terms and conditions of this permit.

S3.A. Reporting

The first monitoring period begins on the effective date of the permit. The Permittee must:

1. Summarize, report, and submit monitoring data obtained during each monitoring period on the electronic Discharge Monitoring Report (DMR) form provided by Ecology within WQWebDMR. Include data for each of the parameters tabulated in Special Condition S2 and as required by the form. Report a value for each day sampling occurred (unless specifically exempted in the permit) and for the summary values (when applicable) included on the electronic form.

2. Enter the “NO DISCHARGE” reporting code for an entire DMR, for a specific monitoring point, or for a specific parameter as appropriate, if the Permittee did not discharge wastewater or a specific pollutant during a given monitoring period. Report single analytical values below detection as “less than the detection level (DL)” by entering < followed by the numeric value of the detection level (e.g. < 2.0) on the DMR. If the method used did not meet the minimum DL and quantitation level (QL) identified in the permit, report the actual QL and DL in the comments or in the location provided.
3. Report the test method used for analysis in the comments if the laboratory used an alternative method not specified in the permit and as allowed in **Appendix A**.
4. Calculate average values (unless otherwise specified in the permit) using:
 - a. The reported numeric value for all parameters measured between the agency-required detection value and the agency-required quantitation value.
 - b. One-half the detection value (for values reported below detection) if the lab detected the parameter in another sample for the reporting period.
5. Report single-sample grouped parameters (for example priority pollutants, PAHs, pulp and paper chlorophenolics, TTOs) on the WQWebDMR form and include: sample date, concentration detected, detection limit (DL) (as necessary), and laboratory quantitation level (QL) (as necessary). The Permittee must also submit an electronic PDF copy of the laboratory report using WQWebDMR.

If the Permittee has obtained a waiver from electronic reporting or if submitting prior to the compliance date, the Permittee must submit a paper copy of the laboratory report providing the following information: date sampled, sample location, date of analysis, parameter name, CAS number, analytical method/number, detection limit (DL), laboratory quantitation level (QL), reporting units, and concentration detected.

The contract laboratory reports must also include information on the chain of custody, QA/QC results, and documentation of accreditation for the parameter.

6. Ensure that DMRs are electronically submitted no later than the dates specified below, unless otherwise specified in this permit.
7. Submit DMRs for parameters with the monitoring frequencies specified in S2 (monthly, quarterly, annual, etc.) at the reporting schedule identified below. The Permittee must:
 - a. Submit **monthly** DMRs by the 15th day of the following month.
 - b. Submit **quarterly DMRs**, unless otherwise specified in the permit, by the 15th day of the month following the monitoring period. Quarterly sampling periods are January through March, April through June, July through September, and October through December.

- c. Submit **annual DMRs**, unless otherwise specified in the permit, by January 15 for the previous calendar year. The annual sampling period is the calendar year.
 - d. Submit permit renewal application monitoring data in a report **by August 31, 2018**
8. Report PCB results on the WQWebDMR form as total PCBs no later than the applicable date specified above. The total PCB concentration must be calculated as the sum of the concentrations of all PCB congeners measured at concentrations greater than the detection limits (DL).
- In addition to online submittal, the Permittee must submit a paper copy of the PCB laboratory reports from EPA Method 1668 that include the sample date, congener concentrations detected, detection limits (DL), and laboratory quantitation levels (QL) through the WQWebPortal. Ensure that the PCB laboratory reports are received by Ecology through the WQWebPortal no later than the applicable date specified above, unless otherwise specified in this permit.
9. Effective on the permit renewal date, submit reports to Ecology online using Ecology's electronic WQWebDMR submittal forms (electronic DMRs) as required above.
10. Changes to WQWebDMR users: The Permittee must notify Ecology when WQWebDMR users are no longer authorized to use WebDMR on behalf of the Permittee. The notice must be sent within 10 days in writing by mail or via email to the Permit Manager.
11. Submit all reports through the WQWebPortal. When noted, send paper copies of reports to Ecology at:

Mr. Pat Hallinan
Water Quality Program
Department of Ecology/ERO
4601 North Monroe Street
Spokane, WA 99205-1295

S3.B. Records retention

The Permittee must retain records of all monitoring information for a minimum of three (3) years. Such information must include all calibration and maintenance records and all original recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit. The Permittee must extend this period of retention during the course of any unresolved litigation regarding the discharge of pollutants by the Permittee or when requested by Ecology.

S3.C. Recording of results

For each measurement or sample taken, the Permittee must record the following information:

1. The date, exact place, method, and time of sampling or measurement
2. The individual who performed the sampling or measurement
3. The dates the analyses were performed
4. The individual who performed the analyses
5. The analytical techniques or methods used
6. The results of all analyses

S3.D. Additional monitoring by the Permittee

If the Permittee monitors any pollutant more frequently than required by Special Condition S2 of this permit, then the Permittee must include the results of such monitoring in the calculation and reporting of the data submitted in the Permittee's DMR unless otherwise specified by Special Condition S2.

S3.E. Reporting permit violations

The Permittee must take the following actions when it violates or is unable to comply with any permit condition:

1. Immediately take action to stop, contain, and cleanup unauthorized discharges or otherwise stop the noncompliance and correct the problem.
2. If applicable, immediately repeat sampling and analysis. Submit the results of any repeat sampling to Ecology within thirty (30) days of sampling.

a. Immediate reporting

The Permittee must immediately report the following occurrences of noncompliance by telephone to Ecology at (509) 329-3400 for any of the following circumstances:

1. Any noncompliance that may endanger health or the environment, unless previously reported under immediate reporting requirements.
2. Any unanticipated bypass that causes an exceedance of any effluent limit in the permit (See Part S4.B., "Bypass Procedures").
3. Any upset that causes an exceedance of an effluent limit in the permit (See G.15, "Upset").
4. Any violation of a maximum daily or instantaneous maximum discharge limit for any of the pollutants in Section S1.A of this permit.
5. Any overflow prior to the treatment works, whether or not such overflow endangers health or the environment or exceeds any effluent limit in the permit.

b. Report within five days

The Permittee must also submit a written report within five days of the time that the Permittee becomes aware of any reportable event under subparts a above. The report must contain:

1. A description of the noncompliance and its cause.
2. The period of noncompliance, including exact dates and times.
3. The estimated time the Permittee expects the noncompliance to continue if not yet corrected.
4. Steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.
5. If the noncompliance involves an overflow prior to the treatment works, an estimate of the quantity (in gallons) of untreated overflow.

c. Waiver of written reports

Ecology may waive the written report required in subpart b, above, on a case-by-case basis upon request if the Permittee has submitted a timely oral report.

d. All other permit violation reporting

The Permittee must report all permit violations, which do not require immediate or within 24 hours reporting, when it submits monitoring reports for S3.A ("Reporting"). The reports must contain the information listed in subpart c, above. Compliance with these requirements does not relieve the Permittee from responsibility to maintain continuous compliance with the terms and conditions of this permit or the resulting liability for failure to comply.

e. Report Submittal

The Permittee must submit reports to Ecology as specified in S3.A.

S3.F. Other reporting

a. Spills of Oil or Hazardous Materials

The Permittee must report a spill of oil or hazardous materials in accordance with the requirements of RCW 90.56.280 and chapter 173-303-145. You can obtain further instructions at the following website:
<http://www.ecy.wa.gov/programs/spills/other/reportaspill.htm> .

b. Failure to submit relevant or correct facts

Where the Permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application, or in any report to Ecology, it must submit such facts or information promptly.

S3.G. Maintaining a copy of this permit

The Permittee must keep a copy of this permit at the facility and make it available upon request to Ecology inspectors.

S4. Corrective actions for stormwater benchmark exceedences

S4.A. Level One Corrective Actions – Operational Source Control BMPs

Permittees that exceed any applicable *benchmark* value(s) in Permit Condition S1.B must complete a Level 1 Corrective Action for each parameter exceeded in accordance with the following:

1. Within 14 days of receipt of sampling results that indicate a benchmark exceedance:

Conduct an inspection to investigate the cause.

Review the SWPPP and ensure that it fully complies with Permit Condition S5, and contains the correct BMPs from the applicable *Stormwater Management Manual*.

Make appropriate revisions to the SWPPP to include additional *Operational Source Control BMPs* with the goal of achieving the applicable *benchmark* value(s) in future discharges. The Permittee must sign and certify the revised SWPPP in accordance with Permit Condition S5.A.6.

2. Summarize the Level 1 Corrective Actions in the Annual Report (Permit Condition S4.D.)
3. **Level One Deadline:** The Permittee must fully implement the revised SWPPP according to Permit Condition S5 and the applicable *Stormwater Management Manual* as soon as possible, but no later than the DMR due date for the quarter in which the *benchmark* was exceeded.

S4.B. Level Two Corrective Actions – Structural Source Control BMPs

Permittees that exceed an applicable *benchmark* value (for a single parameter) for any two quarters during a calendar year must complete a Level 2 Corrective Action. Alternatively, the Permittee may skip Level 2 and complete a Level 3 Corrective Action in accordance with Condition S4.C.

1. Review the SWPPP and ensure that it fully complies with Permit Condition S5.
2. Make appropriate revisions to the SWPPP to include additional *Structural Source Control BMPs* with the goal of achieving the applicable *benchmark* value(s) in future discharges. The Permittee must sign and certify the revised SWPPP in accordance with S5.A.6.
3. Summarize the Level 2 Corrective Actions (planned or taken) in the Annual Report (Condition S4.D).
4. **Level 2 Deadline:** The Permittee must fully implement the revised SWPPP according to Permit Condition S5 and the applicable *Stormwater Management Manual* as soon as possible, but no later than August 31st the following year.

- a. To request a time extension or waiver, a Permittee must submit a detailed explanation of why it is making the request (technical basis) by May 15th prior to Level 2 Deadline. *Ecology* will approve or deny the request within 60 days of receipt of a complete request.
- b. For the year following the calendar year the Permittee triggered a Level 2 corrective action, benchmark exceedences (for the same parameter) do not count towards additional Level 2 or 3 Corrective Actions.

S4.C. Level Three Corrective Actions – Treatment BMPs

Permittees that exceed an applicable *benchmark* value (for a single parameter) for any three quarters during a calendar year must complete a Level 3 Corrective Action. A Level 2 Corrective Action is not required.

1. Review the SWPPP and ensure that it fully complies with Permit Condition S3.
2. Make appropriate revisions to the SWPPP to include additional *Treatment BMPs* with the goal of achieving the applicable *benchmark* value(s) in future discharges. Revisions must include additional operational and/or structural source control BMPs if necessary for proper performance and maintenance of *Treatment BMPs*.
 - a. The Permittee must sign and certify the revised SWPPP in accordance with S5.A.6.
 - b. A licensed professional engineer, geologist, hydrogeologist, or Certified Professional in Storm Water Quality (CPSWQ) must design and stamp the portion of the SWPPP that addresses *stormwater* treatment structures or processes.
 - c.
 - i. *Ecology* may waive the requirement for a licensed or certified professional upon request of the Permittee and demonstration that the Permittee or treatment device vendor can properly *design* and install the treatment device; or the treatment BMP does not require site-specific design or sizing (e.g., off-the-shelf filtration units, etc.).
 - ii. *Ecology* will not waive the Level 3 requirement for a licensed or certified professional more than one time during the permit cycle.
3. Before installing treatment BMPs that require the site-specific design or sizing of structures, equipment, or processes to collect, convey, treat, reclaim, or dispose of industrial stormwater, the Permittee must submit an engineering report, plans and specifications, and an operations and maintenance (O&M) manual to *Ecology* for review in accordance with Chapter 173-240 WAC.
 - a. The engineering report must be submitted no later than the May 15th prior to the Level 3 deadline, unless an alternate due date is specified in an order.
 - b. The plans and specifications and O&M Manual must be submitted at least 30 days before construction/installation, unless an alternate date is specified in an order. Upon request of the Permittee, *Ecology* may allow final conceptual drawings to be substituted for plans and specifications.

4. Summarize the Level 3 Corrective Actions (planned or taken) in the Annual Report (Condition S4.D). Include information on how monitoring, assessment or evaluation information was (or will be) used to determine whether existing treatment BMPs will be modified/enhanced, or if new/additional treatment BMPs will be installed.
5. **Level 3 Deadline:** The Permittee must fully implement the revised SWPPP according to Permit Condition S3 and the applicable *Stormwater Management Manual* as soon as possible, but no later than September 30th the following year.
 - a. To request a time extension or waiver, a Permittee must submit a detailed explanation of why it is making the request (technical basis) by May 15th prior to the Level 3 Deadline. *Ecology* will approve or deny the request within 60 days of receipt of a complete request.
 - b. For the year following the calendar year the Permittee triggered a Level 3 corrective action, benchmark exceedences (for the same parameter) do not count towards additional Level 2 or 3 Corrective Actions.

S4.D. Annual Reporting

The Permittee must submit a complete and accurate Annual Report to the Department of *Ecology* **no later than March 15th of each year** (except 2014) using a form provided by or otherwise approved by *Ecology*.

The annual report must include corrective action documentation as required in this Permit Condition, above. If corrective action is not yet completed at the time of submission of this annual report, the Permittee must describe the status of any outstanding corrective action(s).

The Permittee must include the following information with each annual report. The Permittee must:

1. Identify the condition triggering the need for corrective action review.
2. Describe the problem(s) and identify the dates they were discovered.
3. Summarize any Level 1, 2 or 3 corrective actions completed during the previous calendar year and include the dates it completed the corrective actions.
4. Describe the status of any Level 2 or 3 corrective actions triggered during the previous calendar year, and identify the date it expects to complete corrective actions.

S5. Stormwater pollution prevention plan (SWPPP)

S5.A. General Requirements

1. Submit to Ecology for review and approval an update to the existing SWPPP **by September 1, 2015**
2. The SWPPP must specify the Best Management Practices (BMPs) for stormwater discharges to Outfalls SW-North and SW-South, necessary to:

- a. Provide all known, available, and reasonable methods of prevention, control, and treatment (AKART) of stormwater pollution.
 - b. Ensure the discharge does not cause or contribute to a violation of the Water Quality Standards.
 - c. Comply with applicable federal technology-based treatment requirements under 40 CFR 125.3.
3. Proper Selection and Use of Stormwater Management Manuals (SWMM):
BMPs must be consistent with:
 - a. Stormwater Management Manual for Eastern Washington (2004 edition).
 - b. Revisions to the Stormwater Management Manual for Eastern Washington, or other stormwater management guidance documents or manuals which provide an equivalent level of pollution prevention, that are approved by Ecology and incorporated into the current Industrial Stormwater General Permit in accordance with the permit modification requirements of WAC 173-220-190. For purposes of this section, the documents listed in Appendix 10 of the Phase I Municipal Stormwater Permit are hereby incorporated into this permit.
 - c. Documentation in the SWPPP that the BMPs selected are demonstrably equivalent to practices contained in stormwater technical manuals approved by Ecology, including the proper selection, implementation, and maintenance of all applicable and appropriate best management practices for on-site pollution control.
4. Update of the SWPPP
 - a. The Permittee must modify the SWPPP if the owner/operator or the applicable local or state regulatory authority determines during inspections or investigations that the SWPPP is, or would be, ineffective in eliminating or significantly minimizing pollutants in stormwater discharges from the site. The Permittee must modify the SWPPP:
 - i. As necessary to include additional or modified BMPs designed to correct problems identified.
 - ii. To correct the deficiencies identified in writing from Ecology within 30 days of notice.

- b. The Permittee must modify the SWPPP whenever there is a change in design, construction, operation, or maintenance at the facility that significantly changes the nature of pollutants discharged in stormwater from the facility, or significantly increases the quantity of pollutants discharged.

5. Other Pollution Control Plans

The Permittee may incorporate by reference applicable portions of plans prepared for other purposes at their facility. Plans or portions of plans incorporated by reference into a SWPPP become enforceable requirements of this permit and must be available along with the SWPPP. A Pollution Prevention Plan prepared under the Hazardous Waste Reduction Act, Chapter 70.95C RCW, is an example of such a plan.

6. Signatory Requirements

The Permittee must sign and certify all SWPPPs in accordance with General Condition G1, each time it revises or modifies a SWPPP to comply with Conditions S9.A.4 (Update of the SWPPP).

S5.B. Specific SWPPP Requirements

The SWPPP must contain a site map, a detailed assessment of the facility, a detailed description of the BMPs, Spill Prevention and Emergency Cleanup Plan, and a sampling plan.

1. The site map must identify:

- a. The scale or include relative distances between significant structures and drainage systems.
- b. Significant features.
- c. The stormwater drainage and discharge structures and identify, by name, any other party other than the Permittee that owns any stormwater drainage or discharge structures.
- d. The stormwater drainage areas for each stormwater discharge point off-site (including discharges to ground water) and assign a unique identifying number for each discharge point.
- e. Each sampling location by unique identifying number.
- f. Paved areas and buildings.
- g. Areas of pollutant contact (actual or potential) associated with specific industrial activities.
- h. If required, surface water locations (including wetlands and drainage ditches).
- i. Areas of existing and potential soil erosion (in a significant amount).
- j. Vehicle maintenance areas.
- k. Lands and waters adjacent to the site that may be helpful in identifying discharge points or drainage routes.

2. The facility assessment must include a description of the facility; an inventory of facility activities and equipment that contribute to or have the potential to contribute any pollutants to stormwater; and, an inventory of materials that contribute to or have the potential to contribute pollutants to stormwater.
 - a. The facility description must describe:
 - i. The industrial activities conducted at the site.
 - ii. Regular business hours and seasonal variations in business hours or industrial activities.
 - iii. The general layout of the facility including buildings and storage of raw materials, and the flow of goods and materials through the facility.
 - b. The inventory of industrial activities must identify all areas associated with industrial activities (see Table 1) that have been or may potentially be sources of pollutants, including, but not limited to, the following:
 - i. Loading and unloading of dry bulk materials or liquids.
 - ii. Outdoor storage of materials or products.
 - iii. Outdoor manufacturing and processing.
 - iv. On-site dust or particulate generating processes.
 - v. On-site waste treatment, storage, or disposal.
 - vi. Vehicle and equipment fueling, maintenance, and/or cleaning (includes washing).
 - vii. Roofs or other surfaces exposed to air emissions from a manufacturing building or a process area.
 - viii. Roofs or other surfaces composed of materials that may be mobilized by stormwater (e.g., galvanized roofs, galvanized fences, etc.).
 - c. The inventory of materials must list:
 - i. The types of materials handled at the site that potentially may be exposed to precipitation or runoff and could result in stormwater pollution.
 - ii. A short narrative for each material describing the potential of the pollutant to be present in stormwater discharges. The Permittee must update this narrative when data become available to verify the presence or absence of these pollutants.
 - iii. A narrative description of any potential sources of pollutants from past activities, materials and spills that were previously handled, treated, stored, or disposed of in a manner to allow ongoing exposure to stormwater. Include the method and location of on-site storage or disposal. List significant spills and significant leaks of toxic or hazardous pollutants.

3. The SWPPP must identify specific individuals by name or by title within the organization (pollution prevention team) whose responsibilities include: SWPPP development, implementation, maintenance, and modification.

4. Best Management Practices (BMPs)

- a. General BMP Requirements

The Permittee must describe each BMP selected to eliminate or reduce the potential to contaminate stormwater and prevent violations of water quality standards.

- b. **No later than September 1, 2016**, the Permittee must include each of the following mandatory BMPs in the SWPPP and implement the BMPs. The Permittee may omit individual BMPs if site conditions render the BMP unnecessary, infeasible, or the Permittee provides alternative and equally effective BMPs, if the Permittee clearly justifies each BMP omission in the SWPPP.

- i. Operational Source Control BMPs

- 1) The SWPPP must include the Operational Source Control BMPs listed as “applicable” in Ecology’s SWMMs, or other guidance documents or manuals approved in accordance with S9.A.3.c.
 - 2) Good Housekeeping: The SWPPP must include BMPs that define ongoing maintenance and cleanup, as appropriate, of areas which may contribute pollutants to stormwater discharges.

The SWPPP must include the schedule/frequency for completing each housekeeping task, based upon industrial activity, sampling results and observations made during inspections. The Permittee must:

- a) Vacuum paved surfaces with a vacuum sweeper (or a sweeper with a vacuum attachment) to remove accumulated pollutants a minimum of once per quarter.
 - b) Identify and control all on-site sources of dust to minimize stormwater contamination from the deposition of dust on areas exposed to precipitation.
 - c) Inspect and maintain air pollution control equipment (bag houses, etc.) monthly to prevent the escape of dust from the system. Immediately remove any accumulated dust at the base of exterior air pollution control units.
 - d) Keep all dumpsters under cover or fit with a lid that must remain closed when not in use.
- 3) Preventive Maintenance: The SWPPP must include BMPs to inspect and maintain the stormwater drainage, source controls, treatment systems (if any), and plant equipment and systems that could fail and result in contamination of stormwater. The SWPPP must include the schedule/frequency for completing each maintenance task. The Permittee must:

- a) Clean catch basins when the depth of debris reaches 60% of the sump depth. In addition, the Permittee must keep the debris surface at least 6 inches below the outlet pipe.
 - b) Inspect all equipment and vehicles during monthly site inspections for leaking fluids such as oil, antifreeze, etc. Take leaking equipment and vehicles out of service or prevent leaks from spilling on the ground until repaired.
 - c) Immediately clean up spills and leaks (e.g., using absorbents, vacuuming, etc.) to prevent the discharge of pollutants.
- 4) Spill Prevention and Emergency Cleanup Plan (SPECP): The SWPPP must include a SPECP that includes BMPs to prevent spills that can contaminate stormwater. The SPECP must specify BMPs for material handling procedures, storage requirements, cleanup equipment and procedures, and spill logs, as appropriate. The Permittee must:
- a) Store all chemical liquids, fluids, and petroleum products, on an impervious surface that is surrounded with a containment berm or dike that is capable of containing 10% of the total enclosed tank volume or 110% of the volume contained in the largest tank, whichever is greater.
 - b) Prevent precipitation from accumulating in containment areas with a roof or equivalent structure or include a plan on how it will manage and dispose of accumulated water if a containment area cover is not practical.
 - c) Locate spill kits within 25 feet of all stationary fueling stations, fuel transfer stations, and mobile fueling units. At a minimum, spill kits must include:
 - i) Oil absorbents capable of absorbing 15 gallons of fuel.
 - ii) A storm drain plug or cover kit.
 - iii) A non-water containment boom, a minimum of 10 feet in length with a 12 gallon absorbent capacity.
 - iv) A non-metallic shovel.
 - v) Two five-gallon buckets with lids.
 - d) Not lock shut-off fueling nozzles in the open position. Do not “top-off” tanks being refueled.
 - e) Block, plug or cover storm drains that receive runoff from areas where fueling, during fueling.
 - f) Use drip pans or equivalent containment measures during all petroleum transfer operations.

- g) Locate materials, equipment, and activities so that leaks are contained in existing containment and diversion systems (confine the storage of leaky or leak-prone vehicles and equipment awaiting maintenance to protected areas).
 - h) Use drip pans and absorbents under or around leaky vehicles and equipment or store indoors where feasible. Drain fluids from equipment and vehicles prior to on-site storage or disposal.
 - i) Maintain a spill log that includes the following information for chemical and petroleum spills: date, time, amount, location, and reason for spill; date/time clean-up completed, notifications made and staff involved.
- 5) Employee Training: The SWPPP must include BMPs to provide SWPPP training for employees who have duties in areas of industrial activities subject to this permit. At a minimum, the training plan must include:
- a) The content of the training,
 - i) An overview of what is in the SWPPP.
 - ii) How employees make a difference in complying with the SWPPP and preventing contamination of stormwater.
 - iii) Spill response procedures, good housekeeping, maintenance requirements, and material management practices.
 - b) How the Permittee will conduct training.
 - c) The frequency/schedule of training. The Permittee must train employees annually, at a minimum.
 - d) A log of the dates on which specific employees received training.
- 6) Inspections and Recordkeeping
- The SWPPP must include documentation of procedures to ensure compliance with permit requirements for inspections and recordkeeping. At a minimum, the SWPPP must:
- a) Identify facility personnel who will inspect designated equipment and facility areas as required in Permit Condition S6.
 - b) Contain a visual inspection report or check list that includes all items required by Permit Condition S6.C.
 - c) Provide a tracking or follow-up procedure to ensure that a report is prepared and any appropriate action taken in response to visual inspections.
 - d) Define how the Permittee will comply with signature requirements and records retention identified in Special Condition S9, Reporting and Recordkeeping Requirements.

- e) Include a certification of compliance with the SWPPP and permit for each inspection using the language in Permit Condition S6.C.1.c.

7) Illicit Discharges

The SWPPP must include measures to identify and eliminate the discharge of process wastewater, domestic wastewater, noncontact cooling water, and other illicit discharges, to stormwater sewers, or to surface waters and ground waters of the state. The Permittee can find BMPs to identify and eliminate illicit discharges in Volume IV of Ecology's SWMM for Western Washington and Chapter 8 of the SWMM for Eastern Washington.

Water from washing vehicles or equipment, steam cleaning and/or pressure washing is considered process wastewater. The Permittee must not allow this process wastewater to comeingle with stormwater or enter storm drains; and must collect in a tank for off-site disposal, or discharge it to a sanitary sewer, with written approval from the local sewage authority.

ii. Structural Source Control BMPs

- 1) The SWPPP must include the Structural Source Control BMPs listed as "applicable" in Ecology's SWMMs, or other guidance documents or manuals approved in accordance with S3.A.3.c.
- 2) The SWPPP must include BMPs to minimize the exposure of manufacturing, processing, and material storage areas (including loading and unloading, storage, disposal, cleaning, maintenance, and fueling operations) to rain, snow, snowmelt, and runoff by either locating these industrial materials and activities inside or protecting them with storm resistant coverings.

Permittees must:

- a) Use grading, berming, or curbing to prevent runoff of contaminated flows and divert run-on away from these areas.
- b) Perform all cleaning operations indoors, under cover, or in bermed areas that prevent stormwater runoff and run-on and also that capture any overspray.
- c) Ensure that all washwater drains to a collection system that directs the washwater to further treatment or storage and not to the stormwater drainage system.

iii. Treatment BMPs

The Permittee must:

- 1) Use Treatment BMPs consistent with the applicable documents referenced in Permit Condition S5.A.3.

- 2) Employ oil/water separators, booms, skimmers or other methods to eliminate or minimize oil and grease contamination of stormwater discharges.
- 3) Obtain Ecology approval before beginning construction/installation of all treatment BMPs that include the addition of chemicals to provide treatment.

iv. Stormwater Peak Runoff Rate and Volume Control BMPs

Facilities with new development or redevelopment must evaluate whether flow control BMPs are necessary to satisfy the state's AKART requirements, and prevent violations of water quality standards. If flow control BMPs are required, they must be selected according to Permit Condition S5.A.3.

v. Erosion and Sediment Control BMPs

The SWPPP must describe the BMPs necessary to prevent the erosion of soils and other earthen materials (crushed rock/gravel, etc.) and prevent off-site sedimentation and violations of water quality standards. The Permittee must implement and maintain:

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

5. Sampling Plan

The SWPPP must include a sampling plan. The plan must:

- a. Identify points of discharge to surface water, storm sewers, or discrete ground water infiltration locations, such as dry wells or detention ponds.
- b. Include documentation of why each discharge point is not sampled (if applicable):
 - i. Location of which discharge points the Permittee does not sample because the pollutant concentrations are substantially identical to a discharge point being sampled.
 - ii. General industrial activities conducted in the drainage area of each discharge point.
 - iii. Best Management Practices conducted in the drainage area of each outfall.
 - iv. Exposed materials located in the drainage area of each discharge point that are likely to be significant contributors of pollutants to stormwater discharges.

- v. Impervious surfaces in the drainage area that could affect the percolation of stormwater runoff into the ground (e.g., asphalt, crushed rock, grass, etc.).
- vi. Reasons why the Permittee expects the discharge points to discharge substantially identical effluents.
- c. Identify each sampling location by its unique identifying number such as A1, A2, etc.
- d. Identify staff responsible for conducting stormwater sampling.
- e. Specify procedures for sample collection and handling.
- f. Specify procedures for sending samples to a laboratory.
- g. Identify parameters for analysis, sampling frequencies, holding times and preservatives, laboratory quantitation levels, and analytical methods.
- h. Specify the procedure for submitting results to Ecology.

S6. Stormwater inspections

S6.A. Inspection Frequency and Personnel

- 1. The Permittee must conduct and document visual inspections of the site each month.
- 2. The Permittee must ensure that inspections are conducted by *qualified personnel*.

S6.B. Inspection Components

Each inspection must include:

- 1. Observations made at *stormwater* sampling locations and areas where *stormwater* associated with *industrial activity* is discharged off-site; or discharged to *waters of the state*, or to a *storm sewer* system that drains to *waters of the state*.
- 2. Observations for the presence of floating materials, visible oil sheen, discoloration, *turbidity*, odor, etc. in the *stormwater* discharge(s).
- 3. Observations for the presence of *illicit discharges* such as *domestic wastewater*, *noncontact cooling water*, or *process wastewater* (including *leachate*).
 - a. If an *illicit discharge* is discovered, the Permittee must notify *Ecology* within seven days.
 - b. The Permittee must eliminate the *illicit discharge* within 30 days.
- 4. A verification that the descriptions of potential *pollutant* sources required under this permit is accurate.
- 5. A verification that the site map in the SWPPP reflects current conditions.
- 6. An assessment of all BMPs that have been implemented, noting all of the following:

- a. Effectiveness of BMPs inspected.
- b. Locations of BMPs that need maintenance.
- c. Reason maintenance is needed and a schedule for maintenance.
- d. Locations where additional or different BMPs are needed and the rationale for the additional or different BMPs.

S6.C. Inspection Results

1. The Permittee must record the results of each inspection in an inspection report or checklist and keep the records on-site for *Ecology* review. The Permittee must ensure each inspection report documents the observations, verifications and assessments required in Permit Condition S6.B and includes:
 - a. Time and date of the inspection.
 - b. Locations inspected.
 - c. Statements that, in the judgment of 1) the person conducting the site inspection, and 2) the person described in Condition G2., the site is either in compliance or out of compliance with the terms and conditions of the SWPPP and this permit.
 - d. A summary report and a schedule of implementation of the remedial actions that the Permittee plans to take if the site inspection indicates that the site is out of compliance. The remedial actions taken must meet the requirements of the SWPPP and the permit.
 - e. Name, title, and signature of the person conducting site inspection, and the following statement: "I certify that this report is true, accurate, and complete, to the best of my knowledge and belief."
 - f. Certification and signature of the person described in Permit Condition G1.A, or a duly authorized representative of the *facility*, in accordance with Permit Condition G1.B.

S6.D. Reports of Non-Compliance

The Permittee must prepare reports of non-compliance identified during an inspection in accordance with the requirements of Condition S4.D.

S7. Operation and maintenance

The Permittee must, at all times, properly operate and maintain all facilities or systems of treatment and control (and related appurtenances), which are installed to achieve compliance with the terms and conditions of this permit. Proper operation and maintenance also includes keeping a daily operation logbook (paper or electronic), adequate laboratory controls, and appropriate quality assurance procedures. This provision of the permit requires the Permittee to operate backup or auxiliary facilities or similar systems only when the operation is necessary to achieve compliance with the conditions of this permit.

The Permittee must schedule any facility maintenance, which might require interruption of wastewater treatment, degrade effluent quality, during non-critical water quality periods, and carry this maintenance out in a manner approved by Ecology.

S7.A. Operations and maintenance (O&M) manual

a. O&M manual submittal and requirements

The Permittee must:

1. Prepare an O&M Manual that meets the requirements of 173-240-150 WAC and submit it to Ecology for approval by **September 1, 2015** The Permittee must submit a paper copy and an electronic copy online through the WQWebPortal.
2. Review the O&M Manual at least annually and confirm this review by letter to Ecology by **January 15th of each year.**
3. Submit to Ecology for review and approval substantial changes or updates to the O&M Manual whenever it incorporates them into the manual.
4. Keep the approved O&M Manual at the permitted facility.
5. Follow the instructions and procedures of this manual.
6. Submit reviews, changes, and updates to Ecology through the WQWebPortal.

b. O&M manual components

In addition to the requirements of WAC 173-240-150, the O&M Manual must include:

1. Emergency procedures for plant shutdown and cleanup in the event of a wastewater system upset or failure.
2. A review of system components which if failed could pollute surface water or could impact human health. Provide a procedure for a routine schedule of checking the function of these components.
3. Wastewater system maintenance procedures that contribute to the generation of process wastewater.
4. Any directions to maintenance staff when cleaning, or maintaining other equipment or performing other tasks which are necessary to protect the operation of the wastewater system (for example, defining maximum allowable discharge rate for draining a tank, blocking all floor drains before beginning the overhaul of a stationary engine.)
5. Wastewater sampling protocols and procedures for compliance with the sampling and reporting requirements in the wastewater discharge permit.
6. Minimum staffing adequate to operate and maintain the treatment processes and carry out compliance monitoring required by the permit
7. Treatment plant process control monitoring schedule.

8. Specify other items on case-by-case basis such as O&M for any pump stations, lagoon liners, etc.

S7.B. Bypass procedures

This permit prohibits a bypass, which is the intentional diversion of waste streams from any portion of a treatment facility.

Ecology may take enforcement action against a Permittee for a bypass unless one of the following circumstances (1, 2, or 3) applies.

1. Bypass for essential maintenance without the potential to cause violation of permit limits or conditions.

This permit authorizes a bypass if it allows for essential maintenance and does not have the potential to cause violations of limits or other conditions of this permit, or adversely impact public health as determined by Ecology prior to the bypass. The Permittee must submit prior notice, if possible, at least ten (10) days before the date of the bypass.

Bypass is unavoidable, unanticipated, and results in noncompliance of this permit.

This permit authorizes such a bypass only if:

- a. Bypass is unavoidable to prevent loss of life, personal injury, or severe property damage. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which would cause them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass.
 - b. No feasible alternatives to the bypass exist, such as:
 - The use of auxiliary treatment facilities.
 - Retention of untreated wastes.
 - Stopping production.
 - Maintenance during normal periods of equipment downtime, but not if the Permittee should have installed adequate backup equipment in the exercise of reasonable engineering judgment to prevent a bypass.
 - Transport of untreated wastes to another treatment facility or preventative maintenance), or transport of untreated wastes to another treatment facility.
 - c. The Permittee has properly notified Ecology of the bypass as required in Special Condition S3.E of this permit.
2. If bypass is anticipated and has the potential to result in noncompliance of this permit.
 - a. The Permittee must notify Ecology at least thirty (30) days before the planned date of bypass. The notice must contain:
 - A description of the bypass and its cause.

- An analysis of all known alternatives which would eliminate, reduce, or mitigate the need for bypassing.
 - A cost-effectiveness analysis of alternatives including comparative resource damage assessment.
 - The minimum and maximum duration of bypass under each alternative.
 - A recommendation as to the preferred alternative for conducting the bypass.
 - The projected date of bypass initiation.
 - A statement of compliance with SEPA.
 - A request for modification of water quality standards as provided for in WAC 173-201A-410, if an exceedance of any water quality standard is anticipated.
 - Details of the steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass.
- b. For probable construction bypasses, the Permittee must notify Ecology of the need to bypass as early in the planning process as possible.

The Permittee must consider the analysis required above during preparation of the engineering report or facilities plan and plans and specifications and must include these to the extent practical. In cases where the Permittee determines the probable need to bypass early, the Permittee must continue to analyze conditions up to and including the construction period in an effort to minimize or eliminate the bypass.

- c. Ecology will consider the following prior to issuing an administrative order for this type of bypass:
- If the bypass is necessary to perform construction or maintenance-related activities essential to meet the requirements of this permit.
 - If feasible alternatives to bypass exist, such as the use of auxiliary treatment facilities, retention of untreated wastes, stopping production, maintenance during normal periods of equipment down time, or transport of untreated wastes to another treatment facility.
 - If the Permittee planned and scheduled the bypass to minimize adverse effects on the public and the environment.

After consideration of the above and the adverse effects of the proposed bypass and any other relevant factors, Ecology will approve or deny the request. Ecology will give the public an opportunity to comment on bypass incidents of significant duration, to the extent feasible. Ecology will approve a request to bypass by issuing an administrative order under RCW 90.48.120.

S8. Application for permit renewal or modification for facility changes

The Permittee must submit an application for renewal of this permit **by August 31, 2018**. The application must be submitted online through the WQWebPortal.

The Permittee must also submit a new application or supplement at least one hundred eighty (180) days prior to commencement of discharges, resulting from the activities listed below, which may result in permit violations. These activities include any facility expansions, production increases, or other planned changes, such as process modifications, in the permitted facility.

S9. Non-routine and unanticipated discharges

1. Beginning on the effective date of this permit, the Permittee is authorized to discharge non-routine wastewater on a case-by-case basis if approved by Ecology. Prior to any such discharge, the Permittee must contact Ecology and at a minimum provide the following information:
 - a. The proposed discharge location
 - b. The nature of the activity that will generate the discharge
 - c. Any alternatives to the discharge, such as reuse, storage, or recycling of the water
 - d. The total volume of water it expects to discharge
 - e. The results of the chemical analysis of the water
 - f. The date of proposed discharge
 - g. The expected rate of discharge discharged, in gallons per minute
2. The Permittee must analyze the water for all constituents limited for the discharge and report them as required by subpart 1.e above. The analysis must also include any parameter deemed necessary by Ecology.
All discharges must comply with the effluent limits as established in Special Condition S1 of this permit, water quality standards, and any other limits imposed by Ecology.
3. The Permittee must limit the discharge rate, as referenced in subpart 1.g above, so it will not cause erosion of ditches or structural damage to culverts and their entrances or exits.
4. The discharge cannot proceed until Ecology has reviewed the information provided and has authorized the discharge by letter to the Permittee or by an Administrative Order. Once approved and if the proposed discharge is to a municipal storm drain, the Permittee must obtain prior approval from the municipality and notify it when it plans to discharge.

S10. PCB Best Management Practices (BMP) Plan

The goal of the BMP plan is to maintain or lower effluent concentrations of PCBs through removal of sediments in the settling basin system, source identification and control, pollution prevention and/or stormwater reduction opportunities.

The Permittee must also investigate and attempt to identify sources of PCBs in the process wastewater discharged through Outfall 001 by removing sediments in the settling basin system, submitting a scope of work for a PCB Source Identification Study, completing the Study, and reporting the results.

1. Removal of sediments in the settling basin system

By September 1, 2015, the Permittee must submit a scope of work for the removal and disposal of sediments within the settling basin system (both primary and secondary basins). The Permittee must submit a paper copy and an electronic copy online through the WQWebPortal. The scope of work must include:

- a. Estimated sediment volumes and removal procedures.
- b. Measures used to prevent stormwater discharge from Outfall # 001 into Deadman Creek during the sediment removal work in the primary settling basin.
- c. Stormwater controls for any temporary sediment storage locations.
- d. Final disposal site.

By September 1, 2016 the Permittee must have completed the sediment removal and disposal from the settling basin system. The Permittee must confirm the removal by letter to Ecology.

2. PCB Source Identification Study

The Permittee must submit a scope of work for a PCB source identification study **by September 1, 2016**. The Permittee must submit a paper copy and an electronic copy online through the WQWebPortal. The scope of work shall include a site review identifying areas at the facility which may contribute PCBs to the stormwater system, a sampling plan with proposed sampling locations, quality control protocols, sampling protocols, and PCB test methods.

Upon approval of the scope of work by the Department, the Permittee shall complete the study. The Permittee shall submit a report of the results within two years of approval of the scope of work and incorporate the findings in the BMP Plan below.

3. PCB BMP Plan

By September 1, 2018, the Permittee shall develop a PCB BMP plan and submit it to the Department for review and approval. The Permittee must submit a paper copy and an electronic copy online through the WQWebPortal. The plan shall include the following:

- a. A list of members of a cross-functional team responsible for developing the BMP plan. The list shall include the name of a designated team leader.
- b. A description of current and past source identification, source control, pollution prevention, and wastewater reduction efforts and their effectiveness.
- c. Identification of technical/economical evaluation of new BMPs. BMPs should include, but are not limited to: modification of equipment, facilities, technology, processes, and procedures; source control; remediation of any contaminated areas, etc.
- d. A schedule for implementation of economically feasible BMPs.
- e. Methods used for measuring progress towards the BMP goal and updating the BMP plan.
- f. Results from testing of any wastestreams (not already required under Special Condition S3. of this permit) for PCBs taken in support of the PCB BMP plan and PCB Source Identification Study.

Thereafter, the Permittee shall submit an annual report to the Department **by June 1 of every year**. The Permittee must submit a paper copy and an electronic copy online through the WQWebPortal. The annual report shall include: a) all BMP plan monitoring results for the year; b) a summary of effectiveness of all BMPs implemented to meet the BMP plan goal; and c) any updates to the BMP plan.

This permit may be modified, or revoked and reissued, to revise or remove the requirements of this Section based on information collected under this Section.

S11. Schedule of compliance for TSS, aluminum, temperature and fecal coliform bacteria

By the dates tabulated below, the Permittee must complete the following tasks and submit a report describing, at a minimum:

- Whether it completed the task and, if not, the date on which it expects to complete the task.
- The reasons for delay and the steps it is taking to return the project to the established schedule.

	Tasks	Date Due
1.	Annual Status Reports ^a	January 15 th of every year
2.	Scope of Work for Mixing and Receiving Water Studies ^b	At least (2) two years prior to the commencement of any new process wastewater discharge from the site
3.	Mixing Study Results, Receiving Water Results, and Engineering Report ^c	At least one hundred eighty (180) days prior to the commencement of any new process wastewater discharge from the site
^a	The Permittee must provide status reports on any restart of, or new, operations that will result in a discharge of process wastewater from the site. If the Permittee plans a restart of, or new, operations, the status report must include the progress made toward completing items 2 through 4 above.	
^b	See Permit Condition S12 for requirements for the Mixing Study and Permit Condition S13 for requirements for Receiving Water Study	
^c	The Permittee must prepare and submit two copies of an approvable engineering report in accordance with chapter 173-240 WAC to Ecology for review and approval. <u>The Permittee must submit a paper copy and an electronic copy online through the WQWebPortal.</u> The report must include a construction schedule for installation of any additional wastewater treatment facilities.	

S12. Mixing study

S12.A. General Requirements

The Permittee must:

1. Submit a Plan of Study to Ecology for review by the **date listed in Permit Condition S11, item 2** prior to initiation of the effluent mixing study. The Permittee must submit a paper copy and an electronic copy through the WQWebPortal.

2. Determine the degree of mixing during critical conditions, as defined in WAC 173-201A-020 Definitions - "Critical Condition," or as close to critical conditions as reasonably possible.
3. Use the Guidance for Conducting Mixing Zone Analyses (Ecology, 2008) to establish the critical condition scenarios.
4. Measure the dilution ratio in the field with dye using study protocols specified in the Guidance, Section 5.0 "Conducting a Dye Study," as well as other protocols listed in Subpart C "Protocols." The Permittee may use mixing models as an acceptable alternative or adjunct to a dye study if:
 - a. The critical ambient conditions necessary for model input are known or will be established with field studies.
 - b. If the diffuser is visually inspected for integrity or has been recently tested for performance by the use of tracers.
5. Consult the Guidance mentioned above when choosing the appropriate model.
6. Use models if critical condition scenarios that need to be examined are quite different from the set of conditions present during the dye study.
7. Must conduct validation/calibration in accordance with the Guidance mentioned above, in particular, Subsection 5.2 "Quantify Dilution" if it determines it needs to validate (and possibly calibrate) a model.
8. Apply the resultant dilution ratios for acute and chronic boundaries in accordance with directions found in Ecology's *Permit Writer's Manual* (2010), Chapter VI and Appendix 6. You can obtain a copy of the manual at: <http://www.ecy.wa.gov/pubs/92109.pdf>

S12.B. Reporting requirements

The Permittee must:

1. Include the results of the effluent mixing study in the Effluent Mixing Report and submit it to Ecology for approval by the **date listed in Permit Condition S11, item 3**. The Permittee must submit a paper copy and an electronic copy through the WQWebPortal.
2. Submit to Ecology any available information it has regarding background physical conditions or background concentrations of chemical substances in the receiving water (for which there are criteria in chapter 173-201A WAC) as part of the Effluent Mixing Report.
3. Submit to Ecology an analysis of seasonal (October-April and May-September) receiving water flows in Deadman Creek.
4. Locate the outfall and mixing zone boundaries with GPS coordinates and identify the accuracy of station locations in the report.

If the results of the mixing study, toxicity tests, and chemical analysis indicate that the concentration of any pollutant(s) exceeds or has a reasonable potential to exceed the state water quality standards, chapter 173-201A WAC, Ecology may issue an administrative order to require a reduction of pollutants or modify this permit to impose effluent limits to meet the water quality standards.

S12.C. Protocols

The Permittee must determine the dilution ratio using protocols outlined in the following references, approved modifications thereof, or by another method approved by Ecology:

1. Akar, P.J. and G.H. Jirka, Cormix2: An Expert System for Hydrodynamic Mixing Zone Analysis of Conventional and Toxic Multiport Diffuser Discharges, USEPA Environmental Research Laboratory, Athens, GA, Draft, July 1990.
2. Baumgartner, D.J., W.E. Frick, P.J.W. Roberts, and C.A. Bodeen, *Dilution Models for Effluent Discharges*, USEPA, Pacific Ecosystems Branch, Newport, OR, 1993.
3. Doneker, R.L. and G.H. Jirka, Cormix1: An Expert System for Hydrodynamic Mixing Zone Analysis of Conventional and Toxic Submerged Single Port Discharges, USEPA, Environmental Research Laboratory, Athens, GA, EPA/600-3-90/012, 1990.
4. Ecology, *Permit Writer's Manual*, Water Quality Program, Department of Ecology, Olympia, WA 98504, revised November 2010, including most current addenda.
5. Ecology, *Guidance for Conducting Mixing Zone Analyses*, *Permit Writer's Manual*, (Appendix 6.1), Water Quality Program, Department of Ecology, Olympia, WA 98504, October 1996.
6. Kilpatrick, F.A., and E.D. Cobb, *Measurement of Discharge Using Tracers*, Chapter A16, *Techniques of Water-Resources Investigations of the USGS*, Book 3, Application of Hydraulics, USGS, U.S. Department of the Interior, Reston, VA, 1985.
7. Wilson, J.F., E.D. Cobb, and F.A. Kilpatrick, *Fluorometric Procedures for Dye Tracing*, Chapter A12. *Techniques of Water-Resources Investigations of the USGS*, Book 3, Application of Hydraulics, USGS, U.S. Department of the Interior, Reston, VA, 1986.

S13. Receiving water study

The Permittee must collect information on the effluent and receiving water to determine compliance with the final permit limits for temperature and fecal coliform bacteria; and if the effluent has a reasonable potential to cause a violation of the water quality standards. If reasonable potential exists, Ecology will use this information to calculate effluent limits, in addition to those specified in Permit Condition S1.A.

S13.A. General Requirements

The Permittee must:

1. Submit a Sampling Quality Assurance Project Plan for Ecology review and approval by the **date listed in Permit Condition S11, item 2.** The Permittee must submit a paper copy and an electronic copy through the WQWebPortal.
2. Conduct all sampling and analysis in accordance with the guidelines given in *Guidelines for Preparing Quality Assurance Project Plans for Environmental Studies*, Ecology Publication 04-03-030 (<http://www.ecy.wa.gov/pubs/0403030.pdf>).

For temperature, a model Quality Assurance Plan specific for temperature is available at <http://www.ecy.wa.gov/programs/wq/permits/guidance.html>.

S13.B. Temperature requirements

The Permittee must:

1. Measure temperature in the ambient water upstream of the outfall during the months of January through December. Locate other field and receiving water sampling locations outside the zone of influence of the effluent.
2. Use micro-recording temperature devices known as thermistors to measure temperature. Ecology's Quality Assurance Project Plan Development Tool (*Standard Operating Procedures for Continuous Temperature Monitoring of Fresh Water Rivers and Streams*) contains protocols for continuous temperature sampling. This document is available online at http://www.ecy.wa.gov/programs/eap/ga/docs/ECY_EAP_SOP_Cont_Temp_Mon_Ambient_v1_0EAP080.pdf.

3. Calibrate the devices as specified in this document unless using recording devices certified by the manufacturer.

Ecology does not require manufacture-specific equipment as given in this document; however, if the Permittee wishes to use measuring devices from another company, it must demonstrate the accuracy is equivalent.

4. Set the recording devices to record at one-half-hour intervals.
5. Report temperature monitoring data as: daily maximum, seven-day running average of the daily maximums, and the monthly maximum of the seven-day running average. The model Quality Assurance Plan shows an example of these calculations.

S13.C. Field and chemical analysis requirements

The Permittee must:

1. Locate the receiving water sampling locations outside the zone of influence of the effluent.
2. Use sampling station accuracy requirements of ± 20 meters.
3. Time the sampling as close as possible to the critical period.
4. Follow the clean sampling techniques (Method 1669: *Sampling Ambient Water for Trace Metals at EPA Water Quality Criteria Levels*, EPA Publication No. 821-R-95-034, April 1995).

5. Collect at least ten receiving water samples and analyze the samples for total suspended solids, conductivity, turbidity, hardness, temperature, pH, dissolved oxygen, fecal coliform bacteria, aluminum, fluoride, zinc, and copper.
6. Conduct all chemical analysis using the methods and the detection levels identified in Appendix A.
7. Submit the results of the study to Ecology by **the date listed in Permit Condition S11, item 3.** The Permittee must submit a paper copy and an electronic copy through the WQWebPortal.

General Conditions

G1. Signatory requirements

1. All applications, reports, or information submitted to Ecology must be signed and certified.
 - a. In the case of corporations, by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:
 - A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions for the corporation, or
 - The manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
 - In the case of a partnership, by a general partner.
 - In the case of sole proprietorship, by the proprietor.
 - In the case of a municipal, state, or other public facility, by either a principal executive officer or ranking elected official.

Applications for permits for domestic wastewater facilities that are either owned or operated by, or under contract to, a public entity must be submitted by the public entity.

2. All reports required by this permit and other information requested by Ecology must be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:
 - a. The authorization is made in writing by a person described above and submitted to Ecology.
 - b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility, such as the position of plant manager, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.)

3. Changes to authorization. If an authorization under paragraph G1.2, above, is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph G1.2, above, must be submitted to Ecology prior to or together with any reports, information, or applications to be signed by an authorized representative.
4. Certification. Any person signing a document under this section must make the following certification:

“I certify under penalty of law, that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

G2. Right of inspection and entry

The Permittee must allow an authorized representative of Ecology, upon the presentation of credentials and such other documents as may be required by law:

1. To enter upon the premises where a discharge is located or where any records must be kept under the terms and conditions of this permit.
2. To have access to and copy, at reasonable times and at reasonable cost, any records required to be kept under the terms and conditions of this permit.
3. To inspect, at reasonable times, any facilities, equipment (including monitoring and control equipment), practices, methods, or operations regulated or required under this permit.
4. To sample or monitor, at reasonable times, any substances or parameters at any location for purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act.

G3. Permit actions

This permit may be modified, revoked and reissued, or terminated either at the request of any interested person (including the permittee) or upon Ecology’s initiative. However, the permit may only be modified, revoked and reissued, or terminated for the reasons specified in 40 CFR 122.62, 122.64 or WAC 173-220-150 according to the procedures of 40 CFR 124.5.

1. The following are causes for terminating this permit during its term, or for denying a permit renewal application:
 - a. Violation of any permit term or condition.
 - b. Obtaining a permit by misrepresentation or failure to disclose all relevant facts.
 - c. A material change in quantity or type of waste disposal.

- d. A determination that the permitted activity endangers human health or the environment, or contributes to water quality standards violations and can only be regulated to acceptable levels by permit modification or termination.
 - e. A change in any condition that requires either a temporary or permanent reduction, or elimination of any discharge or sludge use or disposal practice controlled by the permit.
 - f. Nonpayment of fees assessed pursuant to RCW 90.48.465.
 - g. Failure or refusal of the Permittee to allow entry as required in RCW 90.48.090.
2. The following are causes for modification but not revocation and reissuance except when the Permittee requests or agrees:
- a. A material change in the condition of the waters of the state.
 - b. New information not available at the time of permit issuance that would have justified the application of different permit conditions.
 - c. Material and substantial alterations or additions to the permitted facility or activities which occurred after this permit issuance.
 - d. Promulgation of new or amended standards or regulations having a direct bearing upon permit conditions, or requiring permit revision.
 - e. The Permittee has requested a modification based on other rationale meeting the criteria of 40 CFR Part 122.62.
 - f. Ecology has determined that good cause exists for modification of a compliance schedule, and the modification will not violate statutory deadlines.
 - g. Incorporation of an approved local pretreatment program into a municipality's permit.
3. The following are causes for modification or alternatively revocation and reissuance:
- a. When cause exists for termination for reasons listed in 1.a through 1.g of this section, and Ecology determines that modification or revocation and reissuance is appropriate.
 - b. When Ecology has received notification of a proposed transfer of the permit. A permit may also be modified to reflect a transfer after the effective date of an automatic transfer (General Condition G7) but will not be revoked and reissued after the effective date of the transfer except upon the request of the new Permittee.

G4. Reporting planned changes

The Permittee must, as soon as possible, but no later than one hundred eighty (180) days prior to the proposed changes, give notice to Ecology of planned physical alterations or additions to the permitted facility, production increases, or process modification which will result in:

- 1. The permitted facility being determined to be a new source pursuant to 40 CFR 122.29(b)
- 2. A significant change in the nature or an increase in quantity of pollutants discharged.

3. A significant change in the Permittee's sludge use or disposal practices. Following such notice, and the submittal of a new application or supplement to the existing application, along with required engineering plans and reports, this permit may be modified, or revoked and reissued pursuant to 40 CFR 122.62(a) to specify and limit any pollutants not previously limited. Until such modification is effective, any new or increased discharge in excess of permit limits or not specifically authorized by this permit constitutes a violation.

G5. Plan review required

Prior to constructing or modifying any wastewater control facilities, an engineering report and detailed plans and specifications must be submitted to Ecology for approval in accordance with chapter 173-240 WAC. Engineering reports, plans, and specifications must be submitted at least one hundred eighty (180) days prior to the planned start of construction unless a shorter time is approved by Ecology. Facilities must be constructed and operated in accordance with the approved plans.

G6. Compliance with other laws and statutes

Nothing in this permit excuses the Permittee from compliance with any applicable federal, state, or local statutes, ordinances, or regulations.

G7. Transfer of this permit

In the event of any change in control or ownership of facilities from which the authorized discharge emanate, the Permittee must notify the succeeding owner or controller of the existence of this permit by letter, a copy of which must be forwarded to Ecology.

1. Transfers by Modification

Except as provided in paragraph (2) below, this permit may be transferred by the Permittee to a new owner or operator only if this permit has been modified or revoked and reissued under 40 CFR 122.62(b)(2), or a minor modification made under 40 CFR 122.63(d), to identify the new Permittee and incorporate such other requirements as may be necessary under the Clean Water Act.

2. Automatic Transfers

This permit may be automatically transferred to a new Permittee if:

- a. The Permittee notifies Ecology at least thirty (30) days in advance of the proposed transfer date.
- b. The notice includes a written agreement between the existing and new Permittees containing a specific date transfer of permit responsibility, coverage, and liability between them.
- c. Ecology does not notify the existing Permittee and the proposed new Permittee of its intent to modify or revoke and reissue this permit.

A modification under this subparagraph may also be minor modification under 40 CFR 122.63. If this notice is not received, the transfer is effective on the date specified in the written agreement.

G8. Reduced production for compliance

The Permittee, in order to maintain compliance with its permit, must control production and/or all discharges upon reduction, loss, failure, or bypass of the treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost, or fails.

G9. Removed substances

Collected screenings, grit, solids, sludges, filter backwash, or other pollutants removed in the course of treatment or control of wastewaters must not be resuspended or reintroduced to the final effluent stream for discharge to state waters.

G10. Duty to provide information

The Permittee must submit to Ecology, within a reasonable time, all information which Ecology may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The Permittee must also submit to Ecology upon request, copies of records required to be kept by this permit.

G11. Other requirements of 40 CFR

All other requirements of 40 CFR 122.41 and 122.42 are incorporated in this permit by reference.

G12. Additional monitoring

Ecology may establish specific monitoring requirements in addition to those contained in this permit by administrative order or permit modification.

G13. Payment of fees

The Permittee must submit payment of fees associated with this permit as assessed by Ecology.

G14. Penalties for violating permit conditions

Any person who is found guilty of willfully violating the terms and conditions of this permit is deemed guilty of a crime, and upon conviction thereof shall be punished by a fine of up to ten thousand dollars (\$10,000) and costs of prosecution, or by imprisonment in the discretion of the court. Each day upon which a willful violation occurs may be deemed a separate and additional violation.

Any person who violates the terms and conditions of a waste discharge permit may incur, in addition to any other penalty as provided by law, a civil penalty in the amount of up to ten thousand dollars (\$10,000) for every such violation. Each and every such violation is a separate and distinct offense, and in case of a continuing violation, every day's continuance is deemed to be a separate and distinct violation.

G15. Upset

Definition – “Upset” means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limits because of factors beyond the reasonable control of the Permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limits if the requirements of the following paragraph are met.

A Permittee who wishes to establish the affirmative defense of upset must demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

1. An upset occurred and that the Permittee can identify the cause(s) of the upset.
2. The permitted facility was being properly operated at the time of the upset.
3. The Permittee submitted notice of the upset as required in Special Condition S3.E.
4. The Permittee complied with any remedial measures required under S3.E of this permit.

In any enforcement action the Permittee seeking to establish the occurrence of an upset has the burden of proof.

G16. Property rights

This permit does not convey any property rights of any sort, or any exclusive privilege.

G17. Duty to comply

The Permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

G18. Toxic pollutants

The Permittee must comply with effluent standards or prohibitions established under Section 307(a) of the Clean Water Act for toxic pollutants within the time provided in the regulations that establish those standards or prohibitions, even if this permit has not yet been modified to incorporate the requirement.

G19. Penalties for tampering

The Clean Water Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than two (2) years per violation, or by both.

If a conviction of a person is for a violation committed after a first conviction of such person under this condition, punishment shall be a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than four (4) years, or by both.

G20. Reporting requirements applicable to existing manufacturing, commercial, mining, and silvicultural dischargers

The Permittee belonging to the categories of existing manufacturing, commercial, mining, or silviculture must notify Ecology as soon as they know or have reason to believe:

1. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in this permit, if that discharge will exceed the highest of the following “notification levels:”
 - a. One hundred micrograms per liter (100 µg/L).
 - b. Two hundred micrograms per liter (200 µg/L) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/L) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/L) for antimony.
 - c. Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7).
 - d. The level established by the Director in accordance with 40 CFR 122.44(f).
2. That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in this permit, if that discharge will exceed the highest of the following “notification levels:”
 - a. Five hundred micrograms per liter (500µg/L).
 - b. One milligram per liter (1 mg/L) for antimony.
 - c. Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7).
 - d. The level established by the Director in accordance with 40 CFR 122.44(f).

G21. Compliance schedules

Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit must be submitted no later than fourteen (14) days following each schedule date.

Appendix A

LIST OF POLLUTANTS WITH ANALYTICAL METHODS, DETECTION LIMITS AND QUANTITATION LEVELS

The Permittee must use the specified analytical methods, detection limits (DLs) and quantitation levels (QLs) in the following table for permit and application required monitoring unless:

- Another permit condition specifies other methods, detection levels, or quantitation levels.
- The method used produces measurable results in the sample and EPA has listed it as an EPA-approved method in 40 CFR Part 136.

If the Permittee uses an alternative method, not specified in the permit and as allowed above, it must report the test method, DL, and QL on the discharge monitoring report or in the required report.

If the Permittee is unable to obtain the required DL and QL in its effluent due to matrix effects, the Permittee must submit a matrix-specific detection limit (MDL) and a quantitation limit (QL) to Ecology with appropriate laboratory documentation.

When the permit requires the Permittee to measure the base neutral compounds in the list of priority pollutants, it must measure all of the base neutral pollutants listed in the table below. The list includes EPA required base neutral priority pollutants and several additional polynuclear aromatic hydrocarbons (PAHs). The Water Quality Program added several PAHs to the list of base neutrals below from Ecology's Persistent Bioaccumulative Toxics (PBT) List. It only added those PBT parameters of interest to Appendix A that did not increase the overall cost of analysis unreasonably.

Ecology added this appendix to the permit in order to reduce the number of analytical "non-detects" in permit-required monitoring and to measure effluent concentrations near or below criteria values where possible at a reasonable cost.

CONVENTIONAL PARAMETERS

Pollutant & CAS No. (if available)	Recommended Analytical Protocol	Detection (DL)¹ $\mu\text{g/L}$ unless specified	Quantitation Level (QL)² $\mu\text{g/L}$ unless specified
Biochemical Oxygen Demand	SM5210-B		2 mg/L
Soluble Biochemical Oxygen Demand	SM5210-B ³		2 mg/L
Chemical Oxygen Demand	SM5220-D		10 mg/L
Total Organic Carbon	SM5310-B/C/D		1 mg/L

Pollutant & CAS No. <i>(if available)</i>	Recommended Analytical Protocol	Detection (DL)¹ $\mu\text{g/L}$ <i>unless specified</i>	Quantitation Level (QL)² $\mu\text{g/L}$ <i>unless specified</i>
Total Suspended Solids	SM2540-D		5 mg/L
Total Ammonia (as N)	SM4500-NH ₃ -B and C/D/E/G/H		20
Flow	Calibrated device		
Dissolved oxygen	SM4500-OC/OG		0.2 mg/L
Temperature (max. 7-day avg.)	Analog recorder or Use micro-recording devices known as thermistors		0.2° C
pH	SM4500-H ⁺ B	N/A	N/A

NONCONVENTIONAL PARAMETERS

Pollutant & CAS No. <i>(if available)</i>	Recommended Analytical Protocol	Detection (DL)¹ $\mu\text{g/L}$ <i>unless specified</i>	Quantitation Level (QL)² $\mu\text{g/L}$ <i>unless specified</i>
Total Alkalinity	SM2320-B		5 mg/L as CaCO ₃
Chlorine, Total Residual	SM4500 Cl G		50.0
Color	SM2120 B/C/E		10 color units
Fecal Coliform	SM 9221E,9222	N/A	Specified in method - sample aliquot dependent
Fluoride (16984-48-8)	SM4500-F E	25	100
Nitrate + Nitrite Nitrogen (as N)	SM4500-NO ₃ - E/F/H		100
Nitrogen, Total Kjeldahl (as N)	SM4500-N _{org} B/C and SM4500NH ₃ -B/C/D/EF/G/H		300
Soluble Reactive Phosphorus (as P)	SM4500- PE/PF	3	10

Pollutant & CAS No. <i>(if available)</i>	Recommended Analytical Protocol	Detection (DL)¹ $\mu\text{g/L}$ unless specified	Quantitation Level (QL)² $\mu\text{g/L}$ unless specified
Phosphorus, Total (as P)	SM 4500 PB followed by SM4500-PE/PF	3	10
Oil and Grease (HEM)	1664 A or B	1,400	5,000
Salinity	SM2520-B		3 practical salinity units or scale (PSU or PSS)
Settleable Solids	SM2540 -F		100
Sulfate (as mg/L SO_4)	SM4110-B		200
Sulfide (as mg/L S)	SM4500-S ² F/D/E/G		200
Sulfite (as mg/L SO_3)	SM4500-SO3B		2000
Total Coliform	SM 9221B, 9222B, 9223B	N/A	Specified in method - sample aliquot dependent
Total dissolved solids	SM2540 C		20 mg/L
Total Hardness	SM2340B		200 as CaCO_3
Aluminum, Total (7429-90-5)	200.8	2.0	10
Barium Total (7440-39-3)	200.8	0.5	2.0
BTEX (benzene +toluene + ethylbenzene + m,o,p xylenes)	EPA SW 846 8021/8260	1	2
Boron Total (7440-42-8)	200.8	2.0	10.0
Cobalt, Total (7440-48-4)	200.8	0.05	0.25
Iron, Total (7439-89-6)	200.7	12.5	50
Magnesium, Total (7439-95- 4)	200.7	10	50
Molybdenum, Total (7439- 98-7)	200.8	0.1	0.5

Pollutant & CAS No. <i>(if available)</i>	Recommended Analytical Protocol	Detection (DL)¹ µg/L <i>unless specified</i>	Quantitation Level (QL)² <i>µg/L unless specified</i>
Manganese, Total (7439-96-5)	200.8	0.1	0.5
NWTPH Dx ⁴	Ecology NWTPH Dx	250	250
NWTPH Gx ⁵	Ecology NWTPH Gx	250	250
Tin, Total (7440-31-5)	200.8	0.3	1.5
Titanium, Total (7440-32-6)	200.8	0.5	2.5

PRIORITY POLLUTANTS

Pollutant & CAS No. <i>(if available)</i>	Recommended Analytical Protocol	Detection (DL)¹ µg/L <i>unless specified</i>	Quantitation Level (QL)² <i>µg/L unless specified</i>
METALS, CYANIDE & TOTAL PHENOLS			
Antimony, Total (7440-36-0)	200.8	0.3	1.0
Arsenic, Total (7440-38-2)	200.8	0.1	0.5
Beryllium, Total (7440-41-7)	200.8	0.1	0.5
Cadmium, Total (7440-43-9)	200.8	0.05	0.25
Chromium (hex) dissolved (18540-29-9)	SM3500-Cr EC	0.3	1.2
Chromium, Total (7440-47-3)	200.8	0.2	1.0
Copper, Total (7440-50-8)	200.8	0.4	2.0
Lead, Total (7439-92-1)	200.8	0.1	0.5
Mercury, Total (7439-97-6)	1631E	0.0002	0.0005
Nickel, Total (7440-02-0)	200.8	0.1	0.5

Pollutant & CAS No. <i>(if available)</i>	Recommended Analytical Protocol	Detection (DL)¹ µg/L unless specified	Quantitation Level (QL)² µg/L unless specified
Selenium, Total (7782-49-2)	200.8	1.0	1.0
Silver, Total (7440-22-4)	200.8	0.04	0.2
Thallium, Total (7440-28-0)	200.8	0.09	0.36
Zinc, Total (7440-66-6)	200.8	0.5	2.5
Cyanide, Total (57-12-5)	335.4	5	10
Cyanide, Weak Acid Dissociable	SM4500-CN I	5	10
Cyanide, Free Amenable to Chlorination (Available Cyanide)	SM4500-CN G	5	10
Phenols, Total	EPA 420.1		50

Pollutant & CAS No. <i>(if available)</i>	Recommended Analytical Protocol	Detection (DL)¹ µg/L unless specified	Quantitation Level (QL)² µg/L unless specified
ACID COMPOUNDS			
2-Chlorophenol (95-57-8)	625	1.0	2.0
2,4-Dichlorophenol (120-83-2)	625	0.5	1.0
2,4-Dimethylphenol (105-67-9)	625	0.5	1.0
4,6-dinitro-o-cresol (534-52-1) (2-methyl-4,6,-dinitrophenol)	625/1625B	1.0	2.0
2,4 dinitrophenol (51-28-5)	625	1.0	2.0
2-Nitrophenol (88-75-5)	625	0.5	1.0

Pollutant & CAS No. <i>(if available)</i>	Recommended Analytical Protocol	Detection (DL)¹ µg/L unless specified	Quantitation Level (QL)² µg/L unless specified
4-nitrophenol (100-02-7)	625	0.5	1.0
Parachlorometa cresol (59-50-7) (4-chloro-3-methylphenol)	625	1.0	2.0
Pentachlorophenol (87-86-5)	625	0.5	1.0
Phenol (108-95-2)	625	2.0	4.0
2,4,6-Trichlorophenol (88-06-2)	625	2.0	4.0

PRIORITY POLLUTANTS (continued)

Pollutant & CAS No. <i>(if available)</i>	Recommended Analytical Protocol	Detection (DL)¹ µg/L unless specified	Quantitation Level (QL)² µg/L unless specified
VOLATILE COMPOUNDS			
Acrolein (107-02-8)	624	5	10
Acrylonitrile (107-13-1)	624	1.0	2.0
Benzene (71-43-2)	624	1.0	2.0
Bromoform (75-25-2)	624	1.0	2.0
Carbon tetrachloride (56-23-5)	624/601 or SM6230B	1.0	2.0
Chlorobenzene (108-90-7)	624	1.0	2.0
Chloroethane (75-00-3)	624/601	1.0	2.0
2-Chloroethylvinyl Ether (110-75-8)	624	1.0	2.0
Chloroform (67-66-3)	624 or SM6210B	1.0	2.0

Pollutant & CAS No. <i>(if available)</i>	Recommended Analytical Protocol	Detection (DL)¹ µg/L unless specified	Quantitation Level (QL)² µg/L unless specified
VOLATILE COMPOUNDS			
Dibromochloromethane (124-48-1)	624	1.0	2.0
1,2-Dichlorobenzene (95-50-1)	624	1.9	7.6
1,3-Dichlorobenzene (541-73-1)	624	1.9	7.6
1,4-Dichlorobenzene (106-46-7)	624	4.4	17.6
Dichlorobromomethane (75-27-4)	624	1.0	2.0
1,1-Dichloroethane (75-34-3)	624	1.0	2.0
1,2-Dichloroethane (107-06-2)	624	1.0	2.0
1,1-Dichloroethylene (75-35-4)	624	1.0	2.0
1,2-Dichloropropane (78-87-5)	624	1.0	2.0
1,3-dichloropropene (mixed isomers) (1,2-dichloropropylene) (542-75-6) ⁶	624	1.0	2.0
Ethylbenzene (100-41-4)	624	1.0	2.0
Methyl bromide (74-83-9) (Bromomethane)	624/601	5.0	10.0
Methyl chloride (74-87-3) (Chloromethane)	624	1.0	2.0
Methylene chloride (75-09-2)	624	5.0	10.0
1,1,2,2-Tetrachloroethane	624	1.9	2.0

Pollutant & CAS No. <i>(if available)</i>	Recommended Analytical Protocol	Detection (DL)¹ µg/L unless specified	Quantitation Level (QL)² µg/L unless specified
VOLATILE COMPOUNDS			
(79-34-5)			
Tetrachloroethylene (127-18-4)	624	1.0	2.0
Toluene (108-88-3)	624	1.0	2.0
1,2-Trans-Dichloroethylene (156-60-5) (Ethylene dichloride)	624	1.0	2.0
1,1,1-Trichloroethane (71-55-6)	624	1.0	2.0
1,1,2-Trichloroethane (79-00-5)	624	1.0	2.0
Trichloroethylene (79-01-6)	624	1.0	2.0
Vinyl chloride (75-01-4)	624/SM6200B	1.0	2.0

PRIORITY POLLUTANTS (continued)

Pollutant & CAS No. <i>(if available)</i>	Recommended Analytical Protocol	Detection (DL)¹ µg/L unless specified	Quantitation Level (QL)² µg/L unless specified
BASE/NEUTRAL COMPOUNDS (compounds in bold are Ecology PBTs)			
Acenaphthene (83-32-9)	625	0.2	0.4
Acenaphthylene (208-96-8)	625	0.3	0.6
Anthracene (120-12-7)	625	0.3	0.6
Benzidine (92-87-5)	625	12	24
Benzyl butyl phthalate (85-68-7)	625	0.3	0.6

Pollutant & CAS No. (if available)	Recommended Analytical Protocol	Detection (DL) ¹ µg/L unless specified	Quantitation Level (QL) ² µg/L unless specified
BASE/NEUTRAL COMPOUNDS (compounds in bold are Ecology PBTs)			
Benzo(a)anthracene (56-55-3)	625	0.3	0.6
Benzo(b)fluoranthene (3,4-benzofluoranthene) (205-99-2) ⁷	610/625	0.8	1.6
Benzo(j)fluoranthene (205-82-3) ⁷	625	0.5	1.0
Benzo(k)fluoranthene (11,12-benzofluoranthene) (207-08-9) ⁷	610/625	0.8	1.6
Benzo(r,s,t)pentaphene (189-55-9)	625	0.5	1.0
Benzo(a)pyrene (50-32-8)	610/625	0.5	1.0
Benzo(ghi)Perylene (191-24-2)	610/625	0.5	1.0
Bis(2-chloroethoxy)methane (111-91-1)	625	5.3	21.2
Bis(2-chloroethyl)ether (111-44-4)	611/625	0.3	1.0
Bis(2-chloroisopropyl)ether (39638-32-9)	625	0.3	0.6
Bis(2-ethylhexyl)phthalate (117-81-7)	625	0.1	0.5
4-Bromophenyl phenyl ether (101-55-3)	625	0.2	0.4
2-Chloronaphthalene (91-58-7)	625	0.3	0.6

Pollutant & CAS No. (if available)	Recommended Analytical Protocol	Detection (DL) ¹ µg/L unless specified	Quantitation Level (QL) ² µg/L unless specified
BASE/NEUTRAL COMPOUNDS (compounds in bold are Ecology PBTs)			
4-Chlorophenyl phenyl ether (7005-72-3)	625	0.3	0.5
Chrysene (218-01-9)	610/625	0.3	0.6
Dibenzo (a,h)acridine (226-36-8)	610M/625M	2.5	10.0
Dibenzo (a,i)acridine (224-42-0)	610M/625M	2.5	10.0
Dibenzo(a-h)anthracene (53-70-3)(1,2,5,6-dibenzanthracene)	625	0.8	1.6
Dibenzo(a,e)pyrene (192-65-4)	610M/625M	2.5	10.0
Dibenzo(a,h)pyrene (189-64-0)	625M	2.5	10.0
3,3-Dichlorobenzidine (91-94-1)	605/625	0.5	1.0
Diethyl phthalate (84-66-2)	625	1.9	7.6
Dimethyl phthalate (131-11-3)	625	1.6	6.4
Di-n-butyl phthalate (84-74-2)	625	0.5	1.0
2,4-dinitrotoluene (121-14-2)	609/625	0.2	0.4
2,6-dinitrotoluene (606-20-2)	609/625	0.2	0.4

PRIORITY POLLUTANTS (continued)

Pollutant & CAS No. (if available)	Recommended Analytical Protocol	Detection (DL) ¹ µg/L unless specified	Quantitation Level (QL) ² µg/L unless specified
BASE/NEUTRAL COMPOUNDS (compounds in bold are Ecology PBTs)			
Di-n-octyl phthalate (117-84-0)	625	0.3	0.6
1,2-Diphenylhydrazine (as Azobenzene) (122-66-7)	1625B	5.0	20
Fluoranthene (206-44-0)	625	0.3	0.6
Fluorene (86-73-7)	625	0.3	0.6
Hexachlorobenzene (118-74-1)	612/625	0.3	0.6
Hexachlorobutadiene (87-68-3)	625	0.5	1.0
Hexachlorocyclopentadiene (77-47-4)	1625B/625	0.5	1.0
Hexachloroethane (67-72-1)	625	0.5	1.0
Indeno(1,2,3-cd)Pyrene (193-39-5)	610/625	0.5	1.0
Isophorone (78-59-1)	625	0.5	1.0
3-Methyl cholanthrene (56-49-5)	625	2.0	8.0
Naphthalene (91-20-3)	625	0.3	0.6
Nitrobenzene (98-95-3)	625	0.5	1.0
N-Nitrosodimethylamine (62-75-9)	607/625	2.0	4.0
N-Nitrosodi-n-propylamine (621-64-7)	607/625	0.5	1.0

Pollutant & CAS No. <i>(if available)</i>	Recommended Analytical Protocol	Detection (DL)¹ µg/L unless specified	Quantitation Level (QL)² µg/L unless specified
BASE/NEUTRAL COMPOUNDS (compounds in bold are Ecology PBTs)			
N-Nitrosodiphenylamine (86-30-6)	625	0.5	1.0
Perylene (198-55-0)	625	1.9	7.6
Phenanthrene (85-01-8)	625	0.3	0.6
Pyrene (129-00-0)	625	0.3	0.6
1,2,4-Trichlorobenzene (120-82-1)	625	0.3	0.6

Pollutant & CAS No. <i>(if available)</i>	Recommended Analytical Protocol	Detection (DL)¹ µg/L unless specified	Quantitation Level (QL)² µg/L unless specified
DIOXIN			
2,3,7,8-Tetra-Chlorodibenzo- P-Dioxin (176-40-16) (2,3,7,8 TCDD)	1613B	1.3 pg/L	5 pg/L

PRIORITY POLLUTANTS (continued)

Pollutant & CAS No. <i>(if available)</i>	Recommended Analytical Protocol	Detection (DL)¹ µg/L unless specified	Quantitation Level (QL)² µg/L unless specified
PESTICIDES/PCBs			
Aldrin (309-00-2)	608	0.025	0.05
alpha-BHC (319-84-6)	608	0.025	0.05
beta-BHC (319-85-7)	608	0.025	0.05

Pollutant & CAS No. <i>(if available)</i>	Recommended Analytical Protocol	Detection (DL)¹ µg/L unless specified	Quantitation Level (QL)² µg/L unless specified
PESTICIDES/PCBs			
gamma-BHC (58-89-9)	608	0.025	0.05
delta-BHC (319-86-8)	608	0.025	0.05
Chlordane (57-74-9) ⁸	608	0.025	0.05
4,4'-DDT (50-29-3)	608	0.025	0.05
4,4'-DDE (72-55-9)	608	0.025	0.05 ¹⁰
4,4' DDD (72-54-8)	608	0.025	0.05
Dieldrin (60-57-1)	608	0.025	0.05
alpha-Endosulfan (959-98-8)	608	0.025	0.05
beta-Endosulfan (33213-65-9)	608	0.025	0.05
Endosulfan Sulfate (1031-07-8)	608	0.025	0.05
Endrin (72-20-8)	608	0.025	0.05
Endrin Aldehyde (7421-93-4)	608	0.025	0.05
Heptachlor (76-44-8)	608	0.025	0.05
Heptachlor Epoxide (1024-57-3)	608	0.025	0.05
PCB-1242 (53469-21-9) ⁹	608	0.25	0.5
PCB-1254 (11097-69-1)	608	0.25	0.5
PCB-1221 (11104-28-2)	608	0.25	0.5
PCB-1232 (11141-16-5)	608	0.25	0.5
PCB-1248 (12672-29-6)	608	0.25	0.5
PCB-1260 (11096-82-5)	608	0.13	0.5

Pollutant & CAS No. <i>(if available)</i>	Recommended Analytical Protocol	Detection (DL)¹ µg/L unless specified	Quantitation Level (QL)² µg/L unless specified
PESTICIDES/PCBs			
PCB-1016 (12674-11-2) ⁹	608	0.13	0.5
Toxaphene (8001-35-2)	608	0.24	0.5

1. Detection level (DL) or detection limit means the minimum concentration of an analyte (substance) that can be measured and reported with a 99% confidence that the analyte concentration is greater than zero as determined by the procedure given in 40 CFR part 136, Appendix B.
2. Quantitation Level (QL) also known as Minimum Level of Quantitation (ML) – The lowest level at which the entire analytical system must give a recognizable signal and acceptable calibration point for the analyte. It is equivalent to the concentration of the lowest calibration standard, assuming that the lab has used all method-specified sample weights, volumes, and cleanup procedures. The QL is calculated by multiplying the MDL by 3.18 and rounding the result to the number nearest to (1, 2, or 5) x 10ⁿ, where n is an integer. (64 FR 30417).
ALSO GIVEN AS:
The smallest detectable concentration of analyte greater than the Detection Limit (DL) where the accuracy (precision & bias) achieves the objectives of the intended purpose. (Report of the Federal Advisory Committee on Detection and Quantitation Approaches and Uses in Clean Water Act Programs Submitted to the US Environmental Protection Agency December 2007).
3. Soluble Biochemical Oxygen Demand method note: First, filter the sample through a Millipore Nylon filter (or equivalent) - pore size of 0.45-0.50 µm (prep all filters by filtering 250 ml of laboratory grade deionized water through the filter and discard). Then, analyze sample as per method 5210-B.
4. NWTPH Dx - Northwest Total Petroleum Hydrocarbons Diesel Extended Range – see <http://www.ecy.wa.gov/biblio/97602.html>
5. NWTPH Gx - Northwest Total Petroleum Hydrocarbons Gasoline Extended Range – see <http://www.ecy.wa.gov/biblio/97602.html>
6. 1, 3-dichloropropylene (mixed isomers) You may report this parameter as two separate parameters: cis-1, 3-dichloropropene (10061-01-5) and trans-1, 3-dichloropropene (10061-02-6).

7. Total Benzo(a)fluoranthenes - Because Benzo(b)fluoranthene, Benzo(j)fluoranthene and Benzo(k)fluoranthene co-elute you may report these three isomers as total benzo(a)fluoranthenes.
8. Chlordane – You may report alpha-chlordane (5103-71-9) and gamma-chlordane (5103-74-2) in place of chlordane (57-74-9). If you report alpha and gamma-chlordane, the DL/PQLs that apply are 0.025/0.050.
9. PCB 1016 & PCB 1242 – You may report these two PCB compounds as one parameter called PCB 1016/1242.

Errata

For the Industrial Stormwater General Permit Issued on November 20, 2019 and effective on January 1, 2020.

November 25, 2019

Ecology corrected S6.C.2. Footnote 6. Footnote 6 defines the Puget Sound Sediment Cleanup Sites. Ecology has added Oakland Bay/Shelton Harbor to the list.

⁶ ***Puget Sound Sediment Cleanup Site*** means: Category 4B (Sediment) portions of Budd Inlet (Inner), Commencement Bay (Inner), Commencement Bay (Outer), Dalco Passage and East Passage, Duwamish Waterway (including East and West Waterway), Eagle Harbor, Elliot Bay, Hood Canal (North), Liberty Bay, Rosario Strait, Sinclair Inlet, and Thea Foss Waterway; Category 5 (Sediment) portions of the Duwamish Waterway; Category 4A (Sediment) portions of Bellingham Bay (Inner); and the Everett/Port Gardner, [Oakland Bay/Shelton Harbor](#), and Port Angeles Harbor sediment cleanup areas, as mapped on Ecology's ISGP website. All references to Category 4A, 4B and 5 pertain to the 2012 EPA-approved Water Quality Assessment.

December 17, 2019

Ecology corrected two typos in Table 3. The changes are marked with underlined blue text and strikethrough red text. The two typos were leaving off the NAICS code 113310 in the Wood Product Manufacturing category and transposing two numbers on the Construction, Transportation, Mining, and Forestry Machinery and Equipment Rental and Leasing category.

Table 1: Additional Benchmarks and Sampling Requirements Applicable to Specific Industries (screenshot of changes in table)

Petroleum Hydrocarbons (Diesel Fraction)	mg/L	10	NWTPH-D x	0.25	1/quarter
5. Timber Product Industry (321xxx), Paper and Allied Products (322xxx), Wood Product Manufacturing (321xxx, <u>113310</u>)					
COD	mg/L	120	SM5220-D	10	1/quarter
TSS	mg/L	100	SM2540-D	5	1/quarter
6. Transportation (482xxx-485xxx), Petroleum Bulk Stations and Terminals (4247xx), Transportation Equipment Manufacturing (336xxx), Construction, Transportation, Mining, and Forestry Machinery and Equipment Rental and Leasing (53424 <u>53241x</u>)					
Petroleum Hydrocarbons (Diesel Fraction)	mg/L	10	NWTPH-D x	0.25	1/quarter
7. Coal Mining (2121xx), Oil and Gas Extraction (2111xx), Nonmetallic Mining and Quarrying, except Fuels (2123xx), Petroleum and Coal Products Manufacturing (324xxx), Nonmetallic Mineral Product Manufacturing (327xxx), Steam Electric					

January 27, 2020

Ecology corrected additional typos in Table 3. The changes are marked with underlined blue text. The typos were leaving off NAICS codes 488210, 4883xx, and 488490 in the transportation category.

Table 2: Additional Benchmarks and Sampling Requirements Applicable to Specific Industries (screenshot of changes in table)

TSS	mg/L	100	SM2540-D	5	1/quarter
6. Transportation (482xxx-485xxx, <u>488210</u>, <u>4883xx</u>, <u>488490</u>), Petroleum Bulk Stations and Terminals (4247xx), Transportation Equipment Manufacturing (336xxx), Construction, Transportation, Mining, and Forestry Machinery and Equipment Rental and Leasing (53241X)					
Petroleum Hydrocarbons (Diesel Fraction)	mg/L	10	NWTPH-Dx	0.25	1/quarter
7. Coal Mining (2121xx), Oil and Gas Extraction (2111xx), Nonmetallic Mining and Quarrying, except Fuels (2123xx),					

Issuance Date: November 20, 2019
Effective Date: January 1, 2020
Expiration Date: December 31, 2024

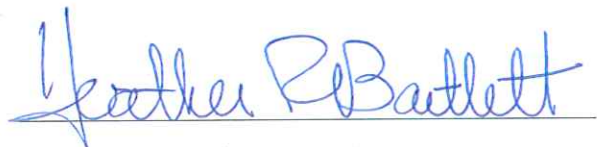
INDUSTRIAL STORMWATER GENERAL PERMIT

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

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

In compliance with the provisions of
The State of Washington Water Pollution Control Law
Chapter 90.48 Revised Code of Washington
and
The Federal Water Pollution Control Act
(The Clean Water Act)
Title 33 United States Code, Section 1251 et seq.

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



Heather R. Bartlett
Water Quality Program Manager
Washington State Department of Ecology

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SUMMARY OF PERMIT REPORTS & SUBMITTALS

Permit Section	Submittal	Frequency	Due Date(s)
S1.F	Conditional "No Exposure" Certification (CNE) Form	As necessary	As necessary, with renewals every 5 years
S2.A	Application for Permit Coverage	As necessary	As necessary
S2.B	Request Modification of Permit Coverage	As necessary	As necessary
S2.D	Request Transfer of Coverage	As necessary	As necessary
S8.D	Level 3 Engineering Report	As necessary	May 15 th , prior to Level 3 deadline ¹
S8.D	Level 3 O&M Manual	As necessary	30 days after Level 3 installation
S9.B	Discharge Monitoring Reports (DMRs)	1/quarter	February 15 th May 15 th August 15 th November 15 th
S9.C	Annual Report	1/year	May 15 th
S9.D	SWPPP, if requested by Ecology	Per Ecology request	Within 14 days of request
S9.F	Noncompliance Notification	As necessary	Within 30 days of noncompliance event
G8	Duty to Reapply	1/permit cycle	July 3, 2024

The text of this permit contains words or phrases in ***bold and italics***. These words or phrases are the first usage in the permit and are defined in [Appendix 2](#).

¹ Unless an alternate due date is specified in an order

SUMMARY OF REQUIRED ONSITE DOCUMENTATION²

Permit Condition(s)	Document Title
S3	Stormwater Pollution Prevention Plan (SWPPP) ³
S9.C	Copies of Annual Reports
S9.D.1.a	Copy of Permit
S9.D.1.b	Copy of Permit Coverage Letter
S9.D.1.c	Original Sampling Records (Field Notes and Laboratory Reports)
S7.C & S9.D.1.d	Site Inspection Reports
S9.D.1.j	Copies of Discharge Monitoring Reports (DMRs)

² A complete list is contained in Condition S9.D. The Permittee shall make all plans, documents and records required by this permit immediately available to Ecology or the local jurisdiction upon request.

³ With signed and completed SWPPP Certification Form(s) – see [Appendix 3](#)

SPECIAL CONDITIONS

S1. PERMIT COVERAGE

A. Facilities Required to Seek Coverage Under This General Permit

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

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

1. Facilities engaged in any industrial activities in Table 1 shall apply for coverage if stormwater from the facility discharges to a surface waterbody, or to a storm sewer system that discharges to a surface waterbody. The **North American Industry Classification System (NAICS)** groups generally, but not always, associated with these activities are listed in Table 1.

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

Industrial Activities	NAICS Groups
Metal Ore Mining	2122xx
Coal Mining	2121xx
Oil and Gas Extraction	2111xx
Nonmetallic Mineral Mining and Quarrying, except Fuels (except facilities covered under the Sand and Gravel General Permit)	2123xx
Food, Beverage, and Tobacco Manufacturing	311xxx-312xxx
Textile and Textile Products Mills	313xxx-314xxx
Apparel Manufacturing	315xxx
Wood Products Manufacturing	321xxx, 113310 ^a
Furniture and Related Product Manufacturing	337xxx
Paper Manufacturing	322xxx
Printing and Related Support Activities	323xxx, 5111xx

Industrial Activities	NAICS Groups
Chemicals Manufacturing (including Compost Facilities)	325xxx
Petroleum and Coal Products Manufacturing (except facilities covered under the Sand and Gravel General Permit)	324xxx
Plastics and Rubber Products Manufacturing	326xxx
Leather and Allied Product Manufacturing	316xxx
Nonmetallic Mineral Product Manufacturing (except covered under the Sand and Gravel General Permit)	327xxx
Primary Metal Manufacturing	331xxx
Fabricated Metal Product Manufacturing	332xxx
Machinery Manufacturing	333xxx
Computer and Electronic Product Manufacturing	334xxx
Electrical Equipment, Appliance, and Component Manufacturing	335xxx
Transportation Equipment Manufacturing (except NPDES regulated boatyards)	336xxx
Miscellaneous Manufacturing	339xxx
Warehousing and Storage	493xxx, 531130
Recycling facilities involved in the recycling of materials, including but not limited to, metal scrap yards, battery reclaimers, salvage yards, auto recyclers, and automobile junkyards.	42314x and 42393x
Steam Electric Power Generation (Not covered under 40 CFR § 423)	N/A
Waste Management and Remediation Services, including, but not limited to, landfills, transfer stations, open dumps, and land application sites, except as described in S1.C.6 or C.7.	562xxx
Hazardous waste treatment, storage, and disposal (TSD) facilities, and recycling facilities regulated under Chapter 173-303 WAC.	562211
Treatment works treating domestic sewage, or any other sewage sludge, or wastewater treatment device or system, used in the storage, recycling, and reclamation of municipal or domestic sewage (including land dedicated to the disposal of sewage sludge that are located within the confines of the facility) with the design flow capacity of 1 million gallons per day (MGD) or more, or required to have a pretreatment program under 40 CFR §403.	22132x
Transportation facilities which have vehicle maintenance activity, equipment cleaning operations, or airport deicing operations: <ul style="list-style-type: none"> Railroad Transportation Transit and Ground Passenger Transportation Truck Transportation Postal Service 	
	482xxx, 488210
	485xxx, 488490, 487110
	484xxx
	491xxx

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

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

- Any facility that has an existing **National Pollutant Discharge Elimination System (NPDES)** permit which does not address all stormwater discharges associated with industrial activity [40 CFR §122.26(b)(14)] shall obtain permit coverage.
- Any **inactive facility** which is listed under **40 CFR** §122.26(b)(14) where **significant materials** remain onsite and are exposed to stormwater shall obtain permit coverage.

B. Significant Contributors of Pollutants

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

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

C. Facilities Not Required to Obtain Coverage

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

- Industrial facilities that submit an **application** and qualify for a Conditional “No Exposure” Exemption. (Condition S1.F)
- Industrial facilities that discharge stormwater only to a municipal **combined sewer** or **sanitary sewer**. Discharge of stormwater to sanitary or combined sewers shall only occur as authorized by the municipal sewage authority.
- Industrial facilities that discharge stormwater only to groundwater (e.g., on-site infiltration) with no discharge to **surface waters of the State** under any condition, provided the facility doesn’t meet the requirements of S1.B.1.
- Office buildings and/or administrative parking lots from which stormwater does not commingle with stormwater from areas associated with industrial activity.

5. Any discharge that is in compliance with the instructions of an on-scene-coordinator pursuant to 40 CFR § 300 (The National Oil and Hazardous Substances Pollution Contingency Plan) or 33 CFR § 153.10(e) (Pollution by Oil and Hazardous Substances), in accordance with 40 CFR § 122.3(d).
6. Any **land application site** used for the beneficial use of industrial or municipal wastewater for agricultural activities or when applied for landscaping purposes at agronomic rates.
7. Any farmland, domestic garden, or land used for sludge management where domestic sewage sludge (biosolids) is beneficially reused (nutrient builder or soil conditioner) and which is not physically located in the confines of domestic sewage treatment works, or areas that are in compliance with Section 405 (Disposal of Sewage Sludge) of the **Clean Water Act (CWA)**.
8. Any inactive coal mining operation if:
 - a. The performance bond issued to the facility by the appropriate Surface Mining Control and Reclamation Act (SMCRA) authority has been released from applicable state or federal reclamation requirements after December 17, 1990.
 - b. The mine does not have a discharge of stormwater that comes in contact with any overburden, raw material, intermediate products, finished products, byproducts, or waste products located on the site of the facility.
9. Closed **landfills** that are capped and stabilized, in compliance with Chapter 173-304 WAC, and in which no significant materials or industrial **pollutants** remain exposed to stormwater. Permittee's with existing coverage may submit a **Notice of Termination** in accordance with Special Condition S13.A.1.

D. Facilities Excluded from Coverage

Ecology will not cover the following facilities or activities under this permit:

1. If any part of a facility, in the categories listed below, has a stormwater discharge subject to stormwater Effluent Limitations Guidelines, New Source Performance Standards (NSPS) Under 40 CFR subchapter N, or Toxic Pollutant Effluent Standards under 40 CFR subchapter D §129; the operator of the facility must apply for an individual NPDES permit or seek coverage under an industry-specific **general permit** for those stormwater discharges.

Below is a list of categories of industries specified in 40 CFR subchapter N for which at least one subpart includes stormwater effluent limitations guidelines or NSPS. Industries included in this list should review the [subchapter N guidelines](#) to determine if they are subject to a stormwater effluent limitation guideline for activities which they perform at their site.

40 CFR 411 Cement manufacturing	40 CFR 423 Steam electric power generating
40 CFR 412 Feedlots	40 CFR 434 Coal mining
40 CFR 418 Fertilizer manufacturing	40 CFR 436 Mineral mining and processing
40 CFR 419 Petroleum refining	40 CFR 440 Ore mining and dressing
40 CFR 422 Phosphate manufacturing	40 CFR 443 Paving and roofing materials (tars & asphalt)
40 CFR 449.11(a) Airports with more than 10,000 annual jet departures	

Facilities, which are subject to effluent standards in 40 CFR subchapter D §129: Aldrin/Dieldrin; DDT; Endrin; Toxaphene; Benzidine; or Polychlorinated Biphenyls (PCBs), shall apply for an individual NPDES permit.

2. Nonpoint source silvicultural activities with natural **runoff** that are excluded in 40 CFR §122.27.
3. Industrial activities operated by any department, agency, or instrumentality of the executive, legislative, and judicial branches of the Federal Government of the United States, or another entity, such as a private contractor, performing industrial activity for any such department, agency, or instrumentality.
4. Facilities located on “Indian Country” as defined in 18 USC §1151, except portions of the Puyallup Reservation as noted below.

Indian Country includes:

- a. All land within any Indian Reservation notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation. This includes all federal, tribal, and Indian and non-Indian privately owned land within the reservation.
- b. All off-reservation Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.
- c. All off-reservation federal trust lands held for Native American Tribes.

Puyallup Exception: Following the “Puyallup Tribes of Indians Land Settlement Act of 1989,” 25 USC §1773; the permit does apply to land within the Puyallup Reservation except for discharges to surface water on land held in trust by the federal government.

5. Any facility authorized to discharge stormwater associated with industrial activity under an existing NPDES individual or other general permit.
6. All **construction activities**. Operators of these construction activities shall seek coverage under the Construction Stormwater General Permit or an individual NPDES permit for stormwater associated with construction activity.
7. Facilities that discharge to a waterbody with a **control plan**, unless this general permit adequately provides the level of protection required by the control plan.
8. **New dischargers** to a waterbody listed pursuant to Section 303(d) of the CWA, unless the Permittee meets the requirements of Condition S6.B.
9. Hazardous waste landfills subject to 40 CFR §445, subpart A.

E. Discharges to Ground

1. For sites with a **discharge point** to groundwater the terms and conditions of this permit shall apply. However, permittees are not required to sample on-site discharges to ground (e.g., infiltration), unless specifically required by Ecology (Condition G12).

2. Facilities with a discharge point to groundwater through an ***Underground Injection Control well*** shall comply with any applicable requirements of the Underground Injection Control (UIC) regulations, [Chapter 173-218 WAC](#).

F. Conditional "No Exposure" Exemption

1. A facility engaged in industrial activity may qualify for a Conditional "No Exposure" Exemption (CNE) if there is no exposure of industrial materials and activities to rain, snow, snow melt, and/or runoff.

Industrial materials and activities include, but are not limited to, ***material handling*** equipment or activities, industrial machinery, raw materials, intermediate products, by-products, and final products, or waste products.

Material handling activities include storage, loading and unloading, transport, or conveyance of any raw materials, intermediate product, by-product, final products, or waste products.

2. To determine if you qualify for a CNE, eleven questions must be answered and certified that none of the following materials or activities are, or will be in foreseeable future, exposed to precipitation [Industrial Stormwater General Permit webpage](#):
 - A. Is anyone using, storing or cleaning industrial machinery or equipment in an area that is exposed to stormwater, or are there areas where residuals from using, storing or cleaning industrial machinery or equipment remain and are exposed to stormwater?
 - B. Are there materials or residuals on the ground or in stormwater inlets from spills/leaks?
 - C. Are materials or products from past industrial activity exposed to precipitation?
 - D. Is material handling equipment used/stored (except adequately maintained vehicles)?
 - E. Are materials or products exposed to precipitation during loading/unloading or transporting activities?
 - F. Are materials or products stored outdoors (except final products intended for outside use, e.g., new cars, where exposure to storm water does not result in the discharge of pollutants)?
 - G. Are materials contained in open, deteriorated or leaking storage drums, barrels, tanks, and similar containers?
 - H. Are materials or products handled/stored on roads or railways owned or maintained by the discharger?
 - I. Is waste material exposed to precipitation (except waste in covered, non-leaking containers, e.g., dumpsters)?
 - J. Does the application or disposal of process wastewater occur (unless otherwise permitted)?
 - K. Is there particulate matter or visible deposits of residuals from roof stacks/vents not otherwise regulated, i.e., under an air quality control permit, and evident in the storm water outflow?

3. To apply for an exemption, an electronic application must be submitted to Ecology's Water Quality Permitting Portal (WQWebPortal). The WQWebPortal can be accessed at <https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/Water-quality-permits-guidance/WQWebPortal-guidance>.
 - a. A Permittee is automatically granted a No Exposure exemption 90 days from Ecology's receipt of a complete and accurate No Exposure Certification Form, unless Ecology informs the applicant in writing or electronically within 90 days that it has denied or approved the request.
 - b. Ecology will automatically terminate permit coverage when it grants the No Exposure exemption to a permitted facility.
 - c. Facilities which are granted a No Exposure exemption must submit a No Exposure Certification Form to Ecology once every five years.
 - d. No Exposure exemptions are conditional. If there is a change at the facility that results in the exposure of industrial activities or materials to stormwater, the facility is required to immediately apply for and obtain a permit.

S2. APPLICATION FOR COVERAGE

A. Obtaining Permit Coverage

1. Unpermitted facilities that require coverage under this permit shall submit to Ecology, a complete and accurate **Notice of Intent (NOI)** using Ecology's Water Quality Permitting Portal – Permit Coverage Notice of Intent form as follows:
 - a. Existing Facilities
 - i. Unpermitted existing facilities that require coverage under this permit shall submit a complete and accurate permit application to Ecology.
 - ii. Existing facilities are facilities in operation prior to the effective date of this permit, January 1, 2020.
 - b. New Facilities

New facilities are facilities that begin operation on or after the effective date of this permit, January 1, 2020. All unpermitted new facilities shall:

 - i. Submit a complete and accurate permit application to Ecology at least 60 days before the commencement of stormwater discharge from the facility.
 - ii. The application shall include certification that the facility has met the applicable public notice and **State Environmental Policy Act (SEPA)** requirements in WAC 173-226-200(f).
 - c. Electronic Submittal

Use the Water Quality Permitting Portal (WQWebPortal) to submit a complete application for coverage to Ecology.

For more information about the WQWebPortal, visit:
<https://secureaccess.wa.gov/ecy/wqwebportal/>.

To access the WQWebPortal, you must first register for Secure Access Washington (SAW). For additional information about SAW, visit:
<https://support.secureaccess.wa.gov/>.

B. Modification of Permit Coverage

A Permittee anticipating a significant process change, or otherwise requesting a modification of permit coverage, shall submit a complete Modification of Coverage Form to Ecology. The Permittee shall:

1. Apply for modification of coverage at least 60 days before implementing a significant process change; or by May 15th prior to a Corrective Action deadline, if requesting a Level 2 or 3 time extension or waiver request per Condition S8.B-D.
2. Complete the public notice requirements in WAC 173-226-130(5) as part of a complete application for modification of coverage.
3. Comply with SEPA as part of a complete application for modification of coverage if undergoing a significant process change.

C. Permit Coverage Timeline

1. If the applicant does not receive notification from Ecology, permit coverage automatically commences on whichever of the following dates occurs **last**:
 - a. The 31st day following receipt by Ecology of a completed application for coverage.
 - b. The 31st day following the end of a 30-day public comment period.
 - c. The effective date of the general permit.
2. Ecology may need additional time to review the application:
 - a. If the application is incomplete.
 - b. If it requires additional site-specific information.
 - c. If the public requests a public hearing.
 - d. If members of the public file comments.
 - e. When more information is necessary to determine whether coverage under the general permit is appropriate.
3. When Ecology needs additional time:
 - a. Ecology will notify the applicant in writing within 30 days and identify the issues that the applicant must resolve before a decision can be reached.
 - b. Ecology will submit the final decision to the applicant in writing. If Ecology approves the application for coverage, coverage begins the 31st day following approval, or the date the approval letter is issued, whichever is later.

D. Transfer of Permit Coverage

Coverage under this general permit shall automatically transfer to a new discharger, if **all** of the following conditions are met:

1. The Permittee (existing discharger) and new discharger submit to Ecology a complete, written, signed agreement ([Transfer of Coverage Form](#)) containing a specific date for transfer of permit responsibility, coverage, and liability.
2. The type of industrial activities and practices remain substantially unchanged.
3. Ecology does not notify the Permittee of the need to submit a new application for coverage under the general permit or for an individual permit pursuant to Chapters 173-216, 173-220, and 173-226 WAC.
4. Ecology does not notify the existing discharger and new discharger of its intent to revoke coverage under the general permit. The transfer is effective on the date specified in the written agreement unless Ecology gives notice of revocation.

S3. STORMWATER POLLUTION PREVENTION PLAN (SWPPP)

A. General Requirements

All Permittees and applicants for coverage under this permit shall implement a **Stormwater Pollution Prevention Plan (SWPPP)** developed by *qualified personnel* as follows:

1. The SWPPP shall specify the **Best Management Practices (BMPs)** necessary to:
 - a. Provide **All Known, Available, and Reasonable methods of prevention, control, and Treatment (AKART)** of *stormwater pollution*.
 - b. Ensure the discharge does not cause or contribute to a violation of the Water Quality Standards.
 - c. Comply with applicable federal technology-based treatment requirements under 40 CFR § 125.3.
2. Proper selection and use of **Stormwater Management Manuals (SWMM)**.
 BMPs shall be consistent with:
 - a. *2019 Stormwater Management Manual for Western Washington*, for sites west of the crest of the Cascade Mountains; **or**
 - b. *2019 Stormwater Management Manual for Eastern Washington*, for sites east of the crest of the Cascade Mountains; **or**
 - c. Revisions to the manuals in S3.A.3. a & b, or other stormwater management guidance documents or manuals which provide an equivalent level of **pollution** prevention, that are approved by Ecology and incorporated into this permit in accordance with the permit modification requirements of WAC 173-226-230. For purposes of this section, the documents listed in Appendix 10 of the August 1, 2019 *Phase I Municipal Stormwater Permit* are hereby incorporated into this permit; **or**
 - d. Documentation in the SWPPP that the BMPs selected are **demonstrably equivalent** to practices contained in stormwater technical manuals approved by Ecology, including the proper selection, implementation, and maintenance of all applicable and appropriate best management practices for on-site pollution control.

3. Update of the SWPPP

- a. The Permittee shall modify the SWPPP if the owner/operator or the applicable local or state regulatory authority determines during inspections or investigations that the SWPPP is, or would be, ineffective in eliminating or significantly minimizing pollutants in stormwater discharges from the site. The Permittee shall modify the SWPPP:
 - i. As necessary to include additional or modified BMPs designed to correct problems identified.
 - ii. To correct the deficiencies identified in writing from Ecology within 30 days of notice.
- b. The Permittee shall modify the SWPPP whenever there is a change in design, construction, operation, or maintenance at the facility that significantly changes the nature of pollutants discharged in stormwater from the facility, or significantly increases the quantity of pollutants discharged.
- c. If a Permittee covered under the 2015 ISGP needs to update their SWPPP to be consistent with the 2020 ISGP, the update shall be completed by January 30, 2020.

4. Other Pollution Control Plans

The Permittee may incorporate by reference applicable portions of plans prepared for other purposes at their facility. Plans or portions of plans incorporated by reference into a SWPPP become enforceable requirements of this permit and must be available along with the SWPPP, as required in S9.F. A Pollution Prevention Plan prepared under the Hazardous Waste Reduction Act, Chapter 70.95C RCW, is an example of such a plan.

5. Signatory Requirements

The Permittee shall sign and certify all SWPPPs in accordance with General Condition G2, each time they revise or modify a SWPPP to comply with Conditions S3.A.4 (Update of the SWPPP), S7 (Inspections) or S8 (Corrective Actions). The SWPPP Certification Form is contained in [Appendix 3](#) of this permit and on Ecology's industrial stormwater website.

B. Specific SWPPP Requirements

The SWPPP shall contain a site map, a detailed assessment of the facility, a detailed description of the BMPs, Spill Prevention and Emergency Cleanup Plan, and a sampling plan. The Permittee shall identify any parts of the SWPPP which the facility wants to claim as confidential business information.

1. The site map shall identify(site map may be multiple pages if needed):
 - a. The scale or include relative distances between significant structures and drainage systems.
 - b. The size of the property in acres.
 - c. The location and extent of all buildings, structures and all impervious surfaces.
 - d. Direction of stormwater flow (use arrows).
 - e. Locations of all structural source control BMPs.
 - f. Locations of all receiving water (including wetlands and drainage ditches) in the immediate vicinity of the facility.

- g. Conditionally approved non-stormwater discharges.
 - h. Areas of existing and potential soil **erosion** that could result in the discharge of a **significant amount** of turbidity, sediment, or other pollutants.
 - i. Locations of all stormwater conveyances including ditches, pipes, catch basins, vaults, ponds, swales, etc.
 - j. Locations of actual and potential pollutant sources.
 - k. Locations of all stormwater monitoring points.
 - l. The stormwater drainage areas for each stormwater discharge point off site (including discharges to groundwater).
 - m. Locations of stormwater inlets and outfalls with a unique identification number for each sampling point and discharge point, indicating any that are identified as substantially identical, and identify, by name, any other party other than the Permittee that owns any stormwater drainage or discharge structures.
 - n. Combined sewers or MS4s and where stormwater discharges to them.
 - o. Locations of fueling and **vehicle** maintenance areas.
 - p. Locations and sources of run-on to your site from adjacent properties that may contain pollutants.
2. The facility assessment shall include a description of the facility; an inventory of facility activities and equipment that contribute to or have the potential to contribute any pollutants to stormwater; and, an inventory of materials that contribute to or have the potential to contribute pollutants to stormwater.
- a. The facility description shall describe:
 - i. The industrial activities conducted at the site.
 - ii. Regular business hours and seasonal variations in business hours or industrial activities.
 - iii. The general layout of the facility including buildings and storage of raw materials, and the flow of goods and materials through the facility.
 - b. The inventory of industrial activities shall identify all areas associated with industrial activities (see [Table 1](#)) that have been or may potentially be sources of pollutants, including, but not limited to, the following:
 - i. Loading and unloading of dry bulk materials or liquids.
 - ii. Outdoor storage of materials or products.
 - iii. Outdoor manufacturing and processing.
 - iv. On-site dust or particulate generating processes.
 - v. On-site waste treatment, storage, or disposal.
 - vi. Vehicle and equipment fueling, maintenance, and/or cleaning (includes washing).
 - vii. Roofs or other surfaces exposed to **air emissions** from a manufacturing building or a process area.

- viii. Roofs or other surfaces composed of materials that may be mobilized by stormwater (e.g., galvanized roofs, galvanized fences).
- c. The inventory of materials shall list:
 - i. The types of materials handled at the site that potentially may be exposed to precipitation or runoff and could result in stormwater pollution.
 - ii. A short narrative for each material describing the potential of the pollutant to be present in stormwater discharges. The Permittee shall update this narrative when data become available to verify the presence or absence of these pollutants.
 - iii. A narrative description of any potential sources of pollutants from past activities, materials and spills that were previously handled, treated, stored, or disposed of in a manner to allow ongoing exposure to stormwater. Include the method and location of on-site storage or disposal. List significant spills and significant leaks of toxic or hazardous pollutants.
- 3. The SWPPP shall identify specific individuals by name or by title within the organization (pollution prevention team) whose responsibilities include: SWPPP development, implementation, maintenance, and modification.
- 4. Best Management Practices (BMPs)
 - a. General BMP Requirements

The Permittee shall describe each BMP selected to eliminate or reduce the potential to contaminate stormwater and prevent violations of water quality standards. The SWPPP must explain in detail how and where the selected BMPs will be implemented.
 - b. The Permittee shall include each of the following mandatory BMPs in the SWPPP and implement the BMPs. The Permittee may omit individual BMPs if site conditions render the BMP unnecessary or infeasible and the Permittee provides alternative and equally effective BMPs. The Permittee must justify each BMP omission in the SWPPP.
 - i. **Operational Source Control BMPs**
 - 1) The SWPPP shall include the Operational **Source Control BMPs** listed as “applicable” in Ecology’s SWMMs, or other guidance documents or manuals approved in accordance with S3.A.3.c.
 - 2) **Good Housekeeping:** The SWPPP shall include BMPs that define ongoing maintenance and cleanup, as appropriate, of areas which may contribute pollutants to stormwater discharges. The SWPPP shall include the schedule/frequency for completing each housekeeping task, based upon industrial activity, sampling results and observations made during inspections. The Permittee shall:
 - a) Vacuum paved surfaces with a vacuum sweeper (or a sweeper with a vacuum attachment) to remove accumulated pollutants a minimum of once per quarter.
 - b) Identify and control all on-site sources of dust to minimize stormwater contamination from the deposition of dust on areas exposed to precipitation.

- c) Inspect and maintain bag houses monthly to prevent the escape of dust from the system. Immediately remove any accumulated dust at the base of exterior bag houses.
 - d) Keep all dumpsters under cover or fit with a storm resistant lid that must remain closed when not in use. (Tarps are not considered storm resistant.)
- 3) **Preventive Maintenance:** The SWPPP shall include BMPs to inspect and maintain the stormwater drainage, source controls, treatment systems (if any), and plant equipment and systems that could fail and result in contamination of stormwater. The SWPPP shall include the schedule/frequency for completing each maintenance task. The Permittee must:
- a) Clean catch basins when the depth of debris reaches 60% of the sump depth. In addition, the Permittee must keep the debris surface at least 6 inches below the outlet pipe.
 - b) Maintain ponds, tanks/vaults, catch basins, swales, filters, oil/water separators, drains, and other stormwater drainage/treatment facilities in accordance with the maintenance standards set forth in the applicable Stormwater Management Manual, other guidance documents or manuals approved in accordance with S3.A.3.c, demonstrably **equivalent BMPs** per S3.A.3.d, or an O&M Manual submitted to Ecology in accordance with S8.D.
 - c) Inspect all equipment and vehicles during monthly site inspections for leaking fluids such as oil, antifreeze, etc. Take leaking equipment and vehicles out of service or prevent leaks from spilling on the ground until repaired.
 - d) Clean up spills and leaks immediately (e.g., using absorbents, vacuuming, etc.) to prevent the discharge of pollutants.
- 4) **Spill Prevention and Emergency Cleanup Plan (SPECP):** The SWPPP shall include a SPECP that includes BMPs to prevent spills that can contaminate stormwater. The SPECP shall specify BMPs for material handling procedures, storage requirements, cleanup equipment and procedures, and spill logs, as appropriate. The Permittee shall:
- a) Store all hazardous substances, petroleum/oil liquids, and other chemical solid or liquid materials that have potential to contaminate stormwater on an impervious surface that is surrounded with a containment berm or dike that is capable of containing 10% of the total enclosed tank volume or 110% of the volume contained in the largest tank, whichever is greater, or use double-walled tanks.
 - b) Prevent precipitation from accumulating in containment areas with a roof or equivalent structure or include a plan on how it will manage and dispose of accumulated water if a containment area cover is not practical.

- c) Locate spill kits within 25 feet of all stationary fueling stations, fuel transfer stations, mobile fueling units, and used oil storage/transfer stations. At a minimum, spill kits shall include:
 - i) Oil absorbents capable of absorbing 15 gallons of fuel. Facilities with a Spill Prevention, Control, and Countermeasures Plan (SPCCP) must have enough oil absorbents capable of absorbing the minimum anticipated spill amount or potential discharge volume identified in that plan if more than 15 gallons.
 - ii) A storm drain plug or cover kit.
 - iii) A non-water containment boom, a minimum of 10 feet in length with a 12-gallon absorbent capacity.
 - iv) A non-metallic shovel.
 - v) Two 5-gallon buckets with lids.
 - d) Not lock shut-off fueling nozzles in the open position. Do not “top-off” tanks being refueled.
 - e) Block, plug or cover storm drains that receive runoff from areas where fueling, during fueling.
 - f) Use drip pans or equivalent containment measures during all petroleum transfer operations.
 - g) Locate materials, equipment, and activities so that leaks are contained in existing containment and diversion systems (confine the storage of leaky or leak-prone vehicles and equipment awaiting maintenance to protected areas).
 - h) Use drip pans and absorbents under or around leaky vehicles and equipment or store indoors where feasible. Drain fluids from equipment and vehicles prior to on-site storage or disposal.
 - i) Maintain a spill log that includes the following information for chemical and petroleum spills: date, time, amount, location, and reason for spill; date/time cleanup completed, notifications made and staff involved.
- 5) **Employee Training:** The SWPPP shall include BMPs to provide SWPPP training for employees who have duties in areas of industrial activities subject to this permit. At a minimum, the training plan shall include:
- a) The content of the training.
 - i) An overview of what is in the SWPPP.
 - ii) How employees make a difference in complying with the SWPPP and preventing contamination of stormwater.
 - iii) Spill response procedures, good housekeeping, maintenance requirements, and material management practices.

- b) How the Permittee will conduct training.
 - c) The frequency/schedule of training. The Permittee shall train employees annually, at a minimum.
 - d) A log of the dates on which specific employees received training.
- 6) **Inspections and Recordkeeping:** The SWPPP shall include documentation of procedures to ensure compliance with permit requirements for inspections and recordkeeping. At a minimum, the SWPPP shall:
- a) Identify facility personnel who will inspect designated equipment and facility areas as required in Condition S7.
 - b) Contain a visual inspection report or check list that includes all items required by Condition S7.C.
 - c) Provide a tracking or follow-up procedure to ensure that a report is prepared and any appropriate action taken in response to visual inspections.
 - d) Define how the Permittee will comply with signature requirements and records retention identified in Special Condition S9, Reporting and Recordkeeping Requirements.
 - e) Include a certification of compliance with the SWPPP and permit for each inspection using the language in S7.C.1.c.
 - f) Include all inspection reports completed by the Permittee (S7.C).
- 7) **Illicit Discharges:** The SWPPP shall include measures to identify and eliminate the discharge of **process wastewater, domestic wastewater, noncontact cooling water**, and other illicit discharges, to stormwater sewers, or to surface waters and groundwaters of the State. The Permittee can find BMPs to identify and eliminate illicit discharges in Volume IV of Ecology's SWMM for Western Washington and Chapter 8 of the SWMM for Eastern Washington.

Water from washing vehicles or equipment, buildings, pavement, steam cleaning and/or pressure washing is considered process wastewater. The Permittee must not allow this process wastewater to comeingle with stormwater or enter storm drains; and must collect in a tank for off-site disposal, or discharge it to a sanitary sewer, with written approval from the local sewage authority.

ii. **Structural Source Control BMPs**

- 1) The SWPPP shall include the structural source control BMPs listed as "applicable" in Ecology's SWMMs, or other guidance documents or manuals approved in accordance with S3.A.3.c.
- 2) The SWPPP shall include BMPs to minimize the exposure of manufacturing, processing, and material storage areas (including loading and unloading, storage, disposal, cleaning, maintenance, and fueling operations) to rain, snow,

snowmelt, and *runoff* by either locating these industrial materials and activities inside or protecting them with storm resistant coverings.

Permittees shall:

- a) Use grading, berming, or curbing to prevent runoff of contaminated flows and divert run-on away from these areas.
- b) Perform all cleaning operations indoors, under cover, or in bermed areas that prevent stormwater runoff and run-on, also that capture any overspray.
- c) Ensure that all washwater drains to a collection system that directs the washwater to further treatment or storage and not to the ***stormwater drainage system***.

iii. ***Treatment BMPs***

The Permittee shall:

- 1) Use treatment BMPs consistent with the applicable documents referenced in Condition S3.A.3.
- 2) Employ oil/water separators, booms, skimmers or other methods to eliminate or minimize oil and grease contamination of stormwater discharges.
- 3) Obtain Ecology approval before beginning construction/installation of all treatment BMPs that include the addition of chemicals to provide treatment.

iv. **Stormwater Peak Runoff Rate and Volume Control BMPs**

Facilities with ***new development*** or redevelopment shall evaluate whether flow control BMPs are necessary to satisfy the state's AKART requirements, and prevent violations of water quality standards. If flow control BMPs are required, they shall be selected according to S3.A.3.

v. ***Erosion and Sediment Control BMPs***

The SWPPP shall include BMPs necessary to prevent the erosion of soils and other earthen materials (crushed rock/gravel, etc.), control off-site sedimentation, and prevent violations of water quality standards. The Permittee shall implement and maintain:

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

5. Sampling Plan

The SWPPP shall include a sampling plan. The plan shall:

- a. Identify points of discharge to surface water, storm sewers, or discrete groundwater infiltration locations, such as dry wells or detention ponds.
- b. Include documentation of why applicable parameters are not sampled at each discharge point per S4.B.3 (if applicable). The required documentation includes:
 - i. Location of which discharge points the Permittee does not sample applicable parameters because the pollutant concentrations are substantially identical to a discharge point being sampled.
 - ii. General industrial activities conducted in the drainage area of each discharge point.
 - iii. Best Management Practices conducted in the drainage area of each discharge point.
 - iv. Exposed materials located in the drainage area of each discharge point that are likely to be significant contributors of pollutants to stormwater discharges.
 - v. Impervious surfaces in the drainage area that could affect the percolation of stormwater runoff into the ground (e.g., asphalt, crushed rock, grass).
 - vi. Reasons why the Permittee expects the discharge points to discharge substantially identical effluents.
- c. Identify each sampling location by its unique identifying number such as A1, A2.
- d. Identify staff responsible for conducting stormwater sampling.
- e. Specify procedures for sample collection and handling.
- f. Specify procedures for sending samples to a laboratory.
- g. Identify parameters for analysis, holding times and preservatives, laboratory **quantitation levels**, and analytical methods.
- h. Specify the procedure for submitting results to Ecology.

S4. GENERAL SAMPLING REQUIREMENTS

A. General Requirements

The Permittee shall conduct sampling of stormwater in accordance with this permit and the SWPPP.

B. Sampling Requirements

1. Sample Timing and Frequency

- a. The Permittee shall sample the discharge from each designated location at least once per quarter:

1st Quarter = January, February, and March

2nd Quarter = April, May, and June

3rd Quarter = July, August, and September

4th Quarter = October, November, and December

- b. Permittees shall sample the stormwater discharge from the **first fall storm event** each year. First fall storm event means the first time on or after September 1st of each year that precipitation occurs and results in a stormwater discharge from a facility.
 - c. Permittees shall collect samples within the first 12 hours of stormwater discharge events. If it is not possible to collect a sample within the first 12 hours of a stormwater discharge event, the Permittee must collect the sample as soon as practicable after the first 12 hours, and keep documentation with the sampling records (Condition S4.B.3) explaining why they could not collect samples within the first 12 hours; or if it is unknown (e.g., discharge was occurring during start of regular business hours).
 - d. The Permittee shall obtain **representative samples**, which may be a single grab sample, a time-proportional sample, or a flow-proportional sample.
 - e. Permittees need not sample outside of **regular business hours**, during **unsafe conditions**, or during quarters where there is no discharge, but shall submit a Discharge Monitoring Report each reporting period (Condition S9.A).
 - f. Permittees monitoring more than once per quarter shall **average** all of the monitoring results for each parameter (except pH and visible oil sheen) and compare the average value to the **benchmark** value. However, if Permittees collect more than one sample during a 24-hour period, they must first calculate the **daily average** of the individual grab sample results collected during that 24-hour period; then use the daily average to calculate a quarterly average.
2. Sample Location(s)
- a. The Permittee shall designate sampling location(s) at the point(s) where it discharges stormwater associated with industrial activity off-site.
 - b. The Permittee is not required to sample on-site discharges to ground (e.g., infiltration) or sanitary sewer discharges, unless specifically required by Ecology (Condition G12).
 - c. Ecology may require sampling points located in areas where unsafe conditions prevent regular sampling be moved to areas where regular sampling can occur.
 - d. The Permittee shall notify Ecology of any changes or updates to sample locations, discharge points, and/or outfalls by submitting an "Industrial Stormwater General Permit Discharge/Sample Point Update Form" to Ecology. The Permittee may be required to provide additional information to Ecology prior to changing sampling locations.
3. Substantially Identical Discharge Points
- a. The Permittee shall sample each distinct point of discharge off-site except as otherwise exempt from monitoring as a **substantially identical discharge point** per S3.B.5.b. If applicable, the Permittee is only required to monitor applicable parameters at one of the substantially identical discharge points.

The Permittee shall notify Ecology of any changes or updates to sample locations, discharge points, and/or outfalls by submitting an "[Industrial Stormwater General Permit Discharge/Sample Point Update Form](#)" to Ecology.

4. Sample Documentation

For each stormwater sample taken, the Permittee shall record the following information and retain it on-site for Ecology review:

- a. Sample date
- b. Sample time
- c. A notation describing if the Permittee collected the sample within the first 12 hours of stormwater discharge events; or, if it is unknown (e.g., discharge was occurring during start of regular business hours).
- d. An explanation of why the permittee could not collect a sample within the first 12 hours of a stormwater discharge event, if it was not possible. Or, if it is unknown, an explanation of why it is unknown if a sample was collected within or outside the first 12 hours of stormwater discharge.
- e. Sample location (using SWPPP identifying number)
- f. Method of sampling, and method of sample preservation, if applicable.
- g. Individual who performed the sampling

5. Laboratory Documentation

The Permittee shall retain laboratory reports on-site for Ecology review and shall ensure that all laboratory reports providing data for all parameters include the following information:

- a. Date of analysis
- b. Parameter name
- c. CAS number, if applicable
- d. Analytical method(s)
- e. Individual who performed the analysis
- f. Method detection limit (MDL)
- g. Laboratory quantitation level (QL) achieved by the laboratory
- h. Reporting units
- i. Sample result
- j. Quality assurance/quality control data

- 6. The Permittee shall maintain the original records onsite and make them available to Ecology upon request.
- 7. The Permittee can reduce monitoring to once a year for a period of three years (12 quarters) based on consistent attainment of benchmark values when:
 - a. Eight consecutive quarterly samples demonstrate a reported value equal to or less than the benchmark value; or for pH, within the range of 5.0 – 9.0.

- b. For purposes of tallying consecutive quarterly samples:
 - i. Do not include any quarters in which the Permittee did not collect a sample, but should have (e.g., discharge(s) occurred during normal working hours, and during safe conditions; but no sample was collected during the entire quarter). If this occurs, the tally of consecutive quarterly samples is reset to zero.
 - ii. Do not include any quarters in which the Permittee did not collect a sample because there was no discharge during the quarter (or the discharges during the quarter occurred outside normal working hours or during unsafe conditions). These quarters are not included in the calculation of eight consecutive quarters, but do not cause the tally to be reset; i.e., they are skipped over.
- c. The annual sample must be taken during the 4th quarter. A facility may average the annual sample with any other samples taken over the course of the 4th quarter. The annual sample does not include the first fall storm event.
- d. A Permittee whose annual sample exceeds the benchmark during consistent attainment is no longer allowed to claim consistent attainment. The Permittee must begin sampling in accordance with S4.B.
- 8. A Permittee who has a **significant process change** shall not use previous sampling results to demonstrate consistent attainment.
- 9. Suspension of sampling based on consistent attainment does not apply to pollutant parameters subject to “report only” requirements, oil sheen, or numeric effluent limits based on federal Effluent Limitation Guidelines (Condition S5) or Section 303(d) of the Clean Water Act (Condition S6).

C. Analytical Procedures for Sampling Requirements

The Permittee shall ensure that analytical methods used to meet the sampling requirements in this permit conform to the latest revision of the [Guidelines Establishing Test Procedures for the Analysis of Pollutants](#) contained in 40 CFR § 136, unless specified otherwise in this permit.

D. Laboratory Accreditation

- 1. The Permittee shall ensure that all analytical data required by Ecology is prepared by a laboratory registered or accredited under the provisions of, Accreditation of Environmental Laboratories, Chapter 173-50 WAC.
- 2. **Turbidity** and pH are exempt from this requirement, unless the laboratory must be registered or accredited for any other parameter.

55. BENCHMARKS, EFFLUENT LIMITATIONS AND SPECIFIC SAMPLING REQUIREMENTS

A. Benchmarks and Sampling Requirements

- 1. Permittees shall sample their stormwater discharges as specified in Condition S4 and as specified in Table 2.

2. Additional requirements apply to specific industrial categories (S5.B), facilities subject to effluent limitation guidelines (S5.C), and certain discharges to impaired waterbodies (S6).

If a Permittee's discharge exceeds a benchmark listed in Table 2, the Permittee shall take the actions specified in Condition S8.

Table 2: Benchmarks and Sampling Requirements Applicable to All Facilities

Parameter	Units	Benchmark Value	Analytical Method	Laboratory Quantitation Level ^a	Minimum Sampling Frequency ^b
Turbidity	NTU	25	EPA 180.1 Meter	0.5	1/quarter
pH	Standard Units	Between 5.0 and 9.0	Meter/Paper ^c	±0.5	1/quarter
Oil Sheen	Yes/No	No Visible Oil Sheen	N/A	N/A	1/quarter
Copper, Total	µg/L	Western WA: 14 Eastern WA: 32	EPA 200.8	2.0	1/quarter
Zinc, Total	µg/L	117	EPA 200.8	2.5	1/quarter

^a The Permittee shall ensure laboratory results comply with the quantitation level (QL) specified in the table. However, if an alternate method from 40 CFR Part 136 is sufficient to produce measurable results in the sample, the Permittee may use that method for analysis. If the Permittee uses an alternative method it must report the test method and QL on the discharge monitoring report. The permittee must also upload the QA/QC documentation from the lab on the QL development.

^b 1/quarter means at least one sample taken each quarter, year-round.

^c Permittees shall use either a calibrated pH meter or narrow-range pH indicator paper with a resolution of ± 0.5 SU or better.

B. Additional Sampling Requirements for Specific Industrial Groups

1. In addition to the requirements in Table 2, all Permittees identified by an industrial activity in Table 3 shall sample stormwater discharges as specified in Condition S4 and in Table 3.
2. If a discharge exceeds a benchmark listed in Table 3, the Permittee shall take the actions specified in Condition S8.

Table 3: Additional Benchmarks and Sampling Requirements Applicable to Specific Industries

Parameter	Units	Benchmark Value	Analytical Method	Laboratory Quantitation Level ^a	Minimum Sampling Frequency ^b
1. Chemical and Allied Products (325xxx), Food and Kindred Products (311xxx-312xxx)					
BOD ₅	mg/L	30	SM 5210B	2	1/quarter
Nitrate + Nitrite Nitrogen, as N	mg/L	0.68	SM4500 NO ₃ -E/F/H	0.10	1/quarter
Phosphorus, Total	mg/L	2.0	EPA 365.1	0.01	1/quarter
2. Primary Metals(331xxx), Metals Mining (2122xx), Automobile Salvage and Scrap Recycling (42314x and 42393x), Metals Fabricating (332xxx), Machinery Manufacturing (333xxx)					
Lead, Total	µg/L	64.6	EPA 200.8	0.5	1/quarter
Petroleum Hydrocarbons (Diesel Fraction)	mg/L	10	NWTPH-Dx	0.25	1/quarter
3. Hazardous Waste Treatment, Storage and Disposal Facilities and Dangerous Waste Recyclers subject to the provisions of Resource Conservation and Recovery Act (RCRA) Subtitle C					
Chemical Oxygen Demand (COD)	mg/L	120	SM5220-D	10	1/quarter
Total Ammonia (as N)	mg/L	2.1	SM4500-NH ₃ - GH	0.02	1/quarter
TSS	mg/L	100	SM2540-D	5	1/quarter
Arsenic, Total	µg/L	150	EPA 200.8	0.5	1/quarter
Cadmium, Total	µg/L	2.1	EPA 200.8	0.25	1/quarter
Cyanide, Total	µg/L	22	EPA 335.4	10	1/quarter
Lead, Total	µg/L	64.6	EPA 200.8	0.5	1/quarter
Mercury, Total	µg/L	1.4	EPA 1631E	0.0005	1/quarter
Selenium, Total	µg/L	5.0	EPA 200.8	1.0	1/quarter
Silver, Total	µg/L	3.4	EPA 200.8	0.2	1/quarter
Petroleum Hydrocarbons (Diesel Fraction)	mg/L	10	NWTPH-Dx	0.25	1/quarter
4. Air Transportation^c (481xxx)					
Total Ammonia (as N)	mg/L	2.1	SM4500-NH ₃ - GH	0.02	1/quarter
BOD ₅	mg/L	30	SM 5210B	2	1/quarter
COD	mg/L	120	SM5220-D	10	1/quarter

Parameter	Units	Benchmark Value	Analytical Method	Laboratory Quantitation Level ^a	Minimum Sampling Frequency ^b
Nitrate + Nitrite Nitrogen, as N	mg/L	0.68	SM 4500-NO3-E/F/H	0.10	1/quarter
Petroleum Hydrocarbons (Diesel Fraction)	mg/L	10	NWTPH-Dx	0.25	1/quarter
5. Timber Product Industry (321xxx), Paper and Allied Products (322xxx), Wood Product Manufacturing (321xxx)					
COD	mg/L	120	SM5220-D	10	1/quarter
TSS	mg/L	100	SM2540-D	5	1/quarter
6. Transportation (482xxx-485xxx), Petroleum Bulk Stations and Terminals (4247xx), Transportation Equipment Manufacturing (336xxx), Construction, Transportation, Mining, and Forestry Machinery and Equipment Rental and Leasing (53421)					
Petroleum Hydrocarbons (Diesel Fraction)	mg/L	10	NWTPH-Dx	0.25	1/quarter
7. Coal Mining (2121xx), Oil and Gas Extraction (2111xx), Nonmetallic Mining and Quarrying, except Fuels (2123xx), Petroleum and Coal Products Manufacturing (324xxx), Nonmetallic Mineral Product Manufacturing (327xxx), Steam Electric Power Generation					
TSS	mg/L	100	SM2540-D	5	1/quarter
Petroleum Hydrocarbons (Diesel Fraction)	mg/L	10	NWTPH-Dx	0.25	1/quarter
8. Marine Industrial Construction (ECY003)					
Arsenic	µg/L	Report Only ^d	EPA 200.8	0.5	1/quarter
PAH compounds ^e	µg/L	Report Only ^d	EPA 610	10	1/quarter
p-cresol	µg/L	Report Only ^d	EPA 8270D	10	1/quarter
Phenol	µg/L	Report Only ^d	EPA 625.1	4.5	1/quarter
TSS	mg/L	100	SM2540-D	5	1/quarter
Petroleum Hydrocarbons (Diesel Fraction)	mg/L	10	NWTPH-Dx	0.25	1/quarter

^a The Permittee shall ensure laboratory results comply with the quantitation level (QL) specified in the table. However, if an alternate method from 40 CFR Part 136 is sufficient to produce measurable results in the sample, the Permittee may use that method for analysis. If the Permittee uses an alternative method it must report the test method and QL on the discharge monitoring report. If the Permittee is unable to obtain the required QL due to matrix effects, the Permittee must report the matrix-specific method detection level (MDL) and QL on the DMR. The permittee must also upload the QA/QC documentation from the lab on the QL development.

^b 1/quarter means at least one sample taken each quarter, year-round.

^c For airports where a single Permittee, or a combination of permitted facilities use more than 100,000 gallons of glycol-based deicing chemicals and/or 100 tons or more of urea on an average annual basis, monitor these additional five parameters in those discharge points that collect runoff from areas where deicing activities occur.

- ^d. A benchmark does not apply, but permittees must report the sampling result. "Report only" reporting may not be applied to consistent attainment. Ecology will use the data collected during this permit term to determine if the pollutants listed will need to be included in the next permit, and if so, develop benchmarks based on the data received and water quality criteria.
- ^e PAH Compounds include: acenaphthene, acenaphthylene, anthracene, benzo(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(ghi)perylene, benzo(k)fluoranthene, chrysene, dibenzo(a,h)anthracene, fluoranthene, fluorene, indeno(1,2,3-cd)pyrene, naphthalene, phenanthrene, and pyrene.

C. Landfills and Airports Subject to Effluent Limitation Guidelines

1. Permittees with discharges from the following activities shall comply with the effluent limits and monitor as specified in Condition S4 and Tables 4 and 5.
2. The discharge of the pollutants at a level more than that identified and authorized by this permit for these activities shall constitute a violation of the terms and conditions of this permit.
3. Permittees operating non-hazardous waste landfills subject to the provisions of 40 CFR §445 Subpart B shall not exceed the effluent limits⁴ listed in [Table 4](#).

⁴ As set forth in 40 CFR §445 Subpart B, these numeric effluent limits apply to contaminated stormwater discharges from Municipal Solid Waste Landfills that have not been closed in accordance with 40 CFR §258.60, and to contaminated stormwater discharges from those landfills that are subject to the provisions of 40 CFR §257 except for discharges from any of the following facilities: (a) landfills operated in conjunction with other industrial or commercial operations, when the landfill receives only wastes generated by the industrial or commercial operation directly associated with the landfill; (b) landfills operated in conjunction with other industrial or commercial operations, when the landfill receives wastes generated by the industrial or commercial operation directly associated with the landfill and also receives other wastes, provided that the other wastes received for disposal are generated by a facility that is subject to the same provisions in 40 CFR Subchapter N as the industrial or commercial operation, or that the other wastes received are of similar nature to the wastes generated by the industrial or commercial operation; (c) landfills operated in conjunction with CWT facilities subject to 40 CFR §437, so long as the CWT facility commingles the landfill wastewater with other non-landfill wastewater for discharge. A landfill directly associated with a CWT facility is subject to this part if the CWT facility discharges landfill wastewater separately from other CWT wastewater or commingles the wastewater from its landfill only with wastewater from other landfills; or (d) landfills operated in conjunction with other industrial or commercial operations when the landfill receives wastes from public service activities, so long as the company owning the landfill does not receive a fee or other remuneration for the disposal service.

Table 4: Effluent Limits Applicable to Non-Hazardous Waste Landfills Subject to 40 CFR Part 445 Subpart B

Parameter	Units	Average Monthly ^a	Maximum Daily ^b	Analytical Method ^c	Laboratory Quantitation Level ^d	Minimum Sampling Frequency ^e
BOD ₅	mg/L	37	140	EPA 405.1 or SM 5210B	2	1/quarter
TSS	mg/L	27	88	SM2540-D	5	1/quarter
Total Ammonia (as N)	mg/L	4.9	10	SM4500-NH3-GH	0.02	1/quarter
Alpha Terpineol	µg/L	16	33	EPA 625.1	N/A ^f	1/quarter
Benzoic Acid	µg/L	71	120	EPA 625.1	N/A ^f	1/quarter
p-Cresol (4-methylphenol)	µg/L	14	25	EPA 8270D	10	1/quarter
Phenol	µg/L	15	26	EPA 625.1	4.5	1/quarter
Zinc, Total	µg/L	110	200	EPA 200.8	2.5	1/quarter
pH	SU	Between 6.0 and 9.0		Meter	±0.1	1/quarter

- a. Average monthly effluent limit means the highest allowable average of daily discharges over a calendar month. To calculate the discharge value to compare to the limit, you add the value of each daily discharge measured during a calendar month and divide this sum by the total number of daily discharges measured. If only one sample is taken during the calendar month, the average monthly effluent limitation applies to that sample. If only one sample is taken during the reporting period, the average monthly effluent limitation applies to that sample.
- b. Maximum daily effluent limit means the highest allowable daily discharge. The daily discharge means the discharge of a pollutant measured during a calendar day. The daily discharge is the average measurement of the pollutant over the day; this does not apply to pH.
- c. Or other equivalent EPA-approved method with the same or lower quantitation level.
- d. The Permittee shall ensure laboratory results comply with the quantitation level (QL) specified in the table. However, if an alternate method from 40 CFR §136 is sufficient to produce measurable results in the sample, the Permittee may use that method for analysis. If the Permittee uses an alternative method it must report the test method and QL on the discharge monitoring report. The permittee must also upload the QA/QC documentation from the lab on the QL development.
- e. 1/quarter means at least one sample taken each quarter, year-round.
- f. EPA method 625.1 does not list quantitation levels for this pollutant. Reporting limits will be performance based and laboratory reporting levels must be included on the DMR.

4. Permittees operating airlines and airports subject to provisions of 40 CFR §449 shall comply with the following:
 - a. **Airfield Pavement** Deicing. Existing and new primary airports with 1,000 or more annual jet departures (**annual non-propeller aircraft departures**) that discharge wastewater associated with airfield pavement **deicing** commingled with stormwater must either use non-urea-containing deicers⁵, or meet the effluent limit in Table 5 at every discharge point, prior to any dilution or any commingling with any non-deicing discharge.

Table 5: Effluent Limit Applicable to Airports Subject to 40 CFR Part 449

Parameter	Units	Maximum Daily ^a	Analytical Method ^b	Laboratory Quantitation Level ^c	Minimum Sampling Frequency ^d
Total Ammonia (as N)	mg/L	14.7	SM4500-NH3-GH	0.02	1/quarter

- a. Maximum daily effluent limit means the highest allowable daily discharge. The daily discharge means the discharge of a pollutant measured during a calendar day. The daily discharge is the average measurement of the pollutant over the day.
- b. Or other equivalent *EPA*-approved method with the same or lower quantitation level.
- c. The Permittee shall ensure laboratory results comply with the quantitation level (QL) specified in the table. However, if an alternate method from 40 CFR Part 136 is sufficient to produce measurable results in the sample, the Permittee may use that method for analysis. If the Permittee uses an alternative method it must report the test method and QL on the discharge monitoring report. If the Permittee is unable to obtain the required QL due to matrix effects, the Permittee must report the matrix-specific method detection level (MDL) and QL on the DMR. The permittee must also upload the QA/QC documentation from the lab on the QL development.
- d. 1/quarter means at least one sample taken each quarter, year-round.

D. Conditionally Authorized Non-Stormwater Discharges

1. The categories and sources of non-stormwater discharges identified in Condition S5.D.2, below, are conditionally authorized, provided:
 - a. The discharge is otherwise consistent with the terms and conditions of this permit, including Condition S5, S6, and S10.
 - b. The Permittee conducts the following assessment for each non-stormwater discharge (except for S5.D.2.a & f) and documents the assessment in the SWPPP, consistent with Condition S3.B.2. The Permittee shall:
 - i. Identify each source.
 - ii. Identify the location of the discharge into the stormwater collection system.
 - iii. Characterize the discharge including estimated flows or flow volume, and likely pollutants which may be present.

⁵ Affected Permittees must certify in its annual report that it does not use airfield deicing products that contain urea, or meet the numeric limit in Table 5 (Condition S9.B.4).

- iv. Evaluate and implement available and reasonable source control BMPs to reduce or eliminate the discharge.
 - v. Evaluate compliance of the discharge with the state water quality standards.
 - vi. Identify appropriate BMPs for each discharge to control pollutants and or flow volumes.
- 2. Conditionally authorized non-stormwater discharges include:
 - a. Discharges from emergency firefighting activities.
 - b. Fire protection system flushing, testing, and maintenance.
 - c. Discharges of potable water including water line flushing, provided that water line flushing must be de-chlorinated prior to discharge.
 - d. Uncontaminated air conditioning or compressor condensate.
 - e. Landscape watering and irrigation drainage.
 - f. Uncontaminated groundwater or spring water.
 - g. Discharges associated with dewatering of foundations, footing drains, or utility vaults where flows are not contaminated with process materials such as solvents.
 - h. Incidental windblown mist from cooling towers that collects on rooftops or areas adjacent to the cooling tower. This does not include intentional discharges from cooling towers such as piped cooling tower blow down or drains.

E. Prohibited Discharges

Unless authorized by a separate NPDES or state waste discharge permit, the following discharges are prohibited:

- 1. The discharge of process wastewater is not authorized. Stormwater that commingles with process wastewater is considered process wastewater.
- 2. Illicit discharges are not authorized by this permit. Conditionally authorized non-stormwater discharges in compliance with Condition S5.D are not illicit discharges.

F. General Prohibitions

Permittees shall manage stormwater to prevent the discharge of:

- 1. Synthetic, natural, or processed oil or oil-containing products as identified by an oil sheen, and
- 2. Trash and floating debris.

S6. DISCHARGES TO IMPAIRED WATERS

A. General Requirements for Discharges to Impaired Waters

Permittees that discharge to an impaired waterbody, either directly or indirectly through a stormwater drainage system, shall conduct sampling and inspections in accordance with Conditions S4, S5, S6, and S7.

B. Eligibility for Coverage of New Discharges to Impaired Waters

Facilities that meet the definition of new discharger and discharge to a **303(d)-listed waterbody** (Category 5), or an impaired waterbody with an **applicable TMDL** (Category 4A), or a pollution control program for sediment cleanup (i.e., a Category 4B sediment-impaired waterbody) are not eligible for coverage under this permit unless the facility:

1. Prevents all exposure to stormwater of the pollutant(s) for which the waterbody is impaired, and retains documentation of procedures taken to prevent exposure onsite with its SWPPP; **or**
2. Documents that the pollutant(s) for which the waterbody is impaired is not present at the facility, and retains documentation of this finding with the SWPPP; **or**
3. Provides Ecology with data showing that the discharge is not expected to cause or contribute to an exceedance of a water quality standard, and retain such data onsite with its SWPPP. The facility must provide data and other technical information to Ecology sufficient to demonstrate:
 - a. For discharges to waters without an EPA approved or established TMDL, that the discharge of the pollutant for which the water is impaired will meet instream water quality criteria at the point of discharge to the waterbody; **or**
 - b. For discharges to waters with an EPA approved or established TMDL, that there are sufficient remaining **wasteload allocations** in an EPA approved or established TMDL to allow industrial stormwater discharge and that existing dischargers to the waterbody are subject to compliance schedules designed to bring the waterbody into attainment with water quality standards.

Facilities are eligible for coverage under this permit if Ecology issues permit coverage based upon an affirmative determination that the discharge will not cause or contribute to the existing impairment.

C. Additional Sampling Requirements and Effluent Limits for Discharges to Certain Impaired Waters and Puget Sound Sediment Cleanup Sites

1. Permittees discharging to a 303(d)-listed waterbody (Category 5), either directly or indirectly through a stormwater drainage system, shall comply with the applicable sampling requirements and numeric effluent limits in [Table 6](#). If a discharge point is subject to an impaired waterbody effluent limit (Condition S6.C) for a parameter that also has a benchmark, the effluent limit supersedes the benchmark. Permittees discharging to a 303(d) – listed waterbody (Category 5) that was not 303(d)-listed at the time of 2015 permit coverage shall comply with the applicable sampling requirements and numeric effluent limits in Table 6 as soon as possible, but no later than January 1, 2022.

- a. Facilities subject to these limits include, but may not be limited to, facilities listed in [Appendix 4](#).
- b. For purposes of this condition, “applicable sampling requirements and effluent limits” means the sampling and effluent limits in Table 6 that correspond to the specific parameter(s) the receiving water is 303(d)-listed for at the time of permit coverage, or total suspended solids (TSS) if the waterbody is 303(d)-listed (Category 5) for sediment quality at the time of permit coverage.

Table 6: Sampling and Effluent Limits Applicable to Discharges to 303(d)-listed Waters

Parameter	Units	Maximum Daily ^a		Analytical Method ^b	Laboratory Quantitation Level ^c	Sampling Frequency ^d
		Freshwater	Marine			
Turbidity	NTUs	25	25	EPA 180.1 Meter	0.5	1/quarter
pH	SU	i	Between 7.0 and 8.5	Meter	±0.1	1/quarter
Fecal Coliform Bacteria	# colonies/ 100 mL	Report Only ^h	Report Only ^h	SM 9222D	20 CFU/ 100 mL	1/quarter
E. coli	# colonies/ 100 mL	Report Only ^h	N/A	EPA 1603	20 CFU/ 100 mL	1/quarter
Enterococci	# colonies/ 100 mL	N/A	Report Only ^h	EPA 1600	20 CFU/ 100 mL	1/quarter
TSS ^f	mg/L	30	30	SM2540-D	5	1/quarter
Phosphorus, Total	mg/L	g	g	EPA 365.1	0.01	1/quarter
Total Ammonia (as N)	mg/L	g	g	SM 4500 NH ₃ -GH	0.02	1/quarter
Copper, Total	µg/L	g	g	EPA 200.8	2.0	1/quarter
Lead, Total	µg/L	g	g	EPA 200.8	0.5	1/quarter
Mercury, Total	µg/L	2.1	1.8	EPA1631E	0.0005	1/quarter
Zinc, Total	µg/L	g	g	EPA 200.8	2.5	1/quarter
Pentachlorophenol	µg/L	g	g	EPA 625.1	10.8	1/quarter

- ^a Maximum daily effluent limit means the highest allowable daily discharge. The daily discharge means the discharge of a pollutant measured during a calendar day. The daily discharge is the average measurement of the pollutant over the day; this does not apply to pH.
- ^b Or other equivalent method with the same reporting level.
- ^c The Permittee shall ensure laboratory results comply with the quantitation level (QL) specified in the table. However, if an alternate method from 40 CFR Part 136 is sufficient to produce measurable results in the sample, the Permittee may use that method for analysis. If the Permittee uses an alternative method it must report the test method and QL on the discharge monitoring report. If the Permittee is unable to obtain the required QL due to matrix effects, the Permittee must report the matrix-specific method detection level (MDL) and QL on the DMR. The permittee must also upload the QA/QC documentation from the lab on the QL development.
- ^d 1/quarter means at least one sample taken each quarter, e.g., Q1 = Jan 1 – March 31st, Q2 = April 1 – June 30th

- e. Permittees shall use either a calibrated pH meter consistent with EPA 9040 or an approved state method.
 - f. Permittees who discharge to a 303(d)-listed waterbody (Category 5) for sediment quality shall sample discharge for TSS.
 - g. Site-specific effluent limitation will be assigned at the time of permit coverage.
 - h. A numeric effluent limit does not apply, but Permittees must sample according to Table 6. In addition, the following mandatory BMPs shall be incorporated into the SWPPP and implemented; the Permittee must:
 - 1) Use all known, available and reasonable methods to prevent rodents, birds, and other animals from feeding/nesting/roosting at the facility. Nothing in this section shall be construed as allowing violations of any applicable federal, state or local statutes, ordinances, or regulations including the Migratory Bird Treaty Act.
 - 2) Perform at least one annual dry weather inspection of the stormwater system to identify and eliminate sanitary sewer cross-connections;
 - 3) Install structural source control BMPs to address on-site activities and sources that could cause bacterial contamination (e.g., dumpsters, compost piles, food waste, animal products);
 - 4) Implement operational source control BMPs to prevent bacterial contamination from any known sources of fecal coliform bacteria (e.g., animal waste);
 - 5) Conduct additional bacteria-related sampling and/or BMPs, if ordered by Ecology on a case-by-case basis.
 - i. The effluent limit for a Permittee who discharges to a freshwater body 303(d)-listed for pH is: Between 6.0 and 8.5, if the 303(d)-listing is for high pH only; Between 6.5 and 9.0, if the 303(d)-listing is for low pH only; and Between 6.5 and 8.5 if the 303(d)-listing is for both low and high pH. All pH effluent limits are applied end-of-pipe.
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- 2. Permittees discharging to a ***Puget Sound Sediment Cleanup Site***⁶, either directly or indirectly through a stormwater drainage system, shall comply with this section:
 - a. Permittees shall sample the discharge for total suspended solids (TSS) in accordance with Table 7.
 - b. If the waterbody is listed within Category 5 (sediment medium) where the ***outfall*** discharges to the waterbody, the discharge is subject to the TSS numeric effluent limit in Table 6.
 - c. If the waterbody is not listed within Category 5 (sediment medium) where the outfall discharges to the waterbody, the discharge is subject to the TSS benchmark in Table 7. If a discharge exceeds the TSS benchmark, the Permittee shall comply with Condition S8.

⁶ ***Puget Sound Sediment Cleanup Site*** means: Category 4B (Sediment) portions of Budd Inlet (Inner), Commencement Bay (Inner), Commencement Bay (Outer), Dalco Passage and East Passage, Duwamish Waterway (including East and West Waterway), Eagle Harbor, Elliot Bay, Hood Canal (North), Liberty Bay, Rosario Strait, Sinclair Inlet, and Thea Foss Waterway; Category 5 (Sediment) portions of the Duwamish Waterway; Category 4A (Sediment) portions of Bellingham Bay (Inner); and the Everett/Port Gardner, Oakland Bay/Shelton Harbor, and Port Angeles Harbor sediment cleanup areas, as mapped on Ecology's ISGP website. All references to Category 4A, 4B and 5 pertain to the 2012 EPA-approved Water Quality Assessment.

Table 7: Benchmarks and Sampling Requirements Applicable to Discharges to Puget Sound Sediment Cleanup Sites that are not Category 5 for Sediment Quality

Parameter	Units	Benchmark Value ^a	Analytical Method	Laboratory Quantitation Level ^b	Minimum Sampling Frequency ^c
TSS	mg/L	30	SM2540-D	5	1/quarter

^a Permittees sampling more than once per quarter shall average the sample results and compare the average value to the benchmark to determine if the discharge has exceeded the benchmark value. However, if Permittees collect more than one sample during a 24-hour period, they must first calculate the daily average of the individual grab sample results collected during that 24-hour period; then use the daily average to calculate a quarterly average.

^b The Permittee shall ensure laboratory results comply with the quantitation level (QL) specified in the table. However, if an alternate method from 40 CFR Part 136 is sufficient to produce measurable results in the sample, the Permittee may use that method for analysis. If the Permittee uses an alternative method it must report the test method and QL on the discharge monitoring report. The permittee must also upload the QA/QC documentation from the lab on the QL development.

^c 1/quarter means at least one sample taken each quarter, year-round.

- d. Permittees shall remove accumulated solids from storm drain lines (including inlets, catch basins, sumps, conveyances lines, and oil/water separators) on or beneath your facility at least once in the term of the permit.

Permittees shall conduct line cleaning operations (e.g., jetting, vacuuming, removal, loading, storage, and/or transport) using BMPs to prevent discharges of storm drain solids to surface waters of the State.

Removed storm drain solids and liquids shall be disposed of in accordance with applicable laws and regulations and documented in the SWPPP.

- i. If a Permittee can demonstrate, based on video inspection, in-line storm drain solids sampling, or other documentation, that storm drain line cleaning is not necessary to prevent downstream sediment contamination or recontamination, Ecology may waive this requirement by approving a modification of permit coverage.
 - ii. Requests for line cleaning waivers must be accompanied by a modification of coverage form, and a detailed technical basis to support the request. The due date for line cleaning waiver requests is May 15, 2024.
- e. Permittees shall sample and analyze storm drain solids in accordance with [Table 8](#) at least once in the term of the permit. Storm drain solids must be collected/sampled from a representative catch basin, sump, pipe or other feature within the storm drain system that corresponds to the discharge point where total suspended solids samples are collected per Condition S6.C. Samples may be either a single grab sample or a composite sample. Samples must be representative of the storm drain solids generated and accumulated in the facility's drainage system. To the extent possible, sample locations must exclude portions of the drainage system affected by water from off-site sources (e.g., run-on from off-site properties, tidal influence, backflow, etc.).
 - i. If a Permittee can demonstrate that storm drain solids sampling and analysis is not feasible or not necessary, Ecology may waive this requirement by approving a modification of permit coverage.

- ii. Requests for storm drain solids sampling and analysis waivers must be accompanied by a modification of coverage form, and a detailed technical basis to support the request. The due date for solids sampling and analysis waiver requests is May 15, 2021.
- f. All storm drain solids sampling data shall be reported to Ecology on a Solids Monitoring Report (SMR) no later than the DMR due date for the reporting period in which the solids were sampled, in accordance with Condition S9.A. A copy of the lab report shall be submitted to Ecology with the SMR.

Table 8: Sampling and Analytical Procedures for Storm Drain Solids

Analyte	Method in Sediment	Quantitation Level ^a
Conventional Parameters		
Percent total solids	SM 2540G, or ASTM Method D 2216	NA
Total organic carbon	Puget Sound Estuary Protocols (PSEP 1997), or EPA 9060	0.1%
Grain size	Ecology Method Sieve and Pipette (ASTM 1997), ASTMD422, or PSEP 1986/2003	NA
Metals		
Antimony, Total	EPA Method 200.8 (ICP/MS) , EPA Method 6010 or EPA Method 6020	0.2 mg/kg dw ^b
Arsenic, Total	EPA Method 200.8 (ICP/MS) , EPA Method 6010 or EPA Method 6020	0.1 mg/kg dw
Beryllium, Total	EPA Method 200.8 (ICP/MS) , EPA Method 6010 or EPA Method 6020	0.2 mg/kg dw
Cadmium, Total	EPA Method 200.8 (ICP/MS) , EPA Method 6010 or EPA Method 6020	0.2 mg/kg dw
Chromium, Total	EPA Method 200.8 (ICP/MS) , EPA Method 6010 or EPA Method 6020	0.5 mg/kg dw
Copper, Total	EPA Method 200.8 (ICP/MS) , EPA Method 6010 or EPA Method 6020	0.2 mg/kg dw
Lead, Total	EPA Method 200.8 (ICP/MS) , EPA Method 6010 or EPA Method 6020	0.2 mg/kg dw
Mercury, Total	EPA Method 1631E, or EPA Method 7471B	0.005 mg/kg dw
Nickel, Total	EPA Method 200.8 (ICP/MS) , EPA Method 6010 or EPA Method 6020	0.1 mg/kg dw
Selenium, Total	EPA Method 200.8 (ICP/MS) , EPA Method 6010 or EPA Method 6020	0.5 mg/kg dw
Silver, Total	EPA Method 200.8 (ICP/MS) , EPA Method 6010 or EPA Method 6020	0.1 mg/kg dw
Thallium, Total	EPA Method 200.8 (ICP/MS) , EPA Method 6010 or EPA Method 6020	0.2 mg/kg dw
Zinc, Total	EPA Method 200.8 (ICP/MS) , EPA Method 6010 or EPA Method 6020	5.0 mg/kg dw

Analyte	Method in Sediment	Quantitation Level ^a
Organics		
PAH compounds ^c	EPA Method 8270 D	70 µg/kg dw
PCBs (aroclers), Total ^d	EPA Method 8082A	10 µg/kg dw
Petroleum Hydrocarbons		
NWTPH-Dx	NWTPH-Dx	25.0-100.0 mg/kg dw

^a The Permittee shall ensure laboratory results comply with the quantitation level (QL) specified in the table. However, if an alternate method is sufficient to produce measurable results in the sample, the Permittee may use that method for analysis. If the Permittee uses an alternative method it must report the test method and QL on the sediment monitoring report. The permittee must also upload the QA/QC documentation from the lab on the QL development. All results shall be reported. For values below the QL, or where a QL is not specified, report results at the method detection limit from the lab and the qualifier of "U" for undetected at that concentration. All results shall be reported. For values below the reporting limit, report results at the method detection limit from the lab and the qualifier of "U" for undetected at that concentration.

^b dw = dry weight

^c PAH compounds include: 1-methylnaphthalene, 2-methylnaphthalene, 2-chloronaphthalene, acenaphthylene, acenaphthene, anthracene, benzo(a)anthracene, benzo(a)pyrene, benzo(b, k)fluoranthene, benzo(ghi)perylene, dibenzo(a,h)anthracene, dibenzofuran, carbazole, chrysene, fluoranthene, fluorene, indeno(1,2,3-cd)pyrene, naphthalene, phenanthrene, and pyrene.

^d Total = sum of PCB aroclors 1016+1221+1232+1242+1248+1254+1260

D. Requirements for Discharges to Waters with Applicable TMDLs

1. The Permittee shall comply with applicable TMDL determinations. Applicable TMDLs or TMDL determinations are TMDLs which have been completed by the issuance date of this permit, or which have been completed prior to the date that the Permittee's application is received by Ecology, whichever is later. Ecology will list the Permittee's requirements to comply with this condition on the letter of permit coverage.
2. TMDL requirements associated with TMDLs completed after the issuance date of this permit only become effective if they are imposed through an administrative order issued by Ecology.
3. Where Ecology has established a TMDL wasteload allocation and sampling requirements for the Permittee's discharge, the Permittee shall comply with all requirements of the TMDL as listed in [Appendix 5](#).
 - a. If a discharge point is subject to a TMDL-related effluent limit (Condition S6.D) for a parameter that also has a benchmark (Condition S5), the effluent limit supersedes the benchmark.
4. Where Ecology has established a TMDL general wasteload allocation for industrial stormwater discharges for a parameter present in the Permittee's discharge, but has not identified specific requirements, Ecology will assume the Permittee's compliance with the terms and conditions of the permit complies with the approved TMDL.
5. Where Ecology has not established a TMDL wasteload allocation for industrial stormwater discharges for a parameter present in the Permittee's discharge, but has not excluded these discharges, Ecology will assume the Permittee's compliance with the terms and conditions of this permit complies with the approved TMDL.

6. Where a TMDL for a parameter present in the Permittee's discharge specifically precludes or prohibits discharges of stormwater associated with industrial activity, the Permittee is not eligible for coverage under this permit.

S7. INSPECTIONS

A. Inspection Frequency and Personnel

1. The Permittee shall conduct and document visual inspections of the site each month.
2. The Permittee shall ensure that inspections are conducted by qualified personnel.

B. Inspection Components

Each inspection shall include:

1. Observations made at stormwater sampling locations and areas where stormwater associated with industrial activity is discharged off-site; or discharged to waters of the State, or to a storm sewer system that drains to waters of the State.
2. Observations for the presence of floating materials, visible oil sheen, discoloration, turbidity, odor, etc. in the stormwater discharge(s).
3. Observations for the presence of illicit discharges such as domestic wastewater, noncontact cooling water, or process wastewater (including leachate).
 - a. If an illicit discharge is discovered, the Permittee shall notify Ecology within seven days.
 - b. The Permittee shall eliminate the illicit discharge within 30 days.
4. A verification that the descriptions of potential pollutant sources required under this permit are accurate.
5. A verification that the site map in the SWPPP reflects current conditions.
6. An assessment of all BMPs that have been implemented, noting all of the following:
 - a. Effectiveness of BMPs inspected.
 - b. Locations of BMPs that need maintenance.
 - c. Reason maintenance is needed and a schedule for maintenance.
 - d. Locations where additional or different BMPs are needed and the rationale for the additional or different BMPs.

C. Inspection Results

1. The Permittee shall record the results of each inspection in an inspection report or checklist and keep the records on-site, as part of the SWPPP, for Ecology review.

The Permittee shall ensure each inspection report documents the observations, verifications and assessments required in S7.B and includes:

 - a. Time and date of the inspection
 - b. Locations inspected

- c. Statements that, in the judgment of 1) the person conducting the site inspection, and 2) the person described in Condition G2, the site is either in compliance or out of compliance with the terms and conditions of the SWPPP and this permit.
- d. A summary report and a schedule of implementation of the remedial actions that the Permittee plans to take if the site inspection indicates that the site is out of compliance. The remedial actions taken must meet the requirements of the SWPPP and the permit.
- e. Name, title, and signature of the person conducting site inspection; and the following statement: "I certify that this report is true, accurate, and complete, to the best of my knowledge and belief."
- f. Certification and signature of the person described in Condition G2.A, or a duly authorized representative of the facility, in accordance with Condition G2.B and D.

D. Reports of Non-Compliance

The Permittee shall prepare reports of non-compliance identified during an inspection in accordance with the requirements of Condition S9.E.

S8. CORRECTIVE ACTIONS

A. Implementation of Source Control and Treatment BMPs from Previous Permit

In addition to the Corrective Action Requirements of S8.B-D, Permittees shall implement any applicable Level 1, 2 or 3 Responses required by the previous Industrial Stormwater General Permit(s). Permittees shall continue to operate and/or maintain any source control or treatment BMPs related to Level 1, 2 or 3 Responses implemented prior to the effective date of this permit.

B. Level One Corrective Actions – Operational Source Control BMPs

Permittees that exceed any applicable benchmark value(s) in [Table 2](#), [Table 3](#), and/or [Table 7](#) for any quarter during a calendar year shall complete a Level 1 Corrective Action for each parameter exceeded in accordance with the following:

1. Within 14 days of receipt of sampling results that indicate a benchmark exceedance during a given quarter⁷; or, for parameters other than pH or visible oil sheen, the end of the quarter, whichever is later:
 - a. Conduct an inspection to investigate the cause.
 - b. Review the SWPPP and ensure that it fully complies with Permit Condition S3, and contains the applicable BMPs from the appropriate Stormwater Management Manual.

⁷ Based on quarterly average per Condition S5.A.3, S5.B.2 and/or S6.C.2.c. For pH, and visible oil sheen, quarterly averaging is not allowed, so the 14 days begin upon receipt of a single benchmark exceedance.

- c. Make appropriate revisions to the SWPPP to include additional operational source control BMPs with the goal of achieving the applicable benchmark value(s) in future discharges.
2. Summarize the Level 1 Corrective Actions in the Annual Report (Condition S9.B)
3. Level One Deadline: The Permittee shall sign/certify and fully implement the revised SWPPP according to Permit Condition S3 and the applicable Stormwater Management Manual as soon as possible, but no later than the DMR due date for the quarter the benchmark was exceeded.

C. Level Two Corrective Actions – Structural Source Control BMPs

Permittees that exceed an applicable benchmark value in [Table 2](#), [Table 3](#) and/or [Table 7](#) (for a single parameter) for any two quarters during a calendar year shall complete a Level 2 Corrective Action in accordance with S8.C. Alternatively, the Permittee may skip Level 2 and complete a Level 3 Corrective Action in accordance with Condition S8.D.

1. Review the SWPPP and ensure that it fully complies with Permit Condition S3.
2. Make appropriate revisions to the SWPPP to include additional structural source control BMPs with the goal of achieving the applicable benchmark value(s) in future discharges.
3. Summarize the Level 2 Corrective Actions (planned or taken) in the Annual Report (Condition S9.B).
4. **Level 2 Deadline:** The Permittee shall sign/certify the SWPPP using the SWPPP Certification Form found on page 63 of this permit, and fully implement the revised SWPPP according to Permit Condition S3 and the applicable Stormwater Management Manual as soon as possible, but no later than August 31st of the following year.
 - a. If installation of necessary structural source control BMPs is not feasible by August 31st of the following year, Ecology may approve additional time, by approving a Modification of Permit Coverage.
 - b. If installation of structural source control BMPs is not feasible or not necessary to prevent discharges that may cause or contribute to a violation of a water quality standard, Ecology may waive the requirement for additional structural source control BMPs by approving a Modification of Permit Coverage.
 - c. To request a time extension or waiver, a Permittee shall submit a detailed explanation of why it is making the request (technical basis), and a [Modification of Coverage form](#) to Ecology in accordance with Condition S2.B, by May 15th prior to Level 2 Deadline. Ecology will approve or deny the request within 60 days of receipt of a complete Modification of Coverage request.
 - d. While a time extension is in effect, benchmark exceedances (for the same parameter) do not count towards additional Level 2 or 3 Corrective Actions.
 - e. For the year following the calendar year the Permittee triggered a Level 2 corrective action, benchmark exceedances (for the same parameter) do not count towards additional Level 2 or 3 Corrective Actions.

D. Level Three Corrective Actions – Treatment BMPs

Permittees that exceed an applicable benchmark value in [Table 2](#), [Table 3](#), and/or [Table 7](#) (for a single parameter) for any three quarters during a calendar year shall complete a Level 3 Corrective Action in accordance with S8.D. A Level 2 Corrective Action is not required.

1. Review the SWPPP and ensure that it fully complies with Permit Condition S3.
2. Make appropriate revisions to the SWPPP to include additional treatment BMPs with the goal of achieving the applicable benchmark value(s) in future discharges. Revisions shall include additional operational and/or structural source control BMPs if necessary for proper performance and maintenance of treatment BMPs.

A **qualified industrial stormwater professional** shall review the revised SWPPP, sign the SWPPP Certification Form, and certify that it is reasonably expected to meet the ISGP benchmarks upon implementation. Upon written request Ecology may, one time during the permit cycle, waive this requirement on a case-by-case basis if a Permittee demonstrates to Ecology's satisfaction that the proposed Level 3 treatment BMPs are reasonably expected to meet ISGP benchmarks upon implementation.

3. Before installing treatment BMPs that require the site-specific design or sizing of structures, equipment, or processes to collect, convey, treat, reclaim, or dispose of industrial stormwater, the Permittee shall submit an engineering report to Ecology for review.
 - a. The engineering report must include:
 - i. Brief summary of the treatment alternatives considered and why the proposed option was selected. Include cost estimates of ongoing operation and maintenance, including disposal of any spent media;
 - ii. The basic design data, including characterization of stormwater influent, and sizing calculations of the treatment units;
 - iii. A description of the treatment process and operation, including a flow diagram;
 - iv. The amount and kind of chemicals used in the treatment process, if any.
Note: Use of stormwater treatment chemicals requires submittal of [Request for Chemical Treatment Form](#);
 - v. Results to be expected from the treatment process including the predicted stormwater discharge characteristics;
 - vi. A statement, expressing sound engineering justification through the use of pilot plant data, results from similar installations, and/or scientific evidence that the proposed treatment is reasonably expected to meet the permit benchmarks; **and**
 - vii. Certification by a licensed professional engineer.
 - b. The engineering report shall be submitted no later than the May 15th prior to the Level 3 deadline, unless an alternate due date is specified in an order.
 - c. An Operation and Maintenance Manual (O&M Manual) shall be submitted to Ecology no later than 30 days after construction/installation is complete; unless an alternate due date is specified in an order.

4. Summarize the Level 3 Corrective Actions (planned or taken) in the Annual Report (Condition S9.B). Include information on how monitoring, assessment or evaluation information was (or will be) used to determine whether existing treatment BMPs will be modified/enhanced, or if new/additional treatment BMPs will be installed.
5. **Level 3 Deadline:** The Permittee shall sign/certify and fully implement the revised SWPPP according to Permit Condition S3 and the applicable Stormwater Management Manual as soon as possible, but no later than September 30th of the following year.
 - a. If installation of necessary treatment BMPs is not feasible by the Level 3 Deadline; Ecology may approve additional time by approving a Modification of Permit Coverage.
 - b. If installation of treatment BMPs is not feasible or not necessary to prevent discharges that may cause or contribute to violation of a water quality standard, Ecology may waive the requirement for treatment BMPs by approving a Modification of Permit Coverage.
 - c. To request a time extension or waiver, a Permittee shall submit a detailed explanation of why it is making the request (technical basis), and a [Modification of Coverage](#) form to Ecology in accordance with Condition S2.B, by May 15th prior to the Level 3 Deadline. Ecology will approve or deny the request within 60 days of receipt of a complete Modification of Coverage request.
 - d. While a time extension is in effect, benchmark exceedances (for the same parameter) do not count towards additional Level 2 or 3 Corrective Actions.
 - e. For the year following the calendar year the Permittee triggered a Level 3 corrective action, benchmark exceedances (for the same parameter) do not count towards additional Level 2 or 3 Corrective Actions.

S9. REPORTING AND RECORDKEEPING

A. Electronic Reporting Requirements

The Permittee shall submit all NOIs, NOTs, Noncompliance Reports, Annual Reports, DMRs, and other reporting information as required electronically, unless you have received a waiver from Ecology. All information required to be submitted shall be submitted through Ecology's [Water Quality Permitting Portal](#).

If you are unable to submit electronically (for example, you do **not** have access to the internet), you must contact Ecology to request an Electronic Reporting Waiver form and submit the completed form to Ecology.

B. Discharge Monitoring Reports

1. The Permittee shall submit sampling data obtained during each reporting period on a Discharge Monitoring Report (DMR) or a Solids Monitoring Form (SMR)⁸ form provided, or otherwise approved, by Ecology.
2. Upon permit coverage, the Permittee shall ensure that DMRs are submitted to Ecology by the DMR due dates below:

Table 9: Reporting Dates and DMR Due Dates

Reporting Period	Months	DMR Due Date
1 st	January-March	May 15
2 nd	April-June	August 15
3 rd	July-Sept	November 15
4 th	October-December	February 15

3. DMRs and SMRs shall be submitted electronically using Ecology's Water Quality Permitting Portal – Discharge Monitoring Report (DMR) application, unless a waiver from electronic reporting has been granted (e.g., if a Permittee does not have broadband internet access). SMR forms, identified as a single sample DMR type, are included with the quarterly DMR forms on the Portal. If a waiver has been granted, reports must be postmarked or delivered to the following address by the due date:

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

4. The first full quarter following permit coverage, the Permittee shall submit a DMR each reporting period, whether or not the facility discharged stormwater from the site.
 - a. If no stormwater sample was obtained from the site during a given reporting period, the Permittee shall submit the DMR form indicating “no sample obtained,” or “no discharge during the quarter,” with a written explanation as to why there was no sample taken or no discharge.
 - b. If a Permittee has suspended sampling for a parameter due to consistent attainment, the Permittee shall submit a DMR and indicate that it has achieved consistent attainment for that parameter(s).
5. The Permittee must use the Water Quality Permitting Portal – Permit Submittals application (unless otherwise specified in the permit) to submit all other written permit-required reports by the date specified in the permit unless a waiver has been granted under S9.B. If a

⁸ SMR required if Condition S6.C.2 applies.

waiver has been granted, DMRs must be postmarked or delivered to the address listed in S9.B.3 by the due date.

C. Annual Reports

1. The Permittee shall submit a complete and accurate Annual Report to the Department of Ecology no later than May 15th of each year using Ecology's Water Quality Permitting Portal – Permit Submittals application, unless a waiver from electronic reporting has been granted according to S9.B.3. Annual Reports are not required if the Permittee didn't have permit coverage during the previous calendar year.
2. The annual report shall include corrective action documentation as required in S8.B-D. If corrective action is not yet completed at the time of submission of this annual report, the Permittee must describe the status of any outstanding corrective action(s).
3. Permittees shall include the following information with each annual report. The Permittee shall:
 - a. Identify the condition triggering the need for corrective action review.
 - b. Describe the problem(s) and identify the dates they were discovered.
 - c. Summarize any Level 1, 2 or 3 corrective actions completed during the previous calendar year and include the dates it completed the corrective actions.
 - d. Describe the status of any Level 2 or 3 corrective actions triggered during the previous calendar year, and identify the date it expects to complete corrective actions.
 - e. Primary airport Permittees with at least 1,000 annual jet departures shall include a certification statement in each annual report that it does not use airfield deicing products that contain urea. Alternatively, Permittees shall meet the numeric effluent limit for ammonia in Condition S5.C, [Table 5](#).
4. Permittees shall retain a copy of all annual reports onsite for Ecology review.

D. Records Retention

1. The Permittee shall retain the following documents onsite for a minimum of five years:
 - a. A copy of this permit.
 - b. A copy of the permit coverage letter.
 - c. Records of all sampling information specified in Condition S4.B.3.
 - d. Inspection reports including documentation specified in Condition S7.
 - e. Any other documentation of compliance with permit requirements.
 - f. All equipment calibration records.
 - g. All BMP maintenance records.
 - h. All original recordings for continuous sampling instrumentation.
 - i. Copies of all laboratory reports as described in Condition S3.B.4.
 - j. Copies of all reports required by this permit.

- k. Records of all data used to complete the application for this permit.
2. The Permittee shall extend the period of records retention during the course of any unresolved litigation regarding the discharge of pollutants by the Permittee, or when requested by Ecology.
3. The Permittee shall make all plans, documents, and records required by this permit immediately available to Ecology or the local jurisdiction upon request; or within 14 days of a written request from Ecology.

E. Additional Sampling by the Permittee

If the Permittee samples any pollutant at a designated sampling point more frequently than required by this permit, then the Permittee shall include the results in the calculation and reporting of the data submitted in the Permittee's DMR.

If Permittees collect more than one sample during a 24-hour period, they must first calculate the daily average of the individual grab sample results collected during that 24-hour period; then use the daily average to calculate a quarterly average.

F. Reporting Permit Violations

1. In the event the Permittee is unable to comply with any of the terms and conditions of this permit which may endanger human health or the environment, or exceed any numeric effluent limitation in the permit, the Permittee shall, upon becoming aware of the circumstances:
 - a. Immediately take action to minimize potential pollution or otherwise stop the noncompliance and correct the problem.
 - b. Immediately notify the local jurisdiction and appropriate Ecology regional office of the failure to comply:
 - **Central Region** at (509) 575-2490 for Benton, Chelan, Douglas, Kittitas, Klickitat, Okanogan, or Yakima County
 - **Eastern Region** at (509) 329-3400 for Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Lincoln, Pend Oreille, Spokane, Stevens, Walla Walla, or Whitman County
 - **Northwest Region** at (425) 649-7000 for Island, King, Kitsap, San Juan, Skagit, Snohomish, or Whatcom County
 - **Southwest Region** at (360) 407-6300 for Clallam, Clark, Cowlitz, Grays Harbor, Jefferson, Lewis, Mason, Pacific, Pierce, Skamania, Thurston, or Wahkiakum County
 - c. Submit a detailed written report to Ecology within 5 days of the time the Permittee becomes aware of the circumstances, unless Ecology requests an earlier submission. The report shall be submitted using Ecology's Water Quality Permitting Portal – Permit Submittals application, unless a waiver from electronic reporting has been granted according to S9.B.3. The Permittee's report shall contain:
 - i. A description of the noncompliance, including exact dates and times.

- ii. Whether the noncompliance has been corrected and, if not, when the noncompliance will be corrected.
 - iii. The steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.
- d. Upon request of the Permittee, Ecology may waive the requirements for a written report on a case-by-case basis, if the immediate notification (S9.F.1.b) is received by Ecology within 24 hours.
- 2. Compliance with the requirements of this section does not relieve the Permittee from responsibility to maintain continuous compliance with the terms and conditions of this permit or the resulting liability for failure to comply.

G. Public Access to SWPPP

The Permittee shall provide access to, or a copy of, the SWPPP to the public when requested in writing. Upon receiving a written request from the public for the SWPPP, the Permittee shall:

- 1. Provide a copy of the SWPPP to the requestor within 14 days of receipt of the written request; **or**
- 2. Notify the requestor within ten days of receipt of the written request of the location and times within normal business hours when the requestor may view the SWPPP, and provide access to the SWPPP within 14 days of receipt of the written request; **or**
- 3. If you provide a URL in your NOI where your SWPPP can be found, and maintain your current SWPPP at this URL, you will have complied with the public availability requirements for the SWPPP. To remain current, you must post any SWPPP modifications, records, and other reporting elements required for the permit term at the same URL as the main body of the SWPPP.

S10. COMPLIANCE WITH STANDARDS

- A. Discharges shall not cause or contribute to a violation of Surface Water Quality Standards (Chapter 173-201A WAC), Groundwater Quality Standards (Chapter 173-200 WAC), Sediment Management Standards (Chapter 173-204 WAC), and federal human health-based criteria for Washington (40 CFR 131.45). Discharges that are not in compliance with these standards are prohibited.
- B. Ecology will presume compliance with water quality standards, unless discharge monitoring data or other site specific information demonstrates that a discharge causes or contributes to violation of water quality standards, when the Permittee is:
 - 1. In full compliance with all permit conditions, including planning, sampling, monitoring, reporting, and recordkeeping conditions.
 - 2. Fully implementing stormwater best management practices contained in stormwater technical manuals approved by the department, or practices that are demonstrably equivalent to practices contained in stormwater technical manuals approved by Ecology,

including the proper selection, implementation, and maintenance of all applicable and appropriate best management practices for on-site pollution control.

- C. Prior to the discharge of stormwater and non-stormwater to waters of the State, the Permittee shall apply all known and reasonable methods of prevention, control, and treatment (AKART). To comply with this condition, the Permittee shall prepare and implement an adequate SWPPP, with all applicable and appropriate BMPs, including the BMPs necessary to meet the standards identified in Condition S10.A, and shall install and maintain the BMPs in accordance with the SWPPP, applicable SWMMs, and the terms and conditions of this permit.

S11. PERMIT FEES

- A. The Permittee shall pay permit fees assessed by Ecology and established in Chapter 173-224 WAC.
- B. Ecology will continue to assess permit fees until it terminates a permit in accordance with Special Condition S13 or revoked in accordance with General Condition G5.

S12. SOLID AND LIQUID WASTE MANAGEMENT

The Permittee shall not allow solid waste material or *leachate* to cause violations of the State Surface Water Quality Standards (Chapter 173-201A WAC), the Groundwater Quality Standards (Chapter 173-200 WAC) or the Sediment Management Standards (Chapter 173-204 WAC).

S13. NOTICE OF TERMINATION (NOT)

A. Conditions for a NOT

Ecology may approve a Notice of Termination (NOT) request when the Permittee meets one or more of the following conditions and Ecology determines that the discharges from the facility are no longer required to be covered under this permit:

1. All permitted stormwater discharges associated with industrial activity that are authorized by this permit cease because the industrial activity has ceased, and no significant materials or industrial pollutants remain exposed to stormwater.
2. The party that is responsible for permit coverage (signatory to application) sells or otherwise legally transfers responsibility for the industrial activity.
3. All stormwater discharges associated with industrial activity are prevented because the stormwater is redirected to a sanitary sewer, or discharged to ground (e.g., infiltration).

B. Procedure for Obtaining Termination

1. The Permittee shall apply for a NOT on a form specified by Ecology ([NOT Form](#)).
2. The Permittee seeking permit coverage termination shall sign the NOT in accordance with Condition G2 of this permit.
3. The Permittee shall submit the completed NOT form to Ecology through the WQWebPortal.

GENERAL CONDITIONS

G1. DISCHARGE VIOLATIONS

All discharges and activities authorized by this general permit shall be consistent with the terms and conditions of this general permit. Any discharge of any pollutant more frequently than, or at a level in excess of that identified and authorized by the general permit, shall constitute a violation of the terms and conditions of this permit.

G2. SIGNATORY REQUIREMENTS

A. All permit applications shall be signed:

1. In the case of corporations, by a ***responsible corporate officer***.
2. In the case of a partnership, by a general partner of a partnership.
3. In the case of sole proprietorship, by the proprietor.
4. In the case of a municipal, state, or other public facility, by either a principal executive officer or ranking elected official.

B. All reports required by this permit and other information requested by Ecology shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

1. The authorization is made in writing by a person described above and submitted to the Ecology.
2. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility, such as the position of plant manager, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters.

C. Changes to authorization. If an authorization under paragraph G2.B.2 above is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph G2.B.2 above shall be submitted to Ecology prior to, or together with, any reports, information, or applications to be signed by an authorized representative.

D. Certification. Any person signing a document under this section shall make the following certification:

“I certify under penalty of law, that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

G3. RIGHT OF INSPECTION AND ENTRY

The Permittee shall allow an authorized representative of Ecology, upon the presentation of credentials and such other documents as may be required by law:

- A. To enter upon the premises where a discharge is located or where any records shall be kept under the terms and conditions of this permit.
- B. To have access to and copy, at reasonable times and at reasonable cost, any records required to be kept under the terms and conditions of this permit.
- C. To inspect, at reasonable times, any facilities, equipment (including sampling and control equipment), practices, methods, or operations regulated or required under this permit.
- D. To sample or monitor, at reasonable times, any substances or parameters at any location for purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act.

G4. GENERAL PERMIT MODIFICATION AND REVOCATION

This permit may be modified, revoked and reissued, or terminated in accordance with the provisions of Chapter 173-226 WAC. Grounds for modification, revocation and reissuance, or termination include, but are not limited to, the following:

- A. When a change which occurs in the technology or practices for control or abatement of pollutants applicable to the category of dischargers covered under this permit.
- B. When effluent limitation guidelines or standards are promulgated pursuant to the CWA or Chapter 90.48 RCW, for the category of dischargers covered under this permit.
- C. When a water quality management plan containing requirements applicable to the category of dischargers covered under this permit is approved.
- D. When information is obtained which indicates that cumulative effects on the environment from dischargers covered under this permit are unacceptable.

G5. REVOCATION OF COVERAGE UNDER THE PERMIT

- A. Pursuant with Chapter 43.21B RCW and Chapter 173-226 WAC, Ecology may terminate coverage for any discharger under this permit for cause. Cases where coverage may be terminated include, but are not limited to, the following:
 - 1. Violation of any term or condition of this permit.
 - 2. Obtaining coverage under this permit by misrepresentation or failure to disclose fully all relevant facts.
 - 3. A change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.
 - 4. Failure or refusal of the Permittee to allow entry as required in RCW 90.48.090.
 - 5. A determination that the permitted activity endangers human health or the environment, or contributes to water quality standards violations.
 - 6. Nonpayment of permit fees or penalties assessed pursuant to RCW 90.48.465 and Chapter 173-224 WAC.

7. Failure of the Permittee to satisfy the public notice requirements of WAC 173-226-130(5), when applicable.
- B. Ecology may require any discharger under this permit to apply for and obtain coverage under an individual permit or another more specific general permit.
- C. Permittees who have their coverage revoked for cause according to WAC 173-226-240 may request temporary coverage under this permit during the time an individual permit is being developed, provided the request is made within 90 days from the time of revocation and is submitted along with a complete individual permit application form.

G6. REPORTING A CAUSE FOR MODIFICATION

The Permittee shall submit a new application, or a supplement to the previous application, whenever a material change to the industrial activity or in the quantity or type of discharge is anticipated which is not specifically authorized by this permit. This application shall be submitted at least 60 days prior to any proposed changes. The filing of a request by the Permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not relieve the Permittee of the duty to comply with the existing permit until it is modified or reissued.

G7. COMPLIANCE WITH OTHER LAWS AND STATUTES

Nothing in this permit shall be construed as excusing the Permittee from compliance with any applicable federal, state, or local statutes, ordinances, or regulations.

G8. DUTY TO REAPPLY

The Permittee shall apply for permit renewal at least 180 days prior to the expiration date of this permit.

G9. REMOVED SUBSTANCES

Collected screenings, grit, solids, sludges, filter backwash, or other pollutants removed in the course of treatment or control of stormwater shall not be resuspended or reintroduced to the final effluent stream for discharge to state waters.

G10. DUTY TO PROVIDE INFORMATION

The Permittee shall submit to Ecology, within a reasonable time, all information which Ecology may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The Permittee shall also submit to Ecology, upon request, copies of records required to be kept by this permit [40 CFR 122.41(h)].

G11. OTHER REQUIREMENTS OF 40 CFR

All other requirements of 40 CFR 122.41 and 122.42 are incorporated in this permit by reference.

G12. ADDITIONAL SAMPLING

Ecology may establish specific sampling requirements in addition to those contained in this permit by administrative order or permit modification.

G13. PENALTIES FOR VIOLATING PERMIT CONDITIONS

Any person who is found guilty of willfully violating the terms and conditions of this permit shall be deemed guilty of a crime, and upon conviction thereof shall be punished by a fine of up to \$10,000 and costs of prosecution, or by imprisonment at the discretion of the court. Each day upon which a willful violation occurs may be deemed a separate and additional violation.

Any person who violates the terms and conditions of this permit shall incur, in addition to any other penalty as provided by law, a civil penalty in the amount of up to \$10,000 for every such violation. Each and every such violation shall be a separate and distinct offense, and in case of a continuing violation, every day's continuance shall be deemed to be a separate and distinct violation.

G14. UPSET

Definition – "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the Permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of the following paragraph are met.

A Permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs or other relevant evidence that: 1) an upset occurred and that the Permittee can identify the cause(s) of the upset; 2) the permitted facility was being properly operated at the time of the upset; 3) the Permittee submitted notice of the upset as required in condition S9.E; **and** 4) the Permittee complied with any remedial measures required under this permit.

In any enforcement proceeding, the Permittee seeking to establish the occurrence of an upset has the burden of proof.

G15. PROPERTY RIGHTS

This permit does not convey any property rights of any sort, or any exclusive privilege.

G16. DUTY TO COMPLY

The Permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

G17. TOXIC POLLUTANTS

The Permittee shall comply with effluent standards or prohibitions established under Section 307(a) of the Clean Water Act for toxic pollutants within the time provided in the regulations that establish those standards or prohibitions, even if this permit has not yet been modified to incorporate the requirement.

G18. PENALTIES FOR TAMPERING

The Clean Water Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any sampling device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than two years per violation, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this Condition, punishment shall be a fine of not more than \$20,000 per day of violation, or imprisonment of not more than four years, or both.

G19. REPORTING PLANNED CHANGES

The Permittee shall, as soon as possible, give notice to Ecology of planned physical alterations, modifications, or additions to the permitted industrial activity, which will result in:

- A. The permitted facility being determined to be a new source pursuant to 40 CFR 122.29(b).
- B. A significant process change, as defined in the glossary of this permit.
- C. A change in the location of industrial activity that affects the Permittee's sampling requirements in Conditions S3, S4, S5, and S6.

Following such notice, permit coverage may be modified, or revoked and reissued pursuant to 40 CFR 122.62(a) to specify and limit any pollutants not previously limited. Until such modification is effective, any new or increased discharge in excess of permit limits or not specifically authorized by this permit constitutes a violation.

G20. REPORTING OTHER INFORMATION

Where the Permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to Ecology, it shall promptly submit such facts or information.

G21. REPORTING ANTICIPATED NON-COMPLIANCE

The Permittee shall give advance notice to Ecology by submission of a new application, or supplement to the existing application, at least 45 days prior to commencement of such discharges, of any facility expansions, production increases, or other planned changes, such as process modifications, in the permitted facility or activity which may result in noncompliance with permit limits or conditions. Any maintenance of facilities, which might necessitate unavoidable interruption of operation and degradation of effluent quality, shall be scheduled during non-critical water quality periods and carried out in a manner approved by Ecology.

G22. REQUESTS TO BE EXCLUDED FROM COVERAGE UNDER THE PERMIT

- A. Any discharger authorized by this permit may request to be excluded from coverage under the general permit by applying for an individual permit.
- B. The discharger shall submit to Ecology an application as described in WAC 173-220-040 or WAC 173-216-070, whichever is applicable, with reasons supporting the request. These reasons shall fully document how an individual permit will apply to the applicant in a way that the general permit cannot.

- C. Ecology may make specific requests for information to support the request. Ecology shall either issue an individual permit or deny the request with a statement explaining the reason for the denial.
- D. When an individual permit is issued to a discharger otherwise subject to the industrial stormwater general permit, the applicability of the industrial stormwater general permit to that Permittee is automatically terminated on the effective date of the individual permit.

G23. APPEALS

- A. The terms and conditions of this general permit, as they apply to the appropriate class of dischargers, are subject to appeal by any person within 30 days of issuance of this general permit, in accordance with Chapter 43.21B RCW and Chapter 173-226 WAC.
- B. The terms and conditions of this general permit, as they apply to an individual discharger, are appealable in accordance with Chapter 43.21B RCW within 30 days of the effective date of coverage of that discharger. Consideration of an appeal of general permit coverage of an individual discharger is limited to the general permit's applicability or nonapplicability to that individual discharger.
- C. The appeal of general permit coverage of an individual discharger does not affect any other dischargers covered under this general permit. If the terms and conditions of this general permit are found to be inapplicable to any individual discharger(s), the matter shall be remanded to Ecology for consideration of issuance of an individual permit or permits.

G24. SEVERABILITY

The provisions of this permit are severable, and if any provision of this permit, or application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit shall not be affected thereby.

G25. BYPASS PROHIBITED

Bypass, which is the intentional diversion of waste streams from any portion of a treatment facility, is prohibited, and Ecology may take enforcement action against a Permittee for bypass unless one of the following circumstances (A, B, or C) is applicable.

- A. Bypass for Essential Maintenance without the Potential to Cause Violation of Permit Limits or Conditions

Bypass is authorized if it is for essential maintenance and does not have the potential to cause violations of limitations or other conditions of this permit, or adversely impact public health as determined by Ecology prior to the bypass. The Permittee must submit prior notice, if possible, at least ten days before the date of the bypass.

- B. Bypass Which is Unavoidable, Unanticipated, and Results in Noncompliance of this Permit

This bypass is permitted only if:

1. Bypass is unavoidable to prevent loss of life, personal injury, or **severe property damage**. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which would cause them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass.

2. There are no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, stopping production, maintenance during normal periods of equipment downtime (but not if adequate backup equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance), or transport of untreated wastes to another treatment facility.
 3. Ecology is properly notified of the bypass as required in condition S9E of this permit.
- C. Bypass which is anticipated and has the Potential to Result in Noncompliance of this Permit
- The Permittee must notify Ecology at least thirty days before the planned date of bypass. The notice must contain (1) a description of the bypass and its cause; (2) an analysis of all known alternatives which would eliminate, reduce, or mitigate the need for bypassing; (3) a cost-effectiveness analysis of alternatives including comparative resource damage assessment; (4) the minimum and maximum duration of bypass under each alternative; (5) a recommendation as to the preferred alternative for conducting the bypass; (6) the projected date of bypass initiation; (7) a statement of compliance with SEPA; (8) a request for modification of water quality standards as provided for in WAC 173-201A-410, if an exceedance of any water quality standard is anticipated; and (9) steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass.

For probable construction bypasses, the need to bypass is to be identified as early in the planning process as possible. The analysis required above must be considered during preparation of the engineering report or facilities plan and plans and specifications and must be included to the extent practical. In cases where the probable need to bypass is determined early, continued analysis is necessary up to and including the construction period in an effort to minimize or eliminate the bypass.

Ecology will consider the following prior to issuing an administrative order for this type bypass:

1. If the bypass is necessary to perform construction or maintenance-related activities essential to meet the requirements of this permit.
2. If there are feasible alternatives to bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, stopping production, maintenance during normal periods of equipment down time, or transport of untreated wastes to another treatment facility.
3. If the bypass is planned and scheduled to minimize adverse effects on the public and the environment.

After consideration of the above and the adverse effects of the proposed bypass and any other relevant factors, Ecology will approve or deny the request. The public must be notified and given an opportunity to comment on bypass incidents of significant duration, to the extent feasible. Approval of a request to bypass will be by administrative order issued by Ecology under RCW 90.48.120.

APPENDIX 1 – ACRONYMS

AKART	All Known, Available and Reasonable methods of prevention, control and Treatment
BMP	Best Management Practice
CAS	Chemical Abstract Service
CERCLA	Comprehensive Environmental Response Compensation & Liability Act
CFR	Code of Federal Regulations
CWA	Clean Water Act
CWT	Centralized Waste Treatment
EPA	Environmental Protection Agency
ESC	Erosion and Sediment Control
FAA	Federal Aviation Administration
FWPCA	Federal Water Pollution Control Act
NAICS	North American Industry Classification System
NOI	Notice of Intent
NOT	Notice of Termination
NPDES	National Pollutant Discharge Elimination System
RCRA	Resource Conservation and Recovery Act
RCW	Revised Code of Washington
SARA	Superfund Amendment and Reauthorization Act
SEPA	State Environmental Policy Act
SIC	Standard Industrial Classification
SMCRA	Surface Mining Control and Reclamation Act
SWMM	Stormwater Management Manual
SWPPP	Stormwater Pollution Prevention Plan

TMDL	Total Maximum Daily Load
TSS	Total Suspended Solids
USC	United States Code
WAC	Washington Administrative Code
WQ	Water Quality

APPENDIX 2 – DEFINITIONS

40 CFR means Title 40 of the Code of Federal Regulations, which is the codification of the general and permanent rules published in the Federal Register by the executive departments and agencies of the federal government.

303(d)-Listed water body means waterbodies as listed as Category 5 on Washington State's Water Quality Assessment.

Air Emission means a release of air contaminants into the ambient air.

Airfield Pavement means all paved surfaces on the airside of an airport.

AKART is an acronym for “all known, available, and reasonable methods of prevention, control, and treatment.” AKART represents the most current methodology that can be reasonably required for preventing, controlling, or abating the pollutants and controlling pollution associated with a discharge.

Annual Non-Propeller Aircraft Departures means the average number of commercial turbine-engine aircraft that are propelled by jet, i.e., turbojet or turbofan, that take off from an airport on an annual basis, as tabulated by the Federal Aviation Administration (FAA).

Applicable TMDL means a TMDL which has been completed either before the issuance date of this permit or the date the Permittee first obtains coverage under this permit, whichever is later.

Application means a request for coverage under this general permit pursuant to WAC 173-226-200. Also called a Notice of Intent (NOI).

Average means arithmetic mean, which is equal to the sum of the measurements divided by the number of measurements.

Benchmark means a pollutant concentration used as a permit threshold, below which a pollutant is considered unlikely to cause a water quality violation, and above which it may. When pollutant concentrations exceed benchmarks, corrective action requirements take effect. Benchmark values are not water quality standards and are not numeric effluent limitations; they are indicator values.

Best Management Practices (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, and other physical, structural and/or managerial practices to prevent or reduce the pollution of waters of the State. BMPs include treatment systems, operating procedures, and practices to control: plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. In this permit BMPs are further categorized as operational source control, structural source control, erosion and sediment control, and treatment BMPs.

Bypass means the intentional diversion of waste streams from any portion of a treatment facility.

Clean Water Act (CWA) means the Federal Water Pollution Control Act enacted by Public Law 92-500, as amended by Public Laws 95-217, 95-576, 96-483, and 97-117; USC 1251 et seq.

Combined Sewer means a sewer which has been designed to serve as a sanitary sewer and a storm sewer, and into which inflow is allowed by local ordinance.

Construction Activity means clearing, grading, excavation and any other activity which disturbs the surface of the land. Such activities may include road building, construction of residential houses, office buildings, industrial buildings, and demolition activity.

Control Plan means a total maximum daily load (TMDL) determination, restrictions for the protection of state or federal threatened or endangered species, a groundwater management plan, or other limitations that regulate or set limits on discharges to a specific waterbody or ground water recharge area.

Daily Average means the average measurement of the pollutant throughout a period of 24 consecutive hours starting at 12:01 A.M. and ending at the following 12:00 P.M. (midnight).

Deicing means procedures and practices to remove or prevent any accumulation of snow or ice on: 1) an aircraft; or 2) airfield pavement.

Demonstrably Equivalent means that the technical basis for the selection of all stormwater best management practices are documented within a stormwater pollution prevention plan. The stormwater pollution prevention plan must document: 1) The method and reasons for choosing the stormwater best management practices selected; 2) The pollutant removal performance expected from the practices selected; 3) The technical basis supporting the performance claims for the practices selected, including any available existing data concerning field performance of the practices selected; 4) An assessment of how the selected practices will comply with state water quality standards; and 5) An assessment of how the selected practices will satisfy both applicable federal technology-based treatment requirements and state requirements to use all known, available, and reasonable methods of prevention, control, and treatment.

Detention means the temporary storage of stormwater to improve quality and/or to reduce the mass flow rate of discharge.

Discharge [of a pollutant] means any addition of any pollutant or combination of pollutants to surface waters of the State of Washington from any point source. This definition includes additions of pollutants into surface waters of the State of Washington from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works.

Discharge Point means the location where a discharge leaves the Permittee's facility. Discharge point also includes the location where a discharge enters the ground on-site (e.g., infiltration BMP).

Discharger means an owner or operator of any facility or activity subject to regulation under Chapter 90.48 RCW or the Federal Clean Water Act.

Domestic Wastewater means water carrying human wastes, including kitchen, bath, and laundry wastes from residences, buildings, industrial establishments, or other places, together with such groundwater infiltration or surface waters as may be present.

Ecology means the Washington State Department of Ecology.

EPA means the United States Environmental Protection Agency.

Equivalent BMPs means operational, source control, treatment, or innovative BMPs which result in equal or better quality of stormwater discharge to surface water or to groundwater than BMPs selected from the SWMM.

Erosion means the wearing away of the land surface by running water, wind, ice, or other geological agents, including such processes as gravitational creep.

Erosion and Sediment Control BMPs means BMPs that are intended to prevent erosion and sedimentation, such as preserving natural vegetation, seeding, mulching and matting, plastic covering, filter fences, and sediment traps and ponds.

Existing Facility means a facility that was in operation prior to the effective date of this permit. It also includes any facility that is not categorically included for coverage but is in operation when identified by Ecology as a significant contributor of pollutants.

Facility means any establishment (including land or appurtenances thereto) that is subject to regulation under this permit. See Special Condition S1.

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

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

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

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

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

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

Industrial Activity means (1) the 11 categories of industrial activities identified in 40 CFR 122.26(b)(14)(i-xi) that must apply for either coverage under this permit or no exposure certification, (2) any facility conducting any activities described in [Table 1](#), and (3) the activities occurring at any facility identified by Ecology as a significant contributor of pollutants. Table 1 lists the 11 categories of industrial activities identified in 40 CFR 122.26(b)(14)(i-xi) in a different format.

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

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

Leachate means water or other liquid that has percolated through raw material, product or waste and contains substances in solution or suspension as a result of the contact with these materials.

Local Government means any county, city, or town having its own government for local affairs.

Material Handling means storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, by-product or waste product.

Municipality means a political unit such as a city, town or county; incorporated for local self-government.

National Pollutant Discharge Elimination System (NPDES) means the national program for issuing, modifying, revoking, and reissuing, terminating, and enforcing permits, and imposing and enforcing pretreatment requirements, under sections 307, 402, 318, and 405 of the Federal Clean Water Act, for the discharge of pollutants to surface waters of the State from point sources. These permits are referred to as NPDES permits and, in Washington State, are administered by the Washington Department of Ecology.

New Development means land disturbing activities, including Class IV -general forest practices that are conversions from timber land to other uses; structural development, including construction or installation of a building or other structure; creation of impervious surfaces; and subdivision, short subdivision and binding site plans, as defined and applied in Chapter 58.17 RCW. Projects meeting the definition of redevelopment shall not be considered new development.

New Discharge(r) means a facility from which there is a discharge, that did not commence the discharge at a particular site prior to August 13, 1979, which is not a new source, and which has never received a finally effective NPDES permit for discharges at that site. See 40 CFR 122.2.

New Facility means a facility that begins activities that result in a discharge or a potential discharge to waters of the State on or after the effective date of this general permit.

Noncontact Cooling Water means water used for cooling which does not come into direct contact with any raw material, intermediate product, waste product, or finished product.

North American Industry Classification System (NAICS) means the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy. NAICS was developed under the auspices of the Office of Management and Budget (OMB), and adopted in 1997 to replace the Standard Industrial Classification (SIC) system. It was developed jointly by the U.S. Economic Classification Policy Committee (ECPC), Statistics Canada, and Mexico's Instituto Nacional de Estadística y Geografía to allow for a high level of comparability in business statistics among the North American countries.

Notice of Intent (NOI) – See “Application”

Notice of Termination (NOT) means a request for termination of coverage under this general permit as specified by Special Condition S13 of this permit.

Operational Source Control BMPs means schedule of activities, prohibition of practices, maintenance procedures, employee training, good housekeeping, and other managerial practices to prevent or reduce the pollution of waters of the State. Not included are BMPs that require construction of pollution control devices.

Operator means any entity with a stormwater discharge associated with industrial activity.

Outfall means the point where a discharge from a facility enters a receiving waterbody or receiving waters.

Pollutant means the discharge of any of the following to waters of the State: dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, domestic sewage sludge (biosolids), munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste. This term does not include sewage from vessels within the meaning of section 312 of the FWPCA nor does it include dredged or fill material discharged in accordance with a permit issued under section 404 of the FWPCA.

Pollution means contamination or other alteration of the physical, chemical, or biological properties of waters of the State; including change in temperature, taste, color, turbidity, or odor of the waters; or such discharge of any liquid, gaseous, solid, radioactive or other substance into any waters of the State as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to the public health, safety or welfare; or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses; or to livestock, wild animals, birds, fish, or other aquatic life.

Process Wastewater means any non-stormwater which, during manufacturing or processing, comes into direct contact or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product. If stormwater commingles with process wastewater, the commingled water is considered process wastewater.

Puget Sound Sediment Cleanup Site means Category 4B (Sediment) portions of Budd Inlet (Inner), Commencement Bay (Inner), Commencement Bay (Outer), Dalco Passage and East Passage, Duwamish Waterway (including East and West Waterway), Eagle Harbor, Elliot Bay, Hood Canal (North), Liberty Bay, Rosario Strait, Sinclair Inlet, and Thea Foss Waterway; Category 5 (Sediment) portions of the Duwamish Waterway; Category 4A (Sediment) portions of Bellingham Bay (Inner); and the Everett/Port Gardner and Port Angeles Harbor sediment cleanup areas, as mapped on Ecology's ISGP website. All references to Category 4A, 4B and 5 pertain to the 2012 EPA-approved Water Quality Assessment.

Qualified Industrial Stormwater Professional means a licensed professional engineer, geologist, hydrogeologist; Certified Professional in Stormwater Quality, Certified Professional in Erosion and Sediment Control; or qualified environmental professional with education and experience in stormwater management and licensed to do business in the State of Washington.

Qualified Personnel means those who (1) possesses the knowledge and skills to assess conditions and activities at the facility that could impact stormwater quality; (2) can evaluate the effectiveness of best management practices required by this permit for this specific facility and its unique operations

and; (3) is familiar with site operations and practices with sufficient authority to commit the organization to the BMPs and actions detailed in the SWPPP..

Quantitation Level (QL) also known as *Minimum Level of Quantitation (ML)* means the lowest level at which the entire analytical system must give a recognizable signal and acceptable calibration point for the analyte. It is equivalent to the concentration of the lowest calibration standard, assuming that all method-specified sample weights, volumes, and cleanup procedures have been employed.

Reasonable Potential means the likely probability for pollutants in the discharge to exceed the applicable water quality criteria in the receiving waterbody.

Redevelopment means on a site that is already substantially developed (i.e., has 35% or more of existing impervious surface coverage), the creation or addition of impervious surfaces; the expansion of a building footprint or addition or replacement of a structure; structural development including construction, installation or expansion of a building or other structure; replacement of impervious surface that is not part of a routine maintenance activity; and land disturbing activities.

Regular Business Hours means those time frames when the facility is engaged in its primary production process, but does not include additional shifts or weekends when partial staffing is at the site primarily for maintenance and incidental production activities. Regular business hours do not include periods of time that the facility is inactive and unstaffed.

Representative [sample] means a sample of the discharge that accurately characterizes stormwater runoff generated in the designated drainage area of the facility.

Responsible Corporate Officer means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures (40 CFR 122.22).

Runoff means that portion of rainfall or snowmelt water not absorbed into the ground that becomes surface flow.

Sanitary Sewer means a sewer which is designed to convey domestic wastewater.

Sediment means the fragmented material that originates from the weathering and erosion of rocks, unconsolidated deposits, or unpaved yards, and is transported by, suspended in, or deposited by water.

Severe Property Damage means substantial physical damage to property, damage to the treatment facilities which would cause them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

Significant Amount means an amount of a pollutant in a discharge that is amenable to available and reasonable methods of prevention, control, or treatment; or an amount of a pollutant that has a reasonable potential to cause a violation of surface or ground water quality standards or sediment management standards.

Significant Contributor of Pollutant(s) means a facility determined by Ecology to be a contributor of a significant amount(s) of a pollutant(s) to waters of the State.

Significant Materials includes, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under section 101(14) of CERCLA; any chemical the facility is required to report pursuant to section 313 of title III of SARA; fertilizers; pesticides; and waste products such as ashes, slag, and sludge that have the potential to be released with stormwater discharges.

Significant Process Change means any modification of the facility that would result in any of the following:

1. Add different pollutants in a significant amount to the discharge.
2. Increase the pollutants in the stormwater discharge by a significant amount.
3. Add a new industrial activity (SIC) that was not previously covered.
4. Add additional impervious surface or acreage such that stormwater discharge would be increased by 25% or more.

Source Control BMPs means structures or operations that are intended to prevent pollutants from coming into contact with stormwater through physical separation of areas or careful management of activities that are sources of pollutants. This permit separates source control into two types: structural source control BMPs and operational source control BMPs.

Standard Industrial Classification (SIC) is the statistical classification standard underlying all establishment-based federal economic statistics classified by industry as reported in the 1987 SIC Manual by the Office of Management and Budget.

State Environmental Policy Act (SEPA) means the Washington State Law, RCW 43.21C.020, intended to prevent or eliminate damage to the environment.

Storm Sewer means a sewer that is specifically designed to carry stormwater. Also called a storm drain.

Stormwater means that portion of precipitation that does not naturally percolate into the ground or evaporate, but flows via overland flow, interflow, pipes, and other features of a stormwater drainage system into a defined surface waterbody, or a constructed infiltration facility.

Stormwater Drainage System means constructed and natural features which function together as a system to collect, convey, channel, hold, inhibit, retain, detain, infiltrate or divert stormwater.

Stormwater Management Manual (SWMM) or Manual means the technical manuals prepared by Ecology for stormwater management in western and eastern Washington.

Stormwater Pollution Prevention Plan (SWPPP) means a documented plan to implement measures to identify, prevent, and control the contamination of point source discharges of stormwater.

Structural Source Control BMPs means physical, structural, or mechanical devices or facilities that are intended to prevent pollutants from entering stormwater.

Substantially Identical Discharge Point means a discharge point that shares the following characteristics with another discharge point: 1) the same general industrial activities conducted in the drainage area of the discharge point, 2) the same Best Management Practices conducted in the drainage area of the discharge point, 3) the same type of exposed materials located in the drainage area of the discharge point that are likely to be significant contributors of pollutants to stormwater discharges, and 4) the same type of impervious surfaces in the drainage area that could affect the percolation of stormwater runoff into the ground (e.g., asphalt, crushed rock, grass).

Surface Waters of the State includes lakes, rivers, ponds, streams, inland waters, salt waters, and all other surface waters and water courses within the jurisdiction of the state.

Total Maximum Daily Load (TMDL) means a calculation of the maximum amount of a pollutant that a waterbody can receive and still meet state water quality standards. Percentages of the total maximum daily load are allocated to the various pollutant sources. A TMDL is the sum of the allowable loads of a single pollutant from all contributing point and nonpoint sources. The TMDL calculations include a "margin of safety" to ensure that the waterbody can be protected in case there are unforeseen events or unknown sources of the pollutant. The calculation also accounts for seasonable variation in water quality.

Treatment BMPs means BMPs that are intended to remove pollutants from stormwater.

Turbidity means the clarity of water expressed as nephelometric turbidity units (NTU) and measured with a calibrated turbidimeter.

Underground Injection Control Well means a well that is used to discharge fluids into the subsurface. An underground injection control well is one of the following:

1. A bored, drilled, or driven shaft,
2. An improved sinkhole, or
3. A subsurface fluid distribution system. (WAC 173-218-030)

Unsafe Conditions means those that are dangerous or create inaccessibility for personnel, such as local flooding, high winds, or electrical storms, or situations that otherwise make sampling impractical, such as drought or extended frozen conditions.

Unstaffed means the facility has no assigned staff. A site may be "unstaffed" even when security personnel are present, provided that pollutant generating activities are not included in their duties.

Vehicle means a motor-driven conveyance that transports people or freight, such as an automobile, truck, train, or airplane.

Vehicle Maintenance means the rehabilitation, mechanical repairing, painting, fueling, and/or lubricating of a motor-driven conveyance that transports people or freight, such as an automobile, truck, train, or airplane.

Wasteload Allocation (WLA) means the portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources of pollution. WLAs constitute a type of water quality based effluent limitation (40 CFR 130.2(h)).

Water Quality Standards means the Water Quality Standards for Surface Waters of the State of Washington, Chapter 173-201A WAC, Ground Water Quality Standards (Chapter 173-200 WAC), Sediment Management Standards (Chapter 173-204 WAC), and the federal human health-based criteria for Washington (40 CFR 131.45).

Waters of the State includes those waters defined as "waters of the United States" in 40 CFR Subpart 122.2 within the geographic boundaries of Washington State. State statute defines "waters of the State" to include lakes, rivers, ponds, streams, wetlands, inland waters, underground waters, salt waters, and all other surface waters and water courses within the jurisdiction of the state of Washington (Chapter 90.48 RCW).

APPENDIX 3 - SWPPP CERTIFICATION FORM

The Permittee shall use this form to sign and certify that the Stormwater Pollution Prevention Plan (SWPPP) is complete, accurate and in compliance with Conditions S3 and S8 of the Industrial Stormwater General Permit.

- A SWPPP certification form needs to be completed and attached to all SWPPPs.
- Each time a Level 1, 2 or 3 Corrective Action is required, this form needs to be re-signed and re-certified by the Permittee, and attached to the SWPPP.

Is this SWPPP certification in response to a Level 1, 2 or 3 Corrective Action? ☐ Yes ☐ No

If Yes, Type of Corrective Action: ☐ Level 1 ☐ Level 2 ☐ Level 3*

Date SWPPP update/revision completed:

Briefly describe SWPPP Update (use back side, if necessary):

***Note:** For Level 3 Corrective Actions, a qualified industrial stormwater professional must review the revised SWPPP, and sign and certify below, in accordance with Condition S8.D.2:

"The Permittee has made appropriate revisions to the SWPPP to include additional Treatment BMPs with the goal of achieving the applicable benchmark value(s) in future discharges. Based on my review of the SWPPP, discharges from the facility are reasonably expected to meet the ISGP benchmarks upon implementation."

Qualified Industrial Stormwater Professional's Printed Name

Title

Qualified Industrial Stormwater Professional's Signature

Date

(cont'd next page)

"I certify under penalty of law that this SWPPP and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate information to determine compliance with the Industrial Stormwater General Permit. Based on my inquiry of the person or persons who are responsible for stormwater management at my facility, this SWPPP is, to the best of my knowledge and belief, true, accurate, and complete, and in full compliance with Permit Conditions S3 and S8, including the correct Best Management Practices from the applicable Stormwater Management Manual. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Operator's Printed Name *

Title

Operator's Signature *

Date

* Federal regulations require this document to be signed in accordance with Condition G2.

APPENDIX 4 - EXISTING DISCHARGERS TO IMPAIRED WATER BODIES

This appendix has a link below to a website list of existing Permittees that discharge pollutants of concern, either directly or indirectly through a stormwater drainage system, to impaired water bodies based on the 2012 EPA-approved water quality assessment and to Puget Sound Sediment Cleanup Sites. <https://apps.ecology.wa.gov/paris/ImpairedWaterBodyLimits.aspxh>.

Appendix 4 was originally published on Ecology's website on 11/19/2014, and is linked to Ecology's PARIS database. As such, it is subject to revision based upon new information including but not limited to: new facilities, discharge points, and/or outfalls; updates or corrections to ISGP facility locations, stormwater sample points, discharge points, and/or outfall locations.

Appendix 4 is a technical assistance tool intended to support ISGP facilities with permit compliance. Appendix 4 may contain errors or omissions for various reasons, but this does not relieve ISGP facilities of applicable permit requirements. If an inconsistency exists between Appendix 4 and ISGP Condition S6, the ISGP takes precedence. Permittees aware of errors or omissions with the information contained in Appendix 4 shall contact Ecology so that an update/correction can be made. If changes or updates are made, based on new or more accurate information, Ecology will notify the affected Permittees directly. Such changes or updates will not become effective until 30 days after the affected dischargers are notified.

APPENDIX 5 - DISCHARGERS SUBJECT TO TMDL REQUIREMENTS


The list of dischargers identified as discharging to water bodies which have completed water quality cleanup plans or TMDLs and associated monitoring requirements can be viewed on Ecology's website at:

<https://ecology.wa.gov/DOE/files/14/14a209fd-4090-4d4a-9d5a-debfc3628fa9.pdf>.

The most current list can also be obtained by contacting Ecology at:

Industrial Stormwater General Permit
Washington State Department of Ecology
PO Box 47696
Olympia, WA 98504-7696

This list is based on the best information available to Ecology. There will be changes and updates to this list based on new, more accurate information. If changes or updates are made, Ecology will notify the affected Permittees directly. Such changes or updates will not become effective until 30 days after the affected dischargers are notified.

 Water Quality Program Corrections Required		
Construction Stormwater General Permit (CSGP) <input type="checkbox"/>	Industrial Stormwater General Permit (ISGP) <input checked="" type="checkbox"/>	Sand and Gravel General Permit (S&G) <input type="checkbox"/>
Site name and location		Mailing address –
Spokane Recycling Co. LLC 2111 E Hawthorne Rd Spokane WA 99218		3548 Piper Avenue Burnaby BC V5A 3A9
Site contact: Larry Murray 505-202-7402 Kiser7211@yahoo.com		Phone: 604-715-5056 diamond.eleven@hotmail.com
Ecology inspector(s): Ross, Atkins, Petrisor, Quinn		Permit #: WAR304975
Inspector phone: 509-329-3573		Inspection date: Aug.9, 2018
FAX:		E-mail: jros461@ecy.wa.gov
Notice of Penalty issued <input type="checkbox"/> Yes <input type="checkbox"/> No	Field Citation # N/A	Latitude and longitude (if available):

The Department of Ecology (Ecology) is responsible for overseeing environmental laws that protect human health and the environment in Washington. Ecology observed violations of Chapter 90.48 of the Revised Code of Washington (RCW), Chapter 173-226 of the Washington Administrative Code (WAC), Waste Discharge General Permit Program during this site visit. Violations observed are checked below.

Violation No.	Violation	Reason	Permit Condition
<input type="checkbox"/> 1	RCW 90.48.160	Operating or discharging without a permit (all)	Does not apply.
<input type="checkbox"/> 2	RCW 90.48.080	Polluting waters of the state (all)	
<input type="checkbox"/> 3	RCW 90.48.080	Polluting impaired waters, discharge exceeds 303(d) limit (CSGP and ISGP)	
<input type="checkbox"/> 4	WAC 173-201A or WAC 173-200	Violating Water Quality Standards (<i>List specific standard violated.</i>) (all)	
<input type="checkbox"/> 5	RCW 90.48.090	Denial or withdrawal of access (all)	
<input type="checkbox"/> 6	RCW 90.48.080, WAC 173-226-070	Process water discharge without treatment in lined impoundment (S&G)	
<input type="checkbox"/> 7	RCW 90.48.080, WAC 173-226-070	Failure to clean up oil spills or repair leaking equipment	
X 8	RCW 90.48.080, WAC 173-226-070	Cover or containment not provided for chemical or petroleum products (all)	S3.B.4.b.ii.2
<input type="checkbox"/> 9	RCW 90.48.080, WAC 173-226-070	Corrective Action not taken (ISGP)	
X 10	RCW 90.48.080, WAC 173-226-070	No Stormwater Pollution Prevention Plan (SWPPP) (all)	S3.A.4.a
<input type="checkbox"/> 11	RCW 90.48.080, WAC 173-226-070	SWPPP does not meet permit requirements (all)	
X 12	RCW 90.48.080, WAC 173-226-070	X Not <u>maintaining</u> best management practices (BMPs) (all) X Not <u>implementing</u> BMPs (all) <input type="checkbox"/> Failure to modify SWPPP per permit or Dept. of Ecology Notice (all)	S3.B.4
<input type="checkbox"/> 13	RCW 90.48.080, WAC 173-226-070	<input type="checkbox"/> BMPs not <u>maintained</u> per permit or Dept. of Ecology Notice (all) <input type="checkbox"/> BMPs not <u>implemented</u> per permit or Dept. of Ecology Notice (all)	
X 14	RCW 90.48.080, WAC 173-226-070	X Inspections not completed as required by permit (CSGP and ISGP) <input type="checkbox"/> Inspections do not comply with permit requirements (CSGP and ISGP)	S7
X 15	RCW 90.48.080, WAC 173-226-090	X Monitoring not conducted as required by permit (all) <input type="checkbox"/> Sampling does not comply with permit requirements (all)	S4,S5
X 16	RCW 90.48.080, WAC 173-226-070	Not keeping site log book (CSGP and ISGP) X Not keeping inspection reports or checklists (CSGP)	S9.C.1.d
X 17	RCW 90.48.080, WAC 173-226-090	<input type="checkbox"/> Did not telephone report turbidity greater than 250 NTU (CSGP), or threshold exceeded (ISGP) X No Discharge Monitoring Reports available (all) X Failure to notify Dept. of Ecology of noncompliance with permit requirement (all)	S9.A
X 18		Failure to submit annual reports as required	S9.B

X	19	Failure to report planned changes	G19
<input type="checkbox"/>	20		

Violation No.	Observation(s) and action(s) required to achieve compliance. (see permit conditions)	Complete or Submit Date
8 S3.B.4.b.ii.2	Several piles of waste and product are exposed to the elements and have direct access to stormwater drains. All waste and product piles that have exposure to stormwater need to be removed, moved inside, or otherwise covered to prevent exposure.	April 30 2019
10 S3.A.4.a	No SWPPP is on site or known to exist. A SWPPP that contains all elements of S3 must be completed and kept on site. A copy should be sent to Ecology's permit manager to verify completion.	Dec. 31, 2018
12 S3.B.4	Storm drains and catch basins need to be functional and maintained. Fill material covered several drains, allowing large amounts of sediment to be washed into the stormwater system.	April 30, 2019
14 S7	Monthly stormwater maintenance inspection records are not on site. Monthly inspections must be completed and documented, and records kept on site.	Dec. 31, 2018
15 S4,S5	No records of quarterly monitoring are on site. No monitoring results have been entered into Ecology's Water Quality Permitting Portal as required by the permit	Dec. 31, 2018
16 S9.C.1.d	No inspection reports or checklists on site	Dec. 31, 2018
17 S9.A	No discharge monitoring reports (DMRs) available on site. No entry of DMRs into PARIS. No copies of lab reports on site. Failure to notify Ecology of non-compliance with permit requirements.	Dec. 31, 2018
18 S9.B	No annual reports for 2016 or 2017	Dec. 31, 2018
19 G19	Failure to report planned changes (new tenants performing regulated industrial activity)	Dec. 31, 2018

Instructions:

- These corrective action requirements are not an enforcement order and are **not appealable**.
- If a penalty accompanies these corrective action requirements, **the penalty is appealable**.
- **Appeal directions are on the back of the penalty.**
- Failure to comply with these corrective action requirements may result in enforcement action.

1. To comply with the water quality regulations, complete the actions identified in the table above.
2. If you have questions, contact Jim Ross, Ecology inspector, at 509-329-3573.
3. To request an extension, **send a written request** to the Ecology inspector by .

Ecology will notify you if an extension is granted. Please include all of the following:

- Reason extension is needed.
- Steps already taken.
- Description of work that remains to be completed.
- Anticipated completion date.

Send required document(s) to the appropriate Ecology office:

Bellingham Field Office
1440 10th St Ste 102
Bellingham WA 98225
360-715-5200

Vancouver Field Office
2108 Grand Blvd
Vancouver WA 98661
360-690-7171

Central Regional Office
15 W Yakima Ave Ste 200
Yakima WA 98902
509-575-2490

Northwest Regional Office
3190 160th Ave SE
Bellevue WA 98008-5452
425-649-7000

Southwest Regional Office
PO Box 47775
Olympia WA 98504-7775
360-407-6300

Eastern Regional Office
4601 N Monroe
Spokane WA 99205-1295
509-329-3400

Ecology Inspector (signature):  Date: 11/20/2018

If you need this publication in an alternate format, call the Water Quality Program at 360-407-6722. Persons with hearing loss call 711 for the Washington Relay Service. Persons with a speech disability call 877-833-6341

October 19, 2020

Mark W. Schneider
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Spokane Recycling Company, LLC
Paramjit Hothi
c/o Outside Counsel
Ken Lederman
Foster Garvey PC
1111 3rd Avenue, Suite 3000
Seattle, WA 98101
ken.lederman@foster.com

Via Email & Overnight Courier

Managing Agent
CDC Mead, LLC
1650 Des Peres Road, Suite 303
St. Louis, MO 63131

Via Overnight Courier

Managing Agent
NMC Mead, LLC
12214 Lakewood Blvd
Downey, CA 90242

Via Overnight Courier

Re: NOTICE OF INTENT TO FILE SUIT UNDER THE CLEAN WATER ACT

All:

On behalf of Kaiser Aluminum Investments Company (“KAIC”)¹, this letter provides Spokane Recycling Company, LLC, Paramjit Hothi, CDC Mead, LLC, and NMC Mead, LLC (collectively, “You”) with sixty days’ notice of KAIC’s intent to file a citizen suit against You under Section 505 of the Clean Water Act (“CWA”), 33 U.S.C. § 1365, for violations of the CWA occurring at and around property located at 2111 E Hawthorne Road in Spokane, WA 99224 (“Property”). The Property is covered under and subject to the requirements of the Washington State Department of Ecology’s (“Ecology”) Industrial Stormwater General Permit (“ISGP”) No. WAR 304975 (“the Permit”).²

In addition to violations of several other state and federal environmental and health and safety laws, as well as private agreements, You have violated and continue to violate “effluent

¹ KAIC’s address is 27422 Portola Parkway, Suite 200, Foothill Ranch, CA 92610, United States and its phone number is 1-949-614-1740. Any response or correspondence related to this matter should be directed to me at the phone number, email address, or mailing address above.

² Your activities at and around the Property were previously covered under and subject to the requirements of NPDES Permit No. WA0000876 (last issued on August 7, 2014, with expiration date August 31, 2019). This permit was cancelled as of December 13, 2017 because coverage was obtained under ISGP Permit No. WAR304975. ISGP Permit No. WAR 304975 was issued on November 20, 2019, became effective on January 1, 2020, and had an expiration date December 31, 2024.

standards or limitations” under 33 U.S.C. § 1365(f) by exceeding benchmarks set in the Permit and failing to complete the required Corrective Actions following those benchmark exceedances. You have also repeatedly violated numerous other conditions of the Permit and requirements of the November 20, 2019 Settlement Agreement (“Settlement Agreement”). These violations include, but are not limited to, violations of Water Quality Standards, failing to implement a stormwater pollution prevention plan (“SWPPP”), failing to maintain and implement best management practices (“BMP”), repeatedly neglecting to perform and document monthly inspections, and repeatedly neglecting to submit quarterly Discharge Monitoring Reports and annual reports. Under 33 U.S.C. § 1365(f)(7), these violations also are actionable in a citizen suit. These violations and the exceedances are discussed further below.

The Permit sets a benchmark for total zinc at 117 µg/L and for copper at 32 µg/L. Analysis of a July 10, 2018 sample showed exceedances of the Permit benchmarks for both zinc (measured at 130 µg/L) and copper (measured at 62 µg/L), and You failed to conduct the required Level 1 Corrective Actions to address these exceedances. In addition, you have violated several other Water Quality Standards, both in general and in violation of the Permit.

In addition to these exceedances, You are violating the Permit by failing to implement BMPs at the Property. Ecology inspectors found that You were not maintaining and implementing BMPs when they inspected the Site in August 2018. This is a continuing violation because You still have not implemented BMPs. Among the many violations, there are numerous waste piles and deteriorating building materials at the Property that contain elevated concentrations of several pollutants. Many of the waste piles and deteriorating materials are uncontrolled, without secondary containment, and located outside, where they are exposed to the elements. As a result, pollutants from these piles and materials have migrated and continue to migrate to and through the stormwater system and accumulate in the settling ponds. These settling ponds, which contain Your pollutants, then drain to Deadman Creek, a tributary of the Little Spokane River. The continued existence of—and lack of secondary containment around—these uncontrolled piles and deteriorating materials violate BMPs.

Moreover, Your prior NPDES Permit for the Property (No. WA0000876) required You to remove sediments in the settling ponds by September 1, 2016 as a part of required BMPs. *See* NPDES Permit No. WA0000876, section S10.1. You failed to do so.

You are also violating the Permit and Settlement Agreement by continually failing to implement a SWPPP, which is necessary to properly manage the Site to protect waters from stormwater pollution. Ecology penalized Mr. Hothi for Your failure to implement a SWPPP in July 2019. In the Settlement Agreement between Ecology and Mr. Hothi related to this penalty, Mr. Hothi agreed to provide Ecology with an approvable SWPPP by March 31, 2020. Despite this Settlement Agreement and the Permit condition requiring a SWPPP, You still have not implemented a SWPPP.

Spokane Recycling Company, LLC
Paramjit Hothi
CDC Mead, LLC
NMC Mead, LLC
October 19, 2020
Page 3

Finally, You also have violated the Permit by repeatedly neglecting to perform required monthly inspections and repeatedly failing to submit quarterly Discharge Monitoring Reports and annual reports. For further information, the EPA Action Memoranda relating to the Property dated June 1, 2020 and relating to the KAIC property dated July 2, 2020, which, in part, document some of Your violations, are incorporated here by reference as if set forth in full.

The above-described violations are based on currently available information. These violations are ongoing and reasonably likely to recur because You have failed to take required Corrective Actions to address the exceedances, and You have repeatedly failed to satisfy the Permit reporting, inspection, planning, and BMP requirements that are designed to prevent such exceedances. Your continued failure to implement the required SWPPP and BMPs also constitute ongoing violations of the Permit and Settlement Agreement. KAIC intends to sue for all violations, including those yet to be discovered and those committed after the date of this notice of intent to sue.

Under Section 309(d) of the CWA, 33 U.S.C. 1319(d), each of the above-described violations subjects You to a penalty of up to \$55,800 per day per violation. In addition to civil penalties, KAIC will seek injunctive relief to prevent further violations under Sections 505(a) and (d) of the CWA, 33 U.S.C. § 1365(a) and (d), and such other relief as permitted by law. KAIC will also seek to recover costs including attorneys' fees, as permitted by Section 505(d) of the CWA, 33 U.S.C. § 1365(d).

This notice of intent to sue sufficiently states grounds for filing suit. We may, at the close of the 60-day notice period, or shortly thereafter, file a citizen suit against You under Section 505(a) of the CWA for violations.

During the 60-day notice period, we would be willing to discuss effective remedies for the violations as set forth in this letter, as well as the violations of the easements that You have with KAIC as well as KAIC's other claims. If You wish to pursue such discussions, please let me know.

Sincerely,



Mark W. Schneider

cc: Kaiser Aluminum Investments Company
Andrew Wheeler, Administrator, U.S. EPA
Chris Hladick, Administrator, Region 10 U.S. EPA
Laura Watson, Director, Washington Department of Ecology



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

4601 N Monroe Street • Spokane, Washington 99205-1295 • (509)329-3400

November 19, 2018

Mr. Paramjit Hothi
Spokane Recycling LLC
3548 Piper Avenue
Burnaby, BC V5A 3A9
Canada

RE: Notice of Corrections Required Extension request

Dear Paramjit Hothi:

Ecology received your email on November 13 requesting an extension for the completion of corrective actions as specified on the October 2018 Water Quality Program Corrections Required form that was generated after our August 2018 inspection of your Spokane Recycling facility in Mead WA.

Ecology has made multiple efforts since 2014 to get you into compliance with your permit and ensure water quality protection:

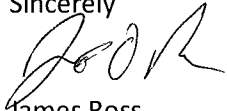
- November 2014 -- You received an NPDES Individual Permit. The permit requirements included development of a stormwater pollution prevention plan, routine monitoring, and reporting monitoring results.
- June 2016 -- Due to your failure to comply with the individual permit requirements, you received a notice of violation for failure to submit 27 required submittals. Discussions between yourself and Ecology led to the termination of your individual permit and issuance of a general permit for managing industrial stormwater at your facility.
- August 2016 -- An account was set up to allow you to submit your required reports online through Ecology's Web Portal.
- June 2018 -- You received your first notice for failure to report Discharge Monitoring Reports (DMRs) in 2017. The notice explained that since the issuance of your general permit, you have not submitted a single required report.
- September 2018 -- You received your second notice for failure to report DMRs. The notice stated that DMRs must be submitted by October 21, 2018. To date, no DMRs have been submitted for either 2017 or 2018.



You now have requested for a delay until April of 2019 to comply with permit requirements that you should have been aware of since you received your first permit in 2014. Ecology is not prepared to provide an extension until April for reporting requirements that can be implemented immediately. Ecology will provide you until December 31, 2018 to complete reporting required DMRs. But, Ecology will grant you an extension until April 30, 2018 to comply with actions required for violations #8 and 12.

An updated Water Quality Program Corrections Required form is enclosed with revised complete or submit dates. Failure to comply with the requirements of the permit and the Corrections Required notice will result in an Administrative Order and/or civil penalties.

Sincerely

A handwritten signature in black ink, appearing to read "J. Ross", written over the word "Sincerely".

James Ross
Stormwater inspector
Water Quality Program
(509) 329-3573
james.ross@ecy.wa.gov

June 19, 2019

Paramjit Hothi
Spokane Recycling LLC
3548 Piper Avenue
Burnaby, BC V5A 3A9

RE: Water Quality Program Corrections Required
Water Quality Program Notice of Penalty #01058

Dear Paramjit Hothi:

The Department of Ecology conducted a permit compliance inspection at your facility on August 9, 2018. You received a notice of corrections required (attached) with several items needing to be addressed. You asked for, and received an extension in November 2018. While several of the reporting violations were corrected, Ecology still has not received a copy of your facility's Stormwater Pollution Prevention Plan (SWPPP). This document is a key piece in properly managing your site to protect waters from stormwater pollution. The extended due date for this critical document was December 31, 2018. Due to your failure to comply with the notice of corrections regarding this facility, Ecology has issued Notice of Penalty # 01058 in the amount of \$3000 which must be paid in 30 days of receipt of the citation. Information on appealing the citation can be found on page 2 of the citation. If you have questions about the inspection you may contact me at (509) 329-3573 or by email at jros461@ecy.wa.gov.

Sincerely:

James Ross
Washington State Dept. of Ecology
Eastern Region – Industrial Stormwater Inspector

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7 **POLLUTION CONTROL HEARINGS BOARD**
8 **STATE OF WASHINGTON**

9 PARAMJIT HOTHI,

10 Appellant,

11 v.

12 STATE OF WASHINGTON,
13 DEPARTMENT OF ECOLOGY,

14 Respondent.

PCHB No. 19-036

SETTLEMENT AGREEMENT AND
JOINT MOTION TO DISMISS

15 Pursuant to WAC 371-08-440, Respondent, State of Washington, Department of
16 Ecology (Ecology), represented by Robert W. Ferguson, Attorney General, through Cheerful
17 Catunao, Assistant Attorney General; and Appellant, Paramjit Hothi, appearing *pro se*, submit
18 this Settlement Agreement (Agreement) to the Pollution Control Hearings Board (Board) as a
19 full and final settlement of the above-referenced appeal, and jointly request the Board to dismiss
20 the above-captioned appeal.

21 **I. BACKGROUND**

22 1. On July 5, 2017, Ecology granted Industrial Stormwater General Permit (ISGP)
23 No. WAR304975 coverage to Mr. Hothi's facility, Spokane Recycling Co. LLC, located at 2111
24 E. Hawthorne Road Spokane, WA 99218.

25 2. The ISGP requires all permittees to develop and implement a Stormwater
26 Pollution Prevention Plan (SWPPP) for the permitted facility. ISGP at 8 (Condition S2.A). The
SWPPP must specify the best management practices (BMPs) necessary to implement all known,

1 available and reasonable methods of treatment, ensure compliance with state water quality
2 standards, and comply with applicable federal technology-based treatment requirements. *Id.*

3 3. On August 9, 2018, Ecology inspectors observed several ISGP violations
4 relevant to the above-captioned appeal during a stormwater compliance inspection of the facility:
5 (1) facility lacks a SWPPP, ISGP Condition S3.A.4.a; (2) facility not maintaining and
6 implementing BMPs, ISGP Condition S3.B.4; and (3) inspections not completed as required by
7 permit, ISGP condition S7. Consequently, Ecology sent to Mr. Hothi a Water Quality Program
8 Corrections Required form, dated November 20, 2018. The Corrections Required form identified
9 several actions that Mr. Hothi needed to take by December 31, 2018,¹ to achieve ISGP
10 compliance.

11 4. On June 13, 2019, Ecology issued Notice of Penalty No. 01058 in the amount of
12 \$3000 due to Mr. Hothi's failure to comply with the November 2018 Corrections Required form,
13 and for alleged violations of RCW 90.48, WAC 173-226-070, and ISGP Conditions.

14 5. On July 5, 2019, Mr. Hothi appealed Notice of Penalty No. 01058 with the Board.

15 6. Mr. Hothi and Ecology now agree to resolve Mr. Hothi's appeal of the Penalty
16 through the Agreement described below.

17 II. SETTLEMENT AGREEMENT

18 The parties wish to resolve the disputes arising out of this appeal and avoid the time
19 and cost associated with further litigation. Without admitting fault or liability, the parties
20 stipulate and agree as follows:

21 A. SCOPE

22 This Agreement constitutes the entire agreement between Mr. Hothi and Ecology, and
23 settles all issues raised by Notice of Penalty No. 01058. Ecology agrees to deem Notice of
24 Penalty No. 01058 resolved upon (1) Mr. Hothi's satisfactory and timely payment of the
25 amount set out in Paragraph II.B.1 of this Agreement; and (2) Mr. Hothi's timely submission

26 ¹ Following Mr. Hothi's extension request, Ecology extended the compliance deadline for required
actions from November 2018 to December 31, 2018.

1 of an approvable SWPPP, also set out in Paragraph II.B.1 This Agreement applies only to
2 Notice of Penalty No. 01058 and does not in any way limit Ecology's authority to take
3 enforcement actions for violations that are not addressed herein.

4 **B. RESOLUTION OF PENALTY**

5 1. **Partial Suspension of the Penalty.**

6 Ecology agrees to hold one thousand five hundred dollars (\$1,500) of the three
7 thousand dollars (\$3,000) Penalty in abeyance following this Agreement's effective date so
8 long as Mr. Hothi provides Ecology with a submittal of an approvable SWPPP by March 31,
9 2020. Therefore, if Mr. Hothi fails to provide Ecology with an approvable SWPPP by March
10 31, 2020, the amount held in abeyance, one thousand five hundred dollars (\$1,500), would then
11 become immediately due and payable to Ecology without further right of administrative or
12 judicial review.

13 The SWPPP must be submitted to Jim Ross, Ecology Inspector, by e-mail at
14 JROS461@ECY.WA.GOV, and the following mail address by certified mail with return
15 receipt to:

16 Eastern Regional Office
17 4601 N Monroe
18 Spokane WA 99205-1295

18 2. **Cash Payment.**

19 Within thirty (30) days of this Agreement's effective date, Mr. Hothi shall make its
20 payment by check or money order payable to the "Department of Ecology" and make reference
21 to Notice of Penalty No. 01058, and shall send the payment to:

22 Department of Ecology
23 Cashiering Unit
24 P.O. Box 47611
25 Olympia, Washington 98504-7611

26 If Ecology does not receive Mr. Hothi's payment of one thousand five hundred dollars
(\$1,500) within thirty (30) days of this Agreement's effective date, the full three thousand

dollars (\$3,000) will become immediately due and payable without further right of administrative or judicial review.

C. REMEDIES

In the event that any party violates the terms of this Agreement, any other party may pursue all remedies available by law. By entering into this Agreement, all parties waive any rights to administrative or judicial review of the underlying merits of the Agreement.

D. JURISDICTION AND VENUE

The Appellant consents to subject matter and personal jurisdiction and venue in Thurston County Superior Court, Washington (the Court), solely for the purpose of enforcement of this Agreement and without waiving their right to contest the Court's jurisdiction or venue in other matters.

E. MODIFICATION OF AGREEMENT

This Agreement shall not be modified, supplemented or amended except in writing, specifically referring to this Agreement, and signed by an authorized representative of each party hereto.

F. DISMISSAL OF APPEAL

The parties consent to the submission of this Agreement to the Board and request that, based upon a full and final settlement having been reached, the Board dismiss this appeal with prejudice. Both parties further agree to bear their own costs and attorneys' fees associated with this appeal.

G. EFFECTIVE DATE

This Agreement shall become effective upon signature by authorized representatives of all parties below and the issuance of the Board's order dismissing this appeal.

H. SIGNATORIES AUTHORIZED

Each of the persons who signs his/her name below affirms that he/she has the authority to execute this Agreement on behalf of the party whose name appears next to his/her signature

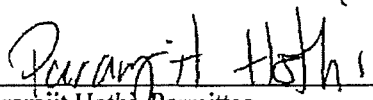
1 and that this Agreement is a binding obligation enforceable against said party and their
2 successors under the law of Washington. The signatory from the Washington Attorney General
3 Office represents that he/she has the authority to execute this Agreement on behalf of
4 Washington and that this Agreement is a binding obligation enforceable against Washington
5 under the law of Washington.

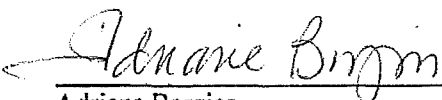
6 **I. EXECUTION**

7 This document may be executed in counterparts and may be executed by facsimile
8 and/or electronically, and each executed counterpart shall have the same force and effect as the
9 original instrument.

10 PARAMJIT HOTHI


STATE OF WASHINGTON

11
12 
13 Paramjit Hothi, Permittee
14 ISGP No. WAR304975


Adriane Borgias
Eastern Regional Manager, Water Quality
Program
Department of Ecology
DATED: November 20, 2019

15 DATED: November 18, 2019

16
17 ROBERT W. FERGUSON
18 Attorney General

19
20 
21 CHEERFUL CATUNAO, WSBA #53731
22 Assistant Attorney General
23 Attorneys for Respondent
24 cheerful.catunao@atg.wa.gov
25 360-586-6762

26 DATED: November 20, 2019

Pursuant to RCW 9A.72.085, I certify that on the 20th day of November 2019, I caused to be served a Settlement Agreement and Joint to Dismiss in the above-captioned matter upon the parties herein as indicated below:

☐ U.S. Mail
☒ Email
☐ Hand Delivered
☐ Overnight Express

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Leslie Hummel
LESLIE HUMMEL, Legal Assistant



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

4601 N Monroe Street • Spokane, Washington 99205-1295 • (509)329-3400

June 23, 2016

Mr. Paramjit Hothi
Spokane Recycling LLC
3548 Piper Avenue,
Burnaby, BC V5A 3A9
Canada

Notice of Violation (NOV) Docket No.	13468
Name	Spokane Recycling LLC located in Spokane County
Location	2111 E. Hawthorne Road, Mead WA 99021

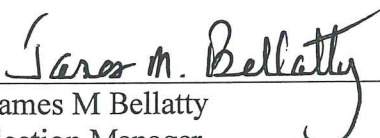
RE: Notice of Violation

Dear Mr. Hothi:

The Department of Ecology is issuing the enclosed Notice of Violation to you for the failure to submit twenty seven (27) required submittals or pay \$22,318.07 in permit fees for National Pollutant Discharge Elimination System (NPDES) permit WA0000876. This Notice of Violation is issued under the authority of Revised Code of Washington 90.48.120(1).

Please contact Michael Hepp at (509) 329-3536 or mhep461@ecy.wa.gov if you have any questions concerning this Notice of Violation.

Sincerely,


James M Bellatty
Section Manager
Water Quality Program
Eastern Regional Office

FedEx International Air Waybill No. 8672 9305 9007

Enclosures: Notice of Violation Docket No. 13468

cc: Pat Hallinan
Michael Hepp
Charles Gilman

WQ -NOV (2/2015)



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

IN THE MATTER OF COMPLIANCE)	NOTICE OF VIOLATION
BY Mr. Paramjit Hothi)	DOCKET No. 13468
WITH CHAPTER 90.48 RCW AND THE)	
RULES AND REGULATIONS OF)	
THE DEPARTMENT OF ECOLOGY		

To: Mr. Paramjit Hothi
Spokane Recycling LLC
3548 Piper Avenue,
Burnaby, BC V5A 3A9
Canada

Notice of Violation (NOV) Docket No.	13468
Name	Spokane Recycling LLC located in Spokane County
Location	2111 E. Hawthorne Road, Mead WA 99021

The Department of Ecology (Ecology) is issuing this Notice of Violation to you for violating provisions of Chapter 90.48 Revised Code of Washington (RCW) Water Pollution Control. This notice contains Ecology's determination that a violation has or will occur.

Ecology has the authority to issue this Notice of Violation under RCW 90.48.120(1) which reads in part:

“Whenever, in the opinion of Ecology, any person shall violate or create a substantial potential to violate the provisions of the chapter, or fails to control the polluting content of waste discharged, or to be discharged into any waters of the state the department shall notify such person of its determination by registered mail....”

PROJECT/SITE] LOCATION

Spokane Recycling LLC. 2111 E. Hawthorne Road, Mead WA 99021

DETERMINATION OF VIOLATIONS

Notice is hereby given in accordance with RCW 90.48.120(1), as follows:

Spokane Recycling LLC has been permitted to discharge to Deadman Creek under National Pollutant Discharge Elimination System (NPDES) Permit No. WA0000876 since November 14, 2014. To date Spokane Recycling LLC has had the following 28 violations of NPDES permit No. WA0000876:

1. Permit Condition G13 – failure to pay \$22,318.07 of fiscal year 2016 permit fee.
2. Twenty seven missing submittals:

Submittal	Permit Section	Due Dates	No. Violations
Monthly DMR – November 2014 through November 2015	S3.A	December 15, 2014 through May 15, 2016	19
ANNUAL STORMWATER BENCHMARK COMPLIANCE REPORT	S4.D	3/15/2015	1
ANNUAL STORMWATER BENCHMARK COMPLIANCE REPORT	S4.D	3/15/2016	1
STORMWATER POLLUTION PREVENTION PLAN	S5	9/1/2015	1
O&M - Operation And Maintenance Manual	S7.A.1	9/1/2015	1
O&M - Operation And Maintenance Manual (Update)	S7.A	1/15/2016	1
SCOPE OF WORK – REMOVAL & DISPOSAL OF SEDIMENTS IN SETTLE POND SYSTEM	S10.1	9/1/2015	1
SCHEDULE OF COMPLIANCE – ANNUAL STATUS REPORTS	S11	1/15/2015 and 1/15/2016	2
TOTAL			27

This determination does not constitute an Order or directive under RCW 43.21B.310.

FILE A REPORT WITH ECOLOGY

Pursuant to RCW 90.48.120(1), within thirty (30) days from receipt of this Notice of Violation Mr. Paramjit Hothi must file a full report with Ecology stating:

1. What steps HAVE BEEN taken to control such waste or pollution to otherwise comply with this determination of Ecology.
2. What steps ARE BEING taken to control such waste or pollution to otherwise comply with this determination of Ecology.

Send the report to:

Mr. Michael Hepp
Department of Ecology
Eastern Regional Office
4601 N Monroe St.
Spokane, WA 99205

ECOLOGY'S RESPONSE

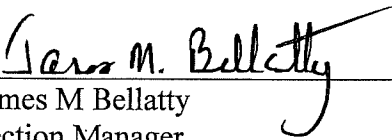
Upon receipt of the report, Ecology will review the information provided and issue an Order or directive as it deems appropriate under the circumstances, and shall notify Mr. Paramjit Hothi.

CONTACT INFORMATION

Please direct all questions about this Notice of Violation to:

Mr. Michael Hepp
Department of Ecology
Eastern Regional Office
4601 N Monroe St.
Spokane, WA 99205
(509) 329-3536
mhpe461@ecy.wa.gov

SIGNATURE


James M Bellatty
Section Manager
Water Quality Program
Eastern Regional Office

6/23/16
Date



U.S. Department of Justice



U.S. Environmental Protection Agency

MAR 14 1997

MEMORANDUM

SUBJECT: Defining "Matters Addressed" in CERCLA Settlements

FROM: Bruce S. Gelber *Bruce S. Gelber*
Deputy Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice

Sandra L. Connors *Sandra L. Connors*
Director, Regional Support Division
Office of Site Remediation Enforcement
U.S. Environmental Protection Agency

TO: All EES Attorneys and Paralegals
EPA Regional Counsel Branch Chiefs, Regions I-X

This memorandum revises the policy of the Department of Justice and the Environmental Protection Agency with respect to the content of contribution protection clauses in judicial and administrative settlements under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). In many cases it is appropriate for the settlement agreement to contain an explicit definition of "matters addressed" that clarifies the parties' intent regarding the scope of contribution protection. Such a definition will reduce uncertainty and litigation regarding the effect of CERCLA settlements on the contribution claims of other persons, and will promote the rapid entry of decrees. This memorandum will describe the principles to be applied in defining "matters addressed," and will discuss the application of these principles to the most common types of CERCLA settlements. This memorandum supersedes EPA's "Interim Agency Policy on Contribution Protection Clauses in CERCLA Settlements" (Apr. 10, 1991).

A. Background

Section 113(f)(2) of CERCLA provides that:

A party who has resolved its liability to the United States or a State in an administrative or judicially approved settlement **shall not** be liable for claims for contribution **regarding matters addressed in the settlement.** Such settlement does not discharge any of the other potentially liable parties unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement.

42 U.S.C. § 9613(f)(2) (emphasis added). Sections 122(g)(5) and 122(h)(4) of CERCLA provide virtually identical contribution protection provisions for settlements with de minimis parties and administrative cost recovery settlements, respectively.

In the past, CERCLA settlements have generally not included a definition of "matters addressed," but instead have at most contained a statement that the "Settling Defendants are entitled to such protection from contribution actions or claims as is provided in CERCLA Section 113(f)(2)" or the equivalent. This approach has sometimes caused uncertainty regarding the effect of the settlement on the contribution rights of persons not party to the settlement, resulting in delays in the entry of decrees and the entanglement of the United States in subsequent litigation regarding the scope of contribution protection.¹ Several courts

¹ See, e.g., United States v. Alcan Aluminum, 25 F.3d 1174 (3rd Cir. 1994) (reversing denial of motion to intervene by nonsettlers and remanding for determination as to whether consent decree cut off nonsettlers' contribution rights); United States v. Charter International Oil Co., 83 F.3d 510 (1st Cir. 1996) (dispute over scope of contribution protection); United States v. Colorado & Eastern RR Co., 50 F.3d 1530 (10th Cir. 1995) ("CERC") (U.S. argued as amicus that matters addressed in consent decree were limited to EPA's past costs so that prior settlers performing remedy could maintain action against defendant); Akzo Coatings v. Aigner Corp. 30 F.3d 761 (7th Cir. 1994) (amicus brief argued that RD/RA consent decree did not provide contribution protection for early removal action); Dravo v. Zuber, 13 F.3d 1222 (8th Cir. 1994) (amicus brief argued that de minimis AOC provided site-wide contribution protection); Avnet, Inc. v. Allied-Signal, Inc., 825 F. Supp. 1132 (D. R.I. 1992) (same); Waste Management of Pennsylvania, Inc. v. City of York, 910 F. Supp. 1035 (M.D. Pa. 1995) (U.S. argued unsuccessfully as amicus that Section 122(h)(1) Administrative Order on Consent provided broad contribution protection).

have indicated that the United States can reduce this uncertainty by defining "matters addressed" explicitly in its CERCLA consent decrees.²

Defining "matters addressed" in CERCLA settlements will serve the public interest by reducing uncertainty and litigation regarding the scope of contribution protection associated with such settlements, and will enable the United States to maximize the value of its CERCLA recoveries by affording greater certainty and finality to settling parties. In addition, careful crafting of the scope of matters addressed is important to the United States where an agency other than EPA has a potential claim for recovery of response costs that could be extinguished as a result. Therefore, a definition of "matters addressed" should

² United States v. Charter Internat'l Oil Co., 83 F.3d at 517, n. 9 ("The absence of specific language concerning 'matters addressed' might be thought to be of concern to the EPA and the public. Having the scope of 'matters addressed' specifically agreed upon should lead to greater certainty and finality. That certainty and finality are attractive inducements to settle."); CERC, 50 F.3d at 1537 (citing parties' failure to "draft around the 'matters addressed' problem," presumably by defining "matters addressed"); Akzo v. Aigner, 30 F.3d at 766, n. 8 ("if the parties have included terms explicitly defining 'matters addressed' by their settlement, then those terms will be highly relevant to, and perhaps even dispositive of, the scope of contribution protection").

typically be included in the contribution protection section of future CERCLA settlements.³

B. Defining "Matters Addressed": General Principles

The term "matters addressed" should be drafted on a site-specific basis to correspond to the facts of the case and the intent of the parties. Generally, the term "matters addressed" should identify those response actions and costs for which the parties intend contribution protection to be provided. At a minimum, these will be the response actions or costs the settling parties agree to perform or pay; however, "matters addressed" can be broader if the settlement is intended to resolve a wider range of response actions or costs, regardless of who undertakes the work or incurs those costs. This broader contribution protection is typical in most de minimis and ability to pay settlements, as well as in certain RD/RA and cash-out settlements.

In crafting a definition of "matters addressed," the parties should be prepared to satisfy the legal standard for entry, i.e., that the settlement is "fair, reasonable and consistent with the goals of CERCLA."⁴ Where the settlement is intended to extinguish the contribution rights of other PRPs that may incur or be held liable for response costs, the entering court may, as one part of its fairness analysis, require a demonstration that

³ The following model CERCLA settlement documents already contemplate inclusion of a definition of "matters addressed": 1) Revised Model RD/RA Consent Decree (July 13, 1995); 2) Model CERCLA Section 107 Consent Decree for Recovery of Past Response Costs (September 29, 1995); 3) Model CERCLA Section 122(h)(1) Agreement for Recovery of Past Response Costs (September 29, 1995); 4) Revised Model CERCLA Section 122(g)(4) De Minimis Contributor Consent Decree and Administrative Order on Consent (September 29, 1995); 5) Model CERCLA Section 122(g)(4) De Minimis Administrative Order on Consent and Consent Decree, issued as attachments to the Revised Guidance on CERCLA Settlements with De Minimis Waste Contributors (June 3, 1996).

⁴ United States v. Charter, 83 F.3d at 520; United States v. Cannons Eng'g Corp., 899 F.2d 79, 85 (1st Cir. 1990).

this result is fair to potential contribution plaintiffs whose rights would be extinguished.⁵

Ordinarily, the required demonstration can be accomplished by showing that the response actions or costs within the definition of "matters addressed" were taken into consideration in determining the amount of the settlement, and that the settlors' payment or other contribution represents a reasonable contribution to those costs based on some defensible criterion such as the settlors' volumetric share or ability to pay, or a fair assessment of the litigation risks. Moreover, the impact of the settlement on the contribution rights of any non-parties must be fair under all of the relevant circumstances. In evaluating the fairness of the settlement, it is relevant that the proceeds from the settlement serve to "reduce the potential liability" of all non-settling PRPs. See 42 U.S.C. § 9613(f)(2).⁶

⁵ See United States v. Charter, 83 F.3d 523 (holding that consent decree was not unfair to prior settling parties because it did not bar contribution claims); U.S. v. Alcan Aluminum Corp., 25 F. 3d 1174 (3d Cir. 1994) (a party whose contribution rights may be extinguished should be permitted to intervene for the purpose of opposing entry of a consent decree); but see U.S. v. Rohm and Haas Company, 721 F. Supp. 666, 686-687 (if a decree is otherwise reasonable in light of identified factors, the reviewing court need not separately consider the fairness of the decree to non-settling parties). At most, fairness to other parties is but one dimension of the larger fairness analysis, which has both procedural and substantive dimensions that are beyond the scope of this memorandum. See United States v. Cannons Eng'g Corp., 899 F.2d at 89-90.

⁶ It may be appropriate in some instances to structure a settlement to ensure that PRPs whose contribution rights are being cut off receive an appropriate benefit from the settlement, e.g., through direct reimbursement for work they have performed or through establishment of a CERCLA § 122(b)(3) special account to fund future work. For example, in cases where prior settlors have agreed to perform the remedy and pay most of EPA's costs, it may, in light of that cooperation, be appropriate to allocate the proceeds from a subsequent settlement between the Superfund and the prior settlors in order to ensure the fairness of the settlement. On the other hand, if in the prior settlement the United States compromised its past costs claims on the understanding that it would seek the shortfall from others, the prior settlors may have already received an appropriate benefit through the original compromise, so that it is perfectly fair for the Superfund to retain all of the proceeds from a subsequent settlement.

The scope of the covenant not to sue is relevant to, but not dispositive of, the scope of "matters addressed." A cost or response action is not a "matter addressed" merely because the United States covenants not to sue for it. "If the covenant not to sue alone were held to be determinative of the scope of contribution protection, the United States would not be free to release the settling parties from further litigation with the United States, without unavoidably cutting off all private party contribution rights." Akzo, 30 F.3d at 766 (quoting brief of United States as amicus). The government may have reasons to give such a covenant unrelated to an intent regarding the scope of contribution protection affecting other parties, such as prior settlers. Thus, in some cases "matters addressed" is appropriately defined less broadly than the covenant not to sue. On the other hand, an item that is **not** within the scope of the covenant not to sue is not ordinarily considered to be a "matter addressed" in the settlement. As always, it remains important to keep the concept of "matters addressed" distinct from the scope of the covenant not to sue.

C. Application of Principles to Typical Settlements

The following examples offer some guidance and suggested language for defining "matters addressed" in different types of CERCLA settlements. These are examples only. Site-specific considerations may require changes to the language suggested in these examples.

1. De Minimis Settlements

Typically, de minimis settlements are intended to provide complete relief to the settlers by fully resolving all claims

against them relating to cleanup of the site. To ensure that such settlements achieve their intended purpose, it is important that all costs for which contribution protection is being provided be considered in determining the amount of the payment. Thus, in de minimis (and other) settlements in which PRPs pay a share of specified costs, an item is "addressed" if it is included in the cost total to which the parties' shares are applied. Other items whose costs cannot be estimated at the time of settlement (e.g., additional work that may be required as a result of conditions that are not known or anticipated at the time of the settlement, or work performed by other PRPs for which an accurate accounting is unavailable) may be included in "matters addressed" if the settlors pay a premium that reflects the risk that such costs will ultimately be incurred. Where a diligent effort is made to include all currently anticipated site costs (past and future, government and private) in the cost basis of the settlement, the definition of "matters addressed" should be drafted to include all such costs, as follows:

The "matters addressed" in this settlement are all response actions taken or to be taken and all response costs incurred or to be incurred by the United States or any other person with respect to the Site.⁷ The "matters addressed" in this settlement do not include those response costs or response actions as to which the United States has reserved its rights under this Consent Decree (except for claims for failure to comply with this Decree), in the event that the United States asserts rights against Settling Defendants coming within the scope of such reservations.⁸

⁷ In cases in which a State has or is expected to take response actions or incur response costs with respect to the site, and those actions and costs are not considered in arriving at the settlement amount, this definition should be modified to exclude State response actions or response costs.

⁸ Section 7 of this Memorandum explains the rationale for carving out reserved matters from "matters addressed," and should be consulted in connection with drafting a definition of "matters addressed" that will result in broad, site-wide contribution protection.

Of course, if the settlement is not based on an evaluation of the party's appropriate share of all anticipated site costs (e.g., where it is limited to a particular operable unit, or other portion of site costs), then the definition of "matters addressed" should be modified accordingly.

2. Final RD/RA Consent Decrees

In final RD/RA settlements, there often is no explicit determination of percentage shares, but a group of settlors will agree to perform the remedy and pay all or a portion of the United States' past and future costs. Because such settlors usually bear the bulk of the site costs, it is likely to be fair that they receive contribution protection for all site costs, including those that may have been incurred by other PRPs (such as the costs of doing an RI/FS under an EPA order). In such cases, so long as the costs borne by other PRPs are known (or can be reasonably estimated) and were considered in determining how much the final RD/RA settlors should be required to do and pay, those earlier PRP costs should be included in "matters addressed" along with all of the United States' costs. The definition of "matters addressed" in such a settlement should include all anticipated costs and work, and should be similar or identical to the definition suggested above for de minimis settlements.

If, on the other hand, the United States is unable to conclude that the settlors are paying an appropriate portion of **all** costs, both public and private -- e.g., where the settlors agree to perform a relatively inexpensive remedy, but do not contribute to an expensive RI/FS that was performed by other PRPs -- it may be appropriate either to limit "matters addressed" to costs reimbursed or work performed under the decree or to list specifically the matters for which the settlor is to receive contribution protection, including costs incurred by PRPs to the extent they have been considered or addressed.

3. Partial (Operable Unit) Consent Decrees

In RD/RA settlements for only one of several operable units, the "matters addressed" are likely to be limited to the portion of the cleanup which the settlors are performing or funding. In such cases, the following language should be used:

The "matters addressed" in this settlement are Past and Future Response Costs **[as defined herein; or for specific, described work]** and the Work as defined herein.

However, where a settlor conducts the whole remedy at a site through a series of operable unit decrees, the last operable unit decree should generally use a definition of "matters addressed" that is equivalent to what the settlor would have received if it had performed the whole remedy under one, final RD/RA decree.

4. Past Cost-Only Settlements

In past cost settlements, settlors pay all or a portion of the United States' past costs and the covenant is similarly limited. Such decrees often contain a definition of "Past Response Costs" that limits such costs to those incurred by the United States with respect to the site prior to a given date. In other cases, "Past Response Costs" may be defined as costs relating to a specified set of response actions. In "Past Cost-Only" settlements, the covenant not to sue covers such Past Response Costs only. To prevent disputes regarding the parties' intentions as to the scope of contribution protection in such settlements, "matters addressed" should be narrowly defined as follows:

The "matters addressed" in this settlement are limited to the United States' Past Response Costs, as defined herein.

In some past cost settlements, the definition of "matters addressed" should be even narrower. For example, if prior settlors have already reimbursed part of the United States' past costs, the amount of the settlement in issue may be limited by the amount of the United States' remaining shortfall, so that the settlor's payment may be smaller than what would be a reasonable contribution by the settlor to **all** of the government's past costs. In such a case, it may be appropriate to provide an even narrower definition, such as by limiting "matters addressed" to the past costs settling defendant has agreed to pay or to the United States' past costs that were unreimbursed prior to any payments to be made under the decree.

5. Cash-Out Settlements

In cash-out settlements (where a settlor pays money and typically receives a covenant not to sue under Sections 106 and 107 for both past and future costs and future liability, subject to standard reopeners), the scope of "matters addressed" depends on the circumstances and the intent of the parties. For example, if the settlor's payment represents a reasonable contribution toward all anticipated past and estimated future site costs (including past and future PRP response costs), "matters addressed" should include all such response activities and costs, and the language suggested above for de minimis and final RD/RA settlements is appropriate. If, however, the settlor's payment was determined based on only a subset of site response costs, only that subset is a matter actually addressed. Under these circumstances, the following form should be used:

The "matters addressed" in this settlement are limited to the Past and Future Response Costs, incurred or to be incurred **[by the United States; prior to a specified date; or with respect to specified items of work such as an RI/FS or Operable Unit].**⁹

⁹ Note that one court has held that, because Section 122(h) of CERCLA allows EPA to settle claims only for costs incurred by the government, administrative cash-out settlements under Section 122(h) cannot extinguish contribution claims of private parties with respect to the cleanup costs they incur. Waste Management of Pennsylvania, Inc. v. City of York, 910 F. Supp. 1035 (M.D. Pa. 1995). In light of this decision, it may be prudent in the case of cash-out settlements in which the government intends to afford protection from contribution actions for private party response costs (such as costs incurred by prior RD/RA settlers), to utilize a settlement vehicle other than an administrative settlement based solely on Section 122(h) of CERCLA, such as an administrative settlement based on the Attorney General's inherent authority to settle or a judicially approved consent decree.

6. Ability to Pay Settlements

The purpose of ability to pay settlements is to provide repose to a defendant with limited financial resources, in return for a contribution to the cleanup that takes into account the defendant's limited financial means. Such a settlement often represents a judgment that, given the total anticipated costs (public and private, past and future) at this site, it is appropriate that this impecunious PRP pay a specified portion of its limited funds toward cleanup. So long as cost or work items are considered in such an analysis, they should be included in "matters addressed." Indeed, it may be difficult to secure such settlements without some assurance of broad contribution protection, because PRPs with limited resources may be unwilling to settle if they must retain resources to defend against contribution actions. Therefore, ordinarily "matters addressed" should include all site costs, using the language suggested for de minimis and final RD/RA settlements.¹⁰

Note, however, that ability to pay settlements do not always address all site costs. Partial settlements such as operable unit settlements may contain ability to pay provisions for some parties, without resolving those parties' liability for all site costs. In such cases, a more limited definition of "matters addressed" will be appropriate.

7. Reserved Matters

In most CERCLA settlements, the United States explicitly identifies a variety of matters and claims that it is reserving with respect to the settling defendants notwithstanding the

¹⁰ Note that because CERCLA § 113(f)(3)(C) subordinates private party contribution claims to the rights of the United States, there is nothing unfair about the United States recovering all or substantially all of the settlement proceeds in cases involving a limited ability to pay, so long as the total recovery is reasonable. See United States v. Bay Area Battery, 895 F. Supp 1524 (N.D. Fla. 1995). As noted above, however, it may be appropriate in some cases to consider an arrangement whereby the proceeds of such settlements are shared with potential contribution plaintiffs.

plaintiff's covenant not to sue. There may be an overlap between the subject matter of these reservations and the definition of "matters addressed." Specifically, the definition of "matters addressed" recommended above for certain settlements would provide contribution protection for "all response actions taken or to be taken and all response costs incurred or to be incurred" with respect to the site. Many reservations of rights in CERCLA decrees, such as the statutory reopeners for unknown conditions and new information, by their terms also relate to potential liability for "response actions" and "response costs." By virtue of the fact that the United States has **reserved** its rights to pursue the settlors for such matters, however, in the usual instance such matters are not "addressed" by the settlement.

In order to avoid any uncertainty arising from the overlap between the definition of "matters addressed" and the standard reservations and reopeners, the following language should be added to the definition of "matters addressed," as indicated above, where a broad definition of matters addressed is being used:

The "matters addressed" in this settlement do not include those response costs or response actions as to which the United States has reserved its rights under this Consent Decree (except for claims for failure to comply with this Decree),¹¹ in the event that the United States asserts rights against Settling Defendants coming within the scope of such reservations.

It is important that the language excluding reopeners and reservations from the definition of "matters addressed" be drafted to require that the United States invoke the reservation or reopener before a contribution plaintiff can avoid the bar to

¹¹ See, e.g., Model RD/RA Decree ¶¶ 80 and 84.a. The issue of a settling defendant's compliance is between the United States and that defendant. A determination by the United States that the defendant is out of compliance can usually be addressed by such mechanisms as stipulated penalties, motions to enforce, or other steps, and should not automatically expose the settling defendant to third-party contribution actions that would otherwise be barred by operation of Section 113(f)(2) of CERCLA.

contribution suits on the basis of such reservation or reopener. This formulation is intended to preclude contribution claims against the settlors based on frivolous allegations by the contribution plaintiff that the conditions triggering such reservations have been met.

Where consent decrees are not intended to afford broad contribution protection, as in the example of partial and past-cost-only decrees described in Sections C.3 and C.4 above, the more limited definition of "matters addressed" does not overlap with the standard reservations and reopeners from CERCLA model settlement documents, and there will be no need to add any language to the definition in order to exclude such items from "matters addressed" by explicit reference.

D. Purpose and Use of this Memorandum

This memorandum is intended exclusively as guidance for employees of the U.S. Environmental Protection Agency and the U.S. Department of Justice, and is subject to modification at any time. This memorandum is not a rule and does not create any legal rights or obligations. Whether and how the principles set forth in this memorandum are applied in a particular settlement will depend on the relevant facts. Questions regarding this memorandum should be directed to Daniel C. Beckhard of the Environmental Enforcement Section (202/514-2771) or Janice Linett of the Regional Support Division (703/978-3057).

cc: Lisa K. Friedman, Associate General Counsel,
Solid Waste and Emergency Response Division
Stephen D. Luftig, Director, Office of Emergency and
Remedial Response
Barry Breen, Director, Office of Site Remediation
Enforcement
Letitia Grishaw, Chief, Environmental Defense Section
EDS Deputy and Assistant Chiefs

EPA-R10-2021-000437 Request Details



Submitted



Evaluation



Assignment



Processing



Closed

Contact Information

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Request Information

Agency	Superfund and Emergency Management Division
Will Pay Up To	\$100.00
Date Submitted	10/21/2020
Estimated Date of Completion	11/20/2020
Fee Category	Commercial
Request Track	Simple
Request Phase	Processing
Final Disposition	Undetermined

Additional Information

Records Locations - Identify one or more locations where records may be located Region 10 - AK ID OR WA and 271 Native Tribes

Description

Description	I am requesting documents related to the Former Kaiser Smelter Site, Mead, Washington. I am attaching a document with detailed descriptions of documents I
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am requesting. Also attached for reference are two Agreements regarding this site: the Spokane Recycling Settlement Agreement and the TriStar North Administrative Settlement Agreement for Payment of Response Costs. Please let me know if you have any questions.

Request Expedited Processing

Made Request? No

Request a Fee Waiver

Made Request? No

Supporting Files

Download	Attached File Name	Size (MB)	File Type
<input type="checkbox"/>	Spoakne Recycling Settlement Agreement.pdf	0.393	Adobe PDF Document
<input type="checkbox"/>	TriStar North Costs Agreement.pdf	0.1698	Adobe PDF Document
<input type="checkbox"/>	Description of documents requested.docx	0.0188	Microsoft Word 2007

Description of documents requested related to the Former Kaiser Smelter Site, Mead, Washington:

- Any and all financial documents submitted to EPA by Spokane Recycling Company, LLC, its principals, and/or its affiliates, including, but not limited to:
 - Narrative responses regarding financial information requested by EPA pursuant to Section 104(e) of CERCLA, 42 U.S.C. § 9604(e)
 - Bank Statements for February through December 2015, January through December 2016, January through December 2017, January through December 2018, January through September 2019, and February 2020
 - U.S. Federal Tax Returns for 2015 through 2018
 - Shareholder Reports to the Canadian Government for 2015 through 2017
- Any and all documents submitted to EPA by Spokane Recycling Company, LLC, its principals, and/or its affiliates related to the Settlement Agreement, U.S. EPA Region X, CERCLA Docket No. 10-2-2—0142, Proceeding Under Section 122(h)(1) of CERCLA, 42 U.S.C. 9622(H)(1) (hereinafter referred to as the “EPA – Spokane Recycling Settlement Agreement”)
- Any and all documents and communications to or gathered by EPA regarding Spokane Recycling Company, LLC, its principals, and/or its affiliates
- Any and all documents and communications concerning the ability to pay of Spokane Recycling Company, LLC, its principals, and/or its affiliates and/or concerning any of their assets, financial or otherwise
- Any and all documents and communications concerning the corporate structure and management of Spokane Recycling Company, LLC and the relationship between Spokane Recycling Company, LLC and its principals and affiliates
- Any and all documents and communications disclosing, reflecting, or relating to analyses undertaken by or for EPA “to determine whether Settling Party is financially able to pay response costs incurred and to be incurred at the Site,” as set forth in the EPA – Spokane Recycling Settlement Agreement
- Any and all documents and communications disclosing, reflecting, or relating to EPA’s determination that “Settling Party has limited financial ability to pay for response costs incurred and to be incurred at the Site,” as set forth in the EPA – Spokane Recycling Settlement Agreement

- Any and all documents submitted to EPA by TriStar North, Inc., its principals, and/or its affiliates, including but not limited to:
 - Documents related to Administrative Settlement Agreement for Payment of Response Costs, U.S. EPA Region 10, CERCLA Docket No. 10-2020-0141 (hereinafter referred to as the “EPA-TriStar Agreement”)
 - Documents and communications disclosing, reflecting, or relating to the lease, ownership, operation, occupancy, or use of the “Property” as defined in III.10. of the EPA-TriStar Agreement
- Appendix B and Appendix C of the EPA-TriStar Agreement

From: admin@foiaonline.gov
To: [Munson, Brad \(SEA\)](#)
Subject: FOIA Tracking Number Change for request EPA-2021-000437 (to EPA-R10-2021-000437)
Date: Thursday, October 22, 2020 1:03:12 PM

The FOIA request EPA-2021-000437 has had its Tracking Number changed to EPA-R10-2021-000437. This is normally due to the request being transferred to another agency (for example, EPA to Dept. of Commerce) or to a sub-agency to process it. Additional details for this request are as follows:

- Old Tracking Number: EPA-2021-000437
- New Tracking Number: EPA-R10-2021-000437
- Requester Name: Brad Munson
- Date Submitted: 10/21/2020
- Long Description: I am requesting documents related to the Former Kaiser Smelter Site, Mead, Washington. I am attaching a document with detailed descriptions of documents I am requesting. Also attached for reference are two Agreements regarding this site: the Spokane Recycling Settlement Agreement and the TriStar North Administrative Settlement Agreement for Payment of Response Costs.

Please let me know if you have any questions.