

THE NORTHWEST SEAPORT ALLIANCE
MEMORANDUM

MANAGING MEMBERS
ACTION ITEM

Item No.	<u>9F</u>
Date of Meeting	<u>July 7, 2026</u>

DATE: June 30, 2026

TO: Managing Members

FROM: John Wolfe, CEO

Sponsor: Dana Henderson, General Counsel

Project Manager: Jason Jordan, Director, Environmental and Planning Services

SUBJECT: 2025 Industrial Stormwater General Permit (ISGP) Appeal - Amended Settlement Agreement with Washington State Department of Ecology (Ecology), Voluntary Dismissal Without Prejudice of Certain Issues and Funding Request

A. ACTION REQUESTED

Three party vote: Request the Northwest Seaport Alliance Managing Members and Homeport Commissions (Port of Seattle and Port of Tacoma) approve the Amended Settlement Agreement with the Washington State Department of Ecology in substantially the same form as presented and also approve voluntary dismissal without prejudice of issues 20, 35-44, 54-57, and 59 lodged in 2025 ISGP Appeal.

NWSA only vote: Request the Managing Members authorize \$200,000 in potential additional legal services funding relating to responding to ongoing legal challenges relating to the 2025 ISGP and defense of settlements with Ecology.

B. SYNOPSIS

The ISGP is both a state waste discharge permit and the vehicle by which Ecology oversees federal Clean Water Act compliance for industrial stormwater discharges. In late 2024, Ecology issued a 2025 Permit which included several important issues of concern for the Northwest Seaport Alliance and Homeports of Tacoma and Seattle (together, "Ports"). Together with several other industry entities, the Ports appealed the 2025 ISGP on these key issues. The Parties reached a partial settlement on some of the issues in the appeal in January, 2026 and later reached a second and final settlement agreement in February, 2026 (together, "Settlement"). For procedural and substantive reasons, the Parties have reached a proposed amendment to the

Settlement, and the Ports are also recommending dismissal of issues 20, 35-44, 54-57 and 59 previously lodged in the 2025 ISGP Appeal.

Because the Settlement has been challenged since entry, additional legal services funding is potentially needed to respond to the ongoing legal challenges and litigation over the Settlement and additional issues brought by other appellants in the 2025 ISGP.

C. Background

In November of 2024, the Ports authorized an appeal of the 2025 ISGP if it included any of the defined key issues of concern to the Ports and allocated litigation funding to be paid by NWSA for the effort. Because several of the key issues were included in the final 2025 ISGP, the Ports appealed the permit. Since commencement of the appeal, and in parallel with litigation efforts, the Ports and Ecology have engaged in ongoing work to address concerns about the permit, and reached a resolution in the form the Settlement on several issues to provide the Ports with greater certainty and ability to stay in compliance with the ISGP.

Per the Settlement, Ecology agreed to propose edits to a future re-issued ISGP and waiver process on the following issues:

- 1) removal of ambiguous provisions requiring compliance with water quality (Issues 20, 40-44);
- 2) extension of deadlines for engineering, constructing treatment at port facilities (Issues 39 and 55);
- 3) removal of “tallying facility-wide” language (Issues 37, 38, 54);
- 4) addressing numeric effluent limitations for total arsenic (issue brought by Wa. Trucking Ass’n) (Issue 59);
- 5) revision of the definition of “facility” so as not to include main track in permit scope (issue brought by BNSF) (Issue 17); and
- 6) use of “waivers” to address tallying facility-wide for remainder of Permit cycle (issues 35 and 36).

(together, “Settled Issues”). The Settlement was contingent on a continuance of the hearing on certain of these issues, and the Ports were not required to dismiss these issues until a new permit is issued.

Since entry of the Settlement, another appellant challenged other provisions of the 2025 ISGP through a full hearing in February, 2026, which necessitated the Ports’ appearance and continued engagement. Additionally, the other appellant challenged Ecology’s stay of certain permit conditions, and has argued that any stay of the permit conditions is unlawful. In ruling that it would not continue a hearing on certain of the

Settled Issues until issuance of a new permit, the Pollution Control Hearings Board (PCHB) has given the Ports the option to proceed to hearing on the Settled Issues or agree to a voluntary dismissal. Upon further consideration, and recognizing the value of the Settlement even without a continuance of the hearing, staff and counsel are recommending removing the Settlement's contingency on a continuance of the hearing and are instead recommending the attached proposed Amended Settlement Agreement with the Department of Ecology.

Additionally, based on the Settlement, and recent rulings from the PCHB, staff and counsel are recommending not proceeding to hearing on issues 20, 35-44, 54-57, and 59 by dismissing these issues, without prejudice.

Due to the need to be involved in the February 2026 hearing to represent the Ports' position regarding the 2025 ISGP as well as the anticipated future legal work related to the Settlement and respond to ongoing legal challenges relating to the 2025 ISGP, an additional \$200,000 is requested for potential additional legal services.

D. FINANCIAL IMPLICATIONS

The proposed Amended Settlement Agreement does not contemplate any payment by NWSA or the Homeports to Ecology or others. The additional \$200,000 requested for legal support will be expensed as incurred.

E. ENVIRONMENTAL IMPACTS/REVIEW

Permitting: None

Remediation: None

Stormwater: As discussed in this memo.

Air Quality: None

F. PREVIOUS ACTIONS OR PUBLIC BRIEFINGS

<u>Date</u>	<u>Action</u>	<u>Amount</u>
January 6, 2025	Additional funding authorized by Managing Members	\$250,000
November 5, 2024	Authorization to commence appeal and authorized litigation funding. (Note, of the funds spent here to date, over \$200,000 is for expert analysis and costs. Though billed against the 2025 ISGP appeal, this expert work also	\$600,000

	supports other related stormwater litigation, as well as future any future permit or waiver efforts by the Ports.)	
TOTAL		\$850,000

G. ATTACHMENTS TO THIS REQUEST

- Proposed Amended Settlement Agreement

AMENDED SETTLEMENT AGREEMENT

The State of Washington, Department of Ecology (Ecology), represented by Julian Beattie, Assistant Attorney General, Adam L. Levitan, and Samuel C. Yang; Appellant BNSF Railway Company (BNSF), represented by Bradford T. Doll, Lynne M. Cohee, and Devra Cohen; Appellants Northwest Seaport Alliance (NWSA), Port of Seattle, and Port of Tacoma, represented by Bradford T. Doll, Lynne M. Cohee, and Devra Cohen; Appellant Washington Trucking Associations, represented by James A. Tupper and Emma Lautanen; Appellant Washington Public Ports Association, represented by Sara Frase and Tim Schermetzler; and Appellant SSA Terminals, LLC, represented by Dianne K. Conway and Bradley P. Jones (collectively, the Settling Parties), enter into this Amended Settlement Agreement (Agreement):

I. BACKGROUND

1. On December 2, 2024, Ecology issued the 2025 Industrial Stormwater General Permit (ISGP), effective January 1, 2025.
2. The Appellant parties to this Agreement all timely filed notices of appeal of the ISGP with the Pollution Control Hearings Board (Board).
3. On January 22, 2025, the Board issued an Order Regarding Case Consolidation, which consolidated the appeals by the Appellant parties to this Agreement, as well as other parties, in the above-captioned case.
4. Each Appellant submitted a list of issues to the Board. Those issues were combined and amended until June 17, 2025, when the Board issued an Order Granting Motion to Amend Appellants' List of Issues and Third Amended Prehearing Order listing all the issues subject to the appeal, including the Subject Issues defined below.
5. In March 2025, the U.S. Supreme Court in *City and County of San Francisco, California v. Environmental Protection Agency*, 604 U.S. 334, 355 (2025) (*City and County of San Francisco*), held that 33 U.S.C. § 1311(b)(1)(C) of the Clean Water Act does not authorize the EPA to include "end-result" water-quality limitations in its NPDES permits.
6. Counsel and staff for the Settling Parties have engaged in discussions relating to the settlement of many of the issues that are the subject of this appeal (the Subject Issues) in order to resolve them without the need for the additional time and expense of litigation. The Settling Parties have agreed that settlement of the Subject Issues as set forth below is in the public interest and in the best interest of all the Settling Parties. The Settling Parties agreed to resolve the appeal of the Subject Issues through the settlement outlined below.

II. AGREEMENT

This Agreement amends and replaces in its entirety the agreement entered into by the Settling Parties dated January 16, 2026. This Agreement is a partial settlement of this matter between the Appellant parties to this Agreement and Ecology and settles all claims related to the Subject Issues that are each specifically set forth below. This Agreement does not affect in any way the remaining issues raised in this appeal by any Appellant.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, Ecology and Permittee-Appellants have reached agreement on language for proposed modifications to each of the Subject Issues set forth below as indicated either by strikeout of language or underlined text replacing or adding language to each of the following conditions in the 2025 Industrial Stormwater General Permit (2025 ISGP). The modifications will be included in any modification of the 2025 ISGP or the renewal or reissuance of the 2025 ISGP, whichever first occurs. Ecology agrees to reasonably defend any appeal of the modified provisions of the Subject Issues detailed below, whether in an appeal of a modified 2025 ISGP or an appeal of a renewed or reissued ISGP that contains the modified provisions.

1. **Condition S8.C.** Ecology agrees to propose the following modifications:

Permittees that exceed an applicable benchmark value in Table 2, Table 3 and/or Table 7 (for a single parameter) in a single drainage area for any two quarters during a calendar year (~~tallied facility-wide~~) ~~shall~~ must 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 in the drainage area(s) associated with the discharge point(s) ~~all areas/discharge points~~ that exceeded the benchmark parameter twice during the calendar year for a single parameter, triggering the Level 2 corrective action, with the goal of achieving the applicable benchmark value(s) in future discharges. Level 2 corrective actions need not be completed in ~~areas/discharge points that did not exceed the benchmark during the calendar year~~ other drainage areas.

2. **Condition S8.D.** Ecology agrees to propose the following modifications:

Permittees that exceed an applicable benchmark value in Table 2, Table 3, and/or Table 7 (for a single parameter) in a single drainage area for any three quarters during a calendar year (~~tallied facility-wide~~) ~~shall~~ must 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 in ~~all areas/discharge points~~ the drainage area(s) associated with the discharge point(s) that exceeded the benchmark parameter three times for a single parameter during the calendar year, triggering the Level 3 Corrective Action, with the goal of achieving the applicable benchmark value(s) in future

discharges. Level 3 corrective actions need not be completed in ~~areas/discharge points that did not exceed the benchmark during the calendar year~~ other drainage areas. Revisions ~~shall~~ must include additional operational and/or structural source control BMPs, if necessary for proper performance and maintenance of treatment BMPs.

3. **Condition S8.D.3.b.** Ecology agrees to propose the following modifications:

The engineering report will be submitted no later than 6 months after the last day of the calendar year in which the Level 3 was triggered, i.e., due June 30th; unless an alternate due date is specified in an administrative order, or no later than 18 months after the last day of the calendar year for a facility that is owned or operated by a *small business* or a publicly owned entity, *or* that is larger than 5 acres.

4. **Condition S8.D.5.** Ecology agrees to propose the following modifications:

Level 3 Deadline: The Permittee will 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 provided, however, for corrective actions at facilities that require the submission of an engineering report to Ecology and that are owned or operated by a *small business* or a publicly owned entity, *or* that are larger than 5 acres, the deadline will be no later than September 30th of the second following year.

Before the effective date of any modified, renewed, or reissued ISGP, Ecology further commits that it will grant a year-long extension of the deadlines set forth in Conditions S8.D.3.b and S8.D.5 should any Appellant that is a party to this Agreement or member of an Appellant that is a party to this Agreement timely apply for and provide adequate justification for a modification of permit coverage pursuant to S2.B before Ecology's implementation of modifications to Conditions S8.D.3.b and S8.D.5 described above.

FURTHER, Ecology agrees to propose the following additional text regarding the term "facility" and "main track" and agrees this text is consistent with Ecology's determinations for and interpretation of the 2025 ISGP:

1. **Definition of "facility."** Ecology agrees to propose the following modification:

Facility means any establishment (including land or appurtenances thereto) that is subject to regulation under this permit. See Special Condition S1. The term does not include *main track* unless the main track is subject to permit coverage under 40 C.F.R. § 122.26(b)(14)(viii) or pursuant to a determination under Condition S1.B.

2. **New definition of "main track."** Ecology agrees to propose the following addition:

Main Track means a track, other than an auxiliary track, extending through yards or between stations, upon which trains are operated by timetable or train order or both, or the use of which is governed by a signal system.

Ecology agrees to apply these clarifying edits to facilities permitted under the 2025 ISGP and apply the 2025 ISGP to permitted facilities in accordance with the foregoing. Ecology further agrees that upon request by a court, Ecology will provide an amicus brief setting out its understanding of the term “Facility.”

FURTHER, Ecology agrees to propose the following modifications regarding compliance with water quality standards. With the exception of Condition S10.A and S10.C, the Settling Parties did not reach any agreement as to whether or not these modifications or any others are required by the Supreme Court’s decision in *City and County of San Francisco*. However, Ecology recognizes that Condition S10.A is inconsistent with the Supreme Court’s holding in *City and County of San Francisco*. Ecology further recognizes that the language in Condition S10.C requiring BMPs necessary to meet the standards identified in Condition S10.A is inconsistent with the Supreme Court’s holding in *City and County of San Francisco*. Ecology further agrees that upon request by a court, Ecology will provide an amicus brief setting out its position on these matters.

1. **Condition S1.B.** Ecology agrees to propose the following modification:

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

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

2. **Condition S3.A.1.** Ecology agrees to propose the following modification:

The SWPPP ~~shall~~will specify the ***Best Management Practices (BMPs)*** intended necessary to: . . .

~~b) Ensure the discharge does not cause or contribute to a violation of the Water Quality Standards.~~

3. **Condition S3.B.4.b.v.** Ecology agrees to propose the following modification:

The SWPPP ~~shall~~will include BMPs intended necessary to prevent the erosion of soils and other earthen materials (crushed rock/gravel, etc.) and control off-

site sedimentation, and prevent violations of water quality standards. The Permittee will implement and maintain:

4. **Condition S10.** Ecology agrees to propose the following modification:

~~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.~~ B. C. Prior to Before the discharge of stormwater and non-stormwater to waters of the State, the Permittee ~~shall~~must apply all known and reasonable methods of prevention, control, and treatment (AKART). To comply with this condition, the Permittee ~~shall~~must 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~~must install and maintain the BMPs in accordance with the SWPPP, applicable SWMMs, and the terms and conditions of this permit.

5. **Condition S12.** Ecology agrees to propose the following modification:

~~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).~~

FURTHER, Ecology agrees to take the following actions:

1. **Condition S6.C.1, Table 6.** Ecology agrees to propose deletion of the current numeric effluent limitation and sampling requirement for Total Arsenic. Ecology may propose a new numeric effluent limitation that is not based on human health water quality criteria, and an associated sampling requirement.

FURTHER, Ecology has agreed to, and does hereby, exercise its authority under RCW 43.21B.310(1) to the following partial stay of the 2025 ISGP pending the Board’s resolution of the appeals in this matter:

1. Special Conditions S10.A, S10.B, S3.A.1, S3.B.4.b.v, and S12 are stayed during the pendency of this appeal.
2. The language in Special Condition S10.C modifying the word SWPPP with “adequate” and stating “including the BMPs necessary to meet the standards identified in Condition S10.A” is stayed during the pendency of this appeal.
3. The numeric effluent limitations for Total Arsenic in Special Condition S6.C.1, Table 6 are stayed during the pendency of this appeal.
4. The definition of ***Facility*** in the 2025 ISGP is stayed insofar as it encompasses ***main track***, as that term is defined in 40 C.F.R. § 218.5, unless the ***main track*** is subject to permit coverage under 40 C.F.R. § 122.26(b)(14)(viii) or pursuant to a determination under Condition S1.B.

FINALLY, the Settling Parties agree that the aforementioned terms and actions by Ecology are contingent upon the following conditions:

1. The Appellant Parties agree to dismiss, without prejudice and without an award of costs or attorney fees to any party, Issues 20, 37, 38, 39, 40, 41, 42, 43, 44, 54, 55, 56, 57, and 59 (the “Subject Issues”). BNSF further agrees that it will dismiss, without prejudice and without an award of costs or attorney fees to any party, Issue 17.
2. This Agreement—except for the partial stay, which is effective only during the pendency of this appeal—is effective from the time the Agreement is signed by authorized representatives for Ecology and the Appellant parties to this Agreement through the effective date of the Next Version of the ISGP.
3. This document may be executed in counterparts and may be executed by facsimile and/or electronically, and each executed counterpart will have the same force and effect as the original instrument.
4. This Agreement may be amended only upon the mutual written agreement of the Settling Parties. Any revision of this Agreement must be made in writing and signed by the Settling Parties.
5. No obligations or rights under this Agreement may be assigned to any other person or entity without the written consent of all Settling Parties. This Agreement and all

rights under this Agreement are intended for the sole benefit of the Settling Parties executing this Agreement and do not imply or create any rights on the part of, or obligation to, any other person except as, and then only to the extent, expressly provided elsewhere in this Agreement.

(signatures on following page)

PORT OF SEATTLE

By: _____
Stephen P. Metruck

Its Executive Director

Dated: _____, 2026

THE NORTHWEST SEAPORT ALLIANCE

By: _____
John Wolfe

Its Chief Executive Officer

Dated: _____, 2026

PORT OF TACOMA

By: _____
Eric Johnson

Its Executive Director

Dated: _____, 2026

WASHINGTON TRUCKING
ASSOCIATIONS

By: _____
Sheri Call

Its President & CEO

Dated: _____, 2026

SSA TERMINALS, LLC

By: _____
Candice Woods

Its Deputy General Counsel

Dated: _____, 2026

BNSF RAILWAY COMPANY

By: _____
Doug McReynolds

Its Director Environmental Operations

Dated: _____, 2026

WASHINGTON STATE DEPARTMENT
OF ECOLOGY

By: _____
Jon Kenning

Its Water Quality Program Manager

Dated: _____, 2026

WASHINGTON PUBLIC PORTS
ASSOCIATION

By: _____
Eric ffitch

Its Executive Director

Dated: _____, 2026

2025 ISGP Appeal –Amended Settlement Agreement with Washington State Department of Ecology, Voluntary Dismissal Without Prejudice of Certain Issues and Funding Request

Item No.: 9F
Date of Meeting: July 7, 2026



Presenters: Dana Henderson, General Counsel
Heather Burgess, Port of Tacoma General Counsel (contracted)
Elizabeth Black, Port of Seattle Deputy General Counsel

1

Action Requested

Three party vote: Request the Northwest Seaport Alliance Managing Members and Homeport Commissions approve the Amended Settlement Agreement with the Washington State Department of Ecology in substantially the same form as presented and also approve voluntary dismissal without prejudice of issues 20, 35-44, 54-57, and 59 lodged in 2025 ISGP Appeal.

NWSA only vote: Request the MMs authorize \$200,000 in potential additional legal services funding relating to responding to ongoing legal challenges relating to the 2025 ISGP and defense of settlements with Ecology.



2

2025 ISGP Appeal – Key Points of Settlement

- Ecology agreed in two agreements (together, “Settlement”) to propose edits to a re-issued Industrial Stormwater General Permit (“ISGP”) and a waiver process:
 - Remove ambiguous “end result” provisions requiring compliance with water quality (EPA v. City & County of SF) (Issues 20, 40-44)
 - Extend default deadlines for engineering, constructing treatment at port facilities (Issues 39 and 55)
 - Remove “Tallying facility-wide” language (Issues 37, 38, and 54)
 - Address numeric effluent limitations for total arsenic (issue brought by Wa. Trucking Ass’n)(Issue 59)
 - Revise definition of “facility” to clarify exclusion of main track in permit scope (issue brought by BNSF) (Issue 17)
 - Update benchmarks and use of “waivers” for corrective actions (Issues 35 and 36)
- Ecology's agreement for future final ISGP is subject to required public process.
- Settlement was contingent on Ecology staying the effectiveness of the ambiguous provisions.
- Appellants not required to dismiss these issues until new ISGP issued.



3

2025 ISGP Appeal – Procedural Posture of Settlement

- 1) First Settlement approved 1/2026, conditioned on the Pollution Control Hearings Board (“PCHB”) issuing a continuance of certain settled issues until re-issuance of a new ISGP.
- 2) Second and final settlement reached on 2/2026 on several scope/treatment/enforcement-related issues (together, “Settlement”).

Since entry of the Settlement:

- Additional litigation has been pursued by third parties, challenging elements of the ISGP as well as the Settlement, including the partial permit stay by Ecology.
- Ecology has started the public process to re-issue ISGP in 2028.
- Another appellant challenged Ecology’s stipulated motion to stay certain permit conditions, arguing that any stay is unlawful.
- PCHB has given Ports the option to proceed to hearing or agree to dismiss certain issues.



4

2025 ISGP Appeal – Amendment to Settlement and Dismissal of Certain Issues

- The proposed Amended Settlement Agreement is recommended to remove the contingency regarding the continuance of the hearing to preserve the overall intent of the Settlement.
- There is value in the Settlement even without a continuance of the hearing.
- Based on substance of Settlement, and a recent ruling from PCHB, staff and counsel and staff are recommending not proceeding to a hearing on issues 20, 35 – 44, 54 – 57, and 59.
- Dismissal of these issues would be without prejudice.
- Ports are anticipating additional legal work related to the Settlement and respond to ongoing legal challenges relating to the 2025 ISGP, therefore, a potential additional \$200,000 in funds is needed.



5

Action Requested

Three party vote: Request the Northwest Seaport Alliance Managing Members and Homeport Commissions approve the Amended Settlement Agreement with the Washington State Department of Ecology in substantially the same form as presented and also approve voluntary dismissal without prejudice of issues 20, 35-44, 54-57, and 59 lodged in 2025 ISGP Appeal.

NWSA only vote: Request the MMs authorize \$200,000 in potential additional legal services funding relating to responding to ongoing legal challenges relating to the 2025 ISGP and defense of settlements with Ecology.



6

Questions / Discussion

