

THE NORTHWEST SEAPORT ALLIANCE
MEMORANDUM

MANAGING MEMBERS
ACTION ITEM

Item No.: 8D
Meeting Date: Nov. 5, 2024

DATE: October 28, 2024

TO: Managing Members

FROM: John Wolfe, CEO

Sponsor: Dana Henderson, General Counsel

Project Manager: Mindi Kellar, Senior Manager, Water Quality

SUBJECT: Conditional Approval to Appeal 2025 Industrial Stormwater General Permit

A. ACTION REQUESTED

DUAL ACTION VOTE (Port of Tacoma and NWSA) Request the Port of Tacoma Commission and the Managing Members of The Northwest Seaport Alliance (NWSA) direct legal counsel to file an appeal of the 2025 Industrial Stormwater General Permit (ISGP) to the Pollution Control Hearings Board (PCHB), contingent on the final permit including any of the most critical issues identified by staff (“Key Issues”) and further that the Managing Members approve \$600,000 in funding from the NWSA for such appeal. Should the final ISGP satisfactorily resolve and not include any of the Key Issues, staff will return to the Managing Members and Port of Tacoma Commission to seek rescission of this authority granted hereby.

B. SYNOPSIS

The Draft 2025 Industrial Stormwater General Permit was released in May 2024. Together with many entities holding the ISGP, the NWSA, and Homeports (the Ports of Seattle and Tacoma) provided comments in July 2024. The final ISGP is expected to be issued in late November with an effective date of January 1, 2025. Any appeal of the ISGP must be filed within 30 days of its issuance.

Due to the limited time to file an appeal, release of the ISGP during the holidays, and timing of Managing Members’ meetings between the final permit language being released in late November 2024 and the 30-day deadline to file an appeal, staff and counsel seek direction now, contingent on the inclusion of any of the Key Issues in the final ISGP, so that the appeal may be drafted in a timely manner. Should none of the Key Issues be included in the final ISGP, the Managing Members and Port of

Tacoma Commission would be asked to rescind litigation direction (and related funding) at the December 2024 Managing Members' meeting, again, in a Dual Action vote.

The NWSA Master Policy on Delegation of Authority provides that the Managing Members must authorize the commencement of litigation if the NWSA will be a party plaintiff. (NWSA Resolution 2023-07, Master Policy on Delegation of Authority, Section 10 a. i. (Litigation Policy and Procedures). The Port of Tacoma has a similar provision (Port of Tacoma Resolution 2024-03-PT, Section IV. (Policies Governing Legal Activities). The Port of Seattle does not have the same requirement in its Delegation of Responsibility and Authority to the Executive Director (DORA) and is expected to also file an appeal of the 2025 ISGP. NWSA and Port of Tacoma staff and counsel are seeking such authorization and related funding, to be paid by NWSA.

C. BACKGROUND

The current ISGP expires December 31, 2024. The Draft 2025 ISGP was released in May 2024 and NWSA and the Homeports (along with many ports, cities, associations, and businesses) provided comments in July of 2024. We anticipate release of the final permit on November 22, 2024. The deadline to appeal is 30 days later, likely December 20, 2024. The ISGP will take effect January 1, 2025. Ecology has not announced any changes from the draft to final language. Due to the short turnaround between release of the final ISGP and the 30-day deadline to file an appeal, including holidays, and timing of Managing Members' meetings, staff and counsel need litigation direction now to best prepare an appeal.

Should all Key Issues be satisfactorily resolved in the final version of the ISGP, staff will seek rescission of this action at the December 2024 Managing Members Meeting.

The following are Key Issues identified in the draft 2025 ISGP. An appeal is recommended if any of these Key Issues remain in the Final 2025 ISGP:

- Expansive definitions of Industrial Activity and Facility that require ISGP coverage for areas used only for transportation activities, including its treatment requirements (Condition S1.A and Definitions).
- Expansive definitions of Material Handling and Facility that require ISGP coverage for areas used only for transportation activities, including its treatment requirements (Condition S1.A and Definitions).
- Expanding the 'reasonable potential' definition to include a new subjective and ambiguous standard (facilities associated with pollutants that cause or contribute to 'loss of sensitive and/or important habitat') will cause confusion and ambiguity

- regarding what activities require permit coverage (Condition S1.B and Definitions).
- Training Requirements (S3.B.5). Requiring ISGP permittees to train all vendors or contractors that access their facilities and perform duties in industrial areas is an unreasonable burden and unlikely to improve stormwater quality beyond the current best management practices and training for a business's employees.
 - 6PPD-quinone Monitoring (S5.B.3). Requiring 6PPD-quinone (6PPD-q) sampling by transportation facilities imposes a burden on that sector without a scientific basis. Current research on detrimental impacts of 6PPD-q on salmon involves freshwater streams only, with little or no information on fate and transport in the marine environment.
 - Use of State Authority for Permit requirements. Ecology should clearly identify in the ISGP that any scope of permit coverage for transportation facilities broader than described under EPA's definition in 40 C.F.R. § 22.26(b)(14)(i)-(xi) is imposed exclusively under state authorities, Chapter 90.48 RCW, the Water Pollution Control Act, and is not part of the Federally approved program.

Should an appeal of the 2025 ISGP be authorized, we are requesting Managing Members authorize \$600,000 to cover legal costs (inclusive of expert analysis) to bring our issues to the Pollution Control Hearings Board. If an appeal is authorized, a new project and Master Identification Number (MID) will be created for the 2025 ISGP.

D. FINANCIAL IMPLICATIONS

Source of Funds

The cost of this effort will be expensed as incurred. Funding for this will be provided by NWSA operations.

E. ENVIRONMENTAL IMPACTS / REVIEW

Should the 2025 ISGP be issued as seen in the draft, the increased costs of compliance will divert funds from other crucial environmental programs for the NWSA and Homeports.

F. ALTERNATIVES CONSIDERED AND THEIR IMPLICATIONS

- NWSA and Homeports do not appeal the 2025 ISGP permit.
- NWSA partner with and support other ports, cities, utilities, or industry partners or agencies if they decide to appeal. We do not currently know which other entities may appeal, nor the cost for this option, but staff are actively pursuing partners

for this effort. Sharing costs could be beneficial to parties involved, and a cost share could reduce NWSA spend requested hereby.

G. ATTACHMENTS TO THIS REQUEST

- N/A

H. PREVIOUS ACTIONS OR BRIEFINGS

- No prior actions on the 2025 ISGP.