



Association
of Washington
Business

Washington State's Chamber of Commerce

July 15, 2009

Mr. Jeff Killelea
Water Quality Program
Washington Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600
(Submitted via email: industrialstormwatercomments@ecy.wa.gov)

Subject: Proposed Industrial Stormwater General Permit

Dear Mr. Killelea,

The Association of Washington Business appreciates the opportunity to provide the following comments on the Washington Department of Ecology's June 3, 2009 Proposed Industrial Stormwater General Permit (ISWGP).

Many of the 1,200+ businesses in Washington required to obtain and comply with Ecology's ISWGP are members of AWB and will be directly impacted by the department's decision making as the agency moves forward with implementation of the permit.

AWB and member organizations have collaboratively participated in Ecology stakeholder processes for many years in an effort to assist the department in developing an efficient and effective general permit that is simple to understand and implement.

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However, reviewing previous comment letters submitted by AWB (April 20, 2007; August 24, 2007; January 10, 2008; September 12, 2008) and other comment letters from the business community around that timeframe, it is readily apparent that the majority of concerns the business community has been consistently raising regarding the department's ISWGP are still valid in this latest draft.

In addition to the following general concerns, AWB supports substantive and technical comments submitted by Weyerhaeuser, Boeing, Northwest Food Processors Association, Schnitzer Steel, J.R. Simplot Company, the Copper Development Association and other members of the business community, which clearly demonstrate that the department has fallen considerably short of developing an ISWGP that the business community can support.

As Ecology refines the proposed draft permit prior to adoption in October, please consider the following three main points:

1) Compliance, Costs & Complexities – All Pain, No Gain

Unfortunately, the proposed ISWGP signals the department's intent to continue a long-standing tradition of adopting the most costly and complex stormwater permit in the nation. The economic burden that the proposed permit will impose on Washington businesses may well prove to be the final competitive disadvantage faced by businesses in our state that drives them to locate their business and jobs elsewhere.

Our economy continues to spiral downward and is far from recovery, and unemployment continues to rise in our state. Ecology's proposed ISWGP will only exacerbate our current economic crisis. For example:

- Many permittees will be required to install active treatment systems, estimated to cost \$255,000 or more per acre for metals.

- Many permittees will be required to spend \$10,000 – 20,000 per acre for stormwater treatment to comply with turbidity requirements.
- Permittees will have few “Ecology approved” alternatives to active treatment. Many of these alternatives may require expensive studies and engineering reports, estimated to cost between \$10,000 and \$40,000 per acre.
- Recent government studies concluded that surface water runoff and municipal wastewater treatment plants (not industry) were by far the most significant contributors to toxics loading. Yet industrial stormwater permittees will be required to comply with the most restrictive stormwater permits in Washington and the country, while municipalities and the Washington Department of Transportation do not have to take actions required of industry based on monitoring data.
- New “benchmark levels” replace reasonable and fully protective action levels in the current permit. Reported discharge data shows some industrial categories samples exceeded benchmarks 50-70% of the time. And across all industry sectors, a conservative estimate of samples that would exceed the proposed benchmarks:
 - o ~37% exceed turbidity benchmark (25 NTU)
 - o ~30% exceed the zinc benchmark (200 ug/l)
 - o ~62% exceed copper benchmark (14 ug/l)
- The proposed benchmark values for lead, copper and zinc are inappropriate and unreasonably stringent. AWB supports comments submitted by the Copper Development Association which highlight the shortcomings of the Herrera report and why the benchmarks for metals should be jettisoned.
- This permit has extensive requirements to identify and install best management practices from the Stormwater technical manual to achieve all known and reasonable treatment technology (AKART). In addition to the expense of installing these treatment technologies, many businesses will be forced to hire a consultant to assist in identifying what treatments are available and appropriate.

These increased costs and permit complexities will result in very little measurable improvement to water quality. Rather, the complexities of the permit will continue to be used as a fundraising tool by those more interested in profiting from permit non-compliance issues, most of which relate to the complex and confusing record keeping requirements under the permit, than improving the environment.

2) Business Efforts to Improve the ISWGP Largely Rejected by Ecology

During the last year, members of the Association of Washington Business have offered innovative alternatives to the strict benchmark approach in the draft permit during an advisory committee process that have mostly been ignored by the department. For example, we suggested that Ecology:

- Use innovative methods to focus on the worst dischargers (*not adopted*).
- Consider alternatives to minimize impact on very small business via tiered permits (*not adopted*).
- Identify a list of basic mandatory best practices as initial requirement in permit (*Ecology incorporated*).
- Use a format for the permit that is easier to read (*Ecology attempted*).
- Adopt a permit that is less complex (*instead, the draft permit has more stringent conditions; contains more mandatory conditions and creates more challenges to fully comply with the permit*).
- Use innovative “tickets” with modest mandatory fines to level the playing field among businesses and remove argument from environmental community that Ecology is not enforcing permit (*pilot underway*).
- Allow for the use of new scientific techniques to establish benchmarks which reflect the real effect of pollutant discharges on receiving waters (*not adopted*).

The business community also asked Ecology to honor the principles incorporated into the 2004 stormwater legislation (RCW 90.48.555) for general stormwater permits, to achieve an effective, efficient and legally enforceable general permit. These principles have for the most part, been abandoned by Ecology.

Ecology has the opportunity to make substantial improvements to the proposed ISWGP by reconsidering and incorporating the above suggestions.

3) Inappropriate Deviation from State Stormwater Statute

For reasons unknown, Ecology seems intent to deviate from RCW 90.48.555, which AWB, the department and environmental advocates negotiated during the 2004 legislative session. Most notably and problematic, the department has altered the intended use of benchmarks in the proposed draft permit. Currently, benchmarks are used to determine the effectiveness of adaptive management. However in the proposed permit, benchmarks are now used to assess compliance with water quality-based narrative effluent limitations. This is a significant deviation from current law and is unacceptable to AWB members. Ecology should instead continue to use benchmark values to evaluate whether additional best management practices may be needed.

Additionally, the draft permit does not include any presumption of compliance with water quality standards that is an integral part of RCW 90.48.555. Ecology staff has said that the department will honor the legislation in its enforcement discretion, but that does nothing to address liability in citizen suit claims. The department should state clearly in the permit and Fact Sheet that permittees are deemed to be in compliance with water quality standards if the conditions of the permit are met and best management practices are fully implemented, as provided by state law.

Conclusion

Ecology's efforts to create a general permit that is efficient, effective and legally enforceable have not been successful. Instead, the proposed permit is overly complex and will unnecessarily add enormous costs onto businesses struggling to survive in difficult economic times. Most likely, if the proposed permit is adopted, businesses may be forced to cut jobs or be forced out of state. Those businesses able to afford the exponential increase in costs to comply with the permit, or able to pass compliance costs on to customers, will likely face an increase in citizen lawsuits aimed at fleecing Washington businesses out of dollars better spent on real environmental benefit.

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AWB remains eager and willing to assist Ecology in developing an industrial stormwater general permit that accomplishes environmental benefit without inflicting unnecessary economic harm.

Sincerely,

A handwritten signature in black ink, appearing to read "Grant Nelson", with a long horizontal flourish extending to the right.

Grant Nelson
Governmental Affairs Director