



Washington State's Chamber of Commerce

Friday, July 11, 2014

Jeff Killelea
Water Quality Program
Washington Department of Ecology
P.O. Box 47696
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RE: proposed-Industrial Stormwater General Permit

Mr. Killelea:

Thank you for the opportunity to comment on the draft-Industrial Stormwater General Permit (ISGP) proposed by the Department of Ecology. In particular, we appreciate the additional public comment opportunity provided by the Department. The proposed revisions to the draft-Permit are numerous and complex, and the additional time was helpful in preparing comments.

I am writing to you on behalf of the Association of Washington Business (AWB), the state's oldest and largest statewide business association, which includes more than 8,100 employers representing 700,000 employees. AWB serves as both the state's chamber of commerce and the manufacturing and technology association. As you are aware, many of our member employers represent a large constituency of permittees required to perform under ISGP requirements.

It is our understanding, in communicating with our members, that many ISGP permittees will submit their own comprehensive comments, however, many other permittees will not provide comments for a variety of reasons, including, time, resources and lack of understanding. Our comments are meant to be supportive of those comments submitted by ISGP permittees, but also should be considered as representing those entities that were otherwise unable to provide direct comment at this time.

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In preparing our comments, we heard from many industry segments, acknowledging the ongoing need to provide adequate environmental protection through preservation and restorative efforts. We recognize the proposed ISGP provides, as does the current permit, opportunities to achieve such outcomes. Additions to the permit to provide clarity, in-part asked for by the permitted community, helps increase compliance and positive outcomes as well.

While we are committed to working with Ecology, and other stakeholders, some of the suggested changes are of concern to broader business community, and will also present economic and technical challenges. Such changes included expanded application to new and unsuspecting permittees; changes to violation reporting requirements; complicated interplay between competing state standards; and lack of a proper analysis under the state's Administrative Procedure Act (APA); to name a few. Hereafter we provide additional high-level comments with specific concern, identified by section. In some instances we ask questions that should be answered before Ecology continues with the update of the proposed permit. We do provide some limited suggestions for alternative paths or thinking Ecology might consider.

Total Suspended Solids (TSS)

Under the proposed-draft permit, the Department is proposing to establish numeric effluent limits for Total Suspended Solids (TSS) to Puget Sound Sediment Cleanup Sites, which expands permit requirements for many permittees. The draft, as written, would also propose to add an additional 200+ permittees based on the 2010 impaired water bodies list. Some of the permittees covered under the proposed expansion of the rule are unaware of the new coverage due to lack of appropriate stakeholder involvement.

Our ongoing discussions with stakeholders, engaged throughout the Ecology update process, indicated Ecology suggested such substantive changes were not being considered during this update, and we were shocked to see the major expansion of effluent limits for TSS being proposed. Concerns with the expanded limits for TSS include:

- Ecology provides no technical support or justification for the proposed limit of 30 mg/L.
- Ecology added unnecessary complexity by cross-referencing Puget Sound Sediment Cleanup requirements.

- The expansion of the ISGP to include TSS, there are likely to be many cases where the limits are likely to be exceeded.
- Lack of clarity on compliance.

The process to update the ISGP didn't include a broader discussion about the inclusion of TSS limits as proposed in the draft-permit. In fact, it appears the inclusion of TSS effluent limits were not included in the Economic Impact Statement for this rule. Ecology should provide proper vetting of the proposal, including providing the justification for inclusion of these limits, as well as appropriate review under the APA laws of the state.

In addition, Ecology's inclusion of discharges to the Puget Sound Sediment Cleanup sites requires new and cumbersome burden on permittees. Adding cleanup sites references to this rule adds a layer of complexity, which coincidentally and perhaps more appropriately, is regulated through the state's Model Toxics Control Act.

The current benchmark used by Ecology of 100 mg/L for monitoring seems to be more appropriate than the proposed limit, especially given the Environmental Protection Agency's (EPA) multi-sector general permit discharge daily maximum limits with a range of 23 to 100 mg/L. Before Ecology moves forward in adopting the proposed permit, you should consider a comparison to the DRAFT EPA MSGP with focus on:

1. EPA does not include any limits or benchmarks based on discharges to impaired water bodies;
2. The only numeric limits for TSS in EPA permit are technology-based and industry specific;
3. No other state includes TSS effluent limits for discharges to impaired water bodies; and
4. If a limit is included it should be a narrative limit only, similar to the fecal coliform limit for impaired water bodies.

Given the expansion of the ISGP to include TSS, there are likely to be many cases where the limits are exceeded. For example, those permittees that will be required to comply do not have treatment systems in place to meet the proposed TSS limits. The limits would be effective on January 1, 2015. No compliance schedules are included in the proposed rule, but RCW 90.48.555(7) requires that new limits include a compliance schedule. Many of these dischargers have designed their stormwater treatment facilities to comply with limits

required under a cleanup order. Furthermore, if there are violations of these standards, the draft-permit fails to provide a clear pathway for compliance, but at the same time provides for the imposition of daily fines under CWA strict liability.

The draft permit creates a serious regulatory conflict with MTCA and CERCLA source control requirements. Puget Sound cleanup site requirements are based on a complex consideration of numerous factors, including costs, time needed to comply and what constitutes compliance. The inclusion of separate enforceable limits under this permit will create a compliance nightmare for cleanup parties. There is no evidence in the fact sheet that Ecology considered these regulatory conflicts in its decision to include these sites.

Ecology needs to take a step back from the proposed TSS effluent limits, and work with stakeholders to better explain why these standards are needed and to allow appropriate stakeholder input. The broader permitted community has several ideas of how to address the TSS, but in order to vet these ideas; Ecology needs to engage with the permittees in a more informative process.

Cleaning / Sampling

There are various sections throughout the permit dealing with cleaning and sampling requirements, based on the industry sectors covered under the permit. Many of the updates or expansions of these provisions are confusing, and don't provide a clear regulatory path for the permitted community.

These include the updates to the new requirements for sampling requirements in S5.B around petroleum hydrocarbons, as well as for storm drain line cleaning and sampling under S6.C.2 and storm drain systems in S6.C.2.b. Permittees already have strict requirements for monitoring and cleaning, and well as reporting for disposal.

Like the inclusion of TSS limits Ecology has fallen short at providing the justification for the increased requirements for cleaning and sampling, especially given the rules already in place. Adoption of limits adds to costs, and appears to be redundant.

Should Ecology require new provision around cleaning and sampling, there is additional guidance that needs to be developed to help permittees understand requirements.

Reporting Permit Violations

Ecology is proposing to change S9.E.1.c sampling requirements for a written report when there is a violation from 30 days to 5 days. It seems arbitrary to decrease the time permittees have to provide the written report. What justification does Ecology provide for this change? The ISGP fact sheet states it is for consistency with federal code, but 40 CFR 122.41(1)(6) provides a waiver of that Ecology's proposed rule doesn't include. Ecology, at a minimum should also provide the waiver clause from the federal rule.

Appendix 4 / Mapping

We are concerned with the application of the proposed permit, in particular to those entities included on Appendix 4. In discussion with our broader community, Appendix 4 was not provided during the development of the draft-permit being proposed. In fact, as we noted to Ecology in our letter dated June 13th of this year, Appendix 4 was not released with the rest of the draft-permit language. As such, there are many permittees on the Appendix 4 list that otherwise do not know they are listed.

Perhaps more troublesome is that some of the entities are listed, and should not be listed in Appendix 4.

As a general observation, we've heard from our members a certain level of frustration around the consistency in the mapping systems used by Ecology to identify entities that are subject to standards based on outfall data. Mapping by Ecology should do a better job to identify outfalls, especially as it relates to 303(d) listings.

So why does this matter? As of January 1 of 2015, all ISGP permittees will have to comply with the provision of the draft-permit, should they be adopted, whether they know they are on there or not. Additionally, Ecology has put a burden on the permitted entity to prove they should be removed from the list that makes up Appendix 4.

Washington state is one of the most trade dependent states in the nation, and as such permittees rely on a predictable regulatory environment. The new proposed draft-permit continues to jeopardize our economic competitiveness. Other states in our region adopt regulations consistent with EPA guidance, but that are economically less burdensome. We

encourage Washington regulators to better consider the economic consequences of pursuing regulations that exceed EPA or Clean Water Act guidance.

While we are committed to improving and preserving the environment and quality of life we enjoy in Washington, it is equally important to consider the benefits of a strong economic environment.

We appreciate the opportunity to provide comments on the proposed draft-ISGP. Based on our comments, we believe Ecology should work to provide better answers to those issues raised with in our letter, as well as those issues we know our members will be addressing in their respective letters.

Please let us know if you have any questions regarding our comments, or if there is additional help we can provide in the update of the ISGP.

Sincerely,

A handwritten signature in black ink, appearing to read "Brandon Houskeeper". The signature is fluid and cursive, with a long horizontal stroke at the end.

Brandon Houskeeper
Government Affairs Director
Association of Washington Business