

March 16, 2012

Mr. Jeff Killelea
Water Quality Program
Washington Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

RE: AWB Comments on Draft Industrial Stormwater General Permit

Dear Mr. Killelea:

The Association of Washington Business (AWB) appreciates the opportunity to provide comments on the Department of Ecology's (Ecology) modification to the Industrial Stormwater General Permit (ISGP) dated February 1, 2012.

AWB's comments are organized into two sections. Section I provides general comments on the modifications to the ISGP and the need for a reasonable permit and pathway for compliance. Section II includes comments specific to particular sections of the draft ISGP modifications. These comments represent some of the key concerns outlined by our membership but may not represent the viewpoint of our entire membership.

SECTION I

AWB and member companies who own and operate facilities permitted under the ISGP have spent considerable time and energy working with Ecology on the current ISGP. The current round of revisions highlights the ongoing need for a permit that is both stable and understandable. While AWB appreciates the immediate need for some of the modifications in the draft, our members have expressed a concern that ongoing litigation will continue to create more uncertainty and additional changes to the ISGP may be required in the future. Any modifications made to the ISGP should be changes that are not likely to be revised again within the next few months pending the outcome of current litigation.

Additionally, AWB and its member companies continue to express concerns about the ongoing costs of complying with environmental regulations, including the ISGP. While those who own and operate facilities permitted under the ISGP are committed to staying in compliance with their permit obligations, the costs of compliance are significant. Ecology

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must consider modifications that provide a reasonable and certain pathway for compliance. Permit modifications that reference the use of BMPs without specifically defining critical terms are likely to create additional costs and another round of permit revisions or litigation (see Section II for specific examples). Ultimately, Ecology should use this opportunity to modify the ISGP to provide greater clarity on the use of adaptive management (as directed by the Pollution Control Hearings Board) to the regulated community, which serves Ecology's objective to protect water quality and the regulated community's objective to confidently comply with the obligations of the ISGP.

SECTION II

The following comments are offered by various AWB members and relate to specific sections of the draft modifications to the ISGP:

S2. Application For Coverage

S2.B.1 Modification of Permit Coverage: The submittal dates for the Annual Report and any Modification of Permit Coverage requesting a Level 2 or 3 time extension should be coordinated. While April 1st is fine for the Corrective Action time extension, it is at this time that permittees are likely to confirm their status, announce decisions on Corrective Actions, and determine if a time extension should be requested. Ecology should consider advancing the Annual Report date from May 15th to April 1st.

S2.C Permit Coverage Timeline: Ecology proposes to remove the applicability of automatic commencement of applications for modification of coverage, including applications for waivers and extensions under Condition S8. The permit should retain an automatic commencement process.

S3. Stormwater Pollution Prevention Plan (SWPPP)

S3.A General Requirements: *NEW SECTION REQUESTED*—Ecology needs an unambiguous statement to define “all known, available, and reasonable methods of prevention, control, and treatment (AKART) for stormwater pollution.” While S3.A.2.a references AKART under the general requirements of a SWPPP, permittees and Ecology staff should be able to discern what constitutes AKART.

S4. General Sampling Requirements

S4.B.3 Sampling Documentation: The stormwater sampling documentation change from 30 minutes to 12 hours is greatly appreciated. The modified time frame is a more attainable requirement. Taking a stormwater sample within 30 minutes of the commencement of discharge is extremely difficult due to the complexity of staffing, tasking, calibrating equipment, gathering sampling necessities (even if they are set aside), donning the proper protective wear, and maintaining safety in the storm environment.

S4.B.6 Sampling Requirements: The stormwater sampling change suspension from four consecutive quarters to eight consecutive quarters seems excessive. Implementing the *draft* change would mean that if a permit holder had two “dry” quarters (normally during the summer), a permit owner would end up sampling for two and a half years. If a permit holder has a proven track record, why would eight consecutive quarters be necessary? Assuming that Ecology’s proposed revision of the “consistent attainment” parameter is driven by the PCHB decision in Copper Development, et.al. v. Washington Department of Ecology (PCHB Nos. 09-135 through 09-141), Ecology should simply accept the PCHB’s direction that seven consecutive quarterly sample results attaining benchmark values is a demonstration of continuous attainment.

S6. Discharges to 303(d)-Listed or TMDL Waters

S6.Table 5 Sampling and Effluent Limits Applicable to Discharges to 303(d)-Listed Waters: Several of the proposed footnote “h” requirements relating to mandatory BMPs targeting fecal coliform in stormwater are not practical and likely to be misunderstood. The broad language used to define “mandatory BMPs” in h(1) is vague. The proposed narrative limits include requirements to install “effective structural source control BMPs” and “effective source control BMPs to eliminate” known sources of bacteria. What is meant by “effective” and “eliminate”? Further, what are “all known, available and reasonable methods to prevent rodents, birds, and other animals from feeding/nesting/roosting at the facility”? Will Ecology’s final version of the Table 5 fecal coliform requirement be the model for other stormwater permittees discharging fecal coliform to 303(d)-listed waters? Will Phase I and Phase II municipal stormwater permits or the WSDOT municipal stormwater permit be subject to the same AKART requirements?

S8. Corrective Actions

Generally, Ecology should consider deferring any modifications to Condition S8 until the appeal of the ISGP is final. Modifications to Condition S8 are premature, unless Ecology is

prepared to adopt permit language or policies that fully implement the statutory presumption of compliance as required by the statute. Ecology's revisions do not meet any reasonable standard of adaptive management for Corrective Actions; rather, the revisions continue the directed management approach that the PCHB noted needed more agency involvement and information, especially at Level 3.

S8.C.2 and D.2 Level Two and Level Three Corrective Actions: The current permit language demands that "additional" BMPs be identified and implemented in pursuit of the goal of achieving the applicable benchmark values. This directive is counter to RCW 90.48.555(6) which states that, at all times, "all applicable and appropriate best management practices" be selected, implemented and maintained. Responsible permittees have already been adjusting their SWPPPs with an "adaptive management" approach for quite a number of years. At some point in the Corrective Action process a permittee is likely to conclude that all applicable and appropriate BMPs have been implemented. A demand for serial "addition" of BMPs may be hollow. Ecology would more appropriately reference the "all applicable and appropriate" language.

S8.C.5 and D.5- Additional Corrective Action May Be Required: The subsection heading indicates additional corrective actions "may" be required; the section text says "must." What permit requirement does Ecology intend? The comment offered above for S8.C.2. and D.2. also applies to C.5. and D.5.

S8.D.2 Level Three Corrective Actions – Treatment BMPs: The last sentence demands Level 3 Treatment BMPs or additional BMPs necessary to "meet" the goal of achieving the applicable benchmark value(s). The permit treats benchmark values as if they are numeric effluent limits, but they are just goals. Under the permit, if the goals (effluent limits) are not consistently achieved, additional actions must be taken. With this nuanced approach and outcome, Ecology must be prepared to accept a permittee's judgment on BMP adequacy.

Thank you for considering these comments.

Sincerely,



Courtney Barnes
Government Affairs Director