

Attachment 2: Reference

Copper Dev. Association v. Department of Ecology, Findings of Fact, Conclusions of Law, and Order, PCHB No. 09-135 (April 25, 2011) at 71-72:

The adaptive management process envisioned by the permit is iterative, and does not necessarily anticipate the kind of definitive cut-off point Boeing appears to seek. The permittee is ultimately required to comply with water quality standards, both under the law, and under the terms of the ISGP. *Condition S10*. To work as an effective adaptive management process, however, Condition S8. requires further refinement. This Board has previously recognized that, to be valid, an adaptive management program in a general permit requires a meaningful mechanism for feedback, to allow evaluation of the effectiveness of the measures and to make any necessary changes in response to such results in order to achieve the desired goal. *Puget Soundkeeper Alliance v. Ecology*, PCHB Nos. 07-021, 07-026 through 07-030, 07-037 (Phase I) and 07-022 & 07-023 (Phase II), Findings of Fact, Conclusions of Law, and Order, (2008) (Municipal Stormwater General Permit, Condition S4., Phase I and Phase II). Quarterly discharge monitoring reports may be sufficient feedback in some circumstances, particularly with Level 1 and Level 2 actions, but they are likely inadequate in more complex situations such as Level 3 treatment BMPs. *Id.* at COL 22. Ecology's lead permit writer has explained that at a Level 3 corrective action, Ecology and the permittee will be engaged in an iterative exchange and evaluation of BMPs, to bring the facility to compliance with benchmarks. We conclude that Condition S8.D. (Level Three Corrective Actions) of the ISGP should also require the use of monitoring, assessment, or evaluation information as a basis on which Ecology and the permittee may determine whether further modification of the BMPs or additional BMPs are necessary to meet the goal of achieving the applicable benchmark values in future discharges. This information should be included in a permittee's summary of its Level 3 Corrective Actions (planned or taken) submitted in its Annual Report. In this manner, the permit will correctly state the adaptive management process expected of permittees.

When a permittee is taking all the steps required by the adaptive management process, as modified by this opinion, or is *in fact* meeting benchmarks of the permit, then the permittee is entitled to the presumption of compliance provided by the statute. This interpretation does not convert the benchmarks into numeric effluent limitations. Rather, it implements the adaptive management response that is called for by both state and federal law

FAQ citations:

<http://www.ecy.wa.gov/programs/wq/stormwater/industrial/permitdocs/iswgpfaq.pdf>

Q#51: What kind of documentation is required if I install a treatment system at my facility?

A#51:

o Off-the-shelf treatment measures like catch basin filter inserts, roof downspout media filtration units, or absorbent devices do not require an Engineering Report, but an Operations and Maintenance Manual must be incorporated into the SWPPP.

o For stormwater treatment systems that require a Professional Engineer to size an engineered structure based on specific design criteria, the permittee must prepare an engineering report, plans and specifications, and O&M Manual that addresses the following items (unless waived by Ecology):

- Brief summary of the treatment alternatives considered and why the proposed option was selected
 - The basic design data and sizing calculations of the treatment units;
 - A description of the treatment process and operation, including a flow diagram;
 - The amount and kind of chemicals used in the treatment process, if any. Note requires submittal of: Request for Chemical Treatment Form
 - Results to be expected from the treatment process including the predicted wastewater characteristics,
 - A Statement, expressing sound engineering justification through the use of pilot plant data, results from similar installations, and/or scientific evidence that the proposed
 - treatment will meet the permit benchmarks. WAC 173-240-130 (q), and
 - Operations and Maintenance Manual.
- o Once the documentation above is incorporated into the SWPPP, the Permittee must sign and certify the revised SWPPP in accordance with S3.A.6.

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- A licensed professional engineer, geologist, hydrogeologist, or Certified Professional in Storm Water Quality (CPSWQ) shall design and stamp the portion of the SWPPP that addresses stormwater treatment structures or processes.
 - Ecology may waive the requirement for a licensed or certified professional upon request of the Permittee and demonstration that the Permittee or treatment device vendor can properly design and install the treatment device.
 - Ecology will not waive the Level 3 requirement for a licensed or certified professional more than one time during the permit cycle.

Q#48: With multiple discharge locations (separate outfalls or even separate water bodies), can you be at different Corrective Action levels by exceeding different benchmarks for the separate drainage areas of your site?

A#48: No, corrective actions are –parameter-specific||, but are not –outfall-specific||. For example: if a facility exceeds the zinc benchmark at outfall 1 during the 1st quarter, exceeds the zinc benchmark at outfall 2 during the 2nd quarter, and then exceed the zinc benchmark at outfall 3 during the 3rd quarter; they are required to complete a Level 3 corrective action for the entire facility.

Q#50: I need to do a Level 3 Corrective Action, and I want to use a BMP treatment system that is not in Ecology’s Stormwater Management Manual (or Ecology’s TAPE review process), what can I do?

A#50: The permit allows facilities to use innovative products or technologies, including those not listed in Ecology’s Stormwater Management Manuals (or not yet approved through Ecology’s TAPE process), as long as they document that the BMP is –demonstrably equivalent|| to practices in stormwater manuals approved by Ecology (see p.13, S3.A.3.d).