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March 16, 2012

Electronic Mail to: industrialstormwatercomments@ecy.wa.gov

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P.O. Box 47600
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Subject: Industrial Stormwater General NPDES Permit

Dear Jeff:

Enclosed are the Weyerhaeuser Company comments on proposed modifications to the Industrial Stormwater General NPDES Permit.

S2.B.1. Modification of Permit Coverage – It would make sense to coordinate the submittal dates for the Annual Report and any Modification of Permit Coverage requesting a Level 2 or 3 time extension. This point in time is logically when a permittee will confirm their status, announce decisions on Corrective Actions, and determine if a time extension should be requested. April 1st is fine for the Corrective Action time extension. Ecology should consider advancing the Annual Report date from May 15th to April 1st.

S3.A.7. – New Section – Ecology should include a new subsection which says

AKART

- a. The identification, application/installation, and maintenance of applicable Best Management Practices from appropriate Stormwater Management Manuals constitutes the provision of “all known, available, and reasonable methods of prevention, control, and treatment (AKART) for stormwater pollution”.

Support for Request – An unambiguous statement defining AKART is important. Permittees and Ecology staff should be able to discern, with confidence, what constitutes AKART. The ISGWP requires AKART, but the only permit section which references this legal requirement appears to be in S3.A.¹

¹ S3.A. is defining the needed content of the SWPPP and includes a listing of AKART, federal technology-based requirements, and identifying the obligation for sufficient BMPs to allow for achievement of water quality standards.

S4.B.6. Sampling Requirements – Ecology’s proposed revision of the “consistent attainment” parameter is driven by the PCHB decision in *Copper Development, et.al. vs. Washington Department of Ecology* (PCHB Nos. 09-135 through 09-141). In Conclusion of Law 31, the PCHB said

“...we conclude that at least seven quarters of meeting benchmark values should be expected prior to a suspension of sampling for the remainder of the permit term.”

Why would not Ecology simply accept the PCHB direction that seven consecutive quarterly sample results attaining benchmark values is a demonstration of continuous attainment? The agency should change the proposed permit language from “Eight” to “Seven consecutive quarters...”.

S6. Table 5 Discharges to 303(d) or TMDL Waters – Several of the proposed footnote “h” requirements relating to mandatory BMPs targeting fecal coliform in stormwater are not practical and/or will be misunderstood, and thus in the end, largely ignored.

First, recognize the scope of the Table 5 requirements is probably significant. There appear to be about 500-600 waterbody segments listed for fecal coliform on the 2008 Section 303(d) Category 5 report. The point here is that there may be 100’s of ISWGP permittees who discharge into a Category 5 waterbody segment, and thus subject to the S6. Table 5 proposed requirements.

Second, the broad language used to define “mandatory BMPs” in subsection 1) is problematic. To illustrate, in subsection 1), what exactly are the “all known, available and reasonable methods” which Ecology has in mind? Will it be necessary for permittees to hire hunters/trappers to kill or divert all animal life that seeks entry to a facility? Is this a 24/7 obligation? Should sound machines or ribbons or netting or an electrified fence be placed around the perimeter of a property? These techniques/equipment (and many others) would certainly be AKART contenders.

A practical approach (and one consistent with the PCHB Conclusion of Law 21 in *Copper Development*) would substitute this language as the “footnote h”:

h) ISWGP dischargers to 303(d) or TMDL waters must:

- 1) Perform and document a dry weather inspection to identify and eliminate sanitary sewer cross-connections;
- 2) Install operational and structural source control, and describe in the SWPPP, those BMPs which seek to minimize precipitation/stormwater contact with probable sources of fecal coliform bacteria (e.g., dumpsters, compost piles, exposed food wastes, exposed animal products)

- 3) Sampling/analysis for fecal coliform would be required if Ecology determines the industrial activity at a Facility is a likely and persistent source of fecal coliform to the stormwater discharge(s).

Finally, should we expect that Ecology's final version of this Table 5 fecal coliform requirement will now be the model for other stormwater permittees discharging to fecal coliform/303(d) waterbodies? For example, will future versions of the Phase I and Phase II municipal stormwater permits, or the WSDOT Municipal stormwater permit, include the same requirements? If not, why not?

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. Ecology needs to recognize that responsible Permittees have been adjusting their SWPPPs with an “adaptive management” approach for quite a number of years by now. At some point in the Corrective Action process a Permittee is likely to conclude that all applicable and appropriate BMPs have been implemented in the pursuit of the “goal” of achieving the benchmark value(s). As such, a demand for serial “addition” of BMPs may be hollow. The agency 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. applies to C.5. and D.5. as well.

S8. D.2. – The last sentence demands Level 3 Treatment BMPs or additional BMPs necessary to “meet” the goal of achieving the applicable benchmark value(s). The permitting concepts and language are really strained at this point (with no thanks to the PCHB). The permit pushes to treat benchmark values as numeric effluent limits, but not really as they are just goals, but then unending activity needs to continue if the goals are not consistently achieved (ala effluent limits). With this nuanced approach and outcome, Ecology needs to be prepared to accept Permittee judgments on BMP adequacy as equally credible as agency determinations.

Thank you for the opportunity to provide these comments.

Sincerely,

Ken Johnson
Corporate Environmental Manager