



Comments from King County on the Public Notice Draft of the Industrial Stormwater General Permit.

Special Condition 1. Permit Coverage

A.1 The *Standard Industrial Classification (SIC)* groups generally, but not always, associated with these activities are listed in Table 1.

Reword, this sentence is unclear.

Table 1: The following facilities that have road maintenance shops, equipment cleaning operations, or deicing operations:

- **Railroad Transportation and *vehicle* maintenance shops (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication).**
- **Local and Suburban Transit and Interurban Highway Passenger Transportation and vehicle maintenance shops (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication).**
- **United States Postal Service and vehicle maintenance shops (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication).**

None of the other industrial groups listed in Table 1 have qualifiers of their descriptions. These facilities probably do not have road maintenance shops and this industrial group is contained in SIC code 16XX or SIC code 92XX. If these facilities have equipment cleaning operations or deicing operations, then those activities would be covered under these industrial groups and it is redundant to call these activities out. This qualifier is irrelevant unless it is the intent of Ecology to only have these specific industrial activities, listed for the qualified industrial groups, covered under this permit.

Delete – “The following facilities that have road maintenance shops, equipment cleaning operations, or deicing operations:”

A.2. Previously exempt facilities owned or operated by municipalities were required to obtain coverage by March 10, 2003. These facilities were not required to obtain coverage under the industrial stormwater general permit issued August 2002 (Condition S2.A.3) consistent with the Intermodal Surface Transportation and Efficiency Act (ISTEA) exemption. If facilities meet the criteria for coverage identified in this special condition, they shall obtain permit coverage.

There is confusion about what facilities are now included in the ISWGP as a result of the withdrawal of the ISTWA exemption. The section should clarify that the ISTEA exemption covered municipal-operated industrial facilities that are one of the ten industrial groups described in 40 CFR Subpart 122.26 (b)(14)(i – ix or xi) as listed in Table 1. See the attached letter on ISTEA exemptions for detailed response to this section.

Replace - “Previously exempt industrial facilities as listed in Table 1, owned or operated by municipalities with populations of less than 100,000....”

Replace - "If facilities meet the criteria for coverage identified in this special condition by being facilities conducting industrial activities that discharge stormwater to a surface water body or to a municipal separate storm sewer system, they shall obtain permit coverage.

A.3. Any facility that has an existing *National Pollutant Discharge Elimination System (NPDES)* discharge permit which does not address all stormwater discharges associated with industrial activity if Title 40 of the Code of Federal Regulations (40 CFR) Subpart 122.26(b)(14) requires the facility to have a stormwater NPDES permit, shall obtain permit coverage.

Replace - Any facility qualifying as an industrial facility as listed in Table 1 and discharges stormwater to a surface water body or to a municipal separate storm sewer system, that has an existing National Pollutant Discharge Elimination System (NPDES) discharge permit other than an Industrial Stormwater General Permit or Individual Permit, which does not address all stormwater discharges associated with industrial activity if Title 40 of the Code of Federal Regulations (40 CFR) Subpart 122.26(b)(14) requires the facility to have a stormwater NPDES permit, shall obtain permit coverage under this permit.

C.11. Any facility covered by an individual NPDES permit that addresses stormwater discharges. The individual NPDES permit must contain the same substantive and procedural requirements as the ISWGP (e. g., a stormwater pollution prevention plan (SWPPP) and sampling of stormwater discharges), as determined by the Ecology individual permit manager.

It is possible that there are specific procedures and tests that are in the general permit that are not in an individual permit. As written, this permit could be requiring the individual permit holder to conduct the same substantive and procedural requirements, regardless of applicability, because of this section.

Replace - The individual permit must contain applicable substantive and procedural requirements similar to the ISWGP...".

Special Condition 2. Application for Coverage

Section A.3.a.i states that Previously Exempt Municipal Facilities (ISTEA) that existed before the effective date of this permit shall submit an application for coverage immediately. Section B (Compliance Schedule for SWPPP) part 1 states that there is no compliance schedule authorized under this permit for developing and implementing the SWPPP except for existing facilities not previously permitted (S2.A.3.b.).

Section B.2.b requires complete implementation of non-capital BMPs within 90 days of receiving coverage and Section B.2.c. requires complete implementation of BMPs that require capital investment within nine months of receiving coverage.

Section A.3.a.i mandates that ISTEA exempt facilities apply immediately and Section B.1 excludes existing industrial municipal facilities that were under ISTEA. Municipalities discovering that they have facilities that have been included in this permit will have no time to write and implement the SWPPPs and will be out of compliance with this permit. Municipalities should have the chance to meet the permit requirements by being included in Section B.1. Most municipalities are on a one, two or more year budget cycle for funding capital projects. It is unlikely that any municipality will be able to comply with either sections B.2.b or B.2.c. Language needs to be included in the permit that recognizes municipal budget cycles and capital outlay programs or many municipalities may be unable to meet the terms of this permit.

Section D. (Permit Coverage Commencement) describes a time frame during which an applicant may be out of compliance or without coverage. This time period of non-coverage results from a series of permit requirements that need to occur before a facility is granted permit coverage. These include the requirement of public notice; the SEPA process; and, the time lag between application and notification of coverage.

Existing facilities that were included under ISTEA or that were covered under other NPDES permits that are being seconded to this permit will not receive permit coverage until after their application is approved. Are these facilities covered under the industrial NPDES permit during the public notification, SEPA and application process?

E. 2. A Permittee with a stormwater discharge to a storm sewer operated by a Phase I or Phase II municipality shall send a copy of their application for coverage to the appropriate entity. Appendix 5 contains a list of Phase I and Phase II jurisdictions.

This section does not provide needed specificity for submission of applications to these municipalities. King County, and other Municipal NPDES permit holders are large organizations and a submittal to the municipality by an applicant does not guarantee that the application is routed to the appropriate agency for review. We recommend that Ecology, being the central authority, approve the applications and then forward the completed applications to the appropriate authority within the municipality.

Replace - A Permittee with a stormwater discharge to a storm sewer operated by a Phase I or Phase II municipality shall have a complete and approved send a copy of their application for coverage sent to the appropriate entity by Ecology. Appendix 5 contains a list of Phase I and Phase II jurisdictions.

Special Condition 3. Stormwater Pollution Prevention Plan (SWPPP)

Most existing facilities have stormwater BMPs constructed and developed over years. The requirement to use the current eastern and western Washington stormwater manual on already existing facilities is unfeasible and inappropriate. Including a statement such as meeting the appropriate stormwater design at the time of construction is an important clarification. Language should be altered to address stormwater BMPs built after a specific date instead of facilities permitted after a specific date. All references to the Eastern or Western Washington Stormwater manual must include statement of equivalency.

Replace - A.3.a.i. The Stormwater Management Manual for Western Washington, 2005 Revision or equivalent, applicable to:

Replace - A.3.a.i.1. Any facility located west of the crest of the Cascade Mountains with stormwater facilities built that received permit coverage after February 1, 2005, or

Replace - A.3.a.ii. The Stormwater Management Manual for Western Washington, 2001, or equivalent applicable to:

Replace - A.3.a.ii. 1. Any facility west of the crest of the Cascade Mountains with stormwater facilities built that received permit coverage before August 1, 2001, and

Replace - A.3.a.iii. The Stormwater Management Manual for Eastern Washington, or equivalent, applicable to all facilities east of the crest of the Cascade Mountains as of November, 2004.

Replace - A.3.c. New facilities, or existing facilities undergoing significant process change shall apply the applicable minimum requirements of the appropriate and most current SWMM or equivalents, available before new or expanded operations begin.

Replace - A.3.d. Permittees choosing to follow the stormwater management practices contained in approved SWMMs, or equivalent including the proper selection, implementation, and maintenance of appropriate BMPs are presumed to have satisfied Condition

B.3.a. The Permittee shall indicate whether each BMP is based on the *presumptive approach* or *demonstrative approach*, and shall cite the manual and page number of the BMP.

Ecology's approach to the application of best management practices should be to encourage the use of new and innovative technologies available to stormwater managers. The science of stormwater treatment is rapidly advancing and the permits discourage permit holders from using these new technologies. Currently there is little or no incentive or benefit to the permit holders to invest in programs such as the application of LID or the newest technology in the treatment of stormwater.

Delete - "and shall cite the manual and page number of the BMP."

B.3.e.iii. All treatment BMPs that include the addition of chemicals to provide treatment must be approved by Ecology before beginning construction/installation.

Delete section - These treatment BMPs are already approved by Ecology and in the SWMM or equivalent. If there is a need to notify Ecology it should be a requirement in the SWMM.

Special Condition 4. Sampling

B.1.a The Permittee shall sample the discharge from each designated location at least four times during the period from October 1 to June 30.

King County recommends that sampling be modified to take place five separate times during a given rain "season" with all of the requisite changes in reporting, benchmarking and action level exceedences as described above and in the 6415 report. We have recommended that the action level be triggered by the median of 5 samples during the rainy season as a better measure of the nature of the runoff. If this recommendation is not adopted then we prefer to shift quarterly sampling as it exists under the current permit.

If the sampling requirement is to be left as proposed, with samples being required four times during the rainy season, then we suggest that the sampling event be at least four weeks apart to ensure that the samples would be representative of the facility's discharge during the year.

B.c. The Permittee shall not sample a discharge point until the results from the previous sample have been received by the Permittee.

Add- received from an accredited laboratory by the Permittee.

C.2. After the effective date of this permit, the Permittee may suspend sampling for one or more parameters based on consistent attainment of benchmark values when:

As worded, no prior sampling can be used to determine consistent attainment of benchmark values. This is reasonable for new parameters or parameters with new benchmark such as total

zinc. It provides no additional environmental protection to exclude previous results for parameters whose protocols or benchmark values have not changed from the current ISWGP. By resetting the clock, all of the permittees who had achieved consistent attainment under the current permit would have to resample these parameters for at least another two years. If the permittee have experienced no exceedences of the benchmark parameter for two years already, chances are that they would not exceed it in the next two years. Recommend allowing previous constant attainment status to be carried forward for parameters that have had no change in protocols or benchmark values.

Special Condition 5. Benchmarks, Action Levels, and Discharge Limitations

King County recommends that the ISWGP use fixed benchmark and action level values instead of the 50th and 75th percentile benchmark & action levels. If, in general, the permit holders have uniformly low contaminant levels, then 25 percent of the population would still be in violation and be required to carry out the tiered response structure under the action levels, even though there is little or no impact to the receiving waters. Conversely, if the parameter values are uniformly high, then the 50th and 75th percentile benchmark & action levels would not be protective of the receiving waters.

S5.A Benchmarks, Action Levels, and Sampling Requirements Applicable to Permittees Discharging to Non-303(d)-listed Water bodies

The significant reduction of the action level for zinc called for in this permit will cause many facilities to quickly proceed through the action level response train to the installation of treatment BMPs. Due to cost or other considerations, facilities may not be able to install treatment BMPs in a timely fashion causing a violation of the permit. King County suggests that the action level for total zinc be phased in over time to allow for opportunities such as source removal, allowing permit holders to remain in compliance with the permit. One approach could be a 20% reduction in the action level in this permit with an additional 20% reduction to follow in the next permit cycle.

King County recommends adding sampling for hardness when sampling for metals. Hardness is critical in determining the potential toxicity of the metals in stormwater. The use of a median state-wide hardness is questionable when considering the disparate geology of the state and the wide variability of hardness in stormwater that can be seen at a single site.

Special Condition 6. Discharges to (D)-Listed or TMDL Waters

A.1. Permittees shall comply with the Surface Water Quality Standards (Chapter 172-201A WAC), Sediment Management Standards (Chapter 173-204 WAC), Ground Water Quality Standards (Chapter 173-200 WAC), and human health-based criteria in the National Toxics Rule (40 CFR 131.36).

Compliance with Standards is common to all permits and the standards that a permit must comply with should be consistent across the permits. For consistency with definitions in other permits: *Delete* “and human health-based criteria in the National Toxics Rule (40 CFR 131.36).”

Special Condition 8 Corrective Actions.

Under the current proposed language, permittees must retain their number of exceedences from the current permit to the new permit. It would not be prudent to completely eliminate all action

level exceedences from a permittees record, but this does effectively penalize those permittees who have been diligent about obtaining their samples under the current permit. Permittees currently under a level three response plan should be expected to continue on with these efforts. King County suggests implementing a system where one action level exceedences could be removed for every two years of consistent attainment. Or, in the case of a median sampling value from a rain season, one action level exceedence could be removed each permit cycle.

King County recommends that the action level triggers when the median value of five separate samples obtained during a given rainy season exceeded the given action level instead of when a single sample result exceeds the action level (as is currently established). Sharp spikes in the concentration of a given parameter are common in stormwater but do not represent the typical concentrations in the runoff. Focusing on long term, more typical, stormwater discharge (chronic effects) from a given site should be the issue of concern for this permit.

This does not need to impact the requirement to perform a Level 1 response any and every time an individual sample result exceeded the benchmark level. This change would, however, likely necessitate a change in how past action level exceedences are handled as it would be unfair to compare current permit action level exceedences to new permit action level exceedences.

Some stormwater maintenance tasks may actually increase stormwater contaminant levels for a short period of time. This could be the removal of sediment captured by a constructed wetland. Until the plants re-grow, exceedences may occur. General Condition 21 recognizes that some maintenance activities might cause degradation of stormwater quality. But there is no mechanism to allow for the permittee the cycle out of the tiered response action plan as a result of exceedences occurring during the maintenance. Permittees should be allowed to temporarily suspend monitoring during the maintenance program or release the permitted from the tiered response action plan for exceedences occurring during and immediately following such maintenance activities so long as the maintenance is “carried out in a manner approved by Ecology”?

C. Level Three Corrective Actions

The ISWGP only allows permittees 12 months implement all practical treatment BMPs at the level three response. For most organizations, obtaining funds required to complete most treatment BMPs is not a 12 month process. King County could take two years to get a project through a funding cycle and could be longer for municipalities with a biennial budget process.

Additionally, installing a new treatment BMP might trigger a requirement for the facility’s entire stormwater system to be brought up to current stormwater permit code. If this were to happen, the cost would rise significantly higher as the majority of older facilities were built to earlier codes or before stormwater codes were in existence. King County recommends that the permittee provide a timeline to Ecology within 12 months explicitly stating how long it will take to complete the Level 3 response and why it will take that length of time.

Special Condition 10. Compliance with Standards

A. Discharges shall not cause or contribute to a violation of Surface Water Quality Standards (Chapter 173-201A WAC), Ground Water Quality Standards (Chapter 173-200 WAC), Sediment Management Standards (Chapter 173-204 WAC), and human health-based criteria in the National Toxics Rule (40 CFR 131.36). Discharges that are not in compliance with these standards are prohibited.

Compliance with Standards is common to all permits and the standards that a permit must comply with should be consistent across the permits. For consistency with definitions in other permits: *Delete* “and human health-based criteria in the National Toxics Rule (40 CFR 131.36).”

Appendix A -Definitions

Definitions within this section need to be consistent with terms used in other regulations issued by the State of Washington such as Chapter 173-218 WAC (Underground Injection Control Program); Chapter 173-303 WAC (Dangerous Goods) Chapter 173-350 WAC (Solid Waste Handling Standards; Chapter 173-201A (Water Quality Standards for Surface Water); Chapter 173-200 WAC (Water Quality Standards for Ground Water); and permits issued under Chapter 173-220 WAC (National Pollutant Discharge Elimination System) such as Sand and Gravel General Permit; the Industrial Stormwater General Permit; the Phase I Municipal Stormwater Permit; and, the Phase II – Western Washington.

Benchmark

Add - means a pollutant concentration used by the permit as a threshold, *at or* below which a pollutant is considered unlikely to cause a water quality violation and above which it may. Benchmark values are not water quality criteria and site-specific conditions must still be considered to determine if an actual water quality violation exists.

Significant Amount means an amount of a pollutant in a discharge that is amenable to available and reasonable methods of prevention or treatment; or an amount of a pollutant that has a reasonable potential to cause a violation of surface or ground water quality or sediment management standards.

Under this definition, discharge pollutants in amounts that do not violate surface water, groundwater, or sediment standards, but are amenable to treatment, would be considered a “significant amount.” This would be true, even if the permittee is complying with all permit conditions. As a result the discharger would be considered a “significant contributor” and may be required to obtain a permit, even though the discharger is below the one acre threshold. The definition should be modified to clarify that mere discharge of a pollutant is not automatically considered a significant amount just because the pollutant is amenable to available and reasonable treatment. It appears to create a standard that is below the relevant water quality and sediment quality standards. Within the current definition of significant amount, an amount of a pollutant in a discharge that is amenable to available and reasonable methods of prevention, control, or treatment that is not violating any standard would create a significant contributor.

Delete – “an amount of a pollutant in a discharge that is amenable to available and reasonable methods of prevention, control, or treatment; or”

Significant Contributor of Pollutant(s) means a facility determined by Ecology to be a contributor of a significant amount(s) of a pollutant(s) to waters of the state of Washington. What are the standards and conditions that Ecology uses to determine a significant amount? What are the determining criteria that Ecology will use to decide that a facility is a significant contributor?

Stormwater means that portion of precipitation that does not naturally percolate into the ground or evaporate, but flows via overland flow, interflow, pipes, and other features of a stormwater drainage system into a defined surface water body, or a constructed infiltration facility.

Replace with - "Stormwater" means that portion of precipitation that does not naturally percolate into the ground or evaporate, but flows via overland flow, interflow, pipes and other features of a stormwater drainage system into a defined surface waterbody, or a constructed infiltration facility. There has been a lack of consistency between permits and other regulations issued by Ecology. The term "stormwater" should have one definition across all permits and regulations. This should apply to all definitions, terms, acronyms or even concepts generated by Ecology regardless of what law, regulation, or permit the word or term is located.

Water Quality Standards means the Water Quality Standards for Surface Waters of the State of Washington, Chapter 173-201A WAC, Ground Water Quality Standards (Chapter 173-200 WAC), Sediment Management Standards (Chapter 173-204 WAC), and human health-based criteria in the National Toxics Rule (40 CFR 131.36). Water quality means the chemical, physical, and biological characteristics of water, usually with respect to its suitability for a particular purpose.

Delete – "human health-based criteria in the National Toxics Rule (40 CFR 131.36)." There needs to be consistency between permits and other regulations issued by Ecology. The term "Water Quality Standards" should have one definition across all permits and regulations. This should apply to all definitions, terms, acronyms or even concepts generated by Ecology regardless of what law, regulation, or permit the word or term is located.