



April 19, 2007

Jim La Spina
Water Quality Program
Washington Department of Ecology
P.O. Box 47600
Olympia, WA

RE: Comments on Draft Industrial Stormwater General Permit

Dear Mr. La Spina:

The Northwest Food Processors Association (NWFPFA) appreciates the opportunity to comment on the draft Industrial Stormwater General Permit (ISWGP). NWFPFA represents 72 processing plants in the state with combined annual sales of \$3.1 billion and an annual payroll of \$1 billion. Food processing in Washington is the state's third largest manufacturing sector.

General Comments

NWFPFA is recommending that Ecology withdraw and re-work this proposed permit. There are significant problems with the current proposal. A broad segment of Washington's industrial sector has given Ecology very similar feedback about the provisions of this proposal. We have outlined a recommended course of action at the end of our comments, which we believe will lead to a more workable permit that will better achieve the goals of protecting Washington water quality and compliance with the permit conditions.

The draft ISWGP is incredibly complex and will be extremely difficult to implement. Ecology's fact sheet, dated February 2007, indicates that even under the current permit there are severe challenges to compliance, including non-reporting, benchmark exceedances and other issues related to the complexity of the requirements in the permit.

The draft ISWGP is even more complex than the current permit. This complexity will lead to a failure of the program to achieve its primary goal of protecting surface waters, while putting industrial dischargers in the difficult position of trying to implement a permit that makes compliance nearly impossible.

A general permit should be as simple as possible, with clearly defined goals and outcomes. The draft ISWGP is over 100 pages long and contains about 50 pages of substantive requirements. When combined with the referenced Eastern or Western Stormwater Management Manual, the draft ISWGP requires compliance with well over 300 pages of permit language.

By comparison, the State of Oregon's newly adopted industrial stormwater general permit, the 1200-Z, has 27 pages and EPA's new Multi-Sector General Permit contains about 40 pages of substantive requirements. While we realize that the number of pages is not the final arbiter of effectiveness, it is clear that the Washington permit is far more complex and cumbersome than either the Oregon or EPA permits, which are implementing the same regulatory requirements.

We believe it is possible to effectively regulate stormwater discharges in the State of Washington with a far more streamlined, simplified permit. We urge Ecology not to adopt this permit and to reconsider the structure and nature of the approach taken.

Benchmarks, Action Levels and Discharge Limitations

We believe that the most critical issues which need to be addressed in the draft ISWGP arise from the way the benchmark levels have been established and how they are used to require corrective actions. These are outlined below:

- Benchmark levels seem to have been established in an arbitrary manner and are used as default water quality standards. For example, the copper and zinc benchmarks are unreasonably stringent when applied to all receiving waters. Requiring all permit applicants to comply with a standard that is based on the most restrictive scenario, such as streams with limited flows, is unreasonable. Discharges into water bodies that do not provide for adequate dilution should be dealt with under individual permits, rather than trying to deal with it in the general permit. In addition, we question whether these levels can even be achieved with current treatment technology. Both of these metals are ubiquitous in the environment and companies with stormwater discharges have little or no control over the deposition of these metals from sources like brake pads and tire dust.
- Benchmarks are not water quality standards and should not be used in that manner. The benchmarks should be used as indicators of the effectiveness of BMP measures. Significantly more data is needed to truly understand how to effectively control stormwater discharges and optimize the balance between practical, cost effective measures and protecting water quality.
- Exceedance of a benchmark by a single sample should not require corrective action. Benchmarks are a measure of the effectiveness of BMP's, which are the heart of an effective stormwater management program. Ecology's own stormwater monitoring data shows wide variations in individual samples from the same site. This is normal, due to the nature of stormwater events and is the reason that all other states and the EPA utilize medians and means, obtained over a significant period of time, to determine compliance with benchmarks and water quality standards. Ecology should modify the draft ISWGP to utilize average or mean values in evaluating the effectiveness of benchmarks and BMP's.
- The level 4 response is inappropriate and goes beyond the scope of a general permit. This is especially problematic when combined with the manner in which the benchmarks become default water quality standards. The level 4 response should not be a part of the general permit and companies who are unable to comply with the general permit should be moved into individual permits that address their specific issues. Of course, under the current draft, many companies would face this as an inevitable outcome, which is why we are asking Ecology to re-think the entire approach.
- Benchmark values are inconsistent in the draft ISWGP. For example, the draft requires food processors to comply with a turbidity benchmark that is far more stringent than sand and gravel operations. These values must be consistent in all Ecology permits.

Permit Specific Comments

Condition S1F2c

It is unclear to us what is being required in this condition. It appears to require facilities that are applying for a “no exposure certificate” to sample discharges, in addition to meeting the requirements of the law and regulations for qualifying for “no exposure”. If a site has no exposure and can demonstrate that, there should be no requirement for sampling. By definition, a company that has no exposure is not causing or contributing to the degradation of applicable water quality standards.

Condition S2A3ci

Requiring an application 180 days prior to commencement of stormwater discharge is overly burdensome. DOE should be able to process general permit applications in 60 days. If not, the permit is too complex. The application deadline should be changed to 60 days.

Condition S2B2c

Requiring BMP's that require capital investment to be implemented within nine months is an undue burden on industrial permittees. Corporate capital budget processes, especially under the Sarbanes-Oxley Act of 2002, cannot respond in that amount of time. A minimum of one year should be allowed.

Condition S3A4e

NWFPA has repeatedly commented to Ecology on permit requirements that make the holder of the permit responsible to provide information to the public. This is an unreasonable and unworkable requirement that clearly is the responsibility of the Agency itself. Washington has public records access laws that are designed to accommodate the public's right to know. Individuals who want information on permits must be required to access that information from Ecology.

Other Permit Specific Comments

Several NWFPA member companies have submitted individual comments on specific provisions of this permit so we will not repeat those in our submission. However, it should be noted that NWFPA supports and agrees with those comments.

The Path Forward

We are requesting that Ecology withdraw the permit, rather than attempting to make surface fixes which will lead to a poor regulatory outcome. Notices of Intent to Sue under the current permit are escalating rapidly, as businesses and municipalities in the state find it extremely difficult to comply with the current stormwater general permits. This trend will explode into an epidemic, if this draft permit is adopted.

We are aware that Ecology is reluctant to re-open the process due to the looming expiration date of the current ISWGP. While we understand that the Agency is concerned about dedicating

further staff resources and the possibility of criticism from outside entities if you do not adopt the permit. However, re-opening the process and fixing the fatal flaws in this permit will, over time, be the most cost effective, least staff intensive and most favorable option available to Ecology. Litigation expense alone and the time spent to support the litigation effort will far exceed any additional staff time spent now to fix the issues that will, without doubt, lead to a blizzard of lawsuits.

Ecology has the option to:

- a. Administratively extend the current permit,
- b. During the extension period, issue temporary individual stormwater permits to new applicants that are identical to the current general permit,
- c. Roll these individual permits into the new general permit, once it is issued.

Ecology has an Industrial Stormwater Advisory Group in place that can assist you in re-working the permit. We urge you to utilize them in a process that more closely evaluates many of the recommendations in the 6415 Report, which we believe hold great promise of simplifying the permit and improving compliance, without compromising water quality.

We appreciate the opportunity to comment on the proposal and look forward to working with you as we move forward.

Sincerely,



Craig Smith
Vice President

