

APR 25 2007
WATER QUALITY PROGRAM

**NORTHWEST
PULP&PAPER**

NORTHWEST PULP & PAPER ASSOCIATION
1300 114TH AVENUE SOUTHEAST, SUITE 200
BELLEVUE, WASHINGTON 98004
(425) 455-1323 FAX (425) 451-1349

April 20, 2007

sent regular mail and electronically

Jim La Spina
Water Quality Program
Washington Department of Ecology
P.O. Box 47600
Olympia, WA 98504

Subject: NWPPA Comments on Draft Industrial Stormwater General Permit

Dear Jim;

This letter constitutes the NWPPA comments on the February 2007 Draft Industrial Stormwater General Permit (ISWGP). NWPPA represents pulp and paper mills in Washington State. Our members have both individual NPDES permits for facility operations as well authorization under the ISWGP for surface runoff. Typically, stormwater from process areas is routed to the treatment facility for the main outfall and other stormwater areas may have separate outfalls. Additionally NWPPA members have other facilities and ancillary operations subject solely to the ISWGP.

NWPPA also supports the comments of AWB and Weyerhaeuser. Due to the robustness and completeness of those comments, NWPPA comments are more summary in nature to avoid duplication.

NWPPA's Request

NWPPA respectfully requests that Ecology not issue the ISWGP at this time and keep the current version of the ISWGP in place until such time as Ecology can correct inconsistencies in interpretation of legislative direction and inconsistencies with its own rules.

Further, Ecology should undertake revisions to greatly simplify the ISWGP with the goal to: (1) Create effective tool for addressing environmental issues associated with stormwater runoff; and (2) Increase understanding and compliance rates and thereby reduce needless exposure to third party liability.

It is poor policy making indeed to impose requirements that are so complex and confusing that a reasonable person making a good faith effort to comply is nonetheless subject to a high rate of compliance issues and exposure to litigation.

NWPPA Concerns

1 Inconsistency with Legislative Intent by Omission of Key Concepts

During the 2004 Legislative Session, NWPPA and its members worked with AWB, Ecology and environmental organizations, and legislators to pass Senate Bill 6415. SB 6415 was widely hailed as “the major environmental bill of the year” because of the complexity and difficulty of the issues as well as the positive outcome it represented

It is disappointing now to see that Ecology has departed from agreed language resulting from those negotiations by omitting to incorporate some of the provisions of RCW 90.48.555. Ecology cannot pick and choose parts of a bill and ignore other related provisions to accomplish a different result than the core principles of the legislation.

Specifically, Ecology has produced a ISWGP which:

- Sets the expectation that water quality criterion will be met at the point of discharge, while no stormwater pollutant variability or dilution in receiving waters is provided. The Fact Sheet expressing the intention to eliminate mixing zones for all stormwater discharges, a significant departure from the prior ISWGP.
- Improperly equates benchmark values with receiving water criteria, instead of utilizing benchmarks as an adaptive management tool. The ISWGP accomplishes this improper result by requiring treatment technology to control discharges to the level of the benchmarks.
- Fails to adequately incorporate the concept that a permittee in compliance with Best Management Practices (BMPs) and other permit provisions is deemed in compliance with water quality standards

2. Failure to Allow for Dilution/Elimination of Mixing Zones

The Fact Sheet for the ISWGP on Page 44 states:

“RCW 90.48.555(12) applies to this permit and addresses mixing zones. It states: “The department may authorize mixing zones only in compliance with and after making determinations mandated by the procedural and substantive requirements of applicable laws and regulations.”

The applicable laws and regulations include federal Clean Water Act, RCW 90.48, WAC 173-200, WAC 173-201A, WAC 173-204, WAC 173-220-040, WAC 173-216-070 and human health based criteria in the National Toxics Rule (40 CFR 131.36)

No mixing zones are established in this draft permit. Since a general permit must apply to a number of different sites, precise mixing zones and available dilution are not applicable to facilities covered under a general permit

Any discharger may request a mixing zone through an application for an individual permit in accordance with WAC 173-220-040 or WAC 173-216-070 ”

This statement is in marked contrast to the 2002 Fact Sheet (for the current ISWGP) which states on P. 27, that although there are inherent technical issues in establishing mixing zones, there are several methods for doing so. Ecology then goes on to allow mixing zones in certain circumstances:

“Typically a mixing zone dye study or modeling is applied to establish the amount of mixing a discharge will receive in the allotted mixing zone. This mixing is expressed as a dilution factor. For specific pollutants, the background level of the pollutant in the receiving water also factors into determining the available dilution. These factors become part of a calculation used to set a discharge limit that must be met at the point of discharge (or as close to point of discharge as practical). All of these considerations are very site-specific and difficult for stormwater discharges. Since a general permit must apply to a number of different sites, precise mixing zones and available dilution are not easily applied to facilities covered under a general permit.

This general permit does authorize the application of a mixing zone to determine if a Permittee’s discharge complies with water quality-based standards. To be eligible the Permittee must have applied all appropriate best management practices for stormwater management at their site and allowable mixing must not result in loss of beneficial uses in the receiving water. A discharge that is not causing or contributing to a water quality violation will typically not cause a loss of beneficial uses. New facilities must request a mixing zone by completing that portion of the application for coverage. The existing and previous versions of the permit authorized a mixing zone when considering compliance with water quality-based criteria. Although the revised permit is more specific on the dimensions of the mixing zone and how it will be applied, it is not introducing a new authorization to existing Permittees. Therefore, existing Permittees will be eligible for a standard mixing zone without submitting an application for modification of coverage.”

Ecology’s rationale for eliminating mixing zones in the 2007 proposed ISWGP appears to have to do with the view expressed in 2002 that mixing zones are difficult to establish.

Ecology has offered no other rationale to explain why mixing zones were previously applicable and now views them as “not applicable.”

In the negotiations leading to the adoption of SB 6415, it was clearly anticipated that mixing zones or some form of dilution would be allowed in some, although not necessarily all situations. Although Ecology has a certain amount of discretion, there is no legislative record indicating they are for all purposes “inapplicable.”

Ecology’s rationale that mixing zones are difficult, also falls short of credibility given that Ecology has been administering stormwater mixing zones for the past 5 years. Also, this policy choice is not one of the recommendations mentioned in the 6415 Report, *Evaluation of Washington’s Industrial Stormwater General Permit (2006)*. In fact the 6415 Report (P. 20) contains key findings which expressly acknowledges different dilution scenarios with respect to receiving water quality:

“The results from this analysis indicated that a high percentage of samples exceeded the water quality criteria when dilution factors of 0 and 10 were assumed. The percentage of

exceedance for all parameters dropped to less than 35 percent with a dilution factor of 25, and less than 15 percent with a dilution factor of 50. When the actual benchmark concentrations were assumed for the stormwater discharge and then assessed in relation to representative receiving water conditions, the typical dilution factors that would be required to meet acute water quality criteria ranged from to meet chronic water quality criteria ranged from 1.6 for zinc to 76 for lead. This indicates that the existing benchmarks, if attained, are fairly protective for zinc, less protective but reasonable under most scenarios for copper, very protective for lead in terms of acute concentrations, but not protective if the discharge represented a chronic condition."

Furthermore, the 2007 Economic Impact Analysis fails to make any mention of the increase in costs these changes represent. The elimination of mixing zones or dilution allowance, combined with requirements to install technology to meet the benchmarks at the end of pipe means a great increase in capital investment for virtually every facility subject to coverage under this permit. Inexplicably, Ecology makes no economic analysis of this fact whatsoever.

In sum, Ecology is making policy choices that are at odds with SB 6415 and offers nothing in the administrative record to support its position. In fact the administrative record appears built around the assumption that mixing zones or some allowance for dilution will continue. In light of its own administrative record, Ecology should retain the interpretation of the current ISWGP.

3. The ISWGP Creates Conflicts with Other Existing Rules

Subsection S1.D.5 states that facilities covered by an individual NPDES permit that addresses stormwater (as explained above, this is typical for NWPPA members) are unconditionally *excluded* from coverage under the ISWGP.

S1.C.11 conflicts with this provision by exempting NPDES permittees but nonetheless requiring such permittees to meet the content of the stormwater provisions in their individual permits.

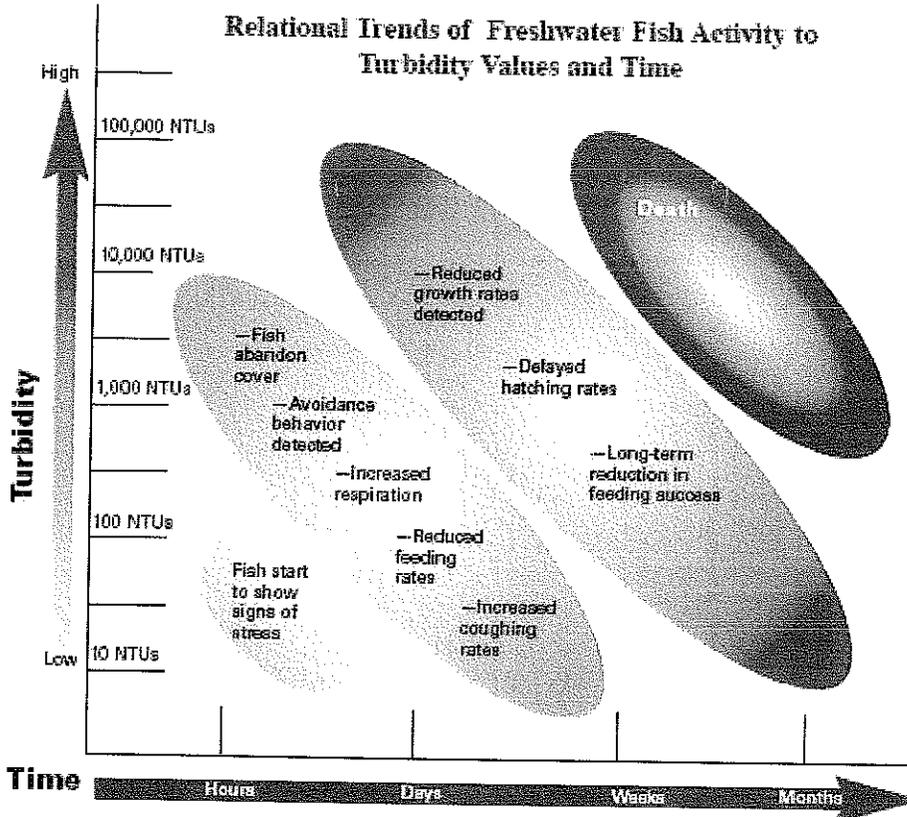
S1.C.11 should be deleted from the ISWGP as it makes no sense and adds no value. Individual NPDES permit holders typically contain detailed stormwater management requirements tailored to the site-specific nature of the particular facility. The permit writer responsible for drafting the individual permit is charged with understanding the characteristics of wastewater from the manufacturing process as well as any stormwater from the process area. As a result these NPDES permits often contain effluent limits and other site-specific requirements that are different from and may be more stringent than the ISWGP.

4. Selection of benchmark values for copper, zinc and turbidity lack good science

Others have extensively addressed issues with respect to the benchmarks for metals such as the AWB. NWPPA concurs with those comments and does not wish to duplicate

them. NWPPA does wish to add further information with respect to turbidity (TSS) benchmark. This benchmark is too low for use for short-term episodic events such as stormwater, which may increase turbidity only for a matter of hours, typically 4-12 hours.

Concerns with respect to the effect of turbidity on fish are time-related as the following chart illustrates:



Ecology's permit fact sheet is misleading by stating that a TSS benchmark of 100-130 mg/l would not be protective of endangered species. Ecology's assertion is based on a NOAA document that speaks to sustained exposure over a course of days, not short-term episodic exposure due to stormwater events.

NWPPA supports the approach taken by the Oregon DEQ in their stormwater permits. 1200-A, 1200-Z and 1200 COLS and suggests that Ecology examine that rationale.

5. The ISWGP is Overly Complex and Does Not Deliver Value Relative to the Additional Complexity

Ecology is proposing one of the most lengthy and complex stormwater permits in the nation. In order for a permittee to achieve and to maintain compliance, over 100 requirements detailed over 50 pages must be met and updated. The permit is linked to

the Western (or Eastern) Washington Stormwater Manual, which effectively adds 200-300 pages of technical/regulatory requirements. This is marked contrast with the Oregon industrial stormwater general permit, which is 27 pages long.

Ecology's has presented information documenting that the universe of affected facilities are experiencing difficulty complying with the current version of the ISWGP and that understanding and compliance is likely to be lower still with the proposed ISWGP.

The plethora of minutiae in this permit is a recipe for non-compliance and creates exposure to liability to third party lawsuits even for facilities making a good faith effort to comply.

Ecology has failed to show what environmental benefit would be achieved over and above a more manageable approach such as developed by the Oregon DEQ

In sum, NWPPA urges Ecology to redraw this proposal and redevelop the permit in compliance with SB 6415 and the 6415 report and seek to reduce the complexity in order to make this a useful and effective tool for improvement of stormwater.

Thank-you for consideration of these comments.

Sincerely,

A handwritten signature in cursive script that reads "Llewellyn Matthews".

Llewellyn Matthews,
Executive Director