

StormwaterRx Comments on November 21, 2007 Draft of Washington Industrial Stormwater General Permit

**Paragraph S1.A** authorizes discharges by permit to “waters of the state.” The Appendix 2 definition of “waters of the state” includes “underground waters.” Paragraph 2 of section S1.A states that the permit only applies to discharges to surface water bodies or MS4s. Paragraph S1.B.1.c further qualifies that a permit may be required by Ecology if a facility is determined to “be a significant contributor of pollutants to ground water....”

The combination of these statements and the qualifying phrase “significant contributor” is confusing. We suggest that Ecology include quantitative criteria that should be used by facilities that infiltrate stormwater or that conduct industrial activities on unpaved surfaces to judge whether runoff could be deemed a “significant contributor of pollutants to groundwater.” We suggest the criteria should apply equally to facilities that clearly qualify for a permit by surface water or MS4 discharge, and facilities that could qualify for a permit by the “Significant Contributors of Pollutants” criteria. The permit should also stipulate or reference acceptable management practices that should be employed in the case that infiltration or discharge to “underground waters” exists at a facility

**Paragraph S1.C.3.** We concur with this exclusion of certain parking lots from coverage under this permit. The exclusion should be clarified that administrative parking lots and adjoining private roadways or accessways must be entirely separate from traffic such as delivery vehicles and trucks that would access and drag-out stormwater associated with industrial activity. In StormwaterRx experience, this cross-contamination and dual usage of roadways is quite common.

**Paragraph S1.E.1.** It appears that a regulatory gap exists for facilities that infiltrate stormwater onsite to groundwater through certain types of structures (e.g. a stormwater infiltration pond that is wider than it is deep at the land surface and/or that contains perforated pipe.) These discharges do not qualify for coverage under the Underground Injection Control program, nor do they qualify for coverage under the Industrial Stormwater General Permit. Under this circumstance, we are not aware of a current regulatory program that would control or manage the risk of groundwater pollution. Ecology may want to consider providing clarification regarding acceptable management practices or water quality pre-treatment BMPs that should be implemented prior to planned or incidental infiltration.

**Paragraph S8.A.2.** This seasonal median comparison should be retroactive and calculated based on the sampling results from the prior sampling season, whether or not the prior sampling period is within the dates of coverage by the new permit. If Ecology intended this, it is not clear in the current draft permit language.

**Paragraph S8.B.** The actions required for exceeding a threshold are inconsistent in severity relative to the Step A and B Corrective Actions for benchmark exceedence. Because of time between sample submittal and receipt of analytical results (usually two weeks), using exceedence of a threshold value to try to identify and correct a condition that existed no less than two weeks earlier is often unrealistic. It might be more useful to correlate turbidity or some other real-time analysis with a potential threshold exceedence and indicate a response plan if that real-time parameter exceeds the threshold. It also seems that having a parameter present at 10 times the benchmark would indicate some greater problem that should warrant a more definitive onsite response than reporting alone.

**Paragraph S8.C.** Regarding prescribed timelines for meeting benchmarks. Step A Corrective Action would be required after a season (7 or 8 months) of sampling results demonstrates a parameter exceeds its benchmark. The Step A Corrective Action then requires the Permittee to implement BMPs within 18 months to reduce all pollutant concentrations below benchmarks. Step B Corrective Action would be required if, after implementation of those Step A BMPs, the Permittee is still above the benchmarks. If the Permittee gets to Step B before finally reducing all pollutant concentrations below benchmarks, the Permittee is granted at least an additional 24-months (12 months for submittal of the engineering report, an unknown amount of time for Ecology's review and approval of the engineering report, plus 12 more months for Step B BMP implementation.)

This extended timeline provides almost another full permit term before facilities would be required to meet benchmarks. Most facilities should have been operating under an Ecology NPDES stormwater permit since the late 1980's; the metric of "progress toward benchmarks" should not be a new concept to permittees. In our experience third party legal suits against permittees have cited the lack of timely progress. There may be a legal consequence for Ecology and the permittees to consider given this potential benchmark achievement timeline.

**Paragraph S8.C.3 and S8.D.1.** Regarding stated objectives of Steps A and B Corrective Actions, the objective statements for the Step A Corrective Actions (S8.C.3) and Step B Corrective Actions (S8.D.1) is very similar and leads confusion to the expectation Ecology has for the Permittee between Steps A and B. Both Steps include grammatical variations of the objective "to reduce all pollutant concentrations below benchmarks." We suggest Ecology clarify its expectations for Permittees under each of the two Correction Action steps.