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January 8, 2008

Mr. Lionel Klikoff
Washington State Department of Ecology
PO Box 47600
Olympia, WA 98504-7600

Subject: Comments on the November 2007 Revised Draft Industrial Stormwater General Permit

Dear Mr. Klikoff:

These comments are provided by Schnitzer Steel Industries, Inc. (Schnitzer), on the Revised Draft Industrial Stormwater General Permit issued by the Washington State Department of Ecology (Ecology) on November 21, 2007. These comments are provided in addition to the verbal testimony provided by Warren Hansen, PE (Windward Environmental LLC, Seattle, Washington) on behalf of Schnitzer at the public hearing in Centralia, Washington, on January 4, 2008.

Schnitzer is concerned that the Draft Permit will result in compliance and administrative difficulties for both the regulated community and Ecology. As a member of the Association of Washington Businesses (AWB), Schnitzer has been in communication with association members regarding the Draft Permit, and we have heard this same concern echoed throughout the business community. We have reviewed the AWB comments prepared by Tupper | Mack | Brower PLLC and lend our endorsement to the observations and recommendations contained therein. We add to these our overall concerns as set forth under General Comments (below), as well as specific comments regarding the following:

- ◆ Technical issues
- ◆ Accuracy and completeness of information
- ◆ Scope of facilities proposed for coverage
- ◆ Other concerns

General Comments

Implementation of the Draft Permit as it is proposed will make it less useful as a vehicle by which the regulated community can achieve stormwater permit

coverage and compliance under the state's water quality regulations. The net effect of the new permit conditions will be the migration of permittees to coverage under individual permits. Although larger firms may be able to absorb the additional costs associated with individual permits, this will be an increased burden for numerous small to medium-sized companies, many of which do business with Schnitzer and are an integral and irreplaceable part of the important resource-sustaining scrap recycling industry in Washington.

Schnitzer shares the business community's opinion that the strict response action triggers and procedures set forth under the revised permit effectively elevate the proposed benchmark values to de-facto numeric effluent limitations. Furthermore, setting the benchmark values for contaminants such as zinc and copper based on the median of what the majority of industries are capable of achieving is inherently problematic. It guarantees that up to half of the regulated entities will fail to meet the limits and be compelled to pursue engineering studies and other measures to meet the permit requirements. This is particularly troubling inasmuch as the reference dataset (i.e., for copper) apparently includes facilities that are already implementing state-of-the-art best management practices (BMPs) and other measures to reduce contaminant concentrations, thus effectively penalizing those companies that have already worked so hard to comply with the state's stormwater regulations.

Specific Comments

Technical Issues

Copper and Lead Added as "Core" Sampling Parameters (Fact Sheet, Pages 72 and 83): The *Evaluation of Washington's Industrial Stormwater General Permit* (also known as the 6415 Report) (EnviroVision and Herrera 2006) provides the following limited rationale for adding copper as a core monitoring parameter:

"Copper has become a focus of Endangered Species Act (ESA) related concerns around stormwater and the existing data do indicate there are frequent exceedances for this parameter. Results from the data analysis (Appendix I) also indicate that lead concentrations may be a concern at a chronic toxicity level. Given these concerns, inclusion of these parameters in routine monitoring is prudent."

This alone is not sufficient basis for the addition of these two metals as core monitoring parameters. If monitoring data based on the existing monitoring requirements indicate that copper and lead exceedances are indeed frequently detected, then it could also be argued that the existing system is sufficient to monitor for these parameters. Ecology needs to demonstrate that the existing method, which requires that lead and copper be monitored only if other core parameter limits are exceeded, is somehow the cause of or allows for these

frequent exceedances (i.e., of copper and lead) rather than their being the result of other, more likely causes, such as treatability.

Step A and Step B Responses (Draft Permit, Page 39): The Draft Permit includes "transition" language that equates the Step A and B responses to the former Level 2 and 3 responses. This highlights the confining nature of the new response process and the fact that the former "Level 1" response (under the 2002 Permit) is no longer provided for in the new permit. The Fact Sheet (Page 88) refers to this as "streamlining" the corrective actions and submittal requirements in comparison to the existing permit, and no other reasoning is provided for excluding the former Level 1 response, which allowed a permittee exceeding a benchmark value to make a prompt inspection of the facility, consider additional BMPs, and report to Ecology. A table comparing existing and proposed response action schemes is provided on the third and fourth pages of the Fact Sheet cover pages. As shown therein, the Step B response is essentially triggered by similar circumstances as those triggering a level 2 response (two exceedances). However, under Step B, the response actions are much more demanding, including preparation of an engineering report. In the case of zinc, which is acknowledged by Ecology to be a problem for many permittees, the level 2 response would have been required if zinc concentrations exceeded if two of four quarterly results exceeded the action level (372 µg/L). Under the new draft permit, "equivalent" Step B would be triggered if the seasonal median result exceeds the new proposed benchmark value (112 µg/L) (and after Step A corrective actions have been completed). While the triggering circumstances are slightly different, the stipulated outcome of a second exceedance of a zinc benchmark value that is less than half the former action level for zinc would be the preparation of an engineering report. This is anticipated to result in an unacceptably large number of reports being submitted to Ecology for review.

Corrective Actions appear to address all parameters (Draft Permit, Page 40): The listing of corrective actions for Step A includes the requirement that the permittee "identify potential sources of all stormwater pollutants in the discharge," This would presumably be the case even if only one contaminant exceeds the benchmark value. This is related to the previous comment regarding Step A and Step B responses and again highlights the need to allow for an initial, more focused approach such as the Level 1 response under the current permit.

Requirement to sample first flush and timing constraints (Draft Permit, Page 28): the permittee will be required to take at least one sample from each designated [discharge] location to capture the first discharge from the site during the seasonal first flush after September 1 of each year. It is unclear what the value, other than perhaps for research purposes, would be in attempting to capture "first-flush" data. Presumably this could result in elevated concentrations above the seasonal median that would be used to evaluate compliance, but the general outcome

would usually remain unchanged. It is interesting to note that, according to the Fact Sheet (Page 69), Ecology originally attempted to streamline the sampling requirements in the February 2007 draft permit by allowing the Permittee to sample 1) within 12 hours of the beginning of the discharge, or 2) within 12 hours of the beginning of normal business hours. The Fact Sheet goes on to note that, in response to comments received during the public comment period for the February 2007 draft permit, Ecology subsequently modified this requirement so that permittees will now have to collect at least one sample from each designated sample point to characterize the seasonal first flush. Ecology considers the first discharge after September 1 of each year to best represent the seasonal first flush. The permittee must also sample within 12 hours of the beginning of the discharge or within 12 hours of the beginning of business hours, whichever is sooner. The requirement to sampling a storm event within 12 hours of the beginning of the discharge potentially requires sampling during non-business hours. For example, if a storm event were to begin at 6 p.m. (after the close of business), the sampling would have to occur on or before 6 a.m. of the following day in order to be in compliance. This can represent a serious logistics and safety issue for company employees. At a minimum, Ecology should restore the February 2007 permit language.

Mixing zone that was available in the existing permit is no longer provided for in the draft Permit (Draft Permit, Page 49): The draft permit indicates that no mixing zones are provided for in the new draft permit and that dischargers can only request a mixing zone through an application for an individual permit in accordance with WAC 173-220-040 or WAC 173-216-070. This is in contrast to the Existing 2002 Permit that allowed for application of a mixing zone where a number of stipulations were met [the specific pollutant or pollutants are not subject to 303(d) listing at the point of discharge to a listed segment/grid; the receiving water body does not have a control plan that would limit available dilution; and the facility has implemented all known, available and reasonable methods of prevention, control, and treatment (AKART)]. The justification for excluding mixing zone considerations in the draft permit is that "a general permit must apply to a number of different sites, and therefore precise mixing zones and available dilution are not applicable to facilities covered under a general permit." Ecology is therefore electing to shift an entire subset of permittees from general permit to coverage under individual permits. This will place an undue administrative burden on small to medium-sized permittees and is contrary to the concept of providing a general permit for the majority of potentially covered facilities. The provisions for considering a mixing zone should be restored.

Accuracy and Completeness of Information

(Draft Permit, Pages 41 and 42): It is not clear from the permit if the Step B response allows the permittee to focus on only those contaminants exceeding the benchmark. The language generally states that "the [engineering] report shall include an evaluation of effectiveness and costs of all possible source control and treatment BMPs to reduce all pollutants to below benchmark concentrations." This open-ended language could be construed to mean that the report would need to address the universe of BMPs for the full list of stormwater parameters, rather than focusing on the specific parameter at issue. Ecology has stated in their workshops that the analysis can focus on only those parameters exceeding the limits, but this is not evident in the language of the permit. This is also contradicted by the discussions on pages 89 and 90 of the Fact Sheet that make it fairly clear that Ecology's intent is to include "all parameters:" "Permittees must address **all** parameters with benchmarks in the Step A process, not just the parameter they exceeded." We are concerned with the lack of flexibility and potential unnecessary engineering costs reflected in this proposed approach. The permit and fact sheet should be reworded to allow for response actions to focus on those parameters that are problematic.

Threshold Exceedances (Fact Sheet, Page 89): Ecology should clarify language on Page 89 of the Public Notice Fact Sheet to more clearly indicate that it is a threshold exceedance by a single sample (rather than a seasonal median) that triggers immediate reporting to Ecology and subsequent source control actions. It is difficult to interpret this section as it is currently written.

Scope of Facilities Proposed for Coverage

Facilities and Activities Requiring Permitting: The approach to describing what requires coverage under the new permit will result in confusion and likely differences in interpretation at the field inspector level. Permittees are left to determine what specific activities at their site may require coverage based on their similarity to covered SIC industries.

Other Concerns

Training Requirements (Draft Permit, Page 18): The text states that the permittee shall attend at least one Ecology-approved industrial stormwater training session for the permit within one year of obtaining coverage under the permit. It is unclear if this training is to be provided by Ecology and/or the availability and funding for "Ecology-approved" training sessions. It is also unclear how many staff from a particular permitted facility would be required to attend. It would be beneficial if Ecology could provide on-line training (via the internet) and more flexibility in meeting this requirement consistent with the specific nature of a facility's stormwater sampling/ management needs.

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Permit application and preparation of a stormwater pollution prevention plan (SWPPP) 180 days prior to discharge for new facilities (Draft Permit, Page 9):

Although a new facility may be able to apply for permit coverage 180 days prior to stormwater discharge, it is anticipated that the preparation of a meaningful SWPPP within that same time frame will be problematic for a number of reasons (e.g., specific operations and assigned personnel will not yet have been identified). It seems as though a shorter time period would be justified (e.g., 60 or 90 days) for submittal of the SWPPP.

We appreciate your attention to these comments and encourage Ecology to consider them in revising the Draft Industrial Stormwater General Permit.

Sincerely,


for James H. Wilson
Regional Director