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January 10, 2008

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Subject:       Comments on Draft Industrial Stormwater General NPDES Permit

Dear Mr. Klikoff:

This letter presents the Weyerhaeuser Company comments on the Industrial Stormwater General NPDES permit (hereafter, "ISWGP") proposed for public review and comment on November 21, 2007.

The ISWGP is an important permit for Weyerhaeuser. Seventeen company facilities are authorized to discharge stormwaters under terms of this permit. These consist of six sawmills, one veneer manufacturing operation, four log storage/sort yards, two containerboard packaging facilities, a paper recycling facility, and three facilities with other industrial activities. This level of exposure to the ISWGP program since the mid-1990's has resulted in Weyerhaeuser being especially well grounded on the implementation aspects of this permit. The comments presented below are based on these facilities' collective and varied experiences, and in many cases will express frustration with the unnecessary busyness and complexity of the draft permit. Broader criticisms are directed at Ecology's selection of benchmark parameters and concentrations, and the misuse of benchmark values in the adaptive management process defined in RCW 90.48.555.

In a number of subject areas the terms and conditions of this draft permit are significantly improved from the February 2007 draft ISWGP. The permit Fact Sheet attributes these changes to "the breadth of comments received," and lessons learned during the existing permit cycle. Weyerhaeuser appreciates that Ecology gave serious consideration to the problems and uncertainties presented on the prior draft permit, and has made the effort to address those.

## **SPECIFIC COMMENTS**

### **S1. Permit Coverage**

### Comment 1

S1.A. – *Facilities Required to Seek Coverage Under this General Permit.* ISWGP permitting should not be required if a discharge to surface waters of the state occurs only during storm events of a greater magnitude than the “design storm”.

Discussion – If a qualifying industrial facility successfully infiltrates stormwater on-site at all times except during major storm events; e.g., greater than the Western Washington design storm corresponding to a 6-month, 24-hour storm event, is there an obligation to obtain permit coverage? Note in S1.E.3. that facilities discharging only to ground are not required to obtain ISWGP coverage. Note also the direction in the Western or Eastern Washington Stormwater Management Manuals that treatment BMPs be designed to accommodate stormwater flows produced by the design storm; i.e., stormwater flow volumes arising from storm events larger than the design storm can be bypassed without treatment.

As a practical example, would industrial facilities who only discharged stormwater to off-site surface waters during the extraordinary December 2007 precipitation events in Western Washington be required to obtain permit coverage?

### Comment 2

S1.A.Table 1, Footnote 1. – The footnote is unacceptably vague and should be removed. A small font footnote is the wrong means to (perhaps) broadly expand the intended permit applicability. Ecology should clearly articulate in S1.A any other categories of industrial facilities subject to the permit.

Discussion – The open-ended footnote language is not sufficient to inform on ISWGP applicability. Note that Ecology’s remedy for requiring an industrial facility not fitting into a Table 1 SIC code to obtain permit coverage is detailed in S1.B. *Significant Contributors of Pollutants.*

### Comment 3

S1.C.11. and S1.D.5. – Both these subsections give definition to ISWGP requirements for facilities authorized to discharge stormwaters under an individual permit. In S1.C.11. the direction is for facilities “Not Required to Obtain Coverage”; in S1.D.5. the description is on “Facilities Excluded from Coverage.”

Discussion – To avoid any confusion, S1.C.11 could be eliminated.

### Comment 4

S1.F. -- *Conditional “No Exposure” Certificate.* Eligibility for a *Conditional “No Exposure” Certificate* should not be precluded because of regional flooding conditions arising from storm events greater than the design storm.

Discussion – One of the prerequisites for the “No Exposure” Certificate is that “all areas of industrial activity and materials handling...(be)...protected from exposure to ...runoff.” Is there an exception to this condition for area flooding arising from storm events having a greater magnitude/duration than the “design storm”? As a practical example, could an industrial facility located in any of the areas flooded in December 2007 ever be eligible for a Conditional “No Exposure” Certificate?

## **S2. Application for Coverage**

### Comment 5

S2.A.3.b. -- Permitting *New Facilities* and S2.A.4. *Facilities with Significant Process Change*. Several different timelines for application submittal and processing are offered. There should be clarity and consistency in these requirements.

Discussion – The draft ISWGP states that New Facilities “shall” apply for coverage at least 180 days before commencement of a stormwater discharge. However, the minimum timeline to complete the permitting elements could be much shorter. For example, an expeditious permitting process could follow this path:

- application submitted on day 1 (with a SWPPP included),
- completion of published public notices by day 15,
- public comment period on the public notice complete by day 45,
- concurrent SEPA review/processing within this 45 day period,
- at day 45 the application is considered to be “complete,”
- S2.E. states that on the 61<sup>st</sup> day following “completion of all application requirements” permit coverage is granted.

The permitting timeline is now at 106 days. Assuming no requests for additional information or a request for a public hearing, is the permittee allowed to discharge on day 106 or must the permittee wait for day 180?

Similar questions arise with the permittee timeline established for “*Facilities with Significant Process Change*.” (S2.A.4.) In this situation the permit directs:

- submittal of a “complete application at least 60 days before implementing the process change.”
- a “complete application” is achieved by accomplishing the public notice requirement (45 days minimum), SEPA review (assume a parallel 45 days), and SWPPP revision have preceded the application submittal

It therefore appears that a minimum of 106 days (45 days and 61 days) are required to satisfy the permitting timeline for *Facilities with Significant Process Change*. Is there a regulatory distinction between a “new facility” and a “facility with a significant process change” that demands a different permitting timeline?

Adding to this confusion is the ISWGP Fact Sheet discussion which offers

“Condition S2.A.3 and A.4 of the draft permit requires new facilities or existing facilities not previously under permit coverage to submit their application for coverage at least 60 days before beginning operation or implementing a significant process change. This is the minimum amount of time that is legally required to issue coverage.”<sup>1</sup>

#### Comment 6

S2.G.2. -- *Partial Transfer of Permit Coverage*. In subsection 2.b., is the transfer process complete once the “updated application” is submitted to Ecology?

Discussion – We assume the objective for a “completed application” is simply to convey information on the remaining industrial activities at the permitted site so Ecology records can be updated. If Ecology intends that the application will trigger an administrative review, i.e., the S2.A.4. *Facilities with Significant Process Change*, this should be detailed in the permit.

#### Comment 7

S2.H. -- *Local Government Requirements*. The obligation to transmit a “copy of their application for coverage” needs some clarification.

Discussion – Is it Ecology’s intent that only applications for *New Facilities* and *Facilities with Significant Process Changes* be sent to Phase I and Phase II municipalities, or does the requirement extend to *Reapplication* and *Permit Transfer* transactions?

### **S3. Stormwater Pollution Prevention Plan**

#### Comment 8

General Comment on S3. requirements for Stormwater Pollution Prevention Plan - Ecology’s objective for a comprehensive, “living” SWPPP has unquestioned merit. However, the sheer number of mandatory NPDES permit requirements; i.e., “shall” statements, creates a high probability of non-compliance with the permit. Inevitable, “built-in” permit non-compliance is an unacceptable regulatory policy outcome. Ecology has discretion to fix this and is strongly encouraged to adjust permit language throughout S3. to reduce the mandatory requirements. This could most easily be done by converting many of the “shall” requirements to “should” or “recommended” statements.

Discussion – This is an NPDES permit issued under authority of federal and state law. Literal non-compliance with its terms and conditions could subject a permittee to civil or criminal penalties, or injunctive relief, by the government or public. Ecology’s choice of “shall”

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<sup>1</sup> Page 61, *Fact Sheet for Industrial Stormwater General Permit*, Washington Department of Ecology, November 2007

statements to denote mandatory actions for many detailed requirements is unnecessary and unfairly puts permittees at risk.

Note that in S3. there are 23 “shall” requirements relating to some procedural obligation. These requirements are generally not objectionable. Examples include:

- develop a SWPPP for the permitted facility,
- retain the SWPPP on-site,
- make the SWPPP immediately available,
- contact the SWPPP “requestor” to determine the portions of the SWPPP requested,
- provide access to copying services,
- provide a schedule in the SWPPP for implementation of any ...BMPs,
- complete a plan and schedule for BMP implementation,
- maintain a log book,
- sign the initial SWPPP and updates.

In S3. there are 70+ “shall” requirements relating to specific information demands. Examples include:

- identify vehicle service areas on a site map,
- describe the flow of goods and materials through the facility,
- inventory roof and other surfaces exposed to air emissions,
- inventory incidental sources such as tire wear or equipment leaks,
- inventory materials that potentially may be exposed to precipitation or runoff,
- provide a short narrative for each...material...describing the potential of the pollutant to be present in stormwater,
- include the schedule/frequency for completing each housekeeping task,
- define how the permittee will comply with signature requirements,
- document the evaluation of the risk of soil erosion that could contaminate stormwater.

These mandatory requirements go on and on. If there are multiple “industrial activities,” or “materials,” or “discharge points” as most facilities will surely have, the obligations expand. A number of these mandatory obligations require the permittee to “include a short narrative for each type of material describing the potential of the pollutant to be present,” or to “evaluate the risk,” or to “document the evaluation,” or to “include a discussion,” or to “discuss the method,” or to “include a narrative,” or to “update the narrative,” etc. In addition, the draft permit language requires real-time SWPPP updates as new or updated information is developed.

We suggest the vast majority of ISWG permittees will not have the regulatory knowledge or skills to fully comply with these S3. requirements. An NPDES permit should be drafted such that full compliance is attainable with reasonable good-faith effort. A permit should not inadvertently “build-in” non-compliance simply due to its design. (Note that S4. *Sampling* and S7. *Inspections* add many additional “shall” requirements.)

It is perhaps worth noting that Ecology field inspectors do not judge compliance status of a SWPPP based on a point-by-point review of mandatory information requirements (as presented

in the 2004 modified permit). The inspectors coarse review informs and implicitly establishes expectations on what Ecology accepts as a compliant SWPPP, and certainly reflects the practical realities of permit and permittee performance.

An agency strategy to establish unrealistically-tough content requirements for the SWPPP and then to deal with deficiencies through “enforcement-discretion,” places permittees in a vulnerable position. Ecology should instead review Special Condition S3. and make an effort to distinguish between the necessary information (“shall” statements) and other information that is less critical (“should” or “recommended” statements).

#### Comment 9

S3.A.5.a.i. – *Update of the SWPPP*. This subsection would more closely align with Special Condition S8. *Corrective Actions* with the following adjustment:

A change in the facility or BMP design, construction, operation, or maintenance as a result of exceedence of a seasonal median benchmark or threshold value;

Discussion – As proposed in this draft ISWGP it is the exceedence of a seasonal median benchmark value that triggers a corrective action, not, as this draft language implies, the single exceedence of a benchmark value.

#### Comment 10

S3.A.6.a. – *Implementation of Enhanced/Additional BMPs*. This subsection would more closely align with Special Condition S8 *Corrective Actions* with the following adjustment:

a. The Permittee shall provide a schedule...for implementation...of...BMPs...that are necessary because of...(an) exceedence of a seasonal median benchmark or threshold value as described in S8.

Discussion – It is not a single sampling result above a benchmark value that triggers the need for evaluation/implementation of a BMP; rather, as proposed in this draft ISWGP it is the median value from the sampling season.

#### Comment 11

S3.A.6.f. – Potential liability. As worded, this subsection seems to overlook provisions in RCW 90.48.555. Ecology needs to reconcile this permit section with the statute.

Discussion – RCW 90.48.555(6) provides that permittees “fully implementing stormwater best management practices in stormwater water technical manuals approved by the department” will be presumed to comply with water quality standards. (See also S10.C.2.)

It would seem that implementation and maintenance of “BMPs,” “enhanced/additional BMPs,” and “enhanced/additional BMPs” drawn from the appropriate Ecology Stormwater Management

Manual (i.e., these are the provisions of S3.A.6.c, d, e), would represent full implementation of department approved stormwater management manuals. As such, given RCW 90.48.555(6), how is it that liability would arise if all appropriate and applicable BMPs are applied?

Stated differently, what are specific examples where “liability for enforcement action” could arise, assuming S6.A.6.c., d., and e. are achieved?

#### Comment 12

S3.A.9.c. – Compliance/Enforcement. This subsection would more closely align with Special Condition S8. *Corrective Actions* with the following adjustment:

c. Ecology may require additional BMPs where the Permittee’s discharge exceeds a seasonal median benchmarks or thresholds value.

Discussion – It is the exceedence of a seasonal median benchmark value that triggers a corrective action, not, as the draft language implies, the discrete exceedence of a benchmark value.

#### Comment 13

S3.B.3.a.v.E. – Ecology-approved training. Ecology should clarify who the “Permittee” is.

Discussion - Instead of directing the “Permittee” to attend industrial stormwater training, it would make more sense to specify “a member of the Pollution Prevention Team.” Also, we assume Ecology will liberally approve stormwater management training programs. It may be quite a challenge for Ecology to review and certify training programs following permit issuance in May 2008, and then expect all Permittees to receive training by May 2009.

#### Comment 14

S3.B.3.c.i. – Treatment BMPs. This subsection demands the application of BMPs, including treatment BMPs, until pollutant discharges are reduced below “the benchmarks.” This language will have the effect of establishing benchmarks as de facto effluent limitations. This construct exceeds the authority codified in RCW 90.48.555. See our Comment 29 also.

Discussion - A requirement demanding the serial application of BMPs until pollutants are adequately reduced below benchmarks is a critical issue. The positioning of benchmark values in ISWGP language as the minimum performance outcome for Corrective Actions represents a fundamental misunderstanding of RCW 90.48.555.

Three comments are appropriate:

- If Ecology did not intend that benchmark values serve as effective effluent limitations, then this suggested language change would resolve the issue:

- i. The Permittee shall complete construction/installation of treatment BMPs in combination with ~~when~~ operational and source control BMPs to accomplish the S8. Corrective Actions requirements. ~~do not adequately reduce pollutants below the benchmarks.~~
- If, as this subsection indicates, Ecology believes BMPs must continue to be enhanced until stormwater sampling demonstrates pollutants are reduced below the benchmarks, a review of the Washington statutory language controlling this permit development is in order. RCW 90.48.555(5) specifies that the primary means of attaining compliance with technology and water quality-based effluent limitations will be through the implementation of all applicable and appropriate BMPs. Technology-based requirements (AKART) are met by fully implementing BMPs contained in stormwater technical manuals approved by Ecology. Compliance with water quality standards is presumed if applicable and appropriate BMPs are being fully implemented.
  - If Ecology determines that narrative effluent limitations are not effective in achieving; i.e., have a reasonable potential to cause or contribute to violation of state water quality standards, the agency is to establish numeric effluent limitations. RCW 90.48.555(4) details the factors which must be considered.

Ecology will be hard pressed to legally establish that pollutant discharges must be reduced below benchmark values. Equally challenging will be a demonstration on how the permit language leads to any other conclusion but that an effective numeric effluent limitation will result.

## **S5. Benchmarks, Thresholds, and Discharge Limitations**

### Comment 15

S5.A.1. – Benchmarks, Thresholds, and Sampling Requirements. This section should be amended to say:

Benchmark values are not water quality standards and are not numeric permit limits. ~~Values at or below a benchmark are considered unlikely to cause a water quality violation.~~

Discussion – The deleted sentence represents an often-stated, conservative and generalized opinion. It appears to be a boot-strapping effort to create an imprimatur on Ecology's choice of benchmark values. An equally valid opinion would be that stormwater pollutant discharges somewhat above benchmark values are unlikely to cause water quality violations, especially for turbidity and BOD (as the surrogate for dissolved oxygen) where the water quality criteria demands an upstream/downstream assessment.

Since no regulatory direction is conveyed with the statement, it should be removed from the permit.

### Comment 16

S5.A.4. – Benchmark Exceedence. This subsection would more closely align with Special Condition S8. *Corrective Actions* with the following adjustment:

4. If the Permittee’s discharge exceeds a seasonal median benchmark or threshold value for a parameter, the Permittee shall perform the Corrective Actions in accordance with S8.

Discussion – It is the exceedence of a seasonal median benchmark value that triggers a corrective action, not, as the draft language implies, the discrete exceedence of a benchmark value.

### Comment 17

S5.A. Table 2. The ISWGP benchmark value for turbidity of 25 NTU is inconsistent with recent Ecology AKART determinations. Ecology has made recent regulatory determinations that AKART control for turbidity in stormwater discharges is 50 NTU. If turbidity is retained as a benchmark in the ISWGP it should be reset to 50 NTU.

Discussion – The agency is producing inconsistent and illogical regulatory determinations. It is simply not credible that a benchmark value for turbidity in this draft ISWGP would be more stringent than an AKART determination in contemporaneous individual construction stormwater permits. Please consider:

- There are numerous and recent individual construction stormwater NPDES permits where the Department has made regulatory determinations that AKART is 50 NTU.<sup>2</sup> Further, these permits direct that best management practices contained in the *Stormwater Management Manual for Western Washington*, Ecology 2005, will be used.
- RCW 90.48 requires Ecology to develop technology-based effluent discharge limitations reflecting the “all known, available, and reasonable methods of treatment” (AKART) in all NPDES permits. AKART is defined in WAC 173-201A as

“...the most current methodology that can be reasonably required for preventing, controlling, or abating the pollutants associated with a discharge. The concept of AKART applies to both point and non-point sources of pollution. The term “best management practices,” typically applied to nonpoint source pollution controls is considered a subset of the AKART requirement.” (emphasis added)

To summarize this point, Ecology has issued many AKART determinations for controlling turbidity in stormwater. Those regulatory determinations indicate the “most current methodology that can be reasonably required for preventing, controlling, or abating the

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<sup>2</sup>See for example: Issaquah Highlands, NPDES Permit #WA-003188-7; Brightwater Conveyance System Project, NPDES Permit #WA-003205-1; Brightwater Wastewater Treatment Plant, NPDES Permit #WA-003204-2; Snoqualmie Ridge II, NPDES Permit #WA-003201-8; Redmond Ridge East, NPDES Permit #WA-003208-5

pollutants associated with a discharge” could yield discharge waters with a 50 NTU turbidity concentration. How then can Ecology develop a turbidity benchmark value of 25 NTU which is to serve as an indicator of the performance of best management practices contained in approved stormwater management manuals?

Stated differently, RCW 90.48.555(6) requires that “all applicable and appropriate” best management practices contained in approved stormwater management manuals be provided to industrial and construction stormwater dischargers authorized under general NPDES permits. Does Ecology believe “all applicable and appropriate” BMPs are somehow different from those BMPs representing the “most current methodology that can be reasonably required for preventing, controlling, or abating the pollutants associated with a discharge”?

Finally, the draft S3.B.3.c.i. literally requires the application of BMPs until the pollutants in stormwater are reduced below benchmark values. If Ecology has determined that AKART for stormwater turbidity is 50 NTU in 2006 NPDES permit determinations, the demand to now reduce turbidity below a 25 NTU benchmark implies something more than AKART-level BMPs. Is this what Ecology intends, and if so, what is the statutory basis for this demand and where in an approved Ecology stormwater manual might those BMPs be described?

#### Comment 18

In S5.A. Table 2. The ISWGP benchmark value for turbidity of 25 NTU is inconsistent with Ecology’s recent AKART determination in the Sand and Gravel General NPDES permit. The ISWGP fails to incorporate a correct evaluation of the WAC 173-201A water quality criterion for turbidity. If turbidity is retained as a benchmark in the ISWGP it should be reset to 50 NTU.

Discussion – The Response to Comments in the Sand and Gravel General NPDES Permit (2006) evidences a correct evaluation of the WAC 173-201A water quality criterion for turbidity in its determination of an effluent limitation.<sup>3</sup> Ecology asserts that the 50 NTU turbidity effluent limit is both a technology-based and water quality-based limitation.

“Ecology interprets the turbidity criteria to be an ambient “in-water” parameter, applied to various class of surface waters in the State of Washington, and not directly applied to point source dischargers....It is assumed that, in a vast majority of situations, a 50 NTU discharge will not cause or contribute to a violation of water quality standards in the receiving waterbody.”

“In an effort to prevent violations of the turbidity standard within the context of a general permit, Ecology has used Best Professional Judgment (BPJ) and applied a conservative dilution factor of 10 which resulted in the 50 NTU “end of pipe” effluent limitation.”

The analysis Ecology employed in the Sand and Gravel permit has direct application to the selection of a benchmark value for this ISWGP. Ecology’s Water Quality Program should

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<sup>3</sup> Addendum to Permit Fact Sheet, The Sand and Gravel General NPDES Permit, modification date May 17, 2006, pages 53-54

adhere to a common logic on a turbidity AKART determination and implementation of the WAC 173-201A turbidity criterion.

### Comment 19

In S5.A. Table 2 - The 25 NTU benchmark value for turbidity is inadequately supported. Ecology has largely ignored its commitment to consider alternative benchmark parameters for stormwater solids discharges. Ecology should allow for the use of total suspended solids and/or settleable solids as alternative benchmark parameters. Benchmark values of 100 mg/l for total suspended solids and/or 0.1 ml/l for settleable solids would be appropriate.

Discussion – The explanation in support of the 25 NTU turbidity benchmark in the draft ISWGP permit is limited to

“Ecology best professional judgment”

“Ecology retained the turbidity benchmark of 25 NTU from the existing permit. Based on field experience, Ecology staff determined that a stormwater discharge of 25 NTU or less will typically cause no water quality standards violation. (2002 ISWGP Fact Sheet, page 34)”<sup>4</sup>

General comments casting turbidity as a surrogate for solids loadings, as a factor in adverse ecological impacts, and pointing to the link with the WAC 173-201A water quality standard were also presented in the Fact Sheet.

Ecology committed in the 2002 ISWGP renewal process to review and, if warranted, to adjust benchmark values. Various stakeholders commenting on the 2002 ISWGP renewal had questions and/or were critical of several benchmark parameters and values incorporated in the permit. One of the complaints was that turbidity would not be a good measure of BMP effectiveness and that the value of 25 NTU was unrealistically low. Ecology responded with an explanation for the choice of the parameter and value, and then offered that

*Response: ...Except for the turbidity benchmark value, all the values are from the EPA multi-sector general permit. Ecology will not consider any revision of these values now but will reconsider them when the permit is reissued in 5 years. The data collected under this permit may provide the basis for such consideration.*

*Response: ...Ecology will reassess the use of benchmarks and the values used during the next permit cycle. The data gathered under this permit will be part of this assessment.*<sup>5</sup>

In summary, the Department of Ecology committed to a data-based review on the appropriateness of the benchmark parameters and values, to occur in conjunction with the 2007

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<sup>4</sup> Page 76, *Fact Sheet for draft Industrial Stormwater General NPDES Permit*, November 21, 2007

<sup>5</sup> Both references are from pages 79-80 of “*Fact Sheet for Industrial Stormwater General Permit – Summary*,” Industrial Stormwater General NPDES Permit, 2002

permit renewal. Ecology was reminded in early 2006 of timber products industry interest in a data-based review.<sup>6</sup>

The *6415 Final Report* actually recommends that TSS be used as the benchmark parameter primarily because “TSS provides a much better reflection of BMP performance.”<sup>7</sup> The *6415 Final Report* suggests a very low TSS benchmark value but cautions that

“Given the small amount of available data for deriving these values and the large difference between the EPA targets, the TSS permit targets should be re-evaluated when more monitoring data are available.”<sup>8</sup>

The ISWGP should provide the option to use total suspended solids and/or settleable solids as the appropriate adaptive management parameters for solids discharges. A TSS benchmark value of 100 mg/l would conform to the EPA proposed benchmark value in the draft Multi-Sector General NPDES Stormwater Permit (2005) and is less than the State of Oregon’s Industrial Stormwater General Permit benchmark value of 130 mg/l (2006). Ecology has long used a settleable solids discharge limitation of 0.1 ml/l as an indication of good solids removal; e.g, see the Water Treatment Plant Industry General NPDES Permit, WAG-64.

Finally, Ecology’s permit Fact Sheet criticism of a possible TSS benchmark value of 100 mg/l<sup>9</sup> overlooks the obvious reality that rapid mixing of stormwater in a receiving waterbody will in nearly all situations result in a much lower ambient concentration and for limited time periods; i.e., the NOAA concerns of “acute mortality after a few days exposure at this level” (100 mg/l TSS) represents an unrealistic receiving water condition.

#### Comment 20

In S5.A. Table 2 - Ecology’s willingness to eventually consider an alternative benchmark pollutant parameter and/or action level will occur after the permit has required attainment of the median 25 NTU turbidity benchmark value. The benchmark value for turbidity of 25 NTU is unreasonably low for facilities in the Timber Products Industry (SIC 24). Ecology should address this issue by either providing a higher turbidity benchmark value and/or offering alternative benchmark parameters and values in this permit renewal.

Discussion – Monitoring data produced from the Timber Products Industry over the past 3 years has indicated this benchmark level is too low. Fifty-one percent of the sample data were reported as above 25 NTU. Thirty-three percent of the data are above a value of 50 NTU.<sup>10</sup> These results are not surprising. Facilities in this industry are predominately located in Western

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<sup>6</sup> Letter – Ken Johnson, Weyerhaeuser, to Jim LaSpina and Pat Brommer, WDOE, dated March 14, 2006.

<sup>7</sup> Page 32, “*Evaluation of Washington’s Industrial Stormwater General Permit*,” prepared for the Dept of Ecology by EnviroVision and Herrera Environmental Consultants; November 2006

<sup>8</sup> Ibid, page 35

<sup>9</sup> Page 82, *Fact Sheet for Industrial Stormwater General Permit*, Washington Department of Ecology, November 2007

<sup>10</sup> “*Evaluation of Monitoring Data From General NPDES Permits for Industrial and Construction Stormwater*,” page A-1, Prepared for the Dept of Ecology by Herrera Environmental Consultants, March 23, 2006

Washington, are 10-100 acres in size with expansive outside storage of raw materials and finished products, and have significant heavy equipment travel on both paved and rocky surfaces. For these reasons turbidity and suspended solids concentrations will typically be higher in stormwaters discharging from Timber Products industry facilities.

Weyerhaeuser has several facilities where all appropriate and applicable BMPs have been applied, including treatment BMPs. Attachment 1 presents facility information and recent data which shows low discharge pollutant concentrations for most parameters, but variable turbidity and BOD. Two messages are important. First, even with all appropriate and applicable BMPs, including treatment BMPs, the turbidity and BOD benchmarks are not continuously achieved. Second, the data variability appears to be more related to sampling protocol and storm duration/intensity, than to the efficacy of BMPs.

This draft ISWGP adds monitoring requirements for the Timber Products Industry to explore the relationship between turbidity and TSS. The idea is that these data might be used to inform the decision for more appropriate benchmark parameters and concentrations in the 2012 ISWGP renewal. This concession on the issue will simply be too late. As the ISWGP is drafted, permittees exceeding median benchmark levels will be forced by the Step B requirements in S8 *Correction Action* process into making significant financial investments within the 2007-2012 permit cycle (and likely within the first 24 months). As drafted, the permit requires an engineering report and then implementation of additional treatment and source controls until the 25 NTU benchmark value is achieved.

Our comment 19 identifies a selection of more appropriate benchmark parameters and values.

#### Comment 21

In S5.B.Table 3 – COD should replace BOD<sub>5</sub> as the benchmark parameter for Timber Products Industry facilities. Ecology could substitute Chemical Oxygen Demand and simply accept EPA's benchmark value for the industry of 120 mg/l. Please also reference Comment 19 for an understanding of Ecology's commitment during the 2002 ISWGP development.

Discussion – The basis for Ecology's choice of BOD<sub>5</sub> as a benchmark parameter and value of 30 mg/l can be traced back to EPA's Secondary Treatment Regulation (40 CFR 133).<sup>11</sup> While it was convenient for Ecology to incorporate this benchmark parameter and value for Timber Products in the ISWGP (2002), it was totally arbitrary. EPA recognizes that wood products manufacturing operations will contribute organic pollutants to stormwater. EPA has now selected COD as the Timber Products industry sector benchmark parameter and at a value of 120 mg/l.<sup>12</sup>

Ecology has rationalized BOD<sub>5</sub> as a benchmark parameter because it can serve as an indicator of the impact on receiving water dissolved oxygen. In reality, COD would be a superior parameter to accomplish this assessment. If BOD<sub>5</sub> must be retained as the benchmark parameter, a science-

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<sup>11</sup> *Stormwater Multi-Sector General Permit for Industrial Activities*, Environmental Protection Agency, footnote 4 to Table 3, 65 FR 64767, October 30, 2000.

<sup>12</sup> "Multi-Sector General Permits for Stormwater Discharges Associated with Industrial Activity," Part 4, Sector A, Environmental Protection Agency, draft permit proposed October 2005

based approach to the selection of an appropriate benchmark value would have Ecology model a typical stormwater discharge to determine the BOD<sub>5</sub> discharge concentration which yields an in-stream dissolved oxygen reduction of 0.2 mg/l (WAC 173-201A-200(1)(d)). For almost all reasonable discharge scenarios, the “allowable” BOD<sub>5</sub> will be much higher than 30 mg/l.

Finally, the draft ISWGP proposal to require sampling/analysis of COD from the Timber Products Industry suffers from the same problem articulated in Comment 20. Ecology could comfortably accept the EPA benchmark parameter and level. The Fact Sheet discussion on *6415 Data Analysis Report* recommendations for COD (and TSS) is based on a very limited and non-Timber Products Industry data base, and thus has questionable relevance.<sup>13</sup>

#### Comment 22

S5.D.2. – The list of *Conditionally Approved Non-Stormwater Discharges* should be expanded to mimic the list in EPA’s *Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Discharges*.<sup>14</sup>

Discussion – The following discharge types should be added:

- Landscape watering provided all pesticides, herbicides, and fertilizers have been applied in accordance with manufacturer’s instructions:
- Pavement wash waters where no detergents are used and no spills or leaks of toxic or hazardous materials have occurred (unless all spilled material has been removed).

A decision by Ecology not to add these non-stormwater discharge types to this permit implies a regulatory obligation to obtain NPDES permit authorization for these discharges. Neither permittees nor Ecology have the resources to develop individual NPDES permits for these innocuous wastewater types.

#### Comment 23

S5.D.3. – This subsection should be redrafted to simply accept the permit requirements for “*Allowable Non-Stormwater Discharges*” in the EPA’s *Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Discharges*.<sup>15</sup> Ecology should not overlook this opportunity to simplify the ISWGP.

Discussion – Ecology’s interest in regulating these non-stormwater discharges will be adequately addressed if the EPA general permit requirements are achieved; in essence, to identify the discharge location and describe the appropriate BMPs. Ecology add-on requirements in sub-paragraph S5.D.3.b. represents an example where significant effort will be

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<sup>13</sup> Page 81, *Fact Sheet for Industrial Stormwater General Permit*, Washington Department of Ecology, November 2007

<sup>14</sup> Section 1.2.3, “*Multi-Sector General Permits for Stormwater Discharges Associated with Industrial Activity*,” Environmental Protection Agency, draft permit proposed October 2005

<sup>15</sup> *Ibid*, section 2.1.4.5

required to achieve literal compliance, but for which a trivial regulatory and environmental benefit will accrue.

## **S6. Additional Requirements for Dischargers to Impaired Waters**

### Comment 24

*S6.A.1. – General Requirements for Discharges to Impaired Waters.* This section should reference the most recent approved Clean Water Act Section 303(d) list.

Discussion – The first sentence should be adjusted to read

1. Permittees that apply for coverage on or before the effective date of this permit shall use the 303(d) list which is in effect since November 2005 (2004 303(d) list) most recent 303(d) list that has been approved by the EPA.

This is a logical suggestion that Ecology should find no fault with. Ecology's Water Quality Program intends to finalize the 2006/8 303(d) list in spring-2008 and forward it to EPA for approval. This renewal of the ISWGP will be effective in May 2008. As such, for most of this permit term a more current 303(d) list will be available. Permit regulatory determinations and permit requirements should be based on the most recent approved 303(d) list.

### Comment 25

*S6.B.1. – Benchmarks and Sampling Requirements for Discharges to Impaired Waters.* This section is somewhat confusing. Sampling requirements should only include the Table 2 parameters and the pollutant for which the receiving waterbody is listed on the 303(d) list. There should be no requirement to sample for the full Table 6 list.

Discussion – Subsection b. refers to the "letter of permit coverage." Presumably that letter will identify the 303(d) list waterbody and pollutant(s) which is not attaining water quality standards. We assume the only additional sampling requirement is for the 303(d) listed pollutant(s).

S6.B.1.b. should not be read to require that all parameters in Table 6 need to be sampled/analyzed. The necessary adjustment to S6.B.1.b. would be:

- b. Sample its stormwater discharges for the parameter(s) specified in the letter of permit coverage; i.e., the parameter(s) for which the receiving waterbody is impaired. Table 6 and Appendices 3 and 4 describe the applicable benchmarks, thresholds, and sampling requirements for the parameter(s).

### Comment 26

*S6.B.1.c. – Discharge exceeds a benchmark or threshold.* The trigger for S8. Corrective Action should not be tied to a single exceedence of a benchmark value.

Discussion – It is the exceedence of a seasonal median benchmark value that triggers a corrective action, not, as the draft language implies, a discrete exceedence of a benchmark value. This subsection should be adjusted to read

- c. If the Permittee’s discharge exceeds a seasonal median benchmark or threshold value, the permittees shall take the actions specified in S8.

Comment 27

S6. -- *Benchmarks and Sampling Requirements for Discharges to Impaired Waters.* Ecology should immediately develop and communicate the procedures by which a “reasonable potential” analysis will be conducted to assess compliance with WAC 173-201A water quality standards. We expect those procedures will include consideration of the criteria appearing in RCW 90.48.555(4).

Discussion – RCW 90.48.555(7) requires that discharges to waterbodies on the 303(d) list must comply with an appropriately-derived water quality-based effluent limitation by May 1, 2009. Ecology and permittees will presumably be conducting “reasonable potential” analyses in mid-2008 to support decisions on possible BMP additions necessary to achieve compliance with the effluent limitation.

This short timeline, and inherent issues with the variability of storm events, stormwater discharge characteristics and receiving water conditions should encourage Ecology to develop practical guidance.

Comment 28

S6. -- *Benchmarks and Sampling Requirements for Discharges to Impaired Waters.* In Table 6, Ecology derivation of benchmark values should not result in values more stringent than adopted WAC 173-201A criteria.

Discussion - The total metals benchmark values presented in Table 6 are very conservative and could force permittees to over-react in necessary S8 *Corrective Action* responses. Ecology’s methodology to derive these benchmark might well results in criterion more stringent than adopted WAC 173-201A standards for the individual discharge. Other pollutants listed in Table 6 may be equally conservative. Permittees discharging to 303(d) listed waterbodies should have the opportunity to “appropriately derive” a water quality-based effluent limit, such that corrective actions can more confidently be completed by the statutory compliance date of May 1, 2009.

**S8. Corrective Actions**

Comment 29

S8.A.2.c.; S8.C. introductory paragraph; S8.C.3.; S8, Table 9; S8.D.1.; S8, Table 10 -- In each of these S8. subsections, Ecology’s use of language communicates a literal demand that

best management practices be serially applied to reduce “all pollutant concentrations below the benchmark(s).” This language will have the functional effect of establishing benchmark values as effluent limitation(s). This construct exceeds the authority codified in RCW 90.48.555. See our Comment 14.

Discussion – In the draft S5.A.1. the Department correctly acknowledges that benchmark values are not numeric permit limits. As such, it is improper to require or even imply that “pollutants be reduced below benchmark values” through the Step A and B Corrective Actions. This performance outcome is certainly a goal, but it is not required by statute.

RCW 90.48.555 requires that “all applicable and appropriate” best management practices be provided and properly maintained. Compliance with water quality standards is then presumed. If Ecology has information to determine that a water quality standard is not achieved, RCW 90.48.555(3) and (4) specify a process for establishing effluent limitations.

Ecology should redraft the referenced S8 subsections to remove any literal or implied requirement “that pollutants must be less than benchmarks.”

### Comment 30

S8.A.3.c. – Step B Corrective Action for Permittees in Level 3. For those facilities currently working through a Level 3 response, there should not be a requirement to immediately begin a Step B Corrective Action. The Step B process should be triggered solely on the results of seasonal monitoring. This subsection should be removed from the permit.

Discussion – Two reasons support the request to remove the draft requirement;

First, a facility engaged in a Level 3 corrective action will have already evaluated additional BMPs, including treatment BMPs, developed and submitted a source control report, and be implementing BMPs deemed feasible. The requirement to prepare an engineering report in accordance with WAC 173-240-130 will likely cost \$10,000 to \$40,000/permitted facility. This heavy expenditure would likely have marginal value for a facility already evaluating and implementing appropriate BMPs, including treatment BMPs.

Second, the data evaluation criteria to cause a Level 3 Response in the current permit is quite different from the evaluation metric proposed in this renewal draft ISWGP for Step B. These factors include: changed sampling program protocol, a total count of discrete sample values vs. seasonal median values, and action level values vs. benchmark values. Sampling data for several benchmark parameters has caused certain facilities to initiate a Level 3 Response, where the same data set would not have triggered a Step B response.

Ecology should be content to allow the Level 3 Response to be fully implemented and evaluated, with subsequent sampling data being evaluated against the seasonal median benchmark values. That is, facilities currently implementing Level 3 Response actions should be evaluated on the rainy season 2008-2009 sampling results. If those seasonal median values exceed benchmarks, the Step B Corrective Action program should be initiated.

Comment 31

S8.D. -- *Step B Corrective Action Process*. Ecology's proposed approach is not especially practical or cost-efficient. Alternatives should be considered.

Discussion – Please consider these comments:

- Preliminary discussions with two environmental consulting firms suggest a price range of \$10,000-40,000/facility to develop an engineering report conforming to WAC 173-240-130. Facility site specific factors and the requirement for a professional engineering stamp means each report will be unique and comprehensive.
- A quick review of the Herrera Environmental Consultants data suggest that over half of the ISWGP permittees must surely be engaged in Level 3 corrective actions at this time. As drafted, this ISWGP would require the retention of environmental consultant support “immediately.” It could be questioned whether there is enough capacity in the consultant community to accomplish many hundreds of engineering reports in the initial 12-24 months of the reissued permit.
- As drafted, the permit imposes a substantial cost burden on permittees. At even \$10,000/engineering report, and assuming 500-800 permittees will be required to accomplish a Plan B report, the cost for just this part of the permit activity will run to \$5,000,000 to 8,000,000. This number of permittees forced to Plan B (in the first 12-24 months of the permit) seems reasonable given the draft ISWGP criteria relating to 1) existing Level 3 Response participants, and 2) the treatment of benchmark values as effective effluent limitations; i.e., “if the seasonal benchmark exceeds a benchmark one time for any parameter, the Permittee shall implement Step B.”
- The content of the engineering reports for permittees within the same industry category might be 90% similar.
- It must be questioned whether Ecology has the resources to review and approve a significant number of engineering reports in the timeframe implied by the draft S8.D.

Ecology should adjust the Step B Corrective Action criteria to 1) spread out the requirement for engineering plans by accepting the proposal in our Comment 30, and 2) allow for a common or base engineering report by industry category as a means to cut costs.

For example, considering the Timber Products Industry, Ecology has already developed the “*Industrial Stormwater General Permit for Log Sort Yards*,” Publication 04-10-031, April 2004. Given that the majority of the 127 “Lumber and Wood Products” permittees will have reported multiple exceedences of the 25 NTU benchmark value for turbidity since 2004 (and thus be in Level 3 now and forced to an immediate Step B with the new ISWGP), is there really a need for (say) 80 facilities to spend \$10,000 each to produce engineering reports that regurgitate 90% of the content of the “Log Sort Yards” publication, and which themselves are 90% similar?

The Department needs to engage Permittees to develop practical and innovative approaches to reduce the Step B burden while retaining the environmental objective.

## **S10. Compliance With Standards**

### Comment 32

S10.B. and C. – *Compliance with Standards*. This section accurately presents the statutory requirements appearing in RCW 90.48.555. Special Condition S10 *Compliance with Standards* should be moved to the front of the permit.

Discussion – S10. announces the statutory principles around which the ISWGP has been developed. It would have more information value if presented as S1. or before the Special Condition addressing stormwater pollution prevention plans, currently S3.

## **General Conditions**

### Comment 33

*G25 Bypass Prohibited* – General Condition 25 *Bypass Prohibited* should be simplified to be meaningful for permittees. The *Stormwater Management Manual for Western Washington* (2005) instructs that treatment BMPs be designed to treat stormwater runoff from a 6-month, 24 hour precipitation event return frequency. Stormwater volumes above this specified volume will be untreated and bypassed.

Discussion – This General Condition is NPDES permit boilerplate originally developed for permittees with continuous discharges. This General Condition is loaded with detailed requirements which are difficult to understand and apply in a stormwater discharge context. Because of this, most permittees likely ignore this section. Now that Ecology has chosen to relocate this section from the body of the permit (it appeared as Special Condition S8 in the ISWGP (2004)) to the General Condition section, it is even more obscure.

Ecology should redraft this section to provide clear and concise instruction to stormwater permittees, especially relating to the treatment BMP design issue. As an example, G25.A.3.(a.-c.) are unreasonable limitations for the bypassing of stormwaters arising from extreme precipitation events. It would be fruitless to force a demonstration that the bypass was unavoidable or that no feasible alternatives exist to the bypass. The Stormwater Management Manual design specification moots out these considerations, and as such these subsections should be deleted. We also suggest there would be little value in forcing a permittee to notify Ecology when a bypass has occurred (especially since there is no S9.E. in this draft ISWGP).

G25.A.3. should be amended as follows:

A.3. This bypass is permitted only if:

a. The bypass discharge volume originates from a precipitation event in excess of the 6-month, 24-hour precipitation event return frequency.

~~a~~. b. Bypass is unavoidable to prevent loss of life, ...

G25.A.4. and 5. should be deleted from the permit or customized to acknowledge the BMP treatment design specification which allows for a bypass. As presently written, G25.A. requires that subsections 1-5 all be achieved in order to lawfully bypass stormwater. The burden to literally accomplish all these requirements is unreasonable.

#### Comment 34

The former *Dispute Resolution* Special Condition (S13 in the ISWGP (2004)) should be retained in this renewal permit. Ecology should encourage the use of this informal process to resolve disagreements on permit terms and conditions, and implementation.

Discussion – The ISWGP Fact Sheet (page 42) encourages use of an informal mediation process to resolve issues. Unfortunately, the permit section in the current ISWGP which announces this opportunity has been proposed for elimination. It should be added back.

#### **Permit Fact Sheet**

#### Comment 35

Aspects of the Fact Sheet discussion on pages 90-91<sup>16</sup> critically overstate available knowledge. In particular, there is little basis to conclude that “repeated exceedences of benchmark values” provide “sufficient evidence that the facility has not implemented AKART.” Ecology’s assumption on this matter is the apparent underpinning for the requirements in S8. Corrective Response which seek to establish benchmarks as de facto effluent limitations. (See Comment 29)

Additionally, the full implementation of applicable and appropriate best management practices taken from Ecology approved stormwater management manuals is considered as AKART per RCW 90.48.555. The discussion about the MSGP and BAT (which applies to designated toxic pollutants and certain non-conventional pollutants such as ammonia, iron, chlorine and phenols) is mystifying.

Ecology seems resigned to there being an appeal to the Pollution Control Hearings Board of the renewed ISWGP. The agency should work to avoid this outcome. There are many involved stakeholders who share the common goal of a practical and effective ISWGP. The public comments on this permit draft will surely identify many issues. Prior to final permit issuance, Ecology should consider a common meeting to share agency reactions to the comments/issues,

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<sup>16</sup> Page 91, *Fact Sheet for Industrial Stormwater General Permit*, Washington Department of Ecology, November 2007

Mr. Klikoff  
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and facilitate a discussion which seeks compromise resolution. Weyerhaeuser would welcome the opportunity to participate in this type of session.

Sincerely,

Ken Johnson  
Regulatory Affairs Manager