

ATTACHMENT 1

Ecology managers have repeated the goal of “effective, efficient and enforceable for the current Industrial Stormwater General Permit (ISWGP). We have come to understand that these terms mean:

- **Effective:** the permit provision will result in permittees attaining narrative water quality standards through use of adaptive management. The adaptive management will use a series of triggers to cause the permittee to install effective best practices to attain desired receiving water quality.
- **Efficient:** the permit will be relatively simple for the permittee to implement and Ecology to manage. Resource expenditures by each permittee will result in meaningful improvements in discharge that will improve receiving water quality.
- **Enforceable:** Both the agency and permittees will know what is required to comply with the narrative standards in the permit to attain compliance. Ecology will have the resources to identify violations and provide technical assistance.

After supporting multiple agency efforts at stakeholder meetings, permit rewrites and a legislative initiative, it is our opinion that the current permit does not meet these three goals. Many of the concerns about this permit arise from circumstances beyond the control of Ecology, including the availability of resources to issue and manage stormwater permits and to incorporate the concepts and tools suggested by the stakeholder process team members, Ecology staff or external advisors.

Achievement of an effective, efficient and enforceable ISWGP cannot be achieved without Ecology driving the creation of an integrated comprehensive long range stormwater management vision, and a plan to implement it. A comprehensive stormwater plan is essential to avoid permits based on an ad-hoc collection of demands and requirements, and was not available from Ecology when requested by the stormwater permit process stakeholders.

To be effective, efficient and enforceable Ecology’s stormwater planning needs to include the following actions:

- Identify long term vision and near term goals for the stormwater program.
- Schedule attainment of these goals on various types of water bodies and population environments (urban, suburban and rural).
- Determine how best to incorporate Endangered Species Act protections into Ecology’s three permitting goals.
- Expand the technology database to identify improved best practices.
- Focus on removal of constituents of concern from products (e.g., zinc and copper from brake pads, and architectural coatings and materials) rather than on end of pipe control.
- Define the “economically attainable” aspects of AKART standard.

- Establish criteria to move a permittee to individual permits, if needed.
- Ensure coverage compliance for 100% of those who should be permitted.
- Create an enforcement plan that prioritizes worst case offenders.
- Project the resources needed to meet the stormwater program requirements as it evolves and where to obtain the supporting revenue.
- Integrate the municipal, construction and industrial permit systems.

Boeing has been a collaborator with Ecology since the original ISWGP was written. The experience developed during that time is indicative that the current permitting structure cannot work without significant changes in approach. The National Academy of Science report on stormwater completed in 2008 has come to the same conclusion - the current NPDES ISWGP permitting approach needs to be rethought.

Boeing recommends that Ecology bring together the relevant stakeholders, not to write a new permit, but to develop a comprehensive vision and plan for future stormwater management in Washington State – a plan that has the vision to attain acceptable water quality, in a reasonable time frame, by applying resources where the greatest risk exists. This plan can then be memorialized in legislation to provide the necessary tools and authorities for Ecology to manage Washington’s stormwater discharges effectively.

Specific concerns with the three goals in the proposed permit include:

Effective: The current draft permit relies on a narrative indicator of adaption (benchmark) and turns it into a de-facto numeric discharge limit. The permit requires only that a pollutant concentration value be collected. This value is then used without context of discharge flow, receiving water conditions or discharge frequency to impute impact on water quality. In reality, this single pollutant parameter does not provide a representation of the impact the discharger may be having on the receiving water. Thus the insistence on attaching ever more stringent adaptive management requirements up to and including active treatment - as a result of sampling data results above these benchmark values is a misapplication of the basic tenets of a reasonable potential analysis pursuant to the Clean Water Act. Even the mechanism by which these benchmark numbers were derived is incomprehensible for establishing risk to receiving waters. Ecology used a probabilistic modeling of the discharge monitoring report data from all permittees of all industries without discharge flow data or any understanding of employed best practices or receiving water conditions to create these benchmarks. A benchmark derived in this manner cannot recognize the wide differences in facilities, stormwater patterns, receiving water conditions or treatment efforts by permittee. As a result, the benchmark number is not effective in predicting a reasonable potential impact to receiving water. Yet, permittees will be repeatedly driven to increased actions to control discharge pollutant levels without the permittee, or Ecology, having an understanding of the resultant impacts.

Multiple alternatives to this permitting approach were proposed by members of the stakeholder committee including:

- Parsing the permit to recognize the difference in dischargers by SIC.
- Generalizing receiving water values to estimate water quality risks.
- Applying more sophisticated approaches involving use of modeling of types recommended by EPA water quality development guides.

Many of these recommendations would allow Ecology to begin the process of segregating genuinely higher-risk discharger groups from those presenting lesser risk. The failure to incorporate any of these approaches in lieu of the benchmark as pseudo-numeric limits will assure endless battles over what the benchmark number should be, and not identifying those discharges which actually present a risk and thereby require adaptive management actions.

Boeing recommends that Ecology use this permit cycle to move away from a single benchmark value concept to an approach in which adaptive management is based on narrative standards with a realistic risk based measure.

Efficient: An efficient permit provides both the permittee and Ecology with a reasonable path to compliance. Boeing appreciates the agency's efforts to provide a simpler, shorter and more understandable permit. In the end, however, the proposed permit does not achieve these objectives. Although reformatted to be easier to read, it is still 71 pages long paired with a 119 page fact sheet. Embedded in the permit are at least 58 specific requirements, some of which in turn point to the Washington State Stormwater Technical manual - itself containing hundreds of pages of requirements and calculations. All of this is intended to be read, understood and complied with by over 1,200 permittees ranging from major corporations to the smallest shops with a couple employees. Each requirement presents an increased resource demand on permittee's time and materials to comply and demands understanding requirements that are outside the permittees core business activity. This long, complex and technical permit is not an efficient mechanism for many, if not most, permittees. During the stormwater stakeholder committee process these concerns were identified as contributing to low compliance with, and even significant permittee failure to apply for, the ISWGP.

Ecology has discussed with the stakeholder committee problems associated with the effective implementation and enforcement of the draft permit. The realities of implementing this draft permit, coupled with an understaffed enforcement agency, mean permittees will be compelled to interpret ambiguous permit provisions on their own. This places the permittee at risk of non-compliance with the permit through inadequate action or having made erroneous interpretations. These agency resource issues lead to further concerns that when industry needs technical assistance or to obtain specialized waivers, exemptions or alterations to the permit, that Ecology will not have the resources or expertise available to provide a timely and accurate response. This can result in unacceptable consequences to construction and operational efforts in support of business

activities.

Boeing recommends that Ecology revisit its approach to relying on a single permit for all industrial stormwater general permittees. A study of the risks posed by each discharging group would allow Ecology to issue a tiered permit or multiple general permits that would be simpler and less difficult to implement for permittees. These more tailored permits would also support Ecology's focus on those permit groups that data suggest would pose the greater risk.

Enforceable: A permit should be so clear, concise and simple that it is easily understood by the permittee, the agency inspectors, as well as third parties. The length and complexity of this permit raises two significant enforcement concerns. First, no matter how hard a permittee works to comply with the permit, administrative errors are inevitable, exposing the permittee to enforcement. In most cases, these types of errors present little or no appreciable risk to the environment, yet provide ready targets for Clean Water Act citizen suits. Resolving such lawsuit typically requires that permittee's funds are expended toward settlements, rather than improvements to stormwater controls. Second, Ecology's stated five-year inspection cycle will leave many permittees at risk of misunderstanding the permit requirements for much of their permit cycle. Only when an inspection is made will the permittee, and environment, benefit from requirement interpretation by the inspector.

Boeing recommends that the draft permit be carefully reviewed to remove as many administrative "shall and will" requirements as possible; and that Ecology shifts resources from lower priority programs to the stormwater program in order to enhance its stormwater inspection and technical support.