

July 15, 2009

Mr. Jeff Killelea
Department of Ecology
PO Box 47600
Olympia, Washington 98504-7600

via Email

Re: Comments on 2009 Draft NPDES Industrial Stormwater General Permit and Fact Sheet

Dear Mr. Killelea:

Please accept the following comments on the Draft Industrial Stormwater General Permit and Fact Sheet issued by the Department of Ecology (Ecology) in June 2009.

S1.F. Conditional “No Exposure” Exemption

The current permit (condition S6.D) specifies that Ecology will grant a conditional “no exposure” determination 60 days after the form is submitted to Ecology, unless Ecology responds in writing. The draft permit states that upon receipt of a complete and accurate No Exposure Certification Form, the No Exposure exemption is automatically granted in 60 days, unless the applicant is informed in writing within 60 days that the request is denied or that additional information is required.

The draft wording seems intended to prevent an automatic granting of the No Exposure Certification as well as to prevent Ecology from having to respond in writing within 60 days. Alternatively, the permit condition should be worded as follows: Upon receipt of a No Exposure Certification Form, the No Exposure exemption is automatically granted within 60 days, unless the applicant is informed in writing within 60 days that the request is denied or that additional information is required.

Currently there are numerous facilities that have submitted No Exposure Certification Forms, have not received any response back from Ecology, and have been listed in Ecology’s online database with a “Hold” status for months or years. The new permit (or Fact Sheet) should clarify that those facilities that already submitted a No Exposure Certification Form and did not hear back from Ecology within 60 days of their submittal are automatically granted the No Exposure exemption (regardless of their online “Hold” status). If the facility’s site conditions have changed in the intervening months/years, a new certification form would need to be submitted.

S3. Stormwater Pollution Prevention Plan (SWPPP)

S3.B.3.b.ii. Specific (mandatory) Structural Source Control BMPs are now included in the permit text. Including mandatory structural BMPs in the permit itself is too inflexible. Due to the nature of some industrial operations (e.g., large lumber/wood products facilities, scrap metal recycling facilities), it is not practical or feasible to locate all industrial materials and activities inside and/or protect the materials and activities with storm resistant coverings, as is now specified in the draft permit. As another example, some facilities may use treatment BMPs instead of “berming or curbing to prevent runoff of contaminated flows” from these areas.

As currently drafted, it appears the permittee can only request a waiver for infeasibility of these mandatory structural BMPs as part of a Level Two Corrective Action.

Alternatively, these mandatory SWPPP structural BMP provisions should be qualified so as to be required "where practical" or "where feasible." A more workable option is to remove the mandatory structural BMPs from the permit [provision ii.2)] and retain the reference to the SWMMs [provision ii.1)].

S4. Sampling

We support the proposed sampling protocols that eliminate the restrictive storm event conditions of the current permit.

S5. Benchmarks and Effluent Limitations

The draft permit includes a new copper benchmark of only 14 µg/L. While the draft Fact Sheet states that benchmark values are not numeric effluent limitations, it also states that Ecology has decided to refine and clarify the substance of Level 3 "and clearly articulate the performance goal of Level 3 is attainment of the benchmark in future discharges."

The proposed benchmark concentration for copper is problematic for several reasons, as follows.

- The general permit doesn't account for stormwater run-on from adjacent streets and doesn't account for air deposition; permittees have little or no options to control either of these copper sources. The natural background concentration for copper in soil (state-wide average) is 36,000 µg/kg (Ecology, 1994). A few particles of soil washing off the tires of an employee vehicle and/or dust generated from an adjacent roadway could cause a facility to exceed the proposed copper benchmark of 14 µg/L. Additionally, copper from the wear of brake linings has been shown to contribute significantly to copper concentrations in stormwater runoff (Brake Pad Partnership, 2007). Even so, the Stormwater Management Manual includes no BMPs for the control of copper from brake wear. Ecology's own studies have shown significant air deposition of copper in the Puget Sound region; the permittee has no control over atmospheric sources of copper.
- The Stormwater Management Manuals (SWMMs) do not include treatment BMPs or *Active Stormwater Treatment Systems* designed for the removal of metals.
- Today's end-of-pipe stormwater treatment technologies cannot attain an effluent discharge concentration of 14 µg/L. Ecology need only look at existing facilities that process copper-bearing materials and operate sophisticated stormwater treatment systems to understand what might be achievable across a number of facilities and site-specific conditions.
- No mixing zones are authorized in this permit. As Ecology is aware, a facility's ability to achieve water quality-based effluent limits for metals invariably requires the use of mixing zone or dilution factor.

It makes no sense to set a water quality-based benchmark that is not technologically achievable, and provide no allowance for a mixing zone. By lowering the copper benchmark to 14 µg/L, Ecology is likely setting these permittees up for failure of a narrative effluent standard- since "failure to comply with the specific corrective action requirements in S8 ... would be considered a

permit violation” and since operational, structural and treatment BMPs will not allow permittees to consistently attain (if at all) a copper concentration of 14 µg/L.

Unless and until the permit provides a mixing zone provision, a methodology to consider background contributions to stormwater pollutants in a facility’s runoff, and until the SWMM’s identify and vet treatment technologies for metals removal, the existing benchmark concentration for copper should be maintained.

S6. Discharges to 303(d)-Listed or TMDL Waters

A reference to Appendices 4 and 5 would be helpful.

S6.C.1.a. Should provision a. require sampling/effluent limitations that correspond to the parameters the receiving water is 303(d)-listed for *and* Total Suspended Solids (instead of *or* Total Suspended Solids)?

S8. Corrective Actions

S8.A., B., and C. For clarity, perhaps the first sentence/first bullet of these conditions should state “... that exceed any *applicable* benchmark value [in tables 2-6]....” This also seems appropriate for the second bullet in S8.C.

S8.B. Permittees in Level Two must revise their SWPPP to include “additional” Structural Source Control BMPs. This category includes permittees that are in Level Two and Three of the current permit; as such, these permittees may have exhausted all feasible Structural BMPs and still exceed a benchmark(s) under the new permit. In the case where all feasible structural BMPs have been exhausted, what is Ecology’s intent for this permittee under Level Two of the new permit? Must the permittee apply for a waiver? Will such a permittee be in violation of this narrative effluent limitation?

The **S8.B.4.c.** waiver (and time extension) provision requires the submittal of an Application for Coverage form in accordance with S2.B. Condition S2.B. includes a public notice requirement. A public notice seems unnecessary, given that this permit condition (the allowance for a waiver or extension) has undergone public notice and opportunity for comment. Additionally, this seems unduly burdensome for a structural BMP.

S8.B.4. The requirement to fully implement Structural Source Control BMPs “immediately” is not reasonable. We suggest the Level 2 deadline simply read “no later than the deadline specified in Table 6.”

S8.C.3. Is it Ecology’s intent that the P.E. certify that the entire SWPPP (not just the treatment portions) is consistent with Condition S3.A.?

Is it Ecology’s intent that the PE certify consistency with Condition S3.A., or with S3.A.3.?

There are existing permittees that have completed Level Three Responses and have submitted engineering reports to Ecology, per chapter 173-240 WAC, for the construction of stormwater treatment BMPs/systems. Is it Ecology’s intent that these permittees complete a Level 3 SWPPP Certification per S8.C.3.? Alternatively, wouldn’t their (prior) submittal of the engineering report suffice? Requiring a new certification in this situation does not seem warranted and would result in unnecessary additional cost to the permittee.

S8.C.4 The requirement to fully implement Treatment BMPs “immediately” is not reasonable. We suggest the Level 3 deadline simply read “no later than the deadline specified in Table 6.”

Additionally, most treatment BMPs (including detention ponds, sand filters, and systems designed to remove metals) require construction approval per chapter 173-240 WAC. Ecology is the approving agency and construction approval is a many-month process that can exceed 6 months. Is it Ecology’s intent that a Level 3 permittee apply for a Modification of Permit Coverage where the agency is delaying the implementation of the treatment BMP such that the specified deadline cannot be met?

S8.D. Level Four Corrective Actions include a reference to an *Active Stormwater Treatment System*, which is defined to include, but not be limited to, chemical treatment, enhanced media filtration, electrocoagulation and ion exchange. Is the inclusion of this definition intended to separate these systems from the definition of a *Treatment BMP* as used in the Level Three Corrective Action requirements? If yes, does this mean the permittee is not required to consider *Active Stormwater Treatment Systems* as part of its Level Three Corrective Action?

S8.D.1. lists the actions Ecology will take when a permittee triggers a Level 4 Corrective Action. There are no timeframes indicated for these agency actions. During the time between a permittee’s submittal of a Level 4 Notification Form and Ecology’s taking action per S8.D.1., is the permittee in compliance with the Level Four Corrective Action provisions of the permit? Because the adaptive management program constitutes a narrative effluent limitation, it is important to understand the permittee’s exposure during delay periods.

Condition G25. Bypass Prohibited This condition is found in S8.A. of the current permit; however, the text has been reorganized such that it doesn’t make sense. See text of current permit (A.1., 2., 3., and 4.).

Fact Sheet Page 94 (last paragraph) mentions permittees that “enter the permit at Level Three.” This seems to conflict with the draft permit, which has permittees only entering Level Three after exceeding a benchmark during any 4 (or 8) separate quarters after January 1, 2020.

Thank you for the opportunity to comment on the draft permit.

Sincerely,

Dawson Consulting LLC



Linda Dawson
Principal

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References

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Ecology. 1994. Natural Background Soil Metals Concentrations in Washington State. Publication #94-115. October.