WASHINGTON STATE DEPARTMENT OF
Natural Resources

PETER GOLDMARK
Washington State Commissioner of Public Lands

DEPARTMENT OF ECOLOGY

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WATER QUALITY PROGRAM

June 23, 2009

Mr. Jeff Killelea
Water Quality Program
Department of Ecology
PO Box 47600
Olympia, WA 98504-7600

Subject: Comments on the draft Industrial Stormwater General Permit issued October 21, 2009.

Dear Mr. Killelea:

The Department of Natural Resources (DNR) as the steward of the aquatic lands owned by the State of Washington has the obligation to protect and enhance those lands. State-owned aquatic lands are managed by DNR for future and current citizens of the state to sustain and enhance ecosystems and economic viability and to ensure long-term access to aquatic lands and the benefits derived from them. DNR is directed by the legislature to balance land management activities with other public benefits including environmental protection, fostering water dependent uses, utilizing natural resources, encouraging public use, and generating revenue.

The draft Industrial Stormwater General Permit ("Permit") was developed to protect the waters and sediments of the state from stormwater discharges from certain designated industrial facilities. The management of stormwater and stormwater outfalls is important for the protection of human health, the environment, and the sustainability and continuing development of aquatic resources. DNR welcomes the issuance of the Permit. It is a step in the right direction of addressing the toxic nature of stormwater discharges and its affects on water and sediment. As noted in the Fact Sheet, the issuance of the permit is part of a process that Ecology is undertaking to reduce the toxicity associated with stormwater discharges.

However, DNR believes that the draft Permit fails to adequately protect aquatic lands managed by the Department of Natural Resources from pollutants in stormwater discharges originating from industrial facilities.

The Department is concerned:

- that the permit allows discharges to exceed acute and possibly chronic water quality standards and to adversely affect sediment standards without clear adaptive management processes for reducing those loads;
- that notification of exceedances of standards is weak;

- that monitoring requirements are inadequate; and
- that the Department of Ecology is incapable of undertaking the necessary level of departmental inspections to sustain the permit.

COMPLIANCE WITH STANDARDS

Although the Permit states that it prohibits discharges that are toxic or violate water and sediment standards, the provisions of the Permit do not effectively protect state lands from continued discharge of toxic substances. The Permit appropriately prohibits discharges that contain toxicants as defined by RCW 90.48.520 but only weakly addresses those discharges. It also states that it precludes stormwater discharges that violate surface water quality standards (WAC 173-201A), ground water quality standards (WAC 173-200), and sediment management standards (WAC 173-204), but fails to address how they would be identified.

The Permit allows for numerous exceedances of benchmarks levels before the facility is required to determine if water quality standards are exceeded. There are no standards for the degree of exceedance of the benchmarks. The lack of restrictions on when the samples are to be taken allows for the permitee to adjust sampling to avoid periods of high exposure of pollutants to stormwater and to discharge pollutants at times when there is no sampling.

ACHIEVEMENT OF STANDARDS

The Stormwater Management Program Plans include an iterative adaptive management component as an integral component of the concept. Adaptive management requires within the duration of a permit that periodic examination of implemented Best Management Practices (BMPs) be assessed to determine whether existing BMPs require maintenance, be altered, or be replaced. It is not possible to assess whether implementation of BMPs is effectively reducing the discharge of pollutants or meeting water quality standards based upon the proposed monitoring.

COMPLIANCE

The compliance rate for the existing industrial stormwater permit is unacceptable. The fact sheet notes that the compliance rate is approximately 95 % at one point, and then states that many facilities are not in compliance with permit conditions only two paragraphs later. It was noted that only 30 percent of the facilities were submitting DMRs. Only 40 percent of the SWPPPs were up to date. Only 60 top 70 percent of the facilities could identify one or more BMPs. Later on it stated that only 10 percent of the facilities would be in full compliance. For a permit that relies on permitees for implementation of BMPs, monitoring, and inspections these figures represent failure and probable noncompliance with water quality standards. Note also in the Fact Sheet (p83) that it is acknowledged that BMPs are not implemented. Exceedances of benchmarks should require additional inspections by both the facility and Ecology. A fee should be imposed to offset such costs. There is no point in issuing a new permit until Ecology is able or willing to undertake a compliance policy that effectively limits the discharge of toxic substances.

DISCHARGES TO 303(D) WATERS:

The Permit allows by its silence the discharge of additional pollutants to waters that have been listed as impaired for which no TMDL had been developed. The permitting of the discharge of additional pollutants to impaired waters is not in accord with the recent 9th circuit court decision that prohibited the discharge to an impaired water of any additional pollutants for which the water is listed. The failure to create numeric limits for those discharges is unacceptable. The only mechanism to prevent the discharge of additional pollutants is to require effluent limits for those waters.

Permit:

1. S1.E. If a facility discharges only to groundwater, but not through a UIC, is the facility regulated by this permit? How? Does this permit provide any protection for groundwater quality?
2. S1.F. Ecology should inspect those facilities granted a No Exposure Certification. Without a clearly defined inspection process by Ecology, it is unlikely that this process will be meet CWA requirements.
3. S3.A.2. and S3A.4. It is unclear how the permitee or Ecology will know which BMPs are necessary to comply with water quality standards. Surely the BMPs within the SWPPP, not the SWPPP itself, minimize the discharge of pollutants.
4. S3.B.3. How does the permitee know which BMPs will prevent violations of water quality standards?
5. S4.B.1 The permitee may wait for a long rainy period and then sample? Why ignore first flush considerations? Why bother to wait 24 hours between sampling events with this sampling scenario?
6. S4.B.2. If the BMPs are designed to prevent contact with stormwater, how can the stormwater pass through them?
7. Table 2 Why isn't copper included? Oil sheen is a poor indicator of TPH. If oil sheen is detected, then require sampling for TPH.
8. S6.B. Eliminate the first two options. Require the permitee to demonstrate with sampling that the listed parameter is absent or no more discharges of listed contaminants to listed waters at any concentration unless the permitee can demonstrate that the discharge does not elevate the loadings of the contaminate in the receiving water. TMDL is based upon loadings, not simply concentrations.
9. S6.D. All dischargers should comply with future TMDLs. The permit requires that the permitee comply with future stormwater manuals.
10. S7.B.5. What does reflect current conditions mean? Accurately shows?
11. S7.6. How does the permitee determine the effectiveness of BMPs inspected without sampling?
12. S8.B.4 Does this sentence suggest that Ecology may waive requirements that are necessary to meet water quality standards?

13. S8.C.4.Does this sentence mean that Ecology may waive a requirement for treatment BMPs necessary to achieve water quality standards?
14. S8.D.What is an Active Stormwater Treatment System?

Fact Sheet:

1. p.55 There is a paucity of data to support the idea that if a benchmark is exceeded many times that the potential for water quality violations increases. The fallacy with the logic and the concept that as the number of exceedances increases the requirements for the facility increase is that such statements are made in the absence of any information on the magnitude of the exceedances.
2. p67 The adjustment of sampling requirements is based upon failures related to lack of training. Is it not one of the goals of Ecology to provide directly or indirectly for that training? That excuse is unacceptable.
3. p.68. The elimination of the requirement to sample the first flush is unacceptable. This is a clear example of backsliding.
4. p.68. It makes no sense to depart from a statistically sensible use of the median.
5. p.70. It is inappropriate with the very limited sampling requirements to allow for consistent attainment for discharges to listed waters.
6. p.73 and p.75. Is this reduction in CORE requirements backsliding?
7. p.74 90% probably what?
8. p.75. Ecology has not without question established that controlling zinc controls copper, lead, and other contaminants.
9. p. 78 90% probably what?
10. p.87 To assume that compliance with this permit is compliance with the TMDL is unconscionable. Compliance with a loosely written permit does not qualify for TMDL compliance.
11. p.90 What is an accurate SWPPP? A better adjective might be effective.
12. p. 92 It is unclear what immediately, but no later than means.
13. p. 93? Does this reflect the uncertainty of the permit?
14. p.92 Only at level three is there a clear requirement to meet benchmarks? Why not previously?
15. p.94. Is Ecology stating that it may waive the requirement to meet water quality standards by waiving treatment requirements?
16. p.95 What is active stormwater treatment?
17. p. 97 Clearly this permit authorizes, not prevents, pollution of state waters.
18. p.97 If treatment BMPs are required to prevent stormwater contamination, then all permittees must implement treatment methodologies.

The intent of the general stormwater Permit is to be commended. However, the real answer to stormwater issues lies not so much in a weak permit, but in effective mechanisms to reduce the discharge of pollutants, including:

- the development of alternative products containing fewer pollutants such as tires, oils, brake linings;
- development and testing of the effectiveness of BMPs;
- frequent and more thorough Ecology inspections;
- effective education of stormwater managers and operators
- consideration of the levels of exceedances of benchmark values in addition to the frequency;
- consideration of the impacts to sediment;
- and public involvement;

Sincerely,

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