



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

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SEP 2 2009

OFFICE OF
WATER AND WATERSHEDS

Ms. Kelly Susewind, P.E., P.G. Manager
Water Quality Program
Department of Ecology
P. O. Box 47696
Olympia, Washington 98504-7696

Dear Mr. Susewind:

The U.S. Environmental Protection Agency Region 10 (EPA) has reviewed the June 3, 2009, draft Industrial Stormwater General Permit (Draft Permit). EPA is providing comments on this permit consistent with the 1989 Amendment to the National System Pollutant Discharge Elimination System (NPDES) Memorandum of Agreement between EPA and the Washington Department of Ecology (Ecology), which allows EPA up to 90 days to provide comments, recommendations, or objections to Ecology on draft general permits.

As you know, managing stormwater has emerged as a high priority to help clean up our nations waters. This is particularly the case for the Puget Sound region where stormwater runoff has been identified as a leading contributor of pollutant loadings. EPA views the Draft Permit as an important mechanism to reduce stormwater impacts to the Puget Sound and its tributaries as well as to waterbodies throughout the State. EPA also recognizes that stormwater runoff from industrial sites is only a component of a larger stormwater problem.

EPA appreciates the challenges associated with this general permit and Ecology's leadership in administering this important permit. Although EPA is not formally objecting to the Draft Permit, EPA believes Ecology should carefully consider the comments and recommendations below. Our comments focus on recommended changes or additions to the Draft Permit, but also address some important aspects of the Draft Permit that EPA supports.

Copper Benchmarks

EPA supports the 14 ug/L and 32 ug/L copper benchmarks for western and eastern Washington, respectively. These benchmarks are significantly lower than the 63.6 ug/L copper benchmark in the previous permit and are more representative of a level to ensure attainment of the copper water quality standard and to avoid or minimize adverse effects to aquatic species. While the 2008 Multi-Sector General Permit (MSGP) issued by EPA includes a lower copper benchmark level equivalent to the copper water quality criteria (e.g., 5.6 ug/L for freshwaters with a typical 25-50 mg/L hardness in western Washington), EPA notes that the copper benchmarks are only one aspect on the non-numeric effluent limit. And because EPA believes that the other elements of the Draft Permit that comprise the non-numeric effluent limit are generally more robust than those set forth in the MSGP (e.g., sample-by-sample comparison to the benchmarks, specific nature of corrective action steps, and required vacuum sweeping), EPA believes the Draft Permit and the MSGP provide a similar level of protection for those facilities where the copper benchmarks apply. Additionally, since monitoring data indicate that many

sectors will need to adopt some additional control measures to reduce copper, EPA believes the risk that the Draft Permit copper benchmarks are too high to trigger the adoption of available and reasonable control measures is low. For these reasons, EPA supports the copper benchmarks in the Draft Permit.

Application of the Copper Benchmark

Under the Draft Permit, the copper benchmark would only apply to five sectors, which represent approximately 15% of the 1,200 facilities regulated under the permit. The Draft Permit relies on the zinc benchmark to serve as a surrogate for copper for all sectors other than the five. EPA does not support the use of the zinc benchmark as a surrogate for copper and recommends that the copper benchmark and associated sampling be applied for most, if not all, industrial sectors, as was done in the previous permit term. Monitoring data summarized in the Fact Sheet shows that nearly all the sectors have a median value that exceeds the 14 ug/L western Washington copper benchmark, indicating that additional measures to reduce copper runoff are needed. Although copper and zinc are often both found in stormwater, the sources of copper and zinc may be different thus requiring different control measures. Although the MSGP only applies the copper benchmark to five sectors, the MSGP does contain a provision for EPA to require additional sampling and requirements. As a result of the Endangered Species Act consultation process, EPA, in coordination with the National Marine Fisheries Service (NMFS) and Fish and Wildlife Service, are currently in the process of reviewing the notices of intent (NOIs) for MSGP facilities in Washington State. EPA plans on applying the copper benchmark and associated sampling to these facilities unless data indicate copper runoff is not a concern at the facility. As you know copper has received much attention with regard to its adverse effects on salmon and impacts on Puget Sound. EPA believes it is important that all sectors monitor for copper to help ensure discharges of copper are controlled to avoid exceedances of the copper water quality standard and to reduce the amount of copper discharged into Puget Sound.

Zinc Benchmarks

The Draft Permit includes zinc benchmarks of 200 ug/L and 255 ug/L for western and eastern Washington, respectively. These benchmarks are higher than the 117 ug/L zinc benchmark in the previous permit. EPA does not support these higher zinc benchmarks and recommends that Ecology retain the 117 ug/L zinc benchmark. EPA is concerned that higher benchmarks may not result in the adoption of available and reasonable control measures to control zinc. Although the Fact Sheet monitoring summary shows that many facilities recorded very high zinc levels, the median value for nearly all sectors is below 200 ug/L and for most sectors is below 150 ug/L. This information suggests that reasonable control measures can be, and have been, adopted by regulated facilities to reduce zinc levels below 200 ug/L. The MSGP includes a more stringent zinc benchmark of 50 ug/L for freshwater with typical western Washington hardness (equivalent to the zinc water quality criteria) and NMFS has indicated that adverse effects could occur at levels as low as 5.6 ug/L. As explained above regarding the copper benchmark, EPA believes that benchmark levels in the MSGP and Draft Permit are not directly comparable due to other elements (e.g., averaging and corrective action steps) that comprise the non-numeric effluent limit in each of the respective permits. Because such additional elements are generally more robust in the Draft Permit relative to the MSGP, EPA

supports a 117 ug/L zinc benchmark in this permit. Further, based on monitoring data summarized in the Fact Sheet, the risk is low that a 117 ug/L benchmark will not result in the adoption of available and reasonable control measures.

Function of Benchmarks

There appears to be significant concern in the regulated community that the benchmarks are, in effect, numeric effluent limits. EPA has been clear that benchmarks of the MSGP are not numeric effluent limits, and it is clear that Ecology is not intending benchmarks to be numeric limits in the Draft Permit. Benchmarks are intended to be used as an adaptive management mechanism for the facility operator to revise the Storm Water Pollution Prevention Plan (SWPPP) and adopt additional control measures when benchmarks are exceeded, with goal of achieving the benchmarks. A facility's failure to attain benchmarks in and of itself is not a permit violation. When a facility's monitoring data exceeds the benchmark levels, the facility can be in full compliance with the permit as long as it follows all the corrective action and subsequent reporting steps. Ecology discusses this issue in the Fact Sheet but does not address the topic in the permit itself. EPA believes that clarity on this issue is important enough that Ecology should address the topic within the permit itself.

Sampling Criteria

EPA supports Ecology intention to simplify the sampling conditions to avoid confusion and reduce the number of "no qualifying storm event" reports. However, EPA believes that too many criteria were removed from the Draft Permit, which is intended to result in samples that appropriately characterize stormwater runoff from the facilities. EPA recommends that Ecology adopt the recommendations in the Herrera November 2006 report. Specifically, EPA recommends that Ecology retain the pre-sample 24-hour dry period, remove the storm event size, and extend the sample collection period from 1-hour to within the first 12-hours of discharge. Further, EPA recommends that at least one sample be required to capture discharge during one of the first storm events of the rainy season. This sample can be counted toward either the 3rd or 4th quarter sampling requirement.

Reporting

EPA believes that the ongoing performance of the facilities covered under this general permit should be more transparent to the public. As Ecology discusses in the Fact Sheet, non-compliance was significant under the previous permit, and EPA believes more transparency will help motivate facility operators to improve compliance. Accordingly, EPA recommends that the permit contain an annual or bi-annual report, similar to the annual report now required for facilities under the MSGP. The report form should be short (1-3 pages), and could include where to access the SWPPP, list of BMPs implemented, summary of benchmark exceedances, and summary of corrective actions taken or planned. EPA also recommends that Ecology post these reports on its website. Lastly, EPA recommends that the permit include language encouraging each facility to post its SWPPP on the internet.

Corrective Action Triggers and Deadlines

EPA has two concerns with Section S8 - *Corrective Actions* in the draft permit. First, EPA found the triggers for corrective action and the implementation deadlines at the various levels to be somewhat unclear, and the overall corrective action scheme to be overly complicated. Second, EPA wants to ensure that facilities needing to adopt *additional treatment* BMPs to reduce pollutant levels are not given excessive time to implement such controls. EPA recommends that Ecology count benchmark exceedances for a specific pollutant in order to both avoid confusion and help target corrective actions. EPA also recommends more specific language for each level of corrective action and that Table 6 be eliminated. Below is example language for Level Two:

- Appendix 6 facilities: Corrective action implemented not later than July 1, 2010.
- Other facilities: Corrective action triggered after XX benchmark exceedances for a particular pollutant after January 1, 2010. Corrective action implemented no later than 6 months after the end of the quarter which contained the sample that triggered the corrective action.

Facilities Discharging into Sediment Contaminated Sites

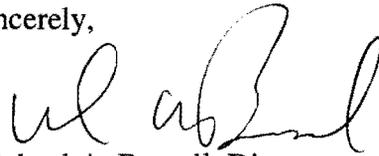
EPA is very concerned about stormwater re-contamination of Superfund clean-up sites such as the Lower Duwamish Waterway and Commencement Bay. These areas are listed on the Clean Water Act §303(d) list because the sediments in these areas exceed the State's sediment quality standards for various pollutants. The Draft Permit contains a 30 mg/L TSS numeric effluent limit for facilities that discharge to a water body that is 303(d)-listed for sediment parameters. There is considerable uncertainty as to whether this limit is sufficient to prevent pollutants from further contributing to these contaminated sediments. For example, the relationship and effectiveness of TSS to control polychlorinated biphenyls (PCB) is uncertain. As more is learned on this issue, new numeric effluent limits may be needed, possibly within the term of this permit. EPA recommends that Ecology explain this uncertainty in the Fact Sheet and explain that the permit may need to be modified to add additional numeric effluent limits for these facilities.

Further, EPA recommends that Ecology include a mechanism in Section S6 – *Discharges To 303(D)- Listed or TMDL Waters* for Ecology to add specific requirements (i.e., non-numeric effluent limits) for facilities discharging into §303(d)-listed water bodies for sediment parameters or add specific requirements applicable to all these facilities. Consistent with the Western Washington Storm Water Management Manual, Volume IV, EPA recommends the following requirements apply to some or all of these facilities: 1) Within 1 year, all stormwater discharge pipes and outfalls on the facility's property, and sanitary lines complete with connections to public utilities, be verified, mapped and certified by a professional civil engineer, including verification of the means how flow was stopped for inactive pipes; and 2) At least once before the expiration date of the permit, all the stormwater lines and structures must be cleaned and the collected sediment analyzed for parameters for which the sediment is impaired.

In closing, after reviewing some of the public comment provided to Ecology on this Draft Permit, EPA recognizes that this permit remains contentious and issuing the final permit will be difficult. Although, EPA's comments above are largely focused on best meeting Clean Water Act requirements, EPA is also hopeful that inclusion of our recommendations in the final permit will address concerns raised by other stakeholders. Lastly, we offer our assistance to work with you and other stakeholders to help finalize this permit.

Thank you for your consideration of our comments and recommendations. If you have any questions or concerns, please call me at 206-553-4198 or my Senior Policy Advisor John Palmer at 206-553-6521.

Sincerely,



Michael A. Bussell, Director
Office of Water and Watersheds

cc: Mr. Steve Landino, NMFS
Mr. Ken Berg, FWS
Mr. Grant Nelson, Association of Washington Business
Mr. Bob Beckman, Puget Soundkeeper Alliance
Ms. Kathy Fletcher, People for Puget Sound