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15 July 2009

Mr. Jeff Killelea
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Subject: Draft Industrial Stormwater General Permit Comments

Dear Mr. Killelea:

Kennedy/Jenks Consultants would like to thank you for the opportunity to provide our comments on the proposed revisions to the Industrial Stormwater General Permit (ISGP) posted for public review on 3 June 2009.

General Comments

1. Much of the language contained in Sections S3.F. (Mixing Zones) and Section 7 (Compliance with Standards) of the existing permit has not been included in the draft ISGP. Is this an oversight or intentional deletion of those provisions?
2. In situations where an industrial facility leases land or parcels (i.e., many port facilities), the draft permit does not discuss the division of responsibility between lessor and lessee with regard to the ISGP. Please provide guidance for the responsibilities of the property owner and operators of facilities.

Specific Comments

1. Table of Contents, Page 5 – Add “Corrective Action Certifications” to the “Summary of Required Onsite Documentation.
2. S1.A.1. Table 1 – Ecology should retain the language in Appendix 1, Section C.8. of the current permit, requiring permit coverage for Transportation Facilities (SIC codes 40XX, 41XX, 42XX, 43XX, 44XX, 45XX and 5171), which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Also retain the language in the body of the permit that “only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations or which are otherwise identified under one of the other 11 categories of industrial activities

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listed in this appendix are associated with industrial activity.” Though this language is provided by reference to 40 CFR 122.26(b)(14)(i-xi) in the glossary definition of *Industrial Activity*, the limitation of permit coverage will not be recognized by many permittees unless clearly stated in the permit.

Please clarify the definition of vehicle maintenance provided in the definition of *Industrial Activity* included in the glossary. The definition of maintenance provided includes broad categories, including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication. Mechanical repairs may be performed at numerous locations at many facilities, varying from vehicle rehabilitation in designated maintenance shops to replacing headlights in administrative parking lots (defined to not require ISGP coverage under S.1.C.3.). Some Ecology inspectors have indicated that the area where any vehicle maintenance is performed at a facility requires coverage under the ISGP. The perceived intent of the ISGP is to cover vehicle maintenance performed outdoors at a vehicle maintenance shop that may contribute a significant amount of pollutants. General maintenance performed outside of the vehicle maintenance shop area, while implementing appropriate source and operational control best management practices (BMPs), should not be covered under this definition.

Please clarify whether mobile or fixed fueling alone are operations requiring coverage under the ISGP at sites without vehicle maintenance shops. Also, at many sites, only those portions of the site where vehicle maintenance occurs are covered and included in the facility Stormwater Pollution Prevention Plan (SWPPP). Requiring coverage for areas where fueling alone occurs or where mobile fueling occurs at sites with vehicle maintenance shops would expand coverage considerably, including marinas and many commercial and general aviation operations.

Many facilities that have fuel tanks and conduct mobile fueling activities are covered under federal spill prevention control and countermeasures (SPCC) and other regulations. BMPs for proper storage and transfer of fuel are clearly defined in these regulations. Ecology should provide clarification that areas beyond vehicle maintenance shops where fueling is performed do not require coverage under the ISGP.

3. S1.E.1. – Please clarify which permit conditions apply to discharges to groundwater, including monitoring, inspections, etc. The statement included in S4.B.2.b. that “onsite discharges to ground (e.g., infiltration, etc.) are not sampled unless specifically required by Ecology (Condition G12)” should be included in this section.
4. S1.F.1. – It will be difficult for most permittees to find the applicable sections defining the terms and conditions required to demonstrate no exposure listed in 40 CFR 122.26 (g). Ecology should consider including the proper section as an appendix to the permit.
5. S2.C.3.a. – Timeframe for Ecology notification when additional time is required needs to be defined.

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6. S3.A.2.a – This has been a subject of discussion for years. Please define all known, available, and reasonable methods of prevention, control, and treatment (AKART) for stormwater discharges. Is it solely implementing what is in the Stormwater Management Manual (SWMM)? If so, that should be stated. If not, how is a facility to know what constitutes AKART?
7. S3.B.1.g. – Does the identification of areas of pollutant contact include materials of construction (roofs, galvanized fences, drainage systems, parking lots, roadways, etc.) that are not associated with specific industrial activities? Guidance defining these common materials as pollution-generating would be helpful to permittees.
8. S3.B.1.k – Clarification as to what constitutes a vehicle service area should be included. See comment 2 above.
9. S3.B.2.b.ii. – “Materials and products” is a broad term, further definition is appropriate.
10. S3.B.2.c.ii. – Many permittees are likely not aware of common materials that present the potential to contribute pollutants in stormwater. See comment 7 above.
11. S3.B.3.b.i.3.b. – States that “all sources of dust shall be identified and prevented from accumulating on hard surfaces at the facility.” It will be impossible to prevent dry deposition from ambient air from accumulating on hard surfaces between sweepings.
12. S3.B.3.b.i.3.c. – Making a permittee in violation of their permit and the Clean Water Act if they forget to close the lid on their dumpster seems inappropriate. A clause should be included to allow dumpsters placed under cover to be exempted from this requirement. Also, permittees may have limited control over dumpsters provided by outside vendors, or in situations where industrial facilities lease parcels from other entities.
13. S3.B.3.b.i.4.b. – All vehicles leak to some degree. Discussion of incidental leakage should be included. Also, larger facilities may have hundreds of pieces of equipment and vehicles present. Inspection of all equipment on a monthly basis could be a full time job. Who has the responsibility to inspect vehicles owned and operated by service providers or contractors?
14. S3.B.3.b.i.5.a. – Does the secondary containment requirement apply to mobile equipment, tanks, and trucks used for fueling? The draft states that “all chemical liquids, fluids and petroleum products, shall be stored ...” This passage is overly general, as ‘fluids’ may refer to water storage or other innocuous liquids present at industrial facilities. It would be appropriate to restrict the list of fluids to those that are hazardous. In addition, federal SPCC plans required under the Clean Water Act do not require containment of 110% of the largest tank. Rather, the SPCC regulations require containment of the largest tank, plus sufficient capacity for rainfall. These containment requirements should be consistent.

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15. S3.B.3.b.i.5.d. – Are permittees required to plug storm drains when performing mobile fueling?
16. S3.B.3.b.i.5.g. – The phrase ‘on-site storage’ needs to have a defined time component. If fluids are to be drained from equipment and vehicles prior to onsite storage, is it assumed that vehicles idled or retired must be drained within a week? Within a month? If vehicles are stored onsite while a part is ordered, must they be drained in the interim? As it stands, the draft suggests it would be a permit violation not to drain fluids for temporary onsite storage. Could Ecology please define the difference between temporary and long-term storage and clarify whether this passage is appropriate to both?
17. S3.B.3.b.ii.2. – How should the storm-resistant covering requirement be extended to mobile fueling operations?
18. S3.B.3.b.iii.2). – As written, this section would require all permittees to employ oil control devices, even if releases are unlikely. This provision should be applicable only to facilities where treatment BMPs are required.
19. S3.B.3.b.iv.1. – The basis for why flow control is necessary to satisfy AKART and to comply with water quality (WQ) standards is unclear. How does flow control relate to either? Also, this requirement applies to new facilities and those having a significant process change, not to existing facilities. Requirements for installation of flow control are defined under municipal permit minimum technical requirements for new development and redevelopment. Please explain the duplication of requirements.
20. S3.B.4. Discussion of erosion and sediment control BMPs provided in this section may be better included under “BMPs” in S3.B.3. It should be made clear that erosion and sediment control BMPs (in addition to those deemed mandatory by the draft) are only required “if necessary” based on self-evaluation allowed under S9.B.4. of the current permit. As written, all permittees would be required to implement and maintain sediment control and filtration BMPs, even if a site is completely paved.
21. S4. – Language from Section S4.D.2. of the current permit should be retained. “Benchmark values are not water quality standards and are not permit limits. They are indicator values.”
22. S4.A. – Reference to Ecology’s “how to” sampling guidance should be included in this section.
23. S4.B. – Given the inherent variability in runoff monitoring data, it seems inevitable that most permittees will exceed benchmarks and enter the corrective action phases given enough time. Ecology should reconsider the use of the seasonal median presented in previous draft permit revisions.

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24. S4.B.6. – Is it Ecology's expectation that all permittees must reinitiate sampling for all benchmark parameters to prove consistent attainment even if they achieved consistent attainment under the current permit and their sampling results are within acceptable levels given the revised benchmarks? If this is the case, it should be clearly stated. May a permittee who collects multiple samples in a given quarter average the results for a given parameter when considering the applicability of consistent attainment?
25. S4.B.6.c. – Ecology should define what level below which consistent attainment can be reached. Is this the practical quantification level (PQL) listed in the tables?
26. S4.C. – Ensuring the proper analytical methods should be a laboratory certification requirement. Few permittees are likely to understand how to achieve this requirement.
27. S5.Table 2 – Many water bodies are listed for a single 303(d) parameter that is not on this list. This could be interpreted to mean that monitoring for these parameters is not required if the water body is on the 303(d) list.
- Many permittees will have trouble meeting the turbidity benchmark, ultimately triggering runoff treatment. Given that turbidity is not an accurate surrogate for total suspended solids (TSS), reducing the level requiring *Action* for turbidity will likely result in large expense for permittees with little actual benefit to water quality.
 - “Meter” is listed as an acceptable analytical method for turbidity monitoring. Acceptable meters to be used should be defined.
 - Increasing the pH benchmark lower range to 6.0 will trigger corrective actions and be problematic for many industrial facilities. The pH of rainwater is often below this level, and pH adjustment of runoff will ultimately be required at numerous facilities. The lower end of the benchmark should be maintained at the current action level value of 5.0.
 - Oil sheen should be deleted from the list. Few positive responses for benchmark exceedance are expected to be reported, and sheens from organic sources may trigger false reports. If the benchmark is retained, it should be clarified that the sheen will need to be observed on the monitored discharge.
 - The zinc benchmark is too conservative. Zinc concentrations in runoff from common building materials, roadways, and parking lots could exceed this requirement having nothing to do with the industrial activity requiring permit coverage. Also, the need to reduce the zinc benchmark is not supported by existing ambient water quality data, which do not show many water bodies as impaired for zinc.
28. S5.Table 3 (Category 2) – The listed copper benchmarks are likely much lower than the discharge monitoring data for many facilities and have been measured to exceed ambient rainfall concentrations at some industrial facilities. The treatment required to reliably reduce runoff concentrations to below the listed benchmarks will not be economically achievable for many. Also, the need to reduce the copper benchmark is

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not supported by existing ambient water quality data, which do not show many water bodies as impaired for copper. Reduction of the levels triggering corrective action for five-day biochemical oxygen demand (BOD₅), nitrate/nitrite, ammonia, and lead will be similarly problematic for numerous permittees.

29. S5.F.2. – Floating debris should be better defined or the requirement removed. As stated, it is a permit violation for anything floating to be discharged.
30. S.6. – This section will be very difficult for permittees to understand and determine what, if any portions, apply to them.
31. S6.A. – This section should refer permittees to the appendix listing 303(d) listed water bodies or list of dischargers to these water bodies. Ecology should make it easy for permittees to establish whether the requirements apply to them.
32. S6.C.1.b. – How does Ecology propose to determine that a permittee is unable to comply with the applicable effluent limits by 1 July 2010? This timeframe allows for the collection of 2 quarters of data after the permit becomes effective. This is very little time to assess and implement adequate solutions.
33. S6.C.1.Table 5. – Is it Ecology's intent to require permittees to monitor for all of the parameters listed in Table 5 if they discharge to any 303(d) listed water or just for the parameter applicable given the discharge limitation at their point of discharge? Many permittees will have trouble meeting these limitations. It is not clear to which permittees these will apply.
34. S7.A.1. – Does Ecology have an expectation with regard to monthly inspections to be performed during wet or dry periods?
35. S7.B.3.b. – Several situations could be imagined where 30 days would be insufficient to eliminate an illicit discharge. Perhaps an extension could be granted if the situation is reported and approved by Ecology.
36. S7.C.1.c. and e. – If inspections are conducted by consultants, they will not be able to certify compliance with the SWPPP or permit. Consultants can sign the inspection form, but they cannot represent the permittee. Since an authorized representative of the facility also needs to sign the report, they should provide the certification.
37. S8. General Comments – Ecology has indicated that the corrective actions defined in this section will be triggered by exceedance of ANY benchmark parameter. An example could be envisioned that a facility could exceed benchmark values for four different parameters in four separate quarters triggering a Level 2 response for permittees not listed in Appendix 6. If this is Ecology's intent, it needs to be clearly stated, as many permittees will not understand the requirement and how to apply appropriate corrective actions.

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Please define what will be required of permittees currently in a Level 2 or Level 3 response condition under the existing permit for a parameter that they will not be required to monitor for under the new permit (e.g., copper).

Please clarify whether corrective actions need to be implemented in the basin where monitoring is performed or for the entire facility.

Several facilities are currently implementing very labor intensive and expensive operational and source control BMPs though they will be unable to achieve benchmark values applying these methods. If a facility implements treatment, these operational and source control BMPs may become unnecessary. Ecology should include language in the permit allowing the cessation of mandatory BMPs under this scenario.

38. S8.B.4.c. and S8.C.4.c. – The timeframes listed for modification of permit coverage defined in these sections are unrealistic and could be extremely problematic from a permit compliance standpoint. For example, a permittee wishing to request a modification for permit coverage because structural source control is not a viable option at their facility (e.g., very large sites) would need to submit a Notice of Intent no later than 49 days following the discharge monitoring report (DMR) date where a Level 2 corrective action is triggered. If Ecology rejects the request after the allotted 60 days for consideration of modification, the permittee would be required to implement structural source control within one month of receiving the notice. This timeframe is not realistic and could cause many permittees to be in violation of the Clean Water Act and subject to third party lawsuits.
39. S8.C.2. – The treatment BMPs listed in the SWMM will not be adequate to reduce pollutants to below benchmark values at many industrial facilities. Will implementation of the treatment BMPs defined in the applicable SWMMs be considered AKART?
40. S8.C. – Ecology should define that the required treatment flowrate is specified as the WQ flowrate defined in the SWMM and that higher flows are allowed to bypass untreated.
41. S8.D.1. – If permittees enter a Level 4 Corrective Action status, are they shielded from third party lawsuit while awaiting further guidance from Ecology?
42. S8.D.1.a.i – No guidance is given concerning the components and requirements of a “receiving water study.”
43. S8.D.1.d. and e. – If revoked or terminated, what response is required by the permittee?

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44. S8.D.1.Table 6. – The corrective action deadlines are unrealistic and, in many cases, will be unachievable. Determining the best course of action and implementing solutions within 1.5 months of triggering a Level 1 corrective action will be problematic for many. Similarly, 4.5 months are allowed from DMR submittal, triggering Level 2 and 3 corrective actions requiring installation of structural or treatment BMPs. This will not be enough time to research, secure funding, design, arrange construction, and install appropriate methods in most cases.

Ecology should consider respite or removal of monitoring requirements while Level 2 and 3 activities are performed. Under the current scenario, those currently in a Level 2 or 3 condition could be well on the way to a Level 3 or 4 condition before the results of the Level 2 or 3 efforts can be realized.

45. S9.A.6.a. – It appears that failure to collect a sample during any quarter is a permit violation unless it was found to be unsafe to collect, runoff only occurred outside of regular business hours, or no runoff was produced. If this is the case, it should be clearly stated in this section.

46. S10.B. – How should a permittee verify that they have installed all applicable and appropriate BMPs necessary to meet Condition S10.A? Also, please see comment 5 above.

Very truly yours,

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