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July 15, 2009

Mr. Jeff Killelea
Department of Ecology
Post Office Box 47600
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Subject: Draft Industrial Stormwater General Permit

Dear Mr. Killelea:

Thank you for the opportunity to comment on the Draft Industrial Stormwater General Permit. While there are a number of changes from the existing permit that we support, we are very concerned about many of the changes. Our primary concerns are that many, if not most, permittees are likely to end up at Corrective Action Level Four and that unlinking corrective action triggers from specific parameters and outfalls is inconsistent with the adaptive management process.

S8. Corrective Actions

Corrective action should only be triggered by consistent exceedances of particular parameters at particular outfalls. Under the proposed permit, a new permittee could trigger Level Two Corrective Action by exceeding four different parameters at four different outfalls. The purpose of an adaptive management approach is to gather information so that responses can be tailored accordingly. The proposed permit undermines that approach by requiring action in the face of inconsistent results. What additional structural source control BMPs are appropriate when a permittee exceeds zinc, turbidity, pH, and notices an oily sheen one time each over a period of three years?

A notable side effect of the proposed change is that permittees will cycle through the corrective action levels much more quickly than under the current permit. According to the Fact Sheet, almost one third of existing permittees are already at Corrective Action Level Two or Three. Those permittees will more quickly move to Corrective Action Level Four and others will soon join them under this proposal. There was a notable absence of explanation in the Fact Sheet about why Ecology decided to



Mr. Jeff Killelea

July 15, 2009

Page 2

undermine the adaptive management approach by unlinking corrective actions from specific parameter and outfall exceedances. We request that the Department reconsider this approach or at least explain the reasoning behind it and provide guidance to permittees on how to decide what BMPs are appropriate when the sampling data is erratic. We understand the desire to decrease the complexity of the permit, but the permittees and the adaptive management process should not be sacrificed in the name of simplicity.

We also disagree that permittees who are listed in Appendix 6 should automatically be required to implement additional structural source control BMPs. The list appears to include all facilities that ever triggered a Level Two or Three Response under the existing permit. If those facilities took appropriate action and are now discharging clean stormwater, they should not have to automatically implement additional source control BMPs solely because they once triggered a Level Two Response.

We support the change in the permit to no longer require submissions to Ecology for Level Two corrective actions. As Ecology well knows, it is difficult for permittees to comply with the complicated paperwork and recordkeeping requirements of the permit. The Fact Sheet states that no more than 10% of facilities can be considered in full compliance with the permit. We believe that eliminating this requirement reduces the burden on permittees and properly allows them to focus on stormwater improvements rather than paperwork.

S5. Benchmarks and Effluent Limitations

With the possible exception of oil and grease, action is now required at lower concentrations or at a greater range of values (pH) for all of the core parameters as well as copper and lead. When nearly a third of permittees are already at Level Two or Three because they have been unable to meet existing action levels, it is a mistake to dramatically tighten the permit requirements. According to the Fact Sheet, 45% of the samples in the Fabricated Metal Products Category exceeded the existing action level of 372 µg/L for zinc and the median value was 310 µg/L. Lowering the action level to 200 µg/L will therefore cause more than half of the samples to qualify as exceedances. The same is true for turbidity in the Motor Freight Category. The Fact Sheet indicates that 48% of samples currently exceed 25 NTU. Lowering the action level to 25 NTU will therefore cause nearly half of the samples to qualify as exceedances. The dramatic lowering of action levels, in combination with the uncoupling of corrective action from specific parameters and outfalls, is likely to result in a wave of permittees cycling



Mr. Jeff Killelea

July 15, 2009

Page 3

through the process into Level Four, although the number may be somewhat reduced by the business closures that will be caused by the heightened compliance burden.

We have particular concerns about increasing the range of pH values that triggers corrective action. Currently, a Level Two or Three response is triggered by values outside the range of 5.0-10.0. Corrective action is required under the draft permit by values outside the range of 6.0-9.0. We are concerned that the permit does not properly take into account local variations in the pH of rain and that some permittees may be required to take corrective action solely because of the pH of the rain, and not because of any pH problems at the site. As noted in the Fact Sheet, the new range essentially mirrors the state water quality standard. This contrasts with the benchmark for zinc which corresponds to a 90% probability of meeting water quality standards using an assumed dilution factor of five. We urge Ecology to consider applying the same analysis to pH to evaluate whether the range of "compliance" should be broader.

We support Ecology's proposal to use zinc as a surrogate for the presence of copper and lead. Because zinc is more commonly associated with stormwater than copper and lead and because zinc is usually present when copper and lead are present, applying source control and treatment BMPs for zinc will also control copper and lead.

S9. Reporting and Recordkeeping

Our next comment relates to requests from the public under S9.E, Access to Plans and Records. We are opposed to requiring permittees to supply the public with copies of all "plans and records" within 14 days of a request. Such plans and records can be voluminous and it is burdensome to make copies on such a short time frame. We are not opposed to supplying Ecology with such copies in that time frame because we are confident that Ecology will only make such requests when necessary and will be reasonable about which documents it requires. We do not have the same level of confidence with respect to private requests and are worried about repeated burdensome requests from the public.

This section should be revised to allow 28 days to provide copies and permittees should be allowed to charge a reasonable copying fee. Most importantly, permittees should not have to provide all "plans and records" which includes all records required by the permit. The list of such records is extensive as detailed in S9.B. It includes such things as "all equipment calibration records" and "any other documentation of compliance with permit requirements." The existing permit only requires provision of the SWPPP. The new permit should only require provision of the



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Mr. Jeff Killelea
July 15, 2009
Page 4

SWPPP and copies of any documents submitted to Ecology. The existing provision regarding confidential business information and security concerns should also be included in the new permit.

S4. Sampling

We support the changes in the draft that eliminate all the timing requirements for when samples must be collected. This will make it much easier for permittees to obtain valid samples and increase the number of samples reported to Ecology.

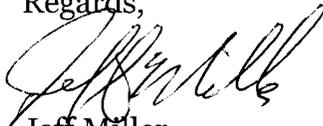
S3. Stormwater Pollution Prevention Plan

There appears to be a mistake in Section S3.B.4, Erosion and Sediment Control BMPs. It requires all facilities to implement and maintain sediment control BMPs such as detention and retention ponds and bioswales. This does not make sense on sites where there is no potential for soil erosion. The existing permit requires BMPs only if there is a "reasonable potential for soil erosion of a significant amount." This language should be retained in the new permit.

Drafting Concerns

Our remaining comments relate to drafting concerns. It appears that Section S9.E.3 is an alternative to S9.E.2(a) and S9.E.2(b). If so, and subject to the substantive comments above, it should be converted to S9.E.2(c) to make that clear.

It appears from the Fact Sheet that only new facilities or those undergoing redevelopment are subject to the Volume/Flow Control BMPs. It is unclear from the language of the permit, however, whether Sections S3.B.3.b.iv.2-4 apply to all facilities or just new ones and those having significant process changes. Section S3.B.3.b.iv should be revised to make it clear which facilities are subject to the Volume and Flow Control BMPs.

Regards,

Jeff Miller