NORTHWEST FOOD PROCESSORS ASSOCIATION

July 15, 2009

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

Re: Comments on Draft Industrial Stormwater Permit

Dear Mr. Killelea:

These comments are provided by the Northwest Food Producers Association (NWFPA). NWFPA represents Washington food processors that employ 27,000 people and pay annual wages that exceed $1 billion. During the past decade, food processing wages have steadily increased, providing one of the most stable sectors of employment in the state. Food processing is the third largest manufacturing employment sector in the state of Washington.[1]

The industrial community, including NWFPA and its member companies, has been actively involved in working with the Department of Ecology (Ecology) for a number of years to resolve issues with the reissuance of the Industrial Stormwater Permit (Draft ISWGP). As described below, the Draft Permit still has a number of requirements that NWFPA believes will create significant compliance issues and will be extremely costly. NWFPA does not believe that the costs and resources required by the Draft Permit are commensurate with the expected environmental benefits.

We urge the Department of Ecology not to issue this draft permit as written. General and topic specific comments are as follows.

General Comments

1. The overall benchmark and action parameters and levels far exceed the current EPA Multi Sector General Permit (MSGP) that has recently been issued, especially for the Food and Kindred Products SIC code (2037). Subpart U of the MSGP (which covers our industry) does not require benchmark monitoring for certain subsectors, and for subsectors that benchmark monitoring is required, the parameters are total suspended solids (2041-2048) and total suspended solids, BOD, COD and nitrate plus nitrite nitrogen (2074-2079).

   EPA believes that visual assessment is protective of the environment and provides a simple and cost effective way of determining stormwater compliance. As a minimum, for benchmark testing, we recommend that if benchmark values are not exceeded within the

[1] Source: "Economic Performance of the NW Food Processing Industry: Trends and Analysis from the Benchmark Data." Globalwise Inc., 2008.

first year of testing, subsequent testing for the remainder of the permit period is not required.

2. In our experience, the costs for implementation of the ISWGP program for a site far exceed previous estimates of the Department of Ecology. Consultant requirements for the initial site contour surveys and runoff evaluation alone have run thousands of dollars in excess of Ecology estimates.

3. The draft ISWGP itself is quite complex, especially for smaller sites. For such sites, the onsite personnel will have trouble coping with the various requirements.

4. For the draft ISWGP corrective action requirement (S8), if either the benchmark or action levels are exceeded, the results can produce an administrative nightmare, and can go as far as require AKART review and production of an Engineering Report. As a minimum, there needs to be a "quantitative qualifier" for small sites and small discharges, as the draft ISWGP only evaluates qualitative discharge levels.

5. Furthermore, S8 in the draft ISWGP essentially results in benchmark requirements being de-facto effluent discharge limits. The Fact Sheet (page 89) states that "benchmark values are not numeric effluent limitations," however S8 is structured in such a way that benchmark values are used as effluent discharge limits.

6. Condition S3.B.3.b.i.5.a states "All chemical liquids, fluids, and petroleum products shall be…" This requirement should be rephrased to clarify that it applies only to hazardous chemicals and petroleum products. Inclusion of the word "fluids" is particularly troublesome in that this could be interpreted as any liquid (e.g., drinking water).

7. Condition S3.B.4 requires all dischargers to construct both sediment control and filtration BMPs. This is excessive and inappropriate for many industrial facilities, particularly for facilities that have little exposed soil (as is typical of industrial facilities). Erosion and sediment control BMPs should be required only at specific facilities where excessive erosion or sediment generation is a problem.

8. Organization of Conditions S3.B.3 and S3.B.4 is confusing, with structural source control, treatment, and volume control BMPs in S3.B.3.ii through iv while erosion and sediment control BMPs are in S3.B.4.

<u>Appropriateness of Benchmarks</u>

1. BOD, TSS, COD, and nitrate plus nitrite nitrogen should not be required on all sectors of the food processing industry. The Multi Sector Group Permit for storm water only identifies sampling requirements for specific operations within the food kindred products. The sectors identified are Grain Mills Products (SIC 2041-2048) for TSS, and Fats and Oil Products (SIC 2074-2079) for BOD, COD, nitrate plus nitrite nitrogen, and TSS. The justification to require all food plants to conduct this special sampling is not described and the significance is undetermined.

Using a potential monthly BOD average discharge standard from a treated waste water municipal facility to apply to storm water discharges is inappropriate and technically without merit in the control of storm water discharges. The BOD/COD ratio of food processing wastewaters changes through the treatment sequence from untreated to fully treated. Applying a final treated water BOD/COD ratio to an initial raw storm water BOD/COD ratio and extrapolating across all segments of the food processing industry is incorrect. The BOD/COD ratio on an untreated stormwater discharge that is controlled by Best Management Practices would be more representative at a ratio of 0.7 to 0.6. This would lead to a BOD benchmark of 72 mg/L to 84 mg/L based upon the COD of 120 mg/L.[2]

2. Changing the fats, oils, and grease standard from 15 mg/L to a no visible sheen requirement is not recommended. Modifying the compliance standard to a less definable approach by visible observation is inconsistent with a good practice to define the impact. The standard for Fats, Oils and Grease should either stay the same at 15 mg/L, or be eliminated due to the significant compliance achieved in this area. No visible sheen determinations can be difficult and highly subjective throughout a 24 hour period and there can be (and often are) visible sheens created from non-petroleum hydrocarbon sources.

3. De-coupling the lead and copper sampling from the zinc benchmark excedance is an improvement and this proposed change is one that we support.

4. The fecal coliform benchmark based upon recreational waters is inappropriate and overly restrictive for water quality purposes and goals in the state. This coliform requirement would classify all waters as recreational in regards to storm water, even though discharge standards from municipal wastewater treatment facilities would be permitted on an ongoing basis to discharge significantly higher levels on fecal coliforms. Requiring untreated storm water discharges to meet standards beyond requirements for wastewater treatment facilities is without technical basis on how a system of best management practices is able to achieve requirements with microbiological materials that are naturally present in soil bacteria.

S7 Certified Stormwater Manager

S7 requires that routine monthly visual inspections be performed only by a Certified Industrial Stormwater Manager (CISM), Certified Professional in Stormwater Quality (CPSWQ), or Professional Engineer. It is impractical and unreasonable to require that every permitted facility either retain consultants for routine monthly inspections or provide the extensive and time consuming training to facility personnel necessary to obtain one of these certifications. Routine monitoring does not involve complicated determinations that would warrant such extensive

[2] See "Wastewater Engineering Treatment/Disposal/Reuse," 2nd edition, Metcalf & Eddy, Inc., McGraw Hill, page 98. The bar graph showing relative relationships between COD and BOD5 (among other tests such as TOC) and the graph fully supports the 0.7 to 0.6 ratio.

training requirements. The permit should be modified to allow facility personnel to perform routine monthly inspections.

S8 Correction Action Requirements – AKART

As discussed above, for the ISWGP requirement, S8, if either benchmark or action levels are exceeded, the results can go as far as require AKART review and production of an Engineering Report.

AKART (from WAC 173-201A-020 Definitions for Water Quality Standards for Surface Waters of the State of Washington):

"AKART" is an acronym for "all known, available, and reasonable methods of prevention, control and treatment." AKART shall represent the most current methodology that can be reasonably required for preventing, controlling, or abating the pollutants associated with a discharge. The concept of AKART applies to both point and nonpoint sources of pollution. The term "best management practices," typically applied to nonpoint source pollution controls is considered a subset of the AKART requirement.

AKART is usually incorporated into the Engineering Report and usually requires an extensive analysis of known practices and a determination of applicability, effectiveness and cost (both capital and operating) of each practice. For Industrial Wastewater Facilities, the Engineering report (WAC 173-240-130) is an extensive (and detailed) list of requirements that would need to be considered for each AKART process. For example, one NWFPA company recently went through an AKART analysis in an Engineering Report, 14 processes were analyzed in the initial report and Ecology requested an additional 2 process reviewed.

This document costs several thousand dollars and was used only for "screening" the AKART processes, a subsequent Engineering Report was required once the specific process was chosen. There is a tremendous amount of time, money and effort on both the industrial discharger and Ecology for review and approval process. There may be some instances when this is required, but the low benchmark and action levels for certain parameters, especially metals, will add a burden to a program where there will be little additional benefit to water quality.

S8 Corrective Action Requirements – Timeframes

S8 imposes unreasonably short timeframes for implementation of Level Three and Level Four corrective actions:

Level Three corrective actions involve design and construction of treatment facilities such as detention ponds, biofiltration systems, or constructed wetlands. Any such facility must be designed and determined to be AKART by a professional Engineer (typically Ecology only accepts AKART determinations from consultants). The process of securing funding, consultant selection, facility design, and construction must be completed "Immediately, but no later than the deadline specified in Table 6." Table 6 allows a maximum of six months from triggering a Level Three corrective action to completion of construction.

Design and construction of such treatment systems can be extremely expensive, potentially over one million dollars for a single facility, and often will require purchase of additional land to accommodate the treatment system because these systems require far more space than is available at many industrial facilities. Budget planning for such a large expenditure and securing the needed land would typically require at least a year before the design process can begin. A six month timeframe is unreasonably short for implementation of this requirement.

Level Four corrective actions are even more complex, expensive, and time consuming than the Level Three corrective actions discussed above. These can include completion of a receiving water study and/or design and construction of complex treatment facilities such as chemical treatment, electro-coagulation or ion exchange. The proposed new ISWGP allows only three months for complete implementation of a Level Four corrective action.

S8 Corrective Action Requirements – Termination of ISWGP

Paragraphs D.1.d. and D.1.e. provide for potential termination of coverage under the ISWGP by Ecology, which may force a facility to cease operation or be exposed to undue regulatory risk. The permit needs to be clear about providing an administrative path for challenging such a decision by Ecology. It would be helpful to have the ISWGP provide a clear path for an alternate permit, such as if Ecology determines that a general permit is not appropriate, that a facility has 90 days to apply for an individual permit and if that application is submitted within that 90 days that the facility retain coverage under the general permit until an individual permit is issued.

S13 Permit Termination

Condition S13 does not allow permit termination if a facility uses dry well, swales or other BMPs to contain all stormwater on-site. Such BMPs are well represented in Ecology's Stormwater management manuals; use of BMPs to eliminate discharges to surface water should be included in allowed conditions for a Notice of Termination. Condition S1A of the permit states "This statewide permit applies to facilities conducting industrial activities that discharge stormwater to a surface water body or to a storm sewer system that drains to a surface water body." It stands to reason that, if all off-site stormwater discharges are terminated through use of approved BMPs, the permit should also terminate.

NWFPA appreciates this opportunity to comment on the draft permit and we look forward to working with Ecology to further improve the stormwater permitting process in Washington.

Sincerely,

Craig Smith
Vice President