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Via email and 1st class mail

July 15, 2009

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

Subject: Washington State Department of Ecology
Revised Draft Industrial Stormwater General Permit (version
6/3/09)

Dear Mr. Killelea:

The J. R. Simplot Company (Simplot) is a privately owned agribusiness corporation with interests in the state of Washington ranging from food processing, cattle ranching, crop production, transportation facilities and wholesale/retail fertilizer operations. We have been following the initial drafts and subsequent public drafts of the revised Industrial Stormwater General Permit (ISWGP) and have provided comments in the past ourselves and through Northwest Food Processor Association (NWFPA), along with other involved parties in Washington.

Simplot has the following comments on the draft ISWGP.

Benchmarks

The overall benchmark and action parameters and levels in the draft ISWGP far exceed the current EPA Multi Sector General Permit (MSGP) that has recently been issued for the Food and Kindred Products SIC code (2037). The Draft ISWGP requires monitoring for all food product subsectors for a number of parameters: BOD₅, nitrate/nitrite, total phosphorus, turbidity, pH, oil sheen and total zinc. In contrast, Subpart U of the MSGP (which covers the food 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). Thus, for several subsectors, EPA

believes that visual assessment is protective of the environment and provides a simple and cost effective way of determining stormwater compliance. The draft ISWGP does not provide the justification to require all food subsectors/plants to conduct the sampling/analysis of the additional parameters. Simplot recommends that Ecology re-evaluate what testing is needed for the Food and Kindred Products sector based on the requirements of EPA MSGP.

As a minimum, for benchmark testing, we recommend that if benchmark values are not exceeded within the first year of testing, subsequent testing for the remainder of the permit period is not required. This recommendation is consistent with the EPA MSGP. For those situations where the benchmark values are not exceeded, Ecology has not provided any justification for why sampling beyond the first year of the permit term is beneficial.

Specific Benchmark Values

Several of the proposed benchmarks need to be reconsidered and revised by Ecology.

Turbidity

The draft ISWGP has a proposed benchmark for turbidity of 25 NTU. The Fact Sheet (page 73) describes the basis of this being “Ecology best professional judgment.” The Fact Sheet also has the following statement: “Based on field experience, Ecology staff determined that a stormwater discharge of 25 NTU or less will typically cause no water quality violation.”

The benchmark value of 25 NTU is relatively low; the benchmark value for turbidity needs to be based on what typical Best Management Practices (BMPs) can achieve (see discussion in section “Use of Benchmarks”). The value needs to be at least 50 or 75 NTU until a more technical basis is determined. Also, the statement by Ecology staff about a value of 25 NTU not resulting in water quality violations is misplaced. As also discussed in the section on “Use of Benchmarks” the original concept of benchmarks was they represent what could be achieved by BMPs; benchmarks should not be equivalent to water quality criteria nor effluent discharge limits.

Petroleum/Oil & Grease

The draft ISWGP has changed the benchmark from 15 mg/L to a “no visible oil sheen.” Ecology should remove the “no visible oil sheen” and return to a 15 mg/L value. Natural substances (such as wood) can produce an “oil” sheen on water; in fact on slow-moving waters in creeks and wetlands it is common to see such an “oil” sheen.¹ Having a numeric benchmark value provides an objective target.

¹ The “sheen” comes from the refraction of light off the water surface where the surface has a cover of organic substances. These substances don’t have to be “petroleum” related to produce

Zinc

Zinc is used as a surrogate parameter for copper and lead in the draft ISWGP. There are various sources of zinc (such as from tires). Data from stormwater monitoring in Washington has shown that typical measured values are much greater than the proposed benchmark. As described earlier and in the section "Use of Benchmarks", benchmark values need to be based on what BMPs can realistically achieve. The value proposed by Ecology is based on a theoretically calculated value to achieve a water quality standard. The benchmark value should be changed to be reflective of what BMPs can achieve.

Use of Benchmarks

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. S8 (as currently in the draft ISWGP) requires installation of controls to achieve the benchmarks. No engineering or technical studies have been done to justify the use of the benchmarks as effluent limits. As Ecology knows, effluent limits are derived through one of two processes: technology based or water quality based. Developing these limits is an extensive process; Ecology has not taken any process to relate these benchmarks to a technology standard. Instead, Ecology discusses that by exceeding benchmarks "the potential for a violation of water quality standards increases."

One of the major original concepts in the management of stormwater was that Best Management Practices (BMPs) would be utilized to control pollutants and that "benchmarks" would be used as a method to evaluate the effectiveness of the BMPs. Benchmarks were to be reflective of the appropriate BMPs for that industry sector. Ecology's process of increasing requirements for "controls" goes beyond using benchmarks as an evaluation method to one of actually being a discharge limit. Rather than using benchmarks as effluent discharge limits (***which is the practical effect*** of the draft ISWGP) and then assuming that exceeding those may cause a water quality criterion issue, it is more appropriate to use the benchmarks to evaluate whether appropriate BMPs are being utilized and if there is a water quality concern (as determined through proper water quality monitoring), then site and source specific limits can be put in place for both stormwater and point-sources to address the concern.

this effect and it is not realistically possible to differentiate a sheen caused by such natural organic substances and petroleum substances. Thus the statement in the Fact Sheet (page 74) that "This benchmark is based on Ecology's best professional judgment that stormwater associated with industrial activity with a visible petroleum oil sheen is likely to discharge cancer causing pollutants including, but not limited to benzene, metals, and polycyclic aromatic hydrocarbons" is not correct and needs to be removed. As an example, terpenes (which are present in wood) will produce this effect. Terpenes are not benzene, PAHs or metals.

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. Also, EPA's MSGP does not have such a requirement. Routine monitoring does not involve complicated determinations that would warrant such extensive training requirements. The permit should be modified to allow facility personnel to perform routine monthly inspections.

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.

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.

Costs

An issue that needs considerable deliberation is the cost to benefit ratio of this permit. These comments point out a number of requirements that increase costs without (in our opinion) any significance environmental value.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.
- Additional parameter testing.
- Additional monitoring required for benchmarks
- The need for a “certified” stormwater manager
- Corrective action requirements – AKART study. The development of an AKART document costs thousands of dollars. Simplot recently had an AKART document prepared for only a “screening” of potential 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.
- Corrective action requirements i.e., new controls, due to using benchmark values as *de facto* end of pipe treatment standards. As discussed earlier, the utilization of benchmark values as effluent discharge limits has not undergone any technical evaluation nor has there been any demonstration of the need for these limits to meet water quality standards.

² Simplot believes that Ecology has not provided any documentation as to the environmental benefits of requirements that have gone beyond the EPA MSGP or utilization of benchmark values as discharge limits.

If you have questions or comments, please contact me at
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Sincerely,



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C:

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