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Conversation: Comment on draft Industrial Stormwater General Permit
Subject: Comment on draft Industrial Stormwater General Permit

The Industrial Stormwater General Permit (ISWGP), Public Notice Draft, July 15, 2009

We submit the following written comment on behalf of Union Pacific Railroad Company (UPRR). This comment focuses on the ambiguity, contradiction and inconsistency in the draft ISWGP regarding required permit coverage for railroad transportation facilities (SIC 40xx, 41xx). We believe a revision to the draft permit is necessary to clarify the scope of required coverage for these facilities so it is clear and concise to facilities, Ecology field inspectors and the public.

Comment 1 - Section S1 Permit Coverage

Table 1 (Activities Requiring Permit Coverage) on page 7 of 71 in the ISWGP identifies SIC codes 40xx and 41xx for railroad transportation facilities. The table specifically notes the following activities which would require permit coverage:

Railroad transportation and vehicle maintenance shops (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication)

The November 2007 draft permit contained a footnote 3 to Table 1 which has now been deleted in the most recent draft permit. In fact, all footnotes to Table 1 have been deleted. Footnote 3 provided some clarification on the application of the permit coverage requirements s follows:

" Footnote *3. Only the specified activities (vehicle maintenance shops, equipment cleaning operations….) occurring at a facility require coverage under this permit "* (Emphasis added)

While Table 1 and the former Footnote 3 appear clear to have limited permit coverage for railroad transportation facilities to "only the specified activities", there are other parts of Section 1 and the accompanying ISWGP permit Fact Sheet that are confusing as to the required coverage. In addition, the deletion of Footnote 3 adds to the confusion. Other examples where the permit is not clear on the coverage are as follows:

> Section S1A Facilities Required to Seek Coverage under this General Permit - *Facilities engaged in industrial activities in Table 1 shall apply for coverage if stormwater from the facility discharges to a surface water body or to a storm sewer system that discharges to a surface water body….* (Emphasis added)

Industrial Stormwater General Permit Fact Sheet pg 57, S1. Permit Coverage does not discuss the deletion of the footnotes from Table 1.

Summary

Based on the above the permit is less clear and still appears to confuse the specific industrial activities that are included and excluded at a railroad transportation facility. It is also our experience during site inspections that Ecology's own Site Inspectors are also not clear on the required permit coverage. At an Ecology public meeting on the November 2007 draft ISWGP, the Ecology presenter implied that clarity would be provided in guidance documents that would be published later on. These documents have not yet been published. Often the intended Ecology guidance documents are never published, are guidance only and not part of the permit. For example, guidance documents intended to be published by Ecology for clarification of the Model Toxics Control Act (MTCA) Cleanup Regulations rule revisions (finalized in 2001) have not yet been completed. Overall, this leads to continuing confusion regarding required permit coverage. The opportunity is available now to make the permit language clear which would eliminate the need for a guidance document later on the issue. We are requesting that the draft permit language be modified so it is clear in advance of the permit going into effect this October 2009 that only the specific activities identified in Table 1 and the former Footnote 3 require permit coverage for railroad transportation facilities.

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