

**Industrial Stormwater General Permit Initiative
Work Group Meeting – October 17, 2008**

WORK GROUP ATTENDEES

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PUBLIC & INVITED ATTENDEES

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This meeting summary was prepared by Nick Spang and Kate Snider. It is based on notes and transcriptions of the flip charts used during the meeting to document the discussion. ***Concepts that will be useful to bring forward into potential recommendations for a new ISWGP are identified in bold italics.***

MEETING OBJECTIVES

- Review examples and case studies to provide context for developing recommendations.
- Review proposals for the permit program from Work Group members including a “straw dog” with draft numbers from Ecology.
- Discuss Benchmarks, Action Levels, Sampling, Adaptive Management & Enforcement.
- Identify potential recommendations for next iteration of the ISWGP.

CONTEXT FOR DISCUSSION

Examples of ISWGP Programs from Other States

Cal looked at other states to identify models for success and provided a [one-page handout](#). He gave an overview of his results so far and noted that he is partway through the process and will finish the briefing at the next meeting. Looking at permit programs generally, not at specific permits, he found that:

- Enforcement is important for a successful program, and that good enforcement is driven by passionate individual regulators.
- Staffing limitations for regulatory enforcement are universal and impede forward progress for permit programs.
 - * Some states are relying more on **fee funded positions** to augment staffing.
- There is a trend towards **industry-specific permitting**.
 - * Washington State is the most progressive with **specialized, industry-specific inspectors**.
- Environmental group initiatives contribute to forward progress in stormwater policy development.
- There are no effluent limitations in other state’s general permits.
 - * Other states rely on benchmark values & BMPs.
 - * Most other state permits refer to EPA multi-sector numbers for guidance on benchmark values.
- Washington is unusual in that it has **sector-specific permits** for boatyards, sand and gravel operations, etc.

Environmental Results Program (ERP) Overview

Kevin provided the Work Group with a brief examination of the [ERP program](#) across the country. Allison Chamberlain, from the Department of Ecology was also at the meeting. Alison is the Environmental Results (ERP) coordinator for the Department of Ecology’s Hazardous Waste Program, and is currently managing Ecology’s ERP pilot project for the auto body repair sector. Kevin summarized:

- 18 states have engaged in the program since 1988, including Washington.
- Washington State is using the ERP program for the dry cleaning and auto body repair sectors.
- ERP has a multi-media approach pertinent to stormwater compliance.
 - * A couple different states have looked into using the ERP for stormwater.
- **ERP focus is on BMPs to address multiple media (air, water, etc) that are prescriptive for business types.**
- The **ERP's checklists and workbooks** allow agencies to focus resources.
 - * **Checklists are a measurement tool.**
 - * **Checklists allow inspectors to focus on businesses out of compliance or outside permit coverage.**
 - Others can self track as they have a clear understanding of the measurement framework.
 - * Checklists allow for the linking of appropriate BMPs to conditions.
- **Compliance assistance is frequently tied to award programs**, which make it attractive to opt in.
 - * This is a missing component in Washington's ISWGP.
- Many benefits seem evident from the ERP model for stormwater permits
 - * **Gets businesses engaged with incentives**
 - * **Provides better tools with clear definitions**
 - * **Focuses inspection and enforcement**
 - * **Gets more businesses under permit**
- Ecology's use of ERP includes **pre and post inspections** to evaluate the efficacy of technical assistance.
 - * The first sample is chosen randomly, and the second is for tech assistance evaluation.
- ERP is based on multi-agency partnerships.
- Kevin recommends talking to Allison Chamberlin and Michelle Underwood as points of contact for the ERP in Washington.
- Is there an opportunity here of **coordination with municipal inspections?**
 - * Heather will be looking at this issue during the next meeting.
- In Washington the ERP is working with Phase I permit inspections, focusing entirely on the auto body repair industry.

Case Studies of Level 3 Source Control Reports

Jeff surveyed Ecology inspectors and reviewed Level 3 Source Control Reports between meetings and provided a series of [case study handouts](#) and an overview to the Work Group with his results:

- The six case studies represent what Ecology sees on the ground.
 - * The case studies show that Level 3 responses are generally inadequate
 - * Level 3 responses are typically not addressing treatment, as required by the permit. **Should be an enforcement step where treatment is considered.**
 - * The issues surrounding the current adaptive management scheme and action levels are complex and troublesome.
 - * There are examples of good work being done, resulting in significant reductions, but not reaching sampling results below action levels.
 - * Inspectors are inconsistent in their interpretation of what constitutes an adequate Level 3 response.

Work Group discussion:

- A key question is what should Ecology do if they have made a good faith effort at a level 3 response but permittees are still not meeting action levels?
- There is concern that BMPs and treatment based on previous benchmarks or action levels won't meet changing benchmarks as permit requirements may change in the future. Will significant permittee investments in treatment technologies be enough to meet future requirements?
- There is a lack of clarity about what is adequate or not, by Ecology inspectors and the permit, and consequently with the permittees.
- Lots of facilities in Level 3 never did an adequate Level 2 response.
- The ISWGP is complex and people want to comply but don't understand how – **they need clearer requirements and technical assistance.**
- Key industry concerns and confusion:
 - * Are BMPs AKART? If BMPs are effectively and consistently implemented, is the facility in compliance?
 - * Action levels are not supposed to be effluent limits...Ecology process and many permittees treat them that way.
- **There needs to be a stronger push for overall compliance with the permit and consistent, effective enforcement.**

PRESENTATIONS ON NEW PROPOSALS FOR THE ISWGP PROGRAM

WPPA Proposal Overview

Paul gave an overview of where the WPPA thinks the permit process should go. This went along with a [handout provided by WPPA](#). Paul shared the following WPPA positions with the Work Group:

- Ecology should maintain their presumption that BMPs will protect water quality.
 - * This is especially the case for “ordinary” stormwater.
 - * ***Other types of stormwater might need a special sector permit or an individual permit.***
- Ecology should stick with the current plan.
- Permittees should not monitor their way out of non-compliance, but should act their way out, by upgrading BMPs.
 - * Ecology should allow enough time to implement BMP upgrades.
 - * It is likely that the process could take 30 months for significant upgrades.
- ***The ISWGP should be much more specific about required BMPs.***
 - * Inspections should focus on inspecting proper and consistent installation of BMPs.
 - * ***If permittees still can't perform with new BMPs they should move to an individual permit.***
- Since there are multiple levels of BMPs, how should Ecology specify BMPs for particular situations?
- ***Permittees should specify their BMPs of choice in their SWPPPs.***
 - * ***Ecology should approve BMPs and SWPPPs.***
 - * Ecology needs to better define AKART and compliance.
- Important Issues
 - * What is “ordinary” stormwater?
 - * When is a permittee done and in compliance?
 - * What are the incentives?
 - ***Clearly define actions that permittees can take to be “done.”***
 - Permittees may choose to implement actions that would cost more and be more difficult but would have incentive of being quicker and more certain.
- For BMPs and Adaptive Management, the permit should address
 - * Levels and requirements
 - * Required BMPs
 - * Adaptive management process

- * Making BMPs prescriptive
- * What BMPs are approved and what are required
- * Using Workbooks
- For Inspection and Enforcement, the permit should look at
 - * How to focus resources
 - * Who and what to inspect
 - * Incentives and inspection and enforcement process
- The December meeting on permittee assistance will discuss recommendations for BMPs, Adaptive Management, and Inspection and Enforcement.

Ecology's "Straw Dog" Proposal

Bill Moore [provided a handout](#) and some background to the Work Group about Ecology's draft proposal for permit language. The draft language contained a list of assumptions, updated benchmark and action level values, and simplified sampling requirements. He began the discussion with Ecology's goals for the next iteration of the ISWGP:

- simplify permit conditions
- Do not make significant departure from current permit structure to minimize internal and external confusion
- Minimize confusion during the transition from the old permit to new by maintaining existing definition of Level 1, 2, 3, and making it clear that if a facility was in Level 2 when the previous permit expired, they are still in Level 2 when the new permit is issued.
- Add a Level 4 for added enforcement accountability

Work Group Discussion:

AWB has high hopes for the next iteration of the permit, including that:

- The permit will be less complex.
- There will be very clear markers defining when a facility is in compliance.
- Accountability for performance will be part of the permit.
- There will be more engagement by Ecology.
- Creative and innovative ideas will be incorporated in the permit.

Acceptance of Ecology's assumptions limits the ability to be innovative in that the timeline is too constrained and the level of resources is too limited. The question was raised as to whether those assumptions are real barriers or are there ways to work on greater creativity.

Ecology needs to have a draft permit for review by March or April. Ecology could extend that deadline if there is full agreement. Ecology can not guarantee any change to their internal

resource limitations, although the Work Group can discuss ways to potentially bring additional resources, beyond Ecology employees, to assist with permittee technical assistance and enforcement. Ecology will make the commitment to define and capture creative ideas that are beyond Ecology's current constraints. Those creative ideas can be considered for the next ISWGP draft, or for future permit iterations or the broader water quality program.

Permit recommendations including new and creative ideas will be captured in the Work Group notes and will be summarized and further discussed in the January meetings. Actual permit drafting will in large part wait until after that – in early 2009.

THE TECHNICAL BASIS FOR BENCHMARKS

The remainder of the meeting was a Work Group discussion about benchmarks, action levels, determination of compliance under the permit, and consequences if permittees can not meet Level 3 requirements.

Ecology Proposed Level 4 Requirements, Relationship to Reasonable Potential Analysis

In the Ecology "Straw Dog", Ecology was proposing a new Level 4 Corrective Action requirement in which following completion of Level 3 corrective actions, if sampling exceeds action levels during two quarters, permittees would be held to Action Levels as numeric effluent limits for the parameters of concern.

Significant concerns were raised about action levels being used per the Level 4 proposal as effluent limits without site-specific receiving water body characteristics being taken into account, see further discussion below.

Ecology's preferred approach is to set narrative standards while assuming that BMPs achieve AKART. That position is reflected in the straw dog. However, the framework must also satisfy water quality-based standards.

The question was asked about whether the action levels in the "Straw Dog" permit language have been evaluated relative to resultant potential to exceed water quality standards. 6415¹ requires performance of an analysis regarding whether permit requirements have a reasonable potential to violate water quality standards.

Ecology stated that the proposed Level 4 approach was one method to address reasonable potential to violate water quality standards.

Ecology stated however, that they ***could also potentially perform a new reasonable potential analysis on the proposed action levels before the new permit is finalized.*** Such an analysis would make general assumptions about receiving water body characteristics. This will be discussed further at the next meeting.

¹ Refers to [Engrossed Senate Substitute Bill 6415](#)

General discussion regarding proposed Level 4 response:

- Permittees should implement BMPs (as defined in western Washington stormwater manual and other resources, see below for more discussion). Benchmarks provide an initial indication for need for BMPs, action levels indicate need for additional BMPs and corrective actions
- Some group members expressed their opinion that if Level 3 corrective actions do not consistently result in stormwater effluent quality below the action levels, then the permit should trigger the need for an individual permit, rather than the proposed Level 4 effluent limit that does not address site-specific receiving water characteristics, etc.
- There was general agreement in the work group that **permittees who do not consistently achieve an action level following Level 3 corrective actions should be able to have the option of an individual permit OR the Level 4 response as proposed.**
- If a permittee knows right away that they will be at Action Level 4 they don't need to go through the entire general permit process for adaptive management.

Additional discussion regarding benchmarks, action levels and BMPs:

- The Turbidity benchmark is an example of the difficult relationship between benchmarks and technology. **Using Total Suspended Solids (TSS) as an alternative should be discussed further.**
- Is it fair to treat small and large discharges on the same water body in the same way? This question goes back to the discussion of mass at last meeting.
- There should be a **swift and heavy hammer for non-compliance with the permit.**
- **Permit requirements need to make it much more clear what is in and out of compliance.**
- Permittees need more technical assistance
- The role of BMPs in presuming water quality protection -
 - * **Permittees should have set BMPs to choose from**
 - * **Ecology should approve of the BMP choices**
 - * **And follow up with inspection and enforcement**
- Monitoring is used to determine if permittees have achieved the right levels or applications of BMPs. Action levels are an appropriate tool to check the effectiveness of BMPs
 - * It may be that **specific industries or business sectors should go straight to Level 3**
- **Mass and loading should be factored into the general permit.**
- The current permit is more focused on the paperwork chase than the environmental component, which is undervalued. Improvements could include

- * Focus on BMPs
- * **Feedback loop of sampling relative to action levels, that relates to the effectiveness of BMPs**
- * **A workbook with prescriptive BMPs** in place of a traditional SWPPP
 - learn from the ERP Auto body example above
 - See Pierce County activities in regards to BMPs
- * **Advice upfront from someone accountable/accredited to define BMPs**
- * **Make permittees accountable to faithfully and fully implement BMPs**
- * **Clear consequences, like swift fines**
- * Compliance determination based on multiple measurements
 - With the appropriate amount of time between measurements
- * **Addressing aerial deposition and assumed background concentrations**

SAMPLING

The straw dog sampling requirements were discussed.

- **Sampling procedures should focus on an effective adaptive management feedback loop regarding the effects of BMPs**
- The AWB suggested that a single data value shouldn't trigger corrective actions, but rather that it should be median value over a period of time.
 - * It is more representative of BMP performance and sample variability.
 - * However, with median values there is concern about the long time frame before action and the added complexity.
- The Puget Soundkeeper Alliance suggested monthly chemical samples
- **Sample based on a required frequency not on "Qualifying Storm Events."**
- This will remove "No Qualifying Storm Event" check box from DMRs
 - * "No Discharge" would remain applicable.
- The permit could **scale sample requirements based on acreage**
- The permit could **provide some leveling for the number of outfalls and samples**

Action Levels

- The numbers should be based on a permit-level Reasonable Potential Evaluation.
 - * They could be more accurate and useful if different based on location, to address significant differences in water body characteristics such as hardness
 - * Confirm procedures for reasonable potential evaluation, use of dilution
- **Does the permit need to define both Action Levels and Benchmarks?**
 - * **Or would 1 number be more useful and clear?**

- It would be less complex
- Using one number depends on how it is used and defined in the permit
- Should discuss further at the next meeting
- For future permit revisions, could consider a **watershed-based water quality trading program**.
 - * The acute number would equal the max concentration from a given facility
 - * Businesses would have the ability to buy or trade discharge potential
- **Mass-based limits could be considered**
 - * The requirement for flow estimates would allow for an estimate of loading.

ADAPTIVE MANAGEMENT

The recommendations around adaptive management included:

- Continue with current level 2 and 3 responses in the new permit for continuity, unless there is clearly a better way.
- Consider Level 4 requiring a receiving water study (see the last draft permit). See Level 4 discussion above
- Better clarify the difference between response levels 2 and 3
- The adaptive management process should be clear every step of the way.
 - * The permit should spell out what, exactly, should happen at each point.
 - After evaluation, then what?
- Right now there are complex benchmarks and action levels.
- Pictures and flow charts might help make the process clear.
- From the WPPA straw dog: adaptive management should lead permittees to “act your way out” not “monitor your way out” of the corrective action process.
- Timing and consequences need to be swifter.
 - * Through enforcement the real implementation of Action Level 2 might work to bring permittees under compliance
 - It may not be necessary to make permittees go directly to individual permits.
- Consider a requiring a “Level 3 Report” instead of an “Engineering report”

HOMEWORK

- Place Inspection, Enforcement, and Incentives on the agenda for the next meeting
- All: Evaluate if the new EPA multi-sector general permit has useful ideas or is influential for this ISWGP initiative.
- National Academy of Science report may also be useful
 - * Ecology will send link

- Ecology: prepare to education the Work Group on how a Reasonable Potential Evaluation is done at the permit level.
- Evaluate opportunities for coordinating the ISWGP with municipal inspections under the municipal permit.

TIMING IN 2009

- Mid February: Ecology will submit an early draft of the new permit to the Work Group
- Late February: potentially reconvene the group back together for a final evaluation.
- April: draft released for formal public comment.