

**Industrial Stormwater General Permit Initiative
Work Group Meeting – November 13, 2008**

WORK GROUP ATTENDEES

Bill Moore	Washington Department of Ecology (Ecology)	b moo461@ecy.wa.gov
Jeff Killelea	Washington Department of Ecology	jkil461@ecy.wa.gov
Ken Johnson	Weyerhaeuser, for the Association of Washington Business (AWB)	ken.johnson@weyerhaeuser.com
Sue Joerger	Puget Soundkeeper Alliance (PSA)	sue@pugetsoundkeeper.org
Marilyn Guthrie	Washington Public Ports Association (WPPA)	gutherie.m@portseattle.org
Heather Kibbey	City of Everett, Association of Washington Cities	hkibbey@ci.everett.wa.us
Cal Noling	StormwaterRx Consultants	caln@stormwaterx.com
Gary Smith	Independent Business Association	iba@isomedia.com
Ross Dunning	Kennedy Jenks Consultants	rossdunning@kennedyjenks.com
Kate Snider	Floyd Snider (Facilitation)	kate.snider@floydsnider.com
Nick Spang	Floyd Snider (Facilitation)	nick.spang@floydsnider.com

PUBLIC & INVITED ATTENDEES

Mel Oleson	Boeing	mel.oleson@boeing.com
Alan Sugino	Boeing	alan.k.sugino@boeing.com
Paul Fendt	CDM	fendtps@cdm.com
Lincoln Loehr	Stoel Rives	lcloeher@stoel.com
Katie Kolarich	Puget Soundkeeper Alliance	katie@pugetsoundkeeper.org
Ross Stainsby	Hart Crowser	ross.stainsby@hartcrowser.com
Bridget Baker-White	Smith & Lowney, PLLC with the Puget Soundkeeper Alliance	bridgetbw@igc.org
Grant Nelson	Association of Washington Business (AWB)	grantn@awb.org

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

- As follow up from 10/17, discuss Action Levels vs. Benchmarks and the process of conducting a Reasonable Potential Evaluation for proposed targets.
- Continue review of industrial stormwater permit examples from other states.
- Discuss ISWGP Enforcement and Incentives.
- Examine administrative issues, continuity between old and new permits.

BENCHMARKS AND ACTION LEVELS

The meeting opened with the discussion of Benchmarks and Action Levels. The Work Group concluded that:

- Using two numbers can add unnecessary complexity and is confusing for permittees.
- The key issue is what actions the target values trigger.
- Benchmarks and Action Levels are indicators, not effluent limits – need to clarify in previous meeting documentation.
- Small business use the benchmarks as a “warning light”
- ***There is support for using only one number in the permit***
 - * ***But it is very important how that number is used***
- Assume compliance with permit if appropriate BMPs are implemented, which achieve AKART. Action Level provides indicator that next level of BMPs or treatment is necessary.

Reasonable Potential Evaluation

Jeff [provided a handout](#) on a proposed reasonable potential evaluation (RPE) of the new permit target values. Ecology wants a high degree of confidence that the new target values will be protective of water quality. ***The purpose of the RPE would be to assess the proposed permit targets (action levels and/or benchmarks) for their potential to exceed water quality criteria using a statistical simulation.***

Ecology proposes to hire Herrera to conduct the evaluation using a [Monte Carlo statistical method](#), consistent with the Herrera evaluation used for the 6415 Report in 2007.

Issues being considered include:

- The factors to include for the evaluation, and how best to define these factors for a general rather than site specific evaluation. Factors are defined in the Ecology handout.
- The permit targets to be evaluated, and their function in the adaptive management process.

- The use of dilution factors.
 - * In site-specific reasonable potential evaluations, a dilution factor is used that addresses behavior of the discharge in the receiving water body.
 - * Ecology needs to clarify use of dilution factors in light of the Pollution Control Hearing Board (PCHB) ruling for the boatyard permit.
- Small businesses have a concern regarding the differences in mass versus volume between dischargers.
- Using conservative requirements because the ISWGP applies to many facilities.
- Potential use of different hardness values for east and west side of the state
- The RPE output would need to be fully transparent regarding the variables utilized and their sensitivity to the outcome.

The Work Group supports Ecology moving forward with the generic reasonable potential evaluation, as long as Ecology clarifies the role and applicability of the PCHB decision and provides output that is transparent as to use of variables.

INCENTIVES

Marilyn discussed incentives and provided an [overview handout from the WPPA](#). Kevin is also going to be talking about incentives at the next meeting on the topic of the permit's implementation support structure.

- ***The WPPA handout is a brainstorm of incentive recommendations***
- Defining items that could be punished and rewarded, a potential point system, the concept of a ***3rd Party Stormwater Permit Assessor***, incentives/rewards for consistent or "above and beyond" compliance, ideas for ***meaningful incentives for businesses***.
- These ideas are well documented in the WPPA handout.

Ken provided a [handout from AWB](#) about incentives and enforcement, and provided a summary of AWB's position:

- ***Recommendations are well documented in the AWB handout.***
- Ecology should be ***review SWPPPs as a condition for permit approval.***
- ***Full implementation of the SWPPP should define compliance with the permit (=AKART).*** Non-compliance with SWPPP should = mandatory penalty.
- ***Presumptive BMPs by industry type should be specified***
 - * The permit should ***provide incentives through the ability to reduce sampling frequency***, etc. if consistent attainment of water quality standards.
- ***Use the [safe harbor concept](#) regarding technical assistance.***
 - * If request for technical assistance and good faith effort to comply, then no enforcement action. Learn from successful L&I program.

Gary agreed that the Safe Harbor statute in the Washington Industrial Safety and Health Act (WISHA) is very beneficial to small business.

- WISHA: [RCW 49.17 250 \(2\)](#)
- See also HB 1010, an [act relating to electric utility planning](#) with incentives for participation.
- The balance between incentives and enforcement is critical.
 - * ***If a business sends in DMRs as specified in the SWPPP and is consistently below target levels it should be able to reduce sampling frequency.***
 - * [EnviroStars](#) type tools are effective for many folks.
 - * The goal should be to focus Ecology's time appropriately on non-compliance and facilities that are not in program.
- Effective deterrents to non-compliance are bad PR and threats of a lawsuit

The General Permit should be focused on “ordinary” industrial stormwater

- Ecology should ***move more complex facilities to individual permits*** to make the general permit more simple and appropriate to majority of small industries.
 - * In individual permits effluent limits are defined for site-specific circumstances.
 - * One option is to isolate and support specific sectors.
 - There is merit in ***moving to sector permits rather than directly to individual permits. Prescriptive BMPs can be defined by sector.***

COORDINATION WITH MUNICIPAL INSPECTIONS

Heather started the conversation on ISWGP coordination with municipal inspections by noting that the different agencies can coordinate on the certification of inspectors and that people are concerned regarding wasted resources from overlap between the different agencies. The Work Group discussed the issue:

- ***Frequent coordination between municipal and Ecology inspectors*** is worthwhile.
- There should be ***Ecology, municipal, and third party certification available*** for the ability to review and approve SWPPPs, inspect BMPs, and provide technical assistance.
 - * The different organizations would need a clearinghouse for coordination on who's doing what.
- The IBA has coordinated with municipalities and found that effective coordination between entities is a problem.
 - * Coordination is important for the clarity of requirements and to reduce conflict.
- Certification at the local government level for Ecology and local government monitoring requirements would be good
 - * Multi-party inspections are OK but sometimes are overwhelming and conflicting.

- Compliance with the current ISWGP is a real problem.
- ***Ecology and municipal agencies should support incentives like [EnviroStars](#) and the [Clean Marina Program](#), which provide incentives for reducing discharge volumes and above and beyond compliance.***
 - * The constant attainment section of the program already provides an incentive by reducing monitoring frequencies.

ENFORCEMENT

The Work Group discussion regarding effective enforcement included the following:

- Don't let mandatory penalties become a "pay to pollute" option.
- For inspections, the more people on the ground the better.
 - * One issue to address is the significant amount of training needed for inspectors.
- ***Certification of third parties (consultant, non-profit, municipal inspectors, business people) to review and approve SWPPPs, and to perform inspections is recommended***
- Ecology needs to acknowledge and document that compliance with the permit is important and meaningful.
 - * Permittees need a clearer message regarding importance of compliance.
 - * ***There should be more frequent and clearer communication between Ecology and permittees.***
 - * The seriousness of non-compliance should be emphasized.
 - The perception is that if permittees haven't heard anything, then it's okay.
- Currently there is a lack of training and understanding on the part of owners and their employees.
 - * ***Self-certification*** is a potential solution
- A key issue is societal (background) chemicals and how to address them in the permit.
- Another issue to review is how to ***certify SWPPP updates.***
 - * This would go along with ***defining in the SWPPP exactly what is required for BMPs.***
 - * Accountability comes from the "responsible official" making the certification as to whether the permittee has lived up to the SWPPP or fallen short.
 - * Some Work Group members expressed concern that SWPPPs are too qualitative.
- Target levels serve as proof as to whether BMPs are working.
 - * Target levels should be appropriate for specific sectors or types of industries.

- Consultants can assist in defining requirements and act as responsible officials if third party certification
- Certified third parties can provide assistance to permittees to establish the SWPPP and delineate implementation requirements.

APPEAL OF THE GENERAL PERMIT RE-ISSUANCE

The Work Group briefly discussed the current appeal of the re-issuance of the ISWGP. Ecology stated that it should not affect the ISWGP initiative, and the Work Group generally agreed.

EXAMPLES OF ISWGP PROGRAMS FROM OTHER STATES (CONTINUED FROM 10/17)

Cal finished his briefing from the review of industrial stormwater permits from other states. For this meeting he looked at information from the national Institute of Scrap Recycling Industries and attended the [California Metals Coalition Stormwater Monitoring Group's](#) annual mandatory training to get an end-user perspective.

- California has established a group permit for 40 industrial businesses.
 - * The permittees are coordinated by a group manager.
 - * The program contains incentives for involvement
 - If a business is part of the group, monitoring frequency is reduced for that permittee.
 - The group provides consultation on BMPs, monitoring and audits.

ADMINISTRATIVE ISSUES

The Work Group discussed administrative issues including continuity between the current and new permit, the shifting of certain permittees to individual permits, the merits of sector permits, the ramifications of EPA's the new multi-sector general permit for the ISWGP, and the report to the legislature on effluent limits for dischargers to 303(d) listed waters.

Continuity

- Ecology goal is to transition permits in such a way that the transition is fair and permittees don't lose ground.
- Ecology hopes to simplify the new permit but not confuse permittees with radical change of nomenclature.
 - * Nomenclature and target levels should be the focus for a smooth transition as well as data management
 - * Clear data management so that both permittees and Ecology can track progress and status.
- ***For the transition, permittees should move into a parallel status, whether they were at level 2 or 3, and not go backward or gain additional time for compliance.***

- However, if the existing system is not working, it should not be maintained simply for purposes of maintaining continuity.
- Many facilities don't know what level of compliance they are in and for the new permit they need a way of clarifying their starting point.
 - * The level issue can be clarified with a fact sheet and/or website summary.
 - * There should be a process for permit holders to clarify their information.
 - There are people at level 3 that haven't done level 2
 - * There should be overlap between the new and old requirements while Ecology is developing new materials.
- ***For permittees who don't submit DMRs or are not sampling, Ecology should consider how to insert them into the new process.***
- Ecology plans to ***remove the requirement for "qualifying storm event."*** to make sampling requirement more clear
- A potential penalty for not sampling should be considered - to ***classify the missed sampling the same as an exceedance.***
- Ecology's transaction costs for penalties are high and the agency is working on changing that by ***allowing inspectors to issue tickets and returning to confirm compliance.***
- Ecology has ramped up civil penalties for construction permits.
 - * There are now certified professionals who conduct more inspections with higher penalties and clearer requirements.
 - * Consider for ISWGP?

Individual and Sector permits

The Work Group suggested that Ecology could review compliance data for different SIC codes to identify the higher risk industries to place under sector permits.

Ecology has already carved off a number of higher risk sectors from the general permit. There was a question about whether Ecology is considering moving certain industries directly to level 3 corrective actions. Ecology could analyze data to define the needs for a new sector permit.

EPA multi-sector general permit

The Work Group asked whether there are legal requirements from the new EPA multi-sector general permit that must be accommodated in the new ISWGP. The short answer is no. The Code of Federal Regulations (CFRs) apply as overarching rules for Washington, but the new EPA permit is only applicable to tribal and federal properties, as well as a handful of states not including Washington.

Ecology's report to the legislature regarding dischargers to 303(d)-listed water bodies

Ecology noted that it will send the report to the Work Group before submitting it to the legislature. The report will address businesses that are out-of-compliance on May 1 and coordination with new permit. There is parallel work to refine the list of facilities affected, based on refined the parameters used in the initial list (eg sediment triggers) and focusing on those parameters that relate to stormwater compliance per early discussions at the work group.

The Work Group suggested that Ecology add a statement about its lack of resources to legislative report and suggested fee increases to cover the job required by the legislature.

Boeing Model Development

Mel discussed Boeing's efforts to produce a demo version of a computer model that could be used to selecting tailored target discharge values for facilities, based on site specific factors like location, mass, etc.

- The model would include a reasonable potential estimate calculation of likelihood for target values to exceed water quality criteria.
- Boeing is developing the model with Kennedy Jenks assistance, and plans to make it available to Ecology for consideration.
- The model would result in a range of concentrations that would be protective water quality and emphasize the work required to protect water quality.
 - * It helps focus on facilities with more serious impacts.
- Cal mentioned to not forget about infiltration as an overall water resource goal

NEXT STEPS AND ADDITIONAL DISCUSSION ITEMS

- Prepare for the January meetings where the Work Group will discuss documented recommendations.
 - * Nick and Kate will compile the recommendations from previous meeting notes and work group member input.
 - * Preview and overview the initial recommendations compilation at December meeting
- Ecology provides draft legislative report for Work Group review.
- Ecology will contract for assistance to perform the Monte Carlo simulation and evaluate the proposed permit target values numbers.
- It would be helpful to compile and discuss real-world information regarding the practicality and cost of meeting low target values to the agenda.
 - * Focus on the effectiveness of BMPs, and relationship of BMPs and treatment technologies to discharge values
 - Nick will coordinate with members regarding bringing forward information.

- Marilyn will look at the airport's effectiveness with BMPs.
 - * Further discuss the SWPPP review concept and AKART, provision of presumptive or sector focused BMPs. Consider a "SWPPP wizard" concept.
- Boeing and Kennedy Jenks will continue working on their potential modeling tool. Mel will send out a further description with a potential to show a prototype at a future meeting.