ORIGINAL

Department of Ecology
Water Quality Program
FEB 04 2005

POLLUTION CONTROL HEARINGS BOARD
FOR THE STATE OF WASHINGTON

PUGET SOUNDKEEPER ALLIANCE;	)	
	)	No.
Petitioner,	)	
	)	NOTICE OF APPEAL
v.	)	
	)	
DEPARTMENT OF ECOLOGY,	)	
	)	
Respondent,	)	
	)	

1. Identity of appealing parties and representative.

The appealing party is

Puget Soundkeeper Alliance
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The representative of the appealing party is

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2. Identification of other parties.

The respondent in this appeal is the Washington State Department of Ecology.

3. The decision under appeal.

This is an appeal of "The Sand and Gravel General Permit," a National Pollutant Discharge Elimination System and State Waste Discharge General Permit, issued on January 5, 2005 A copy of this permit is attached.

4. Short and plain statement showing grounds for appeal.

Appellant considers The Sand and Gravel General Permit to be unlawful and unfair because it does not meet the requirements or intent of the federal Clean Water Act, applicable regulations promulgated by the Environmental Protection Agency, Washington State water pollution control law, and Ecology's regulations. In violation of these various laws and regulations, The Sand and Gravel General Permit fails to ensure compliance with water quality standards for turbity, oil sheen, other pollutants, some discharges to waterbodies that will have Total Maximum Daily Loads (TMDLs), and from some types of waste streams. The Permit also fails to require implementation of AKART and includes unclear, unlawful, inconsistent, and unfair monitoring, application, and reporting requirements. The Permit also includes unlawful and unfair provisions for effective modification of permit terms without adherence to permit modification procedures.

5. Statement of facts.

The Sand and Gravel General Permit authorizes stormwater, mine dewatering water, and industrial wastewater discharges from more than 900 mining operations and concrete and asphalt production facilities across the State of Washington.

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The Permit authorizes the discharge of stormwater associated with industrial activities, as defined at 40 C.F.R. § 122.26(b)(14). The application designated for use to obtain coverage under the Permit in Conditions S1.C. fails to require all of the information specified by 40 C.F.R. § 122.26(c)(1).

Condition S2 of the Permit establishes an effluent limitation for discharges of turbidity to surface water at 50 NTU. The water quality criteria for turbidity are as follows: for Class AA and Class A waters, turbidity shall not exceed 5 NTU over background turbidity when the background turbidity is 50 NTU or less, or have more than a 10 percent increase in turbidity when the background turbidity is more than 50 NTU; for Class B and Class C waters, turbidity shall not exceed 10 NTU over background turbidity when the background turbidity is 50 NTU or less, or have more than a 20 percent increase in turbidity when the background turbidity is more than 50 NTU; and for Lake Class waters, turbidity shall not exceed 5 NTU. WAC 173-201A-030. The Permit's 50 NTU effluent limitation is identified in the Fact Sheet as a technology-based effluent limitation. The Fact Sheet states that this effluent limitation will be sufficient to "meet water quality standards in most discharge situations," effectively admitting that it will not be so in all anticipated permittee discharge situations. The Permit and this effluent limitation are not sufficient to ensure that discharges do not cause or contribute to violations of water quality standards.

Condition S3.A. fails to ensure that discharges will not cause or contribute to violation of water quality standards when discharges are of pollutants of concern to impaired (303(d)-listed) waters and waters with TMDLs. S3.A.3. requires both new and existing facilities to comply with TMDL wasteload allocations, but specifically limits this duty to TMDLs that are completed

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before the date of permit coverage. S3.A.5. prohibits increases in loadings of pollutants of concern to 303(d)-listed waters, but only "until a wasteload allocation is assigned from a completed TMDL." As a result, discharge loadings of pollutants of concern to 303(d)-listed waters may not be increased until a TMDL is issued, at which point a permittee is relieved of such duty under S3.A.5, but need not meet the requirements of the TMDL under S3.A.3.

In addition, the monitoring and effluent limitation conditions of the Permit are inadequate to ensure that discharges do not cause or contribute to violation of water quality standards in 303(d)-listed waters.

Condition S2 of the Permit identifies the effluent limitations for oil sheen as "visible sheen." It is unclear whether this effluent limitation prohibits any visible sheen or authorizes a visible sheen or otherwise. It is also unclear from the Permit whether this effluent limitation applies to sheen in the receiving waters, as indicated by Condition S3.A.2., or in the discharge as may be inferred from Condition S2.

The Permit's monitoring requirements for oil sheen are contradictory and unclear. The table in Condition S2 indicates that monitoring is "daily", although it does not specify what is to be monitored (discharge or receiving waters or otherwise). Condition S4.A.3. requires visual inspection of the point of discharge to surface water at least once a month when discharges occur. Condition S4.D. requires visual monitoring for oil sheen at surface water discharge points each day that equipment operates.

Condition S4.A.4. provides for modification of permit requirements to reduce the frequency of turbidity monitoring from twice a month to once a quarter without following permit modification procedures required by state and federal regulations.

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Condition S7.C. allows discharges of process wastewater from existing maintenance shops with inadequate monitoring requirements, without implementation of AKART, and without requirements sufficient to ensure that such discharges will not cause or contribute to violations of water quality standards. The Fact Sheet includes no description or discussion of these maintenance shop discharges or these requirements.

Condition S8. is unclear in that it states that permittees are "responsible for the proper operation and maintenance of any facilities or systems of control ...." From this language, it is unclear whether failure to so properly operate and maintain would constitute a permit violation. This language is inconsistent with applicable regulations requiring permit language to provide that "[t]he permittee shall at all times properly operate and maintain all facilities and systems of treatment and control ...." E.g., 40 C.F.R. § 122.41(e).

Condition S9.A.6.c. allows stormwater best management practices in a permittee's stormwater pollution prevention plan to be "consistent with" "[o]ther equivalent stormwater management guidance documents approved by Ecology" as an alternative to Ecology's Eastern and Western Washington Stormwater Management Manuals. Such "other equivalent stormwater management guidance documents" are not specified or identified in any way, and neither is the mechanism or standard for approval of such manuals. This condition also allows substantive changes in the requirements for BMPs and SWPPPs without adherence to permit modification procedures.

Condition S10 requires stormwater inspections only at active sites, excluding inactive sites, while S4.C. requires stormwater monitoring at inactive sites that meet certain criteria for limited but potentially pollution-generating activity and stormwater discharges. S10 is

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inconsistent with federal regulations requiring inspections at least annually. 40 C.F.R. § 122.44(i). It is also inconsistent with federal regulatory requirements for certification of stormwater pollution prevention plan and permit compliance. Id.

7. Relief requested.

Appellants request that the Board order the Department of Ecology to modify The Sand and Gravel General Permit to be consistent with applicable legal requirements in response to the above-listed defects.

Dated this 3RD day of ~~January~~ February, 2005.

SMITH & LOWNEY, PLLC

By: _____
Richard A. Smith, WSBA #21788
Attorneys for Petitioner

CERTIFICATE OF SERVICE

I, Matt Fontaine, declare that I had this Notice Of Appeal served by Federal Express next day delivery on the Department of Ecology, 300 Desmond Drive, Lacey, WA 98503, on ~~January~~ FEBRUARY 3rd 2005.

_____
Matt Fontaine

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