

[Received at 6:12 p.m. PDT, September 8, 2010.]

Dear Ms. Bakeman:

The Building Industry Association of Washington (BIAW) appreciates the opportunity to comment on the revised Construction Stormwater General Permit (CSGP). BIAW is the state's largest trade association, with over 10,500 company members in the land development and building trades, many of whom routinely seek coverage under the CSGP.

Since the CSGP's expansion to smaller sites in 2005—along with greater requirements and restrictions—BIAW members have done their best to properly apply and comply with the permit. It has not been easy. Understanding and correctly implementing the best BMPs on a variety of sites with unique infiltration and run-off demands is sufficiently challenging for the average small-site contractor. However, adding to this challenge is the paperwork heavy application, monitoring, and termination process. It is this process that should be revised in the current permit. Unfortunately, Ecology has seemingly not chosen to do so.

The following comments include recommendations for changes to streamline the permit process, saving Ecology and applicants significant time and money.<sup>1</sup>[1]

### **Page 8, Application**

BIAW would like Ecology to adopt an eNOI system, similar to the EPA. This will save significant time and resources, including paper and Ecology FTEs. If Ecology does not plan to adopt an eNOI system, please explain why.

### **Page 9, Public Notice**

Publishing public notice twice in a paper of general circulation is extremely expensive, unnecessarily burdensome, and questionably valuable. Publishing the recommended template in the Tacoma News Tribune costs \$750, for a total of \$1500. This is an incredible cost. And in this day and age of online papers and notices, is it the most effective means to reach its intended audience? Ecology should remove the paper requirement and allow online paper notices.<sup>2</sup>[2] Under the EPA's eNOI system, an applicant can go to work within seven days of the NOI. This is a fresh breath of efficiency.

### **Page 11, Ground Water Discharges**

Ecology has changed the language such that it suggests that permit holders must sample groundwater discharges to ensure that they “meet the terms and conditions of this CSWGP.” Please clarify whether Ecology is asking applicants to sample groundwater.

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<sup>1</sup>[1] Notably, Ecology wants to double its water quality account, which is entirely paid for by applicants. Because applicants cannot afford the “Chevy” program that Ecology wants, even in a good economy, Ecology should look to cost-saving efficiencies within the permit that will serve to fund other important needs, like enforcement.

<sup>2</sup>[2] At a recent meeting of the Wastewater Permit Fee Taskforce, Bruce Wishart claimed that People for Puget Sound previously supported this common-sense change.

### **Page 13, Inspections**

The inspection frequency remains unnecessarily burdensome, especially for sites with continuous discharge (e.g., designed drainage and dewatering sites). Inspecting a site one a week is sufficient to determine whether BMPs are functioning properly, particularly because most permittees will visit the site when raining to get an accurate site assessment and sample. Please strike “any” and further revise such that the weekly inspection *should* be within 24 hours of a rain event.

### **Page 14, Reliable Contact**

Please give examples of what Ecology determines to be “other reliable method[s]” of contact. BIAW is concerned that this subjective determination exposes the inspector to liability when he or she cannot be contacted.

### **Page 17, Numeric Effluent Limit**

As Ecology is well aware, the EPA just withdrew its 280 NTU effluent limitation, stating “the Agency has concluded that it improperly interpreted the data and, as a result, the calculations in the existing administrative record are no longer adequate to support ...” the rule. BIAW believes the 280 NTU numeric effluent limit should be similarly withdrawn from the CSGP. If the EPA is lacking sufficient data to support the limit, then Ecology also lacks credible data needed to support and defend the limit. The CSGP and Fact Sheet do not provide a rationale for the 280 NTU beyond that it is a new requirements of the EPA.

BIAW was also dismayed that Ecology applied the new requirement immediately, disregarding the phased approach adopted by the EPA. Regardless of how few sites have recorded discharges over 280 NTU in the past few years, the possibility of breaching the limit brings uncertainty, particularly as broad low impact development requirements are imposed in the next few years. Numeric limits invite anti-growth CWA litigation, which in turn fosters uncertainty and plagues development financing.

### **Page 25, SWPPP General Requirements**

The new language in B.1.e (“a *contingency plan* for additional treatment and/or storage of stormwater that would violate the water quality standards if discharged”) creates a requirement that the applicant design two SWPPPs—the primary SWPPP and a back-up SWPPP. The previous language suggested that the permit holder have an “action plan”—how he or she will respond if the BMPs are not functioning properly.<sup>3[3]</sup> The new language suggests that the permit holder should have a second SWPPP at the ready with different BMPs to respond to unknown conditions and/or situations. This is the problem. Only when the site is active, rain events are occurring, and BMPs performing can the permit holder determine how to revise the SWPPP to meet run-off requirements. Otherwise, the permit holder is wasting time and money designing a “contingency plan” (secondary SWPPP) based on speculative events or conditions.

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<sup>3[3]</sup> Oregon has a similar “action plan” approach. Permit holders are required to take immediate action, not prematurely design a plan in the absence of a problem.

### **Page 28, Stabilize Soils**

Please define what “if needed” means under 5.c. Will the permittee’s decision based on the weather forecast be supported regardless of actual weather and outcome?

### **Page 33, Termination**

The language has been tweaked to clarify what already was: a permittee can terminate the permit (without a transfer) upon sale to the homeowner or upon selling all lots. However, this still leaves the standard developer in a lurch. If the developer has wants to sell a few lots—and desperately needs to do so in this economic climate—but the spec builder(s) or homeowner(s) will not accept transfer, the developer is forced to maintain permit coverage, cost, and liability even though he is not responsible for erosion practices on the site. The responsibility (and enforcement consequences) should be on the builder or homeowner to accept transfer or obtain the permit. Please change the language to allow termination once the developer transfers operational control of the site, lot, or property.

### **Page 41, Bypass**

Please define and/or include the “design criteria” listed under G26.A.

### **Economic Impact Analysis**

Ecology correctly concludes that the “general permit has a disproportionate impact on small business.” For sites disturbing 1 – 5 acres, Ecology has determined it will cost \$4,130 to comply with the permit. ***Yet Ecology has omitted the most expensive parts of the permit from its analysis.*** As in the last permit and supporting EIA, Ecology omits any costs from federal base-line requirements, including SWPPPs and minimum BMPs, pursuant to WAC 173-226-120. However, this WAC and Ecology’s omission are inconsistent with RCW 19.85, which is designed to consider all costs to small business of a proposed rule. Ecology voluntarily accepted administration of the CSGP from the EPA, and with it all minimum requirements from the EPA. Thus, Ecology is responsible for accurately assessing and reporting the entirety of costs to a permittee in applying and complying with the CSGP.<sup>4[4]</sup> Only with this accurate assessment can regulators and legislators make reasoned cost-benefit decisions—the intent of RCW 19.85.

Of the listed mitigation measures, their scope and effectiveness are limited, and they are heavily outweighed by the cost of the permit. Some of the previous relief measures are no longer, such as phased-in sampling. The erosivity waiver is so limited that very few residential construction sites can use it in Western Washington. Applying and qualifying for the extreme hardship and small business waivers is difficult for the average contractor. Ultimately, Ecology has failed to provide actual cost-saving features, such as online NOIs, fully functioning eDMRs, limited DMRs where appropriate (in months with no discharge), expanded erosivity waivers, and fewer (or online) public notices.

BIAW requests that Ecology revise the permit to remove unnecessary and redundant compliance costs. In addition, BIAW would like to see Ecology make a concerted effort to

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<sup>4[4]</sup> Ecology cannot remove minimum requirements to mitigate costs, but by its own numbers, Ecology acknowledges there is at least \$4,310 that can be cut.

alleviate the burden of this permit on small business with greater exemptions and fewer paperwork requirements.

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