



DOUGLAS COUNTY
TRANSPORTATION & LAND SERVICES

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September 10, 2010

Sharleen Bakeman
Permit Comments
Department of Ecology, Water Quality Section
PO Box 47600
Olympia, WA 98504-760

Sent via e-mail: sharleen.bakeman@ecy.wa.gov.

Subject: Construction Stormwater General Permit – new Draft 2010 (July 21, 2010)

Dear Ms. Bakeman,

While it appears that the DRAFT permit has been available for review since July 21, 2010, information was discovered inadvertently while looking for other information on the Construction Stormwater web-page. It is frustrating that information that this DRAFT was available was not provided to permitted NPDES jurisdictions or to developers, contractors and agencies that have been or are currently covered under a Construction Stormwater General Permit.

Local jurisdictions, including Douglas County, Chelan County, Wenatchee and East Wenatchee have been continuously working with the Department of Ecology Water Quality Section on development and implementation of Stormwater Management Programs to comply with the NPDES Phase II Municipal Stormwater Permit. One of the elements of the municipal permit is that the permittee obtain and comply with the Construction Stormwater Permit for projects. It is frustrating that the Department of Ecology did not provide **outreach** to Municipal Stormwater Permit holders, at least to the same degree that the Department of Ecology expects Permit holders to provide **outreach** to the public as part of the required stormwater program. Would it be acceptable to the Department of Ecology if outreach to the public, including businesses, and developers, were limited to posting of information on a web-site? The Department of Ecology recently held listening sessions in Eastern Washington regarding the process to updated the Eastern Washington Permit. This was an opportunity were those affected by the update of the Municipal Permit could have been notified that the DRAFT of the updated Construction Stormwater Permit was available.

While separate, the Construction Stormwater General Permit and the elements within the Stormwater Management Program required by the NPDES Phase II permit do overlap. This overlap has created confusion for the development community, the local jurisdictions and for Ecology staff. The relationship between the Construction Stormwater Permit and the Municipal

permits should be evaluated and clarified during the process of updating BOTH the Municipal Stormwater Permit and the Construction Stormwater Permit.

It appears that the Department of Ecology Construction Stormwater Permit requirements and timeline exceed federal requirements. EPA provided for implementation in phases, depending upon the size of the activity, the DRAFT does not phase in implementation.

The following comments apply to the DRAFT Notice of Intent (NOI) application form.

- Clarification is requested regarding who is qualified to prepare and submit the NOI. Some of the information, including existing site conditions – contaminated soils/groundwater and Discharge/Water Information may require input from a professional in order for the information provided to be accurate, consistent and valuable. What is the intent of the Department of Ecology with regard to preparing the NOI? Keep in mind that while requiring information of a technical nature should warrant the use of a professional that is capable of providing accurate information, this would also increase the time and costs associated with preparing the NOI.
- Based upon feedback from the development community and experience attempting to coordinate (local agency/state agency) with the Department of Ecology, the requirements associated with the State Environmental Policy Act are frustrating and confusing. The length of the process is problematic to local jurisdictions attempting to prepare for construction during the bidding process in an effort to begin construction as soon as possible after a contract is awarded. Waiting until a contract is awarded to begin the processing of an NOI, (this is when the contractor is identified) is not reasonable and does not serve the public interest in completing projects in a cost effective and timely manner. The same concerns regarding timing associated with SEPA have been expressed to the County from the development community.
- There are problems with determining the SEPA lead agency. In many instances activities which trigger the need for a Construction Stormwater Permit begin prior to issuance of a permit by the local jurisdiction. The Department of Ecology has asserted that the local jurisdiction is the lead agency. Ecology is the agency issuing the permit, as such Ecology would be the lead agency. Inconsistent information from Ecology and local agencies has frustrated the development community. Conveyance of inconsistent information from the Department of Ecology and the local jurisdiction on this issue impacts the successful implementation of the required local stormwater program. It creates a sense of mistrust from the public and development community as local jurisdictions attempt to work with the public and the development community through education and outreach in order to implement required stormwater program elements.
- While there are not changes proposed to the public notice requirements, this is an area that should be evaluated. The public notice requirement associated with the Construction Stormwater NOI and the SEPA process are costly. Evaluation of the intent and benefits of the public notice process should be conducted and should include analysis of any other options for providing public notice in an alternate manner which could be more timely and cost effective. This may include but not be limited to posting of the NOI's on an Ecology hosted web-site.

- It appears that the NOI and the permit are inconsistent with regard to Electronic Discharge Monitoring Reports (WebDMR). The NOI states that the reports must be submitted electronically, while the permit itself provides for a waiver from electronic submission. While electronic submission may not be problematic for local agencies, this requirement could be seen as an additional burden upon a small operator or individual, if they do not have the ability meet the electronic submittal requirement they would be subjected to yet another process in order to comply with the Construction Stormwater Permit.

Another area of frustration with the current and the proposed DRAFT permit is the Termination and Transfer of Permit coverage process. The Termination process to date has been inconsistent. Clearly defined criteria for determination of stabilization to allow for Termination should be identified. Additionally guidance and/or procedures to aid developers to transfer of coverage to the purchasers of parcels created by development activities covered under a Construction Stormwater Permit should be included as part of the permit. Transfer of coverage has been problematic for the development community, this is an area where the Department of Ecology could achieve successful implementation of the permit by providing guidance and education to those impacted.

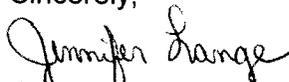
The Economic Impact Analysis has identified many components associated with obtaining and complying with the Construction Stormwater Permit. The labor cost of \$32.50 per hour is lower than what would be anticipated for projects (both public and private) in the Douglas County area. Requesting input from public and private developers in Eastern and Western Washington regarding the costs associated with compliance with the existing Construction Stormwater Permit would provide a realistic basis for evaluating the costs of implementing additional requirements in the DRAFT document. This analysis should address situations where monitoring and compliance is addressed by the permit holder and where monitoring is conducted by professionals that specialize in providing these services on behalf of permit holders.

The public education and outreach associated with the comment period for the DRAFT Construction Stormwater General Permit has not been sufficient to ensure that those impacted by the permit have been provided the opportunity to thoroughly review and comment on the permit. Additionally due to the relationship and overlap between the Construction Stormwater General Permit and the NPDES Phase II Municipal Stormwater Permit it would seem that since both permits are at a point that an update and re-issuance is required, these updates should be coordinated to ensure consistency and to provide clarity for issuance and compliance.

I look forward to working with Ecology on both the Construction Stormwater General Permit and NPDES Municipal Stormwater Permit processes in order to meet the objectives of complying with state and federal regulations in a manner that efficiently serve the needs of the community.

If you have any questions or need any additional information, please feel free to contact me.

Sincerely,



Jennifer Lange, P.E.
Assistant County Engineer