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September 10, 2010

Sharleen Bakeman
Water Quality Program
Washington Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

RE: Comments on the Draft Construction Stormwater General Permit

Dear Ms. Bakeman:

The Washington State Department of Transportation (WSDOT) appreciates the opportunity to provide comments on the draft Construction Stormwater General Permit (Draft). WSDOT has a strong interest in working with the Washington Department of Ecology (Ecology) because the Construction Stormwater General Permit (CSWGP) substantially impacts WSDOT policy and construction operations. WSDOT appreciates the challenges of preparing a CSWGP that satisfies federal and state laws, Pollution Control Hearings Board decisions, and the many stakeholders.

Attached to this letter, WSDOT comments have been organized into the following sections:

- **Priority Concerns** (High importance to WSDOT)
- **General Comments** (Considering the draft documents as a whole)
- **Specific Comments** (Specified line-by-line)
- **Draft Fact Sheet Comments** (Specified line-by-line)

Thank you for the opportunity to provide input regarding the draft permit and fact sheet. Please direct questions regarding these comments to Elsa Piekarski, WSDOT Statewide Erosion Control Lead at 360-570-6654 or piekare@wsdot.wa.gov.

Sincerely,

Megan White, P.E., Director
Environmental Services Office

MW:ep

Enclosure

PRIORITY CONCERNS

S4.C. Turbidity/Transparency Sampling Requirements

Priority Concern (reference #PC.1):

The new language throughout this subsection requiring CESCL certification will be ineffective for meeting the presumed objective of improving the quality of samples collected by permittees. WSDOT disagrees with the language (p 34, lines 5-6) of the Fact Sheet, that "CESCL courses provide hands-on training on transparency, turbidity and pH sampling and analysis". WSDOT Erosion Control Lead, Elsa Piekarski, recently attended a CESCL certification course and received no meaningful training on water quality sampling. Other evaluations of these courses report inconsistent quality, permit inaccuracies, and broad generalizations that will be harmful to WSDOT procedural administration. Another certification requirement will not assure that quality samples will be collected and reported.

Note on Concern:

All WSDOT personnel that collect samples are required to take an 8 hour Construction Site Erosion and Sediment Control course, which details approved sampling methods. An agency or industry specific course, such as the internal course developed by WSDOT, is more appropriate and effective than a generalized CESCL certification course because:

1. It can include important agency or industry specific detail about how to comply with other permits and certifications. CESCL courses do not cover the complexities associated with overlapping permits and requirements.
2. Course curricula can be developed using Ecology guidance. WSDOT's internal course was developed using the WSDOT Highway Runoff Manual which was approved as equivalent to the Ecology stormwater manuals and utilizes the same sampling procedures. Internal courses can change easily as requirements change. Permittees that have taken proactive measures to develop quality training courses should not have to abandon effective programs.
3. There are many other factors involved in Ecology receiving quality data from permittees that should be considered. Our internal course covers important agency specific procedures that would be missing in a generalized CESCL certification course, including how to:
 - a. Record the data properly in the Water Quality Monitoring database.
 - b. File Environmental Compliance Assurance Procedure (ECAP) reports.
 - c. Get the Contractors to take action using agency Standard Specifications.
 - d. Develop and update the TESC (SWPPP) plan.
 - e. Manage the unique nature of linear projects.
 - f. Access ongoing support from agency Erosion Control Leads and regional environmental contacts.

Recommendations:

WSDOT appreciates the need for requiring QA/QC sampling methods in the CSWGP and the importance of quality data. WSDOT has three recommendations:

- Provide language in the CSWGP that will outline an approval process for getting other training approved as equivalent.
- Audit current CESCL courses to make sure they actually provide “hands-on training on transparency, turbidity and pH sampling and analysis” as mentioned in the Fact Sheet.
- Allow a phasing-in period so permittees can prepare for this requirement by getting personnel certified and developing CESCL equivalent training.

Priority Concern PC.2:

On August 13, 2010, EPA filed an unopposed motion with the U.S. Court of Appeals for the 7th Circuit, asking the court for an order vacating portions of EPA’s final rule that includes the turbidity numeric effluent limitation. On August 24, 2010, the federal appeals court granted the EPA’s request for remand of said portion of the stormwater construction rule so the agency can determine whether it needs to revise the discharge limits for construction sites. As such, there is no need for the CSWGP to incorporate the 280 NTU numeric effluent limit at this time as EPA will pursue further rulemaking on this topic over the next 18 months. Our comments here will focus on the Ecology Draft language as currently written, and are offered for consideration in case Ecology proposes to modify the re-issued permit in the future to include a numeric limit.

(p 17, Line 19-20) The Draft language “Permittees with 10 or more acres of disturbed land at any one time must comply with a 280 NTU numeric effluent limit...” does not provide detail about applicability on linear construction projects.

The 280 numeric effluent limit unnecessarily competes with the existing 250 NTU benchmark. An exceedance benchmark coupled with a numeric effluent limit makes the implementation of this permit difficult, especially for projects where the acreage disturbed is always changing.

Note on Concern:

There are numerous examples that make the applicability of the numeric effluent limit unclear. If 10 acres or more of disturbed soil has been determined as the threshold for elevating the risk of turbid discharges, the 280 NTU limit should only apply where 10 acres or more of disturbed soil are draining and discharging to the same receiving water body.

Estimating when the 10 acre threshold is met will be difficult to determine in the field. The linear nature of WSDOT projects means projects can extend for several miles, and include multiple corridors and drainage basins.

The numeric effluent limitation does not take into account any efforts by the permittee to comply with the adaptive management requirements in the Draft, including eliminating a discharge (p 17, line 17).

Recommendations:

Remove the numeric effluent limit from the Draft.

If removing the numeric effluent limit is not possible, WSDOT recommends removing the 250 benchmark phone reporting trigger on projects that are required to meet the 280 NTU limit, to minimize reporting process confusion.

Further consideration about the unique nature of linear projects needs to occur. If the numeric effluent limit remains in place, WSDOT recommends an appendix providing detail pertaining to linear construction applicability.

Also, increase overall clarity about the applicability of the numeric effluent limitation. For example, tie the 10 acre threshold to actual discharge locations with language such as (p 17, lines 19-21) "Permittees with 10 or more acres of disturbed soil at any one time must comply with a 280 NTU numeric effluent limit at all points from the site affected by the 10 acres of soil disturbance that discharge into any on-site surface waters of the State".

Priority Concern PC.3:

(p 17, Line 26-29) Using averages to measure compliance is problematic because it provides a disincentive to quickly respond to and stop a high turbid discharge. Using averages may result in reliance upon calculations to demonstrate compliance rather than improved erosion/sediment control practices. Also, the applicability of using averages to evaluate compliance is questionable. It is currently unclear if the intent is to use the average of all measurements taken in a day, or if the intent is to derive separate averages for each discharge location.

Recommendations:

Remove the numeric effluent limit from the Draft.

If removing the numeric effluent limit is not possible, WSDOT recommends including language that will allow for contingency plans that work to immediately eliminate discharges over 280 NTU. Develop a condition similar to that used in S4.C.5.b.v.d. (p 17, line 17) which will provide an alternative to the averaging method. This will allow permittees a chance to eliminate discharges before a violation occurs. Options that allow flexibility will encourage a working relationship between Ecology and permittees. Also, WSDOT recommends clarifying how the averaging is done; either a combined average or separate averages for individual discharge locations. Lastly, provide information about how to report the numerous sample measurements and averages in the Discharge Monitoring Reports.

S4.D. pH Monitoring: Sites with Significant Concrete Work or Engineered Soils

Priority Concern PC.4:

(p 18, line 7) There is no guidance for determining a "curing period".

Note on Concern:

WSDOT has developed pH monitoring policy and procedures around the *Instructions and Frequently Asked Questions for Completing the DMR Forms* guidance document provided by Ecology. The document provides guidelines for a curing period. The data provided by WSDOT referenced in the Fact Sheet (p 37, line 28) was used in developing the CSWGP pH monitoring triggers and also supports the information provided in the guidance document stating a 30-day curing period.

Recommendation:

Incorporate into the CSWGP the guidelines in the *Instructions and Frequently Asked Questions for Completing the DMR Forms* document.

Priority Concern PC.5:

(p 48, Line 43) The definition for 'significant concrete work' has new wording, "over the life of a project". The concern with the new definition is that it changes the meaning of the phrase 'significantly' and that it will devalue the effort currently taken by WSDOT to encourage phasing project construction. The intent of the added wording is unclear because the body of the Draft does not contain this new definition, nor are there any evident changes in requirements regarding pH monitoring.

Note on Concern:

Current WSDOT policy utilizes Ecology guidance given in the *Instructions and Frequently Asked Questions for Completing the DMR Forms* document. Number 8 in this document includes the following language which WSDOT has incorporated into its pH monitoring procedures:

For poured concrete, the 1000 cubic yard threshold is met if a single or multiple concrete pours on the site results in greater than 1000 cubic yards of concrete curing at the same time. Typical curing time is less than 30 days. If individual concrete pours smaller than 1000 cubic yards occur more than 30 days apart, pH sampling is not required unless required by Ecology order.

These instructions provide clear guidance which could no longer be used under the new definition. The new definition makes Ecology's stance on pH unclear and inconsistent.

Recommendations:

WSDOT recommends returning to the old definition and incorporating the aforementioned language from the DMR guidance document, which provides specific parameters about the curing period and pH monitoring.

Also, the definition in the appendix should be consistent with the wording for 'significant concrete work' throughout the Draft and the Fact Sheet. Also see comments PC.4 and SC.15.

GENERAL COMMENTS

General Comment (Reference #GC.1):

There are noticeable changes that improve readability and WSDOT appreciates Ecology's effort to make the CSWGP 'reader friendly'.

General Comment GC.2:

There are several definitions in the Draft Fact Sheet that are missing in the Draft.

General Comment GC.3:

A definition of "process water" is needed because personal interpretations of the term hinder WSDOT's ability to consistently manage this kind of water (see SC.38 below for a possible definition). While the current or proposed CSWGP does not regulate process water, Ecology inspectors use the term and provide guidance on how it should be managed. Whether a definition is included in the proposed CSWGP or not, WSDOT requests clarification on the relationship of process water to the CSWGP, possibly in the Fact Sheet.

The following information is intended to provide detail about the current misunderstanding and need for clarification:

- It is WSDOT's understanding that stormwater which contacts curing concrete is not process water, although it may become high pH stormwater. Ecology Inspectors have told WSDOT personnel that stormwater can become process water. The same confusion surrounds ground water.
- It is WSDOT's understanding that infiltration of high pH water can be used as a treatment BMP. WSDOT uses this method in designated areas, which are chosen based on site specific criteria including soil characteristics, depth to ground water, location of sensitive areas and other factors.
- Contractors need different disposal options that are appropriate for site conditions and the volume of process water being managed.

- WSDOT personnel have reportedly been told that neutralization and infiltration is not allowed by language in the draft permit. It is not clear to WSDOT if that is accurate.
- The Stormwater Management Manual for Western Washington does not provide clear or consistent instruction on this issue. For example, BMP C252 makes no distinctions between slurry, process water and wastewater, while BMP C152 does make a distinction between slurry and process water.
- Ecology guidance has acknowledged the use of infiltration as a treatment BMP. The Draft Permit (p 30, line 38) includes "upland land application" as a treatment BMP for process water from washing activities. The Fact Sheet also mentions in several places that infiltration can provide water quality improvement benefits (p 49, lines 44-46; p 50, lines 8-9; p 53, 5-7).

General Comment GC.4:

WSDOT encourages Ecology to continue to develop additional guidance. With such a detailed CSWGP, guidance from the regulatory agency is vital for permittee compliance. Examples, templates, checklists, guidelines and definitions are solid foundations for effective permit implementation and will minimize consistency problems associated with misused terminology and the human element of translation and interpretation.

SPECIFIC COMMENTS

S1. PERMIT COVERAGE

S1.B. Operators Required to Seek Coverage Under this General Permit

Comment (reference #SC.1):

(p 28, lines 4-15) In the Draft Fact Sheet there is language describing a special condition pertaining to ground water which is not included in the Draft Permit. It is unclear if this special condition was inadvertently left out of the Draft Permit. Add Special Condition, S1.F Coverage for Discharges to Ground Water, to the permit.

S1.D.6. Prohibited Discharges

Comment SC.2:

(p 7, lines 4-14) The term 'wastewater' should be defined in the Draft so there is no more questions about what it includes or does not include. Wastewater is a term often used in association with sewage waste and adds confusion to the Draft. While the term 'process water' is not used in the Draft, the term is used by the construction industry and Ecology

Inspectors. Wastewater and process water are not always the same thing and definitions are needed. Also see comments GC.3 and SC.33.

Recommendations:

Define 'wastewater' as it pertains to the CSWGP.

Add 'process water' to the Prohibited Discharge special condition and provide a definition in the appendix. See comment SC.33 for possible definition.

S1.E. Limitations on Coverage

Comment SC.3:

This section does not include language about sanitary sewer coverage that is consistent with the new language (p 15, lines 16-18) which limits reporting requirements to Ecology.

Recommendation:

Format problem: Add language which will state that discharges to a sanitary sewer, covered by a permit obtained from the owner of the facility, are not covered by the CSWGP.

S2. APPLICATION REQUIREMENTS

S2.A.1.b. Notice of Intent/Timeline

Comment SC.4:

There is no space for the permittee to include a billing address on the draft Notice of Intent application form. Consider adding an area for this information on the form to prevent misdirected mail.

S4. MONITORING REQUIREMENTS, BENCHMARKS, REPORTING TRIGGERS AND LIMITS

S4. Table 3. Summary of Primary Monitoring Requirements

Comment SC.5:

(p 12, Table) The last row in the table could be improved. The language in the lower left quadrant and the associated superscript ¹ could be interpreted differently than the language (p 17, line 19) which states "...10 or more acres of disturbed land at any one time..."

The empty fields in the table are confusing.

The weekly pH sampling column says "required" which is misleading because there are thresholds involved.

Recommendations:

Add "at any one time" to the above referenced language in Table 3.

The superscript ¹ should be changed to say "size of soil disturbance is calculated by adding all areas currently affected by construction activity".

Change the language in the weekly pH sampling column to "required if thresholds are met".

Include "N/A" in the currently empty fields for weekly sampling with transparency tube and pH.

S4.B. Site Inspections

Comment SC.6:

(p 12, lines 14-16) The new language requiring permittees to report changes in CESCL personnel adds another notification trigger and will require training to be implemented. The current requirement of having CESCL personnel information updated in the SWPPP is sufficient (p 13, lines 26-27) and the new reporting requirement is unnecessary and onerous.

Recommendation:

Consider removing the new reporting requirement.

Comment SC.7:

(p 13, line 16) The new language "where construction activities are occurring" is misleading and should be consistent with the language on p 12, line 11.

Recommendations:

Change the language to "in all areas disturbed by construction activities, all BMPs, and all stormwater discharge points".

It would also be helpful to add information pertaining to areas within the project limits that do not require inspections such as areas that have not been disturbed yet and areas that have been fully stabilized.

S4.C. Turbidity/Transparency Sampling Requirements

Comment SC.8:

(p 14, Line 32) the Draft language in S.4.C.2.a., "when it enters waters of the state", and similarly (p 15, Line 9) in S.4.C.3.a., "where it enters any on-site surface waters of the state", have the potential to cause confusion. The language is inconsistent and will create misunderstanding. The language can be interpreted to suggest in-stream sampling, which does not capture the true turbidity measurement of a discharge.

Recommendation:

Remove the language “when it enters” and “where it enters any” and replace both with “prior to entering any”.

Comment SC.9:

(p 16-17) The benchmark values are not adequate based on the readings given by standard turbidimeter models. The CSWGP requires certain action if the turbidity is 26-249 NTU, but it is not clear what the permittee is required to do if the turbidity sample is 25.5 NTU or 249.5 NTU.

Recommendation:

Adding tenth values to the benchmark ranges (i.e. 25 to ‘25.0’ and 26 – 249 to ‘25.1-249.9’) will minimize ambiguity.

Comment SC.10:

(p 16, line 26) Condition “i” states “Telephone the applicable Ecology Region’s Environmental Report Tracking System (ERTS) number within 24 hours, in accordance with Condition S5.F.” Not providing numbers may lead to permittees not reporting. Please include the ERTS numbers for all Ecology regions in an appendix.

Comment SC.11:

(p 17, lines 11-16) This language continues to create confusion about the difference between benchmarks and water quality standards. If benchmarks are used as indicators of compliance, that principle should be consistent throughout the CSWGP to prevent confusion.

The language also creates confusion because it can be interpreted to require in-stream sampling and the CSWGP provides no guidance for in-stream sampling. In-stream sampling methods can vary greatly depending on site specific factors and often there are access and safety concerns that need to be considered.

Recommendation:

Remove option c. (p 17, lines 11-16).

Comment SC.12:

(p 17, lines 18-32) The Draft language consistently uses the term “numeric effluent limit” while the language associated with Table 4 (p 16) uses the term “Maximum Daily Discharge Limitation” and neither is defined in the appendix. We suggest selecting one term, using it consistently to prevent confusion, and defining it in the appendix.

Comment SC.13:

(p 17, lines 24-25) Guidance is needed for determining the 2-year, 24-hour storm event. Select a source for weather data and provide that information in the CSWGP or Fact Sheet.

S4.D. pH Monitoring: Sites with Significant Concrete Work or Engineered Soils

Comment SC.14:

It will add clarity to include language in S4.D.1 that will tie pH sampling requirements to specific discharge locations. For example "Permittees with significant concrete work must sample for pH at all discharge points where stormwater may be affected by the concrete work".

Comment SC.15:

Make sure the definition for "significant concrete work" is consistent in the body of the Draft, the definitions appendix, and the Fact Sheet. Also see comment PC.5.

S5. REPORTING AND RECORDKEEPING REQUIREMENTS

S5.D. Recording Results

Comment SC.16:

It is unclear what the difference is between the "individual who performed the sampling or measurement" (p 19, line 31) and the "individual who performed the analyses" (p 20, line 1).

Note on Concern:

It will generally be the same person doing these actions and they should be performing analysis immediately after sampling. This is especially important in the case of pH because temperature changes in the sample can change pH measurements.

Recommendation:

Please add clarification or combine the elements into one requirement which states "The first and last name(s) of the individual(s) who performed the sampling, measurement and analysis".

S9. STORMWATER POLLUTION PREVENTION PLAN

S9.D.4. Install Sediment Controls

Comment SC.17:

(p 28, lines 4-5) This language could be made more meaningful if the importance of the action was clarified. For example, "Where feasible, design outlet structures that withdraw impounded

stormwater from the surface to avoid discharging sediment that is still suspended in the water column”.

S9.D.5. Stabilize Soils

Comment SC.18:

(p 29, lines 1-5) Consider breaking the sentence into smaller sentences as it is hard to comprehend.

S9.D.9. Control Pollutants

Comment SC.19:

(p 30, line 25) The wording is redundant and grammatically awkward, remove “at a minimum”.

Comment SC.20:

(p 31, lines 11-14) The third sentence of the paragraph does not appear to provide any new information from the first sentence. Rewording redundant statements will create confusion. Remove the third sentence.

S9.D.10. Control Dewatering

Comment SC.21:

(p 31, line 20) The language in S9.D.10.a, which states that dewatering water with “characteristics similar to stormwater runoff”, is vague and the applicability is unclear. The Fact Sheet comments on the difficulty of characterizing stormwater discharging from construction sites (p 7, lines 29-31; p 18, lines 27-28). If Ecology acknowledges the difficulty in characterizing stormwater, expectations should be provided.

Recommendation:

Provide guidance for characterizing dewatering water.

S9.D.11. Maintain BMPs

Comment SC.22:

(p 32, lines 7-9) See comments below for S.10 Notice of Termination. Some biodegradable BMPs are used for temporary erosion control but are designed to be left in place. Exceptions to this requirement should be considered when biodegradable BMPs are used.

S.10. NOTICE OF TERMINATION

Comment SC.23:

(p 33, line 13-14) The language "removed all temporary BMPs" does not take into consideration new biodegradable BMP technologies that are becoming more favorable. Compost socks, wattles, berms and blankets are often used for temporary erosion control with the intention of being left in place. Leaving these BMPs in place can improve soil quality and encourage vegetation to grow. Also, removing such BMPs after they are impregnated with vegetation is very disruptive and can create erosion problems. Ecology has acknowledged the value of biodegradable BMPs and has allowed some BMPs to be left in place on a case-by-case basis. If guidelines were in place for the allowance of certain BMPs to be left in place at final stabilization, it would save time and money for permittees and produce a better environmental result.

Recommendation:

Add language to S.10.A.1 which states "BMPs made of fully biodegradable materials can be left in place as part of final stabilization".

G2. SIGNATORY REQUIREMENTS

Comment SC.24:

(p 34, lines 13-14) The signatory requirements are too restrictive. Applying G2.A.4 to WSDOT would require the region administrator (the principal executive officer of the region) to sign all Notices of Intent for coverage under the CSWGP. This level of signature authority is not necessary.

Recommendation:

The signatory requirement should read "...by either a principal executive officer...or their designee." which would allow a project engineer or region environmental manager to sign the NOI.

APPENDIX A – DEFINITIONS

Comment SC.25:

Format problem: Define 'discharge' or 'discharge point'. Suggested definition: discharge point is the point at which water is released from the construction site, beyond the project limits, or into waters of the state.

Comment SC.26:

Define the term or terms 'disturbed' or 'soil disturbance'. Suggested definition: soil disturbance includes all areas currently undergoing clearing, grading, grubbing and/or excavation, or any other construction activity that disturbs the surface of the land or its vegetative cover.

Comment SC.27:

(p 46, lines 26-28) The definition for 'final stabilization' should be made more clear so permittees can prepare better for Notice of Termination requirements.

Recommendation:

Define a percentage requirement for vegetated cover, which would also provide a quantitative expectation that permittees can prepare for. Ecology inspectors have used various percentages for vegetated cover when inspecting sites, usually in the range of 70% - 80%, which seems like a reasonable requirement to have in the CSWGP.

Comment SC.28:

(p 31, line 37) The term 'outfall' is used only once in the Draft. The term outfall has a legal meaning and is defined in 40 CFR 122.26. The definition for 'outfall' listed in the Draft is not consistent with other legal definitions of the term. The terms 'discharge' and 'discharge point' are used throughout the Draft but not included in the definitions.

Recommendation:

Remove the definition for 'outfall', and replace with a definition for 'discharge point', and use "discharge point" consistently throughout the permit and associated documents.

Comment SC.29:

(p 30, line 32) Define 'secondary containment' as a required component to control pollutants, and describe what structures, materials, sizing or practices would constitute adequate secondary containment for on-site fueling tanks.

Comment SC.30:

(p 49, line 10-12) The definition for 'stabilization' is not necessary and may add confusion with the defined terms 'final stabilization' (fully stabilized) and 'temporary stabilization'. The definition for 'stabilization' should be removed.

Comment SC.31:

The definition for 'temporary stabilization' would benefit from some detail about expectations so permittees can better evaluate when it has occurred. The underlined language should be

added to the current definition: “Seeding alone is not considered temporary stabilization until germination has occurred and vegetation covers the soil”.

Comment SC.32:

(p 20, line 24) Any new terms used in the Draft associated with the numeric effluent limit should be included in the definitions appendix. The term ‘upset’ is an example. Also see comment SC.12.

Comment SC.33:

The term ‘wastewater’ is confusing because has been associated with sewage.

Recommendations:

Define ‘wastewater’ as it pertains to the CSWGP, or replace the term with ‘process water’ where applicable. Also see comment SC.2.

Suggested definition: Process water is water used in a manufacturing or treatment process or in the actual product manufactured. Examples would include water used for washing, rinsing, direct contact, cooling, solution make-up, chemical reactions, and gas scrubbing in industrial and food processing applications. For purposes of this permit, a distinction is made among process water, stormwater, and wastewater (such as from a POTW).

DRAFT FACT SHEET COMMENTS

The following are comments on the Fact Sheet:

- (p 15, lines 16-26) WSDOT disagrees with Ecology’s decision not to incorporate phasing deadlines for implementing the numeric effluent limitation. While the sampling methods and monitoring requirements are not new, the fact that an exceedance of the numeric effluent limit represents a permit violation is a noteworthy change which will require new strategies for maintaining compliance and preventing penalties. We suggest phasing deadlines. (Note: this comment is dependent on Ecology’s decision vis-a-vis Comment PC.2 herein.)
- (p 71, line 20) The definition for ‘significant concrete work’ is not consistent with the Draft. Ecology should develop and use a consistent definition throughout the Fact Sheet and CSWGP. Also see comment PC.5.