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Department of Ecology
PO Box 47696
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**Re: Anchor QEA Comments on Proposed Construction Stormwater General Permit
Language**

Dear Amy:

Thank you for the opportunity to review the draft permit language for the renewal of the construction general stormwater permit (Permit). Our company (Anchor QEA) works with many public and private organizations that will be subject to the proposed Permit language as part of their implementation of cleanup, reuse and restoration projects. We offer the attached comments in the interest of enhancing clarity and effectiveness of the proposed Permit language.

Comment #1 - Provide Definitions for Contaminated Soil and Groundwater: A key element of the proposed Permit language is to provide a uniform notification provision for projects involving construction activities that will generate stormwater contacting contaminated soils and/or co-mingling with contaminated groundwater. This expansion of the permit is appropriate and reflects existing Ecology procedures. However, the threshold is not as clearly defined as it needs to be.

We recommend that definitions for “Contaminated soils” and “Contaminated Groundwater” be included in the Permit to better identify when the additional notification provisions apply.

Ecology's Model Toxics Control Act (WAC 173-340) regulations (and the associated expertise of the Toxics Cleanup Program staff) provide an appropriate threshold for these definitions. Specifically the MTCA regulations provide appropriate "short-lists" of contaminants and concentrations that capture the majority of contaminated sites to be regulated under the Permit. These "short-lists" are contained in the MTCA Method A cleanup levels for contaminated soil and groundwater [WAC 173-340-740-720(2) and 173-340-745(3)]. For more complex sites, the MTCA regulations contain detailed procedures for determining when chemical concentrations exceed applicable thresholds.

Recommendation: The proposed Permit language should provide clear definitions for "contaminated soils" and "contaminated groundwater" that reflect these established thresholds. In light of the foregoing, we offer the following suggested definitions for inclusion in the Permit:

"Contaminated Soils: Soils to be disturbed by proposed construction activity that contain contaminant concentrations exceeding applicable MTCA Method A soil cleanup levels promulgated under WAC 173-340-740(2) or 173-340-745(3), or applicable site-specific cleanup levels as defined under WAC 173-340-740 or 173-340-745."

"Contaminated Groundwater: Groundwater to be co-mingled with stormwater to be discharged during proposed construction activity that contains contaminant concentrations exceeding applicable MTCA Method A groundwater cleanup levels promulgated under WAC 173-340-720(3), or applicable site-specific cleanup levels as defined under WAC 173-340-720."

Comment #2: Clarify when projects require additional notifications related to contaminated soils and/or groundwater: Currently, section S2.A.1.f of the Permit requires that project proponents that are "aware of contaminated soils and/or groundwater associated with the construction activity..." implement additional notifications to Ecology. However, in practice, this threshold is ambiguous. Based on previous projects that we have been involved with, it is

not as clear as Ecology intends when the levels of contaminants at a site trigger this notification provision.

Recommendation: We recommend that the language be clarified to specify that the additional notification provisions of Section S2.A.1.f only apply if the contaminated soils are “expected to be exposed to stormwater discharged under this Permit” and/or if contaminate groundwater “is expected to be comingled with stormwater to be discharged under this Permit”.

Comment #3 - Recommended revisions to Permit language: Based on the foregoing comments 1 and 2, we recommend that the Permit language in Section S2.A.1.f be updated as follows:

Recommended Language: “Applicants must notify Ecology if they are aware of contaminated soils that are expected to be exposed to stormwater discharged under this permit, or contaminated and/or groundwater that is expected to be comingled with stormwater to be discharged under this permit.~~associated with the construction activity.~~ Provide ~~detailed summary~~ information with the NOI (as known and readily available) ~~on regarding~~ the nature and extent of the contaminated soil and/or contaminated groundwater contamination (type, concentrations, locations, and depth) within the site areas to be disturbed by the construction activity regulated by this permit, as well as pollution prevention and/or treatment BMPs proposed to control the discharge of contaminated soil and/or contaminated groundwater ~~contaminants constituents~~ in stormwater. Examples of such ~~detail information~~ may include, but are not limited to,

- i. List or table of ~~all~~ known contaminants with laboratory test results showing concentration and depth within proposed construction areas,
 - ii. Map with sample locations,
 - iii. Temporary Erosion and Sediment Control (TESC) plans, Draft Construction Stormwater General Permit – December 1, 2010 Page 11
 - iv. Stormwater Pollution Prevention Plan (SWPPP) modified to address contaminated soils and/or groundwater, v. Dewatering plan and/or dewatering contingency plan.”
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Comment # 4 - Need for development of benchmarks: With recent proposed language, Ecology is increasingly bringing the monitoring and control of priority pollutants into the scope of the stormwater general permits. This includes both recent proposed changes to the Industrial Stormwater General Permit as well the current proposed changes to the Construction Stormwater General Permit. However, to date, permit benchmarks are only available for a limited number of chemical constituents.

Recommendation: We recommend that prior to developing permit requirements or other stormwater requirements relating to priority pollutants in stormwater discharges, Ecology invest the resources necessary to develop scientifically sound and technically appropriate benchmarks for management of these priority pollutants. The availability of these scientifically and technologically based benchmarks will ensure clarity and consistency during implementation of the stormwater permitting programs.

Anchor QEA appreciates the opportunity to comment on the proposed Construction Stormwater General Permit language. Please do not hesitate to contact me if I can provide additional clarification regarding our comments. I can be reached at (206) 903-3359 or at mlarsen@anchoragea.com.

Thank you for your commitment to protection of the environment that we share.

Sincerely,



Mark Larsen
Principal Scientist/Partner
Anchor QEA, LLC

Cc: Nicole LaFranchise, Anchor QEA
Nathan Soccorsy, Anchor QEA
