Port of Seattle

August 10, 2015

Ms. Amy Moon
Washington State Department of Ecology
Northwest Regional Office
3190 160th Avenue SE
Bellevue, WA 98008-5452
Sent electronically to cswgpcomments@ecy.wa.gov

Subject: Draft Construction Stormwater General Permit

Dear Amy Moon:

We appreciate the opportunity to provided comments on the Draft Construction Stormwater General Permit.

We are happy to present our comments which show proposed language in the permit, Notice of Intent (NOI), and Fact Sheet as bold and italicized; the Port's comments and recommendations immediately follow the proposed language.

DRAFT CONSTRUCTION STORMWATER GENERAL PERMIT COMMENTS

S2.A.1.c. ***Unless Ecology responds to the complete application in writing, based on public comments, or any other relevant factors, coverage under the general permit will automatically commence on the thirty-first day…***

Comment # 1:

Currently, applicants are not notified if the application is complete. If an applicant does not hear from Ecology within 31 days of the second public notice, they assume they are covered under the permit and start work. If Ecology deems the application incomplete, the applicant is subsequently out of compliance without knowing it. Ecology should establish a response time to inform the applicant whether the NOI is considered complete or not, particularly given that NOIs are now required to be submitted electronically. PARIS is not a reliable source to determine if Ecology deems the application complete.

Recommended Language:

Ecology shall respond to the applicant within seven (7) days to notify whether the application is considered complete. Unless Ecology responds to the complete application in writing, based on public comments, or any other relevant factors, coverage under the general permit will automatically commence on the thirty-first day, unless Ecology specifies a later date in writing within the 30-day comment period.

S2.A.1.f.iii, iv, and v. TESC plans, SWPPP modified to address contaminated soils and/or groundwater, Dewatering plan and/or dewatering contingency plan.

Comment # 2:

Public entities (agencies, municipalities, etc.) are required to obtain all permits prior to putting a project out to bid. Pollution prevention and/or treatment BMPs and/or TESC plans and/or SWPPPs and/or dewatering plans cannot be dictated to contractors because it is up to the contractor's means and methods to perform the work. Therefore, the BMPs Ecology requests for contaminated sites may not necessarily be used during project construction. NOI cannot be considered complete and accurate and a permit issued when the information provided may not be the methods implemented. Please clarify if it is Ecology's expectation that plans have been finalized when submitting a NOI. This is not feasible for public entities, and could create long delays and project costs.

Recommendation:

Remove S2.A.1.f.iii, iv, and v. from the Permit.

S3.D. ***Where construction sites also discharge to ground water*** (sic)***, the ground water*** (sic) ***discharges must also meet the terms and conditions of this CSWGP.***

Comment # 3: Many sites use infiltration to manage stormwater. This condition appears to conflict with S1.2.a. which states that operators are not required to seek a permit if discharging to groundwater, etc. as long as there is no point source discharge to surface water or a storm sewer system that drains to surface waters of the State. Please clarify.

S4.C.2.g. ***The Permittee may reduce the sampling frequency for temporarily stabilized, inactive sites to once every calendar month.***

S4.C.3.b. ***The Permittee may discontinue sampling at discharge points that drain areas of the project that are fully stabilized to prevent erosion.***

Comment # 4:

These two conditions appear to conflict with one another. If discharge points that drain areas are stabilized and inactive, why would a Permittee continue to sample in that area? Please clarify.

Recommended Language:

Remove S4.C.2.g. from the Permit.

S4.C.3.b. *The Permittee may discontinue sampling at discharge points that drain areas of the project that are inactive and stabilized to prevent erosion.*

S4.D.1. ***...when the concrete is first poured and exposed to precipitation, and continue weekly throughout and after the concrete pour and curing period, until stormwater pH is in the range of 6.5 to 8.5 (su).***

Comment # 5:

PH sampling is supposed to occur weekly during pours and curing. A Permittee should not be required to sample for pH after the active pour and/or during the curing period if pH is within range. Some concrete can take years to fully cure.

Recommended Language:

...when the concrete is first poured and exposed to precipitation, and continue weekly until stormwater pH is in the range of 6.5 to 8.5 (su).

S4.D.2. ***For sites with recycled concrete, the Permittee must begin the weekly pH monitoring period when the recycled concrete is first exposed to precipitation and must continue until the recycled concrete is fully stabilized and stormwater pH is in the range of 6.5 to 8.5 (su).***

Comment # 6:

Define "fully stabilized" for recycled concrete. Concrete from a demolition should not be considered to be "recycled concrete". Recycled concrete is often in rubble form and is used as a stabilizer for soft ground, etc. Recycled concrete should be considered fully stabilized when stormwater discharge is within range.

Recommended Language:

...the Permittee must begin the weekly pH monitoring period when the recycled concrete is first exposed to precipitation and continue until stormwater pH is in the range of 6.5 to 8.5 (su).

S4.D.1 & 2. ***...pH is in the range of 6.5 to 8.5 (su)***

Comment # 7:

Make consistent with the ISGP pH range of 6.0 to 9.0 (su).

S4.D.5. ***The Permittee must sample pH in the sediment trap/pond(s) or other locations that receive stormwater runoff from the area of significant concrete work or engineered soils before the stormwater discharges to surface waters.***

Comment # 8:

This condition states that pH sampling locations are supposed to be different than stormwater discharge locations where turbidity is measured. However, this is not specified in "sampling locations" listed in S4.C.3. Please clarify. If sampling locations for pH are supposed to be different than turbidity sampling points, add pH sampling location-specific criteria in S4.C.3., otherwise modify language in S4.D.5. to have discharge points be the sampling locations for both parameters.

S5.F. ***...and the resulting noncompliance may cause a threat to human health or the environment, or exceed numeric effluent limitations, the Permittee must...***

Comment # 9: The CSWGP does not include effluent limitations. Effluent limitations would typically be associated with additional restrictions such as an Administrative Order. Noncompliance notifications associated with effluent limits should be specified in the Administrative Order, not the CSWGP. If effluent limits are referring to 303(d)-listed waters, then the intent should be specified clearly.

Recommendation:

Remove "exceed numeric effluent limitations" from S5.F.

S9.D.9.g. ***Adjust the pH of stormwater or authorized non-stormwater if necessary to prevent an exceedance of groundwater and/or surface water quality standards.***

Comment # 10: Stormwater that does not leave the site (i.e., infiltrated) does not require sampling; therefore a Permittee will only adjust pH if their stormwater or authorized non-stormwater is discharged to surface waters of the state or a storm conveyance system.

Recommended Language:

S9.D.9.g. *Adjust the pH of stormwater or authorized non-stormwater if discharged and necessary to prevent an exceedance of groundwater and/or surface water quality standards.*

G6. ***The Permittee must submit a new application... (including the discovery of contaminated soils and/or groundwater that may impact the discharge). This application must be submitted at least sixty (60) days prior to any proposed changes.***

Comment # 11: Define "contaminated". Presence of "contaminated" material does not necessarily mean stormwater will be impacted. Who makes the determination that discovered contamination may impact discharge? The Permittee? Ecology? If an application needs to be submitted 60 days prior to proposed changes, it is not practical to do so if contaminated material is discovered. Is the Permittee supposed to stop work for 60 days while Ecology reviews a modified permit application? The potential economic impacts associated with delays; work that was originally scheduled for the dry season could get pushed into the wet season, etc.

G13. Ecology may establish specific monitoring requirements in addition to those contained in this permit by administrative order (sic) ***or permit modification.***

Comment # 12:

Administrative Orders are becoming increasingly more common. Specifics about Administrative Orders - and what triggers them - is needed. Issuing Administrative Orders to projects where controlling turbidity will control pollutants defeats the purpose of having a general permit. Having contaminants onsite does not automatically qualify a site to be considered a "significant contributor of pollutants", nor will discharging stormwater from a site with contaminants automatically create a violation of water quality standards. Having contaminants onsite should not be the deciding factor in issuing an Administrative Order. The Permittee should also have demonstrated that they are not complying with the intent of the permit through the implementation of BMPs.

Set up a stakeholders working group to discuss this issue. The stake holder working group should include industry, impacted businesses and other key stakeholders.

GENERAL COMMENTS

Comment # 13:

Section 6.3 (Public Process) of the Permit Writer's Manual lists several options to engage the public during the permit writing stage. The third bullet reads as follows:

- Stakeholder advisory group – Consider the need for stakeholder involvement (e.g. technical, implementation issues). Discuss these with your supervisor and PIO.

The Port request that Ecology set up a stakeholders working group to discuss this issue. The stake holder working group should include industry, impacted businesses and other key stakeholders.

Comment # 14:

The majority of pollutants that are encountered during construction projects are tied to sediment. By controlling the turbidity, a Permittee is effectively controlling the pollutants. Additional Administrative Orders and other restrictions should not be issued simply by the presence of a pollutant. Ecology's approach to controlling contaminants in surface water runoff in the Industrial Stormwater General Permit is to control the solids – which is monitored through benchmarks of turbidity and total suspended solids. The CSW group should use the same approach so Permittees that have multiple permits on one site can rely on one standard in which to plan and implement their BMPs.

Potential water quality violations cannot be determined simply by what is present in the soil. Ecology cannot reasonably make a correlation between pollutant(s) in the soil with what will actually mobilize when coming into contact with stormwater. At the very minimum, it can be determined that only a fraction of what is in the soil may mobilize during a storm event. This means that even if pollutant concentration levels are above a cleanup standard in the soil, a water quality violation is unlikely if a Permittee is implementing the proper BMPs.

Conclusion

The Port of Seattle appreciates the opportunity to provide comments to Department of Ecology on the Draft Construction Stormwater General Permit. The Port and Ecology have worked together over the years on many permits. We believe that has been a very productive collaboration and we look forward to future collaborative efforts associated with the CSWGP.

Please contact me at (206) 787-3193 if you have any questions regarding this letter.

Sincerely,

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