



August 10, 2015

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Sent electronically to cswgpccomments@ecy.wa.gov

Dear Ms. Moon,

Thank you for the opportunity to review and comment on the Draft Construction Stormwater General Permit (CSWGP or permit). The ability to review a draft of the updated CSWGP allows the development community and the Department of Ecology (Ecology) to discuss and agree upon a practical approach to environmental protection during construction projects.

The Port of Tacoma (Port) provides jobs and cargo mobility to thousands of people throughout our region, and is a substantial economic driver in Pierce County, Western Washington and the entire state. A key component of the Port's success is construction and infrastructure improvements. During the previous CSWGP cycle (2010-2015), the Port obtained and/or managed 20 CSWGPs for projects totaling over 50 million dollars. The Port is currently in the planning and/or development stages of projects that may be constructed during the new permit cycle (2016-2021), with an estimated value of over 100 million dollars.

The Port appreciates Ecology's effort to protect water quality during construction projects through the CSWGP. The Port is also committed to environmental stewardship and water quality protection. The Port has received national recognition and multiple awards associated with our innovations in stormwater treatment.

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

S1.B.1.a. Clearing, grading, and/or excavation that results in the disturbance of one or more acres (including off-site disturbance acreage authorized in S1.C.2.)...

Comment # 1:

Clearing is removing vegetation to ground level; it should not be considered ground disturbance. Often vegetation (e.g., bushes, forbs, etc.) has to be removed to create staging areas but the ground itself isn't disturbed.

The addition of "including off-site disturbance acreage" is superfluous since it is already covered in S1.C.2. Staging areas, material storage areas, etc. are already supposed to be part of the project site, regardless of location. "Off-site disturbance acreage" could have implications for Permittees who use property not associated with the project but may stockpile soil or other materials for other projects.

Recommendation:

- Change permit language from "clearing" to "grubbing" because grubbing indicates ground disturbance, or define "clearing" in "Appendix B - Definitions" to specify that "clearing" must include soil disturbance to qualify as disturbance acreage.
- Remove "(including off-site disturbance acreage authorized in S1.C.2.)" from the Permit.

S1.B.1.b.i. *Determines to be a significant contributor of pollutants to waters of the State of Washington.*

S1.B.1.b.ii. *Reasonably expects to cause a violation of any water quality standards.*

Comment # 2:

Ecology should clearly identify what criteria the Department will use to determine a "significant contributor of pollutants" and define the individuals or agency contact who is responsible making the determination.

Ecology is also obligated to make notifications to a property owner that their site is considered a "significant contributor of pollutants" prior to an applicant submitting a NOI.

Define what a reasonable expectation is, that a project may cause a violation of **any** water quality standard. Recommend to replace "any" with "appropriate".

If the project is less than an acre and/or stormwater will not be discharged to surface waters or a storm system, a NOI typically will not be submitted. Ecology must clarify how the Department declares a "significant contributor of pollutants" if no NOI is submitted.

Recommended Language:

S1.B.1.b.i. Has previously declared the site to be a known significant contributor of pollutants to waters of the State of Washington.

S1.B.1.b.ii. Expects to cause a violation of a previously established site-specific water quality standard.

S1.D.7. *Wheel wash wastewater, unless discharged according to Special Condition S9.D.9.*

Recommendation:

Replace "*discharged*" with "*managed*" to remain consistent with language in S1.D.4.

S2.A.1.b. *Permittees unable to submit electronically (for example, those who do not have an internet connection) must contact Ecology to request a waiver and obtain instructions on how to obtain a paper NOI.*
<http://www.ecy.wa.gov/programs/wq/stormwater/construction/index/html>.

Comment # 3:

The Port recommends moving the link to earlier in the paragraph. It could easily be interpreted that applicants who can't submit electronically must go to the website to obtain a waiver.

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 # 4:

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. *Applicants must notify Ecology if they are aware of contaminated soils and/or groundwater associated with the construction activity. Provide detailed information with the NOI (as known and readily available) on the nature and extent of the contamination (concentrations, locations, and depth), as well as pollution prevention and/or treatment BMPs proposed to control the discharge of soil and/or groundwater contaminants in stormwater.*

Comment # 5:

Define "contaminated soils and/or groundwater". Without a quantifiable definition of what Ecology considers contaminated, **any** site with above natural background levels of a contaminant could be considered contaminated (i.e., any urban area within Puget Sound and many other regions). Presence of a contaminant does not necessarily mean a site is

contaminated. Some areas have naturally occurring concentrations of contaminants that are above “natural background”. Ecology must determine what sites should be deemed “contaminated” prior to submitting a NOI. It should not be left up to the applicant to make the determination as to whether a site should be considered contaminated.

Define “*readily available*”. What if data exist but are not “readily available”? What if contamination is suspected but there are no data? This goes back to the point that an applicant should not be making the “contaminated site” determination.

Contamination may be present within the project area but located outside the ground disturbance area (e.g. an already stabilized staging area, etc.); Ecology should only need to be informed of contamination that is within the soil disturbance area.

Our concern is that the Construction Stormwater group is reaching beyond the intent of its construction stormwater mandate and may issue Administrative Orders in addition to the CSWGP, adding to agency and Permittee confusion, potential legal liability, and project delays. Administrative Orders are typically a negotiation between parties after some kind of violation occurs. Issuing Administrative Orders prior to any proof that water quality standards have been violated—or an immediate concern that they could be violated due to a Permittee’s neglect—is excessive. Issuing additional parameters to treat and sample when the majority of contaminants can be controlled by controlling the turbidity takes away from the intent of having a General Permit.

Recommendation:

Remove S2.A.1.f. from the Permit.

S2.A.1.f.i. *List or table of all known contaminants with laboratory test results showing concentrations and depth,*

Comment # 6:

Sites that have contaminants at concentrations higher than the appropriate cleanup level should already be on Ecology’s radar (i.e. MTCA cleanup sites, etc.). Ecology programs should coordinate with one another during DCAP development so stormwater considerations can be addressed during the implementation of the plan and the CSWGP can remain a “general permit”.

Requiring applicants to list ***all*** known contaminants, regardless of concentration is excessive and unnecessary. This reinforces the ideology that presence equates contamination. “Contaminant” has not been properly defined. Having a consistent definition of what “contaminated” means will allow applicants to prepare a NOI that is accurate and complete prior to submittal.

Recommendation:

Remove S2.A.1.f.i. from the Permit.

S2.A.1.f.ii. *Map with sample locations,*

Comment # 7:

Please clarify the purpose of the map with sample locations. If contaminants are onsite in areas of soil disturbance, a map showing sample locations should not influence Ecology's review of the NOI.

Recommendation:

Remove S2.A.1.f.ii. from the Permit.

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 # 8:

Public entities (agencies, municipalities, etc.) are generally required to obtain all permits prior to going 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 them to determine work means and methods. It is also the contractor's liability in how work is performed. Public contracting in particular is outcome-based. That is to say, there is an outcome required in the contract (in this case be in compliance with water quality standards and the permit) and it is up to the contractor to determine how that outcome will be achieved and to bid the project appropriately. Prescription of how work will be performed or changes to project requirements after the bidding process is complete will greatly increase costs to both public and private owners. A 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 increased project costs.

Recommendation:

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

S2.C.2.b.iii. <http://www.ecy.wa.gov/programs/wq/stormwater/construction/index.html>

Comment # 9:

The link should read <http://www.ecy.wa.gov/programs/wq/stormwater/construction/resourcesguidance.html> because the Construction Stormwater main page is not where the link to the Average Annual Precipitation is located.

S2.C.4. ***The waiver is not available for facilities declared significant contributors of pollutants as defined in Special Condition S2.B.1.b. or for any size construction activity that could reasonably expect to cause a violation of any water quality standard as defined in Special Condition S1.B.1.b.ii.***

Comment # 10:

The terms (significant contributor of pollutants, and construction activity that could reasonably expect to cause a violation) are not defined in S1.B.1.b. or S1.B.1.b.ii. They are referenced but a definition of what these terms mean is not provided. See comments for S1.B.1.b.i and ii. Please define these terms.

S3.B. ***...includes the preparation and implementation of an adequate Stormwater Pollution Prevention Plan (SWPPP)...***

Recommendation:

The SWPPP acronym has already been defined earlier in the Permit. Ecology does not need to define it again here.

S3.C. ***Ecology presumes that a Permittee complies with water quality standards unless discharge monitoring data or other site-specific information demonstrates that a discharge causes or contributes to a violation of water quality standards, when the Permittee complies with the following conditions.***

Comment # 11:

Please clarify this sentence. The wording is confusing and can be misinterpreted. Is the Permittee complying with water quality standards when they comply with the “following conditions” or are they out of compliance if a discharge causes or contributes to a violation, regardless of whether they comply with the conditions?

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 # 12:

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.B. ...and all stormwater discharge points under the Permittees operational control.

Recommendation:

“Permittees” should read “Permittee’s”.

S4.C.2.a. ...sampling is not required on sites that disturb less than an acre.

Comment # 13:

Only sites that are considered “a significant contributor of pollutants” or “reasonably expected to cause a violation of water quality standards” are required to obtain a permit for projects that disturb less than an acre. If an Operator has no way to demonstrate that they are in compliance with water quality standards, then they should not be required to apply for a permit.

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 # 14:

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.C.3.e. The Permittee may discontinue sampling at discharge points in the areas of the project where the Permittee no longer has operational control of the construction activity.

Comment # 15:

The Port agrees with this inclusion to the permit. It provides needed clarification that the Permittee is not responsible for sampling discharge points where they have no operational control.

S4.D. *...(significant concrete work means greater than 1000 cubic yards poured concrete used over the life of a project) or the use of recycled concrete or engineered soils...*

Comment # 16

Please confirm that the trigger for pH sampling stormwater for the use of recycled concrete and/or engineered soils is also 1000 cubic yards. Currently, there is no quantifiable amount listed.

Recommended Language:

...(significant concrete work means greater than 1000 cubic yards poured concrete, recycled concrete or engineered soils used over the life of the project)...

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 # 17:

PH sampling is supposed to occur weekly during pours and curing. If the pH is within range after the initial pour, the pH will continue to neutralize while the concrete cures. 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 # 18:

Define “fully stabilized” for 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. Concrete from a demolition should not be considered to be “recycled concrete”.

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 # 19:

Make consistent with the ISGP pH range of 6.0 to 9.0 (su). The ISGP is a longer term permit; it does not make sense to have a temporary, short term permit be more restrictive.

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 # 20:

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.A. *...(or submit an electronic report through Ecology's Water Quality Permitting Portal (WQWebPortal) - Permit. The website is: <http://www.ecy.wa.gov/programs/wq/stormwater/construction/permit.html>.*

Comment # 21:

The website provided is not the WQWebPortal. It is the Construction Stormwater main page.

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 # 22:

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.

S5.F.3. *Submit a detailed written report to Ecology within five (5) days of the time the Permittee becomes aware of the circumstances, unless requested earlier by Ecology. The report must be submitted using Ecology's Water Quality Permitting Portal (WQWebPortal) - Permit Submittals...*

Comment # 23:

The Port agrees that using the electronic submittal system will streamline and simplify the reporting process.

S5.G.1.e. *Erosivity Waiver*

Comment #24:

While the Port agrees that it is a good idea to keep an Erosivity Waiver onsite to prevent any confusion, it should not be a permit requirement since the waiver is not covered under the permit.

S8.A.2. *...on January 1, 2011, or the date when...*

Recommendation:

Update the date to reflect the upcoming permit cycle.

**S8.E.2. *...before January 1, 2011, or before the date the operator's complete permit application...
...if they are imposed through an administrative order...***

Recommendations:

Update the date to reflect the upcoming permit cycle.
Capitalize "administrative order".

S9. *...properly implement an adequate Stormwater Pollution Prevention Plan (SWPPP)...*

Recommendation:

The SWPPP acronym has already been defined earlier in the Permit. Ecology does not need to define it again here.

S9.A.1. *To implement best management practices (BMPs) to prevent erosion...*

Recommendation:

The BMP acronym has already been defined earlier in the Permit. Ecology does not need to define it again here.

**S9.D.1. ...and the exemption from that element is clearly justified in the SWPPP.
 Preserve Vegetation/Mark Clearing Limits**

Recommendation:

Formatting: "Preserve Vegetation/Mark Clearing Limits" should have its own heading.

**S9.D.6.c.i. West of the Cascade Mountain Crest: Temporary pipe slope drains must
 handle the peak 10-minute velocity of flow rate from a Type 1A, 10-year, 24-
 hour frequency storm for the developed condition.**

Comment # 25:

The Port agrees with the change in terminology.

**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 # 26:

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.*

S9.D.13. The primary purpose of Low Impact Development (LID) BMPs...

Recommendation:

The LID acronym is already defined in the heading. Do not need to define it again here.

S10.B. *When the site is eligible for termination, the Permittee must submit a complete and accurate Notice of Termination (NOT) form...*

The termination is effective on the thirty-first day following the date Ecology receives a complete NOT form, unless Ecology notifies the Permittee ~~within 30 days~~ that the termination request is denied...

Comment # 27:

Ecology should specify how a Permittee will be notified that the NOT is considered complete and accurate. If Permittee submits a NOT and does not hear from Ecology for 31 days, the CSWGP should be considered terminated.

S10.B. *When an electronic termination form is available, the Permittee may choose to submit a complete and accurate Notice of Termination (NOT) form through the Water Quality Permitting Portal rather than mailing a hardcopy as noted above.*

Comment # 28:

The Port agrees that having an electronic version of the NOT is a good idea. It will streamline the termination process and eliminate the risk of NOTs getting lost in the mail, etc.

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 # 29:

Define "contaminated". Presence of "contaminated" material does not necessarily mean stormwater discharge for construction activities 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.

G11. *The Permittee must submit to Ecology, within a reasonable amount of time, all information that Ecology may request...*

Comment # 30:

Please quantify "reasonable amount of time".

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

Comment # 31:

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 determining 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 improper/inadequate implementation of BMPs.

Appendix A Benchmark...and are not numeric effluent limitations; they are indicator values.

Comment # 32:

Please define the term "indicator value" and its intended use.

Appendix A

Comment # 33:

Please define the term "contaminated".

Appendix A – Contaminant

Comment # 34:

WAC 173-340-200 is not helpful in defining what contaminant means. It is a regurgitation of what is written here. More thought – and stakeholder input – is needed before this definition can be incorporated into the CSWGP.

Appendix A – Hazardous Substance

Comment # 35:

This term is defined by reference and not helpful. Please see comment regarding "contaminant".

Appendix A – Significant Concrete Work

Recommended Language:

Significant Concrete Work means greater than 1000 cubic yards of poured concrete, recycled concrete, or engineered soils used over the life of a project.

Appendix A – Uncontaminated

Comment # 36:

This definition is not helpful, nor consistent with previous experience with Ecology on projects containing “contaminants”. MTCA is not necessarily used to determine whether a site is “contaminated” or “uncontaminated”. If Ecology intends to use MTCA standards for the definition of uncontaminated, they need to also use the appropriate MTCA cleanup action levels according to land use (i.e., industrial, unrestricted, etc.) and clearly state in the permit this is the standard Ecology is using.

FACT SHEET COMMENTS

Fact Sheet *This fact sheet (sic) explains the nature of authorized discharges, the decisions on limiting pollutants in those discharges, and the regulatory and technical bases for those decisions.*

Comment # 37:

It should be noted that the following language was modified from the 2010 Fact Sheet:

2010: "This Fact Sheet explains the nature of discharges from construction activities, Ecology's decisions on limiting pollutants in stormwater and non-stormwater from construction activities, and the regulatory and technical basis (sic) for those decisions."

2015: "This fact sheet (sic) explains the nature of **authorized discharges** (emphasis added), the decisions on limiting pollutants in **those discharges** (emphasis added), and the regulatory and technical bases for those decisions."

"Authorized discharges" is a broad term and implies that Ecology could attempt to regulate discharges outside the intent of this permit. It is important to note that the previous version specifically states that discharges are associated with construction activities. This language should remain in the current Fact Sheet as well, so as to not tempt Ecology to regulate outside parameters set by the CSWGP.

The 2015 Fact Sheet does NOT explain the changes to the permit, nor the regulatory or technical bases for those decisions. The Fact Sheet does not explain why the new language surrounding “contaminated sites” is included.

Fact Sheet *The draft CSWGP includes minor changes overall.*

Comment # 38:

This is not a true statement. While not many words were changed/added to the CSWGP, the implications and the potential impacts of those words to the construction and development industries will be significant.

Fact Sheet *Economic Impact Analysis*

Comment # 39:

The Fact Sheet states that the cost of compliance with the draft general permit is disproportionate to business size. This is now even more accurate with the inclusion of the "contaminated sites" language into the permit. Many projects may become cost prohibitive because of the restrictions Ecology will put on a Permittee, when controlling the turbidity should be sufficient to control the pollutants. The mitigation features provided in the Fact Sheet do not address the additional costs for retention, testing, treatment and disposal that would be required for "contaminated sites". If Ecology wants to include contaminated sites, the Economic Impact Analysis should include additional costs incurred by Permittees on these sites. These costs have not been properly captured by Ecology.

Fact Sheet *Numeric effluent limits are not always feasible for construction stormwater discharges as such discharges pose challenges not presented by the vast majority of NPDES-regulated discharges...*

The variability of effluent and effectiveness of appropriate control measures make setting uniform effluent limits for stormwater extremely difficult...

In accordance with 40 CFR 122.44(k) and 40 CFR 122.44(s), this draft general permit includes requirements for the development and implementation of a...SWPPP along with 13 categories of BMPs...to minimize or prevent the discharge of pollutants to waters of the state. These BMPs constitute Best Conventional Pollutant Control Technology (BCT) and Best Available Technology Economically Achievable (BAT) for stormwater discharges.

Comment # 40:

By issuing Administrative Orders on top of the CSWGP, Ecology has demonstrated that it is not following its own rationale for non-numeric technology-based effluent limits. If a Permittee is implementing the requirements in the permit (SWPPP, 13 Elements, BMPs, etc.), establishing numerical effluent limits are not necessary unless the Permittee demonstrates otherwise. Issuing Administrative Orders before a Permittee has the opportunity to execute BCT and BAT through BMPs is not consistent with the intent of the permit.

NOTICE OF INTENT COMMENTS

NOI ***I. Site Information***

Comment # 41:

Please clarify the necessity to differentiate the types of soil disturbance? The type of construction activity is already specified. Ecology should not need this information to review the NOI.

NOI ***VI. Existing Site Conditions***
"Contaminated" and "contamination" here mean containing any hazardous substance (as defined in WAC 173-340-200) that does not occur naturally or occurs at greater than natural background levels.

Comment # 42:

"Contaminated" and "contamination" are not well defined. Definition by reference to the WAC does not provide enough information. The inclusion of "occurs at greater than natural background" is too vague and inclusive and could lead to multiple issues. See comments regarding S2.A.1.f.

NOI ***VI. Existing Site Conditions***
This information should include related portions of the Stormwater Pollution Prevention Plan (SWPPP) that describe how contaminated and potentially contaminated construction stormwater and dewatering water will be managed.

Comment # 43:

The SWPPP is not required to be developed until after the permit is issued, as long as it is prior to starting construction (See NOI VII.). This language implies that a SWPPP must be written prior to the NOI being submitted. See comments regarding S2.A.1.f.iii, iv, and v.

Recommendation:

Remove this language from the NOI.

NOI ***IX. Discharge/Receiving Water Information***
Location of Outfall into Surface Waterbody
Include the names and locations of both direct and indirect discharges to surface waterbodies, even if the risk of discharge is low or limited to periods of extreme weather.

Comment # 44:

The language added to this sentence (...even if the risk of discharge is low or limited to periods of extreme weather) is not needed. All known discharge points should be included in the NOI already. If extreme weather creates a new discharge point, the WQWebDMR system allows for new discharge points to be added if need be. This should be sufficient in the event of extreme weather.

NOI ***IX. Discharge/Receiving Water Information
Location of Outfall into Surface Waterbody
If the site discharges to a stormwater conveyance system that in turn flows to a surface waterbody, include the surface waterbody name and location.***

Comment # 45:

This could be misinterpreted if not familiar with what Ecology is requesting. The language indicates Ecology requests both the conveyance system and the waterbody.

Recommended Language:

If the site discharges to a stormwater conveyance system that in turn flows to a surface waterbody, use the surface waterbody name and location, not the conveyance system.

NOI ***XI. Other Ecology National Pollutant Discharge Elimination System (NPDES) and/or State Waste Discharge Permits***

Comment # 46:

This is not necessary to issue a CSWGP. Additionally, Ecology should use their own database (PARIS) if they want to know whether a site has coverage under another Ecology-issued permit.

GENERAL COMMENTS

Comment # 47:

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.*

Ecology should clarify why there was no stakeholder group formed during the permit update process. The Fact Sheet should specify why Ecology did not think a stakeholder group was necessary. This permit update was made in a vacuum. There were no stakeholder groups, or review panel discussions or meetings available to interested parties prior to the draft permit being issued for public comment.

It was brought to the Port's attention during one of the workshops that only one person would review all the comments submitted to Ecology for the draft CSWGP. The only reviewer is also the permit writer. This appears to be a conflict of interest. Comment review should have an objective perspective for a permit that has statewide implications. Section 6.3 of the Permit Writer's Manual indicates that a team of people should review comments:

- *Schedule time for review of the RTC by any internal team who contributed to the permit, your supervisor, and legal review if necessary.*
-

Comment # 48:

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.

Comment # 49:

Ecology must create consistent criteria for establishing constituents of concern. If there is not a previously known source of a contaminant (i.e., historical land uses, etc.) on a site, there should be no reason to arbitrarily create restrictions. Natural fluctuations of pollutants occur throughout the region. Pollutants naturally occur in elevated "hot spot" concentrations and should not necessarily be regulated simply because they are present.

The permit writer(s) have been unresponsive when asked direct questions surrounding the definition of contaminated sites, and the new language in the permit is vague and highly subjective. Consistent, quantifiable (where appropriate) definitions and justifications should be mandatory as part of a permit update.

Comment # 50:

Ecology's CSW Group is interjecting influence into an arena already regulated by MTCA and TCP. If there are concerns regarding stormwater quality on "contaminated" sites, the two groups should work together during the planning process and incorporate stormwater conditions into the DCAP. Applicants and Permittees should not be forced to duplicate efforts for the same agency because of a lack of internal communication between groups.

Conclusion

The Port of Tacoma 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.

Ports are unique and challenging in that the facilities are generally large, paved, and flat; have large tidal changes; and are very near the receiving water. The Port of Tacoma understands the difficult balance of managing stormwater, improving water quality and maintaining the economic viability of our port. Empty terminals will be good for neither the local communities, the state, nor water quality.

Respectfully,



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