



**Washington State
Department of Transportation**

Lynn Peterson
Secretary of Transportation

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August 10, 2015

Ms. Amy Moon
Water Quality Program
Washington State Department of Ecology
PO Box 47600
Olympia, WA 98504-7600

RE: Comments on the Draft Construction Stormwater General Permit and Notice of Intent

Dear Ms. Moon:

The Washington State Department of Transportation (WSDOT) appreciates the opportunity to provide comments on the draft Construction Stormwater General Permit (draft permit) and Notice of Intent (NOI). WSDOT has a strong interest in working with the Washington State Department of Ecology (Ecology) because the Construction Stormwater General Permit (permit) substantially impacts WSDOT policy and construction operations.

WSDOT would like to provide the following general comments on the draft permit:

1. WSDOT recommends Ecology outline their process and expectations for emergency projects to ensure consistency statewide. WSDOT understands that Ecology is following the federal requirements for emergency related projects. However, the federal requirements do not provide a lot of detail. As a result, it has been WSDOT's experience that Ecology's regional permit administrators may have different expectations and procedures for emergency projects.
2. WSDOT recommends that the Water Quality Permitting Portal accommodate our internal signature delegations for signing NOIs and Notice of Terminations (NOTs). It is WSDOT's understanding that Ecology considers NOIs and NOTs to meet the signatory requirements of G2.A, however WSDOT disagrees and believes that NOI and NOT signature authority can be delegated in accordance with G2.B. After a review of 40 C.F.R. section 122.2 and section 128, it is clear to WSDOT that the NOI is not an "application" for a "permit" under the federal rules; there is a difference between applying for a permit (such as WSDOT's Municipal Stormwater Permit) versus requesting coverage under a general permit for a project. It makes sense that the original application for a permit must be signed by the principal executive officer, since the application likely reflects some policy choices by the agency applicant. However, the NOI and NOT process is simply implementation of the general permit and must be able

to be delegated to the individuals having personal knowledge who are competent to sign the certificate. The certificate states that the application was prepared under the signer's direction or supervision; that is never going to be true of either the Secretary of Transportation or a regional administrator. Our principal executive officers do not have the detailed knowledge of or involvement in, a project to the degree necessary to be able to attest to the requirements listed in the signature block certification in the NOI and NOT forms.

3. WSDOT recommends the formation of an Ecology-led intergovernmental Process Wastewater Task Force to fully identify the issues and potential solutions regarding process wastewater management and disposal. WSDOT appreciates the improvements made to the draft permit for managing uncontaminated water-only based shaft drilling water, and encourages Ecology to pursue similar management options for other sources of uncontaminated process wastewater. Though House Bill 1695 relates to the reuse of aggregate and concrete, Section 1 (e) recognizes the environmental value in reducing truck trips. The ability to manage uncontaminated process wastewater on-site can certainly reduce truck trips, especially in rural areas where viable disposal locations can be many miles from the construction site.

WSDOT would like to provide the following specific comments on the redlined version of the draft permit:

4. Page 22, S4.D.1, 2, 3, and 4:

Comment: WSDOT recommends changing the word "monitoring" to "sampling" to be consistent with the other changes in S.4.D. If Ecology feels this recommendation is not appropriate because it changes the intent, WSDOT recommends defining the expectations for "pH monitoring" on page 22 or in the definitions section.

5. Page 25, S5.F:

Comment: WSDOT recommends referencing S8 after the new wording "or exceed numeric effluent limitations" to ensure the understanding that numeric effluent limits are used to evaluate discharges to outfalls in impaired receiving waters, while benchmark values are used to evaluate discharges to outfalls in non-impaired waters.

6. Page 25, S5.F:

Comment: WSDOT recommends adding examples of noncompliance that may cause a threat to human health or the environment, such as spills of fuels or other materials,

pond or slope failure which discharge significant amounts of sediment to fish bearing surface waters, and discharges that violate water quality standards.

7. Page 32, S8.E:

Comment: WSDOT suggests adding clarification that Ecology will inform permittees of the applicable TMDL requirements, rather than a permittee needing to determine applicable TMDL requirements using the link provided.

8. Page 37, S9.D.5:

Comment: WSDOT recommends clarifying that the soil covering timelines in S9.D.5.d. apply to exposed and unworked soils including stockpiles. It has been WSDOT's experience that some Ecology inspectors have expectations that all stockpiles be covered at the end of every day; even if the stockpiles are being worked, are located away from discharge points, are protected with sediment trapping measures, and there is no rain in the forecast (comply with S9.D.5.e, and f.). If covering stockpiles daily is the expectation, please clarify that expectation in S9.D.5.f.

9. Page 44, G2.B:

Comment: In conjunction with comment 2, WSDOT recommends editing the first sentence to, "All reports required by this permit and other information requested by Ecology (including Notices of Intent, Notices of Termination, and Transfer of Coverage forms) must be signed by a person described above or by a duly authorized representative of that person."

10. Page 46, G6:

Comment: WSDOT recommends clarifying the process for submitting a new application or supplemental information and the compliance expectations for a project that is in construction. Specifically, WSDOT is concerned about how this process will affect construction timelines. It is WSDOT's understanding that this condition does not require that work stop in the vicinity of the cause for modification until the existing permit is reissued or modified. However, if a stop work order is a possibility, WSDOT recommends clarifying under what conditions that might occur.

11. Page 57:

Comment: WSDOT recommends adding a definition for numeric effluent limit.

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12. Page 58, Process Wastewater definition:

Comment: WSDOT recommends leaving the word “water” and not changing it to “non-stormwater.” Changing the word to “non-stormwater” creates a potential loophole in which stormwater or groundwater could be collected and then used as part of a construction process, but not be considered process wastewater. Disregard this recommendation if that was the intent of the change.

13. Page 58:

Comment: WSDOT recommends adding a definition for recycled concrete to prevent potentially hazardous cementitious waste from being incorporated on-site as recycled concrete. The definition should be consistent with the current draft of the NPDES Sand and Gravel General Permit and include examples of what can and cannot be incorporated as recycled concrete. WSDOT would like to propose the following definition for recycled concrete: Hardened structural concrete material such as, demolished structures, roads, sidewalks. Concrete waste such as, drilling slurries, concrete mix truck washout, and material from washout containers, cannot be incorporated on-site as recycled concrete.

WSDOT would like to provide the following specific comment of the draft NOI:

14. Section I. Site Information:

Comment: WSDOT recommends adding a check box to identify emergency projects.

Thank you for the opportunity to provide input regarding the draft permit and NOI. Please direct questions regarding these comments to Elsa Pond, WSDOT Total Maximum Daily Load Lead at 360-570-6654 or ponde@wsdot.wa.gov.

Sincerely,



Kenneth M. Stone
Resource Programs Branch Manager
Environmental Services Office

KMS:ep