



April 16, 2007

SCANNED AND SUBMITTED VIA EMAIL

Jim La Spina
Water Quality Program
Washington Department of Ecology
PO Box 47600
Olympia, WA 98504-7600

RE: FedEx Express Comments on Public Draft Industrial Stormwater NPDES
and State Waste Discharge General Permit

Dear Mr. La Spina:

The purpose of this letter is to provide comments from Federal Express Corporation (FedEx Express) on the Public Draft Industrial Stormwater NPDES and State Waste Discharge General Permit (the "Public Draft Permit"). We appreciate the opportunity to submit these comments.

FedEx Express is the world's largest express transportation company. We receive and handle packages at warehouse facilities and distribute them throughout the world. These warehouse facilities operate under an umbrella Standard Industrial Classification of 4513 (air courier services) because they are all connected to our integrated global air transportation network, but the majority of these facilities are non-airport "station" locations that are primarily motor freight and transportation warehousing (SIC 42XX) facilities. Individual FedEx Express facilities may engage in industrial activities such as vehicle fueling, vehicle maintenance, vehicle washing, aircraft washing, and aircraft deicing and, as such, are subject to the applicable requirements of the Washington Industrial Stormwater General Permit.

Benchmarks and Action Levels

The central issue in the Public Draft Permit concerns the benchmark values, action levels and discharge limitations contained in Condition S5, particularly the way in which these are combined with the Corrective Actions contained in Condition S8. FedEx Express is greatly concerned that Ecology is using the benchmark values and action levels in a way that is contrary to the Legislature's direction, as established in ESSB 6415, which was passed in 2004, and is codified in RCW 90.48.555. We believe the resulting system seems to be designed for failure.

We believe there are two essential questions that Ecology has failed to adequately address:

- Are these the right parameters/numbers?
- Are the numbers (benchmark values and action levels) being used in a way that is legally correct, sensible and effective?

Are These the Right Parameters/Numbers?

The 2002 Industrial Stormwater General Permit (the "2002 Permit") introduced the concept of benchmark values and action levels. We understand that the particular benchmark values and action levels laid out in the 2002 Permit were established in a somewhat arbitrary fashion, without a great deal of information concerning whether they were the "right numbers." By "right numbers," we mean that the correct parameters are used, and the correct trigger levels are set for adaptive management.

ESSB 6415 provides for the presumption of compliance with water quality standards for industrial and construction stormwater discharges where a Permittee complies with permit conditions. RCW 90.48.555(6) specifies:

“Compliance with water quality standards shall be presumed, unless discharge monitoring data or other site specific information demonstrates that a discharge causes or contributes to violation of water quality standards, when the Permittee is:

- 1) In full compliance with all permit conditions, including planning, sampling, monitoring, reporting, and recordkeeping conditions; and
- 2) Fully implementing stormwater BMPs contained in the stormwater technical manuals approved by Ecology.....”.

The above language would indicate that, when a Permittee is implementing all appropriate BMPs in the appropriate Stormwater Management Manual (SWMM), then the Permittee is presumed to be in compliance with water quality standards. There is no site specific information that Ecology can rely upon in a general permit to presume that discharges cause or contribute to a violation of water quality standards. Therefore, compliance must be presumed.

The Public Draft Permit presents *water quality-based* benchmarks and action levels. When sampling results fall outside of these levels, Permittees will be required to implement corrective actions in an effort to reduce pollutant concentrations to below benchmark values. This approach is reaching far beyond what is required by state law. The concept of including a Level Four Corrective Action, which requires Permittees to evaluate and implement treatment beyond what is required by the appropriate SWMM, is inappropriate because it is in directed conflict to what is provided by ESSB 6415. The SWMMs represent all known, available and reasonable methods of prevention, control and treatment (AKART) (see Section 1.6.1, page 1-7 of the SWMM for Western Washington); therefore any additional treatment evaluation and implementation is unnecessary because AKART has already been specified. We suggest establishing benchmarks (and eliminating action levels) to evaluate the effectiveness of BMP implementation, which is part of the adaptive management process anticipated by ESSB 6415. Implementation of the appropriate SWMM is already anticipated under the Public Draft Permit; however benchmarks could be used as a trigger point in an adaptive management process for Permittees to reevaluate its BMP implementation practices.

There are numerous problems with continued use of both the turbidity and the metals parameters, and they need to be evaluated now. For example, most technical experts would agree that total suspended solids (TSS) is a better parameter to use, rather than turbidity. TSS measurements would provide a better assessment of BMP effectiveness, particularly metals removal, since metals are primarily associated with particulates. Also, there are serious questions as to whether 25 NTU as a benchmark and 50 NTU as an action level is appropriate to assess the effectiveness of BMP performance.

Similarly, the issue of what are the "right numbers" for zinc, copper and lead is highly contentious, in that significant questions exist regarding the effect of dissolved metals in the environment, as well as the appropriate levels that should be set.

If Ecology continues with the benchmarks presented in the Public Draft Permit, a better explanation of how the benchmarks were derived is necessary. In the Fact Sheet, the discussion refers the reader to Appendix III of the ESSB 6415 report for additional information. However, this information does not demonstrate how Ecology derived the statewide hardness values, nor the translator values for total/dissolved metals. Access to this data is necessary to evaluate its quality and the appropriateness of the methodology in calculating the benchmarks. For example, additional information is needed regarding the basis for the copper benchmark. Is the benchmark solely based on recalculation of EPA's water quality criteria and Ecology's assumptions of hardness and a total/dissolved translator, or was additional science considered? The data that is used to establish benchmarks must be compelling and verified since achieving benchmarks is difficult and the adaptive management process can be onerous.

Are the Numbers Being Used Correctly?

FedEx is concerned that the benchmark values are being used in this permit as de facto effluent limitations. Effluent limitations are defined in 40 CFR 122.2 as "any restriction imposed by the Director on quantities, discharge rates, and concentrations of pollutants." Condition S8 of this permit imposes enforceable consequences, such as a requirement to implement additional BMPs, when the benchmark values are not achieved. *See, e.g., S8.A.1; S8.B.2; S8.C.2; S8.D.1.* In our view, this means they are de facto effluent limitations and therefore contrary to the legislative mandates of RCW 90.48.555, which requires that Ecology make a determination of reasonable potential to cause or contribute to the violation of an applicable water quality standard before imposing an effluent limitation. Ecology has made no such determination.

Also, Ecology must consider the implications of establishing action levels that require implementation of stormwater treatment beyond what is considered AKART (full implementation of Ecology's SWMMs). *Available data suggest that somewhere between 25 to 50 percent of the existing sampling data for zinc and copper show concentrations above the proposed action levels. In addition, it is well known that, for many facilities, treatment BMP implementation cannot reduce pollutant concentrations to below proposed action levels, much less benchmarks.* Does Ecology believe that it is a good use of money for hundreds of

Permittees to provide additional treatment for the small fraction of stormwater that is discharged from industrial sites compared with stormwater from other (non-industrial) sources? The costs to both private and public Permittees will be enormous, with no measurable environmental benefit. FedEx Express is tremendously concerned with this aspect of the Public Draft Permit.

We suggest that the benchmarks should continue to be used as they were intended: as a way to monitor the effectiveness of BMP performance. Rather than prescribing specific corrective actions, the Permittee should be responsible to assess current conditions, confirm that BMPs in the appropriate SWMMs have been implemented (which represents AKART), and make changes to improve BMP performance, as necessary. By applying the SWMM and utilizing readily-available technical expertise, the Permittee should be able to determine what precisely the problem is, and what is the best approach to eliminate it. Although this will frequently involve many of the same steps as laid out in Condition S8, the difference is the use of best professional judgment by the Permittee. Documentation of these actions would, of course, be necessary.

If Ecology persists in the current approach (which, in our view, would be a mistake), then we would ask that you develop a management program that at least makes technical and practical sense. Two improvements would help make the program more sensible and effective. These are:

I. Rolling annual monitoring:

Because stormwater quality is highly variable, results from a single sample are not necessarily an indicator of BMP effectiveness. A single result may be less related to BMP performance and more determined by such factors as storm event intensity, time lapse of sampling the storm event, various aspects of the sampling protocol, etc. A rolling annual geometric mean of monitoring data, not individual sampling events, should be used to trigger Level Two, Level Three and Level Four adaptive management actions.

II. Scheduling and Timing:

The Public Draft doesn't allow sufficient time between Corrective Action Levels Two, Three and Four to evaluate sources and potential solutions, budget for implementing the improvements, and finally, to assess the effectiveness of implementation. We believe that a better approach would be to develop a permit implementation schedule that results in better compliance, reflects the realities of implementation at an industrial facility, and considers the variability of stormwater analytical results to ascertain whether the improvements are effective.

Trigger dates for implementation of Corrective Actions

Another general comment concerns the retroactive dates for comparing sampling data to benchmarks and action levels, which in turn trigger corrective actions. We request that Ecology consider whether applying previous sampling results, conducted under the current permit, to actions required in the new permit is either legal or appropriate.

Use of ESSB 6415 Report Recommendations

Ecology requested specific feedback regarding whether benchmarks and action levels should be based on recommendations presented in the ESSB 6415 legislatively mandated report. Based on our comments presented above, FedEx does *not* support use of the report's recommendations regarding the establishment of benchmarks and action levels. The statistical analysis presented in the report does not consider the wide variability of stormwater quality based on type of industry. The ESSB 6415 report clearly shows that different industries have different stormwater quality; thus the setting of benchmarks aggregating all industry is inappropriate.

Thank you for the opportunity to comment on the Public Draft Permit.

Very truly yours,

FEDERAL EXPRESS CORPORATION

A handwritten signature in black ink, appearing to read "David M. Jensen", with a long horizontal flourish extending to the right.

David M. Jensen
Lead Counsel
Regulatory Affairs