



Via Electronic Delivery to: industrialstormwatercomments@ecy.wa.gov

January 10, 2008

Lionel Klikoff
Department of Ecology
PO Box 47600
Olympia, WA 98504-7600

RE: Port of Seattle Comments on the November 21, 2007 Draft Industrial Stormwater General Permit

Dear Mr. Klikoff:

This letter provides the Port of Seattle's (Port) comments on the Draft Industrial Stormwater General Permit issued on November 21, 2007 (Draft Permit). We appreciate the opportunity to submit these comments and for the opportunity to participate in the development of the permit.

GENERAL COMMENTS

The Port applauds Ecology's recognition that stormwater is variable by moving the permit benchmarks to a seasonal median, as recommend in the ESSB 6415 Report¹ (6415 Report), and its attempt to streamline and simplify the permit. However, the Port is deeply concerned over two major changes that, when combined; create a permit that potentially forces permittees to prematurely enter into expensive and perhaps unnecessary corrective actions:

- 1) Removing action levels and concurrent lowering of benchmarks and
- 2) Minimizing the value of the adaptive management approach by establishing an excessively rigid and burdensome corrective action process.

Ecology's rationale for removing action levels, as stated in the Fact Sheet is that doing so will reduce permit complexity, and eliminate an endless corrective action do-loop. Although the Port is usually in favor of simplifying permits, in this case it is not well grounded and appears to represent a premature abandonment of the action level approach. Instead, a better approach is contained in the recommendations of the 6415 Report. Rather than eliminating action levels altogether and subjecting a large percentage of permittees to potentially unnecessary corrective action, the recommendation involves some simple changes to the Level One, Two and Three response actions. The elimination of the copper action level is especially burdensome given the

¹ Evaluation of Washington's Industrial Stormwater General Permit (EnviroVision and Herrera Environmental Consultants, November 2006)

lack of effective BMPs for copper and a poor understanding of copper sources in industrial settings.

The adaptive management corrective action approach contained in the 6415 Report recommendations provide a much more workable approach to achieving benchmarks. Moreover, they are more consistent with the direction given to Ecology by the Legislature in ESSB 6415 (now RCW 90.48.555). The 6415 Report approach provides more realistic timeframes and incentives for permittees to evaluate site conditions and implement controls with clear timeline for required actions.

Our concerns are compounded by the fact that **the current permit is working** and that less drastic changes and additional enforcement are what is needed to make it an even more workable and effective permit. For example, at the Port's Seaport Maintenance Facility, conventional source control BMPs (e.g., covering/moving of dumpsters and material storage areas, sweeping, and catch basin inserts) implemented a little over one year ago in response to several quarters of benchmark exceedances have resulted in five consecutive quarters of meeting benchmarks.

The Port respectfully requests that Ecology reconsider and adopt the approach contained in the 6415 Report regarding benchmarks, action levels and corrective action adaptive management approaches.

SPECIFIC COMMENTS

S1.E.1: Requirements for facilities that discharge some stormwater to the ground needs to be clarified. Currently, the Draft Permit states that discharges to the ground will need to comply with "the terms and conditions of this permit". Which terms and conditions of the permit apply? Discharges to the ground should not require sampling and analysis and comparison with benchmarks given that such sampling would not produce results representative of water discharging to the surface water.

S1, Table 1, Footnote 1: This footnote is confusing and overly broad in its attempt to identify industrial facilities that require coverage under the permit. The phrase "similar to" could be interpreted much too broadly and requires additional clarification to specifically identify those industrial facilities and/or activities that require coverage. For example, a facility that otherwise does not require coverage and engages in recycling of employee's waste paper and soda cans could be considered to conduct activities "similar to" the Recycling Facilities industrial category and therefore be required to obtain coverage. Part of the confusion stems from the use of the heading "Industrial Activities" in the first column of Table 1. With a few exceptions (such as Metal Mining, Coal Mining, Oil and Gas Extraction), the table entry is not an activity but an industrial category (e.g., Lumber and Wood Products, Industrial and Commercial Machinery and Computer Equipment). Therefore, "Facilities with activities similar to those described in the narrative title" does not specifically identify the activity that should be regulated to control stormwater pollution.

S1, Table 1, Footnote 3: The Port agrees with Ecology's decision to retain the limitation of coverage included in this footnote to vehicle maintenance shops, equipment cleaning operations,

and airport anti-icing /de-icing operations. If this limitation did not exist, numerous non-industrial facilities in the Water Transportation industrial category would be required to needlessly obtain coverage under the Permit.

S2.A: This section should address a schedule for preparing and implementing a SWPPP for those existing facilities that previously did not require coverage, but do now (due to Ecology adding SIC Codes requiring coverage). We suggest allowing at least 90 days for these facilities to develop and submit their SWPPP.

S2.A.3.b: The Draft Permit increases the minimum application period for new facilities from 38 days to 180 days prior to commencement of stormwater discharge from the facility. This application period is excessive and we recommend that the application period be reduced to 60 days, similar to the requirements contained in S2.A.4 of the Draft Permit for facilities undergoing a significant process change. The longer application period will likely result in late application submittals and potentially require the applicant to needlessly delay the start of new facility operations.

S3.B.3.a.v.E: In order to implement the Ecology-approved industrial stormwater training session, the Port encourages Ecology to develop an internet-based training session to increase Permittee participation and reduce Permittee costs associated with offsite training. This condition of the Draft Permit should also be clarified to describe which members of the Permittee's staff are required to attend this training.

S4.B: The Port views the changes contained in the Draft Permit regarding wet season monitoring, removal of stringent sample collection criteria, and use of the median value in comparing sampling results to benchmarks as significantly positive changes to the permit. However, two changes to this section of the permit are needed. First, this section of the permit should clarify what constitutes an individual storm event (e.g., at least 24 hours of no precipitation between each storm event, at least one week between samples, etc.) to provide guidance on storm event sampling. Second, the following sentence taken from the current permit should be added to the end of S4.B.b to qualify the requirement for sampling the first discharge from the site after September 1: "The Permittee is not required to sample outside of regular business hours..." Omission of this statement would place an undue burden on the Permittee to provide round-the-clock staff to ensure collection of the first discharge.

S4.B.e: The phrase "retention pond" should be changed to "detention pond".

S5: The Port views Ecology's decision to base most benchmarks on actual regional stormwater monitoring data as a positive step in establishing appropriate technology-based permit targets. However, the Port is disappointed in Ecology's decision to ignore the recommendations of the 6415 Report and eliminate the use of action levels in the Draft Permit.

This concern is best demonstrated by examining its impact in the context of the new benchmark for copper (20 µg/L). There is a real possibility that few, if any, permittees will be able to achieve the new copper benchmark. BMPs designed to feasibly treat stormwater to the copper benchmark level have not been identified, and the primary source of copper is, in many cases,

not even associated with industrial activity but is instead related to urban traffic. For example, at Sea-Tac International Airport, the highest copper concentrations over the entire airport are found in runoff from the drainage basin that serves high vehicle use areas. Brake pads and vehicle traffic, not industrial activity, is the most likely source of this contamination. Despite the implementation of innovative and costly treatment BMPs to treat this runoff, including the complete retrofit of the basin, it is anticipated that maintaining copper levels below the 20 µg/L will be very difficult. The effect of adopting this benchmark and concurrently eliminating the copper action level is that up to one-half of Permittees will enter into Step A and/or Step B corrective actions. Yet no feasible BMP for addressing copper exists.

We believe the best approach is to re-instate all action levels as recommended by the 6415 Report. Alternatively, Ecology should reconsider the proposed copper benchmark until a feasible means of achieving the copper benchmark is developed and a better understanding of industry's relative contribution as a source of copper to stormwater exists. Specifically, we suggest that Ecology adopt the 6415-recommended copper action level (42.6 µg/L) as the new benchmark until the time that copper treatment BMPs and copper sources at industrial facilities are better understood.

S7.D.3: This section of the permit requires that the person conducting the site inspection provide a statement declaring whether the site is either in compliance or out of compliance with the terms and conditions of the SWPPP and the permit. In many cases, the person conducting the site inspection is not in a position to make such a judgment, especially in cases where the Permittee has contracted with a consultant to conduct the quarterly inspection/monitoring. The current permit requires that quarterly visual monitoring reports be signed by the person making the observations (see S4.D 1 of the current permit) and that the report be reviewed and signed by a duly authorized representative of the facility, at which time the representative provides the above-described declaration as to compliance or noncompliance with the SWPPP and the permit. This framework currently in place provides a more workable approach. Also, Paragraph 7 of this section should be omitted because it is a duplicate of Paragraph 3.

S8: The proposed two-step corrective action process is excessively rigid and requires the Permittee to commit to a potentially costly and disruptive response action before the need for such a response has been definitively established. Increased flexibility is needed in the permit to allow Permittees to phase in source control and treatment BMPs as steps that build upon each other (consistent with the adaptive management approach). As discussed above, this flexibility is especially needed given that a large percentage of Permittees will be implementing corrective measures due to the elimination of action levels. The following are specific examples of how the Draft Permit should be modified to increase flexibility in complying with the permit:

- The Draft Permit requires the Permittee to commit to source control *and* treatment BMPs within 4 weeks of entering into Step A corrective action. This commitment is to be included within Form 3 to be submitted along with the Spring DMR. This approach does not allow the Permittee to assess the effectiveness of correcting improperly installed, constructed, or maintained BMPs (the first task under Step A) or to assess the effectiveness of a new source control BMP prior to committing to the installation of costly treatment BMPs. This approach should be modified to allow the Permittee to

phase the implementation of these corrections to existing BMPs and new source control BMPs to determine whether treatment BMPs are needed. This could be accomplished by allowing the Permittee to include a qualifier in the Form 3 report that states that the need for treatment BMPs will be based on the results of the second year's wet season monitoring such that the previously selected treatment BMPs would not be constructed if benchmarks were achieved. In most cases, simple source control BMPs provide a more cost effective and environmentally sound means to prevent stormwater pollution and the permit should be written to encourage their use over treatment BMPs.

- References to “source control and treatment BMPs” within this section should be changed to “source control *and/or* treatment BMPs” to reflect the fact that treatment BMPs may not be appropriate for certain pollutants and facility situations. For example, if a facility is having difficulty achieving the 25 NTU turbidity benchmark as a result of turbid runoff from an unpaved surface, that facility should not have to commit to a treatment BMP when simply paving the area (i.e., a source control BMP) would address the problem. Under the current language, the Permittee for this facility is required to identify and commit to both source control *and* treatment BMPs to address the turbidity exceedance.
- The current permit contains a means to request a waiver from employing stormwater treatment BMPs (see Level Three Response, P. 26 of 72 in current permit). This waiver must include an explanation why the implementation of stormwater treatment BMPs are infeasible, and are not necessary for compliance with water quality standards due to unique site conditions. Under the current permit, Ecology must review and approve the waiver for it to become effective. The corrective action process of the Draft Permit should be modified to include such a waiver. This waiver could address the issue raised earlier regarding the lack of feasible treatment BMPs for copper. It could also be used to generate site specific comparisons to water quality criteria through calculation of site specific dilution factors, as described in Sections 3 and 5 of the ESSB 6415 Report, and calculation of appropriate translator values which relate total metals concentrations to dissolved metals concentrations. In essence, the waiver could be structured to support a reasonable potential analysis.

The waiver needs to be available to Permittees early on in the corrective action process (i.e., within Step A) to avoid the installation of unneeded source control and treatment BMPs. In addition, the Permittee must be allotted sufficient time to complete the waiver. One possible approach to incorporating the waiver into the corrective action process would be to substitute the waiver for the engineering report associated with Step B. This would involve indicating on the Form 3 report (to be submitted within one month of entering into Step A corrective action) that the Permittee elects to pursue a waiver from employing treatment BMPs and therefore the Permittee is allowed to omit the designation of treatment BMPs on Form 3. The Permittee then proceeds to complete the remainder of the Step A corrective action process. If the Permittee then enters Step B, the waiver is completed in lieu of the engineering report. If Ecology denies the waiver, the Permittee then prepares and implements the engineering report.

- Sections S8.A.2.c and d are confusing as written and appear to imply that as part of Step A, the Permittee must commit to the design and installation of BMPs for all parameters being monitored, even those that do not exceed their respective benchmark. This approach does not make technical sense because it forces the Permittee to design for a water quality issue that may never exist. The Draft Permit should be revised to specify that one enters Step A and Step B for a specific benchmark exceedance and that the Permittee may have to repeat this process for a different parameter if the benchmark for that parameter is exceeded in the future. The likelihood of this second entry into the corrective action process for a new parameter is low because it is unlikely that a new parameter will exceed a benchmark at some future time, unless the facility undergoes a significant process change.

S9.A.5: Ecology is encouraged to complete the development of the electronic DMR filing system. We have experienced problems because information submitted to Ecology by Permittees takes months or years to be posted in the appropriate file at Ecology.

Thank you for this opportunity to comment on the Draft Permit. If you have any questions concerning the content of this letter, please contact Marilyn Guthrie at 206-728-3347.

Sincerely,



Stephanie Jones Stebbins
Seaport Environmental Manager

cc:

Susan Ridgley – POS Legal
Marilyn Guthrie – Stormwater Program Manager
Kathy Bahnick – Environmental Program Supervisor