



**Regional Road Maintenance ESA Forum
155 Monroe Ave NE, Renton Washington 98155-4199**

April 20, 2007

Jim LaSpina
Washington State Department of Ecology
Water Quality Program
P.O. Box 47600
Olympia, WA 98504-7600

RE: Comments Public Notice Draft of the Industrial Stormwater General Permit

Dear Mr. LaSpina:

The Regional Road Maintenance ESA Program Stormwater Committee has reviewed Public Notice Draft of the Industrial Stormwater General Permit (ISWGP) issued by your group on February 21, 2007. We wish to thank you for the opportunity to do this review. The comments set forth in this letter are made to ensure that the time, effort, and money spent on this permit are used effectively to target improvements in water quality in Washington State. This letter primarily deals with the ISTEA portion of the permit. This is an area of serious concern to us and is addressed below.

Provisions within the Intermodal Surface Transportation and Efficiency Act (ISTEA) of 1991 temporarily exempted storm water discharges associated with industrial activity that are owned or operated by municipalities serving populations less than 100,000 people (except for airports, power plants, and uncontrolled sanitary landfills) from the need to apply for or obtain a storm water discharge permit (section 1068(c)). Industrial Activity is defined as the ten categories of industrial activities identified in 40 CFR 122.26(b)(14)(i-ix or xi) <http://cfpub.epa.gov/npdes/stormwater/swcats.cfm>. Table 1 of this permit lists these ten categories of industrial in a different format. The transpiration groups listed in Table 1 of the permit are SIC Group 40: Railroad Transportation; SIC Group 41: Local and Suburban Transit and Interurban Highway Passenger Transportation; and SIC Group 43: United States Postal,

These do not apply to public works facilities, other than bus maintenance facilities. A letter from US EPA from July 1991 states that: *"Facilities primarily engaged in the maintenance of vehicles used for highway construction and maintenance are not required to apply for storm water discharge permits. The Agency believes that such facilities are properly classified under Standard Industrial Classification (SIC) code 16. SIC code 16 includes facilities that are primarily engaged in the construction or maintenance of highway and streets, bridges, and sewers. Sic code 16 facilities are not classified as industrial activities under the storm water discharge application rule."*

In reviewing the fact sheet, the applicable CFR, and Table 1 of the permit, we found no SIC codes or industrial groups described that are comparable and applicable to public work facilities, such as road maintenance facilities. These facilities clearly fall under the SIC code 16XX (heavy construction other than building construction and SIC code 92XX (public order and safety). The most applicable SIC Group is 1611, Highway and Street Construction, Except Elevated Highways. It is clear that these public works facilities do not fall under the coverage of the

industrial NPDES permit and are specifically called out in the Municipal NPDES permit. This permit is for industrial facilities categorically included for coverage that discharge stormwater to surface water as are listed in Table 1 in the permit.

During our consultations with Ecology on the municipal NPDES permits, it has always been agreed that these facilities would be covered under the municipal NPDES permit. The inclusion of these facilities into the ISWGP was done without any outreach or notification to the agencies or municipalities affected. It was only through word-of-mouth that most agencies and municipalities impacted by this potential change in permit coverage became aware of the double coverage.

No where in the ISWGP focus sheets, the fact sheet, webpage, or in the permit itself does Ecology specifically call out adding municipal facilities that are not one of the ten categories of industrial activities. The fact sheet only discusses changes applicable to industrial facilities owned by Phase II. *“A significant change contained in the Phase 2 regulations applied to industrial facilities owned or operated by municipalities with populations of less than 100,000. Facilities in this category include wastewater treatment plants and vehicle maintenance shops. Based on EPA Phase 1 stormwater regulations, the previous permit did not require these facilities to obtain coverage. These facilities were included in the EPA Phase 2 stormwater regulations which required them to obtain a discharge permit by March 10, 2003. Condition S1.A.2 of the draft permit contains this requirement. Any previously exempt municipal facility that has an industrial activity identified in Table 1 of the draft permit for coverage and discharges to surface water must have permit coverage.”*

In addition, the ISWGP states in S1.D.5 (Facilities excluded from coverage) that any facility authorized to discharge stormwater under an **existing** NPDES individual or other **general permit** is excluded from this permit. The Municipal NPDES permits have already been issued, maintenance yards et.al, are already specifically called out.

Phase I - S5.C.9.a.iv,vii,xi, - Covering heavy equipment maintenance or storage yards and from material storage facilities; and, road right-of-ways and maintenance yards.

Phase II - S5.C.5.f, g, i - Covering road right-of-ways and maintenance yards; and, heavy equipment maintenance or storage yards and material storage facilities.

These facilities are already covered under the municipal NPDES permits and the ISWGP does not apply.

We had no input or guidance on what activities on our facilities would cause Ecology to include them in the ISWGP. We have no input or guidance on what facilities would be included in the ISWGP and which facilities would be under the municipal permit and on what basis these decisions would be made. Would the ISWGP include just the public works facilities held by Phase II municipalities under ISTEPA, the Phase I public works facilities, public works facilities of municipalities not covered by a municipal NPDES permit, would WSDOT facilities to be covered under the ISWGP or their Phase I permit? We would expect that decision by Ecology that results in a significant shift in resources for the affected municipalities such as this would be preceded by some collaboration with us.

Significant Changes

If Ecology plans to add public works facilities to the ISWGP had proceeded then we would have requested an extension of the public comment period and that Ecology supply the language and reasoning for including non-industrial municipal facilities under the ISWGP. It was just

communicated to us that Ecology does not plan to do this so we will not need this extension. The addition of municipal public works facilities to the ISWGP constituted a significant change to the ISWGP and we would have expected an opportunity to comment on the new language through another round of public comments.

The lack of outreach and notification by Ecology about this change to municipalities and affected agencies resulted in little or no opportunity to comment on the Public Notice draft of the Industrial Stormwater General Permit. There was no notice from Ecology that they intended to expand the coverage of the ISWGP to include SIC Code 16XX or SIC code 92XX, which the codes for public works facilities. One of the reasons that no review was done earlier is that it was our understanding that our facilities were covered under the municipal NPDES permit and were not in one of the ten categories of industrial activity listed in CFR 40 therefore covered under the ISWGP.

Overlap

One of the other issues raised in this process was the recurring instance of overlap within the various NPDES permits. In the process of trying to determine which permit was applicable, one of the clarifications received from Ecology was that when more than one permit is applicable “the more restrictive one would trump.” This “the more restrictive one” method of choosing applicable NPDES permits introduces too much uncertainty to the permit process. Overlap of permits needs to be avoided; Ecology needs to compare the NPDES permits before issuance to remove overlaps and a more predictive process needs to be established when overlaps of permits do occur.

With various NPDES permits being issued and reissued, there needs to be consistency across the NPDES spectrum. This would include reduction or elimination of overlaps between permits, consistency of terms and definitions between permits and across regulations. This lack of consistency and permit/regulation coordination does nothing but create additional work for everyone involved. We wish to express our thanks and appreciation for the opportunity for this review. We look forward to working with you on the implementation of this permit in a way that provides protection to the environment and uses solutions that are effective and attainable by our programs.

Sincerely,

Douglas D. Navetski
Committee Chair
Stormwater Committee
Regional Road Maintenance Forum

Cc: Regional Road Maintenance Forum Members