



July 15, 2009

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Via email: industrialstormwatercomments@ecy.wa.gov

**RE: Draft Industrial Stormwater General Permit**

Dear Mr. Killelea,

Thank you for the opportunity to comment on scoping for the *draft Industrial Stormwater General Permit*.

People For Puget Sound is a nonprofit, citizens' organization whose mission is to protect and restore the health of Puget Sound and the Northwest Straits.

We are concerned that the revised permit is not adequate to protect water quality in Puget Sound. While we were willing to accept flexibility in the first round of the permit, it is disappointing that this version does not represent a significant step forward. In fact, it is our view that the permit is, in some ways, less stringent than the current Industrial Stormwater General Permit. In particular, there are now 4 levels of corrective actions and more opportunities to delay compliance. We view this approach as backsliding.

In addition, we support Puget Soundkeeper Alliance's extensive comments including issues of lack of adequate "reasonable potential" analysis by Ecology, loosened sampling requirements (including first flush), relaxed benchmarks (dilution), reduced treatment requirements, inadequate public notification of facility modification, extended timelines, specificity and clarification of sampling requirement (representative samples, pollutant types, etc.), comprehensive coverage of all discharge points, lessening of corrective action requirements, clarity of reporting requirements, and inadequate requirement for public access to records (including SWPPPs).

That this draft permit is *weaker* than the previous permit is contrary to Governor Gregoire's Puget Sound Initiative and the new Puget Sound Partnership Action Agenda. How does Ecology justify this?

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Our specific comments follow:

1. **Section S4: Sampling.** The proposed sampling (once per quarter) is no different from the current permit. Yet the current strategy has resulted in the majority of permittees obtaining fewer than three samples per year. The proposed permit will not remedy this situation and allows continued abuse of the system.
2. **Section S5: Benchmarks.** There are several areas in which the proposed permit violates the federal Clean Water Act's "anti-backsliding" provisions.
  - a. As you are aware, the benchmarks are part of a narrative effluent limit – the other part being the corrective actions. Both of these facets of the draft permit have become less stringent. The existing permit holds permittees to a benchmark of 117ug/L for zinc. The study conducted under SB 6514 indicated that the median reported value was 120 ug/L, which means that at least 50% of the permittees could achieve this benchmark. In fact, by Ecology's own admission, most of the permittees studied were not implementing appropriate BMPs. How then can Ecology propose a benchmark that is 1.7 to 2 times higher than what permittees were already achieving? This is not only backsliding, but also does not meet federal requirements. Moreover, this approach violates 90.48 RCW requirements for implementation of technology-based standards as the first line of water quality protection.
  - b. Second, the proposed permit does not provide criteria for sampling storm events. The current permit has such provisions. The lack of storm criteria and antecedent dry conditions allows savvy permittees to sample after the first flush has passed and concentrations are lower. Although the current storm criteria have not been particularly functional, the lack of storm criteria coupled with the higher benchmark allows the permittees to use dilution. This amounts to backsliding.
  - c. Additional evidence of backsliding involves the failure of the Department to propose a benchmark for copper for all industries. While Ecology has used zinc as a surrogate for copper (and lead) based on EPA's MSGP, copper is a more highlighted problem in Washington and especially in Puget Sound (as indicated by recent Puget Sound Toxics Loading studies). Failure to monitor for a parameter of concern that is monitored for under the current permit is backsliding. Further, many of the current permittees are not meeting the current benchmark for copper. It is critical that benchmark for copper be included in the permit.
  - d. The draft permit allows permittees an extension to the current permit deadline for SWPPPs. The existing permit requires that SWPPPs be prepared and implemented prior to discharge. The SWPPP under the existing permit already includes a pollution prevention team, good housekeeping, preventative maintenance, emergency spill controls, employee training, and inspections, and record keeping. The draft permit allows a reprieve until July 2010. This represents additional backsliding.
  - e. The proposed permit has a less stringent corrective action regime which also represents backsliding. This provision allows permittees currently in Action Level two or three additional time to comply with a less stringent standard (see comments on the Corrective Actions below).

- f. Finally, the use of dilution factors is the equivalent of granting a mixing zone, contrary to the ruling by the PCHB.
3. **Effluent Limitation.** The proposed permit does not provide for effluent limitations for hazardous waste landfills. While there are currently no hazardous waste landfills in the state, a disposal facility could be located in the state at a point in the duration of the permit. The effluent limits equivalent to EPA's MSGP should be contained in the permit.
4. **Section S6: Discharges to 303(d) -Listed Waters.**
  - a. For purposes of determining whether a discharger is a new discharger to meet the requirements of 303(d), Ecology must use EPA's definition. A "new discharge" discharging to a 303(d) listed water body is one that began discharging after about 1973, not one that began discharging after the issuance of this permit. As you are no doubt aware, there is recent case law on this topic. At a minimum, the permit should define a "new discharger" as one beginning discharge after the listing of a waterbody on the 303(d) list.
  - b. We also have concerns regarding the ability of Ecology staff to make affirmative determinations as to whether a discharger is in compliance with the water quality criteria at the end of pipe. Currently the staff who issue permits do not necessarily have the technical expertise to make an affirmative determination of this sort. Further, these staff members are under pressure to ensure that permits are issued within 60 days of receipt of a complete application. The resources of the regional staff are also over taxed. If Ecology does not dedicate the resources towards making these determinations, they become a license to continue to degrade the already impaired waters.
  - c. The permit needs to state that waterbodies that are listed for dissolved oxygen must be sampled for the appropriate nutrient(s) causing the waterbody to be depleted in oxygen. Generally phosphorus is the limiting nutrient in freshwaters and nitrogen species are the appropriate nutrients in marine waters.
  - d. Since mercury is not hardness dependent, Ecology should list the effluent limit in Table 5.
  - e. All permittees discharging fecal coliform to a listed waterbody should sample for and have a limit established for the pollutant. This is particularly a problem in older sections of cities, where many cross connections between sanitary and storm sewers go undetected. Permittees may unknowingly be contributing to impairment for fecal coliform. All permittees discharging to waters listed for fecal coliform (not just those listed in footnote "h" to Table 5) should prove that they are not contributing to the degradation.
5. **Section S7: Inspections.** The requirement for qualified inspectors CISM's or CPSWQ is a needed and positive requirement. Having said that, January 2011 would be a more appropriate deadline for this requirement.

## 6. Section S8: Corrective Actions

- a. The Corrective Action portion of the permit continues to be complicated and promotes continued discharge of pollutants without serious commitment to remedying the situation.
- b. We also disagree that Level 1 Corrective Action requirements be reduced as this will lead to less public involvement as well as less transparency.
- c. The Level 2 Corrective action allows permittees who have already been in a Level 2 corrective action (Appendix 6) under the current permit to get another extension of six months to comply with a new, less stringent benchmark. Again, this is backsliding. Ecology also provides for a third extension by allowing the permittee to claim that installation within 6 months is not feasible and to process that with a modification of coverage request. This condition makes the permit a nothing more than a “paper tiger,” rather than a tool to improve stormwater.
- d. The number of exceedances of a benchmark to arrive at Level 3 will require at least two years and more likely three years of sampling (see comment on abuse of sampling requirements). Again in Level 3, Ecology provides for a claim that installation within 6 months is not feasible or not necessary.
- e. It is safe to assume that no permittees will complete a Level 4 Corrective Action within this five-year permit cycle. Permittees who see that their benchmarks are high will simply not monitor and claim no discharge for the quarters necessary to ensure that they will not move to this level.

## 7. Additional SWPPP and monitoring issues

- a. **Specific SWPPP Requirements.** The permit should require that the owner of each stormwater-related feature (drain, outfall, etc.) on the site be identified. There are many situations around the regions in which there are drains that cross parcels which are owned by entities other than the site owner.
  - b. **Outside of business hours.** People For Puget Sound has repeatedly requested that Ecology require sampling (especially for larger or more polluting industrial sites) *outside of business hours*. Many sampling devices can be set up to work at water level triggers and this should be required for sites above specified thresholds. Ecology should not allow important storms (first flush, etc.) to be bypassed.
  - c. **Oil and Grease/TPH.** Additionally, relaxing sampling for oil and grease and Total Petroleum Hydrocarbons is contrary to the need to reduce our loads of these chemicals to the Puget Sound basin as has been demonstrated in the recent Toxics Loadings studies.
  - d. **Sample Documentation.** Photographs should be required for each sample collection event. This is now standard protocol for agencies and there is no reason that sampling photographs should not be required in this permit.
8. **Exterior surfaces at sites.** The permit does not address the actual surfaces that are used for structures or ground cover at the industrial sites. We believe that this should be included in the

permit. The permit should address both the cleaning of surfaces (vacuuming, etc.) *and* the actual coatings or materials of the surfaces. Roof materials and coatings are a concern. For example, if a new roof is installed, the new roof should be made of inert materials. Also, in some areas, the caulking between concrete pads adjacent to and in older buildings or adjacent to airport runways, etc. contains PCBs.

9. **Non-Industrial portions of sites.** Finally, we have a clarifying question: Do Municipal General Stormwater NPDES permits apply to the non-industrial aspects of the facility sites? Has Ecology clarified this with local jurisdictions?

All in all, this permit does not meet our expectations nor does it comply with federal and state law. We hope to work with you to correct these serious deficiencies before final issuance. If you have any questions, please contact Heather at (206) 382-7007/htrim@pugetsound.org and Bruce at (350) 754-9177/bwishart@pugetsound.org.

Sincerely,

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