



May 1, 2009

Ms. Julie Lowe
Senior Stormwater Planner
Water Quality Program
Department of Ecology
P.O. Box 47600
Olympia WA 98504-7600

RE: Phase I Municipal Stormwater NPDES and State Waste Discharge General Permit Modification

Dear Ms. Lowe:

The purpose of this letter is to provide comments from the Port of Seattle on the Phase I Municipal Stormwater NPDES and State Waste Discharge General Permit Modifications (the "Permit Modifications"). Like other agencies across the state, the Port of Seattle has been impacted by the global economic downturn. Our cargo volumes have dropped significantly and we are working with our tenants and customers to find ways to reduce costs to survive this difficult time. It is with this in mind that the Port is recommending the following permit modifications. We appreciate the opportunity to submit these comments.

EXTENDING INTERIM PERMIT DEADLINES AND REDUCING COSTS

1. S6.E.3.d. - Current Language

Conduct field inspections and visually inspect for discharges at all known outfalls that discharge to surface waters. Visually inspect at least one third (on average) of all known outfalls each year beginning no later than 24 months from the date of permit coverage.

Proposed Language:

Reduce the outfall screening requirements to one fifth (1/5) of all known outfalls annually.

Proposal Intent – The IDDE program was developed during the first 2 years of the permit. Requiring annual inspection of 1/3 of all outfalls would result in inspection of all outfalls during this permit cycle. Because of the upfront time developing the IDDE program, the inspection frequency is increased. The permit cycle is 5 years; therefore 1/5 of the outfalls should be screened annually. Spreading out the initial inspections will free up resources and start screenings at a consistent, long-term frequency, without compromising the permit standard.

2. S6.E.6.b. - Current Language

The Port will manage maintenance activities to inspect all stormwater BMPs listed in the O&M manual annually, and take appropriate maintenance action in accordance with the O&M manual.

(ii) Unless there are circumstances beyond the Permittees control, when an inspection identifies an exceedence of the maintenance standard, maintenance shall be performed:

- Within 6 months for typical maintenance.

Proposed Language:

The results of the initial annual inspection of catch basins and inlets owned and operated by the Permittee will identify backlogged and unmaintained systems. The permittee will be allowed 24 months (instead of the “6 month for typical maintenance” time frame) from the initial inspection cycle to bring the catch basin and inlet inventory up to current maintenance standards. Upon completion of this initial maintenance cycle, sections S6.E.6.b. will be implemented

Proposal Intent – It is recognized, through catch basin maintenance programs throughout the region, that there is a significant cost associated with initializing a program of cleaning all catch basins. This will involve hiring additional staff and outside resources as this comprehensive program goes through start up. Prorating the initial cleaning over a longer period of time makes meeting this requirement more feasible. It is unlikely, in the current economic climate that the Port will be able to meet this requirement without a 24 month initial clean out period.

3. S5.C.5.b.iii Low Impact Development

Proposal:

The Port properties located in City and County jurisdictions will be required to implement the ordinances put in place by the Cities and Counties. The Port would like to be included in this stakeholder process.

Proposal Intent – The Ports, because of their location, have significant issues that are problematic for LID installation and, so far, appear to be of little concern for the other Phase I Permittees. The Port believes that these are legitimate issues that go beyond Port properties and would like to be assured that these issues will be addressed through Ecology’s stakeholder process.

Specific examples include:

1. Discharging to Large Water bodies that are exempt from flow control requirements.
2. Contaminated soils. In early 1900s Seattle’s waterfront was a maze of piers, canneries, shipyards, sawmills, warehouses, railroad tracks and high impact industrial activity. In 1911 the voters of Seattle established the Port of Seattle with the hope of taking back the water front and creating economic benefit for the community. With this history in mind, it easy to understand that most of the property owned by the Port has been impacted by these activities and would have soil and groundwater issues that would make infiltration and potential LID installation infeasible.
3. High ground water is present at most Port properties because of its location adjacent to the water.
4. Most properties are also tidally influenced.

5. There is a fair amount of property that is "overwater" and is incapable of infiltration or providing a feasible location for LID.

4. S6. E Stormwater Management Program for the Port of Seattle and Port of Tacoma - Current Language

SWPPP(s) shall be prepared and implemented for all Port-owned lands that are not covered by either a General Permit or an individual NPDES permit issued by Ecology that covers stormwater discharges.

Proposed Language:

Reduce this requirement to be the same as other Phase I Permittees. Condition S5.C.9.b.xi requires cities and counties to:

Develop and implement a Stormwater Pollution Prevention Plan (SWPPP) for *all heavy equipment maintenance or storage yards, and material storage facilities* owned or operated by the Permittee in areas subject to this permit, that are not covered under by another Ecology issued stormwater discharge permit.

Proposal Intent – This remains an expensive and unfair requirement of the Ports. It is in the Port's interest to reduce stormwater and other environmental impacts particularly on Port properties. However, it is also important that the Port maintain a level playing field with businesses that reside on Port properties and businesses that do not.

The SWPPP requirement in the permit (above) creates not only a significant level of effort and costs for businesses that happen to reside on Port properties, but also creates an unlevel playing field for Port businesses.

The Port of Seattle has a very diverse business population spread over a 6 mile in length non-contiguous area. Writing one SWPPP to cover the Subway (near the First Avenue Bridge) all the way to a recreational boating facility (at Shilshole Bay) would result in either an unusable large SWPPP or a completely meaningless SWPPP. Most tenant control their properties and the Port simply leases to the tenant with only a basic understanding of on-site tenant operations. For that reason, it also makes no sense to write a one-size-fits all SWPPP for Port businesses.

In addition, these properties are already regulated under the City of Seattle Stormwater Drainage Code which includes operational, structural best management practices (bmps). Inspections that are required of business within the City of Seattle (S.5.C.7.b.iii.) are imposed on Port properties. All of this regulation results in duplicative requirements for Port Properties, significant frustration and a feeling of harassment on the part of our tenants. Given the economic environment it seems prudent to reconcile overlapping and sometimes contradictory permit requirements for Port businesses.

Industrial tenants on Port properties are covered with Industrial Permits. This constitutes approximately 70 % of Port property, raising the question of why SWPPPs are needed for what are mostly Port parking lots.

Examples of business covered by this requirement:

Pier 66 World Trade Center	Pier 69 Offices	Fugro Office Building
Vacant Properties	The Victoria Clipper	Seattle Public School District
Law Offices	Subway	Chinooks restaurant
The Parking Lot at Shilshole Bay Marina	Terminal 102 Office and Marina Parking	Carter and University VW Audi new car parking

In order to implement SWPPPs “for all Port-owned lands”, it requires a constant evaluation of the Port’s over 300 leases in order to determine when business come and go, if they have an NPDES permit and if not, making sure the business complete and implement a SWPPP when if they simply resided on property across the street they won’t be required to have. In other words, there’s been a significant amount of push back from businesses who are confused about needing a SWPPP when it isn’t required at their other facilities not on Port property.

The cost of implementing SWPPPs “for all Port lands” has been \$ 51,000 and maintaining these SWPPPs “for all Port lands” is estimated at \$ 15,000/year. All this costs is duplicative and unnecessary in the light of City Code required bmps and the existence of Industrial, Boatyard or Individual permits where industrial activities occur. No other permit requirement hinges on property ownership.

5. **S8. MONITORING**

a) S8F. Stormwater Treatment BMP Monitoring - Current Language

S8G.1.d. Full implementation of the monitoring program shall begin no later than 2.5 years after the effective date of the permit.

Proposed Language:

Extend the full implementation date to allow for a phased-in approach - conduct S8.D and E, then S8F; and/or

Postpone BMP Treatment Monitoring to the next permit cycle, require start-up activities this permit term; or

Require only the amount of monitoring that can be done within the cost estimate of the permit.

Proposal Intent –

Option 1: Phase in or postpone BMP Treatment Monitoring

The purpose of the Stormwater Treatment BMP monitoring requirement is to test whether or not public domain treatment facilities are consistent with what is allowed in the DOE Stormwater Manual. BMPs were expected to be selected that meet the design standards in the DOE Manual. DOE did not anticipate the lag time between when treatment facilities are required / approved and when they are actually in-ground. As a result, most municipalities struggled to find BMPs within the jurisdiction that meets the design standards of the DOE Manual. Because of this, most municipalities were forced to select

BMPs that are not optimal and/or will marginally meet the intent of the BMP monitoring requirement. Data collected from facilities that are better designed would provide better data as to the functioning of the facilities and whether or not the public treatment domain facilities meet the pollutant removal goals of the DOE Manual. Extensive resources and money are currently being allocated to monitoring requirements that will provide questionable data about the functioning of the facilities. Better data would be provided if the monitoring schedule was extended and allowed to time for selection of facilities that will provide better results.

Option 2: BMP sampling done within the cost estimate of the permit

Appendix C of the Phase I Municipal permit estimated monitoring program costs. DOE estimated that the first year of BMP Evaluation Monitoring would cost the Port \$26,118. This was grossly underestimated. BMP monitoring for the Port of Seattle will cost \$214,400 for the first year of monitoring; eight times DOE's estimate. The cost of actually doing the BMP monitoring far exceeded DOE's estimate and will consume enormous Port resources to collect questionable data.

A phases-in approach or postponing BMP evaluation to the next permit cycle would allow permittees to learn from previous studies and provide more time for BMPs that are designed to the DOE Manual to be built. This would also provide a cost savings by spreading out the monitoring requirements.

Conducting S8.D & E, then S8.F could reduce Port of Seattle's monitoring costs by more than \$200,000 during the first year of program implementation.

b) S8.D.2.e. - Current Language

Each storm event shall be sampled using grab samples for the following constituents/parameters:

- i. Total Petroleum Hydrocarbons (TPH) using NWTPH –Gx and NWTPH-Dx (sample must be collected early in the storm event and skimmed from the surface), and
- ii. Fecal coliform bacteria.

Proposed Language:

Remove the restriction that the grab sample be collected early in the storm event.

Proposal Intent - Requiring that the grab sample be collected early in the storm event adds significant costs to sampling. Currently, monitoring staff spends a significant amount of time waiting for it to rain in order to be on site to perform the early sampling and this often results in not sample since rain events are difficult to predict. By eliminating this constraint, Port of Seattle could save 8 to 14 labor hours (\$800 – \$1200) per sampling event. Requiring the grab sample early in the storm consumes considerable staff resources with little benefits. Many variables (length of dry antecedent period, rainfall depth and intensity, position of pollutant sources within the basin, etc.) influence concentrations early in the storm. Thus sampling during the event "first-flush" will not

necessarily provide samples with the highest concentrations. FHWA (Federal Highway Administration) acknowledges in their stormwater monitoring guidance manual that peak pollutant concentrations do not always coincide with the "first flush," especially in areas subject to frequent, low intensity storms. Eliminating this constraint will save resources while not compromising the permit standard.

OR; Analyze for fecal coliform and TPH-Dx from a grab sample collected early on the storm using an automatic sampler and remove the requirement to analyze TPH-Gx.

Use of Teflon sample lines and appropriately cleaned glass bottles would reduce potential bias from auto sampling. Samples could still be retrieved soon enough to meet holding times specified in the S8D QAPP. Analysis of TPH-Dx would be sufficient to characterize oil and grease in stormwater; TPH-Gx has not typically been used as a surrogate for analysis of oil and grease in stormwater and is not a required analysis in the TAPE protocol. Eliminating this analysis would save resources without compromising the permit standards.

c) Method Reporting Limits (MRLs) for metals - Current Language

Proposed Language:

Raise Metals reporting limits for limits copper, lead, zinc and cadmium.

Permit limits are too low, clean hands procedure not applicable or feasible.

Proposal Intent - Raise the MRL requirements to levels that are consistent with stormwater sampling methodologies. To obtain the MRLs required for metals EPA method 200.8 field and sample processing methods would need to be adapted to allow analysis of ultra low trace metals. Meeting these low MRLs will require significant additional costs which cannot be justified. These field sampling collection and preparation methodologies are not suitable for use with automatic sampling devices. Permittees have had QAPPs approved with these higher MRLs, but it hasn't been consistent for all permittees. If the MRLs are raised in the permit, it will save considerable

King County Environmental Laboratory detection limit for total and dissolved copper is 0.4 ug/L, total and dissolved lead is 0.1 ug/L, and dissolved and total cadmium is 0.05 ug/L using EPA method 200.8 without using a "clean hands/dirty hands" method based on EPA 1669 sample collection for ultra low trace metals. This type of field sampling methodology is not suitable for use with automatic sampling devices. Therefore, this slightly higher detection limits will be used for this project.

Raising the reporting limits for these four metals would reduce the Port of Seattle's analytical costs for S8D monitoring by more than \$4,000 during the first year of program implementation.

S8.D.2.b. - Current Language

Chemicals below detection limits after two years of data analysis may be dropped from the analysis

Proposed Language:

Chemicals below detection limits after eight (8) sampling events may be dropped from the analysis.

Proposal Intent - Two years of data to drop a parameter would require analysis of 22 samples (11 samples per year). Requiring analysis of 22 samples is excessive to drop a parameter from analysis. The industrial NPDES permits require 2 years of quarterly sampling, or 8 samples, with non-detected results to drop the requirement to analyze for a specific parameter. To be consistent with the Industrial NPDES permit, a parameter should be allowed to be dropped after a parameter in 8 samples are non-detected. Reducing the requirement to analyze parameters that have shown to be non-detected will after 8 samples would provide considerable laboratory analysis cost savings, would be consistent with the requirements of the Industrial NPDES permit, and would not compromise the permit standards.

d) S8.D.2.d. - Current Language

The seasonal first-flush shall be tested for toxicity.

Proposed Language:

Delay toxicity sampling until the second year of monitoring.

Proposal Intent - Permittees are becoming comfortable with the monitoring process and procedures during the first year of monitoring. Preparing for toxicity testing will require considerable resources and commencing the toxicity analysis during the first year monitoring start-up. Delaying the toxicity testing for a year would provide some relief from the costs and procedures of the start-up monitoring. Delay of the toxicity testing would not compromise the permit standards.

Foregoing toxicity testing until the second year of monitoring would reduce the Port of Seattle's costs by more than \$13,000 for the first year of monitoring program implementation. With this proposal, permit criteria can still be met.

e) S8.D.2.b. - Current Language

Precipitation and flow data shall be reported, and samples shall be analyzed and results reported for the constituents/parameters listed below.

Proposed Language: - **Allow a tiered parameter list, similar to that in S8.D.2.c., for half of the stormwater samples.**

Proposal Intent - Having a priority list of parameters applied to half of the stormwater samples will reduce laboratory analytical costs. Analysis of the lower priority parameters

would continue to be conducted on half of the stormwater samples. Prioritizing parameter analysis on half of the samples would not compromise the permit standards.

G3 NOTIFICATION OF SPILL AND G20 NON-COMPLIANCE – Comments and proposed language

There is a significant amount of confusion around the G3 and G 20 notifications in the Permit. First, in an effort to ensure compliance, the Port has notified under multiple permit situations. For example, if there is a permit exceedance under the Construction General Permit, we have also notified under the Phase I Permit.

Second, the new language in G3 is also confusing. The new language proposed seems to be an expansion of the former language. Instead of saying "spill into", the language now reads "spill or discharge into or from". The Permit defines a "discharge" as only discharges from an MS4 ("Discharge" for the purpose of this permit, unless indicated otherwise, refers to discharges **from** municipal separate storm sewers of the Permittees. See also 40 CFR 122.2.). What is confusing is what is meant by "discharge into" what "or from" what. It is unclear if a discharge is into the MS4, the receiving water or something else. It is also unclear how the PCHB ruling requires this expansion.

As an example, a spill "from" MS4 could occur whenever it rains and stormwater discharges from parking lot that is contaminated with auto oil. The current language would seem to require a G3 notice for this example each time it rained.

Additionally, there is confusion around "constitute a threat to human health, welfare or the environment" and how the permittee is able to determine these threats.

Proposed Language:

G3. NOTIFICATION OF SPILL OR DISCHARGE

If a Permittee has knowledge of a spill or discharge into a receiving water from a municipal storm sewer which could constitute a threat to human health, welfare, or the environment, the Permittee shall take appropriate action to correct or minimize the threat to human health, welfare and/or the environment, and:

- A. Notify the spill or discharge under only one Ecology NPDES permit. One notification under this permit or another Ecology NPDES permit is sufficient to complete notification under this permit.
- B. Notify the Ecology regional office and other appropriate spill response authorities immediately but in no case later than within 24 hours of obtaining that knowledge. The Department of Ecology's Regional Office 24-hr. number is 425-649-7000 for the Northwest Regional Office and 360-407-6300 for the Southwest Regional Office.
- C. Immediately report spills or discharges which might cause bacterial contamination of shellfish, such as broken sewer lines and failing onsite septic systems, to the Ecology regional office and to the Department of Health, Shellfish Program. The Department of Health's Shellfish 24-hr. number is 360-236-3330.

- D. Immediately report spills or discharges of oils or hazardous materials to the Ecology regional office and to the Washington Emergency Management Division, 1-800-258-5990.
- E. Notification under S4.F.
- Perform notification required under S4.F
 - In the event that Ecology determines that a discharge from a municipal separate storm sewer is causing or contributing to a violation of Water Quality Standards in a receiving water, and the violation is not already being addressed by a Total Maximum Daily Load or other water quality cleanup plan, Ecology will notify the Permittee in writing in accordance with S4.F.

G20. NON-COMPLIANCE NOTIFICATION

In the event it is unable to comply with any of the terms and conditions of this permit, the Permittee must, under the S4. F notification requirements:

A. Notify Ecology of the failure to comply with the permit terms and conditions in writing within **30 days** of becoming aware of the non-compliance. The written notification to Ecology must include all of the following:

1. A description of the non-compliance, including the reference(s).
2. Beginning and ending dates of the non-compliance, or if the Permittee has not corrected the non-compliance, the anticipated date of correction.
3. Steps taken or planned to reduce, eliminate, or prevent reoccurrence of the non-compliance

B. Take appropriate action to stop or correct the condition of non-compliance.

G20. notification is reserved for permit compliance issues **not** associated with the G3. spill or discharge notification requirements.

Ms. Lowe
May 1, 2009

Thank you for this opportunity to comment on the Permit Modifications. If you have any questions concerning the contents of this letter, please contact Marilyn Guthrie at (206-728-3378) or guthrie.m@portseattle.org.

Sincerely,



Stephanie Jones Stebbins
Senior Manager – Seaport Environmental Programs
Port of Seattle
Pier 69
PO Box 1209
Seattle, WA 98111

cc:
Susan Ridgley – Port Legal
Marilyn Guthrie – Seaport Environmental