

Washington Industrial General Stormwater Permits



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Introduction

- Stormwater and Wetlands
 - NPDES permits
 - 404 permits
 - Critical Area Ordinances
 - Ecology Administrative Orders
 - SEPA review
- Western SWMM - Vol. I - Appendix D
- BMPT10.30 Stormwater Treatment Wetlands

Permit Appeal Status

- Boatyard General Permit - PCHB Hearing July 2006
- Construction Stormwater General Permit
 - Motions for Summary Judgment
 - PCHB Hearing January 2007
- Industrial Stormwater General Permit

Critical Issues

- Permit coverage decision
- Effluent limitations
- Benchmarks
- Adequacy of state water quality criteria
- Adaptive management

Permit Coverage

- Is the decision to grant coverage under a general permit a permit decision by the department? If so, is the department required to review and approve SWPPPs?
- *Waterkeepers Alliance v. EPA*, 399 F.3d 486 (2nd Cir. 2005)(CAFO rule); *EDC v. EPA*, 344 F.3d 832 (9th Cir. 2003)(Phase I municipal permit)
- *Texas Independent Producers and Royalty Owners Ass'n v. EPA*, 410 F.3d 964 (2005)(EPA CSGP)
- *Puget Soundkeepers Alliance v. Ecology*, PCHB No. 00-174 (2001); *Cascade Conservation League v. Ecology*, PCHB No. 98-82 (1999)
- Boatyard General Permit
- 2005 CSGP Appeal

Strict compliance with CWA

- *Defenders of Wildlife v. Browner*, 191 F.3d 1159, 1164-65 (9th Cir. 1999) – maximum extent practicable for municipal stormwater does not require strict compliance with water quality standards.
- Section 402(p) compliance requirements for municipal and industrial stormwater discharges

Numeric effluent limitations in general permits

- Effluent limitations include BMPs 33 U.S.C. § 1365(f)
- EPA regulations allow effluent limitations to be expressed as BMPs 40 CFR 122.44(k)
- EPA stormwater policies rely on BMPs as appropriate effluent limits for stormwater
- 61 Fed. Reg. 57425-02 (November 6, 1996)
- State Water Quality Standards - e.g., WAC 173-201A-510 (3)(a)

Reasonable Potential Analysis

- When is the Department required to make a reasonable potential analysis under RCW 90.48.555 and 40 CFR § 122.44(d)(ii) and impose numeric effluent limits?
- SB 6415 Monitoring Data Report
- Boatyard Permit

Benchmarks and Action Levels

- ISGP - Use of EPA benchmarks
- Boatyard - Copper benchmark based on standard dilution factors and water effects ratios
- CSGP - 25 NTU turbidity benchmark based on field experience and protection of fisheries
- EPA draft Multi-sector General Permit
- 6415 Consultant recommendations

Adequacy of State Water Quality Criteria for Toxics

- NMFS research and concerns over toxicity to salmon when exposed to concentrations of heavy metals within less than half of Washington's chronic criteria
- ESA Consultation Between EPA and NMFS over Washington NPDES permit program
- WAC 173-201A-240 - chronic copper for marine waters - 3.1 µg/L
- Phase II Municipal Permit Fact Sheet - dissolved copper between 7 and 12 µg/L

Adaptive Management

- Are adaptive management provisions adequate to protect water quality?
- How does that impact the development of benchmarks?
- What if benchmarks are not achievable?

Preliminary Draft ISGP - Status

- Ecology accepting comments until November 6, 2006.
- Final draft issued for public comment in December 2006
- Permit reissued in September 2006

Preliminary ISGP - Significant Provisions

- Requires SWPPPS to be filed
- Retains existing benchmarks and action levels
- Adds sampling for copper and lead
- Eliminates dry season sampling and storm event criteria
- Addition of Level Four Corrective Action
- Role of Ecology manuals
- Compliance with standards - assess compliance at point of discharge

Developments to monitor

- Boatyard General Permit decision from PCHB - pending
- CSGP appeal - hearing in January 2007
- ISGP draft - December 2006
- SB 6415 Report - December 2006
- Municipal Phase I and II - December 2006