

Revising Oregon's Industrial Stormwater General Permits Advisory Committee Meeting Notes

Meeting: Meeting 2- Overview of EPA's Multi-Sector General Permit

Date: August 4, 2009

Location: DEQ-Headquarters, Portland

Attendees: Committee:

- Mark Riskedahl-Northwest Environmental Defense Center
- Michael Campbell-Stoel Rives LLP on behalf of Oregon Industrial Stormwater Group
- Calvin Noling-StormwaterRx
- Dan Mensher, Pacific Environmental Advocacy Center, on behalf of NEDC and Columbia Riverkeeper
- Eric Strecker-GeoSyntec Consultants
- Neil Alongi-Maul Foster & Alongi, Inc.
- Doug Pennington-Oregon Metals Industry Council
- Russell Strader-Boise Cascade LLC
- Jay Waldron-Glenwood Auto Parts
- Rick Fischl-Clean Water Services on behalf of OR Association of Clean Water Agencies
- Michael Pronold-City of Portland, Bureau of Environmental Services
- Dorothy Sperry- Port of Portland

DEQ: Annette Liebe, Jenine Camilleri, Paula Calvert, Rodney Weick

Chair: Commissioner Ken Williamson

EPA: Misha Vakoc and Michael Le, EPA Region 10, Stormwater Program

Introduction:

- Commissioner Williamson explained that the purpose of the meeting was to gain a greater understanding of EPA's permit.
- Administrative matters:
 - Members will bring copies of the meeting materials to each meeting so DEQ does not have to bring hard copies.
 - DEQ proposed that the future meetings be held on the third Tuesday of every month from 1 :30 to 4 :30 pm. Members will let DEQ know at the next meeting whether they have any conflicts with the proposed dates and times.
 - DEQ can set up a call-in number for these meetings. Members will need to notify DEQ before the meeting if they will participate by phone.

Settlement Agreement and Effect of EPA's Multi Sector General Permit (MSGP):

Annette Liebe provided an overview of the settlement agreement and discussed the Department of Justice memorandum on the effect of the MSGP.

- DEQ has committed to revising the permits within 16 months.
- EPA's MSGP is the desirable platform for revising the permits, but there are areas where Oregon permits may differ from the MSGP requirements.

- Where DEQ deviates from the MSGP, the agency will need to base the different approach on substantial evidence.
- As part of the settlement agreement, DEQ will seek feedback from the advisory committee on requirements that may go beyond the MSGP such as increasing monitoring requirements (related to monitoring waiver), consequences for benchmark exceedances and conducting an initial characterization of stormwater discharges. Many of the issues that DEQ will discuss with the committee are interrelated.

Overview of MSGP and rationale for new requirements

Jenine Camilleri and Paula Calvert gave a presentation on EPA's rationale for the following MSGP requirements: technology based effluent limits; water quality based effluent limits; monitoring requirements, benchmarks and response to benchmark exceedances. Jenine and Paula also identified areas where DEQ may deviate from the MSGP and further clarification of the requirements.

During the discussion on narrative technology based effluent limits (TBELs), the committee raised the following comments:

- Members asked whether the MSGP sets out prescriptive Best Management Practices (BMPs). DEQ responded that the permit does not prescribe BMPs, but rather allows the facility flexibility to determine how to meet the TBELs. The permit provides factors that the facility must consider in choosing the controls measures, but ultimately the facility evaluates what controls are technologically available and economically practicable in light of best industry practice.
- Members asked how DEQ or a facility would evaluate compliance with TBELs if a facility was not conducting benchmark monitoring under the MSGP and how the agency would analyze a facility's discharge. The initial question related to evaluating compliance with TBELs was not fully addressed. EPA Region 10 staff responded that EPA inspectors in their region would collect instream samples to evaluate whether the facility is meeting water quality standards. DEQ responded that depending on agency resources, DEQ would conduct monitoring during an inspection to evaluate compliance with water quality standards.
- A member requested that since DEQ reviews and approves the stormwater plans, the permit should contain a permit shield that prevents DEQ from citing TBELs violations when a facility has complied with their stormwater plan. Another member commented that a shield should not apply in instances where the facility makes changes to activities on site and fails to update their plan.
- A member raised a question about how the narrative TBELs relate to the benchmarks. He asked what the purpose of benchmarks is if a facility can be cited for a violation of narrative TBEL, but is meeting benchmarks. He was also concerned that if DEQ cited multiple violations (e.g., TBELs and plan violations) then it would be double jeopardy.
- Another member noted there are multiple ways to check if the BMPs are effective under the permit (i.e., through benchmark monitoring, narrative TBELs and plan implementation) since there are no numeric limits.
- DEQ will consult with the Office of Compliance and Enforcement about how DEQ would cite narrative TBELs violations and whether double jeopardy applies if DEQ cited multiple violations.

During the discussion on narrative water quality based effluent limits (e.g., provisions on compliance with water quality standards and discharges to impaired waterbodies), the committee raised the following comments:

- A member suggested that the permit require all facilities that discharge to impaired waterbodies to conduct source control measures up front for the pollutants of concern on the 303(d) list. For example, if the stream was impaired for zinc and then the facility should evaluate BMPs to see if they are appropriate for controlling zinc rather than waiting to see if they are violating water quality standards.
- Members commented that that it is hard to see the practical difference between the new water quality standards language in the MSGP (i.e., “must control your discharge as necessary”) and the prior permit language (i.e., “prohibited from causing or contributing to a water quality standards violation”).
- A member commented that it is not fair to set the point of compliance for meeting water quality standards at the end of pipe because there can be a mixing zone. If there are multiple discharges to a MS4 conveyance system, you could treat the system as a waterbody and allocate all the discharges a certain load like a TMDL.
- Other members commented that if facility is required to evaluate whether they are meeting water quality standards by taking a sample at end of the pipe then the facility would be able to determine if they are causing or contributing to a standards violation.
- Another member commented that it is burdensome to ask the facilities to collect samples to determine if they are complying with water quality standards. Facilities do not collect enough samples to determine total loading to the receiving stream so it is difficult to know if their discharge is meeting standards. DEQ should be responsible for verifying if facilities are complying with standards.

During the discussion on the monitoring requirements related to substantially similar outfalls, the committee members raised the following comments:

- A member questioned what type of data DEQ will need to evaluate whether the outfalls are substantially similar. DEQ responded that this evaluation does not have to be based solely on monitoring data. The evaluation could be based on more than one type of data (e.g. past monitoring data or analysis of site characteristics, significant materials and management practices within the area drained by the outfalls).
- A member commented that currently under the permits facilities are describing the activities that are similar to support their assertion that the outfalls are substantially similar.
- A member stated that the goal of the substantially similar outfall language in the settlement agreement was to have the facilities get approval from DEQ before reducing the number of outfalls that they monitor. The MSGP was silent on this issue.

Purpose of Monitoring

Given that there are many purposes for monitoring (benchmarks, water quality standards, discharges to impaired waterbodies), Jenine sought feedback from the committee on the most important issues the agency should address in the next year.

The following comments were offered by the committee:

- A member commented that the frequency of the monitoring should connect to the facility’s performance so there is an emphasis on compliance. There may be certain sectors where an increase in monitoring is acceptable, but the agency should not penalize all the facilities.
- A member suggested that DEQ should look at risk as a way to prioritize which sectors have increased monitoring, which is recommended by the National Research Council report.

- A member suggested developing a matrix regarding the purpose of monitoring that includes risk based monitoring requirements (i.e., bad actors that will have increased monitoring); identifying those sectors that we want to know more about so we may conduct more comprehensive monitoring to characterize their discharge (i.e., flow based composite sampling); and analysis of BMP performance. DEQ could also describe the goals and objectives and the pros/cons for each approach.
- A member suggested that DEQ is clear about what issues the agency is trying to resolve by more monitoring and then the facilities will figure out how best to obtain the data.
- A member stated that the agency should not focus on stormwater data that is collected by the facilities because it meaningless from a statistical prospective and there is a delay in getting effective results. The permit should have more prescriptive BMPs instead. Another member explained that there is a small list of prescriptive BMPs that could apply to all the facilities due to site variability and that the BMPs that facilities implement should be a site specific consideration.
- A member stated that data quality is a big issue since better or more monitoring may not solve the problem. A cost to benefit analysis of increased monitoring should be conducted. Another member stated that qualifying storm events gets in the way of gathering a good data set. The geometric mean is a progressive way to evaluate stormwater data because it eliminates the outliers.
- A member stated that the data is a key part of identifying sectors that are not meeting the permit requirements. Usually, an industry of concern has a pattern of not meeting benchmarks. However, the current monitoring data does not adequately characterize a facility's discharge because they do not monitor for many pollutants that may be present in their discharges, especially impairment pollutants.
- A member stated that having facilities submit an Action Plan within 30 days of the benchmark exceedance under DEQ's current permit is not meaningful and the MSGP requirement of submitting an annual report is a better approach.

Follow up Items

- Future meeting dates: members will check their calendars and notify DEQ at next meeting whether there are any conflicts with the proposed dates and times
- Send out definition of terms for state and federal stormwater requirements (i.e., definition of impaired waterbody)
- Develop a summary document on the purpose of monitoring.
- Research how EPA will evaluate compliance with water quality standards provision in MSGP
- Research how DEQ would cite violations of the narrative TBELs and DEQ's enforcement policies regarding citing multiple violations that may stem from the same conduct.
- Research the number of samples that are necessary to establish water quality based effluent limits in individual permits (related to discharges to impaired waterbodies).