

Luster, Tom

From: Luster, Tom
Sent: Monday, September 14, 1998 11:49 AM
To: Barrett, Tony; Hegy, Terra; O'Brien, Ed
Cc: Ehlers, Paula; Manning, Sandra
Subject: 401 Water Quality Certifications and Stormwater Discharges

Hi Tony, Terra, and Ed --

Here's the e-mail I am planning to send out to the 401 and stormwater staffs -- I wanted to send it to you first so you can look it over and consider whether to include this issue in the Thursday meeting.

Let me know what you think...

Tom L.

DRAFT
401 Water Quality Certifications and Stormwater Discharges

Hi all --

I want to provide you all with a brief summary of a very significant issue that we've recently become aware of, and one that we will have to deal with at many levels -- everywhere from reviewing individual permits to developing an agency perspective on the matter. I would like to start talking about this sooner rather than later, and would appreciate the opportunity to include this issue in this Thursday's stormwater meeting at NWRO.

Here's the issue -- when Ecology approves a project for 401 certification, we are certifying that the project construction and operation meets the state water quality standards and other appropriate state aquatic resource-related regulations. When the project includes stormwater discharges, we have been requiring the applicant to meet the conditions of the appropriate stormwater manual, thinking that compliance with the BMPs listed in the various manuals were adequate to meet standards. Recently, we sat down with an applicant to analyze their proposed stormwater treatment and found that for some contaminants, discharge levels were nowhere near the required criteria. The stormwater in question was fairly typical urban runoff -- metals, some fecal coliform, TSS, etc. -- and the BMPs were fairly standard BMPs -- bioswales, wet vaults, etc.

Based on this and on discussions with water quality staff, it appears that for many projects, the usual BMPs will not provide the levels of treatment we need to certify projects under 401. When we brought this up in a meeting with the A.G.s last week, we were told that if we issued a 401 knowing that water quality criteria were not being met, we would not be in compliance with the Clean Water Act or with the state water quality standards. In order for us to certify, it looks like we need to require much more stormwater treatment than we are currently requiring. To do this, we need a combination of things -- policy/guidance from management, additional project review and technical assistance from the stormwater staff, more specific guidance for applicants to use in designing their stormwater system, etc.

Some questions:

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* guidance/interpretation -- it appears that Ecology may have different internal guidance or regulatory interpretation on this issue. Can we make 401 permit decisions based on guidance that applies only to projects requiring a 401, and make different decisions for projects that don't require a 401? For example -- projects needing a 401 (i.e., projects that include open water or wetland fill) must include stormwater treatment that will allow water quality criteria to be met. Projects not needing a 401 (i.e., entirely in uplands) must meet the applicable stormwater manual.

* technical assistance -- what kind of technical assistance can the 401 staff get from the stormwater staff? Are there general guidelines we can use to help applicants develop stormwater systems that will meet the standards? Do we need to handle this on a project-by-project basis? On what basis do we assume that

the proposed treatment will meet the standards?

* outreach -- what message do we deliver to applicants? to local governments with approved stormwater manuals? to citizens interested in improving Ecology's environmental compliance?

* what now? -- until we get the answers to the questions above, what should we do now with the existing 401 permit applications? My recommendation is that we recognize the difference between projects built in waters of the state and waters built in upland areas and require that projects needing a 401 meet the water quality standards, including stormwater discharges that meet the relevant criteria. We would need some design constraints (e.g., treatment necessary to meet criteria for 95% of the flows up to the 25-year storm, or something similar), and we should give applicants early notice (through SEPA comments?), but I think we can clearly make the case that the 401 requirement invokes a different standard than might otherwise be in place.

I'm sending this e-mail to get the dialogue started on this issue, and again, I'd appreciate it if we could talk about this at this Thursday's stormwater meeting. Our decision on this issue will have workload implications, could result in additional costs to applicants, and could raise a lot of political concern; however, the 401 unit should not knowingly issue permits that don't provide the environmental protection required by law and that aren't legally defensible.

So -- let's chat!

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