

Luster, Tom

From: Kenny, Ann
Sent: Thursday, March 11, 1999 8:46 AM
To: Manning, Sandra; Luster, Tom; Holliday, Keith; Vining, Rick; Randall, Loree'; 'Eliz.Phinney'
Cc: Hellwig, Raymond; Ehlers, Paula
Subject: FW: Another viewpoint on stormwater

Hi. I'm resending the e-mail below since I'm not sure it made it to you due to last Friday's e-mail failure at HQ. I also want to share the results of a meeting that Ray and I had Tuesday with our region's water quality program regarding this issue.

Ray and I met with John Glynn (Section Supervisor) and Kevin Fitzpatrick a unit supervisor for NPDES stormwater permitting and arrived at the following understandings and points of clarification:

1. Ray emphasized that SEA program management is aware of the issues/concerns and is working to develop a consistent approach to 401 and stormwater issues.
2. John concurred with Kevin's opinion (see below) that it is very difficult to apply water quality standards to discharges that are not coming from a point source to a discharge such as stormwater. He too believes that efforts to strictly apply the numeric criteria of the water quality standards is very difficult and it would be impossible to guarantee that the standards would be met. This could place Ecology in the position of not being able to issue any 401 certifications for projects that involve stormwater discharges.

We discussed our concern that it is difficult to define exactly what we mean when we say a project must meet water quality standards when stormwater is concerned. The adaptive management strategy that Kevin describes below is in an approach that puts the burden on the applicant and requires monitoring and correction of any problems identified. He recommends the SEA program adopt "adaptive management" as a strategy to help us make scientifically sound, economically feasible and legally defensible decisions.

3. John voiced his belief that section 401 and section 402 of the CWA were designed to be mutually compatible and that as an agency Ecology should not issue 401 certifications that cast doubt on the legality of the 402 permit. For example, placing conditions into a 401 that attempt to correct perceived deficiencies with an existing 402 permit at best creates a mixed message and at worst gives a concerned citizen reason to claim that the 402 permit was inadequate. We then discussed the fact that Ecology is divided into programs which have responsibility for administering various laws and that as an agency decisions have been made as to where specific resources are allocated. The Water Quality Program has primary responsibility for implementing and interpreting water quality laws. Additionally, the resources to support this function have been allocated to the WQ program. So from a practical viewpoint, even though 401 is located in the SEA program, it is the WQ program that has the resources (staff and expertise) to address issues related to WQ. What this means is that the SEA program (at least in the regions) is dependent on the WQ program to provide us with the technical support that we need to address WQ related issues.

4. We agreed that the majority of projects will be covered by some kind of NPDES permit. It will either have a general stormwater permit for construction, an industrial permit, or an individual permit for the construction phase of the project. After the project is constructed it will be covered by a NPDES permit issued by Ecology or a stormwater permit issued by the local municipality.

5. John told us very bluntly that NWRO's WQ program has no resources to dedicate to additional stormwater review. Period. This region processes about 1100 stormwater permits annually which is one of the reason's the WQ program went to the general permit system.

6. The WQ program is comfortable with having the 401 certification require compliance with any existing NPDES permits or with requiring the applicant to obtain an NPDES permit if required and to require compliance with the stormwater requirements of the permit. When an NPDES is not required, the WP recommends that we require compliance with the Puget Sound Stormwater Manual and with any local stormwater plan or requirements.

7. We agreed that some projects may require a higher standard of review and that in that case we

AR 023701

WINGARD 0122

should seriously look at adopting a fee-based permit system so that Ecology would be able to ensure adequate review of the project for stormwater issues. We also agreed that we may want to choose to waive on more projects where there is little environmental impact in order to free up more review time for projects with greater impacts.

I'm not sure where the internal discussion should go from here but I offer the above for your consideration.

-----Original Message-----

From: Kenny, Ann
Sent: Friday, March 05, 1999 9:49 AM
To: Manning, Sandra; Shorin, Bonnie; Holliday, Keith; Randall, Loree; Vining, Rick; 'Eliz.Phinney'
Subject: FW: Another viewpoint on stormwater

Here's a viewpoint on the issue from a water quality perspective which may help us to understand the issues.

-----Original Message-----

From: Fitzpatrick, Kevin
Sent: Thursday, March 04, 1999 5:38 PM
To: Luster, Tom
Cc: Hellwig, Raymond; Austin, Lisa; Glynn, John; Ehlers, Paula; Kenny, Ann; O'Brien, Ed
Subject: RE: Friday SeaTac meeting...

Tom: The critical question in all of this is how a stormwater discharge is determined to be in compliance with the state's surface water quality standards (WAC 173-201A). In formulating an answer to this critical question, the Water Quality Program has taken an iterative process that first started with stormwater discharges from shipyards under individual NPDES Permits, then moved on to other industrial sectors under individual permits. This analysis of stormwater compliance is just now grappling with facilities covered under general stormwater permits. The iterative process in formulating this answer on stormwater compliance is far from complete.

Why has it been so difficult and taken so long to formulate this answer? Part of the delay comes from well-intentioned but mistaken attempts in the past by Ecology and EPA to fit the very "round peg" of stormwater discharges into the very "square holes" of steady-state point source discharges. For example, we thought early on that concentrations of heavy metals in stormwater that exceeded our state numeric chronic and acute criteria must constitute a violation of the water quality standards. However, a closer examination of the criteria reveal that the acute standards are generally a 1 hour average not to be exceeded more than once every three years and chronic criteria are usually a four-day average concentrations not to be exceeded more than once in three years. Such criteria work great for what are essentially steady-state point source discharges that you can statistically derive long term averages for, but how does one intelligently, legally and correctly apply these same criteria to the dynamic and highly variable characteristics of a stormwater discharge? Generally what one sees in stormwater is a high concentration in first flush storm events. These concentrations may quickly attenuate depending on the storm intensity. But then again, we have seen plenty of exceptions even to this most gross generalization. My point is, the more we study stormwater, the more we realize how little we know about it, especially when it originates from an urban setting with multiple land uses. But I think we have learned enough about it to know that the same compliance templates we apply to steady-state point source discharges can not be applied to stormwater discharges.

This brings me back to your matrix which relies heavily on deciding whether or not a stormwater discharge is in compliance with water quality standards. What does that really mean? I would judge a facility to be in compliance with its NPDES Permit if it was implementing all required BMPs of the permit in managing its stormwater discharge; however, its discharge may still exceed state water quality standards for a host of parameters. I would go further to judge that the facility's stormwater discharge complies with state standards if the facility has in place an adaptive stormwater management scheme which relies on a comprehensive monitoring program of its stormwater discharges to provide necessary feedback on continually upgrading operational, source control and treatment BMPs.

It is unrealistic to hold even new facilities to an instantaneous standard of complete and categorical compliance with state water quality standards for their stormwater discharges. I believe a scientifically sound, economically feasible and legally defensible approach would be the requirement of the project or facility to provide reasonable assurance that it will follow an adaptive stormwater management scheme that will bring their stormwater discharges into compliance with the state's water quality standards.

-----Original Message-----

From: Luster, Tom

WINGARD 0123

AR 023702

Sent: Thursday, March 04, 1999 12:59 PM
To: Fitzpatrick, Kevin
Cc: Hellwig, Raymond; Ehlers, Paula
Subject: RE: Friday SeaTac meeting...

Okay -- the 25th is on my calendar. We need to talk before then -- this is a pretty big issue and while my regulatory interpretation seems to match the general Water Quality interpretation, there is some difference in how we interpret stormwater implementation. Here's a copy of my latest memo (in two parts) regarding 401 certifications and stormwater -- let me know what you think.

<< File: 401-StormwaterMemo2.doc >> << File: 401-402table.doc >>

Thanks,

Tom L.

-----Original Message-----

From: Fitzpatrick, Kevin
Sent: Thursday, March 04, 1999 8:49 AM
To: Luster, Tom
Cc: Hellwig, Raymond
Subject: RE: Friday SeaTac meeting...

Tom: I won't be able to attend this meeting tomorrow because I have to take our son to a dental appointment from 10:00 to 11:30. I have had a number of occasions in the past to hear the concerns of each of these citizen groups with Sea-Tac Airport and their particular concerns with the proposed third runway throughout the entire public notice process on the NPDES permit.

Elizabeth Leavitt with the POS has scheduled a meeting on March 25th here at the NWRO @ 1:00 PM to further delineate their requirements under the 401 Certification on the Third Runway with respect to storm water. I hope this doesn't present a conflict and that you'll be able to attend. Thanks! Kevin

-----Original Message-----

From: Luster, Tom
Sent: Thursday, March 04, 1999 8:12 AM
To: Hellwig, Raymond; Ehlers, Paula; Stockdale, Erik; Fitzpatrick, Kevin; Langley, Ron
Subject: Friday SeaTac meeting...

Hi all --

Here's what I found out from Jonathan re: our Friday meeting at the Corps:

Attendees --

Corps -- Tom Mueller, Gail Terzi, Jonathan Freedman, and Siri Nelson (Corps atty.)

Groups -- Al Furney (RCAA), Larry Corvari (CASE), Greg Winguard (WAP), and Chris Gower (local activist) and us...

It's scheduled from 10 to 12.

AR 023703

Jonathan didn't have an agenda, but we agreed that the main purpose of the meeting is for the agency folks to hear the concerns of the groups. We thought we'd start the meeting with a brief status report of where the project was in the Corps process, and then open it up to the groups to let us know what their concerns were.

Hope this helps...

Tom L.