

Washington State
Department of Ecology
Shorelands and Environmental Assistance Program
Post Office Box 47600
Olympia, WA 98504-7600
Phone (360) 407-6600
Fax (360) 407-6902

Fax

To: Tom Young From: Sandra Manning
At: _____ Phone: (360) 407-6912
Fax: 506-6760 Email: SMAM461@ecy.wa.gov
Date: 8/20/02 CC: _____

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Signed Stormwater agreement

AR 033654

Exhibit-2092



Chapter 1

WQP Policy 1-22

Resource Contact: Sandra Manning
Bill Moore
References: WAC 173-201A
WQP Procedure 1-23

Effective: July 15, 2001

Revised:

Adopting Supplemental Treatment as a Best Management Practice and Defining Compliance with Water Quality Standards for Stormwater Impacts for the Water Quality and SEA Programs

Purpose: This policy establishes a procedure for applying stormwater mitigation by adopting supplemental treatment as a Best Management Practice. This policy also defines how project compliance decisions will be made for permits covered under sections 401 and 402 of the Federal Clean Water Act.

Application: To be used by Ecology Water Quality and SEA Program Staff when reviewing or permitting projects with stormwater impacts, and for determining compliance with the Water Quality Standards for stormwater discharges.

1. Defining compliance with water quality standards for stormwater discharges

Compliance with water quality standards is defined as follows --Per WAC 173-201A-160(3) "Activities which generate nonpoint source pollution or activities which cause pollution of stormwater, shall be conducted so as to comply with the water quality standards. The primary means to be used for requiring compliance with the standards shall be through best management practices (BMPs). BMPs shall be applied so that when all appropriate combinations of BMPs are utilized, violation of water quality criteria shall be prevented. If a discharger is applying all BMP's appropriate or required by Ecology and a violation of water quality criteria occurs, the discharger shall modify existing practices or apply further water pollution control measures selected or approved by the department, to achieve compliance with the water quality criteria."

A. Compliance Requirements for Meeting Section 402 of the Clean Water Act
Compliance with the water quality standards for stormwater discharges requiring an Individual State 402 Permit under Section 402 of the Federal Clean Water Act shall be addressed through the 402 permitting process. Projects covered by a 402 Permit must meet the water quality standards for all parameters unless an effluent limit has been stated on the 402 Permit, or a compliance schedule has been established. Application of the stormwater Supplemental Treatment Best Management Practice (BMP) can not be used for obtaining compliance with the Water Quality Standards for stormwater discharges regulated only by Individual 402 permits. Existing discharges may be granted a compliance schedule, subject to the terms of WAC 173-201A-160(4). New discharges shall not be granted a compliance schedule, and must meet the standards.

B. Compliance Requirements when both Section 401 & 402 of the Clean Water Act Apply
Where both a Water Quality Certification under Section 401 of the Federal Clean Water Act (CWA) and an NPDES permit under Section 402 of the CWA are necessary, they will be applied in a non-duplicative and complementary manner through one of the following applications:

- 1) When a project's discharges are covered by an Individual 402 Permit, and the project is in compliance with that permit as determined by the Water Quality Program, the 401 Certification will require compliance with the Individual 402 Permit as adequate for compliance with the water quality standards, however additional 401 Certification conditions may be necessary to address compliance for stormwater and other water quality impacts or project areas not covered by the 402 Permit.
- 2) When a project's discharges are covered by a General 402 Stormwater Permit (municipal or construction) with general stormwater conditions assigned to a project, the 401 Water Quality Certification may add permit requirements, including Supplemental Treatment on a case-by-case basis as needed for site and project specific requirements (i.e. 303(d) listed parameters, ESA species requirements, protection of beneficial uses, etc).
- 3) For projects covered by an Individual or General 402 Permit that are determined by the Water Quality Program to be out of compliance with that permit, the 401 Certification will be held in abeyance for a maximum period of one year, denied without prejudice until compliance with the 402 Permit is achieved, or the Water Quality Program will provide conditions (possibly including Supplemental Treatment) to be included in the 401 Certification that will result in compliance with the stormwater requirements and the 402 Permit.
- 4) For projects that have not yet obtained a required 402 Permit, the 401 Certification will be held in abeyance for a maximum period of one year, or denied without prejudice until the 402 Permit is received. A 401 Certification can not be approved if a required 402 Permit has not yet been received because reasonable assurance that the standards will be met can not be determined on a proposed future permit.

C. Compliance Requirements for Meeting Section 401 of the Clean Water Act
Compliance with the water quality standards for stormwater discharges from projects requiring a State Water Quality Certification under Section 401 of the Federal Clean Water Act shall be obtained through protection and maintenance of beneficial uses. The numeric and narrative criteria will be used when appropriate to determine if the beneficial uses will be protected. Use of appropriate BMPs for stormwater compliance including avoidance and minimization measures, and if necessary application of the Supplemental Treatment BMP criteria defined below may be required. Per WAC 173-201(A)060(10), the primary means of determining compliance for stormwater discharges to wetlands is through implementing the anti-degradation section of the water quality standards.

2. Establishing Supplemental Treatment as a Best Management Practice for Use with Section 401 Water Quality Certifications

Ecology hereby adopts Supplemental Treatment as an appropriate anti-degradation BMP for treatment of stormwater. Supplemental Treatment will be used only as needed to gain compliance with the Water Quality Standards for Water Quality Certification approvals under Section 401 of the Clean Water Act. This BMP will be used as needed for obtaining the required reasonable assurance that a project will be in compliance with the water quality standards for permitted discharges covered under Section 401 Water Quality Certifications.

3. Establish a mixing zone for off-site Supplemental Treatment BMP for Use with Section 401 Water Quality Certifications

- A) When approving use of off-site Supplemental Treatment BMP measures as the appropriate BMP, Ecology must establish a mixing zone for the discharge reach as defined in WAC 173-201(A)-100(10) – *“The proposed mixing zone shall not have a reasonable potential to result in loss of sensitive or important habitat, substantially interfere with the existing or characteristic uses of the water body, result in damage to the ecosystem, or adversely affect public health.”*
- B) The allowable size and location of a mixing zone and associated effluent limits shall be established in discharge permits, 401 Water Quality Certifications, general permits, or Orders as appropriate, WAC 17302-1(A)-100(1).
- C) When applying supplemental treatment, the use of a mixing zone shall result in a net gain to water quality or quantity needs to the receiving waters within the mixing zone.

4. Application of Supplemental Treatment for Stormwater Discharges for Use with Section 401 Water Quality Certifications

- A) Supplemental Treatment may be required by Ecology for obtaining compliance with the Water Quality Standards for project sites that are:
 - Covered by a General 402 NPDES permit (municipal or construction general permit) and site specific needs warrant additional conditions;
 - Sites that are out of compliance with their General or Individual 402 NPDES Permit; or
 - Sites not covered by a Section 402 permit, that require approval of a Section 401 Water Quality Certification;
- B) A stormwater discharge shall not be allowed if the new effluent will increase any 303(d) listed parameter, or does not meet the Total Maximum Daily Load (TMDL) requirements defined for the discharge reach;
- C) For new discharges, the water quality standards shall be met without a compliance schedule;
- D) Compliance with the water quality standards shall be obtained through on-site application of BMPs;
- E) If after on-site application of BMPs, it is determined that the water quality standards will not be met because the stormwater BMPs do not provide adequate treatment, or it is determined to be unreasonable by Ecology, Ecology may require off-site Supplemental Treatment as follows:
 - 1) The off-site Supplement Treatment shall occur within the same receiving water as the new discharge, and within the allowable dilution zone as determined by Ecology; and

- 2) The additional off-site Supplemental Treatment will be required to compensate for the increased contaminants from the new discharge not being treated at the new discharge site, and for any impairment of beneficial uses. A combination of on- and off-site treatment BMPs shall result in a net improvement to water quality within the receiving water; and
- 3) The applicant shall demonstrate that the Supplemental Treatment BMP will reduce background contaminant loadings to provide additional assimilative capacity for the proposed new discharge. Background loadings may be reduced by using either of the following approaches:
 - a) For 303(d) listed waters, or waters that have been identified with limiting parameters, the off-site treatment shall reduce the listed limiting parameters within the reach; or
 - b) For non-303(d) listed waters or waters where no limiting parameters have been identified, the off-site treatment shall consist of at least one of the following approaches:
 - i. Parameter based – Parameter Supplemental Treatment BMPs would remove the same pollutant off-site as is being discharged at the new discharge site, and must result in a net reduction of that pollutant within the discharge reach to compensate for the additional input at the new discharge that will not be removed with on-site treatment;
 - ii. Source based – Source Supplemental Treatment BMPs would provide in-kind source control, e.g. for a proposed pollution generating impervious surface the BMPs would include retrofitting a nearby site with impervious surfaces to result in a net decrease in stormwater discharges between the two sites;
 - iii. Quantity based – Quantity Supplemental Treatment BMPs must provide flood management and erosion control where stormwater quantity or erosion is the problem identified for the receiving water.

In all cases, Ecology reserves the right to require a specific Supplemental Treatment BMP, or deny the discharge if it is determined that there will be an unacceptable or unmitigatable impact to waters of the state.

Approved: Megan White Date: 7/11/01
Megan White, P.E., Manager
Water Quality Program
Department of Ecology

Approved: Gordon White Date: 7/16/01
Gordon White, Manager
Shorelands and Environmental Assistance Program
Department of Ecology