

ATG MI SeaTac 3rd Runway

From: Fitzpatrick, Kevin
Sent: Friday, May 14, 1999 5:14 PM
To: Luster, Tom; Hellwig, Raymond; Ehlers, Paula; Stockdale, Erik; Bolender, Wendy
Cc: Austin, Lisa; Glynn, John; Moore, Bill (ECY)
Subject: RE: Updated 401 Permit Matrix

Tom: You are correct (Item # 13) that there should be no question about the retrofitting of existing storm water outfalls that are part of industrial activity basins. What needs to be developed in the NPDES permit is a compliance schedule on how and when this retrofitting will occur.

I am becoming as frustrated as you, Tom, in the way we are continuing to talk past each other over how storm water discharges achieve compliance with WQ Standards (Items #11 & 12). Again, the WQ approach to achieve compliance is by a step-wise and deliberative approach ("adaptive management" for lack of a better term) of applying current technology BMPs, monitoring the effectiveness of those BMPs and then determining additional measures (i.e. additional source control, development of innovative BMPs) should monitoring indicate that storm water discharges are adversely impacting beneficial uses of the receiving water. I know that you want to employ the 401 Certification to require instantaneous and strict categorical compliance with the numeric WQ standards for storm water discharges. I don't see how that is possible. I can't make that happen with the NPDES Permit. That being the case, and if that is how you indeed want to condition the 401 Certification, I see no alternative but to deny a 401 certification for any project with existing storm water discharges.

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

From: Luster, Tom
Sent: Friday, May 14, 1999 3:27 PM
To: Hellwig, Raymond; Ehlers, Paula; Stockdale, Erik; Fitzpatrick, Kevin; Bolender, Wendy
Subject: RE: Updated 401 Permit Matrix

Hi Ray and all --

Gosh, comments from Tom Luster!!! Yes, who'd of guessed it...

First, an editorial comment, provided at the risk of sounding like a broken record... I think part of my role in 401 is to provide applicants with clear understanding of what's expected for project approval. For some reason, I apparently am not making myself clear enough -- we've told the Port many times what was needed to meet the regulations and the level of information we expected, and they have often either come back with something that falls far short of our requirements, or as in the current situation, have asked us to lessen what we're requiring (e.g., reconsider whether NW Ponds are waters of the state, whether flow augmentation is necessary, etc.). I think we are all in agreement that there are many ways to get to a complete mitigation package,

The Port has made great strides on some of the issues -- for instance, the current mitigation discussions are going far better than those of a year ago. However, given the magnitude of this project and its impacts, and the current conditions in the Des Moines and Miller Creek watersheds, it will take a substantial and specific mitigation package for us to be able to get to an approval. We are not there yet, and I continue to have doubts that we can get there (due to the existing level of impairment in the creeks and the watershed), but I continue to be willing to consider the possibilities.

With that said, here are a few of my comments on the matrix:

AR 033718

General Comment --

At some point, we'll need to pull the separate matrix items together to form a comprehensive mitigation package. For example, the RDF, the stormwater facilities, the streamflow augmentation, and the retrofit

issues all need to be coordinated and cannot conflict with one another.

Specific Comments --

Item #3 --

- * just to clarify... the buffer width is a 100' average on each side of the creek.
- * along with the average width, we'll need to establish a minimum buffer width (e.g., something like "...the buffer shall be an average of 100' wide and at no point shall be less than 50' wide...").
- * we should reconfirm with the Port that the mitigation sites and buffers will be subject to the condition in the previous 401 that established what activities and facilities can and can't occur in the mitigation and buffer areas.

Item #5 --

- * just to clarify... the mitigation conditions that the Port and FAA work out need approval by Ecology.

Item #6 --

- * the NW Ponds are waters of the state. I don't understand how this came to be a question -- we've told the Port several times in the past that they are waters of the state. The question we are dealing with is what kinds of impacts will occur at the ponds and what kind of mitigation is necessary.

Item #7 --

- * I don't understand what is meant by "Port's discharge and mitigation is separated from RDF." Is the RDF a part of the Port's stormwater facilities and mitigation package? If yes, we need a design, impact analysis, mitigation, etc.; if not, we need the Port to address their stormwater and mitigation needs in another manner.

Item #8 --

- * we should get a status report on the RDF design work. And, again, I'm not sure what is meant by "Port to endeavor to do our part to ensure mitigation for RDF can occur." -- we need more certainty than that. The phrase "endeavor to do our part" is not a defensible permit condition.

Item #10 --

- * does this include Level 2 detention for the three new outfalls on Miller Creek? I believe they are all downstream from the existing Miller Creek detention areas.

Items #11 & 12 --

- * I know we're deferring to the NPDES permit on many issues, but I have concerns about us defending a 401 approval of stormwater discharges that were shown to violate the standards (Lisa's analysis last year based on SeaTac data). I don't know that we can take the presumptive approach if we have data that shows the opposite of our presumption. In fact, I thought the main reason the Port was considering the WER and mixing zone approach (Item #14 below) was due to the known exceedances.

Item #13 --

- * I didn't think retrofitting was still an issue -- Kevin? My understanding that it is required; it's just a question of how it should be scheduled.

Item #14 --

- * we need to talk schedule on this point. I'll be reviewing the proposed project for compliance with the standards as they currently exist, and 401 conditions would be based on those standards. As stated previously, if the Port wants to use the WER approach establish mixing zones, we'll have to wait to make a 401 decision until after they are approved.

Item #15 --

* **Beneficial Uses:** this item is key to our decision. It will be tough enough to argue that the proposed project and its mitigation will somehow result in a "net environmental benefit" to the creek, much less that it will meet the water quality standards. All the literature and data about watersheds and impervious surfaces that I'm aware of (general information as well as that specific to these watersheds) suggests the opposite will occur, even with the amount of mitigation that the Port has thus far proposed.

The Port does get mitigation credit for the riparian improvements, but those improvements have to be part of a complete mitigation package (including wetlands, riparian, streamflows, stormwater, etc.) that adequately addresses beneficial uses.

This issue is especially important, given the description in the Des Moines Creek Basin Plan that describes all the limiting factors that prevent the beneficial uses from being fully expressed. The Plan essentially describes a hydrologically "broken" stream system -- one in which the normally occurring 100-year flood flow happens every two years, where the significant erosive flows happen ten times more often than under pre-development conditions, where there is currently a 21% loss in average summer baseflow, with the anticipation of an additional 20% loss. Unless these factors are addressed, it will be difficult to argue that any project in the basin is going to result in the support of beneficial uses.

Item #16 --

* **clean fill criteria** -- depending on what the Port is proposing (and Ecology is able to accept), this may result in the need for a solid waste permit from the local jurisdiction. The kinds of contaminated soils that I believe the Port is considering would likely be considered a "problem waste", and the runway area could be subject to landfill siting criteria. I'm not up on my solid waste regs, but we should at least give the Port a heads-up on this possibility.

Items #19 & 20 --

* do we just need to discuss the status of these items or do we need to clarify what they mean? Also, it would be good to have the Corps present during this part of the meeting, since they have to deal with WSDOT/cumulative impacts issue.

Additional Item --

* don't forget the public process! -- notice, hearing, comments... Any agreements we may reach with the Port are subject to change and additional review when we take this out for public review. Also, has the Port determined what they're going to do about SEPA?

That's it for now. Thanks for reading through this whole thing...

Tom L.

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

From: Hellwig, Raymond
Sent: Thursday, May 13, 1999 11:30 AM
To: Aboe, Sharon; Bolender, Wendy; Carr, Paul David; Ehlers, Paula; Fitzpatrick, Kevin; Glynn, John; Hellwig, Raymond; Kenny, Ann; Langley, Ron; Luster, Tom; Nye, Roger; Rundlett, Mike; Stockdale, Erik; Stone, Bob; Stucki, Julianna; Thompson, Janet; Tom McDonald; White, Gordon
Subject: FW: Updated 401 Permit Matrix

FYI to all. Primarily intended for those of you planning to attend the May 17, meeting.

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

From: Cheyne, Michael [SMTP:cheyne.m@portseattle.org]
Sent: Thursday, May 13, 1999 7:42 AM
To: 'rhe1461@ecy.wa.gov'
Cc: Goodwin, Traci; Leavitt, Elizabeth; Hinkle, Barbara; Hubbard, Tom; Fitch, Jeff

Subject: Updated 401 Permit Matrix

To All 5/12: Attached is the updated matrix that can act as an agenda for the Monday, May 17 meeting between the Port and Ecology.

If you have any difficulty in retrieving the attachment, please give me a call at 431-4994. The meeting is scheduled to start at 9:30 AM in the "Go" conference room at the Port's Project Management Offices located at 17900 International Blvd, Suite 301.

We are looking forward to this meeting. Please pass along this reminder and attached document to others that will be attending the meeting.

Thank you for your continued willingness to work through our many technical issues. Michael Cheyne

<<Permit matrix May12.doc>> << File: Permit matrix May12.doc >>