

Fecal Coliform: Overview of Washington NPDES Permit Requirements

Managing Fecal Coliform in Stormwater Run-off
October 20, 2011

Overview

- Industrial Stormwater General Permit (ISWGP) requirements
 - Compliance schedules and reporting
 - Common compliance misconceptions
 - Enforcement Scenarios
- Update on Phase I, Phase II municipal requirements

Industrial Stormwater General Permit (ISWGP)

- ISWGP fecal coliform (FC) limits and conditions
 - Permit effective January 1, 2010
- “...Beginning July 1, 2010, Permittees discharging to a *303(d)-listed water body (without an EPA approved TMDL)* shall comply with the applicable sampling requirements and effluent limits in Table 5, unless a compliance schedule is requested and granted in accordance with S6.C.1.b&c...”
- No ISWGP were found to discharge to a 303(d)-listed water body *with* an approved TMDL

Compliance Limit Dependent on Water Body

- Facilities subject to limit listed in Appendix 4
 - Based on 2008 303(d) category 5 listing—water body must be listed as impaired for FC
 - About 89 facilities
 - 303(d) listings **DO** change over time
- To determine FC limits, find water body classification in WAC-173-201(a) for water contact recreation (freshwater below—from Table 200(2)(b))
 - Extraordinary primary contact recreation—100 cfu/100 mls
 - Primary contact recreation—200 cfu/100 mls
 - Secondary contact recreation—400 cfu/100 mls
- Marine standards—Table 210(3)(b)
- Sampling frequency—1/quarter

Existing Permittees

- Must meet FC standard immediately
- Between July 2010–October 2011:
 - Should have collected five total samples
 - DMRs—3rd and 4th quarter 2010; 1st, 2nd, 3rd quarter of 2011 per DMR schedule
- Any additional sampling for FC must be reported and must meet limit

Exceedance and/or Failure to Report

- As described in ISWGP:
 - Subject to enforcement including fines
 - Enforcement may be appealed to Pollution Control Hearing Board and state courts
 - Subject to third party lawsuits
 - Requires filing of a 60-day notice of intent to sue in district courts
 - Ecology is notified but not a party

Compliance Schedule

- Required to seek compliance schedule by January 31, 2010
 - Indicates cannot meet limit by July 2010
- If granted, Ecology-established schedule and notice was sent to permittee by April 1, 2010
 - Now must meet by date identified in notice
- Notice date should be no later than 24 months or 2 wet seasons after effective date of permit

Common FC Compliance Misconceptions

- FC numeric limits are NOT the same as benchmarks
 - Corrective actions are not triggered
- Non-compliance with an FC limit is a permit violation—must meet all effluent limits
- Failure to sample and/or to report are separate permit violations
- Sampling and reporting must occur for FC, even if non-detect or less than criteria levels
 - No “consistent attainment” condition like benchmark values

Enforcement Scenarios

- Ecology
 - Informal letters
 - Fines (up to \$32,500/violation but usually less)
 - Fines and other formal enforcement actions can be appealed to PCHB
 - Administrative order...maybe
- Third-party lawsuits
 - Federal court
 - Requires 60-day Notice of Intent to sue
 - Court may levy fines and attorneys fees

Phase I, II Municipal Permits

- Phase I
 - Cities of Seattle and Tacoma
 - King, Snohomish, Pierce, Clark Counties
- Phase II
 - 80 cities
 - Urban areas of four counties
- New draft permits out for comment October 19, 2011
 - <http://www.ecy.wa.gov/programs/wq/stormwater/municipal/2012draftMUNIcom.html>
 - Two versions of each permit
 - 1-year permit (2012-2013)
 - 5-year permit—effective date 9/1/2013
 - Phase II: 1 year—no change
 - Phase I: 1-year—monitoring requirements changed

Phase I, II Municipal Permits (cont.)

- Fact sheets not out for 5-year permit yet—early November
- Appendix 2 to both permits contains TMDL requirements—appears to contain substantial revisions
 - More monitoring, updates to TMDLs, etc.