

1 2. Identification of other parties.

2 The respondent in this appeal is the Washington State Department of Ecology.

3 3. The decision under appeal.

4 This is an appeal of the "Construction Stormwater General Permit," a National Pollutant
5 Discharge Elimination System and State Waste Discharge General Permit, issued on November
6 16, 2005. A copy of this permit is attached.

7 4. Short and plain statement showing grounds for appeal.

8 Appellant considers the Construction Stormwater General Permit ("CSGP") to be
9 unlawful and unfair because it does not meet the requirements or intent of the federal Clean
10 Water Act, applicable regulations promulgated by the Environmental Protection Agency,
11 Washington State water pollution control law, and Ecology's regulations.

12 5. Statement of facts.

13 The CSGP regulates discharges from construction sites across the state that disturb one
14 acre or more of land. Hundreds and perhaps thousands of discharges will be authorized by the
15 CSGP at any particular time through its five year term. Stormwater discharges from construction
16 sites are potentially very significant sources of pollution and water quality degradation.

17 Pollutants commonly found in construction stormwater discharges include sediment (i.e.,
18 suspended solids, turbidity), pH, phosphorus, and petroleum products. Construction activity
19 involves land disturbing operations such as clearing, grading, and excavation. Disturbed soils
20 that are exposed to precipitation are subject to erosion resulting in runoff contaminated with
21 suspended sediment, commonly measured as total suspended solids and/or turbidity.

22 Construction stormwater may become contaminated from alkaline construction materials

1 resulting in high pH. Alkaline construction materials include concrete, mortar, lime, cement kiln
2 dust, Portland cement treated base, fly ash, recycled concrete, and masonry work. Phosphorus is
3 a potential constituent of construction stormwater because it occurs naturally in soils. If erosion
4 and sediment control measures are inadequate to prevent the discharge of suspended sediment,
5 phosphorus is likely to contaminate the stormwater. Oil, grease, and other petroleum products
6 may contaminate stormwater if they are spilled or leaked from heavy equipment, diesel pumps,
7 fuel tanks, or vehicles. Historical contamination or natural soil conditions may contribute other
8 pollutants to stormwater. Examples might include pesticides, metals, PCBs, and petroleum.

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11 The permit is unfair and unlawful because it fails to require the submission of stormwater
12 pollution prevention plans ("SWPPPs") with permit applications, or notices of intent. This
13 failure substantially thwarts meaningful public participation in permitting and results in an
14 impermissible self-regulatory scheme in violation of applicable law.
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16 The permit application timeline is unfair and unlawful because it does not meaningfully
17 require applications to be made at least sixty days before commencement of discharges required
18 to be regulated as required by applicable law.
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20 The permit's low rainfall erosivity waiver provisions are unlawful and unfair because
21 they are inconsistent with applicable law.

22 The permit's monitoring provisions are unlawful and unfair in that they allow the use of
23 transparency monitoring instead of turbidity monitoring by some permittees, which is inadequate
24 to determine compliance with water quality standards in violation of applicable law and which
25 represents a failure to require the implementation of AKART in pollution controls. The
26 monitoring provisions are also unlawful because requirements for sampling and analysis are
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1 postponed to October 1, 2006, for sites of five acres or more and to October 1, 2008, for sites of
2 one to five acres in violation of applicable law.

3 The permit is unfair and unlawful because it fails to ensure compliance with water quality
4 standards in the manner required by applicable law.

5 The permit is unfair and unlawful because the frequency for site inspections for
6 temporarily stabilized, inactive sites (once per month) is inadequate in violation of applicable
7 law.

8 The permit is unfair and unlawful because the timeline for reviewing SWPPPs for permit
9 compliance and for appropriate revisions upon exceedence of turbidity benchmarks is too long
10 and inadequate in violation of applicable law.

11 The permit is unfair and unlawful because the definition of "significant concrete work,"
12 set at 1000 or more cubic yards of concrete poured at a site, which triggers the pH monitoring
13 requirement and brings a site into the adaptive management scheme for pH, is inadequate in
14 violation of applicable law.

15 The permit is unfair and unlawful in its regulation of discharges to 303(d)-listed
16 waterbodies.

17 The permit is unfair and unlawful in that it allows SWPPPs to include best management
18 practices consistent with unspecified stormwater management guidance documents "approved by
19 Ecology" without identifying any approval process or criteria. This amounts to a provision that
20 would effectively allow modification of permit conditions without adherence to permit
21 modification procedures.

1 The permit is unfair and unlawful in that its provisions for "upset" and "bypass" fail to
2 satisfy applicable legal requirements for 24-hour reporting.

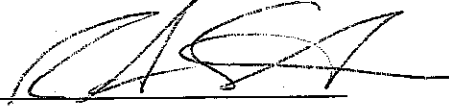
3 The issuance of the permit was unfair and unlawful because Ecology failed to provide
4 adequate notice and opportunity for comment on permit conditions in violation of applicable law.

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6 7. Relief requested.

7 Appellants request that the Board order the Department of Ecology to modify the
8 Construction Stormwater General Permit to be consistent with applicable legal requirements in
9 response to the above-listed defects.

10 Dated this 15 day of December, 2005.

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12 SMITH & LOWNEY, PLLC

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16 Attorneys for Petitioner
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