

**Addendum to Fact Sheet**

**Appendix A:**

**Sand and Gravel General Permit**

**Response to Comments**

National Pollutant Discharge Elimination System and  
State Waste Discharge General Permit

For discharges from  
For Process Water, Stormwater, and Mine Dewatering Water Discharges  
Associated with Sand and Gravel Operations, Rock Quarries, and Similar Mining  
Facilities, Including Stockpiles of Mined Materials, Concrete Batch Operations and  
Hot Mix Asphalt Operations

February 17, 2016

State of Washington  
Department of Ecology

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## Summary of Permit Development

The Washington Department of Ecology (Ecology) issues this Response to Comments (RTC) as an Appendix to the September 9, 2015 Fact Sheet that accompanied the September 9, 2015 formal draft of the Sand and Gravel General Permit, which is a National Pollutant Discharge Elimination System (NPDES) and state waste discharge permit.

The permit authorizes discharge of process water, stormwater, and mine dewatering water to waters of the State of Washington from sand and gravel operations, rock quarries, and similar mining facilities, including concrete batch operations and hot mix asphalt operations.

The permit limits the discharge of pollutants to surface waters under the authority of the Federal Water Pollution Control Act and limits the discharge of pollutants to surface and ground water under the authority of the State of Washington Water Pollution Control Law, Chapter 90.48 RCW.

This RTC responds to comments on the formal draft permit that Ecology released for public comment on September 9, 2015 until October 23, 2015.

A detailed history of the public process for the permit is available in the September 9, 2015 Fact Sheet and online at <http://www.ecy.wa.gov/programs/wq/sand/permit.html>. Ecology's public process included:

**February 2014 through May 2015:** Ecology held and participated in several meetings with stakeholders to discuss permit issues and concerns in preparation for reissuance of the Sand and Gravel General Permit.

**May 26, 2015 to June 23, 2015:** Ecology invited informal public comment on a preliminary draft version of the Sand and Gravel General Permit. Ecology also held a public meeting to discuss the preliminary draft permit and to accept verbal comments. Ecology received comments during this period from several individuals and organizations. Ecology considered these comments during the development of the formal draft permit.

**July 7, 2015 to July 21, 2015:** Ecology invited public comment on the preliminary draft concrete recycling language within the Sand and Gravel General Permit. Ecology also held a public meeting and webinar to explain the preliminary draft concrete recycling language, to provide the basis for the preliminary draft language, and to discuss the environmental concerns regarding recycled concrete. Ecology received comments during this period from several organizations. Ecology considered these comments during the development of the formal draft permit.

**September 9, 2015 to October 23, 2015:** Ecology held a 45 day public comment period on the formal draft permit and conducted two public hearings and two workshops. Ecology received

approximately 100 pages of comments that were considered in the formulation of the final permit. This document responds to those comments.

**February 17, 2016:** Ecology issued the final Sand and Gravel General Permit.

**April 1, 2016:** Effective date for the final Sand and Gravel General Permit.

## Summary of Changes

Ecology made the following changes to the final permit (note the permit references below refer to the final permit unless noted otherwise):

### Permit Revisions:

- Italicized defined words the first time they appear in the permit instead of every time they are used in the permit.

#### *S1. Permit Coverage*

- In S1.D, removed the sentence: “*All activities at the permitted site must have the appropriate permits for those uses.*”
- Revised S1.E to clarify that permittees are only authorized to discharge from the activities listed in their coverage page and to clarify when they should notify Ecology regarding modifying their coverage.

#### *S2. Effluent Limits*

- Revised Table 2 to allow the discharge of process water associated with North American Industrial Classification System (NAICS) Code 324121 to ground, except for process water discharges from wet scrubbers. Ecology also revised Table 2 to group ECY001 with NAICS Code 324121.
- Revised Table 3 to group ECY001 with NAICS 324121. Thus, requiring quarterly (instead of monthly) pH monitoring for ECY001 and no longer requiring total dissolved solids monitoring for process water discharges associated with ECY001.
- Removed the columns in Table 2 and 3 related to discharge flow monitoring and added a sentence referring to the monitoring requirements for new facilities in S12.A.
- Deleted *Appendix C – Pollution Prevention Schedule for pH* and the associated footnotes in Table 2 and Table 3.
- Reworded Table 2 and 3, footnote 3 to clarify that permittees should report the presences of a visible sheen at their discharge point (as opposed to anywhere on-site) on their discharge monitoring reports. Added the language from footnote 3 related to observations of oil sheen on-site to S4.F.2.e.
- Reworded Table 2, footnote 4 for clarity.

### ***S3. Additional Discharge Limits***

- Revised the language in S3.J.3 to remove the language “*have the potential to discharge stormwater off site*” and “*or equivalent (e.g. Licensed Professional Geologist, Certified Professional Erosion and Sediment Control, etc.)*”. Ecology added an option for permittees to conduct yearly Wet Season Inspections at their inactive site instead of hiring a Registered Professional Engineer to inspect their inactive site every three years.

### ***S4. Monitoring Requirements***

- Removed the row from Table 4 related to discharge flow.
- In S4.G.2, added the sentence: “*Completed inspection forms, logs, checklists, or records used to meet other governmental agency requirements (e.g. Washington State Department of Transportation or Mine Safety and Health Administration requirements) may be acceptable as inspection reports provided they address the items in S4.G.1 of the permit.*”

### ***S8. SMP Section 3: Stormwater Pollution Prevention Plan (SWPPP)***

- Revised S8.E.8 to refer to unhardened (instead of uncured) concrete and to refer to returned asphalt.
- Removed the source control BMP for release agents (S8.E.8 in the formal draft).
- Revised S8.E.12.c to clearly state that wheel wash and tire bath wastewater is considered process water. Ecology added that the discharge of this water is subject to the effluent limitations and monitoring requirements in Special Condition S2, Table 2, and S4.
- Revised S8.F.1 so that the Best Management Practices (BMPs) regarding the placement of concrete recycling stockpiles only apply to sites that receive permit coverage for the first time on or after April 1, 2016.

### ***S10. Reporting and Record Keeping Requirements***

- Clarified the electronic reporting language and added a later due date for inactive sites to submit their Electronic Signature Account Forms or an Electronic Reporting Waiver.
- Relocated the production number range reporting requirements to S10.B. Permittees will report these ranges as a separate submittal from their Discharge Monitoring Reports.

### ***S12. Permit Application***

- Separated the application requirements for existing facilities planning a significant process change in S12.A.1.
- Removed the language in the S12.B.4 of the formal draft permit stating that portable permittees may only operate at one site at a time.

### ***G7. Engineering Plan Review Required***

- Removed General Condition G7. ENGINEERING PLAN REVIEW REQUIRED from the permit. Left in a placeholder to maintain numbering of General Conditions.

### ***Appendix A – NAICS Codes, Ecology Codes, SIC Numbers, and Descriptions for Facilities Covered Under this Permit***

- Added the SIC Number to the Table in Appendix A for Concrete Block and Brick.
- Added the following language to Appendix A for ECY001 and ECY002: “*Sites only storing or stockpiling hardened structural concrete / hardened asphalt, and not otherwise crushing or processing the material are not subject to coverage under this permit unless they conduct additional activities requiring coverage under this permit.*”

### ***Appendix B – Definitions***

- Revised the definition of “Application” to clarify that there are multiple types of application forms and to provide the link to Ecology’s website.
- Revised the definition of “Discharge Point” to include where the discharge leaves the permittees facility.
- Clarified in the definition for “Electronic Waiver Request” that Ecology typically only grants waivers to permittees that do not have a computer, printer, or internet connection.
- Added a definition for returned asphalt.

### ***Appendix C – Pollution Prevention Schedule for pH***

- Deleted *Appendix C – Pollution Prevention Schedule for pH* and the associated footnotes in Table 2 and Table 3.

### **Fact Sheet Errata:**

Ecology makes the following corrections to the Fact Sheet.

- At the end of section 4.2 add the sentence: “*Discharges to ground waters not subject to regulation under the federal Clean Water Act are authorized in this permit only under state authorities, Chapter 90.48 RCW, the Water Pollution Control Act.*”
- On page 48, revise the second paragraph under Water Quality Concerns as follows: “*The American Concrete Pavement Association noted in their 2009 Engineering Bulletin on Recycling Concrete Pavements that engineers should be aware of the highly alkaline nature of recycled concrete aggregates, the relatively high degree of solubility of the hydroxide-bearing components of the material, and the potential increases in pH that could occur in water percolating through an RCA, recycled concrete aggregate subbase. (ACPA 2009).*”
- On page 50, revise the second paragraph as follows: “*The American Concrete Pavement Association (ACPA) noted in their 2009 Engineering bulletin on Recycling Concrete Pavements that “it is not uncommon, however, to see very small regions of vegetation kill in the immediate areas of the drain outlet” associated with effluent from recycled concrete aggregates subbase.*”

- On page 51, revise the first paragraph under the Materials Acceptance Procedures heading as follows: *“The ACPA recommends in their 2009 Engineering bulletin that quality control plans should be developed for aggregate production in new concrete mixtures. This includes methods to ensure that reclaimed concrete source materials are not contaminated with unacceptable amounts of deleterious materials. ACPA recommends that these methods should be established prior to using recycled concrete aggregates in new concrete mixtures.”*

## **Organization of the Response to Comments (RTC)**

The table of contents lists the issues for which Ecology received comments and lists the section in which the summary of and response to comments for each group of issues is located. The page numbers are provided and issues in the table of contents are hyperlinked to the specific section in this document’s electronic file.

Several commenters asked Ecology to include their comments on the preliminary draft permit within the Response to Comments on the formal draft permit. When requested in writing to do so, Ecology included these comments in this Response to Comments document. Ecology has not distinguished between the preliminary draft comments and the formal draft comments in this document – instead including them all together and responding to both preliminary and formal draft comments.

In a few instances, commenters’ stances changed between their preliminary and formal draft permit comments (for example a permittee supported Appendix C in preliminary draft comments but in their formal draft comments asked for the removal of Appendix C). Ecology took this change in stance into consideration when developing the final permit; but has not specifically noted these instances within this Response to Comments document.

In the next section is an index that lists the name of each commenter and page numbers where their comments can be found. Where appropriate, an acronym, shortened name, or representative organization is provided to identify the commenter in this document.

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## Comments and Ecology's Response

### 1.0 General comments and Enforcement

#### 1.1 Reissuance Process

##### 1.1.1 Reissuance Timeline for the Preliminary Drafts:

**Commenters:** Bruce Chattin, WACA; CPM Development; Dave Lewis, Miles Sand & Gravel; WSDOT

##### **Summary of Comments:**

- There simply was not enough time to adequately review the preliminary draft changes in comparison the existing permit.
- The preliminary draft is now very confusing, full of duplications and contradictions; which has led to a document that is very difficult to review.
- Our members have had a very difficult time reading through all of the redlines and proposed "clarifying" revisions and segregating formatting.
- The short timeframes provided for the preliminary draft review compromised the ability to provide meaningful and comprehensive comments. Summer is always a highly busy season for the construction industry and our comment periods have also occurred over extended (and welcome) holiday breaks. This does not contribute to a preferred process for stakeholders.
- We especially appreciate the process that was used to inform and educate potential permittees. The website was effective at maintaining a clear schedule of events and providing the opportunity to review and comment on both informal and formal draft permits. It allowed my staff and WSDOT regions the time needed to fully understand proposed changes to the permit.

##### **Response:**

- Ecology is not required to hold a preliminary draft comment period. Ecology went beyond requirements of WAC 173-226-130 to hold multiple preliminary draft comment periods on proposed permit language. Ecology provided a four week comment period on the preliminary draft, a two week comment period of the Concrete Recycling Preliminary Draft Language, and held multiple meetings with stakeholders to discuss the changes proposed in the preliminary drafts.
- Ecology provided numerous versions of the preliminary draft permit so that stakeholders could easily review the changes. Ecology also provided an explanation of changes within the margins of the preliminary draft permit.
- Ecology disagrees that the preliminary draft was full of duplications and contradictions. Where specific issues were pointed out Ecology has attempted to make corrections.

- Stakeholders had additional time to review the proposed permit language during the 45 day formal comment period.

### 1.1.2 Reissuance Timeline for Recycled Concrete Discussion

**Commenters:** Bruce Chattin, WACA; Concrete Nor'West; Jimmy Blais, Stoneway

#### **Summary of Comments:**

- As you know, the discussion with Ecology about recycled concrete and recycled asphalt is a very important one. Our mutual discussion, plant tours and other exchanges have demonstrated this is important to insure pollution prevention is realized, but the importance of being able to recycle these materials versus disposal and landfilling is equally important. What is the balance? What is the point of compliance? Together, we acknowledge there is a direct nexus to the CSWP to realize both objectives. As this is a new and important element of consideration, we would suggest establishing a longer term review that allows participants in the management of pH of these important resources to evaluate what is needed, what is practical and reasonable to effectively manage pH while reusing these resources. It is important to mutually agree these are resources to be managed versus wastes to be eliminated. Imposing requirements that do not allow for the recycling of the huge tonnage of the state's returning infrastructure and transportation system is an irresponsible approach and not consistent with the environmental and sustainable practices of life cycle, and FHWA and EPA stated consideration of the importance of recycling these construction materials.
- Requirements for concrete recycle are still a question. We have been told by Ecology that no significant changes are being proposed, yet a three hour meeting to discuss the topic is scheduled by Ecology for July 7<sup>th</sup>. Any proposed changes to the requirements regarding concrete recycling operations as well as the conditions governing the management of recycled concrete aggregate should have been outlined early on in this process to allow adequate time for review and provide comments on any new proposals. Changes to this section at this time will not allow adequate time to evaluate the true nature of associated impacts (including economic impacts) on permittees.
- Thank you for the opportunity to comment on the preliminary recycled concrete portion of the S&G NPDES rewrite. I am also appreciative of the presentation made at our meeting on July 7 to provide background and perspective in the preliminary draft presented. Very helpful and well done.
- Thank you for your diligence in attempting to better understand this complex issue. The Dept. correctly notes that concrete recycling will become a more productive activity in the future. We appreciate your strong support of concrete recycling and we look forward to working with you to make it work rather than over regulate the success and necessity of recycling these materials.

#### **Response:**

- Ecology is not required to hold a preliminary draft comment period. Ecology went beyond requirements of WAC 173-226-130 to hold a preliminary draft comment period on the proposed recycling concrete language. This comment period was held from July 7 – July 21, 2015. Ecology read and considered all comments received during this preliminary draft comment period.
- Ecology also held a public meeting on July 7, 2015 to explain the preliminary draft concrete recycling language, provide the basis for the language, and to discuss the environmental concerns regarding recycled concrete. This meeting lasted approximately an hour and a half.
- Permittees had another chance to comment on the proposed recycled concrete permit language during the formal comment period which lasted from September 9 – October 23, 2015.

### **1.1.3 Preliminary Draft Comments Were Ignored**

**Commenters:** Bruce Chattin, WACA; CPM Development; Concrete Nor'West; David Schoettler, Stoneway; Jimmy Blais, GMCC; Dave Lewis, Miles Sand & Gravel; Jimmy Blais, Stoneway; Keven Samuelson, Granite Construction; Lakeside Industries; Ryan Ransavage, Miles Sand & Gravel; WAPA

#### **Summary of Comments:**

- Ecology has not responded to, or largely ignored, the comments industry submitted on the preliminary draft permits.
- We do not believe that our original comments were taken seriously by Ecology as none of our comments or suggestions were incorporated, or no substantive changes were made, in the formal draft permit.
- We are greatly disappointed by the lack of consideration that the Ecology has taken to reconcile any of the concerns brought forth by the Industry regarding to the proposed changes for 2015 reissuance of this Permit.
- Our written comments on the preliminary draft permits should be considered and responded to. A full review of prior comments from across the industry is necessary because of the demonstrative lack of response by DOE to the majority of concerns previously submitted via the comment process. We urge DOE to institute a comprehensive revision of the Draft Permit that addresses all of industry comments received to date.
- We urge Ecology to revise the Permit to consider and address all of our comments, which are reasonable and necessary to our business.
- We are deeply concerned that the Draft Permit persists in attempting to include provisions that have been previously identified by industry experts as problematic. Despite our disappointment that our comments have been ignored, we are committed to making comments and hope they will resonate with Ecology and appropriate and needed

changes will be made to the permit. We hope that our comments and other comments provided by our industry are at the very least considered by Ecology in this final draft period.

- It is imperative that prior comments by industry and industry associations be reviewed again and addressed in partnership with DOE as was the case in the past. It is disheartening that the process that has worked well in the past has largely been ignored. WAPA has heretofore worked behind the scenes with other industry associations that have addressed previous iterations of the Sand & Gravel General Permit effectively in close cooperation with your agency. Unfortunately, for reasons that are unclear, the legitimate concerns of the industry have not been given due credence in the process of developing the current Draft Permit.
- While we appreciate you extending the preliminary comment period by two weeks, we are concerned with your statement that: the later comments are received, the less able Ecology will be to incorporate them into the formal draft permit. Because more than adequate time remains in Ecology's reissuance schedule to carefully consider and incorporate all of our comments, including those received after the original 2-week comment period, we trust that you will do so.
- You will have received numerous industry comments by our members and they have done an excellent job of analyzing and commenting on the fact sheet, economic analysis, asphalt issues and the strong and consistent objection of reformatting the permit from its original format. I encourage you to fully and carefully review and digest these comments from these industry professionals. To dismiss this significant industry expertise and permit knowledge a second time would be of significant concern and undervalues the input from primary industry stakeholders.

**Response:**

- Ecology is not required to hold a preliminary draft comment period. Ecology went beyond requirements to hold two preliminary draft comment periods (one specifically on the draft recycled concrete language and one on the rest of the permit changes). When Ecology announced the preliminary draft comment periods, Ecology specifically stated both on Ecology's webpage and at in person meetings that a written response to comments would not be issued. Ecology did not have the resources to issue a written response to comments on the preliminary draft permits.
- Ecology read and carefully considered all of the preliminary and formal comments received on the preliminary draft permits.
- Ecology made many changes in the permit based on the comments received during the preliminary comment period. Some of these changes include:
  - Reducing the site mapping requirements by revising the language from "should show" instead of "must show."
  - Revising the release agent best management practice language.

- Applying the recycled concrete stockpile location best management practices to new piles only (as opposed to all piles).
- Clarifying which facilities can have process water discharges to surface water.
- Revising the spill reporting language.
- Allowing excavation work for maintenance at inactive sites.
- Clarifying the laboratory accreditation language.
- In other cases, Ecology decided to leave the permit unchanged in order to gather additional comments during the formal comment period.
- Ecology has included comments on the preliminary drafts in this Response to Comments document and has provided written responses as appropriate, when requested specifically by the original commenter in a formal comment letter or in their verbal testimony.

#### **1.1.4 Withdraw the Draft Permit/Pause the Reissuance Process**

**Commenters:** Bruce Chattin, WACA; CalPortland; Concrete Nor'West; Dave Lewis, Miles Sand & Gravel; David Schoettler, Stoneway; Jimmy Blais, GMCC; NAPA; Ryan Ransavage, Miles Sand & Gravel; WACA; WAPA

##### **Summary of Comments:**

- The 99% compliance rate with the existing permit suggests that the existing permit is working well. As such we respectfully request that Ecology abandon its re-write process and leave the existing permit in place.
- The existing Sand and Gravel Permit is highly effective and well understood by industry. Ecology has chosen to focus on a tiny fraction of water quality violations as justification for a permit re-write. The existing permit should be retained.
- With the inclusion of my previous comments per attached, and the comments submitted on behalf of industry professionals during the rewrite process, and the clear pattern of high compliance as presented in Ecology's own documents, there is substantial evidence the agency has produced a permit that is unwarranted.
- We invite you and urge you to consider our invitation to take the step to re-engage the primary industry stakeholders and make this a better permit that supports our mutual success rather than undermining it.
- We would ask the agency to revisit the many permit elements that have been commented on and shown to be erroneous. We can do much better. The opportunity to make the necessary corrections per CFR and other requirements remain in play as necessary.
- A considerable amount of work on the draft permit still needs to be completed. As such, this draft permit should be withdrawn by DOE and rewritten around the current permit.
- I urge Ecology to consider whether the better course would be to pause at this stage in the process in order to take the necessary time to fully understand my client's concerns and implications for their businesses.

- We stand ready to “reset” this process and to provide additional information via national resources and national experts in hot mix asphalt plant environmental facts, through the National Asphalt Pavement Assoc. (NAPA) and affiliated groups. We look forward to engaging in a process that addresses productive and constructive updates to the Sand & Gravel General Permit and eliminates additional regulation that does not improve our joint stewardship of the environment.
- On behalf of the asphalt pavement industry, we encourage you to take this opportunity to review the permit process, involve all stakeholders, and ensure the definitions and requirements set forth in the draft permit are realistic, accurate, and consensus-based.
- I continue to be perplexed at the amount of time and effort both sides are expending arguing about a permit that has a nearly perfect compliance rate. The draft permit language is predicated on a data set that is statistically insignificant for the purpose of revising the existing permit. Violations compiled by Ecology represent less than 1 % of the DMR's over a nearly 5 year period. A 99% permit compliance rate is a cause for celebration and the existing permit language should be retained. If it isn't broke don't fix it. Please re-adopt the existing permit which has a history of remarkable compliance rates and is highly protective of water quality and the environment. This would be a great outcome for all parties.
- You have given a timeline for issuance of the permit which is not realistic. It is important to have the time to complete a permit that is workable, not one that meets a certain deadline. Department of Ecology did not allow the time needed to complete the permit and we should not suffer from Department of Ecology's mistakes. The total rearrangement of the current permit has also caused a time delay. Move the timelines which will allow for a good workable permit.
- We have more than adequate time in the reissuance schedule to carefully consider and incorporate an ongoing comment process given the many redline revisions. The challenge is a short time frame to discover and understand the complete nuances and consequences of these changes when taken in to account individually and across the permit as a whole.
- We are optimistic that DOE will consider our comments worthy of further discussion prior to finalizing any updates to the Sand and Gravel General Permit.
- We are anxious to renew the cooperative efforts that have made the Sand and Gravel General Permit successful in the past. We anticipated that the partnering approach DOE has demonstrated when renewing the permit in the past would be followed in this iteration of the process.
- There should be an inherent obligation for the agency to robustly engage the industry to craft a permit that builds upon and strengthens an already strong compliance record. This is in the agency and permittees best interest.
- WACA and its members are uniquely situated to provide Ecology with thoughtful, insightful comments based on their real life, on the ground experience implementing the

existing and prior versions of the Permit. Many members received the first Sand and Gravel General Permit issued in the State of Washington decades ago. Consequently, they have a long history and deep understanding of how Permit terms were developed and Ecology's role in that process over the years.

**Response:**

- The current permit has expired and Ecology is required to issue a new permit.
- Ecology has gone beyond public involvement requirements. We have held a yearlong reissuance process which has included over six meetings with stakeholders, a preliminary draft comment period, a formal draft comment period, two public workshops, and two public hearings. A reset in the process would undermine this reissuance work and effort put in on both the part of stakeholders and Ecology.
- Ecology has made many of the changes that were requested by permittees during the stakeholder process.
- Reissuing the current permit without making changes would violate federal and state law and is not an option.
- Ecology is planning on holding workshops on the final permit which permittees can attend or send staff to for training on the final permit.

## 1.2 Current Compliance with the Permit

**Commenters:** Bruce Chattin, WACA; CalPortland; Dave Lewis, Miles Sand & Gravel; David Schoettler, Stoneway; Jimmy Blais, GMCC; Ryan Ransavage, Miles Sand & Gravel; WACA; WAPA

**Summary of Comments:**

- The Agency has provided some data regarding compliance in the Fact Sheet (Page 11). These data have been partially analyzed by the Agency, however not on a holistic scale.
- Since water discharge permits establishes numeric effluent discharge limits, the number of numeric effluent violations or water quality violations is an indicator of a discharge permits overall effectiveness in protecting water quality standards.
- The Agency has failed to present a critical piece of information regarding the Industry's overall water quality compliance record with the current permit. The critical piece of information that Agency failed to clarify is what 485 numeric effluent violations actually represents when put into the proper context of the number of water quality parameters monitored at permitted sites.
- Table 2 indicates in the 2010 to 2015 permit cycle that 485 water quality violations occurred. There are other violations in Table 2, however the other violations are clerical and do not impact water quality.
- How do the 485 water quality violations compare with the total number of water quality parameters that are routinely monitored at permitted sites? The Agency does not provide this data, so what follows is an estimate based on industry knowledge:

- There are 926 permitted sites but only 599 are active.
- Assume each site has three monitoring points
- Assume each monitoring point has three associated parameters (for example, oil sheen, pH and TDS)
- Assume each point is monitored monthly (in reality some parameters such as oil sheen are monitored daily, but for purposes of this example the assumption is once per month per parameter)

599 sites\* 3 pts/site \* 3 parameters/pt\* 12 months/yr \* 5 years = 323,460 monitored water quality parameters. Therefore, the estimated overall water quality compliance rate for the industry is 485 violations out of 323,460 monitoring observances or 99.85% compliance. While this is only an estimate, it is believed to be accurate enough for discussion purposes.

- Additionally, the agency verifies this fact in the fact sheet listing the compliance rates for each of the effluent discharge parameters, all of which have exceptionally high compliance rates (Ph= 99% compliance rate, turbidity =99% compliance rate, TSS= 96% compliance rate, TDS =100% compliance rate).
- This begs the following questions: Why is the Agency proposing so many changes to a permit that is already achieving such a high compliance rate? It would stand to reason that the current permit effectively protects water quality standards already, since there are no proposed to changes to the numeric effluent discharge standards in the new 2015 version of the Sand and Gravel permit. As such, does an overall compliance rate of 99.9% provide adequate justification to impose new and burdensome compliance measures?
- The industry has achieved a 96-100% rate compliance in the technology based effluent limits as stated in the Sept. 9 Fact Sheet on pages 23-31. This significant achievement is one the agency should be celebrating and citing as the example of the benefits of working together; agency and industry to accomplish environmental protection and significant pollution prevention. This should be the guiding direction of the S&G NPDES 2015 renewal. The agency has stated in every renewal that our S&G NPDES permit is “a good one, works well and needs very few changes”.
- The permittees in this segment are not uniform businesses and vary significantly. Given that significance, they have still have achieved a 96-100% compliance rating; which shows the permit holders understand and can comply with the current permit requirements. The purpose of our current permit is to ensure that the water quality standards are being met, which it has done. Now we are being rewarded for our hard work by an overhaul of both format and structure of the permit.

**Response:**

- Ecology acknowledges the overall compliance rate achieved by the industry. This is in part, why Ecology included the compliance rate information and approximate number of

violations per year figures in 6.2.2. of the Fact Sheet. The high compliance rate is also one of the reasons Ecology took the approach of not substantially changing the monitoring requirements, inspection requirements, and most of the other requirements in the permit during this permit reissuance.

- The purpose of the Sand and Gravel General Permit is to protect groundwater, surface water, and the quality of sediment in waters under the authority of the Federal Water Pollution Control Act and Chapter 90.48 Revised Code of Washington (RCW). Both of these laws include additional requirements, beyond meeting State Water Quality Standards, which Ecology must include in the permit.

### 1.3 Formatting Changes

#### 1.3.1 Support and Appreciation for Formatting Changes

**Commenters:** Citizens for a Healthy Bay; City of Tacoma; Lakeside Industries; Puget Soundkeeper

#### **Summary of Comments:**

- You have made a number of changes that clarify and improve the permit.
- We appreciate that the majority of the revisions were intended to clarify and reorganize the permit to make it easier to read, interpret and implement. While we appreciate Ecology's efforts, we are concerned with the nature and extent of some key proposed revisions.
- I would like to thank the Department of Ecology for attempting to clarify the language, structure and format of the permit I think it does make it easier to transfer the permit requirements directly to a stormwater plan and eliminating some of the duplicate language makes it easier to know where to find the information that we need.
- We support moving Best Management Practices to their own section earlier in the permit, which emphasizes the importance of these activities and encourages their implementation. Over all we support the text and formatting changes throughout the permit and appreciate Ecology's effort to make the permit easier to understand to protect local surface and groundwater.

**Response:** Comments noted.

#### 1.3.2 Retain the Current Permit Structure

**Commenters:** Bruce Chattin, WACA; CalPortland; CPM Development; Concrete Nor'West; Dave Lewis, Miles Sand & Gravel; David Schoettler, Stoneway & Jimmy Blais, GMCC; James Essig, Granite Construction; Jimmy Blais, Stoneway; Keven Samuelson, Granite Construction; Lakeside Industries; Palmer Coking Coal; Ryan Ransavage, Miles Sand & Gravel; WACA; WAPA

### **Summary of Comments:**

- Ecology should revert back to the original permit format as was offered and has been asked for by industry.
- The reorganization of the permit is very challenging. We are frustrated, disappointed, concerned, and puzzled with the draft permit which made a multitude of changes to a permit that has a 96% to 100% compliance rate. This is unfortunate for many reasons, not the least of which is that WACA members and Ecology have invested years developing a relationship that has paid dividends in many ways, including an exemplary compliance track-record, and 20 years of experience.
- Ecology's decision to revise the Permit format seems unreasonable and unnecessary. With 96-100% compliance over 926 statewide permits, the permit should remain consistent with what works rather than rewriting and reformatting it to address less than 2% of the regulatory violations and responsive to a few inquiries that didn't understand the permit.
- The Permit is working this is an accomplishment that should be celebrated. Yet, instead of a reward, Ecology still felt the need to make significant organization changes, and we face a wholesale structural rewrite of the permit. Given the permit is working well for 926 permit holders, those new to the program would be better served to have Ecology orientate them to the permit rather than revise it for the entire general permit population.
- Leaving the structure intact and focusing the renewal on revisions provides better and more effective pollution prevention and is a reasonable approach that is protective of water quality. In many instances, Ecology's proposed structural revisions do not provide any additional protection for water quality, which in and of itself is a basis to reconsider this approach. If the requirements of the existing permit were causing a water quality problem then there would be some grounds for change. There does not appear to be any major problems with water quality. If it is not broke, don't fix it.
- Ecology has taken the approach of a permit rewrite versus a permit renewal. The latter suggesting there will be practical updates and like revisions that are consistent with the current document versus a reformatting of the permit overall. To turn to a rewrite that imposes administrative and prescriptive measures that provide little benefit to water quality is simply change for the sake of change.
- We urge Ecology to put forth a permit that is workable to protect water quality, not one that is confusing and changes the focus so much that Permittees become bogged down in the details of trying to comply instead of protecting water quality. The focus should remain on substantive revisions that would actually benefit water quality.
- We feel that many of the changes and new requirements found in the Primary Draft of the 2015 Sand and Gravel General Permit rewrite inadvertently undermine the Agency's overall objective for all permittees to achieve water quality compliance.

- For a 25 year old mature permit that according to multiple current and previous Ecology Water Quality program managers and Ecology directors has been working well, Ecology has not provided, offered or established any compelling or basic evidence that as currently written, the permit is failing to accomplish its primary function of environmental protection and pollution prevention. In each instance of change, we would request the agency provide compelling evidence that the permit is failing to be effective, is unclear or confusing to the majority of permit holders.
- We urge Ecology to explain what you hope to accomplish with all of the revisions in the draft.
- The Agency has significantly modified, rearranged, and added language with the intent to enhance readability, consolidate like sections and improve usability for permittees. The Agency has touted in the permit public meetings that the reorganization has been done to make reading the permit easier. If this was the case, then why have all the industry stakeholders (many of whom have worked with the permit for 20+ years) requested that the changes be undone? The perspective (i.e reading ease) of how a permit should be organized is in the eye of the beholder.
- There are over 100 changes in the revised version, many of which could be argued as structural, but most require comparison to the existing permit and actually include subtle language/word changes that greatly alter the meaning compared to the existing permit. Discussion with Ecology indicates the changes are primarily to address grammatical issues and to add clarity for permittees. We suggest these changes will have the opposite effect.
- The revisions are administrative in nature; prescriptive recordkeeping, record retention and other administrative functions. We request that Ecology show the proposed changes. These changes should be only what is required based on Best Available Science and what is required by law not, personal preference.
- While we understand that no permit remains the same over time and revisions are to be expected, the level and degree of these permit revisions and integrated new conditions is unexpected and maybe applicable for a new permit versus a mature permit that has been consistently represented by the agency as a "good permit", "that works well" and "doesn't need a lot of changes". The agency would seem to be inconsistent with their own assessment of the permit.
- The permit has not only been re-organized, the overall length of the permit has increased from 51 pages to 64 pages or by 25%. If the permit were simply being re-organized, the length should remain the same. The increase in length is a further indication of the expansion of the scope and breadth of this permit.
- The Agency contradicts itself in the Fact Sheet (page 16 Section 6, paragraph 2) by stating that the Agency has focused on improving the "reading ease of the permit." This statement is directly contradicted in the third paragraph where the Agency states " ...

Ecology attempted to maintain the basic structure of the 2010 permit..." Those statements contradict each other. The Agency has significantly reorganized the permit and in no means is it similar to the 2010 permit.

**Response:**

- There are approximately 20 new permittees each year, 100 new permittees per permit cycle. Additionally, there is staff turnover at existing facilities. Ecology attempts to educate employees at both new and existing facilities but has limited staff resources to meet this ongoing education and training need.
- The comments point to the high compliance rates with the effluent limits in the permit as proof that the permit is working to protect water quality and pollution prevention. These high compliance rates were achieved in part because Ecology has spent countless hours educating permittees regarding the permit requirements. Education can only go so far. Having a concise, clearly written permit that reaches all permittees at the time of permit issuance is a much better and more efficient approach.
- The intent behind most of the permit revisions was to enhance readability, consolidate like sections, and improve usability for permittees.
- As the comments point out the majority of the changes are structural in nature and do not result in any operational changes at Sand and Gravel facilities. The monitoring requirements, effluent limits, inspection requirements, and most of the other requirements in the permit have stayed the same or been reduced.
- Ecology has carefully reviewed specific comments pointing out places where a language change may have altered the meaning compared to the existing permit. Please refer to the other sections in the Response to Comments document for Ecology's response to these specific concerns.
- Ecology disagrees that an increase in permit length means that the permit has been expanded in scope and breadth. The majority of the extra permit length was due to the addition of three new tables within the permit.
- Ecology believes that the proposed Sand and Gravel continues similar layout (i.e., structure) and language to the previous 2010 permit. With the exception of breaking S5 into four separate sections (which still remained in the same order) and the relocation of S8 to S1, the layout / structure of the permit has remained largely the same.

### **1.3.3 Reissuance Process for Formatting Changes**

**Commenters:** Bruce Chattin, WACA; CalPortland; CPM Development; Dave Lewis, Miles Sand & Gravel; David Schoettler, Stoneway & Jimmy Blais, GMCC

**Summary of Comments:**

- From February 2014 through October 2015, The Agency and vested stakeholders participated in several meeting to discuss permit issues and concerns in preparation for

the 2015 reissuances of the Sand and Gravel Permit. In these early stakeholder meetings, it was indicated to industry several times that this permit renewal would be a minor update to the current permit. However, this formal draft substantiates that this given assurance could not have been further from the truth. We were originally were told that the only changes needed would be because of law changes and hearing board decisions. A reorganization of this caliber is a major change.

- We participated with Ecology through multiple workshops, on-site tours and comment periods only to find that new regulations have been moved forward against our persistent attestation that these controls are unnecessary and overly burdensome.
- We are concerned with Ecology's characterization of many of these revisions as "clarifying" changes designed for flow, readability and organization. There is always some improvements that can be made, however, it is clear to those regulated by this document, these are substantial revisions that go far beyond the three bullet example list contained in Ecology's "Summary of Changes" document dated 05/26/2015.
- At the June 1, 2015 preliminary meeting, staff clearly heard from industry they challenged the new formatting and requested the permit go back to the old format. Staff responded they could do that. Following that meeting, the industry commented overwhelming that the reorganization was not well received. The objections were raised by stakeholders that held almost 50% of the permits. Yet Ecology later retracted the option to go back to the original formatting, overlooked the majority of comments by industry, and published a draft permit with all of the reorganization intact; as they received a few comments that liked the new format. The department didn't receive enough input to dismiss the strong objections of the majority of permit holders. It is evident that Ecology's offer was not a serious one.
- If the Agency desires to rearrange the permit in the future, stakeholder input should be sought before making significant changes. On behalf of the 425 permittees represented by our Association and the remaining 510 that may not be aware of these changes and proposed rewrite, we request the ability to be a partner in this rewrite, not rewritten out of it. The permit renewal process is not to be a perfunctory or obligatory process that meets administrative requirements. Our 25 year relationship in building successful permit outcomes has earned us the ability to be a meaningful part of the process and to help make for an improved, but workable document.

**Response:**

- Ecology is not required to hold a preliminary draft comment period. Ecology went beyond requirements to hold multiple preliminary draft comment periods on the language within the permit. Ecology provided a four week comment period on the preliminary draft, a two week comment period of the Concrete Recycling Preliminary Draft Language, and held multiple meetings with stakeholders to discuss the changes within the preliminary drafts.

- Ecology provided numerous versions of the preliminary draft permit so that stakeholders could easily review the changes. Ecology also provided an explanation of changes within the margins of the preliminary draft permit.
- Stakeholders had additional time to review the proposed permit language during the 45 day formal comment period.
- The monitoring requirements, effluent limits, inspection requirements, and most of the other requirements in the permit have stayed the same or been reduced. The majority of the changes in the permit will not result in any operational changes at Sand & Gravel facilities. Ecology does not view changes in the permit that will not result in operation changes at Sand & Gravel facilities as substantial revisions.
- During the preliminary comment period, Ecology heard from some permittees that they had concerns about the new formatting. Ecology received requests to go back to the old format. Ecology carefully considered these comments and requests. Ecology evaluated these comments and requests against the benefits of improving the readability of the permit, comments received in favor of the formatting changes, and Ecology's obligations under executive orders.
- Ecology has chosen to address specific comments where stakeholders indicated confusion or identified specific concerns and continues the rest of the changes within the formal draft and final permits.

#### **1.3.4 Retain the Familiarity of the Existing Permit**

**Commenter:** Bruce Chattin, WACA; CalPortland; Concrete Nor'West; Keven Samuelson, Granite Construction; WACA

#### **Summary of Comments:**

- Familiarity with the existing permit and requirements promote and is a key component towards achieving and maintaining high compliance levels. Industry indicated and Ecology has acknowledged the importance of familiarity with permit documents for those site administrators responsible for administering and complying with the permit. The best way to comply with the permit is to have well trained employees, working on site, who are familiar with the Permit and understand its requirements.
- The existing 2011 issued permit is similar in layout and language to the previous 2005, 2000 etc. permits and personnel have become familiar with the permit requirements. It makes little sense to reformat a working document people on the ground are familiar with and have obviously been successful in implementing.
- While the permit initially has always been difficult to read over its original 51 pages, we have been able to apply it as presented. Wholesale rewrite now undermines this familiarity.

- WACA members overwhelmingly find the structural revisions confusing. Many members (including those who have not sent in comments) have talked with employees directly responsible for implementing the Permit and have uniformly heard that the revised format makes it much more difficult to understand and comply with the Permit.

**Response:**

- The monitoring requirements, effluent limits, inspection requirements, and most of the other requirements in the permit have stayed the same or been reduced. The majority of the changes in the permit will not result in any operational changes at Sand & Gravel facilities. Thus, well trained employees who are familiar with the permit and understand its requirements will still be successful in implementing the permit the same way they have under the current permit.
- Ecology believes that the final Sand and Gravel General Permit continues similar layout and language to the previous 2010 permit. With the exception of breaking S5 into four separate sections (which still remained in the same order) and the relocation of S8 to S1, the layout of the permit has remained largely the same.
- Ecology has also talked with permittees, including those who have not sent in comments, and has heard that the revised format makes it much easier to understand and comply with the permit.

### 1.3.5 Formatting Changes Increase the Risk of Third Party Lawsuits

**Commenters:** Bruce Chatten, WACA; David Schoettler, Stoneway & Jimmy Blais, GMCC

**Summary of Comments:**

- With the extensive reformatting, all newly required conditions, reports, or documents the rewritten permit has added or requires now become a potential source of liability for third party enforcement.
- Permittees will be in jeopardy of violations simply because they no longer can track the permit in the new format or may miss the many small changes throughout the document while they are training and reorienting their staff to the new permit.
- As third party actions are becoming more aggressive and more expensive to resolve, Ecology should not be so willing to place permittees in jeopardy for the sake of requiring additional administrative paperwork.
- The Agency should be required to substantiate the need for additional reporting or like documents before creating unnecessary exposure for permittees to frivolous third party actions. Based on the past practices of some firms, claims are filed on even minor paperwork violations and demanding higher and higher penalties and attorney's fees to settle. There is little if any benefit to water quality to these new requirements and significant risk placed on permittees.

**Response:**

- When permittees do not understand their permit obligations they are at an increased risk of violations and third party lawsuits. Therefore, it is to everyone's benefit to have a permit that is clear and concise.
- The monitoring requirements, effluent limits, inspection requirements, and most of the other requirements in the permit have stayed the same or been reduced. The majority of the changes in the permit will not result in any operational changes at Sand & Gravel facilities. Thus, employees who are familiar with the permit and understand its requirements will still be successful in implementing the permit the same way they have under the current permit and should not be at increased risk for third party lawsuits.
- There are many changes in the permit that benefit permittees and make compliance easier. Many of these changes were requested by permittees during the stakeholder process.

## 1.4 Enforcement

**Commenters:** Bruce Chattin, WACA; Anne Dunn

### Summary of Comments:

- Ecology will have an “all hands on deck” meeting and specific training sessions for inspectors to understand in detail the permit changes and how to regulate them with the perspective of looking for NON compliance. We will not have the same luxury and we will have to take our best guess to identify what the new definitions or standards of compliance are. This represents an unequal playing field and not supportive of permittees or supportive of successful compliance. Compliance may very well become a moving target from inspector to inspector given the many changes and subjective interpretations. Not a productive or welcome process.
- I do not see anything in the permit changes that reflect enforcement. Gravel pits seem to continue violations, pay the fine, and continue to violate the conditions of the permit. Including small pits. Violations continue with the Pit paying a fine, ignoring the citation and continuing willingly and knowingly violate the condition. In the meantime neighboring properties and habitat are adversely affected. There seems to be no enforcement to stop the destruction. Fines or mitigation for the pit is not the answer.
- Wetlands are a major concern. Mitigating for reclamation to be done when they have completed a project can be 40 to 50 YEARS from the time of destruction of the wetlands. We will probably be dead and so will the habitat. What good is that?

### Response:

- Ecology has held numerous meetings/public workshops with permittees to explain the proposed changes in the draft permit.

- Ecology is also planning on holding public workshops on the final Sand and Gravel General Permit to explain the changes and answer questions. Permittees are welcome to attend these public workshops.
- Ecology has established an internal Sand and Gravel Team composed of the Sand and Gravel General Permit inspectors and permit writer. One of the main objectives of this team is to help ensure consistency across the state. Ecology still recognizes the need for varying compliance approaches based on regional and site specific conditions.
- Wetland reclamation is a serious issue, but it is outside of the scope of this general permit.

## 1.5 Discharges

**Commenters:** Bruce Chattin, WACA; WACA

### Summary of Comments:

- This combined NPDES and State Waste Discharge Permit regulates discharges to waters of the state. Yet, in many places, the Permit imposes requirements on "discharges" rather than "discharges to waters of the state." All Permit references to "discharge" should be replaced with "discharge to waters of the state," which is consistent with language in other general permits, the federal Clean Water Act, RCW 90.48, and the general permit regulations.
- The S&G permit should also contain language similar to the state municipal storm water permits clarifying that the authorizations to discharge to ground water are not authorized under the Clean Water Act. Include in the permit the following language contained in the Municipal Stormwater Phase I and II General Permits: *“Discharges to ground waters not subject to regulation under the federal Clean Water Act are authorized in this permit only under state authorities, Chapter 90.48 RCW, the Water Pollution Control Act.”* This language will also provide some additional protection or limits to citizen suit liability, which only applies to violations of the Clean Water Act.

### Response:

- Both the Clean Water Act and RCW 90.48 include provisions regarding pollution prevention. Ecology is obligated under this legal authority not only to regulate discharges to waters of the state but to also prevent waters of the state from becoming polluted. In several instances in the permit the term discharge is used without noting “to waters of the state” for the purposes of pollution prevention.
- In other instances in the permit when discharge is used the “to waters of the state” is implied. In these cases, Ecology feels it is unnecessary to add “to waters of the state” and doing so would make the permit more cumbersome.

- Ecology does not agree to add the suggested sentence to the permit. However, Ecology does agree to add the sentence to the Fact Sheet of the permit [refer to the Fact Sheet Errata: Summary of Changes section in this Response to Comments document].

## 1.6 Other general comments

### 1.6.1 SEPA / Public Notice

**Commenter:** Bruce Chattin, WACA

**Comments:** There are a number of new conditions that Ecology has indicated they have not yet determined how they will be implemented. Staff has indicated verbally to a direct inquiry this was true with the condition as it related to SEPA and public meeting notice requirements (example; p. 19 of the Fact Sheet). The NPDES and state waste discharge permit is only authorized to regulate discharges to waters of the state. It is not intended nor is it the agencies role to be a catch all for other land use or other permits. As staff has indicated there are unknowns yet to be determined by the agency. It is difficult at best to anticipate an impact or make a comment to an unknown or undefined impact or accept a permit draft that has not been fully analyzed. Once determined, potential impacts of unknown consequences may increase a permittees compliance risk and exposures to third party lawsuits or create a false premise for initiating a permit process or treatment BMP. Ecology should not release this draft for comment until all details or impacts are known, properly identified and can be communicated.

**Response:**

- Ecology disagrees that there are a number of new conditions that Ecology has not yet determined how they will be implemented.
- Ecology indicated verbally that Ecology was reviewing SEPA and public notice requirements in relationship to permittees adding the new codes ECY001 and ECY002 to their site coverages which resulted in a significant process change. Ecology has handled these reviews on a case-by-case basis to ensure that Ecology and permittees were meeting existing SEPA and public notice requirements.
- Ecology disagrees that that there are unknowns yet to be determined by Ecology. Ecology is aware of the existing SEPA and public notice requirements.

### 1.6.2 Performance Based Versus Prescriptive Base Permit

**Commenters:** Bruce Chattin, WACA; Jimmy Blais, Stoneway; WAPA

**Summary of Comments:**

- The permit has always been represented as a performance-based permit especially for smaller facilities that can innovatively, practically, effectively and economically address their site specific characteristics. This formula has worked well. It also gives the permittees an ability to engage productively with their respective inspector (in most

cases) to mutually address any necessary improvements. The win for the agency, inspector, permittees and environment is obvious in this model. Inspectors can make permittees more effective.

- As proposed, this effective model is set aside and now becomes a paper chase for violations, and creates unnecessary compliance exposures for minor paperwork violations. Not conducive to protecting water quality.
- It is our strong opinion that the permit has become more prescriptive base, rather than performance based. It is our understanding that this is a general permit- "a-one-size-fits-all-permit" - thus it must work in general for the majority of all permittees.
- We feel the Agency is now specifically telling permittees how to run their operations, instead of allowing permittees to adjust, and implement best management practices to achieve compliance with water quality standards.

**Response:**

- As others have pointed out in the past, the monitoring requirements (performance demonstration) of this permit are minimal and generally do not include in-ground groundwater monitoring. In the absence of frequent effluent monitoring, Ecology relies on demonstrated source control and treatment Best Management Practices (BMPs). Permittees may omit certain BMPs if they are unnecessary or an equally effective BMP is used. Permittees may implement innovative BMPs as well.

### 1.6.3 Additional Comments

**Commenters:** Bruce Chattin, WACA; Dave Lewis, Miles Sand & Gravel; City of Tacoma; CPM Development; Harry Branch; WDFW

**Summary of Comments:**

- It is important to state that not all permits need to mimic the Industrial or Construction permit, this is a General Permit for a reason – the conditions should reflect the industry it is covering instead of trying to achieve or mimic aspects of other permits. Do not make this permit similar to permits for government agencies, construction, and industry; this is not a municipal permit; we are not the same.
- I'm glad the discharge question is being revised. I hope someday we will also consider the holding capacity of watersheds.
- The second comment is I would like to thank the Department for recognizing the pre-treatment requirements in CFR 443 and putting that language directly into the permit.
- The Habitat Program's Division Managers and Regional Managers were asked to review the draft permit. The managers did not identify any fish and wildlife concerns.
- Just wanted to say on record thank you very much for the workshop presentation today on October 5, 2015. Ah, very entertaining, a lot of good information, some very good points of clarification.

- It is disappointing that your inspectors were not invited to participate in the meetings on the renewal of the permit. Inspectors participated in past permit renewals and their participation has been proven to be beneficial for all.

**Response:**

- Comments noted.
- The Ecology inspectors were consulted during the permit renewal. Ecology did not have inspectors participate actively in stakeholder meetings at the request of the Washington Concrete and Aggregate Association.

## 2.0 Fact Sheet

*For comments on specific permit requirements that refer to the Fact Sheet, see the specific permit sections of this Response to Comments document.*

### 2.1 Dust Control Water

**Commenters:** CalPortland; CPM Development; Dave Lewis, Miles Sand & Gravel; David Schoettler, Stoneway & Jimmy Blais, GMCC; James Essig, Granite Construction; Lakeside Industries; NAPA; Pyramid Materials; WACA; WAPA

**Summary of Comments:**

- The Fact Sheet page 21 states that:  
*"Spraying, with non-process water or process water that has been treated is permitted under this permit for use on unpaved access roads to maximize dust control and to minimize the off-site tracking of sand, soil, sediment or similar materials. However, permittees cannot allow untreated discharges of dust control water to run-off site or to a surface waters. Also, pools or ponds of dust control water may be considered a groundwater discharge. Permittees should attempt to minimize puddling, pooling and ponding of dust control water. If a discharge to surface water or groundwater occurs then the dust control water is considered process water discharge."*

The Agency, in the above statement, is confusing the intent of where monitoring is to be conducted at facilities. The monitoring intent is to representatively monitor all areas of a facility at established monitoring points. The language invokes the use of the undefined term "pool" which can be interpreted to be a puddle. Ecology has since the beginning of the permit in 1994 said that the permit intent is to not monitor every puddle at a facility, but to conduct representative monitoring. The above information in the fact sheet confuses the issue in relation to monitoring. The potential for a pool of water to be interpreted as a discharge to ground water as a result of dust control efforts is not only unreasonable, but creates conflicts between two different permits issued by the same

agency. Statements discussing pools of water that may be considered to be a groundwater discharge must be removed.

- Dust control water is applied judiciously to dampen surfaces to control dust but not to generate discharges. Ecology is attempting to over regulate something which is not an issue and which will create confusion for operators. Revise the language in the fact sheet and let our Monitoring Plans stand on their own.
- Dust control water is used throughout facilities to control dust. Facilities drainage areas are already characterized in the Monitoring Plan as to the type of water (i.e. NAICS 212321 stormwater to ground, or NAICS 327230 process water to ground etc. etc.). Ecology should let the existing monitoring plans at our facilities stand on their own.
- Complying with the permit now requires testing of dust control water in accordance with Table 2 on page 10 of the permit and confuses the issue of representative monitoring and monitoring locations. Dust control water is used to control fugitive dusts throughout a facility and should not be characterized as process water.
- If a water truck wets down the aggregate stockpile areas which drain to a stormwater drainage pond and an incidental amount of dust control water trickles into that pond, does the type of water in the pond suddenly change from stormwater to process water? Certainly, this is not the intent of the Agency. The minimal amount of dust control water that may run into a stormwater pond should not be considered as changing the stormwater pond into a process water pond.
- The problem remains with the misconception by DOE that dust control water is process water. The dust control water used for other activities is allowed to discharge to surface water.
- “Process Water means any water that is used for or results from the production, clean-up, or use of any raw material, intermediate product, finished product, byproduct, or waste product. The term also means any waste water used in or results from the slurry transport of mined material, air emissions control, or processing exclusive of mining.” Under this definition and description, Ecology has changed the scope of the permit in regards to process water and dust control water.
- Ecology’s definition is discordant with US EPA’s definition and must be addressed. It is our understanding that a number of state environmental agencies have similarly reviewed their state’s definition of “process wastewater” and have reached the same conclusion with regards to the use of dust suppression technologies at asphalt plants — these water sources are not considered process waters. We can provide appropriate citations at a later time, if necessary.

**Response:**

- The permit requires representative monitoring to waters of the state. Ecology believes that permittees have the capability to anticipate if and where dust control water will

collect and discharge to waters of the state and that this information can be, or already is, addressed in their monitoring plans.

- Since the original iteration of the permit dust control has been classified as process water. The 1994 fact sheet for the first Sand and Gravel General Permit stated: “Typical uses of process water at a mining facility generally depend of the diversity of operations at the facility including dust control and washing or screening mined rock products.” Ecology is not changing this designation.

## 2.2 References Pertaining to Recycled Concrete

**Commenters:** ACPA; Bruce Chattin, WACA; CalPortland; CPM Development; Concrete Nor’West; Dave Lewis, Miles Sand & Gravel; David Schoettler, Stoneway & Jimmy Blais, GMCC; Puget Soundkeeper; Ryan Ransavage, Miles Sand & Gravel; University of Wisconsin; WACA

### Summary of Comments:

- The American Concrete Pavement Association has reviewed the fact sheet document with regard to references to the American Concrete Pavement Association’s (ACPA’s) Engineering Bulletin EB043P. We note that Ecology has referenced several statements from within the text of our publication inappropriately:
  - Specifically, the citation on page 48 of the fact sheet “*engineers should be aware of the highly alkaline nature of recycled concrete aggregates, the relatively high degree of solubility of the hydroxide-bearing components of the material, and the potential increases in pH that could occur in water percolating through recycled concrete*” refers to information discussed in a call-out note on page 58 of EB043P in Appendix B – Guidelines for Using RCA in Unstabilized Granular Subbases. The statement has been generalized and taken out of context. The statement in EB043P is “*engineers should be aware of the highly alkaline nature of recycled concrete aggregates, the relatively high degree of solubility of the hydroxide-bearing components of the material, and the potential increases in pH that could occur in water percolating through an RCA, recycled concrete aggregate subbase.*” The nature of run-off and considerations thereof may be significantly different in stockpiles or other applications than in use as a subbase layer, which was the focus of our recommendation.
  - A citation on page 51 of the fact sheet may also be considered somewhat generalized and potentially misleading. The fact sheet quotes EB043P as follows: “*It is not uncommon, however, to see very small regions of vegetation kill in the immediate areas of the drain outlet*” and includes the additional phrase *associated with effluent from recycled concrete aggregate*. The quoted words/phrase are accurate, but the additional phrase highlighted by underline is not stated in EB043P. The context of our statement in EB043P is referring to recycled concrete

used as subbase material not in any other form. The full statement is as follows: *“The effluent from RCA foundation layers is initially highly alkaline (an effect that diminishes with time in service), but is generally not considered to be an environmental hazard because it is effectively diluted at a very short distance from the drain outlet with much greater quantities of surface runoff. It is not uncommon, however, to see very small regions of vegetation kill in the immediate areas of the drain outlet. The gradation and washing recommendations provided above to prevent precipitate formation also are generally effective in reducing initial pH levels in RCA subbase drainage effluent.”* This paragraph is found on page 44 of EB043P.

- A third reference to EB043P occurs on page 51 of the fact sheet. The fact sheet states: *“The ACPA recommends in their 2009 Engineering bulletin that quality control plans should be developed for aggregate production. This includes methods to ensure that reclaimed concrete source materials are not contaminated with unacceptable amounts of deleterious materials. ACPA recommends that these methods should be established prior to using recycled concrete aggregates.”* Our recommendation that quality control plans be developed is on page 56 of EB043P in a section on using recycled concrete as aggregate in a new concrete mixture. This is a very important distinction from using recycled aggregate in unbound layers or other uses. Paving contractors and material producers work under ASTM, AASHTO or state standards that limit deleterious materials in all types of aggregates used in concrete mixtures to help control variability in concrete properties. Given this context, the full statement in EB043P directed at paving contractors is as follows: *“Develop and implement a quality control (QC) plan for aggregate production. The QC plan should describe the production procedures, test methods and frequency of testing to ensure consistent production of RCA meeting the requirements of the intended application. The QC plan also should describe methods to be used to ensure that reclaimed concrete source materials are not contaminated with unacceptable amounts of deleterious materials. Establish methods and criteria for examining RCA prior to its use.”*

EB043P was developed for the purposes of educating pavement engineers and contractors on the considerations of using recycled concrete materials and for prospering best practices in this area of construction. The considerations do include appropriate cautions relating to environmental issues, but also proper techniques and considerations to mitigate these concerns in consideration of recycled concrete aggregate use. It appears that the full context of some of our information may not have been fully appreciated by your Department in the references provided in the fact sheet. We request correction of these references to our Association’s technical guidance, which is otherwise strictly intended for educational purposes.

- I'm writing you in reference to the use of our study, "Leaching of Alkaline Substances and Heavy Metals from Recycled Concrete Aggregate Used as Unbound Base Course" in the fact sheet that the Washington State Dept. of Ecology is using in developing rules for developing concrete recycling BMP's. The formal citation for this document is below. Specifically, this fact sheet cites our work on page 50, in paragraphs 3 and 4. We have a few concerns with the manner that the results of this study are being used in the fact sheet.
  - First, while we indeed saw high pH leachate produced in our laboratory and parking lot studies, high pH leachate was not observed at the MnROAD facility site. This site is most representative of the actual environmental conditions that would be present when RCA is used as an unlined base course. At a minimum, this evidence should also have been included in the fact sheet to more accurately represent the studies. It is important to note the distinction between laboratory results and field conditions when attempting to characterize the presence of pH.
  - Second, while the pH of the leachate was measured, the stated goal of the studies was not to determine the quantity of high pH leachate that the materials could produce. Much more extensive RCA characterization, site-specific conditions, and buffering reactions would need to be considered to provide a sound scientific basis for the proper characterization of pH in RCA. Accordingly, this report was not intended for the development of a regulatory framework covering the pH of RCA leachate.
  - Third, while this document was peer-reviewed by the Physicochemical and Biological Processes in Soils Committee of the Transportation Research Board, it was not subject to anonymous peer-review.

Given these concerns, the full context of our studies may not have been fully represented by your Department in the references provided in the fact sheet. We respectfully request correction of these references regarding our report.

- Additionally, three major entities that have been cited in the fact sheet and used by the agency to substantiate their positions for permit modifications have all gone on record indicating the agency has used their information, reports, bulletins out of context. This pattern demonstrates the agency has selectively used only portions of the documents and research of others to build their case for the proposed changes. But under scrutiny, these statements fail to meet necessary accuracy measures. The agency has not demonstrated any strong or compelling evidence of continued non-compliance or environmental harm. The information used by the department to support their objectives, referenced documents that did not reflect conditions or circumstances experienced in Washington State. Since 1995 this permit has worked well, the Department should rely on that. Quite simply, based on the evidence of the dept.'s own data and records, this rewrite is unwarranted and should be withdrawn.

- We believe that Ecology's reliance on several documents in the Fact Sheet on concrete recycling are not appropriate, taken out of context and not used as intended. Ecology should remove these references from the Fact Sheet and use their own data which shows there is no problem with concrete recycling.
- The fact sheets are full of assumptions and opinions. Ecology has not been able to provide any valid peer reviewed scientific documentation which supports and/or justifies their stringent regulatory requirements for concrete recycling.
- Best available science has been ignored. Concrete Recycling BMP's have not been backed by any best available science (BAS). DOE is required to use the best available science to make the policies that support the creation and implementation of rules. What qualifies for best available science is not defined in any way for DOE. It is inappropriate for DOE to use information that is not peer reviewed or formally published. Using a slideshow obtained from the internet should not guide policies for 937 permit holders. We suggest DOE defines the requirements of best available science for the water quality division, before implementation of this permit.
- The BMP's implemented are being pushed using violations. Violations and science are two very different things. Violations are not science and should not be considered as such. The violations used are a very small percentage when compared to the recorded compliance. The arbitrary numbers used in the BMP's have no scientific support. This section should be removed from the permit. There is no sound science that supports the need for the draft permit's proposed regulations. Ecology should remove these regulations until validated scientific evidence shows that recycled concrete piles pose a probable and significant threat to Waters of the State.
- During your July 7, 2015 presentation, you referred to a University of Wisconsin study on recycled concrete used in road construction. This study was not peer reviewed and was self published. In this instance best available science should be used to determine what, if any, impact concrete recycling has on ground water to require these extensive and expensive BMPs. Ecology has not presented any valid peer reviewed scientific data to support the suggested draft language. The University of Wisconsin study has not been peer reviewed and cannot be incorporated as a standard or benchmark in this permit update. Ecology did reference a University of Wisconsin study that has yet to go through peer review or be published.
- We urge that concrete recycling provisions be strengthened. In addition to the 28 violations that have been reported to Ecology on this matter over the past 5 years, numerous state and federal agencies, including Ohio Department of Transportation and the Federal Highway Administration, have found that this material can cause significant leachate problems when used as road fill. Leachate above a pH of 12 has been found which would indicate that, in some cases, this material should be managed as a “dangerous waste” under RCRA and state laws.

## **Response:**

- This Response to Comments document is an appendix to the Fact Sheet. So the discussion in the document can be taken as an amendment to the Fact Sheet.
- Ecology makes corrections to the Fact Sheet with regards to the American Concrete Pavement Association's (ACPA) comments regarding referencing recycled concrete aggregate subbase instead of recycled concrete aggregates in general. Refer to the Summary of Changes section in this Response to Comments document for the specific changes.
- Ecology reviewed ACPA's Engineering Bulletin EB043P and determined that the characteristics and environmental concerns associated with recycled concrete aggregate subbase are similar to those observed from the use and storage of recycled concrete aggregates at Sand and Gravel facilities in Washington State.
- Ecology has noted the distinction between laboratory results, field conditions, reports from permittees, and inspector observations when attempting to characterize the presence and potential of high pH associated with recycled concrete materials and the associated uses of those materials.
- Refer to section *S8.F Concrete Recycling BMPs* and section *Appendix C – Pollution Prevention Schedule for pH* in this Response to Comment document for additional discussions related to concrete recycling permit requirements.

## **3.0 Cost of the Permit, Economic Impact Analysis, Red Tape Analysis**

### **3.1 General Comments on Cost**

**Commenters:** Bruce Chattin, WACA; CalPortland; CPM Development; Concrete Nor'West; Dave Lewis, Miles Sand & Gravel; David Schoettler, Stoneway & Jimmy Blais, GMCC; James Essig, Granite Construction; Jimmy Blais, Stoneway; Palmer Coking Coal; Ryan Ransavage, Miles Sand & Gravel

#### **Summary of Comments:**

- We expect each renewal to have some new elements and requirements. Some we can manage and others are more difficult. The current proposed changes will require outside consultants, along with burdensome, costly and unreasonable site improvements. It is estimated that it will cost us well over \$2 million to achieve full compliance with the Formal Draft Sand and Gravel Permit. These new requirements will effectively delay future site improvements and limit the industry's ability to reduce the consumption of finite natural resources.
- The current draft represents a completely restructured permit that is immensely burdensome and costly.

- The new requirements will be very costly for compliance and appear to be lacking sound judgment. Many of the added details and requirements create an undue burden on the permittee through increased costs.
- There are a number of other provisions throughout the Draft Sand and Gravel Permit, which are complicated and serve little interest except bureaucracy and higher compliance costs for permit holders. These new provisions will substantially increase the cost of compliance and will impose severe administrative and regulatory burdens as well as significantly new costs to an industry with a good track record of proven NPDES success.
- This "New & Improved" reformatted permit and all of its proposed changes will cost us well over \$3 million and for a permit already achieving 96-100% compliance the cost benefit ratio is not there and the proposed changes to the permit are not warranted.

**Response:**

- The monitoring requirements, effluent limits, inspection requirements, and most of the other requirements in the permit have stayed the same or have been reduced, so Ecology anticipates that most permittees will not see increased compliance costs. Some permittees may see a decrease in the compliance costs.

### **3.2 Staff Will Need Training, Increasing Cost**

**Commenters:** Bruce Chattin, WACA; CPM Development; WACA

**Summary of Comments:**

- Essentially, Ecology has added to the cost of permit compliance with these mostly clerical changes as facilities will now spend more time and money training employees to adhere to the new format, etc - with little to no environmental benefit.
- This is an unnecessary exercise and will cost permittees significant time and money to retrain their onsite compliance people, as a direct result of the revised structure.

**Response:**

- The monitoring requirements, effluent limits, inspection requirements, and most of the other requirements in the permit have stayed the same or have been reduced. The majority of the changes in the permit will not result in any operational changes at Sand and Gravel facilities. Thus, employees who are familiar with the permit and understand its requirements will still be successful in implementing the permit the same way they have under the previous permit.
- Ecology is planning on holding workshops on the final permit which permittees can attend or send staff to for training on the final permit.

### **3.3 Site Management Plans will have to be Rewritten, Increasing Cost**

**Commenters:** Bruce Chattin, WACA; CalPortland; CPM Development; Concrete Nor'West

**Summary of Comments:**

- Essentially, Ecology has added to the cost of permit compliance as facilities will now spend more time and money re-writing Site Management Plans (SMPs) plans to adhere to the new format, etc - with little to no environmental benefit.
- What about the current permit is not working that requires this significant rewrite of SWPPs that are currently in place, approved and have been accepted and working for years?
- The significant re-arranging of the draft permit will require re-writing all of our plans at a large cost and learning curve to our site managers.
- It appears there are a number of revisions to plans and reporting that will require permittees to hire outside professional consultants to assist in compliance with these provisions. Hiring a consultant to re-write a SMP to comply with the Agency proposed re-organization efforts is an unnecessary costly clerical exercise.
- The cost for a consultant to prepare a compliant SWPPP is between \$3000 and \$5000 per site. Any future modifications of the SMP require additional consulting service fees. Most operators cannot afford to hire consultants to prepare SMP's.

**Response:**

- Less than 25% of permittees will have to revise their site management plans to add new best management practices for concrete recycling to one section of their site management plans.
- Permittees that have chosen to directly cite sections in the permit should have anticipated making changes knowing that the permit references would likely change on a five year reissuance cycle. Permittees may choose to correct direct references to the permit.
- Permittees will have a year to complete any changes necessary to their site management plans.
- Ecology plans to create a Site Management Plan template which will help permittees write and edit their Site Management Plans in the future.

### 3.4 Red Tape Analysis

**Commenter:** Bruce Chattin, WACA:

**Comments:** I would make a comment on the red tape index information that you mentioned, is that when we have the discussions with Commerce and Ecology and industry, it was Industry's perspective that the administrative costs that Ecology listed were generally much lower than what actually realized by Industry in setting up the same standards and the red tape index, although was a very good opportunity to move forward and identify some administrative burdens, cost-wise for permittees, that effort was abandoned and did not occur with the Industry participation. So I just wanted to make a clarification that while we were in the discussions we felt it wasn't going to work out based on the lower estimates of costs that made it unrealistic and

it wasn't the administration costs to the permit that was the challenge it was the cost of regulatory compliance that was the challenge.

**Response:**

- Governor Inslee's Results Washington initiative includes a leading indicator to track reductions in the administrative burden of complying with regulatory requirements. The Department of Commerce, with the participation of the Departments of Ecology, Labor and Industries, and Revenue, launched a "Red Tape Index" pilot project with the participating agencies using the International Standard Cost Model to estimate administrative costs associated with selected regulations.
- The International Standard Cost Model considers the time it takes to perform each administrative activity, the wage categories of persons doing the activity, frequency the activity is performed, and number of businesses completing the activity. This information is collected from business during a series of interviews.
- Ecology met with WACA to discuss the pilot project, select the categories of the administrative burdens for the "Red Tape Index" pilot project, and ask for their participation. Ecology scheduled interviews with six WACA members.
- After the first WACA member interview, WACA communicated to Ecology several concerns with the project and methodology. The subsequent WACA members canceled their interviews and the project was put on hold.
- The whole purpose of the interviews was to get accurate estimates of the administrative costs associated with the permit. WACA had a chance to participate and provide realistic cost estimates but chose not to.

### 3.5 Economic Impact Analysis

**Commenters:** CalPortland; Concrete Nor'West; CPM Development; Dave Lewis, Miles Sand & Gravel; David Schoettler, Stoneway & Jimmy Blais, GMCC; Ryan Ransavage, Miles Sand & Gravel; WACA; WAPA

**Summary of Comments:**

- The Agency has conducted a Small Business Economic Impact Analysis (SBEIA) associated with the permit renewal. The analysis continues to show Ecology's lack of knowledge of the industry after 22 years of having a general permit. The study is broadly deficient as no assessment was made on:
  - Small/large active concrete plant not associated with mining operations
  - Small/large active concrete recycling facility
  - Small/large active sand & gravel pit with hot-mix asphalt facility
  - Small/large active sand & gravel pit with both hot-mix asphalt and concrete plant facilities and associated recycling products.
  - Portable Operations

- Other concrete facilities under the following NAICS codes 327331, 327332, 327390 and 327999 as these facilities have significantly different operations than a ready mix concrete facility NAICS 327320. A concrete block facility, a prestress/precast operation, cast in place facilities, etc., are nothing like a ready mix concrete facility
- The failure to include a large portion of the industry segment (stand-alone concrete batch plants and recycle facilities) shows that the Economic Study is not complete and does not adequately represent the permitted sand and gravel universe. This is a major oversight which must be addressed prior to moving forward.
- Under the current analysis, less than 1/3 of our 38 permits are characterized by the categories in the analysis and therefore, costs cannot be adequately estimated.
- The SBEIA study has been done only twice (1994 and 2015) as the Agency has argued during each permit renewal cycle since 1994 that very little is changing and therefore the 1994 SBEIA is still valid. The value of conducting the SBEIA during each permit renewal cycle is to benchmark how permit compliance costs are increasing over time as well as impacting small business. The Table below attempts to make the comparison between the 1994 SBEIA and the 2015 SBEIA.

Table 1: 1994 SBEIA compared to 2015 SBEIA

	1994 SBEIA (\$/site)	1994 SBEIA in 2015 dollars * (\$/site)	2015 SBEIA (\$/Site)
Small Inactive S&G mine	\$1,326	\$2135	\$2000
Small Active S&G mine	\$6,902	\$11,112	\$18,000
Large Active S&G mine	\$15,676	\$25,238	\$46,000
Small active S&G mine w/concrete	\$14,201	\$22,863	\$48,000
Large Active S&G mine w/concrete	\$23,245	\$37,424	\$93,000
*Bureau of Labor Statistics \$100 in 1994 = \$161 in 2015			

- The data from the 1994 and 2015 SBEIA shows that the cost of compliance has significantly outpaced inflation. The Agency has argued that the permit has changed very little over the years and if that were the case, the inflation adjusted costs from 1994 should very closely match the costs in the 2015 SBEIA. However, the 2015 SBEIA shows that real costs are actually between 62% and 149% greater than estimated in the 1994 SBEIA (note this excludes the small inactive mine category). This indicates significantly increased cost of compliance across the board. It appears that our cost of compliance under the new permit would more than double. This increase is not justified when the permit compliance rate is between 96-100%.

- Based on the compliance evidence (96-100%) of the department's own summarized data and the significant analysis made by companies re the 1994 - 2015 SBEIS cost showing dramatic increases that will not provide any significant benefit to water quality, and the industry determinations that anticipated new costs for compliance could range from \$50,000 - \$80,000 per facility and over \$2,500,000 cumulatively, this rewrite is unwarranted and unjustified and at a minimum should be reconsidered. Small companies can't afford this rewrite.
- We believe that the increase in permit compliance costs is a direct result of the proposed changes in the Formal Draft Permit: Permit reorganization, Engineering Reports, Concrete Recycling Standards etc.
- The current SBEIA failed to include the cost of engineering design reports in the analysis. Engineering reports are very costly and we estimate that over the 5 year permit cycle that each of our facilities will potentially make water treatment system changes triggering engineering review. These costs should have been included in the analysis.
- Costs for impervious liners under concrete recycling piles should be assessed in the EIA, costs for mandatory BMP's such as oil water separators for vegetable based release agents at both concrete and asphalt plants needs to be addressed these are all valid costs associated that are required under the Formal Draft Permit.
- Ecology has stated numerous times that there are only minor changes to the permit as have previous permit renewals, yet Ecology has made enough changes to trigger a new Economic Impact Analysis.
- The SBEIA did not utilize cost rates that are proportionate to nor do they accurately represent rates seen by the Industry.
- The EIA completed for this permit renewal grossly underestimates the cost of compliance. The cost of labor alone was less than half the actual cost (\$20.32/hour vs approximately \$52/hour). The EIA does not include the cost of healthcare, L & I insurance, FICA, and retirement contributions. In addition, the rate for equipment is extremely low (\$29/ hour for a loader when the actual cost is between \$52 and \$137/hour). If implemented as currently drafted, we would see a huge increase in permit compliance costs. All told, we estimate the actual annual costs associated with this permit would increase our expenses in excess of \$1 million dollars (based on DOE figures). Using the more accurate costs we've noted above, we would expect the increase to be closer to \$2 million dollars annually. Using the EIA from the 1994 permit, our current costs would be approximately \$900,000 (corrected for inflation).
- In Section 2.1, data used in this analysis, shows that unit costs were based on updated past industry and DOT estimates. DOT uses prevailing wages and equipment rates from Equipment Watch. While private projects do not use prevailing wage, they do use the rates derived from Equipment Watch. When we use union wage rates and equipment rates from Equipment Watch, we estimate that the added requirements costs per year for

us would be over one million dollars. This could also mean that small permit holders' costs would also be much greater than what is shown in the EIA.

- In Section 4.2.5 of the SBEI the Agency asserts that smaller operators typically have fewer Site Management Plan (SMP) changes when compared to larger facilities thus providing cost mitigation for small operators. We question how Ecology can make this assertion accurately and we strongly disagree with this statement. In our extensive experience the size of the site makes no difference on when and how often SMP updates are made.
- The EIA as it stands now, is not accurately reflective of the permit. The EIA needs to be revised to reflect the impact these permit revisions will have. We request that Ecology immediately withdraw the Draft Permit and conduct a proper economic study so that the true cost of implementing the permit and true effect on small businesses can be understood by permittees. Ecology needs to halt moving forward on the permit and adequately address all mandatory requirements of the permit to adequately determine costs. The overly simplistic economic analysis should be redone with input from actual facility operators.

**Response:**

- The purpose of the Economic Impact Analysis is to reduce the economic impact of the general permit on small businesses when it is legal and feasible to do so.
- While the accuracy of costs or industry configurations included could be debated, such estimates would not change the conclusion of the Economic Impact Analysis or the conditions of the permit. The Economic Impact Analysis concluded that the general permit does have a proportionally greater impact on small businesses than on large business, and Ecology reduced compliance costs for these businesses, as appropriate, where legal and feasible.
- The draft permit did not require mandatory impervious liners under concrete recycling piles so therefore the cost was not included in the Economic Impact Analysis. The costs for additional monitoring for concrete recycling stockpiles was included.
- For new hot-mix asphalt facilities, Ecology included the costs of paving the asphalt release agent application areas and having an oil water separator in the Economic Impact Analysis.
- The Economic Impact Analysis outlines the mitigation actions Ecology has taken to reduce the compliance costs for small businesses. The extent of mitigation actions is limited by state and federal law and by the need to ensure that the general permit is effective in controlling water pollution.
- In Section 4.2.5 of the Economic Impact Analysis Ecology states that small sites or less-complex sites typically have fewer changes in facility and site conditions. This statement

is based on observations Ecology has made when reviewing Site Management Plans and conducting site inspections.

- Per WAC 173-226-120(3)(c), the Economic Impact Analysis correctly did not include the costs of complying with the Clean Water Act, National Pollutant Discharge Elimination System (NPDES) regulations and certain state regulations (WACs 173-200, 201A, 204, and 224).
- Wage rates used in the EIA are based on broadly surveyed and verified wage rates for Washington, by occupation. Median or average wages are intended to represent a central measure of wage rates, and will not reflect the high-end nor low-end of wage rates across the industry. They may also not reflect regional variation within the state, but capture overall wages across the state.

## 4.0 S1 Permit Coverage

### 4.1 General Comments on Permit Coverage / Add Helpful Information to the Permit

**Commenter:** Kitsap Quarry

#### **Summary of Comments:**

- You may want to consider adding a short executive summary/introduction acknowledging the importance of supporting the mining industry and the value the Sand and Gravel Permit plays in assuring a healthy industry and environment, protection the permit provides the operator, and discuss Ecology's philosophy regarding compliance.
- You may want to think about having a short section for the new owner or operator of a mining operation explaining how to navigate the permit process (step by step). When we purchased Kitsap Quarry, I hired a consulting firm to write the permit because I didn't think I could do it. After 8 months and \$30,000, my Ecology inspector said that I would be better off to write it myself, which I did. I was able to write the plan myself which I would have done to begin with if I had a road map and an outline.
- Would it be possible to put the list Summary of Required Forms and Reports into buckets? Application, reporting, Notifications, emergency, Changes and others. This would make it easier to read and more digestible.
- You may want to think about putting the reporting and emergency in a format that is wallet size? Maybe each operator can receive a business card of the DOE Inspectors and on the back side the emergency numbers?
- Do we need a Sand & Gravel Permit for Timber Tract Operations – NAICS Code 113110? If so, explain when.

#### **Response:**

- Ecology includes the information suggested for an executive summary/introduction already in the Fact Sheet for the permit. No permit or fact sheet change.
- Ecology includes additional guidance information regarding how to navigate the permit process on its website at: <http://www.ecy.wa.gov/programs/wq/sand/index.html>.
- Ecology plans to create a Site Management Plan Template which will help permittees write and edit their Site Management Plans in the future.
- Ecology revised the Summary of Required Forms and Reports table at the beginning of the permit to group like items.
- Ecology inspectors typically provide business cards to operators during inspections, or upon request. Some Ecology business cards include the emergency numbers for oil spills, but not all do. Ecology leaves this up to each inspector. Permittees should have the emergency numbers identified in their Site Management Plans.
- Appendix A of the permit describes when a Sand & Gravel Permit is needed for Timber Tract Operations. In summary, this category includes mining and processing activities that support forest management operations, e.g., crushed rock for logging roads. Please consult your regional Ecology office regarding specific permit coverage questions.

#### 4.2 S1.D Other/Unpermitted Site Uses

**Commenters:** Bruce Chattin, WACA; James Essig, Granite Construction; Keven Samuelson, Granite Construction; Lakeside Industries; WAPA; WACA

##### **Summary of Comments:**

- We are concerned with the following language: *"All activities at the permitted site must have the appropriate permits for those uses."* Remove this sentence from the permit.
- While Ecology may require the proper NPDES or State Waste Discharge Permit for discharges, neither the federal Clean Water Act, RCW 90.48, or Washington's general permit regulations allow Ecology to interpose a requirement to obtain appropriate "permits" for "uses", which could implicate a host of land use and other permits (business and operational permits) that have nothing to do with discharges to waters of the State.
- Adopting such language is precedent setting and is evidence that Ecology is working outside its areas of expertise and authority. The land use and operational permits that are required for any specific operation, beyond discharge to waters of the State regulations, are not within DOE's authority to police.
- What is an "activity?" The added language is very broad and pulls in the requirement to have appropriate permits.

**Response:** Ecology agrees that the sentence specified in the comments above is broad and could include permitting actions beyond Ecology's intent. Therefore, Ecology has removed this sentence from the final permit.

**Revision:** In S1.D, Ecology removed the sentence: “All activities at the permitted site must have the appropriate permits for those uses.”

## 5.0 S2 Effluent Limits

### 5.1 Removal of the Nitrate + Nitrite Effluent Limit and Monitoring Requirements

**Commenter:** Puget Soundkeeper

**Comments:**

- We were concerned to see that the draft permit eliminates both monitoring and effluent limits for nitrates in stormwater. DMRs that have been submitted over the last number of years have shown the exceedances for nitrates in stormwater, and while some nitrates originate offsite that does not relieve the permittee from the obligation to address the problem. Obviously the site alterations that will facilitate the infiltration of these if for no other reason, they should be addressed in the permit.
- In Section S1.E.3, table 3, the Department eliminates the Nitrate standard for these facilities. We have concerns with this approach. To begin with this is backsliding and prohibited under the Clean Water Act. Moreover, we note that DMRs submitted by facilities covered under this permit have shown exceedances for nitrates. While we understand that some nitrates may originate offsite, that does not relieve the permittee from an obligation to address the problem. We also recognize that loss of onsite vegetation, native soil, and other significant alterations of natural conditions onsite may greatly facilitate the movement of nitrates and other pollutants into ground and surface water.
- At a minimum, we would expect the Department to maintain this standard, require monitoring for nitrates, but perhaps utilize a waiver in which the permittee may be excused from corrective action or penalties if they demonstrate that the violation is due to natural background or originates offsite and onsite conditions do not facilitate contamination of ground or surface water. Moreover, it is important to note that while sand and gravel operations might not typically be the source of such pollution, there could be onsite activities that generate nitrates such as a failing septic system or wildlife drawn to water features onsite.

**Response:**

- Ecology made an error when adding back the nitrate monitoring requirements when previously eliminating it from an earlier version of the Sand and Gravel permit. Ecology believes correcting this error does not constitute backsliding.

## 5.2 Prohibition of Process Water Discharges for Asphalt Batch Plans

**Commenters:** Bruce Chattin, WACA; CalPortland; Citizens for a Healthy Bay; CPM Development; CPM Development; Dave Lewis, Miles Sand & Gravel; David Schoettler, Stoneway & Jimmy Blais, GMCC; James Essig, Granite Construction; Keven Samuelson, Granite Construction; Lakeside Industries; NAPA; Pyramid Materials; Ryan Ransavage, Miles Sand & Gravel; WACA; WAPA

### Summary of Comments:

- One of our paramount concerns is the attempt to prohibit discharge of “process water” from NAICS Code 324121 (Asphalt Paving Mixture and Block Manufacturing) to surface and groundwater (2015 Formal Draft, Section S2. Table 2: Effluent Limits and Monitoring Requirements for Process Water and Mine Dewatering Water, NAICS Code 324121). This is a misunderstanding of the operations of a hot mix asphalt facility and is beyond previous regulations. The new exclusion of process waters from asphalt plants is extremely alarming and unwarranted.
  - This change makes the permit impossible to comply with by stating that Groundwater and Surface water discharges from these activities are not allowed.
  - Ecology has given no reasoning or justification of significant or continual historic noncompliance's that would support this prohibition.
  - Ecology is essentially forcing asphalt plants to be removed from the general permit and to seek individual permits if this prohibition on process water/dust control remains.
- It is widely understood throughout the industry that DOE has previously verified that the prohibition of discharging “process water” was intended to be applied only to wet scrubber discharges from specific facility types (324121 facilities). It is very clear in reviewing the 1999 Fact Sheet and May 2006 Modified Final Permit that the current permit only forbids discharges from plants utilizing wet scrubbers. DOE’s previous Permit Lead confirmed, in writing, that wet scrubber discharges were the only process water discharges precluded from 324121 facilities.
  - The history of asphalt plant discharge water stems from the use of wet scrubbers to control air emissions from the drum.
  - This issue was reconciled in the 2005 permit discussion and Ecology may have missed this resolution or is changing direction. The wisdom of the resolve in 2004 has been realized as wet scrubber facilities are virtually no longer used.
- Please also note that 2010 Permit does not prohibit all process water discharges from 324121 facilities.
  - The current permit does prohibit the discharge of 324121 process water to surface water in S3.G but there is nothing in the permit that prohibits 324121 process water discharge to ground water. In fact, the Current permit and the Preliminary Draft permit language also states in Section S3.E.2 "this permit prohibits the

direct discharge of process water from Concrete Batch Plants (NAICS 327320) and Asphalt Plants (NAICS 324121), including any wastewater from truck wash-out areas, except to a lined impoundment." It continues to state that "After treatment, the Permittee may discharge wastewater subject to the limits set forth in Conditions S2 and other parts of this section (we believe it was an oversight in the previous permit that inadvertently left the NAICS code 324121 off of Table 2). Table 2 needs to be revised to allow process water discharges from these NAICS codes to discharge to ground water.

- It is imperative for DOE to make a full and critical examination of its prior wet scrubber discharge/ 324121 process water rules dating back to 1999. Upon examination, it will be evident that process water discharges should only be prohibited for wet scrubbers and not for the entire NAICS 324121 category.
- Many asphalt facilities have been in place for many years and have infrastructure in place to control water, both storm and process (dust control) waters from paved and unpaved surfaces and been allowed to discharge to ground and surface waters. These facilities have consistently complied with the permit effluent limits and now without warning or justification, Ecology is prohibiting the discharges.
- Prohibiting discharge of all "process water" to both surface water and groundwater for activities associated with NAICS Code 324121 prohibits the use of BMPs necessary for material track-out and mandatory dust control purposes. This prohibition would put a facility's compliance in conflict with the conditions of the DOE's General Order of Approval No. 10AQ-GO-01, Amendment 1, Portable and Stationary Asphalt Plants (General Order dated April 18, 2011). Condition 1.11 of the General Order requires putting into practice The Fugitive Dust Control Plan (attachment to the General Order). Compliance requires that a facility apply water at rates and frequencies sufficient to minimize dust from access roads and on-site vehicle access areas; and to have a water truck on site.
  - Additionally, it also creates a conflict with many other jurisdictional air agencies and asphalt plant permits, which require fugitive dust to be controlled.
- The use of process water for fugitive dust control and track out is critical for our continued operations. The prohibition against discharge from NAICS 324121 facilities should be removed from the permit – particularly since the permit specifically authorizes discharges (a nod to the practical use of dust control and tracking control water) from other activities operating in virtually the same environments, including Ready Mix Concrete Manufacturing (327320) and Construction Sand and Gravel Mining (212321). Discharges from 324121 facilities (except from wet scrubbers, as discussed above) should be specifically authorized and the Fact Sheet needs to be corrected.
- Prohibiting discharges of process water from dust control severely burdens these facilities that have been operating for years with infrastructure compliant to the permit. The cost to comply with this prohibition is at least \$100,000 per site as complete sites would have to

have current infrastructure re-designed, re-engineered (thus requiring an engineering report) and re-constructed to fix a problem that doesn't exist. There is no additional compliance to be gained, therefore, spending this money has no additional benefit to water quality.

- Hot-mix asphalt manufactured by asphalt batch plants is a simple blend of aggregate and bitumen. For hot mix asphalt plants, water is not typically used in the actual manufacture of hot mix asphalt unless a wet scrubber is employed. Wet scrubbers require settling ponds and utilize true “process water”.
- The use of certain warm-mix asphalt technologies does involve the injection of a small amount of water into the asphalt binder; however, it is converted to steam during the manufacturing process and thus does not result in process wastewater.
- The asphalt professionals have long communicated that there is no process water in asphalt production. The agency has chosen to ignore this argument and has now placed itself in direct conflict with itself and fugitive dust requirements that require dust control measure to be in place.
- There is no valid data, adequate current or historical reasoning in any Fact Sheet, Permit or compliance data to date to justify the prohibition on process water discharges from 324121 facilities, other than from wet scrubbers, which was dealt with in the previous permit renewal. If such data does exist, CPM requests that Ecology makes it available. Overall, there is a plethora of scientific research and consensus that hot-mix asphalt does not pose a threat to water quality. Ecology acknowledge that "Ecology believes that spills of bitumen present an extremely low risk to water quality."
- Our concerns are elevated by the following statement in the Fact Sheet: "Also, pools or ponds of dust control water may be considered a groundwater discharge." Ecology must narrow the prohibition against discharge of process water so that it applies only to wet scrubbers.
- Suggested Edit: Table 2 of the Formal Draft Permit should be modified to authorize process water discharges from 324121 to surface water and groundwater with a footnote stating: "Process water discharge to surface and groundwater from wet scrubbers is prohibited."
- Clarifying language around prohibited discharges for specific NAICS codes also strengthens the permit and protects surface and groundwater.

**Response:**

- Ecology has reviewed the past history of the permit, past fact sheets, past response to comments, and the comments received listed above.
- The prohibition of process water discharges from 324121 to surface water is set within the Code of Federal Regulations and Ecology is obligated to implement this prohibition.

- Ecology agrees, based on the above mentioned review, to allow the process water discharge from 324121 to groundwater with the addition of the footnote noting the prohibition for wet scrubbers.
- Process water related to dust control may be discharged to ground.

**Revision:** Table 2 is revised as follows in the excerpt below

Type	NAICS Code (see Appendix A)	Discharge to:	pH		Turbidity (NTU)	Total Suspended Solids (TSS)	Oil Sheen <sup>3</sup>	Discharge Flow (gpm)	Total Dissolved Solids (TDS)
324121 <sup>5</sup> , ECY001		Surface	----Surface Water Discharge Not Permitted----						
		Ground	One/Month		---	---	Daily when runoff occurs	---	---
			6.5	8.5	---	---	Visible Sheen	---	---

5. The discharge of process water from wet scrubbers to groundwater is prohibited.

### 5.3 Ecology Codes for Concrete and Asphalt Recycling

**Commenters:** Bruce Chattin, WACA; CalPortland; Concrete Nor' West; CPM Development; Dave Lewis, Miles Sand & Gravel; David Schoettler, Stoneway & Jimmy Blais, GMCC; James Essig, Granite Construction; Keven Samuelson, Granite Construction; Lakeside Industries; NAPA; Ryan Ransavage, Miles Sand & Gravel; WACA; WAPA; WSDOT ; Puget Soundkeeper

#### Summary of Comments:

- Recycling activities have always been considered normal, traditional and acceptable associated uses. Ecology was unable to find a NAICS code that precisely matched the concrete recycling activity because it is widely accepted as an accessory use of their parent activities -- concrete batching (NAICS 327320) or is categorized under NAICS 327399.
- Historically, sites which are permitted under NAICS 327320 (concrete batch plants) have return concrete piles. This is an accessory activity associated with concrete operations as trucks routinely return from jobsites with leftover concrete. The limited activity of handling return concrete is currently an accepted accessory use (does not include import of concrete from external projects) and should continue to be allowed under NAICS 327320 as an accessory use.
- Ecology has erred on their approach on concrete and asphalt recycling. It is the direction our communities and legislature want us to move towards. We have worked hard to demonstrate the uniqueness of these sites. The permit does not accomplish the objective to move recycling forward in a responsible manner, rather it attempts to regulate it like a problem to be eliminated rather an asset to be managed. Ecology's novel approach

imposes burdens and barriers to recycling these materials in the State of Washington, which do not exist elsewhere.

- With greater than 99% success in recycling and related activities, they do not warrant a separate code and unnecessarily impact those activities with increased compliance costs, monitoring, reporting etc. With 99% compliance, there is little if any benefit to water quality to this new requirement.
- Ecology has created ECY002 as an industrial code to specifically capture concrete recycling. We see no justification or legal basis for Ecology to create a new industrial code which effectively slices NAICS code 327320 into two separate pieces: Concrete Batching and the accepted Accessory Use of recycling return concrete.
- ECY001 is incorrectly aligned with Concrete facility NAICS code in Tables 2 and 3. Historically, recycled asphalt has been consistently and correctly covered under NAICS Code 324121, which requires quarterly pH sampling not monthly. Quarterly pH sampling provides sufficient data to document compliance with permitted effluent limits associated with the recycling of asphalt products. It is unnecessary to increase pH monitoring as compliance has not been an issue amongst permittees. The increased pH monitoring frequency will triple the cost of compliance for existing facilities without any corresponding environmental benefit.
- ECY001 activities have virtually no history of pH related issues and there is no rational reason for DOE to increase ECY001 monitoring for pH. The hot mix asphalt industry, operating under the ECY001 strictures, has nearly flawless compliance within the existing permit parameters. Increase the pH monitoring frequency for ECY001 activity is not justified.
- In June 2015, Granite submitted comment on the preliminary draft of the Sand and Gravel General Permit focused specifically on the new coding developed by Ecology for asphalt (ECY001) and concrete (ECY002) recycling. We are disappointed to find that Ecology has basically ignored these comments and has continued to propose a new coding system for these activities in Washington State. It is difficult to understand how a nationally adopted industrial classification system is not sufficient to address the typical uses found within asphalt and concrete production facilities.
- The need to development ECY001 use code for Asphalt Recycling is not necessary. It is disappointing that Ecology has already begun implementing the use of specific recycle codes prior to the adoption of the 2016 Sand and Gravel General Permit.
- Although on its face, there appear to be minimal requirements in the SGGP associated with the storage of recycled or reclaimed asphalt pavement (RAP), it should be made clear that RAP and recycled concrete are very different commodities. Both materials are high-value, both are routinely processed, stored separately, used in different processes, and both are used to meet certain specifications. Therefore, it would be highly unusual to see recycled asphalt and concrete comingled, unless it is being delivered to a construction

and debris facility as solid waste. While the recycling of both materials represents good environmental stewardship, the materials used in very different ways. The two products should never be placed under a single broad category.

- The intent of the NAICS codes is to separate different activities "to allow for a high level of comparability in business statistics among the North American countries". The national boards who determines the NAICS codes and their associated activities saw these activates too insignificant to create a NAICS code for asphalt and concrete recycle separate from any others. In the 2011 Sand and Gravel General Permit fact sheet, DOE mentions "Facilities that recycle concrete and asphalt typically already conduct one or more of the activities described above".
- Ecology's decision to depart from the established NAICS framework is unreasonable and imposes barriers to businesses that are involved in recycling these materials. There is no absence of regulation of recycling under the NAICS categories. Under the existing Permit's NAICS codes, Ecology can track discharges associated with recycling activities. Ecology's decision to unilaterally "create" entirely new categories for recycling is unsupported by any legitimate rationale.
- We believe that the addition of adding Ecology codes for recycling activities for both concrete and asphalt will support facilities that participate in these activities while outlining procedures to protect water quality.
- The material, which has been received onsite as "recyclable" has been stored onsite for many years without being reused. This raises questions about whether it should be managed as "solid waste." We would ask that the permit be amended to require that permittees meet all applicable solid and hazardous waste laws and make clear that the permit does not authorize applicants to violate those laws. We also urge you to work with Ecology staff in these programs to resolve these conflicts.
- Suggestions:
  - Ecology should eliminate ECY 001 and 002 and revert to the NAICS code framework, which includes recycling as subsidiary activities.
  - ECY002 should also be included with 327999 as it is in the current permit.
  - Edit Table 2 and Table 3 to associate the recycling code ECY001 with its respective manufacturing code (NAICS 324121) to continue quarterly monitoring for pH.
  - Develop a Simple, Non-Bureaucratic process for companies to add ECY002 to their sites.
  - Clarify that sites only storing or stockpiling hardened structural concrete or hardened asphalt, and not otherwise crushing or processing the material, do not need to be classified under the NAICS/Ecology codes ECY001 or ECY002 and thus do not need coverage under this permit.

**Response:**

- In the past, recycling of hardened concrete and asphalt was mostly used through mixing it within new batches of concrete and hot mix asphalt. At that time, it was appropriate to classify this material as an accessory use under the associated NAICS codes for concrete ready mix (327320) and hot mix asphalt (324121).
- In recent years, Ecology has observed a significant increase in the recycling of hardened concrete and asphalt materials. Additionally, these materials, after crushing and sorting, are now being used more frequently as standalone products (for example, as subbase) and are not always used within traditional concrete/asphalt mixtures. This has led to an additional number of Sand and Gravel facilities dedicated solely to the recycling of concrete and asphalt materials, separate from concrete and asphalt production. Ecology anticipates that there will be additional growth in this industry segment since the 2015 legislature passed a new bill promoting the use of recycled concrete within Washington State.
- In 2010, Ecology included these standalone recycling facilities under the general permit coverage to authorize and regulate their wastewater discharges. In 2010, Ecology reviewed the North American Industry Classification System codes and determined there was not one code specific to hardened concrete or asphalt recycling. At the time, Ecology added to the permit NAICS code 327999 and specifically included concrete recycling under this code; although concrete recycling was not specifically included in the description provided by the North American Industry Classification System. Ecology did not add a code specific for hardened asphalt recycling in the 2010 permit. Instead, Ecology classified recycled concrete under NAICS code 324121, based on comments received on the draft of the 2010 permit.
- During the 2010 permit cycle, by estimating that few other facilities other than concrete recycling facilities fell under code 327999, Ecology was able to collect information related to wastewater discharges associated with hardened recycled concrete. Ecology was unable to do the same for recycling of hardened asphalt materials.
- In order for Ecology to effectively set effluent limits, determine AKART, and fulfill Ecology's other obligations under state and federal laws, Ecology has determined that there is a need for Ecology to be able to track and collect information on the discharges associated with the recycling of hardened concrete and hardened asphalt separately from other NAICS code related discharges. Therefore, Ecology has established the codes ECY001 and ECY002.
- The establishment of these separate codes also allows Ecology to support and encourage recycling activities that are done in a manner that is protective of the environment and water quality. By separating the codes for hardened concrete and asphalt recycling, Ecology can more effectively set appropriate effluent limits on the wastewater associated with this material and provide flexibility where appropriate.

- Under the 2010 permit the discharge of process water associated with asphalt recycling was prohibited. In the reissued permit, Ecology allows the discharge of process water associated with hardened asphalt recycling. Ecology believes that this was a barrier that was removed for the recycling industry.
- Ecology agrees with the comments that ECY001 should be associated in this permit with NAICS Code 324121 and that the pH monitoring frequency should be set to quarterly. This frequency and level of effort is equivalent to that established for 324121 (SIC Code 2951) in the 2005 permit for process water discharges, and that established in the 2010 permit for stormwater discharges.
- In the formal draft permit Ecology placed ECY002 in the same group in Tables 2 and 3 as NAICS code 327999 and 327320. Ecology has not revised this placement in the final permit.
- Permittees are already obligated to meet all applicable solid and hazardous waste laws without the permit directly stating so. G14 of the permit already makes it clear that the permit does not authorize applicants to violate any applicable Federal, State, or local statutes, ordinances, or regulations. Ecology Water Quality Program staff have coordinated and consulted with other Ecology staff members in other programs while developing the conditions in the permit.
- Ecology agrees that sites only storing or stockpiling hardened structural concrete or hardened asphalt, and not otherwise crushing or processing the material, and not conducting other activities that would require permit coverage, do not automatically need coverage under this permit. Ecology agrees to add clarification in Appendix A of the permit.
- It is not Ecology's intent to regulate under the Sand and Gravel General Permit solid waste landfills that may store or stockpile hardened concrete or asphalt and do not produce a reusable product.
- Please note that in the reissued permit **unhardened** returned (or comeback) concrete and returned asphalt is not classified as recycled concrete/asphalt and is still classified under the concrete ready mix (327320) and hot mix asphalt (324121) codes.

**Revisions:**

- Table 2 is revised as follows in the excerpt below:

Type	NAICS Code (see Appendix A)	Discharge to:	pH		Turbidity (NTU)	Total Suspended Solids (TSS)	Oil Sheen <sup>3</sup>	Discharge Flow (gpm)	Total Dissolved Solids (TDS)
324121 <sup>5</sup> , <u>ECY001</u>		Surface	----Surface Water Discharge Not Permitted----						
		Ground	One/Month		----	----	Daily when runoff occurs	----	----
			6.5	8.5	----	----	Visible Sheen	----	----

5. The discharge of process water from wet scrubbers to groundwater is prohibited.

- Table 3 is revised as follows in the excerpt below:

Stormwater Type 2 & 3...	NAICS Code (see Appendix A)	Discharge to:	pH		Turbidity (NTU)		Oil Sheen	Discharge Flow (gpm)
			Min	Max	Average Monthly	Maximum Daily		
			113110, 212312, 212313, 212319, 212399, 212324, 212325, 113310 324121, <u>ECY001</u>	Surface	Quarterly <sup>1</sup>			
6.5	8.5	50			50	No Discharge <sup>3</sup>	----	
Ground	Quarterly <sup>1</sup>			----		Daily when runoff occurs	----	
	6.5	8.5		----		No Discharge <sup>3</sup>	----	

- The table in Appendix A is revised as follows in the excerpt below:

NAICS/Ecology Code	SIC Number	CFR Reference	Description
ECY001 Asphalt Recycling			<p>The processing (including, but not limited to, crushing, fracturing, sorting, storing, stockpiling, grading, and washing) of hardened asphalt (not including asphalt roofing products) to produce a reusable product.</p> <p><u>Sites only storing or stockpiling hardened asphalt, and not otherwise crushing or processing the material are not subject to coverage under this permit unless they conduct additional activities requiring coverage under this permit.</u></p>

<b>NAICS/Ecology Code</b>	<b>SIC Number</b>	<b>CFR Reference</b>	<b>Description</b>
ECY002 <i>Concrete Recycling</i>			<p>The processing (including, but not limited to, crushing, fracturing, sorting, storing, stockpiling, grading, and washing) of hardened structural concrete to produce a reusable concrete product.</p> <p><u>Sites only storing or stockpiling hardened structural concrete, and not otherwise crushing or processing the material are not subject to coverage under this permit unless they conduct additional activities requiring coverage under this permit.</u></p>

## 6.0 S3 Additional Discharge Limits

### 6.1 S3.B Not Cause or Contribute to a Violation of Standards

**Commenters:** David McClelland, Wm. Dickson; Richard Dickson, Wm. Dickson

#### Summary of Comments:

- We wanted to comment on Section *S3.B Not Cause or Contribute to Violation of Standards* of the permit. This language in this section is the same as in the previous version of the permit. It reads:
 

*Discharges must not cause or contribute to a violation of: Groundwater Quality Standards, Surface Water Quality Standards, or Sediment Management Standards of the State of Washington; and 40 CFR 131.*
- In 2011, Dickson Co. was fined by Ecology for discharging water which exceeded the 50 NTU effluent limit established in the Permit, and was separately fined for discharging more than the 5 NTU above background turbidity, the surface water quality standard in WAC 173-201A. The fines were appealed to the Pollution Control Hearings Board (PCHB). The PCHB ruled that a permit holder could not be separately penalized for violating both standards. This was further clarified in appeal by the Pierce County Superior Court which stated in the attached appeal decision that "a discharge of not more than 5 NTU, applying a dilution factor of 10, would not be a violation of WAC 173-201A-200(1)(e)".
- On September 10, 2014, in a response to our inquiries about the turbidity discharge limit in the General Sand and Gravel Permit (attached), Ecology Director Heather Bartlett stated: "The Sand and Gravel General Permit includes both the 5 NTU additional discharge limit AND the 50 NTU effluent limit in Table 2 because when the conditions in the receiving water vary, the more stringent limit must apply." In that same letter, Ms.

Bartlett also stated that "Both the 50 NTU effluent limit and the 5 NTU above background additional discharge limit are enforceable conditions of the Sand and Gravel General Permit."

- Wm. Dickson Co. maintains that the Sand and Gravel General Permit has established one turbidity effluent limit for all permit holders, the 50 NTU limit in Table 2 of the permit. This was confirmed by the Pierce County Superior Court in May, 2015.
- Since the court has confirmed that the turbidity limit in the Sand and Gravel General Permit is 50 NTU, and that discharges up to 50 NTU are NOT a violation of WAC 173-201A-200(1)(e), and to avoid confusion between permit holders and permit managers, Dickson Co. would like the new Sand and Gravel Permit to include language stating that "Turbidity discharges up to the 50 NTU limit in Table 2 are not a violation of WAC 173-201A-200(1)(e)".
- We want language to be included in the permit to clarify the fact that, first of all, you can't be fined for violating both standards from a single incident and also for the fact that the 50 ntu standard is the standard and that it supersedes the 5 ntu over background. As we understand it from the court decision when it was appealed the 50 ntu is what applies as long as it is understood not to violate surface standards.

**Response:**

- Ecology is aware of the PCHB / Pierce County Superior Court decision you have referenced and we have trained our staff. Language addressing specific enforcement responses to noncompliance is not typically written into permits. No permit change.
- It is difficult to establish a water quality based effluent limitation in a general permit because a significant amount of site specific information (background conditions, dilution factor, etc.) is required to do it precisely. In an effort to prevent violations of the turbidity standard within the context of a general permit, Ecology has established an enforceable "end of pipe" effluent limitation that applied a set of conservative assumptions about receiving water characteristics (dilution factors and background conditions) and developed a 50 NTU effluent limitation that is presumed to comply with the state's turbidity standard.
- Ecology does not agree that the 50 NTU effluent limit supersedes the 5 NTU over background standard in all situations covered under the general permit. When discharge is 50 NTU or less, facilities with a dilution factor of less than 10 have the potential to violate the "5 NTU over background" turbidity standard. As such, Ecology cant include the suggested language ("Turbidity discharges up to the 50 NTU limit in Table 2 are not a violation of WAC 173-201A-200(1)(e)"; it would be inconsistent with state and federal regulations. In situations where it is determined that a discharge is causing or contributing to a violation of the turbidity criteria in WAC 173-201A, Ecology will continue to take appropriate enforcement action to bring the discharge into compliance.

## 6.2 Lined Impoundments

**Commenter:** Jimmy Blais, Stoneway

### **Summary of Comments:**

- We appreciate Ecology's considerations regarding the frequency and timing in which inspections of lined impoundment must occur, there are still logistical issues with respect to the actual feasibility of required inspections. The impoundments at many of our facilities have a layer of crushed rock covering the concrete liner at the bottom of the impoundment. This layer of crushed rock serves as an indicator/protector for the crew cleaning and maintaining the impoundments to recognize when they reach a certain depth to ensure that the equipment does not damage the integrity of the liner or the bottom of the impoundment. Thus, to remove this crushed rock layer to inspect the liner beneath would subject the liner to become damaged during this process. This would potentially generate an avoidable cost to replace an accidentally damaged liner that was before functioning properly.
- When this issue was brought up during the meeting with Ecology held on 6/1/2015, Bill Moore stated that the purpose of these inspections were to find large tears and rips in the liners, which would be responsible for a substantial releases to the environment, not minor inconsequential defects. Substantial compromises are self-evident as water levels within the impoundments drop greatly without having a managed discharge event. If such a situation were to present itself the permittee is already required by the current permit to stop operations and fix the upset condition.
- To draw down these impoundments to a level where one could viably inspect the integrity of the liner creates another logistical problem. How does Ecology propose a permittee properly manage this water to ensure that it is detained and/or disposed of in a manner that does not compromise water quality standards? These lined impoundments are used as best management practice under the current permit and are used to detain a substantial amount of water which is often deemed to be unsuitable for discharge in its current state (e.g. turbid/elevated in pH). Therefore, this requirement would force the permittee to come up with a suitable option to detain this water, incurring substantial costs and using precious resources in order to ensure this water is managed in a manner that is compliant with permit regulations.

### **Response:**

- Ecology has not changed the requirements to inspect lined impoundments from the 2011 permit. The requirements to inspected lined impoundments whenever sludge removal occurs has been in the permit since the 1999 permit. In 2010, Ecology added the inspection requirement for continuous removal systems.

- Ecology received comments on lined impoundments during the 2014-2015 stakeholder meetings and preliminary comment periods. Ecology carefully considered those comments and the comments above but has not made changes to the final permit.
- Ecology disagrees that substantial compromises are self-evident. Lined impoundments may develop cracks and holes over time that may not result in noticeable visual conditions.
- Ecology does not have a general proposal for how permittees should manage their wastewater while conducting maintenance activities. Ecology believes that each permittee is best suited to make their own determination on how they handle their wastewater during maintenance activities based on their unique site conditions and operations. Ecology refers permittees to section G5 in the permit which outlines potential bypass procedures for maintenance activities. Permittees should contact their regional Ecology office for specific questions about bypass procedures.

### 6.3 Unauthorized Use of Site

**Commenters:** CalPortland; CPM Development; David Schoettler, Stoneway & Jimmy Blais, GMCC

**Summary of Comments:** S3.D.1 - Unauthorized Use of Site: Ecology needs to remove this language from the permit. It is outside the scope of a water quality permit and not included in other general permits. Ecology should rely on G14 for compliance with other regulations.

**Response:** The final permit specifically authorizes discharges from activities that are typical of the Sand and Gravel operations listed in Appendix A. Discharges from other unrelated activities (e.g., composting, storage, recreational vehicle use, etc.) can contaminate stormwater and process water, and are not authorized by this permit.

### 6.4 S3.F.1 Use of Chemical Treatment Products

**Commenter:** Lakeside Industries

**Summary of Comments:** S3.F.1 Use of Chemical Treatment Products. Change “Material Safety Data Sheet” to “Safety Data Sheet” to be consistent with OSHA’s Hazard Communication Standard, revised in 2012.

**Response:** The change requested was made in the formal draft permit and continued in the final permit.

### 6.5 S3.G.1 Discharges must not cause a visible increase in turbidity

**Commenters:** Kitsap Quarry; Pyramid Materials

**Comments:** Regarding S3.G.1, due to the subjectivity of “visible increase”, should the permit refer back to effluent limits for specific turbidity?

**Response:** State law and the permit contains both numerical and narrative water quality criteria to limit the levels of pollutants allowed in receiving water to protect aquatic life, recreation, aesthetic values, and human health. Permittees must meet both the numerical and narrative criteria.

## 6.6 Inactive Sites

**Commenters:** Bruce Chattin, WACA; Citizens for a Healthy Bay; Dave Lewis, Miles Sand & Gravel; David Schoettler, Stoneway & Jimmy Blais, GMCC; Jimmy Blais, Stoneway; WACA

### Summary of Comments:

- The new requirements for inactive sites are problematic for several reasons. First, neither the Federal Clean Water Act nor RCW 90.48 holds permittees to the standard of "no potential to discharge storm water off site." As discussed above, the permit regulates discharges to surface waters of the state, not "potential" "offsite" discharges. Second, any requirement related to a "potential" must be tied to "reasonableness" rather than a theoretical "potential," which could be construed to implicate even the remotest of risks. Third, based on our information, we believe that the new provisions are unreasonable based on compliance with the existing permit. Finally, these additional requirements are not protecting water quality since monitoring is already required under S4.C. These new requirements should be deleted from the Permit.
- Inactive Sites S3J.3: States "At inactive sites that are inactive for a period of three years or longer, and have potential to discharge stormwater off site, a Registered Professional Engineer, or equivalent (e.g. Licensed Professional Geologist, Certified Professional Erosion and Sediment Control, ect.) must certify every three years that the facility complies with this general permit. The Permittee must maintain the certification as part of the Erosion and Sediment Control Plan (ESCP)." It is our strong opinion that this requirement is unreasonable, costly, and burdensome for permittees.
- We believe that site managers and/or internal employees, who have adequate knowledge about erosion and sediment control, onsite conditions, and best management practices utilized onsite are more than qualified to ensure compliance with the general permit conditions. We question what purpose this requirement is really intended serve? What problem does this requirement correct? Has there been a significant problem in the past with discharge events associated with inactive sites?
- The language "have potential to discharge stormwater offsite" is ambiguous. Does "discharge stormwater offsite" include discharging to groundwater? What is considered offsite? Is stormwater on a small drive that sheet flows towards to publicly owned roads

considered an offsite discharge event? S3.J.3 should be removed in its entirety from this permit.

- The language in the current permit is sufficient and this item does not need to be revised.
- CHB supports the changes made in this section related to identifying when inactive sites need stormwater monitoring.

**Response:**

- The requirement for a professional engineer to certify every three years that the facility is in compliance with the permit has been in every iteration of the permit. The requirement is from 40 CFR §122.44(i)(4)(iv) and it is Ecology’s obligation to include it within the permit.
  - 40 CFR §122.44(i)(4)(iv) states: “Permits for storm water discharges associated with industrial activity from inactive mining operations may, where annual inspections are impracticable, require certification once every three years by a Registered Professional Engineer that the facility is in compliance with the permit, or alternative requirements.”
- The intent of this requirement is to prevent pollution to waters of the state from inactive sites. If permittees observe the discharge of pollution during their site inspections they should report it under the conditions of the permit. As part of these inspections permittees should observe and correct, as needed, any pollution prevention best management practices. Ecology has observed pollution discharge events associated with inactive sites.
- The language “and have the potential to discharge stormwater offsite” has been in the permit since 2005. Ecology agrees to remove this language from the permit, since it does not appear in 40 CFR §122.44(i)(4)(iv).
- Ecology notes the language: “or equivalent (e.g. Licensed Professional Geologist, Certified Professional Erosion and Sediment Control, etc.)” also does not appear in the CFR so Ecology has removed this language as well.
- Since, 40 CFR §122.44(i)(4)(iv) provides permittees the option to inspect the inactive site themselves without hiring a professional engineer, Ecology will revise the language to add this option. Ecology feels that the appropriate level of site inspection for these inactive sites is equivalent to the wet season inspection. Otherwise, the inactive site inspection requirements have been revised to conform with the requirements for inactive sites in 40 CFR §122.44(i)(4)(iv).

**Revision:** In S3.J.3 the language will be revised to the following:

3. At Inactive sites ~~that are inactive for a period of three years or longer, and have the potential to discharge stormwater off site, either:~~

- a. ~~Have a Registered Professional Engineer, or equivalent (e.g. Licensed Professional Geologist, Certified Professional in Erosion and Sediment Control,~~

etc.) ~~must~~ certify every three years that the facility complies with this general permit.

b. Or, annually conduct a Wet Season Inspection, per S4.F.3.a, and certify that the facility complies with this general permit.

The Permittee must maintain the certification(s) as part of the ~~Erosion and Sediment Control Plan (ESCP)~~ Site Management Plan.

## 7.0 S4 Monitoring Requirements

### 7.1 Groundwater Monitoring

**Commenters:** Bruce Chattin, WACA; Puget Soundkeeper; Kitsap Quarry

**Summary of Comments:**

- We are very concerned that the permit does not require adequate monitoring of recycled concrete piles. The permit requires that the permittee conduct monitoring at ponds and puddles that are associated with the piles. As you know, in many cases, there is no associated pond / puddle or the pond /puddle is some distance from the pile which makes it very likely, particularly where there are highly pervious soils, that the runoff from the pile will infiltrate into groundwater and not necessarily arrive at the pond/puddle. We would strongly suggest that you strengthen monitoring requirements. Large piles should be required to have associated groundwater monitoring. Other piles that are not deemed to be high risk may require less rigorous monitoring but, regardless, permittees should be required to monitor nearby associated puddles rather than simply rely on distant ponds.
- Ecology indicated they believed a change they could support was the reconsideration of points of compliance. The permit does not seem to provide any difference at the point of measurement for pH. Litmus paper at the bottom of a stockpile is not representative of the characteristic of pH or accurately represents any pollution potential. Given the recognition the department indicated would be an appropriate consideration and a more proper approach, we are uncertain as to why that did not happen.
- I am concerned about the viability of requiring/suggesting ground water monitoring for unlined ponds. By the time pH or chemical change shows up in the ground water table you would be into a major clean up. It seems more appropriate to test the soil below the surface to monitor pH or chemical change so changes can be made to the operation prior to impacting the ground water. If you wait until the monitoring well shows a problem the clean-up will be really expensive verses monitoring the soil (1' or 2') to determine if the pH of the soil has changed such that treatment needs to occur.

**Response:**

- Ecology considered requiring permittees that recycle concrete to conduct receiving water monitoring so that Ecology could further evaluate the impact to waters of the state.

Ecology decided not to pursue requirements for receiving water monitoring during this permit cycle based on the current high compliance rates and costs of such requirements.

- The permit requires that monitoring be representative of the operating conditions at a site and the nature of discharges that occur. Representative sampling of discharges to ground water does not mean that all ponds and puddles that occur onsite must be sampled. It does mean that the Permittee must identify how many samples are necessary to accurately represent discharge conditions. The permit requires a monitoring plan. The plan should include documentation of the testing conducted by the Permittee to determine representative sampling for their site. The Permittee should periodically conduct additional sampling to assure that their monitoring plan provides representative sampling.
- In accordance with WAC 173-200-060, the points of compliance is in the groundwater as near the source as technically, hydrogeologically, and geographically feasible. Since monitoring wells are not required by the permit, the point of compliance with groundwater quality standards is any point within an unlined impoundment pond or other point of discharge to groundwater. The permit provides Permittees the option of conducting ground water monitoring with approved groundwater monitoring wells rather than sampling directly from unlined impoundments or at other points of discharge to groundwater.
- Sampling and analytical methods used to meet the monitoring requirements specified in this permit must conform to the Guidelines Establishing Test Procedures for the Analysis of Pollutants contained in 40 CFR Part 136. Table 4 in the permit lists the recommended analytical methods from 40 CFR Part 136 for the parameters listed in condition S2 in the permit. The use of litmus paper for monitoring does not meet the Guidelines Establishing Test Procedures for the Analysis of Pollutants contained in 40 CFR Part 136.
- The purpose of the Sand and Gravel General Permit is to regulate the discharges to waters of the state. Ecology does not believe that soil testing would necessarily indicate or predict a violation of ground water quality standards. Ecology acknowledges that cleanup costs can be substantial for permittees that violate ground water quality standards. This is, in part why, Ecology encourages and requires permittees to implement pollution prevention best management practices.

## 7.2 S4.D Sampling and Analytical Procedures

**Commenter:** Lakeside Industries

### **Summary of Comments:**

- S4.D. Table 4 Recommended Analytical Methods and Laboratory Quantitation Levels for Monitoring Parameters. Since Nitrate + Nitrite is no longer a required monitoring parameter in S2, we suggest removing this parameter from Table 4. In addition, the Laboratory Accreditation Required note for pH and Turbidity may be confusing to some Permittees.

- Suggested Alternative: To further eliminate confusion regarding laboratory accreditation requirements for pH and Turbidity, we suggest revising the table note to read “No, if field testing is performed/Yes, if testing is performed by an accredited laboratory”.

**Response:** Changes were made from the preliminary to the formal draft permit based on these comments, these changes were continued in the final permit.

### 7.3 Inspection Requirements

**Commenters:** CalPortland; Kitsap Quarry

**Summary of Comments:**

- Inspections within the erosion control plant as well as the oil water separator are to be done either on a set frequency or after 1/2" of precipitation. This is an impractical requirement for plant operators. Tasks at facilities are best accomplished when plant personnel can incorporate these tasks into a routine activity that occurs at a set frequency. A requirement to conduct an activity following a certain amount of precipitation is difficult to manage. CalPortland suggests conducting inspections at set time intervals only (daily, weekly, monthly, semiannually).
- [Regarding S4.F.3.a] – Wet Season Inspections could be conducted by a licensed consultant, currently says personnel name in the SWPPP.

**Response:**

- Permittees have been performing site inspections after precipitation events since the 1994 Sand and Gravel General Permit.
- Precipitation events can cause erosion and sedimentation, and damage to best management practices. These issues may need to be addressed sooner than the once a week frequency inspection frequency would require – especially if back-to-back storm events occur. Failing to address these items could lead to the unintended discharge of pollution. Additionally, permittees should inspect to ensure that their erosion and sediment control measures functioned as intended.
- Oil water separators may accumulate large amounts of oil and sludge during precipitation events and may need maintenance immediately after storm events to avoid the unintended discharge of pollution.
- For purposes of S4.G.3.a, personnel can include licensed consultants.

### 7.4 Inspection Reports

**Commenter:** CalPortland

**Summary of Comment:** The use of the word Reports is a misnomer. The Permit includes a variety of inspections (oil/water, oil sheen, semi-annual, erosion etc.) which are typically completed on forms or inspection logs which include the elements listed under S4.F9 (a -e). However, the word Report connotes something greater than an inspection log and it should be clarified that the Agency does not expect written reports for standard inspections. The Agency

has provided some clarification on this topic on page 37 of the Fact sheet, however CalPortland urges the Agency to provide this clarification directly in the permit.

**Response:** Ecology added the clarification from the Fact Sheet to the final permit.

**Revision:** In S4.G, Ecology added: “Completed inspection forms, logs, checklists, or records used to meet other governmental agency requirements (e.g. Washington State Department of Transportation or Mine Safety and Health Administration requirements) may be acceptable as inspection reports provided they address the items in S4.G.1 of the permit.”

## 8.0 S5 Site Management Plan (SMP)

### 8.1 Implementation of the Site Management Plan (SMP)

**Commenter:** CalPortland

**Summary of Comments:**

- Ecology has changed the permit language regarding implementation of SMP's. Ecology has changed the language of this condition to read "Have and fully implement the SMP". This language is troublesome as it invokes the undefined term "fully" which can be interpreted in a way (i.e. 100%, perfectly, without discrepancy) that sets up permittees for failure. CalPortland suggests removing the word "Fully" from condition S5.B.1
- The Agency has inserted in the permit very specific and detailed requirements which permittees are required to include in their site SMP's. Failure to include such written details is considered to be non-compliance by the Agency. The level of nuanced requirements has increased to such a point that many permittees will be forced to hire environmental consultants to develop "compliant SMP's" having a twofold effect.
- Reduced effectiveness: The most effective SMP is one which is prepared and written by the permittee. The group of on-site personnel which writes the SMP has an innate understanding of the site and the SMP requirements. As a result SMP's written in this way accurately reflect site conditions and operational nuances. SMP's which are written by consultants are designed to meet the written detail requirements of the Permit (i.e. legally compliant) but are of limited use to permittees.
- The Agencies requirement for additional and nuanced details in the SMP suggests that the SMP is becoming more of a legally compliant document than an actual useful living guide to water quality management. Permittees will be driven to ensure that site SMP's are legally compliant; however, the drive toward legalistic SMP's does not further the objective of achieving and maintaining water quality.

**Response:**

- Ecology added the term “fully” in the final 2010 Sand & Gravel General Permit based on a public comment. Ecology agreed with the commenter that the SMP needs to be implemented in its entirety to maintain compliance with the permit conditions.
- Permittees need to understand their permit obligations in meeting State and Federal water quality regulations. This includes the requirement to use all known, available, and reasonable methods to prevent, control and treat pollutants in the permittee’s wastewater and stormwater (AKART). Ecology has added language throughout the history of the Sand and Gravel General Permit to ensure that permittees were meeting AKART by implementing their SMPs. Ecology has indicated in the permit language where permittees have flexibility regarding the use of alternative or equally effective best management practices.
- The permit language was written so that permittees would have sufficient information to enable them to prepare their SMPs. Large or complex facilities may require assistance in the preparation of SMPs. Permittees should decide when they need to hire consultants to develop their SMPs and explain their legal obligations. Permittees are responsible for developing and modifying their own plans, with or without consultant help.
- Ecology has provided and will continue to provide technical assistance with SMPs. In the future Ecology plans to create a SMP template which permittees could use to help create and edit their SMPs. Trade organizations may also be able to provide permittees with assistance with their SMPs.

## 8.2 Best Management Practices (BMPs)

**Commenter:** Kitsap Quarry

**Summary of Comment:** Does DOE provide a master list of potential BMP's or do you leave it up to each operator to research the latest BMP's?

**Response:** Ecology provides a list of potential BMPs within the Stormwater Management Manuals for Western and Eastern Washington. Permittees may also use innovative BMPs to achieve compliance with the permit.

## 8.3 S5.D Site Map

**Commenters:** Bruce Chattin, WACA; CPM Development; David Schoettler, Stoneway & Jimmy Blais, GMCC; Jimmy Blais, Stoneway; Palmer Coking Coal

**Summary of Comments:**

- The long list of all features that must be identified is cumbersome and will be difficult without survey and other costly mapping. Many permit holders do not have the technical skills to create a map furnished with all of these new requirements, thus many permit holders (especially small businesses) would be forced to resort to contracting a third party

to complete this task. This becomes extremely costly and burdensome to the permit holder; especially if a company holds multiple permits for many different sites.

- The Agency has added new detailed language regarding the requirements for the SMP site map. Specifically, "The site map must show and identify the following features and areas associated with industrial activities." We continue to support the opinion that, the use of the words "must show" would render current site maps as non-compliant if a current site map does not include all the requirements specified. Therefore, the permittee would be forced to construct new site maps in order to achieve compliance with the newly specified requirements.
- The new requirements would force a permittee to produce a map that is to scale, shows the distances between structure and drainage systems are shown, assigns a unique identifier up to four characters to each outfall and monitoring point, shows drainage area for each point, labels the types of discharges that occur at each point, labels whether the discharge is to surface and groundwater, and adds detailed requirements for what must be shown for drainage features and industrial areas.
- What about the current permit is not working that requires this significant rewrite of site maps that are currently in place, approved and have been accepted and working for years?
- We question the actual benefits these map requirements generate for the environment.
- The requirement to have a four character identifier for each outfall location is silly. If we have less than 10 outfall locations, why would we need any more than one digit or character?

**Response:**

- Based on the comments on the preliminary draft permit, Ecology revised the mapping requirement to say "should show" instead of "must show" in the formal draft and final permits.
- Maps help permittees and Ecology determine monitoring points, identify BMPs, track spills, determine discharge quantities, and have other benefits as well.
- Permittees may use a one digit identifier. The limit is no more than four.

## **9.0 S8 SMP Section 3: Stormwater Pollution Prevention Plan**

### **9.1 S8.A Measures to Prevent Commingling**

**Commenters:** CPM Development; Jimmy Blais, Stoneway

**Summary of Comments:**

- Ecology has unnecessarily revised the commingling language in this section of the permit making it more stringent by requiring commingling to be prevented unless the facility is

designed to reuse process water. This requirement only allows process water and stormwater to commingle if there is a means to recycle the process water.

- This requirement as an overreach by Ecology in telling facilities how conduct, and set up their operation, and has capital expenditure impacts to existing facilities.
- The permit already states that stormwater that commingles with process water is considered process water, it should be handled as process water and is to be monitored under the most stringent monitoring standards. It is already a common practice for facilities to limit the amount commingling that occurs between process water and stormwater. Facilities should be able to decide how they choose to manage the process water as long as their management procedure achieves compliance with water quality standards. There is no need for Ecology to further regulate and restrict this process with further requirements. Such a requirement would only generate higher costs for the permittee in order to comply with this new condition.
- The language revision significantly changes the past requirements of the permit. This is an example of how a change to permit can change the meaning significantly. This proposed language should be deleted and the language should revert back to the existing language as facilities already have controls in place to comply with the previous language.

**Response:**

- Page 8 of the 1994 Fact Sheet for the original Sand and Gravel General Permit states: *“The most important BMP that relates to storm water is minimization of the amount of storm water which contacts products and raw materials or flows or falls into an area of active processing or process water storage.”* Additionally, page 21 of the 1994 Fact Sheet identifies that one of the main objectives of the SWPPP is the elimination of commingling of process water and stormwater.
- This emphasis on preventing the commingling of process water and stormwater has been a key component of the Sand & Gravel General Permit throughout the history of the permit and has not changed in the last twenty years.
- There is no difference for the commingling requirements between the 2010 and final permit. The language *“unless the facility is designed for reuse of process water”* was included in the 2010 permit as well. Ecology did not make the permit more stringent; therefore, permittees should not see any cost increase.

**9.2 S8.E Source Control BMPs**

**Commenter:** Puget Soundkeeper

**Summary of Comments:**

Section S8.E.9, which refers to source control BMPs and storage of certain materials on

concrete pads should be amended to include “comeback asphalt.” This material does cause runoff of petroleum products and should not be stored on a pervious surface.

- **Dave Lewis, Miles Sand & Gravel:** Draft Permit S8.E.13.c. This section is being revised to include wheel wash water as process water. There is little proof that this water is derived from process water. Revisions to this section are not necessary.

#### **Response:**

- Ecology agrees that hot returned asphalt (i.e., comeback asphalt) may leach petroleum products and harmful pollutants and should be stored on an impervious surface. Ecology revised the language in S8.E.9 to refer to returned asphalt. The term “returned” is used as opposed to “cured” because curing times vary between products, curing is an ongoing process without a clearly defined end point, and asphalt does not undergo a curing process.
- Ecology has added a definition for returned asphalt. Ecology does not intend for returned asphalt to include asphalt that was installed, compacted, cooled, and then pulverized, removed, and returned to the plant for recycling or disposal.
- Ecology believes that wheel wash water meets the definition of process water. Wheel wash water is not derived from process water, wheel wash water itself is a process water. Ecology revised the language in S8.E.13.c to state this clearly.

#### **Revisions:**

- Revise S8.E.9 to: Store **unhardened concrete**, any type of concrete solids (does not include fully cured or recycled concrete), returned asphalt, and cold mix asphalt on a bermed impervious surface...
- Revise S8.E.13.c.: ...~~The permit considers w~~ Wheel wash and tire bath wastewater as is process wastewater. Discharge of this water and is subject to the effluent limitations in Special Condition S2, Table 2, and S4, and must not cause a violation of *water quality* standards.
- Revise Appendix B to add the term and definition: *Returned asphalt means hot mix asphalt that was brought back to the hot mix asphalt plant after being sent to a job site. Returned asphalt does not include asphalt that was installed and allowed to cool.*

### **9.3 S8.E Source Control BMP for Release Agents**

**Commenters:** Bruce Chattin, WACA; CalPortland; CPM Development; Dave Lewis, Miles Sand & Gravel; James Essig, Granite Construction; Keven Samuelson, Granite Construction; Lakeside Industries; NAPA; Pyramid Materials; WACA; WAPA

#### **Summary of Comments:**

- The Agency has introduced a new source control BMP related to release agents. The BMP requires that runoff from areas where release agents are used must drain to an oil

water separator. This proposed provision to add oil/water separators is not reasonable given the available (and widely used) alternate BMPs and given that there are strict effluent limits in the existing permit.

- The Agency is mandating the installation of unnecessary equipment at facilities which goes beyond the intentions of the NPDES permit program.
- Ecology needs to either:
  - Retain the existing permit requirements.
  - Remove the proposed oil/water separator language from the permit.
  - Revise this requirement.
  - Distinguish between products to incentivize industry to use new products and/or processes.
  - Alter the requirement to adequately and properly address products being used that are environmentally friendly.
  - Rewrite this section to distinguish between the different types of oils and release agents.
- There is no risk to water quality posed by continuing with existing permit requirements.
- Ecology is attempting to require a significant operational up-grade that will be very costly and will provide little to no environmental benefit.
- This may be imposing a \$50-\$85K compliance cost although there is very little risk to environment. For us, that is a cost of just under a million dollars for all our asphalt plants.
- The cost to install a simple oil water separator is \$20,000 to 25,000 per installation and in most cases is unnecessary.
- In addition to the lack of precedent, treating biodegradable release agents with an oil/water separator will come with great cost.
- Cost of compliance for facilities using biodegradable release agents is prohibitive.
- All asphalt batch plant facilities use asphalt release agents to prevent the asphalt mix (bitumen and aggregate) from sticking to the bed of the trucks. Spray down areas for bed release agents at asphalt plants are configured differently at all facilities.
- The application rate for release agents is designed to only lightly coat the surface of the truck bed. It would be a rare occurrence for an over-application of these agents to create visible liquid in the truck bed that could be released prior to the loading of asphalt pavement mix, which occurs generally within minutes of the truck bed release agent application. Although most staging areas for release agent application are paved and would not require further treatment, in an instance where such areas are not paved, there would be no need for a mechanism to capture excess release agent, simply because none is generated.
- The use of petroleum-based release agents for trucks hauling asphalt pavement has been all but eliminated. Ecology has previously prohibited the use of diesel as an asphalt

release agent. Our industry's best practices prohibit the use of diesel, our industry encourages the use of biodegradable release agents.

- There are alternative BMPs that are equally as effective as oil water separators, including by way of example, controlling overspray using foam application, auto sensor shut off units, and biodegradable release agents. Release agents delivered in a foam form and the use of vegetable based/ certified biodegradable release agents are very effective BMPs.
- Ecology had indicated a desire that industry should look to move away from hydrocarbon products as release agents.
- Ecology's BMP language includes vegetable oils with other hydrocarbon products with no differentiation in the benefits of them. Ecology is not accepting vegetable oils as an alternative BMP and requires them to be treated the same as petroleum release agents. Based on this, Ecology is providing no incentive to industry to find or use better products or processes to benefit the environment. Ecology is telling industry it is an equal BMP to continue using diesel/hydrocarbon products as release agents and that new products/processes are not viable BMP's. Industry may go back to using diesel as a release agent.
- We use bio-degradable release agents at all of the asphalt production facilities in Washington and prohibits third party truck drivers from using diesel on the premises. If a driver is found to be using diesel they are asked to leave the site and not return.
- Release oil is applied to concrete E-block forms routinely and rarely does the drainage from these areas include an oil/water separator. Form oil becomes encapsulated in the concrete when the block is produced and oil sheen run-off is not observed from these areas. At all our facilities, the runoff from Ecology block areas is co-mingled with the plant process water which is observed for oil sheen prior to discharge. We have never observed oil sheen in process water as a result of E-block form oil.
- The additional treatment of biodegradable release agents is unreasonable given the high precedent industry has set in effluent limit compliance.
- It is our contention that an oil-water separator, a mandatory BMP, should not be required as the discharge is ultimately governed by the effluent limits.
- The proposed permit condition is not reasonable and is based on perception rather than science. Ecology has presented no data that supports the need to implement additional BMP's such as oil water separators to address wastewater that comes into contact with asphalt release agents.
- The asphalt release agent BMP within the preliminary draft permit was not feasible as written. This preliminary draft requirement would have included a tent/cover of the area, curbing, in ground vault to contain any stormwater from the area and then testing and proper disposal as needed - which methods and costs have yet to be determined. It is a mischaracterization to call an asphalt bed release agent a process water as it does not meet the definition of a process water as defined in the permit.

**Response:**

- The revised language from the preliminary to the formal draft emphasized the use of oil/water separators for release agents. Oil/water separators are typically considered as treatment BMPs and are already listed in the treatment BMP section of the permit (S8.B). Permittees should also be managing release agents per S8.D.6 of the permit (i.e., Permittees must manage any material that contains petroleum contamination or has the potential to cause aquatic toxicity to prevent stormwater contamination). Thus, the additional language to the Source Control BMP section is unnecessary and Ecology will remove it from the final permit.
- Ecology agreed with the concerns expressed in the comments on the release agent BMP requirements in the preliminary draft of the Sand & Gravel General Permit. Thus, Ecology revised these requirements for the formal draft permit.

**Revision:**

- Remove S8.E.8: ~~“Treat wastewater that comes into contact with the overspray and drip-off of release agents with an oil water separator. Oil water separators should meet the design criteria in Section 11.6, Volume V, of the SWMMWW (Section 5.10.6 of the SWMMEW). Do not allow the discharge of release agents directly to ground.”~~

## 9.4 S8.F Concrete Recycling BMPs

**Commenters:** Bruce Chattin, WACA; CalPortland; Concrete Nor’ West; CPM Development; Dave Lewis, Miles Sand & Gravel; David Schoettler, Stoneway & Jimmy Blais, GMCC; Ryan Ransavage, Miles Sand & Gravel; Kitsap Quarry; WACA; Puget Soundkeeper

**Summary of Comments:**

- The draft permit adds new requirements for recycled concrete. This new section is unnecessary and Ecology lacks any significant data to demonstrate a need for these new requirements. These BMPs are overly burdensome and unjustified by sound science. We strongly object to the S8.F Concrete Recycling BMPs. This section should be deleted. This section is over-regulation.
- We urge that concrete recycling provisions be strengthened.
- Ecology has indicated that facilities can use alternative or equally effective BMP's, however, there is no indication or evidence that any BMP's are necessary. BMP's should be used as a tool where there is a proven issue or ongoing compliance issues.
- To limit concrete or asphalt recycling as stated suggests the permittees may not even have the ability to successfully mitigate potential concerns or implement effective performance standards that negate the need for additional protections as outlined.
- It has been clearly and repeatedly communicated by staff, the agency direction to manage recycling activities is to “make it work”. These new restrictions and limitations do not

meet that firm directive. These restrictions should be revisited and discussed more fully with industry stakeholders.

- Requirements for Concrete Recycling BMP's for all are unnecessary. Facilities recycling concrete in compliance with the existing permit should not be burdened with additional requirements. The BMP's will also create a burden for many facilities that have stored recycled concrete, but choose or need to relocate the stockpiles. Many facilities will be unable to create new stockpiles due to being unable to meet the BMP's for new stockpiles. Based on the data Ecology provided, a finite set of companies (2) would need assistance to improve their compliance and management practices versus impacting the other companies that represent the other 2100+ points of sampling data. The BMP's as written preclude, eliminate or otherwise impact sites that are already in compliance. To impose them won't materially improve upon the 99% compliance rate.
- We appreciate the Section S9.F which identifies siting standards for concrete recycling piles and support the new language but are very concerned to discover that there are no new requirements for existing piles. The permit needs to have, at a minimum, stronger monitoring provisions for these piles, this is a substantial omission. At a minimum, those existing stockpiles that are located within the siting criteria in F.1 must be evaluated to determine what risk they pose. Appendix C should also be strengthened to ensure that we address any problems that are discovered in a timely manner.
- The proposed required Concrete Recycling BMP's actually takes the ability to recycle away from many facilities. Many facilities cannot meet the location standards listed as BMP's but are in fact already storing recycled concrete stockpiles in these areas with no issues or violations. Ecology is taking a perceived problem from 7 permittees and is proposing to enforce strict BMP's for facilities already in compliance.
- BMP's may be more applicable for new sites that will be establishing recycling concrete materials so new conditions can be anticipated and in place early versus disrupting sites that are already successfully conducting this activity and in compliance, well beyond the 5-year data period.
- Ecology did suggest restriction were to apply to new sites, but permittees that have demonstrated successful management of these activities should be able to comply per their history at new sites.
- BMP's should be suggested and used as a tool to regain compliance only when ongoing violations are documented.
- We appreciate the fact that the Agency will allow, as noted in Section S8.F, the permittee to omit certain BMPs if they are unnecessary or an equally effective BMP is used, however the burden for omission or substitution is still on the Permittee. This increases the potential for third party lawsuits and subjective interpretations of the permit by Agency inspectors.

- We object to language that states that permittees “may omit individual BMPs “if site conditions render the BMP unnecessary.” Who will make that determination and how will this be determined? We would suggest you provide a clear process for making these determinations, one that ensures Ecology oversight.
- Can you provide or provide a link to an "acceptance procedure" that meets your approval?
- The Agency has failed to produce any scientific reasoning as to why restrictions such as shoreline setbacks and well head protection area prohibitions have been put in place. We question why the Agency is proposing such restrictive BMP requirements for new concrete stockpiles.
- The imposition of restricted placements for new stockpiles of materials while may make intuitive sense, but may not be practical for a number of reasons according to professional water consultants.
- The restriction on wellhead protection areas is an ambiguous provision. There are few reliable or readily available sources to determine where a wellhead protection is located. Water utilities typically look at wellhead protection areas in short term time periods of 10-year, 5-year, 1-year and six month or shorter capture zones. If you have to avoid a 10-year capture zone that could be a fairly large or expansive area. The inability to accurately and responsibly be able to determine this makes the provision impractical.
- The requirement of within 100 horizontal feet of a drinking water well or within a well head protection area appears to be arbitrary and difficult to implement as WHPS'a are not always mapped.
- Being within a 100 feet a drinking water well is not always problematic based on the physical characteristics of the well or outside any potential influence on the well. Given this, the 100-foot separation is not well founded in geology or hydrology and makes a general assumption of specific site or well conditions without any consideration of specific hydrology or other characteristics. Surface activities adjacent to a well with sufficient depth to the point of withdrawal may contribute little if any likelihood of pH impacts. Variations in western Washington soil characteristics can make a difference on any real or perceived impact and drainage characteristics within an arbitrary 100-foot buffer. The 100-foot limitations as a general condition has little basis to establish a well-developed set of guidelines or regulations for infiltration structures intended to manage infiltration of runoff.
- Over a 5-year time period, the 99% compliance rate would be considered an amazing record of good practices, monitoring and management of pH or any effluent for that matter. I think you and I would agree 100% is difficult at best to achievable. Using the compliance rate to push unneeded changes to the permit is unreasonable.
- Ecology's rationale for these new requirements appears to be based on a very small number of pH exceedances that represent a very small percentage of permittees - by our

calculation less than 2%. Seven permittees out of 929 permits does not indicate a widespread problem - this is less than 1% of permittees. This means that over 98% of permittees have complied with the pH effluent limits in the Permit. We do not believe that it is reasonable, in the context of a general permit that covers nearly 1,000 facilities, to impose additional permit requirements based on a hypothetical risk to water quality extrapolated from 2% non-compliance.

- Upon reviewing the data Carrie provided that was used in making suggested determinations on concrete recycling and the DMR data provided:
  - With 28 numeric violations indicated as the basis for the revisions, it was the collective assumption the concern would be the elevated pH of concrete discharges to ground water. We would not anticipate lower than allowable pH values to be commonly associated with concrete materials unless a treatment process used was contributing to the lower values. Of the 26 total violations, 13 are for violations under the 6.5 pH limit. The low pH violations are indicative of a problem in the treatment system. Excluding the 13 low pH violations, there is a compliance rate of 99.4%.
  - I only can account for 26 violations as others have suggested, but will rely on your 28.
  - 46% of the exceedances are below 6.5 pH.
  - There are approx. 12 exceedances attributed to surface water discharges (43%), not the focus of ground water discharges as anticipated.
  - Of the 40 unique reporting sites, 2 companies account for 16 points of data on both the high and low end of the pH effluent limit. These two companies account for 57% of the exceedances.
  - 13 of the violations had a pH less than 6.5.
  - 7 of the violations occurred in 2012 from one company and have not occurred since, likely meaning there is no longer an issue.
  - Of the additional DMR data provided:
    - There are indications that rainfall events may have contributed to discharges not normally anticipated at some facilities.
    - Some of the DMR data is from 2008.
    - 6 of the 16 violations came from a precast facility and improperly depositing comeback/washout onto the ground. It does not appear that they were conducting concrete recycling operations on the site.
    - Only 6 companies were responsible for the DMR high pH violations.
    - Inspection reports indicate 2 companies had other serious violations, not just high pH issues.
  - Some of the remaining data presented is somewhat questionable. Who obtained the data and what was used to determine the pH? Some of the data was duplicated. How was the data validated?

- The 10- year, 24-hour storm event is the standard for compliance with the existing permit. We are aware that at least one company that reported pH values outside of permit limits did so after a storm event that was greater than the 10-year, 24-hour storm. Other violations may have been during the same timeframe. This information further dilutes the rationale of using this data to revise the existing permit. Ecology should re-review the data in light of 10-year, 24-hour storm events.
- We thank you for including language on concrete recycling, which we do think is a significant problem but feel strongly that this section should be strengthened. I think we've seen 20 violations associated with these materials over the past 5 years in Washington State. A number of other states and federal agencies have conducted studies and have found that this material can cause very significant pH violations, as high as 12. Industry has been managing these operations in compliance with the existing permit without impacting water quality.
- In the Fact Sheet (page 49) the Agency points to an example of a single site in Southwest Washington as the poster-child-justification for the new regime of concrete storage standards found in S8.F. Singling out a single case of noncompliance and extending this to the entire industry is an example of regulating to the lowest common denominator (i.e. the 2%). The example company used in the Fact Sheet is an outlier. Outliers do not change behaviors or BMP's simply because an Agency decides to write more stringent regulation. The imposition of more stringent regulation makes operating a business more complicated and costly for those who intend to comply, while the outliers continue business-as-usual. The Agency already has the regulatory and enforcement tools within the existing permit to deal with the outliers
- The data indicates there were numerous minor pH violations over the numeric effluent limit (as low as .07 in one instance) but doesn't suggest evidence of any effects on ground water. Although not clearly stated, it can be assumed that this compliance rate includes both discharges to surface water and to ground water.
- Ecology has indicated that there is no evidence of data which shows that concrete recycling causes pollution to the waters of the State. In the July 7, 2015 presentation, Ecology listed Water Quality Concerns, but has no evidence or studies to support that. There is no evidence of ground water impact from concrete recycling, but yet Ecology has inserted mandatory BMP's for all facilities regardless of compliance.
- We are extremely disappointed in the approach that Ecology has taken towards the regulation of recycled concrete piles. The proposed S8.F has been put in place due to "pH phobia" among Ecology's inspectors.
- The Washington Legislature has also passed a bill requiring the use of recycled concrete, asphalt, and other sand and gravel materials up to a certain percentage in municipal construction projects. Ecology's BMP's is forcing rubble concrete to landfills. We have several facilities where in excess 100,000 cubic yards of viable recycle material will be

diverted to landfills and a tipping fee incurred costing millions over the years because of these BMP's.

- Given the data, compliance is high and impacts appear to be low, we would suggest the agency and industry establish a pilot study during the next renewal period to confirm evaluated pH and ground water discharges associated with concrete recycling. We can then determine the appropriate BMP's that will allow for better management of concrete pH as may or may not be necessary. Our industry would be supportive of a collaborative effort rather than assumption and application of regulations that are not warranted.
- CalPortland suggests eliminating Section S8.F and relying on on-going monitoring and the use of Appendix C to deal with cases where persistent high pH is observed. Appendix C provides the Agency with the tools to require permittees to take actions to investigate potential impacts, but only when high pH is observed. In these rare instances the Agency will be provided with the information necessary to assess any groundwater impact. If 99.4% of the sites are reporting compliant ground water discharges (pH between 6.5 and 8.5)
- Thank you for your diligence in attempting to better understand this complex issue. Ecology correctly notes that concrete recycling will become a more productive activity in the future. We appreciate your strong support of concrete recycling and we look forward to working with you to make it work rather than over regulate the success and necessity of recycling these materials.

**Response:**

- The Sand & Gravel General Permit does not require receiving water monitoring (such as in stream monitoring or groundwater monitoring). Instead, permittee sample their discharge points. If permittees are in compliance with the effluent limits at their discharge point they are assumed to be in compliance with water quality standards. While this approach is appropriate for the permit for numerous reasons; it makes it much more difficult for Ecology to determine the water quality effects from a new or more frequently used pollutant source such as recycled concrete.
- Ecology does not collect data from Sand & Gravel Permittees regarding storm event occurrences. Therefore, Ecology cannot re-review the discharge monitoring report (DMR) data values based on storm events. The discharge monitoring data discussed in the Fact Sheet and the above comments is provided to Ecology directly by Sand & Gravel permittees per their permit requirements. Ecology did not go through and validate the data that permittees provided. Ecology assumes that permittees reported accurate values based on the monitoring methods required in the permit.
- Based on the permittees reported data, during the last five year cycle 8% of dischargers associated with NAICS code 327999 reported a violation of the upper pH effluent limit of 8.5. At least one permittee reported to Ecology a pH value of 11.5 associated with concrete recycling. This is 1,000 times more alkaline than the pH value of 8.5 allowed by

water quality standards. Since Ecology does not require permittees to conduct receiving water monitoring, Ecology is unable to definitively state if the violations reported to Ecology translated directly to violations of water quality standards. Ecology believes that there is a reasonable potential that these violations may have resulted in violations of the water quality standards.

- Ecology used the example of the site in Southwest Washington to show that high pH discharges associated with recycled concrete have the potential to result in violations to Water Quality Standards, including human caused variations of greater than 0.2 – 0.5 standard units pH change, depending on the applicable aquatic life criteria.
- Ecology considered the lack of receiving water data and the high compliance rate from the majority of discharges associated with NAICS code 327999 when determining the permit language within the Sand & Gravel General Permit. This is in part why Ecology did not pursue additional BMPs such as storing recycled concrete stockpiles on bermed impervious surfaces, covering recycled concrete stockpiles, or limiting the size of recycled concrete stockpiles.
- Ecology also considered the difficulty for existing Sand and Gravel permittees to implement the BMPs listed in S8.F.1 of the formal draft of the Sand & Gravel General Permit. Ecology agrees with the comment that BMPs may be more suitable for new facilities that can anticipate the BMPs in S8.F.1 and implement them before beginning operations. Ecology acknowledges the implementing the BMPs listed in S8.F.1 could disrupt existing permittees' current operations and could require site reconfiguration. Based on these considerations, Ecology has decided to revise the final permit to only require the BMPs in S8.F.1 for sites whom receive coverage for the first time on or after April 1, 2016 (the effective date of the new permit).
- Ecology does not have the resources to track sites that have successfully managed concrete recycling activities and to apply this compliance history to another site. Permittees often operate under numerous different affiliations. Plus, specific site factors such as geography, amount of recycled material, staffing choices, training of staff, and site configuration play a major part in determining permit compliance and may not be necessarily replicated at a new site. Ecology believes applying the BMPs for new facilities regardless of the permittee's past compliance history is appropriate.
- One of the main purposes of BMPs is to prevent pollution from occurring. Ecology disagrees with the notion that BMPs should only be used as a tool to regain compliance only when ongoing violations are documented.
- Ecology has maintained the allowance for permittees to omit certain BMPs if they are unnecessary or an equally effective BMP is used. Ecology acknowledges that the burden for supporting omissions or substitutions for BMPs is on the Permittee. Ecology reviews permittees' determinations for omissions or substitutions during site inspections.

- Ecology will work on providing examples / guidance to permittees regarding acceptance procedures and will post this information on Ecology's website when available.
- Setbacks from receiving waters help to provide a buffer zone between the source of pollution and the receiving water. Over the last few years more tools for the tracking and mapping of well head protection zones have become available. Both Ecology and the Washington State Department of Health provide mapping tools for wellhead protection areas. The Department of Health's mapping tool is available at: <https://fortress.wa.gov/doh/eh/maps/SWAP/index.html>. Ecology's mapping tool is available at: <https://fortress.wa.gov/ecy/eimreporting/Default.aspx>.
- When considering the addition of a BMP for wellhead protection, Ecology mapped 71 Sand and Gravel sites that had the associated 327999 NAICS code. Ecology found that approximately 31% of the sites with the code 327999 were located at least partially within a wellhead protection area. Ecology also found that most sites within a wellhead protection area were within the 5 year and 10 year protection areas. In some cases the wellhead protection area encompassed an entire facility site.
- Ecology acknowledges that existing facilities may not always be aware of being located within a wellhead protection zone. This is one of the reasons Ecology as decided that in the final permit the wellhead protection BMP will apply to new sites receiving coverage for the first time after the effective date of the new permit. Ecology believes that permittees have a responsibility to complete due diligence on their site selection which includes the necessity of identifying any nearby wellhead protection areas.
- Ecology agrees that site specific conditions such as geology or hydrology can affect the likelihood of high pH discharges to receiving waters. Ecology has put the BMPs in the permit in an effort to prevent pollution and violations associated with recycled concrete. Ecology allows permittees to omit BMPs if they evaluate their specific site conditions and find the BMP unnecessary or use an equally effective BMP.
- Ecology disagrees with the comment that the proposed BMPs have been put in place in the permit due to "pH phobia among Ecology's inspectors". As indicated in the response above, and in other locations in this Response to Comments document, Ecology carefully considered many pieces of information to make a determination regarding the BMPs within S8.F.
- Ecology considered and discussed with the industry the possibility of pilot study for recycled concrete when the 2010 permit was issued. Ecology is concerned that site specific differences can have a significant effect on the discharge of pH to receiving waters. Thus, Ecology believes that it would be difficult to conduct a pilot study that would represent enough site conditions so that the results could be applied in the general permit. Ecology considered requiring permittees that recycle concrete to conduct receiving water monitoring so that Ecology could further evaluate the impact to waters of the state. Ecology decided not to pursue requirements for receiving water monitoring

during this permit cycle based on the current high compliance rates and costs of such requirements.

- Based on the comments received Ecology has decided to remove Appendix C from the permit. Please refer to Section 15.0 in this Response to Comments document for additional discussion regarding Appendix C.
- Please refer to Section 2.2 in this Response to Comments document for additional discussion regarding sources used in the Fact Sheet pertaining to recycled concrete.

**Revision:**

Ecology revises S8.F.1 as follows:

1. Permittees that receive permit coverage for their site for the first time on or after April 1, 2016 must ~~Do~~ not place new concrete recycling stockpile(s) in the following locations:...

## 10.0 S10 Reporting and Record Keeping Requirements

### 10.1 Reporting Production Numbers

**Commenters:** CPM Development; James Essig, Granite Construction; Kitsap Quarry

**Summary of Comments:**

- S10.B now requires annual reporting of production numbers by using a range code. There are still no provisions in the permit protecting production data as confidential information. Ecology needs to add language to the permit to adequately protect production data that is now being required annually. Ecology needs to outline a process to ensure that production numbers are not disclosed to the public or other companies in the industry.
- Sales volumes and throughput data is considered proprietary and should not be made available to the public. Production data is confidential, regardless of the format and needs to be treated as such.
- Do you plan on sending out an electronic notification prior to when the DMR is due?

**Response:**

- Ecology is authorized to grant a request for confidentiality for information related to processes of production unique to the owner or operator, or that may adversely affect the competitive position of the owner or operator if released to the public or to a competitor, so long as the grant of confidentiality is not detrimental to the public interest and is otherwise in accord with the policies and purposes of RCW 43.21A.
- Ecology has in place a policy for reviewing confidentiality requests.
- Permittees that would like to request confidentiality for their production range information may do so by submitting a written request to Ecology and providing justification per RCW 43.21A. Ecology believes that it is in the public interest to understand how permit fees are

calculated and developed; therefore Ecology will most likely deny confidentiality requests related to the reporting of production range information.

- In WQWebDMR, permittees may sign up to receive e-mail reminders seven days before DMR due dates.

## 10.2 Additional Monitoring by the Permittee

### Comments:

- **Kitsap Quarry:** [Regarding S10.C Additional Monitoring by the Permittee] why, shouldn't this be voluntary or there will be no incentive to do it.

**Response:** In some cases permittees may conduct additional monitoring voluntarily but in other cases permittees may be required to conduct additional monitoring due to non-compliance, an agreed order, or other reasons. S10.C requires permittees to include the results of this monitoring in the calculations and reporting of the data submitted in the DMRs or other reporting requirements regardless of why the monitoring was completed.

## 10.3 Keeping Records Already Held By Ecology

**Commenters:** Concrete Nor'West; Kitsap Quarry

### Summary of Comments:

- Why do we need to keep our monitoring information and discharge monitoring reports on site especially now that we are required to submit them electronically to Ecology? We need to keep a copy but I would prefer to keep those type of records at our main office and not on site.
- Permittees shouldn't have to retain records that are required to be submitted to Ecology. Example is Permit Coverage Page and DMR's. The permit coverage page is created by Ecology; you can retrieve it as needed. Likewise, as DMR's are submitted, they become permanent records held by Ecology. Why burden the Permittee with records held by Ecology? Would also suggest a checkbox on the DMR's that all parameters reported were gathered and reported in compliance with S4.D if that would create an adequate record under S10.

### Response:

- Permittees may keep their monitoring information and discharge monitoring reports at their main office provided that the office is within reasonable access to the site.
- The Permit Coverage Page contains information about the Permittee's allowable discharge. Permittees may need to refer to it if conditions change at their site or if compliance concerns are brought up during inspection.
- Permittees may also need to refer to their monitoring records and discharge monitoring reports to address ongoing site concerns, changing site conditions, effluent violations, and non-compliance.

- 40 CFR 122.41(j)(2) requires certain permit related documents to be retained for a period of three years.

#### 10.4 Availability of Records

**Commenters:** Concrete Nor'West; CPM Development; David Schoettler, Stoneway & Jimmy Blais, GMCC; Jimmy Blais, Stoneway:

##### **Summary of Comments:**

- The Agency is inconsistent with the words used to establish the requirements for this condition. S10.D states the "permittees must retain records of the following documents on site or within reasonable access to the site." Then in S10.D.3 it states that "The Permittee must make all documents and records required by this permit immediately available upon request, to Ecology or the local jurisdiction." As such this creates confusion as to what is actually required and therefore what will be enforced. The existing permit's language allows for records to be stored onsite or within reasonable access to the site, allowing permittees to keep records in a central office location, a common organizational practice for larger companies who do not store important documents and records at production sites. If this practice is still allowed under the new Permit then, the term immediately in S10.D.3 would make the first statement unattainable, subjecting permittees to violations.
- Suggestions:
  - Removed "immediately" and revert to the old permit language, "onsite or reasonable access to the site."
  - Carry the language in S10.D.1 consistently throughout this section.
  - Replace "immediately" with "within two business days".

##### **Response:**

- Ecology does not agree that the language is inconsistent. The term immediately is generally defined as without delay. Reasonable access to the site generally means nearby or within a short drive. Permittees may retain records on site or within reasonable access to the site, including in central office locations, as long as they can also produce them, when requested, without a delay.
- Both terms "onsite or reasonable access to the site" and "immediately" were used in the final 2010 and 2011 Sand & Gravel General permits.

#### 10.5 Public Disclosure

**Commenters:** Kitsap Quarry; Pyramid Materials

##### **Summary of Comments:**

- If the operator is responsible to respond directly to all public requests, this language effectively transfers public disclosure requirements from the Agency (Department of Ecology) to the operator. You are dumping your Public Disclosure responsibility onto private landowners.
- It is recommended that if a public records request is made the operator then submit the SMP to the agency for disclosure to the public. This is something that DOE should provide not a permittee as part of your public disclosure responsibility.
- I question the legality, precedent and DOE legal liability/ability to put this burden onto the private landowner/permittee. If this was the intent of the Federal and State Laws they would have explicitly written that requirement into the legislation. You should check with the AG's office to see if you can even do this and what implications this puts on a private business and what risk this puts DOE in if they do not comply because ultimately DOE as the responsible public entity is legally liable to provide the documents.
- Ecology is legally responsible for keeping all these records well beyond when the permit expires.

**Response:**

- Per the Clean Water Act, Section 308(b)(2), the public is entitled to the most current Site Management Plan. In lieu of requiring permittees to submit new Site Management Plans to Ecology for every change or update, each permittee has the responsibility of providing a copy of their SMP to the public when requested to do so. This ensures that the public gets the correct most recent version of the SMP in a short timeframe.
- Ecology must still meet public disclosure requirements that are submitted to, or created by, Ecology.

## 10.6 Reporting Permit Violations

**Summary of Comment:**

- **CalPortland:** Is Ecology so concerned about water quality violations (99.85% compliance rate) that violation reports must be submitted to Ecology within 5 days imposing an unnecessary and burdensome requirement on the Industry? Is 10 days not reasonable?

**Response:**

- The Code of Federal Regulations 40 CFR 122.41(l)(6), *Conditions Applicable to All Permits*, requires the five day written reporting timeline for any noncompliance which may endanger health or the environment.

## 10.7 Spill Reporting

**Commenters:** Concrete Nor'West; Pyramid Materials; Jimmy Blais, Stoneway

### Summary of Comments:

- The new proposed language of this condition (S10.F Spill Reporting) is rather ambiguous. It states "in the event of a spill or discharge of oil or hazardous substances which present a threat to human health, welfare, or the environment immediately call National Response Center, Washington Emergency Management Division and the Department of Ecology." Accordingly, this requires a subjective judgment call by the permittee. Or, the language requires spills of even a minor nature to be immediately reported to three agencies. This leaves the permittee vulnerable to enforcement repercussions and violations if a spill is not reported.
- An example would be a broken hydraulic hose that leaks two gallons of hydraulic fluid onto a gravel area around a plant. Does this present a " ... threat to the environment ... "?
- We suggest that this section includes a statement that clearly provides more discretion to the permittee or a set of guidelines that conclusively defines what Ecology would consider as a threat to human health, welfare and the environment. Clarification is needed in terms of spill quantities and reporting, particularly if there is no discharge to surface or groundwater.

### Response:

- Ecology significantly revised this section between the preliminary and final drafts. This section no longer refers to events which present a threat to human health, welfare, or the environment. Instead, Ecology refers permittees to the spill reporting requirements in RCW 90.56.280, WAC 173-303-145, and Ecology's spill reporting website (<http://www.ecy.wa.gov/programs/spills/other/reportaspill.htm>).

## 11.0 S11 Solid Waste Disposal

### Summary of Comment:

- **Concrete Nor'West:** Ecology should review the draft permit and delete language and references to stand alone regulations such as WAC Chapter 173-350 Solid Waste Handling. This type of language contributes to an overly long permit and serves no useful purpose beyond education. We recommend adding this type of language to a fact sheet if desired.

### Response:

- Improper solid waste disposal has the potential to cause water pollution. The permit does not just reference the solid waste handling sections but also requires permittees to properly dispose of solid wastes and comply with the applicable solid and hazardous waste regulations (Chapters 173-350 and 173-303 WAC) in order to stay in compliance with the Sand & Gravel General Permit.

## 12.0 S12.B Permit Coverage for Portable Facilities

**Commenters:** Bruce Chattin, WACA; Concrete Nor'West; CPM Development; Dave Lewis, Miles Sand & Gravel; Ryan Ransavage, Miles Sand & Gravel; WACA; WAPA

### Summary of Comments:

- DOE is overstepping their authority to require areas where portable concrete plant operations be reclaimed before the portable plant can be permitted at another location. Proposed revisions to this section will make it next to impossible to move portable plants from site to site. The proposed language is confusing and not acceptable. This requirement should be removed or revised, with better understanding of the issue, so as to encourage portable facilities rather than to make them logistically nearly impossible to use in a practical sense.
- Technically a portable plant can only operate at one location at a time and often times, the Notice of Intent to move to another location has to be submitted before a Notice of Closure can be submitted. Furthermore, a portable may need to start operating at its next location, but a crew could still be employed at the previous site to finish the clean-up. There is no logic in compelling portable facilities to only "operate" at one site at a time.
- Compliance with the proposed provision would require portable facilities to lose jobs, work, and employees. The provision should be eliminated because it is not required to protect water quality and appears to be based on a fundamental misunderstanding of how portable facilities conduct their business.
- WACA negotiated the terms of the current permit condition through extensive negotiations with Puget Soundkeeper Alliance and Ecology in the appeal of the existing Permit. Consequently, it does not make sense to change the permit requirements at this time.
- Many projects which require portable plants allow plant setup in areas which will require further site work after the plant has been removed. This site work is controlled by the local entity and may take some time before the site is further developed. Waiting for the completed site work would not allow the use of a portables for some time.
- Time delays by Ecology in processing the NOC will certainly cause unnecessary delays. This requirement undermines the wisdom of keeping the permit with the plant as operations can move quicker than the agency can accommodate.
- Many times the portable permit operator is not in charge of the site where the portable has operated and does not have control over how the site owner does or does not want the site restored upon completion of the job. These requirements are typically the responsibility of the general contractor for the project. Any reference to site remediation, vegetation, or stabilization should be removed from subsection B2 and 3C.
- Ecology should remove requirements in this permit that require portable concrete plant operation areas be reclaimed before the portable plant can be permitted at another

location. Reclamation is the subject of other permits and redundant and conflicting language should be avoided here.

- Ecology should not have oversight on how a site is closed before the portable operates elsewhere.
- Projects that are prime candidates for the use of portable hot mix asphalt plants are generally remote from existing fixed based plants and are only temporarily located at the gravel pit or temporary plant location. The portable hot mix asphalt plant has very little impact on the underlying use of the temporary sites and will be operated within the site's land use permit stipulations. There is no justification for requiring additional site work mandates after the temporary plant has been removed.
- Development of each sand and gravel site within the strictures of the approved underlying permits for the specific site should not be altered by the Sand & Gravel General Permit. Waiting for "completed site work" would preclude the use of a portable hot mix asphalt plants. The result of making portable facilities much more difficult to employ will be that materials will be hauled from remote permanent plants at much higher cost and with increased environment impact due to extended hauling distances etc.

**Response:**

- Ecology acknowledges that portable permittees may want to begin operating at a new location while still employing a crew at the site to finish the clean-up / restoration. Permittees that do this should be aware that they are potentially liable for polluted discharges associated with the site until they submit a Portable Facility Notice of Completion form. The Portable Facility Notice of Completion form serves as a coverage termination form for a specific portable site. It is therefore in the permittee's best interest to submit these forms as quickly as appropriate. Ecology will remove the proposed draft language.
- Ecology acknowledges that portable permittees may have limited ability for site stabilization when working on construction projects. This is one of the reasons Ecology requires portable permittees to develop a plan for site restoration when submitting their Notice of Intent to Begin Operations form. Ecology expects permittees to identify difficulties for site restoration and solutions before beginning operations so that they can later ensure that the site can be stabilized once the activities associated with the portable operation have ceased.
- To simply cease operation does not necessarily remove the vulnerability to discharge pollution to Waters of the State. Cleaning up, restoring the site, or otherwise preventing the discharge of pollutants, is still required to protect the state's waters and allow cancellation of the permit for the specific site. Only after restoration, when the site is completely stabilized will the permittee's legal obligation to protect the waters of the state under chapter 90.48 RCW and the Clean Water Act be satisfied.

**Revision:**

- Remove S12.B.4: ~~“Portable facilities may only operate at one site at a time. Portable facilities cannot begin operations at a new subsequent location until they have completed operations at their previous site and Ecology has received a completed and signed “Portable Facility Notice of Completion of Portable Operations” form (ECY 070-30).”~~

## 13.0 General Conditions

### 13.1 G7. Engineering Plan Review Required

**Commenters:** Bruce Chattin, WACA; CalPortland; Concrete Nor’ West; CPM Development; Dave Lewis, Miles Sand & Gravel; David Schoettler, Stoneway & Jimmy Blais, GMCC; James Essig, Granite Construction; Keven Samuelson, Granite Construction; Lakeside Industries; Palmer Coking Coal; Puget Soundkeeper; Pyramid Materials; Ryan Ransavage Miles Sand & Gravel; Jimmy Blais, Stoneway; WACA; WAPA

**Summary of Comments:**

- We strongly object to the proposed revisions to G7. This requirement does not belong in the Sand and Gravel General Permit and represents an over reach by the Agency by trying to implement such a requirement.
- This requirement is an administrative change that is unnecessarily burdensome, excessive, and greatly expands Ecology’s role. The nature of the NPDES permit system (Plan, Do, Check and Correct) has a built in mechanism to correct treatment system deficiencies. There is a well-established back-stop in the corrective action portion of the NPDES system. If there is a deficiency found in our water treatment program, we are duty bound to implement corrective action. By taking control of how the treatment systems are designed, the Agency is discarding the basic principles of the NPDES program. The Sand and Gravel General Permit's main purpose is to protect Water Quality, not run our businesses. We do not need an Agency dictating how we design, build and implement our water treatment systems.
- This expanded oversight would require extensive additional formal systems engineering and design than is currently regulated by the existing permit. It is a whole added level of oversight that is completely unjustified. We believe that extensive/ expensive and unnecessary engineering requirements, like those proposed by Ecology, are completely beyond any demonstrated need for Ecology oversight.
- This provision is far too cumbersome and counterproductive.
- The G7 language in the existing permit is limited to wastewater control facilities as those facilities are described in WAC 173-240 (Industrial Wastewater Facilities), which does not even apply to general permits. Ecology's proposed text goes well beyond wastewater control facilities and extends to treatment BMPs, structures, equipment, processes to

collect, convey, treat, reclaim or dispose of wastewater, which would include orders of magnitude more engineering than the current permit requires.

- The language in the introduction of G7 is so broadly written that virtually all parts of an operation (paved surfaces, slope angles, tank sizes, sump sizes, pump sizes, line sizes, electrical requirements, pH probe style and design, recirculation rates, holding times etc.) can be lumped into the treatment system and hence trigger review requirements.
- The PCHB has already determined, the condition that Ecology required engineering reports for the general permits had to comply with the provisions of WAC 173-240-060 that govern engineering plans for domestic wastewater facilities was inappropriate for stormwater permits and vague as to what was required. The PCHB's decision referenced in the Fact Sheet certainly does not compel this provision. It is overkill to ask a facility to retain a PE to certify that an Ecology approved BMP works as intended if it is sized and constructed in accordance with Ecology's stormwater management manuals.
- The permit already requires facilities to ensure that the site is designed for a 10 year/ 24 hour storm event. These calculations are completed on site and kept on file for Agency review. This should be sufficient to meet the Agency needs without imposing additional engineering requirements.
- Applying the requirements for engineering reports from the municipal wastewater treatment WAC's is not appropriate or necessary.
- We believe that the extensive engineering requirements proposed by Ecology will actually impede companies making improvements to their structures and equipment because of the cost associated with hiring an outside consultant to prepare engineering reports and the process associated with Ecology's review and approval. The exercise of making simple solutions that become too expensive or complex has little if any benefit to water quality and may very likely establish a disincentive to solutions.
- Centralized engineering "oversight" will impede companies from innovating and improving existing systems because of the added bureaucracy associated with Ecology's review and approval processes.
- The language of this provision imposes expensive requirements for any treatment BMPs and all structure or process associated with wastewater, regardless of size and regardless of function.
- This provision imposes substantial economic burdens on permittees, including small and large businesses, to hire engineers to prepare engineering reports, plans, and specifications, and an operations and maintenance manual for review and approval by Ecology. This economic impact is exponential to companies with multiple facilities and economically significant and possibly prohibitive to small businesses. Simple water treatment systems are already expensive for permittees to install. Requiring engineering reports would only impose additional, and unnecessary, costs on our operations. It is not

compatible with this industry segment to impose a stringent and prescriptive requirement to a wide range of small, family companies and expect their ability to afford.

- I don't recall seeing any of these costs being discussed in the Economic Study paper.
- We have completed an engineering review of a simple treatment system (tank and recirculation pump with acid addition) for a site which discharges to a Municipal Sewer. The engineering report alone for the aforementioned simple system was approximately \$20,000 and was over 1" thick. The imposition of this requirement will drive unnecessary cost into our operations.
- We have recently installed a very simple CO<sub>2</sub> pH sparging treatment system at one of its facility's. The system alone cost more than \$30,000 dollars to install. No engineering report was created for this system and the system works flawlessly and enables our operation to adequately achieve compliance with water quality standards. Moreover, if an engineering report was required to install this simple system, the net cost for the installation would have easily been upwards of \$40-45,000 dollars all said and done. Treatment systems are already costly; we do not need additional regulations that increase the cost of compliance with little to no effect on water quality.
- This group of permittees is not like a municipal waste permit pool where there are predictable revenues based on ratepayers and where engineering is the normal process for operation implementation.
- As explained in the fact sheet, the Agency is drawing upon the engineering report requirements found in the Industrial Stormwater General Permit which were inserted based on an interpretation of a recent PCHB decision. The Industrial Stormwater General Permit (ISGP) does not include the requirements contained in Ecology's proposed revision. Instead, the ISGP engineering report requirements only extends to a Level 3 Corrective Action and contains only 6 requirements (ISGP at p. 38). By way of example, the ISGP does not require any of the requirements contained in G7B.3, 5, 9, 10, 12, or G7.C. Moreover, the ISGP only requires engineering reports to be submitted to Ecology for review. The proposed G7 text requires engineering reports to be submitted for approval. That is a significant difference in the burden and cost to permittees. Requiring approval will delay implementation of BMP's and pollution prevention. The purpose of inspection is to confirm or question the effectiveness of any corrective actions.
- Engineering reports are not required to meet many standards under this permit. An example is a ready-mix batch plant with settling ponds and pH treatment prior to discharge. Industry developed these very effective systems without detailed engineering reports. They work very well, are effective and we have years and years of monitoring reports to prove that they work.
- The use of acid or CO<sub>2</sub> to treat alkaline water is a basic system. These types of systems have been used for many years with no issues. The requirement to have an engineered system is obtuse.

- Sand and gravel mines utilize sediment detention ponds which slow the velocity of water allowing it to pool providing time for gravity separation to take effect, settling out the suspended sediment particles present in the water. Concrete batch plants and concrete recycling facilities utilize a similar setting pond configuration accompanied with pH adjustment mechanisms (CO<sub>2</sub> Sparging System) to neutralize any high pH water prior to discharge. These types of systems have been utilized and are proven extremely effective in achieving water compliance standards. Countless years of water monitoring reports serve as proof of their effectiveness.
- This requirement will introduce significant and unnecessary delays for facilities to comply with this requirement. The engineering review process takes a significant amount of time to complete. Typically several weeks are spent selecting a licensed engineer, followed by 6 to 8 weeks for the licensed engineer to complete a design report followed by as much as 6 months of review time at Ecology to review the report. Overall, the process will take 6 to 9 months to complete for the simplest of design changes at a facility. This is an unrealistic time delay for BMP changes which often need to be done quickly to address an issue. As written, this requirement will delay BMP implementation putting permittees in jeopardy of being out of compliance while awaiting agency action. The timeline of 180 days (6 months of Ecology review time) severely limits the facilities ability to protect water quality efficiently and effectively.
- Given the 96-100% compliance rate this requirement is unwarranted. This prescriptive permit requirement seems particularly unreasonable given the permittee's high rate of compliance with the Permit's effluent limitations. Much of the industry has already established their BMP's and are very successful based on Ecology reports. Please provide equally compelling evidence equal to the imposition of these new requirements to substantiate prevention measures are not working in the existing permit. This level of compliance suggests that the water treatment systems already installed without Ecology oversight are working well. We see the increased engineering requirements as a misguided effort to address a problem that does not currently exist, against an industry with a stellar record of permit compliance.
- Sand and gravel facilities are pretty straightforward facilities and how they operate, discharge and require managing is well known by industry environmental professionals. The systems needed for this industry to comply with the permit are very simple and easily replicated by facilities as needed.
- Hiring a licensed PE to conduct an engineering study of a simple water treatment system change brings no value to an operation.
- The language discourages operators from creating alternative and or innovative BMP's that may be just as effective. Operators in the construction material industry are very innovative and should be allowed the opportunity to develop and implement creative treatment BMP's which can achieve compliance with discharge effluent standards.

- Requiring a permittee to submit an engineering report prior to implementation of a specific treatment BMP creates an additional work load for Ecology, which is already stretched for resources. The added cost to Ecology to oversee the proposed G7 language will ultimately be borne by the permittees.
- This section puts a permit holder in a position of having two government entities approving the same plans. Each government entity may not give the same approval.
- We support the requirements in Section G7, Engineering Plan Review Required, and note that these enumerated elements of the plan review are consistent with WAC 173-240 (a WAC specifically referenced as a requirement of the existing permit). We also note that the PCHB has ruled requiring the Department to specifically enumerate all these required elements of the review. Having said that, there are numerous requirements in, for example, WAC 173-240-130, which have *not* been captured in G7. Failure to include applicable requirements of 173-240, means that the permit is in violation of the WAC. It would also represent backsliding and be in violation of the federal Clean Water Act.
- Our suggestion is to only require engineered plans if or when an operator is unable to meet performance standards in the permit using self-designed facilities and BMPs.
- Ecology should leave this section "as is" and apply as it has the past.
- We suggest this condition be eliminated from the permit.
- We suggest removing the requirements for an engineered design for pH adjustment water treatment system.
- Bill Moore stated in our June 1, 2015 meeting that existing facilities are exempt from submitting an engineered plan. This statement should be added to G7 for clarity.

**Response:**

- Based on the comments received and a thorough review of RCW 90.48 and WAC 173-240, Ecology has determined that referencing WAC 173-240 within the Sand and Gravel General Permit is not necessary. Ecology has removed General Condition G7. ENGINEERING PLAN REVIEW REQUIRED from the permit.
- Compliance with the permit may require the construction or modification of industrial wastewater facilities, as defined by WAC 173-240-020(9). Ecology is not proposing to modify or change the requirements in WAC 173-240. Ecology will rely on the existing notification requirements within the permit to determine if changes at the site may result in permittees needing to comply with WAC 173-240-110. Ecology will work with permittees on a case-by-case basis when the submission of engineering reports, plans, and specifications per WAC 173-240-110 is required.
- Ecology does not intend for Sand and Gravel permittees to submit engineering reports for the large variety of structures that are not necessary components of a process water treatment facility. Ecology does not intend for Sand and Gravel permittees to submit engineering reports for treatment facilities for Type 1, 2, or 3 stormwater or mine dewatering water unless it is comingled with process water.

**Revision:**

- Remove General Condition G7. ENGINEERING PLAN REVIEW REQUIRED from the permit.

**13.2 G19. Permit Transfer****Comment:**

- **CPM Development:** Ecology is adding language to the general provisions that is different from other general permits. This proposed language does not make sense on several levels. First, it is not the current permittees responsibility to determine if the new operator, owner etc. needs a permit. Secondly, there is no such thing as transferring a portion of a permit to another person. Two entities cannot hold the same permit, a new permit should be sought by the new entity/owner and the original permit should remain in the current permittees name. CPM recommends that Ecology delete this unnecessary and confusing condition.

**Response:**

- Ecology added new language to the permit to address partial transfers. The added language is similar to the language in the Construction Stormwater General Permit.
- Ecology agrees that it is not the current permittees responsibly to determine if the new owner will need permit coverage.
- Ecology agrees that a new permit should be sought by the new owner and the original permit should remain in the current permittees name. This is the process that Ecology outlined in the Fact Sheet on page 59. The current permittee will need to submit an application for coverage per G8 (i.e., if the partial transfer will result in a significant process change at the facility). The current permittee should mark on their application the box for modification. This will allow Ecology to record changes to monitoring points, NAICS codes, etc; while ensuring the current permit retains their same permit number.

**13.3 G20. Duty to Reapply****Comment:**

- **Palmer Coking Coal:** The requirement that applicants file an application electronically should be stricken. The DOE's Water Quality Permitting Portal is a cumbersome and clunky site which took our company hours to master due to poor design.

**Response:**

- The requirement for an electronic application makes progress with Ecology's obligation to comply with EPA's NPDES Electronic Reporting Rule (40 CFR Part 127). RCW 43.17.095 also requires Ecology to offer electronic reporting options.

- This proposed electronic application requirement is expected to save time and resources for permittees and Ecology (e.g., eliminating paperwork, data entry workload, database errors) while improving compliance and protection of water quality.
- Permittees may request a waiver from submitting an electronic application if they do not have the ability to use the Water Quality Permitting Portal.
- Ecology is continuously trying to improve the Water Quality Permitting Portal website.

## 14.0 Appendix B – Definitions

**Commenters:** David Schoettler, Stoneway & Jimmy Blais, GMCC

**Summary of Comments:** Ecology changed the scope of the permit in regards to process water and dust control water through their definition changes of Process Water on page 59 of the permit. Complying with the permit now requires testing of dust control water in accordance with Table 2 on page 10 of the permit. Water from a water truck used to control dust in the area of a concrete plant by applying water to the ground, would be required to be tested for TDS and pH. Water used to control dust in the area of an asphalt plant is now prohibited. Is it really Ecology's intent to require permittees to test dust control water?

**Response:** Ecology did not change the meaning of process water within the permit. The only change Ecology made in the permit to the definition of process water was to remove a cross reference to the definitions of Type 1, 2 and 3 stormwater. Refer to sections 2.1 and 5.2, in this Response to Comments, for discussion regarding monitoring of dust control water.

## 15.0 Appendix C – Pollution Prevention Schedule for pH

**Commenters:** Bruce Chattin, WACA; CalPortland; Concrete Nor'West; CPM Development; Dave Lewis, Miles Sand & Gravel; David Schoettler, Stoneway & Jimmy Blais, GMCC; Puget Soundkeeper

**Summary of Comments:**

- We object to the draft Appendix C Pollution Prevention Schedule for pH. Appendix C is unnecessary and should be removed from the permit.
- Appendix C should be removed in its entirety as written and a more reasonable and common sense approach be considered.
- We object to the “three strikes and you’re out” approach taken in this section. A pH above 8.5 is a violation of ground water quality standard (WAC 173-200) and must be treated as such. “Appropriate pollution prevention opportunities” should not be left to the discretion of the permittee but spelled out in the permit. These measures which might include covering the pile, relocating the pile and/or installing a concrete pad or liner

under the pile. We were even more disturbed to see the language in section 2.c. of the appendix, which, after a second failure to achieve the standard, seems to allow the permittee to simply conduct further studies (ground water impact study) as opposed to taking some action to resolve what is clearly a serious water quality problem.

- To create and require implementation of an extensive new and overreaching process outlined in Appendix C is not warranted given these high compliance rate. Ecology's data shows that only 7 companies were shown to be effected in 5 years. Of those, 3 companies had 1 or 2 violations. In one instance, a pH violation was recorded at 8.57. This Ecology data is correctly defined as "statistically insignificant".
- Other mitigations, options or enforcement are more than readily available than contained in Appendix C.
- The department has not shown in any capacity that the death penalty for concrete recycling stated in 2(d): "Cease discharges to ground related to the recycled concrete (for example, remove the recycled concrete material from the facility)" is not supported by a 99+% compliance rate over a 5 year period; 26 violations (5.6/year) or only 13 elevated pH violations over 8.5 (2.6/year).
- Appendix C does not appear to have a point in which the response schedule re-sets. Once a permittee enters the compliance schedule there is not a trigger for when the response schedule re-sets once appropriate measures have been put in place and the issue has been resolved. Identifying and addressing high pH discharges satisfactorily should result in resuming normal operations and monitoring protocols under Table 1. Once a reported exceedance has been corrected and future reporting indicates no further concerns, there should be the ability for a facility to reset pH reporting.
- Appendix C does not have a reset to allow a permittee to get out of the increased testing.
- The timelines within item 2 are unrealistic and should be extended, or at the very least, there should be the ability to extend the 180 day implementation schedule. Treatment systems generally take more than 180 days to install as they first need to be evaluated, bench scale testing needs to be conducted, a design report needs to be submitted, Ecology needs to review and approve the report, the systems then need to be manufactured and finally installed. In reality, this process can take more than a year to complete. Insert language to specifically address this concern.
- Appendix C should be strengthened to ensure that any problems discovered are addressed in a timely manner.
- We like the approach to the new Pollution Prevention Schedule provided in Appendix C, in that it outlines a detailed response to the rare case that a permittee has a discharge with a pH value higher than 8.5 allowing permittees to remain in compliance with the permit as they seek to resolve their high pH values. Facilities would have up to 3 exceedances before a violation would occur versus a single discharge resulting in a violation now. The data supports the basis for this and this approach would be of value. 3 instances would

suggest that additional attention should be applied, while 1 instance could or should be reconciled as the facility reports and makes necessary corrections. Future reporting would confirm the correction(s) worked or if there were extenuating circumstances contributing to the discharge.

**Response:** In the 2010 permit, permittees that had a discharge of pH higher than 8.5 associated with concrete recycling activities were in violation with the permit. In the draft permit, Ecology proposed the addition of Appendix C which would have kept permittees in compliance with the permit as they resolved their high pH values and / or determined if their high pH discharges resulted in an exceedance of groundwater quality standards. Based on the objections to this approach identified by permittees and other stakeholders, Ecology will not include Appendix C in the final permit.

**Revision:** Delete Appendix C and the associated footnotes in Table 2 and Table 3 in the permit.