BEFORE THE POLLUTION CONTROL HEARINGS BOARD
IN AND FOR THE STATE OF WASHINGTON

WASHINGTON AGGREGATE AND
CONCRETE ASSOCIATION, ASSOCIATED
GENERAL CONTRACTORS OF
WASHINGTON, INLAND NORTHWEST
ASSOCIATED GENERAL CONTRACTORS,
ASSOCIATED BUILDERS &
CONTRACTORS WESTERN WASHINGTON
CHAPTER, ASSOCIATED BUILDERS &
CONTRACTORS INLAND PACIFIC
CHAPTER, BUILDING INDUSTRY
ASSOCIATION OF WASHINGTON, and
AMERICAN PAVEMENT CONCRETE
ASSOCIATION,

Appellants,

v.

STATE OF WASHINGTON, DEPARTMENT
OF ECOLOGY,

Respondent.

PCHB No. 15-142
SETTLEMENT AGREEMENT

Appellants Washington Aggregate and Concrete Association, Associated General
Contractors of Washington, Inland Northwest Associated General Contractors, Associated
Builders & Contractors Western Washington Chapter, Associated Builders & Contractors
Inland Pacific Chapter, Building Industry Association of Washington and American Pavement
Concrete Association and Respondent State of Washington, Department of Ecology (Ecology)
hereby submit this Settlement Agreement (Agreement) to the Pollution Control Hearings Board
(Board) as a full and final settlement of the above-referenced appeal, and request that the Board
dismiss the appeal without prejudice.

I. BACKGROUND

1. On November 18, 2015, Ecology issued the Construction Stormwater General
   Permit (CSGP) covering stormwater discharges associated with construction activities.
2. On December 17, 2015, Appellants appealed the Permit to the Board.
3. Appellants and Ecology have agreed to resolve the appeal of the Permit through
   the settlement outlined below.

II. SETTLEMENT AGREEMENT

A. SCOPE

This Agreement constitutes the entire agreement between the parties to this appeal, and
settles all issues raised by Appellants in their appeal of the CSGP.

B. RESOLUTION OF APPEAL

1. Permit Modification. Ecology agrees to issue a draft modification of the CSGP for
   public comment within 45 days of the Board’s dismissal of this appeal, that includes the
   following modifications (presented in strikeout for removed language and underline for new
   language for the benefit of the Board’s review):

   a. Condition S1.C.3.i:

       Uncontaminated or potable water used to control dust. Permitees must minimize the
       amount of dust control water used.


       Assure that washout of concrete trucks is performed off-site or in designated concrete
       washout areas only. Do not wash out concrete trucks drums or concrete handling
       equipment onto the ground, or into storm drains, open ditches, streets, or streams. Do
       not dump excess concrete on site, except in designated concrete washout areas.
       Concrete spillage or concrete discharge directly to groundwater or to surface waters
       of the State is prohibited. Do not wash out to formed areas awaiting LID facilities.

   c. Condition S4.D.
If construction activity results in the disturbance of 1 acre or more, and involves significant concrete work (significant concrete work means greater than 1000 cubic yards poured concrete or recycled concrete used over the life of a project) or the use of reclaimed concrete or engineered soils (soil amendments including but not limited to Portland cement-treated base [CTB], cement kiln dust [CKD], or fly ash), and stormwater from the affected area drains to surface waters of the State or to a storm sewer system that drains to surface waters of the State, the Permittee must conduct pH sampling as set forth below. Note: In addition, discharges to segments of water bodies on Washington State’s 303(d) list (Category 5) for high pH are subject to a numeric effluent limit for pH; refer to Special Condition S8.

1. For sites with significant concrete work, the Permittee must begin the pH sampling period when the concrete is first poured and exposed to precipitation, and continue weekly throughout and after the concrete pour and curing period, until stormwater pH is in the range of 6.5 to 8.5 (su).

2. For sites with recycled concrete where monitoring is required, the Permittee must begin the weekly pH sampling period when the recycled concrete is first exposed to precipitation and must continue until the recycled concrete is fully stabilized with an stormwater pH is in the range of 6.5 to 8.5 (su).”


Engineering calculations for ponds, treatment systems, and any other designed structures. When a treatment system requires engineering calculations, these calculations must be included in the SWPPP. Engineering calculations do not need to be included in the SWPPP for treatment systems that do not require such calculations.

2. Guidance. Ecology agrees to the terms of the following guidance and agrees to post this guidance on its CSGP web page for Resources and Guidance for the CSGP.


LID BMPs may be used to manage construction stormwater during construction; however, LID BMPs that will be used post construction (permanent facilities) must be restored to fully functioning condition. This includes, if necessary, the removal of sediment and replacing the removed soils with soils meeting the design specification. In addition, infiltration rates must be maintained or restored to meet post construction LID design criteria.

b. Coverage of offsite areas under Condition S1.B.1.a.

The determination of total disturbed acreage for the purposes of permit coverage must include off-site acreage that will be disturbed as a direct result of the construction project and will discharge stormwater. For example, off-site equipment staging yards, material storage areas, borrow areas, and parking areas as indicated in S1.C.2. Off-site acreage does not have to be included for the purposes of determining total acreage disturbed if it is covered under a separate permit coverage for any stormwater discharge.
3. Dismissal. Appellants agree to a full and complete dismissal all issues that have been or could have been raised in this appeal including without limitation the issues set forth in the Pre-Hearing entered by the Board on January 22, 2016.

C. APPEAL OF THE FINAL PERMIT MODIFICATION

Appellants acknowledge that Ecology cannot be bound to issue a final modification of the CSGP with the agreed terms in a draft permit modification set forth above and and acknowledge Ecology must consider any and all public comments on the draft modification before issuing a final permit modification. Appellants further acknowledge that third parties have the right to appeal the final CSGP modification.

D. DISMISSAL OF APPEAL

The parties consent to the submission of this Agreement to the Board and request that this matter be stayed pending issuance of a final CSGP modification and posting of the agreed guidance on the Ecology website. Appellants shall promptly move to dismiss the appeal without prejudice upon issuance of the final CSG modification and posting of the guidance. The parties further agree to bear their own costs and attorneys' fees associated with this appeal.

E. EFFECTIVE DATE

This Agreement shall become effective on the date of the undersigned signatures.

F. SIGNATORIES AUTHORIZED

The undersigned representatives for Appellants and Ecology certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Agreement and to legally bind such party thereto.

G. EXECUTION

This document may be executed in counterparts and may be executed by facsimile and/or electronically, and each executed counterpart shall have the same force and effect as the original instrument.
Dated this 27th day of October, 2016.

ATTORNEY GENERAL OF WASHINGTON, ECOLOGY DIVISION

By: Ronald L. Lavigne
Senior Counsel

APPELLANTS:

TUPPER MACK WELLS PLLC

By: James A. Tupper
Attorneys for Appellants

WASHINGTON AGGREGATE AND CONCRETE ASSOCIATION

By: Its:

ASSOCIATED GENERAL CONTRACTORS OF WASHINGTON

By: Its: Executive Vice President

INLAND NORTHWEST ASSOCIATED GENERAL CONTRACTORS

By: Its:

ASSOCIATED BUILDERS & CONTRACTORS WESTERN WASHINGTON CHAPTER

By: Its:

ASSOCIATED BUILDERS & CONTRACTORS INLAND PACIFIC CHAPTER

By: Its:

BUILDING INDUSTRY ASSOCIATION OF WASHINGTON

By: Its:

AMERICAN CONCRETE PAVEMENT ASSOCIATION

By: Its:

SETTLEMENT AGREEMENT
Dated this ____ day of October, 2016.

ATTORNEY GENERAL OF WASHINGTON, ECOLOGY DIVISION

By: ____________________________
Ronald L. Lavigne
Senior Counsel

APPELLANTS:

TUPPER MACK WELLS PLLC

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James A. Tupper
Attorneys for Appellants

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AMERICAN CONCRETE PAVEMENT ASSOCIATION

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TUPPER MACK WELLS PLLC
2025 First Avenue, Suite 1100
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Dated this day of October, 2016,

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By:

INLAND NORTHWEST ASSOCIATED GENERAL CONTRACTORS

By:

DEPARTMENT OF ECOLOGY

By: Heather Bartlett
Water Quality Program Manager

ASSOCIATED BUILDERS & CONTRACTORS WESTERN WASHINGTON CHAPTER

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By:

4828-0467-4810, v. 1

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Ronald L. Lavigne
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DEPARTMENT OF ECOLOGY

By: __________________________
Heather Bartlett
Water Quality Program Manager

ASSOCIATED BUILDERS &
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By: __________________________

ASSOCIATED BUILDERS &
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CHAPTER

By: __________________________
President — CEO

BUILDING INDUSTRY ASSOCIATION OF
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AMERICAN CONCRETE PAVEMENT
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Dated this ___ day of October, 2016.

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Its:  

Settlement Agreement
Dated this ___ day of October, 2016.

ATTORNEY GENERAL OF
WASHINGTON, ECOLOGY DIVISION
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    Ronal d L. Lavigne
    Senior Counsel

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AMERICAN CONCRETE PAVEMENT ASSOCIATION

By: __________________
   Its: Executive Director

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