

Addendum to Fact Sheet
Appendix C:
Sand and Gravel General Permit Modification
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

January 19, 2018

State of Washington
Department of Ecology

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Introduction

The Washington State Department of Ecology (Ecology) is modifying the Sand and Gravel General Permit that was issued on February 17, 2016 (2016 permit). The Washington Aggregates and Concrete Association (WACA) appealed the 2016 permit on March 21, 2016. An appeal settlement was reached that included proposed changes to permit Special Conditions S2, S8, and S12. Ecology issued a draft of the permit with the conditions modified per the settlement agreement for public comment from September 26, 2017 to December 8, 2017. This Response to Comments (RTC) responds to public comments on the modified draft 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.

Ecology issues this 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.

Summary of Permit Development

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.

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

March 21, 2016 to August 4, 2017: The Washington Aggregate and Concrete Association (WACA) appealed the 2016 permit. The 2016 permit became effective on April 1, 2016. Ecology and WACA engaged in settlement negotiations and reached a settlement agreement.

September 26, 2017 to December 8, 2017: Ecology modified the permit per the settlement agreement and issued a draft of the modified permit. Ecology held a 74-day public comment period on the modified draft permit and conducted one public hearing and a workshop on the modified draft permit.

January 19, 2017: Ecology issued the final modified permit with an April 1, 2018 effective date.

Summary of Changes

Ecology did not make any changes between the draft of the modified permit and the final modified permit.

Organization of the Response to Comments

Ecology read and considered all of the comments received on the modified draft. Ecology also listened to and considered all of the comments provide via oral testimony at the public hearing. For brevity, Ecology has summarized some of the comments received in the Comments and Response section below and has not responded to comments which were out of scope in regards to the permit modification. The full text of all the comments and the audio file of the public hearing on our webpage at www.ecology.wa.gov/sandandgravel.

Comments and Responses are grouped together and organized by topic. Under each topic heading you can see the comments Ecology received for that topic followed by Ecology's response.

The table below also lists the name of each commenter. Washington State Department of Ecology used the following topics to group comments together:

- Recycled Concrete
- Site Restoration
- Forms
- Other

Affiliation	Commenter Name	Topics where comments were assigned	Associated Comment numbers
Agency			
United States Environmental Protection Agency	Burgess, Karen	Recycled Concrete	A-1-1
Business			
Gary Merlino Construction Company, Inc.	Cratsenberg, Drew	Other	B-1-1
Lloyd L Palm Construction	Palm, Lloyd	Recycled Concrete	B-2-1 , B-2-2, B-2-3
		Other	B-2-4
Miles Sand and Gravel	Lewis, Dave	Site Restoration	B-3-1
		Forms	B-3-2
Miles Sand and Gravel	Ransavage, Ryan	Forms	B-4-1 , B-4-2
		Other	B-4-3

Comments and Responses

Comments on Recycled Concrete

Commenter: Lloyd Palm - Comment B-2-1

The commenter has tested the pH of water throughout his property and based upon these results and subsequent observations of buffering, does not believe that pH is an environmental concern for water concrete or waste asphalt.

Commenter: Lloyd Palm - Comment B-2-2

The commenter feels that allowing for self-testing and monitoring will lead to permittees submitting false data to Ecology to satisfy the permits monitoring and reporting requirements. The commenter suggested that dilution at the monitoring location would resolve concerns of pollutants being measured above the permit effluent limits.

Commenter: Lloyd Palm - Comment B-2-3

The commenter is concerned that Ecology has not considered the benefits of recycling concrete. The commenter questioned the disconnect between Ecology's concerns regarding pH from concrete waste and the use of recycled concrete through RCW 70.95.805. The commenter is concerned that requiring the use of recycled concrete through HB 1695 - 2015-16 does more environmental harm than good due to concerns around high pH.

Commenter: Karen Burgess - Comment A-1-1

We have two concerns about this proposed permit; there are no effluent limits for the monitoring wells and a list of monitoring parameters is not included. The Groundwater Monitoring Program may have parameters but a Pollution Control Hearings Board ruling on the General Industrial Stormwater permit required parameters to be in the permit and available for public comment.

Ecology's Responses on Recycled Concrete

B-2-1

The limits in the permit for pH are established at 6.5 and 8.5 and are the same as the Water Quality Standards. These limits have not changed in the permit during this modification. The Water Quality Standards (and effluent limits) address human health effects, toxicity to aquatic organisms, bioaccumulation potential, and adverse effects on beneficial water use.

Ecology considered the buffering capacity of natural water bodies, soil, and precipitation when considering the appropriate BMPs to place in permit section S8.F. Ecology also considered that the capacity of natural systems to neutralize pH can be limited, site specific, and finite.

B-2-2

Monitoring requirements are used to ensure continued compliance with the effluent limits set in the permit, evaluate the potential effects on state waters, and assist in developing other permit conditions and limits. The concept of self-monitoring has been a cornerstone of the NPDES program since its inception. Per RCW 90.48.590, any person who knowingly falsifies data is guilty of a gross misdemeanor. Ecology has the authority to enter any facility and conduct announced and unannounced inspections. These inspections may include obtaining samples for ensuring compliance with permit limits and to verify the accuracy of the self-monitoring reports.

The permit requires representative sampling. Neutralizing the location of the sampling spot without neutralizing the rest of the runoff discharging from the area would not be representative and would still lead to a violation of the effluent limits.

Per RCW 90.48.140, any person found guilty of willfully violating any of the provisions of chapter 90.48 RCW or chapter 90.56 RCW, or any final written orders or directive of the department or a court in pursuance thereof is guilty of a gross misdemeanor, and upon conviction thereof shall be punished by a fine of up to ten thousand dollars and costs of prosecution, or by imprisonment in the county jail for up to three hundred sixty-four days, or by both such fine and imprisonment in the discretion of the court. Each day upon which a willful violation of the provisions of this chapter or chapter 90.56 RCW occurs may be deemed a separate and additional violation.

B-2-3

Ecology is committed to supporting concrete recycling that is done in a manner that is protective of the environment and water quality. Ecology discussed the environmental benefits of recycling concrete in section 6.8.3 (page 48) of the Fact Sheet that accompanied the 2015 draft Sand and Gravel General Permit.

Ecology believes that there are a wide variety of applications where recycled concrete can be used without harming water quality or the environment. Ecology notes that RCW 70.95.805 does not negate RCW 90.48.080 and that the Washington Department of Transportation, its implementation partners, and local government entities are responsible for using recycled concrete in applications that would not lead to a violation of RCW 90.48.080.

A-1-1

Table 2 and Table 3 in Special Condition S2 specifies the effluent limits and monitoring frequencies for the monitoring wells that apply to the discharge from permittees' recycled concrete stockpiles and any other commingled water as appropriate.

Additionally, Ecology expects permittees to follow the monitoring requirements in S4 of the permit. S4 of the permit discusses discharges to groundwater, sampling procedures, analytical procedures, and laboratory accreditation. S7 of the permit includes the requirements for permittees to develop, maintain, and comply with a monitoring plan. S10 of the permit discusses the monitoring reporting and monitoring record keeping requirements.

Ecology believes that adding in cross references to all of the other sections in the permit that include monitoring requirements is not practical or beneficial. Ecology expects permittees to read and implement the permit in its entirety.

Comments on Site Restoration

Commenter: Dave Lewis - Comment B-3-1

During the November 30, 2017 workshop, you were asked if "an active construction site," Condition S12.B.3.c.i, included portable plants within a permitted surface mine. That is, the term construction site includes surface mines. You said no that surface mines were not considered construction sites. You were then asked how will you permit portable plants within permitted surface mines? You stated that portable plants within permitted surface mines would be permitted as they (portable plants) had been in the past. Please clarify that DOE will permit portable plants within permitted surface mines as they have in the past or that the term "construction sites" includes permitted surface mines.

Ecology's Response on Site Restoration

B-3-1

Ecology did not intend for the term active construction site to include active surface mining sites. Ecology will permit portable plants operating within permitted surface mines as we have in the past.

Comments on Forms

Commenter: Dave Lewis - Comment B-3-2

The revised Form ECY 070-36, Item 12 should be removed from this form: ECY 070-36; Item 12. Amount of Recycled Concrete (Optional). While you stated, during the workshop, that this portion of the application was optional for us if we wanted to state the quantity. Recycled Concrete quantities are reported to DOE under the requirements of Chapter 173-350 WAC. The current Sand and Gravel General Permit does not require recycled concrete quantities be reported within permit Section S12.B or elsewhere within the permit.

Commenter: Ryan Ransavage - Comment B-4-1

The inclusion of an optional section in a form is misleading. The forms are created to implement the conditions of the permit. It is inappropriate for Ecology to request information that is not

required by the permit. As such, we are requesting the removal of any optional sections for form ECY 070-36.

Commenter: Ryan Ransavage - Comment B-4-2

In the same vein, the online permit application requires all portions of the application be complete, even if they are not applicable, before being submitted. The online application process allows Ecology to require additional information that the permit does not require. One example of this is monitoring point location. The application requires the use of latitude and longitude to create a monitoring point. The permit does explicitly state a specific way of recording monitoring point location. The online application should allow for other ways to record monitoring point location. I would provide additional information on the online application, however the WEBDMR portal is currently down.

Ecology's Responses on Forms

B-3-2 and B-4-1

Ecology has the authority to collect any information deemed necessary in the application per RCW 90.48.170 and WAC 173-226-200. Ecology uses the application forms to review the applicants operations to determine if coverage should be granted under the general permit, set appropriate effluent limits, and to set all known available and reasonable methods to prevent and control the pollution of the waters of the state of Washington. The Sand and Gravel General Permit does not state any specific information that must be included in the permit application.

Ecology used the voluntarily submitted concrete recycling information to help determine reasonable methods to prevent pollution to waters of the state of Washington. Specifically, Ecology took information from fixed site facilities to verify information collected by Ecology inspectors on the size of recycled concrete stockpiles. Ecology used this information to determine that it was not reasonable to require all Sand and Gravel facilities to pave the areas under their recycled concrete stockpiles as a best management practice. Ecology would like permittees to voluntarily provide this information specific to portable operations as well. Ecology may use this information to determine the reasonableness of best management practices specific to portable operations.

Ecology does not want to hold up an application request because a portable permittee may not have this information on hand. Ecology has therefore chosen to allow permittees to waive providing this information while still submitting an application deemed to be complete; even though Ecology could require this information to be provided per RCW 90.48.170 and WAC 173-226-200.

B-4-2

The Sand and Gravel General Permit does not state any specific information that must be included in the permit application. Ecology has the authority to collect any information

deemed necessary in the application per RCW 90.48.170 and WAC 173-226-200. Ecology has deemed the latitude and longitude of permittee's monitoring points as necessary information for adequate program implementation.

Ecology is continuously improving the electronic Notice of Intent (e-NOI) application. Ecology will complete a review to ensure that the fields with optional information can be left blank and the application can still be submitted. Ecology will work on clarifying on the e-NOI which fields are required and which are optional. Ecology encourages permittees to submit a Technical Assistance Request to Ecology if they discover a discrepancy between the paper NOI and e-NOI.

Comments on Other

Commenter: Drew Cratsenberg - Comment B-1-1

Gary Merlino Construction Co. Inc. appreciates and supports the modification to the General Permit.

Commenter: Ryan Ransavage - Comment B-4-3

In general, Miles would like Ecology to adhere to the permit requirements and nothing more. The examples given above, may seem small now, but could create liability for Ecology in the future.

Commenter: Lloyd Palm - Comment B-2-4

We the hardworking entrepreneurs and business people of America, of course are considered the bad guys. The government's attitude is, since we are the bad guys they need to keep control of us with permits, inspections, writing up violations on us with fines we are forced to pay.

Ecology's Responses to Other

B-1-1

Thank you for your comment.

B-4-3 and B-2-4

In response to B-4-3, Ecology is not limited to adhering to past or present permit conditions.

Ecology issues the permit and associated documents in compliance with the provisions of the State of Washington Water Pollution Control Law Chapter 90.48 Revised Code of Washington and the Federal Water Pollution Control Act (The Clean Water Act) Title 33 United States Code, Section 1251 et seq.