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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

1 (Board) as a full and final settlement of the above-referenced appeal, and request that the Board
2 dismiss the appeal without prejudice.

3 I. BACKGROUND

4 1. On November 18, 2015, Ecology issued the Construction Stormwater General
5 Permit (CSGP) covering stormwater discharges associated with construction activities.

6 2. On December 17, 2015, Appellants appealed the Permit to the Board.

7 3. Appellants and Ecology have agreed to resolve the appeal of the Permit through
8 the settlement outlined below.

9 II. SETTLEMENT AGREEMENT

10 A. SCOPE

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

13 B. RESOLUTION OF APPEAL

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

18 a. Condition S1.C.3.i:

19 Uncontaminated or potable water used to control dust. Permittees must minimize the
20 amount of dust control water used.

21 b. Condition S9.D.9.

22 Assure that washout of concrete trucks is performed off-site or in designated concrete
23 washout areas only. Do not wash out concrete trucks, ~~drums or concrete handling~~
24 ~~equipment~~ onto the ground, or into storm drains, open ditches, streets, or streams. Do
25 not dump excess concrete on site, except in designated concrete washout areas.
26 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.

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

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

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

6 d. Condition S9.B.1.f.

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

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

13 a. Protection of Low Impact Development (LID) facilities under Condition S9.D.13.

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

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

21 The determination of total disturbed acreage for the purposes of permit coverage must
22 include off-site acreage that will be disturbed as a direct result of the construction
23 project and will discharge stormwater. For example, off-site equipment staging yards,
24 material storage areas, borrow areas, and parking areas as indicated in S1.C.2. Off-
25 site acreage does not have to be included for the purposes of determining total
26 acreage disturbed if it is covered under a separate permit coverage for any stormwater
discharge.

1 3. Dismissal. Appellants agree to a full and complete dismissal all issues that have been
2 or could have been raised in this appeal including without limitation the issues set forth in the
3 Pre-Hearing entered by the Board on January 22, 2016.

4 **C. APPEAL OF THE FINAL PERMIT MODIFICATION**

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

10 **D. DISMISSAL OF APPEAL**

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

16 **E. EFFECTIVE DATE**

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

18 **F. SIGNATORIES AUTHORIZED**

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

22 **G. EXECUTION**

23 This document may be executed in counterparts and may be executed by facsimile and/or
24 electronically, and each executed counterpart shall have the same force and effect as the original
25 instrument.

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Dated this 27th day of October, 2016.

ATTORNEY GENERAL OF
WASHINGTON, ECOLOGY DIVISION

By: [Signature]
Ronald L. Lavigne
Senior Counsel

DEPARTMENT OF ECOLOGY

By: [Signature]
Heather Bartlett
Water Quality Program Manager

APPELLANTS:

TUPPER MACK WELLS PLLC

By: [Signature]
James A. Tupper
Attorneys for Appellants

ASSOCIATED BUILDERS &
CONTRACTORS WESTERN WASHINGTON
CHAPTER

By: _____
Its: _____

WASHINGTON AGGREGATE AND
CONCRETE ASSOCIATION

By: _____
Its: _____

ASSOCIATED BUILDERS &
CONTRACTORS INLAND PACIFIC
CHAPTER

By: _____
Its: _____

ASSOCIATED GENERAL CONTRACTORS
OF WASHINGTON

By: [Signature]
Its: Executive Vice President

BUILDING INDUSTRY ASSOCIATION OF
WASHINGTON

By: _____
Its: _____

INLAND NORTHWEST ASSOCIATED
GENERAL CONTRACTORS

By: _____
Its: _____

AMERICAN CONCRETE PAVEMENT
ASSOCIATION

By: _____
Its: _____

4828-0487-4810, v. 1

1 Dated this ____ day of October, 2016.

2 ATTORNEY GENERAL OF
3 WASHINGTON, ECOLOGY DIVISION

DEPARTMENT OF ECOLOGY

4 By: _____
5 Ronald L. Lavigne
6 Senior Counsel

By: _____
Heather Bartlett
Water Quality Program Manager

7 APPELLANTS:
8 TUPPER MACK WELLS PLLC

ASSOCIATED BUILDERS &
CONTRACTORS WESTERN WASHINGTON
CHAPTER

9 By: _____
James A. Tupper
Attorneys for Appellants

By: Wendy Novak
Its: President

10 WASHINGTON AGGREGATE AND
11 CONCRETE ASSOCIATION

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Its: _____

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ATTORNEY GENERAL OF
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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: EX-TRA DIRECTOR

ASSOCIATED GENERAL
CONTRACTORS OF WASHINGTON

By: _____
Its: _____

INLAND NORTHWEST ASSOCIATED
GENERAL CONTRACTORS

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Its: _____

DEPARTMENT OF ECOLOGY

By: _____
Heather Bartlett
Water Quality Program Manager

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ATTORNEY GENERAL OF
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DEPARTMENT OF ECOLOGY

By: _____
Ronald L. Lavigne
Senior Counsel

By: _____
Heather Bartlett
Water Quality Program Manager

APPELLANTS:

TUPPER MACK WELLS PLLC

ASSOCIATED BUILDERS &
CONTRACTORS WESTERN WASHINGTON
CHAPTER

By: _____
James A. Tupper
Attorneys for Appellants

By: _____
Its: _____

WASHINGTON AGGREGATE AND
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ASSOCIATED BUILDERS &
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CHAPTER

By: _____
Its: _____

By: Durame Schult
Its: President - CEO

ASSOCIATED GENERAL CONTRACTORS
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ATTORNEY GENERAL OF
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By: _____
Ronald L. Lavigne
Senior Counsel

APPELLANTS:

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By: _____
James A. Tupper
Attorneys for Appellants

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Water Quality Program Manager

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Its: _____

BUILDING INDUSTRY ASSOCIATION OF
WASHINGTON

By: Adam Traud
Its: General Counsel

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By: _____
Heather Bartlett
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APPELLANTS:

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James A. Tupper
Attorneys for Appellants

By: _____
Its: _____

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INLAND NORTHWEST ASSOCIATED
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AMERICAN CONCRETE PAVEMENT
ASSOCIATION

By: 
Its: Executive Director

By: _____
Its: _____

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2 ATTORNEY GENERAL OF
3 WASHINGTON, ECOLOGY DIVISION

DEPARTMENT OF ECOLOGY

4 By: _____
5 Ronald L. Lavigne
6 Senior Counsel

By: _____
Heather Bartlett
Water Quality Program Manager

7 APPELLANTS:

8 TUPPER MACK WELLS PLLC

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9 By: _____
10 James A. Tupper
11 Attorneys for Appellants

By: _____
Its: _____

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AMERICAN CONCRETE PAVEMENT
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22 By: _____
23 Its: _____

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25 Its: Executive Director

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