

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

**POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON**

WASHINGTON AGGREGATES &
CONCRETE ASSOCIATION,

Appellant,

v.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Respondent.

PCHB No. 16-030

SETTLEMENT AGREEMENT

COMES NOW Respondent State of Washington, Department of Ecology by and through its attorneys, Robert W. Ferguson, Attorney General, and Ronald L. Lavigne, Senior Counsel; and Appellant, Washington Aggregates & Concrete Association (WACA), by and through its attorneys Foster Pepper, PLLC and Lori Terry Gregory, and hereby submit this Settlement Agreement (Agreement) to the Pollution Control Hearings Board as a full and final settlement of the above-captioned appeal.

I. BACKGROUND

1. On or about February 17, 2016, Ecology issued the Sand and Gravel General Permit (Permit).
2. On or about March 18, 2016, WACA appealed the Permit to the Board.
3. Ecology and WACA have agreed to resolve the appeal of the Permit through the settlement outlined below.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

II. SETTLEMENT AGREEMENT

The parties desire to resolve the dispute herein and avoid the cost and time associated with further litigation. The parties therefore stipulate and agree as follows:

A. SCOPE

This Agreement constitutes the entire agreement between the parties to this appeal, and settles all issues raised by WACA in its appeal of the Permit.

B. RESOLUTION OF APPEAL

1. Ecology stipulates that the Permit's separate codes for recycled asphalt (ECY001) and recycled concrete (ECY002) are included in the Permit to collect separate monitoring data for these recycling activities. These ECY001 and 002 codes are imposed in the Permit as a data management tool. The new ECY001 and ECY002 codes in the Permit are not intended to suggest that these recycling activities are always new activities.

2. Ecology agrees to propose a permit modification to reduce pH monitoring for process water discharges to ground associated with code ECY001 from monthly to quarterly.

3. Ecology agrees to propose a permit modification to Condition S8.F to allow new facilities to be located within a Wellhead Protection Area or within 100 feet of a drinking water or irrigation well subject to Ecology's review and approval of a groundwater monitoring program.

4. Ecology agrees to propose a permit modification to Condition S12.B as set forth in Attachment A hereto.

5. Ecology will issue the draft permit modifications for public review and comment within sixty (60) days of the date of this Agreement and will finalize the permit modifications within forty-five (45) days of the close of the public comment period unless Ecology receives public comments that prevent Ecology from finalizing the draft permit modification.

1 **C. DISMISSAL OF APPEAL**

2 Within forty (40) days of Ecology's issuance of an amended permit pursuant to
3 Paragraph B of this Agreement, and assuming that no one files an appeal of the amended
4 permit, Ecology and WACA will move the Board to dismiss this appeal.

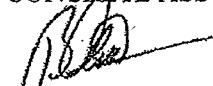
5 **D. SIGNATURE AUTHORIZED**

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

9 STATE OF WASHINGTON
10 DEPARTMENT OF ECOLOGY

WASHINGTON AGGREGATES &
CONCRETE ASSOCIATION

11 



12 HEATHER R. BARTLETT
Water Quality Program Manager

13 BRUCE CHATTIN
Executive Director

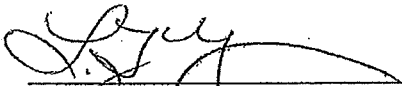
14 Dated: 7/28/17

Dated: 7/26/17

15 ROBERT W. FERGUSON
16 Attorney General

FOSTER PEPPER, PLLC

17 



18 RONALD L. LAVIGNE, WSBA #18550
19 Senior Counsel
Attorneys for Department of Ecology
360-586-6751

LORI TERRY GREGORY, WSBA #22006
Attorneys for Washington Aggregates &
Concrete Association
206-447-8902

20 Dated: 8/4/17

Dated: 7/26/17

EXHIBIT A

3. New facilities that propose to discharge to surface water must conduct a receiving water study for two years when Ecology determines, at the time of application, that there is a potential for violation of water quality standards. The study consists of measuring the receiving water flow and temperature and discharge flow and temperature at the time of *critical flows*. The applicant/Permittee must contact Ecology before developing a receiving water study plan. If Ecology determines a receiving water study is required, the receiving water study plan must be completed before operations are begun.

B. Permit Coverage for Portable Facilities

All portable facilities that are new facilities, un-permitted existing facilities, and permitted existing facilities planning a significant process change must comply with the requirements in S12.A. Permit coverage will apply only to the specific *portable facility* identified in the application. Permit coverage is provided for the portable facility at sites throughout the state subject to the following requirements:

1. The Permittee of the portable facility must submit a completed and signed “Portable Facility Notification of Intent to Beginning of Operation Notice” form (ECY 070-36⁸) no less than ten (10) days before beginning each operation at a new location. The form must be sent to the appropriate Ecology regional office for where the site and operation is located. The Permittee must also complete requirements for new discharges (S12.A.2 and S12.A.3) if the new location will have a discharge to surface waters.
2. The Permittee must submit a completed and signed “Portable Facility Notice of Completion of Portable Operations Notice” form (ECY 070-30⁸) to the Water Quality Permit Coordinator at the appropriate Ecology regional office when it has completed the following:
 - a. All activities associated with the portable operation have ceased.
 - b. All equipment associated with the operation has been removed.
 - c. All land affected by the portable operation has been restored in accordance with S12.B.3 E.
- 2.3. Upon completion of the portable operation, the Permittee must restore all areas affected by the operation in accordance with the “Site Restoration” portion of the “Portable Beginning of Operation Notice of Intent to Begin Operations” form (ECY 070-36⁸) submitted to Ecology prior to beginning operations.

Site restoration must include:

 - a. Cleaning up, or otherwise preventing the discharge of, any pollutant (including spilled petroleum products) to waters of the state.
 - b. The removal of all processing equipment associated with the portable operation.

⁸ This form will be updated during the 2017 permit modification.

- c. Stabilizing all areas affected by activities associated with the portable operation with a permanent vegetative cover or equivalent permanent stabilization measure (crushed rock surfacing, rip rap, etc.) which will prevent erosion.
- i. Permittees that operated a portable facility at an active construction site do not have to provide permanent vegetative cover or permanent stabilization if all of the following conditions apply:
- (a) The portable facility operated within a part of the site where construction activities occurred or will occur.
 - (b) The restoration of the area where the portable facility operated will be completed according to construction plans for the site.
 - (c) Permittees note this exception and provide an estimated timeline for final restoration in their completed and signed "Portable Completion of Operation Notice" form (ECY 070-30⁸).
- d. Restoration to the satisfaction of the Ecology permit manager and local jurisdiction, if required.
- e. If the Permittee is prohibited by law from accessing the site to complete site restoration, the Permittee may request completion of portable operations at the site by submitting to Ecology a "Portable Completion of Operation Notice" form (ECY 070-30⁸) along with documentation of the Permittee's inability to access the site.
- f. If the Permittee has no legal responsibility over site restoration, the Permittee may request completion of portable operations at the site by submitting to Ecology a "Portable Completion of Operation Notice" form (ECY 070-30⁸) along with documentation demonstrating that another entity is responsible for site restoration.

Portable operations that meet the conditions in S12.B.3.c.i do not have to submit documentation demonstrating that another entity is responsible for site restoration.

- ~~b.a. The Permittee must submit a completed and signed "Portable Facility Notice of Completion of Portable Operations" form (ECY 070-30) to the Water Quality Permit Coordinator at the appropriate Ecology regional office when it has completed the following:~~
- ~~e.a. All activities associated with the portable operation have ceased.~~
- ~~d.a. All equipment associated with the operation has been removed.~~
- ~~g. All land affected by the portable operation has been restored in accordance with S12.E.~~