APPENDIX B.

COMMENTS RECEIVED ON THE 2010 DRAFT SAND AND GRAVEL GENERAL PERMIT WITH ECOLOGY RESPONSES

Table of Contents

WRITTEN COMMENTS

January 29, 2010
Gary Bailey Sent by Electronic Mail
Water Quality Program
Washington State Department of Ecology
P.O. Box 47600
Olympia, WA 98504
Subject: Comments on the Proposed Sand and Gravel General NPDES Permit
Dear Mr. Bailey:

Ken Johnson, Weyerhaeuser NR Company

Please accept the following comment from Weyerhaeuser NR Company relating to the proposed Sand and Gravel General NPDES Permit (permit draft dated January 20, 2010). Weyerhaeuser's specific interest relates to the **S1. Permit Coverage** direction specifying permit coverage for activities in SIC Code 0811 *Timber Tracts (sand and gravel point source activities)* and SIC Code 2411 *Logging (sand and gravel point source activities)*, and then **S1.A.3.f.** which states that "Any silvicultural point source" requires permit coverage.

The objective for this comment is to confirm our understanding that Ecology intends no change in the permit coverage requirements contained in the 2005 Sand and Gravel permit. For silvicultural point sources and in the context of this Sand and Gravel NPDES permit this means coverage is required only for 1) rock crushing or gravel washing facilities that 2) use a "discernable, confined and discrete conveyance" to discharge pollutants (i.e., process water) into a water of the United States. Where either of these two elements is missing, the silvicultural sand and gravel or rock activity is not subject to permit coverage under this permit.

The origin for this understanding arises from federal law and regulation. Under the Clean Water Act the universe of silvicultural activities that are regulated as "silvicultural point sources" is relatively narrow. In June 1976, pursuant to court order, the United States Environmental Protection Agency excluded nearly all silvicultural activities from NPDES permit coverage. *See* 41 Fed. Reg. 24,709 (June 18, 1976). Following exhaustive review, EPA concluded that only four narrow categories of silvicultural activities are "silvicultural point sources" and therefore subject to the NPDES program:

> Silvicultural point sources means any discernable, confined and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage facilities which are operated in connection with silvicultural activities and from which pollutants are discharged into waters of the United States. The term does not include non-point source silvicultural activities such as nursery operations, site preparation, reforestation and subsequent treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance from which there is natural runoff.

40 C.F.R. § 122.27(b)(1) (July 1, 1993).

We believe this detailed regulatory direction is assured and adequately presented in the proposed permit through the definition of "Silvicultural Point Source." This definition appears in **Appendix B – Definitions.** The Fact Sheet discussion is consistent with his same outcome (page 6 in the January 20, 2010 draft Fact Sheet).

Ecology's concurrence that no changes are intended on this aspect of the permit would be appreciated. Thank you for your consideration of this comment.

Sincerely,
Ken Johnson
Corporate Environmental Manager

1. Response: Ecology concurs that no change is intended.

Bailey, Gary (ECY)
From: Bob Yoder [redmondblog@gmail.com]
Sent: Tuesday, February 02, 2010 12:50 PM
To: Bailey, Gary (ECY)
Cc: Bob Yoder
Subject: Comment on proposed Gravel and Sand permit update

Bob Yoder, City of Redmond

Dear Mr. Bailey -
As a citizen of the City of Redmond I'd like to comment on your proposed Gravel and Sand permit update.

Within the last year the City conducted a Shoreline Master Plan Update, including Evans Creek. State Department of Ecology was the decision-maker, so you should have some good data on the Industrial Park through which Evans Creek runs.

I looked in your Fact Sheet to see if SE Redmond industrial area was one of your 500 + sites, but couldn't find the list. If it's not on the list, I'm requesting you add it. Thank you.

As you probably know from your Shoreline work, SE Redmond industrial is loaded with gravel roads, gravel piles, and gravel processing facilities (Cadman). SE Redmond industrial recycles concrete (AWR), pressure treated wood (AWR), and asphalt (Watsons). AWR and Watson's concrete and asphalt materials are piled right on top of Wellhead Protection Zones 1 & 2. The piles also lie directly on the banks of Evans creek. Recycled concrete is spilling directly into the county wetlands. A large outfall pipe can be seen on the steep bank below Watson Asphalt

Many Industrial infiltration systems are over 30 years old. Untreated stormwater runs off into Evans creek and the county wetlands to the East -- is probably significant. The county wetlands

are monitored by the city with DOE wellheads. The wetlands provide significant acquifer recharge.

If not already done, hope you will include the Cadman, AWR, Watson, and other similar site in SE Redmond in your update. Thank you. I sent your permit announcement to a city councilmember and public works executive. They were very interested.
Sincerely,
Bob Yoder
10019 169th Ave. NE
Redmond, WA. 98052
425-802-2523

PS. Currently, the industries do not have to account for gravel as an impervious material, even though gravel is listed in the City Municipal Code. Therefore, as ratepayers, their calculated stormwater rate doesn't include gravel as a contributor to treatment costs. The residental and businesses have to pay most of the $600,000 that was recently collected from city-wide stormwater billings to pay for SE Redmond infiltration modification upgrades.

2. **Response: Cadman and Watson are covered under the sand and gravel general permit and are subject to its requirements. Ecology required All Wood Recycling to apply for an individual State Waste Discharge permit based on their discharge to ground subject to the Underground Injection Control Program.**

Smith & Lowney, p.l.l.c.
2317 East John Street
Seattle, Washington 98112
(206) 860-2883, Fax (206) 860-4187
February 19, 2010
Via e-mail (gary.bailey@ecy.wa.gov)
Gary Bailey – Sand and Gravel General Permit Comments
Washington Department of Ecology
P.O. Box 47600
Olympia, WA 98504

Richard A. Smith, Puget Soundkeeper Alliance

Re: Comments on Draft Sand & Gravel General Permit

Dear Mr. Bailey:

These comments on the draft Sand & Gravel General Permit are submitted on behalf of Puget Soundkeeper Alliance. The draft permit includes a number of conditions, including but not limited to the unjustified deletion of effluent limitations, the use of dilution factors in calculation

of turbidity effluent limitations, inadequate effluent limitations for discharges to 303(d)-listed waters, and incorporation by reference of unspecified manuals, which are very troublesome. Ecology's failure to comply with the antidegredation policy is also egregious. Furthermore, the draft permit and Fact Sheet are sloppily done in several instances. Given the importance of this permit – there are more than 600 permittees across the state – it is likely that Puget Soundkeeper Alliance and/or other environmental organizations will appeal this permit unless substantial improvements are made.

Antidegradation

Ecology has failed to comply with the requirements of the antidegradation policy with regard to the draft permit. Ecology has not done the analysis, developed the adaptive process, or provided the public notice mandated by WAC 173-201A-320, Tier II antidegradation protection.

Tier II applies whenever a water quality constituent is of a higher quality than a designated water quality criteria (i.e., whenever a waterbody is not on the 303(d) list) and a new or expanded action conducted under an NPDES permit is expected to cause a measurable change in the quality of the water. WAC 173-201A-320(1). New or reissued general permits must undergo an analysis under Tier II when Ecology develops and approves the general permit. WAC 173-201A-320(6).

Tier II analysis requires a determination of whether the discharge to be authorized has the potential to cause a measurable change in the physical, chemical, or biological quality of the receiving waters. WAC 173-201A-320(3). If this determination is affirmative, "then an analysis must be conducted to determine if the lowering of water quality is necessary and in the overriding public interest." WAC 173-201A-320(4). "Information to conduct the analysis must be provided … by [Ecology] in developing a general permit …" and must include specified information about social, economic, and environmental costs, as well as "site, structural, and managerial approaches" to prevent or minimize the lowering of water quality. Id.

These requirements apply to general permits. As Ecology explained in a January 19, 2006, letter to EPA[1],

> During the development or re-issuance of a general permit, Ecology will assess the anticipated level of degradation due to new or expanded discharges that are likely to be authorized by the general permit, and that level of degradation will be taken into account during the antidegredation review of the general permit. The permit or fact sheet will contain a determination whether or not the lowering of water quality from the anticipated discharges is necessary and in the overriding public interest.

Nowhere in the Fact Sheet or other materials available with the draft permit is any discussion of the anticipated level of degradation due to new or expanded discharges likely to be authorized by the general permit or of whether the lowering of water quality is necessary and in the overriding public interest. Has Ecology made the assessments and determinations required by WAC 173-201A-320(4)? Where are these discussed?

3. Response: Antidegradation requirements for general permits are specified in 173-201A-320(6). Antidegradation is applicable when there is a new or expanded discharge causing a measureable degradation of water quality. Ecology has no way to predict the number of new or expanded discharges under this general permit. The rule acknowledges this fact and places requirements for general permits in 173-201A-320(6).

Furthermore, to allow meaningful public participation in the Tier II antidegradation analysis, Ecology explained that it would provide information about all permittees in the public notice process for general permits:

> A list of the facilities applying for coverage along with a list of the potentially effected (sic) water bodies will be public noticed each time a permit is reissued and each time that a facility applies for coverage under a general permit. The public notice will occur in both a local paper and on Ecology's webpage. The notice will identify the facilities requesting coverage, the receiving water bodies they may affect, and the fact that general permit conditions were established with the expectation that the facilities covered will meet water quality standards; including the antidegradation requirements. A contact name for obtaining more information on the antidegradation review will also be included.

Jan. 16, 2006, Ecology letter to EPA. EPA specifically relied on these provisions in its determination approving the changes to the antidegradation regulation as a means to allow antidegradation review on the general permit level, rather than permittee-by permittee. May 2, 2007, EPA letter to Ecology.

[1] January 19, 2006, letter from David C. Peeler, Ecology Water Quality Program Manager, to Michael Gearheard, U.S. EPA Region 10. EPA explicitly relied on Ecology's representations made in this letter in its approval of Washington's 2003 amendments to the antidegradation provisions of the water quality standards. May 2, 2007, letter from Michael F. Gearheard to David C. Peeler.

It appears that Ecology has not followed these procedures for the draft permit. Has Ecology public noticed on its website and in appropriate local papers the list of facilities applying for coverage and the receiving waters that they may affect? Has Ecology provided a contact name for providing more information on the antidegradation review?

4. Response: No instructions were given to Ecology staff regarding public notice requirements and antidegradation other than Supplementary Guidance (7/18/2005). The process in the referenced letter appears to conflict with the language in WAC 173-201A-320(6).

Ecology requires all new or expanded facilities requesting coverage or modified coverage under the sand and gravel general to provide public notice as follows:
Public Notice Requirements

The application for coverage and modification of application for coverage must go through a public notice process. Public notice must be published once each week for two consecutive weeks (twice), at least seven days apart, in a newspaper of general circulation within the county in which the discharge is proposed. The public has up to 30 days after the second publication to comment on the proposal. At a minimum, public notice must include the following:

1. A statement that the applicant is seeking coverage under the Washington Department of Ecology's NPDES General Permit for Stormwater Discharges Associated with Industrial Activities;
2. The name, address and location of the facility where the proposed discharge would occur;
3. The name and address of the applicant if different from facility in 2. above;
4. A description of the type of business, description of areas from which a stormwater discharge will occur including acreage, and when industrial activities will begin;
5. A brief description of stormwater management activities that provide source control and treatment;
6. Whether application is for a new permit coverage or modification of existing permit coverage;
7. Identification of the waters that will receive the stormwater discharge and if a mixing zone is included;
8. Whether the facility has any other wastewater discharge permit; and
9. The statement: "Any person desiring to present their views to the Department of Ecology concerning this application, or interested in the department's action on this application may notify the Department of Ecology in writing within 30 days of the last date of publication of this notice. Comments shall be submitted to: Department of Ecology, P.O. Box 47696, Olympia, WA 98504-7696."

Ecology believes number 5 of the public notice requirement complies with the antidegradation regulation and supplemental guidance.

A list of facilities covered under the sand and gravel general permit is available to the public on a website
https://fortress.wa.gov/ecy/wplcsreports/public/f?p=wplcs_online:permit_search:5275013056624509

A contact name is provided with the public notice for issuance/reissuance of a general permit.

Finally, where "information regarding the existence, effectiveness, or costs of control practices for reducing pollution and meeting the water quality standards may be incomplete" because a water quality control program and associated control technologies are "in a continual state of improvement and development," Ecology may satisfy the requirements of Tier II for a general permit by adopting "a formal process to select, develop, adopt, and refine control practices for protecting water quality and meeting the intent" of the antidegradation policy. WAC 173-201A-320(6)(c).

> This adaptive process must:
>
> (i) Ensure that information is developed and used expeditiously to revise permit or program requirements;
>
> (ii) Review and refine management and control programs in cycles not to exceed five years or the period of permit reissuance; and
>
> (iii) Include a plan that describes how information will be obtained and used to ensure full compliance with [the antidegradation policy]. The plan must be developed and documented in advance of permit or program approval under [WAC 173-201A-320].

WAC 173-201A-320(6)(c).

In other words, this adaptive process is one that Ecology must follow to develop and use information about the efficacy of its regulation and the available technology to review and refine

general permit requirements and/or other programs in conjunction with the five-year permit cycle, and there must be a documented plan about how this is to be done before the general permit can be issued.

While information about the best control practices for reducing pollution from Sand and Gravel General Permit discharges is incomplete, particularly with respect to stormwater discharges, Ecology has no documented plan to comply with these requirements. The Fact Sheet includes a statement on pages 18 – 19 describing a defunct protocol for evaluating emerging stormwater treatment technologies, identifying some mechanisms that Ecology *may* use to develop and spread information about stormwater control techniques, and concluding that "[t]hese efforts and the benchmarks in this permit, based on water quality criteria, constitute Ecology's antidegredation plan." This constitutes no plan whatsoever to ensure that information about technology for control of sand and gravel discharges – both stormwater and process wastewater – is developed and used expeditiously to revise requirements in future permits. No description of how such information will be obtained and used to ensure full compliance with the antidegradation policy is presented. No timelines, milestones, or schedule is included. Though the inclusion of permit conditions for benchmarks and adaptive management responses for permittees could not satisfy the requirements of WAC 173-201A-320(6)(c), which call for an adaptive process for *Ecology* to improve *its* regulation, the Fact Sheet's reference to "benchmarks in this permit" is particularly odd – the draft permit includes no meaningful benchmarks and no adaptive management requirements in response to benchmark exceedences. How has Ecology complied with the requirements of WAC 173-201A-320(6)(c)?

5. **Response: The TAPE process is not defunct. Ecology closed the TAPE process to new applications in November 2008 due to loss of staff at Ecology and the attrition of membership in the review committee (TRC). Ecology no longer accepts new applications, but Ecology continued to evaluate products previously accepted. The TRC is no longer in place to assist Ecology in the review of products.**

   Under a grant from Ecology, the City of Puyallup is working to reopen the TAPE application process. The City has contracted with Washington State University and the University of Washington to assist them in this work. Work being done under the grant includes an update of the TAPE Guidance Manual to take into account lessons learned in previous studies, taking on the review effort previously done by Ecology and TRC, and establishing a Board of External Reviewers (BER) to provide technical assistance, when needed.

   Following finalization of the revised TAPE Guidance Manual (Fall 2010), Ecology will accept new applications and existing applications can continue to be reviewed in a timely manner. Ecology will work closely with the grantees in the development of the new procedures and retains the right of final approval for all emerging technologies that pass through the TAPE process.

The TAPE grantees received a second grant from Ecology to begin the development of a Stormwater Technical Resource Center (SWTRC). Development of the SWTRC follows the guidance of RCW 90.48.545.

The SWTRC will house the new TAPE program. The grantees created a committee to assist in the development of a business plan for the SWTRC and to investigate funding strategies. A second committee provides similar assistance for the TAPE grant.

Ecology will incorporate any appropriate stormwater control processes developed in the TAPE process in developing the conditions for the next reissuance of this permit.

Engineering reports

WAC 173-240-110 requires submission of engineering reports, plans, and specifications for a project to construct or modify industrial wastewater facilities, and the approval of these before the project can be undertaken. WAC 173-240-020(9) defines "industrial wastewater facility" as "all structures, equipment, or processes required to collect, carry away, treat, reclaim, or dispose of industrial wastewater." WAC 173-240-020(8) defines "industrial wastewater" as "the water or liquid that carries waste from industrial or commercial processes, as distinct from domestic wastewater. These wastes may result from any process or activity of industry, manufacture, trade or business, from the development of any natural resource, … The term includes stormwater and also leachate from solid waste facilities."

While compliance with the permit may require the construction or modification of industrial wastewater facilities, either with respect to wastewater or stormwater (both of which are "industrial wastewater" as defined by WAC 173-240), the draft permit nowhere requires submission and approval of an engineering report at WAC 173-240 mandates. For instance, treatment BMPs under S5.C.5.d. may constitute "industrial wastewater facilities" under WAC 173-240, yet the permit requires no submission of an engineering report when this is the case. The draft permit is inconsistent with these requirements and appears to contemplate violation of the engineering report provisions. How is the draft permit consistent with the requirements of WAC 173-240?

6. Response: The draft permit requires submittal of an engineering report when wastewater treatment devices are installed or modified (General Condition 7).

Removal of daily maximum effluent limitations

The omission of daily maximum effluent limitations for turbidity and total suspended solids constitutes impermissible backsliding in violation of 33 U.S.C. § 1342(o). The change from the previous permit, which included both daily maximum and monthly effluent limitations for these parameters, to the draft permit, which includes only monthly average effluent limitations, leaves the draft permit with "effluent limitations that are less stringent than the comparable effluent

limitations in the previous permit" in violation of the general prohibition in § 1342(o)(1). None of the exceptions identified in § 1342(o)(2) applies, so the change is prohibited.

How does the omission of daily maximum effluent limitations for turbidity and TSS comply with the prohibition of the anti-backsliding provision?

7. Response: The current permit requires two samples per month for turbidity and the limits are 50 NTU monthly average and 50 NTU daily maximum. The current permit requires one sample per quarter for TSS and the limits are 40 mg/l monthly average and 80 mg/L daily maximum.

Effluent limits are based on a long term average (LTA). The long term average is derived from the performance of a treatment device (technology-based) or that necessary to meet water quality standards. Technology-based monthly limits are derived as the LTA plus 1.645 times the standard deviation of the LTA. This results in a type two error (false non-compliance rate) of 5%. The daily maximum limit is set as the LTA plus 2.326 the standard deviation of the LTA. This results in a type two error of 1%. The fact sheet for the current permit defined the basis of the turbidity limit of 50 as "economically achievable". That language implies a technology-based limit. There is no explanation in the previous permit as to why the daily maximum was set at the same number as the monthly average. Ecology assumes this was a mistake and therefore the daily maximum for turbidity is reinstated in the permit at 71 NTU.

What is the basis for the omission of the daily maximum effluent limitations for turbidity and TSS? The Fact Sheet explains that the daily maximum limitations are removed "because the permit requires one sample per quarter and therefore the limit is the monthly average." For starters, this is no reason whatsoever. Omission of a daily maximum effluent limitation in the monitoring regime described would allow a permittee to game the permit by taking additional samples to drive down a monthly average if a first quarterly sample exceed the monthly average effluent limitation. This is likely to present an enforcement difficulty that is totally unwarranted. Second, there has been no change in the frequency of monitoring for turbidity and TSS from the previous permit to the draft. It is not true that the permit requires one sample per quarter for turbidity – two samples per month are required.

8. Response: The draft permit requires 2 samples per month for turbidity and one sample per quarter for TSS.

Ecology's definition of daily maximum limit is the same as EPAs maximum daily discharge which is the highest daily discharge. The highest daily discharge is: the ''discharge of a pollutant'' measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the ''daily discharge'' is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the ''daily discharge'' is calculated as the average measurement of the pollutant over the day.

Effluent limits are process control parameters and Ecology expects permittees to meet the limits. This may mean sampling several times a day when possible. For most pollutants there is no opportunity to "game the system" because of the time necessary to sample and analyze for the pollutant.

The current permit contains effluent limits for TSS of 40/80 monthly/daily or 25/45 monthly/daily. The sampling frequency for TSS is once per quarter. As the fact sheet explains when only one sample is taken during a compliance period, the monthly average is the enforceable number because it is the lower limit. The daily maximum becomes irrelevant. If a discharger wants to sample more than once per quarter, Ecology believes that is consistent with the objective of pollutant control.

Turbidity effluent limitations

The above-cited Fact Sheet statement is inconsistent with another that provides a basis for continuing the 50 NTU monthly average turbidity effluent limitation. On page 16, the Fact Sheet states:

> Based on turbidity data collected during the previous permit cycles, Ecology determined that 50 NTU was economically achievable by dischargers covered by this permit and therefore constituted a valid technology-based effluent limit (AKART, BCT). The current permit contains a turbidity limit of 50 NTU as a monthly average and 50 NTU as a daily maximum. During the term of the current permit, turbidity exceedances accounted for 36% of reported permit violations. The proposed permit continues the 50 NTU as a monthly average limit.
>
> Why does Condition S1. not comport with this paragraph from the Fact Sheet?

9. Response: The fact sheet language cited was inadvertently carried over from the previous fact sheet unchanged. It has been corrected.

Has Ecology determined whether the technology-based turbidity effluent limitation is adequate to ensure that discharges do not cause or contribute to violations of water quality standards? Has Ecology conducted a reasonable potential analysis for turbidity?

10. Response: Turbidity is a relative criteria and depends on the background turbidity therefore it is not amenable to reasonable potential analysis even for individual dischargers. The 50 NTU limit is a BPJ technology based limit. As noted, Ecology believes 50 NTU is protective with a minimal amount of dilution in the receiving water. Surface water discharges occur infrequently, as noted in the fact sheet, occur during high flow periods generally, and to receiving waters which vary from wetlands to rivers. The wide range of discharge situations does not lend to reasonable potential analysis as defined by EPA (1991). Reasonable potential analysis described in the EPA Technical

Support document is possible only for discharges of toxics with absolute limits discharged into a specific water body.

A minimal dilution factor of 10 would be necessary to meet the water quality criteria if the receiving water turbidity was near zero.

As noted on page 21 of the Fact Sheet, the water quality criteria for turbidity are either 5 or 10 NTU over background when background is 50 NTU or less, and 10 or 20 percent over background when background is more than 50 NTU. How does the 50 NTU effluent limitation ensure that discharges do not violate these criteria? Do no permittees discharge to waters in which background is less than 50 NTU? The Fact Sheet (p. 22) states that a dilution factor of 10 was considered in the evaluation of the need for more stringent turbidity effluent limitations. However, numeric water quality based effluent limitations must be sufficient to attain a level of water quality that is derived from and complies with all applicable water quality standards. 40 C.F.R. § 122.44(d). The PCHB has ruled that there can be no dilution factors without mixing zones, and no mixing zones without compliance with Ecology's mixing zone regulation. *Puget Soundkeeper Alliance v. Ecology*, PCHB No. 05-150 (Boatyard General Permit case) (1/26/2007); *Puget Soundkeeper Alliance v. Ecology*, PCHB No. 02-162 (Industrial Stormwater General Permit case) (1/6/2003). As the Fact Sheet describes (p. 11), there were nearly 5000 violations for the 644 permittees from February 2005 to September 2009. These violations were for reporting and monitoring problems, and exceedences of turbidity, TSS, pH, and oil/grease limitations. All of these violations are related to failure to implement BMPs and failure to implement AKART. This constitutes widespread failure to implement AKART, circumstances in which the PCHB has emphasized that mixing zones and dilution factors are particularly inappropriate.

What is the justification for use of a dilution factor of 10 in consideration of the water quality impacts of the 50 NTU turbidity effluent limitation? How does use of this dilution factor comport with the PCHB's repeated rejection of the use of dilution factors in general permits?

11. Response: The fact sheet says that of 4992 violations of the current permit, 80% were for failure to report or sample for a parameter. 353 or 7% were for exceeding the turbidity limit. Many of these were marginal exceedances. Considering the high variability of turbidity, the difficulty of obtaining 50 NTU with clay-type native soils, and the discharge characteristics of this industry, Ecology believes a 7% exceedance rate is protective of water quality. In addition, Ecology does not believe that the rate of non-compliance necessarily invalidates the pollutant control mechanism or limit.

A dilution factor is appropriate when AKART is achieved and other factors are met.

Ecology believes the PCHB decisions on dilution factors were specific to the permit subject to hearing.

TSS effluent limitations

The Fact Sheet notes (p. 15) that "EPA reported the level of effluent quality attainable for non-rainfall conditions, including all facilities [in the crushed stone industry] and all wastewater streams (excluding stormwater) as a monthly average TSS of 38 mg/l and a maximum daily TSS of 80 mg/l." This is cited as support for the 40 mg/l monthly average TSS limitations for "most categories in the general permit." Why are the monthly average effluent limitations 40 mg/l instead of 38 mg/l? How does the 40 mg/l effluent limitation require AKART if EPA's study found that 38 mg/l was attainable?

12. Response: This limit and text was continued from the current permit and there was no explanation in the previous fact sheet of why 40 was used instead of 38. We assume it is because there is no practical difference between 38 and 40 and 38 was rounded up for convenience.

No visible sheen effluent limitation

The change in the effluent limitation for visible sheen also constitutes impermissible backsliding in violation of 33 U.S.C. § 1342(o). The previous permit gives the effluent limitation simply as "No Visible Sheen," which the draft permit ambiguously gives the limit as "Visible Sheen," clarified by footnote 3: "The occurrence of a visible sheen is not a violation if the Permittee complies with all three of the following: a. Implements preventive BMPs, b. Reports the occurrence on the discharge monitoring report, c. Explains the cause and describes the immediate solution and future preventive practices on the discharge monitoring report." As the resulting effluent limitation is less stringent than the comparable effluent limitation in the previous permit, the general prohibition of § 1342(o)(1) applies. None of the exceptions identified in § 1342(o)(2) applies, so the change is prohibited.

How do the changes to the "no visible sheen" effluent limitation comply with the prohibition of the anti-backsliding provision?

13. Response: The permit wording is changed to make it clear that the discharge of sheen to surface waters is a violation.

Furthermore, no basis for the change to the "no visible sheen" limitation is provided. The change is ill-advised as it would make it very difficult to conduct enforcement against permittees with oil discharge problems. Under the draft language, no matter how seriously or often a permittee discharges an oil sheen, there is no permit violation and no enforcement so long as the permittee satisfies the requirements of (grammatically incorrect) footnote 3. No longer would presence of a visible sheen itself be a permit violation and basis for enforcement. Under the draft language, an enforcer would have to prove that "preventive BMPs" are not implemented and that prescribed reporting was not done. Implementation of BMPs and the reporting required by footnote 3 are already independent requirements of the permit.

What is the basis for the changes to the "no visible sheen" effluent limitation?
The footnote should be removed and the language restored to the "no visible sheen"

language of the previous permit.

14. Response: The presence or observation of sheen is often subjective, is dependent upon the presence or angle of sunlight, and may be due to causes other than petroleum oil. Ecology doesn't enforce on oil sheen unless there is no effort to prevent or control it when it is observed. The change in wording reflects our actual enforcement practice, however, discharge of sheen to surface water remains a permit violation.

Nitrate + nitrite N effluent limitation

Table S1. of Special Condition S1. includes quarterly monitoring and a 0.68 mg/L figure for Nitrate + Nitrite N for stormwater discharges from some categories of permittee. However, footnote 4, which is attached to the column header, mysteriously states "Monitoring benchmark". No explanation or further discussion of this effluent limitation or benchmark is provided in the permit or in the Fact Sheet. Is the 0.68 mg/L Nitrate + Nitrite N an effluent limitation or a benchmark? Is it a daily maximum or monthly average figure? If it is a monitoring benchmark, what does the permit require if it is exceeded? If it is a benchmark, why is it in the effluent limitation table? What is the basis for its inclusion?

15. Response: The permit is changed to note the limit is only applicable for operations that use explosives to mine material. With one sample per quarter the numeric value is a quarterly average limit.

pH effluent limitation

While the Fact Sheet (p. 25) explains that the pH limit for facilities included in the Construction Sand and Gravel category (NAICS 212321, SIC 1442) is eliminated based on a review of data for this category. However, SIC 1442 did not have a pH limit in the previous permit. Instead, the draft permit proposes to eliminate the pH limit for the Industrial Sand category (NAICS 212322, SIC 1446). This appears to constitute impermissible backsliding. How does the elimination of this effluent limitation satisfy the requirements of the backsliding prohibition of 33 U.S.C. § 1342(o)? What is the basis for the elimination of this effluent limitation?

16. Response: Our version of the current permit requires pH monitoring and limits for 1442.

Elimination of pH in category SIC 1446 is for the same reason as for 1442. There is no addition of acids or bases therefore there is no concern regarding the exceedance of the pH limitations.

Reasonable potential analysis

Federal regulations require that reasonable potential analyses be performed for all NPDES permit that must be conditioned to ensure compliance with water quality standards, including this one. 40 C.F.R. § 122.44(d). What reasonable potential analyses did Ecology perform in the development of the permit?

17. Response: This is a general permit. A reasonable potential analysis as defined by EPA guidance is not required or possible. However, Ecology required permittees to monitor discharge and receiving water flow in the previous permit to assess possible impact of this category of dischargers to water quality. The results are discussed in the fact sheet.

Condition S3.

Maintenance shop discharges

S3.C. prohibits maintenance shop discharges except for discharges from maintenance shops that existed before February 5, 2005, where other conditions are satisfied as well. Technology-based requirements are intended to become more stringent over time. Permittee's with "old" maintenance shops should now be required to eliminate their discharges. Does Ecology anticipate that these discharges will continue indefinitely? When will they be disallowed? How does this requirement satisfy demands of AKART? It does not.

18. Response: The exception for maintenance shop discharge containing pollutants is eliminated.

Furthermore, the S3.C. draft language is faulty because it bases the exemption on the age of the maintenance shop itself instead of on the maintenance shop discharge. Under this language, a permittee could lawfully add a new maintenance shop discharge, provided that the maintenance shop existed before February 5, 2005, and the other conditions are met. The language should be changed to specify that it is the discharge itself, not just the maintenance shop, that must have been in existence before that date. In addition, the language "adequate treatment" is subjective and inappropriate because it does not define AKART. If there are permittees who have maintenance shop discharges that present particular challenges in their elimination, they should be covered under individual permits and individual AKART determinations should be made.

AKART for impoundment facilities

Condition S3.F. 3. of the draft permit states that AKART must be applied with respect to impoundment capacity. This is an inadequate permit condition – the permit should define AKART, not merely state that it must be applied. What is AKART for impoundment capacity in the context of this condition?

19. Response: The paragraph is changed to:

> Any impoundment must have adequate capacity to provide treatment ~~for water quality~~ and flow control of *wastewater* ~~except when~~ Tthe *design storm for calculating the size of the impoundment is the (10-year, 24-hour precipitation event)*

~~is exceeded and *All Known, Available, and Reasonable Methods of Prevention, Control, and Treatment (AKART)* has been applied~~.

Condition S3.F.4. of the draft permit requires that "any necessary repairs" be made before a lined impoundment can be refilled. This language is impermissibly subjective. What constitutes a "necessary repair"? The permit should require that a certified engineer inspect impoundments on a regular and frequent basis and provide a certified report about the structural integrity of the liner to allow continued use of the impoundment.

20. Response: Necessary repairs are those required for structural strength and containment. Ecology doesn't believe a certified engineer is required to determine a lined impoundment requires repair.

Condition S3.F.5. of the draft permit appears to allow discharges to mined pit ponds to escape the application of AKART. How does the permit require the application of AKART to these discharges?

21. Response: Ecology assumes there is no discharge of pollutants to ground water or surface waters in a mined pit pond. No treatment of this water is reasonable.

Discharges to 303(d)-listed waters

Conditions S3.G.4. and 5. of the draft permit are inadequate to ensure that discharges do not cause or contribute to violations of water quality standards in 303(d)-listed waters and are inadequate under the law. Ecology's NPDES permit writers manual states that "general permits will contain language which says, 'The permittee's discharge must not cause or contribute to an excursion of the State's water quality standards, including the State's narrative criteria for water quality [40 CFR 122.44(d)(1)(i)]. If you discharge a pollutant which is named as a pollutant causing a water quality standards' violation at the location named on the State's 303(d) list you shall not discharge that pollutant at a concentration above the State's water quality standard.'" Why doesn't the draft permit follow the explicit direction of the permit writers manual and include the specified language for discharges to 303(d)-listed waters?

22. Response: We were unable to find the quoted text in the Permit Writers Manual. Ecology believes that permit conditions S3.G.4 and 5 are adequate to ensure that discharges do not cause or contribute to violations of water quality standards.

With respect to S3.G.5., how are the monitoring requirements of the permit adequate to determine whether loadings or concentrations of the listed pollutants are increased? What is the applicable baseline (i.e., loading or concentration increased as compared to what?)?

23. Response: The concentrations are compared to a facility's historic data.

Without more specificity and adequate monitoring and reporting requirements, S3.G.4. and 5. cannot ensure that discharges do not cause or contribute to water quality standards violations in

waterbodies that are already listed as impaired, and these important standards can not be enforced.

24. Response: Ecology believes these conditions are enforceable.

Condition S4.

Inspections

S4.A. requires inspections of specified equipment on a specified schedule. However, the permit does not appear to include any requirement for documentation of these inspections – either that they were conducted or what was found or done in response to findings. Appropriate recordkeeping requirements should be added.

25. Response: The first sentence of S4.A is changed to also cover 1. and 2.

S4.B.3. requires a visual inspection "of the point of discharge to surface water …." To ensure that any visual observation that could be significant is made and recorded, this language should be changed to require visual inspection "of the receiving waters and the discharge at the point of discharge."

26. Response: The language requires recording of any visible change in turbidity or color.

Monitoring plans and receiving water studies

Monitoring plans and receiving water studies under S4.B.4. and 5. should be submitted with permit applications for new facilities, and Ecology's approval of these should be made before or at the same time as a grant of permit coverage. This is important to allow public review, comment, and opportunity for appeal of these crucial aspects of new discharges to impaired waterbodies. Furthermore, the permit should explicitly state that the approved plans under S4.B.4. and 5. must be implemented as approved.

27. A monitoring plan is required to be available at the time the application is submitted. Few applicants would know at the time of application that they needed a receiving water study. A receiving water study plan, if required, must be completed before operation begins.

S4.D. is vague and potentially unenforceable in foreseeable circumstances. It requires stormwater monitoring at inactive sites when there is a discharge and the permittee or operator "adds or withdraws raw materials or finished products from stockpiles." Does this refer to the standard suite of monitoring requirements? Does it require monitoring only on the day that materials are added or withdrawn, or during that week, or month, or quarter, or year? After addition or withdrawal, when does the monitoring requirement end?

28. Response: The permit is changed to explicitly require monitoring any time there is a withdrawal within a 3 month period. The time and type of monitoring for discharges

to surface water is specified as the same as type 3 stormwater (Table 3). In addition, all BMPs are required to be in place and functioning.

S4.F.1.a. refers to the "description of potential pollutant sources required under this permit …." To what description and requirement does this refer?

29. Response: This requirement refers to condition S5.C.5.b. Inventory of Materials and Pollutants. This section was expanded to clearly require listing of expected pollutants.

The log of observations from erosion and sediment control inspections required by S4.F.3.a. should include corrective actions in addition to observations.

30. Response: The text requiring documentation of corrective actions is added.

S4.G. should specify that all points of discharge from the permittee's site must be monitored. Does the draft permit require monitoring of all points of discharge? If not, why not and where does the permit specify which are to be monitored?

31. Response: Ecology doesn't believe that it is necessary to monitor all points of discharge. The monitored discharge locations are required to be defined in S4.B.1 and 2.

Condition S5.

Stormwater management plans

S5.1. contains superfluous language that muddies the meaning of the requirement to implement the SMP and creates a potential enforcement difficulty. The language should state, "Fully implement the SMP." The inclusion of the qualifying language, "… to maintain compliance with the permit conditions," creates ambiguity. Isn't implementation of the SMP itself required to maintain compliance with the permit conditions? If only some parts of the SMP need be implemented "to maintain compliance with the permit conditions," which parts are these?

32. Response: The text is changed.

S5.4. contains a typographical error. It should read "to the public when requested," instead of "or the public when requested." S5.4. should also specify that the SMP copy must be provided within a specified time – perhaps ten days.

33. Response: The text is changed.

The first sentence of S5.A. includes vague language. It should require ESCP preparation before earth moving activities occur, not "any time earth moving activities occur."

34. Response: The text is changed.

S5.B.1.c. should require sampling of all points of discharge for a period of time, perhaps two years, to allow a considered determination of what constitutes representative sampling. How does anyone know whether the plan identifies enough sample points to provide representative sampling of all point source discharges without characterization by actual sampling of all discharge points?

35. Response: We believe the judgment of representative can be made by the type of activity occurring at the discharge point. Points of monitored discharged are reviewed by Ecology inspectors at the time of inspection. Inspectors and permit managers also provide guidance and review of plans and site conditions.

S5.C.3.a. and b. require implementation of additional or modified BMPs "as soon as possible." This is vague and likely to present enforcement difficulties in many circumstances. What does "as soon as possible" mean? These conditions should be changed to require implementation of additional or modified BMPs "immediately or in accordance with an implementation schedule described in the SWPPP that explains barriers to immediate implementation and sets forth a timeline for implementation as soon as possible."

36. Response: The time required would differ according to the type of BMP. We believe the condition is enforceable without being prescriptive. The word practicable is used in place of possible.

S5.C.4. impermissibly incorporates unspecified stormwater manuals. The PCHB has repeatedly ruled that this is not lawful, and it is extremely annoying that Ecology persists in inserting this type of language in general permits. Which versions of the eastern and western stormwater management manuals are referenced in S5.C.4.a. and b.? What are the "other equivalent stormwater management guidance documents approved by Ecology," and where are these identified? The permit may not incorporate in this manner manuals that have yet to be modified or approved because to do so deprives the public of opportunities for participation and appeal. This language essentially allows backdoor permit modification through post-permit issuance manual approval or modification.

37. Response: The current versions of the stormwater manuals are 2005 for the Western Washington Manual and 2004 for the Eastern Washington Manual as noted in the references. The version dates are added to the references. There are currently no other equivalent stormwater management documents approved by Ecology, however, Ecology has agreed to work with the industry to develop a specific BMP guidance manual. The definition of "equivalent stormwater management documents approved by Ecology" has been changed to include "and subject to public review and comment".

S5.C.5.a. does not require that the site map include location of the discharge points themselves. It should explicitly require inclusion of this important information.

38. Response: The discharge points are required.

From S5.C.5.c.3., the words "must be fitted" should be deleted.

39. Response: The suggested text is deleted.

S5.C.5.c.13. is vague. It should specify when or in what circumstances source control BMPs are required in the specified areas. In what circumstances will source control BMPs be required in the specified areas?

40. Response: We have specified that these areas require source control BMPs when inspection shows evidence of contamination.

S5.C.5.d. is vague. In what circumstances are the runoff conveyance and treatment BMPs identified required?

41. Response: The text is changed to "The *SWPPP* must include runoff conveyance and *treatment BMPs* as necessary to control pollutants and comply with the *stormwater* discharge limits in S2 and S3."

Condition S6.

Monitoring at facilities "not operating"

S6.A.2. implies that monitoring is not required for facilities that were "not operating" during a given period. This does not comport with permit requirements –there is not an exemption for monitoring for facilities that are "not operating," nor should there be. Temporary stoppage of operations at a site provides no assurance that appropriate BMPs will be implemented or that effluent limitations will be met. The references to "not operating" should be removed from this condition.

42. Response: The permit requires all BMPs to be in place and functioning at inactive sites. Monitoring is required at inactive sites when material is removed from stock piles within 3 months of the time of reporting.

Condition S8.

The term "accessory uses" should be italicized to indicate that it is defined in Appendix B.

43. Response: The section is reworded.

Condition S9.

Portable facilities

S9.B. provides for one-time permit application for portable facilities and blanket coverage for these facilities as they move from one location to another. This appears to violate legal requirements for public participation. Does this scheme mean that once a portable facility is

permitted, it can relocate in the middle of the permit term to a new location and new receiving waters and people near the new location who care about the new receiving waters would have no opportunity to comment on or challenge permit coverage? How does this satisfy the requirements for public participation, or comport with the CWA direction that public participation be provided for and encouraged, 33 U.S.C. § 1251(e)? Changing the receiving waters seems, at a minimum, to be a major permit modification that requires public notice and participation.

44. Response: A portable may move location with the appropriate notification to Ecology. The permit relies on local zoning, local permitting and SEPA to provide notice of land use change (new or renewed activity). The permit specifies the pollutant control measures to protect water quality wherever the portable operates. The facilities using portable equipment are typically small gravel or rock pits for a local road project, they operate during the summer period, and do not discharge. Ecology doesn't believe the low potential for pollution warrants the administrative burden of permit modification.

General Conditions

G5.2.c. refers to S3.E., which does not concern notification of bypass.

45..Response:The text is changed to reference S6.E.

Definitions

The definition of "accessory uses" should be changed to be grammatically correct.

46. Response: This section is changed. See response 160.

The referenced date in the definition of "new facility" should be changed.

47. Response: The referenced date is changed

The definition of TMDL should indicate that a TMDL is only effective after EPA approval.

48..Response: The text is added.

Very truly yours,
Richard A. Smith

Gary Merlino Construction Company

Gary Merlino Construction Company Inc.

February 24, 2010

Washington State Department of Ecology
Attn: Mr. Gary Bailey, Water Quality Program
P.O. Box 47600
Olympia, Washington 98504-7600

Subject: Gary Merlino Construction Company Inc. Comments on the 2010 Draft Sand and Gravel General Permit.

Dear Mr. Bailey,

Gary Merlino Construction Company Inc. appreciates the opportunity to offer comments and suggestions on the Department of Ecology's Draft Sand and Gravel General Permit. We appreciate ecology's continued willingness to listen to the perspective of our company. GMCC Inc. renders the following comments:

1. S2 Effluent Limits: In Table 1, Nitrate and Nitrite monitoring have been added to sand and gravel operations. There is very little explanation as to why these parameters have been added and why they only apply to surface water discharges from sand and gravel operations. Please explain. Additionally, testing for Nitrates and Nitrites will increase operational costs by more than $500 per year. This increase in cost is just one more burden on industry in an already tough economic time.

49. Response: As noted by EPA, nitrate and nitrite are pollutants occurring with blasting operations. The permit is changed to specify that monitoring and a limit are only applicable when blasting.

2. S2 Effluent Limits: In Table 1, pH is still listed in Table 1 on page 7. In the fact sheet it states that pH limits have been removed from the proposed permit for facilities included in the Construction Sand and Gravel category (NAICS 212321). Please update the Table 1.

50. Response: Table 1 is updated.

3. S3.E.4 The Permittee must inspect the structural integrity of a lined impoundment whenever sludge removal occurs and make any necessary repairs before refilling. Inspecting the structural integrity of a lined impoundment every time sludge removal occurs is both overly burdensome and unnecessary. Sludge is removed from lined impoundments by many methods ranging from the use of heavy equipment to continuous removal systems such as an Alar System. Operations employing continuous sludge removal operations whether by conveyer or suction hose should not have to inspect their impoundments daily. In addition, rarely are sludge and water completely removed from impoundments. In such a case, does a visual inspection of the exposed portions constitute an inspection? Please define inspection and please consider allowing sites to manage their impoundment's structural integrity during routine site inspections.

51. Response: Text is added to require periodic inspections for continuous removal systems instead of daily. A visual inspection of exposed portions constitutes an inspection.

4. S3.F.3 Document Use- The Permittee must document the use of any chemicals used to suppress dust. Documentation must identify the chemicals used, their commercial source, the material safety data sheet, and the application rate. The Permittee must retain this information on site or within reasonable access to the site and make it immediately available, upon request, to Ecology. Gary Merlino Construction Company requests that Ecology clarifies this requirement by changing "Chemicals" to "Chemical treatment additives or soil stabilization polymers." We request this change based on the fact that "chemicals" are added to city water. Currently, the City of Seattle adds "chemicals" including 1ppm Chlorine and 1ppm Fluoride to the City's drinking water supply. As this permit is written, every time a site uses city water to suppress dust, they have to document the use of chemicals such as Chlorine.

52. Response: The text is changed as requested.

5. S3.H.2 Any discharge to a pond, lagoon, or other type of impoundment or storage facility that is unlined is considered a discharge to groundwater and is subject to the groundwater quality standards (Chapter 173-200 WAC). Water Ponding at a facility can be considered a discharge to groundwater. The ponding of water should not be considered a discharge to groundwater. This stipulation would require the testing of every puddle on a site. Though it is stated in the fact sheet that representative sampling of discharges to ground water does not mean that facilities must sample all ponds and puddles on site, this requirement does give Ecology the right to monitor and fine sites for every small pothole that is above benchmark values. Most sand and gravel sites are hundreds of acres in size. Should sites really have to monitor every little pothole and detention (in order to avoid fines and permit violations) or continue to manage and monitor their representative discharges?

53. Response: The definition section of the permit clarifies the sampling requirements.

6. S4.A.1 The Permittee must inspect oil/water separators twice per month during the wet season (October 1 – April 30) and monthly during the dry season (May 1 – September 30). The Permittee must retain inspection, maintenance and servicing records on site and make them immediately available to Ecology upon request. The inspection of oil/water separators is a site specific BMP. As such it should be monitored and maintained in accordance with S3.A. There is no reason to require a set number of inspections. If inspections are required they should be consistent with the Washington State Surface Water Management Manual, which they are not.

54. Response: The inspection requirements are made consistent with *Stormwater Management Manual for Eastern Washington* (Ecology publication 04-10-076, 2004) and *Stormwater Management Manual for Western Washington* (Ecology publication 05-10-33, 2005).

7. S4.A.2 The Permittee must inspect all equipment and vehicles weekly for leaking fluids such as oil, hydraulic fluid, antifreeze, etc. Inspections of equipment and vehicles are a site BMP. As such it should be monitored and maintained in accordance with S3.A. There is no reason to require a set number of inspections. Please provide credible data backing this requirement.

55. Response: Ecology considers weekly inspection as a minimum frequency and not burdensome.

8. S4.B The ability to reduce turbidity monitoring has been removed in the new permit. In the old permit it was listed in S4.A.4. It stated: "Facilities may reduce the frequency of turbidity monitoring from two times a month to one time per quarter if:

    a. The facility has demonstrated continuous compliance with permit terms and conditions for a period of 18 consecutive months; and
    b. The Permittee submits to Ecology, a "Request to Reduce Frequency of Turbidity or pH Monitoring" form (ECY 070-34; and
    c. An Ecology inspection and review of turbidity data supports the likelihood of continued compliance; and
    d. Ecology provides written approval to the facility.

    There is no explanation as to why this stipulation has been taken out of the permit. Please provide detail as to why this condition was removed.

56. Response: Ecology removed this condition for several reasons. This condition was only utilized once in the past permit cycle. Secondly, when a reduction is authorized and during the reduced monitoring the facility shows non-compliance, Ecology must write an order to install the original frequency. Our compliance data system cannot accommodate the increase so any non-compliance isn't then tracked. Removal of this condition makes it consistent with the construction stormwater general permit.

9. S4.H The Permittee must ensure that all monitoring data required by Ecology is prepared by a laboratory registered or accredited under the provisions of chapter 173-50 WAC, Accreditation of Environmental Laboratories. Flow, temperature, settleable solids, conductivity, pH, and internal process control parameters are exempt from this requirement. The Permittee must obtain accreditation for conductivity and pH if it must receive accreditation or registration for other parameters. Turbidity has been removed from the list of exempt parameters. There is no explanation as to why this occurred. Sites should not be required to have a lab test their turbidity. Turbidity meters are currently required to be calibrated, are highly accurate and easy to use. The cost of having a lab conduct all turbidity testing would add approximately $2,375 in yearly costs to sand and gravel facilities.

57. Response: Turbidity is added back as exempt

10. S5.C.5.c The SWPPP must include source control BMPs as necessary to achieve AKART and compliance with the stormwater discharge limits in S2 and S3. Ecology has determined the following BMPs will be appropriate for most facilities covered under this permit. The Permittee may omit individual BMPs if site conditions render the BMP unnecessary, infeasible, or the Permittee provides alternative and equally effective BMPs. The Permittee must note the rational for omission or substitution in the SWPPP. Best Management Practices should not be prescriptive. We request that Ecology allows sites to determine their own BMPs based on the needs of their specific site to manage stormwater such that it does not contribute to a violation of water quality standards. Sites should not have to explain or prove to ecology that their BMP is better than the generally accepted BMP as long as it prevents stormwater contamination.

58. Response: The BMPs listed are standard and appropriate for most facilities. The permit condition does not prohibit additional BMPs or improvements as appropriate. This condition was made consistent with the Industrial Stormwater General Permit as recommended during the stakeholder meetings.

11. S5.C.5.c.1 Store all chemical liquids, fluids, and petroleum products, (including empty containers) on an impervious surface surrounded with a containment berm or dike that is capable of containing 10% of the total enclosed tank volume or 110% of the volume contained in the largest tank, whichever is greater. Gary Merlino Construction Company Inc. agrees that chemicals and petroleum products should be stored within secondary containment in order to prevent stormwater contamination. Empty containers however, do not pose a threat to the contamination of stormwater. Dry, empty containers should be allowed on sites uncovered and without secondary containment. There is no reason to regulate against this. GMCC understands that the intention of this paragraph is to target recently used containers that have residue or small amounts of unused material. However if a container contains any amount of chemical fluid then it should not be considered empty and thus regulated as a chemical liquid, fluid or petroleum product.

59. Response: Agreed. The phrase "including empty containers" is removed but language about covered bungs and minimizing the number of containers on site is added.

12. S5.C.5.c.2 Use drip pans and absorbents under leaky vehicles and equipment or store indoors where feasible. Drain fluids from unused equipment and vehicles. We respectfully request that Ecology removes or changes the language regarding the draining of fluids from unused equipment. Vehicles on sand and gravel sites often sit idle until they are needed to perform their designated task. If a vehicle is unused for a day/week/month/year should we have to drain all the fluids out of it? It should be up to the site to monitor for spills and leaks and take the appropriate actions to prevent them.

60. Response: The requirement to drain fluid from unused equipment and vehicles is deleted for the reasons presented. It's expected the minimum weekly inspection will detect leaking vehicles and the leak will be corrected.

13. S5.C.5.c.5 Use drip pans or equivalent containment measures during all petroleum transfer operations. Please detail the reasoning behind this mandatory BMP. The use of drip pans or equivalent containment measures during all petroleum transfer operations is overly prescriptive and unnecessary. Fuel transfer operations can easily and effectively be conducted with little to no threat to water quality. When considering this issue, please think about every time you have filled your vehicle with gas. Was a drip pan necessary?

61. Response: Ecology intended this to be applicable to transfer from bulk storage to smaller containers and exposure of uncovered fueling operations. BMPs (equivalent) for fueling operations for vehicles are covered in Vol. 4 of the *Stormwater Management Manual* and should be used as appropriate.

14. S5.C.5.c.6 Conduct all vehicle and equipment cleaning operations under cover or in a bermed area to prevent commingling of wash water and stormwater. All wash water must drain to a proper collection system (i.e., no the stormwater drainage system). This does not apply to using low pressure (under 100 psi) cold water to rinse mud off of vehicles and equipment provided no soap is used, and the rinse water is routed to a sediment treatment structure on the site. The fact sheet does not provide any detail as to why vehicle washing operations are being regulated by this permit. Please detail the reasoning as to why only cold water, low pressure systems and no soap are allowed. Additionally we request that Ecology provide numerical evidence as to why this BMP has been added. Such regulations should be based on documented facts.

62. Response: Cleaning of industrial vehicles with steam or detergent emulsifies oil and greases which may contain high concentrations of metals and hydrocarbons. Detergents and pressure wash soaps are often toxic to aquatic organisms.

Emulsified oils are not removed in an oil/water separator unless the emulsion is chemically cracked. In the type of substrate typical of a sand/gravel operation this emulsion would go to groundwater untreated. In a cold water wash the oils and greases will separate and be collected in an oil water separator.

Ecology's news release for vehicle washing was intended for residential vehicle washing. In that release, Ecology's advice to people washing their cars was to wash over grass or soil areas where the emulsion would be contained and degraded in the upper soil area or alternatively to use a commercial car wash.

15. S5.C.5.c.7 Store uncured concrete, any type of concrete solids (does not include fully cured recycled concrete), uncured asphalt paving materials, cold mix asphalt on a bermed impervious surface. This includes ecology blocks, septic tanks, jersey barriers, and other cast concrete products. This source control BMP is incredibly prescriptive and would cause tremendous increases to operational costs. As written every cured concrete products (not made of recycled concrete) no matter of its age or structural integrity, would have to be stored in a bermed containment area. This means that every Jersey barrier or ecology block in the world would have to be placed in a containment area while being stored between uses. Please explain the reasoning behind this BMP. What defines "cured" concrete or asphalt? Is concrete cured when it is hard? Is asphalt cured when it is cold? This stipulation is overly prescriptive, has no technical backing and is not consistent with the Stormwater Management Manual.

63. Response: The text on "any type…" is removed.

Newly poured concrete leaches material and causes stormwater to be high pH. Ecology believes concrete is cured (minor pH change of contact water) in 7 days based on recommendations from the WA Dept of Transportation. Concrete that is cured and capable of being moved to a place other than casting does not have to be stored on a bermed, impervious surface. Asphalt is "cured" when cold.

16. S5.C.5.c.8 Treat all stormwater that contacts (uncured concrete, any type of concrete solids (does not include fully cured recycled concrete), uncured asphalt paving materials, and cold mix asphalt) in a lined impoundment as the permit considers it process water. Discharge of this water is subject to the effluent limitations in permit condition S2 and must not cause a violation of water quality standards. As written all stormwater exposed to non-recycled cured concrete solids would have to be routed to a lined impoundment. Stormwater that hits cured concrete solids should not be considered process water. This water has an extremely low chance of contributing to violations of water quality standards. Please detail the reasoning behind this addition and provide numerical evidence.

64. Response: The section is changed to match S5.C.5.c.7 above.

17. S5.C.5.c.12 Manage cold mix asphalt to prevent stormwater contamination. This stipulation is already stated in S5.C.5.c 7&8.

65. Response: Agree, this section is removed.

18. S5.C.5.f Toxic Materials. Gary Merlino Construction Company Inc. respectfully requests that Ecology change the title of this section. Several of the materials listed in this section are not toxics. For example many concrete admixtures are composed of natural materials.

66. Response: Agreed, this heading is changed to Other Materials.

19. S6.C The Permittee must retain records of all monitoring information for a minimum of five (5) years. GMCC request that Ecology provides detail as to why the retention period has changed from three years to five years.

67. Response: The requirement is specified in State regulation (WAC 173-226-090-2-c). The current permit requirement is not correct.

20. S8. All accessory uses of the permitted site must have the appropriate permits for those uses. This permit does not cover any discharge from accessory uses, therefore, any site with accessory uses must separate process wastewater and stormwater. No accessory uses are allowed in the excavated portion of the site unless those uses are covered by a separate individual wastewater discharge permit. Gary Merlino Construction Company requests that the Department of Ecology remove S8 from the permit. Land Use regulations fall under the jurisdiction of city, county and state governments. These organizations are responsible for regulating the uses conducted on properties in which sand and gravel mines operate. The Department of Ecology shall allow the above stated agencies to regulate these lands in order to guarantee that accessory uses have the appropriate permits. If the proper permits are not in place the Department of Ecology shall contact these governmental bodies in order to enforce code or permit violations.

68. Response: This section is retitled and reworded. See response number 160.

21. All "shalls" have been changed to "musts." Please explain why this change has been made.

69. Response: Ecology has determined that must has a clearer meaning than shall.

22. Type 2 stormwater has been added to the Permit. Type two stormwater was removed from the permit in negotiations during the appeal of the 2005 Stormwater General Permit. Please explain why Type two stormwater has been re-introduced to the permit.

70. Response: Ecology inspectors have observed pollutant problems with Type 2 stormwater. Monitoring of Type 2 Stormwater is intended to apply to those situations where there is heavy equipment operating during earth moving activities or when the exposed soil can contribute turbidity to surface waters. These situations, which must be identified in the Erosion and Sediment Control Plan, have a high potential to contaminate stormwater. Monitoring for oil sheen when equipment is operating is already required. Assuring that discharge limits for turbidity are met during these activities can only be confirmed by discharge monitoring. The definition of Type 2 stormwater is changed and the monitoring requirement of Table 2 notes that monitoring is only required in situations described above.

23. SIC codes have been changed to NAICS Codes. There is no information as to why Ecology has decided to use NAICS Codes instead of SIC Codes. Please explain the reasoning behind this change.

71. Response: The U.S. government is changing from SIC to NAICS as the standard for industrial classification. This will be a phased change because of the huge number of federal regulations that used the SIC classification.

24. The Fact sheet is outdated and does not account for many of the changes in the new Draft Permit. Please update the Fact sheet to accommodate these changes.

72. Response: The fact sheet is corrected for factual errors. This response to comments notes changes to the draft permit and the reasons for those changes.

Gary Merlino Construction Company Inc. appreciates the opportunity to comment on the Draft Sand and Gravel General Permit and looks forward to the Department of Ecology's Final Permit.

Thank you,

Jimmy Blais
Environmental Affairs Lead
Gary Merlino Construction Co. Inc.
9125 10th Avenue S.
Seattle, WA 98108
Ofc 206-762-9125/ Fax 206-763-4178/ Cell 206-255-5153
JBlais@gmccinc.com

Matthew L. Hinck, CalPortland

February 23, 2010

Department of Ecology
Attn: Mr. Gary Bailey, Water Quality Program
P.O. Box 47600
Olympia, Washington 98504-7600

Subject: CalPortland Comments on 2010 Draft Sand and Gravel Permit

1. S2 Effluent Limits: The information presented in Table 1 on page 8 is unclear. The limitations for Turbidity and TSS have been changed in this permit from maximum daily limits to average limitations. Table 1 also presents limitations for Total Dissolved Solids and Nitrate/Nitrite but does not indicate if the limitations are average or daily maximum values. Page one in the fact sheet indicates that monitoring limits have been changed to averages. Please provide clarification.

73. Response: Table 1 is changed to become Table 1 defining SIC and NAICS codes. Table 2 defines monitoring requirements and limits for process wastewater. Table 3 defines monitoring and limitations for Type 2 and 3 stormwater. Turbidity is changed to contain average quarterly and maximum daily. TSS is defined as a quarterly average .

Nitrate/Nitrite is a limit and monitoring parameter for those facilities that use blasting to mine material.

2. S4.A.1- Oil Water Separators: The inspection requirements in the draft permit are twice monthly during the wet season and monthly during the dry season. The Stormwater Management Manual for Western Washington Volume 5 published by the Department of Ecology includes a section on Oil Water separators. The Stormwater manual includes an operation and maintenance section where the inspection frequency is prescribed as "Inspect Oil/Water separators monthly during the wet season of October 1 to April 30 to ensure proper operation and during and immediately after a large storm event of >1 inch in 24 hours." The proposed requirements in the draft permit for oil/water separators exceed the standard set in the Stormwater manual. CalPortland requests that the inspection frequency for Oil/Water Separators be changed to be consistent with the stormwater manual.

74. Response: Agreed. The requirement has been changed to be consistent with the manuals.

3. S4.A.2 Vehicle Inspections: The use of the term "..must inspect all equipment and vehicles" is overly encompassing and should be revised to reflect the real intention of the inspection requirement. The use of the term "All" vehicles can be interpreted to include any vehicle (personal or business related) which is on a site at any time. CalPortland understands the environmental as well as safety importance of inspecting the vehicles and equipment which are directly related to the operation of our concrete and aggregate plants. CalPortland urges Ecology to revise this section to read "The permittee must inspect all operationally related equipment and vehicles weekly..." Making this change would exclude personal and other transitory vehicles which are not directly related to operations at the site.

75, Response: Agreed. The wording is changed.

4. S5.C.5.c.1. – Storage of empty containers in containment should be removed from this section as an overly prescriptive requirement. Empty containers should be allowed on sites and not take up space in containment areas. Empty containers do not pose an environmental risk when managed properly which includes fully draining, capping and minimizing the number on site. Requiring empty containers to be in containment is another unnecessary added cost to industry.

76. Response: Agreed. The language is changed.

5. S5.C5.c.11 – Management of trackout. CalPortland believes the stepwise approach for trackout control in the draft permit is inappropriate and an example of overly prescriptive conditions. The focus of trackout should be on stormwater quality. CalPortland proposes that item #11 be changed to read "Trackout should be managed by the permittee to prevent stormwater contamination." Steps a, b, c, d and e should be eliminated as Permittees are free to choose the appropriate BMP's at their sites to manage trackout as needed. Following a prescriptive set of steps might apply at some sights but not work effectively or practically at others. Ecology should not be mandating how problems should be managed or solved at permittee sites.

77. Response: Ecology agrees to the wording. However, the BMPs are included as examples of how to control trackout.

6. S5.C.5.c.11.c- This comment is in relation to item 11c which in our comment #3 CalPortland is proposing to eliminate. If Ecology keeps item 11c, this comment applies. The language on the disposal of wheel wash water is consistent with the Western Washington Stormwater Manual. However, BMP C106 Wheel Wash - was written for implementation at construction sites where wheel wash systems are typically installed on a temporary basis. Under construction site conditions it is expected that the water in the wheel wash will be different than stormwater found on other parts of a construction site and it is logical that there is a provision to handle wheel wash water in a "separate" treatment system.

78. Response: The word separate has been removed.

Permittees covered by the Sand and Gravel Permit typically install wheel washes at aggregate mines and quarries to control trackout. The water in these wheel washes is identical to mine processing water also found at these sites. Permittees have sophisticated and permanent water handling and treatment systems such as sedimentation basins, flocculation clarifiers and presses that provide more than adequate treatment for wheel wash waters. Furthermore, CalPortland has tested and found at our operating sites that wheel wash waters do not contain heavy metals (analytical results attached Attachment A). Based on this discussion the word "separate" should be removed from the last sentence in item S5.C.5.c.11.c. The financial burden to install separate treatment systems for wheel wash water would exceed $100,000 at each site and provide no different treatment that our wheel wash water is already receiving.

Lastly, most mine sites are in rural areas that are not located near municipalities that could provide sanitary sewer service. While this may be an option for some sites, at most sites this is impractical or impossible.

79. Response: The word separate is removed. Ecology does, however, take exception to the conclusion that wheel wash water does not contain heavy metals from the data presented. The reported detection level for copper was 6 µg/L while the aquatic life criteria in fresh water is 4.6 µg/L. The reported detection level for lead was 40 µg/L while the criteria in fresh water is 14 µg/L. The detection level for at least these two metals was higher than criteria values.

7. S4.H: Turbidity should be included as an exempt test parameter as it currently exists in the 2006 issuance of the Sand and Gravel General Permit. The measurement of turbidity is straightforward and can be done as simply on site as within the lab. Today's turbidity analyzers are robust, stable and accurate and include calibration standards. CalPortland has cross analyzed field samples for turbidity in the field with laboratory measurements and found <1% difference in the readings. Furthermore at remote sites there is a significant cost in taking samples to a laboratory. The cost to bring one sample to a lab for turbidity analysis is approximately $200. This cost includes laboratory expenses, fuel, and labor as well as equipment costs. In comparison a high quality Hanna turbidity analyzer retails for about $800. Analyzing two samples per month for turbidity at a lab would pay for the analyzer in 2 months.

80. Response: Turbidity is included as an exempt parameter.

8. S5.C.5.c (page 22): There appears to be a formatting issue following source control item #13.

81. Response: Error corrected

9. S5.C.5.c.6: This source control BMP is in regards to vehicle cleaning. In particular CalPortland is concerned about the requirement over the use of soap. The BMP as written indicates that wash water can be sent to

sediment trap on site provided that cold water and "no soap" is used. This BMP does not differentiate the discharge method (i.e. surface or ground infiltration) of the wash water which is an important distinction. It is CalPortland understanding that the occasional washing of vehicles with a soap product is allowed as long as the wash water is discharged to the ground. CalPortland has previously received guidance from Ecology inspectors within the NWRO and SWRO offices on this matter and been consistently told by Ecology that soap can be used to occasionally wash a vehicle as long as the water is ground discharged. CalPortland understands Ecology's concerns regarding surface water discharges and the related aquatic toxicity of soaps/surfactants. As support for this comment, a news release from former Ecology director Jay Manning is included as an attachment (Attachment B). In this news release Director Manning clearly states that occasional vehicle washing in a ground discharge situation is allowed. CalPortland takes pride in the appearance of our vehicle fleet as this is the face that the public sees. This image is important to our brand and our stature in the marketplace. CalPortland urges Ecology to modify source control item 6 to allow occasional vehicle washing with soap at sites that ground discharge.

82. Response: see response number 62.

10. S6.C- The record keeping requirements in the draft permit have been changed from 3 years to 5 years. CalPortland requests that Ecology provide justification for this change as it is our understanding that federal general permits have 3 year record keeping requirements.

83. Response: The requirement is specified in State regulation (WAC 173-226-090-2-c) for general permits. The current permit is not correct.

CalPortland appreciates the opportunity to make comments on the Sand and Gravel General permit

Sincerely,

Matthew L. Hinck
Environmental Manager, Washington Division

Enc. Attachement A: Wheel Wash Analytical Results
Attachement B: Letter from Jay Manning on Vehicle Washing

Attachment A
NOTE: WATER out of Wheel Wash

SPECTRA Laboratories
2221 Ross Way • Tacoma, WA 98421 • (253) 272-4850 • Fax (253) 572-9838 • www.spectra-lab.com

09/14/2009

Cal Portland - Seattle Corporate Office
P.O. Box 1730
Seattle, WA 98111
Attn: Matthew Hinck

Project: Snoqualmie Wheel Wash
Client ID: Wheel Wash
Sample Matrix: Water
Date Sampled: 09/11/2009
Date Received: 09/11/2009
Spectra Project: 2009090239
Spectra Number: 2
Rush

Analyte	Result	Units	Method
Dissolved Zinc	< 0.006	mg/L	EPA 200.7
Dissolved Arsenic	< 0.05	mg/L	SW846 6010B
Dissolved Barium	0.021	mg/L	SW846 6010B
Dissolved Cadmium	< 0.003	mg/L	SW846 6010B
Dissolved Chromium	< 0.007	mg/L	SW846 6010B
Dissolved Copper	< 0.006	mg/L	SW846 6010B
Dissolved Lead	< 0.04	mg/L	SW846 6010B
Dissolved Selenium	< 0.08	mg/L	SW846 6010B
Dissolved Silver	< 0.007	mg/L	SW846 6010B
Dissolved Mercury	< 0.0002	mg/L	SW846 7470A

SPECTRA LABORATORIES

Steve Hibbs, Laboratory Manager
a5/snb

Attachment A
NOTE WATER Supply to Wheel Wash

SPECTRA Laboratories
2221 Ross Way • Tacoma, WA 98421 • (253) 272-4850 • Fax (253) 572-9838 • www.spectra-lab.com

09/14/2009

Cal Portland - Seattle Corporate Office
P.O. Box 1730
Seattle, WA 98111
Attn: Matthew Hinck

Project: Snoqualmie Wheel Wash
Client ID: Water Supply
Sample Matrix: Water
Date Sampled: 09/11/2009
Date Received: 09/11/2009
Spectra Project: 2009090239
Spectra Number: 1
Rush

Analyte	Result	Units	Method
Arsenic	< 0.05	mg/L	SW846 6010B
Barium	0.067	mg/L	SW846 6010B
Cadmium	< 0.003	mg/L	SW846 6010B
Chromium	< 0.007	mg/L	SW846 6010B
Copper	< 0.006	mg/L	SW846 6010B
Lead	< 0.04	mg/L	SW846 6010B
Selenium	< 0.08	mg/L	SW846 6010B
Silver	< 0.007	mg/L	SW846 6010B
Zinc	0.071	mg/L	SW846 6010B
Mercury	< 0.0002	mg/L	SW846 7470A

SPECTRA LABORATORIES

Steve Hibbs, Laboratory Manager
a5/snb

Attachment A

SPECTRA Laboratories

2221 Ross Way • Tacoma, WA 98421 • (253) 272-4850 • Fax (253) 572-9838 • www.spectra-lab.com

04/23/2008

Glacier NW-Seattle Corporate Office
5050 First Avenue South
Suite 102
Seattle, WA 98134
Attn: Matthew Hinck

Project: Snoqualmie Scale Sediments
Client ID: Snoqualmie Scale Sediment
Sample Matrix: Soil
Date Sampled: 04/17/2008
Date Received: 04/18/2008
Spectra Project: 2008040324
Spectra Number: 1

Analyte	Result	Units	Method
Diesel	<10.0	mg/Kg	NWTPH-D
Oil	<100	mg/Kg	NWTPH-D
TCLP Arsenic	< 0.05	mg/L	SW846 6010B
TCLP Barium	0.64	mg/L	SW846 6010B
TCLP Cadmium	< 0.003	mg/L	SW846 6010B
TCLP Chromium	0.020	mg/L	SW846 6010B
TCLP Lead	< 0.04	mg/L	SW846 6010B
TCLP Selenium	< 0.08	mg/L	SW846 6010B
TCLP Silver	< 0.007	mg/L	SW846 6010B
TCLP Mercury	< 0.0002	mg/L	SW846 7470A

September 24, 2008

Phase I and Phase II Permittees and Other Interested Parties

RE: Residential Car Washing Under Washington's Municipal Stormwater Permits

Dear Ladies and Gentlemen:

It has recently become clear that there is significant confusion regarding how Washington's municipal stormwater permits apply to residential car washing. This letter will provide additional clarity and guidance on this issue.

For many of us, washing our car or truck is as American as baseball and apple pie. It's hard to imagine that there is a connection between keeping your car clean and keeping our rivers, lakes, and marine waters clean and healthy. It's harder still to believe that one person washing their car can really cause any harm.

However, thousands of people washing their cars can be a serious problem. Soapy, dirty car wash water, carrying with it oils, grease, and toxic metals is, without a doubt, a serious pollution source when it occurs on a large scale. Since most storm drains run directly into local streams or marine waters – without treatment – storm drains are direct extensions of those local waters. Some believe that our stormwater permits "prohibit" residential car washing and wonder what, if any, enforcement actions might be taken against those "violating" the prohibition. Let me be clear: **the permits do not prohibit car washing**. The permit only deals with discharges to storm drains. In this case, that means that wash water, which contains soap, oils, grease, metals and other chemicals – all of which pollute water and harm fish – is prohibited from being discharged to public storm drains.

So how do we wash our cars without sending the dirty wash water down the storm drain? There are a number of simple ways to wash cars that don't result in soapy wash waters getting into our creeks and rivers and lakes. We recommend washing cars on grass or any other surface where the wash water seeps into the ground. Or you can lay something on the ground to divert the wash water away from the storm drain. And, of course, you can always take your car to a commercial car wash.

Charity car washes are almost a rite of passage for most of us, and they can also be done in a way that avoids the dirty wash water getting into the storm drain. Again, washing cars on a permeable surface, or diverting wash water to such surfaces, is an easy option. Another option is to divert the car wash waters into a sanitary sewer where it is treated. Many local governments have car wash kits that can be used for this purpose. Some charities rent a "bay for a day" at a self-serve car wash. Many commercial car washes will work with charity groups to provide discount car wash coupons that the charity can then sell. For more information on using a commercial car wash as part of a charity fund raiser, please look at the

Puget Sound Car Wash Association web site: http://www.charitycarwash.org/. Many local governments have developed charity car wash kits that are available to charities to use. For example, King County has a lot of good information on where to borrow or how to build a car wash kit. http://dnr.metrokc.gov/wlr/pi/carwash_res.htm .

I want to further clarify that while the permits do not allow soap and detergents to enter a storm drain, we recommend an educational rather than enforcement approach about car washing. We definitely don't recommend enforcement against charity car washes. We urge our local government partners to take the same approach we will – education regarding impacts and alternatives. We want to work with people to solve this problem, and we are confident that Washington's citizens will work with us and with their local government to avoid polluting their local streams and lakes.

Many citizens already wash their cars in ways that prevent water pollution. Others should be made aware of the harmful impacts of putting dirty wash water into our streams and rivers, so that they can make the small adjustments necessary to avoid water pollution.

Stormwater is by far the greatest threat we face in protecting Washington's rivers and streams. Unlike other pollution sources, the pollutants carried by stormwater come from all of us. Countless tiny sources of pollution, such as drops of oil or antifreeze, copper shavings from car brakes, zinc from galvanized fencing, air pollutants like mercury or diesel soot that fall to the ground, and many others, all get swept up and washed into our rivers and streams when it rains. Alone, these sources are miniscule. But added up, the problem is enormous, and is truly our greatest water pollution challenge. To reduce the adverse impacts of stormwater, we all have to do our small part. We should be cautious in our use of fertilizers, pick up after our pets, and make sure our vehicles are not dripping oils and grease onto the road. We should also be mindful when we wash our cars and trucks at home.

Changing how we do things can be hard. But we've demonstrated that we can and will do it when given adequate information and alternatives. Dumping used motor oil down the storm drain used to be common practice, but now we know better. We intend to work with cities and counties and with individual citizens – with patience and persistence – to provide needed information about the unintended and often hidden impacts of pollutants like soap, oils, grease and metals, and about alternatives that allow us to keep our vehicles clean and still protect our rivers, lakes, and streams.

Sincerely,

Jay J. Manning,
Director

Jim Muck, National Marine Fisheries Service and U.S. Fish and Wildlife

Mr. Bailey, February 24, 2010
Thank you for the opportunity to review and provide comments on the draft Sand & Gravel National Pollutant Discharge Elimination System (NPDES) and State Waste Discharge General Permit. The National Marine Fisheries Service and U.S. Fish and Wildlife Service (jointly the Services) offer the following comments on the proposed permits pursuant to our role as providers of biological and technical assistance under the Endangered Species Act of 1973 (16 USC 1531*et seq*.), as amended, and the Fish and Wildlife Coordination Act (16 USC 661 *et seq*.). In addition, these comments are provided per the processes outlined in the Memorandum of Agreement between the Environmental Protection Agency (EPA) and the Services regarding enhanced coordination under the Clean Water Act and ESA (66 FR 1102-11217).

Overall Comments:

1) The Services appreciate the efforts of the Washington State Department of Ecology (Ecology) in developing the general permit process to provide protection to the states waters. While Ecology has the responsibility to administer the permitting process through the NPDES, the ultimate responsibility is with the EPA. Under the Endangered Species Act, federal agencies are required to consult with the Services for any action they authorize, fund, or carry out to insure that the action is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. At this time, EPA has not consulted on the NPDES process or on all individual NPDES permits. To fully analyze the impacts of the Sand & Gravel General Permit process, the Services recommend that EPA consult on the NPDES permits.

84. Response: Ecology believes the Services should direct this comment to EPA.

2) The Services have a concern with the discharge effluent limits and their potential impacts to listed species. The Services have analyzed sediment impacts to listed species, designated critical habitat, and the aquatic environment, using the methods described by Newcombe and Jensen (1996) and Anderson et al. (1996). These authors developed a model that calculates what they term the severity of effect (SEV), in other words, the effects associated with excess suspended sediment on salmonids and their habitat. Newcombe and Jensen (1996) developed a 15-point scale to qualitatively rank the effects of sediment on fish. The lowest rank, SEV 0, results in no behavioral effects. The highest rank, SEV 14, results in 80 to 100% mortality. Using a similar 15-point scale, Anderson et al. (1996) were able to rank the effects of sediment on salmonid habitat. The lowest ranking (SEV 3) shows a measured change in habitat preference, and the upper rank (SEV 14) results in a catastrophic or total destruction of habitat.
There are numerous factors that can influence sediment affects on listed salmonids. These factors include the concentration and duration of sediment input, existing sediment conditions, stream conditions (velocity, depth, etc.), weather or climate conditions (precipitation, wind, etc.) fish presence or absence, and best management practices employed and their effectiveness. However, Newcombe and Jensen (1996) and Anderson et al. (1996) considered these factors when they

conducted literature reviews of pertinent documents to develop the models to determine potential sediment related impacts to salmonids. Newcombe and Jensen (1996) used six data groups for their analysis. These groups were 1) juvenile and adult salmonids, 2) adult salmonids, 3) juvenile salmonids, 4) eggs and larvae of salmonids and non-salmonids, 5) adult estuarine nonsalmonids, and 6) adult freshwater nonsalmonids. From this information the Services can analyze the potential impact of the effluent limits identified in Table 1 of the Sand & Gravel General Permit. Because eggs and larvae of salmonids are most sensitive to sediment input, permitted discharges at the level of effluent limits identified in Table 1 can have significant impacts on spawning listed species such as Chinook salmon or bull trout. The effluent limit for total suspended solids (TSS) for the first North American Industry Classification System (NAICS) Category is 40 mg/l. Using the Newcombe and Jensen (1996) model for eggs and larvae you can calculate when adverse affects can occur. $SEV = a + b(\log_e x) + c(\log_e y)$ x= estimate of exposure duration y= concentration of suspended sediment in mg/L For eggs and larvae the equation is $SEV = 3.7466 + 1.0946(\log_e x) + 0.3117(\log_e y)$. The equation to determine the exposure duration (x) is $5 = 3.7466 + 1.0946(\log_e x) + 0.3117(\log_e 40)$. An SEV of 5 identifies when minor physiological stress occurs, and to the Services, any stress on eggs or larvae results in adverse effects. Solving for x, the time in which adverse affects to eggs and larvae will occur is one hour. Mortality to eggs and larvae will begin at 42.5 hours (SEV 9). This shows the significance of sediment discharge into streams. Similar analysis can be made for juveniles and adults in the streams. The Services are concerned with the levels identified in Table 1 on pages 8 and 9 of the Sand & Gravel General Permit and the potential impact these levels have on listed species.

Specific Comments:

Fact Sheet:

1) Page 6, Last paragraph: Text states "Because a general permit is designed to provide environmental protection under conditions typical for the covered industry…." The permit should be designed to provide environmental protection by setting standards that avoids, minimizes or reduces a potential impact. As written, it seems that the permit is designed to allow effluent discharges that are typical for the industry and does not try to have the industry improve on the effluent discharge.

85. Response: Ecology believes the permit as written will comply with Washington's water quality standards and be protective of aquatic life.

2) Page 7, Background Information, Mining Activities – First paragraph states number of mines in 1991. This data is almost 20 years outdated, any new information?

86. Response: The most recent data from DNR shows a count of 1043 permitted and pending reclamation mines. However, our permit includes facilities other than mines. DNR reclamation permits often apply to sites associated with forest practices and numerous sites in the eastern part of Washington which don't meet the criteria for the Sand and Gravel General Permit.

3) Page 11, Permit Status: Text states that there are currently 940 facilities covered under this general permit. How does this relate to the 1,750 mines, quarries, and borrow pits operated in the state in 1991 that is identified on Page 7, Mining Activities (or updated 2009 numbers)? Further

information should be provided on the number of facilities that are not covered, why they are not, and what is being done to make sure they are covered.

87. Response: Ecology only has responsibility for mines that are generating pollutants (operational). The Department of Natural Resources has responsibility for reclamation activities. These numbers may be different.

4) Page 11, Summary of Compliance with the Previous Permit – The Services are concerned with the number of non-reporting violations that are reported. With the number of violations (39%) that occur for exceedance to turbidity and TSS (which is significant) to have a large number of facilities that are not reporting, this overall potential impact to listed species is a major concern. How does Ecology take the facilities that are not meeting the current general permitting requirements into consideration when they renew a permit?

88. Response: The permit conditions and compliance with those permit conditions are separate issues. Making the permit more stringent will not make more people to come into compliance and non-reporting doesn't mean limits are being exceeded. We have a limited number of personnel to enforce wastewater discharge permits but a facility that is not reporting raises its priority for receiving an inspection.

5) Page 14, Proposed Permit Limits, first partial paragraph. The document discusses that water quality-based limits are based upon compliance with the Surface Water Quality Standards… The Services have only consulted on the temperature and dissolved oxygen water quality standards. Even though the limits may comply with the Surface Water Quality Control Standards, these standards may still have impacts to listed fish species.

89. Response: This is an issue to bring to Ecology during the revision of our water quality standards (WAC 173-201A). Once those standards are determined and approved by EPA, Ecology permit writers must use them to craft limits for permits.

6) Page 14, Technology-based Effluent Limits: The paragraph details the results of the evaluations for the different categories covered by the general permit. However, all the documents cited were published prior to 1982. It would seem with the science available today, that these documents may be outdated. With the listing of salmon and bull trout in Washington, new information has been published that would provide better environmental protection. If these documents provide the necessary information for the general permit, an explanation is needed to state why the older documents are necessary.

90. Response: The documents cited were developed by EPA and have not been revised. We assume they are still valid or EPA would have revised them.

7) Page 14, Technology-based Effluent Limits: The last sentence of this paragraph states that Ecology bases the proposed permit limits for TSS in process water and quarry water on demonstrated performance (AKART). What are the demonstrated performances and are these based off the documents cited previously (see comment #6)? If so, new technology would have greater efficiencies than those developed prior to 1982.

91. Response: The demonstrated performance that is referenced refers to performance at the time of the issuance of the first sand and gravel permit. The pollutant controls for TSS and turbidity remain very simple. They are source control (BMPs), filtration, settling, and use of settling agents if necessary.

8) Page 15, Process Wastewater and Mine Dewatering, third paragraph: This paragraph identifies maximum daily concentrations, however, Page 1 of the Fact Sheet states that the elimination of the daily maximum limits was a significant change to the reissuance of the permit.

92. Response: Daily maximum limits were eliminated only for those parameters sampled once per quarter.

9) Page 15, Process Wastewater and Mine Dewatering, third and fourth paragraphs: As discussed above in #2 of the general comments, the Services have a concern with the high effluent levels for TSS. These levels when introduced into waters with eggs, larvae, and juvenile salmonids can result in adverse affects.

93. Response: This comment seems to assume that the effluent discharges to fish-bearing waters and that the discharge causes that water body to reach that concentration of TSS. Our survey indicates very few facilities discharge directly to fish-bearing waters. TSS is not a uniform parameter. The TSS most likely to be carried over in the effluent is the lightest fraction which is also the least likely to settle on the stream bottom and affect fish eggs, larvae and juvenile fish.

10) Page 16, Process Wastewater and Mine Dewatering, first paragraph on this page (last in section): Similar to Comment #9, the Services are also concerned with the 50 NTU monthly average limit. Turbidity and TSS can have the same impact to the aquatic environment. The discussion described above for TSS also applies to turbidity.

94. Response: Response 93 also applies to turbidity. Turbidity of 50 NTU is only slightly opaque and not likely to cause any measureable difference in a receiving water after minimal mixing.

11) Page 16, Stormwater Discharge Conditions, first paragraph: Again it appears that a document dated 1991 is used to provide information for best information for BMPs, when today's technology would provide more current information.

95. Response: Ecology is unaware of that technology but we welcome any pertinent information. We believe the current technologies for treatment of TSS and turbidity are source control, filtration, settling, and the use of flocculants. We believe this combination of controls constitutes AKART.

12) Page 17, Numerical Criteria for the Protection of Aquatic Life: See Comment #5 above on the Services not consulting on the State Water Quality Standards. These standards may not be sufficient to protect listed species.

96. Response: We believe this is EPA's responsibility to consult when approving our standards.

13) Page 17, Numerical Criteria for the Protection of Human Health: The last sentence states that the criteria designed to protect humans are applicable to fish. What is the documentation to support this statement? EPA has not consulted on their water quality criteria, and the standard for protecting human health may not be sufficient to protect fish.

97. Response: You have misread the paragraph. It says "primarily applicable to fish and shellfish consumption.." . As noted in the fact sheet, these criteria were promulgated by EPA for the State of Washington.

14) Pages 20 – 22, Tables 2 – 5: As previously stated, only Water Quality Standards for temperature and dissolved oxygen have been consulted on. The other standards may not be sufficient to protect listed species.

100. Response: See response 96.

15) Page 22, Turbidity – See previous comments about the effluent level and potential impacts to fish species and the aquatic environment.

101. Response: See previous response.

16) Page 22, Temperature, second paragraph – the paragraph states: "Of these eighteen facilities, 9 (7%) may have some potential to cause a rise in the temperature of the receiving water. Ecology inspectors will make individual assessments on these facilities, however, it's apparent that the industry as a group does not have a large potential to impact the temperature of surface waters. Ecology removed the temperature study from the proposed permit as a requirement for dischargers to surface waters. Ecology may require a study for new dischargers to surface waters if Ecology determines there is a potential for violation of water quality standards." The Services agree that as whole, the sand and gravel industry does not (may not?) have a large potential to impact the temperature of surface waters. However, the Services are concerned with those facilities stated that have the potential to cause a rise in the temperature of receiving waters. Without full information on where these facilities are located and whether the streams they discharge to have high temperatures the impact of these increased high temperatures is unknown. The Services recommend that these facilities be evaluated and if necessary measures taken to reduce temperature increases from discharges so that the facilities are in compliance with the current temperature standards for Washington State. This example further demonstrates the need for the Services to consult on NPDES permits to minimize the potential for take and adverse affects(sic) to listed species.

102. Response: New facilities that apply for coverage under this permit are assessed for potential to cause water quality problems. Any facilities that appear to have some potential to cause water quality problems are required to do receiving water studies

or are required to obtain an individual permit. The services are free to comment with concerns on any application for coverage or existing coverage under this permit.

17) Page 23, Discharges to 303(d) – Listed Impaired Waterbodies – Please see previous comments regarding water quality standards. The Services appreciates the intended purpose of the requirements to minimize discharge of pollutants into streams on the 303(d) list, however, these discharge could have adverse impacts to listed species.

103. Response: see previous response on the water quality standards.

18) Page 23, Discharges to 303(d) – Listed Impaired Waterbodies, last paragraph – the text states "Condition S1.B.1 of the current permit states that facilities that discharge to a waterbody listed pursuant to Section 303(d) of the Clean Water Act are excluded from the general permit unless it is not causing or contributing to the impairment of the receiving water." How does Ecology determine that a discharge from a facility does not cause or contribute to the impairment of the receiving water? There are few pollutants that just leave a system. When a pollutant is discharged into a stream, the pollutant may be diluted but it is still in the system. This pollutant then mixes with additional pollutants as other facilities discharge into the system until a certain threshold is reached and the waterbody is considered impaired. All pollutants entering a system are contributing to the impairment of a receiving waterbody.

104. Response: Any facility proposing to directly discharge to a water body impaired for temperature would be required to show they would not discharge during the critical period. Any facility proposing to discharge to a water body listed for turbidity or sediment would be required to demonstrate they could operate with no discharge to surface waters. This is a permit for control of specific point source discharges and cannot account for pollutants entering a waterbody from other sources.

19) Page 24, Aquatic Sediment Quality, second paragraph – This paragraph states "Ecology has determined through a review of the discharge characteristics that this discharge has no reasonable potential to violate the Sediment Management Standards." What is the basis for this determination? Have sediment samples been taken to see if pollutants that are discharged do not settle and accumulate in the sediment?

105. Response: No. The Sediment Management Standards are toxic pollutant standards such as organic chemicals or metals. This industry does not have these pollutants as process pollutants.

20) Page 24 -25, IV. Comparison of Effluent Limits with the Current Permit. The first paragraph says that Ecology removed the daily maximum values in recognition that with only one required sample per quarter, the monthly average limit is appropriate. If only one sample is taken per quarter, then the correct effluent discharge should be a "quarterly average." To get a monthly average, you would have to take monthly readings. The Service believes that only one sample per quarter cannot accurately show or prove that the discharges are in compliance with the permit. Similarly, a daily value, and it may be a maximum or average, is needed to avoid, minimize, or reduce potential impacts to listed salmonids. Technology is available that allows

continuous monitoring of many of the water quality-based criteria (temperature, pH, turbidity, etc.). As stated above in overall comments, the use of Newcombe and Jensen (1996) and Anderson et al. (1996) can show how discharges of sediment into a stream can impact salmonids. The Services recommend that multiple readings be taken daily during the time that facility is discharging.

106. Response: Agreed. One sample per quarter should be noted as quarterly average. Continuous monitoring is not practical for intermittent or occasional stormwater discharges. Ecology believes that quarterly sampling is sufficient to characterize the discharge from this industry.

21) Page 25, IV. Comparison of Effluent Limits with the Current Permit, last paragraph. The Services are concerned about the effluent limit of an "oil sheen." Oil has numerous pollutants that can impact listed species (mammals and fish). Depending on the flow of the discharge, a visible "sheen" may not be apparent. An oil sheen may be visible on slow, still, or stagnant waters, but not on flowing or turbulent waters. The Services recommend that a different effluent limit be developed that can accurately determine when oil is present so that actions to minimize this discharge are taken to avoid adverse impacts to listed species.

107. Response: An oil sheen may be caused by a layer of material that is only one molecule thick and may be caused by materials other than petroleum products. Ecology has tried to quantify the concentration of oil when sheen is present without success. There is no water quality criteria for oil. The technology-based limits for oil and grease are 10 and 15 mg/l as average and daily maximum and are based on the performance of gravity oil/water separators.

Oil sheen is often a better indicator of control of petroleum drips and leaks at a facility than laboratory measurements.

22) Page 25, Monitoring Requirements – see previous comment. The Services do not understand how the monitoring required in the general permit can "verify that facilities are utilizing BMPs, that treatment processes are functioning correctly, and that facilities are meeting the effluent limit" with only one sample per quarter. The last sentence states that the specified monitoring frequencies take into account the quantity and variability of the discharge, the treatment method, past compliance by the industry as a whole, significance of pollutants, and the cost of monitoring. The Services understand this holistic approach, but as a whole, when the Services have not consulted on all the water quality standards or on specific NPDES permits, there is a large potential for impacts to listed species. The overall justification for one sample per quarter based on "quantity and variability of discharge" provides justification to the Services that multiple daily readings are needed. Many of the pollutants found today have not been analyzed by the Services to determine the exposure level to listed species necessary for survival. The cost of monitoring has also decreased with the technology that provides continuous monitoring.

108. Response: See response 106.

23) Page 25, Representative Sampling – The Services do not understand how sentences such as "the proposed permit requires facilities to collect samples that represent the operating conditions at a site and the nature of discharges that occur" compare to the monitoring requirement of only sampling twice a month or quarterly. To get an accurate representation of operating conditions and how these conditions may change throughout a day, more monitoring is required.

109. Response: See response 106. In addition to effluent sampling the permit controls effluent quality by requiring the permittee to conduct visual monitoring. Ecology also conducts inspections at these facilities.

24) Page 25 – 26, Representative Sampling – The sentences that read "The intent of monitoring for turbidity is to determine if control measures are adequate to control discharge turbidity. Therefore, this sampling must be conducted during a major storm event when control measures are most stressed," seem to conflict with Table 1 of the general permit that states that turbidity samples must be 24 hours apart. This will not capture sediment releases throughout a stormwater discharge event. Multiple samples must be taken throughout storm events to truly understand how control measures are operating. In Western Washington many rain events last longer than one day and monitoring throughout the event must occur.

Sand and Gravel General Permit

1) Pages 8 and 9, Table 1 – See previous comments on effluent limits and monitoring requirements.

2) Page 10, S3. Additional Discharge Limits, B Not Cause or Contribute to a Violation of Standards and C. Maintenance Shop Zero Discharge, #4 – See previous comment (#18 above). A pollutant discharged to a stream will contribute to pollutant levels in a system.

3) Page 11, F. Use of Chemical Treatment Products – The Services have a concern with the use of chemicals as many chemicals have not been consulted on by the Services and may injure listed species. Even applying chemicals as instructed by the manufacturer may be harmful to the biota in streams.

110. Response: 1. See previous response.

2. See previous response.

3. Ecology has found that chemicals used as settling agents have a very low toxicity. Many of these agents are used in drinking water treatment plants. The permit requires facilities using settling agents to identify those agents, identify the level of toxicity, and requires no toxicity in the discharge.

4) Page 12, G. Discharges to Surface Water – Additional Effluent Limits, #2 – The use of the term or phrase "cause a visible increase" is very subjective. Different people can interrupt this differently. Depending on the receiving water, if flowing or turbulent, a visible increase may not be observed even though a high increase in sediment discharge may occur.

111. Response: We agree the phase is subjective but the phase is intended to apply to turbidity which is not necessarily correlated to TSS (sediment).

5) Page 12, G. Discharges to Surface Water – Additional Effluent Limits, #4 – See previous comments on cause or contribute to a violation of water quality standards.

112. Response: See previous response.

6) Page 12, G. Discharges to Surface Water – Additional Effluent Limits, #5 – The Service recommend that this should state that facilities should reduce their loading or concentration of the pollutant versus must not increase. Reducing pollutant loading is the only way to improve impaired waterbodies.

113. Response: Ecology has found that impairment for sediment or turbidity is typically caused by non-point sources such as agriculture or forestry which is not regulated by wastewater discharge permits. We don't believe regulated point sources should be made to try to cure impairment before a TMDL, which quantifies the sources, is completed.

7) Page 14, B. Discharges to Surface Water, #1 – see previous comments on monitoring.

114. Response: See previous response.

8) Page 14, B. Discharges to Surface Water, #3 – see previous comments on visual inspection or visible sheens. More accurate monitoring is needed to insure compliance with the permit and that BMPs are working appropriately.

115. Response: See previous response.

9) Page 14, B. Discharges to Surface Water, #4 – this appears to conflict with the language on Page 6, (B), (b) on discharge to a water body with a TMDL for turbidity, etc. However, #4 is very similar to Page 12, (G), (4), although #4 on Page 12 includes the phrase "but without a completed TMDL."

116. Response: Condition S4.B.4 requires new facilities proposing to discharge to a waterbody listed for turbidity or fine sediment to conduct receiving water turbidity monitoring. Condition S1.B.1.b. requires facilities to comply with conditions of S3.G.3 or 5 in order to obtain coverage under this permit. Conditions S3.G.3, S3.G.4 and S3.G.5 are limits.

10) Page 15, E Monitoring for Oil Sheen – see previous comments on visual monitoring for oil sheens.

117. Response: See previous response.

11) Page 18, d (part of A Erosion and Sediment Control Plan) – Providing stabilization measures at outlets can result in habitat degradation. Conservation measures need to be incorporated into the stabilization methods to avoid, minimize, or reduce potential habitat degradation. In most circumstances, a U.S. Army Corps of Engineers permit will be needed to place fill below the

ordinary high water line. In these cases, the Corps is required to consult with the Services and conservation measures incorporated into the project will expedite the consultation process.

118. Response: Thank you for that information.

12) Page 28, B How to Apply for and Maintain Permit Coverage for Portable Facilities – The Services' overall concern related to the discharge of turbidity and sediment into streams and the potential impacts to listed species, especially to eggs and larvae, is especially pertinent with discussions on portable facilities. The Services emphasis the need to consult on permits related to portable facilities as the potential to discharge sediment into important spawning and rearing habitat increases. The Services recommend that measures or requirements be incorporated into the permits that avoid or minimize sediment discharges into stream reaches where salmonid spawning and rearing occurs.

119. Response: Portable facilities are required to meet the applicable conditions of the permit.

13) Page 28 - 29, B How to Apply for and Maintain Permit Coverage for Portable Facilities, (3), (b) – The Services recommend that the use of native and non-invasive vegetation be used for stabilization or restoration actions. See previous comment (#11 of general permit) on stabilization methods. The use of riprap in streams results in habitat degradation for salmonids.

120. Response: Thank you for that information. This information should be conveyed to DNR.

Thank you for the opportunity to review and provide comments on the draft Sand & Gravel NPDES and State Waste Discharge General Permit. If you have any questions, please contact me at 206/526-4740 or by email at jim.muck@noaa.gov.

Literature Cited:

Anderson, P.G., B.R. Taylor, and G.C. Balch. 1996. Quantifying the Effects of Sediment Release on Fish and their Habitats. Canadian Manuscript Report of Fisheries and Aquatic Sciences No. 2346, Department of Fisheries and Oceans, Vancouver, B.C. and Winnipeg, Manitoba, 1996.

Newcombe, C.P., and J.O.T. Jensen. 1996. Channel Suspended Sediment and Fisheries: A Synthesis for Quantitative Assessment of Risk and Impact. North American Fisheries Management 16: 693-727

Jennifer Keune, King County

From: Keune, Jennifer [Jennifer.Keune@kingcounty.gov]
Sent: Wednesday, February 24, 2010 4:49 PM
To: Bailey, Gary (ECY)
Cc: Fritz, Rob; Finlinson, Jason; Dhoore, Brent; Cassidy, Jon
Subject: Comments on The Draft Sand and Gravel General Permit
Mr. Bailey,

King County Roads Maintenance Section appreciates the opportunity to comment on the draft Sand and Gravel General Permit currently available for review on Ecology's website. We would like Ecology to consider the following points before finalizing the permit:
a.) NAICS code 212319 is listed twice under the Process Water/Mine Dewatering section of Table 1. As written, it is confusing. Was Ecology's intention only to list that code once in that section?

121. Response: Yes. One has been removed.

b.) During the information session conducted by Ecology on February 22, 2010, the intent of S4.A.2 was discussed. It was stated that personal vehicles, and those that are visiting the permitted facility but are not part of the onsite operations, are not subject to this requirement. We would like to see the permit language reflect that clarification.

122. Response: The language has been changed.

c.) We would like to see the permit language in S4.D.1 clarify the types of stockpiles that are included in this requirement. Specifically, does this refer to materials contained in stockpiles that are generated via mining operations on site, or do stockpiles containing materials brought to the site from another facility meet this permit condition?

123. Response: This permit condition applies to all stockpiles.

d.) S4.H requires that all parameters other than those listed be analyzed by a certified/accredited laboratory. It is our understanding that the accuracy of readily-available field test kits is sufficient to meet the needs of this permit for Nitrate + Nitrite as required in Table 1. We believe Nitrate + Nitrite should be added to the list of parameters that do not require laboratory analysis.

124. Response: Field kits are not acceptable for monitoring nitrate+nitrite in an NPDES permit. The analysis must be conducted by an accredited lab using methods from 40 CFR Part 136. This monitoring requirement is only for facilities that use blasting to loosen material.

e.) S6.F requires all spills to be reported according to the requirements of S6.E. We would like to see this permit clarify what Ecology considers a qualifying spill. For example, is it Ecology's intent that *de minimus* spills that are quickly cleaned up be reported to the Sand and Gravel Permit Manager? Does notification to the appropriate Ecology Regional Office Spill Response Coordinator (ERTS program) satisfy the notification requirement found in this section?

125. Response: Ecology believes all spills must be reported.

f.) S7.A references "solid waste, including material from cleaning catch basins". There is no general consensus that material removed from catch basins qualifies as solid waste. However, the current wording in the draft permit suggests that materials removed from catch basins are considered solid waste. This has the potential to set precedent in other regulatory documents and interpretations, which is beyond

the purview of the Sand and Gravel Permit. The classification of catch basin materials should and will be addressed by Ecology and stakeholders when WAC 173-350 is opened up for revision later this year. We believe that the reference to catch basin material should be removed from this section entirely. When the proper determination for catch basin materials is reached it will be reflected in the revised WAC 173- 350 and will still apply to Sand and Gravel Permit holders through S7.C.

126. Response: Ecology doesn't believe this permit creates any precedent for the solid waste program. Until defined elsewhere, Ecology believes material taken from a catch basin should be treated as a solid waste.

Thank you for your consideration of the comments listed above.

Jennifer (Rilling) Keune
Environmental Scientist
Roads Maintenance Section

Road Services Division
King County Department of Transportation
Phone (206) 205-3703
Cell (206) 793-3999
Fax (206) 296-8198
****New E-mail**:** Jennifer.Keune@kingcounty.gov

Ryan K. Gardner, Environmental Law Clinic, Spokane Riverkeeper

UNIVERSITY LEGAL ASSISTANCE
721 North Cincinnati Street
P.O. Box 3528
Spokane, Washington 99220-3528
Phone (509) 313-5791
Facsimile (509) 313-5805
TTY (509) 313-3796

Director
LARRY A. WEISER

Office Manager
BONNIE WHITE

Supervising Attorneys
MICHAEL J. CHAPPELL
GEORGE A. CRITCHLOW
STEPHEN F. FAUST
JENNIFER A. GELLNER
GAIL HAMMER
JOSHUA J. KANASSATEGA
ALAN L. McNEIL
TERRENCE V. SAWYER

JAMES P. CONNELLY
MARK E. WILSON
Of Counse

February 24, 2010

Via e-mail (gary.bailey@ecy.wa.gov)
Gary Bailey – Sand and Gravel General Permit Comments
Washington Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600
(360) 407-6433

Re: Comments on Draft Sand and Gravel General Permit

The Environmental Law Clinic, on behalf of the Spokane Riverkeeper, hereby submits comments on the draft Sand and Gravel General Permit (Draft 1/20/2010). The draft permit falls short, in numerous areas, of guaranteeing compliance by the estimated 950 discharging facilities with the permit. The permit's flaws, which are addressed in detail below, include the need for additional sampling of Total Suspended Solids (TSS), additional receiving water studies, and clarification of ambiguous language. Additionally, 296 inactive facilities are insufficiently monitored under the general permit, creating a substantial risk for discharger gaming. Further, Ecology's history of enforcement under the current version of the permit reflects an appallingly inadequate response to permittee discharge violations.

The Spokane Riverkeeper is particularly interested in preserving and increasing Washington's water quality, and working to improve compliance with state water quality standards. The Spokane Riverkeeper's mission is to preserve and protect the Spokane River. Spokane Riverkeeper accomplishes its mission via on-the-water surveillance, education and public outreach, and, when necessary, the initiation of citizen-based enforcement of the federal Clean Water Act and other environmental laws. The Environmental Law Clinic, on behalf of the Spokane Riverkeeper, reserves the right, if unsatisfied with the improvements made in response to our comments, to appeal this general permit.

1. The quarterly sampling requirement in Condition S2. of the draft permit for TSS is too infrequent, being that numeric effluent limitations are set for this parameter. Quarterly monitoring is insufficient to determine variability in TSS concentrations. Why does Ecology propose that quarterly monitoring for TSS variation is sufficient to detect variation when the potential for variations is no less present on a shorter time span (ex: monthly)? How would monthly monitoring of TSS fail to present a better indication of variation in TSS concentrations?

Recommendation: This permit should require TSS sampling on a monthly basis, at a minimum, to accurately portray TSS variability.

127. Response: The objective of monitoring is to assure that pollutant control measures are being implemented. Ecology believes that quarterly monitoring is sufficient for this industry.

2. The Draft Permit, while general and not specific to individual discharge sites, fails to take into account the site specific situations at each facility regarding the effect of temperature on receiving waters. In the past, Ecology has stated that receiving water studies are unnecessary because of Ecology's ability to establish additional monitoring requirements by administrative order or permit modification. However, the general permit is considerably less effective for application to individual sites by not requiring a receiving water study for each of the dischargers under the permit, but only those proposing to begin discharging to surface water when Ecology determines a potential for violation of water quality standards.

The draft permit defines *pollutant* the same as 40 C.F.R. § 122.2, which specifically includes "heat" in the definition. The Draft Permit Fact Sheet specifies (under Consideration of Surface Water Quality-Based Limits for Numeric Criteria) at least 7% of (a limited number of) discharging facilities responding to letters from Ecology may have some potential to cause a rise in the temperature of receiving waters. Ecology subsequently characterizes this as an insignificant potential. How can Ecology justify making this determination based only on facilities that discharge directly to a perennial stream? Why were facilities whose discharge travels through a non-perennial water body before ultimately ending up in a perennial water body not included in this analysis?

Additionally, the Fact Sheet includes a chart, "Temperature Criteria For Aquatic Life In Fresh Water," indicating a need to adhere to those criteria under the permit. However, the permit fails to require the receiving water studies, as well as periodic (**recommended**: monthly) monitoring of discharge temperature, necessary to discern whether a violation of surface water quality standards has taken place. Ecology has a responsibility to regulate this critical pollutant above and beyond simply stating in the general permit that "Dischargers must not cause or contribute to a violation of: ... Surface Water Quality Standards (Chapter 173-201A WAC)...." Like other recognized pollutants regulated under the permit, this constituent should require periodic sampling and inclusion in Discharge Monitoring Reports (DMRs). As proposed, the permit acknowledges the potential detrimental impacts of discharge temperature on water bodies but fails to require those (estimated 950 dischargers in Washington) currently discharging under the current version of the permit to actually consider the temperature effects of their discharge on the receiving water bodies.

The draft permit does articulate the need to adhere to temperature standards when discharging to a Clean Water Act (CWA) 303(d) listed site. The need to adhere to such standards should be also be emphasized when the receiving waters are not 303(d) listed. The current language seems to downgrade the detrimental effects of temperature damage by discharge in non-listed waters, which decreases the permit's ability to discourage increases in the violation of temperature surface water quality standards to non-listed waters, consequently increasing the likelihood of 303(d) listing in the future. This is counterproductive, and Ecology should clearly and equally discourage such discharges to both listed and non-listed waters.

Recommendation: The new permit should include a requirement for all dischargers, including those already discharging under the current version of the permit, to perform receiving water studies to determine whether their discharge has effects receiving waters temperature. While Ecology suggests other methods for individual monitoring of temperature at specific sites, this is the only method by which Ecology would be able to determine whether each discharging site actually impacts the receiving waters. The other suggested methods should be reserved for use by Ecology, but currently fail to explore actual discharge temperature violations by dischargers under the permit. Further, Ecology should also include a requirement for monthly monitoring of temperature in the permit effluent limitations and in discharger DMR requirements.

128. Response: As noted in the fact sheet, the current permit required all Permittees discharging to surface waters to conduct a receiving water study. Based on the results of that study, Ecology believes that we can determine from applications from new facilities the risk of water quality impacts from those applicants. Those facilities deemed at risk will be required to conduct receiving water studies. Please note that general condition G15 allows Ecology to require additional monitoring by administrative order.

3. Condition S4.D. of the Draft Permit allows dischargers to avoid stormwater monitoring at sites deemed "inactive," except when "the permittee or operator adds or withdraws raw materials or finished products from stockpiles" and "the site has a discharge of stormwater to surface waters of the state." (Italics removed.) Currently, Ecology does not require a site visit or any other authentication of a sites actual inactivity.

The Draft Permit Fact Sheet explains that there are around 300 currently inactive sites, each receiving the benefit of this exemption. Currently, there are no assurances in the Draft Permit that inactive sites are not discharging to surface waters of the state, because nothing in the Draft Permit mandates monitoring of an inactive site's discharge during rain events after such an addition or withdrawal. Based on Ecology's comments that it is inconvenient for a facility to monitor inactive sites during rain events, a facility can game the system, following the addition or withdrawal of raw materials or finished products from stockpiles at an inactive site, by never having a person on site during a rain event. Therefore, a permittee has the option, under the Draft Permit, to never have personnel on site when it is most likely the site will discharge stormwater to surface waters of the state, and the public and Ecology have no assurances that facilities are not causing or contributing to violations of water quality standards or permit effluent limitations.

Recommendation: The draft permit language should be changed to remove the possibility of dischargers evading permit requirements with regard to discharges from "inactive" sites. The Draft Permit should include monitoring requirements for inactive sites that appropriately monitor discharges from such sites during rain event following the addition or withdrawal of raw materials or finished products from stockpiles. Further, Condition S9.D. should include a requirement that Ecology ensure a site is truly inactive, and should include a site-inspection by a member of Ecology, before a site is deemed "inactive."

129. Response: Wastewater discharge permits rely on voluntary compliance and enforcement to assure compliance. An operator that wanted to game the system could declare a site inactive, get an inspection, then operate the site as an active facility. When Ecology discovers a site is active after declaring it inactive, that site is subject to enforcement. We think this process is sufficient without penalizing owners of inactive sites from unnecessary sampling.

4. Condition S5.D.3. of the draft permit states, with respect to Spill Response, "[a]ll employees must receive appropriate training to assure all spills are reported and responded to appropriately." The language "appropriate training" is impermissibly subjective. What constitutes "appropriate training?" What guarantees has Ecology made, both within and independent of the proposed permit, that (1) such training will actually take place and (2) is sufficient to guarantee the best possible spill-response by discharger-employees? Is there some form of required continuing education classes for discharger-employees who may have received their training in years past, thus ensuring compliance with new standards or methods? Is training required for all employees before the commencement of any new discharging projects for portable facilities? If not, why not in light of the fact that different discharging locations may present unique spill response requirements? Does Ecology scrutinize each training plan, or each discharger's training plan(s), to guarantee effectiveness? If not, how does Ecology guarantee that spills will actually be responded to appropriately? Does Ecology have a history of formal enforcement actions against facilities who fail to respond to spills appropriately? Against facilities who have failed to respond to spills appropriately on multiple occasions? If not, why not?

Recommendation: The draft permit should include specific requirements with respect to discharger training to employees, and should include a requirement that the details of each training be recorded and provided to Ecology before discharging commences at each new location.

130. Response: Spill training is very specific to the facility, the materials kept on site and the quantity of materials on site. Ecology inspectors review the spill training plans during the site inspections and require that the plan, including training, is appropriate for the facility.

5. Conditions S5.C.4.a. and b. should specify what versions of the Stormwater Management Manuals for both Western and Eastern Washington are controlling for dischargers under the draft permit. The current language in the draft permit is impermissibly vague, and should be changed to guarantee that all dischargers are following the same, specified version of the Manuals. Additionally, the draft permit should clearly disallow future Manual modifications from applying to dischargers adhering to those Manuals under S5.C.4. without appropriate agency scrutiny and opportunity for public notice and comment.

Condition S5.C.4.c. lacks specificity in stating "[o]ther equivalent *stormwater* management guidance documents approved by Ecology" without providing any indication of what such documents are. This language is impermissibly vague. What are these other "approved" documents, and why are they not specifically provided for in the draft permit? The draft permit should be revised to specify which "approved documents" are appropriate under the Condition.

Further, condition S5.C.4.d. contains a grammatical error. The condition should include "; and" at the end of i). to clearly state that both i). and ii.) are required under the subsection.

131. Response: See response number 37.

6. The draft permit fact sheet provides, from February 2005 to September 2009, "Ecology took 2221 enforcement actions" against active reporting facilities, but less than 6% of these actions took the form of penalties or notices of violation or enforcement orders, and most were informal (e.g. warning letters). How does Ecology justify this abysmal lack of formal enforcement against those clearly violating the permit? Does Ecology plan on increasing its use of formal enforcement actions in the future? Can Ecology cite any supporting information that informal enforcement actions work as well or better than formal enforcement actions? Ecology cites to insufficient resources as a reason for not adopting additional permit requirements, and an increase in the number of formal monetary penalties would help to relieve that burden and allow for better monitoring and enforcement of permit provisions and requirements.

The draft permit fact sheet also provides 80% of the violations acknowledged by Ecology between February 2005 and September 2009 were due to non-reporting ("no submittal of a discharge monitoring report or not analyzing for a required parameter"). Recognizing the strong potential to use non-reporting to conceal permit effluent violations, does Ecology currently, or plan to in the future, utilize any form of increased enforcement actions guaranteeing that repeat-offenders of non-reporting suffer formal enforcement actions instead of just informal ones? Additionally, the draft permit fact sheet states "Ecology has concentrated repeat visits on those facilities with compliance problems." Has Ecology also concentrated repeat visits on those facilities with non-reporting problems? If not, how does Ecology account for the lack of focus on such facilities?

Recommendation: Ecology should immediately increase its use of formal enforcement actions against permit-violators and repeat-offending non-reporting facilities, and should emphasize its intention to do so in the draft permit.

132. Response: Comment noted. Permits are written to direct the actions of regulated facilities. As noted, failure to report causes the facility to be a higher priority for inspection.

7. The draft permit fact sheet provides (at p. 9) that "[p]eriodic cleaning of lined ponds [containing discharged process water] is necessary." This language is vague and impermissibly subjective. What does "cleaning" in this case specifically consist of? How often is "periodic"?

Recommendation: Ecology should include in the draft permit and / or the draft permit fact sheet specific information on how often lined ponds of this sort should be cleaned, and what specifically that cleaning should entail so as to guarantee the resulting discharge does not cause or contribute to a violation of permit effluent limits or surface water quality standards.

133. Response: Fact sheet language is intended to be informative of the decisions Ecology made on the permit. Fact sheet language does not impose requirements on Permittees. The frequency of cleaning is site specific as noted by comment from Melino (#3) .

8. The draft permit fact sheet declares (at p. 13), "Facilities *should* notify their Ecology permit manager of any planned change and the potential to impact their wastewater discharge." (Emphasis added.) This language is improper as it fails to appropriately mandate such action, but instead only encourages it.

Recommendation: The word "should" ought to be changed to "must" to appropriately direct such action instead of leaving it at the discretion of the discharger. If, elsewhere in the fact sheet or the draft permit, such commanding language already exists, then "should" should be removed nonetheless to avoid ambiguity due to contrasting terms.

134. Response: The fact sheet sentence is changed to "must" to avoid confusion. The permit requires any permittee considering process change to reapply for coverage.

9. The draft permit fact sheet asserts (at p. 15) "EPA reported the level of effluent quality attainable for non-rainfall conditions, including *all* facilities and *all* wastewater streams (excluding stormwater) as a monthly average TSS of 38 mg/l and a maximum daily TSS of 80 mg/l. The limit for most categories of the current general permit is 40 mg/l average monthly TSS and 80 mg/l maximum daily TSS." (Emphasis added.) Why is Ecology using a monthly average TSS standard above that reported by EPA as attainable for all facilities and wastewater streams? How does Ecology justify this increased level, which allows greater monthly discharge of TSS than needed for all facilities? and wastewater streams to be in compliance?

Recommendation: The average monthly TSS standard should be changed from 40 mg/l to 38 mg/l.

135. Response: The TSS limit in the draft was carried over from the current permit. See response number 12.

10. In the response to Comment 4 to the current version of the permit, "Ecology … decided to delete the compliance schedule language from the general permit" and compliance schedules are now addressed using administrative orders on a case by case basis. Additionally, there is no compliance schedule language in the draft permit or the draft permit fact sheet. The creation and modification of compliance schedules under the draft permit are critical actions that have direct bearing on whether or not a permittee discharge must adhere to permit effluent limits, and require public notice and an opportunity for public comments. How does Ecology justify removing public notice and comment opportunities from the permit regarding compliance schedules?

Recommendation: The Draft Permit should be modified to include a requirement that the creation and modification of compliance schedules under the permit necessitate public notice and an opportunity for public comment.

136. Response: Compliance schedules are only issued as a part of an enforcement action for non-compliance with the permit conditions or if the permit imposes conditions that are not immediately obtainable. It's not applicable in this permit. Ecology has never solicited public input on enforcement actions, however, all enforcement actions are available to the public on Ecology's web site. Anyone who believes Ecology is not diligent in enforcement for surface water discharges may bring suit against a facility under the citizen's suit provisions of the Clean Water Act.

11. Condition S5. contains a grammatical error in the fourth requirement of the permittee immediately under the section heading. The "or" should be change to "to." Additionally, as a matter of public policy, it should be explicitly expressed in the permit that the SMP is a "public document." Further, the permit should expressly include an appropriate maximum amount of time a permittee has to provide its SMP to the public after receiving such a request. Does Ecology currently have a policy regarding the amount of time they allow a facility to respond to such a request? Does Ecology monitor such requests from the public to facilities?

137. Response: The permit has been changed to incorporate a process for public review of the SMP. Ecology does not monitor requests but can enforce for failure to provide.

The Clean Water Act requires, and the citizens of Washington deserve, a Sand and Gravel General Permit that assures discharger compliance with permit effluent limits and state water quality standards. For the reasons above, The Environmental Law Clinic, on behalf of the Spokane Riverkeeper, is unable to support the current draft permit because it does not assure such compliance. Therefore, it is requested that Ecology implement the changes outlined in this comment letter and circulate a new draft Sand and Gravel General Permit for public comment.

Sincerely,

/s/ Ryan K. Gardner
Ryan K. Gardner
Intern, Gonzaga Environmental Law Clinic
On behalf of the Spokane Riverkeeper

Forest Lane, Lakeside Industries

February 24, 2010
VIA EMAIL
Attn: Gary Bailey
Department of Ecology
Water Quality Program
P.O. Box 47600
Olympia, WA 98506-7600
RE: Comments on Draft Sand and Gravel General NPDES Permit
Dear Mr. Bailey:
This letter presents Lakeside Industries, Inc. comments on the Draft Sand and Gravel General NPDES Permit (hereafter, Draft Permit) proposed for public review and comment on January 20, 2010. Lakeside has 26 sites covered under the Permit, 15 of which are Hot Mix Asphalt Plants, accounting for 4% of the permitted facilities.

As a measure of our experience and standing on this issue, Lakeside has participated as an industrial stakeholder in each Permit renewal process since issuance. Historically, each renewal period demonstrated the consensus that over time we have collectively built a very good permit, one that has served our industry well, protected the environment and water quality, and has been used as a model for other general permit elements.

Once again, we appreciate Ecology for inviting stakeholders to provide input. However, we were disappointed in the process and the end result which added many changes and increased the complexity of the Draft Permit. During the process Ecology indicated they were going to re-write many Best Management Practices (BMPs) from the Stormwater Management Manual (SWMM) and would make some of them "mandatory." There appeared be two factions amongst Ecology inspectors having an influence on this new approach:
• The Prescriptive Group (BMPs must be precise and prescriptive for the sake of the inspector backing up deficiencies); and
• The SWMM Group (the SWMM does a good job of defining applicable BMPs and provides options to develop the best ones for a particular site).

In the end, the selection of source control BMPs followed neither the SWMM model nor the Prescriptive model.

We conclude the BMP wording in the Draft Permit is a blending of the two models. This can be seen in Section S5.C.5.c of the Draft Permit. The first paragraph provides flexibility for the prescriptive BMPs that follow, some of which are not consistent with the SWMM.

We are convinced that the new approach is not an improvement to the 2005 permit and undermines our past efforts. We expect many operators to be more confused in their BMP selection process. The writers certainly didn't have Governor Gregoire's Executive Order 06-02 in mind when they wrote the draft. The order says, in part:

Citizens and businesses deserve state agencies that will be *innovative and creative in simplifying their procedures for permits*, licenses, regulatory compliance and all other business operations .

Businesses should expect state agencies to provide:

• *Clear rules and regulations*;
• Consistent, high-quality, problem-solving service;
• Timely responses;
• *User-friendly processes*; and…

Citizens need results that protect the public health and safety and do not compromise *environmental quality*" [emphasis added] There are many places in the permit that violate the clear "plain writing" fundamentals this state has become known for. For example, Section S5.C.5.c as referenced above states:

"The SWPPP *must* include source control BMPs *as necessary* to achieve AKART and compliance with the stormwater discharge limits in S2 and S3. Ecology has determined the following BMPs will *be appropriate* for *most* facilities covered under this permit. The Permittee *may* omit individual BMPs if site conditions render the BMP *unnecessary*, *infeasible*, or the Permittee *provides alternative* and *equally effective BMPs*. The Permittee *must* note the rationale for omission or substitution in the SWPPP. The Permittee *must*:"

Which will result in more compliance? A permit that contains logically organized, clear, plain language with requirements and conditions technically supported and tied to water quality or a permit that contains poorly organized, confusing, and contradictory language with a prescriptive list of must-do items that have little if any connection to improvement of stormwater quality. We suggest compliance with a well written permit will lead to protection of water quality, whereas compliance with a poorly written permit may or may not protect water quality.

Lakeside looks forward to working with Ecology in our mutual pursuit of water quality protection. In light of that, we believe this permit is not ready for issue.

The appendix to this letter contains our detailed comments. If you have any questions or need additional information, please call me at (425) 313-2656 or e-mail me at forestl@lakesideind.com.

Sincerely,
Forest Lane
Environmental Program

Enclosure

Appendix: Lakeside Industries Specific Comments on DRAFT Sand & Gravel NPDES Permit **2010**

SECIFIC COMMENTS

S1. Permit Coverage

Comment 1

S1.A.1 *Coverage Under This Permit* and (by reference) *Appendix A -SIC and NAICS Number and Descriptions for Facilities Covered Under This Permit* -- The parenthetical note on page 5 refers the

reader to "...see Appendix A for a more complete description of activities covered." However, the appendix information is neither complete nor helpful.
Discussion-- Appendix A contains the same table from page 5, with the titles of the SIC and NAICS added to the two columns. This is followed by some references to the government web sites regarding the NAICS codes. The remainder of the "more complete description" on pages 42-44 of Appendix A is a verbatim repetition from the old permit with a more detailed description of the old SIC Codes. It would be less confusing if the SIC/NAICS translation table was included in only one place, either S1 at page five or in Appendix A. We are not sure it's helpful to include so much detail on the outdated SIC codes without corresponding detail on the NAICS.

138. Response: Table 1 is for quick reference. Appendix A is changed to include detail on the NAICS classification and CFR classification.

Comment 2
S1.A.1 *Coverage Under This Permit* and (by reference) *Appendix A -SIC and NAICS Number and Descriptions for Facilities Covered Under This Permit* -- There is no technical basis or explanation as to why Asphalt Recycle has been included under the NAICS category along with Crushed and Broken Stone Mining and Quarrying.
Discussion -- The point of confusion centers on the placement of recycled asphalt into NAICS 212319 instead of including it in the 2951/324121 codes where it belongs. Recycled Asphalt Pavement (RAP) is not quarried or mined. There is no crushing or breaking of stone. Although the initial step for recycling pavement involve some crushing, special crusher designs are used so as not to break the rocks, but only break the asphalt bonds between the rocks. Accordingly, less dust is produced than the crushing of rocks. Furthermore, it doesn't fit the definition of beneficiation from the NAICS reference (which "is the process whereby the extracted material is reduced to particles which can be separated into mineral and waste, the former suitable for further processing or direct use"). Unlike crushed and recycled Portland Cement Concrete, the crushed RAP is simply added back into the normal heated mixing zone at the asphalt plant where the asphalt cement melts and the RAP is naturally incorporated into the new pavement. The full process is described at Attachment 1.

Placing RAP into NAICS code 212319 (Crushed and Broken Stone, not elsewhere classified) adds confusion and raises further questions. If *crushing* is the key to this classification, how does one know that the recycled asphalt was not manufactured from crushed granite or crushed limestone? Shouldn't crushed pavement which was made from granite or limestone be coded as 212312 or 212313 respectively?

We have also considered the possibility that RAP was placed in NAICS 212319 because this code also includes mining of Bituminous Limestone and Bituminous Sandstone. These are natural sedimentary rock formations which have been impregnated with natural deposit of bituminous oil, or Bitumen. The material is mined in quarries and the bitumen is recovered by various processes which are described as a "coking process" or a "refractory-lined oven" process, more akin to a crude oil refining process. This would indicate that the Bitumen still contains some of the lighter ends of the oil spectrum (see attachment 2, Paper 23: Bituminous Sandstone…of Utah). Therefore the handling of this material belongs in the Petroleum Refining NAICS code, 324110 and would require different, more intense BMPs. In contrast, the asphalt cement used for pavements is the stable, heavy material left at the bottom of the fractionating tower at the crude oil refinery. It is different than the Bitumen described above. The better approach would be to simply consider RAP as part of the asphalt pavement manufacturing process (2951 and 324121). Why does Ecology want to create a new sub-category of 212319? Is there some technical basis for doing this? Is Ecology suggesting that use of RAP should require different

effluent limits, monitoring frequency, or BMPs than hot-mix pavement? We are unable to find any reference or explanation in the permit or fact sheet as to why Ecology considers RAP to be in a different SIC/NAICS category than hot-mix asphalt plants.
The hot-mix asphalt industry has always considered the use of RAP to be included in the standard 2951 SIC. We have been crushing and adding RAP in our hot-mix process in 7 of our 15 asphalt plants, some for 20 years or more. Consequently we have been monitoring stormwater from RAP piles since the permit started. For all practical purposed, RAP has been included in the Sand & Gravel permit under SIC 2951 since the first permit in 1994. There has been plenty of "full disclosure": correspondence and discussions with DOE on the subject of RAP for many years.

We are aware of the Department's recent anecdotal "documentation" (a photograph of a small pile of crushed pavement with oil sheen adjacent). However, this "circumstantial association" does not show a casual relationship. Oil sheen cannot arise from the RAP. Oil doesn't "come out" of old pavements, new pavements, uncrushed RAP, crushed RAP, or even from fresh hot-mix before it's laid down. If it did, we would see oil sheen on every stormwater pond adjacent to every asphalt concrete paved road. We have personally demonstrated to several DOE water quality inspectors that fresh, hot asphalt concrete does not give off any oil sheen when dropped in a glass of water. With all our years of experience with processing and recycling RAP, Lakeside can decisively affirm that piles of asphalt pavement, either crushed or uncrushed, are not contributors to oil sheen or any other water quality problem. If Ecology has some specific evidence or technical basis (beyond this photograph) as to how the processing and recycle of RAP may contribute to the degradation of water quality, it seems appropriate that they would produce it. Furthermore, we question why 15 years into the Sand and Gravel permit there is a sudden concern.
We have considered the possibility that Ecology was concerned about sites that only crush and store RAP without recycling back into a hot-mix. These sites may sell the crushed RAP as a road base or lowdust driveway surface. The crushed product could be thought of as many small pieces of pavement, each one as stable at the original road pavement. No new or different processes are introduced. Thus we feel that the 2951/324121 codes would cover this use as well.

By the way, the USEPA and local Clean Air Agencies consider SIC Code 2951 and NAICS 234121 to be inclusive of RAP. We found many other indications that RAP has always been considered part of the 2951/324121 category. For example, the Fact Sheet for the New Jerseys NPDES permit for the hot-mix industry includes RAP in its description of the activities of the 2951/324121 industry

139. Response: Recycled asphalt is placed in SIC/NAICS codes 2951/324121 as recommended.

Comment 3
Sites that handle RAP are already under the jurisdiction of Ecology. They are covered under the registration/permit program in Chapter 173-350 WAC: Solid Waste Handling Standards. Not only does this chapter consider RAP to be inert waste (173-350-990 WAC), but it also conditionally exempts recyclers of solid waste (including RAP) from the requirement to obtain a solid waste handling permit (173-350-210 WAC). An annual inspection is required both for the permit and the exemption. The conditions for this exemption (173-350-040) include:
(1) Design, construct, operate, and close all facilities in a manner that does not pose a threat to human health or the environment;
(2) Comply with chapter 90.48 RCW, Water pollution control and implementing regulations, including Chapter 173-200 WAC, Water quality standards for ground waters of the state of Washington;

Would this not provide enough coverage by means of city or county inspections?

140. Response: Ecology believes that the draft permit contains the requirements to meet (2) above.

S2. Effluent Limits

Comment 4

S2, Table 1 *Effluent Limits, Benchmarks and Monitoring Requirements* -- The same NAICS code issue discussed in comment 2, creates confusion for permittee in NAICS 212319. It's listed twice, presumable once for crushed and broken stone and once for pavement recycle? The effluent limits and monitoring requirements are different. Which one is which?

141. Response: Table 1 is corrected and the part of the table on page 9 has been renamed to Table 2 to make it clear that Table 2 applies to Type 2 and Type 3 stormwater requirements and monitoring. SIC codes 1429 and 1499 were both given the NAICS code 212319.

Discussion-- On the right side of the table 212319 (twice) and 324121 are all listed in the same box and therefore appear to have the same monitoring/effluent limits (although I don't believe they should, see Comment 7, below). However the table could be simplified by leaving 212319 as crushed and broken stone alone and simply define 324121 to include RAP. There is no documented reason for RAP to have any different monitoring or effluent limits than 2951/234121. Even when it is still hot, hot-mix asphalt does not "leak oil" or give off a sheen in water. This has been demonstrated on numerous occasions, including several times to Ecology Department inspectors.

Comment 5

S2, Table 1 *Effluent Limits, Benchmarks and Monitoring Requirements* -- On the left side of Table 1, Process water: There is no 327999 listed.

Discussion-- Like the recycled asphalt, it would make no difference in limits or monitoring frequency with process water, but it would make a difference on the right side of the table with stormwater. And why is 212399 (pumice, perlite, vermiculite, and diatomaceous earth) listed on the bottom stormwater block with 327999? Were there problems last permit cycle that justify this?

142. Response: NAICS code 327999 (All Other Miscellaneous Nonmetallic Mineral Product Manufacturing) to include concrete recycling is placed in Table 1. In regards to NAICS code 212399, Ecology believes there is some potential for turbidity from this category.

Comment 6

S2, Table 1 *Effluent Limits, Benchmarks and Monitoring Requirements* --Table 1, right side: The quarterly monitoring for Nitrate/Nitrite should be lined up with 212319 Crushed and Broken Stone exclusively.

Discussion-- Nitrate/Nitrite is an issue only where nitrogen based explosives are used in quarries to process aggregates. The nitrogen issue is associated with use of explosives in hard rock mining and quarrying. In parts of the country where there are no extensive sand and gravel deposits (anywhere south of farthest advance of the last continental glacier) it is standard practice to produce Construction Sand and Gravel from quarried stone. Perhaps this is why the National

NPDES Multi-sector Permit lists Nitrate/Nitrite monitoring to a benchmark in the Non-Metallic Mineral Mining Sector. However, in Washington, with the abundant resources of glacially deposited sand and gravel, explosive are mostly only used for the 1422/212312, 1423/212313, 1429/212319 codes. To prevent unnecessary monitoring, while still following the example of the National Permit, we would recommend that an asterisk or footnote be added Nitrate/Nitrite column heading that says "applies only to site that employ blasting during the quarter." This is exactly how the first Sand and Gravel permit handled the issue (see Attachment 3). Furthermore on page 13 of the Fact Sheet for the 1999 Sand and Gravel General Permit, it states that "data from this monitoring indicate that Nitrates are not found at levels of concern and therefore the proposed permit will not require monitoring for nitrates." (Attachment 4)

143. Response: The permit has been changed to require N monitoring only when blasting occurs.

Comment 7
S2, Table 1 *Effluent Limits*, *Benchmarks and Monitoring Requirements* --Table 1, left and right side: In the "Discharge Flow" columns, the reference to "See… S4.B6":
There is no paragraph S4.B.6. in the permit.

Some monitoring frequencies are listed as "Monthly" and some are listed as "One/Month. If these mean the same thing, they should be listed consistently.

144. Response: The reference to S4.B.6 is deleted.

S3 Additional Discharge Limits

Comment 8
S3.E.1 *Water Management*. The wording of this paragraph can be interpreted several ways.

Discussion— The paragraph seem to imply that all ditches and channels "must be designed…" This appears to preclude the use of a natural ditch or channel that pre-existed in a Type 1 or Type 2 Stormwater area. Recommend the Department go back to wording in current permit S7.H: "Any ditch, channel, or other *Best Management Practices (BMPs)* used for routing water shall be designed, constructed, and maintained to contain all flows except…"

145. Response: The suggested wording seems to have the same problem but is changed as suggested.

Comment 9

S3.E.6 *Water Management*. This requirement is repeated word for word in S3.J.
Discussion—To avoid repetition, remove S 3.E.6 or S3.J.

146. Response:Condition S3.J. is removed from the permit.

S4 Monitoring Requirements

Comment 10
S4.A.1 and S4.A.2 *Monitoring Requirements –A. All Discharges*—Why are these inspection requirements located in the Monitoring Requirements section?

Discussion --In the context of this permit, monitoring is used to refer to sampling the discharge at the *point of discharge*, not to inspections. Inspection requirements belong in the Site Management Plan or the SWPPP. This paragraph should be removed from this place in S4 and included into the stormwater wet and dry inspection section S4.F.(see further recommendation in comment 15).

147. Response: Conditions S4.A.1 and 2 are moved as recommended.

Comment 11
S4.A.1 *Monitoring Requirements –A. All Discharges*—Having a General Permit that covers such a variety of industries and such variability in site size, slope and facility design makes it difficult to justify such a prescriptive requirement for Oil/Water Separators (O/W Separators) such as this.

Discussion-- This requirement to inspect twice monthly (wet) and once monthly (dry) makes several irresponsible assumptions: all sites and industries covered by this permit will have similar potential for pollution and similar designs for their stormwater conveyance and treatment. The prescribed frequency may be unnecessarily burdensome in some cases and inadequate in others. The frequency of inspection and maintenance will depend on the size of the drainage area served by the O/W separator, the activities being conducted in the drainage area, the season of the year, unusual weather extremes and the climate (annual hydrograph) of the geographic area. We recommend this requirement be written so that inspection frequency is "…consistent with the appropriate Stormwater Maintenance Manual , other equivalent guidance, or other technical basis." It is better to allow the permittee to design and defend the inspection and maintenance schedule for each O/W separator in the Site Management Plan (SMP). Overly prescriptive rules create " paperwork drills" and resentment

148. Response: The inspection frequency is made to be consistent with the stormwater manuals.

Comment 12
S4.A.2 *Monitoring Requirements –*A. *All Discharges*. "Permittee must inspect all equipment and vehicles weekly…." This is an overreaching and prescriptive requirement which has only a tenuous and indirect connection with discharging unpolluted stormwater.

Discussion-- This reaches beyond the purpose, goal, and jurisdiction of the NPDES permit and creates unnecessary inspections and paperwork. This is a *stormwater* permit, not a *vehicle maintenan*ce permit. When a permit such as this gets too prescriptive, as in S4.A. (as well as in most of the Source Control BMP's listed in S5.C.5.c.1-13), it's easy for the permittee to get so wrapped up in the minutia of the *List* that he loses sight of the permit goal—protect water quality. Every time the permit calls for a specific management practice on a certain vehicle, or a certain piece of equipment, the permit is weakened and its ability to protect and regulate is compromised. For example, by saying all equipment and vehicles "must be inspected weekly…" (S4.A.2.) is the permittee authorized to ignore all trailers and liquid storage tanks? We have generally found it better for the maintenance personnel to be responsible for taking care of vehicle inspection frequency and maintenance. That, in turn, results in best environmental results. Recommend that S4.A.2 be removed from the permit

149. Response: Ecology believes specifying the minimum visual inspection frequency has a direct connection with preventing stormwater contamination. Trailers and storage tanks are addressed elsewhere in this permit.

Comment 13
S4.B.1 and S4.C.1 The permit has made a significant change from the previous version by calling for *monitoring of all discharges of Type 2 stormwater* for to both surface and groundwater. Where did this come from and why?

Discussion: The only mention of the change in the fact sheet is on page 11 where it states, "Some facilities may need to treat the stormwater to meet turbidity limits." Where is the explanation? Where is the technical basis? Furthermore if one looks at S2 table 1, in the "Type" Column, one will see that the requirement to test Type 2 stormwater is included in every NAICS code and every monitoring parameter. The permit requires goes much further than the meager warning about turbidity in the Fact Sheet—now Type 2 water must be monitored for pH, oil sheen, Nitrates. Type 2 water is stormwater that had not contacted industrial processes. Recommend this be removed as a requirement with no recognizable gain in water quality.

150. Response: Ecology inspectors have observed turbidity and sheen in Type 2 (subtype 1 and 2) stormwater periodically. The sampling requirement is changed to only apply when there are earth moving activities or when the exposed soil can contribute turbidity to surface waters. These situations, which must be identified in the Erosion and Sediment Control Plan, have a high potential to contaminate stormwater. Monitoring for oil sheen when equipment is operating is already required. Assuring that discharge limits for turbidity are met during these activities can only be confirmed by discharge monitoring. In addition, the definition of type 2 is changed to exclude subcategory 3 (runoff routed by an unlined ditch). If monitoring of Type 2 stormwater is found to be unnecessary for pollutant control it will be removed in the next permit.

Comment 14
S4.D. *Stormwater monitoring at inactive sites.* Confusing sentence. Consider revising.

Response: S4.D is rewritten for clarity.

Comment 15
S4.F. *Stormwater Inspections*—This section belongs in its own separate "S" section, or possibly in S5. Site Management Plan. (including S4.A. from Comment 9).

Discussion—These inspections generally deal with the overall design and management of the site and associated BMPs. In the context of this permit, monitoring should be limited to the specific meaning, namely sampling water. We consider them misplaced in S4 where they could be overlooked.

151. Response: See response 147.

Comment 16

S4.H. *Lab accreditation.* Turbidity has been removed from list of monitoring parameters which are exempt from laboratory accreditation.. Was this an oversight?

Discussion-- If Ecology intended to require accreditation for turbidity, they neglected to give any explanation or technical basis. There is guidance in Chapter 173-26-90(5) WAC where turbidity is included in a list of parameter that "need not be accredited." Additionally, the Industrial Stormwater General Permit also exempts turbidity.

152. Response: Turbidity is exempted from the requirement for lab accreditation.

S5. Site Management Plan

Comment 17

S5.C.5.c. *Source Control BMPs.* – Where did the notion come that a more prescriptive list of BMP's was needed? Was the present version of the permit creating a lot of deficiencies? Was it a lack of understanding? Were there a lot more deficiencies than previously? Is there some reason to believe the current conditions and BMP's were ineffective? Also, there is no technical basis to isolate paving equipment from any other type of equipment. Nothing in the Fact Sheet indicates that.

153. Response: Ecology inspectors have discovered that some operators, especially those with small facilities, were unsure of specific BMPs required for their facilities. Ecology inspectors have determined that paving equipment, if not properly cared for, may cause discharge of pollutants such as release agents or cleaning agents.

Comment 18

S5.C.5.f. *Toxic Materials* – The title "Toxic Materials" is misleading.

Discussion—Not all of the listed materials are toxic. Recommend changing the text to "Materials of Concern."

Response: The heading is changed.

S8 Accessory Uses of Site

Comment 19

S8 *Accessory Uses of Site* – Wrong wording and misleading.

Discussion— An accessory use is related to primary use. For example, an accessory use to a sand and gravel operation would be a HMA plant, a Concrete Batch Plant, a maintenance shop, etc. The intention seems to be to prevent NON-accessory uses, or unrelated uses, to the site. This is a land-use decision regulated and pemitted by local governments. Recommend changing the text to say "All uses of the site must have the appropriate permit. The Sand & Gravel General Permit does not cover discharges from unrelated or non-accessory uses."

154. Response: This section is changed.

Recycled Asphalt Pavement Information Sheet

The incorporation of Recycled Asphalt Pavement (RAP) into our county and state highways is an effective way to save rock and oil resources and to conserve landfill space. In order to utilize RAP efficiently, it must be incorporated into new asphalt pavement at a rate of between 15 to 30%. There is no such thing as a "recycle only" plant. Consequently, it is added to the production line of a hot-mix asphalt plant that has been modified to incorporate RAP into the new pavement mix. It is very common for asphalt plants to be modified to incorporate RAP into the mix.

Because RAP gets added to virgin asphalt, it makes sense to process and handle the RAP at the same site that extracts and processes the aggregate and produces the new asphalt pavement. This is efficient from the standpoint of material handling frequency and from the standpoint of reduced traffic. Often it works out that the same truck trip that hauls new hot-mix pavement to a job site, can return with RAP for processing into future pavement.

In February 2003, a new solid waste rule, Chapter 173-350 WAC, Solid Waste Handling Standards became effective. One component of the new rule is that certain solid waste facilities (including asphalt pavement recycling) are conditionally exempt from solid waste permitting. Certain conditions and standards must be maintained in order for this exemption to apply. Additionally, Thurston County has decided to promulgate its own rules that regulate RAP storage. The performance standards required by the county for its recycling permit are identical to the performance standards in WAC 173-350-040 that are required to be exempt from the state solid waste permit.

The following paragraphs describe in more detail how asphalt pavement is recycled:

Recycled Asphalt Pavement (RAP) is removed from the highway with special machines that grind off a measured top layer. Alternatively it is ripped from parking lots, utility trenches, or other sources in larger pieces and hauled to a temporary stockpile for further sorting. If required, it is screened and broken into smaller fragments with a crushing processor that breaks apart the asphalt cement bond between the rocks. The smaller, fine-grained aggregate material stays bonded to the asphalt cement, which means that the crushed RAP would create less fugitive dust than virgin crushed aggregate.

The RAP now looks like dark gray crushed rock. It is ready to be loaded into a hopper for recycling back into hot-mix asphalt. It is important to recognize how stable and non-toxic this material is. No substances leach out of the asphalt or rock. It cannot mix with or contaminate water. No solvents are used. It is not a toxic or dangerous waste. Asphalt concrete is used to line fish rearing ponds and drinking water reservoirs. Even in its crushed state it's as "safe as a highway."

At the asphalt plant the RAP is fed from its hopper into the virgin mix as a rate of about 15-30%, but that can vary. The crushed product drops from the conveyor into a mixing chamber into the already heated aggregate and asphalt cement and is mixed into the "hot-

mix." Alternatively, with batch plants the crushed RAP drops from the conveyor onto the hot-stone elevator where it is lifted in the tower and eventually is mixed into the hot-mix in the pug-mill. It is important to note that this process uses the entire recycled pavement. There is no leftover material or waste. Modern asphalt plants are designed to receive this material in an efficient and environmentally safe manner, which creates a significant saving in natural resources (rock and asphalt cement). For every ton of RAP incorporated into the hot-mix there is a resource savings of one ton of crushed rock and about 100 pounds of asphalt cement. Furthermore, since RAP generally has less moisture than crushed aggregate due to its size distribution, it requires less energy to heat and therefore should result in lower air emissions.

There is no chemical processing or separation of asphalt and rock. Those unfamiliar with the process have wrongly implicated recycling as a likely source of ground water pollution. If this is true then we should be equally concerned about the environmental safety of the thousands of miles of paved roads. On the contrary, this recycling technique is a cost-effective, environmentally safe way to manufacture asphalt pavement while conserving natural resources and reducing air emissions.

Paper 23 BITUMINOUS SANDSTONE AND LIMESTONE DEPOSITS OF UTAH

by Robert E. Covington[1]

INTRODUCTION

The significant bituminous sandstone and bituminous limestone deposits of Utah are located within, or on the edges of, the Uinta Basin. They are all located within the boundaries of Carbon, Duchesne, and Uintah Counties. The Sunnyside deposits in Carbon County contain the greatest reserves of bituminous sandstone in the United States. The sandstone averages 8 to 10% bitumen by weight, (Holmes, 1956), totaling more than 1,600,000,000 cubic yards of bitumen. The second largest deposit in Utah is the Asphalt Ridge bituminous sandstone area in Uintah County, Utah. Reserves for this area have been estimated at more than 1 billion barrels, although this figure is probably high. The asphaltic sandstones of the Peor Springs area and the Whiterocks Canyon area are described. The Asphalt Ridge, Sunnyside, Peor Springs, and Whiterocks Canyon area deposits contain more than 90% of the asphalt reserves in the State of Utah.

There are many other small, relatively insignificant deposits of no commercial value, but of geologic interest: Among those discussed are the asphaltic sandstones in the Deep Creek area, the Chapita Wells area, the Raven Ridge deposits, the John Starr Flat accumulation, the Lake Fork-Yellowstone River area, the North Tabiona area, the South Myton area, the "argulite" deposits in Argyle Creek, the asphaltic limestone deposits in Indian Canyon-Lake Canyon, and the asphaltic sandstones in the Dragon-Asphalt Wash area.

ATTACHMENT 3.

		Sampling Frequency	
	and to all unlined impoundments		
[a] Storm water samples collected and analyzed once per quarter when storm water is present			

2. Within 36 months of coverage under this general permit, permittees shall monitor process water, Type 3 storm water, and mine dewatering water to include the following additional requirements:

		Sampling Frequency	
Parameter	Sample Point	Process Water	Storm Water
Total Petroleum Hydrocarbons	Discharge point(s) to surface water and to all unlined impoundments	Monthly	Annually
Nitrate[1]	Discharge point(s) to surface water and to all unlined impoundments	Monthly	Annually

[1] Applies only to active sites employing blasting

Nitrate was also considered as a parameter of concern. Mining operations that employ blastin have the potential for nitrate contamination. Nitrates might also be found in wastewater associated with concrete batch operations. The existing permit required monitoring for nitrate The data from this monitoring indicate that nitrates are not found at levels of concern and therefore the proposed permit will not require monitoring for nitrates.

Rob Johnson, Cadman, Inc.

February 22, 2010

Cadman,In
Suite 1
7554 185th Avenue N
PO Box 970
Redmond, WA 98073-97
425.867.12
fax 425.861.40
www.cadman.cc

Gary Bailey
Washington State Department of Ecology
P.O. Box 47600
Olympia, WA 98504

Reference: Sand and Gravel General Permit Comments

Dear Mr. Bailey,

Cadman would like to provide the following comments regarding the revised Sand and Gravel Permit issued by your Department.

Cadman is a major corporation that operates nine sites within the Puget Sound region. All nine of Cadman's facilities are covered under the General Sand and Gravel Permit. Our operations include: aggregate mining, aggregate processing, concrete ready mix production, concrete recycling, reclamation activities, equipment maintenance and servicing, ecology block production and many other supplemental site activities. During these difficult economic times, we see our Company as a major provider of family wage jobs and a producer of essential building materials. Cadman takes its commitment to the environment and its communities very seriously and for many decades has taken innovative steps to comply and go beyond the parameters of the Sand and Gravel General Permit.

In light of our expertise in managing process and storm waters, we would like the Department to seriously consider some of the current permit revisions and determine if so many changes are really necessary. Specifically:

- **Entire Permit**- Many of the sampling and inspection requirements are slightly changed from those in the original permit. Not only are these changes confusing, in some cases, they exceed the requirements of the Stormwater Management Manual for Western Washington. Consistency between all Ecology permits and Ecology guidance documents is paramount for an operator to properly understand the requirements.

155. Response: Some changes have been made to be consistent with the Stormwater Management Manual. General Permits are crafted to the specific industrial practices and pollutants. For that reason, they will have differences.

- **Entire Permit**- There are many areas within the revisions that include highly prescriptive measures. Specifically, the section discussing BMPs (c. Pg 21) and the section discussing track out (S5.C5.c.11 Pg.21). Ecology must understand that each operating location is very different and generic BMPs do not work in all situations. For example, at four of

Cadman's facilities prevention of track out is specifically detailed in our local land use permit conditions. In some cases these conditions are also very prescriptive on how to prevent track out, the difference being that the local government went through a site specific environmental review before determining the improvements with such specificity. The permit changes raise significant issues about implementation; for example, do the new requirements in the General Sand and Gravel Permit and the prescriptive approach override the local jurisdictions which currently mandate site conditions? Does the new prescriptive approach to dealing with BMPs mean that we must ignore our previous extensive site specific environmental reviews upon which current land use permits are based and install the 13 BMPs only? The existing General Sand and Gravel General Permit does a good job of protecting water quality without crossing the line into land use and local permit regulation. Cadman strongly encourages the Department to continue to protect water quality through effluent limits and not through onsite construction/land use mandates.

156. Response: This permit does not supersede any more restrictive requirements placed on the facility by another permitting agency.

- **Entire Permit**- This revision is very difficult to review and implement. Many smaller producers will not have the resources necessary to implement all of the various requirements. It is our understanding that
EXECUTIVE ORDER 06-02 gives businesses the right to expect state agencies to provide:
  - Clear rules and regulations;
  - Consistent, high-quality, problem-solving service;
  - Timely responses;
  - User-friendly processes

157. Response: Ecology believes the permit more clearly defines the requirements, especially for the smaller producers.

- **S5.C.5.c.6**: This BMP is in regards to the use of soap in vehicle cleaning. Cadman understands that the washing of vehicles with a soap product is allowed as long as the wash water is discharged to the ground and sampled as process waters. The exclusion of soap use to clean vehicles only increases track out concerns. This section should be clarified to allow soap use in process water to ground water discharges.

158. Response: See response number 62.

- **S5.C.5.c.11.c Pg 22**- Treatment of wheel wash water is addressed consistent with the Western Washington Stormwater Manual. However, the language in this manual is intended for short duration use wheel washes on construction sites. The permanent wheel washes that Cadman installs and operates are entirely more effective than a typical construction site wheel wash. In order to reconfigure our existing wheel wash systems to provide a separate area for water treatment, the cost is in excess of $100,000 per site. This separate area is simply not necessary because we already treat wheel wash waters in oil/water separators and then re-use the waters along with our other aggregate process waters. Repeated testing shows wheel wash water to be free of metals and to be similar to aggregate wash plant process waters and should be treated as such.

159. Response: The requirement for a separate treatment is removed.

- **S8**: Accessory Uses: Cadman understands the need for the Department to regulate unrelated uses that turn up on aggregate sites. However, the way in which this section is worded has many parallels with land use regulations. 'Accessory Use' is a legal term of art used in land use code when describing uses that are compatible or accessory to one another. It appears that Ecology is attempting to regulate uses that are not covered under the permit and are therefore not accessory uses. Cadman would like to suggest the following wording for section S8:

> **Other/unpermitted uses of the site**
> All activities at the permitted site shall have the appropriate permits for those uses. This permit does not cover any discharge from uses not falling within the SIC codes covered by the General Sand and Gravel Permit. No discharge is allowed from any activities unless it is either covered under this permit's SIC code criteria or is covered by a separate individual wastewater discharge permit.

160. Response: The suggested wording is accepted.

Thank you for your work on this permit revision. If you would like to discuss any of the above concerns in further detail, contact me at any time. Please understand that the General Sand and Gravel Permit is a major component of our day to day site operations and we are committed to ensuring that a successful and workable permit can be obtained.

Jana McDonald, PE, CPM Development Corp.

February 4, 2010

Gary Bailey – Sand and Gravel General Permit Comments
Washington State Department of Ecology
P.O. Box 47600
Olympia, WA 98504

Dear Mr. Bailey,

CPM Development Corp. (CPM) was an active participant in the review of the Sand and Gravel General Permit in the latter half of 2009. Based on meetings, the Draft permit, and the Fact Sheet out for review, CPM has the following comments.

General Comments:

1. Ecology has made many changes to the permit without any data. CPM would urge Ecology to provide proof of their data that substantiates many of the permit changes. It is important to remember that the overall goal of the permit is

161. Response: Ecology is unsure what data is necessary. The discharge monitoring data and inspection reports clearly show that this industry generates pollutants that go to State's waters.

2. CPM has over 35 Sand & Gravel General Permits. The permit as written will have financial impacts to many companies in this industry.

162. Response: Ecology agrees that there will be some increased cost for additional monitoring, however, we believe these are minimal.

3. The Fact Sheet is outdated, does not address many of the permit changes, or accurately reflect how the industry operates.

163. Response: Comment noted.

4. The Draft Permit is consistently inconsistent and very difficult to review. Executive Order 06-02 states "Businesses should expect state agencies to provide:
   - Clear rules and regulations;
   - Consistent, high-quality, problem solving service;
   - Timely responses;
   - User-friendly processes"

164. Response: See response 153.

5. The existing permit allows the flexibility the industry needs to operate while having all the tools an inspector needs to monitor compliance with water quality. This Draft permit is highly prescriptive and has moved away from a performance based permit. The intent of the permit is to protect water quality.

165. Response: As others have pointed out in this document, the monitoring requirements (performance demonstration) of this permit are minimal and generally do not include monitoring of discharges to ground water. In the absence of frequent effluent monitoring, Ecology relies on demonstrated source control (BMPs).

As industry has shown over the course of this permit, there are many ways to protect water quality. The Draft permit restricts the industry to seek innovative or new technologies to address issues. It also dictates which BMP's to use and steps to be taken to address issues which may not be applicable to specific sites.

166. Response: Ecology is unable to find where the draft permit restricts the industry to seek innovative or new technologies. The permit allows exception to specific BMPs if they are not applicable and does not prohibit new source control measures.

Permit Specific Comments:

1. S2. Table 1 (page 9) – The addition of Nitrate and Nitrite testing for Type 2 & 3 Stormwater for discharges to surface water for Construction Sand & Gravel and Industrial Sand does not make sense. What is the rationale for this addition, as there is not a clear argument in the Fact Sheet?

167. Response: See response 143.

2. S2. Table 1 Type 2 Stormwater has been added to the testing matrix. In 2005, Type 2 stormwater was removed from the permit as part of the appeal negotiations. Those negotiations should remain valid and Type 2 stormwater should remain out of the permit. Please remove Type 2 stormwater from the permit or provide compelling reasoning as to why it should be back in the permit.

168 Response: See response number 150.

3. S4.A.1 – Inspection of oil/water separators – this monitoring requirement is not consistent with the Storm Water Management Manual. Inspection frequency should be consistent with the Manual.

169. Response: See response number 74.

4. S4.A.2. – Inspection of all equipment on a weekly basis. This is an example of an overly prescriptive requirement. This is an industry permit not a vehicle maintenance permit.

170. Response: See response number 75.

5. S4.H – Turbidity has been removed from the testing parameters allowed to be performed by the permittee if accredited. There is no discussion or backup of this omission in the Fact Sheet. Turbidity should be returned to this section unless Ecology can provide industry some proof of why it should be removed.

171. Response: See response number 57.

6. S5.C.5.c. – Source Control BMP's – This section is too prescriptive to the point that it restricts industry's ability to be innovative and flexible in solutions that could result in better protection of water quality.

172 Response: See response above.

7. S5.C.5.c.1. – Storage of empty containers in containment should be removed from this section as an overly prescriptive requirement. Empty containers should be allowed on sites and not take up space in containment areas. Many sites already have double containment areas set and do not have room for empty containers. Requiring empty containers to be in containment is another unnecessary added cost to industry.

173. Response: See response number 59.

8. S5.C.5.c.2 – Unused equipment to be drained of fluids needs to be removed from the permit as an overly prescriptive requirement. There is no definition of "unused" and it will be at the discretion of the company, inspector, etc. This industry sees many fluctuations of business due to weather, economy,

etc and the costs associated with complying with this requirement are unnecessary. It is up to each company to properly manage and maintain their equipment. Again, this is not a vehicle maintenance permit.

174. Response: See response number 60,

9. S5.C.5.c.6. – Vehicle Washing – This prohibits use of soap for all operations and creates an added expense to sites unnecessarily. DOE has put out documentation allowing the use of soap if it is discharged to ground and not to a storm drain or surface water. This is an over prescriptive BMP that is inconsistent with previous DOE guidance – see attached letter.

175. Response: See response number 62.

10. S5.C.5.c.7. – Storage of uncured concrete, any type of concrete solids (does not include fully cured recycled concrete), uncured asphalt paving materials, cold mix asphalt on a bermed impervious area. This includes ecology blocks, septic tanks, jersey barriers, and other cast concrete products. Ecology blocks, septic tanks, jersey barriers and other cast concrete products are cured concrete essentially making this requirement ridiculous and overly prescriptive. In addition, asphalt does not go through a curing process, there is no chemical reaction going on to change the components of asphalt which determine whether it is cured or not. There is no technical backing of this BMP, no reasoning, and it should be removed from the permit.

176. Response: See response number 63.

11. S5.C.5.c.11. – Managing Sediment Track out – This section is overly prescriptive – it should simply read "Track out should be managed to prevent stormwater contamination." Industry should have the flexibility to determine the best way to manage track out. Not all sites are going to need a prescriptive list of BMP's to manage track out and the prescriptive list should not be the final list as to how it should be managed. Not all sites need a wheel wash or tire bath, so they could skip item c and jump to item d and still be effectively managing track out. In addition, industry has provided test data to Ecology in regards to the wheel wash discharge. Test data indicate no contaminants. Ecology has failed to provide any proof as to why wheel wash water needs to be handled differently.

177. Response: See response number 77.

12. S5.C.5.f. – Toxic Materials – CPM requests that Ecology rename this section to more adequately reflect the intent and suggests "Chemicals of Concern". Many of the materials listed are not toxics and it is incorrect to label them as such. For example, many concrete admixtures are comprised of natural materials.

178. Response: See response number 66.

13. S8. – Accessory Uses – CPM requests that this section be removed from the permit. Land Use regulations are not part of DOE's jurisdiction but rather fall to city, county and state governments. There are many accessory uses to the industry that are associated with sites. If in fact it is DOE's intent to regulate NON-accessory uses to the industry then this section needs to be re-written to clarify that intent.

179. Response: See response number 68.

August 4, 2010

CPM Development Corp. appreciates the opportunity to comment on the Draft Sand & Gravel General Permit.

Sincerely,

CPM Development Corp.

Bruce T. Chattin, Washington Aggregates and Concrete Association

Gary,
Thanks very much for this opportunity to have worked with you and Scott during the renewal stakeholder period for the General Permit. Each renewal period continues to demonstrate the consensus that over time we have collectively built a very good permit, one that has served our industry well, protected the environment and water quality and has been used as a model for other general permit elements.

As we entered into this process, it was indicated by Bill Moore and Ted Sturdevant and reinforced at our initial meeting that Ecology's directive for this renewal effort was *"minimal changes and to streamline the permit"*. I think you'll see through the many comments of our industry members it would appear we may not have accomplished either. Not due to lack of effort, but rather I think is more symptomatic of the way the stakeholder process and renewal process takes place. As you know, we were extensively and actively engaged throughout the discussion process. Once these discussions concluded, the process goes internal to Ecology. Consequently, we are not aware of what, if any changes may take place until the draft language is produced and we begin the public comment period.

My comments are going to be very specific to what I believe has contributed to the lack of agreement in the permit as drafted as a result of the internal Ecology process. I would submit as we identified and fought against in our general discussions, Ecology allowed the self interests of one inspector to dominate the changes, regardless of the clarity and cogent arguments we made to refute emotional input. The purpose of our collective comments is to identify and reconcile the changes we see, versus the discussions we had, and the outcome is clearly identified to a single source. I would suggest this does not serve Ecology or the stakeholders of this permit renewal process well.

We continually objected to the changes based on the input of some inspectors. I believe we very successfully pointed out where the inspector did not fully understand the original intent of the permit, identified where the necessary permit tools and language were to address their concerns, identified permit elements that provided inspectors the tools to implement the permit as designed, and provided the clarity of the role of an inspector to address BMP's or mitigations that may not be effective as required. Unfortunately, at least one of the inspection team felt it their obligation to be able to include specific prescriptive elements in the general permit to provide "leverage" in their inspection efforts. We pointed out numerous instances where the permit already addressed these concerns, provided the language that BMP's need to be effective and encouraged them to become more familiar with the content and intent of the permit rather creating a personal checklist.

We believed we had successfully made the argument that "mandatory" now referred to as "prescriptive" BMP's were not acceptable. We see this concept has been reintroduced into the draft and based on the continuity of the previous discussions the source is readily identifiable.

180. Response: The conditions in the draft permit were subject to considerable internal debate and discussions with the industry. We believe the draft is an effective , protective and fair permit.

The General permit was originally and intentionally and specifically designed to be a *performance based BMP permit.* It recognizes the variety and site specific changes throughout our industry as well as the significant resource differences of larger and small producers. The general permit has always been built on the effectiveness of the BMP's implemented. If the BMP's are not effective, than changes (implemented by an inspector as Scott so effectively does) would be required to improve the conditions. The incorporation of prescriptive BMP's undermines this very historic concept, makes it more difficult for operators to be able to economically manage their onsite discharges and simply provided this inspector a checklist of what they thought was necessary in order to do their job. Rubbish.

Now, such an element will give inspectors the ability to say that BMP's must be carried out in a very prescriptive way and if not done accordingly, an operator may be in conflict with how each inspector may interpret prescriptive measures.

181. Response: Ecology believes small operators will appreciate knowing what Ecology expects to see when we go on site.

To underscore the practical and economic effects of this new element, David Freels of Godbey Redi Mix testified to the impacts these new measures will have on his business and indicated as result his ability to fund prescriptive measures as outlined may impact his ability to stay in business. Their company located in a very small and rural area in Eastern. WA. The direct cost of implementing prescriptive measures instantly impacts his bottom line. This is exactly the flexibility that performance based and BMPs were the backbone of this permit from the very beginning. David also commented that the permit still does not recognizes the differences in conditions in Eastern versus Western Washington and the prescriptive measures make this even more difficult. The permit has never really done a good job in this area.

182. Response: The BMPs specified in this permit are the minimum BMPs that Ecology has always expected to see in practice. Mr. Freals comments and responses are given below.

There are basic elements where BMP's on the "prescriptive list" make sense. In other areas such as wheel wash and track out, they are completely subjective to the visual observation of an inspector. We also collectively addressed the use of wheel washes as a BMP and the frequency of discharging those waters. CalPortland was the only resource to provide actual data regarding the makeup of these discharges (copies provided to Ecology) and there were minimal if any areas of concern. We also indicated that if not properly written, the discharge of these waters would be extremely expensive (upwards of $100,000 in some cases to treat and dispose of). We now have a permit element where operators have already implemented a high level of BMP to deal with "track out" in use of wheel washes that will make this very effective and voluntary BMP more expensive to implement.

183. Response: The issues of wheel wash and track out have been addressed.

Other areas of considerable concern:

S4.A.1: Inspection of oil water separators: A specific inspector concern. If the systems are not effective as required, the inspector can require the system be improved and brought to an effective condition.

184. Response: The frequency of oil/water inspections has been addressed.

S4.A.2 Vehicle inspections: A specific inspector concern. This has been historically addressed by the permit. Vehicles are already inspected in pre-shift and pre-operational inspections usually on a daily basis, so the additional prescriptive measure is unnecessary.

185. Response: The permit defines our minimum expectation. We know a conscientious facility will exceed these minimum requirements.

S5.C5.c6: Soap cleaning. A specific inspector concern. Again, this is already addressed and allowable as a discharge to ground and sampled as process water as well as being a tangent BMP to reduce track out.

186. Response: See response number 62.

S5.C5.c7: Work areas where precast or Ecology blocks are manufactured and or stored. A specific inspector concern. These processes have been contemplated since day one of the permit as this activity is a profound BMP of the reuse and recycling of return concrete. These activities are typically conducted in areas that are already identified on a site plan and addressed as process water activities areas and the waters associated with these activities are classified accordingly, treated or collected prior to discharge. As written, this would require 7 day storage of materials in a covered area, which is not practical. In discussing this with Scott at the hearing, this was not the intent of the language as written , but rather to identify new areas where these activities may be a start up condition and would be reconsidered.

187. Response: This section does not require covering. It requires that stormwater go to process water collection until the concrete is cured.

S8: Accessory uses: A specific Inspector concern. Discussed extensively. We recognize the many variations in rural versus urban areas where such activities can take place and as recycling becomes a greater part of our future industry, will need to be properly address, but this does not accomplish that. This was an inspector checklist item.
We understand the concerns where more rural Permitees are engaging in activities that are not consistent with the discharge elements contemplated in this General Permit. As written we now are faced with potential land use permit generated decision making and would question the ability of Ecology to have this capability within the conditions of a general permit. Please supply the specific written and compelling cites that would authorize this permit to make land use application decisions.

188. Response: This section has been changed. See response number 68.

Short of that, the solution seems to reasonably straight forward:
If the new activity use is not consistent with the discharge elements or conditions contemplated by our general permit, the use is not allowable and shouldn't be covered under this permit. If necessary, the permitee may be required to acquire specific permits as provided by Ecology to cover the new activities.
To more correctly deal with the way the S8 is written, it really should be rephrased as *NON accessory uses*, which is really what the permit is trying to address. We would strongly encourage we fully revisit and discuss this section to more correctly deal with and rewrite accordingly.

189. Response: See response number 68.

General concern: Additional paperwork requirements: The measures as indicated in the permit in these comments and in the many comments by other industry members will only result in additional recordkeeping and paperwork. As some elements may only be visually inspections, the inspector will now have the words on the paper to request and verify such inspections were conducted.
These types of concerns is one that makes the interpretive nature of each inspector difficult to predict and consequently does not bring any continuity to the permit, regional success or simply implements unnecessary efforts to proved a checklist to inspectors that do not have the intimate knowledge on how the permit is intended to be implemented.

We consistently offered to work with the inspectors to deal with their concerns and offered to co-design a guidance document that could be used by Inspectors to help deal with improved upon BMP's , improve communications and expectations of Permitees in their inspections, and do a joint workshop on making this document readily available. There were a number of folks that felt this was a good idea, and some suggested it may be better adopted once this permit renewal was completed. I submit the Guidance Document would be far more comprehensive and effective than a random set of inspectors concerns placed within the permit. Our offer remains on the table and I hope we can move forward on this.

190. Response: Ecology inspectors have agreed to work on this effort. Please contact Gary Bailey to work out the details of the workshop.

I hope and trust you will take my specific and focused concerns regarding the source as I perceive them to be as to identify why we feel the process has been compromised. We have communicated these same concerns throughout the process and believe it has not contributed to an improved permit document.
We look forward to continue to work with you and Scott in making this a better document, and to meet the original objectives of modest changes and streamlining. Thank you for your efforts in this.

Jeff Rudolph, Pierce County

Hi Gary,
Below is our comments in red from Pierce County Road Operations regarding the new Sand and Gravel permit.

S4.F 3. Erosion and Sediment Control Inspections
a. At *active sites* conducting earth moving activities that discharge to *surface water*, the Permittee must inspect all on-site *erosion* and *sediment* control *BMPs* at least once every seven days, and within 24 hours after any storm event of greater than 0.5 inches of rain per 24 hour period. The Permittee must maintain a file containing a log of observations as part of the *Erosion and Sediment Control Plan (ESCP).*
b. At Inactive sites that are inactive for a period of three years or longer, and have the **potential** to discharge *stormwater* off *site*, 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. The Permittee must maintain the certification as part of the *Erosion and Sediment Control Plan (ESCP).*
Potential to discharge is a loose term. We would prefer something with less potential for interpretation issues. Most stormwater facilities are designed to handle a specific stormwater event such as the 6 month, 2 year, etc. It would be easier for everyone if the discharge was tied to a specific storm event.

192. Response: Ecology agrees every active site has some potential. The permit is changed to use the 10 year-24 hour storm event.

Thanks

Jeff

Dave Lewis, Miles Sand and Gravel

Re: DRAFT SAND AND GRAVEL GENERAL PERMIT

Dear Mr. Bailey,

Miles Sand & Gravel Company is disappointed with the content in the draft of this general permit. We have been an active participant in the meetings with DOE Staff. During these meetings, both DOE Staff and members of WACA Environmental Committee agreed that the present general permit was working well and only needed minor "tweaks" and some reorganization. The writing of this draft did not follow our discussions.

This draft, as written, has changed from a performance based permit to a prescriptive permit. During the preparation of the present permit, a similar situation occurred and appeals were filed. This present draft should be changed to conform to the agreements we made last year.

We are aware there are some DOE Staff members who believe the solution to preventing contamination of our water is to implement more conditions, checklists, the same prescriptive requirements for all permit sites and the same requirements in all general permits. While prescriptive requirements may make it easier for an inspector to fill out an inspection report, the inspector may not understand how the industry works and that some prescriptive requirements will not work at all sites. The performance based requirements will allow the inspector and the industry to work together to attain the goal we are all after, **"to not pollute the waters of the state."**

In spite of our disappointment, with this draft, we are still committed to working with DOE to obtain a performance based permit. The following comments are intended to be constructive and are not to be considered as criticism to anyone.

SPECIAL CONDITIONS

- **S1.A.1:** NAICS 212319. The Activity shown does not match the Activity shown in the Fact Sheet or the Activity or the Activity shown in Appendix A. This Activity should state "Asphalt Concrete Recycle".

193. Response: Text is changed.

- **S2 Table 1:** References under "Discharge Flow" denote to see S4.B.5 and S4.B.6. There is not a S4.B.6.

194. Response: Reference to S4.B.6 is deleted.

- **S2 Table 1:** Why is there a requirement to test NAICS 212321 and 212322 Stormwater for Nitrate? The Fact Sheet does not even discuss this or show that nitrate is a problem for sites covered by this general permit. The discussion in the Fact Sheet under "Whole Effluent Toxicity" states "Ecology may require effluent toxicity testing in the future, if it receives information that toxicity may be present…" Since Ecology does not know if Nitrates are present in any stormwater discharge or any other discharges regulated under this permit, then Nitrates should be treated the same as toxicity. Remove the requirement for Nitrate testing.

195. Response: See response number 15

- **S2 Table 1:** Why has testing of Type 2 Stormwater been added to this permit? During negotiations of the appeal to the present permit DOE agreed to remove the requirement for testing of Type 2 Stormwater. The agreement made by DOE should still be valid and testing requirement of Type 2 Stormwater should be removed from the pending permit. DOE has not shown in the Fact Sheet that Type 2 Stormwater is causing harm to the Waters of the State.

196. Response: See response number 70 and 150.

- **S2 Table 1:** Discharge limit for TDS, 500 mg/l, is now shown as a mandatory limit. The Fact Sheet stated that the present permit requires concrete batch plant facilities that exceeded a discharge to ground of 500 mg/l to determine the cause of the elevated TDS using a Pollution Prevention Schedule to solve the TDS problem. See Appendix C of the present permit. The Fact Sheet goes on to say that Industry complained that this schedule created an uncertain end point and therefore DOE made the 500 mg/l a mandatory limit. When reviewing our notes, we suggested to DOE that Appendix C be rewritten to resolve the uncertain end point. This is what we recommend should be done. DOE has not stated in the Fact Sheet why the TDS limit should be 500 mg/l. What proof does DOE have to show that if the discharge exceeds 500 mg/l it will be harmful to the ground water?

197. Response: Ecology believed the simplest way to resolve the uncertain end point was to make 500 mg/L a discharge limit. The value of 500 mg/L total dissolved solids is a ground water standard (see WAC 173-200).

- **S3.G.1:** Add "untreated" after "discharge" and before "process water". Any process water that has been treated and/or meets the water quality standards should be allowed to discharge to surface. See 40 Cfr Part 443, Subpart B which states "Asphalt Concrete facilities must not discharge any process waste water pollutants to surface waters." The key word here is **"pollutants".** If the process water is treated so that discharge to surface meets water quality standards then it is not polluted. See also Table 1.

198. Response: The regulation does not say "meets water quality standards". Many pollutants do not have any water quality numeric standards but still cause

pollution. The only way to assure there is no discharge of process pollutants is not to discharge any process wastewater.

- **S4. A.1:** The inspection requirements for oil/water separators should be as required in the DOE Stormwater Manual.

199. Response: See response number 74.

- **S4. A. 2:** Equipment records should not be a part of this permit. Equipment records are part of a maintenance program and need not be duplicated. This is one of the many prescriptive requirements that do not lead to better water quality.

200. Response: Equipment records kept for other purposes may be used to satisfy the conditions of this permit

- **S4. B & C:** Remove all mention of Type 2 Stormwater. Testing requirements were removed as discussed before.

201. Response: See response number 70 and 150.

- **S4. F:** Add "Some sites may not lead to wet and dry season inspections. The reasons for not conducting these inspections must be explained in the site SWPPP." Some sites are completely surfaced with pervious and impervious pavement and do not have a potential to erode.

202. Response: Erosion is only one of the problems to be determined during wet and dry season inspections.

- **S4. H:** Turbidity should be included as exempt from Laboratory Accreditation. The present permit does not require laboratory accreditation so why now? Today's analyzers are accurate and contain calibration standards. Wording in this section should allow the use of testing meters for testing of various monitoring data when the meters have proven dependability.

203. Response: See response number 57.

- **S5. C. 5.c.3:** This should be deleted. Why does the lid of a dumpster need to be closed at all times or under cover? This is not covered in the Fact Sheet.

204. Response: Dumpsters can contain garbage which leach pollutants in rain water. It's not necessary to close a lid when the sun is shining but if it is a routine practice you don't have to worry about getting it closed when it starts raining. Language is added to exempt containers for non-leachable materials.

- **S5. C.5.c.6:** This should be deleted. The Fact Sheet does not mention any harmful effect for the use of soap in washing of equipment.

205. Response: See response number 62.

- **S5 C. 5.c.7:** Delete the mention of uncured asphalt paving materials and cold mix asphalt. Uncured (what ever this means) asphalt paving materials and cold mix asphalt are used on roadways throughout the state without any proven harmful effect to water quality.

206, Response: Ecology believes that hot (uncured) asphalt paving materials and cold mix asphalt may leach harmful pollutants.

- **S5. C. 5.c.10 thru 13:** These items should be removed and written to conform to how this industry works. There appears to be an attempt to make these requirements the same as the general permits for industry and construction. This will not work.

207. Response: Ecology is unsure of the meaning of this comment. For example, permit condition S5.C.5.c.10 is "Take leaking equipment out of service and prevent it from leaking on the ground until repaired. Repair all leaks before putting equipment back into service on the site." We're sure the commenter would follow this requirement.

- **S 8:** Accessory uses are more of a land use issue than a water quality issue. The last sentence of this condition is unnecessary and should be deleted

208. Response: See response number 68.

The Fact Sheet does not use the latest information available for our industry. The DNR information is from 1991 and 1998. Other information is from the 1970's. More current information for our industry is available and should be utilized.

Before this draft permit was written, the best available information should have been used. For this reason, we recommend that the present permit be used until DOE can update their information.

Thank you for the opportunity to comment on this draft permit.

Very truly yours,

Mike Schuh for

Dave Lewis
Environmental Manager

PUBLIC HEARING TESTIMONY

Let the record show that it is 2:54 PM on February 22nd, 2010, and this public hearing is being held at the Lacey Timberland Regional Library, located at 500 College Street SE, Lacey, Washington. The primary purpose of this hearing is to receive public comments regarding the reissuance of the Sand and Gravel NPDES state waste and discharge general permit. The legal notice of this public hearing was published in the Washington State Register, Issue number 10-02-082. Ecology directly notified approximately 900 permit holders, government agencies and the tribes of this proposal. In addition, information about the permit reissuance, public workshop and the hearing date was posted on Ecology's website and public calendar. At this point in time we have one person who has indicated that he would like to provide testimony, and he's already up here waiting and so if you would state your name, your address for the record, you may begin your testimony.

Forest Lane, Lakeside Industries, PO Box 7016, Issaquah, 98027.

If I run out of things to say, and need to pause a little bit, can you pause it while I collect thoughts? I'm ready to go now, but I was just figuring….OK, never mind. It'll be a blank spot if needed.

Lakeside Industries – I've been there since '93, I think, and I guess the permit was issued about the same time I came to work. So, I'm familiar with the permit. I feel emotionally connected to it and have been involved in every reissue since then.

We have 12 hot mix asphalt plants, 12 sand and gravel sites and 20 NPDES permits. Not for the record, but 20X …..that's a lot of dollars for figures such as this.

I'm reading on the Fact Sheet first. There's a couple of things on the fact sheet that I think are good for guidance, I'm not sure what follows. The fact sheet explains the nature of discharge covered by the general permit. Ecology's decisions on limiting the pollutants in the wastewater and the regulatory technical basis for these decisions. I think the regulatory and technical basis for some of these decisions is not there.

Third paragraph, on page one of the Fact Sheet: Proposed general permit provides protection of groundwater, surface water and aquatic sediment in waters of the state by limiting discharge of pollutants to process water, mine water and stormwater. I'm saying what is really happening there is you have a large checklist that when checked should be limiting those discharges, but I'm not sure it will really do the job.

Significant changes at the bottom. There's 8 things listed, and I think Ecology has done an excellent job with 6 out of 8. I think those are all true. But, I'm – number 2 and number 3 is what I want to provide my comments around.

I think the idea of listing specific best management practices in the permit in a prescriptive way is not good for Ecology or good for us permittees. I think we need something that we can have a little more flexibility with – I do not mean flexibility as in getting out of the requirements, I'm concerned that if you are too prescriptive, it's what you don't mention that becomes the focus. If

I say manage all equipment to keep stormwater pollution-free, and I left out trucks. If I say trucks and equipment, then maybe I forgot trailers. So, as soon as you say something specific, I'm worried about what you haven't said. In the source control BMPs in the permit S-5, I think it's C, and the following, there's a list of very prescriptive BMPs. Secondary containment is in SWM manual right now. In fact, a lot of these are in SWM manual. Secondary containment is, dumpsters (keep the lid on them) is, spill kits is not, drain fluids from unused equipment – I'm not sure I understand that – drain fluids from unused equipment…I'm not sure why we're draining fluids, when it's-what's unused. One day, two days, a year? And, that's the problem here with prescriptive statements. As soon as you say something, with detail, there's a lot of detail that you've left out. I'm thinking it's going to make the permit a little weaker. I think you need a good, strong statement like you've got in the permit on page 22 of the draft permit, right under number 13, it says the permittee may be required to use source control BMPs and other general areas including - and then you've got a list of these areas. (Although they're in the SWM manual) The SWM manual has everything that you need to – if you want something beyond the SWM manual, maybe you identify a section off to the side, but….

Fit all dumpsters (there's a little language problem), fit all dumpsters must be fit with a lid that must be closed when not in use, or kept under cover. Well, that means that if it's a sunny day, I leave the dumpster open for an hour because I've got some garbage coming soon, I could be deficient. You know, dumpsters is important, but I don't think we need to come up with a specific plan on when to close it or when not to close it. It's obvious when it needs to be closed.

In another place in here, it talks about – over here in the SWPPP. In the monitoring plan. I don't know why these inspections are in monitoring plan. It's another one of my comments, we have S-4-A and S-4-E, talking about stormwater inspections. I don't agree that that's monitoring. That's confusing to me to put monitoring requirements as a title and then talk about stormwater inspections. Which, we're talking about where things are flowing through and whether they're working or they need some further design, or whether they need maintenance or not. I think that probably belongs in the site management plan under BMPs – maintenance of BMPs. But, S-4-A-2 says the permittee must inspect all equipment and vehicles weekly for leaking fluids such as oil, hydraulic fluid and antifreeze. That sounds like this permit is trying to be a maintenance guide. Our operators inspect our vehicles every day when they use them and when they're done with them. It's standard procedure. Why should I have to inspect them weekly when I'm already doing that daily? And, you say that's not as onerous as what you're already doing. But, you've got a paperwork drill here. You're making us fill out paperwork that's – eventually, you resent it. The more detail you have in a permit, the more you're, likely over time – you're going to have people, present company excepted, have people who treat it as an exercise only and don't really do it. And, there's no way to really manage that. You want to create a permit that's friendly, in the sense that it be understood. Everything that I read in here, if it is prescriptive, I can see a definite connection with a stormwater issue. Not otherwise…..no.

I would have to provide you with some recommended language in the industry group –in fact I'd provide it myself. Give me 7 days and I'll have a list of specific BMPs that the industry can pick from. If you write your list non-prescriptive, write it in a way that refers to the SWM

manual. I would also challenge Ecology to consider whether their own source control BMPs on page 21 fall under their guidance on page 20, where it talks about stormwater BMPs must be consistent with the following conditions. I would ask you to look at the innovative – or the source control BMPs on page 21 and check to see if they're all listed in the SWM manual or are they in some other equivalent management documents or whether they're in some technical basis to show that they're needed. Without a technical basis, you can't really change anything.

I think the other thing I had was 29-51 sic code and the appropriate NAICS code. That covers recycle. Recycle doesn't do anything more than we're already doing in the hot mix asphalt process. We're crushing up old pavements and putting them right back in the mixing zone, heating them up. There's no additional water issues. A crushed pavement is – runoff from a crushed pavement is the same as runoff from an uncrushed pavement. So there's really no reason to. Well, in fact, we put it into a different sic code to deal with crushed and broken stone not otherwise classified, puts it into a category with other quarries, and it's nothing like a quarry. When you crush an asphalt pavement, you're crushing the asphalt bonds, not the rocks. You're not using any process water, so you're really not adding any additional requirements. Whether you put it in crushed and broken stone or whether you put it in with the 29-51 or the new appropriate number, you haven't really changed anything. It's not reducing the effectiveness of the permit or the monitoring requirements.

I think I've about blown my wad . . .there's some more to come in by hand – or on the handwritten stuff. I will – one further challenge that the Executive Order 6-02 by Governor Gregoire talks about permits that need to be …businesses should expect agencies to provide clear rules and regulations, consistent high quality problem solving service. It's the first one I'm really worried about. Procedures should be innovative and creative in simplifying the procedures for permits. I think simple is better. Complex is . . .the overall goal of this is not to provide an easier inspection by inspectors. The goal is to provide clean water for the state. I'm just afraid that the tendency towards prescriptive lists is serving the inspector's needs and not the clients' needs. We need to have something simple and understandable so we can comply and ultimately the goal is clean water – clean stormwater, clean process water. And that's in the state's interest as well. So, I think everybody's served right if we keep this thing on the simple side.

Done.

209. Response: The individual substantive points in this discussion are addressed in the numbered comments and responses above.

OK. Nobody else indicated that they wanted to testify, but I believe that we have someone who –

Do you want to come on up here?

OK. So, if you would come up and state your name and your address for the record, you may go ahead and begin.

David Freals, PO Box 505, Brewster Washington.

My main complaint with this is – or I have several main complaints, but I'll start with my first meeting in Spokane with Bob Rayforth on the permit that was issued in, I believe,'94. We specifically asked him if we would be able to comply with this. And, as a small business, and he indicated that we would and that nothing would ever change. And, I think you have to be honest with businesses if there's a bigger agenda, because financially this is a real burden on our company and any small company. They need to know what's ahead of them to make a good business decision. I feel like we got "drug" into this, led into it, and had no idea what this was going to cost us in the long run, and now this is where our main money going is Ecology mine safety - different government agencies. And, what I really don't like about it is that there's no protection. If we make all these investments and do these things, a guy down the street can come in and set up a batch plant up and what I have found is that Ecology won't step in and do anything about that until that guy's well established, four or five years down the road and you've been competing with them and then they start to bring them into compliance. And, I've been told that once you set up a batch plant or a pressure, you've got to have, everything's got to be in place. That is not true, because I've got pictures and can take you to several sites that don't.

210. Response: Your comment about assuring equity in the industry has been given to managers who assign inspectors time.

My other concern is when we talk about clean water, the storing of poured concrete, and curing and having it under cover. We've got a small pre-cast business, too that goes along with this and if we have to store tanks for 7 days under cover, or before we move them and let them cure out, that's not going to work for us. And, we've got to be able to move those tanks to continue to pour, and I have to laugh at all this clean water stuff. What we're seeing between Ecology, Labor & Industries, Dept. of Health, there's three producers in Okanogan County that produce tanks, and right now we're all looking at probably doubling or tripling our costs of a tank or getting out of the business. And, we're starting to see cars and 55 gallon drums be buried back in the ground for septic tanks, with – and not using a tank. We're seeing a lot of that now. And, we're going to go back to the '20s or 30s if our prices keep going up. Because people can't afford it. So, I think Eastern Washington and Western Washington need to be separated, and different things looked at, because we're not – we pour maybe 5000 a year on average. We're not pouring two or three thousand yards a day. And, I would - what's our protection from a portable plant coming in or us just screwing this permit and going portable? I mean, that's my other option. So, I think a lot of this needs to be looked at for the smaller plants that don't have the volume that larger plants do.

That's it.

211. Response: The permit doesn't require casting under cover. It requires that any rain water falling on freshly cast material be collected and treated for pH adjustment if necessary.

OK, is there anyone else who would like to say anything for the record? No?

OK. All the testimony that was presented at the hearing as well as any written comments that were received are part of the public record. And, they receive equal weight in the decision making process by Ecology. The public comment period ends on February 24th, 2010. Written comments must be received no later than 5 O-clock PM on that date. Please submit written comments to Gary Bailey, Department of Ecology, PO Box 47600, Olympia, Washington 98504-7600.

Ecology would really prefer comments to be submitted by email if at all possible. You may submit comments by email to Gary and his address is Gary.Bailey@ecy.wa.gov. You may also fax comments to Gary and the fax number is 360-407-6426. And, if the comments could reference the permit and the specific text you are talking about and would like Ecology to look at, that would be wonderful.

All the oral and written comments received during the public comment period are responded to in a document called the response to comments summary that will state Ecology's official position on the issues and the concerns that have been raised. That document will be automatically mailed out to anyone who provided oral or written testimony. Ecology is expected to issue the permit sometime around July. It will become effective 31 days after the permit issuance. If Ecology believes that the comments received either in writing or in oral testimony could substantially change the scope or the conditions of the original draft permit, another public notice of draft comment period may be necessary which will result in a delay in issuing the permit coverage. The ultimate decision on whether or not this permit is going to be issued will be made by the water quality program manager, Mr. Kelly Susewind. On behalf of the Department of Ecology, thank you for attending our workshop and our public hearing. We appreciate your time and comments and this hearing is adjourned at 3:13. Thank you.