Fact Sheet Addendum
For the Modification of the
Sand and Gravel General Permit

December 21, 2005

Reason(s) for Modifying the Sand and Gravel General Permit

On January 5, 2005 Ecology issued the current Sand and Gravel General Permit. On February 3rd the permit was appealed to the Pollution Control Hearings Board (PCHB) by Washington Concrete and Aggregates Association (WACA) and on February 4th the Puget Sound Keeper Alliance (PSA) filed their appeal.

NOTE: Copies of both appeals and settlement documents are available from the Department of Ecology WEB site at: http://www.ecy.wa.gov/programs/wq/sand/settlement.html Copies can also be obtained directly from Ecology by contacting Jennifer Hennessey at (360) 407-7529.

The Pollution Control Hearings Board identified twelve separate appeal issues in their April 5, 2005 pre-hearing order:

1. Is Special Condition S2, Monitoring Requirements and Effluent Limitations Matrix, requiring monthly monitoring of pH for stormwater discharges to groundwater from Ready-Mix Concrete Product facilities operating under SIC Codes 3273 and 3272 unreasonable or inconsistent with applicable law? (WACA)

2. Are the permit requirements for monitoring Type 2 stormwater in Special Condition S2, S3, and S4 unreasonable or inconsistent with applicable law? (WACA)

3. Did Ecology fail to provide legally adequate notice of proposed permit conditions for public comment? (WACA)

4. Does the permit fail to include effluent limitations sufficient to ensure that discharges do not cause or contribute to violations of water quality standards? (PSA)

5. Are the permit requirements concerning discharges to 303(d) – listed waters and compliance with applicable total maximum daily loads unreasonable or inconsistent with applicable law? (PSA)

6. Are the permit's monitoring conditions unreasonable or inconsistent with applicable law? (PSA)

7. Does the permit provide for modification of its terms without adherence to permit modification procedures and safeguards? (PSA)

8. Does the permit fail to require implementation of AKART? (PSA)

9. Do the permit's provisions concerning proper operation and maintenance fail to satisfy applicable law? (PSA)

10. Is the permit's incorporation of unspecified stormwater management guidance documents as a basis for selection of best management practices unreasonable or inconsistent with applicable law? (PSA)

11. Do the permit's provisions regarding inspections and inspection recording and reporting fail to satisfy applicable law? (PSA)

12. Do the permit's provisions regarding stormwater pollution prevention plans, spill plans control plans, monitoring plans, and erosion and sediment control plans violate applicable requirements for permitting authority review? (PSA)

Over the spring and summer of 2005 Ecology worked with both appealing parties in an attempt to reach a negotiated settlement of the two appeals of the Sand and Gravel General Permit. In late September the three parties reached a settlement which resulted in the three parties signing a Stipulation and Agreed Order of Dismissal. On October 21, 2005 the PCHB entered the Stipulation and Agreed Order of Dismissal and closed the two appeals.

Under the agreement, within 60 days of the date that the PCHB enters the order of dismissal, Ecology must initiate a public comment period to modify the sand and gravel general permit. The exact permit language for the proposed permit modifications were worked out between the appealing parties as part of the settlement agreement.

Ecology also agreed to provide an opportunity for public comment regarding the frequency of pH monitoring in condition S2 of the permit.

The public comment period is only on the proposed permit modifications (including the frequency of pH monitoring). Comments received on the parts of the permit which are not being modified will not be considered during the comment period and in developing the final permit.

Proposed Permit Modifications and Basis for the Proposed Modifications to the Sand and Gravel General Permit

S1. Permit Coverage - No changes proposed

S2. Monitoring Requirements and Effluent Limitations Matrix

pH Monitoring Frequency (Legal Issue #1) – During the public comment period on the draft Sand and Gravel General Permit (Permit), several pH-related public comments were submitted to Ecology which resulted in reviewing the pH monitoring requirements across the entire industry. The Permit covers discharges from a wide range of facilities and Standard Industrial Classification (SIC) codes. Some SIC codes include industrial activity which modifies the pH of stormwater and process water (e.g., concrete stormwater and process water) while other SIC codes do not modify pH (e.g., gravel pits). The discussion below summarizes the rationale for the pH monitoring frequency for the SIC codes covered under the Permit

Since the industrial activities associated with sand and gravel mining do not typically have the potential to modify the pH of stormwater, the pH limitations and monitoring requirements for stormwater discharges from Construction Sand and Gravel (SIC 1442) facilities were dropped; this applied to stormwater discharges to both surface water and ground water. Since process water and mine dewatering discharges are included in EPA's Federal Effluent Limitation Guidelines for the Mineral Mining and Processing Point Source Category (40 CFR Part 436), the pH limitations and monitoring requirements for process water (gravel wash water, etc.) and mine dewatering discharges had to be retained. However, since the data collected during the previous permit cycle indicated a high level of compliance with the pH limit, the pH monitoring frequency for SIC 1442 process water and mine dewatering water was reduced to once per quarter which is adequate to detect any pH problems that may be seasonal.

The pH monitoring frequency for other related SIC codes (e.g., SIC 1429 Crushed and Broken Stone, etc.) with a low risk of modifying pH of surface or ground water were also decreased from monthly to quarterly.

The revised permit increased the frequency of pH monitoring for Concrete Type 3 Stormwater (SIC 3272, 3273) discharges to ground water from quarterly to monthly.

In total, a greater number of facilities had a decrease in pH monitoring (from monthly to quarterly) compared to the number of facilities that were increased from quarterly to monthly.

The following table is a summary of changes regarding pH monitoring.

SIC	Count*	Process (S)	Process (G)	Storm (S)	Storm (G)
0811	8	decreased	decreased	decreased	same
1411	19	n/a	decreased	decreased	same
1422	23	decreased	decreased	decreased	same
1423	27	decreased	decreased	decreased	same
1429	282	decreased	decreased	decreased	same
1442	541	decreased	decreased	dropped	dropped
1446	13	decreased	decreased	decreased	same
1455	1	n/a	decreased	decreased	same
1459	16	n/a	decreased	decreased	same
1499	6	n/a	decreased	decreased	same
2411	5	decreased	decreased	decreased	same
2951	156	n/a	decreased	decreased	same
3272	13	same	same	same	increased
3273	184	same	same	same	increased
5032	2	n/a	n/a	n/a	n/a

* Note: Number of facilities with SIC codes; some facilities have multiple SIC codes (S) = Discharge to surface water; (G) = Discharge to ground water

The reason for these changes was to focus pH monitoring on the industrial activities that have the greatest potential to affect the pH of discharges and violate water quality standards (e.g., concrete batch plants and concrete pre-cast manufacturers); and reduce monitoring for the activities that typically do not affect pH (e.g., sand and gravel pits, etc).

Specifically, the increase in pH monitoring for Concrete Type 3 Stormwater (SIC 3272, 3273) discharges to ground water was based on a number of considerations including: 1) concrete process water monitoring was already being conducted monthly; 2) the potential for pollution from concrete process water is not substantively different from type 3 stormwater from concrete plants; and 3) stormwater from industrial activity is more variable in terms of volume and pollutant concentration than process wastewater. Type 3 Stormwater is defined as stormwater discharges from: 1. Industrial plant yards; 2. Immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; 3. Material handling sites; 4. Sites used for the storage and maintenance of material handling equipment; 5. Sites used for residual treatment, storage, or disposal; 6. Shipping and receiving areas; 7. Storage areas for raw materials or intermediate and finished products at active sites; and 8. Areas where industrial activity has taken place in the past and significant materials remain and are exposed to stormwater.

Other considerations included the environmental significance of pH; and the cost of monitoring relative to the benefits obtained. Specifically, pH is a simple, inexpensive, on-site test that can detect and prevent discharges that can cause violations of state water quality standards.

Type 2 Stormwater Monitoring Requirements (Legal issue #2) – Ecology is proposing to drop the requirement to monitor type 2 stormwater from the matrix. This is consistent with the 1995 and 1999 versions of the permits as well as the version of the permit which went out for public

comment in June 2004. Both the 1995 and the 1995 permits required monitoring for type 3 stormwater but did not require monitoring for type 2 stormwater.

No Visible Sheen (legal issue #4) – Added the word "No" to the daily limitation of "visible sheen".

S2.A.8 (Legal issue #4) – added the condition:

> "Notwithstanding the effluent limits established in the above matrix, discharges shall not cause or contribute to a violation of: Ground Water Quality Standards (Chapter 172-200 WAC), Surface Water Quality Standards (Chapter 173-201A WAC), or Sediment Management Standards (Chapter 173-204 WAC) of the State of Washington; and 40 CFR 131."

The language: "(D)ischarges shall not cause or contribute to a violation of: Ground Water Quality Standards (Chapter 172-200 WAC), Surface Water Quality Standards (Chapter 173-201A WAC), or Sediment Management Standards (Chapter 173-204 WAC) of the State of Washington; and 40 CFR 131." is identical to existing permit language in the introductory paragraph of S3 Additional Discharge Limitations. The addition of this language under S2 makes it clear that compliance with state water quality standards is required notwithstanding the effluent limitations contained in S2.

S3. Additional Discharge Limitations

S3.A.5 (Legal issue #5) – Under the current permit, existing facilities which discharge to a water body impaired due to turbidity, fine sediment, pH, or temperature are prohibited from increasing the loading of the listed pollutant for the duration of the permit, or until a wasteload allocation is assigned from a completed TMDL. This proposed permit modification would allow TMDLs (and any associated wasteload allocations) completed after the issuance date of the permit to become applicable only if they are imposed through an administrative order issued by Ecology, or through a modification of permit coverage.

S4. Additional Monitoring Requirements

S4.A.1, S4.A.2, and S4.B.1 (legal Issue #2) – deleted type 2 stormwater from the monitoring requirements. (See also type 2 stormwater monitoring discussion above)

S4.A.4 (Legal issue #7) – Clarified conditions under which the frequency of turbidity monitoring may be reduced by Ecology. These proposed modifications would also clarify that the original, twice monthly monitoring frequency for turbidity monitoring would be restored if the facility violated the turbidity effluent limitation unless the turbidity effluent violation is associated with a 10 year, 24 hour precipitation event or greater.

S4.B4 (Legal issue #1) – Ecology is proposing to add new language to the permit which would allow for the reduction in the pH monitoring frequency from monthly to one time per quarter for discharges to ground. This reduction in monitoring frequency would be available to facilities which are able to demonstrate continuous compliance with the permit for a period of 18 months.

The original (monthly) monitoring frequency would be restored when the facility implements a significant process change or if the facility violates the pH effluent limitation unless the pH effluent limitation violation is associated with a 10 year, 24 hour precipitation event or greater.

S4.D (legal Issue #6) – The current permit contains a narrative effluent limitation of no visible oil sheen in the receiving waters. The permit also allows the permittee to monitor for oil sheen at a representative location as an alternative to monitoring the discharge point to surface waters. This proposed permit change would require permittees to immediately inspect the point of discharge into the receiving waters if they observe an oil sheen at a representative location other than the discharge point to surface waters.

S5. Monitoring Plan

S5 (Legal Issue #12) – added a reference to S6.F on public access to the permittees monitoring plan. (See also explanation for S6.F below)

S6 Reporting and Recordkeeping Requirements

S6.F (Legal issue #12) – Added a new permit condition on public access to plans. Under this condition the permittee must make available; the monitoring plan required by Special Condition S5, the stormwater pollution prevention plan required by Special Condition S9, and the spill control plan required by Special Condition S11 to the public when requested in writing to do so. The permittee(s) must retain these plans on site or within reasonable access to the site and make them immediately available upon request to Ecology or the local jurisdiction. A copy of the Plan(s) must be provided to Ecology within 14 days of receipt of a written request from Ecology.

A copy of the Plan(s) or access to the Plan(s) must be provided to the public when requested in writing. Upon receiving a written request from the public for one or more of the Permittee's Plan(s), the Permittee may either: Provide a copy of the Plan(s) to the requestor within 14 days of receipt of the written request; or Notify the requestor within 10 days of receipt of the written request of the location and times within normal business hours when the Plan(s) may be viewed, and provide access to the Plan(s) within 14 days of receipt of the written request. If the Permittee chooses the Permittee may provide a copy of the Plan(s) to Ecology for viewing by the requestor at an Ecology office, or may arrange with the requestor for an alternative, mutually agreed upon location for viewing and/or copying of the Plan(s). If access to the SWPPP is provided at a location other than at an Ecology office, the Permittee must also provide reasonable access to copying services for which a reasonable fee may be charged.

S7 Water Management

S7.C (Legal issue # 8) – Currently there are no known direct discharges from maintenance shops covered under the Sand and Gravel General Permit to surface waters. Ecology has determined that alternatives to direct discharge to surface waters exist and that AKART for maintenance shop discharges is not discharging to surface waters. Ecology has also concluded that AKART for new maintenance shops is also zero discharge to ground water. Existing maintenance shops may discharge to ground provided: a discharge to sanitary sewer is not available; the discharge is

provided with all known available and reasonable methods of prevention, control and treatment prior to discharge; and the maintenance shop discharge will not cause or contribute to a violation of the ground water quality standards.

S8 Operation and Maintenance

S8 (Legal issue #9) – The proposed changes to S8 make the permit requirements consistent with the operation and maintenance requirements in 40 CFR 122.41(e) which require: "Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit."

S9 Stormwater Pollution Prevention Plan

S9.A.2 (legal issue #12) – added a reference to S6.F on public access to the permittees monitoring plan. (See also explanation for S6.F above)

S9.A.6.c (Legal issue #10) – deleted the reference to "other equivalent stormwater management guidance documents approved by Ecology. At the time the permit was issued Ecology had not approved any other guidance documents as being equivalent to either the Stormwater Management Manual for Western Washington or the Stormwater Management Manual for Eastern Washington.

S10 Stormwater Inspections

S10.D.2 (Legal issue # 11) – Under 40 CRR 122.44(i)(4)(i) permittees with stormwater discharges to surface waters must annually inspect the site and evaluate whether the permittees stormwater pollution prevention plan are adequate and properly implemented. 40 CFR 122.44(i)(4)(iv) identifies minimum inspection requirements for stormwater discharges associated with inactive mining sites. The proposed permit modifications to S10.D.2 are intended to satisfy both the annual inspection requirements under 40 CFR 122.44(i)(4)(i) and the inspection requirements for inactive mining sites under 40 CFR 122.44(i)(4)(iv).

S10.E (Legal issue # 11) – Inspection reports must be signed by the person performing the inspection and if different by a dually authorized representative of the facility. Inspection reports must include a certification that in the judgment of the person doing the inspection, the facility is in compliance or non-compliance with the permittees Stormwater pollution prevention plan and the permit. If the site inspection indicates the requirements of the permittees SWPPP or permit are not being met, the inspection report must include a summary of the actions which will be taken to bring the facility back into compliance. This new permit language is being added to satisfy the inspection and certification requirements under 40 CFR 122.44(i)(4)(ii) and (iii).

S11 Spill Control Plan

S11 (legal issue #12) – added a reference to S6.F on public access to the permittees monitoring plan. (See also explanation for S6.F above)