Sand and Gravel General Permit

Full Comments Received During 2020 Public Comment Period

Spring 2021

GARY MERLINO CONSTRUCTION COMPANY

December 3rd, 2020

Washington State Department of Ecology
Attn: Adrien Carroll-Perkins, Water Quality Program
P.O. Box 47600
Olympia, Washington 98504-7600

Subject: Gary Merlino Construction Company Comments on the Draft of the Sand and Gravel Permit

Dear Ms. Perkins,

Gary Merlino Construction Company (GMCC) appreciates the opportunity to provide comments and suggestions on the Department of Ecology's Draft Sand and Gravel Permit. GMCC respectfully requests that Ecology consider the following comments:

S10.B. Production Operation Status Verification Reporting: Section B.1. now requires annual reporting of concrete and asphalt production numbers for select NAICS codes. The draft also removes the ability to report these numbers within a range. GMCC, like many of its competitors, considers its production numbers to be confidential business information. These figures are unique to us and cannot be shared openly between competitors due to Federal Anti-Trust Laws. Currently, Ecology does not have any proposed provisions within the draft permit to protect the requested figures as confidential. As such, Ecology becomes a conduit for the exchange of information that has the potential to be used for illegal purposes in violation of the Federal Anti-Trust laws. Disclosure of production information would cause substantial competitive harm to companies within the sand and gravel industry.

To avoid violating Federal Anti-Trust laws, the best option is to keep the current production ranges from the 2015 Sand and Gravel Permit. The production ranges used in the previous permit protected confidential information for all companies and allows Ecology to process annual fees in accordance with the amount of production for each site.

Adding Appendices For Forms Regarding Change Request, Activity Status Change, Production Report, and Other Reporting Requirements: Forms that are submitted to Ecology for changes in permit coverage, activity status changes, production reporting, and other requirements should be included in an appendix with the permit. Having forms to reference within the permit will help permit holders understand what forms go with each permit requirement or notification requirements.

Thank you for the opportunity to provide comments.

Sincerely,

Gary Merlino
Construction Company, Inc.

Drew Cratsenberg | Environmental Assistant

O: 206-762-9125 | **D:** 253-797-9567

WASHINGTON AGGREGATES & CONCRETE ASSOCIATION
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Adrien Carroll-Perkins December 11, 2020
Washington State Department of Ecology
PO Box 47696
Olympia, WA 98504-7696
Re: Comments regarding the NPDES S&G Permit Renewal December 2020

Adrien,

Thank you for this opportunity to provide comments to the proposed changes in the 2020 S&G NPDES permit. On behalf of our membership, we appreciate the opportunity to work with permit managers and staff to collaboratively provide input regarding issues needing clarification and suggested changes as improvements are made over time.

This permit was first introduced circa 1995 and progressed significantly over each renewal to the permit we have today. We appreciate the recognition by Ecology this is a very good permit, that works very well and has been successful in eliminating pollution practices for this industry segment. Both the agency and industry can take credit for the environmental protections and outcomes as a result of this permit.

Comments to redline areas of the permit:

Page 4: "Electronic Signature Account Form" (ESAF) or an "Electronic Waiver Request" form. What is the anticipated alternative to this form or reporting mechanism and where is it found in the permit?

Table 2 &3 S1 E3:

- Change in language from "run off" to "discharge" throughout the oil sheen column. What is the distinction between run off and discharge ?
  Does "discharge" suggest a return to sampling any and all puddles that may be present vs taking a representative sample of puddles on the site?
- This has been a reoccurring discussion over a series of permit renewals and a representative sample is the standard in which the current permit and prior versions have agreed upon. We would request we do not return to sampling of any and all puddles as a "discharge".

With regard to changes in the oil sheen column, is there any discussion Industry and agency should have regarding oil sheens ? Are there concerns or instances that may have prompted these changes ?

P. 16 S3-H:
"There must be no visible oil sheen at any points of discharge to groundwater". Is a puddle formally considered a discharge to ground water ?

- **P 17 S3 J: Inactive sites**:
  Industry has discussed the inactive and change in status of inoperative sites with the agency. We are looking forward to helping draft a working flow chart to assist inspectors and industry on the suggested changes to inactive sites, operating periods, fees, monitoring and other changes. We suggest this flow chart be discussed and a pilot approach (if necessary) be considered so interpretation and application is consistent by the agency and industry.

P33 S10 B-1: Production ~~Number Range~~ and Operating Status Verification Reporting
"Annually, by January 30 non-portable Permittees that have a NAICS code of 324121, 327320, 327332, and/or 327390 must report annual concrete and asphalt production numbers in accordance with Chapter 173-224 WAC"

- Industry has continually objected to the effort to require formal production numbers for any purpose in the permit. Production numbers are considered proprietary information. If contained as a requirement for fees or reporting, in a public document this allows sharing of competitive information among competitors and may be a violation of anti-trust.
- We strongly request any reference to "production numbers" also contain "ranges" ("production number ranges") for consistency throughout the document. Comments provided in the last permit renewal properly sums up our concerns and our strong objection to reporting of production numbers as a stand-alone number for any permitee.

Comments from Previous renewal in 2016:

"S10.A.2 now requires annual reporting of production numbers. There are no provisions in the permit protecting production data as confidential information. The production information is undeniably unique to us and is not readily ascertainable to our competitors because it is a violation of Federal Anti-Trust laws to exchange market share information. With competitors for obvious reasons. By not having provisions in the permit for holding production information confidential, Ecology becomes a conduit for the exchange of information that has the potential to be used for illegal purposes in violation of the Federal Ani-Trust laws. It is an integral part of our financial and commercial information. Disclosure of production information would cause substantial competitive harm to us if it were disclosed to or made available for disclosure to our competitors because it is our right to keep market information secret.

Ecology needs to add language to the permit to adequately protect production data that is now being required annually."

- See S10 B3 for a proper and recommended wording when referring to production numbers:

- Permittees must submit their production number ranges and non-operating status request electronically using Ecology's Water Quality Permitting Portal, unless the Permittee applies for and Ecology approves an Electronic Reporting Waiver. Permittees that have received an Electronic Reporting Waiver from Ecology must submit their production number ranges……

- If Table 7 is taken out of the permit what are the ranges that would now apply ? We recommend these ranges remain in the permit as has been the standard. Please provide an explanation for the removal of Table 7

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P. 34 S10 B 3Water Quality Fees Unit. via the paper form that Ecology provides for this purpose.
- Is this the alternative to the ESAF ? Who is the WQF unit and what is their role and authorities ?

P 36 S 11 C: Solid waste disposal / Recycled concrete and asphalt.
- We object to these materials being listed under the heading of "solid waste". The legislature has passed legislation to promote and encourage the use of these materials as a valuable and reusable product. Industry and agency should continue to have on going and progressive discussion on increasing the use of recycled concrete and aggregate materials, point of compliance for run off and an improved understanding of ph.
- Ecology continues to regulate these important products as a waste to be managed versus a resource to be to be used.

P 36 S12: Permit Application:
- Requires a "complete and accurate" Notice of Intent (NOI).
- What is the definition of "complete and accurate" permit application and who makes that determination, and based on what criteria ?

P 39 S12 E1:
"A Department of Natural Resources (DNR) reclamation permit is considered "restored" when the DNR reclamation permit has been terminated, or DNR has determined that the reclamation minimum standards have been achieved…."

- In prior discussions, we have pointed out the distinction between restored and reclaimed. A DNR permit is a reclamation permit and "restoration" is not a condition. It is a correct term for when a reclamation permit issued by DNR is not in place (less than 3 acres) and restoration of a site is subject to the approval of local jurisdiction is received.
- Recommend language change to DNR reclamation permit is considered ~~restored~~ reclaimed.

S12 E for terminating coverage and S12 F for permit transfers;
- Delays occur when determinations are made at the 30 day or stated timeline and terminations and transfers do not efficiently take place or are delayed sometimes indefinitely. The CSWP has language that allows for the termination or transfer when no comments regarding the request are received.
- We recommend making the language and intents of the 2 related permits the same for consistency between the 2 permits.

P 44. Right of Entry:
- Please note that all mine sites are under the jurisdiction of the Federal Mine Safety and Health Administration; MSHA. ALL persons entering a mine site MUST report to the mine office and receive site specific safety training before entering the mine site. This includes contractors, customers, and agency inspectors. Please add any necessary language to clarify that this is understood by the agency and is a condition on the right of entry that will be implemented.
- *A mine operator has the responsibility for the safety for all persons on the mine site and we appreciate your consideration of this federal requirement.*

Thank you for this opportunity to provide these comments for your consideration. Please feel free to contact me directly with any questions.

Sincerely,

Bruce Chattin"
Executive Director

US EPA Region 10

1.The Draft Sand and Gravel General Permit includes the following paragraph in the current General Permit Section S.2. Please consider also adding the following 2 sentences at the beginning of Section S.3H: "The Permittee is authorized to discharge process water, mine dewatering water, and stormwater to groundwater at the permitted location subject to the numeric effluent limitations in Table 2 and Table 3. If the Permittee combines discharges from two or more industrial activities, the most stringent effluent limit for each parameter applies."

2.Section S.3G and other applicable sections could also benefit for clarification purposes that the most stringent effluent limit for each parameter applies when discharges are from two or more industrial activities. Please consider adding: "The Permittee is authorized to discharge process water, mine dewatering water, and stormwater to groundwater at the permitted location subject to the numeric effluent limitations in Table 2 and Table 3. If the Permittee combines discharges from two or more industrial activities, the most stringent effluent limit for each parameter applies."

3. The General Conditions section, Section G, does not include a section for Proper Operation and Maintenance. This should be added to the permit.

Glacier Northwest Inc., dba CalPortland

Please see the attached comments.

Department of Ecology

Attn: Adrien Carroll-Perkins
Washington State Department of Ecology
PO Box 47696
Olympia, WA 98504-7696

Subject: CalPortland Comments on the 2020 Draft Sand and Gravel General Permit

CalPortland appreciates the opportunity to provide feedback on the Draft Sand and Gravel General Permit and supports many of the proposed changes. In particular, CalPortland supports the Agencies decision to maintain existing effluent limitations as these have been shown to be highly protective of surface and groundwaters. CalPortland is submitting the following minor comments for your consideration:

1. S.10.B.1 CalPortland proposes that Ecology keep the existing permit language "Annually, by January 30 non-portable Permittees that have a NAICS code of 324121, 327320, 327332, and/or 327390 must report for the previous year which range below their production of asphalt and/or concrete fell within." The proposed language "annual concrete and asphalt production numbers" compels permittees to submit proprietary information.

2. Notice of Intent Non-Portable Operations under the Sand and gravel General Permit Form, Section VI – Other Permits/Registration – This request is vague. CalPortland requests that Ecology provide an explanation for how existing permits and registrations are evaluated in the context of considering Notices of Intent for Sand and Gravel General Permit coverage. If knowledge of a specific permit or registration is necessary CalPortland encourages Ecology to provide clarity within section VI of the Notice of Intent form.

Once again, CalPortland appreciates the opportunity to submit comments on the Draft Sand and Gravel General Permit and looks forward to reviewing Ecology's responses.

Thank you,

Annie Ayre

Environmental Manager – Washington Region

Cc: Bryan Wigginton, Scott Nicholson, Doug Anderson, Matthew Hinck