

RESPONSIVENESS SUMMARY  
FOR  
PUBLIC COMMENTS CONCERNING  
THE  
SAND AND GRAVEL GENERAL PERMIT

This responsiveness summary includes testimony and comments submitted at six public hearings. Also included are written comments submitted by the close of the comment period, May 26, 1994. Multiple comments regarding like issues are paraphrased and presented as a single comment. Comments are numbered and correspond to the responses on the pages that follow.

<u>COMMENTOR</u>	<u>COMMENTS</u>
1. Steven R. Baer Superior Asphalt & Concrete Co. Yakima, WA	7, 42
2. Steve Barneowe-Meyer Weyerhaeuser Co. Twin Harbor, WA	15
3. Bill Beckley, Environ. Scientist Yakama Indian Nation Toppenish, WA	18, 19, 20
4. Robin Boynton East King County Ground Water Advisory Committee Carnation, WA	23, 31, 32, 33 35, 44
5. Michael D. Crawford Concrete Northwest Mount Vernon, WA	8
6. Harry B. Corliss Corliss Company Auburn, WA	25, 36, 40, 41
7. Kathryn A. Gardow, P.E. Kathryn Gardow and Associates Seattle, WA	1, 5, 40
8. Robert E. Gustavson Washington Forest Protection Association Olympia, WA	15

9.	Kate Halstead East King County Ground Water Advisory Committee Carnation, WA	23, 31, 32, 33 35, 44
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11.	Fred Hobbs Acme Construction Co. Spokane, Wa	2, 16, 21, 30
12.	Ken Kramer Weyerhaeuser Co. Longview, WA	15
13.	Forest J. Lane Lakeside Industries Bellevue, WA	24, 43
14.	Jana McDonald Central Pre-Mix Spokane, WA	36
15.	Lois J. Miller Friends of the East Fork Battle Ground, WA	31, 33
16.	Mark Murphy Central Pre-Mix Spokane, WA	2, 3, 6, 7 22
17.	Errol Nelson P.E. Optimum Environment Issaquah, WA	16, 17, 26, 27 28, 29, 37, 38
18.	Catherine L. Phillips Weyerhaeuser Co. Tacoma, WA	15
19.	Daniel C. Rich, P.E. AHR Civil Eng., Planners & Surveyors Tacoma, WA	1, 8, 12, 13 14, 29, 34 41
20.	Scott Rose Battle Ground, WA	31, 32, 33, 35
21.	Christina Simon Simon & Associates Vancouver, WA	1, 7, 8, 27 40, 42

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|-----|--|-----------|
| 22. | Lesa R. Starke<br>Attorney at Law<br>Whatcom Sand and Gravel Association<br>Lynden, WA | 4, 10, 11 |
| 23. | Nancy M. Thompson, R.S.<br>Washington State Dept. of Transportation<br>Olympia, WA     | 9, 29, 39 |
| 24. | Karen Welch<br>Water Resources Consulting<br>Bellingham, WA                            | 5, 31     |
| 25. | Arne Wirkkala<br>Naselle Rock and Asphalt Co.<br>Naselle, WA                           | 8, 27, 42 |

### COMMENT 1

The general permit conditions should be modified to be less onerous to small businesses. For example, requiring less frequent monitoring, such as annual storm water monitoring mandated in federal regulations, could significantly reduce the cost to the small business owner.

### RESPONSE 1

It is true that the permit's conditions could be modified in order to decrease compliance costs. However, mitigation of the disproportionate cost impacts of the general permit on small business is only required when it is legal and feasible in meeting the stated objectives of the Clean Water Act and the State Water Pollution Control Act (see WAC 173-226-120(2)).

Ecology believes that the permit's conditions are required by state and federal laws and regulations. The permit's effluent limits and stormwater conditions are required by law. Monitoring requirements could be legally lowered. Fewer pollutants could be monitored and monitoring frequencies could be lowered. However, Ecology believes that the monitoring required by the permit is needed to determine whether the facility is complying with the permit. Under the provisions of the federal Clean Water Act, Section 308, Ecology is bound to require that point source dischargers monitor their effluent in order to determine compliance and assist in development of effluent limits.

Ecology also believes that relaxation of the general permit's conditions would limit its effectiveness in controlling water pollution. Nearly all businesses subject to the permit are small businesses. Therefore, if the permit's conditions were modified in order to reduce costs for small businesses, the permit's effectiveness in controlling water pollution would be reduced.

## COMMENT 2

The SBEIS costs are too low. For example, labor, management, grader and loader costs are understated. The costs are 3 to 4 times this amount. The department should use the Equipment Bluebook rates or some similar index for estimating costs. Also, the cost of cleaning out settling ponds and disposal of the sludge is not included.

## RESPONSE 2

The cost estimates used in the small business economic impact statement (SBEIS) were provided by the Washington Aggregates and Concrete Association (WACA) and the Washington State Department of Transportation (WSDOT).

WSDOT provided the cost estimates for the construction of wet ponds, biofiltration swales, and erosion best management practices. WSDOT used its own system for calculating hourly costs for equipment. This system does generate lower costs than those in cost estimation books such as the **National Construction Estimator**.

The cost estimates did not include the costs of sludge removal and disposal. Because they were not included, Ecology had no information on which to estimate them.

Ecology did not have the expertise in designing and building settling ponds, swales, etc. needed to verify the accuracy of the cost estimates. This was especially true for estimates of the amount of hours required to build ponds, etc. For the most part, the estimates were accepted as accurate and used in the form that they were received from WACA and WSDOT. The exception to this rule was where it was obvious that certain costs included in the cost estimates did not have to be incurred in order to comply with the general permit.

While it would be better to have more accurate cost estimates, such estimates would not change the conclusion of the SBEIS or the conditions of the permit. The SBEIS concluded that the general permit does have a proportionally greater impact on small businesses than on large businesses. In response to this conclusion, changes were made in the permit in order to lower costs. However, the extent of these changes was limited by state and federal water pollution control laws and by the need to ensure that the general permit was effective in controlling water pollution.

The permit's effluent limits are definitely required by both state and federal law. The limits require a low cost and low technology level of pollution control. They are definitely known, available, and reasonable methods of treatment, as is required by the state pollution control act (see RCW 90.48.010). Also, the permit's stormwater conditions are required by federal law and closely parallel those in the baseline general permit for industrial stormwater discharges.

### COMMENT 3

Fees were not included in the SBEIS.

### RESPONSE 3

The rule that covers writing of general permits (see WAC 173-226-120(4)) specifically prohibits permit fees from being included in the cost estimates of SBEISs. The logic for this prohibition is that the impact of fees on permit holders is considered in the process of setting fees. The impact should not be considered a second time during the writing of a general permit.

### COMMENT 4

The department should review and revise the permit fees based on the number of sites actually covered under the permit.

### RESPONSE 4

This comment apparently proposes that if more sites are covered by the general permit than originally estimated, then the fee per site should decline. The comment assumes that Ecology plans to spend a fixed amount of money on permitting sand and gravel pits, concrete ready-mix operations, etc. during the current biennium. Given estimates of the number of sites to be covered by the permit, a fee schedule that generates that amount of money was calculated. Thus, if the number of sites actually covered is greater than the estimated number, then a surplus of fee revenue is generated. Fees could then be lowered in the following biennium while still generating the needed amount of revenue.

In general, this method is the one that Ecology uses to set permit fees. Two of the determinants of the fee schedule for a particular industry are: 1) the total amount of funds that Ecology plans to spend on the permit holders in that industry during the biennium; and 2) the estimated number of permitted facilities. Therefore, if the number of sites actually covered by the general permit for sand and gravel pits, ready-mix operations, etc. differs from the estimated number of sites used in setting the fee schedule, fees should be changed. Ecology estimated that 800 additional facilities would be covered by the general permit. This is a very rough estimate.

Every two years Ecology rewrites the permit fee schedule. Currently Ecology is beginning a project to "restructure" the fee schedule. As a result of this restructuring, the principles used to set fees in the future will probably differ from those used currently. Those who have ideas about how fees should be set should call Scott Boettcher of the Water Quality Program's Alternative Strategies Unit at (206) 407-6453.

#### **COMMENT 5**

How does Ecology plan to enforce this program and standardize inspections with consistency?

#### **RESPONSE 5**

The general permit should "level the playing field" for all operators through standardized requirements for preparation of pollution prevention plans and monitoring discharges of storm water and process water. The general permit conditions mean Ecology inspectors will have a reference standard for comparison from site to site since the same permit conditions will apply to all facilities with the same SIC Code.

#### **COMMENT 6**

Our experience is that discharging fines to water in a pit enhances the reclamation of the pit. This material also serves to increase the filter factor of the pit.

#### **RESPONSE 6**

The department consulted with DNR reclamation staff on this point during the development of the general permit. With certain exceptions, the general permit does not prohibit the discharge of process water or storm water that contains fine sediment to water in a pit. The exceptions, according to Special Condition S5.G., apply to Type 3 storm water, asphalt and concrete batch plant processing water, and any associated truck washout water. Wastewater from these activities may not be discharged to a pit or excavation that penetrates the water table.

#### **COMMENT 7**

Special Condition S5.E. requires coverage and containment for asphalt concrete material stockpiled on a site. This will discourage the use of this material for recycling into fresh asphalt products.

#### **RESPONSE 7**

Washington State Dangerous Waste Regulations contain a categorical exemption for asphaltic materials that are intended and have been used for structural and construction purposes. (WAC 173-303-071(3)(e)). Other information made available to the department indicates that stockpiles of used asphalt would not require special handling beyond that afforded any other stockpiled material at a mine site. As a result, Special Condition S5.E. was amended to exclude used asphalt concrete. (Note that there is an additional change to the language of Special Condition S5.E. based on a comment concerning petroleum contaminated soils. The new language for Special Condition S5.E. is in Response 14.)

#### **COMMENT 8**

The general permit does not recognize differences in size of operations, regional differences in the amount of precipitation, or other conditions encountered at a site.

#### **RESPONSE 8**

The intent of the general permit is to provide coverage for many facilities with similar water quality issues. Facilities that do not fit within the coverage criteria established in the general permit may apply for an individual discharge permit. This process would require preparation of an engineering report that addresses the site specific issues that did not allow coverage under the general permit. During the preparation of the individual engineering report, the facility would remain covered by the general permit. Upon completion of the engineering report and its approval by the department, the facility would be covered by an individual discharge permit that would be conditioned to address the site specific issues.

#### **COMMENT 9**

The definition of Wellhead Protection Area (WHPA) should be changed to conform with the language in the Department of Health proposed WAC 246-290-010.

#### **RESPONSE 9**

Comment noted. The suggested language has been included in the Definitions section of the general permit. No other changes in the permit will be required.

#### **COMMENT 10**

The department should implement a system for notifying all operators that permit coverage and compliance are required.

#### **RESPONSE 10**

The department has a mailing list of approximately 900 entries, consisting primarily of owners and operators with some consultants and other interested parties. The department will notify everyone on the mailing list concerning the issuance date of the general permit and the last date for receipt of the Notice of Intent for coverage under the general permit.

**COMMENT 11**

The department should prepare model BMPs for implementation by operators.

**RESPONSE 11**

During workshops held in early 1993, comments by owners/operators indicated that since many types of sites would be covered under the general permit, the department should not be overly specific in BMP design requirements. As a result, the department included specific design requirements for some BMPs in the general permit (for example liner materials), but for most BMPs the general permit suggests several reference documents that contain appropriate BMPs that can be tailored to meet site requirements. Depending on available resources, some technical assistance may be obtained from regional Ecology staff or from trade organizations.

**COMMENT 12**

Does storm water from storms larger than the 10 year 24 hour event bypass or overflow the treatment system?

**RESPONSE 12**

Based on federal effluent limit requirements, the proper approach is to overflow the excess water. For clarification, Special Condition S1.J. was added to the permit, as follows:

S1.J. Any overflow from any wastewater treatment system for storm water, mine dewatering water, or process water shall not be subject to the limitations of Special Conditions S1.A. through S1.F. if the wastewater treatment system is designed, constructed, and maintained to contain and treat wastewater and the volume of storm water that would result from the design storm.

**COMMENT 13**

What is done with wastewater from a maintenance shop?

**RESPONSE 13**

Wastewater from this source must be recycled or treated and properly disposed offsite.

#### **COMMENT 14**

The definition of Petroleum Contaminated Soils (PCS) that requires coverage and containment should be restricted to soils that fail to meet MTCA Method A treatment levels.

#### **RESPONSE 14**

Ecology agrees that a distinction should be made in the handling of the types of PCS that may be stockpiled on a site without coverage and containment. Special Condition S5.E. was changed as follows:

S5.E. Any facility that stores or uses toxic materials, petroleum contaminated soils (PCS) that fail to meet the most protective MTCA Method 'A' treatment levels (WAC 173-340-740(2)), chemicals, cement, admixtures, fuels, lubricants, asphalt concrete that has not been used for construction, tar, or other petroleum products shall provide physical coverage and containment for such materials.

#### **COMMENT 15**

The coverage of silvicultural pits or forestry rock sites under the general permit should be clarified.

#### **RESPONSE 15**

To clarify this issue, the general permit will further define coverage for silvicultural rock/gravel pits, which shall be termed Silvicultural Point Sources. The following changes were made in the permit:

Special Condition S1.A.--The following has been added:

SIC Code 0811 Timber Tracts

SIC Code 2411 Logging

Special Condition S2.A.--The following has been added:

SIC Code 0811 Timber Tracts

SIC Code 2411 Logging

Appendix 1--The following has been added:

SIC Code 0811 Timber Tracts

SIC Code 2411 Logging

Coverage is provided for silvicultural point sources.

Special Condition S3.B. (Facilities Required to Apply for Coverage)--The following has been added:

S3.B.7. Any silvicultural point source.

Definitions section --The following has been added:  
Silvicultural Point Sources means any discernible, confined and discrete conveyance related to rock crushing or gravel washing which are operated in connection with silvicultural activities and from which pollutants are discharged into waters of the State.

**COMMENT 16**

Why must all surface mines, regardless of size or production, be included in the permit?

**RESPONSE 16**

Only those owners/operators of facilities that are identified in Appendix 1 and that meet the criteria established in Special Condition S3.B. are required to apply for the general permit. The department does not anticipate that all facilities will meet these criteria. It is the responsibility of the individual owner/operator to determine the applicability of the general permit to his/her operation. Any facility that is categorically excluded from the general permit under Special Condition S3.C. is required to apply to the department for coverage under an individual permit.

**COMMENT 17**

If mine owners can demonstrate 100% retention of all surface water, why is a permit required?

**RESPONSE 17**

The general permit is issued as both an NPDES and a state Waste Discharge Permit. The NPDES permit program is delegated to the state by the EPA and is issued to facilities that discharge to surface water. A state Waste Discharge Permit is based on state regulations that apply to facilities with discharges to ground water. Thus, any facility that does not discharge to surface water but has a discharge to ground water is potentially subject to permitting under a state Waste Discharge Permit.

**COMMENT 18**

Not all dischargers eligible for coverage under this permit may be eligible for a mixing zone. Allowing a discharge of 50 NTU could be in violation of state water quality standards.

**RESPONSE 18**

Ecology acknowledges that some facilities initially covered under this general permit may not ultimately prove in fact to be eligible for coverage. Chapter 173-226 WAC (General Permits) allows issuance of a general permit as long as the majority of the permittees have common traits. It is the department's opinion that the majority of facilities covered

under the general permit will meet the mixing zone criteria. The department determines that certain facilities do not qualify for coverage, the owner/operator will be required to prepare an individual engineering report and obtain an individual discharge permit.

#### **COMMENT 19**

Dischargers are not eligible for a mixing zone until they fully apply AKART. The schedule of compliance allows dischargers up to 18 months to apply AKART. This could allow exceedence of state water quality standards for 18 months.

#### **RESPONSE 19**

Ecology recognizes that some facilities initially covered under this general permit may not in fact be eligible for a mixing zone without implementation of the BMP's required under the permit. Ecology also recognizes that existing facilities cannot be expected to immediately achieve compliance with applicable effluent standards and limitations and other legally applicable requirements or provisions (i.e. mixing zones) contained in the general permit. For this reason, and under provisions available in the federal Clean Water Act and in Chapter 173-226 WAC- Waste Discharge General Permits Program, a compliance schedule was established which was considered reasonable for facilities to continue operation while working to come into compliance with all of the requirements of the general permit.

#### **COMMENT 20**

As a condition of coverage under this general permit, dischargers should provide information that indicates a mixing zone would be allowable for their discharge.

#### **RESPONSE 20**

As part of the Notice of Intent for coverage under the general permit, the owner/operator is required to identify the receiving water for any proposed discharge. The department may use that information to judge the adequacy of the receiving water to support a mixing zone. In the event subsequent information reveals that the receiving water would not qualify the facility for a mixing zone, an individual permit would be required.

#### **COMMENT 21**

Does the definition of Process Water include water that is pumped from an aquifer, used for washing gravel, and then is discharged to a pit that intercepts the same aquifer?

#### **RESPONSE 21**

Yes. The general permit does not address the source of water used for processing at a site. Water that is used on a site for washing gravel would be classified as process water

and may be discharged into a pit that intercepts the water table under the terms of Special Condition S5.G.

#### **COMMENT 22**

Some mining operations intercept an aquifer. Is this water considered ground water or surface water?

#### **RESPONSE 22**

This permit considers any water in a pit that intercepts an aquifer is not jurisdictional water of the state. The general permit allows discharge of gravel wash water into the pit for the purpose of enhancing reclamation in accordance with Special Condition S5.G. (and as discussed in Response 5). Thus, the general permit considers that the pit is part of the treatment system.

#### **COMMENT 23**

Site permittees should not be allowed to give 10 days notice without public input. SEPA review may be necessary.

#### **RESPONSE 23**

Existing facilities that submit an NOI within 90 days of the issuance of the general permit are exempt from SEPA according to regulation. New facilities must complete the SEPA process before site coverage under this permit is obtained.

#### **COMMENT 24**

Asphalt truck washout water should not be covered by the general permit.

#### **RESPONSE 24**

Any asphalt material that is washed out of these trucks is not "used" according to the definition in WAC 173-303-071(3)(e) and as discussed in Response 7. Further, the department believes that the concerns that apply to hot mix asphalt plant effluent should apply equally to pollutants that may be found in washwater from the trucks that transport this material. This concern could be addressed in an individual or group engineering report, as described in the permit.

#### **COMMENT 25**

Ecology should use implementation of BMPs instead of effluent limits.

#### **RESPONSE 25**

Permit effluent limits are established to ensure protection of beneficial uses of the state's surface water, ground water, and sediment quality set out in state and federal regulations. Application of BMPs at most facilities will allow discharge of storm water and process water that is in conformance with those regulations. In some cases, BMPs alone may not be adequate. In those cases, treatment methods in addition to BMP requirements must be employed by the owner/operator to achieve the necessary protection.

#### **COMMENT 26**

What information does monitoring provide to the DOE? Why can't you do it yourself focusing on the segment of the industry most likely to have an impact?

#### **RESPONSE 26**

Monitoring requirements are used to ensure continued compliance with the effluent limits set in the permit, evaluate the potential effects on state waters, and assist in developing other permit conditions and limits. Self-monitoring is a standard procedure used by the department. The concept of self-monitoring has been a cornerstone of the NPDES program since its inception. A system of monitoring by the government would be a costly burden on the general taxpayer. It is more equitable to require that a discharger to public waters should bear the cost associated with monitoring and reporting. The general permit is designed to require coverage of, and thereby set effluent limits for, all facilities that are likely to adversely affect the environment by their discharges.

#### **COMMENT 27**

If monitoring proves to be consistently negative, why must everyone monitor in perpetuity?

#### **RESPONSE 27**

Monitoring is tied to the life of a permit, which is five years for this general permit. When the general permit is reissued, the frequency and parameters may be adjusted based on analysis of submitted monitoring data. However, for coverage under the general permit, all permittees with similar discharges have the same monitoring requirements.

The purpose of continued monitoring is to demonstrate compliance with the permit conditions during the life of the permit. Seasonal variations and process changes may affect the quality of water discharged by an operator that would not be reflected in any short term monitoring program.

**COMMENT 28**

Why can only "approved" laboratories conduct monitoring?

**RESPONSE 28**

There is no requirement in the permit that states that a representative from an Ecology-accredited laboratory must collect any samples. The permit includes guidance in Special Condition S8. to permittees for preparation of their own monitoring plans, including reference to a USEPA document for specific monitoring guidance. The permit requires use of accredited laboratories for analytical results that are submitted to the department according to Chapter 173-050 WAC. The accreditation program is intended to assure that laboratories have the capability to accurately analyze samples.

**COMMENT 29**

Operators should be allowed to test their discharges onsite for pH and turbidity.

**RESPONSE 29**

The first paragraph in Special Condition S8.A.2., Lab Certification, has been modified. The General Permit now states:

After July 1, 1995, all monitoring data, except for flow, temperature, pH, electrical conductivity, and internal process control parameters, shall be prepared by a laboratory accredited under the provisions of Accreditation of Environmental Laboratories, Chapter 173-050 WAC.

Whether analyzed by an accredited laboratory, or by the permittee, all monitoring data must be analyzed using EPA approved methods. For measuring pH, use of a pH meter is approved by the department and EPA, but use of pHydrion paper is not. For measurement of all other parameters required under the general permit, including turbidity, a facility may apply for accreditation under the department's laboratory program. Once approved, a facility may analyze samples for those approved parameters.

**COMMENT 30**

I am not sure that we have qualified people in our organization who could prepare a storm water pollution prevention plan, or who could collect monitoring data. If we can't use our own personnel, our costs will be higher.

**RESPONSE 30**

The references section of the Fact Sheet contains a list of documents that were included with the intent that many owners/operators would have sufficient information that would enable them to prepare the necessary documents. Large or complex facilities may require assistance in the preparation of the plans. The department may be able to give some

technical assistance, but is not prepared to write or design specific plans. Trade organizations may also be able to provide assistance.

**COMMENT 31**

Since industry can't be trusted to collect unbiased samples, Ecology should do the monitoring.

**RESPONSE 31**

The department has the authority to enter any facility and conduct announced and unannounced inspections. These inspections may include obtaining samples for ensuring compliance with permit limits and to verify the accuracy of the self-monitoring reports.

**COMMENT 32**

Citizens should be allowed access to mine sites for monitoring.

**RESPONSE 32**

The state legislature provides the department with authority to conduct inspections. The legislature does not extend this authority to citizens.

**COMMENT 33**

Concern that only pH is monitored for ground water discharges. Also, storm water and process water sampling parameters and frequency is inadequate.

**RESPONSE 33**

If the department determines that site specific conditions exist at a facility that require additional monitoring, the department can require an individual permit that would include monitoring for the parameters of concern.

#### **COMMENT 34**

Clarify the test required in the permit for Total Petroleum Hydrocarbons (TPH).

#### **RESPONSE 34**

The TPH test required in all Special Conditions is the Department of Ecology WTPH 418.1 Modified. There is a possibility that over the life of the general permit, this test may be replaced by another test. To account for this, the following language has been added to the general permit:

##### **S8.A: Monitoring Plan General Requirements**

4. Any Total Petroleum Hydrocarbons laboratory analysis shall conform to WTPH 418.1 Modified, or equivalent, as approved by the department.

#### **COMMENT 35**

Average monthly effluent limits are not indicative of large rainfall events or changes in operations.

#### **RESPONSE 35**

The permit specifies that the monitoring must be done under typical operating conditions.

#### **COMMENT 36**

Federal regulations are less stringent than Washington State regulations. Why does this permit exceed federal requirements for effluent limits and monitoring?

#### **RESPONSE 36**

All waste discharge permits, according to both state and federal law, must include conditions that the permitted discharges meet State water quality standards. For the facilities covered under this general permit, federal regulations address discharges to surface water only. The State has adopted both ground water and surface water quality standards. The limitations and monitoring requirements in the general permit are based on these standards which were designed to protect beneficial uses of water. The federal technology-based regulations which specify limits only for pH are inadequate to prevent water quality impacts from operation of facilities covered under the general permit.

### **COMMENT 37**

When is the DOE going to prepare an Environmental Checklist, or EIS, describing the existing conditions (of surface mine discharges, if any, on the waters of the state), the impacts of the regulation in reducing the individual and collective discharges, and mitigation measures that could achieve the goal of clean water--with and without a regulation, plans and monitoring?

### **RESPONSE 37**

In the State Environmental Policy Act (SEPA) regulations, WAC 197-11-855(1) states that the following activities of the department of ecology shall be exempt:

The issuance, reissuance, or modification of any waste discharge permit that contains conditions no less stringent than federal effluent limitations and state rules and regulations. This exemptions shall apply to existing discharges only and shall not apply to any new source discharges.

Thus, for existing facilities, this general permit is exempt from SEPA requirements. New facilities must demonstrate SEPA compliance before they can be considered for coverage under this general permit.

### **COMMENT 38**

What is the DOE doing to comply with the provisions of the statute regarding adoption and implementation of the Regulatory Reform statute?

### **RESPONSE 38**

The general permit is an example of how the department is working to improve efficiency in the permitting process. By use of this general permit, several hundred owners/operators that require permits for storm water, process water or mine dewatering water discharges will be covered. The alternative to the issuance of this general permit would be for the agency to dedicate limited resources to prepare individual permits for these same facilities. The individual permits would contain requirements found in this general permit.

The general permit also results in lower permit fees to owner/operators. By law, the department is required to recover its costs of administering the permit. The efficiency of covering numerous facilities with one permit results in lower administrative costs for the department. For permittees, these lower costs are reflected in the form of reduced permit fees.

### **COMMENT 39**

Section 402 of the Clean Water Act exempts mining operations from storm water permitting.

### **RESPONSE 39**

The department's interpretation of this section of the Clean Water Act is that the exemption does not apply to Type 3 storm water (as defined in the general permit). As a result, the following change has been made to Special Condition S3.B. of the general permit:

S3B.1. Any active site that:

- a. Ditches, routes, collects, contains, or impounds process water or Type 3 storm water;

### **COMMENT 40**

If effluent limitations are met, why are facilities required to line settling ponds?

### **RESPONSE 40**

Only those settling ponds that receive effluent from asphalt or concrete batch plants are required to be lined. A compliance schedule of 36 months for these facilities has been included in the general permit. The general permit also includes a process for preparation of an individual engineering report that would address site-specific conditions. Based on this engineering report, the department would prepare an individual permit that would include requirements to address the site-specific conditions. The general permit also includes a process for development of a group engineering report that would address the department's broader concerns regarding effluent from asphalt or concrete batch plants.

### **COMMENT 41**

Can low permeability soils be used as an alternative liner material?

### **RESPONSE 41**

The general permit does not consider low permeability soils as an acceptable substitute for the liner requirements in Special Condition S5.B. The general permit does include the opportunity for facilities to initiate a group engineering report that would address issues such as alternative liner materials. Also, an owner/operator could make an engineering demonstration to the department of the effectiveness of low permeability soils as liner material.

#### **COMMENT 42**

There should be some water testing to identify significant concerns before requiring process water liners for asphalt batch plants.

#### **RESPONSE 42**

The Fact Sheet accompanying the general permit indicates the sources of information relied upon by the department to conclude that the liner requirement for asphalt and concrete batch plants is appropriate. Any facility, or a group of facilities, may approach the department with a proposal that would include an engineering report that would be designed to address the concerns identified by the department. In the absence of such a proposal, the department is relying on the existing information available to it.

#### **COMMENT 43**

The term "asphalt batch plant" is not the generic term to use to refer to SIC Code 2951. The proper term is "hot mix asphalt plant". A batch plant is one of two types of hot mix asphalt plants which are currently in use.

#### **RESPONSE 43**

Ecology agrees. The term "asphalt batch plant" has been replaced with the term "hot mix asphalt plant" throughout the permit. In addition, the term hot mix asphalt plant has been added to the Definitions section, as follows:

Hot mix asphalt plant means a plant that blends together aggregate and asphalt cement to produce a hot, homogeneous asphalt paving mixture. The term includes batch plants, continuous mix plants, and drum mix plants.

#### **COMMENT 44**

Most permittees are unlikely to report a cause for revocation of their own permit. Any member of the public should be allowed to report a cause for revocation. The public should also be allowed to notify the department of potential pollutant practices at a site.

#### **RESPONSE 44**

Each Ecology Regional Office has a complaints coordinator. Citizens may contact the coordinator by telephone or by writing to report perceived violations of water quality standards or permit limitations. Ecology responds to complaints to the extent of available resources.