August 17, 2011

RESPONSE TO COMMENTS - SAND AND GRAVEL GENERAL PERMIT DRAFT MODIFICATION AND ANTIDEGRADATION PLAN

FROM: Jana McDonald, P.E.
CPM Development Corporation
PO Box 3366
Spokane, WA 99220

Dear Mr. Bailey,

CPM Development Corp. (CPM) respectfully submits the following comments on the Revised Draft Sand and Gravel General Permit:

1. S4.B.3 Discharges to Surface Water: Ecology added language to the permit, requiring that operators of sand and gravel mines conduct visual inspections of *each* point of discharge to surface waters at lease once a month when discharges occur. CPM objects to this permit condition based on the necessity and safety issues associated with the monitoring of some discharges. Some discharge points are not physically safe for a person to access to visually inspect and accessing them for an inspection would put the employee and company at risk of violating other agency rules and standards (i.e. MSHA). The feasibility of providing a safe access would require securing additional permits to make modifications along a shoreline, which is unnecessary and burdensome. The current permit requires operators to monitor these discharge points through the monitoring and sampling of representative discharges. The monitoring of representative discharges has adequately protected water quality throughout the history of this permit. The addition of a condition requiring the monitoring of each point of discharge creates a safety hazard to employees, potential for other agency violations and provides no benefit to water quality. CPM objects to this condition.

RESPONSE 1. Ecology has added text to the permit condition S4.B.3 to allow a facility to apply for an exemption of visual monitoring for those outfalls which are not physically safe for a person to access for visual inspection.

2. S5.4 Site Management Plan: Ecology added language requiring operators to provide a copy of the SMP and *applicable incorporated plans* to the public when requested in writing to do so. Sand and Gravel operations utilize hundreds of pages of plans and documents that could be considered "applicably incorporated" to the Site Management Plan. These documents include site development plans, permits, land use information, attorney-client privileged information and confidential business information. In no way should a company have to submit this information to the public upon request. CPM objects to this requirement.

RESPONSE 2. The types of documents cited in the comment are not considered applicable incorporated plans. An example of an applicable plan would be a SPCC plan as required under 40 CFR Part 112 for fuel storage which then is incorporated by reference into the Site Management Plan for spill prevention.

3. S5.C.3.a Modifications of the SWPPP: A clause was added requiring additional or modified BMPs to be implemented as soon as practicable but not to exceed 10 days. The addition of this condition is arbitrary, unnecessary potentially unfeasible. Permittees needing to modify BMP's that would require capital expenditures will not be able to meet this requirement. The permit needs to somehow address capital expenditures. The response time should be flexible enough to reflect the range of site specific circumstances that may be encountered. Permittees understand the importance of implementing BMPs and making revisions to the SWPPP in response to an upset or non-compliance situation. There is no timeline to reflect a compliance deadline for capital improvements which will definitely extend beyond the 10 day

RESPONSE 3. Language is added to this section to allow additional time upon request to Ecology for modifications that requires additional time for things such as other permits, engineering report approval, or purchase of equipment.

FROM: Matthew L. Hinck, Environmental Manager
CalPortland
PO Box 1730
Seattle, WA 98111

Dear Mr. Bailey:

CalPortland appreciates the opportunity to offer comments and suggestions on the Department of Ecology's Draft Sand and Gravel permit. CalPortland is submitting the following comments:

1. S2 Effluent Limitations: The daily maximum effluent limitation for turbidity in all effluent categories has been changed from 71 to 50 ntu which matches the existing monthly average turbidity of 50 ntu. CalPortland objects to the change of the daily maximum turbidity level on the following grounds

    a. Daily Maximum limits and Monthly Average limitations are established to account for the range of conditions that a site treatment system will encounter. In particular, turbidity treatment systems typically rely on a series of quiescent clarification ponds which provide sufficient settling time for particles to agglomerate and sink (to be later recovered out of the basin) which produces an effluent that meets the average monthly turbidity standard. Facility systems are designed and sized with the 10 year 24 hour storm event as a design criteria. As daily and hourly rainfall levels increase during storm events the effective system residence time is reduced which affects the treatment efficiency. It is during times of heavy precipitation that a facility treatment system will be most stressed and least efficient, and it is during these exceptional times that the effluent turbidity can be higher than the established monthly average limitation. The Daily Maximum Turbidity is higher than the monthly average specifically to account for conditions encountered at sites during adverse and severe

conditions such as extreme storm events which typically occur between late October and February each year. Reducing the Daily Maximum Turbidity Limitation to match the Monthly Average unfairly penalizes permittees with increased risk of permit violation during exceptional storm events.

b. The effluent limitation for turbidity is a technology based limitation and the NPDES permit writers handbook establishes methods and procedures for determining daily maximum limitations. In the issuance of the October 1, 2010 permit Ecology used the methodology in the permit writers handbook to correctly calculate the Daily Maximum limitation for turbidity as 71 ntu. A full explanation of this calculation was provided by Ecology in comments made in response to Mr. Richard Smith in the Response to Comments Document issued by Ecology on August 4, 2010. Reducing the Daily Maximum Turbidity limitation to 50 ntu's ignores the clearly established procedures in the NPDES permit writers handbook and is being done so only to appease a third party organization for purposes of settling an appeal.

RESPONSE 4. The 2005 permit set a daily maximum turbidity limit of 50 NTU. This limit was apparently carried over from the permit that preceded the 2005 permit, and was based on the compliance rate with that first permit. No basis was identified for the original limit, although some Ecology staff believe it may have been based on an allowable 5 NTU increase in the receiving water times a minimal dilution factor of 10 (water quality-based).

In developing the current permit, Ecology reviewed the language in the 2005 permit fact sheet. By referencing the 50 NTU limit as "economically achievable," the fact sheet implied a technology-based limit. Since there was no explanation underlying the original designation of the 50 NTU limit in the first permit, and since there was no explanation of why the daily maximum limit was set at the same number as the monthly average, Ecology assumed that the 50 NTU daily maximum limit was a mistake. Ecology calculated a new (71) daily maximum limit for the current permit based on instructions in Ecology's Permit Writer's Manual for deriving technology-based effluent limits.

When challenged on appeal, Ecology took the opportunity to examine the compliance rate with the daily maximum turbidity limit of 50 NTU in the 2005 permit. The discharge monitoring data for that permit (8,695 values) showed a compliance rate of 96% with the daily maximum of 50 NTU. This compliance rate is a good target rate for determining a

performance-based or BPJ limit, and it also represents AKART. Given that the 50 NTU was in the prior two permits, and in light of the compliance rate with the 50 NTU limit, Ecology believes the reduction to the previous limit of 50 NTU is appropriate.

2. S5.C.3.a (page 19). – CalPortland finds that the language change made in S5.C.3.a regarding the timeframe to implement or modify site BMP's to be impractical and unworkable. The revised language directs permittees to implement new or modified BMP's when non-compliance occurs according to the following timeframe: "....as soon as practicable but not to exceed 10 days." The timeframes are unworkable in many situations due to the scale, complexity and capital planning requirements necessary to implement or modify a site BMP. Some BMP changes are simple and easy to implement within 10 days: Some examples of these include modifying site housekeeping protocols, cleaning certain areas of a site, changing maintenance protocols on equipment. However, often times changes to site treatment or structural BMP's must be implemented to meet compliance limits: some examples of these larger changes include increasing sump size, changing pump/line sizing, modifying site grading/drainage pattern, modifying treatment sequence, installing water filtration equipment. The aforementioned BMP changes take considerable time, effort and capital dollars to implement and it is simply not practicable to meet the arbitrary timeline of 10 days. Permittees that must implement significant BMP changes face an uncertain jeopardy when these changes are not implemented within 10 days and are open to third party lawsuit challenge for failing to meet the 10 day limit.

CalPortland understands the importance of rapidly responding to and addressing an issue of non compliance at a facility and in many cases this can be done is a short time frame. CalPortland suggests that the language be modified to provide allowance and protection under the permit when significant BMP's which take longer than 10 days are implemented. A suggested language change is, "Additional or modified BMP's must be implemented within 10 days or as soon as practicable in exceptional circumstances"

RESPONSE 5. See Response 3 above.

FROM: James A. Tupper, Jr.
Tupper/Mack/Jensen/Wells PLLC
2025 First Ave. , Suite 1100
Seattle, WA 98121

Dear Mr. Bailey:
This comment letter is submitted on behalf of the Washington Aggregate and Concrete Association ("WACA"). WACA is profoundly disappointed that Ecology has capitulated to Puget Soundkeeper Alliance by proposing to reduce the daily maximum limits for turbidity to levels in the previous Sand and Gravel Permit. This is particularly troubling in that Ecology has admitted that the limits in the previous permit were erroneously derived. WACA requests that Ecology reject any modification to the daily maximum limits for turbidity in the permit. The 71 NTU daily maximum limits in the current permit are based on standard practices and methods for deriving water quality effluent limits set forth in both state and federal guidance. Ecology explained in its response to comments on the draft 2010 permit that the proposed turbidity effluent limits were based on a long term average derived from the performance of technology. Appendix B, Sand and Gravel General Permit, at 10. The monthly turbidity effluent limits were derived as the long term average ("LTA") plus 1.645 times the standard deviation of the LTA. *Id*. Daily maximum limits are set as the long term average plus a 2.326 the standard deviation of the LTA. *Id*. Ecology acknowledged in its response to comments that the daily maximum limits for turbidity in the prior permit were erroneously derived. *Id.* Ecology corrected that error in the current SGGP by calculating the daily maximum limit as the long term average plus a 2.326 the standard deviation. The result was a 71 NTU daily maximum limit. The derivation of the 71 NTU daily maximum limits reflects and is consistent with Ecology permit drafting practice. In Ecology's Permit Writer's Manual, the use of a 2.326 standard deviation from the LTA is provided as a model approach for deriving technology-based effluent limits. Ecology, Water Quality Program Permit Writer's Manual, Pub. No. 92-109 (July 2008), at IV-18 to IV-21.

The current 71 NTU limit is also consistent with EPA's 2010 guidance for permit writers. That guidance indicates that daily maximum limits should not mirror the long-term average. "[L]limitations generally are expressed as *maximum daily* and *average monthly limitations* (see definitions in Exhibit A-2 in Appendix A of this document) that include an allowance for variability around the long-term average." EPA, NPDES Permit Writer's Manual (Sept. 2010) at 55.[1] "The average monthly limitation requires continuous dischargers to provide ongoing control on a monthly basis that complements controls imposed by the maximum daily limitation. To meet the average monthly limitation, a facility must counterbalance a value near the maximum daily limitation with one or more values well below the maximum daily limitation. To achieve compliance, the values must result in an average monthly value at or below the average monthly limitation. As explained below, *EPA uses a smaller percentile basis for the average monthly limitation than the maximum daily limitation to encourage facilities to target their systems to a value closer to the long-term average.*" *Id.* (emphasis added).

1 The practice of setting different monthly maximum and daily effluent limitations has been approved by federal courts. For example, the D.C. Circuit Court of Appeal upheld EPA's decision to set different monthly maximum and daily maximum effluent limitations for the pulp and paper industry. *National Wildlife Federation, et al v.*

Environmental Protection Agency, 286 F.3d 554, 573 (D.C. Cir. 2002). In its decision, the Court quoted EPA's explanation for the difference in daily maximum and monthly maximum values: "In order to meet the monthly average limitation, a facility must counterbalance a value near the daily maximum limitation with one or more values well below the daily maximum limitation." *Id*.
According to EPA, the daily maximum permit limit is usually the 99th upper percentile value of the pollutant distribution, while the monthly maximum is usually the 95th percentile of the distribution of daily values. EPA, Technical Support Document for Water Quality-based Toxics Control, (March 1991), Appendix E at E-1. Benchmarks in Ecology's Boatyard General Permit were likewise "calculated in the same manner as [sic] effluent limit derivation presented in the Technical Support Document, Appendix E (EPA/505/2-90-001). The copper data was not normally distributed so it was transformed by log normal transformation to derive benchmarks." Ecology, Fact Sheet for NPDES Boatyard General Permit Reissuance, Summary at 18; *see also id*. at 34.

RESPONSE 6. The 2005 permit set a daily maximum turbidity limit of 50 NTU. This limit was apparently carried over from the permit that preceded the 2005 permit, and was based on the compliance rate with that first permit. No basis was identified for the original limit, although some Ecology staff believe it may have been based on an allowable 5 NTU increase in the receiving water times a minimal dilution factor of 10 (water quality-based).

In developing the current permit, Ecology reviewed the language in the 2005 permit fact sheet. By referencing the 50 NTU limit as "economically achievable," the fact sheet implied a technology-based limit. Since there was no explanation underlying the original designation of the 50 NTU limit in the first permit, and since there was no explanation of why the daily maximum limit was set at the same number as the monthly average, Ecology assumed that the 50 NTU daily maximum limit was a mistake. Ecology calculated a new (71) daily maximum limit for the current permit based on instructions in Ecology's Permit Writer's Manual for deriving technology-based effluent limits.

When challenged on appeal, Ecology took the opportunity to examine the compliance rate with the daily maximum turbidity limit of 50 NTU in the 2005 permit. The discharge monitoring data for that permit (8,695 values) showed a compliance rate of 96% with the daily maximum of 50 NTU. This compliance rate is a good target rate for determining a performance-based or BPJ limit, and it also represents AKART. Given that the 50 NTU was in the prior two permits, and in light of the compliance rate with the 50 NTU limit, Ecology believes the reduction to the previous limit of 50 NTU is appropriate.

Ecology cannot in any case modify a NPDES permit without cause. 40 C.F.R. §122.62, 40 C.F.R. §122.64; 173-220-150(1)(d). Ecology has not provided a lawful explanation for the proposed change to the daily maximum turbidity limits.

RESPONSE 7. Ecology believes response to an appeal is proper cause for modification (40 CFR 122.28(b) and WAC 173-226-230). See response 6 above for the explanation of the proposed change.

Finally, Ecology cannot modify a NPDES permit without providing a fact sheet that explains the basis for the proposed modifications. 40 C.F.R. §124.59, WAC 173-220-060. A fact sheet is absolutely necessary for Ecology to explain how it derived the proposed 50 NTU daily maximum limit, and how that limit comports with the proposed 50 NTU monthly maximum limit and with EPA and Ecology's guidance for calculating technology-based effluent limits. The public comment period should also be extended for a period of thirty days from the date Ecology publishes notice of the availability of a fact sheet in accordance with WAC 173-220-060(1)(i).

RESPONSE 8. Ecology finds no requirement for a fact sheet in regulations dealing with modifications of general NPDES permits. Section 40 CFR 124.59, as cited above, appears to apply to 404 permits. It appears the appropriate cite for general permit modification in federal regulations is 40 CFR 122.62 which does not contain a requirement for a fact sheet for a modified general permit. The appropriate state requirements for modification of general permits are found in WAC 173-226-230(2) and Ecology has met those requirements. Ecology is attaching a brief Statement of Basis to this response to comments and to the modified final permit which is mailed to all facilities covered by this permit. The comments above assume there would be some general public interest in the changes in this permit if a fact sheet were attached. Ecology finds the only interest is with the litigants. Ecology met with the appellants and interveners together for one meeting to discuss the appeal items. Ecology met twice subsequently with the interveners to explain our position on the appeal items.

FROM: Bruce T. Chattin, Executive Director
Washington Aggregates and Concrete Association
22223 7th Ave. S
Des Moines, WA 98198

Dear Mr. Bailey,

The Washington Aggregates and Concrete Association (WACA) represents the primary stakeholders and statewide regulated industry as granted coverage under this NPDES Sand & Gravel General Permit. WACA provides the following comments and recommendations to the Department of Ecology's Draft Sand and Gravel General Permit Modification. These modifications were made over our strong objections. We encourage Ecology's continued obligation to incorporate the perspective of our organization and the perspectives of the industry professionals who served as Permittee stakeholders and have participated extensively with the Department in this permit renewal process to make modifications workable, practical and effective.

1) S2 Effluent Limits: In the June 1, 2011 version of the S&G General Permit Draft Modifications, Table 2, Ecology expressed the *"Maximum daily limit for turbidity for all categories as reduced from 71 to 50 mg/L"*. We assume Ecology meant to express the units as mg/L versus the scientifically expressed NTU unit of designation. Our significant objection is Ecology retreating from their originally stated determination and reduced the maximum effluent daily limit for turbidity for all categories, from 71 to 50 mg/L (NTU) in their settlement with PSA. *WACA vigorously objects to this change*.

- The maximum daily limit for turbidity was originally changed from 50 to 71 mg/L (NTU). The Department of Ecology indicated they made this change based on the fact the previous 50 mg/L (NTU) limit was derived as a technical error in the previous permit.

RESPONSE 9. The correct unit of measurement for turbidity is NTU. See response 6 above for the reason for the change.

- Ecology indicated they had sound and defensible evidence that the 71 mg/L (NTU) limit is protective of water quality and could defend the change if it were to be appealed.

RESPONSE 10. Ecology finds no statement about water quality in the fact sheet or response to comments although we do believe the limit is protective of water quality.

- Industry legal council has suggested, when a limit is derived in error, it is not subject to the anti backsliding provisions when considering a change in a limit or range. Given Ecology's

explanation and basis for the change, this change is exempt from anti backsliding arguments made by others.

RESPONSE 11. Ecology agrees that the increase is probably not subject to anti-backsliding, however, the appellants believe that the increase is backsliding. The decision would be with the courts. As explained in Responses 4 and 6, the 50 NTU limit represents AKART. If the limit remained at 71 NTU, that could be considered backsliding.

It is our opinion that the shift from the 71 mg/L to 50 mg/L (NTU) for the daily maximum limit is solely being made to appease the Puget Sound Keepers Alliance. The Department of Ecology should have the conviction to stand by its sound and defensible evidence and to uphold the appropriate 71 mg/L (NTU) maximum daily limit as they had originally determined.

RESPONSE 12. Comment noted.

2) S2 Effluent Limits:

Ecology changed the wording in the "Oil Sheen" column of Table 3. The monitoring limit for this parameter was changed from "Visible Sheen" to "No Discharge." This wording change is in conflict with the site oil sheen monitoring procedure, which is clearly outlined in condition S4.E. It is not a permit requirement that there be "no discharge" of oil sheen at a site monitoring point. Rather, Permittees are required to clean up a sheen discovered at any surface or ground water discharge, document the incident, and take steps to prevent future occurrence. Table 3 should reflect these existing permit requirements.

Changes were also made to the third footnote of Table 3, which describes response to the occurrence of oil sheen in a discharge. *This footnote contradicts itself and the permit conditions it references.*

- It states that a discharge of sheen to surface or ground water *is* a violation, and that the presence of a visible sheen on site is *not* a violation, *"provided certain actions are taken"*.
- The presence of oil sheen in a discharge is a site condition that must be resolved, documented, and investigated (see condition S4.E). It is not a "violation" to be reported in accordance with S6.E, as is implied by the footnote's reference to this condition.
- The use of "No Discharge" in the Oil Sheen column of Table 3, combined with the language of footnote 3, effectively requires Permittees to treat "oil sheen" as an "oil spill."

Recommendation(s):

- The table should be amended to conform to the monitoring requirements listed in permit Condition S4.E. As the currently effective (October 1, 2010) permit reads, "Visible Sheen" should be listed as the monitoring limit for the oil sheen parameter.
- Footnote 3 should simply read, *"See condition S4.E."* This condition details oil sheen monitoring requirements and is the only reference required here. Any additional text in this note is extraneous and may create inconsistency within the permit.

- WACA requests Ecology provides written and formal guidance to assist Permittee compliance with this requirement if it stands as modified.

RESPONSE 13. This condition was reworded for clarity but the condition requirements remain the same. A discharge of oil sheen to waters of the state (surface or ground) is a violation and must be reported on the discharge monitoring report. This is the same requirement as in the 2005 permit and the current permit. The presence of oil sheen at a site but not discharging to states waters is not a violation but must be corrected and reported on the site inspection report. The monitoring frequency remains as daily when runoff occurs.

3) S3.F Use of Chemical Treatment Products: WACA believes notifying Ecology prior to the use of any new chemicals discharging to surface waters or of any significant change in application rates of chemicals discharging to surface waters is onerous and exposes sand and gravel facilities to avoidable third party actions. This change is subjective and overly prescriptive.

- The application rate of chemical treatment products is dependent on weather and site conditions and the Permittee must have the flexibility and discretion to make adjustments accordingly.
- The use of a single brand/model of chemical treatment product varies based on availability. Accordingly, Ecology's response time would be a concern.
- WACA requests clarification on what a "significant" application rate change entails (Is this compared to historical application rates; compared to the previous day's application rate?); and if Ecology considers different brands of the same chemical product to be a "new chemical."
- Additionally, WACA formerly requests Ecology provide information requiring or warranting this change, how Ecology plans on tracking notifications in order to ensure that documentation of notifications is retained in the event of a third party accusation and how Ecology will defend the Permittee in the event of a third party accusation.

Recommendation: The original language as stated in the August 4 2010 permit is more than adequate, comprehensive enough and includes clear direction; *"apply in accordance with manufacturer instructions"*, documentation and identification of use of chemicals, and use consistent with the current list of restrictions as well as be *"immediately available"* to Ecology.

- In the event a new chemical is to be introduced or not listed in the SW Manual, manufacturers should submit to Ecology a request to be approved for use and Ecology should communicate approval of new chemicals for treatment on a as needed or frequent basis or list on their website.
- Amend proposed language: "*…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. ~~The Permittee must notify Ecology prior to use of any new chemicals discharging to surface waters or of any~~*

~~*significant change in application rates of chemicals discharging to surface waters.*~~*"*

RESPONSE 14. All permittees covered under the Sand and Gravel General Permit must specify the chemicals used at their facility upon application. Any change in chemicals or amount of chemicals may affect the discharge. Rather than submitting a new application, Ecology requests notification. Ecology suggests this notification be done by email or by telephone with written follow up. Any additional guidance required can be placed in the guidance document WACA is preparing for its members.

4) S4.B.3 Discharges to Surface Water: Ecology added language to the permit, requiring operators of sand and gravel facilities to conduct visual inspections of *each* point of discharge to surface waters at lease once a month when discharges occur.
In addition to these discharges *being authorized by Ecology* as part of a Permittees SWPPP, no evidence or information has been presented to warrant this modification.

- This requirement is overly prescriptive.
- Sand and Gravel facilities are by nature large sites and have numerous discharge points.
- The current permit *already* requires operators to monitor these discharge points through the monitoring and sampling of representative discharges. The monitoring of representative discharges has adequately protected water quality throughout the history of this permit.
- The addition of a condition requiring the visual monitoring of each point of discharge creates a unnecessary burden for very large sites, requires visual inspection of discharge points that are not readily or practically visible, may be a safety hazard pending the location of the discharge,
- Provides no **additional** benefit to water quality beyond existing sampling and monitoring regimes

Recommendation:
Amend proposed language: *The Permittee must conduct a visual inspection of each point of discharge to surface water at least once a month* ***OR*** *when discharges occur. The date of the inspection, and any visible change in turbidity or color in the receiving water caused by the discharge, must be recorded and filed with the monitoring plan required by Condition S2.* ***If no discharges occur or if discharge points are not readily visible, indicate no discharge occurred or no visible discharge filed with the monitoring plan.***

RESPONSE 15. Placing the word OR in the sentence would require permittees to conduct visual inspection whenever discharge occurred. We believe the requirement is sufficient without the word OR.

5) S5.4 Site Management Plan: Ecology added language requiring operators to provide a copy of the SMP and *applicable incorporated plans* to the public when requested in writing to do so. **WACA strongly objects to this requirement.**

- Sand and Gravel operations utilize hundreds of pages of plans and documents that could be considered *"applicably incorporated"* to the Site Management Plan. These documents include site development plans, permits, land use information, attorney-client privileged information and confidential business information.
- There is no definition for "applicably incorporated" in the permit.
- It is unreasonable and impractical to expect 950+ Permittees to be able to submit this volume of information to the public or parties "upon request" that may exploit the permit for political or legal actions and be subjected to considerable exposure to 3rd party actions as well as operational jeopardy unrelated to the permit. As written, the change does not give the Permittee the flexibility to withhold sensitive, site specific or other documents not a function of obtaining coverage of the S&G permit. This should be narrowly considered and restricted to only those documents that are required or directly attributable, or material in the process of obtaining a Sand & General Permit from the Department.
- *This exact discussion* was raised during the last 5 year renewal by the same appealing parties. WACA strongly objected to it then as being unworkable, impractical and unnecessarily exposes Permittees (large and small) to 3rd party actions for no valid reason. After considerable discussion, all parties agreed with the resolution drafted and advanced by Ecology to have any public requests directed to Ecology and Ecology would work with the Permittee to satisfy the request. Ecology was well aware of the 3rd party exposures then and there is no new or compelling evidence that this resolution should be changed. It is this same reasoning that Ecology did not agree to the appeal issue in maintenance and shops regarding discharges. The issue had already been raised, discussed and an agreement reached. We recommend this same rational prevail here.

Recommendation: The language in the Aug 4, 2010 permit is adequate. Amend as follows:
Provide a copy of the SMP ~~and applicable incorporated plans~~ to the public when requested in writing to do so. The copy must be provided within 10 days.

- Consistent with prior renewal negotiations and determinations, this may be readily resolved by invoking Permit condition S5.3

RESPONSE 16. See response 2.

6) S5.C.3.a Modifications of the SWPPP: Language was added requiring additional or modified BMPs to be implemented as soon as practicable "but not to exceed 10 days". WACA disagrees with this requirement as impractical and arbitrary.

- The addition of this condition is a clear example of creating a deadline for the sake of a deadline and does not contemplate the many practical and reasonable factors necessary to implement BMP modifications or changes in SWPP management strategies.
- The requirement of "as soon as practical and but not to exceed 10 days" is inherently in conflict with each other. Practical may not always be within 10 days for many valid reasons: The response time should be flexible enough to reflect the range of site specific circumstances that may be encountered, any additional analysis or consultant work that may be required, lab test reporting, and to allow for scheduling of any permitting, plan approval processes, specialized or standard equipment and request for capital expenditures. These are

only a few of the reasonable examples of when a deadline makes no sense and creates a non compliance condition unnecessarily.

- The requirement is arbitrary and unnecessary as Permittees understand the importance of implementing BMPs and making revisions to the SWPPP in response to an unanticipated event or non-compliance situation. Permittees are already obligated to review these occurrences, take corrective actions and report them. If there needs to be additional considerations, the Permittee and Inspector have the ability to monitor the remedial actions, communicate and make suggestions to insure modifications are practical and effectively applied for the Permittee, inspected, and improve water quality protection. This provision undermines the role of the technical assistance of the inspector to work with Permittees (small companies have few professional resources) to make site improvements.
- The 10 day response requirement is currently in the Construction Storm water General Permit. There is no reason to implement the 10 day requirement, in order to be consistent with the Construction permit, unless a previously un-communicated technical basis exists.

RESPONSE 17. See response 3

Ecology is compelled to independently and without prejudice review all received comments. The stipulation regarding settlement and order with Puget Sound Keepers compromises this independent ability and essentially assures no new "significant" modifications will be adopted as it stipulates the additional legal actions by others is to be expected. It is clear this stipulated condition lacks any incentives for Ecology to revise this modified draft of the permit to anything different than what is in current form.

RESPONSE 18. Ecology has changed the draft modification in response to appropriate and relative comments.

Ecology has repeatedly stated in each renewal effort that timelines for comments and modifications are often not considered late in the process as it would require reopening the comment periods and requires starting the process over again. Ecology simply says "we are not going to do that". Given this position, why would any party objecting to the modified draft expect any reasonable consideration of qualified comments when the agency considers it disruptive to the process or inconvenient to the agency?

RESPONSE 19. Ecology finds that whoever made the statements above was not properly speaking for the agency.

Originally this permit renewal cycle was represented by SW Program Managers and others; "*to streamline the permit with minimal changes"* as the existing permit as written was doing a good job of protecting water quality. Again, the agency is inconsistent with their representations and actions. We consistently objected to changes made for the sake of "wordsmithing". This

suggests an invalid approach and an affinity to *"no harm no foul"* permit modifications made for language development, approach and management.

Given the extensive involvement of WACA and industry stakeholder members in the development of the permit renewal conditions, we encourage Ecology to value the integrity and merit of the stakeholder process and the results of this collaborative process. We object to the modifications made by non participating interests being given equal or greater weight and lack the practicality of implementing the permit and its conditions. As a result, we request Ecology provide written and compelling evidence outside of standardized responses to comments justifying these proposed changes.

RESPONSE 20. Ecology agrees that the changes proposed in this modification could have easily been settled prior to issuance if the appellant had participated in the stakeholder meetings, however, they have a legal right to appeal the permit.

Ecology does not understand the request for written and compelling evidence outside of standardized responses to comments. Ecology reminds WACA that Ecology management held two meetings with WACA to explain Ecology's position on the changes proposed for settlement. Ecology also reminds WACA that Ecology modified its initial position on the permit as a result of meetings and comments from WACA and WACA members during the stakeholder process. These changes include: Ground water studies, Concrete recycling, Mandatory BMP implementation, Track out/wheel wash, Accessory Uses, Oil Water separator inspection, Nitrate testing frequency, Lined impoundment inspection, Exemption of pH and turbidity testing from accreditation, Draining fluids from unused vehicles, Uncured concrete, Defined type 2 stormwater, Vehicle inspection requirement, Storage of empty containers, Recycled asphalt classification, and Dumpster cover exemption.

August 17, 2011

FROM: Katelyn Kinn, Esq
Legal Affairs Coordinator
Puget Soundkeeper Alliance
5305 Shilshole Ave. NW, Suite 150
Seattle, WA 98107

Mr. Bailey:

Please consider these comments on the Sand and Gravel General Permit Draft released by the Washington Department of Ecology (Ecology) on June 1, 2011.

Puget Soundkeeper Alliance (Soundkeeper) is a non-profit organization with its mission to Protect and Preserve Puget Sound by tracking down and stopping the flow of toxic pollutants into the Sound. In order to achieve this goal, Soundkeeper routinely interfaces with Ecology's Water Quality Program, Spills Program and Toxics Cleanup Program. Soundkeeper also comments on draft regulatory language. In order to stop the sources of illegal pollution, Soundkeeper also enforces National Pollutant Discharge Elimination System (NPDES) permits through Section 505 of the Clean water Act when permittees fail to comply with permits. Soundkeeper supports the modifications reflected in the draft permit which are necessary to protect water quality and agreed to in the three way settlement between Ecology, Soundkeeper, and Washington Aggregates and Concrete Association.

The text changes to S1.B.1.c, Facilities Excluded From Coverage under This Permit, provides necessary clarification concerning discharges or proposed discharges to water bodies listed as impaired under Section 303(d) of the Clean Water Act. For purposes of clarifying the exclusion from coverage of certain facilities, this language should remain as it is currently stated in the draft.

The reduced TSS limit for category 212321 (Construction Sand and Gravel Mining) from 40 mg/l to 25 mg/l and reduced maximum daily limit for turbidity for all categories from 71 NTU to 50 NTU are necessary both to protect water quality and reflect AKART as indicated by monitoring results collected under the previous permit. PSA strongly supports these modifications.

The text change to S2. Table 3. Note 3 concerning oil sheens provides important clarification on the issue of petroleum product discharges. The new wording adequately clarifies that the discharge of oil sheens to surface water is a violation and must be reported as a violation. This language should remain.

The modification to S3.E.4 concerning inspection and continuous removal of impoundment is important for purposes of clarifying the point that impoundment must be inspected, repaired, and drawn down on a regular basis and as necessary to protect water quality. This modification should remain.

The modification to S3.F.1 requiring permittees to notify Ecology prior to use of any new chemicals or significant change in application thereof is necessary to control the discharge of pollutants to surface waters. The additional language should remain.

The substitution in S3.I of the word "written" for "special" provides clarifying integrity to this section and creates an appropriate requirement for discharges to sanitary sewer. This language should remain.

The addition of text to S4.F.2 requiring review of the implementation of BMPs to ensure that the SWPPP is fully implemented as part of the dry season inspection is important to ensuring that facilities remain aware of all required BMPs and increases the chances of implementation of BMPs. This modification should remain.

The removal in S4.F.4.d of the word "major" is important for purposes of promoting more detailed and complete inspection reports. Comprehensive documentation of all observations supports a stronger a more effective monitoring program. Soundkeeper very much supports this modification.

The modification to S5.4 requiring a permittee to provide incorporated plans in addition to a copy of their SMP provides greater opportunity for public oversight and fosters increased environmental protection through transparency. This language should remain.

The text change in S5.C.3.a requiring the permittee to implement additional BMPs pursuant to SWPPP modifications within 10 days provides a much more appropriate level of immediacy than previously provided by this section. The inclusion of language in S5.C.3.b requiring the permittee to implement BMPs pursuant to a modified SWPPP as directed by Ecology is important to reinforce Ecology's oversight of SWPPPs. Soundkeeper supports these modifications as efforts to increase water quality protection.

Inclusion in S6.A.2 of the words "as applicable" is important to verify that a facility must distinguish carefully between the suitable reasons for abstaining from monitoring stormwater for a particular calendar quarter. This language should remain.

The addition of text to S9.B requiring public notice for portable facilities intending to discharge to surface water is appropriate for purposes of maintaining baseline transparency for portable concrete, asphalt, and rock plants and crushers. The previous permit condition allowing portable facilities to relocate and discharge to previously undisclosed receiving waters violated basic principles of public participation important to the Clean Water Act. Concerned citizens must have the opportunity to comment and challenge decisions to allow discharges to waterbodies that they care about. In the absence of Ecology opting to remove subsection 2, this is an adequate modification.

RESPONSE 21. Comments noted.

FROM: Jimmy Blais, Env. Manager
Stoneway Concrete 9125;10th Ave S
9125 10th Ave .S.
Seattle, WA 98108

Dear Mr. Bailey,

Stoneway Concrete appreciates the opportunity to offer comments and suggestions on the Department of Ecology's Draft Sand and Gravel General Permit Modification. Stoneway renders the following comments:

1. S2 Effluent Limits: In Table 2, Ecology has changed the maximum daily limit for turbidity, for all categories, from 71 to 50 mg/L. Stoneway Concrete objects to this change. The Department of Ecology made this change based on the fact that the previous 50 mg/L limit was a technical error in the previous permit (thus is not considered backsliding) and based on the fact that Ecology has sound and defensible evidence that the 71 mg/L limit is protective of water quality. Daily maximum limits are established to account for the range of conditions that are encountered at our sites throughout the year. These include extreme storm events during which the 71 ntu daily maximum is crucial in order to avoid permit violations. Reducing the daily maximum limit from 71 ntu to 50 ntu penalizes permittees for Ecology's past omissions and puts them at a greater risk for permit violations at no benefit to water quality.

RESPONSE 22. See responses above.

2. S4.B.3 Discharges to Surface Water: Ecology added language to the permit, requiring that operators of sand and gravel mines conduct visual inspections of *each* point of discharge to surface waters at lease once a month when discharges occur. This requirement is overly prescriptive. Sand and Gravel Mines by nature are large sites and have numerous discharge points. Occasionally, it is unfeasible or unsafe to monitor certain discharge points. The current permit requires operators to monitor these discharge points through the monitoring and sampling of representative discharges. The monitoring of representative discharges has adequately protected water quality throughout the history of this permit. The addition of a condition requiring the monitoring of each point of discharge not only creates unnecessary work for sand and gravel operators but it also provides no benefit to water quality.

RESPONSE 23. See responses above

3. S5.4 Site Management Plan: Ecology added language requiring operators to provide a copy of the SMP and *applicable incorporated plans* to the public when requested in writing to do so. Stoneway objects to this requirement. Sand and Gravel operations utilize hundreds of pages of plans and documents that could be considered "applicably incorporated" to the Site Management Plan. These documents include site development plans, permits, land use information, attorney-client privileged information and confidential business information. In no way should a company have to submit this information to the public upon request.

RESPONSE 24. See responses above

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Bruce T. Chattin, Washington Aggregates and Concrete Association, DesMoines, Washington, 22223 7th Avenue South.

Just on behalf of members of our Environmental Committee and Washington Aggregates and Concrete Association, as Gary noted, we object to some of the modifications proposed in the stipulation agreement, and we will be providing written comments and we hope that Ecology will give these strong consideration in their review. Thank you.

RESPONSE 25. See responses above.