

WA Aggregates and Concrete Association (Cory Shaw)

Please see attached file.

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SUBMITTED ONLINE VIA COMMENT PORTAL

Washington State

Department of Ecology

Air Quality Program

P.O. Box 47600

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Attention: Gary Huitsing

gary.huitsing@ecy.wa.gov

Submitted via Online Comment Form

RE: Draft General Order Revisions for Rock Crushers (26AQ-GO-01), Hot Mix Asphalt Plants (26AQ-GO-02), and Concrete Batch Plants (26AQ-GO-03)

Dear Mr. Huitsing,

These comments are submitted on behalf of the Washington Aggregates & Concrete Association (“WACA”). WACA is a non-profit industry trade association representing a broad spectrum of businesses across Washington State, including sand, gravel, quarry rock, cement, ready-mix concrete, suppliers, and other industry-related entities. Collectively, WACA’s four hundred and twenty-six (426) members contribute over \$4 billion annually to the state’s economy, provide more than \$1 billion in wages, and employ over 16,000 Washingtonians. WACA’s members and partners will be directly and significantly impacted by the proposed changes in the draft General Orders for Rock Crushers (26AQ-GO-01), Hot Mix Asphalt Plants (26AQ-GO-02) and Concrete Batch Plants (26AQ-GO-03).

WACA thanks the Washington Department of Ecology for the opportunity to provide formal comments on the Draft Air Quality General Orders and supports Ecology's objective of maintaining consistency with current air quality standards. Many facilities currently operating under General Order coverage have done so successfully for years while maintaining compliance with applicable permit requirements and air quality standards. WACA is concerned that several proposed changes would substantially restrict operational flexibility without a demonstrated need based on facility compliance history, observed impacts, or documented air quality violations. However, several proposed revisions may significantly reduce the usefulness of the General Order program and create operational and permitting challenges for facilities that have historically operated successfully under General Order coverage. WACA strongly urges Ecology to reexamine the proposed language and revert to existing language with minor revisions to provide clarity and ensure consistent regulatory enforcement. Below are detailed comments.

1. Proposed Daily Production Limits Are the Primary Concern

WACA's primary concern is the proposed daily production limits for rock crushers, asphalt plants, and concrete batch plants.

These limits appear to be based on conservative modeling assumptions rather than actual operating conditions. While facilities may remain well below their annual production limits, they often need

flexibility to increase production during limited construction windows, favorable weather conditions, and time-sensitive projects. Major highway, airport, utility, housing, and emergency repair projects frequently require short-term production rates that exceed the proposed daily limits.

The proposed daily limits would also significantly reduce operational flexibility by limiting a facility's ability to utilize extended work schedules or double-shift operations to meet project demands. During peak construction periods, producers often need to increase daily output over a limited number of days rather than spread production evenly throughout the year. The proposed limits would effectively prevent facilities from responding to these short-term demands even when they remain well within their annual production limits.

These restrictions are particularly problematic for asphalt plants and concrete batch plants. Large paving projects and concrete pours require significant volumes of material to be produced and delivered continuously over a short period of time. High-capacity facilities must be able to accommodate these temporary production spikes to support critical infrastructure and construction projects. Limiting daily production could delay project schedules, increase construction costs, reduce contractor efficiency, and hinder the timely delivery of public infrastructure projects.

Facilities operating under the General Orders are already subject to annual production limits, emission limits, and pollution control requirements. Ecology has not demonstrated why additional daily limits are necessary for facilities with a long history of compliant operation.

WACA recommends removing the proposed daily production limits and retaining the existing approach based on annual production limits.

If Ecology must require daily production limits, WACA recommends that modelling assumes the maximum possible control percentage for stockpiles and roads. The technical support documents outline that lower control percentages were used in modelling due to assumed lower application rates for stockpiles and roads; however, the general order requires compliance with stockpile and road watering provisions. Ecology should not assume noncompliance when choosing what percentage of control to apply to modelling rates.

2. Language on Single Locations Require Clarity to Avoid Confusion

The new language describing facilities operating in a single location is unclear. WACA interprets this language as a facility operating anywhere on the property dedicated to the given operation (i.e. a crusher operating at multiple pits within one mine site) is subject to the production limits, and if the permitted facility leaves and returns to this property within the same consecutive 12-month period, the production limits do not reset. However, as written, it can be interpreted that the production limits apply to multiple facilities (i.e. multiple crushers or batch plants) operating in a single location, and the production of one facility is limited by the presence of another. WACA requests Ecology to reexamine this language to potentially provide additional clarification to avoid the condition being misconstrued.

3. Individual Permitting Is Not a Practical Alternative

Ecology has indicated that facilities unable to meet General Order limitations may pursue an individual Notice of Construction (NOC) permit.

While this option technically exists, it is often not practical for the construction materials industry. Projects are frequently awarded on short timelines and may require production increases almost immediately. The time required to prepare, submit, review, and approve an individual permit may exceed the timeframe available between project award and project startup.

WACA requests that Ecology provide information regarding:

- Expected processing timelines for individual permits versus General Order coverage;
- Ecology's anticipated permitting workload following adoption of the revised General Orders;
- Ecology's capacity to process an increased number of individual permit applications if more facilities become ineligible for General Order coverage; and
- Cost of individual permit application and requirements vs General Order permit applications.

4. Proposed Setback Requirements May Unnecessarily Exclude Existing and Future Operations

WACA is concerned that the proposed setback and buffer requirements will function as de facto siting restrictions that unnecessarily eliminate otherwise compliant facilities from General Order eligibility.

Many aggregate, concrete, and asphalt facilities have operated for decades under existing permits while successfully implementing dust controls, operational best practices, and other requirements designed to protect air quality. The proposal does not demonstrate that these facilities have caused ambient air quality violations or other impacts that would justify imposing substantially larger setback requirements.

The proposed setbacks appear to be based on conservative modeling assumptions rather than demonstrated field conditions or facility compliance history. As a result, facilities may become ineligible for General Order coverage solely because of their proximity to certain receptors, even when they have a long history of operating without documented air quality concerns.

In effect, the proposed setbacks function as siting criteria rather than emission-based eligibility criteria. Facilities could become ineligible for General Order coverage based solely on their location relative to surrounding land uses, regardless of their demonstrated compliance history, actual emissions, or ability to meet applicable air quality standards through operational controls and permit requirements.

More importantly, these setback requirements undermine the fundamental purpose of the General Order program. General Orders are intended to provide a streamlined permitting pathway for categories of similar sources. If otherwise compliant facilities are excluded from coverage based primarily on fixed separation distances, many operators will be forced into individual permitting, increasing costs, permitting complexity, and agency workload without a corresponding environmental benefit.

WACA requests that Ecology reconsider the proposed setback requirements and give greater weight to demonstrated compliance history, existing permit performance, and the industry's longstanding record of operating successfully under previous General Orders.

5. RAP Limitations and Crumb Rubber Prohibition Reduce Operational Flexibility

WACA is concerned with the proposed limitation of recycled asphalt pavement (RAP) to 30 percent and the categorical exclusion of crumb-rubber-modified asphalt from General Order eligibility.

Both RAP and crumb rubber are established materials that have been successfully incorporated into asphalt production for many years. Many facilities have utilized RAP percentages above 30 percent while demonstrating compliance with applicable emission limits and permit requirements through source testing, emissions evaluations, and operational controls. The proposed restrictions remove operational flexibility without clearly demonstrating that higher RAP percentages or crumb-rubber-modified asphalt cannot be operated in compliance with applicable air quality requirements. The proposed restrictions may also discourage the use of recycled materials that support resource conservation and sustainability objectives.

Rather than imposing categorical restrictions, WACA encourages Ecology to retain a compliance-based approach. Facilities that can demonstrate compliance while utilizing RAP percentages above 30 percent through source testing, emissions calculations, or other technically supported methods should remain eligible for General Order coverage regardless of RAP percentage or use of crumb-rubber-modified asphalt.

At a minimum, Ecology should provide the technical basis supporting the proposed RAP limitation and crumb rubber exclusion and explain why demonstrated compliance through testing and operational controls is no longer an acceptable basis for General Order eligibility.

6. Proposed Odor Condition Creates Compliance Uncertainty for Asphalt Plants

The proposed odor condition, "The permittee must not cause or allow the generation of any odor which unreasonably interferes with any other property owner's use and enjoyment of their property.", raises concerns because compliance appears to depend on subjective interpretations of what constitutes an unreasonable odor impact.

Unlike production limits, opacity standards, or other measurable permit requirements, the proposed odor language lacks objective compliance criteria. Facilities may face uncertainty regarding how compliance will be evaluated and whether complaints alone could trigger enforcement concerns despite otherwise compliant operations.

WACA requests additional clarification regarding how Ecology intends to assess compliance with this requirement and what objective factors will be considered during inspections or complaint investigations.

7. Routine Equipment Replacements Should Not Trigger Loss of Operational Flexibility

We appreciate Ecology's clarification that facilities operating under existing permits are not automatically required to obtain coverage under the revised General Orders.

However, Ecology has also indicated that replacement of primary equipment, such as crushers, drums, burners, or baghouses, could require a facility to seek coverage under the revised General Orders. Routine replacement of equipment is a normal business practice and often results in improved environmental performance.

Facilities should not lose long-standing operational flexibility solely because they replace existing equipment with functionally equivalent equipment of comparable capacity and emissions characteristics. WACA encourages Ecology to include clear "like-for-like" replacement provisions in the General Orders specifying that routine replacement of existing equipment with equivalent equipment does not require a facility to obtain coverage under a revised General Order or become subject to more restrictive operating requirements, provided there is no material increase in production capacity or emissions.

8. Rolling Twelve-Month Limits Create Challenges for Seasonal Industries

WACA believes the use of rolling twelve-month production limits will create significant challenges for seasonal industries such as aggregate production, asphalt manufacturing, and concrete production.

The construction materials industry frequently operates within limited construction seasons driven by weather, paving schedules, and project delivery timelines. Rolling twelve-month limits can effectively capture production from two peak construction seasons within a single compliance period, potentially restricting operations even when a facility's overall annual production remains consistent from year to year.

Unlike calendar-year limits, rolling twelve-month limits can make compliance more difficult to predict and manage because production decisions made during one construction season may affect operational flexibility well into the following year. This may unnecessarily constrain facilities during periods of high demand despite continued compliance with overall annual production expectations.

Calendar-year limits would provide a more predictable, transparent, and practical framework for both permittees and regulators while still allowing Ecology to track and enforce annual production limitations.

9. Complaint Reporting Requirements Create Unnecessary Administrative Burden

WACA supports the concept of a complaint response program and associated recordkeeping requirements, as these are common elements of air quality permits in many jurisdictions. Permittees should appropriately document complaints, investigate potential issues, maintain records of findings and corrective actions, and respond to complainants when warranted.

However, the proposed requirement to notify Ecology of each complaint within one business day is unnecessary and may create administrative burdens without providing a corresponding environmental benefit. Operators need sufficient time to evaluate the circumstances of a complaint, determine whether any operational issues exist, and identify whether corrective actions are warranted. Immediate reporting requirements may result in the submission of incomplete, duplicative, or unsubstantiated information, increasing workload for both permittees and Ecology.

WACA believes a more practical approach is to require facilities to maintain a complaint log documenting complaints received, investigations conducted, corrective actions taken, and responses provided to complainants. These records should be retained on site and made available to Ecology upon request. This approach ensures accountability and transparency while allowing facilities to focus on meaningful investigation and resolution of concerns rather than meeting arbitrary reporting deadlines.

10. Dust Control Requirements Should Remain Performance-Based

WACA supports effective fugitive dust control but is concerned that several proposed requirements are overly prescriptive and limit a facility's ability to adjust control measures based on actual site conditions and operations.

Dust generation varies based on production activity, weather, traffic levels, and facility size. Operators should be allowed to implement dust control measures, including the application of water, that are appropriate for their specific operations, provided they comply with applicable visible emission and fugitive dust requirements.

For example, requiring haul roads to be wetted during all operating periods may be unnecessary when a facility is conducting maintenance activities or otherwise generating minimal traffic. Similarly, facilities should retain flexibility to use the most effective dust suppression method for site conditions, including water trucks, fixed spray systems, hoses, wet-vacuum sweepers, or other equivalent measures.

WACA encourages Ecology to maintain a performance-based approach focused on achieving compliance rather than prescribing specific dust control methods, such as requiring water trucks to be on-site. This would provide flexibility for facilities of varying sizes and operating conditions while continuing to protect air quality.

11. Existing Compliance History Should Be Given Greater Weight

The aggregate, concrete, and asphalt industries have successfully operated under Washington's General Order program for many years. Existing facilities have demonstrated compliance while providing essential materials for public and private construction projects throughout the state.

WACA encourages Ecology to place greater weight on this demonstrated compliance history when evaluating the necessity of significant new restrictions, throughput reductions, and eligibility requirements.

12. Infrastructure and Economic Impacts Should Be Evaluated

Aggregate producers, asphalt plants, and concrete batch plants supply materials essential to transportation infrastructure, housing development, schools, airports, utilities, commercial construction, and emergency repairs.

The cumulative effect of reduced production limits, expanded setbacks, increased permitting requirements, RAP restrictions, and other operational limitations may reduce operational flexibility, increase project costs, constrain material availability, and create delays for both public and private construction projects.

WACA encourages Ecology to evaluate and disclose the infrastructure, economic, and supply-chain impacts associated with the proposed revisions before final adoption.

13. Overly Vague General Conditions Create Compliance and Enforcement Uncertainty

WACA is concerned that several new general conditions included in the draft General Orders rely on terms that are not clearly defined. Ambiguous permit language creates uncertainty for permittees and increases the potential for inconsistent interpretation and enforcement across facilities and regions.

- **Credible Evidence:** The draft General Orders reference the use of "credible evidence" to establish the start date of a violation or a return to compliance. However, the term is not defined. WACA requests that Ecology clearly identify the types of information that constitute credible evidence and explain how such evidence will be evaluated and applied for compliance determinations.
- **Discontinuation of Construction:** The draft provisions addressing discontinued construction should provide additional clarity regarding what constitutes a satisfactory demonstration that an extension is justified. WACA requests that Ecology identify the information required to support an extension request and establish clear criteria for approval. Providing objective standards would improve consistency and predictability for permittees. NWCAA Regulation 300.11(A) provides a useful example of this approach.
- **Changes in Operation:** The draft General Orders should more clearly define what constitutes a "change in operation" that would trigger the need for new or amended General Order coverage. Without additional guidance, permittees may face uncertainty regarding whether routine operational adjustments, equipment maintenance activities, process improvements, equipment upgrades, or other common business practices require agency review or permit modifications.

WACA encourages Ecology to provide clear definitions and objective criteria for these provisions so that permittees have a consistent understanding of compliance obligations and can effectively plan and manage their operations.

Conclusion

WACA respectfully requests that Ecology:

- Eliminate the proposed daily production limits and continue relying on annual production limits,
- Provide clarity on the single location language as it relates to production limitations;
- Provide additional transparency regarding the modeling assumptions and technical basis supporting the daily limits;
- Evaluate the practical implications of directing facilities into individual permitting;
- Reconsider proposed setback requirements;
- Reevaluate RAP limitations and the crumb rubber prohibition;

- Remove or substantially clarify the proposed odor condition;
- Provide flexibility for routine equipment replacement projects;
- Reconsider vague language and provide clear definitions; and
- Consider the infrastructure and economic impacts associated with the proposed revisions.

The General Order program has historically provided an efficient permitting pathway for low-risk facilities while maintaining protection of public health and the environment. WACA encourages Ecology to preserve that functionality while updating the program to address current regulatory requirements.

Thank you for your consideration of these comments.

Sincerely,

Cory Shaw
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