



GARY MERLINO CONSTRUCTION COMPANY

September 5, 2025

Washington Department of Ecology
Attn: Eric Daiber
PO Box 47696
Olympia, WA 98504-7696

Subject: Comments on the Draft Sand and Gravel General Permit

Mr. Daiber,

Please find the comments below on the 2026 Draft Sand and Gravel General Permit.

Overall Comment: Permittees of the Sand and Gravel General Permit have achieved a ~95%+ compliance rate over the past 20 years. Industry and Ecology have always worked well together trying to create a general permit that protects the environment and allows flexibility as it is a general permit, not an individual permit. Past permits have allowed companies to select BMPs and create plans/forms that best work for their sites/employees and are protective of water quality. The proposed draft deviates significantly from that strategy. The draft permit is overly prescriptive, creates numerous paperwork traps, requires a significant increase in manpower and cost to comply and does very little to increase the protection of water quality. Why were these changes needed for a permit and an industry that has consistently achieved a 95%+ compliance rate? Ecology already has all of the tools necessary under the existing permit to regulate the bad actors and enforce water quality standards. The vast majority of the draft permit changes should be removed. Do not make the permit impossible to comply with; focus on water quality standards not data collection and unnecessary paperwork.

Changes to the permit are listed below in red along with our comments.

S3.D.3.a

This permit prohibits the direct discharge of process water from concrete operations and asphalt batch plants to waters of the state, these process waters must be stored in a lined impoundment and treated prior to discharge.

Comment: This is a new section in the permit. Was scientific basis does Ecology have to now require these discharges to go to a lined impoundment? Have there been significant violations under the existing permit necessitating the change?

S3.D.3.b

Direct discharge of concrete and/or cement truck wash-out, concrete sludge, and/or unhardened concrete solids to ground or surface water is prohibited. These discharges must be to a lined impoundment and treated prior to discharge.

Comment: This is a new section in the permit. Was scientific basis does Ecology have to now require these discharges to go to a lined impoundment? Have there been significant violations under the existing permit necessitating the change? Ecology has never shown that there are significant impacts to ground water from these types of discharges. The entire section should be removed from the permit. What if these discharges of concrete or unhardened solids are on a hardened and covered surface? Why should the covered surface be required to accommodate a 10 year 24hr storm event? This is a general permit let Permittees determine the BMPs necessary to meet water quality standards on their own sites.

S3.E

Permittees Chemical Use Plans must now be reviewed and approved by Ecology...

Comment: Why must chemical use plans now be submitted, reviewed and approved by Ecology? How does this benefit water quality? Permittees are already required to notify Ecology when using chemicals at their sites. Do Permittees need to wait for Ecology's approval? Does Ecology have the staff necessary to review these plans in a timely manner? Why not just require the development of a plan like all the other plans required under the permit? This will increase staff time for both the operator and for Ecology, with little to no benefit to the environment.

S3.F.1

Discharges must not cause a visible increase in turbidity, objectionable color, or discoloration, change in odor, observable film, scum or cause visible oil sheen or grease in the receiving water.

Comment: The addition of non-measurable and arbitrary enforcement actions violates the WAC and case law. The newly added language needs to be removed unless specific criteria for the measurement of these parameters is added.

S3.G.2

Ecology may consider water on permeable surface and not conveyed to a monitoring point a discharge to groundwater.

Comment: This newly added provision is arbitrary and open to the individual interpretation of the inspector. This will lead to inconsistent enforcement and conflict. Ecology has long agreed with the industry that inspectors should not focus on "puddle testing." No site is perfectly flat nor 100% paved. Having to potentially monitor every single puddle is impractical, overly burdensome and will not add to overall protection of the environment. Ecology needs to remove this provision.

S3.G.3

All soap-impacted waters are prohibited from discharging to groundwaters of the state.

Comment: Why? The ISGP allows this type of discharge. Ecology's own guidance tells people to "Wash (cars) on lawns or other surfaces where water can seep into the ground."

https://ecology.wa.gov/getattachment/dae25f1e-4b51-4630-9872-461f3f7ec0ad/factsheet_carwash.pdf

Ecology should be consistent with its guidelines and not randomly prohibit one industry from using soaps over pervious surfaces. What scientific basis does Ecology have to show that there are impacts to groundwater from soaps specifically from Sand and Gravel Facilities?

S3.I.1

No excavation or processing is allowed at an active site.

Comment: Ecology added "processing" yet there is no definition of processing in the permit. Does that mean rock crushing, sorting of piles, or separation of a single boulder from a larger pile? Ecology has long allowed inactive sites to remove material from existing stockpiles. If we "process" those stockpiles by separating them by type or size, does that then make the site active?

S4.A.1

The Permittee must collect samples at the outfall, either before or as close as reasonably achievable to the point where the discharge first contacts the receiving water.

Comment: The current permit states that the Permittee must representatively sample discharges to surface water. Why is the new language necessary? How does as close to reasonably achievable to the point where the discharge first contacts the receiving water do anything more to protect water quality than the current permit language? The new language does not make it clear if a permittee has to potentially sample off site or not, assuming the site is not directly adjacent to a surface water body. Ecology needs to stop adding additional language to the general permit when the current language is enforceable and works.

S4.A.4

Permittees discharging process waters to a surface water conducting NAICS Code 327320, 327331, 327332, 327390, and/or 327999 and/or Ecology Code ECY002, must collect, analyze and report to Ecology the dissolved hexavalent chromium concentration at a minimum frequency of once per month.

Comment: Ecology has not published any data that shows that hexavalent chromium is a potential problem from sites permitted under the Sand and Gravel General Permit. Ecology must base monitoring requirements on valid, representative and published data. This new

requirement seems to be a fact-finding mission rather than a proven problem. Ecology is completely overstepping its authority using the Permit as case study. Sampling of hexavalent chromium will greatly increase the cost of annual sampling, a cost that will have an undue impact on small businesses. Also what does “minimum frequency of once per month mean?” This seems to leave the prospect open that an inspector could require individual sites to sample at a frequency greater than once per month. Ecology should remove this entire section until such a time that they release data confirming issues with hexavalent chromium from the permitted uses.

S4.B.1

The permittee is required to representatively sample discharges to ground as near to the source as technically, hydrogeologically and graphically feasible.

Comment: The current permit states that Permittees must representatively sample discharges to ground. Please explain how representative discharges do less to protect water quality than the new language. Further please explain how permittees are supposed to determine what the “most technically, hydrogeologically, and geographically feasible” sampling point is. Is that the middle of a pond as close to the bottom as feasible or the edge of a pond? How does this better protect water quality? Stop adding arbitrary language to the permit.

S4.B.5

The Permittee might be required to construct and sample groundwater monitoring wells...

Comment: The ability for Ecology to arbitrarily require Permittees to construct and monitor groundwater wells throughout their site is a massive overstep from the current permit. The cost of installing wells would create significant harm to all permittees, especially smaller businesses. Is there any evidence of persistent and wholistic groundwater discharge violations from current permit data? If so, that data should be brought forth to the industry and Ecology should work with industry to develop a voluntary groundwater study instead of potentially mandating it based on a lack of data.

S5.D.3.a

Drainage direction, flow paths, ditches, infiltration areas, infiltration ponds, unlined impoundments and discharge structures.

Comment: Why did “ponding areas” not suffice for site maps? What water quality benefit will be created by identifying infiltration areas, infiltration ponds and unlined impoundments over simply identifying ponding areas? This is simply a paperwork trap for permittees. The level of detail that Ecology is requiring will add an unnecessary burden without improving water quality.

S8.B.2

For a surface to be considered an impermeable surface with no discharge to groundwater, the surface must be constructed of either: a) synthetic or flexible membrane material; b) hardened concrete (not to include recycled concrete aggregates unless a binder is added); c) hardened asphalt (not to include a recycled asphalt aggregates unless a binder is added), or; d) a functionally equivalent material based on standard engineering practices or approved by Ecology to meet the intent of this section.

Comment: This entire section needs to be deleted. Ecology's interpretation of impermeable does not follow state standards. Every other jurisdiction considers impervious surfaces to be those non vegetated surfaces that substantially reduces, retards or prevents the infiltration of stormwater. This commonly includes compacted gravel and hardened soils. Ecology should follow the same standards.

S8.E.1.c

Engineered lined impoundments for treatment of wastewater cannot be used as part of the secondary containment.

Comment: Why? If the impoundment is designed and engineered to handle a rupture, why can it not be used as part of the secondary containment? There are numerous sites currently in operation that utilize these lined impoundments for their secondary containment. For 25+ years of this permit they have functioned. The addition of this provision would be impossible for certain permittees to meet and would create significant economic harm. This is a non-sensical provision that should be removed from the permit.

S8.E.8

Equipment vehicle washing requirements.

Comment: See the above comment regarding vehicle washing with soaps.

S8.E.9

Store unhardened concrete, any type of unhardened concrete solids, returned asphalt, and cold mix asphalt on a bermed impervious surface. This includes comeback concrete, concrete sludge, cement leachate, unhardened Portland cement mix, raw paver brick mix, unhardened ecology blocks, unhardened septic tanks, unhardened jersey barriers, windrowed concrete, and all other unhardened concrete products/mixtures.

Comment: Why does any type of unhardened concrete solids need to be stored on a bermed impervious surface? Is that the only BMP that could be used to prevent impacts to waters of the state. Why would storing unhardened concrete or unhardened concrete solids on compacted gravel and under cover not suffice? What if it's the middle of summer in Eastern Washington; why would an impervious surface not suffice when there is no chance of rain? This is a general permit; it is not supposed to be this prescriptive in nature as every site is different. Allow permittees to manage their sites and implement BMP based on their own site conditions.

S8.F.2.b

Within 100 feet or less (horizontal distance) from drinking water and irrigation wells **or within a Wellhead Protection Area** unless:

Comment: Wellhead Protection Area has been added to the permit. What scientific evidence documenting that ECY002 causes problems within wellhead protection areas does Ecology have? This expanded language vastly expands prohibited areas that recycling facilities can be located. Ecology should be promoting the expansion and addition of recycling facilities instead of making it harder and harder to permit them.

S8.F.3

Source control and/or treatment BMPs include by are not limited to the following:.....

Comment: This entire section was negotiated and litigated out of the last permit. Ecology continuously trying to implement infeasible regulations that were already settled is extremely frustrating. The requirement of these bmps would make it economically infeasible to operate for nearly every concrete recycling operation in the state. Ecology has never proven that there is a significant issue with ground water discharges from these facilities. They pulled together a study from outside sources, that was not peer reviewed for their justification. This section should be removed immediately until there is permit data or scientific, peer reviewed, studies that prove it necessity.

S9.C.4

Maintain a spill log on site that includes a minimum of the following information for each spill: date and time of the spill, what material was spilled, estimated amount in the spill, location of the spill, and cause or reason for spill; date and time cleanup actions initiated and completed, photographs taken before and after cleanup, notifications made, and staff involved in the cleanup response.

Comment: This new section is overly prescriptive and will only lead to paperwork violations. There is no reason for a site to record even half of this information. The existing permit language states that the permittee must immediately cleanup all spills, leaks and contaminated soil to prevent the discharge of pollutants. How does all of the required record keeping information do anything to better protect the environment from the existing language? What if the permittee does not have a camera on them when a spill occurs? Should they wait to clean up the spill until they can take photos of the spill prior to initiating the cleanup? If they prioritize cleaning up the spill as fast as possible over taking pictures, will they be in violation of this section? What if the cause is unknown? The existing language has worked for the past 20 years; there is no need to change it other than to create additional paperwork for the Permittee and subject them to unnecessary paperwork violations.

S10.C

The permittee must retain and document the pre-and post treatment conditions in their DMR. That is, report the initial, untreated value to the DMR and include the post-treatment value in the comments. For example, if the pH of the water in the unlined impoundment prior to addition of vinegar is 9.5, then after vinegar treatment is 8.4, the Permittee must document both readings and report any violations of Special Conditions S2, S3, and S4 in the DMR.

Comment: This provision adds an entirely new monitoring point for each and every facility that treats stormwater. Collecting this data is likely impossible at most sites as they utilize constant rate treatment systems that automatically dose treat the water. There is no batch of untreated water to sample. Even if sampling is possible, this adds significant staff time and cost, for nothing more than a data gathering exercise for Ecology. This will not benefit water quality; this will hurt businesses. The permit is not an Ecology data study, stop treating it as such and writing in permit regulations such as this.

S11.G

Annually, by January 30th, active non-portable Permittees must submit to Ecology and Annual Report form, using ECY070-791, for the prior year's activity that the Permittee has: 1) Reviewed and updated, as necessary the Site Management Plan, including the Erosion and Sediment Control Plan, Monitoring Plan, Stormwater Pollution Prevention Plan, Spill Control Plan, and maintained a Spill Log in accordance with Special Conditions S5.B.2, S10.F, and S9.C; 2) Conducted the "wet season" and "dry season" inspection in accordance with Special Condition S4.F.3; 3) Confirm no significant process changes or substantial changes have been made at the facility affecting this permit since last approved, and; 4) Confirm if the Permittee qualifies as a small business.

Comment: What good does an annual report do that simply certifies the conditions that already exist in the permit? If a Permittee is not abiding by the current conditions, how will an annual report certifying that they've met the conditions do anything to help water quality? This is just one more example of Ecology requiring unnecessary paperwork that will cost Permittees time and money without benefiting the environment.

S11.B

The permittee must not allow leachate from solid waste material or recycling material to enters waters of the state without achieving AKART.

Comment: Why has recycling material been added to this section? Section S11 is a Solid Waste section; specifically adding recycling material does not line up with solid waste regulations and is inappropriate. Ecology should be finding ways to promote recycling

instead of constantly adding provisions that will ultimately lead to the failure of recycling facilities in this State.

Definitions:

Groundwater Discharge – The new definition seems to open up the possibility of having to sample every single puddle that is not fully conveyed to a sampling location. This has been a point of discussion with Ecology for the past 20 years and Ecology has always agreed that puddles are not representative discharges. This definition should be changed to reflect this.

Impermeable Surface- The definition does not seem to line up with definitions from every other jurisdiction in the state. Non vegetated, compact surfaces should be considered impervious.

Major Modification of Coverage – This definition has been modified significantly. Ecology should leave this definition as “a substantial change of operation at a facility.” The additional language is too prescriptive and does not make logical sense for most mining operations. For example, how does changing a discharge location to a surface water body by 1 foot or 100 feet or 100 yards necessitate a major modification of coverage and a full new SEPA?

I sincerely hope that Ecology removes the majority of the changes to the permit as they only increase paperwork and cost with little to no benefit to water quality standards. The permit as it exists has proven effective; stop making it harder to comply simply to collect more data. Thank you for your consideration of these comments.

Thank you,

Jimmy Blais

Gary Merlino Construction Co.
5050 1st Ave. S., Suite 102
Seattle, WA 98134