October 10, 2025

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

Subject: Comments on Draft 2026 Sand and Gravel General Permit

Dear Mr. Daiber –

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

1 SUMMARY OF REQUIRED FORMS AND REPORTS

2 Table 1: Summary of required Forms and Reports

- Some of the items under Forms and Reports are not forms or reports.
- Cite forms and report instructions, as hyperlinks, accordingly.
- Correct to proper singular/plural to correspond with Description and Frequency headings.

3 S3.E Chemical Use Plan

- The term "Chemical" needs to be defined, or a reference cited. E.g., water is a chemical. If "commercial chemicals" is the target, as the term is used in the Chemical Use Plan Form, then state that and define "commercial chemical," which is also undefined, in Appendix B or reference accordingly.

4 G5. Notification of Overflow or Bypass

- Is "Bypass" meant to be bolded. If so, reference bolding accordingly.

5 Special Conditions

S1. Permit Coverage

- Footnote 2 – Do you mean bolded text? If so, this should be a footnote of Table1, assuming "Bypass" is meant to be bolded. Bypass is a term frequently used in the Permit with many occurrences un-bolded.

6 A. Coverage Under This Permit

- The term "discharge" must be defined in Appendix B" and should be in bold and linked directly to the term Point Source (already in Appendix B). The term "discharge" should be further defined (in Appendix B) as explicitly not including sheet flow, infiltration, or any other non-conveyance-associated flow (including "containers" unless perhaps leaking via a point source) of stormwater that may reach waters of the State. Sheet flow should be defined and addressed in Appendix B for clarity, as it is a point of contention due to some limited, unsupported assertions by EPA Region X staff (not EPA Headquarters) and several EPA documents that also carry disclaimers stating that they do *"… not impose any new legally binding requirements on EPA, States, or the regulated community…"*
- Unless via a point source, such as a well, infiltration to groundwater is not a discharge under NPDES. Please cite state statute (RCW) and rule (WAC) where (a non-point source) infiltration to groundwater (a non-point source) is defined as a discharge and the underlying rationale and/or supporting documentation.

7 Table 2: NAICS/Ecology Codes and Activities Covered by the Sand and Gravel General Permit

- Please provide citations of codification of Ecology Codes ECY001 and ECY002 in state statute (RCW) and rule (WAC). It is our understanding that the Permit may be adopted by rule but state statute and rule are not established by the Permit, as adopted.

8 B. Coverage for Similar Facilities

- (1.) Ecology should first determine that there is a "discharge with similar discharge characteristics…" Ecology must define and provide criteria and accompanying rationale for that definition of discharge in Appendix B or via reference citation(s).

9 D. Other/Unpermitted Site Uses

"No discharge is allowed from any activities…" should be "activity" unless the sentence structure is changed and the word "either" should be removed.

10 E. Authorization

- (1) It should be stipulated that "discharge" in general, and to groundwater in particular, must be via point source to meet NPDES and State criteria unless Ecology can present contrary citations of federal (CFR) and/or state statute (RCW) in this regard. If Ecology is basing this policy on the Maui Decision (see below), that decision narrowly addresses point source discharge via injections wells (point source discharges). Thus, "discharges" via infiltration to groundwater are not point source. Moreover, Ecology final determinations should be based on conclusions made by qualified professionals, i.e., geologists or hydrogeologists licensed in Washington.
- *In County of Maui v. Hawaii Wildlife Fund, the U.S. Supreme Court held that point source discharges to a water of the United States through groundwater require a National Pollutant Discharge Elimination System (NPDES) permit <u>if the discharge is the "functional equivalent" of a direct discharge</u>* (EPA, underline added).

11 S2.B. Discharge to Groundwater

Definitions and Terminology

Groundwater Discharges, as defined in Appendix B, and similar terms and terminology is inconsistent throughout the permit (such as in this section heading). Please use the same defined terms throughout the permit and related documents to maintain clarity.

Ecology needs to clarify the term "discharges to groundwaters" [and clarify terminology differences between this permit and the 2025 ISGP] as being a defined point source discharge rather than any source of water, such as standing surface water. Furthermore, we suggest Ecology adopt the draft and eventual final EPA guidance for determining such discharge, the current version being "Applying the Supreme Court's County of Maui v. Hawaii Wildlife Fund Decision in the Clean Water Act Section 402 National Pollutant Discharge Elimination System Permit Program to Discharges through Groundwater." Furthermore, final determinations should be based on conclusions made by qualified professionals, i.e., geologists or hydrogeologists licensed in Washington.

Validity

Applicable literature shows that parameter discharges to groundwater are complex, often involving many site-specific factors. Impacts to groundwater from surface water sources, confined or otherwise, also vary widely. However, Ecology's implied, underlying premise that surface water parameters are equivalently transferred to groundwater and otherwise unattenuated is unfounded, in either applicable literature or in Ecology's own studies.

Ecology's Quality Assurance Project Plan[1], while well intentioned, is poorly developed, lacking *a priori* experimental design and peer review by qualified researchers in the field. As such, it should not be used as a study by which to set regulatory policy: it does not constitute *best available science*. The study also disregards temporal and spatial limits often associated with sand and gravel mining that do not apply, for instance, to large farmlands worked for more than a century that have resulted in nitrate impacts to groundwater. Lastly, the directive by Ecology to disregard the validity of this rudimentary study when it is the foundation underlying major policy decisions is ungrounded and untenable.

Following the County of Maui v. Hawai'i Wildlife Fund (Maui) U.S. Supreme Court decision, there has been greater attention given to the potential effects of wastewater on groundwater. It should be noted, however, that Maui was particular to point source discharges (via injection) to groundwater. Point source stormwater discharges to groundwater should be objectively assessed to determine potential effects with permit coverage issued accordingly. For instance, the presence of shallow pools or puddles on soil surfaces (some completely or nearly impervious) has been construed by Ecology as having potential effects to groundwater that should be covered by NPDES permits. Indeed, some companies have been required by Ecology or local municipalities to, for instance, spray acids onto such pools to neutralize high pH liquids, fearing that they might somehow detrimentally affect groundwater. These actions are apparently required with no underlying professional (e.g., via a panel of licensed geological professionals) or peer-reviewed scientific support. Perhaps Ecology could empanel a team of licensed professionals and qualified academicians to review *ad hoc* policies and requirements prior to implementing them in the field. Doing otherwise is likely a waste of resources.

[1] Daiber, E., Fennell, J. Quality Assurance Project Plan: Concrete Manufacturing and/or Recycling: Statewide Effluent Characterization. Publication 24-10-001. Washington State Department of Ecology, Olympia. https://apps.ecology.wa.gov/publications/SummaryPages/2410001.html.

12 S3. Additional Discharge Limits

A. Best management Practices

Given the overarching spirit of AKART, we would like to suggest that Ecology establish a clear demarcation between the use of a municipal manual (e.g., King County Surface Water Design Manual) and site-specific requirements of the SWPPPs and the Permit. In short, local regulators are sometimes attempting to apply requirements of local manuals to sand and gravel sites. Local manuals were ostensibly developed to address MS4 sources without points of compliance - which was the original intent and driver of modern Manual development. Industrial sites with sector-specific NPDES covered activities, which have points of compliance and site-specific SWPPPs, should be free of additional, and often inappropriate, requirements of local manuals. We would ask that Ecology step in to help jurisdictions understand the basis of the water quality permitting framework and where to apply appropriate regulations and manuals.

A.3.ii.

Discharges of process water that otherwise meet or exceed all stormwater discharge standards should be allowed as an authorized, non-stormwater discharge. In short, clean water is clean water, regardless of the source. Our understanding is that other states, such as Oregon, are moving in this direction.

13 Appendix B – Definitions

Discharger – Citation seems errant as it cites to https://app.leg.wa.gov/RCW/default.aspx?cite=90.48.465
Is this intended? Please provide the particular, appropriate citation of state regulatory authority, rather than simply the Water Pollution Control section.

14 General Comments

Grammar and overall structure of this document is much better compared to the latest ISGP. However, Ecology needs to check spelling, bolding, and term consistency, throughout. For instance, one occurrence of “ground waters” rather than groundwaters on Page 14.

Sincerely,

Shane Latimer, PhD
VP / Senior Environmental Planner
SCS Engineers

SL/GH