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SUBMITTED ONLINE VIA COMMENT PORTAL, EMAIL AND CERTIFIED MAIL

Department of Ecology
Water Quality Program
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Re: HM Pacific Northwest Comments on 2026 Draft Sand & Gravel General Permit

Dear Mr. Daiber,

Heidelberg Materials (HM) is a leading producer of aggregates, ready-mix concrete, and related construction materials in Washington State. Our operations support critical infrastructure, housing, and transportation projects throughout the region. We appreciate the opportunity to provide comments on the Department of Ecology's Draft 2026 Sand & Gravel General Permit ("Draft SGGP"). Our comments reflect HM's commitment to environmental stewardship, regulatory compliance, and practical, data-driven solutions.

General Comments

The Draft SGGP introduces significant changes to the regulatory framework governing sand and gravel operations. While we support efforts to protect water quality and ensure responsible resource management, several proposed revisions present challenges related to feasibility, clarity, and operational impact. We respectfully request that Ecology consider the following general concerns:

- **Feasibility of Implementation**: Many new requirements will necessitate substantial infrastructure upgrades and operational changes. Realistic compliance schedules and phased implementation are essential to ensure safe, effective, and economically viable transitions.
- **Clarity and Consistency**: Certain permit conditions and definitions are vague or ambiguous, increasing the risk of inconsistent enforcement and regulatory uncertainty.
- **Scientific and Technical Basis**: Several new requirements lack sufficient data or technical justification. Regulatory changes should be supported by sound science and industry best practices.
- **Administrative Burden**: Expanded reporting and documentation requirements may duplicate existing obligations, increasing costs without clear environmental benefit.

Section-Specific Comments

Section 1: Permit Coverage

Definitions and Exclusions: The revised language regarding "excavation and/or mining depth" is unclear and may inadvertently exclude facilities previously covered under the permit. HM recommends that Ecology clarify the intent and scope of this change to avoid unintended loss of coverage for operations with non-mining excavations.

Discharges to 303(d) Listed Waterbodies: Under the existing SGGP, facilities are excluded from permit coverage only if they discharge a listed pollutant to a listed segment and the discharge would cause or contribute to a violation of the applicable water quality standard. The Draft SGGP, however, revises this condition to prohibit coverage for any discharge to a 303(d) listed waterbody or TMDL-listed waterbody, regardless of whether the facility actually discharges the listed pollutant.
This change is not supported by data or regulatory precedent. Ecology has provided no evidence showing that SGGP-regulated discharges from HM or similar facilities have contributed to 303(d) impairments, nor has it demonstrated that blanket exclusions will improve water quality outcomes.

Coverage for Similar Facilities: The criteria for determining coverage based on "similar activities" should be clearly defined to prevent inconsistent application and unnecessary individual permitting.

Section 2: Effluent Limits

Oil Sheen Monitoring: The definition of "discharge point" in Appendix B is overly broad, encompassing not only traditional outfalls but also any permeable surface where water may infiltrate or percolate to groundwater. This would require daily monitoring of every unpaved location on a site, which is not feasible for large or complex operations. Such an approach goes beyond the scope of the National Pollutant Discharge Elimination System (NPDES), which defines a discharge point (outfall) as the location where stormwater or process water is released to waters of the state (see 40 CFR §122.2).

The requirement for daily visual monitoring and immediate notification to Ecology for any observation of oil sheen is not supported by evidence of widespread industry issues. Existing reporting mechanisms, such as quarterly Discharge Monitoring Reports (DMRs), are sufficient to document compliance and address any actual violations.

Additionally, visible oil sheen at a discharge point is not, in itself, a violation unless there is a discharge of sheen or petroleum product. The draft permit already contains notification procedures for reporting permit violations. Requiring a separate notification for every observation of oil sheen, even when no violation has occurred, is duplicative and does not enhance environmental protection.

HM recommends that visual monitoring for oil sheen be limited to representative monitoring points where discharge is occurring, and that notification to Ecology only be required when a violation is confirmed. Documentation should continue through established quarterly DMRs.

Discharge Point vs. Monitoring Point: The conflation of these terms creates confusion and may expand monitoring requirements beyond what is reasonable. Clear definitions and distinctions are needed.

Section 3: Additional Discharge Limits

Prohibition of Process Water Discharges: The addition of six new industrial codes and blanket requirements for lined impoundments lack scientific justification. Many operations, such as precast concrete manufacturing, do not generate significant volumes of pH-impacted water. We recommend that requirements be tailored to actual risk and supported by data.

Prohibition and Definition of Soap and Soap-Impacted Waters: HM strongly opposes the Draft SGGP's new prohibitions on "soap-impacted" discharges (Special Conditions S3.F.2 and S3.G.3) and associated definitions in Appendix B. These provisions are overly broad, unsupported by data, and would have severe practical and economic impacts on heavy maintenance activities, particularly equipment and truck washing operations necessary to maintain compliance with track-out and stormwater control requirements.

Ecology has provided no scientific analysis, field data, or technical justification demonstrating that biodegradable soaps used in standard mine activities cause measurable degradation of surface or groundwater quality. The categorical prohibition is therefore arbitrary and unsupported by any record evidence. Permit conditions must rest on objective, data-driven conclusions about pollutant risk; no such evidence has been provided.

Additionally, Appendix B defines "soap" so broadly that it includes virtually any cleaning or surfactant product, and then defines "soap-impacted water" to include water affected by any such material. This language captures every form of truck wash water—even when generated from biodegradable, non-toxic soaps—and classifies it as "process water," automatically subject to discharge prohibitions under S3.F.2 and S3.G.3.

At the same time, Appendix B allows biodegradable soaps that are phosphate- and NPE-free, creating a direct conflict within the permit. These internal inconsistencies render the condition vague and unenforceable and expose permittees to arbitrary enforcement.

The prohibition on any soap-impacted discharge would make core truck washing activities functionally impossible:

- Ceasing soap use is infeasible. Fleet washing is essential to control sediment track-out, protect equipment, and maintain safe operations. Eliminating soap would increase off-site sediment transport and vehicle damage.
- Closed-loop wash systems would require complete segregation of wash water from all other process waters and construction of dedicated containment and treatment infrastructure. Most yards lack the space or drainage configuration to accommodate such systems. Estimated installation costs exceed $100,000 per site, not including permitting and engineering.
- Sanitary sewer discharge is not a viable alternative. Most municipal systems prohibit industrial wastewater discharges or lack the capacity to accept them. Even if approval were possible, facilities would still need to construct new collection and conveyance systems at significant expense.

These requirements would impose disproportionate costs, particularly on small and mid-sized operators, without any demonstrated environmental benefit. The rule would also create compliance conflicts between Ecology's stormwater mandates and local track-out prevention obligations.

To preserve environmental protection while maintaining feasible operations, HM recommends that the permit language be revised as follows:

- **S3.F.2 and S3.G.3:**

"Discharges of water impacted by non-biodegradable, phosphate-containing, or nonylphenol-ethoxylate soaps are prohibited. Discharges of water impacted solely by biodegradable soaps that are free of phosphates and nonylphenol ethoxylates are

permissible when managed under approved BMPs that prevent visible residues, foam, or sheen."

- **Appendix B – Definitions:**
    - Soap: "Soap means a cleaning agent containing surfactants. This includes natural or synthetic cleaning compounds but excludes biodegradable soaps that are free of phosphates and nonylphenol ethoxylates."
    - Soap-Impacted Water: "Soap-impacted water means water containing soaps as defined above that may cause a violation of water quality standards; it does not include water impacted by biodegradable, phosphate-free, non-NPE soaps managed under BMPs."

As drafted, the soap prohibition is arbitrary, capricious, and exceeds Ecology's authority under RCW 90.48 and WAC 173-226. It lacks scientific support, disregards established BMP compliance methods, and imposes infeasible, economically harmful mandates that would severely disrupt HM operations. Ecology must either remove the prohibition or adopt the revised language above to ensure lawful, practical, and consistent application.

Section 4: Monitoring Requirements

Representative Sampling: Prescribed monitoring locations may not accurately reflect site-specific conditions. Flexibility should be provided to select representative points based on operational realities.

Hexavalent Chromium Monitoring: HM strongly opposes the new requirement in Special Condition S4.A.4 of the Draft SGGP that mandates monitoring for dissolved hexavalent chromium (Cr(VI)). This provision lacks scientific justification, is based on incomplete and unreliable data, and would impose significant and unnecessary costs on HM and other sand, gravel, and concrete operations without any demonstrated environmental benefit.

Cr(VI) analysis is highly specialized and operationally burdensome:

- The method's 24-hour sample holding time requires immediate shipment to certified laboratories, few of which are available in Washington.
- Strict preservation and temperature control requirements increase the likelihood of sample invalidation.
- Rural and remote sites—common for aggregate and ready-mix facilities—often cannot meet these turnaround times.

For HM, these factors would make monthly monitoring logistically infeasible and increase administrative and transportation costs substantially.

Requiring Cr(VI) monitoring would impose disproportionate costs relative to any potential environmental benefit.
Laboratory fees for hexavalent chromium speciation analyses are several times higher than standard metals testing. Many HM facilities operate multiple discharge locations, multiplying compliance costs across sites.
These expenditures would divert resources from proven, water-quality–protective practices—such as process water reuse, dust suppression, and infrastructure upgrades—with no measurable improvement in environmental outcomes.

Ecology previously committed to using data from effluent characterization studies to inform development of the 2026 permit. However, the study referenced to support this change remains incomplete, unpublished, and does not include any analysis showing elevated or detectable Cr(VI) concentrations in relevant industry discharges. Implementing this requirement before the study is finalized undermines transparency and contradicts Ecology's stated intent to base permit revisions on verified data.

To maintain a science-based and practicable permitting framework, HM recommends removal or deferral of the Cr(VI) monitoring requirement until credible data confirm a reasonable potential for its occurrence.

Total Dissolved Solids (TDS) Benchmarking: HM strongly opposes the new requirement in Special Condition S4.B.4 of the Draft SGGP that mandates benchmark monitoring for TDS at facilities located in Wellhead Protection Areas, Sole Source Aquifers, or Critical Aquifer Recharge Areas (CARAs). The proposed condition lacks

scientific support, is based on flawed and incomplete data, and would impose unnecessary, costly, and impractical obligations on HM and other aggregate and concrete operators.

Ecology has not presented credible data indicating that TDS discharges from SGGP-covered facilities pose a measurable risk to water quality. The limited sampling conducted under Ecology's incomplete effluent characterization study does not establish any reasonable potential for TDS exceedances attributable to industry operations.
Of the few samples that reported elevated TDS, the record shows they were not representative, lacked documentation of contributing activities, and likely reflected natural background concentrations unrelated to facility operations. In at least one case, Ecology acknowledged that elevated TDS was a known site-specific background condition. Despite this, the agency continues to rely on those outlier results to justify an across-the-board monitoring mandate.

Additionally, Ecology's own field documentation undermines the reliability of its conclusions. Sampling logs did not identify whether waters were comingled or the precise activities contributing to each sample location. Industrial codes listed on field sheets indicate potential—not actual—activities at the time of sampling. Without verification of water source, upstream conditions, or discharge type, the data cannot reasonably support a new monitoring requirement.
Further, only five of 13 "comingled" samples showed elevated TDS levels. This is statistically insignificant and cannot form the technical basis for a statewide monitoring mandate.

Ecology's analysis ignores known geological and hydrogeological variability across Washington. Many aquifers, particularly in eastern Washington, naturally exceed 500 mg/L TDS due to regional mineral composition, not industrial discharge. Imposing a uniform TDS benchmark disregards these background conditions and risks unfairly penalizing permittees for naturally occurring water chemistry.

The new TDS requirement would significantly increase compliance costs without any demonstrated environmental benefit. Facilities can expect to pay a minimum of

$2,000 annually per monitoring point to collect, transport, and analyze samples. Because most HM and other industry aggregate operations maintain multiple monitoring points, this condition would multiply costs across sites. These resources would be diverted from higher-value environmental investments—such as process water recycling, stormwater infrastructure upgrades, and dust control improvements—that have proven water quality benefits.

Requiring TDS monitoring without data linking permit-regulated operations to elevated TDS levels violates RCW 90.48 and WAC 173-226, which require permit conditions to be supported by technical and scientific justification. Ecology's reliance on incomplete, nonrepresentative sampling and unverified assumptions renders the condition arbitrary and capricious. See *Copper Development Assoc. v. Ecology* (PCHB Nos. 09-135 through 09-141, 2011) and *Associated General Contractors v. Ecology* (PCHB Nos. 05-157 through 05-159, 2007).

HM urges Ecology to remove or substantially revise the TDS monitoring requirement. The proposed condition lacks a defensible scientific basis, creates inconsistent regulatory obligations, and imposes significant, unjustified costs on HM and the broader industry. Ecology should rely on credible, site-specific data before expanding monitoring obligations that offer no measurable benefit to water quality.

Section 5: Reporting and Documentation

Spill Documentation: Expanded requirements for spill documentation, including before-and-after photographs and detailed timing, are excessive. The priority should remain on prompt spill response and remediation.

Section 6–8: Site Management, Pollution Prevention, and Infrastructure

Stormwater Design Standards: Basin-wide management approaches are more practical and effective than requirements focused on temporary conveyance structures. Standards should prioritize permanent infrastructure and allow for operational flexibility.

Storage of Materials: The Draft SGGP introduces new, highly prescriptive requirements for the storage of unhardened concrete, concrete solids, returned asphalt, and cold mix asphalt, specifically mandating storage on a bermed impervious surface (Special Condition S8.E.9). HM is concerned that this approach is unnecessarily restrictive, does not account for site-specific conditions, and is inconsistent with established regulatory practices.

Mandating storage on a bermed impervious surface ignores the diversity of site layouts, operational practices, and climatic conditions across Washington State. For example, facilities in eastern Washington experience different rainfall, evaporation, and curing rates compared to western Washington. A one-size-fits-all requirement may impose significant costs and operational challenges without demonstrable water quality benefits.

Current permit language already requires that discharge of water from stored materials is subject to effluent limitations and must not cause a violation of water quality standards. This performance-based approach allows operators to implement a variety of BMPs—such as covering, grading, or trench drains—to achieve compliance, rather than mandating a single method. Washington Administrative Code (WAC) 173-226-030(3) defines BMPs as "schedules of activities, prohibitions of practices, maintenance procedures, and other management practices" designed to prevent or reduce pollution.

HM recommends that the permit establish clear performance standards for the storage of these materials, allowing operators flexibility in how those standards are met. For example, the use of covers, grading, or equivalent BMPs should be permitted as alternatives to bermed impervious surfaces, provided they achieve the same level of environmental protection.

Definitions of "Impermeable" and "Permeable": The use of these terms is inconsistent with other regulatory frameworks. We recommend adopting "impervious" and "pervious" to align with established practice.

2016 Concrete Recycling Exemption: The Draft SGGP proposes to revise the exemption for concrete recycling operations established in the 2016 permit (Special

Condition S8.F). Under the existing permit, any operation with Sand & Gravel General Permit coverage prior to April 1, 2016 was exempt from certain locational and operational requirements for concrete recycling. The draft revision would require that operations must have specifically had the ECY002 NAICS code prior to April 1, 2016 in order to qualify for the exemption.

The ECY002 NAICS code was not introduced until the issuance of the 2016 permit. As a result, it is unclear how any permittee could have met this requirement prior to that date. This creates a regulatory inconsistency and could immediately place longstanding, compliant operations out of compliance upon issuance of the new permit, despite having operated in full compliance under previous versions.

Facilities that added concrete recycling—and the ECY002 code—to an already existing SGGP facility after April 1, 2016 may be immediately out of compliance, even if they have operated in accordance with all previous permit requirements. This change could have significant financial and operational impacts on the concrete recycling industry, potentially requiring site reconfiguration or cessation of recycling activities.

The original exemption criteria provided clarity and fairness for facilities operating in compliance prior to April 1, 2016. The Washington Department of Ecology previously recognized the difficulty for existing permittees to implement new BMPs and locational criteria retroactively. In its Addendum to Fact Sheet, Appendix A: Response to Comments (February 17, 2016, at Page 77), Ecology stated:

“Ecology also considered the difficulty for existing Sand and Gravel permittees to implement the BMPs listed in S8.F.1 of the formal draft of the Sand & Gravel General Permit. Ecology agrees with the comment that BMPs may be more suitable for new facilities that can anticipate the BMPs in S8.F.1 and implement them before beginning operations. Ecology acknowledges the implementing the BMPs listed in S8.F.1 could disrupt existing permittees’ current operations and could require site reconfiguration. Based on these considerations, Ecology has decided to revise the final permit to only require the BMPs in S8.F.1 for sites whom receive coverage for the first time on or after April 1, 2016 (the effective date of the new permit).”

HM recommends that the language in Section S8.F be restored to its original form as established in the 2016 permit. The exemption should apply to any facility with SGGP coverage prior to April 1, 2016, regardless of the specific NAICS code assigned at that time. This approach maintains regulatory consistency, avoids retroactive compliance issues, and supports continued recycling operations in Washington

Conclusion

HM appreciates the opportunity to provide these comments and remains committed to working collaboratively with the Department of Ecology to develop a permit that balances environmental protection with operational viability. We respectfully request that Ecology consider the recommendations outlined above and engage with industry stakeholders to ensure practical, science-based, and effective regulatory outcomes.

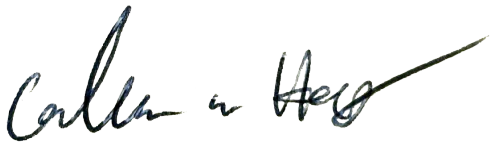
Additionally, HM wishes to express concern regarding the limited time provided to review and respond to this draft. The scope and complexity of the proposed changes represent the most significant overhaul of the permit since its inception, with substantial implications for operational practices, infrastructure planning, and compliance obligations.

The abbreviated timeline for public comment did not allow HM, nor other regulated entities, sufficient opportunity to thoroughly analyze the draft language, consult with technical experts, and develop comprehensive, site-specific feedback. The release of the draft permit was the first opportunity for HM to review the actual language and assess its implications for our operations. As a result, our ability to fully evaluate the impacts and provide detailed recommendations was constrained.

We respectfully request that the Department of Ecology consider extending future comment periods for major permit revisions to ensure that regulated entities have adequate opportunity to review, consult, and respond. This will help support the development of practical, effective, and science-based regulations that balance environmental protection with operational feasibility.

If further clarification or discussion is needed, HM is available to assist.

Sincerely,



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