

Date: December 8, 2011

To: Board of Directors
Puget Sound Clean Air Agency

Subject: Resolution No. 1232 – Amending Regulation I, Sections 5.03 and 6.03, Adopting Regulation I, Sections 5.12 and 9.18 (All Related to Rock Crusher Operations)

Honorable Members:

The proposal as presented in Resolution No. 1232 includes amendments to the Agency's Registration and NOC regulations regarding applicability to rock crushing operations. It also includes two new sections of regulations for rock crushers – Regulation I, Section 5.12 (registration procedures specifically for rock crusher operations) and Section 9.18 (emission limits for rock crushers).

The proposed revisions are intended to clarify the emission performance requirements for rock crushing operations in the agency's jurisdiction, and simplify and streamline administration of these requirements.

Proposed Regulation Changes

Staff has previously briefed the Board on this concept. Overall, this proposal eliminates individual permits and creates a permit by rule system for rock crushers. The proposed revision package has three components:

- Establish a regulation for emissions that would apply to all existing and future rock crushers
- Exempt rock crushers from preconstruction case-by-case review under the Notice of Construction (NOC) program
- Regulate rock crushing operations through the Registration program by amending the regulation to clarify when and how rock crushing operations must register with the Agency.

Since 2001, the agency has regulated these crushing operations through the combination of the NOC program and the Registration program. Under the current system, the first time a crushing operation proposes to operate within the agency's jurisdiction, an NOC application and subsequent order of approval are required prior to installation and commencement of operation. After obtaining the original order of approval, that source would be included in the Agency's registration program. The order of approval would remain active and valid provided that the active registration of that source operation was maintained and the source was not modified. The owner of that actively registered crushing operation could then relocate to other locations in the jurisdiction using the notification process in Regulation I, Section 6.03(b). That notification could be filed with a nominal fee (\$100) and authorize the

relocation of a crusher provided that the source operation complied with the original order of approval.

The current system is an improvement over the previous system, which required NOC applications and approval for each new site, regardless of whether there were any modifications to the equipment that would increase or change the emissions from previous reviews. Still, there are some remaining challenges, which we are proposing to address with these amended and new regulation sections.

The first element of the proposal is a new section in Regulation I, Article 9, establishing emission standards. This new section, Section 9.18, would apply to all rock crushing operations defined through an EPA definition for “*equipment processing nonmetallic minerals*” (40 CFR Section 60.671). The proposed emission standards are consistent and similar with the emission performance requirements included in agency NOC orders of approval issued over the last 10 years. They are also consistent with the elements of the EPA’s New Source Performance Standards (NSPS) that apply to rock crushers (40 CFR 60, Subpart OOO – Standards of Performance for Nonmetallic Mineral Process Plants) and the agency’s Regulation I, Section 9.15 (Fugitive Dust Control Measures).

The proposed emission standards also provide operators with flexibility to operate their emission control systems as actual conditions would indicate. For example, if no visible emissions were observed, then the absence of operating dust suppression systems would not represent a violation of the regulation. However, if visible emissions are present, then the rule requires that emission control equipment shall be operational onsite in order for the operator to rely on the emission performance levels provided in the rule (i.e. visible emission allowances rather than no visible emissions). Agency experience with these rock crusher operations has shown that the proposed visible emission limitations can be met by any equipment operator that is using and properly operating a water spray system for dust suppression. Water sprays are the industry norm for emission control measures in this area.

The second element of the proposal is to amend the NOC regulations to exempt rock crushing operations from NOC application and approval processes. The reason for this exemption is that the agency intends to focus attention on the actual emission performance required for all rock crushing operations as specified in the new proposed emission standard rather than through individual NOC orders of approval. Many of these NOC application reviews result in very similar permit conditions, which are reflected in the proposed emission standards.

The third element of the proposal is to add a new section to the registration program (Regulation I, Section 5.12 – Registration of Crushing Operations) on specific procedures and requirements for registering crusher operations. By exempting the crushers from NOC applications and reviews, the focus then shifts to the registration program. The proposal would not change the annual registration fee for a rock crushing operation and any existing rock crushing operation could retain its current status by paying registration fees when annual invoices are sent by the agency (typically in November for the upcoming calendar year). For new rock crushers or operators of crushing plants that only operate intermittently, this proposal allows registration to be initiated shortly before operation begins. The total registration fee for the year would be due at that time and there would be no proration of fees provided for sources that wait to see if they have an opportunity to operate later in the year. This proposal is also based on the premise that each active crushing site must be separately registered. Multiple site operations with one registered business identity would not be

allowed as the annual registration fee is intended to support the cost of inspection and compliance verification with the rules.

In contrast, the Washington State Department of Ecology and other local air authorities use different approaches. Recent regulation changes by Ecology suggested that a portable source like a rock crusher could move between operational sites and rely on the NOC order of approval obtained from some location within the state. This option is available to any local air authority that wants to adopt or accept the Ecology rules that relies on these previously issued NOC orders of approval (even if from another agency). Ecology also is updating its general orders of approval for rock crushing operations as another option to streamline permitting for this source category. The agency's proposal is not following either of these policy choices because they focus on the linkage between the equipment on the ground and the equipment authorized under some previously issued approval. Instead, the agency's proposal reflects an interest in focusing more on the emission performance of that equipment and compliance with clear requirements that apply to all operations.

Public Comments & Responses

The proposed regulation amendments were published for public comment period and made available on the agency website. An announcement of the proposed amendments was also sent to all regulation change e-mail subscribers.

Agency staff has been working with representatives of the aggregates industry on rule revisions for over a year. As we developed the proposed changes and shared them with the industry, we understood there might be additional comments on the proposal.

To date, the agency has received four public comments, and copies of the comments are attached. Comments were received from representatives of:

1. Cal Portland
2. Washington Aggregates & Concrete Association
3. Puget Sound Surfacers
4. Miles Sand & Gravel
5. Gary Merlino Construction

A summary of these comments and the agency's responses are provided below.

Comment – Provide additional control measures beyond those included in the proposed rule to allow use of the numerical emission limits in Section 9.18(b)(1) [Commenters 1, 2 & 5]

Agency's Response – The proposed rule required use of emission control equipment in order to allow reliance on the numerical visible emission limits in Section 9.18(b)(1). The purpose of that proposal was to ensure that operators were using appropriate emission control measures when visible emissions were occurring rather than just assuming they were below the visible emission limits without dust suppression efforts. This concept is consistent with the provisions of Regulation I, Section 9.15 (Control of Fugitive Dust), which require reasonable precautions to minimize emissions.

We agree with these comments. The proposed rule only provided three options for emission control equipment – water sprays, fabric filters, or wet scrubbers. For every potential emission point to have a water spray in order to receive the benefit of the numerical emission

limit performance levels would be impractical. Past observations by Agency staff have illustrated that properly installed and operating water sprays almost always reduce dust emissions to the “no visible emission” level. Still, we agree that there are other dust suppression techniques which may also be effective in reducing visible emissions.

In response to these comments, we recommend revising the language in the proposal for Section 9.18 to delete the references to water sprays in Sections 9.18(b)(1)(A) and 9.18(b)(1)(B), delete the reference to any specific emission control equipment in Section 9.18(b)(1)(3); and delete the original language proposed for Section 9.18(b)(4). The net effect of these edits would leave the controlling term for the visible emission standard (numerical or no visible emissions) to be linked to operating control equipment. The last change in response to these comments would be to insert new language into Section 9.18(b)(4) that would define “control equipment” for this specific regulation:

“For the purpose of this section, “**Control Equipment**” shall mean either fabric filter, wet scrubber, water sprays, or other dust suppression techniques which effectively reduce visible emissions from the emission units observed.”

We believe these changes address the comments and concerns raised on this point while still addressing the agency’s interests. The proposed rule is a replacement for case-by-case NOC preconstruction review. The expectation is that when visible emissions are observed by an operator, some control measure or adjustments are appropriate in an effort to reduce those emissions rather than continue to operate and assume the resultant emissions are less than the numerical limits. The recommended changes provide the operators flexibility in responding to observed visible emissions but still require operational attention to the emission control interest. It also provides the operators the flexibility to adjust their dust control measures down (or off) when there is an absence of visible emissions.

Comment – Modify the rule to require no additional control measures to allow use of the numerical emission limits in Section 9.18(b)(1) [Commenter 4]

Agency’s Response – We disagree with this comment and recommend no changes be made in response to this suggestion. This suggestion is inconsistent with the interests discussed in the comment response above. It would not require the operator of a rock crushing system to do anything to reduce or control their visible emissions once they were observed. There would be no requirement to demonstrate compliance with the visible emissions from operations, unless an inspector was able to observe the operation and complete a visible emission observance or if the Agency ordered the source to do a compliance test. This suggestion is less protective of the environment than a continuation of the case-by-case NOC review for all rock crusher installations.

No changes to the proposal were made in response to this comment.

Comment – Clarify the relationship between the proposed rule and the existing NOC orders of approval currently in effect for sources [Commenter 1]

Agency’s Response – Any NOC order of approval previously issued and in effect for a currently registered rock crusher operation would remain in effect, if desired by the source. In that circumstance, the existing order and the proposed rule (Regulation I, Section 9.18) would both apply to that equipment. Sources may request to cancel existing NOC orders of approval for rock crusher to eliminate the overlap. This can be accomplished through a

request to rescind an existing approval that covers rock crushing operations alone. If a rock crusher was approved in an order that includes other equipment (not subject to the proposed Regulation I, Section 9.18), the source would need to request the agency remove the rock crushing equipment from the approval and reissue an order for the remaining equipment. For rock crusher operations which choose to let their registration status expire until they are contracted for a crushing project in our jurisdiction, their existing NOC orders of approval will expire with their registration status.

No changes to the proposal were made in response to this comment.

Comment – Clarify the relationship between the proposed rule and the Registration program, as proposed for the rock crusher sources [Commenter 4]

Agency’s Response – This commenter asked a number of questions regarding the registration program and other matters. In general, the overall concepts of the proposed regulation are as stated above. The proposed emission standards for rock crushers in Section 9.18 would apply to all rock crushers operating in our jurisdiction – existing and future equipment. The NOC provisions for rock crushers would be gone in this proposal as they all would be exempt. The key question is not what information is needed to document an exemption – it is more important to understand whether the crusher is operating at a site that is “registered”. Crusher installations previously approved through NOC approvals would remain subject to registration fees, as it is today.

Under this proposal, registration is the key to managing compliance for these sources. Crushing equipment can be moved from site to site, but each current operating site in our jurisdiction must be registered. If an owner had 2 or 3 different operating sites, each registered, they could move the crushing equipment between the sites without additional process with this agency.

No changes to the proposal were made in response to these questions.

Comment – Clarify how the proposed regulation would address the challenge for an intermittent crusher operation to obtain permits and remain registered [Commenter 3]

Agency’s Response – The proposed regulation provides the type of flexibility this commenter seeks. Under the proposed rules, this commenter would no longer have to pay a registration fee solely to maintain the validity of an existing NOC order of approval. Since future rock crusher operations would not be subject to NOC application review, this commenter could cancel his registration and wait until he received a contract for crushing work in our jurisdiction. At that time, he would need to register his rock crushing activity prior to commencing operation and pay the full registration bill due for that year. Once registered, he would need to comply with the proposed emission limitations in Section 9.18.

No changes to the proposal were made in response to this comment.

Comment – Delay the proposed rulemaking to allow for more discussion and input on the proposal [Commenters 1, 2, & 4]

Agency’s Response – We disagree with this comment. We believe the recommended changes to the original proposal fully address the key concerns raised by these commenters. The

comments have been fairly reviewed and considered and the recommended changes reflect the transparency of this process.

We also believe this proposal should not be delayed because work on it has been underway for more than 18 months and further process is unlikely to produce a significantly different outcome. Despite claims that the industry had inadequate time to review the proposal, the emission limits proposed for Section 9.18 were first shared with a member of the industry group on May 14, 2010. Since that time, staff has been in discussion with the industry and minor changes to that version resulted from a meeting between agency staff and industry representatives on July 26, 2011. The additional delay in the rule development process since July was related to developing an alternative registration process for rock crushers.

We recommend moving forward with this rulemaking proposal because the major concerns identified by the commenters have been addressed.

Summary

The agency has shared the responses to comments as stated in this memo with all the commenters prior to the Board meeting.

Staff Recommendation

After review of the comments received to date, the staff recommends accepting the changes identified in the memorandum above, and recommends the Board adopt Resolution No. 1232 as presented, which includes the changes made in response to these comments.

Respectfully submitted,

Craig T. Kenworthy
Executive Director

Attachment

jwc