STATE OF OREGON

COUNTY OF TILLAMOOK

PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO

DONALD L SMITH
DBA MOHLER SAND AND GRAVEL
36435 HIGHWAY 101 N   (503) 368-5157
NEHALEM, OREGON 97131

The specific limits for the use are listed below along with conditions
of use.

APPLICATION FILE NUMBER: S-70858

SOURCE OF WATER: NEHALEM RIVER AND PETERSON CREEK, TRIBUTARIES OF
NEHALEM BAY

PURPOSE OR USE: INDUSTRIAL USE

RATE OF USE: 2.23 CUBIC FEET PER SECOND

PERIOD OF ALLOWED USE: MAY 1 THROUGH OCTOBER 31 FROM NEHALEM RIVER;
NOVEMBER 1 THROUGH APRIL 30 FROM PETERSON CREEK

DATE OF PRIORITY: NOVEMBER 6, 1990

POINT OF DIVERSION (POD) LOCATION: NW 1/4 NW 1/4, SECTION 5, T2N, R9W,
W.M.; POD 1 - 1450 FEET SOUTH AND 1400 FEET WEST; POD 2 - 1296 FEET
SOUTH AND 1315 FEET WEST, BOTH FROM THE N 1/4 CORNER OF SECTION 5.

THE PLACE OF USE IS LOCATED AS FOLLOWS:

NW 1/4 NW 1/4
SECTION 5
TOWNSHIP 2 NORTH, RANGE 9 WEST, W.M.

Measurement, recording and reporting conditions:

A.   Before water use may begin under this permit, the permittee
      shall install a meter or other suitable measuring device as
      approved by the Director. The permittee shall maintain the
      meter or measuring device in good working order, shall keep a
      complete record of the amount of water used each month and
      shall submit a report which includes the recorded water use
      measurements to the Department annually or more frequently as
      may be required by the Director. Further, the Director may
      require the permittee to report general water use information,
      including the place and nature of use of water under the
      permit.

B. The permittee shall allow the watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.

The use is subject to the maintenance and use of adequate treatment facilities to remove sediment before returning the water to the stream.

During June 16 through September 15, water may be diverted only when the return flow temperature is no higher than 1 degree fahrenheit of the temperature as measured at the intake point. The permittee is encouraged to contact the Oregon Department of Fish and Wildlife for information on obtaining temperature monitoring equipment.

The permittee shall install, maintain, and operate fish screening to prevent fish from entering the proposed diversion. The permittee shall also install a fishway at the obstruction that will provide adequate upstream and downstream passage for fish. The required screens and fishways are to be in place and functional, and the fishway must be approved by Oregon Department of Fish and Wildlife before diversion of any water.

STANDARD CONDITIONS

The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

Failure to comply with any of the provisions of this permit may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the permit.

This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.

By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

The use of water allowed herein may be made only at times when sufficient water is available to satisfy all prior rights, including prior rights for maintaining instream flows.

The Director finds that the proposed use(s) of water described by this permit, as conditioned, will not impair or be detrimental to the public interest.

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Actual construction work shall begin within one year from permit issuance and shall be completed on or before October 1, 1998. Complete application of the water to the use shall be made on or before October 1, 1999.

Issued July 17, 1996

for Martha O. Pagel, Director
Water Resources Department