

## Fact Sheet Appendix H. Boatyard General Permit Modification (Issued December 19, 2007)

Ecology reissued the Boatyard General Permit in November 2005. The Northwest Marine Trade Association (NMTA) and the Puget Soundkeeper Alliance (PSA) appealed the permit. While under appeal, Ecology modified the permit in May 2006 to correct a mistake in the lake discharge benchmark. The Pollution Control Hearings Board (PCHB) heard the appeal during the week of July 10, 2006. The PCHB issued a decision on the appeal issues on January 26, 2007. You can view the decision on-line at <http://www.eho.wa.gov/searchdocuments/2007%20Archive/pchb%2005-150,151,06-034,040%20final.pdf> . The NMTA and PSA appealed the decision of the PCHB to Superior Court in February 2007.

In July 2007, the NMTA, PSA, and Ecology reached a settlement on the appeal. The settlement funds a pilot study to determine the effectiveness of treatment for boatyard stormwater runoff. The settlement also requires a permit modification to incorporate some of the orders from the PCHB decision. The settlement agreement is posted on the Ecology Boatyard General Permit website at <http://www.ecy.wa.gov/programs/wq/permits/boatyard/index.html> .

The settlement requirements, the corresponding PCHB orders and the resultant permit modifications are given below.

SETTLEMENT REQUIREMENT IV.1.1. “clarifies in Section S2C3 that appropriate copper benchmarks apply to Lake Union and other lakes listed on the 303d list as required by item 3 of the Jan. 26, 2007, Order.”

SETTLEMENT REQUIREMENT - IV.1.2.”establishes an effluent limit for lead formulated as required by item 3 of the Jan. 26, 2007, Order.”

PCHB ORDER item 3 - “Ecology shall establish an effluent limitation for lead that specifically applies to discharges to Lake Union and any other lakes listed on the current 303(d) list for lead.

Ecology shall also clarify permit condition S2. C3 so that the copper benchmark for facilities (existing, new source, or new discharge) which discharge stormwater to lakes clearly applies to Lake Union (and, as necessary, to any other lakes that are listed on the current 303(d) list for any parameter other than copper).”

### PERMIT MODIFICATIONS -

The modified permit establishes an effluent limit for lead (new condition S2C3) that specifically applies to discharges to Lake Union and the Ship Canal. There are no other lakes listed on the current 303(d) list for lead or other metals. The effluent limit as total recoverable lead as  $\mu\text{g/l}$  was calculated as (dissolved lead criteria @ 25 mg/l hardness) X (1/ratio of dissolved to total recoverable) =  $(13.9 \mu\text{g/l}) \times (1/0.25) = 55.6 \mu\text{g/l}$  Total Recoverable lead.

2<sup>nd</sup> modification. Issue 12/19/07, Effective 1/19/08

The modified permit clarifies existing condition S2C2 by stating that the copper limit of 16 µg/l applies to new source and new discharges for boatyard facilities which discharge stormwater to Lake Union and the Ship Canal. There are no other lakes listed on the current 303(d) list for copper.

The modified permit contains a new condition S2C4 which applies a copper benchmark of 38 µg/l copper to all boatyard dischargers (Existing, New Source, and New Discharge) which discharge stormwater to lakes other than Lake Union. This condition also applies to existing discharges to Lake Union and the Ship Canal. There are no existing discharges to lakes other than Lake Union and the Ship Canal.

The existing permit condition S2C4 becomes condition S2C5 but is otherwise unchanged and so on to renumbered permit condition S2C9.

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SETTLEMENT REQUIREMENT - IV.1.3 “establishes monitoring requirements for lead and zinc as required by item of the Jan. 26, 2007 order.”

PCHB ORDER 2 - “Ecology shall establish separate ... monitoring requirements for lead and zinc that do not rely exclusively on copper as an indicator for these metals.”

PERMIT MODIFICATIONS - Condition S.3.B. was modified to include monitoring for total zinc and lead in stormwater runoff.

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SETTLEMENT REQUIREMENT - IV.1.4 “establishes receiving water sampling as required by item 7 of the Jan. 26, 2007 order.”

PCHB ORDER 7- “The 2005 BGP shall be modified to include a requirement for the collection of receiving water samples from some or all boatyards covered under the permit for the purpose of yielding data to verify or modify the assumptions used in calculating the current benchmarks or to develop numeric effluent limitations, as necessary and appropriate, in the next renewal of the BGP. The Permit may either require permittees to collect and analyze such samples, or to cooperate with Ecology in the collection and analysis of such samples.”

PERMIT MODIFICATION - The permit was modified (S3.C.) to require facilities covered under the Boatyard General Permit to cooperate with Ecology in the collection of receiving water information. Ecology will conduct the receiving water study for hardness, metals (copper, lead and zinc), and comparative toxicity of receiving water and laboratory water. The study will be conducted in the fall of 2008 to the spring of 2009.

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SETTLEMENT REQUIREMENT - IV.1.5 “establishes an exception to the prohibition on non-vacuum grinders as required by item 8 of the Jan. 26, 2007 order.”

PCHB ORDER 8 - “Condition S2.C.7.a. shall be modified to allow an exception to the prohibition on non-vacuum grinders under those limited circumstances where it is impracticable to use a vacuum grinder and a permittee employs an alternative determined by Ecology to be demonstrably equivalent.”

2<sup>nd</sup> modification. Issue 12/19/07, Effective 1/19/08

PERMIT MODIFICATIONS - Permit condition S2.C.7.a. was modified to allow permittees to petition Ecology to use an alternative to vacuum grinders. The permittee must demonstrate the alternative is equivalent to vacuum grinders in collecting pollutants. The permit requires that a conceptual design be submitted to Ecology for approval prior to submittal of specific design plans. Approval may be withdrawn if Ecology discovers upon inspection that construction of the alternative doesn't meet the design objectives of containing copper dust.

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SETTLEMENT REQUIREMENT - IV.1.6 "establish that for a permittee, who is in full compliance with permit conditions, participating in the Study provided in this settlement agreement, and who is also required to prepare a engineering report under Section S4, the deadline to submit the report shall be (3) months from the date the Final Technical Report or three months from March 15, 2008, whichever date is earlier."

PERMIT MODIFICATIONS - No permit modification is required. Ecology will implement this portion of the agreement through enforcement discretion.

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#### OTHER PERMIT MODIFICATIONS

DEFINITIONS - "visual monitoring" includes observation to detect the presence of oil sheen in the stormwater runoff.

S1.B. "Exemptions of Coverage" does not apply to hull work.

S6.B. "Records Retention" specifies that records must be available at the permitted facility site.

#### CURRENT 303(d) LISTINGS FOR COPPER, LEAD AND ZINC

##### 303d Copper

Listing ID Category, WRIA, Water Body Name, Parameter, Medium

9101 5 1 FEVER CREEK Copper Water  
42309 5 9 DES MOINES CREEK Copper Water  
42352 5 9 DES MOINES CREEK, EAST TRIBUTARY Copper Water  
13815 5 9 HILL (MILL) CREEK Copper Water  
42342 5 9 MASSEY CREEK Copper Water  
42348 5 9 MASSEY CREEK Copper Water  
42320 5 9 McSORLEY CREEK Copper Water  
13839 5 9 NEWAUKUM CREEK Copper Water  
13765 5 9 NEWAUKUM CREEK Copper Water

##### 303d Lead

8066 5 8 UNION LAKE Lead Water  
12585 5 15 NORTH CREEK Lead Water

##### 303d Zinc

41773 5 1 BAKER CREEK Zinc Water  
41775 5 1 BAKER CREEK Zinc Water  
9106 5 1 FEVER CREEK Zinc Water  
41772 5 1 SQUALICUM CREEK Zinc Water  
41776 5 1 SQUALICUM CREEK Zinc Water  
41777 5 1 TOAD LAKE CREEK Zinc Water

2<sup>nd</sup> modification. Issue 12/19/07, Effective 1/19/08

42308 5 9 DES MOINES CREEK Zinc Water  
42341 5 9 MASSEY CREEK Zinc Water

## **COMMENTS RECEIVED ON THE 9/17/07 DRAFT MODIFICATION (12/19/07 final) WITH ECOLOGY RESPONSES**

Comment 1. (Northwest Marine Trade Association (NMTA)) The permit needs clarification on how effluent limits for lead on Lake Union are calculated.

Response 1 – The effluent limit for Lake Union boatyards as total lead was calculated by multiplying the water quality criteria for lead at 25 mg/l hardness (13.9 µg/l ) by the translator value (1/ratio of dissolved to total recoverable). The expected value for the ratio of dissolved/total in Lake Union is 0.25. This value of 0.25 or 25% was recommended by Dr. Richard Horner, consultant to the Puget Soundkeeper Alliance in an email correspondence to Ecology dated July 13, 2007. The resultant value for the translator is 4. Therefore, 13.9µg/l times 4 equals 55.6µg/l.

Comment 2. (Richard Smith for Puget Soundkeeper Alliance (PSA)) The PCHB specifically concluded, with respect to copper, that the default values provided by the Manual provide a more realistic and conservative approach to deriving a translator value for use in benchmark calculation. Certainly, the same can be said for a translator value for a numeric water quality based effluent limitation for lead in a lead-impaired (303(d)-listed) waterbody. The use of either of these values would result in a lower lead effluent limitation than the 55.6 ug/L limitation derived by using a 0.25 value (i.e., 40.8 ug/L and 29.8 ug/L for 0.340 and 0.466 respectively).

Response 2. The PCHB, in it's decision, deferred to Dr. Horner's estimate of 0.5 as a copper translator based on his experience with stormwater. In this modification, Ecology used Dr. Horner's translator estimate of 0.25 for the lead limitation.

Comment 3. (NMTA) We are unsure what the effluent limit for lead will mean for boatyards. The NMTA would like to investigate the likelihood that boatyards will be able to meet the proposed limit right away. We will likely request a compliance schedule if we find that they will not.

Response 3. Individual boatyards may request a compliance schedule as part of an enforcement response if they are not able to meet the new effluent limit for lead. Ecology believes that boatyards that are meeting the copper benchmarks will meet the new limit for lead.

Comment 4. (NMTA) We would like to comment on the section regarding receiving water monitoring (pg. 21). We are not in disagreement with the language in the permit. However, we want to reiterate the part of our June 2007 Settlement Agreement (Attachment A), which states that technical experts from Ecology, NMTA, and Puget Soundkeeper Alliance will design the receiving water monitoring study to meet the requirements of the Pollution Control Hearings Board. That team needs to clarify:

- How the receiving water monitoring will be executed
- Who will perform the sampling

- Who will pay for receiving water monitoring

Response 4. The NMTA, Puget Soundkeeper Alliance and Ecology have specified the scope of the receiving water study. Ecology will fund the study to be conducted during the winter of 08-09. The quality assurance project plan will be transmitted to NMTA and PSA for comment in the summer of 2008.

Comment 5. (Richard Smith for PSA) - The draft new provision on receiving water monitoring, S3.C., is of great concern to PSA and could lead us to challenge the permit modification to the PCHB or to bring an action against Ecology to require it to comply with the PCHB's January 26, 2007, order. The draft provision, which simply states "The permittee must cooperate with Ecology in the event the permittee receives an administrative order requiring additional effluent monitoring or receiving water monitoring," is inadequate to satisfy the requirements of the PCHB's order or the parties' settlement agreement, and adds virtually nothing to the permit.

Item 7 of the January 26, 2007, order states:

The 2005 BGP shall be modified to include a requirement for the collection of receiving water samples from some or all boatyards covered under the permit for the purpose of yielding data to verify or modify the assumptions used in calculating the current benchmarks or to develop numeric effluent limitations, as necessary and appropriate, in the next renewal of the BCP [sic]. The Permit may either require permittees to collect and analyze such samples, or to cooperate with Ecology in the collection and analysis of such samples.

The PCHB intended that the modified permit would specify the receiving water sampling required. The parties' agreement required this modification to establish receiving water sampling, plainly contemplating that the receiving water sampling program and permit requirement would be worked out in a collaborative effort between Ecology and the parties' experts for specification and inclusion in the permit modification. Based on communications with our expert, we believe that Ecology failed to adequately follow up with these experts for this purpose, having sent a questionnaire to the experts and then never providing any further communications after receiving responses. We see the draft permit language as manifestly inconsistent with the spirit and letter of the parties' agreement.

The draft S3.C. effectively adds nothing to the permit. Even without this condition, the law requires permittees to comply with any order issued by Ecology about effluent or receiving water monitoring. The only effect of S3.C. would be to shield a receiving water monitoring program from PCHB review as part of the general permit. Furthermore, if Ecology never issues any such administrative order about receiving water monitoring, there is nothing that PSA or anyone else could do to force compliance with the PCHB's order. To comply with the PCHB's order and the parties' agreement, the permit must spell out the receiving water monitoring that is required. The PCHB's order on this issue is the result of a major expenditure of

limited resources by PSA to protect water quality in the public interest. The need for receiving water monitoring is well-described by the PCHB's order. We can hardly believe – and find it rather outrageous – that Ecology would even propose S3.C. This is particularly so after the labors that PSA, NMTA, and Ecology went through to address this issue in the settlement negotiations.

Response 5. Absent specific direction in the settlement agreement Ecology followed the plain language of the settlement agreement and the PCHB order Item 7 as the settlement agreement required. We find nothing in the PCHB decision that requires specifics of a receiving water study be included in the permit. Ecology seldom puts the specifics of complex receiving water studies in a permit. Any change in the details because of unforeseen circumstances requires a permit modification with substantial delay and administrative costs.

Ecology has reached agreement with PSA and NMTA on the specifics of the receiving water studies as to parameters, locations, time of sampling and range of the number of samples. Ecology's Environmental Assessment Program will conduct this study in the fall and winter of 08-09. A detailed Quality Assurance Project Plan will be submitted to PSA and NMTA for review and comment in the summer of '08.

The permit already requires individual boatyards that reach a level 3 to submit a level 3 report (engineering report). This report must include receiving water data in the vicinity of their discharge in addition to the treatment technology options.

Comment 6. (Phil Reese, Seaview Boatyards) - (The following comment specific to the permit was abstracted from oral testimony. The full testimony is posted on the following website <http://www.ecy.wa.gov/programs/wq/permits/boatyard/index.html>. Comments not directly related to the modification have been given to Water Quality Program Management but are not addressed here.) What kind of process is acceptable to Ecology to make the demonstration of condition S2.C.8.a. in the modified permit? We have developed a process of completely enclosing boats while we are working on them.

Response 6. The concept of the proposed process should be submitted to Ecology for a decision as noted in the modified permit. After conceptual approval, boatyards must submit detailed plans for containment including material that may fall on the ground or asphalt surfaces. Ecology suspects that the interstitial area of asphalt may harbor residual copper dust. The alternative process should include a mechanism for containing material falling on the ground and not rely solely on ground or asphalt to contain the copper material. As noted above, if an Ecology inspection reveals that the construction of the alternative doesn't meet the requirement for containing the copper dust the approval may be withdrawn.

Comment 7. (Chip White) - On page 23 where the requirements for submitting Level Two and Level Three responses is discussed, it is still not clear if a report must be submitted

2<sup>nd</sup> modification. Issue 12/19/07, Effective 1/19/08

for any 4 violations of the standard or if it is 4 violations of a single standard. Perhaps if an example was included ie. “If the benchmark for copper is exceeded 4 times then a Level Two Response is required” would solve this problem.

Response 7. An example has been included to clarify the requirement.

Comment 8. (Chip White) - On page 5 under level two response it states that the report is due 6 months after the DMR is submitted. On page 23 it states that the report is due 3 months after the DMR is submitted. It is believed that 3 months is correct.

Response 8. Page 5 has been corrected.

Comment 9. (Chip White) - On page 5 under Stormwater Monitoring Results the sampling months have changed from September, October to October, November. On page 21 they remained September, October. Which is correct?

Response 9. Page 5 has been corrected.