

## SETTLEMENT AGREEMENT

### I. INTRODUCTION

1. This Settlement Agreement between the Department of Ecology (“Ecology”), the Northwest Marine Trade Association (“NMTA”), and the Puget Soundkeeper Alliance (“PSA”), collectively “the parties,” resolves issues stemming from the appeals of the 2005 Boatyard General Permit (“BGP”) that were the subject of Pollution Control Hearings Board case nos. 05-150, 05-151, 06-034, and 06-040, which were consolidated by the Board and resulted in the Board’s January 26, 2007, Findings of Fact, Conclusions of Law, and Order (“Jan. 26, 2007, Order”). This Settlement Agreement also resolves these issues in the appeals of the Jan. 26, 2007, Order filed by NMTA and PSA in Thurston County Superior Court (Cause Nos 07-2-00385-9 and 07-2-00393-0).

2. Counsel and staff for the parties have engaged in discussions relating to the settlement of this matter and wish to resolve it without the need for additional time consuming and expensive litigation. The parties have agreed that settlement of this matter is in the public interest and in the best interest of the parties, and that entry into this agreement is the most appropriate means of resolving this dispute.

### II. BINDING EFFECT AND AMENDMENTS

1. The provisions of this Settlement Agreement shall inure to the benefit of and be binding upon the parties hereto, including their officials, agents, representatives, officers, directors, employees, successors, and assigns. Changes in the organizational form or status of a party shall have no effect on the binding nature of this Settlement Agreement or its applicability.

2. The terms of this Settlement Agreement may be modified by the parties through amendment to which all parties agree. Evidence of such an agreed amendment shall be written and signed by a duly-authorized representative of each party, and shall clearly reference the provision of the Settlement Agreement being modified.

### III. STUDY AND REPORT

1. The parties agree to work cooperatively and collaboratively on a study including pilot projects (Study) to evaluate the performance of various technologies to reduce the levels of metals, particularly lead, copper, and zinc, in boatyard stormwater discharges and to determine what level of metals reduction is achievable using the known and available technologies included in the study. The study is not an AKART study but may be used as appropriate in future AKART studies and engineering reports. The study shall be the installation, testing, and performance evaluation of treatment or control technologies at no less than three boatyards. Electrocoagulation shall be among the technologies studied. Other technologies to be studied may include bioswales, coverings, filtration, and/or other technologies as determined by the Steering Committee described below. The pilot study shall evaluate such technologies as determined by the Steering Committee.

2. A Steering Committee comprising Michael Campbell (or such other designee as NMTA may assign), Sue Joerger (or such other designee as PSA may assign), Gary Bailey (or such other designee as Ecology may assign), Barry Kellems (or such other qualified technical consultant as NMTA may reasonably select), and Rich Horner (or such other qualified technical consultant as PSA may reasonably select) shall provide oversight and direction for the pilot study and related tasks, including selections

of the project manager, vendors, cooperating boatyards, and review of draft technical reports.

3. NMTA shall serve as the fiscal agent for the study and related tasks. As such, NMTA shall hold, disperse, and manage all funds contributed or raised for the pilot study and related tasks, including fees for Barry Kellems' and Rich Horner's time, and shall be the contracting party as necessary. NMTA shall provide accounting information showing receipts, expenditures, and balances to the Steering Committee on a regular basis and as may be reasonably requested by PSA or Ecology.

4. The Steering Committee shall hire a project manager to manage requests for proposals, consultant and vendor solicitations, project implementation, timeline, funding, and other tasks as assigned.

5. The study shall result in the preparation of a technical report that will evaluate the performance of the technologies included in the study.

6. The timeline for the study is as follows (dates may be altered by unanimous agreement of Steering Committee members):

- Project manager hired by June 27, 2007;
- Request(s) for proposals issued and associated process developed by July 11, 2007;
- Proposals from boatyards, consultants, and vendors received by August 8, 2007;
- Boatyards, consultants, and vendors selected by September 7, 2007;
- Treatment or other technology systems in place by October 5, 2007;
- Stormwater monitoring performed October 5 – December 31, 2007;
- Draft Technical Report prepared by January 31, 2008;
- Final Technical Report prepared by March 15, 2008.

7. NMTA and PSA shall each use their best efforts to raise funds sufficient to perform these tasks, pay the project manager, pay Barry Kellems and Rich Horner, and pay other associated costs. The parties estimate that NMTA and PSA will each have to raise ten to twenty thousand dollars for these purposes, although NMTA and PSA will endeavor to raise whatever funds are necessary to satisfy the requirements and objectives of this Settlement Agreement. The intent of the NMTA and PSA is to raise as much funding as possible from sources outside of their respective organizations.

#### IV. PERMIT MODIFICATION

1. Not later than seventy-five (75) days after the execution of this Settlement Agreement, Ecology shall issue a draft modification of the Boatyard General Permit that:

- 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;
- 2) establishes an effluent limit for lead formulated as required by item 3 of the Jan. 26, 2007, Order;
- 3) establishes monitoring requirements for lead and zinc as required by item 2 of the Jan. 26, 2007, Order;
- 4) establishes receiving water sampling as required by item 7 of the Jan. 26, 2007, as determined in accordance with Attachment A to this Settlement Agreement;
- 5) establishes an exception to the prohibition on non-vacuum grinders required by item 8 of the Jan. 26, 2007, Order, with permittee allowed to make a demonstration that use is impracticable and request an exception from Ecology subject to an administrative order from Ecology approving the request; and
- 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. As part of this agreement and not part of the permit modification, the parties agree that any permittee that is also a NMTA member shall be deemed to be participating in the Study. Ecology shall finalize and make effective this permit modification without undue delay.

2. Not later than ninety (90) days after the Final Technical Report, which is required under paragraph III.6. above to be completed by March 15, 2008, Ecology shall issue a draft modification or reissue the Boatyard General Permit that considers the Final Technical Report and addresses the remaining items of the Jan. 26, 2007, Order.

#### V. STAY AND DISPOSITION OF THE APPEALS

1. The parties agree to seek a stay of all proceedings in the pending judicial appeals of the PCHB January 26, 2007, order pending before the Thurston County Superior Court, Cause Nos 07-2-00385-9 and 07-2-00393-0. The parties also agree to request a status conference on or about April 15, 2008. The stay shall remain in effect subject to a status conference to be scheduled with the court.

2. Upon issuance of a final permit modification pursuant to Section IV.2 above, and not later than (15) days thereafter, the parties shall file a stipulations or notices to dismiss the appeals of the Jan. 26, 2007, Order, Thurston County Superior Court Cause Nos 07-2-00385-9 and 07-2-00393-0 without prejudice and without an award of costs or attorney fees to any party.

## VI. DISPUTES

1. The parties agree that jurisdiction over any dispute concerning interpretation of, implementation of, or compliance with this Settlement Agreement shall be in the Superior Court for Thurston County.

2. In the event of any dispute concerning interpretation of, implementation of, or compliance with this Settlement Agreement, the complaining party shall provide written notice of the dispute to set forth the basis for the dispute and that party's intent to commence legal action regarding the dispute. This notice shall be provided no less than twenty days before the complaining party commences such legal action. During the twenty-day notice period, the parties shall confer in good faith regarding the dispute and attempt to resolve their differences.

## VII. ENTIRE AGREEMENT

1. This Settlement Agreement constitutes the entire agreement between the parties. There are no other or further agreements, either written or verbal, except as expressly contained herein. Each party is a co-drafter of this Settlement Agreement. If a court determines that this Settlement Agreement is ambiguous and/or that one party was the primary drafter of this Settlement Agreement, the court shall not construe this Settlement Agreement against the primary drafter on that basis.

2. This Settlement Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together constitute one and the same Settlement Agreement.

The undersigned represent that they are duly authorized to enter into this Settlement Agreement and do so on behalf of the party indicated.

## ATTACHMENT A

The receiving water monitoring required by item 7 of the Jan. 26, 2007, Order shall be designed through collaboration and by agreement of the parties' technical experts, who are expected to be Gary Bailey for Ecology, Barry Kellems for NMTA, and Rich Horner for PSA. The near-term amendment to the Boatyard General Permit to establish receiving water sampling as required by item 7 of the Jan. 26, 2007, Order will be for the purpose of yielding data to verify or modify the assumptions used in calculating benchmarks for copper, lead, and zinc or to develop numeric effluent limitations for these parameters, as necessary and appropriate, in the next renewal of the BGP. The assumptions include hardness, water effects ratio ("WER"), and dissolved fraction translator. The receiving water monitoring program shall be one to which the parties' technical experts agree.

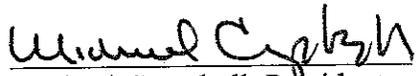
The technical experts will design the study to accomplish this purpose and shall determine locations of receiving water monitoring that will provide data comprising a strong representation of the range of relevant receiving waters, weighted towards waters receiving discharges from multiple permittees, and the effects of boatyard stormwater discharges on receiving waters. The frequency and extent of receiving water monitoring shall be sufficient to collect information adequate to test the assumptions in time for use of this information in the second permit modification (or reissuance) of the BGP under the Settlement Agreement (i.e., the modification or reissuance due to be issued in draft form not later than 90 days after the Final Technical Report) if possible, although receiving water monitoring may continue beyond the date of the second permit modification if deemed appropriate. The receiving water monitoring shall be designed to allow Ecology to use methods established by Ecology or EPA rules or guidance, or reasonable facsimiles of such methods, to develop benchmarks or numeric effluent limitations adequate to result in water quality derived from and compliant with all applicable water quality standards.

DEPARTMENT OF ECLOGY

  
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David C. Peeler, Manager  
Water Quality Program

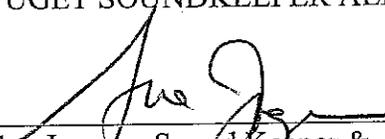
7/5/07  
Date

NORTHWEST MARINE TRADE ASSOCIATION

  
\_\_\_\_\_  
Michael Campbell, President

6/27/07  
Date

PUGET SOUNDKEEPER ALLIANCE

  
\_\_\_\_\_  
Sue Joerger, Sound Keeper &  
Executive Director

6/28/07  
Date