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April 16 2021

James Hovis
Washington State Department of Ecology
PO Box 47696
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RE: Puget Soundkeeper Alliance's Comments on Draft Boatyard General Permit

Dear James:

Puget Soundkeeper Alliance is a 501(c) 3 non-profit organization founded in 1984, with a mission to protect and enhance the waters of Puget Sound for the health and restoration of our aquatic ecosystems and the communities that depend on them. With programs focused on monitoring and enforcement, policy and civic engagement, and education and stewardship; Soundkeeper has a long history of successful advocacy on Washington's general stormwater Clean Water Act permits. Soundkeeper submits these comments on behalf of over 7,000 members, supporters, and volunteers.

Puget Soundkeeper Alliance supports the reissuance of the Boatyard General Permit ("BGP") and the increased stringency of this permit iteration. Given the particular challenges for discharge water quality control faced in the regulation of this industry and the relatively small universe of regulated boatyards, it is crucial that the BGP impose stringent requirements to ensure compliance with AKART and water quality-compliance mandates of state law, RCW 90.48.520, if the general permit mechanism is to be used rather than individual permits for this category of dischargers.

Soundkeeper understands that boatyards typically face challenges in meeting standards due to the age of their infrastructure (many boatyards are older facilities designed and constructed without regard to modern pollution control concerns), their typical location on the waterfront that provides extra potential for problem discharges and enhanced environmental impacts, the prevalence of copper in wastes generated by work at boatyards on boat hulls coated with copper-based antifouling paint, and that pollution-generating work at boatyards is often conducted by independent contractors or boat owners themselves, rather than individuals under the direction and direct control of boatyard facilities. It is crucial that the BGP include conditions to ensure the implementation of proper best management practices for all work performed at boatyards, and discharge quality that will not adversely affect receiving waters.

Elevated levels of dissolved copper in boatyard discharges are the inevitable result of inadequate best management practices at boatyards, and the cause of substantial environmental concern. Dissolved copper at incredibly low levels is very harmful to

salmonids. Research demonstrates that copper is broadly toxic to the salmon olfactory nervous system. Consequently, short-term influxes of copper to surface waters may interfere with olfactory-mediated behaviors that are critical for the survival and migratory success of wild salmonids.[1] Boatyards that are unable to attain low enough levels of copper in their discharges with their existing pollution controls must be required to implement adequate treatment. It is now particularly appropriate to require controls for copper because the anticipated industry switch to non-copper-based bottom paint has not materialized and is not expected anytime soon.

Clean Water Act mandates for stormwater pollution controls for most municipalities and many industrial facilities are forcing a paradigm change in how municipal managers, planners, and engineers, as well as many businesses with traditionally outdoor operations, think about and prioritize measures to minimize and control the exposure of pollution-generating materials to precipitation and runoff. The boatyard industry and the boating community, including individual, private boat owners, must participate in this paradigm shift too. Indeed, this industry and community should bear even greater responsibility given the importance of aquatic environments to their prosperity.

Condition-specific comments

S1.A. Soundkeeper supports inclusion of the additional sentences clarifying the geographic scope of BGP coverage to all areas where listed boat maintenance activities occur. It is important to include all such areas and to do so clearly. As we have recently seen in recent litigation over the Industrial Stormwater General Permit ("ISGP"), NPDES permits should be clear and unequivocal about the intended geographic scope of permit requirements.

S2.A.1. Soundkeeper supports the tightening of the numeric effluent limitations for discharges to non-delegated POTWs.

S2.D. The draft BGP proposes changes to numeric benchmarks for direct stormwater discharges and supporting monitoring requirements. Soundkeeper generally supports these changes, including the significant reduction in the copper benchmark from 50 ug/L to 15 (or 20) ug/L because controlling copper is essential for protection of salmonids. The comparable copper benchmark in the ISGP is 14 ug/L. Please explain how benchmarks at these levels are adequate to protect juvenile coho salmon, which are harmed by copper levels as low as 5

[1] Baldwin DH, Sandahl JF, Labenia JS, Scholz NL. Sublethal effects of copper on coho salmon: impacts on nonoverlapping receptor pathways in the peripheral olfactory nervous system. Environ Toxicol Chem. 2003 Oct;22(10):2266-74. DOI: 10.1897/02-428. PMID: 14551988. Available online at: https://pubmed.ncbi.nlm.nih.gov/14551988/
McIntyre, JK, Baldwin, DH, Beauchamp, DA, Scholz, NL. Low-level copper exposures increase visibility and vulnerability of juvenile coho salmon to cutthroat trout predators. Ecological Applications, 2012 July; 22(5): 1460-71. DOI: 10.2307/41722866. Available online at: https://www.researchgate.net/profile/David-Beauchamp/publication/230712766_Low-level_copper_exposures_increase_visibility_and_vulnerability_of_juvenile_Coho_salmon_to_cutthroat_trout_predators/links/00b49539fa4f11e73f000000/Low-level-copper-exposures-increase-visibility-and-vulnerability-of-juvenile-Coho-salmon-to-cutthroat-trout-predators.pdf

ug/L.[2] While Soundkeeper does not understand in the context of law, equity, or science why the BGP copper benchmark should not also be 14 ug/L, it supports the reduction. Soundkeeper prefers numeric effluent limitations to benchmarks because they are easier to enforce and therefor more effective to ensure that standards are met. While the benchmark/adaptive management approach embodied in this condition will be effective for some boatyard permittees (i.e., to force them to implement measures to consistently meet benchmarks), some permittees will manage to avoid implementing required measures under the permit's benchmark scheme because it ultimately mandates effort instead of results. Soundkeeper hopes that Ecology will keep an open mind about the replacement of benchmarks with numeric effluent limitations in the BGP as we move forward over time and the benchmark approach demonstrably fails at some regulated facilities.

S2.D. also increases the frequency of sample collection by the addition of a March sampling requirement. Soundkeeper supports this increase but notes that the month-specific sampling requirement is harder to keep track of than an every-month requirement and does not understand why monthly sampling is not required. Given the potential for harmful discharges, including during "first flushes" during the summer months when monitoring is not currently required, it seems that a monthly sample collection requirement is warranted.

S2.D. eliminates the confusing seasonal average benchmarks and Soundkeeper accepts this change. A change to monitoring every month would make it more feasible to use some type of average for evaluation of discharge performance and standards compliance.

S2.E.1. Soundkeeper appreciates Ecology's effort to impose meaningful discharge limitations to protect impaired receiving waters. This is important to attain legal mandates on water quality protection. The subcondition's new language is ambiguous. It purports to prohibit existing discharges to impaired waters from "caus[ing] further permanent impairment of any 303(d)-listed water body for any listed parameter." To "cause further permanent impairment" is probably so vague as to be ineffective and unenforceable. How is it to be determined that a discharge "causes further permanent impairment"? What is "further permanent impairment"? In this context, what is "permanent"? And why would further impairment be allowed if it is of lesser than permanent duration? What if the further impairment can be expected to abate in a decade, or a year? Ecology should either define this term in a manner that is clear and practical or try a different approach to achieve the objective.

S2.E.3. Soundkeeper applauds the addition of numeric effluent limitations for discharges to impaired receiving waters and believes that these are mandated by law.

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[2] Soloman, Frances. Impacts of Copper on Aquatic Ecosystems and Human Health. Environment & Communities, Mining.com, 2009 January. Available online at:
http://www.ushydrotech.com/files/6714/1409/9604/Impacts_of_Copper_on_Aquatic_Ecosystems_and_human_Health.pdf
https://www.researchgate.net/profile/David-Beauchamp/publication/230712766_Low-level_copper_exposures_increase_visibility_and_vulnerability_of_juvenile_Coho_salmon_to_cutthroat_trout_predators/links/00b49539fa4f11e73f000000/Low-level-copper-exposures-increase-visibility-and-vulnerability-of-juvenile-Coho-salmon-to-cutthroat-trout-predators.pdf

S3. Soundkeeper supports the clarifications and additions to the mandatory best management practices. These seem like commonsense changes to clarify the permit and appropriately strengthen its requirements.

S6.A.3. provides that permittees may forgo sampling at "substantially identical discharge points." Exemptions from monitoring requirements should only be created with great care. Soundkeeper's ISGP enforcement experience informs us that misapplication and violation of the "substantially identical" monitoring exception is very common. Evaluation of the monitoring plan explanation of "substantial identicality" assertions has repeatedly revealed this. The ISGP's documentation condition here is crucial. The draft permit's inclusion of the same language as that in the ISGP at S8.B.2 makes this provision acceptable.

S6.C. specifies in detail when stormwater samples need not be collected from areas used only for boat storage. Soundkeeper applauds Ecology's addition of this language and its response to problems observed in the implementation of the current BGP. Soundkeeper also supports the addition of the associated language at S6.D.1.iv. requiring assessment of storage area status as part of visual inspections.

S6.D.1. includes new language to ensure that visual inspections are required for the entire area of the permitted facility. This is a good clarification.

S7.A. has been modified to count benchmark exceedances for the purpose of adaptive management responses during the entire permit term rather than providing an annual reset. The stringency of this condition is warranted as the boatyard industry has been given a very extended and lenient timeline for implementation of enhanced and treatment best management practices in comparison to all other sectors of industrial stormwater dischargers, i.e., under the ISGP and the Sand and Gravel General Permit.

S8.B.1.b. includes changes to the requirements for the SWPPP site map. These appear to be well-considered changes that will improve the utility of the SWPPPs.

S8.B.3.e. includes additional specificity about preventive maintenance. These appear to be well-considered changes that will improve the utility of the SWPPPs and likely result in cleaner discharges.

S8.B.3.f. includes additional specificity about spill prevention and clean up plans. These appear to be well-considered changes that will improve the utility of the SWPPP.

Thank you for considering these comments.

Sincerely,

SMITH & LOWNEY, PLLC

By: *s/Richard A. Smith*
Richard A. Smith