

April 16, 2021

Mr. James Hovis  
Washington State Department of Ecology  
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Olympia, WA 98504-7696

*Submitted online:* <https://ecology.wa.gov/Regulations-Permits/Permits-certifications/Boatyard-general-permit>

**Re: Comments on 2021 Draft – Boatyard General Permit**

Dear Mr. Hovis:

The purpose of this letter is to provide comments on the proposed revisions reflected in the 2021 Draft – Boatyard General Permit (boatyard permit). Managing stormwater and wastewater discharges and protecting Washington’s receiving waters is a critical and central goal for the Port of Seattle (Port). In today’s competitive economic climate, water quality permits issued by Washington Department of Ecology (Ecology) can have major economic impacts on the Port, Port tenants and customers, and related businesses. Therefore, when evaluating revisions, the Port appraises impacts to Port and tenant operations, and the benefits of and risks mitigated by proposed changes. The Port supports efforts to improve water quality from Washington boatyards and our comments are submitted with the aim of achieving environmental protection and regulatory predictability while balancing the economic needs of local businesses.

The Port appreciates Ecology’s efforts to align boatyard permit requirements with the current state water quality standards. However, the Port is concerned with expanded requirements for a group dominated by small businesses that provide family wage jobs, and one that has declined dramatically with more than 50 percent of Washington boatyards closing in the last 20 years: in 1997 there were 130 boatyards, in 2010 it was down to 88, and by 2020 Washington has only 48 boatyards. Boatyards are instrumental in confining boat maintenance work within a controlled area, and the loss of boatyards could indicate that maintenance work on the 240,000 registered boats in the state is occurring in areas that do not have the oversight and controls that the Port and Ecology would prefer. It is important to ensure that additional costs and resource commitments placed on boatyards result in commensurate environmental benefits. We are not convinced that all proposed revisions to the boatyard permit will result in environmental benefits, while certainly having a steep economic impact on Washington boatyards and their ability to meet these new requirements. In our comments, we identify improvements and modifications that will help to ensure consistent application and interpretation for requirements while reducing economic impacts where environmental benefit would be negligible.

The Port has the following general comments on the proposed boatyard permit:

- The totality of proposed revisions does not support a permittee’s ability to use adaptive management in meeting permit requirements. The goal of the permit is to protect water quality, which can be done more effectively through source control rather than primarily relying on

treatment. Operational practices are a key component of protecting water quality, but the permit revisions would escalate the path to treatment very quickly and not allow time for adaptive management to work.

- Some of the revisions are unclear and confusing, especially the benchmark exceedance response structure. This could require permittees to contract consultants to help understand and implement the new requirements. This is an undue burden on a small business.
- Ecology and the legislature have proposed limiting or eliminating copper in anti-fouling paints for boats since approximately 2011. We support this effort, but until this legislation is enacted, results are quantified, and alternatives to copper boat paint approved, revisions to copper benchmarks should be put on hold to avoid forcing permittees to invest in expensive, possibly soon-to-be obsolete treatment systems for a pollutant that may be removed from their facilities by legislation.

The following more specifically illustrates our primary concerns (we include Attachment A with greater detail on recommended revisions):

- 1) *General Sampling Requirements.* The draft permit has added the month of March to the existing five months (now six) for monitoring discharges to surface waters (not impaired) to state or ground water. This addition along with adding new parameters and significantly lowering the copper benchmark are substantial changes for permittees and will add significantly to the cost of compliance.

The Fact Sheet indicates that stormwater samples must be collected during the first storm event of the sampling period to capture the "first flush" of contaminants from the site. Given the rain patterns of Western Washington's wet season during required sampling months (October, November, January, March, April, May), and the short periods between rain events, this does not make sense. Likewise, given the frequency of sampling, capturing the "first flush" each month does not provide much value during the wet season. This requirement goes well beyond requirements in the 2020 Industrial Stormwater General Permit (ISGP) and should be removed.

- 2) *Water Quality Benchmarks and Adaptive Management.* As stated in the Fact Sheet and from review of the draft boatyard permit, it seems that it is designed to become similar to the ISGP. However, the changes described below have made the boatyard permit, in many ways, more stringent than the ISGP.

The boatyard permit includes new sampling parameters (turbidity, pH, and petroleum hydrocarbons) and a significantly reduced benchmark value for copper, while maintaining the same approach for Level Two and Level Three corrective action responses. These changes combined with the increase in sampling frequency do not allow adequate time for permittees to implement adaptive management at their facilities. For example, permittees will not have the time or ability to test new source control measures to determine effectiveness prior to additional sampling results that count toward a Level Two or Level Three response. While this is important for all parameters, this is of particular significance for new sampling parameters proposed in the draft permit.

To provide adequate opportunity for adaptive management, benchmark exceedances should be based on monthly monitoring periods and not on individual exceedances at each monitoring location. As proposed, a permittee with three or four sampling locations could have three or four benchmark

exceedances in a single month. The responses to benchmark exceedances should be based on the average of the stormwater sampling results collected during the required monthly monitoring periods and not on discrete results.

In addition, permittees who triggered a Level Two response under the current boatyard permit would be held to a different standard than those who are newly permitted. The same response standards should be applied to permittees regardless of benchmark data under the previous permit cycle.

We believe that Ecology can continue a strong, consistent, science-based regulatory framework that protects and improves water quality without significantly impacting local businesses and the regional economy, and creating a system where more boatyards struggle with regulatory compliance or are forced out of business.

We include more detail in Attachment A. Thank you in advance for considering our comments. If you have any questions, please contact me at (206) 787-4668.

Sincerely,



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