



April 16, 2021

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Boatyard and Drinking Water Facility General Permits  
Water Quality Program  
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*Via e-mail to Jhov461@ECY.WA.GOV*

Re: Comments on 2021 Boatyard General Permit

Dear Mr. Hovis:

Northwest Marine Trade Association (NMTA), as the leader of this coalition which includes Association of Washington Business (AWB), Seattle Marine Business Coalition, Washington Maritime Federation, and Washington Retail Association (Coalition), provides these comments on the Washington Department of Ecology's (Ecology) Draft National Pollutant Discharge Elimination System (NPDES) and State Waste Discharge General Permit for stormwater discharges associated with boatyard activities (the Permit). Because there are so many crossover members and interests on this subject, our comments reflect our unified position.

As the senior partner of the Coalition, NMTA represents over 700 businesses and Public Ports in the boating industry, including several dozen members with Permit coverage. These members comprise the state's \$6.9 billion economic engine for the state, and boatyards serve as the catalyst for this economic activity (source: National Marine Manufacturers Association, 2019). As is said in the boating industry, "Nothing happens until a boat is sold." Oftentimes, and

predominantly for used vessels, a marine survey must occur, and those surveys take place at boatyards.

For decades, the Washington boatyard community has shown leadership in protecting the environment and leading on water quality. Examples of this partnership include NMTA, AWB and Ecology's continued collaboration to phase-out bottom paint containing copper, which began in 2011. NMTA also founded the Clean Boating Foundation (Foundation), a non-profit organized specifically to enhance and protect water quality. The Foundation educates boatyards about best practices and Permit requirements, while encouraging boaters to patronize those boatyards certified as having met the Foundation's high standards for environmental protection. The criteria for the certification process was developed in close consultation with Puget Soundkeeper Alliance and Ecology. To showcase NMTA's commitment to environmental excellence, NMTA received AWB's prestigious membership award in 2011 as it related to the association's innovative approach to reducing copper in the marine environment.

Washington's boatyards are also critical to protecting water quality. Boatyards support 240,000 registered boats in Washington. Unlike work done outside boatyards, maintenance conducted in boatyards is subject to inspection and monitoring. Employees are trained in best management practices, including how to handle and dispose of materials. Boatyards are also educating boaters about the benefits of replacing zinc anodes with aluminum anodes. Without boatyards, boat maintenance activity would move into the unregulated waterways, streets and driveways. We have made enormous progress in public education tying together the importance of water quality and boating and achieved a high degree of compliance with the Permit at boatyard facilities. The reduction in copper coming from boatyards speaks for itself and is available for all to see on Ecology's PARIS database.

As was mentioned, Washington's boatyards are the nexus of a \$6.9 billion industry. Recreational boating alone generates roughly \$70 million in taxes and fees for the state (source: Joint Legislative Audit Review Committee, 2010); provides a \$70,000 average salary (source: Econ. Develop. Council study) benefiting thousands of Washington residents; and induces additional jobs in supporting industries. Many of these businesses serve or rely on boatyards to service boats. Boatyards are critical to the sale of used boats by providing inspection and repair services. For many rural communities, boatyards serve as the lynchpin of the community's economic hub.

Boatyards are exclusively small businesses. The average marine business size is 10.5 employees (source: Hebert Report, 2013) and for the most part are family-run operations. There are no national chains or big conglomerates running boatyards in Washington state. Rather, these operations are often time handed off from one generation to the next.

Unfortunately, boatyards have seen a precipitous decline through the years. In 1997 there were 130 boatyards. In 2010 there were 88 boatyards. In 2021, there are only 63 active boatyards.

Please keep this frame in mind as you peruse our comments.

### **1. Condition S2.D: Ecology Should Leave the Copper Benchmarks in Place.**

There is a substantial scientific and policy basis for the current benchmarks developed by Gary Bailey, one the most-experienced Ecology employees on the process and procedure for developing a reasonable potential analysis and effluent limits for water quality permits. Ecology should retain the current benchmarks in the Permit given the basis of the existing benchmarks, coupled with the immense cost associated with lowering the copper benchmark to 15 ug/L. Ecology should recognize the inapplicability to boatyards of the Industrial Stormwater General Permit (ISGP) assumptions regarding receiving water conditions, dilution, the translator factor, and appropriate risk.

First, Ecology has failed to explain why it is abandoning copper benchmarks that Ecology expressly represented to be based upon “technical and economic information” including “receiving water data, monitoring data, treatment data, scientific studies, water quality standards and economic data.”<sup>1</sup> Ecology has identified no errors, new science, or other new information that justifies abandoning Ecology’s best professional judgment reflected in the current permit. Neither the 2011 nor the 2016 Permits were appealed by industry or environmental groups, speaking to the agreed-upon nature of the Permit’s composition and architecture.

In 2011, Ecology calculated the current Permit’s copper benchmarks of 50 ug/L (seasonal average) and 147 ug/L (maximum daily) using EPA’s Technical Support Document for Water Quality-based Toxics Control (the TSD method).<sup>2</sup> Ecology considered a receiving water study in Lake Union and Puget Sound.<sup>3</sup> Critically, this study concluded that copper in the receiving waters near boatyards was below acute and chronic criteria.<sup>4</sup> If Ecology has concluded that boatyard discharges are exceeding water quality standards for copper Ecology should explain this conclusion relative to Ecology’s study and its prior calculation of the copper benchmarks.

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<sup>1</sup> Ecology, Appendix B Response to Comments – Boatyard General Permit (April 21, 2010) at 10.

<sup>2</sup> Ecology, Boatyard General Permit Fact Sheet at 22, Table 10.

<sup>3</sup> 2010 Boatyard General Permit Fact Sheet at 12 (citing Ecy Pub. No. 09-03-051).

<sup>4</sup> “The receiving water data collected by Ecology in the vicinity of boatyards showed no impairment for copper.” Ecology, 2011 Boatyard General Permit, Appendix B, Response to Public Comments at 16.

Ecology also determined that the current benchmarks were protective of salmonids. Ecology rejected Puget Soundkeeper Alliance's argument that the benchmarks did not reflect consideration of salmonids:

Ecology has reviewed the recent literature on the effects of copper to salmonids and more recently, reviewed the expert testimony on copper presented to the PCHB. Ecology believes the current permit is protective of salmonids.<sup>[5]</sup>

(emphasis added). Ecology determined that "sample test values at or below the benchmarks are unlikely to cause water quality violations." *Puget Soundkeeper Alliance v. Ecology*, PCHB Nos. 05-150, 05-151, 06-034, & 06-040, 2007 WL 314868, \*12 (Jan. 25, 2007). Ecology has not provided any basis for the proposed benchmarks relative to its prior determinations.

The current copper benchmarks also reflect Ecology's recognition that that boatyards typically discharge to receiving waters with substantial dilution. Ecology observed "that boatyards are located by necessity on large bodies of water and typically have current or tidal exchange at the point of storm water discharge."<sup>6</sup> Ecology provided boatyards with a mixing zone and a dilution factor of 20 for boatyards implementing all known and reasonable technology (AKART):

Permittees meeting the other conditions of this permit are allowed a mixing zone from the point of discharge to extend no more than 20 feet into the receiving water or the distance necessary to achieve a dilution factor of 20 if this is a lesser distance.<sup>[7]</sup>

Ecology considered and rejected the argument that it was not authorized to provide boatyards with a mixing zone. Ecology stated that the "PCHB decisions on mixing zones should be viewed in context of the permit in review."<sup>8</sup> There is no basis for Ecology to apply a dilution factor of 5 given that Ecology has already concluded boatyards are entitled to a dilution factor of 20.

A dilution factor of 20 is even more appropriate now that many boatyards have installed stormwater treatment systems. According to Ecology, when a facility submits an engineering report for a stormwater treatment system, Ecology approves the engineering report, and the

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<sup>5</sup> Ecology, Appendix B Response to Comments – Boatyard General Permit (April 21, 2010) at 16.

<sup>6</sup> Ecology, Appendix B Response to Comments – Boatyard General Permit (April 21, 2010) at 20 (R35).

<sup>7</sup> Ecology, Boatyard General Permit (March 2, 2011), Condition S4.A.

<sup>8</sup> Ecology, Appendix B Response to Comments – Boatyard General Permit (April 21, 2010) at 20 (R33).

facility installs the stormwater treatment system, the facility has implemented AKART. In the last ten years, many boatyards have installed stormwater treatment systems reviewed and approved by Ecology, meaning these facilities are implementing AKART.

It is not clear that boatyards can meet the proposed benchmark. To reduce copper in stormwater discharges the current copper benchmarks were derived from “analysis of multimedia filtration installed at boatyards” that showed treatment systems were not capable of meeting a 14 ug/L benchmark.<sup>9</sup> Ecology therefore refused to impose a 14 ug/L benchmark that was not demonstrably achievable: “Ecology cannot impose requirements for technology not demonstrated to be available and therefore has removed the 14 ug/L limit.”<sup>10</sup>

Second, Ecology already rejected the enormous cost required to force boatyards to meet a 14 ug/L benchmark. A Cost Analysis Study identified an order-of-magnitude economic analysis for installing treatment at a typical boatyard and was intended to inform Ecology’s determination of AKART for the Boatyard General Permit.<sup>11</sup> This analysis included the cost of stormwater treatment technologies and site improvements. Ecology concluded that the Permit’s benchmarks were both appropriate and “achievable at a reasonable cost” while it was not demonstrated that options were available to meet a 14 ug/L benchmark.<sup>12</sup>

Ecology knows that stormwater discharges are highly variable, so a Permit that combines a low benchmark, inadequate time to take additional samples, and inadequate time to take lower-cost source controls is going to drive permit holders to install treatment. That is exactly what Ecology has done here. Now, less than ten years after many boatyards installed stormwater treatment systems that Ecology approved and deemed AKART, Ecology is essentially requiring all boatyards to install additional treatment. Ecology has now combined in the Boatyard Permit (1) a 15 ug/L copper benchmark; (2) the requirement to sample six times per year; and (3) the requirement to install treatment if the facility exceeds benchmarks six times in a five-year period.

There is no precedent or basis for this approach. The Boatyard Permit is now more stringent than the Industrial Stormwater General Permit (ISGP). ISGP permittees sample less frequently (quarterly) leaving more time for corrective action and averaging of sample results to remain below benchmarks. Also, ISGP permittees do not trigger a Level 3 corrective action until they

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<sup>9</sup> Ecology, Appendix B Response to Comments – Boatyard General Permit (April 21, 2010) at 9 (emphasis added).

<sup>10</sup> Ecology, Appendix B Response to Comments – Boatyard General Permit (April 21, 2010) at 17.

<sup>11</sup> Arcadis, Boatyard Stormwater Treatment Technology Cost Analysis (2008) at § 1.

<sup>12</sup> Ecology, Appendix B Response to Comments – Boatyard General Permit (April 21, 2010) at 16 (R21) and 17 (R24). See also Arcadis, Boatyard Stormwater Treatment Technology Cost Analysis (2008); Ecology, Fact Sheet for NPDES Boatyard General Permit Reissuance (April 21, 2010) at 4.

exceed benchmarks in three of four quarters in a calendar year. By contrast, boatyard permittees sample nearly monthly (leaving no time for averaging or corrective action) and will trigger an additional treatment obligation merely by exceeding benchmarks in any 6 out of 30 samples over a five-year permit term. Ecology should explain how it concluded that this de facto treatment requirement is consistent with its prior determinations including its AKART determinations for boatyards, the cost efficacy of treatment alternatives, the dilution for boatyard discharges, and the fact that copper is a legal biocide for which there are no available reasonable alternatives without introducing a regrettable substitution.

In sum, the current Permit benchmarks reflect analysis of stormwater runoff from representative boatyards; analysis of state water quality criteria; calculation of water quality-based limits using EPA's TSD method and application of principles from Ecology's Permit Writer's Manual; public comments and Ecology responses thereto; extensive negotiations; and Board review. Boatyards have relied on Ecology's determinations in making major economic investments.

Meanwhile, the ISGP's assumptions regarding receiving water conditions, dilution, the translator factor, and appropriate risk are inapplicable to boatyards. When Ecology revised the 2010 Industrial Stormwater General Permit copper benchmark, it sought to address "the vast majority of conditions" in the state<sup>13</sup> and made assumptions about "receiving water conditions having the highest potential for occurrence."<sup>14</sup> It assumed a value for a generally available level of dilution.<sup>15</sup> Ecology also made assumptions about the translator factor and made a policy choice to determine risk levels.<sup>16</sup> None of those assumptions are necessary or appropriate here based on Ecology's own determinations and studies specific to boatyards. Meanwhile, recent studies have called into question core assumptions for the ISGP's copper benchmark, including the bioavailability of copper and the actual constituent in urban runoff that explains salmonid mortality.

Given the immense cost associated with dropping the copper benchmark to 15 ug/L, the enormous scientific basis for the current benchmarks, and the inapplicability to boatyards of the ISGP's assumptions regarding receiving water conditions, dilution, the translator factor, and

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<sup>13</sup> *Copper Development Assoc., et. al v. Ecology*, PCHB Nos. 09-137 through 09-141, 2011 WL 1623638, \*9, Findings of Fact, Conclusions of Law, and Order (April 25, 2011).

<sup>14</sup> *Copper Development Assoc., et. al v. Ecology*, PCHB Nos. 09-137 through 09-141, 2011 WL 1623638, \*9, Findings of Fact, Conclusions of Law, and Order (April 25, 2011).

<sup>15</sup> *Copper Development Assoc., et. al v. Ecology*, PCHB Nos. 09-137 through 09-141, 2011 WL 1623638, \*10, Findings of Fact, Conclusions of Law, and Order (April 25, 2011).

<sup>16</sup> *Copper Development Assoc., et. al v. Ecology*, PCHB Nos. 09-137 through 09-141, 2011 WL 1623638, \*9, Findings of Fact, Conclusions of Law, and Order (April 25, 2011).

appropriate risk, the Coalition request that Ecology retain the current copper benchmarks in the new Permit.

## **2. Condition S2.D: Ecology Should Not Base Revisions to the Total Copper Benchmarks in Section S2.D On An Acute Dilution Factor of 5..**

The Coalition strongly encourages Ecology to re-evaluate the use of a dilution factor of 5 in the draft Permit. It is unreasonable, arbitrary, unsupported by the best available science, and inconsistent with other permits for Ecology staff who are unfamiliar with the Permit to conclude that dilution factors greater than 5 are impermissible for boatyards without citing any evidentiary basis for that conclusion—particularly when the evidence overwhelmingly indicates otherwise:

- There is no technical basis for the proposed dilution factor of 5.
- The proposed dilution factor of 5 does not agree with best available science findings of a previous Permit writer.
- The proposed dilution factor of 5 is inconsistent based on comparison with Department of Ecology NPDES permitted dilution factors.
- There is no technical basis for treating boatyards like Industrial Stormwater General ISGP permittees.
- A dilution factor of 5 will result in undue economic hardship on boatyards.

The 2005 and 2011 Permit writer, Gary Bailey, determined that for boatyards a dilution factor of up to 20 is “easily achieved in minimal distance.”<sup>17</sup> Mr. Bailey also determined that “the mean of acute dilution factors from individual permits” was 30.<sup>18</sup> Mr. Bailey further determined that the “minimal dilution allowance” provided to boatyards would result in meeting water quality criteria.<sup>19</sup>

There is absolutely no basis for concluding that Mr. Bailey’s conclusions, which were a product of extensive data review, were a mistake. Mr. Bailey wrote previous Permits, Fact Sheets, and Responses to Comments, and participated in the Pollution Control Hearings Board appeal and negotiations over the Permit. Mr. Bailey was an expert in water quality standards, described by Ecology as having “profoundly” contributed to Ecology’s Water Quality Program Permit Writer’s Manual (the Manual).<sup>20</sup> Mr. Bailey was a recognized expert in the U.S. Environmental

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<sup>17</sup> Ecology, 2011 Boatyard General Permit, Appendix B, Response to Public Comments at 55.

<sup>18</sup> Ecology, Fact Sheet for NPDES General Permit for Boatyards (2005) at 19.

<sup>19</sup> Ecology, 2011 Boatyard General Permit, Appendix B, Response to Public Comments at 14.

<sup>20</sup> Ecology, Water Quality Program, Permit Writer’s Manual, Pub. No. 92-109 (Jan. 2015) at xiii.

Protection Agency’s Technical Support Document method, was the project lead for the Manual’s development, and for 25 years coordinated updates to the Manual.

Moreover, a review of NPDES permits at relevant facilities around the region show that the proposed dilution factor of 5 for boatyards is inconsistent with dilution factors at facilities with similar discharge locations to boatyards. Dilution factors from these facilities are presented in Table 1. The acute dilution factors at these facilities range from 14 to 89.

Table 1. Acute Dilution Factors for Shipyards and Other Applicable Facilities

Facility	Discharge Location	Acute Dilution Factor	Reference
Fairhaven Shipyard	Bellingham Bay	85	FS for NPDES Permit (7/28/17) at 20
Foss Shipyard	Lake WA Ship Canal	14 to 66	FS for NPDES Permit (2005) at 64-65
Georgia Pacific West	Bellingham Bay	89	FS for NPDES Permit (12/2014) at 20
Ambrosia Technology	Willapa Bay	43	Draft NPDES Permit (2012-2017) at 5
General Metals of Tacoma (now Schnitzer Steel)	Hylebos Waterway/ Commencement Bay	31.4	FS for NPDES Permit (5/30/19) at 26
Seattle International Gateway	Lower Duwamish Waterway	17.8	ARCADIS, Technical Basis for L3 Corrective Action Waiver (5/20/2011) App. C
Pacific Fisherman Shipyard	Lake WA Ship Canal	25	FS for NPDES Permit (1/13/19) at 20
Ocean Spray Cranberries	Grays Harbor	31	FS for NPDES Permit (3/25/19) at 26.
Anacortes WWTP	Guemes Channel	31	FS for NPDES Permit (9/25/17) at 23
Coupeville WWTP	Penn Cove PS	30	FS for NPDES Permit (7/1/19) at 30
Bainbridge Island WWTP	Central PS	25	FS for NPDES Permit (8/1/17) at 22
Rosario WWTP	Cascade Bay PS	46	FS for NPDES Permit (7/18/16) at 25



Vashon WWTP

Central PS

89

FS for NPDES Permit  
(9/27/16) at 21

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Notes:

FS = Fact Sheet

PS = Puget Sound

WWTP = Wastewater Treatment Plant

The dilution factors shown in Table 1 are conservative because they are based on a mixing zone analysis conducted in accordance with Ecology's Water Quality Program Permit Writer's Manual. Therefore, each mixing zone analysis was based on critical condition parameters that had low probability of occurrence. These dilution factors are accordingly based on conservative and protective assumptions. The term "reasonable worst-case" applies to these values. The dilution factors used at facilities with similar discharge locations suggests that a dilution factor of 20 is also conservative (i.e., at the lower end of the range of dilution factors) and as protective of water quality.

Furthermore, there is no technical basis for treating boatyards like facilities covered under the ISGP permittees where the applicable copper benchmark is based on a dilution factor of 5. One of the most important factors affecting dilution is the depth of the receiving water. Boatyards are uniformly located on waterways that are deep enough to allow boat access during all tides. By contrast, ISGP permittees commonly discharge to intermittent streams or narrow, shallow canals. It is not technically sound to provide the same dilution factor to boatyards that discharge to deep and tidally influenced waterbodies like the Strait of Juan de Fuca and Puget Sound. It would be more technically sound to use a dilution factor consistent with facilities with discharge locations similar to boatyards like those shown in Table 1, whose dilution factors range from 14 to 89.

The viability of boatyards is critical to ongoing improvements in state water quality. Sampling data from boatyards have shown dramatic reductions in copper loading. There is no evidence that boatyard discharges are generally violating water quality standards. Without boatyards, much of the maintenance of Washington's 240,000+ boats will shift to unregulated backyards, streets, and driveways.

For years, Ecology respected "that boatyards serve a valuable function and are an economic asset to the state economy."<sup>21</sup> The current Permit was crafted to preserve that asset. "We have conducted our economic analysis and crafted a permit that continually reduces pollutants while allowing struggling boatyards to remain in business."<sup>22</sup>

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<sup>21</sup> Ecology, 2011 Boatyard General Permit, Appendix B, Response to Public Comments at 47.

<sup>22</sup> Ecology, 2011 Boatyard General Permit, Appendix B, Response to Public Comments at 47.

More than 50% of the boatyards in Washington have closed during the last 24 years.<sup>23</sup> The remaining boatyards operate on thin economic margins and cannot afford to re-engineer existing stormwater treatment systems to the extent that may be needed to ensure compliance with the proposed draft Permit. The downward change in the dilution factor used in the proposed draft Permit will further hamstring the economics of boatyards and reverse progress they have achieved in stormwater quality.

We strongly encourage Ecology to recognize that science and sound policy do not support the proposed dilution factor.

### **3. Condition S2.D: The Copper Benchmark Is Not Consistent With Adaptive Management.**

Ecology eliminated the seasonal copper average; reduced the maximum daily copper benchmark from 147 ug/L to 15 ug/L for discharges to marine and freshwater in Western Washington; and added a March monthly sample requirement. Collectively, these changes effectively prioritize treatment over adaptive management. Ecology has not provided a clear basis for these changes and they should not be adopted.

Prior Permits were based on escalating adaptive management. Even if boatyards exceeded the seasonal average benchmark (50 ug/L), boatyards with sample results generally below the maximum daily copper benchmark (147 ug/L) had the necessary time to undertake source controls either in combination with or in lieu of treating stormwater.

By eliminating the seasonal average, adding a sampling event in March and dropping the benchmark to 15 ug/L Ecology has effectively mandated that boatyards install incredibly expensive additional treatment systems, fundamentally changing the Boatyard Permit's adaptive management approach. The close spacing of sampling means many facilities may not receive a month's sampling result before taking the second month's sample. A 15 ug/L benchmark is well below the average copper monitoring result for boatyards. Collectively, these changes mean that a boatyard currently meeting benchmarks could trigger level 3 corrective action by April 2022 without any opportunity to meaningfully attempt less expensive source controls.

Ecology has stated that it dropped the seasonal average benchmark because the benchmark was confusing. If the benchmark was confusing, it is incumbent on Ecology to explain it or simplify its calculation. Ecology has an open invitation to meet with NMTA's boatyards and to speak at the Northwest Marina & Boatyard Conference. Minutes and notes from both meetings indicate

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<sup>23</sup> In 1997, there were 130 boatyards. In 2010, there were 88 boatyards. In 2014, there were only 67 boatyards. In 2021, there are 63 boatyards.

at Ecology's never took advantage of this open invitation. Ecology also states the benchmark did not provide new information. On the contrary, the benchmark enabled boatyards to measure progress on a seasonal basis, which is entirely appropriate for evaluating intermittent and variable stormwater discharges.

Ecology has effectively proposed to adopt a requirement that boatyards install additional treatment systems. Ecology should retain the seasonal average benchmark and monitoring provisions or explain how the changes are consistent with the adaptive management approach taken in all of Ecology's other major general stormwater permits.

#### **4. New monitoring requirements for turbidity, pH, and petroleum hydrocarbons (diesel range).**

Ecology proposes to require sampling for turbidity, pH, and petroleum hydrocarbons and to require treatment system installation if there are six exceedances of the benchmarks. It is unreasonable to give boatyards only six sampling events before triggering treatment requirements for these new parameters. Boatyards should be given enough time to identify and implement source controls for turbidity, pH and petroleum hydrocarbons. Over years of inspections and Permit iterations Ecology never previously identified turbidity, pH, and petroleum hydrocarbons as parameters of concern associated with all boatyards. Consequently, boatyards have not had the opportunity to implement source controls and cost-effective best management practices. Given the short lead time from the Permit start date and the sample month of October, it is unreasonable for boatyards to have the support needed to meet these requirements.

In addition, these sampling requirements impose an unnecessary expense on certain boatyards. Certain drainage basins at a boatyard may have no association with these parameters, making sampling for them an unnecessary cost. In addition, many boatyards have already implemented stormwater treatment systems that consistently achieve these benchmarks. Ecology should impose these monitoring requirements selectively or explain why all boatyards are now required to monitor these parameters in all areas of the boatyard.

#### **5. New numeric effluent limits.**

For boatyards discharging to certain parts of certain waterbodies, the proposed Permit imposes numeric effluent limits for pH, total copper, total zinc, total lead, and TSS. First, Ecology should identify well in advance of October 2021 the boatyards subject to numeric effluent limits and communicate the specific sampling requirements. Related to this, Ecology should clarify application of the TSS effluent limit. The proposed TSS numeric effluent limit apparently applies both to facilities discharging to 303(d) listed waterbodies and any facility discharging to a Puget Sound Sediment Cleanup Site (per Condition S2.E.3.a.ii(1)).

Clarifying these requirements is critical to ensuring boatyards understand this change, including which of the five parameters must be sampled. Because failing to sample a required parameter is a violation of the Clean Water Act, and Ecology has never required this sampling before now, Ecology must ensure affected boatyards are clearly notified of the requirements.

Ecology should also consider providing boatyards with an additional year to prepare for implementation this obligation. While exceeding a benchmark is not a Permit violation (benchmarks are corrective action triggers), exceeding a numeric effluent limit is a violation of the Clean Water Act, exposing the permit holder to civil enforcement. Given the seriousness of this requirement, the importance of accurate sampling, and the complexity of identifying who is subject to it, additional time is appropriate to ensure permit holders are not exposed to unnecessary enforcement.

#### **6. Storm Drain Line Cleaning, Sampling, and Reporting.**

For the first time, the 2021 Permit proposes to require that boatyards discharging to a Puget Sound Sediment Cleanup Site implement conduct additional storm drain line cleaning, sample the solids, and report the results, per Condition S2.E.4. Ecology should clearly identify the boatyards subject to this requirement. The concept of a Puget Sound Sediment Cleanup site is a new one for boatyards, as is the concept of sampling an indirect discharge.

In addition, Condition S2.E.3.a.ii(1) indicates that every facility discharging to a Puget Sound Sediment Cleanup site must sample for TSS. But this provision follows Condition S2.E.3.a.i, which indicates that TSS is only sampled when the discharge is to waterbodies that are 303(d)-listed (Category 5) for sediment quality. Ecology should be very clear about what boatyards are required to sample when discharging to a Puget Sound Sediment Cleanup site.

On behalf of the Coalition, thank you for your consideration of these comments.

Sincerely,



NMTA  
President/CEO



Peter Schrappe, President  
Washington Maritime Federation



Peter Tarabochia, President  
Seattle Marine Business Coalition