

June 7, 2005

Ms. Tricia Miller
Water Quality Permit Coordinator
Department of Ecology
Northwest Regional Office
3190 – 160th Avenue SE
Bellevue, WA 98008 – 5452

via email: tmi461@ecy.wa.gov
cc: Donna Ortiz DeAnaya, dort461@ecy.wa.gov

Re: State Waste Discharge Permit No. 7396 for Nichols Brothers Boat Building, Inc.

Dear Ms. Miller:

Friends of Holmes Harbor (FoHH) is submitting the following comments on the draft Waste Discharge Permit No. ST-7396 for the Nichols Brothers Boat Builders, Inc. (NBBBI) ship building facility in Freeland, WA. FoHH is a large and ever-growing non profit organization dedicated to protecting our pristine Holmes Harbor and quality of life on Whidbey Island. Our organization consists of hundreds of private citizens who live around the greater Puget Sound area and cover all economical backgrounds and professions. A great number of our members live in Holmes Harbor and near the NBBBI facility.

FoHH appreciates the Department's permitting and enforcement efforts to ensure that permitted discharges from the NBBBI facility are protective of ground and surface water in and around Holmes Harbor.

General Comments:

1. Please verify that this permit covers NBBBI's current configuration, size, and operations only and that it is not contingent upon and does not cover NBBBI's proposed expansion or reconfiguration.
2. Please confirm that NBBBI is required to submit an application for permit modification to the Department if the facility expands or substantively changes its operations, practices, or procedures.
3. During the protracted permit application process, NBBBI failed to disclose that another business, Nichols Diversified Industries (NDI), operates at their Freeland, WA facility. NDI is not a ship builder. In the permit application, a NBBBI corporate officer certified that "the information submitted is, to the best of my knowledge and belief, true accurate and complete." Failure to disclose this information constitutes NBBBI providing false information in their permit application. What enforcement action is Ecology going to take for this violation?
4. NBBBI misrepresented their hours of operation in its permit application. NBBBI operates 7 am to 8 pm Monday through Saturday.

Comments on Draft State Waste Discharge Permit No. ST-7396:

5. Page 4, Summary of Permit Report Submittals. The due dates for two of the deliverables in this table do not match the schedule presented on page 22 of the Fact Sheet. The due date for item S11. Hydrogeologic Investigation Scope of Work should be

September 7, 2005 and the due date for the Hydrogeologic Investigation Evaluation Report should be December 15, 2006.

6. Page 5, Section S1, second paragraph. Rinse water from yard cleaning and deck and hull cleaning and other processes could be as contaminated as pressure wash water. A requirement for sampling and characterizing this waste stream by NBBBI is necessary to ensure that this waste stream is conveyed to an appropriate treatment process and outfall.
7. Page 5, Section S1, last bullet; Section G1.D; and G3.B. NBBBI's current permit and this draft permit prohibit vessel repair and construction type activities on the cradle, crawler, and railway. In a supplemental permit application from NBBBI to Ecology dated October 7, 2004 signed by Bryan Nichols, Mr. Nichols states "No fabrication or repair work is done on the cradle, on the crawler, or over the water." Bryan Nichols repeated this claim to Donna Ortiz de Anaya, Ecology permit writer, during a telephone conversation on June 30, 2005. Mr. Nichols statements are false and misrepresent process knowledge Mr. Nichols knows to be true. In an email from Bryan Nichols to Donna Ortiz De Anaya dated July 5, 2005, Mr. Nichols states, regarding construction of the X-craft, "Work continued on the vessel while the cradle was under the vessel. I checked with our paint crew and some of the work included wet blasting and roll-on painting." In addition, FoHH provided photographic documentation to Ecology of X-craft construction on the cradle. Some of the photographs are available on NBBBI's own website. <http://www.nicholsboats.com/images/Construction/X-Craft/JAN05/2yard%20overview%20Feb%2005.JPG>. FoHH emailed copies of these photographs to the Department, as well as, a photograph showing the cradle (I-beams and wooden supports) in the water in Holmes Harbor after the X-craft launch.

NBBBI violated their current permit and knowingly provided false and misleading information in their permit application. This violates Section G1.D (Certifications) and G3.B (Permit Actions) of the General Conditions. What enforcement actions is Ecology taking against NBBBI for these permit violations and for knowingly providing false information on their permit application?

Because NBBBI performs construction work on vessels on the cradle, a NPDES permit is required for this facility.

8. Page 6, Section S2. NBBBI expanded its impervious surface work area, significantly increasing the volume of waste water entering the treatment system, without applying for a modification to their existing waste discharge permit. As a result of this illegal expansion, there are frequent overflows from the infiltration basin to the wetland which is hydrologically connected to Holmes Harbor. To protect the water quality of the wetland and Holmes Harbor, storage tanks with sufficient capacity to contain treated waste water until analytical results are available to demonstrate compliance with Outfall #1 criteria need to be installed.

If the permanent treatment system does not rely on the existing infiltration basin to capture overflow, NBBBI must be required to remove the interim infiltration basin and restore the wetland after the permanent system is installed. This requirement needs to be added to the schedule in Section S12.

9. Page 8, Section S2.D, first sentence. Define "infrequent".

10. Page 8, second paragraph. NBBBI claims that overflows do not occur during business hours. To protect the water quality of the wetland and Homes Harbor, an alarm system with telemetry to notify NBBBI of overflows at all times needs to be installed. Furthermore, sample data for overflows entering the wetland or Holmes Harbor should be compared to surface water quality criteria, not ground water criteria.
11. Page 11, Section S3.E.1. Quantify “immediately”.
12. Page 12, Section S4.A.3. The O&M Manual must include management plans and procedures for the structural controls designed to prevent marine water intrusion into the infiltration basin. These structural controls must be installed by September 15, 2005. A new or updated O&M Manual must be submitted to the Department within 30 days after the upgrades are completed (by October 15, 2005.) This requirement needs to be added to Section S12.
13. Page 12, Section S4.A.4. The O&M Manuals for the interim and permanent systems should include the requirement and procedures for daily sweeping and collection of process wastes.
14. Page 12, Section S4.B. NBBBI must notify the Department of releases due to flows greater than 10-year 24-hour storm events so that the magnitude of the storm event can be verified.
15. Page 14, S4.C.1. During rain events, surface water runs off the NBBBI property into the catch basin on Shoreview Drive which discharges directly into Holmes Harbor. How does Ecology propose to enforce the permit requirement in this paragraph for this discharge?
16. Page 14, S5. Does the Department’s Solid Waste Program regulate testing or disposition of infiltration basin soils? Does this waste stream need to go to a permitted solid waste facility?
17. Page 15, S6.B. Sandblasting and painting generally are not conducted in enclosed buildings because vessels are longer and taller than existing structures. Furthermore, tarps are ineffective for controlling dust, paint spray and other fugitive emissions. NBBBI must obtain a variance to exceed the 35’ shoreline building height restriction and the 40’ upland building height restriction in Island County. It is unlikely that NBBBI can obtain a variance because Island County code states that “the granting of the variance shall be consistent with the purpose and intent of this Chapter and conditions will be imposed to ensure compatibility with surrounding permitted uses.” Under Washington law, “shall” is to be construed with mandatory meaning. Surrounding permitted uses include residential uses. There are no conditions the Department of Ecology or Island County can impose to bridge the gap between industrial and residential uses in this area.

The 1983 Final Findings of Fact, Conclusions of Law & Order in Shoreline Hearings Board No. 83-6 on pg 16 paragraph 6 b. states “All fabrication buildings, existing and proposed, shall be enclosed structures.” It is obvious that these conditions were established to control the noise, light, glare, pollution and airborne particulates. Ecology must require NBBBI to conduct sandblasting and painting in enclosed facilities only.

18. Page 16, S6.C. How will Ecology verify that NBBBI has personnel trained to cleanup spills? What proof of training does NBBBI need to provide to Ecology?
19. Page 18, S6.J. Specifically when is NBBBI required to provide proof that they have developed and implemented a program to educate employees, contractors, and customers and what proof is required?
20. Page 19, S7.C. A new or updated Solid Waste Control Plan should be submitted to the Department by August 15, 2005. The plan should address disposition of the infiltration basin soils which must be changed out and disposed no later than September 21, 2005.
21. Page 19, S8. A back-up power generator must be required to prevent overflow of the treatment vault during power outages.
22. Page 19, S9. NBBBI must demonstrate that their bioswale has adequate capacity to contain and treat storm water.
23. Page 19, S9. The permit requires NBBBI to construct a barrier to prevent run-on of tidal marine water into the shipyard, infiltration basin and in the storm water collection system by September 15, 2005. Any and all local, state or federal permits required to perform work within the wetland to construct a barrier will be obtained by NBBBI from the appropriate agency prior to commencement of any construction. Copies of said permits will be sent to Donna Ortiz de Anaya at the Department of Ecology Northwest Regional Office by certified mail within 15 days of issuance of said permits and prior to commencement of any construction.
24. Page 20, S10. NBBBI must review its Spill Control Plan at least annually and submit updates to the Department, therefore, Spill Control Plan revisions and updates must be received by Ecology no later than 1 year after the permit issued date.
25. Page 22, S13. Will the Department advertise and make the SWPPP and BMPs, which are due November 1, 2005, available for public review and comment?
26. Page 19, S9. How many violations, exceedances, or overflows will Ecology tolerate before NBBBI is ordered to shut down the interim system and develop alternate means of collecting and treating waste water until the permanent system is operational?
27. Page 21, S12. Verify the date by which NBBBI is required to change out the soils in the interim infiltration basin.

Comments on Fact Sheet

28. Page 5, History. The integrity of NBBBI's storm water collection system needs to be verified. When will this be completed?
29. Page 6. Quantities and volumes reported in NBBBI's permit application are out of date or missing. How much sandblasting grit was used since 2003? How much water does wet blasting generate? How is it collected? Is the Bobcat sweeper an effective way to collect wet blasting waste grit?

30. Page 7. Is the information on the average number and type of vessels provided in the permit application still accurate?
31. Page 7. How will Ecology verify that no pressure wash water reaches the treatment system? Is all work done on impervious surfaces with no cracks or voids? Is the waste water collection system a tight-line system?
32. Page 7. The marine rail system will also likely require cross bracing.
33. Page 8, paragraph 4. How frequently is there marine water intrusion into the work yard and treatment vault because of high tides?
34. Page 9. How did Ecology verify NBBBI's reported volumes of 35,200 gpd and 22,000 gpd (average)?

Respectfully submitted,

Friends of Holmes Harbor
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