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July 8, 2005

Water Quality Permit Coordinator
Washington State Department of Ecology
Northwest Regional Office
3190 160th Avenue SE
Bellevue, WA 98008-5452

Re: Comments on Draft State Waste Discharge Permit No. ST-7396,
Nichols Brothers Boat Builders, Inc.

Dear Permit Coordinator:

We submit the following comments to the Washington State Department of Ecology on behalf of Puget Soundkeeper Alliance (Soundkeeper) -- a non-profit membership organization dedicated to protecting and restoring natural resources, particularly including the water resources of the State of Washington.

The following comments identify Soundkeeper's concerns with Ecology's approach to regulating the Nichols Brothers Boat Builders, Inc. facility, and with the proposed language of the reissued permit.

General Comments

1. The Department's decision to issue a State Waste Discharge Permit for the facility -- rather than an NPDES permit -- reflects an apparent determination that the facility does not discharge to surface waters (including wetlands). However, while purporting to prohibit most discharges to surface waters, the permit and fact sheet actually acknowledge three or four different surface water discharges: (1) discharges to hydrologically-connected groundwaters; (2) stormwater collection system overflows resulting from precipitation events exceeding the design storm; (3) seeps to wetlands; and (4) discharges resulting from marine intrusion. These discharges to surface waters cannot be authorized by a State Waste Discharge Permit.
2. Moreover, the facility's discharges to surface waters cannot be covered by the Industrial Stormwater General Permit (ISGP), because the facility's stormwater is commingled with process wastewater (*see*, Cond. S2A.). The facility's "process rinse water" (Fact Sheet at 7) is not stormwater, and cannot be considered "conditionally approved non-stormwater discharges" under the ISGP because it is contaminated by contact with the boat yard, vessel hulls and decks, and/or the crawler. As a result, the facility's commingled discharges of stormwater and process wastewater cannot be

authorized or covered by the ISGP. Ecology should issue an individual NPDES permit covering the facility, or notify the facility that all discharges to surface waters are unpermitted.

3. The matter is far from academic, because the draft permit only requires the facility to meet groundwater quality standards, rather than the far more stringent surface water quality standards applicable in Holmes Harbor.

Specific Comments

1. Discharge Limitations (Cond. S1, p.5) -- The permit should prohibit "all discharges" to Holmes Harbor and wetlands -- not merely discharges of pressure wastewater. If pressure wastewater will be specified, the permit should also prohibit all discharges of pressure wastewater to the stormwater treatment and subsurface infiltration system, as indicated by the Fact Sheet. In addition, with reference to the second, fourth, and fifth bulleted items, the permit should prohibit direct and indirect discharges to surface waters of pressure wash wastewater, bilge and ballast water, and wastewater from cooking, dish washing, showers, hydrotesting of piping system and portable steaming and maintenance shops.
2. Interim and Final Effluent Limitations (Conds. S1A.-S1C.) -- The draft permit does not specify when the final effluent limitations will become effective. These provisions are also unclear in other respects:
 - Are the "wastewater discharges to ground" covered by S1A different from discharges to the infiltration basin covered by S1B? If so, how; and where do these discharges take place?
 - Are the effluent limitations provided in S1B interim limitations?
 - With respect to S1C, when will the "characterization of the effluent" take place? Why wasn't an effluent characterization submitted as part of the facility's permit application? Further, it is unclear which (if any) of the deadlines identified in the Compliance Schedule (Cond. S12) applies to the effluent characterization.
3. Overflow to Holmes Harbor (Cond. S2.D.) -- The Permit indicates the permittee will not be required to prohibit seeps to wetlands from precipitation events exceeding the 10-year, 24-hour design storm. (Permit at 8.) As discussed above, the permittee should be informed that any discharges of pollutants to surface waters (including those before September 16, 2007, and those resulting from storms exceeding the design storm) are unpermitted discharges. Also, Condition S2.D identifies sampling and monitoring requirements for stormwater discharged to surface waters. These requirements should be contained in an individual NPDES permit rather than in this State Waste Discharge permit. In addition,

- NBBBI should be required to install an autosampler to sample any discharges from the overflow pipe that occur outside of regular business hours.
 - NBBBI should be required to measure or estimate the volume of any stormwater and/or rinse water discharged to surface waters through the overflow pipe.
 - NBBBI should be required to report any release to surface waters in writing.
 - Any discharges to surface waters should be subject to strict compliance with surface water quality standards.
4. Marine Water Inflow (Cond. S2E) -- any influx event should be reported to the Department in writing. In addition, the report should be submitted "within 24 hours" as specified in Permit Cond. S3.A -- not within 48 hours.
 5. Sampling and Analytical Procedures (Cond. S2F) -- the phrase "unless otherwise . . . approved in writing by the Department of Ecology (Department)" purports to allow the informal modification of permit terms. This language is impermissible, and has been disapproved by the Pollution Control Hearings Board.¹ Ecology should eliminate this language from its permit boilerplate.
 6. Management of Infiltration Basin Soils (Cond. S5.) -- The permit should identify the date by which the permittee is required to update the Soil Management Plan to be consistent with the 2005 Stormwater Management Manual for Western Washington. The date should be within twelve (12) months of permit issuance.
 7. Best Management Practices (Cond. S6.) -- the required identification and implementation of BMPs should be documented and included in the Pollution Prevention Plan (SWPPP) required by Cond. S13.
 8. Solid Waste Disposal / Leachate (Cond. S7B.) -- The permit should prohibit any discharge of leachate to surface waters and hydrologically-connected groundwaters. If the Department believes any such discharge may take place at the facility, the discharge should be covered by an individual NPDES permit containing appropriate protective provisions.
 9. Engineering Report (Cond. S8.) -- the May 1, 2007 date specified here is inconsistent with the March 1, 2007 date specified in the Compliance Schedule (Cond. S13).
 10. Upgrade of Current Wastewater System (Cond. S9) -- It appears that, despite the permittee's previous unauthorized site expansion which did not involve upgrading the stormwater treatment system to meet applicable modern standards, Ecology will only

¹ See, *Port of Seattle v. Ecology*, PCHB Nos. 03-140, 03-141, 03-142, available online at: <http://www.eho.wa.gov/searchdocuments/2004%20Archive/pchb%2003-140%20final.htm>

require the facility to satisfy the "six-month design storm" specified by the 1992 Storm Water Manual until the facility's *next* expansion. This relaxation of modern standards is inappropriate. The permittee should be held accountable for its past expansion (as well as its past discharges to surface waters), and should be required to meet modern standards now.

11. Spill Plan (Cond. S10.) -- The deadline for submitting an updated spill control plan should be within twelve (12) months of permit issuance. There is no justification for giving the permittee nearly two years (until May 1, 2007) to update an existing plan.
12. Compliance Schedule (Cond. S12.) -- The compliance schedule should identify quarterly or semi-annual requirements for status reports detailing the permittee's satisfaction of the compliance schedule deadlines. In addition, the permit should require the submission of a Draft Engineering Report (Facility Plan) for the New Wastewater Treatment System within twelve (12) months of permit issuance.
13. Pollution Prevention Plan (Cond. S13) -- The Pollution Prevention Plan as described is a SWPPP, which should be identified as a required "Permit Report Submittal" on Permit page 4. The SWPPP should be submitted to the Department, and made available to the public. It is a key part of the facility's pollution control technology. In addition, as noted above, the SWPPP requirements should include the boatyard-specific Best Management Practices identified in Cond. S6.

In conclusion, Puget Soundkeeper Alliance appreciates Ecology's efforts to protect water quality. Soundkeeper urges the Department to fulfill its mandate to "maintain the highest possible standards to ensure the purity of all waters of the state" (WAC 173-216-020) by revising and strengthening the subject permit as discussed above.

Please provide Soundkeeper and the undersigned a copy of the Department's final decision. Thank you.

Very truly yours,

Smith & Lowney, P.L.L.C.



By:
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Of Counsel