

RESPONSE TO COMMENTS

United States Department of Defense, Department of the Navy Naval Base Kitsap Bangor NPDES Permit #WA-002557-7

April 14, 2010

On October 23, 2009 the U.S. Environmental Protection Agency (EPA) issued a public notice for the United States Department of Defense, Department of the Navy, Naval Base Kitsap Bangor. The public notice was for the draft National Pollutant Discharge Elimination System (NPDES) Permit No. WA-002557-7 for discharges from once-through cooling water to Hood Canal and the discharge of graving dock floodwater.

This Response to Comments provides a summary of significant comments and provides corresponding EPA responses. Where indicated, EPA has made appropriate changes to the draft NPDES permit.

M. J. Olson, Captain, U.S. Navy, Commanding Officer, Naval Base Kitsap Bangor commented.

- 1. Comment:** Section I.B.5. prohibits the discharge of visible foam from the drydock. We understand this to mean anthropogenic associated foams. Agitating sea water, as done when flooding and dewatering the dry dock, routinely produces natural foam. Please remove 'visible foam' from this sentence.

Response: Visible foam is removed.

- 2. Comment:** Please remove Section I.B.6. that is a prohibition of discharges that offend the senses of sight, smell, touch or taste. This is highly subjective. Paragraph 5 in the same section has substantially similar requirement. It states: "The discharge shall not contain floating solids, visible foam or oily wastes that produce a visible sheen on the surface of the receiving water." EPA agreed to this change on page 39, Comment 19, of the Fact Sheet.

Response: EPA agrees and the Section I.B.6. is removed.

- 3. Comment:** We reiterate that there is no need in this permit to include BMPs not specifically associated with cooling water and dry dock dewatering. The NPDES application was submitted specifically for Delta Pier Dry Dock discharges only. The draft permit, however, includes processes that were not included or described in the application. The permit states in Section I.A.: "During the effective period of this permit, the permittee is authorized to discharge pollutants from the outfalls specified herein to Hood Canal, within the limits and subject to the conditions set forth herein. This permit authorizes the discharge of only those pollutants resulting from facility processes, waste streams, and operations that have been clearly identified in the permit application process. Authorized discharges included the discharge of once through non-contact cooling water (Auxiliary Salt Water) at Outfall 001 and the discharge of drydock floodwater at Outfall 002." Please remove BMPs in the draft permit not specifically

related to outfalls 001 and 002 as follows: II.B.4.b. (iii), (iv), (v), (vi), (vii), (viii), and (xi).

Please modify Page 8, II.B.3. containing broad language in the BMP Plan objectives to more specifically relate to Outfalls 001 and 002. Change the introductory paragraph to read: "The permittee shall develop and amend the BMP Plan consistent with the following objectives and control of pollutants that contribute to *Outfalls 001 and 002.*"

- II.B.3.a) Change "at the facility" to "at Outfalls 001 and 002".
- II.B.3.c) Change "Each facility" to "Each drydock component..."

The Navy's submitted permit application specifically requested NPDES permit coverage for these 2 discharges since all other industrial activities are permitted by the EPA NPDES Stormwater Multi-Sector General Permit (MSGP) for Industrial Activities. This action was in accord with direction in the MSGP guidance which states "Discharge of bilge and ballast water, pressure wash water, sanitary wastes and cooling water originating from vessels are prohibited under an industrial stormwater permit. These discharges require coverage under a separate NPDES permit if discharging to receiving waters or through a municipal separate storm sewer system."

Response: The application submitted is for SIC Code 3731, Ship Building and Repairing. Ships are repaired in-water at pierside outside of the drydock. Further, as of the date of this document, Bangor does not currently have active permit coverage under the MSGP.

In anticipation of Bangor obtaining active permit coverage under the MSGP, those BMPs that are related to stormwater runoff from the piers are removed from the individual permit and those BMPs to control pollutants generated from in-water vessel maintenance will remain in the individual permit.

In conjunction with this, the introductory paragraph for II.B.3. will be replaced with:

"The permittee shall develop and amend the BMP Plan consistent with the following objectives for control of pollutants that contribute to Outfalls 001, 002 and that are generated from in-water vessel maintenance above the waterline."

For Section II.B.3.a) "at the facility" will be replaced with "in the drydock, for the cooling water and for in-water vessel maintenance above the waterline".

For Section II.B.3.c) "Each facility" will be replaced with "Each drydock and in-water maintenance component above the waterline".

Sections II.B.4.b. (vii), (viii), and (xi) controlling pollution from stormwater will be removed from this individual permit and instead be specifically required by EPA Region 10 in the Navy's Storm Water Pollution Prevention Plan under Section 2.2.1 of the MSGP.

Sections II.B.4.b. (iii), (iv), (v) and (vi) controlling pollution from in-water maintenance will remain in the individual permit.

The BMPs related to managing pollutants in stormwater discharges will be required at the facility pursuant to Section 2.2.1 of the MSGP, which states:

“Your discharge must be controlled as necessary to meet applicable water quality standards. EPA expects that compliance with the other conditions in this permit will control discharges as necessary to meet applicable water quality standards. If at any time you become aware, or EPA determines, that your discharge causes or contributes to an exceedance of applicable water quality standards, you must take corrective action as required in Part 3.1, document the corrective actions as required in Parts 3.4 and 5.4, and report the corrective actions to EPA as required in Part 7.2.

Additionally, EPA may impose additional water quality-based limitations on a site-specific basis, or require you to obtain coverage under an individual permit, if information in your NOI, required reports, or from other sources indicates that your discharges are not controlled as necessary to meet applicable water quality standards.” [Emphasis added.]

The discharge of paint chips and spray paint containing copper antifoulants and dry abrasives, primarily copper slag, have the potential to violate the copper standard of 4.8 µg/L in the State of Washington Water Quality Standards, WAC 173-201A. Section II.B.4.b) (viii) helps ensure compliance with this standard by requiring “The mixing of paints and solvents shall be carried out in locations and under conditions such that no spill shall enter waters of the United States.”

Similarly, Section II.B.4.b)(vii) is a requirement to report and clean-up spills “such that no spill shall enter waters of the United States”. And Section II.B.4.b)(xi) helps prevent violations: “Solid chemicals, chemical solutions, paints, oils, solvents, acids, caustic solutions and waste materials, including used batteries, shall be stored in a manner **which will prevent the inadvertent entry of these materials into waters of the United States.**” That inadvertent entry and failure to clean-up spills will violate RCW 90.48.080 that prohibits the discharge of pollutant matter to Washington State waters. [Emphasis added]

The In-Water BMPs required under the individual permit are required at most shipyards in the State of Washington and are Best Available Technology Economically Achievable (BAT) for Bangor. They will also help Bangor meet the applicable water quality standards that are Washington’s water quality standard for copper.

- 4. Comment:** Page 11, II.B.4.b.iii: If EPA does not restrict the permit to only operations that affect Outfalls 001 and 002, then please change the third bulleted item to: "Conventional *dry* abrasive blasting on the vessel's hull while it is in the water is prohibited *unless fully contained.*" Likewise, change BMP (iv) (third bullet) to allow spray-paint or spray-coating applications when fully contained. EPA's MSGP fact sheet for Sector R, ship building and repair provides overwater BMPs for surface preparation, sanding, and paint removal by stating "Prohibit un-contained blasting or sanding activities performed over open water." Actual procedures in use at the Bangor waterfront are far more stringent and effective than the Washington state boatyard general permit or the draft permit. Containments are custom built for each preservation job. Negative air pressure is maintained within the containment to help prevent fugitive emissions. The containment is inspected each shift for tears and leaks, and filters with 99.4% filter

efficiency are used to clean the air during abrasive blast operations. The containment is also used during spray coating operations. The ability to conduct abrasive blasting and spray coating pier side is mission essential and we do not conduct them unless the above Bangor procedures and controls are in place.

Response: See Response to Comment #3. The MSGP does not prohibit uncontained overwater work. The MSGP, § 8.R.4.3.1 *Blasting and Painting Areas* states:

“Document in the SWPPP any standard operating practices relating to blasting and painting (e.g., prohibiting uncontained blasting and painting over open water or prohibiting blasting and painting during windy conditions, which can render containment ineffective).” [Emphasis added].

The BMPs contained within § 8.R.4.3.1 are examples, and not requirements. This renders optional containing blasting and painting and allows Bangor to discharge uncontained copper, lead and zinc from dry blasting and painting from in-water vessel maintenance. These metals have a potential to violate the water quality standards of the State of Washington.

The Navy now states that in-water surface preparation and painting is mission essential. The In-Water Vessel Maintenance – Surface Preparation BMPs are modified to allow the use of this mission essential over water dry blasting and spray coating application with full containment. Discharges of abrasive blasting grit, dust, dirt, debris, or any other pollutants to Hood Canal are prohibited.

Added to the introductory paragraph for In-Water Vessel Maintenance–Surface Preparation BMPs is:

All blasting and sanding activities must be performed within a fully contained enclosure with negative pressure ventilation and air filtration.

The third bullet is changed to:

- Conventional dry abrasive blasting on the vessel's hull while it is in the water is prohibited unless fully contained.

Similarly, the In-Water Vessel Maintenance - Paint and Coating Application BMPs are also modified to allow the use of mission essential over water spray painting and coating application with full containment.

The third bullet of the Water Vessel Maintenance–Surface Preparation BMPs is changed to:

- Conventional spray-paint or spray-coating applications to a vessel's hull while that vessel is in the water are prohibited unless fully contained.

Documentation requirements are still required for any in-water surface preparation or spray painting and coating operations of one hour or more in duration and any in-water coating or painting operation involving 1/2 gallon or more of paint or marine coating.

5. **Comment:** Page 10, II.B.4.b(ii) First paragraph: The text requires confining dust and overspray to the shipyard repair and construction areas. This is an overly broad statement as the permit should be drydock focused. Change to read, "Dust and overspray shall be confined to the drydock during abrasive blasting and spray painting of vessels and modules in the drydock." 5th paragraph: Please replace "yard" with "drydock".

Response: Yard is replaced with the word drydock. See Response to Comment 3.

6. **Comment:** Page 11, II.B.4.b.iii: The BMP states that innovative abrasive blasting systems will be allowed "if it has been demonstrated before-hand to EPA's satisfaction..." We reiterate our comment based on the previous draft permit. While we trust that EPA would endeavor to attend a demonstration and provide feedback as to adequacy, having an unbounded requirement is counter to effective production practice. The unintended consequence of this requirement will be to stifle innovation. For instance, it is unlikely that Waterfront Production would consider using an innovative system considering the vagaries of the approval process even if the system were, from an environmental standpoint, more protective than conventional methods. The same comment applies to innovative spray coating applications.

Response: Approval of innovative abrasive blasting and spray painting systems will be dropped. Added will be notification to EPA 30 days in advance of the use of any innovative system to provide EPA the opportunity to observe the BMPs.

7. **Comment:** Page 14, II.B.4.b.ix: Contact between Water and Debris: Our current cooling water management practice is to route cooling water to/from the vessel via temporary hoses. There is no contact between spent abrasives or paint chips and the cooling water. Additionally any stormwater that may contact paint chips and/or abrasives is routed to our treatment facility. The sentence starting with "Appropriate methods ... " is unnecessary. Please delete it.

Response: EPA concurs and the sentence is deleted.

8. **Comment:** Page 15, II.B.4.xiii: Education of Employees, Contractors, and Customers. The BMP requires training for "employees, and all contractors who work at the facility. Many Navy employees and contractors who work at the facility are not involved in vessel related industrial work such as administrative, security, facility maintenance, and janitorial. For these employees and contractors there is no point in providing BMP training. Please change the sentence to: "To facilitate the consistent and effective implementation of the BMPs described above, the Permittee shall develop a program for training *applicable* employees and contractors who work at the facility. The last sentence regarding "providing similar information to its customers" is not applicable.

Response: EPA concurs and "applicable" is added to the sentence. The last sentence requiring training to customers is removed.

9. **Comment:** Page 15, III.A. third paragraph: In the case of a spill, if it is not feasible to collect a sample the Navy then has 2 permit violations (1 for the spill and 1 for not collecting a sample). Recommend adding language such as "reasonable effort shall be made to collect a sample."

Response: No examples are provided in the comment as to why sampling would be infeasible. This sampling requirement is in all EPA NPDES permits. The permit requires sampling to “ensure that the effluent limitations set forth in this permit are not violated at times other than when routine samples are taken, the permittee shall collect additional samples at the appropriate outfall whenever any discharge occurs that may reasonably be expected to cause or contribute to a violation that is unlikely to be detected by a routine sample.” A spill is time when a discharge may reasonably be expected to cause or contribute to a violation. EPA agrees failure to sample such a discharge to determine impacts to Hood Canal is a violation. The condition is unchanged.

10. Comment: Page 18 IV.B: There is no waiver of immunity for fines under the CWA against the federal government. Please delete paragraphs B.1 and B.2 as they are inapplicable to the U.S. government.

Response: It is EPA's practice to include the language in question in all NPDES permits, as required by 40 CFR 122.41. EPA includes the language in NPDES permits regardless of whether the permittee is federal or private. The language does not change the fact that EPA does not assess punitive penalties against federal agencies for the reasoning set forth in *DOE v. Ohio*. However, since private contractors are "persons" under the CWA, EPA has the authority to assess penalties for NPDES violations by private contractors.

11. Comment: Fact Sheet Comment 15: In the previous draft NPDES permit, the Navy asked EPA to remove the permit provisions pertaining to underwater hull cleaning. Comment 15 of the fact sheet provides EPA's response. The Navy offers the following rebuttal. When Congress passed the Uniform National Discharge Standards amendment to the Federal Water Pollution Control Act, they re-defined the term "pollutant" at 33 USC 1362(6) to clarify that "pollutant" does not include "discharges incidental to the normal operation of vessels of the Armed Forces". As such, Section 33 USC 1311 prohibiting the discharge of a "pollutant" without an NPDES permit (Section 1342), or except in accordance with water quality standards (Section 1312) does not apply to discharges incidental to the normal operation of vessels of the Armed Forces. The submarines maintained at Submarine Base Bangor are vessels of the Armed Forces. Underwater hull husbandry is accepted as a discharge incidental to the normal operation of a vessel. Therefore, discharges incidental to the operation of these vessels are not subject to NPDES permitting. The State of Washington has not enacted a law which purports to broaden the definition of "pollutant" to include vessels of the Armed Forces, nor enacted a law which creates a no discharge zone that includes vessels of the Armed Forces. While the Navy will implement the provisions pertaining to best management practices for the limited circumstances in which it is necessary to conduct underwater hull cleaning, we must reiterate that the EPA does not have legal authority to include the provision in an NPDES permit and we again request that it be removed from the permit. The Navy has no objection to including a discussion of this legal background and the best management practices we will apply in the fact sheet.

Response: The restriction on underwater hull cleaning is removed.