



STATE OF WASHINGTON
ENVIRONMENTAL AND LAND USE HEARINGS OFFICE

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January 28, 2021

Sent by Email and US Mail

Jim Rard
Marine Servicenter
2417 T Avenue
Anacortes WA 98221

Gabrielle Gurian
Assistant Attorney General
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Olympia WA 98504-0117

Re: **PCHB No. 19-084**
MARINE SERVICENTER v. STATE OF WASHINGTON, DEPARTMENT OF
ECOLOGY

Dear Parties:

Enclosed is the Pollution Control Hearings Board's Findings of Fact, Conclusions of Law, and Order in this matter.

This is a FINAL ORDER for purposes of appeal to Superior Court within 30 days. *See* Administrative Procedures Act (RCW 34.05.542) and RCW 43.21B.180.

You are being given the following notice as required by RCW 34.05.461(3): Any party may file a petition for reconsideration with the Board. A petition for reconsideration must be filed with the Board and served on all parties within ten days of mailing of the final decision. WAC 371-08-550.

If you have any questions, please feel free to contact the staff at the Environmental and Land Use Hearings Office at 360-664-9160.

Sincerely,

Michelle Gonzalez, Presiding

MG/le/P19-084
Encl.

CERTIFICATION

On this day, I forwarded a true and accurate copy of the documents to which this certificate is affixed via United States Postal Service postage prepaid or via delivery through State Consolidated Mail Services to the attorneys of record herein.

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED 1/28/21, at Tumwater, WA.

**POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON**

MARINE SERVICENTER,

Appellant,

v.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Respondent.

PCHB No. 19-084

FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND ORDER

I. INTRODUCTION

Appellant Marine Servicer filed an appeal with the Pollution Control Hearings Board (Board) on December 9, 2019, challenging Notice of Penalty No. 16800 in the amount of \$30,000 and Administrative Order No. 16801 issued by the Washington State Department of Ecology (Ecology). Ecology filed a Motion for Summary Judgment and the Board granted the motion as to Issues Nos. 1, 3 and 4, and denied as to Issue No. 2, which proceeded to hearing. The Board found the violations had occurred and the only issue remaining was the reasonableness of the penalty. *Marine Servicer v. Dep't of Ecology*, PCHB No. 19-084 (Sept. 9, 2020).

The Board deciding this matter was comprised of Board Chair Neil L. Wise and Board Members Carolina Sun-Widrow and Michelle Gonzalez. Board Member Gonzalez presided for the Board. Jim Rard, Marine Servicer's owner, represented himself. Assistant Attorney General Gabrielle Gurian represented Ecology.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDER
PCHB No. 19-084

1 The Board held a virtual Zoom hearing in this matter on November 9, 2020. The Board
2 heard sworn testimony of witnesses, reviewed exhibits, and considered the parties' arguments.

3 Based upon the evidence presented, the Board makes the following:

4 **II. FINDINGS OF FACT**

5 1.

6 Stephanie Barney is a water quality specialist for the Department of Ecology's
7 Bellingham field office. She has a Bachelor of Science degree. Barney has worked
8 approximately eight years with Ecology. She is a permit manager and has completed nearly one
9 thousand inspections on behalf of Ecology. Barney is the boatyard permit manager for Skagit
10 County, and she conducted the investigation of Marine Servicer, which was located at 2417 T
11 Avenue in Anacortes. *Barney Testimony.*

12 2.

13 The boatyard general permit (BYGP) is required for boatyards to perform such work as
14 sanding, painting, and engine repair and maintenance. Marine Servicer's operations have
15 been covered under the BYGP since 1994. Ecology issues a new BYGP every five years, and
16 boatyards must renew coverage under each new BYGP. *Barney Testimony.*

17 3.

18 Marine Servicer's BYGP authorized the boatyard to discharge pressure-wash
19 wastewater to the City of Anacortes' wastewater treatment plant. *Barney Testimony; Ex. R-4, p.*
20 *6.* It also authorized stormwater discharge from remaining operations to the city of Anacortes'
21 stormwater sewer system, ultimately discharging to Fidalgo Bay. *Id.*

1 4.

2 The purpose of the BYGP is to protect state waters from pollutants that may be
3 discharged through permitted activities. Paint and grinding materials contain copper, and roofs
4 and chain link fences can contain zinc, which, in high concentrations, can be toxic to aquatic life.
5 Copper and zinc can negatively affect salmon and harm reproductive functions of fish. *Barney*
6 *Testimony*.

7 5.

8 The BYGP requires best management practices (BMPs), which are controls to reduce or
9 remove pollutants that may be present in boatyards before they enter stormwater. Stormwater is
10 not treated once it enters marine waters, ground waters, and municipal separate stormwater sewer
11 systems; therefore, it is important to install BMPs and monitor pollutants through sampling.
12 Marine Servicer sampled their stormwater discharges and their pressure-wash wastewater and
13 submitted these samples to Ecology. *Barney Testimony*.

14 6.

15 In evaluating stormwater discharge sampling, Ecology enforces tiered corrective action
16 for benchmark exceedances. *Barney Testimony; Ex. R-5, pp. 24-28 (BYGP, Condition S7)*. There
17 are three levels of corrective action. If a permittee has six or more exceedances, this triggers a
18 Level Three response, which is the highest level and requires installation of treatment to control
19 the exceedances. *Barney Testimony; Ex. R-5, p. 26-27*.

1 7.

2 On February 25, 2019, Barney inspected Marine Servicer because Ecology had
3 received a complaint about dust-generating activities at the boatyard. During her inspection,
4 Barney found violations, including anti-fouling copper-based paint that was not properly
5 contained and spilled oil from a boom truck that had not been cleaned. *Barney Testimony; Ex.*
6 *R-7.*

7 8.

8 Barney reviewed Marine Servicer's prior history and found it had multiple zinc and
9 copper exceedances, which triggered corrective actions. *Barney Testimony; Ex. R-9.* In
10 February 2012, under its prior permit cycle, Marine Servicer triggered a Level Two response
11 for having four exceedances. As required under Condition S7, Marine Servicer submitted a
12 Level Two source control report to Ecology. In 2014 and 2018, Marine Servicer triggered a
13 Level Three corrective action for copper and zinc exceedances. Barney also found Marine
14 Servicer had failed to submit an engineering report for the 2018 Level Three corrective action
15 to address stormwater treatment. *Barney Testimony.*

16 9.

17 On August 8, 2014, Marine Servicer had triggered a Level Three corrective action and
18 submitted an engineering report. The engineering report recommended installing a StormwaterRx
19 Aquip filtration unit. *Barney Testimony; Ex. R-2.* Implementation of the StormwaterRx Aquip
20 filtration unit should have occurred no later than August 14, 2015. Marine Servicer did not
21 install the stormwater filtration unit. *Barney Testimony.*

10.

Barney followed up with Rard to find out why the stormwater filtration unit had not been installed. Rard stated there was not a guarantee the filtration unit would address the problem.

Barney Testimony.

11.

Rard inquired about other possible sources contributing to the copper and zinc exceedances, such as groundwater contamination. However, the 2014 engineering report looked at the possibility of groundwater contamination contributing to the exceedances. The report noted there had been a water main break, which had been repaired, and that this was not a possible source contributing to exceedances. *Barney Testimony; Ex. R-2.*

12.

On March 29, 2019, Barney drafted a Stormwater Compliance Inspection Report. *Barney Testimony; Ex. R-7.* She followed up with Rard by email and phone to address the serious violations. In response, Marine Servicer implemented improvements. Barney determined, however, that because Marine Servicer failed to install stormwater treatment to remove copper and zinc over a period of several years, enforcement action was necessary.

Barney Testimony.

13.

Ecology assessed the penalty amount based on a matrix. Marine Servicer triggered Level Two and Level Three corrective responses for copper and zinc exceedances. Barney also noted Marine Servicer was aware of the appropriate response since they had prior violations

1 in the previous permit cycle and had to take corrective action. *Barney Testimony; Ex. R-9.*

2 Barney stated she had numerous conversations with Rard about the requirements to respond to a
3 Level Three violation, and he was unresponsive. *Barney Testimony.*

4 14.

5 Barney assessed a total penalty of \$30,000 based on Ecology's rating system. She
6 calculated \$4,000 for the Level Three violation and multiplied it by seven, the number of
7 additional exceedances that occurred after the January 30, 2018, Level Three trigger. She added
8 \$2,000 for the Level Two violation for a total of \$30,000. *Barney Testimony; Exs. R-9, R-10.*
9 Barney also considered the serious nature of Marine Servicer's violations in assessing the
10 penalty. Copper and zinc exceedances were frequent and at high levels, which were discharged
11 into Fidalgo Bay, an aquatic reserve established by Department of Natural Resources. She also
12 considered the economic benefit to Marine Servicecenter of not installing the stormwater
13 filtration unit. *Barney Testimony.*

14 15.

15 Rard did not present any evidence. He sold the boatyard and is no longer operating this
16 facility in Anacortes. *Rard Testimony.*

17 16.

18 Any Conclusion of Law deemed to properly be a Finding of Fact is hereby adopted as
19 such.

1 3.

2 Based on the three penalty factors, the Board concludes that an appropriate amount for
3 this penalty is \$14,000. The nature of the violation is serious. The copper and zinc exceedances
4 were frequent and at high levels. These metals have serious consequences for aquatic life, which
5 were discharged into Fidalgo Bay, an aquatic reserve. The Board finds Marine Servicer did
6 take remedial actions. Barney stated that Marine Servicer had implemented some of the
7 BMPs after her initial inspection. The Level Three violation required Marine Servicer to
8 submit an engineering report, which it did in 2014 but failed to do so in 2018. Marine
9 Servicer is no longer in operation as Rard had sold the boatyard; therefore, the penalty will
10 not influence future compliance by Marine Servicer. Based on these mitigating factors, the
11 Board focuses on the most serious Level Three violation, and does not assess a penalty of \$2,000
12 for the Level Two corrective action. In evaluating the Level Three violation in light of the
13 mitigating factors, the Board reduces the \$4,000 penalty that was multiplied by the seven
14 exceedances to \$2,000 multiplied by seven, for a total of \$14,000.

15 4.

16 Any Finding of Fact deemed to properly be a Conclusion of Law is hereby adopted as
17 such.

18 5.

19 Having so found and concluded, the Board enters the following:
20
21

1 IV. ORDER

2 The Board **AFFIRMS** the penalty, but reduces the amount to \$14,000.

3 SO ORDERED this 28th day of January, 2021.

4 POLLUTION CONTROL HEARINGS BOARD

5
6 
MICHELLE GONZALEZ, Presiding

7
8 
NEIL L. WISE, Board Chair

9
10 
CAROLINA SUN-WIDROW, Member

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