



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PO Box 47775 • Olympia, Washington 98504-7775 • (360) 407-6300

September 27, 2018

Mr. Ken Wiegardt, President
Willapa-Grays Harbor Oyster Growers Association
PO Box 3
Ocean Park, WA 98640

Re: Final Determination to Deny National Pollutant Discharge Elimination System Permit

Dear Mr. Wiegardt:

The Washington State Department of Ecology (Ecology) has completed the 30-day comment period for the tentative determination to deny the Willapa-Grays Harbor Oyster Growers Association (WGHOGA) January 8, 2016, application for an aquatic pesticide discharge National Pollutant Discharge Elimination System (NPDES) permit and applications for two Sediment Impact Zones. Ecology reviewed and considered all comments received. However, we did not find information to change Ecology's tentative denial determination. We found the proposed discharge cannot meet water quality standards to authorize the two Sediment Impact Zones and therefore the NPDES permit application is denied. The detailed basis for the decision is contained in Ecology's Toxic Cleanup Program, September 13, 2018 memorandum recommending the denial of the Sediment Impact Zone applications and the Southwest Regional Water Quality Program, September 20, 2018 memorandum recommending the denial of the NPDES permit application (see enclosed memoranda). We are notifying you, as the applicant, of this final permit decision and providing you information about your right to appeal.

Ecology reviewed the WGHOGA January 8, 2016 application for an aquatic pesticide discharge NPDES permit and applications for Sediment Impact Zones. Ecology also reviewed supporting information submitted by WGHOGA, studies and data relevant to the proposed discharge, and comments and analyses received during the State Environmental Policy Act (SEPA) environmental review. In this process, Ecology developed a Supplemental Environmental Impact Statement using the current, best available science including the 2017 EPA Risk Assessment that provided proxy reference values to compare all the monitoring results. Ecology fully reviewed the 2014 monitoring study, and the results from this commercial scale imidacloprid application indicated inconclusive pesticide efficacy with a range from a 90 percent reduction to 400 percent increase of shrimp burrows after use. Public comment received on the Draft Supplemental Environmental Impact Statement from some members of the public, federal agencies, and environmental groups provided additional documentation including studies and publications that imidacloprid is likely to affect the benthic and aquatic ecosystems beyond a localized scale. This was reflected in the Final Supplemental Environmental Impact Statement issued by Ecology.

Following issuance of the Final Supplemental Environmental Impact Statement, and as required by Washington Administrative Code (WAC) WAC 173-220-110, Ecology made a "tentative staff determination" to deny the permit on April 9, 2018. In accordance with WAC 173-220-050, Ecology



published the notice of the intent to deny the permit in the newspapers *The Chinook Observer* and *The Daily World* on April 9, 2018 . Ecology opened a comment period from April 9 to May 14, 2018 (35 days) for the public to submit comments. We received numerous comments that supported the denial of the permit mostly noting generalized environmental precaution and health. There were several that opposed the tentative determination to deny the permit, including WGHOGA, noting economics, ecosystem services, and our evaluation of the biological resources inside and outside the Sediment Impact Zone. Enclosed is the compilation of Ecology's response to categorized comments, including how to find the public comments submitted.

As described in RCW 90.48.520, Ecology cannot issue a permit if the agency finds the discharge "would violate any water quality standard, including toxicant standards, sediment criteria, and dilution zone criteria." It is the policy of the state of Washington, as set out in RCW 90.48.010, to maintain the highest possible standards to insure the purity of waters of the state consistent with protections such as "protection of wild life, birds, game, fish and other aquatic life . . ." Any permit Ecology issues must comply with surface water quality standards of the state of Washington, including WAC 173-201A, Water Quality Standards for surface waters of the state of Washington, WAC 173-204, Sediment Management Standards, and applicable federal rules. Under the Sediment management standards, a discharge that will violate or has a substantial potential to violate the sediment quality standards is required to obtain an authorized sediment impact zone. Authorization of a sediment impact zone requires compliance with several requirements as set out in WAC 173-204-415(1)(a)-(j). The two requirements that the WGHOGA's proposed discharge cannot meet are: (1) that the discharge shall not have an adverse effect to biological resources within the sediment impact zone above a minor adverse effects level; and (2) that the discharge shall not result in a violation of the sediment quality standards outside of the sediment impact zone. See WAC 173-204-415(1)(f) and (i).

WGHOGA's letter of January 2, 2018, discussed addressing the proposed discharge as an "experimental" discharge in contrast with the current application in which the discharge is for commercial purposes. WGHOGA subsequently confirmed that the January 2, 2018 letter was not a new permit application and not intended to modify the pending permit application. Although such an experimental permit application is not before Ecology, the issues related to an imidacloprid discharge would remain whether the purpose of the discharge is "experimental" or for commercial purposes. An "experimental" discharge application that is substantially similar to the current application request would likely not meet the requirements of the sediment management standards unless it addresses the harmful impact of imidacloprid on the biological resources of Washington, and the movement of imidacloprid beyond the boundaries of a sediment impact zone.

You have a right to appeal this final decision to the Pollution Control Hearing Board (PCHB) within 30 days of the date of receipt of this decision. The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

To appeal you must do both of the following within 30 days of the date of receipt of this decision:

- **File your appeal and a copy of this Determination with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.**
- **Serve a copy of your appeal and this Determination on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.**

You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

ADDRESS AND LOCATION INFORMATION

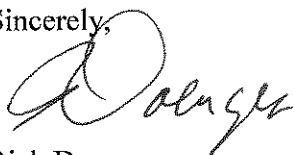
Street Addresses	Mailing Addresses
Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	Department of Ecology Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
Pollution Control Hearings Board 1111 Israel Road SW STE 301 Tumwater, WA 98501	Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903

MORE INFORMATION

- **Pollution Control Hearings Board Website**
<http://www.eluho.wa.gov/Board/PCHB>
- **Chapter 43.21B RCW - Environmental and Land Use Hearings Office – Pollution Control Hearings Board**
<http://app.leg.wa.gov/RCW/default.aspx?cite=43.21B>
- **Chapter 371-08 WAC – Practice And Procedure**
<http://app.leg.wa.gov/WAC/default.aspx?cite=371-08>
- **Chapter 34.05 RCW – Administrative Procedure Act**
<http://app.leg.wa.gov/RCW/default.aspx?cite=34.05>
- **Ecology's Laws, rules, & rulemaking website**
<https://ecology.wa.gov/About-us/How-we-operate/Laws-rules-rulemaking>

Please feel free to contact me at (360) 407-6271 if you have questions regarding this letter, the enclosed technical memoranda, response to comments, or the appeal process.

Sincerely,



Rich Doenges
Southwest Region Manager
Water Quality Program

Enclosures: Toxics Cleanup Program memorandum, dated Sept. 13, 2018
Water Quality Program memorandum, dated Sept. 20, 2018
Response to Public Comments

By CERTIFIED MAIL: 9489 0090 0027 6021 4927 83

cc: Heather Bartlett, Ecology
Jim Pendowski, Ecology
Barry Rogowski, Ecology