

**SEATTLE POST-INTELLIGENCER**

[http://seattlepi.nwsourc.com/specials/brokenpromises/287997\\_nicholsbro09.asp](http://seattlepi.nwsourc.com/specials/brokenpromises/287997_nicholsbro09.asp)

## **Some businesses find flouting environmental laws is cost-effective**

### **State's Hydraulic Code often fails in protecting Puget Sound**

*Monday, October 9, 2006*

**By ROBERT MCCLURE**

P-I REPORTER

FREELAND, Whidbey Island -- The 360-foot-long paddlewheel steamboat was late for delivery. The Nichols Brothers customer was losing millions. With no legal way to launch the steamer into shallow Holmes Harbor, Matt Nichols directed his boatyard workers to do exactly what the government told him not to do: install an unpermitted boat ramp.

A federal official scolded Nichols for building the ramp, but decided to allow its use to avoid "the substantial economic consequences of delaying this launch."

Then boatyard employees botched the June 2003 launch of the \$45 million Empress of the North, sending it careening down the ramp at warp speed. Stuck in the mud, it had to be pulled free by tugboats whose propeller wash gouged out more than 65,000 square feet of eelgrass, an area considerably bigger than a football field -- critical shelter for tiny fish that sustain the Puget Sound food chain.

Over the years, the boatyard also has put up temporary buildings without the required permits, installed an unapproved septic system and been cited for, among other things, filling in wetlands and ripping up tidelands without a permit.

The saga of Nichols Brothers shows how environmental agencies are hamstrung by businesses that repeatedly fail to follow the rules. Critics say it's a flagrant example of how the state's Hydraulic Code -- a set of rules meant to safeguard shorelines -- frequently doesn't protect the Sound.

"I think they have a motto that is: 'Catch me if you can,' " said Christine Goodwin, president of Friends of Holmes Harbor, a group that monitors the health of the harbor. "They do what they need to do to build that boat."

Responds Bryan Nichols, Matt's son and president of the company: "I really hope I can prove her wrong. I guess we'll have to keep a clean record from here on."

His father, chief executive officer and board chairman of the company, said the boatyard has actually helped restore Holmes Harbor since the business opened in 1964. The sawmill that formerly occupied the site left the area littered with logs and sawdust that his family cleaned up, he said.

The company also has spent \$2 million to comply with rules requiring a system to catch and cleanse water running off the boatyard, the company said.

It paid \$97,000 in fines for launching the Empress. Nichols Brothers twice replanted the destroyed eelgrass and hopes the latest plantings will survive and spread. The company also has promised to do additional restoration to compensate for the harm caused, and awaits government instruction on how to proceed.

"We've always prided ourselves on doing what is the correct and right thing to do," Matt Nichols said.

Responds neighbor and critic Jay Hale: "His environmental work that he's done and that he brags about is almost 100 percent in response to being fined or told he had to do it."

After the illegal launching system was discovered in 2003, the state Department of Fish and Wildlife ordered Nichols Brothers to install by the end of 2007 a proper launch that won't endanger eelgrass or the salmon and other creatures that live there, and won't block sand from being transported naturally along the shoreline.

The company has dismantled the rail system erected for the Empress of the North. But the new launch won't be finished by the deadline.

Still, the company probably won't get in trouble.

"My feeling is if they're showing significant progress toward an alternate plan, I don't see how I could shut them down, keep them from launching boats. I'm not that kind of person," said Doug Thompson, the Fish and Wildlife habitat biologist for the area.

Ecology spokesman Larry Altose also credited Nichols Brothers for making progress, saying the company "is really coming close to turning an important corner."

But homeowners in the otherwise-residential neighborhood object to what was once a mom-and-pop boatyard that now builds ships weighing millions of pounds in a site zoned "light industrial."

Matt Nichols charges that the critics just want him to go out of business. He asserts that the company is "abiding by all the laws."

Nichols has its supporters. One of its strongest and most influential is Mike Shelton. Before his election as a county commissioner, he was Nichols' general manager -- the one who received a 1991 citation for unauthorized filling of a wetland.

Shelton is one of three county commissioners -- all strong Nichols supporters -- who are responsible for enforcing building codes as well as laws protecting shorelines and wetlands.

"When 250 of your constituents get a family-living-wage job in an industry in a county that has precious little employment, at least at the family-wage rate, yeah, I'm a big supporter," Shelton said.