



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PO Box 47600 • Olympia, WA 98504-7600 • 360-407-6000

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June 8, 2021

Thom Fischer, President
Electron Hydro, LLC
1800 James Street, Suite 201
Bellingham, WA 98225-9999

Notice of Penalty Docket #	19488
Site Location	19318 Electron Road East Orting, WA 98360
Penalty Amount	\$501,000
Due Date	Within 30 days after receiving this Notice of Penalty

Re: Notice of Penalty

Dear Thom Fischer:

The Department of Ecology (Ecology) has issued the enclosed Notice of Penalty to Electron Hydro, LLC for violating provisions of:

- Chapter 90.48.080 Revised Code of Washington (RCW) – Unlawful Discharge of Polluting Matter into Waters of the State
- Construction Stormwater General Permit WAR 306648 Condition S5.F. – Noncompliance Notification, and S9.D.9. – Control Pollutants

Please read the enclosed Notice of Penalty describing the violation(s) and options for responding to the penalty.

Ecology issues news releases for all major penalties and enforcement actions, including this one. We inform the news media all major penalties that we issue. We will do so for this penalty later today.

Electron Hydro, LLC
June 8, 2021
Page 2

If you have questions, please contact Carol Serdar at carol.serdar@ecy.wa.gov or by phone at (360) 742-9751.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Laura Watson', with a stylized flourish at the end.

Laura Watson
Director

Enclosures: Notice of Penalty Docket #19488
Draft News Release

.cc: Fiscal-Penalty Desk, Ecology

By Certified Mail: 9489 0090 0027 6072 1470 52

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

IN THE MATTER OF PENALTY)	NOTICE OF PENALTY
ASSESSMENT AGAINST)	INCURRED AND DUE
Electron Hydro, LLC)	PENALTY DOCKET #19488
)	

To: Thom Fischer
Electron Hydro, LLC
1800 James Street, Suite 201
Bellingham, WA 98225-4631

Notice of Penalty Docket #	19488
Site Location	19318 Electron Road East Orting, WA 98360
Penalty Amount	\$501,000
Due Date	Within thirty (30) days after receiving this Notice of Penalty

The Department of Ecology (Ecology) has assessed a penalty against Electron Hydro, LLC in the amount of \$501,000 for violating provisions of:

- Chapter 90.48.080 Revised Code of Washington (RCW) – Unlawful Discharge of Polluting Matter into Waters of the State
- Construction Stormwater General Permit WAR 306648 Condition S5.F. – Noncompliance Notification, and S9.D.9. – Control Pollutants

Chapter 90.48 RCW gives Ecology has authority to issue this penalty under RCW 90.48.144 and is basing the penalties on the violations listed in this notice.

DETERMINATION OF VIOLATION(S)

Ecology's determination that a violation/violations has/have occurred is based on the violations listed below.

Violation(s):

Violation Description:

This penalty is being issued to Electron Hydro, LLC, who willingly placed sports turf and crumb rubber into the bypass channel of the Puyallup River while permitted under the Construction Stormwater General Permit (CSWGP) WAR306648. The placement of this material was not authorized by the CSWGP nor by the US Army Corps of Engineers (USACE) Nationwide Permits (NWP) #3 and #13, nor Pierce County's Substantial Development Shoreline Permit.


Electron Hydro, LLC

June 8, 2021

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Background:

Electron Hydro, LLC submitted a Joint Aquatic Resources Permit Application in 2017 for the reconstruction of the hydroelectric diversion dam and intake structure. Electron Hydro, LLC, applied for coverage under the CSWGP in 2018 for the reconstruction activities. On July 30, 2020, Ecology received an Environmental Report Tracking System (ERTS) # 699710 from a citizen stating that turf with crumb rubber bits was ripped away and washed downstream after the turf was placed under the bypass channel liner. The citizen reported that material was discharged downstream in the Puyallup River. On August 3, 2020, Ecology's Southwest Water Quality Program, Watershed Resources Unit Compliance Manager, Carol Serdar, received the ERTS and became aware of Electron Hydro, LLC's use of sports turf under the Puyallup River bypass channel liner, and the delivery of the turf downstream while under CSWGP WAR306648 – Electron Hydro LLC Intake.

Since the filing of the July ERTS, Ecology's Carol Serdar has been to the site seven (7) times. Ecology's Jess Eakens, the CSWGP area Inspector, has been to the site four (4) times. Construction Stormwater General Permit inspection reports were written for each site visit. Three (3) of the visits included a Corrections Required form for issues related to stormwater management and the CSWGP.

Additional technical assistance continued to be provided (via phone and email) to Electron Hydro, LLC. The technical assistance included, but was not limited to:

- Discussions of CSWGP Best Management Practices and permit coverage related to site-specific items with the Permittee.
- Review of the documentation for the CSWGP, the Stormwater Pollution Prevention Plan (SWPPP), and other documents in the Site Log Book with the Permittee.
- Discussions of continued release of sports turf and crumb rubber through the slumps, rips, and tears of the liner; and status of the clean-up and summary report of the discharged sports turf and crumb rubber downstream of construction area with the Permittee.
- Discussions regarding the distinction between the required water quality monitoring per the CSWGP and the Water Quality Monitoring Plan required by USACE NWP Stop Work Order with the Permittee.
- Review, discussions, and observations regarding construction activities within the overlap of the Pierce County Shoreline Substantial Development Permit with the Permittee.
- Review and discussions of the WDFW's Hydraulic Permit Approval conditions and the USACE NWP #3 and #13 with the Permittee.

This penalty is calculated for the unauthorized placement of sports turf and crumb rubber in the bypass channel and the subsequent discharge of portions of the liner and sports turf with crumb rubber into the Puyallup River where it migrated downstream, violating RCW 90.48.080 (Discharge of Polluting Matter in Waters Prohibited) and two (2) Construction Stormwater General Permit Conditions: S5.F. (Noncompliance Notification) and S9.D.9. (Control Pollutants).

The photos below were taken during each of the seven (7) site visits. The photos show the downstream end of the black plastic liner that held the Puyallup River bypass channel during 2020 construction. The sports turf and crumb rubber were placed under the black plastic liner prior to the river being diverted into the constructed bypass channel on July 28, 2020. Soon after the diversion of the river, the force of the river flow caused the lower portion of the sports turf and liner to rip away and discharge downstream. After the initial portion of the liner was ripped away, the continuous flow of water continued to cause a discharge through the varying slumps, rips, and tears. These openings within the black liner are shown in the photos below. The sports turf and crumb rubber were installed in a manner that allowed for continuous discharge of these materials through the openings of the black liner when exposed to the flowing river water. Additionally, the rips in the liner exposed the sports turf and crumb rubber to precipitation. The exposure of the sports turf and crumb rubber to precipitation likely resulted in additional discharges of polluted stormwater into the river.

From August 3, 2020 through November 13, 2020, Ecology received emails from the Puyallup Tribe related to portions of sports turf and crumb rubber that continued to be found downstream of the construction area. On October 25, 2020, the river was diverted to the left bank to enable the removal of the bypass channel liner. Ecology conducted an inspection on October 27, 2020 and observed a portion of the sports turf at the entrance of the fish ladder at the downstream end of the diversion dam, and requested the sports turf be removed. Ecology was informed by Thom Fischer that he removed this portion the same day. Therefore, Ecology determined that a continual discharge of sports turf and crumb rubber into the Puyallup River occurred from July 28, 2020 until October 27, 2020.

Violations Summary:

Total penalty = \$501,000

1. Violation 90.48.080 RCW – Discharge of polluting matter in waters prohibited:

Summary: This violation includes the unauthorized and unsanctioned placement of rolls of sports turf and crumb rubber in the staging area of the Electron Hydro LLC Intake construction site and subsequent discharge into the Puyallup River. A continual discharge of sports turf and crumb rubber into the Puyallup River occurred through the slumps, rips, and tears for 92 days, from July 28, 2020 until October 27, 2020. During the same timeframe, the rips in the liner exposed the sports turf and crumb rubber to precipitation, resulting in the likelihood of additional polluting discharges to the river. Therefore, this violation uses the duration of the violation from July 28, 2020 through October 27, 2020 = ninety-two (92) days.

Total penalty amount for 90.48.080 RCW violation:

\$5,000 x 92 days = \$460,000

2. CSWGP Condition S5.F. (Noncompliance Notification)

Summary: This violation includes the unauthorized and unsanctioned placement of rolls of sports turf and crumb rubber in the staging area of Electron Hydro LLC Intake – WAR306648, then placement of the material in the constructed bypass channel, and subsequent discharge into the Puyallup River. The permittee was obligated to report the discharge of sports turf and crumb rubber as this noncompliance event had the potential to cause a threat to the environment, and

posed a threat to aquatic life that are protected by water quality standards. The Permittee is required to report the discharge of material within twenty-four (24) hours to Ecology. The ERTS was reported to Ecology by a public citizen, not the Permittee. On August 11, 2020, a Corrections Required form was provided to the Permittee with the requirement to comply with CSWGP Condition S5.F., which includes the requirement to provide Ecology with a detailed report of any noncompliance events that pose a risk to human health or the environment. Ecology's Corrections Required form required Electron Hydro, LLC to submit the report on or before August 17, 2020. The Permittee's representative submitted a report to the CSWGP database (PARIS) on August 20, 2020. Therefore, this violation uses the duration of the violation from August 17, 2020 through August 20, 2020 = three (3) days.

Total penalty amount for CSWGP Condition S5.F. violation:

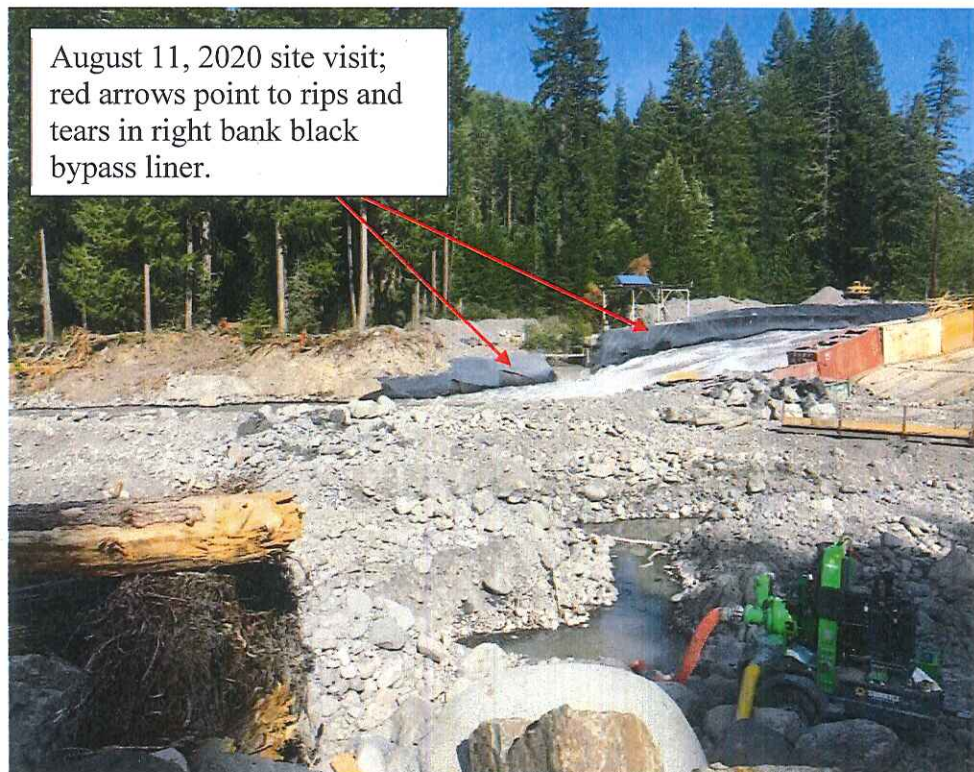
$$\$2,000 \times 3 \text{ days} = \$6,000$$

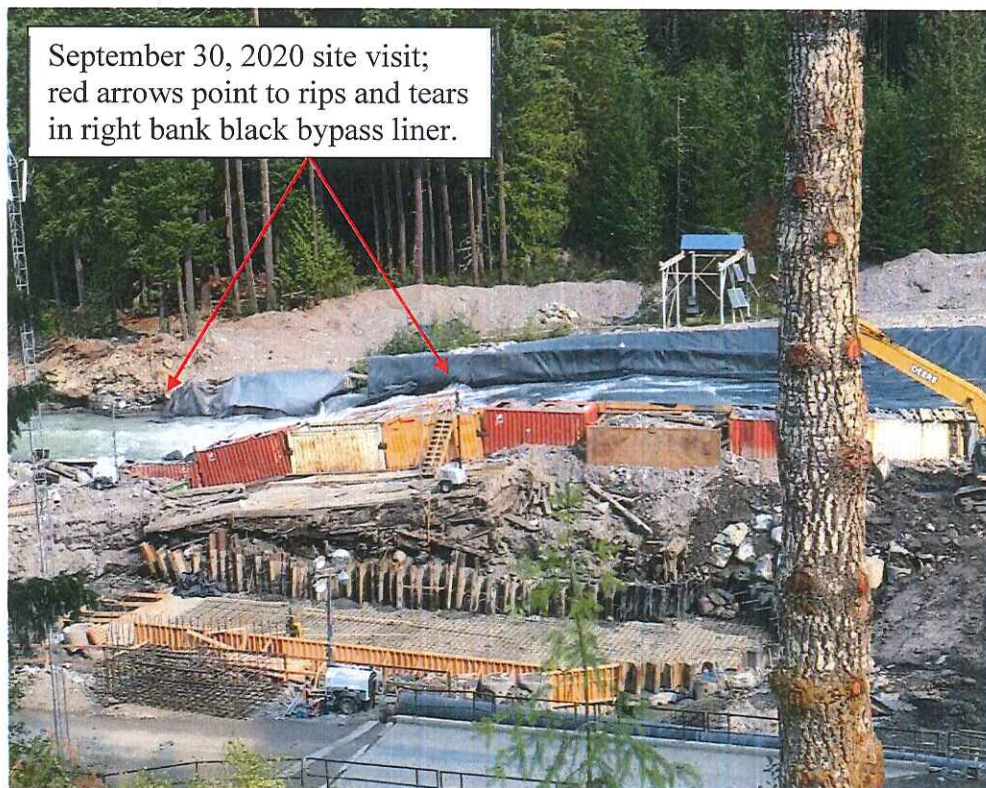
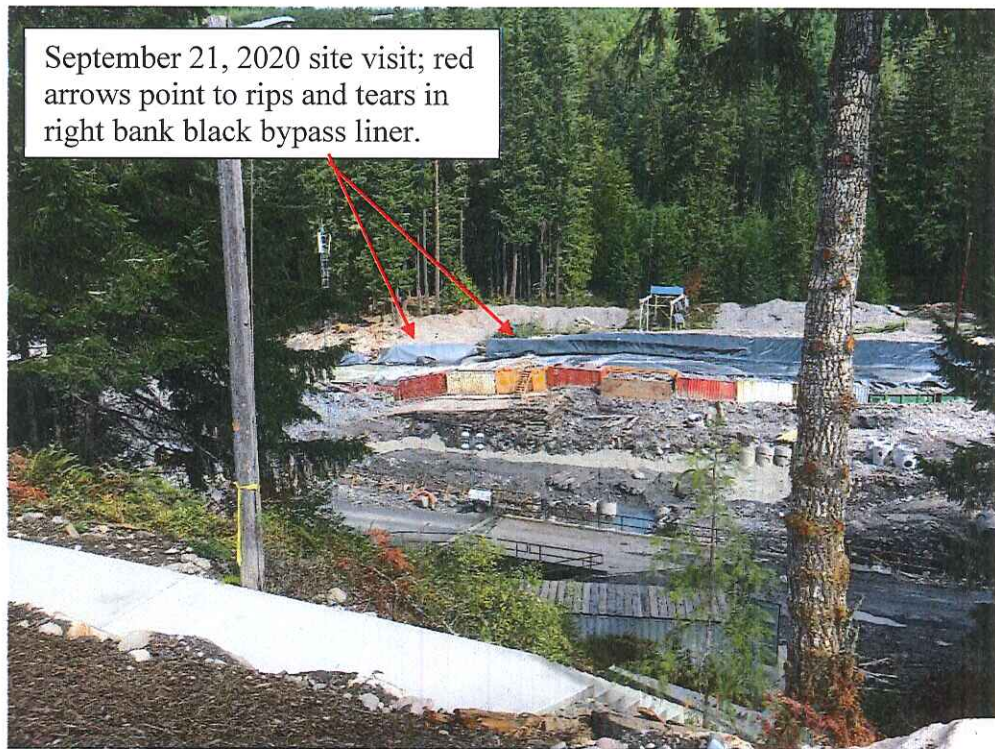
3. CSWGP Condition S9.D.9. (Control Pollutants)

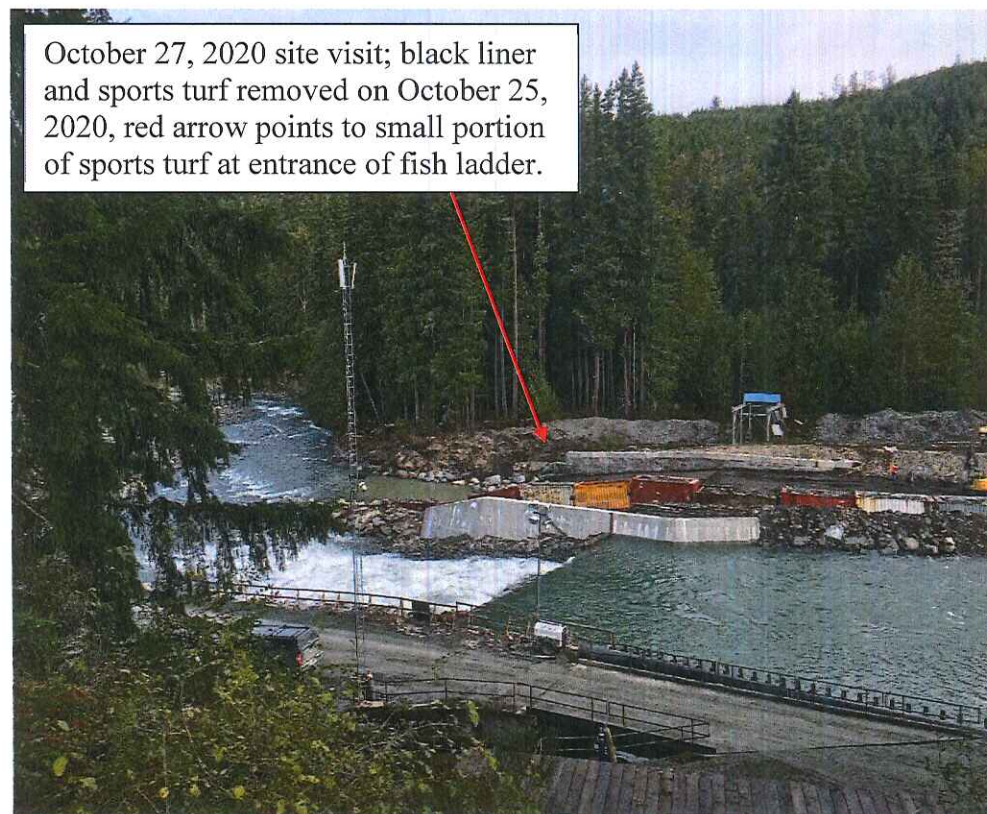
Summary: This violation includes the unauthorized and unsanctioned placement of rolls of sports turf and crumb rubber in the staging area of Electron Hydro LLC Intake – WAR306648, then placement of the material in the constructed bypass channel and subsequent discharge into the Puyallup River. These actions demonstrate the Permittee violated the CSWGP Condition S9.D.9, which requires a permittee to implement a SWPPP that includes the requirement to “[d]esign, install, implement and maintain effective pollution prevention measures to minimize the discharge of pollutants.” Condition S9.D.9.a. also includes a requirement that a permittee handle pollutants in a manner that does not cause contamination of stormwater. The placement of the sports turf and crumb rubber into the bypass channel violated these conditions of the CSWGP. This violation uses the duration of the violation for each day of a CSWGP inspection = seven (7) days.

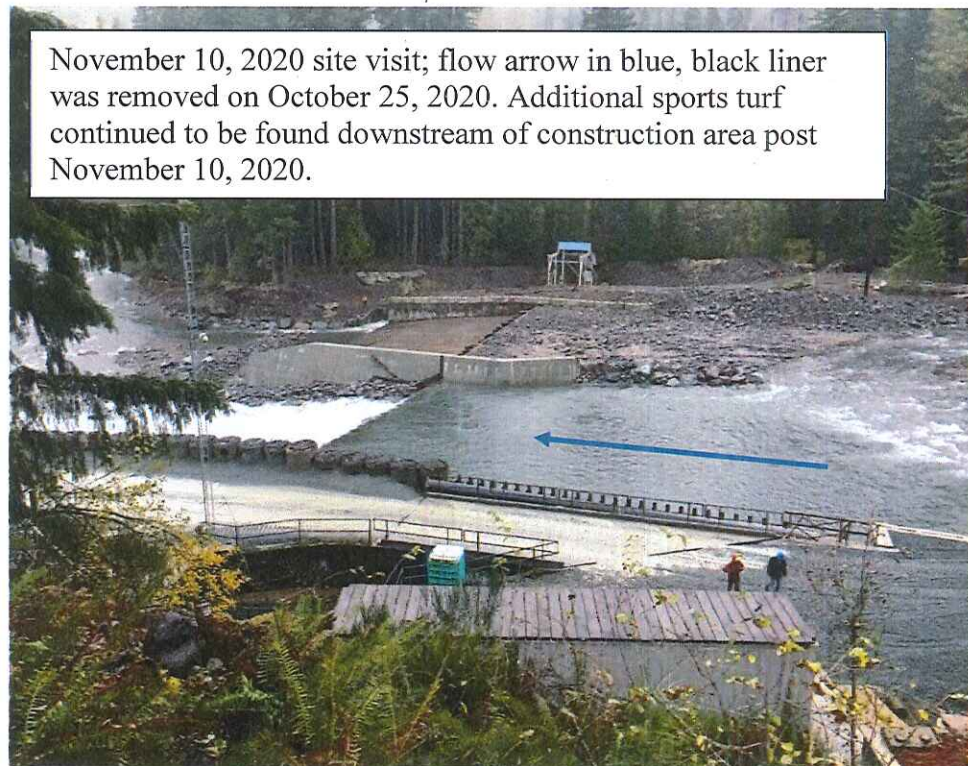
Total penalty amount for CSWGP Condition S9.D.9. violation:

$$\$5,000 \times 7 \text{ days} = \$35,000$$









November 10, 2020 site visit; flow arrow in blue, black liner was removed on October 25, 2020. Additional sports turf continued to be found downstream of construction area post November 10, 2020.

ELIGIBILITY FOR PAPERWORK VIOLATION WAIVER AND OPPORTUNITY TO CORRECT

Under RCW 34.05.110, small businesses are eligible for a waiver of a first-time paperwork violation and an opportunity to correct other violations. We have made no determination as to whether you meet the definition of a “small business” under this section. However, we have determined that the requirements of RCW 34.05.110 do not apply to the violation(s) due to a conflict with federal law or program requirements, including federal requirements that are a prescribed condition to the allocation of federal funds to the state.

FAILURE TO COMPLY WITH THIS NOTICE OF PENALTY

Continued failure to correct the violations listed in this Notice of Penalty may result in additional, escalated penalties.

OPTIONS FOR RESPONDING TO A NOTICE OF PENALTY

Option 1: Pay the penalty within thirty (30) days after receiving the Notice of Penalty.

Make your payment payable to the *Department of Ecology*. Please include the penalty docket number on your payment.

Mail payment to:

Department of Ecology
Cashiering Unit
PO Box 47611
Olympia, WA 98504-7611

Note: Ecology may take legal action to collect the penalty if you have not paid thirty (30) days after receiving the Notice of Penalty, and have not appealed.

Option 2: Appeal to the Pollution Control Hearings Board (PCHB) and serve Ecology within thirty (30) days after the date of receipt of the Notice of Penalty.

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 thirty (30) days after the date of receipt of this Notice of Penalty:

- File your appeal and a copy of this Notice of Penalty with the PCHB during regular business hours.
- Serve a copy of your appeal and this Notice of Penalty on Ecology in paper form, by mail or in person. Email 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 Southeast Lacey, WA 98503	Department of Ecology Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
Pollution Control Hearings Board 1111 Israel Road Southwest, Suite 301 Tumwater, WA 98501	Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903

CONTACT INFORMATION

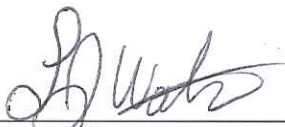
Please direct all questions about this Notice of Penalty to:

Carol Serdar
Department of Ecology
Southwest Regional Office
Water Quality Program
PO Box 47775
Olympia, WA 98504-7775
Phone: (360) 742-9751
Email: carol.serdar@ecy.wa.gov

MORE INFORMATION

- **Pollution Control Hearings Board**
<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>

SIGNATURE



Laura Watson
Director

June 8, 2021