



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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

711 for Washington Relay Service • Persons with a speech disability can call 877-833-6341

January 24, 2022

Brandon Smith
Milestone Companies
PO Box 1376
Sumner, WA 98390

Notice of Penalty Docket #	20884
Site Location	3933 Ingleside Drive Southeast Lacey, WA 98503
Penalty Amount	\$72,000
Due Date	Within 30 days after receiving this Notice of Penalty

Re: Notice of Penalty

Dear Brandon Smith:

The Department of Ecology (Ecology) has issued the enclosed Notice of Penalty to Milestone Companies for violating provisions of:

- Chapter 90.48.080 Revised Code of Washington (RCW) – Water Pollution Control
- Chapters 173-226-070 and 173-226-090 Washington Administrative Code (WAC)- Waste Discharge General Permit Program
- Construction Stormwater General Permit No. WAR308378

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. A copy was sent to you by email with the opportunity to review it for factual errors. Please respond by 8 a.m. tomorrow with any comments related to the news release.

If you have questions please contact Evan Wood at evan.wood@ecy.wa.gov or (360) 706-4599.

Sincerely,

Vincent McGowan, P.E.
Water Quality Program Manager
Department of Ecology

Enclosures: Notice of Penalty Docket #20884
Draft News Release

By certified mail: 9489 0090 0027 6096 5310 59

cc: Fiscal-Penalty Desk, Ecology

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

IN THE MATTER OF PENALTY)	NOTICE OF PENALTY
ASSESSMENT AGAINST)	INCURRED AND DUE
Milestone Companies)	PENALTY DOCKET #20884
Brandon Smith)	

To: Brandon Smith
Milestone Companies
PO Box 1376
Sumner, WA 98390

Notice of Penalty Docket #	20884
Site Location	3933 Ingleside Drive Southeast Lacey, WA 98503
Penalty Amount	\$72,000
Due Date	Within thirty (30) days after receiving this Notice of Penalty

The Department of Ecology (Ecology) has assessed a penalty against Milestone Companies in the amount of \$72,000 for violating provisions of:

- Chapter 90.48.080 Revised Code of Washington (RCW) – Water Pollution Control
- Chapter 173-226-070 Washington Administrative Code (WAC)- Waste Discharge General Permit Program
- Construction Stormwater General Permit No. WAR308378

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 violations have occurred is based on the violations listed below.

Violation(s):

Violation description:

Milestone Companies is the Permittee, site contact, and owner of the Woodbrook Townhomes project located at 3933 Ingleside Drive Southeast, Lacey, Washington. The Woodbrook Townhomes' construction stormwater enters the city of Lacey MS4 system that discharges to the Deschutes River. The wastewater discharge is authorized subject to the benchmarks, monitoring and reporting requirements, terms, and condition established in Construction Stormwater General Permit (CSWGP) No. WAR308378.

Discharges exceeding permit benchmarks were documented on:

- January 12, 2021
- January 13, 2021
- January 14, 2021
- January 15, 2021
- January 16, 2021
- January 17, 2021

- January 18, 2021
- January 19, 2021
- January 20, 2021
- January 21, 2021
- January 22, 2021
- February 4, 2021

CSWGP Special Condition S5.A requires that "Anytime sampling performed in accordance with Special Condition S4.C indicates turbidity has reached the 250 NTUs or more (or transparency less than or equal to 6 cm), high Turbidity reporting level, the Permittee must notify Ecology within twenty-four (24) hours of analysis..." No Environmental Report Tracking System (ERTS) report was filed for any of the above listed discharges.

In addition to the discharge of turbid construction stormwater, and failure to properly notify Ecology, the site remains out of compliance with BMP standards laid out in Section S9 of the CSWGP. This Penalty does not include Special Condition S9 violations that occurred prior to Ecology's February 24, 2021, site inspection.

Violations of CSWGP Special Condition S9 were noted on:

- February 24, 2021
- July 23, 2021
- September 27, 2021
- September 29, 2021
- September 30, 2021
- October 4, 2021
- October 6, 2021
- October 12, 2021
- October 20, 2021
- October 21, 2021
- October 22, 2021
- October 25, 2021

Special Condition S9. Stormwater Pollution Prevention Plan (SWPPP)

D. SWPPP – Narrative Contents and Requirements

2. Establish Construction Access

- b. Stabilize access points with a pad of quarry spalls, crushed rock, or other equivalent Best Management Practices (BMPs), to minimize tracking sediment onto roads.
- d. If sediment is tracked off site, clean the affected roadway thoroughly at the end of each day, or more frequently as necessary (for example, during wet weather). Remove sediment from roads by shoveling, sweeping, or pickup and transport of the sediment to a controlled sediment disposal area.

4. Install Sediment Controls

- b. Minimize sediment discharges from the site. The design, installation and maintenance of erosion and sediment controls must address factors such as the amount, frequency, intensity and duration of precipitation, the nature of resulting stormwater runoff, and soil characteristics, including the range of soil particle sizes expected to be present on the site.

5. Stabilize Soils

- a. The Permittee must stabilize exposed and unworked soils by application of effective BMPs that prevent erosion. Applicable BMPs include, but are not limited to: temporary and permanent seeding, sodding, mulching, plastic covering, erosion control fabrics and matting, soil application of polyacrylamide (PAM), the early application of gravel base on areas to be paved, and dust control.
- b. The Permittee must control stormwater volume and velocity within the site to minimize soil erosion.
- d. Depending on the geographic location of the project, the Permittee must not allow soils to remain exposed and unworked for more than the time periods set forth below to prevent erosion.

West of the Cascade Mountains Crest

During the dry season (May 1 - September 30): **Seven (7) days**

During the wet season (October 1 - April 30): **Two (2) days**

- e. The Permittee must stabilize soils at the end of the shift before a holiday or weekend if needed based on the weather forecast.
- f. The Permittee must stabilize soil stockpiles from erosion, protected with sediment trapping measures, and where possible, be located away from storm drain inlets, waterways, and drainage channels.
- g. The Permittee must minimize the amount of soil exposed during construction activity.

7. Protect Drain Inlets

- a. Protect all storm drain inlets made operable during construction so that stormwater runoff does not enter the conveyance system without first being filtered or treated to remove sediment.
- b. Clean or remove and replace inlet protection devices when sediment has filled one-third of the available storage (unless a different standard is specified by the product manufacturer).

9. Control Pollutants

- a. Handle and dispose of all pollutants, including waste materials and demolition debris that occur on site in a manner that does not cause contamination of stormwater.
- c. Conduct maintenance, fueling, and repair of heavy equipment and vehicles using spill prevention and control measures. Clean contaminated surfaces immediately following any spill incident.
- f. Use BMPs to prevent contamination of stormwater runoff by pH-modifying sources. The sources for this contamination include, but are not limited to: bulk cement, cement kiln dust, fly ash, new concrete washing and curing waters, recycled concrete stockpiles, waste streams generated from concrete grinding and sawing, exposed aggregate processes, dewatering concrete vaults, concrete pumping and mixer washout waters.
- g. Adjust the pH of stormwater or authorized non-stormwater if necessary to prevent an exceedance of groundwater and/or surface water quality standards.
- h. Assure that washout of concrete trucks is performed off-site or in designated concrete washout areas only. Do not wash out concrete truck drums onto the ground, or into storm drains, open ditches, streets, or streams. Washout of small concrete handling equipment may be disposed of in a formed area awaiting concrete where it will not contaminate surface or groundwater. Do not dump excess concrete on site, except in designated concrete washout areas. Concrete spillage or concrete discharge directly to groundwater or surface waters of the State is prohibited. At no time shall concrete be washed off into the footprint of an area where an infiltration BMP will be installed.

11. Maintain BMPs

- a. Permittees must maintain and repair all temporary and permanent erosion and sediment control BMPs as needed to assure continued performance of their intended function in accordance with BMP specifications.
- b. Permittees must remove all temporary erosion and sediment control BMPs within thirty (30) days after achieving final site stabilization or after the temporary BMPs are no longer needed.

12. Manage the Project

- b. Inspect, maintain and repair all BMPs as needed to assure continued performance of their intended function. Conduct site inspections and monitoring in accordance with Special Condition S4.
- c. Maintain, update, and implement the SWPPP in accordance with Special Conditions S3, S4, and S9.

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 30 days after receiving the Notice of Penalty, and have not appealed.

Option 2: Appeal to the 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 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 Pollution Control Hearings Board (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. 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 Southeast Lacey, WA 98503 Pollution Control Hearings Board 1111 Israel Road Southwest, Suite 301 Tumwater, WA 98501	Department of Ecology Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608 Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903

CONTACT INFORMATION

Please direct all questions about this Notice of Penalty to:

Evan Wood
Department of Ecology
Southwest Regional Office
PO Box 47775
Lacey WA 98504-7775

Phone: (360) 706-4599
Email: evan.wood@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



Vincent McGowan, P.E.
Water Quality Program Manager
Department of Ecology

1/27/2022

Date