



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

*Bellingham Field Office • 1440 10th Street, Ste 102 • Bellingham, WA 98225
(360) 715-5200 • FAX (360) 715-5225*

April 17, 2014

Marvin Schouten
Pacific Pumping Inc.
8941 Jasmine Lane
Lynden, WA 98264

Notice of Penalty Docket #	10444
Site Location	4721 & 4774 Rock Road, Sumas, WA 98295
Penalty Amount	\$4,000.00
Due Date	Within 30 days after receiving this Notice of Penalty.

Re: Notice of Penalty

Dear Mr. Schouten:

The Department of Ecology (Ecology) has issued the enclosed Notice of Penalty to Pacific Pumping Inc. for violating provisions of:

- Chapter 90.48.080 Revised Code of Washington (RCW) – Water Pollution Control Law

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

If you have questions please contact Jessica Kirkpatrick at 360-715-5217 or Jessica.Kirkpatrick@ecy.wa.gov.



Pacific Pumping Inc. Notice of Penalty Docket # 10444

April 17th, 2014

Page 2

Sincerely,



Douglas R. Allen
Office Manager
Bellingham Field Office

Enclosures: Notice of Penalty Docket #10444

By certified mail #70123460000028542745

cc: Fiscal-Penalty Desk, Ecology

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

IN THE MATTER OF PENALTY)	NOTICE OF PENALTY
ASSESSMENT AGAINST)	INCURRED AND DUE
Pacific Pumping Inc.)	PENALTY DOCKET #10444
)	

To: Marvin Schouten
Pacific Pumping
8941 Jasmine Lane
Lynden, WA 98264

Notice of Penalty Docket #	10444
Site Location	4721 & 4775 Rock Road, Sumas, WA 98295
Penalty Amount	\$4,000.00
Due Date	Within 30 days after receiving this Notice of Penalty.

The Department of Ecology (Ecology) has assessed a penalty against Pacific Pumping Inc. in the amount of \$4,000.00 for violating provisions of:

- Chapter 90.48.080 Revised Code of Washington (RCW) – Water Pollution Control Law

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 has occurred is based on the information listed below.

Executive Summary

Pacific Pumping Inc, hired by Sarbanand Farms LLC, applied manure-contaminated material from two to three inches deep on a field near Sumas, Washington from September 23rd through September 27th, 2013. Little to no vegetation was present on the fields prior to the manure application, and the manure was applied within 10 feet of two tributaries to Saar Creek. These fields extend to the top of the bank of several drainage ditches (waters of the state) that drain into Saar Creek. Pacific Pumping Inc. did not implement necessary best management practices (BMPs) to prevent discharges of this polluting matter into state waters. Water Quality Inspector Jessica Kirkpatrick observed the manure application in progress in the late afternoon of September 27, 2013, and immediately notified Owen Gosal, manager of Sarbanand Farms, of

their responsibility to prevent discharges of polluting matter to state waters. By the time Inspector Kirkpatrick notified Mr. Gosal, it was beginning to rain. Pacific Pumping LLC began installing a narrow strip of surface roughening around the edge of the field closest to Rock Road on the evening of September 27, 2013, in an attempt to prevent discharges of pollution. However, this proved ineffective and it was likely too late to implement effective BMPs for an operation of this size and risk.

Over September 27th, 28th, 29th, and 30th, 2.3 inches of rain fell in the area, a rain event that was well forecast by the local news media during the week of September 23rd. Water polluted with bacteria and other pollutants associated with manure discharged from the field Pacific Pumping Inc. spread manure on into tributaries of Saar Creek.

On September 30th, 2013, Inspector Kirkpatrick collected samples of water discharging from the field bordering Rock Road into the Rock Road roadside ditch (Attachment C, Field A). This field is shown in Attachment A, Photos 1, 2, and 3. The runoff contained 3,800 Fecal Coliform Bacteria Units per 100 mL of water, a concentration 19 times the level of fecal coliform bacteria allowed by state water quality standards (WAC 173.201A.200(2)(b)). For these discharges of polluted water (a violation of RCW 90.48.080) this Notice of Penalty is issued in the amount of \$4,000.

Facility Description

Pacific Pumping Inc. is a manure liquids transport and handling company with approximately 30 years of experience serving the dairy industry in Whatcom County. Pacific Pumping Inc. was hired by Sarbanand Farms LLC to spread the contents of manure waste lagoons on to Field A (see Attachment C for a map). Sarbanand Farms LLC owns several parcels of land located at 4625 Rock Road in Sumas, Washington, where they operate a blueberry farm. Part of this property was a dairy farm until the summer of 2013, when Sarbanand Farms began decommissioning three lagoons and preparing the fields for blueberry planting. The property is bordered by and intersects three drainage ditches that discharge into Saar Creek. Saar Creek is tributary to the Sumas River that supports several species of salmonids. The drainage ditches intersecting and bordering the farm and Saar Creek are waters of the state. A map of this property is included in Attachment C.

Chronology

September 1st through September 7th, 2013

Western Refinery Services Inc., hired by Sarbanand Farms LLC, spread solid manure mixed with dairy cow bedding sand from one or more of the lagoons between 4 and 6 inches deep on a small portion of Field A in its southwest corner. See Attachment A, Photos 5 and 6 for photos of this area.

September 18th through September 21st, 2013

Northwest Liquid Transport, hired by Sarbanand Farms, spread material from three manure lagoons onto fields bordering two tributaries to Saar Creek at Sarbanand Farms facility at 4625 Rock Road near Sumas, WA.

September 23rd, 2013-September 27th, 2013:

Pacific Pumping, Inc., hired by Sarbanand Farms LLC, spread the remaining contents of the manure lagoon onto these fields. During the week of September 23rd through September 27th, heavy rains were predicted by the National Weather Service from September 28th through September 30th.

September 27th, 2013

Water Quality Inspectors Chris Luerkens and Jessica Kirkpatrick responded to information received from the Department of Agriculture regarding an operation at 4625 Rock Road near Sumas, WA that may pose a risk of discharging manure-related pollutants. Inspector Kirkpatrick observed a truck operated by Pacific Pumping applying manure to the field bordering Rock Road on the afternoon of September 27th, 2013. At the time Inspector Kirkpatrick observed and photo documented Pacific Pumping applying manure to Field A, which borders the Rock Road roadside ditch (See Attachment C for a map and Attachment A, Photos 1,3, and 4). The manure was already spread between one and three inches thick on Field A when Pacific Pumping was applying the last loads of manure-contaminated material on September 27th, 2013. The manure-contaminated material was already spread within 10 feet of the roadside ditch of Rock Road.

Inspector Kirkpatrick observed that no best management practices had been implemented to prevent the manure-contaminated material from washing into the water of the state that bordered this field. Inspector Kirkpatrick immediately notified Mr. Gosal that the field would likely discharge pollution to state waters during the rain event that had been predicted for several days. Inspector Kirkpatrick advised Mr. Gosal that in order to avoid discharging polluted water into the Rock Road roadside ditch, and violating RCW 90.48.080, he would have to act quickly to implement effective BMPs.

According to a statement given by Marvin Schouten, owner of Pacific Pumping Inc, Owen Gosal alerted Pacific Pumping, Inc. and 'chisel plow' around the edges of Field A late in the afternoon of September 27th. This occurred after Inspector Kirkpatrick contacted Mr. Gosal.

By the late afternoon, rain began falling over the property, and by the end of the day a half inch of rain fell on the area. Weather records show that by September 30th, two and a half inches of rain had fallen, starting shortly after Inspector Kirkpatrick visited the site.

September 30th, 2013

At the direction of Mr. Gosal, Tim Maclain of Western Refinery Services (WRS) Inc. provided a tour of the fields. Mr. Maclain explained that the contents of the south lagoon were spread on the fields for approximately 9 days, ending on September 27th.

Inspector Kirkpatrick observed manure-contaminated water discharging from the field bordering Rock Road into the Rock Road roadside ditch, a tributary to Saar Creek. Inspector Kirkpatrick collected a sample of water from the field runoff, and laboratory analysis confirmed that the sample was contaminated with 3,800 fecal coliform bacteria colonies per 100 mL of water (See Attachment B for the laboratory report). This concentration is 19 times greater than the state water quality standards for fecal coliform bacteria for Saar Creek, which are set to protect human health (WAC 173-201A-200). This discharge is a violation of RCW 90.48.080 for unlawfully discharging polluting matter to the waters of the state.

Analysis of a water quality sample collected from Saar Creek just upstream of any potential discharge points from Sarbanand Farms' property show that at that point it carried 160 f.c.u./100mL, not exceeding water quality standards. Inspector Kirkpatrick collected a sample of water from the Rock Road roadside ditch immediately downstream of the point where the runoff from Field A was discharging into this ditch. Analysis results show that this water was contaminated with 2,000 f.c.u. per 100 mL of water, a level 10 times greater than the water quality standard. Analysis of a water quality sample collected from Saar Creek just downstream of the point where the Rock Road roadside ditch discharges into Saar Creek, show that it carried 420 f.c.u./100mL of water, or just more than double the state water quality standard for this stream. Two water quality samples were also collected from ditches draining Fields C and B (See Attachment C for a map). Analysis results show that these ditches had levels of fecal coliform at or near the state water quality standard (170 f.c.u./100 mL of water and 210 f.c.u./100mL of water).

A significant amount of the manure-contaminated material present on the field bordering Rock Road on September 27th (See Attachment A, Photo 1) was dissipated by the rain by September 30th (See Attachment A, Photo 2). In addition to fecal coliform bacteria, manure is known to contain nutrients causing high biological oxygen demand which can degrade the habitat of salmonids.

Between Inspector Kirkpatrick's visits to the property on September 27, 2013, and September 30, 2013, a 15-foot wide strip of surface roughening around the edge of the Field A was implemented. A 5-8 foot wide strip of sawdust was implemented in some places (See Attachment A, Photo 11). However, this had not effectively prevented either fecal coliform bacteria or other pollutants contained in the manure applied by Pacific Pumping Inc. from discharging into state waters.

Severity

By spreading a large volume of manure-contaminated material onto bare fields immediately before a well-forecast heavy precipitation event, without preparing any effective measures to prevent contaminated water from discharging to the state waters bordering those fields, Pacific Pumping LLC caused discharges of pollution into waters of the state in violation of state law.

The Department of Ecology (Ecology) documented evidence of significant discharges resulting from the spreading activity. Sample results show water polluted with concentrations of fecal coliform bacteria 19 times greater than the water quality standards. The sampling conducted showing Saar Creek was meeting water quality standards for fecal coliform bacteria upstream of Pacific Pumping Inc.'s operation, and exceeding water quality standards by more than a factor of two downstream of discharges caused by Pacific Pumping Inc.'s actions does not rule out other sources of bacterial pollution. However, it is clear that the discharge from Sarbanand Farms' 'Field A' into the Rock Road roadside ditch contributed to this rise in fecal coliform bacteria concentrations and the exceedance of water quality standards in Saar Creek. Photographs of the field, before and after the storm, show that a significant amount of manure-contaminated material was dissipated from the field by that rain and some of that clearly washed into adjacent streams. This discharge also had the potential to affect human health, as fecal coliform bacteria are an indicator of fecal-borne pathogens that can sicken people who come into contact with them in the water. The environmental degradation caused by sediment- and nutrient-laden runoff from Pacific Pumping Inc.'s operation also has potential to negatively affect aquatic life uses of Saar Creek. Saar Creek has four documented runs of Salmonid species:

Listed as Threatend and under Endagered Species Act (ESA)

Fall and Spring Chinook (*Oncorhynchus tshawytscha*)

Not Listed under ESA

Coho (*Oncorhynchus kisutch*)

Chum (*Oncorhynchus keta*)

Sockeye (*Oncorhynchus nerka*)

Relevant Statutes and Rules

Ecology's determination that a violation has occurred is based on the following statutes:

1. RCW 90.48.010 of the Water Pollution Control Act requires the use of all known, available and reasonable methods (AKART) to prevent and control the pollution of the waters of the state.
2. RCW 90.48.020 defines surface waters, including lakes, rivers, ponds, streams, inland waters, salt waters and all other surface waters, as waters of the state.

3. RCW 90.48.020 defines the word "pollution", as used in this chapter, to mean contamination or other alteration of the physical, chemical or biological properties of any waters of the state including change in temperature, taste, color, turbidity or odor of the waters, or discharge of any liquid, gaseous, solid, radioactive or other substance into any waters of the state as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to the public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.
4. RCW 90.48.080 provides that it shall be unlawful for any person to throw, drain, run, or otherwise discharge into any of the waters of this state, or to cause, permit to suffer to be thrown, run, drained, allowed to seep or otherwise be discharged into such waters any organic or inorganic matter that shall cause or tend to cause pollution of such waters according to the determination of the Department of Ecology.
5. WAC 173-201A-200(2)(b) provides that the standard for fecal coliform bacteria is 200 f.c.u./100 mL where, as here, single samples were taken.
6. WAC 173-201A-510(3)(c) provides that activities which contribute to nonpoint source pollutions shall be conducted utilizing best management practices to prevent the violation of water quality criteria.
7. Under RCW 90.48.144, the Department of Ecology may issue a penalty of up to \$10,000 per day for a violation of RCW 90.48.080.

ELIGIBILITY FOR PAPERWORK VIOLATION WAIVER AND OPPORTUNITY TO CORRECT

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. Ecology has determined the violation(s) described in this Order are not paperwork violations under RCW 34.05.110 and therefore you are not eligible for a waiver for a first-time paperwork violation.

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 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:

Notice of Penalty Docket # 10444
April 17, 2014
Page 7

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 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 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

CONTACT INFORMATION

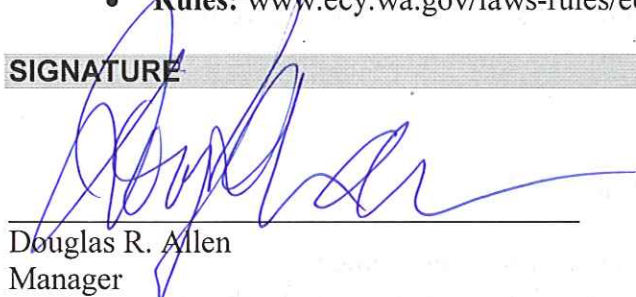
Please direct all questions about this Notice of Penalty to:

Jessica Kirkpatrick
Department of Ecology
Bellingham Field Office
1440 10th St. Suite 102
Bellingham, WA 98225
Phone: 360-715-5217
Email: Jessica.Kirkpatrick@ecy.wa.gov

MORE INFORMATION

- **Pollution Control Hearings Board:**
www.eho.wa.gov/Boards_PCHB.aspx
- **Chapter 43.21B RCW - Environmental and Land Use Hearings Office – Pollution Control Hearings Board**
<http://apps.leg.wa.gov/RCW/default.aspx?cite=43.21B>
- **Chapter 371-08 WAC – Practice and Procedure**
<http://apps.leg.wa.gov/WAC/default.aspx?cite=371-08>
- **Chapter 34.05 RCW – Administrative Procedure Act**
<http://apps.leg.wa.gov/RCW/default.aspx?cite=34.05>
- **Laws:** www.ecy.wa.gov/laws-rules/ecyrcw.html
- **Rules:** www.ecy.wa.gov/laws-rules/ecywac.html

SIGNATURE



Douglas R. Allen
Manager
Bellingham Field Office

4/18/2014
Date

Attachment A – Pacific Pumping Inc At Sarbanand Farms Photo Log



Photo 1 – September 27th, 2013: Photo from Rock Road of Sarbanand Farms' manure lagoon decommissioning project. Note the heavy application of manure solids to Field A. This manure application was 1 to 2 inches thick in this location. Some dead grass stubble can be seen covered by the application. The grass had been mostly killed prior to application. The weather forecast predicted 100% chance of heavy rains over the next three days on the day this photo was taken.



Photo 2 – Photo 2 – September 30th, 2013: This photo shows the same field shown in Photo 1, after three days of heavy rain. Note that some vegetation is now visible on the field, and the absence of the thick layer of manure visible in photo 1. The water flowing off of this field into state waters contained 3,800 fecal coliform colonies per 100 mL of water. Prior to the application the field had been treated with an herbicide and very little living vegetation remains. Also shown is the surface roughening measure that Sarbanand Farms implemented on a 15 foot wide strip after being contacted by Ecology. Stormwater runoff is visible discharging through this strip.



Photo 3 - September 27, 2013: Equipment operated by Pacific Pumping LLC applying manure lagoon contents to a Field A. The manure application to the part of Field A visible from Rock Road was between one to two inches thick.

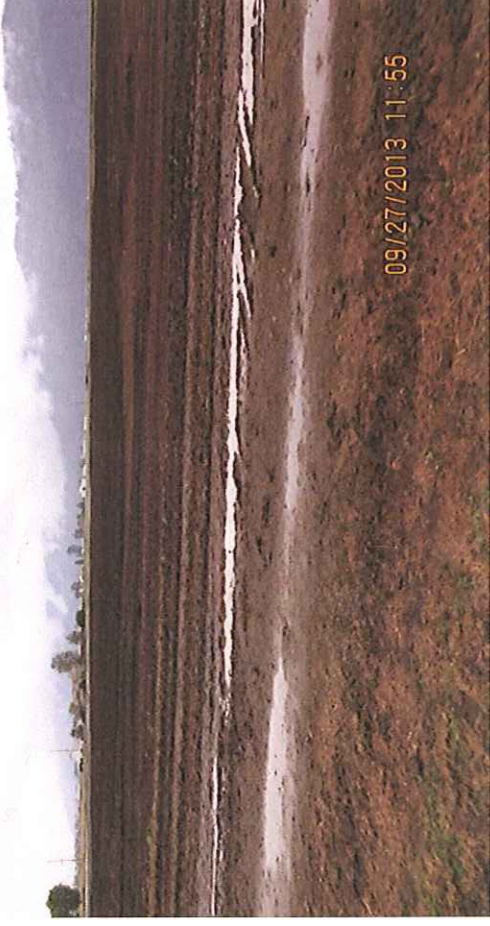


Photo 4 – This photo shows a field devoid of Field B that liquid and solid manure was applied to immediately prior to several days of heavy rain.



Photo 7 – September 30th, 2013 This photo shows Field B. It was leveled and spread with manure. No BMPs had been implemented to prevent sediment or manure from discharging into the drainage ditch in the foreground of the photo.



Photo 8 – September 30, 2013 This photo shows Field C. The contents of the lagoons had been applied to this and other fields prior to September 27th. Evidence of sediment discharge into the stream pictured in the center of the photo was observed along the border of this field.



Photo 9 – September 30th, 2013 This photo shows Field C and its border with a drainage ditch between Field A and Field C that drains to Saar Creek. Field C has been disturbed to the top of the bank and the contents of the manure lagoons spread on the field. There were many places along its border with the ditch where evidence of runoff contaminated with sediment entering the ditch was observed.



Photo 10 – September 30th, 2013 This photo shows a close-up of the area in Photo 5 where visual evidence of contaminated runoff was observed.

Avocet Environmental Testing
1500 North State Street, Suite 200
Bellingham, WA 98225-4551
(360) 734-9033



Client Washington State Department of Ecology
Contact Name Chris Luerkens
Chain of Custody 4200
Date Sampled 09/30/13
Date Received 09/30/13
Date Reported 10/03/13
Test Performed Fecal Coliform Membrane Filter
Matrix Water
Project Name Sarbanand
P.O. # F1A80

Sample Identification	Log Number	Method	Sample Result	Units	Date Analyzed	Analyst
SAAR Creek Rock Road	05730118	sm9222D	420	FC/100 mL	09/30/13	ML
→ Sarbanand 2	05730119	sm9222D	3,800	FC/100 mL	09/30/13	ML
Sarbanand 3	05730120	sm9222D	2,000	FC/100 mL	09/30/13	ML
Sarbanand 4	05730121	sm9222D	170	FC/100 mL	09/30/13	ML
SAAR Creek Upstream	05730122	sm9222D	160	FC/100 mL	09/30/13	ML
Sarbanand 5	05720123	sm9222D	210	FC/100 mL	09/30/13	ML

Sample taken
from field
runoff.

QUALITY CONTROL DATA

Test Performed	Growth	Result FC/100mL	Duplicate Difference
Blank	Negative	--	--
E. Coli	Positive	--	--
Enterobacter aerogenes	Negative	--	--
Fecal Coliform Sample Result	Positive	3,800	--
Lab Duplicate	Positive	2,400	45%

FC: Fecal Coliform


Laboratory Supervisor



