STATE OF WASHINGTON

DEPARTMENT OF ECOLOGY

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

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November 30, 2015

Mr. Emmett Boyle
Director of Assets
Silver Cloud Inns and Hotels
103 118th Avenue Southeast
Bellevue, WA 98005-3753

Notice of Penalty Docket #	12924
Site Location	2317 Ruston Way Tacoma, WA 90402-5303
Penalty Amount	$5,000
Due Date	Within thirty (30) days after receiving this Notice of Penalty.

Re: Notice of Penalty

Dear Mr. Boyle:

The Department of Ecology (Ecology) has issued the enclosed Notice of Penalty to Silver Cloud Inns and Hotels for violating provisions of:

- Chapter 90.48 Revised Code of Washington (RCW) – Water Pollution Control
- Chapter 173-220 Washington Administrative Code (WAC) - National Pollutant Discharge Elimination System (NPDES) Permit Program
- NPDES Permit WA0041084

Please read the enclosed Notice of Penalty describing the violations and options for responding to the penalty.

If you have questions please contact Marc Pacifico at 360-407-6282 or by email at marc.pacifico@ecy.wa.gov.

Sincerely,

Richard Doenges
Southwest Region Manager
Water Quality Program

RD:MP:cc
Enclosures: Notice of Penalty Docket #12924

By certified mail: 7012 1010 0003 0195 0576

cc: John Diamant, Ecology
Fiscal-Penalty Desk, Ecology

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

IN THE MATTER OF PENALTY ASSESSMENT AGAINST Silver Cloud Inns and Hotels Emmett Boyle, Director of Assets	))))	NOTICE OF PENALTY INCURRED AND DUE PENALTY DOCKET #12924

To: Mr. Emmett Boyle
Director of Assets
Silver Cloud Inns and Hotels
103 118th Avenue Southeast
Bellevue, WA 98005-3753

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Site Location	2317 Ruston Way Tacoma, WA 90402-5303
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Due Date	Within thirty (30) days after receiving this Notice of Penalty.

The Department of Ecology (Ecology) has assessed a penalty against Silver Cloud Inns and Hotels in the amount of $5,000 for violating provisions of:

- Chapter 90.48 Revised Code of Washington (RCW) – Water Pollution Control
- Chapter 173-220 Washington Administrative Code (WAC) - National Pollutant Discharge Elimination System (NPDES) Permit Program
- NPDES Permit WA0041084

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:

Silver Cloud Inns and Hotels operates a hotel along the shoreline of Commencement Bay in Tacoma, Washington. The hotel's heating and cooling system uses cooling water that is discharged to Commencement Bay.

Silver Cloud Inns and Hotels is permitted to discharge its heating and cooling water to Commencement Bay subject to the limits, terms, and conditions of NPDES Permit WA0041084.

Permit Condition S1 sets effluent limits for the amount of flow, and the range of pH that can be discharged from Silver Cloud Inns and Hotels into Commencement Bay.

Permit Condition S2 sets monitoring requirements for the pollutants limited in Condition S1.

Permit Condition S3 requires the monitoring data to be summarized, reported, and submitted to Ecology by the 15th day of the following month. If the facility did not discharge during the month a report indicating there was no discharge is required.

Monitoring reports from Silver Cloud Inns and Hotels for February 2014, March 2014, April 2014, May 2014, June 2014, July 2014, August 2014, September 2014, October 2014, November 2014, December 2014, and January 2015, were not received until August 14, 2015. Monitoring Reports for February 2015, March 2015, April 2015, May 2015, and June 2015, were not received until August 21, 2015. Monitoring reports for July 2015 and August 2015 have not been received. Ecology sent Silver Cloud Inns and Hotels Noncompliance Notification Letters for these violations on October 16, 2014; December 22, 2014; January 27, 2015; February 24, 2015; June 23, 2015; June 29, 2015; July 21, 2015; and July 23, 2015.

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 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
P.O. Box 47611
Olympia, Washington 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 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 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, Washington 98503	**Department of Ecology** Attn: Appeals Processing Desk P.O. Box 47608 Olympia, Washington 98504-7608
Pollution Control Hearings Board 1111 Israel Road Southwest, Suite 301 Tumwater, Washington 98501	**Pollution Control Hearings Board** P.O. Box 40903 Olympia, Washington 98504-0903

CONTACT INFORMATION

Please direct all questions about this Notice of Penalty to:

Marc Pacifico
Department of Ecology
Southwest Regional Office
Water Quality Program
P.O. Box 47775
Olympia, Washington 98504-7775

Phone: 360-407-6282

Email: marc.pacifico@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://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
- **Laws:** www.ecy.wa.gov/laws-rules/ecyrcw.html
- **Rules:** www.ecy.wa.gov/laws-rules/ecywac.html

SIGNATURE

Richard Doenges
Southwest Region Manager
Water Quality Program

11/24/15
Date

RECOMMENDATION FOR ENFORCEMENT ACTION
WATER QUALITY PROGRAM

Southwest Regional Office

Penalty Docket No. 12924

Date: August 10, 2015

From: Marc Pacifico
(Name of Investigator(s))

(Signature of Investigator(s))

Senior Permit Compliance Specialist
(Title of Investigator(s))

RECOMMEND ENFORCEMENT ACTION BE TAKEN:

I. Against:
Silver Cloud Inns and Hotels
(Company or Governmental Entity)

Emmett Boyle, Director of Assets
(Responsible Official)

II. Address:
103 118th Avenue Southeast
Bellevue, WA 98005-3753
425-637-9800

Location:
2317 Ruston Way
Tacoma, WA 90402-5303
253-272-1300

III. Type of Action

[X] A. Penalty, Revised Code of Washington (RCW) 90.48.144

[ ] B. Notice of Violation, RCW 90.48.120 (1)

[ ] C. Follow-up Order, RCW 90.48.120(1)

[ ] D. Immediate Action Order, RCW 90.48.120(2)

[ ] E. Amendment of Action

[ ] F. Other (specify authority) _____

IV. Nature of Violation

[ ] 1) Unlawful Discharge of Polluting Matter into Waters of the State, RCW 90.48.080.

[X] 2) Violation of the Terms of a Waste Discharge Permit Issued under RCW 90.48.160, 90.48.180 or 90.48.260 through 90.48.262.

[ ] 3) Discharging Pollutants Without a Permit Authorized under RCW 90.48.160, 90.48.180, or 90.48.260 through 90.48.262.

[ ] 4) Violation of the Terms of a Regulatory Order or other provisions of RCW 90.48.

[ ] 5) Agricultural Discharges, RCW 90.48.450. Has consideration been given to the effect of the action on conversion of agricultural to nonagricultural uses?_____. If yes, what attempts have been made to minimize the possibility of such conversion? (Water Quality Program Policy #1-05)

[ ] 6) Other

V. Name of Watercourse Involved: Commencement Bay

VI. Narrative of Incident:

Silver Cloud Inns and Hotels operates a hotel along the shoreline of Commencement Bay in Tacoma, Washington. The hotel's heating and cooling system uses cooling water that is discharged to Commencement Bay.

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VII. Technical Assistance Efforts to Resolve Violation: Permit Manager, John Diamant, spoke to Emmett Boyle regarding the violations in August 2015. As a result of the calls, late DMRs from February 2014 through June 2015 were received.

VIII. Evidence Obtained:

[ ] Samples, Lab. Report No.
[ ] Pictures
[ ] Video Tape
[ ] Witness Statements
[ ] Documents
[ ] Maps
[X] Other: PARIS Database

IX. Penalty Calculation

a) **Violation of Permit condition S3. late receipt of monitoring reports for February 2014, March 2014 April 2014, May 2014, June 2014, July 2014, August 2014, September 2014, October 2014, November 2014, December 2014, January 2015, February 2015, March 2015, April 2015, May 2015, and June 2015.**

TABLE 1
Gravity Criteria (see attached definitions)

	NO (0)	POSSIBLY (1)	PROBABLY (2)	DEFINITELY (3)
1. Public Health Risk?	X			
2. Environmental Damage?		X		
3. Willful or Knowing Violation?			X	
4. Unresponsive in Correcting Violation?		X		
5. Improper Operation or Maintenance?				X
6. Failure to Obtain Necessary Permits	X			
7. Economic Benefit from Noncompliance?	X			

Total Rating Points 7

See Addendum for guidance

TABLE 2
Gravity Component Penalty

Rating	1-2	3-4	**5-8**	9-11	12-14	15
Penalty	$500	$1000	**$2000**	$3000	$4000	$5000

Rating	16	17	18	19	20
Penalty	$6000	$7000	$8000	$9000	$10000

☐ For each violation multiply the penalty amount by the duration of violation, e.g., number of days, weeks, months, etc.

☐ If the facility has a history of documented violations and previous penalties, apply a multiple of three (3) to the previous penalty (remember the maximum penalty for a violation is $10,000 per day regardless of any previous violations).

TABLE 3
Economic Benefit Penalty

If the answer to question #7 in Table 1 is "Definitely," include the estimated dollar amount of economic benefit determined by the EPA BEN computer model or other appropriate method. Attach calculations.

b) Violation of Permit Condition S3 failure to receive monitoring reports for July 2015, and August 2015.

1. Public Health Risk?	X	___	___	___
2. Environmental Damage?	___	X	___	___
3. Willful or Knowing Violation?	___	___	X	___
4. Unresponsive in Correcting Violation?	___	___	___	X
5. Improper Operation or Maintenance?	___	___	___	X
6. Failure to Obtain Necessary Permits	X	___	___	___
7. Economic Benefit from Noncompliance?	___	___	X	___

Total Rating Points 11

TABLE 2
Gravity Component Penalty

Rating	1-2	3-4	5-8	**9-11**	12-14	15
Penalty	$500	$1000	$2000	**$3000**	$4000	$5000

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TABLE 3
Economic Benefit Penalty

If the answer to question #7 in Table 1 is "Definitely," include the estimated dollar amount of economic benefit determined by the EPA BEN computer model or other appropriate method. Attach calculations.

X. Total Recommended Penalty Amount **$5,000**

Based On: Matrix	[X]
Economic Benefit	[ ]
Both	[ ]

XI. Additional Comments:

ENDORSEMENTS

The following actions are recommended to resolve this matter:

Concur

Steve Eberl, P.E. _____
Unit Supervisor Date 11-19-2015

Concurrence with recommended action:

Rich Doenges _____
Section Manager Date 11/24/15

I have reviewed this recommendation for the proposed action:

Sally Toteff _____
Regional Director Date _____

Gravity Criteria Definitions

1. Did the violation result in a public health risk?
- Answer "no" if there is no evidence to support a claim of public health risk.
- Answer "possibly" if a public health risk can be inferred from evidence and knowledge of the effects of the violation.
- Answer "probably" if evidence supports a claim of public health risk and there is a plausible connection between this violation and the health or effect.
- Answer "definitely" if there is direct evidence linking public health risk or adverse effects with the violation.

2. Did the violation result in environmental damage?
- Answer "no" if there is no evidence to support a claim of environmental damage or impairment of beneficial uses.
- Answer "possibly" if environmental damage or impairment of beneficial uses can be inferred from evidence or knowledge of the effects of the violation.
- Answer "probably" if there is evidence to support a claim of environmental damage or impairment of beneficial uses and there is a plausible connection between the violation and the damage/impairment.
- Answer "definitely" if there is direct evidence linking demonstrable environmental damage or impairment of the beneficial uses with the violation.

3. Was it a willful or knowing violation?
- Answer "no" if the violator obviously did not know that the action or inaction constituted a violation.
- Answer "possibly" if it is likely the violator knew.
- Answer "probably" if the violator should have known.
- Answer "definitely" if the violator clearly knew. If the answer is "definitely," consider consulting with the environmental crimes unit.

4. Was the responsible person unresponsive in correcting the violation?
- Answer "no" if the violation was corrected as soon as the responsible person learned of it.
- Answer "possibly" if the violation was corrected in a less timely and cooperative fashion.
- Answer "probably" if the responsible person attempted to correct the problem but did not correct it.
- Answer "definitely" if the responsible person made no attempt to correct the violation.

5. Was the violation a result of improper operation or inadequate maintenance? (i.e., BMPs, pollution prevention plans, operation and maintenance (O&M) plans)
- Answer "no" if the violation was not the result of improper operation or inadequate maintenance.
- Answer "possibly" if the facility has an O&M plan, PPP, SWPPP, or BMP manual that is out of date or inadequate.
- Answer "probably" if there is no O&M plan, PPP, SWPPP, or BMPs developed for the facility.
- Answer "definitely" if the facility has no plans or is not following its plan AND the violation was clearly the result of improper operation or maintenance.

6. Did the facility fail to obtain all of the necessary permits, certifications, and approvals to operate at the time of the violation?
- Answer "no" if the paperwork was complete and appropriate for the job or task that caused the violation.

- Answer "definitely" if the facility did not have all the required permits and approvals for the job or task that caused the violation.

7. Did anyone benefit economically from non-compliance?
- Answer "no" if it is clear that no one obtained an economic benefit.
- Answer "possibly" if someone might have benefited.
- Answer "probably" if anyone benefited, but the benefit is not quantifiable.
- Answer "definitely" if the economic benefit is quantifiable.

Revised April 2005