



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Northwest Regional Office • 3190 160th Ave SE • Bellevue, WA 98008-5452 • 425-649-7000
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JUL 03 2019

Robert Terhune Sr. (aka Robert Terhune III) and
Robert Terhune Jr. (aka Robert Terhune IV)
Stetson Heights LLC
18306 Driftwood Dr E
Lake Tapps, WA 98391

Stavros & Colleen Anastasiou
15949 104th Ave NE
Bothell, WA 98011

Stetson Heights LLC
1000 Second Avenue, Suite 2950
Seattle, WA 98104

Notice of Penalty Docket No.	16171
Site Location	Stetson Heights South and Southwest of Glenwood Road Port Orchard, WA 98367
Penalty Amount	\$202,500
Due Date	Within 30 days after receiving this Notice of Penalty

Re: Notice of Penalty

Dear Robert Terhune III, Robert Terhune IV, Stavros & Colleen Anastasiou, and Stetson Heights LLC:

The Department of Ecology (Ecology) has issued the enclosed Notice of Penalty to Stetson Heights LLC, Robert Terhune III, Robert Terhune IV, and Stavros & Colleen Anastasiou for violating provisions of:

- Chapter 90.48 Revised Code of Washington (RCW) – Water Pollution Control.
- Chapter 173-226 Washington Administrative Code (WAC) – Waste Discharge General Permit Program.
- Construction Stormwater General Permit No. WAR306103.

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 courtesy copy of the draft news release is enclosed. If you have a comment or question, contact Ecology communication manager Larry Altose at 425-649-7009 or larry.altose@ecy.wa.gov within one business day of when you first receive the draft news release.

If you have questions, please contact Evan Dobrowski at 425-649-7276 or edob461@ecy.wa.gov.

Sincerely,



Heather Bartlett
Water Quality Program Manager
Washington State Department of Ecology

Enclosures: Notice of Penalty Docket No. 16171
Draft news release

By Certified Mail No.: 9171 9690 0935 0204 6826 58 – Robert Terhune Sr. and Robert Terhune Jr.
9171 9690 0935 0204 6826 41 – Stavros & Colleen Anastasiou
9171 9690 0935 0204 6826 34 – Stetson Heights LLC

cc: Fiscal-Penalty Desk, Ecology

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

IN THE MATTER OF PENALTY)
ASSESSMENT AGAINST)
Stetson Heights LLC)
Robert Terhune Sr. (aka Robert Terhune III))
Robert Terhune Jr. (aka Robert Terhune IV))
Stavros & Colleen Anastasiou)

NOTICE OF PENALTY
INCURRED AND DUE
PENALTY DOCKET NO. 16171

To: Robert Terhune Sr. (aka Robert Terhune III) and
Robert Terhune Jr. (aka Robert Terhune IV)
Stetson Heights LLC
18306 Driftwood Dr E
Lake Tapps, WA 98391

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Site Location	Stetson Heights South and Southwest of Glenwood Road Port Orchard, WA 98367
Penalty Amount	\$202,500
Due Date	Within 30 days after receiving this Notice of Penalty

The Department of Ecology (Ecology) has assessed a penalty against Stetson Heights LLC, Robert Terhune III, Robert Terhune IV, and Stavros & Colleen Anastasiou in the amount of **\$205,500** for violating provisions of:

- Chapter 90.48 Revised Code of Washington (RCW) - Water Pollution Control.
- Chapter 173-226 Washington Administrative Code (WAC) - Waste Discharge General Permit Program.
- Construction Stormwater General Permit No. WAR306103.

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:

Violation 1: CSWGP Condition S4.B.5 Site Inspections, which states:

The Permittee must summarize the results of each inspection in an inspection report or checklist and enter the report/checklist into, or attach it to, the site logbook. At a minimum, each inspection report or checklist must include: ...

Observation:

On July 11, 2018; Ecology staff visited the site at which time there was no SWPPP, CESCL inspection reports, or site logbook available as required by CSWGP Condition S4.B.5.

4x - Violation 2: CSWGP Condition S4.C.2.a Sampling Frequency, which states:

The Permittee must sample all discharge points at least once every calendar week when stormwater (or authorized non-stormwater) discharges from the site or enters any on-site surface waters of the state (for example, a creek running through a site); sampling is not required on sites that disturb less than an acre.

Observation:

On October 26, 2018; October 29, 2018; and November 19, 2018; Ecology staff observed discharges off-site while the CESCL was present, but not taking any samples. The CESCL explained the site does not currently have a turbidimeter and will need to purchase one. On December 18, 2018, Ecology staff observed discharges off-site while the CESCL was not present and was not able to come to the site to sample. Discharge Monitoring Reports show the Stetson Heights LLC CESCL did not sample during the calendar weeks that include October 26, 2018; November 19, 2018; or December 18, 2018, when Ecology staff visually identified discharges off-site. The Stetson Heights CESCL did report discharge on October 28, 2019, in Discharge Monitoring Reports. However, during the October 29, 2018, site inspection, the CESCL told Ecology staff he did not have a turbidimeter and would need to purchase one in order to sample discharge events. Accordingly, Ecology does not believe that the CESCL sampled discharges during the calendar week that includes October 29, 2018.

7x - Violation 3: CSWGP Condition S9.C Stormwater Best Management Practices (BMPs), which states:

BMPs must be consistent with:

1. *Stormwater Management Manual for Western Washington* published by Ecology (or most current approved edition at the time this permit was issued), for sites west of the crest of the Cascade Mountains.

Observation:

On July 11, 2018; October 26, 2018; October 29, 2018; November 19, 2018; December 4, 2018; December 18, 2018; and December 26, 2018; Ecology staff observed the site lacking BMPs that were inconsistent with the *Stormwater Management Manual for Western Washington*, were failing, or were installed incorrectly as required by CSWGP Condition S9.C and contributed to these highly turbid stormwater discharges.

7x - Violation 4: CSWGP Condition S9.D.2.d Establish Construction Access, which states:

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.

Observation:

On July 11, 2018; October 26, 2018; October 29, 2018; November 19, 2018; December 4, 2018; December 18, 2018; and December 26, 2018; Ecology staff observed sediment tracked off the construction site onto adjacent streets and not cleaned up at end of day. This was inconsistent with CSWGP Condition S9.D.2.d and contributed to these highly turbid stormwater discharges.

3x - Violation 5: CSWGP Condition S9.D.3 Control Flow Rates, which states:

- a) Protect properties and waterways downstream of development sites from erosion and the associated discharge of turbid waters due to increases in the velocity and peak volumetric flow rate of stormwater runoff from the project site, as required by local plan approval authority.
- b) Where necessary to comply with Special Condition S9.D.3.a, construct stormwater retention or detention facilities as one of the first steps in grading. Assure that detention facilities function properly before constructing site improvements (for example, impervious surfaces).
- c) If permanent infiltration ponds are used for flow control during construction, protect these facilities from siltation during the construction phase.

Observation:

On July 11, 2018; October 26, 2018; and October 29, 2018; Ecology staff observed the Stetson Heights construction site either did not have retention or detention ponds on-site or was directing stormwater off-site by bypassing flow control structures. This was inconsistent with CSWGP Condition S9.D.3 and contributed to these highly turbid stormwater discharges.

8x - Violation 6: CSWGP Condition S9.D.5.d Stabilize Soil, which states:

The Permittee must not allow soils to remain exposed and unworked for more than the time periods set forth below to prevent erosion:

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

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

Observation:

On July 11, 2018; October 26, 2018; October 29, 2018; November 19, 2018; December 4, 2018; December 18, 2018; December 21, 2018; and December 26, 2018; Ecology staff observed soils that were not stabilized as required by CSWGP condition S9.D.5 and contributed to these highly turbid stormwater discharges. Stetson Heights construction site has had a stop work order from the City of Port Orchard as of 11:30AM on October 26, 2018. A second stop work order was put on the Stetson Heights construction site by City of Port Orchard at 4:15PM on November 5, 2018 due to violations of the first stop work order. As of December 26, 2018 no work should be conducted at the Stetson Heights construction site other than BMP installation due to stop work orders issued by City of Port Orchard.

6x - Violation 7: CSWGP Condition S9.D.6 Protect Slopes, which states:

- c. At the top of slopes, collect drainage in pipe slope drains or protected channels to prevent erosion.
- e. Place check dams at regular intervals within constructed channels that are cut down a slope.

Observation:

On October 26, 2018; October 29, 2018; November 19, 2018; December 4, 2018; December 21, 2018; and December 26, 2018; Ecology staff observed slopes that were not stabilized or protected as required by CSWGP Condition S9.D.6 and contributed to these highly turbid stormwater discharges. Ecology observed unprotected slopes with no slope protection BMPs such as slope drains, construction channels, etc.

Violation 8: CSWGP Condition S9.D.8.a Stabilize Channels, which states:

Design, construct, and stabilize all on-site conveyance channels to prevent erosion from the following expected peak flows:

- i. West of the Cascade Mountains Crest: Channels must handle the peak 10-minute flow rate from a Type 1A, 10-year, 24-hour frequency storm for the developed condition. Alternatively, the 10-year, 1-hour flow rate indicated by an approved continuous runoff model, increased by a factor of 1.6, may be used. The hydrologic analysis must use the existing land cover condition for predicting flow rates from tributary areas outside the project limits. For tributary areas on the project site, the analysis must use the temporary or permanent project land cover condition, whichever will produce the highest flow rates. If using the WWHM to predict flows, bare soil areas should be modeled as "landscaped area."

Observation:

On December 21, 2018; Ecology staff observed areas of channels without the stabilization required by CSWGP Condition S9.D.8.a.

Violation 9: CSWGP Condition S9.D.9.b Control Pollutants, which states:

- b. Provide cover, containment, and protection from vandalism for all chemicals, liquid products, petroleum products, and other materials that have the potential to pose a threat to human health or the environment. On-site fueling tanks must include secondary containment. Secondary containment means placing tanks or containers within an impervious structure capable of containing 110% of the volume contained in the largest tank within the containment structure. Double-walled tanks do not require additional secondary containment.

Observation:

On October 26, 2018; Ecology staff observed petroleum products stored outside without secondary containment as required by CSWGP Condition S9.D.9.b.

Violation 10: CSWGP Condition S9.D.11.a maintain BMPs, which states:

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.

Observation:

On December 21, 2018, Ecology staff observed areas of BMPs that needed maintenance such as silt fence repairs around wetland areas; this violates CSWGP Condition S9.D.11.a.

Violation 11: CSWGP Condition S9.D.12 Manage the Project, which states:

Phase development projects to the maximum degree practicable and take into account seasonal work limitations.

Observation:

On October 26, 2018; October 29, 2018; November 19, 2018; December 4, 2018, and December 18, 2018; Ecology staff observed roughly 83 acres of grading or waiting for grading which was originally fully vegetated prior to the project start. Furthermore, the Immediate Action Order Ecology sent to Stetson Heights LLC on November 8, 2018, required phasing and that requirement has yet to be implemented. No phasing of this project has occurred as required by CSWGP Condition S9.D.12 which contributed to these highly turbid stormwater discharges.

6x - Violation 12: IAO requirement #1, which states:

Stetson Heights LLC must cease all stormwater discharges from the site until appropriate erosion and sediment control and treatment BMPs are installed which demonstrate that the stormwater discharged from the site can meet the turbidity benchmark of 25 NTU or lower.

Observation:

On November 23, 2018; November 26, 2018; November 27, 2018; November, 28, 2016; December 13, 2018; and December 18, 2018; highly turbid stormwater was discharged from the Stetson Heights construction site into the tributary to Ruby Creek. These discharges occurred after Stetson Heights LLC received the Immediate Action Order.

Violation 13: IAO Requirement #2, which states:

On or before November 15, 2018, Stetson Heights LLC must fully implement an updated Stormwater Pollution Prevention Plan (SWPPP) which includes, but is not limited to, the following:

- a. Divert all stormwater flows to on-site stormwater flow control structures.
- b. Install all necessary BMPs to stabilize slopes and flow paths from stormwater erosion issues such as rilling.
- c. Install conveyance channels in accordance with BMP C202 and C207.
- d. Begin phasing the project for ground work to ensure BMPs are functional at all times. Do not remove any additional vegetation until current phase is stabilized and discharges are consistently meeting 25 NTU or lower.
- e. Maintain all BMPs on-site in order for BMPs to remain functional for the life of the project until final stabilization is established.

Observation:

As of December 26, 2018 the updated SWPPP has not been implemented in its entirety. For example, BMP C202 and C207 are not properly installed.

Violation 14: IAO Requirement #3a, which states:

Report the following information to Ecology inspector, Evan Dobrowski:

- a. Submit an updated SWPPP no later than November 15, 2018.

Observation:

During the December 4, 2018, Ecology site visit, no updated SWPPP had yet been sent or given to Ecology inspector, Evan Dobrowski. However, an updated SWPPP was shown to Ecology inspector, Evan Dobrowski, but no copy to bring back was provided. As of December 26, 2018, no copy of the SWPPP has been sent via e-mail, standard mail, in person, etc. The Immediate Action Order was sent on November 8, 2018, requiring Stetson Heights LLC to submit an updated SWPPP to Ecology. An e-mail dated November 13, 2018, was also sent to Stetson Heights LLC staff, Jim Shinn, Robert Terhune Sr, Robert Terhune Jr, and BPCI staff members, Zac and Shelby. Ecology received an e-mail from Robert Terhune asking if there were any preferences for method of receiving the SWPPP on November 15, 2018, showing acknowledgement of IAO. Ecology responded to this e-mail on November 15, 2018, with all options available to provide Ecology the site SWPPP.

19x - Violation 15: IAO Requirement #3b, which states:

Report the following information to Ecology inspector, Evan Dobrowski:

- b. Beginning immediately upon receipt of this Order until December 1, 2018, conduct daily inspections and submit photo/video/written documentation of inspections on a daily basis. Inspection documentation must include all actual or potential discharge points, evidence that off-site discharges have ceased, sampling results documenting progress toward achieving the 25 NTU benchmark, implemented BMPs, and current site work.

Observation:

During the December 4, 2018, Ecology site visit, CESCL inspection reports were documented via photos showing CESCL inspections on the following dates: October 26, November 2, November 11, November 16, November 22, and November 26, 2018. Daily inspections were not conducted from November 8-10, 12-15, 17-21, 23-25, and 27-30.

In addition to the violations noted above, the discharge of high turbidity stormwater into the tributary of Ruby Creek, Blackjack Creek, and associated wetlands on-site and off-site is a violation of CSWGP Condition S3 Compliance with Standards, which states:

- A. Discharges must not cause or contribute to a violation of surface water quality standards.
- B. Prior to the discharge of stormwater and non-stormwater to waters of the State, the Permittee must apply all known, available, and reasonable methods of prevention, control, and treatment (AKART). This includes the preparation and implementation of an adequate SWPPP, with all appropriate BMPs installed and maintained in accordance with the SWPPP and the terms and conditions of this permit.

The discharge of high turbidity stormwater into the tributary of Ruby Creek, Blackjack Creek, and wetlands on and offsite, is also a violation of RCW 90.48.080 which states:

“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 or suffer to be thrown, run, drained, allowed to seep or otherwise 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, as provided for in this chapter.”

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
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:

Evan Dobrowski
Department of Ecology
Northwest Regional Office
3190 160th Avenue SE
Bellevue, WA 98008-5452
Phone: 425-649-7276
Email: edob461@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



Heather Bartlett
Water Quality Program Manager
Washington State Department of Ecology

DATED 2/2/19, at Olympia, WA