

RECEIVED

AUG 06 2019

DEPARTMENT OF ECOLOGY  
EXECUTIVE

Appeals Processing Desk

Cc: ☒ Rev/ Rec - Cost Recovery

☒ B. Maiden ATG K. Barker fiscal

Orig: ☒ ATG Docket Clerk

☒ H. Bartlett WQ/HQ

Initial: JB 8/6

V. McGowan

J. Killelea

J. Maroncelli wq/hq

POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

STETSON HEIGHTS, LLC, ROBERT  
TERHUNE SR. (AKA ROBERT TERHUNE  
III), ROBERT TERHUNE JR. (AKA ROBERT  
TERHUNE IV), STAVROS ANASTASIOU,  
AND COLLEEN ANASTASIOU,

Appellant,

vs.

STATE OF WASHINGTON DEPARTMENT  
OF ECOLOGY,

Respondent.

Notice of Penalty No. 16171

NOTICE OF APPEAL

INTRODUCTION

This appeal is filed on behalf of Stetson Heights, LLC, Robert Terhune Sr. (aka Robert Terhune III), Robert Terhune Jr. (aka Robert Terhune IV), Stavros Anastasiou, and Colleen Anastasiou ("Appellants"), pursuant to RCW 43.21B.230, RCW 43.21B.300, WAC 371-08-335, and WAC 371-08-340.

On July 3, 2019, the Washington State Department of Ecology ("Respondent") mailed Notice of Penalty No. 16171 to Appellants assessing a penalty of \$202,500 against Appellants for fifteen alleged violations of Construction Stormwater General Permit No. WAR306103. For the reasons described below, the Notice of Penalty is in error and deficient.

Appellants hereby appeal Notice of Penalty No. 16171.

NOTICE OF APPEAL - 1

SCHWABE, WILLIAMSON & WYATT, P.C.  
Attorneys at Law  
1420 5th Avenue, Suite 3400  
Seattle, WA 98101-4010  
Telephone: 206.622.1711

1  
2 **1. Appellants' Name, Address, Telephone Number, Fax Number, Email Address,  
and Name of Representative**

3 **1.1 Appealing Parties:**

4 Stetson Heights, LLC  
5 1000 Second Avenue, Suite 2950  
6 Seattle, WA 98104

7 Robert Terhune Sr. (aka Robert Terhune III)  
8 and Robert Terhune Jr. (aka Robert Terhune IV)  
9 18306 Driftwood Drive E  
10 Lake Tapps, WA 98391

11 Stavros and Colleen Anastasiou  
12 15949 104th Avenue NE  
13 Bothell, WA 98011

14 **1.2 Appealing Parties' Representative:**

15 Ryen L. Godwin, WSBA #40806  
16 Email: rgodwin@schwabe.com  
17 Lindsay Thane, WSBA #53798  
18 Email: lthane@schwabe.com  
19 Schwabe, Williamson & Wyatt, P.C.  
20 1420 5th Avenue, Suite 3400  
21 Seattle, WA 98101-4010  
22 Telephone: 206.622.1711  
23 Facsimile: 206.292.0460  
24 Attorneys for Appellants

25 **2. Date and Docket Number of the Notice of Penalty, and Attach a Copy (RCW  
26 43.21B.230(3)(b); RCW 43.21B.230(3)(c); WAC 371-08-340(3))**

27 **2.1** Washington Department of Ecology issued Notice of Penalty Docket No. 16171 to  
28 Appellants on July 3, 2019.

29 **2.2.** The registered agent for Stetson Heights, LLC is the only appellant that received, by  
30 registered mail, a copy of Notice of Penalty.

31 **2.3** On or about July 22, 2019, Diane Hennessey on behalf of the Department of Ecology  
32 admitted that the date of receipt is July 8, 2019.

33 **2.4** A copy of the Notice of Penalty is attached as Exhibit A.

34 **3. A Short and Plain Statement of the Grounds Upon Which the Appellants  
35 Consider the Notice of Penalty Unjust or Unlawful (WAC 371-08-340(4))**

36  
NOTICE OF APPEAL - 2

SCIWABE, WILLIAMSON & WYATT, P.C.  
Attorneys at Law  
1420 5th Avenue, Suite 3400  
Seattle, WA 98101-4010  
Telephone: 206.622.1711

1 3.1 Appellants appeal the penalty determination on the grounds that the penalty is unjust,  
unreasonable, and/or unlawful.

2 3.2 Appellants appeal the penalty determination on the grounds that the Department  
3 Ecology's conclusions contain errors of law and fact which do not justify the penalty  
4 imposed.

5 **4. A Clear, Separate, and Concise Statement of Every Error Alleged; A Clear and  
6 Concise Statement of Facts Upon Which the Appellants Rely to Sustain its  
7 Statements of Error and Grounds for Appeal**

8 4.1 In answering Violation 1, Appellants admit that on July 11, 2018 Ecology staff did not  
9 observe a SWPPP, CESCL inspection reports, or site log book available as required by  
10 CSWGP Condition S4.B.5. Appellants assign error to the penalty calculation  
11 associated with this violation.

12 4.2 In answering Violation 2, Appellants admit the allegation that no samples were taken  
13 the calendar weeks for October 26, 2018 and October 29, 2018. Appellants deny the  
14 allegation that no samples were taken the weeks of November 19, 2018 and December  
15 18, 2018. Appellants further deny the allegation that Stetson Heights did not have a  
16 turbidimeter. Appellant's assign error to the number of violations alleged. Appellants  
17 assign error to the penalty calculation associated with this violation.

18 4.3 In answering Violation 3, Appellants admit that the site lacked some, but not all, BMPs  
19 consistent with the Stormwater Management Manual for Western Washington on July  
20 11, 2018, October 26, 2018, and October 29, 2018. Appellants deny that the site lacked  
21 BMPs consistent with the Stormwater Management Manual for Western Washington  
22 on November 19, 2018, December 4, 2018, December 18, 2018, and December 26,  
23 2018. Appellants lack sufficient information or knowledge to form a belief as to the  
24 truth of the allegations in Violation 3 that the lack of BMPs caused or contributed to  
the discharge of turbid water from the site and therefore deny the same. Appellants  
assign error to the number of violations alleged. Appellants assign error to the penalty  
calculation associated with this violation.

18 4.4 In answering Violation 4, Appellants deny that sediment tracked offsite from the  
19 construction entrance was not cleaned up at the end of the day on the dates referenced.  
20 Appellants assign error to the number of violations alleged. Appellants assign error to  
the penalty calculation associated with this violation.

21 4.5 In answering Violation 5, Appellants admit that on July 11, 2018, October 26, 2018,  
22 and October 29, 2018 Stetson Heights did not have retention or detention ponds on site.  
23 Stetson Heights denies that it directed stormwater offsite by bypassing flow control  
24 structures. Appellants lack sufficient information or knowledge to form a belief as to  
the truth of the allegations in Violation 5 that the lack of retention or detention ponds  
caused or contributed to the discharge of turbid water from the site and therefore deny  
the same. Appellants assign error to the number of violations alleged. Appellants  
assign error to the penalty calculation associated with this violation.

25 4.6 In answering Violation 6, Appellants admit that on July 11, 2018, October 26, 2018,  
26 October 29, 2018, November 19, 2018, December 4, 2018, December 18, 2018,  
December 21, 2018, and December 26, 2018 that soils were not stabilized with straw

NOTICE OF APPEAL - 3

SCHWABE, WILLIAMSON & WYATT, P.C.  
Attorneys at Law  
1420 5th Avenue, Suite 3400  
Seattle, WA 98101-4010  
Telephone: 206.622.1711

1 or hydroseed according to the Stormwater Management Manual for Western  
2 Washington. Appellants admit that stop work orders were issued by the City of Port  
3 Orchard. Appellants deny that the stop work orders are still in place. The stop work  
4 orders were lifted by the City of Port Orchard in March 2019. Appellants lack sufficient  
5 information or knowledge to form a belief as to the truth of the allegations in Violation  
6 6 that unstable soils caused or contributed to the discharge of turbid water from the site  
7 and therefore deny the same. Appellants assign error to the penalty calculation  
8 associated with this violation.

9 4.7 In answering Violation 7, Appellants admit that diversion trenches were not in place at  
10 the top of slopes on October 26, 2018 and October 29, 2018. Appellants deny that  
11 diversion trenches were not in place on November 19, 2018, December 4, 2018,  
12 December 21, 2018, and December 26, 2018. Appellants lack sufficient information  
13 or knowledge to form a belief as to the truth of the allegations in Violation 7 that  
14 unstable soils caused or contributed to the discharge of turbid water from the site and  
15 therefore deny the same. Appellants assign error to the number of violations alleged.  
16 Appellants assign error to the penalty calculation associated with this violation.

17 4.8 In answering Violation 8, Appellants deny the allegations in Violation 8. Appellants  
18 assign error to the penalty calculation associated with this violation.

19 4.9 In answering Violation 9, Appellants deny the allegations in Violation 9. Appellants  
20 assign error to the penalty calculation associated with this violation.

21 4.10 In answering Violation 10, Appellants deny the allegations in Violation 10. Appellants  
22 assign error to the penalty calculation associated with this violation.

23 4.11 In answering Violation 11, Appellants deny the allegations in Violation 11. Appellants  
24 further assign error to the penalty calculation associated with this violation. Appellants  
25 further, upon information and belief, assign error to the validity of the Immediate  
26 Action Order.

4.12 In answering Violation 12, Appellants deny the allegations in Violation 12.  
Appellant's assign error to the number of violations alleged. Appellants, upon  
information and belief, assign error to the validity of the Immediate Action Order.  
Appellants further assign error to the penalty calculation associated with this violation.

4.13 In answering Violation 13, Appellants deny the allegations in Violation 13. Appellants,  
upon information and belief, assign error to the validity of the Immediate Action Order.  
Appellants further assign error to the penalty calculation associated with this violation.

4.14 In answering Violation 14, Appellants deny the allegations in Violation 14. Appellants,  
upon information and belief, assign error to the validity of the Immediate Action Order.  
Appellants further assign error to the penalty calculation associated with this violation.

4.15 In answering Violation 15, Appellants deny the allegations in Violation 15. Appellant's  
assign error to the number of violations alleged. Appellants, upon information and  
belief, assign error to the validity of the Immediate Action Order. Appellants further  
assign error to the penalty calculation associated with this violation.

4.16 Appellant is a small business as defined, and Appellants are entitled to the small

- 1 business waiver, notification, and opportunity to correct requirements of RCW  
2 34.05.110.
- 3 4.17 The Department cannot establish, in whole or in part, that each and every allegation  
4 resulted in a discharge of organic or inorganic matter that caused or tended to cause  
5 pollution of surface waters of the state. RCW 90.48.080.
- 6 4.18 The Department's Administrative Order fails for lack of jurisdiction because the  
7 alleged discharges, in whole or in part, did not reach surface waters of the state. RCW  
8 90.48.030.
- 9 4.19 The Department failed to provide adequate notice of alleged violations. RCW  
10 90.48.120(1).
- 11 4.20 The Department failed to use credible data that surface waters of the state do not meet  
12 their designated use or other criteria under the anti-degradation policy. RCW  
13 90.48.580; RCW 90.54.020(3)(b).
- 14 4.21 The Department relied on data that does not meet the standards in the Construction  
15 Stormwater General Permit (CSGP) or approved analytical methodology. CSGP S4.C;  
16 WAC 173-220-210.
- 17 4.22 The Appellants used all known, available, and reasonable methods of treatment  
18 (AKART) pursuant to the Construction Stormwater General Permit (CSGP) prior to  
19 discharge of stormwater. RCW 90.54.020(3)(b); CSGP S3.
- 20 4.23 The discharges, if any, are the direct and proximate result of an operational upset  
21 beyond the reasonable control of the Permittee. CSGP G15.
- 22 4.24 The Department's Administrative Order is barred, in whole or in part, by the doctrines  
23 of res judicata, collateral estoppel, equitable estoppel, laches, unclean hands, and  
24 mootness.
- 25 4.25 The discharges of pollutants to surface waters of the state, in whole or in part, are the  
26 direct and proximate result of the acts or omissions of third parties.
- 4.26 Appellants reserve the right to amend this notice of appeal to add or delete assignments  
of error upon review of the entire administrative record.
- 4.27 To the extent the penalty assessed relies upon any violation alleged in Administrative  
Order 16532, Appellant incorporates herein the errors and defenses identified in the  
Notice of Appeal for Administrative Order 16532.
- 5. Extent and Nature of the Relief Sought**
- 5.1 Appellant respectfully requests that the Notice of Penalty be dismissed, vacated, and/or  
remanded to the Department of Ecology.
- 5.2 In the alternative, Appellant respectfully requests that the Notice of Penalty be reduced  
consistent with the facts and the law.

1 5.3 Appellant respectfully requests such other or further relief as the Board deems just and  
2 equitable.  
3  
4

5 Dated this 5<sup>th</sup> day of August, 2019.

6 SCHWABE, WILLIAMSON & WYATT, P.C.

7  
8 By: 

Ryan L. Godwin, WSBA #40806  
Email: rgodwin@schwabe.com  
Lindsay Thane, WSBA #53798  
Email: lthane@schwabe.com  
1420 5th Avenue, Suite 3400  
Seattle, WA 98101-4010  
Telephone: 206.622.1711  
Facsimile: 206.292.0460

13 Attorneys for Appellants  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

NOTICE OF APPEAL - 6

**CERTIFICATE OF SERVICE**

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

I hereby certify that on 5th day of August, 2019, I served the following **Notice of Appeal of Notice of Penalty No. 16171** on:

Department of Ecology  
Attn: Appeals Processing Desk  
P.O. Box 47608  
Olympia, WA 98504-7608  
(Via Certified Mail, Return Receipt Requested)

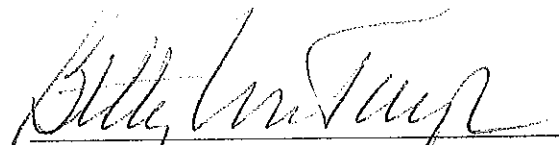
Pollution Control Hearings Board  
1111 Israel Road SW, Suite 301  
Tumwater, WA 98501  
(Via Email: [pchb-shbappeals@eluhc.wa.gov](mailto:pchb-shbappeals@eluhc.wa.gov)  
and Via Hand Delivery on August 6, 2019)

Department of Ecology  
Attn: Appeals Processing Desk  
300 Desmond Drive SE  
Lacey, WA 98503  
(Via Hand Delivery on August 6, 2019)

by:

<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>
<input type="checkbox"/>
<input checked="" type="checkbox"/>
<input type="checkbox"/>

U.S. Postal Service, certified mail, return receipt requested,  
hand delivery  
facsimile  
electronic service  
other (specify) \_\_\_\_\_

  
Betty Lou Taylor, Legal Assistant

NOTICE OF APPEAL - 7

SCHWABE, WILLIAMSON & WYATT, P.C.  
Attorneys at Law  
1420 5th Avenue, Suite 3400  
Seattle, WA 98101-4010  
Telephone: 206.622.1711

# EXHIBIT A



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

IN THE MATTER OF PENALTY	)	NOTICE OF PENALTY
ASSESSMENT AGAINST	)	INCURRED AND DUE
Stetson Heights LLC	)	PENALTY DOCKET NO. 16171
Robert Terhune Sr. (aka Robert Terhune III)	)	
Robert Terhune Jr. (aka Robert Terhune IV)	)	
Stavros & Colleen Anastasiou	)	

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

Stavros & Colleen Anastasiou  
15949 104<sup>th</sup> 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

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 Shimm, 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
<b>Department of Ecology</b> Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	<b>Department of Ecology</b> Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
<b>Pollution Control Hearings Board</b> 1111 Israel Road SW STE 301 Tumwater, WA 98501	<b>Pollution Control Hearings Board</b> 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 160<sup>th</sup> 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

 DATED 7/2/19, at Olympia, WA  
Heather Bartlett  
Water Quality Program Manager  
Washington State Department of Ecology