

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

IN THE MATTER OF PENALTY)	NOTICE OF PENALTY
ASSESSMENT AGAINST)	INCURRED AND DUE
Dale Marr dba Marr's "Black Plush")	PENALTY DOCKET #9743
Ranch Inc.)	

To: Dale Marr
dba Marr's "Black Plush" Ranch Inc.

Notice of Penalty Docket #	9743
Site Location	9471 Mt. Baker Highway, Deming, WA 98244 and 9580 Mt. Baker Highway, Deming, WA 98244.
Penalty Amount	\$48,000
Due Date	Within 30 days after receiving this Notice of Penalty.

The Department of Ecology (Ecology) has assessed a penalty against Dale Marr dba Marr's "Black Plush" Ranch Inc. in the amount of \$48,000 for violating provisions of:

- Chapter 90.48.010 Revised Code of Washington (RCW) – Water Pollution Control Law
- Chapter 90.48.080 Revised Code of Washington (RCW) – Water Pollution Control Law
- Chapter 173.201A.200 (2)(b) Washington Administrative Code (WAC) – Water Quality Standards for Surface Waters of the State of Washington

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 information listed below.

Executive Summary

Mr. Dale Marr owns and operates Marr Mink Farm. The operation is run in two proximate, but not contiguous locations. The first location is on Cornell Creek Road, (physical address: 9580 Mt. Baker Highway, Deming WA, 98244) (Cornell Creek Farm). The second location is adjacent to Mt. Baker Highway (9471 Mt. Baker Highway, Deming, WA 98244) (Mt. Baker Highway Farm). See Photo 1 of attached photo log. Mr. Marr has a history of documented contaminated discharge violations dating back to 1999. See subsection entitled "History" below. In 1999, Mr. Marr was issued formal enforcement including Immediate Action Order DE 99WQ-N435 and Notice of Penalty DE 99WQ-N443 in the amount of \$24,000.

The current investigation revealed that Mr. Marr had not maintained Best Management Practices (BMPs) in a manner that prevented contaminated discharges into state waters. Mr. Marr's farm was again and is currently discharging manure-related and mink food related contaminants into highly sensitive state waters. These discharges were flowing into ditches that flow to an unnamed tributary of Hedrick and Cornell Creeks. Both of these named streams have documented populations of all five salmon species and two trout species. Two species are listed as "Threatened" under the federal Endangered Species Act.

Due to: 1) the documented history of violations from the Marr farm, 2) the egregious nature of these ongoing contaminated discharges, 3) the lack of maintenance of the BMPs to prevent contaminated discharges, and 4) the sensitivity of the receiving waters, Ecology is taking formal enforcement in the form of an Immediate Action Order requiring Mr. Marr to halt all discharges immediately and in the future and to require him to apply for and gain coverage under an Ecology Individual National Pollution Discharge Elimination System (NPDES) and State Waster Discharge Permit. Additionally, Ecology is taking formal enforcement in the form of a Notice of Penalty in the amount of \$48,000.

Chronology

December 10, 2012

At 11:45 am, Ecology water quality inspector Mak Kaufman arrived at the Marr Mink Farm to conduct a compliance investigation. This investigation was conducted in response to a citizen's water pollution complaint (ERTS # 637767). Mr. Kaufman contacted Mr. Dale Marr, who owns and operates the mink farm to discuss the complaint. Upon his arrival, with just a casual look at the farm from the road, Mr. Kaufman observed several ongoing discharges of mink manure and mink food contaminated with manure flowing from each of the five barns located at the Cornell location into the South Cornell Creek Road ditch that flows past the farm. Each of the five barns at this location were built within about 20-25 feet from the ditch that flows past the farm, and the land the barns are built upon slopes toward the ditch. At the lower end of each of the five barns, there were two 5-gallon buckets receiving manure-contaminated mink food and incidental spillage from a low-pressure, nipple watering system that spills into a stainless steel watering trough that had previously served as the main source of water for the mink Mr. Marr rears. Mr. Marr installed this low-pressure, nipple watering system after Ecology took enforcement actions for similar discharges that Ecology documented in 1999. This system significantly reduced the volume of water Mr. Marr has to deal with and made compliance with state water quality standards much easier to achieve. These 5-gallon buckets mentioned above had not been properly maintained and were overflowing at the time of inspection. Mr. Kaufman observed thick bacterial mats and a leachate trails leading from the overflowing buckets towards pipes that flowed to the ditch along the south side of Cornell Creek Road. This indicated that the contaminated flows from these overtopping buckets conveyed flows directly into pipes that flowed to the ditch along the south side of Cornell Creek Road. These bacterial mats were also indications that these poorly maintained conditions on Mr. Marr's farm had been going on for quite some time and were the sources of contaminated discharges into state waters at the time of the inspection. These stainless steel watering troughs had previously been decommissioned as main source of water after similar discharges were detected and formal enforcement actions had been taken against Mr. Marr in 1999. These watering troughs now only convey small volumes of incidental drinking water spilled from a low-pressure nipple watering system that was installed after contaminated discharges were detected in 1999. See photos 5-12 in the attached photo log.

Mr. Kaufman explained to Mr. Marr that these contaminated discharges were coming from the same areas that had been documented during compliance inspections conducted in 1999. After documenting the previous discharges in 1999, Ecology took formal enforcement against Mr. Marr in the form of a \$24,000 penalty and an order requiring him to permanently halt all of these discharges. He openly admitted that he had not been maintaining the BMPs as he had been formally ordered to do in 1999. Mr. Kaufman took several documentary photographs of the facility and of the contaminated discharges into pipes that collectively flow into the ditch that flows past his property. This ditch continues on and flows past the Mt. Baker location, and later flows into Hedrick Creek.

Mr. Kaufman then continued the compliance inspection at the Mt. Baker location. This part of the operation was also discharging contaminated water, in this case onto a property that Mr. Marr had deeded to Whatcom Land Trust and placed into a Conservation Reserve in perpetuity. This exchange of land was conducted in lieu of paying the entire \$24,000 Notice of Penalty that had been issued for the previous discharges documented in 1999. This property was supposed to be protected in perpetuity as portions of the property have valuable salmon spawning habitat. Mr. Kaufman collected a sample of the water flowing through contaminated areas at the Mt. Baker location and off of the farm into state waters for fecal coliform bacterial analysis. The third-party, independent laboratory results indicated a FC bacterial count of 24,000 FC bacteria/100 ml water. The state limit for this water body is 100 FC bacteria/100ml water.

Mr. Kaufman and Mr. Marr then proceeded back to the Cornell location to collect documentation samples of contaminated water flowing off of his property and of water flowing onto his property. The sample results indicated 900 FC bacteria /100 ml of water flowing into his property, but also documented discharges above water quality standards for all other sample collections of water flowing off of the Cornell Creek location and into state waters. All of the samples collected of water flowing off of Mr. Marr's property exceeded state water quality standards. See photos 2-4 for sampling locations and listings of the lab results. See figures 1-2 for copies of the actual lab results.

December 14, 2012

After receiving verbal confirmation of the bacterial analysis from the certified, independent, third-party laboratory, Mr. Kaufman spoke with Mrs. Marr. She indicated that her husband had taken action to correct the problems and that they felt that the discharges had been halted. Mr. Kaufman explained to Mrs. Marr that because the previously documented discharges were substantially similar to the current discharges, and because of the state of his facility, that Ecology could not allow them to adaptively manage this facility through the normal technical assistance mechanisms used at the Whatcom Conservation District.

Mr. Kaufman explained that Ecology was likely going to require the Marr Mink Farm to hire a professional engineering firm to thoroughly evaluate their facility and design a system to collect and contain all contaminated water into impervious storage. Mr. Kaufman explained that the Marr Mink Farm must provide this analysis and design for Ecology to review. Mr. Kaufman went on to explain that this storage must be designed with enough capacity to store all contaminated water for the entire winter rainy months, and that in northeastern Whatcom County, this usually translates to 7-8 months of storage. Mr. Kaufman went on to explain that this engineering firm would also have to provide Ecology with evidence that there was adequate cropland to apply all of this contaminated water during the growing

season at agronomic rates based on known crop uptake values for nitrogen and phosphorus. Mr. Kaufman explained that in 1999 Ecology had allowed Mr. Marr to implement BMPs recommended by the Whatcom Conservation District with the expectation that he would maintain these BMPs into perpetuity. Since he has demonstrated that he has not managed these BMPs properly, Ecology needs assurances that any future designs will result in permanently halting all contaminated discharges from the facility. Mr. Kaufman explained that professional engineering firms experienced in preventing industrial pollution would be required to address these issues.

Mr. Kaufman then immediately drove out to the farm to conduct a second compliance inspection to check on how effective Mr. Marr's actions were at preventing contaminated discharges into state waters.

When he arrived at the farm at 3:30 pm, Mr. Kaufman observed that Mr. Marr had replaced the five-gallon buckets used to catch the manure and mink food-contaminated water discharged by the low-pressure nipple watering system. Mr. Marr admitted that he had not "stayed on top of things", but that the changes he had made should correct these problems.

Mr. Marr stated that he had found that his kitchen sink (septic system) had been plumbed to some underground piping that flowed to the sump that Mr. Kaufman had collected a water sample from on December 10, 2012. That particular sample revealed a FC bacterial count of 120,000 Colony Forming units (CFUs) per 100 milliliters of water. Mr. Marr thought that this should solve the ongoing contaminated discharges, but Mr. Kaufman let him know that all of the gravel around all of his barns was contaminated with manure and mink food from the wheels of the mechanical feeding cart that had been driven through the manure in the barns. Mr. Marr had eliminated the need for the feeding cart to drive on some of the gravel that is exposed to precipitation (i.e. storm water) at the lower end of two of his barns that are located immediately adjacent to the ditch flowing past the barns. Mr. Kaufman explained that this would reduce the contaminant loads, but that Mr. Marr would have to do this on all of his barns and prevent the feeding cart from contaminating the gravel throughout the farm. Mr. Kaufman explained to Mr. Marr that Ecology was going to require him to hire a professional engineering firm to evaluate his entire facility and design a system that could collect, contain and properly store all contaminated water generated on the facility for 7-9 months. Mr. Kaufman explained that he would also be required to protect groundwater by halting the winter applications of manure contaminated water on his brother's farm fields and fields owned by Mark Kelly, a beef farm located on Silver Lake Road. No samples were collected that day as it was too late in the afternoon to get the samples to the lab.

January 7, 2013

Mr. Kaufman conducted an additional follow-up compliance inspection with Ecology inspectors Jessica Kirkpatrick and Chris Luerkens. Mr. Marr had not made any additional changes at the time of this follow-up compliance inspection. Mr. Kaufman collected water samples from the same locations he had collected the samples from on December 10, 2012, but added a sample site that represented storm water flows from his house and employee parking lot. See sample collection sites and a list of lab results in photo 4 in the attached photo log. To view a copy of the actual laboratory results see Figure 2 in the attached photo log.

History

Ecology has previously taken formal enforcement action for contaminated discharges that are substantially similar to the discharges currently being cited in this enforcement recommendation. In 1999, Ecology took formal enforcement in the form of Immediate Action Order DE 99WQ-N435. This order required Marr Mink Farm to cease all discharges of septic waste and mink manure to state waters and to hire a professional engineering firm to provide Ecology with an analysis of the farm's wastewater and produce a design that would permanently correct the conditions on these two facilities that were causing contaminated discharges into state water.

Additionally, Ecology took enforcement in the form of Notice of Penalty DE 99WQ-N443 in the amount of \$24,000 against the Marr Mink Farm. After an appeal of the order and penalty were filed, Ecology agreed to allow the Whatcom Conservation District to provide Mr. Marr with technical assistance in lieu of a professionally engineered design to correct these conditions on his property that were the causes of ongoing contaminated discharges to state waters.

The design for BMPs produced by Whatcom Conservation District (WCD) was ultimately insufficient to prevent discharges. This was compounded by the fact that the BMPs recommended by WCD relied heavily upon Mr. Marr conducting a great deal of careful maintenance, which he failed to complete. The result has been ongoing contaminated discharges of manure, mink food and manure-related contaminants into Hedrick Creek, an unnamed tributary of Hedrick Creek and Cornell Creek (all state waters).

Severity

The long-term, ongoing contaminated discharges from Marr Mink Farm's two facilities appear to have caused significant degradation of aquatic habitat in the waters receiving runoff. This degradation has been documented in the form of a heavy bacterial mat covering the entire benthic surfaces (stream bottom) of unnamed tributaries of both streams. This bacterial mat has also effectively degraded all habitat required for the benthic macroinvertebrates that the juvenile salmon rely on for a food source as these fish species hatch from their respective spawning redds (nests). This habitat degradation affects seven species of the taxonomic family Salmonidae in Hedrick Creek and eight species of the taxonomic family of Salmonidae in Cornell Creek (WDF&W records).

For Hedrick Creek, these species include:

- 1) Both Fall and Spring runs of Chinook Salmon (*Oncorhynchus tshawytscha*);
- 2) Coho Salmon (*Oncorhynchus kisutch*);
- 3) Chum Salmon (*Oncorhynchus keta*);
- 4) Pink Salmon (*Oncorhynchus gorbuscha*)
- 5) Both winter and summer runs of Steelhead trout (*Oncorhynchus mykiss*);
- 6) Bull Trout (*Salvelinus confluentus*)
- 7) Cutthroat Trout (*Oncorhynchus clarkii*)

For Cornell Creek, these species include:

- 1) Both Fall and Spring runs of Chinook Salmon (*Oncorhynchus tshawytscha*);
- 2) Coho Salmon (*Oncorhynchus kisutch*);
- 3) Chum Salmon (*Oncorhynchus keta*);
- 4) Pink Salmon (*Oncorhynchus gorbuscha*)

- 5) *Both winter and summer runs of Steelhead trout (Oncorhynchus mykiss);*
- 6) *Bull Trout (Salvelinus confluentus)*
- 7) *Cutthroat Trout (Oncorhynchus clarkii)*
- 8) *Sockeye Salmon (Oncorhynchus nerka)*

Relevant Statutes, Rules and Findings of Fact

RCW 90.48.010 Policy Enunciated

It is declared to be the public policy of the state of Washington to maintain the highest possible standards. to insure the purity of all waters of the state consistent with public health and public enjoyment thereof, the propagation and protection of wild life, birds, game, fish and other aquatic life, and the industrial development of the state, and to that end require the use of all known available and reasonable methods (commonly known as AKART by industries) and others to prevent and control the pollution of the waters of the state of Washington.

Mr. Marr's operation of his mink rearing farm does not meet AKART for animal rearing operations. Mr. Marr has not implemented any additional Best Management Practices (BMPs) to protect state waters and he has not maintained the BMPs that he had previously implemented. This has been demonstrated through inspections and water sample collections and analysis.

RCW 90.48.030 Jurisdiction of department

The department shall have the jurisdiction to control and prevent the pollution of streams, lakes, rivers, ponds, inland waters, salt waters, water courses, and other surface and underground waters of the state of Washington.

Hedrick and Cornell Creeks and the ditches and waterways flowing past Mr. Marr's farm meet the definition of waters of the state. Ecology has legal authority and obligation to prevent and control pollution of these water bodies.

RCW 90.48.080 Discharge of polluting matter in waters prohibited

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.

Mr. Marr's farm discharged manure-contaminated water into state waters. This is demonstrated by water quality samples showing the exceedance of state water quality standards for fecal coliform bacteria. In addition to violations of fecal coliform standards, discharges of manure contaminated muddy water to waters of the state has substantial potential to violate water quality standards for turbidity, pH, and dissolved oxygen and biological oxygen demand (BOD) for aquatic life.

RCW 90.48.120 Notice of department's determination that violation has or will occur — Report to department of compliance with determination — Order or directive to be issued — Notice

(2) Whenever the department deems immediate action is necessary to accomplish the purposes of this chapter or chapter 90.56 RCW, it may issue such order or directive, as appropriate under the circumstances, without first issuing a notice or determination pursuant to subsection (1) of this section. An order or directive issued pursuant to this subsection shall be served by registered mail or personally upon any person to whom it is directed.

Ecology is formally notifying Mr. Marr of these violations and is requiring correction of the conditions on his farm that are causing violations of RCW 90.48 through Immediate Action Order # 9744.

90.48.160 Waste disposal permit — Required — Exemptions.

Any person who conducts a commercial or industrial operation of any type which results in the disposal of solid or liquid waste material into the waters of the state, including commercial or industrial operators discharging solid or liquid waste material into sewerage systems operated by municipalities or public entities which discharge into public waters of the state, shall procure a permit from either the department or the *thermal power plant site evaluation council as provided in RCW 90.48.262(2) before disposing of such waste material: PROVIDED, That this section shall not apply to any person discharging domestic sewage only into a sewerage system.

The department may, through the adoption of rules, eliminate the permit requirements for disposing of wastes into publicly operated sewerage systems for:

- (1) Categories of or individual municipalities or public corporations operating sewerage systems; or
- (2) Any category of waste disposer;

if the department determines such permit requirements are no longer necessary for the effective implementation of this chapter. The department may by rule eliminate the permit requirements for disposing of wastes by upland finfish rearing facilities unless a permit is required under the federal clean water act's national pollutant discharge elimination system. **Mr. Marr's mink rearing operation has had documented discharges above state water quality standards for fecal coliform bacteria into state waters on December 10, 2012 and on January 7, 2013. As a result, Ecology is formally designating Mr. Marr's farm as a significant contributor of pollutants to state waters and designating the farm as a Confined Animal Feeding Operation. Mr. Marr is being required through Immediate Action Order #9744 to apply for and gain coverage under an Ecology Individual National Pollution Discharge Elimination System (NPDES) and State Waste Discharge Permit.**

WAC 173.201A.200(2)(b) Bacteria criteria to protect water extraordinary primary contact recreation in fresh waters

Fecal coliform organism levels must not exceed a geometric mean value of 50 colonies /100 mL, with not more than 10 percent of all samples (or any single sample when less than ten sample points exist) obtained for calculating the geometric mean value exceeding 100 colonies /100 mL.

All of the water samples collected of water flowing off of Mr. Marr's farm and into state waters on December 10, 2012 and January 7, 2013 exceeded the water quality standard for fecal coliform bacteria. Hedrick Creek and Cornell Creek flow into the North Fork of the Nooksack River upstream of Maple Creek and therefore meet the criteria of "extraordinary primary contact recreation".

WAC 173.201A.510 (3) Means of Implementation (Nonpoint source and storm water pollution)

(a) Activities which generate nonpoint source pollution shall be conducted so as to comply with the water quality standards. The primary means to be used for requiring compliance with the standards shall be through best management practices required in waste discharge permits, rules, orders, and directives issued by the department for activities which generate nonpoint source pollution.

(b) Best management practices shall be applied so that when all appropriate combinations of individual best management practices are utilized, violation of water quality criteria shall be prevented. If a discharger is applying all best management practices appropriate or required by the department and a violation of water quality criteria occurs, the discharger shall modify existing practices or apply further water pollution control measures, selected or approved by the department, to achieve compliance with water quality criteria. Best management practices established in permits, orders, rules, or directives of the department shall be reviewed and modified, as appropriate, so as to achieve compliance with water quality criteria.

(c) Activities which contribute to nonpoint source pollution shall be conducted utilizing best management practices to prevent violation of water quality criteria. When applicable best management practices are not being implemented, the department may conclude individual activities are causing pollution in violation of RCW 90.48.080. In these situations, the department may pursue orders, directives, permits, or civil or criminal sanctions to gain compliance with the standards.

(d) Activities which cause pollution of storm water shall be conducted so as to comply with the water quality standards. The primary means to be used for requiring compliance with the standards shall be through best management practices required in waste discharge permits, rules, orders, and directives issued by the department for activities which generate storm water pollution. The consideration and control procedures in (b) and (c) of this subsection apply to the control of pollutants in storm water. **The Marr Mink Farm generates nonpoint source pollution. This has been demonstrated during inspections and by the analysis of water samples collected of water flowing off Mr. Marr's mink farm and into state waters on December 10, 2012 and on January 7, 2013. The inspections and the analysis of these water samples indicate exceedances of water quality standards and demonstrate that he has not applied all appropriate Ecology approved Best Management Practices (BMPs) that in combination prevent the discharge of manure related contaminants into state waters.**

ELIGIBILITY FOR PAPERWORK VIOLATION WAIVER AND 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:

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

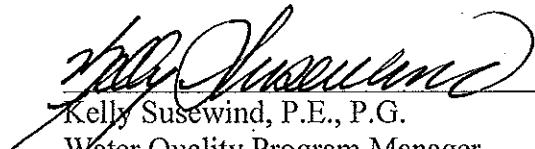
Please direct all questions about this Notice of Penalty to:

Mark A. "Mak" Kaufman
Dept. of Ecology
1440 10th Street Suite 102
Bellingham, WA 98225
Phone: (360) 715-5221
Email: mak.kaufman@ecy.wa.gov

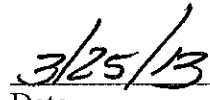
MORE INFORMATION

- **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



Kelly Susewind, P.E., P.G.
Water Quality Program Manager



Date