STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

IN THE MATTER OF PENALTY	)	NOTICE OF PENALTY
ASSESSMENT AGAINST:	)	INCURRED AND DUE,
Mr. Rory A. Westmoreland	)	DOCKET #10688

To: Mr. Rory A. Westmoreland
32288 US Highway 97
Oroville, Washington 98844-9782

Notice of Penalty Docket #:	10688
Penalty Amount:	$301,000
Due:	Within 30 days after this Notice of Penalty is received.
Date of Incident:	May 13, 2012 through June 3, 2012
Vessel Name/Number:	F/V *Deep Sea*, IMO # 6506226

The Department of Ecology (Ecology) has assessed a penalty against you in the amount of $301,000 for violating provisions of:

- RCW 90.56.280, Duty to notify coast guard and division of emergency management of discharge.
- RCW 90.56.320, Unlawful for oil to enter waters -- Exceptions.
- RCW 90.56.340, Duty to remove oil.

Ecology has authority to issue this penalty under RCW 90.48.144, and is basing the penalty on the violations described below.

SUMMARY OF INCIDENT

Saturday night, May 12, 2012, the F/V *Deep Sea*, a former commercial fishing vessel built in 1947 and anchored in Penn Cove, Whidbey Island, Washington, began to burn. Firefighting efforts began that night and continued through the afternoon of May 13, 2012. Around 6:00 p.m. on May 13, the *Deep Sea* rolled to port and sank. Oil began to leak from the *Deep Sea* around 12 a.m. on May 13 and continued until the vessel was raised on June 3, 2012, and moved to Seattle to be scrapped. Ecology determined that 5,555 gallons of oil were discharged from the *Deep Sea* to waters of the state.

Mr. Rory A. Westmoreland bought the *Deep Sea* on November 22, 2011, from the Port of Seattle and had the *Deep Sea* towed from Fisherman's Terminal, Port of Seattle, to Penn Cove, Whidbey Island in December 2011. Mr. Westmoreland anchored the *Deep Sea* in Penn Cove on state-owned aquatic lands managed by the Washington State Department of Natural Resources (DNR). On January 13, 2012, he was contacted by DNR and given instructions on how to obtain authorization to anchor his vessel in Penn Cove. Mr. Westmoreland failed to do so. On March 7, 2012, DNR sent Mr. Westmoreland a notice of Unauthorized Use and Occupancy informing him he was now considered to be trespassing on state-owned aquatic lands.

DESCRIPTION OF VIOLATION #1

RCW 90.56.280 Duty to notify coast guard and division of emergency management of discharge.
It shall be the duty of any person discharging oil or hazardous substances or otherwise causing, permitting, or allowing the same to enter the waters of the state, unless the discharge or entry was expressly authorized by the department prior thereto or authorized by operation of law under RCW 90.48.200, to immediately notify the coast guard and the division of emergency management. The notice to the division of emergency management within the *department of community, trade, and economic development shall be made to the division's twenty-four hour statewide toll-free number established for reporting emergencies.

Based on investigation, the following findings support a violation determination:

A. Mr. Westmoreland is a "person" as defined in RCW 90.56.010.

B. Penn Cove is a "water of the state" as defined in RCW 90.56.010.

C. Diesel and lube oil are "oil" as defined in RCW 90.56.010.

D. Mr. Westmoreland caused, permitted or allowed diesel and lube oil under his control to enter Penn Cove from May 14 to June 3, 2012.

E. Mr. Westmoreland did not notify the Division of Emergency Management or the U.S. Coast Guard.

***Reviser's note:** The powers, duties, and functions of the department of community, trade, and economic development relating to emergency management were transferred to the state military department pursuant to 1995 c391 § 10.

DESCRIPTION OF VIOLATIONS #2 THROUGH #22

RCW 90.56.320 Unlawful for oil to enter waters — Exceptions.
It shall be unlawful, except under the circumstances hereafter described in this section, for oil to enter the waters of the state from any ship or any fixed or mobile facility or installation located offshore or onshore whether publicly or privately operated, regardless of the cause of the entry or fault of the person having control over the oil, or regardless of whether it be the result of intentional or negligent conduct, accident or other cause. This section shall not apply to discharges of oil in the following circumstances:
(1) The person discharging was expressly authorized to do so by the department prior to the entry of the oil into state waters; or
(2) The person discharging was authorized to do so by operation of law as provided in RCW 90.48.200.

Based on investigation, the following support a violation determination:

A. Diesel fuel and lube oil are "oil" as defined in RCW 90.56.010.

B. The *Deep Sea* is a "ship" as defined in RCW 90.56.010.

C. Penn Cove is a "water of the state" as defined in RCW 90.56.010.

D. Oil entered waters of the state from the *Deep Sea* beginning on May 14, 2012, and continued to enter waters of the state until June 3, 2012, for a total of 21 days.

E. The discharge of oil was not authorized by the Department of Ecology.

F. The discharge was not authorized under RCW 90.48.200.

G. Mr. Westmoreland owned and operated, and had control of the oil on, the Deep Sea on May 14, 2012 to June 3, 2012.

Under RCW 90.48.144, each day of violation is a separate violation. Oil from Mr. Westmoreland's vessel, the *Deep Sea*, entered the waters for the state for 21 days. Therefore, Mr. Westmoreland had 21 violations of RCW 90.56.320.

DESCRIPTION OF VIOLATIONS #23 through #43

RCW 90.56.340. Duty to remove oil
It shall be the obligation of any person owning or having control over oil entering waters of the state in violation of RCW 90.56.320 to immediately collect and remove the same. If it is not feasible to collect and remove, said person shall take all practicable actions to contain, treat and disperse the same. The director shall prohibit or restrict the use of any chemicals or other dispersant or treatment materials proposed for use under this section whenever it appears to the director that use thereof would be detrimental to the public interest.

Based on investigation, the following support a violation determination:

A. Diesel fuel and lube oil are "oil" as defined in RCW 90.56.010.

B. The *Deep Sea* is a "ship" as defined in RCW 90.56.010.

C. Penn Cove is a "water of the state" as defined in RCW 90.56.010.

D. Oil entered waters of the state from the *Deep Sea* beginning on May 14, 2012, and continued to enter waters of the state until June 3, 2012, for a total of 21 days.

E. Mr. Westmoreland owned the *Deep Sea* and had control over the oil on the *Deep Sea* on prior to its sinking on May 13, 2012.

F. Oil entered the waters of the state from the *Deep Sea* from May 14, 2012 to June 3, 2012, in violation of RCW 90.56.320.

G. Mr. Westmoreland did not collect and remove the oil or otherwise take all practicable actions to contain, treat and disperse the oil.

Under RCW 90.48.144, each day of violation is a separate violation. Oil from Mr. Westmoreland's vessel, the *Deep Sea*, was in waters for the state for 21 days. Therefore, Mr. Westmoreland had 21 violations of RCW 90.56.340.

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. Ecology has determined the violation(s) described in this Notice of Penalty are not paperwork violations under RCW 34.05.110 and therefore you are not eligible for a waiver for a first-time paperwork violation. Ecology has also determined that you are not eligible for an opportunity to correct under RCW 34.05.110 because no correction is possible.

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. Email 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 **Pollution Control Hearings Board** 1111 Israel Road SW STE 301 Tumwater, WA 98501	**Department of Ecology** Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608 **Pollution Control Hearings Board** PO Box 40903 Olympia, WA 98504-0903

CONTACT INFORMATION

Please direct questions about this Notice of Penalty to:

Jeff Fishel
Department of Ecology
Spills Program

Phone: (360) 407-7504
Email: jfis461@ecy.wa.gov

Mailing address:

PO Box 47600
Olympia, WA 98504-7600

Street address:

300 Desmond Dr. SE
Lacey, WA 98503

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

- **Chapter 88.40 RCW - Transport of Petroleum Products — Financial Responsibility**
  http://apps.leg.wa.gov/RCW/default.aspx?cite=88.40
- **Chapter 88.46 RCW - Vessel Oil Spill Prevention and Response**
  http://apps.leg.wa.gov/RCW/default.aspx?cite=88.46
- **Chapter 90.48 RCW - Water Pollution Control**
  http://apps.leg.wa.gov/RCW/default.aspx?cite=90.48
- **Chapter 90.56 RCW - Oil and Hazardous Substance Spill Prevention and Response**
  http://apps.leg.wa.gov/RCW/default.aspx?cite=90.56
- **Spill Prevention, Preparedness, and Response Rules:**
  www.ecy.wa.gov/laws-rules/ecywac.html#sppr

SIGNATURE

Dale Jensen
Program Manager
Spills Prevention, Preparedness, and Response

5-2-14
Date