

Field Notice of Penalty (NOP)



Objectives

- Efficiently address large numbers of common violations of the Construction Stormwater, Industrial Stormwater, and Sand & Gravel General Permits.
 - Immediate consequences for violations.
 - Faster than conventional enforcement process.
 - Reduce number of appeals.
 - Save state resources.
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Phase-in period

- Ecology News Release notifying industries and associated groups.
 - Postcards mailed to CSGP, ISGP, and S&G permit holders.
 - Posting on Enforcement Web Page.
 - Meeting with Water Quality Partnership
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- The background of the slide features several concentric, light blue circular ripples that resemble water droplets hitting a surface, scattered across the lower half of the page.

Phase-in period

(continued)

- Each regional office gets one NOP book for the CSGP, ISGP, and S&G permits.
- Each field office gets one NOP book.
- Limit of two penalties per month for each NOP book issued.
- Six months or (possibly) one wet season.

Requirements for first group of inspectors

- They were chosen based on their qualifications and experience.
- The W.Q. Program established the guidelines for issuing Field NOPs.
- Each inspector received a Delegation Memo for signatory authority.
- The first group of inspectors works for six months with the next group of inspectors as part of their training plan.

Minimum qualifications and experience to issue NOPs

- Approval by Section Managers and Unit Supervisors.
- Section Managers and Unit Supervisors will monitor completion of training.
- Training includes:
 - DOP approved Core Investigator Training.
 - Enforcement and Basic Inspector Training.
 - Serving Difficult Clients (or equivalent).
- Proven ability to demonstrate good, calm, objective judgment in all situations, including with difficult clients.

Minimum qualifications and experience to issue NOPs

- Complete the NOP training.
- Six months on-the-job training with a NOP trained inspector (possibly waived).
- Delegation Letter for signatory authority.
- Observe or participate in at least one appeal hearing of an enforcement action before the Pollution Control Hearings Board (possibly waived).

Avoiding problems

- Issuing a NOP on a first visit is the exception, not the rule.
- Only for clear, easily-proven violations such as failure to submit DMRs, no SWPPP, or operating without a permit.
- Not for subjective violations, such as a SWPPP doesn't meet permit requirements. These need supporting documentation and evidence (RFE).

How the Corrections Required form is used

- Only for violations of the CSGP, ISGP, S&G.
- Two pages, two-part self-copying paper.
- Documents observations and actions required to comply.
- Follow-up inspection in two weeks, if workload permits.
- Includes a date on the form for a response showing that the violation was corrected.
- It is not an Administrative Order.

How the Corrections Required form is used (continued)

- Issued before a NOP (depending on prior violations, history and feasibility for follow-up).
- Required every time a NOP is issued to clearly state the violations and needed corrective actions.
- Does not replace an inspection report (evidence, photos, samples, who, what, when, where, why, and how). An inspection report is required whenever a NOP is issued.
- Not a stop work order. These should be issued by the local jurisdictions if needed.

Field Notice of Penalty

 Water Quality Program Notice of Penalty			
Construction Stormwater General Permit (CSGP) <input type="checkbox"/>	Industrial Stormwater General Permit (ISGP) <input type="checkbox"/>	Sand and Gravel (S&G) General Permit <input type="checkbox"/>	
Penalty #:	Permit #:	Agency Docket #: <i>(for internal use only)</i>	
Responsible party:			
Location of violation (site address):		Mailing address: <i>(if different)</i>	
City, State, Zip:		City, State, Zip:	
Latitude and longitude <i>(if available)</i> :			
Date issued:	Time:	Region:	
Violation	Reason	Permit Condition	
<input type="checkbox"/> RCW 90.48.160	Operating or discharging without a permit (all)	Does not apply.	
<input type="checkbox"/> RCW 90.48.080	Polluting waters of the state (all)		
<input type="checkbox"/> RCW 90.48.080	Polluting impaired waters, discharge exceeds 303(d) limit (CSGP, ISGP)		
<input type="checkbox"/> WAC 173-201A or WAC 173-200	Violating water quality standards <i>(List specific standard violated.)</i> (all)		
<input type="checkbox"/> RCW 90.48.090	Denial or withdrawal of access, <u>permitted sites only</u> (all)		
<input type="checkbox"/> RCW 90.48, WAC 173-226-070	Process water discharge without treatment in lined impoundment (S&G)		
<input type="checkbox"/> RCW 90.48, WAC 173-226-070	Failure to clean up oil spills or repair leaking equipment (S&G)		
<input type="checkbox"/> RCW 90.48, WAC 173-226-070	Cover or containment not provided for chemical or petroleum products (all)		
<input type="checkbox"/> RCW 90.48, WAC 173-226-070	Corrective Action not taken (ISGP)		
<input type="checkbox"/> RCW 90.48, WAC 173-226-070	No Stormwater Pollution Prevention Plan (SWPPP) (all)		
<input type="checkbox"/> RCW 90.48, WAC 173-226-070	SWPPP does not meet permit requirements (all)		
<input type="checkbox"/> RCW 90.48, WAC 173-226-070	<input type="checkbox"/> Not <u>maintaining</u> best management practices (BMPs) (all)		
	<input type="checkbox"/> Not <u>implementing</u> BMPs (all)		
	<input type="checkbox"/> Failure to modify SWPPP per permit or Ecology Notice (all)		
<input type="checkbox"/> RCW 90.48, WAC 173-226-070	<input type="checkbox"/> BMP not <u>maintained</u> per Permit or Ecology Notice (all)		
	<input type="checkbox"/> BMP not <u>implemented</u> per Permit or Ecology Notice (all)		
<input type="checkbox"/> RCW 90.48, WAC 173-226-070	<input type="checkbox"/> Inspections not completed as required by permit (CSGP, ISGP)		
	<input type="checkbox"/> Inspections do not comply with permit requirements (CSGP, ISGP)		
<input type="checkbox"/> RCW 90.48, WAC 173-226-090	<input type="checkbox"/> Monitoring not conducted as required by permit (all)		
	<input type="checkbox"/> Sampling does not comply with permit requirements (all)		
<input type="checkbox"/> RCW 90.48, WAC 173-226-070	<input type="checkbox"/> Not keeping site log book (CSGP, ISGP)		
	<input type="checkbox"/> Not keeping inspection reports or checklists (CSGP)		
	<input type="checkbox"/> Did not telephone report turbidity greater than 250 NTU (CSGP), or threshold exceeded (ISGP)		
<input type="checkbox"/> RCW 90.48, WAC 173-226-090	<input type="checkbox"/> No Discharge Monitoring Reports available (all)		
	<input type="checkbox"/> Failure to notify Ecology of noncompliance with permit requirement (all)		

Citation amount (not to exceed \$3,000.00): Under the authority of RCW 90.48.144 the Department of Ecology assesses a penalty against you in the amount of \$ _____. This penalty must be appealed within 30 days of receipt of this citation unless you file an Application for Relief or appeal within that time.

If you need this publication in an alternate format, please call the Water Quality Program at 360-407-6401. Persons with hearing loss can call 711 for Washington Relay Service. Persons with a speech disability can call 877-633-6341.

I personally investigated or observed the violation(s) noted above.	Ecology Regional Offices Bellingham Field Office 1440 10 th St Suite 102 Bellingham WA 98225 360-715-5200 Northwest Regional Office 3190 180 th Ave SE Bellevue WA 98008-5452 425-649-7000 Vancouver Field Office 2108 Grand Blvd Vancouver WA 98681 360-660-7171 Southwest Regional Office PO Box 47775 Olympia WA 98504-7775 360-407-6300 Central Regional Office 15 W Yakima Ave Ste 200 Yakima WA 98902 509-575-2490 Eastern Regional Office 4601 N Monroe Spokane WA 99205-1265 509-326-3400		
Signature of Water Quality inspector	Date		
I acknowledge receipt of this action. A signature does not imply agreement.			
Signature of responsible party or site contact	Date		
Printed name of responsible party or site contact			
This action does not limit the Dept. of Ecology from taking other enforcement actions as deemed necessary. You have a right to appeal this penalty. Detailed instructions are included on this page. Immediately contact the inspector that issued this penalty if you do not understand the appeal process.			
Authority to issue penalties for these violations is found in RCW 90.48.144.			
The penalty is due and payable by you within 30 days of your receipt of this Notice. Please send your penalty payment to: Department of Ecology, Cashiering Unit, P.O. Box 47611, Lacey, Washington 98504-7611.			
You have the right to submit an Application for Relief to Ecology. You also have the right to appeal this penalty to the Pollution Control Hearings Board immediately without exercising the option of filing an Application for Relief to Ecology.			
If you file a timely Application for Relief to Ecology within 30 days of your receipt of this notice of penalty, Ecology will respond with a Notice of Disposition upon Application for Relief. You then have a right to appeal Ecology's Notice of Disposition upon Application for Relief to the Pollution Control Hearings Board.			
NOTICE: This penalty becomes due and owing and is not subject to further administrative or judicial review if you do not submit a timely Application for Relief or Appeal.			
To submit an Application for Relief from an Assessed Penalty: Chapter 43.21B RCW requires you to submit an Application for Relief in writing to Ecology within 30 days of the date of receipt of this document. Send the Application for Relief to the following two locations:			
Original Application for Relief sent to: (Enter name and address for Water Quality Inspector) Department of Ecology Attn:		Copy sent to: Department of Ecology Appeals and Application for Relief Coordinator P.O. Box 47608 Olympia, WA 98504-7608.	
To Appeal this Notice of Penalty you must: <ul style="list-style-type: none"> File your appeal with the Pollution Control Hearings Board (PCHB) within 30 days of the date of receipt of this document. Filing means actual receipt by the PCHB during regular office hours. Note: "Date of receipt" is defined in RCW 43.21B.001(2). Include a copy of the Notice of Penalty that you are appealing with your Notice of Appeal. Serve your appeal on Ecology within 30 days of the date of receipt of this document. Service is accomplished by any of the procedures identified in WAC 371-08-305(10). Serve and file your appeal in paper form. Electronic copies are not accepted. 			
1. File your appeal with the Pollution Control Hearings Board. Mail appeal to: The Pollution Control Hearings Board P.O. Box 40803 Olympia, WA 98504-0803 or Deliver appeal in person to: The Pollution Control Hearings Board 4224 - 6th Ave SE Rowe Six, Bldg 2 Lacey, WA 98503	2. Serve your appeal on the Department of Ecology. Mail appeal to: The Department of Ecology Appeals and Application for Relief Coordinator P.O. Box 47608 Olympia, WA 98504-7608 or Deliver appeal in person to: The Department of Ecology Appeals and Application for Relief Coordinator 300 Desmond Dr SE Lacey, WA 98503	3. Send a copy of appeal to: (Enter name and address for Water Quality Inspector)	
While copy: Responsible party		Yellow copy: Fiscal	Pink copy: Remains in book, copy to file

For additional information visit the Environmental Hearings Office website: <http://www.eko.wa.gov/>. To find laws and agency rules visit the Washington State Legislature website: <http://www1.leg.wa.gov/CodeReviser>.

Field Notice of Penalty

- If there are a lot of violations, impacts to human health or the environment, or violations requiring confirmation through sample analysis issue a conventional Penalty supported by an RFE.
- Issue a conventional Penalty supported by an RFE and good evidence for subjective violations such as:
 - AKART not implemented.
 - BMPs not adequately maintained.
 - Inadequate SWPPP.

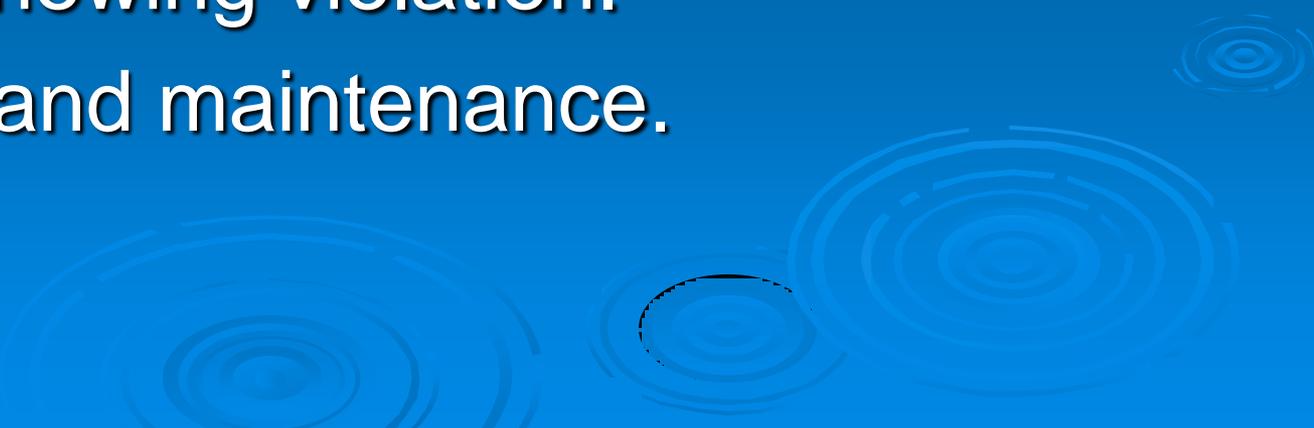
Field Notice of Penalty (continued)

- Only for violations of the for CSGP, ISGP, S&G.
- Minimum assessment \$500, maximum \$3,000.
- Need documentation of prior history before issuing a Field NOP.
- Technical assistance efforts, Corrections Required issued, inspection reports, written records of phone calls, ERTS, photos, samples, warning letters, anything else that is important.
- Maximum of two Field NOPs for any one site before escalating to the conventional enforcement and penalty process.

NOP considerations

- The considerations are the matrix.
- Used to determine amount.
- Each violation has a gravity criteria ranging from 0 – 3.
- The matrix and gravity criteria are printed on the inside cover of the NOP.

The Matrix

- Previous history.
 - Impact on public health and/or the environment.
 - Actions taken to remedy a problem after a discharge has occurred.
 - Willful or knowing violation.
 - Operation and maintenance.
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Penalty Calculation Guidance Gravity Criteria Designation*

Previous history:

1. Is there a previous history of this violation?

- Gravity Criteria = 0 if there is no previous history of this violation.
- Gravity Criteria = 1 if evidence on site shows a previous history of this violation.
- Gravity Criteria = 2 if there is a written record documenting a previous history of this violation.
- Gravity Criteria = 3 if the violator has received a Corrections Required form for this violation, and the violation was not corrected.

Special note: If two Field Citations have been issued to this site, do not issue another. Prepare a Recommendation for Enforcement and issue a Notice of Penalty Incurred and Due.

Impact on public health and/or the environment:

2. Was there any impact on public health or the environment?

- Gravity Criteria = 0 if there is no evidence of detrimental impact on public health, the environment, or impairment of beneficial uses.
- Gravity Criteria = 1 if public health impacts, environmental damage, or impairment of beneficial uses can be inferred from evidence or knowledge of the effects of the violation.
- Gravity Criteria = 2 if there is evidence to support a claim of public health impact, environmental damage, or impairment of beneficial uses and there is a plausible connection between the violation and the damage or impairment.
- Gravity Criteria = 3 if there is direct evidence linking demonstrable public health impact, environmental damage, or impairment of the beneficial uses with the violation.

Actions taken to remedy a problem after a discharge has occurred:

3. Was any action taken to remedy the problem after a discharge has occurred?

- Gravity Criteria = 0 if the violation was corrected as soon as the responsible person learned of it.
- Gravity Criteria = 1 if the violation was corrected in a less timely and cooperative fashion.
- Gravity Criteria = 2 if the responsible person attempted to correct the problem but did not correct it.
- Gravity Criteria = 3 if the responsible person made no attempt to correct the violation.

Willful or knowing violation:

4. Was it a willful or knowing violation?

- Gravity Criteria = 0 if the violator obviously did not know that the action or inaction constituted a violation.
- Gravity Criteria = 1 if it is likely the violator knew.
- Gravity Criteria = 2 if the violator should have known.
- Gravity Criteria = 3 if the violator clearly knew.

Operation and maintenance:

5. Was violation a result of improper operation or inadequate maintenance? (For example: BMPs, stormwater pollution prevention plans (SWPPP), operation and maintenance (O&M) plans)

- Gravity Criteria = 0 if the violation was not the result of improper operation or inadequate maintenance.
- Gravity Criteria = 1 if the facility has an O&M plan, SWPPP, or BMP manual that is out of date or inadequate.
- Gravity Criteria = 2 if there is no O&M plan, SWPPP, or BMPs developed for the facility.
- Gravity Criteria = 3 if the facility has no plans or is not following its plan and the violation was clearly the result of improper operation or maintenance.

Gravity Criteria Penalty Designation

Rating	1-3	4-6	7-9	10-12	13-14	15
Penalty	\$500	\$1000	\$1500	\$2000	\$2500	\$3000

*for reference only

Using the Matrix

- This is not an RFE.
- The Corrections Required form and inspection report will serve the same function as an RFE in an appeal.
- Not used to rank each violation checked on the form.
- Used to evaluate all of the violations combined and determine a penalty amount.
- For guidance only.
- Not filled out on paper when issuing a NOP.

How can the NOP be Issued?

- In person.
- Certified mail - no later than 30 days after the site inspection.

Questions?

