

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

IN THE MATTER OF COMPLIANCE BY )  
US Golden Eagle Farms LP )  
 )  
With Chapters 90.03 Revised Code of Washington )  
(RCW) )

NOTICE OF PENALTY  
Docket #15WRNR -  
DE 13070

**To: John Negrin**  
**US Golden Eagle Farms LP**  
**33083 Cockreham Island Rd**  
**Sedro Woolley, WA 98284**

<b>Notice of Penalty Docket #</b>	15WRNR – DE 13070
<b>Site Location</b>	Cockreham Island, Skagit County
<b>Penalty Amount</b>	\$16,000
<b>Due Date:</b>	Within 30 days after receiving this Notice of Penalty.

The Department of Ecology (Ecology) has assessed a penalty against US Golden Eagle Farms LP in the amount of \$16,000 for violating terms and provisions of:

- Cease and Desist Order dated January 3, 2012
- Chapter 90.03 Revised Code of Washington (RCW)
- Surface Water Certificate 11032, Groundwater Certificate 1848-A, and Groundwater Certificate 2677-A; and Goundwater Claim G1-096365CL

Ecology has authority to issue this penalty under RCW 43.27A.190, RCW 90.03.600, and RCW 90.03.605, and is basing the penalties on the violations listed in this notice.

**DESCRIPTION OF VIOLATION(S)**

U.S. Golden Eagle Farms, LP (USGE) owns over 700 acres of agricultural land on Cockreham Island, Skagit County. This farm is located near the Skagit River in WRIA 3. USGE has surface and ground water rights and a claim that authorize 250 acres of irrigation. A third party reported unpermitted irrigation on the property in 2008. Ecology issued an order to cease and desist unpermitted irrigation in 2009 to the company leasing the property.

In 2009, USGE began purchasing the property. Since 2011, USGE has been knowingly irrigating property on their Cockreham Island Farm outside of the place of use and in excess of the acreage allowed by their water rights. Ecology sent a warning letter in 2011, issued a cease and desist order in 2012, and provided many instances of technical assistance to USGE every year from 2011 to 2015. USGE has continued to illegally irrigate throughout this period and Ecology has field verified four violations in 2015.

This penalty is based on the illegal water use observed on four days during the 2015 irrigation season on USGE’s property. Continued irrigation in excess of USGE’s water rights may lead to further penalties.

**Violation 1:**

In 2015, Ecology observed USGE exceeding the allowed irrigation acres of their water rights and claims by approximately 200 acres. USGE has at least 450 acres of blueberries planted. USGE is only authorized to irrigate 250 acres. The penalty is based on observations made from public right-of-way on four days during the 2015 irrigation season.

- On June 9, 2015, Ecology staff observed unpermitted irrigation of blueberries on USGE fields 4 and 11. Evidence includes photos and video.
- On June 16, 2015, Ecology staff observed unpermitted irrigation of blueberries on USGE fields 1, 2, 4, and 12. Evidence includes photos.
- On June 24, 2015, Ecology staff observed unpermitted irrigation of blueberries on USGE fields 3, 4 and 11. Evidence includes photos and video.
- On July 7, 2015, Ecology staff observed unpermitted irrigation of blueberries on USGE fields 3, 4 and 11. Evidence includes photos and video.

**Calculation of Penalty:**

**I. Table 1 – Gravity Criteria**

<b>Penalty Matrix</b>						
			<b>No</b>	<b>Possibly</b>	<b>Probably</b>	<b>Definitely</b>
<b>1. Willful or knowing violation?</b>			<b>0</b>	<b>1</b>	<b>2</b>	<b>3</b>
"No" if the violator obviously did not know that the action or inaction constituted a violation. "Possibly" if the violator should have known. "Probably" if it is likely the violator knew. "Definitely" if the violator clearly knew. (If the answer is "definitely," consider consulting with the environmental crimes unit.)						
Mitigative Factor - Degree of cooperation in working toward compliance.						
<b>2. Failure to obtain necessary permits?</b>			<b>0</b>	<b>1</b>	<b>2</b>	<b>3</b>
"No" if the paperwork was complete and appropriate for the action that caused the violation. "Definitely" if missing any of the required permits and approvals for the action that caused the violation.						
<b>3. Economic benefit?</b>			<b>0</b>	<b>1</b>	<b>2</b>	<b>3</b>
Did non-compliance benefit anyone economically? Avoided costs may include engineering costs, permit fees, or product sales. "No" if it is clear that no one obtained an economic benefit. "Possibly" if someone might have benefited. "Probably" if anyone benefited, but the benefit is not quantifiable. "Definitely" if the economic benefit is quantifiable.						

<b>Penalty Matrix</b>						
			<b>No</b>	<b>Possibly</b>	<b>Probably</b>	<b>Definitely</b>
<b>4. Environmental or resource damage?</b>			<b>0</b>	<b>1</b>	<b>2</b>	<b>3</b>
<p>"No" if there is no evidence to support a claim of environmental damage or impairment of beneficial uses.</p> <p>"Possibly" if environmental damage or impairment of beneficial uses can be inferred from evidence or knowledge of the effects of the violation.</p> <p>"Probably" if there is evidence to support a claim of environmental damage or impairment of beneficial uses and there is a plausible connection between the violation and the damage or impairment.</p> <p>"Definitely" if there is direct evidence linking demonstrable environmental damage or impairment of the beneficial uses with the violation.</p> <p>Mitigative Factor -                      Compensation paid or agreed to for damages to public resources.</p>						
<b>5. Damage to the property of others?</b>			<b>0</b>	<b>1</b>	<b>2</b>	<b>3</b>
<p>"No" if there is no evidence to support a claim of property damage or impairment of beneficial uses.</p> <p>"Possibly" if property damage or impairment of beneficial uses can be inferred from evidence or knowledge of the effects of the violation.</p> <p>"Probably" if there is evidence to support a claim of property damage or impairment of beneficial uses and there is a plausible connection between the violation and the damage/impairment.</p> <p>"Definitely" if there is direct evidence linking demonstrable property damage or impairment of the beneficial uses with the violation.</p> <p>Mitigative Factor -                      Compensation paid or agreed to for damages to public resources.</p>						
<b>6. Damage to the health of others?</b>			<b>0</b>	<b>1</b>	<b>2</b>	<b>3</b>
<p>"No" if there is no evidence to support a claim of damage to health.</p> <p>"Possibly" if damage to health can be inferred from evidence and knowledge of the effects of the violation.</p> <p>"Probably" if evidence supports a claim of damage to health and there is a plausible connection between this violation and the effect on health.</p> <p>"Definitely" if there is direct evidence linking damage to health or adverse effects with the violation.</p>						
<b>7. Unresponsive in correcting the violation?</b>			<b>0</b>	<b>1</b>	<b>2</b>	<b>3</b>
<p>"No" if the violation was corrected as soon as the responsible person learned of it.</p> <p>"Possibly" if the violation was corrected in a less timely and cooperative fashion.</p> <p>"Probably" if the responsible party attempted to correct the problem but did not correct it.</p> <p>"Definitely" if the responsible party made no attempt to correct the violation.</p> <p>Mitigative Factors -                      Timeliness and appropriateness of corrective actions taken.                      Degree of cooperation in working toward compliance.</p>						

Penalty Matrix						
			No	Possibly	Probably	Definitely
Total			16			

**Table 2: Gravity Component Penalty**

Rating:	1	2-5	6-10	11-15	16-20	21
Penalty:	\$100.	\$500.	\$1,000.	\$2,000.	\$4,000.	\$5000.

Each of the four times Ecology staff visited the site, staff saw healthy blueberry plants. Thus, it is reasonable to assume that with the 2015 drought conditions and the fragile 1-2 year old blueberry plants, crops were illegally irrigated throughout the season and not just on the four incidences identified in this report. A penalty based on the full 103 days (May 16<sup>th</sup>- August 26) of irrigation that likely occurred this irrigation season could be in excess of \$400,000.

Based on Ecology’s Water Resources Program penalty matrix, the penalty for the four witnessed days of illegal irrigation is \$16,000 (4 x \$4,000).

**Based on this calculation, Ecology hereby issues US Golden Eagle Farms LP a penalty of \$16,000.**

**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 determined that US Golden Eagle Farms LP is not eligible for an opportunity to correct under RCW 34.05.110 because:

1. The effect of the violation poses a potentially significant threat to the environment or causes serious harm to the public interest.
2. The violation involves a knowing or willful violation.
3. US Golden Eagle Farms LP received warning letter on August 8, 2011 and Administrative Order to Cease and Desist on January 3, 2012.

**FAILURE TO COMPLY WITH THIS NOTICE OF PENALTY**

Continued failure to correct the violations listed in this Notice of Penalty and comply with the corrective actions required may result in added 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**

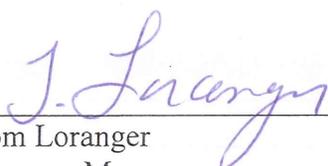
Please direct all questions about this Notice of Penalty to:

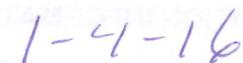
Tom Buroker  
Department of Ecology  
3190 160<sup>th</sup> AVE SE  
Bellevue, WA 99008-5452  
Phone: 425-649-7270  
[thomas.buroker@ecy.wa.gov](mailto:thomas.buroker@ecy.wa.gov)

**MORE INFORMATION**

- **Pollution Control Hearings Board**  
[www.eho.wa.gov/Boards\\_PCHB.aspx](http://www.eho.wa.gov/Boards_PCHB.aspx)
- **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>
- **Laws:** [www.ecy.wa.gov/laws-rules/ecyrcw.html](http://www.ecy.wa.gov/laws-rules/ecyrcw.html)
- **Rules:** [www.ecy.wa.gov/laws-rules/ecywac.html](http://www.ecy.wa.gov/laws-rules/ecywac.html)

**SIGNATURE**

  
\_\_\_\_\_  
Tom Loranger  
Program Manager  
Water Resources Program

  
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Date