

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

IN THE MATTER OF PENALTY)
ASSESSMENT AGAINST:) NOTICE OF PENALTY
The Boeing Company) INCURRED AND DUE,
) DOCKET #8562

To: Mr. Michael Verhaar
Environmental Affairs Manager
737 Airplane Programs
MC 67-74
The Boeing Company
P.O. Box 3707
Seattle, Washington 98124-2207

Notice of Penalty Docket #:	8562
Penalty Amount:	\$102,000
Due:	Within 30 days after this Notice of Penalty is received.
Incident Location:	Duwamish River, 47.532424° N / 122.18006° W
Date of Incident:	May 28, 2010
Facility Name/Site	Boeing Plant No. 2, Aviation Fuel Farm

The Department of Ecology (Ecology) has assessed a penalty against you in the amount of \$102,000 for violating provisions of:

- RCW 90.56.280
- RCW 90.56.320
- RCW 90.56.330

Ecology has authority to issue this penalty under RCW 90.48.144 and 90.56.330, and is basing the penalty on the violations described below.

SUMMARY OF INCIDENT

On Friday evening, May 28, 2010, two tank trucks delivered about 10,000 gallons of Jet A fuel to The Boeing Company's (Boeing) Plant 2 Aviation Fuel Farm (fuel farm). During the second delivery, between 1845 and 1930, the Boeing refueler on site noted the sound of fluid flowing into the 19,000 gallon sump. He also noted an odor of Jet A and alerted Boeing. Boeing Fire Department and a Boeing plumber investigated at the scene. Jet A fuel was found in the sump, the oil/water separator that served the sump, and the first stormwater catch basin to which the oil/water separator discharged. The second catch basin was checked by removing the grate and filter material, but not the stainless steel insert, and no fuel was noted. The plumber locked-out the power supply to the float-activated pump on the sump. The Duwamish River was also checked by Boeing personnel, but no fuel was found at that time.

On Saturday, May 29, 2010, at 08:22, a sheen was reported on the Duwamish River downstream of the outfall from the stormwater system serving the fuel farm. Ecology and the U.S. Coast Guard (USCG) searched for a source, but could not locate one. A pocket of sheen was found and sampled. The samples were tested and found to match the Jet A fuel from the Boeing fuel farm.

On Tuesday, June 1, 2010, at about 08:30, a Boeing employee noted sheen along the shoreline near the stormwater outfall, and traced it back through the stormwater system to the fuel farm. Boeing reported the spill to the USCG National Response Center (USCG/NRC) at 10:38. Ecology took samples of the sheen from the Duwamish River which were tested and found to match the Jet A fuel from the Boeing fuel farm.

It was later determined that about 300 gallons of Jet A were spilled to the Duwamish River. Response was terminated on June 2, 2010.

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 the determination of violation:

- A. The Boeing Company is a person as defined in RCW 90.56.010.
- B. Storm drains that lead to the Duwamish River, and the River, are waters of the State as defined in RCW 90.56.010.
- C. Jet A fuel is an oil as defined in RCW 90.56.010.
- D. Jet A fuel was under the control of The Boeing Company when it was discharged to a storm water system that led to the Duwamish River, and entered the Duwamish River on May 28, 2010.
- E. The Boeing Company notified Washington State's Emergency Management Division of the spill on June 1, 2011, at 09:10.
- F. The Boeing Company did not immediately notify Washington State's Emergency Management Division.

DESCRIPTION OF VIOLATION #2

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. Jet A Fuel is “oil” as defined in RCW 90.56.010.
- B. Boeing Plant 2 is an installation located onshore near the Duwamish River.
- C. Storm drains that lead to the Duwamish River, and the River, are “waters of the state” as defined in RCW 90.56.010.
- D. Oil entered waters of the state from the Boeing Plant 2 on May 28, 2010.
- E. The discharge of oil was not authorized by the Department of Ecology.
- F. The Boeing Company owned and operated the Plant 2 on May 28, 2010.

DESCRIPTION OF VIOLATION #3

Under RCW 90.56.330, an additional penalty may be assessed if Ecology determines that the spill was negligent, reckless or intentional. The statute states:

RCW 90.56.330 Additional penalties. Except as otherwise provided in RCW 90.56.390, any person who negligently discharges oil, or causes or permits the entry of the same, shall incur, in addition to any other penalty as provided by law, a penalty in an amount of up to one hundred thousand dollars for every such violation, and for each day the spill poses risks to the environment as determined by the director. Any person who intentionally or recklessly discharges or causes or permits the entry of oil into the waters of the state shall incur, in addition to any other penalty authorized by law, a penalty of up to five hundred thousand dollars for every such violation and for each day the spill poses risks to the environment as determined by the director. The amount of the penalty shall be determined by the director after taking into consideration the size of the business of the violator, the gravity of the violation, the previous record of the violator in complying, or failing to comply, with the provisions of chapter 90.48 RCW, the speed and thoroughness of the collection and removal

of the oil, and such other considerations as the director deems appropriate. Every act of commission or omission which procures, aids or abets in the violation shall be considered a violation under the provisions of this section and subject to the penalty herein provided for. The penalty provided for in this section shall be imposed pursuant to RCW 43.21B.300.

RCW 90.56.390 exempts from liability a person, other than a responsible party, who responds to an oil spill consistent with national response plan and/or directions from the federal on-scene coordinator. By its terms, this statute does not apply to a responsible party such as The Boeing Company.

Based on investigation, the following support a determination of a negligent oil spill:

- A. The Boeing Company is a person as defined in RCW 90.56.010.
- B. Jet A Fuel is "oil" as defined in RCW 90.56.010.
- C. The Boeing Company owned and operated the Boeing Plant 2 fuel farm on May 28, 2010.
- D. Boeing Plant 2 fuel farm comprises two tanks, both serviced through a 200-gallon fuel filter system which was fitted with a 3/4-inch drain pipe used to drain fuel from the filter when servicing.
- E. The fuel farm was required to have a Spill Prevention, Control and Containment Plan (SPCC Plan) under 40 CFR Part 112.
- F. Section 4.3 of Boeing's SPCC Plan (Facility Transfer Operations) required: "Master flow, drain, loading and unloading valves and connections that could permit an unauthorized release to the surface are locked in the closed position when not in use."
- G. Section 13 of Boeing's SPCC Plan (Security) required: "All flow and drain valves from bulk storage containers are closed and locked when not in use, except for the standby generator tanks throughout the site..."
- H. The fuel filter drain led to a 19,000 gallon underground sump. A single quarter-turn ball valve located on the fuel filter's drain pipe isolated the fuel filter tank, and the two above-ground storage tanks, from the sump. There was no lock-out, tag-out procedure followed for this valve.
- I. During maintenance on the fuel filter on the morning of May 28, 2010, the drain pipe valve was left open.
- J. The sump was serviced by a pump with a float switch that pumped liquid to an aboveground oil-water separator that discharged to the on-site stormwater system.
- K. Section 4.3 of Boeing's SPCC Plan (Facility Transfer Operations) stated in relevant part: "The sump is controlled by float switches, which have an On/Off power switch near the

opening of the sump. If there is no sheen on the surface of the sump liquids, then the float switch is turned on. Floats then activate the sump pump, which discharges the liquids into an aboveground Oil/Water Separator (OWS).”

- L. Power to the sump’s pump was “on” during maintenance and refueling work on May 28, 2010, and remained “on” until a Boeing plumber lock it out in the evening.
- M. While checking Plant 2’s stormwater system, the Boeing Fire Department and plumber failed to remove the stainless steel insert in the second catch basin from the sump discharge to determine if Jet A had passed that point of the system. No further inspection of the system was made on May 28, 2010.
- N. Between and including May 28 and June 1, 2010, Boeing Plant 2 operated under NPDES Industrial Stormwater General Permit No. WAR000482, issued by Ecology, which prohibited discharge of pollutants to the Duwamish River through Boeing’s stormwater system unless Boeing complied with the conditions of the Permit.
- O. Special Condition No. S9.E.1 of the Industrial Stormwater Permit required immediate notification of Ecology, “In the event Boeing is unable to comply with any of the terms and conditions of this permit which may endanger human health or the environment, or the facility experiences any bypass or upset which causes an exceedance of any effluent limitation in the permit”
- P. Discharge of oil to the stormwater system at Boeing Plant 2 posed a serious threat to the environment, and was a “bypass or upset” of Permit conditions, and was not immediately reported to Ecology by Boeing.
- Q. On June 1, 2010, oil was reported on the Duwamish River and a full inspection of Plant 2 stormwater system was conducted at that time. As a result on May 29, 2010, a vacuum truck cleaned out the sump and CB#1 but no further cleanup was performed until after oil was discovered in the Duwamish on June 1, 2010.
- R. Boeing Fire Department personnel and plumbers who responded on May 28, 2011, were unaware of modifications to Plant 2’s stormwater system.
- S. Approximately 6,008 gallons of Jet A fuel were unaccounted for and assumed discharged to the underground sump and subsequently to the stormwater system. An estimated 300 gallons made it to the Duwamish River.

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 requirements of RCW 34.05.110 do not apply to the violation(s) described in this Notice of Penalty because you are not a small business as defined in RCW 34.05.110 (9).

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 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 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 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:

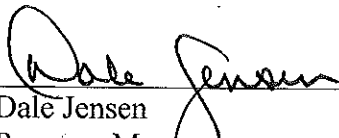
300 Desmond Dr. SE
Lacey, WA 98503

MORE INFORMATION

- **Pollution Control Hearings Board**
www.eho.wa.gov/Boards_PCHB.aspx
- **Chapter 43.21B RCW - Environmental 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
Spill Prevention, Preparedness, and Response Program
Department of Ecology

6-27-2011
Date