

# Environmental and Natural Resources Update

## Washington Department of Ecology to Issue Fines on the Spot for Water Quality Violations

### Overview

The Washington Department of Ecology (Ecology) is now implementing a new program that authorizes Water Quality Program inspectors to issue on the spot “Field Tickets” for alleged water quality violations with fines of up to \$3,000 per violation. In general, the program targets the less significant class of water quality violators that, on an individual basis, have not been the focus of past programs. Ecology has concluded that such sources pose a significant collective threat to the state's water quality. The compliance program will focus on those sites covered by the Industrial, Construction, and Sand & Gravel Stormwater General Permits.

### Reason For Concern

Likely to be caught within Ecology's new stormwater enforcement net, and particularly vulnerable during the winter rainy season, are construction sites, road and utility maintenance activities, and commercial and industrial facilities. Under this new program, water quality inspectors are empowered to issue “field tickets” when they observe an alleged violation during an inspection. The amount of the fine will vary from \$500 to \$3,000, per violation.

Except in cases where the Ecology inspectors come upon a “flagrant violation,” Ecology inspectors can

issue field tickets in only those cases where the recipient has either: (1) *previously been issued a written warning for the alleged violation*; or (2) *the problem had been noted in a prior inspection report*.

Exactly what constitutes a “flagrant violation” is not defined. Thus, in practice it is likely that each field inspector will define what he or she believes to be a flagrant violation on a case-by-case basis. Factors to be considered may include: site stormwater history, company compliance history, the severity of impacts noted, and corrective actions taken.

### What is Ecology looking for?

Common water quality violations that will be targeted by Ecology include, but are not limited to:

- Untreated wastewater discharges
- Spills of oil or other chemicals
- Not having required pollution prevention plans on site
- Allowing muddy runoff to discharge from construction sites
- Not taking steps to prevent stormwater contamination

A field ticket violation will become a part of Ecology's enforcement database and, therefore, would

likely become a factor in the calculation of any future fines.

## Right to Appeal Violation

The field tickets can be appealed to the state Pollution Control Hearing Board. However, if not appealed in a timely manner, the violator must pay the fine, correct the violation and report back to Ecology that the violation has been corrected. The Ecology press release contains additional details about this new program, and may be found at: <http://www.ecy.wa.gov/pubs/0810100.pdf>.

## How We can Help

The Short Cressman and Burgess Environmental and Natural Resource Section has experience handling stormwater issues for clients throughout Washington. Please contact any of the attorneys pictured if you have questions concerning this new program or if we can assist you with any other stormwater or water quality compliance matter.



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