

Violations of Environmental Permits and Regulations for State Transportation Projects

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Secretary of Transportation

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February 2022



**Washington State
Department of Transportation**

RE: RCW 47.85.040 (5) – Report summarizing violations of environmental permits and regulations for state transportation projects

The 2015 Legislature directed the Washington State Department of Transportation (WSDOT) to summarize environmental violations annually. RCW 47.85.040 (5) states:

“Provide an annual report summarizing violations of environmental permits and regulations to Ecology and the Legislature by March 1st of each year for violations occurring during the preceding year.”

WSDOT’s Commitment to Environmental Protection

Washington State’s transportation system policy goals include environmental protection: “To enhance Washington's quality of life through transportation investments that promote energy conservation, enhance healthy communities, and protect the environment” (RCW 47.04.280). WSDOT is committed to protecting the quality of our air, water, cultural and natural resources. In addition, WSDOT directs its employees to follow sound environmental practices in the planning, design, construction, operation, and maintenance of the state’s transportation system and facilities. WSDOT’s efforts to ensure our activities meet this commitment include:

- Integrating environmental protection features in the design of projects and maintenance activities.
- Working with federal, state, local, and tribal agencies to ensure our projects and maintenance work comply with applicable laws and regulations;
- Incorporating environmental commitments (such as permit conditions) into project-level contracts, and tracking them throughout project delivery; and
- Training staff to spot risks and minimize the potential for harm by implementing best management practices (BMPs).

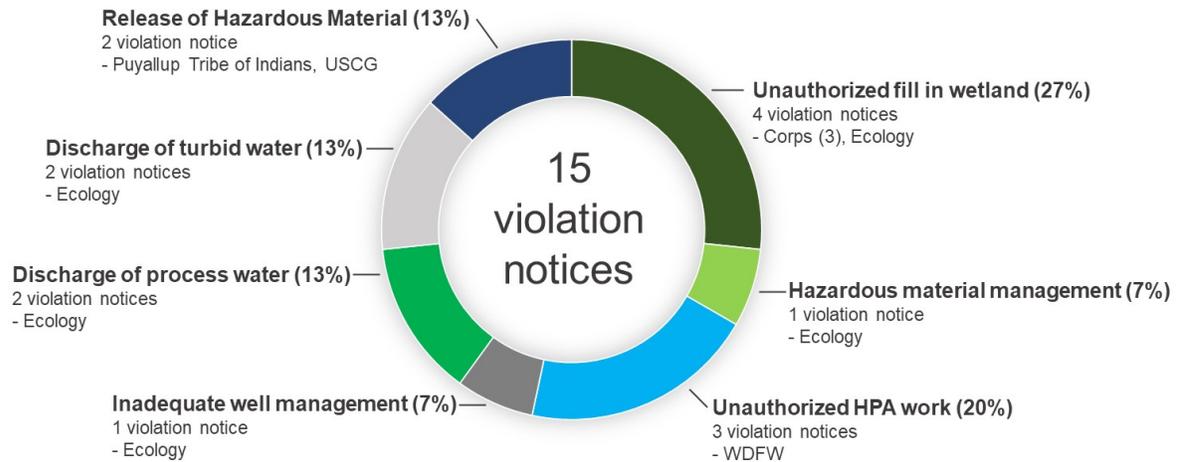
WSDOT and its contractors regularly conduct site inspections and monitor water quality to ensure compliance with environmental permits and approvals. When non-compliance events are detected, we follow the Environmental Compliance Assurance Procedures that WSDOT has established. Non-compliance events are actions that are not in compliance with environmental standards, permits, agreements, or laws. Not all non-compliance events result in a violation. We place a high emphasis on self-reporting so that we can address problems before harm is done. Self-reporting also helps us reduce the potential for violations. For the purposes of this report, violations are defined as written notices received from regulatory agencies and tribes in 2021, including: warning letters, inspection reports (citing violations and requiring corrective action), notices of violation, orders, and monetary penalties.

2021 Environmental Violations

In 2021, regulatory agencies and a tribe issued 11 violations to highway construction projects and three to WSDOT maintenance work. There was one violation issued to Washington State Ferries. These 15 violations issued in 2021 stemmed from 11 non-compliance events (where one event resulted in two violations) in 2021, and three non-compliance events in 2020. The total number of violations issued in 2021 increased by four from the 11 violations we reported in our 2020 report. Figure 1 below displays

violation notices by categories, and Table 1 at the end of this report provides details of each non-compliance event.

Figure 1. WSDOT activities received 15 environmental violation notices in 2021
Number of notices by category and issuing agency



Data source: WSDOT Environmental Services Office

Note: Corps = US Army Corps of Engineers. Ecology = Washington State Department of Ecology. USCG = US Coast Guard. WDFW = Washington Department of Fish and Wildlife. Percentages may not add up exactly to 100% due to rounding.

Of the 15 statewide violation notices, regulatory agencies and a tribe issued seven to WSDOT only, three to both WSDOT and contractor (or Design-Builder) and five directly to a WSDOT contractor. Violations can be issued directly to a contractor when the regulatory agency determined that the contractor was solely responsible or was the permit-holder.

WSDOT-only violations – Regulatory agencies and a tribe issued a total of seven violations directly to WSDOT in 2021: two for cutting wood debris in a manner unauthorized by the General Hydraulic Project Approval (HPA), one for a contractor excavating areas unauthorized by the HPA, one for mismanaging hazardous materials on site, one for the release of hazardous material, and two for unauthorized fill into wetlands.

WSDOT and Contractor violations – Regulatory agencies issued a total of three violations to both WSDOT and the contractor in 2021 on the same project. The US Army Corps of Engineers (Corps) and Washington State Department of Ecology (Ecology) both issued violations for the contractor filling a privately-owned wetland at an off-site staging area selected by the contractor; WSDOT has followed up with the agencies and clarified that this event was the contractor’s responsibility. Ecology also issued a joint violation for discharging turbid waters.

Contractor-only violations – Regulatory agencies issued a total five violations directly to the contractor. Ecology issued a violation to the contractor for inadequate well decommissioning. The US Coast Guard (USCG) issued a violation to the contractor for failing to contain petroleum that migrated out of a work area. Ecology also noted three distinct illegal discharges to waters of the state that occurred in late 2020: two discharges of process water and one of turbid water. Ecology issued a penalty to the contractor in 2021 for those 2020 discharges.

WSDOT penalties – None of the violation notices received by WSDOT resulted in monetary penalties.

Contractor penalties – In 2021, Ecology issued a contractor a monetary penalty of \$43,000 in response to three separate discharge non-compliance events that occurred over a two-month period in 2020. The three events included a discharge of concrete slurry process water that was turbid and high in pH, a discharge of turbid stormwater, and a discharge of high pH process water.

WSDOT maintains strong practices that improve compliance for our projects. In 2022, we will continue to improve our performance by:

- Sharing lessons learned from 2021 with WSDOT regions, ferries and megaprograms.
- Discussing high-risk activities, environmental requirements, and work expectations with the contractor during pre-construction meetings.
- Assessing construction sites and working with contractors to prevent, detect, and address any potential issues for stormwater, containment, erosion, or hazardous materials.
- Updating our manuals, guidance, contract language, and training to reflect the most up to date information.

Should you have any questions, or need further information, please contact Ahmer Nizam, Environmental Services Office Director, at 360-705-7480, or ahmer.nizam@wsdot.wa.gov.

Table 1: Violations notices received in 2021

Event	Project	Event Date	Activity resulted in Violation	Issuer/Project Response
Discharge of process water	I 90 Bullfrog Road Vicinity – Concrete Rehab, Bridge Deck Rehab and Painting	11/3/2020	Contractor failed to use BMPs correctly allowed 5 gallons of concrete slurry process water that was turbid with high pH to discharge to the river.	Ecology issued one \$43,000 penalty on 6/14/2021 to the contractor for three events occurring on 11/3/2020, 11/23/2020 and 12/23/2020.
Discharge of turbid water	I 90 Bullfrog Road Vicinity – Concrete Rehab, Bridge Deck Rehab and Painting	11/23/2020	Contractor, by failing to use BMPs correctly, allowed between 1,000-2,000 gallons of turbid water to discharge to the river	Ecology issued one \$43,000 penalty on 6/14/2021 to the contractor for three events occurring on 11/3/2020, 11/23/2020 and 12/23/2020.
Discharge of process water	I 90 Bullfrog Road Vicinity – Concrete Rehab, Bridge Deck Rehab and Painting	12/23/2020	Contractor removed the plug on the bridge deck allowing 5-10 gallons of process water that was turbid with high pH to discharge to the river.	Ecology issued one \$43,000 penalty on 6/14/2021 to the contractor for three events occurring on 11/3/2020, 11/23/2020 and 12/23/2020.
Unauthorized HPA work	Moclips River Bridge	1/2021	WSDOT Maintenance cut wood debris smaller than prescribed in HPA and did not notify WDFW as required in Bridge Debris Maintenance General HPA.	WSDOT staff briefed the bridge crew supervisor, discussed corrective measures, and met with WDFW.
Release of hazardous material	I-5 SB HOV	2/19/2021	Unsecured fuel tank was accessed and drilled into resulting in fuel draining onto the ground and to the levee area of the Puyallup River.	The Puyallup Indian Tribe sent an email on the incident. The contractor used contents from the spill kits to absorb the fuel. WSDOT and contractor are evaluating locations to securely park and store equipment and supplies.

Event	Project	Event Date	Activity resulted in Violation	Issuer/Project Response
Unauthorized HPA work	Moclips River Bridge	4/2021	WSDOT Maintenance cut wood debris smaller than prescribed in HPA and did not notify WDFW as required in Bridge Debris Maintenance General HPA.	WSDOT staff briefed the Bridge crew supervisor, discussed corrective measures, and met with WDFW.
Inadequate well management	SR 520 Montlake Phase	9/14/2021	Contractor decommissioned vapor protection wells without following appropriate procedures.	Ecology issued a violation to the contractor.
Unauthorized fill in wetland	SR 538 Logan Creek Fish Passage Project	9/22/2021	Contractor placed fill in a wetland at an off-site staging area, on privately-owned land and outside the scope of the contract.	Ecology issued a violation letter. City of Mt. Vernon is working with landowner and contractor to remove the unpermitted fill and restore the site through planting and monitoring.
Unauthorized fill in wetland	SR 538 Logan Creek Fish Passage Project	9/22/2021	Contractor placed fill in a wetland at an off-site staging area, on privately-owned land and outside the scope of the contract.	Corps issued a violation letter. City of Mt. Vernon is working with landowner and contractor to remove the unpermitted fill and restore the site through planting and monitoring.
Discharge of turbid water	SR 538 Logan Creek Fish Passage	9/27/2021	Contractor failed to oversee and maintain temporary stream diversion (TSD), and to remove debris from fish nets and fish screen suction boxes, which allowed flow to overtop diversion during a rain event.	Ecology issued the violation letter. Contractor did not act when notified TSD was failing. This inaction resulted in additional cost and time to complete the project.

Event	Project	Event Date	Activity resulted in Violation	Issuer/Project Response
Unauthorized HPA work	PCC Railroad Structure Rehabilitation and Replacement	10/9/2021	Contractor excavated areas not identified in HPA.	WDFW sent an email response. WSDOT consulted with WDFW and stabilized and seeded the area. The silt fence was removed and replaced with wattle, and rock dam was removed.
Unauthorized fill in wetland	I 90 Easton Hill to W. Easton Interchange WB Replace Bridge and Build Detour	10/28/2021	Newly constructed fill slope failed and discharged of 2 cubic yards of fill material into a wetland during high rain event.	WSDOT consulted with the Corps. WSDOT placed shot rock across the toe of slope to stabilize the slope. Also, WSDOT placed a sandbag curb at the edge of the pavement.
Hazardous material management	SR 20 Deception Pass Bridge Painting	12/2/2021	Ecology tested sandblast abrasives for more constituents than just lead and notified WSDOT of incomplete designation of material, illegible labels, and incomplete manifests. Additionally, the waste was not shipped to the disposal facility within regulatory timeframes.	Ecology issued an inspection report. WSDOT reconciled uniform hazardous waste manifest, provided Ecology explanation for shipping delay, and requested an extension for storage. WSDOT also updated the manifest, and applied legible and proper labels to the drums, and developed an inspection log in response to the inspection report.
Release of hazardous material	SR 519/Seattle Terminal – Terminal Bldg. & N. Trestle Replacement	12/8/2021	Contractor deployed booms and formed work containment around area waterward of the work cell where oil had discharged. The oil migrated outside the contained area.	USCG issued a Notice of Federal Interest warning letter to respond as necessary to the migration of the released oil or be fined.

Event	Project	Event Date	Activity resulted in Violation	Issuer/Project Response
Unauthorized fill in wetland	SR 503 Marble Creek Maintenance Debris Rock Placement	12/20/2021	Additional 6 cubic yards were excavated and placed in a wetland increasing the project footprint from what was approved under NWP 3.	WSDOT notified the Corps for the additional excavation and fill, while replacing debris rack and foundation in Marble Creek. Corps issued an after-the-fact permit modification.