

Violations of Environmental Permits and Regulations for State Transportation Projects

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Secretary of Transportation

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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 2023, including: warning letters, inspection reports (citing violations and requiring corrective action), notices of violation, orders, and monetary penalties.

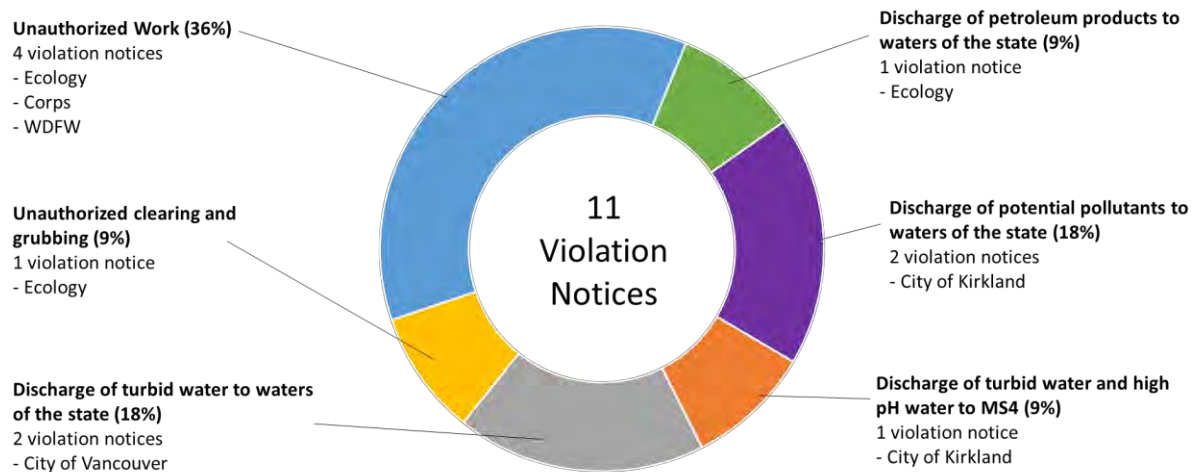
2023 Environmental Violations

In 2023, regulatory agencies issued 11 violations to state highway and ferry construction projects. These 11 violations issued in 2023 stemmed from eight non-compliance events in 2023 (where one event resulted in two violations), one non-compliance event in 2022, and one non-compliance event in 2021. Please note, the non-compliance event in 2021 received a violation in 2021 and was previously reported in the 2021 annual report. A regulatory agency issued an additional violation in 2023, relating to the

2021 event. The total number of violations issued in 2023 decreased by one from the 12 violations that we included in our 2022 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.

WSDOT activities received 11 environmental violation notices in 2023
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. WDFW= Washington Department of Fish and Wildlife. NMFS = National Marine Fisheries Service

Of the 11 violation notices issued, regulatory agencies issued four to WSDOT only, three to both WSDOT and a WSDOT contractor or Design-Builder, and four directly to a WSDOT contractor or Design-Builder. Violations can be issued directly to a WSDOT contractor or Design-Builder when the regulatory agency determined that the WSDOT contractor or Design-Builder was solely responsible for the violation or was the permit-holder.

WSDOT-only violations – Regulatory agencies issued a total of four violations directly to WSDOT in 2023 on four separate projects. Washington State Department of Ecology (Ecology) issued two violations for unauthorized work and unauthorized clearing and grubbing. Washington Department of Fish and Wildlife (WDFW) issued one violation for unauthorized work. Ecology also issued a violation for unauthorized work to WSDOT for an event that occurred in 2022.

WSDOT and contractor violations – Regulatory agencies issued a total of three violations to both WSDOT and the contractor/Design-Builder/sub-contractor in 2023 on one project. In separate letters, the City of Kirkland issued violations for the discharge of potential pollutants to waters of the state and discharge of turbid water and high pH water to a municipal separate storm sewer system (MS4).

Contractor-only violations – Regulatory agencies issued a total of four violations directly to a WSDOT contractor and Design-Builder. The City of Vancouver issued two violations to a contractor for the discharge of turbid water to waters of the state. The US Army Corps of Engineers (Corps) issued a

violation to the Design-Builder for unauthorized work. Ecology issued a violation to a contractor for the discharge of petroleum products to waters of the state.

WSDOT penalties – In 2023, the City of Kirkland issued three monetary penalties to WSDOT, each for the amount of \$833.34, in response to two discharges of potential pollutants to waters of the state and a discharge of turbid water & high pH water to an MS4.

Contractor penalties – In 2023, the City of Kirkland issued a WSDOT Design-Builder three monetary penalties, each for the amount of \$833.34, in response to two discharges of potential pollutants to waters of the state and a discharge of turbid water & high pH water to an MS4. The City of Kirkland issued a monetary penalty of \$416.67 to a subcontractor in response to a discharge of potential pollutants to waters of the state. The City of Vancouver issued a WSDOT contractor two monetary penalties of \$1,000 and \$250 in response to two discharges of turbid water to waters of the state. Ecology issued a contractor a monetary penalty of \$4,299.72 in response to a discharge of petroleum products to waters of the state.

WSDOT maintains strong practices that improve compliance for our projects. In 2024, we will continue to improve our performance by:

- Using lessons learned from 2023 non-compliance events and fall assessments to update our Environmental Construction Compliance and other training with WSDOT regions, ferries, and megaprograms (per [RCW 47.85.040](#)).
- Updating our policies, procedures, construction language to reflect the most up to date information and lessons learned.
- Discussing high-risk activities, environmental requirements, and work expectations with the contractor during pre-construction meetings.
- Assessing construction sites and working with WSDOT contractors to prevent, detect, and address any potential non-compliance issues related to stormwater, containment, erosion, or hazardous materials.

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 2023

Event	Project	Event Date	Activity resulting in Violation	Issuer/Project Response
Unauthorized Work	I-90/Cabin Creek Interchange to W Easton Interchange - Add Lanes (Phase 3)	6/9/2023	Contractor installed an unpermitted temporary stream crossing.	<p>WDFW issued WSDOT an inspection report and corrections required. Ecology issued WSDOT a warning letter.</p> <p>WSDOT, Ecology, WDFW, and the Contractor determined appropriate remediation actions.</p>
Discharge of turbid water to waters of the state	SR 14/I-205 to SE 164th Ave - Auxiliary Lanes	4/20/2023	Contractor’s bypass failed and allowed turbid water to enter the bypass and discharge into waters of the state.	City of Vancouver issued a \$1,000 fine to the contractor on 4/21/2023
Discharge of turbid water to waters of the state	SR 14/I-205 to SE 164th Ave - Auxiliary Lanes	4/6/2023	Contractor’s culvert plug failed, resulting in a large quantity of turbid water to enter waters of the state.	City of Vancouver issued a \$250 fine to the contractor on 4/7/2023
Unauthorized clearing and grubbing	I-90/SR 18 IC to Deep Creek - Widening and Interchange	3/21/2023	Design-Builder felled trees beyond the Joint Aquatic Resource Permit Application (JARPA) impact area.	<p>Ecology conducted an inspection in response to the non-compliance event and issued corrective actions to WSDOT.</p> <p>Design-Builder stopped work in the area and notified WSDOT.</p>
Discharge of potential pollutants to waters of the state	I-405/NE 132nd Street Interchange Improvements	3/13/2023	A sewer bypass system failed and allowed effluent to enter waters of the state.	<p>City of Kirkland issued a notice of violation to WSDOT, Design-Builder, and subcontractor. WSDOT and the Design-Builder received fines of \$833.34 each, and the subcontractor received a fine of \$416.67.</p> <p>Auto dialer notified the Design-Builder and immediately worked to address the problem.</p>

Event	Project	Event Date	Activity resulting in Violation	Issuer/Project Response
Discharge of potential pollutants to waters of the state	I-405/NE 132nd Street Interchange Improvements	2/27/2023	A sewer bypass system failed and allowed effluent to enter waters of the state	City of Kirkland issued a notice of violation to WSDOT, Design-Builder, and subcontractor. Fines of \$833.34 were issued to WSDOT and the Design-Builder. Auto dialer notified Design-Builder and immediately worked to address the problem.
Unauthorized work	SR 167/I-5 to SR 509 - New Expressway (Stage 1b)	2/9/2023	Design-Builder constructed an unpermitted temporary working platform over waters of the state.	Corps issued a warning letter to the Design-Builder.
Discharge of turbid water & high pH to MS4	I-405/NE 132nd Street Interchange Improvements	2/3/2023	Subcontractor allowed process rinse water from a work area to enter an MS4.	City of Kirkland issued a notice of violation to WSDOT, Design-Builder, and subcontractor. Fines of \$833.34 were issued to WSDOT and the Design-Builder.
Unauthorized work	SR 20 Upper Skagit Emergency Flood Repair - Soldier Pile Wall	11/22/2022	An unlicensed well driller installed unpermitted shallow dewatering wells.	Ecology issued a notice of violation to WSDOT.
Discharge of petroleum products to waters of the state	SR 519/Seattle Terminal – Terminal Bldg. & N. Trestle Replacement	12/8/2021	Unanticipated contaminated soil discharged petroleum products into waters of the state during excavation.	Ecology issued a fine of \$4,299.72 to the contractor. Ecology is also in the process of determining compensation for natural resources damage.