

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

IN THE MATTER OF PENALTY) NOTICE OF PENALTY
ASSESSMENT AGAINST:) INCURRED AND DUE,
The Boeing Company) 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
<p>Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503</p> <p>Pollution Control Hearings Board 1111 Israel Road SW STE 301 Tumwater, WA 98501</p>	<p>Department of Ecology Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608</p> <p>Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903</p>

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>

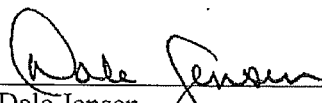
Notice of Penalty Docket #8562

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- **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

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

IN THE MATTER OF AN) ORDER FOR REIMBURSEMENT
ADMINISTRATIVE ORDER) OF EXPENSES,
AGAINST: The Boeing Company) Docket #8566

To: The Boeing Company
Attn: Attn: Michael L. Verhaar
P.O. Box 3707
Seattle, WA 98124-2207

ORE Docket #:	8566
Invoice Amount:	\$5,542.95
Due:	Within 30 calendar days after this Order for Reimbursement of Expenses is received.
Incident Location:	7750 East Marginal Way; Seattle WA
Date of Incident:	May 28, 2010

The Department of Ecology (Ecology) is issuing this Order for Reimbursement of Expenses (ORE) that orders you to reimburse the state of Washington in the amount of \$5,542.95 for expenses incurred for actions authorized by Revised Code of Washington (RCW) 90.56.350.

Ecology finds:

On May 28, 2010, an open fuel filter valve resulted in Jet A fuel being released into the Duwamish River, waters of the state as defined in RCW 90.56.010. The state of Washington responded to the incident and incurred expenses necessary to the state's obligation under RCW 90.56.350.

Ecology has determined you are liable under RCW 90.56.360 for the necessary expenses incurred by the state of Washington in responding to the incident described above. This ORE is issued under the authority of RCW 90.56.400.

An invoice is enclosed documenting the necessary expenses incurred by the state.

This amount is due and payable within 30 calendar days after this ORE is received.

OPTIONS FOR RESPONDING TO THIS ORDER FOR REIMBURSEMENT OF EXPENSES

Option 1: Pay the invoice within 30 days after receiving the ORE.

Make your payment payable to the *Department of Ecology*. Please include the ORE 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 invoice amount if you have not paid 30 days after receiving the ORE and have not submitted an Application for Relief (AFR).

Option 2: Apply for relief to Ecology.

Complete the enclosed Application for Relief (AFR) form and deliver it to Ecology by mail or in person.

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

This Action is **not** an Order that may be appealed to the Pollution Control Hearings Board under RCW 43.21B.310.

CONTACT INFORMATION

Please direct all questions about this ORE to:

John Butler
Department of Ecology
Spills Program
PO Box 47600
Olympia, Washington 98504-7600
(360) 407-6970
jbut461@ecy.wa.gov

Order for Reimbursement of Expenses Docket #8566

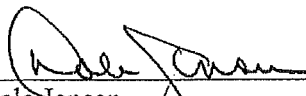
June 27, 2011

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MORE INFORMATION

- **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
- **Application for Relief form**
www.ecy.wa.gov/biblio/ecy070375.html

SIGNATURE



Dale Jensen
Program Manager
Spill Prevention, Preparedness, and Response Program
Washington State Department of Ecology

Date

6-27-2011



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PO Box 47600 • Olympia, WA 98504-7600 • 360-407-6000
711 for Washington Relay Service • Persons with a speech disability can call 877-833-6341

INVOICE

The Boeing Company
Michael L Verhaar
PO Box 3707
Seattle WA 98124-2207

Boeing Jet Duwamish Spill

Invoice No. SP11011001
Project # 8P1Y

To invoice for costs incurred through September 2010.

Dept of Ecology Costs:

Salaries & Benefits	\$ 3,555.23	
Indirect/Overhead	1,238.95	
Subtotal		\$ 4,794.18
Goods & Services		16.77
Lab Cost		700.00
Travel		32.00
Total - State of Washington Costs:	\$	5,542.95

Please remit payment and a copy of this invoice to:

Department of Ecology
Attention: Cashiering Unit
PO Box 47611
Olympia, WA 98504-7611

If you have any questions or desire further information regarding this billing, contact John Butler at (360) 407-6970. If you have any questions regarding payment of this invoice, contact Beth McKee at (360) 407-7081 or Debbie Iness at (360) 407-7096.

Invoice No.	SP11011001	
FOR FISCAL USE ONLY		
062-SPILLEN-173-0434-CP0021	8P1Y	\$ 5,542.95
TOTAL		\$ 5,542.95



DEPARTMENT OF ECOLOGY
 FISCAL OFFICE - REVENUE/RECEIVABLE SECTION
 COST RECOVERY INDIRECT WORKSHEET

Boeing Jet Duwamish Spill
 Project # 8P1Y
 Fund 173

To invoice for costs incurred through September 2010.

INDIRECT CALCULATION:

FY 00	0.00	x	0.3160	=	0.00
FY 01	0.00	x	0.3290	=	0.00
FY 02	0.00	x	0.3630	=	0.00
FY 03	0.00	x	0.3790	=	0.00
FY 04	0.00	x	0.3970	=	0.00
FY 05	0.00	x	0.3902	=	0.00
FY 06	0.00	x	0.3963	=	0.00
FY 07	0.00	x	0.3895	=	0.00
FY 08	0.00	x	0.3578	=	0.00
FY 09	0.00	x	0.3547	=	0.00
FY 10	1,820.78	x	0.3680	=	670.05
FY 11	1,734.45	x	0.3280	=	568.90
	-----				-----
TOTAL	3,555.23				1,238.95
	=====				=====

ATTACHMENT PREPARED TO REPORT AGENCY INDIRECT CHARGES.

WASHINGTON STATE DEPARTMENT OF ECOLOGY
 DETAIL OF EXPENDITURES
 ECY 8P1Y

TYPE	SP	OBJECT	VENDOR	AMOUNT	FM	FY	DOCUMENT NO
GOODS/SERVICES							
	02	TEAUTO	MILEAGE	16.77	13	11	46103643JV
				<u>\$16.77</u>			
LAB COSTS							
	02	TE0D73	LAB COSTS	560.00	12	10	46103394AC
	02	TE0D73	LAB COSTS	140.00	13	11	46103988JV
				<u>\$700.00</u>			
TRAVEL							
	02	GA	MARTIN, BRAD	32.00	12	10	1965-025
				<u>\$32.00</u>			
Grand Total:				<u>\$748.77</u>			

Options for Responding to an Order for Reimbursement of Expenses (ORE)

Within 30 calendar days after you receive the ORE, choose one of the following two options.

Option 1: Pay the Invoice

Mail payment to:
Department of Ecology
Cashiering Unit
PO Box 47611
Lacey, WA 98504-7611

Note: Remember to include the ORE docket number on your payment.



Ecology processes your payment.



The process is finished. Thank you.

Order for Reimbursement of Expenses (ORE): An order requiring you to reimburse the state for expenses to respond, assess, and investigate the incident.

Application for Relief (AFR): A written request to ask Ecology to reconsider the ORE to determine whether or not it was just and fair under all of the circumstances.

Notice of Disposition (NOD): A document informing you of Ecology's decision on the AFR.

Option 2: Ask Ecology to Reconsider (AFR) to Ecology?

Submit your completed Application for Relief (AFR) to Ecology:

1. Fill out the AFR. A copy was provided with your Order or you can get a copy by:
-Downloading the form at:
www.ecy.wa.gov/biblio/ecy070375.html
-Calling the contact listed in your ORE
2. Deliver the AFR by fax, mail, or in person to Ecology within 30 days after you receive the ORE.



Ecology reviews your AFR.

- Ecology will consider your AFR and determine if the ORE is just and fair under all of the circumstances.
- Ecology may request further information.



Ecology issues a decision (NOD) that either:

1. Affirms the amount assessed by the ORE.
2. Reduces the amount assessed by the ORE.
3. Rescinds the amount assessed by the ORE.

Mailing Address:

Department of Ecology
Attn: Appeals Processing Desk
PO Box 47608
Olympia, WA 98504-7608

FAX: (360) 407 - 6989

Street Address:

Department of Ecology
Attn: Appeals Processing Desk
300 Desmond Drive SE
Lacey, WA 98503

Under what circumstances may I submit an AFR?

If you are able to demonstrate why the invoice is not just and fair under all of the circumstances, you may ask Ecology to reconsider your ORE by submitting an AFR.

How may I respond to the NOD?

You may do one of the following:

- Pay the amount stated in the NOD (See Option 1).
- If Ecology rescinds the ORE, there is no need to respond or to do anything.

Download copies of Laws (RCWs):
www.ecy.wa.gov/laws-rules/ecyrcw.html

Download copies of Rules (WACs):
www.ecy.wa.gov/laws-rules/ecywac.html



DEPARTMENT OF
ECOLOGY
State of Washington

If you need this publication in an alternate format, please call the Washington State Department of Ecology's Spills Program at (360) 407-7455. Persons with hearing loss can call 711 for Washington Relay Service. Persons with a speech disability can call (877) 833-6388.



Application for Relief from Order for Reimbursement of Expenses

PART 1 – GENERAL INFORMATION

Note: ORE means Order for Reimbursement of Expenses

ORE Docket #:		Invoice amount:	
Site/Incident Location:			
Contact Name:			
Business Name:			
Mailing Address:			
City:	State:	Zip Code:	
Phone (1): ()	Fax: ()		
Phone (2): ()	Email:		

PART 2 – REASON(S) FOR THIS REQUEST

Provide the information you want Ecology to consider in determining whether the ORE is just and fair under all of the circumstances. Please use additional pages if needed. You may also attach any documentation that supports the information you are providing.

I certify that the reason(s) given in this application for relief are true and complete statements of fact. I understand that Ecology will rely on the information I provide in this application for relief and that it is a gross misdemeanor to knowingly make a false or misleading material statement to a public servant. RCW 9A.76.175 <http://apps.leg.wa.gov/RCW/default.aspx?cite=9A.76.175>

Signature

Print Name

Title

Date



Application for Relief from Order for Reimbursement of Expenses

INSTRUCTIONS

1. **Complete the Application for Relief (AFR)**
To ask the Department of Ecology (Ecology) to reconsider the Order for Reimbursement of Expenses (ORE), please fill out the AFR. In Part II, provide information that demonstrates the amount invoiced in the ORE is not just and fair under all the circumstances.

2. **Submit the completed AFR to Ecology:**
Deliver the AFR form by fax, mail or in person to Ecology within 30 days after you receive the ORE.

What happens next?

Ecology will review the AFR.

- We will determine whether the information you provided demonstrates the amount invoiced in the ORE is not just and fair under all of the circumstances.
- We may seek further information while considering your request to cancel or reduce the amount assessed by the ORE.

Ecology will issue a Notice of Disposition that includes:

- The decision on your AFR (affirmed, reduced or rescinded).
- Instructions for responding.

ADDRESS AND LOCATION INFORMATION

Street Addresses	Mailing Addresses
<p>Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503</p>	<p>Department of Ecology Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608</p>



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PO Box 47600 • Olympia, WA 98504-7600 • 360-407-6000

711 for Washington Relay Service • Persons with a speech disability can call 877-833-6341

May 17, 2011

Michael Verhaar
The Boeing Company
PO Box 3707
7555 E Marginal Way
Seattle, WA 98124-2207

Dear Mr. Verhaar,

On May 28, 2010, the Boeing Company (Boeing) spilled an estimated 300 gallons of jet fuel to the Duwamish River. The Washington State Resource Damage Assessment (RDA) Committee held a preassessment screening for this incident on September 8, 2010. At this screening, Boeing presented the Boeing Plant 2 Fuel Spill – Restoration and Enhancement Project report (report) to the RDA Committee for approval as compensation for natural resource damages. At the time, the RDA Committee requested that Boeing provide more information on the proposal.

After several conversations with Steven Tochko, I received some cost figures for consulting and engineering support, construction, and waste disposal. In the report there is a description of emergency response that discusses:

- Removal of 1,700 square feet of concrete dock
- Removal of 1,600 cubic yards of intertidal soil/sediment and riprap/concrete debris
- Recontouring/filling excavated area
- Replacing a section of NPDES-permitted stormwater outfall
- Replacing 600 square feet of batter boards on new face of concrete deck.

Mixing response costs with restoration costs is of concern to the RDA Committee. Many of the costs presented were response related and cannot be considered restoration for the purposes of natural resource injury compensation.

However, after the conversations with Steven, there are some activities that Boeing completed which can be considered restoration for the purpose of compensating the State for injury to its natural resources. The regrading and back filling down the entire beach face with clean sand and removing and disposing of the creosote pilings both qualify.

Michael Verhaar
May 17, 2011
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The RDA Committee still questions the restorative value of placing large rocks on the upper intertidal area. Had Boeing contacted the RDA Committee and obtained approval for their project, as required by law, settling the NRDA would have proceeded smoother and been more transparent to the citizens of Washington State whom the trustee agencies serve.

In the report's introduction, Boeing cites WAC 173-183-260(4). If the project proponents had looked at WAC 173-183-260(5), they would have realized they needed RDA Committee approval before initiating any projects. We hope that there are no future spills from Boeing, but if there are, Boeing must first get approval from the RDA Committee before starting a project if they want NRDA restoration credit.

However, as for the status of this damage assessment, the RDA Committee has made a one-time case-specific exemption from the pre-approval requirement and approved portions of the activities described in the report as meeting the requirements set forth in WAC 173-183-260. Boeing has met their Natural Resource Damage Assessment obligation and no further activity or compensation related to the May 28, 2010 jet fuel spill is required from Boeing.

Sincerely,



Rebecca Post

Chair, Resource Damage Assessment Committee

rp/bl

cc: Shayne Cothorn, DNR
Dan Doty, WDFW
Dale Jensen, Ecology
Deborah Petersen, Parks
Mark Toy, DOH
Barry Troutman, WDFW
Rob Whitlam, DAHP
Kelly Wood, ATG