



Notice of Violation – Reissue			
Title 20 – Clearing Regulations			
Date:	August 17, 2011	Issued to:	
Case #:	ENF2011-00047	<input checked="" type="checkbox"/> Property Owner <input type="checkbox"/> Contractor <input type="checkbox"/> Business Owner	
Parcel #:	390117-065466, -205467, -067334 & -278062 (ENF case: 390119-092500)	Certified Mail #:	7007 2560 0002 5871 1669
Site Address:	Henry Rd. and Lonseth Rd.	Name:	Pacific International Terminals, Inc. Attn: Mr. Mark Knudsen
Designation:	HII - Heavy Impact Industrial	Address:	1131 SW Klickitat Way Seattle, WA 98134-1108

Dear Mr. Knudsen,

In July and August of 2011, staff of the Whatcom County Planning and Development Services Department (PDS) researched your property. Specifically, staff reviewed related PDS records and conducted site inspections.

Elements of the Administrative Determination:

- June 2008 – Gateway Pacific Terminal (GPT) submitted a letter confirming that they would notify PDS 30-days prior to commencing all future work under SHS92-0020 and MDP92-0003. PDS would then have 30-days to review the submitted material and issue a determination whether or not the proposed work required a new permit.
- July 2008 – PDS accepted GPT’s notification proposal.
- Sept. 2008 – GPT submitted a letter notifying PDS that they intended to perform geotechnical investigations per the terms of the 1992 permits and that the work to be performed shall be done according to Terrestrial Geotechnical Investigation Field Study Plan dated Sept. 2008 by AMEC Earth & Environmental, Inc.
- Nov. 2008 – PDS approved the proposed geotechnical investigations pursuant to the 2008 field study plan. Work outside of areas covered by the 1992 permits was approved pursuant to the 2005 Critical Areas Ordinance (CAO), Section 16.16.235.F which stated that routine site investigation work in wetlands was an activity allowed with notification to PDS.
- July 16, 2011 – PDS received an email reporting recent clearing activity.
- July 19, 2011 – PDS staff conducted a site inspection and documented clearing activity impacting critical areas (wetlands) and/or their associated buffers.

- At a minimum, the activities included clearing (including trees and stumps, shrubs, and undergrowth) resulting in exposed soils and grading (clearing activity) associated with installation of access roads.

Clearing and grading is regulated by Title 20 when it reaches the thresholds listed in WCC 20.80.734. “Clearing” is defined under WCC 20.97.053 and “clearing activity” is defined under WCC 20.97.054.

- Pursuant to WCC 20.80.734.4, the county shall review all clearing activities within a critical area or critical area buffer, and all clearing activity greater than 500 square feet within 200 feet of a wetland or habitat conservation area.

- July 20, 2011 – PDS contacted GPT and requested any documentation authorizing the activity. In response, GPT submitted documentation for the Terrestrial Geotechnical Investigations that were approved in Sept. 2008 along with a new map depicting work locations dated March 2011.
- July 22, 2011 – PDS contacted GPT to inform them that the recent work was not authorized under the Field Study Plan dated Sept. 2008 and recommended ceasing work until permit approval had been approved.
 - Pursuant to WCC 16.16.235, notification shall be valid for one year per activity provided that there is no change in the scope of the project. The subject clearing and grading activity not only occurred after the one-year approval, but it also exceeded the original scope of approval.
 - PDS records indicated no 30-day notification of activity submitted prior to conducting the clearing and grading work and as agreed upon in 2008. PDS records further indicate no permit applications or issued permits on file authorizing the activity. The activity constituted a new violation.
- Aug. 2, 2011 – PDS issued a Notice of Violation and Notice of Penalty for violation of the Whatcom County clearing regulations. The notices were received on Aug. 5, 2011.
 - The Notice of Violation referenced WCC 20.80.734.5 for clearing activities that met the definition of a conversion from a forest use to another land use pursuant to WCC 20.97.085.
- Aug. 12, 2011 – The Washington State Dept. of Natural Resources (DNR) issued a Notice to Comply (NTC) and an Informal Conference Note (ICN). In the ICN, the DNR stated that they did not consider the timber clearing as conversion activities as defined in RCW 76.09.020. Instead, DNR considered it to have been Class III forest practices activities that would have required a Forest Practices Application/Notification (FPA/N).
- Aug. 17, 2011 – PDS issued a Notice of Rescission for the Notices of Violation and Penalty dated Aug. 2, 2011.
- Although the reference to conversion has been removed from this Notice, clearing activities were performed that still exceeded the general review thresholds without prior review or permit approval on record.

Administrative Determination: A violation of the Whatcom County Code - Title 20 has occurred.

Violation: Section(s) 20.80.734.4 - General review thresholds.

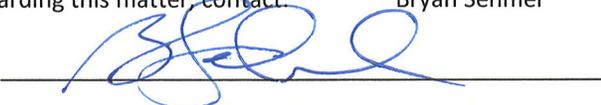
Corrective Action(s): You are required to complete the following:

1. Exposed soils remain on site. You submitted a temporary erosion and sedimentation control (TESC) plan on Aug. 15, 2011, but it has not yet been approved. Once the plan has been approved, you shall immediately cover all exposed soils by employing the approved best management practices (BMPs) in accordance with the Whatcom County Development Standards. Once completed, contact PDS to schedule a compliance inspection.
2. The filling and grading performed on-site requires review by PDS. In response, on Aug. 16, 2011 you submitted a land disturbance application and fee, a SEPA environmental checklist and fees, and the fee associated with submittal of the pending mitigation/restoration plan. You shall continue to pursue permitting and restoration for this work in a timely manner.

Updating Enforcement Staff and Failure to Comply: Please update the Enforcement staff person listed below. Failure to comply with any portion of the corrective actions by the date(s) listed above may result in imposition of monetary penalties or civil charges as allowed by law.

Appeal Rights and Enforcement Authority: Please refer to the attached appeal rights and enforcement authority in this matter.

Information Sources: The PDS Code Enforcement Office is dedicated to assisting you with development of a resolution-oriented plan. You are encouraged to contact the below-listed Enforcement staff person for any questions, resources, or possible alternative resolutions. You may also reference Whatcom County Codes on-line at: www.whatcomcounty.us.

For questions regarding this matter, contact: **Bryan Sehmel** Planner – Code Enforcement
Signature:  Phone: (360) 676-6907, ext. 50206
E-mail: BSehmel@co.whatcom.wa.us

Attachments:	<input checked="" type="checkbox"/> Appeal Rights/Enforcement Authority	<input checked="" type="checkbox"/> Notice of Penalty	
Delivery Method:	<input type="checkbox"/> Posted on Site	<input type="checkbox"/> Hand Delivered	<input checked="" type="checkbox"/> Certified Mail

CC: Mr. Cliff Strong, AMEC Earth & Environmental, Inc., 11810 North Creek Parkway N Bothell, WA 98011
Certified Mail # 7007 2560 0002 5871 1676



WHATCOM COUNTY
Planning & Development Services
 5280 Northwest Drive, Suite B
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 360-676-6907, TTY 800-833-6384
 360-738-2525 Fax



J.E. "Sam" Ryan
 Director

Notice of Penalty – Reissue Title 20 – Clearing Regulations			
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Violation

Whatcom County Planning and Development Services Department (PDS) rendered an administrative determination that a violation of the Whatcom County Code - Title 20 occurred at this site. A Notice of Violation was issued on Aug. 17, 2011. This is the first (1st) penalty issued for violation of Title 20.

Penalty Calculation

Penalties are calculated pursuant to PDS Administrative Policy (#PL1-76-002A) effective July 25, 2008 and revised January 28, 2010. Penalties are final unless contested as provided for in the attached appeal rights.

Description	Assessed Fine
<input checked="" type="checkbox"/> Base Fine: \$300 (not eligible for remission)	\$300.00
<input checked="" type="checkbox"/> Permit Violation: \$200	\$200.00
Impact Fine <input type="checkbox"/> Minor: \$100 <input type="checkbox"/> Moderate: \$250 <input checked="" type="checkbox"/> Severe: \$500	\$500.00
Failure to Comply <input type="checkbox"/> First: \$200 <input type="checkbox"/> Second and each subsequent: \$400	\$0.00
Fine Subtotal:	\$1,000.00
Total Assessed Penalty: (not to exceed \$1,000/day/violation)	\$1,000.00

For questions regarding this matter, contact:

Bryan Sehmel

Planner – Code Enforcement

Signature: _____

Phone: (360) 676- 6907, ext. 50206

E-mail: BSehmel@co.whatcom.wa.us

Authorized by: _____

Attachments:	<input checked="" type="checkbox"/> Appeal Rights/Enforcement Authority	<input checked="" type="checkbox"/> Notice of Violation
Delivery Method:	<input type="checkbox"/> Posted on Site	<input type="checkbox"/> Hand Delivered <input checked="" type="checkbox"/> Certified Mail

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Appeal Rights and Enforcement Authority
Whatcom County Code – Title 20

Notice of Violation or Other Determination

You may **appeal the determination** to the Whatcom County Hearing Examiner, pursuant to WCC 20.94.060. This is provided that you have not already had the opportunity to appeal such determination on a previous notice/order/letter. Determinations will be considered final if an appeal is not filed in a timely manner. Please see below for the procedure on filing an appeal.

Notice of Penalty

You have three options for responding to a Notice of Penalty. You may:

- A. Pay the fine.** By paying the fine, you are agreeing to not contest the penalty. An invoice should be mailed to you by our Finance Department within sixty (60) days of this notice. Please do not attempt to pay the fine until the invoice arrives. *Be advised, you are still required to bring the site into compliance.*
- B. Request remission or mitigation of the fine.** By entering into the remission process, you are agreeing to not contest the penalty. You may explain any mitigating circumstances and the penalty may or may not be reduced as an outcome. Remission is available by mail or by personal appearance. To request remission, you must submit a completed Request for Remission Agreement within 20 calendar days of receipt/delivery of the Notice of Penalty (WCC 20.94.040). The Agreement is available upon request. *Be advised, you are still required to bring the site into compliance.*
- C. Appeal the penalty.** You may appeal the penalty to the Whatcom County Hearing Examiner, pursuant to WCC 20.94.060. Penalties will be considered final if an appeal is not filed in a timely manner. Please see below for the procedure on filing an appeal.

Procedure for Filing an Appeal & Burden of Proof

To be valid, an appeal must be made within 14 calendar days of receipt/delivery of this Notice. It must be submitted directly to PDS and include the following: 1) A completed appeal application, and 2) The appropriate appeal fee as defined in the Whatcom County Unified Fee Schedule. An appeal application is available upon request and on the PDS webpage. In an appeal before the Hearing Examiner, the County has the burden of proving the alleged violation.

Enforcement Authority

Pursuant to WCC 20.04.010 and 20.04.035, employees of PDS are authorized to administer and enforce the provisions of Title 20. Pursuant to WCC 20.94.030, any person, firm, partnership, corporation, or other entity who violates any of the provisions of the Whatcom County Zoning Ordinance, Title 20, shall be guilty of a civil offense. Each day during which such violation is continued or committed shall constitute a separate offense, and may be fined a sum not to exceed \$1,000 for each offense.