

NEW SECTION

WAC 246-272B-08105 Civil penalty schedule. (1) The department calculates penalties based on:

- (a) The significance of the violation;
- (b) Previous compliance record; and
- (c) The presence of aggravating or exacerbating circumstances.

(2) Significance of violation. The department determines significance of the violation based on risk:

(a) Low. Low risk violations do not affect the function of the LOSS and have a low potential to threaten public health or the environment.

(b) Medium. Medium risk violations are those relating to reporting requirements of LOSS function, including monitoring, operation, and maintenance of the LOSS and do not present an immediate threat to public health or the environment.

(c) High. High risk violations are those relating to the functioning of the LOSS and present an immediate threat to public health or the environment.

(3) Previous compliance record. The department considers any notice of violation issued to the person responsible for compliance with LOSS requirements in the past five years when calculating a penalty.

(4) Penalty schedule.

Number of Notice of Violations in the past 5 years	Low Risk	Medium Risk	High Risk
0	\$250	\$500	\$1,000
1	\$350	\$700	\$1,400
2	\$450	\$900	\$1,800
3	\$550	\$1,100	\$2,200
4	\$650	\$1,300	\$2,600
5 or more	\$750	\$1,500	\$3,000

(5) Aggravating or exacerbating circumstances. The department can also consider circumstances that aggravate or exacerbate the harm or risk to people or the environment. The violation can be aggravated or exacerbated by an existing circumstance, or the violation can aggravate or exacerbate an existing circumstance related to the system or its operation. Aggravating or exacerbating circumstances can include, but are not limited to, the following factors:

(a) The extent to which there is a history of unaddressed permit conditions;

(b) The extent that other actions or inactions by the owner or their representative contribute to the severity of the risk to public health or the environment posed by the violation; and

(c) The length of time that factors (a) or (b) of this subsection have been present for the system.

(6) If the department determines that one or more aggravating or exacerbating factors are present, then the department may increase the penalty to a level greater than listed in the penalty schedule.

(7) The maximum civil penalty that may be imposed by the department is \$10,000 per day for each violation.

(8) The department considers each violation to be a separate and distinct event. Each day a violation is continued is a separate and distinct violation. When a person has committed multiple violations, the violations are cumulative for the purpose of calculating the appropriate penalty. Penalties are added together, rather than served concurrently.

(9) Nothing in this section prevents the department from responding to a violation by:

(a) Declining to pursue a civil penalty;

(b) Issuing a notice of correction instead of pursuing a civil penalty; or

(c) Negotiating settlement of a case on such terms and for such reason as the department deems appropriate. Violations covered by a prior settlement agreement may be used for the purpose of determining the appropriate penalty for the current alleged violation(s), unless prohibited by the prior settlement agreement.

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