



RULE-MAKING ORDER PERMANENT RULE ONLY

CR-103P (December 2017) (Implements RCW 34.05.360)

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: February 07, 2025

TIME: 2:35 PM

WSR 25-05-018

Agency: Department of Health

Effective date of rule:

Permanent Rules

31 days after filing.

Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

Yes No If Yes, explain:

Purpose: Civil penalty schedule for large on-site sewage systems in WAC 246-272B-08105. The adopted rule establishes a civil penalty schedule for violations of a law or rule regulating large on-site sewage systems. This rule is necessary to clarify the department's penalties based on significance of the violation, previous compliance record, and the presence of aggravating or exacerbating circumstances.

Citation of rules affected by this order:

New: WAC 246-272B-08105

Repealed: None

Amended: None

Suspended: None

Statutory authority for adoption: RCW 70A.115.040

Other authority: RCW 70A.115.050

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 24-21-102 on October 18, 2024 (date).

Describe any changes other than editing from proposed to adopted version: None.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name: Ashlie Laydon

Address: PO Box 47822, Olympia, WA 98504-7822

Phone: N/A

Fax: N/A

TTY: 711

Email: ashlie.laydon@doh.wa.gov

Web site:

Other:

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Federal rules or standards:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Recently enacted state statutes:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>

The number of sections adopted at the request of a nongovernmental entity:

New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
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The number of sections adopted on the agency's own initiative:

New	<u>1</u>	Amended	<u>0</u>	Repealed	<u>0</u>
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	<u>1</u>	Amended	<u>0</u>	Repealed	<u>0</u>
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The number of sections adopted using:

Negotiated rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Pilot rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Other alternative rule making:	New	<u>1</u>	Amended	<u>0</u>	Repealed	<u>0</u>

Date Adopted: February 7, 2025

Name: Kristin Peterson, JD for Jessica Todorovich, MS

Title: Chief of Policy for Acting Secretary of Health

Signature:



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.