

Significant Legislative Rule Analysis

WAC 246-272B-08105
a Rule Concerning Large
On-site Sewage System Civil
Penalty Schedule

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SECTION 1

A brief description of the proposed rule including the current situation/rule, followed by the history of the issue and why the proposed rule is needed.

An on-site sewage system in an integrated system of components, located on or near the property it serves, that conveys, stores, treats, and provides subsurface soil treatment and disposal of domestic sewage. It consists of a collection system, a treatment component or treatment sequence, and a drain field. It may or may not include a mechanical treatment system. A large on-site sewage system is an on-site sewage system with design flows of 3,500 gallons per day up to and including 100,000 gallons per day. Protection of public health and the environment requires properly designed, operated, and maintained on-site sewage systems. Failure of these systems can pose certain health and environmental hazards if sewage is not adequately treated, leaks above ground creating a potential of direct or indirect contact with the public, or if untreated sewage reaches surface or groundwater.

RCW 70A.115.050 gives the department the ability to assess a penalty of not more than \$10,000 per day for every violation of a law or rule regulating large on-site sewage systems.

The proposed 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.

SECTION 2

Significant Analysis Requirement

As defined in RCW 34.05.328, the rule requires significant analysis because it is a rule other than a procedural or interpretive rule that adopts substantive provisions of law pursuant to delegated legislative authority, the violation of which subjects a violator of such rule to a penalty.

SECTION 3

Goals and objectives of the statute that the rule implements.

Protection of public health and the environment requires properly designed, operated, and maintained on-site sewage systems. Failure of these systems can pose certain health and environmental hazards if sewage leaks above ground or if untreated sewage reaches surface or groundwater. RCW 70A.115.050 gives the department the ability to assess a penalty of not more than \$10,000 per day for every violation of a law or rule regulating large on-site sewage systems.

The proposed rule establishes a civil penalty schedule for violations of a law or rule regulating large on-site sewage systems based on significance of the violation and previous compliance record.

SECTION 4

Explanation of why the rule is needed to achieve the goals and objectives of the statute, including alternatives to rulemaking and consequences of not adopting the proposed rule.

The proposed rule is necessary to assess civil penalties for violations of a law or rule regulating large on-site sewage systems based on significance and previous compliance record. The consequence of not adopting the proposed rule is the department is not able to calculate a civil penalty amount based on the significance of the violation and previous compliance record. Any amount other than the total amount of \$10,000 per day for every violation would be arbitrary and capricious.

SECTION 5

Analysis of the probable costs and benefits (both qualitative and quantitative) of the proposed rule being implemented, including the determination that the probable benefits are greater than the probable costs.

WAC 246-272B-08105 Civil penalty schedule.

Description: The proposed rule establishes a civil penalty scheduled based on the significance of the violation, previous compliance record, and the presence of aggravating or exacerbating circumstances. Civil penalties will only be assessed when a violation of a law or rule regulating large on-site sewage systems occurs. The proposed rule outlines how the department will calculate civil penalties based on the significance of the violation, previous compliance record, and the presence of aggravating or exacerbating circumstances.

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	\$750	\$1,500	\$3,000

Low risk violations do not affect the function of the large onsite sewage system and have a low potential to threaten public health or the environment. Medium risk violations are those relating to reporting requirements of the large on-site sewage system function, including monitoring, operation, and maintenance of the system and do not present an immediate threat to public health or the environment. High risk violations are those relating to the function of the large on-site sewage system and present an immediate threat to public health and the environment.

Base penalties for low risk, medium risk, and high risk have been established at \$250, \$500, and \$1,000 respectively. The penalty for a medium risk violation is twice that of a low risk violation, while the penalty for a high risk violation is twice that of a medium risk violation.

The department considers previous compliance with large on-site sewage system law and rules and may increase the base penalty amount depending on the number of previous Notice of Violations the owner or their representative have received in the past 5 years. Penalties for low risk, medium risk, or high risk violation could be assessed at as much as \$750, \$1,500, and \$3,000

respectively if the compliance record shows 5 or more Notice of Violations issued to the owner or their representative in the past 5 years.

The department considers aggravating or exacerbating circumstances and may increase the penalty to an amount greater than listed in the penalty schedule. Aggravating or exacerbating circumstances include, but are not limited to, the extent to which there is a history of unaddressed permit conditions, the extent to which 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 the length of time either of these factors have been present.

Example:

The department has a LOSS that has been operating without a valid operating permit since 2022 and has several concurrent violations for outstanding permit conditions. The department has been attempting to contact the owner; however, the owner is not reachable. The department issues a Notice of Correction followed by a Violation Warning. The department sends an email to the owner inviting them to a site visit. The owner does not respond. The department conducts the site visit and is not able to find a LOSS representative. The department finds evidence of a drainfield failure.

The owner failed to comply with the Violation Warning when they failed to obtain the operating permit. The owner also failed to comply with the operating permit conditions.

The department attempts to contact the owner by phone and email. The owner does not respond. The department decides to take formal action by issuing a Notice of Violation with civil penalty.

The department calculates the civil penalty amount:

(1) Significance of the violation.

A LOSS operating without a valid operating permit poses a medium risk to the public and the environment.

(2) Previous compliance record.

The department reviews the owner's compliance record over the past 5 years and finds the owner had a previous complied with Notice of Violation.

(3) Presence of aggravating or exacerbating circumstances.

The owner failed to comply with the Violation Warning when they failed to obtain the operating permit. The owner also failed to comply with the operating permit conditions.

An ongoing drainfield failure was found that could have been discovered and mitigated had the owner complied with previous requirements. A drainfield failure with surfacing sewage poses a high risk to the public and the environment.

Example Calculation:

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	\$750	\$1,500	\$3,000
Amount per violation:			\$700
Multiplied by number of violations:			(1) \$700
			= \$700
<u>Aggravating or exacerbating circumstances:</u>			
Failure to comply with the Notice of Violation/Failure			+ \$1,400
Total:			\$2,100
Amount issued:			\$2,100

Cost(s): There is no cost associated with the proposed rule. The department has the authority to enforce chapter 70A.115 RCW and chapter 246-272B WAC. Both give the department the authority to issue a civil penalty of up to \$10,000 per day for each violation, when a violation is present. The proposed rule outlines how the department will calculate a civil penalty based on the significance of the violation, past compliance record, and the presence of aggravating or exacerbating circumstances.

Benefit(s): The proposed rule establishes a civil penalty schedule to protect public health and the environment by ensuring large on-site sewage systems are properly designed, operated, and maintained. A civil penalty schedule, in rule, provides transparency in how the department calculates the penalty amount and serves as a deterrent to future noncompliance. Protection of public health and the environment requires properly designed, operated, and maintained on-site sewage systems. Failure of these systems can pose certain health and environmental hazards if sewage is not adequately treated, leaks above ground creating a potential of direct or indirect contact with the public, or if untreated sewage reaches surface or groundwater.

Determination

Probable Benefits greater than Probable Costs

The department determines that the probable benefits of protecting public health and the environment by ensuring large on-site sewage systems are properly designed, operated, and maintained outweigh the probable cost of an appropriately calculated civil penalty when a violation is present.

SECTION 6

List of alternative versions of the rule that were considered including the reason why the proposed rule is the least burdensome alternative for those that are required to comply and that will achieve the goals and objectives of the proposed rule.

Alternatives to the proposed rule include assessing a \$10,000 penalty per day for every violation as outlined in RCW 70A.115.050. Without a civil penalty schedule in rule, assessing an amount other than the maximum of \$10,000 would be arbitrary and capricious.

SECTION 7

Determination that the rule does not require those to whom it applies to take an action that violates requirements of another federal or state law.

Compliance with the proposed rule will not result in a violation of another federal or state law.

SECTION 8

Determination that the rule does not impose more stringent performance requirements on private entities than on public entities unless required to do so by federal or state law.

The proposed rule does not impose more stringent performance requirements on private entities.

SECTION 9

Determination if the rule differs from any federal regulation or statute applicable to the same activity or subject matter and, if so, determine that the difference is justified by an explicit state statute or by substantial evidence that the difference is necessary.

The proposed rule does not conflict with any other federal regulation or statute.

SECTION 10

Demonstration that the rule has been coordinated, to the maximum extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter.

No other federal, state, or local laws apply to this subject matter.