

WAC 16-662-170 Civil penalties and enforcement—Aggravating and mitigating factors. (1) As provided under RCW 19.112.060 (1)(b), the department has discretion to determine the civil penalty based on circumstances such as the gravity of violations and the history of violations. Criteria for determining whether and how to adjust the civil penalties specified in WAC 16-662-165 are considered aggravating and mitigating factors.

(2) When assessing a penalty using aggravating or mitigating factors, the department will provide a written summary to include the base penalty amount provided in the civil penalty section and any aggravating and/or mitigating factors it considered when arriving at a final civil penalty amount that differs from the base penalty amount.

(3) The department may increase a civil penalty based on the penalties found in WAC 16-662-165 because of aggravating factors including, but not limited to, the following:

(a) Situations where the civil penalty assessed is not substantially equivalent to the violator's economic benefit derived from the violation.

(b) The number of separate violations contained within a single notice of intent.

(c) The magnitude of the harm or potential harm caused by the violation, including the degree of harm to any affected vehicles, property, people, or to the environment.

(d) The sameness or similarity of the current violation to previous violations committed within the previous two years.

(e) The extent to which the violation is part of a pattern of the same or substantially similar violations including violations at other locations operated by the same business or person.

(f) The department may assess up to the maximum penalty of ten thousand dollars as authorized under RCW 19.112.060 (1)(b) when the department determines one or more aggravating factors are associated with violations presenting grave risks to persons, property, or the environment or that represent a pattern of repeated violations presenting moderate risks to persons, property, or the environment.

(4) The department may reduce a civil penalty based on the civil penalty identified in WAC 16-662-165 because of mitigating factors including, but not limited to, the following:

(a) Voluntary disclosure of a violation.

(b) Promptly taking voluntary corrective actions to stop further harm and/or minimize the likelihood that the violation will be repeated.

(c) Promptly making appropriate restitution to any identified customers who were affected or may have been affected by the violation.

(d) Proof that the violations occurred due to structural failures or unintentional errors on the part of the business owner or operator when such failures or errors were outside the control or responsibility of the owner or operator. However, the owner or operator is responsible for the quality of fuel offered for sale at that location.

[Statutory Authority: RCW 19.94.190, 19.94.195, 19.112.020, 19.112.140, and chapter 34.05 RCW. WSR 16-19-093, § 16-662-170, filed 9/21/16, effective 10/22/16.]