

WAC 16-611-300 Penalty for discharge of pollutants. (1) In accordance with RCW 90.64.010 (17)(a), 90.48.080, and 90.48.144, a discharge of pollutants into the waters of the state may be subject to a civil penalty in the amount of up to ten thousand dollars a day for each violation. Each violation is a separate and distinct offense and, in case of a continuing violation, every day's continuance is a separate and distinct violation.

(2) The median penalty shall be assessed unless an adjustment is warranted due to the presence of aggravating or mitigating factors.

(3) **Aggravating factors.** The department may consider aggravating circumstances and enhance the penalty based on the seriousness of the violation. When the department determines that one or more aggravating factors are present, the department may assess the maximum penalty as listed within the penalty schedule table in subsection (5) of this section or may, in its discretion, assess a civil penalty in an amount between the median and maximum amount. Aggravating factors include, but are not limited to, the following:

(a) The magnitude of harm or potential harm to:

(i) Waters of the state;

(ii) Humans, animals, plants, property, the environment; or

(iii) Species listed as threatened or endangered caused by the violation(s).

(b) The similarity of the current alleged violation to previous history of the dairy, or the extent to which the alleged violation is part of a pattern of the same or substantially similar conduct.

(c) Economic value derived from noncompliance.

(4) **Mitigating factors.** The department may consider mitigating circumstances and reduce the penalty. When the department determines that one or more mitigating factors are present, the department may assess the minimum penalty for the violation within the penalty schedule table in subsection (5) of this section or may, in its discretion, assess a civil penalty in an amount between the minimum and median amount listed for the violation in subsection (3) of this section. Mitigating factors include, but are not limited to, the following:

(a) Voluntary disclosure of a violation;

(b) Speed and effectiveness of actions taken to correct the violation or stop a discharge to waters of the state;

(c) Remedial actions taken to repair or compensate for impacts or that will result in increased public protection or that will permanently result in a decreased likelihood that the violation will be repeated.

(5) Penalty schedule for discharges to waters of the state.

Violation	Discharge to Waters of the State		
	Minimum	Median	Maximum
First	\$1000.00	\$4000.00	\$10,000.00
Second	\$2000.00	\$6000.00	\$10,000.00
Third or subsequent	\$4000.00	\$8000.00	\$10,000.00 ¹

¹Statutory authority RCW 90.48.144.

[Statutory Authority: RCW 90.64.110 and chapter 34.05 RCW. WSR 12-22-019, § 16-611-300, filed 10/29/12, effective 11/29/12.]