

Chapter 16-611 WAC

NUTRIENT MANAGEMENT

WAC

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WAC 16-611-005 Purpose. The purpose of this chapter is to provide for fair and uniform determination of civil penalties issued for violations of chapter 90.64 RCW.

[Statutory Authority: RCW 90.64.110 and chapter 34.05 RCW. WSR 12-22-019, § 16-611-005, filed 10/29/12, effective 11/29/12.]

WAC 16-611-010 Definitions. "Agronomic rate" means the application of nutrients to supply crop or plant nutrient needs to achieve realistic yields and minimize the movements of nutrients to surface and ground waters.

"Dairy nutrient management plan" means a plan meeting the requirements established under RCW 90.64.026.

"Dairy producer" means a person who owns or operates a licensed dairy farm.

"Department" means the Washington state department of agriculture.

"Nutrient," for purposes of this rule, means any product or combination of products used to supply crops with plant nutrients including, but not limited to, manure or commercial fertilizer.

"Transfer of manure" means the transfer of manure, litter or process waste water to other persons when the receiving facility is in direct control of:

- (a) Application acreage;
- (b) Application rate;
- (c) Application times; and
- (d) Transfer rate and time.

[Statutory Authority: RCW 90.64.110 and chapter 34.05 RCW. WSR 12-22-019, § 16-611-010, filed 10/29/12, effective 11/29/12.]

WAC 16-611-020 Recordkeeping requirements. (1) In accordance with RCW 90.64.010 (17)(c) and 90.64.102, dairy producers must maintain records to demonstrate that applications of nutrients to crop land are within acceptable agronomic rates.

(2) Dairy producers must maintain the following records to demonstrate that applications of nutrients to the land were within acceptable agronomic rates:

- (a) Soil analysis.
 - (i) Annual postharvest soil nitrate nitrogen analysis;
 - (ii) Every three years, a current soil analysis that includes:
 - (A) Organic matter;
 - (B) pH;
 - (C) Ammonium nitrogen;

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(D) Phosphorus (the Bray-1 method must be used to determine soil phosphorus for soils below pH 7 and the Olsen bicarbonate method must be used for soils at or above pH 7);

(E) Potassium; and

(F) A measure of electrical conductivity.

(b) Nutrient analysis for all sources of organic and inorganic nutrients including, but not limited to, manure and commercial fertilizer supplied for crop uptake. Manure and other organic sources of nutrients must be analyzed annually for organic nitrogen, ammonia nitrogen, and phosphorus.

(c) Application records must include:

(i) Field identification and year of application;

(ii) Crop grown in each field where the application occurred;

(iii) Crop nutrient needs based on expected crop yield;

(iv) Nutrient sources available from residual soil nitrogen including contributions from soil organic matter, previous legume crop, and previous organic nutrients applied;

(v) Date of applications, method of application, nutrient sources, nutrient analysis, amount of nitrogen and phosphorus applied and available for each source;

(vi) Total amount of nitrogen and phosphorus applied to each field each year; and

(vii) Weather conditions twenty-four hours prior to and at time of application.

(d) Manure transfer records, including imports or exports. Records must include:

(i) Date of manure transfer;

(ii) Amount of nutrients transferred;

(iii) The name of the person supplying and receiving the nutrients; and

(iv) Nutrient analysis of manure transferred.

(e) Irrigation water management records. Records must include:

(i) Field identification;

(ii) Total amount of irrigation water applied to each field each year.

[Statutory Authority: RCW 90.64.110 and chapter 34.05 RCW. WSR 12-22-019, § 16-611-020, filed 10/29/12, effective 11/29/12.]

WAC 16-611-100 Assessing civil penalties. The department may assess civil penalties.

(1) Nothing in this chapter shall prevent the department from:

(a) Choosing not to pursue a civil penalty;

(b) Issuing a notice of correction in lieu of pursuing a civil penalty;

(c) Negotiating a settlement of cases of such terms and for reasons as it deems necessary; or

(d) Referring a violation to any federal or state agency with jurisdiction over the activities in question.

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(2) Prior violations may be used by the department for the purpose of determining the appropriate penalty for current violations.

(3) Responses and mitigating actions taken by the dairy and responsible party may be used by the department for the purpose of determining the appropriate penalty for current violations.

(4) Civil penalties under this rule are imposed pursuant to the procedures set forth in RCW 43.21B.300 and may be appealed to the pollution control hearings board in accordance with chapter 43.21B RCW.

[Statutory Authority: RCW 90.64.110 and chapter 34.05 RCW. WSR 12-22-019, § 16-611-100, filed 10/29/12, effective 11/29/12.]

WAC 16-611-110 Issuing a civil penalty without first issuing a notice of correction. (1) Pursuant to RCW 43.05.-100, the department may issue a notice of correction when the department becomes aware of conditions that are not in compliance with the applicable laws and rules enforced by the department.

(2) The department may assess a civil penalty without first issuing a notice of correction in accordance with RCW 43.05.110 and 34.05.110.

[Statutory Authority: RCW 90.64.110 and chapter 34.05 RCW. WSR 12-22-019, § 16-611-110, filed 10/29/12, effective 11/29/12.]

WAC 16-611-200 Penalty for lack of recordkeeping.

(1) In accordance with RCW 90.64.010 (17)(c) and 90.64.-102, failure to maintain all records necessary to show that applications of nutrient to the land were within acceptable agronomic rates may be subject to a civil penalty. The aggregate amount of civil penalties issued to a dairy producer under this section shall not exceed five thousand dollars per calendar year. Each violation is a separate and distinct offense.

(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 or increase the penalty above the maximum penalty listed for the violation in subsection (5) of this section. Aggravating factors include, but are not limited to, the following:

- (a) The gravity and magnitude of the violation;
- (b) Whether the violation was repeated or is continuous;
- (c) Whether the cause of the violation was due to negligence, or an intentional act; and
- (d) The immediacy and extent to which the violation threatens the public health or safety or harms the environment.

(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:

(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 WAC 16-611-300(5). Mitigating factors include, but are not limited to, the following:

- (a) Whether the cause of the violation was an unavoidable accident;
- (b) The violator's efforts to correct the violation.
- (5) Penalty schedule for recordkeeping violations.

Penalties	Recordkeeping Violations		
	Minimum	Median	Maximum
First	\$100.00	\$250.00	\$2500.00
Second	\$200.00	\$500.00	\$3000.00
Third or subsequent	\$400.00	\$1000.00	\$5000.00

[Statutory Authority: RCW 90.64.110 and chapter 34.05 RCW. WSR 12-22-019, § 16-611-200, filed 10/29/12, effective 11/29/12.]

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.]