

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 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.]