

# Concise Explanatory Statement

## WAC 246-272B-08105, Civil penalty schedule



Comment Received	Department of Health Determination
<p>A \$10,000 fine a day would cripple a LOSS owner. This money should go towards repairing the system, rather than paying a fine.</p>	<p><b>No change to proposed rule.</b> <a href="#">RCW 70A.115.050</a> already gives the department the authority to issue a civil penalty of up to \$10,000 per day per violation of a law or rule regulating large onsite sewage systems. The adopted rule provides a framework for the department to calculate a civil penalty based on significance of the violation, previous compliance record, and the presence of aggravating or exacerbating circumstances. The adopted rule clarifies the structure for penalties of less than \$10,000 per day per violation.</p> <p><a href="#">WAC 246-272B-08100</a> outlines enforcement actions the department may take to bring a large onsite sewage system into compliance. The department strives to obtain voluntary compliance before taking formal enforcement action. A civil penalty is just one action the department may take and is often reserved for instances in which previous enforcement actions have been unsuccessful.</p> <p><a href="#">WAC 246-272B-01000</a> states that the purpose of this chapter is to protect public health and the environment by establishing a comprehensive framework for statewide management of LOSS. The department is mindful of and committed to this purpose throughout its discussions with system owners, operators and managers when a violation has occurred.</p>
<p>The liability of a \$10,000 penalty may discourage people from becoming operators and maintenance persons of large onsite sewage systems.</p>	<p><b>No change to proposed rule.</b> <a href="#">RCW 70A.115.050</a> already gives the department the authority to issue a civil penalty of up to \$10,000 per day per violation of a law or rule</p>

	<p>regulating large onsite sewage systems. <a href="#">WAC 246-272B-08100</a>(3) states that the department may initiate enforcement action against the owner to bring the system into compliance by using one or more of a list of options, which includes, but is not limited to, civil penalties.</p>
<p>Summary of questions received during public hearing:</p> <ul style="list-style-type: none"> <li>- When are these notices received?</li> <li>- Have they been issued in the past?</li> <li>- Can the violations be back dated?</li> <li>- Can an owner have a waiver if working towards a solution?</li> </ul>	<p><b>No change to proposed rule.</b> <a href="#">WAC 246-272B-08100</a> outlines enforcement actions the department may take against an owner to bring a large onsite sewage system into compliance. The department strives to obtain voluntary compliance before taking formal enforcement action through a multi-tiered approach:</p> <ul style="list-style-type: none"> <li>- The department will inform the owner of the violation and necessary action to gain compliance. This includes providing technical assistance.</li> <li>- If deadlines pass and compliance has not been achieved, formal enforcement action may occur.</li> <li>- A civil penalty is just one action the department may take and is often reserved for instances in which previous enforcement actions have been unsuccessful or imminent health hazards or severe risk to public health and environment exists.</li> <li>- Civil penalties will not be issued if the owner is working with the department towards gaining compliance.</li> </ul> <p>The department has issued orders for civil penalties in the past. As explained in <a href="#">WAC 246-272B-01000</a>, the department's purpose in issuing civil penalties under this chapter of the WAC is to further the department's purpose to protect public health and the environment. The department is mindful of this purpose throughout its enforcement and other regulatory oversight efforts, including efforts to achieve voluntary compliance and the situations referenced in the questions.</p> <p>The department only takes enforcement action at the time of the violation is discovered.</p> <p><a href="#">WAC 246-272B-08000</a> outlines when a "waiver" can be</p>

	requested. Waivers do not apply to enforcement actions, including a civil penalties.
Factors at play that are out of an owner’s control. May find an issue and are already working towards a solution, but it could take time to get parts, find someone to work on it, etc.	<p><b>No change to proposed rule.</b> <a href="#">WAC 246-272B-08100</a> outlines enforcement actions the department may take against an owner to bring a large onsite sewage system into compliance. The department strives to obtain voluntary compliance before taking formal enforcement action through a multi-tiered approach:</p> <ul style="list-style-type: none"> <li>– The department will inform the owner of the violation and necessary action to gain compliance. This includes providing technical assistance.</li> <li>– If deadlines pass and compliance has not been achieved, formal enforcement action may occur.</li> <li>– A civil penalty is just one action the department may take and is often reserved for instances in which previous enforcement actions have been unsuccessful or imminent health hazards or severe risk to public health and environment exists.</li> <li>– Civil penalties will not be issued if the owner is working with the department towards gaining compliance.</li> </ul>



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