

# Division of Drinking Water Policy

Title:	Penalty Formula	Number: J.13 (rev)
References:	Chapter 70.119A RCW and Compliance Manual	
Contact:	John Aden	
Effective Date:		
Supersedes:	November 1, 1997 version	
Approved:	<i>Director, Division of Drinking Water</i>	

Drinking water policies are written descriptions of the approach taken by the Program to implement a statute, regulation, court order, or other agency order, and may include the Program's current practice, procedure, or method of action based on that approach. Any generally applicable directives or criteria that provide the basis for imposing penalties or sanctions, or for granting or denying Program approvals, must either be in statute or established in a rule.

## **POLICY STATEMENT:**

The Office of Drinking Water (ODW) shall use the following penalty procedure when determining appropriate penalties to levy against purveyors who fail to comply with applicable drinking water regulations as authorized in RCW 70.119A.030 and 70.119A.040.

In addition, the ODW, in cooperation with the Attorney General's Office, will make every effort to recover interest and attorney fees authorized by RCW 70.119A.040(4) when a person fails to pay a penalty assessed by a final administrative order. The ODW will also work, in cooperation with the Attorney General's Office, to ensure that a person who appeals, to the Superior Court, a civil penalty assessed by a final administrative order under chapter 70.119A RCW will be required to place the full amount of the penalty and such other charges as are appropriate in an interest-bearing account in the registry of the court.

## **POLICY SCOPE:**

- This policy affects all parties who may be subject to a civil penalty issued under chapter 70.119A RCW.
- This policy applies to all parties who have been given notice to come into compliance with an applicable drinking water requirement and have failed to do so in the time allowed.

## Key Definitions

Public Health Risk Factor – A value assigned to a specific violation or type of violation of an applicable drinking water requirement based on the violation's relative effect on consumers of the water.

Previous Record of Compliance – A measure of the system's ability to meet applicable drinking water requirements over time and the cooperation shown in dealing with ODW directives.

Public Health Emergency – As defined in RCW 70.119A.020 means a declaration by an authorized health official of a situation in which either illness, or exposure known to cause illness, is occurring or is imminent. RCW 70.119A.030 authorizes the secretary or his or her designee or the local health officer to declare a public health emergency.

## **PROCEDURE:**

#	Action By	Action
1	Compliance Staff, Management and/or Engineer	Determine need for issuance of civil penalty
2	Compliance Staff	Draft civil penalty as appropriate using Penalty Formula Chart and Work Sheet.  NOTE 1: Documentation of proper notice and requirements for resolution are necessary prior to issuance of a penalty when a prior order has not been issued except in the case of a declared public health emergency.  NOTE 2: When calculating the penalty amount, the total penalty per violation shall not exceed \$5,000 per day except in the case of a public health emergency as noted below.  NOTE 3: In the case of a public health emergency, the civil penalty shall be twice the amount derived from using the penalty calculation formula presented herein as long as the total penalty per violation does not exceed \$10,000 per day.
3	Compliance Staff	Get Regional Office review and input if applicable.  Transmit electronic drafts to appropriate Headquarters Compliance Staff for review.
4	Headquarters Compliance Staff	Review draft penalty and provide feedback to Compliance staff
5	Compliance Staff	Review comments and prepare final penalty document for appropriate signature
6	Appropriate Manager	Review final penalty document and sign

7	Compliance Staff	Send final signed penalty document to Headquarters Compliance staff
---	------------------	---

## Penalty Formula Chart

<b>Public Health Risk - "A" shall be assigned one of the following values:</b>	
1.0 = Low - This includes, but is not limited to, the following violations that represent low public health risk:	<ul style="list-style-type: none"> <li>• Failure to submit monitoring plan to the department as directed;</li> <li>• Failure to obtain annual operating permit;</li> <li>• Secondary Maximum Contaminant Level (MCL) violation;</li> <li>• Failure to submit required consumer confidence report to customers and the Department; and</li> <li>• Failure to submit other reports not specifically listed.</li> </ul>
2.0 = Slight - This includes, but is not limited to, the following violations that represent slight public health risk:	<ul style="list-style-type: none"> <li>• Failure to have a cross-connection control program;</li> <li>• Failure to submit required planning document (Water System Plan, Small Water System Management Program, Wellhead Protection Program) when requested by the department;</li> <li>• Failure to adequately respond to consumer complaints;</li> <li>• Failure to hire a licensed engineer;</li> <li>• Failure to maintain 24-hour phone availability;</li> <li>• Failure to retain a Satellite Management Agency, when required; and</li> <li>• Failure to provide Tier 3 public notification (PN).</li> </ul>
4.0 = Moderate - This includes, but is not limited to, the following violations that represent moderate health risk:	<ul style="list-style-type: none"> <li>• Lead and Copper monitoring or reporting (M/R) violation;</li> <li>• Source M/R violation;</li> <li>• Failure to conduct public education following lead exceedance;</li> <li>• Failure to monitor and/or report disinfectant residual and/or contact time;</li> <li>• Improper water service termination;</li> <li>• Failure to submit to a sanitary survey;</li> <li>• Failure to submit project report or construction documents as directed;</li> <li>• Failure to provide required pressures; and</li> <li>• Failure to obtain existing system approval as directed.</li> </ul>
7.0 = Medium – This includes, but is not limited to, the following violations that represent medium public health risk:	<ul style="list-style-type: none"> <li>• Failure to install and/or operate disinfection equipment when directed by the department;</li> <li>• Failure to provide Tier 2 PN;</li> <li>• Failure to provide cross-connection control protection to high risk premises;</li> <li>• Failure to provide source protection as directed;</li> </ul>

- Failure to install facilities as directed;
- Chronic chemical MCL violation; and
- Lead and/or copper action level exceedance.

11.0 = High - This includes, but is not limited to, the following violations that represent high public health risk:

- Failure to do required follow-up monitoring;
- Failure to cover uncovered reservoirs as directed;
- Surface water or ground water under the direct influence of surface water (GWI) M/R violation;
- Failure to disinfect after repair;
- Unscheduled chronic water outages;
- Failure to complete GWI determination;
- Non-acute MCL violation;
- Failure to monitor and/or report for acute contaminants (coliform, nitrate and chlorine dioxide); and
- Failure to comply with Operator Certification requirements.

16.0 = Acute - This includes, but is not limited to, the following violations that represent acute public health risk:

- Failure to provide minimum treatment;
- Failure to correct high public health risk sanitary survey findings;
- Acute MCL violation;
- Surface water or GWI treatment technique violation;
- Diagnosed waterborne illness;
- Falsification of reports to ODW;
- Construction without approval that poses a potential significant risk to health;
- Documented Cross Connection or confirmed backflow incident; and
- Failure to provide Tier 1 PN.

It is intended that each type of drinking water violation has been assigned a public health risk value, however, it is recognized that there may be violations to which a value has not been assigned. If a violation occurs which has not been assigned a public health risk value herein, the compliance manager shall consult with the compliance coordinator for assignment of a risk factor prior to issuing a penalty for that violation.

**Previous Record of Compliance - "B" shall be assigned one of the following values based on previous record of compliance with drinking water statutes and regulations:**

4.0 shall be most compliant and 9.0 shall be least compliant based on consideration of, but not limited to, the following two elements that shall be added together:

1. A value of 1.0 or 2.0 should be assigned based on the following considerations:
  - The number and nature of department contacts regarding non-compliance;
  - The period of time department efforts to effect compliance have extended; and
  - The nature and extent of the responsible party's efforts to effect compliance, if any.

2. A value of 3.0 to 7.0 shall be assigned based on the number of violations occurring prior to the date of the current penalty and going back up to five years;

- **3.0** = 1 acute, non-acute or major repeat violation, or less than 4 major monitoring or

- other drinking water violations, provided the total number is not greater than 3;
- **4.0** = 2 acute, non-acute or major repeat violations, or 4-6 major monitoring or other drinking water violations, provided the total number is not greater than 6;
- **5.0** = 3 acute, non-acute or major repeat violations, or 7-9 major monitoring or other drinking water violations, provided the total number is not greater than 9;
- **6.0** = 4 acute, non-acute or major repeat violations, or 10-12 major monitoring or other drinking water violations, provided the total number is not less than 12; and
- **7.0** = Greater than 4 acute, non-acute or major repeat violations, or greater than 12 major monitoring or other drinking water violations.

**Population Served - "C" shall be assigned one of the following values according to the size of the system which the violation affects:**

- 2.0 = Group B;
- 3.0 = TNC;
- 4.0 = NTNC and Community less than 100 services;
- 5.0 = Community 100 to 500 services;
- 6.0 = Community 501 to 999 services;
- 7.0 = Community 1,000 to 3,299 services;
- 8.0 = Community 3,300 to 9,999 services; and
- 9.0 = Community greater than 9,999 services.

**Daily Factor - "D" shall be used for violations that might occur on a daily basis such as water outages, failure to monitor residual disinfectant concentration, etc.**

When an initial penalty is issued, a section shall be included in the Notice of Imposition of Penalties (NIP) that clearly states that continued failure to comply with drinking water regulations may result in further penalties calculated on a per day basis of up to \$5,000 dollars per violation or up to \$10,000 per violation if the violation is determined to be a public health emergency. Initiating staff may issue subsequent NIPs at any interval they deem appropriate, however as a general practice it is recommended that additional NIPs be issued on a monthly basis.

**Construction without approval - [Includes expansion or modification] (maximum of \$500,000 per penalty)**

<b><u>SYSTEM SIZE</u></b>	<b><u>PENALTY</u></b>
• Group B =	\$ 5,000
• Group A TNC =	\$ 7,500
• Group A NTNC =	\$ 10,000
• Community less than 100 connections =	\$ 3,000/connection
• Community 100 - 500 connections =	\$ 3,500/connection
• Community 501 - 999 connections =	\$ 4,000/connection
• Community 1,000 - 9,999 connections =	\$ 4,500/connection
• Community 10,000 and up =	\$ 5,000/connection

NOTE: For the purpose of computing the penalty under construction without approval, a service connection shall include any new service connection actually constructed, any anticipated service connection the system has been designed to serve, and, in the case of a system modification not involving expansions, each existing service connection that benefits or would benefit from the modification.

In determining the penalty, regional office staff should document how an estimate of the **number of services was derived**. Initiating staff may issue subsequent NIPs at any interval they deem appropriate, however as a general practice it is recommended that additional NIPs be issued on a monthly basis.

