



HCICAG HPA Penalty Schedule Discussion Guide

Background

Amendments to the [Hydraulic Code Rules \(chapter 200-660 WAC\)](#) are proposed to implement elements of Second Substitute House Bill (2SHB) 1579. 2SHB 1579 is a bill that passed the Washington Legislature during the 2019 legislative session that amended the law governing [Construction Projects in State Waters - chapter 77.55 RCW](#), better known as the Hydraulic Code. The bill provided enhanced authorities for WDFW's civil compliance program (RCWs 77.55.400-470), repealed a statute (former RCW 77.55.141) that limited WDFW's authority to regulate bank protection in saltwater areas for single-family residences, and added a procedure for potential applicants to request a preapplication determination about whether a project requires a hydraulic project approval (HPA).

Rule Making

WDFW has initiated rule making to implement the legislation, which became effective on July 28, 2019. The scope of this rule making is limited to implementing the statutory elements provided in the bill and adding or editing current rule language to increase transparency about civil compliance and other procedures for those affected by the changes.

In order to implement 2SHB 1579, WDFW's objectives for this rule making include:

1. Add new compliance tools:
 - Stop-work orders;
 - Notice to Comply;
 - Notice of Civil Penalty;
2. Provide a penalty schedule and specify signature authority for certain compliance tools, as directed by 2SHB 1579;
3. Add a procedure for prospective applicants to request and receive a determination about whether a proposed project requires an HPA; and
4. Strike language from rules that references the repealed single-family residential saltwater bank protection statute.

Rule Making Process

The rule making process is governed by the [Administrative Procedure Act - chapter 34.05 RCW](#). The process begins when an agency publishes a Preproposal Notice of Inquiry - the notice for this rule making will publish on October 2, 2019, the purpose of which is to solicit comments and proposals for how to develop the rules. These comments are taken into consideration as the agency drafts rule language. Next, the rule proposals are published ("Notice of Proposed Rule Making" also known as the CR-102 form), and the formal public comment period begins,

culminating in a public hearing held by the Washington Fish and Wildlife Commission. WDFW anticipates rule proposals to be available in November for a January public hearing date. After the public hearing, the Commission adopts the finalized rules, which become effective a month after adoption.

Introduction

[RCW 77.55.440](#) directs WDFW to develop a penalty schedule for civil penalties:

(6) The department shall adopt by rule a penalty schedule to be effective by January 1, 2020. The penalty schedule must be developed in consideration of the following:

- (a) Previous violation history;*
- (b) Severity of the impact on fish life and fish habitat;*
- (c) Whether the violation of this chapter or of its rules was intentional;*
- (d) Cooperation with the department;*
- (e) Reparability of any adverse effects resulting from the violation; and*
- (f) The extent to which a penalty to be imposed on a person for a violation committed by another should be reduced if the person was unaware of the violation and has not received a substantial economic benefit from the violation.*

Questions for HCICAG

Discussion on September 26 will revolve around these four questions. Please be prepared to respond to these, using the case studies that follow as background.

- What elements from among the case studies provided seem relevant or appropriate to the HPA civil penalty schedule? What elements are missing?
- Should elements be different for different types of violations? (e.g., different elements or criteria for violations of administrative/paperwork or construction provisions or design specifications?)
- Should the schedule reflect aggravating or mitigation factors or other prescriptions for deviating from a set schedule?
- Are there elements or criteria in the examples that are inappropriate for application to the HPA penalty schedule?

Definitions for this discussion (only):

Penalty schedule: RCW 77.55.440 directs WDFW to develop a penalty schedule in rule. A schedule helps WDFW determine (and the potentially regulated community understand) the amount of a penalty based on the criteria specified in statute.

Elements or Factors: Categories of considerations describing motivation or behavior contributing to a violation or the consequences of a violation. 2SHB 1579 Items (a) through (f) are elements of a penalty schedule (see worksheet, below).

Criteria: Metrics to quantify behavior or consequences.

Aggravating factors: Aspects of motivation, behavior, or consequence that merit a more severe adjustment for that element.

Mitigating factors: Aspects of motivation, behavior, or consequence that merit a less severe adjustment for that element.

Compliance category: A group of provisions that are alike in their effect on fish/habitat. For example, construction compliance violations tend to result in short term harm to fish/habitat, whereas design compliance violations tend to result in long-term and persistent harm to fish/habitat.

HCICAG Worksheet 1 - Elements of penalty assessment

Think about the following elements of penalty assessment and make notes about those thoughts, or about other ideas for elements that should be included.

Statutory Elements	Thoughts and ideas
(a) History;	
(b) Severity;	
(c) Intent;	
(d) Cooperation;	
(e) Reparability; and	
(f) Economic benefit.	

HCICAG Worksheet 2 - Compliance categories

Think about whether penalties should differ among compliance categories and record your ideas and examples:

Category (from pilot)	Examples	Category Ideas	Examples
<p>Notification/Paperwork provisions</p> <p>Permit provisions that require the permittee to notify WDFW, submit records to WDFW, or maintain records</p>	<ul style="list-style-type: none"> • Copy of HPA and plans/specifications on-site • Provided project-start, project-completed, other notices as specified in HPA • Uploaded survey reports, photos into APPS, as specified in HPA • Reporting fish kills or fuel spills 		
<p>Construction provisions</p> <p>Provisions relating to staging, construction, and demobilization</p>	<ul style="list-style-type: none"> • Equipment and materials staging • Locating benchmarks • Fish exclusion and screening methods • Types of construction materials • Containment of construction-related sediment, erosion and pollution • Demobilization/clean-up provisions • Placement of habitat mitigation/restoration features 		
<p>Design provisions</p> <p>Aspects of the as-built structure, the measurement of which determines whether a structure is built according to the plans and specifications approved at the time the HPA was issued</p>	<ul style="list-style-type: none"> • Lack of adequate benchmarks • Length and/or depth of structures • Placement of structures relative to benchmarks and OHWL • Orientation of structures (e.g., docks) • Endurance/survival of mitigation features (e.g., plantings) • Culvert length, slope, and drop 		



Penalty Schedule Case Studies

Following are four case studies utilizing existing laws and rules for other resource agencies. How might WDFW incorporate aspects of these case studies into the HPA penalty schedule?

Case Study A - Agriculture Penalty Schedule in WAC 16-228 (relating to chapters 17.21 and 15/58 RCW - pesticide application and sales)

Agriculture has a maximum penalty of \$7500 per violation for both chapter 17.21 RCW (application) and chapter 15.58 RCW (sales) pesticide violations. The penalty schedule includes both a monetary penalty and a license suspension, denial, revocation (to apply a pesticide or to sell a pesticide).

The term "Civil penalty" does not include any criminal penalty, damage assessment, wages, premiums, or taxes owed, or interest or late fees on any existing obligation.

Notification of violation committed: Agriculture issues an informal "Notice of correction," which is akin to the "Correction Request" in HPA parlance. The department can follow with a "Notice of Intent" (roughly equivalent to WDFW's "Notice of Civil Penalty)."

"Notice of Correction" means a document issued by the department that describes a condition or conduct that is not in compliance with chapter [15.58](#) or [17.21](#) RCW, or the rules adopted under the authority of chapter [15.58](#) or [17.21](#) RCW and is not subject to civil penalties as provided for in RCW [43.05.110](#). A notice of correction is not a formal enforcement action, is not subject to appeal and is a public record.

"Notice of intent" means a document issued by the department that alleges specific violations of chapter [15.58](#) or [17.21](#) RCW, or any rules adopted under the authority of those chapters. A notice of intent is a formal enforcement document issued with the intent to assess civil penalties to the alleged violator and/or to suspend, deny or revoke the alleged violator's pesticide license.

These two notices are similar in effect to the two HPA documents cited, with the exception that license suspension or revocation are not options for WDFW.

Factors in considering the penalty include how many of the same violation the subject has committed in the past three years, and whether the adverse effects are probable or not probable.

A) Number of violations - "level of violation"

This is defined as the number of prior incidents within 3 years of committing the current (alleged) violation, and is measured from none to 3-or-more.

B) "Adverse effect(s)" means that the alleged activity actually causes, or creates the possibility of, damage, injury, or public health threat, to humans, animals, plants,

property or the environment. In those situations involving a wood destroying organism inspection, adverse effects exist when the inspection has been performed in a faulty, careless or negligent manner.

"Not probable" means that the alleged violator's conduct more likely than not would not have an adverse effect.

"Probable" means that the alleged violator's conduct more likely than not would have an adverse effect.

The department retains the right to vary from the schedule based on aggravating or mitigating factors.

"Aggravating factors" include (but aren't limited to):

- Number of separate violations contained within a single "Notice of Intent;"
- The high magnitude of the harm or potential harm, including quantity and/or degree, to humans, animals, plants, property, or the environment cause by the violation;
- The similarity of the current alleged violations to previous violations committed within the last 3 years; and
- The extent to which the alleged violation is part of a pattern of the same or similar conduct.

"When the department determines that one or more aggravating factors are present, the department may assess the maximum penalty as listed within the level of violation or may, in its discretion, increase the penalty to a level greater than the maximum penalty, including but not limited to revocation of the license."

"Mitigating factors" include (but aren't limited to):

- Whether the violation was disclosed voluntarily;
- The magnitude of the harm (quantify and/or degree), and
- Whether remedial measures to increase public protection or decrease likelihood of re-offense were taken voluntarily.

When the department determines that one or more mitigating factors are present, the department may assess the minimum penalty for the violation from the penalty schedule.

Calculating penalties: The department considers each violation to be a separate and distinct event. When a person has committed multiple violations, the violations are cumulative for purposes of calculating the appropriate penalty. Penalties are added together. Agriculture starts with the "median penalty" and adjust upwards or downwards depending on level of violation, adverse effects, and aggravating or mitigating factors.

*(1) Median penalty selection. In the disposition of administrative cases, the department shall use the penalty assignment schedule listed in WAC [16-228-1130](#) to determine appropriate penalties. The department shall calculate the appropriate penalty based on the **level of violation** and the **adverse effect(s)** or potential adverse effects at the time of*

*the incident(s) giving rise to the violation. The median penalty shall be assessed unless a proportionate adjustment is warranted and/or there are **aggravating or mitigating factors** present. The median penalty as listed in WAC [16-228-1130](#) may be proportionately adjusted and/or aggravated to a level more than the maximum penalty listed for the violation in the penalty assignment schedule table. The median penalty under the penalty assignment schedule may not be proportionately adjusted and/or mitigated to a level less than the minimum penalty listed for the violation.*

Suspending, revoking, or denying a license: Agriculture has authority to suspend or revoke licenses when a license holder or applicant has violated statute/rule. WDFW does not have this authority (except “disapproval”) so this topic is not discussed further. Agriculture, like WDFW, can deny an applicant when the applicant has outstanding penalties owed from previous violations (“disapproval” in WDFW parlance).

Proportionate adjustment of median penalty. Agriculture reserves the right to proportionately increase the civil penalty and proportionately decrease the licensing action under certain circumstances. Such circumstances include situations where licensing action(s) as a deterrent are ineffective and include, but are not limited to:

- (i) Violations by persons who are not licensed; and*
- (ii) Situations where the civil penalty assessed is not substantially equivalent to the violator's economic benefit derived from the violation.*

Agriculture also reserves the right to proportionately decrease the civil penalty and increase the licensing action in circumstances that demonstrate the ineffectiveness of a civil penalty as a deterrent. Nothing shall prevent the department from proportionally adjusting a licensing action to a level greater than the maximum licensing action listed in the penalty assignment schedule.

Maximum penalty: Violation(s) committed during the period when an individual's license is suspended or revoked shall be subject to the maximum civil penalty of seven thousand five hundred dollars and/or revocation of the license for a period of up to five years. Violation(s) committed by unlicensed individuals are subject to the provisions of this chapter, including the penalty provision.

Pesticide Application and Sales Schedule:

Here’s how the Agriculture pesticide penalty schedule lays out:

Level of Violation	Adverse Effects - Not Probable			Adverse Effects - Probable		
	Minimum	Median	Maximum	Minimum	Median	Maximum
First	\$200 and or 2 days license suspension	\$300 and or 3 days license suspension	\$500 and or 6 days license suspension	\$350 and or 5 days license suspension	\$450 and or 7 days license suspension	\$550 and or 9 days license suspension

Second	\$350 and or 3 days license suspension	\$500 and or 6 days license suspension	\$1000 and or 9 days license suspension	\$600 and 10 days license suspension denial or revocation	\$1300 and 20 days license suspension denial or revocation	\$2000 and 30 days license suspension denial or revocation
Third	\$700 and or 4 days license suspension	\$1000 and or 9 days license suspension	\$2000 and or 12 days license suspension	\$800 and 30 days license suspension denial or revocation	\$2400 and 40 days license suspension denial or revocation	\$4000 and 50 days license suspension denial or revocation
Fourth or more	\$900 and or 5 days license suspension denial or revocation	\$2000 and or 12 days license suspension denial or revocation	\$3000 and or 15 days license suspension denial or revocation	\$1000 and 50 days license suspension denial or revocation	\$4250 and 70 days license suspension denial or revocation	\$7500 and 90 days license suspension denial or revocation

Case Study B - Agriculture Dairy Nutrient Management (chapter 90.64 RCW, chapter 16-611 WAC)

Violations are defined as the following acts or omissions:

(a) A discharge of pollutants into the waters of the state, except those discharges that are due to a chronic or catastrophic event, or to an upset as provided in 40 C.F.R. Sec. 122.41, or to a bypass as provided in 40 C.F.R. Sec. 122.41, and that occur when:

(i) A dairy producer has a current national pollutant discharge elimination system permit with a wastewater system designed, operated, and maintained for the current herd size and that contains all process-generated wastewater plus average annual precipitation minus evaporation plus contaminated stormwater runoff from a twenty-five year, twenty-four hour rainfall event for that specific location, and the dairy producer has complied with all permit conditions, including dairy nutrient management plan conditions for appropriate land application practices; or

(ii) A dairy producer does not have a national pollutant discharge elimination system permit, but has complied with all of the elements of a dairy nutrient management plan that: Prevents the discharge of pollutants to waters of the state, is commensurate with the dairy producer's current herd size, and is approved and certified under RCW 90.64.026;

(b) Failure to register as required under RCW 90.64.017;

(c) Failure to keep for a period of five years all records necessary to show that applications of nutrients to the land were within acceptable agronomic rates;

(d) The lack of an approved dairy nutrient management plan by July 1, 2002; or

(e) The lack of a certified dairy nutrient management plan for a dairy farm after December 31, 2003.

Penalties:

Failure to maintain all records necessary to show that applications of nutrient to the land were within acceptable agronomic rates: Penalty not more than \$5,000 in a calendar year.

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.

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

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 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. 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 an unavoidable accident, 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.

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 or may, in its discretion, assess a civil penalty in an amount between the minimum and median amount listed for the violation. 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.

Alternatives:

- (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.

Agriculture Dairy Nutrient Management Schedule:

Violation	Recordkeeping Violations			Discharge of Pollutants		
	Minimum	Median	Maximum	Minimum	Median	Maximum
First	\$100	\$250	\$2500	\$1000	\$4000	\$10,000
Second	\$200	\$500	\$3000	\$2000	\$6000	\$10,000
Third or subsequent	\$400	\$1000	\$5000	\$4000	\$8000	\$10,000

Case Study C - Ecology Water Quality

Ecology compiled a “Compliance Assurance Manual” in July 2011 for agencywide application in outlining the compliance sequence steps as well as determining the amount of a penalty.

Determining the Appropriate Penalty Amount

Historically, three factors have been used by the environmental hearings boards to determine if the penalty amount assessed was reasonable:

- 1) The nature of the violation.
- 2) The prior behavior of the violator.
- 3) Actions taken by the violator to correct the problem.

Nature of the violation

The most significant factor is the nature of the violation. This factor involves both the gravity and conditions of the violation.

Specific criteria to be considered include:

- Severity of the violation in terms of public health and/or environmental impact. These criteria may be addressed differently by the courts or the boards in different types of cases. Some statutory schemes apply a strict liability standard for violations. You should consult with an Assistant Attorney General for advice on how this standard applies to your specific program.
- Magnitude of the violation in terms of type or amount of pollutant and resources affected, and the duration and/or number of specific violations.
- Whether the violation was due to negligence, recklessness, or was intentional.
- Precautions taken to prevent the violation.
- The expressed statutory purpose.
- Financial incentives to violate requirements or to continue violation.

Prior Behavior of the Violator

It is essential to have written documentation of when the violation was first observed, and documented opportunities for the violator to make corrections. The courts and Environmental Hearings Boards consider the specific history of the facility cited.

Specific criteria to be considered include:

- Record of similar violations or a pattern of violations indicating general disregard of environmental laws and rules.
- Past efforts by Ecology to provide notice of the violation, and applicable corrective actions. Prior Warnings, Notices, Orders or Penalties addressing the same or similar violations document Ecology efforts to bring the violator into compliance. (See Enforcement Tools above.)

Remedial Actions by the Violator

Remedial actions are relevant because a purpose of monetary penalties is to eliminate the economic benefit of noncompliance by the violator and ensure a level playing field for the general regulated community. Remedial actions that cost as much or more than a penalty may be considered in determining the penalty amount. Remedial actions that have an ongoing effect in ensuring compliance in the future also may be considered.

Other criteria to be considered include:

- Degree of cooperation in working toward compliance.
- Timeliness and appropriateness of corrective actions taken.
- Compensation paid or agreed to for damages to public resources.

Economic Benefit

The courts and environmental hearings boards may also consider whether the violation resulted in an economic benefit to the violator.

Water Quality Program Example

Ecology also provided program-specific guidance to determining civil penalties - this example is from the Water Quality program.

Typical minimum and maximum penalty: Minimum penalty issued is \$500.00; Maximum is \$10,000.00 per violation per day. (90.48.144 RCW). Each and every violation is a separate and distinct offense. In the case of a continuing violation, every day's continuance is deemed a separate and distinct violation.

Penalty for a negligent discharge of oil to water: Chapter 90.56.330 RCW sets the penalty for negligent discharges of oil to water at an amount of up to one hundred thousand dollars for every such violation, and for each day the spill poses risks to the environment as determined by the director. Intentional or reckless discharges of oil to water may be penalized up to five hundred thousand dollars for every such violation and for each day the spill poses risks to the environment as determined by the director.

Determining the Size of a Penalty: Use the Water Quality Civil Penalty Matrix shown in Tables 1 and 2 below to determine the size of the penalty. Assignment of a score is based on a decision flow process, which consists of a series of questions and guidance on how to select the appropriate answer to the questions. The amount of a penalty is based upon a set of criteria.

Criteria for Assessing Water Quality Penalties

1. Did the violation result in a public health risk?

Answer “no” if there is no evidence to support a claim of public health risk.

Answer “possibly” if a public health risk can be inferred from evidence and knowledge of the effects of the violation.

Answer “probably” if evidence supports a claim of public health risk and there is a plausible connection between this violation and the health or effect.

Answer “definitely” if there is direct evidence linking public health risk or adverse effects with the violation.

2. Did the violation result in environmental damage?

Answer “no” if there is no evidence to support a claim of environmental damage or impairment of beneficial uses.

Answer “possibly” if environmental damage or impairment of beneficial uses can be inferred from evidence and knowledge of the effects of the violation.

Answer “probably” if evidence supports a claim of environmental damage or impairment of beneficial uses and there is a plausible connection between this violation and the damage or impairment.

Answer “definitely” if there is direct evidence linking environmental damage or impairment of beneficial uses with the violation.

3. Was it a knowing violation?

Answer “no” if the violator did not know that the action or inaction constituted a violation.

Answer “possibly” if it is likely the violator knew that the action or inaction constituted a violation.

Answer “probably” if the violator should have known.

Answer “definitely” if the violator clearly knew. If the answer is “definitely”, consider consulting with the environmental crimes unit.

4. Was the responsible party unresponsive in correcting the violation?

Answer “no” if the violation was corrected as soon as the responsible person learned of it.

Answer “possibly” if the violation was corrected in a less timely and cooperative fashion.

Answer “probably” if the responsible person attempted to correct the problem but did not correct it.

Answer “definitely” if the responsible person made no attempt to correct the violation.

5. Was the violation the result of improper operation and/or maintenance?

Answer “no” if the violation was not the result of improper operation or inadequate maintenance.

Answer “possibly” if the facility has an O&M manual, Pollution Prevention Plan or Best Management Practices manual that is out of date or inadequate.

Answer “probably” if there is no O&M manual, Pollution Prevention Plan or Best Management Practices manual developed for the facility.

Answer “definitely” if the facility has no plans or is not following its plan AND the violation was clearly the result of improper operation or maintenance.

6. Did the facility obtain necessary permits and approvals to operate?

Answer “no” if the paperwork was complete and appropriate for the job or task that caused the violation.

Answer “definitely” if the facility did not have all the required permits and approvals for the job or task that caused the violation.

7. Did the facility benefit economically from non-compliance?

Answer “no” if it is clear that no one obtained an economic benefit.

Answer “possibly” if the facility might have benefited.

Answer “probably” if the facility benefited, but the benefit is not quantifiable.

Answer “definitely” if the economic benefit is quantifiable.

Table 1 - Ecology Water Quality Gravity Criteria Scoring

	NO (0)	POSSIBLY (1)	PROBABLY (2)	DEFINITELY (3)
1. Public Health Risk?	_____	_____	_____	_____
2. Environmental Damage?	_____	_____	_____	_____
3. Willful or Knowing Violation?	_____	_____	_____	_____
4. Unresponsive in Correcting Violation?	_____	_____	_____	_____
5. Improper Operation or Maintenance?	_____	_____	_____	_____
6. Failure to obtain necessary permits	_____	_____	_____	_____
7. Economic Benefit from Noncompliance?	_____	_____	_____	_____
Total Rating Points	_____			

Table 2 - Gravity Component Penalty Schedule

Rating	1-2	3-4	5-8	9-11	12-14	15
Penalty	\$500	\$1000	\$2000	\$3000	\$4000	\$5000

Rating	16	17	18	19	20
Penalty	\$6000	\$7000	\$8000	\$9000	\$10000

Cast Study D - DNR Forest Practices

DNR uses an enforcement manual as guidance for carrying out enforcement actions on forest practices. The most recent copy we have is a 2016 version. WDFW illustrates the DNR case study using only those elements that DNR rules have in common with WDFW HPA situations. Components of scoring for forest practices violations include history of previous violations, severity of resource impact, intent of the violator, and repairability of the damaged habitat, and cooperation of the violator with agency staff. We edited the scoring rubric somewhat to exclude DNR-specific considerations.

Penalty decisions

DNR uses the key decision points presented in chapter 43.05 RCW to determine whether a penalty can be assessed.

Penalty amounts:

Forest practices penalties are assessed using a base penalty and factors. Every day’s continuance of a violation is a separate violation for assessing penalties. Base penalties range from \$500 to \$2000, depending on violation type, with maximum penalties per violation (in this case, “violation type”) not to exceed \$10,000.

Scoring elements

DNR uses the Forest Practices Violation and Civil Penalty Assessment form to calculate the total penalty. A Civil Penalty may be issued for a base penalty amount without assessing the following adjustment factors. A base penalty may be considered for violations such as those that do not include resource damage. Note: FPA/N means Forest Practices Application /Notification.

Repairability:

- 0 = Repairability is not a factor in this violation.
- 1 = Natural recovery or effective correction will occur in less than 3 years.
- 2 = Natural recovery or effective correction will take more than 3 years or the damage may never be effectively corrected.

Considerations:

- How long it will take for the site to recover to the pre-operation condition;
- Recovery time of a reforestation plan, if implemented; and
- How long it will take for the trees to grow back to the same maturity.

Intention:

0 = The violation was not foreseeable.

1 = The violation was foreseeable and no precaution was taken to avoid it.

2 = The violation occurred after consultation, Informal Conference, or other enforcement action.

An “intent” determination is based on the enforcement documents that were issued and other documentation from conversations had with the violator.

Cooperation:

0 = The violator complied with the requirements of the enforcement document(s).

1 = The violator did not comply with the requirements of the enforcement document(s).

2 = The violator ignored or evaded agency contacts.

Cooperation should only be evaluated from the time the violation(s) on this Civil Penalty began and should include completing required work on time. Past cooperation efforts should not be evaluated in this assessment.

Previous Violations:

0 = The violator has no previous documented Forest Practices violations.

2 = The violator’s previous violations did not involve adverse impacts or potential adverse impacts to public resources.

4 = The violator’s previous violations did involve adverse impacts or potential adverse impacts to public resources.

Include only documentation for the same or similar violation (violation of WAC(s) cited on an enforcement document). DNR doesn’t include anything that was issued more than 5 years from the date that the penalty’s underlying enforcement action was issued.

Severity:

0 = There is no damage or potential damage to public resources.

2 = There is damage or potential damage, but not extensive.

4 = There is extensive and/or significant damage to public resources.

Considerations include a) the damage that occurred; b) the specific public resources that were impacted; c) the extent and magnitude of the violation; and d) expert opinions/conclusions.

Figure 1 DNR Forest Practices Decision Worksheet

Civil Penalty Decision Worksheet (Appendix J) For Violations Discovered During Enforcement Inspections	
Name of Violator: <u>J. Public</u> FPA/N #: <u>none</u> IIR #: <u>16-A-BCD</u>	
Date Violation Observed: <u>02/14/2016</u> By: <u>A. Forester</u>	
Check all of the following that apply: (Chapter 43.05 RCW)	
1. <input type="checkbox"/> Failure to comply with the terms or conditions of an FPA/N.	
2. <input type="checkbox"/> Documented same/similar violation of the same RCW or WAC. Describe:	
3. <input checked="" type="checkbox"/> Probability of:	
A. <input checked="" type="checkbox"/> More than minor environmental harm. Describe: Timber removal occurred on 15 acres within a channel migration zone (CMZ) of the Skagit River. The timber stand removed was predominantly large cedar and spruce of sufficient size to function as LWD in the Skagit River. The landowner was advised in 2013 that no harvest in the CMZ would be permitted. Replacing the loss of 15 acres of timber such as this can only be done through extensive mitigation using timber of like species and size.	
B. <input type="checkbox"/> Death or bodily harm. Describe:	
C. <input type="checkbox"/> Greater than \$1000.00 physical damage to another's property. Describe:	
4. <input type="checkbox"/> Business with 50 or more employees for one day of each of the last 12 months. Describe:	
<input type="checkbox"/> None of the above apply. <div style="text-align: center;"><u>CANNOT ISSUE A CIVIL PENALTY</u></div>	<input checked="" type="checkbox"/> One or more of the above apply. <div style="text-align: center;"><u>CAN ISSUE A CIVIL PENALTY</u></div>
Reviewed by: <u>B. Forester</u> Date: <u>02/21/2016</u>	

Figure 2 Forest Practices Violation and Civil Penalty Assessment

Incident name: J. Public Civil Penalty # 16-A-BCD
 FPA #: None Legal: Sec. 27 Twp. 35, Rge 05E E/W, W.M.

PENALTY SUMMARY

VIOLATION NUMBER	VIOLATION(S) WAC / RCW	BASE PENALTY (BP)	+ + + + + =					X (BP) PENALTY ADJUSTMENT	X(BP) + BP TOTAL PENALTY	= MAXIMUM PENALTY (PER VIOLATION) NOT TO EXCEED \$10,000.00	
			R E P A R A B I L I T Y	I N T E N T	C O N V E R S I O N	P R E V I O U S V I O L A T I O N S	S E V E R I T Y				T O T A L M U L T I P L I E R S
1	WAC 222-20-010(1)	2,000	2	2	0	0	4	8	16,000	18,000	10,000
2	WAC 222-30-020(13)	500	2	2	0	0	4	8	4,000	4,500	4,500
3											
4											
									Total Penalty = \$ 14,500		

Prepared by: A. Forester Date: 03/01/2016
 Reviewing Supervisor: B. Forester Date: 03/05/2016
 Supervisor's Comments: I concur with this assessment.

*BASE PENALTY SCHEDULE

WAC/RCW	VIOLATION	BASE PENALTY
WAC 222-20-010; RCW 76.09.050	Operation without an approved forest practices application or notification	\$2,000.00
WAC 222-20-010; RCW 76.09.060	Willful misrepresentation of information on the forest practices application/notification	\$2,000.00
WAC 222-20-050; RCW 76.09.060	Conversion of forest land without the consent of the county, city or town	\$2,000.00
WAC 222-20-040; WAC 222-20-060 RCW 76.09.060	Significant, in the opinion of the Department, deviation from an approved forest practice application or notification	\$2,000.00
Title 222 WAC & Chapter 76.09 RCW	Forest practices violations other than above, see regulations and statute	\$500.00

References - For Further Reading:

Chapter [43.05 RCW](#) TECHNICAL ASSISTANCE PROGRAMS

WDFW HPA RCWs and WACs

Chapter [77.55 RCW](#) CONSTRUCTION PROJECTS IN STATE WATERS

Chapter [220-660 WAC](#) HYDRAULIC CODE RULES

Ecology RCWs and WACs

RCW [18.104.155](#) [Water Well Construction] Civil penalties—Amount and disposition.

RCW [70.95.315](#) [Solid Waste Management - Reduction and Recycling] Penalty.

RCW [70.105.080](#) [Hazardous Waste Management] Violations—Civil penalties.

RCW [70.105.095](#) [Hazardous Waste Management] Violations—Orders—Penalty for noncompliance—Appeal.

RCW [70.107.050](#) [Noise Control] Civil penalties.

RCW [90.03.600](#) [Water Code] Civil penalties.

RCW [90.48.144](#) [Water Pollution Control and Spill Prevention/Response] Violations—Civil penalty—Procedure.

RCW [90.64.102](#) [Dairy Nutrient Management Recordkeeping violations—Civil penalty.

DNR RCWs and WACs

RCW [76.09.170](#) Violations—Conversion to nontimber operation—Penalties—Remission or mitigation—Appeals—Lien.

RCW [76.09.190](#) Additional penalty, gross misdemeanor.

WAC [222-46-060](#) Forest Practice Rules for civil penalties.

WAC [222-46-065](#) [Forest Practices Rules] Base penalty schedule.

Agriculture RCWs and WACs

Chapter [15.58 RCW](#) - WASHINGTON PESTICIDE CONTROL ACT

RCW [15.58.260](#) Civil penalties and/or denial, suspension, or revocation of license, registration or permit.

RCW [15.58.290](#) Minor violations, warning notice in writing.

RCW [15.58.300](#) Persons exempted from certain penalties under RCW [15.58.150](#).

RCW [15.58.335](#) Civil penalty.

Chapter [17.21 RCW](#) - WASHINGTON PESTICIDE APPLICATION ACT

RCW [17.21.310](#) General penalty.

RCW [17.21.315](#) Civil penalty for failure to comply with chapter.

RCW [17.21.340](#) Violation of chapter—Remedies.

Chapter [90.64 RCW DAIRY NUTRIENT MANAGEMENT](#)

RCW [90.64.010](#) Definitions.

RCW [90.64.102](#) Recordkeeping violations—Civil penalty.

Chapter [16-90 WAC ANIMAL INDUSTRY](#)

WAC 16-90-010 [Animal Industry Penalty Schedule] Penalty outline.

WAC 16-90-015 [Animal Industry Penalty Schedule] Revoking, suspending, or denying a permit or license.

WAC 16-90-030 [Animal Industry Penalty Schedule] Penalty schedule.

Chapter [16-139 WAC - DAIRY, FEED, AND EGGS](#)

WAC 16-139-005 [Dairy, Food, and Eggs Penalties] Definitions.

WAC 16-139-010 [Dairy, Food, and Eggs Penalties] Calculation of penalty.

WAC 16-139-020 [Dairy, Food, and Eggs Penalties] Penalty assignment schedule—Critical violations.

WAC 16-139-030 [Dairy, Food, and Eggs Penalties] Penalty assignment schedule—Significant violations.

WAC 16-139-040 [Dairy, Food, and Eggs Penalties] Penalty assignment schedule—Economic and other violations of chapters [16.49](#), 19.32, 69.04, 69.07, and [69.10](#) RCW.

Chapter [16-228 WAC - GENERAL PESTICIDE RULES](#)

WAC [16-228-1110](#) What are the definitions specific to penalties?

WAC [16-228-1120](#) How are penalties calculated?

WAC [16-228-1125](#) When can the department revoke or deny a license?

WAC [16-228-1130](#) What is the penalty assignment schedule?

WAC [16-228-1150](#) What are the other dispositions of alleged violations that the department may choose?

Chapter [16-611 WAC NUTRIENT MANAGEMENT](#)

WAC 16-611-100 Assessing civil penalties.

WAC 16-611-110 Issuing a civil penalty without first issuing a notice of correction.

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

WAC 16-611-300 Penalty for discharge of pollutants.