

Division of Drinking Water Policy/Procedure

Title:	Penalty Settlement	Number: J.25
References:	Compliance Manual TAB 5	
Contact:	John Aden	
Effective Date:	December 15, 1996	
Supersedes:	N/A	
Approved:	<i>Director, Division of Drinking Water</i>	

POLICY:

The Division of Drinking Water views the issuance of civil penalties authorized by RCW 70.119A.040, as an enforcement tool to be used against purveyors showing unwillingness to comply with applicable drinking water regulations. The issuance of penalties is a serious step and not one taken lightly by the Department. As such, once issued, the Department has a responsibility to carry through with enforcement and collection of these penalties. To avoid further penalties, purveyors are encouraged to work with the Department to resolve compliance issues, but it shall be the policy of the Drinking Water Program, that once a penalty is issued it will only be considered for mitigation under limited circumstances (Refer to Guideline titled "Civil Penalty Settlement").

PURPOSE STATEMENT/BACKGROUND:

In 1986 the legislature authorized the Department to levy civil penalties to any person violating a law or rule regulating public water systems administered by the Department of Health. The legislature felt that conformance with laws and regulations to preserve and protect the purity of drinking water in our public water systems was of utmost importance.

Direction for the issuance of civil penalties can be found in the Division's Compliance Manual under TAB 5.

GUIDELINE

Civil Penalty Settlement

Once a civil penalty has been issued to a water system purveyor as authorized under RCW 70.119A.040, the purveyor receiving the penalty may request an appeal by contacting the Office of Professional Standards (OPS), Department of Health. Once an appeal has been filed with OPS, the Department may consider mitigating or dismissing the penalty as part of a formal settlement agreement. The Department will not consider any type of mitigation unless an appeal has been properly filed. When contacted by the purveyor, staff will take the following steps:

1. Confirm that a proper appeal has been filed with OPS;
2. Clarify the reason and authority for issuing the penalty;
3. Restate what the purveyor can do to avoid further penalties;
4. Explain that the Department may consider mitigating the penalty as part of settlement if:
 - a) A change of ownership takes place and the new owner is:
 - i) A Department approved Satellite Management Agency; or
 - ii) An entity willing and able to own and operate the water system in a manner that assures the Department that compliance with applicable regulations will be achieved.
 - b) Improvements are made to system facilities/operation as approved by the Department, which bring the system back into compliance with applicable requirements. In this case, documented costs of improvements could be considered toward reduction of the original penalty amount.
5. Notify the Assistant Attorney General (AAG) representing the Department that a settlement agreement is being sought and clarify the AAG's involvement in negotiations.

If the Department, in conjunction with the AAG, approves one of the conditions listed above, the penalty may be mitigated as part of the settlement agreement following submittal of appropriate change of ownership documentation, documentation of installation of improvements or documentation of operational change. The final written settlement/mitigation agreement will be prepared by the AAG or purveyor's legal representative and signed by the purveyor and the Department and a copy filed with OPS.