

Lummi Administrative Regulation
Civil Fines Assessment for Violation of
Lummi Code of Laws Title 17



Lummi Indian Business Council
Natural Resources Department
Water Resources Division

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17 LAR 08.010 Introduction

- (a) The purpose of this administrative regulation is to describe the procedures that will be used to assess civil fines for violations of the Lummi Nation Water Resources Protection Code (Lummi Code of Laws [LCL] Title 17). The civil fine assessment methodology considers the type and severity of the impact, the length of time that the violation occurred or continued following initial notification, and the conduct of the violator following notification. A monetary penalty may be issued based on the results of the violation assessment.
- (b) Pursuant to LCL 17.08.030, the Executive Director is authorized to act through non-judicial means including the imposition of a civil fine.
- (c) Pursuant to LCL 17.08.020, the Executive Director is authorized to file a civil action in the Tribal Court in the name of Lummi Nation against any person engaged in an activity or activities prohibited by these regulations.
- (d) Pursuant to LCL 17.02.030(j), the Water Resources Manager is responsible for recommending to the Executive Director the imposition of fines and issuance of orders, including both emergency restraining orders and cease and desist orders, as may be necessary to enforce the provisions of LCL Title 17 and any regulation, permit, order, plan, determination, policy, guideline, or rule developed in accordance with LCL Title 17.
- (e) These regulations apply to all lands on the Lummi Indian Reservation and any other lands that are owed by the Nation or held in trust for the Nation by the United States throughout the usual and accustomed grounds and stations and Traditional Areas of the Lummi Nation.

17 LAR 08.020 Definitions

In addition to the definitions in LCL Title 17, the following definitions are intended to facilitate the use of these regulations:

“Day” is any part or complete twenty-four hour period of time.

“Stream banks” are the portion of the land surface extending from the water surface to the ordinary high water mark of a stream channel.

“Stream bed” is the bottom of a stream channel.

“Stream channel” is any long, narrow, sloping depression on land that has been shaped by flowing water. The channel may or may not contain flowing water at any given time.

“**Wellhead Protection Area**” is a geographic area delineated around wells and/or wellfields within which land uses are regulated to protect the quality and quantity of the ground water resource.

17 LAR 08.030 Impact Assessment

- (a) Each violation of the Lummi Nation Water Resources Protection Code is a separate offense.
- (b) The Water Resources Manager shall evaluate potential violations of LCL Title 17 and recommend to the Executive Director an impact rating based on a scale of one to five and an associated civil fine. The impact rating and the severity of impact will determine the recommended civil fine.
- (c) The matrices shown in 17 LAR 08.030 (d – i) cannot anticipate every possible violation and are intended to be used as guidelines to assess the impact of a violation.
- (d) Wellhead Protection Impact Ratings

Impact	Rating
Prohibited uses, development, and/or activities in designated Wellhead Protection Areas.	1
Regulated source of contamination is constructed, stored, disposed, or applied within the Sanitary Control Area surrounding a single family, domestic water supply well.	2
Regulated source of contamination is constructed, stored, disposed, or applied within the Sanitary Control Area surrounding a public water supply well or spring.	3
Measurable contamination of the ground water within the Sanitary Control Area of a domestic water supply well, public water supply well, or spring.	4
Contamination of the ground water resources causing the closure of a domestic water supply well, public water supply well, or spring.	5

(e) Storm Water Impact Ratings

Impact	Rating
A visible indication of an illicit discharge into a storm water management system (e.g., paint, cement, sediment, oil, gasoline, or other pollutant) with no measurable impacts to the storm water management system.	1
Regulated land-disturbing or industrial activity without an approved Storm Water Pollution Prevention Plan (SWPPP) when required.	2
A violation of an issued stop work order.	3
Illicit discharge that leads to measurable degradation of streams, tidelands, wetlands, estuaries, or Wellhead Protection Area.	4
Illicit discharge that leads to the closure of a shellfish or fisheries harvest area and/or results in a fish kill.	5

(f) Streams or Rivers Impact Ratings

Impact	Rating
Regulated activity that disturbs less than 1,000 square feet of a Category 2 stream buffer without prior authorization pursuant to LCL 17.06.	1
Regulated activity that disturbs more than 1,000 square feet but less than 5,000 square feet of a Category 2 stream buffer or a septic system that is built within 100 feet of a Category 2 stream without prior authorization pursuant to LCL 17.06.	2
Regulated activity that disturbs more than 5,000 square feet of a Category 2 stream buffer, or less than 5,000 square feet of a Category 1 stream buffer, or a septic system is built within 200 feet of a Category 1 stream without prior authorization pursuant to LCL 17.06.	3
Regulated activity that disturbs more than 5,000 square feet of a Category 1 stream buffer or alters a Category 2 stream channel without prior authorization pursuant to LCL 17.06.	4
Regulated activity that disturbs or alters a Category 1 stream channel without prior authorization pursuant to LCL 17.06, and/or leads to a closure of a shellfish or fisheries harvest area, and/or results in a fish kill.	5

(g) Wetlands Impact Ratings

Impact	Rating
Regulated activity that disturbs or alters the 25-foot buffer of a Category 4 wetland without prior authorization pursuant to LCL 17.06.	1
Regulated activity that disturbs or alters a Category 4 wetland or less than 25 feet within a Category 3 wetland buffer without prior authorization pursuant to LCL 17.06.	2
Regulated activity that disturbs or alters more than 25 feet within a Category 3 wetland buffer or less than 35 feet within a Category 2 wetland buffer without prior authorization pursuant to LCL 17.06.	3
Regulated activity that disturbs or alters a Category 3 wetland, more than 35 feet within a Category 2 wetland buffer, or less than 50 feet within a Category 1 wetland buffer without prior authorization pursuant to LCL 17.06.	4
Regulated activity that disturbs or alters more than 50 feet within a Category 1 wetland buffer, a Category 2 wetland, or a Category 1 wetland without prior authorization pursuant to LCL 17.06.	5

(h) Water Quality Standards Impact Ratings

Impact	Rating
A visible indication of pollutant discharge into Lummi Nation Waters (e.g., paint, cement, sediment, oil, gasoline, or other pollutant) with no measurable exceedance of Water Quality Standards in a receiving water body.	1
Pollutant discharge results in a measurable exceedance of adopted Lummi Nation Water Quality Standards for one variable.	2
Pollutant discharge that results in a measurable exceedance of adopted Lummi Nation Water Quality Standards for two variables.	3
Pollutant discharge that results in a measurable exceedance of adopted Lummi Nation Water Quality Standards for three variables.	4
Pollutant discharge that results in a measurable exceedance of adopted Lummi Nation Water Quality Standards for four or more variables, and/or a closure of a fisheries or shellfish harvesting area, and/or results in a fish kill.	5

(i) Other Considerations

Impact	Rating
Prompt, effective response from the responsible party following verbal notification of violation, violation is a result of an accident, or the responsible party violated LCL Title 17 without prior knowledge of the Code.	1
Two separate notifications of violations before the responsible party takes effective corrective action.	2
Three separate notifications of violations before the responsible party takes effective corrective action.	3
Responsible party has prior violations of LCL Title 17 or is verbally abusive of Lummi Natural Resources staff.	4
No effective corrective action taken or the responsible party engages knowingly in any action that will violate LCL Title 17.	5

17 LAR 08.040 Severity of Impact

- (a) The Water Resources Manager will also rate each impact for severity.
- (1) Low Severity: A violation of LCL Title 17 or associated regulations resulting in no apparent off-site impacts.
 - (2) Moderate Severity: A violation of LCL Title 17 or associated regulations resulting in measurable off-site impacts and that can be reasonably mitigated by the violator with limited Lummi Indian Business Council (LIBC) Water Resources staff review and assistance.
 - (3) High Severity: A violation of LCL Title 17 or associated regulations resulting in measurable off-site impacts including a fisheries or shellfish harvest area closure or a fish kill. The mitigation requires professional and substantial LIBC Water Resources staff review and assistance.

17 LAR 08.050 Civil Fines Assessment Calculation Matrix

- (a) Each penalty assessment represents an administrative determination that a violation has been committed.
- (b) The Water Resources Manager will compute the civil fine based on the Civil Fine Calculation Matrix.

(c) Civil Fine Calculation Matrix

Impact Type	Impact Rating	Severity of Impact		
		Low	Moderate	High
	1	0.05	0.10	0.20
	2	0.20	0.30	0.40
	3	0.40	0.50	0.60
	4	0.60	0.70	0.80
	5	0.80	0.90	1.00

Total = Calculation Result x Number of Days of Non-Compliance x \$ 5,000

- (d) The Water Resources Manager will recommend the resulting civil fine to the Executive Director.
- (e) If a violation results in multiple categories of impact (17 LAR 08.030 [d-i]), the Water Resources Manager will compute each category as a separate violation and associated civil fine.
- (f) The Executive Director will consider the recommended civil fine and determine the civil fine amount or other penalty.
- (g) The Executive Director's determination is final unless contested as provided in LCL 17.08.040.