Administrative Procedures Act Petition per RCW 34.05.330
Petition for Rule Amendment (WAC 390-37-143 & WAC 390-37-182)

Explanation

The PDC has adopted a penalty schedule which contains penalty ranges for certain types of violations. There are two rules which contain penalty schedules. One rule contains the penalty schedule for brief adjudicative proceedings and one rule which contains the penalty schedule for full adjudicative proceedings.

For both of these rules, there are three columns that determine the severity of the base penalty to be imposed. The first column is for the first violation, the second column is for the second violation, and the third column is for the third violation. The base penalty gets higher depending on how many violations the respondent has committed.

The purpose of this rulemaking petition is to change the way in which the agency determines which column the respondent should fall under for purposes of calculating a base penalty.

Staff's interpretation of the penalty schedule is that a respondent can only fall into the 2nd or 3rd column of the penalty schedule if they have violated that particular statute before. For example, let's say that a respondent has already been fined twice for failing to timely submit their F-1 reports. If the respondent were subsequently charged at a hearing for failing to submit their C-4 reports on time, under staff's interpretation, the respondent would only have to deal with the base penalty amount for a first-time violator and not have to deal with the far higher penalty associated with a third time violation.

My argument is that a violation of any statute within the agency's regulatory purview should push the respondent into the next column when they face future charges.

For example, consider the BAP hearing of Joshua Binda that was held last week, PDC Case No. 175907. Binda had been previously found to have violated the FCPA once (order for 110503 issued in September of 2022), twice (combined order for cases 100348 & 100589 issued in February of 2023), a third time (order for 136332 issued in July of 2023), and a fourth time (SOU signed for 166668 in May of 2025). However, despite this, the agency determined in the hearing that imposing a base penalty for only a 2nd time violation was appropriate based on what I am arguing is a flawed interpretation of how prior occasions are calculated.

The purpose of this rule change petition is to change that and to impose larger penalties on violators who repeatedly fail to comply with our state's campaign finance laws.

Proposed Rule Changes

WAC 390-37-143 - Brief enforcement hearings (brief adjudicative proceeding)—Penalty schedule.

(1)…

"Occasion" means established violation, including any violation acknowledged by the respondent in a statement of understanding. Only violations in the last five years will be considered for the purpose of determining second and third occasions. Any violation enumerated above will count as a prior occasion for the purpose of determining second and third occasions, regardless of which category the prior occasion(s) fell into.

…

WAC 390-37-182 - Penalty factors (full adjudicatory proceedings).

(1)…

"Occasion" means established violation, including any violation acknowledged by the respondent in a statement of understanding. Only violations in the last five years will be considered for the purpose of determining second and third occasions. Any violation enumerated above will count as a prior occasion for the purpose of determining second and third occasions, regardless of which category the prior occasion(s) fell into.

…