

WAC 173-446-610 Enforcement. (1) If a covered or opt-in entity does not have sufficient compliance instruments in its compliance account to meet its compliance obligation by the compliance deadlines specified in WAC 173-446-600 (3) and (4), it has violated its compliance obligation and correction is not possible. As a result of such noncompliance, the covered or opt-in entity must, within six months after the compliance deadline submit to ecology four penalty allowances for every one compliance instrument that it failed to have in its compliance account by the compliance deadline.

(2) When a covered entity or opt-in entity reasonably believes that it will be unable to meet a compliance obligation, the entity shall immediately notify ecology. Upon receiving notification, ecology will issue an order requiring the covered or opt-in entity to submit the penalty allowances.

(3) If a covered entity or opt-in entity fails to submit penalty allowances as required by subsection (1) of this section, ecology must issue an order or issue a penalty of up to \$10,000 per day per violation, or both, for failure to submit penalty allowances as required by subsection (1) of this section. Each metric ton of CO₂e not covered by a compliance instrument constitutes a separate violation. The order may include a plan and schedule for coming into compliance.

(4) Ecology may issue a penalty of up to \$50,000 per day per violation if ecology determines that a registered entity has:

(a) Provided false or misleading facts;

(b) Withheld material information that could influence a decision by ecology;

(c) Violated any part of the auction rules;

(d) Violated registration requirements; or

(e) Violated any rules regarding the conduct of the auction.

(5) In addition to the specific sanctions in subsections (3) and (4) of this section, any person that violates the terms of this chapter or an order issued under this chapter incurs a penalty of up to \$10,000 per day per violation for each day that the person does not comply. All penalties under subsections (3) and (4) of this section and this subsection must be deposited into the climate investment account.

(6) Violators are also subject to the sanctions authorized in chapter 19.86 RCW, as appropriate.

(7) Orders and penalties issued under this chapter are appealable to the pollution control hearings board under chapter 43.21B RCW.

(8) For the first compliance period, ecology may reduce the amount of the penalty by adjusting the monetary amount of a civil penalty or reducing the number of penalty allowances required to be provided within six months under subsection (1) of this section. In no case will ecology reduce the number of penalty allowances required to a number below one allowance for each missing compliance instrument.

(9) An electric utility or natural gas utility must notify its retail customers and the Environmental Justice Council in published form within three months after paying a monetary penalty under this section.

(10) If ecology determines that a covered entity or an opt-in entity has over reported its GHG emissions under chapter 173-441 WAC, ecology will reduce the covered or opt-in entity's compliance obligation by sufficient compliance instruments to cover the amount of over-reported emissions.

(11) If ecology determines that a covered entity or an opt-in entity has under reported its GHG emissions under chapter 173-441 WAC:

(a) The covered or opt-in entity must, by November 1st of the year in which ecology makes the determination, provide sufficient compliance instruments to cover the additional emissions.

(b) If the covered or opt-in entity fails to submit the compliance instruments required under (a) of this subsection, the covered or opt-in entity must, within six months after the compliance deadline, submit four penalty allowances for every one compliance instrument that it failed to submit.

[Statutory Authority: RCW 70A.65.220. WSR 22-20-056 (Order 21-06), § 173-446-610, filed 9/29/22, effective 10/30/22.]