

WAC 173-219-150 Regulatory action for noncompliance. The generation, distribution, and/or use of reclaimed water without a permit, or in a manner that violates the terms and conditions of a permit, order, or directive issued under this chapter, is prohibited.

(1) Immediate protection of public health or the environment. When it appears to the lead agency that immediate action is required to protect human health and safety or the environment, the lead agency may issue a written order or directive to the person or persons responsible without first issuing a notice of determination of violation pursuant to subsection (2) of this section. An order or directive issued pursuant to this subsection shall be served by registered mail or personally upon any person to whom it is directed, and shall inform the person or persons responsible to take immediate action, and of the process for requesting an adjudicative hearing.

(2) Notice of determination of violation. The notice of determination of violation is not an appealable order or directive. Upon determination of a violation or substantial potential to violate this chapter or chapter 90.46 RCW, and except as provided for in subsection (1) of this section, the lead agency must:

(a) Provide notice of the determination of violation by registered mail or personally to the responsible person or persons.

(b) Provide thirty calendar days from receipt of the notice for the responsible party to submit a full report containing the steps taken or to be taken to comply with the determination of violation.

If the violation is not corrected or proposed actions or schedule are not sufficient, the lead agency may issue an order, directive, or other enforcement action to the responsible party after the expiration of thirty calendar days, or after the full report is filed in response to the notice of determination of violation, whichever is sooner.

(c) Send the order, directive, or enforcement action by registered mail and inform the responsible party of the process for requesting an adjudicative hearing.

(3) Compliance schedules and conditions. The lead agency may establish schedules and conditions to achieve compliance through an administrative order or terms of a permit. If the schedule has more than one year between interim requirement completion dates, the reclaimed water permit or administrative order must require and specify due dates for progress reports towards completion. A compliance schedule must:

(a) Set the shortest, most reasonable time, to achieve the specified requirements.

(b) Contain interim requirements and establish dates for completion.

(c) Direct the responsible person or persons to submit written notice to the lead agency within fourteen calendar days of:

(i) Completion of each compliance item.

(ii) Missed compliance requirements, including the following:

(A) Reason for missed compliance.

(B) Plan to achieve compliance.

(d) Inform the responsible person or persons that failure to comply with conditions or interim requirements in the compliance schedule is considered a continuing violation and that the lead agency may modify or revoke the reclaimed water permit or take other direct enforcement actions as provided for in this chapter.

(4) Enforcement authority. The lead agency may:

(a) Modify, suspend, or revoke a reclaimed water permit in whole or in part during its term for cause.

(b) Assess penalties and other civil relief as may be appropriate against any entity who:

(i) Generates any reclaimed water for a use regulated under this chapter and distributes or uses that water without a permit.

(ii) Violates any term or condition of a permit issued under this chapter.

(iii) Violates any of the provisions or requirements of this chapter.

(c) With the assistance of the attorney general, bring any appropriate action at law or in equity, including action for injunctive relief, as may be necessary to enforce the provisions of this chapter. The lead agency may bring the action in the superior court of the county in which the violation occurred, or in the superior court of Thurston County. The court may award reasonable attorneys' fees for the cost of the attorney general's office in representing the lead agency.

(d) Seek criminal sanctions against any person or entity who knowingly makes any false statement, representation, or certification in any notice, report, monitoring device, methodology, or data required by the terms and conditions of a reclaimed water permit.

(5) Penalties.

(a) Any entity who is found guilty of willfully violating chapter 90.46 RCW, or any written orders or directives of the lead agency or a court, is guilty of a gross misdemeanor, and upon conviction may be punished by a fine of up to ten thousand dollars and costs of prosecution, or by imprisonment, or both, at the discretion of the court. Each day upon which a willful violation occurs may be deemed a separate and additional violation.

(b) Any entity who violates the terms and conditions of a reclaimed water permit incurs, in addition to any other penalty as provided by law, a civil penalty in the amount of up to ten thousand dollars for every such violation.

Each such violation is a separate and distinct offense, and in case of a continuing violation, every day's continuance is considered a separate and distinct violation.

[Statutory Authority: RCW 90.46.015. WSR 18-03-166 (Order 06-12), § 173-219-150, filed 1/23/18, effective 2/23/18.]