

**WAC 173-407-240 Enforcement of the emissions performance standard under Part II.**

Note: Ecology is the agency responsible for enforcing this section.

(1) A baseload electric generation facility or unit or baseload electric cogeneration facility or unit subject to WAC 173-407-130 that fails to meet the applicable GHG EPS or any implementation schedules and requirements in a sequestration plan or program may be subject to enforcement using the enforcement criteria and procedures specified in chapter 70.94 RCW.

Penalties can include:

(a) Financial penalties, which may be assessed after a failure to meet a sequestration benchmark in the sequestration plan or sequestration program. Each pound of GHG above the GHG EPS will constitute a separate violation, as averaged on an annual basis;

(b) Revocation of the approval to construct the source or to operate the source.

(2) If a new, modified or upgraded facility or unit fails to meet a sequestration plan or sequestration program benchmark on schedule, a revised sequestration plan or sequestration program must be submitted no later than one hundred fifty calendar days after the due date established under subsection (3)(c) of this section for reporting the failure. The revised sequestration plan or sequestration program must be submitted to ecology for approval.

(3) Provisions for unavoidable circumstances.

(a) The owner or operator of a facility or unit operated under an approved sequestration plan or sequestration program shall have the burden of proving to ecology in an enforcement action that failure to meet a sequestration benchmark was unavoidable. This demonstration must be a condition to obtain relief under (d), (e), and (f) of this subsection.

(b) Failure to meet a sequestration benchmark determined to be unavoidable under the procedures and criteria in this section must be excused and not subject to financial penalty.

(c) Failure to meet a sequestration benchmark must be reported as part of the routine sequestration monitoring reports or by January 31st of the year following the calendar year during which the event occurred. Upon request by ecology, the owner or operator of the sequestration project must submit a full written report including the known causes, the corrective actions taken, and the preventive measures to be taken to minimize or eliminate the chance of recurrence.

(d) Failure to meet a sequestration benchmark due to startup or shutdown conditions must be considered unavoidable provided the source reports as required under (c) of this subsection. The owner or operator of the sequestration project must adequately demonstrate that the failure to meet a sequestration benchmark could not be prevented through careful planning and design and if a bypass of equipment occurs, and the bypass is necessary to prevent loss of life, personal injury, or severe property damage.

(e) Failure to meet a sequestration benchmark due to scheduled maintenance must be considered unavoidable if the source reports as required under (c) of this subsection, and adequately demonstrates that the excess emissions could not be avoided through reasonable design, better scheduling for maintenance or through better operation and maintenance practices.

(f) Failure to meet a sequestration benchmark due to upsets must be considered unavoidable provided the source reports as required under (c) of this subsection, and adequately demonstrates that:

(i) The event was not caused by poor or inadequate design, operation, maintenance, or any other reasonably preventable condition;

(ii) The event was not of a recurring pattern that indicated inadequate design, operation, or maintenance; and

(iii) The owner or operator took immediate and appropriate corrective action in a manner consistent with good practice for minimizing nonsequestration during the upset event.

(4) Enforcement for permit violations. Enforcement of a violation of an order of approval must follow the requirements of chapter 70.94 RCW, as implemented by the permitting authority. Enforcement of an ecology approved sequestration plan or sequestration program must be in accordance with this section.

[Statutory Authority: Chapter 80.80 RCW. WSR 18-05-091 (Order 16-12), § 173-407-240, filed 2/21/18, effective 3/24/18; WSR 08-14-011 (Order 07-11), § 173-407-240, filed 6/19/08, effective 7/20/08.]