

**WAC 463-85-240 Enforcement of the emissions performance standard on schedule.** Any power plant subject to WAC 463-85-120 that does not meet the emissions performance standard on schedule shall be subject to enforcement under chapter 80.50 RCW.

(1) Penalties can include:

(a) Financial penalties, which shall be assessed after any year of failure to meet a sequestration benchmark established in the sequestration plan or sequestration program. Each pound of greenhouse gases above the emissions performance standard will constitute a separate violation, as averaged on an annual basis;

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

(2) If a new, modified or upgraded baseload electric generation facility or unit or baseload electric cogeneration facility or unit fails to meet a sequestration plan or sequestration program benchmark on schedule, a revised sequestration plan or sequestration program will be required to 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 is to be submitted to EFSEC, as appropriate, for approval.

(3) Provisions for unavoidable circumstances.

(a) The owner or operator of a facility operated under an approved sequestration plan or sequestration program shall have the burden of proving to EFSEC in an enforcement action that failure to meet a sequestration benchmark was unavoidable. This demonstration shall be a condition to obtaining 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 shall be excused and not subject to financial penalty.

(c) Failure to meet a sequestration benchmark shall be reported by January 31 of the year following the year during which the event occurred or as part of the routine sequestration monitoring reports. Upon request by EFSEC the owner(s) or operator(s) of the sequestration project source(s) shall 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 shall be considered unavoidable provided the source reports as required under (c) of this subsection, and adequately demonstrates that the failure to meet a sequestration benchmark could not have been prevented through careful planning and design and if a bypass of equipment occurs, that such bypass is necessary to prevent loss of life, personal injury, or severe property damage.

(e) Maintenance. Failure to meet a sequestration benchmark due to scheduled maintenance shall be considered unavoidable if the source reports as required under (c) of this subsection, and adequately demonstrates that the excess emissions could not have been 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 shall 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 indicative of inadequate design, operation, or maintenance; and

(iii) The 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 any part of an EFSEC site certification agreement will proceed in accordance with RCW 80.50.150.

[Statutory Authority: Chapters 80.70 and 80.80 RCW and RCW 80.50.040. WSR 08-14-064, § 463-85-240, filed 6/25/08, effective 7/26/08.]