

Enforcement for Hanford's Cleanup

This publication explains the Department of Ecology's role as enforcer of the state's dangerous waste rules and the role of the Tri-Party Agreement for enforcement at Hanford.

The mission of the Department of Ecology is to protect, preserve and enhance Washington's environment, and promote the wise management of our air, land, and water for the benefit of current and future generations.

Ecology's Nuclear Waste Program regulates the treatment, storage, and disposal of chemically hazardous wastes at Hanford. Sometimes we must take formal enforcement steps to ensure that the wastes are properly managed to protect human health and the environment.

The goal of the Nuclear Waste Program's enforcement is to ensure environmental compliance for Hanford's cleanup.

What is enforcement?

Enforcement is how Ecology uses its state civil authority to require people, businesses, and government to comply with environmental laws.

Enforcement is a tool for protecting human health and the environment. We use a graduated approach, matching the enforcement action to the significance or seriousness of the violation.

WHY IT MATTERS



Enforcement at Hanford will ensure the cleanup of past disposal sites like this is safe and legal.

MORE INFORMATION

- Ecology's Hanford web site:
<http://www.ecy.wa.gov/programs/nwp>
- Ecology's Enforcement web site:
<http://www.ecy.wa.gov/enforce.html>.
- Hanford toll-free information line:
800-321-2008

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Special accommodations:

If you need this publication in an alternate format, call the Nuclear Waste Program at 509-372-7950. Persons with hearing loss, call 711 for Washington Relay Service. Persons with a speech disability, call 877-833-6341.



What forms does enforcement take?

There are two paths for the enforcement of environmental laws and rules: civil and criminal. Ecology handles civil enforcement. County prosecutor's offices or the Office of the Attorney General handle criminal enforcement actions for Ecology.

Ecology's enforcement tools are warning letters, noncompliance letters, formal notices, orders, and civil penalties. Penalties take the form of fines.

Sometimes in settling an appeal of a penalty, violators propose to do a "supplemental environmental project." This would be a project related to the violation that would benefit the environment. The costs for the project can offset most of the fine.

Where does Ecology get the authority to enforce?

Ecology has statewide enforcement authority under a number of environmental laws. These address water and air quality, toxics cleanup, and hazardous waste management. Most of our enforcement at

Hanford focuses on hazardous waste management. Our authority comes from the federal Resource Conservation and Recovery Act, through the state's Hazardous Waste Management Act (HWMA). At Hanford, Ecology can enforce under:

- Washington Administrative Code (WAC) Chapter 173-303, Dangerous Waste Regulations.
- WAC 173-218, Underground Injection Control.
- The Hanford Federal Facility Dangerous Waste Permit (commonly called the site-wide permit).
- WAC 173-400, Air Quality Regulations.
- WAC 173-200, Water Quality Standards for Groundwater.
- WAC 173-216, Waste Discharge Permit Program.
- The Hanford Federal Facility Agreement and Consent Order (the Tri-Party Agreement).

Hanford Enforcement Actions

In the past six years, Ecology's Nuclear Waste Program has conducted 52 dangerous waste inspections, which have resulted in the enforcement actions below:

- Issued 14 notices of violation, including corrective measures, for not complying with state dangerous waste regulations.
- Issued 4 administrative orders or civil penalties.
- Assessed \$770,000 in civil penalties.
- Initiated a lawsuit to compel United States Department of Energy (USDOE) to perform an adequate study of the environmental impact of proposed federal waste management decisions.
- Initiated a lawsuit to enforce the terms of the Tri-Party Agreement after negotiations to change some key deadlines came to an impasse.



How can Ecology enforce under the Tri-Party Agreement?

Ecology, U.S. Department of Energy (USDOE), and the U.S. Environmental Protection Agency (EPA) signed the Hanford Federal Facility Agreement and Consent Order, also known as the Tri-Party Agreement, in 1989. Among other things, the Tri-Party Agreement is an administrative order issued under Washington's HWMA of 1976, as amended under the Revised Code of Washington (RCW) Chapter 70.105.

The Tri-Party Agreement is a legal document that binds USDOE to:

- Actions that comply with state and federal hazardous waste and Superfund cleanup laws.
- A schedule for coming into compliance with hazardous waste laws and also addresses violations of those laws.

If USDOE is out of compliance with the Tri-Party Agreement, Ecology can issue stipulated penalties under the terms of the agreement, or step outside the agreement to issue a penalty directly under the HWMA.

EPA can enforce under the agreement as well. The Tri-Party Agreement is also an enforceable "Federal Facility Cleanup Agreement" under Section 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, or Superfund).

What is a stipulated penalty?

A stipulated penalty is an up-front agreement on the penalty amount or range. Ecology can issue a stipulated penalty if USDOE fails to comply with the Tri-Party Agreement. When Ecology issues a stipulated penalty, USDOE cannot dispute the amount of the penalty, only whether the violation occurred.

How does Ecology decide to issue a penalty to USDOE?

A penalty is often the last resort in an ongoing process to achieve environmental compliance. It usually comes after Ecology has worked with USDOE to correct a problem by using other enforcement tools such as warning letters and formal notices. Most Ecology penalties are governed by RCW 43.21B.300.



Ecology employees inspect a satellite accumulation area at Hanford.



How does Ecology determine the penalty amount?

The method and amount of penalties vary. They depend on whether enforcement is directly through the HWMA or through a stipulated penalty under the Tri-Party Agreement.

In deciding the right amount for the penalty, Ecology considers the nature of the violation, the prior behavior of USDOE or its contractors, and actions they have taken to correct the problem. We issue larger penalties for more serious violations.

- For enforcement through the HWMA directly, a penalty can be up to \$10,000 per day per violation.
- For enforcement under the Tri-Party Agreement a penalty can be up to \$5,000 per week for the first week of violation, and \$10,000 per week after that.

What appeal rights does USDOE have for enforcements?

When Ecology issues a penalty under the HWMA, USDOE has 30 days to submit an appeal to the Pollution Control Hearings Board (PCHB), submit an Application for Relief of Penalty to Ecology, or both.

An Application for Relief of Penalty is a request to reduce or withdraw the penalty due to extraordinary circumstances. If Ecology denies the application, USDOE must pay the penalty, or appeal it to the PCHB within 30 days.

When Ecology issues a penalty under the Tri-Party Agreement, USDOE can dispute it formally through the courts or appeal to the PCHB.

If USDOE doesn't appeal the penalty within the timeframes provided by law, USDOE loses the right of appeal and must pay the penalty.

Where does the penalty money come from, and where does it go?

The penalty money can come from USDOE's Environmental Management budget. Sometimes USDOE requires its contractors to pay with the contractor's money, not USDOE's budget.

Penalty money goes to the state's Toxics Control Account to help pay for toxic waste cleanups around the state.



Ecology issued a \$500,000 penalty against USDOE for spilling radioactive hazardous tank waste onto the soil at Hanford in 2007.

