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# Compostable Plastic Labeling Standards

## Response to Incidents of Non-Compliance

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## I. Introduction

These guidelines are for Solid Waste Management (SWM) staff responding to instances of non-compliance with the Plastic Product Degradability, chapter 70A.455 Revised Code of Washington (RCW). These guidelines are not intended as notice to potential violators of the specific action Ecology will take in response to a particular case<sup>1</sup>. However, these guidelines may be read by people outside Ecology. These guidelines cover potential responses to non-compliance.

## II. Co-enforcement with cities and counties

RCW 70A.455.090(1)(a) says, “the department [of Ecology] and cities and counties have concurrent authority to enforce this chapter and to issue and collect civil penalties for a violation of this chapter.” Ecology, cities, and counties all retain statutory authority. Additionally, cities and counties may submit observations of non-compliance to Ecology’s public forum.

Per RCW 70A.455.090(1)(c), “A city or county that chooses to enforce [this law] must notify the department with a letter of intent that includes the start and any end date for local enforcement activities, the geographic boundaries of their enforcement, and any requests for technical assistance, education, or enforcement tools” from Ecology. Ecology will work with cities and counties individually. Letters of intent, emails, and other written communications will document any plans. Enforcement within a jurisdiction should be led either by Ecology or a local agency and streamlined so agencies do not impede each other. There may be special cases where Ecology needs to step in. For example, if a city or county requests Ecology’s assistance to compel a producer’s compliance, or if the county/city neglects to respond to violations observed within its jurisdiction. If a violation leads to a penalty and the producer has already paid a penalty for the same violation to a local government, Ecology must reduce their penalty by the amount paid to the local authority.

## III. Compliance assurance philosophy and approach

Compostable plastics sold, offered for sale, or distributed in Washington should adhere to uniform standards for compostability, and they should be easy and quick to identify at public sorting areas and compost facilities. Consumers should also be protected from false or misleading claims about a product’s compostability or environmental impact. Technical assistance and education for the regulated community (i.e. producers), as well as retailers, distributors, businesses, and the public will be a priority for SWM staff. Ecology will assume that all producers intend to comply with the law and do not intend to benefit financially from any non-compliance. The requirements for compostable products are found in chapter 70A.455 RCW, and [Section IV: Specific Violations and Responses](#) list the types of non-compliance. When responding to non-compliance, SWM staff will treat each case individually and give appropriate support by:

- A. Providing specific recommendations based on the product type and the requirements in chapter 70A.455 RCW;
- B. Attempting to reach the producer in multiple ways (phone, email, web chats, mail, etc.);
- C. Considering the history of violations for the product, brand, and producer, as well as the same product type made by other producers (i.e., industry challenges);

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<sup>1</sup> As guidelines, this document is not prescriptive or precisely describes what action(s) should be taken in each case. Instances of non-compliance will be different; this document intends to serve as a useful tool for Ecology staff while maintaining flexibility to deal with incidents on an individual basis.

- D. Providing specific SWM or other resources that pertain to the observation of non-compliance.

Formal enforcement is one of several compliance tools available. It may not be necessary to achieve compliance and should only be used after other tools have been tried. Technical assistance, education, and communication with affected groups and partners are all preferred tools to help producers meet the law. Formal enforcement is used when appropriate and in consultation with the state's Attorney General's Office (AGO). In the event of any enforcement, SWM will ensure the violation is clearly defined and the response is consistent with its magnitude. While violations of chapter 70A.455 RCW are not likely to pose a direct or potential threat to the environment or public health, Plastic Product Degradability is part of Washington's plan to meet critical climate and food waste reduction goals. Ecology will remind producers that compliance is paramount to Washington's success.

## IV. Definitions

**Formal Enforcement Action:** For the purposes of enforcing chapter 70A.455 RCW, formal enforcement actions are limited to civil penalties delivered through a Notice of Penalty. The AGO may decide to pursue other formal enforcement actions such as orders, injunctions, criminal charges, or other civil actions.

**Informal Response to Non-Compliance:** Informal responses include phone calls, inspection reports, warning letters, Notices of Violation and/or Correction, documentation of deficiencies resulting from technical assistance visits (virtual and in person), compliance meetings, and consultative visits.

## V. Authority for penalties and support for technical assistance

RCW 70A.455.090 authorizes Ecology to enforce the law and issue penalties. Additionally, chapter 43.05 RCW says Ecology must provide technical assistance to encourage voluntary compliance from producers. SWM staff should familiarize themselves with the technical assistance parts of this statute. Staff may be required to do certain things when initially contacting a producer before a Notice of Violation, Notice of Correction, and penalties can be issued. This includes declaring a visit as a technical assistance visit. In most cases, Ecology will request technical assistance visits with producers through a Warning Letter. A producer should send an email to [organics@ecy.wa.gov](mailto:organics@ecy.wa.gov) accepting the visit and asking to schedule the meeting. This documentation shows Ecology followed the proper procedures in the event of formal enforcement actions.

## VI. General principles

The following subsections describe the general principles that guide enforcement for Plastic Product Degradability (chapter 70A.455 RCW):

### Priorities

SWM Program objectives dictate that formal enforcement actions are taken on all violations that pose an imminent or potential threat to human health or the environment. Violations of the compostable plastic labeling standards are unlikely to do this, however, Plastic Product Degradability is part of Washington's plan to meet critical climate and food waste reduction goals, so violations are not harmless. Additionally, if the violations result in contaminated organic waste or compost feedstocks, then they are a potential environmental threat. Violations may also cause economic costs for clean-up. When determining priorities for a program response, the nature of the violation is the most important

factor. Other factors to consider are prior behavior of the producer and actions taken to correct the problem. Guidance for determining potential fines is provided in Section XI.

Penalties are not punishments. They are ways to deter the violator and fellow producers from non-compliance and to “level the playing field” if a producer benefited unfairly from non-compliance. Consult Ecology’s Publication 21-01-001 (“[Compliance Assurance Manual](#)<sup>2</sup>”) for more details on determining penalty amounts.

## Identifying Non-Compliance

RCW 70A.455.090(1)(b) says enforcement “must be based primarily on complaints filed with the department and cities and counties.” Members of the public, cities, and counties can file an observation of non-compliance on the Ecology website to report a product that violates chapter 70A.455, Plastic Product Degradability. These reports can be the basis for formal actions or informal responses. SWM staff will consider each observation for a product unless the product listed is already on a compliance schedule with Ecology.

Non-compliance may also be identified through technical assistance visits.

## Escalation

Initial responses to non-compliance should create a foundation for elevated program response if Ecology needs to address continued or repeated violations. Staff should consider the potential for a violation to escalate with each enforcement response, including the first. Similarly, initial responses should foster a collaborative relationship with the producer, and respectful communication must be maintained throughout.

Ecology can only escalate enforcement steps (both informal and formal) if the same UPC or SKU has received repeated violations. Ecology staff should inform producers of their intent to escalate enforcement responses, if necessary. Informal responses will establish compliance schedules for the product (default 90 days). New observations for products that are on an active compliance schedule with Ecology will not escalate the enforcement process.

Proceeding to formal enforcement actions should happen based on resources and priorities. Producers that do not take actions to correct a violation or prevent recurring violations may receive escalated enforcement responses including larger penalties.

## Documentation

Documentation of all circumstances and activities relating to a violation and subsequent enforcement action is essential, including informal responses. If formal enforcement becomes necessary, the action and the associated penalty may be based partly on prior informal actions. Every Notice of Penalty may be appealed to the Pollution Control Hearings Board (PCHB) by the producer. Ecology's ability to defend its decision depends on complete documentation showing that Ecology took reasonable, logical, and procedurally correct steps in response to violations of chapter 70A.455 RCW, Plastic Product Degradability.

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<sup>2</sup> Internal Ecology documents and links may not open for people outside the agency.

Documentation must provide complete and detailed information about the producer and product (i.e., name, producer address, product type, brand, SKU/UPC), nature of the violation (including correct statutory and regulatory citations), and where the product was obtained (business name and address or website). All informal and formal enforcement actions will be retained in Ecology's Waste Reduction Portal and the producer database. In addition, documented correspondence should show Ecology gave resources to the producer for compliance support, made offers for technical assistance visits, established reasonable compliance schedules, sent steps on how the producer could correct their violation(s), notified producers of how Ecology might respond to continued violations, and included any history of similar or related violations for the same product. If there are more records regarding compliance problems or specific violations of the producer, retain the contact information, nature of the problem(s), and Ecology's response.

A violator's history can include violations of other product laws, which shows a pattern of disregard or neglect. Documentation includes telephone logs, memos confirming conversations, instructions, meetings, sample records, recordings, photographs, sworn statements, and emails. Thorough documentation of violations (past and current) is essential, so Ecology can provide the evidence to defend any formal enforcement actions. Ecology bears the burden of proof to show the violation occurred and the enforcement action taken by the agency is reasonable.

While informal responses and formal actions are saved in Ecology's database, case files may be useful in certain situations, especially when records are extensive or kept in multiple places. Case files should consolidate documents and information to a single location maintained by the Policy Section.

In all formal enforcement cases, SWM staff will draft a recommendation for enforcement to be reviewed by the Policy Section and SWM Managers, the AGO, and others as appropriate (ex. the Organics Job-Alike-Group, OJAG). Enforcement recommendations and any resulting actions will be written in unambiguous language that clearly describes the violation, relevant circumstances, and the specific correction(s) Ecology is requiring the producer to take. When recommending penalties, summaries of supporting documentation will be referenced. Staff need to coordinate with supervisors to ensure appropriate protocols for peer and cross-program review are followed. The producer has a right to know about and understand the nature of the problem as well as action(s) Ecology may take. Compliance dates will be specified for the non-compliant product. Responsibility for review, approval, and signature of formal enforcement actions lies with the SWM Program Manager.

When formal enforcement results in a penalty, each case must be assigned a docket number. Staff send a [Docket Number Request Form](#)<sup>3</sup> to the SWM Docket Coordinator. If a docket number is obtained but no action is taken, have the Docket Coordinator recall the number.

## Timeframe for Program Compliance Response

Ecology will give producers a default 90-day compliance period after receiving an observation for their product. This matches the mandated timeline for city and county enforcement per RCW 70A.455.100. During the 90-day compliance period, Ecology will not respond to observations for the same product if they are for the same violation(s). Once the compliance period ends, Ecology will only proceed with enforcement in response to another observation. Violations resulting in actual, imminent, or possible impact to human health or the environment will compel more immediate compliance dates. (This is

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<sup>3</sup> Internal Ecology links (including those to forms) may not work for those outside the agency.

unlikely for Plastic Product Degradability). In response to a Notice of Violation (NOV) and Notice of Correction (NOC), producers can request a compliance extension for “good cause.” The producer must send Ecology an email requesting the extension within 30 days of receiving the NOV or NOC and provide explanation of the good cause. The Organics and Food Center Supervisor or Section Manager will approve compliance extensions.

Staff will streamline enforcement procedures, but document preparation and review will remain thorough and complete throughout.

If a producer proves to Ecology their product is now compliant, SWM staff may choose to change the product’s compliance status in the Waste Reduction Portal and producer database, so future observations can be dismissed. This may or may not be prudent and is up to the discretion of enforcement staff and their supervisor(s).

## VII. General Procedures

Below are the general steps for responding to a violation of chapter 70A.455 RCW, Plastic Product Degradability. However, each case is different, and these steps may not be appropriate for all observations or violations.

1. The public, cities, or counties report an observation of non-compliance to Ecology. Ecology will review the observation and decide if it should be referred to a local jurisdiction doing their own enforcement. If referred to a local agency, Ecology will respect the jurisdiction’s letter of intent and the documented arrangement around co-authority. Otherwise, the observation should be attached to a product in the producer database. If missing, Ecology will add the producer and product information.
2. In most cases, an observation of non-compliance will warrant an informal response. Formal enforcement actions occur only after a producer’s repeated non-compliance. Before penalties, SWM staff should explore alternatives and discuss with the Organics and Food Center Supervisor, Policy Section Supervisor, OJAG, SWM Program Manager and/or the AGO. Ecology should develop a case-specific strategy to help the producer comply quickly.
3. Informal responses should describe the violation, the consequences of continued non-compliance, and steps the producer can take to correct the violation(s) to prevent elevated enforcement actions. Informal responses include letters of education, Warning Letters, offers for technical assistance visits, Notices of Violations, and Notices of Correction.

Each informal response is an opportunity to explain the law and its requirements to producers. Ecology should provide resources and product-specific steps to come into compliance. This will often be in writing; however, phone calls and other conversations or methods of communication may be appropriate. These should be followed by a written communication that recounts and documents the event. Technical assistance visits can occur virtually and may be recorded. A Notice of Violation will document a technical assistance visit if non-compliance is confirmed. Policy Section staff are responsible for enforcement actions and should update supervisors and managers as necessary, especially if escalated enforcement action is possible.



4. Formal enforcement may be necessary if the product receives another observation after the compliance date established in a Notice of Correction. Unless otherwise requested by the AGO, SWM staff will tell a producer when formal enforcement is being recommended.

Formal enforcement begins with staff writing a Recommendation for Enforcement (RFE) for the Policy Section Manager and SWM Program Manager. An RFE should thoroughly describe the reason for the recommendation without subjective opinions. It should include backup documentation and a rationale for the penalty amount based on the Enforcement Matrix. The SWM Program Manager must approve and sign all formal enforcement actions. When formal enforcement proceeds, staff will notify the producer by email the Notice of Penalty is coming.

5. Ecology will document if the producer takes sufficient corrective actions during a compliance period or while formal enforcement is pending. Ecology staff may also choose to change the compliance status of a product permanently in their producer database.

If the producer does not comply by the date specified, Ecology will only escalate enforcement appropriately and in response to new observations for the same product. In general, escalated enforcement should show an elevated response over the previous action(s). Ecology staff will consult with the Organics and Food Center Supervisor, the Policy Section Manager, the Organics Management Group, the Organics Job Alike Group (OJAG), and other relevant parties when considering formal enforcement actions and when formal actions repeat (i.e., a subsequent NOP with higher fine).

6. When formal enforcement actions do not compel compliance, or when an appeal of a civil action is anticipated, the Policy Section Supervisor or SWM Program Manager will consult with the AGO. A memo drafted by the responsible staff should include:
  - a. The sequence, circumstances, and conditions that initiated enforcement responses.
  - b. A summary of, or copies of correspondence, memoranda of record, inspection reports, monitoring reports, and any other documentation relating to the situation.

## VIII. Formal enforcement tools

For chapter 70A.455 RCW, Plastic Product Degradability, formal enforcement actions include a Notice of Penalty. When issuing civil penalties, innovative approaches such as mediation, environmental audits, mandatory education programs, and compensatory actions can be considered as appropriate mitigation so long as compliance is achieved.

### Notices of Penalty

Ecology will issue fines through a written Notice of Penalty (NOP) for violations of any provision in chapter 70A.455 RCW. Ecology will not issue any penalty less than \$50 for Plastic Product Degradability violation(s). The maximum fine for a producer's first NOP is \$2,000, a second NOP maximum is \$5,000, and third (and subsequent) NOPs can fine up to \$10,000. Civil penalties will be calculated based on the factors in [Section XI](#). All civil penalties will be sent by certified mail.

An NOP will establish a 90-day compliance period for the product and provide a list of corrective action(s) for the producer.

## IX. Specific Violations and responses

Ecology has identified 10 different violations related to chapter 70A.455 RCW. These violations are grouped into three categories. Regarding enforcement guidance, Ecology staff will respond in the same manner (as laid out in these guidelines) for all violations regardless of the type or how many violations a product receives on an observation. The type of violation and the number of individual violations may impact penalty amounts as specified in the enforcement matrix. All responses in this section are considered informal and should be tracked with the database observation/incident number rather than a docket number.

### Types of Non-Compliance

Category: Misleading or “Greenwashing”

- Compostable film bag uses chasing arrows or other recycling symbol.
- Product uses a term other than compostable like “biodegradable,” “oxo-degradable,” “degradable”, etc.
- Non-compostable film bag uses green, beige, or brown tinting/color schemes required on compostable film bags.
- Non-compostable product is labeled or uses term compostable.

Category: Mislabeled Compostable Product

- Missing the word “compostable.”
- Labeled or implied product is “Home Compostable Only.”
- Improper or no use of green, beige, or brown as a color signal for compostable products.
- Missing or invalid certification logo.

Category: Miscellaneous

- Product is undeclared or not up to date on the producer’s certified declaration with Ecology.
- Other: \_\_\_\_\_

### Response to First Observation – Letter of Education (LOE)

Ecology’s response to a product’s first observation will be a letter of education sent via regular post and emailed to the address(es) listed in the producer database. The letter explains the law, its intent, and describes why the product was reported. This initial letter should foster a positive relationship between Ecology and the producer and provide resources on how the producer can comply. The letter may not include individualized recommendations but will have Ecology contact information and resources for the producer (websites, publications, etc.). The letter of education will include the product type, brand, and SKU or UPC of the product.

The letter gives 90 days for the producer to comply. During those 90 days, Ecology will not elevate enforcement steps if they receive observations for the same product as long as the violation(s) are the same.



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## Response to Second Observation – Warning Letter and Technical Assistance Invitation

If the same product receives a second observation after the 90-day compliance period ends, Ecology will send a Warning Letter via certified mail and notify the producer via email that the letter is coming.

The Warning Letter will reiterate the letter of education (the law, its intent, the violation, product information, etc.) In addition, the Warning Letter explains next steps if the producer remains non-complaint and has a section for staff to include notes related to the individual product or incident.

The most important part of a Warning Letter is Ecology’s request for the producer to schedule a technical assistance meeting. The producer has 30 days after receiving the Warning Letter to schedule the technical assistance visit, which can happen virtually. At the technical assistance meeting, Ecology staff will assess the product and the requirements of chapter 70A.455 RCW with the producer. If staff determine the product violates Plastic Product Degradability, then they will send a Notice of Violation within two weeks of the meeting.

A Warning Letter gives producers 90 days to comply. During that 90-day period, Ecology will not elevate enforcement steps if they receive observations for the same product so long as the violation(s) are the same.

## Notice of Violation (NOV)

Ecology will send a Notice of Violation (NOV) to a producer if staff determine that the product violates any part of chapter 70A.455 RCW at a technical assistance meeting. The NOV will include product and observation information (including the incident number, product brand, product type, and SKU or UPC) and cite the specific subsections of chapter 70A.455 RCW that were violated. The NOV will list the technical assistance meeting date and attendees from Ecology as well as steps the producer can take to comply.

An NOV re-sets the 90-day compliance period from the Warning Letter, so a producer has 90 days to correct the violation(s) after receiving the NOV. However, per RCW 43.05.120, a producer may request an extension for “good cause.” A producer has 30 days to send an extension request and their reason to Ecology. The opportunity for extension must also be included in the NOV.

An NOV provides an earlier opportunity for producers to request an extended compliance plan if they attend a TA visit with Ecology.

## Notice of Correction (NOC)

Ecology will send a Notice of Correction (NOC) if a product receives a third observation after the compliance date set in a Warning Letter (for producers who did not respond or accept a technical assistance meeting) or an NOV (for producers who accepted a technical assistance meeting).

The NOC will contain the same information as the Notice of Violation but without reference to a technical assistance visit. An NOC should provide a history of Ecology’s attempts to reach out and have the violation(s) corrected. Like other informal responses, an NOC will establish a 90-day compliance period, so a producer has 90 days to correct the violation(s) after receiving the NOC. Again, per RCW 43.05.120, a producer can request an extension for “good cause.” Producers have 30 days to send an extension request and their reason to Ecology. The opportunity for extension must also be included in the NOC.

## Exhaustion of These Steps

If all informal responses above fail to get the producer to comply, civil penalties issued through a Notice of Penalty (NOP) may be recommended, unless:

- i.) Deviating from these guidelines has been justified in writing by responsible staff and approved by the Policy Section Manager.
- ii.) Insufficient evidence exists or is not obtainable to defend penalty action.
- iii.) A penalty would jeopardize or conflict with an ongoing criminal investigation or prosecution.
- iv.) Staff resources to document and defend the penalty are unavailable.

## X. Inter-program coordination of enforcement actions

Ecology aims for coordinated and comprehensive enforcement responses. Coordination between SWM sections, Ecology programs, and local agencies (ex. cities and counties) should happen before Ecology issues a penalty. Ecology staff will consider how other laws and their enforcement may impact producers and those buying their products (restaurants, retailers, etc.). When possible, coordinate enforcement actions for a comprehensive approach. Integrated enforcement is encouraged unless it would jeopardize effective enforcement.

## XI. Determining a penalty amount

### Decision Flow Process

These questions are designed to guide SWM staff to determine an appropriate penalty for violating Plastic Product Degradability. Staff should substantiate any “possible,” “probably,” and “definitely” answers with documentation for the Recommendation for Enforcement (RFE).

1. Is the violation misleading to consumers or “greenwashing”?

Answer “no” if there is no evidence of misleading claims or greenwashing.

Answer “possibly” if the product can be inferred to be misleading from the evidence and situation.

Answer “probably” if evidence supports the product as mislabeled and it can be inferred that the violation is misleading or greenwashing.

Answer “definitely” if there is direct evidence linking the mislabeled product to consumer confusion or greenwashing.

2. Is distribution or sale happening directly by the producer?

Answer “no” if there is no evidence the producer is directly distributing or selling the non-compliant product and has little to no control over the person who is.

Answer “possibly” if it can be inferred that the producer has control over the sale or distribution of the noncompliant product based on the evidence and situation.

Answer “probably” if there is evidence that the producer is not directly distributing or selling but it can be inferred that the producer has substantial influence over the activity.

Answer “definitely” if there is direct evidence the producer is directly responsible distribution or sale to consumers.

3. Does the producer have other products with a history of observations/non-compliance?

Answer “no” if there is no evidence that the producer has a history of observations or other non-compliant products.

Answer “possibly” if there is no history of non-compliance but it can be inferred that the producer has other products that are non-compliant.

Answer “probably” if there is no observation history but there is evidence that the producer has other non-compliant products on the Washington market.

Answer “definitely” if there is direct evidence of the producer’s history with non-compliance related to Plastic Product Degradability or other federal or state laws.

4. Did the producer benefit economically from non-compliance? This includes “saving” or avoiding costs and capturing market share unfairly.

Answer “no” if it is clear the producer did not benefit economically.

Answer “possibly” if the producer might have benefited.

Answer “probably” if the producer likely benefited, but the benefit is not quantifiable.

Answer “definitely” if the economic benefit is measurable.

5. Was the violation due to the producer’s negligence, recklessness, or intent?

Answer “no” if the producer obviously did not know that the action or inaction constituted a violation.

Answer “possibly” if it is likely the producer knew.

Answer “probably” if the producer should have known.

Answer “definitely” if the producer clearly knew.

6. Was the producer unresponsive in correcting the violation or taking steps to prevent it?

Answer “no” if the producer has been responsive and corrected the violation(s).

Answer “possibly” if the violation was corrected in a less timely or cooperative fashion.

Answer “probably” if the producer took only preventative action but did not correct the violation(s).

Answer “definitely” if the producer made no attempt to correct the violation, was nonresponsive, or refused to correct the violation(s).

7. Is the non-compliant product widely available?

Answer “no” if the product is only available at minimal physical locations.

Answer “possibly” if the product is likely only available in one city or county.

Answer “probably” if the product is likely available across multiple cities and counties.

Answer “definitely” if the product is available statewide (i.e., through a retailer, food service business, distributor, or online store).

### Penalty Calculation

GRAVITY CRITERIA - PENALTIES FOR VIOLATING PLASTIC PRODUCT DEGRADABILITY	NO	POSSIBLY	PROBABLY	DEFINITELY
	(0)	(1)	(2)	(3)
1. Violation is misleading to consumers or "greenwashing"	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Distribution or sale is happening directly by producer	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Producer has other products with a history of observations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Financial incentives or economic benefit for producer to continue non-compliance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Violation due to negligence, recklessness, or was intentional by the producer	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Producer unresponsive in correcting violation or taking steps to prevent it	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Non-compliant product is available over a large geographic area (ex. statewide)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Total Rating Points \_\_\_\_\_

Check if Product's First penalty (1x) \_\_\_\_\_

Check if Product's Second penalty (2.5X) \_\_\_\_\_

Check if Product's Third (or subsequent) penalty (5X) \_\_\_\_\_

Use the table below to determine penalties with the total rating points calculated above and the number of previous penalties sent for the product.

Penalty Number	RATING POINTS										
	1-2	3-4	5-8	9-11	12-14	15	16	17	18	19	20-21
<b>First</b>	None	\$50	\$100	\$250	\$500	\$1,000	\$1,250	\$1,500	\$1,750	\$1,850	\$2,000
<b>Second</b>	\$50	\$125	\$250	\$625	\$1,250	\$2,500	\$3,125	\$3,750	\$4,375	\$4,625	\$5,000
<b>Third+</b>	\$100	\$250	\$500	\$1,250	\$2,500	\$5,000	\$6,250	\$7,500	\$8,750	\$9,250	\$10,000

## XII. Using discretion to determine the optimum approach

Staff can and should use professional discretion in the following cases:

- responses to non-significant violations (i.e., missed declarations and declaration updates);
- the use and terms of orders (consent or unilateral); and
- justification of deviations from policy or guidelines.

### Responses to Non-Threatening Violations

Staff has discretion to avoid formal enforcement action for violations that do not pose risk to human health or the environment and do not jeopardize Washington’s organics management goals. If a staff’s professional judgment concludes a violation is non-aggravated or marginal, then formal enforcement is not necessary.

However, if formal enforcement is taken, then a repeat violation is significant and should also lead to escalated enforcement, including additional penalties. This rule is subject to the following conditions:

- i.) Relevant extenuating circumstances should be factored into the initial penalty recommendation.
- ii.) When issuing escalated penalties for repeat violations, excluding minimal violation from the point calculation may be reasonable and justifiable.
- iii.) When non-significant violation(s) would lead to an unreasonable level of enforcement or penalty, staff can justify deviating from the guidelines.

### Use and Terms of Orders

Staff must use their professional judgment when determining whether it is appropriate to issue an order that requires corrective or preventative actions. Both consent orders and unilateral orders prevent escalating enforcement for related violations and can suspend penalties during the term of the order, so long as the producer is complying with the terms. As an alternative, staff can stipulate penalties as part of the agreement.

Staff also have broad professional discretion to determine the terms of the orders for both substantive requirements and compliance schedules. Applicable federal and state laws supersede staff discretion as does what the AGO finds defensible (i.e., “reasonable”).

### Deviations From Guidelines

Professional staff may justify deviating from these guidelines at their discretion. The rationale for such deviations should be included as part of the supporting documents with the recommendation for enforcement sent to the Policy Section Manager and SWM Program Manager.



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To request an ADA accommodation, contact Ecology by phone at 360-407-6000 or email at [SWMPublications@ecy.wa.gov](mailto:SWMPublications@ecy.wa.gov), or visit <https://ecology.wa.gov/accessibility>. For Relay Service or TTY call 711 or 877-833-6341