

RCW 70A.555.110 Civil actions authorized—Penalties. (1) (a) A

battery stewardship organization implementing an approved plan may bring a civil action or actions to recover costs, damages, and fees, as specified in this section, from a producer who sells or otherwise makes available in Washington covered batteries or battery-containing products not included in an approved plan in violation of the requirements of this chapter. An action under this section may be brought against one or more defendants. An action may only be brought against a defendant producer when the stewardship program incurs costs in Washington, including reasonable incremental administrative and program promotional costs, in excess of \$1,000 to collect, transport, and recycle or otherwise dispose of the covered batteries or battery-containing products of a nonparticipating producer.

(b) A battery stewardship organization may bring a civil action against a producer of a recalled battery to recover costs associated with handling a recalled battery.

(c) A battery stewardship organization implementing an approved stewardship plan may bring a civil action against another battery stewardship organization that under performs on its battery collection obligations under this chapter by failing to collect and provide for the end-of-life management of batteries in an amount roughly equivalent to costs imposed on the plaintiff battery stewardship organization by virtue of the failures of the defendants, plus legal fees and expenses.

(d) The remedies provided in this subsection are in addition to the enforcement authority of the department and do not limit and are not limited by a decision by the department to impose a civil penalty or issue an order under subsection (2) of this section. The department is not required to audit, participate in, or provide assistance to a battery stewardship organization pursuing a civil action authorized under this subsection.

(2) (a) The department may administratively impose a civil penalty on a person who violates this chapter in an amount of up to \$1,000 per violation per day.

(b) The department may administratively impose a civil penalty of up to \$10,000 per violation per day on a person for repeated violations of this chapter or failure to comply with an order issued under (c) of this subsection.

(c) Whenever on the basis of any information the department determines that a person has violated or is in violation of this chapter, the department may issue an order requiring compliance. A person who fails to take corrective action as specified in a compliance order is liable for a civil penalty as provided in (b) of this subsection, without receiving a written warning prescribed in (e) of this subsection.

(d) A person who is issued an order or incurs a penalty under this section may appeal the order or penalty to the pollution control hearings board established by chapter 43.21B RCW.

(e) Prior to imposing penalties under this section, the department must provide a producer, retailer, or battery stewardship organization with a written warning for the first violation by the producer, retailer, or battery stewardship organization of the requirements of this chapter. The written warning must inform a producer, retailer, or battery stewardship organization that it must participate in an approved plan or otherwise come into compliance with the requirements of this chapter within 30 days of the notice. A

producer, retailer, or battery stewardship organization that violates a provision of this chapter after the initial written warning may be assessed a penalty as provided in this subsection.

(3) Penalties levied under subsection (2) of this section must be deposited in the model toxics control operating account created in RCW 70A.305.180.

(4) No penalty may be assessed on an individual or resident for the improper disposal of covered batteries as described in RCW 70A.555.140 in a noncommercial or residential setting. [2023 c 434 s 12.]