
HOUSE BILL 2856

State of Washington

55th Legislature

1998 Regular Session

By Representatives Carrell, Chandler and Talcott

Read first time 01/21/98. Referred to Committee on Agriculture & Ecology.

1 AN ACT Relating to an aquatic plant management permit program;
2 amending RCW 90.48.445 and 17.24.051; reenacting and amending RCW
3 75.20.100; and adding a new chapter to Title 90 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** FINDINGS AND PURPOSE. The legislature finds
6 that it is in the best interest of the people of the state to provide
7 a predictable approach to control of aquatic plants that is protective
8 of both human health and the environment. The legislature intends,
9 through an aquatic plant management permit program, to create a
10 coordinated, timely, and predictable permit process that will assist
11 property owners and local governments in controlling aquatic plants.

12 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this
13 section apply throughout this chapter, unless the context requires
14 otherwise.

15 (1) "Aquatic plant" includes any noxious weed on the state noxious
16 weed list adopted under RCW 17.10.080; any other nuisance or beneficial
17 aquatic plants not on the state noxious weed list; and any algae or
18 cyanobacteria.

1 (2) "Aquatic plant management" means controlling, eradicating, or
2 removing aquatic plants through chemical, biological, or mechanical
3 means.

4 (3) "Aquatic plant management plan" means any plan that reviews
5 alternative aquatic plant management methods according to the
6 principles of integrated pest management, as defined in RCW
7 17.15.010(1), determines feasible, effective solutions to be
8 implemented, and provides for the monitoring and evaluation of the
9 plan's effectiveness.

10 (4) "Department" means the department of ecology.

11 (5) "Person" means an individual or a public or private entity or
12 organization and includes local, state, and federal government
13 agencies, and all business organizations including corporations and
14 partnerships.

15 NEW SECTION. **Sec. 3.** AQUATIC PLANT MANAGEMENT PERMIT. No person
16 may control, eradicate, remove, or otherwise alter any aquatic plants
17 in waters of the state unless an aquatic plant management permit for
18 such activity has been issued by the department, or unless either: (1)
19 The removal is incidental or unintentional, or (2) the activity is in
20 waters expressly exempted by this chapter or by rule. Application for
21 an aquatic plant management permit to engage in aquatic plant
22 management activities shall be made to the department.

23 NEW SECTION. **Sec. 4.** RULE MAKING. (1) The department and the
24 department of agriculture shall jointly develop rules to implement the
25 aquatic plant management permit program, in consultation with the
26 department of natural resources, the department of health, the
27 department of fish and wildlife, and the state noxious weed board. The
28 rules shall be adopted by the department. The rules shall be oriented
29 towards developing solutions to noxious and nuisance aquatic plant
30 problems, shall provide first for the protection of human health, and
31 second for the protection of wildlife and the environment, and shall
32 provide for measurable results. The rules shall also be based on the
33 principles of integrated pest management as defined in RCW 17.15.010(1)
34 and shall define a tiered approach to aquatic plant management,
35 including the tiers described in section 5 of this act. The rules
36 shall include, at a minimum, the following elements:

37 (a) The submittal requirements for a permit application;

1 (b) Criteria for issuing, modifying, or denying permit
2 applications;

3 (c) Operating and threshold requirements for chemical, biological,
4 and mechanical controls based on the risk assessment in subsection (2)
5 of this section;

6 (d) An administrative appeals process;

7 (e) An opportunity for public comment on permit applications;

8 (f) Penalties and remedies for noncompliance by an applicant or the
9 department;

10 (g) Maximum timelines for permit issuance, not to exceed sixty days
11 from the time a complete application is received;

12 (h) A fee schedule as described in section 7 of this act;

13 (i) A method to update the rules periodically as new information or
14 products are developed; and

15 (j) Criteria and forms for state environmental policy act review
16 under chapter 43.21C RCW, appropriate to an aquatic environment, to
17 expedite issuance of individual permits.

18 (2) The department and the department of agriculture shall contract
19 for a risk assessment of alternative aquatic plant management methods.
20 Consultants may be nominated by national scientific organizations or by
21 the public. Review of chemical control methods shall focus on issues
22 specific to Washington state that are not addressed through federal
23 pesticide registration and labeling. Information in the risk
24 assessment shall be reviewed by experts in the fields of aquatic plant
25 management and water quality, and shall be used to develop the
26 operating and threshold requirements referenced in subsection (1)(c) of
27 this section.

28 (3) Environmental review of the proposed rules conducted according
29 to chapter 43.21C RCW shall incorporate and update all existing state
30 environmental policy act documents related to aquatic plant management.

31 NEW SECTION. **Sec. 5.** TIERED APPROACH. (1) The aquatic plant
32 management permit program shall include a tiered approach to aquatic
33 plant management. At a minimum, the permit program shall include the
34 following tiers:

35 (a) No aquatic plant management permit may be required for lakes of
36 less than twenty acres if there is no outlet, no salmonids, no drinking
37 water use of the lake, no swimming, and the lake is in single ownership
38 or all owners support the exemption. In such lakes, any state-

1 registered aquatic pesticide may be used. Use of the pesticide shall
2 be conducted in a manner to protect human health and safety, and to
3 prevent injury to nontargeted plant and animal life.

4 (b) The operating and threshold requirements of the aquatic plant
5 management permit established in section 4(1)(c) of this act may be
6 replaced by operating and threshold requirements developed through
7 site-specific review for waters with adopted aquatic plant management
8 plans. State environmental policy act review under chapter 43.21C RCW
9 must be completed for any aquatic plant management plan. Waters with
10 adopted aquatic plant management plans may be issued a multiyear
11 aquatic plant management permit.

12 (c) Pilot use of state-registered aquatic pesticides that does not
13 meet the operating requirements in section 4(1)(c) of this act may be
14 permitted to develop solutions to noxious and nuisance conditions
15 affecting the public health, to address early infestation of noxious
16 weeds, and for the purpose of data collection and research to assist
17 the department with the review and revision of the operating
18 requirements of the aquatic plant management permit program.

19 (d) General permits may be issued on a regional or state-wide basis
20 to control noxious aquatic weeds. Any person may apply for coverage
21 under the general permit.

22 (2) The department and the department of agriculture may expand
23 these tiers to address other circumstances or waters.

24 NEW SECTION. **Sec. 6.** PERMIT COORDINATION. The rules developed by
25 the department and the department of agriculture to implement the
26 aquatic plant management permit program shall include the requirements
27 of other aquatic plant management permitting programs, including the
28 water quality permit required by RCW 90.48.445, the hydraulic project
29 approval required by RCW 75.20.100 and 75.20.108, and the special
30 permit for biological control required by RCW 17.24.051. Issuance of
31 an aquatic plant management permit satisfies the requirements of RCW
32 90.48.445, 75.20.100, and 17.24.051. If an application for an aquatic
33 plant management permit includes biological control methods, the
34 department shall defer to the department of agriculture and the
35 requirements of RCW 17.24.051. If an application for an aquatic plant
36 management permit includes mechanical control methods, the department
37 shall defer to the department of fish and wildlife and the requirements
38 of RCW 75.20.100 and 75.20.108.

1 NEW SECTION. **Sec. 7.** FEES. The department shall establish a
2 schedule of fees for aquatic plant management permits. Fees shall be
3 established in amounts to recover expenses incurred by the department
4 in administering the aquatic plant management permit program. All fees
5 shall be deposited in the aquatic plant management permit account.

6 NEW SECTION. **Sec. 8.** AQUATIC PLANT MANAGEMENT PERMIT ACCOUNT.
7 The aquatic plant management permit account is created in the state
8 treasury. All receipts from aquatic plant management permit fees,
9 appropriations, grants, and private contributions must be deposited in
10 the account. Moneys in the account may be spent only after
11 appropriation. Expenditures from the account may be used for
12 administration of the aquatic plant management permit program.

13 NEW SECTION. **Sec. 9.** CAPTIONS NOT LAW. Captions used in this
14 chapter are not any part of the law.

15 **Sec. 10.** RCW 75.20.100 and 1997 c 385 s 1 and 1997 c 290 s 4 are
16 each reenacted and amended to read as follows:

17 (1) In the event that any person or government agency desires to
18 construct any form of hydraulic project or perform other work that will
19 use, divert, obstruct, or change the natural flow or bed of any of the
20 salt or fresh waters of the state, such person or government agency
21 shall, before commencing construction or work thereon and to ensure the
22 proper protection of fish life, secure the approval of the department
23 as to the adequacy of the means proposed for the protection of fish
24 life. This approval shall not be unreasonably withheld.

25 (2)(a) Except as provided in RCW 75.20.1001, the department shall
26 grant or deny approval of a standard permit within forty-five calendar
27 days of the receipt of a complete application and notice of compliance
28 with any applicable requirements of the state environmental policy act,
29 made in the manner prescribed in this section.

30 (b) The applicant may document receipt of application by filing in
31 person or by registered mail. A complete application for approval
32 shall contain general plans for the overall project, complete plans and
33 specifications of the proposed construction or work within the mean
34 higher high water line in salt water or within the ordinary high water
35 line in fresh water, and complete plans and specifications for the
36 proper protection of fish life.

1 (c) The forty-five day requirement shall be suspended if:

2 (i) After ten working days of receipt of the application, the
3 applicant remains unavailable or unable to arrange for a timely field
4 evaluation of the proposed project;

5 (ii) The site is physically inaccessible for inspection; or

6 (iii) The applicant requests delay. Immediately upon determination
7 that the forty-five day period is suspended, the department shall
8 notify the applicant in writing of the reasons for the delay.

9 (d) For purposes of this section, "standard permit" means a written
10 permit issued by the department when the conditions under subsections
11 (3) and (6)(b) of this section are not met.

12 (3)(a) The department may issue an expedited written permit in
13 those instances where normal permit processing would result in
14 significant hardship for the applicant or unacceptable damage to the
15 environment. In cases of imminent danger, the department shall issue
16 an expedited written permit, upon request, for work to repair existing
17 structures, move obstructions, restore banks, protect property, or
18 protect fish resources. Expedited permit requests require a complete
19 written application as provided in subsection (2)(b) of this section
20 and shall be issued within fifteen calendar days of the receipt of a
21 complete written application. Approval of an expedited permit is valid
22 for up to sixty days from the date of issuance.

23 (b) For the purposes of this subsection, "imminent danger" means a
24 threat by weather, water flow, or other natural conditions that is
25 likely to occur within sixty days of a request for a permit
26 application.

27 (c) The department may not require the provisions of the state
28 environmental policy act, chapter 43.21C RCW, to be met as a condition
29 of issuing a permit under this subsection.

30 (d) The department or the county legislative authority may
31 determine if an imminent danger exists. The county legislative
32 authority shall notify the department, in writing, if it determines
33 that an imminent danger exists.

34 (4) Approval of a standard permit is valid for a period of up to
35 five years from date of issuance. The permittee must demonstrate
36 substantial progress on construction of that portion of the project
37 relating to the approval within two years of the date of issuance. If
38 the department denies approval, the department shall provide the
39 applicant, in writing, a statement of the specific reasons why and how

1 the proposed project would adversely affect fish life. Protection of
2 fish life shall be the only ground upon which approval may be denied or
3 conditioned. Chapter 34.05 RCW applies to any denial of project
4 approval, conditional approval, or requirements for project
5 modification upon which approval may be contingent.

6 (5) If any person or government agency commences construction on
7 any hydraulic works or projects subject to this section without first
8 having obtained approval of the department as to the adequacy of the
9 means proposed for the protection of fish life, or if any person or
10 government agency fails to follow or carry out any of the requirements
11 or conditions as are made a part of such approval, the person or
12 director of the agency is guilty of a gross misdemeanor. If any such
13 person or government agency is convicted of violating any of the
14 provisions of this section and continues construction on any such works
15 or projects without fully complying with the provisions hereof, such
16 works or projects are hereby declared a public nuisance and shall be
17 subject to abatement as such.

18 (6)(a) In case of an emergency arising from weather or stream flow
19 conditions or other natural conditions, the department, through its
20 authorized representatives, shall issue immediately, upon request, oral
21 approval for removing any obstructions, repairing existing structures,
22 restoring stream banks, or to protect property threatened by the stream
23 or a change in the stream flow without the necessity of obtaining a
24 written approval prior to commencing work. Conditions of an oral
25 approval to protect fish life shall be established by the department
26 and reduced to writing within thirty days and complied with as provided
27 for in this section. Oral approval shall be granted immediately, upon
28 request, for a stream crossing during an emergency situation.

29 (b) For purposes of this section and RCW 75.20.103, "emergency"
30 means an immediate threat to life, the public, property, or of
31 environmental degradation.

32 (c) The department or the county legislative authority may declare
33 and continue an emergency when one or more of the criteria under (b) of
34 this subsection are met. The county legislative authority shall
35 immediately notify the department if it declares an emergency under
36 this subsection.

37 (7) The department shall, at the request of a county, develop five-
38 year maintenance approval agreements, consistent with comprehensive
39 flood control management plans adopted under the authority of RCW

1 86.12.200, or other watershed plan approved by a county legislative
2 authority, to allow for work on public and private property for bank
3 stabilization, bridge repair, removal of sand bars and debris, channel
4 maintenance, and other flood damage repair and reduction activity under
5 agreed-upon conditions and times without obtaining permits for specific
6 projects.

7 (8) This section shall not apply to the construction of any form of
8 hydraulic project or other work which diverts water for agricultural
9 irrigation or stock watering purposes authorized under or recognized as
10 being valid by the state's water codes, or when such hydraulic project
11 or other work is associated with streambank stabilization to protect
12 farm and agricultural land as defined in RCW 84.34.020. These
13 irrigation or stock watering diversion and streambank stabilization
14 projects shall be governed by RCW 75.20.103.

15 A landscape management plan approved by the department and the
16 department of natural resources under RCW 76.09.350(2), shall serve as
17 a hydraulic project approval for the life of the plan if fish are
18 selected as one of the public resources for coverage under such a plan.

19 (9) A permit issued under section 3 of this act satisfies the
20 requirements under this section.

21 (10) For the purposes of this section and RCW 75.20.103, "bed"
22 means the land below the ordinary high water lines of state waters.
23 This definition does not include irrigation ditches, canals, storm
24 water run-off devices, or other artificial watercourses except where
25 they exist in a natural watercourse that has been altered by man.

26 (~~(10)~~) (11) The phrase "to construct any form of hydraulic
27 project or perform other work" does not include the act of driving
28 across an established ford. Driving across streams or on wetted stream
29 beds at areas other than established fords requires approval. Work
30 within the ordinary high water line of state waters to construct or
31 repair a ford or crossing requires approval.

32 **Sec. 11.** RCW 90.48.445 and 1995 c 255 s 3 are each amended to read
33 as follows:

34 (1) The director shall issue or approve water quality permits for
35 use by federal, state, or local governmental agencies and licensed
36 applicators for the purpose of using, for aquatic noxious weed control,
37 herbicides and surfactants registered under state or federal pesticide
38 control laws. The issuance of the permits shall be subject only to

1 compliance with: Federal and state pesticide label requirements, the
2 requirements of the federal insecticide, fungicide, and rodenticide
3 act, the Washington pesticide control act, the Washington pesticide
4 application act, and the state environmental policy act; and applicable
5 requirements established in an option or options recommended for
6 controlling the noxious weed by a final environmental impact statement
7 published under chapter 43.21C RCW by the department prior to May 5,
8 1995, by the department of agriculture, or by the department of
9 agriculture jointly with other state agencies. This section may not be
10 construed as requiring the preparation of a new environmental impact
11 statement to replace a final environmental impact statement published
12 before May 5, 1995.

13 (2) The director of ecology may not utilize this permit authority
14 to otherwise condition or burden weed control efforts. The director's
15 authority to issue water quality modification permits for activities
16 other than the application of surfactants and approved herbicides, to
17 control aquatic noxious weeds, is unaffected by this section.

18 (3) A permit issued under section 3 of this act satisfies the
19 permit requirements under this section.

20 (4) As used in this section, "aquatic noxious weed" means an
21 aquatic weed on the state noxious weed list adopted under RCW
22 17.10.080.

23 **Sec. 12.** RCW 17.24.051 and 1991 c 257 s 9 are each amended to read
24 as follows:

25 The introduction into or release within the state of a plant pest,
26 noxious weeds, bee pest, or any other organism that may directly or
27 indirectly affect the plant life of the state as an injurious pest,
28 parasite, predator, or other organism is prohibited, except under
29 special permit issued by the department under rules adopted by the
30 director. A special permit is not required if a permit has been issued
31 under section 3 of this act. A special permit is not required for the
32 introduction or release within the state of a genetically engineered
33 plant or plant pest organism if the introduction or release has been
34 approved under provisions of federal law and the department has been
35 notified of the planned introduction or release. The department shall
36 be the sole issuing agency for the permits. Except for research
37 projects approved by the department, no permit for a biological control
38 agent shall be issued unless the department has determined that the

1 parasite, predator, or plant pathogen is target organism or plant
2 specific and not likely to become a pest of nontarget plants or other
3 beneficial organisms. The director may also exclude biological control
4 agents that are infested with parasites determined to be detrimental to
5 the biological control efforts of the state. The department may rely
6 upon findings of the United States department of agriculture or any
7 experts that the director may deem appropriate in making a
8 determination about the threat posed by such organisms. In addition,
9 the director may request confidential business information subject to
10 the conditions in RCW 17.24.061.

11 Plant pests, noxious weeds, or other organisms introduced into or
12 released within this state in violation of this section shall be
13 subject to detention and disposition as otherwise provided in this
14 chapter.

15 NEW SECTION. **Sec. 13.** Sections 1 through 9 of this act constitute
16 a new chapter in Title 90 RCW.

17 NEW SECTION. **Sec. 14.** If any provision of this act or its
18 application to any person or circumstance is held invalid, the
19 remainder of the act or the application of the provision to other
20 persons or circumstances is not affected.

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