
HOUSE BILL 2710

State of Washington

59th Legislature

2006 Regular Session

By Representatives Buck and B. Sullivan

Read first time 01/12/2006. Referred to Committee on Natural Resources, Ecology & Parks.

1 AN ACT Relating to clarifying the process for hydraulic permit
2 appeals; and amending RCW 77.55.021 and 77.55.301.

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

4 **Sec. 1.** RCW 77.55.021 and 2005 c 146 s 201 are each amended to
5 read as follows:

6 (1) Except as provided in RCW 77.55.031, 77.55.051, and 77.55.041,
7 in the event that any person or government agency desires to undertake
8 a hydraulic project, the person or government agency shall, before
9 commencing work thereon, secure the approval of the department in the
10 form of a permit as to the adequacy of the means proposed for the
11 protection of fish life.

12 (2) A complete written application for a permit may be submitted in
13 person or by registered mail and must contain the following:

14 (a) General plans for the overall project;

15 (b) Complete plans and specifications of the proposed construction
16 or work within the mean higher high water line in saltwater or within
17 the ordinary high water line in freshwater;

18 (c) Complete plans and specifications for the proper protection of
19 fish life; and

1 (d) Notice of compliance with any applicable requirements of the
2 state environmental policy act, unless otherwise provided for in this
3 chapter.

4 (3)(a) Protection of fish life is the only ground upon which
5 approval of a permit may be denied or conditioned. Approval of a
6 permit may not be unreasonably withheld or unreasonably conditioned.
7 Except as provided in this subsection and subsections (8), (10), and
8 (11) of this section, the department has forty-five calendar days upon
9 receipt of a complete application to grant or deny approval of a
10 permit. The forty-five day requirement is suspended if:

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

14 (ii) The site is physically inaccessible for inspection;

15 (iii) The applicant requests a delay; or

16 (iv) The department is issuing a permit for a storm water discharge
17 and is complying with the requirements of RCW 77.55.161(3)(b).

18 (b) Immediately upon determination that the forty-five day period
19 is suspended, the department shall notify the applicant in writing of
20 the reasons for the delay.

21 (c) The period of forty-five calendar days may be extended if the
22 permit is part of a multiagency permit streamlining effort and all
23 participating permitting agencies and the permit applicant agree to an
24 extended timeline longer than forty-five calendar days.

25 (4) If the department denies approval of a permit, the department
26 shall provide the applicant a written statement of the specific reasons
27 why and how the proposed project would adversely affect fish life.
28 Issuance, denial, conditioning, or modification of a permit shall be
29 appealable to (~~the department or~~) the board as specified in RCW
30 77.55.301 within thirty days of the notice of decision.

31 (5)(a) The permittee must demonstrate substantial progress on
32 construction of that portion of the project relating to the permit
33 within two years of the date of issuance.

34 (b) Approval of a permit is valid for a period of up to five years
35 from the date of issuance, except as provided in (c) of this subsection
36 and in RCW 77.55.151.

37 (c) A permit remains in effect without need for periodic renewal
38 for hydraulic projects that divert water for agricultural irrigation or

1 stock watering purposes and that involve seasonal construction or other
2 work. A permit for streambank stabilization projects to protect farm
3 and agricultural land as defined in RCW 84.34.020 remains in effect
4 without need for periodic renewal if the problem causing the need for
5 the streambank stabilization occurs on an annual or more frequent
6 basis. The permittee must notify the appropriate agency before
7 commencing the construction or other work within the area covered by
8 the permit.

9 (6) The department may, after consultation with the permittee,
10 modify a permit due to changed conditions. The modification becomes
11 effective unless appealed to ~~((the department or))~~ the board as
12 specified in RCW 77.55.301 within thirty days from the notice of the
13 proposed modification. For hydraulic projects that divert water for
14 agricultural irrigation or stock watering purposes, or when the
15 hydraulic project or other work is associated with streambank
16 stabilization to protect farm and agricultural land as defined in RCW
17 84.34.020, the burden is on the department to show that changed
18 conditions warrant the modification in order to protect fish life.

19 (7) A permittee may request modification of a permit due to changed
20 conditions. The request must be processed within forty-five calendar
21 days of receipt of the written request. A decision by the department
22 may be appealed to the board as specified in RCW 77.55.301 within
23 thirty days of the notice of the decision. For hydraulic projects that
24 divert water for agricultural irrigation or stock watering purposes, or
25 when the hydraulic project or other work is associated with streambank
26 stabilization to protect farm and agricultural land as defined in RCW
27 84.34.020, the burden is on the permittee to show that changed
28 conditions warrant the requested modification and that such a
29 modification will not impair fish life.

30 (8) The department or the county legislative authority may declare
31 and continue an emergency. The county legislative authority shall
32 immediately notify the department if it declares an emergency under
33 this subsection. The department, through its authorized
34 representatives, shall issue immediately, upon request, oral approval
35 for a stream crossing, or work to remove any obstructions, repair
36 existing structures, restore streambanks, protect fish life, or protect
37 property threatened by the stream or a change in the stream flow
38 without the necessity of obtaining a written permit prior to commencing

1 work. Conditions of the emergency oral permit must be established by
2 the department and reduced to writing within thirty days and complied
3 with as provided for in this chapter. The department may not require
4 the provisions of the state environmental policy act, chapter 43.21C
5 RCW, to be met as a condition of issuing a permit under this
6 subsection.

7 (9) All state and local agencies with authority under this chapter
8 to issue permits or other authorizations in connection with emergency
9 water withdrawals and facilities authorized under RCW 43.83B.410 shall
10 expedite the processing of such permits or authorizations in keeping
11 with the emergency nature of such requests and shall provide a decision
12 to the applicant within fifteen calendar days of the date of
13 application.

14 (10) The department or the county legislative authority may
15 determine an imminent danger exists. The county legislative authority
16 shall notify the department, in writing, if it determines that an
17 imminent danger exists. In cases of imminent danger, the department
18 shall issue an expedited written permit, upon request, for work to
19 remove any obstructions, repair existing structures, restore banks,
20 protect fish resources, or protect property. Expedited permit requests
21 require a complete written application as provided in subsection (2) of
22 this section and must be issued within fifteen calendar days of the
23 receipt of a complete written application. Approval of an expedited
24 permit is valid for up to sixty days from the date of issuance. The
25 department may not require the provisions of the state environmental
26 policy act, chapter 43.21C RCW, to be met as a condition of issuing a
27 permit under this subsection.

28 (11) The department may issue an expedited written permit in those
29 instances where normal permit processing would result in significant
30 hardship for the applicant or unacceptable damage to the environment.
31 Expedited permit requests require a complete written application as
32 provided in subsection (2) of this section and must be issued within
33 fifteen calendar days of the receipt of a complete written application.
34 Approval of an expedited permit is valid for up to sixty days from the
35 date of issuance. The department may not require the provisions of the
36 state environmental policy act, chapter 43.21C RCW, to be met as a
37 condition of issuing a permit under this subsection.

1 **Sec. 2.** RCW 77.55.301 and 2005 c 146 s 801 are each amended to
2 read as follows:

3 (1) There is created within the environmental hearings office under
4 RCW 43.21B.005 the hydraulic appeals board of the state of Washington.

5 (2) The board consists of three members: The director of the
6 department of ecology or the director's designee, the director of the
7 department of agriculture or the director's designee, and the director
8 or the director's designee of the department. A decision must be
9 agreed to by at least two members of the board to be final.

10 (3) The board may adopt rules necessary for the conduct of its
11 powers and duties or for transacting other official business.

12 (4) The board shall make findings of fact and prepare a written
13 decision in each case decided by it. The finding and decision shall be
14 effective upon being signed by two or more board members and upon being
15 filed at the board's principal office, and shall be open to public
16 inspection at all reasonable times.

17 (5) The board has exclusive jurisdiction to hear appeals arising
18 from the approval, denial, conditioning, or modification of a permit
19 issued by the department(~~(: (a) Under the authority granted in RCW~~
20 ~~77.55.021 for the diversion of water for agricultural irrigation or~~
21 ~~stock watering purposes or when associated with streambank~~
22 ~~stabilization to protect farm and agricultural land as defined in RCW~~
23 ~~84.34.020; (b) under the authority granted in RCW 77.55.241 for off-~~
24 ~~site mitigation proposals; (c) under the authority granted in RCW~~
25 ~~77.55.141; or (d) under the authority granted in RCW 77.55.181)) under
26 this chapter.~~

27 (6)(a) Any person aggrieved by the approval, denial, conditioning,
28 or modification of a permit under (~~(RCW 77.55.021)) this chapter may,~~

29 except as otherwise provided in chapter 43.21L RCW, seek review from
30 the board by filing a request for the same within thirty days of notice
31 of the approval, denial, conditioning, or modification of the permit.

32 (b) The review proceedings authorized in (a) of this subsection are
33 subject to the provisions of chapter 34.05 RCW pertaining to procedures
34 in adjudicative proceedings.

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