

SHB 2525 - S COMM AMD

By Committee on Natural Resources, Ocean & Recreation

ADOPTED 03/05/2008

1 Strike everything after the enacting clause and insert the
2 following:

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

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

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

13 (a) General plans for the overall project;

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

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

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

22 (3) As soon as possible after receipt of an application, the
23 department shall provide notice of the application to affected
24 federally recognized Indian tribes and shall accept comment regarding
25 the application provided by such tribes.

26 (4)(a) Protection of fish life is the only ground upon which
27 approval of a permit may be denied or conditioned. Approval of a
28 permit may not be unreasonably withheld or unreasonably conditioned.
29 Except as provided in this subsection and subsections ~~((+8+))~~ (9),
30 ~~((+10+))~~ (11), and ~~((+11+))~~ (13) of this section, the department has

1 forty-five calendar days upon receipt of a complete application to
2 grant or deny approval of a permit. The forty-five day requirement is
3 suspended if:

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

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

8 (iii) The applicant requests a delay; or

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

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

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

18 ~~((4))~~ (5) If the department denies approval of a permit, the
19 department shall provide the applicant a written statement of the
20 specific reasons why and how the proposed project would adversely
21 affect fish life. Issuance, denial, conditioning, or modification of
22 a permit shall be appealable to the department or the board as
23 specified in RCW 77.55.301 within thirty days of the notice of
24 decision.

25 ~~((5))~~ (6)(a) The permittee must demonstrate substantial progress
26 on construction of that portion of the project relating to the permit
27 within two years of the date of issuance.

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

31 (c) A permit remains in effect without need for periodic renewal
32 for hydraulic projects that divert water for agricultural irrigation or
33 stock watering purposes and that involve seasonal construction or other
34 work. A permit for streambank stabilization projects to protect farm
35 and agricultural land as defined in RCW 84.34.020 remains in effect
36 without need for periodic renewal if the problem causing the need for
37 the streambank stabilization occurs on an annual or more frequent

1 basis. The permittee must notify the appropriate agency before
2 commencing the construction or other work within the area covered by
3 the permit.

4 ~~((+6+))~~ (7) The department may, after consultation with the
5 permittee, modify a permit due to changed conditions. The modification
6 becomes effective unless appealed to the department or the board as
7 specified in RCW 77.55.301 within thirty days from the notice of the
8 proposed modification. For hydraulic projects that divert water for
9 agricultural irrigation or stock watering purposes, or when the
10 hydraulic project or other work is associated with streambank
11 stabilization to protect farm and agricultural land as defined in RCW
12 84.34.020, the burden is on the department to show that changed
13 conditions warrant the modification in order to protect fish life.

14 ~~((+7+))~~ (8) A permittee may request modification of a permit due to
15 changed conditions. The request must be processed within forty-five
16 calendar days of receipt of the written request. A decision by the
17 department may be appealed to the board within thirty days of the
18 notice of the decision. For hydraulic projects that divert water for
19 agricultural irrigation or stock watering purposes, or when the
20 hydraulic project or other work is associated with streambank
21 stabilization to protect farm and agricultural land as defined in RCW
22 84.34.020, the burden is on the permittee to show that changed
23 conditions warrant the requested modification and that such a
24 modification will not impair fish life.

25 ~~((+8+))~~ (9)(a) The department ~~((or))~~, the county legislative
26 authority, or the governor may declare and continue an emergency. If
27 the county legislative authority declares an emergency under this
28 subsection, it shall immediately notify the department ~~((if it declares~~
29 ~~an emergency under this subsection))~~. A declared state of emergency by
30 the governor under RCW 43.06.010 shall constitute a declaration under
31 this subsection.

32 (b) The department, through its authorized representatives, shall
33 issue immediately, upon request, oral approval for a stream crossing,
34 or work to remove any obstructions, repair existing structures, restore
35 streambanks, protect fish life, or protect property threatened by the
36 stream or a change in the stream flow without the necessity of
37 obtaining a written permit prior to commencing work. Conditions of the

1 emergency oral permit must be established by the department and reduced
2 to writing within thirty days and complied with as provided for in this
3 chapter.

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

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

14 ~~((10))~~ (11) The department or the county legislative authority
15 may determine an imminent danger exists. The county legislative
16 authority shall notify the department, in writing, if it determines
17 that an imminent danger exists. In cases of imminent danger, the
18 department shall issue an expedited written permit, upon request, for
19 work to remove any obstructions, repair existing structures, restore
20 banks, protect fish resources, or protect property. Expedited permit
21 requests require a complete written application as provided in
22 subsection (2) of this section and must be issued within fifteen
23 calendar days of the receipt of a complete written application.
24 Approval of an expedited permit is valid for up to sixty days from the
25 date of issuance. The department may not require the provisions of the
26 state environmental policy act, chapter 43.21C RCW, to be met as a
27 condition of issuing a permit under this subsection.

28 ~~((11))~~ (12)(a) For any property, except for property located on
29 a marine shoreline, that has experienced at least two consecutive years
30 of flooding or erosion that has damaged or has threatened to damage a
31 major structure, water supply system, septic system, or access to any
32 road or highway, the county legislative authority may determine that a
33 chronic danger exists. The county legislative authority shall notify
34 the department, in writing, when it determines that a chronic danger
35 exists. In cases of chronic danger, the department may issue a permit,
36 upon request, for work necessary to abate the chronic danger by
37 removing any obstructions, repairing existing structures, restoring

1 banks, restoring road or highway access, protecting fish resources, or
2 protecting property. Permit requests must be made and processed in
3 accordance with subsections (2) and (4) of this section.

4 (b) Any projects proposed to address a chronic danger identified
5 under (a) of this subsection that satisfies the project description
6 identified in RCW 77.55.181(1)(a)(ii) are not subject to the provisions
7 of the state environmental policy act, chapter 43.21C RCW. However,
8 the project is subject to the review process established in RCW
9 77.55.181(3) as if it were a fish habitat improvement project.

10 (13) The department may issue an expedited written permit in those
11 instances where normal permit processing would result in significant
12 hardship for the applicant or unacceptable damage to the environment.
13 Expedited permit requests require a complete written application as
14 provided in subsection (2) of this section and must be issued within
15 fifteen calendar days of the receipt of a complete written application.
16 Approval of an expedited permit is valid for up to sixty days from the
17 date of issuance. The department may not require the provisions of the
18 state environmental policy act, chapter 43.21C RCW, to be met as a
19 condition of issuing a permit under this subsection."

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20 On page 1, line 1 of the title, after "damage;" strike the
21 remainder of the title and insert "and amending RCW 77.55.021."

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