
HOUSE BILL 1482

State of Washington

61st Legislature

2009 Regular Session

By Representatives McCoy, Chandler, Blake, Van De Wege, Kretz, Upthegrove, and Nelson; by request of Department of Ecology

Read first time 01/21/09. Referred to Committee on Agriculture & Natural Resources.

1 AN ACT Relating to reclaimed water permitting; amending RCW
2 90.46.010, 90.46.015, 90.46.040, 90.46.080, 90.46.120, 90.48.465,
3 43.21B.110, 43.21B.300, and 43.21B.310; adding new sections to chapter
4 90.46 RCW; creating new sections; repealing RCW 90.46.060; and
5 prescribing penalties.

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

7 **Sec. 1.** RCW 90.46.010 and 2006 c 279 s 4 are each amended to read
8 as follows:

9 The definitions in this section apply throughout this chapter
10 unless the context clearly requires otherwise.

11 (1) "Agricultural industrial process water" means water that has
12 been used for the purpose of agricultural processing and has been
13 adequately and reliably treated, so that as a result of that treatment,
14 it is suitable for other agricultural water use.

15 (2) "Agricultural processing" means the processing of crops or milk
16 to produce a product primarily for wholesale or retail sale for human
17 or animal consumption, including but not limited to potato, fruit,
18 vegetable, and grain processing.

1 (3) "Agricultural water use" means the use of water for irrigation
2 and other uses related to the production of agricultural products.
3 These uses include, but are not limited to, construction, operation,
4 and maintenance of agricultural facilities and livestock operations at
5 farms, ranches, dairies, and nurseries. Examples of these uses
6 include, but are not limited to, dust control, temperature control, and
7 fire control.

8 ~~((("Beneficial use" means the use of reclaimed water, that has
9 been transported from the point of production to the point of use
10 without an intervening discharge to the waters of the state, for a
11 beneficial purpose.~~

12 ~~(+)) "Constructed beneficial use wetlands" means those wetlands
13 intentionally constructed on nonwetland sites to produce or ((replace))
14 create natural wetland functions and values. ((Constructed beneficial
15 use wetlands are considered "waters of the state."~~

16 ~~(+)) (5) "Constructed treatment wetlands" means ((those wetlands))
17 wetland-like impoundments intentionally constructed on nonwetland sites
18 and managed for the primary purpose of ((polishing)) further treatment
19 or retention of reclaimed water ((or aesthetics)) as distinct from
20 creating natural wetland functions and values. ((Constructed treatment
21 wetlands are considered part of the collection and treatment system and
22 are not considered "waters of the state."~~

23 ~~(+)) (6) "Direct groundwater recharge" means the controlled
24 subsurface addition of water directly ((to the groundwater basin that
25 results in the replenishment of)) into groundwater for the purpose of
26 replenishing groundwater.~~

27 ~~((+)) (7) "Greywater or gray water" means ((wastewater having the
28 consistency and strength of residential)) domestic type ((wastewater.
29 Greywater includes wastewater)) flows from bathtubs, showers, bathroom
30 sinks, washing machines, dishwashers, and kitchen or utility sinks~~((
31 showers, and laundry fixtures, but))~~. Gray water does not include flow
32 from a toilet or urinal ((waters)).~~

33 ~~((+)) "Groundwater recharge") (8) "State drinking water contaminant
34 criteria" means the contaminant criteria found in the drinking water
35 quality standards adopted by the state board of health pursuant to
36 chapter 43.20 RCW and the department of health pursuant to chapter
37 70.119A RCW.~~

1 ~~((+10+))~~ (9) "Industrial reuse water" means water that has been
2 used for the purpose of industrial processing and has been adequately
3 and reliably treated so that, as a result of that treatment, it is
4 suitable for other uses.

5 ~~((+11+))~~ (10) "Land application" means use of reclaimed water as
6 permitted under this chapter for the purpose of irrigation or watering
7 of landscape ~~((enhancement for residential, business, and governmental~~
8 ~~purposes))~~ vegetation.

9 ~~((+12+))~~ (11) "Person" means any state, individual, public or
10 private corporation, political subdivision, governmental subdivision,
11 governmental agency, municipality, copartnership, association, firm,
12 trust estate, or any other legal entity whatever.

13 ~~((+13+))~~ (12) "Planned groundwater recharge project" means any
14 reclaimed water project designed for the purpose of recharging
15 groundwater ~~((, via direct recharge or surface percolation))~~.

16 ~~((+14+))~~ (13) "Reclaimed water" means ~~((effluent))~~ water derived in
17 any part from ~~((sewage from a))~~ wastewater ~~((treatment system))~~ with a
18 domestic wastewater component that has been adequately and reliably
19 treated, so that ~~((as a result of that treatment, it is suitable for a~~
20 ~~beneficial use or a controlled use that would not otherwise occur and~~
21 ~~is no longer considered wastewater.~~

22 ~~(15) "Reclamation criteria" means the criteria set forth in the~~
23 ~~water reclamation and reuse interim standards and subsequent revisions~~
24 ~~adopted by the department of ecology and the department of health))~~ it
25 can be used for beneficial purposes. Reclaimed water is not considered
26 a wastewater.

27 (14) "Wastewater" means water-carried wastes from residences,
28 buildings, industrial and commercial establishments, or other places,
29 together with such groundwater infiltration and inflow as may be
30 present.

31 ~~((+16) "Sewage"))~~ (15) "Domestic wastewater" means ((water-carried
32 human wastes from residences, buildings, industrial and commercial
33 establishments, or other places, together with such groundwater
34 infiltration, surface waters, or industrial wastewater as may be
35 present)) wastewater from greywater, toilet, or urinal sources.

36 ~~((+17+))~~ (16) "Streamflow or surface water augmentation" means the
37 ~~((discharge))~~ intentional use of reclaimed water ~~((to))~~ for rivers and

1 streams of the state or other surface water bodies, (~~but not~~
2 ~~wetlands~~) for the purpose of increasing volumes.

3 ~~((+18+))~~ (17) "Surface percolation" means the controlled
4 application of water to the ground surface or to unsaturated soil for
5 the purpose of replenishing groundwater.

6 ~~((+19+))~~ (18) "User" means any person who uses reclaimed water.

7 ~~((+20) "Wastewater" means water and wastes discharged from homes,~~
8 ~~businesses, and industry to the sewer system.~~

9 ~~+21+))~~ (19) "Wetland or wetlands" means areas that are inundated or
10 saturated by surface water or groundwater at a frequency and duration
11 sufficient to support, and that under normal circumstances do support,
12 a prevalence of vegetation typically adapted to life in saturated soil
13 conditions. Wetlands generally include swamps, marshes, bogs, and
14 similar areas. Wetlands regulated under this chapter shall be
15 delineated in accordance with the manual adopted by the department of
16 ecology pursuant to RCW 90.58.380.

17 (20) "Lead agency" means either the department of health or the
18 department of ecology that has been designated by rule as the agency
19 that will coordinate, review, issue, and enforce a reclaimed water
20 permit issued under this chapter.

21 (21) "Nonlead agency" means either the department of health or the
22 department of ecology, whichever is not the lead agency for purposes of
23 this chapter.

24 **Sec. 2.** RCW 90.46.015 and 2006 c 279 s 1 are each amended to read
25 as follows:

26 (1) The department of ecology shall, in coordination with the
27 department of health, adopt rules for reclaimed water use consistent
28 with this chapter. The rules must address all aspects of reclaimed
29 water use, including commercial and industrial uses, land applications,
30 direct groundwater recharge, wetland discharge, surface percolation,
31 constructed wetlands, and streamflow or surface water augmentation.
32 The department of health shall, in coordination with the department of
33 ecology, adopt rules for greywater reuse. The rules must also
34 designate whether the department of ecology or the department of health
35 will be the lead (~~permitting or regulatory~~) agency responsible for a
36 particular aspect of reclaimed water use. In developing the rules, the

1 departments of health and ecology shall amend or rescind any existing
2 rules on reclaimed water in conflict with the new rules.

3 (2) All rules required to be adopted pursuant to this section must
4 be completed no later than December 31, 2010, although the department
5 of ecology is encouraged to adopt the final rules as soon as possible.

6 (3) The department of ecology must consult with the advisory
7 committee created under RCW 90.46.050 in all aspects of rule
8 development required under this section.

9 **Sec. 3.** RCW 90.46.040 and 2006 c 279 s 6 are each amended to read
10 as follows:

11 (1)((+a)) The department of ecology shall, in coordination with
12 the department of health, adopt a single set of standards, procedures,
13 and guidelines, on or before August 1, 1993, for land applications of
14 reclaimed water.

15 ((+b)) (2) Standards adopted under this section are superseded by
16 any rules adopted by the department of ecology pursuant to RCW
17 90.46.015 as they relate to the land application of reclaimed water.

18 ((-2) A permit is required for any land application of reclaimed
19 water. The department of ecology may issue a reclaimed water permit
20 under chapter 90.48 RCW to the generator of reclaimed water who may
21 then distribute the water, subject to provisions in the permit
22 governing the location, rate, water quality, and purpose of use. The
23 department of ecology shall not issue more than one permit for any
24 individual land application of reclaimed water to a single generator.

25 (-3) In cases where the department of ecology determines, in land
26 applications of reclaimed water, that a significant risk to the public
27 health exists, the department shall refer the application to the
28 department of health for review and consultation and the department of
29 health may require fees appropriate for review and consultation from
30 the applicant pursuant to RCW 43.70.250.

31 (-4) A permit under this section for use of reclaimed water may be
32 issued only to:

33 (-a) A municipal, quasi-municipal, or other governmental entity;

34 (-b) A private utility as defined under RCW 36.94.010; or

35 (-c) The holder of a waste discharge permit issued under chapter
36 90.48 RCW.

1 ~~(5) The authority and duties created in this section are in~~
2 ~~addition to any authority and duties already provided in law. Nothing~~
3 ~~in this section limits the powers of the state or any political~~
4 ~~subdivision to exercise such authority.~~

5 ~~(6) Before deciding whether to issue a permit under this section to~~
6 ~~a private utility, the department of ecology may require information~~
7 ~~that is reasonable and necessary to determine whether the private~~
8 ~~utility has the financial and other resources to ensure the~~
9 ~~reliability, continuity, and supervision of the reclaimed water~~
10 ~~facility.))~~

11 **Sec. 4.** RCW 90.46.080 and 2006 c 279 s 9 are each amended to read
12 as follows:

13 (1) Except as otherwise provided in this section, reclaimed water
14 may be beneficially used for surface percolation provided the reclaimed
15 water meets the ~~((groundwater recharge))~~ state drinking water
16 contaminant criteria as measured in groundwater beneath or down
17 gradient of the recharge project site, and has been incorporated into
18 a sewer or water comprehensive plan, as applicable, adopted by the
19 applicable local government and approved by the department of health or
20 department of ecology as applicable.

21 (2) If the state ~~((groundwater recharge))~~ drinking water
22 contaminant criteria ~~((as defined by RCW 90.46.010))~~ do not contain a
23 standard for a constituent or contaminant, the department of ecology
24 shall establish a discharge limit consistent with the goals of this
25 chapter, except as otherwise provided in this section.

26 (3) Except as otherwise provided in this section, reclaimed water
27 that does not meet the ~~((groundwater recharge))~~ state drinking water
28 contaminant criteria may be beneficially used for surface percolation
29 where the department of ecology, in consultation with the department of
30 health, has specifically authorized such use at such lower standard.

31 (4) The provisions of this section are superseded by any rules
32 adopted by the department of ecology pursuant to RCW 90.46.015 as they
33 relate to surface percolation.

34 **Sec. 5.** RCW 90.46.120 and 2007 c 445 s 3 are each amended to read
35 as follows:

36 (1) The owner of a wastewater treatment facility that is reclaiming

1 water with a permit issued under this chapter has the exclusive right
2 to any reclaimed water generated by the wastewater treatment facility.
3 Use, distribution, storage, and the recovery from (~~(aquifer)~~) storage
4 of reclaimed water (~~((by the owner of the wastewater treatment~~
5 ~~facility))~~ permitted under this chapter is exempt from the permit
6 requirements of RCW 90.03.250 and 90.44.060, provided that a permit for
7 recovery of reclaimed water from aquifer storage (~~(and recovery)~~) shall
8 be reviewed under the standards established under RCW 90.03.370(2) for
9 aquifer storage and recovery projects. Revenues derived from the
10 reclaimed water facility shall be used only to offset the cost of
11 operation of the wastewater utility fund or other applicable source of
12 systemwide funding.

13 (2) If the proposed use (~~(or uses)~~) of reclaimed water (~~(are~~
14 ~~intended)~~) is to augment or replace potable water supplies or to create
15 the potential for the development of an additional new potable water
16 (~~((supplies, such use or uses shall be considered in the development of~~
17 ~~any regional water supply plan or plans addressing potable water supply~~
18 ~~service by multiple water purveyors. Such water supply plans include~~
19 ~~plans developed by multiple jurisdictions under the relevant provisions~~
20 ~~of chapters 43.20, 70.116, 90.44, and 90.82 RCW, and the water supply~~
21 ~~provisions under the utility element of chapter 36.70A RCW. The method~~
22 ~~by which such plans are approved shall remain unchanged. The owner of~~
23 ~~a wastewater treatment facility that proposes to reclaim water shall be~~
24 ~~included as a participant in the development of such regional water~~
25 ~~supply plan or plans))~~ supply, then regional water supply plans, or any
26 other potable water supply plans prepared by multiple water purveyors,
27 must consider the proposed use of the reclaimed water as they are
28 updated.

29 (a) Regional water supply plans include those adopted under state
30 board of health laws (chapter 43.20 RCW), the public water system
31 coordination act of 1977 (chapter 70.116 RCW), groundwater protection
32 laws (chapter 90.44 RCW), and the watershed planning act (chapter 90.82
33 RCW).

34 (b) The requirement to consider the use of reclaimed water does not
35 change the plan approval process established under these statutes.

36 (c) When regional water supply plans are being developed, the
37 owners of wastewater treatment facilities that produce or propose to

1 produce reclaimed water for use within the planning area must be
2 included in the planning process.

3 ~~(3) ((Where opportunities for the use of reclaimed water exist~~
4 ~~within the period of time addressed by a water system plan, a water~~
5 ~~supply plan, or a coordinated water system plan developed))~~ When
6 reclaimed water is available or is proposed for use under a water
7 supply or wastewater plan developed under chapter~~((s))~~ 43.20, 70.116,
8 90.44, ~~((and))~~ 90.48, or 90.82 RCW~~((, and the water supply provisions~~
9 ~~under the utility element of chapter 36.70A RCW,))~~ these plans must be
10 ~~((developed and))~~ coordinated to ensure that opportunities for
11 reclaimed water are evaluated. The requirements of this subsection (3)
12 do not apply to water system plans developed under chapter 43.20 RCW
13 for utilities serving less than one thousand service connections.

14 (4) The provisions of any plan for reclaimed water, developed under
15 the authorities in subsections (2) and (3) of this section, should be
16 included by a city, town, or county in reviewing provisions for water
17 supplies in a proposed short plat, short subdivision, or subdivision
18 under chapter 58.17 RCW, where reclaimed water supplies may be proposed
19 for nonpotable purposes in the short plat, short subdivision, or
20 subdivision.

21 **Sec. 6.** RCW 90.48.465 and 2002 c 361 s 2 are each amended to read
22 as follows:

23 (1) The department shall establish annual fees to collect expenses
24 for issuing and administering each class of permits under RCW
25 90.48.160, 90.48.162, and 90.48.260. An initial fee schedule shall be
26 established by rule and be adjusted no more often than once every two
27 years. This fee schedule shall apply to all permits, regardless of
28 date of issuance, and fees shall be assessed prospectively. All fees
29 charged shall be based on factors relating to the complexity of permit
30 issuance and compliance and may be based on pollutant loading and
31 toxicity and be designed to encourage recycling and the reduction of
32 the quantity of pollutants. Fees shall be established in amounts to
33 fully recover and not to exceed expenses incurred by the department in
34 processing permit applications and modifications, monitoring and
35 evaluating compliance with permits, conducting inspections, securing
36 laboratory analysis of samples taken during inspections, reviewing
37 plans and documents directly related to operations of permittees,

1 overseeing performance of delegated pretreatment programs, and
2 supporting the overhead expenses that are directly related to these
3 activities.

4 (2) The annual fee paid by a municipality, as defined in 33 U.S.C.
5 Sec. 1362, for all domestic wastewater facility permits issued under
6 RCW 90.48.162 and 90.48.260 shall not exceed the total of a maximum of
7 fifteen cents per month per residence or residential equivalent
8 contributing to the municipality's wastewater system.

9 (3) The department shall ensure that indirect dischargers do not
10 pay twice for the administrative expense of a permit. Accordingly,
11 administrative expenses for permits issued by a municipality under RCW
12 90.48.165 are not recoverable by the department.

13 (4) In establishing fees, the department shall consider the
14 economic impact of fees on small dischargers and the economic impact of
15 fees on public entities required to obtain permits for storm water
16 runoff and shall provide appropriate adjustments.

17 (5) The fee for an individual permit issued for a dairy farm as
18 defined under chapter 90.64 RCW shall be fifty cents per animal unit up
19 to one thousand two hundred fourteen dollars for fiscal year 1999. The
20 fee for a general permit issued for a dairy farm as defined under
21 chapter 90.64 RCW shall be fifty cents per animal unit up to eight
22 hundred fifty dollars for fiscal year 1999. Thereafter, these fees may
23 rise in accordance with the fiscal growth factor as provided in chapter
24 43.135 RCW.

25 (6) The fee for a general permit or an individual permit developed
26 solely as a result of the federal court of appeals decision in
27 *Headwaters, Inc. v. Talent Irrigation District*, 243 F.3rd 526 (9th Cir.
28 2001) is limited, until June 30, 2003, to a maximum of three hundred
29 dollars. Such a permit is required only, and as long as, the
30 interpretation of this court decision is not overturned or modified by
31 future court rulings, administrative rule making, or clarification of
32 scope by the United States environmental protection agency or
33 legislative action. In such a case the department shall take
34 appropriate action to rescind or modify these permits.

35 (7) All fees collected under this section shall be deposited in the
36 water quality permit account hereby created in the state treasury.
37 Moneys in the account may be appropriated only for purposes of

1 administering permits under section 9 of this act, RCW 90.48.160,
2 90.48.162, and 90.48.260.

3 (8) The department shall present a biennial progress report on the
4 use of moneys from the account to the legislature. The report will be
5 due December 31st of odd-numbered years. The report shall consist of
6 information on fees collected, actual expenses incurred, and
7 anticipated expenses for the current and following fiscal years.

8 NEW SECTION. Sec. 7. LEAD AGENCY DUTIES. (1) The department of
9 ecology and the department of health shall have authority to carry out
10 all the provisions of this chapter including, but not limited to,
11 permitting and enforcement. Only the department of ecology or the
12 department of health may act as a lead agency for purposes of this
13 chapter and will be established as such by rule. Enforcement of a
14 permit issued under this chapter shall be at the sole discretion of the
15 lead agency that issued the permit.

16 (2) All permit applications shall be referred to the nonlead agency
17 for review and consultation. The nonlead agency may choose to limit
18 the scope of its review.

19 (3) The authority and duties created in this section are in
20 addition to any authority and duties already provided in law. Nothing
21 in this section limits the powers of the state or any political
22 subdivision to exercise such authority.

23 NEW SECTION. Sec. 8. VIOLATIONS--INJUNCTIONS AND LEGAL
24 PROCEEDINGS AUTHORIZED. The lead agency, with the assistance of the
25 attorney general, is authorized to bring any appropriate action at law
26 or in equity, including action for injunctive relief, as may be
27 necessary to carry out the provisions of this chapter. The lead agency
28 may bring the action in the superior court of the county in which the
29 violation occurred or in the superior court of Thurston county. The
30 court may award reasonable attorneys' fees for the cost of the attorney
31 general's office in representing the lead agency.

32 NEW SECTION. Sec. 9. OPERATING PERMIT REQUIRED. (1) Any person
33 proposing to generate any type of water for a use regulated under this
34 chapter shall obtain a permit from the lead agency prior to

1 distribution or use of that water. The permit must include provisions
2 that protect human health and the environment. At a minimum, the
3 permit must:

- 4 (a) Assure adequate and reliable treatment; and
- 5 (b) Govern the water quality, location, rate, and purpose of use.

6 (2) A permit under this chapter may be issued only to:
7 (a) A municipal, quasi-municipal, or other governmental entity;
8 (b) A private utility as defined in RCW 36.94.010;
9 (c) The holder of a waste disposal permit issued under chapter
10 90.48 RCW; or

11 (d) The owner of an agricultural processing facility that is
12 generating agricultural industrial process water for agricultural use,
13 or the owner of an industrial facility that is generating industrial
14 process water for reuse.

15 (3) Before deciding whether to issue a permit under this section to
16 a private utility, the lead agency may require information that is
17 reasonable and necessary to determine whether the private utility has
18 the financial and other resources to ensure the reliability,
19 continuity, and supervision of the reclaimed water facility.

20 (4) Permits shall be issued for a fixed term specified by the rules
21 adopted under RCW 90.46.015. A permittee shall apply for permit
22 renewal prior to the end of the term. The rules adopted under RCW
23 90.46.015 shall specify the process of renewal, modification, change of
24 ownership, suspension, and termination.

25 (5) The lead agency may deny an application for a permit or modify,
26 suspend, or revoke a permit for good cause, including but not limited
27 to, any case in which it finds that the permit was obtained by fraud or
28 misrepresentation, or there is or has been a failure, refusal, or
29 inability to comply with the requirements of this chapter or the rules
30 adopted under this chapter.

31 (6) The lead agency shall provide for adequate public notice and
32 opportunity for review and comment on all initial permit applications
33 and renewal applications. Methods for providing notice may include
34 electronic mail, posting on the lead agency's internet site,
35 publication in a local newspaper, press releases, mailings, or other
36 means of notification the lead agency determines appropriate. The lead
37 agency shall also publicize notice of final permitting decisions.

1 (7) Any person aggrieved by a permitting decision has the right to
2 an adjudicative proceeding. An adjudicative proceeding conducted under
3 this subsection is governed by chapter 34.05 RCW. For any permit
4 decision for which the department of ecology is the lead agency under
5 this chapter, any appeal shall be in accordance with chapter 43.21B
6 RCW. For any permit decision for which department of health is the
7 lead agency under this chapter, any application for an adjudicative
8 proceeding must be in writing, state the basis for contesting the
9 action, include a copy of the decision, be served on and received by
10 the department of health within twenty-eight days of receipt of notice
11 of the final decision, and be served in a manner that shows proof of
12 receipt.

13 NEW SECTION. **Sec. 10.** AUTHORITY TO ENTER PREMISES--SEARCH
14 WARRANTS. (1)(a) Except as otherwise provided in (b) of this
15 subsection, the lead agency or its designee shall have the right to
16 enter and inspect any property related to the purpose of the permit,
17 public or private, at reasonable times with prior notification in order
18 to determine compliance with laws and rules administered by the lead
19 agency. During such inspections, the lead agency shall have free and
20 unimpeded access to all data, facilities, and property involved in the
21 generation, distribution, and use of reclaimed water.

22 (b) The lead agency or its designee need not give prior
23 notification to enter property under (a) of this subsection if the
24 purpose of the entry is to ensure compliance by the permittee with a
25 prior order of the lead agency or if the lead agency or its designee
26 has reasonable cause to believe there is a violation of the law that
27 poses a serious threat to public health and safety or the environment.

28 (2) The lead agency or its designee may apply for an administrative
29 search warrant to a court of competent jurisdiction and an
30 administrative search warrant may issue where:

31 (a) The lead agency has attempted an inspection under this chapter
32 and access has been actually or constructively denied; or

33 (b) There is reasonable cause to believe that a violation of this
34 chapter or rules adopted under this chapter is occurring or has
35 occurred.

1 NEW SECTION. **Sec. 11.** PLANS, REPORTS, AND PROPOSED METHODS OF
2 OPERATION AND MAINTENANCE TO BE SUBMITTED TO DEPARTMENTS. All required
3 feasibility studies, planning documents, engineering reports, and plans
4 and specifications for the construction of new reclaimed water,
5 agricultural industrial process water, and industrial reuse water
6 facilities, including generation, distribution, and use facilities, or
7 for improvements or extensions to existing facilities, and the proposed
8 method of future operation and maintenance of said facility or
9 facilities, shall be submitted to and be approved by the lead agency,
10 before construction thereof may begin. No approval shall be given
11 until the lead agency is satisfied that the plans, reports, and
12 specifications and the methods of operation and maintenance submitted
13 are adequate to protect the quality of the water for the intended use
14 as provided for in this chapter and are adequate to protect public
15 health and safety as necessary.

16 NEW SECTION. **Sec. 12.** NOTICE OF DETERMINATION THAT VIOLATION HAS
17 OR WILL OCCUR--REPORT OF COMPLIANCE WITH DETERMINATION--ORDER OR
18 DIRECTIVE TO BE ISSUED--NOTICE. (1) When, in the opinion of the lead
19 agency, a person violates or creates a substantial potential to violate
20 this chapter, the lead agency shall notify the person of its
21 determination by registered mail. The determination shall not
22 constitute an appealable order or directive. Within thirty days from
23 the receipt of notice of such determination, the person shall file with
24 the lead agency a full report stating what steps have been and are
25 being taken to comply with the determination of the lead agency. After
26 the full report is filed or after the thirty days have elapsed, the
27 lead agency may issue the order or directive as it deems appropriate
28 under the circumstances, shall notify the person by registered mail,
29 and shall inform the person of the process for requesting an
30 adjudicative hearing.

31 (2) When it appears to the lead agency that water quality
32 conditions or other conditions exist which require immediate action to
33 protect human health and safety or the environment, the lead agency may
34 issue a written order to the person or persons responsible without
35 first issuing a notice of determination pursuant to subsection (1) of
36 this section. An order or directive issued pursuant to this subsection

1 shall be served by registered mail or personally upon any person to
2 whom it is directed, and shall inform the person or persons responsible
3 of the process for requesting an adjudicative hearing.

4 NEW SECTION. **Sec. 13.** PENALTY. Any person found guilty of
5 willfully violating any of the provisions of this chapter, or any final
6 written orders or directive of the lead agency or a court in pursuance
7 thereof, is guilty of a gross misdemeanor, and upon conviction thereof
8 shall be punished by a fine of up to ten thousand dollars and costs of
9 prosecution, or by imprisonment in the county jail for not more than
10 one year, or both, in the discretion of the court. Each day upon which
11 a willful violation of the provisions of this chapter occurs may be
12 deemed a separate and additional violation.

13 NEW SECTION. **Sec. 14.** VIOLATIONS--CIVIL PENALTY--PROCEDURE. (1)
14 Except as provided in RCW 43.05.060 through 43.05.080, 43.05.100,
15 43.05.110, and 43.05.150, any person who:

16 (a) Generates any water for a use regulated under this chapter and
17 distributes or uses that water without a permit;

18 (b) Violates the terms or conditions of a permit issued under this
19 chapter; or

20 (c) Violates rules or orders adopted or issued pursuant to this
21 chapter,

22 shall incur, in addition to any other penalty as provided by law, a
23 penalty in an amount of up to ten thousand dollars per day for every
24 violation. Each violation shall be a separate and distinct offense,
25 and in case of a continuing violation, every day's continuance shall be
26 a separate and distinct violation. Every act of commission or omission
27 which procures, aids, or abets in the violation shall be considered a
28 violation under the provisions of this section and subject to the
29 penalty herein provided for. The penalty amount shall be set in
30 consideration of the previous history of the violator and the severity
31 of the violation's impact on public health, the environment, or both,
32 in addition to other relevant factors.

33 (2) A penalty imposed by a final administrative order is due upon
34 service of the final administrative order. A person who fails to pay
35 a penalty assessed by a final administrative order within thirty days
36 of service of the final administrative order shall pay, in addition to

1 the amount of the penalty, interest at the rate of one percent of the
2 unpaid balance of the assessed penalty for each month or part of a
3 month that the penalty remains unpaid, commencing within the month in
4 which the notice of penalty was served, and reasonable attorneys' fees
5 as are incurred if civil enforcement of the final administrative order
6 is required to collect penalty.

7 (3) A person who institutes proceedings for judicial review of a
8 final administrative order assessing a civil penalty under this chapter
9 shall place the full amount of the penalty in an interest bearing
10 account in the registry of the reviewing court. At the conclusion of
11 the proceeding the court shall, as appropriate, enter a judgment on
12 behalf of the lead agency and order that the judgment be satisfied to
13 the extent possible from moneys paid into the registry of the court or
14 shall enter a judgment in favor of the person appealing the penalty
15 assessment and order return of the moneys paid into the registry of the
16 court together with accrued interest to the person appealing. The
17 judgment may award reasonable attorneys' fees for the cost of the
18 attorney general's office in representing the lead agency.

19 (4) If no appeal is taken from a final administrative order
20 assessing a civil penalty under this chapter, the lead agency may file
21 a certified copy of the final administrative order with the clerk of
22 the superior court in which the person resides, or in Thurston county,
23 and the clerk shall enter judgment in the name of the lead agency and
24 in the amount of the penalty assessed in the final administrative
25 order.

26 (5) When the penalty herein provided for is imposed by the
27 department of ecology, it shall be imposed pursuant to the procedures
28 set forth in RCW 43.21B.300. All penalties imposed by the department
29 of ecology pursuant to RCW 43.21B.300 shall be deposited into the state
30 treasury and credited to the general fund.

31 (6) When the penalty is imposed by the department of health, it
32 shall be imposed pursuant to the procedures set forth in RCW 43.70.095.
33 All receipts from penalties shall be deposited into the health
34 reclaimed water account. The department of health shall use revenue
35 derived from penalties only to provide training and technical
36 assistance to reclaimed water system owners and operators.

1 NEW SECTION. **Sec. 15.** APPLICATION OF ADMINISTRATIVE PROCEDURE LAW
2 TO RULE MAKING AND ADJUDICATIVE PROCEEDINGS. The provisions of chapter
3 34.05 RCW, the administrative procedure act, apply to all rule making
4 and adjudicative proceedings authorized by or arising under the
5 provisions of this chapter.

6 **Sec. 16.** RCW 43.21B.110 and 2003 c 393 s 19 are each amended to
7 read as follows:

8 (1) The hearings board shall only have jurisdiction to hear and
9 decide appeals from the following decisions of the department, the
10 director, local conservation districts, and the air pollution control
11 boards or authorities as established pursuant to chapter 70.94 RCW, or
12 local health departments:

13 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,
14 70.105.080, 70.107.050, 88.46.090, 90.03.600, section 14 of this act,
15 90.48.144, 90.56.310, and 90.56.330.

16 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
17 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,
18 90.14.130, section 12 of this act, 90.48.120, and 90.56.330.

19 (c) Except as provided in RCW 90.03.210(2), the issuance,
20 modification, or termination of any permit, certificate, or license by
21 the department or any air authority in the exercise of its
22 jurisdiction, including the issuance or termination of a waste disposal
23 permit, the denial of an application for a waste disposal permit, the
24 modification of the conditions or the terms of a waste disposal permit,
25 or a decision to approve or deny an application for a solid waste
26 permit exemption under RCW 70.95.300.

27 (d) Decisions of local health departments regarding the grant or
28 denial of solid waste permits pursuant to chapter 70.95 RCW.

29 (e) Decisions of local health departments regarding the issuance
30 and enforcement of permits to use or dispose of biosolids under RCW
31 70.95J.080.

32 (f) Decisions of the department regarding waste-derived fertilizer
33 or micronutrient fertilizer under RCW 15.54.820, and decisions of the
34 department regarding waste-derived soil amendments under RCW 70.95.205.

35 (g) Decisions of local conservation districts related to the denial
36 of approval or denial of certification of a dairy nutrient management
37 plan; conditions contained in a plan; application of any dairy nutrient

1 management practices, standards, methods, and technologies to a
2 particular dairy farm; and failure to adhere to the plan review and
3 approval timelines in RCW 90.64.026.

4 (h) Any other decision by the department or an air authority which
5 pursuant to law must be decided as an adjudicative proceeding under
6 chapter 34.05 RCW.

7 (2) The following hearings shall not be conducted by the hearings
8 board:

9 (a) Hearings required by law to be conducted by the shorelines
10 hearings board pursuant to chapter 90.58 RCW.

11 (b) Hearings conducted by the department pursuant to RCW 70.94.332,
12 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

13 (c) Proceedings conducted by the department, or the department's
14 designee, under RCW 90.03.160 through 90.03.210 or 90.44.220.

15 (d) Hearings conducted by the department to adopt, modify, or
16 repeal rules.

17 (e) Appeals of decisions by the department as provided in chapter
18 43.21L RCW.

19 (3) Review of rules and regulations adopted by the hearings board
20 shall be subject to review in accordance with the provisions of the
21 Administrative Procedure Act, chapter 34.05 RCW.

22 **Sec. 17.** RCW 43.21B.300 and 2007 c 147 s 9 are each amended to
23 read as follows:

24 (1) Any civil penalty provided in RCW 18.104.155, 70.94.431,
25 70.105.080, 70.107.050, 88.46.090, 90.03.600, section 14 of this act,
26 90.48.144, 90.56.310, and 90.56.330 and chapter 90.76 RCW shall be
27 imposed by a notice in writing, either by certified mail with return
28 receipt requested or by personal service, to the person incurring the
29 penalty from the department or the local air authority, describing the
30 violation with reasonable particularity. Within thirty days after the
31 notice is received, the person incurring the penalty may apply in
32 writing to the department or the authority for the remission or
33 mitigation of the penalty. Upon receipt of the application, the
34 department or authority may remit or mitigate the penalty upon whatever
35 terms the department or the authority in its discretion deems proper.
36 The department or the authority may ascertain the facts regarding all
37 such applications in such reasonable manner and under such rules as it

1 may deem proper and shall remit or mitigate the penalty only upon a
2 demonstration of extraordinary circumstances such as the presence of
3 information or factors not considered in setting the original penalty.

4 (2) Any penalty imposed under this section may be appealed to the
5 pollution control hearings board in accordance with this chapter if the
6 appeal is filed with the hearings board and served on the department or
7 authority thirty days after the date of receipt by the person penalized
8 of the notice imposing the penalty or thirty days after the date of
9 receipt of the notice of disposition of the application for relief from
10 penalty.

11 (3) A penalty shall become due and payable on the later of:

12 (a) Thirty days after receipt of the notice imposing the penalty;

13 (b) Thirty days after receipt of the notice of disposition on
14 application for relief from penalty, if such an application is made; or

15 (c) Thirty days after receipt of the notice of decision of the
16 hearings board if the penalty is appealed.

17 (4) If the amount of any penalty is not paid to the department
18 within thirty days after it becomes due and payable, the attorney
19 general, upon request of the department, shall bring an action in the
20 name of the state of Washington in the superior court of Thurston
21 county, or of any county in which the violator does business, to
22 recover the penalty. If the amount of the penalty is not paid to the
23 authority within thirty days after it becomes due and payable, the
24 authority may bring an action to recover the penalty in the superior
25 court of the county of the authority's main office or of any county in
26 which the violator does business. In these actions, the procedures and
27 rules of evidence shall be the same as in an ordinary civil action.

28 (5) All penalties recovered shall be paid into the state treasury
29 and credited to the general fund except those penalties imposed
30 pursuant to RCW 18.104.155, which shall be credited to the reclamation
31 account as provided in RCW 18.104.155(7), RCW 70.94.431, the
32 disposition of which shall be governed by that provision, RCW
33 70.105.080, which shall be credited to the hazardous waste control and
34 elimination account created by RCW 70.105.180, RCW 90.56.330, which
35 shall be credited to the coastal protection fund created by RCW
36 90.48.390, and RCW 90.76.080, which shall be credited to the
37 underground storage tank account created by RCW 90.76.100.

1 **Sec. 18.** RCW 43.21B.310 and 2004 c 204 s 5 are each amended to
2 read as follows:

3 (1) Except as provided in RCW 90.03.210(2), any order issued by the
4 department or local air authority pursuant to RCW 70.94.211, 70.94.332,
5 70.105.095, 43.27A.190, 86.16.020, 88.46.070, section 12 of this act,
6 or 90.48.120(2) or any provision enacted after July 26, 1987, or any
7 permit, certificate, or license issued by the department may be
8 appealed to the pollution control hearings board if the appeal is filed
9 with the board and served on the department or authority within thirty
10 days after the date of receipt of the order. Except as provided under
11 chapter 70.105D RCW and RCW 90.03.210(2), this is the exclusive means
12 of appeal of such an order.

13 (2) The department or the authority in its discretion may stay the
14 effectiveness of an order during the pendency of such an appeal.

15 (3) At any time during the pendency of an appeal of such an order
16 to the board, the appellant may apply pursuant to RCW 43.21B.320 to the
17 hearings board for a stay of the order or for the removal thereof.

18 (4) Any appeal must contain the following in accordance with the
19 rules of the hearings board:

20 (a) The appellant's name and address;

21 (b) The date and docket number of the order, permit, or license
22 appealed;

23 (c) A description of the substance of the order, permit, or license
24 that is the subject of the appeal;

25 (d) A clear, separate, and concise statement of every error alleged
26 to have been committed;

27 (e) A clear and concise statement of facts upon which the requester
28 relies to sustain his or her statements of error; and

29 (f) A statement setting forth the relief sought.

30 (5) Upon failure to comply with any final order of the department,
31 the attorney general, on request of the department, may bring an action
32 in the superior court of the county where the violation occurred or the
33 potential violation is about to occur to obtain such relief as
34 necessary, including injunctive relief, to insure compliance with the
35 order. The air authorities may bring similar actions to enforce their
36 orders.

37 (6) An appealable decision or order shall be identified as such and

1 shall contain a conspicuous notice to the recipient that it may be
2 appealed only by filing an appeal with the hearings board and serving
3 it on the department within thirty days of the date of receipt.

4 NEW SECTION. **Sec. 19.** The code reviser shall alphabetize and
5 renumber the definitions in RCW 90.46.010.

6 NEW SECTION. **Sec. 20.** Captions used in this act are not any part
7 of the law.

8 NEW SECTION. **Sec. 21.** Sections 7 through 15 of this act are each
9 added to chapter 90.46 RCW.

10 NEW SECTION. **Sec. 22.** RCW 90.46.060 (Enforcement powers--
11 Secretary of health) and 1992 c 204 s 7 are each repealed.

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