
HOUSE BILL 1708

State of Washington 61st Legislature 2009 Regular Session

By Representatives Nelson, Simpson, Chase, White, Cody, Upthegrove, Williams, McCoy, Appleton, Dickerson, Darneille, and Goodman

Read first time 01/27/09. Referred to Committee on Agriculture & Natural Resources.

1 AN ACT Relating to wells on lands adjacent to the Maury Island
2 aquatic reserve; amending RCW 90.44.050 and 78.44.380; and adding a new
3 section to chapter 78.44 RCW.

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

5 **Sec. 1.** RCW 90.44.050 and 2003 c 307 s 1 are each amended to read
6 as follows:

7 (1) After June 6, 1945, no withdrawal of public groundwaters of the
8 state shall be begun, nor shall any well or other works for such
9 withdrawal be constructed, unless an application to appropriate such
10 waters has been made to the department and a permit has been granted by
11 it as herein provided: EXCEPT, HOWEVER, That any withdrawal of public
12 groundwaters for stock-watering purposes, or for the watering of a lawn
13 or of a noncommercial garden not exceeding one-half acre in area, or
14 for single or group domestic uses in an amount not exceeding five
15 thousand gallons a day, or as provided in RCW 90.44.052, or for an
16 industrial purpose in an amount not exceeding five thousand gallons a
17 day, is and shall be exempt from the provisions of this section, but,
18 to the extent that it is regularly used beneficially, shall be entitled
19 to a right equal to that established by a permit issued under the

1 provisions of this chapter: PROVIDED, HOWEVER, That the department
2 from time to time may require the person or agency making any such
3 small withdrawal to furnish information as to the means for and the
4 quantity of that withdrawal: PROVIDED, FURTHER, That at the option of
5 the party making withdrawals of groundwaters of the state not exceeding
6 five thousand gallons per day, applications under this section or
7 declarations under RCW 90.44.090 may be filed and permits and
8 certificates obtained in the same manner and under the same
9 requirements as is in this chapter provided in the case of withdrawals
10 in excess of five thousand gallons a day.

11 (2)(a)(i) Any permit exempt well located on an industrial or mining
12 site adjacent to the Maury Island aquatic reserve, created by order of
13 the commissioner on November 8, 2004, must meter daily withdrawals of
14 groundwater.

15 (ii) A withdrawal report must be submitted to the department every
16 month indicating the daily withdrawal amounts of groundwater from the
17 permit exempt wells.

18 (b) The department, in consultation with the department of natural
19 resources, is required to suspend all privileges associated with the
20 withdrawal of groundwater from a permit exempt well located on an
21 industrial or mining site adjacent to the Maury Island aquatic reserve,
22 if:

23 (i) Water withdrawals are in excess of five thousand gallons per
24 day for any five days over a six-month period;

25 (ii) There are reductions in spring flow, aquifer level, or a
26 combination of the two, of more than five percent in the affected
27 aquifers or springs; or

28 (iii) There is a five percent or more decrease in the water level
29 in any of the monitoring wells on or surrounding the industrial or
30 mining site.

31 (c) If there are reductions in the spring flow, aquifer level, or
32 a combination of the two, of more than five percent in the affected
33 aquifers or springs, the department must make a determination of cause,
34 and suspend all privileges associated with the withdrawal of
35 groundwater from a permit exempt well until flows return to the January
36 1, 2009, levels.

1 **Sec. 2.** RCW 78.44.380 and 2007 c 192 s 3 are each amended to read
2 as follows:

3 (1) The department may issue an order to stop all surface mining to
4 any permit holder, miner, or other person who authorizes, directs, or
5 conducts such activities without a valid surface mine reclamation
6 permit or compliance with subsection (4) of this section. This order
7 is effective upon issuance unless otherwise stated in the order.
8 Administrative appeal of the order to stop work does not stay the stop
9 work requirement. The department shall notify the local jurisdiction
10 of record when a stop work order has been issued for operating without
11 a valid reclamation permit.

12 (2) The department may issue an order to stop surface mining
13 occurring outside of any permit area to a permit holder that does not
14 have a legal right to occupy the affected area. This order is
15 effective upon issuance unless otherwise stated in the order. An
16 administrative appeal of the order to stop work does not stay the stop
17 work requirement.

18 (3) Where a permit holder is conducting surface mining activities
19 outside of its permit boundary, but within land that it has the right
20 to occupy, the department may issue an order to stop surface mining or
21 mining-related activities occurring outside of the authorized area
22 after the permit holder fails to comply with a notice of correction.
23 The notice of correction must specify the corrections necessary as per
24 the violation and provide a reasonable time to do so. This order is
25 effective upon issuance unless otherwise stated in the order. An
26 administrative appeal of the order to stop work does not stay the stop
27 work requirement.

28 (4) The department is required to issue an order to stop surface
29 mining if:

30 (a) Any permit exempt well, as authorized by RCW 90.44.050, located
31 on an industrial or mining site adjacent to the Maury Island aquatic
32 reserve, created by order of the commissioner on November 8, 2004, has
33 water withdrawals in excess of five thousand gallons per day for any
34 five days over a six-month period;

35 (b) There are reductions in the spring flow, aquifer level, or a
36 combination of the two, of more than five percent in the affected
37 aquifers or springs; or

1 (c) There is a five percent or more decrease in the water level in
2 any of the monitoring wells on or surrounding the industrial or mining
3 site.

4 (5) Stop work orders must be in writing, delivered by United States
5 certified mail with return receipt requested, facsimile, or by hand to
6 the permit holder of record. The order must state the facts supporting
7 the violation, the law being violated, and the specific activities
8 being stopped. Stop work orders must be signed by the state geologist
9 or an assistant state geologist. The department shall proceed as
10 quickly as feasible to complete any requested adjudicative proceedings
11 unless the parties stipulate to an appeal timeline or the department's
12 stop work order states that it is not effective until after the
13 administrative review process. If the recipient appeals the order, the
14 recipient may file a motion for stay with the presiding officer, which
15 will be reviewed under preliminary injunction standards.

16 NEW SECTION. Sec. 3. A new section is added to chapter 78.44 RCW
17 to read as follows:

18 Any mine located on land adjacent to the Maury Island aquatic
19 reserve that is in excess of twenty-five acres must provide a corporate
20 surety bond in an amount sufficient to replace any water systems that
21 supply water to all properties within hydrologic continuity of the mine
22 whose water supply may be impacted by mining activity.

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