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**SUBSTITUTE SENATE BILL 5504**

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**State of Washington**

**61st Legislature**

**2009 Regular Session**

**By** Senate Environment, Water & Energy (originally sponsored by Senators Fraser, Honeyford, Rockefeller, Marr, Kline, and Morton; by request of Department of Ecology)

READ FIRST TIME 02/11/09.

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 ~~(+))~~ (5) "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 developed or 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 chapter are in  
20 addition to any authority and duties already provided in law. Nothing  
21 in this chapter 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 reclaimed water for a use regulated  
34 under this chapter shall obtain a permit from the lead agency prior to  
35 distribution or use of that water. The permittee may then distribute

1 and use the water, subject to the provisions in the permit. The permit  
2 must include provisions that protect human health and the environment.  
3 At a minimum, the 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 (8) Permit requirements for the distribution and use of greywater  
14 will be established in rules adopted by the department of health under  
15 RCW 90.46.015.

16 NEW SECTION. **Sec. 10.** AUTHORITY TO ENTER PREMISES--SEARCH

17 WARRANTS. (1)(a) Except as otherwise provided in (b) of this  
18 subsection, the lead agency or its designee shall have the right to  
19 enter and inspect any property related to the purpose of the permit,  
20 public or private, at reasonable times with prior notification in order  
21 to determine compliance with laws and rules administered by the lead  
22 agency. During such inspections, the lead agency shall have free and  
23 unimpeded access to all data, facilities, and property involved in the  
24 generation, distribution, and use of reclaimed water.

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

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

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

36 (b) There is reasonable cause to believe that a violation of this

1 chapter or rules adopted under this chapter is occurring or has  
2 occurred.

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

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

33 (2) When it appears to the lead agency that water quality  
34 conditions or other conditions exist which require immediate action to  
35 protect human health and safety or the environment, the lead agency may  
36 issue a written order to the person or persons responsible without

1 first issuing a notice of determination pursuant to subsection (1) of  
2 this section. An order or directive issued pursuant to this subsection  
3 shall be served by registered mail or personally upon any person to  
4 whom it is directed, and shall inform the person or persons responsible  
5 of the process for requesting an adjudicative hearing.

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

15 NEW SECTION. **Sec. 14.** VIOLATIONS--CIVIL PENALTY--PROCEDURE. (1)  
16 Except as provided in RCW 43.05.060 through 43.05.080, 43.05.100,  
17 43.05.110, and 43.05.150, any person who:

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

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

22 (c) Violates rules or orders adopted or issued pursuant to this  
23 chapter,

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

35 (2) A penalty imposed by a final administrative order is due upon  
36 service of the final administrative order. A person who fails to pay

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

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

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

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

33 (6) When the penalty is imposed by the department of health, it  
34 shall be imposed pursuant to the procedures set forth in RCW 43.70.095.  
35 All receipts from penalties shall be deposited into the health  
36 reclaimed water account. The department of health shall use revenue  
37 derived from penalties only to provide training and technical  
38 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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