

SHB 1601 - H AMD 293

By Representative Zeiger

NOT CONSIDERED 04/26/2011

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

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 70.94 RCW
4 to read as follows:

5 (1) All decisions on applications under this chapter must be
6 completed and the decision returned to the applicant within ninety days
7 of submitting the application. If the ninety-day deadline is not
8 satisfied, the applicant may file a motion in the appropriate superior
9 court requesting court approval of the application.

10 (2) If the application is denied either within or after the ninety-
11 day decision period, the applicant may file a motion in the appropriate
12 superior court requesting the court to overturn the decision. This
13 subsection applies notwithstanding, and as an alternative to, any other
14 provision of law establishing appeal procedures. Applicants choosing
15 to utilize this appeal authority are deemed to have satisfied all
16 administrative remedies.

17 **Sec. 2.** RCW 70.94.181 and 1991 c 199 s 306 are each amended to
18 read as follows:

19 (1) Any person who owns or is in control of any plant, building,
20 structure, establishment, process or equipment may apply to the
21 department (~~(of ecology)~~) or appropriate local authority board for a
22 variance from rules or regulations governing the quality, nature,
23 duration or extent of discharges of air contaminants. The application
24 shall be accompanied by such information and data as the department
25 (~~(of ecology)~~) or board may require. The department (~~(of ecology)~~) or
26 board may grant such variance, provided that variances to state rules
27 shall require the department's approval prior to being issued by a
28 local authority board. The total time period for a variance and

1 renewal of such variance shall not exceed one year. Variances may be
2 issued by either the department or a local board but only after public
3 hearing or due notice, if the department or board finds that:

4 (a) The emissions occurring or proposed to occur do not endanger
5 public health or safety or the environment; and

6 (b) Compliance with the rules or regulations from which variance is
7 sought would produce serious hardship without equal or greater benefits
8 to the public.

9 (2) No variance shall be granted pursuant to this section until the
10 department (~~(of ecology)~~) or board has considered the relative
11 interests of the applicant, other owners of property likely to be
12 affected by the discharges, and the general public.

13 (3) Any variance or renewal thereof shall be granted within the
14 requirements of subsection (1) of this section and under conditions
15 consistent with the reasons therefor, and within the following
16 limitations:

17 (a) If the variance is granted on the ground that there is no
18 practicable means known or available for the adequate prevention,
19 abatement, or control of the pollution involved, it shall be only until
20 the necessary means for prevention, abatement, or control become known
21 and available, and subject to the taking of any substitute or alternate
22 measures that the department (~~(of ecology)~~) or board may prescribe.

23 (b) If the variance is granted on the ground that compliance with
24 the particular requirement or requirements from which variance is
25 sought will require the taking of measures which, because of their
26 extent or cost, must be spread over a considerable period of time, it
27 shall be for a period not to exceed such reasonable time as, in the
28 view of the department (~~(of ecology)~~) or board is requisite for the
29 taking of the necessary measures. A variance granted on the ground
30 specified herein shall contain a timetable for the taking of action in
31 an expeditious manner and shall be conditioned on adherence to such
32 timetable.

33 (c) If the variance is granted on the ground that it is justified
34 to relieve or prevent hardship of a kind other than that provided for
35 in (a) and (b) of this subsection, it shall be for not more than one
36 year.

37 (4) Any variance granted pursuant to this section may be renewed on
38 terms and conditions and for periods which would be appropriate on

1 initial granting of a variance. If complaint is made to the department
2 ((~~of ecology~~)) or board on account of the variance, no renewal thereof
3 shall be granted unless following a public hearing on the complaint on
4 due notice the department or board finds that renewal is justified. No
5 renewal shall be granted except on application therefor. Any such
6 application shall be made at least sixty days prior to the expiration
7 of the variance. Immediately upon receipt of an application for
8 renewal, the department ((~~of ecology~~)) or board shall give public
9 notice of such application in accordance with rules of the department
10 ((~~of ecology~~)) or board.

11 (5) A variance or renewal shall not be a right of the applicant or
12 holder thereof but shall be granted at the discretion of the department
13 ((~~of ecology~~)) or board. However, any applicant adversely affected by
14 the denial or the terms and conditions of the granting of an
15 application for a variance or renewal of a variance by the department
16 ((~~of ecology~~)) or board may obtain judicial review thereof under the
17 provisions of chapter 34.05 RCW as now or hereafter amended.

18 (6) Nothing in this section and no variance or renewal granted
19 pursuant hereto shall be construed to prevent or limit the application
20 of the emergency provisions and procedures of RCW 70.94.710 through
21 70.94.730 to any person or his or her property.

22 (7) An application for a variance, or for the renewal thereof,
23 submitted to the department ((~~of ecology~~)) or board pursuant to this
24 section shall be approved or disapproved by the department or board
25 within sixty-five days of receipt unless the applicant and the
26 department ((~~of ecology~~)) or board agree to a continuance.

27 (8) Variances approved under this section shall not be included in
28 orders or permits provided for in RCW 70.94.161 or 70.94.152 until such
29 time as the variance has been accepted by the United States
30 environmental protection agency as part of an approved state
31 implementation plan.

32 (9)(a) All decisions on variances under this section must be
33 completed and the decision returned to the applicant within ninety days
34 of submitting the application. If the ninety-day deadline is not
35 satisfied, the applicant may file a motion in the appropriate superior
36 court requesting court approval of the application.

37 (b) If the application is denied either within or after the ninety-
38 day decision period, the applicant may file a motion in the appropriate

1 superior court requesting the court to overturn the decision. This
2 subsection applies notwithstanding, and as an alternative to, any other
3 provision of law establishing appeal procedures. Applicants choosing
4 to utilize this appeal authority are deemed to have satisfied all
5 administrative remedies.

6 **Sec. 3.** RCW 76.09.060 and 2007 c 480 s 11 and 2007 c 106 s 1 are
7 each reenacted and amended to read as follows:

8 (1) The department shall prescribe the form and contents of the
9 notification and application. The forest practices rules shall specify
10 by whom and under what conditions the notification and application
11 shall be signed or otherwise certified as acceptable. Activities
12 conducted by the department or a contractor under the direction of the
13 department under the provisions of RCW 76.04.660, shall be exempt from
14 the landowner signature requirement on any forest practice application
15 required to be filed. The application or notification shall be
16 delivered in person to the department, sent by first-class mail to the
17 department or electronically filed in a form defined by the department.
18 The form for electronic filing shall be readily convertible to a paper
19 copy, which shall be available to the public pursuant to chapter 42.56
20 RCW. The information required may include, but is not limited to:

21 (a) Name and address of the forest landowner, timber owner, and
22 operator;

23 (b) Description of the proposed forest practice or practices to be
24 conducted;

25 (c) Legal description and tax parcel identification numbers of the
26 land on which the forest practices are to be conducted;

27 (d) Planimetric and topographic maps showing location and size of
28 all lakes and streams and other public waters in and immediately
29 adjacent to the operating area and showing all existing and proposed
30 roads and major tractor roads;

31 (e) Description of the silvicultural, harvesting, or other forest
32 practice methods to be used, including the type of equipment to be used
33 and materials to be applied;

34 (f) Proposed plan for reforestation and for any revegetation
35 necessary to reduce erosion potential from roadsides and yarding roads,
36 as required by the forest practices rules;

1 (g) Soil, geological, and hydrological data with respect to forest
2 practices;

3 (h) The expected dates of commencement and completion of all forest
4 practices specified in the application;

5 (i) Provisions for continuing maintenance of roads and other
6 construction or other measures necessary to afford protection to public
7 resources;

8 (j) An affirmation that the statements contained in the
9 notification or application are true; and

10 (k) All necessary application or notification fees.

11 (2) Long range plans may be submitted to the department for review
12 and consultation.

13 (3) The application for a forest practice or the notification of a
14 forest practice is subject to the reforestation requirement of RCW
15 76.09.070.

16 (a) If the application states that any land will be or is intended
17 to be converted:

18 (i) The reforestation requirements of this chapter and of the
19 forest practices rules shall not apply if the land is in fact converted
20 unless applicable alternatives or limitations are provided in forest
21 practices rules issued under RCW 76.09.070;

22 (ii) Completion of such forest practice operations shall be deemed
23 conversion of the lands to another use for purposes of chapters 84.33
24 and 84.34 RCW unless the conversion is to a use permitted under a
25 current use tax agreement permitted under chapter 84.34 RCW;

26 (iii) The forest practices described in the application are subject
27 to applicable county, city, town, and regional governmental authority
28 permitted under RCW 76.09.240 as well as the forest practices rules.

29 (b) Except as provided elsewhere in this section, if the landowner
30 harvests without an approved application or notification or the
31 landowner does not state that any land covered by the application or
32 notification will be or is intended to be converted, and the department
33 or the county, city, town, or regional governmental entity becomes
34 aware of conversion activities to a use other than commercial timber
35 operations, as that term is defined in RCW 76.09.020, then the
36 department shall send to the department of ecology and the appropriate
37 county, city, town, and regional governmental entities the following
38 documents:

1 (i) A notice of a conversion to nonforestry use;

2 (ii) A copy of the applicable forest practices application or
3 notification, if any; and

4 (iii) Copies of any applicable outstanding final orders or
5 decisions issued by the department related to the forest practices
6 application or notification.

7 (c) Failure to comply with the reforestation requirements contained
8 in any final order or decision shall constitute a removal of
9 designation under the provisions of RCW 84.33.140, and a change of use
10 under the provisions of RCW 84.34.080, and, if applicable, shall
11 subject such lands to the payments and/or penalties resulting from such
12 removals or changes.

13 (d) Conversion to a use other than commercial forest product
14 operations within six years after approval of the forest practices
15 application or notification without the consent of the county, city, or
16 town shall constitute a violation of each of the county, municipal
17 city, town, and regional authorities to which the forest practice
18 operations would have been subject if the application had stated an
19 intent to convert.

20 (e) Land that is the subject of a notice of conversion to a
21 nonforestry use produced by the department and sent to the department
22 of ecology and a local government under this subsection is subject to
23 the development prohibition and conditions provided in RCW 76.09.460.

24 (f) Landowners who have not stated an intent to convert the land
25 covered by an application or notification and who decide to convert the
26 land to a nonforestry use within six years of receiving an approved
27 application or notification must do so in a manner consistent with RCW
28 76.09.470.

29 (g) The application or notification must include a statement
30 requiring an acknowledgment by the forest landowner of his or her
31 intent with respect to conversion and acknowledging that he or she is
32 familiar with the effects of this subsection.

33 (4) Whenever an approved application authorizes a forest practice
34 which, because of soil condition, proximity to a water course or other
35 unusual factor, has a potential for causing material damage to a public
36 resource, as determined by the department, the applicant shall, when
37 requested on the approved application, notify the department two days
38 before the commencement of actual operations.

1 (5) Before the operator commences any forest practice in a manner
2 or to an extent significantly different from that described in a
3 previously approved application or notification, there shall be
4 submitted to the department a new application or notification form in
5 the manner set forth in this section.

6 (6) Except as provided in RCW 76.09.350(4), the notification to or
7 the approval given by the department to an application to conduct a
8 forest practice shall be effective for a term of two years from the
9 date of approval or notification and shall not be renewed unless a new
10 application is filed and approved or a new notification has been filed.
11 At the option of the applicant, an application or notification may be
12 submitted to cover a single forest practice or a number of forest
13 practices within reasonable geographic or political boundaries as
14 specified by the department. An application or notification that
15 covers more than one forest practice may have an effective term of more
16 than two years. The board shall adopt rules that establish standards
17 and procedures for approving an application or notification that has an
18 effective term of more than two years. Such rules shall include
19 extended time periods for application or notification approval or
20 disapproval. On an approved application with a term of more than two
21 years, the applicant shall inform the department before commencing
22 operations.

23 (7) Notwithstanding any other provision of this section, no prior
24 application or notification shall be required for any emergency forest
25 practice necessitated by fire, flood, windstorm, earthquake, or other
26 emergency as defined by the board, but the operator shall submit an
27 application or notification, whichever is applicable, to the department
28 within forty-eight hours after commencement of such practice or as
29 required by local regulations.

30 (8) Forest practices applications or notifications are not required
31 for forest practices conducted to control exotic forest insect or
32 disease outbreaks, when conducted by or under the direction of the
33 department of agriculture in carrying out an order of the governor or
34 director of the department of agriculture to implement pest control
35 measures as authorized under chapter 17.24 RCW, and are not required
36 when conducted by or under the direction of the department in carrying
37 out emergency measures under a forest health emergency declaration by
38 the commissioner of public lands as provided in RCW 76.06.130.

1 (a) For the purposes of this subsection, exotic forest insect or
2 disease has the same meaning as defined in RCW 76.06.020.

3 (b) In order to minimize adverse impacts to public resources,
4 control measures must be based on integrated pest management, as
5 defined in RCW 17.15.010, and must follow forest practices rules
6 relating to road construction and maintenance, timber harvest, and
7 forest chemicals, to the extent possible without compromising control
8 objectives.

9 (c) Agencies conducting or directing control efforts must provide
10 advance notice to the appropriate regulatory staff of the department of
11 the operations that would be subject to exemption from forest practices
12 application or notification requirements.

13 (d) When the appropriate regulatory staff of the department are
14 notified under (c) of this subsection, they must consult with the
15 landowner, interested agencies, and affected tribes, and assist the
16 notifying agencies in the development of integrated pest management
17 plans that comply with forest practices rules as required under (b) of
18 this subsection.

19 (e) Nothing under this subsection relieves agencies conducting or
20 directing control efforts from requirements of the federal clean water
21 act as administered by the department of ecology under RCW 90.48.260.

22 (f) Forest lands where trees have been cut as part of an exotic
23 forest insect or disease control effort under this subsection are
24 subject to reforestation requirements under RCW 76.09.070.

25 (g) The exemption from obtaining approved forest practices
26 applications or notifications does not apply to forest practices
27 conducted after the governor, the director of the department of
28 agriculture, or the commissioner of public lands have declared that an
29 emergency no longer exists because control objectives have been met,
30 that there is no longer an imminent threat, or that there is no longer
31 a good likelihood of control.

32 (9)(a) All decisions on applications or notifications under this
33 section must be completed and the decision returned to the applicant
34 within ninety days of submitting the application. If the ninety-day
35 deadline is not satisfied, the applicant may file a motion in the
36 appropriate superior court requesting court approval of the
37 application.

1 (b) If the application is denied either within or after the ninety-
2 day decision period, the applicant may file a motion in the appropriate
3 superior court requesting the court to overturn the decision. This
4 subsection applies notwithstanding, and as an alternative to, any other
5 provision of law establishing appeal procedures. Applicants choosing
6 to utilize this appeal authority are deemed to have satisfied all
7 administrative remedies.

8 NEW SECTION. Sec. 4. A new section is added to chapter 90.48 RCW
9 to read as follows:

10 (1) All decisions on applications under this chapter must be
11 completed and the decision returned to the applicant within ninety days
12 of submitting the application. If the ninety-day deadline is not
13 satisfied, the applicant may file a motion in the appropriate superior
14 court requesting court approval of the application.

15 (2) If the application is denied either within or after the ninety-
16 day decision period, the applicant may file a motion in the appropriate
17 superior court requesting the court to overturn the decision. This
18 subsection applies notwithstanding, and as an alternative to, any other
19 provision of law establishing appeal procedures. Applicants choosing
20 to utilize this appeal authority are deemed to have satisfied all
21 administrative remedies.

22 **Sec. 5.** RCW 77.55.021 and 2010 c 210 s 27 are each amended to read
23 as follows:

24 (1) Except as provided in RCW 77.55.031, 77.55.051, and 77.55.041,
25 in the event that any person or government agency desires to undertake
26 a hydraulic project, the person or government agency shall, before
27 commencing work thereon, secure the approval of the department in the
28 form of a permit as to the adequacy of the means proposed for the
29 protection of fish life.

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

32 (a) General plans for the overall project;

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

1 (c) Complete plans and specifications for the proper protection of
2 fish life; and

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

6 (3)(a) Protection of fish life is the only ground upon which
7 approval of a permit may be denied or conditioned. Approval of a
8 permit may not be unreasonably withheld or unreasonably conditioned.
9 Except as provided in this subsection and subsections (~~((8), (10), and~~
10 ~~(12))~~) (9), (11), and (13) of this section, the department has forty-
11 five calendar days upon receipt of a complete application to grant or
12 deny approval of a permit. The forty-five day requirement is suspended
13 if:

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

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

18 (iii) The applicant requests a delay; or

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

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

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

28 (4) If the department denies approval of a permit, the department
29 shall provide the applicant a written statement of the specific reasons
30 why and how the proposed project would adversely affect fish life.

31 (a) Except as provided in (b) of this subsection, issuance, denial,
32 conditioning, or modification of a permit shall be appealable to the
33 board within thirty days from the date of receipt of the decision as
34 provided in RCW 43.21B.230.

35 (b) Issuance, denial, conditioning, or modification of a permit may
36 be informally appealed to the department within thirty days from the
37 date of receipt of the decision. Requests for informal appeals must be
38 filed in the form and manner prescribed by the department by rule. A

1 permit decision that has been informally appealed to the department is
2 appealable to the board within thirty days from the date of receipt of
3 the department's decision on the informal appeal.

4 (5)(a) Notwithstanding the forty-five day decision timeline
5 required in this section, all decisions on applications under this
6 section must be completed and the decision returned to the applicant no
7 longer than ninety days of submitting the application. If the ninety-
8 day deadline is not satisfied, the applicant may file a motion in the
9 appropriate superior court requesting court approval of the
10 application.

11 (b) If the application is denied either within or after the ninety-
12 day decision period, the applicant may file a motion in the appropriate
13 superior court requesting the court to overturn the decision. This
14 subsection applies notwithstanding, and as an alternative to, any other
15 provision of law establishing appeal procedures. Applicants choosing
16 to utilize this appeal authority are deemed to have satisfied all
17 administrative remedies.

18 (6)(a) The permittee must demonstrate substantial progress on
19 construction of that portion of the project relating to the permit
20 within two years of the date of issuance.

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

24 (c) A permit remains in effect without need for periodic renewal
25 for hydraulic projects that divert water for agricultural irrigation or
26 stock watering purposes and that involve seasonal construction or other
27 work. A permit for streambank stabilization projects to protect farm
28 and agricultural land as defined in RCW 84.34.020 remains in effect
29 without need for periodic renewal if the problem causing the need for
30 the streambank stabilization occurs on an annual or more frequent
31 basis. The permittee must notify the appropriate agency before
32 commencing the construction or other work within the area covered by
33 the permit.

34 ~~((+6+))~~ (7) The department may, after consultation with the
35 permittee, modify a permit due to changed conditions. The modification
36 is appealable as provided in subsection (4) of this section. For
37 hydraulic projects that divert water for agricultural irrigation or
38 stock watering purposes, or when the hydraulic project or other work is

1 associated with streambank stabilization to protect farm and
2 agricultural land as defined in RCW 84.34.020, the burden is on the
3 department to show that changed conditions warrant the modification in
4 order to protect fish life.

5 ~~((+7))~~ (8) A permittee may request modification of a permit due to
6 changed conditions. The request must be processed within forty-five
7 calendar days of receipt of the written request. A decision by the
8 department is appealable as provided in subsection (4) of this section.
9 For hydraulic projects that divert water for agricultural irrigation or
10 stock watering purposes, or when the hydraulic project or other work is
11 associated with streambank stabilization to protect farm and
12 agricultural land as defined in RCW 84.34.020, the burden is on the
13 permittee to show that changed conditions warrant the requested
14 modification and that such a modification will not impair fish life.

15 ~~((+8))~~ (9)(a) The department, the county legislative authority, or
16 the governor may declare and continue an emergency. If the county
17 legislative authority declares an emergency under this subsection, it
18 shall immediately notify the department. A declared state of emergency
19 by the governor under RCW 43.06.010 shall constitute a declaration
20 under this subsection.

21 (b) The department, through its authorized representatives, shall
22 issue immediately, upon request, oral approval for a stream crossing,
23 or work to remove any obstructions, repair existing structures, restore
24 streambanks, protect fish life, or protect property threatened by the
25 stream or a change in the stream flow without the necessity of
26 obtaining a written permit prior to commencing work. Conditions of the
27 emergency oral permit must be established by the department and reduced
28 to writing within thirty days and complied with as provided for in this
29 chapter.

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

33 ~~((+9))~~ (10) All state and local agencies with authority under this
34 chapter to issue permits or other authorizations in connection with
35 emergency water withdrawals and facilities authorized under RCW
36 43.83B.410 shall expedite the processing of such permits or
37 authorizations in keeping with the emergency nature of such requests

1 and shall provide a decision to the applicant within fifteen calendar
2 days of the date of application.

3 ~~((+10+))~~ (11) The department or the county legislative authority
4 may determine an imminent danger exists. The county legislative
5 authority shall notify the department, in writing, if it determines
6 that an imminent danger exists. In cases of imminent danger, the
7 department shall issue an expedited written permit, upon request, for
8 work to remove any obstructions, repair existing structures, restore
9 banks, protect fish resources, or protect property. Expedited permit
10 requests require a complete written application as provided in
11 subsection (2) of this section and must be issued within fifteen
12 calendar days of the receipt of a complete written application.
13 Approval of an expedited permit is valid for up to sixty days from the
14 date of issuance. The department may not require the provisions of the
15 state environmental policy act, chapter 43.21C RCW, to be met as a
16 condition of issuing a permit under this subsection.

17 ~~((+11+))~~ (12)(a) For any property, except for property located on
18 a marine shoreline, that has experienced at least two consecutive years
19 of flooding or erosion that has damaged or has threatened to damage a
20 major structure, water supply system, septic system, or access to any
21 road or highway, the county legislative authority may determine that a
22 chronic danger exists. The county legislative authority shall notify
23 the department, in writing, when it determines that a chronic danger
24 exists. In cases of chronic danger, the department shall issue a
25 permit, upon request, for work necessary to abate the chronic danger by
26 removing any obstructions, repairing existing structures, restoring
27 banks, restoring road or highway access, protecting fish resources, or
28 protecting property. Permit requests must be made and processed in
29 accordance with subsections (2) and (3) of this section.

30 (b) Any projects proposed to address a chronic danger identified
31 under (a) of this subsection that satisfies the project description
32 identified in RCW 77.55.181(1)(a)(ii) are not subject to the provisions
33 of the state environmental policy act, chapter 43.21C RCW. However,
34 the project is subject to the review process established in RCW
35 77.55.181(3) as if it were a fish habitat improvement project.

36 ~~((+12+))~~ (13) The department may issue an expedited written permit
37 in those instances where normal permit processing would result in
38 significant hardship for the applicant or unacceptable damage to the

1 environment. Expedited permit requests require a complete written
2 application as provided in subsection (2) of this section and must be
3 issued within fifteen calendar days of the receipt of a complete
4 written application. Approval of an expedited permit is valid for up
5 to sixty days from the date of issuance. The department may not
6 require the provisions of the state environmental policy act, chapter
7 43.21C RCW, to be met as a condition of issuing a permit under this
8 subsection.

9 NEW SECTION. **Sec. 6.** A new section is added to chapter 90.76 RCW
10 to read as follows:

11 (1) All decisions on license applications under this chapter must
12 be completed and the decision returned to the applicant within ninety
13 days of submitting the application. If the ninety-day deadline is not
14 satisfied, the applicant may file a motion in the appropriate superior
15 court requesting court approval of the application.

16 (2) If the license application is denied either within or after the
17 ninety-day decision period, the applicant may file a motion in the
18 appropriate superior court requesting the court to overturn the
19 decision. This subsection applies notwithstanding, and as an
20 alternative to, any other provision of law establishing appeal
21 procedures. Applicants choosing to utilize this appeal authority are
22 deemed to have satisfied all administrative remedies.

23 **Sec. 7.** RCW 78.44.081 and 1997 c 192 s 1 are each amended to read
24 as follows:

25 (1) After July 1, 1993, no miner or permit holder may engage in
26 surface mining without having first obtained a reclamation permit from
27 the department. Operating permits issued by the department between
28 January 1, 1971, and June 30, 1993, shall be considered reclamation
29 permits. A separate permit shall be required for each noncontiguous
30 surface mine. The reclamation permit shall consist of the permit forms
31 and any exhibits attached thereto. The permit holder shall comply with
32 the provisions of the reclamation permit unless waived and explained in
33 writing by the department.

34 (2) Prior to receiving a reclamation permit, an applicant must
35 submit an application on forms provided by the department that shall

1 contain the following information and shall be considered part of the
2 reclamation permit:

3 ~~((1))~~ (a) Name and address of the legal landowner, or purchaser
4 of the land under a real estate contract;

5 ~~((2))~~ (b) The name of the applicant and, if the applicants are
6 corporations or other business entities, the names and addresses of
7 their principal officers and resident agent for service of process;

8 ~~((3))~~ (c) A reasonably accurate description of the minerals to be
9 surface mined;

10 ~~((4))~~ (d) Type of surface mining to be performed;

11 ~~((5))~~ (e) Estimated starting date, date of completion, and date
12 of completed reclamation of surface mining;

13 ~~((6))~~ (f) Size and legal description of the permit area and
14 maximum lateral and vertical extent of the disturbed area;

15 ~~((7))~~ (g) Expected area to be disturbed by surface mining during
16 ~~((a))~~ (i) the next twelve months, and ~~((b))~~ (ii) the following
17 twenty-four months;

18 ~~((8))~~ (h) Any applicable SEPA documents; and

19 ~~((9))~~ (i) Other pertinent data as required by the department.

20 (3) The reclamation permit shall be granted for the period required
21 to deplete essentially all minerals identified in the reclamation
22 permit on the land covered by the reclamation plan. The reclamation
23 permit shall be valid until the reclamation is complete unless the
24 permit is canceled by the department.

25 (4)(a) All decisions on applications under this chapter must be
26 completed and the decision returned to the applicant within ninety days
27 of submitting the application. If the ninety-day deadline is not
28 satisfied, the applicant may file a motion in the appropriate superior
29 court requesting court approval of the application.

30 (b) If the application is denied either within or after the ninety-
31 day decision period, the applicant may file a motion in the appropriate
32 superior court requesting the court to overturn the decision. This
33 subsection applies notwithstanding, and as an alternative to, any other
34 provision of law establishing appeal procedures. Applicants choosing
35 to utilize this appeal authority are deemed to have satisfied all
36 administrative remedies.

1 NEW SECTION. **Sec. 8.** A new section is added to chapter 18.104 RCW
2 to read as follows:

3 (1) All decisions on applications under this chapter must be
4 completed and the decision returned to the applicant within ninety days
5 of submitting the application. If the ninety-day deadline is not
6 satisfied, the applicant may file a motion in the appropriate superior
7 court requesting court approval of the application.

8 (2) If the application is denied either within or after the ninety-
9 day decision period, the applicant may file a motion in the appropriate
10 superior court requesting the court to overturn the decision. This
11 subsection applies notwithstanding, and as an alternative to, any other
12 provision of law establishing appeal procedures. Applicants choosing
13 to utilize this appeal authority are deemed to have satisfied all
14 administrative remedies.

15 **Sec. 9.** RCW 86.16.025 and 1995 c 8 s 4 are each amended to read as
16 follows:

17 (1) Subject to RCW 43.21A.068, with respect to such features as may
18 affect flood conditions, the department shall have authority to
19 examine, approve, or reject designs and plans for any structure or
20 works, public or private, to be erected or built or to be reconstructed
21 or modified upon the banks or in or over the channel or over and across
22 the floodway of any stream or body of water in this state.

23 (2)(a) All decisions on applications under this chapter must be
24 completed and the decision returned to the applicant within ninety days
25 of submitting the application. If the ninety-day deadline is not
26 satisfied, the applicant may file a motion in the appropriate superior
27 court requesting court approval of the application.

28 (b) If the application is denied either within or after the ninety-
29 day decision period, the applicant may file a motion in the appropriate
30 superior court requesting the court to overturn the decision. This
31 subsection applies notwithstanding, and as an alternative to, any other
32 provision of law establishing appeal procedures. Applicants choosing
33 to utilize this appeal authority are deemed to have satisfied all
34 administrative remedies.

35 **Sec. 10.** RCW 70.95.205 and 1998 c 36 s 18 are each amended to read
36 as follows:

1 (1) Waste-derived soil amendments that meet the standards and
2 criteria in this section may apply for exemption from solid waste
3 permitting as required under RCW 70.95.170. The application shall be
4 submitted to the department in a format determined by the department or
5 an equivalent format. The application shall include:

6 (a) Analytical data showing that the waste-derived soil amendments
7 meet standards established under RCW 15.54.800; and

8 (b) Other information deemed appropriate by the department to
9 protect human health and the environment.

10 (2) After receipt of an application, the department shall review it
11 to determine whether the application is complete, and forward a copy of
12 the complete application to all interested jurisdictional health
13 departments for review and comment. Within forty-five days, the
14 jurisdictional health departments shall forward their comments and any
15 other information they deem relevant to the department, which shall
16 then give final approval or disapproval of the application. Every
17 complete application shall be approved or disapproved by the department
18 within ninety days after receipt. If the ninety-day deadline is not
19 satisfied, the applicant may file a motion in the appropriate superior
20 court requesting court approval of the application. If the application
21 is denied either within or after the ninety-day decision period, the
22 applicant may file a motion in the appropriate superior court
23 requesting the court to overturn the decision. This subsection applies
24 notwithstanding, and as an alternative to, any other provision of law
25 establishing appeal procedures. Applicants choosing to utilize this
26 appeal authority are deemed to have satisfied all administrative
27 remedies.

28 (3) The department, after providing opportunity for comments from
29 the jurisdictional health departments, may at any time revoke an
30 exemption granted under this section if the quality or use of the
31 waste-derived soil amendment changes or the management, storage, or end
32 use of the waste-derived soil amendment constitutes a threat to human
33 health or the environment.

34 (4) Any aggrieved party may appeal the determination by the
35 department in subsection (2) or (3) of this section to the pollution
36 control hearings board.

1 **Sec. 11.** RCW 15.54.820 and 1998 c 36 s 16 are each amended to read
2 as follows:

3 (1) After receipt from the department of the completed application
4 required by RCW 15.54.325, the department of ecology shall evaluate
5 whether the use of the proposed waste-derived fertilizer or the
6 micronutrient fertilizer as defined in RCW 15.54.270 is consistent with
7 the following:

8 (a) Chapter 70.95 RCW, the solid waste management act;

9 (b) Chapter 70.105 RCW, the hazardous waste management act; and

10 (c) 42 U.S.C. Sec. 6901 et seq., the resource conservation and
11 recovery act.

12 (2) The department of ecology shall apply the standards adopted in
13 RCW 15.54.800. If more stringent standards apply under chapter 173-303
14 WAC for the same constituents, the department of ecology must use the
15 more stringent standards.

16 (3) Within sixty days of receiving the completed application, the
17 department of ecology shall advise the department as to whether the
18 application complies with the requirements of subsections (1) and (2)
19 of this section. In making a determination, the department of ecology
20 shall consult with the department of health and the department of labor
21 and industries.

22 (4) A party aggrieved by a decision of the department of ecology to
23 issue a written approval under this section or to deny the issuance of
24 such an approval may appeal the decision to the pollution control
25 hearings board within thirty days of the decision. Review of such a
26 decision shall be conducted in accordance with either subsection (5) of
27 this section or with chapter 43.21B RCW(~~-~~), with any subsequent
28 appeal of a decision of the hearings board (~~shall be~~) obtained in
29 accordance with RCW 43.21B.180.

30 (5)(a) All decisions on applications under this chapter must be
31 completed and the decision returned to the applicant within ninety days
32 of submitting the application. If the ninety-day deadline is not
33 satisfied, the applicant may file a motion in the appropriate superior
34 court requesting court approval of the application.

35 (b) If the application is denied either within or after the ninety-
36 day decision period, the applicant may file a motion in the appropriate
37 superior court requesting the court to overturn the decision. This
38 subsection applies notwithstanding, and as an alternative to, any other

1 provision of law establishing appeal procedures. Applicants choosing
2 to utilize this appeal authority are deemed to have satisfied all
3 administrative remedies.

4 **Sec. 12.** RCW 43.21C.033 and 1995 c 347 s 422 are each amended to
5 read as follows:

6 (1)(a) Except as provided in subsection (2) of this section, the
7 responsible official shall make a threshold determination on a
8 completed application within ninety days after the application and
9 supporting documentation are complete. The applicant may request an
10 additional thirty days for the threshold determination. The
11 governmental entity responsible for making the threshold determination
12 shall by rule, resolution, or ordinance adopt standards, consistent
13 with rules adopted by the department to implement this chapter, for
14 determining when an application and supporting documentation are
15 complete.

16 (b) If the ninety-day deadline is not satisfied, the applicant may
17 file a motion in the appropriate superior court requesting court
18 approval of the application. If the application is denied either
19 within or after the ninety-day decision period, the applicant may file
20 a motion in the appropriate superior court requesting the court to
21 overturn the decision. This subsection applies notwithstanding, and as
22 an alternative to, any other provision of law establishing appeal
23 procedures. Applicants choosing to utilize this appeal authority are
24 deemed to have satisfied all administrative remedies.

25 (2) This section shall not apply to a city, town, or county that:

26 (a) By ordinance adopted prior to April 1, 1992, has adopted
27 procedures to integrate permit and land use decisions with the
28 requirements of this chapter; or

29 (b) Is planning under RCW 36.70A.040 and is subject to the
30 requirements of RCW 36.70B.090.

31 **Sec. 13.** RCW 77.115.040 and 2007 c 216 s 6 are each amended to
32 read as follows:

33 (1) All aquatic farmers, as defined in RCW 15.85.020, shall
34 register with the department. The director shall assign each aquatic
35 farm a unique registration number and develop and maintain in an
36 electronic database a registration list of all aquaculture farms. The

1 department shall establish procedures to annually update the aquatic
2 farmer information contained in the registration list. The department
3 shall coordinate with the department of health using shellfish growing
4 area certification data when updating the registration list.

5 (2)(a) All decisions on registrations under this chapter must be
6 completed and the decision returned to the applicant within ninety days
7 of submitting the registrations. If the ninety-day deadline is not
8 satisfied, the applicant may file a motion in the appropriate superior
9 court requesting court approval of the application.

10 (b) If the application is denied either within or after the ninety-
11 day decision period, the applicant may file a motion in the appropriate
12 superior court requesting the court to overturn the decision. This
13 subsection applies notwithstanding, and as an alternative to, any other
14 provision of law establishing appeal procedures. Applicants choosing
15 to utilize this appeal authority are deemed to have satisfied all
16 administrative remedies.

17 (3) Registered aquaculture farms shall provide the department with
18 the following information:

19 (a) The name of the aquatic farmer;

20 (b) The address of the aquatic farmer;

21 (c) Contact information such as telephone, fax, web site, and e-
22 mail address, if available;

23 (d) The number and location of acres under cultivation, including
24 a map displaying the location of the cultivated acres;

25 (e) The name of the landowner of the property being cultivated or
26 otherwise used in the aquatic farming operation;

27 (f) The private sector cultured aquatic product being propagated,
28 farmed, or cultivated; and

29 (g) Statistical production data.

30 ~~((+3))~~ (4) The state veterinarian shall be provided with
31 registration and statistical data by the department.

32 NEW SECTION. Sec. 14. A new section is added to chapter 69.30 RCW
33 to read as follows:

34 (1) All decisions on applications under this chapter must be
35 completed and the decision returned to the applicant within ninety days
36 of submitting the application. If the ninety-day deadline is not

1 satisfied, the applicant may file a motion in the appropriate superior
2 court requesting court approval of the application.

3 (2) If the application is denied either within or after the ninety-
4 day decision period, the applicant may file a motion in the appropriate
5 superior court requesting the court to overturn the decision. This
6 subsection applies notwithstanding, and as an alternative to, any other
7 provision of law establishing appeal procedures. Applicants choosing
8 to utilize this appeal authority are deemed to have satisfied all
9 administrative remedies.

10 NEW SECTION. **Sec. 15.** A new section is added to chapter 90.64 RCW
11 to read as follows:

12 (1) All decisions on applications under this chapter must be
13 completed and the decision returned to the applicant within ninety days
14 of submitting the application. If the ninety-day deadline is not
15 satisfied, the applicant may file a motion in the appropriate superior
16 court requesting court approval of the application.

17 (2) If the application is denied either within or after the ninety-
18 day decision period, the applicant may file a motion in the appropriate
19 superior court requesting the court to overturn the decision. This
20 subsection applies notwithstanding, and as an alternative to, any other
21 provision of law establishing appeal procedures. Applicants choosing
22 to utilize this appeal authority are deemed to have satisfied all
23 administrative remedies.

24 NEW SECTION. **Sec. 16.** A new section is added to chapter 15.58 RCW
25 to read as follows:

26 (1) All decisions on applications under this chapter must be
27 completed and the decision returned to the applicant within ninety days
28 of submitting the application. If the ninety-day deadline is not
29 satisfied, the applicant may file a motion in the appropriate superior
30 court requesting court approval of the application.

31 (2) If the application is denied either within or after the ninety-
32 day decision period, the applicant may file a motion in the appropriate
33 superior court requesting the court to overturn the decision. This
34 subsection applies notwithstanding, and as an alternative to, any other
35 provision of law establishing appeal procedures. Applicants choosing

1 to utilize this appeal authority are deemed to have satisfied all
2 administrative remedies.

3 NEW SECTION. **Sec. 17.** A new section is added to chapter 17.21 RCW
4 to read as follows:

5 (1) All decisions on applications under this chapter must be
6 completed and the decision returned to the applicant within ninety days
7 of submitting the application. If the ninety-day deadline is not
8 satisfied, the applicant may file a motion in the appropriate superior
9 court requesting court approval of the application.

10 (2) If the application is denied either within or after the ninety-
11 day decision period, the applicant may file a motion in the appropriate
12 superior court requesting the court to overturn the decision. This
13 subsection applies notwithstanding, and as an alternative to, any other
14 provision of law establishing appeal procedures. Applicants choosing
15 to utilize this appeal authority are deemed to have satisfied all
16 administrative remedies.

17 **Sec. 18.** RCW 16.65.030 and 2003 c 326 s 65 are each amended to
18 read as follows:

19 (1) No person shall operate a public livestock market without first
20 having obtained a license from the director. Application for a license
21 shall be in writing on forms prescribed by the director, and shall
22 include the following:

23 (a) A nonrefundable original license application fee of two
24 thousand dollars.

25 (b) A legal description of the property upon which the public
26 livestock market shall be located.

27 (c) A complete description and blueprints or plans of the public
28 livestock market physical plant, yards, pens, and all facilities the
29 applicant proposes to use in the operation of such public livestock
30 market.

31 (d) A financial statement, audited by a certified or licensed
32 public accountant, to determine whether or not the applicant meets the
33 minimum net worth requirements, established by the director by rule, to
34 construct and/or operate a public livestock market. If the applicant
35 is a subsidiary of a larger company, corporation, society, or
36 cooperative association, both the parent company and the subsidiary

1 company must submit a financial statement to determine whether or not
2 the applicant meets the minimum net worth requirements. All financial
3 statement information required by this subsection is confidential
4 information and not subject to public disclosure.

5 (e) The schedule of rates and charges the applicant proposes to
6 impose on the owners of livestock for services rendered in the
7 operation of such livestock market.

8 (f) The weekly or monthly sales day or days on which the applicant
9 proposes to operate his or her public livestock market sales and the
10 class of livestock that may be sold on these days.

11 (g) Projected source and quantity of livestock anticipated to be
12 handled.

13 (h) Projected gross dollar volume of business to be carried on, at,
14 or through the public livestock market during the first year's
15 operation.

16 (i) Facts upon which is based the conclusion that the trade area
17 and the livestock industry will benefit because of the proposed market.

18 (j) Other information as the director may require by rule.

19 (2) If the director determines that the applicant meets all the
20 requirements of subsection (1) of this section, the director shall
21 conduct a public hearing as provided by chapter 34.05 RCW, and shall
22 grant or deny an application for original license for a public
23 livestock market after considering evidence and testimony relating to
24 the requirements of this section and giving reasonable consideration
25 to:

26 (a) Benefits to the livestock industry to be derived from the
27 establishment and operation of the public livestock market proposed in
28 the application;

29 (b) The geographical area that will be affected;

30 (c) The conflict, if any, with sales days already allocated in the
31 area;

32 (d) The amount and class of livestock available for marketing in
33 the area;

34 (e) Buyers available to the proposed market; and

35 (f) Any other conditions affecting the orderly marketing of
36 livestock.

37 (3) Before a license is issued to operate a public livestock
38 market, the applicant must:

1 (a) Execute and deliver to the director a surety bond as required
2 under RCW 16.65.200;

3 (b) Provide evidence of a custodial account, as required under RCW
4 16.65.140, for the consignor's proceeds;

5 (c) Pay the appropriate license fee; and

6 (d) Provide other information required under this chapter and rules
7 adopted under this chapter.

8 (4)(a) All decisions under this section must be completed and the
9 decision returned to the applicant within ninety days of submitting the
10 registrations. If the ninety-day deadline is not satisfied, the
11 applicant may file a motion in the appropriate superior court
12 requesting court approval of the application.

13 (b) If the application is denied either within or after the ninety-
14 day decision period, the applicant may file a motion in the appropriate
15 superior court requesting the court to overturn the decision. This
16 subsection applies notwithstanding, and as an alternative to, any other
17 provision of law establishing appeal procedures. Applicants choosing
18 to utilize this appeal authority are deemed to have satisfied all
19 administrative remedies.

20 NEW SECTION. Sec. 19. A new section is added to chapter 70.95J
21 RCW to read as follows:

22 (1) All decisions on applications under this chapter must be
23 completed and the decision returned to the applicant within ninety days
24 of submitting the application. If the ninety-day deadline is not
25 satisfied, the applicant may file a motion in the appropriate superior
26 court requesting court approval of the application.

27 (2) If the application is denied either within or after the ninety-
28 day decision period, the applicant may file a motion in the appropriate
29 superior court requesting the court to overturn the decision. This
30 subsection applies notwithstanding, and as an alternative to, any other
31 provision of law establishing appeal procedures. Applicants choosing
32 to utilize this appeal authority are deemed to have satisfied all
33 administrative remedies.

34 **Sec. 20.** RCW 70.119A.110 and 2003 1st sp.s. c 5 s 18 are each
35 amended to read as follows:

36 (1) No person may operate a group A public water system unless the

1 person first submits an application to the department and receives an
2 operating permit as provided in this section. A new application must
3 be submitted upon any change in ownership of the system. Any person
4 operating a public water system on July 28, 1991, may continue to
5 operate the system until the department takes final action, including
6 any time necessary for a hearing under subsection (3) of this section,
7 on a permit application submitted by the person operating the system
8 under the rules adopted by the department to implement this section.

9 (2) The department may require that each application include the
10 information that is reasonable and necessary to determine that the
11 system complies with applicable standards and requirements of the
12 federal safe drinking water act, state law, and rules adopted by the
13 department or by the state board of health.

14 (3)(a) Following its review of the application, its supporting
15 material, and any information received by the department in its
16 investigation of the application, the department shall issue or deny
17 the operating permit. The department shall act on initial permit
18 applications as expeditiously as possible, and shall in all cases
19 either grant or deny the application within (~~one hundred twenty~~)
20 ninety days of receipt of the application or of any supplemental
21 information required to complete the application.

22 (b) The applicant for a permit shall be entitled to two different
23 appeals pathways:

24 (i) The applicant may file an appeal in accordance with chapter
25 34.05 RCW if the department denies the initial or subsequent
26 applications or imposes conditions or requirements upon the operator.
27 Any operator of a public water system that requests a hearing may
28 continue to operate the system until a decision is issued after the
29 hearing.

30 (ii) In the alternative, if the ninety-day deadline is not
31 satisfied, the applicant may file a motion in the appropriate superior
32 court requesting court approval of the application. If the application
33 is denied either within or after the ninety-day decision period, the
34 applicant may file a motion in the appropriate superior court
35 requesting the court to overturn the decision. This subsection applies
36 notwithstanding, and as an alternative to, any other provision of law
37 establishing appeal procedures. Applicants choosing to utilize this

1 appeal authority are deemed to have satisfied all administrative
2 remedies.

3 (4) At the time of initial permit application or at the time of
4 permit renewal the department may impose such permit conditions,
5 requirements for system improvements, and compliance schedules as it
6 determines are reasonable and necessary to ensure that the system will
7 provide a safe and reliable water supply to its users.

8 (5) Operating permits shall be issued for a term of one year, and
9 shall be renewed annually, unless the operator fails to apply for a new
10 permit or the department finds good cause to deny the application for
11 renewal.

12 (6) Each application shall be accompanied by an annual fee as
13 follows:

14 (a) The annual fee for public water supply systems serving fifteen
15 to forty-nine service connections shall be twenty-five dollars.

16 (b) The annual fee for public water supply systems serving fifty to
17 three thousand three hundred thirty-three service connections shall be
18 based on a uniform per service connection fee of one dollar and fifty
19 cents per service connection.

20 (c) The annual fee for public water supply systems serving three
21 thousand three hundred thirty-four to fifty-three thousand three
22 hundred thirty-three service connections shall be based on a uniform
23 per service connection fee of one dollar and fifty cents per service
24 connection plus ten cents for each service connection in excess of
25 three thousand three hundred thirty-three service connections.

26 (d) The annual fee for public water supply systems serving fifty-
27 three thousand three hundred thirty-four or more service connections
28 shall be ten thousand dollars.

29 (e) In addition to the fees under (a) through (d) of this
30 subsection, the department may charge an additional one-time fee of
31 five dollars for each service connection in a new water system.

32 (f) Until June 30, 2007, in addition to the fees under (a) through
33 (e) of this subsection, the department may charge municipal water
34 suppliers, as defined in RCW 90.03.015, an additional annual fee
35 equivalent to twenty-five cents for each residential service connection
36 for the purpose of funding the water conservation activities in RCW
37 70.119A.180.

1 (7) The department may phase-in the implementation for any group of
2 systems provided the schedule for implementation is established by
3 rule. Prior to implementing the operating permit requirement on water
4 systems having less than five hundred service connections, the
5 department shall form a committee composed of persons operating these
6 systems. The committee shall be composed of the department of health,
7 two operators of water systems having under one hundred connections,
8 two operators of water systems having between one hundred and two
9 hundred service connections, two operators of water systems having
10 between two hundred and three hundred service connections, two
11 operators of water systems having between three hundred and four
12 hundred service connections, two operators of water systems having
13 between four hundred and five hundred service connections, and two
14 county public health officials. The members shall be chosen from
15 different geographic regions of the state. This committee shall
16 develop draft rules to implement this section. The draft rules will
17 then be subject to the rule-making procedures in accordance with
18 chapter 34.05 RCW.

19 (8) The department shall notify existing public water systems of
20 the requirements of RCW 70.119A.030, 70.119A.060, and this section at
21 least one hundred twenty days prior to the date that an application for
22 a permit is required pursuant to RCW 70.119A.030, 70.119A.060, and this
23 section.

24 (9) The department shall issue one operating permit to any approved
25 satellite system management agency. Operating permit fees for approved
26 satellite system management agencies shall be one dollar per connection
27 per year for the total number of connections under the management of
28 the approved satellite agency. The department shall define by rule the
29 meaning of the term "satellite system management agency." If a
30 statutory definition of this term exists, then the department shall
31 adopt by rule a definition consistent with the statutory definition.

32 (10) For purposes of this section, "group A public water system"
33 and "system" mean those water systems with fifteen or more service
34 connections, regardless of the number of people; or a system serving an
35 average of twenty-five or more people per day for sixty or more days
36 within a calendar year, regardless of the number of service
37 connections.

1 **Sec. 21.** RCW 90.03.350 and 1995 c 8 s 6 are each amended to read
2 as follows:

3 (1) Except as provided in RCW 43.21A.068, any person, corporation
4 or association intending to construct or modify any dam or controlling
5 works for the storage of ten acre feet or more of water, shall before
6 beginning said construction or modification, submit plans and
7 specifications of the same to the department for examination and
8 approval as to its safety. Such plans and specifications shall be
9 submitted in duplicate, one copy of which shall be retained as a public
10 record, by the department, and the other returned with its approval or
11 rejection endorsed thereon. No such dam or controlling works shall be
12 constructed or modified until the same or any modification thereof
13 shall have been approved as to its safety by the department. Any such
14 dam or controlling works constructed or modified in any manner other
15 than in accordance with plans and specifications approved by the
16 department or which shall not be maintained in accordance with the
17 order of the department shall be presumed to be a public nuisance and
18 may be abated in the manner provided by law, and it shall be the duty
19 of the attorney general or prosecuting attorney of the county wherein
20 such dam or controlling works, or the major portion thereof, is
21 situated to institute abatement proceedings against the owner or owners
22 of such dam or controlling works, whenever he or she is requested to do
23 so by the department.

24 (2) A metals mining and milling operation regulated under chapter
25 232, Laws of 1994 is subject to additional dam safety inspection
26 requirements due to the special hazards associated with failure of a
27 tailings pond impoundment. The department shall inspect these
28 impoundments at least quarterly during the project's operation and at
29 least annually thereafter for the postclosure monitoring period in
30 order to ensure the safety of the dam or controlling works. The
31 department shall conduct additional inspections as needed during the
32 construction phase of the mining operation in order to ensure the safe
33 construction of the tailings impoundment.

34 (3)(a) All decisions on plan applications under this section must
35 be completed and the decision returned to the applicant within ninety
36 days of submitting the application. If the ninety-day deadline is not
37 satisfied, the applicant may file a motion in the appropriate superior
38 court requesting court approval of the application.

1 (b) If the application is denied either within or after the ninety-
2 day decision period, the applicant may file a motion in the appropriate
3 superior court requesting the court to overturn the decision. This
4 subsection applies notwithstanding, and as an alternative to, any other
5 provision of law establishing appeal procedures. Applicants choosing
6 to utilize this appeal authority are deemed to have satisfied all
7 administrative remedies.

8 **Sec. 22.** RCW 90.03.370 and 2003 c 329 s 1 are each amended to read
9 as follows:

10 (1)(a) All applications for reservoir permits are subject to the
11 provisions of RCW 90.03.250 through 90.03.320. But the party or
12 parties proposing to apply to a beneficial use the water stored in any
13 such reservoir shall also file an application for a permit, to be known
14 as the secondary permit, which shall be in compliance with the
15 provisions of RCW 90.03.250 through 90.03.320. Such secondary
16 application shall refer to such reservoir as its source of water supply
17 and shall show documentary evidence that an agreement has been entered
18 into with the owners of the reservoir for a permanent and sufficient
19 interest in said reservoir to impound enough water for the purposes set
20 forth in said application. When the beneficial use has been completed
21 and perfected under the secondary permit, the department shall take the
22 proof of the water users under such permit and the final certificate of
23 appropriation shall refer to both the ditch and works described in the
24 secondary permit and the reservoir described in the primary permit.
25 The department may accept for processing a single application form
26 covering both a proposed reservoir and a proposed secondary permit or
27 permits for use of water from that reservoir.

28 (b) The department shall expedite processing applications for the
29 following types of storage proposals:

30 (i) Development of storage facilities that will not require a new
31 water right for diversion or withdrawal of the water to be stored;

32 (ii) Adding or changing one or more purposes of use of stored
33 water;

34 (iii) Adding to the storage capacity of an existing storage
35 facility; and

36 (iv) Applications for secondary permits to secure use from existing
37 storage facilities.

1 (c) A secondary permit for the beneficial use of water shall not be
2 required for use of water stored in a reservoir where the water right
3 for the source of the stored water authorizes the beneficial use.

4 (2)(a) All decisions on applications under this section must be
5 completed and the decision returned to the applicant within ninety days
6 of submitting the application. If the ninety-day deadline is not
7 satisfied, the applicant may file a motion in the appropriate superior
8 court requesting court approval of the application.

9 (b) If the application is denied either within or after the ninety-
10 day decision period, the applicant may file a motion in the appropriate
11 superior court requesting the court to overturn the decision. This
12 subsection applies notwithstanding, and as an alternative to, any other
13 provision of law establishing appeal procedures. Applicants choosing
14 to utilize this appeal authority are deemed to have satisfied all
15 administrative remedies.

16 (3)(a) For the purposes of this section, "reservoir" includes, in
17 addition to any surface reservoir, any naturally occurring underground
18 geological formation where water is collected and stored for subsequent
19 use as part of an underground artificial storage and recovery project.
20 To qualify for issuance of a reservoir permit an underground geological
21 formation must meet standards for review and mitigation of adverse
22 impacts identified, for the following issues:

- 23 (i) Aquifer vulnerability and hydraulic continuity;
- 24 (ii) Potential impairment of existing water rights;
- 25 (iii) Geotechnical impacts and aquifer boundaries and
26 characteristics;
- 27 (iv) Chemical compatibility of surface waters and groundwater;
- 28 (v) Recharge and recovery treatment requirements;
- 29 (vi) System operation;
- 30 (vii) Water rights and ownership of water stored for recovery; and
- 31 (viii) Environmental impacts.

32 (b) Standards for review and standards for mitigation of adverse
33 impacts for an underground artificial storage and recovery project
34 shall be established by the department by rule. Notwithstanding the
35 provisions of RCW 90.03.250 through 90.03.320, analysis of each
36 underground artificial storage and recovery project and each
37 underground geological formation for which an applicant seeks the

1 status of a reservoir shall be through applicant-initiated studies
2 reviewed by the department.

3 ~~((+3))~~ (4) For the purposes of this section, "underground
4 artificial storage and recovery project" means any project in which it
5 is intended to artificially store water in the ground through
6 injection, surface spreading and infiltration, or other department-
7 approved method, and to make subsequent use of the stored water.
8 However, (a) this subsection does not apply to irrigation return flow,
9 or to operational and seepage losses that occur during the irrigation
10 of land, or to water that is artificially stored due to the
11 construction, operation, or maintenance of an irrigation district
12 project, or to projects involving water reclaimed in accordance with
13 chapter 90.46 RCW; and (b) RCW 90.44.130 applies to those instances of
14 claimed artificial recharge occurring due to the construction,
15 operation, or maintenance of an irrigation district project or
16 operational and seepage losses that occur during the irrigation of
17 land, as well as other forms of claimed artificial recharge already
18 existing at the time a groundwater subarea is established.

19 ~~((+4))~~ (5) Nothing in chapter 98, Laws of 2000 changes the
20 requirements of existing law governing issuance of permits to
21 appropriate or withdraw the waters of the state.

22 ~~((+5))~~ (6) The department shall report to the legislature by
23 December 31, 2001, on the standards for review and standards for
24 mitigation developed under subsection ~~((+3))~~ (4) of this section and
25 on the status of any applications that have been filed with the
26 department for underground artificial storage and recovery projects by
27 that date.

28 ~~((+6))~~ (7) Where needed to ensure that existing storage capacity
29 is effectively and efficiently used to meet multiple purposes, the
30 department may authorize reservoirs to be filled more than once per
31 year or more than once per season of use.

32 ~~((+7))~~ (8) This section does not apply to facilities to recapture
33 and reuse return flow from irrigation operations serving a single farm
34 under an existing water right as long as the acreage irrigated is not
35 increased beyond the acreage allowed to be irrigated under the water
36 right.

37 ~~((+8))~~ (9) In addition to the facilities exempted under subsection
38 ~~((+7))~~ (8) of this section, this section does not apply to small

1 irrigation impoundments. For purposes of this section, "small
2 irrigation impoundments" means lined surface storage ponds less than
3 ten acre feet in volume used to impound irrigation water under an
4 existing water right where use of the impoundment: (a)(i) Facilitates
5 efficient use of water; or (ii) promotes compliance with an approved
6 recovery plan for endangered or threatened species; and (b) does not
7 expand the number of acres irrigated or the annual consumptive quantity
8 of water used. Such ponds must be lined unless a licensed engineer
9 determines that a liner is not needed to retain water in the pond and
10 to prevent groundwater contamination. Although it may also be composed
11 of other materials, a properly maintained liner may be composed of
12 bentonite. Water remaining in a small irrigation impoundment at the
13 end of an irrigation season may be carried over for use in the next
14 season. However, the limitations of this subsection (~~(+8+)~~) (9) apply.
15 Development and use of a small irrigation impoundment does not
16 constitute a change or amendment for purposes of RCW 90.03.380 or
17 90.44.055.

18 **Sec. 23.** RCW 90.58.140 and 2010 c 210 s 36 are each amended to
19 read as follows:

20 (1) A development shall not be undertaken on the shorelines of the
21 state unless it is consistent with the policy of this chapter and,
22 after adoption or approval, as appropriate, the applicable guidelines,
23 rules, or master program.

24 (2) A substantial development shall not be undertaken on shorelines
25 of the state without first obtaining a permit from the government
26 entity having administrative jurisdiction under this chapter.

27 A permit shall be granted:

28 (a) From June 1, 1971, until such time as an applicable master
29 program has become effective, only when the development proposed is
30 consistent with: (i) The policy of RCW 90.58.020; and (ii) after their
31 adoption, the guidelines and rules of the department; and (iii) so far
32 as can be ascertained, the master program being developed for the area;

33 (b) After adoption or approval, as appropriate, by the department
34 of an applicable master program, only when the development proposed is
35 consistent with the applicable master program and this chapter.

36 (3) The local government shall establish a program, consistent with
37 rules adopted by the department, for the administration and enforcement

1 of the permit system provided in this section. The administration of
2 the system so established shall be performed exclusively by the local
3 government.

4 (4) Except as otherwise specifically provided in subsection (11) of
5 this section, the local government shall require notification of the
6 public of all applications for permits governed by any permit system
7 established pursuant to subsection (3) of this section by ensuring that
8 notice of the application is given by at least one of the following
9 methods:

10 (a) Mailing of the notice to the latest recorded real property
11 owners as shown by the records of the county assessor within at least
12 three hundred feet of the boundary of the property upon which the
13 substantial development is proposed;

14 (b) Posting of the notice in a conspicuous manner on the property
15 upon which the project is to be constructed; or

16 (c) Any other manner deemed appropriate by local authorities to
17 accomplish the objectives of reasonable notice to adjacent landowners
18 and the public.

19 The notices shall include a statement that any person desiring to
20 submit written comments concerning an application, or desiring to
21 receive notification of the final decision concerning an application as
22 expeditiously as possible after the issuance of the decision, may
23 submit the comments or requests for decisions to the local government
24 within thirty days of the last date the notice is to be published
25 pursuant to this subsection. The local government shall forward, in a
26 timely manner following the issuance of a decision, a copy of the
27 decision to each person who submits a request for the decision.

28 If a hearing is to be held on an application, notices of such a
29 hearing shall include a statement that any person may submit oral or
30 written comments on an application at the hearing.

31 (5) The system shall include provisions to assure that construction
32 pursuant to a permit will not begin or be authorized until twenty-one
33 days from the date of receipt as provided in subsection (6) of this
34 section; or until all review proceedings are terminated if the
35 proceedings were initiated within twenty-one days from the date of
36 receipt as defined in subsection (6) of this section except as follows:

37 (a) In the case of any permit issued to the state of Washington,
38 department of transportation, for the construction and modification of

1 SR 90 (I-90) on or adjacent to Lake Washington, the construction may
2 begin after thirty days from the date of filing, and the permits are
3 valid until December 31, 1995;

4 (b) Construction may be commenced no sooner than thirty days after
5 the date of the appeal of the board's decision is filed if a permit is
6 granted by the local government and (i) the granting of the permit is
7 appealed to the shorelines hearings board within twenty-one days of the
8 date of receipt, (ii) the hearings board approves the granting of the
9 permit by the local government or approves a portion of the substantial
10 development for which the local government issued the permit, and (iii)
11 an appeal for judicial review of the hearings board decision is filed
12 pursuant to chapter 34.05 RCW. The appellant may request, within ten
13 days of the filing of the appeal with the court, a hearing before the
14 court to determine whether construction pursuant to the permit approved
15 by the hearings board or to a revised permit issued pursuant to the
16 order of the hearings board should not commence. If, at the conclusion
17 of the hearing, the court finds that construction pursuant to such a
18 permit would involve a significant, irreversible damaging of the
19 environment, the court shall prohibit the permittee from commencing the
20 construction pursuant to the approved or revised permit until all
21 review proceedings are final. Construction pursuant to a permit
22 revised at the direction of the hearings board may begin only on that
23 portion of the substantial development for which the local government
24 had originally issued the permit, and construction pursuant to such a
25 revised permit on other portions of the substantial development may not
26 begin until after all review proceedings are terminated. In such a
27 hearing before the court, the burden of proving whether the
28 construction may involve significant irreversible damage to the
29 environment and demonstrating whether such construction would or would
30 not be appropriate is on the appellant;

31 (c) If the permit is for a substantial development meeting the
32 requirements of subsection (11) of this section, construction pursuant
33 to that permit may not begin or be authorized until twenty-one days
34 from the date of receipt as provided in subsection (6) of this section.

35 If a permittee begins construction pursuant to subsections (a),
36 (b), or (c) of this subsection, the construction is begun at the
37 permittee's own risk. If, as a result of judicial review, the courts
38 order the removal of any portion of the construction or the restoration

1 of any portion of the environment involved or require the alteration of
2 any portion of a substantial development constructed pursuant to a
3 permit, the permittee is barred from recovering damages or costs
4 involved in adhering to such requirements from the local government
5 that granted the permit, the hearings board, or any appellant or
6 intervener.

7 (6) Any decision on an application for a permit under the authority
8 of this section, whether it is an approval or a denial, shall,
9 concurrently with the transmittal of the ruling to the applicant, be
10 transmitted to the department and the attorney general. A petition for
11 review of such a decision must be commenced within twenty-one days from
12 the date of receipt of the decision. With regard to a permit other
13 than a permit governed by subsection (10) of this section, "date of
14 receipt" as used herein refers to the date that the applicant receives
15 written notice from the department that the department has received the
16 decision. With regard to a permit for a variance or a conditional use,
17 "date of receipt" means the date a local government or applicant
18 receives the written decision of the department rendered on the permit
19 pursuant to subsection (10) of this section. For the purposes of this
20 subsection, the term "date of receipt" has the same meaning as provided
21 in RCW 43.21B.001.

22 (7) Applicants for permits under this section have the burden of
23 proving that a proposed substantial development is consistent with the
24 criteria that must be met before a permit is granted. In any review of
25 the granting or denial of an application for a permit as provided in
26 RCW 90.58.180 (1) and (2), the person requesting the review has the
27 burden of proof.

28 (8) Any permit may, after a hearing with adequate notice to the
29 permittee and the public, be rescinded by the issuing authority upon
30 the finding that a permittee has not complied with conditions of a
31 permit. If the department is of the opinion that noncompliance exists,
32 the department shall provide written notice to the local government and
33 the permittee. If the department is of the opinion that the
34 noncompliance continues to exist thirty days after the date of the
35 notice, and the local government has taken no action to rescind the
36 permit, the department may petition the hearings board for a rescission
37 of the permit upon written notice of the petition to the local

1 government and the permittee if the request by the department is made
2 to the hearings board within fifteen days of the termination of the
3 thirty-day notice to the local government.

4 (9) The holder of a certification from the governor pursuant to
5 chapter 80.50 RCW shall not be required to obtain a permit under this
6 section.

7 (10) Any permit for a variance or a conditional use by local
8 government under approved master programs must be submitted to the
9 department for its approval or disapproval.

10 (11)(a) An application for a substantial development permit for a
11 limited utility extension or for the construction of a bulkhead or
12 other measures to protect a single family residence and its appurtenant
13 structures from shoreline erosion shall be subject to the following
14 procedures:

15 (i) The public comment period under subsection (4) of this section
16 shall be twenty days. The notice provided under subsection (4) of this
17 section shall state the manner in which the public may obtain a copy of
18 the local government decision on the application no later than two days
19 following its issuance;

20 (ii) The local government shall issue its decision to grant or deny
21 the permit within twenty-one days of the last day of the comment period
22 specified in (i) of this subsection; and

23 (iii) If there is an appeal of the decision to grant or deny the
24 permit to the local government legislative authority, the appeal shall
25 be finally determined by the legislative authority within thirty days.

26 (b) For purposes of this section, a limited utility extension means
27 the extension of a utility service that:

28 (i) Is categorically exempt under chapter 43.21C RCW for one or
29 more of the following: Natural gas, electricity, telephone, water, or
30 sewer;

31 (ii) Will serve an existing use in compliance with this chapter;
32 and

33 (iii) Will not extend more than twenty-five hundred linear feet
34 within the shorelines of the state.

35 (12)(a) All decisions on permits under this section must be
36 completed and the decision returned to the applicant within ninety days
37 of submitting the application. If the ninety-day deadline is not

1 satisfied, the applicant may file a motion in the appropriate superior
2 court requesting court approval of the permit.

3 (b) If the permit is denied either within or after the ninety-day
4 decision period, the applicant may file a motion in the appropriate
5 superior court requesting the court to overturn the decision. This
6 subsection applies notwithstanding, and as an alternative to, any other
7 provision of law establishing appeal procedures. Applicants choosing
8 to utilize this appeal authority are deemed to have satisfied all
9 administrative remedies.

10 **Sec. 24.** RCW 70.118B.030 and 2007 c 343 s 4 are each amended to
11 read as follows:

12 (1) A person may not install or operate a large on-site sewage
13 system without an operating permit as provided in this chapter after
14 July 1, 2009. The owner of the system is responsible for obtaining a
15 permit.

16 (2) The department shall issue operating permits in accordance with
17 the rules adopted under RCW 70.118B.040.

18 (3) The department shall ensure the system meets all applicable
19 siting, design, construction, and installation requirements prior to
20 issuing an initial operating permit. Prior to renewing an operating
21 permit, the department may review the performance of the system to
22 determine compliance with rules and any permit conditions.

23 (4) At the time of initial permit application or at the time of
24 permit renewal the department shall impose those permit conditions,
25 requirements for system improvements, and compliance schedules as it
26 determines are reasonable and necessary to ensure that the system will
27 be operated and maintained properly. Each application must be
28 accompanied by a fee as established in rules adopted by the department.

29 (5) Operating permits shall be issued for a term of one year, and
30 shall be renewed annually, unless the operator fails to apply for a new
31 permit or the department finds good cause to deny the application for
32 renewal.

33 (6) Each permit may be issued only for the site and owner named in
34 the application. Permits are not transferable or assignable except
35 with the written approval of the department.

36 (7) The department may deny an application for a permit or modify,
37 suspend, or revoke a permit in any case in which it finds that the

1 permit was obtained by fraud or there is or has been a failure,
2 refusal, or inability to comply with the requirements of this chapter
3 or the standards or rules adopted under this chapter. RCW 43.70.115
4 governs notice of denial, revocation, suspension, or modification and
5 provides the right to an adjudicative proceeding to the permit
6 applicant or permittee.

7 (8) For systems with design flows of more than fourteen thousand
8 five hundred gallons per day, the department shall adopt rules to
9 ensure adequate public notice and opportunity for review and comment on
10 initial large on-site sewage system permit applications and subsequent
11 permit applications to increase the volume of waste disposal or change
12 effluent characteristics. The rules must include provisions for notice
13 of final decisions. Methods for providing notice may include
14 electronic mail, posting on the department's internet site, publication
15 in a local newspaper, press releases, mailings, or other means of
16 notification the department determines appropriate.

17 (9) A person aggrieved by the issuance of an initial permit, or by
18 the issuance of a subsequent permit to increase the volume of waste
19 disposal or to change effluent characteristics, for systems with design
20 flows of more than fourteen thousand five hundred gallons per day, has
21 the right to an adjudicative proceeding. The application for an
22 adjudicative proceeding must be in writing, state the basis for
23 contesting the action, include a copy of the decision, be served on and
24 received by the department within twenty-eight days of receipt of
25 notice of the final decision, and be served in a manner that shows
26 proof of receipt. An adjudicative proceeding conducted under this
27 subsection is governed by chapter 34.05 RCW.

28 (10) Any permit issued by the department of ecology for a large
29 on-site sewage system under chapter 90.48 RCW is valid until it first
30 expires after July 22, 2007. The system owner shall apply for an
31 operating permit at least one hundred twenty days prior to expiration
32 of the department of ecology permit.

33 (11) Systems required to meet operator certification requirements
34 under chapter 70.95B RCW must continue to meet those requirements as a
35 condition of the department operating permit.

36 (12)(a) All decisions on permits under this section must be
37 completed and the decision returned to the applicant within ninety days

1 of submitting the application. If the ninety-day deadline is not
2 satisfied, the applicant may file a motion in the appropriate superior
3 court requesting court approval of the permit.

4 (b) If the permit is denied either within or after the ninety-day
5 decision period, the applicant may file a motion in the appropriate
6 superior court requesting the court to overturn the decision. This
7 subsection applies notwithstanding, and as an alternative to, any other
8 provision of law establishing appeal procedures. Applicants choosing
9 to utilize this appeal authority are deemed to have satisfied all
10 administrative remedies.

11 NEW SECTION. Sec. 25. A new section is added to chapter 90.66 RCW
12 to read as follows:

13 (1) All decisions on permits or transfers under this section must
14 be completed and the decision returned to the applicant within ninety
15 days of submitting the application. If the ninety-day deadline is not
16 satisfied, the applicant may file a motion in the appropriate superior
17 court requesting court approval of the permit.

18 (2) If the permit is denied either within or after the ninety-day
19 decision period, the applicant may file a motion in the appropriate
20 superior court requesting the court to overturn the decision. This
21 subsection applies notwithstanding, and as an alternative to, any other
22 provision of law establishing appeal procedures. Applicants choosing
23 to use this appeal authority are deemed to have satisfied all
24 administrative remedies."

25 Correct the title.

EFFECT: Strikes the underlying bill. Requires agency decision making on specified permits, variations, applications, and registrations to take place within ninety days of such documents being submitted. Allows a motion to be filed in superior court requesting court approval pertaining to the submitted document if the deadline is not met. Provides the ability for an applicant to file a motion in superior court to overturn a denial.

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