
HOUSE BILL 1961

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By Representatives Zeiger, Blake, Harris, Kristiansen, Wilcox, Taylor, Haler, Buys, Johnson, Rivers, Dahlquist, McCune, Short, Overstreet, Bailey, and Fagan

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1 AN ACT Relating to establishing consistent standards for agency
2 decision making; amending RCW 70.94.181, 77.55.021, 78.44.081,
3 86.16.025, 70.95.205, 15.54.820, 43.21C.033, 77.115.040, 16.65.030,
4 70.119A.110, 90.03.350, 90.03.370, 90.58.140, and 70.118B.030;
5 reenacting and amending RCW 76.09.060; adding a new section to chapter
6 70.94 RCW; adding a new section to chapter 90.48 RCW; adding a new
7 section to chapter 90.76 RCW; adding a new section to chapter 18.104
8 RCW; adding a new section to chapter 69.30 RCW; adding a new section to
9 chapter 90.64 RCW; adding a new section to chapter 15.58 RCW; adding a
10 new section to chapter 17.21 RCW; adding a new section to chapter
11 70.95J RCW; and adding a new section to chapter 90.66 RCW.

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

13 NEW SECTION. **Sec. 1.** A new section is added to chapter 70.94 RCW
14 to read as follows:

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

1 (2) 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. 2.** RCW 70.94.181 and 1991 c 199 s 306 are each amended to
9 read as follows:

10 (1) Any person who owns or is in control of any plant, building,
11 structure, establishment, process or equipment may apply to the
12 department (~~(of ecology)~~) or appropriate local authority board for a
13 variance from rules or regulations governing the quality, nature,
14 duration or extent of discharges of air contaminants. The application
15 shall be accompanied by such information and data as the department
16 (~~(of ecology)~~) or board may require. The department (~~(of ecology)~~) or
17 board may grant such variance, provided that variances to state rules
18 shall require the department's approval prior to being issued by a
19 local authority board. The total time period for a variance and
20 renewal of such variance shall not exceed one year. Variances may be
21 issued by either the department or a local board but only after public
22 hearing or due notice, if the department or board finds that:

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

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

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

32 (3) Any variance or renewal thereof shall be granted within the
33 requirements of subsection (1) of this section and under conditions
34 consistent with the reasons therefor, and within the following
35 limitations:

36 (a) If the variance is granted on the ground that there is no
37 practicable means known or available for the adequate prevention,

1 abatement, or control of the pollution involved, it shall be only until
2 the necessary means for prevention, abatement, or control become known
3 and available, and subject to the taking of any substitute or alternate
4 measures that the department (~~(of ecology)~~) or board may prescribe.

5 (b) If the variance is granted on the ground that compliance with
6 the particular requirement or requirements from which variance is
7 sought will require the taking of measures which, because of their
8 extent or cost, must be spread over a considerable period of time, it
9 shall be for a period not to exceed such reasonable time as, in the
10 view of the department (~~(of ecology)~~) or board is requisite for the
11 taking of the necessary measures. A variance granted on the ground
12 specified herein shall contain a timetable for the taking of action in
13 an expeditious manner and shall be conditioned on adherence to such
14 timetable.

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

19 (4) Any variance granted pursuant to this section may be renewed on
20 terms and conditions and for periods which would be appropriate on
21 initial granting of a variance. If complaint is made to the department
22 (~~(of ecology)~~) or board on account of the variance, no renewal thereof
23 shall be granted unless following a public hearing on the complaint on
24 due notice the department or board finds that renewal is justified. No
25 renewal shall be granted except on application therefor. Any such
26 application shall be made at least sixty days prior to the expiration
27 of the variance. Immediately upon receipt of an application for
28 renewal, the department (~~(of ecology)~~) or board shall give public
29 notice of such application in accordance with rules of the department
30 (~~(of ecology)~~) or board.

31 (5) A variance or renewal shall not be a right of the applicant or
32 holder thereof but shall be granted at the discretion of the department
33 (~~(of ecology)~~) or board. However, any applicant adversely affected by
34 the denial or the terms and conditions of the granting of an
35 application for a variance or renewal of a variance by the department
36 (~~(of ecology)~~) or board may obtain judicial review thereof under the
37 provisions of chapter 34.05 RCW as now or hereafter amended.

1 (6) Nothing in this section and no variance or renewal granted
2 pursuant hereto shall be construed to prevent or limit the application
3 of the emergency provisions and procedures of RCW 70.94.710 through
4 70.94.730 to any person or his or her property.

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

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

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

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

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

29 (1) The department shall prescribe the form and contents of the
30 notification and application. The forest practices rules shall specify
31 by whom and under what conditions the notification and application
32 shall be signed or otherwise certified as acceptable. Activities
33 conducted by the department or a contractor under the direction of the
34 department under the provisions of RCW 76.04.660, shall be exempt from
35 the landowner signature requirement on any forest practice application
36 required to be filed. The application or notification shall be
37 delivered in person to the department, sent by first-class mail to the

1 department or electronically filed in a form defined by the department.
2 The form for electronic filing shall be readily convertible to a paper
3 copy, which shall be available to the public pursuant to chapter 42.56
4 RCW. The information required may include, but is not limited to:

5 (a) Name and address of the forest landowner, timber owner, and
6 operator;

7 (b) Description of the proposed forest practice or practices to be
8 conducted;

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

11 (d) Planimetric and topographic maps showing location and size of
12 all lakes and streams and other public waters in and immediately
13 adjacent to the operating area and showing all existing and proposed
14 roads and major tractor roads;

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

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

21 (g) Soil, geological, and hydrological data with respect to forest
22 practices;

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

25 (i) Provisions for continuing maintenance of roads and other
26 construction or other measures necessary to afford protection to public
27 resources;

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

30 (k) All necessary application or notification fees.

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

33 (3) The application for a forest practice or the notification of a
34 forest practice is subject to the reforestation requirement of RCW
35 76.09.070.

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

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

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

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

12 (b) Except as provided elsewhere in this section, if the landowner
13 harvests without an approved application or notification or the
14 landowner does not state that any land covered by the application or
15 notification will be or is intended to be converted, and the department
16 or the county, city, town, or regional governmental entity becomes
17 aware of conversion activities to a use other than commercial timber
18 operations, as that term is defined in RCW 76.09.020, then the
19 department shall send to the department of ecology and the appropriate
20 county, city, town, and regional governmental entities the following
21 documents:

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

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

25 (iii) Copies of any applicable outstanding final orders or
26 decisions issued by the department related to the forest practices
27 application or notification.

28 (c) Failure to comply with the reforestation requirements contained
29 in any final order or decision shall constitute a removal of
30 designation under the provisions of RCW 84.33.140, and a change of use
31 under the provisions of RCW 84.34.080, and, if applicable, shall
32 subject such lands to the payments and/or penalties resulting from such
33 removals or changes.

34 (d) Conversion to a use other than commercial forest product
35 operations within six years after approval of the forest practices
36 application or notification without the consent of the county, city, or
37 town shall constitute a violation of each of the county, municipal

1 city, town, and regional authorities to which the forest practice
2 operations would have been subject if the application had stated an
3 intent to convert.

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

8 (f) Landowners who have not stated an intent to convert the land
9 covered by an application or notification and who decide to convert the
10 land to a nonforestry use within six years of receiving an approved
11 application or notification must do so in a manner consistent with RCW
12 76.09.470.

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

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

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

28 (6) Except as provided in RCW 76.09.350(4), the notification to or
29 the approval given by the department to an application to conduct a
30 forest practice shall be effective for a term of two years from the
31 date of approval or notification and shall not be renewed unless a new
32 application is filed and approved or a new notification has been filed.
33 At the option of the applicant, an application or notification may be
34 submitted to cover a single forest practice or a number of forest
35 practices within reasonable geographic or political boundaries as
36 specified by the department. An application or notification that
37 covers more than one forest practice may have an effective term of more
38 than two years. The board shall adopt rules that establish standards

1 and procedures for approving an application or notification that has an
2 effective term of more than two years. Such rules shall include
3 extended time periods for application or notification approval or
4 disapproval. On an approved application with a term of more than two
5 years, the applicant shall inform the department before commencing
6 operations.

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

14 (8) Forest practices applications or notifications are not required
15 for forest practices conducted to control exotic forest insect or
16 disease outbreaks, when conducted by or under the direction of the
17 department of agriculture in carrying out an order of the governor or
18 director of the department of agriculture to implement pest control
19 measures as authorized under chapter 17.24 RCW, and are not required
20 when conducted by or under the direction of the department in carrying
21 out emergency measures under a forest health emergency declaration by
22 the commissioner of public lands as provided in RCW 76.06.130.

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

25 (b) In order to minimize adverse impacts to public resources,
26 control measures must be based on integrated pest management, as
27 defined in RCW 17.15.010, and must follow forest practices rules
28 relating to road construction and maintenance, timber harvest, and
29 forest chemicals, to the extent possible without compromising control
30 objectives.

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

35 (d) When the appropriate regulatory staff of the department are
36 notified under (c) of this subsection, they must consult with the
37 landowner, interested agencies, and affected tribes, and assist the

1 notifying agencies in the development of integrated pest management
2 plans that comply with forest practices rules as required under (b) of
3 this subsection.

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

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

10 (g) The exemption from obtaining approved forest practices
11 applications or notifications does not apply to forest practices
12 conducted after the governor, the director of the department of
13 agriculture, or the commissioner of public lands have declared that an
14 emergency no longer exists because control objectives have been met,
15 that there is no longer an imminent threat, or that there is no longer
16 a good likelihood of control.

17 (9)(a) All decisions on applications or notifications under this
18 section must be completed and the decision returned to the applicant
19 within ninety days of submitting the application. If the ninety-day
20 deadline is not satisfied, the applicant may file a motion in the
21 appropriate superior court requesting court approval of the
22 application.

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

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

32 (1) All decisions on applications under this chapter 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.

1 (2) 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. 5.** RCW 77.55.021 and 2010 c 210 s 27 are each amended to read
9 as follows:

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

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

18 (a) General plans for the overall project;

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

22 (c) Complete plans and specifications for the proper protection of
23 fish life; and

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

27 (3)(a) Protection of fish life is the only ground upon which
28 approval of a permit may be denied or conditioned. Approval of a
29 permit may not be unreasonably withheld or unreasonably conditioned.
30 Except as provided in this subsection and subsections (~~(8), (10), and~~
31 ~~(12)~~) (9), (11), and (13) of this section, the department has forty-
32 five calendar days upon receipt of a complete application to grant or
33 deny approval of a permit. The forty-five day requirement is suspended
34 if:

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

1 (ii) The site is physically inaccessible for inspection;
2 (iii) The applicant requests a delay; or
3 (iv) The department is issuing a permit for a storm water discharge
4 and is complying with the requirements of RCW 77.55.161(3)(b).

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

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

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

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

19 (b) Issuance, denial, conditioning, or modification of a permit may
20 be informally appealed to the department within thirty days from the
21 date of receipt of the decision. Requests for informal appeals must be
22 filed in the form and manner prescribed by the department by rule. A
23 permit decision that has been informally appealed to the department is
24 appealable to the board within thirty days from the date of receipt of
25 the department's decision on the informal appeal.

26 (5)(a) Notwithstanding the forty-five day decision timeline
27 required in this section, all decisions on applications under this
28 section must be completed and the decision returned to the applicant no
29 longer than ninety days of submitting the application. If the ninety-
30 day deadline is not satisfied, the applicant may file a motion in the
31 appropriate superior court requesting court approval of the
32 application.

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

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

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

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

9 (c) A permit remains in effect without need for periodic renewal
10 for hydraulic projects that divert water for agricultural irrigation or
11 stock watering purposes and that involve seasonal construction or other
12 work. A permit for streambank stabilization projects to protect farm
13 and agricultural land as defined in RCW 84.34.020 remains in effect
14 without need for periodic renewal if the problem causing the need for
15 the streambank stabilization occurs on an annual or more frequent
16 basis. The permittee must notify the appropriate agency before
17 commencing the construction or other work within the area covered by
18 the permit.

19 ((+6)) (7) The department may, after consultation with the
20 permittee, modify a permit due to changed conditions. The modification
21 is appealable as provided in subsection (4) of this section. For
22 hydraulic projects that divert water for agricultural irrigation or
23 stock watering purposes, or when the hydraulic project or other work is
24 associated with streambank stabilization to protect farm and
25 agricultural land as defined in RCW 84.34.020, the burden is on the
26 department to show that changed conditions warrant the modification in
27 order to protect fish life.

28 ((+7)) (8) A permittee may request modification of a permit due to
29 changed conditions. The request must be processed within forty-five
30 calendar days of receipt of the written request. A decision by the
31 department is appealable as provided in subsection (4) of this section.
32 For hydraulic projects that divert water for agricultural irrigation or
33 stock watering purposes, or when the hydraulic project or other work is
34 associated with streambank stabilization to protect farm and
35 agricultural land as defined in RCW 84.34.020, the burden is on the
36 permittee to show that changed conditions warrant the requested
37 modification and that such a modification will not impair fish life.

1 ~~((+8))~~ (9)(a) The department, the county legislative authority, or
2 the governor may declare and continue an emergency. If the county
3 legislative authority declares an emergency under this subsection, it
4 shall immediately notify the department. A declared state of emergency
5 by the governor under RCW 43.06.010 shall constitute a declaration
6 under this subsection.

7 (b) The department, through its authorized representatives, shall
8 issue immediately, upon request, oral approval for a stream crossing,
9 or work to remove any obstructions, repair existing structures, restore
10 streambanks, protect fish life, or protect property threatened by the
11 stream or a change in the stream flow without the necessity of
12 obtaining a written permit prior to commencing work. Conditions of the
13 emergency oral permit must be established by the department and reduced
14 to writing within thirty days and complied with as provided for in this
15 chapter.

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

19 ~~((+9))~~ (10) All state and local agencies with authority under this
20 chapter to issue permits or other authorizations in connection with
21 emergency water withdrawals and facilities authorized under RCW
22 43.83B.410 shall expedite the processing of such permits or
23 authorizations in keeping with the emergency nature of such requests
24 and shall provide a decision to the applicant within fifteen calendar
25 days of the date of application.

26 ~~((+10))~~ (11) The department or the county legislative authority
27 may determine an imminent danger exists. The county legislative
28 authority shall notify the department, in writing, if it determines
29 that an imminent danger exists. In cases of imminent danger, the
30 department shall issue an expedited written permit, upon request, for
31 work to remove any obstructions, repair existing structures, restore
32 banks, protect fish resources, or protect property. Expedited permit
33 requests require a complete written application as provided in
34 subsection (2) of this section and must be issued within fifteen
35 calendar days of the receipt of a complete written application.
36 Approval of an expedited permit is valid for up to sixty days from the
37 date of issuance. The department may not require the provisions of the

1 state environmental policy act, chapter 43.21C RCW, to be met as a
2 condition of issuing a permit under this subsection.

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

16 (b) Any projects proposed to address a chronic danger identified
17 under (a) of this subsection that satisfies the project description
18 identified in RCW 77.55.181(1)(a)(ii) are not subject to the provisions
19 of the state environmental policy act, chapter 43.21C RCW. However,
20 the project is subject to the review process established in RCW
21 77.55.181(3) as if it were a fish habitat improvement project.

22 ~~((+12+))~~ (13) The department may issue an expedited written permit
23 in those instances where normal permit processing would result in
24 significant hardship for the applicant or unacceptable damage to the
25 environment. Expedited permit requests require a complete written
26 application as provided in subsection (2) of this section and must be
27 issued within fifteen calendar days of the receipt of a complete
28 written application. Approval of an expedited permit is valid for up
29 to sixty days from the date of issuance. The department may not
30 require the provisions of the state environmental policy act, chapter
31 43.21C RCW, to be met as a condition of issuing a permit under this
32 subsection.

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

35 (1) All decisions on license applications under this chapter must
36 be completed and the decision returned to the applicant within ninety

1 days 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 application.

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

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

13 (1) After July 1, 1993, no miner or permit holder may engage in
14 surface mining without having first obtained a reclamation permit from
15 the department. Operating permits issued by the department between
16 January 1, 1971, and June 30, 1993, shall be considered reclamation
17 permits. A separate permit shall be required for each noncontiguous
18 surface mine. The reclamation permit shall consist of the permit forms
19 and any exhibits attached thereto. The permit holder shall comply with
20 the provisions of the reclamation permit unless waived and explained in
21 writing by the department.

22 (2) Prior to receiving a reclamation permit, an applicant must
23 submit an application on forms provided by the department that shall
24 contain the following information and shall be considered part of the
25 reclamation permit:

26 ((+1)) (a) Name and address of the legal landowner, or purchaser
27 of the land under a real estate contract;

28 ((+2)) (b) The name of the applicant and, if the applicants are
29 corporations or other business entities, the names and addresses of
30 their principal officers and resident agent for service of process;

31 ((+3)) (c) A reasonably accurate description of the minerals to be
32 surface mined;

33 ((+4)) (d) Type of surface mining to be performed;

34 ((+5)) (e) Estimated starting date, date of completion, and date
35 of completed reclamation of surface mining;

36 ((+6)) (f) Size and legal description of the permit area and
37 maximum lateral and vertical extent of the disturbed area;

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

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

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

6 (3) The reclamation permit shall be granted for the period required
7 to deplete essentially all minerals identified in the reclamation
8 permit on the land covered by the reclamation plan. The reclamation
9 permit shall be valid until the reclamation is complete unless the
10 permit is canceled by the department.

11 (4)(a) All decisions on applications under this chapter must be
12 completed and the decision returned to the applicant within ninety days
13 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 (b) If the application is denied either within or after the ninety-
17 day decision period, the applicant may file a motion in the appropriate
18 superior court requesting the court to overturn the decision. This
19 subsection applies notwithstanding, and as an alternative to, any other
20 provision of law establishing appeal procedures. Applicants choosing
21 to utilize this appeal authority are deemed to have satisfied all
22 administrative remedies.

23 NEW SECTION. Sec. 8. A new section is added to chapter 18.104 RCW
24 to read as follows:

25 (1) 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 (2) 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 **Sec. 9.** RCW 86.16.025 and 1995 c 8 s 4 are each amended to read as
2 follows:

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

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

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

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

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

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

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

32 (2) After receipt of an application, the department shall review it
33 to determine whether the application is complete, and forward a copy of
34 the complete application to all interested jurisdictional health
35 departments for review and comment. Within forty-five days, the
36 jurisdictional health departments shall forward their comments and any
37 other information they deem relevant to the department, which shall

1 then give final approval or disapproval of the application. Every
2 complete application shall be approved or disapproved by the department
3 within ninety days after receipt. If the ninety-day deadline is not
4 satisfied, the applicant may file a motion in the appropriate superior
5 court requesting court approval of the application. If the application
6 is denied either within or after the ninety-day decision period, the
7 applicant may file a motion in the appropriate superior court
8 requesting the court to overturn the decision. This subsection applies
9 notwithstanding, and as an alternative to, any other provision of law
10 establishing appeal procedures. Applicants choosing to utilize this
11 appeal authority are deemed to have satisfied all administrative
12 remedies.

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

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

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

24 (1) After receipt from the department of the completed application
25 required by RCW 15.54.325, the department of ecology shall evaluate
26 whether the use of the proposed waste-derived fertilizer or the
27 micronutrient fertilizer as defined in RCW 15.54.270 is consistent with
28 the following:

- 29 (a) Chapter 70.95 RCW, the solid waste management act;
- 30 (b) Chapter 70.105 RCW, the hazardous waste management act; and
- 31 (c) 42 U.S.C. Sec. 6901 et seq., the resource conservation and
32 recovery act.

33 (2) The department of ecology shall apply the standards adopted in
34 RCW 15.54.800. If more stringent standards apply under chapter 173-303
35 WAC for the same constituents, the department of ecology must use the
36 more stringent standards.

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

7 (4) A party aggrieved by a decision of the department of ecology to
8 issue a written approval under this section or to deny the issuance of
9 such an approval may appeal the decision to the pollution control
10 hearings board within thirty days of the decision. Review of such a
11 decision shall be conducted in accordance with either subsection (5) of
12 this section or with chapter 43.21B RCW(~~(-)~~), with any subsequent
13 appeal of a decision of the hearings board (~~shall be~~) obtained in
14 accordance with RCW 43.21B.180.

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

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

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

29 (1)(a) Except as provided in subsection (2) of this section, the
30 responsible official shall make a threshold determination on a
31 completed application within ninety days after the application and
32 supporting documentation are complete. The applicant may request an
33 additional thirty days for the threshold determination. The
34 governmental entity responsible for making the threshold determination
35 shall by rule, resolution, or ordinance adopt standards, consistent
36 with rules adopted by the department to implement this chapter, for

1 determining when an application and supporting documentation are
2 complete.

3 (b) If the ninety-day deadline is not satisfied, the applicant may
4 file a motion in the appropriate superior court requesting court
5 approval of the application. If the application is denied either
6 within or after the ninety-day decision period, the applicant may file
7 a motion in the appropriate superior court requesting the court to
8 overturn the decision. This subsection applies notwithstanding, and as
9 an alternative to, any other provision of law establishing appeal
10 procedures. Applicants choosing to utilize this appeal authority are
11 deemed to have satisfied all administrative remedies.

- 12 (2) This section shall not apply to a city, town, or county that:
- 13 (a) By ordinance adopted prior to April 1, 1992, has adopted
14 procedures to integrate permit and land use decisions with the
15 requirements of this chapter; or
- 16 (b) Is planning under RCW 36.70A.040 and is subject to the
17 requirements of RCW 36.70B.090.

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

20 (1) All aquatic farmers, as defined in RCW 15.85.020, shall
21 register with the department. The director shall assign each aquatic
22 farm a unique registration number and develop and maintain in an
23 electronic database a registration list of all aquaculture farms. The
24 department shall establish procedures to annually update the aquatic
25 farmer information contained in the registration list. The department
26 shall coordinate with the department of health using shellfish growing
27 area certification data when updating the registration list.

28 (2)(a) All decisions on registrations under this chapter must be
29 completed and the decision returned to the applicant within ninety days
30 of submitting the registrations. 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.

33 (b) If the application is denied either within or after the ninety-
34 day decision period, the applicant may file a motion in the appropriate
35 superior court requesting the court to overturn the decision. This
36 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 (3) Registered aquaculture farms shall provide the department with
5 the following information:

6 (a) The name of the aquatic farmer;

7 (b) The address of the aquatic farmer;

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

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

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

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

16 (g) Statistical production data.

17 ((+3)) (4) The state veterinarian shall be provided with
18 registration and statistical data by the department.

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

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

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

33 NEW SECTION. Sec. 15. A new section is added to chapter 90.64 RCW
34 to read as follows:

35 (1) All decisions on applications under this chapter must be
36 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 application.

4 (2) If the application is denied either within or after the ninety-
5 day 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. 16.** A new section is added to chapter 15.58 RCW
12 to read as follows:

13 (1) All decisions on applications under this chapter must be
14 completed and the decision returned to the applicant within ninety days
15 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 application.

18 (2) If the application is denied either within or after the ninety-
19 day 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 utilize this appeal authority are deemed to have satisfied all
24 administrative remedies.

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

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

32 (2) If the application is denied either within or after the ninety-
33 day decision period, the applicant may file a motion in the appropriate
34 superior court requesting the court to overturn the decision. This
35 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. 18.** RCW 16.65.030 and 2003 c 326 s 65 are each amended to
5 read as follows:

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

10 (a) A nonrefundable original license application fee of two
11 thousand dollars.

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

14 (c) A complete description and blueprints or plans of the public
15 livestock market physical plant, yards, pens, and all facilities the
16 applicant proposes to use in the operation of such public livestock
17 market.

18 (d) A financial statement, audited by a certified or licensed
19 public accountant, to determine whether or not the applicant meets the
20 minimum net worth requirements, established by the director by rule, to
21 construct and/or operate a public livestock market. If the applicant
22 is a subsidiary of a larger company, corporation, society, or
23 cooperative association, both the parent company and the subsidiary
24 company must submit a financial statement to determine whether or not
25 the applicant meets the minimum net worth requirements. All financial
26 statement information required by this subsection is confidential
27 information and not subject to public disclosure.

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

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

34 (g) Projected source and quantity of livestock anticipated to be
35 handled.

36 (h) Projected gross dollar volume of business to be carried on, at,

1 or through the public livestock market during the first year's
2 operation.

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

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

6 (2) If the director determines that the applicant meets all the
7 requirements of subsection (1) of this section, the director shall
8 conduct a public hearing as provided by chapter 34.05 RCW, and shall
9 grant or deny an application for original license for a public
10 livestock market after considering evidence and testimony relating to
11 the requirements of this section and giving reasonable consideration
12 to:

13 (a) Benefits to the livestock industry to be derived from the
14 establishment and operation of the public livestock market proposed in
15 the application;

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

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

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

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

22 (f) Any other conditions affecting the orderly marketing of
23 livestock.

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

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

28 (b) Provide evidence of a custodial account, as required under RCW
29 16.65.140, for the consignor's proceeds;

30 (c) Pay the appropriate license fee; and

31 (d) Provide other information required under this chapter and rules
32 adopted under this chapter.

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

1 federal safe drinking water act, state law, and rules adopted by the
2 department or by the state board of health.

3 (3)(a) Following its review of the application, its supporting
4 material, and any information received by the department in its
5 investigation of the application, the department shall issue or deny
6 the operating permit. The department shall act on initial permit
7 applications as expeditiously as possible, and shall in all cases
8 either grant or deny the application within (~~one hundred twenty~~)
9 ninety days of receipt of the application or of any supplemental
10 information required to complete the application.

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

13 (i) The applicant may file an appeal in accordance with chapter
14 34.05 RCW if the department denies the initial or subsequent
15 applications or imposes conditions or requirements upon the operator.
16 Any operator of a public water system that requests a hearing may
17 continue to operate the system until a decision is issued after the
18 hearing.

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

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

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

1 (6) Each application shall be accompanied by an annual fee as
2 follows:

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

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

9 (c) The annual fee for public water supply systems serving three
10 thousand three hundred thirty-four to fifty-three thousand three
11 hundred thirty-three service connections shall be based on a uniform
12 per service connection fee of one dollar and fifty cents per service
13 connection plus ten cents for each service connection in excess of
14 three thousand three hundred thirty-three service connections.

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

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

21 (f) Until June 30, 2007, in addition to the fees under (a) through
22 (e) of this subsection, the department may charge municipal water
23 suppliers, as defined in RCW 90.03.015, an additional annual fee
24 equivalent to twenty-five cents for each residential service connection
25 for the purpose of funding the water conservation activities in RCW
26 70.119A.180.

27 (7) The department may phase-in the implementation for any group of
28 systems provided the schedule for implementation is established by
29 rule. Prior to implementing the operating permit requirement on water
30 systems having less than five hundred service connections, the
31 department shall form a committee composed of persons operating these
32 systems. The committee shall be composed of the department of health,
33 two operators of water systems having under one hundred connections,
34 two operators of water systems having between one hundred and two
35 hundred service connections, two operators of water systems having
36 between two hundred and three hundred service connections, two
37 operators of water systems having between three hundred and four
38 hundred service connections, two operators of water systems having

1 between four hundred and five hundred service connections, and two
2 county public health officials. The members shall be chosen from
3 different geographic regions of the state. This committee shall
4 develop draft rules to implement this section. The draft rules will
5 then be subject to the rule-making procedures in accordance with
6 chapter 34.05 RCW.

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

12 (9) The department shall issue one operating permit to any approved
13 satellite system management agency. Operating permit fees for approved
14 satellite system management agencies shall be one dollar per connection
15 per year for the total number of connections under the management of
16 the approved satellite agency. The department shall define by rule the
17 meaning of the term "satellite system management agency." If a
18 statutory definition of this term exists, then the department shall
19 adopt by rule a definition consistent with the statutory definition.

20 (10) For purposes of this section, "group A public water system"
21 and "system" mean those water systems with fifteen or more service
22 connections, regardless of the number of people; or a system serving an
23 average of twenty-five or more people per day for sixty or more days
24 within a calendar year, regardless of the number of service
25 connections.

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

28 (1) Except as provided in RCW 43.21A.068, any person, corporation
29 or association intending to construct or modify any dam or controlling
30 works for the storage of ten acre feet or more of water, shall before
31 beginning said construction or modification, submit plans and
32 specifications of the same to the department for examination and
33 approval as to its safety. Such plans and specifications shall be
34 submitted in duplicate, one copy of which shall be retained as a public
35 record, by the department, and the other returned with its approval or
36 rejection endorsed thereon. No such dam or controlling works shall be
37 constructed or modified until the same or any modification thereof

1 shall have been approved as to its safety by the department. Any such
2 dam or controlling works constructed or modified in any manner other
3 than in accordance with plans and specifications approved by the
4 department or which shall not be maintained in accordance with the
5 order of the department shall be presumed to be a public nuisance and
6 may be abated in the manner provided by law, and it shall be the duty
7 of the attorney general or prosecuting attorney of the county wherein
8 such dam or controlling works, or the major portion thereof, is
9 situated to institute abatement proceedings against the owner or owners
10 of such dam or controlling works, whenever he or she is requested to do
11 so by the department.

12 (2) A metals mining and milling operation regulated under chapter
13 232, Laws of 1994 is subject to additional dam safety inspection
14 requirements due to the special hazards associated with failure of a
15 tailings pond impoundment. The department shall inspect these
16 impoundments at least quarterly during the project's operation and at
17 least annually thereafter for the postclosure monitoring period in
18 order to ensure the safety of the dam or controlling works. The
19 department shall conduct additional inspections as needed during the
20 construction phase of the mining operation in order to ensure the safe
21 construction of the tailings impoundment.

22 (3)(a) All decisions on plan applications under this section must
23 be completed and the decision returned to the applicant within ninety
24 days 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 (b) 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. 22.** RCW 90.03.370 and 2003 c 329 s 1 are each amended to read
35 as follows:

36 (1)(a) All applications for reservoir permits are subject to the
37 provisions of RCW 90.03.250 through 90.03.320. But the party or

1 parties proposing to apply to a beneficial use the water stored in any
2 such reservoir shall also file an application for a permit, to be known
3 as the secondary permit, which shall be in compliance with the
4 provisions of RCW 90.03.250 through 90.03.320. Such secondary
5 application shall refer to such reservoir as its source of water supply
6 and shall show documentary evidence that an agreement has been entered
7 into with the owners of the reservoir for a permanent and sufficient
8 interest in said reservoir to impound enough water for the purposes set
9 forth in said application. When the beneficial use has been completed
10 and perfected under the secondary permit, the department shall take the
11 proof of the water users under such permit and the final certificate of
12 appropriation shall refer to both the ditch and works described in the
13 secondary permit and the reservoir described in the primary permit.
14 The department may accept for processing a single application form
15 covering both a proposed reservoir and a proposed secondary permit or
16 permits for use of water from that reservoir.

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

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

21 (ii) Adding or changing one or more purposes of use of stored
22 water;

23 (iii) Adding to the storage capacity of an existing storage
24 facility; and

25 (iv) Applications for secondary permits to secure use from existing
26 storage facilities.

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

30 (2)(a) All decisions on applications under this section 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 (3)(a) For the purposes of this section, "reservoir" includes, in
5 addition to any surface reservoir, any naturally occurring underground
6 geological formation where water is collected and stored for subsequent
7 use as part of an underground artificial storage and recovery project.
8 To qualify for issuance of a reservoir permit an underground geological
9 formation must meet standards for review and mitigation of adverse
10 impacts identified, for the following issues:

- 11 (i) Aquifer vulnerability and hydraulic continuity;
- 12 (ii) Potential impairment of existing water rights;
- 13 (iii) Geotechnical impacts and aquifer boundaries and
14 characteristics;
- 15 (iv) Chemical compatibility of surface waters and groundwater;
- 16 (v) Recharge and recovery treatment requirements;
- 17 (vi) System operation;
- 18 (vii) Water rights and ownership of water stored for recovery; and
- 19 (viii) Environmental impacts.

20 (b) Standards for review and standards for mitigation of adverse
21 impacts for an underground artificial storage and recovery project
22 shall be established by the department by rule. Notwithstanding the
23 provisions of RCW 90.03.250 through 90.03.320, analysis of each
24 underground artificial storage and recovery project and each
25 underground geological formation for which an applicant seeks the
26 status of a reservoir shall be through applicant-initiated studies
27 reviewed by the department.

28 ~~((3))~~ (4) For the purposes of this section, "underground
29 artificial storage and recovery project" means any project in which it
30 is intended to artificially store water in the ground through
31 injection, surface spreading and infiltration, or other department-
32 approved method, and to make subsequent use of the stored water.
33 However, (a) this subsection does not apply to irrigation return flow,
34 or to operational and seepage losses that occur during the irrigation
35 of land, or to water that is artificially stored due to the
36 construction, operation, or maintenance of an irrigation district
37 project, or to projects involving water reclaimed in accordance with
38 chapter 90.46 RCW; and (b) RCW 90.44.130 applies to those instances of

1 claimed artificial recharge occurring due to the construction,
2 operation, or maintenance of an irrigation district project or
3 operational and seepage losses that occur during the irrigation of
4 land, as well as other forms of claimed artificial recharge already
5 existing at the time a groundwater subarea is established.

6 ~~((+4))~~ (5) Nothing in chapter 98, Laws of 2000 changes the
7 requirements of existing law governing issuance of permits to
8 appropriate or withdraw the waters of the state.

9 ~~((+5))~~ (6) The department shall report to the legislature by
10 December 31, 2001, on the standards for review and standards for
11 mitigation developed under subsection ~~((+3))~~ (4) of this section and
12 on the status of any applications that have been filed with the
13 department for underground artificial storage and recovery projects by
14 that date.

15 ~~((+6))~~ (7) Where needed to ensure that existing storage capacity
16 is effectively and efficiently used to meet multiple purposes, the
17 department may authorize reservoirs to be filled more than once per
18 year or more than once per season of use.

19 ~~((+7))~~ (8) This section does not apply to facilities to recapture
20 and reuse return flow from irrigation operations serving a single farm
21 under an existing water right as long as the acreage irrigated is not
22 increased beyond the acreage allowed to be irrigated under the water
23 right.

24 ~~((+8))~~ (9) In addition to the facilities exempted under subsection
25 ~~((+7))~~ (8) of this section, this section does not apply to small
26 irrigation impoundments. For purposes of this section, "small
27 irrigation impoundments" means lined surface storage ponds less than
28 ten acre feet in volume used to impound irrigation water under an
29 existing water right where use of the impoundment: (a)(i) Facilitates
30 efficient use of water; or (ii) promotes compliance with an approved
31 recovery plan for endangered or threatened species; and (b) does not
32 expand the number of acres irrigated or the annual consumptive quantity
33 of water used. Such ponds must be lined unless a licensed engineer
34 determines that a liner is not needed to retain water in the pond and
35 to prevent groundwater contamination. Although it may also be composed
36 of other materials, a properly maintained liner may be composed of
37 bentonite. Water remaining in a small irrigation impoundment at the
38 end of an irrigation season may be carried over for use in the next

1 season. However, the limitations of this subsection (~~(+8)~~) (9) apply.
2 Development and use of a small irrigation impoundment does not
3 constitute a change or amendment for purposes of RCW 90.03.380 or
4 90.44.055.

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

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

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

14 A permit shall be granted:

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

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

23 (3) The local government shall establish a program, consistent with
24 rules adopted by the department, for the administration and enforcement
25 of the permit system provided in this section. The administration of
26 the system so established shall be performed exclusively by the local
27 government.

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

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

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

3 (c) Any other manner deemed appropriate by local authorities to
4 accomplish the objectives of reasonable notice to adjacent landowners
5 and the public.

6 The notices shall include a statement that any person desiring to
7 submit written comments concerning an application, or desiring to
8 receive notification of the final decision concerning an application as
9 expeditiously as possible after the issuance of the decision, may
10 submit the comments or requests for decisions to the local government
11 within thirty days of the last date the notice is to be published
12 pursuant to this subsection. The local government shall forward, in a
13 timely manner following the issuance of a decision, a copy of the
14 decision to each person who submits a request for the decision.

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

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

24 (a) In the case of any permit issued to the state of Washington,
25 department of transportation, for the construction and modification of
26 SR 90 (I-90) on or adjacent to Lake Washington, the construction may
27 begin after thirty days from the date of filing, and the permits are
28 valid until December 31, 1995;

29 (b) Construction may be commenced no sooner than thirty days after
30 the date of the appeal of the board's decision is filed if a permit is
31 granted by the local government and (i) the granting of the permit is
32 appealed to the shorelines hearings board within twenty-one days of the
33 date of receipt, (ii) the hearings board approves the granting of the
34 permit by the local government or approves a portion of the substantial
35 development for which the local government issued the permit, and (iii)
36 an appeal for judicial review of the hearings board decision is filed
37 pursuant to chapter 34.05 RCW. The appellant may request, within ten
38 days of the filing of the appeal with the court, a hearing before the

1 court to determine whether construction pursuant to the permit approved
2 by the hearings board or to a revised permit issued pursuant to the
3 order of the hearings board should not commence. If, at the conclusion
4 of the hearing, the court finds that construction pursuant to such a
5 permit would involve a significant, irreversible damaging of the
6 environment, the court shall prohibit the permittee from commencing the
7 construction pursuant to the approved or revised permit until all
8 review proceedings are final. Construction pursuant to a permit
9 revised at the direction of the hearings board may begin only on that
10 portion of the substantial development for which the local government
11 had originally issued the permit, and construction pursuant to such a
12 revised permit on other portions of the substantial development may not
13 begin until after all review proceedings are terminated. In such a
14 hearing before the court, the burden of proving whether the
15 construction may involve significant irreversible damage to the
16 environment and demonstrating whether such construction would or would
17 not be appropriate is on the appellant;

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

22 If a permittee begins construction pursuant to subsections (a),
23 (b), or (c) of this subsection, the construction is begun at the
24 permittee's own risk. If, as a result of judicial review, the courts
25 order the removal of any portion of the construction or the restoration
26 of any portion of the environment involved or require the alteration of
27 any portion of a substantial development constructed pursuant to a
28 permit, the permittee is barred from recovering damages or costs
29 involved in adhering to such requirements from the local government
30 that granted the permit, the hearings board, or any appellant or
31 intervener.

32 (6) Any decision on an application for a permit under the authority
33 of this section, whether it is an approval or a denial, shall,
34 concurrently with the transmittal of the ruling to the applicant, be
35 transmitted to the department and the attorney general. A petition for
36 review of such a decision must be commenced within twenty-one days from
37 the date of receipt of the decision. With regard to a permit other
38 than a permit governed by subsection (10) of this section, "date of

1 receipt" as used herein refers to the date that the applicant receives
2 written notice from the department that the department has received the
3 decision. With regard to a permit for a variance or a conditional use,
4 "date of receipt" means the date a local government or applicant
5 receives the written decision of the department rendered on the permit
6 pursuant to subsection (10) of this section. For the purposes of this
7 subsection, the term "date of receipt" has the same meaning as provided
8 in RCW 43.21B.001.

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

15 (8) Any permit may, after a hearing with adequate notice to the
16 permittee and the public, be rescinded by the issuing authority upon
17 the finding that a permittee has not complied with conditions of a
18 permit. If the department is of the opinion that noncompliance exists,
19 the department shall provide written notice to the local government and
20 the permittee. If the department is of the opinion that the
21 noncompliance continues to exist thirty days after the date of the
22 notice, and the local government has taken no action to rescind the
23 permit, the department may petition the hearings board for a rescission
24 of the permit upon written notice of the petition to the local
25 government and the permittee if the request by the department is made
26 to the hearings board within fifteen days of the termination of the
27 thirty-day notice to the local government.

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

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

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

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

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

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

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

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

17 (ii) Will serve an existing use in compliance with this chapter;
18 and

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

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

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

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

35 (1) A person may not install or operate a large on-site sewage
36 system without an operating permit as provided in this chapter after

1 July 1, 2009. The owner of the system is responsible for obtaining a
2 permit.

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

5 (3) The department shall ensure the system meets all applicable
6 siting, design, construction, and installation requirements prior to
7 issuing an initial operating permit. Prior to renewing an operating
8 permit, the department may review the performance of the system to
9 determine compliance with rules and any permit conditions.

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

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

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

23 (7) The department may deny an application for a permit or modify,
24 suspend, or revoke a permit in any case in which it finds that the
25 permit was obtained by fraud or there is or has been a failure,
26 refusal, or inability to comply with the requirements of this chapter
27 or the standards or rules adopted under this chapter. RCW 43.70.115
28 governs notice of denial, revocation, suspension, or modification and
29 provides the right to an adjudicative proceeding to the permit
30 applicant or permittee.

31 (8) For systems with design flows of more than fourteen thousand
32 five hundred gallons per day, the department shall adopt rules to
33 ensure adequate public notice and opportunity for review and comment on
34 initial large on-site sewage system permit applications and subsequent
35 permit applications to increase the volume of waste disposal or change
36 effluent characteristics. The rules must include provisions for notice
37 of final decisions. Methods for providing notice may include

1 electronic mail, posting on the department's internet site, publication
2 in a local newspaper, press releases, mailings, or other means of
3 notification the department determines appropriate.

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

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

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

23 (12)(a) All decisions on permits under this section 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 permit.

28 (b) If the permit is denied either within or after the ninety-day
29 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 NEW SECTION. Sec. 25. A new section is added to chapter 90.66 RCW
36 to read as follows:

37 (1) All decisions on permits or transfers under this section must

1 be completed and the decision returned to the applicant within ninety
2 days of submitting the application. If the ninety-day deadline is not
3 satisfied, the applicant may file a motion in the appropriate superior
4 court requesting court approval of the permit.

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

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