
HOUSE BILL 2013

State of Washington 64th Legislature 2015 Regular Session

By Representatives Orcutt, Hargrove, Hayes, and Pike

Read first time 02/06/15. Referred to Committee on Environment.

1 AN ACT Relating to environmental standards related to
2 transportation projects; amending RCW 47.01.290, 90.48.260, and
3 77.55.021; adding a new section to chapter 43.21C RCW; and adding a
4 new section to chapter 77.55 RCW.

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

6 **Sec. 1.** RCW 47.01.290 and 1994 c 258 s 3 are each amended to
7 read as follows:

8 The legislature recognizes that environmental review of
9 transportation projects is a continuous process that should begin at
10 the earliest stages of planning and continue through final project
11 construction. Early and extensive involvement of the relevant
12 environmental regulatory authorities is critical in order to avoid
13 significant changes in substantially completed project design and
14 engineering. It is the expectation of the legislature that if a
15 comprehensive environmental approach, consistent with RCW 90.48.260
16 and sections 3 and 4 of this act, is integrated throughout various
17 transportation processes, onerous, duplicative, and time-consuming
18 permit processes will be minimized.

19 **Sec. 2.** RCW 90.48.260 and 2012 1st sp.s. c 1 s 313 are each
20 amended to read as follows:

1 (1) The department of ecology is hereby designated as the state
2 water pollution control agency for all purposes of the federal clean
3 water act as it exists on February 4, 1987, and is hereby authorized
4 to participate fully in the programs of the act as well as to take
5 all action necessary to secure to the state the benefits and to meet
6 the requirements of that act. With regard to the national estuary
7 program established by section 320 of that act, the department shall
8 exercise its responsibility jointly with the Puget Sound partnership,
9 created in RCW 90.71.210. The department of ecology may delegate its
10 authority under this chapter, including its national pollutant
11 discharge elimination permit system authority and duties regarding
12 animal feeding operations and concentrated animal feeding operations,
13 to the department of agriculture through a memorandum of
14 understanding. Until any such delegation receives federal approval,
15 the department of agriculture's adoption or issuance of animal
16 feeding operation and concentrated animal feeding operation rules,
17 permits, programs, and directives pertaining to water quality shall
18 be accomplished after reaching agreement with the director of the
19 department of ecology. Adoption or issuance and implementation shall
20 be accomplished so that compliance with such animal feeding operation
21 and concentrated animal feeding operation rules, permits, programs,
22 and directives will achieve compliance with all federal and state
23 water pollution control laws. The powers granted herein include,
24 among others, and notwithstanding any other provisions of this
25 chapter or otherwise, the following:

26 (a) Complete authority to establish and administer a
27 comprehensive state point source waste discharge or pollution
28 discharge elimination permit program which will enable the department
29 to qualify for full participation in any national waste discharge or
30 pollution discharge elimination permit system and will allow the
31 department to be the sole agency issuing permits required by such
32 national system operating in the state of Washington subject to the
33 provisions of RCW 90.48.262(2). Program elements authorized herein
34 may include, but are not limited to: (i) Effluent treatment and
35 limitation requirements together with timing requirements related
36 thereto; (ii) applicable receiving water quality standards
37 requirements; (iii) requirements of standards of performance for new
38 sources; (iv) pretreatment requirements; (v) termination and
39 modification of permits for cause; (vi) requirements for public
40 notices and opportunities for public hearings; (vii) appropriate

1 relationships with the secretary of the army in the administration of
2 his or her responsibilities which relate to anchorage and navigation,
3 with the administrator of the environmental protection agency in the
4 performance of his or her duties, and with other governmental
5 officials under the federal clean water act; (viii) requirements for
6 inspection, monitoring, entry, and reporting; (ix) enforcement of the
7 program through penalties, emergency powers, and criminal sanctions;
8 (x) a continuing planning process; and (xi) user charges.

9 (b) The power to establish and administer state programs in a
10 manner which will ensure the procurement of moneys, whether in the
11 form of grants, loans, or otherwise; to assist in the construction,
12 operation, and maintenance of various water pollution control
13 facilities and works; and the administering of various state water
14 pollution control management, regulatory, and enforcement programs.

15 (c) The power to develop and implement appropriate programs
16 pertaining to continuing planning processes, area-wide waste
17 treatment management plans, and basin planning.

18 (2) The governor shall have authority to perform those actions
19 required of him or her by the federal clean water act.

20 (3) By July 31, 2012, the department shall:

21 (a) Reissue without modification and for a term of one year any
22 national pollutant discharge elimination system municipal storm water
23 general permit applicable to western Washington municipalities first
24 issued on January 17, 2007; and

25 (b) Issue an updated national pollutant discharge elimination
26 system municipal storm water general permit applicable to western
27 Washington municipalities for any permit first issued on January 17,
28 2007. An updated permit issued under this subsection shall become
29 effective beginning August 1, 2013.

30 (i) Provisions of the updated permit issued under (b) of this
31 subsection relating to new requirements for low-impact development
32 and review and revision of local development codes, rules, standards,
33 or other enforceable documents to incorporate low-impact development
34 principles must be implemented simultaneously. These requirements may
35 go into effect no earlier than December 31, 2016, or the time of the
36 scheduled update under RCW 36.70A.130(5), as existing on July 10,
37 2012, whichever is later.

38 (ii) Provisions of the updated permit issued under (b) of this
39 subsection related to increased catch basin inspection and illicit
40 discharge detection frequencies and application of new storm water

1 controls to projects smaller than one acre may go into effect no
2 earlier than December 31, 2016, or the time of the scheduled update
3 under RCW 36.70A.130(5), as existing on July 10, 2012, whichever is
4 later.

5 (4) By July 31, 2012, the department shall:

6 (a) Reissue without modification and for a term of two years any
7 national pollutant discharge elimination system municipal storm water
8 general permit applicable to eastern Washington municipalities first
9 issued on January 17, 2007; and

10 (b) Issue an updated national pollutant discharge elimination
11 system municipal storm water general permit for any permit first
12 issued on January 17, 2007, applicable to eastern Washington
13 municipalities. An updated permit issued under this subsection
14 becomes effective August 1, 2014.

15 (5) The department may not adopt or maintain any rule that
16 includes, or include in any permit, a requirement under this chapter
17 that is applicable to transportation projects, as that term is
18 defined in RCW 47.29.020, if the requirement is more stringent than
19 would be required for a similar project in an abutting jurisdiction
20 that is subject to the federal clean water act. If a rule of the
21 department, or a condition of a department permit, applies to more
22 than just transportation projects, then this subsection only applies
23 as that rule or permit requirement affects the transportation
24 project.

25 NEW SECTION. Sec. 3. A new section is added to chapter 43.21C
26 RCW to read as follows:

27 The design, funding, permitting, construction, and maintenance of
28 any transportation project, as that term is defined in RCW 47.29.020,
29 is not subject to the provisions of this chapter if any element of
30 the transportation project is required to conduct any level of
31 environmental review under the national environmental policy act (42
32 U.S.C. Sec. 4321 et seq.).

33 NEW SECTION. Sec. 4. A new section is added to chapter 77.55
34 RCW to read as follows:

35 Transportation projects, as that term is defined in RCW
36 47.29.020, are not subject to the requirements of this chapter if the
37 project is designed, permitted, constructed, and maintained
38 consistent with the applicable provisions, if any, of the: Federal

1 clean water act, federal clean air act, the federal endangered
2 species act, the shoreline management act, the growth management act
3 and critical area ordinances, the forest practices act and the forest
4 and fish habitat conservation plan, the national and state
5 environmental policy acts, local grading permits and other local
6 regulatory authorities, or the state proprietary discretion in
7 aquatic lands leasing.

8 **Sec. 5.** RCW 77.55.021 and 2012 1st sp.s. c 1 s 102 are each
9 amended to read as follows:

10 (1) Except as provided in RCW 77.55.031, 77.55.051, 77.55.041,
11 (~~and~~) 77.55.361, and section 4 of this act, in the event that any
12 person or government agency desires to undertake a hydraulic project,
13 the person or government agency shall, before commencing work
14 thereon, secure the approval of the department in the form of a
15 permit as to the adequacy of the means proposed for the protection of
16 fish life.

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

19 (a) General plans for the overall project;

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

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

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

28 (e) Payment of all applicable application fees charged by the
29 department under RCW 77.55.321.

30 (3) The department may establish direct billing accounts or other
31 funds transfer methods with permit applicants to satisfy the fee
32 payment requirements of RCW 77.55.321.

33 (4) The department may accept complete, written applications as
34 provided in this section for multiple site permits and may issue
35 these permits. For multiple site permits, each specific location must
36 be identified.

37 (5) With the exception of emergency permits as provided in
38 subsection (12) of this section, applications for permits must be
39 submitted to the department's headquarters office in Olympia.

1 Requests for emergency permits as provided in subsection (12) of this
2 section may be made to the permitting biologist assigned to the
3 location in which the emergency occurs, to the department's regional
4 office in which the emergency occurs, or to the department's
5 headquarters office.

6 (6) Except as provided for emergency permits in subsection (12)
7 of this section, the department may not proceed with permit review
8 until all fees are paid in full as required in RCW 77.55.321.

9 (7)(a) Protection of fish life is the only ground upon which
10 approval of a permit may be denied or conditioned. Approval of a
11 permit may not be unreasonably withheld or unreasonably conditioned.

12 (b) Except as provided in this subsection and subsections (12)
13 through (14) and (16) of this section, the department has forty-five
14 calendar days upon receipt of a complete application to grant or deny
15 approval of a permit. The forty-five day requirement is suspended if:

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

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

20 (iii) The applicant requests a delay; or

21 (iv) The department is issuing a permit for a storm water
22 discharge and is complying with the requirements of RCW
23 77.55.161(3)(b).

24 (c) Immediately upon determination that the forty-five day period
25 is suspended under (b) of this subsection, the department shall
26 notify the applicant in writing of the reasons for the delay.

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

31 (8) If the department denies approval of a permit, the department
32 shall provide the applicant a written statement of the specific
33 reasons why and how the proposed project would adversely affect fish
34 life.

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

39 (b) Issuance, denial, conditioning, or modification of a permit
40 may be informally appealed to the department within thirty days from

1 the date of receipt of the decision. Requests for informal appeals
2 must be filed in the form and manner prescribed by the department by
3 rule. A permit decision that has been informally appealed to the
4 department is appealable to the board within thirty days from the
5 date of receipt of the department's decision on the informal appeal.

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

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

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

22 (10) The department may, after consultation with the permittee,
23 modify a permit due to changed conditions. A modification under this
24 subsection is not subject to the fees provided under RCW 77.55.321.
25 The modification is appealable as provided in subsection (8) of this
26 section. For a hydraulic project that diverts water for agricultural
27 irrigation or stock watering purposes, when the hydraulic project or
28 other work is associated with streambank stabilization to protect
29 farm and agricultural land as defined in RCW 84.34.020, the burden is
30 on the department to show that changed conditions warrant the
31 modification in order to protect fish life.

32 (11) A permittee may request modification of a permit due to
33 changed conditions. The request must be processed within forty-five
34 calendar days of receipt of the written request and payment of
35 applicable fees under RCW 77.55.321. A decision by the department is
36 appealable as provided in subsection (8) of this section. For a
37 hydraulic project that diverts water for agricultural irrigation or
38 stock watering purposes, when the hydraulic project or other work is
39 associated with streambank stabilization to protect farm and
40 agricultural land as defined in RCW 84.34.020, the burden is on the

1 permittee to show that changed conditions warrant the requested
2 modification and that such a modification will not impair fish life.

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

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

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

21 (d) The department may not charge a person requesting an
22 emergency permit any of the fees authorized by RCW 77.55.321 until
23 after the emergency permit is issued and reduced to writing.

24 (13) All state and local agencies with authority under this
25 chapter to issue permits or other authorizations in connection with
26 emergency water withdrawals and facilities authorized under RCW
27 43.83B.410 shall expedite the processing of such permits or
28 authorizations in keeping with the emergency nature of such requests
29 and shall provide a decision to the applicant within fifteen calendar
30 days of the date of application.

31 (14) The department or the county legislative authority may
32 determine an imminent danger exists. The county legislative authority
33 shall notify the department, in writing, if it determines that an
34 imminent danger exists. In cases of imminent danger, the department
35 shall issue an expedited written permit, upon request, for work to
36 remove any obstructions, repair existing structures, restore banks,
37 protect fish resources, or protect property. Expedited permit
38 requests require a complete written application as provided in
39 subsection (2) of this section and must be issued within fifteen
40 calendar days of the receipt of a complete written application.

1 Approval of an expedited permit is valid for up to sixty days from
2 the date of issuance. The department may not require the provisions
3 of the state environmental policy act, chapter 43.21C RCW, to be met
4 as a condition of issuing a permit under this subsection.

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

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

24 (16) The department may issue an expedited written permit in
25 those instances where normal permit processing would result in
26 significant hardship for the applicant or unacceptable damage to the
27 environment. Expedited permit requests require a complete written
28 application as provided in subsection (2) of this section and must be
29 issued within fifteen calendar days of the receipt of a complete
30 written application. Approval of an expedited permit is valid for up
31 to sixty days from the date of issuance. The department may not
32 require the provisions of the state environmental policy act, chapter
33 43.21C RCW, to be met as a condition of issuing a permit under this
34 subsection.

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