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States' Wetlands Permitting Statutes:

Washington



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Wash. Rev. Code Ch. 90.48

Wash. Rev. Code Ch. 90.58

Current with effective legislation from the 2024 Regular Session of the Washington Legislature.

Wash. Rev. Code § 90.48.010. Policy enunciated.

It is declared to be the public policy of the state of Washington to maintain the highest possible standards to insure the purity of all waters of the state consistent with public health and public enjoyment thereof, the propagation and protection of wild life, birds, game, fish and other aquatic life, and the industrial development of the state, and to that end require the use of all known available and reasonable methods by industries and others to prevent and control the pollution of the waters of the state of Washington. Consistent with this policy, the state of Washington will exercise its powers, as fully and as effectively as possible, to retain and secure high quality for all waters of the state. The state of Washington in recognition of the federal government's interest in the quality of the navigable waters of the United States, of which certain portions thereof are within the jurisdictional limits of this state, proclaims a public policy of working cooperatively with the federal government in a joint effort to extinguish the sources of water quality degradation, while at the same time preserving and vigorously exercising state powers to insure that present and future standards of water quality within the state shall be determined by the citizenry, through and by the efforts of state government, of the state of Washington.

Wash. Rev. Code § 90.48.020. Definitions.

Whenever the word "person" is used in this chapter, it shall be construed to include any political subdivision, government agency, municipality, industry, public or private corporation, copartnership, association, firm, individual or any other entity whatsoever.

Wherever the words "waters of the state" shall be used in this chapter, they shall be construed to include lakes, rivers, ponds, streams, inland waters, underground waters, salt waters and all other surface waters and watercourses within the jurisdiction of the state of Washington.

Whenever the word "pollution" is used in this chapter, it shall be construed to mean such contamination, or other alteration of the physical, chemical or biological



properties, of any waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the state as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to the public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

Wherever the word "department" is used in this chapter it shall mean the department of ecology.

Whenever the word "director" is used in this chapter it shall mean the director of ecology.

Whenever the words "aquatic noxious weed" are used in this chapter, they have the meaning prescribed under RCW 17.26.020.

Whenever the words "general sewer plan" are used in this chapter they shall be construed to include all sewerage general plans, sewer general comprehensive plans, plans for a system of sewerage, and other plans for sewer systems adopted by a local government entity including but not limited to cities, towns, public utility districts, and water-sewer districts.

Wash. Rev. Code § 90.48.030. Jurisdiction of department.

The department shall have the jurisdiction to control and prevent the pollution of streams, lakes, rivers, ponds, inland waters, salt waters, water courses, and other surface and underground waters of the state of Washington.

Wash. Rev. Code § 90.48.035. Rule-making authority.

The department shall have the authority to, and shall promulgate, amend, or rescind such rules and regulations as it shall deem necessary to carry out the provisions of this chapter, including but not limited to rules and regulations relating to standards of quality for waters of the state and for substances discharged therein in order to maintain the highest possible standards of all waters of the state in accordance with the public policy as declared in RCW 90.48.010.

Wash. Rev. Code § 90.48.037. Authority of department to bring enforcement actions.

The department, with the assistance of the attorney general, is authorized to bring any appropriate action at law or in equity, including action for injunctive relief, in the name of the people of the state of Washington as may be necessary to carry out the provisions of this chapter or chapter 90.56 RCW.



Wash. Rev. Code § 90.48.039. Hazardous substance remedial actions – Procedural requirements not applicable.

The procedural requirements of this chapter shall not apply to any person conducting a remedial action at a facility pursuant to a consent decree, order, or agreed order issued pursuant to chapter 70A.305 RCW, or to the department of ecology when it conducts a remedial action under chapter 70A.305 RCW. The department of ecology shall ensure compliance with the substantive requirements of this chapter through the consent decree, order, or agreed order issued pursuant to chapter 70A.305 RCW, or during the department-conducted remedial action, through the procedures developed by the department pursuant to RCW 70A.305.090.

Wash. Rev. Code § 90.48.045. Environmental excellence program agreements – Effects on chapter.

Notwithstanding any other provision of law, any legal requirement under this chapter, including any standard, limitation, rule, or order is superseded and replaced in accordance with the terms and provisions of an environmental excellence program agreement, entered into under chapter 43.21K RCW.

Wash. Rev. Code § 90.48.080. Discharge of polluting matter in waters prohibited.

It shall be unlawful for any person to throw, drain, run, or otherwise discharge into any of the waters of this state, or to cause, permit or suffer to be thrown, run, drained, allowed to seep or otherwise discharged into such waters any organic or inorganic matter that shall cause or tend to cause pollution of such waters according to the determination of the department, as provided for in this chapter.

Wash. Rev. Code § 90.48.090. Right of entry – Special inspection requirements for metals mining and milling operations.

The department or its duly appointed agent shall have the right to enter at all reasonable times in or upon any property, public or private, for the purpose of inspecting and investigating conditions relating to the pollution of or the possible pollution of any of the waters of this state.

The department shall have special inspection requirements for metals mining and milling operations regulated under chapter 232, Laws of 1994. The department shall inspect these mining and milling operations at least quarterly in order to ensure compliance with the intent and any permit issued pursuant to this chapter. The department shall conduct additional inspections as needed during the construction phase of these mining operations in order to ensure compliance with this chapter.



Wash. Rev. Code § 90.48.095. Authority of department to compel attendance and testimony of witnesses, production of books and papers – Contempt proceedings to enforce – Fees.

In carrying out the purposes of this chapter or chapter 90.56 RCW the department shall, in conjunction with either the adoption of rules, consideration of an application for a waste discharge permit or the termination or modification of such permit, or proceedings in adjudicative hearings, have the authority to issue process and subpoena witnesses effective throughout the state on its own behalf or that of an interested party, compel their attendance, administer oaths, take the testimony of any person under oath and, in connection therewith require the production for examination of any books or papers relating to the matter under consideration by the department. In case of disobedience on the part of any person to comply with any subpoena issued by the department, or on the refusal of any witness to testify to any matters regarding which he or she may be lawfully interrogated, it shall be the duty of the superior court of any county, or of the judge thereof, on application of the department, to compel obedience by proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein. In connection with the authority granted under this section no witness or other person shall be required to divulge trade secrets or secret processes. Persons responding to a subpoena as provided herein shall be entitled to fees as are witnesses in superior court.

Wash. Rev. Code § 90.48.100. Request for assistance.

The department shall have the right to request and receive the assistance of any educational institution or state agency when it is deemed necessary by the department to carry out the provisions of this chapter or chapter 90.56 RCW.

Wash. Rev. Code § 90.48.110. Plans and proposed methods of operation and maintenance of sewerage or disposal systems to be submitted to department – Exceptions – Time limitations.

(1) Except under subsection (2) of this section, all engineering reports, plans, and specifications for the construction of new sewerage systems, sewage treatment or disposal plants or systems, or for improvements or extensions to existing sewerage systems or sewage treatment or disposal plants, and the proposed method of future operation and maintenance of said facility or facilities, shall be submitted to and be approved by the department, before construction thereof may begin. No approval shall be given until the department is satisfied that said plans and specifications and the methods of operation and maintenance submitted are adequate to protect the quality of the state's waters as provided for in this chapter. Approval under this chapter is not required for large on-site sewage systems permitted by the department of



health under chapter 70A.115 RCW or for on-site sewage systems regulated by local health jurisdictions under rules of the state board of health.

(2) To promote efficiency in service delivery and intergovernmental cooperation in protecting the quality of the state's waters, the department may delegate the authority for review and approval of engineering reports, plans, and specifications for the construction of new sewerage systems, sewage treatment or disposal plants or systems, or for improvements or extensions to existing sewerage system or sewage treatment or disposal plants, and the proposed method of future operations and maintenance of said facility or facilities and industrial pretreatment systems, to local units of government requesting such delegation and meeting criteria established by the department.

(3) For any new or revised general sewer plan submitted for review under this section, the department shall review and either approve, conditionally approve, reject, or request amendments within ninety days of the receipt of the submission of the plan. The department may extend this ninety-day time limitation for new submittals by up to an additional ninety days if insufficient time exists to adequately review the general sewer plan. For rejections of plans or extensions of the timeline, the department shall provide in writing to the local government entity the reason for such action. In addition, the governing body of the local government entity and the department may mutually agree to an extension of the deadlines contained in this section.

Wash. Rev. Code § 90.48.112. Plan evaluation – Consideration of reclaimed water.

The evaluation of any plans submitted under RCW 90.48.110 must include consideration of opportunities for the use of reclaimed water as defined in RCW 90.46.010. Wastewater plans submitted under RCW 90.48.110 must include a statement describing how applicable reclamation and reuse elements will be coordinated as required under RCW 90.46.120(2).

Wash. Rev. Code § 90.48.120. Notice of department's determination that violation has or will occur – Report to department of compliance with determination – Order or directive to be issued – Notice.

(1) Whenever, in the opinion of the department, any person shall violate or creates a substantial potential to violate the provisions of this chapter or chapter 90.56 RCW, or fails to control the polluting content of waste discharged or to be discharged into any waters of the state, the department shall notify such person of its determination by registered mail. Such determination shall not constitute an order or directive under RCW 43.21B.310. Within thirty days from the receipt of notice of such determination, such person shall file with the



department a full report stating what steps have been and are being taken to control such waste or pollution or to otherwise comply with the determination of the department. Whereupon the department shall issue such order or directive as it deems appropriate under the circumstances, and shall notify such person thereof by registered mail.

(2) Whenever the department deems immediate action is necessary to accomplish the purposes of this chapter or chapter 90.56 RCW, it may issue such order or directive, as appropriate under the circumstances, without first issuing a notice or determination pursuant to subsection (1) of this section. An order or directive issued pursuant to this subsection shall be served by registered mail or personally upon any person to whom it is directed.

Wash. Rev. Code § 90.48.140. Penalty.

Any person found guilty of willfully violating any of the provisions of this chapter or chapter 90.56 RCW, or any final written orders or directive of the department or a court in pursuance thereof is guilty of a gross misdemeanor, and upon conviction thereof shall be punished by a fine of up to ten thousand dollars and costs of prosecution, or by imprisonment in the county jail for up to three hundred sixty-four days, or by both such fine and imprisonment in the discretion of the court. Each day upon which a willful violation of the provisions of this chapter or chapter 90.56 RCW occurs may be deemed a separate and additional violation.

Wash. Rev. Code § 90.48.142. Violations – Liability in damages for injury or death of fish, animals, vegetation – Action to recover.

(1) Any person who:

(a)

(i) Violates any of the provisions of this chapter or chapter 90.56 RCW;

(ii) Fails to perform any duty imposed by this chapter or chapter 90.56 RCW;

(iii) Violates an order or other determination of the department or the director made pursuant to the provisions of this chapter or chapter 90.56 RCW;

(iv) Violates the conditions of a waste discharge permit issued pursuant to RCW 90.48.160; or

(v) Otherwise causes a reduction in the quality of the state's waters below the standards set by the department or, if no



standards have been set, causes significant degradation of water quality, thereby damaging the same; and

(b) Causes the death of, or injury to, fish, animals, vegetation, or other resources of the state;

shall be liable to pay the state and affected counties and cities damages in an amount determined pursuant to RCW 90.48.367.

(2) No action shall be authorized under this section against any person operating in compliance with the conditions of a waste discharge permit issued pursuant to RCW 90.48.160.

Wash. Rev. Code § 90.48.144. Violations – Civil penalty – Procedure.

Except as provided in RCW 43.05.060 through 43.05.080 and 43.05.150, every person who:

(1) Violates the terms or conditions of a waste discharge permit issued pursuant to RCW 90.48.180 or 90.48.260 through 90.48.262, or

(2) Conducts a commercial or industrial operation or other point source discharge operation without a waste discharge permit as required by RCW 90.48.160 or 90.48.260 through 90.48.262, or

(3) Violates the provisions of RCW 90.48.080, or other sections of this chapter or chapter 90.56 RCW or rules or orders adopted or issued pursuant to either of those chapters, shall incur, in addition to any other penalty as provided by law, a penalty in an amount of up to ten thousand dollars a day for every such violation. Each and every such violation shall be a separate and distinct offense, and in case of a continuing violation, every day's continuance shall be and be deemed to be a separate and distinct violation. Every act of commission or omission which procures, aids or abets in the violation shall be considered a violation under the provisions of this section and subject to the penalty herein provided for. The penalty amount shall be set in consideration of the previous history of the violator and the severity of the violation's impact on public health and/or the environment in addition to other relevant factors. The penalty herein provided for shall be imposed pursuant to the procedures set forth in RCW 43.21B.300.

Wash. Rev. Code § 90.48.150. Construction of chapter.

This chapter shall not be construed as repealing any of the laws governing the pollution of the waters of the state, but shall be held and construed as ancillary to and



supplementing the same and an addition to the laws now in force, except as the same may be in direct conflict herewith.

Wash. Rev. Code § 90.48.153. Cooperation with federal government – Federal funds.

The department is authorized to cooperate with the federal government and to accept grants of federal funds for carrying out the purposes of this chapter. The department is empowered to make any application or report required by an agency of the federal government as an incident to receiving such grants.

Wash. Rev. Code § 90.48.156. Cooperation with other states and provinces – Interstate and state-provincial projects.

The department is authorized to cooperate with appropriate agencies of neighboring states and neighboring provinces, to enter into contracts, and make contributions toward interstate and state-provincial projects to carry out the purposes of this chapter and chapter 90.56 RCW.

Wash. Rev. Code § 90.48.158. Grants to public bodies authorized.

The department of ecology is authorized to make and administer grants to any public bodies for the purpose of aiding in the construction and improvement of water pollution control facilities in conjunction with federal grants authorized pursuant to the Federal Water Pollution Control Act.

Wash. Rev. Code § 90.48.160. Waste disposal permit – Required – Exemptions.

Any person who conducts a commercial or industrial operation of any type which results in the disposal of solid or liquid waste material into the waters of the state, including commercial or industrial operators discharging solid or liquid waste material into sewerage systems operated by municipalities or public entities which discharge into public waters of the state, shall procure a permit from either the department or the *thermal power plant site evaluation council as provided in RCW 90.48.262(2) before disposing of such waste material: PROVIDED, That this section shall not apply to any person discharging domestic sewage only into a sewerage system.

The department may, through the adoption of rules, eliminate the permit requirements for disposing of wastes into publicly operated sewerage systems for:

- (1) Categories of or individual municipalities or public corporations operating sewerage systems; or
- (2) Any category of waste disposer;



if the department determines such permit requirements are no longer necessary for the effective implementation of this chapter. The department may by rule eliminate the permit requirements for disposing of wastes by upland finfish rearing facilities unless a permit is required under the federal clean water act's national pollutant discharge elimination system.

Wash. Rev. Code § 90.48.162. Waste disposal permits required of counties, municipalities and public corporations.

Any county or any municipal or public corporation operating or proposing to operate a sewerage system, including any system which collects only domestic sewerage, which results in the disposal of waste material into the waters of the state shall procure a permit from the department of ecology before so disposing of such materials. This section is intended to extend the permit system of RCW 90.48.160 to counties and municipal or public corporations and the provisions of RCW 90.48.170 through 90.48.200 and 90.52.040 shall be applicable to the permit requirement imposed under this section. A permit under this chapter is not required for large on-site sewage systems permitted by the department of health under chapter 70A.115 RCW or for on-site sewage systems permitted by local health jurisdictions under rules of the state board of health.

Wash. Rev. Code § 90.48.165. Waste disposal permits required of counties, municipalities and public corporations – Cities, towns or municipal corporations may be granted authority to issue permits – Revocation – Termination of permits.

Any city, town or municipal corporation operating a sewerage system including treatment facilities may be granted authority by the department to issue permits for the discharge of wastes to such system provided the department ascertains to its satisfaction that the sewerage system and the inspection and control program operated and conducted by the city, town or municipal corporation will protect the public interest in the quality of the state's waters as provided for in this chapter. Such authority may be granted by the department upon application by the city, town or municipal corporation and may be revoked by the department if it determines that such city, town, or municipal corporation is not, thereafter, operated and conducted in a manner to protect the public interest. Persons holding municipal permits to discharge into sewerage systems operated by a municipal corporation authorized by this section to issue such permits shall not be required to secure a waste discharge permit provided for in RCW 90.48.160 as to the wastes discharged into such sewerage systems. Authority granted by the department to cities, towns, or municipal corporations to issue permits under this section shall be in addition to any authority or power now or hereafter granted by law to cities, towns and municipal corporations for the regulation of discharges into sewerage systems operated by such cities, towns,



or municipal corporations. Permits issued under this section shall automatically terminate if the authority to issue the same is revoked by the department.

Wash. Rev. Code § 90.48.170. Waste disposal permits required of counties, municipalities and public corporations – Application – Notice as to new operation or increase in volume – Investigation – Notice to other state departments.

Applications for permits shall be made on forms prescribed by the department and shall contain the name and address of the applicant, a description of the applicant's operations, the quantity and type of waste material sought to be disposed of, the proposed method of disposal, and any other relevant information deemed necessary by the department. Application for permits shall be made at least sixty days prior to commencement of any proposed discharge or permit expiration date, whichever is applicable. Upon receipt of a proper application relating to a new operation, or an operation previously under permit for which an increase in volume of wastes or change in character of effluent is requested over that previously authorized, the department shall instruct the applicant to publish notices thereof by such means and within such time as the department shall prescribe. The department shall require that the notice so prescribed shall be published twice in a newspaper of general circulation within the county in which the disposal of waste material is proposed to be made and in such other appropriate information media as the department may direct. Said notice shall include a statement that any person desiring to present his or her views to the department with regard to said application may do so in writing to the department, or any person interested in the department's action on an application for a permit, may submit his or her views or notify the department of his or her interest within thirty days of the last date of publication of notice. Such notification or submission of views to the department shall entitle said persons to a copy of the action taken on the application. Upon receipt by the department of an application, it shall immediately send notice thereof containing pertinent information to the director of fish and wildlife and to the secretary of social and health services. When an application complying with the provisions of this chapter and the rules and regulations of the department has been filed with the department, it shall be its duty to investigate the application, and determine whether the use of public waters for waste disposal as proposed will pollute the same in violation of the public policy of the state.

Wash. Rev. Code § 90.48.180. Waste disposal permits required of counties, municipalities and public corporations – Issuance – Conditions – Duration.

The department shall issue a permit unless it finds that the disposal of waste material as proposed in the application will pollute the waters of the state in violation of the public policy declared in RCW 90.48.010. The department shall have authority to



specify conditions necessary to avoid such pollution in each permit under which waste material may be disposed of by the permittee. Permits may be temporary or permanent but shall not be valid for more than five years from date of issuance.

Wash. Rev. Code § 90.48.190. Waste disposal permits required of counties, municipalities and public corporations – Termination – Grounds.

A permit shall be subject to termination upon thirty days' notice in writing if the department finds:

- (1) That it was procured by misrepresentation of any material fact or by lack of full disclosure in the application;
- (2) That there has been a violation of the conditions thereof;
- (3) That a material change in quantity or type of waste disposal exists.

Wash. Rev. Code § 90.48.195. Waste disposal permits required of counties, municipalities and public corporations – Modification or additional conditions may be ordered.

In the event that a material change in the condition of the state waters occurs the department may, by appropriate order, modify permit conditions or specify additional conditions in permits previously issued.

Wash. Rev. Code § 90.48.200. Waste disposal permits required of counties, municipalities and public corporations – Nonaction upon application – Temporary permit – Duration.

In the event of failure of the department to act upon an application within sixty days after it has been filed the applicant shall be deemed to have received a temporary permit. Said permit shall authorize the applicant to discharge wastes into waters of the state as requested in its application only until such time as the department shall have taken action upon said application.

Wash. Rev. Code § 90.48.215. Upland finfish facilities – Waste discharge standards – Waste disposal permit.

- (1) The following definition shall apply to this section: "Upland finfish hatching and rearing facilities" means those facilities not located within waters of the state where finfish are hatched, fed, nurtured, held, maintained, or reared to reach the size of release or for market sale. This shall include fish hatcheries, rearing ponds, spawning channels, and other similarly constructed or fabricated public or private facilities.



(2) Not later than September 30, 1989, the department shall adopt standards pursuant to chapter 34.05 RCW for waste discharges from upland finfish hatching and rearing facilities. In establishing these standards, the department shall incorporate, to the extent applicable, studies conducted by the United States environmental protection agency on finfish rearing facilities and other relevant information. The department shall also issue a general permit as authorized by the federal clean water act, 33 U.S.C. 1251 et seq., or RCW 90.48.160 by September 30, 1989, for upland finfish hatching and rearing facilities. The department shall approve or deny applications for coverage under the general permit for upland finfish hatching and rearing facilities within one hundred eighty days from the date of application, unless a longer time is required to satisfy public participation requirements in the permit process in accordance with applicable rules, or compliance with the requirements of the state environmental policy act under chapter 43.21C RCW. The department shall notify applicants for coverage by a general permit as soon as it determines that a proposed discharge meets or fails to comply with the standards or general permit conditions set forth pursuant to this section, or that a time period longer than one hundred eighty days is necessary to satisfy public participation requirements or the state environmental policy act.

Wash. Rev. Code § 90.48.220. Marine finfish rearing facilities – Waste discharge standards – Discharge permit applications – Exemption.

(1) For the purposes of this section "marine finfish rearing facilities" means those private and public facilities located within the salt water of the state where finfish are fed, nurtured, held, maintained, or reared to reach the size of release or for market sale.

(2) Not later than October 31, 1994, the department shall adopt criteria under chapter 34.05 RCW for allowable sediment impacts from organic enrichment due to marine finfish rearing facilities.

(3) Not later than June 30, 1995, the department shall adopt standards under chapter 34.05 RCW for waste discharges from marine finfish rearing facilities. In establishing these standards, the department shall review and incorporate, to the extent possible, studies conducted by state and federal agencies on waste discharges from marine finfish rearing facilities, and any reports and other materials prepared by technical committees on waste discharges from marine finfish rearing facilities. The department shall approve or deny discharge permit applications for marine finfish rearing facilities within one hundred eighty days from the date of application, unless a longer time is required to satisfy public participation requirements in the permit process in accordance with applicable rules, or compliance with the requirements of the state environmental policy act under chapter 43.21C RCW. The department shall



notify applicants as soon as it determines that a proposed discharge meets or fails to comply with the standards adopted pursuant to this section, or if a time period longer than one hundred eighty days is necessary to satisfy public participation requirements of the state environmental policy act.

(4) The department may adopt rules to exempt marine finfish rearing facilities not requiring national pollutant discharge elimination system permits under the federal water pollution control act from the discharge permit requirement.

Wash. Rev. Code § 90.48.225. Issuance of national pollutant discharge elimination system permits associated with nonnative marine finfish aquaculture.

(1) The department may issue national pollutant discharge elimination system permits associated with nonnative marine finfish aquaculture only if these activities are performed under a lease of state-owned aquatic lands in effect on June 7, 2018. The department may not issue national pollutant discharge elimination system permits in connection with any of these activities or operations after the expiration date of the relevant lease of state-owned aquatic lands in effect on June 7, 2018.

(2) For purposes of this section, "state-owned aquatic lands" has the same meaning as defined in RCW 79.105.060.

Wash. Rev. Code § 90.48.230. Application of administrative procedure law to rule making and adjudicative proceedings.

The provisions of chapter 34.05 RCW, the Administrative Procedure Act, apply to all rule making and adjudicative proceedings authorized by or arising under the provisions of this chapter.

Wash. Rev. Code § 90.48.240. Water pollution orders for conditions requiring immediate action – Appeal.

Notwithstanding any other provisions of this chapter or chapter 90.56 RCW, whenever it appears to the director that water quality conditions exist which require immediate action to protect the public health or welfare, or that a person required by RCW 90.48.160 to obtain a waste discharge permit prior to discharge is discharging without the same, or that a person conducting an operation which is subject to a permit issued pursuant to RCW 90.48.160 conducts the same in violation of the terms of said permit, causing water quality conditions to exist which require immediate action to protect the public health or welfare, the director may issue a written order to the person or persons responsible without prior notice or hearing, directing and affording the person or persons responsible the alternative of either (1) immediately discontinuing or modifying the discharge into the waters of the state, or (2) appearing



before the department at the time and place specified in said written order for the purpose of providing to the department information pertaining to the violations and conditions alleged in said written order. The responsible person or persons shall be afforded not less than twenty-four hours notice of such an information meeting. If following such a meeting the department determines that water quality conditions exist which require immediate action as described herein, the department may issue a written order requiring immediate discontinuance or modification of the discharge into the waters of the state. In the event an order is not immediately complied with the attorney general, upon request of the department, shall seek and obtain an order of the superior court of the county in which the violation took place directing compliance with the order of the department. Such an order is appealable pursuant to RCW 43.21B.310.

Wash. Rev. Code § 90.48.250. Agreements or contracts to monitor waters and effluent discharge.

The department is authorized to make agreements and enter into such contracts as are appropriate to carry out a program of monitoring the condition of the waters of the state and the effluent discharged therein, including contracts to monitor effluent discharged into public waters when such monitoring is required by the terms of a waste discharge permit or as part of the approval of a sewerage system, if adequate compensation is provided to the department as a term of the contract.

Wash. Rev. Code § 90.48.260. Federal clean water act – Department designated as state agency, authority – Delegation of authority – Powers, duties, and functions.

(1) The department of ecology is hereby designated as the state water pollution control agency for all purposes of the federal clean water act as it exists on February 4, 1987, and is hereby authorized to participate fully in the programs of the act as well as to take all action necessary to secure to the state the benefits and to meet the requirements of that act. With regard to the national estuary program established by section 320 of that act, the department shall exercise its responsibility jointly with the Puget Sound partnership, created in RCW 90.71.210. The department of ecology may delegate its authority under this chapter, including its national pollutant discharge elimination permit system authority and duties regarding animal feeding operations and concentrated animal feeding operations, to the department of agriculture through a memorandum of understanding. Until any such delegation receives federal approval, the department of agriculture's adoption or issuance of animal feeding operation and concentrated animal feeding operation rules, permits, programs, and directives pertaining to water quality shall be accomplished after reaching agreement with the director of the department of



ecology. Adoption or issuance and implementation shall be accomplished so that compliance with such animal feeding operation and concentrated animal feeding operation rules, permits, programs, and directives will achieve compliance with all federal and state water pollution control laws. The powers granted herein include, among others, and notwithstanding any other provisions of this chapter or otherwise, the following:

(a) Complete authority to establish and administer a comprehensive state point source waste discharge or pollution discharge elimination permit program which will enable the department to qualify for full participation in any national waste discharge or pollution discharge elimination permit system and will allow the department to be the sole agency issuing permits required by such national system operating in the state of Washington subject to the provisions of RCW 90.48.262(2). Program elements authorized herein may include, but are not limited to: (i) Effluent treatment and limitation requirements together with timing requirements related thereto; (ii) applicable receiving water quality standards requirements; (iii) requirements of standards of performance for new sources; (iv) pretreatment requirements; (v) termination and modification of permits for cause; (vi) requirements for public notices and opportunities for public hearings; (vii) appropriate relationships with the secretary of the army in the administration of his or her responsibilities which relate to anchorage and navigation, with the administrator of the environmental protection agency in the performance of his or her duties, and with other governmental officials under the federal clean water act; (viii) requirements for inspection, monitoring, entry, and reporting; (ix) enforcement of the program through penalties, emergency powers, and criminal sanctions; (x) a continuing planning process; and (xi) user charges.

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

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

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



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

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

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

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

(ii) Provisions of the updated permit issued under (b) of this subsection related to increased catch basin inspection and illicit discharge detection frequencies and application of new stormwater controls to projects smaller than one acre may go into effect no earlier than December 31, 2016, or the time of the scheduled update under *RCW 36.70A.130(5), as existing on July 10, 2012, whichever is later.

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

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

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

Wash. Rev. Code § 90.48.261. Aquatic resource mitigation.



When exercising its powers under RCW 90.48.260, the department shall, at the request of the project proponent, follow the guidance contained in RCW 90.74.005 through 90.74.030.

Wash. Rev. Code § 90.48.262. Implementation of RCW 90.48.260 – Permits for energy facilities – Rules and procedures.

(1) The powers established under RCW 90.48.260 shall be implemented by the department through the adoption of rules in every appropriate situation. The permit program authorized under *RCW 90.48.260(1) shall constitute a continuation of the established permit program of RCW 90.48.160 and other applicable sections within chapter 90.48 RCW. The appropriate modifications as authorized in **this 1973 amendatory act are designed to avoid duplication and other wasteful practices and to insure that the state permit program contains all required elements of and is compatible with the requirements of any national permit system.

(2) Permits for energy facilities subject to chapter 80.50 RCW shall be issued by the energy facility site evaluation council: PROVIDED, That such permits shall become effective only if the governor approves an application for certification and executes a certification agreement pursuant to said chapter. The council shall have all powers necessary to establish and administer a point source discharge permit program pertaining to such plants, consistent with applicable receiving water quality standards established by the department, and to qualify for full participation in any national waste discharge or pollution discharge elimination permit system. The council and the department shall each adopt, by rules, procedures which will provide maximum coordination and avoid duplication between the two agencies with respect to permits in carrying out the requirements of **this act including, but not limited to, monitoring and enforcement of certification agreements, and in qualifying for full participation in any such national system.

Wash. Rev. Code § 90.48.264. Federal clean water act – Rules for on-site sewage disposal systems adjacent to marine waters.

In implementing this chapter and in participating in programs under the federal clean water act, the department may consult with the department of social and health services concerning standards for repair of existing, failing on-site sewage disposal systems that are adjacent to marine waters. By January 1, 1989, the department of social and health services shall propose rules for adoption by the state board of health identifying the standards for repair of existing, failing on-site sewage disposal systems at single-family residences that were legally occupied prior to June 9, 1988, and that are adjacent to marine waters. The rules may specify the design, operation and maintenance standards for such repaired systems so as to ensure protection of



the public health, attainment of state water quality standards and the protection of shellfish and other public resources. The rules shall also provide that any proposed discharge to marine water shall be considered only if on-site sewage disposal systems are not feasible and that such discharges shall meet the requirements of this chapter and department of ecology regulations. The state board of health shall adopt such proposed rules unless the board finds modification or rejection of them necessary to protect the public health.

Wash. Rev. Code § 90.48.270. Sewage drainage basins – Authority of department to delineate and establish.

The department shall have authority to delineate and establish sewage drainage basins in the state for the purpose of developing and/or adopting comprehensive plans for the control and abatement of water pollution within such basins. Basins may include, but are not limited to, rivers and their tributaries, streams, coastal waters, sounds, bays, lakes, and portions or combinations thereof, as well as the lands drained thereby.

Wash. Rev. Code § 90.48.280. Sewage drainage basins – Comprehensive plans for sewage drainage basins.

The department is authorized to prepare and/or adopt a comprehensive water pollution control and abatement plan and to make subsequent amendments thereto, for each basin established pursuant to RCW 90.48.270. Comprehensive plans for sewage drainage basins may be prepared by any municipality and submitted to the department for adoption.

Prior to adopting a comprehensive plan for any basin or any subsequent amendment thereof the department shall hold a public hearing thereon. Notice of such hearing shall be given by registered mail, together with copies of the proposed plan, to each municipality, or other political subdivision, within the basin exercising a sewage disposal function, at least twenty days prior to the hearing date. Such hearing may be continued from time to time and, at the termination thereof, the department may reject the plan proposed or adopt it with such modifications as it shall deem proper.

Following adoption of a comprehensive plan for any basin, the department shall require compliance with such plan by any municipality or person operating or constructing a sewage collection, treatment or disposal system or plant, or any improvement to or extension of an existing sewage collection, treatment or disposal system or plant, within the basin.

Wash. Rev. Code § 90.48.285. Contracts with municipal or public corporations and political subdivisions to finance water pollution control projects – Requisites – Priorities.



The department is authorized to enter into contracts with any municipal or public corporation or political subdivision within the state for the purpose of assisting such agencies to finance the design and construction of water pollution control projects, whether procured through chapter 39.10 or 70A.140 RCW, or otherwise, that are necessary to prevent the discharge of untreated or inadequately treated sewage or other waste into the waters of the state, including but not limited to, systems for the control of storm or surface waters which will provide for the removal of waste or polluting materials in a manner conforming to the comprehensive plan of water pollution control and abatement proposed by the agencies and approved by the department. Any such contract may provide for:

The payment by the department to a municipal or public corporation or political subdivision on a monthly, quarterly, or annual basis of varying amounts of moneys as advances which shall be repayable by said municipal or public corporation, or political subdivision under conditions determined by the department.

Contracts made by the department shall be subject to the following limitations:

- (1) No contract shall be made unless the department shall find that the project cannot be financed at reasonable cost or within statutory limitations by the borrower without the making of such contract.
- (2) No contract shall be made with any public or municipal corporation or political subdivision to assist in the financing of any project located within a sewage drainage basin for which the department shall have previously adopted a comprehensive water pollution control and abatement plan unless the project is found by the department to conform with the basin comprehensive plan.
- (3) The department shall determine the interest rate, not to exceed ten percent per annum, which such advances shall bear.
- (4) The department shall provide such reasonable terms and conditions of repayment of advances as it may determine.
- (5) The total outstanding amount which the department may at any time be obligated to pay under all outstanding contracts made pursuant to this section shall not exceed the moneys available for such payment.
- (6) Municipal or public corporations or political subdivisions shall meet such qualifications and follow such procedures in applying for contract assistance as shall be established by the department.

In making such contracts the department shall give priority to projects which will provide relief from actual or potential public health hazards or water pollution conditions and which provide substantial capacity beyond present requirements to meet anticipated future demand.



Wash. Rev. Code § 90.48.290. Grants to municipal or public corporations or political subdivisions to aid water pollution control projects – Limitations.

The department is authorized to make and administer grants within appropriations authorized by the legislature to any municipal or public corporation, or political subdivision within the state for the purpose of aiding in the construction of water pollution control projects necessary to prevent the discharge of untreated or inadequately treated sewage or other waste into the waters of the state including, but not limited to, projects for the control of storm or surface waters which will provide for the removal of waste or polluting materials therefrom.

Grants so made by the department shall be subject to the following limitations:

(1) No grant shall be made in an amount which exceeds the recipient's contribution to the estimated cost of the project: PROVIDED, That the following shall be considered a part of the recipient's contribution:

(a) Any grant received by the recipient from the federal government pursuant to section 8(f) of the Federal Water Pollution Control Act (33 U.S.C. 466) for the project;

(b) Any expenditure which is made by any municipal or public corporation, or political subdivision within the state as a part of a joint effort with the recipient to carry out the project and which has not been used as a matching contribution for another grant made pursuant to this chapter,[,] and

(c) Any expenditure for the project made by the recipient out of moneys advanced by the department from a revolving fund and repayable to said fund.

(2) No grant shall be made for any project which does not qualify for and receive a grant of federal funds under the provisions of the Federal Water Pollution Control Act as now or hereafter amended: PROVIDED, That this restriction shall not apply to state grants made in any biennium over and above the amount of such grants required to match all federal funds allocated to the state for such biennium.

(3) No grant shall be made to any municipal or public corporation, or political subdivision for any project located within a drainage basin unless the department shall have previously adopted a comprehensive water pollution control and abatement plan and unless the project is found by the department to conform with such basin comprehensive plan: PROVIDED, That the requirement for a project to conform to a comprehensive water pollution control and abatement plan may be waived by the department for any grant



application filed with the department prior to July 1, 1974, in those situations where the department finds the public interest would be served better by approval of any grant application made prior to adoption of such plan than by its denial.

(4) Recipients of grants shall meet such qualifications and follow such procedures in applying for grants as shall be established by the department.

(5) Grants may be made to reimburse recipients for expenditures made after July 1, 1967 for projects which meet the requirements of this section and were commenced after the recipient had filed a grant application with the department.

Wash. Rev. Code § 90.48.310. Application of barley straw to waters of the state.

(1) Notwithstanding any other provisions of this chapter, the application of barley straw to waters of the state for the purposes of water clarification does not require a state waste discharge permit as long as the following provisions are met:

(a) The barley straw is applied at a rate of up to two hundred twenty-five pounds per acre of surface water;

(b) Whole bales or tightly packed straw are not used. Straw must be loosely packed in nylon or mesh bags;

(c) Bags of straw are placed where control is desired, such as around docks and swim areas, and around inlets to aid in aeration or mixing;

(d) The bags must be staked or anchored in place;

(e) Straw is placed in early spring, prior to the growth of algae; and

(f) Bags are removed four to six months after placement and must not be left in the water over winter.

(2) The placement of barley straw into waters of the state in any other instance is not authorized absent a permit.

(3) This section does not alter any permit requirement that may exist under chapter 77.55 RCW.

Wash. Rev. Code § 90.48.364. Discharge of oil into waters of the state – Definitions.

For the purposes of this chapter, "technical feasibility" or "technically feasible" means that given available technology, a restoration or enhancement project can be



successfully completed at a cost that is not disproportionate to the value of the resource before the injury.

Wash. Rev. Code § 90.48.366. Discharge of oil into waters of the state – Compensation schedule.

(1) The department, in consultation with the departments of fish and wildlife and natural resources, and the parks and recreation commission, shall adopt rules establishing a compensation schedule for the discharge of oil in violation of this chapter and chapter 90.56 RCW. The amount of compensation assessed under this schedule shall be:

(a) For spills totaling one thousand gallons or more in any one event, no less than three dollars per gallon of oil spilled and no greater than three hundred dollars per gallon of oil spilled; and

(b) For spills totaling less than one thousand gallons in any one event, no less than one dollar per gallon of oil spilled and no greater than one hundred dollars per gallon of oil spilled.

(2) Persistent oil recovered from the surface of the water within forty-eight hours of a discharge must be deducted from the total spill volume for purposes of determining the amount of compensation assessed under the compensation schedule.

(3) The compensation schedule adopted under this section shall reflect adequate compensation for unquantifiable damages or for damages not quantifiable at reasonable cost for any adverse environmental, recreational, aesthetic, or other effects caused by the spill and shall take into account:

(a) Characteristics of any oil spilled, such as toxicity, dispersibility, solubility, and persistence, that may affect the severity of the effects on the receiving environment, living organisms, and recreational and aesthetic resources;

(b) The sensitivity of the affected area as determined by such factors as:

(i) The location of the spill;

(ii) Habitat and living resource sensitivity;

(iii) Seasonal distribution or sensitivity of living resources;

(iv) Areas of recreational use or aesthetic importance;



- (v) The proximity of the spill to important habitats for birds, aquatic mammals, fish, or to species listed as threatened or endangered under state or federal law;
- (vi) Significant archaeological resources as determined by the department of archaeology and historic preservation; and
- (vii) Other areas of special ecological or recreational importance, as determined by the department; and

(c) Actions taken by the party who spilled oil or any party liable for the spill that:

- (i) Demonstrate a recognition and affirmative acceptance of responsibility for the spill, such as the immediate removal of oil and the amount of oil removed from the environment; or
- (ii) Enhance or impede the detection of the spill, the determination of the quantity of oil spilled, or the extent of damage, including the unauthorized removal of evidence such as injured fish or wildlife.

Wash. Rev. Code § 90.48.367. Discharge of oil into waters of the state – Assessment of compensation.

- (1) After a spill or other incident causing damages to the natural resources of the state, the department shall conduct a formal preassessment screening as provided in RCW 90.48.368.
- (2) The department shall use the compensation schedule established under RCW 90.48.366 to determine the amount of damages if the preassessment screening committee determines that: (a) Restoration or enhancement of the injured resources is not technically feasible; (b) damages are not quantifiable at a reasonable cost; and (c) the restoration and enhancement projects or studies proposed by the liable parties are insufficient to adequately compensate the people of the state for damages.
- (3) If the preassessment screening committee determines that the compensation schedule should not be used, compensation shall be assessed for the amount of money necessary to restore any damaged resource to its condition before the injury, to the extent technically feasible, and compensate for the lost value incurred during the period between injury and restoration.
- (4) Restoration shall include the cost to restock such waters, replenish or replace such resources, and otherwise restore the stream, lake, or other waters of the state, including any estuary, ocean area, submerged lands, shoreline,



bank, or other lands adjoining such waters to its condition before the injury, as such condition is determined by the department. The lost value of a damaged resource shall be equal to the sum of consumptive, nonconsumptive, and indirect use values, as well as lost taxation, leasing, and licensing revenues. Indirect use values may include existence, bequest, option, and aesthetic values. Damages shall be determined by generally accepted and cost-effective procedures, including, but not limited to, contingent valuation method studies.

(5) Compensation assessed under this section shall be recoverable in an action brought by the attorney general on behalf of the people of the state of Washington and affected counties and cities in the superior court of Thurston county or any county in which damages occurred. Moneys recovered by the attorney general under this section shall be deposited in the coastal protection fund established under RCW 90.48.390, and shall only be used for the purposes stated in RCW 90.48.400.

(6) Compensation assessed under this section shall preclude claims under this chapter by local governments for compensation for damages to publicly owned resources resulting from the same incident.

Wash. Rev. Code § 90.48.368. Discharge of oil into waters of the state – Preassessment screening.

(1) The department shall adopt rules establishing a formal process for preassessment screening of damages resulting from spills to the waters of the state causing the death of, or injury to, fish, animals, vegetation, or other resources of the state. The rules shall specify the conditions under which the department shall convene a preassessment screening committee. The preassessment screening process shall occur concurrently with reconnaissance activities. The committee shall use information obtained from reconnaissance activities as well as any other relevant resource and resource use information. For each incident, the committee shall determine whether a damage assessment investigation should be conducted, or, whether the compensation schedule authorized under RCW 90.48.366 and 90.48.367 should be used to assess damages. The committee may accept restoration or enhancement projects or studies proposed by the liable parties in lieu of some or all of: (a) The compensation schedule authorized under RCW 90.48.366 and 90.48.367; or (b) the claims from damage assessment studies authorized under RCW 90.48.142.

(2) A preassessment screening committee may consist of representatives of the departments of ecology, archaeology and historic preservation, fish and wildlife, health, and natural resources, and the parks and recreation commission, as well as other federal, state, and local agencies, and tribal and



local governments whose presence would enhance the reconnaissance or damage assessment aspects of spill response. The department shall chair the committee and determine which representatives will be needed on a spill-by-spill basis.

(3) The committee shall consider the following factors when determining whether a damage assessment study authorized under RCW 90.48.367 should be conducted: (a) Whether evidence from reconnaissance investigations suggests that injury has occurred or is likely to occur to publicly owned resources; (b) the potential loss in services provided by resources injured or likely to be injured and the expected value of the potential loss; (c) whether a restoration project to return lost services is technically feasible; (d) the accuracy of damage quantification methods that could be used and the anticipated cost-effectiveness of applying each method; (e) the extent to which likely injury to resources can be verified with available quantification methods; and (f) whether the injury, once quantified, can be translated into monetary values with sufficient precision or accuracy.

(4) When a resource damage assessment is required for an oil spill in the waters of the state, as defined in RCW 90.56.010, the state trustee agency responsible for the resource and habitat damaged shall conduct the damage assessment and pursue all appropriate remedies with the responsible party.

(5) Oil spill damage assessment studies authorized under RCW 90.48.367 may only be conducted if the committee, after considering the factors enumerated in subsection (3) of this section, determines that the damages to be investigated are quantifiable at a reasonable cost and that proposed assessment studies are clearly linked to quantification of the damages incurred.

(6) As new information becomes available, the committee may reevaluate the scope of damage assessment using the factors listed in subsection (3) of this section and may reduce or expand the scope of damage assessment as appropriate.

(7) The preassessment screening process shall provide for the ongoing involvement of persons who may be liable for damages resulting from an oil spill. The department may negotiate with a potentially liable party to perform restoration and enhancement projects or studies which may substitute for all or part of the compensation authorized under RCW 90.48.366 and 90.48.367 or the damage assessment studies authorized under RCW 90.48.367.

(8) For the purposes of this section and RCW 90.48.367, the cost of a damage assessment shall be considered "reasonable" when the anticipated cost of the damage assessment is expected to be less than the anticipated damage that may have occurred or may occur.



Wash. Rev. Code § 90.48.386. Department of natural resources leases.

After May 15, 1991, the department of natural resources shall include in its leases for onshore and offshore facilities the following provisions:

- (1) Require those wishing to lease, sublease, or re-lease state-owned aquatic lands to comply with the provisions of this chapter;
- (2) Require lessees and sublessees to operate according to the plan of operations and to keep the plan current in compliance with this chapter; and
- (3) Include in its leases provisions that a violation by the lessee or sublessee of the provisions of this chapter may be grounds for termination of the lease.

Wash. Rev. Code § 90.48.390. Coastal protection fund – Established – Moneys credited to – Use.

The coastal protection fund is established to be used by the department as a revolving fund for carrying out the purposes of restoration of natural resources under this chapter and chapter 90.56 RCW. To this fund there shall be credited penalties, fees, damages, charges received pursuant to the provisions of this chapter and chapter 90.56 RCW, compensation for damages received under this chapter and chapter 90.56 RCW, and an amount equivalent to one cent per gallon from each marine use refund claim under *RCW 82.36.330.

Moneys in the fund not needed currently to meet the obligations of the department in the exercise of its powers, duties, and functions under RCW 90.48.142, 90.48.366, 90.48.367, and 90.48.368 shall be deposited with the state treasurer to the credit of the fund. During the 2007-2009 fiscal biennium, the coastal protection fund may also be used for a standby rescue tug at Neah Bay. During the 2011-2013 fiscal biennium, the legislature may transfer from the coastal protection fund to the state general fund such amounts as reflect excess fund balance derived from penalties, forfeits, and seizures.

Wash. Rev. Code § 90.48.400. Coastal protection fund – Disbursal of moneys from.

- (1) Moneys in the coastal protection fund shall be disbursed for the following purposes and no others:
 - (a) Environmental restoration and enhancement projects intended to restore or enhance environmental, recreational, archaeological, or aesthetic resources for the benefit of Washington's citizens;
 - (b) Investigations of the long-term effects of oil spills; and



(c) Development and implementation of an aquatic land geographic information system.

(2) The director may allocate a portion of the fund to be devoted to research and development in the causes, effects, and removal of pollution caused by the discharge of oil or other hazardous substances.

(3) A steering committee consisting of representatives of the departments of ecology, fish and wildlife, and natural resources, and the parks and recreation commission shall authorize the expenditure of the moneys collected under RCW 90.48.366 through 90.48.368, after consulting impacted local agencies and local and tribal governments.

(4) Agencies may not be reimbursed from the coastal protection fund for the salaries and benefits of permanent employees for routine operational support. Agencies may only be reimbursed under this section if money for reconnaissance and damage assessment activities is unavailable from other sources.

Wash. Rev. Code § 90.48.420. Water quality standards affected by forest practices – Department of ecology solely responsible for water quality standards – Forest practices rules – Adoption – Examination – Enforcement procedures.

(1) The department of ecology, pursuant to powers vested in it previously by chapter 90.48 RCW and consistent with the policies of said chapter and RCW 90.54.020(3), shall be solely responsible for establishing water quality standards for waters of the state. On or before January 1, 1975, the department of ecology shall examine existing rules containing water quality standards and other applicable rules of said department pertaining to waters of the state affected by nonpoint sources of pollution arising from forest practices and, when it appears appropriate to the department of ecology, modify said rules. In any such examination or modification the department of ecology shall consider such factors, among others, as uses of the receiving waters, diffusion, downstream cooling, and reasonable transient and short-term effects resulting from forest practices.

Adoption of forest practices rules pertaining to water quality by the forest practices board shall be accomplished after reaching agreement with the director of the department or the director's designee on the board. Adoption shall be accomplished so that compliance with such forest practice[s] rules will achieve compliance with water pollution control laws.

(2) The department of ecology shall monitor water quality to determine whether revisions in such water quality standards or revisions in such forest



practices rules are necessary to accomplish the foregoing result, and either adopt appropriate revisions to such water quality standards or propose appropriate revisions to such forest practices rules or both.

(3) Notwithstanding any other provisions of chapter 90.48 RCW or of the rules adopted thereunder, no permit system pertaining to nonpoint sources of pollution arising from forest practices shall be authorized, and no civil or criminal penalties shall be imposed with respect to any forest practices conducted in full compliance with the applicable provisions of RCW 76.09.010 through 76.09.280, forest practices rules, and any approvals or directives of the department of natural resources thereunder.

(4) Prior to the department of ecology taking action under statutes or rules relating to water quality, regarding violations of water quality standards arising from forest practices, the department of ecology shall notify the department of natural resources.

Wash. Rev. Code § 90.48.422. Water quality standards – Compliance methods – Department authority.

(1) The legislature finds that the courts have rendered decisions in *Elkhorn (Public Utility District No. 1 v. Washington Department of Ecology*, 511 U.S. 700, 114 S. Ct. 1900, 128 L.Ed. 2d 716 (1994)) and *Sullivan Creek (Public Utility District No. 1 of Pend Oreille County v. Washington Department of Ecology*, 146 Wn.2d 778, 51 P.3d 744 (2002)) related to water quality certifications issued under section 401 of the clean water act, 33 U.S.C. 1251 et seq. Enactment of this legislation does not expand or contract the legal holdings of these decisions and does not affect in any way the application of these holdings to any future case or fact pattern related to water quality certifications issued for federally licensed hydropower facilities under section 401 of the clean water act, 33 U.S.C. 1251 et seq.

(2) When a water quality standard cannot be reasonably met through the issuance of permits or regulatory orders issued under the authority of this chapter, the department may use voluntary, incentive-based methods including funding of water conservation projects, lease and purchase of water rights, development of new storage projects, or habitat restoration projects in an attempt to meet water quality standards.

(3) The department may not abrogate, supersede, impair, or condition the ability of a water right holder to fully divert or withdraw water under a water right permit, certificate, statutory exemption, or claim granted or recognized under chapter 90.03, 90.14, or 90.44 RCW through the authority granted to the department in this chapter. However, nothing in chapter 15, Laws of 2003 1st



sp. sess. shall be construed to affect the department's authority related to the issuance of certifications under section 401 of the federal clean water act, 33 U.S.C. 1251 et seq., with respect to the application of federally authorized water quality standards, for federal energy regulatory commission licensed hydropower projects as provided under this chapter and chapter 90.74 RCW. With respect to federal energy regulatory commission licensed hydropower projects, the department may only require a person to mitigate or remedy a water quality violation or problem to the extent there is substantial evidence such person has caused such violation or problem.

Wash. Rev. Code § 90.48.425. Forest practices act and regulations relating to water quality protection to be utilized to satisfy federal water pollution act.

The forest practices act, chapter 76.09 RCW, and the forest practices regulations adopted thereunder relating to water quality protection shall be utilized to satisfy the planning and program requirements of sections 208, 209, and 305 of the federal Water Pollution Control Act, as regards silvicultural activities, unless it is determined by the department of ecology that extraordinary conditions exist which make forest practices regulations unsuitable to satisfy such federal requirements.

Wash. Rev. Code § 90.48.430. Watershed restoration projects – Approval process – Waiver of public review.

A permit, certification, or other approval required by the department for a watershed restoration project as defined in RCW 89.08.460 shall be processed in compliance with RCW 89.08.450 through 89.08.510. Public review of proposed watershed restoration projects may be shortened or waived by the department.

Wash. Rev. Code § 90.48.445. Aquatic noxious weed control – Water quality permits – Definition.

(1) The director shall issue or approve water quality permits for use by federal, state, or local governmental agencies and licensed applicators for the purpose of using, for aquatic noxious weed control, herbicides and surfactants registered under state or federal pesticide control laws, and for the purpose of experimental use of herbicides on aquatic sites, as defined in 40 C.F.R. Sec. 172.3. The issuance of the permits shall be subject only to compliance with: Federal and state pesticide label requirements, the requirements of the federal insecticide, fungicide, and rodenticide act, the Washington pesticide control act, the Washington pesticide application act, and the state environmental policy act, except that:

(a) When the director issues water quality permits for the purpose of using glyphosate and surfactants registered by the department of



agriculture to control spartina, as defined by RCW 17.26.020, the water quality permits shall contain the following criteria:

- (i) Spartina treatment shall occur between June 1st and October 31st of each year unless the department, the department of agriculture, and the department of fish and wildlife agree to add additional dates beyond this period, except that no aerial application shall be allowed on July 4th or Labor Day and for ground application on those days the applicator shall post signs at each corner of the treatment area;
- (ii) The applicator shall take all reasonable precautions to prevent the spraying of nontarget vegetation and nonvegetated areas;
- (iii) A period of fourteen days between treatments is required prior to re-treating the previously treated areas;
- (iv) Aerial or ground broadcast application shall not be made when the wind speed exceeds ten miles per hour; and
- (v) An application shall not be made when a tidal regime leaves the plants dry for less than four hours.

(b) The director shall issue water quality permits for the purpose of using herbicides or surfactants registered by the department of agriculture to control aquatic noxious weeds, other than spartina, and the permit shall state that aerial and ground broadcast applications may not be made when the wind speed exceeds ten miles per hour.

(c) The director shall issue water quality permits for the experimental use of herbicides on aquatic sites, as defined in 40 C.F.R. Sec. 172.3, when the department of agriculture has issued an experimental use permit, under the authority of RCW 15.58.405(3). Because of the small geographic areas involved and the short duration of herbicide application, water quality permits issued under this subsection are not subject to state environmental policy act review.

(2) Applicable requirements established in an option or options recommended for controlling the noxious weed by a final environmental impact statement published under chapter 43.21C RCW by the department prior to May 5, 1995, by the department of agriculture, or by the department of agriculture jointly with other state agencies shall be considered guidelines for the purpose of granting the permits issued under this chapter. This section may not be construed as requiring the preparation of a new environmental impact statement to replace a final environmental impact statement published before May 5, 1995, but



instead shall authorize the department of agriculture, as lead agency for the control of spartina under RCW 17.26.015, to supplement, amend, or issue addenda to the final environmental impact statement published before May 5, 1995, which may assess the environmental impact of the application of stronger concentrations of active ingredients, altered application patterns, or other changes as the department of agriculture deems appropriate.

(3) The director of ecology may not utilize this permit authority to otherwise condition or burden weed control efforts. Except for permits issued by the director under subsection (1)(c) of this section, permits issued under this section are effective for five years, unless a shorter duration is requested by the applicant. The director's authority to issue water quality modification permits for activities other than the application of surfactants and approved herbicides, to control aquatic noxious weeds or the experimental use of herbicides used on aquatic sites, as defined in 40 C.F.R. Sec. 172.3, is unaffected by this section.

(4) As used in this section, "aquatic noxious weed" means an aquatic weed on the state noxious weed list adopted under RCW 17.10.080.

Wash. Rev. Code § 90.48.447. Aquatic plant management program – Commercial herbicide information – Experimental application of herbicides – Appropriation for study.

(1) The department of ecology shall update the final supplemental environmental impact statement completed in 1992 for the aquatic plant management program to reflect new information on herbicides evaluated in 1992 and new, commercially available herbicides. The department shall maintain the currency of the information on herbicides and evaluate new herbicides as they become commercially available.

(2) For the 1999 treatment season, the department shall permit by May 15, 1999, municipal experimental application of herbicides such as hydrothol 191 for algae control in lakes managed under chapter 90.24 RCW. If experimental use is determined to be ineffective, then the department shall within fourteen days consult with other state, federal, and local agencies and interested parties, and may permit the use of copper sulfate. The Washington institute for public policy shall contract for a study on the lake-wide effectiveness of any herbicide used under this subsection. Prior to issuing the contract for the study, the institute for public policy shall determine the parameters of the study in consultation with licensed applicators who have recent experience treating the lake and with the nonprofit corporation that participated in centennial clean water fund phase one lake management studies for the lake. The parameters must include measurement of the lake-wide effectiveness of the application of the herbicide in maintaining beneficial uses of the lake, including any uses



designated under state or federal water quality standards. The effectiveness of the application shall be determined by objective criteria such as turbidity of the water, the effectiveness in killing algae, any harm to fish or wildlife, any risk to human health, or other criteria developed by the institute. The results of the study shall be reported to the appropriate legislative committees by December 1, 1999. A general fund appropriation in the amount of \$35,000 is provided to the Washington institute for public policy for fiscal year 1999 for the study required under this subsection.

Wash. Rev. Code § Eurasian water milfoil – Pesticide 2,4-D application.

(1) Subject to restrictions in this section, a government entity seeking to control a limited infestation of Eurasian water milfoil may use the pesticide 2,4-D to treat the milfoil infestation, without obtaining a permit under RCW 90.48.445, if the milfoil infestation is either recently documented or remaining after the application of other control measures, and is limited to twenty percent or less of the littoral zone of the lake. Any pesticide application made under this section must be made according to all label requirements for the product and must meet the public notice requirements of subsection (2) of this section.

(2) Before applying 2,4-D, the government entity shall: (a) Provide at least twenty-one days' notice to the department of ecology, the department of fish and wildlife, the department of agriculture, the department of health, and all lake residents; (b) post notices of the intent to apply 2,4-D at all public access points; and (c) place informational buoys around the treatment area.

(3) The department of fish and wildlife may impose timing restrictions on the use of 2,4-D to protect salmon and other fish and wildlife.

(4) The department may prohibit the use of 2,4-D if the department finds the product contains dioxin in excess of the standard allowed by the United States environmental protection agency. Sampling protocols and analysis used by the department under this section must be consistent with those used by the United States environmental protection agency for testing this product.

(5) Government entities using this section to apply 2,4-D may apply for funds from the freshwater aquatic weeds account consistent with the freshwater aquatic weeds management program as provided in RCW 43.21A.660.

(6) Government entities using this section shall consider development of long-term control strategies for eradication and control of the Eurasian water milfoil.



(7) For the purpose of this section, "government entities" includes cities, counties, state agencies, tribes, special purpose districts, and county weed boards.

Wash. Rev. Code § 90.48.450. Discharges from agricultural activity – Consideration to be given as to whether enforcement action would contribute to conversion of land to nonagricultural use – Minimize the possibility.

(1) Prior to issuing a notice of violation related to discharges from agricultural activity on agricultural land, the department shall consider whether an enforcement action would contribute to the conversion of agricultural land to nonagricultural uses. Any enforcement action shall attempt to minimize the possibility of such conversion.

(2) As used in this section:

(a) "Agricultural activity" means the growing, raising, or production of horticultural or viticultural crops, berries, poultry, livestock, grain, mint, hay and dairy products.

(b) "Agricultural land" means at least five acres of land devoted primarily to the commercial production of livestock or agricultural commodities.

Wash. Rev. Code § 90.48.455. Discharge of chlorinated organics – Engineering reports by pulp and paper mills – Permits limiting discharge.

(1) The department may require each pulp mill and paper mill discharging chlorinated organics to conduct and submit an engineering report on the cost of installing technology designed to reduce the amount of chlorinated organic compounds discharged into the waters of the state. The department shall allow at least twenty-four months from June 11, 1992, for each pulp mill and each paper mill to submit an engineering report.

(2) The department may not issue a permit establishing limits to the discharge of chlorinated organic compounds by a pulp mill or a paper mill under RCW 90.48.160 or 90.48.260 until at least nine months after receiving an engineering report from a kraft mill and at least fifteen months after receiving an engineering report from a sulfite mill.

(3) Nothing in this section shall apply to dioxin compounds.

Wash. Rev. Code § 90.48.465. Water discharge fees – Report to the legislature.



(1) The department shall establish fees to collect expenses for issuing and administering each class of permits under RCW 90.48.160, 90.48.162, and 90.48.260. An initial fee schedule shall be established by rule and be adjusted no more often than once every two years. This fee schedule shall apply to all permits, regardless of date of issuance, and fees shall be assessed prospectively. All fees charged shall be based on factors relating to the complexity of permit issuance and compliance and may be based on pollutant loading and toxicity and be designed to encourage recycling and the reduction of the quantity of pollutants. Fees shall be established in amounts to fully recover and not to exceed expenses incurred by the department in processing permit applications and modifications, monitoring and evaluating compliance with permits, conducting inspections, securing laboratory analysis of samples taken during inspections, reviewing plans and documents directly related to operations of permittees, overseeing performance of delegated pretreatment programs, and supporting the overhead expenses that are directly related to these activities.

(2) The department shall ensure that indirect dischargers do not pay twice for the administrative expense of a permit. Accordingly, administrative expenses for permits issued by a municipality under RCW 90.48.165 are not recoverable by the department.

(3) In establishing fees, the department shall consider the economic impact of fees on small dischargers and the economic impact of fees on public entities required to obtain permits for stormwater runoff and shall provide appropriate adjustments.

(4) The fee for an individual permit issued for a dairy farm as defined under chapter 90.64 RCW shall be fifty cents per animal unit up to one thousand two hundred fourteen dollars for fiscal year 1999. The fee for a general permit issued for a dairy farm as defined under chapter 90.64 RCW shall be fifty cents per animal unit up to eight hundred fifty dollars for fiscal year 1999. Thereafter, these fees may rise in accordance with the fiscal growth factor as provided in chapter 43.135 RCW.

(5) The fee for a general permit or an individual permit developed solely as a result of the federal court of appeals decision in *Headwaters, Inc. v. Talent Irrigation District*, 243 F.3rd 526 (9th Cir. 2001) is limited, until June 30, 2003, to a maximum of three hundred dollars. Such a permit is required only, and as long as, the interpretation of this court decision is not overturned or modified by future court rulings, administrative rule making, or clarification of scope by the United States environmental protection agency or legislative action. In such a case the department shall take appropriate action to rescind or modify these permits.



(6) All fees collected under this section shall be deposited in the water quality permit account hereby created in the state treasury. Moneys in the account may be appropriated only for purposes of administering permits under RCW 90.46.220, 90.48.160, 90.48.162, and 90.48.260.

(7) The department shall present a biennial progress report on the use of moneys from the account to the legislature. The report will be due December 31st of odd-numbered years. The report shall consist of information on fees collected, actual expenses incurred, and anticipated expenses for the current and following fiscal years.

Wash. Rev. Code § 90.48.467. Report to the legislature – Required information.

Beginning in 2025, the department of ecology's biennial progress report required in RCW 90.48.465(7) must include information on the implementation of a revised fee structure for full cost recovery for municipal wastewater discharge permits and the use of the fees to administer the municipal discharge permitting program and issue permits in a timely manner. The biennial report must also include information demonstrating progress towards achieving the goal of reducing the wastewater discharge permit backlog to no more than 40 percent by July 1, 2025, and not more than a 20 percent backlog by July 1, 2027.

Wash. Rev. Code § 90.48.480. Reduction of sewer overflows – Plans – Compliance schedule.

The department of ecology shall work with local governments to develop reasonable plans and compliance schedules for the greatest reasonable reduction of combined sewer overflows. The plan shall address various options, including construction of storage tanks for sewage and separation of sewage and stormwater transport systems. The compliance schedule shall be designed to achieve the greatest reasonable reduction of combined sewer overflows at the earliest possible date. The plans and compliance schedules shall be completed by January 1, 1988. A compliance schedule will be a condition of any waste discharge permit issued or renewed after January 1, 1988.

Wash. Rev. Code § 90.48.490. Sewage treatment facilities – Plans to upgrade or construct.

Plans for upgrading sewage treatment facilities and plans for new sewage treatment facilities shall address the greatest reasonable reduction of combined sewer overflows and implementation of pretreatment standards.

Wash. Rev. Code § 90.48.495. Water conservation measures to be considered in sewer plans.



The department of ecology shall require sewer plans to include a discussion of water conservation measures considered or underway that would reduce flows to the sewerage system and an analysis of their anticipated impact on public sewer service and treatment capacity.

Wash. Rev. Code § 90.48.520. Review of operations before issuance or renewal of wastewater discharge permits – Incorporation of permit conditions.

In order to improve water quality by controlling toxicants in wastewater, the department of ecology shall in issuing and renewing state and federal wastewater discharge permits review the applicant's operations and incorporate permit conditions which require all known, available, and reasonable methods to control toxicants in the applicant's wastewater. Such conditions may include, but are not limited to: (1) Limits on the discharge of specific chemicals, and (2) limits on the overall toxicity of the effluent. The toxicity of the effluent shall be determined by techniques such as chronic or acute bioassays. Such conditions shall be required regardless of the quality of receiving water and regardless of the minimum water quality standards. In no event shall the discharge of toxicants be allowed that would violate any water quality standard, including toxicant standards, sediment criteria, and dilution zone criteria.

Wash. Rev. Code § 90.48.530. Construction projects involving fill material – Leaching test.

(1) In order to ensure that construction projects involving the use of fill material do not pose a threat to water quality, the department may require that the suitability of potential fill material be evaluated using a leaching test included in the soil clean-up rules adopted by the department under chapter 70A.305 RCW in any water quality certification issued under section 401 of the federal clean water act and in any administrative order issued under this chapter, where such certification or administrative order authorizes the placement of fill material, some or all of which will be placed in waters of the state. Any such requirement imposed by the department in a water quality certification or administrative order issued prior to May 9, 2003, is ratified and approved by the legislature as a valid and reliable method for determining concentrations of chemical constituents that can be present in fill material without posing an unacceptable risk of violating water quality standards, and shall be in effect as imposed by the department for all work not completed by June 1, 2003.

(2) Nothing in this section limits, in any way, the department's authority under this chapter.



Wash. Rev. Code § 90.48.531. Leaching tests – Identification – Report to the legislature.

The department shall identify the leaching tests utilized for evaluating the potential impacts to water quality in situations where fill material is imported. The tests may include those identified in the soil clean-up rules adopted by the department under chapter 70A.305 RCW. Within existing resources, the department shall assess whether this list of leaching tests provides appropriate methods for analyzing water quality impacts for all types of projects and in all circumstances where fill material is imported. The department shall also identify any gaps in leaching test methodology. The department shall report both the leaching test list and the list of test methodology gaps to the appropriate committees of the legislature by December 31, 2003.

Wash. Rev. Code § 90.48.540. Use attainability analysis of water within federal reclamation project boundaries – Rules.

(1) The department, as resources allow, shall at the request of the United States bureau of reclamation or federal reclamation project irrigation districts cooperatively conduct a use attainability analysis of water bodies located within the boundaries of the federal reclamation project.

(2) If necessary because of the use attainability analysis conducted under subsection (1) of this section, the department, consistent with applicable federal water quality laws and regulations, shall adopt rules designating uses for water bodies within the federal reclamation project that support beneficial uses consistent with the primary authorized project purposes of constructed storage and conveyance facilities and other water transport systems and that recognize the unique site-specific characteristics of the arid and semiarid regions of the state of Washington where federal reclamation projects are located. The rules shall also recognize the need to deliver project irrigation water and to construct, operate, and maintain project facilities.

Wash. Rev. Code § 90.48.545. Stormwater technical resource center – Duties – Advisory committee – Report to legislative committees.

(1) As funding to do so becomes available, the department shall create a stormwater technical resource center in partnership with a university, nonprofit organization, or other public or private entity to provide tools for stormwater management. The center shall use its authority to support the duties listed in this subsection through research, development, technology demonstration, technology transfer, education, outreach, recognition, and training programs. The center may:

(a) Review and evaluate emerging stormwater technologies;



- (b) Research and develop innovative and cost-effective technical solutions to remove pollutants from runoff and to reduce or eliminate stormwater discharges;
 - (c) Conduct pilot projects to test technical solutions;
 - (d) Serve as a clearinghouse and outreach center for information on stormwater technology;
 - (e) Assist in the development of stormwater control methods to better protect water quality, including source control, product substitution, pollution prevention, and stormwater treatment;
 - (f) Coordinate with federal, state, and local agencies and private organizations in administering programs related to stormwater control measures; and
 - (g) Collaborate with existing stormwater outreach programs.
- (2) The department shall consult with an advisory committee in the development of the stormwater technical resource center. The advisory committee must include representatives from relevant state agencies, local governments, the business community, the environmental community, tribes, and the building and development industry.
- (3) The department, in consultation with the stormwater technical resource center advisory committee, shall identify a funding strategy for funding the stormwater technical resource center.
- (4) The department shall encourage all interested parties to help and support the technical resource center with in-kind services.
- (5) The department and other partners in the center shall in even-numbered years inform the appropriate legislative committees of the progress made in achieving the objectives of this section.

Wash. Rev. Code § 90.48.570. Water quality data – Findings – Intent.

- (1) The legislature finds that:
- (a) The proper collection and review of credible water quality data is necessary to ensure compliance with the requirements of the federal clean water act (33 U.S.C. Sec. 1251 et seq.);
 - (b) The state needs to assemble and evaluate all existing and readily available water quality-related data and information from sources other than the state water quality agency, such as federal agencies, tribes,



universities, and volunteer monitoring groups, if the data meets the state's requirements for data quality; and

(c) Developing and implementing water quality protection measures based on credible water quality data ensures that the financial resources of state and local governments and regulated entities are prioritized to address our state's most important water quality issues.

(2) The legislature intends to ensure that credible water quality data is used as the basis for the assessment of the status of a water body relative to the surface water quality standards.

(3) It is the intent of the legislature that a water body in which pollutant loadings from naturally occurring conditions are the sole cause of a violation of applicable surface water quality standards not be listed as impaired.

Wash. Rev. Code § 90.48.575. Water quality data – Definitions.

The definitions in this section apply to RCW 90.48.580 and 90.48.585 unless the context clearly requires otherwise.

(1) "Credible data" means data meeting the requirements of RCW 90.48.585.

(2) "Department" means the Washington state department of ecology.

(3) "Impaired water" means a water body or segment for which credible data exists that: (a) Satisfies the requirements of RCW 90.48.580 and 90.48.585; and (b) demonstrates the water body should be identified pursuant to 33 U.S.C. Sec. 1313(d).

(4) "Naturally occurring condition" means any condition affecting water quality that is not caused by human influence.

(5) "Section 303(d)" has the same meaning as in the federal clean water act (33 U.S.C. Sec. 1313(d)).

(6) "Total maximum daily load" has the same meaning as in the federal clean water act (33 U.S.C. Sec. 1313(d)).

Wash. Rev. Code § 90.48.580. Water quality data – Credible data, information, literature.

(1) The department shall use credible information and literature for developing and reviewing a surface water quality standard or technical model used to establish a total maximum daily load for any surface water of the state.

(2) The department shall use credible data for the following actions after June 10, 2004:



- (a) Determining whether any water of the state is to be placed on or removed from any section 303(d) list;
 - (b) Establishing a total maximum daily load for any surface water of the state; or
 - (c) Determining whether any surface water of the state is supporting its designated use or other classification.
- (3) The department shall respond to questions regarding the data, literature, and other information it uses under this section. The department shall reply to requests within five business days acknowledging that the department has received the request and provide a reasonable estimate of the time the department will require to respond to the request.
- (4) The department, the United States environmental protection agency, and the Indian tribes in Washington state have developed a voluntary agreement relating to the cooperative management of the clean water act section 303(d) program. The department shall consider water quality data that has been collected by Indian tribes under a quality assurance project plan that has been approved by the United States environmental protection agency if that data meets the objectives of the plan.

Wash. Rev. Code § 90.48.585. Water quality data – When credible.

- (1) In collecting and analyzing water quality data for any purpose identified in RCW 90.48.580(2), data is considered credible data if:
- (a) Appropriate quality assurance and quality control procedures were followed and documented in collecting and analyzing water quality samples;
 - (b) The samples or measurements are representative of water quality conditions at the time the data was collected;
 - (c) The data consists of an adequate number of samples based on the objectives of the sampling, the nature of the water in question, and the parameters being analyzed; and
 - (d) Sampling and laboratory analysis conform to methods and protocols generally acceptable in the scientific community as appropriate for use in assessing the condition of the water.
- (2) Data interpretation, statistical, and modeling methods shall be those methods generally acceptable in the scientific community as appropriate for use in assessing the condition of the water.



(3) The department shall develop policy:

- (a) Explaining how it uses scientific research and literature for developing and reviewing any water quality standard or technical model used to establish a total maximum daily load for any water of the state;
- (b) Describing the specific criteria that determine data credibility; and
- (c) Recommending the appropriate training and experience for collection of credible data.

Wash. Rev. Code § 90.48.590. Water quality data – Falsified data – Penalty.

Any person who knowingly falsifies data is guilty of a gross misdemeanor.

Wash. Rev. Code § 90.48.595. On-site sewage disposal system repair and replacement – Loan and grant programs.

The department shall offer financial and technical assistance to local governments and tribal entities in Puget Sound counties to establish or expand on-site sewage disposal system repair and replacement through local loan and grant programs. The programs must give priority to low-income and financially distressed homeowners.

Wash. Rev. Code § 90.48.605. Amending state water quality standards – Compliance schedules in excess of ten years authorized.

The department shall amend the state water quality standards to authorize compliance schedules in excess of ten years for discharge permits issued under this chapter that implement allocations contained in a total maximum daily load under certain circumstances. Any such amendment must be submitted to the United States environmental protection agency under the clean water act. Compliance schedules for the permits may exceed ten years if the department determines that:

- (1) The permittee is meeting its requirements under the total maximum daily load as soon as possible;
- (2) The actions proposed in the compliance schedule are sufficient to achieve water quality standards as soon as possible;
- (3) A compliance schedule is appropriate; and
- (4) The permittee is not able to meet its waste load allocation solely by controlling and treating its own effluent.

Wash. Rev. Code § 90.48.615. Motorized or gravity siphon aquatic mining – Prohibited acts.



(1) A discharge to waters of the state from a motorized or gravity siphon aquatic mining operation is subject to the department's authority under this chapter and the federal clean water act. The department shall evaluate whether the number of dischargers subject to this section warrants the adoption of a general permit for motorized or gravity siphon aquatic mining. If so, the department is directed to minimize the cost to permit applicants by basing general permit provisions on existing general permits adopted in other states to comply with the federal clean water act.

(2) The following act or acts are prohibited: Motorized or gravity siphon aquatic mining or discharge of effluent from such activity to any waters of the state that has been designated under the endangered species act as critical habitat, or would impact critical habitat for salmon, steelhead, or bull trout. This includes all fresh waters with designated uses of: Salmonid spawning, rearing, and migration.

(3) A person commits the offense of unlawful motorized or gravity siphon aquatic mining if the person engages in such an activity in violation of this chapter or the federal clean water act. Such an offense is subject to enforcement under this chapter. Before the department may take any enforcement action against a person pursuant to this section, the department shall first attempt to achieve voluntary compliance. As part of this first response, the department shall offer information and technical assistance to the person in writing identifying one or more means to accomplish the person's purposes within the framework of the law.

(4) For the purposes of this section, "motorized or gravity siphon aquatic mining" means mining using any form of motorized equipment, including but not limited to a motorized suction dredge, or a gravity siphon suction dredge, for the purpose of extracting gold, silver, or other precious metals, that involves a discharge within the ordinary high water mark of waters of the state.

(5) This section does not apply to:

- (a) Aquatic mining using nonmotorized methods, such as gold panning, if the nonmotorized method does not involve use of a gravity siphon suction dredge;
- (b) Mining operations where no part of the operation or discharge of effluent from the operation is to waters of the state;
- (c) Surface mining operations regulated by the department of natural resources under Title 78 RCW;



(d) Metals mining and milling operations as defined in chapter 78.56 RCW; or

(e) Activities related to an industrial facility, dredging related to navigability, or activities subject to a clean water act section 404 individual permit.

Wash. Rev. Code § 90.58.010. Short title.

This chapter shall be known and may be cited as the "Shoreline Management Act of 1971".

Wash. Rev. Code § 90.58.020. Legislative findings – State policy enunciated – Use preference.

The legislature finds that the shorelines of the state are among the most valuable and fragile of its natural resources and that there is great concern throughout the state relating to their utilization, protection, restoration, and preservation. In addition it finds that ever increasing pressures of additional uses are being placed on the shorelines necessitating increased coordination in the management and development of the shorelines of the state. The legislature further finds that much of the shorelines of the state and the uplands adjacent thereto are in private ownership; that unrestricted construction on the privately owned or publicly owned shorelines of the state is not in the best public interest; and therefore, coordinated planning is necessary in order to protect the public interest associated with the shorelines of the state while, at the same time, recognizing and protecting private property rights consistent with the public interest. There is, therefore, a clear and urgent demand for a planned, rational, and concerted effort, jointly performed by federal, state, and local governments, to prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines.

It is the policy of the state to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses. This policy is designed to insure the development of these shorelines in a manner which, while allowing for limited reduction of rights of the public in the navigable waters, will promote and enhance the public interest. This policy contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life, while protecting generally public rights of navigation and corollary rights incidental thereto.

The legislature declares that the interest of all of the people shall be paramount in the management of shorelines of statewide significance. The department, in adopting guidelines for shorelines of statewide significance, and local government, in



developing master programs for shorelines of statewide significance, shall give preference to uses in the following order of preference which:

- (1) Recognize and protect the statewide interest over local interest;
- (2) Preserve the natural character of the shoreline;
- (3) Result in long term over short term benefit;
- (4) Protect the resources and ecology of the shoreline;
- (5) Increase public access to publicly owned areas of the shorelines;
- (6) Increase recreational opportunities for the public in the shoreline;
- (7) Provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary.

In the implementation of this policy the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state shall be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally. To this end uses shall be preferred which are consistent with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the state's shoreline. Alterations of the natural condition of the shorelines of the state, in those limited instances when authorized, shall be given priority for single-family residences and their appurtenant structures, ports, shoreline recreational uses including but not limited to parks, marinas, piers, and other improvements facilitating public access to shorelines of the state, industrial and commercial developments which are particularly dependent on their location on or use of the shorelines of the state and other development that will provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state. Alterations of the natural condition of the shorelines and shorelands of the state shall be recognized by the department. Shorelines and shorelands of the state shall be appropriately classified and these classifications shall be revised when circumstances warrant regardless of whether the change in circumstances occurs through man-made causes or natural causes. Any areas resulting from alterations of the natural condition of the shorelines and shorelands of the state no longer meeting the definition of "shorelines of the state" shall not be subject to the provisions of chapter 90.58 RCW.

Permitted uses in the shorelines of the state shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use of the water.

Wash. Rev. Code § 90.58.030. Definitions and concepts.



As used in this chapter, unless the context otherwise requires, the following definitions and concepts apply:

(1) Administration:

- (a) "Department" means the department of ecology;
- (b) "Director" means the director of the department of ecology;
- (c) "Hearings board" means the shorelines hearings board established by this chapter;
- (d) "Local government" means any county, incorporated city, or town which contains within its boundaries any lands or waters subject to this chapter;
- (e) "Person" means an individual, partnership, corporation, association, organization, cooperative, public or municipal corporation, or agency of the state or local governmental unit however designated.

(2) Geographical:

- (a) "Extreme low tide" means the lowest line on the land reached by a receding tide;
- (b) "Floodway" means the area, as identified in a master program, that either: (i) Has been established in federal emergency management agency flood insurance rate maps or floodway maps; or (ii) consists of those portions of a river valley lying streamward from the outer limits of a watercourse upon which flood waters are carried during periods of flooding that occur with reasonable regularity, although not necessarily annually, said floodway being identified, under normal condition, by changes in surface soil conditions or changes in types or quality of vegetative ground cover condition, topography, or other indicators of flooding that occurs with reasonable regularity, although not necessarily annually. Regardless of the method used to identify the floodway, the floodway shall not include those lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or maintained under license from the federal government, the state, or a political subdivision of the state;
- (c) "Ordinary high water mark" on all lakes, streams, and tidal water is that mark that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to



vegetation as that condition exists on June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by a local government or the department: PROVIDED, That in any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining salt water shall be the line of mean higher high tide and the ordinary high water mark adjoining fresh water shall be the line of mean high water;

(d) "Shorelands" or "shoreland areas" means those lands extending landward for two hundred feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward two hundred feet from such floodways; and all wetlands and river deltas associated with the streams, lakes, and tidal waters which are subject to the provisions of this chapter; the same to be designated as to location by the department of ecology.

(i) Any county or city may determine that portion of a one-hundred-year-flood plain to be included in its master program as long as such portion includes, as a minimum, the floodway and the adjacent land extending landward two hundred feet therefrom.

(ii) Any city or county may also include in its master program land necessary for buffers for critical areas, as defined in chapter 36.70A RCW, that occur within shorelines of the state, provided that forest practices regulated under chapter 76.09 RCW, except conversions to nonforestland use, on lands subject to the provisions of this subsection (2)(d)(ii) are not subject to additional regulations under this chapter;

(e) "Shorelines" means all of the water areas of the state, including reservoirs, and their associated shorelands, together with the lands underlying them; except (i) shorelines of statewide significance; (ii) shorelines on segments of streams upstream of a point where the mean annual flow is twenty cubic feet per second or less and the wetlands associated with such upstream segments; and (iii) shorelines on lakes less than twenty acres in size and wetlands associated with such small lakes;

(f) "Shorelines of statewide significance" means the following shorelines of the state:

(i) The area between the ordinary high water mark and the western boundary of the state from Cape Disappointment on the



south to Cape Flattery on the north, including harbors, bays, estuaries, and inlets;

(ii) Those areas of Puget Sound and adjacent salt waters and the Strait of Juan de Fuca between the ordinary high water mark and the line of extreme low tide as follows:

(A) Nisqually Delta—from DeWolf Bight to Tatsolo Point,

(B) Birch Bay—from Point Whitehorn to Birch Point,

(C) Hood Canal—from Tala Point to Foulweather Bluff,

(D) Skagit Bay and adjacent area—from Brown Point to Yokeko Point, and

(E) Padilla Bay—from March Point to William Point;

(iii) Those areas of Puget Sound and the Strait of Juan de Fuca and adjacent salt waters north to the Canadian line and lying seaward from the line of extreme low tide;

(iv) Those lakes, whether natural, artificial, or a combination thereof, with a surface acreage of one thousand acres or more measured at the ordinary high water mark;

(v) Those natural rivers or segments thereof as follows:

(A) Any west of the crest of the Cascade range downstream of a point where the mean annual flow is measured at one thousand cubic feet per second or more,

(B) Any east of the crest of the Cascade range downstream of a point where the annual flow is measured at two hundred cubic feet per second or more, or those portions of rivers east of the crest of the Cascade range downstream from the first three hundred square miles of drainage area, whichever is longer;

(vi) Those shorelands associated with (f)(i), (ii), (iv), and (v) of this subsection (2);

(g) "Shorelines of the state" are the total of all "shorelines" and "shorelines of statewide significance" within the state;

(h) "Wetlands" means areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of



vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas to mitigate the conversion of wetlands.

(3) Procedural terms:

(a) "Development" means a use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to this chapter at any state of water level;

(b) "Guidelines" means those standards adopted to implement the policy of this chapter for regulation of use of the shorelines of the state prior to adoption of master programs. Such standards shall also provide criteria to local governments and the department in developing master programs;

(c) "Master program" means the comprehensive use plan for a described area, and the use regulations together with maps, diagrams, charts, or other descriptive material and text, a statement of desired goals, and standards developed in accordance with the policies enunciated in RCW 90.58.020. "Comprehensive master program update" means a master program that fully achieves the procedural and substantive requirements of the department guidelines effective January 17, 2004, as now or hereafter amended;

(d) "State master program" is the cumulative total of all master programs approved or adopted by the department of ecology;

(e) "Substantial development" means any development of which the total cost or fair market value exceeds five thousand dollars, or any development which materially interferes with the normal public use of the water or shorelines of the state. The dollar threshold established in this subsection (3)(e) must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2007, based upon changes in the consumer price index during that time period.



"Consumer price index" means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items, compiled by the bureau of labor and statistics, United States department of labor. The office of financial management must calculate the new dollar threshold and transmit it to the office of the code reviser for publication in the Washington State Register at least one month before the new dollar threshold is to take effect. The following shall not be considered substantial developments for the purpose of this chapter:

- (i) Normal maintenance or repair of existing structures or developments, including damage by accident, fire, or elements;
- (ii) Construction of the normal protective bulkhead common to single-family residences;
- (iii) Emergency construction necessary to protect property from damage by the elements;
- (iv) Construction and practices normal or necessary for farming, irrigation, and ranching activities, including agricultural service roads and utilities on shorelands, and the construction and maintenance of irrigation structures including but not limited to head gates, pumping facilities, and irrigation channels. A feedlot of any size, all processing plants, other activities of a commercial nature, alteration of the contour of the shorelands by leveling or filling other than that which results from normal cultivation, shall not be considered normal or necessary farming or ranching activities. A feedlot shall be an enclosure or facility used or capable of being used for feeding livestock hay, grain, silage, or other livestock feed, but shall not include land for growing crops or vegetation for livestock feeding and/or grazing, nor shall it include normal livestock wintering operations;
- (v) Construction or modification of navigational aids such as channel markers and anchor buoys;
- (vi) Construction on shorelands by an owner, lessee, or contract purchaser of a single-family residence for his own use or for the use of his or her family, which residence does not exceed a height of thirty-five feet above average grade level and which meets all requirements of the state agency or local government having jurisdiction thereof, other than requirements imposed pursuant to this chapter;



(vii) Construction of a dock, including a community dock, designed for pleasure craft only, for the private noncommercial use of the owner, lessee, or contract purchaser of single and multiple family residences. This exception applies if either: (A) In salt waters, the fair market value of the dock does not exceed two thousand five hundred dollars; or (B) in fresh waters, the fair market value of the dock does not exceed: (I) Twenty thousand dollars for docks that are constructed to replace existing docks, are of equal or lesser square footage than the existing dock being replaced, and are located in a county, city, or town that has updated its master program consistent with the master program guidelines in chapter 173-26 WAC as adopted in 2003; or (II) ten thousand dollars for all other docks constructed in fresh waters. However, if subsequent construction occurs within five years of completion of the prior construction, and the combined fair market value of the subsequent and prior construction exceeds the amount specified in either (e)(vii)(A) or (B) of this subsection (3), the subsequent construction shall be considered a substantial development for the purpose of this chapter. All dollar thresholds under (e)(vii)(B) of this subsection (3) must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2018, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items, compiled by the bureau of labor and statistics, United States department of labor. The office of financial management must calculate the new dollar thresholds, rounded to the nearest hundred dollar, and transmit them to the office of the code reviser for publication in the Washington State Register at least one month before the new dollar thresholds are to take effect;

(viii) Operation, maintenance, or construction of canals, waterways, drains, reservoirs, or other facilities that now exist or are hereafter created or developed as a part of an irrigation system for the primary purpose of making use of system waters, including return flow and artificially stored groundwater for the irrigation of lands;

(ix) The marking of property lines or corners on state owned lands, when such marking does not significantly interfere with normal public use of the surface of the water;



(x) Operation and maintenance of any system of dikes, ditches, drains, or other facilities existing on September 8, 1975, which were created, developed, or utilized primarily as a part of an agricultural drainage or diking system;

(xi) Site exploration and investigation activities that are prerequisite to preparation of an application for development authorization under this chapter, if:

(A) The activity does not interfere with the normal public use of the surface waters;

(B) The activity will have no significant adverse impact on the environment including, but not limited to, fish, wildlife, fish or wildlife habitat, water quality, and aesthetic values;

(C) The activity does not involve the installation of a structure, and upon completion of the activity the vegetation and land configuration of the site are restored to conditions existing before the activity;

(D) A private entity seeking development authorization under this section first posts a performance bond or provides other evidence of financial responsibility to the local jurisdiction to ensure that the site is restored to preexisting conditions; and

(E) The activity is not subject to the permit requirements of RCW 90.58.550;

(xii) The process of removing or controlling an aquatic noxious weed, as defined in RCW 17.26.020, through the use of an herbicide or other treatment methods applicable to weed control that are recommended by a final environmental impact statement published by the department of agriculture or the department jointly with other state agencies under chapter 43.21C RCW;

(xiii) The external or internal retrofitting of an existing structure with the exclusive purpose of compliance with the Americans with disabilities act of 1990 (42 U.S.C. Sec. 12101 et seq.) or to otherwise provide physical access to the structure by individuals with disabilities.

Wash. Rev. Code § 90.58.040. Program applicable to shorelines of the state.



The shoreline management program of this chapter shall apply to the shorelines of the state as defined in this chapter.

Wash. Rev. Code § 90.58.045. Environmental excellence program agreements – effect on chapter.

Notwithstanding any other provision of law, any legal requirement under this chapter, including any standard, limitation, rule, or order is superseded and replaced in accordance with the terms and provisions of an environmental excellence program agreement, entered into under chapter 43.21K RCW.

Wash. Rev. Code § 90.58.050. Program as cooperative between local government and state – Responsibilities differentiated.

This chapter establishes a cooperative program of shoreline management between local government and the state. Local government shall have the primary responsibility for initiating the planning required by this chapter and administering the regulatory program consistent with the policy and provisions of this chapter. The department shall act primarily in a supportive and review capacity with an emphasis on providing assistance to local government and on insuring compliance with the policy and provisions of this chapter.

Wash. Rev. Code § 90.58.060. Review and adoption of guidelines – Public hearings, notice of – Amendments.

(1) The department shall periodically review and adopt guidelines consistent with RCW 90.58.020, containing the elements specified in RCW 90.58.100 for:

(a) Development of master programs for regulation of the uses of shorelines; and

(b) Development of master programs for regulation of the uses of shorelines of statewide significance.

(2) Before adopting or amending guidelines under this section, the department shall provide an opportunity for public review and comment as follows:

(a) The department shall mail copies of the proposal to all cities, counties, and federally recognized Indian tribes, and to any other person who has requested a copy, and shall publish the proposed guidelines in the Washington state register. Comments shall be submitted in writing to the department within sixty days from the date the proposal has been published in the register.

(b) The department shall hold at least four public hearings on the proposal in different locations throughout the state to provide a



reasonable opportunity for residents in all parts of the state to present statements and views on the proposed guidelines. Notice of the hearings shall be published at least once in each of the three weeks immediately preceding the hearing in one or more newspapers of general circulation in each county of the state. If an amendment to the guidelines addresses an issue limited to one geographic area, the number and location of hearings may be adjusted consistent with the intent of this subsection to assure all parties a reasonable opportunity to comment on the proposed amendment. The department shall accept written comments on the proposal during the sixty-day public comment period and for seven days after the final public hearing.

(c) At the conclusion of the public comment period, the department shall review the comments received and modify the proposal consistent with the provisions of this chapter. The proposal shall then be published for adoption pursuant to the provisions of chapter 34.05 RCW.

(3) The department may adopt amendments to the guidelines not more than once each year. Such amendments shall be limited to: (a) Addressing technical or procedural issues that result from the review and adoption of master programs under the guidelines; or (b) issues of guideline compliance with statutory provisions.

Wash. Rev. Code § 90.58.065. Application of guidelines and master programs to agricultural activities.

(1) The guidelines adopted by the department and master programs developed or amended by local governments according to RCW 90.58.080 shall not require modification of or limit agricultural activities occurring on agricultural lands. In jurisdictions where agricultural activities occur, master programs developed or amended after June 13, 2002, shall include provisions addressing new agricultural activities on land not meeting the definition of agricultural land, conversion of agricultural lands to other uses, and development not meeting the definition of agricultural activities. Nothing in this section limits or changes the terms of the *current exception to the definition of substantial development in RCW 90.58.030(3)(e)(iv). This section applies only to this chapter, and shall not affect any other authority of local governments.

(2) For the purposes of this section:

(a) "Agricultural activities" means agricultural uses and practices including, but not limited to: Producing, breeding, or increasing agricultural products; rotating and changing agricultural crops; allowing land used for agricultural activities to lie fallow in which it is plowed and



tilled but left unseeded; allowing land used for agricultural activities to lie dormant as a result of adverse agricultural market conditions; allowing land used for agricultural activities to lie dormant because the land is enrolled in a local, state, or federal conservation program, or the land is subject to a conservation easement; conducting agricultural operations; maintaining, repairing, and replacing agricultural equipment; maintaining, repairing, and replacing agricultural facilities, provided that the replacement facility is no closer to the shoreline than the original facility; and maintaining agricultural lands under production or cultivation;

(b) "Agricultural products" includes but is not limited to horticultural, viticultural, floricultural, vegetable, fruit, berry, grain, hops, hay, straw, turf, sod, seed, and apiary products; feed or forage for livestock; Christmas trees; hybrid cottonwood and similar hardwood trees grown as crops and harvested within twenty years of planting; and livestock including both the animals themselves and animal products including but not limited to meat, upland finfish, poultry and poultry products, and dairy products;

(c) "Agricultural equipment" and "agricultural facilities" includes, but is not limited to: (i) The following used in agricultural operations: Equipment; machinery; constructed shelters, buildings, and ponds; fences; upland finfish rearing facilities; water diversion, withdrawal, conveyance, and use equipment and facilities including but not limited to pumps, pipes, tapes, canals, ditches, and drains; (ii) corridors and facilities for transporting personnel, livestock, and equipment to, from, and within agricultural lands; (iii) farm residences and associated equipment, lands, and facilities; and (iv) roadside stands and on-farm markets for marketing fruit or vegetables; and

(d) "Agricultural land" means those specific land areas on which agriculture activities are conducted.

(3) The department and local governments shall assure that local shoreline master programs use definitions consistent with the definitions in this section.

Wash. Rev. Code § 90.58.070. Local governments to submit letters of intent – Department to act upon failure of local government.

(1) Local governments are directed with regard to shorelines of the state in their various jurisdictions to submit to the director of the department, within six months from June 1, 1971, letters stating that they propose to complete an



inventory and develop master programs for these shorelines as provided for in RCW 90.58.080.

(2) If any local government fails to submit a letter as provided in subsection (1) of this section, or fails to adopt a master program for the shorelines of the state within its jurisdiction in accordance with the time schedule provided in this chapter, the department shall carry out the requirements of RCW 90.58.080 and adopt a master program for the shorelines of the state within the jurisdiction of the local government.

Wash. Rev. Code § 90.58.080. Timetable for local governments to develop or amend master programs – Review of master programs – Grants.

(1) Local governments shall develop or amend a master program for regulation of uses of the shorelines of the state consistent with the required elements of the guidelines adopted by the department in accordance with the schedule established by this section.

(2)

(a) Subject to the provisions of subsections (5) and (6) of this section, each local government subject to this chapter shall develop or amend its master program for the regulation of uses of shorelines within its jurisdiction according to the following schedule:

(i) On or before December 1, 2005, for the city of Port Townsend, the city of Bellingham, the city of Everett, Snohomish county, and Whatcom county;

(ii) On or before December 1, 2009, for King county and the cities within King county greater in population than ten thousand;

(iii) Except as provided by (a)(i) and (ii) of this subsection, on or before December 1, 2011, for Clallam, Clark, Jefferson, King, Kitsap, Pierce, Snohomish, Thurston, and Whatcom counties and the cities within those counties;

(iv) On or before December 1, 2012, for Cowlitz, Island, Lewis, Mason, San Juan, Skagit, and Skamania counties and the cities within those counties;

(v) On or before December 1, 2013, for Benton, Chelan, Douglas, Grant, Kittitas, Spokane, and Yakima counties and the cities within those counties; and

(vi) On or before December 1, 2014, for Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grays Harbor, Klickitat, Lincoln,



Okanogan, Pacific, Pend Oreille, Stevens, Wahkiakum, Walla Walla, and Whitman counties and the cities within those counties.

(b) Nothing in this subsection (2) shall preclude a local government from developing or amending its master program prior to the dates established by this subsection (2).

(3)

(a) Following approval by the department of a new or amended master program, local governments required to develop or amend master programs on or before December 1, 2009, as provided by subsection (2)(a)(i) and (ii) of this section, shall be deemed to have complied with the schedule established by subsection (2)(a)(iii) of this section and shall not be required to complete master program amendments until the applicable dates established by subsection (4)(b) of this section. Any jurisdiction listed in subsection (2)(a)(i) of this section that has a new or amended master program approved by the department on or after March 1, 2002, but before July 27, 2003, shall not be required to complete master program amendments until the applicable date provided by subsection (4)(b) of this section.

(b) Following approval by the department of a new or amended master program, local governments choosing to develop or amend master programs on or before December 1, 2009, shall be deemed to have complied with the schedule established by subsection (2)(a)(iii) through (vi) of this section and shall not be required to complete master program amendments until the applicable dates established by subsection (4)(b) of this section.

(4)

(a) Following the updates required by subsection (2) of this section, local governments shall conduct a review of their master programs at least once every 10 years as required by (b) of this subsection. Following the review required by this subsection (4), local governments shall, if necessary, revise their master programs. The purpose of the review is:

(i) To assure that the master program complies with applicable law and guidelines in effect at the time of the review; and

(ii) To assure consistency of the master program with the local government's comprehensive plan and development regulations adopted under chapter 36.70A RCW, if applicable, and other local requirements.



(b) Counties and cities shall take action to review and, if necessary, revise their master programs as required by (a) of this subsection as follows:

(i) On or before June 30, 2019, and every 10 years thereafter, for King, Pierce, and Snohomish counties and the cities within those counties;

(ii) On or before June 30, 2020, and every 10 years thereafter, for Clallam, Clark, Island, Jefferson, Kitsap, Mason, San Juan, Skagit, Thurston, and Whatcom counties and the cities within those counties;

(iii) On or before June 30, 2021, and every 10 years thereafter, for Benton, Chelan, Cowlitz, Douglas, Grant, Kittitas, Lewis, Skamania, Spokane, and Yakima counties and the cities within those counties; and

(iv) On or before June 30, 2022, and every 10 years thereafter, for Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille, Stevens, Wahkiakum, Walla Walla, and Whitman counties and the cities within those counties.

(5) In meeting the update requirements of subsection (2) of this section, local governments are encouraged to begin the process of developing or amending their master programs early and are eligible for grants from the department as provided by RCW 90.58.250, subject to available funding. Except for those local governments listed in subsection (2)(a)(i) and (ii) of this section, the deadline for completion of the new or amended master programs shall be two years after the date the grant is approved by the department. Subsequent master program review dates shall not be altered by the provisions of this subsection.

(6) In meeting the update requirements of subsection (2) of this section, the following shall apply:

(a) Grants to local governments for developing and amending master programs pursuant to the schedule established by this section shall be provided at least two years before the adoption dates specified in subsection (2) of this section. To the extent possible, the department shall allocate grants within the amount appropriated for such purposes to provide reasonable and adequate funding to local governments that have indicated their intent to develop or amend master programs during the biennium according to the schedule established by subsection (2) of this section. Any local government that applies for but does not receive



funding to comply with the provisions of subsection (2) of this section may delay the development or amendment of its master program until the following biennium.

(b) Local governments with delayed compliance dates as provided in (a) of this subsection shall be the first priority for funding in subsequent biennia, and the development or amendment compliance deadline for those local governments shall be two years after the date of grant approval.

(c) Failure of the local government to apply in a timely manner for a master program development or amendment grant in accordance with the requirements of the department shall not be considered a delay resulting from the provisions of (a) of this subsection.

(7) In meeting the update requirements of subsection (2) of this section, all local governments subject to the requirements of this chapter that have not developed or amended master programs on or after March 1, 2002, shall, no later than December 1, 2014, develop or amend their master programs to comply with guidelines adopted by the department after January 1, 2003.

(8) In meeting the update requirements of subsection (2) of this section, local governments may be provided an additional year beyond the deadlines in this section to complete their master program or amendment. The department shall grant the request if it determines that the local government is likely to adopt or amend its master program within the additional year.

Wash. Rev. Code § 90.58.090. Approval of master program or segments or amendments – Procedures – Departmental alternatives when shorelines of statewide significance – Later adoption of master program supersedes departmental program.

(1) A master program, segment of a master program, or an amendment to a master program shall become effective when approved by the department as provided in subsection (7) of this section. Within the time period provided in RCW 90.58.080, each local government shall have submitted a master program, either totally or by segments, for all shorelines of the state within its jurisdiction to the department for review and approval.

The department shall strive to achieve final action on a submitted master program within one hundred eighty days of receipt and shall post an annual assessment related to this performance benchmark on the agency website.

(2) Upon receipt of a proposed master program or amendment, the department shall:



(a) Provide notice to and opportunity for written comment by all interested parties of record as a part of the local government review process for the proposal and to all persons, groups, and agencies that have requested in writing notice of proposed master programs or amendments generally or for a specific area, subject matter, or issue. The comment period shall be at least thirty days, unless the department determines that the level of complexity or controversy involved supports a shorter period;

(b) In the department's discretion, conduct a public hearing during the thirty-day comment period in the jurisdiction proposing the master program or amendment;

(c) Within fifteen days after the close of public comment, request the local government to review the issues identified by the public, interested parties, groups, and agencies and provide a written response as to how the proposal addresses the identified issues;

(d) Within thirty days after receipt of the local government response pursuant to (c) of this subsection, make written findings and conclusions regarding the consistency of the proposal with the policy of RCW 90.58.020 and the applicable guidelines, provide a response to the issues identified in (c) of this subsection, and either approve the proposal as submitted, recommend specific changes necessary to make the proposal approvable, or deny approval of the proposal in those instances where no alteration of the proposal appears likely to be consistent with the policy of RCW 90.58.020 and the applicable guidelines. The written findings and conclusions shall be provided to the local government, and made available to all interested persons, parties, groups, and agencies of record on the proposal;

(e) If the department recommends changes to the proposed master program or amendment, within thirty days after the department mails the written findings and conclusions to the local government, the local government may:

(i) Agree to the proposed changes by written notice to the department; or

(ii) Submit an alternative proposal. If, in the opinion of the department, the alternative is consistent with the purpose and intent of the changes originally submitted by the department and with this chapter it shall approve the changes and provide notice to all recipients of the written findings and conclusions. If the department determines the proposal is not consistent with the



purpose and intent of the changes proposed by the department, the department may resubmit the proposal for public and agency review pursuant to this section or reject the proposal.

(3) The department shall approve the segment of a master program relating to shorelines unless it determines that the submitted segments are not consistent with the policy of RCW 90.58.020 and the applicable guidelines.

(4) The department shall approve the segment of a master program relating to critical areas as defined by *RCW 36.70A.030(5) provided the master program segment is consistent with RCW 90.58.020 and applicable shoreline guidelines, and if the segment provides a level of protection of critical areas at least equal to that provided by the local government's critical areas ordinances adopted and thereafter amended pursuant to RCW 36.70A.060(2).

(5) The department shall approve those segments of the master program relating to shorelines of statewide significance only after determining the program provides the optimum implementation of the policy of this chapter to satisfy the statewide interest. If the department does not approve a segment of a local government master program relating to a shoreline of statewide significance, the department may develop and by rule adopt an alternative to the local government's proposal.

(6) In the event a local government has not complied with the requirements of RCW 90.58.070 it may thereafter upon written notice to the department elect to adopt a master program for the shorelines within its jurisdiction, in which event it shall comply with the provisions established by this chapter for the adoption of a master program for such shorelines.

Upon approval of such master program by the department it shall supersede such master program as may have been adopted by the department for such shorelines.

(7) A master program or amendment to a master program takes effect when and in such form as approved or adopted by the department. The effective date is fourteen days from the date of the department's written notice of final action to the local government stating the department has approved or rejected the proposal. For master programs adopted by rule, the effective date is governed by RCW 34.05.380. The department's written notice to the local government must conspicuously and plainly state that it is the department's final decision and that there will be no further modifications to the proposal.

(a) Shoreline master programs that were adopted by the department prior to July 22, 1995, in accordance with the provisions of this section then in effect, shall be deemed approved by the department in



accordance with the provisions of this section that became effective on that date.

(b) The department shall maintain a record of each master program, the action taken on any proposal for adoption or amendment of the master program, and any appeal of the department's action. The department's approved document of record constitutes the official master program.

(8) Promptly after approval or disapproval of a local government's shoreline master program or amendment, the department shall publish a notice consistent with RCW 36.70A.290 that the shoreline master program or amendment has been approved or disapproved. This notice must be filed for all shoreline master programs or amendments. If the notice is for a local government that does not plan under RCW 36.70A.040, the department must, on the day the notice is published, notify the legislative authority of the applicable local government by telephone or electronic means, followed by written communication as necessary, to ensure that the local government has received the full written decision of the approval or disapproval.

Wash. Rev. Code § 90.58.100. Programs as constituting use regulations – Duties when preparing programs and amendments thereto – Program contents.

(1) The master programs provided for in this chapter, when adopted or approved by the department shall constitute use regulations for the various shorelines of the state. In preparing the master programs, and any amendments thereto, the department and local governments shall to the extent feasible:

(a) Utilize a systematic interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts;

(b) Consult with and obtain the comments of any federal, state, regional, or local agency having any special expertise with respect to any environmental impact;

(c) Consider all plans, studies, surveys, inventories, and systems of classification made or being made by federal, state, regional, or local agencies, by private individuals, or by organizations dealing with pertinent shorelines of the state;

(d) Conduct or support such further research, studies, surveys, and interviews as are deemed necessary;



(e) Utilize all available information regarding hydrology, geography, topography, ecology, economics, and other pertinent data;

(f) Employ, when feasible, all appropriate, modern scientific data processing and computer techniques to store, index, analyze, and manage the information gathered.

(2) The master programs shall include, when appropriate, the following:

(a) An economic development element for the location and design of industries, projects of statewide significance, transportation facilities, port facilities, tourist facilities, commerce and other developments that are particularly dependent on their location on or use of the shorelines of the state;

(b) A public access element making provision for public access to publicly owned areas;

(c) A recreational element for the preservation and enlargement of recreational opportunities, including but not limited to parks, tidelands, beaches, and recreational areas;

(d) A circulation element consisting of the general location and extent of existing and proposed major thoroughfares, transportation routes, terminals, and other public utilities and facilities, all correlated with the shoreline use element;

(e) A use element which considers the proposed general distribution and general location and extent of the use on shorelines and adjacent land areas for housing, business, industry, transportation, agriculture, natural resources, recreation, education, public buildings and grounds, and other categories of public and private uses of the land;

(f) A conservation element for the preservation of natural resources, including but not limited to scenic vistas, aesthetics, and vital estuarine areas for fisheries and wildlife protection;

(g) An historic, cultural, scientific, and educational element for the protection and restoration of buildings, sites, and areas having historic, cultural, scientific, or educational values;

(h) An element that gives consideration to the statewide interest in the prevention and minimization of flood damages; and

(i) Any other element deemed appropriate or necessary to effectuate the policy of this chapter.



(3) The master programs shall include such map or maps, descriptive text, diagrams and charts, or other descriptive material as are necessary to provide for ease of understanding.

(4) Master programs will reflect that state-owned shorelines of the state are particularly adapted to providing wilderness beaches, ecological study areas, and other recreational activities for the public and will give appropriate special consideration to same.

(5) Each master program shall contain provisions to allow for the varying of the application of use regulations of the program, including provisions for permits for conditional uses and variances, to insure that strict implementation of a program will not create unnecessary hardships or thwart the policy enumerated in RCW 90.58.020. Any such varying shall be allowed only if extraordinary circumstances are shown and the public interest suffers no substantial detrimental effect. The concept of this subsection shall be incorporated in the rules adopted by the department relating to the establishment of a permit system as provided in RCW 90.58.140(3).

(6) Each master program shall contain standards governing the protection of single-family residences and appurtenant structures against damage or loss due to shoreline erosion. The standards shall govern the issuance of substantial development permits for shoreline protection, including structural methods such as construction of bulkheads, and nonstructural methods of protection. The standards shall provide for methods which achieve effective and timely protection against loss or damage to single-family residences and appurtenant structures due to shoreline erosion. The standards shall provide a preference for permit issuance for measures to protect single-family residences occupied prior to January 1, 1992, where the proposed measure is designed to minimize harm to the shoreline natural environment.

Wash. Rev. Code § 90.58.110. Development of program within two or more adjacent local government jurisdictions – Development of program in segments, when.

(1) Whenever it shall appear to the director that a master program should be developed for a region of the shorelines of the state which includes lands and waters located in two or more adjacent local government jurisdictions, the director shall designate such region and notify the appropriate units of local government thereof. It shall be the duty of the notified units to develop cooperatively an inventory and master program in accordance with and within the time provided in RCW 90.58.080.



(2) At the discretion of the department, a local government master program may be adopted in segments applicable to particular areas so that immediate attention may be given to those areas of the shorelines of the state in most need of a use regulation.

Wash. Rev. Code § 90.58.120. Adoption of rules, programs, etc., subject to RCW 34.05.310 through 34.05.395 – Public hearings, notice of – Public inspection after approval or adoption.

All rules, regulations, designations, and guidelines, issued by the department, and master programs and amendments adopted by the department pursuant to RCW 90.58.070(2) or * 90.58.090(4) shall be adopted or approved in accordance with the provisions of RCW 34.05.310 through 34.05.395 insofar as such provisions are not inconsistent with the provisions of this chapter. In addition:

(1) Prior to the adoption by the department of a master program, or portion thereof pursuant to RCW 90.58.070(2) or * 90.58.090(4), at least one public hearing shall be held in each county affected by a program or portion thereof for the purpose of obtaining the views and comments of the public. Notice of each such hearing shall be published at least once in each of the three weeks immediately preceding the hearing in one or more newspapers of general circulation in the county in which the hearing is to be held.

(2) All guidelines, regulations, designations, or master programs adopted or approved under this chapter shall be available for public inspection at the office of the department or the appropriate county and city. The terms "adopt" and "approve" for purposes of this section, shall include modifications and rescission of guidelines.

Wash. Rev. Code § 90.58.130. Involvement of all persons and entities having interest, means.

To insure that all persons and entities having an interest in the guidelines and master programs developed under this chapter are provided with a full opportunity for involvement in both their development and implementation, the department and local governments shall:

(1) Make reasonable efforts to inform the people of the state about the shoreline management program of this chapter and in the performance of the responsibilities provided in this chapter, shall not only invite but actively encourage participation by all persons and private groups and entities showing an interest in shoreline management programs of this chapter; and

(2) Invite and encourage participation by all agencies of federal, state, and local government, including municipal and public corporations, having interests or



responsibilities relating to the shorelines of the state. State and local agencies are directed to participate fully to insure that their interests are fully considered by the department and local governments.

Wash. Rev. Code § 90.58.140. Development permits – Grounds for granting – administration by local government, conditions – Applications – Notices – Recission – Approval when permit for variance or conditional use.

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

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

A permit shall be granted:

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

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

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

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

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

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



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

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

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

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

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

(b)

(i) In the case of any permit or decision to issue any permit to the state of Washington, department of transportation, for the replacement of the floating bridge and landings of the state route number 520 Evergreen Point bridge on or adjacent to Lake Washington, the construction may begin twenty-one days from the date of filing. Any substantial development permit granted for the floating bridge and landings is deemed to have been granted on the date that the local government's decision to grant the permit is issued. This authorization to construct is limited to only those elements of the floating bridge and landings that do not preclude the department of transportation's selection of a four-lane alternative for state route number 520 between Interstate 5 and Medina. Additionally, the Washington state department of



transportation shall not engage in or contract for any construction on any portion of state route number 520 between Interstate 5 and the western landing of the floating bridge until the legislature has authorized the imposition of tolls on the Interstate 90 floating bridge and/or other funding sufficient to complete construction of the state route number 520 bridge replacement and HOV program. For the purposes of this subsection (5)(b), the "western landing of the floating bridge" means the least amount of new construction necessary to connect the new floating bridge to the existing state route number 520 and anchor the west end of the new floating bridge;

(ii) Nothing in this subsection (5)(b) precludes the shorelines hearings board from concluding that the project or any element of the project is inconsistent with the goals and policies of the shoreline management act or the local shoreline master program;

(iii) This subsection (5)(b) applies retroactively to any appeals filed after January 1, 2012, and to any appeals filed on or after March 23, 2012, and expires June 30, 2014;

(c)

(i) In the case of permits for projects addressing significant public safety risks, as defined by the department of transportation, it is not in the public interest to delay construction until all review proceedings are terminated. In the case of any permit issued under this chapter or decision to issue any permit under this chapter for a transportation project of the Washington state department of transportation, construction may begin twenty-one days after the date of filing if all components of the project achieve a no net loss of shoreline ecological functions, as defined by department guidelines adopted pursuant to RCW 90.58.060 and as determined through the following process:

(A) The department of transportation, as part of the permit review process, must provide the local government with an assessment of how the project affects shoreline ecological functions. The assessment must include specific actions for avoiding, minimizing, and mitigating impacts to shoreline ecological functions, developed in consultation with the department, that ensure there is no net loss of shoreline ecological functions; and



(B) The local government, after reviewing the assessment required in (c)(i)(A) of this subsection and prior to the final issuance of all appropriate shoreline permits and variances, must determine that the project will result in no net loss of shoreline ecological functions.

(ii) Nothing in this subsection (5)(c) precludes the shorelines hearings board from concluding that the shoreline project or any element of the project is inconsistent with this chapter, the local shoreline master program, chapter 43.21C RCW and its implementing regulations, or the applicable shoreline regulations.

(iii) This subsection (5)(c) does not apply to permit decisions for the replacement of the floating bridge and landings of the state route number 520 Evergreen Point bridge on or adjacent to Lake Washington;

(d) Except as authorized in (b) and (c) of this subsection, construction may be commenced no sooner than thirty days after the date of the appeal of the board's decision is filed if a permit is granted by the local government and (i) the granting of the permit is appealed to the shorelines hearings board within twenty-one days of the date of filing, (ii) the hearings board approves the granting of the permit by the local government or approves a portion of the substantial development for which the local government issued the permit, and (iii) an appeal for judicial review of the hearings board decision is filed pursuant to chapter 34.05 RCW. The appellant may request, within ten days of the filing of the appeal with the court, a hearing before the court to determine whether construction pursuant to the permit approved by the hearings board or to a revised permit issued pursuant to the order of the hearings board should not commence. If, at the conclusion of the hearing, the court finds that construction pursuant to such a permit would involve a significant, irreversible damaging of the environment, the court shall prohibit the permittee from commencing the construction pursuant to the approved or revised permit until all review proceedings are final. Construction pursuant to a permit revised at the direction of the hearings board may begin only on that portion of the substantial development for which the local government had originally issued the permit, and construction pursuant to such a revised permit on other portions of the substantial development may not begin until after all review proceedings are terminated. In such a hearing before the court, the burden of proving whether the construction may involve significant



irreversible damage to the environment and demonstrating whether such construction would or would not be appropriate is on the appellant;

(e) Except as authorized in (b) and (c) of this subsection, if the permit is for a substantial development meeting the requirements of subsection (11) of this section, construction pursuant to that permit may not begin or be authorized until twenty-one days from the date the permit decision was filed as provided in subsection (6) of this section.

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

(6) Any decision on an application for a permit under the authority of this section, whether it is an approval or a denial, shall, concurrently with the transmittal of the ruling to the applicant, be filed with the department and the attorney general. This shall be accomplished by return receipt requested mail. A petition for review of such a decision must be commenced within twenty-one days from the date of filing of the decision.

(a) With regard to a permit other than a permit governed by subsection (10) of this section, "date of filing" as used in this section refers to the date of actual receipt by the department of the local government's decision.

(b) With regard to a permit for a variance or a conditional use governed by subsection (10) of this section, "date of filing" means the date the decision of the department is transmitted by the department to the local government.

(c) When a local government simultaneously transmits to the department its decision on a shoreline substantial development with its approval of either a shoreline conditional use permit or variance, or both, "date of filing" has the same meaning as defined in (b) of this subsection.

(d) The department shall notify in writing the local government and the applicant of the date of filing by telephone or electronic means, followed by written communication as necessary, to ensure that the applicant has received the full written decision.



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

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

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

(10) Any permit for a variance or a conditional use issued with approval by a local government under their approved master program must be submitted to the department for its approval or disapproval.

(11)

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

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

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

(iii) If there is an appeal of the decision to grant or deny the permit to the local government legislative authority, the appeal



shall be finally determined by the legislative authority within thirty days.

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

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

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

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

(12) A permit under this section is not required in order to dispose of dredged materials at a disposal site approved through the cooperative planning process referenced in RCW 79.105.500, provided the dredged material disposal proponent obtains a valid site use authorization from the dredged material management program office within the department of natural resources.

Wash. Rev. Code § 90.58.143. Time requirements – Substantial development permits, variances, conditional use permits.

(1) The time requirements of this section shall apply to all substantial development permits and to any development authorized pursuant to a variance or conditional use permit authorized under this chapter. Upon a finding of good cause, based on the requirements and circumstances of the project proposed and consistent with the policy and provisions of the master program and this chapter, local government may adopt different time limits from those set forth in subsections (2) and (3) of this section as a part of action on a substantial development permit.

(2) Construction activities shall be commenced or, where no construction activities are involved, the use or activity shall be commenced within two years of the effective date of a substantial development permit. However, local government may authorize a single extension for a period not to exceed one year based on reasonable factors, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record on the substantial development permit and to the department.

(3) Authorization to conduct construction activities shall terminate five years after the effective date of a substantial development permit. However, local government may authorize a single extension for a period not to exceed one year based on reasonable factors, if a request for extension has been filed



before the expiration date and notice of the proposed extension is given to parties of record and to the department.

(4) The effective date of a substantial development permit shall be the date of filing as provided in RCW 90.58.140(6). The permit time periods in subsections (2) and (3) of this section do not include the time during which a use or activity was not actually pursued due to the pendency of administrative appeals or legal actions or due to the need to obtain any other government permits and approvals for the development that authorize the development to proceed, including all reasonably related administrative or legal actions on any such permits or approvals.

Wash. Rev. Code § 90.58.147. Substantial development permit – Exemption for projects to improve fish or wildlife habitat or fish passage.

(1) A public or private project that is designed to improve fish or wildlife habitat or fish passage shall be exempt from the substantial development permit requirements of this chapter when all of the following apply:

(a) The project has been approved by the department of fish and wildlife or, for forest practices hydraulic projects within the scope of RCW 77.55.181, the department of natural resources if the local government notification provisions of RCW 77.55.181 are satisfied;

(b) The project has received hydraulic project approval by the department of fish and wildlife pursuant to chapter 77.55 RCW or approval of a forest practices hydraulic project within the scope of RCW 77.55.181 from the department of natural resources if the local government notification provisions of RCW 77.55.181 are satisfied; and

(c) The local government has determined that the project is substantially consistent with the local shoreline master program. The local government shall make such determination in a timely manner and provide it by letter to the project proponent.

(2) Fish habitat enhancement projects that conform to the provisions of RCW 77.55.181 are determined to be consistent with local shoreline master programs.

(3) Public projects for the primary purpose of fish passage improvement or fish passage barrier removal are exempt from the substantial development permit requirements of this chapter.

Wash. Rev. Code § 90.58.150. Selective commercial timber cutting, when.

With respect to timber situated within two hundred feet abutting landward of the ordinary high water mark within shorelines of statewide significance, the department



or local government shall allow only selective commercial timber cutting, so that no more than thirty percent of the merchantable trees may be harvested in any ten year period of time: PROVIDED, That other timber harvesting methods may be permitted in those limited instances where the topography, soil conditions or silviculture practices necessary for regeneration render selective logging ecologically detrimental: PROVIDED FURTHER, That clear cutting of timber which is solely incidental to the preparation of land for other uses authorized by this chapter may be permitted.

Wash. Rev. Code § 90.58.160. Prohibition against seabed mining for hard minerals and surface drilling for oil or gas, where.

(1) Seabed mining for hard minerals and surface drilling for oil or gas is prohibited in the waters of Puget Sound north to the Canadian boundary and the Strait of Juan de Fuca seaward from the ordinary high water mark and on all lands within one thousand feet landward from said mark.

(2)

(a) For purposes of this section, "hard minerals" means natural deposits of valuable minerals including, but not limited to, metals and placer deposits of metals, nonmetallic minerals, gemstones, ores, sediments, gold, silver, copper, lead, iron, manganese, silica, chrome, platinum, tungsten, zirconium, titanium, garnet, and phosphorus.

(b) "Hard minerals" does not include rock, gravel, sand, silt, coal, or hydrocarbons.

Wash. Rev. Code § 90.58.170. Shorelines hearings board – Established – Members – Chair – Quorum for decision – Expenses of members.

A shorelines hearings board sitting as a quasi-judicial body is hereby established within the environmental and land use hearings office under *RCW 43.21B.005. The shorelines hearings board shall be made up of six members: Three members shall be members of the pollution control hearings board; two members, one appointed by the association of Washington cities and one appointed by the association of county commissioners, both to serve at the pleasure of the associations; and the commissioner of public lands or his or her designee. The chair of the pollution control hearings board shall be the chair of the shorelines hearings board. Except as provided in RCW 90.58.185, a decision must be agreed to by at least four members of the board to be final. The members of the shorelines hearings board shall receive the compensation, travel, and subsistence expenses as provided in RCW 43.03.050 and 43.03.060.

Wash. Rev. Code § 90.58.175. Rules and regulations.



The shorelines hearings board may adopt rules and regulations governing the administrative practice and procedure in and before the board.

Wash. Rev. Code § 90.58.180. Review of granting, denying, or rescinding permits by shorelines hearings board – Board to act – Local government appeals to board – Grounds for declaring rule, regulation, or guideline invalid – Appeals to court.

(1) Any person aggrieved by the granting, denying, or rescinding of a permit on shorelines of the state pursuant to RCW 90.58.140 may seek review from the shorelines hearings board by filing a petition for review within twenty-one days of the date of filing of the decision as defined in RCW 90.58.140(6).

Within seven days of the filing of any petition for review with the board as provided in this section pertaining to a final decision of a local government, the petitioner shall serve copies of the petition on the department, the office of the attorney general, and the local government. The department and the attorney general may intervene to protect the public interest and ensure that the provisions of this chapter are complied with at any time within fifteen days from the date of the receipt by the department or the attorney general of a copy of the petition for review filed pursuant to this section. The shorelines hearings board shall schedule review proceedings on the petition for review without regard as to whether the period for the department or the attorney general to intervene has or has not expired.

(2) The department or the attorney general may obtain review of any final decision granting a permit, or granting or denying an application for a permit issued by a local government by filing a written petition with the shorelines hearings board and the appropriate local government within twenty-one days from the date the final decision was filed as provided in RCW 90.58.140(6).

(3) The review proceedings authorized in subsections (1) and (2) of this section are subject to the provisions of chapter 34.05 RCW pertaining to procedures in adjudicative proceedings. Judicial review of such proceedings of the shorelines hearings board is governed by chapter 34.05 RCW. The board shall issue its decision on the appeal authorized under subsections (1) and (2) of this section within one hundred eighty days after the date the petition is filed with the board or a petition to intervene is filed by the department or the attorney general, whichever is later. The time period may be extended by the board for a period of thirty days upon a showing of good cause or may be waived by the parties.

(4) Any person may appeal any rules, regulations, or guidelines adopted or approved by the department within thirty days of the date of the adoption or



approval. The board shall make a final decision within sixty days following the hearing held thereon.

(5) The board shall find the rule, regulation, or guideline to be valid and enter a final decision to that effect unless it determines that the rule, regulation, or guideline:

- (a) Is clearly erroneous in light of the policy of this chapter; or
- (b) Constitutes an implementation of this chapter in violation of constitutional or statutory provisions; or
- (c) Is arbitrary and capricious; or
- (d) Was developed without fully considering and evaluating all material submitted to the department during public review and comment; or
- (e) Was not adopted in accordance with required procedures.

(6) If the board makes a determination under subsection (5)(a) through (e) of this section, it shall enter a final decision declaring the rule, regulation, or guideline invalid, remanding the rule, regulation, or guideline to the department with a statement of the reasons in support of the determination, and directing the department to adopt, after a thorough consultation with the affected local government and any other interested party, a new rule, regulation, or guideline consistent with the board's decision.

(7) A decision of the board on the validity of a rule, regulation, or guideline shall be subject to review in superior court, if authorized pursuant to chapter 34.05 RCW. A petition for review of the decision of the shorelines hearings board on a rule, regulation, or guideline shall be filed within thirty days after the date of final decision by the shorelines hearings board.

Wash. Rev. Code § 90.58.185. Appeals involving single-family residences, involving penalties of fifteen thousand dollars or less, or other designated cases – Composition of board – Rules to expedite appeals.

(1) In the case of an appeal involving a single-family residence or appurtenance to a single-family residence, including a dock or pier designed to serve a single-family residence, appeals involving a penalty of fifteen thousand dollars or less, or other cases designated by the chair of the hearings board, the request for review may be heard by a panel of three board members, at least one and not more than two of whom shall be members of the pollution control hearings board. Two members of the three must agree to issue a final decision of the board. In designating appeals for review by panels of three hearings board members, the chair shall consider factors such as the complexity and



precedential nature of the case and the efficiency and cost-effectiveness of using a short board versus a full board.

(2) The board shall define by rule alternative processes to expedite appeals, including those involving a single-family residence or appurtenance to a single-family residence, including a dock or pier designed to serve a single-family residence, or involving a penalty of fifteen thousand dollars or less. These alternatives may include: Mediation, upon agreement of all parties; submission of testimony by affidavit; or other forms that may lead to less formal and faster resolution of appeals.

Wash. Rev. Code § 90.58.190. Appeal of department's decision to adopt or amend a master program.

(1) The appeal of the department's decision to adopt a master program or amendment pursuant to RCW 90.58.070(2) or 90.58.090(5) is governed by RCW 34.05.510 through 34.05.598.

(2)

(a) The department's final decision to approve or reject a proposed master program or master program amendment by a local government planning under RCW 36.70A.040 shall be appealed to the growth management hearings board by filing a petition as provided in RCW 36.70A.290.

(b) If the appeal to the growth management hearings board concerns shorelines, the growth management hearings board shall review the proposed master program or amendment solely for compliance with the requirements of this chapter, the policy of RCW 90.58.020 and the applicable guidelines, the internal consistency provisions of RCW 36.70A.070, 36.70A.040(4), 35.63.125, and 35A.63.105, and chapter 43.21C RCW as it relates to the adoption of master programs and amendments under chapter 90.58 RCW.

(c) If the appeal to the growth management hearings board concerns a shoreline of statewide significance, the board shall uphold the decision by the department unless the board, by clear and convincing evidence, determines that the decision of the department is noncompliant with the policy of RCW 90.58.020 or the applicable guidelines, or chapter 43.21C RCW as it relates to the adoption of master programs and amendments under this chapter.

(d) The appellant has the burden of proof in all appeals to the growth management hearings board under this subsection.



(e) Any party aggrieved by a final decision of the growth management hearings board under this subsection may appeal the decision to superior court as provided in RCW 36.70A.300.

(3)

(a) The department's final decision to approve or reject a proposed master program or master program amendment by a local government not planning under RCW 36.70A.040 shall be appealed to the shorelines hearings board by filing a petition within thirty days of the date that the department publishes notice of its final decision under RCW 90.58.090(8).

(b) In an appeal relating to shorelines, the shorelines hearings board shall review the proposed master program or master program amendment and, after full consideration of the presentations of the parties, shall determine the validity of the local government's master program or amendment in light of the policy of RCW 90.58.020 and the applicable guidelines, and chapter 43.21C RCW as it relates to the adoption of master programs and amendments under this chapter.

(c) In an appeal relating to shorelines of statewide significance, the shorelines hearings board shall uphold the decision by the department unless the board determines, by clear and convincing evidence that the decision of the department is noncompliant with the policy of RCW 90.58.020 or the applicable guidelines, or chapter 43.21C RCW as it relates to the adoption of master programs and amendments under this chapter.

(d) Review by the shorelines hearings board shall be considered an adjudicative proceeding under chapter 34.05 RCW, the administrative procedure act. The appellant shall have the burden of proof in all such reviews.

(e) Whenever possible, the review by the shorelines hearings board shall be heard within the county where the land subject to the proposed master program or master program amendment is primarily located. The department and any party aggrieved by a final decision of the hearings board may appeal the decision to superior court as provided in chapter 34.05 RCW.

(4) A master program amendment shall become effective after the approval of the department or after the decision of the growth management hearings board or shorelines hearings board to uphold the master program or master program amendment, provided that either the growth management hearings board or



the shorelines hearings board may remand the master program or master program amendment to the local government or the department for modification prior to the final adoption of the master program or master program amendment.

Wash. Rev. Code § 90.58.195. Shoreline master plan review – Local governments with coastal waters or coastal shorelines.

(1) The department of ecology, in cooperation with other state agencies and coastal local governments, shall prepare and adopt ocean use guidelines and policies to be used in reviewing, and where appropriate, amending, shoreline master programs of local governments with coastal waters or coastal shorelines within their boundaries. These guidelines shall be finalized by April 1, 1990.

(2) After the department of ecology has adopted the guidelines required in subsection (1) of this section, counties, cities, and towns with coastal waters or coastal shorelines shall review their shoreline master programs to ensure that the programs conform with RCW 43.143.010 and 43.143.030 and with the department of ecology's ocean use guidelines. Amended master programs shall be submitted to the department of ecology for its approval under RCW 90.58.090 by June 30, 1991.

Wash. Rev. Code § 90.58.200. Rules and regulations.

The department and local governments are authorized to adopt such rules as are necessary and appropriate to carry out the provisions of this chapter.

Wash. Rev. Code § 90.58.210. Court actions to ensure against conflicting uses and to enforce – Civil penalty – Review.

(1) Except as provided in RCW 43.05.060 through 43.05.080 and 43.05.150, the attorney general or the attorney for the local government shall bring such injunctive, declaratory, or other actions as are necessary to ensure that no uses are made of the shorelines of the state in conflict with the provisions and programs of this chapter, and to otherwise enforce the provisions of this chapter.

(2) Any person who shall fail to conform to the terms of a permit issued under this chapter or who shall undertake development on the shorelines of the state without first obtaining any permit required under this chapter shall also be subject to a civil penalty not to exceed one thousand dollars for each violation. Each permit violation or each day of continued development without a required permit shall constitute a separate violation.



(3) The penalty provided for in this section shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the same from the department or local government, describing the violation with reasonable particularity and ordering the act or acts constituting the violation or violations to cease and desist or, in appropriate cases, requiring necessary corrective action to be taken within a specific and reasonable time.

(4) The person incurring the penalty may appeal within thirty days from the date of receipt of the penalty. The term "date of receipt" has the same meaning as provided in RCW 43.21B.001. Any penalty imposed pursuant to this section by the department shall be subject to review by the shorelines hearings board. Any penalty imposed pursuant to this section by local government shall be subject to review by the local government legislative authority. Any penalty jointly imposed by the department and local government shall be appealed to the shorelines hearings board.

Wash. Rev. Code § 90.58.220. General penalty.

In addition to incurring civil liability under RCW 90.58.210, any person found to have wilfully engaged in activities on the shorelines of the state in violation of the provisions of this chapter or any of the master programs, rules, or regulations adopted pursuant thereto shall be guilty of a gross misdemeanor, and shall be punished by a fine of not less than twenty-five nor more than one thousand dollars or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment: PROVIDED, That the fine for the third and all subsequent violations in any five-year period shall be not less than five hundred nor more than ten thousand dollars: PROVIDED FURTHER, That fines for violations of RCW 90.58.550, or any rule adopted thereunder, shall be determined under RCW 90.58.560.

Wash. Rev. Code § 90.58.230. Violators liable for damages resulting from violation – Attorney's fees and costs.

Any person subject to the regulatory program of this chapter who violates any provision of this chapter or permit issued pursuant thereto shall be liable for all damage to public or private property arising from such violation, including the cost of restoring the affected area to its condition prior to violation. The attorney general or local government attorney shall bring suit for damages under this section on behalf of the state or local governments. Private persons shall have the right to bring suit for damages under this section on their own behalf and on the behalf of all persons similarly situated. If liability has been established for the cost of restoring an area affected by a violation the court shall make provision to assure that restoration will be accomplished within a reasonable time at the expense of the violator. In addition to



such relief, including money damages, the court in its discretion may award attorney's fees and costs of the suit to the prevailing party.

Wash. Rev. Code § 90.58.240. Additional authority granted department and local governments.

In addition to any other powers granted hereunder, the department and local governments may:

- (1) Acquire lands and easements within shorelines of the state by purchase, lease, or gift, either alone or in concert with other governmental entities, when necessary to achieve implementation of master programs adopted hereunder;
- (2) Accept grants, contributions, and appropriations from any agency, public or private, or individual for the purposes of this chapter;
- (3) Appoint advisory committees to assist in carrying out the purposes of this chapter;
- (4) Contract for professional or technical services required by it which cannot be performed by its employees.

Wash. Rev. Code § 90.58.250. Intent – Department to cooperate with local governments – Grants for development of master programs.

(1) The legislature intends to eliminate the limits on state funding of shoreline master program development and amendment costs. The legislature further intends that the state will provide funding to local governments that is reasonable and adequate to accomplish the costs of developing and amending shoreline master programs consistent with the schedule established by RCW 90.58.080. Except as specifically described herein, nothing in chapter 262, Laws of 2003 is intended to alter the existing obligation, duties, and benefits provided by chapter 262, Laws of 2003 to local governments and the department.

(2) The department is directed to cooperate fully with local governments in discharging their responsibilities under this chapter. Funds shall be available for distribution to local governments on the basis of applications for preparation of master programs and the provisions of RCW 90.58.080(7). Such applications shall be submitted in accordance with regulations developed by the department. The department is authorized to make and administer grants within appropriations authorized by the legislature to any local government within the state for the purpose of developing a master shorelines program.

Wash. Rev. Code § 90.58.260. State to represent its interest before federal agencies, interstate agencies and courts.



The state, through the department of ecology and the attorney general, shall represent its interest before water resource regulation management, development, and use agencies of the United States, including among others, the federal power commission, environmental protection agency, corps of engineers, department of the interior, department of agriculture and the atomic energy commission, before interstate agencies and the courts with regard to activities or uses of shorelines of the state and the program of this chapter. Where federal or interstate agency plans, activities, or procedures conflict with state policies, all reasonable steps available shall be taken by the state to preserve the integrity of its policies.

Wash. Rev. Code § 90.58.270. Nonapplication to certain structures, docks, developments, etc., placed in navigable waters – Nonapplication to certain rights of action, authority – Floating homes and floating on-water residences must be classified as a conforming preferred use.

(1) Nothing in this section shall constitute authority for requiring or ordering the removal of any structures, improvements, docks, fills, or developments placed in navigable waters prior to December 4, 1969, and the consent and authorization of the state of Washington to the impairment of public rights of navigation, and corollary rights incidental thereto, caused by the retention and maintenance of said structures, improvements, docks, fills or developments are hereby granted: PROVIDED, That the consent herein given shall not relate to any structures, improvements, docks, fills, or developments placed on tidelands, shorelands, or beds underlying said waters which are in trespass or in violation of state statutes.

(2) Nothing in this section shall be construed as altering or abridging any private right of action, other than a private right which is based upon the impairment of public rights consented to in subsection (1) of this section.

(3) Nothing in this section shall be construed as altering or abridging the authority of the state or local governments to suppress or abate nuisances or to abate pollution.

(4) Subsection (1) of this section shall apply to any case pending in the courts of this state on June 1, 1971 relating to the removal of structures, improvements, docks, fills, or developments based on the impairment of public navigational rights.

(5)

(a) A floating home permitted or legally established prior to January 1, 2011, must be classified as a conforming preferred use.

(b) For the purposes of this subsection:



(i) "Conforming preferred use" means that applicable development and shoreline master program regulations may only impose reasonable conditions and mitigation that will not effectively preclude maintenance, repair, replacement, and remodeling of existing floating homes and floating home moorages by rendering these actions impracticable.

(ii) "Floating home" means a single-family dwelling unit constructed on a float, that is moored, anchored, or otherwise secured in waters, and is not a vessel, even though it may be capable of being towed.

(6)

(a) A floating on-water residence legally established prior to July 1, 2014, must be considered a conforming use and accommodated through reasonable shoreline master program regulations, permit conditions, or mitigation that will not effectively preclude maintenance, repair, replacement, and remodeling of existing floating on-water residences and their moorages by rendering these actions impracticable. A substantial development permit is not required when replacing or remodeling a floating on-water residence if the size of the existing residence is not materially exceeded. A substantial development permit is required if the replacement or remodel of a floating on-water residence materially exceeds the size of the existing residence. All replacements and remodels which add one hundred twenty square feet or more to the living space must require on-board graywater containment or a wastewater connection that disposes of the graywater to a wastewater disposal system.

(b) For the purpose of this subsection, "floating on-water residence" means a vessel or any other floating structure other than a floating home, as defined under subsection (5) of this section: (i) That is designed or used primarily as a residence on the water and has detachable utilities; and (ii) whose owner or primary occupant has held an ownership interest in space in a marina, or has held a lease or sublease to use space in a marina, since a date prior to July 1, 2014.

Wash. Rev. Code § 90.58.280. Application to all state agencies, counties, public and municipal corporations.

The provisions of this chapter shall be applicable to all agencies of state government, counties, and public and municipal corporations and to all shorelines of the state owned or administered by them.



Wash. Rev. Code § 90.58.290. Restrictions as affecting fair market value of property.

The restrictions imposed by this chapter shall be considered by the county assessor in establishing the fair market value of the property.

Wash. Rev. Code § 90.58.300. Department as regulating state agency – Special authority.

The department of ecology is designated the state agency responsible for the program of regulation of the shorelines of the state, including coastal shorelines and the shorelines of the inner tidal waters of the state, and is authorized to cooperate with the federal government and sister states and to receive benefits of any statutes of the United States whenever enacted which relate to the programs of this chapter.

Wash. Rev. Code § 90.58.310. Designation of shorelines of statewide significance by legislature – Recommendation by director, procedure.

Additional shorelines of the state shall be designated shorelines of statewide significance only by affirmative action of the legislature.

The director of the department may, however, from time to time, recommend to the legislature areas of the shorelines of the state which have statewide significance relating to special economic, ecological, educational, developmental, recreational, or aesthetic values to be designated as shorelines of statewide significance.

Prior to making any such recommendation the director shall hold a public hearing in the county or counties where the shoreline under consideration is located. It shall be the duty of the county commissioners of each county where such a hearing is conducted to submit their views with regard to a proposed designation to the director at such date as the director determines but in no event shall the date be later than sixty days after the public hearing in the county.

Wash. Rev. Code § 90.58.320. Height limitation respecting permits.

No permit shall be issued pursuant to this chapter for any new or expanded building or structure of more than thirty-five feet above average grade level on shorelines of the state that will obstruct the view of a substantial number of residences on areas adjoining such shorelines except where a master program does not prohibit the same and then only when overriding considerations of the public interest will be served.

Wash. Rev. Code § 90.58.340. Use policies for land adjacent to shorelines, development of.

All state agencies, counties, and public and municipal corporations shall review administrative and management policies, regulations, plans, and ordinances relative



to lands under their respective jurisdictions adjacent to the shorelines of the state so as the [to] achieve a use policy on said land consistent with the policy of this chapter, the guidelines, and the master programs for the shorelines of the state. The department may develop recommendations for land use control for such lands. Local governments shall, in developing use regulations for such areas, take into consideration any recommendations developed by the department as well as any other state agencies or units of local government.

Wash. Rev. Code § 90.58.350. Nonapplication to treaty rights.

Nothing in this chapter shall affect any rights established by treaty to which the United States is a party.

Wash. Rev. Code § 90.58.355. Persons, projects, and activities not required to obtain certain permits, variances, letters of exemption, or other local review.

Requirements to obtain a substantial development permit, conditional use permit, variance, letter of exemption, or other review conducted by a local government to implement this chapter do not apply to:

- (1) Any person conducting a remedial action at a facility pursuant to a consent decree, order, or agreed order issued pursuant to chapter 70A.305 RCW, or to the department of ecology when it conducts a remedial action under chapter 70A.305 RCW. The department must ensure compliance with the substantive requirements of this chapter through the consent decree, order, or agreed order issued pursuant to chapter 70A.305 RCW, or during the department-conducted remedial action, through the procedures developed by the department pursuant to RCW 70A.305.090;
- (2) Any person installing site improvements for stormwater treatment in an existing boatyard facility to meet requirements of a national pollutant discharge elimination system stormwater general permit. The department must ensure compliance with the substantive requirements of this chapter through the review of engineering reports, site plans, and other documents related to the installation of boatyard stormwater treatment facilities;
- (3) The department of transportation projects and activities that meet the conditions of RCW 90.58.356;
- (4) Projects and activities undertaken by the department of fish and wildlife, a federally recognized Indian tribe, a public utility district, or a municipal utility that meet the conditions of RCW 90.58.357; or
- (5) Actions taken on the Columbia river by the United States army corps of engineers, under the authority of United States Code Titles 33 and 42 and 33 C.F.R. Sec. 335, to maintain and improve federal navigation channels in



accordance with federally mandated dredged material management and improvement project plans, provided the project: (a) Has undergone environmental review under both the national environmental policy act, 42 U.S.C. Sec. 4321-4370h and the state environmental policy act, chapter 43.21C RCW; and (b) has applied for federal clean water act section 401 water quality certifications issued by the department.

Wash. Rev. Code § 90.58.356. Projects and activities not required to obtain certain permits, variances, letters of exemption, or other local review – Written notice, when required.

(1) For purposes of this section, the following definitions apply:

(a) "Maintenance" means the preservation of the transportation facility, including surface, shoulders, roadsides, structures, and such traffic control devices as are necessary for safe and efficient utilization of the highway in a manner that substantially conforms to the preexisting design, function, and location as the original except to meet current engineering standards or environmental permit requirements.

(b) "Repair" means to restore a structure or development to a state comparable to its original condition including, but not limited to, restoring the development's size, shape, configuration, location, and external appearance, within a reasonable period after decay or partial destruction. Repair of a structure or development may not cause substantial adverse effects to shoreline resources or the shoreline environment. Replacement of a structure or development may be considered a repair if: Replacement is the common method of repair for the type of structure or development; the replacement structure or development is comparable to the original structure or development including, but not limited to, the size, shape, configuration, location, and external appearance of the original structure or development; and the replacement does not cause substantial adverse effects to shoreline resources or the shoreline environment.

(c) "Replacement" of any existing transportation facility means to replace in a manner that substantially conforms to the preexisting design, function, and location as the original except to meet current engineering standards or environmental permit requirements. Maintenance or replacement activities do not involve expansion of automobile lanes, and do not result in significant negative shoreline impact.



(2) The following department of transportation projects and activities do not require a substantial development permit, conditional use permit, variance, letter of exemption, or other review conducted by a local government:

(a) Maintenance, repair, or replacement that occurs within the roadway prism of a state highway as defined in RCW 46.04.560, the lease or ownership area of a state ferry terminal, or the lease or ownership area of a transit facility, including ancillary transportation facilities such as pedestrian paths, bicycle paths, or both, and bike lanes;

(b) Construction or installation of safety structures and equipment, including pavement marking, freeway surveillance and control systems, railroad protective devices not including grade separated crossings, grooving, glare screen, safety barriers, energy attenuators, and hazardous or dangerous tree removal;

(c) Maintenance occurring within the right-of-way; or

(d) Construction undertaken in response to unforeseen, extraordinary circumstances that is necessary to prevent a decline, lapse, or cessation of service from a lawfully established transportation facility.

(3) The department of transportation must provide written notification of projects and activities authorized under this section with a cost in excess of one million dollars before the design or plan is finalized to all agencies with jurisdiction, agencies with facilities or services that may be impacted, and adjacent property owners.

Wash. Rev. Code § 90.58.357. Maintenance activities performed by certain entities that do not require a substantial development permit, conditional use permit, variance, letter of exemption, or other review conducted by a local government – Notification.

(1) The following maintenance activities undertaken by the department of fish and wildlife, a federally recognized Indian tribe, a public utility district, or a municipal utility, necessary to maintain the operation of fish hatcheries, including water intakes and discharges, fish ladders, water and power conveyances, weirs, and racks and traps used for fish collection, do not require a substantial development permit, conditional use permit, variance, letter of exemption, or other review conducted by a local government:

(a) Maintenance, repair, or replacement of equipment and components that support the larger hatchery facility and occur within the existing footprint of fish hatchery facilities;

(b) Construction or installation of safety structures and equipment;



(c) Maintenance occurring within existing water intake and outflow sites during times when fish presence is minimized; or

(d) Construction undertaken in response to unforeseen, extraordinary circumstances that is necessary to prevent a decline, lapse, or cessation of operation of a fish hatchery facility.

(2) The proponent of a project undertaken pursuant to this section must ensure compliance with the substantive requirements of this chapter for projects under this section. Projects undertaken under this section must not adversely affect public access or shoreline ecological functions.

(3) Prior to beginning a maintenance or repair project, the proponent of the project must provide written notification of projects authorized under this section to the local government with jurisdiction and to the department.

Wash. Rev. Code § 90.58.360. Existing requirements for permits, certificates, etc., not obviated.

Nothing in this chapter shall obviate any requirement to obtain any permit, certificate, license, or approval from any state agency or local government.

Wash. Rev. Code § 90.58.370. Processing of permits or authorizations for emergency water withdrawal and facilities to be expediated.

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

Wash. Rev. Code § 90.58.380. Adoption of wetland manual.

The department by rule shall adopt a manual for the delineation of wetlands under this chapter that implements and is consistent with the 1987 manual in use on January 1, 1995, by the United States army corps of engineers and the United States environmental protection agency. If the corps of engineers and the environmental protection agency adopt changes to or a different manual, the department shall consider those changes and may adopt rules implementing those changes.

Wash. Rev. Code § 90.58. 515. Watershed restoration projects – Exemption.

Watershed restoration projects as defined in RCW 89.08.460 are exempt from the requirement to obtain a substantial development permit. Local government shall review the projects for consistency with the locally adopted shoreline master program



in an expeditious manner and shall issue its decision along with any conditions within forty-five days of receiving a complete consolidated application form from the applicant. No fee may be charged for accepting and processing applications for watershed restoration projects as used in this section.

Wash. Rev. Code § 90.58.550. Oil or natural gas exploration in marine waters – Definitions – Application for permit – Requirements – Review – Enforcement.

(1) Within this section the following definitions apply:

(a) "Exploration activity" means reconnaissance or survey work related to gathering information about geologic features and formations underlying or adjacent to marine waters;

(b) "Marine waters" include the waters of Puget Sound north to the Canadian border, the waters of the Strait of Juan de Fuca, the waters between the western boundary of the state and the ordinary high water mark, and related bays and estuaries;

(c) "Vessel" includes ships, boats, barges, or any other floating craft.

(2) A person desiring to perform oil or natural gas exploration activities by vessel located on or within marine waters of the state shall first obtain a permit from the department of ecology. The department may approve an application for a permit only if it determines that the proposed activity will not:

(a) Interfere materially with the normal public uses of the marine waters of the state;

(b) Interfere with activities authorized by a permit issued under RCW 90.58.140(2);

(c) Injure the marine biota, beds, or tidelands of the waters;

(d) Violate water quality standards established by the department; or

(e) Create a public nuisance.

(3) Decisions on an application under subsection (2) of this section are subject to review only by the pollution control hearings board under chapter 43.21B RCW.

(4) This section does not apply to activities conducted by an agency of the United States or the state of Washington.

(5) This section does not lessen, reduce, or modify RCW 90.58.160.



(6) The department may adopt rules necessary to implement this section.

(7) The attorney general shall enforce this section.

Wash. Rev. Code § 90.58.570. Consultation before responding to federal coastal zone management certificates.

The department of ecology shall consult with affected state agencies, local governments, Indian tribes, and the public prior to responding to federal coastal zone management consistency certifications for uses and activities occurring on the federal outer continental shelf.

Wash. Rev. Code § 90.58.580. Shoreline restoration projects – Relief from shoreline master program development standards and use regulations.

(1) The local government may grant relief from shoreline master program development standards and use regulations within urban growth areas when the following apply:

(a) A shoreline restoration project causes or would cause a landward shift in the ordinary high water mark, resulting in the following:

(i)

(A) Land that had not been regulated under this chapter prior to construction of the restoration project is brought under shoreline jurisdiction; or

(B) Additional regulatory requirements apply due to a landward shift in required shoreline buffers or other regulations of the applicable shoreline master program; and

(ii) Application of shoreline master program regulations would preclude or interfere with use of the property permitted by local development regulations, thus presenting a hardship to the project proponent;

(b) The proposed relief meets the following criteria:

(i) The proposed relief is the minimum necessary to relieve the hardship;

(ii) After granting the proposed relief, there is net environmental benefit from the restoration project;



(iii) Granting the proposed relief is consistent with the objectives of the shoreline restoration project and consistent with the shoreline master program; and

(iv) Where a shoreline restoration project is created as mitigation to obtain a development permit, the project proponent required to perform the mitigation is not eligible for relief under this section; and

(c) The application for relief must be submitted to the department for written approval or disapproval. This review must occur during the department's normal review of a shoreline substantial development permit, conditional use permit, or variance. If no such permit is required, then the department shall conduct its review when the local government provides a copy of a complete application and all supporting information necessary to conduct the review.

(i) Except as otherwise provided in subsection (2) of this section, the department shall provide at least twenty-days notice to parties that have indicated interest to the department in reviewing applications for relief under this section, and post the notice on their website.

(ii) The department shall act within thirty calendar days of close of the public notice period, or within thirty days of receipt of the proposal from the local government if additional public notice is not required.

(2) The public notice requirements of subsection (1)(c) of this section do not apply if the relevant shoreline restoration project was included in a shoreline master program or shoreline restoration plan as defined in WAC 173-26-201, as follows:

(a) The restoration plan has been approved by the department under applicable shoreline master program guidelines;

(b) The shoreline restoration project is specifically identified in the shoreline master program or restoration plan or is located along a shoreline reach identified in the shoreline master program or restoration plan as appropriate for granting relief from shoreline regulations; and

(c) The shoreline master program or restoration plan includes policies addressing the nature of the relief and why, when, and how it would be applied.



(3) A substantial development permit is not required on land within urban growth areas as defined in RCW 36.70A.030 that is brought under shoreline jurisdiction due to a shoreline restoration project creating a landward shift in the ordinary high water mark.

(4) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Shoreline restoration project" means a project designed to restore impaired ecological function of a shoreline.

(b) "Urban growth areas" has the same meaning as defined in RCW 36.70A.030.

Wash. Rev. Code § 90.58.590. Local governments authorized to adopt moratoria – Requirements – Public hearing.

(1) Local governments may adopt moratoria or other interim official controls as necessary and appropriate to implement this chapter.

(2)

(a) A local government adopting a moratorium or control under this section must:

(i) Hold a public hearing on the moratorium or control;

(ii) Adopt detailed findings of fact that include, but are not limited to justifications for the proposed or adopted actions and explanations of the desired and likely outcomes;

(iii) Notify the department of the moratorium or control immediately after its adoption. The notification must specify the time, place, and date of any public hearing required by this subsection;

(iv) Provide that all lawfully existing uses, structures, or other development shall continue to be deemed lawful conforming uses and may continue to be maintained, repaired, and redeveloped, so long as the use is not expanded, under the terms of the land use and shoreline rules and regulations in place at the time of the moratorium.

(b) The public hearing required by this section must be held within sixty days of the adoption of the moratorium or control.



(3) A moratorium or control adopted under this section may be effective for up to six months if a detailed work plan for remedying the issues and circumstances necessitating the moratorium or control is developed and made available for public review. A moratorium or control may be renewed for two six-month periods if the local government complies with subsection (2)(a) of this section before each renewal. If a moratorium or control is in effect on the date a proposed master program or amendment is submitted to the department, the moratorium or control must remain in effect until the department's final action under RCW 90.58.090; however, the moratorium expires six months after the date of submittal if the department has not taken final action.

(4) Nothing in this section may be construed to modify county and city moratoria powers conferred outside this chapter.

Wash. Rev. Code § 90.58.600. Conformance with chapter 43.97 RCW required.

With respect to the National Scenic Area, as defined in the Columbia [River] Gorge National Scenic Area Act, P.L. 99-663, the exercise of any power or authority by a local government or the department of ecology pursuant to this chapter shall be subject to and in conformity with the requirements of chapter 43.97 RCW, including the management plan regulations and ordinances adopted by the Columbia River Gorge commission pursuant to the Compact.

Wash. Rev. Code § 90.58.610. Relationship between shoreline master programs and development regulations under growth management act governed by RCW 36.70A.480.

RCW 36.70A.480 governs the relationship between shoreline master programs and development regulations to protect critical areas that are adopted under chapter 36.70A RCW.

Wash. Rev. Code § 90.58.620. New or amended master programs – Authorized provisions.

(1) New or amended master programs approved by the department on or after September 1, 2011, may include provisions authorizing:

(a) Residential structures and appurtenant structures that were legally established and are used for a conforming use, but that do not meet standards for the following to be considered a conforming structure: Setbacks, buffers, or yards; area; bulk; height; or density; and

(b) Redevelopment, expansion, change with the class of occupancy, or replacement of the residential structure if it is consistent with the



master program, including requirements for no net loss of shoreline ecological functions.

(2) For purposes of this section, "appurtenant structures" means garages, sheds, and other legally established structures. "Appurtenant structures" does not include bulkheads and other shoreline modifications or overwater structures.

(3) Nothing in this section: (a) Restricts the ability of a master program to limit redevelopment, expansion, or replacement of overwater structures located in hazardous areas, such as floodplains and geologically hazardous areas; or (b) affects the application of other federal, state, or local government requirements to residential structures.

Wash. Rev. Code § 90.58.630. Shoreline master programs – Impact of sea level rise and storm severity.

The department shall update its shoreline master program guidelines to require shoreline master programs to address the impact of sea level rise and increased storm severity on people, property, and shoreline natural resources and the environment.

Wash. Rev. Code § 90.58.900. Liberal construction.

This chapter is exempted from the rule of strict construction, and it shall be liberally construed to give full effect to the objectives and purposes for which it was enacted.

Wash. Rev. Code § 90.58.920. Effective date – 1971 ex.s. c 286.

This chapter is necessary for the immediate preservation of the public peace, health and safety, the support of the state government, and its existing institutions. This 1971 act shall take effect on June 1, 1971. The director of ecology is authorized to immediately take such steps as are necessary to insure that this 1971 act is implemented on its effective date.

