
HOUSE BILL 1996

State of Washington

63rd Legislature

2013 Regular Session

By Representative Orcutt

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

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

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

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

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

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

27 (a) Complete authority to establish and administer a comprehensive
28 state point source waste discharge or pollution discharge elimination
29 permit program which will enable the department to qualify for full
30 participation in any national waste discharge or pollution discharge
31 elimination permit system and will allow the department to be the sole
32 agency issuing permits required by such national system operating in
33 the state of Washington subject to the provisions of RCW 90.48.262(2).
34 Program elements authorized herein may include, but are not limited to:

35 (i) Effluent treatment and limitation requirements together with timing
36 requirements related thereto; (ii) applicable receiving water quality
37 standards requirements; (iii) requirements of standards of performance
38 for new sources; (iv) pretreatment requirements; (v) termination and

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

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

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

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

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

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

27 (b) Issue an updated national pollutant discharge elimination
28 system municipal storm water general permit applicable to western
29 Washington municipalities for any permit first issued on January 17,
30 2007. An updated permit issued under this subsection shall become
31 effective beginning August 1, 2013.

32 (i) Provisions of the updated permit issued under (b) of this
33 subsection relating to new requirements for low-impact development and
34 review and revision of local development codes, rules, standards, or
35 other enforceable documents to incorporate low-impact development
36 principles must be implemented simultaneously. These requirements may
37 go into effect no earlier than December 31, 2016, or the time of the

1 scheduled update under RCW 36.70A.130(5), as existing on July 10, 2012,
2 whichever is later.

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

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

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

15 (b) Issue an updated national pollutant discharge elimination
16 system municipal storm water general permit for any permit first issued
17 on January 17, 2007, applicable to eastern Washington municipalities.
18 An updated permit issued under this subsection becomes effective August
19 1, 2014.

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

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

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

1 NEW SECTION. **Sec. 4.** A new section is added to chapter 77.55 RCW
2 to read as follows:

3 Transportation projects, as that term is defined in RCW 47.29.020,
4 are not subject to the requirements of this chapter if the project is
5 designed, permitted, constructed, and maintained consistent with the
6 applicable provisions, if any, of the: Federal clean water act,
7 federal clean air act, the federal endangered species act, the
8 shoreline management act, the growth management act and critical area
9 ordinances, the forest practices act and the forest and fish habitat
10 conservation plan, the national and state environmental policy acts,
11 local grading permits and other local regulatory authorities, or the
12 state proprietary discretion in aquatic lands leasing.

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

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

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

23 (a) General plans for the overall project;

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

27 (c) Complete plans and specifications for the proper protection of
28 fish life;

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

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

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

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

5 (5) With the exception of emergency permits as provided in
6 subsection (12) of this section, applications for permits must be
7 submitted to the department's headquarters office in Olympia. Requests
8 for emergency permits as provided in subsection (12) of this section
9 may be made to the permitting biologist assigned to the location in
10 which the emergency occurs, to the department's regional office in
11 which the emergency occurs, or to the department's headquarters office.

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

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

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

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

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

26 (iii) The applicant requests a delay; or

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

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

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

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

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

5 (b) Issuance, denial, conditioning, or modification of a permit may
6 be informally appealed to the department within thirty days from the
7 date of receipt of the decision. Requests for informal appeals must be
8 filed in the form and manner prescribed by the department by rule. A
9 permit decision that has been informally appealed to the department is
10 appealable to the board within thirty days from the date of receipt of
11 the department's decision on the informal appeal.

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

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

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

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

1 (11) A permittee may request modification of a permit due to
2 changed conditions. The request must be processed within forty-five
3 calendar days of receipt of the written request and payment of
4 applicable fees under RCW 77.55.321. A decision by the department is
5 appealable as provided in subsection (8) of this section. For a
6 hydraulic project that diverts water for agricultural irrigation or
7 stock watering purposes, when the hydraulic project or other work is
8 associated with streambank stabilization to protect farm and
9 agricultural land as defined in RCW 84.34.020, the burden is on the
10 permittee to show that changed conditions warrant the requested
11 modification and that such a modification will not impair fish life.

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

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

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

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

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

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

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

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

34 (16) The department may issue an expedited written permit in those
35 instances where normal permit processing would result in significant
36 hardship for the applicant or unacceptable damage to the environment.
37 Expedited permit requests require a complete written application as
38 provided in subsection (2) of this section and must be issued within

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

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