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HOUSE BILL 1117

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State of Washington

61st Legislature

2009 Regular Session

By Representatives Blake, Green, and Ormsby

Read first time 01/14/09. Referred to Committee on Agriculture & Natural Resources.

1 AN ACT Relating to enforcement of the requirements of chapter 77.55  
2 RCW when a construction project is commenced without first obtaining a  
3 hydraulic project approval; amending RCW 77.55.291 and 77.15.300;  
4 adding new sections to chapter 77.55 RCW.

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

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

8 (1) If any person or government agency fails to follow the  
9 requirement of obtaining a hydraulic project approval under this  
10 chapter for a specific project, the department may issue an order to  
11 that person or government agency requiring the person or government  
12 agency to:

13 (a) Stop work on any or all of the activities subject to the  
14 hydraulic project approval;

15 (b) Correct or to restore the nonconforming site; or

16 (c) Both stop work and correct or restore the nonconforming site.

17 (2) Unless the department extends by rule the maximum time for  
18 filing, a person receiving an order from the department under this  
19 section may file a written petition with the department appealing the

1 order within twenty days of service of the order. The filed petition  
2 must be treated as an application for an adjudicative proceeding under  
3 chapter 34.05 RCW. In the event of an appeal, a person or government  
4 agency may seek interim relief from an order under this section as  
5 provided in chapter 34.05 RCW.

6 (3) This section only applies to instances when the person or  
7 government agency fails to apply for a hydraulic project approval.  
8 This section does not apply to a person or government agency that fails  
9 to carry out any of the requirements or conditions of a hydraulic  
10 project approval issued under this chapter.

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

13 (1) Failure to obtain a hydraulic project approval under this  
14 chapter for a specific project and failure to abide by any stop work or  
15 correction order issued under section 1 of this act may, as an  
16 alternative to the penalties assigned in RCW 77.15.300, be cited by the  
17 department as a civil infraction to be punished as a natural resource  
18 infraction as provided by chapter 7.84 RCW. Each day a project  
19 progresses without obtaining a hydraulic project approval or in  
20 violation of a stop work order represents an individual citable  
21 violation. Any fines issued under this section are supplemental to any  
22 remedies provided by section 1 of this act.

23 (2) This section only applies to instances when the person or  
24 government agency fails to apply for a hydraulic project approval or  
25 fails to abide by an order issued under section 1 of this act. This  
26 section does not apply to a person or government agency that fails to  
27 carry out any of the requirements or conditions of a hydraulic project  
28 approval issued under this chapter.

29 **Sec. 3.** RCW 77.55.291 and 2005 c 146 s 701 are each amended to  
30 read as follows:

31 (1) The department may levy civil penalties of up to one hundred  
32 dollars per day for violation of any provisions of RCW 77.55.021  
33 relating to the failure of the approval holder to carry out any of the  
34 requirements or conditions of a hydraulic project approval issued under  
35 this chapter. The penalty provided shall be imposed by notice in

1 writing, either by certified mail or personal service to the person  
2 incurring the penalty, from the director or the director's designee  
3 describing the violation.

4 (2) Any person incurring any penalty under this (~~chapter~~) section  
5 may appeal the same under chapter 34.05 RCW to the director. Appeals  
6 shall be filed within thirty days of receipt of notice imposing any  
7 penalty.

8 (3) The penalty imposed shall become due and payable thirty days  
9 after receipt of a notice imposing the penalty unless an appeal is  
10 filed. Whenever an appeal of any penalty incurred under this chapter  
11 is filed, the penalty shall become due and payable only upon completion  
12 of all review proceedings and the issuance of a final order confirming  
13 the penalty in whole or in part.

14 (4) If the amount of any penalty is not paid within thirty days  
15 after it becomes due and payable, the attorney general, upon the  
16 request of the director, shall bring an action in the name of the state  
17 of Washington in the superior court of Thurston county or of any county  
18 in which such violator may do business, to recover (~~such~~) the  
19 penalty. In all (~~such~~) actions under this section, the procedure and  
20 rules of evidence shall be the same as an ordinary civil action. All  
21 penalties recovered under this section shall be paid into the state's  
22 general fund.

23 **Sec. 4.** RCW 77.15.300 and 2000 c 107 s 239 are each amended to  
24 read as follows:

25 (1) A person is guilty of unlawfully undertaking hydraulic project  
26 activities if the person constructs any form of hydraulic project or  
27 performs other work on a hydraulic project and:

28 (a) Fails to have a hydraulic project approval required under  
29 chapter 77.55 RCW for (~~such~~) the construction or work; (~~or~~)

30 (b) Violates any requirements or conditions of the hydraulic  
31 project approval for (~~such~~) the construction or work; or

32 (c) Violates a stop work or correction order issued under section  
33 1 of this act.

34 (2) Unlawfully undertaking hydraulic project activities is a gross  
35 misdemeanor.

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