CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 2935

Chapter 210, Laws of 2010

61st Legislature
2010 Regular Session

ENVIRONMENTAL AND LAND USE HEARINGS BOARDS--CONSOLIDATION

EFFECTIVE DATE: Sections 1, 3, 5, 7, 9-14, and 16-42 become effective 07/01/10; sections 2, 4, 6, 15, 43, and 46 become effective 07/01/11; and section 8 becomes effective 06/30/19.

Passed by the House March 9, 2010
    Yeas 91  Nays 6

Frank Chopp
Speaker of the House of Representatives

Passed by the Senate March 8, 2010
    Yeas 45  Nays 2

Brad Owen
President of the Senate

Approved March 25, 2010, 3:44 p.m.

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is SUBSTITUTE HOUSE BILL 2935 as passed by the House of Representatives and the Senate on the dates hereon set forth.

Barbara Baker
Chief Clerk

FILED
March 26, 2010

Christine Gregoire
Secretary of State
State of Washington
AN ACT Relating to environmental and land use hearings boards; amending RCW 43.21B.001, 43.21B.010, 43.21B.010, 43.21B.180, 43.21B.230, 43.21B.320, 36.70A.270, 70.95.094, 76.06.180, 76.09.050, 76.09.080, 76.09.090, 76.09.170, 76.09.310, 77.55.011, 77.55.021, 77.55.141, 77.55.181, 77.55.241, 77.55.291, 78.44.270, 78.44.380, 79.100.120, 84.33.0775, 90.58.140, 90.58.180, 90.58.190, 90.58.210, and 90.58.560; reenacting and amending RCW 43.21B.005, 43.21B.005, 43.21B.110, 43.21B.110, 43.21B.300, 43.21B.310, and 76.09.020; adding a new section to chapter 43.21B RCW; adding new sections to chapter 36.70A RCW; adding a new section to chapter 76.09 RCW; creating new sections; repealing RCW 43.21B.190, 76.09.210, 76.09.220, 76.09.230, 77.55.301, 77.55.311, 43.21L.005, 43.21L.010, 43.21L.020, 43.21L.030, 43.21L.040, 43.21L.050, 43.21L.060, 43.21L.070, 43.21L.080, 43.21L.090, 43.21L.100, 43.21L.110, 43.21L.120, 43.21L.130, 43.21L.140, 43.21L.900, and 43.21L.901; providing effective dates; and providing expiration dates.

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

NEW SECTION. Sec. 1. It is the intent of the legislature to reduce and consolidate the number of state boards that conduct
administrative review of environmental and land use decisions and to make more uniform the timelines for filing appeals with such boards. The legislature intends to eliminate the hydraulics appeals board and the forest practices appeals board by transferring their duties to the pollution control hearings board. The legislature further intends to eliminate certain preliminary informal appeals heard internally by agencies. The legislature also intends to consolidate administratively and physically collocate the growth management hearings boards into the environmental and land use hearings office by July 1, 2011.

Sec. 2. RCW 43.21B.001 and 2004 c 204 s 1 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Business days" means Monday through Friday exclusive of any state or federal holiday.
(2) "Date of receipt" means:
   (a) Five business days after the date of mailing; or
   (b) The date of actual receipt, when the actual receipt date can be proven by a preponderance of the evidence. The recipient's sworn affidavit or declaration indicating the date of receipt, which is unchallenged by the agency, shall constitute sufficient evidence of actual receipt. The date of actual receipt, however, may not exceed forty-five days from the date of mailing.
(3) "Department" means the department of ecology.
(4) "Director" means the director of ecology.
(5) "Environmental boards" means the pollution control hearings board created in RCW 43.21B.010 and the shorelines hearings board created in RCW 90.58.170.
(6) "Land use board" means the growth management hearings board created in RCW 36.70A.250.

Sec. 3. RCW 43.21B.005 and 2003 c 393 s 18 and 2003 c 39 s 22 are each reenacted and amended to read as follows:

(1) There is created an environmental hearings office of the state of Washington. The environmental hearings office ((shall)) consists of the pollution control hearings board created in RCW 43.21B.010, ((the forest practices appeals board created in RCW 76.09.210,)) the
shorelines hearings board created in RCW 90.58.170, and the
environmental and land use hearings board created in chapter 43.21L
RCW, and the hydraulic appeals board created in RCW 77.55.170). The
chair of the pollution control hearings board shall be the chief
executive officer of the environmental hearings office. Membership,
powers, functions, and duties of the pollution control hearings
board, the forest practices appeals board, and the shorelines
hearings board, and the hydraulic appeals board) shall be as
provided by law.

(2) The chief executive officer of the environmental hearings
office may appoint an administrative appeals judge who shall possess
the powers and duties conferred by the administrative procedure act,
chapter 34.05 RCW, in cases before the boards comprising the office.
The administrative appeals judge shall have a demonstrated knowledge of
environmental law, and shall be admitted to the practice of law in the
state of Washington. Additional administrative appeals judges may also
be appointed by the chief executive officer on the same terms.
Administrative appeals judges shall not be subject to chapter 41.06
RCW.

(3) The administrative appeals judges appointed under subsection
(2) of this section are subject to discipline and termination, for
cause, by the chief executive officer. Upon written request by the
person so disciplined or terminated, the chief executive officer shall
state the reasons for such action in writing. The person affected has
a right of review by the superior court of Thurston county on petition
for reinstatement or other remedy filed within thirty days of receipt
of such written reasons.

(4) The chief executive officer may appoint, discharge, and fix the
compensation of such administrative or clerical staff as may be
necessary.

(5) The chief executive officer may also contract for required
services.

Sec. 4. RCW 43.21B.005 and 2003 c 393 s 18 and 2003 c 39 s 22 are
each reenacted and amended to read as follows:

(1) There is created an environmental and land use hearings office
of the state of Washington. The environmental and land use hearings
office of the pollution control hearings board
created in RCW 43.21B.010, ((the forest practices appeals board created in RCW 76.09.210,)) the shorelines hearings board created in RCW 90.58.170, ((the environmental and land use hearings board created in chapter 43.21L RCW, and the hydraulic appeals board created in RCW 77.55.170. The chair of the pollution control hearings board shall be the chief executive officer of the environmental hearings office)) and the growth management hearings board created in RCW 36.70A.250. The governor shall designate one of the members of the pollution control hearings board or growth management hearings board to be the director of the environmental and land use hearings office during the term of the governor. Membership, powers, functions, and duties of the pollution control hearings board, ((the forest practices appeals board,)) the shorelines hearings board, and the ((hydraulic appeals)) growth management hearings board shall be as provided by law.

(2) The ((chief executive officer)) director of the environmental and land use hearings office may appoint ((an)) one or more administrative appeals judges ((who shall possess the powers and duties conferred by the administrative procedure act, chapter 34.05 RCW)) in cases before the environmental boards and, with the consent of the chair of the growth management hearings board, one or more hearing examiners in cases before the land use board comprising the office. The administrative appeals judges shall possess the powers and duties conferred by the administrative procedure act, chapter 34.05 RCW, have a demonstrated knowledge of environmental law, and shall be admitted to the practice of law in the state of Washington. ((Additional administrative appeals judges may also be appointed by the chief executive officer on the same terms. Administrative appeals judges shall not be subject to chapter 41.06 RCW.)) The hearing examiners possess the powers and duties provided for in RCW 36.70A.270.

(3) Administrative appeals judges are not subject to chapter 41.06 RCW. The administrative appeals judges appointed under subsection (2) of this section are subject to discipline and termination, for cause, by the ((chief executive officer)) director of the environmental and land use hearings office. Upon written request by the person so disciplined or terminated, the ((chief executive officer)) director of the environmental and land use hearings office shall state the reasons for such action in writing. The person affected has a right of review
by the superior court of Thurston county on petition for reinstatement or other remedy filed within thirty days of receipt of such written reasons.

(4) The director of the environmental and land use hearings office may appoint, discharge, and fix the compensation of such administrative or clerical staff as may be necessary.

(5) The director of the environmental and land use hearings office may also contract for required services.

Sec. 5. RCW 43.21B.010 and 1979 ex.s. c 47 s 3 are each amended to read as follows:

There is hereby created within the environmental hearings office a pollution control hearings board of the state of Washington.

The purpose of the pollution control hearings board is to provide for a more expeditious and efficient disposition of designated environmental appeals (with respect to the decisions and orders of the department and director and with respect to all decisions of air pollution control boards or authorities established pursuant to chapter 70.94 RCW) as provided for in RCW 43.21B.110.

Sec. 6. RCW 43.21B.010 and 1979 ex.s. c 47 s 3 are each amended to read as follows:

There is hereby created within the environmental and land use hearings office a pollution control hearings board of the state of Washington.

The purpose of the pollution control hearings board is to provide for a more expeditious and efficient disposition of designated environmental appeals (with respect to the decisions and orders of the department and director and with respect to all decisions of air pollution control boards or authorities established pursuant to chapter 70.94 RCW) as provided for in RCW 43.21B.110.

Sec. 7. RCW 43.21B.110 and 2009 c 456 s 16, 2009 c 332 s 18, and 2009 c 183 s 17 are each reenacted and amended to read as follows:

(1) The hearings board shall only have jurisdiction to hear and decide appeals from the following decisions of the department, the director, local conservation districts, (and) the air pollution
control boards or authorities as established pursuant to chapter 70.94
RCW, ((or)) local health departments, the department of natural
resources, the department of fish and wildlife, and the parks and
recreation commission:

(a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,
70.105.080, 70.107.050, 76.09.170, 77.55.291, 78.44.250, 88.46.090,
90.03.600, 90.46.270, 90.48.144, 90.56.310, and 90.56.330.

(b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,
90.14.130, 90.46.250, 90.48.120, and 90.56.330.

(c) A final decision by the department or director made under

(d) Except as provided in RCW 90.03.210(2), the issuance,
modification, or termination of any permit, certificate, or license by
the department or any air authority in the exercise of its
jurisdiction, including the issuance or termination of a waste disposal
permit, the denial of an application for a waste disposal permit, the
modification of the conditions or the terms of a waste disposal permit,
or a decision to approve or deny an application for a solid waste
permit exemption under RCW 70.95.300.

(e) Decisions of local health departments regarding the grant or
denial of solid waste permits pursuant to chapter 70.95 RCW.

(f) Decisions of local health departments regarding the issuance
and enforcement of permits to use or dispose of biosolids under RCW
70.95J.080.

(g) Decisions of the department regarding waste-derived fertilizer
or micronutrient fertilizer under RCW 15.54.820, and decisions of the
department regarding waste-derived soil amendments under RCW 70.95.205.

(h) Decisions of local conservation districts related to the denial
of approval or denial of certification of a dairy nutrient management
plan; conditions contained in a plan; application of any dairy nutrient
management practices, standards, methods, and technologies to a
particular dairy farm; and failure to adhere to the plan review and
approval timelines in RCW 90.64.026.

(i) Any other decision by the department or an air authority which
pursuant to law must be decided as an adjudicative proceeding under
chapter 34.05 RCW.
(j) Decisions of the department of natural resources, the department of fish and wildlife, and the department that are reviewable under chapter 76.09 RCW, and the department of natural resources' appeals of county, city, or town objections under RCW 76.09.050(7).

(k) Forest health hazard orders issued by the commissioner of public lands under RCW 76.06.180.

(l) Decisions of the department of fish and wildlife to issue, deny, condition, or modify a hydraulic project approval permit under chapter 77.55 RCW.

(m) Decisions of the department of natural resources that are reviewable under RCW 78.44.270.

(n) Decisions of a state agency that is an authorized public entity under RCW 79.100.010 to take temporary possession or custody of a vessel or to contest the amount of reimbursement owed that are reviewable under RCW 79.100.120.

(2) The following hearings shall not be conducted by the hearings board:

(a) Hearings required by law to be conducted by the shorelines hearings board pursuant to chapter 90.58 RCW.

(b) Hearings conducted by the department pursuant to RCW 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

(c) Appeals of decisions by the department under RCW 90.03.110 and 90.44.220.

(d) Hearings conducted by the department to adopt, modify, or repeal rules.

(e) Appeals of decisions by the department as provided in chapter 43.21L RCW.

(3) Review of rules and regulations adopted by the hearings board shall be subject to review in accordance with the provisions of the administrative procedure act, chapter 34.05 RCW.

Sec. 8. RCW 43.21B.110 and 2009 c 456 s 16 and 2009 c 332 s 18 are each reenacted and amended to read as follows:

(1) The hearings board shall only have jurisdiction to hear and decide appeals from the following decisions of the department, the director, local conservation districts, ((and)) the air pollution control boards or authorities as established pursuant to chapter 70.94
(a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431, 70.105.080, 70.107.050, 76.09.170, 77.55.291, 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, and 90.56.330.

(b) Orders issued pursuant to RCW 18.104.043, 18.104.060, 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070, 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

(c) Except as provided in RCW 90.03.210(2), the issuance, modification, or termination of any permit, certificate, or license by the department or any air authority in the exercise of its jurisdiction, including the issuance or termination of a waste disposal permit, the denial of an application for a waste disposal permit, the modification of the conditions or the terms of a waste disposal permit, or a decision to approve or deny an application for a solid waste permit exemption under RCW 70.95.300.

(d) Decisions of local health departments regarding the grant or denial of solid waste permits pursuant to chapter 70.95 RCW.

(e) Decisions of local health departments regarding the issuance and enforcement of permits to use or dispose of biosolids under RCW 70.95J.080.

(f) Decisions of the department regarding waste-derived fertilizer or micronutrient fertilizer under RCW 15.54.820, and decisions of the department regarding waste-derived soil amendments under RCW 70.95.205.

(g) Decisions of local conservation districts related to the denial of approval or denial of certification of a dairy nutrient management plan; conditions contained in a plan; application of any dairy nutrient management practices, standards, methods, and technologies to a particular dairy farm; and failure to adhere to the plan review and approval timelines in RCW 90.64.026.

(h) Any other decision by the department or an air authority which pursuant to law must be decided as an adjudicative proceeding under chapter 34.05 RCW.

(i) Decisions of the department of natural resources, the department of fish and wildlife, and the department that are reviewable under chapter 76.09 RCW, and the department of natural resources' appeals of county, city, or town objections under RCW 76.09.050(7).
(j) Forest health hazard orders issued by the commissioner of
public lands under RCW 76.06.180.

(k) Decisions of the department of fish and wildlife to issue,
deny, condition, or modify a hydraulic project approval permit under
chapter 77.55 RCW.

(l) Decisions of the department of natural resources that are
reviewable under RCW 78.44.270.

(m) Decisions of a state agency that is an authorized public entity
under RCW 79.100.010 to take temporary possession or custody of a
vessel or to contest the amount of reimbursement owed that are
reviewable under RCW 79.100.120.

(2) The following hearings shall not be conducted by the hearings
board:

(a) Hearings required by law to be conducted by the shorelines
hearings board pursuant to chapter 90.58 RCW.

(b) Hearings conducted by the department pursuant to RCW 70.94.332,
70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

(c) Appeals of decisions by the department under RCW 90.03.110 and
90.44.220.

(d) Hearings conducted by the department to adopt, modify, or
repeal rules.

(e) Appeals of decisions by the department as provided in chapter
43.21L RCW.

(3) Review of rules and regulations adopted by the hearings board
shall be subject to review in accordance with the provisions of the
administrative procedure act, chapter 34.05 RCW.

NEW SECTION. Sec. 9. A new section is added to chapter 43.21B RCW
to read as follows:

In all appeals, upon request of one or more parties and with the
consent of all parties, the environmental hearings boards may schedule
a conference for the purpose of attempting to mediate the case.
Mediation must be conducted by an administrative appeals judge or other
duly authorized agent of the board who has received training in dispute
resolution techniques or has a demonstrated history of successfully
resolving disputes, as determined by the board. A person who mediates
in a particular appeal may not participate in a hearing on that appeal
and may not write the decision and order in the appeal. The mediator
may not communicate with board members regarding the mediation other
than to inform them of the pendency of the mediation and whether the
case settled. Mediation provided by the environmental hearings boards
must be conducted pursuant to the provisions of the uniform mediation
act, chapter 7.07 RCW.

Sec. 10. RCW 43.21B.180 and 1994 c 253 s 6 are each amended to
read as follows:

((Judicial review of)) Any party aggrieved by a final decision and
order of the pollution control hearings board may ((be obtained only
pursuant to)) obtain judicial review of the final decision and order as
provided in RCW 34.05.510 through 34.05.598. The ((director)) state or
local agency that issued the decision appealed to the board shall have
the same right of review from a decision made pursuant to RCW
43.21B.110 as does any person.

Sec. 11. RCW 43.21B.230 and 2004 c 204 s 3 are each amended to
read as follows:

((Consistent with RCW 43.21B.110, any person having received notice
of denial of a petition, a notice of determination, or notice of an
order made by the department may appeal to the hearings board, within
thirty days from the date of receipt of the notice of such denial, order,
or determination by the appealing party.)) (1) Unless otherwise
provided by law, any person with standing may commence an appeal to the
pollution control hearings board by filing a notice of appeal with the
board within thirty days from the date of receipt of the decision being
appealed.

(2) The appeal ((shall be perfected by serving a copy of the notice
of appeal upon the department or air pollution authority established
pursuant to chapter 70.94 RCW, as the case may be, within the time
specified herein and by filing the original thereof with)) is timely if
it is filed with the board and served upon the state or local agency
whose action is being appealed within the same thirty-day period.
Proof of service must be filed with the clerk of the hearings board to
perfect the appeal.

(3) The appeal must contain the following in accordance with the
rules of the hearings board:

(a) The appellant's name and address;
(b) The date and docket number of the order, permit, license, or decision appealed;

(c) A copy of the order, permit, license, or decision that is the subject of the appeal;

(d) A clear, separate, and concise statement of every error alleged to have been committed;

(e) A clear and concise statement of facts upon which the requester relies to sustain his or her statements of error; and

(f) A statement setting forth the relief sought.

Sec. 12. RCW 43.21B.300 and 2009 c 456 s 17 and 2009 c 178 s 2 are each reenacted and amended to read as follows:

(1) Any civil penalty provided in RCW 18.104.155, 70.94.431, 70.95.315, 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, and 90.56.330 and chapter 90.76 RCW 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 penalty from the department or the local air authority, describing the violation with reasonable particularity. For penalties issued by local air authorities, within thirty days after the notice is received, the person incurring the penalty may apply in writing to ((the department or)) the authority for the remission or mitigation of the penalty. Upon receipt of the application, the ((department or)) authority may remit or mitigate the penalty upon whatever terms ((the department or)) the authority in its discretion deems proper. The ((department or the)) authority may ascertain the facts regarding all such applications in such reasonable manner and under such rules as it may deem proper and shall remit or mitigate the penalty only upon a demonstration of extraordinary circumstances such as the presence of information or factors not considered in setting the original penalty.

(2) Any penalty imposed under this section may be appealed to the pollution control hearings board in accordance with this chapter if the appeal is filed with the hearings board and served on the department or authority thirty days after the date of receipt by the person penalized of the notice imposing the penalty or thirty days after the date of receipt of the notice of disposition by a local air authority of the application for relief from penalty.

(3) A penalty shall become due and payable on the later of:
(a) Thirty days after receipt of the notice imposing the penalty;

(b) Thirty days after receipt of the notice of disposition by a local air authority on application for relief from penalty, if such an application is made; or

(c) Thirty days after receipt of the notice of decision of the hearings board if the penalty is appealed.

(4) If the amount of any penalty is not paid to the department within thirty days after it becomes due and payable, the attorney general, upon request of the department, shall bring an action in the name of the state of Washington in the superior court of Thurston county, or of any county in which the violator does business, to recover the penalty. If the amount of the penalty is not paid to the authority within thirty days after it becomes due and payable, the authority may bring an action to recover the penalty in the superior court of the county of the authority's main office or of any county in which the violator does business. In these actions, the procedures and rules of evidence shall be the same as in an ordinary civil action.

(5) All penalties recovered shall be paid into the state treasury and credited to the general fund except those penalties imposed pursuant to RCW 18.104.155, which shall be credited to the reclamation account as provided in RCW 18.104.155(7), RCW 70.94.431, the disposition of which shall be governed by that provision, RCW 70.105.080, which shall be credited to the hazardous waste control and elimination account created by RCW 70.105.180, RCW 90.56.330, which shall be credited to the coastal protection fund created by RCW 90.48.390, and RCW 90.76.080, which shall be credited to the underground storage tank account created by RCW 90.76.100.

Sec. 13. RCW 43.21B.310 and 2009 c 456 s 18 and 2009 c 178 s 3 are each reenacted and amended to read as follows:

(1) (Except as provided in RCW 90.03.210(2), any order issued by the department or local air authority pursuant to RCW 43.27A.190, 70.94.211, 70.94.332, 70.95.315, 70.105.095, 86.16.020, 88.46.070, 90.46.250, or 90.48.120(2) or any provision enacted after July 26, 1987, or any permit, certificate, or license issued by the department may be appealed to the pollution control hearings board if the appeal is filed with the board and served on the department or authority
within thirty days after the date of receipt of the order. Except as
provided under chapter 70.105D RCW and RCW 90.03.210(2), this is the
exclusive means of appeal of such an order.

(2) The department or the authority) The issuing agency in its
discretion may stay the effectiveness of (an any order that has been
appealed to the board during the pendency of such an appeal.

((3)) (2) At any time during the pendency of an appeal of such an
order to the board, the appellant may apply pursuant to RCW 43.21B.320
to the hearings board for a stay of the order or for the removal
thereof.

((4) Any appeal must contain the following in accordance with the
rules of the hearings board:
(a) The appellant's name and address;
(b) The date and docket number of the order, permit, or license
appealed;
(c) A description of the substance of the order, permit, or license
that is the subject of the appeal;
(d) A clear, separate, and concise statement of every error alleged
to have been committed;
(e) A clear and concise statement of facts upon which the requester
relies to sustain his or her statements of error; and
(f) A statement setting forth the relief sought.

((5)) (3) Upon failure to comply with any final order of the
department, the attorney general, on request of the department, may
bring an action in the superior court of the county where the violation
occurred or the potential violation is about to occur to obtain such
relief as necessary, including injunctive relief, to ((insure)) ensure
compliance with the order. The air authorities may bring similar
actions to enforce their orders.

((6)) (4) An appealable decision or order shall be identified as
such and shall contain a conspicuous notice to the recipient that it
may be appealed only by filing an appeal with the hearings board and
serving it on the ((department)) issuing agency within thirty days of
the date of receipt.

Sec. 14. RCW 43.21B.320 and 1987 c 109 s 7 are each amended to
read as follows:

(1) A person appealing to the hearings board an order ((of the
1 department or an authority))}, not stayed by the issuing agency, may
2 obtain a stay of the effectiveness of that order only as set forth in
3 this section.
4
5 (2) An appealing party may request a stay by including such a
6 request in the appeal document, in a subsequent motion, or by such
7 other means as the rules of the hearings board shall prescribe. The
8 request must be accompanied by a statement of grounds for the stay and
9 evidence setting forth the factual basis upon which request is based.
10 The hearings board shall hear the request for a stay as soon as
11 possible. The hearing on the request for stay may be consolidated with
12 the hearing on the merits.
13
14 (3) The applicant may make a prima facie case for stay if the
15 applicant demonstrates either a likelihood of success on the merits of
16 the appeal or irreparable harm. Upon such a showing, the hearings
17 board shall grant the stay unless the ((department or authority))
18 issuing agency demonstrates either (a) a substantial probability of
19 success on the merits or (b) likelihood of success on the merits and an
20 overriding public interest which justifies denial of the stay.
21
22 (4) Unless otherwise stipulated by the parties, the hearings board,
23 after granting or denying an application for a stay, shall expedite the
24 hearing and decision on the merits.
25
26 (5) Any party or other person aggrieved by the grant or denial of
27 a stay by the hearings board may petition the superior court for
28 Thurston county for review of that decision pursuant to chapter 34.05
29 RCW pending the appeal on the merits before the board. The superior
30 court shall expedite its review of the decision of the hearings board.
31
32 NEW SECTION. Sec. 15. A new section is added to chapter 36.70A
33 RCW to read as follows:
34
35 (1) On July 1, 2011, the growth management hearings board is
36 administratively consolidated into the environmental and land use
37 hearings office created in RCW 43.21B.005.
38
39 (2) Not later than July 1, 2012, the growth management hearings
40 board consists of seven members qualified by experience or training in
41 matters pertaining to land use law or land use planning, except that
42 the governor may reduce the board to six members if warranted by the
43 board's caseload. All board members must be appointed by the governor,
44 two each residing respectively in the central Puget Sound, eastern
Washington, and western Washington regions and shall continue to meet the qualifications set out in RCW 36.70A.260. The reduction from seven board members to six board members must be made through attrition, voluntary resignation, or retirement.

Sec. 16. RCW 36.70A.270 and 1997 c 429 s 11 are each amended to read as follows:

Each growth management hearings board shall be governed by the following rules on conduct and procedure:

(1) Any board member may be removed for inefficiency, malfeasance, and misfeasance in office, under specific written charges filed by the governor. The governor shall transmit such written charges to the member accused and the chief justice of the supreme court. The chief justice shall thereupon designate a tribunal composed of three judges of the superior court to hear and adjudicate the charges. Removal of any member of a board by the tribunal shall disqualify such member for reappointment.

(2) Each board member shall receive reimbursement for travel expenses incurred in the discharge of his or her duties in accordance with RCW 43.03.050 and 43.03.060. If it is determined that the review boards shall operate on a full-time basis, each member shall receive an annual salary to be determined by the governor pursuant to RCW 43.03.040. If it is determined that a review board shall operate on a part-time basis, each member shall receive compensation pursuant to RCW 43.03.250, provided such amount shall not exceed the amount that would be set if they were a full-time board member. The principal office of each board shall be located by the governor within the jurisdictional boundaries of each board. The boards shall operate on either a part-time or full-time basis, as determined by the governor.

(3) Each board member shall not: (a) Be a candidate for or hold any other public office or trust; (b) engage in any occupation or business interfering with or inconsistent with his or her duty as a board member; and (c) for a period of one year after the termination of his or her board membership, act in a representative capacity before the board on any matter.

(4) A majority of each board shall constitute a quorum for making orders or decisions, adopting rules necessary for the conduct of its powers and duties, or transacting other official business, and may act
even though one position of the board is vacant. One or more members
may hold hearings and take testimony to be reported for action by the
board when authorized by rule or order of the board. The board shall
perform all the powers and duties specified in this chapter or as
otherwise provided by law.

(5) The board may (appoint) use one or more hearing examiners to
assist the board in its hearing function, to make conclusions of law
and findings of fact and, if requested by the board, to make
recommendations to the board for decisions in cases before the board.
Such hearing examiners must have demonstrated knowledge of land use
planning and law. The boards shall specify in their joint rules of
practice and procedure, as required by subsection (7) of this section,
the procedure and criteria to be employed for designating hearing
examiners as a presiding officer. Hearing examiners (selected) used
by a board shall meet the requirements of subsection (3) of this
section. The findings and conclusions of the hearing examiner shall
not become final until they have been formally approved by the board.
This authorization to use hearing examiners does not waive the
requirement of RCW 36.70A.300 that final orders be issued within one
hundred eighty days of board receipt of a petition.

(6) Each board shall make findings of fact and prepare a written
decision in each case decided by it, and such findings and decision
shall be effective upon being signed by two or more members of the
board and upon being filed at the board's principal office, and shall
be open for public inspection at all reasonable times.

(7) All proceedings before the board, any of its members, or a
hearing examiner appointed by the board shall be conducted in
accordance with such administrative rules of practice and procedure as
the boards jointly prescribe. All three boards shall jointly meet to
develop and adopt joint rules of practice and procedure, including
rules regarding expeditious and summary disposition of appeals. The
boards shall publish such rules and decisions they render and arrange
for the reasonable distribution of the rules and decisions. Except as
it conflicts with specific provisions of this chapter, the
administrative procedure act, chapter 34.05 RCW, and specifically
including the provisions of RCW 34.05.455 governing ex parte
communications, shall govern the practice and procedure of the boards.
(8) A board member or hearing examiner is subject to disqualification under chapter 34.05 RCW. The joint rules of practice of the boards shall establish procedures by which a party to a hearing conducted before the board may file with the board a motion to disqualify, with supporting affidavit, against a board member or hearing examiner assigned to preside at the hearing.

(9) The members of the boards shall meet jointly on at least an annual basis with the objective of sharing information that promotes the goals and purposes of this chapter.

Sec. 17. RCW 70.95.094 and 1989 c 431 s 8 are each amended to read as follows:

(1) The department and local governments preparing plans are encouraged to work cooperatively during plan development. Each county and city preparing a comprehensive solid waste management plan shall submit a preliminary draft plan to the department for technical review. The department shall review and comment on the draft plan within one hundred twenty days of receipt. The department's comments shall state specific actions or revisions that must be completed for plan approval.

(2) Each final draft solid waste management plan shall be submitted to the department for approval. The department will limit its comments on the final draft plans to those issues identified during its review of the draft plan and any other changes made between submittal of the preliminary draft and final draft plans. Disapproval of the local comprehensive solid waste management plan shall be supported by specific findings. A final draft plan shall be deemed approved if the department does not disapprove it within forty-five days of receipt.

(3) If the department disapproves a plan or any plan amendments, the submitting entity may appeal the decision (under the procedures of Part IV of chapter 34.05 RCW. An administrative law judge shall preside over the appeal) to the pollution control hearings board as provided in RCW 43.21B.230. The appeal shall be limited to review of the specific findings which supported the disapproval under subsection (2) of this section.

Sec. 18. RCW 76.06.180 and 2007 c 480 s 7 are each amended to read as follows:

(1) Prior to issuing a forest health hazard warning or forest
health hazard order, the commissioner shall consider the findings and
recommendations of the forest health technical advisory committee and
shall consult with county government officials, forest landowners and
forest land managers, consulting foresters, and other interested
parties to gather information on the threat, opportunities or
constraints on treatment options, and other information they may
provide. The commissioner, or a designee, shall conduct a public
hearing in a county within the geographical area being considered.

(2) The commissioner of public lands may issue a forest health
classification of necessary to manage
the development of a threat to forest health or address an existing
threat to forest health. A decision to issue a forest health hazard
warning may be based on existing forest stand conditions and:

(a) The presence of an uncharacteristic insect or disease outbreak
that has or is likely to (i) spread to multiple forest ownerships and
cause extensive damage to forests; or (ii) significantly increase
forest fuel that is likely to further the spread of uncharacteristic
fire;

(b) When, due to extensive physical damage from wind or ice storm
or other cause, there are (i) insect populations building up to large
scale levels; or (ii) significantly increased forest fuels that are
likely to further the spread of uncharacteristic fire; or

(c) When otherwise determined by the commissioner to be
appropriate.

(3) The commissioner of public lands may issue a forest health
hazard order when he or she deems such action is necessary to address
a significant threat to forest health. A decision to issue a forest
health hazard order may be based on existing forest stand conditions
and:

(a) The presence of an uncharacteristic insect or disease outbreak
that has (i) spread to multiple forest ownerships and has caused and is
likely to continue to cause extensive damage to forests; or (ii)
significantly increased forest fuels that are likely to further the
spread of uncharacteristic fire;

(b) When, due to extensive physical damage from wind or ice storm
or other cause (i) insect populations are causing extensive damage to
forests; or (ii) significantly increased forest fuels are likely to
further the spread of uncharacteristic fire;
(c) Insufficient landowner action under a forest health hazard warning; or

(d) When otherwise determined by the commissioner to be appropriate.

(4) A forest health hazard warning or forest health hazard order shall be issued by use of a commissioner's order. General notice of the commissioner's order shall be published in a newspaper of general circulation in each county within the area covered by the order and on the department's web site. The order shall specify the boundaries of the area affected, including federal and tribal lands, the forest stand conditions that would make a parcel subject to the provisions of the order, and the actions landowners or land managers should take to reduce the hazard.

(5) Written notice of a forest health hazard warning or forest health hazard order shall be provided to forest landowners of specifically affected property.

(a) The notice shall set forth:

(i) The reasons for the action;

(ii) The boundaries of the area affected, including federal and tribal lands;

(iii) Suggested actions that should be taken by the forest landowner under a forest health hazard warning or the actions that must be taken by a forest landowner under a forest health hazard order;

(iv) The time within which such actions should or must be taken;

(v) How to obtain information or technical assistance on forest health conditions and treatment options;

(vi) The right to request mitigation under subsection (6) of this section and appeal under subsection (7) of this section;

(vii) These requirements are advisory only for federal and tribal lands.

(b) The notice shall be served by personal service or by mail to the latest recorded real property owner, as shown by the records of the county recording officer as defined in RCW 65.08.060. Service by mail is effective on the date of mailing. Proof of service shall be by affidavit or declaration under penalty of perjury.

(6) Forest landowners who have been issued a forest health hazard order under subsection (5) of this section may apply to the department for the remission or mitigation of such order. The application shall
be made to the department within fifteen days after notice of the order has been served. Upon receipt of the application, the department may remit or mitigate the order upon whatever terms the department in its discretion deems proper, provided the department deems the remission or mitigation to be in the best interests of carrying out the purposes of this chapter. The department may ascertain the facts regarding all such applications in such reasonable manner and under such rule as it deems proper.

(7) Forest landowners who have been issued a forest health hazard order under subsection (5) of this section may appeal the order to the pollution control hearings board.

((a)) The appeal shall be filed within thirty days after notice of the order has been served, unless application for mitigation has been made to the department. When such an application for mitigation is made, such appeal shall be filed within thirty days after notice of the disposition of the application for mitigation has been served as provided in RCW 43.21B.230.

((b)) The appeal must set forth:

(i) The name and mailing address of the appellant;

(ii) The name and mailing address of the appellant's attorney, if any;

(iii) A duplicate copy of the forest health hazard order;

(iv) A separate and concise statement of each error alleged to have been committed;

(v) A concise statement of facts upon which the appellant relies to sustain the statement of error; and

(vi) A statement of the relief requested.)

(8) A forest health hazard order issued under subsection (5) of this section is effective thirty days after date of service unless application for remission or mitigation is made or an appeal is filed. When an application for remission or mitigation is made, the order is effective thirty days after notice setting forth the disposition of the application is served unless an appeal is filed from such disposition. Whenever an appeal of the order is filed, the order shall become effective only upon completion of all administrative and judicial review proceedings and the issuance of a final decision confirming the order in whole or in part.
(9) Upon written request, the department may certify as adequate a
forest health management plan developed by a forest landowner, before
or in response to a forest health hazard warning or forest health
hazard order, if the plan is likely to achieve the desired result and
the terms of the plan are being diligently followed by the forest
landowner. The certification of adequacy shall be determined by the
department in its sole discretion, and be provided to the requestor in
writing.

Sec. 19. RCW 76.09.020 and 2009 c 354 s 5 and 2009 c 246 s 4 are
each reenacted and amended to read as follows:
The definitions in this section apply throughout this chapter
unless the context clearly requires otherwise.
(1) "Adaptive management" means reliance on scientific methods to
test the results of actions taken so that the management and related
policy can be changed promptly and appropriately.
(2) "Appeals board" means the ((forest-practices-appeals))
pollution-control-hearings board created by RCW ((76.09.210))
43.21B.010.
(3) "Application" means the application required pursuant to RCW
76.09.050.
(4) "Aquatic resources" includes water quality, salmon, other
species of the vertebrate classes Cephalaspidomorphi and Osteichthyes
identified in the forests and fish report, the Columbia torrent
salamander (Rhyacotriton kezeri), the Cascade torrent salamander
(Rhyacotriton cascadae), the Olympic torrent salamander (Rhyacotriton
olympian), the Dunn's salamander (Plethodon dunni), the Van Dyke's
salamander (Plethodon vandyke), the tailed frog (Ascaphus truei), and
their respective habitats.
(5) "Board" means the forest practices board created in RCW
76.09.030.
(6) "Commissioner" means the commissioner of public lands.
(7) "Contiguous" means land adjoining or touching by common corner
or otherwise. Land having common ownership divided by a road or other
right-of-way shall be considered contiguous.
(8) "Conversion to a use other than commercial timber operation"
means a bona fide conversion to an active use which is incompatible
with timber growing and as may be defined by forest practices rules.
(9) "Department" means the department of natural resources.

(10) "Fish passage barrier" means any artificial instream structure that impedes the free passage of fish.

(11) "Forest land" means all land which is capable of supporting a merchantable stand of timber and is not being actively used for a use which is incompatible with timber growing. Forest land does not include agricultural land that is or was enrolled in the conservation reserve enhancement program by contract if such agricultural land was historically used for agricultural purposes and the landowner intends to continue to use the land for agricultural purposes in the future. As it applies to the operation of the road maintenance and abandonment plan element of the forest practices rules on small forest landowners, the term "forest land" excludes:

(a) Residential home sites, which may include up to five acres; and
(b) Cropfields, orchards, vineyards, pastures, feedlots, fish pens, and the land on which appurtenances necessary to the production, preparation, or sale of crops, fruit, dairy products, fish, and livestock exist.

(12) "Forest landowner" means any person in actual control of forest land, whether such control is based either on legal or equitable title, or on any other interest entitling the holder to sell or otherwise dispose of any or all of the timber on such land in any manner. However, any lessee or other person in possession of forest land without legal or equitable title to such land shall be excluded from the definition of "forest landowner" unless such lessee or other person has the right to sell or otherwise dispose of any or all of the timber located on such forest land.

(13) "Forest practice" means any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber, including but not limited to:

(a) Road and trail construction;
(b) Harvesting, final and intermediate;
(c) Precommercial thinning;
(d) Reforestation;
(e) Fertilization;
(f) Prevention and suppression of diseases and insects;
(g) Salvage of trees; and
(h) Brush control.
"Forest practice" shall not include preparatory work such as tree marking, surveying and road flagging, and removal or harvesting of incidental vegetation from forest lands such as berries, ferns, greenery, mistletoe, herbs, mushrooms, and other products which cannot normally be expected to result in damage to forest soils, timber, or public resources.

(14) "Forest practices rules" means any rules adopted pursuant to RCW 76.09.040.

(15) "Forest road," as it applies to the operation of the road maintenance and abandonment plan element of the forest practices rules on small forest landowners, means a road or road segment that crosses land that meets the definition of forest land, but excludes residential access roads.

(16) "Forest trees" does not include hardwood trees cultivated by agricultural methods in growing cycles shorter than fifteen years if the trees were planted on land that was not in forest use immediately before the trees were planted and before the land was prepared for planting the trees. "Forest trees" includes Christmas trees, but does not include Christmas trees that are cultivated by agricultural methods, as that term is defined in RCW 84.33.035.

(17) "Forests and fish report" means the forests and fish report to the board dated April 29, 1999.

(18) "Operator" means any person engaging in forest practices except an employee with wages as his or her sole compensation.

(19) "Person" means any individual, partnership, private, public, or municipal corporation, county, the department or other state or local governmental entity, or association of individuals of whatever nature.

(20) "Public resources" means water, fish and wildlife, and in addition shall mean capital improvements of the state or its political subdivisions.

(21) "Small forest landowner" has the same meaning as defined in RCW 76.09.450.

(22) "Timber" means forest trees, standing or down, of a commercial species, including Christmas trees. However, "timber" does not include Christmas trees that are cultivated by agricultural methods, as that term is defined in RCW 84.33.035.
(23) "Timber owner" means any person having all or any part of the legal interest in timber. Where such timber is subject to a contract of sale, "timber owner" shall mean the contract purchaser.

(24) "Unconfined channel migration zone" means the area within which the active channel of an unconfined stream is prone to move and where the movement would result in a potential near-term loss of riparian forest adjacent to the stream. Sizeable islands with productive timber may exist within the zone.

(25) "Unconfined stream" means generally fifth order or larger waters that experience abrupt shifts in channel location, creating a complex floodplain characterized by extensive gravel bars, disturbance species of vegetation of variable age, numerous side channels, wall-based channels, oxbow lakes, and wetland complexes. Many of these streams have dikes and levees that may temporarily or permanently restrict channel movement.

(26) "Date of receipt" has the same meaning as defined in RCW 43.21B.001.

**Sec. 20.** RCW 76.09.050 and 2005 c 146 s 1003 are each amended to read as follows:

(1) The board shall establish by rule which forest practices shall be included within each of the following classes:

**Class I:** Minimal or specific forest practices that have no direct potential for damaging a public resource and that may be conducted without submitting an application or a notification except that when the regulating authority is transferred to a local governmental entity, those Class I forest practices that involve timber harvesting or road construction within "urban growth areas," designated pursuant to chapter 36.70A RCW, are processed as Class IV forest practices, but are not subject to environmental review under chapter 43.21C RCW;

**Class II:** Forest practices which have a less than ordinary potential for damaging a public resource that may be conducted without submitting an application and may begin five calendar days, or such lesser time as the department may determine, after written notification by the operator, in the manner, content, and form as prescribed by the department, is received by the department. However, the work may not begin until all forest practice fees required under RCW 76.09.065 have
been received by the department. Class II shall not include forest practices:

(a) On lands platted after January 1, 1960, as provided in chapter 58.17 RCW or on lands that have or are being converted to another use;
(b) Which require approvals under the provisions of the hydraulics act, RCW 77.55.021;
(c) Within "shorelines of the state" as defined in RCW 90.58.030;
(d) Excluded from Class II by the board; or
(e) Including timber harvesting or road construction within "urban growth areas," designated pursuant to chapter 36.70A RCW, which are Class IV;

Class III: Forest practices other than those contained in Class I, II, or IV. A Class III application must be approved or disapproved by the department within thirty calendar days from the date the department receives the application. However, the applicant may not begin work on that forest practice until all forest practice fees required under RCW 76.09.065 have been received by the department;

Class IV: Forest practices other than those contained in Class I or II: (a) On lands platted after January 1, 1960, as provided in chapter 58.17 RCW, (b) on lands that have or are being converted to another use, (c) on lands which, pursuant to RCW 76.09.070 as now or hereafter amended, are not to be reforested because of the likelihood of future conversion to urban development, (d) involving timber harvesting or road construction on lands that are contained within "urban growth areas," designated pursuant to chapter 36.70A RCW, except where the forest landowner provides: (i) A written statement of intent signed by the forest landowner not to convert to a use other than commercial forest product operations for ten years, accompanied by either a written forest management plan acceptable to the department or documentation that the land is enrolled under the provisions of chapter 84.33 RCW; or (ii) a conversion option harvest plan approved by the local governmental entity and submitted to the department as part of the application, and/or (e) which have a potential for a substantial impact on the environment and therefore require an evaluation by the department as to whether or not a detailed statement must be prepared pursuant to the state environmental policy act, chapter 43.21C RCW. Such evaluation shall be made within ten days from the date the department receives the application. PROVIDED, That nothing herein
shall be construed to prevent any local or regional governmental entity from determining that a detailed statement must be prepared for an action pursuant to a Class IV forest practice taken by that governmental entity concerning the land on which forest practices will be conducted. A Class IV application must be approved or disapproved by the department within thirty calendar days from the date the department receives the application, unless the department determines that a detailed statement must be made, in which case the application must be approved or disapproved by the department within sixty calendar days from the date the department receives the application, unless the commissioner of public lands, through the promulgation of a formal order, determines that the process cannot be completed within such period. However, the applicant may not begin work on that forest practice until all forest practice fees required under RCW 76.09.065 have been received by the department.

Forest practices under Classes I, II, and III are exempt from the requirements for preparation of a detailed statement under the state environmental policy act.

(2) Except for those forest practices being regulated by local governmental entities as provided elsewhere in this chapter, no Class II, Class III, or Class IV forest practice shall be commenced or continued after January 1, 1975, unless the department has received a notification with regard to a Class II forest practice or approved an application with regard to a Class III or Class IV forest practice containing all information required by RCW 76.09.060 as now or hereafter amended. However, in the event forest practices regulations necessary for the scheduled implementation of this chapter and RCW 90.48.420 have not been adopted in time to meet such schedules, the department shall have the authority to regulate forest practices and approve applications on such terms and conditions consistent with this chapter and RCW 90.48.420 and the purposes and policies of RCW 76.09.010 until applicable forest practices regulations are in effect.

(3) Except for those forest practices being regulated by local governmental entities as provided elsewhere in this chapter, if a notification or application is delivered in person to the department by the operator or the operator's agent, the department shall immediately provide a dated receipt thereof. In all other cases, the department shall immediately mail a dated receipt to the operator.
(4) Except for those forest practices being regulated by local governmental entities as provided elsewhere in this chapter, forest practices shall be conducted in accordance with the forest practices regulations, orders and directives as authorized by this chapter or the forest practices regulations, and the terms and conditions of any approved applications.

(5) Except for those forest practices being regulated by local governmental entities as provided elsewhere in this chapter, the department of natural resources shall notify the applicant in writing of either its approval of the application or its disapproval of the application and the specific manner in which the application fails to comply with the provisions of this section or with the forest practices regulations. Except as provided otherwise in this section, if the department fails to either approve or disapprove an application or any portion thereof within the applicable time limit, the application shall be deemed approved and the operation may be commenced: PROVIDED, That this provision shall not apply to applications which are neither approved nor disapproved pursuant to the provisions of subsection (7) of this section: PROVIDED, FURTHER, That if seasonal field conditions prevent the department from being able to properly evaluate the application, the department may issue an approval conditional upon further review within sixty days: PROVIDED, FURTHER, That the department shall have until April 1, 1975, to approve or disapprove an application involving forest practices allowed to continue to April 1, 1975, under the provisions of subsection (2) of this section. Upon receipt of any notification or any satisfactorily completed application the department shall in any event no later than two business days after such receipt transmit a copy to the departments of ecology and fish and wildlife, and to the county, city, or town in whose jurisdiction the forest practice is to be commenced. Any comments by such agencies shall be directed to the department of natural resources.

(6) For those forest practices regulated by the board and the department, if the county, city, or town believes that an application is inconsistent with this chapter, the forest practices regulations, or any local authority consistent with RCW 76.09.240 as now or hereafter amended, it may so notify the department and the applicant, specifying its objections.
(7) For those forest practices regulated by the board and the
department, the department shall not approve portions of applications
to which a county, city, or town objects if:
   (a) The department receives written notice from the county, city,
or town of such objections within fourteen business days from the time
of transmittal of the application to the county, city, or town, or one
day before the department acts on the application, whichever is later;
and
   (b) The objections relate to lands either:
       (i) Platted after January 1, 1960, as provided in chapter 58.17
RCW; or
       (ii) On lands that have or are being converted to another use.

The department shall either disapprove those portions of such
application or appeal the county, city, or town objections to the
appeals board. If the objections related to subparagraphs (b)(i) and
(ii) of this subsection are based on local authority consistent with
RCW 76.09.240 as now or hereafter amended, the department shall
disapprove the application until such time as the county, city, or town
consents to its approval or such disapproval is reversed on appeal.
The applicant shall be a party to all department appeals of county,
city, or town objections. Unless the county, city, or town either
consents or has waived its rights under this subsection, the department
shall not approve portions of an application affecting such lands until
the minimum time for county, city, or town objections has expired.

(8) For those forest practices regulated by the board and the
department, in addition to any rights under the above paragraph, the
county, city, or town may appeal any department approval of an
application with respect to any lands within its jurisdiction. The
appeals board may suspend the department's approval in whole or in part
pending such appeal where there exists potential for immediate and
material damage to a public resource.

(9) For those forest practices regulated by the board and the
department, appeals under this section shall be made to the appeals
board in the manner and time provided in ((RCW 76.09.220(8))) section
24 of this act. In such appeals there shall be no presumption of
correctness of either the county, city, or town or the department
position.
(10) For those forest practices regulated by the board and the department, the department shall, within four business days notify the county, city, or town of all notifications, approvals, and disapprovals of an application affecting lands within the county, city, or town, except to the extent the county, city, or town has waived its right to such notice.

(11) For those forest practices regulated by the board and the department, a county, city, or town may waive in whole or in part its rights under this section, and may withdraw or modify any such waiver, at any time by written notice to the department.

(12) Notwithstanding subsections (2) through (5) of this section, forest practices applications or notifications are not required for exotic insect and disease control operations conducted in accordance with RCW 76.09.060(8) where eradication can reasonably be expected.

Sec. 21. RCW 76.09.080 and 1989 c 175 s 163 are each amended to read as follows:

(1) The department shall have the authority to serve upon an operator a stop work order which shall be a final order of the department if:

(a) There is any violation of the provisions of this chapter or the forest practices regulations; or

(b) There is a deviation from the approved application; or

(c) Immediate action is necessary to prevent continuation of or to avoid material damage to a public resource.

(2) The stop work order shall set forth:

(a) The specific nature, extent, and time of the violation, deviation, damage, or potential damage;

(b) An order to stop all work connected with the violation, deviation, damage, or potential damage;

(c) The specific course of action needed to correct such violation or deviation or to prevent damage and to correct and/or compensate for damage to public resources which has resulted from any violation, unauthorized deviation, or willful or negligent disregard for potential damage to a public resource; and/or those courses of action necessary to prevent continuing damage to public resources where the damage is resulting from the forest practice activities but has not resulted from any violation, unauthorized deviation, or negligence; and
(d) The right of the operator to a hearing before the appeals board.

The department shall immediately file a copy of such order with the appeals board and mail a copy thereof to the timber owner and forest land owner at the addresses shown on the application. The operator, timber owner, or forest land owner may commence an appeal to the appeals board within ((fifteen)) thirty days ((after service upon)) from the date of receipt of the order by the operator. If such appeal is commenced, a hearing shall be held not more than twenty days after copies of the notice of appeal were filed with the appeals board. Such proceeding shall be an adjudicative proceeding within the meaning of chapter 34.05 RCW, the administrative procedure act. The operator shall comply with the order of the department immediately upon being served, but the appeals board if requested shall have authority to continue or discontinue in whole or in part the order of the department under such conditions as it may impose pending the outcome of the proceeding.

Sec. 22. RCW 76.09.090 and 1975 1st ex.s. c 200 s 6 are each amended to read as follows:

If a violation, a deviation, material damage or potential for material damage to a public resource has occurred and the department determines that a stop work order is unnecessary, then the department shall issue and serve upon the operator or land owner a notice, which shall clearly set forth:

(1)(a) The specific nature, extent, and time of failure to comply with the approved application; or identifying the damage or potential damage; and/or

(b) The relevant provisions of this chapter or of the forest practice regulations relating thereto;

(2) The right of the operator or land owner to a hearing before the department; and

(3) The specific course of action ordered by the department to be followed by the operator to correct such failure to comply and to prevent, correct and/or compensate for material damage to public resources which resulted from any violation, unauthorized deviation, or wilful or negligent disregard for potential damage to a public resource; and/or those courses of action necessary to prevent
continuing damage to public resources where the damage is resulting from the forest practice activities but has not resulted from any violation, unauthorized deviation, or negligence.

The department shall mail a copy thereof to the forest land owner and the timber owner at the addresses shown on the application, showing the date of service upon the operator. Such notice to comply shall become a final order of the department: PROVIDED, That no direct appeal to the appeals board will be allowed from such final order. Such operator shall undertake the course of action so ordered by the department unless, within fifteen days after the date of service of such notice to comply, the operator, forest land owner, or timber owner, shall request the department in writing to schedule a hearing. If so requested, the department shall schedule a hearing on a date not more than twenty days after receiving such request. Within ten days after such hearing, the department shall issue a final order either withdrawing its notice to comply or clearly setting forth the specific course of action to be followed by such operator. Such operator shall undertake the course of action so ordered by the department unless within thirty days after the date of receipt of such final order, the operator, forest land owner, or timber owner appeals such final order to the appeals board.

No person shall be under any obligation under this section to prevent, correct, or compensate for any damage to public resources which occurs more than one year after the date of completion of the forest practices operations involved exclusive of reforestation, unless such forest practices were not conducted in accordance with forest practices rules and regulations: PROVIDED, That this provision shall not relieve the forest land owner from any obligation to comply with forest practices rules and regulations pertaining to providing continuing road maintenance. No action to recover damages shall be taken under this section more than two years after the date the damage involved occurs.

Sec. 23. RCW 76.09.170 and 1999 sp.s. c 4 s 803 are each amended to read as follows:

(1) Every person who violates any provision of RCW 76.09.010 through 76.09.280 or of the forest practices rules, or who converts forest land to a use other than commercial timber operation within
three years after completion of the forest practice without the consent
of the county, city, or town, shall be subject to a penalty in an
amount of not more than ten thousand dollars for every such violation.
Each and every such violation shall be a separate and distinct offense.
In case of a failure to comply with a stop work order, every day's
continuance shall be a separate and distinct violation. Every person
who through an act of commission or omission procures, aids or abets in
the violation shall be considered to have violated the provisions of
this section and shall be subject to the penalty in this section. No
penalty shall be imposed under this section upon any governmental
official, an employee of any governmental department, agency, or
entity, or a member of any board or advisory committee created by this
chapter for any act or omission in his or her duties in the
administration of this chapter or of any rule adopted under this
chapter.

(2) The department shall develop and recommend to the board a
penalty schedule to determine the amount to be imposed under this
section. The board shall adopt by rule, pursuant to chapter 34.05 RCW,
such penalty schedule to be effective no later than January 1, 1994.
The schedule shall be developed in consideration of the following:
(a) Previous violation history;
(b) Severity of the impact on public resources;
(c) Whether the violation of this chapter or its rules was
intentional;
(d) Cooperation with the department;
(e) Repairability of the adverse effect from the violation; and
(f) The extent to which a penalty to be imposed on a forest
landowner for a forest practice violation committed by another should
be reduced because the owner was unaware of the violation and has not
received substantial economic benefits from the violation.

(3) The penalty 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
describing the violation with reasonable particularity. Within fifteen
days after the notice is received, the person incurring the penalty may
apply in writing to the department for the remission or mitigation of
such penalty. Upon receipt of the application, that department may
remit or mitigate the penalty upon whatever terms that department in
its discretion deems proper, provided the department deems such
remission or mitigation to be in the best interests of carrying out the
purposes of this chapter. The department shall have authority to
ascertain the facts regarding all such applications in such reasonable
manner and under such rule as it may deem proper.

(4) Any person incurring a penalty under this section may appeal
the penalty to the appeals board. Such appeals shall be filed within thirty days after the date of receipt of
the penalty unless an application for remission or mitigation is made to the department. When such an application for remission or mitigation is made, such appeals shall be filed within thirty days of receipt of notice from the department setting forth the disposition of the application for remission or mitigation.

(5) The penalty imposed under this section shall become due and payable thirty days after receipt of a notice imposing the same unless application for remission or mitigation is made or an appeal is filed. When such an application for remission or mitigation is made, any penalty incurred under this section shall become due and payable thirty days after receipt of notice setting forth the disposition of such application unless an appeal is filed from such disposition. Whenever an appeal of the penalty incurred is filed, the penalty shall become due and payable only upon completion of all administrative and judicial review proceedings and the issuance of a final decision confirming the penalty in whole or in part.

(6) If the amount of any penalty is not paid to the department within thirty days after it becomes due and payable, the attorney general, upon the request of the department, shall bring an action in the name of the state of Washington in the superior court of Thurston county or of any county in which such violator may do business, to recover such penalty, interest, costs, and attorneys' fees. In all such actions the procedure and rules of evidence shall be the same as an ordinary civil action except as otherwise provided in this chapter. In addition to or as an alternative to seeking enforcement of penalties in superior court, the department may bring an action in district court as provided in Title 3 RCW, to collect penalties, interest, costs, and attorneys' fees.

(7) Penalties imposed under this section for violations associated with a conversion to a use other than commercial timber operation shall
be a lien upon the real property of the person assessed the penalty and
the department may collect such amount in the same manner provided in
chapter 60.04 RCW for mechanics' liens.

(8) Any person incurring a penalty imposed under this section is
also responsible for the payment of all costs and attorneys' fees
incurred in connection with the penalty and interest accruing on the
unpaid penalty amount.

NEW SECTION. Sec. 24. A new section is added to chapter 76.09 RCW
to read as follows:

A person aggrieved by the approval or disapproval of an application
to conduct a forest practice or the approval or disapproval of any
landscape plan or permit or watershed analysis may seek review from the
appeals board by filing a request for the same within thirty days from
the date of receipt of the decision. Concurrently with the filing of
any request for review with the appeals board as provided in this
section, the requestor must file a copy of his or her request with the
department and the attorney general. The attorney general may
intervene to protect the public interest and ensure that the provisions
of this chapter are complied with.

Sec. 25. RCW 76.09.310 and 1987 c 95 s 4 are each amended to read
as follows:

(1) The department shall send a notice to all forest landowners,
both public and private, within the geographic area selected for
review, stating that the department intends to study the area as part
of the hazard-reduction program.

(2) The department shall prepare a proposed plan for each
geographic area studied. The department shall provide the proposed
plan to affected landowners, Indian tribes, interested parties, and to
the advisory committee, if established pursuant to RCW 76.09.305.

(3) Any aggrieved landowners, agencies, tribes, and other persons
who object to any or all of the proposed hazard-reduction plan may,
within thirty days of issuance of the plan, request the department in
writing to schedule a conference. If so requested, the department
shall schedule a conference on a date not more than thirty days after
receiving such request.
Within ten days after such a conference, the department shall either amend the proposed plan or respond in writing indicating why the objections were not incorporated into the plan.

Within one hundred twenty days following the issuance of the proposed plan as provided in subsection (2) of this section, the department shall distribute a final hazard-reduction plan designating those sites for which hazard-reduction measures are recommended and those sites where no action is recommended. For each hazard-reduction measure recommended, a description of the work and cost estimate shall be provided.

Any aggrieved landowners, agencies, tribes, and other persons are entitled to appeal the final hazard-reduction plan to the appeals board if, within thirty days of the issuance of the final plan, the party transmits a notice of appeal to the appeals board and to the department.

A landowner's failure to object to the recommendations or to appeal the final hazard-reduction plan shall not be deemed an admission that the hazard-reduction recommendations are appropriate.

The department shall provide a copy of the final hazard-reduction plan to the department of ecology and to each affected county.

Sec. 26. RCW 77.55.011 and 2009 c 549 s 1028 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Bed" means the land below the ordinary high water lines of state waters. This definition does not include irrigation ditches, canals, storm water runoff devices, or other artificial watercourses except where they exist in a natural watercourse that has been altered artificially.

(2) "Board" means the pollution control hearings board created in chapter 43.21B RCW (77.55.301).

(3) "Commission" means the state fish and wildlife commission.

(4) "Department" means the department of fish and wildlife.

(5) "Director" means the director of the department of fish and wildlife.
(6) "Emergency" means an immediate threat to life, the public, property, or of environmental degradation.

(7) "Hydraulic project" means the construction or performance of work that will use, divert, obstruct, or change the natural flow or bed of any of the salt or freshwaters of the state.

(8) "Imminent danger" means a threat by weather, water flow, or other natural conditions that is likely to occur within sixty days of a request for a permit application.

(9) "Marina" means a public or private facility providing boat moorage space, fuel, or commercial services. Commercial services include but are not limited to overnight or live-aboard boating accommodations.

(10) "Marine terminal" means a public or private commercial wharf located in the navigable water of the state and used, or intended to be used, as a port or facility for the storing, handling, transferring, or transporting of goods to and from vessels.

(11) "Ordinary high water line" means the mark on the shores of all water 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 ordinary years as to mark upon the soil or vegetation a character distinct from the abutting upland. Provided, that in any area where the ordinary high water line cannot be found, the ordinary high water line adjoining saltwater is the line of mean higher high water and the ordinary high water line adjoining fresh water is the elevation of the mean annual flood.

(12) "Permit" means a hydraulic project approval permit issued under this chapter.

(13) "Sandbars" includes, but is not limited to, sand, gravel, rock, silt, and sediments.

(14) "Small scale prospecting and mining" means the use of only the following methods: Pans; nonmotorized sluice boxes; concentrators; and minirocker boxes for the discovery and recovery of minerals.

(15) "Spartina," "purple loosestrife," and "aquatic noxious weeds" have the same meanings as defined in RCW 17.26.020.

(16) "Streambank stabilization" means those projects that prevent or limit erosion, slippage, and mass wasting. These projects include, but are not limited to, bank resloping, log and debris relocation or
removal, planting of woody vegetation, bank protection using rock or
woody material or placement of jetties or groins, gravel removal, or
erosion control.

(17) "Tide gate" means a one-way check valve that prevents the
backflow of tidal water.

(18) "Waters of the state" and "state waters" means all salt and
fresh waters waterward of the ordinary high water line and within the
territorial boundary of the state.

(19) "Date of receipt" has the same meaning as defined in RCW
43.21B.001.

Sec. 27. RCW 77.55.021 and 2008 c 272 s 1 are each amended to read
as follows:

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

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

(a) General plans for the overall project;

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

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

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

(3)(a) Protection of fish life is the only ground upon which
approval of a permit may be denied or conditioned. Approval of a
permit may not be unreasonably withheld or unreasonably conditioned.
Except as provided in this subsection and subsections (8), (10), and
(12) of this section, the department has forty-five calendar days upon
receipt of a complete application to grant or deny approval of a
permit. The forty-five day requirement is suspended if:
(i) After ten working days of receipt of the application, the applicant remains unavailable or unable to arrange for a timely field evaluation of the proposed project;

(ii) The site is physically inaccessible for inspection;

(iii) The applicant requests a delay; or

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

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

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

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

(a) Except as provided in (b) of this subsection, issuance, denial, conditioning, or modification of a permit shall be appealable to ((the department or)) the board ((as specified in RCW 77.55.301)) within thirty days from the date of receipt of the ((notice of)) decision as provided in RCW 43.21B.230.

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

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

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

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

(6) The department may, after consultation with the permittee, modify a permit due to changed conditions. The modification ((becomes effective unless appealed to the department or the board as specified in RCW 77.55.301 within thirty days from the notice of the proposed modification)) is appealable as provided in subsection (4) of this section. For hydraulic projects that divert water for agricultural irrigation or stock watering purposes, or when the hydraulic project or other work is associated with streambank stabilization to protect farm and agricultural land as defined in RCW 84.34.020, the burden is on the department to show that changed conditions warrant the modification in order to protect fish life.

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

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

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

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

(9) 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.

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

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

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

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

Sec. 28. RCW 77.55.141 and 2005 c 146 s 501 are each amended to read as follows:

(1) In order to protect the property of marine waterfront shoreline owners it is necessary to facilitate issuance of permits for bulkheads or rockwalls under certain conditions.

(2) The department shall issue a permit with or without conditions within forty-five days of receipt of a complete and accurate application which authorizes commencement of construction, replacement, or repair of a marine beach front protective bulkhead or rockwall for single-family type residences or property under the following conditions:

(a) The waterward face of a new bulkhead or rockwall shall be located only as far waterward as is necessary to excavate for footings or place base rock for the structure and under no conditions shall be located more than six feet waterward of the ordinary high water line;
(b) Any bulkhead or rockwall to replace or repair an existing bulkhead or rockwall shall be placed along the same alignment as the bulkhead or rockwall it is replacing. However, the replaced or repaired bulkhead or rockwall may be placed waterward of and directly abutting the existing structure only in cases where removal of the existing bulkhead or rockwall would result in environmental degradation or removal problems related to geological, engineering, or safety considerations; and

(c) Construction of a new bulkhead or rockwall, or replacement or repair of an existing bulkhead or rockwall waterward of the existing structure shall not result in the permanent loss of critical food fish or shellfish habitats; and

(d) Timing constraints shall be applied on a case-by-case basis for the protection of critical habitats, including but not limited to migration corridors, rearing and feeding areas, and spawning habitats, for the proper protection of fish life.

(3) Any bulkhead or rockwall construction, replacement, or repair not meeting the conditions in this section shall be processed under this chapter in the same manner as any other application.

(4) Any person aggrieved by the approval, denial, conditioning, or modification of a permit under this section may appeal the decision as provided in RCW 77.55.021(4).

Sec. 29. RCW 77.55.181 and 2005 c 146 s 505 are each amended to read as follows:

(1) In order to receive the permit review and approval process created in this section, a fish habitat enhancement project must meet the criteria under (a) and (b) of this subsection:

(a) A fish habitat enhancement project must be a project to accomplish one or more of the following tasks:

(i) Elimination of human-made fish passage barriers, including culvert repair and replacement;

(ii) Restoration of an eroded or unstable streambank employing the principle of bioengineering, including limited use of rock as a stabilization only at the toe of the bank, and with primary emphasis on using native vegetation to control the erosive forces of flowing water; or
(iii) Placement of woody debris or other instream structures that benefit naturally reproducing fish stocks.

The department shall develop size or scale threshold tests to determine if projects accomplishing any of these tasks should be evaluated under the process created in this section or under other project review and approval processes. A project proposal shall not be reviewed under the process created in this section if the department determines that the scale of the project raises concerns regarding public health and safety; and

(b) A fish habitat enhancement project must be approved in one of the following ways:

(i) By the department pursuant to chapter 77.95 or 77.100 RCW;

(ii) By the sponsor of a watershed restoration plan as provided in chapter 89.08 RCW;

(iii) By the department as a department-sponsored fish habitat enhancement or restoration project;

(iv) Through the review and approval process for the jobs for the environment program;

(v) Through the review and approval process for conservation district-sponsored projects, where the project complies with design standards established by the conservation commission through interagency agreement with the United States fish and wildlife service and the natural resource conservation service;

(vi) Through a formal grant program established by the legislature or the department for fish habitat enhancement or restoration; and

(vii) Through other formal review and approval processes established by the legislature.

(2) Fish habitat enhancement projects meeting the criteria of subsection (1) of this section are expected to result in beneficial impacts to the environment. Decisions pertaining to fish habitat enhancement projects meeting the criteria of subsection (1) of this section and being reviewed and approved according to the provisions of this section are not subject to the requirements of RCW 43.21C.030(2)(c).

(3)(a) A permit is required for projects that meet the criteria of subsection (1) of this section and are being reviewed and approved under this section. An applicant shall use a joint aquatic resource permit application form developed by the office of regulatory
assistance to apply for approval under this chapter. On the same day, the applicant shall provide copies of the completed application form to the department and to each appropriate local government. Local governments shall accept the application as notice of the proposed project. The department shall provide a fifteen-day comment period during which it will receive comments regarding environmental impacts. Within forty-five days, the department shall either issue a permit, with or without conditions, deny approval, or make a determination that the review and approval process created by this section is not appropriate for the proposed project. The department shall base this determination on identification during the comment period of adverse impacts that cannot be mitigated by the conditioning of a permit. If the department determines that the review and approval process created by this section is not appropriate for the proposed project, the department shall notify the applicant and the appropriate local governments of its determination. The applicant may reapply for approval of the project under other review and approval processes.

(b) Any person aggrieved by the approval, denial, conditioning, or modification of a permit under this section may ((formally)) appeal the decision ((to the board pursuant to the provisions of this chapter)) as provided in RCW 77.55.021(4).

(4) No local government may require permits or charge fees for fish habitat enhancement projects that meet the criteria of subsection (1) of this section and that are reviewed and approved according to the provisions of this section.

Sec. 30. RCW 77.55.241 and 2005 c 146 s 602 are each amended to read as follows:

(1) The legislature finds that the construction of hydraulic projects may require mitigation for the protection of fish life, and that the mitigation may be most cost-effective and provide the most benefit to the fish resource if the mitigation is allowed to be applied in locations that are off-site of the hydraulic project location. The department may approve off-site mitigation plans that are submitted by permit applicants.

(2) If a permit applicant proposes off-site mitigation and the department does not approve the permit or conditions the permit in such a manner as to render off-site mitigation unpracticable, the project
Sec. 31. RCW 77.55.291 and 2005 c 146 s 701 are each amended to read as follows:

(1) The department may levy civil penalties of up to one hundred dollars per day for violation of any provisions of RCW 77.55.021. The penalty provided shall be imposed by notice in writing, either by certified mail or personal service to the person incurring the penalty, from the director or the director's designee describing the violation.

(2)(a) Except as provided in (b) of this subsection, any person incurring any penalty under this chapter may appeal the same under chapter 34.05 RCW to the board. Appeals shall be filed within thirty days from the date of receipt of the penalty in accordance with RCW 43.21B.230.

(b) Issuance of a civil penalty may be informally appealed to the department within thirty days from the date of receipt of the penalty. Requests for informal appeal must be filed in the form and manner prescribed by the department by rule. A civil penalty that has been informally appealed to the department is appealable to the board within thirty days from the date of receipt of the department's decision on the informal appeal.

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

(4) If the amount of any penalty is not paid within thirty days after it becomes due and payable, the attorney general, upon the request of the director, shall bring an action in the name of the state of Washington in the superior court of Thurston county or of any county in which such violator may do business, to recover such penalty. In all such actions the procedure and rules of evidence shall be the same as an ordinary civil action. All penalties recovered under this section shall be paid into the state's general fund.
Sec. 32. RCW 78.44.270 and 1993 c 518 s 35 are each amended to read as follows:

Appeals from Department determinations under this chapter shall be made as follows:

Appeals from department determinations made under this chapter shall be made under the provisions of the Administrative Procedure Act (chapter 34.05 RCW), and shall be considered an adjudicative proceeding within the meaning of the Administrative Procedure Act, chapter 34.05 RCW) may be appealed to the pollution control hearings board as provided in RCW 43.21B.230. Only a person aggrieved within the meaning of RCW 34.05.530 has standing and can file an appeal.

Sec. 33. RCW 78.44.380 and 2007 c 192 s 3 are each amended to read as follows:

(1) The department may issue an order to stop all surface mining to any permit holder, miner, or other person who authorizes, directs, or conducts such activities without a valid surface mine reclamation permit. This order is effective upon issuance unless otherwise stated in the order. Administrative appeal of the order to stop work does not stay the stop work requirement. The department shall notify the local jurisdiction of record when a stop work order has been issued for operating without a valid reclamation permit.

(2) The department may issue an order to stop surface mining occurring outside of any permit area to a permit holder that does not have a legal right to occupy the affected area. This order is effective upon issuance unless otherwise stated in the order. An administrative appeal of the order to stop work does not stay the stop work requirement.

(3) Where a permit holder is conducting surface mining activities outside of its permit boundary, but within land that it has the right to occupy, the department may issue an order to stop surface mining or mining-related activities occurring outside of the authorized area after the permit holder fails to comply with a notice of correction. The notice of correction must specify the corrections necessary as per the violation and provide a reasonable time to do so. This order is effective upon issuance unless otherwise stated in the order. An administrative appeal of the order to stop work does not stay the stop work requirement.
(4) Stop work orders must be in writing, delivered by United States certified mail with return receipt requested, facsimile, or by hand to the permit holder of record. The order must state the facts supporting the violation, the law being violated, and the specific activities being stopped. Stop work orders must be signed by the state geologist or an assistant state geologist. The pollution control hearings board shall proceed as quickly as feasible to complete any requested adjudicative proceedings unless the parties stipulate to an appeal timeline or the department's stop work order states that it is not effective until after the administrative review process. If the recipient appeals the order, the recipient may file a motion for stay with the presiding officer, which will be reviewed under RCW 43.21B.320.

Sec. 34. RCW 79.100.120 and 2006 c 153 s 5 are each amended to read as follows:

(1) A person seeking to contest an authorized public entity's decision to take temporary possession or custody of a vessel under this chapter, or to contest the amount of reimbursement owed to an authorized public entity under this chapter, may request a hearing in accordance with this section.

(2)(a) If the contested decision or action was undertaken by a state agency, a written request for a hearing related to the decision or action must be filed with the pollution control hearings board and served on the state agency in accordance with RCW 43.21B.230 (2) and (3) within thirty days of the date the authorized public entity acquires custody of the vessel under RCW 79.100.040, or if the vessel is redeemed before the authorized public entity acquires custody, the date of redemption, or the right to a hearing is deemed waived and the vessel's owner is liable for any costs owed the authorized public entity. In the event of litigation, the prevailing party is entitled to reasonable attorneys' fees and costs.

(b) Upon receipt of a timely hearing request, the pollution control hearings board shall proceed to hear and determine the validity of the decision to take the vessel into temporary possession or custody and the reasonableness of any towing, storage, or other charges permitted under this chapter. Within five business days
after the request for a hearing is filed, the pollution control hearings board shall notify the vessel owner requesting the hearing and the authorized public entity of the date, time, and location for the hearing. Unless the vessel is redeemed before the request for hearing is filed, the pollution control hearings board shall set the hearing on a date that is within ten business days of the filing of the request for hearing. If the vessel is redeemed before the request for a hearing is filed, the pollution control hearings board shall set the hearing on a date that is within sixty days of the filing of the request for hearing. A proceeding brought under this subsection may be heard by one member of the pollution control hearings board, whose decision is the final decision of the board.

(3)(a) If the contested decision or action was undertaken by a metropolitan park district, port district, city, town, or county, which has adopted rules or procedures for contesting decisions or actions pertaining to derelict or abandoned vessels, those rules or procedures must be followed in order to contest a decision to take temporary possession or custody of a vessel, or to contest the amount of reimbursement owed.

(b) If the metropolitan park district, port district, city, town, or county has not adopted rules or procedures for contesting decisions or actions pertaining to derelict or abandoned vessels, then a person requesting a hearing under this section must follow the procedure established in RCW 53.08.320(5) for contesting the decisions or actions of moorage facility operators.

Sec. 35. RCW 84.33.0775 and 1999 sp.s. c 5 s 1 are each amended to read as follows:

(1) A taxpayer is allowed a credit against the tax imposed under RCW 84.33.041 for timber harvested on and after January 1, 2000, under a forest practices notification filed or application approved under RCW 76.09.050 and subject to enhanced aquatic resources requirements.

(2)(a) For a person other than a small harvester who elects to calculate tax under RCW 84.33.074, the credit is equal to the stumpage value of timber harvested for sale or for commercial or industrial use multiplied by eight-tenths of one percent.
(b) For a small harvester who elects to calculate tax under RCW 84.33.074, the credit is equal to sixteen percent of the tax imposed under this chapter.

(c) The amount of credit claimed by a taxpayer under this section shall be reduced by the amount of any compensation received from the federal government for reduced timber harvest due to enhanced aquatic resource requirements. If the amount of compensation from the federal government exceeds the amount of credit available to a taxpayer in any reporting period, the excess shall be carried forward and applied against credits in future reporting periods. This subsection does not apply to small harvesters as defined in RCW 84.33.073.

(d) Refunds may not be given in place of credits. Credit may not be claimed in excess of tax owed. The department of revenue shall disallow any credits, used or unused, upon written notification from the department of natural resources of a final decision that timber for which credit was claimed was not harvested under a forest practices notification filed or application approved under RCW 76.09.050 and subject to enhanced aquatic resources requirements.

(3) As used in this section, a forest practices notification or application is subject to enhanced aquatic resource requirements if it includes, in whole or in part, riparian area, wetland, or steep or unstable slope from which the operator is limited, by rule adopted under RCW 76.09.055, 34.05.090, 43.21C.250, and 76.09.370, or any federally approved habitat conservation plan or department of natural resources approved watershed analysis, from harvesting timber, or if a road is included within or adjacent to the area covered by such notification or application and the road is covered by a road maintenance plan approved by the department of natural resources under rules adopted under chapter 76.09 RCW, the forest practices act, or a federally approved habitat conservation plan.

(4) For forest practices notification or applications submitted after January 1, 2000, the department of natural resources shall indicate whether the notification or application is subject to enhanced aquatic resource requirements and, unless notified of a contrary determination by the pollution control hearings board, the department of revenue shall use such indication in determining the credit to be allowed against the tax.
assessed under RCW 84.33.041. The department of natural resources shall develop revisions to the form of the forest practices notifications and applications to provide a space for the applicant to indicate and the department of natural resources to confirm or not confirm, whether the notification or application is subject to enhanced aquatic resource requirements. For forest practices notifications or applications submitted before January 1, 2000, the applicant may submit the approved notification or application to the department of natural resources for confirmation that the notification or application is subject to enhanced aquatic resource requirements. Upon any such submission, the department of natural resources will within thirty days confirm or deny that the notification or application is subject to enhanced aquatic resource requirements and will forward separate evidence of each confirmation to the department of revenue. Unless notified of a contrary ruling by the pollution control hearings board, the department of revenue shall use the separate confirmations in determining the credit to be allowed against the tax assessed under RCW 84.33.041.

(5) A refusal by the department of natural resources to confirm that a notification or application is subject to enhanced aquatic resources requirements may be appealed to the pollution control hearings board.

(6) A person receiving approval of credit must keep records necessary for the department of revenue to verify eligibility under this section.

Sec. 36. RCW 90.58.140 and 1995 c 347 s 309 are each amended to read as follows:

(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)) of receipt 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)) receipt 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) 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)) receipt, (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;

(c) 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)) of receipt as provided
in subsection (6) of this section.

If a permittee begins construction pursuant to subsections (a),
(b), or (c) 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)) transmitted to the department and the attorney general.
A petition for review of such a decision must be commenced within
twenty-one days from the date of receipt of the decision. With regard
to a permit other than a permit governed by subsection (10) of this
section, "date of ((filing)) receipt" as used herein ((means)) refers
to the date ((of actual receipt by the department)) that the applicant
receives written notice from the department that the department has
received the decision. With regard to a permit for a variance or a
conditional use, "date of ((filing)) receipt" means the date a local
government or applicant receives the written decision of the department
rendered on the permit pursuant to subsection (10) of this section ((is
transmitted by the department to the local government. The department
shall notify in writing the local government and the applicant of the
date of filing)). For the purposes of this subsection, the term "date
of receipt" has the same meaning as provided in RCW 43.21B.001.

(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 by local
government under approved master programs 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 (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.

Sec. 37. RCW 90.58.180 and 2003 c 393 s 22 are each amended to read as follows:

(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, except as otherwise provided in chapter 43.21L RCW, seek review from the shorelines hearings board by filing a petition for review within twenty-one days of the date of receipt of the decision as provided for 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 of receipt 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 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.
Sec. 38. RCW 90.58.190 and 2003 c 321 s 4 are each amended to read as follows:

(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 or modify 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 with jurisdiction over the local government. The appeal shall be initiated by filing a petition within sixty days from the date of the department's written notice to the local government of the department's final decision to approve or reject a proposed master program or master program amendment, as provided in RCW 36.70A.290. The department's written notice must conspicuously and plainly state that it is the department's final decision and that there will be no further modifications under RCW 90.58.090(2).

(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 inconsistent with the policy of RCW 90.58.020 and the applicable guidelines.

(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 a 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 or modify 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 of the department's written notice to the local government
of the department's final decision to approve((,)) or reject((, or
modify)) a proposed master program or master program amendment ((as
provided in RCW 90.58.090(2))). The department's written notice must
conspicuously and plainly state that it is the department's final
decision and that there will be no further modifications under RCW
90.58.090(2).

(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
local government and the department, 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.

(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 inconsistent with the
policy of RCW 90.58.020 and the applicable guidelines.

(d) Review by the shorelines hearings board shall be considered an
adjudicative proceeding under chapter 34.05 RCW, the administrative
procedure act. The aggrieved local government 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 local government 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 shorelines
hearings board to uphold the master program or master program
amendment, provided that the board may remand the master program or
master program adjustment to the local government or the department for
modification prior to the final adoption of the master program or
master program amendment.
Sec. 39. RCW 90.58.210 and 1995 c 403 s 637 are each amended to read as follows:

(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) Within thirty days after the notice is received, the person incurring the penalty may apply in writing to the department for remission or mitigation of such penalty. Upon receipt of the application, the department or local government may remit or mitigate the penalty upon whatever terms the department or local government in its discretion deems proper. 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.
Sec. 40. RCW 90.58.560 and 1995 c 403 s 638 are each amended to read as follows:

(1) Except as provided in RCW 43.05.060 through 43.05.080 and 43.05.150, a person who violates RCW 90.58.550, or any rule adopted thereunder, is subject to a penalty in an amount of up to five 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 provided for in this section.

(2) The penalty 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 penalty from the director or the director's representative describing such violation with reasonable particularity. ((The director or the director's representative may, upon written application therefor received within fifteen days after notice imposing any penalty is received by the person incurring the penalty, and when deemed to carry out the purposes of this chapter, remit or mitigate any penalty provided for in this section upon such terms as he or she deems proper, and shall have authority to ascertain the facts upon all such applications in such manner and under such regulations as he or she may deem proper.))

(3) Any person incurring any penalty under this section may appeal the penalty to the hearings board as provided for in chapter 43.21B RCW. Such appeals shall be filed within thirty days from the date of receipt of ((notice imposing any)) the penalty ((unless an application for remission or mitigation is made to the department. When an application for remission or mitigation is made, such appeals shall be filed within thirty days of receipt of notice from the director or the director's representative setting forth the disposition of the application)). Any penalty imposed under this section shall become due and payable thirty days after receipt of a notice imposing the same unless ((application for remission or mitigation is made or)) an appeal is filed. ((When an application for remission or mitigation is made, any penalty incurred hereunder shall become due and payable thirty days after receipt of notice setting forth the disposition of the))
application unless an appeal is filed from such disposition.)

Whenever an appeal of any penalty incurred under this section is filed, the penalty shall become due and payable only upon completion of all review proceedings and the issuance of a final order confirming the penalty in whole or in part.

(4) If the amount of any penalty is not paid to the department within thirty days after it becomes due and payable, the attorney general, upon the request of the director, shall bring an action in the name of the state of Washington in the superior court of Thurston county or of any county in which such violator may do business, to recover such penalty. In all such actions the procedure and rules of evidence shall be the same as an ordinary civil action except as otherwise provided in this chapter ((provided)). All penalties recovered under this section shall be paid into the state treasury and credited to the general fund.

NEW SECTION. Sec. 41. The following acts or parts of acts are each repealed:

(1) RCW 43.21B.190 (Judicial review--Appeal from board's order) and 2004 c 204 s 2, 1995 c 382 s 4, 1994 c 253 s 7, 1988 c 202 s 43, & 1970 ex.s. c 62 s 49;

(2) RCW 76.09.210 (Forest practices appeals board--Created--Membership--Terms--Vacancies--Removal) and 1979 ex.s. c 47 s 4 & 1974 ex.s. c 137 s 21;

(3) RCW 76.09.220 (Forest practices appeals board--Compensation--Travel expenses--Chair--Office--Quorum--Powers and duties--Jurisdiction--Review) and 2007 c 480 s 8, 2003 c 393 s 20, 1999 sp.s. c 4 s 902, & 1999 c 90 s 1;

(4) RCW 76.09.230 (Forest practices appeals board--Mediation--Appeal procedure--Judicial review) and 1994 c 253 s 9, 1992 c 52 s 23, 1989 c 175 s 165, & 1974 ex.s. c 137 s 23;

(5) RCW 77.55.301 (Hydraulic appeals board--Members--Jurisdiction--Procedures) and 2005 c 146 s 801, 2003 c 393 s 21, 2000 c 107 s 20, 1996 c 276 s 2, 1993 sp.s. c 2 s 37, 1989 c 175 s 160, 1988 c 272 s 3, 1988 c 36 s 37, & 1986 c 173 s 4; and

(6) RCW 77.55.311 (Hydraulic appeals board--Procedures) and 2005 c 146 s 802, 1995 c 382 s 7, 1989 c 175 s 161, & 1986 c 173 s 5.
NEW SECTION.  Sec. 42.  (1) This act applies prospectively only and not retroactively.  It applies only to appeals that are commenced on or after the effective date of this section.  The repeals in section 41 of this act do not affect any existing right acquired or liability or obligation incurred under the statutes repealed or under any rule or order adopted under those statutes nor do they affect any proceeding instituted under them.

(2) All pending cases before the forest practices appeals board and the hydraulics appeals board shall be continued and acted upon by those boards.  All existing rules of the forest practices appeals board shall remain in effect and be used by the pollution control hearings board until the pollution control hearings board adopts superseding rules for forest practices appeals.

NEW SECTION.  Sec. 43.  A new section is added to chapter 36.70A RCW to read as follows:

(1) The powers, duties, and functions of the growth management hearings board are hereby transferred to the environmental and land use hearings office.

(2)(a) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the growth management hearings board shall be delivered to the custody of the environmental and land use hearings office.  All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the growth management hearings board shall be made available to the environmental and land use hearings office.  All funds, credits, or other assets held by the growth management hearings board shall be assigned to the environmental and land use hearings office.

(b) Any appropriations made to the growth management hearings board shall, on the effective date of this section, be transferred and credited to the environmental and land use hearings office.

(c) If any question arises as to the transfer of any personnel, funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the director of financial management shall make a determination as to the proper allocation and certify the same to the state agencies concerned.
(3) All employees of the growth management hearings board are transferred to the jurisdiction of the environmental and land use hearings office. All employees classified under chapter 41.06 RCW, the state civil service law, are assigned to the environmental and land use hearings office to perform their usual duties upon the same terms as formerly, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing state civil service.

(4) All existing rules and all pending cases before the growth management hearings board shall be continued and acted upon by the growth management hearings board located within the environmental and land use hearings office. All pending business, existing contracts, and obligations shall remain in full force and shall be performed by the environmental and land use hearings office.

(5) The transfer of the powers, duties, functions, and personnel of the growth management hearings board shall not affect the validity of any act performed before the effective date of this section.

(6) If apportionments of budgeted funds are required because of the transfers directed by this section, the director of financial management shall certify the apportionments to the agencies affected, the state auditor, and the state treasurer. Each of these shall make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with the certification.

NEW SECTION. Sec. 44. (1) Sections 1, 3, 5, 7, 9 through 14, and 16 through 42 of this act take effect July 1, 2010.

(2) Sections 2, 4, 6, 15, 43, and 46 of this act take effect July 1, 2011. The chief executive officer of the environmental hearings office may take the necessary steps to ensure that these sections are implemented on their effective date.

(3) Section 8 of this act takes effect June 30, 2019.

NEW SECTION. Sec. 45. (1) Sections 3 and 5 of this act expire July 1, 2011.

(2) Section 7 of this act expires June 30, 2019.

NEW SECTION. Sec. 46. The following acts or parts of acts are each repealed:
(1) RCW 43.21L.005 (Purpose) and 2003 c 393 s 1;
(2) RCW 43.21L.010 (Definitions) and 2003 c 393 s 2;
(3) RCW 43.21L.020 (Exclusive review process--Exception--Procedural rules) and 2003 c 393 s 3;
(4) RCW 43.21L.030 (Designation as qualifying project--Request for determination--Duties of office of permit assistance) and 2003 c 393 s 4;
(5) RCW 43.21L.040 (Environmental and land use hearings board) and 2003 c 393 s 5;
(6) RCW 43.21L.050 (Review proceedings--Commencement--Rules for filing and service) and 2003 c 393 s 6;
(7) RCW 43.21L.060 (Standing) and 2003 c 393 s 7;
(8) RCW 43.21L.070 (Petition requirements) and 2003 c 393 s 8;
(9) RCW 43.21L.080 (Affidavit certifying applications for permits--Initial hearing on jurisdictional and preliminary matters) and 2003 c 393 s 9;
(10) RCW 43.21L.090 (Expedited review of petitions) and 2003 c 393 s 10;
(11) RCW 43.21L.100 (Stay or suspension of board action) and 2003 c 393 s 11;
(12) RCW 43.21L.110 (Decision record--Certified copy to board--Costs) and 2003 c 393 s 12;
(13) RCW 43.21L.120 (Board review of permit decisions--Correction of errors and omissions--Prettrial discovery--Requests for records under chapter 42.56 RCW) and 2005 c 274 s 295 & 2003 c 393 s 13;
(14) RCW 43.21L.130 (Standards for granting relief--Action by board) and 2003 c 393 s 14;
(15) RCW 43.21L.140 (Judicial review) and 2003 c 393 s 15;
(16) RCW 43.21L.900 (Implementation--2003 c 393) and 2003 c 393 s 24; and
(17) RCW 43.21L.901 (Effective date--2003 c 393) and 2003 c 393 s 25.

Passed by the House March 9, 2010.
Passed by the Senate March 8, 2010.
Approved by the Governor March 25, 2010.
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