
HOUSE BILL 1029

State of Washington

66th Legislature

2019 Regular Session

By Representatives Walsh, Irwin, and Young

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1 AN ACT Relating to processes and criteria for the consideration
2 of environmental impacts under certain environmental laws; amending
3 RCW 90.48.260 and 43.21C.110; and creating a new section.

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

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

7 (1) The department of ecology is hereby designated as the state
8 water pollution control agency for all purposes of the federal clean
9 water act as it exists on February 4, 1987, and is hereby authorized
10 to participate fully in the programs of the act as well as to take
11 all action necessary to secure to the state the benefits and to meet
12 the requirements of that act. With regard to the national estuary
13 program established by section 320 of that act, the department shall
14 exercise its responsibility jointly with the Puget Sound partnership,
15 created in RCW 90.71.210. The department of ecology may delegate its
16 authority under this chapter, including its national pollutant
17 discharge elimination permit system authority and duties regarding
18 animal feeding operations and concentrated animal feeding operations,
19 to the department of agriculture through a memorandum of
20 understanding. Until any such delegation receives federal approval,
21 the department of agriculture's adoption or issuance of animal

1 feeding operation and concentrated animal feeding operation rules,
2 permits, programs, and directives pertaining to water quality shall
3 be accomplished after reaching agreement with the director of the
4 department of ecology. Adoption or issuance and implementation shall
5 be accomplished so that compliance with such animal feeding operation
6 and concentrated animal feeding operation rules, permits, programs,
7 and directives will achieve compliance with all federal and state
8 water pollution control laws. The powers granted herein include,
9 among others, and notwithstanding any other provisions of this
10 chapter or otherwise, the following:

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

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

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

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

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

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

11 (b) Issue an updated national pollutant discharge elimination
12 system municipal stormwater general permit applicable to western
13 Washington municipalities for any permit first issued on January 17,
14 2007. An updated permit issued under this subsection shall become
15 effective beginning August 1, 2013.

16 (i) Provisions of the updated permit issued under (b) of this
17 subsection relating to new requirements for low-impact development
18 and review and revision of local development codes, rules, standards,
19 or other enforceable documents to incorporate low-impact development
20 principles must be implemented simultaneously. These requirements may
21 go into effect no earlier than December 31, 2016, or the time of the
22 scheduled update under RCW 36.70A.130(5), as existing on July 10,
23 2012, whichever is later.

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

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

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

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

1 (5) The following requirements apply to the decision by the
2 department to grant or deny a water quality certification under
3 section 401 of the federal clean water act, as it exists on January
4 1, 2019:

5 (a) Certification must be based upon the applicable provisions of
6 sections 301, 302, 303, 306, and 307 of the federal clean water act;

7 (b) The department shall consider only the discharges by the
8 applicant that result from the federally licensed or permitted
9 activity of the applicant; and

10 (c) The department may not consider environmental effects that
11 are solely within the jurisdiction of the federal government to
12 address or are otherwise not within the jurisdiction of the state to
13 address.

14 (6) The department shall adopt rules pertaining to water quality
15 certifications under section 401 of the federal clean water act, as
16 it exists on January 1, 2019. In the rules adopted under this
17 subsection (6), the department shall:

18 (a) Identify clearly the procedures through which a water quality
19 certification may be requested from the department;

20 (b) Identify clearly the criteria by which a water quality
21 certification request will be evaluated by the department;

22 (c) Establish protocols for department review of water quality
23 certification requests that include, but are not limited to:

24 (i) On receipt of a request for certification, the department
25 shall immediately notify the administrator of the United States
26 environmental protection agency of the request; and

27 (ii) Within ninety days of receipt of a request for
28 certification, the department must identify in writing all specific
29 additional materials or information that are necessary to make a
30 final decision on such a request; and

31 (iii) Providing that the grounds for a decision by the department
32 must be set forth in writing to the applicant.

33 (7) Nothing in this section precludes the evaluation, under the
34 standards of subsection (5) of this section and the rules adopted by
35 the department under subsection (6) of this section, of water quality
36 certification requests associated with activities for which the
37 department has previously granted or denied a water quality
38 certification request.

1 **Sec. 2.** RCW 43.21C.110 and 2012 1st sp.s. c 1 s 311 are each
2 amended to read as follows:

3 It shall be the duty and function of the department of ecology:

4 (1) To adopt and amend rules of interpretation and implementation
5 of this chapter, subject to the requirements of chapter 34.05 RCW,
6 for the purpose of providing uniform rules and guidelines to all
7 branches of government including state agencies, political
8 subdivisions, public and municipal corporations, and counties. The
9 proposed rules shall be subject to full public hearings requirements
10 associated with rule adoption. Suggestions for modifications of the
11 proposed rules shall be considered on their merits, and the
12 department shall have the authority and responsibility for full and
13 appropriate independent adoption of rules, assuring consistency with
14 this chapter as amended and with the preservation of protections
15 afforded by this chapter. The rule-making powers authorized in this
16 section shall include, but shall not be limited to, the following
17 phases of interpretation and implementation of this chapter:

18 (a) Categories of governmental actions which are not to be
19 considered as potential major actions significantly affecting the
20 quality of the environment, including categories pertaining to
21 applications for water right permits pursuant to chapters 90.03 and
22 90.44 RCW. The types of actions included as categorical exemptions in
23 the rules shall be limited to those types which are not major actions
24 significantly affecting the quality of the environment. The rules
25 shall provide for certain circumstances where actions which
26 potentially are categorically exempt require environmental review. An
27 action that is categorically exempt under the rules adopted by the
28 department may not be conditioned or denied under this chapter.

29 (b) Rules for criteria and procedures applicable to the
30 determination of when an act of a branch of government is a major
31 action significantly affecting the quality of the environment for
32 which a detailed statement is required to be prepared pursuant to RCW
33 43.21C.030.

34 (c) Rules and procedures applicable to the preparation of
35 detailed statements and other environmental documents, including but
36 not limited to rules for timing of environmental review, obtaining
37 comments, data and other information, and providing for and
38 determining areas of public participation which shall include the
39 scope and review of draft environmental impact statements.

1 (d) Scope of coverage and contents of detailed statements
2 assuring that such statements are simple, uniform, and as short as
3 practicable; statements are required to analyze only reasonable
4 alternatives and probable adverse environmental impacts which are
5 significant, and may analyze beneficial impacts. Such statements and
6 the other environmental documents prepared under this chapter may not
7 analyze probable adverse environmental impacts that are based solely
8 on impacts from activities that are not within the jurisdiction of
9 the state to regulate, including impacts based on the end use of a
10 product that occurs outside of state borders.

11 (e) Rules and procedures for public notification of actions taken
12 and documents prepared.

13 (f) Definition of terms relevant to the implementation of this
14 chapter including the establishment of a list of elements of the
15 environment. Analysis of environmental considerations under RCW
16 43.21C.030(2) may be required only for those subjects listed as
17 elements of the environment (or portions thereof). The list of
18 elements of the environment shall consist of the "natural" and
19 "built" environment. The elements of the built environment shall
20 consist of public services and utilities (such as water, sewer,
21 schools, fire and police protection), transportation, environmental
22 health (such as explosive materials and toxic waste), and land and
23 shoreline use (including housing, and a description of the
24 relationships with land use and shoreline plans and designations,
25 including population).

26 (g) Rules for determining the obligations and powers under this
27 chapter of two or more branches of government involved in the same
28 project significantly affecting the quality of the environment.

29 (h) Methods to assure adequate public awareness of the
30 preparation and issuance of detailed statements required by RCW
31 43.21C.030(2)(c).

32 (i) To prepare rules for projects setting forth the time limits
33 within which the governmental entity responsible for the action shall
34 comply with the provisions of this chapter.

35 (j) Rules for utilization of a detailed statement for more than
36 one action and rules improving environmental analysis of nonproject
37 proposals and encouraging better interagency coordination and
38 integration between this chapter and other environmental laws.

39 (k) Rules relating to actions which shall be exempt from the
40 provisions of this chapter in situations of emergency.

1 (1) Rules relating to the use of environmental documents in
2 planning and decision making and the implementation of the
3 substantive policies and requirements of this chapter, including
4 procedures for appeals under this chapter.

5 (m) Rules and procedures that provide for the integration of
6 environmental review with project review as provided in RCW
7 43.21C.240. The rules and procedures shall be jointly developed with
8 the department of commerce and shall be applicable to the preparation
9 of environmental documents for actions in counties, cities, and towns
10 planning under RCW 36.70A.040. The rules and procedures shall also
11 include procedures and criteria to analyze planned actions under RCW
12 43.21C.440 and revisions to the rules adopted under this section to
13 ensure that they are compatible with the requirements and
14 authorizations of chapter 347, Laws of 1995, as amended by chapter
15 429, Laws of 1997. Ordinances or procedures adopted by a county,
16 city, or town to implement the provisions of chapter 347, Laws of
17 1995 prior to the effective date of rules adopted under this
18 subsection (1)(m) shall continue to be effective until the adoption
19 of any new or revised ordinances or procedures that may be required.
20 If any revisions are required as a result of rules adopted under this
21 subsection (1)(m), those revisions shall be made within the time
22 limits specified in RCW 43.21C.120.

23 (2) In exercising its powers, functions, and duties under this
24 section, the department may:

25 (a) Consult with the state agencies and with representatives of
26 science, industry, agriculture, labor, conservation organizations,
27 state and local governments, and other groups, as it deems advisable;
28 and

29 (b) Utilize, to the fullest extent possible, the services,
30 facilities, and information (including statistical information) of
31 public and private agencies, organizations, and individuals, in order
32 to avoid duplication of effort and expense, overlap, or conflict with
33 similar activities authorized by law and performed by established
34 agencies.

35 (3) Rules adopted pursuant to this section shall be subject to
36 the review procedures of chapter 34.05 RCW.

37 NEW SECTION. **Sec. 3.** If any part of this act is found to be in
38 conflict with federal requirements that are a prescribed condition to
39 the allocation of federal funds to the state, the conflicting part of

1 this act is inoperative solely to the extent of the conflict and with
2 respect to the agencies directly affected, and this finding does not
3 affect the operation of the remainder of this act in its application
4 to the agencies concerned. Rules adopted under this act must meet
5 federal requirements that are a necessary condition to the receipt of
6 federal funds by the state.

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