

CERTIFICATION OF ENROLLMENT
SUBSTITUTE SENATE BILL 5504

61st Legislature
2009 Regular Session

Passed by the Senate April 19, 2009
YEAS 45 NAYS 2

President of the Senate

Passed by the House April 9, 2009
YEAS 98 NAYS 0

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5504** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5504

AS AMENDED BY THE HOUSE

Passed Legislature - 2009 Regular Session

State of Washington 61st Legislature 2009 Regular Session

By Senate Environment, Water & Energy (originally sponsored by Senators Fraser, Honeyford, Rockefeller, Marr, Kline, and Morton; by request of Department of Ecology)

READ FIRST TIME 02/11/09.

1 AN ACT Relating to reclaimed water permitting; amending RCW
2 90.46.010, 90.46.015, 90.46.040, 90.46.080, 90.46.120, 90.48.465,
3 43.21B.110, 43.21B.300, and 43.21B.310; adding new sections to chapter
4 90.46 RCW; creating new sections; repealing RCW 90.46.060; and
5 prescribing penalties.

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

7 **Sec. 1.** RCW 90.46.010 and 2006 c 279 s 4 are each amended to read
8 as follows:

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

11 (1) "Agricultural industrial process water" means water that has
12 been used for the purpose of agricultural processing and has been
13 adequately and reliably treated, so that as a result of that treatment,
14 it is suitable for other agricultural water use.

15 (2) "Agricultural processing" means the processing of crops or milk
16 to produce a product primarily for wholesale or retail sale for human
17 or animal consumption, including but not limited to potato, fruit,
18 vegetable, and grain processing.

1 (3) "Agricultural water use" means the use of water for irrigation
2 and other uses related to the production of agricultural products.
3 These uses include, but are not limited to, construction, operation,
4 and maintenance of agricultural facilities and livestock operations at
5 farms, ranches, dairies, and nurseries. Examples of these uses
6 include, but are not limited to, dust control, temperature control, and
7 fire control.

8 ~~((("Beneficial use" means the use of reclaimed water, that has
9 been transported from the point of production to the point of use
10 without an intervening discharge to the waters of the state, for a
11 beneficial purpose.~~

12 ~~(+))~~ (5) "Constructed beneficial use wetlands" means those wetlands
13 intentionally constructed on nonwetland sites to produce or ~~((replace))~~
14 create natural wetland functions and values. ~~((Constructed beneficial
15 use wetlands are considered "waters of the state."~~

16 ~~(+))~~ (5) "Constructed treatment wetlands" means ~~((those wetlands))~~
17 wetland-like impoundments intentionally constructed on nonwetland sites
18 and managed for the primary purpose of ~~((polishing))~~ further treatment
19 or retention of reclaimed water ~~((or aesthetics))~~ as distinct from
20 creating natural wetland functions and values. ~~((Constructed treatment
21 wetlands are considered part of the collection and treatment system and
22 are not considered "waters of the state."~~

23 ~~(+))~~ (6) "Direct groundwater recharge" means the controlled
24 subsurface addition of water directly ~~((to the groundwater basin that
25 results in the replenishment of))~~ into groundwater for the purpose of
26 replenishing groundwater.

27 ~~((+))~~ (7) "Greywater or gray water" means ~~((wastewater having the
28 consistency and strength of residential))~~ domestic type ~~((wastewater.
29 Greywater includes wastewater))~~ flows from bathtubs, showers, bathroom
30 sinks, washing machines, dishwashers, and kitchen or utility sinks~~((
31 showers, and laundry fixtures, but))~~. Gray water does not include flow
32 from a toilet or urinal ~~((waters))~~.

33 ~~((+))~~ ~~("Groundwater recharge")~~ (8) "State drinking water contaminant
34 criteria" means the contaminant criteria found in the drinking water
35 quality standards adopted by the state board of health pursuant to
36 chapter 43.20 RCW and the department of health pursuant to chapter
37 70.119A RCW.

1 ~~((+10+))~~ (9) "Industrial reuse water" means water that has been
2 used for the purpose of industrial processing and has been adequately
3 and reliably treated so that, as a result of that treatment, it is
4 suitable for other uses.

5 ~~((+11+))~~ (10) "Land application" means use of reclaimed water as
6 permitted under this chapter for the purpose of irrigation or watering
7 of landscape ~~((enhancement for residential, business, and governmental~~
8 ~~purposes))~~ vegetation.

9 ~~((+12+))~~ (11) "Person" means any state, individual, public or
10 private corporation, political subdivision, governmental subdivision,
11 governmental agency, municipality, copartnership, association, firm,
12 trust estate, or any other legal entity whatever.

13 ~~((+13+))~~ (12) "Planned groundwater recharge project" means any
14 reclaimed water project designed for the purpose of recharging
15 groundwater ~~((, via direct recharge or surface percolation))~~.

16 ~~((+14+))~~ (13) "Reclaimed water" means ~~((effluent))~~ water derived in
17 any part from ~~((sewage from a))~~ wastewater ~~((treatment system))~~ with a
18 domestic wastewater component that has been adequately and reliably
19 treated, so that ~~((as a result of that treatment, it is suitable for a~~
20 ~~beneficial use or a controlled use that would not otherwise occur and~~
21 ~~is no longer considered wastewater.~~

22 ~~(15) "Reclamation criteria" means the criteria set forth in the~~
23 ~~water reclamation and reuse interim standards and subsequent revisions~~
24 ~~adopted by the department of ecology and the department of health))~~ it
25 can be used for beneficial purposes. Reclaimed water is not considered
26 a wastewater.

27 (14) "Wastewater" means water-carried wastes from residences,
28 buildings, industrial and commercial establishments, or other places,
29 together with such groundwater infiltration and inflow as may be
30 present.

31 ~~((+16) "Sewage"))~~ (15) "Domestic wastewater" means ((water-carried
32 human wastes from residences, buildings, industrial and commercial
33 establishments, or other places, together with such groundwater
34 infiltration, surface waters, or industrial wastewater as may be
35 present)) wastewater from greywater, toilet, or urinal sources.

36 ~~((+17+))~~ (16) "Streamflow or surface water augmentation" means the
37 ~~((discharge))~~ intentional use of reclaimed water ~~((to))~~ for rivers and

1 streams of the state or other surface water bodies, (~~but not~~
2 ~~wetlands~~) for the purpose of increasing volumes.

3 ((~~+18~~)) (17) "Surface percolation" means the controlled
4 application of water to the ground surface or to unsaturated soil for
5 the purpose of replenishing groundwater.

6 ((~~+19~~)) (18) "User" means any person who uses reclaimed water.

7 (~~(+20)~~) ~~"Wastewater" means water and wastes discharged from homes,~~
8 ~~businesses, and industry to the sewer system.~~

9 ~~(+21)~~) (19) "Wetland or wetlands" means areas that are inundated or
10 saturated by surface water or groundwater at a frequency and duration
11 sufficient to support, and that under normal circumstances do support,
12 a prevalence of vegetation typically adapted to life in saturated soil
13 conditions. Wetlands generally include swamps, marshes, bogs, and
14 similar areas. Wetlands regulated under this chapter shall be
15 delineated in accordance with the manual adopted by the department of
16 ecology pursuant to RCW 90.58.380.

17 (20) "Lead agency" means either the department of health or the
18 department of ecology that has been designated by rule as the agency
19 that will coordinate, review, issue, and enforce a reclaimed water
20 permit issued under this chapter.

21 (21) "Nonlead agency" means either the department of health or the
22 department of ecology, whichever is not the lead agency for purposes of
23 this chapter.

24 **Sec. 2.** RCW 90.46.015 and 2006 c 279 s 1 are each amended to read
25 as follows:

26 (1) The department of ecology shall, in coordination with the
27 department of health, adopt rules for reclaimed water use consistent
28 with this chapter. The rules must address all aspects of reclaimed
29 water use, including commercial and industrial uses, land applications,
30 direct groundwater recharge, wetland discharge, surface percolation,
31 constructed wetlands, and streamflow or surface water augmentation.
32 The department of health shall, in coordination with the department of
33 ecology, adopt rules for greywater reuse. The rules must also
34 designate whether the department of ecology or the department of health
35 will be the lead (~~permitting or regulatory~~) agency responsible for a
36 particular aspect of reclaimed water use. In developing the rules, the

1 departments of health and ecology shall amend or rescind any existing
2 rules on reclaimed water in conflict with the new rules.

3 (2) All rules required to be adopted pursuant to this section must
4 be completed no later than December 31, 2010, although the department
5 of ecology is encouraged to adopt the final rules as soon as possible.

6 (3) The department of ecology must consult with the advisory
7 committee created under RCW 90.46.050 in all aspects of rule
8 development required under this section.

9 **Sec. 3.** RCW 90.46.040 and 2006 c 279 s 6 are each amended to read
10 as follows:

11 (1)((+a)) The department of ecology shall, in coordination with
12 the department of health, adopt a single set of standards, procedures,
13 and guidelines, on or before August 1, 1993, for land applications of
14 reclaimed water.

15 ((+b)) (2) Standards adopted under this section are superseded by
16 any rules adopted by the department of ecology pursuant to RCW
17 90.46.015 as they relate to the land application of reclaimed water.

18 ((-2) A permit is required for any land application of reclaimed
19 water. The department of ecology may issue a reclaimed water permit
20 under chapter 90.48 RCW to the generator of reclaimed water who may
21 then distribute the water, subject to provisions in the permit
22 governing the location, rate, water quality, and purpose of use. The
23 department of ecology shall not issue more than one permit for any
24 individual land application of reclaimed water to a single generator.

25 (-3) In cases where the department of ecology determines, in land
26 applications of reclaimed water, that a significant risk to the public
27 health exists, the department shall refer the application to the
28 department of health for review and consultation and the department of
29 health may require fees appropriate for review and consultation from
30 the applicant pursuant to RCW 43.70.250.

31 (-4) A permit under this section for use of reclaimed water may be
32 issued only to:

- 33 (-a) A municipal, quasi-municipal, or other governmental entity;
- 34 (-b) A private utility as defined under RCW 36.94.010; or
- 35 (-c) The holder of a waste discharge permit issued under chapter
36 90.48 RCW.

1 ~~(5) The authority and duties created in this section are in~~
2 ~~addition to any authority and duties already provided in law. Nothing~~
3 ~~in this section limits the powers of the state or any political~~
4 ~~subdivision to exercise such authority.~~

5 ~~(6) Before deciding whether to issue a permit under this section to~~
6 ~~a private utility, the department of ecology may require information~~
7 ~~that is reasonable and necessary to determine whether the private~~
8 ~~utility has the financial and other resources to ensure the~~
9 ~~reliability, continuity, and supervision of the reclaimed water~~
10 ~~facility.))~~

11 **Sec. 4.** RCW 90.46.080 and 2006 c 279 s 9 are each amended to read
12 as follows:

13 (1) Except as otherwise provided in this section, reclaimed water
14 may be beneficially used for surface percolation provided the reclaimed
15 water meets the ~~((groundwater recharge))~~ state drinking water
16 contaminant criteria as measured in groundwater beneath or down
17 gradient of the recharge project site, and has been incorporated into
18 a sewer or water comprehensive plan, as applicable, adopted by the
19 applicable local government and approved by the department of health or
20 department of ecology as applicable.

21 (2) If the state ~~((groundwater recharge))~~ drinking water
22 contaminant criteria ~~((as defined by RCW 90.46.010))~~ do not contain a
23 standard for a constituent or contaminant, the department of ecology
24 shall establish a discharge limit consistent with the goals of this
25 chapter, except as otherwise provided in this section.

26 (3) Except as otherwise provided in this section, reclaimed water
27 that does not meet the ~~((groundwater recharge))~~ state drinking water
28 contaminant criteria may be beneficially used for surface percolation
29 where the department of ecology, in consultation with the department of
30 health, has specifically authorized such use at such lower standard.

31 (4) The provisions of this section are superseded by any rules
32 adopted by the department of ecology pursuant to RCW 90.46.015 as they
33 relate to surface percolation.

34 **Sec. 5.** RCW 90.46.120 and 2007 c 445 s 3 are each amended to read
35 as follows:

36 (1) The owner of a wastewater treatment facility that is reclaiming

1 water with a permit issued under this chapter has the exclusive right
2 to any reclaimed water generated by the wastewater treatment facility.
3 Use, distribution, storage, and the recovery from (~~(aquifer)~~) storage
4 of reclaimed water (~~((by the owner of the wastewater treatment~~
5 ~~facility))~~ permitted under this chapter is exempt from the permit
6 requirements of RCW 90.03.250 and 90.44.060, provided that a permit for
7 recovery of reclaimed water from aquifer storage (~~(and recovery)~~) shall
8 be reviewed under the standards established under RCW 90.03.370(2) for
9 aquifer storage and recovery projects. Revenues derived from the
10 reclaimed water facility shall be used only to offset the cost of
11 operation of the wastewater utility fund or other applicable source of
12 systemwide funding.

13 (2) If the proposed use (~~(or uses)~~) of reclaimed water (~~(are~~
14 ~~intended)~~) is to augment or replace potable water supplies or to create
15 the potential for the development of an additional new potable water
16 (~~((supplies, such use or uses shall be considered in the development of~~
17 ~~any regional water supply plan or plans addressing potable water supply~~
18 ~~service by multiple water purveyors. Such water supply plans include~~
19 ~~plans developed by multiple jurisdictions under the relevant provisions~~
20 ~~of chapters 43.20, 70.116, 90.44, and 90.82 RCW, and the water supply~~
21 ~~provisions under the utility element of chapter 36.70A RCW. The method~~
22 ~~by which such plans are approved shall remain unchanged. The owner of~~
23 ~~a wastewater treatment facility that proposes to reclaim water shall be~~
24 ~~included as a participant in the development of such regional water~~
25 ~~supply plan or plans))~~ supply, then regional water supply plans, or any
26 other potable water supply plans prepared by multiple water purveyors,
27 must consider the proposed use of the reclaimed water as they are
28 developed or updated.

29 (a) Regional water supply plans include those adopted under state
30 board of health laws (chapter 43.20 RCW), the public water system
31 coordination act of 1977 (chapter 70.116 RCW), groundwater protection
32 laws (chapter 90.44 RCW), and the watershed planning act (chapter 90.82
33 RCW).

34 (b) The requirement to consider the use of reclaimed water does not
35 change the plan approval process established under these statutes.

36 (c) When regional water supply plans are being developed, the
37 owners of wastewater treatment facilities that produce or propose to

1 produce reclaimed water for use within the planning area must be
2 included in the planning process.

3 ~~(3) ((Where opportunities for the use of reclaimed water exist~~
4 ~~within the period of time addressed by a water system plan, a water~~
5 ~~supply plan, or a coordinated water system plan developed))~~ When
6 reclaimed water is available or is proposed for use under a water
7 supply or wastewater plan developed under chapter((s)) 43.20, 70.116,
8 90.44, ((and)) 90.48, or 90.82 RCW((, and the water supply provisions
9 ~~under the utility element of chapter 36.70A RCW,))~~ these plans must be
10 ~~((developed and))~~ coordinated to ensure that opportunities for
11 reclaimed water are evaluated. The requirements of this subsection (3)
12 do not apply to water system plans developed under chapter 43.20 RCW
13 for utilities serving less than one thousand service connections.

14 (4) The provisions of any plan for reclaimed water, developed under
15 the authorities in subsections (2) and (3) of this section, should be
16 included by a city, town, or county in reviewing provisions for water
17 supplies in a proposed short plat, short subdivision, or subdivision
18 under chapter 58.17 RCW, where reclaimed water supplies may be proposed
19 for nonpotable purposes in the short plat, short subdivision, or
20 subdivision.

21 (5) By November 30, 2009, the department of ecology shall review
22 comments from the reclaimed water advisory committee under RCW
23 90.46.050 and the reclaimed water and water rights advisory committee
24 under the direction of the department of ecology and submit a
25 recommendation to the legislature on the impairment requirements and
26 standards for reclaimed water. The department of ecology shall also
27 provide a report to the legislature that describes the opinions of the
28 stakeholders on the impairment requirements and standards for reclaimed
29 water.

30 **Sec. 6.** RCW 90.48.465 and 2002 c 361 s 2 are each amended to read
31 as follows:

32 (1) The department shall establish annual fees to collect expenses
33 for issuing and administering each class of permits under RCW
34 90.48.160, 90.48.162, and 90.48.260. An initial fee schedule shall be
35 established by rule and be adjusted no more often than once every two
36 years. This fee schedule shall apply to all permits, regardless of
37 date of issuance, and fees shall be assessed prospectively. All fees

1 charged shall be based on factors relating to the complexity of permit
2 issuance and compliance and may be based on pollutant loading and
3 toxicity and be designed to encourage recycling and the reduction of
4 the quantity of pollutants. Fees shall be established in amounts to
5 fully recover and not to exceed expenses incurred by the department in
6 processing permit applications and modifications, monitoring and
7 evaluating compliance with permits, conducting inspections, securing
8 laboratory analysis of samples taken during inspections, reviewing
9 plans and documents directly related to operations of permittees,
10 overseeing performance of delegated pretreatment programs, and
11 supporting the overhead expenses that are directly related to these
12 activities.

13 (2) The annual fee paid by a municipality, as defined in 33 U.S.C.
14 Sec. 1362, for all domestic wastewater facility permits issued under
15 RCW 90.48.162 and 90.48.260 shall not exceed the total of a maximum of
16 fifteen cents per month per residence or residential equivalent
17 contributing to the municipality's wastewater system.

18 (3) The department shall ensure that indirect dischargers do not
19 pay twice for the administrative expense of a permit. Accordingly,
20 administrative expenses for permits issued by a municipality under RCW
21 90.48.165 are not recoverable by the department.

22 (4) In establishing fees, the department shall consider the
23 economic impact of fees on small dischargers and the economic impact of
24 fees on public entities required to obtain permits for storm water
25 runoff and shall provide appropriate adjustments.

26 (5) The fee for an individual permit issued for a dairy farm as
27 defined under chapter 90.64 RCW shall be fifty cents per animal unit up
28 to one thousand two hundred fourteen dollars for fiscal year 1999. The
29 fee for a general permit issued for a dairy farm as defined under
30 chapter 90.64 RCW shall be fifty cents per animal unit up to eight
31 hundred fifty dollars for fiscal year 1999. Thereafter, these fees may
32 rise in accordance with the fiscal growth factor as provided in chapter
33 43.135 RCW.

34 (6) The fee for a general permit or an individual permit developed
35 solely as a result of the federal court of appeals decision in
36 *Headwaters, Inc. v. Talent Irrigation District*, 243 F.3rd 526 (9th Cir.
37 2001) is limited, until June 30, 2003, to a maximum of three hundred
38 dollars. Such a permit is required only, and as long as, the

1 interpretation of this court decision is not overturned or modified by
2 future court rulings, administrative rule making, or clarification of
3 scope by the United States environmental protection agency or
4 legislative action. In such a case the department shall take
5 appropriate action to rescind or modify these permits.

6 (7) All fees collected under this section shall be deposited in the
7 water quality permit account hereby created in the state treasury.
8 Moneys in the account may be appropriated only for purposes of
9 administering permits under section 9 of this act, RCW 90.48.160,
10 90.48.162, and 90.48.260.

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

16 NEW SECTION. **Sec. 7.** LEAD AGENCY DUTIES. (1) The department of
17 ecology and the department of health shall have authority to carry out
18 all the provisions of this chapter including, but not limited to,
19 permitting and enforcement. Only the department of ecology or the
20 department of health may act as a lead agency for purposes of this
21 chapter and will be established as such by rule. Enforcement of a
22 permit issued under this chapter shall be at the sole discretion of the
23 lead agency that issued the permit.

24 (2) All permit applications shall be referred to the nonlead agency
25 for review and consultation. The nonlead agency may choose to limit
26 the scope of its review.

27 (3) The authority and duties created in this chapter are in
28 addition to any authority and duties already provided in law. Nothing
29 in this chapter limits the powers of the state or any political
30 subdivision to exercise such authority.

31 NEW SECTION. **Sec. 8.** VIOLATIONS--INJUNCTIONS AND LEGAL
32 PROCEEDINGS AUTHORIZED. The lead agency, with the assistance of the
33 attorney general, is authorized to bring any appropriate action at law
34 or in equity, including action for injunctive relief, as may be
35 necessary to carry out the provisions of this chapter. The lead agency
36 may bring the action in the superior court of the county in which the

1 violation occurred or in the superior court of Thurston county. The
2 court may award reasonable attorneys' fees for the cost of the attorney
3 general's office in representing the lead agency.

4 NEW SECTION. **Sec. 9.** OPERATING PERMIT REQUIRED. (1) Any person
5 proposing to generate any type of reclaimed water for a use regulated
6 under this chapter shall obtain a permit from the lead agency prior to
7 distribution or use of that water. The permittee may then distribute
8 and use the water, subject to the provisions in the permit. The permit
9 must include provisions that protect human health and the environment.
10 At a minimum, the permit must:

- 11 (a) Assure adequate and reliable treatment; and
- 12 (b) Govern the water quality, location, rate, and purpose of use.
- 13 (2) A permit under this chapter may be issued only to:
 - 14 (a) A municipal, quasi-municipal, or other governmental entity;
 - 15 (b) A private utility as defined in RCW 36.94.010;
 - 16 (c) The holder of a waste disposal permit issued under chapter
17 90.48 RCW; or
 - 18 (d) The owner of an agricultural processing facility that is
19 generating agricultural industrial process water for agricultural use,
20 or the owner of an industrial facility that is generating industrial
21 process water for reuse.

22 (3) Before deciding whether to issue a permit under this section to
23 a private utility, the lead agency may require information that is
24 reasonable and necessary to determine whether the private utility has
25 the financial and other resources to ensure the reliability,
26 continuity, and supervision of the reclaimed water facility.

27 (4) Permits shall be issued for a fixed term specified by the rules
28 adopted under RCW 90.46.015. A permittee shall apply for permit
29 renewal prior to the end of the term. The rules adopted under RCW
30 90.46.015 shall specify the process of renewal, modification, change of
31 ownership, suspension, and termination.

32 (5) The lead agency may deny an application for a permit or modify,
33 suspend, or revoke a permit for good cause, including but not limited
34 to, any case in which it finds that the permit was obtained by fraud or
35 misrepresentation, or there is or has been a failure, refusal, or
36 inability to comply with the requirements of this chapter or the rules
37 adopted under this chapter.

1 (6) The lead agency shall provide for adequate public notice and
2 opportunity for review and comment on all initial permit applications
3 and renewal applications. Methods for providing notice may include
4 electronic mail, posting on the lead agency's internet site,
5 publication in a local newspaper, press releases, mailings, or other
6 means of notification the lead agency determines appropriate. The lead
7 agency shall also publicize notice of final permitting decisions.

8 (7) Any person aggrieved by a permitting decision has the right to
9 an adjudicative proceeding. An adjudicative proceeding conducted under
10 this subsection is governed by chapter 34.05 RCW. For any permit
11 decision for which the department of ecology is the lead agency under
12 this chapter, any appeal shall be in accordance with chapter 43.21B
13 RCW. For any permit decision for which department of health is the
14 lead agency under this chapter, any application for an adjudicative
15 proceeding must be in writing, state the basis for contesting the
16 action, include a copy of the decision, be served on and received by
17 the department of health within twenty-eight days of receipt of notice
18 of the final decision, and be served in a manner that shows proof of
19 receipt.

20 (8) Permit requirements for the distribution and use of greywater
21 will be established in rules adopted by the department of health under
22 RCW 90.46.015.

23 NEW SECTION. **Sec. 10.** AUTHORITY TO ENTER PREMISES--SEARCH
24 WARRANTS. (1)(a) Except as otherwise provided in (b) of this
25 subsection, the lead agency or its designee shall have the right to
26 enter and inspect any property related to the purpose of the permit,
27 public or private, at reasonable times with prior notification in order
28 to determine compliance with laws and rules administered by the lead
29 agency. During such inspections, the lead agency shall have free and
30 unimpeded access to all data, facilities, and property involved in the
31 generation, distribution, and use of reclaimed water.

32 (b) The lead agency or its designee need not give prior
33 notification to enter property under (a) of this subsection if the
34 purpose of the entry is to ensure compliance by the permittee with a
35 prior order of the lead agency or if the lead agency or its designee
36 has reasonable cause to believe there is a violation of the law that
37 poses a serious threat to public health and safety or the environment.

1 (2) The lead agency or its designee may apply for an administrative
2 search warrant to a court of competent jurisdiction and an
3 administrative search warrant may issue where:

4 (a) The lead agency has attempted an inspection under this chapter
5 and access has been actually or constructively denied; or

6 (b) There is reasonable cause to believe that a violation of this
7 chapter or rules adopted under this chapter is occurring or has
8 occurred.

9 NEW SECTION. **Sec. 11.** PLANS, REPORTS, AND PROPOSED METHODS OF
10 OPERATION AND MAINTENANCE TO BE SUBMITTED TO DEPARTMENTS. All required
11 feasibility studies, planning documents, engineering reports, and plans
12 and specifications for the construction of new reclaimed water,
13 agricultural industrial process water, and industrial reuse water
14 facilities, including generation, distribution, and use facilities, or
15 for improvements or extensions to existing facilities, and the proposed
16 method of future operation and maintenance of said facility or
17 facilities, shall be submitted to and be approved by the lead agency,
18 before construction thereof may begin. No approval shall be given
19 until the lead agency is satisfied that the plans, reports, and
20 specifications and the methods of operation and maintenance submitted
21 are adequate to protect the quality of the water for the intended use
22 as provided for in this chapter and are adequate to protect public
23 health and safety as necessary.

24 NEW SECTION. **Sec. 12.** NOTICE OF DETERMINATION THAT VIOLATION HAS
25 OR WILL OCCUR--REPORT OF COMPLIANCE WITH DETERMINATION--ORDER OR
26 DIRECTIVE TO BE ISSUED--NOTICE. (1) When, in the opinion of the lead
27 agency, a person violates or creates a substantial potential to violate
28 this chapter, the lead agency shall notify the person of its
29 determination by registered mail. The determination shall not
30 constitute an appealable order or directive. Within thirty days from
31 the receipt of notice of such determination, the person shall file with
32 the lead agency a full report stating what steps have been and are
33 being taken to comply with the determination of the lead agency. After
34 the full report is filed or after the thirty days have elapsed, the
35 lead agency may issue the order or directive as it deems appropriate

1 under the circumstances, shall notify the person by registered mail,
2 and shall inform the person of the process for requesting an
3 adjudicative hearing.

4 (2) When it appears to the lead agency that water quality
5 conditions or other conditions exist which require immediate action to
6 protect human health and safety or the environment, the lead agency may
7 issue a written order to the person or persons responsible without
8 first issuing a notice of determination pursuant to subsection (1) of
9 this section. An order or directive issued pursuant to this subsection
10 shall be served by registered mail or personally upon any person to
11 whom it is directed, and shall inform the person or persons responsible
12 of the process for requesting an adjudicative hearing.

13 NEW SECTION. **Sec. 13.** PENALTY. Any person found guilty of
14 willfully violating any of the provisions of this chapter, or any final
15 written orders or directive of the lead agency or a court in pursuance
16 thereof, is guilty of a gross misdemeanor, and upon conviction thereof
17 shall be punished by a fine of up to ten thousand dollars and costs of
18 prosecution, or by imprisonment in the county jail for not more than
19 one year, or both, in the discretion of the court. Each day upon which
20 a willful violation of the provisions of this chapter occurs may be
21 deemed a separate and additional violation.

22 NEW SECTION. **Sec. 14.** VIOLATIONS--CIVIL PENALTY--PROCEDURE. (1)
23 Except as provided in RCW 43.05.060 through 43.05.080, 43.05.100,
24 43.05.110, and 43.05.150, any person who:

25 (a) Generates any reclaimed water for a use regulated under this
26 chapter and distributes or uses that water without a permit;

27 (b) Violates the terms or conditions of a permit issued under this
28 chapter; or

29 (c) Violates rules or orders adopted or issued pursuant to this
30 chapter,

31 shall incur, in addition to any other penalty as provided by law, a
32 penalty in an amount of up to ten thousand dollars per day for every
33 violation. Each violation shall be a separate and distinct offense,
34 and in case of a continuing violation, every day's continuance shall be
35 a separate and distinct violation. Every act of commission or omission
36 which procures, aids, or abets in the violation shall be considered a

1 violation under the provisions of this section and subject to the
2 penalty herein provided for. The penalty amount shall be set in
3 consideration of the previous history of the violator and the severity
4 of the violation's impact on public health, the environment, or both,
5 in addition to other relevant factors.

6 (2) A penalty imposed by a final administrative order is due upon
7 service of the final administrative order. A person who fails to pay
8 a penalty assessed by a final administrative order within thirty days
9 of service of the final administrative order shall pay, in addition to
10 the amount of the penalty, interest at the rate of one percent of the
11 unpaid balance of the assessed penalty for each month or part of a
12 month that the penalty remains unpaid, commencing within the month in
13 which the notice of penalty was served, and reasonable attorneys' fees
14 as are incurred if civil enforcement of the final administrative order
15 is required to collect penalty.

16 (3) A person who institutes proceedings for judicial review of a
17 final administrative order assessing a civil penalty under this chapter
18 shall place the full amount of the penalty in an interest bearing
19 account in the registry of the reviewing court. At the conclusion of
20 the proceeding the court shall, as appropriate, enter a judgment on
21 behalf of the lead agency and order that the judgment be satisfied to
22 the extent possible from moneys paid into the registry of the court or
23 shall enter a judgment in favor of the person appealing the penalty
24 assessment and order return of the moneys paid into the registry of the
25 court together with accrued interest to the person appealing. The
26 judgment may award reasonable attorneys' fees for the cost of the
27 attorney general's office in representing the lead agency.

28 (4) If no appeal is taken from a final administrative order
29 assessing a civil penalty under this chapter, the lead agency may file
30 a certified copy of the final administrative order with the clerk of
31 the superior court in which the person resides, or in Thurston county,
32 and the clerk shall enter judgment in the name of the lead agency and
33 in the amount of the penalty assessed in the final administrative
34 order.

35 (5) When the penalty herein provided for is imposed by the
36 department of ecology, it shall be imposed pursuant to the procedures
37 set forth in RCW 43.21B.300. All penalties imposed by the department

1 of ecology pursuant to RCW 43.21B.300 shall be deposited into the state
2 treasury and credited to the general fund.

3 (6) When the penalty is imposed by the department of health, it
4 shall be imposed pursuant to the procedures set forth in RCW 43.70.095.
5 All receipts from penalties shall be deposited into the health
6 reclaimed water account. The department of health shall use revenue
7 derived from penalties only to provide training and technical
8 assistance to reclaimed water system owners and operators.

9 NEW SECTION. **Sec. 15.** APPLICATION OF ADMINISTRATIVE PROCEDURE LAW
10 TO RULE MAKING AND ADJUDICATIVE PROCEEDINGS. The provisions of chapter
11 34.05 RCW, the administrative procedure act, apply to all rule making
12 and adjudicative proceedings authorized by or arising under the
13 provisions of this chapter.

14 **Sec. 16.** RCW 43.21B.110 and 2003 c 393 s 19 are each amended to
15 read as follows:

16 (1) The hearings board shall only have jurisdiction to hear and
17 decide appeals from the following decisions of the department, the
18 director, local conservation districts, and the air pollution control
19 boards or authorities as established pursuant to chapter 70.94 RCW, or
20 local health departments:

21 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,
22 70.105.080, 70.107.050, 88.46.090, 90.03.600, section 14 of this act,
23 90.48.144, 90.56.310, and 90.56.330.

24 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
25 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,
26 90.14.130, section 12 of this act, 90.48.120, and 90.56.330.

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

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

1 (e) Decisions of local health departments regarding the issuance
2 and enforcement of permits to use or dispose of biosolids under RCW
3 70.95J.080.

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

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

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

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

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

20 (b) Hearings conducted by the department pursuant to RCW 70.94.332,
21 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

22 (c) Proceedings conducted by the department, or the department's
23 designee, under RCW 90.03.160 through 90.03.210 or 90.44.220.

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

26 (e) Appeals of decisions by the department as provided in chapter
27 43.21L RCW.

28 (3) Review of rules and regulations adopted by the hearings board
29 shall be subject to review in accordance with the provisions of the
30 Administrative Procedure Act, chapter 34.05 RCW.

31 **Sec. 17.** RCW 43.21B.300 and 2007 c 147 s 9 are each amended to
32 read as follows:

33 (1) Any civil penalty provided in RCW 18.104.155, 70.94.431,
34 70.105.080, 70.107.050, 88.46.090, 90.03.600, section 14 of this act,
35 90.48.144, 90.56.310, and 90.56.330 and chapter 90.76 RCW shall be
36 imposed by a notice in writing, either by certified mail with return
37 receipt requested or by personal service, to the person incurring the

1 penalty from the department or the local air authority, describing the
2 violation with reasonable particularity. Within thirty days after the
3 notice is received, the person incurring the penalty may apply in
4 writing to the department or the authority for the remission or
5 mitigation of the penalty. Upon receipt of the application, the
6 department or authority may remit or mitigate the penalty upon whatever
7 terms the department or the authority in its discretion deems proper.
8 The department or the authority may ascertain the facts regarding all
9 such applications in such reasonable manner and under such rules as it
10 may deem proper and shall remit or mitigate the penalty only upon a
11 demonstration of extraordinary circumstances such as the presence of
12 information or factors not considered in setting the original penalty.

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

20 (3) A penalty shall become due and payable on the later of:

21 (a) Thirty days after receipt of the notice imposing the penalty;

22 (b) Thirty days after receipt of the notice of disposition on
23 application for relief from penalty, if such an application is made; or

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

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

37 (5) All penalties recovered shall be paid into the state treasury
38 and credited to the general fund except those penalties imposed

1 pursuant to RCW 18.104.155, which shall be credited to the reclamation
2 account as provided in RCW 18.104.155(7), RCW 70.94.431, the
3 disposition of which shall be governed by that provision, RCW
4 70.105.080, which shall be credited to the hazardous waste control and
5 elimination account created by RCW 70.105.180, RCW 90.56.330, which
6 shall be credited to the coastal protection fund created by RCW
7 90.48.390, and RCW 90.76.080, which shall be credited to the
8 underground storage tank account created by RCW 90.76.100.

9 **Sec. 18.** RCW 43.21B.310 and 2004 c 204 s 5 are each amended to
10 read as follows:

11 (1) Except as provided in RCW 90.03.210(2), any order issued by the
12 department or local air authority pursuant to RCW 70.94.211, 70.94.332,
13 70.105.095, 43.27A.190, 86.16.020, 88.46.070, section 12 of this act,
14 or 90.48.120(2) or any provision enacted after July 26, 1987, or any
15 permit, certificate, or license issued by the department may be
16 appealed to the pollution control hearings board if the appeal is filed
17 with the board and served on the department or authority within thirty
18 days after the date of receipt of the order. Except as provided under
19 chapter 70.105D RCW and RCW 90.03.210(2), this is the exclusive means
20 of appeal of such an order.

21 (2) The department or the authority in its discretion may stay the
22 effectiveness of an order during the pendency of such an appeal.

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

26 (4) Any appeal must contain the following in accordance with the
27 rules of the hearings board:

28 (a) The appellant's name and address;

29 (b) The date and docket number of the order, permit, or license
30 appealed;

31 (c) A description of the substance of the order, permit, or license
32 that is the subject of the appeal;

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

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

37 (f) A statement setting forth the relief sought.

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

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

12 NEW SECTION. **Sec. 19.** The code reviser shall alphabetize and
13 renumber the definitions in RCW 90.46.010.

14 NEW SECTION. **Sec. 20.** Captions used in this act are not any part
15 of the law.

16 NEW SECTION. **Sec. 21.** Sections 7 through 15 of this act are each
17 added to chapter 90.46 RCW.

18 NEW SECTION. **Sec. 22.** RCW 90.46.060 (Enforcement powers--
19 Secretary of health) and 1992 c 204 s 7 are each repealed.

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