

RCW 77.55.161 Stormwater discharges. (1) Notwithstanding any other provision of this chapter, all permits related to stormwater discharges must follow the provisions established in this section.

(2) Permits issued in locations covered by a national pollution discharge elimination system municipal stormwater general permit may not be conditioned or denied for water quality or quantity impacts arising from stormwater discharges. A permit is required only for the actual construction of any stormwater outfall or associated structures pursuant to this chapter.

(3) (a) In locations not covered by a national pollution discharge elimination system municipal stormwater general permit, the department may issue permits that contain provisions that protect fish life from adverse effects, such as scouring or erosion of the bed of the water body, resulting from the direct hydraulic impacts of the discharge.

(b) Prior to the issuance of a permit issued under this subsection (3), the department must:

(i) Make a finding that the discharge from the outfall will cause harmful effects to fish life;

(ii) Transmit the findings to the applicant and to the city or county where the project is being proposed; and

(iii) Allow the applicant an opportunity to use local ordinances or other mechanisms to avoid the adverse effects resulting from the direct hydraulic discharge. The forty-five day requirement for permit issuance under RCW 77.55.021 is suspended during the time period the department is meeting the requirements of this subsection (3) (b).

(c) After following the procedures set forth in (b) of this subsection, the department may issue a permit that prescribes the discharge rates from an outfall structure that will prevent adverse effects to the bed or flow of the waterway. The department may recommend, but not specify, the measures required to meet these discharge rates. The department may not require changes to the project design above the mean higher high water mark of marine waters, or the ordinary high water mark of fresh waters of the state. Nothing in this section alters any authority the department may have to regulate other types of projects under this chapter. [2005 c 146 § 503; 2002 c 368 § 4. Formerly RCW 77.55.340.]

Part headings not law—2005 c 146: See note following RCW 77.55.011.

Finding—Intent—2002 c 368: "The legislature finds that hydraulic project approvals should ensure that fish life is properly protected, but conditions attached to the approval of these permits must reasonably relate to the potential harm that the projects may produce. The legislature is particularly concerned over the current overlap of agency jurisdiction regarding stormwater projects, and believes that there is an immediate need to address this issue to ensure that project applicants are not given conflicting directions over project design. Requiring a major redesign of a project results in major delays, produces exponentially rising costs for both public and private project applicants, and frequently produces only marginal benefits for fish.

The legislature recognizes that the department of ecology is primarily responsible for the approval of stormwater projects. The legislature believes that once the department of ecology approves a proposed stormwater project, it is inappropriate for the department of

fish and wildlife to require a major redesign of that project in order for the applicant to obtain hydraulic project approval. The legislature further believes that it is more appropriate for the department of fish and wildlife to defer the design elements of a stormwater project to the department of ecology and focus its own efforts on determining reasonable mitigation or conditions for the project based upon the project's potential harm to fish. It is the intent of the legislature to restore some balance over conditions attached to hydraulic permits, and to minimize overlapping state regulatory authority regarding stormwater projects in order to reduce waste in both time and money while still providing ample protection for fish life." [2002 c 368 § 1.]