RULE-MAKING ORDER

CR-103P (May 2009)
(Implements RCW 34.05.360)

Agency: Department of Ecology AO # 09-05

Permanent Rule Only

Effective date of rule:
Permanent Rules
☒ 31 days after filing.
☐ Other (specify) _____ **(If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)**

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?
☐ Yes ☒ No If Yes, explain:

Purpose:
Chapter 173-152 WAC was originally adopted in 1998 in response to the Washington State Supreme Court decision in Hillis v Dept. of Ecology, 131 Wn.2d 373, 932 P.2d 139 (1997). In that decision the Supreme Court agreed that the organization and management of the Department of Ecology's workload was reasonable but it needed to be implemented through rule making under the Administrative Procedures Act, Chapter 34.05 RCW.

This rule amendment brings the existing rule into compliance with several statutory changes enacted over the past ten years, yet maintains the agency's compliance with the Washington State Supreme Court decision. Here are the purposes of this rule making. (See Attachment A)

Citation of existing rules affected by this order:
Repealed:
Amended:
Suspended:

Statutory authority for adoption: RCW 43.21A.064(9) ; RCW 43.27A.090(11);

Other authority : Chapters 90.03, 90.44, 90.54, and 90.82 RCW.

PERMANENT RULE (Including Expedited Rule Making)
Adopted under notice filed as WSR 10-14-113 on July 7, 2010 (date).
Describe any changes other than editing from proposed to adopted version:

- Clarified definitions for "mitigation" and "water budget neutral."
- Removed subsection under proposed WAC 173-152-050(3)(g) and amended water budget neutral definition to cover it.
- Clarified prioritization related to trust water.
- Moved proposed WAC 173-152-050(1)(e) to WAC 173-152-050(2)(a).
- Added language to ensure that applications processed under RCW 90.90 would be eligible for priority processing.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting: NA

Name: phone ( ) _____
Address: fax ( ) _____
e-mail _____

Date adopted: 12/20/10

NAME (TYPE OR PRINT)
Ted Sturdevant

SIGNATURE

TITLE
Director

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: December 20, 2010
TIME: 12:41 PM

WSR 11-01-126

(COMPLETE REVERSE SIDE)

Note: If any category is left blank, it will be calculated as zero. No descriptive text.

Count by whole WAC sections only, from the WAC number through the history note. A section may be counted in more than one category.

The number of sections adopted in order to comply with:

Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	1	Amended	4	Repealed	_____

The number of sections adopted at the request of a nongovernmental entity:

New	_____	Amended	_____	Repealed	_____

The number of sections adopted in the agency's own initiative:

New	1	Amended	6	Repealed	_____

The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	1	Amended	6	Repealed	_____

The number of sections adopted using:

Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	_____	Amended	_____	Repealed	_____

Attachment A

CR103P

Chapter 173-152 WAC, Water Rights

Purpose continued:

1. As new water rights become more difficult to acquire and water right changes are more common, Ecology seeks new ways to provide water to those who need it. This rule amendment took a closer look at the Supreme Court decision and the newly enacted statutes, most specifically Chapter 90.90 RCW. Ecology found a need to amend the organization and management of processing applications for the Columbia Basin Water Supply.

   The rule amendment clarifies the differences of Ecology's organization and management of workload when processing applications under Chapter 90.90 RCW and those applications processed using RCW 90.03, 90.44, and Chapter 90.54 RCW

2. Ecology also recognized a "road block" in its quest to locate new water supplies. The new water supplies are meant to provide water for the backlog of requests for new water and alleviate interruptible water rights. Potential applications for storage projects funded through Chapter 90.90 RCW may be resolved with the new water supply. However, the application(s) that could provide that new supply is stuck in line behind the applications that need that storage. The amendments to RCW 90.03.370 from 2000 to 2003 allows expedition of specific reservoir permits. With the subsequent passage of Chapter 90.90 RCW in 2006, Ecology believes it is critical to the implementation of the statutes to prioritize the Columbia Basin supply storage permits.

3. Another reason for the rule amendment relates to a change in statute in 2001. The Legislature amended RCW 90.03.380 addressing what we commonly call the "two-lines" processing and prioritizing. This amendment separated applications for new water and transfers into two separate lines. Chapter 173-152 WAC was originally adopted with all applications competing in one line. As a result of the legislative amendments, applications for transfer and for new applications no longer compete against each other for processing. Under the new statutory language there are varied criteria Ecology may use to decide how to prioritize an application.

4. The passage of the municipal water law in 2003, changed how we define a municipal supplier. Ecology found it necessary to clarify prioritizing failing public water systems based on the new definition of municipal water supplier. We worked closely with the Department of Health to bring about a more updated rule that works with the new definition.