

# Reclaimed Water Rule Advisory Committee

March 14, 2007, 9:30 – 2:30

Lacey, Washington

## REVISED Meeting Summary

### *Attendees*

See attached list

### *Ecology Action Items*

- Send information on the June 12 conference including hotel costs, registration, etc.
- Send information on the November 7-9 – Water in the Pacific NW – Science and Policy (WSU Conference)
- Update and distribute proposed revised meeting schedule:
  - No meeting in August to allow for vacations
  - Sept. meeting to be moved to Thursday, Sept. 6 or Thursday, Sept. 13 to allow committee members to participate in the PNCWA Conference Sept. 11 and 12.
- Take a critical look at the schedule (potential for numerous task groups needed) and adjust as needed at the April meeting. Consider options to combine subtask group work to improve efficiency.
- Research opportunities to streamline public involvement process – appeal regulations?

### *PSAT Action Item*

Contact business representative for the Barriers subtask group (Scott and Kathy)

### *Parking Lot*

1. Definitions needed: beneficial use, significant risk, controlled use
2. Pipe separation standards

### *Agreements this Meeting*

1. Evaluate all types of permitting approaches including combined vs. separate permits, general vs individual permits, drinking water, biosolids, and other approaches. Flexibility is good.
2. Good that DOH and Ecology are working on the permit process and will present proposal in July. They should keep the committee updated on their progress.
3. Automatic transfer of permit ownership is good.
4. A permit fact sheet or statement of basis is needed. It should cover important information but keep it as short and simple as possible.
5. Want outside speakers at every meeting. Real world examples.
6. Need to begin now to work on task forces that may happen from proposed legislation.
7. Appreciate PSAT working with the Environmental Law Institute – this will be valuable.

### *Task 1 Reclaimed Water Program and Rule Updates*

- Kathy Cupps reported that Ecology and DOH met on Monday to discuss the permit process input received from the committee. They came up with a list of 8 things that we agreed to at the last advisory committee meeting. Those items have been added to the list of Agreements To Date.

- Kathy provided the following information regarding SB 6117 Reclaimed Water – 2007 Legislative Session
  - Passed floor - E2SSB6117 has a number of sections related to our advisory committee work. It will now go to the house. Posted on website.
  - Probably will keep changing.
  - There are 12 Sections to the current bill.
- 1) (1 and 2) Broad statements of legislative findings and intent regarding the value of reclaimed water to help address water issues within the state -- climate change, Puget Sound, salmon recovery, water quality, watershed plans, and Columbia river management. Emphasizes importance of taking action now to move the program forward and address barriers to use.
- 3) Expands Scope (definition) of Water Supply Planning coordination. Includes 43.20 State Board of Health, 70.116 Public health and safety, 90.44 regulation of public ground water, 90.82 watershed planning and 36.70A growth management utility elements.
- 4) Water Right Impairment Task Force - Amends language on process – removes 3<sup>rd</sup> party. Ecology to form task force and report to legislature by December 31, 2007.
- 5) Barriers Removal Subtask Force – Rule Advisory Committee - Ecology to form a 10 member subtask force to address issues assigned by rule advisory committee that are outside scope of the rule includes staffing, resources and agency roles, optimizing organizational structure, unresolved legal issues. Append report to the rule progress reports (due January 2008 and 2009).
- 6) Watershed Planning Report - Adds reporting requirements on reclaimed water implementation and barriers to watershed planning report (December 2007 and every other year).
- 7) DOH Program Implementation Brief Status Report – January 1 2008. DOH report status on fees, greywater, reclaimed water program implementation, public health issues.
- 8) Adds - reclaimed water use to Water Resources Act (RCW 90.54.020) general declaration for water management. Emphasizes state and local planning and programs, financial incentives, reducing regulatory barriers and streamlining permits.
- 9) Adds - reclaimed water use to water use efficiency and conservation (RCW 90.54.180). Directs state agencies and facilities to use reclaimed water where feasible (defined).
- 10) Adds - local governments may require conforming to local water conservation ordinances and reclaimed water ordinances to plats and subdivisions (Ch 58.17 RCW).
- 11) Dedicated Funding Subtask Force – Ecology form 10 member subtask force from the rule advisory committee to propose dedicated funding program for reclaimed water facilities. Due January 2008.

- PSAT and Environmental Law Institute – Scott Redman.  
Scott Redman provided an overview (attached) of the Proposed Scope of Work for *Encouraging Reclaimed Water in the Puget Sound Region* - Puget Sound Action Team, Environmental Law Institute, and National Policy Consensus Center. Scott asked the group for feedback related to issues and process. The following comments were received:
  - Issues: insurance coverage; location and type of plant related to energy conservation; climate change; timetable.
  - Process: work with this committee (They noted this may work well with the proposed subtask groups outlined in SB6117); update previous work; assign a subtask force- the following volunteered: Peggy, Lynn, Clint, Scott, Heather, Hal, Karla, Kathy, Craig.

### ***Task 2 The Permitting Process***

This agenda item is Step 2 for Puzzle Pieces 7-9 of the Permitting Process. This step provides the opportunity for conversation regarding these puzzle pieces with a focus on building agreement on the concepts and identifying areas that need more information and discussion.

#### *PP #7 Permit duration and replacement.*

Kathy went over the information that was distributed to the committee prior to the meeting and answered questions.

The following comments / questions came up during the discussion.

- Clarification was given on “general permit” related to reclaimed water.  
*The general permit approach produces a permit for a group of similar facilities at different locations. A general permit is appropriate when the requirements for all of the Permittees are similar so that a standard set of permit requirements will provide the environmental and public health protections for the uses covered in the permit. It takes about a year to write a general permit. Once issued, individual facilities apply for coverage under the general permit. The permits are issued for a fixed term (traditionally 5 years) but could be longer if non-NPDES. These requirements must be included in the reclaimed water rule if they are different from the wastewater general permits issued under the Water Pollution Control Act.*
- How can a Utility economically grow as it evolves?
  - Suggestion: Have plants apply for a class of RW and all uses under that class during permit cycle.
- How will this tie with water systems plans? Require a current water system plan?
- How will this tie with wastewater discharge permits. Require a current wastewater discharge permit?
- A class/standard based permit rather than site specific should be considered.
- Could there be a temporary permit to be used during the permitting process?
- Should reclaimed water permit be separate from wastewater discharge permits.
  - Combined permit is more efficient to administer but less flexible to modify
  - Flexibility is a good thing.
  - Do not want to increase administrative costs – permit fees.
- Duration and timing of impacts will affect cost.
- Put the water supply permits on the same 6 year cycle.
- Need flexibility; keep the RW permit separate from the NPDES so the RW can move forward if NPDES gets slowed down.
- Have plants apply for a class of RW and all uses under that Class during permit cycle.

PP#8 - Automatic transfer Agreement that the concepts are “good” as presented.

PP# 9 Permit Fact Sheet

Kathy went over the information that was distributed to the committee prior to the meeting and answered questions. The following comments / questions came up during the discussion.

- Fact sheets need a date and permit reference. Not all are current.
- Fact sheets should include information for the public on why the permit is being requested (from the applicant). Balance with statement against – if any. Perhaps more context from an unbiased source would be better.
- Like on-line use
- Include discussion of links to water supply plans – quantity and maintenance issues.
- Acknowledge dual distribution systems and requirements for cross-connection control.
- Fact sheets are too long. Is it really a “Fact Sheet” when it can be very long (10 plus pages is common).
- Add list of interested parties to end of fact sheet.

***Public Process Puzzle Pieces #10 - #16***

10. Confidential information.
11. Notifying the public.
12. Notice to other agencies.
13. Public access to information.
14. Public hearings.
15. Notice of public hearings.
16. Permit appeals.

Kathy went over the information that was distributed to the committee prior to the meeting and answered questions. The following comments / questions came up during the discussion.

- #10 Confidential information – Agreed OK to concepts as presented.
- List of interested parties is included on the Fact Sheet – they should be informed.
- Why make the RW permit process as stringent as other permits when the risk is much less?
- Term “as appropriate” is too broad authority / requested
- Broaden the notification to all water supplier agencies, such as planning and NR
- Work with potential opponents early to avoid litigation / Who would pay for this?
- Use electronic media to save \$.
- Do we have to include TV ads?
- Need an education component with the public process.
- What is the appeal process? Like NPDES?
- Ask public to use and like RW, but you do not know what you will be getting with a distribution system – scary. Never ending appeal process.
- Consider different categories of notice and who gets the notice.
- Involve stakeholders earlier – pre-meeting with stakeholders. Not state agency role – project proponent’s role.
- The only thing worse than telling the public is not telling them, i.e. notification as proposed on PP 10-16 is good.
- Third party suits may be required due to water resources law.

***Working Lunch***

***Audience Comments- None***

### ***Task 3 – Overview of Permit Options***

Melissa shared general information on the spectrum of permitting options and trade-offs.

### ***Task 4 – The Permitting Process- Step 1- Introduction***

#### *PP#17-25 Permit Conditions as a group.*

This is Step 1. Kathy explained the overall concept – Rule should state what conditions must be included in the permit. For this part – the permit PROCESS – we can be general. We will get into the details with standards and submittals. Remember this is primarily a list, conceptual discussion and will be an introduction for more detailed work in the standards and submittals phases. We will discuss at the April meeting – as needed.

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- Does the current (proposed) procedure work well the way it is?
- Do you have recommendations for simple improvements that would help the process?
- Are there any key areas that need more work? How do we best accomplish that work?

PP#17 Water Quality, Distribution and Use Requirements

PP#17B Source Control and Pretreatment

PP#18 Contracts and Agreements

PP#19 Operations and Maintenance Protocols

PP# 20 Operator Certification and Staffing Requirements

PP# 21 Laboratory Accreditation

PP# 22 Monitoring and Recording Requirements

PP# 23 Monitoring Protocols and Frequencies

PP#24 Reporting Requirements

PP#25 Other Permit Terms and Conditions

Comments received:

- Less control on how the general public use the RW water. . . liability?
- Public education needed during the permit process.
- Third party litigation should not be allowed / Disagree – it is necessary / Out of compliance may be reported by the permittee
  - Action item to check on this. Expectation that a permit would not be revoked when new standards come in.

#### ***PP#26-31 Permit Compliance –Step 1 Introduction***

PP# 26 Site access for inspection

PP# 27 Noncompliance

PP# 28 Schedules of compliance.

PP# 30 Modify, suspend or revoke permit

PP# 31 Enforcement procedure

Kathy went over the information that was distributed to the committee prior to the meeting and answered questions. The following comments / questions came up during the discussion. [Note- The discussion level that took place for PP#26-31 is more in line with Step 2 - discussion level. To maintain consistency, Task 4 - (PP #26-31) materials are included in this revised summary.]

#### **PP#26 Site access and inspections**

- Discussion regarding the need for probable cause before conducting a site inspection. What are business hours: the hours the plant is operating, or regular 8-5 type hours?
- Subpoena required – probable cause with suspected violation

- Probably Cause – Reasonableness
- Electronic copying

#### PP#27 Noncompliance

Comments received:

Would like a better definition of “non-compliance”. Is an incident when a permit condition is not met, equal to on-going and repetitive situation? Especially important if 3<sup>rd</sup> party lawsuits are allowed.

#### PP# 28 Schedules of compliance

Schedules should be as short as possible.

#### PP#30 Modify, suspend or revoke a permit

- Any good reasons to modify? Changing conditions.
- Tiered? Separate major violations.
- Need to be able to expect the permit is good through term issued.
- Need a process to work through suspension process so the service is not interrupted.
- Can’t sell facility if under a moratorium.
- If permit conditions are met –shared if not borne by permit issuer.
- Encourage, advise, and consent.
- No unilateral terms and conditions of permit.

#### PP#31 Enforcement

- Could a timeline be added to enforcement?
- Defining reasonable times might hem in too much.
- Use hours of operation.
- Is it feasible to access the uses for inspection?
- Seems like a potential barrier to inspect the use areas.
- Show probable cause for inspection.
- This is pretty standard for regulatory agencies – we have to get access on site to regulate. DOH and Ag have similar authority provided.
- If denied access, can get a warrant.
- Copies – add electronic copies.
- Do we have to include an appeals process?
- Moratorium – may need private resources to make revisions / sale issues/ short-sighted / may be condition of sale.
- Public hearings / public input = very little lawsuits.

#### ***Task 5 – Mel Oleson, Boeing***

Mel provided a presentation on Boeing’s work with Reclaimed Water.

#### ***Task 6 Audience Comments and Wrap-Up***

Audience Comments - None.

Wrap-up - Facilitator, Lori Isenberg, reviewed the action items and agreements. She then facilitated a Go-Round for closing comments from the committee members. Comments reflected the group was pleased with the meeting and was becoming more comfortable with the process. Additional comments:

- Water supply examples would be helpful
- Ginger noted she is bringing concerns from her constituents.

- We don't want to derail the RW process because of perceived risks compared to the benefits. This needs to be discussed in more depth.
- Potable water model – look at the WAC.
- Insurance is difficult to get coverage for liability.
- Energy conservation is important too.
- Need to start thinking about subcommittees now to integrate with new legislation – maybe one task force.
- New legislation will take a lot of volunteer time for task force work. Can we get paid?

*Adjourn 2:30*

## *Attendees*

### *Department of Ecology*

Katharine Cupps, Agency Lead

Melissa McEachron, Rule Coordinator

Lori Isenberg, Facilitator

### *Department of Health*

Maryanne Guichard, Director, Office of  
Shellfish and Water Protection

Dave Lenning, Environmental Health and  
Safety

### *In attendance*

#### *Members*

Department of Ecology (WRP)

Department of Ecology (WQP)

Department of Health

City of Olympia

King County

Spokane County

Kitsap County

LOTT Alliance

Department of Agriculture

Sno-King Water Alliance

City of Seattle

Evergreen Valley Utilities

Washington Water & Sewer Assoc.

City of Walla Walla (phone)

Puget Sound Action Team

People for Puget Sound

Lynn Coleman

Nancy Winters

Craig Riley

Tikva Breuer

Peggy Leonard

Bruce Rawls

Keith Folkerts

Karla Fowler

Ann Wick

Ginger Desy

Terry Martin

Clint Perry

Walt Canter

Hal Thomas

Scott Redman

Heather Trim

#### *Alternates*

WWSA

Hal Schlomann

## *Task 1-Material Used in Committee Discussion*

### **Encouraging Reclaimed Water in the Puget Sound Region Proposed Scope of Work**

**Puget Sound Action Team, Environmental Law Institute, and National Policy Consensus Center**

Conserving and recovering the Puget Sound ecosystem requires a broad array of efforts that will, among other things, control sources of toxic, nutrient, and pathogen pollution and ensure that streamflows provide the water needed to drive physical processes and support aquatic life habitat requirements. Reclaiming municipal wastewater and subsequently putting the reclaimed water to beneficial use (e.g., irrigation, streamflow augmentation, groundwater recharge) is one means of addressing pollution control and streamflow protection while simultaneously addressing concerns about water supplies in the face of a changing climate and a growing human population.

The Puget Sound Action Team (PSAT) intends to develop a partnership with the Environmental Law Institute (ELI) and the National Policy Consensus Center (NPCC) to identify, evaluate, and recommend approaches for addressing the key legal, regulatory, and financial impediments to reclaiming wastewater and using reclaimed water as a water supply. This project would begin in March or April 2007 and be completed by late 2007.

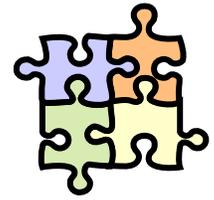
Through this partnership, funding provided by PSAT would be matched by ELI-secured funding from other sources, to support ELI and NPCC work on the following tasks:

1. **Research complex issues of water reclamation and reuse** under state and federal law, identify potential legal and institutional barriers, draw comparisons to others states' efforts in this areas, and work with Washington state and local partners to develop solutions for increasing reclamation and reuse. Research will address the key barriers to water reclamation and reuse under current Washington State law and policy, and describe and evaluate a subset of those barriers that will not be addressed by pending legislation or rulemaking currently being undertaken by the Washington departments of Ecology and Health. This task will include examining the role of reclamation and reuse in other states and comparable watershed restoration efforts, and derive lessons that might apply in the Puget Sound Basin. Issues will be selected and developed as the work progresses, but specific issues that might be addressed by this task could include:
  - Effects of word choice and definitions regarding reclaimed water, wastewater, water supply, water resource, effluent, etc.
  - Restrictions on and classifications of reclaimed water uses
  - Permits and other means of holding purveyors and contractors accountable
  - Liability concepts associated with generating, delivering, and using reclaimed water
  - Interjurisdictional issues and opportunities, especially related to interests of tribes
  - Incentives for using reclaimed water (e.g., state investment in infrastructure, pricing of potable and nonpotable water supplies, development of regulations, water rights credits for groundwater recharge or streamflow augmentation, )

## *Task 1 -Material Used in Committee Discussion*

- Options for funding facilities and operations (including analysis of who benefits and who pays)
  - Concerns specific to encouraging and developing decentralized (small) systems for reclaiming water (and using small quantities of reclaimed water)
  - [Relationships between water rights issues and efforts to reclaim wastewater and use reclaimed water, (including impairment of water rights, mitigation of these impairments, resolution of conflicts between rights to distribute and use reclaimed water and water rights) – *depends on outcome of potential legislative action*]
  - [Comprehensive planning of water supplies, wastewater facilities, reclaimed water facilities – *needs further discussion between PSAT and ELI*]
2. **Participate in ongoing discussions** and workshops and other events about encouraging projects to reclaim water and use reclaimed water in the Puget Sound region and throughout Washington State. By participating in these discussions, ELI and NPCC will be able to direct their analyses and recommendations to best address the concerns of stakeholders.
  3. **Publish a report highlighting the research on legal barriers, and on comparative approaches for encouraging more generation and use of reclaimed water in the Puget Sound region.** The report will contain a set of recommendations for removing or minimizing impediments to reclamation and reuse and for increasing the viability of reclaimed water projects.
  4. **If additional outside funding can be secured, convene a conference of public officials, environmental, and business leaders** to canvass reclamation and reuse policy recommendations to help achieve the Puget Sound Partnership's 2020 goals. The focus of the conference will be a panel of experts on reclamation and reuse issues for an audience of government, nongovernmental and private-sector stakeholders in the Puget Sound region. This might be scheduled as a followup to the one-day forum being convened by the Pacific Northwest Clean Water Association on June 12, 2007, and would occur before the start of the 2008 session of the Washington State legislature.

## *Task 2 -Material Used in Committee Discussion*



Reclaimed Water Rule Advisory Committee – February 14, 2007  
Concepts for consideration under the permit process (PP#1-#9 Revised)  
Related to development of new rule: Ch 173-219 WAC Reclaimed Water  
Reclaimed Water Rule Advisory Committee – February 14, 2007

### ***Ecology would like the following input on PP#7- Revised***

1. Does the current (proposed) procedure work well the way it is?
2. Do you have recommendations for simple improvements that would help the process?
3. Are there any key areas that need more work? How do we best accomplish that work?

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### **PP#7 Permit Duration and Replacement**

#### **Concepts:**

- Permits are issued for a fixed amount of time determined by the issuing agency.
- The Permittee must submit an application to replace an existing permit before it expires.
- If the RW permit is combined with a state wastewater discharge permit or NPDES permit, the requirements for these permits also apply. These include:
  - The maximum time is 5 years.
  - When a complete renewal application is submitted on time, the expiring permit remains in effect and enforceable until the permitting agency denies or issues the replacement.
  - Public notice and comment procedures apply to each draft permit.
- If the permitting agency issues a general permit for reclaimed water use, the requirements for coverage under that general permit would apply as established in this rule.

#### **Proposed Procedure:**

- The rule should answer the following questions:

Q: What is the maximum time before a permit expires?

A: Five years if combined with an Ecology NPDES or state waste discharge permit.

- Other?

Q: When is the application for renewal due?

A: Before the existing permit expires.

## ***Task 2 -Material Used in Committee Discussion***

- NPDES, 180 days.
- State wastewater discharge permits, 60 days
- Recommend – 180 days for all reclaimed water permits? This allows agency review time and assures consistency with all wastewater discharge permit requirements.

Q: What happens if the application is submitted on time but the agency does not respond?

A: If the Permittee submits a complete application on time, an expiring permit remains in effect and enforceable until the permitting agency denies or issues a replacement permit. A Permittee cannot apply for coverage under an expired general permit.

Q: What is the scope of permitting agency review for a permit renewal?

- A: Remain consistent with requirements for wastewater discharge permits? This would include assuring:
- Compliance with permit terms and conditions.
  - Up-to-date information.
  - Consistency with legal requirements in effect at the time of renewal.
  - Submittal of a complete application.

Q: Do public participation and review procedures apply to each draft permit?

A: Yes.

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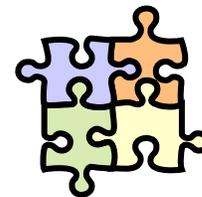
### **Related statutes and regulations**

Ch 173-220-180 NPDES – Duration and replacement of existing permit.

Ch 173-216- 070 State discharge – Application for a permit.

## ***Task 2 - Material Used in Committee Discussion***

Reclaimed Water Rule Advisory Committee – February 14, 2007  
Concepts for consideration under the permit process (PP#1-#9 Revised)  
Related to development of new rule: Ch 173-219 WAC Reclaimed Water



### ***Ecology would like the following input on PP#8 - Revised***

1. Does the current (proposed) procedure work well the way it is?
2. Do you have recommendations for simple improvements that would help the process?
3. Are there any key areas that need more work? How do we best accomplish that work?

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### **PP#8 Transfer of Permit**

#### **Concepts:**

- Permits need to be transferred when the Permittee changes.
- If the RW permit is combined with a state wastewater discharge permit or NPDES permit, the requirements to transfer these permits also apply.
- If the permitting agency issues a general permit for reclaimed water use, the requirements for coverage under a general permit would apply, unless this rule establishes different requirements.

#### **Proposed Procedure:**

- Continue using the current procedure which is consistent with wastewater discharge permits issued by Ecology.
- The rule should answer the following questions:

Q: How is a permit transferred to a new Permittee?

A: A permit is automatically transferred to a new owner or operator if the old and new owner or operator submits to the permitting agency a written agreement signed by both parties. The agreement must state the specific date for transfer of the permit responsibility, coverage, and liability.

Q: How long does a transferred permit remain in effect?

A: The permit remains in effect until the expiration date unless the permitting agency notifies otherwise.

## *Task 2 - Material Used in Committee Discussion*

Q: What happens if a permit is not automatically transferred?

A: The new Permittee may not distribute or use reclaimed water until issued a permit.

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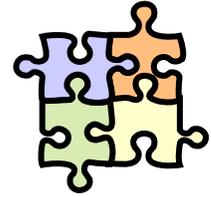
### **Related statutes and regulations**

WAC 173-220-200 NPDES – Transfer of permit

WAC 173-216-120 State discharge permits – Transfer of a permit.

## *Task 2 - Material Used in Committee Discussion*

Reclaimed Water Rule Advisory Committee – February 14, 2007  
Concepts for consideration under the permit process (PP#1-#9 Revised)  
Related to development of new rule: Ch 173-219 WAC Reclaimed Water



### ***Ecology would like the following input on PP#9 - Revised***

1. Does the current (proposed) procedure work well the way it is?
2. Do you have recommendations for simple improvements that would help the process?
3. Are there any key areas that need more work? How do we best accomplish that work?

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### **PP#9 Permit Fact Sheet**

#### **Concepts:**

- The permitting agency prepares a fact sheet to document the basis for permit conditions.
- The fact sheet is retained in agency files.
- The fact sheet and draft permit are also used during public participation procedures.
- If the RW permit is combined with a state wastewater discharge permit or NPDES permit, the requirements for fact sheets for these permits also apply.

#### **Proposed Procedure:**

- Continue using the current procedure, which is consistent with NPDES wastewater discharge permits issued by Ecology.
- The rule should answer the following questions:

Q: When is the permit fact sheet prepared?

A: Before public notice of the agencies decision to issue or deny a permit.

Q: What information is included in the permit fact sheet?

A: The permit fact sheet summarizes:

- Decision to issue or deny the permit.
- Process for making final decisions.
- Opportunities for public participation.
- Name and type of reclaimed water facility.
- Location of the treatment facilities.
- Location of the distribution system, if any.

## ***Task 2 - Material Used in Committee Discussion***

- Proposed uses and location of use areas.
- Quality of reclaimed water produced.
- Quantity of reclaimed water produced.
- Legal and technical grounds for the draft permit decision.
- Proposed permit conditions including how the permit addresses:
  - Reclaimed water treatment and quality requirements.
  - Distribution and use of the reclaimed water.
  - Use or disposal of residual solids from wastewater treatment.
  - Water right impairment.
  - Credit for new water rights.

Q: Who receives the permit fact sheet?

A: The permitting agency distributes the fact sheet to:

- The contact listed on the permit application.
- Upon request, to anyone.

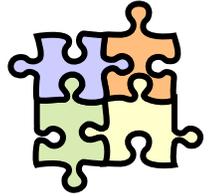
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### **Related statutes and regulations**

WAC 173-220-060 NPDES – Fact Sheet

## *Task 2 - Material Used in Committee Discussion*

Reclaimed Water Rule Advisory Committee – February 14, 2007  
Concepts for consideration under the permit process (PP#10-16)  
Related to development of new rule: Ch 173-219 WAC Reclaimed Water Use



### ***Ecology would like the following input on PP#10***

1. Does the current (proposed) procedure work well the way it is?
2. Do you have recommendations for simple improvements that would help the process?
3. Are there any key areas that need more work? How do we best accomplish that work?

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### **PP#10 Confidentiality of information**

#### **Concepts:**

- State agencies must comply with public disclosure laws.
- Sometimes information needed for permit decisions contains confidential business information that the applicant does not wish to disclose to the public.
- Ecology may be able to designate some material as confidential business information under procedures established in the state laws listed below.

#### **Proposed Procedure:**

- The rule should state that we will follow the procedures to request certification of records as confidential under state RCW [43.21A.160](#).
- The rule should remain consistent with the information and procedures in use for wastewater discharge permits under WAC 173-216-080.
- The rule will answer the following questions:

Q: How does the applicant claim information as confidential?

A: The applicant must place the words "confidential business information" or similar words, on each page claimed. All other information is available to the public.

## ***Task 2 - Material Used in Committee Discussion***

Q: How does the agency determine if the information claimed is confidential?

A: For all claims of confidentiality, state law requires the permitting agency to handle the claim according to processes in these state laws:

1. Disclosure, chapter [42.17 RCW](#)
2. Public records, chapter [173-03 WAC](#)
3. Procedures to request certification of records as confidential, RCW [43.21A.160](#).

Q: What information will state agencies always disclose to the public?

A: The agency will deny claims of confidentiality for:

1. Name and address of applicant.
2. The description of the proposed project including the:
  - Quality and amount of reclaimed water produced.
  - Distribution and uses of the reclaimed water.
  - Receiving ground or surface water, if any.
  - Environmental impacts under the State Environmental Policy Act.

Q: When will the permitting agency provide confidential information to USEPA?

A: If permits have requirements under the federal Water Pollution Control Act (NPDES), the permitting agency must disclose confidential information to the USEPA if requested by the USEPA regional administrator.

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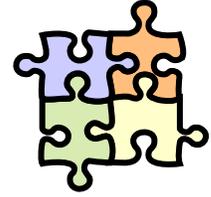
### **Related statutes and regulations**

The reclaimed water statute instructs Ecology to issue reclaimed water permits under the authority of Ch 90.48 RCW, the Water Pollution Control Act.

1. WAC 173-216-080, Confidentiality of information - State discharge permits.
2. Ch 42.17 RCW, Public Disclosure
3. Ch 173-03 WAC, Public Records
4. RCW 43.21A.160, Procedures to request certification of records as confidential

## *Task 2 - Material Used in Committee Discussion*

Reclaimed Water Rule Advisory Committee – February 14, 2007  
Concepts for consideration under the permit process (PP#10-16)  
Related to development of new rule: Ch 173-219 WAC Reclaimed Water Use



### *Ecology would like the following input for PP#11*

1. Does the current (proposed) procedure work well the way it is?
2. Do you have recommendations for simple improvements that would help the process?
3. Are there any key areas that need more work? How do we best accomplish that work?

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### **PP#11 Notifying the public.**

#### **Concepts:**

- Permits are a public process.
- State agencies must comply with “right to know” portions of permit process.
- Before issuing a permit, the public has the right to know:
  1. That an applicant has applied for a permit.
  2. The permitting agency’s tentative decision to issue or deny the permit.
  3. The process for public review and comment.
- If the RW permit is combined with a state wastewater discharge permit or NPDES permit, the public notice requirements for these permits also apply.
- If the permitting agency issues a general permit for reclaimed water use, the requirements for a general permit would apply.

#### **Proposed Procedure:**

- Remain consistent with current processes for public notice of wastewater permits.
- Add language to include the electronic media commonly used today.
- The rule will answer the following questions:

#### Q: How does the permitting agency notify the public?

A: The permitting agency notifies the public in several ways.

1. Anyone may request to be on the list for information about a permit decision.
  - Note: Ecology keeps statewide, local area and individual permit lists.

## *Task 2 - Material Used in Committee Discussion*

2. The permitting agency determines how and when to best inform the public. This may include:
  - (i) Distributing by electronic or regular mail.
  - (ii) Posting information to an accessible internet site.
  - (iii) Issuing news releases or newsletter articles.
  - (iv) Publishing information in local newspapers.
  - (v) When appropriate, the permitting agency may also require the applicant to:
    - Post information in public places such as the post office, public library, or entrance to the applicant's site.
    - Pay for information published in local newspapers.
    - Pay for advertising in radio, television or other media.

### Q: How long is the public notification and comment period?

A: The minimum period for any comment period is thirty days. The permitting agency may extend the comment period beyond thirty days.

### Q: What information is included in the public notice?

A: The permitting agency prepares the content including the:

1. Name, address, phone number of agency issuing the public notice.
2. Name and address of the applicant.
3. Name and location of proposed reclaimed water treatment facilities, distributors and users.
4. Tentative decision to issue or deny a permit.
5. Procedures used to make final decisions, including the thirty-day comment period and any other means for public participation and comment.
  
6. Address and phone number of locations where the public may obtain more information.
7. How to obtain copies of permit applications, draft permits and fact sheets.

### Q: How does the public comment?

## ***Task 2 - Material Used in Committee Discussion***

A: The public submits written comments to the permitting agency within thirty days from the close of the public notice period.

Q: What does the permitting agency do with the comments?

A: The permitting agency:

1. Keeps all written comments submitted during the comment period.
2. Considers all comments in making the final decision to issue or deny the permit.
3. Prepares a written response to all comments received.
4. May make changes to the permit based on the comments received.
5. Makes a final decision to issue or deny the permit.

Q: How does the agency notify the applicant and others of the final permit decision?

A: The permitting agency notifies the applicant and anyone who submitted written comments or requested notice of the final permit decision by electronic or regular mail. This notification includes:

1. The decision.
2. The written response to comments received.
3. Procedures to appeal the decision.

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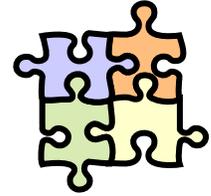
### **Related statutes and regulations**

The reclaimed water statute instructs Ecology to issue reclaimed water permits under the authority of Ch 90.48 RCW, the Water Pollution Control Act. See the following:

1. WAC 173-220-050 NPDES - Public notice.
2. WAC 173-216-090 State Discharge Permits Public notice.

## ***Task 2 - Material Used in Committee Discussion***

Reclaimed Water Rule Advisory Committee – February 14, 2007  
Concepts for consideration under the permit process (PP#10-16)  
Related to development of new rule: Ch 173-219 WAC Reclaimed Water Use



### ***Ecology would like the following input on PP#12***

1. Does the current (proposed) procedure work well the way it is?
2. Do you have recommendations for simple improvements that would help the process?
3. Are there any key areas that need more work? How do we best accomplish that work?

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### **PP#12 Notifying other agencies.**

#### **Concepts:**

- The permitting agency must notify other appropriate government agencies of each draft permit decision.
- These agencies must submit their written views and recommendations by the date specified in the notice.
- If the RW permit is combined with a state wastewater discharge permit or NPDES permit, the agency notice requirements for these permits also apply.

#### **Proposed Procedure:**

- Remain consistent with the current processes for individual wastewater discharge permits.
- Assure that the departments of ecology and health always receive notice of reclaimed water permit applications.
- The rule will answer the following questions:

Q: Which state agencies receive notice of draft reclaimed water permits?

A: The departments of ecology and health always receive notification. Other state agencies such as fish and wildlife, natural resources, and agriculture receive notice when appropriate or upon request.

Q: Which agencies receive notice if the permit contains federal NPDES requirements?

## ***Task 2 - Material Used in Committee Discussion***

A: WAC 173-220-070 lists all the NPDES required state and federal agencies. The USEPA may request a review period up to ninety days.

- Note: Federal NPDES notice requirements apply to all reclaimed water permits with uses for streamflow augmentation or in wetlands that are waters of the United States.

They also apply to any combined NPDES and reclaimed water permits.

Q: What if an agency does not want to receive the notices?

A: Any agency may submit a written request to waive receiving notice of the permit decisions. Copies must be available to the public for inspection and copying.

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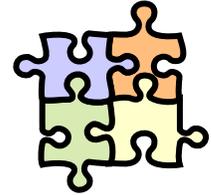
### **Related statutes and regulations**

The reclaimed water statute instructs Ecology to issue reclaimed water permits under the authority of Chapter 90.48 RCW, the Water Pollution Control Act.

See WAC 173-220-070 NPDES Notice to other governmental agencies.

## *Task 2 - Material Used in Committee Discussion*

Reclaimed Water Rule Advisory Committee – February 14, 2007  
Concepts for consideration under the permit process (PP#10-16)  
Related to development of new rule: Ch 173-219 WAC Reclaimed Water Use



### ***Ecology would like the following input on PP#13***

1. Does the current (proposed) procedure work well the way it is?
2. Do you have recommendations for simple improvements that would help the process?
3. Are there any key areas that need more work? How do we best accomplish that work?

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### **PP#13 Public Access to information.**

#### **Concepts:**

- Under state public disclosure laws, the department must:
  1. Process all requests for public information promptly without undue requirements or restrictions.
  2. Provide facilities for the public to review all non-confidential permit documents.
  3. Provide copiers or copies of requested documents at a reasonable fee.
  4. Protect any information determined as confidential. See PP#11.
- If the RW permit is combined with a state wastewater discharge permit or NPDES permit, the public access requirements for these permits also apply.

#### **Proposed Procedure:**

- Use the existing procedure outlined above. This is consistent with WAC 173-220-080 for individual NPDES permits and state disclosure requirements.
- State this information in the rule.

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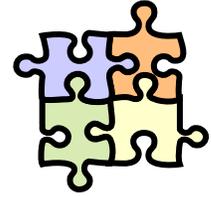
### **Related statutes and regulations.**

The reclaimed water statute instructs Ecology to issue reclaimed water permits under the authority of Ch 90.48 RCW, the Water Pollution Control Act. See the following references:

5. WAC 173-220-080 Public access to information.
6. Ch 42.17 RCW, Public Disclosure
7. Ch 173-03 WAC, Public Records
8. RCW 43.21A.160, Procedures to request certification of records as confidential

## *Task 2 - Material Used in Committee Discussion*

Reclaimed Water Rule Advisory Committee – February 14, 2007  
Concepts for consideration under the permit process (PP#10-16)  
Related to development of new rule: Ch 173-219 WAC Reclaimed Water Use



### ***Ecology would like the following input on PP#14***

1. Does the current (proposed) procedure work well the way it is?
2. Do you have recommendations for simple improvements that would help the process?
3. Are there any key areas that need more work? How do we best accomplish that work?

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### **PP#14 Public Hearings**

#### **Concepts:**

- During the public notice and comment period, anyone may request a public hearing about a proposed permit.
- Ecology has discretion to determine if a public hearing is necessary.
- If the RW permit is combined with a state wastewater discharge permit or NPDES permit, the public hearing requirements for these permits also apply.

#### **Proposed Procedure:**

- Continue using the existing process under WAC 173-220-090 for NPDES permits.
- Answer the following questions in the rule:

#### Q: How does a person request a public hearing?

A: In writing to the permitting agency during the public comment period. The request must state the interest of the person filing the request and the reason they want a public hearing.

#### Q: How does the agency decide whether or not to hold a public hearing?

A: The permitting agency must determine if there is enough public interest to hold a hearing. If in doubt, the agency should schedule a public hearing.

## *Task 2 - Material Used in Committee Discussion*

Q: When and where does the agency hold a public hearing?

A: The permitting agency determines the appropriate time and place.

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### **Related statutes and regulations**

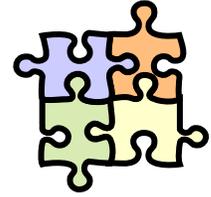
The reclaimed water statute instructs Ecology to issue reclaimed water permits under the authority of Ch. 90.48 RCW, the Water Pollution Control Act.

9. WAC 173-220-090, Public Hearings – NPDES Permits

10. WAC 173-216-100 Public Hearings – State Waste Discharge Permits

## *Task 2 - Material Used in Committee Discussion*

Reclaimed Water Rule Advisory Committee – February 14, 2007  
Concepts for consideration under the permit process (PP#10-16)  
Related to development of new rule: Ch 173-219 WAC Reclaimed Water Use



### ***Ecology would like the following input on PP#15***

1. Does the current (proposed) procedure work well the way it is?
2. Do you have recommendations for simple improvements that would help the process?
3. Are there any key areas that need more work? How do we best accomplish that work?

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### **PP#15 Notifying the public of hearings.**

#### **Concept:**

- The permitting agency must notify the public at least thirty days before a public hearing.
- If the RW permit is combined with a state wastewater discharge permit or an NPDES permit, the public hearing requirements for these permits also apply.

#### **Proposed Procedure:**

- Remain consistent with current processes for public notice of hearings for wastewater permits.
- Add language to include the electronic media commonly used today.
- Answer the following questions in the rule:

Q: What does the notification include?

A: The following information:

- Name, address, and contact phone number for the agency holding the hearing.
- The purpose of the hearing.
- Name and address of the applicant.
- A brief description of the draft permit.
- The time and location for the hearing.
- A brief description of the nature of the hearing.
- Summary of any issues raised by persons requesting the hearing.
- The date and identification number of the public notice for the draft permit.
- Address and phone number where interested persons may obtain more information.

## ***Task 2 - Material Used in Committee Discussion***

Q: How does the agency notify the public?

A: Use the same procedures as for public notice of the permit. See PP# 11.

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### **Related statutes and regulations**

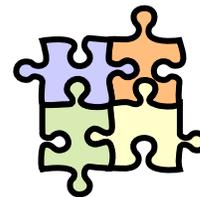
The reclaimed water statute instructs Ecology to issue reclaimed water permits under the authority of Chapter 90.48 RCW, the Water Pollution Control Act.

11. WAC 173-220-100, Public Notice of Public Hearings - NPDES

12. WAC 173-216-100 Public Hearings – State Waste Discharge Permits

## *Task 2 - Material Used in Committee Discussion*

Reclaimed Water Rule Advisory Committee – February 14, 2007  
Concepts for consideration under the permit process (PP#10-16)  
Related to development of new rule: Ch 173-219 WAC Reclaimed Water Use



### ***Ecology would like the following input on PP#16***

4. Does the current (proposed) procedure work well the way it is?
5. Do you have recommendations for simple improvements that would help the process?
6. Are there any key areas that need more work? How do we best accomplish that work?

---

### **PP#16 Appeals**

#### **Concepts:**

- The applicant or any interested party may appeal a decision to issue or deny a permit.
- Ch 43.21B RCW provides the process to appeal a permit decision.

#### **Proposed Procedure:**

- The rule should include language stating the right to appeal a permit decision under Ch. [43.21B](#) RCW.
- Use language consistent with WAC 173-220-225 for NPDES permits.
- **Note:** We need to check and see if we need to add other appeals procedures for DOH and WRP provisions within the reclaimed water permit.

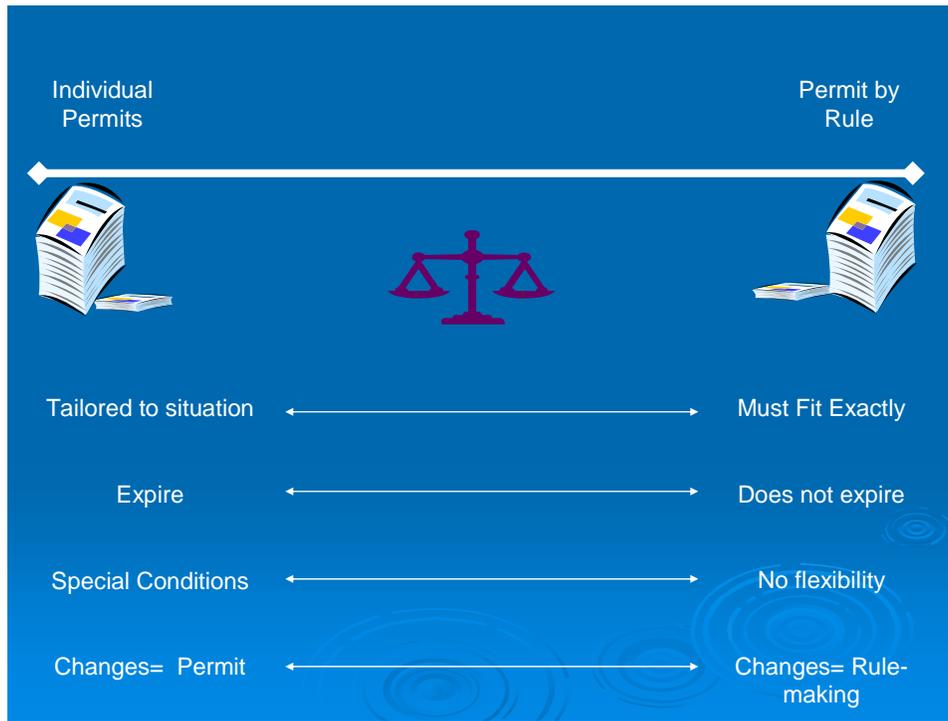
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### **Related statutes and regulations**

The reclaimed water statute instructs Ecology to issue reclaimed water permits under the authority of Ch 90.48 RCW, the Water Pollution Control Act.

1. Chapter 43.21B RCW Environmental hearings office — pollution control hearings board
2. WAC 173-220-225 Appeals.

### Task 3 - Material Used in Committee Discussion



## *Task 4 - Material Used in Committee Discussion*

### *Ecology would like the following input on PP#26-31*

#### **Permit Compliance**

- ✱ OK (green card)
- ✪ Minor changes needed (yellow card).
- ✶ Major changes needed (red card).

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#### **Topics in permit compliance section.**

**Overview** (Click on link)

PP#26 Site access and inspections

PP#27 Noncompliance

PP#28 Schedules of compliance

PP#29 Add new users (moving to permit conditions section)

PP#30 Modify, suspend or revoke a permit

PP#31 Enforcement

---

#### **Statutory requirements for permit compliance. Review before meeting.**

The reclaimed water statute [Ch 90.46 RCW](#) instructs ecology to issue reclaimed water permits under the authority of [Ch 90.48 RCW](#), the Water Pollution Control Act. See RCW 90.48.030, 037, 090, 095, 120, 140, 142, 144, 240, and 260.

The reclaimed water statute [RCW 90.46.060](#) provides health with all enforcement authority granted to the department under Ch [43.70](#) RCW including RCW 43.70.090 through 43.70.200.

[Ch. 43.05 RCW](#) directs all regulatory agencies - including ecology and health - to develop programs encouraging voluntary compliance by providing technical assistance consistent with their statutory requirements.

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#### **Regulations related to permit compliance. Review before meeting.**

State Waste Discharge Permits:

[WAC 173-216-110](#) State Wastewater discharge - Permit terms and conditions.

[WAC 173-216-130](#) Modification, suspension and revocation of permits.

NPDES Permits:

[WAC 173-220-150](#) NPDES - Other terms and conditions.

[WAC 173-220-140](#) NPDES - Schedules of compliance.

[WAC 173-220-190](#) Modification and revocation of permits.

[WAC 173-220-230](#) Enforcement

## PP#26 Site Access and Inspections

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**Concept:** Rule must include rights for permit agency staff to access sites and inspect the treatment, distribution, use and records as necessary to assure permit compliance.

- Rule references: Subsection (3) [WAC 173-216-110](#) , Subsection (1e) [WAC 173-220-150](#)
- 

### **Suggested:**

- Authorize staff to enter any property - at reasonable times - to inspect and investigate for permit compliance.
- Define reasonable times as:
  - Normal business hours for production, treatment, discharge, distribution or use.
  - Immediately, when required to investigate a suspected violation.
- Authorizes agency staff to:
  - View and copy – at reasonable cost - all records required by the permit.
  - Inspect any treatment, monitoring equipment or method required in the permit.
  - Sample the reclaimed water, wastewater or effluent discharges, waste treatment processes, and internal waste streams.

### **Advisory Committee Recommendations:**

- ✱ OK (green card)
- ✪ Minor changes needed (yellow card).
- ✶ Major changes needed (red card).

Include suggestions below:

## PP#27 Noncompliance

---

**Concept:** Rule must define noncompliance and the required corrective actions.

- Rule references: [WAC 173-216-110](#) (6) , Subsection [WAC 173-220-150](#) (1)
- 

### **Suggested:**

- Noncompliance is violating any permit condition - including water quality limits.
- If unable to comply for any reason, the permittee must:
  - Immediately take action to stop, contain, cleanup and correct the problem.
  - Immediately notify both agencies.
  - For limit violations, immediately repeat sampling and analysis and submit results within 30 days.

### **Advisory Committee Recommendations:**

- ✱ OK (green card)
- ✪ Minor changes needed (yellow card).
- ✶ Major changes needed (red card).

Include suggestions below:

## PP#28 Schedules of Compliance

---

### Concepts: Rule should:

- Provide a process and schedule to achieve compliance with new requirements or to return to compliance after permit violations.
  - Establish the conditions and methods to modify and enforce the compliance schedules.
  - Assure that any uses regulated under federal NPDES requirements (streamflow augmentation and some wetlands) meet those regulations.
- Rule Reference: [WAC 173-220-140](#). NPDES
- 

### Suggested:

- The permitting agency may establish schedules and permit conditions to achieve compliance with reclaimed water standards, environmental water quality standards, and other applicable legal requirements.
- Schedules should be as short as possible and may be in orders or in permits.
- Schedules should specify specific tasks and milestones, not more than 1 year apart.
- The permitting agency may modify, suspend or revoke a permit or otherwise enforce for failure to meet the schedule.
- Upon request of the permittee, the permitting agency may modify a schedule of compliance or permit condition for good and valid cause (an act of God, strike, flood, materials shortage, or other event where the permittee has little control or remedy.)
- NPDES permits must comply with the requirements in WAC 173-220-140.

### Advisory Committee Recommendations:

- ✱ OK (green card)
- ✪ Minor changes needed (yellow card).
- ✶ Major changes needed (red card).

Include suggestions below:

## PP#30 Modify, Suspend or Revoke A Permit

---

**Concept:** Provide the rationale and a process to modify, suspend or revoke a permit.

Note: NPDES permits (streamflow and some wetlands) have NPDES requirements.

- Rule references: [WAC 173-216-130](#) and [WAC 173-220-190](#) (NPDES)
- 

### Suggested:

- The permitting agency may modify, suspend or revoke a reclaimed water permit for cause:
  - Violation of any permit term or condition.
  - Obtaining a permit by misrepresentation or failure to disclose relevant facts.
  - Nonpayment of permit fees.
  - Significant threat to public health or environmental harm.
  - Applicable new or revised standards.
  - Events over which the permittee has little control or reasonable remedy.
- The permitting agency must modify, suspend or revoke a reclaimed water permit if so directed by the Pollution Control Hearings Board or appeals court of jurisdiction.
- A permit remains in effect until modified, suspended or terminated by the permitting agency.
- Public notice is required if changes result in less stringent requirements. Otherwise, the permitting agency determines if the changes require public notice on a case-by-case basis.

### Advisory Committee Recommendations:

- ✱ OK (green card)
- ✪ Minor changes needed (yellow card).
- ✶ Major changes needed (red card).

Include suggestions below:

## PP#31 Enforcement Procedures

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**Concept:** Provide for enforcement of permit conditions identifying the processes for technical assistance, informal actions, civil action, and criminal sanctions. Provide a method for appeal.

Note: NPDES permits (streamflow and some wetlands) also allow for citizen suits.

- Rule References: [WAC 173-220-230](#) (NPDES)
- 

### **Suggested:**

Technical assistance encouraged. [Ch. 43.05 RCW](#)

Informal action (telephone calls, warning letter, notice of correction)

Civil action:

- Notice of violation (NOV)
- Administrative order – *schedules of compliance, conditional operating permits.*
- Consent order
- Consent decree
- Penalty – up to \$10,000 per day. [RCW 90.48.144](#)
- Moratoriums on development or sale of property until corrected.

**Note:** Law Suits

- Ecology may sue to enjoin any threatened or continuing violations without revoking the permit.
- Third party (citizen) suits are allowable under NPDES.

Criminal sanctions. [RCW 90.48.140.](#)

- Penalty for willful violations – up to \$10,000 per day
- Up to 1 year imprisonment.

Appeals: Ecology actions are appealable to the Pollution Control Hearings Board (PCHB).

DOH actions are appealable to DOH Adjudicative Court.

These decisions are appealable to state or federal court.

### **Advisory Committee Recommendations:**

- ★ OK (green card)
- ★ Minor changes needed (yellow card).
- ★ Major changes needed (red card).

Include suggestions below: