

WASHINGTON STATE
DEPARTMENT OF
E C O L O G Y

April 23, 2008
Reclaimed Water
Rule Advisory Committee

Task # 4
Clarifying Statutory Authority

RCW 90.46.015 & Rule Development

The statute directs Ecology to clarify which agency (Ecology or DOH) has regulatory and permitting authority for various aspects of reclaimed water use within the rule.

Why Propose A Statutory Change?

- 💧 The statute must be clear to specify in rule.
- 💧 Permitting and enforcement authorities are not clear in statute.
- 💧 Reference to the permit process for wastewater discharge permits (Ch 90.48 RCW) may not always work well.
 - Reclaimed water is considered a water supply.
 - Not a waste discharge.
 - Some uses do not have an environmental 'discharge' while other require an NPDES permit.

Four Conceptual Changes

1. Create clear, specific authority within Ch 90.46 RCW.
 - New sections in statute.
2. Eliminate the broad references to authority in other statutes.
 - When possible and appropriate.
 - Retain Ch 90.48 RCW authority where required.

Four Conceptual Changes

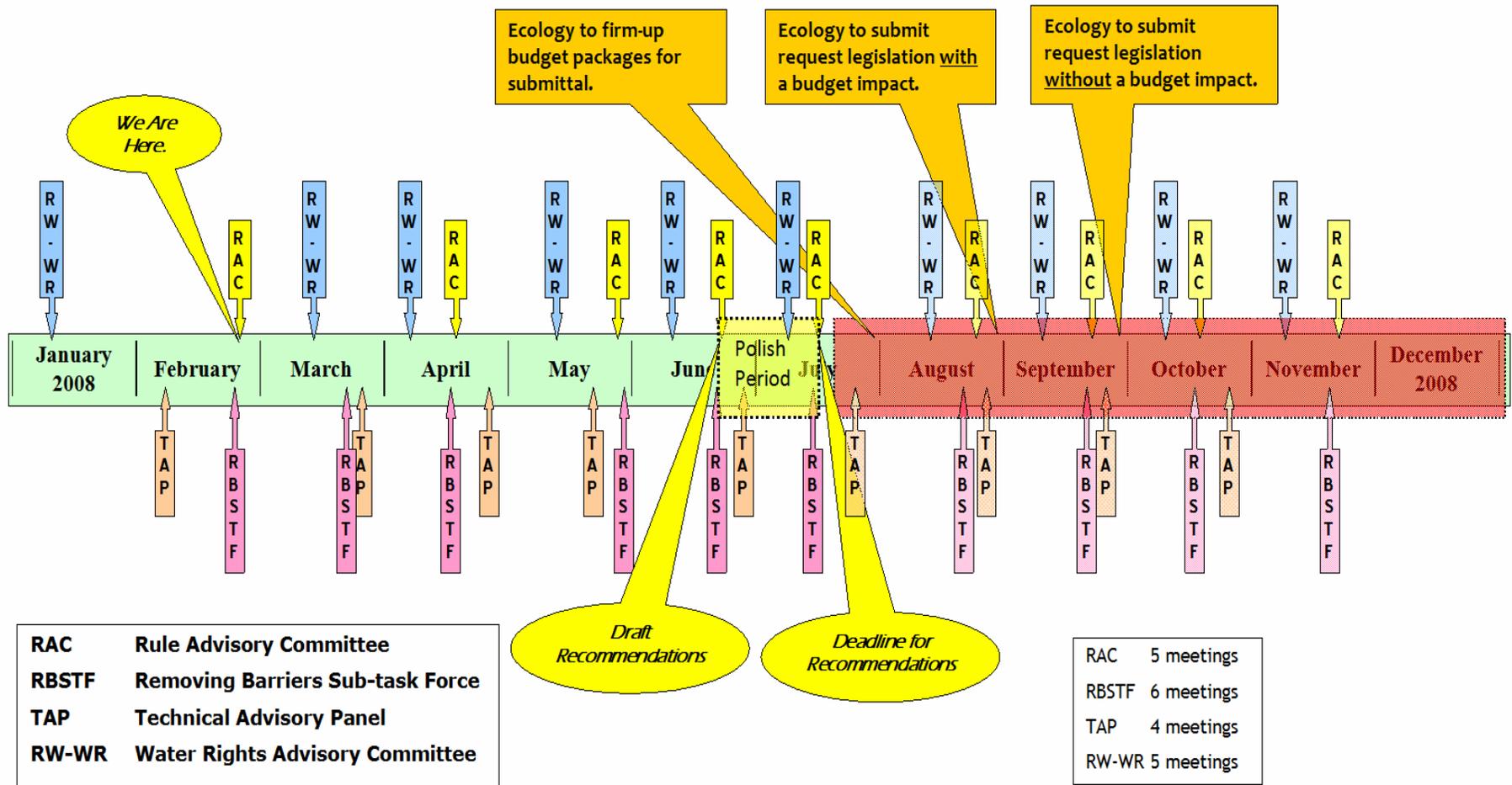
3. Provide authority so that one lead agency can approve, deny, condition & issue permit.

4. Clarify enforcement authorities – consider:
 - Lead agency enforces permit through their processes (Ecology PCHB or DOH hearing)
 - Each agency retains separate enforcement authority for specific parts of permit.

Examples – Very, very preliminary.

- 💧 For discussion only – work in progress!
 - Borrowing text from Ch 90.48 RCW.
 - Amend PCHB jurisdiction?
 - Amend DOH jurisdiction?
- 💧 Guide Ecology/DOH internal meetings – May
- 💧 Tight timeline for agency request legislation!

Timeline - Reclaimed Water Rule Advisory Committee to provide any recommendations to Ecology for consideration during the 2009 legislative session



Amend 90.46.060

Delete existing text:

Enforcement powers-Secretary of health

The secretary of health has all of the enforcement powers granted to the secretary of health under chapter 43.70 RCW to enforce this chapter.

Amend 90.46.060

Replace with the following **CONCEPTUAL** text:

Authority to implement

Both the departments of ecology and health shall have authority to carry out all of the provisions of this chapter, including but not limited to, permitting and enforcement. The rules promulgated under RECW 90.46.015 shall designate the lead agency for issuance and enforcement of each type of permit or use of reclaimed water under the chapter.

Specific Permit Requirements

- 💧 Alternatives:

- Amend each section describing use.
- Create one new section addressing all uses.

- 💧 Examples: (very rough)

- Any person proposing to produce, distribute or use reclaimed water shall obtain a permit under this chapter.
- Any person proposing to use reclaimed water for _____ shall obtain a permit under this chapter.

New Sections

- 💧 Use Ch 90.48 RCW as model.
- 💧 Modify as necessary to apply to Ch 90.46 RCW

A Few Examples:

- **90.48.037 Authority to bring enforcement actions.**
- **90.48.120 Authority to issue orders.**
- **RCW 90.48.144 Violations - Penalty - Procedure**
 - Address civil and criminal sanctions
 - Requires modification to procedures referenced under Ch. 43.21B RCW (PCHB jurisdiction)
 - Add DOH authority to PCHB process.

Modify Ch 43.21B RCW

- 💧 Pollution Control Hearing Board Jurisdiction
- 💧 Include a reference Ch 90.46 RCW.
- 💧 Sections identified to modify include:
 - 020,110,230,240,300,310 and 320.
 - Example on next slide
- 💧 Also similarly modify any applicable DOH statutes.

Example

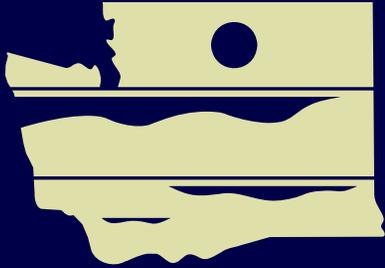
RCW 43.21B.110 Pollution control hearings board jurisdiction.

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

- Add: or the department of health.

(a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431, 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.48.144, 90.56.310, and 90.56.330.

- Add: and 90.46.XXX.



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Comments & Questions

End Task # 4
To be continued next month