

**Building the New Reclaimed Water WAC
Proposed Draft Rule Language - work in progress (WIP)
for Rule Advisory Committee Use Only
Wednesday, April 29, 2009**

1. **Outline of proposed Chapter 173-219 WAC**
2. ***Part I – GENERAL INFORMATION - version 1.0 (4-23-2009)***

Note: This text has been revised assuming that SB 5504 as passed by the 2009 legislature will be signed into law effective (date) 2009.

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Questions for the next section 010

1. *Most Ecology rules are brief on authority and purpose. Is this sufficient since there are separate sections proposed to address applicability and scope?*
2. *If not, what would you recommend and why?*

WAC 173-219-010 Authority and purpose.

1. **Authority.** This chapter is adopted under the authority of chapter 90.46 RCW, Reclaimed Water Use.
2. **Purpose.** The purpose of this chapter is to adopt a rule that addresses all aspects of reclaimed water use, including the beneficial uses of reclaimed water, while protecting human health and the environment.

Questions for the next section 020 Applicability

1. *Does Ecology need to add something to address pre-existing reclaimed water facilities? Is so, what?*
2. *Is the list of uses, discharges that are not covered in this rule helpful? How could it be improved?*

WAC 173-219-020 Applicability.

1. These rules apply to all existing and future facilities planning, generating, distributing, storing or using reclaimed water as defined in chapter 90.46 RCW and in this chapter. The distribution and use of reclaimed water in compliance with the requirements of this rule and with any permit issued under this rule is not considered a wastewater discharge.
2. Unless the lead agency determines that the potential for public or environmental exposure from the use requires a reclaimed water permit under this chapter, this chapter does not apply to the following types of water reuse:
 - (a) The use of reclaimed water or of wastewater effluent for treatment plant purposes within the bounds of a wastewater treatment facility.
 - (b) The capture and redirection of used process water back to process uses within the bounds of an industrial facility.
 - (c) The reuse of greywater permitted under rules adopted by the department of health.
 - (d) The use of agricultural industrial process water permitted under Ch 90.48 RCW.
 - (e) The use of industrial reuse water permitted under Ch 90.48 RCW.
 - (f) Land treatment facilities permitted under Ch 90.48 RCW.
 - (g) Wastewater effluent discharges permitted under Ch 90.48 RCW.

(h) Onsite sewage disposal systems regulated under Ch. 70.118 and 70.118B RCW.

3. Relationship to other laws.

(a) In addition to the requirements of this chapter, other laws, regulations, and ordinances may also apply to reclaimed water generation, distribution or use. These include but are not limited to those listed in Appendix 1.

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

4. Severability. If any provision of this chapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application.

Questions for the next section 030 Scope

Note: This new section summarizes the content for this rule.

1. *Is it accurate?*
2. *Is it complete?*

WAC 173-219-030 Scope

1. This rule governs all aspects of the use of reclaimed water in Washington, including the authority to generate and distribute it, and the sanctions for failing to comply with state requirements expressed in statute or rule.
2. The rule establishes:
 - (a) The lead agency for the state for all authorized categories of reclaimed water use.
 - (b) Requirements for consideration of reclaimed water in planning documents.
 - (c) Submittal requirements and procedures for agency review and approval of reclaimed water facilities.
 - (d) Requirements and procedures for permit issuance, appeal, transfer, modification and revocation. For private utilities, this includes information reasonable and necessary for the lead agency to determine whether the utility has the financial and other resources to ensure the reliability, continuity, and supervision of the reclaimed water facility.
 - (e) Required permit conditions and compliance monitoring that assure adequate and reliable treatment, and govern the water quality, location, rate, and purpose of use.
 - (f) Requirements for operation and maintenance of the facility.

- (g) Technical standards for the generation, distribution, storage and use of each category of reclaimed water use authorized under state law
- (h) Standards for assessing potential for impairment of existing water rights and plans to compensate or mitigate for that potential.
- (i) Fees to recover the costs of administering the program.

Questions for the next section 040 Definitions

How should we handle the definitions section? Options:

- 1. *Incorporate definitions from statutes by reference?*
- 2. *Add definitions as needed as we go through section by section of the rule?*
- 3. *Address as a group in the final version?*
- 4. *Other or combination of the above?*

WAC 173-219- 040 Definitions – Alphabetized List

Note: Ecology has temporarily placed the list of potential definitions in a separate file solely for convenience in reading this document.

Questions for the next section 050 - Agency Responsibilities

- 1. *Is this clear?*
- 2. *Does this streamline the review and permitting process as intended by the legislature?*
- 3. *Is the summary table useful?*

173-219-050 Division of responsibilities between the departments of ecology and health

- 1. The department of ecology and the department of health shall have authority to carry out all the provisions of this chapter including, but not limited to, permitting and enforcement. Only the department of ecology or the department of health may act as a lead agency for purposes of this chapter.
- 2. For any permit, the lead agency shall:
 - (a) Receive the permit application and related project submittals.
 - (b) Review and approve all submittals required for permit issuance.
 - (c) Coordinate project reviews and permit input with the non-lead agency.

- (d) Issue the permit for the reclaimed water facility with permit conditions specifically stating notification requirements and regulatory authority.
 - (e) Receive, review, coordinate with non-lead agency, and approve all submittals required by conditions in the permit.
 - (f) Conduct compliance inspections and take corrective actions when appropriate.
 - (g) Report violations of specified permit conditions to the non-lead agency and coordinate on the best method to achieve compliance. Both Ecology and DOH retain their separate regulatory authorities to take corrective action as needed to protect public health or environmental water quality.
3. For any permit, the non lead agency shall:
- (a) Coordinate with lead agency to assure that state regulations, permits, and compliance requirements will protect both public health and environmental water quality.
 - (b) Review ~~portions of referred~~ submittals ~~requested by~~ from lead agency.
 - (c) Assist lead agency with permit appeals, compliance or enforcement actions when needed.
4. Responsibilities of the department of ecology.
- (a) Except as provided in subsection (5) of this section, the department of ecology is the lead agency and shall coordinate, review, issue, and enforce all reclaimed water permits issued under this chapter.
 - (b) Ecology's Water Quality Program shall review reclaimed water requirements for consistency with other state and federal water quality regulations including:
 - i. Inclusion in general sewerage planning and facility plans.
 - ii. NPDES and state waste discharge requirements and permits including source control and pretreatment requirements.
 - iii. Regulation of operators of reclaimed water facilities.
 - (c) Ecology's Water Resources Program shall make all regulatory decisions related to potential impairment of existing water rights or for new water rights when mitigated by reclaimed water.
 - (d) Ecology's Shorelands and Environmental Assistance Program will review watershed planning under Ch. 90.82 RCW for inclusion of reclaimed water in planning documents.
5. Responsibilities of the department of health

- (a) The department of health shall be the lead agency for facilities and uses limited to the following:
 - i. On-site, subsurface ground water recharge by vadose zone percolation up to and including 100,000 gallons per day provided that the source of the reclaimed water is domestic wastewater only.
 - ii. Commercial and industrial uses when a reclaimed water or wastewater discharge permit is not otherwise required by Ecology.
 - iii. Limited landscape irrigation at or below agronomic rates when confined to a location with reclaimed water uses or wastewater discharges otherwise permitted by DOH.
- (b) Review reclaimed water requirements for consistency with other state and federal public health regulations including:
 - i. Water supply planning. State law requires consideration of reclaimed water use within water supply plans and encourages implementation where feasible.
 - ii. Establishing public health protection requirements for industrial, commercial and urban service uses including pipe separation, dual plumbed systems, cross-connection control and backflow prevention.
 - iii. Protection of potable water systems including the responsibility to identify when and under what conditions a water supply is suitable for potable purposes.
- (c) Coordinate with local health departments in order to foster a closer working relationship with local agencies and to reduce any potential conflicts. To the extent authorized, DOH may delegate some or all of its responsibilities for a proposed project to a local health jurisdiction. For any local delegation, DOH will incorporate into the delegation agreement a requirement that the local agency abide by the terms and conditions in the same manner as DOH.

Summary Table of Lead Agency Responsibilities

Category of Use	Ecology Lead	DOH Lead
Surface water augmentation	All	
Wetlands	All	
GW recharge by surface percolation	All	
GW recharge by vadose zone percolation Domestic wastewater source	> 100,000 gpd	< or = 100,000 gpd
Industrial wastewater source	All	
Combined wastewater source	All	
Direct groundwater recharge	All	
Land application		

At or below agronomic rates	All except ----- -	Landscape irrigation confined to a location under DOH permit.
Above agronomic rates	All	
Impoundments	All?	
Commercial and industrial uses such as toilet flushing, cooling water, etc.	When combined with Ecology regulated uses or effluent discharges.	When the only use or combined only with DOH regulated uses or effluent discharges.

Questions for the next two sections 060 Enforcement and 070 Appeals

1. Is it sufficient to reference statutory requirements?
2. If not, what should we detail within the rule?
3. Should enforcement and appeals be pulled out of "Part I" and made a separate "Part VII" of the rule?

173-219-060 Enforcement.

1. Any violation of this chapter or any permit issued under this chapter may be subject to the enforcement provisions of applicable laws including, but not limited to, chapters 43.21A, 43.70, 90.46 and 90.48 RCW.
2. Enforcement of a permit issued under this chapter shall be at the sole discretion of the lead agency that issued the permit.
3. The enforcement of other laws, regulations, and ordinances is the responsibility of the agency with jurisdiction.

173-219-070 Appeals.

Any person aggrieved by a decision of the department made in accordance with provisions of this chapter may appeal that decision only as provided by applicable law including, but not limited to, chapters [43.21B](#) and [34.05](#) and 90.46 RCW. [[2009 SB 5504-S](#)]

Questions for the next section 080 Requirements for a person who generates reclaimed water.

1. Should Ecology keep subsection 2(a) and (b) on permitting private and public entities here or move it to Part III (Permits) of this rule?
2. How and where should Ecology address private utility viability requirements (2) (a) (iii) within this rule?
3. Should Ecology expand on subsection 3 regarding how the generator will ensure that all requirements are met within the rule? If so, how and where?
4. How should the lead agency ensure that all contracts required under subsection 5 are in place and enforceable?

173-219-080 Requirements for a person who generates reclaimed water.

1. A person shall not generate reclaimed water for distribution or use except in accordance with applicable requirements of this chapter and any applicable permit issued under this chapter.
2. The generator shall obtain a permit from the lead agency prior to distribution or use of the reclaimed water in accordance with the requirements of Part III of this rule.
 - (a). **Private Entity.** The lead agency may permit a privately owned facility to generate reclaimed water provided:
 - i. The uses of the reclaimed water are authorized under this chapter.
 - ii. The owner of the facility is one or more of the following:
 - (1). A private utility as defined in RCW [36.94.010](#).
 - (2). The holder of a waste discharge permit issued under chapter [90.48](#) RCW.
 - (3). A facility serving a single nonresidential industrial or commercial establishment. This does not include commercial/industrial complexes serving multiple owners or tenants or multiple residential dwelling facilities such as mobile home parks, apartments, and condominiums.
 - iii. Before deciding whether to issue a permit to a nonpublic entity, the lead agency may require information that is reasonable and necessary to determine whether the private entity has the financial and other resources to ensure the reliability, continuity, and supervision of the reclaimed water facility.
 - (b). **Public Entity.** All other facilities shall be owned by a public entity. Nothing in this rule precludes a public entity from contracting for operation and maintenance.
3. The permittee shall ensure that the applicable requirements of this chapter and the permit issued under this chapter are met.
4. The permittee shall maintain control over, and be responsible for, all facilities and activities inherent to the production of reclaimed water to ensure that the reclamation plant operates as approved by the Washington Departments of Health and Ecology.
 - (a) The permittee shall control industrial and toxic discharges that may affect reclaimed water quality through either a delegated pre-treatment program with Ecology or assuring all applicable discharges have permits issued under chapter 90.48 RCW and 173-220 WAC.
 - (b) The permittee shall have an operator, certified by the state, in responsible charge of the day-to-day operation of the facility generating reclaimed water. The certification procedures are set forth in chapter [173-230](#) WAC.

5. Where the reclaimed water distribution or use area is not under the direct control of the permittee, the permittee shall provide the distributor and user with a copy of the permit requirements and ensure through enforceable contracts or ordinances that the applicable requirements in this chapter and any applicable permit issued under this chapter are met.

Questions for the next section 100 Requirements for a person who distributes reclaimed water.

Note: Ecology modified the content of this section to reflect comments from the RAC regarding agency authority to regulate distributors and users that are not the Permittee.

1. *Does this work?*
2. *If not, why not and how could it be improved?*

WAC 173-219-100 Requirements for a person who distributes or transports reclaimed water.

1. A person may not distribute reclaimed water except in accordance with applicable requirements of this chapter and any applicable permit issued under this chapter.
2. Any person who distributes reclaimed water is responsible for all facilities and activities inherent to their distribution of the reclaimed water. For the purposes of this section, distribution also includes the use of any storage facilities or transport vehicles.
3. The person who distributes the reclaimed water shall ensure that the construction, operation, maintenance and monitoring system within their distribution system meets all applicable requirements of this chapter and the permit issued to generator of the reclaimed water.
4. If the person distributing or otherwise transporting reclaimed water is not the user, the distributor shall provide the user with a copy of the applicable permit requirements and ensure through enforceable contracts or ordinances that the applicable requirements in this chapter and any applicable permit issued under this chapter are met.

Questions for section 100 Requirements for a person who distributes reclaimed water.

Do we have a time limitation “reasonable amount of time” for providing the user with the applicable permit?

Who is responsible for the enforcement in the enforceable contracts? What happens if the enforcement doesn’t take place in a timely fashion or at all?

Questions for the next section 110 Requirements for a person who uses reclaimed water.

Note: Ecology modified the content of this section to reflect comments from the RAC regarding agency authority to regulate distributors uses that are not the Permittee.

- 1. Does this work?*
- 2. If not, why not and how could it be improved?*

WAC 173-219-110 Requirements for a person who uses reclaimed water.

1. A person may not use reclaimed water except in accordance with applicable requirements of this chapter and any applicable permit issued under this chapter.
2. Any person who uses reclaimed water is responsible for all facilities and activities inherent to the use of the reclaimed water. For the purposes of this section, use also includes the use of any on-site storage facilities.
3. The person using the reclaimed water shall ensure that the construction, operation, maintenance and monitoring system at their use area meets all applicable requirements of this chapter and the permit issued to generator of the reclaimed water.

Questions for 110 Requirements for a person who uses reclaimed water.

What is the difference in requirements for a person who uses reclaimed water if that person is the generator of the reclaimed water, the distributor of the reclaimed water, or if he/she is only the end user of reclaimed water?

Are there circumstances where the permittee is the end-user for reclaimed water? If so does this need to be addressed separately?