

LAKEHAVEN UTILITY DISTRICT COMMENTS ARE IN RED

Chapter 173-219 WAC
DRAFT Baseline or Default Rule
RECLAIMED WATER USE
Chapter 173-219 WAC

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I. Introduction

WAC 173-219-A1 Policy Statement

Ch. 90.46 RCW, Reclaimed Water Use authorizes these rules to implement the beneficial use of reclaimed water while protecting human health and the environment. The state of Washington recognizes reclaimed water as a valuable source of water supply.

WAC 173-219-A2 Applicability and Scope

1. These rules apply to all facilities planning, generating, distributing, storing or using reclaimed water as defined in this chapter.¹
2. These rules establish²
 - a. Requirements for consideration of reclaimed water in planning documents.
 - b. Submittal requirements and procedures for agency review and approval.
 - c. Requirements and procedures for permit issuance, appeal, transfer, modification and revocation.
 - d. Required permit conditions and compliance monitoring.
 - e. Technical standards for the generation, distribution, storage and use of reclaimed water.
3. These rules do **not** apply to the following:
 - a. Use of effluent for treatment plant purposes within the bounds of the treatment facility except where the potential for public exposure requires reclaimed water.
 - b. Gray water (or greywater) use regulated by the Department of Health³.
 - c. Agricultural industrial process water uses permitted under Ch 90.48 RCW⁴.

¹ The term “ facility” needs to be defined. Important to assure the definition continues to allow existing financial assistance funding Under RCW 90.46.050. This reference declares that reclaimed water facilities are water pollution control facilities as defined in [RCW 70.146.020](#).

² This section is intended to establish the general scope of the rule. More detail can be added, if needed for clarity.

³ Gray water (greywater) is under existing DOH guidance and will be regulated under a new rule to be adopted by DOH in coordination with Ecology.

⁴ Under existing statute (RCW 90.46.150) Ecology permits this type of reuse under Ch 90.48 RCW on a case-by-case basis. It is not considered reclaimed water. Proposed statutory changes in 2009 session could add authority to regulate under Ch 90.46 RCW. NW Association of Food Processors ran the existing legislation and should be at the table for any proposed regulatory changes to existing practices. The 1997 reclaimed water standards do not address these types of water reuse. Addressing agricultural industrial reuse could add significantly to the workload for the rule.

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- d. Industrial reuse water permitted under Ch 90.48 RCW.⁵
- e. Wastewater discharges regulated under Ch 90.48 RCW.
- f. Drinking water supplies regulated under Ch. 43.20, 70.116, and 70.119A RCW, and under Ch 246-290 and 246-291 WAC.
- g. Water right permits and certificates regulated under RCW 90.03.250 or 90.44.060⁶.
- h. Large onsite sewage disposal systems regulated under Ch. 70.118B RCW.

WAC 173-219-A3 Explanation of use of terms⁷

Appendix A provides a list of definitions for terms as used within this chapter. Put the definitions in here not in Appendix

WAC 173-219-A4 Source of supply - No longer considered wastewater.

1. When in compliance with the requirements of this rule and with all applicable permits issued under this rule⁸, then the distribution and beneficial use of reclaimed water is not considered a waste discharge.⁹
2. A person shall not distribute or use reclaimed water except in accordance with the requirements of this rule and any applicable permit issued under this rule or under Ch.90.48 RCW as it may relate to the source control, treatment, distribution or use of reclaimed water.
3. Any person who generates reclaimed water for distribution or use shall ensure through enforceable contracts or ordinances that the applicable requirements in this rule and any applicable permit issued under this rule or under Ch 90.48 RCW are met throughout the source control, treatment, distribution and use of the reclaimed water.

WAC 173-219 -A5 Relationships to other laws and regulations

⁵ Under existing statute (RCW 90.46.160) Ecology permits this type of reuse under Ch 90.48 RCW on a case-by-case basis. It is not considered reclaimed water. Proposed statutory changes in 2009 session could add authority to regulate under Ch 90.46 RCW. Industries should be at the table for any proposed regulation under this rule. The 1997 reclaimed water standards do not address these types of water reuse. Addressing industrial reuse could add significantly to the workload for the rule.

⁶ Intent is to distinguish between the exclusive right granted under RCW 90.46.120 (also RCW 90.46.150 and 160) and an appropriative water right. The state does not regulate appropriated rights under this rule.

⁷ Definitions are usually placed in a section near the front of a rule. An Appendix was chosen (for now) because the list of definitions is lengthy and will require further work.

⁸ Permits are currently issued under Ch 90.48 RCW authority. Proposed statutory change would allow issuance under Ch 90.46 RCW authority.

⁹ RCW 90.46.010(14) definition of reclaimed water.

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1. Any violation of this rule or any permit issued under this rule is subject to the enforcement provisions of applicable laws including, but not limited to, chapters 43.21A, 43.70, 90.46 and 90.48 RCW.¹⁰ The enforcement of other laws, regulations, and ordinances is the responsibility of the agency with jurisdiction.
2. Any person aggrieved by a decision of the department made in accordance with provisions of this rule may appeal that decision only as provided by applicable law including, but not limited to, chapters [43.21B](#) and [34.05](#) RCW.¹¹
3. In addition to the requirements of this rule, other laws, regulations, and ordinances may apply to reclaimed water.¹² These include, but are not limited to:

Statutes (RCWs) and Rules (WACs)	Application
Chapter 90.46 RCW Reclaimed Water Use	This statute is the basis for permitting, standards, and legislative intent.
Chapter 90.48 RCW Water Pollution Control	This statute provides broad authority for Ecology to regulate waste discharges to waters of the state. Ecology permits for reclaimed water are issued under Ch 90.48 RCW authority. ¹³
Chapter 90.03 RCW Water Code Chapter 90.44 RCW Regulation of Public Ground Waters Chapter 90.54 RCW Water Resources Act of 1971 Chapter 90.22 RCW Minimum Water Flows and Levels	These statutes provide the basis for the appropriation and beneficial uses of public waters. Use and distribution of the reclaimed water when permitted under this rule are exempt from water rights permit requirements under RCW 90.03.250 or 90.44.060.
Chapter 43.20 RCW State Board Of Health	This statute provides the broad authority for DOH to adopt rules (WACs) for sewage and drinking water systems.
Chapter 173-200 WAC Water Quality Standards for Ground Waters	This rule applies to any reclaimed water beneficial use that discharges to ground water except as amended by RCW 90.46.080 for surface percolation.
Chapter 173-201A WAC Water Quality Standards for Surface Waters	This rule applies to any reclaimed water that would discharge to surface waters of

¹⁰ DOH staff added enforcement references proposed under the 2009 proposed legislation pending AAG review.

¹¹ Includes proposed language in 2009 legislation pending AAG review.

¹² This list is comprehensive and may or may not need to be included within the rule. Some of it may be under the basis for the rule.

¹³ Ecology permitting authority currently comes from Ch 90.48 RCW. AAG should revisit after 2009 legislative session with consideration that Ecology permits will have requirements from both statutes.

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	the state.
Chapter 173-216 WAC State Waste Discharge Permit Program	This rule currently is used as the basis to permit reclaimed water uses including source control and uses that do not include discharges to waters of the United States permitted under Ch. 173-220 WAC. ¹⁴
Chapter 173-220 WAC National Pollution Discharge Elimination System Program (NPDES)	This rule delegates to Ecology the NPDES permitting program from USEPA for discharges to waters of the United States and is used as the basis to permit reclaimed water uses to waters of the United States. ¹⁵
Chapter 173-240 WAC Submission of Plans and Report for Construction of Wastewater Facilities	This rule governs the engineering submittal requirements for Ecology for permits issued under Ch 90.48 RCW. This authority is used in addition to the guidance provided in the reclamation standards. ¹⁶
Chapter 246-271 WAC Public Sewage	This rule provides the basic investigative powers of DOH for regulating municipal sewage system discharges and approving engineering documents. ¹⁷
Chapter 246-290 WAC Group A Public Water Systems	This rule establishes requirements for public water systems consistent with the Safe Drinking Water Act and other DOH statutes and WACs.
Chapter 70.116 RCW Public water system coordination act	This statute governs the establishment of critical water supply service areas related to water utility planning and development.

¹⁴ The 2009 changes proposed to Ch 90.46 RCW will specify permitting authority under the Reclaimed Water Use statute. The rule under development, should include the basis for permitting reclaimed water use as distinct from the state waste discharge permit program and establish when the state waste discharge permit program requirements also apply.

¹⁵ The changes proposed to Ch 90.46 RCW (2009) will specify permitting authority under the Reclaimed Water Use statute. The new rule (Ch 173-219 WAC under development) will establish when the NPDES permit program requirements also apply.

¹⁶ The changes proposed to Ch 90.46 RCW (2009) will specify the lead agency review authority and requirements under Ch 90.46 RCW and establish when requirements under Ch 173-240 WAC also apply.

¹⁷ Revisit need for this reference after 2009 session.

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Chapter 90.82 RCW Watershed planning	This statute governs the development of local watershed plans for managing water resources and for protecting existing water rights.
Chapter 36.70A RCW Growth management	This statute governs the development and adoption of comprehensive plans and development regulations of those counties and cities that are required or choose to plan under RCW 36.70A.040 .
Chapter 173-154 WAC Protection Of Upper Aquifer Zones	This rule establishes policies and procedures for the protection of upper aquifer zones from excessive water level declines or reductions in water quality.
Chapter 173-218 WAC Underground injection control program	This rule establishes an underground injection control program for the injection of fluids through wells. This rule is applicable to reclaimed water that would discharge to ground water by way of an injection well.
Chapter 173-157 WAC, Underground Artificial Storage and Recovery	This rule implements RCW 90.03.370 (2) and establishes the standards for review of applications for underground artificial storage and recovery projects and, when necessary, to identify options for mitigation of potential adverse impacts. ¹⁸
Chapter 173-150 Protection of Withdrawal Facilities Associated with Ground Water Rights	This rule describes minimum requirements before a water right holder may claim impairment of water obtained from a well.
Chapter 173-500 thru 173-564	These rules provide the specifics of the state's instream flows and closures in various watersheds.
WAC 246- LOSS Regulations under development (HB 5894)	These rules describe requirements for larger on-site systems regulated by the Department of Health.
RCW 70.119A Public water systems -- Penalties and compliance	Water systems planning requirements.
UTC Statutes and regulations for water systems and public water supplies.	UTC regulates potable water systems but does not currently regulate reclaimed

¹⁸ RCW 90.46.120 states that a permit for recovery of reclaimed water from aquifer storage and recovery shall be reviewed under the standards established under RCW [90.03.370](#)(2).

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WAC 173-219-A6 Formal agreements between departments

1. The departments of ecology and health may designate specific authorities to each other in order to administer this chapter. Authorization shall be consistent with any applicable state laws and regulations and with the state-USEPA agreement regarding delegation of federal authority. Each department retains all authorities and responsibilities not specifically designated to the other agency.
2. The departments shall designate specific authorities only by a written memorandum of understanding (MOU) or similar document of mutual consent acceptable to both departments. At a minimum, the document shall specify the designated authorities and responsibilities, provide a termination date of the agreement, include a process for periodic review, update, and renewal of the agreement, and specify a process to revoke all or part of the designated authority for cause.¹⁹

WAC 173-219-A7 Formal agreements between permittee, distributors, users.

Any person who generates reclaimed water for distribution, storage or use by others shall ensure through written enforceable contracts or ordinances that all applicable requirements of this rule and of any permit issued under this rule are met. I have emailed you both some considerations on what should be considered in a contract with a reclaimed producer and the users. The intent is to communicate as best as possible the events that might reduce the reliability of reclaimed water so that the water utility may understand the risks it is assuming on a reclaimed water supply.

¹⁹ **Note:** In 1995, the departments signed an MOU related to the review, permitting, and enforcement of reclaimed water projects. The MOU needs updating to reflect existing statutory direction for the rule under 90.46.015 RCW that the rule under development must also designate whether the department of ecology or the department of health will be the lead permitting or regulatory agency responsible for a particular aspect of reclaimed water use. Ecology and DOH jointly proposed a statutory change for 2009 (Section 10 Lead Agency Duties) to state that both departments have authority to carry out all provisions of the statute, that only one of the two agencies will be the lead agency for a given project and that the rule will establish which agency will act as the lead agency.

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II. Planning Requirements

WAC 173-219-A8 Explanation of use of planning terms

Appendix A provides a list of definitions for all terms as used within this chapter. The following terms related to planning requirements are also included here.²⁰

1. "General sewer plan"²¹ is a comprehensive plan for a system of sewers adopted by a local government entity:
 - a. Sewerage general plan adopted by counties under chapter [36.94](#) RCW.
 - b. Plan for a system of sewerage adopted by cities under chapter [35.67](#) RCW.
 - c. Comprehensive plan for a system of sewers adopted by water-sewer districts under chapter [57.08](#) RCW.
 - d. Plan for sewer systems adopted by public utility districts under chapter [54.16](#) RCW.
 - e. Plan for sewer systems adopted by port districts under chapter [53.08](#) RCW.

The plan includes the items specified in each respective statute. It includes the general location and description of treatment and disposal facilities, trunk and interceptor sewers, pumping stations, monitoring and control facilities, local service areas and a general description of the collection system to serve those areas. The plan also includes preliminary engineering in adequate detail to assure technical feasibility, provides for the method of distributing the cost and expense of the sewer system, and indicates the financial feasibility of plan implementation.

2. "Water system plan" means a document prepared under WAC 246-290 (Ch 43.20 RCW) that demonstrates a water system's operational, technical, managerial, and financial capability to achieve and maintain compliance with local, state and federal plans and regulations. It also demonstrates how the system will address present and future needs in a

²⁰ Definitions of planning terms are included here for easier reference. Ecology must decide how best to present definitions in the new rule (in each section, appendix, or near the beginning of the rule).

²¹ A general sewer plan under this rule is the same as defined under WAC 173-240-020(7)(a) except this is corrected to delete references to sewer districts under chapter 56.08 RCW which were re-codified as water-sewer districts under chapter 57.08 RCW.

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manner consistent with other relevant plans and local, state, and federal laws, including applicable land use plans.²²

3. “Regional water supply plan” includes plans developed by multiple jurisdictions under the relevant provisions of chapters [43.20](#), [70.116](#), [90.44](#), and [90.82](#) RCW, and the water supply provisions under the utility element of chapter [36.70A](#) RCW.²³
4. “Wastewater facility plan” is an engineering report that also includes general sewer plan elements meeting the requirements under federal regulation 40 CFR 35 for the Environmental Protection Agency’s municipal wastewater construction grants program.

WAC 173-219-A9 Consideration in sewerage planning required

1. Any person submitting a general sewerage plan or wastewater facility plan, including amendments, to the department of ecology must include an evaluation of opportunities for reclaimed water use as part of the submittal.²⁴

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WAC 173-219-A10 Consideration in water system planning required

1. Except as stated in (2) of this section, any person submitting a water system plan to the department of health²⁵ must include an evaluation of opportunities for reclaimed water use as part of the submittal.

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2. The requirements of this section do not apply to water system plans developed under chapter [43.20](#) RCW for utilities serving less than one thousand service connections.

WAC 173-219-A11 Consideration in regional water supply planning required²⁶

1. When the proposed use or uses of reclaimed water are intended to augment or replace potable water supplies or create the potential for the development of additional potable water supplies, such use or uses shall be considered in the development of any regional water supply plan or plans addressing potable water supply service by multiple water purveyors. Such water supply plans include plans developed by multiple jurisdictions under the relevant provisions of chapters [43.20](#), [70.116](#), [90.44](#), and [90.82](#) RCW, and the water supply provisions under the utility element of chapter [36.70A](#) RCW.
2. The method by which such plans are approved shall remain unchanged.
3. The requirements of this section do not apply to water system plans developed under chapter [43.20](#) RCW for utilities serving less than one thousand service connections.

²² from WAC 246-290-100(1)

²³ From RCW 90.46.120. Proposed legislation (2009) may remove the reference to chapter [36.70A](#) RCW (Growth Management Act) from RCW 90.46.120. We could identify each statute by name as well as number.

²⁴ From RCW 90.48.112.

²⁵ Citation needed.

²⁶ From RCW 90.46.120. Proposed legislation (2009) may alter these requirements.

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4. The owner of a wastewater treatment facility that proposes to reclaim water shall be included as a participant in the development of such regional water supply plan or plans. To clarify this assumes the treatment plant owner is the only agency that can reclaim the water and not the upstream collection system owners before it enters the treatment plant. Upstream collection system owner have the ability to build their own plants (whether scalping plants or zero discharge plants).

WAC 173-219-A12 Coordinated planning required ²⁷

Any entity required to or choosing to consider reclaimed water use shall coordinate with the other applicable entities providing water, wastewater and reclaimed water services to determine the feasibility of a reclaimed water project. Plans submitted to the departments shall describe the process for coordination as part of the feasibility study.

WAC 173-219-A13 Feasibility study²⁸

1. At a minimum, the feasibility study shall:

- a. Identify all (do you really mean this) existing and potential users and uses of the water including uses outside of the traditional water service area boundaries. Please note you have not limited the area around a water service area so is it 1 mile 100 miles?? there has to be a better way of describing what you mean. Note: water utilities do not have the ability to provide service outside their service area boundary so this may be a problem too.
- b. For each of the uses identified, estimate the annual or seasonal volume of reclaimed water required. Compare estimates of annual or seasonal volume required to the total production of reclaimed water available. If the beneficial uses are not capable of using the total production of the water describe plans for storage or discharge of the excess.
- c. Determine the level of water quality, treatment and reliability required for the uses identified. Evaluate the ability of current or proposed treatment facilities, including industrial sources to meet requirements.
- d. Conduct a preliminary screening to evaluate if there is potential for receiving water or downstream water rights impairment.
- e. Discuss the general layout of a reclaimed water transmission lines and distribution system for the likely uses identified. Provide a map showing potential routes for ~~((trunk))~~ pipe ²⁹ lines to provide reclaimed water to the alternative uses identified.

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²⁷ From RCW 90.48.112 and RCW 90.46.120.

²⁸ From existing agency guidance <http://www.ecy.wa.gov/programs/wq/reclaim/guideto9048112.pdf> This is guidance and we may or may not want to incorporate all of it into the rule. It is a good idea to spell out minimum requirements within the rule – detail can be here or in the next section III.

²⁹ Shows proposed changes to existing guidance web document (deletions in ~~strikeout~~; adds in italic underline.)

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- f. Identify plans to meet future water demands if reclaimed water is not used. Reference information within water supply and **consistent with** growth management plans. Include a discussion of the need for future facilities, groundwater and surface water management, capital and operational costs and **potential** customer rate structures.³⁰
 - g. Compare the various production/treatment, water supply, distribution, and use alternatives and provide a basis for selection or rejection of alternatives. Select the most promising reuse alternatives for further evaluation. Consider reliability of water supply, value of reclaimed water nutrients, groundwater and surface water supply management, wastewater treatment and water quality benefits resulting from reduction or removal wastewater effluent disposal, and reduction or elimination of public water system infrastructure in your assessment. Estimate capital costs, operational and maintenance costs, engineering feasibility, energy analysis, environmental and water quality impacts resulting from better water supply management, public and market acceptance and access to additional water supply ((water rights)).³¹
 - h. Using a whole systems approach³² **this needs to be defined and agreed to**, compare the life cycle costs of reclaimed water to the existing and proposed alternatives for water and wastewater management (include potable water, other nonpotable water supplies, wastewater treatment and disposal, and environmental quality and quantity impacts). Estimate both current and future needs (up to 50 years) to determine if the selected alternatives will remain cost-effective over time.
 - i. Consider ownership requirements and operational requirements and capacity including financial, managerial, and adequate qualified staffing.
2. Ecology recommends submitting a water right impairment analysis as early as possible in the planning process, typically as a component of a feasibility study or engineering report.

The facility shall submit a feasibility report for review and approval in accordance with WAC 173-219-Part A-III.

³⁰ Ibid.

³¹ Ibid.

³² Definition may be needed.

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III. Submission of Engineering Documents

WAC 173-219-A14 Applicability and scope

The purpose of Section III is to implement Ch 90.46 RCW and RCW 90.48.112³³ requirements for submittal of feasibility studies, planning documents, engineering reports and plans and specifications for reclaimed water facilities including generation, distribution and use facilities. This section also includes provisions for review and approval of proposed methods of operation and maintenance.

WAC 173-219-A15 Explanation of use of terms

For a complete list of definitions used within this chapter, refer to Appendix A. The following terms applying to Section III and also included here.³⁴

1. "Approval" means written approval.
2. "Construction quality assurance plan" means a plan describing the methods by which the professional engineer in responsible charge of inspection of the project will determine that the facilities were constructed without significant change from the departments approved plans and specifications.
3. "Feasibility report" means³⁵
4. "Engineering report" means a document that thoroughly examines the engineering and administrative aspects of a particular water reclamation facility. The report shall contain the appropriate information required under WAC 173-219-A26.
5. "Plans and specifications" means the detailed drawings and specifications used in the construction or modification of domestic or industrial wastewater facilities. Except as otherwise allowed, plans and specifications are preceded by an approved engineering report. Either delete the above or add to definitions and then delete the above.

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WAC 173-219-A16 Lead Agency (Existing Process)³⁶

1. Applicant submits all engineering review documents to **both** the department of ecology and health for review.

³³ Add DOH citations. Ecology and DOH jointly propose stating specific authority under Ch 90.46 RCW (proposed 2009 legislation) for submittal of plans, reports and proposed methods of operation and maintenance. If passed, this citation would apply as codified.

³⁴ Definitions in Section III are taken from WAC 173-240-020 unless otherwise noted.

³⁵ To be defined - basically it is a report submitting the results of the feasibility study.

³⁶ From 1995 MOU and attachment A-1. Note: Proposed legislation for 2009 session would define and establish either DOH or Ecology as the lead agency for a facility. This will streamline the review process. In the proposed definition, "lead agency" means either the department of health or the department of ecology that has been designated by rule as the agency that will coordinate, review, issue, and enforce a reclaimed water permit issued under this chapter.

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2. Each agency follows its own procedures for review and approval.
3. Ecology is the lead agency for permit issuance and shall not issue a permit until all approvals are in place. Ecology shall include DOH requirements within the permit.

WAC 173-219-A17 Relationship to other laws and regulations

1. All projects proposing a discharge of wastewater effluent shall **also** be reviewed under the technical standards established under WAC [173-240-060](#) or [173-240-130](#) as applicable.
2. All projects proposing recovery from aquifer storage of reclaimed water shall be reviewed under the technical standards established under RCW [90.03.370\(2\)](#).³⁷

WAC 173-219-A18 Ownership and oversight ³⁸

1. **Except** as provided in subsections (2), (3), (4) and (5) of this section, the departments shall **not** approve reclaimed water facilities unless ownership and responsibility for operation and maintenance³⁹ is by a public entity. Nothing in this rule precludes a public entity from contracting for operation and maintenance.
2. The departments may approve ownership by nonpublic entities provided the uses of the reclaimed water are authorized under this chapter and the owner is either:
 - a. A private utility as defined in RCW [36.94.010](#).
 - b. The holder of a waste discharge permit issued under chapter [90.48](#) RCW.
3. Before deciding whether to issue a permit under this section to a nonpublic entity, the departments 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. The departments may require the following:
...⁴⁰
4. Public ownership is not required for reclaimed water facilities serving a single nonresidential, industrial, or commercial establishment. This exemption does not apply to:
 - a. Commercial/industrial complexes serving multiple owners or tenants.
 - b. Multiple residential dwelling facilities such as mobile home parks, apartments, and condominiums.

³⁷ From RCW 90.46.120(1).

³⁸ Language is taken from existing authority for domestic wastewater facilities under Ch 173-240 WAC and from requirements under RCW 90.46.030 and 040. See footnote 40.

³⁹ Note: Some of this may be duplicative and could possibly be shortened by referencing the requirements under Part III of this rule.

⁴⁰ The scope of this requirement has not been established.

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5. Public ownership is not required for facilities producing agricultural industrial process water or industrial reuse water.

WAC 173-219-A19 Operator requirements⁴¹

The owner of a domestic wastewater facility generating reclaimed water is required by chapter [70.95B](#) RCW to have an operator, certified by the state, in responsible charge of the day to day operation of the facility. The certification procedures are set forth in chapter [173-230](#) WAC.

WAC 173-219-A20 Submittal requirements⁴²

1. Before constructing or modifying reclaimed water facilities^{43 and 44}, the owner or the owner's authorized representative must submit and receive the ~~department's~~ approval of required planning and engineering documents. These submittal requirements are in addition to, but may be submitted in conjunction with, the requirements applicable for wastewater treatment facilities under WAC 173-240-030 and 110.
2. Submittals generally follow in the approval sequence listed below:
 - a. Feasibility report
 - b. Water rights impairment assessment.
 - c. Engineering report.
 - d. Plans and specifications.
 - e. Construction quality assurance plan.
 - f. Draft operation and maintenance manual.
 - g. Declaration of completion of construction by the project engineer.
 - h. Final operation and maintenance manual.
3. The owner or the owner's authorized representative shall submit all required plans and reports consistent with a compliance schedule issued by the departments or no later than sixty days before the time approval is desired.⁴⁵
4. Where construction does not begin within two years following approval of the submittal, the departments may require an update to reflect changed conditions such as: water quality,

Deleted: departments

⁴¹ This authority comes from WAC 173-240-100 by reference and should be explicitly stated in the rule implementing Ch 90.46 RCW.

⁴² Current authority is from Ch 90.46 RCW through the 1997 WRR standards and reference to WAC 173-240-030 and 110.

⁴³ Should include storage, distribution and use facilities (such as recharge basins).

⁴⁴ For industrial reuse facilities – this is not addressed except in reference to requirements of WAC 173-240-110 for industrial wastewater facilities. This may need to be addressed within this rule.

⁴⁵ From WAC 173-240-030.

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services availability, regulatory requirements, or engineering technology.⁴⁶ I would recommend that at a minimum a Cross Control Specialist be employed by the reclaimed water using agency and that a new license for reclaimed water piping be established and/OR Existing holders of Water Distribution Specialist and Water Managers be eligible for getting an additional add on to their licenses by taking the test for reclaimed water distribution specialist or managers have to take. The Reclaimed water plant will be rated by DOE/DOH and tell the generating party what level license is needed to reflect the complexity of the process involved.

WAC 173-219-A21 Review standards⁴⁷

1. The departments will generally review and either approve, comment on, or disapprove submittals within ninety days of receipt. If circumstances prevent, the departments shall notify the owner of the reasons for the delay.⁴⁸
2. The departments shall review submittals under this chapter to determine whether the proposed facilities will be designed, constructed, operated, and maintained consistent with good engineering practices to:
 - a. Meet state standards and other requirements for the generation, distribution and use of reclaimed water under this rule and under chapter 90.46 RCW.
 - b. Meet applicable requirements of an NPDES or state waste discharge permit and the policies and requirements of chapters 90.48 and 90.54 RCW pertaining to the prevention and control of pollution of waters of the state.
 - c. Assure consistency with the applicable sections of the state of Washington, "Criteria for sewage works design" and other standard engineering references including, but not limited to, Manuals of Practice and Design Specifications of the United States Environmental Protection Agency, the United States Department of Agriculture, the National Resource Conservation Service, the Water Environment Federation, the American Society of Civil Engineering, the American Water Works Association, the American Public Works Association, and the National Water Research Institute.

WAC 173-219-A22 Requirement for a professional engineer

⁴⁶ Ibid.

⁴⁷ From WAC 173-240-030 unless otherwise noted.

⁴⁸ From RCW 90.48.110 (3) For any new or revised general sewer plan submitted for review under this section, the department shall review and either approve, conditionally approve, reject, or request amendments within ninety days of the receipt of the submission of the plan. The department may extend this ninety-day time limitation for new submittals by up to an additional ninety days if insufficient time exists to adequately review the general sewer plan. For rejections of plans or extensions of the timeline, the department shall provide in writing to the local government entity the reason for such action. In addition, the governing body of the local government entity and the department may mutually agree to an extension of the deadlines contained in this section.

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All required (~~(engineering)~~) reports, and plans and specifications for the construction or modification of facilities regulated under this chapter must be prepared under the supervision of a professional engineer licensed in accordance with chapter [18.43](#) RCW. All copies of these documents submitted to the departments for review shall bear the *signed and dated* seal of the professional engineer under whose supervision they have been prepared.⁴⁹

WAC 173-219-A23 Right of inspection⁵⁰

The departments or its their authorized representatives has have the right to enter at all reasonable times in or upon any property, public or private, for the purposes of inspection or investigation relating to the:

1. Treatment, use and distribution of reclaimed water, agricultural industrial process water and industrial reuse water.
2. Pollution or possible pollution of the waters of the state, including the inspection of construction activities related to the facilities.

WAC 173-219-A24 Approval of Construction Changes⁵¹

All facilities subject to the provisions of this rule shall be constructed in accordance with the plans and specifications approved by the departments. Any contemplated changes during construction, which are significant deviations from the approved plans, shall first be submitted to the departments for approval.

WAC 173-219-A25 Feasibility Report⁵²

A feasibility report is a report, including any supporting documentation, prepared as the result of a feasibility study to assess a specific proposal for reclaimed water use.

WAC 173-219-A26 Engineering Report⁵³

1. Before producing, distributing or using reclaimed water, the applicant must file an engineering report with *and receive approval from* the Washington Departments of Health and Ecology. These submittal requirements are separate from, but may be submitted in

⁴⁹ From WAC 173-240-060. For industrial facilities, WAC 173-240-160 allows that upon request of the owner, the department may waive the P.E. requirement for construction or modification of wastewater treatment facilities.

⁵⁰ From WAC 173-240-170.

⁵¹ From WAC 173-240-075

⁵² There are no established requirements for the feasibility report (based on the feasibility study.) Consider using the Bureau of Reclamation requirements for a feasibility report and how that relates to engineering report requirements. Should this require a PE. ? When must it be submitted?

⁵³ From 1997 WRR standards.

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conjunction with, the requirements for wastewater treatment facilities under WAC 173-240-030 and 110.

2. The report shall be prepared by an engineer registered in the state of Washington and experienced in the field of wastewater treatment.
3. Design approaches shall be consistent with these regulations and accepted engineering practice as defined by state regulatory authorities.
4. The report shall clearly indicate the means for compliance with the standards and requirements specified by the Washington Departments of Health and Ecology under this rule.
5. The engineering report shall also meet the applicable regulatory requirements in:
 - a. WAC 173-240-060 or 100 - Submission of Plans and reports for Construction of Wastewater Facilities.
 - b. Ch. 246-290 WAC – Group A Public Water Systems including:
 - i. WAC 246-290-490 Cross-connection control
 - ii. WAC 246-290-100 Water System Plans
 - Cross-connection control programs
 - Conservation programs (including reuse).

 - WAC 246-290-108 Consistency with Local Plans and Regulations
 - WAC 246-290-230 Distribution Systems
 - WAC 246-290-235 Distribution Reservoirs
 - Water Use Efficiency Guidance, Department of Health
6. All engineering reports shall include a description of the design of the proposed reclamation system including:
 - a. The operational and management personnel, their qualifications, experience, and responsibilities.
 - b. Process description and diagrams for secondary treatment process, reclamation process and reliability features and controls. ~~((For direct recharge projects, the description and diagram shall delineate all treatment processes, transmission facilities, direct recharge facilities, monitoring well facilities and the reliability features and controls.))~~
 - i. The process description and diagram shall delineate all treatment processes, transmission, distribution, storage, booster pump, booster disinfection, and /or use area facilities and the reliability features and controls.

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- ii. For direct recharge projects, the description shall also include the additional reverse osmosis treatment facilities, RO brine management facilities, direct recharge / pumping facilities and monitoring well facilities.⁵⁴ I would not limit this to RO but recommend that a pilot test facility be used if an engineer can prove that a lesser treatment process would provide the same level of protection since water from RO facilities is inherently corrosive and unstable.
- c. Basis for design including the requirements in Part B of this rule and references to sources of published design standards, pilot plant results and site-specific data.
- d. Description and results of any pilot plant studies used to assess the selected and alternative treatment processes and define unit design and operating parameters.
- e. Reliability assessment of all major or otherwise significant equipment and components, individual unit processes and complete treatment trains. The reliability assessment must address:
 - i. Flexibility of design
 - ii. Power supply
 - iii. Unit processes
 - iv. Alarms
 - v. Automated diversions
 - vi. Storage
 - vii. Provisions for disposal or alternative uses
- f. Engineering design calculations for the reclamation process including:
 - i. Aeration / organic carbon reduction
 - ii. Nutrient reduction (as required)
 - iii. Disinfection facilities selection
 - iv. Disinfectant reactor contact time
 - v. Coagulation and filtration processes (if required)
 - vi. Reverse osmosis process (if required)
 - vii. Pumping, piping and control valve systems
- g. A contingency plan assuring that untreated or inadequately treated wastewater will **not** be delivered to the use area including ground water recharge.

⁵⁴ Existing practices - Italics provide additional detail not included within the 1997 WRR standards.

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- h. A cross connection control plan identifying any cross-connection control issues, who is responsible for compliance and testing of cross-connection control activities, and details of the water purveyor's program for cross-connection control.
 - i. A summary checklist form provided by the departments, showing how the report addresses each requirement of these standards.
 - j. Other information requested by the departments as necessary to assess the treatment, distribution or use of the water.
2. All engineering reports proposing direct⁵⁵ aquifer recharge projects shall provide a hydrogeologic study of the ground water aquifer proposed to receive the reclaimed water including:⁵⁶
- a. The impact of the recharge project on potable ground water.
 - b. The source, area of recharge, quality, hydrostratigraphy, aquifer characteristics, and ground water flow patterns for all ground water within the ground water basin receiving recharged reclaimed water;
 - c. All wells or areas that will be affected by the proposed project and describe the ground water quality in the aquifer receiving the reclaimed water;
 - d. All well(s) subject to the highest reclaimed water contribution and shortest reclaimed water retention time in the underground;
 - e. The possibility of premature discharge of ground water to the surface, landslides, or other slope failures resulting from the proposed project
 - f. Quantitative descriptions of the soil, soil layers, aquifer transmissivity, aquifer hydraulic conductivity, rate and direction of flow, aquifer boundaries, historic ground water levels, and aquifer storage capacity of the aquifer.
 - g. Identification of the agency responsible for preventing the withdrawal of potable ground water within areas restricted by specified minimum separation distances and minimum retention time requirements. You might consider how a surface water source(s) that could be under the influence/hydraulically connected should be handled.
 - h. Description of the methods of determination and results for minimum retention time in the underground and minimum horizontal separation between the point of direct recharge and withdrawal of potable ground water.
 - i. The number and location of monitoring wells.
 - j. A water quality monitoring plan for treated wastewater, reclaimed water and ground water withdrawn from monitoring wells.

⁵⁵ Should this also apply to percolation projects?

⁵⁶ From 1997 WRR Standards. Could this part be stamped by a licensed hydrogeologist instead of an engineer?

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3. All projects proposing recovery from aquifer storage of reclaimed water shall be reviewed under the technical standards established under RCW [90.03.370\(2\)](#).⁵⁷

WAC 173-219-A27 Plans and Specifications⁵⁸

1. The plans and specifications for a reclaimed water facility are the detailed construction documents by which the owner or his or her contractor bid and construct the facility.
2. The content and format of the plans and specifications must be as stated in the state of Washington, "Criteria for sewage works design," and shall include a list of the facility design criteria and a plan for interim operation of facilities during construction.
3. Plans and specifications for sewer line extensions shall include, as a separate report, an analysis of the existing collection and treatment system's ability to transport and treat additional flow and loading.
4. Two copies of the plans and specifications must be submitted to the departments for approval before starting construction.⁵⁹

WAC 173-219-A28 Operation and Maintenance - Manual⁶⁰

1. Each reclamation plant shall provide a written preventive maintenance program ensuring that all equipment is kept in a reliable operating condition.⁶¹
2. Each reclamation plant shall be provided with a sufficient number of qualified personnel to operate the facility effectively so as to achieve the required level of treatment at all times.⁶²
3. The proposed method of operation and maintenance of the reclaimed water facility must be stated in the engineering report or plans and specifications approved by the departments. The statement must include who will own, operate, and maintain the facility and what the staffing and testing requirements are. The owner and operators shall follow the approved method of operation after the facility is constructed, unless the departments approve changes in writing.

⁵⁷ This requirement was added to RCW 90.46.120 in 2007. The implementing regulation for RCW 90.03.370(2) is [Ch. 173-157 WAC](#), which also states that it does not apply to reclaimed water. Requirements likely must either be listed within this regulation or amend Ch 173-157 WAC for requirements applicable to reclaimed water aquifer recovery projects.

⁵⁸ From WAC 173-240-080 (industrial wastewater facilities are regulated under [WAC 173-240-140](#) 173-240-140.

⁵⁹ Approve prior to going to bid.

⁶⁰ From WAC 173-240-080 Domestic Wastewater Facilities except as specifically noted. Note that Industrial facilities are regulated under WAC 173-240-150.

⁶¹ 1997 standards

⁶² Article 9 of 1997 standards

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4. A draft operation and maintenance manual must be submitted to the departments for review and approval in the early stages of the construction of a facility. Before completing construction, the owner of a reclaimed water facility must submit and receive approval of a detailed operation and maintenance manual. Two copies of the manual must be submitted to the departments for approval. The manual shall include regulatory requirements, manufacturer's information on equipment before unit start up and technical guidance for both normal and emergency operating conditions.
5. The operation and maintenance manual shall also include the following list of topics. For those projects funded by the U.S. Environmental Protection Agency, the manual shall also follow the requirements of the EPA publication, "Considerations for Preparation of Operation and Maintenance Manuals."
 - (a) The assignment of managerial and operational responsibilities, including plant classification and classification of required operators.
 - (b) A description of plant type, flow pattern, operation, and efficiency expected.
 - (c) The principal design criteria.
 - (d) A process description of each plant unit, including function, relationship to other plant units, and schematic diagrams.
 - (e) A discussion of the detailed operation of each unit and description of various controls, recommended settings, fail-safe features, etc.
 - (f) A discussion of how the treatment facilities are to be operated during anticipated maintenance procedures, and under less than design loading conditions, if applicable, such as initial loading on a system designed for substantial growth.
 - (g) A section on laboratory procedures, including sampling techniques, monitoring requirements, and sample analysis.
 - (h) Recordkeeping procedures and sample forms to be used.
 - (i) A maintenance schedule that incorporates manufacturer's recommendations, preventative maintenance and housekeeping schedules, and special tools and equipment usage.
 - (j) A section on safety.
 - (k) A section that lists the spare parts inventory, address of local suppliers, equipment warranties, and appropriate equipment catalogues.

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(l) Emergency plans and procedures.

WAC 173-219-A29 Construction Quality Assurance Plan⁶³

1. Before construction begins, a detailed plan must be submitted to the departments that shows how adequate and competent construction inspection will be provided.
2. The construction quality assurance plan shall include a:
 - (a) Construction schedule with a summary of planned construction activities, their sequence, interrelationships, durations, and terminations.
 - (b) Description of the construction management organization, management procedures, lines of communication, and responsibility.
 - (c) Description of anticipated quality control testing that includes type of test, frequency, and who will perform the tests.
 - (d) Description of the change order process that includes who will initiate change orders, as well as who will review, negotiate, and approve change orders.
 - (e) Description of the technical records handling methodology that includes where plans and specifications, record drawings, field orders, and change orders will be kept.
 - (f) Description of the construction inspection program that includes inspection responsibility, anticipated inspection frequency, deficiency resolution, and inspector qualifications.

WAC 173-219-A30 Approval of Construction Changes⁶⁴

All facilities subject to the provisions of this rule must be constructed in accordance with the plans and specifications approved by the departments. Any contemplated changes during construction, which are significant deviations from the approved plans, must first be submitted to the departments for approval.

WAC 173-219-A31 Declaration of Completion of Construction⁶⁵

Within thirty days after acceptance by the owner of the construction or modification of a reclaimed water facility, the professional engineer in responsible charge of inspection of the project shall submit to the departments:

⁶³ From WAC 173-240-077 Domestic Wastewater Facilities

⁶⁴ From WAC 173-240-180 Approval of construction changes for wastewater facilities

⁶⁵ From WAC 173-240-090 Domestic Wastewater Facilities

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1. One complete set of record drawings:
2. A declaration stating the facilities were constructed in accordance with the provisions of the construction quality assurance plan and without significant change from the departments approved plans and specifications. The declaration form shall be the same form as for WAC [173-240-095](#), declaration of construction of water pollution control facilities.

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IV Permits

WAC 173-219- A32 Permit Required

Except as stated under WAC 173-219-A2(3), the generation, distribution and use of reclaimed water must be authorized under a permit issued under this rule, Ch 90.46 RCW, and the applicable provisions of Ch 90.48 RCW. No distribution or use of reclaimed water is authorized until such time as a permit has been issued consistent with the terms and conditions of this chapter.

WAC 173-219-A33 Explanation of use of terms

For a complete list of definitions used within this chapter, refer to Appendix A.

“FWPCA” means the federal water pollution control act.

"Individual permit" means a permit for a single point source or a single facility.⁶⁶

"General permit" means a permit which covers multiple generators of reclaimed water within a designated geographical area in lieu of individual permits being issued to each.⁶⁷

"Lead agency" means either the department of ecology or the department of health that has been designated in this rule as the agency that will coordinate, review, issue, and enforce a reclaimed water permit issued under this chapter.⁶⁸

"Nonlead agency" means either the department of health or the department of ecology, whichever is not the lead agency for purposes of this chapter.⁶⁹

WAC 173-219-A34 Types of permits issued under this chapter

Ecology issues an individual permit⁷⁰ to the facility generating reclaimed water using the administrative procedures for waste discharge permits established under WAC 173-220 and 216 WAC.⁷¹

⁶⁶ Definition is from WAC 173-220-030

⁶⁷ Definition adapted from WAC 173-220-030. We currently have no general permits for reclaimed water use.

⁶⁸ Proposed as a statutory definition – 2009 agency request legislation. See RCW 90.46.015(1) for requirement for rule to designate a lead agency.

⁶⁹ Proposed as a statutory definition – 2009 agency request legislation. See RCW 90.46.015(1)

⁷⁰ Ecology also has authority to issue a general permit under Ch 90.48 RCW and has chosen not to do so yet. The RAC requested a procedure for a general or master permit different from the procedure for waste discharge general permits under Ch 173-226 WAC.

⁷¹ Statutory authority to issue permits under Ch 90.48 RCW.

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WAC 173-219-A35 Coordination with non-lead agency⁷²

Ecology shall include the permit conditions required by the department of health within a section of the permit. Both agencies and their authorities shall be listed on the cover of the permit. ⁷³

WAC 173-219-A36 Relationship to water pollution control act permits

Under normal circumstances, the permit requirements under this rule and under the Water Pollution Control Act, chapter 90.48 RCW shall, be contained in a single permit document. Projects that include a point source discharge into any surface water of the state shall be subject to the permitting requirements under the national pollutant discharge elimination system permit program, chapter 173-220 WAC.⁷⁴

WAC 173-219-A37 Relationship to water right permits.⁷⁵

The owner of a facility with a permit issued under this rule has the exclusive right to any reclaimed water generated by the wastewater treatment facility. Use, distribution, and the recovery from aquifer storage of reclaimed water by the owner of the wastewater treatment facility is exempt from the permit requirements of RCW [90.03.250](#) and [90.44.060](#)⁷⁶ What about leakage out of the storage aquifer (i.e. should they get 100% recovery? And could this impact other users in the area?)

WAC 173-219-A38 Application for permit.⁷⁷

1. Any person generating or proposing to generate reclaimed water for distribution or use must file an application with the lead agency on a form prescribed by the lead agency in sufficient time⁷⁸ to insure compliance with the requirements of Ch 90.46 RCW and any other applicable water quality standards or effluent standards and limitations **prior** to commencement of the distribution or use of the water.

⁷² The 1995 MOU provides that Ecology shall issue the permits. Proposed change for 2009 legislation would create lead agency (DOH or Ecology) that would issue the permit.

⁷³ Per interagency MOU 1995.

⁷⁴ Current procedures are to issue one combined permit. Authority is from Ch 90.48 RCW and implementing WACs.

⁷⁵ From RCW 90.46.120(1)

⁷⁶ This is statutory language and should provide an administrative process for implementing within the rule. WRP is working on this with internal Ecology and an external stakeholder committee. This section may also need to address the relationship of reclaimed water permits where the reclaimed water is used as mitigation for new appropriate water rights.

⁷⁷ from WAC 173-220-040

⁷⁸ No time established -NPDES requires at least 180 days and state waste discharge requires 60 days.

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2. The Permittee shall submit a new application, or a supplement to the most recent application for any new or increased use not specifically authorized by the current permit.⁷⁹
3. The application form must bear a certification of correctness signed by the principal executive officer or ranking elected official.
4. The requirement for permit application shall be satisfied if the owner of the facility files a complete application form appropriate for the type, category, or size of facility and any additional information required by the lead or non-lead agency pertaining to the water quality, location, rate or purpose of use.
5. For the purpose of satisfying the requirements of this section, any person generating reclaimed water under a permit issued by the department of Ecology prior to the time this rule is adopted shall be considered as meeting this requirement.⁸⁰

WAC 173-219-A39 Staff determinations -fact sheet⁸¹

1. Prior to public notice, the lead agency shall prepare tentative staff determinations to issue or deny a permit described in the application.
2. The lead agency shall prepare a fact sheet for every draft permit determination. Such fact sheets shall, at a minimum, summarize the:
 - a. Type and location of all proposed facilities.
 - b. Purpose of use.
 - c. Provisions for adequate and reliable treatment.
 - d. Water quality standards and limitations applied.
 - e. Flow quantity and rate.
 - f. Other permit conditions including source control and handling of residual solids generated by wastewater treatment;
 - g. Legal and technical grounds for the draft permit determination.
 - h. Procedures for the formulation of final determinations, comments, requesting a hearing, and any other procedures by which the public may participate in the formulation of the final determinations.

⁷⁹ From WAC 173-216-110.

⁸⁰ Grandfather in existing permits.

⁸¹ from WAC 173-220-060, 110 and Ch 90.46 RCW requirements.

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2. Fact sheets for permits combined with Ch 90.48 RCW permits shall also include the additional information required under WAC 173-220-060.
3. The lead agency shall notify the non-lead agency of each draft permit determination and shall provide the non-lead agency an opportunity to submit their written views and recommendations. Unless the non-lead agency waives or limits their review, the notification shall include transmission of the application, fact sheet and draft permit for comment or objection within thirty days, or if requested up to a maximum of ninety days.
4. The lead agency shall send the fact sheet to the applicant and, upon request, to any other person.

WAC 173-219-A40 Notice to the public and other agencies.⁸²

Notice of every draft permit determination regarding an individual permit shall be circulated in a manner designed to inform interested and potentially affected persons of the proposed water quality, location, rate and purpose of use and of the proposed determination to issue or deny a permit.

1. Notice shall be circulated within the geographical area of the proposed use as directed by the lead agency following the same procedures as established for discharge permits under WAC 173-220-050 (1).⁸³
2. The lead agency shall notify other appropriate government agencies. For permits combined with Ch 90.48 RCW permits, notice shall include all government agencies required under WAC 173-220-070.
3. Notice shall be mailed to any other federal, state, or local agency, Indian tribe or any affected country, upon request.
4. The lead agency shall provide a period of not less than thirty days following the date of the public notice during which time interested persons may submit their written views on a draft permit determination. All written comments submitted during the thirty-day comment period shall be retained by the lead agency and considered in the formulation of its final determination with respect to the application. The period for comment may be extended at the discretion of the lead agency.
5. The lead agency shall prepare the contents of the public notice, which shall, at a minimum, include the following:

⁸² from WAC173-220-050 and 060.

⁸³ Either cite by reference or spell out within this rule.

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- a. Name, address, phone number of agency issuing the public notice.
- b. Name and address of each applicant, and if different, of the facility or activity to be regulated.
- c. The actual or proposed water quality, location, rate and purpose of use.
- d. Whether this is a new or existing facility or use.
- e. The tentative determination to issue or deny a permit.
- f. The procedures for the formulation of final determinations, including the thirty-day comment period required by subsection (5) of this section and any other means by which interested persons may comment upon those determinations.
- g. Address and phone number of state premises at which interested persons may obtain further information.
- h. Copies of the fact sheet and draft permits.

The lead agency shall notify the applicant and persons who have submitted written comments or requested notice of the final permit decision. This notification shall include response to comments received, the final permit issued, and reference to the procedures for contesting the decision.

WAC 173-219-A41 Public access to information. ⁸⁴

1. In accordance with chapter 42.17 RCW, the lead agency shall make records relating to permits available to the public for inspection and copying. The lead agency shall provide facilities for the inspection of information relating to the permits and shall insure that employees honor requests for such inspection promptly without undue requirements or restrictions. The lead agency shall either (a) insure that a machine or device for the copying of papers and documents is available for a reasonable fee, or (b) otherwise provide for or coordinate with copying facilities or services such that requests for copies of non-confidential documents may be honored.
2. Claims of confidentiality shall be handled in accordance with the provisions of Ch.42.17 RCW, Ch. 173-03 WAC, and RCW 43.21A.160. ⁸⁵
3. For permits combined with NPDES permits, any information accorded confidential status, whether or not contained in an application form, shall be disclosed, upon request, to the USEPA regional administrator. ⁸⁶

WAC 173-219-A42 Public hearings. ⁸⁷

⁸⁴ from-220-080 and 173-216-080

⁸⁵ This probably needs more work to determine what information would not be afforded confidential status – see referenced WACs.

⁸⁶ Ch 90.48 RCW federal delegation requirement.

⁸⁷ From WAC 173-220-090 and 100

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1. The applicant or any interested agency or person may request a public hearing with respect to a draft permit determination. Any such request for a public hearing shall:
 - a. Be filed with the lead agency within the thirty-day notice period under WAC 173-219- A40.
 - b. Indicate the interest of the party filing such request.
 - c. Indicate the reasons why a hearing is warranted.
2. The lead agency shall hold a hearing if it determines there is a significant public interest. Instances of doubt will be resolved in favor of holding the hearing. Any hearing brought pursuant to this subsection shall be held at a time and place deemed appropriate by the lead agency.

WAC 173-219-A43 Notice of public hearing⁸⁸

The lead agency shall circulate public notice of any hearing at least as widely as was the public notice under WAC 173-219- A40. Notice shall be circulated at least thirty days in advance of the hearing and include:

- a. Name, address, and phone number of agency holding the public hearing.
- b. The time and location for the hearing.
- c. The nature and purpose of the hearing.
- d. The issues raised by the persons requesting the hearing, and any other appropriate issues which may be of interest to the public.
- e. A reference to the public notice issued pursuant to WAC 173-219-4.6, including identification number and date of issuance;
- f. Contacts and locations where interested persons may obtain information.

WAC 173-219-A44 Appeal of a permit⁸⁹

1. Within thirty days of notification of the lead agency determination under WAC 173-219- A40, any person may appeal a permit decision.
2. For any permit decision for which the department of ecology is the lead agency., appeal shall be to the water pollution control hearings board in accordance with chapter 43.21B RCW.⁹⁰

⁸⁸ from WAC 173-220 -100

⁸⁹ Currently permits are issued by Ecology and follow the requirements in this section through authority under Ch 90.48 RCW.

⁹⁰ Proposed 2009 legislation. "For any permit decision for which department of health is the lead agency, application for an adjudicative proceeding must be in writing, state the basis for contesting the action, include a copy of the decision, be served on and received by the department of health within twenty-eight days of receipt of notice of the final decision, and be served in a manner that shows proof of receipt."

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WAC 173-219-A45 Permit requirements - water quality, distribution, use.⁹¹

Any permit issued by the lead agency shall specify conditions necessary to ensure that the permittee maintains control over and is responsible for all facilities and activities inherent to the production of reclaimed water including the protection of public health and the environment. Conditions shall include, but are not limited to:

- a. Adequate and reliable treatment as defined in Part B of the rule. Any discharge of any pollutant more frequent than or at a level in excess of that identified and authorized by the permit shall constitute a violation of the terms and conditions of the permit;
- b. Standards for water quality, distribution, and use as defined in Part B of this rule. All uses authorized by the permit shall be consistent with the terms and conditions of the permit.
- c. Prevention and control of waste discharges into the waters of the state under Ch 90.48 RCW.
- d. Source control and pretreatment under WAC 173-219-A46.
- e. Contracts and agreements with distributors and water users under WAC 173-219-A47.
- f. Procedures for facility operation and maintenance under WAC 173-219-A48.
- g. Operator certification and minimum staffing requirements under WAC 173-219-A49.
- h. Laboratory accreditation under WAC 173-219-A50.
- i. Monitoring and record keeping under WAC 173-219-A51.
- j. Procedures for monitoring and frequency required under WAC 173-219-A52.
- k. Reporting requirements under WAC 173-219-A53.
- l. Site access for inspection under WAC 173-219-A55
- m. Regulatory action for noncompliance under WAC 173-219-A56.

WAC 173-219-A46 Source control and pretreatment.⁹²

1. Any permit issued under this rule shall include conditions to ensure the control of industrial and toxic discharges that may affect reclaimed water quality through either a delegated pre-

⁹¹ Adapted WAC 173-216-110 and 173- 220-130 and 150 and 1997 standards. Note: The rule also needs to consider the RAC permit recommended changes - puzzle pieces 2007.

⁹² From WAC 173-220-150 regarding pretreatment and industrial sources and WRR Standards Article 9, Section 6.

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treatment program with the department of Ecology or assuring that all applicable discharges have permits issued in accordance with Ch 90.48 RCW, WAC 173-220-150 and sections 204(b), 307, and 308 of the FWPCA.

2. Except where categories and classes of discharges are specified within the permit, the permit shall require notification to the lead agency of the following:
 - a. Any new introduction of pollutants into such treatment works from a source which would be a new source as defined in section 306 of the FWPCA if such source were discharging pollutants;
 - b. Any new introduction of pollutants into such treatment works from a source which would be subject to section 301 of the FWPCA if such source were discharging pollutants;
 - c. Any substantial change in volume or character of pollutants being introduced into such treatment works by a source existing at the time of issuance of the permit.
3. Such notice shall include information on the quality and quantity of effluent to be introduced into such treatment works and any anticipated impact of such change in the quantity or quality of the reclaimed water generated.

WAC 173-219-A47 Contracts and agreements with distributors and users.

Any permit issued under this rule shall include conditions requiring any person who generates reclaimed water for distribution, storage or use by others shall ensure through written enforceable contracts or ordinances that all applicable requirements are met.⁹³ Including those issues sent to you by separate cover on the reliability/risk issues with reclaimed water.

WAC 173-219-A48 Procedures for facility operation and maintenance.⁹⁴

Any permit issued under this rule shall include conditions requiring the permittee to properly operate and maintain any facilities or systems of control installed by the permittee to achieve compliance with the terms and conditions of the permit. Where design criteria have been established, the permittee shall not allow flows or waste loadings to exceed approved design criteria, or approved revisions thereto.

WAC 173-219-A49 Operator certification and minimum staffing

Any permit issued under this rule shall include conditions requiring the owner of a facility generating reclaimed water to

⁹³ 1997 WRR standards. The requirements for the contracts to be included in the submittals requirement section of this rule (revisions to Part #3 required to include Article 9, Section 6).

⁹⁴ From WAC 173-220-150 for NPDES permits.

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1. Have an operator, certified under chapter 173-230 WAC⁹⁵, in responsible charge of the day to day operation of the facility
2. Provide a sufficient number of qualified personnel to operate the facility effective so as to achieve the required level of treatment at all times.⁹⁶

WAC 173-219-A50 Laboratory accreditation.⁹⁷

Any permit issued under this rule shall include conditions requiring the use of accredited laboratories accredited under Ch 173-50 WAC for the submission of analytical data required for compliance with the permit.

WAC 173-219-A51 Requirements for monitoring and record keeping.

1. Any permit issued under this rule shall specify conditions for monitoring, recording, and reporting to verify that the treatment process is functioning correctly and that the facility is achieving the required reclaimed water quality standards established under Part B of this rule..⁹⁸
2. Operating records shall be maintained at the facility or at a central location within the operating agency for a minimum of five years⁹⁹. Records shall include:¹⁰⁰
 - a. All analyses specified in these regulations.
 - b. Records of operational problems, unit process and equipment breakdowns.
 - c. Diversions to emergency storage or disposal.
 - d. Corrective or preventative action taken.
3. Process of equipment failure triggering an alarm shall be recorded and maintained as a separate record file. The recorded information shall include the time and cause of failure and the corrective action taken.¹⁰¹

WAC 173-219-A52 Procedures for monitoring and frequency required.

The permit shall establish a detailed self-monitoring and testing schedule including sampling type, method for determining compliance, and frequency of monitoring. Specified monitoring frequencies shall take into account the quantity and variability of the reclaimed water, the treatment method, past compliance, significance of pollutants, and cost of monitoring.

⁹⁵ Statutory authority Ch 78.95 RCW.

⁹⁶ 1997 WWR Standards, Article 9.

⁹⁷ The accreditation program is designed to satisfy the intent of RCW [43.21A.230](#) and [43.21A.445](#).

⁹⁸ The conditions are based on the Ch 90.48 RCW authority to specify appropriate reporting and recordkeeping requirements to prevent and control the distribution or use of inadequately treated wastewater.

⁹⁹ 5 years of records is an NPDES requirement.

¹⁰⁰ WRR Standards, Article 9, Section 3 (a).

¹⁰¹ WRR Standards, Article 9, Section 3 (b).

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WAC 173-219-A53 Reporting requirements.

The permit shall establish minimum requirements for reporting routine compliance monitoring, preventative maintenance and noncompliance events.

Unless the permit specifies otherwise, a monthly summary of operating records specified under WAC 173-219-A51(2) shall be filed monthly with the lead agency and a copy sent to the non-lead agency.

1. In the event the permittee is unable to comply with any of the permit terms and conditions due to any cause, the permittee shall:
 - a. Immediately take action to stop, contain, and cleanup unauthorized discharges or otherwise stop the violation, and correct the problem.
 - b. Immediately notify the lead agency (and the non-lead agency if required by the permit) of the failure to comply.
 - c. Submit a detailed written report to the department within thirty days, unless requested earlier by the department, describing the nature of the violation, corrective action taken and/or planned, steps to be taken to prevent a recurrence, and any other pertinent information.

WAC 173-219-A54 Additional permit requirements.¹⁰²

Place holder

WAC 173-219-A55 Site access for inspection.^{103 and 104}

1. The permittee shall allow the department or its authorized representative upon the presentation of credentials and at reasonable times:
 - a. To enter upon permittee's premises in which an effluent source is located or in which any records are required to be kept under terms and conditions of the permit, subject to any access restrictions due to the nature of the project;
 - b. To have access to, and copy at reasonable cost, any records required to be kept under terms and conditions of the permit;

¹⁰² From WAC 173-220-150 for NPDES permits.

¹⁰³ From WAC 173-220-150 for NPDES permits.

¹⁰⁴ Alternative language is proposed in 2009 agency request legislation. Modeled after authority established under RCW 90.48.090 for right of entry under permits issued under the water pollution control act.

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- c. To inspect any monitoring equipment or method required in the permit.
- d. To sample any discharge of pollutants.

WAC 173-219-A56 Regulatory action for noncompliance.¹⁰⁵

1. When, in the opinion of the lead agency, a person violates or creates a substantial potential to violate Ch 90.46 RCW, the lead agency shall notify the person of its determination by registered mail. The determination shall not constitute an appealable order or directive. Within thirty days from the receipt of notice of such determination, the person shall file with the lead agency a full report stating what steps have been and are being taken to comply with the determination of the lead agency.
2. After the full report is filed or after the thirty days have elapsed, the lead agency may issue the order or directive as it deems appropriate under the circumstances, shall notify the person by registered mail, and shall inform the person of the process for requesting an adjudicative hearing.

WAC 173-219-A57 Establishing schedules to return to compliance.¹⁰⁶

1. The lead agency may establish schedules and conditions to achieve compliance with applicable requirements. Schedules of compliance shall set forth the shortest, reasonable period of time, to achieve the specified requirements.
2. When schedules for compliance exceed one year, the schedule shall be specified within the permit and provide interim requirements and the dates for their achievement with no more than one year between interim dates. If the time necessary for completion of the interim requirement (such as construction of a treatment facility) is more than one year and is not readily divided into stages of completion, interim dates shall be specified for the submission of reports of progress toward completion of the interim requirement.
3. Within fourteen days following each date of compliance, the permittee shall provide the lead agency with written notice of the permittee's compliance or noncompliance with the requirement.
4. If a permittee fails or refuses to comply with an interim or final requirement in a permit, such noncompliance shall constitute a violation of the permit for which the lead agency may modify or revoke the permit or take direct enforcement action.

¹⁰⁵ Proposed as 2009 legislation into Ch 90.46 RCW. Modeled after authority established under RCW 90.48.120.

¹⁰⁶ From WAC 173-220-140

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WAC 173-219-A58 Procedures to modify, suspend, or revoke a permit.¹⁰⁷

The permit may be modified or revoked in whole or in part during its terms for cause including, but not limited to, the following:

1. Violation of any term or condition of the permit.
2. Obtaining a permit by misrepresentation or failure to disclose fully all relevant facts.
3. A change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.
4. A determination that the permitted activity endangers human health or the environment, or contributes to water quality standards violations.
5. Establishment of a toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) under (section 307(a) of the FWPCA)¹⁰⁸ for a toxic pollutant which is more stringent than any limitation upon such pollutant in the permit.
6. Failure or refusal of the permittee to allow entry as required under WAC 173-219- A55.¹⁰⁹
7. Nonpayment of assessed permit fees.

WAC 173-219-A59 Formal enforcement procedures.¹¹⁰

As authorized under Ch 90.48 RCW¹¹¹

1. The lead agency, with the assistance of the attorney general, may sue in courts of competent jurisdiction to enjoin any threatened or continuing violations of any permits or conditions thereof without the necessity of a prior revocation of the permit.
2. The lead agency may assess or, with the assistance of the attorney general, sue to recover in court, such civil fines, penalties, and other civil relief as may be appropriate for the violation by any person of (a) any effluent standards and limitations or water quality standards, (b) any permit or term or condition thereof, (c) any filing requirements, (d) any duty to permit or carry out inspection, entry, or monitoring activities, or (e) any rules, regulations, or orders issued by the lead agency.
3. The lead agency may request the prosecuting attorney to seek criminal sanctions for the violation by such persons of (a) any effluent standards and limitations or water quality standards, (b) any permit or term or condition thereof, (c) any filing requirements.

¹⁰⁷ From WAC 173-220-190 for NPDES permits.

¹⁰⁸ Other applicable authority should be specified within the rule. (Standards under this rule, etc.

¹⁰⁹ If proposed statutory change specifies authority under Ch 90.46 add that here. Otherwise cite Ch 90.48 RCW authority.

¹¹⁰ WAC 173-220-230.

¹¹¹ Language proposed for statutory addition to Ch 90.46 RCW in 2009 session. (Sec 17-18) would change the reference to Ch 90.46 RCW.

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4. The lead agency, with the assistance of the prosecuting attorney, may seek criminal sanctions against any person who knowingly makes any false statement, representation, or certification in any form or any notice or report required by the terms and conditions of any issued permit or knowingly renders inaccurate any monitoring device or method required to be maintained by the department.

WAC 173-219-A60 Fees

1. The applicant must pay the applicable permit fees under chapter 173-224 WAC for permits issued by the department of Ecology.
2. The department of health may require fees appropriate for review and consultation from the applicant pursuant to RCW 43.70.250.

WAC 173-219-A61 Transfer of a permit¹¹²

1. A permit is automatically transferred provided:
 - a. A written agreement between the old and new owners and generators containing a specific date for transfer of permit responsibility, coverage, and liability is submitted to the lead agency.
 - b. The lead agency does not notify the old and new owners and generators of their intent to modify, or revoke and reissue the permit. If this notice is not given, the transfer is effective on the date specified in the agreement mentioned in (a) of this subsection.
2. Unless a permit is automatically transferred according to subsection (1) of this section, a permit may be transferred only if modified or revoked and reissued to identify the new Permittee and incorporate such other requirements as may be necessary.

¹¹² From state waste discharge permit regulation WAC 173-216-120 and NPDES WAC 173-220-200.