

## **Building the New Reclaimed Water WAC Proposed Draft Rule Language - work in progress (WIP) for Rule Advisory Committee Use Only**

### **1. Outline of proposed Chapter 173-219 WAC**

#### **2. *Part I – GENERAL INFORMATION - version 1.1 (5-12-2009)***

##### DEL and CLR comments on -050.

##### *PART I GENERAL INFORMATION*

- 173-219- 010 Authority and purpose.
- 173-219- 020 Applicability.
- 173-219- 030 Scope.
- 173-219- 040 Definitions.
- 173-219- 050 ~~Division of rR~~Responsibilities ~~between of~~ the departments of ecology and health.  
~~173-219- 010~~Enforcement.  
~~173-219- 010~~Appeals.
- ~~173-219- 010~~173-219- 060 Requirements for a person who generates reclaimed water.
- 173-219- 100 Requirements for a person who distributes reclaimed water.
- 173-219- 110 Requirements for a person who uses reclaimed water.

##### *PART II PLANNING AND ENGINEERING REVIEW*

#### **173-219-050 ~~Division of rR~~Responsibilities ~~between of~~ 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. Approve those that meet requirements.
  - (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) Bill the applicant all appropriate application and permit submittal review fees, permit fees, and inspection fees.

~~(e)~~(f) \_\_\_\_\_ Receive, review, coordinate with non-lead agency, ~~and approve~~ all submittals required by conditions in the permit. Approve submittals when appropriate.

~~(f)~~(g) \_\_\_\_\_ Conduct compliance inspections and take corrective actions when appropriate.

~~(g)~~(h) \_\_\_\_\_ 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<sup>[A1]</sup> agency shall:

(a) Receive a copy of all permit applications and related project submittals.

~~(a)~~(b) \_\_\_\_\_ Coordinate with lead agency to assure that state regulations, permits, and compliance requirements will protect both public health and environmental water quality.

~~(b)~~(c) \_\_\_\_\_ Review ~~portions of submittals~~ and provide comments when specifically requested~~referred submittals requested~~ by lead agency. Review other submittals at its discretion and provide comments to the lead agency.

~~(e)~~(d) \_\_\_\_\_ Assist lead agency with permit appeals, compliance or enforcement actions when needed.

(e) Bill the applicant submittal review fees and inspection fees according to its fee schedule.

4. Responsibilities of the department of ecology.

(a) Except as provided in subsection (5) of this section and the Summary Table, the department of ecology is the lead agency. ~~and shall coordinate, review, issue, and enforce all reclaimed water permits issued under this chapter~~<sup>[A2]</sup>.

(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 treatment facilities<sup>[CLR3]</sup>.

(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 regardless of which agency is lead.

(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<sup>[A4]</sup>.

5. Responsibilities of the department of health<sup>[CLR5]</sup>

- (a) The department of health shall be the lead agency for the following 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 for some part of the facility or operation of some part of the facility or operation by department of Ecology.
  - iii. Limited landscape irrigation at or below agronomic rates when confined to a location with reclaimed water uses or wastewater treatment systems otherwise regulated permitted by department of health~~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 to a local health jurisdiction, DOH will incorporate into the delegation agreement a requirement that the local agency abide by this the terms and conditions reclaimed water rule in the same manner as DOH.

Summary Table of Lead Agency Responsibilities

Category of Use	Ecology Lead	DOH Lead
<u>Multiple types of use</u>	<u>Ecology is the lead in cases where both agencies have jurisdictions except ...</u>	<u>Direct urban uses where DOH would otherwise be the lead.</u>
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
<del>Industrial wastewater source</del> <del>Combined wastewater source</del> <sub>[CLR6]</sub>	All	All?
	All	
Direct groundwater recharge	All	
Land application/ <u>irrigation</u> <u>At or below agronomic rates</u>	All except ----- -	Landscape irrigation confined to a location under DOH permit.
<u>Above agronomic rates</u>	All <sub>[CLR7]</sub>	
Impoundments	<u>All except -----</u> <u>-All?</u>	<u>Landscape irrigation confined to a location under DOH permit.</u>
Commercial and industrial uses such as toilet flushing, cooling water, etc.	When combined with Ecology regulated uses <sub>[CLR8]</sub> <u>or effluent discharges</u> <sub>[CLR9]</sub> .	When the only use or combined only with DOH regulated uses <u>or effluent discharges.</u>

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for Rule Advisory Committee use only  
Wednesday, June 3, 2009**

***Part III PERMITS - version 1.1 kcc draft 5-7-2009 DEL  
comments6/9/09: section 230+***

*PART III RECLAIMED WATER PERMITS*

173-219-(200-220 introduced 4-23-2009 to be completed 6-3-2009)

200-Types of permits issued under this chapter.  
205- Permittee  
210- Application for a reclaimed water permit  
215- Application for coverage under a general reclaimed water permit  
220- Signature requirements

173-219-(230-290 excepting 280 - introduce 6-3-2009)

230-Draft determination to issue or deny permit.  
240-Process for public notice and comments.  
~~250-Procedures to modify, suspend, or revoke a permit.(moved under 290)~~  
2560-Fees.  
2670-Procedures to transfer a permit.  
270-Permit duration and replacement.  
**280 Permit terms and conditions will be introduced beginning 6-24-2009.**  
290-Regulatory action for noncompliance.

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**4-29-2009 Questions and Comments for the next section 200 Types of permits**

*Note: Proposed text of subsection 1(a) and 1(b) on permitting private and public entities shows how it would be moved from Part I (section 080) of this rule?*

1. *In 2007, this RAC recommended 3 types of reclaimed water permits (individual permit, master generator permit, and general permit). Does this RAC still recommend this approach? If not, what changed your recommendation?*
  - 4-29-2009 RAC Agreement – Yes, continue 3 permit approach.
2. *In 2007, this RAC was divided on whether reclaimed water permits should be combined with NPDES or state waste discharge permits*

*under chapter 90.48 RCW. Ecology recommends that individual permits be combined with the waste discharge permit for administrative convenience to the lead agency, the permittee and other interested parties. Ecology also recommends that the rule provide the flexibility to issue separate reclaimed water and waste discharge permits when it is the opinion of the lead agency that separate permits provide more effective regulation. Does the RAC support this recommendation?*

- 4-29-2009 RAC Agreement – Correction to be issued and renewed concurrently with wastewater discharge permits, not necessarily combined into a single permit document. Whenever possible, pair the cycle of the Waste Water Permit with the cycle of the Reclaimed Water Permit; have them run concurrent with one another for review, issue and reissue. Otherwise agree.

~~3. Ecology recommends that only public entities be permitted as Master Generators since these facilities will have responsibilities for several facilities producing reclaimed water. Does the RAC support this concept? Why or why not?~~

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~~4.3. In 2007, this RAC recommended that this rule establish specific requirements for a reclaimed water general permit as separate from the requirements for an NPDES general permit under chapter 173-226 WAC. Does the RAC still recommend this approach? If not, what changed your recommendation?~~

- 4-29-2009 RAC – Agree with 2007 approach.

4. Add the term 'master generator' to the list of definitions. (done)

5. Consider rephrasing language regarding when to use a master or general permit to positively emphasize using the best permit to encourage reclaimed water rather than to meet a regulatory requirement. (Attempted - see revised language below – subject to AAG review)

#### **WAC 173-219- 200 Types of permits issued under this chapter (as revised for 6-3-2009 RAC)**

The lead agency ~~shall~~must issue one of three types of permits for the generation, distribution and use of reclaimed water- using the administrative procedures developed under this rule.

~~4. Individual Reclaimed Water Permit.~~ Unless eligible for another type of permit under this section, the lead agency ~~shall~~ issues an individual permit to the

facility generating reclaimed water using the administrative procedures established under this rule. Typically, the permit requirements under this rule and under the Water Pollution Control Act, chapter 90.48 RCW are issued concurrently or contained in a single combined permit document.

~~(α). 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.~~

~~(β). (a). Public Entity. All other facilities shall must be owned by a public entity. Nothing in this rule precludes a public entity from contracting for operation and maintenance.~~

~~4.2. Master Generator Individual Reclaimed Water Permit. When it is the opinion of the lead agency that a category of reclaimed water generation and use is more effectively regulated under a master generator permit than under individual permits, the The lead agency may issue a master generator individual permit to a single public entity or authorized private utility. The permitted entity must provide overall management and operational responsibilities for multiple facilities producing reclaimed water without the necessity for a physical connection between such systems. The permittee must own or otherwise demonstrate direct control over all facilities covered under the master generator permit. The master generator permit shall be issued using the administrative procedures established for an individual permit under this rule.~~

~~3.3. General Reclaimed Water Permit. When it is the opinion of the lead agency that a category of reclaimed water generation or use is more effectively regulated under a general permit than under individual permits, the The lead agency may issue a general permit to cover categories of reclaimed water generation facilities~~

with the same or substantially similar water quality requirements, uses of reclaimed water, types of treatment, reliability features, operating conditions, best management practices, monitoring, recordkeeping and reporting requirements, using the administrative procedures established under this rule for a general permit. The lead agency may then accept and consider applications for coverage under the general permit, modify conditions of coverage, revoke and reissue coverage, or terminate coverage under the general permit. ~~General permits may be written to cover categories of reclaimed water generation facilities with the same or substantially similar water quality requirements, uses of reclaimed water, types of treatment reliability features and operating conditions, best management practices, monitoring, recordkeeping and reporting requirements.~~

*Note: 6-3-2009 Ecology – the term generator (generating) needs to include master generator to be eligible under Ch. 90.46 RCW. Add to definitions list.*

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#### **4-29-2009 Questions and Comments for the next section 205 Permittee**

1. Move language on who is the “Permittee” from Part I to Part III (this part) of the rule. (done – new section added)

4.2. Ecology recommends that only public entities be permitted as Master Generators since these facilities will have responsibilities for several facilities producing reclaimed water. Does the RAC support this concept? Why or why not?

- 4-29-2009 RAC – No - All entities eligible for a reclaimed water permit should be eligible for a master generator permit. This could be a private utility as provided for under chapter 90.46 RCW or in certain cases a private holder of a ch 90.48 RCW permit. Provides more flexibility and it is still issued like an individual permit.
- 4-29-2009 RAC Define authority and determine need for restrictions on private entities. Should it be the same for wastewater facilities given that this is a requirement to get a Ch 90.48 RCW permit?

- Ecology staff – This may be possible provided eligibility of permittees is as revised in new section 205 and AAG concurs. Public entities are more straightforward to regulate in terms of oversight, utility fees, etc. This could add complexity in administration as well as additional requirements for an SBEIS if issued to a private entity. We need consistency with state waste discharge permits to administer program.

#### **WAC 173-219- 205 Permittee. (new section)**

The lead agency must issue the permit to the owner of the facility generating the reclaimed water. For uses authorized under this chapter, the lead agency may issue a reclaimed water permit to:

1. A public entity. Nothing in this rule precludes a public entity from contracting for operation and maintenance of the facility.
2. A private utility as defined in RCW 36.94.010 provided the lead agency determines that the private utility has the financial and other resources to ensure the reliability, continuity, and supervision of the reclaimed water facility.
3. Any entity currently holding an active wastewater discharge permit issued under chapter 90.48 RCW. For new facilities, department of ecologythe lead agency may issue the waste discharge permit concurrently with the reclaimed water permit.

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#### ***4-29-2009 Questions for the next section 210 - Individual or master generator permit application.***

1. Should Ecology separate individual and master generator permit applications into two separate sections of this rule?
  - Yes, done. (Sections 210 and 212)
2. Do RAC members have any questions regarding the purpose or content of this section?
3. Are RAC members comfortable with the requirements for an exemption as stated under subsection 3?
  - 4-23-2009 RAC - Work on language ‘ boundaries or within bounds’
4. How could Ecology improve this section?
  - 4-23-2009 RAC - Keep positive language.

#### **WAC 173-219-210 Application for an individual or master generator individual permit.**

1. Application required. Except as exempted under subsection (3) of this section or when covered under a reclaimed water general permit issued under this rule, any person generating or proposing to generate reclaimed water for distribution or use must apply for an individual permit or an individual master generator permit for the generation, distribution and final use of the reclaimed water.
  - (a). It is a violation of this chapter for a facility to fail to submit a permit application to the department as required by these rules.
  - (b). 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.
  - (c). Projects that include a point source discharge into any surface water of the state ~~shall also be subject to the~~ must also meet the permitting requirements under the national pollutant discharge elimination system permit program, chapter 173-220 WAC.
  - (d). A new application or a supplement to the most recent application ~~shall~~must be filed for any new or increased type of use not specifically authorized under a current permit.
  - (e). ~~For the purpose of satisfying the requirements of this subsection, any~~Any person generating reclaimed water under ~~aan unexpired~~ permit issued by the department of Ecology ~~prior to the time before~~ this rule is adopted ~~shall be is~~ considered as meeting to meet the application this requirements of this subsection.
2. Filing the Application. The requirement ~~for to apply for a permit an application shall be is~~ satisfied ~~provide when~~ the applicant files the required forms with the lead agency at least 180 days before the permit is required. For new or complex permits, the applicant should file the forms at least a year in advance. The lead agency determines the application forms required for the type, category, or size of the facility and any additional information required by either the lead or non-lead agency pertaining to the water quality, location, rate or purpose of use.
3. Permitting exemptions: Facilities generating reclaimed water do not require a permit or coverage under a general permit issued under this chapter provided all of the following conditions are met:
  - ~~1-(a).~~ \_\_\_\_\_ The reclaimed water is not distributed or transported beyond the boundaries of the ~~wastewater~~ treatment facility generating the reclaimed water.
  - ~~2-(b).~~ \_\_\_\_\_ The reclaimed water is only used for treatment plant purposes under the direct control of the operator of the within the bounds of the ~~wastewater~~ treatment facility generating the reclaimed water.

~~3~~-(c). \_\_\_\_\_ A permit under this chapter is not otherwise required in order to comply with the Federal Clean Water Act or the state Water Pollution Control Act.

~~4~~-(d). \_\_\_\_\_ A permit under this chapter is not otherwise required to protect public health.

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4-23-2009 Questions for the next section 215 - Application for coverage under a general permit.

~~a~~-1. \_\_\_\_\_ Should Ecology include this new section to incorporate general permits into this rule? (yes)

~~b~~-2. \_\_\_\_\_ Do RAC members have any questions regarding the purpose or content of this section? (no – 4-23-2009)

~~e~~-3. \_\_\_\_\_ How could Ecology improve this section?

**WAC 173-219- 215 Application for coverage under a reclaimed water general permit.**

•1. The lead agency must develop an application form for each general permit 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. The lead agency must make the application form available during the draft general permit public notice period.

•2. Following issuance of a general permit, the lead agency must consider the requirement to apply for coverage under the general permit satisfied if the applicant files a complete and accurate application on the form prescribed by the lead agency. Coverage under a general permit commences on the date established by the lead agency.

3. Where the lead agency determines that a reclaimed water generator should not be covered under a general permit, it must respond in writing within sixty days of receipt of an application for coverage stating the reason(s) why coverage cannot become effective and any actions needed to be taken by the applicant in order for coverage under the general permit to become effective.

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4-23-2009 Questions and comments for the next section 220 Signature requirements.

*Note: This section has not changed from the content in the "Existing Practices Framework" presented to this RAC in January and February 2009.*

~~a~~-1. \_\_\_\_\_ Do all private utilities fit under one of these headings? Yes.

2. Do RAC members have any additional comments or questions on this section?

- Define how far up the signatory authority goes. Ecology comment – as high as possible – this is the person held responsible to pay the fines or go to jail for violations.
- Who is in responsible charge of that facility? Ecology comment – this is consistent terminology with requirements established for operator certification. See WAC 173-230-040.

b.3. How could Ecology improve this section?

## **WAC 173-219- 220 Signature requirements**

a.1. Signature on Application. All permit applications ~~shall~~must be signed as follows:

1.(a). Corporations. By a responsible corporate officer. For the purposes of this section, a responsible corporate official includes either of the following:

200i. A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation.

204ji. The manager of one or more manufacturing, production, or operating facilities if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

2.(b). Partnership. By a general partner.

3.(c). Sole Proprietorship. By the proprietor.

4.(d). Public Agency. By either the principal executive officer or ranking elected official.

4.2. Signature on Other Submittals. All other submittals required by permits, and other information requested by the department must be signed by a person described under subsection 1 of this section, or by their duly authorized representative.

i.(a). Duly Authorized Representative. A person is a duly authorized representative only if the person described in subsection 2.1 of this section submits written authorization to the department lead agency specifying an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters.

ii.(b). Changes to authorization. If an authorization under 2(a) of this subsection is no longer accurate, a new authorization satisfying the

requirements of [2\(a\)](#) of this [subsection](#) must be submitted to the department prior to or together with any reports or other information.

[\(e\)-3. Certification.](#) Any person signing a document under this rule ~~shall~~[must](#) make the following certification, unless a different certification is applicable under another related section of this [chapter](#)[rule](#):

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

[END Content introduced April 23, 2009](#)

Begin June 3, 2009 RAC (new content)

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*6-3-2009 Questions and Comments for the next section 230 Draft determination to issue or deny permit.*

- Note extra requirements for general permits.

**WAC 173-219- 230 Draft determination to issue or deny permit.**

~~(a)~~-1. Individual Permits. The lead agency must make a draft determination to issue or deny an individual permit or a master generator individual permit upon receipt and review of a complete and accurate application<sup>[A1]</sup>. The lead agency must prepare a fact sheet as described in ~~subsection 3 of this section~~the Purple Book for every draft permit determination.

~~(b)~~-2. General Permits. The lead agency may make a draft determination<sup>[A2]</sup> to develop a general permit. Interested persons may also petition the lead agency requesting that a category of reclaimed water be considered for the development of a general permit. The lead agency must respond to such a petition within ninety days of receipt. The lead agency must prepare a fact sheet as described in ~~subsection 3 of this section~~the Purple Book for every draft general permit determination. The lead agency may be required to prepare a small business economic impact statement as described in subsection 4 of this section for a draft general permit intended to directly impact small businesses.

~~(c)~~-3. Fact Sheets. Fact sheets must, at a minimum, summarize ~~the~~<sup>[A3]</sup>:

(a).Type and location of all proposed facilities.

(b).Purpose of beneficial use.

(c).Provisions for adequate and reliable treatment.

(d).Potential for human contact or health risk

~~(d)~~-(e). \_\_\_ Water quality standards and limitations applied.

~~(e)~~-(f). \_\_\_ Flow quantity and rate, including interruptibility.

~~(f)~~-(g). \_\_\_ Other permit conditions including source control and handling of residual solids generated by reclamation~~wastewater~~ treatment;

~~(g)~~-(h). \_\_\_ Legal and technical grounds for the draft permit determination.

~~(h)~~-(i). \_\_\_ 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.

~~(+)(j)~~. Fact sheets for permits combined with NPDES permits must also include ~~the~~ additional information required under WAC 173-220-060.

~~(+)(k)~~. The lead agency must notify the non-lead agency of each draft permit determination and must provide the non-lead agency an opportunity to submit their written views and recommendations before the draft permit is released for public notice. Unless the non-lead agency waives or limits their review, the notification must 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.

~~(+)(l)~~. The lead agency must send the fact sheet to the applicant and, upon request, to any other person.

#### 4. Small business economic impact analysis for general permits

(a). The lead agency must prepare an economic impact analysis on all draft general permits intended to directly cover small business. The economic impact analysis must be prepared on the draft general permit for which public notice is being provided pursuant to WAC 173-219-240<sup>[A4]</sup>.

(b). The purpose of the economic impact analysis is to reduce the economic impact of the general permit on small business by doing one or more of the following when it is legal and feasible in meeting the stated objectives of chapter 90.46 RCW.

(c). The contents of a small business economic impact analysis for a proposed general permit must include the requirements under the Regulatory Fairness Act, [chapter 19.85 RCW](#) and the Administrative Procedures Act, [chapter 34.05 RCW](#).

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#### *6-3-2009 Questions and Comments for the next section 240 Public notice*

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#### **WAC 173-219-240 Process for public notice and comments**

1. Notice of draft determination. For every draft determination, the lead agency must provide notice by electronic or other means that:

(a). States the lead agency's determination to issue or deny an individual, master generator or general reclaimed water permit under this rule.

(b). Informs interested and potentially affected persons of the proposed reclaimed water quality, location, rate and purpose of use.

- (c). Informs the public living within the geographical boundaries of the proposed project or service area.
- (d). Notifies the non-lead agency, and other affected federal, state, county or local government agencies and Indian tribes of the determination.
- (e). Notifies all government agencies required under WAC 173-220-070 when permits are subject to NPDES permit requirements. ~~The<sup>[A5]</sup> department of Ecology is the lead agency for reclaimed water permits combined with NPDES permits.~~
- (f). Notifies any other parties that requested notification.
- (g). For general permits, request~~s~~ comments on whether a general reclaimed water permit is appropriate for the proposed category or whether individual permits are necessary.

2. Comment Period. The lead agency must:

- (a). 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.
- (b). Retain and consider all written comments submitted during the thirty-day comment period in the formulation of the lead agency's final determination with respect to the permit. The period for comment may be extended at the discretion of the lead agency.

3. Contents of Public Notice. The lead agency must prepare the contents of the public notice to include:

- (a). For all permits issues under this chapter:
  - (i). Name, address, phone number of the ~~lead~~ agency issuing the public notice.
  - (ii). Copies of the fact sheet and the draft permits.
  - (iii). The types and locations of facilities, activities and uses to be covered under the permit.
  - (iv). The geographical area for which the permit will be valid.
  - (v). The tentative determination to issue or deny the permit.
  - (vi). The procedures for the formulation of final determinations, including the thirty-day comment period ~~required~~ and any other means by which interested persons may comment upon those determinations.

- (vii). The address and phone number of state premises at which interested persons may obtain further information.
- (b). For all individual permits, the following additional information:
- (i). Name and address of each applicant, and if different, of the facility or activity to be regulated.
  - (ii). Whether this is a new or existing facility, activity or use.
  - (iii). The actual or proposed reclaimed water quality.
  - (iv). The actual or proposed locations, uses, and quantity of reclaimed water required.
  - (v). The potential for impairment of existing downstream water rights and compensation and mitigation proposed for such impairment, if any.
- (c). For all master generator permits, the following additional information:
- (i). Name and address of each applicant, and if different, of each the facility or activity to be regulated.
  - (ii). Whether this is a new or existing facility, activity or use.
  - (iii). The actual or proposed reclaimed water quality.
  - (iv). The actual or proposed locations, uses, and quantity of reclaimed water required.
  - (v). The criteria to approve coverage of new facilities under the master generator permit<sup>[A6]</sup>.
- (d). For all general permits, the following additional information<sup>[A7]</sup>:
- (i). A copy of the application for coverage under the general permit.
  - (ii). The criteria to approve coverage of new facilities under the master generator permit
  - (iii). A summary of the small business economic impact analysis if required.
4. Public access to information.
- (a). Availability of records. In accordance with chapter [42.17](#) RCW, the lead agency must make records relating to permits available to the public for inspection and copying. ~~The lead agency must provide facilities for the inspection of information relating to the permits and must insure that employees honor requests for such inspection promptly without undue requirements or restrictions. The lead agency must provide a method to insure that requests for copies of non-confidential documents may be~~

~~honored. The lead agency may require a reasonable fee for copying of documents~~<sup>[A8]</sup>.

(b). Confidential Information. Claims of confidentiality must be handled in accordance with the provisions of chapter. [42.17](#) RCW, [173-03](#) WAC, and RCW. [43.21A.160](#).

(c). For reclaimed water permits subject to -NPDES permit requirements, any information accorded confidential status, whether or not contained in an application form, must be disclosed, upon request, to the USEPA regional administrator.

5. Public hearings. The applicant or any interested agency or person may request a public hearing with respect to a draft permit determination.

(a). Any such request for a public hearing must:

- (i). Be filed with the lead agency within the thirty-day public notice period.
- (ii). Indicate the interest of the party filing such request.
- (iii). Indicate the reasons why a hearing is warranted.

(b). The lead agency must hold a hearing if it determines there is a significant public interest at a time and place deemed appropriate by the lead agency. Instances of doubt will be resolved in favor of holding the hearing.

(c). At least thirty days in advance of the hearing, the lead agency must provide public notice of any hearing at least as widely as was the public notice of the determination.

(d). The notice of public hearing must include:

- (i). Name, address, and phone number of agency holding the public hearing.
- (ii). Time and location for the hearing.
- (iii). Nature and purpose of the hearing.
- (iv). Issues raised by the persons requesting the hearing, and any other appropriate issues which may be of interest to the public.
- (v). A reference to the public notice issued pursuant to WAC 173-219-4.6, including identification number and date of issuance;
- (vi). Contacts and locations where interested persons may obtain information.

6. Notification of Final Permit Decision. The lead agency must notify the applicant, the non-lead agency and all persons who have submitted written comments or requested notice of the final permit decision. This notice must include response to comments received, the final determination, a copy of any permit issued and the procedures for contesting the decision.
7. Appeal. Any person may appeal a permit decision under the procedures established in Part VII of this rule within thirty days of notice of the lead agency determination.

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*6-3-2009 Questions and Comments for the next section 260 Fees*

- Does this adequately address DOH fees?

**WAC 173-219-260 Fees**

1. If department of Ecology is lead agency, ~~t~~The applicant must pay the applicable permit fees for new and renewal permits under chapter [173-224](#) WAC.
2. The department of health may establish fees under chapter 90.46.030 and may require fees appropriate for review, ~~and~~ consultation and permit issuance from the applicant pursuant to RCW [43.70.250](#).
3. Review and consultation work performed by the non-lead agency for a project or permit may be billed in the same manner as the other provisions in this section, or under chapter 246-290.

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*6-3-2009 Questions and Comments for the next section 270 Transfer Permits*

- Note: Allows for automatic transfer of a permit with advance notification unless the lead agency acts. Parallels requirement in state waste discharge permits chapter 173-216 WAC.

**WAC 173-219-270 Procedures to transfer a permit.**

1. A permit, or coverage under a general permit, may be automatically transferred provided a written agreement between the old and new owners and Permittees, if different, is submitted to the lead agency at least thirty days before the proposed change takes place. The agreement must specify the date for transfer of permit responsibility, coverage and liability. The transfer is effective on the date specified in the written agreement unless the lead agency notifies the parties of their intent to modify or revoke and reissue the permit.

2. Permits that are not automatically transferred under subsection (1) of this section may be transferred only if modified or revoked and reissued by the lead agency.

3. Notice of transfer shall be given to the non-lead agency.

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*6-3-2009 Questions and Comments for the next section 275 Permit duration and replacement.*

Note: Parallels wastewater discharge permit cycle under chapter 90.48 RCW. Allows lead agency to issue a permit for a shorter term.

### **WAC 173-219-275 Permit Duration and Replacement**

#### 1. Individual and Master Generator Permits

- (a). Permits issued by tThe lead agency must be issue a permit for a fixed term not exceeding five years from the effective date stated on the cover of the permit.
- (b). Permittees must file an application for replacement of the permit at least one hundred eighty days prior to the permit expiration date stated on the cover of the permit.
- (c). When a permittee has made timely and sufficient application for the renewal of a permit, an expiring permit remains in effect and enforceable until the lead agency either denies the application or issues a replacement permit.

(d). If a permittee fails to submit a timely and sufficient application, coverage expires on the expiration date of the individual or master generatorl permit

~~(d)-(e)~~. The lead agency must review the renewal application to insure:

- i. The permittee is in substantial compliance with all of the terms, conditions, requirements and schedules of compliance of the expired permit.
- ii. The department has up-to-date information.
- iii. The reclaimed water quality is consistent with applicable water quality standards and limitations and other legally applicable requirements.

~~(e)-(f)~~. Public notice and participation procedures specified in sections 230 (3) (k) and 240 of this rule apply to each draft replacement permit.

#### 2. General Permits (this still needs some work – kcc)

- (a). ~~The lead agency must issue Aa~~ general permit issued by the lead agency to an individual generator must be for a fixed term not exceeding five years from the effective date stated on the cover of the general permit.

- (b). When a permittee has made timely and sufficient application for the renewal of coverage under a general permit,
  - (i). Coverage under an expiring general permit remains in effect and enforceable until the lead agency denies the application, issues a new general permit, or cancels the expired permit.
  - (ii). Coverage under a newly issued general permit will automatically commence on the effective date of the new permit unless the lead agency notifies the permittee otherwise.
- (c). If a permittee fails to submit a timely and sufficient application, coverage expires on the expiration date of the general permit.

**WAC 173-219- 290 Regulatory action for noncompliance<sup>[A9]</sup>**

1. Notification of Determination of Noncompliance. 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 must notify the person of its determination by registered mail. The determination must not constitute an appealable order or directive. Within thirty days from the receipt of notice of such determination, the person must 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. Issuance of Order or Directive. 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, must notify the person by registered mail, and must inform the person of the process for requesting an adjudicative hearing.
3. Compliance Schedules. The lead agency may establish schedules and conditions to achieve compliance with applicable requirements.
  - a. Schedules of compliance must set forth the shortest, reasonable period of time, to achieve the specified requirements.
  - b. When schedules for compliance exceed one year, the schedule must 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 must be specified for the submission of reports of progress toward completion of the interim requirement.
  - c. Within fourteen days following each date of compliance, the permittee must provide the lead agency with written notice of the permittee's compliance or noncompliance with the requirement.

- d. If a permittee fails or refuses to comply with an interim or final requirement in a permit, such noncompliance must constitute a violation of the permit for which the lead agency may modify or revoke the permit or take direct enforcement action.

4. Procedures to modify, suspend, or revoke a permit. The permit may be modified or revoked in whole or in part during its terms for cause including, but not limited to, the following:

- (a). Violation of any term or condition of the permit.
- (b). Obtaining a permit by misrepresentation or failure to disclose fully all relevant facts.
- (c). A change in any condition that requires either a temporary or permanent reduction or cessation of generation, distribution or use of the reclaimed water.
- (d). A determination that the permitted activity endangers human health or the environment, or contributes to water quality standards violations.
- (e). Failure or refusal of the permittee to allow entry for permit compliance inspection.
- (f). Nonpayment of assessed permit fees.

5. Formal enforcement procedures.

- a. 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.
- b. 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 (i) any reclaimed water standards and limitations (ii) any permit or term or condition thereof, (iii) any filing requirements, (iv) any duty to permit or carry out inspection, entry, or monitoring activities, or (v) any rules, regulations, or orders issued by the lead agency.
- c. The lead agency may request the prosecuting attorney to seek criminal sanctions for the violation by such persons of (i) any effluent standards and limitations or water quality standards, (ii) any permit or term or condition thereof, (iii) any filing requirements.
- d. 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 lead agency.

Building the New Reclaimed Water WAC  
Proposed Draft Rule Language – work in progress (WIP) for  
Rule Advisory Committee Use Only – Wednesday, June 3, 2009

**Part V GENERAL REQUIREMENTS FOR STORAGE,  
DISTRIBUTION AND USE – version 1.0**

**(5/19/2009) Riley and Lahmann 6/9/09**

Note: Embedded in the following language are questions related to significant rule changes. Unless otherwise noted, all recommended changes are endorsed by both the TAP and Ecology.

**WAC 173-219-400 Reserved**

*Questions for next section – 410: Emergency storage of reclaimed water.*

- 1. Should design capacity be specified in guidance instead of rule<sup>[c1]</sup>?*
- 2. Should the rule list specific considerations for determining storage design capacity with additional info in guidance?*

**WAC 173-219-410 Emergency Storage of Reclaimed Water**

1. Whenever reclaimed water is generated that cannot be used as permitted, the person maintaining control must store the reclaimed water until it can be used, divert it to a different use, or discharge it to a permitted discharge location.
2. The minimum storage capacity shall be determined using methods provided in *Design Criteria for Reclaimed Water Systems* and documented in the engineering report or facility plan.<sup>1</sup><sub>[c2]</sub>
3. Storage capacity design calculations shall consider all of the following:
  - a. Types of use
  - b. Supply, demand and operating requirements and agreements
  - c. Potential for impact to human health and the environment

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<sup>1</sup> The TAP recommends that former storage standards of 1) three times average daily flow, and 2) capacity to store for the duration and intensity of a 10-year storm, be placed into *Design Criteria for Reclaimed Water Systems*. The Engineering Report shall contain basic design data and sizing calculations. The TAP suggested that the permitting agencies may approve an alternative design for storage volume if supported by documentation of equivalent reliability.

- d. Frequency and duration of adverse weather conditions such as precipitation or frozen ground that would preclude use
  - e. Shut down for system maintenance and repair
  - f. Other factors that may limit or prevent the planned use of reclaimed water
4. The departments may approve an alternative design with equivalent reliability in accordance with *Design Criteria for Reclaimed Water Systems*.

**Questions for next section – 420: Distribution System Requirements**

- 1. *Should the 0.5 mg/L chlorine residual be replaced by “detectable<sup>[c3]</sup>”?*
- 2. *Should pipe construction and cross connection control requirements be clarified to allow greater protection of higher quality water?*

**WAC 173-219-420 Distribution System Requirements**

1. **Maintenance of Chlorine Residual.** Except as provided under a and b of this subsection, the person maintaining control of reclaimed water shall provide a detectable chlorine residual measured as free, total, or chlorine dioxide<sup>[c4]</sup> during<sup>[A5]</sup> conveyance from the reclamation plant to the point of use.<sup>2</sup>
  - a. Maintenance of a chlorine residual is not required in reclaimed water impoundments and storage ponds, unless the type of beneficial use or distribution system following storage requires a chlorine residual to prevent biological growth or deterioration of water quality.<sup>3</sup>
  - b. Where justified due to the type of beneficial use, the departments may waive the requirements for maintaining a chlorine residual during conveyance to the point of use.
2. **Labeling.** The person maintaining control of the reclaimed water shall label all reclaimed water valves, storage facilities, and outlets to warn the public or employees that the water is not intended for drinking. Labeling requirements are specified under WAC 173-219-4560.
3. **Pipe Separation.** The person maintaining control of the reclaimed water shall assure that adequate separation is maintained between reclaimed water lines, sanitary sewer lines, storm sewer lines, and potable water lines in accordance with *Design Criteria for Reclaimed Water Systems*, latest edition, as published by the departments.<sup>4</sup> Unless the departments approve a lesser separation distance within an approved engineering report, the following shall be maintained<sup>[A6]</sup>:

<sup>2</sup> The TAP recommends that the 0.5 mg/L chlorine residual be replaced with a “detectable chlorine residual measured as free, total, or chlorine dioxide.”

<sup>3</sup> The TAP recognizes that water quality requirements following storage are project specific, based on type and retention time, uses following storage, and extent of the distribution system. Requirements should not discourage the use of reclaimed water compared to alternative sources.

<sup>4</sup> This comprehensive guidance manual will incorporate the current or latest edition of *Pipeline Separation Design and Installation Reference Guide* as adopted by the departments.

- i. A minimum horizontal separation of 10 feet between reclaimed water lines, sanitary sewer lines, storm sewer lines, and potable water lines.
  - ii. When crossing, a minimum vertical separation of 18 inches between reclaimed water lines, sanitary sewer lines, storm water lines and potable water lines. The pipeline of higher water quality shall be placed above pipelines of lower ~~quality~~<sup>[c7]</sup>.
4. **Cross- connection control**
- a. There shall be no cross-connections between the reclaimed water, potable water, and other systems of lower water quality.
  - b. The permittee or person(s) who distributes reclaimed water or owns or otherwise maintains control over the use area shall coordinate cross connection control with the water supplier which provides potable water to the use area. ~~The potable water purveyor must establish and obtain approval from the Washington Department of Health for a cross-connection control and inspection program pursuant to WAC 246-290-490~~<sup>[c8]</sup>.
  - c. Where both reclaimed water and potable water are supplied to a reclaimed water use area, a ~~reduced pressure principle~~ backflow prevention device or an approved air gap separation commensurate with the hazard level posed by the potential cross connection as determined by WAC 246-290-490 Table 8<sup>[c9]</sup> shall be installed at the potable water service connection to the use area.
  - d. Where potable water is used to supplement a reclaimed water system, there shall be an air gap separation, approved and regularly inspected, as directed by the cross connection control plan of the potable water supplier<sup>[A10]</sup>, between the potable water and reclaimed water.
  - e. Reclaimed water may be used in a dwelling unit or a building containing a dwelling unit for fire protection, toilet or urinal flushing, or other nonpotable purposes, if said purpose is allowed under state or local plumbing codes.<sup>5</sup> <sup>[c11]</sup> <sup>[A12]</sup>
5. **Other Design Requirements.** Reclaimed water distribution pipe material, valves, valve covers, hydrants, and associated components shall comply with the most recent AWWA Manual M24 standards or other recognized standard engineering practices.

### **WAC 173-219-430 Distribution by tank trucks**

- 1. Tank trucks (and similar equipment) may be used to distribute reclaimed water provided the tank truck is:
  - a. Clearly identified with reclaimed water advisory signs.
  - b. Inspected and approved for such use by the reclaimed water permittee to ensure that hazardous or dangerous waste is not present in the tank prior to transporting reclaimed water.

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<sup>5</sup> The TAP recommends that indoor use of reclaimed water not be prohibited but controlled via local or state plumbing codes.

2. Tank trucks used to transport reclaimed water shall **not** be:
  - a. Used to transport potable water that is used for drinking or other potable purposes, unless they have been cleaned to the potable water supplier's standards<sup>[A13]</sup>, and the tanker is contracted to or operated by an approved public water supplier.
  - b. Filled through on-board piping or hoses that may subsequently be used to fill tanks with water from a potable water supply.

**WAC 173-219-440 Minimum Setback Distances from Potable Supplies<sup>[c14]</sup>**

1. The minimum setback distance between any reclaimed water pipeline and a potable water supply well shall be

Reclaimed Water	Minimum Setback Distance
Class A or higher	50 feet
Class B	100 feet

2. Where reclaimed water is used for spray or surface irrigation, the minimum setback distance between the area subject to irrigation and any potable water supply well shall be:

Reclaimed Water	Minimum Setback Distance	
	To Potable Supply Well	For Spray Irrigation, to Public Area
Class A or higher	50 feet	None
Class B	100 feet	50 feet

3. Where reclaimed water is used for an impoundment, storage pond, or wetland, the minimum setback distance between the perimeter of the impoundment or wetland and any potable water supply well shall be:

Reclaimed Water	Minimum Setback Distance	
	Unlined or with seepage to ground.	Lined or sealed to prevent measurable seepage
Class B or higher	500 feet	100 feet

4. The lead agency departments may approve exceptions to the required minimum setback distances, provided the lesser setback distances are demonstrated to the satisfaction of both the departments to assure an equal degree of public health and environmental protection<sup>[c15]</sup>.

**WAC 173-219-450 General Use Area Requirements**

1. The person maintaining control of the reclaimed water shall assure that the public and employees are notified of the use of reclaimed water at all use areas. This shall be accomplished by the posting of advisory signs at use areas, distribution of written notices to residents or employees, or by other methods.

2. Except as otherwise approved by the lead agency departments, reclaimed water, including runoff and spray, shall be confined to the designated and approved use area in accordance with the state permit. Adequate measures shall be taken to:
  - a. Assure that reclaimed water will not be sprayed on people or any facility or area not designated for reuse, including but not limited to buildings, passing vehicles, and drinking water fountains.
  - b. Prevent the unplanned ponding of water, breeding of vectors of health significance and the creation of odors, slimes, or aesthetically displeasing deposits.
3. All reclaimed water valves and outlets shall be of a type, or secured in a manner, that permits operation only by authorized personnel. Access to hose bibs on reclaimed water lines must be controlled or restricted.
4. The person maintaining control of the reclaimed water shall label all reclaimed water valves, storage facilities, and outlets to warn the public or employees that the water is not intended for drinking.
5. The person maintaining control of the reclaimed water shall assure that the maximum attainable separation between reclaimed water lines and potable water lines shall be practiced at the use area<sup>[A16]</sup>.
6. Additional use area requirements may be specified under WAC 173-219-600 through 173-219-900.

### **WAC 173-219-460 Labeling of Reclaimed Water**

1. All reclaimed water piping, valves, outlets, storage facilities and other appurtenances shall be color-coded purple [Pantone 522 or other shades of purple acceptable to review agencies], taped purple [Pantone 512 or other shades of purple acceptable to review agencies], or otherwise marked to identify the source of the water as being nonpotable reclaimed water.
2. Signage or advisory notification shall be colored purple with white or black lettering [Pantone 522 or 512 or other shades of purple acceptable to review agencies]. Signs or notification should read “Reclaimed Water – Not Intended for Drinking” or other advisory or educational language acceptable to the departments. Where appropriate (~~depending on the level of reclaimed water treatment~~), such warning shall inform the public or employees ~~full body to avoid contact with the water is not intended.~~<sup>6</sup> <sup>[c17]</sup>

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<sup>6</sup> Additional details regarding the labeling of pipe and appurtenances will be placed in guidance. There is no reason to use the marking “CAUTION: RECLAIMED WATER – DO NOT DRINK” in all situations.

## Building the New Reclaimed Water WAC Proposed Draft Rule Language - work in progress (WIP) for Rule Advisory Committee Use Only

### PART VII ENFORCEMENT AND APPEALS (Version 1.0 TG 5/6/09)

#### DEL6/09/09

[173-219-900 Enforcement.](#)

[173-219-910 Appeals.](#)

#### 173-219-910 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, 43.05, 90.46 and 90.48 RCW<sub>[A1]</sub>.

~~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.

#### 173-219-920 Appeals.

Any person aggrieved by a decision of the agency that issued the permit~~department~~ made in accordance with provisions of this chapter may appeal that decision only as provided by law applicable ~~to that agency~~law including, but not limited to, chapters 43.21B and 34.05 and 90.46 RCW.<sub>[2009 SB 5504-S</sub><sub>[c2]]</sub>