

Chapter 90.46 RCW

RECLAIMED WATER USE

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90.46.005

Findings—Coordination of efforts—Development of facilities encouraged.

The legislature finds that by encouraging the use of reclaimed water while assuring the health and safety of all Washington citizens and the protection of its environment, the state of Washington will continue to use water in the best interests of present and future generations.

To facilitate the immediate use of reclaimed water for uses approved by the departments of ecology and health, the state shall expand both direct financial support and financial incentives for capital investments in water reuse and reclaimed water to effectuate the goals of this chapter. The legislature further directs the department of health and the department of ecology to coordinate efforts towards developing an efficient and streamlined process for creating and implementing processes for the use of reclaimed water.

It is hereby declared that the people of the state of Washington have a primary interest in the development of facilities to provide reclaimed water to replace potable water in nonpotable applications, to supplement existing surface and ground water supplies, and to assist in meeting the future water requirements of the state.

The legislature further finds and declares that the utilization of reclaimed water by local communities for domestic, agricultural, industrial, recreational, and fish and wildlife habitat creation and enhancement purposes, including wetland enhancement, will contribute to the peace, health, safety, and welfare of the people of the state of Washington. To the extent reclaimed water is appropriate for beneficial uses, it should be so used to preserve potable water for drinking purposes, contribute to the restoration and protection of instream flows that are crucial to preservation of the state's salmonid fishery resources, contribute to the restoration of Puget Sound by reducing wastewater discharge, provide a drought resistant source of water supply for nonpotable needs, or be a source of supply integrated into state, regional, and local strategies to respond to population growth and global warming. Use of reclaimed water constitutes the development of new basic water supplies needed for future generations and local and regional water management planning should consider coordination of infrastructure, development, storage, water reclamation and reuse, and source exchange as strategies to meet water demands associated with population growth and impacts of global warming.

The legislature further finds and declares that the use of reclaimed water is not inconsistent with the policy of antidegradation of state waters announced in other state statutes, including the water pollution control act, chapter **90.48** RCW and the water resources act, chapter **90.54** RCW.

The legislature finds that other states, including California, Florida, and Arizona, have successfully used reclaimed water to supplement existing water supplies without threatening existing resources or public health.

It is the intent of the legislature that the department of ecology and the department of health undertake the necessary steps to encourage the development of water reclamation facilities so that reclaimed water may be made available to help meet the growing water requirements of the state.

The legislature further finds and declares that reclaimed water facilities are water pollution control facilities as defined in chapter **70.146** RCW and are eligible for financial assistance as provided in chapter **70.146** RCW. The legislature finds that funding demonstration projects will ensure the future use of reclaimed water. The demonstration projects in RCW **90.46.110** are varied in nature and will provide the experience necessary to test different facets of the standards and refine a variety of technologies so that water purveyors can begin to use reclaimed water technology in a more cost-effective manner. This is especially critical in smaller cities and communities where the feasibility for such projects is great, but there are scarce resources to develop the necessary facilities.

The legislature further finds that the agricultural processing industry can play a critical and beneficial role in promoting the efficient use of water by having the opportunity to develop and reuse agricultural industrial process water from food processing.

[2007 c 445 § 2; 2001 c 69 § 1; 1997 c 355 § 1; 1995 c 342 § 1; 1992 c 204 § 1.]

NOTES:

Findings—Intent—2007 c 445: "(1) Since the 1992 enactment of the reclaimed water act, the value of reclaimed water as a new source of supply has received increasing recognition across the state and across the nation. New information on the matters in this section has increased awareness of the need to better manage, protect, and conserve water resources and to use reclaimed water in that process. The legislature now finds the following:

(a) Global warming and climate change. Global warming has reduced the volume of glaciers in the North Cascade mountains to between eighteen to thirty-two percent since 1983, and up to seventy-five percent of the glaciers are at risk of disappearing under projected temperatures for this century. Mountain snow pack has declined at virtually every measurement location in the Pacific Northwest, reducing the proportion of annual river flow to Puget Sound during summer months by eighteen percent since 1948. Global warming has also shifted peak streamflows earlier in the year in watersheds covering much of Washington state, including the Columbia river basin, jeopardizing the state's salmon fisheries. The state's recent report on the economic impacts of climate change indicate that water resources will be one of the areas most affected, and that many utilities may need to invest major resources in new supply and conservation measures. Developing and implementing adaptation strategies, such as water conservation that includes the use of reclaimed water, can extend existing water supply systems to help address the global warming impacts. In particular, because reclaimed water uses existing sources of supply and fairly constant base flows of wastewater, it has year-round dependability, without regard to any given year's climate variability. This is particularly important during summer months, when outdoor demands peak and streamflows are critical for fish.

(b) Puget Sound. The governor has initiated a Puget Sound partnership, with a request for an initial strategy to address high priority problems. In December, the partnership delivered a strategy that includes expanded use of reclaimed water both in order to improve the Puget Sound's water quality by reducing wastewater discharges and by replacing current sources of supply for nonpotable uses that detrimentally affect streamflows and habitat.

(c) Salmon recovery. The federal fisheries services recently approved a salmon recovery plan for the Puget Sound, which was developed across multiple watersheds by numerous local governments, tribal governments, and other parties to achieve sustainable populations of salmon and other species. That plan includes an adaptive management component where continued efforts will be made to address issues, including problems with instream flows, identified as a limiting factor in virtually all the watersheds, through strategies that will be developed by regional and watershed implementation groups. A potentially significant strategy may be the substitution of reclaimed water for nonpotable uses where it will benefit streams and habitat.

(d) Water quality. Increasingly stringent federal standards for water quality are forcing a number of communities to develop strategies for wastewater treatment that, in addition to providing higher treatment levels, will reduce the quantity of discharges. For many of those communities, facilities to produce reclaimed water will be a necessary approach to achieve both water quality and water supply objectives.

(e) Watershed plans. Under the watershed planning act of 1997, approximately two-thirds of the watersheds in the state have used a bottom-up approach to developing collaborative plans for meeting future water supply needs. Many of those plans include the use of reclaimed water for meeting those needs.

(f) Columbia river water management. Pursuant to legislation and funding provided in 2006, federal, state, and local governments and agencies, along with tribal governments, user groups, environmental organizations, and others are developing a comprehensive strategy for the mainstem Columbia that will ensure supplies for future growth while protecting streamflows and fish habitat. The strategy will include multiple tools that may include the potential development of new storage, conservation measures, and water use efficiency. One pathway toward conservation and efficiency is likely to be identification and implementation of reclaimed water opportunities.

(g) Development schedule. The time frame required to plan, design, construct, and begin use of reclaimed water can be extensive due to the public information and acceptance efforts required in addition to planning, design, and environmental assessment required for infrastructure projects. This extended time frame necessitates the initiation of reclaimed water projects as soon as possible.

(2) It is therefore the intent of the legislature to:

(a) Effectuate and reinvigorate the original intent behind the reclaimed water act to expand the use of reclaimed water for nonpotable uses throughout the state;

(b) Restate and emphasize the use of reclaimed water as a matter of water resource management policy;

(c) Address current barriers to the use of reclaimed water, where changes in state law will resolve such issues;

(d) Develop information from the state agencies responsible for promoting the use of reclaimed water and address regulatory, financial, planning, and other barriers to the expanded use of reclaimed water, relying on state agency expertise and experience with reclaimed water;

(e) Facilitate achieving state, regional, and local objectives through use of reclaimed water for water supply purposes in high priority areas of the state, and in regional and local watershed and water planning;

(f) Provide planning tools to local governments to incorporate reclaimed water and related water conservation into land use plans, consistent with water planning;

(g) Expand the scope of work of the advisory committee established under chapter 279, Laws of 2006 to identify other reclaimed water issues that should be addressed; and

(h) Provide initial funding, and evaluate options for providing additional direct state funding, for reclaimed water projects." [2007 c 445 § 1.]

Construction—1995 c 342: "This act shall not be construed as affecting any existing right acquired or liability or obligation incurred under the sections amended or repealed in this act or under any rule or order adopted under those sections, nor as affecting any proceeding instituted under those sections." [1995 c 342 § 10.]

Effective date—1995 c 342: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 11, 1995]." [1995 c 342 § 11.]

90.46.010

Definitions.

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Agricultural industrial process water" means water that has been used for the purpose of agricultural processing and has been adequately and reliably treated, so that as a result of that treatment, it is suitable for other agricultural water use.

(2) "Agricultural processing" means the processing of crops or milk to produce a product primarily for wholesale or retail sale for human or animal consumption, including but not limited to potato, fruit, vegetable, and grain processing.

(3) "Agricultural water use" means the use of water for irrigation and other uses related to the production of agricultural products. These uses include, but are not limited to, construction, operation, and maintenance of agricultural facilities and livestock operations at farms, ranches, dairies, and nurseries. Examples of these uses include, but are not limited to, dust control, temperature control, and fire control.

(4) "Constructed beneficial use wetlands" means those wetlands intentionally constructed on nonwetland sites to produce or create natural wetland functions and values.

(5) "Constructed treatment wetlands" means wetland-like impoundments intentionally constructed on nonwetland sites and managed for the primary purpose of further treatment or retention of reclaimed water as distinct from creating natural wetland functions and values.

(6) "Direct groundwater recharge" means the controlled subsurface addition of water directly into groundwater for the purpose of replenishing groundwater.

(7) "Domestic wastewater" means wastewater from greywater, toilet, or urinal sources.

(8) "Greywater or gray water" means domestic type flows from bathtubs, showers, bathroom sinks, washing machines, dishwashers, and kitchen or utility sinks. Gray water does not include flow from a toilet or urinal.

(9) "Industrial reuse water" means water that has been used for the purpose of industrial processing and has been adequately and reliably treated so that, as a result of that treatment, it is suitable for other uses.

(10) "Land application" means use of reclaimed water as permitted under this chapter for the purpose of irrigation or watering of landscape vegetation.

(11) "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.

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

(13) "Person" means any state, individual, public or private corporation, political subdivision, governmental subdivision, governmental agency, municipality, copartnership, association, firm, trust estate, or any other legal entity whatever.

(14) "Planned groundwater recharge project" means any reclaimed water project designed for the purpose of recharging groundwater.

(15) "Reclaimed water" means water derived in any part from wastewater with a domestic wastewater component that has been adequately and reliably treated, so that it can be used for beneficial purposes. Reclaimed water is not considered a wastewater.

(16) "State drinking water contaminant criteria" means the contaminant criteria found in the drinking water quality standards adopted by the state board of health pursuant to chapter **43.20** RCW and the department of health pursuant to chapter **70.119A** RCW.

(17) "Streamflow or surface water augmentation" means the intentional use of reclaimed water for rivers and streams of the state or other surface water bodies, for the purpose of increasing volumes.

(18) "Surface percolation" means the controlled application of water to the ground surface or to unsaturated soil for the purpose of replenishing groundwater.

(19) "User" means any person who uses reclaimed water.

(20) "Wastewater" means water-carried wastes from residences, buildings, industrial and commercial establishments, or other places, together with such groundwater infiltration and inflow as may be present.

(21) "Wetland or wetlands" means areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted to life in saturated soil conditions. Wetlands

generally include swamps, marshes, bogs, and similar areas. Wetlands regulated under this chapter shall be delineated in accordance with the manual adopted by the department of ecology pursuant to RCW **90.58.380**.

[**2009 c 456 § 1**; **2006 c 279 § 4**; **2002 c 329 § 3**; **2001 c 69 § 2**; **1997 c 444 § 5**; **1995 c 342 § 2**; **1992 c 204 § 2**.]

NOTES:

Alphabetization—2009 c 456: "The code reviser shall alphabetize and renumber the definitions in RCW **90.46.010**." [**2009 c 456 § 19**.]

Alphabetization—2006 c 279: "The code reviser shall alphabetize and renumber the definitions in RCW **90.46.010**." [**2006 c 279 § 12**.]

Severability—1997 c 444: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [**1997 c 444 § 11**.]

Construction—Effective date—1995 c 342: See notes following RCW **90.46.005**.

90.46.015

Rules—Coordination with department of health—Consultation with advisory committee.

(1) The department of ecology shall, in coordination with the department of health, adopt rules for reclaimed water use consistent with this chapter. The rules must address all aspects of reclaimed water use, including commercial and industrial uses, land applications, direct groundwater recharge, wetland discharge, surface percolation, constructed wetlands, and streamflow or surface water augmentation. The department of health shall, in coordination with the department of ecology, adopt rules for greywater reuse. The rules must also designate whether the department of ecology or the department of health will be the lead agency responsible for a particular aspect of reclaimed water use. In developing the rules, the departments of health and ecology shall amend or rescind any existing rules on reclaimed water in conflict with the new rules.

(2) All rules required to be adopted pursuant to this section must be completed no later than December 31, 2010, except that the department of ecology shall adopt rules for reclaimed water use no earlier than June 30, 2013.

(3) The department of ecology must consult with the advisory committee created under RCW **90.46.050** in all aspects of rule development required under this section.

[**2011 c 353 § 11**; **2009 c 456 § 2**; **2006 c 279 § 1**.]

NOTES:

Intent—2011 c 353: See note following RCW **36.70A.130**.

90.46.020

Interim standards for pilot projects for use of reclaimed water.

(1) The department of ecology shall, in coordination with the department of health, develop interim standards for pilot projects under subsection (3) of this section on or before July 1, 1992, for the use of reclaimed water in land applications.

(2) The department of health shall, in coordination with the department of ecology, develop interim standards for pilot projects under subsection (3) of this section on or before November 15, 1992, for the use of reclaimed water in commercial and industrial activities.

(3) The department of ecology and the department of health shall assist interested parties in the development of pilot projects to aid in achieving the purposes of this chapter.

[1992 c 204 § 3.]

90.46.030

Standards, procedures, and guidelines for industrial and commercial use of reclaimed water—Reclaimed water permits—Fee structure for permits—Formal agreements between the departments of health and ecology.

(1)(a) The department of health shall, in coordination with the department of ecology, adopt a single set of standards, procedures, and guidelines on or before August 1, 1993, for the industrial and commercial use of reclaimed water.

(b) Standards adopted under this section are superseded by any rules adopted by the department of ecology pursuant to RCW **90.46.015** as they relate to the industrial and commercial use of reclaimed water.

(2) Unless the department of ecology adopts rules pursuant to RCW **90.46.015** that relate to the industrial and commercial use of reclaimed water specifying otherwise, the department of health may issue a reclaimed water permit for industrial and commercial uses of reclaimed water to the generator of reclaimed water who may then distribute the water, subject to provisions in the permit governing the location, rate, water quality, and purposes of use. Permits issued after the adoption of rules under RCW **90.46.015** must be consistent with the adopted rules.

(3) The department of health in consultation with the advisory committee established in RCW **90.46.050**, shall develop recommendations for a fee structure for permits issued under subsection (2) of this section. Fees shall be established in amounts to fully recover, and not exceed, expenses incurred by the department of health in processing permit applications and modifications, monitoring and evaluating compliance with permits, and conducting inspections and supporting the reasonable overhead expenses that are directly related to these activities. Permit fees may not be used for research or enforcement activities. The department of health shall not issue permits under this section until a fee structure has been established.

(4) A permit under this section for use of reclaimed water may be issued only to:

(a) A municipal, quasi-municipal, or other governmental entity;

(b) A private utility as defined in RCW **36.94.010**; or

(c) The holder of a waste discharge permit issued under chapter **90.48** RCW.

(5) The authority and duties created in this section are in addition to any authority and duties already provided in law with regard to sewage and wastewater collection, treatment, and disposal for the

protection of health and safety of the state's waters. Nothing in this section limits the powers of the state or any political subdivision to exercise such authority.

(6) Unless the department of ecology adopts rules pursuant to RCW **90.46.015** that relate to the industrial and commercial use of reclaimed water specifying otherwise, the department of health may implement the requirements of this section through the department of ecology by execution of a formal agreement between the departments. Upon execution of such an agreement, the department of ecology may issue reclaimed water permits for industrial and commercial uses of reclaimed water by issuance of permits under chapter **90.48** RCW, and may establish and collect fees as required for permits issued under chapter **90.48** RCW.

(7) Unless the department of ecology adopts rules pursuant to RCW **90.46.015** that relate to the industrial and commercial use of reclaimed water specifying otherwise, and before deciding whether to issue a permit under this section to a private utility, the department of health may require information that is reasonable and necessary to determine whether the private utility has the financial and other resources to ensure the reliability, continuity, and supervision of the reclaimed water facility.

[**2006 c 279 § 5**; **2005 c 59 § 1**; **2002 c 329 § 4**; **1992 c 204 § 4**.]

90.46.040

Standards, procedures, and guidelines for land applications of reclaimed water.

(1) The department of ecology shall, in coordination with the department of health, adopt a single set of standards, procedures, and guidelines, on or before August 1, 1993, for land applications of reclaimed water.

(2) Standards adopted under this section are superseded by any rules adopted by the department of ecology pursuant to RCW **90.46.015** as they relate to the land application of reclaimed water.

[**2009 c 456 § 3**; **2006 c 279 § 6**; **2005 c 59 § 2**; **1992 c 204 § 5**.]

90.46.042

Standards, procedures, and guidelines for direct recharge.

(1) The department of ecology shall, in consultation with the department of health, adopt a single set of standards, procedures, and guidelines, on or before December 31, 1996, for direct recharge using reclaimed water. The standards shall address both water quality considerations and avoidance of property damage from excessive recharge.

(2) Standards adopted under this section are superseded by any rules adopted by the department of ecology pursuant to RCW **90.46.015** as they relate to direct recharge using reclaimed water.

[**2006 c 279 § 7**; **1995 c 342 § 6**.]

NOTES:

Construction—Effective date—1995 c 342: See notes following RCW **90.46.005**.

90.46.044

Standards, procedures, and guidelines for discharge to wetlands.

(1) The department of ecology shall, in consultation with the department of health, adopt a single set of standards, procedures, and guidelines, on or before June 30, 1996, for discharge of reclaimed water to wetlands.

(2) Standards adopted under this section are superseded by any rules adopted by the department of ecology pursuant to RCW **90.46.015** as they relate to discharge of reclaimed water to wetlands.

[**2006 c 279 § 8; 1995 c 342 § 7.**]

NOTES:

Construction—Effective date—1995 c 342: See notes following RCW **90.46.005**.

90.46.050

Advisory committee—Development of standards, procedures, and guidelines.

The department of ecology shall, before July 1, 2006, form an advisory committee, in coordination with the department of health and the department of agriculture, which will provide technical assistance in the development of standards, procedures, and guidelines required by this chapter. The advisory committee shall be composed of a broad range of interested individuals representing the various stakeholders that utilize or are potentially impacted by the use of reclaimed water. The advisory committee must also contain individuals with technical expertise and knowledge of new advancements in technology.

[**2006 c 279 § 2; 1995 c 342 § 9; 1992 c 204 § 6.**]

NOTES:

Construction—Effective date—1995 c 342: See notes following RCW **90.46.005**.

90.46.070

Exemption from standards, procedures, and guidelines.

Any person lawfully using reclaimed water before April 2, 1992, may continue to do so and is not required to comply with the standards, procedures, and guidelines under chapter **90.46** RCW before July 1, 1995.

[**1992 c 204 § 8.**]

90.46.072

Conflict resolution—Reclaimed water projects and chapter 372-32 WAC.

On or before December 31, 1995, the department of ecology and department of health shall, in consultation with local interested parties, jointly review and, if required, propose amendments to chapter 372-32 WAC to resolve conflicts between the development of reclaimed water projects in the Puget Sound region and chapter 372-32 RCW [WAC].

[1995 c 342 § 8.]

NOTES:

Construction—Effective date—1995 c 342: See notes following RCW **90.46.005**.

90.46.080

Use of reclaimed water for surface percolation—Establishment of discharge limit for contaminants.

(1) Except as otherwise provided in this section, reclaimed water may be beneficially used for surface percolation provided the reclaimed water meets the state drinking water contaminant criteria as measured in groundwater beneath or down gradient of the recharge project site, and has been incorporated into a sewer or water comprehensive plan, as applicable, adopted by the applicable local government and approved by the department of health or department of ecology as applicable.

(2) If the state drinking water contaminant criteria do not contain a standard for a constituent or contaminant, the department of ecology shall establish a discharge limit consistent with the goals of this chapter, except as otherwise provided in this section.

(3) Except as otherwise provided in this section, reclaimed water that does not meet the state drinking water contaminant criteria may be beneficially used for surface percolation where the department of ecology, in consultation with the department of health, has specifically authorized such use at such lower standard.

(4) The provisions of this section are superseded by any rules adopted by the department of ecology pursuant to RCW **90.46.015** as they relate to surface percolation.

[2009 c 456 § 4; 2006 c 279 § 9; 1997 c 444 § 6; 1995 c 342 § 3.]

NOTES:

Severability—1997 c 444: See note following RCW **90.46.010**.

Construction—Effective date—1995 c 342: See notes following RCW **90.46.005**.

90.46.090

Use of reclaimed water for discharge into constructed beneficial use wetlands and constructed treatment wetlands—Standards for discharge.

(1) Reclaimed water may be beneficially used for discharge into constructed beneficial use wetlands and constructed treatment wetlands provided the reclaimed water meets the class A or B reclaimed water standards as defined in the reclamation criteria, and the discharge is incorporated into a sewer or water comprehensive plan, as applicable, adopted by the applicable local government and approved by the department of health or department of ecology as applicable.

(2) Reclaimed water that does not meet the class A or B reclaimed water standards may be beneficially used for discharge into constructed treatment wetlands where the department of ecology, in consultation with the department of health, has specifically authorized such use at such lower standards.

(3)(a) The department of ecology and the department of health must develop appropriate standards for discharging reclaimed water into constructed beneficial use wetlands and constructed treatment wetlands. These standards must be considered as part of the approval process under subsections (1) and (2) of this section.

(b) Standards adopted under this section are superseded by any rules adopted by the department of ecology pursuant to RCW **90.46.015** as they relate to discharge into constructed beneficial use wetlands and constructed treatment wetlands.

[**2006 c 279 § 10; 1997 c 444 § 7; 1995 c 342 § 4.**]

NOTES:

Severability—1997 c 444: See note following RCW **90.46.010**.

Construction—Effective date—1995 c 342: See notes following RCW **90.46.005**.

90.46.100

Discharge of reclaimed water for streamflow augmentation.

(1) Reclaimed water intended for beneficial reuse may be discharged for streamflow augmentation provided the reclaimed water meets the requirements of the federal water pollution control act, chapter **90.48** RCW, and is incorporated into a sewer or water comprehensive plan, as applicable, adopted by the applicable local government and approved by the department of health or department of ecology as applicable.

(2) Standards adopted under this section are superseded by any rules adopted by the department of ecology pursuant to RCW **90.46.015** as they relate to discharge of reclaimed water for streamflow augmentation.

[**2006 c 279 § 11; 1995 c 342 § 5.**]

NOTES:

Construction—Effective date—1995 c 342: See notes following RCW **90.46.005**.

90.46.110

Reclaimed water demonstration program—Demonstration projects.

(1) The department of ecology shall establish and administer a reclaimed water demonstration program for the purposes of funding and monitoring the progress of five demonstration projects. The department shall work in cooperation with the department of health.

(2) The five demonstration projects will be:

(a) The city of Ephrata, to use class A reclaimed water for surface spreading that will recharge the groundwater and reduce the nitrate concentrations that currently exceed drinking water standards in domestic wells;

(b) Lincoln county, for a study of the use of reclaimed water to transport twenty-two million gallons a day from Spokane to water sources that will rehydrate and restore long depleted streambeds;

(c) The city of Royal City to replace an interim emergency sprayfield by using one hundred percent of its discharge as class A reclaimed water to enhance local wetlands and lakes in the winter, and potentially irrigate a golf course;

(d) The city of Sequim to implement a tertiary treatment system and reuse one hundred percent of the city's wastewater to reopen an existing shellfish closure area to benefit state and tribal resources, improve streamflows in the Dungeness river, and provide a sustainable water supply for irrigation purposes;

(e) The city of Yelm to use one hundred percent of its wastewater to provide alternative water supply for irrigation and industrial uses in order to offset increased demand for water supply, to protect the Nisqually river chum salmon runs, and to develop experimental artificial wetlands to test low cost treatment options.

(3) By September 30, 1997, the department of ecology shall enter into a grant agreement with the demonstration project jurisdictions that includes reporting requirements, timelines, and a fund disbursement schedule based on the agreed project milestones.

(4) Upon completion of the projects, the department of ecology shall report to the appropriate committees of the legislature on the results of the program.

(5) Demonstration projects which will discharge or otherwise deliver reclaimed water to federal reclamation project facilities or irrigation district facilities shall meet the requirements of the facilities' operating entity for such discharges or deliveries.

(6) No irrigation district, its directors, officers, employees, or agents operating and maintaining irrigation works for any purpose authorized by law, including the production of food for human consumption and other agricultural and domestic purposes, is liable for damages to persons or property arising from the implementation of the demonstration projects in this section.

[1997 c 355 § 2.]

90.46.120

Use of water from wastewater treatment facility—Consideration in regional water supply plan or potable water supply plans—Consideration in reviewing provisions for water supplies for short plat, short subdivision, or subdivision—Report to the legislature.

(1) The owner of a wastewater treatment facility that is reclaiming water with a permit issued under this chapter has the exclusive right to any reclaimed water generated by the wastewater treatment facility. Use, distribution, storage, and the recovery from storage of reclaimed water permitted under this chapter is exempt from the permit requirements of RCW [90.03.250](#) and [90.44.060](#), provided that a permit for recovery of reclaimed water from aquifer storage shall be reviewed under the standards established under RCW [90.03.370](#)(2) for aquifer storage and recovery projects. Revenues derived from the reclaimed water facility shall be used only to offset the cost of operation of the wastewater utility fund or other applicable source of systemwide funding.

(2) If the proposed use of reclaimed water is to augment or replace potable water supplies or to create the potential for the development of an additional new potable water supply, then regional water supply plans, or any other potable water supply plans prepared by multiple water purveyors, must consider the proposed use of the reclaimed water as they are developed or updated.

(a) Regional water supply plans include those adopted under state board of health laws (chapter [43.20](#) RCW), the public water system coordination act of 1977 (chapter [70.116](#) RCW), groundwater protection laws (chapter [90.44](#) RCW), and the watershed planning act (chapter [90.82](#) RCW).

(b) The requirement to consider the use of reclaimed water does not change the plan approval process established under these statutes.

(c) When regional water supply plans are being developed, the owners of wastewater treatment facilities that produce or propose to produce reclaimed water for use within the planning area must be included in the planning process.

(3) When reclaimed water is available or is proposed for use under a water supply or wastewater plan developed under chapter [43.20](#), [70.116](#), [90.44](#), [90.48](#), or [90.82](#) RCW these plans must be coordinated to ensure that opportunities for reclaimed water are evaluated. The requirements of this subsection (3) do not apply to water system plans developed under chapter [43.20](#) RCW for utilities serving less than one thousand service connections.

(4) The provisions of any plan for reclaimed water, developed under the authorities in subsections (2) and (3) of this section, should be included by a city, town, or county in reviewing provisions for water supplies in a proposed short plat, short subdivision, or subdivision under chapter [58.17](#) RCW, where reclaimed water supplies may be proposed for nonpotable purposes in the short plat, short subdivision, or subdivision.

(5) By November 30, 2009, the department of ecology shall review comments from the reclaimed water advisory committee under RCW [90.46.050](#) and the reclaimed water and water rights advisory committee under the direction of the department of ecology and submit a recommendation to the legislature on the impairment requirements and standards for reclaimed water. The department of ecology shall also provide a report to the legislature that describes the opinions of the stakeholders on the impairment requirements and standards for reclaimed water.

[[2009 c 456 § 5](#); [2007 c 445 § 3](#); [2003 1st sp.s. c 5 § 13](#); [1997 c 444 § 1](#).]

NOTES:

Findings—Intent—2007 c 445: See note following RCW [90.46.005](#).

Severability—2003 1st sp.s. c 5: See note following RCW [90.03.015](#).

Severability—1997 c 444: See note following RCW [90.46.010](#).

90.46.130

Impairment of water rights downstream from freshwater discharge points.

(1) Except as provided in subsection (2) of this section, facilities that reclaim water under this chapter shall not impair any existing water right downstream from any freshwater discharge points of such facilities unless compensation or mitigation for such impairment is agreed to by the holder of the affected water right.

(2) Agricultural water use of agricultural industrial process water and use of industrial reuse water under this chapter shall not impair existing water rights within the water source that is the source of

supply for the agricultural processing plant or the industrial processing and, if the water source is surface water, the existing water rights are downstream from the agricultural processing plant's discharge points existing on July 22, 2001, or from the industrial processing's discharge points existing on June 13, 2002.

[2002 c 329 § 5; 2001 c 69 § 4; 1997 c 444 § 4.]

NOTES:

Severability—1997 c 444: See note following RCW [90.46.010](#).

90.46.140

Greywater reuse—Standards, procedures, and guidelines—Rules.

(1) The department of health shall develop standards, procedures, and guidelines for the reuse of greywater, consistent with RCW [43.20.230](#)(2), by January 1, 1998.

(2) Standards, procedures, and guidelines developed by the department of health for reuse of greywater shall encourage the application of this technology for conserving water resources, or reducing the wastewater load, on domestic wastewater facilities, individual on-site sewage treatment and disposal systems, or community on-site sewage treatment and disposal systems.

(3) The department of health and local health officers may permit the reuse of greywater according to rules adopted by the department of health.

[1997 c 444 § 8.]

NOTES:

Severability—1997 c 444: See note following RCW [90.46.010](#).

90.46.150

Agricultural industrial process water—Permit—Use—Referral to department of health.

The permit to apply agricultural industrial process water to agricultural water use shall be the permit issued under chapter [90.48](#) RCW to the owner of the agricultural processing plant who may then distribute the water through methods including, but not limited to, irrigation systems, subject to provisions in the permit governing the location, rate, water quality, and purpose. In cases where the department of ecology determines that a significant risk to public health exists, in land application of the water, the department must refer the application to the department of health for review and consultation.

The owner of the agricultural processing plant who obtains a permit under this section has the exclusive right to the use of any agricultural industrial process water generated from the plant and to the distribution of such water through facilities including irrigation systems. Use and distribution of the water by the owner is exempt from the permit requirements of RCW [90.03.250](#), [90.03.380](#), [90.44.060](#), and [90.44.100](#).

Nothing in chapter 69, Laws of 2001 shall be construed to affect any right to reuse agricultural industrial discharge water in existence on or before July 22, 2001.

[2001 c 69 § 3.]

90.46.160

Industrial reuse water—Permit.

(1) The permit to use industrial reuse water shall be the permit issued under chapter **90.48** RCW to the owner of the plant that is the source of the industrial process water, who may then distribute the water according to provisions in the permit governing the location, rate, water quality, and purpose. In cases where the department of ecology determines that a proposed use may pose a significant risk to public health, the department shall refer the permit application to the department of health for review and consultation.

(2) The owner of the industrial plant who obtains a permit under this section has the exclusive right to the use of any industrial reuse water generated from the plant and to the distribution of such water. Use and distribution of the water by the owner is exempt from the permit requirements of RCW **90.03.250**, **90.03.380**, **90.44.060**, and **90.44.100**.

(3) Nothing in this section affects any right to reuse industrial process water in existence on or before June 13, 2002.

[2002 c 329 § 6.]

90.46.200

Authority of the departments of ecology and health—Lead agency—Duties.

(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 and will be established as such by rule. Enforcement of a permit issued under this chapter shall be at the sole discretion of the lead agency that issued the permit.

(2) All permit applications shall be referred to the nonlead agency for review and consultation. The nonlead agency may choose to limit the scope of its review.

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

[2009 c 456 § 7.]

90.46.210

Lead agency—Authority to bring legal proceeding.

The lead agency, with the assistance of the attorney general, is authorized to bring any appropriate action at law or in equity, including action for injunctive relief, as may be necessary to carry out the provisions of this chapter. The lead agency may bring the action in the superior court of the

county in which the violation occurred or in the superior court of Thurston county. The court may award reasonable attorneys' fees for the cost of the attorney general's office in representing the lead agency.

[2009 c 456 § 8.]

90.46.220

Permit.

(1) Any person proposing to generate any type of reclaimed water for a use regulated under this chapter shall obtain a permit from the lead agency prior to distribution or use of that water. The permittee may then distribute and use the water, subject to the provisions in the permit. The permit must include provisions that protect human health and the environment. At a minimum, the permit must:

- (a) Assure adequate and reliable treatment; and
- (b) Govern the water quality, location, rate, and purpose of use.

(2) A permit under this chapter may be issued only to:

- (a) A municipal, quasi-municipal, or other governmental entity;
- (b) A private utility as defined in RCW [36.94.010](#);
- (c) The holder of a waste disposal permit issued under chapter [90.48](#) RCW; or

(d) The owner of an agricultural processing facility that is generating agricultural industrial process water for agricultural use, or the owner of an industrial facility that is generating industrial process water for reuse.

(3) Before deciding whether to issue a permit under this section to a private utility, the lead agency may require information that is reasonable and necessary to determine whether the private utility has the financial and other resources to ensure the reliability, continuity, and supervision of the reclaimed water facility.

(4) Permits shall be issued for a fixed term specified by the rules adopted under RCW [90.46.015](#). A permittee shall apply for permit renewal prior to the end of the term. The rules adopted under RCW [90.46.015](#) shall specify the process of renewal, modification, change of ownership, suspension, and termination.

(5) The lead agency may deny an application for a permit or modify, suspend, or revoke a permit for good cause, including but not limited to, any case in which it finds that the permit was obtained by fraud or misrepresentation, or there is or has been a failure, refusal, or inability to comply with the requirements of this chapter or the rules adopted under this chapter.

(6) The lead agency shall provide for adequate public notice and opportunity for review and comment on all initial permit applications and renewal applications. Methods for providing notice may include electronic mail, posting on the lead agency's internet site, publication in a local newspaper, press releases, mailings, or other means of notification the lead agency determines appropriate. The lead agency shall also publicize notice of final permitting decisions.

(7) Any person aggrieved by a permitting decision has the right to an adjudicative proceeding. An adjudicative proceeding conducted under this subsection is governed by chapter [34.05](#) RCW. For any permit decision for which the department of ecology is the lead agency under this chapter, any appeal shall be in accordance with chapter [43.21B](#) RCW. For any permit decision for which department of health is the lead agency under this chapter, any 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.

(8) Permit requirements for the distribution and use of greywater will be established in rules adopted by the department of health under RCW [90.46.015](#).

[2009 c 456 § 9.]

90.46.230

Right to enter and inspect property related to the purpose of the permit— Administrative search warrant.

(1)(a) Except as otherwise provided in (b) of this subsection, the lead agency or its designee shall have the right to enter and inspect any property related to the purpose of the permit, public or private, at reasonable times with prior notification in order to determine compliance with laws and rules administered by the lead agency. During such inspections, the lead agency shall have free and unimpeded access to all data, facilities, and property involved in the generation, distribution, and use of reclaimed water.

(b) The lead agency or its designee need not give prior notification to enter property under (a) of this subsection if the purpose of the entry is to ensure compliance by the permittee with a prior order of the lead agency or if the lead agency or its designee has reasonable cause to believe there is a violation of the law that poses a serious threat to public health and safety or the environment.

(2) The lead agency or its designee may apply for an administrative search warrant to a court of competent jurisdiction and an administrative search warrant may issue where:

(a) The lead agency has attempted an inspection under this chapter and access has been actually or constructively denied; or

(b) There is reasonable cause to believe that a violation of this chapter or rules adopted under this chapter is occurring or has occurred.

[2009 c 456 § 10.]

90.46.240

Plans, reports, specifications, and proposed methods of operation and maintenance to be submitted to departments.

All required feasibility studies, planning documents, engineering reports, and plans and specifications for the construction of new reclaimed water, agricultural industrial process water, and industrial reuse water facilities, including generation, distribution, and use facilities, or for improvements or extensions to existing facilities, and the proposed method of future operation and maintenance of said facility or facilities, shall be submitted to and be approved by the lead agency, before construction thereof may begin. No approval shall be given until the lead agency is satisfied that the plans, reports, and specifications and the methods of operation and maintenance submitted are adequate to protect the quality of the water for the intended use as provided for in this chapter and are adequate to protect public health and safety as necessary.

[2009 c 456 § 11.]

90.46.250

Violation of chapter—Notification—Immediate action.

(1) When, in the opinion of the lead agency, a person violates or creates a substantial potential to violate this chapter, 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. 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.

(2) When it appears to the lead agency that water quality conditions or other conditions exist which require immediate action to protect human health and safety or the environment, the lead agency may issue a written order to the person or persons responsible without first issuing a notice of determination pursuant to subsection (1) of this section. An order or directive issued pursuant to this subsection shall be served by registered mail or personally upon any person to whom it is directed, and shall inform the person or persons responsible of the process for requesting an adjudicative hearing.

[2009 c 456 § 12.]

90.46.260

Penalty.

Any person found guilty of willfully violating any of the provisions of this chapter, or any final written orders or directive of the lead agency or a court in pursuance thereof, is guilty of a gross misdemeanor, and upon conviction thereof shall be punished by a fine of up to ten thousand dollars and costs of prosecution, or by imprisonment in the county jail for up to three hundred sixty-four days, or both, in the discretion of the court. Each day upon which a willful violation of the provisions of this chapter occurs may be deemed a separate and additional violation.

[2011 c 96 § 60; 2009 c 456 § 13.]

NOTES:

Findings—Intent—2011 c 96: See note following RCW [9A.20.021](#).

90.46.270

Violations—Civil penalty—Procedure.

(1) Except as provided in RCW [43.05.060](#) through [43.05.080](#), [43.05.100](#), [43.05.110](#), and [43.05.150](#), any person who:

(a) Generates any reclaimed water for a use regulated under this chapter and distributes or uses that water without a permit;

(b) Violates the terms or conditions of a permit issued under this chapter; or

(c) Violates rules or orders adopted or issued pursuant to this chapter,

shall incur, in addition to any other penalty as provided by law, a penalty in an amount of up to ten thousand dollars per day for every violation. Each violation shall be a separate and distinct offense, and in case of a continuing violation, every day's continuance shall be a separate and distinct violation. Every act of commission or omission which procures, aids, or abets in the violation shall be considered a violation under the provisions of this section and subject to the penalty herein provided for. The penalty

amount shall be set in consideration of the previous history of the violator and the severity of the violation's impact on public health, the environment, or both, in addition to other relevant factors.

(2) A penalty imposed by a final administrative order is due upon service of the final administrative order. A person who fails to pay a penalty assessed by a final administrative order within thirty days of service of the final administrative order shall pay, in addition to the amount of the penalty, interest at the rate of one percent of the unpaid balance of the assessed penalty for each month or part of a month that the penalty remains unpaid, commencing within the month in which the notice of penalty was served, and reasonable attorneys' fees as are incurred if civil enforcement of the final administrative order is required to collect penalty.

(3) A person who institutes proceedings for judicial review of a final administrative order assessing a civil penalty under this chapter shall place the full amount of the penalty in an interest bearing account in the registry of the reviewing court. At the conclusion of the proceeding the court shall, as appropriate, enter a judgment on behalf of the lead agency and order that the judgment be satisfied to the extent possible from moneys paid into the registry of the court or shall enter a judgment in favor of the person appealing the penalty assessment and order return of the moneys paid into the registry of the court together with accrued interest to the person appealing. The judgment may award reasonable attorneys' fees for the cost of the attorney general's office in representing the lead agency.

(4) If no appeal is taken from a final administrative order assessing a civil penalty under this chapter, the lead agency may file a certified copy of the final administrative order with the clerk of the superior court in which the person resides, or in Thurston county, and the clerk shall enter judgment in the name of the lead agency and in the amount of the penalty assessed in the final administrative order.

(5) When the penalty herein provided for is imposed by the department of ecology, it shall be imposed pursuant to the procedures set forth in RCW **43.21B.300**. All penalties imposed by the department of ecology pursuant to RCW **43.21B.300** shall be deposited into the state treasury and credited to the general fund.

(6) When the penalty is imposed by the department of health, it shall be imposed pursuant to the procedures set forth in RCW **43.70.095**. All receipts from penalties shall be deposited into the health reclaimed water account. The department of health shall use revenue derived from penalties only to provide training and technical assistance to reclaimed water system owners and operators.

[2009 c 456 § 14.]

90.46.280

Application of administrative procedure act to chapter.

The provisions of chapter **34.05** RCW, the administrative procedure act, apply to all rule-making and adjudicative proceedings authorized by or arising under the provisions of this chapter.

[2009 c 456 § 15.]