

## Chapter 90.48 RCW

### WATER POLLUTION CONTROL

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**Domestic waste treatment plants—Certification and regulation of operators: Chapter 70.95B RCW.**

**Environmental certification programs—Fees—Rules—Liability: RCW 43.21A.175.**

**Oil and hazardous substance spill prevention and response: Chapter 90.56 RCW.**

**Oil tankers on Puget Sound, restrictions, etc.: RCW 88.16.170 through 88.16.190.**

**Shellfish, sanitary control: RCW 69.30.130.**

**Washington clean air act: Chapter 70.94 RCW.**

**Water-sewer district powers as to mutual systems, approval of exercise by pollution control commission: RCW 57.08.065.**

**Water pollution control facilities, tax exemptions and credits: Chapter 82.34 RCW.**

**Water resources act of 1971: Chapter 90.54 RCW.**

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## **90.48.010**

### **Policy enunciated.**

It is declared to be the public policy of the state of Washington to maintain the highest possible standards to insure the purity of all waters of the state consistent with public health and public enjoyment thereof, the propagation and protection of wild life, birds, game, fish and other aquatic life, and the industrial development of the state, and to that end require the use of all known available and reasonable methods by industries and others to prevent and control the pollution of the waters of the state of Washington. Consistent with this policy, the state of Washington will exercise its powers, as fully and as effectively as possible, to retain and secure high quality for all waters of the state. The state of Washington in recognition of the federal government's interest in the quality of the navigable waters of the United States, of which certain portions thereof are within the jurisdictional limits of this state, proclaims a public policy of working cooperatively with the federal government in a joint effort to extinguish the sources of water quality degradation, while at the same time preserving and vigorously exercising state powers to insure that present and future standards of water quality within the state shall be determined by the citizenry, through and by the efforts of state government, of the state of Washington.

[ 1973 c 155 § 1; 1945 c 216 § 1; Rem. Supp. 1945 § 10964a.]

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## **90.48.020**

### **Definitions.**

Whenever the word "person" is used in this chapter, it shall be construed to include any political subdivision, government agency, municipality, industry, public or private corporation, copartnership, association, firm, individual or any other entity whatsoever.

Wherever the words "waters of the state" shall be used in this chapter, they shall be construed to include lakes, rivers, ponds, streams, inland waters, underground waters, salt waters and all other surface waters and watercourses within the jurisdiction of the state of Washington.

Whenever the word "pollution" is used in this chapter, it shall be construed to mean such contamination, or other alteration of the physical, chemical or biological properties, of any waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the state as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to the public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

Wherever the word "department" is used in this chapter it shall mean the department of ecology.

Whenever the word "director" is used in this chapter it shall mean the director of ecology.

Whenever the words "aquatic noxious weed" are used in this chapter, they have the meaning prescribed under RCW 17.26.020.

Whenever the words "general sewer plan" are used in this chapter they shall be construed to include all sewerage general plans, sewer general comprehensive plans, plans for a system of sewerage, and other plans for sewer systems adopted by a local government entity including but not limited to cities, towns, public utility districts, and water-sewer districts.

[ [2002 c 161 § 4](#); [1995 c 255 § 7](#); [1987 c 109 § 122](#); [1967 c 13 § 1](#); [1945 c 216 § 2](#); Rem. Supp. 1945 § 10964b.]

## NOTES:

**Effective date—1995 c 255:** See RCW [17.26.901](#).

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW [43.21B.001](#).

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### 90.48.030

#### Jurisdiction of department.

The department shall have the jurisdiction to control and prevent the pollution of streams, lakes, rivers, ponds, inland waters, salt waters, water courses, and other surface and underground waters of the state of Washington.

[ [1987 c 109 § 123](#); [1945 c 216 § 10](#); Rem. Supp. 1945 § 10964j. FORMER PART OF SECTION: [1945 c 216 § 11](#); Rem. Supp. 1945 § 10964k, now codified as RCW [90.48.035](#).]

## NOTES:

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW [43.21B.001](#).

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### 90.48.035

#### Rule-making authority.

The department shall have the authority to, and shall promulgate, amend, or rescind such rules and regulations as it shall deem necessary to carry out the provisions of this chapter, including but not limited to rules and regulations relating to standards of quality for waters of the state and for substances discharged therein in order to maintain the highest possible standards of all waters of the state in accordance with the public policy as declared in RCW [90.48.010](#).

[ [1987 c 109 § 124](#); [1970 ex.s. c 88 § 11](#); [1967 c 13 § 6](#); [1945 c 216 § 11](#); Rem. Supp. 1945 § 10964k. Formerly RCW [90.48.030](#), part.]

## NOTES:

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW [43.21B.001](#).

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### **90.48.037**

#### **Authority of department to bring enforcement actions.**

The department, with the assistance of the attorney general, is authorized to bring any appropriate action at law or in equity, including action for injunctive relief, in the name of the people of the state of Washington as may be necessary to carry out the provisions of this chapter or chapter [90.56](#) RCW.

[ [1991 c 200 § 1102](#); [1987 c 109 § 125](#); [1967 c 13 § 7](#).]

#### **NOTES:**

**Effective dates—1991 c 200:** See RCW [90.56.901](#).

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW [43.21B.001](#).

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### **90.48.039**

#### **Hazardous substance remedial actions—Procedural requirements not applicable.**

The procedural requirements of this chapter shall not apply to any person conducting a remedial action at a facility pursuant to a consent decree, order, or agreed order issued pursuant to chapter [70.105D](#) RCW, or to the department of ecology when it conducts a remedial action under chapter [70.105D](#) RCW. The department of ecology shall ensure compliance with the substantive requirements of this chapter through the consent decree, order, or agreed order issued pursuant to chapter [70.105D](#) RCW, or during the department-conducted remedial action, through the procedures developed by the department pursuant to RCW [70.105D.090](#).

[ [1994 c 257 § 19](#).]

#### **NOTES:**

**Severability—1994 c 257:** See note following RCW [36.70A.270](#).

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### **90.48.045**

#### **Environmental excellence program agreements—Effect on chapter.**

Notwithstanding any other provision of law, any legal requirement under this chapter, including any standard, limitation, rule, or order is superseded and replaced in accordance with the terms and provisions of an environmental excellence program agreement, entered into under chapter **43.21K** RCW.

[ **1997 c 381 § 26.**]

**NOTES:**

**Purpose—1997 c 381:** See RCW **43.21K.005.**

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**90.48.080**

**Discharge of polluting matter in waters prohibited.**

It shall be unlawful for any person to throw, drain, run, or otherwise discharge into any of the waters of this state, or to cause, permit or suffer to be thrown, run, drained, allowed to seep or otherwise discharged into such waters any organic or inorganic matter that shall cause or tend to cause pollution of such waters according to the determination of the department, as provided for in this chapter.

[ **1987 c 109 § 126; 1967 c 13 § 8; 1945 c 216 § 14;** Rem. Supp. 1945 § 10964n.]

**NOTES:**

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW **43.21B.001.**

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**90.48.090**

**Right of entry—Special inspection requirements for metals mining and milling operations.**

The department or its duly appointed agent shall have the right to enter at all reasonable times in or upon any property, public or private, for the purpose of inspecting and investigating conditions relating to the pollution of or the possible pollution of any of the waters of this state.

The department shall have special inspection requirements for metals mining and milling operations regulated under chapter 232, Laws of 1994. The department shall inspect these mining and milling operations at least quarterly in order to ensure compliance with the intent and any permit issued pursuant to this chapter. The department shall conduct additional inspections as needed during the construction phase of these mining operations in order to ensure compliance with this chapter.

[ **1994 c 232 § 21; 1987 c 109 § 127; 1945 c 216 § 15;** Rem. Supp. 1945 § 10964o.]

**NOTES:**

**Effective date—1994 c 232 §§ 6-8 and 18-22:** See RCW **78.56.902.**

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW [43.21B.001](#).

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## **90.48.095**

### **Authority of department to compel attendance and testimony of witnesses, production of books and papers—Contempt proceedings to enforce—Fees.**

In carrying out the purposes of this chapter or chapter [90.56](#) RCW the department shall, in conjunction with either the adoption of rules, consideration of an application for a waste discharge permit or the termination or modification of such permit, or proceedings in adjudicative hearings, have the authority to issue process and subpoena witnesses effective throughout the state on its own behalf or that of an interested party, compel their attendance, administer oaths, take the testimony of any person under oath and, in connection therewith require the production for examination of any books or papers relating to the matter under consideration by the department. In case of disobedience on the part of any person to comply with any subpoena issued by the department, or on the refusal of any witness to testify to any matters regarding which he or she may be lawfully interrogated, it shall be the duty of the superior court of any county, or of the judge thereof, on application of the department, to compel obedience by proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein. In connection with the authority granted under this section no witness or other person shall be required to divulge trade secrets or secret processes. Persons responding to a subpoena as provided herein shall be entitled to fees as are witnesses in superior court.

[ [2013 c 23 § 613](#); [1991 c 200 § 1103](#); [1987 c 109 § 128](#); [1967 c 13 § 9](#).]

#### **NOTES:**

**Effective dates—1991 c 200:** See RCW [90.56.901](#).

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW [43.21B.001](#).

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## **90.48.100**

### **Request for assistance.**

The department shall have the right to request and receive the assistance of any educational institution or state agency when it is deemed necessary by the department to carry out the provisions of this chapter or chapter [90.56](#) RCW.

[ [1991 c 200 § 1104](#); [1987 c 109 § 129](#); [1945 c 216 § 16](#); Rem. Supp. 1945 § 10964p.]

#### **NOTES:**

**Effective dates—1991 c 200:** See RCW [90.56.901](#).

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW **43.21B.001**.

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## **90.48.110**

### **Plans and proposed methods of operation and maintenance of sewerage or disposal systems to be submitted to department—Exceptions—Time limitations.**

(1) Except under subsection (2) of this section, all engineering reports, plans, and specifications for the construction of new sewerage systems, sewage treatment or disposal plants or systems, or for improvements or extensions to existing sewerage systems or sewage treatment or disposal plants, and the proposed method of future operation and maintenance of said facility or facilities, shall be submitted to and be approved by the department, before construction thereof may begin. No approval shall be given until the department is satisfied that said plans and specifications and the methods of operation and maintenance submitted are adequate to protect the quality of the state's waters as provided for in this chapter. Approval under this chapter is not required for large on-site sewage systems permitted by the department of health under chapter **70.118B** RCW or for on-site sewage systems regulated by local health jurisdictions under rules of the state board of health.

(2) To promote efficiency in service delivery and intergovernmental cooperation in protecting the quality of the state's waters, the department may delegate the authority for review and approval of engineering reports, plans, and specifications for the construction of new sewerage systems, sewage treatment or disposal plants or systems, or for improvements or extensions to existing sewerage system or sewage treatment or disposal plants, and the proposed method of future operations and maintenance of said facility or facilities and industrial pretreatment systems, to local units of government requesting such delegation and meeting criteria established by the department.

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

[ **2007 c 343 § 13; 2002 c 161 § 5; 1994 c 118 § 1; 1987 c 109 § 130; 1967 c 13 § 10; 1945 c 216 § 17; Rem. Supp. 1945 § 10964q.**]

## **NOTES:**

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW **43.21B.001**.

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## **90.48.112**

### **Plan evaluation—Consideration of reclaimed water.**

The evaluation of any plans submitted under RCW **90.48.110** must include consideration of opportunities for the use of reclaimed water as defined in RCW **90.46.010**. Wastewater plans submitted under RCW **90.48.110** must include a statement describing how applicable reclamation and reuse elements will be coordinated as required under RCW **90.46.120(2)**.

[ **2003 1st sp.s. c 5 § 12; 1997 c 444 § 9.**]

## NOTES:

**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**.

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## 90.48.120

### **Notice of department's determination that violation has or will occur—Report to department of compliance with determination—Order or directive to be issued—Notice.**

(1) Whenever, in the opinion of the department, any person shall violate or creates a substantial potential to violate the provisions of this chapter or chapter **90.56** RCW, or fails to control the polluting content of waste discharged or to be discharged into any waters of the state, the department shall notify such person of its determination by registered mail. Such determination shall not constitute an order or directive under RCW **43.21B.310**. Within thirty days from the receipt of notice of such determination, such person shall file with the department a full report stating what steps have been and are being taken to control such waste or pollution or to otherwise comply with the determination of the department. Whereupon the department shall issue such order or directive as it deems appropriate under the circumstances, and shall notify such person thereof by registered mail.

(2) Whenever the department deems immediate action is necessary to accomplish the purposes of this chapter or chapter **90.56** RCW, it may issue such order or directive, as appropriate under the circumstances, without first issuing a notice or 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.

[ **1992 c 73 § 25; 1987 c 109 § 131; 1985 c 316 § 3; 1973 c 155 § 2; 1967 c 13 § 11; 1945 c 216 § 18;** Rem. Supp. 1945 § 10964r.]

## NOTES:

**Effective dates—1992 c 73:** See RCW **82.23B.902**.

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW **43.21B.001**.

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## 90.48.140

### Penalty.

Any person found guilty of willfully violating any of the provisions of this chapter or chapter **90.56** RCW, or any final written orders or directive of the department 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 by both such fine and imprisonment in the discretion of the court. Each day upon which a willful violation of the provisions of this chapter or chapter **90.56** RCW occurs may be deemed a separate and additional violation.

[ **2011 c 96 § 61**; **2003 c 53 § 419**; **1992 c 73 § 26**; **1973 c 155 § 8**; **1945 c 216 § 20**; Rem. Supp. 1945 § 10964t.]

### NOTES:

**Findings—Intent—2011 c 96:** See note following RCW **9A.20.021**.

**Intent—Effective date—2003 c 53:** See notes following RCW **2.48.180**.

**Effective dates—1992 c 73:** See RCW **82.23B.902**.

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## 90.48.142

### Violations—Liability in damages for injury or death of fish, animals, vegetation— Action to recover.

- (1) Any person who:
- (a)(i) Violates any of the provisions of this chapter or chapter **90.56** RCW;
  - (ii) Fails to perform any duty imposed by this chapter or chapter **90.56** RCW;
  - (iii) Violates an order or other determination of the department or the director made pursuant to the provisions of this chapter or chapter **90.56** RCW;
  - (iv) Violates the conditions of a waste discharge permit issued pursuant to RCW **90.48.160**; or
  - (v) Otherwise causes a reduction in the quality of the state's waters below the standards set by the department or, if no standards have been set, causes significant degradation of water quality, thereby damaging the same; and
- (b) Causes the death of, or injury to, fish, animals, vegetation, or other resources of the state; shall be liable to pay the state and affected counties and cities damages in an amount determined pursuant to RCW **90.48.367**.
- (2) No action shall be authorized under this section against any person operating in compliance with the conditions of a waste discharge permit issued pursuant to RCW **90.48.160**.

[ **1991 c 200 § 810**; **1989 c 262 § 2**; **1988 c 36 § 69**; **1987 c 109 § 132**; **1985 c 316 § 6**; **1970 ex.s. c 88 § 12**; **1967 ex.s. c 139 § 13**.]

### NOTES:

**Effective dates—1991 c 200:** See RCW **90.56.901**.

**Findings—1989 c 262:** "The legislature finds that there is confusion regarding the measure of damages authorized under RCW [90.48.142](#). The intent of this act is to clarify existing law on the measure of damages authorized under RCW [90.48.142](#), not to change the law." [ [1989 c 262 § 1](#).]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW [43.21B.001](#).

**Severability—1967 ex.s. c 139:** See RCW [82.34.900](#).

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## **90.48.144**

### **Violations—Civil penalty—Procedure.**

Except as provided in RCW [43.05.060](#) through [43.05.080](#) and [43.05.150](#), every person who:

- (1) Violates the terms or conditions of a waste discharge permit issued pursuant to RCW [90.48.180](#) or [90.48.260](#) through [90.48.262](#), or
- (2) Conducts a commercial or industrial operation or other point source discharge operation without a waste discharge permit as required by RCW [90.48.160](#) or [90.48.260](#) through [90.48.262](#), or
- (3) Violates the provisions of RCW [90.48.080](#), or other sections of this chapter or chapter [90.56](#) RCW or rules or orders adopted or issued pursuant to either of those chapters, shall incur, in addition to any other penalty as provided by law, a penalty in an amount of up to ten thousand dollars a day for every such violation. Each and every such violation shall be a separate and distinct offense, and in case of a continuing violation, every day's continuance shall be and be deemed to 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 and/or the environment in addition to other relevant factors. The penalty herein provided for shall be imposed pursuant to the procedures set forth in RCW [43.21B.300](#).

[ [1995 c 403 § 636](#); [1992 c 73 § 27](#); [1987 c 109 § 17](#); [1985 c 316 § 2](#); [1973 c 155 § 9](#); [1970 ex.s. c 88 § 13](#); [1967 ex.s. c 139 § 14](#).]

### **NOTES:**

**Findings—Short title—Intent—1995 c 403:** See note following RCW [34.05.328](#).

**Effective dates—1992 c 73:** See RCW [82.23B.902](#).

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW [43.21B.001](#).

**Severability—1967 ex.s. c 139:** See RCW [82.34.900](#).

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## **90.48.150**

### **Construction of chapter.**

This chapter shall not be construed as repealing any of the laws governing the pollution of the waters of the state, but shall be held and construed as ancillary to and supplementing the same and an addition to the laws now in force, except as the same may be in direct conflict herewith.

[ [1945 c 216 § 21](#); Rem. Supp. 1945 § 10964u.]

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### **90.48.153**

#### **Cooperation with federal government—Federal funds.**

The department is authorized to cooperate with the federal government and to accept grants of federal funds for carrying out the purposes of this chapter. The department is empowered to make any application or report required by an agency of the federal government as an incident to receiving such grants.

[ [1987 c 109 § 133](#); [1949 c 58 § 1](#); Rem. Supp. 1949 § 10964pp. Formerly RCW [90.48.040](#).]

#### **NOTES:**

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW [43.21B.001](#).

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### **90.48.156**

#### **Cooperation with other states and provinces—Interstate and state-provincial projects.**

The department is authorized to cooperate with appropriate agencies of neighboring states and neighboring provinces, to enter into contracts, and make contributions toward interstate and state-provincial projects to carry out the purposes of this chapter and chapter [90.56](#) RCW.

[ [1991 c 200 § 1105](#); [1987 c 109 § 134](#); [1949 c 58 § 2](#); Rem. Supp. 1949 § 10964pp-1. Formerly RCW [90.48.050](#).]

#### **NOTES:**

**Effective dates—1991 c 200:** See RCW [90.56.901](#).

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW [43.21B.001](#).

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### **90.48.158**

#### **Grants to public bodies authorized.**

The department of ecology is authorized to make and administer grants to any public bodies for the purpose of aiding in the construction and improvement of water pollution control facilities in conjunction with federal grants authorized pursuant to the Federal Water Pollution Control Act.

[ 1987 c 109 § 154; 1967 c 106 § 2. Formerly RCW 90.50.020.]

## NOTES:

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

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### 90.48.160

#### **Waste disposal permit—Required—Exemptions.**

Any person who conducts a commercial or industrial operation of any type which results in the disposal of solid or liquid waste material into the waters of the state, including commercial or industrial operators discharging solid or liquid waste material into sewerage systems operated by municipalities or public entities which discharge into public waters of the state, shall procure a permit from either the department or the \*thermal power plant site evaluation council as provided in RCW 90.48.262(2) before disposing of such waste material: PROVIDED, That this section shall not apply to any person discharging domestic sewage only into a sewerage system.

The department may, through the adoption of rules, eliminate the permit requirements for disposing of wastes into publicly operated sewerage systems for:

(1) Categories of or individual municipalities or public corporations operating sewerage systems;

or

(2) Any category of waste disposer;

if the department determines such permit requirements are no longer necessary for the effective implementation of this chapter. The department may by rule eliminate the permit requirements for disposing of wastes by upland finfish rearing facilities unless a permit is required under the federal clean water act's national pollutant discharge elimination system.

[ 1989 c 293 § 2; 1973 c 155 § 3; 1967 c 13 § 13; 1955 c 71 § 1.]

## NOTES:

**\*Reviser's note:** The "thermal power plant site evaluation council" was redesignated the "energy facility site evaluation council" by 1975-'76 2nd ex.s. c 108.

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### 90.48.162

#### **Waste disposal permits required of counties, municipalities and public corporations.**

Any county or any municipal or public corporation operating or proposing to operate a sewerage system, including any system which collects only domestic sewerage, which results in the disposal of

waste material into the waters of the state shall procure a permit from the department of ecology before so disposing of such materials. This section is intended to extend the permit system of RCW **90.48.160** to counties and municipal or public corporations and the provisions of RCW **90.48.170** through **90.48.200** and **90.52.040** shall be applicable to the permit requirement imposed under this section. A permit under this chapter is not required for large on-site sewage systems permitted by the department of health under chapter **70.118B** RCW or for on-site sewage systems permitted by local health jurisdictions under rules of the state board of health.

[ **2007 c 343 § 12**; **1972 ex.s. c 140 § 1**.]

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## **90.48.165**

### **Waste disposal permits required of counties, municipalities and public corporations—Cities, towns or municipal corporations may be granted authority to issue permits—Revocation—Termination of permits.**

Any city, town or municipal corporation operating a sewerage system including treatment facilities may be granted authority by the department to issue permits for the discharge of wastes to such system provided the department ascertains to its satisfaction that the sewerage system and the inspection and control program operated and conducted by the city, town or municipal corporation will protect the public interest in the quality of the state's waters as provided for in this chapter. Such authority may be granted by the department upon application by the city, town or municipal corporation and may be revoked by the department if it determines that such city, town, or municipal corporation is not, thereafter, operated and conducted in a manner to protect the public interest. Persons holding municipal permits to discharge into sewerage systems operated by a municipal corporation authorized by this section to issue such permits shall not be required to secure a waste discharge permit provided for in RCW **90.48.160** as to the wastes discharged into such sewerage systems. Authority granted by the department to cities, towns, or municipal corporations to issue permits under this section shall be in addition to any authority or power now or hereafter granted by law to cities, towns and municipal corporations for the regulation of discharges into sewerage systems operated by such cities, towns, or municipal corporations. Permits issued under this section shall automatically terminate if the authority to issue the same is revoked by the department.

[ **1987 c 109 § 135**; **1967 c 13 § 14**.]

## **NOTES:**

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW **43.21B.001**.

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## **90.48.170**

### **Waste disposal permits required of counties, municipalities and public corporations—Application—Notice as to new operation or increase in volume—Investigation—Notice to other state departments.**

Applications for permits shall be made on forms prescribed by the department and shall contain the name and address of the applicant, a description of the applicant's operations, the quantity and type of waste material sought to be disposed of, the proposed method of disposal, and any other relevant information deemed necessary by the department. Application for permits shall be made at least sixty days prior to commencement of any proposed discharge or permit expiration date, whichever is applicable. Upon receipt of a proper application relating to a new operation, or an operation previously under permit for which an increase in volume of wastes or change in character of effluent is requested over that previously authorized, the department shall instruct the applicant to publish notices thereof by such means and within such time as the department shall prescribe. The department shall require that the notice so prescribed shall be published twice in a newspaper of general circulation within the county in which the disposal of waste material is proposed to be made and in such other appropriate information media as the department may direct. Said notice shall include a statement that any person desiring to present his or her views to the department with regard to said application may do so in writing to the department, or any person interested in the department's action on an application for a permit, may submit his or her views or notify the department of his or her interest within thirty days of the last date of publication of notice. Such notification or submission of views to the department shall entitle said persons to a copy of the action taken on the application. Upon receipt by the department of an application, it shall immediately send notice thereof containing pertinent information to the director of fish and wildlife and to the secretary of social and health services. When an application complying with the provisions of this chapter and the rules and regulations of the department has been filed with the department, it shall be its duty to investigate the application, and determine whether the use of public waters for waste disposal as proposed will pollute the same in violation of the public policy of the state.

[ 1994 c 264 § 91; 1988 c 36 § 70; 1987 c 109 § 136; 1967 c 13 § 15; 1955 c 71 § 2.]

## NOTES:

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW [43.21B.001](#).

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## 90.48.180

### **Waste disposal permits required of counties, municipalities and public corporations—Issuance—Conditions—Duration.**

The department shall issue a permit unless it finds that the disposal of waste material as proposed in the application will pollute the waters of the state in violation of the public policy declared in RCW [90.48.010](#). The department shall have authority to specify conditions necessary to avoid such pollution in each permit under which waste material may be disposed of by the permittee. Permits may be temporary or permanent but shall not be valid for more than five years from date of issuance.

[ 1987 c 109 § 137; 1967 c 13 § 16; 1955 c 71 § 3.]

## NOTES:

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW [43.21B.001](#).

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**90.48.190****Waste disposal permits required of counties, municipalities and public corporations—Termination—Grounds.**

A permit shall be subject to termination upon thirty days' notice in writing if the department finds:

(1) That it was procured by misrepresentation of any material fact or by lack of full disclosure in the application;

(2) That there has been a violation of the conditions thereof;

(3) That a material change in quantity or type of waste disposal exists.

[ **1987 c 109 § 138; 1967 c 13 § 17; 1955 c 71 § 4.** (1987 3rd ex.s. c 2 § 43 repealed by 1989 c 2 § 24, effective March 1, 1989.)]

**NOTES:**

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW **43.21B.001**.

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**90.48.195****Waste disposal permits required of counties, municipalities and public corporations—Modification or additional conditions may be ordered.**

In the event that a material change in the condition of the state waters occurs the department may, by appropriate order, modify permit conditions or specify additional conditions in permits previously issued.

[ **1987 c 109 § 139; 1967 c 13 § 18.**]

**NOTES:**

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW **43.21B.001**.

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**90.48.200****Waste disposal permits required of counties, municipalities and public corporations—Nonaction upon application—Temporary permit—Duration.**

In the event of failure of the department to act upon an application within sixty days after it has been filed the applicant shall be deemed to have received a temporary permit. Said permit shall authorize the applicant to discharge wastes into waters of the state as requested in its application only until such time as the department shall have taken action upon said application.

[ 1987 c 109 § 140; 1967 c 13 § 19; 1955 c 71 § 5.]

## NOTES:

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW **43.21B.001**.

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### 90.48.215

#### **Upland finfish facilities—Waste discharge standards—Waste disposal permit.**

(1) The following definition shall apply to this section: "Upland finfish hatching and rearing facilities" means those facilities not located within waters of the state where finfish are hatched, fed, nurtured, held, maintained, or reared to reach the size of release or for market sale. This shall include fish hatcheries, rearing ponds, spawning channels, and other similarly constructed or fabricated public or private facilities.

(2) Not later than September 30, 1989, the department shall adopt standards pursuant to chapter **34.05** RCW for waste discharges from upland finfish hatching and rearing facilities. In establishing these standards, the department shall incorporate, to the extent applicable, studies conducted by the United States environmental protection agency on finfish rearing facilities and other relevant information. The department shall also issue a general permit as authorized by the federal clean water act, 33 U.S.C. 1251 et seq., or RCW **90.48.160** by September 30, 1989, for upland finfish hatching and rearing facilities. The department shall approve or deny applications for coverage under the general permit for upland finfish hatching and rearing facilities within one hundred eighty days from the date of application, unless a longer time is required to satisfy public participation requirements in the permit process in accordance with applicable rules, or compliance with the requirements of the state environmental policy act under chapter **43.21C** RCW. The department shall notify applicants for coverage by a general permit as soon as it determines that a proposed discharge meets or fails to comply with the standards or general permit conditions set forth pursuant to this section, or that a time period longer than one hundred eighty days is necessary to satisfy public participation requirements or the state environmental policy act.

[ 1989 c 293 § 1.]

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### 90.48.220

#### **Marine finfish rearing facilities—Waste discharge standards—Discharge permit applications—Exemption.**

(1) For the purposes of this section "marine finfish rearing facilities" means those private and public facilities located within the salt water of the state where finfish are fed, nurtured, held, maintained, or reared to reach the size of release or for market sale.

(2) Not later than October 31, 1994, the department shall adopt criteria under chapter **34.05** RCW for allowable sediment impacts from organic enrichment due to marine finfish rearing facilities.

(3) Not later than June 30, 1995, the department shall adopt standards under chapter **34.05** RCW for waste discharges from marine finfish rearing facilities. In establishing these standards, the department shall review and incorporate, to the extent possible, studies conducted by state and federal agencies on waste discharges from marine finfish rearing facilities, and any reports and other materials prepared by technical committees on waste discharges from marine finfish rearing facilities. The department shall

approve or deny discharge permit applications for marine finfish rearing facilities within one hundred eighty days from the date of application, unless a longer time is required to satisfy public participation requirements in the permit process in accordance with applicable rules, or compliance with the requirements of the state environmental policy act under chapter **43.21C** RCW. The department shall notify applicants as soon as it determines that a proposed discharge meets or fails to comply with the standards adopted pursuant to this section, or if a time period longer than one hundred eighty days is necessary to satisfy public participation requirements of the state environmental policy act.

(4) The department may adopt rules to exempt marine finfish rearing facilities not requiring national pollutant discharge elimination system permits under the federal water pollution control act from the discharge permit requirement.

[ **1993 c 296 § 1.**]

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### **90.48.225**

#### **Issuance of national pollutant discharge elimination system permits associated with nonnative marine finfish aquaculture.**

(1) The department may issue national pollutant discharge elimination system permits associated with nonnative marine finfish aquaculture only if these activities are performed under a lease of state-owned aquatic lands in effect on June 7, 2018. The department may not issue national pollutant discharge elimination system permits in connection with any of these activities or operations after the expiration date of the relevant lease of state-owned aquatic lands in effect on June 7, 2018.

(2) For purposes of this section, "state-owned aquatic lands" has the same meaning as defined in RCW **79.105.060**.

[ **2018 c 179 § 4.**]

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### **90.48.230**

#### **Application of administrative procedure law to rule making and adjudicative proceedings.**

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.

[ **1989 c 175 § 181; 1967 c 13 § 21.**]

#### **NOTES:**

**Effective date—1989 c 175:** See note following RCW **34.05.010**.

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### **90.48.240**

#### **Water pollution orders for conditions requiring immediate action—Appeal.**

Notwithstanding any other provisions of this chapter or chapter **90.56** RCW, whenever it appears to the director that water quality conditions exist which require immediate action to protect the public health or welfare, or that a person required by RCW **90.48.160** to obtain a waste discharge permit prior to discharge is discharging without the same, or that a person conducting an operation which is subject to a permit issued pursuant to RCW **90.48.160** conducts the same in violation of the terms of said permit, causing water quality conditions to exist which require immediate action to protect the public health or welfare, the director may issue a written order to the person or persons responsible without prior notice or hearing, directing and affording the person or persons responsible the alternative of either (1) immediately discontinuing or modifying the discharge into the waters of the state, or (2) appearing before the department at the time and place specified in said written order for the purpose of providing to the department information pertaining to the violations and conditions alleged in said written order. The responsible person or persons shall be afforded not less than twenty-four hours notice of such an information meeting. If following such a meeting the department determines that water quality conditions exist which require immediate action as described herein, the department may issue a written order requiring immediate discontinuance or modification of the discharge into the waters of the state. In the event an order is not immediately complied with the attorney general, upon request of the department, shall seek and obtain an order of the superior court of the county in which the violation took place directing compliance with the order of the department. Such an order is appealable pursuant to RCW **43.21B.310**.

[ **1991 c 200 § 1106**; **1987 c 109 § 15**; **1967 c 13 § 22**.]

## NOTES:

**Effective dates—1991 c 200:** See RCW **90.56.901**.

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW **43.21B.001**.

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## 90.48.250

### **Agreements or contracts to monitor waters and effluent discharge.**

The department is authorized to make agreements and enter into such contracts as are appropriate to carry out a program of monitoring the condition of the waters of the state and the effluent discharged therein, including contracts to monitor effluent discharged into public waters when such monitoring is required by the terms of a waste discharge permit or as part of the approval of a sewerage system, if adequate compensation is provided to the department as a term of the contract.

[ **1987 c 109 § 141**; **1967 c 13 § 23**.]

## NOTES:

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW **43.21B.001**.

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## 90.48.260

### **Federal clean water act—Department designated as state agency, authority— Delegation of authority—Powers, duties, and functions.**

(1) The department of ecology is hereby designated as the state water pollution control agency for all purposes of the federal clean water act as it exists on February 4, 1987, and is hereby authorized to participate fully in the programs of the act as well as to take all action necessary to secure to the state the benefits and to meet the requirements of that act. With regard to the national estuary program established by section 320 of that act, the department shall exercise its responsibility jointly with the Puget Sound partnership, created in RCW **90.71.210**. The department of ecology may delegate its authority under this chapter, including its national pollutant discharge elimination permit system authority and duties regarding animal feeding operations and concentrated animal feeding operations, to the department of agriculture through a memorandum of understanding. Until any such delegation receives federal approval, the department of agriculture's adoption or issuance of animal feeding operation and concentrated animal feeding operation rules, permits, programs, and directives pertaining to water quality shall be accomplished after reaching agreement with the director of the department of ecology. Adoption or issuance and implementation shall be accomplished so that compliance with such animal feeding operation and concentrated animal feeding operation rules, permits, programs, and directives will achieve compliance with all federal and state water pollution control laws. The powers granted herein include, among others, and notwithstanding any other provisions of this chapter or otherwise, the following:

(a) Complete authority to establish and administer a comprehensive state point source waste discharge or pollution discharge elimination permit program which will enable the department to qualify for full participation in any national waste discharge or pollution discharge elimination permit system and will allow the department to be the sole agency issuing permits required by such national system operating in the state of Washington subject to the provisions of RCW **90.48.262**(2). Program elements authorized herein may include, but are not limited to: (i) Effluent treatment and limitation requirements together with timing requirements related thereto; (ii) applicable receiving water quality standards requirements; (iii) requirements of standards of performance for new sources; (iv) pretreatment requirements; (v) termination and modification of permits for cause; (vi) requirements for public notices and opportunities for public hearings; (vii) appropriate relationships with the secretary of the army in the administration of his or her responsibilities which relate to anchorage and navigation, with the administrator of the environmental protection agency in the performance of his or her duties, and with other governmental officials under the federal clean water act; (viii) requirements for inspection, monitoring, entry, and reporting; (ix) enforcement of the program through penalties, emergency powers, and criminal sanctions; (x) a continuing planning process; and (xi) user charges.

(b) The power to establish and administer state programs in a manner which will ensure the procurement of moneys, whether in the form of grants, loans, or otherwise; to assist in the construction, operation, and maintenance of various water pollution control facilities and works; and the administering of various state water pollution control management, regulatory, and enforcement programs.

(c) The power to develop and implement appropriate programs pertaining to continuing planning processes, area-wide waste treatment management plans, and basin planning.

(2) The governor shall have authority to perform those actions required of him or her by the federal clean water act.

(3) By July 31, 2012, the department shall:

(a) Reissue without modification and for a term of one year any national pollutant discharge elimination system municipal stormwater general permit applicable to western Washington municipalities first issued on January 17, 2007; and

(b) Issue an updated national pollutant discharge elimination system municipal stormwater general permit applicable to western Washington municipalities for any permit first issued on January 17, 2007. An updated permit issued under this subsection shall become effective beginning August 1, 2013.

(i) Provisions of the updated permit issued under (b) of this subsection relating to new requirements for low-impact development and review and revision of local development codes, rules, standards, or other enforceable documents to incorporate low-impact development principles must be implemented simultaneously. These requirements may go into effect no earlier than December 31, 2016, or the time of the scheduled update under RCW **36.70A.130**(5), as existing on July 10, 2012, whichever is later.

(ii) Provisions of the updated permit issued under (b) of this subsection related to increased catch basin inspection and illicit discharge detection frequencies and application of new stormwater controls to projects smaller than one acre may go into effect no earlier than December 31, 2016, or the time of the scheduled update under RCW **36.70A.130**(5), as existing on July 10, 2012, whichever is later.

(4) By July 31, 2012, the department shall:

(a) Reissue without modification and for a term of two years any national pollutant discharge elimination system municipal stormwater general permit applicable to eastern Washington municipalities first issued on January 17, 2007; and

(b) Issue an updated national pollutant discharge elimination system municipal stormwater general permit for any permit first issued on January 17, 2007, applicable to eastern Washington municipalities. An updated permit issued under this subsection becomes effective August 1, 2014.

[ **2012 1st sp.s. c 1 § 313**; **2011 c 353 § 12**; **2007 c 341 § 55**; **2003 c 325 § 7**; **1988 c 220 § 1**; **1983 c 270 § 1**; **1979 ex.s. c 267 § 1**; **1973 c 155 § 4**; **1967 c 13 § 24**.]

## NOTES:

**Finding—Intent—Limitation—Jurisdiction/authority of Indian tribe under act—2012 1st sp.s. c 1:** See notes following RCW **77.55.011**.

**Authority of department of fish and wildlife under act—2012 1st sp.s. c 1:** See note following RCW **76.09.040**.

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

**Effective date—2007 c 341:** See RCW **90.71.907**.

**Intent—Finding—2003 c 325:** See note following RCW **90.64.030**.

**Severability—1983 c 270:** "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." [ **1983 c 270 § 5**.]

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## 90.48.261

### Exercise of powers under RCW 90.48.260—Aquatic resource mitigation.

When exercising its powers under RCW **90.48.260**, the department shall, at the request of the project proponent, follow the guidance contained in RCW **90.74.005** through **90.74.030**.

[ **1997 c 424 § 7**.]

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## 90.48.262

### Implementation of RCW 90.48.260—Permits for energy facilities—Rules and procedures.

(1) The powers established under RCW 90.48.260 shall be implemented by the department through the adoption of rules in every appropriate situation. The permit program authorized under \*RCW 90.48.260(1) shall constitute a continuation of the established permit program of RCW 90.48.160 and other applicable sections within chapter 90.48 RCW. The appropriate modifications as authorized in \*\*this 1973 amendatory act are designed to avoid duplication and other wasteful practices and to insure that the state permit program contains all required elements of and is compatible with the requirements of any national permit system.

(2) Permits for energy facilities subject to chapter 80.50 RCW shall be issued by the energy facility site evaluation council: PROVIDED, That such permits shall become effective only if the governor approves an application for certification and executes a certification agreement pursuant to said chapter. The council shall have all powers necessary to establish and administer a point source discharge permit program pertaining to such plants, consistent with applicable receiving water quality standards established by the department, and to qualify for full participation in any national waste discharge or pollution discharge elimination permit system. The council and the department shall each adopt, by rules, procedures which will provide maximum coordination and avoid duplication between the two agencies with respect to permits in carrying out the requirements of \*\*this act including, but not limited to, monitoring and enforcement of certification agreements, and in qualifying for full participation in any such national system.

[1975-'76 2nd ex.s. c 108 § 41; 1973 c 155 § 5.]

#### NOTES:

**Reviser's note:** \*(1) RCW 90.48.260 was amended by 2011 c 353 § 12, changing subsection (1) to subsection (1)(a).

\*\* (2) "This 1973 amendatory act" and "this act" apparently refer to 1973 c 155, which consists of this section, amendments to RCW 90.48.010, 90.48.120, 90.48.140, 90.48.144, 90.48.160, and 90.48.260, and the repeal of RCW 90.48.070.

**Severability—Effective date—1975-'76 2nd ex.s. c 108:** See notes following RCW 43.21F.010.

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## 90.48.264

### Federal clean water act—Rules for on-site sewage disposal systems adjacent to marine waters.

In implementing this chapter and in participating in programs under the federal clean water act, the department may consult with the department of social and health services concerning standards for repair of existing, failing on-site sewage disposal systems that are adjacent to marine waters. By January 1, 1989, the department of social and health services shall propose rules for adoption by the state board of health identifying the standards for repair of existing, failing on-site sewage disposal systems at single-family residences that were legally occupied prior to June 9, 1988, and that are adjacent to marine waters. The rules may specify the design, operation and maintenance standards for such repaired

systems so as to ensure protection of the public health, attainment of state water quality standards and the protection of shellfish and other public resources. The rules shall also provide that any proposed discharge to marine water shall be considered only if on-site sewage disposal systems are not feasible and that such discharges shall meet the requirements of this chapter and department of ecology regulations. The state board of health shall adopt such proposed rules unless the board finds modification or rejection of them necessary to protect the public health.

[ 1988 c 220 § 2.]

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## 90.48.270

### **Sewage drainage basins—Authority of department to delineate and establish.**

The department shall have authority to delineate and establish sewage drainage basins in the state for the purpose of developing and/or adopting comprehensive plans for the control and abatement of water pollution within such basins. Basins may include, but are not limited to, rivers and their tributaries, streams, coastal waters, sounds, bays, lakes, and portions or combinations thereof, as well as the lands drained thereby.

[ 1987 c 109 § 142; 1967 c 13 § 26.]

#### **NOTES:**

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW [43.21B.001](#).

**Aquifer protection areas:** Chapter [36.36](#) RCW.

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## 90.48.280

### **Sewage drainage basins—Comprehensive plans for sewage drainage basins.**

The department is authorized to prepare and/or adopt a comprehensive water pollution control and abatement plan and to make subsequent amendments thereto, for each basin established pursuant to RCW [90.48.270](#). Comprehensive plans for sewage drainage basins may be prepared by any municipality and submitted to the department for adoption.

Prior to adopting a comprehensive plan for any basin or any subsequent amendment thereof the department shall hold a public hearing thereon. Notice of such hearing shall be given by registered mail, together with copies of the proposed plan, to each municipality, or other political subdivision, within the basin exercising a sewage disposal function, at least twenty days prior to the hearing date. Such hearing may be continued from time to time and, at the termination thereof, the department may reject the plan proposed or adopt it with such modifications as it shall deem proper.

Following adoption of a comprehensive plan for any basin, the department shall require compliance with such plan by any municipality or person operating or constructing a sewage collection, treatment or disposal system or plant, or any improvement to or extension of an existing sewage collection, treatment or disposal system or plant, within the basin.

[ 1987 c 109 § 143; 1967 c 13 § 27.]

## NOTES:

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW [43.21B.001](#).

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### 90.48.285

#### **Contracts with municipal or public corporations and political subdivisions to finance water pollution control projects—Requisites—Priorities.**

The department is authorized to enter into contracts with any municipal or public corporation or political subdivision within the state for the purpose of assisting such agencies to finance the design and construction of water pollution control projects, whether procured through chapter [39.10](#) or [70.150](#) RCW, or otherwise, that are necessary to prevent the discharge of untreated or inadequately treated sewage or other waste into the waters of the state, including but not limited to, systems for the control of storm or surface waters which will provide for the removal of waste or polluting materials in a manner conforming to the comprehensive plan of water pollution control and abatement proposed by the agencies and approved by the department. Any such contract may provide for:

The payment by the department to a municipal or public corporation or political subdivision on a monthly, quarterly, or annual basis of varying amounts of moneys as advances which shall be repayable by said municipal or public corporation, or political subdivision under conditions determined by the department.

Contracts made by the department shall be subject to the following limitations:

(1) No contract shall be made unless the department shall find that the project cannot be financed at reasonable cost or within statutory limitations by the borrower without the making of such contract.

(2) No contract shall be made with any public or municipal corporation or political subdivision to assist in the financing of any project located within a sewage drainage basin for which the department shall have previously adopted a comprehensive water pollution control and abatement plan unless the project is found by the department to conform with the basin comprehensive plan.

(3) The department shall determine the interest rate, not to exceed ten percent per annum, which such advances shall bear.

(4) The department shall provide such reasonable terms and conditions of repayment of advances as it may determine.

(5) The total outstanding amount which the department may at any time be obligated to pay under all outstanding contracts made pursuant to this section shall not exceed the moneys available for such payment.

(6) Municipal or public corporations or political subdivisions shall meet such qualifications and follow such procedures in applying for contract assistance as shall be established by the department.

In making such contracts the department shall give priority to projects which will provide relief from actual or potential public health hazards or water pollution conditions and which provide substantial capacity beyond present requirements to meet anticipated future demand.

[ [2005 c 469 § 4](#); [1987 c 109 § 144](#); [1980 c 32 § 13](#); [1969 ex.s. c 141 § 1](#).]

## NOTES:

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW [43.21B.001](#).

**Severability—1969 ex.s. c 141:** "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 provisions to other persons or circumstances is not affected." [ 1969 ex.s. c 141 § 2.]

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## 90.48.290

### **Grants to municipal or public corporations or political subdivisions to aid water pollution control projects—Limitations.**

The department is authorized to make and administer grants within appropriations authorized by the legislature to any municipal or public corporation, or political subdivision within the state for the purpose of aiding in the construction of water pollution control projects necessary to prevent the discharge of untreated or inadequately treated sewage or other waste into the waters of the state including, but not limited to, projects for the control of storm or surface waters which will provide for the removal of waste or polluting materials therefrom.

Grants so made by the department shall be subject to the following limitations:

(1) No grant shall be made in an amount which exceeds the recipient's contribution to the estimated cost of the project: PROVIDED, That the following shall be considered a part of the recipient's contribution:

(a) Any grant received by the recipient from the federal government pursuant to section 8(f) of the Federal Water Pollution Control Act (33 U.S.C. 466) for the project;

(b) Any expenditure which is made by any municipal or public corporation, or political subdivision within the state as a part of a joint effort with the recipient to carry out the project and which has not been used as a matching contribution for another grant made pursuant to this chapter,[:] and

(c) Any expenditure for the project made by the recipient out of moneys advanced by the department from a revolving fund and repayable to said fund.

(2) No grant shall be made for any project which does not qualify for and receive a grant of federal funds under the provisions of the Federal Water Pollution Control Act as now or hereafter amended: PROVIDED, That this restriction shall not apply to state grants made in any biennium over and above the amount of such grants required to match all federal funds allocated to the state for such biennium.

(3) No grant shall be made to any municipal or public corporation, or political subdivision for any project located within a drainage basin unless the department shall have previously adopted a comprehensive water pollution control and abatement plan and unless the project is found by the department to conform with such basin comprehensive plan: PROVIDED, That the requirement for a project to conform to a comprehensive water pollution control and abatement plan may be waived by the department for any grant application filed with the department prior to July 1, 1974, in those situations where the department finds the public interest would be served better by approval of any grant application made prior to adoption of such plan than by its denial.

(4) Recipients of grants shall meet such qualifications and follow such procedures in applying for grants as shall be established by the department.

(5) Grants may be made to reimburse recipients for expenditures made after July 1, 1967 for projects which meet the requirements of this section and were commenced after the recipient had filed a grant application with the department.

[ 1987 c 109 § 145; 1969 ex.s. c 284 § 1; 1967 c 13 § 28.]

### **NOTES:**

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW [43.21B.001](#).

**Severability—1969 ex.s. c 284:** "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." [ [1969 ex.s. c 284 § 24](#).]

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### **90.48.310**

#### **Application of barley straw to waters of the state.**

(1) Notwithstanding any other provisions of this chapter, the application of barley straw to waters of the state for the purposes of water clarification does not require a state waste discharge permit as long as the following provisions are met:

(a) The barley straw is applied at a rate of up to two hundred twenty-five pounds per acre of surface water;

(b) Whole bales or tightly packed straw are not used. Straw must be loosely packed in nylon or mesh bags;

(c) Bags of straw are placed where control is desired, such as around docks and swim areas, and around inlets to aid in aeration or mixing;

(d) The bags must be staked or anchored in place;

(e) Straw is placed in early spring, prior to the growth of algae; and

(f) Bags are removed four to six months after placement and must not be left in the water over winter.

(2) The placement of barley straw into waters of the state in any other instance is not authorized absent a permit.

(3) This section does not alter any permit requirement that may exist under chapter [77.55](#) RCW.

[ [2007 c 30 § 1](#).]

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### **90.48.364**

#### **Discharge of oil into waters of the state—Definitions.**

For the purposes of this chapter, "technical feasibility" or "technically feasible" means that given available technology, a restoration or enhancement project can be successfully completed at a cost that is not disproportionate to the value of the resource before the injury.

[ [1991 c 200 § 811](#).]

#### **NOTES:**

**Effective dates—1991 c 200:** See RCW [90.56.901](#).

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## 90.48.366

### Discharge of oil into waters of the state—Compensation schedule.

(1) The department, in consultation with the departments of fish and wildlife and natural resources, and the parks and recreation commission, shall adopt rules establishing a compensation schedule for the discharge of oil in violation of this chapter and chapter **90.56** RCW. The amount of compensation assessed under this schedule shall be:

(a) For spills totaling one thousand gallons or more in any one event, no less than three dollars per gallon of oil spilled and no greater than three hundred dollars per gallon of oil spilled; and

(b) For spills totaling less than one thousand gallons in any one event, no less than one dollar per gallon of oil spilled and no greater than one hundred dollars per gallon of oil spilled.

(2) Persistent oil recovered from the surface of the water within forty-eight hours of a discharge must be deducted from the total spill volume for purposes of determining the amount of compensation assessed under the compensation schedule.

(3) The compensation schedule adopted under this section shall reflect adequate compensation for unquantifiable damages or for damages not quantifiable at reasonable cost for any adverse environmental, recreational, aesthetic, or other effects caused by the spill and shall take into account:

(a) Characteristics of any oil spilled, such as toxicity, dispersibility, solubility, and persistence, that may affect the severity of the effects on the receiving environment, living organisms, and recreational and aesthetic resources;

(b) The sensitivity of the affected area as determined by such factors as:

(i) The location of the spill;

(ii) Habitat and living resource sensitivity;

(iii) Seasonal distribution or sensitivity of living resources;

(iv) Areas of recreational use or aesthetic importance;

(v) The proximity of the spill to important habitats for birds, aquatic mammals, fish, or to species listed as threatened or endangered under state or federal law;

(vi) Significant archaeological resources as determined by the department of archaeology and historic preservation; and

(vii) Other areas of special ecological or recreational importance, as determined by the department; and

(c) Actions taken by the party who spilled oil or any party liable for the spill that:

(i) Demonstrate a recognition and affirmative acceptance of responsibility for the spill, such as the immediate removal of oil and the amount of oil removed from the environment; or

(ii) Enhance or impede the detection of the spill, the determination of the quantity of oil spilled, or the extent of damage, including the unauthorized removal of evidence such as injured fish or wildlife.

[ **2011 c 122 § 9**; **2007 c 347 § 1**; **1994 sp.s. c 9 § 855**; **1992 c 73 § 28**; **1991 c 200 § 812**; **1989 c 388 § 2**.]

#### NOTES:

**Severability—Headings and captions not law—Effective date—1994 sp.s. c 9:** See RCW **18.79.900** through **18.79.902**.

**Effective dates—1992 c 73:** See RCW **82.23B.902**.

**Effective dates—1991 c 200:** See RCW **90.56.901**.

**Intent—Application—Captions—Severability—1989 c 388:** See notes following RCW **90.56.010**.

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**90.48.367****Discharge of oil into waters of the state—Assessment of compensation.**

(1) After a spill or other incident causing damages to the natural resources of the state, the department shall conduct a formal preassessment screening as provided in RCW [90.48.368](#).

(2) The department shall use the compensation schedule established under RCW [90.48.366](#) to determine the amount of damages if the preassessment screening committee determines that: (a) Restoration or enhancement of the injured resources is not technically feasible; (b) damages are not quantifiable at a reasonable cost; and (c) the restoration and enhancement projects or studies proposed by the liable parties are insufficient to adequately compensate the people of the state for damages.

(3) If the preassessment screening committee determines that the compensation schedule should not be used, compensation shall be assessed for the amount of money necessary to restore any damaged resource to its condition before the injury, to the extent technically feasible, and compensate for the lost value incurred during the period between injury and restoration.

(4) Restoration shall include the cost to restock such waters, replenish or replace such resources, and otherwise restore the stream, lake, or other waters of the state, including any estuary, ocean area, submerged lands, shoreline, bank, or other lands adjoining such waters to its condition before the injury, as such condition is determined by the department. The lost value of a damaged resource shall be equal to the sum of consumptive, nonconsumptive, and indirect use values, as well as lost taxation, leasing, and licensing revenues. Indirect use values may include existence, bequest, option, and aesthetic values. Damages shall be determined by generally accepted and cost-effective procedures, including, but not limited to, contingent valuation method studies.

(5) Compensation assessed under this section shall be recoverable in an action brought by the attorney general on behalf of the people of the state of Washington and affected counties and cities in the superior court of Thurston county or any county in which damages occurred. Moneys recovered by the attorney general under this section shall be deposited in the coastal protection fund established under RCW [90.48.390](#), and shall only be used for the purposes stated in RCW [90.48.400](#).

(6) Compensation assessed under this section shall preclude claims under this chapter by local governments for compensation for damages to publicly owned resources resulting from the same incident.

[ [1991 c 200 § 813](#); [1989 c 388 § 3](#).]

**NOTES:**

**Effective dates—1991 c 200:** See RCW [90.56.901](#).

**Intent—Application—Captions—Severability—1989 c 388:** See notes following RCW [90.56.010](#).

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**90.48.368****Discharge of oil into waters of the state—Preassessment screening.**

(1) The department shall adopt rules establishing a formal process for preassessment screening of damages resulting from spills to the waters of the state causing the death of, or injury to, fish, animals,

vegetation, or other resources of the state. The rules shall specify the conditions under which the department shall convene a preassessment screening committee. The preassessment screening process shall occur concurrently with reconnaissance activities. The committee shall use information obtained from reconnaissance activities as well as any other relevant resource and resource use information. For each incident, the committee shall determine whether a damage assessment investigation should be conducted, or, whether the compensation schedule authorized under RCW **90.48.366** and **90.48.367** should be used to assess damages. The committee may accept restoration or enhancement projects or studies proposed by the liable parties in lieu of some or all of: (a) The compensation schedule authorized under RCW **90.48.366** and **90.48.367**; or (b) the claims from damage assessment studies authorized under RCW **90.48.142**.

(2) A preassessment screening committee may consist of representatives of the departments of ecology, archaeology and historic preservation, fish and wildlife, health, and natural resources, and the parks and recreation commission, as well as other federal, state, and local agencies, and tribal and local governments whose presence would enhance the reconnaissance or damage assessment aspects of spill response. The department shall chair the committee and determine which representatives will be needed on a spill-by-spill basis.

(3) The committee shall consider the following factors when determining whether a damage assessment study authorized under RCW **90.48.367** should be conducted: (a) Whether evidence from reconnaissance investigations suggests that injury has occurred or is likely to occur to publicly owned resources; (b) the potential loss in services provided by resources injured or likely to be injured and the expected value of the potential loss; (c) whether a restoration project to return lost services is technically feasible; (d) the accuracy of damage quantification methods that could be used and the anticipated cost-effectiveness of applying each method; (e) the extent to which likely injury to resources can be verified with available quantification methods; and (f) whether the injury, once quantified, can be translated into monetary values with sufficient precision or accuracy.

(4) When a resource damage assessment is required for an oil spill in the waters of the state, as defined in RCW **90.56.010**, the state trustee agency responsible for the resource and habitat damaged shall conduct the damage assessment and pursue all appropriate remedies with the responsible party.

(5) Oil spill damage assessment studies authorized under RCW **90.48.367** may only be conducted if the committee, after considering the factors enumerated in subsection (3) of this section, determines that the damages to be investigated are quantifiable at a reasonable cost and that proposed assessment studies are clearly linked to quantification of the damages incurred.

(6) As new information becomes available, the committee may reevaluate the scope of damage assessment using the factors listed in subsection (3) of this section and may reduce or expand the scope of damage assessment as appropriate.

(7) The preassessment screening process shall provide for the ongoing involvement of persons who may be liable for damages resulting from an oil spill. The department may negotiate with a potentially liable party to perform restoration and enhancement projects or studies which may substitute for all or part of the compensation authorized under RCW **90.48.366** and **90.48.367** or the damage assessment studies authorized under RCW **90.48.367**.

(8) For the purposes of this section and RCW **90.48.367**, the cost of a damage assessment shall be considered "reasonable" when the anticipated cost of the damage assessment is expected to be less than the anticipated damage that may have occurred or may occur.

[ **2007 c 347 § 2; 1994 c 264 § 92; 1992 c 73 § 29; 1991 c 200 § 814; 1989 c 388 § 4.**]

## **NOTES:**

**Effective dates—1992 c 73:** See RCW **82.23B.902**.

**Effective dates—1991 c 200:** See RCW [90.56.901](#).

**Intent—Application—Captions—Severability—1989 c 388:** See notes following RCW [90.56.010](#).

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## **90.48.386**

### **Department of natural resources leases.**

After May 15, 1991, the department of natural resources shall include in its leases for onshore and offshore facilities the following provisions:

(1) Require those wishing to lease, sublease, or re-lease state-owned aquatic lands to comply with the provisions of this chapter;

(2) Require lessees and sublessees to operate according to the plan of operations and to keep the plan current in compliance with this chapter; and

(3) Include in its leases provisions that a violation by the lessee or sublessee of the provisions of this chapter may be grounds for termination of the lease.

[ [1991 c 200 § 1101](#).]

#### **NOTES:**

**Effective dates—1991 c 200:** See RCW [90.56.901](#).

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## **90.48.390**

### **Coastal protection fund—Established—Moneys credited to—Use.**

The coastal protection fund is established to be used by the department as a revolving fund for carrying out the purposes of restoration of natural resources under this chapter and chapter [90.56](#) RCW. To this fund there shall be credited penalties, fees, damages, charges received pursuant to the provisions of this chapter and chapter [90.56](#) RCW, compensation for damages received under this chapter and chapter [90.56](#) RCW, and an amount equivalent to one cent per gallon from each marine use refund claim under \*RCW [82.36.330](#).

Moneys in the fund not needed currently to meet the obligations of the department in the exercise of its powers, duties, and functions under RCW [90.48.142](#), [90.48.366](#), [90.48.367](#), and [90.48.368](#) shall be deposited with the state treasurer to the credit of the fund. During the 2007-2009 fiscal biennium, the coastal protection fund may also be used for a standby rescue tug at Neah Bay. During the 2011-2013 fiscal biennium, the legislature may transfer from the coastal protection fund to the state general fund such amounts as reflect excess fund balance derived from penalties, forfeits, and seizures.

[ [2012 2nd sp.s. c 7 § 933](#); [2008 c 329 § 925](#); [1991 sp.s. c 13 § 84](#); [1991 c 200 § 815](#); [1989 c 388 § 7](#); [1989 c 262 § 3](#); [1971 ex.s. c 180 § 4](#).]

#### **NOTES:**

**\*Reviser's note:** Chapter **82.36** RCW was repealed in its entirety by 2013 c 225 § 501, effective July 1, 2016.

**Effective date—2012 2nd sp.s. c 7:** See note following RCW **2.68.020**.

**Severability—Effective date—2008 c 329:** See notes following RCW **28B.105.110**.

**Effective dates—Severability—1991 sp.s. c 13:** See notes following RCW **18.08.240**.

**Effective dates—1991 c 200:** See RCW **90.56.901**.

**Intent—Application—Captions—Severability—1989 c 388:** See notes following RCW **90.56.010**.

**Findings—1989 c 262:** See note following RCW **90.48.142**.

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## **90.48.400**

### **Coastal protection fund—Disbursal of moneys from.**

(1) Moneys in the coastal protection fund shall be disbursed for the following purposes and no others:

(a) Environmental restoration and enhancement projects intended to restore or enhance environmental, recreational, archaeological, or aesthetic resources for the benefit of Washington's citizens;

(b) Investigations of the long-term effects of oil spills; and

(c) Development and implementation of an aquatic land geographic information system.

(2) The director may allocate a portion of the fund to be devoted to research and development in the causes, effects, and removal of pollution caused by the discharge of oil or other hazardous substances.

(3) A steering committee consisting of representatives of the departments of ecology, fish and wildlife, and natural resources, and the parks and recreation commission shall authorize the expenditure of the moneys collected under RCW **90.48.366** through **90.48.368**, after consulting impacted local agencies and local and tribal governments.

(4) Agencies may not be reimbursed from the coastal protection fund for the salaries and benefits of permanent employees for routine operational support. Agencies may only be reimbursed under this section if money for reconnaissance and damage assessment activities is unavailable from other sources.

[ **1994 c 264 § 93; 1992 c 73 § 30; 1991 c 200 § 816; 1990 c 116 § 14**. Prior: **1989 c 388 § 8; 1989 c 262 § 4; 1971 ex.s. c 180 § 5**.]

## **NOTES:**

**Effective dates—1992 c 73:** See RCW **82.23B.902**.

**Effective dates—1991 c 200:** See RCW **90.56.901**.

**Findings—Severability—1990 c 116:** See notes following RCW **90.56.210**.

**Intent—Application—Captions—Severability—1989 c 388:** See notes following RCW **90.56.010**.

**Findings—1989 c 262:** See note following RCW **90.48.142**.

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## **90.48.420**

### **Water quality standards affected by forest practices—Department of ecology solely responsible for water quality standards—Forest practices rules—Adoption—Examination—Enforcement procedures.**

(1) The department of ecology, pursuant to powers vested in it previously by chapter **90.48** RCW and consistent with the policies of said chapter and RCW **90.54.020**(3), shall be solely responsible for establishing water quality standards for waters of the state. On or before January 1, 1975, the department of ecology shall examine existing rules containing water quality standards and other applicable rules of said department pertaining to waters of the state affected by nonpoint sources of pollution arising from forest practices and, when it appears appropriate to the department of ecology, modify said rules. In any such examination or modification the department of ecology shall consider such factors, among others, as uses of the receiving waters, diffusion, down-stream cooling, and reasonable transient and short-term effects resulting from forest practices.

Adoption of forest practices rules pertaining to water quality by the forest practices board shall be accomplished after reaching agreement with the director of the department or the director's designee on the board. Adoption shall be accomplished so that compliance with such forest practice[s] rules will achieve compliance with water pollution control laws.

(2) The department of ecology shall monitor water quality to determine whether revisions in such water quality standards or revisions in such forest practices rules are necessary to accomplish the foregoing result, and either adopt appropriate revisions to such water quality standards or propose appropriate revisions to such forest practices rules or both.

(3) Notwithstanding any other provisions of chapter **90.48** RCW or of the rules adopted thereunder, no permit system pertaining to nonpoint sources of pollution arising from forest practices shall be authorized, and no civil or criminal penalties shall be imposed with respect to any forest practices conducted in full compliance with the applicable provisions of RCW **76.09.010** through **76.09.280**, forest practices rules, and any approvals or directives of the department of natural resources thereunder.

(4) Prior to the department of ecology taking action under statutes or rules relating to water quality, regarding violations of water quality standards arising from forest practices, the department of ecology shall notify the department of natural resources.

[ **1999 sp.s. c 4 § 1101**; **1975 1st ex.s. c 200 § 13**; **1974 ex.s. c 137 § 30**.]

## **NOTES:**

**Part headings not law—1999 sp.s. c 4:** See note following RCW **77.85.180**.

**Effective dates—1974 ex.s. c 137:** See RCW **76.09.925**.

**Severability—1974 ex.s. c 137:** See RCW **76.09.935**.

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## 90.48.422

### Water quality standards—Compliance methods—Department authority.

(1) The legislature finds that the courts have rendered decisions in Elkhorn (**Public Utility District No. 1 v. Washington Department of Ecology**, 511 U.S. 700, 114 S. Ct. 1900, 128 L.Ed. 2d 716 (1994)) and Sullivan Creek (**Public Utility District No. 1 of Pend Oreille County v. Washington Department of Ecology**, 146 Wn.2d 778, 51 P.3d 744 (2002)) related to water quality certifications issued under section 401 of the clean water act, 33 U.S.C. 1251 et seq. Enactment of this legislation does not expand or contract the legal holdings of these decisions and does not affect in any way the application of these holdings to any future case or fact pattern related to water quality certifications issued for federally licensed hydropower facilities under section 401 of the clean water act, 33 U.S.C. 1251 et seq.

(2) When a water quality standard cannot be reasonably met through the issuance of permits or regulatory orders issued under the authority of this chapter, the department may use voluntary, incentive-based methods including funding of water conservation projects, lease and purchase of water rights, development of new storage projects, or habitat restoration projects in an attempt to meet water quality standards.

(3) The department may not abrogate, supersede, impair, or condition the ability of a water right holder to fully divert or withdraw water under a water right permit, certificate, statutory exemption, or claim granted or recognized under chapter 90.03, 90.14, or 90.44 RCW through the authority granted to the department in this chapter. However, nothing in chapter 15, Laws of 2003 1st sp. sess. shall be construed to affect the department's authority related to the issuance of certifications under section 401 of the federal clean water act, 33 U.S.C. 1251 et seq., with respect to the application of federally authorized water quality standards, for federal energy regulatory commission licensed hydropower projects as provided under this chapter and chapter 90.74 RCW. With respect to federal energy regulatory commission licensed hydropower projects, the department may only require a person to mitigate or remedy a water quality violation or problem to the extent there is substantial evidence such person has caused such violation or problem.

[ 2003 1st sp.s. c 15 § 1.]

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## 90.48.425

### Forest practices act and regulations relating to water quality protection to be utilized to satisfy federal water pollution act.

The forest practices act, chapter 76.09 RCW, and the forest practices regulations adopted thereunder relating to water quality protection shall be utilized to satisfy the planning and program requirements of sections 208, 209, and 305 of the federal Water Pollution Control Act, as regards silvicultural activities, unless it is determined by the department of ecology that extraordinary conditions exist which make forest practices regulations unsuitable to satisfy such federal requirements.

[ 1975 1st ex.s. c 200 § 14.]

## NOTES:

Provisions of state law pertaining to federal clean water act: RCW 90.48.260, 90.48.262.

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### 90.48.430

#### **Watershed restoration projects—Approval process—Waiver of public review.**

A permit, certification, or other approval required by the department for a watershed restoration project as defined in RCW 89.08.460 shall be processed in compliance with RCW 89.08.450 through 89.08.510. Public review of proposed watershed restoration projects may be shortened or waived by the department.

[ 1995 c 378 § 15.]

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### 90.48.445

#### **Aquatic noxious weed control—Water quality permits—Definition.**

(1) The director shall issue or approve water quality permits for use by federal, state, or local governmental agencies and licensed applicators for the purpose of using, for aquatic noxious weed control, herbicides and surfactants registered under state or federal pesticide control laws, and for the purpose of experimental use of herbicides on aquatic sites, as defined in 40 C.F.R. Sec. 172.3. The issuance of the permits shall be subject only to compliance with: Federal and state pesticide label requirements, the requirements of the federal insecticide, fungicide, and rodenticide act, the Washington pesticide control act, the Washington pesticide application act, and the state environmental policy act, except that:

(a) When the director issues water quality permits for the purpose of using glyphosate and surfactants registered by the department of agriculture to control spartina, as defined by RCW 17.26.020, the water quality permits shall contain the following criteria:

(i) Spartina treatment shall occur between June 1st and October 31st of each year unless the department, the department of agriculture, and the department of fish and wildlife agree to add additional dates beyond this period, except that no aerial application shall be allowed on July 4th or Labor Day and for ground application on those days the applicator shall post signs at each corner of the treatment area;

(ii) The applicator shall take all reasonable precautions to prevent the spraying of nontarget vegetation and nonvegetated areas;

(iii) A period of fourteen days between treatments is required prior to re-treating the previously treated areas;

(iv) Aerial or ground broadcast application shall not be made when the wind speed exceeds ten miles per hour; and

(v) An application shall not be made when a tidal regime leaves the plants dry for less than four hours.

(b) The director shall issue water quality permits for the purpose of using herbicides or surfactants registered by the department of agriculture to control aquatic noxious weeds, other than spartina, and the permit shall state that aerial and ground broadcast applications may not be made when the wind speed exceeds ten miles per hour.

(c) The director shall issue water quality permits for the experimental use of herbicides on aquatic sites, as defined in 40 C.F.R. Sec. 172.3, when the department of agriculture has issued an experimental

use permit, under the authority of RCW **15.58.405**(3). Because of the small geographic areas involved and the short duration of herbicide application, water quality permits issued under this subsection are not subject to state environmental policy act review.

(2) Applicable requirements established in an option or options recommended for controlling the noxious weed by a final environmental impact statement published under chapter **43.21C** RCW by the department prior to May 5, 1995, by the department of agriculture, or by the department of agriculture jointly with other state agencies shall be considered guidelines for the purpose of granting the permits issued under this chapter. This section may not be construed as requiring the preparation of a new environmental impact statement to replace a final environmental impact statement published before May 5, 1995, but instead shall authorize the department of agriculture, as lead agency for the control of spartina under RCW **17.26.015**, to supplement, amend, or issue addenda to the final environmental impact statement published before May 5, 1995, which may assess the environmental impact of the application of stronger concentrations of active ingredients, altered application patterns, or other changes as the department of agriculture deems appropriate.

(3) The director of ecology may not utilize this permit authority to otherwise condition or burden weed control efforts. Except for permits issued by the director under subsection (1)(c) of this section, permits issued under this section are effective for five years, unless a shorter duration is requested by the applicant. The director's authority to issue water quality modification permits for activities other than the application of surfactants and approved herbicides, to control aquatic noxious weeds or the experimental use of herbicides used on aquatic sites, as defined in 40 C.F.R. Sec. 172.3, is unaffected by this section.

(4) As used in this section, "aquatic noxious weed" means an aquatic weed on the state noxious weed list adopted under RCW **17.10.080**.

[ **1999 sp.s. c 11 § 1**; **1995 c 255 § 3**.]

## NOTES:

**Effective date—1999 sp.s. c 11:** "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 takes effect immediately [June 7, 1999]." [ **1999 sp.s. c 11 § 2**.]

**Effective date—1995 c 255:** See RCW **17.26.901**.

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## 90.48.447

### **Aquatic plant management program—Commercial herbicide information— Experimental application of herbicides—Appropriation for study.**

(1) The department of ecology shall update the final supplemental environmental impact statement completed in 1992 for the aquatic plant management program to reflect new information on herbicides evaluated in 1992 and new, commercially available herbicides. The department shall maintain the currency of the information on herbicides and evaluate new herbicides as they become commercially available.

(2) For the 1999 treatment season, the department shall permit by May 15, 1999, municipal experimental application of herbicides such as hydrothol 191 for algae control in lakes managed under chapter **90.24** RCW. If experimental use is determined to be ineffective, then the department shall within fourteen days consult with other state, federal, and local agencies and interested parties, and may permit

the use of copper sulfate. The Washington institute for public policy shall contract for a study on the lake-wide effectiveness of any herbicide used under this subsection. Prior to issuing the contract for the study, the institute for public policy shall determine the parameters of the study in consultation with licensed applicators who have recent experience treating the lake and with the nonprofit corporation that participated in centennial clean water fund phase one lake management studies for the lake. The parameters must include measurement of the lake-wide effectiveness of the application of the herbicide in maintaining beneficial uses of the lake, including any uses designated under state or federal water quality standards. The effectiveness of the application shall be determined by objective criteria such as turbidity of the water, the effectiveness in killing algae, any harm to fish or wildlife, any risk to human health, or other criteria developed by the institute. The results of the study shall be reported to the appropriate legislative committees by December 1, 1999. A general fund appropriation in the amount of \$35,000 is provided to the Washington institute for public policy for fiscal year 1999 for the study required under this subsection.

[ 1999 c 255 § 2.]

## NOTES:

**Findings—Purpose—1999 c 255:** "The legislature finds that the environmental, recreational, and aesthetic values of many of the state's lakes are threatened by the invasion of nuisance and noxious aquatic weeds. Once established, these nuisance and noxious aquatic weeds can colonize the shallow shorelines and other areas of lakes with dense surface vegetation mats that degrade water quality, pose a threat to swimmers, and restrict use of lakes. Algae can generate health and safety conditions dangerous to fish, wildlife, and humans. The current environmental impact statement is causing difficulty in responding to environmentally damaging weed and algae problems. Many commercially available herbicides have been demonstrated to be effective in controlling nuisance and noxious aquatic weeds and algae and do not pose a risk to the environment or public health. The purpose of this act is to allow the use of commercially available herbicides that have been approved by the environmental protection agency and the department of agriculture and subject to rigorous evaluation by the department of ecology through an environmental impact statement for the aquatic plant management program." [ 1999 c 255 § 1.]

**Effective date—1999 c 255:** "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 takes effect immediately [May 10, 1999]." [ 1999 c 255 § 5.]

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## 90.48.448

### Eurasian water milfoil—Pesticide 2,4-D application.

(1) Subject to restrictions in this section, a government entity seeking to control a limited infestation of Eurasian water milfoil may use the pesticide 2,4-D to treat the milfoil infestation, without obtaining a permit under RCW 90.48.445, if the milfoil infestation is either recently documented or remaining after the application of other control measures, and is limited to twenty percent or less of the littoral zone of the lake. Any pesticide application made under this section must be made according to all label requirements for the product and must meet the public notice requirements of subsection (2) of this section.

(2) Before applying 2,4-D, the government entity shall: (a) Provide at least twenty-one days' notice to the department of ecology, the department of fish and wildlife, the department of agriculture, the

department of health, and all lake residents; (b) post notices of the intent to apply 2,4-D at all public access points; and (c) place informational buoys around the treatment area.

(3) The department of fish and wildlife may impose timing restrictions on the use of 2,4-D to protect salmon and other fish and wildlife.

(4) The department may prohibit the use of 2,4-D if the department finds the product contains dioxin in excess of the standard allowed by the United States environmental protection agency. Sampling protocols and analysis used by the department under this section must be consistent with those used by the United States environmental protection agency for testing this product.

(5) Government entities using this section to apply 2,4-D may apply for funds from the freshwater aquatic weeds account consistent with the freshwater aquatic weeds management program as provided in RCW [43.21A.660](#).

(6) Government entities using this section shall consider development of long-term control strategies for eradication and control of the Eurasian water milfoil.

(7) For the purpose of this section, "government entities" includes cities, counties, state agencies, tribes, special purpose districts, and county weed boards.

[ [1999 c 255 § 3](#).]

## NOTES:

**Findings—Purpose—Effective date—1999 c 255:** See notes following RCW [90.48.447](#).

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## 90.48.450

### **Discharges from agricultural activity—Consideration to be given as to whether enforcement action would contribute to conversion of land to nonagricultural use—Minimize the possibility.**

(1) Prior to issuing a notice of violation related to discharges from agricultural activity on agricultural land, the department shall consider whether an enforcement action would contribute to the conversion of agricultural land to nonagricultural uses. Any enforcement action shall attempt to minimize the possibility of such conversion.

(2) As used in this section:

(a) "Agricultural activity" means the growing, raising, or production of horticultural or viticultural crops, berries, poultry, livestock, grain, mint, hay and dairy products.

(b) "Agricultural land" means at least five acres of land devoted primarily to the commercial production of livestock or agricultural commodities.

[ [1981 c 297 § 31](#).]

## NOTES:

**Legislative finding, intent—1981 c 297:** See note following RCW [70.94.640](#).

**Severability—1981 c 297:** See note following RCW [15.36.201](#).

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### 90.48.455

#### **Discharge of chlorinated organics—Engineering reports by pulp and paper mills—Permits limiting discharge.**

(1) The department may require each pulp mill and paper mill discharging chlorinated organics to conduct and submit an engineering report on the cost of installing technology designed to reduce the amount of chlorinated organic compounds discharged into the waters of the state. The department shall allow at least twenty-four months from June 11, 1992, for each pulp mill and each paper mill to submit an engineering report.

(2) The department may not issue a permit establishing limits to the discharge of chlorinated organic compounds by a pulp mill or a paper mill under RCW **90.48.160** or **90.48.260** until at least nine months after receiving an engineering report from a kraft mill and at least fifteen months after receiving an engineering report from a sulfite mill.

(3) Nothing in this section shall apply to dioxin compounds.

[ **1992 c 201 § 1.** ]

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### 90.48.465

#### **Water discharge fees—Report to the legislature.**

(1) The department shall establish fees to collect expenses for issuing and administering each class of permits under RCW **90.48.160**, **90.48.162**, and **90.48.260**. An initial fee schedule shall be established by rule and be adjusted no more often than once every two years. This fee schedule shall apply to all permits, regardless of date of issuance, and fees shall be assessed prospectively. All fees charged shall be based on factors relating to the complexity of permit issuance and compliance and may be based on pollutant loading and toxicity and be designed to encourage recycling and the reduction of the quantity of pollutants. Fees shall be established in amounts to fully recover and not to exceed expenses incurred by the department in processing permit applications and modifications, monitoring and evaluating compliance with permits, conducting inspections, securing laboratory analysis of samples taken during inspections, reviewing plans and documents directly related to operations of permittees, overseeing performance of delegated pretreatment programs, and supporting the overhead expenses that are directly related to these activities.

(2) The annual fee paid by a municipality, as defined in 33 U.S.C. Sec. 1362, for all domestic wastewater facility permits issued under RCW **90.48.162** and **90.48.260** shall not exceed the total of a maximum of eighteen cents per month per residence or residential equivalent contributing to the municipality's wastewater system.

(3) The department shall ensure that indirect dischargers do not pay twice for the administrative expense of a permit. Accordingly, administrative expenses for permits issued by a municipality under RCW **90.48.165** are not recoverable by the department.

(4) In establishing fees, the department shall consider the economic impact of fees on small dischargers and the economic impact of fees on public entities required to obtain permits for stormwater runoff and shall provide appropriate adjustments.

(5) The fee for an individual permit issued for a dairy farm as defined under chapter **90.64** RCW shall be fifty cents per animal unit up to one thousand two hundred fourteen dollars for fiscal year 1999. The fee for a general permit issued for a dairy farm as defined under chapter **90.64** RCW shall be fifty cents per animal unit up to eight hundred fifty dollars for fiscal year 1999. Thereafter, these fees may rise in accordance with the fiscal growth factor as provided in chapter **43.135** RCW.

(6) The fee for a general permit or an individual permit developed solely as a result of the federal court of appeals decision in **Headwaters, Inc. v. Talent Irrigation District**, 243 F.3rd 526 (9th Cir. 2001) is

limited, until June 30, 2003, to a maximum of three hundred dollars. Such a permit is required only, and as long as, the interpretation of this court decision is not overturned or modified by future court rulings, administrative rule making, or clarification of scope by the United States environmental protection agency or legislative action. In such a case the department shall take appropriate action to rescind or modify these permits.

(7) All fees collected under this section shall be deposited in the water quality permit account hereby created in the state treasury. Moneys in the account may be appropriated only for purposes of administering permits under RCW **90.46.220**, **90.48.160**, **90.48.162**, and **90.48.260**.

(8) The department shall present a biennial progress report on the use of moneys from the account to the legislature. The report will be due December 31st of odd-numbered years. The report shall consist of information on fees collected, actual expenses incurred, and anticipated expenses for the current and following fiscal years.

[ **2009 c 456 § 6**; **2009 c 249 § 1**; **2002 c 361 § 2**; **1998 c 262 § 16**; **1997 c 398 § 2**; **1996 c 37 § 3**; **1992 c 174 § 17**; **1991 c 307 § 1**; 1989 c 2 § 13 (Initiative Measure No. 97, approved November 8, 1988).]

## NOTES:

**Reviser's note:** This section was amended by 2009 c 249 § 1 and by 2009 c 456 § 6, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW **1.12.025(2)**. For rule of construction, see RCW **1.12.025(1)**.

**Findings—Intent—2002 c 361:** "The legislature finds that the recent federal court of appeals decision in **Headwaters, Inc. v. Talent Irrigation District**, 243 F.3rd 526 (9th Cir. 2001) imposes a duty to obtain a national pollutant discharge elimination system permit under the clean water act for the application of pesticides to irrigation canals. This duty is also extended to other individuals and organizations that apply pesticides to other waters, where no duty existed before the **Talent** decision.

The legislature finds that the costs associated with the issuance of the national pollutant discharge elimination system permit now required by the department of ecology as a result of the federal decision is burdensome to the affected individuals and organizations. The legislature intends to temporarily reduce the burden of the federal decision on those individuals and organizations." [ **2002 c 361 § 1**.]

**Effective date—2002 c 361:** "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 takes effect immediately [April 4, 2002]." [ **2002 c 361 § 3**.]

**Effective date—1998 c 262:** See RCW **90.64.900**.

**Short title—Captions—Construction—Existing agreements—Effective date—1989 c 2:** See RCW **70.105D.900** through **70.105D.920**, respectively.

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## 90.48.480

### Reduction of sewer overflows—Plans—Compliance schedule.

The department of ecology shall work with local governments to develop reasonable plans and compliance schedules for the greatest reasonable reduction of combined sewer overflows. The plan shall address various options, including construction of storage tanks for sewage and separation of sewage

and stormwater transport systems. The compliance schedule shall be designed to achieve the greatest reasonable reduction of combined sewer overflows at the earliest possible date. The plans and compliance schedules shall be completed by January 1, 1988. A compliance schedule will be a condition of any waste discharge permit issued or renewed after January 1, 1988.

[ 1998 c 245 § 174; 1985 c 249 § 2.]

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#### **90.48.490**

##### **Sewage treatment facilities—Plans to upgrade or construct.**

Plans for upgrading sewage treatment facilities and plans for new sewage treatment facilities shall address the greatest reasonable reduction of combined sewer overflows and implementation of pretreatment standards.

[ 1985 c 249 § 3.]

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#### **90.48.495**

##### **Water conservation measures to be considered in sewer plans.**

The department of ecology shall require sewer plans to include a discussion of water conservation measures considered or underway that would reduce flows to the sewerage system and an analysis of their anticipated impact on public sewer service and treatment capacity.

[ 2003 1st sp.s. c 5 § 11; 1989 c 348 § 10.]

#### **NOTES:**

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

**Severability—1989 c 348:** See note following RCW [90.54.020](#).

**Rights not impaired—1989 c 348:** See RCW [90.54.920](#).

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#### **90.48.520**

##### **Review of operations before issuance or renewal of wastewater discharge permits—Incorporation of permit conditions.**

In order to improve water quality by controlling toxicants in wastewater, the department of ecology shall in issuing and renewing state and federal wastewater discharge permits review the applicant's operations and incorporate permit conditions which require all known, available, and reasonable methods to control toxicants in the applicant's wastewater. Such conditions may include, but are not limited to: (1) Limits on the discharge of specific chemicals, and (2) limits on the overall toxicity of the effluent. The toxicity of the effluent shall be determined by techniques such as chronic or acute bioassays. Such conditions shall be required regardless of the quality of receiving water and regardless of the minimum

water quality standards. In no event shall the discharge of toxicants be allowed that would violate any water quality standard, including toxicant standards, sediment criteria, and dilution zone criteria.

[ 1987 c 500 § 1.]

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## 90.48.530

### Construction projects involving fill material—Leaching test.

(1) In order to ensure that construction projects involving the use of fill material do not pose a threat to water quality, the department may require that the suitability of potential fill material be evaluated using a leaching test included in the soil clean-up rules adopted by the department under chapter **70.105D** RCW in any water quality certification issued under section 401 of the federal clean water act and in any administrative order issued under this chapter, where such certification or administrative order authorizes the placement of fill material, some or all of which will be placed in waters of the state. Any such requirement imposed by the department in a water quality certification or administrative order issued prior to May 9, 2003, is ratified and approved by the legislature as a valid and reliable method for determining concentrations of chemical constituents that can be present in fill material without posing an unacceptable risk of violating water quality standards, and shall be in effect as imposed by the department for all work not completed by June 1, 2003.

(2) Nothing in this section limits, in any way, the department's authority under this chapter.

[ 2003 c 210 § 1.]

#### NOTES:

**Effective date—2003 c 210:** "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 takes effect immediately [May 9, 2003]." [ 2003 c 210 § 3.]

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## 90.48.531

### Leaching tests—Identification—Report to the legislature.

The department shall identify the leaching tests utilized for evaluating the potential impacts to water quality in situations where fill material is imported. The tests may include those identified in the soil clean-up rules adopted by the department under chapter **70.105D** RCW. Within existing resources, the department shall assess whether this list of leaching tests provides appropriate methods for analyzing water quality impacts for all types of projects and in all circumstances where fill material is imported. The department shall also identify any gaps in leaching test methodology. The department shall report both the leaching test list and the list of test methodology gaps to the appropriate committees of the legislature by December 31, 2003.

[ 2003 c 210 § 2.]

#### NOTES:

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## 90.48.540

### **Use attainability analysis of water within federal reclamation project boundaries—Rules.**

(1) The department, as resources allow, shall at the request of the United States bureau of reclamation or federal reclamation project irrigation districts cooperatively conduct a use attainability analysis of water bodies located within the boundaries of the federal reclamation project.

(2) If necessary because of the use attainability analysis conducted under subsection (1) of this section, the department, consistent with applicable federal water quality laws and regulations, shall adopt rules designating uses for water bodies within the federal reclamation project that support beneficial uses consistent with the primary authorized project purposes of constructed storage and conveyance facilities and other water transport systems and that recognize the unique site-specific characteristics of the arid and semiarid regions of the state of Washington where federal reclamation projects are located. The rules shall also recognize the need to deliver project irrigation water and to construct, operate, and maintain project facilities.

[ 2004 c 214 § 1.]

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## 90.48.545

### **Stormwater technical resource center—Duties—Advisory committee—Report to legislative committees.**

(1) As funding to do so becomes available, the department shall create a stormwater technical resource center in partnership with a university, nonprofit organization, or other public or private entity to provide tools for stormwater management. The center shall use its authority to support the duties listed in this subsection through research, development, technology demonstration, technology transfer, education, outreach, recognition, and training programs. The center may:

- (a) Review and evaluate emerging stormwater technologies;
- (b) Research and develop innovative and cost-effective technical solutions to remove pollutants from runoff and to reduce or eliminate stormwater discharges;
- (c) Conduct pilot projects to test technical solutions;
- (d) Serve as a clearinghouse and outreach center for information on stormwater technology;
- (e) Assist in the development of stormwater control methods to better protect water quality, including source control, product substitution, pollution prevention, and stormwater treatment;
- (f) Coordinate with federal, state, and local agencies and private organizations in administering programs related to stormwater control measures; and
- (g) Collaborate with existing stormwater outreach programs.

(2) The department shall consult with an advisory committee in the development of the stormwater technical resource center. The advisory committee must include representatives from relevant state agencies, local governments, the business community, the environmental community, tribes, and the building and development industry.

(3) The department, in consultation with the stormwater technical resource center advisory committee, shall identify a funding strategy for funding the stormwater technical resource center.

(4) The department shall encourage all interested parties to help and support the technical resource center with in-kind services.

(5) The department and other partners in the center shall in even-numbered years inform the appropriate legislative committees of the progress made in achieving the objectives of this section.

[ 2014 c 76 § 11; 2009 c 449 § 2.]

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## 90.48.570

### Water quality data—Findings—Intent.

(1) The legislature finds that:

(a) The proper collection and review of credible water quality data is necessary to ensure compliance with the requirements of the federal clean water act (33 U.S.C. Sec. 1251 et seq.);

(b) The state needs to assemble and evaluate all existing and readily available water quality-related data and information from sources other than the state water quality agency, such as federal agencies, tribes, universities, and volunteer monitoring groups, if the data meets the state's requirements for data quality; and

(c) Developing and implementing water quality protection measures based on credible water quality data ensures that the financial resources of state and local governments and regulated entities are prioritized to address our state's most important water quality issues.

(2) The legislature intends to ensure that credible water quality data is used as the basis for the assessment of the status of a water body relative to the surface water quality standards.

(3) It is the intent of the legislature that a water body in which pollutant loadings from naturally occurring conditions are the sole cause of a violation of applicable surface water quality standards not be listed as impaired.

[ 2004 c 228 § 1.]

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## 90.48.575

### Water quality data—Definitions.

The definitions in this section apply to RCW **90.48.580** and **90.48.585** unless the context clearly requires otherwise.

(1) "Credible data" means data meeting the requirements of RCW **90.48.585**.

(2) "Department" means the Washington state department of ecology.

(3) "Impaired water" means a water body or segment for which credible data exists that: (a) Satisfies the requirements of RCW **90.48.580** and **90.48.585**; and (b) demonstrates the water body should be identified pursuant to 33 U.S.C. Sec. 1313(d).

(4) "Naturally occurring condition" means any condition affecting water quality that is not caused by human influence.

(5) "Section 303(d)" has the same meaning as in the federal clean water act (33 U.S.C. Sec. 1313(d)).

(6) "Total maximum daily load" has the same meaning as in the federal clean water act (33 U.S.C. Sec. 1313(d)).

[ 2004 c 228 § 2.]

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## 90.48.580

### Water quality data—Credible data, information, literature.

(1) The department shall use credible information and literature for developing and reviewing a surface water quality standard or technical model used to establish a total maximum daily load for any surface water of the state.

(2) The department shall use credible data for the following actions after June 10, 2004:

(a) Determining whether any water of the state is to be placed on or removed from any section 303(d) list;

(b) Establishing a total maximum daily load for any surface water of the state; or

(c) Determining whether any surface water of the state is supporting its designated use or other classification.

(3) The department shall respond to questions regarding the data, literature, and other information it uses under this section. The department shall reply to requests within five business days acknowledging that the department has received the request and provide a reasonable estimate of the time the department will require to respond to the request.

(4) The department, the United States environmental protection agency, and the Indian tribes in Washington state have developed a voluntary agreement relating to the cooperative management of the clean water act section 303(d) program. The department shall consider water quality data that has been collected by Indian tribes under a quality assurance project plan that has been approved by the United States environmental protection agency if that data meets the objectives of the plan.

[ 2004 c 228 § 3.]

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## 90.48.585

### Water quality data—When credible.

(1) In collecting and analyzing water quality data for any purpose identified in RCW 90.48.580(2), data is considered credible data if:

(a) Appropriate quality assurance and quality control procedures were followed and documented in collecting and analyzing water quality samples;

(b) The samples or measurements are representative of water quality conditions at the time the data was collected;

(c) The data consists of an adequate number of samples based on the objectives of the sampling, the nature of the water in question, and the parameters being analyzed; and

(d) Sampling and laboratory analysis conform to methods and protocols generally acceptable in the scientific community as appropriate for use in assessing the condition of the water.

(2) Data interpretation, statistical, and modeling methods shall be those methods generally acceptable in the scientific community as appropriate for use in assessing the condition of the water.

(3) The department shall develop policy:

(a) Explaining how it uses scientific research and literature for developing and reviewing any water quality standard or technical model used to establish a total maximum daily load for any water of the state;

(b) Describing the specific criteria that determine data credibility; and

(c) Recommending the appropriate training and experience for collection of credible data.

[ 2004 c 228 § 4.]

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**90.48.590****Water quality data—Falsified data—Penalty.**

Any person who knowingly falsifies data is guilty of a gross misdemeanor.

[ 2004 c 228 § 5.]

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**90.48.595****On-site sewage disposal system repair and replacement—Loan and grant programs.**

The department shall offer financial and technical assistance to local governments and tribal entities in Puget Sound counties to establish or expand on-site sewage disposal system repair and replacement through local loan and grant programs. The programs must give priority to low-income and financially distressed homeowners.

[ 2006 c 18 § 10.]

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**90.48.605****Amending state water quality standards—Compliance schedules in excess of ten years authorized.**

The department shall amend the state water quality standards to authorize compliance schedules in excess of ten years for discharge permits issued under this chapter that implement allocations contained in a total maximum daily load under certain circumstances. Any such amendment must be submitted to the United States environmental protection agency under the clean water act. Compliance schedules for the permits may exceed ten years if the department determines that:

- (1) The permittee is meeting its requirements under the total maximum daily load as soon as possible;
- (2) The actions proposed in the compliance schedule are sufficient to achieve water quality standards as soon as possible;
- (3) A compliance schedule is appropriate; and
- (4) The permittee is not able to meet its waste load allocation solely by controlling and treating its own effluent.

[ 2009 c 457 § 1.]

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**90.48.906****Short title—1971 ex.s. c 180.**

This 1971 amendatory act may be cited as the "Coastal Waters Protection Act of 1971".

[ 1971 ex.s. c 180 § 13.]