



IMPLEMENTATION PLAN FOR THE ADOPTION OF
Chapter 173-700 WAC, *Wetland Mitigation Banks*

As required by the Washington State Administrative Act, RCW 34.05.

08/19/09

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CHAPTER 173-700 WAC, Wetland Mitigation Banks

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Implementation Plan for Chapter 173-700 WAC, Wetland Mitigation Banks

1. Please describe how the Agency intends to implement and enforce the rule. Please include a description of the resources the Agency intends to use.

Ecology will implement and enforce the rule using existing Ecology staff. These staff already work on wetland bank certifications and oversee wetland banks certified through the pilot project. The staff includes three Wetland Banking Specialists, a Wetland Banking Technical Lead, and a Wetland Banking Policy Lead.

2. Please describe how the Agency intends to inform and educate affected persons about the rule.

Ecology will send the rule language to existing bank sponsors and current applicants. While working with the bank sponsors throughout the certification process, we will inform them of any changes which may affect their bank certification. And, as new sponsors submit bank proposals, we will provide and explain the rule and ensure that the requirements and process are clear to them as well.

We are currently developing guidance on various elements of the certification process for the bank sponsors, local governments and regulatory agencies. The agency is also developing templates for various documents that the sponsor is required to submit as part of the certification process. These templates will be posted on Ecology's website.

Ecology has been and will continue to provide training on wetland mitigation banking for local governments, tribes, consultants and state and federal regulators. The training includes: general information on wetland mitigation banking, the state certification process, the role of the local government, and the use of banks as a mitigation option.

We will post the Wetland Mitigation Bank rule on our website and have hard copies available for those that prefer the document in an alternate format. We will send notice electronically to the following entities, with a hyperlink to the rule and supporting documents:

- Wetlands listserv.
- Wetland Mitigation Banking listserv.
- Local jurisdictions, state and federal agencies which are signatories on current Mitigation Banking Instruments (MBIs).
- All current members of Interagency Review Teams.
- All parties who commented on the rule.
- All parties who commented on the draft environmental impact statement.

We will continue presenting to local jurisdictions' permitting staff on how they can use bank credits to mitigate for wetland impact projects.

3. Please describe how the Agency intends to promote and assist voluntary compliance with this rule.

To ensure compliance with the Wetland Mitigation Bank rule, agency staff will continue to work with bank sponsors during the development of their MBI. The MBI includes, for example, performance standards that must be met before bank credits are available for use

and sale. The agency reviews as-built and monitoring reports and conducts on-going site visits to ensure the sponsor is complying with the MBI. Ecology staff will inform the sponsor of any issues that arise with the development or operation of the bank and any activities required to bring the bank into compliance.

Staff will also inform sponsors of any rule changes which may affect operation of their bank.

We will provide template documents to the bank sponsor, including:

- A Prospectus.
- A Mitigation Banking Instrument (MBI).
- A credit ledger.

The creation or revision of these documents should assist the sponsor with complete and accurate submittals.

The agency will follow the compliance procedures outlined in the rule, if:

- The required performance standards are not met;
- Documentation shows that the requirements stipulated in the MBI are not being met; or,
- Site visits show that a sponsor is out of compliance.

4. Please describe how the Agency intends to evaluate whether the rule achieves the purpose for which it was adopted, including to the maximum extent practicable, the use of interim milestones to assess progress and the use of objectively measurable outcome.

The rule outlines timeframes for the various stages of the certification process. Ecology will track the length of time we spend on document review during the certification process. We have an internal target of 30 days to review documents, or in the case of an MBI, 90 days.

Clarifying text within the rule should ensure that bank sponsors understand our expectations for bank documents. Additionally, clarifying the rule language should lessen the amount of negotiations necessary between Ecology and the bank sponsor.

Ecology is developing GIS layers for tracking wetland mitigation banks and their use. This will allow for spatially-oriented tracking of credit usage. In other words, to evaluate potential trends in the use of banks, we must understand the spatial relationship between the bank site and the wetlands that are affected by development. Should the analysis show that the use of banks and off-site replacement of functions is occurring too far from the impact area to be ecologically beneficial, Ecology may:

- Re-evaluate the criteria used for establishing service areas;
- Provide more guidance on selection of appropriate service areas; or
- Make amendments to the rule.

5. Please describe how the Agency intends to train and inform Ecology staff regarding the rule.

We will conduct presentations for Ecology wetland staff as part of our Wetlands Technical Advisory Group (TAG) meetings to inform them of changes. We will invite permit staff to

attend banking presentations and trainings. We will continue to provide statewide trainings with the US Army Corps of Engineers on the certification process and use of wetland banks. Wetland mitigation banking staff in Headquarters and the Northwest regional office will provide technical assistance to other Ecology staff.

6. Please identify supporting documents that may need to be revised because of the rule. Or Identify new supporting documents that need to be developed because of the rule.

We will edit our MBI template to follow the new rule, as needed. We will create a Prospectus template. We will create a "Prospectus Packet" and a "MBI Packet". Both packets will include a brief instruction sheet, a checklist to ensure the sponsor submits the necessary documentation, and a document template. We will revise the credit ledger template. We will continue to develop general guidance on the certification process and technical requirements for wetland mitigation banks.

All materials will be made available on Ecology's website. Website updates will be ongoing.