

WASHINGTON STATE
DEPARTMENT OF
E C O L O G Y


First Annual Report

**Washington's
Environmental Laws:
Potential Conflicts and Perceived Inconsistencies**

**Washington State
Permit Assistance Center**

**Report to the 55th Session
Washington State Legislature**

December 1996
Publication No. 96-254

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Executive Summary

Background

Over the last 25 years, many local, state, and federal laws have been enacted to address a wide range of environmental problems. Implementation of these laws has produced significant gains in protecting Washington's environment and the health of its citizens. However, the sheer number of laws has also increased the potential for misunderstandings that can result in project delays and conflicts in the implementation of multiple requirements.

The 1995 Legislature enacted the Environmental Permit Assistance Act (Chapter 90.60 RCW; see Appendix A) which established the Permit Assistance Center (the Center). The Center was directed to develop and implement several new procedures to assist businesses and public agencies in complying with environmental quality laws. The procedures are designed to facilitate greater coordination among multiple permitting authorities and provide more reliable and effective access to information on environmental laws and permitting processes. They include a Permit Handbook, which explains the basics of the most commonly required environmental permits (see Appendix B) and a Coordinated Permit Process, which works to coordinate an applicant's environmental permitting process through a master permit decision-making timeline and overall scheduling agreement (see Appendix C). The Center was also directed to:

“. . . [p]rovide an annual report to the legislature on potential conflicts and perceived inconsistencies among existing statutes. The first report shall be submitted to the appropriate standing committees of the house of representatives and senate by December 1, 1996.” (RCW 90.60.030)

Overview

This report is the Center's first annual report. Examples of *potential conflicts and perceived inconsistencies* were compiled by Center staff with substantial input and assistance from the Washington State Departments of Fish and Wildlife, Health, and Natural Resources, and the state's local air pollution control authorities. It is not a *complete* list; we have reported examples that have been raised by individuals, and staff from various agencies. There are additional examples that were not provided in time to be included in this report, and, no doubt, others of which we were not made aware. These will be included in next year's report.

This report provides a general overview of the issue. Where examples are given, the authority for the specific requirement is cited, and the name and phone number of knowledgeable staff are provided so the reader can obtain more specific information. As we gathered this information, we also learned of efforts underway to reduce potential conflicts and perceived inconsistencies. These examples are included in this report.

The Center found that the causes of potential conflicts and perceived inconsistencies include: (1) single media focus of state and federal laws; (2) agency regulations adopted to implement such laws; and (3) procedures used by agencies to implement such laws and regulations. In this first annual report, we focused on the first of these areas (i.e., state and federal laws) in order to address

concerns raised during legislative deliberations that current laws are the primary source of conflicts and inconsistencies. The question of inconsistencies between regulations and implementation procedures was not directly addressed in this report. However, our review indicates that there are some inconsistencies between current regulations. In addition, there appear to be situations where agencies have not exercised available flexibility to reconcile two or more requirements. These situations appear to arise when agency staff are unaware of other requirements, or unaware that specific laws and regulations provided needed flexibility.

Key Findings

- ❖ **The large number of environmental laws and regulations creates the potential for conflicts and inconsistencies among programs and agencies.** Many environmental laws and regulations are administered by local, state, and federal agencies. The sheer number of laws applicable to a particular project or activity is the primary factor which creates the potential for conflicts or inconsistency. However, there are several factors or trends associated with the design of environmental laws that influence whether that potential is translated into a problem. These include: (1) the single-media (e.g., air, water, land) focus of the laws, with little explicit authority to take into account cross-media impacts; (2) a recent trend toward more prescriptive statutes, which limits flexibility (e.g., Federal Clean Air Act); and (3) situations where agencies have not exercised available flexibility to reconcile two or more requirements.
- ❖ **Permit applicants and the general public perceive there are many instances of conflict and inconsistency between various laws and regulations.** The Center identified situations where permit applicants and/or the public expressed the opinion that two or more laws contained inconsistent or conflicting requirements.
- ❖ **The Permit Assistance Center found no clear statutory conflicts.** The Center found no clear examples of situations where compliance with one statute makes it impossible to comply with another statute. Laws are generally written to provide sufficient flexibility to avoid or minimize conflict and inconsistency. However, lack of adequate coordination and information sharing among agencies, lack of agency awareness of other requirements, and poor understanding of requirements by applicants can contribute to the perception that laws are in conflict with each other.
- ❖ **The Permit Assistance Center identified a number of areas where agencies have initiated efforts to improve coordination and communication.** The Joint Aquatic Resource Permit Application (JARPA) and pre-application meetings held between applicants and permit agencies are two examples of such efforts. Experience indicates that increased discussions and coordination early in the permitting process can result in a smoother overall process and a more coordinated decision-making process. This is not to say that all the problems have been solved and everything always runs smoothly. However, agencies are responding to known problems by trying to increase coordination and communication and by removing obstacles to compliance.

- ❖ **Agencies have begun to make the types of resource investments that will be required to integrate multiple agency efforts under multiple statutory directives.** Agencies are increasing efforts to provide improved environmental information systems, train staff, and coordinate among diverse programs. They have begun to shift their focus from managing a single resource or media (e.g., air, water, or land), to more integrated approaches, focusing on whole projects, facilities, or geographic areas.

This is illustrated by Ecology's "Improved Information Integration and Access Project", which is being designed to bring together data from various environmental protection activities, such as water quality, air quality, and hazardous waste management. This integrated information system should facilitate improve information sharing and more coordinated decision-making. The "Community-Based Ecosystem Management Initiative" is another example where staff from diverse programs work with communities to develop environmental priorities.

Conclusions

Many environmental laws and regulations have been developed over the last 25 years. Permit applicants and the public have frequently expressed frustration over situations where they perceived that requirements in two or more laws are inconsistent with one another. Despite such perceptions, the Center found no situations where compliance with one law led to direct conflict with compliance with a second law. However, increased interagency coordination, technical assistance, and information sharing are needed to ensure that implementation of specific agency program policies and regulations does not lead to conflict and inconsistencies in the ways the various laws are implemented.

Agencies are currently implementing several initiatives designed to improve interagency coordination and integrate multiple regulatory requirements. These initiatives should be evaluated at the end of 1997 to determine their effectiveness and what adjustments need to be made.

There are also opportunities for "beyond compliance" partnerships between government environmental permitting agencies and private business. Many states, including Washington, are looking at ways to streamline permit decision-making and offer regulatory flexibility in exchange for environmental performance beyond existing standards and requirements.

Introduction and Overview

This report is the first of what will become an annual report to the Washington State Legislature. It provides examples of *potential conflicts* and *perceived inconsistencies* among environmental requirements contained in one or more federal, state, or local laws. This report has been compiled by the Permit Assistance Center (housed at the Washington State Department of Ecology), with substantial input and assistance from the Washington State Departments of Fish and Wildlife, Health, and Natural Resources, and the state's local air pollution control authorities.

It is not a *complete* list; it reports examples that have been compiled to date. There are additional examples that were not provided in time to be included in this report, and, no doubt, others of which the authors were not made aware. These will be included in next year's report. In this report, we focused on state and federal laws, in order to address concerns raised during legislative deliberations that current laws are the primary sources of conflicts and inconsistencies. The question of inconsistencies between regulations and implementation procedures was not directly addressed in this report. However, our review indicates that there are some inconsistencies among current regulations. In addition, there appear to be situations where agencies have not exercised available flexibility to reconcile two or more requirements. These situations appear to arise when agency staff are unaware of other requirements, or unaware that specific laws and regulations provide needed flexibility.

This report provides a general overview of the issue. Where examples are given, the authority for the specific requirement is cited. The name and phone number of knowledgeable staff are provided, so the reader can obtain more specific information. As we gathered this information, we also learned of many efforts underway to reduce potential conflicts and inconsistencies. Examples are included in this report.

We welcome reader input and feed back on this report. A form is provided at the end of this document to help you get your comments to us. The next report will be delivered in December 1997.

Process Used to Arrive at Report's Findings and Conclusions

The 1995 Legislature enacted the Environmental Permit Assistance Act (Chapter 90.60 RCW) as part of a package of regulatory reforms. The Act established a Permit Assistance Center (the Center) at the Washington Department of Ecology (Ecology), and directed the Center to assist businesses and public agencies in complying with environmental quality laws in an expedited fashion, without reducing protection of public health, safety, and the environment.

Much of the information in this report comes from the Center's experience working with permit applicants. The remainder comes from information received via Ecology's Internet Homepage, as well as from agency staff, business and trade organizations, cities, and counties.

Report Organization

This report is organized as follows:

- ❖ **Findings** — The key findings are:
 1. The large number of environmental laws and regulations creates the potential for conflicts and inconsistencies among programs and agencies.
 2. Permit applicants and the general public perceive there are many instances of inconsistencies between various laws and regulations.
 3. The Permit Assistance Center found no clear statutory conflicts.
 4. The Permit Assistance Center identified a number of areas where agencies have initiated efforts to improve coordination and communication.
 5. Agencies have begun to make the types of resource investments that will be required to integrate multiple agency efforts under multiple statutory directives.
- ❖ **Conclusion** — This section discusses what we learned through this report, and provides information on areas where agencies are making investments to improve communication and coordination.
- ❖ **Appendices** — This section includes more detailed background material that may be of interest to the reader.

Findings

1. **The large number of environmental laws and regulations creates the potential for conflicts and inconsistencies among programs and agencies.**

2.

Over the last 25 years, many local, state and federal laws have been enacted to address a wide range of environmental problems. Implementation of these laws has produced significant environmental improvements. However, increases in the number of laws and agencies with regulatory authority have also been accompanied by an increased potential for conflicts and inconsistencies during the implementation of these requirements (National Academy of Public Administration, 1995; Business Roundtable, 1995; Porter and van der Linde, 1995; President's Council on Sustainable Development, 1996).

The sheer number of laws applicable to a particular project or activity is the primary factor that creates the potential for conflicts and inconsistencies. In addition, many permitting

decisions are made by city and county agencies. In most cases, local agencies have the flexibility to design programs to meet local needs. This has resulted in significant differences in the design, content, and implementation of local programs across the state.

There are several factors or trends associated with the design of environmental laws which influence whether or not the potential for conflict or inconsistency is translated into an actual problem. These include:

- ***Single-Purpose Statutes*** — Most laws have been enacted to address a specific environmental problem or set of problems. However, laws that focus on a single medium (e.g., air, water, etc.) or substance (e.g., benzene, lead, etc.) do not always provide explicit authority to fully address cross-media impacts when developing control strategies. Differences in standard-setting approaches, terminology, and compliance timeframes complicate efforts to integrate requirements and strategies
- ***Increasing Level of Detail in Federal Statutes*** — Several national review committees and authors have chronicled the increasing trend towards more prescriptive statutory language in federal environmental laws (National Academy of Public Administration, 1995; Commission on Risk Assessment and Risk Management, 1996; Howard 1994). In their report to Congress, the National Academy of Public Administration concluded that this increased level of detail provides too little discretion for environmental agencies to make wise decisions. Howard (1994) noted that the increasing level of detail may be most problematic for environmental protection and worker safety.
- ***Fee-Based Funding*** — There is an increasing trend toward fee-based funding for individual environmental programs. In most cases, there is a natural tendency with such programs to limit fee-eligible activities to specific permits or activities. This can limit an agency's ability to perform activities that promote integration and coordination across individual laws and programs.

Example: Work in Water and Wetlands

The potential for conflicts and inconsistencies is illustrated by listing the laws potentially applicable to projects proposed in or near waters of the state. As listed below, a variety of federal, state, and local laws may apply to these projects. Some apply only to certain waterbodies or certain activities. Provisions of one level of government may be more restrictive than another level of government.

While the statutes do not conflict with one another, there is the potential for conflict in implementation if an agency takes a narrow view of its objectives, and is not able to make trade-offs necessary to implement other laws and regulations, or to protect other resources.

Federal Laws and Regulations

The principal federal laws that affect development activities in waters of the state are:

- Sections 404 and 401 of the Clean Water Act 33 USC, Sect. 1344 et. seq. *and*
33 USC, Sect. 1251, et. seq.
- Section 10 of the River and Harbor Act 33 USC, Sect. 403, et. seq.
- Coastal Zone Management Act 16 USC, Sect. 1451, et. seq.
- Fish and Wildlife Coordination Act 16 USC, Sect. 601, et. seq.
- National Environmental Policy Act 42 USC, Sect. 4321, et. seq.
- 1985 Food Security Act 16 USC, Sect. 3801, et. seq.
- 1990 Food, Agriculture, Conservation, and Trade Act 16 USC, Sect. 3101, et. seq.

State Laws and Regulations

The primary state laws that affect development activities in these areas include:

- Growth Management Act Chapter 36.70A RCW
- Shorelines Management Act Chapter 90.58 RCW
- Water Pollution Control Act Chapter 90.48 RCW
- Hydraulic Project Approval Code Chapter 75.20 RCW
- Forest Practices Act Chapter 76.09 RCW
- State Environmental Policy Act Chapter 43.21C RCW
- Aquatic Lands Act Chapter 79.90 RCW

Local Laws and Regulations

Cities and counties regulate projects in or adjacent to state waters through comprehensive plans, shoreline master programs, and development regulations. The most common regulations are:

- Critical area development regulations, adopted under the Growth Management Act.
- Shoreline Master Programs, adopted under the State Shoreline Management Act.

For additional details on permits for activities in water and wetlands, see Appendix D.

2. Permit applicants and the general public perceive there are many instances of inconsistencies between various laws and regulations.

The Center identified several examples where permit applicants and/or the public expressed the opinion that two or more laws contained inconsistent or conflicting requirements. Following each example is some information regarding how agencies are responding to these problems. This is not to say that the problems are all solved, but to provide information on efforts underway to address them.

- a. Stormwater Discharges and Contaminated Sediments:** Existing information indicates that stormwater discharges have resulted in sediment contamination on

aquatic lands. The federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the state Model Toxics Control Act (MTCA) state that public and private landowners are liable for the costs associated with cleaning up contaminated sediments. Ecology and EPA are implementing a long-term stormwater control strategy that emphasizes prevention and cost-effective best management practices as the initial actions. Once these are in place and their effectiveness has been evaluated, additional source controls will be considered and implemented where needed to ensure compliance with water quality and sediment quality standards. Some people have perceived this gradual strategy of “learn and adjust as we go” as inconsistent with pressures to resolve cleanup liabilities and manage public and private resources.

What’s Being Done: The six state and federal agencies involved in sediment management in Washington have formed the Cooperative Sediment Management Program. These agencies include the Departments of Ecology, Natural Resources, and Transportation, the Puget Sound Action Team, the US Army Corps of Engineers, and the Environmental Protection Agency. These agencies are working together to coordinate sediment cleanup and source control efforts.

Authorities: Chapter 70.105D RCW — The Model Toxics Control Act
Federal Comprehensive Environmental Response,
Compensation and Liability Act
Chapter 90.48 RCW — The Water Pollution Control Act
Federal Water Pollution Control Act

Contact: Rachel Friedman-Thomas, Department of Ecology, (360)407-6909
Phil Hertzog, Department of Natural Resources, (360)902-1066

- b. Riparian Buffers:** Two state laws define requirements for timber harvesting buffers along water bodies. The *Shoreline Management Act* requires a 200 foot buffer along shorelines of statewide significance. No more than 30% of the merchantable timber can be harvested from this buffer in a 10 year period. The second requirement, under the *Forest Practices Act* riparian management rules, require a 75 to 100 foot buffer along Type 1 waters (Type 1 waters are all waters designated as “shorelines of the state” under the Shoreline Management Act). The Forest Practice rules also define the number and composition of trees that landowners must leave in the buffer area.

While it may appear to the land owner that these two laws are inconsistent, they actually address two different sets of circumstances that can occur on the same parcel of land. For example, on Hood Canal, which is both a Type 1 water and a “shoreline of statewide significance,” a landowner is required to leave the number and composition of trees required by the Forest Practices rules, *and* to harvest not more than 30% of the merchantable timber within a 10 year period within the 200 foot buffer.

What’s Being Done: Both the Department of Natural Resources (DNR) and the local government try to provide the landowner with coordinated information so that the requirements are clear. A landowner must obtain a *forest practices permit* prior

to beginning any forest practice along these waters such as harvesting or road construction. DNR issues this permit, which may include review by the appropriate county or city. The landowner must also obtain a *shoreline management permit* from the city of county prior to conducting development activities within the shoreline area. The county or city issues this permit after public notice, review under the State Environmental Policy Act (SEPA), comment by agencies with jurisdiction and affected public. These permit processes provide the mechanism to coordinate requirements across agencies and to provide the landowner with clear information.

Authorities: WAC 222-30-020(3) — Forest Practices Board — Timber Harvesting
Chapter 90.58 RCW — Shoreline Management Act

Contact: Tom Mark, Department of Ecology, (360)407-7285.
Ron Schuttie, Department of Natural Resources, (360)902-1391

- c. Water Conservation and Wetlands:** The Water Resources Act of 1971 encourages irrigation districts to conserve water. The districts receive state grants and loans for this purpose. Past irrigation practices sometimes created and supported wetlands, due to seepage of water. Water conservation measures can cause these artificially created wetlands to dry up, resulting in loss of habitat.

What's Being Done: Irrigation districts that seek state grants for irrigation system improvements must first develop a comprehensive plan for their system. In preparing these plans, irrigation districts must address the effect of potential conservation measures on created wetlands and other hydrologic effects. In most cases, mitigation measures are developed and implemented if an important wetland resource is at risk.

Authorities: Chapter 43.83B RCW — Water Supply Facilities Act
Chapter 90.54 RCW — Water Resources Act of 1971

Contact: Ken Slattery, Department of Ecology, (360)407-6603

- d. Reasonable Efficiency In Use of Water:** The State Supreme Court ruled that water rights holders must achieve “reasonable efficiency” in their use of water. However, the “use it or lose it” provisions of state water law (Chapter 90.14 RCW) may inadvertently encourage inefficient use of water. Under this provision a person can have a portion of his or her water right revoked if the entire allocation is not used. The rationale underlying this interpretation is that if a holder is exercising his or her water right efficiently, they should have no need for any excess quantity. However, some people believe that they should be able to apply any water savings to another use or be able to sell it to someone else. Case law presently discourages this for irrigation.

What's Being Done: This issue is among those that might be addressed by the Legislature's Joint Select Committee on Water Right Transfers.

Authorities: Chapter 90.14 RCW — Water Rights-Registration-Waiver Relinquishment
Dept. of Ecology v. Clarence E. Grimes (121 Wash. 2d 459, 852 pg. 2d 1044 (1993))

Contact: Ken Slattery, Department of Ecology, (360)407-6603

The Growth Management Act, the State Environmental Policy Act, and the Shoreline Management Act Overlap and Can Be Duplicative: Policies adopted by local governments under the Shoreline Management Act (SMA) have sometimes been inconsistent with those adopted under the Growth Management Act (GMA) in comprehensive plans, development regulations or critical area ordinances. Where local governments have not reconciled their SMA and GMA policies it is easy to conclude that the two statutes are inconsistent.

A second problem is the potential for duplication under the State Environmental Policy Act. When policies or plans are adopted under either the SMA or the GMA, an environmental analysis under SEPA is required. In this context the land use decisions inherent in the policies or plans are the primary focus of the SEPA review. Subsequently, when a specific project is proposed, a second SEPA analysis is required. This analysis is supposed to be specific to the project at issue, but at times has had the effect of revisiting the land use decisions inherent in the SMA or GMA plan that the project is subject to. This has led some to argue for a SEPA exemption for projects that are consistent with the SMA or GMA plans and policies.

What's Being Done: As directed by Engrossed Substitute House Bill 1724, the Departments of Ecology, and Community, Trade and Economic Development are working to integrate the State Environmental Policy Act (SEPA) and the Shoreline Management Act (SMA) with the Growth Management Act (GMA).

Engrossed Substitute House Bill 1724 requires local jurisdictions to:

- integrate project permit and environmental review under the Growth Management Act (GMA) and the State Environmental Policy Act (SEPA);
- integrate shoreline planning and growth management planning;
- streamline permit and appeal processes; and
- improve opportunities for public involvement.

Policies contained in local Shoreline Master Programs are now considered elements of the local comprehensive plan adopted under the Growth Management Act. The regulations contained in local Shoreline Master Programs are now considered part of the local government's development regulations.

Authorities: Chapter 36.70A — Growth Management Act
Chapter 43.21C — State Environmental Policy Act
Chapter 90.58 — Shoreline Management Act

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Tom Mark, Department of Ecology, (360)407-7285

- f. Fire Prevention vs. Permission to Burn:** Ecology or the local air authority may allow open burning on land *adjacent to* forest lands at times when burning is prohibited on forest land, due to fire danger. These open burns sometimes escape onto forest land, where they may threaten life, property, and air quality. Open burning requirements generally do not address fire prevention and vice versa. Better integration of requirements regarding burning could balance the need to protect air quality with the need to address fire prevention.

What's Being Done: Fire districts, land managers such as Department of Natural Resources and the USDA Forest Service, air agencies, and local government have been involved in the development of outdoor burning guidance, and the delegation of responsibility. In many instances, local fire districts have taken the responsibility for issuing burning permits, along with their fire prevention job, thus alleviating conflicting messages or decisions.

Authorities: Chapter 70.94 RCW — Washington Clean Air Act
Chapter 76.04 RCW — Forest Protection Act

Contact: Mark Gray, Department of Natural Resources, (360)902-1754
Stu Clark, Department of Ecology, (360)407-6873

- g. Use of Fire in Forest Management:** RCW 76.04.167 acknowledges the natural role of fire in forest ecosystems, and the need to use fire under controlled conditions, to prevent wild fires by maintaining healthy forests and eliminating sources of fuel. At the same time, burning impairs visibility, principally in wilderness areas and national parks, and affects public health and welfare.

What's Being Done: Chapter 70.94 RCW established air emission reduction standards for silviculture burning. The standards recognized the need for prescribed fire as a silviculture and forest health tool and strike a balance between two environmental objectives. Historical forest management practices, particularly on federal lands, may increase the pressure for more prescribed burning. An association of 14 western states, public and private land managers, and EPA is studying issues and developing options to ensure balance between forest health, visibility, and public health protection.

Authorities: Chapter 70.94 RCW — Washington Clean Air Act
Chapter 76.04 RCW — Forest Protection Act

Contact: Stu Clark, Department of Ecology, (360)407-6873.
Mark Gray, Department of Natural Resources, (360)902-1754

- h. Handling Forest Debris:** Chapter 70.95 RCW assigns responsibility for solid waste handling, including permitting, to local governments. Chapter 76.04 RCW assigns responsibility for dumping mill waste and forest debris on forest lands to the Department of Natural Resources. Both agencies require permits for this activity.

Authorities: Chapter 70.95 RCW — Solid Waste Management, Reduction and Recycling Act

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- i. Aquatic Weed Control:** The use of copper compounds to control aquatic weeds in lakes may result in contaminated sediments. Highly contaminated sediments can pose a risk to human health, fish life, and the environment, and become a liability for the land owner, including the state of Washington. Ecology encourages the development of watershed plans that address the sources of nutrients that result in weed growth.

Integrated pest management that may also include mechanical and biological means (e.g., introduction of carp and sterile grass), to control aquatic weeds on lakes is also encouraged. The Department of Fish and Wildlife (WDFW) restricts the introduction of non-native fish species. The tendency is to be restrictive because carp can entirely eliminate vegetation lakes, and are very difficult to capture.

What's Being Done: Senate Bill 6666 created a committee to develop a Washington State lake health plan. One aspect of the plan will be to analyze existing federal and state legal requirements for lake management, and recommend ways to eliminate any conflicts and inconsistencies. Another aspect will be to assess and address duplicative state and local agency programs and procedures.

Senate Bill 5633 directs the Department of Fish and Wildlife to develop rules and a companion pamphlet to address projects conducted solely for removal or control of aquatic noxious weeds. As a result, WDFW is developing rules that streamline the Hydraulic Project Approval process.

In addition, The Departments of Ecology and Agriculture have streamlined the permit for routine use of Glyphosate for spartina control for the following water bodies: Willapa Bay; Grays Harbor; Straits of Juan de Fuca; North Puget Sound; South Puget Sound; and Hood Canal. Statewide control of purple loosestrife was covered in a similar manner. Ecology is also proposing amendments to its water quality standards to further streamline the process.

Authorities: Chapter 90.48 RCW — Washington Water Pollution Control Act
Chapter 70.105D RCW — Model Toxics Control Act

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- j. Water Reuse:** Diverting wastewater for reuse may compete with the need to maintain required minimum flows in some streams and rivers. For example, some surface water bodies in Eastern Washington have become dependent on effluent discharge to maintain required minimum flows.

What's Being Done: Ecology is conducting a study to determine whether water rights should be required for some or all water reuse projects. Examples include Spokane and Spokane River, and Yakima and Yakima River.

Authorities: Chapter 90.54 RCW — Washington Resources Act of 1971
Chapter 90.48 RCW — Washington Water Pollution Control Act

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Dan Wrye, Department of Ecology, (360)407-6459

- k. Low Till Farming and Use of Herbicides:** Farmers are encouraged to use low till farming practices, in order to reduce wind and water erosion, and to protect water and air quality. The use of such practices, however, may result in the increased use of herbicides, which impacts water quality.

What's Being Done: The US Dept. of Agriculture, Washington State University, EPA, Ecology, and the State Department of Agriculture are conducting a study on windblown dust and soil erosion conditions in the Columbia Plateau. They hope to establish best management practices which minimize soil erosion, protect top soil, air quality, and water quality.

Authorities: Chapter 90.48 RCW — Washington Water Pollution Control Act
Chapter 70.94 RCW — Washington Clean Air Act

Contact: Stu Clark, Department of Ecology, (360)407-6873

3. The Permit Assistance Center found no clear statutory conflicts.

The Center found no examples of situations where compliance with one statute makes it impossible to comply with another statute. Laws are generally written to provide agencies with sufficient flexibility to avoid or minimize conflicts and inconsistencies. However, lack of coordination and inadequate information sharing among multiple permitting agencies, lack of permit agency awareness of other requirements, and poor understanding of requirements by applicants can all contribute to the perception that laws conflict with, or are inconsistent with, each other.

- a. Field Burning vs. Pesticide Use:** Air quality agencies recommend less burning of agricultural field waste, in order to protect air quality. The water quality agencies recommend reducing use of pesticides or herbicides to protect and enhance water quality. In some cases use of pesticides or herbicides may be an alternative to burning field waste.

What's Being Done: The 1991 legislature, through Chapter 70.94 RCW, created the Agricultural Burning and Research Practices Task Force, which consists of representatives of agriculture, academia, public health, and air quality agencies. The task force establishes best management practices for crops when some type of burning has occurred historically. The task force considers trade-offs between air and water quality, the purpose for the burning, the feasibility of non-burning

alternatives, and other pertinent information. Burning for disease control that might otherwise require herbicide or pesticide use is frequently allowed by the task force. As best management practices are developed for more crops, the potential for conflict between environmental objectives is diminished.

Authorities: Chapter 70.94 RCW — Washington Clean Air Act
Chapter 90.44 RCW — Regulation of Public Ground Waters

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- b. Air Quality Requirements and Transportation Projects:** The Growth Management Act requires transportation services for new development to be provided concurrent with the development. Federal and state air quality laws require transportation plans and projects to conform with air quality goals; that is not to make air quality problems worse. These two laws can create competing priorities; one to expand roads and one to limit expansion to protect air quality.

What's Being Done: The Washington State Department of Transportation (WSDOT) and Ecology jointly developed conformity rules to meet federal air quality requirements. Growth management and State Environmental Policy Act concerns were incorporated into the conformity rule to ensure efficiency and prevent duplicative administrative processes. WSDOT and Ecology developed, in concert with local government and transportation planning agencies, a guidebook for conformity that includes how to integrate Growth Management Act and air quality needs. An ad hoc work group of stakeholders continually reviews and evaluates concerns to identify and resolve issues.

Authorities: Chapter 70.94 RCW — Washington Clean Air Act
Chapter 36.70A RCW — Growth Management Act

Contact: Stu Clark, Department of Ecology, (360)407-6873

- c. Water Management:** The potential exists for conflict between laws to protect water quality, and to grant water rights for beneficial uses. An example of this occurred in the Chehalis River system. The water flow in the system fluctuates significantly from wet to dry weather seasons, affecting human, commercial, and fisheries uses. The river has a significant number of permits and water rights allowing withdrawal that threatens these uses; if all the assigned rights were used, there would be little or no water left flowing.

The challenges with this situation became apparent when an Energy Facility Site Evaluation Council site certification was proposed by a private power investor. The proposal was for a combustion turbine power plant that would use river water and ground water sources to power and cool the plant. Eventual public outcry over impacts to groundwater and the water supply to current permit holders redirected the proponent to focus on reclaimed water from the Chehalis treatment plant.

What's Being Done: Ecology conducted two studies in the river basin (a Total Maximum Daily Load, or "TMDL", study, and a watershed assessment to determine

the status of flow, permits, water rights, and known aquifer locations). They found significant problems with water quality and quantity. Public meetings were held regarding both studies, information was presented from both assessments, giving the community the benefit of both perspectives and the problems they could expect with further use of the system.

While acknowledging the strong community support for the power plant, Ecology noted that the loss of water would be a further impact to the river system. The internal agency coordination allowed these two competing priorities to be addressed in a manner that will satisfy both the needs to protect water quality, address economic development, and to conserve water quantity. Ecology is still working with the company to develop a mutually agreeable solution

The Chehalis Basin Local Action Team has been formed, to work with local governments and interest groups to identify priority issues, develop partnerships, and implement solutions. The Team will operate at the community level to identify local environmental priorities and develop innovative solutions.

Ecology is now using a watershed approach to wastewater permitting statewide. This approach puts all wastewater discharge facilities within a single watershed on the same five-year permit cycle. It allows agencies to look at all the potential impacts from cumulative discharges at the same time and to resolve potential conflicts.

Authorities: Chapter 90.48 RCW — Washington Clean Water Act
Chapter 90.54 RCW — Water Resources Act of 1971

Contact: Dan Wrye, Department of Ecology, (360)407-6459
Don Davidson, Department of Ecology, (360)407-0275

- d. Stock Watering:** Ecology's water quality program has encouraged farmers to fence cattle out of streams. At the same time, a certificate of water right was required to divert water from a stream to a stock-watering area.

What's Being Done: A policy is in place that allows stockwater to be conveyed away from streams in small amounts for consumption by livestock without triggering the water rights permitting process. It allows for a change from instream stock watering to diversionary stock watering without a certificate of water right.

Authorities: Chapter 90.48 RCW — Washington Clean Water Act
Chapter 90.14 RCW — Water Rights Registration — Waive and Relinquishment, Etc.

Contact: Ken Slattery, Department of Ecology, (360)407-6603
Dan Wrye, Department of Ecology, (360)407-6459

4. The Permit Assistance Center identified a number of areas where agencies have initiated efforts to improve coordination and communication.

Following are some examples of initiatives underway to improve coordination and communication:

- a. **The Joint Aquatic Resource Permit Application:** To respond to the need to clarify and simplify the permitting process for projects involving water, several agencies developed The Joint Aquatic Resource Permit Application (JARPA). JARPA consolidates seven aquatic resource permit applications forms from federal, state and local agencies into a single form. Early and meaningful coordination among the Army Corps Of Engineers, Ecology, Fish and Wildlife, Tribes, and local governments is a key to smooth permit processing for projects involving water and/or wetlands.

Permit applications consolidated under JARPA include:

- Section 404 permit of the Clean Water Act, and Sections 9 & 10 permit of the Rivers and Harbors Act US Army Corps of Engineers
US Coast Guard
- Hydraulic Project Approvals WA State Dept. of Fish and Wildlife
- Water Quality Certifications WA State Dept. of Ecology
- Short Term Modifications of Water Quality Standards WA State Dept. of Ecology
- Aquatic Use Authorization WA State Dept. of Natural Resources
- Shoreline Management Permits Local Governments
- Flood Plain Development Permits Local Governments

Use of the JARPA helps reduce paperwork and processing time, provide consistent information to agencies, and reduce the need for permit revisions.

Contact: Bonnie Shorin, Department of Ecology, (360)407-7297

- b. Emergency Permitting:** The Departments of Ecology, Fish and Wildlife and the cities and counties are working to improve an existing Memorandum Of Agreement that clarifies and streamlines permitting requirements during times of disaster. Streamlining efforts include verbal permit approval when necessary, a shortened review time, and regional approvals for post-emergency follow up permits.

Contact: Bonnie Shorin, Department of Ecology, (360)407-7297
Sandra Manning, Department of Ecology, (360)407-6912

- c. Department of Transportation Projects:** The Departments of Ecology, Fish and Wildlife, and the Army Corps of Engineers are working to streamline permits for Department of Transportation projects that are standard and common. A general Hydraulic Project Approval/Water Quality Short Term Modification for bridge and other maintenance activities (debris removal, cleaning, painting, resurfacing, etc.) will be included. The process for beaver dam removal projects has also been streamlined, through receipt of a 5-year approval.

Contact: Sandra Manning, Department of Ecology, (360)407-6912
Sandy Stephens, Department of Transportation, (360)705-7304

- d. Wastewater Outfall Siting:** The Departments of Ecology, Natural Resources, Fish and Wildlife, and Health have developed an interagency outfall siting agreement to streamline and coordinate outfall siting projects in marine waters

Contact: Dan Wrye, Department of Ecology, (360)407-6459

5. Agencies have begun to make the types of resource investments that will be required to integrate multiple agency efforts under multiple statutory directives.

Agencies are increasing their efforts to improve information integration, staff training, and coordination among diverse programs. They have shifted their focus from managing a single resource or media, (e.g., air, water, or land) to an approach which focuses on whole projects or facilities. Community-based ecosystem management provides an opportunity for staff from diverse programs to work with communities to prioritize and systematically resolve environmental problems. Agencies need to continue to focus on the following areas:

- a. Continue to Strengthen Interagency Coordination:** By working together, permitting agencies achieve greater coordination, integration and access to information among single-purpose environmental programs. To ensure smooth permitting processes, local, state, and federal governmental agencies need access to creative means of working with applicants.

Strict permit process directives sometimes restrict opportunities to coordinate permitting activities. When applicants submit permit applications to different

agencies at different stages in project development, it can inhibit cross-agency coordination. Better permit decisions can occur when local, state, and federal agencies use flexibility to synchronize permitting processes and coordinate requirements.

- b. Improve Information Integration and Access:** In 1996, Ecology initiated efforts to develop an information management system that will bring together data from various environmental protection activities, such as water quality, air quality, and hazardous waste management. When completed, the integrated system will facilitate more coordinated decision-making and will give the public easier access to environmental information. As agencies move toward multi-media and geographic approaches, it becomes more important to integrate air, water, and land data.
- c. Provide Improved Technical Assistance:** Agencies continue to provide non-enforcement technical assistance to businesses and individuals statewide.
- **The services of technical specialists** are helping business and individuals save money by reducing hazardous waste generation, air emissions, and wastewater discharges; discovering pollution prevention and recycling opportunities; and finding alternatives that result in the desired outcome with less environmental impact.
 - **Single-industry campaigns**, such as Ecology's "Snapshots" and "Shopsweeps" campaigns are an efficient and effective method of delivering assistance on air, water, and waste issues. "Snapshots" focused on multi-media-technical assistance to lithographic printers, screen printers, and photo processors across the state. "Shop Sweeps" provided multi-media technical assistance to auto repair shops.
- d. Multi-Media Management Programs** consider emissions to air, water, and land. It is possible to reduce redundant plans and reporting requirements, reduce the possibility of shifting pollutants from one pipe or medium to another for disposal, use flexibility to determine the best waste reduction strategy for the project, and to use prevention techniques to reduce the need for or size of pollution control or treatment equipment. The Industrial Section in the Department of Ecology manages all environmental permits for pulp and paper mills, aluminum smelters, and oil refineries. This is an important coordination and streamlining function for those industries.

Engrossed Substitute House Bill 1743 (1994 Legislative Session) directed the Department of Ecology to study the use of integrated approaches for siting and pre-construction permitting, development of operating permits and inspections, and technical assistance. A report to the legislature will be issued in January 1997; preliminary findings indicate that pre-application meetings and coordination efforts increase certainty and reduce application preparation time. Additional time spent early in the proposal is offset by better applications. Engineering reports submitted as part of water quality and air quality permits present opportunities to incorporate pollution prevention measures.

- e. **Reduce Administrative Burden:** Continue to work with business to reduce administrative burdens and provide flexibility in achieving environmental standards: Look for opportunities to consolidate reporting, planning requirements, and permit applications.
- f. **Streamline Permit Processes:** Agencies continue to identify processes that need to be streamlined and improved, and are working together to make those improvements. An example is the work to improve the Joint Aquatic Resource Permit Application process, and to make it useable for additional permits.
- g. **Community-Based Ecosystem Management:** Because problems facing water, land, and air are interrelated, Ecology has formed “Local Action Teams” for the Snohomish, Chehalis, and Yakima river basins. Full-time team leaders will coordinate staff from air, water, and waste programs to work with local communities to decide environmental priorities and implement action in their areas.

Additional geographic-based initiatives include the Dungeness/Quilcene Watershed Project, the Nooksack River Watershed Initiative, the Clark-Skamania Local Action Team, the Methow River Watershed Project, the Nisqually River Watershed Council, and the Willapa Bay project.

Conclusions

There are a number of environmental laws and regulations that have been developed over the last 25 years. They tend to be single media in focus and are implemented by several different agencies and several different levels of government. A recent trend toward more prescriptive statutes tends to limit flexibility and increase the potential for conflicts and inconsistencies.

While this report found no clear examples of direct conflict or inconsistency in statutes, there are many opportunities for confusion and frustration when projects impact air, water, and land resources and require permits from more than one agency.

Historically, we have looked at issues separately (e.g., a permit for wastewater discharge, a permit for air emissions, a permit to protect fish habitat, a permit to protect wetlands, and a permit to manage potential interference with navigation, to name a few). Today, agencies are beginning to implement approaches that focus on the whole project or facility. With these approaches, it is typical for agencies to meet with the project proponent prior to the formal application submittal. These meetings are designed to clarify regulatory requirements and to address competing needs. The proponent gains a clearer understanding of what he/she must do to protect the environment and to help ensure a smooth permit process.

Experience has shown that upfront communication and coordination are time intensive. However, project proponents and agency staff generally believe that time invested is well spent. Misunderstanding and delays are avoided, information can be collected once instead of several times for different agencies and different permits. The best solutions to permit process problems are found when project applicants and agencies work together and use flexibility, when available, to synchronize permitting processes and coordinate requirements.

The Center found that agencies have begun to invest in activities that will strengthen their abilities to avoid much of the historic conflict that has arisen in permitting situations. There are also opportunities for “beyond compliance” partnerships between government environmental permitting agencies and private business. Many states, including Washington, are looking at ways to streamline permit decision-making and offer regulatory flexibility in exchange for environmental performance beyond existing standards and requirements.

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Appendix A

Chapter 90.60 RCW Environmental Permit Assistance

Sections

90.60.010	Findings and declaration.
90.60.020	Definitions.
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90.60.040	Designation of coordinating permit agency--Process.
90.60.050	Project facilitator.
90.60.060	Coordinating permit agency--Designation--Duties.
90.60.070	Coordinating permit agency--Meeting with permit applicant and participating permit agencies.
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90.60.150	Jurisdiction of the energy facility site evaluation council not affected.
90.60.800	Report to legislature.
90.60.900	Finding--Severability--Part headings and table of contents not law--1995 c 347.

NOTES: Reviser's note--Sunset Act application: The permit assistance center is subject to review, termination, and possible extension under chapter 43.131 RCW, the Sunset Act. See RCW 43.131.387. RCW 90.60.010 through 90.60.150 and 90.60.800 are scheduled for future repeal under RCW 43.131.388.

RCW 90.60.010 Findings and declaration. The legislature hereby finds and declares:

(1) Washington's environmental protection programs have established strict standards to reduce pollution and protect the public health and safety and the environment. The single-purpose programs instituted to achieve these standards have been successful in many respects, and have produced significant gains in protecting Washington's environment in the face of substantial population growth.

(2) Continued progress to achieve the environmental standards in the face of continued population growth will require greater coordination between the single-purpose environmental programs and more efficient operation of these programs overall. Pollution must be prevented and controlled and not simply transferred to another media or another place. This goal can only be achieved by maintaining the current environmental protection standards and by greater integration of the existing programs.

(3) As the number of environmental laws and regulations have grown in Washington, so have the number of permits required of business and government. This regulatory burden has significantly added to the cost and time needed to obtain essential permits in Washington. The increasing number of

individual permits and permit authorities has generated the continuing potential for conflict, overlap, and duplication between the various state, local, and federal permits.

(4) The purpose of this chapter is to institute new, efficient procedures that will assist businesses and public agencies in complying with the environmental quality laws in an expedited fashion, without reducing protection of public health and safety and the environment.

(5) Those procedures need to provide a permit process that promotes effective dialogue and ensures ease in the transfer and clarification of technical information, while preventing duplication. It is necessary that the procedures establish a process for preliminary and ongoing meetings between the applicant, the coordinating permit agency, and the participating permit agencies, but do not preclude the applicant or participating permit agencies from individually coordinating with each other.

(6) It is necessary, to the maximum extent practicable, that the procedures established in this chapter ensure that the coordinated permit agency process and applicable permit requirements and criteria are integrated and run concurrently, rather than consecutively.

(7) It is necessary to provide a reliable and consolidated source of information concerning federal, state, and local environmental and land use laws and procedures that apply to any given proposal.

(8) It is the intent of this chapter to provide an optional process by which a project proponent may obtain active coordination of all applicable regulatory and land-use permitting procedures. This process is not to replace individual laws, or diminish the substantive decision-making role of individual jurisdictions. Rather it is to provide predictability, administrative consolidation, and, where possible, consolidation of appeal processes.

(9) It is also the intent of this chapter to provide consolidated, effective, and easier opportunities for members of the public to receive information and present their views about proposed projects. [1995 c 347 § 601.]

RCW 90.60.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Center" means the permit assistance center established in the commission [department] by RCW 90.60.030.

(2) "Coordinating permit agency" means the permit agency that has the greatest overall jurisdiction over a project.

(3) "Department" means the department of ecology.

(4) "Participating permit agency" means a permit agency, other than the coordinating permit agency, that is responsible for the issuance of a permit for a project.

(5) "Permit" means any license, certificate, registration, permit, or other form of authorization required by a permit agency to engage in a particular activity.

(6) "Permit agency" means:

(a) The department of ecology, an air pollution control authority, the department of natural resources, the department of fish and wildlife, and the department of health; and

(b) Any other state or federal agency or county, city, or town that participates at the request of the permit applicant and upon the agency's agreement to be subject to this chapter.

(7) "Project" means an activity, the conduct of which requires permits from one or more permit agencies. [1995 c 347 § 602.]

RCW 90.60.030 Permit assistance center--Duties. The permit assistance center is established within the department. The center shall:

(1) Publish and keep current one or more handbooks containing lists and explanations of all permit laws. The center shall coordinate with the business assistance center in providing and maintaining this information to applicants and others. To the extent possible, the handbook shall include

relevant federal and tribal laws. A state agency or local government shall provide a reasonable number of copies of application forms, statutes, ordinances, rules, handbooks, and other informational material requested by the center and shall otherwise fully cooperate with the center. The center shall seek the cooperation of relevant federal agencies and tribal governments;

(2) Establish, and make known, a point of contact for distribution of the handbook and advice to the public as to its interpretation in any given case;

(3) Work closely and cooperatively with the business license center and the business assistance center in providing efficient and nonduplicative service to the public;

(4) Seek the assignment of employees from the permit agencies listed under RCW 90.60.020(6)(a) to serve on a rotating basis in staffing the center; and

(5) Provide an annual report to the legislature on potential conflicts and perceived inconsistencies among existing statutes. The first report shall be submitted to the appropriate standing committees of the house of representatives and senate by December 1, 1996. [1995 c 347 § 603.]

RCW 90.60.040 Designation of coordinating permit agency--Process. (1) Not later than January 1, 1996, the center shall establish by rule an administrative process for the designation of a coordinating permit agency for a project.

(2) The administrative process shall consist of the establishment of guidelines for designating the coordinating permit agency for a project. If a permit agency is the lead agency for purposes of chapter 43.21C RCW, that permit agency shall be the coordinating permit agency. In other cases, the guidelines shall require that at least the following factors be considered in determining which permit agency has the greatest overall jurisdiction over the project:

(a) The types of facilities or activities that make up the project;

(b) The types of public health and safety and environmental concerns that should be considered in issuing permits for the project;

(c) The environmental medium that may be affected by the project, the extent of those potential effects, and the environmental protection measures that may be taken to prevent the occurrence of, or to mitigate, those potential effects;

(d) The regulatory activity that is of greatest importance in preventing or mitigating the effects that the project may have on public health and safety or the environment; and

(e) The statutory and regulatory requirements that apply to the project and the complexity of those requirements. [1995 c 347 § 604.]

RCW 90.60.050 Project facilitator. Upon the request of a project applicant, the center shall appoint a project facilitator to assist the applicant in determining which regulatory requirements, processes, and permits may be required for development and operation of the proposed project. The project facilitator shall provide the information to the applicant and explain the options available to the applicant in obtaining the required permits. If the applicant requests, the center shall designate a coordinating permit agency as provided in RCW 90.60.060. [1995 c 347 § 605.]

RCW 90.60.060 Coordinating permit agency--Designation--Duties. (1) A permit applicant who requests the designation of a coordinating permit agency shall provide the center with a description of the project, a preliminary list of the permits that the project may require, the identity of any public agency that has been designated the lead agency for the project pursuant to chapter 43.21C RCW, and the identity of the participating permit agencies. The center may request any information from the permit applicant that is necessary to make the designation under this section, and may convene a scoping meeting of the likely coordinating permit agency and participating permit agencies in order to make that designation.

(2) The coordinating permit agency shall serve as the main point of contact for the permit applicant with regard to the coordinated permit process for the project and shall manage the procedural aspects of that processing consistent with existing laws governing the coordinating permit agency and participating permit agencies, and with the procedures agreed to by those agencies in accordance with RCW 90.60.070. In carrying out these responsibilities, the coordinating permit agency shall ensure that the permit applicant has all the information needed to apply for all the component permits that are incorporated in the coordinated permit process for the project, coordinate the review of those permits by the respective participating permit agencies, ensure that timely permit decisions are made by the participating permit agencies, and assist in resolving any conflict or inconsistency among the permit requirements and conditions that are to be imposed by the participating permit agencies with regard to the project.

The coordinating permit agency shall keep in contact with the applicant as well as other permit agencies in order to assure that the process is progressing as scheduled. The coordinating permit agency shall also make contact, at least once, with any local jurisdiction that is responsible for issuing a permit for the project if the local jurisdiction has not agreed to be a participating permit agency as provided in RCW 90.60.020(6).

(3) This chapter shall not be construed to limit or abridge the powers and duties granted to a participating permit agency under the law that authorizes or requires the agency to issue a permit for a project. Each participating permit agency shall retain its authority to make all decisions on all nonprocedural matters with regard to the respective component permit that is within its scope of its responsibility, including, but not limited to, the determination of permit application completeness, permit approval or approval with conditions, or permit denial. The coordinating permit agency may not substitute its judgment for that of a participating permit agency on any such nonprocedural matters. [1995 c 347 § 606.]

RCW 90.60.070 Coordinating permit agency--Meeting with permit applicant and participating permit agencies. (1) Within twenty-one days of the date that the coordinating permit agency is designated, it shall convene a meeting with the permit applicant for the project and the participating permit agencies. The meeting agenda shall include at least all of the following matters:

(a) A determination of the permits that are required for the project;

(b) A review of the permit application forms and other application requirements of the agencies that are participating in the coordinated permit process;

(c)(i) A determination of the timelines that will be used by the coordinating permit agency and each participating permit agency to make permit decisions, including the time periods required to determine if the permit applications are complete, to review the application or applications, and to process the component permits. In the development of this timeline, full attention shall be given to achieving the maximum efficiencies possible through concurrent studies, consolidated applications, hearings, and comment periods. Except as provided in (c)(ii) of this subsection, the timelines established under this subsection, with the assent of the coordinating permit agency and each participating permit agency, shall commit the coordinating permit agency and each participating permit agency to act on the component permit within time periods that are different than those required by other applicable provisions of law.

(ii) An accelerated time period for the consideration of a permit application may not be set if that accelerated time period would be inconsistent with, or in conflict with, any time period or series of time periods set by statute for that consideration, or with any statute, rule, or regulation, or adopted state policy, standard, or guideline that requires any of the following:

(A) Other agencies, interested persons, federally recognized Indian tribes, or the public to be given adequate notice of the application;

(B) Other agencies to be given a role in, or be allowed to participate in, the decision to approve or disapprove the application; or

(C) Interested persons or the public to be provided the opportunity to challenge, comment on, or otherwise voice their concerns regarding the application;

(d) The scheduling of any public hearings that are required to issue permits for the project and a determination of the feasibility of coordinating or consolidating any of those required public hearings; and

(e) A discussion of fee arrangements for the coordinated permit process, including an estimate of the costs allowed under RCW 90.60.100 and the billing schedule.

(2) Each agency shall send at least one representative qualified to make decisions concerning the applicability and timelines associated with all permits administered by that jurisdiction. At the request of the applicant, the coordinating permit agency shall notify any relevant federal agency or federally recognized tribe of the date of the meeting and invite that agency's participation in the process.

(3) If a permit agency or the applicant foresees, at any time, that it will be unable to meet its obligations under the agreement, it shall notify the coordinating permit agency of the problem. The coordinating permit agency shall notify the participating permit agencies and the applicant and, upon agreement of all parties, adjust the schedule, or, if necessary, schedule another work plan meeting.

(4) The coordinating permit agency may request any information from the applicant that is necessary to comply with its obligations under this section, consistent with the timelines set pursuant to this section.

(5) A summary of the decisions made under this section shall be made available for public review upon the filing of the coordinated permit process application or permit applications. [1995 c 347 § 607.]

RCW 90.60.080 Withdrawal from coordinated permit process. (1) The permit applicant may withdraw from the coordinated permit process by submitting to the coordinating permit agency a written request that the process be terminated. Upon receipt of the request, the coordinating permit agency shall notify the center and each participating permit agency that a coordinated permit process is no longer applicable to the project.

(2) The permit applicant may submit a written request to the coordinating permit agency that the permit applicant wishes a participating permit agency to withdraw from participation on the basis of a reasonable belief that the issuance of the coordinated permit process would be accelerated if the participating permit agency withdraws. In that event, the participating permit agency shall withdraw from participation if the coordinating permit agency approves the request. [1995 c 347 § 608.]

RCW 90.60.090 Coordinating permit agency to oversee participating permit agencies. The coordinating permit agency shall ensure that the participating permit agencies make all the permit decisions that are necessary for the incorporation of the permits into the coordinated permit process and act on the component permits within the time periods established pursuant to RCW 90.60.070. [1995 c 347 § 609.]

RCW 90.60.100 Recovery of costs by coordinating permit agency. (1) The coordinating permit agency may enter into a written agreement with the applicant to recover from the applicant the reasonable costs incurred by the coordinating permit agency in carrying out the requirements of this chapter.

(2) The coordinating permit agency may recover only the costs of performing those coordinated permit services and shall be negotiated with the permit applicant in the meeting required pursuant to RCW 90.60.070. The billing process shall provide for accurate time and cost accounting and may include a billing cycle that provides for progress payments. [1995 c 347 § 610.]

RCW 90.60.110 Review of agency action--Petition. A petition by the permit applicant for review of an agency action in issuing, denying, or amending a permit, or any portion of a coordinating permit agency permit, shall be submitted by the permit applicant to the coordinating permit agency or the participating permit agency having jurisdiction over that permit and shall be processed in accordance with the procedures of that permit agency. Within thirty days of receiving the petition, the coordinating permit agency shall notify the other environmental agencies participating in the original coordinated permit process. [1995 c 347 § 611.]

RCW 90.60.120 Amendments or modifications--Procedure. If an applicant petitions for a significant amendment or modification to a coordinated permit process application or any of its component permit applications, the coordinating permit agency shall reconvene a meeting of the participating permit agencies, conducted in accordance with RCW 90.60.070. [1995 c 347 § 612.]

RCW 90.60.130 Failure to provide information--Effect. If an applicant fails to provide information required for the processing of the component permit applications for a coordinated permit process or for the designation of a coordinating permit agency, the time requirements of this chapter shall be held in abeyance until such time as the information is provided. [1995 c 347 § 613.]

RCW 90.60.140 Appeals. (1) The center, by rule, shall establish an expedited appeals process by which a petitioner or applicant may appeal any failure by a permit agency to take timely action on the issuance or denial of a permit in accordance with the time limits established under this chapter.

2) If the center finds that the time limits under appeal have been violated without good cause, it shall establish a date certain by which the permit agency shall act on the permit application with adequate provision for the requirements of RCW 90.60.070(1)(c)(ii) (A) through (C), and provide for the full reimbursement of any filing or permit processing fees paid by the applicant to the permit agency for the permit application under appeal. [1995 c 347 § 614.]

RCW 90.60.150 Jurisdiction of the energy facility site evaluation council not affected. Nothing in this chapter affects the jurisdiction of the energy facility site evaluation council as provided in chapter 80.50 RCW. [1995 c 347 § 615.]

RCW 90.60.800 Report to legislature. By December 1, 1997, the center shall submit a report to the appropriate committees of both houses of the legislature detailing the following information:

(1) The number of instances in which a coordinating permit agency has been requested and used, and the disposition of those cases;

(2) The amount of time elapsed between an initial request by a permit applicant for a coordinated permit process and the ultimate approval or disapproval of the permits included in the process; and

(3) The number of instances in which the expedited appeals process was requested, and the disposition of those cases. [1995 c 347 § 616.]

RCW 90.60.900 Finding--Severability--Part headings and table of contents not law--1995 c 347. See notes following RCW 36.70A.470.

Appendix B

Permit Handbook

Appendix C

Washington's Coordinated Permit Process (CPP)

Washington's Coordinated Permit Process (CPP) is designed to achieve more coordinated and synchronized permit decision-making, and to consolidate and streamline permitting procedures. Through such activities as (a) coordinated and consolidated hearings, comment periods, and appeals processes, (b) concurrent studies, (c) consolidation of administrative processes, and (d) critical path permit processing, permit decision-making can be coordinated, and therefore expedited.

The CPP is an optional process. The CPP decision-making process differs from "regular" permit decision-making in that greater attention is paid to coordinated and synchronized permit decision-making, and to consolidated and streamlined permitting procedure. This is accomplished through a "coordinating permit agency" and a "master permit decision-making timeline." The coordinating permit agency is designated at the outset of the process by the Permit Assistance Center.

The coordinating permit agency serves as the applicant's main point of contact through the duration of the CPP. The coordinating permit agency is responsible for developing the master permit decision-making timeline, and managing and coordinating the procedural aspects of the overall permitting process.

The coordinating permit agency is generally either the Washington Department of Ecology, Fish and Wildlife, Health, or Natural Resources, or one of the state's local air pollution control authorities. Under certain circumstances, the coordinating permit agency may instead be any local, state, or federal permitting agency. The cost of serving as the coordinating permit agency are negotiable and recoverable through applicant fees.

To date, only the Battle Mountain Gold Company (BMGC) has formally opted to use the new CPP. It has done so for its proposed Crown Jewel Gold Mine in Okanogan County, Washington.

BMGC invoked the process in late December 1995, and the Permit Assistance Center designated the Department of Ecology as coordinating permit agency for the BMGC - CPP. The parties involved in the BMGC - CPP are the Washington Departments of Ecology, Health, Fish and Wildlife, and Natural Resources, and the Battle Mountain Gold Company. All parties committed to a master permit decision-making timeline in April 1996 and are presently moving forward with their respective responsibilities per that timeline.

Feedback from participants in the BMGC - CPP (i.e., applicant and agencies alike) has to date been positive.

For more information about Washington's CPP, or to request copies of any of the CPP materials identified below, please contact:

Scott Boettcher, Permit Assistance Center
Washington Department of Ecology
Box 47600

360/407-7564 (tel.)
360/407-6904 (fax.)
sboe461@ecy.wa.gov (e-mail)

Olympia, WA 98504-7600

CPP Materials

- ◆ RCW 90.60.140 - .140 — State Statute for Washington’s Coordinated Permit Process.
- ◆ “Coordinated Permit Process Scheduling Agreement — Battle Mountain Gold Company Master Permit Decision-Making Timeline,” April 9, 1996.
- ◆ Coordinated Permit Process Information Sheet.

Appendix D

Work In Or Near Water

Federal Laws/Permits

Law	Implementation	Jurisdiction	Application to Wetlands	Agency
Clean Water Act Section 404	Permit required to place dredge or fill materials, including related draining, flooding, and excavation	Waters of the United States	Includes all wetlands, with some exceptions	US Army Corps of Engineers/Environmental Protection Agency
Clean Water Act Section 401	Project must meet state water quality standards to receive federal permit.	Federal permits affecting waters of the US, including wetlands	All wetlands that may be affected by a federally permitted activity	Washington Department of Ecology
Rivers and Harbors Act Section 10	Permit Required for all construction activity	Navigable water to the mean high water mark of tidal waters and the ordinary high water mark of fresh water	Wetlands within the limits of "navigable waters"	US Army Corps of Engineers
Coastal Zone Management Act	Notice of consistency with state coastal zone management plan condition of federal action.	Applies to Washington's 15 coastal counties	Wetlands within the 15 coastal counties of Washington	Washington Department of Ecology
National Environmental Policy Act	Requires disclosure of potential impacts of with proposed actions	All federal actions	All wetlands	Varies - federal agency issuing permit

State Laws/Permits

Law	Implementation	Jurisdiction	Application to Wetlands	Agency
Growth Management Act	Consistency with local comp. plans and dev. regulations. Various permits may be required.	Cities and counties	Requires protection of all wetlands designated as "critical areas".	Local jurisdiction/ WA Dept. of Comm., Trade and Economic Dev.
Shoreline Management Act	Permits required to ensure that proposed activity complies with local shoreline master plan and the Shoreline Management Act	Shorelines of the state, including streams, lakes land landward area 200 feet from ordinary high water mark or floodway; wetlands, river deltas, certain floodplains.	All land within 200 feet of the ordinary high water mark of a state shoreline. May include the entirety of an associated wetland and/or floodplain.	Local jurisdiction/ WA Department of Ecology
Water Pollution Control Act	Permits, orders, certifications of compliance with water quality standards	Any pollution of waters of the state	All waters of the state including wetlands	Washington State Department of Ecology
Hydraulic Code	Hydraulic Project Approval	Activities affecting waters of the state	Includes wetlands that are important to fish life	WA Dept. of Fish and Wildlife
Forest Practices Act	Permit Required for tree harvest	State-owned and private timberlands	Restricts harvesting in and around wetlands	WA Dept. of Natural Resources

Local Laws and Permits

Law	Implementation	Jurisdiction	Application to Wetlands	Implementing Agency
Local Laws	Consist w/ comp plans, ordinances, shoreline master program. Various permits may be required.	As defined by local plans, ordinances, and regulations	May identify specific wetlands and performance standards	Local jurisdiction

Primary Federal and State Laws that Apply to Wetlands

If the Project is Located.	Section 404 Permit	Section 401 Certification	Shoreline Management Permit	Hydraulic Project Approval
Adjacent to marine waters	Individual permit required	Required	Required	Required
Adjacent to stream over 5 cfs	Individual Permit required	Required	Required	Required Yes
Isolated wetland, <20 acres	Individual permit if impact is 2 acres. If <2 acres, Nationwide 26 may apply.	If individual permit, or NWP for impact > 1 acre, Yes	Not Required	Maybe
Isolated wetland <1 acre	Not Required	Not Required	Not Required	Not Required (unless it supports fish)
Adjacent to stream >5cfs	Individual permit required	Required	Required	Required
Adjacent to stream <5 cfs	If impact is <2 acres, otherwise NWP 26 may apply	If individual permit or NWP for impact >1 acre, Yes	Not Required	Required
< 1 acre impact Documented habitat for state listed endangered, threatened or sensitive animal species, and has an adverse impact on the species	Individual permit required	Not Required	Not Required	Not Required

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¹ Source: *Wetland Regulations Guidebook*, WA State Department of Ecology; Publication #88-5

Work in or Near Water

Working in or near water can require several permits from local, state and federal agencies.

Activity	Permit Name	Agency
Locating a structure, excavating, or discharging dredged or fill materials in waters of the state.	National Environmental Policy Act Review (NEPA)	Army Corps of Engineers
Work that will use, divert, obstruct or change the natural flow or bed of any fresh or salt water of the state.	Hydraulic Project Approval (HPA)	WA State Dept. Fish and Wildlife
A temporary exceedance of water quality criteria established by WAC 173-201A for in-water work, e.g., changes in turbidity and pH.	State Water Quality Standards Modification	Ecology
Applying for a federal permit to discharge dredge or fill material into water or wetlands, or excavation in water or wetlands.	State 401 Certification and State Coastal Zone Consistency Certification	Ecology
Using state owned aquatic lands, including tidelands, shorelands, and beds of navigable waters.	Aquatic Use Authorization (Aquatic Lease)	WA State Department of Natural Resources
An NPDES construction permit is required only if the project disturbs more than 5 acres at one time.	State NPDES Permit	Ecology
Wastewater discharges, including outfall pipes, within waters of the state	NPDES Permit	Ecology
Discharge or excavation of dredged or fill material in waters of the United States, including wetlands.	Section 404 Permit	US Army Corps of Engineers
Any work in or affecting navigable waters of the United States (e.g., floats, piers, docks, etc.)	Section 10 Permit	US Army Corps of Engineers
Constructing buildings or structures	Building Permit	City or county
Construction in the floodplain in an area participating in the National Flood Insurance Program	Floodplain Development Permit	City or County
Construction valued at \$2,500 or more on the water or shoreline area	Shoreline Management Permit	City or County
Timber harvest or road work with a riparian management zone or riparian leave tree areas.	Forest Practices Permit	Dept. of Natural Resources

Appendix E

Permit Assistance Center Partnership Plan

Purpose

The purpose of the Permit Assistance Center (PAC) Partnership Committee is to ensure that permit agencies work together to provide more effective and coordinated permit processes to meet the intent of Chapter 90.60 RCW. This law was developed to provide:

- Greater coordination and integration among single-purpose environmental programs and more efficient operation of these programs;
- Effective communication among applicants, agencies, and the public; and
- A reliable and consolidated source of information concerning federal, state, and local environmental and land use laws that apply to a given proposal.

Chapter 90.60 RCW directs Ecology to seek staffing of the Permit Assistance Center by the other agencies, and requires state and other agencies to provide the Center with necessary information and to otherwise fully cooperate with the Center. The PAC Partnership Committee is designed to meet these requirements and identify different ways that all partner agencies can contribute to the efforts of the PAC.

Function

The PAC Partnership Committee is a peer agency group, assembled to provide support, guidance, and leadership for PAC operations. The Committee will coordinate their activities with other regulatory reform efforts, including those of the Land Use Study Commission.

Operation

- ❖ Meet Quarterly, or as needed.
- ❖ Rotate responsibility for facilitating Partnership Committee meetings

Members

- ❖ Washington State Departments of Fish and Wildlife (Jane Banyard), Health (Kelly Hjelm), Natural Resources (Dave Deitzman), and Ecology (Kari Rokstad)

❖ Washington State's Local Air Pollution Control Agencies (Jim Davis)

Responsibilities

Committee members may not be individually responsible for actually performing all activities listed below, but will serve as the agency liaison to ensure that these activities are accomplished.

- Encourage partner-agency ownership and investment in PAC.
- Educate partner agency staff about the mutually beneficial opportunities to promote efficient government through PAC activities.
- Educate partner agency staff about their responsibility to assist the PAC staff by: directing permit applicants to the PAC; responding to PAC requests for pre-application meetings; and providing information and other related services as needed.
- Provide respective agency contact lists to the PAC and update as necessary.
- Assist PAC staff in identifying the appropriate agency contact to respond to client needs by serving as a "last resort" contact.
- Coordinate permit handbook revisions within respective agencies (ensure that the right people review the document and provide necessary changes).
- Identify process efficiencies for related permit activities.
- Identify ways to resolve systemic and/or recurring permit issues that are identified through PAC activities; participate in development of solutions to these issues.
- Identify opportunities for improved cross-agency communication and coordination.
- Assist with development of legislative proposals related to PAC activities.
- Share information about the PAC with those who might benefit from PAC services.

Tasks

The following is a list of tasks, developed by the committee with review by PAC staff, that a partner agency could choose to take on individually or in cooperation with other partner agencies. Additional tasks proposed by partner agencies will be considered by the PAC Partnership Committee.

- Develop agency specific informational materials about permit processes and timelines. Coordinate this among agencies so that

information is presented in a similar manner and fits into a permit information package.

- Develop and/or contribute to a PAC Internet Home Page (to include links to agency resources such as permit application forms, regulations, and other information).
- Develop permit information and/or brochures for specific types of activities/ industry.
- Help with outreach to local agencies, such as building and planning departments, Ports, Economic Development Councils, etc.
- Establish methods to enhance coordination of related activities across agencies to increase efficiency.
- Determine how best to involve other governmental, business, and environmental organizations in PAC operations.
- Explore methods for getting PAC services closer to clients. Possibilities include developing multi-agency regional PACs or offering PAC services through existing agency regional staff.

Status

The Permit Assistance Center is staffed by the Departments of Ecology, with the support of the Departments of Health, Fish and Wildlife, Natural Resources, and the seven local air authorities. The Partnership Committee was established, in part, to fulfill legislation directing Ecology to seek staffing of the Permit Assistance Center by the four other "Permit Agencies." By working together through the Partnership committee, permit agencies will achieve greater coordination and integration among single-purpose environmental programs, better communication among applicants, agencies, and the public, and ensure that information provided by the PAC is reliable and consolidated. The Partnership Committee is committed to promote efficient government. Specifically, the Partnership Committee will identify processes efficiencies for related permit activities, identify ways to resolve systemic and/or recurring permit issues that are identified through PAC activities and work to develop solutions to identified issues.

The committee has begun to work together on several projects, including developing a joint Internet homepage, dedicated to permit information and to coordinating the development of permit process information. We will also be providing permit education and information exchanges in forums that include representatives of all relevant agencies.

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