Preliminary draft language for Chapter 173-217 WAC under State Waters Alteration Permit Rulemaking

November 2026

Overview

This is preliminary draft language under consideration for the WAC 173-217 rulemaking. This is for informal public comment and review during the informal comment period. The concepts may change as Ecology gathers more information during the informal comment period. We would like to hear your thoughts on these concepts. Please let us know your suggestions, needs, concerns, and recommendations for us, to help guide us as we develop the permit rule.

Submitting comments

Ecology's comment period will be from **midnight Nov. 5, 2026, until 11:59 p.m. Jan. 19, 2027.** Please send comments to Ecology through our online comment form.

WAC 173-217

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WAC 173-217-010 Purpose

(1) The purpose of this chapter is to establish a state permit program to protect surface waters of the state, including lakes, rivers, ponds, streams, inland waters, salt waters, wetlands, and all other surface waters and watercourses within the jurisdiction of the state of Washington.
(2) The State Waters Alteration Permit authorizes activities that will alter wetlands or other surface waters of the state and will or may result in pollution.
(3) Permits issued under this chapter are designed to satisfy the requirements of RCW 90.48.

WAC 173-217-020 Applicability

(1) This chapter applies to any person, as defined by WAC 173-217-030, that will or has altered a wetland or other surface waters of the state and results in pollution as defined by RCW 90.48.020.

WAC 173-217-030 Definitions

For the purposes of this chapter, the following definitions shall be applicable:

(1) **"Agriculture"** means the cultivation of plants and animals, including farming, dairying, livestock, breeding, raising, and management. It also encompasses agribusiness operations.
(2) **"Agricultural activities"** means agricultural uses and practices including, but not limited to: Producing, breeding, or increasing agricultural products; rotating and changing agricultural crops; allowing land used for agricultural activities to lie fallow in which it is plowed and tilled but left unseeded; allowing land used for agricultural activities to lie dormant as a result of adverse agricultural market conditions; allowing land used for agricultural activities to lie dormant because the land is enrolled in a local, state, or federal conservation program, or the land is subject to a conservation easement; conducting agricultural operations; maintaining, repairing, and replacing agricultural equipment; maintaining, repairing, and replacing agricultural facilities, provided that the replacement facility is no closer to surface waters of the state than the original facility; and maintaining agricultural lands under production or cultivation.
(3) **"Agricultural equipment"** and **"agricultural facilities"** includes, but is not limited to: (i) The following used in agricultural operations: equipment; machinery; constructed shelters, buildings, and ponds (in uplands); fences; upland finfish rearing facilities; water diversion, withdrawal, conveyance, and use equipment and facilities including but not limited to pumps, pipes, tapes, canals, ditches, and drains; (ii) corridors and facilities for transporting personnel, livestock, and equipment to, from, and within agricultural lands; (iii) farm residences and associated equipment, lands, and facilities; and (iv) roadside stands and on-farm markets for marketing fruit or vegetables.
(4) **"Agricultural land"** means those specific land footprints on which agriculture activities are conducted.
(5) **"Agricultural products"** includes but is not limited to horticultural, viticultural, floricultural, vegetable, fruit, berry, grain, hops, hay, straw, turf, sod, seed, and apiary

products; feed or forage for livestock; Christmas trees; hybrid cottonwood and similar hardwood trees grown as crops and harvested within twenty years of planting; and livestock including both the animals themselves and animal products including but not limited to meat, upland finfish, poultry and poultry products, and dairy products.

(6) **"Applicant"** includes any political subdivision, government agency, municipality, industry, public or private corporation, copartnership, association, firm, individual or any other entity whatsoever.

(7) **"Application for coverage"** means a form developed by, or approved by the department, which is used by persons to apply for coverage under a general permit or an individual permit.

(8) **"Beds" or "banks"** means the physical container of the waters of the state, bounded on freshwater bodies by the ordinary high water line or bankfull stage, and in tidal bays and estuaries by the limits of the highest measured tide. The "bed" is typically the horizontal section of land within the wet perimeter and includes non-vegetated gravel bars. The "bank' is typically the vertical portion.

(9) **"Best management practices (BMP)"** means physical, structural, and/or managerial practices approved by the department that, when used singularly or in combination, prevent or reduce pollutant discharges.

(10) **"Perimeter buffer"** means an area located within the outer boundary of and generally surrounding a compensatory mitigation site that is set aside to protect surface waters of the state from the effects of adjacent land uses and to support ecological functions. The buffer area may include upland, wetland, or other waters.

(11) "**Channel**" means a natural (perennial, intermittent, or ephemeral stream) or human made (e.g., drainage ditch) waterway that periodically or continuously contains moving water and has a defined bed and bank that serve to confine the water.

(12) **"Channelized streams"** A constructed feature that intercepts and conveys a natural stream. If a channel conveys water through a jurisdictional wetland, it will be considered a channelized stream.

(13) **"Compensatory mitigation"** means the step in the mitigation sequence where unavoidable impacts to surface waters of the state are offset by replacing the lost resources and functions with similar or different ones.

(14) **"Creation"** means the manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Creation results in a gain in aquatic resource area and functions.

(15) "**Credit**" means a unit of measure (e.g., a functional or areal measure or other suitable metric) representing the accrual or attainment of aquatic functions at a compensatory mitigation site. The measure of aquatic functions is based on the resources re-established, rehabilitated, created, enhanced, or preserved.

(16) **"Department"** means Washington state department of ecology.

(17) **"Director"** means the director of the department of ecology or the director's authorized representative.

(18) "**Ditch**" means a constructed water conveyance channel. Channels that are manipulated streams are not considered ditches but are channelized streams.

(19) **“Drainage ditch”** means a constructed channel that is designed for at least the partial purpose of increasing drainage of a particular land area or infrastructure for purposes including agriculture, transportation including roadside and railroad transportation, mosquito abatement, and stormwater management.

(20) "**Dredging**" means removal of bed material using tools other than hand-held.

(21) "**Emergency**" means an unanticipated and imminent threat to public health, safety, or the environment which requires immediate action **and** is declared an emergency by the governor, WDFW, or a county legislative authority.

(22) **“Enhancement”** means the manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s) and the conditions, functions and values of an existing degraded wetland or other surface water of the state. Enhancement results in the gain of selected aquatic resource function(s) but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

(23) "**Fill”** means any amount of deposit by artificial means.

(24) “**Functions and values**” are those ecological characteristics or processes associated with a surface water of the state and the societal benefits derived from those characteristics. The ecological characteristics are “functions,” whereas the associated societal benefits are “values.”

(25) **"General permit"** means a permit which covers a category of activities under a single set of standardized conditions, rather than issuing separate permits to each individual person.

(26) **“Impact”** means an adverse effect to surface waters of the state.

(27) **“Individual permit”** means an individualized permit for a single project proposal.

(28) “**In-lieu fee program (ILF)**” means a compensatory mitigation program used to compensate for reasonably expected adverse impacts of project development on surface waters of the state with fees paid by the applicant to an ILF sponsor, as approved by the Department.

(29) **“Irrigation ditch”** means that portion of a designed and constructed conveyance system that serves the purpose of transporting irrigation water from its supply source to its place of use; this does not include natural water courses or channels incorporated in the system design.

(30) “**Maintenance**” as used in subsection 173-217-050 and 173-217-080 includes:

(a) Repairs to an existing structure or feature to keep it in its existing state or proper condition or to preserve it from failure or decline;

(b) Excavation of accumulated sediments back to original contours; reshaping of side-slopes; and bank stabilization to prevent erosion where reasonably necessary using control measures (i.e., best management practices). For drainage ditches, such maintenance work must use materials that are compatible with existing bank materials;

(c) Armoring, lining, and piping a previously armored, lined, or piped section of a ditch for the purpose of repair, so long as all work occurs within the footprint of the previous work;

(d) Replacement of existing control structures where the original function is not changed and the original approximate capacity is not increased; and
(e) This definition does not include maintenance that expands the footprint or impact of an existing structure beyond its original contours or design.

(31) "**Material**" means rock, gravel, sand, silt and other inorganic substances and large woody debris, removed from surface waters of the state and any materials, organic or inorganic, used to fill surface waters of the state.

(32) "**Non-wetland waters**" means waters of the state other than wetlands, including bays, intermittent streams, perennial streams, lakes and all other regulated waters.

(33) **"Performance standards"** means measurable criteria for determining if mitigation goals and objectives are being achieved. Performance standards document a desired state, threshold value, or amount of change necessary to indicate that a particular function is being performed or structure has been established as specified in the design.

(34) **"Permit"** means an authorization, license, or equivalent control document issued by the director to implement this chapter.

(35) **"Person (applicant or permittee)"** includes any political subdivision, local, state or federal government agency, municipality, industry, public or private corporation, partnership, association, firm, individual, or any other entity whatsoever.

(36) **"Pollution"** means such contamination, or other alteration of the physical, chemical or biological properties, of any waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the state as will or is likely to create a nuisance or render such waters harmful, detrimental, or injurious to the public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

(37) **"Preservation"** means to permanently protect surface waters of the state having exceptional ecological features. This implies the removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

(38) "**Project**" means the planned activity or activities or set of related activities at a specific location including all connected components that may affect the environment subject to RCW 90.48.

(39) "**Project site**" means the geographic area upon which the project is being proposed.

(40) "**Reconstruction**" means to rebuild or to replace the existing structure in-kind. "Reconstruction" includes a structure being widened by no more than twenty percent of its original footprint at any specific location in surface waters of the state.

(41) **"Re-establishment"** means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural or historic functions and environmental processes to a former aquatic resource. Re-establishment results in

rebuilding a former aquatic resource and results in a gain in aquatic resource area and functions.

(42) **"Rehabilitation"** means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural or historic functions and environmental processes, specifically hydrologic processes, to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function but does not result in a gain in aquatic resource area.

(43) **"Restoration"** means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of reestablishing or returning natural or historic functions and environmental processes to a former or degraded aquatic resource.

(44) **"Sediment quality standards"** means the state of Washington's Sediment management standards (chapter 173-204 WAC).

(45) "**Serviceable**" means capable of being used for its intended purpose, useable as is, or with some maintenance but not so degraded as to essentially require reconstruction.

(46) **"Special characteristics"** means wetland types identified in the Washington State Wetland Rating System that because of their sensitivity to disturbance, significance, rarity, or our ability to replace them have an importance or value that may supersede their functions.

(47) "**Short-term temporary impacts**" means the wetland impacts last for a limited time, and functions return to pre-impact performance within about one year or within one growing season of the impact.

(48) **Surface waters of the state** include lakes, rivers, ponds, streams, inland waters, saltwaters, wetlands, and all other surface waters and water courses within the jurisdiction of the state of Washington.

(49) "**Water quality**" means the measure of physical, chemical and biological characteristics of water as compared to Washington's water quality standards and criteria set out in rules of the Washington Department of Ecology and applicable state law.

(50) **"Wetland rating system"** means a tool for grouping wetlands based on their needs for protection. In Washington State, a rating system for both eastern and western Washington has been developed, which places wetlands in four categories (I, II, III, and IV) based on their rarity, sensitivity to disturbance, the ability to replace them, and the functions they provide.

(51) **"Wetlands"** means areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas to mitigate the conversion of wetlands.

WAC 173-217-040 Types of authorizations

One of the following types of authorizations are required for regulated activities in surface waters of the state, unless exempt under WAC 173-217-050:

(1) Emergencies;
(2) Notifications;
(3) General permit; or
(4) Individual permit.

WAC 173-217-050 Exempted activities

The following activities are exempt from the requirements of chapter 173-217 WAC.

(1) Projects receiving a Forest Practices Permit under the Forest Practices Act RCW 76.09. Projects receiving a Class 1, 2, 3, or class 4 non-conversion, forest practices permit from the department of natural resources.
(2) Existing and ongoing agricultural activities that do not cause new or expanded impacts or pollution of surface waters of the state.
    (a) This includes activities for repair and maintenance of drainage and irrigation ditches provided the activities do not cause new or expanded impacts or pollution of state waters and will meet water quality standards.
    (b) This does not include:
        (i) Activities bringing new land into production that had not previously been used for agricultural production;
        (ii) Activities to prepare lands already in agricultural use for a non-agricultural purpose;
        (iii) Excavation, leveling and fill activities that alter land contours and impact state waters;
        (iv) Lands that have not had agricultural activities take place on them for 10 years or longer and that are not enrolled in a soil or land conservation program; or
        (v) Work in channelized streams.
(3) Ditch maintenance. Activities for maintenance of existing ditches which were constructed in uplands, designed and used for the purposes of conveying stormwater runoff, and where the maintenance activities involve no expansion or use beyond previously existing conditions. Ditches that were designed to convey streams, or which contain fish life, or are located in wetlands are not included in this exemption.
(4) Scientific work, including placement of survey monuments, gage installation, survey work, data collection, exploration, and research if conducted using non mechanical or handheld equipment, and with minimal clearing necessary for monitoring and data collection.
(5) Maintenance of serviceable structures such as dikes, dams, levees, lagoons, groins, riprap, breakwaters, causeways, bridge abutments or approaches, culverts, and transportation structures to **previously existing footprint.**
(6) Maintenance of water reuse, wastewater reclamation, water treatment, or wastewater treatment facilities. Expansion of a facility into surface waters of the state is not exempt.

Alteration or retrofit of existing facilities in surface waters of the state is exempt only if there are no new impacts to surface waters of the state.

(7) Maintenance of conveyance, treatment or flow control facilities created for the purpose of stormwater management. Expansion of a facility into surface waters of the state is not exempt. Alteration or retrofit of existing facilities in surface waters of the state is exempt only if there are no new impacts to surface waters of the state. For the maintenance activity to be exempt for stormwater infrastructure in surface waters of the state, the following conditions must be met:
    (a) The stormwater infrastructure is designed, permitted, and used for the purposes of conveying, detaining, retaining, infiltrating and/or treating stormwater runoff; Or the stormwater infrastructure has a documented history of maintenance activities prior to 1985.
    (b) The stormwater infrastructure has no known evidence of being used by native fish.
    (c) The maintenance activity is conducted using best management practices designed and used to prevent the discharge and/or mobilization of pollutants to receiving waters and/or down gradient stormwater infrastructure.
(8) Projects or activities authorized through a Model Toxics Control Act (MTCA) order or a Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) order.
(9) Projects covered under a federal Clean Water Act Section 401 water quality certification as long as the associated federal permit or license addresses all activities conducted in state waters.
(10) Existing and ongoing shellfish operations that do not include new or expanded impacts or pollution of surface waters of the state and will not cause violations of water quality standards.

WAC 173-217-060 Emergencies

(1) Construction in state waters during a declared emergency must be reported to the department within 24 hours of the activity on a form prescribed by the department.
(2) After the emergency situation is abated, any necessary permanent structures or stabilization measures may require a state waters alteration permit.

WAC 173-217-070 Guidelines for protection

(1) Mitigation sequencing is required for all regulated activities.
(2) Mitigation sequencing includes the following list in order of priority of the action:
    (a) Avoiding the impact altogether by not taking a certain action or parts of an action;
    (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;
    (c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
    (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;

(e) Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; or
(f) Monitoring the impact and taking appropriate corrective measures.

(3) For all projects, the avoidance and minimization checklist developed by the department is required as part of the information submittal.

(4) Impacts under 0.1 acres to category IV wetlands are exempt from the avoidance and minimization requirements in subsections 2(a) and (b) of this section but compensatory mitigation is still required for permanent impacts.

WAC 173-217-080 Notifications

(1) Any person(s) proposing projects that result in minimal impacts, based on subsections (1)(a), (b), and (c) of this section and are not exempt under WAC 173-217-050, must provide a notification to the department.

(a) Wetland notification.

(i) Projects having minimal impacts to wetlands may include:

(A) Projects with direct impacts of less than 0.1 acres of wetlands, or any amount of short-term temporary impacts.

(B) Maintenance of stormwater treatment or flow control facilities created in wetlands limited to removal of accumulated sediment to original design grade.

(ii) Projects with impacts to special characteristic wetlands, category I or II wetlands with high habitat function, do not qualify for a notification.

(b) In-Water notification.

(i) Projects having minimal impacts to non-wetland waters may include activities for which turbidity is the only parameter of concern, and that meet all of the following criteria:

(A) Below 25 cubic yards of dredge or fill material or resuspension of sediment only;

(B) No contaminated sediment within the area of the activity;

(C) The activity will meet turbidity criteria in WAC 173-201A; and

(D) The activity will be completed within one in-water work window.

(c) Notification for fish passage improvement projects. The project or activity must be planned, designed, and constructed solely to restore or enhance the passage of fish and meet the following criteria:

(i) Direct impacts to 1/3 acre or less of wetlands;

(ii) In low flow waterbodies with mean annual flow up to 10 cubic feet per second and will meet the turbidity criteria in WAC 173-201A;

(iii) No contaminated sediment within the area of the activity;

(iv) Project uses only precast concrete; and

(v) Improvements to a single water crossing within one in-water work window.

(2) Notifications shall be submitted on forms as prescribed by the department.

(3) The department may request additional information necessary to make a determination on a project.
(4) Qualification for a notification may require verification of site conditions by the department.
(5) The department retains discretion when reviewing a notification to require a permit if it determines the project will have more than minimal impacts.
(6) If the department determines the project requires coverage under a general permit or an individual permit, it shall notify the person(s) in writing within 45 days of receipt of the notification, otherwise upon the expiration of the 45 days the project may proceed.
(7) A notification does not release the person(s) from meeting all water quality requirements and recordkeeping, retention, and reporting requirements as described in WAC 173-217-110.

WAC 173-217-090 General permit coverage

(1) The director may issue general permits to satisfy any or all applicable requirements of chapter 90.48 RCW with respect to alterations to wetlands and surface waters.
(2) The director may issue general permits to cover categories of activities under a single set of standardized conditions.
(3) The department may issue general permits to cover categories of activities that meet all of the following requirements:
    (a) Involve the same or substantially similar types of activity;
    (b) Cause the same or substantially similar types of pollution;
    (c) Require the same or substantially similar permit conditions;
    (d) Require the same or substantially similar monitoring; and
    (e) In the opinion of the director are more appropriately controlled under a general permit than under individual permits.

WAC 173-217-100 Individual permits

(1) Any person proposing a project that will alter surface waters of the state must file an application for an individual permit if the project:
    (a) Is not exempt under WAC 173-217-050;
    (b) Does not meet the eligibility requirements for a notification; and
    (c) Does not meet the eligibility for coverage under a general permit.
(2) Application for an individual permit may be required for projects with impacts to category I wetlands, wetlands with special characteristics, wetlands with high habitat function, projects needing an extended area of mixing for turbidity, dredging in contaminated sediments where upland disposal is required, or as otherwise determined by the department.

WAC 173-217-110 Recordkeeping, retention, and reporting requirements

Any person performing regulated activities in surface waters of the state that require an authorization, as described in WAC 173-217-040, shall retain for a minimum of five years any records of monitoring activities and all results of those activities including all original strip chart recording for continuous monitoring instrumentation and calibration and maintenance records.

This period of retention shall be extended during the course of any unresolved litigation regarding the discharge of pollutants by the permittee, or when requested by the department or regional administrator.

WAC 173-217-120 Permit terms and conditions

(1) Any permit issued by the department shall specify conditions to ensure compliance with state water quality requirements, including the following whenever applicable:
   (a) The department shall require conditions on projects to ensure that they comply with state water quality standards;
   (b) Conditions to protect water quality. The department may require specific best management practices (BMPs) as conditions of the permit;
   (c) Compensatory mitigation. The department may include compensatory mitigation requirements consistent with section WAC 173-217-200 and WAC 173-217-210;
   (d) Monitoring and reporting. The department may include any monitoring and reporting requirements necessary to ensure compliance with permit conditions; and
   (e) Access requirements. The permit may specify access requirements necessary to ensure compliance.

(2) Project record keeping, retention, and reporting requirements. The department will include appropriate conditions for record keeping, retention, and reporting as described in WAC 173-217-110.

(3) Use of multiple permits. When a person must obtain authorizations for impacts to both wetlands and other non-wetland surface waters, the project will be subject to the highest level permit pathway applicable.

(4) Prohibition on commencing a project under a general permit. An applicant for an individual permit shall not proceed with any portion of the same project under a general permit while the department is evaluating the application for an individual permit unless authorized by the department.

(5) Designated uses as defined in WAC 173-201A-600 must be protected.

WAC 173-217-130 Permit application process

(1) Persons shall submit the application on a form prescribed by the department for the appropriate permit.

(2) The requirements for a permit application will be satisfied if the person files:
   (a) A complete application form; and
   (b) Any additional information required by the department.

(3) The application form shall bear a certification of correctness to be signed:
   (a) In the case of corporations, by a responsible corporate officer.
   (b) In the case of a partnership, by a general partner.
   (c) In the case of sole proprietorship, by the proprietor.
   (d) In the case of a municipal, state, or other public facility, by either a principal executive officer or ranking elected official.

(4) The department may request access to project site to collect information necessary to verify site conditions. Lack of access may result in the department not being able to make a permit decision.

(5) Pre-application meeting.
   (a) Persons seeking an individual permit shall request a pre-application meeting with department staff, which must be held at least 45 days before the person intends to submit an application. The department may waive the requirement for a pre-application meeting.
   (b) Persons seeking a general permit may request a pre-application meeting with the department.
   (c) At the pre-application meeting, the person must present to the department descriptions of the following:
      (i) The general purpose and need for the project;
      (ii) The alteration to surface waters and wetlands;
      (iii) How they applied mitigation sequencing. Applicants shall complete an avoidance and minimization checklist and describe alternative designs considered;
      (iv) Their conceptual compensatory mitigation proposal;
      (v) Their water quality monitoring and protection plan and best management practices proposed; and
      (vi) How the requirements of the water quality standards will be met.
   (d) After a pre-application meeting, the department may provide the person with a list of additional materials that are needed for the application based on the information presented in the pre-application meeting.
(6) Evaluation of application.
   (a) Receipt of application. The department shall notify the applicant within 15 days of the receipt of an application.
   (b) Complete application. The department shall issue a completeness determination within 45 days of receipt of the application if the requirements for a permit application are satisfied and information identified in the pre-application meeting is included.
   (c) The department's evaluation of applications for general and individual permits shall include the following:
      (i) Adequacy of avoidance and minimization measures. The department will determine whether the avoidance and minimization measures proposed are sufficient in minimizing project impacts;
      (ii) State water quality standards. The department will determine if the project will protect water quality;
      (iii) The department will determine mitigation adequacy; and
      (iv) The department will assess unavoidable impacts using the antidegradation criteria in chapter 173-201A WAC.
(7) Persons applying for a permit shall publish notice for each application in such a manner to inform and seek comments from interested and potentially interested persons:
   (a) The person shall provide notice in a form provided by the department to be circulated within the geographical area of the proposed activity. Such circulation shall include:

(i) Publishing once each week for two consecutive weeks, at their expense, a public notice in a newspaper of general circulation in the county of the proposal. A 30-day public comment period begins on the date of the second public notice publication; and

(ii) Any other method the department may direct.

(b) The public notification requirements do not apply for permit renewal if there are no increases in volume or changes in characteristics of discharge beyond those previously authorized.

(c) Any person that submitted written comments or upon request, shall be provided a copy of the department's final decision.

(d) The applicant shall provide the department with an affidavit of publication.

(e) The department shall add the name of any person, upon request, to a mailing list to receive copies of notices for all applications within the state or within a geographical area.

(8) Timelines.

(a) The timeline for decisions on general permits shall be 180 days.

(b) The timeline for decisions on individual permits shall be one year.

(9) Decisions by the department.

(a) General permit.

(i) Written notice if project does not meet criteria for the general permit or is covered under another general permit.

(ii) Denial of coverage if the department determines that the project is not eligible for coverage under a general permit and will require an individual permit. In such cases the department must include the basis with specificity.

(iii) Notice of coverage may include conditions, on a case-by-case basis to clarify the terms and conditions of the underlying general permit or to ensure the project will only have minimal individual and cumulative impacts on state waters.

(b) Individual permit.

(i) The department may take the following actions on applications:

(A) Approve and issue permit; or

(B) Deny.

(c) Administrative closure. If an applicant does not provide information requested by the department within 90 days, the department shall notify the applicant that their application is being closed. The applicant may reapply with the requested information.

WAC 173-217-140 Appeals of permits

(1) The terms and conditions of a general permit are subject to appeal within thirty days of issuance of a general permit in accordance with chapter 43.21B RCW.

(2) The terms and conditions of a general permit, as they apply to a person issued a general permit, are appealable, within thirty days of the effective date of coverage of that

person, in accordance with chapter 43.21B RCW. This appeal is limited to the general permit's applicability or nonapplicability to that individual person.

(3) The appeal of general permit coverage of an individual person does not affect any other persons covered under the general permit. If the terms and conditions of a general permit are found to be inapplicable to any individual person(s), the matter shall be remanded to the department for consideration of issuance of an individual permit or permits.

(4) Individual permits are subject to appeals as specified in chapter 43.21B RCW.

WAC 173-217-150 Public notice for general permit development and issuance

(1) The department shall provide public notice when developing, after drafting and upon issuance of all general permits.

(a) All public notices shall be circulated in a manner designed to inform interested and potentially affected persons of the general permit. Public notices may include any or all of the following:

(i) News releases, focus sheets, or newsletters;

(ii) Publication in the State Register.

(b) The department shall request comments on whether a general permit is appropriate for the level of alteration occurring in surface waters of the state or whether individual permits are necessary.

(c) The public notice shall provide an opportunity for any interested or potentially affected party to submit relevant information regarding the proposed activities to be covered under a general permit.

(d) The department shall add the name of any person upon request to a general permit specific mailing list to receive information and notices related to the development of the general permit.

(2) In the event that the department determines not to develop a general permit after publishing a preliminary determination pursuant to subsection (1)(a) of this section, the department shall provide public notice to that effect.

(3) The department shall publish the following in the State Register at least thirty days before the public hearing on the general permit:

(a) A reference to the relevant sections of chapter 90.48 RCW as the statutory authority for issuing the general permit;

(b) The date on which the agency intends to issue the general permit;

(c) A short explanation of the permit, its purpose, and anticipated effects; and

(d) A draft general permit public notice. The contents of the notice shall, at a minimum, summarize the following:

(i) The name, address, and phone number of the agency issuing the public notice;

(ii) The type of activities which are the subject of the general permit;

(iii) The criteria for which coverage under a general permit will be approved;

(iv) A listing or some other means of generally identifying the activities proposed to be covered under the general permit;

(v) The tentative determination to issue a general permit;
(vi) The procedures for the formulation of final determinations, including the thirty-day comment period as required and any other means by which interested persons may comment upon those determinations;
(vii) The date, time, and place when public hearings will be held on the draft general permit;
(viii) The address and phone number of state premises at which interested persons may obtain further information; and
(ix) The date and time after which comments will not be considered by the department in formulating the final determination on the draft general permit.

(e) The department shall provide a period of not less than thirty days following the last publication of the public notice, during which time interested persons may submit their written views on a draft general permit determination. All written comments submitted during the comment period shall be retained by the department and considered in the formulation of its final determination with respect to the draft general permit. The period for comment may be extended at the discretion of the department.

(f) The department shall make available during the public comment period:
(i) The draft general permit;
(ii) The fact sheet on the draft general permit required pursuant to WAC 173-217-240;
(iii) A copy of the proposed application for coverage; and
(iv) The public notice required pursuant to WAC 173-217-150(1)(a).

(4) The public notice of the issuance of a general permit shall contain:
(a) The name, address, and phone number of the agency issuing the public notice;
(b) The type of activities which are the subject of the general permit;
(c) The criteria for which coverage under a general permit will be approved;
(d) A listing or some other means of generally identifying the activities proposed to be covered under the general permit;
(e) A summary of the application process by which eligible person(s) may obtain coverage under the general permit;
(f) An explanation of any changes to the final general permit, other than editing changes, and the principal reasons for adopting the changes;
(g) A notice that the terms and conditions of the general permit may be appealed only by filing an appeal with the pollution control hearings board and by serving it upon the department within thirty days, and the process for doing so as contained in RCW 43.21B.310; and
(h) The date after which the general permit shall be effective. The effective date of a general permit shall be no sooner than thirty days after the publication in the State Register of the public notice required pursuant to subsection (4) of this section.

WAC 173-217-160 Public hearings

(1) General permits.

(a) The department shall hold one or more public hearing(s) on all draft general permits. The public hearing shall be held during the public comment period provided pursuant to WAC 173-217-150(3)(e).

(b) The date, time, and place will be at the discretion of the department provided:

(i) At least thirty days is provided between the time the public notice is published pursuant to WAC 173-217-130 (3)(c), and the time the hearing is held; and

(ii) The hearing location is within the geographical area covered by the general permit.

(c) The department shall create a record of all hearings required pursuant to this section. The record may be stenographic, mechanical, or electronic.

(2) Individual permits.

(a) Any interested person may request a public hearing with respect to permit applications for which notice is required pursuant to WAC 173-217-130(7). Any such request for a public hearing shall be filed within the thirty-day period prescribed in WAC 173-217-130(7)(a) and shall indicate the interest of the party filing such request and the reasons why a hearing is warranted.

(b) The department shall hold a hearing if it determines there is a significant public interest.

(c) Any hearing held pursuant to this subsection shall be held at a time and place deemed appropriate by the department.

(d) Public notice of any hearing held pursuant to this section shall be circulated at least as widely as was the notice of the application.

(e) Procedures for the circulation of public notice for hearings held shall include at least the following:

(i) Notice shall be published, at the applicant's expense, in at least one newspaper of general circulation within the geographical area of the project;

(ii) Notice shall be sent to all persons who received a copy of the notice given under WAC 173-217-130(7);

(iii) Notice shall be mailed to any person upon request; and

(iv) Notice shall be given at least thirty days in advance of the hearing.

(f) The contents of public notice of any hearing held pursuant to this section shall include at least the following:

(i) Name, address, and phone number of the office of the department holding the public hearing;

(ii) The purpose of the hearing;

(iii) Name and address of the applicant;

(iv) A brief description of the activities altering state waters;

(v) Information regarding the time and location for the hearing;

(vi) A brief description of the nature of the hearing;

(vii) A concise statement of the issues raised by the persons requesting the hearing, when applicable;
(viii) A brief reference to the public notice issued for each application, including identification number and date of issuance; and
(ix) Address and phone number of premises at which interested persons may obtain information.

WAC 173-217-170 Duration and replacement of permits.

(1) General and individual permits shall be issued for fixed terms not to exceed the maximum duration prescribed in RCW 90.48.180.
(2) If it is anticipated that a project will not be completed prior to expiration of the issued permit the permittee shall submit a request for renewal on a form prescribed by the department at least 180 days prior to the expiration date of the permit.
(3) When a permittee has made timely and sufficient application for the renewal of coverage under a general permit or an individual permit, the expiring permit remains in effect and enforceable until:
  (a) The application has been denied;
  (b) A replacement permit has been issued by the department; or
  (c) The expired permit has been canceled by the department.
(4) Permit expiration dates will remain unchanged without a timely and sufficient request for renewal.
(5) Renewals are not subject to public review and comment and do not require newspaper notifications.
(6) The date of the renewal shall become the new date of permit issuance.

WAC 173-217-180 Modification, revocation, and termination of permits.

(1) Modification and revocation of general permits.
  (a) A general permit may be modified, revoked and reissued, or terminated, during its term for cause including, but not limited to, the following:
    (i) Water quality standards are adopted pursuant to chapter 90.48 RCW, for the persons covered under the general permit;
    (ii) A change occurs in the technology or practices for control or abatement of pollutants applicable to the project covered under the general permit; or
    (iii) Wetland guidelines or standards are adopted pursuant to chapter 90.48 RCW, or information is obtained which indicates that cumulative effects on the environment from persons covered under the general permit are unacceptable.
  (b) In the event that the director has determined to modify or revoke, in whole or in part, a general permit pursuant to subsection (1)(a) of this section the director shall notify, in writing, all persons covered under the general permit. The notification shall include:
    (i) The reason(s) why the general permit is being revoked or modified;

(ii) The process for appealing the determination pursuant to RCW 43.21B.310;
(iii) An application form and a time limit for submitting the application; and
(iv) Any other information determined to be relevant by the department.

(2) Revocation of coverage under a general permit.
(a) The director may terminate coverage under a general permit for cause. Cases where coverage under a general permit may be terminated include, but are not limited to, the following:
(i) Violation of any term or condition of the permit;
(ii) Obtaining coverage under a general permit by misrepresentation or failure to fully disclose all relevant facts; or
(iii) A determination that the permitted activity endangers human health, safety, or the environment, or contributes to water or sediment quality standards violations.
(b) The director may require any person(s) to apply for and obtain an individual permit, or to apply for and obtain coverage under another more specific general permit. In cases where the director requires any person(s) to apply for an individual permit, or for another general permit, the person(s) must be notified in writing that another permit is required. This notice shall include:
(i) A statement of why another permit is being required;
(ii) An application form; and
(iii) A time limit for submitting the application.
(c) Any interested party may petition the director to require a person authorized by a general permit to apply for and obtain an individual permit.
(d) Any person authorized by a general permit may request to be excluded from coverage under a general permit by applying for an individual permit. The person shall submit to the director an application with reasons supporting the request. The director shall either issue an individual permit or deny the request with a statement explaining the reason for denial.
(e) Where the department has determined that a person should no longer be covered under a general permit it shall notify the person in writing stating:
(i) The reason(s) why coverage is no longer appropriate; and
(ii) Any actions required to maintain coverage under the general permit.
(f) The person shall have thirty days to respond to any notification provided pursuant to subsection (2)(e) of this section before coverage under a general permit shall be automatically revoked.

(3) Modification, suspension, and revocation of permits.
(a) Any permit issued under this chapter can be modified, suspended, or revoked, in whole or in part by the department for the following causes:
(i) Violation of any permit term or condition;
(ii) Obtaining a permit by misrepresentation or failure to fully disclose all relevant facts;

(iii) A material change in quantity, type of impact, or pollution to state waters; or

(iv) A material change in the condition of the surface waters of the state.

(b) The department may modify a permit, including the schedule of compliance or other conditions, if it determines good and valid cause exists, which includes adoption or revisions of categorical standards.

(4) If the department determines that an individual permit renewal is warranted, the department shall determine if permit conditions need to be modified prior to renewal.

WAC 173-217-190 Transfer of permit coverage.

Coverage under a permit is automatically transferred from the old permittee to a new permittee if:

(1) A written, signed agreement between the old and new permittee containing a specific date for transfer of permit responsibility, coverage, and liability is submitted to the director on a form provided by the department; and

(2) The director does not notify the old and new permittee of the director's intent to revoke coverage under the permit. If this notice is not given, the transfer is effective on the date specified in the agreement mentioned in subsection (1) of this section.

WAC 173-217-200 Compensatory wetland mitigation requirements

(1) Purpose and general considerations.

(a) The department may require compensatory mitigation to ensure that state water quality standards are met.

(b) The purpose of compensatory mitigation is to offset all the functional losses resulting from unavoidable impacts to state waters authorized under a state waters alteration permit.

(c) The application will be evaluated for the adequacy of proposed wetland mitigation using the criteria outlined in the department's most up to date version of the Wetland Mitigation in Washington State Part 1: Agency Policies and Guidance and Part 2: Developing Mitigation Plans.

(d) Mitigation sequencing

(i) Persons must avoid and minimize impacts to surface waters of the state consistent with WAC 173-217-070.

(e) Accounting for regional variations

(i) The department may, where appropriate, account for regional characteristics of aquatic resource types, functions and services when determining performance standards and monitoring requirements of compensatory mitigation projects.

(f) The compensatory mitigation site must be ecologically suitable for providing the desired aquatic resource functions. Proposed compensatory mitigation projects must not degrade areas with existing high natural resource values (e.g., forested uplands, shrub steppe communities).

(g) The compensatory mitigation site must be sustainable, meaning that the targeted functions can be successfully established and will persist into the foreseeable future.

(2) Approaches to compensatory mitigation.

(a) Compensatory mitigation may be provided through any of the following approaches.

(i) Mitigation bank credits may be used to meet compensatory mitigation requirements. Bank credits must come from a state certified bank under chapter 173-700 WAC.

(ii) In lieu fee program credits from a federally approved in lieu fee program may be used to meet compensatory mitigation requirements.

(iii) Permittee responsible mitigation under a watershed approach.

(b) Compensatory mitigation may be provided through the re-establishment, rehabilitation, creation, preservation, or enhancement of wetlands, or some combination of these methods.

(c) Applicants must provide a mitigation plan appropriate to the approach proposed (such as bank use plan, ILF use plan, permittee-responsible mitigation plan).

(3) Methods of compensatory mitigation.

(a) Out of kind mitigation, as described in the department's guidance, may be considered.

(4) Function assessment methods.

(a) A mitigation plan requires a functional value assessment to inform compensatory mitigation requirements.

(b) The functional value assessment shall document the following:

(i) Existing functions and values of the wetland(s);

(ii) Functions and values lost as a result of the project;

(iii) Existing functions and values of the proposed compensatory mitigation project; and

(iv) Functions and values expected following implementation of the compensatory mitigation project.

(c) Use of rating systems. For wetlands, applicants shall provide information on area, category, and functions of affected wetlands through the use of the Washington State Wetland Rating System, or as revised.

(d) Use of credit debit tool. For wetlands, applicants may use the department's credit debit method, or as revised, for assessing functions lost at the impact site and gains in functions at the compensation site.

(e) Generally, the same function assessment method should be used at both the project site and the compensatory mitigation site.

(5) Timing of compensatory mitigation.

(a) Compensatory mitigation should be completed in advance or concurrently with the project authorized by this permit. The department may require additional compensation if the mitigation is not completed concurrently with project construction.

(b) The Department may approve non-concurrent compensatory mitigation if the applicant clearly demonstrates, in writing, the reason for the delay or that there is benefit to the aquatic resources in doing so.

(6) Amount of compensatory mitigation.

(a) The compensation ratios provided in the section are guidance and subject to the department's discretion to determine appropriate adequate compensation of wetland area and functions are provided.

(b) Compensation ratios table.

Category of impacted wetland[2]	Re-establishment or creation[3]	Rehabilitation	Preservation[4,5]	Enhancement[5]
Category IV	1.5:1	3:1	6:1	6:1
Category III	2:1	4:1	8:1	8:1
Category II	3:1	6:1	12:1	12:1
Category I	4:1	8:1	16:1	16:1

(7) Criteria for ratio table.

(a) Ratios in the table, as described in WAC 173-217-200(6)(b), reflect the amount of compensation: amount of impact.

(b) Compensation ratios in this table generally do not apply when impacts involve a wetland whose category is based on special characteristics.

(8) Protection and management of compensation sites.

(a) Perimeter buffers. Compensatory mitigation sites must have perimeter buffers to protect site functions from adjacent land use impacts.

(b) Site protection. Compensatory mitigation sites must be permanently protected with a legal mechanism, as deemed appropriate by the department.

(c) Long-term management post monitoring period. Compensatory mitigation sites shall be managed to ensure sustainability of target wetland functions and to reduce the impact of human disturbances.

(9) Ecological performance standards.

(a) The mitigation plan must contain performance standards that will be used to assess whether the project is achieving stated goals and objectives.

(b) Performance standards must be based on objective and verifiable attributes.

(10) Monitoring.

(a) Monitoring period. The mitigation plan must provide for a monitoring period that is sufficient to demonstrate that the compensatory mitigation project has met performance standards, but not less than five years. The mitigation plan must provide a plan for how the compensatory mitigation project will be monitored that includes the methods, frequency and duration of data collection and reporting. The Department may modify the monitoring period depending on whether performance standards have been met.

(b) The department may issue administrative orders pursuant to chapter 90.48 RCW, and as described in WAC 173-217-220, as necessary to achieve compliance with compensatory mitigation requirements.
(c) Monitoring reports. Reports shall be submitted according to the schedule included in the mitigation plan or as conditioned in the permit. Monitoring reports must accurately represent conditions of the entire compensatory mitigation site.
(d) Contingency. A contingency plan shall be provided in the mitigation plan outlining actions that would be triggered if monitoring of a project reveals a problem that would prevent the site from attaining its stated goals, objectives, and performance standards.
(e) Adaptive management. Adaptive management may be allowed to meet project goals with department approval.
(f) Closure of monitoring period. The department shall provide written notification after mitigation requirements have been met.

WAC 173-217-210 Mitigation or restoration for in-water impacts

The department may require mitigation or restoration for impacts to non-wetland waters of the state. Mitigation or restoration plans developed by the project proponent must be approved by the department.

WAC 173-217-220 Compliance schedules

(1) The department may establish schedules and permit conditions as necessary to achieve compliance with applicable water quality standards and other legally applicable requirements contained in a permit in any or all of the following ways:
   (a) As a condition or schedule in a permit;
   (b) In an administrative order issued pursuant to chapter 90.48 RCW; and
   (c) By any other method deemed appropriate by the department.
(2) If a permittee fails or refuses to comply with a compliance schedule or final requirement contained in a permit, or as submitted as part of an application for coverage under a general permit, such noncompliance shall constitute a violation of the permit for which the department may modify or revoke the permit or coverage under the general permit or take direct enforcement action pursuant to chapter 90.48 RCW.

WAC 173-217-230 Enforcement

(1) The department, with the assistance of the attorney general, may sue in courts of competent jurisdiction to enjoin any threatened or continuing violations of any permits or conditions thereof without the necessity of a prior revocation of a permit.
(2) The department may enter any premises in which a source of pollution is located or in which records are required to be kept under terms or conditions of a permit, and otherwise be able to investigate, inspect, or monitor any suspected violations of water quality standards, or of permit terms or conditions thereof.
(3) The department may assess or, with the assistance of the attorney general, sue to recover in court, such civil fines, penalties, and other civil relief as may be appropriate for the violation by any person of:

(a) Any water quality standards;
(b) Any permit or term or condition thereof;
(c) Any filing requirements;
(d) Any duty to permit or carry out inspection, entry, or monitoring activities; or
(e) Any rules, regulations, or orders issued by the department.

(4) The department may request the prosecuting attorney to seek criminal sanctions for the violation by such persons of:
(a) Any water quality standards;
(b) Any permit or term or condition thereof; or
(c) Any filing requirements.

(5) The department, with the assistance of the prosecuting attorney, may seek criminal sanctions against any person who knowingly makes any false statement, representation, or certification in any form or any notice or report required by the terms and conditions of any issued permit or knowingly renders inaccurate any monitoring device or method required to be maintained by the department.

WAC 173-217-240 Fact sheets

(1) The department shall prepare a fact sheet for every initial draft general permit. Such fact sheets shall summarize the following:
(a) The type of activity which is the subject of the general permit;
(b) The criteria for which coverage under a general permit will be approved;
(c) The information required to be submitted as part of the application for coverage under the general permit;
(d) The conditions in the proposed general permit;
(e) Any compliance schedules proposed as part of the general permit or as a part of the application process pursuant to WAC 173-217-220 and 173-217-130; and
(f) The procedures for finalizing the general permit decision (in more detailed form than that given in the public notice) including:
(i) The thirty-day comment period required by WAC 173-217-150(3), including the date and time after which public comments will not be considered by the department in formulating the final determination on the draft general permit; and
(ii) The time and place of the public hearing(s), if one is to be held.

(2) The department shall provide copies of general permit fact sheets to any interested person upon request.

WAC 173-217-250 Consultation and coordination with state agencies, local governments and Tribes

The department shall consult with state agencies, local governments, and Tribes on draft general permits to obtain comments and inform permit conditions.

WAC 173-217-260 Public access to information.

(1) In accordance with chapter 42.17 RCW, the department shall make records relating to permits available to the public for inspection and copying.

(2) The department shall protect any information (other than information on the effluent) contained in its permit records as confidential upon a showing by any person that such information, if made public, would divulge methods or processes entitled to protection as trade secrets of such person.
(3) Any information accorded confidential status, whether or not contained in an application form, shall be disclosed, upon request, to the director.
(4) The department shall provide facilities for the inspection of information relating to permits and shall insure that employees honor requests for such inspection promptly without undue requirements or restrictions. The department shall either (a) ensure that a machine or device for the copying of papers and documents is available for a reasonable fee, or (b) otherwise provide for or coordinate with copying facilities or services such that requests for copies of nonconfidential documents may be honored promptly.