

WAC 220-660-060 Integration of hydraulic project approvals and forest practices applications. (1) Description:

(a) In 1999, the *Forests and Fish Report* and Engrossed Substitute House Bill 2091, which amended the Forest Practices Act, chapter 76.09 RCW, envisioned a more integrated approach to permitting hydraulic projects that also require forest practices applications (FPAs). In May 2001, the forest practices board adopted permanent forest practices rules in Title 222 WAC, which incorporated fish protection measures normally included in hydraulic project approvals (HPAs) for projects in nonfish-bearing waters.

(b) In April 2012, the Washington state legislature, through Second Engrossed Substitute Senate Bill 6406, amended the Forest Practices Act in chapter 76.09 RCW and the hydraulic code statutes in chapter 77.55 RCW. The amendment resulted in the integration of the hydraulic code rule fish protection standards (Title 220 WAC) into the forest practices rules for hydraulic projects in fish-bearing waters on forest land. As codified in RCW 77.55.361 and 76.09.040, the requirements of the hydraulic code rules no longer apply to any forest practices hydraulic project. The amended statutes also include a requirement that the department adopt rules establishing the procedures for the concurrence review process. This process is outlined in subsection (3) of this section.

(2) General review and comment on forest practices hydraulic projects:

(a) The department may review and provide comments on any FPA.

(b) For FPAs that include a forest practices hydraulic project involving fish-bearing waters or shorelines of the state, the department must review the forest practices hydraulic projects and either provide comments to the department of natural resources (DNR), or document that the review has occurred without the need for comments. Before commenting, the department will strive to communicate with the applicant regarding any concerns relating to consistency with fish protection standards. The department will also strive to maintain communications with DNR as concerns arise and to inform DNR of communications with applicants.

(c) The department will encourage forest landowners to consult with department biologists, including site visits as needed, before submitting an FPA containing a hydraulic project. This will help ensure that project design plans and specifications meet fish protection standards. The intent of preapplication collaboration with the department is to provide more efficient and successful outcomes for forest landowners and their proposed hydraulic projects. In addition to the general review and comment process for forest practices hydraulic projects described in this subsection, hydraulic projects meeting the criteria described in subsection (3)(a) of this section will follow the concurrence review process.

(3) Concurrence review process:

(a) The department must review forest practices hydraulic projects meeting the following criteria and provide written comments to DNR on the project's ability to meet fish protection standards:

(i) Culvert installation or replacement, and repair at or below the bankfull width, as that term is defined in WAC 222-16-010 on July 10, 2012, in fish-bearing rivers and streams that exceed five percent gradient;

(ii) Bridge construction or replacement, and repair at or below the bankfull width, of fish-bearing unconfined streams; or

(iii) Fill within the 100-year flood level, as that term is defined in WAC 222-16-010, of fish-bearing unconfined streams.

(b) After the department receives notification from DNR that an FPA includes one or more hydraulic projects meeting the criteria in subsection (3)(a) of this section, the department has thirty days to review the forest practices hydraulic project(s) for consistency with fish protection standards.

(c) Within five business days after notification from DNR, or as soon as possible thereafter, the department will determine if all information needed to assess the hydraulic project's consistency with fish protection standards is included in the application.

(d) If information is missing, the department will immediately contact the applicant to request the missing information. The department will also provide written notification to DNR, indicating that specific information is missing and that the applicant has been notified. If the applicant fails to provide missing information in a timely manner so that the department can complete its review within the required thirty-day time frame, the department may issue a nonconcurrency on a proposed project.

(e) If, during the thirty-day concurrence review period, the department determines that a forest practices hydraulic project may not be consistent with fish protection standards, the department will attempt to work with the applicant to modify the proposed project. The department will strive to include DNR on site visits with the applicant as needed.

(f) The department must provide written notification of concurrence or nonconcurrency to DNR within the thirty-day review period, stating whether or not the hydraulic project is consistent with fish protection standards. As part of the written notification to DNR, the department must provide information about the outcomes of any meetings with the applicant, including agreements or disagreements, any missing information requested, and any proposed changes needed to meet fish protection standards.

(g) The department will recommend that DNR disapprove the FPA when efforts described in subsection (3)(e) of this section have not resulted in a successful outcome, the project will result in direct or indirect harm to fish life, and enough mitigation cannot be assured by modifying the hydraulic project proposal or by DNR's agreement to add appropriate conditions to the FPA.

[Statutory Authority: RCW 77.04.012, 77.04.020, and 77.12.047. WSR 15-02-029 (Order 14-353), § 220-660-060, filed 12/30/14, effective 7/1/15.]