

State of Washington
Joint Legislative Audit and Review Committee (JLARC)



Office of Regulatory Assistance
Sunset Review
Report 07-3

January 4, 2007

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The Joint Legislative Audit and Review Committee (JLARC) carries out oversight, review, and evaluation of state-funded programs and activities on behalf of the Legislature and the citizens of Washington State. This joint, bipartisan committee consists of eight senators and eight representatives, equally divided between the two major political parties. Its statutory authority is established in RCW 44.28. This statutory direction requires the Legislative Auditor to ensure that performance audits are conducted in accordance with Government Auditing Standards as applicable to the scope of the audit.

JLARC staff, under the direction of the Committee and the Legislative Auditor, conduct performance audits, program evaluations, sunset reviews, and other policy and fiscal studies. These studies assess the efficiency and effectiveness of agency operations, impacts and outcomes of state programs, and levels of compliance with legislative direction and intent. The Committee makes recommendations to improve state government performance and to correct problems it identifies. The Committee also follows up on these recommendations to determine how they have been implemented. JLARC has, in recent years, received national recognition for a number of its major studies.

**OFFICE OF REGULATORY
ASSISTANCE
SUNSET REVIEW**

REPORT 07-3

REPORT DIGEST

JANUARY 4, 2007



STATE OF WASHINGTON

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Mandate

The Office of Regulatory Assistance (ORA) is scheduled to terminate in 2007, pursuant to the Washington Sunset Act. As required by this legislation, the Joint Legislative Audit and Review Committee (JLARC) conducted a sunset review to assist policymakers with deciding whether the Office should be continued, modified, or terminated.

Consistent with evaluation criteria specified in the sunset law, this review explains the degree to which JLARC found ORA has complied with legislative intent; reached its own performance goals and targets; operates in an efficient and economical manner; and undertakes activities otherwise duplicated by another state agency or the private sector.

Background

The Office of Regulatory Assistance has a broad mission that spans regulations, permit requirements, and agency rule-making processes at work in Washington State. Chapters 43.42 and 43.21 RCW assign ten duties to ORA which were the primary focus of this evaluation. To execute these duties, ORA relied on 5.6 direct services FTEs and operated with \$1.2 million a biennium. New regulatory assignments in 2006 increased its biennial resources to \$1.8 million. Since these four additional duties were recently assigned to ORA via the budget, their implementation is still in progress. These new duties are not being reviewed in this report, which is focused on the ten statutory duties authorized in statute.

Statutorily, ORA is administered by the Office of the Governor. Practically, most of ORA is co-located in the headquarters and regional offices of the Department of Ecology and staffed by Ecology employees through an interagency agreement with the Office of Financial Management. Services provided by ORA to its clients consist of a regulatory help desk assisting nearly 2,000 callers a year, and regionally located staff who facilitate, coordinate, and help resolve disputes that can arise in permitting. ORA assisted 88 project applicants with regional staff over the last four years.

Sunset Conclusions and Recommendations

We found ORA complied with some, but not all, of its statutory duties. ORA's largest compliance problems are with tracking project information, identifying customer satisfaction, and reporting results to the Legislature.

ORA's focus has been on *doing*, not on recording or reporting on what it has done or collecting information to evaluate the quality of its services. Further, the agency does not have operational policies in place to ensure the consistency of scoping, facilitation, and coordination services provided at the request of project applicants. Absent the tracking of outcome data, ORA cannot demonstrate its desired performance targets have been achieved or help lawmakers understand the impact this government service has for those who use it.

Using activity data ORA could provide, the agency appears to have increased the level of services since 2003 without increasing its costs. However, without better information about ORA's outcomes and details on the types of functions performed to assist project applicants, JLARC cannot conclude whether or not this trend represents efficiency improvements.

ORA does not appear to duplicate services provided by other agencies and serves a role that is different from those available from the private sector.

To address information gaps identified in this review, JLARC recommends:

- 1. The Legislature should repeal the June 30, 2007, sunset date (Chapter 43.131 RCW) which has the effect of reauthorizing the Office of Regulatory Assistance, and consider establishing a future sunset review in 2011.**
- 2. The Office of Regulatory Assistance should develop an implementation plan to remedy the agency's lack of information about its activities and report to the Legislature on the results of this plan to demonstrate its performance and compliance with statutory duties.**

TABLE OF CONTENTS

CHAPTER ONE: BACKGROUND	1
WHAT IS A SUNSET REVIEW?	1
INTRODUCTION TO THE OFFICE OF REGULATORY ASSISTANCE	1
A BRIEF HISTORY OF THE OFFICE OF REGULATORY ASSISTANCE	2
CHAPTER TWO: RESULTS FROM THE SUNSET REVIEW	5
REVIEW OF THE OFFICE OF REGULATORY ASSISTANCE USING THESE FOUR CRITERIA.....	5
<i>Evaluation Criterion #1: Complying With Legislative Intent</i>	5
<i>Evaluation Criterion #2: Reaching Expected Performance Goals and Targets</i>	8
<i>Evaluation Criterion #3: Operating in an Efficient and Economical Manner</i>	9
<i>Evaluation Criterion #4: Undertaking Activities Duplicated by Another Agency or the Private Sector</i>	10
CHAPTER THREE: CONCLUSIONS AND RECOMMENDATIONS FROM THE SUNSET REVIEW	11
APPENDIX 1: SCOPE AND OBJECTIVES	13
APPENDIX 2: AGENCY RESPONSE	15
APPENDIX 3: EXECUTIVE ORDER 06-02	21
APPENDIX 4: EXAMPLE FLOW CHART: SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT	27
APPENDIX 5: EXAMPLE FACT SHEET: BIO-DIESEL FACILITY PERMIT	31

CHAPTER ONE: BACKGROUND

This report meets the legislative requirement for the Joint Legislative Audit and Review Committee (JLARC) to conduct a sunset review of the Office of Regulatory Assistance (ORA). The second chapter presents the results of JLARC's review. This first chapter provides basic information about the Office itself.

WHAT IS A SUNSET REVIEW?

A sunset review is an evaluation of the need for the continued existence of a program or agency. The review yields a recommendation to (1) retain the program or agency as is; (2) modify the program or agency; or (3) allow the program or agency to terminate. A sunset review is triggered when the Legislature adds a program or agency to Chapter 43.131 RCW (the Sunset Act). This addition to the Sunset Act includes a specific date for the agency or program to terminate. Sunset reviews are conducted by the Joint Legislative Audit and Review Committee.

Consistent with the evaluation criteria specified in the Sunset Act, a sunset review assesses the degree to which an agency or program is:

1. Complying with legislative intent;
2. Reaching expected performance goals and targets;
3. Operating in an efficient and economical manner; and
4. Undertaking activities duplicated by another agency or the private sector.

Unless the Legislature takes specific action to repeal an established sunset date, the selected agency or program terminates on that date. The Sunset Act currently specifies that the Office of Regulatory Assistance will expire July 1, 2007, unless the Legislature takes action to sustain the program.

INTRODUCTION TO THE OFFICE OF REGULATORY ASSISTANCE

The Office of Regulatory Assistance has a broad mission that spans regulations, permit requirements, and agency rule-making processes.¹ ORA focuses on changing communication to improve and simplify the regulatory experience for affected citizens. ORA has ten specific statutory duties, which are the primary focus of this review and of Chapter 2. To accomplish its mission and duties, ORA relies on 5.6 full-time equivalent (FTE) and has had a biennial budget of \$1.2 million. The 2006 Supplemental Operating Budget increased ORA's 2005-07 budget to \$1.8 million to implement additional tasks.

In statute, ORA is administered by the Office of the Governor. In practice, most of ORA is co-located in the headquarters and regional offices of the Department of Ecology and staffed by Ecology employees through an interagency agreement with the Office of Financial Management.

¹ RCW 43.42.005.

A BRIEF HISTORY OF THE OFFICE OF REGULATORY ASSISTANCE

The Office of Regulatory Assistance originated as part of 1995 revisions to the Growth Management Act, starting out as the Department of Ecology's Permit Assistance Center (PAC). JLARC conducted a sunset review of PAC operations in 1998 and recommended continuance with some performance report changes. However, the Legislature did not take action. PAC lapsed out of existence and for a period of months, Ecology staffed and maintained a help desk and hired case managers for the department's own purposes, relying on the authority represented by funds appropriated for regional permit assistance centers and watershed planning.²

WHAT ARE PERMITS?

Permits are authorizations or approvals that allow, or in other words, "permit" development or activity that can impact natural resources or the public interest. For example, permits are needed for constructing a new building. Permits are entrusted to government in order to protect air, land, and water resources held in common as well as the public interest. Permits are required after certain thresholds of development activity are reached.

Permits are intended to ensure compliance with local, state, and/or federal environmental statutes, regulations, policies, and plans; standards; rules; best management practices; and court decisions. Thus, permits typically contain requirements for monitoring, sampling, and reporting; impact mitigation; studies; and compliance.

Permits issued by government are preceded by formal applications, engineering reports, environmental reviews and studies, modeling, mitigation plans, public notice, workshops, and/or hearings about the project and operation. Applicants generally pay fees to government agencies for reviewing permit applications.

Permits can be appealed.

Permits are enforceable.

Permits afford the holder legal coverage.

Source: "From Paper to Shovel, Getting through the Permitting Process," prepared by Department of Ecology for the Washington Economic Development Association's 1995 Annual Winter Conference.

In 2002, the Washington Legislature reconstituted a state permit assistance function. The function was assigned to the Governor, apart from natural resource agencies making regulatory decisions. One year later, lawmakers passed Substitute House Bill 1550. This 2003 act changed the name to the Office of Regulatory Assistance and broadened the office's historical mission of coordinating environmental permitting to encompass more general regulatory processes. In 2006, lawmakers funded four additional regulatory improvement assignments through the budget, and the Governor issued an executive order reinforcing ORA authority and charge.³ Since these four additional duties were recently assigned to ORA via the budget, their implementation is still in progress. These new duties are not being reviewed in this report, which is focused on the ten duties authorized in statute.

² Chapter 237, Laws of 2001, including the Washington State Environmental Policy Act (SEPA) template to streamline environmental reviews.

³ The full text of Executive Order 06-02 concerning regulatory improvement can be found in Appendix 3.

2006 Additional Duties Regulatory Improvement Program

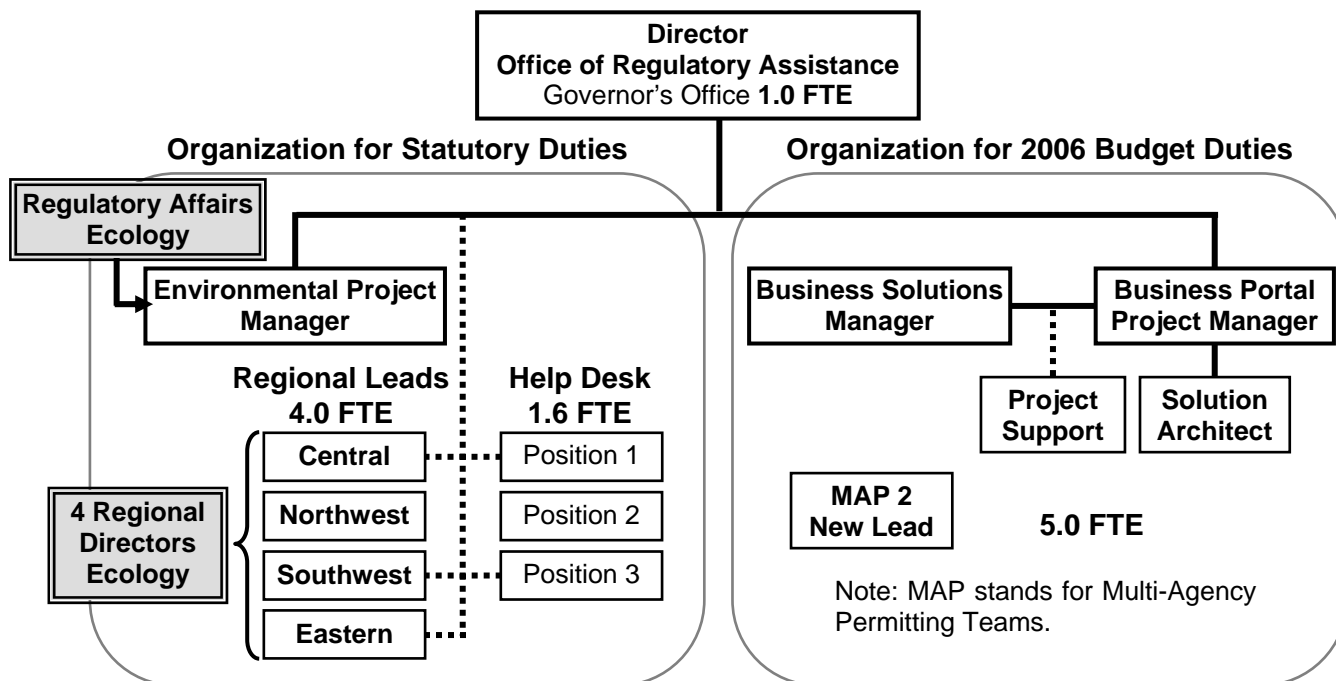
\$550,000 from the state general fund will support the Governor’s Regulatory Improvement Program within ORA to improve the state’s regulatory climate. ORA, in coordination with the Department of Ecology, the Department of Fish and Wildlife, and key business licensing, taxing, and regulatory agencies, will be implementing specific actions, including:

1. Expanded integration of state and local government permit teams for combined environmental review (including private development projects);
2. Expanded use of programmatic and general permits;
3. Deployment of a single portal for businesses to apply for and track permits and licenses, pay taxes, and obtain relevant regulatory information; and
4. Implementation of a broader wetland or conservation banking off-site mitigation program.

Source: State of Washington Legislative Budget Notes: 2005-07 Biennium, 2006 Supplemental, Office of Financial Management, page 88, item 13.

ORA has two primary ways it delivers its statutory services: a regulatory help desk (3 positions; 1.6 FTEs) assisting nearly 2,000 callers per year; and case managers (4 positions; 4.0 FTEs) located in regional offices who facilitate, coordinate, and help resolve disputes that can arise in permitting. These regional staff, called “ORA leads,” worked on 88 projects in the study period of July 2002 through July 2006. ORA is also assisted by a project manager from the Department of Ecology’s regulatory affairs team. Five positions shown on the right side of Figure 1 (below) are new this fiscal year.

Figure 1 - Office of Regulatory Assistance Organization Chart



Source: JLARC.

CHAPTER TWO: RESULTS FROM THE SUNSET REVIEW

Consistent with the evaluation criteria specified in the Sunset Act, a sunset review assesses the degree to which an agency or program is:

1. Complying with legislative intent;
2. Reaching expected performance goals and targets;
3. Operating in an efficient and economical manner; and
4. Undertaking activities duplicated by another agency or the private sector.

This chapter reviews evaluation results for the Office of Regulatory Assistance which terminates as an agency on July 1, 2007, unless the Legislature takes action to sustain the program.

REVIEW OF THE OFFICE OF REGULATORY ASSISTANCE USING THESE FOUR CRITERIA

Evaluation Criterion #1: Complying With Legislative Intent

The table below provides a summary of ORA’s compliance with duties assigned to the agency in statute, which focus largely on permit assistance. As illustrated in the table, ORA is in compliance with some, but not all, of its statutory duties.

Table 1 – Summary of ORA’s Compliance With Statutory Duties

Statutory Duty – ORA is to:	Performance of Duty	Comment
<p>1. Maintain a help desk, handbook, and website to furnish information and connect citizens with the appropriate federal, tribal, state, or local regulators.</p>	<p>Substantially Complied</p>	<p>ORA has fulfilled the requirements for most of this duty, with one exception. ORA has a responsibility to provide links to agency rules. Links on the ORA website are available to many—but not all—such rules. It can be challenging to maintain current links, and some links did not work at the time of this review. ORA’s website does include links to the broader sources of the Office of the Code Reviser for state rules and to the Federal Register for federal rules.</p>
<p>2. Upon request from entities seeking to use or develop land and real property, facilitate and “scope” projects. Scoping here means identifying any permits, licenses, or other steps in the process necessary for regulatory approval of an applicant’s project. ORA may facilitate meetings between an applicant and permit agencies about a proposed project.</p>	<p>Partial Compliance</p>	<p>ORA is facilitating meetings and providing scoping assistance to projects. These services have been provided to 88 projects over the four year sunset review period.</p> <p>With regard to the “scoping” duty, statute requires that the scoping process covers six specific elements, is completed within 60 days, and the results have to be made available to the public. ORA does not currently maintain a centralized record of its scoping activities and could not demonstrate compliance with these specific requirements.</p> <p>Additionally, there is no desk manual or other policy document to guide regional staff in how to conduct this task, leaving open the possibility of inconsistent implementation in different parts of the state.</p>

Office of Regulatory Assistance Sunset Review

Statutory Duty – ORA is to:	Performance of Duty	Comment
<p>3. Coordinate processing of permits required for a specific project on behalf of an applicant. ORA’s role may include activities such as serving as a main point of contact for permit applicants, coordinating regulatory agency processes, and managing administrative procedures. Normally this service would be at the request of an applicant. However, there are circumstances where ORA can intervene on its own or can decline a request due to a lack of resources.</p>	<p>Partial Compliance</p>	<p>ORA is coordinating permit processes. However, ORA does not maintain a centralized record of its coordination agreements and so is unable to identify which functions were performed for specific projects.</p> <p>There is no desk manual or other policy document to guide regional leads in how to conduct this task, leaving open the possibility of inconsistent implementation in different parts of the state.</p>
<p>4. Coordinate the negotiation and implementation of voluntary cost reimbursement agreements, recovering reasonable costs for (a) facilitation and coordination services by ORA; (b) required tasks performed by participating permit agencies; and (c) independent consultants mutually selected by ORA and the permit agencies.</p>	<p>Out of Compliance</p>	<p>ORA has not performed this function, nor does ORA have the policies, guidance, or procedures in place to perform this task.</p> <p>Applicants can opt to pay reasonable expenses to guarantee time-sensitive reviews involving one or more state agency and local air pollution control authorities. Four departments were separately authorized under law to recover expenses and outsource permit tasks until July 2007.⁴ This optional pathway is referred to as a voluntary cost-reimbursement agreement.⁵</p>
<p>5. Develop a range of permit assistance options for project applicants.</p>	<p>Complied</p>	<p>ORA has performed this function. Examples include regulatory checklists, process flow charts, and a joint aquatics regulatory permit application. See ORA’s website for additional information.⁶ An example “schematic” for shoreline development and ORA permit fact sheet for bio-diesel operations are reprinted in Appendix 4 and 5.</p>
<p>6. Review certain transportation initiatives to determine if any would be beneficial if implemented for other types of projects.</p>	<p>Complied</p>	<p>ORA produced a “lessons learned” report on the experiences of the Transportation Permit Efficiency and Accountability Committee before that committee terminated. ORA posted this report on its website. The report served as a basis for some of the additional initiatives the office was assigned through the 2006 Supplemental Budget and Executive Order 06-02.</p>

⁴ Refers to the state departments of Ecology, Fish & Wildlife, Health, and Natural Resources.

⁵ See Chapter 251, Laws of 2000.

⁶ <http://www.ora.wa.gov>.

Office of Regulatory Assistance Sunset Review

Statutory Duty – ORA is to:	Performance of Duty	Comment
7. Develop informal processes for dispute resolution between agencies and permit applicants.	Complied	ORA provided examples, and JLARC staff observed an example, of this dispute resolution function. Since ORA does not maintain a centralized record to show how often it performs this function, it is difficult to identify how widely this service is used by project applicants.
8. Conduct customer surveys to evaluate agency effectiveness.	Partial Compliance	<p>For its help desk function, ORA provides an opportunity for users of the service to provide feedback on the quality of the assistance they received. Few callers make use of this opportunity. ORA does not have a customer survey or other direct mechanism in place to solicit feedback from the clients of ORA’s facilitation/coordination and dispute resolution services. Absent this practice, there is little information on the <u>results</u> of ORA’s efforts to facilitate and coordinate permit processes or of ORA’s dispute resolution activities.</p> <p>ORA recently took steps to collect additional customer information. ORA collaborated with the Department of Ecology to get questions about ORA into Ecology’s own customer satisfaction survey. While this effort is expected to yield some new insights not available at the time of this sunset review, the approach may not provide enough information to reliably reflect all ORA services or impact.</p> <p>JLARC hired an independent survey specialist to review the methodology. While the underlying permit applicant survey is sound, the consultant identified weakness in how the state is trying to capture data about ORA. The consultant identified potential strategies ORA could use to more effectively collect customer feedback in the future.</p>
9. Provide biennial reports to the Governor and to appropriate committees of the Legislature. Three reports are specified in statute: (a) a performance report based on the customer surveys above; (b) a report on statutory or regulatory conflicts identified by the agency in the course of its work; and (c) a report detailing use of outside consultants as part of cost reimbursement agreements.	Out of Compliance	ORA has not produced these required reports.
10. Validate that a project qualifies for an expedited, coordinated decision appeal before the state’s Environmental Hearings Boards.	Complied	ORA has been asked to perform this task twice, and the agency did so.

From this compliance review, JLARC concludes that ORA’s focus has been on *doing*, not on recording or reporting on what it has done or on collecting information to evaluate the quality of its services. It also does not have operational policies in place to ensure the consistency of scoping, facilitation, and coordination services provided at the request of project applicants.

Evaluation Criterion #2: Reaching Expected Performance Goals and Targets

As specified in the Sunset Act, agencies subject to a sunset review are required to work with JLARC to develop a data collection plan in advance of the review. This plan is typically prepared several years before JLARC’s evaluation is due, with the intent of ensuring a baseline of performance data will be available when the review is conducted. In preparation for this sunset review, the Office of Regulatory Assistance worked with JLARC in 2004 on a data collection plan with the intention of establishing the performance measures and data JLARC would be checking as part of this review. This plan and the associated data were specified in JLARC Report #04-06. At this time in 2006, ORA has some—but not all—of the agreed-upon information from its data collection plan.

The following items (Exhibit 1) were collected and reported to JLARC:

Exhibit 1: Measured Performance	
<input checked="" type="checkbox"/> Staff assigned to ORA ⁷ (includes director)	14 positions; 11.6 FTE
<input checked="" type="checkbox"/> Budget Allocation	\$1.8 million GF-State for 2005-07 Biennium
<input checked="" type="checkbox"/> Number of hits on the ORA web site (output) ⁸	
—The on-line permit handbook	2,559 visits a month
—The home page describing ORA permit services	1,360 visits a month
—The on-line permit assistance system	604 visits a month
<input checked="" type="checkbox"/> Number of calls to the ORA help desk (output)	about 2,000 this year
<input checked="" type="checkbox"/> Number of multi-agency permit teams facilitated and/or coordinated (output)	42 open projects ⁹
<input checked="" type="checkbox"/> Number of outreach visits made to foster improvements (output)	3 times a month ¹⁰

The items listed below (Exhibit 2) were supposed to be collected by ORA in accordance with the data collection plan, but these items were not available for our review, or were not clearly met:

Exhibit 2: Unmeasured Performance	
<input type="checkbox"/> At least 75% of those using ORA help desk are satisfied with the service they received (target).	
<input type="checkbox"/> At least 70% of those using ORA permit facilitation services are satisfied with the service they received (target).	
<input type="checkbox"/> Number of rule process improvements developed (output).	
<input type="checkbox"/> At least 70% of local economic development councils are contacted by ORA annually (target).	
<input type="checkbox"/> At least 40% of executive agency rule filings will be accessible from ORA web site (target).	
<input type="checkbox"/> At least three executive agencies with responsibility for environmental permitting have developed measures, monitoring systems, and targets for all their permit processes (target).	

⁷ See organizational chart on page 3 of this report.

⁸ Average based on counts ORA and host Ecology tabulated for a recent 13 month period ending July 2006.

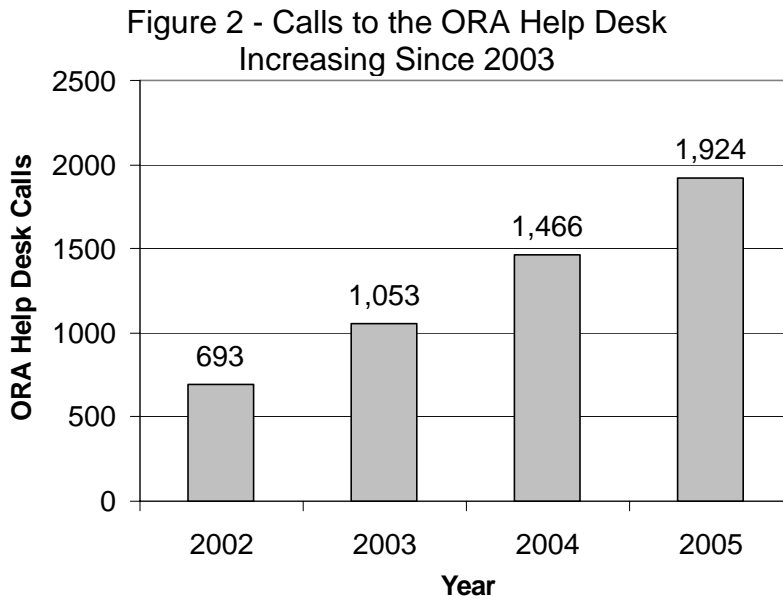
⁹ ORA regional staff facilitated 88 projects over the four-year study period; some have completed the permit process.

¹⁰ Rate is based on the most current year’s activity ORA tabulated.

Note that for five items, in Exhibit 2 on the previous page, ORA had also established specific desired targets for each area. However, absent the tracking of the outcome data, ORA cannot demonstrate whether those desired targets have been achieved or not. Consistent with the conclusion related to statutory compliance, ORA has not been investing adequate time and effort in tracking and reporting its performance.

Evaluation Criterion #3: Operating in an Efficient and Economical Manner

Absent the reporting on outcomes and other performance indicators, it was not possible for JLARC to determine if the *quality* of service clients have been receiving from ORA has remained the same or changed over time. There were also no independent measures JLARC could use for a performance benchmark. We checked to see if an office in Oregon’s state government might offer some comparable benchmarks, but the services it provides were too different to allow an appropriate comparison.¹¹ Absent this information, JLARC cannot make a definitive statement about efficiency.



Source: JLARC.

Information was available to allow for an assessment of how ORA’s operating costs compare with its workload over the four-year study period. We found that operating costs per service unit have declined over the period, largely due to ORA serving additional clients for the same base amount of resources. For the call center side of ORA’s operation, the operating cost per call has declined from an estimated \$107 per call in FY03 to less than half that amount (\$54) in FY06.

For the project side of the operation, where scoping, facilitation, and coordination services are provided, costs per open project have declined from an estimated \$15,800 per project to \$4,200 in FY06. It is important to note that estimates of the cost per open project on the project side of ORA’s operation are highly case sensitive to particular projects.

¹¹ Office of Regulatory Streamlining (<http://www.streamline.oregon.gov/>).

There are trends that indicate ORA has increased the level of services provided without increasing its costs. However, absent information on ORA's outcomes and details on the types of functions provided to assist project applicants, we cannot conclude whether or not this trend represents efficiency improvements.

Evaluation Criterion #4: Undertaking Activities Duplicated by Another Agency or the Private Sector

JLARC examined the services provided by other state permitting agencies and also examined whether environmental consultants can be hired to do the same facilitation functions as ORA.

We found that there are multi-agency efforts underway as pilot efforts in specific areas of the state where regulatory agency staff are working in teams to try to coordinate their efforts and the permitting processes. ORA reports that it supports and encourages such efforts. A distinction at the current time between the work of ORA and these pilot efforts is that ORA's services are available statewide for a wider range of projects.

We also found that private sector contractors such as environmental consultants can be hired by agencies or an applicant to perform a facilitation role. A distinction here is that these consultants normally have a stake in the outcome of a permit process, e.g., their client wants a permit decision to turn out a certain way. ORA's duty is to assist with the process itself, but not to achieve specific permit decisions. ORA's objective is to see that the process to get to permit decisions does not get stalled. This is a different perspective than a private sector consultant hired to facilitate a permit process.

To sum up, ORA's activities do not appear to be duplicative.

CHAPTER THREE: CONCLUSIONS AND RECOMMENDATIONS FROM THE SUNSET REVIEW

The Office of Regulatory Assistance has a broad mission that spans regulations, permit requirements, and agency rule-making processes. ORA's ten statutory duties largely relate to helping citizens navigate the environmental permit application and decision review process. We reviewed ORA duties and operations for compliance with legislative direction. Consistent with the Sunset Act, we also considered whether ORA as an operation is efficient, non-duplicative, and has met its own performance targets. However, there is not sufficient outcome data available to recommend ORA be modified or terminated.

ORA has demonstrated compliance or partial compliance with eight out of ten statutorily required duties. ORA's largest compliance problems are with tracking project data, identifying customer satisfaction, and reporting to the Legislature.

ORA's focus has been on *doing*, not on recording or reporting what it has done or collecting information to evaluate the quality of its services. ORA has not been investing adequate time and effort in tracking and reporting its performance. Moreover, operational policies are not in place to ensure the consistency of scoping, facilitation, and coordination services provided by ORA case managers at the request of project applicants.

There are trends that indicate ORA has increased the level of services provided without increasing its costs. However, absent information on ORA's outcomes and details on the types of functions provided to assist project applicants, we cannot conclude whether or not this trend represents efficiency improvements.

ORA does not appear to duplicate service offered by other departments. Also, the service available through ORA is different from those provided by the private sector. We know that ORA is conducting its various activities. However, because of the absence of the performance information and other required reporting, it is not possible to know what the actual *results* are from ORA's efforts, or whether changes in ORA practices are necessary. Two recommendations below are intended to remedy this information gap.

Recommendation 1

The Legislature should repeal the June 30, 2007, sunset date (Chapter 43.131 RCW), which has the effect of reauthorizing the Office of Regulatory Assistance, and consider establishing a future sunset review in 2011.

Legislation Required:	Yes
Fiscal Impact:	The carry forward budget estimate for ORA for the 2007-09 Biennium is \$2.1 million GF-State.
Reporting Date:	Pursuant to current law (see RCW 43.131.060(3)), ORA would develop performance measures and a data collection plan and submit them for review and comment to the Joint Legislative Audit and Review Committee within one year of the effective date of legislation that establishes a future sunset date.

Recommendation 2

The Office of Regulatory Assistance should develop an implementation plan to remedy the agency's lack of information about its activities and report to the Legislature on the results of this plan to demonstrate its performance and compliance with statutory duties.

Legislation Required:	None
Fiscal Impact:	JLARC assumes this can be completed with existing resources.
Reporting Date:	Initial plan, with approach in detail to JLARC by March 2007; final report, with performance and compliance information, to appropriate committees of the Legislature by June 2008.

Agency Responses

We have provided the report to the Office of the Governor and Office of Financial Management (OFM) and provided them an opportunity to submit written comments. Their written responses are included as Appendix 2.

Acknowledgements

We appreciate the assistance provided by the staff of the Office of Regulatory Assistance, the Department of Ecology (its host), and the Office of Financial Management in conducting the study.

Ruta Fanning
Legislative Auditor

On January 4, 2007, this report was approved for distribution by the Joint Legislative Audit and Review Committee.

Representative Ross Hunter
Chair

APPENDIX 1: SCOPE AND OBJECTIVES

Sunset Review of the Office of Regulatory Assistance

SCOPE AND OBJECTIVES

MAY 24, 2006



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JOINT LEGISLATIVE AUDIT
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MANDATE

The Office of Regulatory Assistance (ORA) is scheduled to terminate in 2007 pursuant to the Washington Sunset Act. As required by this legislation, JLARC will conduct a sunset review to assist policymakers with deciding whether the Office should be continued, modified, or terminated.

BACKGROUND

The Office of Regulatory Assistance originated as part of 1995 revisions to the Growth Management Act, starting out as the Department of Ecology's Permit Assistance Center (PAC). JLARC conducted a sunset review of PAC operations in 1998 and recommended continuance with some performance reporting changes. However, the Legislature did not take action. PAC lapsed out of existence and for a period of months, the Department of Ecology staffed and maintained a unit for internal purposes, relying on the authority represented by funds appropriated for regional permit assistance centers.

In 2002, the Washington Legislature reconstituted a state permit assistance function, formalized as the Office of Regulatory Assistance. It was placed administratively under the Governor, within the Office of Financial Management, apart from departments making regulatory decisions. One year later, lawmakers considered and passed Substitute House Bill 1550. This 2003 Act broadened the Office's historical mission of coordinating environmental permitting by authorizing the Office to encompass regulatory processes more generally.

ORA has two primary responsibilities: 1) to serve as an information clearinghouse about regulatory requirements, particularly those involving state environmental quality permits, and 2) to render facilitation services and assistance to government entities, private firms, and citizens, upon request, as projects navigate multi-agency approval processes.

Absent specific action by the Legislature, the Office of Regulatory Assistance will cease to exist on June 30, 2007.

STUDY SCOPE

This review will examine the operations and duties of the Office of Regulatory Assistance, as specified in Chapter 43.42 RCW. The review will focus on the evaluation criteria specified by the Washington Sunset Act. JLARC will describe how ORA fits into a larger regulatory context today.

JLARC's review will include, but not be limited to, analysis of performance measures identified by ORA as part of a sunset "front-end" review JLARC conducted in 2004.¹

¹ Details on the performance measures can be found in JLARC Report 04-6, published in April 2004.

STUDY OBJECTIVES

JLARC will attempt to answer to what degree the state's Office of Regulatory Assistance is:

1. Complying with legislative intent as contained in Chapter 43.42 RCW;
2. Operating in an efficient and economical manner, with adequate cost controls in place;
3. Reaching expected performance goals and targets; and
4. Undertaking activities duplicated by another agency or the private sector.

The Sunset Act also requires JLARC to consider whether sufficient evidence exists to recommend changing or eliminating duties and, if so recommended, to identify possible impacts.

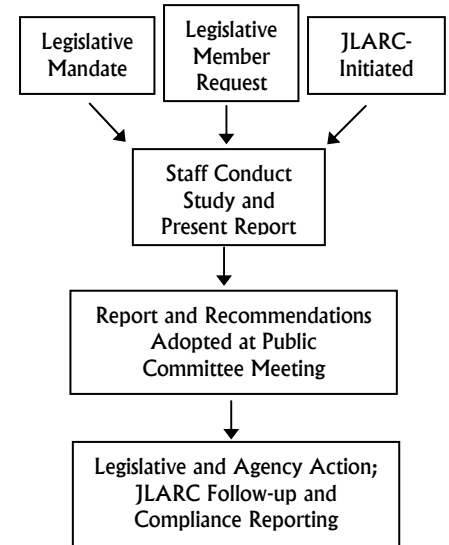
Timeframe for the Study

A preliminary report will be available at the end of **November 2006** with the final report before JLARC when the Committee convenes in early **January 2007**.

JLARC Staff Contact for the Study

Karen Barrett (360) 786-5181 barrett.karen@leg.wa.gov
Valerie Whitener (360) 786-5177 whitener.valerie@leg.wa.gov

JLARC Study Process



Criteria for Establishing JLARC Work Program Priorities

- Is study consistent with JLARC mission? Is it mandated?
- Is this an area of significant fiscal or program impact, a major policy issue facing the state, or otherwise of compelling public interest?
- Will there likely be substantive findings and recommendations?
- Is this the best use of JLARC resources: For example:
 - Is the JLARC the most appropriate agency to perform the work?
 - Would the study be nonduplicating?
 - Would this study be cost-effective compared to other projects (e.g., larger, more substantive studies take longer and cost more, but might also yield more useful results)?
- Is funding available to carry out the project?

APPENDIX 2 – AGENCY RESPONSE

- Office of Regulatory Assistance
- Office of Financial Management

CHRISTINE O. GREGOIRE
Governor



STATE OF WASHINGTON
OFFICE OF THE GOVERNOR

P.O. Box 40002 • Olympia, Washington 98504-0002 • (360) 902-4111

December 6, 2006

Ms. Ruta Fanning
Joint Legislative Audit and Review Committee
506 - 16th Avenue SE
Olympia, WA 98501-2323
(Campus mail: PO Box 40910)

RE: Response to the JLARC Preliminary Report
Office of Regulatory Assistance Sunset Review

Dear Ms. Fanning:

The Governor's Office and the Office of Regulatory Assistance (ORA) concur with the two JLARC (Joint Legislative Audit and Review Committee) recommendations set forth in the table below. In addition, by December 15, 2006 ORA will:

- Adopt policies for coordinating cost reimbursement agreements; and
- Deliver its first performance report to the Governor and Legislature.

These actions will bring ORA into compliance with the two outstanding statutory requirements noted in Chapter Two of the sunset review.

<i>Recommendation</i>	<i>Agency Position</i>	<i>Comments</i>
#1 – The Legislature should repeal the June 30, 2007 sunset date (Chapter 43.131 RCW) which has the effect of reauthorizing the Office of Regulatory Assistance, and consider establishing a future sunset review in 2011.	Concur.	ORA will offer legislation to reauthorize the office.
#2 – The Office of Regulatory Assistance should develop an implementation plan to remedy the agency's lack of information about its activities and report to the Legislature on the results of this plan to demonstrate its performance and compliance with statutory duties.	Concur.	

Ms. Ruta Fanning

December 6, 2006

Page 2

ORA found sunset review to be a valuable tool for a newer office that has gone through transitions in leadership and focus. A new sunset date will allow ORA to develop a data collection plan and new performance measures in line with our current activities. In addition, our implementation plan will include an updated approach for documenting how the office meets its statutorily required duties.

The report to the Governor and Legislature, which is in draft form at this moment, will also describe how the office is responding to directives set forth in Executive Order 06-02 on Regulatory Improvement.

Thank you for this opportunity to provide a response to the sunset review preliminary report.

Sincerely,

A handwritten signature in blue ink, appearing to read "Faith L. Lumsden", with a long horizontal flourish extending to the right.

Faith L. Lumsden, Director
Governor's Office of Regulatory Assistance

cc: Tom Fitzsimmons
Victor Moore




STATE OF WASHINGTON
OFFICE OF FINANCIAL MANAGEMENT

Insurance Building, PO Box 43113 • Olympia, Washington 98504-3113 • (360) 902-0555

December 5, 2006

TO: Ruta Fanning, Legislative Auditor
Joint Legislative Audit and Review Committee

FROM: Victor A. Moore, Director 

**SUBJECT: PRELIMINARY REPORT – OFFICE OF REGULATORY ASSISTANCE
SUNSET REVIEW**

Thank you for giving the Office of Financial Management (OFM) the opportunity to review the Joint Legislative Audit and Review Committee's preliminary report on Office of Regulatory Assistance Sunset Review. As noted below, OFM concurs with the recommendations contained in the report.

Recommendation	Agency Position	Comments
1. The Legislature should repeal the June 30, 2007 sunset date (Chapter 43.131 RCW), which has the effect of reauthorizing the Office of Regulatory Assistance, and consider establishing a future sunset review in 2011.	Concur	
2. The Office of Regulatory Assistance should develop an implementation plan to remedy the agency's lack of information about its activities and report to the Legislature on the results of this plan to demonstrate its performance and compliance with statutory duties.	Concur	

APPENDIX 3: EXECUTIVE ORDER 06-02

See following pages.



STATE OF WASHINGTON
OFFICE OF THE GOVERNOR

P.O. Box 40002 • Olympia, Washington 98504-0002 • (360) 753-6780 • www.governor.wa.gov

EXECUTIVE ORDER 06-02

REGULATORY IMPROVEMENT
Improve, Simplify and Assist

WHEREAS, this Administration wants to make it easy to do business in the state of Washington; and

Citizens and businesses deserve state agencies that will be innovative and creative in simplifying their procedures for permits, licenses, regulatory compliance and all other business operations; and

Businesses should expect state agencies to provide:

- Clear rules and regulations;
- Consistent, high-quality, problem-solving service;
- Timely responses;
- User-friendly processes; and

All state agencies and other levels of government should work to reduce multi-agency barriers for business; and

Citizens need results that protect the public health and safety and do not compromise environmental quality; and

The top priorities of this administration include improving and simplifying the licensing, permitting, tax collection and other state business systems; and

The directors of certain state agencies, and a representative for local jurisdictions, signed a Project Charter in January 2006, which guides the development and implementation of a one-stop business portal for Washington citizens and businesses.

NOW, THEREFORE, I, Christine O. Gregoire, Governor of the state of Washington, direct all regulatory, taxing, licensing, and permitting agencies and programs to improve and simplify service to Washington citizens and businesses.

The Governor's Regulatory Improvement Program will work with agencies to:



- A. **Develop a One-Stop Business Portal.** This single, secure, online portal will make licensing, permitting, regulatory approvals or filings, and tax collection easier for business.
- B. **Provide Multi-Agency Reviews for Permits.** Agencies will ease the burden of dealing with multiple agencies for permits by streamlining the process with features such as multi-agency permit teams, concurrent permit reviews, offering single points of contact, and providing on-line tools, education, and outreach. State agencies also will develop permit review systems and procedures that include local and federal agencies.
- C. **Engage in On-going Regulatory Improvement.** The Director of the Office of Regulatory Assistance will work with state, local and federal agencies to make on-going improvements that will make the permitting, licensing, and regulatory processes easier and more effective. To do this, the Office of Regulatory Assistance will:
- Consult regularly with stakeholders;
 - Develop and implement innovative regulatory best practices;
 - Work with local and federal governments to develop coordinated permitting, licensing and related regulatory systems;
 - Utilize the latest technology to ensure all the work of businesses and citizens with the state is as efficient and user-friendly as possible; and
 - Report annually to the Governor on the status of regulatory improvement work plans.
- D. **Listen to Our Clients.** Agencies will use surveys, focus and advisory groups, interviews, complaint tracking or other methods to understand citizen and business perspectives and to improve service design and delivery.
- E. **Talk Clearly to the Public.** Agencies will make their letters, instructions and processes clear and understandable to citizens and businesses. They will standardize and simplify forms and applications. They will write their processes, rules, online tools, and public information in clear language that will improve accessibility, reduce processing times and increase user-friendliness.
- F. **Be Accountable.** Agencies that collect taxes or provide permits, licenses, approvals, and other regulatory services will:
- Establish measurable service delivery standards to address issues such as:
 - o Turnaround or response times,
 - o Professionalism and helpfulness,
 - o Consistency,
 - o Efficiency and effectiveness, and
 - o Overall quality of service outcomes;

- Regularly measure progress;
- Report quarterly through Governor and agency Government Management, Accountability, and Performance (GMAP) review sessions;
- Consider benchmarks from similar agencies or programs;
- Set targets for improvement; and
- Use Plain Talk standards (Executive Order 05-03) for written materials.

This Executive Order shall take effect immediately.

Signed and sealed with the official seal of the state of Washington, on this 10th day of February, 2006, at Olympia, Washington.

By:


Christine O. Gregoire
Governor

BY THE GOVERNOR:

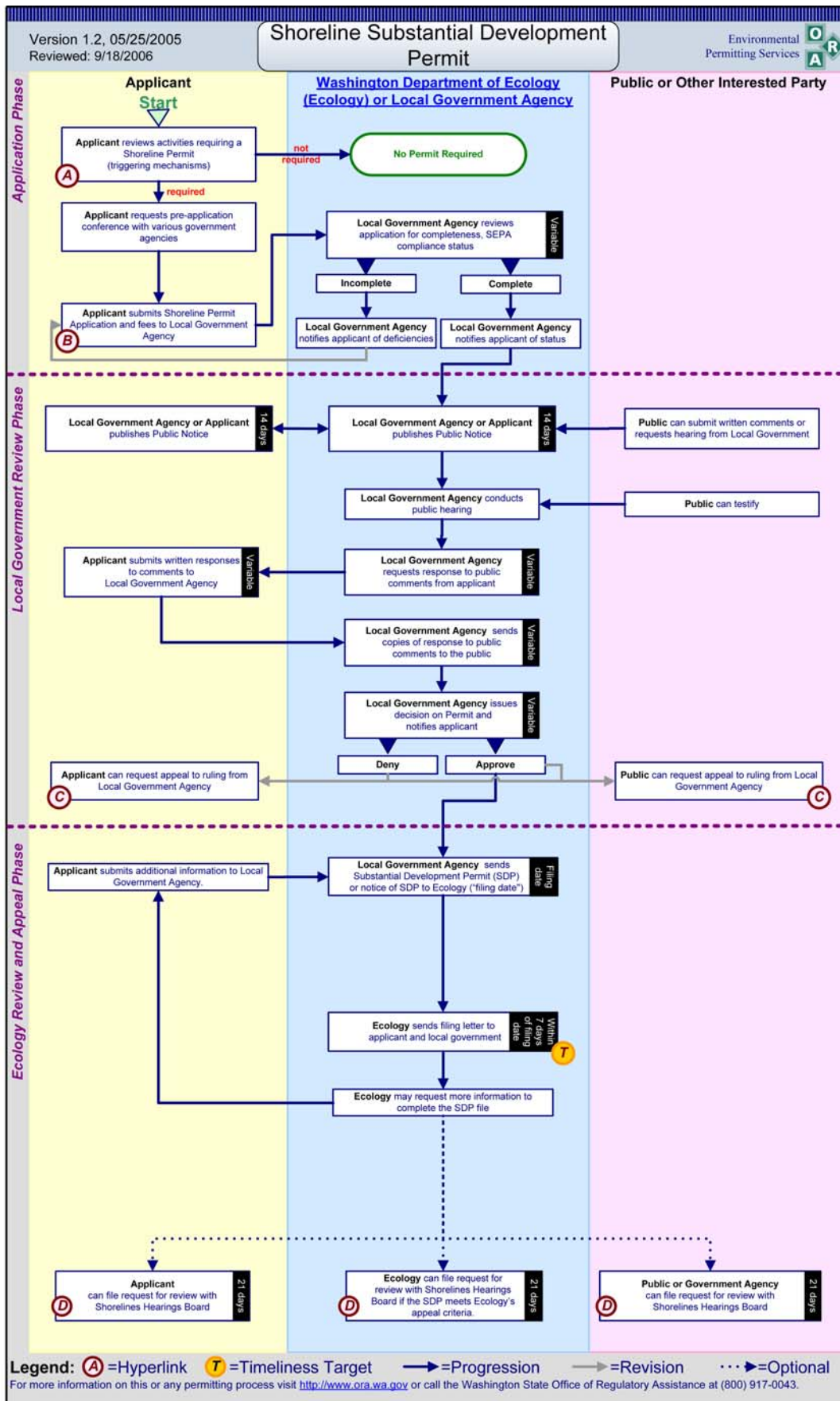

Secretary of State



APPENDIX 4: EXAMPLE FLOW CHART: SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT

See following page.

Office of Regulatory Assistance – Sunset Review



APPENDIX 5: EXAMPLE FACT SHEET: BIO-DIESEL FACILITY PERMIT

See following pages.



The Governor's Office of Regulatory Assistance (ORA) Biodiesel Facility Permits Fact Sheet

In Washington, a number of laws apply to the construction and operation of any industrial facility. These laws are in place to protect public health, safety, and environmental quality. Typically, these restrictions are written into permits issued by local, state or federal agencies.

This fact sheet gives you:

- Tips for how to reduce your permits so you can save time and money.
- The six steps to biodiesel permitting that describe the most common permits you will need.
- Online resources to help you through the permitting process like flow charts and applications.
- Contact information for regional regulatory assistance leads who can answer your questions.

Reduce Your Permits to Save Time and Money

To reduce the permits you need you should select a site that is:

- Already zoned for industrial use.
- Supported by an existing water system that has existing water rights available to provide sufficient process water.
- Supported by a wastewater treatment plant that has the capacity and permits to accept your facility's wastewater.
- Equipped with adequate roads and intersections to support your transportation activities.
- Supported by adequate energy utilities that can meet your project's energy needs.
- Equipped with existing structures and/or storage tanks you can use.
- Supported by sufficient fire and emergency response personnel.



When you shop for a site, factor in the time and money you will need to develop your site and to build and equip your manufacturing plant. It is important to find out if basic services such as water, sewer, and road access are available. Don't forget about the time, money, and permits you need to establish these services if not present. A site's history and/or past industrial contamination can also influence development and permitting costs.

You should also be aware that you may need to adapt your construction footprint to avoid a floodplain or other sensitive environmental areas. If you can't avoid these areas you can identify and implement mitigation to avoid or reduce the impact to these areas. Depending on the circumstance your costs can increase or decrease.

Six Steps to Biodiesel Permitting

Step #1: Zoning and Environmental Review (SEPA)

Zoning. To save time pick a site where there are no zoning restrictions for a biodiesel facility. The local planning agency can tell you what zoning applies to your site. A biodiesel facility is best suited for an industrial zone. Also find out about local zoning restrictions. Ask the local planning department if there is any special state or federal land use restrictions (such as a National Scenic Area) that could impact your facility.

Critical Area Ordinance Evaluation. In Washington, most cities and counties have critical areas ordinances which set up land use restrictions for sensitive areas. Check with the city or county to find out if your proposed site is within a "critical area". Critical areas typically include:

- steep slopes,
- aquifer recharge areas,
- wetlands,
- significant fish and wildlife habitat,
- frequently flooded areas, or
- volcanic hazard zones.

Environmental Review or SEPA. The Washington State Environmental Policy Act (SEPA) is a process not a permit. The SEPA environmental review process is designed to work with other regulations to provide a comprehensive review of a proposal. Most regulations focus on particular aspects of a proposal, while SEPA requires the identification and evaluation of probable impacts to all elements of the built and natural environment.

The SEPA process requires you to describe your project, its environmental impacts, and any mitigation you will implement to avoid or reduce impacts. Simple projects may complete the SEPA process in several months. If your project has significant impacts an Environmental Impact Statement (EIS) may be needed to more thoroughly describe and evaluate your proposal.

You should start the SEPA process as soon as possible because many permits cannot be issued until after a SEPA determination is made. If your project will use federal loans or grants or will need certain federal permits, the project must comply with the federal version of SEPA, called the National Environmental Policy Act (NEPA).

- ✓ Learn more about the SEPA process at:
www.ecy.wa.gov/programs/sea/sepa/e-review.html.
- ✓ Download the SEPA Guide for Project Applicants at:
www.ecy.wa.gov/programs/sea/sepa/apguide/apguide1.htm.
- ✓ Learn more about NEPA at: www.epa.gov/compliance/nepa/.



What starts the SEPA process?

To start the SEPA process you will usually fill out and submit an Environmental Checklist to the "lead agency". An environmental checklist is not required if the applicant and lead agency agree that an EIS is needed or when the project has already been evaluated under NEPA or another SEPA process.

In most cases the city or county is the lead agency for private projects. However, there are times when Ecology is the lead agency. For example, either Ecology or the Energy Facility Site Evaluation Council (EFSEC) is the lead agency for a facility that stores a million gallons or more of fuel.

- ✓ Download the Environmental Checklist at: www.ecy.wa.gov/biblio/ecy05045.html.

What does the Lead Agency do? The lead agency is responsible for evaluating the proposal and issuing the SEPA determination. The lead agency will review your Environmental Checklist and ask other agencies for feedback. You may have to submit more information before a decision can be made. The Lead Agency will issue one of the following decisions:

- **Determination of Nonsignificance (DNS):** A DNS decision is made when a project **is not likely** to have significant unavoidable adverse environmental impacts
- **Determination of Significance (DS):** A DS decision is made when a project **is likely** to have significant unavoidable adverse environmental impacts that cannot be mitigated. A DS triggers the EIS requirement mentioned above.
- **Mitigated Determination of Non-Significance (Mitigated DNS):** A Mitigated DNS decision is made when a project **will have** adverse environmental impacts which could be reduced or avoided through acceptable mitigation.

Step #2: Typical Permits and Approvals to Develop a Facility

Below is a description of the typical local, regional and state permits you will need to develop your facility.

Local Permits

Local ordinances and permits vary from jurisdiction to jurisdiction. It is important to contact the local agencies in the jurisdiction where your site is located. They can confirm the exact local requirements for your project.



Building or Grading Permit. If you plan to clear, grade or build on the site, you will need a building or grading permit. Grading permits usually apply to land clearing, changing the natural land contours, digging or moving soil.

Conditional Use Permit or Special Use Permit. Some local governments use conditional use or special use permits to manage impacts to communities and the environment. These permits approve the development of the site as long as certain conditions are met. For example, an area zoned for industrial activities may allow all types of industry except for those that create noise pollution above a certain level. Conditional use permits typically take several months to get and usually involve a public hearing.

Electrical, Plumbing and Mechanical Permits. Check with the local building department on the necessary electrical, plumbing and mechanical permits. These permits usually require detailed plans along with the permit application. Electrical work is also inspected by the Washington Department of Labor and Industry.

Fire Code. Biodiesel facilities need local fire department permits which are based on the International Fire Code and additional local conditions. Fire permits may be issued as part of the building permit process or separately. Permit requirements can apply to:

- safety,
- fire protection,
- above ground storage tanks,
- corrosives,
- cryogenic fluids,
- flammable and combustible liquid,
- liquefied petroleum gas, and
- hazardous materials.

Contact the local fire district for specific requirements and find out whether they issue one permit, or separate permits. Read information about underground storage tanks under Regional and State Permits below.

- ✓ International Fire Code Web site: www.ifci.org.

Boiler/Pressure Vessel Permit. Some cities and counties require boiler or pressure vessel permits. Check with the local building department to find out if you will need this permit. Read more information about boiler/pressure vessel installation permits under Regional and State Permits below.

Road Permit. If your facility will need new access to a city or county road from private property you will need to get a road access permit. Contact the local public works department early in the project. They can help identify the need to upgrade or expand roads based on the amount of traffic your facility will create. If your facility will impact state or federal roads, you will need a different road access permit from the Washington Department of Transportation (WDOT).

Flood Plain Permit. If your site is in a 100 year floodplain as shown on maps from the Federal Emergency Management Agency you will need a flood plain permit. Contact the local planning department about this requirement.

- ✓ See the Permit Handbook for details:
<http://apps.ecy.wa.gov/permithandbook/permitdetail.asp?id=47>.

Solid Waste Handling Permit and Testing. You may need a solid waste handling permit if you plan to:

- store and process used cooking oil (vegetable oil) or yellow grease,
- landfill solid waste on-site,
- spread solid waste on the land,
- store waste in surface impoundments,

- compost,
- store waste in piles, or
- store waste in tanks.

Farmers who grow crops for biodiesel production do not need a solid waste permit. Contact the local health department about your specific solid waste handling, recycling and disposal plans.

Biodiesel refining produces a dry cake-like ash that should be initially tested to find out if the ash can be disposed in regular trash or if special handling is needed. Read information about special handling under Dangerous Waste below.

- ✓ See the Permit Handbook for details:
<http://apps.ecy.wa.gov/permithandbook/permitdetail.asp?id=83>.
- ✓ Find the local health departments and districts that can help you at
www.doh.wa.gov/LHJMap/LHJMap.htm.

On Site Sewage System Permit. If you are not able to hook up to a wastewater treatment plant for domestic sewage on your site, you can choose to design and install a sewage treatment system that includes a septic tanks and drain field to treat domestic sewage.

Local health departments approve permits for systems that will receive less than 3,500 gallons of domestic sewage per day. The state's Department of Health or Department of Ecology will review and approve the permit for larger systems.

Process wastewater can not be discharged into septic systems. Read the information about industrial wastewater permits under Regional and State Permits below. If you will be discharging non-domestic wastewater to sanitary sewers, you may need a pretreatment permit. In some areas these are issued by the local wastewater treatment plant.

- ✓ Find the local health departments and districts that can help you at:
www.doh.wa.gov/LHJMap/LHJMap.htm.

Shoreline Permit. If you build or modify a facility near a lake, river or marine shoreline, or associated wetlands you may need a shoreline permit. Read more about permits you need for facilities near waterbodies or wetlands in Step 3.

Regional and State Permits

Regional and state agencies implement rules that protect public health and the quality of the environment. Many pollution control laws are assigned to state agencies. This promotes a consistent approach to protecting communities and lands across the state from environmental pollution.



Air Quality Notice of Construction (NOC). Biodiesel processing facilities will be a new source of air contamination. This means before you start construction you will need an air quality NOC permit. Depending on what county you are in the local clean air agency or the Department of Ecology's regional office will review and approve this permit. The timeframe to get this permit is typically 60 to 90 days. This permit must be issued before the start of construction on your project.

If the project is regulated by the Department of Ecology rather than a local clean air agency, call the ORA Call Center to find out who to contact in Ecology's Air Quality Program.

- ✓ Learn how to apply for an air quality NOC permit at: www.ecy.wa.gov/biblio/ecy070121.html.
- ✓ See the Permit handbook for the application and process flow chart at: <http://apps.ecy.wa.gov/permithandbook/permitdetail.asp?id=1>.
- ✓ Find the local clean air authority that can help you at: www.ecy.wa.gov/programs/air/local.html.

In addition to meeting requirements of state and local air pollution control regulations, a number of federal requirements may apply depending on the process steps incorporated and the size of the biodiesel operation. The agency that will process your NOC application can assist you in identifying which federal air quality rules that apply.

Air Operating Permit (AOP). Depending on the amount of air pollution your facility has the potential to create you may need an AOP. An AOP adds up all the air pollution requirements of a qualifying facility. The amounts of air emissions that will trigger an AOP are:

- 10 tons per year or more of any one federally-defined hazardous air pollutant (HAP),
- 25 tons per year or more of all the HAPs, or
- 100 tons or more of nitrogen oxides, sulfur oxides, volatile organic compounds carbon monoxide, or particulate matter.

The principle HAP of concern for a biodiesel facility is methanol, though other chemicals may also be present. If your facility qualifies for an AOP you have twelve months, from the time you complete the installation of the biodiesel system, to submit the permit application.

You can operate your biodiesel system, under the NOC permit terms, as soon as it is installed. The same agency that would issue the NOC permit issues the AOP. Contact the relevant agency for details.

You must renew both of these permits every five years. If your facility has an existing AOP the renewal date will change depending on how and when the biodiesel system was incorporated into your existing permit.

- ✓ See the Permit Handbook for details and the process flow chart at: <http://apps.ecy.wa.gov/permithandbook/permitdetail.asp?id=51>.
- ✓ Learn more about HAPs at: www.epa.gov/ttn/atw/188polls.html.
- ✓ Washington's local clean air authorities: www.ecy.wa.gov/programs/air/local.html.

Water Right Permit. Because water is limited in some watersheds it is important to check on water availability when you choose a location.

You will not need a water right permit if the:

- Facility can get water from an existing municipality or private water system which has adequate water rights to meet your needs.

You *will need* a water right if:

- You need more than 5,000 gallons of water a day,
- You plan to use surface water as your water source, or
- A municipal or private water system is not available or does not have adequate water rights to meet your needs.

Call the ORA Call Center to find out who to contact in Ecology's Water Resources Program.

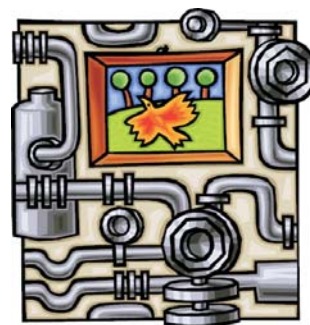
- ✓ See the Permit Handbook for application forms and process flow charts:
 - New water right: <http://apps.ecy.wa.gov/permithandbook/permitdetail.asp?id=78>.
 - Water right change request: <http://apps.ecy.wa.gov/permithandbook/permitdetail.asp?id=79>.

Wastewater Discharge Permits.

The type of wastewater discharge permit you need will depend on where your industrial wastewater and stormwater will go: sanitary sewer, surface water, or to land (ground water). We encourage you to schedule a pre-application meeting with Ecology to discuss your wastewater permits. These meetings can give you technical feedback on how to design and operate your facility to minimize pollution. The meetings also explain the permit process and timeframes. If you will be discharging non-domestic wastewater to sanitary sewers, you may need a pretreatment permit. In some areas these are issued by the local wastewater treatment plant.

You will need a *State Waste Discharge Permit* if your facility will:

- Discharge wastewater and stormwater to a sanitary sewer system that is publicly-owned.
- Construct and/or operate a privately-owned treatment plant.
- Discharge industrial wastewater to land.
- ✓ See the Permit Handbook for the application and process flow chart: <http://apps.ecy.wa.gov/permithandbook/permitdetail.asp?id=20>.



You will need to submit an Engineering Report at least 30 days prior to the time you want to commence construction if:

- You will be treating wastewater prior to discharge to waters of the state,
- Pretreating wastewater prior to discharge to a POTW.
- ✓ Read the regulations at www.ecy.wa.gov/pubs/wac173240.pdf.
- ✓ Read the guidance at <http://www.ecy.wa.gov/pubs/9837/start.pdf> (Criteria for Sewage Works Design)

You will need a *National Pollution Discharge Elimination System (NPDES) Permit* if your facility will discharge construction, stormwater, or industrial wastewater directly into a surface water of the State.

- ✓ See the Permit Handbook for the process flow chart at:
http://www.ecy.wa.gov/programs/sea/pac/ppds_info/construction_stormwater_coverage_schematic.pdf. (for construction stormwater permit) or
http://www.ecy.wa.gov/programs/sea/pac/ppds_info/NPDES_Individual_Industrial_Permit_Schematic.pdf. (for discharge of process wastewater)
- ✓ Download the application at: www.ecy.wa.gov/programs/wq/stormwater/construction/.
- ✓ Read the guidance at: www.ecy.wa.gov/biblio/9937.html.

You will need an *NPDES Industrial Stormwater General Permit* if your facility will only discharge stormwater and no industrial wastewater. You do not need this permit if your stormwater is combined with your other wastewater that goes to a wastewater treatment plant.

- ✓ See the Permit Handbook for the process flow chart at:
<http://apps.ecy.wa.gov/permithandbook/permitdetail.asp?id=17>.
- ✓ Read the guidance and download the application at:
www.ecy.wa.gov/programs/wq/stormwater/industrial/index.html.

You will need a NPDES Construction Stormwater Permit if you grade, re-contour or otherwise disturb more than one acre of soil at your site. The permit sets requirements for stormwater control while your facility is under construction. Once the soil at your site is stabilized you are finished with construction, the permit is closed. Once your facility is built and ready to operate, you may need an industrial stormwater permit that is described above. Expect to receive the permit about 60 days after submitting a complete application.

- ✓ See the Permit Handbook for the application and process flow chart:
<http://apps.ecy.wa.gov/permithandbook/permitdetail.asp?id=16>.
- ✓ Read the guidance at www.ecy.wa.gov/biblio/9937.html.
- ✓ Download the application at www.ecy.wa.gov/programs/wq/stormwater/construction/.

Reclaimed Water Permit. If your facility will reclaim and reuse water (other than within process) you will need a reclaimed water permit from Ecology and the Department of Health. This permit may be combined with a State Waste Discharge Permit or a NPDES Permit (described above), depending on the circumstances.

The Washington Department of Health and Ecology work together to issue the permit and conduct inspections. In most cases, this permit has a five-year life span. After you submit a complete

application, expect a minimum of six months to receive a permit. We encourage pre-application meetings before you submit your application.

- ✓ Read the fact sheet at: www.ecy.wa.gov/pubs/0510012.pdf.
- ✓ Download the application at: www.ecy.wa.gov/biblio/ecy070180.html.
- ✓ Visit the Reclaimed Water Web site at:
www.ecy.wa.gov/programs/wq/reclaim/index.html#Reclaimed%20Water%20Permit.

Underground Storage Tank (UST) Regulations. Underground tanks at your facility that contain 100% biodiesel are not subject to UST regulations. Tanks that contain a blend of biodiesel with petroleum diesel and other petroleum product or hazardous substance must comply with UST regulations. Contact the ORA Call Center to find out who to contact in Ecology's Underground Storage Tank Program.

- ✓ See the Permit Handbook for the application and process flow chart at:
<http://apps.ecy.wa.gov/permithandbook/permitdetail.asp?id=11>.
- ✓ Read the fact sheet at: www.ecy.wa.gov/biblio/0309103.html.
- ✓ Visit the UST Web site at: www.ecy.wa.gov/programs/tcp/ust-lust/tanks.html.

Boiler / Pressure Vessel Installation Permit. If your facility will have a boiler you will need a boiler/pressure vessel installation permit from the Department of Labor and Industries. You must get the permit before you install, move or reinstall any boiler or pressure vessel at your facility.

- ✓ Get more information at: www.lni.wa.gov/TradesLicensing/Boilers/default.asp.
- ✓ Download the application at: www.lni.wa.gov/TradesLicensing/Boilers/FormPub/default.asp.

Road Approach Permit. If state roads will need improvement or expansion to support your facility or because of traffic impacts from your facility, you will need a road approach permit from the Washington Department of Transportation (WDOT). Contact WDOT early in the project to find out if you need this permit.

- ✓ Department of Transportation regional offices: www.wsdot.wa.gov/contact/officelocation.htm.

Archaeological Permit. If you discover an historic or archeological artifact while you are constructing a new facility you will need an Archaeological Permit. Contact the Department of Archeology and Historic Preservation before you start your project. They can tell you if historic or archeological sites have been found nearby. If you are receiving federal grants or loans to help construct your facility you are required to have a Cultural Resource Assessment.

- ✓ Department of Archeology & Historic Preservation: www.oahp.wa.gov/.
- ✓ See the Permit Handbook for the application at:
<http://apps.ecy.wa.gov/permithandbook/permitdetail.asp?id=4>.

Step #3: Other Permits You Need for Facilities Near Waterbodies or Wetlands



A combination of local, state and federal agencies regulate projects that disrupt or require construction in or near lakes, streams, wetlands or marine areas. To better coordinate this process many agencies now use a single permit application called a Joint Aquatic Resource Project Application (JARPA).

- ✓ Download the JARPA form at www.ecy.wa.gov/programs/sea/pac/jarpa.html.

Shoreline Permit. You will most likely need a shoreline permit if your facility is located within:

- 200 feet of the ordinary high water mark of a shoreline of the state (river, lake, or saltwater), associated wetland or
- within the 100 year floodplain.

Contact the local planning department to discuss your site design in the early stage, and ask for suggestions on how to design the site to minimize shoreline impacts. You may be able to reduce permit requirements by modifying your site design. Not all local governments use the JARPA form mentioned above, so check with the local planning department.

Wetlands. Any development in or near wetlands not associated with shorelines of the state are also subject to local requirements adopted by cities and counties under the Growth Management Act. This type of development may also be subject to the other permits described in this section.

- ✓ See the Permit Handbook for information about the:
 - Shoreline Conditional Use Permit:
<http://apps.ecy.wa.gov/permithandbook/permitdetail.asp?id=44>.
 - Shoreline Substantial Development Permit:
<http://apps.ecy.wa.gov/permithandbook/permitdetail.asp?id=38>.
 - Shoreline Variance Permit:
<http://apps.ecy.wa.gov/permithandbook/permitdetail.asp?id=45>.

401 Water Quality Certification. If construction of your facility requires a federal permit (such as a permit from the Army Corps of Engineers (Corps)) you will also need a 401 Water Quality Certification from Ecology. When Ecology issues a 401 Certification they anticipate your project will comply with state water quality standards and other aquatic resource protection requirements. The 401 Certification can cover both the construction and operation of the proposed project. Conditions of the 401 Certification become conditions of the Federal permit or license issued by the Corps.

Contact the Ecology regional office early to discuss the design and operation of your site. Ask for suggestions on how you can minimize impacts of your project and reduce the requirements of the 401 Certification. Use the JARPA form for this permit.

- ✓ See the Permit Handbook for the JARPA form and the process flowchart at:
<http://apps.ecy.wa.gov/permithandbook/permitdetail.asp?id=43>.

404 Permit - Permit for Discharge of Dredge and Fill Material. If construction of your facility will impact water, wetlands, marine lands or other "waters of the U.S.", you will need a permit from the Corps. Typical projects that require this permit include dredging, filling, and clearing along rivers, wetlands or shorelines.

Contact the Corps before you submit an application. They can tell you which process applies to your site and how long it will take. Ask for suggestions for how you can design your site to minimize impacts and reduce requirements of the 404 permit. You may be able to eliminate this permit by redesigning the site footprint. Use the JARPA form for this permit.

- ✓ Visit the Army Corps of Engineers online at:
www.nws.usace.army.mil/PublicMenu/Menu.cfm?sitename=REG&pagename=staff_2.
- ✓ See the Permit Handbook for more information:
<http://apps.ecy.wa.gov/permithandbook/permitdetail.asp?id=37>.

Section 10 Permit - Permit to Work in Navigable Waters. If construction of your site will create an obstruction or alternation in, over, or under navigable waters you will need a permit to work in navigable waters. Typical projects that require these permits include the construction and maintenance of piers, wharfs, dolphins, breakwaters, bulkheads, and groins.

Before you submit your application, contact the Corps to find out which process applies to your site. Ask for suggestions on how you can design your site to minimize impacts and reduce requirements of the Section 10 permit. Use the JARPA form for this permit.

- ✓ Visit the Army Corps of Engineers online at:
www.nws.usace.army.mil/PublicMenu/Menu.cfm?sitename=REG&pagename=staff_2.
- ✓ See the Permit Handbook for more information:
<http://apps.ecy.wa.gov/permithandbook/permitdetail.asp?id=36>.

Hydraulic Project Approval (HPA). If the construction of your facility will divert, obstruct or change the natural flow of water or bed of any of the salt or fresh waters of the state, you will need a Hydraulics Permit from the Department of Fish and Wildlife. Contact a regional biologist early to discuss your project to ask for suggestions for how to design your site to minimize the permit requirements. You may be able to eliminate this permit by modifying your site design.

- ✓ Department of Fish and Wildlife regional offices: wdfw.wa.gov/reg/regions.htm.
- ✓ More information about HPAs: wdfw.wa.gov/hab/hpapage.htm.
- ✓ See the Permit Handbook for more information and the process flowchart at:
<http://apps.ecy.wa.gov/permithandbook/permitdetail.asp?id=25>.

Coastal Zone Management (CZM) Consistency. If your facility is in one of Washington's 15 coastal counties and it is determined you need a 404 permit or a 401 Water Quality Certification, you will automatically need a CZM decision by Ecology. To get a decision, submit the CZM Consistency Checklist and all necessary information that describes how your project is consistent with Washington's Coastal Zone Management Program.

- ✓ More Information: www.ecy.wa.gov/programs/sea/czm/fed-consist.html.
- ✓ See the Permit Handbook for more information and the process flow chart
<http://apps.ecy.wa.gov/permithandbook/permitdetail.asp?id=46>.

Aquatic Land Use Authorization. If you will cross over or impact aquatic land owned by the State of Washington, when you build your facility, you will need an Aquatic Land Use Authorization from the Washington Department of Natural Resources. Before you apply, contact the Department of Natural Resources regional office near you to discuss your project.

- ✓ Department of Natural Resources regional offices: www.dnr.wa.gov/base/regions.html.
- ✓ See the Permit Handbook for more information and the process flowchart: <http://apps.ecy.wa.gov/permithandbook/permitdetail.asp?id=31>.
- ✓ Download the application at www.dnr.wa.gov/htdocs/aqr/forms/longformapp.doc.

Step #4: Additional Regulatory Steps for Operating a Facility

Fuel Registration Requirement. Biodiesel producers who plan to sell fuel commercially need to register their fuel with the Environmental Protection Agency (EPA). New fuel must pass the Tier 1, Tier 2 human health and the environment testing. The National Biodiesel Board currently holds the rights to the EPA approved biodiesel tests. To get the rights to use these test results, you must join the National Biodiesel Board and pay a fee.



- ✓ National Biodiesel Board: www.biodiesel.org/.
- ✓ EPA's diesel fuel web site: www.epa.gov/otaq/regs/fuels/diesel/diesel.htm#regs.

Dangerous Waste Management. If your facility will produce dangerous waste while operating or during maintenance you will need a Resource Conservation and Recovery Act (RCRA) Site Identification Number. The dangerous wastes you generate at your facility must be properly handled, labeled, stored and disposed. The steps for designating waste are in Washington's Dangerous Waste Regulations (Chapter 173-303 WAC).

- ✓ See the Permit Handbook for more information and the process flowchart: <http://apps.ecy.wa.gov/permithandbook/permitdetail.asp?id=10>.
- ✓ Free downloadable hazardous waste labels: www.ecy.wa.gov/programs/hwtr/hw_labels/index.html.

Hazardous Substance Use Reporting (Emergency Planning and Community Right to Know Act (EPCRA)). If you plan to store certain hazardous chemicals at your facility you will need to submit annual reports on the storage and use of these hazardous chemicals.

- ✓ More information about EPCRA: www.ecy.wa.gov/epcra/index.html.
- ✓ See the process flow chart www.ecy.wa.gov/programs/sea/pac/ppds_info/epcra_schematic.pdf.
- ✓ See the chemicals subject to this reporting rule: www.epa.gov/ceppo/pubs/title3.pdf.

Over Water Oil Transfer. If you plan to transfer liquid with any percentage of petroleum-based oil, over state waters, you must have a prevention and response plan. Washington State may require training, recordkeeping, and certain procedures and require you to have the ability to pre-boom the vessel depending on the operation and the type of vessel involved.

You may also be subject to Coast Guard regulations if you transfer oil with a vessel that has a total oil capacity of 10,500 gallons or more. Ecology is currently writing a rule to promote zero oil spills. Although these rules are not yet in place, there are steps you can take at your facility to prevent an oil spill during the transfer of oil.

For example, you can:

- Provide adequate lighting for the areas where the over water transfers will occur;
- Cache spill response kits near the transfer area,
- Train employees on how to prevent spills and how to respond;
- Provide access for emergency response vehicles to the transfer area.
- Read the report to the Legislature: <http://www.ecy.wa.gov/pubs/0508005.pdf>.
- Read the Facility Oil Spill Prevention Plan Standards rule: www.ecy.wa.gov/pubs/wac173180d.pdf.

Certificate of Industrial Insurance Coverage. All biodiesel facilities need to get an Employer Liability Certificate from the Washington Department of Labor and Industry. This certificate verifies that a company has industrial insurance coverage.

- More information about workplace safety: www.lni.wa.gov/Safety/default.asp.
- Employer Liability Certificate (Certificate of Coverage) Information: www.lni.wa.gov/ClaimsIns/Insurance/Uninsured/EmpCert/default.asp.

Step #5: Free Technical Assistance to Save Money and Prevent Waste

Pollution Prevention Free Assistance. Contact the Pollution Prevention Program at an Ecology regional office near your project for free technical assistance. Specialists can review your process design to help you find ways to achieve zero hazardous waste discharges and minimize the production of non-hazardous waste.

Call the ORA Call Center to find out who to contact in Ecology's Hazardous Waste and Toxics Reduction Program.

Technical Resources for Engineering Efficiency (TREE) Program: If you want to use a team of free environmental engineers and specialists to evaluate how your facility can reduce its overall environmental impact, contact the TREE program. Engineers and specialists from Ecology can help you identify opportunities that reduce your facilities environmental impact, while also meeting your company's financial payback requirements. Areas that may be assessed include hazardous waste, water use, wastewater, solid waste, and energy use. As technical assistance officers, TREE team members can visit a facility and make recommendations with no enforcement authority. You choose what opportunities you want to implement.

- ✓ Read more about the TREE Program at: www.ecy.wa.gov/programs/hwtr/TREE/index.html.



Step# 6: Licenses, Taxes and Tax Benefits

Washington State Master Business License. Biodiesel facility operators must get a business license from the Washington Department of Licensing (DOL). A DOL licensing specialist can help you develop a "licensing package" customized for your specific needs. They can also answer questions about contracting licenses or bonding.

- ✓ Contact the department at (360) 664-1400, ext.7 or online at: www.dol.wa.gov/mls/buslic.htm.

Fuel Tax License. If you plan to blend fuel at your biodiesel facility you will need a fuel tax license from DOL. This license allows you to blend taxed fuel with another liquid that is not taxed to produce an end product. Tax is imposed on the volume of product that was not previously taxed.

- ✓ More information and license application: www.dol.wa.gov/forms/441750f.pdf.
- ✓ Fuel Tax Fact Sheet: www.dol.wa.gov/vs/ft-faq.htm#office.



Tax Benefits for Biofuel Sellers. Tax benefits are available for persons who distribute and/or make retail sales of biodiesel fuel. Benefits apply to investments in:

- construction of new facilities,
- machinery,
- equipment, and
- delivery vehicles used for the retail sale of biodiesel.

Income from distribution or retail sales of biodiesel fuel may be deducted from the Washington Business and Occupation tax.

- ✓ More information: www.dor.wa.gov/docs/pubs/specialnotices/2003/sn_03_biofuelsn.pdf.

Tax Benefits for Biofuel Manufacturers. Tax benefits for biodiesel manufacturers are available. Tax benefits include: property tax exemption, leasehold tax exemption and a lower Business and Occupation tax rate.

- ✓ More information: www.dor.wa.gov/docs/pubs/specialnotices/2003/sn_03_mfgbiofuel.pdf.
- ✓ Download the application at: www.dor.wa.gov/docs/forms/proptx/forms/exmprealperspropusdinmanf.pdf.

Online Resource to Help You through the Permitting Process

Environmental Permit Handbook

Try the Environmental Permit Handbook for the most current information about permits in Washington. This handbook gives a summary for the most common local, state and federal environmental permits in Washington. It has contact information, access to permit applications, review time frames, fees, and more.

- ✓ Download a copy of the handbook at <http://apps.ecy.wa.gov/permithandbook/>.
- ✓ Contact the ORA Call Center at the number below to have them send you a copy.

On-Line Permit Assistance System

You can also try the *On-Line Permit Assistance System* to find out what permits you will need. Fill out the questionnaire at <http://apps.ecy.wa.gov/opas>, submit it, and within moments you will get a list of permits you will most likely need for your project.

Permit Process Schematics

The process schematics are flow charts that break down the steps in each of the permit processes.

- ✓ You can see over 20 schematics online at www.ecy.wa.gov/programs/sea/pac/ppds_info/review.htm.

Contact Information



For specific questions or general advice, contact the Office of Regulatory Assistance Call Center at 1-800-917-0043 or assistance@ora.wa.gov.

Contact a Regional Regulatory Assistance Lead near your project site if you want assistance with:

- identifying state agency contacts,
- understanding the permit process, or
- a pre-application consultation.

Regional Regulatory Assistance Leads:

Central: Holly Cushman: 509-575-2384
Eastern: Michele Vazquez: 509-329-3460

Northwest: Sheila Hosner: 206-649-7114
Southwest: Sally Toteff: 360-407-6957

If you need special accommodations or require this information in an alternative format please contact the Office of Regulatory Assistance at 1-800-917-0043 (voice). Those with speech or hearing impairment may call 711 for relay service or 800-833-6388 for TTY.

