



PETITION FOR ADOPTION, AMENDMENT, OR REPEAL OF A STATE ADMINISTRATIVE RULE

Print Form

In accordance with RCW 34.05.330, the Office of Financial Management (OFM) created this form for individuals or groups who wish to petition a state agency or institution of higher education to adopt, amend, or repeal an administrative rule. You may use this form to submit your request. You also may contact agencies using other formats, such as a letter or email.

The agency or institution will give full consideration to your petition and will respond to you within 60 days of receiving your petition. For more information on the rule petition process, see Chapter 82-05 of the Washington Administrative Code (WAC) at <http://apps.leg.wa.gov/wac/default.aspx?cite=82-05>.

CONTACT INFORMATION *(please type or print)*

Petitioner's Name William Thomas

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COMPLETING AND SENDING PETITION FORM

- Check all of the boxes that apply.
- Provide relevant examples.
- Include suggested language for a rule, if possible.
- Attach additional pages, if needed.
- Send your petition to the agency with authority to adopt or administer the rule. Here is a list of agencies and their rules coordinators: <http://www.leg.wa.gov/CodeReviser/Documents/RClist.htm>.

INFORMATION ON RULE PETITION

Agency responsible for adopting or administering the rule: _____

1. NEW RULE - I am requesting the agency to adopt a new rule.

The subject (or purpose) of this rule is: _____

The rule is needed because: _____

The new rule would affect the following people or groups: _____

2. AMEND RULE - I am requesting the agency to change an existing rule.

List rule number (WAC), if known: _____

I am requesting the following change: _____

This change is needed because: _____

The effect of this rule change will be: _____

The rule is not clearly or simply stated: _____

3. REPEAL RULE - I am requesting the agency to eliminate an existing rule.

List rule number (WAC), if known: 220-110-206

(Check one or more boxes)

It does not do what it was intended to do.

It is no longer needed because: _____

It imposes unreasonable costs: The model used to develop the timing windows adopted November 2011 have been determined to be flawed, too generic to be useful, unproven or validated. The overly restrictive dates require individual application and processing unnecessarily.

The agency has no authority to make this rule: _____

It is applied differently to public and private parties: _____

It conflicts with another federal, state, or local law or rule. List conflicting law or rule, if known: _____

It duplicates another federal, state or local law or rule. List duplicate law or rule, if known: _____

Other (please explain): _____

**Testimony of
William Thomas
Before the Washington Fish and Wildlife Commission
January 10, 2014**

Good Morning Chair Wecker and Commissioners,

Later this morning you will hear a brief regarding proposed changes to the mineral prospecting rules as part of the HPA Rulemaking. I am also of the understanding that there will be a brief on how the agency regulates mineral prospecting at the request of Commissioner Mahnken. I would like to offer a picture of the 2 topics from the mineral prospecting and mining communities point of view.

Mineral Prospecting and Mining is regulated by the department through the gold and fish rules contained in the Hydraulic Code Rules, WAC 220-110. The mineral prospecting rules are broken into 4 sections; The into which describes the permitting process, a section with rules for that equipment defined by legislature which does not need a permit but which persons mineral prospecting are to be aware, a section with rules for equipment authorized by the department but with timing restrictions and for which a permit is required, and then the timing windows.

These 4 sections of rules are combined with information gleaned from other federal and state agencies and the defined mineral prospecting terminology and published as the Gold and Fish Pamphlet. This pamphlet serves as the Permit with specific rules for the in-water use of mineral prospecting equipment, in specific rivers and streams at specific times. If the prospector or miner needs to deviate from the rules, they must obtain an individual HPA. With the exception of WDFW's self imposed need to apply to mineral prospect the ocean beaches, most individual HPA's are for in-stream work outside the published work windows. 99.9% of those applications are approved. So when the department states that they are going to include new rules in the Gold & Fish Pamphlet, as you now are aware, they will be incorporated anyway. The questions are; will they be incorporated into the existing sections or become their own section and how they intend to protect our statutory right to conduct small scale mineral prospecting without a permit.

As part of this HUGE undertaking of modifying most of the Hydraulic Code Rules chapter, the department has properly decided to correct verbiage in current rule that they contend requires an individual HPA to conduct any mineral prospecting on the ocean beaches. First of all, this provision should never have been placed into rule at all as "*small scale mineral prospecting shall not need a permit...*" and Secondly, upon adoption of WAC 352-37-340 *Small-scale beach prospecting and placer mining* in 2011 by the Washington Parks and Recreation Commission, the department had a legal obligation to file to amend these provisions. The fact that they instead developed and implemented an **Application for Ocean Beach Mineral Prospecting Hydraulic Project Approval** demonstrates their position of over regulation with no concern for our statutory rights.

Missing in these proposed changes is the coordination with the mineral prospecting and mining community and any science that would require any rule other than those adopted by Parks. The beach prospecting and mining rules proposed were entirely drafted by staff and only allowed limited input at a single public meeting and written comment. At this point, the only chance to see if our inputs were considered or implemented or to make additional comment will be during the 20 day comment period before you, the commission, adopt them. Nothing builds cooperation better than violating an individual's constitutional and statutory rights while ram-rodging regulation down their throat.

Nothing kills an already strained trust like broken promises, lies and threats.

- Work windows development based on Hatchery Temperature Unit method instead of real world standards (flow, gradient, width and depth) as agreed by stakeholders and "Not Negotiable".
- Numerous provisions placed into rules that were felt to be inconsistent with statute. When challenged, the response was "if you don't like it, you can sue us". Now they are upset because we have.
- At some point last year, reneged on the promise/concession of policy that there would be a biologist in each region responsible to process mineral prospecting and mining applications. This was a concession to the original policy that all applications would be issued out of Olympia, which lived a very short life. The purpose was to reduce expenses, time and provide consistency in application processing and eliminating appeals, a policy which had been working until early 2013. In the last year, there have been 3 appeals and 1 permit was not issued within the statutory 45 day time frame. It took 90 days to process that application and instead of a permit, the Biologist issued a letter of denial, which then had to be appealed.
- The Deputy Director habitat program shortly after taking position established a Mineral Prospecting Advisory Board to maintain an open line of communication that had been established. This past summer we were informed that the board had been abolished by the deputy director although she had not yet informed any of the board members.

One of the single largest harms to the mineral prospecting and mining community was the development of the current work windows. Stakeholders had initially decided that the windows would be developed with documented standard stream criteria (flow, gradient, width, depth etc) and input from Area Habitat Biologists. When the department presented the proposed work windows to stakeholders, we were informed that they were developed using a timing standard used by hatcheries using temperature to determine when eggs would hatch. The windows cut the in-water work time by over 1/3, the prospecting community objected, and the Deputy Director Habitat Program repeatedly told us they were non-negotiable. Objection to the windows was echoed during testimony by the small scale mineral prospecting and mining community at the rule adoption public hearing on October 3, 2008. The following day, during the sports fish

manager's brief, the commission engaged in discussion regarding the proposed work windows. The commission heard in Mr. Burley's testimony that the (Temperature Unit) model "needed to be proofed" and "verified" and was "too generic to be used." Despite the fact that there appeared to be major issues with those timing windows, the commission adopted them as submitted the following month. There are numerous area's of previous mining districts where there are concentrations of federal mining claims that require individuals to acquire an HPA because of the timing window. 99.9 % of these applications are approved which would indicate that the spawning data must be invalid or there is another motivation in the establishment of that specific timing. The department has proposed changes to 2 streams in the draft Hydraulic Code Rule changes. The summary for the Hydraulic rules brief indicates that there may be more. A logically person can only come to the conclusion that the current work windows are flawed and in need of a major overhaul based on real world science. The only responsible action to correct this situation is the immediate repeal of section 220-110-206 adopted November 8, 2008. It is fact that the previous timing windows were in effect for over 10 years and there was never a single incident of harm reported.

Hopefully, light has been shed on the feelings that the department is regulating our community into extinction. These regulations are not based upon any valid science, but rather bias or other motivation. Of all the studies and reports that have been done, there is not a single one that states that our activity is other than DeMinimus with short term effects. **BUT**, there are studies and reports that state that our activity actually benefits fishlife. One has to wonder why the department or any other agency, is not attempting to use our community as a resource. I hope you consider my comments as the department goes forward changing the Hydraulic Code rules in anticipation that you will adopt them in a few short months.

Respectfully

William Thomas
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Washington Fish & Wildlife Commission Public Testimony Form

In order to testify, please complete this form and return it to the registration desk before the start of the agenda item.

Please complete a separate Public Testimony Form for each topic.

Date: 1/10/2014 Agenda Item Number: # 2

Name: William THOMAS City: MT VERNON, WA
Please print clearly

Representing: SELF
(If testifying on behalf of an organization, please identify)

Please summarize the main points of your testimony:

HPA Rule MAKING - MINERAL PROSPECTING
