

Summary

Meeting dates:	December 5, 2014, Commission Conference Call
Agenda item:	Petition requesting the Commission repeal proposed WAC 220-660 Hydraulic Code Rules.
Presenter(s):	Jeff Davis, Assistant Director, Habitat Program Randi Thurston, Protection Division Manager, Habitat Program

Background summary: The Fish and Wildlife Commission received a petition (RCW 34.05) from Robert Cunningham to repeal Proposed WAC 220-660 Hydraulic Code Rules.

The petitioner is asking the Commission to repeal WAC 220-660. The stated reasons for this petition are “This rule is being adopted without following the Administrative Procedures Act 34.05.328, thereby breaking RCW and places the Dept. out of compliance with legislative intent. It also includes adaptive management with no funding mechanism placing the taxpayers under obligation unknown”.

Staff comments in response to this petition:

1. Although the stated reasons for the appeal are vague, the department is assuming based on Mr. Cunningham’s testimony at the November 7, 2014 Commission meeting that Mr. Cunningham is asking the Commission to reconsider when an implementation plan should be prepared. Department staff, upon further discussions with our AAGs, agrees that the rule adoption action would be improved by finishing the rule implementation plan. Therefore, Department staff requested the Commission to revisit the rule action for the HPA rules at the December 5, 2014 meeting since the implementation plan is completed.
2. The department does not intend to request additional funds from the legislature to pay for adaptive management. The department currently funds the Science Division to monitor hydraulic projects. The department proposes to use this monitoring data to inform an adaptive management process. The goal of this process is to improve the effectiveness and efficiency of the Hydraulic Project Approval Program.

The adaptive management framework provides a mechanism to involve an Advisory Group throughout the process to improve transparency and collaboration, and to ultimately achieve the best results. The department may ask the Advisory Group to provide input on the adaptive management framework, final monitoring reports, and/or alternative strategies and proposals developed by department staff. In particular, the department will engage the Advisory Committee when actions might:

- Have a significant impact on HPA applicants (e.g. in cost or construction time).
- Negatively affect the environment or create unintended consequences.
- Impose significant changes to standard/current practices.

The department will not reimburse members of the Advisory Group for their time or expenses. These are volunteer positions.

Policy issue(s) you are bringing to the Commission for consideration:

None

Public involvement process used and what you learned:

None

Action requested:

Department staff requests that the Commission deny the petition for the reasons stated above.

Draft motion language:

I move to **deny** Mr. Cunningham's petition to repeal proposed Chapter 220-660 WAC received on November 17, 2014.

Justification for Commission action:

Communications Plan: N/A

Form revised 12/5/12