



Rule-Making Process to Address Water Typing

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Next Steps in the Rule Making Process

February 13, 2018

Multiple statutes and rules apply, and the required processes are implemented concurrently:

- Administrative Procedure Act (APA)(chapter 34.05 RCW)
- Regulatory Fairness Act (chapter 19.85 RCW)
- State Environmental Policy Act (SEPA)(chapter 43.21C RCW)
- Forest Practices Long-Term Applications (WAC 222-20-016)



Next Steps continued

Per Board direction at November 2017 meeting, staff has completed the following:

- CR-101 Preproposal of Inquiry filed on December 6, 2016 with Office of the Code Reviser and published in the Washington State Register on December 24, 2016 (WSR 16-24-072)
- CR-101 notifies public the Board is considering rule making & soliciting participation in rule development



Next Steps continued

- Board's November 2017 Work Plan identified August 2018 as adoption of the water typing system rule.
- For staff to prepare the draft rule, the Board needs to approve the criteria for PHB. The Board can choose to approve more than one PHB criteria for further analyses.
- To prepare for the Board to consider approval to file a **CR-102** to consider multiple PHB criteria staff will need to prepare a draft rule and all the required analyses. Staff recommends the Board adjust the Work Plan to add a Special meeting on June 27, 2018 for the Board to consider and approve a **CR-102**;
- Staff also recommends changing the meeting for adoption of the water typing system rule (CR-103) to the November 2018 meeting.



Preparation for June 2018

The preparation of the draft rule and associated analyses for the Board to review before considering approval to file a **CR-102** involves the following steps:

- 1. Developing draft rule language that includes all Board approved elements (pending action on PHB criteria recommendations tomorrow) (APA);**
- 2. Soliciting input on draft rule language via stakeholder meetings (APA); and**



Preparation for June 2018

3. **Analyzing each of the Board approved elements, including analyses of each set of Board approved potential PHB criteria options, in the following documents:**
 - **Preliminary Cost Benefit Analysis including the Small Business Economic Impact Statement**
 - **SEPA analysis**

Additionally, staff will need to **initiate analysis of Long-Term Applications.**



Analyses

Cost-Benefit Analysis and Small Business Economic Impact Statement (RCW 34.05.328 and RCW 19.85.030):

- Comparison of costs and benefits; consequences of no rule; whether rule, including each set of Board approved potential PHB criteria options, is least burdensome for those required to comply with it; and
- Whether rule options (including PHB criteria) create disproportionate cost on small businesses; and options for reducing those costs



Analyses continued

SEPA Environmental Checklist: Identifies the proposal, including each set of Board approved potential PHB criteria options, and the potential for each to impact the environment (WACs 197-11-310 and -444)

Threshold Determination by Responsible Official: Formal decision the likelihood to have a significant adverse impact on the environment for each option of the proposal (WACs 197-11-315 and -390):

- **Results in Determination of Non-significance (DNS), or Mitigated DNS, or Determination of Significance requiring an EIS**

Comments:

- Required 14-day comment period (WACs 197-11-502 and - 535)
- All comments are considered
- Threshold Determination could be amended by Responsible Official (WAC 197-11-390)



Analysis: Long-Term Applications

Approved **long-term applications (LTAs)** are reviewed when the Board considers new or amended rules to achieve resource protection objectives.

Prior to rule adoption:

- **DNR consults with Ecology, WDFW, and affected Tribes to review, and if necessary analyze the effects of the LTAs on public resources the proposed rules protect, and**
- **DNR reports results to the Board**

Upon rule adoption, Board may direct conditioning and DNR notifies impacted landowners in writing.



June 2018 Special Meeting

At the June 27, 2018 meeting:

- Consider rule proposal which will include analyses for each set of Board approved potential PHB criteria options

Upon Board approval, a **CR-102** is filed with Office of the Code Reviser and **rule making hearings** will be scheduled

In preparation for your November 2018 meeting:

- **Concise Explanatory Statement** is prepared to address comments. May result in change to rule and/or analyses
- **LTA analysis** is completed; and
- **Rule Implementation Plan** is completed



November 2018 Meeting

At your November 2018 meeting:

- Final rule proposal, draft CES, final CBA/SBEIS, & LTA Report are considered

Upon your rule adoption:

- **CR-103 Rule Making Order** is filed with OCR
- **Concise Explanatory Statement** is finalized and distributed to commenters

Rule becomes effective:

- **31 days** after filing; or
- **a later date** if specified by the Board



Action Steps for Tomorrow

To meet a November Board rule adoption timeline, the following actions need to occur tomorrow:

- 1. Decide on which set of potential PHB criteria options to include in the rule proposal; and**
- 2. Direct staff to prepare a CR-102 Proposed Rule Making packet to begin the rule making process.**



Questions?

