

POL-1030 WATER RESOURCES PROGRAM POLICY

Resource Contact: Policy Planning Section

Effective Date: 10-31-91
Revised: 09-13-01

References: RCW 90.03.290 and RCW 90.44.060

PRELIMINARY PERMITS

Purpose: To provide guidance to Program personnel in the use of preliminary permits. Preliminary permits require applicants to conduct studies, surveys, and investigations necessary to provide the information Ecology needs to properly assess the subject application.

Application: This policy applies to all preliminary water right permits issued pursuant to Chapters 90.03 and 90.44 RCW.

1. Preliminary permits

Preliminary permits are issued to retain a priority date and establish a formal timeline and data collection plan when additional information is needed to make a permit decision. The preliminary permit requires the applicant to make surveys, investigations, or conduct studies to satisfy the information needs of the department.

Program personnel issuing a preliminary permit must fully inform the applicant that issuance of a preliminary permit carries a risk for the applicant. The applicant's risk is that failure to comply with the permit requirements will result in cancellation of the permit and rejection of the application. Once issued, the substance of the preliminary permit will significantly direct and prescribe future consideration of the application.

Preliminary permits also may authorize drilling and testing of ground water wells. Preliminary permits issued for such purposes should clearly state that water use for purposes other than those authorized by RCW 90.44.050 is prohibited.

A preliminary permit does not authorize the beneficial use of water.

2. Use of preliminary permits

When the department does not have adequate information to address water availability, detriment to public welfare, beneficial use, impairment of existing rights, or other relevant questions at the time the application or application for change of water right is filed, and the necessary information might be obtained by surveys or investigations conducted by the applicant, a preliminary permit may be appropriate.

The decision to issue a preliminary permit is discretionary; there is no requirement that a preliminary permit be issued. If a preliminary permit is issued, Ecology personnel should ensure, as much as possible, that the work proposed to be done under the preliminary permit can be done in the time allowed and will not be out of date when a permit decision is made. Do not issue a preliminary permit if it is clear the information needs or studies to be done cannot be done in the three-year period allowed by statute. The preliminary permit should be as detailed and specific as possible. Generally, the permittee will not collect any information not identified or specifically required by the preliminary permit. However, the permittee is not precluded from collecting data not required by the preliminary permit.

In a very few cases, data collection and analysis under a preliminary permit will create additional questions or information needs not identified in the preliminary permit. In such cases, Ecology may issue a second, separate and distinct, preliminary permit. However, issuance of an additional preliminary permit does not extend the three-year time period authorized by statute for completion of work required under a preliminary permit for a specific application. If Ecology issues a preliminary permit which, for whatever reason, does not accurately ask for the necessary information, the department shall issue a new preliminary permit requesting the correct information.

3. Application process

A complete water right application or application to change a water right form, either new or pending, and the application fee, must be filed to begin the process.

When public notice of the proposed appropriation is to be published is at the discretion of the regional section supervisor. If a preliminary permit is issued for drilling and testing, public notice may be advertised upon successful demonstration of the well capacity.

If an appropriation is proposed to be developed upon completion of the preliminary permit requirements, public notice should take place immediately.

When a preliminary permit is going to be used, the regional staff person should make a written recommendation to the regional section manager stating why a preliminary permit is justified. The recommendation is for record-keeping only.

4. Format of a preliminary permit

A preliminary permit is issued in letter format and signed by the regional manager. At a minimum the letter shall:

- a. Identify the applicant, application number, scope of the project and its attributes (i.e. source of water, point of diversion or withdrawal, etc.);
- b. State the specific conditions of the data collection plan;
- c. Require a showing of work done under the preliminary permit and progress reports if warranted;
- d. Contain an expiration date (not to exceed three years);
- e. State that no beneficial water use is authorized;
- f. Require wells to be constructed in accordance with chapter 173-160 WAC, and require capping of ground water wells, if applicable; and
- g. Contain a statement that if the applicant fails to comply with the terms of the preliminary permit, the preliminary permit and the application or applications on which it is based shall be canceled pursuant to RCW 90.03.290.

Issuance of a preliminary permit is an appealable action. As an appealable action, preliminary permit letters shall contain the standard paragraph regarding appeals.

5. Time duration

Preliminary permits authorize investigations and surveys for a time period of not more than three years. The time period authorized shall be reasonable for the work required. All preliminary permits issued will contain a specific expiration date.

The permittee may request, prior to the preliminary permit expiration date, additional time to comply with the preliminary permit. Additional time beyond the initial three years may be granted with the approval of the Governor or designee and only upon a showing of work done under the preliminary permit. The showing of work must also establish the good faith, intent, and ability of the permittee to conduct the studies and provide the information. In no case shall a preliminary permit, with an extension, exceed five years in duration.

The preliminary permit terminates automatically at the end of the stated investigation period or, if an extension is granted in writing by the department, at the end of the extension period.

6. Termination of preliminary permit

The department must review, in a timely manner, any information generated under the preliminary permit, and make a decision whether or not the terms of the preliminary permit have been complied with. The department's decision also must be communicated in writing to the permittee in a timely manner.

When a permittee complies with the terms of the preliminary permit, the department will make a decision on the underlying application.

If the permittee fails to comply with the terms of the preliminary permit, the preliminary permit and the application or applications on which it is based shall be canceled pursuant to RCW 90.03.290.

7. Combined use of a preliminary permit and a permit for temporary use

If water use is necessary to obtain information required by a preliminary permit, the applicant must request a temporary permit, pursuant to RCW 90.03.260 (See POL-1035). A permit for temporary water use shall be issued in conjunction with the preliminary permit to authorize the beneficial water use.

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Special Note: These policies and procedures are used to guide and ensure consistency among water resources program staff in the administration of laws and regulations. These policies and procedures are not formal administrative regulations that have been adopted through a rule-making process. In some cases, the policies may not reflect subsequent changes in statutory law or judicial findings, but they are indicative of the department's practices and interpretations of laws and regulations at the time they are adopted. If you have any questions regarding a policy or procedure, please contact the department.