

TEMPORARY AND EMERGENCY DROUGHT PERMITS

Resource Contact: Coordination and Hydrology Section

Effective Date: 10-31-91

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References: RCW 90.03.250, RCW 90.44.060, RCW 43.83B.405, Chapter 173-166 WAC

Purpose: To provide guidance to Program personnel in the use of temporary and emergency drought permits to appropriate water.

Application: This procedure applies to all temporary permits issued pursuant to Chapters 90.03 and 90.44 RCW, and emergency drought permits issued pursuant to chapter 173-166 WAC.

1. Use of temporary permits

Temporary permits authorize water use during the pendency of an application review when requested.

The four tests for issuance of a permit (water availability, public interest, impairment of existing rights, and beneficial use of the water) must be considered prior to granting a temporary permit. Requirements of the State Environmental Policy Act (SEPA) must be satisfied.

Temporary permits are not to be used to circumvent the backlog. The issuance of a temporary permit during the pendency of application review is to make a decision on the application out of priority sequence. A temporary permit should only be issued when you are confident that a permit will be approved in a reasonable time, but circumstances do not allow the complete deliberative process to issue a final decision.

Temporary permits should not be used solely to legitimize an illegal water user, pending a decision on their application.

Temporary permits are not to be used to authorize drilling of ground water wells for testing aquifer characteristics, use a Preliminary Permit (POL-1030).

2. Application process

A complete water right application form and examination fee is required in addition to a request for a temporary permit. All applicants who request a temporary permit must justify in writing why a temporary permit should be granted. The application is processed through public notice in accordance with POL-1000.

Requests for temporary permits are evaluated with respect to the following criteria:

- Imminent threat to public health and safety,
- Economic emergency caused by unforeseen natural events, and
- High degree of public interest.

Regional staff shall make a written recommendation to the regional section supervisor concerning all applications for temporary permit.

3. Format of a temporary permit

Temporary permit may be issued in letter format, signed by the regional section supervisor. At a minimum the permit shall state:

- Applicant's name, application number, source, quantity of water for use, and place of use,
- The specific conditions and an expiration date,
- A statement that if the applicant fails to comply with the terms of the temporary permit it may be revoked, and
- A statement that the issuance of a temporary permit in no way guarantees a standard permit will be issued.

Issuance and revocation of a temporary permit is an appealable action. As an appealable action, temporary permit letters shall contain the following paragraph:

Any person wishing to appeal this action may obtain review by submitting a written request, within thirty (30) days of receipt of this order, to the Washington Pollution Control Hearings Board, 4224 6th Avenue SE, Building 2, Rowe Six, P.O. Box 40903, Lacey; Washington 98504-0903. Concurrently send to the Director of the Department of Ecology, Mail Stop 7600, P.O. Box 47600, Olympia, Washington 98504-7600, a copy of the request for review. These procedures are consistent with the provisions of Chapter 43.21B RCW and the rules and regulations adopted thereunder.

4. Time duration

The time duration for temporary permits will be during the pendency of the application review.

Temporary permits may be revoked for failure to comply with the terms of the permit.

5. Status of a temporary permit

Temporary permits issued during the pendency of an application review are generally superseded by a standard permit and are part of the permanent record.

If upon complete analysis, a permit will not issue, the temporary permit is canceled, the standard permit denied, and the application rejected.

6. Drought relief and emergency drought permits

Whenever a drought is declared pursuant to RCW 43.83B.405, the issuance of emergency permits shall be in agreement with RCW 43.83B.410, in addition to this policy. See Chapter 173-166 WAC.

For emergency permits issued pursuant to Chapter 173-166 WAC the process is generally the same as temporary permits, with the following:

- The application is for a previously established activity conducted under a valid permit or certificate, within a geographic area declared to be in drought;
- The applicant is projected to receive less than seventy-five percent of normal water supply as a result of drought conditions and is expected to experience undue hardships as a result;
- Water obtained through the issuance of an emergency permit must be put to beneficial use in lieu of water which is unavailable because of drought conditions;
- Decision will be provided to the applicant within fifteen days of receipt of the application; and
- Compliance with public notice and SEPA requirements is waived.

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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.