



Bob Ferguson  
**ATTORNEY GENERAL OF WASHINGTON**

Ecology Division  
2425 Bristol Court SW 2nd Floor • Olympia WA 98502  
PO Box 40117 • Olympia WA 98504-0117 • (360) 586-6770

**MEMORANDUM**

DATE: July 12, 2019

TO: Ben Rau, Watershed Planning Unit Supervisor  
Water Quality Program *Ron*

FROM: Ronald L. Lavigne, Senior Counsel

SUBJECT: **Ecology's Authority to Prevent Non-Point Source Pollution and Require Implementation of Management Measures**

This memo is in response to your request for a legal analysis of Ecology's authority to prevent non-point source pollution and to require implementation of management measures. As discussed below, it is my opinion that ch. 90.48 RCW provides Ecology with statutory authority to both prevent non-point source pollution and require implementation of section 6217 management measures pursuant to the Coastal Zone Reauthorization Amendments of 1990 (CZARA).

RCW 90.48.030 specifically gives Ecology the jurisdiction "to control and prevent the pollution of . . . waters of the state of Washington." Pollution is broadly defined in RCW 90.48.020 and includes the contamination or other alteration of the physical, chemical, or biological properties of any waters of the state. Under state law, it does not matter whether the pollution comes from a point or a non-point source, all pollution of state waters is subject to Ecology's authority to control and prevent pollution.

RCW 90.48.080 makes it unlawful for any person to "cause, permit or suffer to be thrown, run, drained, allowed to seep or otherwise discharged . . . any organic or inorganic matter that shall cause or tend to cause pollution of" waters of the state. Any person who violates or creates a substantial potential to violate the provisions of ch. 90.48 RCW is subject to an enforcement order from Ecology pursuant to RCW 90.48.120. Ecology is authorized to "issue such order or directive as it deems appropriate under the circumstances . . ." RCW 90.48.120(1).

The Supreme Court has affirmed Ecology's authority to regulate non-point source pollution. *Lemire v. Dep't of Ecology*, 178 Wn.2d 227, 240, 309 P.3d 395 (2013) (the plain language of RCW 90.48.080 gives Ecology "the authority to regulate nonpoint source pollutant discharge").



July 12, 2019  
Page 2

It is worth noting that while RCW 90.48.120 gives Ecology the authority to take action in response to non-point source pollution, the statute also given Ecology the authority to take action based on a “substantial potential” to pollute state waters via either a point or non-point source. Consequently, Ecology not only has authority to take action following non-point source pollution but also has statutory authority to act proactively to prevent non-point source pollution from occurring in the first place. Ecology’s authority includes the authority to require a non-point source polluter to implement specific management measures. *See Lemire*, 178 Wn.2d at 233 (Ecology is authorized to issue orders to remedy “activities that have a substantial potential to violate the [Water Pollution Control Act].”). Ecology’s authority can be used to prevent non-point pollution and require 6217 management measure implementation, as necessary.

For the reasons set out above, it is my opinion that the Department of Ecology has the statutory authority to prevent non-point source pollution and to require implementation of specific management measures to address non-point source pollution.

RLL:df