



STATE OF WASHINGTON
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MEMORANDUM

July 14, 2004

TO: HELEN BRESLER, Water Quality Program

FROM: RONALD L. LAVIGNE, Assistant Attorney General

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 Act 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.

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 gives 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 has specific 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. Ecology's authority can be used to prevent nonpoint 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:tmr

