

Department of Fish and Wildlife

Effective Date: 4/25/14

## POLICY 5212

**Cancels:**

**See Also: PRO - 5212**

**POL – M5002**

**POL - 1004**

**RCW 77.55**

**WAC 220-110-340**

**WAC 220-110-350**

**Approved By: /s/ Phil Anderson**

### **POL-5212 MONITORING COMPLIANCE WITH THE STATE HYDRAULIC CODE (CHAPTER 77.55RCW)**

**This policy applies to employees who enforce and monitor compliance with the State Hydraulic Code (Chapter 77.55 RCW) or encounter potential Hydraulic Code violations in the course of their duties.**

#### **Intent:**

This policy applies to WDFW employees who monitor hydraulic projects, investigate potential hydraulic code violations, or witness a Hydraulic Code violation. Whenever there is doubt as to the proper course of action, employees should consult PRO-5212.

#### **Definitions:**

**Habitat Biologist (HB):** Any WDFW employee who is authorized by the Director through Policy1004 to sign Hydraulic Project Approvals (HPAs).

**Compliance Check:** An examination or review to ensure that hydraulic work meets conditions of an HPA.

**Fish and Wildlife Officer (FWO):** A commissioned Fish and Wildlife Officer 1, 2 or 3, detective or commissioned supervisory personnel.

**Hydraulic Code:** Chapter 77.55 RCW

#### **1. Program Actions to Support and Implement this Policy**

Habitat and Enforcement Program Personnel will develop and implement training of staff in both programs on:

Application of the Hydraulic Code through review of projects for Hydraulic Project Approval (HPA), and HPA Enforcement Assistance Procedures including, but not

limited to; requirements of PRO-5212, report writing, investigation techniques, and how to provide testimony as an expert witness.

To the extent practicable, the Enforcement Program and Habitat Program databases will be integrated and designed to allow information to be added to the system, accurately and quickly.

This policy will be implemented as per WDFW Procedure 5212.

## **2. Landowner notification by WDFW staff**

### **a. Permitted hydraulic projects**

An HPA Applicant consents to the permitting agencies entering their property when they sign their Joint Aquatic Resources Permit Application or online application form. In addition to this consent, the Habitat Biologist will attempt to notify the landowner in person, by telephone, mail, or e-mail to secure permission prior to conducting a compliance check of the job site identified in a signed HPA application. This notification must include the name of the person conducting the compliance check, their contact information, the reason for needing access to the property, and the date and time of the planned compliance check. The Habitat Biologist will document the notification method, date(s) notified, and landowner response in APPS.

If the attempt to notify the landowner is not successful, staff may conduct the compliance inspection based on applicant consent provided through the signed application. In this circumstance, the HB must notify the landowner by telephone, mail, or email of the date and time they conducted the compliance check (see Procedure 5212).

If the landowner, contractor, project supervisor, or applicant/permittee is present and denies access, or if the HB is threatened in any way, the HB will exit the property immediately and notify the FWO of this situation.

### **b. Unpermitted hydraulic project activity**

FWOs will have primary responsibility for conducting investigations of all projects without valid Hydraulic Project Approvals. The FWO shall coordinate with the HB to identify and assess fish and habitat impacts and to integrate mitigation alternatives into the case report.

If HBs observe unpermitted hydraulic activity, the biologist will document the physical location of the unpermitted hydraulic activity and report the violation to the Enforcement communications center (WILDCOMM).

**3. WDFW staff will conduct compliance checks on permitted projects according to the procedures described in Procedure 5212.**

HBs have the primary responsibility for conducting compliance inspections for all projects with valid HPAs. FWOs have the primary responsibility of locating and investigating unpermitted hydraulic projects. FWOs may also conduct compliance inspections of permitted projects.

If the HB observes a violation of a HPA permit during a compliance check, the HB will inform the landowner, contractor, project supervisor, or applicant/permittee in writing of any violations of law or agency rules. The HB will provide a written statement to the landowner, contractor, project supervisor, or applicant/permittee that includes corrective actions to achieve compliance, the date by which compliance is to be achieved, and opportunity to request an extension. The HB will also provide the FWO with all written information provided to the landowner, contractor, project supervisor or applicant/permittee.

If landowner, contractor, project supervisor, or applicant/permittee is unwilling to comply with HB corrective actions, HB will refer violations to FWO.

- a) FWO and HB will discuss the referral. The FWO will decide the appropriate enforcement track to follow.
- b) FWO will consult with the HB if they discover a violation of a HPA provision.
- c) If landowner is present and denies access, or if threatened in any way, the HB will exit the property immediately and notify the FWO of this situation.

**4. HB will refer Hydraulic Projects that do not have valid HPA to Enforcement for investigation.**

**5. Regional Habitat Program Managers and Enforcement Captains Will Coordinate to Ensure Efficient and Effective Enforcement of Hydraulic Code Compliance.**

- a. Habitat Program Managers and Captains will jointly monitor ongoing HPA violation cases. These Managers and Captains will discuss the implementation of POL 5212 and PRO 5212 during their weekly regional meetings and will develop plans and schedules for unpermitted hydraulic project emphasis patrols that will be conducted in each region annually.

**6. Compliance monitoring information and the final disposition of a violation will be entered into the Aquatic Protection Permitting System (APPS).**

- a. FWO** will track hydraulic code violation cases in the Enforcement Program database system. The FWO will provide the HB with the case tracking number, case updates, and the final disposition.
- b. HB** will enter compliance monitoring information, case tracking number, and the final disposition of all violations, into APPS.