

## WASHINGTON STATE DEPARTMENT OF ECOLOGY REVERSES COURSE ON RAINWATER COLLECTION

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On October 9, 2009, the Washington Department of Ecology issued a new administrative policy on collection of rainwater for beneficial use. In a departure from its previous position, the agency announced that existing law does not require a water right permit for on-site storage and use of rainwater collected from a rooftop or “guzzler” system. Ecology’s about-face has been praised by advocates of sustainable building design and utility stormwater managers.

### **Ecology’s New Policy**

Water Resources Program Policy 1017, signed by Ecology Director Jay Manning, provides:

The on-site storage and/or beneficial use of rooftop or guzzler collected rainwater is not subject to the permit process of RCW 90.03. If and when the department determines that rooftop or guzzler rainwater harvesting systems are likely to negatively affect instream values or existing water rights, local restrictions may be set in place to govern subsequent new systems. To qualify as rooftop collected rainwater, the roof collecting the rainwater must be part of a fixed structure above the ground with a primary purpose other than the collection of rainwater for beneficial use. A guzzler is a device used to catch and store rainwater to provide drinking water for wildlife, livestock or birds.

The policy introduction explains that after considering “existing legal authorities,” Ecology has determined that existing law may be reasonably interpreted not to require a permit for the on-site storage and use of rooftop or guzzler collected rainwater. The new policy explicitly supersedes any previous policy, interpretive statement, focus sheet, or other stated Ecology viewpoint with which it may conflict.

Evolving concepts of sustainable building design provided a likely impetus for the new policy. For example, in an October 6 position paper the Seattle chapter of the American Institute of Architects urged the state to allow rooftop rainwater storage and use as a “reasonable use” not subject to the permit process of RCW chapter 90.03, the Washington Water Code. The AIA Seattle states:

Allowing rooftop rainwater storage will continue our collective push for green building, specifically supporting the water conservation credits of LEED and Prerequisites 10 & 11 of the Living Building Challenge.

The AIA Seattle position paper outlines five policy justifications for allowing rainwater harvest without a water right permit, including reducing the cost of stormwater management, reducing demand for permit-exempt groundwater wells, reducing greenhouse gas emissions by reducing the amount of energy expended to process and distribute water, adjusting out-of-date water laws to address current challenges, and easing the administrative burden on the state-operated water right permit system.

In 2008, Ecology announced a proposed rulemaking to address rainwater harvesting. Its rulemaking proposal proceeded from the assumption that the water code allows a small quantity permit exemption, but that “existing law provides no clear guidelines on how much water can be collected before a permit is required.” Beginning in the 2002 legislative session, each year the Washington Legislature has considered amendments to the water code that would have set a collection amount threshold for a water right permit exemption for rainwater harvesting; each bill has failed.

The new policy eschews collection limits based on an arbitrary volume of water; rather, the amount of water that can be collected is limited by the size of the roof or the size of the “guzzler” system. The storage and beneficial use of the collected rainwater must also occur “on-site” – a term not defined in Ecology’s policy but commonly understood in the land use context.

## **Conclusion and Implications**

The new Department of Ecology policy circumvents the legislative logjam and obviates the need for a formal rulemaking process. The State of Washington has now embraced the growing public consensus that rainwater harvesting simply makes good sense, particularly in urban areas facing increasing environmental and fiscal costs from urban stormwater runoff.

**[Note: For more information on rainwater harvesting and Policy 1017, see <http://www.ecy.wa.gov/programs/wr/hq/rwh.html>.]**