



DEPARTMENT OF
ECOLOGY
State of Washington

Preliminary Cost-Benefit Analysis and Least Burdensome Alternative Analysis

*Chapter 173-224 WAC
Wastewater Discharge Permit Fees*

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Preliminary Cost-Benefit and Least Burdensome Alternative Analyses

Chapter 173-224 WAC, Wastewater Discharge Permit Fees

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Executive Summary

The Administrative Procedure Act (APA; chapter 34.05 RCW) requires that, before adopting a significant legislative rule, the Department of Ecology (Ecology) must, “Determine that the probable benefits of the rule are greater than its probable costs, taking into account both the qualitative and quantitative benefits and costs and the specific directives of the statute being implemented.” [RCW 34.05.328(1)(c)]

The APA also requires Ecology to “determine, after considering alternative versions of the rule...that the rule being adopted is the least burdensome alternative for those required to comply with it that will achieve the general goals and specific objectives” of the governing and authorizing statutes.

For the proposed Wastewater Discharge Permit Fees rule, chapter 173-224 Washington Administrative Code (WAC), this means Ecology must identify the impacts of the proposed rule on individuals, businesses, the public, and the environment. These impacts may be identified qualitatively and quantitatively. Ecology develops quantitative estimates where it is possible to do so with a reasonable degree of certainty.

Since its inception, the Wastewater and Stormwater Permit Fee Program has experienced complex and challenging issues. Fee programs, in general, are not popular. However, fees for the wastewater and stormwater permit program are needed to fund the permit programs.

Wastewater permit fees were initially codified as RCW 90.48.465 – Water Discharge fees. Over the years, this law has been amended by the Washington State Legislature and as a result of those amendments, inequities were created between fee categories because Ecology has not been allowed to recover its true costs for issuing and managing some fee types.

Inequities created within the law include:

- Capping fees for municipal publicly-owned treatment works;
- Establishing and capping fees for dairies;
- Setting base fees for certain aquatic pest control permits;
- Requiring Ecology to mitigate impacts of fees for small business.

Further inequities were established when Initiative 601 was passed in 1993 by Washington State Voters, which resulted in all fee categories being increased by the fiscal growth factor annually. Between the inequities established in the law and Ecology only applying the fiscal growth factor rate increase for all permit types, some fee category types became over-payers, meaning the fees they pay are greater than the costs of managing their permits, and some category types are under-payers, meaning the fees they pay are less than the costs of managing their permits.

To continue addressing the inequities between fee payers and recover the monies needed to fund the program for 2015-2017 biennium, Ecology is using its legislative authority for increasing fees by proposing the following:

1. Increase fees for the following fee types (overpaying fee payers) by:
 - 3.25% for fiscal year 2016
 - 3.21% for fiscal year 2017
2. Increase fees for the following fee types (underpaying fee payers) by:
 - 5.31% for fiscal year 2016
 - 5.27% for fiscal year 2017

As the specific fees are set by Ecology, they are treated as discretionary (even though RCW 90.48.465 instructs Ecology to collect enough in fees in total to fully fund the program). Therefore, the aggregate increase in fees represents the costs of the proposed rule.

The baseline of no fee-increases would result in total annual fees of \$19,450,000 (estimated aggregate fees for FY15).

Under the proposed rule, total fees are estimated to be \$20,140,813 in FY16 and \$20,855,660 in FY 17. This represents increases of \$690,813 in FY16 and \$1,405,660 in FY17 for an aggregated, discounted total cost of: \$2,079,668.

Ecology evaluated the qualitative costs and benefits of the proposed rule and has concluded that the benefits of the proposed rule will most likely exceed the costs.

Ecology's determination was based on:

- Costs: Permit Fee increases of \$2,079,668.
- Benefits: Avoided decreases in program services, such as a reduced ability to maintain current levels of service, increasing the possibility that businesses were not in compliance with requirements, possible increases in emissions of water pollutants, and decreasing provision of technical assistance for businesses on how to comply with wastewater and stormwater permit requirements, as well as meeting the legal requirement for full funding of program services via fees.

There is sufficient evidence, that the proposed rule is the least burdensome version of the rule, for those who are required to comply, given the goals and objectives of the law for Ecology to adopt the proposed rule.

Chapter 1: Introduction

The Administrative Procedure Act (APA; chapter 34.05 RCW) requires that, before adopting a significant legislative rule, the Department of Ecology (Ecology) must, “Determine that the probable benefits of the rule are greater than its probable costs, taking into account both the qualitative and quantitative benefits and costs and the specific directives of the statute being implemented.” [RCW 34.05.328(1)(c)]

The APA also requires Ecology to “determine, after considering alternative versions of the rule...that the rule being adopted is the least burdensome alternative for those required to comply with it that will achieve the general goals and specific objectives” of the governing and authorizing statutes.

For the proposed Wastewater Discharge Permit Fees rule, chapter 173-224 Washington Administrative Code (WAC), this means Ecology must identify the impacts of the proposed rule on individuals, businesses, the public, and the environment. These impacts may be identified qualitatively and quantitatively. Ecology develops quantitative estimates where it is possible to do so with a reasonable degree of certainty.

Estimated impacts are determined as compared to the current regulatory environment—the way permit fees would be set in the absence of the proposed rule. This is called the baseline.

This document provides the public with an overview of the methods Ecology used to perform its analysis and the most likely costs and benefits found.

1.1 History and rule development

Since its inception, the Wastewater and Stormwater Permit Fee Program has experienced complex and challenging issues. Fee programs, in general, are not popular. However, fees for the wastewater and stormwater permit program are needed to fund the permit programs.

The Department of Ecology has been issuing federal National Pollutant Discharge Elimination System (NPDES) Permits and State Waste Discharge Permits since the 1970’s. The permit program was initially funded out of state general fund monies. Ecology amended permit fees to reflect the biennial budget appropriation set by the Washington State Legislature. However, in 1988, Initiative 97 was passed by Washington State Voters mandating that Ecology create a fee program for issuing and administering wastewater discharge permits. At that time, the fee program was structured around individual major industrial and municipal wastewater permits.

The wastewater permit fee portion of Initiative 97 was later codified as RCW 90.48.465 – Water Discharge fees. The language in the law instructed Ecology to establish fees in amounts to fully recover, and not to exceed, expenses incurred by the Department in:

- Processing permit applications and modifications.
- Monitoring and evaluating compliance with permits.
- Conducting inspections.

- Securing laboratory analysis of samples taken during inspections.
- Reviewing plans and documents directly related to operations of Permittees.
- Overseeing performance of delegated pretreatment programs.
- Supporting the overhead expenses that are directly related to these activities.

Over the years, this law has been amended by the Washington State Legislature and as a result of those amendments, inequities were created between fee categories because Ecology has not been allowed to recover its true costs for issuing and managing some fee types.

Inequities created within the law include:

- Capping fees for municipal publicly-owned treatment works;
- Establishing and capping fees for dairies;
- Setting base fees for certain aquatic pest control permits;
- Requiring Ecology to mitigate impacts of fees for small business.

Further inequities were established when Initiative 601 was passed in 1993 by Washington State Voters. This Initiative created a calculation that allows the Washington State Expenditure Limit Committee to determine the percentage rate that state fee programs could increase their fees. This rate typically averages between 3 and 5 percent per year¹. These limited fee increases have not allowed Ecology to increase fees for those fee types whose revenues are less than what it costs to manage their permits. In order to fund as much of the permit program as possible, Ecology increased fees for all permit fee types by the fiscal growth factor limits. In addition, permits have become more complex and the permit program became federally required to issue and manage permits for industrial and construction stormwater discharges.

Between the inequities established in the law and Ecology only applying the fiscal growth factor rate increase for all permit types, some fee category types became over-payers, meaning the fees they pay are greater than the costs of managing their permits. This money subsidizes Ecology's costs to manage permits for under-paying fee types. As a result of this, over-payer fee types have requested Ecology to eliminate the subsidy and have all permit fee types pay their own costs.

¹ <http://www.elc.wa.gov/sub/fgf.asp>

To begin addressing the subsidy issue, Ecology is proposing the current fee structure. The overall program costs would not exceed the state fiscal growth factor increases for state fiscal years 2016 and 2017 (July 1, 2015 through June 30, 2017). However, for those permittees:

- That are currently over-paying, the fee increase proposed would be below the fiscal growth factor.
- That are currently under-paying the fee increase proposed would be above the fiscal growth factor.

Using this approach, Ecology hopes to slowly eliminate the subsidy across fee types over the next several should this be biennium.

1.2 Regulatory baseline

The regulatory baseline is the way permit fees would be calculated if the proposed rule is not adopted.

Under the current law, (RCW 90.48.465 – Water Pollution Control), Ecology is required to set, by rule, fees that would fund the program. Without the adoption of the proposed rule, fees would remain at their previously set levels.

1.3 The proposed rule

The overall revenue budget passed by the 2015 Washington State Legislature contains fiscal growth factor increases totaling 4.22% for state fiscal year 2016 and 4.19% for state fiscal year 2017.

To continue addressing the inequities between fee payers and recover the monies needed to fund the program for 2015-2017 biennium, Ecology is using its legislative authority for increasing fees by proposing the following:

1. Increase fees for the following fee types (overpaying fee payers) by:
 - 3.25% for fiscal year 2016
 - 3.21% for fiscal year 2017

These fee types include:

- Aquaculture
- Combined Industrial Waste Treatment
- Combined Food Processing Waste Treatment
- Combined Sewer Overflow System
- Commercial Laundry
- Crop Preparing – Individual and General Permits
- Facilities Not Otherwise Classified – Individual and General Permits
- Flavor Extraction
- Food Processing
- Fuel and Chemical Storage
- Hazardous Waste Cleanup Sites
- Ink Formulation and Printing
- Inorganic Chemicals Manufacturing

- Noncontact Cooling Water With Additives – Individual and General Permits
- Noncontact Cooling Water Without Additives – Individual and General Permits
- Organic Chemical Manufacturing
- Petroleum Refining
- Photofinishers
- Power and/or Steam Plants
- Pulp, Paper, and Paperboard
- Radioactive Effluents and Discharges
- RCRA Corrective Action Sites
- Seafood Processing
- Solid Waste Sites
- Textile Mills
- Timber Products,
- Vegetable/Bulb Washing Facilities,
- Vehicle Maintenance and Freight Transfer,
- Water Plants – Individual and General Permits
- Wineries

2. Increase fees for the following fee types (underpaying fee payers) by:

- 5.31% for fiscal year 2016
- 5.27% for fiscal year 2017

These fee types include:

- | | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> • Aluminum Alloys • Aluminum and Magnesium Reduction Mills • Aluminum Forming • Aggregate Production – Individual and General Permit, • Aquatic Pest Control • Boatyards – Individual and General Permits • Coal Mining and Preparation • Concentrated Animal Feeding Operations • Dairies | <ul style="list-style-type: none"> Iron and Steel • Metal Finishing • Nonferrous Metals Forming • Ore Mining • Private and State owned Facilities • Shipyards • Stormwater Construction Individual and General Permits • Stormwater Industrial Individual and General Permits • Stormwater Municipal Phase 1 and 2 Permits |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

The impacts of the proposed rule are discussed in depth (along with qualitative discussion of their associated costs or benefits, *if any*) in Chapter 2.

3. Increase fees for municipalities for domestic wastewater facilities with greater than 250,000 residential equivalents (REs) by:

- 12 cents per RE in 2016
- 14 cents per RE in 2017

4. Create new fee categories for Wineries under general permit, In-Water Vessel Deconstruction, and Bridge Washing.

1.4 Analytical format

The remainder of this analysis is organized into the following chapters:

- Benefits and Costs of the Proposed Rule (Chapter 2): Description of the contents of the proposed rule, with relevant baseline identified.
- Observations and Conclusions (Chapter 3)
- Least Burdensome Alternative Analysis (Chapter 4)

Chapter 2: Costs and Benefits of the Proposed Rule

The proposed rule sets permit fees for FY16 and FY17. While these rates represent increases over their current rates, the increases are smaller for rate categories that have historically had fees greater than their costs of managing their permits than for the categories that have historically paid fees that were less than the costs of managing their permits. Ecology manages nearly 5,600 permits.

2.1 Costs

2.1.1 General fee increases

The proposed rule sets permit fee increases for FY16 and FY17 of:

- 3.25% for fiscal year 2016 and 3.21% for fiscal year 2017 for overpaying permit categories, and
- 5.31% for fiscal year 2016 and 5.27% for fiscal year 2017 for underpaying permit categories

As the specific fees are set by Ecology, they are treated as discretionary (even though RCW 90.48.465 instructs Ecology to collect enough in fees in total to fully fund the program). Therefore, the aggregate increase in fees represents the costs of the proposed rule.

The baseline of no fee-increases would result in total annual fees of \$19,450,000 (estimated aggregate fees for FY15).

Under the proposed rule, total fees are estimated to be \$20,140,813 in FY16 and \$20,855,660 in FY 17. This represents increases of \$690,813 in FY16 and \$1,405,660 in FY17 for an aggregated, discounted total cost of: \$2,079,668.

The APA considers aggregate costs and benefits of the proposed rule, and does not address distributional issues. The proposed redistribution of fee burden, therefore, is not included in this analysis, as the total costs under the baseline and proposed rule are not affected by the distribution.

2.1.2 Municipal wastewater fee increases

The proposed rule sets permit fee increases for municipalities discharging wastewater in excess of 250,000 REs for FY16 and FY17 of:

- 12 cents per RE in 2016
- 14 cents per RE in 2017

These increases apply to only one discharging entity (King County) that fits in this category. Its fee would increase as follows under the proposed rule:

- \$1,184,768 for fiscal year 2015
- \$1,272,420 for fiscal year 2016

- \$1,285,293 for fiscal year 2017 (assuming constant numbers of REs).

This translates to fee increases for King County of:

- \$87,652 for fiscal year 2016
- \$100,525 for fiscal year 2017

2.1.3 New fee categories for Wineries, In-Water Vessel Deconstruction, and Bridge Washing

The proposed rule establishes new fee categories for the Winery General Permit, In-Water Vessel Deconstruction permits, and Bridge Washing permits. We describe this cost qualitatively in this section, with a table of the individual fees, because:

- The Winery General Permit has not yet been issued, and we do not know the quantity and distribution of wineries and sizes that will choose to be covered by it at this time. Additionally, some wineries are already covered by individual permits, and the impact to them is represented within the general fee increase discussed above in section 2.1.1. If they choose to switch to the general permit once it is issued, it will be because of a cost-reduction that can be achieved by switching, so we believe including wineries under the general fee increase (section 2.1.1) includes an overlap of coverage under the new fee category (this section).
- Vessel-Deconstruction permits have been available, but none have been issued to date.
- The Bridge Washing permit has not yet been issued, and we do not know the quantity especially of single-site permits that will be approved in future.

| New Fee Category | Fee Subcategory | FY 2016 Annual Permit Fee | FY 2017 Annual Permit Fee |
|--------------------------------|--------------------|---------------------------|---------------------------|
| Bridge Washing | Single-site Permit | \$3,328 | \$3,328 |
| | WSDOT Annual Fee | \$11,061 | \$11,061 |
| In-Water Vessel Deconstruction | n/a | \$16,304 | \$16,304 |
| Wineries - General Permit | (a) | \$645 | \$645 |
| | (b) | \$1,289 | \$1,289 |
| | (c) | \$2,581 | \$2,581 |
| | (d) | \$7,743 | \$7,743 |

In the above table, categories of winery are defined as:

- Facilities producing 0 – 9,999 gallons of wine per year and/or facilities that discharge to a nondelegated publicly owned treatment works (POTW) and produce less than 9,999 gallons of wine per year.
- Facilities producing 10,000 – 24,999 gallons of wine per year and/or facilities that discharge to a nondelegated POTW and produce greater than 10,000 gallons of wine per year.
- Facilities producing 25,000 – 49,999 gallons of wine per year.
- Facilities producing 50,000 gallons or more of wine per year .

2.2 Benefits

The proposed rule raises permit fees in order to maintain funding for the program. Without doing this, the baseline scenario (no fee increases) would likely result in cuts to staff, program services, or both. Reducing the number of staff in the program would likely result in a reduced ability to maintain current levels of service, increasing the possibility that businesses were not in compliance with requirements. This may contribute to a possible increase in emissions of water pollutants, and decreasing provision of technical assistance for businesses on how to comply with wastewater and stormwater permit requirements. Avoiding these cuts is a benefit to the program

Should the program face cuts as outlined above, it would result in the program not meeting its legal requirement to recover the costs of maintaining the program at the level set by the Legislature.

Ecology could not confidently quantify the costs resulting from a reduced and overcapacity program. The benefit of avoiding these costs, under the adopted rule, was considered qualitatively in this analysis.

Chapter 3: Summary and Conclusion

Ecology evaluated the qualitative costs and benefits of the proposed rule and has concluded that the benefits of the proposed rule will most likely exceed the costs.

Ecology's determination was based on:

- Costs:
 - Permit Fee increases of \$2,079,668
 - Fee increases for King County of:
 - \$87,652 for fiscal year 2016
 - \$100,525 for fiscal year 2017
 - Fee categories for the Winery General Permit, In-Water Vessel Deconstruction permits, and Bridge Washing permits (see section 2.1.3 for more information and qualitative discussion).
- Benefits: Avoided decreases in program services, such as a reduced ability to maintain current levels of service, increasing the possibility that businesses were not in compliance with requirements, possible increases in emissions of water pollutants, and decreasing provision of technical assistance for businesses on how to comply with wastewater and stormwater permit requirements, as well as meeting the legal requirement for full funding of program services via fees.

Chapter 4: Least Burdensome Alternative Analysis

RCW 34.05.328(1)(e) requires Ecology to “determine, after considering alternative versions of the rule and the analysis required under (b), (c), and (d) of this subsection, that the rule being adopted is the least burdensome alternative for those required to comply with it that will achieve the general goals and specific objectives stated under (a) of this subsection.”

4.1 Alternatives considered

Ecology considered alternatives to the proposed rule’s content during the rule development process. These alternatives, and reasons for not including them in the proposed rule, are listed below.

4.1.1 Do not increase fees

With no increase in fees, Ecology would not be in compliance with RCW 90.48.465, which instructs Ecology to collect enough in fees in total to fully fund the program. Further, the inequity issues addressed in the proposed rule would continue, if not worsen.

4.1.2 Only increase fees on “under-paying” categories

Continue to increase under-paying categories only but by enough to fully recover costs. After careful consideration, this option was rejected. This would increase fees by almost 10 percent each fiscal year for these permit holders. Increases of this size were determined to place an undue burden on these categories.

4.1.3 Increase all categories by the state’s fiscal growth factor amounts

This would increase fees for all permit holders by 4.22% for state fiscal year 2016 and 4.19% for state fiscal year 2017. This option was rejected because it increases the subsidy burden already being paid by the over-payers.

4.2 Conclusion

Based on research and analysis required by RCW 34.05.328(d)(e) the Department of Ecology determines:

There is sufficient evidence, discussed above, that the proposed rule is the least burdensome version of the rule, for those who are required to comply, given the goals and objectives of the law for Ecology to adopt the proposed rule.