



DEPARTMENT OF
ECOLOGY
State of Washington

Significant Legislative Rule Determinations

Including Final Cost-Benefit and Least- Burdensome Alternative Analyses

*Chapter 173-305 WAC
Hazardous Waste Fee Regulation*

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For more information contact:

Hazardous Waste & Toxics Reduction Program
P.O. Box 47600
Olympia, WA 98504-7600
Phone: 360-407-6900

Washington State Department of Ecology - www.ecy.wa.gov

- Headquarters, Olympia 360-407-6000
- Northwest Regional Office, Bellevue 425-649-7000
- Southwest Regional Office, Olympia 360-407-6300
- Central Regional Office, Union Gap 509-575-2490
- Eastern Regional Office, Spokane 509-329-3400

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**Chapter 173-305 WAC
Hazardous Waste Fee Regulation**

*by
Kasia Patora*

for the

Hazardous Waste & Toxics Reduction Program
Washington State Department of Ecology
Olympia, Washington

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Terminology

The terms “hazardous waste” and “dangerous waste” are interchangeable for the purposes of this report.

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Executive Summary

It is important to note that the proposed rule codifies current practice.

This report presents the determinations made by the Washington State Department of Ecology (“Ecology”) as required in RCW 34.05.328 for the adopted amendments to the Hazardous Waste Fee Regulation rule (chapter 173-305 WAC; “the rule”).

The Washington Administrative Procedure Act (APA; RCW 34.05.328(1)(d)) requires Ecology to evaluate significant legislative rules to “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 law being implemented.” Chapters 1 through 5 of this document describe that determination.

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 (RCW 34.05.328(1)(d)). Chapter 6 of this document describes that determination.

The adopted rule amendments make the following changes not required by other laws or rules:

- Updating the definition of “price deflator” to annually adjust the fee for inflation. The price deflator clarifies which figures to use by the US Department of Commerce, Bureau of Economic Analysis, relative to state and local government gross domestic products.
- Adding two exclusions to the calculation of dangerous waste used as the basis for fee calculations:
 - Dangerous waste treated on-site by the generator, as regulated by the Dangerous Waste Regulations (WAC 173-303-170(3)(b) and (c)).
 - Non-recurrent dangerous waste as reported under the Dangerous Waste Regulations (WAC 173-303-060(5)).

Ecology determined that, compared to the baseline of the existing rule, the adopted rule has the following costs and benefits:

- The total cost of the adopted rule amendments is zero, because the adopted rule does not change the total cost of the program to be funded through fees.
- The benefit of this change is that it will align the rule with existing fee calculation practices, which are consistent with the hazardous waste and toxics reduction goals and purposes of Chapter 70.95C RCW.

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Chapter 1: Background and Introduction

1.1 Introduction

This report presents the determinations made by the Washington State Department of Ecology (“Ecology”) as required in RCW 34.05.328 for the adopted amendments to the Hazardous Waste Fee Regulation rule (chapter 173-305 WAC; “the rule”).

The Washington Administrative Procedure Act (APA; RCW 34.05.328(1)(d)) requires Ecology to evaluate significant legislative rules to “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 law being implemented.” Chapters 1 through 5 of this document describe that determination.

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 (RCW 34.05.328(1)(d)). Chapter 6 of this document describes that determination.

The APA also requires Ecology to make several other determinations (RCW 34.05.328(1)(a) – (c) and (f) – (h)). Appendix A provides the documentation for these determinations. All determinations are based on the best available information at the time of publication.

1.1.1 The Hazardous Waste & Toxics Reduction program

Ecology’s Hazardous Waste & Toxics Reduction program works to manage dangerous waste, prevent pollution, and foster sustainability. Part of this work is as authorized under Chapter 70.95C RCW, including:

- Encouraging the voluntary reduction of hazardous substance usage and waste generation by waste generators and hazardous substance users.
- Coordinating technical assistance to waste generators and hazardous substance users and serving as the state's lead agency and promoter for such programs.
- Encouraging hazardous substance use reduction and waste reduction by:
 - Providing for the rendering of advice and consultation to waste generators and hazardous substance users on hazardous substance use reduction and waste reduction techniques, including assistance in preparation of plans.
 - Sponsoring or co-sponsoring with public or private organizations technical workshops and seminars on waste reduction and hazardous substance use reduction.
 - Administering a waste reduction and hazardous substance use reduction database and hot line providing comprehensive referral services to waste generators and hazardous substance users

- Administering a waste reduction and hazardous substance use reduction research and development program.
- Coordinating a waste reduction and hazardous substance use reduction public education program, as well as publishing necessary new materials on waste reduction.
- Assisting facilities develop pollution prevention plans.
- Reviewing pollution prevention plans

1.1.2 Coverage

At the time of this analysis, the rule covers the fees paid by approximately 630 facilities (in 2016) required to have plans. These facilities are referred to as “planners”. The number of planners fluctuates each year based on annual changes in the amount of hazardous substances used and the amount of hazardous waste generated.

1.2 Summary of the adopted rule amendments

The adopted rule amendments make the following changes not required by other laws or rules:

- Updating the definition of “price deflator” to annually adjust the fee for inflation. The price deflator clarifies which figures to use by the US Department of Commerce, Bureau of Economic Analysis, relative to state and local government gross domestic products.
- Adding two exclusions to the calculation of dangerous waste used as the basis for fee calculations:
 - Dangerous waste treated on-site by the generator, as regulated by the Dangerous Waste Regulations (WAC 173-303-170(3)(b) and (c)).
 - Non-recurrent dangerous waste as reported under the Dangerous Waste Regulations (WAC 173-303-060(5)).

1.3 Reasons for the adopted rule amendments

1.3.1 Price deflator

The Hazardous Waste Fee Regulation specifies the price deflator Ecology must use when adjusting for inflation. The price deflator directs how to adjust for inflation for the total amount Ecology can annually collect through the administration of this fee. This is an early step in order to later calculate individual fees. The rule’s original “Implicit Price Deflator for gross *National* Product” is no longer published by the US Bureau of Economic Analysis BEA.

Ecology is adopting rule language that uses the BEA’s updated “Implicit Price Deflator for gross *Domestic* Product”. This is the measure currently reported on the table taken from the National Income and Product Accounts reported by the BEA.

The adopted rule also provides an option if the state and local measure is unavailable. This also helps avoid the need for similar rulemaking if there is another BEA name change.

This newer price deflator definition will not change how inflation calculations are carried out. Ever since the ‘*National*’ price deflator went away, Ecology has successfully used the ‘*Domestic*’ price deflator as the best available replacement. In effect, there will be no change to fee calculations compared to prior years.

1.3.2 Fee calculation exclusions

Ecology has been collecting Hazardous Waste Fees since 1983. In 1989, an initiative passed by the people of Washington encouraged the Legislature to revise the Hazardous Waste Fees to provide an incentive for hazardous waste reduction and recycling. (RCW 70.105A.035). As a result, RCW 70.95E was passed by the legislature in 1990. In that statute, the Legislature directed the Department of Ecology to adopt a fee schedule by rule after consultation with typical affected businesses and other interested parties. The result was chapter 173-305 WAC.

Ecology’s policies and information management capabilities have changed since 1990 when Chapter 173-305 WAC was promulgated. These changes led Ecology to modify the way they determined the types of waste subject to the fee.

- *Hazardous waste generators that were treating their waste on site.*
In one case, a new method of hazardous waste management, ‘treating waste on site’ became a legal option for planners. Treating waste on site reduced the amount of wastes that would otherwise require planning and were excluded from the fee calculations. The post treatment-on-site waste amounts were used in the fee calculations, recognizing that these wastes still need to be planned for.
- *Hazardous waste generators that had non-recurrent hazardous waste generation.*
When the rules were originally promulgated, there was no way to distinguish non-recurrent wastes from recurrent wastes in the annual waste management reports that were submitted by businesses. Therefore both recurrent and non-recurrent waste streams were treated the same. It became clear that ‘non-recurrent’ waste was not routine and therefore not easy to plan for. Once information management methods for tracking non-recurrent wastes became available, these wastes were excluded from the calculations.

This rulemaking explicitly adds the above wastes as exclusions to the calculation of hazardous waste pounds used in the fee calculation. This will clearly maintain these exclusions in future fee calculations, and bring the rule into line with current practice.

It is important to note that these changes reflect the status quo of what has been carried out for many years by Ecology. There will be no change to those specific fee calculation procedures.

1.4 Document organization

The remainder of this document is organized in the following chapters:

- Baseline and the adopted rule amendments (Chapter 2): Description and comparison of the baseline (what would occur in the absence of the rule amendments) and the adopted changes to rule requirements.

- Likely costs of the adopted rule amendments (Chapter 3): Analysis of the types and sizes of costs we expect impacted entities to incur as a result of the adopted rule amendments.
- Likely benefits of the adopted rule amendments (Chapter 4): Analysis of the types and size of benefits we expect to result from the adopted rule amendments.
- Cost-benefit comparison and conclusions (Chapter 5): Discussion of the complete implications of the CBA, and comments on the results.
- Least-Burdensome Alternative Analysis (Chapter 6): Analysis of considered alternatives to the contents of the adopted rule amendments.
- RCW 34.05.328 determinations not discussed in Chapter 5 or 6 (Appendix A)

Chapter 2: Baseline and the Adopted Rule Amendments

2.1 Introduction

We analyzed the impacts of the adopted rule relative to the baseline of the previously adopted rule, within the context of all existing requirements (federal and state laws and rules). This context for comparison is called the baseline, and reflects the most likely regulatory circumstances that entities would face if the proposed rule had not been adopted. It is discussed in Section 2.2, below.

2.2 Baseline

The baseline for our analyses generally consists of existing rules and laws, and their requirements. This is what allows us to make a consistent comparison between the state of the world with and without the proposed rule amendments.

For this proposed rulemaking, the baseline includes:

- The previously adopted rule, Chapter 173-305 WAC, the Hazardous Waste Fee Regulation
- The direct authorizing statute, Chapter 70.95E RCW, Hazardous Waste Fees
- Associated hazardous waste regulations, including, but not limited to:
 - Chapter 70.95C RCW, Waste Reduction
 - Chapter 70.105 RCW, Hazardous Waste Management
 - Chapter 70.105A RCW, Hazardous Waste Fees (remaining directive that fees promote recycling and reduction)
 - Chapter 173-303 WAC, Dangerous Waste Regulations
 - Chapter 173-307 WAC, Pollution Prevention Plans

It is important to note that the adopted rule codifies current practice. Under the APA and for this analysis, however, current practice is not included in the baseline.

The Hazardous Waste Fee funds “implementation of RCW 70.95C.200 and 70.95C.040. These fees are to be used by the department, subject to appropriation, for plan review, technical assistance to facilities that are required to prepare plans, other activities related to plan development and implementation, and associated indirect costs.”¹ The fee is based on a facility’s pounds of dangerous waste and pounds of emissions per WAC 173-305-220.

In other words, Ecology must first calculate the total fees that they can collect based on the inflation-adjusted total from the previous year, then allocate individual fee burden based on the

¹ RCW 70.95.030

amounts of emissions, hazardous waste and extremely hazardous waste generated. The burden is affected by a 10-to-1 ratio for extremely hazardous waste versus hazardous waste.

The parameters set on the fee by law (Chapter 70.95E RCW) include:²

- The total fees collected under this subsection shall not exceed the department's costs of implementing RCW 70.95C.200 and 70.95C.040 and shall not exceed \$1 million per year.
- The annual fee for a facility shall not exceed \$10 thousand per year.
- Any facility that generates less than 2,640 pounds of hazardous waste per waste generation site in the previous calendar year shall be exempt from the fee imposed by this section.
- The annual fee for a facility generating at least 2,640 pounds but not more than four thousand pounds of hazardous waste per waste generation site in the previous calendar year shall not exceed fifty dollars.
- A person that develops a plan covering more than one interrelated facility as provided for in RCW 70.95C.200 shall be assessed fees only for the number of plans prepared.
- The department shall adopt a fee schedule by rule after consultation with typical affected businesses and other interested parties.
- Hazardous waste generated and recycled for beneficial use, including initial amount of hazardous substances introduced into a process and subsequently recycled for beneficial use, shall not be used in the calculations of hazardous waste generated for purposes of this section.

2.3 Adopted rule amendments

The adopted rule amendments that differ from the baseline and are not *specifically* dictated in the authorizing statute or elsewhere in law or rule include:

- Updating the definition of “price deflator” to include direction regarding which figures to use if the “Implicit Price Deflator for Gross Domestic Product” published by the US Bureau of Economic Analysis required under the existing rule is not available.
- Adding two exclusions to the calculation of dangerous waste used for fee calculations:
 - Dangerous waste treated on-site by the generator, as regulated by the Dangerous Waste Regulations (WAC 173-303-170(3)(b) and (c)).
 - Non-recurrent dangerous waste as reported under the Dangerous Waste Regulations (WAC 173-303-060(5)).

² Bullets 1, 2, and 4 are in 1990-dollars, and are annually adjusted for inflation.

2.3.1 Updating the definition of price deflator

- **Baseline**
Ecology must use the “Implicit Price Deflator for Gross National Product” for state and local government, published by the Bureau of Economic Analysis (BEA).
- **Adopted**
Ecology must use the “Implicit Price Deflator for Gross Domestic Product” for “State and Local Government” published by the BEA. If a “State and Local Government” figure is not available, the general government figure may be used.
- **Expected impact**
We do not expect this change to create costs or benefits. The BEA replaced the “Implicit Price Deflator for Gross National Product” with the “Implicit Price Deflator for Gross Domestic Product” as the measure of price growth. Additionally, in the current “Implicit Price Deflator for Gross Domestic Product” table published by the BEA, all available time periods have deflator values for both “State and Local Government” and general “Government consumption expenditures and gross investment”.³ We understand this to be a precautionary clarification in case the BEA changes its publication practices for national accounts. This precaution may be a benefit in and of itself, but only if BEA publication practices change in the future, by providing clarity in which price deflator should be used if the “State and Local Government” values are not available.

2.3.2 Adding two exclusions to the calculation of dangerous waste used as the basis for fee calculation

- **Baseline**
The pounds of dangerous waste used in the fee calculation is the pounds that are reported that are not recycled for beneficial use, excluding wastewater discharged under permit by rule under WAC 173-303-802.
- **Adopted**
The pounds of dangerous waste used in the fee calculation are the pounds that are reported that are not recycled for beneficial use, excluding:
 - Wastewater discharged under permit by rule under WAC 173-303-802.
 - Dangerous waste that is treated on-site by the generator according to WAC 173-303-170(3)(b) and (c).
 - Non-recurrent dangerous waste as reported on the annual dangerous waste generator report required under WAC 173-303-060(5).
- **Expected impact**
The additional exclusions to the dangerous waste pounds used in the fee calculation do not affect the total fees collected; they only affect the distribution of fees across planners. Consequently, we do not expect the adopted rule to result in aggregate (total across all parties paying the fee) costs as compared to the baseline. The redistribution of fees (with total fee burden unaffected by the proposed rule) is addressed in our associated Small

³ <http://bea.gov/iTable/iTable.cfm?reqid=9&step=3&isuri=1&903=13#reqid=9&step=3&isuri=1&903=13>

Business Economic Impact Statement (Ecology publication no. 16-04-026) issued at rule proposal. It is important to note that the adopted rule codifies current practice. This will not be a departure from current practices and maintains the status quo. It is, however, a difference in explicit rule requirements.

Chapter 3: Likely Costs of the Adopted Rule Amendments

3.1 Introduction

We estimated the likely costs associated with the adopted rule amendments, as compared to the baseline. Amendments and the baseline are discussed in detail in Chapter 2 of this document.

3.2 Zero total cost

Per the baseline and limitations set by the authorizing statute (see discussion in sections 2.2 and 2.3, above), the aggregate fee (total across all parties paying the fee) charged is not affected by the adopted rule. Under both the baseline and adopted rule, the total fees collected shall not exceed the maximum fee allowed by the authorizing statute (Chapter 70.95E RCW).

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Chapter 4: Likely Benefits of the Adopted Rule Amendments

4.1 Introduction

We estimated the likely benefits associated with the adopted rule amendments, as compared to the baseline (both described in Chapter 2 of this document). Likely benefits are that the amendments will align the rule with existing fee calculation practices, which are consistent with the hazardous waste and toxics reduction goals and purposes of the authorizing statute (Chapter 70.95C RCW). This improves clarity in implementing the rule.

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Chapter 5: Cost-Benefit Comparison and Conclusions

5.1 Summary of the costs and benefits of the adopted rule amendments

Ecology determined that, compared to the baseline discussed in Chapter 2 of this document, the adopted rule has the following costs and benefits.

- The total cost of the adopted rule amendments is zero, because the aggregate fee (total across all parties paying the fee) charged is not affected by the adopted rule. Under both the baseline and adopted rule, the total fees collected shall not exceed the maximum fee allowed by the authorizing statute (Chapter 70.95E RCW).
- The benefit of the adopted rule is that the amendments will align the rule with existing fee calculation practices, which are consistent with the hazardous waste and toxics reduction goals and purposes of the authorizing statute (Chapter 70.95C RCW). This improves clarity in implementing the rule.

It is important to note that the adopted rule codifies current practice.

5.2 Conclusion

Ecology concludes, based on reasonable understanding of the quantified and qualitative costs and benefits likely to arise from the adopted rule, that the benefits of the adopted rule amendments are greater than the costs.

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Chapter 6: Least-Burdensome Alternative Analysis

6.1 Introduction

RCW 34.05.328(1)(e) requires Ecology to “[...]d]etermine, 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.” The referenced subsections are:

- (a) Clearly state in detail the general goals and specific objectives of the statute that the rule implements;
- (b) Determine that the rule is needed to achieve the general goals and specific objectives stated under (a) of this subsection, and analyze alternatives to rule making and the consequences of not adopting the rule;
- (c) Provide notification in the notice of proposed rulemaking under RCW 34.05.320 that a preliminary cost-benefit analysis is available. The preliminary cost-benefit analysis must fulfill the requirements of the cost-benefit analysis under (d) of this subsection. If the agency files a supplemental notice under RCW 34.05.340, the supplemental notice must include notification that a revised preliminary cost-benefit analysis is available. A final cost-benefit analysis must be available when the rule is adopted under RCW 34.05.360;
- (d) 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;

In other words, to be able to adopt the rule, Ecology is required to determine that the contents of the rule are the least burdensome set of requirements that still achieve the goals and objectives of the authorizing statute(s).

Ecology assessed alternatives to elements of the adopted rule, and determined whether they met the goals and objectives of the authorizing statutes. Of those that would meet these goals and objectives, Ecology determined whether those chosen for the adopted rule were the least burdensome.

6.2 Goals and objectives of the authorizing statute: Chapter 70.95 RCW

The authorizing statute is direct in its objectives. These include:

- Administering fees associated with the use of hazardous substances and the generation of hazardous waste to support implementation of waste reduction planning under RCW 70.95C.200 and .040.
- Adopting a fee schedule by rule under Chapter 70.95E RCW.
- Using the fee to fund the Hazardous Waste & Toxic Reduction's programs that implement hazardous waste planner regulations under Chapter 70.95E RCW.

There are also statutes associated with Chapter 70.95 RCW, discussing the intent and requirements of hazardous waste regulation. These include an initiative passed by the people of Washington encouraging the Legislature to revise Hazardous Waste Fees to provide an incentive for hazardous waste reduction and recycling (RCW 70.105A.035).

6.3 Alternatives considered and why they were not included

This rulemaking was very limited in its scope. It focused on exclusions to the calculation of dangerous waste pounds used in calculating fees charged to planners. The primary focus was adding exclusions to the rule language that reflect current practices based on experience implementing the existing Hazardous Waste Fee Regulation (Chapter 173-305 RCW). No additional exclusions were suggested during this rulemaking, either as part of internal discussions or stakeholder engagement.

An inherent alternative to the adopted rule is to maintain the status quo, and retain the previously adopted rule content. This would potentially increase burden compared to the adopted rule, because it would reduce clarity in implementing the rule.

6.4 Conclusion

After considering alternatives to the adopted rule's contents, as well as the goals and objectives of the authorizing statute, Ecology determined that the adopted rule represents the least-burdensome alternative of possible rule contents meeting these goals and objectives.

Appendix A

Documentation of Determinations Required under RCW 34.05.328

Describe the general goals and specific objectives of the statute that this rule implements. RCW 34.05.328(1)(a)
See Chapter 6.
Explain why this rulemaking is needed to achieve the goals and objectives of the statute. RCW 34.05.328(1)(b)
See chapters 1 and 2.
Describe alternatives to rulemaking and the consequences of not adopting this rule. RCW 34.05.328(1)(b)
<p>Ecology is required by Chapter 70.95E.030 RCW: ... (“The department shall adopt a fee schedule by rule ...”) to address fee calculations through rulemaking. Previously adopted rule language is incomplete in that it does not specify some categories of waste currently exempted from the fee. See Chapter 6.</p> <p>The consequence for not adopting these rule amendments is ongoing ambiguity and potential confusion regarding fee calculation. The adopted rule brings rule language into line with current practice consistent with the authorizing statutes.</p>
A preliminary cost-benefit analysis was made available. RCW 34.05.328(1)(c)
Notice is provided in the proposed rulemaking notice (CR-102 form) filed under RCW 34.05.320.
Do the probable benefits of this rulemaking outweigh the 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)(d)
See Chapters 1 – 5.
Is this rule the least burdensome alternative for those required to comply? RCW 34.05.328 (1)(e)
See Chapter 6.
Does this rule require those to whom it applies to take an action that violates requirements of another federal or state law?
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Explain how that determination was made. RCW 34.05.328(1)(f)
No other federal or state agencies regulate the Hazardous Waste Planning Fee. There are no related federal regulations for hazardous waste planning fees. However, RCW 70.95E directs Ecology to adopt rules for hazardous waste planning fees.

Does this rule impose more stringent performance requirements on private entities than on public entities? RCW 34.05.328 (1)(g)

- Yes. Provide a citation. Explain.
 No

The fees are the same for public and private entities.

Do other federal, state, or local agencies have the authority to regulate this subject?

- Yes. List below. No

Is this rule different from any federal regulation or statute on the same activity or subject?

- Yes No

If yes, check all that apply. The difference is justified because:

- A state statute explicitly allows Ecology to differ from federal standards. (If checked, provide the citation.)
- There is substantial evidence that the difference is necessary to achieve the general goals and objectives of the statute that this rule implements. (If checked, explain.)

RCW 34.05.328 (1)(h)

There are no other federal or state agencies that regulate the Hazardous Waste Planning Fee. There are no related federal or state regulations for hazardous waste planning fees.

Explain how Ecology ensures that the rule is coordinated with other federal, state, and local agencies, laws, and rules. RCW 34.05.328 (1)(i)

There are no related federal regulations for hazardous waste planning fees. No other state or local agencies regulate the Hazardous Waste Planning Fee. We worked with other agencies to ensure they are aware of these rule changes and impacts to affected parties.