



DEPARTMENT OF
ECOLOGY
State of Washington

Preliminary Regulatory Analyses

Including the:

- Preliminary Cost-Benefit Analysis
 - Least-Burdensome Alternative Analysis
 - Administrative Procedure Act Determinations
 - Regulatory Fairness Act Compliance
-

*Chapter 173-219 WAC
Reclaimed Water*

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Chapter 173-219 WAC

Reclaimed Water

by
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for the

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Executive Summary

This report presents the determinations made by the Washington State Department of Ecology (Ecology) as required under chapters 34.05 RCW and 19.85 RCW, for the proposed Reclaimed Water rule (chapter 173-219 WAC; the “rule”).

This rule is intended to fulfill the directive in RCW 90.46.015 to adopt rules for reclaimed water use consistent with the statute. RCW 90.46.015 states that the rules must address all aspects of reclaimed water use, including commercial and industrial uses, land applications, direct groundwater recharge, wetland discharge, surface percolation, constructed wetlands, and streamflow or surface water augmentation. The statute also states the rules must clarify the designation of lead agency, and amend or rescind any existing rules on reclaimed water in conflict with this rule.

The rule’s intended goal is to provide a clear regulatory framework for encouraging and permitting the production, distribution, and beneficial use of reclaimed water.

The proposed rule restates, or cites by reference, the various rules currently governing reclaimed water generation and reuse. In some cases, the proposed rule creates an additional requirement that does not exist in current regulation. Some of these new requirements or allowances in the proposed rule generate costs or benefits to businesses, the public, or the environment.

The proposed rule will likely create costs due to:

- Pre-planning meeting.
- Impairment analysis.
- Class A+ requirements.
- Specific use-based requirements.

Due to the high degree of variability and uncertainty of costs, Ecology could not quantify the costs of these requirements with a sufficient degree of certainty.

The proposed rule causes qualitative benefits to accrue from:

- Consolidating and clarifying multiple existing regulations that are being applied to reclaimed water permitting under the baseline. This supports improvements in:
 - Protecting public health and safety through consistent application of requirements for pathogen removal or inactivation wherever the public is exposed to reclaimed water.
 - Enhancing water quality for Washington’s groundwater and surface waters, including Puget Sound and the Columbia River.
 - Promoting wise management of water supplies for beneficial uses by providing alternative sources of water to replace the use of potable water where feasible.
 - Enhancing, restoring or creating wetlands habitat.
 - Contributing to the restoration and protection of instream flows that are crucial to

- preservation of the state's salmonid fishery.
- Promoting strategies for reclaimed water use that will respond to population growth and climate change.
- Simplifying and clarifying public understanding of reclaimed water regulation.
- Facilitating and adding certainty to permit application and renewal.
- Eliminating duplicate requirements.
- Streamlining and clarifying agency roles and relationships.
- Avoided legal costs that may arise from proceeding with projects without an impairment analysis.

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

Ecology assessed alternatives to proposed rule content, 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 proposed rule were the least burdensome to those required to comply with them.

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

Chapter 1: Background and Introduction

1.1 Introduction

This report presents the determinations made by the Washington State Department of Ecology (Ecology) as required under chapters 34.05 RCW and 19.85 RCW, for the proposed Reclaimed Water rule (chapter 173-219 WAC; the “rule”). This includes the:

- Preliminary Cost-Benefit Analysis (CBA)
- Least-Burdensome Alternative Analysis (LBA)
- Administrative Procedure Act Determinations
- Regulatory Fairness Act Compliance

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 – 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)) about the rule, including authorization, need, context, and coordination. Appendix A provides the documentation for these determinations.

All determinations are based on the best available information at the time of publication. Ecology encourages feedback (including specific data) that may improve the accuracy of this analysis.

The Washington Regulatory Fairness Act (RFA; Chapter 19.85 RCW) requires Ecology to evaluate the relative impact of proposed rules that impose costs on businesses in an industry. It compares the relative compliance costs to small businesses to the largest businesses affected. Chapter 7 documents that analysis, when applicable.

1.1.1 Legislative direction and history of rule development

Reclaimed water is generated from wastewater— with a domestic wastewater component¹—that has been adequately and reliably treated so that it can be used for beneficial purposes. Once reclaimed, this water is not considered a wastewater. The process of reclaiming water, sometimes called water recycling, involves a highly engineered, multi-step treatment process that mimics nature's restoration of water quality. The process provides a high-level of disinfection and treatment unit reliability and redundancy to assure that only water meeting stringent water quality and public health requirements leaves the treatment facility for an approved use.

The Legislature, in Chapter 90.46 RCW, directed Ecology to work with the Department of Health (Health) and an advisory committee to create a new chapter that addresses all aspects of reclaimed water, including,

- Lead agency designation and responsibilities.
- Planning, design, construction, operations, and maintenance of reclaimed water facilities.
- Permitting of reclaimed water facilities.
- Technology and use based treatment requirements.
- Treatment reliability.
- Operational storage, distribution and use.

Reclaimed water is an important component of wise water management. The State of Washington has had a reclaimed water program since the enactment of the Reclaimed Water Act (RWA; chapter 90.46 RCW) in 1992. There are 28 permitted reclaimed water facilities across Washington State. The first permit was issued in 1994. Nearly all of the existing facilities are owned by local government entities such as cities, counties, and sewer districts. There are three facilities owned by non-profit entities. One facility is owned by a large, private company.

The state regulatory program for reclaimed water currently consists of the RWA and several guidance documents developed by the Health and Ecology. The RWA directed Ecology and Health to develop interim standards for reclaimed water production and use.

In 1997 Health and Ecology – with the assistance of a Water Reuse Advisory Committee, interested stakeholders, and a consultant team of nationally recognized water reuse experts – developed standards for most applications of reclaimed water. Ecology published the standards in September 1997², but did not codify them into rule.

The Legislature enacted ESHB 2884 in 2006, which is now part of Chapter 90.46 RCW. The law directs the Department of Ecology to:

¹90.46 RCW states that industrial reuse water and agricultural industrial process water—with no domestic wastewater—are to be regulated under 90.48 RCW. Therefore, this rule is not applicable to either of these types of reuse.

²Washington State Department of Ecology, *Water Reclamation and Reuse Standards* 97-023, September 1997.

- 1) Form a Water Reuse Advisory Committee (WRAC), which will provide technical assistance in developing standards, procedures, and guidelines.
- 2) Adopt rules for reclaimed water use.

This rule will greatly aid the reclaimed water program by establishing:

- A clear permitting process for reclaimed domestic wastewater.
- Requirements for reclaimed water treatment facilities, including distribution, and use.
- Roles for Health and Ecology.

The WRAC began work in the fall of 2006.

In 2007, the Legislature directed the agencies to look at several specific aspects of the reclaimed water program (amending chapters 90.54, 90.46, and 90.82 RCW). This included considering a long-term, dedicated funding program to construct reclaimed water facilities, and identifying barriers to reclaimed water, such as agency staffing levels. As part of that legislation, the Legislature adopted changes to state law, including changes to consideration of potential impairment of downstream water rights by reclaimed water facilities. The Governor vetoed that section (while adopting the rest of the law) and directed Ecology to work with legislative leadership to address water rights impairment from water reuse projects.

In 2009, Ecology and Health sponsored legislation to gain explicit statutory authority on certain aspects of reclaimed water needed to complete the rule. The Legislature passed an authorizing bill (Substitute Senate Bill 5504; Chapter 456, Laws of 2009) that also directed Ecology to review comments from the RAC and RW-WRAC and submit a recommendation to the Legislature on the impairment requirements and standards by November 30, 2009.

The Yakama Nation requested that the Governor veto the 2009 legislation because the bill did not clarify agency authority and responsibility to protect existing water rights, including instream flows, from impairment. The Governor did not veto the bill, but directed Ecology to develop a proposal for amendments to the impairment standard to ensure the State is protecting its water resources and complying with State agreements. The Governor's request was satisfied when Ecology published a report to the Legislature in December 2009 with recommendations for changes to chapter 90.46 RCW.

Due to an economic downturn in the state in 2010, the Governor issued two consecutive Executive Orders from 2010 through December 2012, suspending all non-essential rulemaking. This included rulemaking for reclaimed water. In 2011, the Legislature revised RCW 90.46.015 providing more time to Ecology to adopt rules after June 2013. In January 2014, Ecology reactivated the rulemaking and Advisory Committee process. Ecology proposed a draft rule in December 2015. Based on significant comments received on that draft, Ecology withdrew that proposal. With a significantly revised version of the draft rule, in early 2017, Ecology reconvened the RAC to prepare this draft rule proposa

1.2 Summary of the proposed rule

The proposed rule restates, or cites by reference, the various rules currently governing reclaimed water generation and reuse. In some cases, the proposed rule creates an additional requirement that does not exist in current regulation. Some of these new requirements or allowances in the proposed rule generate costs or benefits to businesses, the public, or the environment.

1.3 Reasons for the proposed rule

This rule is intended to fulfill the directive in RCW 90.46.015 to adopt rules for reclaimed water use consistent with the statute. RCW 90.46.015 states that the rules must address all aspects of reclaimed water use, including commercial and industrial uses, land applications, direct groundwater recharge, wetland discharge, surface percolation, constructed wetlands, and streamflow or surface water augmentation. The statute also states the rules must clarify the designation of lead agency, and amend or rescind any existing rules on reclaimed water in conflict with this rule.

The rule's intended goal is to provide a clear regulatory framework for encouraging and permitting the production, distribution, and beneficial use of reclaimed water. This includes the following objectives:

- Clear roles and responsibilities
 - Streamline agency designation, roles, and responsibility in rule language
 - Establish bright line for lead agency designation
 - Establish coordinated approach to reviewing and issuing necessary permits
- Clear, predictable, compliance, planning, permitting, and reporting requirements
 - Consolidated planning, reporting, and permitting requirements
 - Provide additional details in guidance documents
 - Provide clarity on Reclaimed Water permit relationship to other Ecology and Health permits
- Scientifically and legally sound standards and practices that protect human health and the environment
 - Meets both Health and Ecology legal obligations to protect human health and the environment
 - Clearly communicated
 - Allows for advances in treatment technology

The proposed rule brings together many existing laws and rules also used to regulate reclaimed water generation, distribution, and use.

1.4 Document organization

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

- Baseline and the proposed rule (Chapter 2): Description and comparison of the baseline (what would occur in the absence of the proposed rule) and the proposed rule requirements.
 - Likely costs of the proposed rule (Chapter 3): Analysis of the types and sizes of costs we expect impacted entities to incur as a result of the proposed rule.
 - Likely benefits of the proposed rule (Chapter 4): Analysis of the types and size of benefits we expect to result from the proposed rule.
 - Cost-benefit comparison and conclusions (Chapter 5): Discussion of the complete implications of the CBA.
 - Least-Burdensome Alternative Analysis (Chapter 6): Analysis of considered alternatives to the contents of the proposed rule.
 - Small Business Economic Impact Statement (Chapter 7): Comparison of compliance costs to small and large businesses; mitigation; impact on jobs.
 - RCW 34.05.328 determinations not discussed in Chapter 5 or 6 (Appendix A)

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Chapter 2: Baseline and the Proposed Rule

2.1 Introduction

We analyzed the impacts of the proposed rule relative to the baseline of not having the proposed rule, within the context of all existing requirements (federal and state laws). This context for comparison is called the baseline, and reflects the most likely regulatory circumstances that entities would face if the proposed rule were not 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.

The regulatory baseline is the way reclaimed water permitting and regulation would be done if the proposed rule is not adopted – that is, the existing laws and rules at various jurisdictional levels that determine how reclaimed water is permitted and regulated now. The baseline does not include guidance and practices commonly used in reclaimed water permitting and production that are not legally required.

Under the current law (chapter 90.46 RCW) entities such as, but not limited to, businesses, individuals, governments, and other organizations must have a permit to operate a reclaimed water facility. While there has not been a single comprehensive rule implementing reclaimed water permitting and regulation, reclaimed water facilities have been permitted under a number of existing laws and rules and regulatory definitions. Existing laws and rules include, but are not limited to:

- RCW 34.05 – Administrative Procedures Act
- RCW 42.17 - Disclosure — campaign finances — lobbying
- RCW 43.20 - State board of health
- RCW 43.21B - Environmental hearings office — pollution control hearings board
- RCW 57.16 - Comprehensive plan — local improvement districts
- RCW 70.95B – Domestic waste treatment plants - operators
- RCW 70.116 - Public water system coordination act of 1977
- RCW 70.118B - Large on-site sewage disposal systems
- RCW 70.119 - Public water supply systems — operators
- RCW 90.03 - Water code
- RCW 90.44 - Regulation of public groundwaters
- RCW 90.46 - Reclaimed water use

- RCW 90.48 - Water pollution control
- RCW 90.54 - Water resources act of 1971
- RCW 90.58 - Shoreline management act of 1971
- RCW 90.74 - Aquatic Resources Mitigation
- WAC 173-201A - Water Quality Standards For Surface Waters Of The State Of Washington
- WAC 173-200 - Water Quality Standards For Groundwaters Of The State Of Washington
- WAC 173-220 - National pollutant discharge elimination system permit program
- WAC 173-221 - Discharge Standards And Effluent Limitations For Domestic Wastewater Facilities
- WAC 173-226 - Waste Discharge General Permit Program
- WAC 173-240 - Submission Of Plans And Reports For Construction Of Wastewater Facilities
- WAC 246-290 - Group A public water supplies
- WAC 246-291 - Group B public water systems
- WAC 246-292 – Waterworks operator certification
- WAC 246-272A – On-site sewage systems
- WAC 246-272B – Large on-site sewage system regulations
- WAC 51-56 - State Building Code Adoption And Amendment Of The 2015 Edition Of The Uniform Plumbing Code

Health and Ecology – with the assistance of a Reclaimed Water Rule Advisory Committee (RAC), interested stakeholders, and a consultant team of nationally recognized water reuse experts – developed standards for most applications of reclaimed water. Ecology published the standards in September 1997, but never codified them into rule.

The 1997 Water Reclamation and Reuse Standards emphasize public health protection and provide design, treatment, and use area criteria for the following reclaimed water categories:

- General requirements (e.g., land application, impoundments, commercial and industrial uses)
- Use in wetlands
- Groundwater recharge (direct and surface percolation)

While these water reclamation and reuse standards are not currently codified they are the standard reference used by Ecology and Health for reclaimed water permitting. The standards were based on the laws and rules included in the list above.

2.3 Proposed rule

2.3.1 WAC 173-219-010 Definitions, abbreviations, and acronyms

Ecology pulled definitions of relevant terms from many existing rules, the current reclaimed water use statute, and the Water Reclamation and Reuse standards of 1997, which are all currently used to regulate reclaimed water.

Ecology included several new definitions to provide clarity or to codify current use of terms in the proposed rule. New definitions for various terms have been added to this section. These definitions describe Ecology's and Health's intent for how these terms are used when evaluating direct potable reuse and groundwater recharge. Thus, they provide more legal certainty to the way the terms are used.

Definitions are consistent with definitions in existing regulations governing reclaimed water under the baseline. No impact is expected.

2.3.2 WAC 173-219-020 Purpose and scope

The purpose and scope of the proposed rule were defined by the authorizing statute, chapter 90.46 RCW. This proposed rule will implement the Washington Legislature's goal of encouraging the use of reclaimed water while assuring the health and safety of all Washington citizens and the protection of its environment.

The purpose and scope of the proposed rule were dictated by authorizing statute, which is contained in the baseline. No impact is expected.

2.3.3 WAC 173-219-030 Applicability

The applicability of the proposed rule, and the exclusions from applicability, were dictated by statute in chapters 90.46 and 90.48 RCW.

The applicability of the proposed rule was dictated by authorizing and existing statutes, which are contained in the baseline. No impact is expected.

2.3.4 WAC 173-219-040 Direct enforceability

The overall compliance deadline for the proposed rule is dictated by statute. Ecology also included cost-mitigating elements in the proposed rule, applicable to compliance deadlines for existing facilities. These include:

- Flexibility in compliance schedules
- Exemption from reapplication until the existing permit expires

The impacts of compliance deadlines is discussed below in section 2.4.

2.3.5 WAC 173-219-050 Lead agency designation

Only Ecology and Health are given authority to be lead agency in RCW 90.46.200. The rule provides clarity on when each agency is to be lead and when they are non-lead along with the implications to applicants.

Lead agency authorities are dictated by statute and are part of the baseline, so no impact is expected as a result of it.

2.3.6 WAC 173-219-060 Agency requirements and responsibilities

Lead and non-lead agency responsibilities, as well as responsibilities specific to Ecology or DOH, are taken from the authorizing statutes.

Ecology does not typically include costs and benefits to the agency itself in Cost-Benefit analyses, as it believes the costs and benefits to the regulated community, public, and environment are the intended assessment context.

2.3.7 WAC 173-219-070 Permit required

The proposed rule requires a permit for the distribution and use of reclaimed water and establishes requirements for:

- Eligibility to apply for a permit
- Duration of a permit
- Transfer and renewal of a permit

Requirements for a permit in the proposed rule are dictated by authorizing and existing statutes, which are contained in the baseline. No impact is expected.

2.3.8 WAC 173-219-080 Applying for a reclaimed water permit

Reclaimed water permitting is authorized under chapter 90.46 RCW. Moreover, this process follows multiple existing regulations, including the National Pollutant Discharge Elimination System (NPDES) program and requirements for wastewater facilities, which are contained in the baseline.

No impact is expected.

2.3.9 WAC 173-219-090 Water rights protection

RCW 90.46.130 provides:

(1) Except as provided in subsection (2) of this section, facilities that reclaim water under this chapter shall not impair any existing water right downstream from any freshwater discharge points of such facilities unless compensation or mitigation for such impairment is agreed to by the holder of the affected water right.

(2) Agricultural water use of agricultural industrial process water and use of industrial reuse water under this chapter shall not impair existing water rights within the water source that is the source of supply for the agricultural processing plant or the industrial processing and, if the water source is surface water, the existing water rights are downstream from the agricultural processing plant's discharge points existing on July 22, 2001, or from the industrial processing's discharge points existing on June 13, 2002.

The proposed rule states that compliance with RCW 90.46.130 must be demonstrated for all permits, all permit renewals, and permit modifications, and that Ecology is responsible for determining whether a proposed reclaimed water facility would comply with the provisions of chapter 90.03 RCW, the state water code, chapter 90.44 RCW, regulation of public groundwaters, RCW 90.46.130, and applicable case law.

Under the rule, existing water rights include any permits, claims, certificates, instream flows established by rule pursuant to chapters 90.22 and 90.54 RCW, and all federally reserved water rights in existence when Ecology accepts a submitted water rights impairment analysis.

The rule requires an applicant to prepare and submit an impairment analysis of potentially impaired water rights, as part of the Feasibility Analysis (WAC 173-219-180) required by this proposed rule. A preliminary proposal for compensation or mitigation as allowed under RCW 90.46.130 may be included with the Feasibility Analysis. The generator must submit a detailed description of the compensation or mitigation plan as part of the Engineering Report submitted under WAC 173-219-210, if necessary to demonstrate compliance with RCW 90.46.130.

The rule requires the applicant, jointly with Ecology, to notify and consult with affected tribes and the Washington State Department of Fish and Wildlife before making a final determination of compliance with RCW 90.46.130.

The rule also allows the applicant to request assistance from ecology through a cost reimbursement agreement, based on resource availability, during any stage of scoping or conducting an analysis to demonstrate compliance with RCW 90.46.130. Cost reimbursement agreements must meet the requirements of RCW 43.21A.690.

The impacts of the impairment analysis is discussed below in section 2.4.

2.3.10 WAC 173-219-100 Public access to information

The proposed rule describes public access, disclosure, and confidentiality requirements consistent with chapter 42.56 RCW, 173-03 WAC, and RCW 43.21A.160.

Public access requirements are dictated by authorizing and existing statutes, which are part of the baseline. No impact is expected.

2.3.11 WAC 173-219-110 Public notice

The rule requires Ecology to provide public notice of a complete reclaimed water permit application as well as a draft permitting decision, which will include Ecology's findings on compliance with RCW 90.46.130 and the specific requirements for what must be in the draft permitting decision notice. The rule also refers to Health's public notice requirements. These follow the authorizing law, chapter 90.46 RCW and many other existing rules, including the NPDES program and requirements for wastewater facilities.

Ecology does not typically include costs and benefits to the agency itself in Cost-Benefit analyses, as it believes the costs and benefits to the regulated community, public, and environment are the intended assessment context.

2.3.12 WAC 173-219-120 Public comment period

The rule requires a thirty-day public comment and requires the agency to retain, consider and respond to all comments received during the public comment period. These follow the authorizing law, chapter 90.46 RCW and many other existing rules, including the NPDES program and requirements for wastewater facilities, which is contained in the baseline.

No impact is expected.

2.3.13 WAC 173-219-130 Public meeting and hearing request

The rule provides for any person requesting a public meeting and/or hearing during the public comment period. A request for a hearing must be filed with the lead agency before the end of the public comment period and a notice of any hearing must be published at least as widely as the draft permitting decision. The rule states the content of these public notices.

These follow the authorizing law, Chapter 90.46 RCW and many other existing rules, including the NPDES program and requirements for wastewater facilities, which are contained in the baseline. No impact is expected.

2.3.14 WAC 173-219-140 Relationship with other ecology and health permits

This section of the proposed rule states the Ecology will streamline permit requirements under this chapter, chapters 173-216 and 173-220 WAC, and NPDES permit requirements under the Federal Water Pollution Control Act into a single permit document issued by ecology.

Similarly, the rule states that Health will streamline permit requirements under this chapter, chapter 173-216 WAC, and on-site sewage system permit requirements under RCW 70.118B.020 and RCW 43.20.050 into a single permit document issued by Health.

The rule allows the lead agency to issue a separate reclaimed water permit with an associated conventional wastewater permit on a case-by-case basis when determined by the lead agency to improve implementation of chapter 90.46 RCW and this chapter.

The impacts of streamlining are discussed below in section 2.4.

2.3.15 WAC 173-219-150 Regulatory action for noncompliance

The actions and standards for response to noncompliance are taken from various existing laws and rules.

The actions and standards for response to noncompliance exist in laws and rules that are part of the baseline. No impact is expected.

2.3.16 WAC 173-219-160 Appeals

Any decision made in accordance with the provisions in this chapter are appealable. The appeals process is governed by multiple existing laws and rules.

The appeals process exists under the baseline, in various existing laws and rules. No impact is expected.

2.3.17 WAC 173-219-170 Pre-planning and project application

The rule requires potential generators of reclaimed water to arrange and attend a pre-planning meeting with the lead and non-lead agency to determine the scope of the feasibility analysis, as well as other planning, permitting, or technical matters related to their intention to generate and distribute reclaimed water for use. When Health is the lead agency, the rule requires the generator submit a project application and fee prior to Health reviewing any document submittals under this chapter and consistent with 246-272B and 246-272 WAC.

The impacts of a pre-planning meeting are discussed below in section 2.4.

2.3.18 WAC 173-219-180 Feasibility analysis

The rule requires a feasibility analysis to be prepared, submitted, and approved by the lead agency, after the pre-planning meeting but prior to submitting an application for a reclaimed water permit.

The feasibility analysis must demonstrate that the generator has the long-term technical, management, legal, and financial capacity to design, construct, operate, and maintain the reclaimed water facility, and that distribution and end uses are feasible. The purpose of the feasibility analysis is to ensure that resources are sufficient to provide public health and environmental protection for a planning period of 20 years.

In addition to requiring specific content in this analysis the use of reclaimed water must be considered and coordinated under other planning requirements in state law, including RCW 90.46.120, as well as local codes and ordinances. The rule allows other planning documents produced under other planning requirements to be submitted to meet all or part of the submittal requirements of this section.

The proposed rule allows private utilities to provide reclaimed water. It incorporates (by reference) the existing requirements for submission of plans and reports for wastewater as part of

the private utility capacity assessment. This involves requirements from the authorizing statute (chapter 90.46 RCW) and chapter 173-240 WAC. The lead agency may require a private utility to produce more evidence for their feasibility analysis than a public entity.

Reclaimed water facilities also need to comply with these rules under the baseline. No impact is expected.

2.3.19 WAC 173-219-190 Timing and signature requirements

The rule provides timing and signature requirements for document submittals, including for those prepared by licensed engineers, geologists, and hydrogeologists. These follow the authorizing law, chapter 90.46 RCW and many other existing rules, including the NPDES program and requirements for wastewater facilities, which is contained in the baseline.

No impact is expected.

2.3.20 WAC 173-219-200 Plan review and review standards

The proposed rule recodifies requirements and standards for agency review from the authorizing law (chapter 90.46 RCW). These include meeting the applicable standards of other existing state and federal criteria protecting environmental and public health.

This is contained in the baseline. No impact is expected.

2.3.21 WAC 173-219-210 Engineering report

The proposed rule restates, or incorporates by reference, the existing requirements for engineering reports, which must be met under the baseline. This involves requirements from the authorizing law (chapter 90.46 RCW), chapter 173-240 WAC, and the relevant general sewer plan and water system plan rules.

Reclaimed water facilities already need to comply with these rules under the baseline. No impact is expected.

2.3.22 WAC 173-219-220 Plans and specifications

The proposed rule restates, or incorporates by reference, the existing requirements for construction plans and specifications, which must be met under the baseline. This involves requirements from the authorizing law (chapter 90.46 RCW) and requirements for construction of wastewater facilities.

Reclaimed water facilities already need to comply with these requirements under the baseline. No impact is expected.

2.3.23 WAC 173-219-230 Construction and declaration of construction

The proposed rule restates, or incorporates by reference, the existing requirements for construction plans and specifications, which must be met under the baseline. This involves

requirements from the authorizing law (chapter 90.46 RCW) and requirements for construction of wastewater facilities.

Reclaimed water facilities already need to comply with these requirements under the baseline. No impact is expected.

2.3.24 WAC 173-219-240 Operations and maintenance

The proposed rule restates, or incorporates by reference, the existing requirements of operations and maintenance manuals for various types of reclaimed water facilities. This includes requirements from the authorizing law (chapter 90.46 RCW), and requirements for wastewater facility construction, water system plans, and local improvement districts.

Reclaimed water facilities also need to comply with these rules under the baseline. No impact is expected.

2.3.25 WAC 173-219-250 Certified operators

The proposed rule requires that for a reclaimed water permit, the generator and distributor, if separate persons, employ one or more operators, or a contractor(s) employing operators, with certain operator certification classifications or levels. It specifies the allowable certifications and references existing rules at chapter [246-292 WAC](#), for waterworks treatment, distribution management, cross-connection control, and backflow prevention assembly testing, and chapter [173-230 WAC](#), for wastewater treatment.

The impacts of the certified operators are discussed below in section 2.4.

2.3.26 WAC 173-219-260 Monitoring, recording, and reporting

The proposed rule requires monitoring recording and reporting. Ecology will base monitoring requirements on:

- Available guidance or model permits.
- The quantity, quality and variability of the reclaimed water.
- Treatment methods.
- Significance of the pollutants.
- Availability of appropriate indicator or surrogate parameters.
- Cost of monitoring.
- Past compliance history.

The impacts of monitoring, recording, and reporting are discussed below in section 2.4.

2.3.27 WAC 173-219-270 Reclaimed water permit terms and conditions

The proposed rule incorporates standard and specific permit conditions based on the authorizing law (chapter 90.46 RCW) and many other existing laws and rules, including the NPDES

program, and requirements for wastewater facilities and waste discharge. Reclaimed water facilities also need to comply with these rules under the baseline.

Permitting requirements are very similar to those in chapter 173-220 WAC. Unique to reclaimed water permits, the permit may include conditions authorizing the addition of certain types of new users or uses of the reclaimed water without reopening the permit, provided an agreement is approved by the lead agency before a new use or user is added. This provides a defined, simple and flexible way to add new users or uses for the permittee, avoiding the time lag and costs associated with reissuing a permit.

In addition, the reclaimed water permit may require the lead agency to review and approve individual agreements or may specify terms and conditions allowing the use of a standardized agreement language or local ordinances for all or some distributors, uses, or users. This provision saves the permittee the time and cost associated with having every individual agreement reviewed by the lead agency.

Permitting costs and benefits for a reclaimed water facility are common to all options for treatment of wastewater. These costs vary widely depending on the size, location, and complexity of the proposed facility. Ecology did not attempt to quantify these costs or benefits since they are imbedded costs applicable to any entity that generates or treats wastewater and are not a substantial change from the baseline for this proposed rule. No impacts relative to the baseline are expected.

2.3.28 WAC 173-219-280 Fact sheet

The rule requires that a fact sheet to support the reclaimed water permit. This is consistent with the issuance of other permitting program requirements, including for wastewater permits, and NPDES permits.

Reclaimed water facilities already need to comply with these rules under the baseline. No impact is expected.

2.3.29 WAC 173-219-290 Use agreements

The rule requires that the lead agency review and approve all proposed or signed contracts or use agreements between the following:

- Generator and distributor of reclaimed water.
- Generator and end user of reclaimed water.
- Distributor and each end user of reclaimed water.

The rule specifies the minimum content of the use agreements to ensure compliance with the requirements of the reclaimed water permit, the rule, and chapter 90.46 RCW, at the point of use.

Regulated entities will have access to each of the minimum requirements. Therefore, added costs will be minimal, if any.

This requirement for use agreements is unique to reclaimed water and a reclaimed water permit may include conditions authorizing the addition of certain types of new users or uses of the reclaimed water without reopening the permit, provided an agreement is approved by the lead agency before a new use or user is added. This provides a defined, simple and flexible way to add new users or uses for the permittee, avoiding the time lag and costs associated with reissuing a permit.

In addition, the lead agency may review and approve individual agreements or may specify terms and conditions in a permit, allowing the use of a standardized agreement language or local ordinances for all or some distributors, uses, or users. This provision saves the permittee the time and cost associated with having every individual agreement reviewed by the lead agency.

Reclaimed water facilities already need to comply with these rules under the baseline. No impact is expected.

2.3.30 WAC 173-219-300 Source control and pretreatment requirements

The proposed rule follows requirements and processes for source control and pretreatment as based on the authorizing law (chapter 90.46 RCW) and many other existing rules, including:

- Federal water pollution rules.
- State rules governing pretreatment of wastewater and dangerous wastes.
- Discharge rules.

Reclaimed water facilities already need to comply with these rules under the baseline. No impact is expected.

2.3.31 WAC 173-219-310 Cross-connection control

The proposed rule includes requirements for cross-connection control to protect higher quality water from lower quality water and states explicitly who is responsible for protecting which systems as well as who must be notified of a potential cross connection issues, reporting requirements, as well as the frequency with which these systems must be inspected and by whom. Cross-connection controls are required in WAC 246-290-490.

These requirements are based upon the drinking water cross-connection controls requirements contained in the baseline. No impact is expected.

2.3.32 WAC 173-219-320 Class A and B reclaimed water

Class A requirements

The proposed rule follows requirements and processes for water releases classified as Class A, as based on many other existing regulations, including the:

- NPDES program

- Current applicable reclaimed water standards
- Discharge and construction standards for water and wastewater

Moreover, it is consistent with other Ecology permitting program requirements designed to mitigate information costs.

Reclaimed water facilities already need to comply with these rules under the baseline. No impact is expected.

Class B requirements

The proposed rule follows requirements and processes for water releases classified as Class B, as based on the authorizing law (chapter 90.46 RCW), and on existing applicable standards. Moreover, it is consistent with other Ecology permitting program requirements designed to mitigate information costs.

Reclaimed water facilities seeking to release Class B water also need to comply with these rules under the baseline. No impact is expected.

Class A+ requirements

The proposed rule adds a category of reclaimed water that could be beneficially used for direct potable reuse. Specific requirements are not specified in the rule and would be established on a case-by-case basis by Health. Any Class A+ use must also be approved by the state board of health.

Impacts for this newly created category are discussed below in section 2.4.

2.3.33 WAC 173-219-330 Performance standards

The proposed rule follows requirements and processes for technical practices and standards, as based on the authorizing law (chapter 90.46 RCW), and many other existing reclaimed water technical standards used in permitting and rules.

Reclaimed water facilities also need to comply with these rules under the baseline. No impact is expected.

2.3.34 WAC 173-219-340 Disinfection process standards

The proposed rule follows requirements and processes for technical practices and standards, as based on the authorizing law (chapter 90.46 RCW), and many other existing reclaimed water technical standards used in permitting and rules.

Reclaimed water facilities also need to comply with these rules under the baseline. No impact is expected.

2.3.35 WAC 173-219-350 Treatment reliability standards.

The proposed rule follows requirements and processes for technical practices and standards, as based on the authorizing law (chapter 90.46 RCW), and many other existing reclaimed water technical standards used in permitting and rules.

Reclaimed water facilities also need to comply with these rules under the baseline. No impact is expected.

2.3.36 WAC 173-219-360 Storage and distribution system requirements

The proposed rule follows requirements and processes for technical practices and standards, as based on the authorizing law (chapter 90.46 RCW), and many other existing reclaimed water technical standards used in permitting and rules.

Reclaimed water facilities also need to comply with these rules under the baseline. No impact is expected.

2.3.37 WAC 173-219-370 Maintenance of chlorine residual

The proposed rule follows requirements and processes for technical practices and standards, as based on the authorizing law (chapter 90.46 RCW), and many other existing reclaimed water technical standards used in permitting and rules.

Reclaimed water facilities also need to comply with these rules under the baseline. No impact is expected.

2.3.38 WAC 173-219-380 General use-based requirements

The rule provides general use-based requirements that are applicable to all uses or reclaimed water, such as site evaluation, signage or advisory notification, label and design requirements, confining the use to site, and restricting operations to authorized personnel.

Reclaimed water facilities also need to comply with these rules under the baseline. No impact is expected.

2.3.39 WAC 173-219-390 Specific Use-based requirements

The proposed rule describes requirements and processes for releases to various reclaimed water uses, including:

- Indoor Use
- Commercial, industrial, and institutional uses
- Irrigation or Land Application
- Wetland restoration or mitigation
- Surface water augmentation

- Indirect and direct groundwater recharge
- Recovery of reclaimed water stored in an Aquifer
- Direct Potable Reuse (with approval of state board of health)

These sections of the proposed rule collect and reference or restate the requirements and allowed uses and standards for using reclaimed water in various land, groundwater, and surface water applications. These are standards that are currently applied from various sections of laws and rules, including the authorizing statute, groundwater and surface water quality standards, public health standards, and standards for public water supplies and water systems.

The proposed rule language applies both drinking water standards and groundwater quality standards to groundwater recharge by surface percolation uses. Authorization for this practice is found in RCW 90.46.080 and chapter 90.48 RCW. It is consistent with the goals of chapter 90.46 RCW to encourage the use of reclaimed water while assuring public health and safety, and protection of the environment. It is also consistent with the goals of chapter 90.48 RCW to prevent and control the pollution of waters of the state.

Under the baseline, Ecology has applied both laws to reclaimed water permits. Both laws are cited in existing reclaimed water permits. To protect the quality of the ground water, Ecology's reclaimed water permits include limitations on the quantity and quality of reclaimed water land applied or infiltrated to recharge groundwater via surface percolation. Water quality limits are primarily based upon the drinking water standards as required in RCW 90.46.080 and chapter 246-290 WAC. The Water Quality Standards for Groundwater (chapter 173-200 WAC) are used for other contaminants not found in drinking water standards that require regulation. The proposed rule requires future water quality limits to be based on both chapters 246-290 and 173-200 WAC, consistent with the baseline.

Chapter 90.48 RCW requires that reclaimed water be adequately and reliably treated prior to distribution and beneficial use. State regulations require that limitations set forth in a permit issued under chapter 90.48 RCW must either be technology or water quality-based limits. All permitted discharges must also be treated with all known, available, and reasonable treatment (AKART) and not pollute the waters of the state. The minimum criteria to demonstrate compliance with these criteria are derived from chapter 173-221 WAC and the 1997 guidance *Water Reclamation and Reuse Standards*.

AKART has specific and separate cost tests for determining reasonable costs for conventional and toxic pollutants. If background water quality cannot be maintained, the groundwater regulation and guidance provides that a demonstration should be made of why groundwater should be allowed to be degraded. This demonstration is part of the overriding consideration of public interest process (chapter 173-200 WAC and *Implementation Guidance for the Groundwater Quality Standards*, Publication no. 90-02, dated 1996, revised 2005).

The impacts of specific use-based requirements are discussed below in section 2.4.

2.4 Newly created impacts

Elements of the proposed rule that differ from the baseline and are not *specifically* dictated in the authorizing statute or elsewhere in law or rule include:

- Bringing together many existing laws and rules used to regulate reclaimed water generation, distribution, and use.
- Compliance deadlines.
- Pre-planning meeting.
- Certified operators.
- Monitoring, recording, and reporting.
- Impairment analysis.
- Class A+ requirements.
- Specific use-based requirements.

2.4.1 Bringing together many existing laws and rules used to regulate reclaimed water generation, distribution, and use

Baseline

Under current rules, reclaimed water generation and reuse is governed by many laws and rules.

Proposed

The proposed rule brings together many existing laws and rules used to regulate reclaimed water generation, distribution, and use.

Expected impact

These proposed rule would create benefits for the public and permittees.

2.4.2 Compliance deadlines

Baseline

The overall compliance deadline for the proposed rule is dictated by statute.

Proposed

The proposed rule includes cost-mitigating elements applicable to compliance deadlines for existing facilities. These include:

- Flexibility in compliance schedules
- Exemption from reapplication until the existing permit expires

Expected impact

Allowances made for compliance schedules, and exemptions available to existing facilities are likely to reduce or eliminate impacts resulting from other requirements in

the proposed rule. A benefit is likely for facilities that can use these cost-mitigating elements of the proposed rule.

2.4.3 Pre planning meeting

Baseline

Under the current rules, permittees are not required to hold a pre planning meeting.

Proposed

The rule requires potential generators of reclaimed water to arrange and attend a pre-planning meeting with the lead and non-lead agency to determine the scope of the feasibility analysis, as well as other planning, permitting, or technical matters related to their intention to generate and distribute reclaimed water for use.

Expected impact

Attending the pre planning meeting will impose minor costs on regulated entities. Information gained at the pre planning meeting will benefit regulated entities by allowing them to avoid providing superfluous information in their feasibility analysis, which would increase their costs unnecessarily. It would also negate their submitting an incomplete feasibility analysis, which would increase their costs through resubmission.

2.4.4 Certified operators

Baseline

Currently, allowable certifications are determined at chapter 246-292 WAC, for waterworks treatment, distribution management, cross-connection control, and backflow prevention assembly testing, and chapter 173-230 WAC, for wastewater treatment.

Proposed

Adds the option of a reclaimed water certification.

Expected impact

The potential benefit of more options for regulated entities in allowable certifications.

2.4.5 Monitoring, recording, and reporting

Baseline

Currently, monitoring, recording, and reporting is required.

Proposed

The proposed rule bases monitoring requirements on:

- Available guidance or model permits.
- The quantity, quality and variability of the reclaimed water.
- Treatment methods.
- Significance of the pollutants.
- Availability of appropriate indicator or surrogate parameters.

- Cost of monitoring.
- Past compliance history.

If the influent to the reclaimed water treatment plant is effluent from a wastewater treatment plant, the permittee may use monitoring data collected for the wastewater discharge permit to fulfill all or part of influent monitoring requirements.

Expected impact

Basing monitoring requirements on compliance history allows the lead agency to decrease monitoring parameters or the frequency they are monitored when warranted, decreasing these costs.

Allowing monitoring data for wastewater discharge permit will save costs and eliminate redundancy, benefitting regulated entities.

2.4.6 Impairment analysis

Baseline

Under the current rules, permittees are required to comply with RCW 90.46.130, however proof of that compliance is not required.

Proposed

Proof of compliance with RCW 90.46.130 takes the form of an impairment analysis, to be conducted as part of the feasibility analysis.

While the applicability and purpose of the planning, design, and construction process for reclaimed water facilities is dictated by the authorizing law, Ecology determined the necessary components of an application, including Ecology responsibilities regarding analysis and possible mitigation of water rights impairment. Feedback on the water right impairment decision will be given early in the planning process with the Feasibility Analysis, before investments in design and construction of a facility are made. The final determination of compliance with RCW 90.46.130 will be part of the decision to issue or deny the reclaimed water permit.

The applicant begins the water right impairment process by submitting an analysis as part of the feasibility analysis. Ecology and the applicant, within the review period, will consult with the Washington State Department of Fish and Wildlife. If the applicant's impairment analysis shows there is impairment to existing water rights, the applicant may seek to mitigate the impact or compensate the affected water right holder.

Expected impact

The proposed rule improves coordination between Ecology, reclaimed water permit applicants, and water right holders. The legislature instructed Ecology to do rulemaking for reclaimed water facilities partly because of the benefit and efficiencies gained from this coordination and reduction or elimination of potential conflicts.

Ecology expects the process of water right impairment analysis to generate compliance costs for permit applicants, and to generate costs to government entities overseeing the process.

2.4.7 Class A+ requirements

Baseline

Under the current rules, the A+ class does not exist.

Proposed

The proposed rule adds a category of reclaimed water that could be beneficially used for direct potable reuse. Specific requirements are not specified in the rule and would be established on a case-by-case basis by Health. Any Class A+ use must also be approved by the state board of health.

Expected impact

Potentially increases costs on regulated entities depending on specific requirements established.

2.4.8 Specific use-based requirements

Baseline

Chapter 90.48 RCW requires that reclaimed water be adequately and reliably treated prior to distribution and beneficial use. State regulations require that limitations set forth in a permit issued under chapter 90.48 RCW must either be technology or water quality-based limits. All permitted discharges must also be treated with AKART and not pollute the waters of the state. The minimum criteria to demonstrate compliance with these criteria are derived from chapter 173-221 WAC and the 1997 guidance *Water Reclamation and Reuse Standards*.

AKART has specific and separate cost tests for determining reasonable costs for conventional and toxic pollutants. If background water quality cannot be maintained, the groundwater regulation and guidance provides that a demonstration should be made of why groundwater should be allowed to be degraded. This demonstration is part of the overriding consideration of public interest process (chapter 173-200 WAC and *Implementation Guidance for the Groundwater Quality Standards*, Publication no. 90-02, dated 1996, revised 2005).

Proposed

The proposed rule describes requirements and processes for releases to various reclaimed water uses, including:

- Indoor Use
- Commercial, industrial, and institutional uses
- Irrigation or Land Application
- Wetland restoration or mitigation
- Surface water augmentation
- Indirect and direct groundwater recharge
- Recovery of reclaimed water stored in an Aquifer
- Direct Potable Reuse (with approval of state board of health)

These sections of the proposed rule collect and reference or restate the requirements and allowed uses and standards for using reclaimed water in various land, groundwater, and surface water applications. These are standards that are currently applied from various sections of laws and rules, including the authorizing statute, groundwater and surface water quality standards, public health standards, and standards for public water supplies and water systems.

The proposed rule language applies both drinking water standards and groundwater quality standards to groundwater recharge by surface percolation uses. Authorization for this practice is found in RCW 90.46.080 and chapter 90.48 RCW. It is consistent with the goals of chapter 90.46 RCW to encourage the use of reclaimed water while assuring public health and safety, and protection of the environment. It is also consistent with the goals of chapter 90.48 RCW to prevent and control the pollution of waters of the state.

Expected impact

Ecology believes codifying the Overriding Consideration of Public Interest (OCPI) for reclaimed water purposes will benefit reclaimed water purveyors by mitigating the costs of compliance overall with groundwater quality standards.

The proposed rule may result in additional treatment costs to applicants if anti-degradation policy as specified in chapter 173-200 WAC requires the implementation of a water quality limit more stringent than the drinking water standard.

The proposed rule will benefit applicants by harmonizing the application of two statutes and their respective regulations, thus eliminating ambiguity. In all circumstances, this harmonization will not result in additional monitoring or treatment costs greater than the baseline.

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Chapter 3: Likely Costs of the Proposed Rule

3.1 Introduction

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

3.2 Cost analysis

The proposed rule will likely create costs due to:

- Pre-planning meeting.
- Impairment analysis.
- Class A+ requirements.
- Specific use-based requirements.

3.2.1 Pre-planning meeting

Attending the pre planning meeting will impose minor costs on regulated entities.

3.2.2 Impairment analysis

These costs will vary considerably across the spectrum of potential projects:

- The simplest decision would be when an existing wastewater discharge to marine waters is being converted to reclaimed water uses and therefore no impairment of water rights exists. Such a situation could incur relatively small administrative costs.
- The most complex analysis might take place in adjudicated basins with multiple water right holders who exercise state-certified rights, federal rights, and instream flow rights. Such a situation could incur significant administrative, legal, and mitigation costs.

3.2.3 Class A+ requirements

New class may create additional costs on regulated entities, depending on specific requirements established.

3.2.4 Specific use-based requirements

The proposed rule may result in additional treatment costs to applicants if anti-degradation policy as specified in chapter 173-200 WAC requires the implementation of a water quality limit more stringent than the drinking water standard.

3.3 Cost Summary

The proposed rule will likely create costs due to:

- Pre-planning meeting.
- Impairment analysis.
- Class A+ requirements.
- Specific use-based requirements.

Due to the high degree of variability and uncertainty of costs, Ecology could not quantify the costs of these requirements with a sufficient degree of certainty. The APA requires that Ecology include quantifiable and qualitative costs and benefits in this analysis, and the qualitative discussion above describes the types of costs that are likely to arise.

Chapter 4: Likely Benefits of the Proposed Rule

4.1 Introduction

We estimated the likely benefits associated with the proposed rule, as compared to the baseline (both described in Chapter 2 of this document).

4.2 Benefit analysis

The proposed rule will likely create benefits due to:

- Bringing together many existing laws and rules used to regulate reclaimed water generation, distribution, and use.
- Compliance deadlines.
- Pre-planning meeting.
- Certified operators.
- Monitoring, recording, and reporting.
- Impairment analysis.
- Specific use-based requirements.

4.2.1 Bringing together many existing laws and rules used to regulate reclaimed water generation, distribution, and use

The proposed rule brings together many existing laws and rules used to regulate reclaimed water generation, distribution, and use. The primary benefits of the proposed rule come from the creation of a single rule specific to reclaimed water permitting, thereby:

- Consolidating and clarifying multiple existing regulations that are being applied to reclaimed water permitting under the baseline. This supports improvements in:
 - Protecting public health and safety through consistent application of requirements for pathogen removal or inactivation wherever the public is exposed to reclaimed water.
 - Enhancing water quality for Washington's groundwater and surface waters, including Puget Sound and the Columbia River.
 - Promoting wise management of water supplies for beneficial uses by providing alternative sources of water to replace the use of potable water where feasible.
 - Enhancing, restoring or creating wetlands habitat.
 - Contributing to the restoration and protection of instream flows that are crucial to preservation of the state's salmonid fishery.
 - Promoting strategies for reclaimed water use that will respond to population growth and climate change.
- Simplifying and clarifying public understanding of reclaimed water regulation.

- Facilitating and adding certainty to permit application and renewal.
- Eliminating duplicate requirements.
- Streamlining and clarifying agency roles and relationships.

4.2.1.1 Consolidate requirements to support: Protecting public health and safety through consistent application of requirements for pathogen removal or inactivation wherever the public is exposed to reclaimed water.

The proposed rule will codify existing standards found in guidance that provide for enhanced disinfection and in some cases filtration of reclaimed waters in order to remove pathogenic bacteria, viruses, and protozoa from the water produced. A facility cannot legally reclaim water without meeting these standards under the baseline, and therefore no change in compliance behavior is expected; only a change in the ease of accessing consistent, consolidated information on requirements.

4.2.1.2 Consolidate requirements to support: Enhancing water quality for Washington's groundwater and surface waters, including Puget Sound and the Columbia River.

The consistent application of both drinking water standards and water quality standards, along with technology standards for all known and available reasonable methods of prevention, control and treatment will provide protection of our groundwater quality. Surface waters are protected by applying the water quality standards to develop limits according to the current National Pollutant Discharge Elimination System and surface water quality standards rules. A facility cannot legally reclaim water without meeting these standards under the baseline, and therefore no change in compliance behavior is expected; only a change in the ease of accessing consistent, consolidated information on requirements.

4.2.1.3 Consolidate requirements to support: Promoting wise management of water supplies for beneficial uses by providing alternative sources of water to replace the use of potable water where feasible.

The proposed rule promotes this goal of the Reclaimed Water Act to save or reduce demands for potable water by using reclaimed water where feasible to replace potable water. Examples include agricultural and landscape irrigation, golf course watering, industrial, and commercial cooling and process water, and toilet flushing. A facility cannot legally reclaim water without meeting these standards under the baseline, and therefore no change in compliance behavior is expected; only a change in the ease of accessing consistent, consolidated information on requirements.

4.2.1.4 Consolidate requirements to support: Enhancing, restoring or creating wetlands habitat.

The proposed rule promotes the use of reclaimed water to enhance or restore damaged wetlands and create new wetland habitat. Reclaimed water is treated to a higher level than wastewater treatment processes and also must reduce nutrient loading to a point where natural biological wetland parameters are sustained. A facility cannot legally use reclaimed water for wetland restoration or enhancement without meeting these standards under the baseline, and therefore no change in compliance behavior is expected; only a change in the ease of accessing consistent, consolidated information on requirements.

4.2.1.5 Consolidate requirements to support: Contributing to the restoration and protection of instream flows that are crucial to preservation of the state’s salmonid fishery.

Reclaimed water used for surface water augmentation of rivers, lakes and streams means the intentional use of reclaimed water for the purpose of increasing volumes. The use of reclaimed water for this beneficial purpose will help to restore instream flows and promote healthy habitat for fisheries. A facility cannot legally use reclaimed water to augment surface waters of the state without meeting the requirements of chapter 90.48 RCW and chapter 173-220 WAC under the baseline. Therefore no change in compliance behavior is expected; only a change in the ease of accessing consistent, consolidated information on requirements.

4.2.1.6 Consolidate requirements to support: Promoting strategies for reclaimed water use that will respond to population growth and global warming.

The proposed rule promotes appropriate coordination of planning across multiple jurisdictions in order to meet future requirements for wise water use. The impact of projected population growth for Washington and the potential impacts of global warming (i.e. reduced snowpack) will likely have the cumulative effect of increasing water demands in water short areas. A facility cannot legally reclaim water without meeting these standards under the baseline, and therefore no change in compliance behavior is expected; only a change in the ease of accessing consistent, consolidated information on requirements.

4.2.1.7 Simplifying and clarifying public understanding of reclaimed water process

The existing reclaimed water permitting and regulation process is based on many state and federal laws and rules, as well as existing permitting standards. The agencies who administer these rules also vary. The public’s understanding of the sources and qualities of reclaimed water are complicated by this, limiting positive public opinion of reclaimed water uses – especially in agricultural or ground and surface water applications where the public could interact with the water.

The proposed rule requires designation of a lead agency to provide clarity on regulatory oversight and a fact sheet to clearly document the legal or factual basis for permit conditions. The proposed rule authorizes the use of combined permits for wastewater and reclaimed water and also allows separate permits to better accommodate the needs of the permittee and provide clarity to the public. Language for standard and specific conditions is included in the proposed rule to facilitate a “no surprises” permit.

4.2.1.8 Facilitating and adding certainty to permit application and renewal

The existing reclaimed water permitting and regulation process is based on many state and federal laws and rules. The agencies who administer these rules also vary. All of these factors add some amount of time to the existing permitting process and compliance efforts. Streamlining the regulations and standards into one rule facilitates permit application and renewal, and overall compliance with requirements.

4.2.1.9 Eliminating duplicate requirements

The existing reclaimed water permitting and regulation process is based on many state and federal laws and rules. The agencies who administer these rules also vary. The proposed rule, as a single streamlined rule, eliminates duplication of requirements and efforts that come from complying with the many different existing rules that might apply to the same project. The regulatory roles and responsibilities are clearly defined between Ecology and Health. This saves both time and labor effort in the reclaimed water project.

4.2.1.10 Streamlining and clarifying agency roles and relationships

At a minimum, government agencies involved in reclaimed water include Ecology and Health. Other entities may also be involved, especially in cases of water right impairment. The proposed rule establishes agency responsibilities and clarifies agency relationships within the reclaimed water regulation context. This limits inter-agency duplication of tasks, facilitates compliance and timeliness on both sides of the permit process, and eliminates the ambiguity of agency roles and relationships. The proposed rule also allows the non-lead agency to opt out or limit the scope of their review, thus saving the reclaimed water proponent the time and costs of dual agency reviews.

4.2.2 Compliance deadlines

Allowances made for compliance schedules, and exemptions available to existing facilities are likely to reduce or eliminate impacts resulting from other requirements in the proposed rule.

4.2.3 Pre-planning meeting

Information gained at the pre planning meeting will benefit regulated entities by allowing them to avoid providing superfluous information in their feasibility analysis, which would increase their costs unnecessarily. It would also negate their submitting an incomplete feasibility analysis, which would increase their costs through resubmission.

4.2.4 Certified Operators

The potential benefit of more options for regulated entities in allowable certifications.

4.2.5 Monitoring, recording, and reporting

Basing monitoring requirements on compliance history allows the lead agency to decrease monitoring parameters or the frequency they are monitored when warranted, decreasing these costs. Allowing monitoring data for wastewater discharge permit will save costs and eliminate redundancy, benefitting regulated entities.

4.2.6 Impairment Analysis

It is extremely difficult to quantify the benefits of conducting a water rights impairment analysis and protection of water right holders. However, it is expected that considerable benefit will be derived from:

- Avoided legal costs that may arise from proceeding with projects without an impairment

analysis. Without improved coordination, disclosure, and accountability, it is more likely that a water right user would file a lawsuit, seek to prevent new water uses and disrupt the certainty of supply for the users of the reclaimed water.

4.2.7 Specific use-based requirements

Ecology believes codifying the OCPI for reclaimed water purposes will benefit reclaimed water purveyors by mitigating the costs of compliance overall with groundwater quality standards.

The proposed rule will benefit applicants by harmonizing the application of two statutes and their respective regulations, thus eliminating ambiguity. In all circumstances, this harmonization will not result in additional monitoring or treatment costs greater than the baseline.

4.3 Benefit Summary

The proposed rule causes qualitative benefits to accrue from:

- Consolidating and clarifying multiple existing regulations that are being applied to reclaimed water permitting under the baseline. This supports improvements in:
 - Protecting public health and safety through consistent application of requirements for pathogen removal or inactivation wherever the public is exposed to reclaimed water.
 - Enhancing water quality for Washington’s groundwater and surface waters, including Puget Sound and the Columbia River.
 - Promoting wise management of water supplies for beneficial uses by providing alternative sources of water to replace the use of potable water where feasible.
 - Enhancing, restoring or creating wetlands habitat.
 - Contributing to the restoration and protection of instream flows that are crucial to preservation of the state’s salmonid fishery.
 - Promoting strategies for reclaimed water use that will respond to population growth and climate change.
- Simplifying and clarifying public understanding of reclaimed water regulation.
- Facilitating and adding certainty to permit application and renewal.
- Eliminating duplicate requirements.
- Streamlining and clarifying agency roles and relationships.
- Avoided legal costs that may arise from proceeding with projects without an impairment analysis.

The APA requires that Ecology include quantifiable and qualitative costs and benefits in this analysis, and the qualitative discussion above describes the types of benefits that are likely to arise.

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Chapter 5: Cost-Benefit Comparison and Conclusions

5.1 Summary of the costs and benefits of the proposed rule

The proposed rule will likely create costs due to:

- Pre-planning meeting.
- Impairment analysis.
- Class A+ requirements.
- Specific use-based requirements.

Due to the high degree of variability and uncertainty of costs, Ecology could not quantify the costs of these requirements with a sufficient degree of certainty.

The proposed rule causes qualitative benefits to accrue from:

- Consolidating and clarifying multiple existing regulations that are being applied to reclaimed water permitting under the baseline. This supports improvements in:
 - Protecting public health and safety through consistent application of requirements for pathogen removal or inactivation wherever the public is exposed to reclaimed water.
 - Enhancing water quality for Washington's groundwater and surface waters, including Puget Sound and the Columbia River.
 - Promoting wise management of water supplies for beneficial uses by providing alternative sources of water to replace the use of potable water where feasible.
 - Enhancing, restoring or creating wetlands habitat.
 - Contributing to the restoration and protection of instream flows that are crucial to preservation of the state's salmonid fishery.
 - Promoting strategies for reclaimed water use that will respond to population growth and climate change.
- Simplifying and clarifying public understanding of reclaimed water regulation.
- Facilitating and adding certainty to permit application and renewal.
- Eliminating duplicate requirements.
- Streamlining and clarifying agency roles and relationships.
- Avoided legal costs that may arise from proceeding with projects without an impairment analysis.

5.2 Conclusion

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

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 achieve the goals and objectives of the authorizing statute(s).

Ecology assessed alternatives proposed rule content, 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 proposed rule were the least burdensome to those required to comply with them.

6.2 Goals and objectives of the authorizing statute: Chapter 90.46 RCW

The goals and objectives of the authorizing statute are:

- Encourage the development of water reclamation facilities
- Encourage the use of reclaimed water to help meet the growing need for clean water across the state by establishing standards for a product that may be used to replace potable water in nonpotable applications.
- Provide a drought resistant source of water supply for nonpotable needs.
- Contribute to the restoration of Puget Sound by reducing wastewater discharges.

6.3 Alternatives considered and why they were not included

6.3.1 Prescriptive requirements on water rights impairment analysis

Ecology considered prescriptive requirements on water rights impairment analysis. Ecology chose to streamline the proposed rule language on water rights impairment to focus on requiring compliance with RCW 90.46.130, and to link the impairment analysis to the steps in the permitting process for the reclaimed water facility. Language on the content of the impairment analysis process was shifted to guidance.

The Washington State Supreme Court decision in *Foster v. Dept' of Ecology*, 184 Wn.2d 465, 362 P.3d 959 (2015), restricts Ecology's tools for addressing impairment of instream flows. The *Foster* decision made it clear that a more flexible standard for addressing impairment of instream flows resulting from reclaimed water is not realistic without a statutory change. In addition, *Foster* held:

- 1.a.i. Ecology cannot use Overriding Consideration of the Public Interest to justify permanent allocations of water.
- 1.a.ii. No impairment of instream flows are permissible, regardless of magnitude or ecological impact (reaffirming *Postema v. Pollution Control Hrgs. Bd.*, 142 Wn.2d 68, 11 p>3d 726 (2000)).
- 1.a.iii. Ecology cannot allow out-of-kind mitigation, such as habitat improvements, to address impairment of instream flows.

Minimizing prescriptive requirements about the water rights impairment analysis will prevent the need to amend this rule if (or when) there is a legislative change to address the *Foster* decision.

Including more prescriptive requirements would be more burdensome for regulated entities.

6.3.2 Prohibit use of reclaimed water in Wellhead Protection Areas and Critical Aquifer Recharge Areas

Considered in response to stakeholder concerns. This alternative does not meet the goals and objectives of the statute of encouraging the production and use of reclaimed water.

6.3.3 Require Service Area agreements for reclaimed water (RW) generators which may allow potable suppliers to restrict and reject use /sale of RW within their Coordination Act service areas

Considered in response to stakeholder concerns. This alternative is contrary to the purpose and intent of the statute. RCW 90.46.005 provides in part: “It is the intent of the legislature that the department of ecology and the department of health undertake the necessary steps to *encourage* the development of water reclamation facilities so that reclaimed water may be made available to help meet the growing water requirements of the state.” (Emphasis added.)

Our Supreme Court has similarly found that “the legislature has strongly urged beneficial use of [reclaimed water] . . . Nothing in chapter 90.46 RCW indicates the legislature intended to require sewage treatment plants to become water utilities before they can otherwise follow the statutory directive to make broad use of reclaimed water, including by sale for suitable uses.” *Cedar River Water and Sewer Dist. v. King County*, 178 Wn.2d 763, 793, 315 P.3d 1065 (2013).

6.3.4 Meeting specific agronomic rates

Compliance with performance standards is determined at the end of the treatment process. No further treatment is required at the release site for irrigation uses. Requiring specific agronomic rates would be more burdensome for regulated entities.

6.3.5 Adding specific criteria for restricting or granting waiver requests

Ecology did not include specific criteria (other than compliance with RCW 90.46.130, which is a statutory requirement) because we recognize that we cannot foresee all of the places where a waiver may be appropriate, but want to allow room for advances in technology or site-specific or use-specific situations that might call for waiver of any number of requirements. In addition, we ensure that waivers must not lower the level of environmental or health protections provided for in this chapter.

This alternative does not meet the goals and objectives of the statute.

6.3.6 Prohibit the conveyance of reclaimed water through surface waters of the state

Some stakeholders would choose to prohibit the conveyance of reclaimed water via waters of the state. Ecology evaluated this concept and based on existing water law found it to be allowable. *See* RCW 90.03.030. This proposed rule permits the use of state waters to convey

reclaimed water from the point of generation to the point of diversion for a beneficial use provided surface water standards are met and additional water quantity and quality information acceptable to the agencies is provided.

To prohibit this activity would be more burdensome for regulated entities.

6.3.7 Application of groundwater quality standards

Setting more stringent and comprehensive groundwater quality standards for reclaimed water was suggested during the preliminary comment process during this rulemaking. Ecology determined that additional cleanup technology requirements added compliance cost burden for permittees in excess of what is needed for adequate protection of public and environmental health.

6.4 Conclusion

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

Chapter 7: Regulatory Fairness Act Compliance

7.1 Introduction

Based on research and analysis required by the Regulatory Fairness Act (RFA) – chapter 19.85 RCW – Ecology has determined the proposed rule does not impact small businesses. After looking at Employment Security data for number of employees we have determined that the private utility regulated by this chapter does not meet the definition of small business in RCW 19.85.020(3). Therefore, Ecology is not required to prepare a small business economic impact statement, RCW 90.85.025(4).

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Appendix A

Administrative Procedure Act (RCW 34.05.328)

Determinations

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 (Water Quality Program) is complying with the Legislative directives to adopt rules implementing Chapter 90.46 RCW- Reclaimed Water. Consequences of avoiding rulemaking are:</p> <ol style="list-style-type: none"> 1) Stakeholders “shop” for permit conditions between Ecology and Health or within Ecology regions resulting in inconsistent permit conditions and/or delays in receiving permits while conditions are sorted out. 2) Stakeholders continue to seek personal remedies through modifications to the statute. 3) State fails to encourage the use of water reclamation as intended by the Legislature for the best interest of the public; and 4) Utilities are not likely to implement reclaimed water projects due to uncertainties, delays, and other administrative barriers. <p>Please see the Least Burdensome Alternative Analysis, Chapter 6 of this document, for discussion of alternative rule content considered.</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)
Please see Chapter 6 and record for rulemaking.
Does this rule require those to whom it applies to take an action that violates requirements of another federal or state law?

Yes No

Explain how that determination was made. RCW 34.05.328(1)(f)

In addition to working with other agencies with authority under this chapter and working to incorporate any other requirements into the chapter, we explicitly state the following: "Nothing in this chapter shall be construed to exempt entities from complying with all other applicable local, state, or federal ordinances, codes, or statutes."

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 standards and regulatory requirements apply to all. The lead agency may require a private utility to produce more evidence for their feasibility analysis than a public entity (RCW 90.46.220(3)).

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)

The Department of Health (Health) is also given authority under 90.46 RCW to regulate this subject. The chapter establishes a process to determine if the Ecology or Health is the lead agency or the non-lead agency. The lead agency is required to coordinate planning and review with the non-lead agency as well as accept the non-lead agency requirements into all reclaimed water permits issued under this chapter. Each agency is thus responsible for ensuring coordination with other applicable statute, ordinances, and codes.

In addition, source water to reclaimed water facilities must comply with the applicable requirements for:

Pretreatment of industrial wastewater under 40 C.F.R. Part 403, Sections 307(b) and 308 in the Federal Water Pollution Control Act.

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)

Currently, there are several state rules and laws that apply to waste water discharge that have been used to permit reclaimed water. One of the main purposes of this rulemaking is to consolidate, and clarify/adapt where needed, those requirements so that most of the requirements for reclaimed water are in one place. The proposed rule also requires that permittees meet local ordinances and codes.

Under chapter 90.46 RCW, the Department of Health (Health) is also given authority to regulate reclaimed water. Chapter 90.46 RCW also requires that Ecology consult and coordinate with Health on this rulemaking effort. Ecology has worked closely with Health to develop this chapter and ensure coordination between agencies, as well as ensuring the chapter is coordinated with other state and federal statutes and rules related to reclaimed water.

Ecology and Health worked together to form the advisory committee. Local governments and other local agencies were part of the advisory committee. This committee, along with other stakeholders, provided input on the rule that we are proposing.

The entire rulemaking process has been done in concert with Health to be sure that we are coordinating, and where appropriate, pulling in the necessary requirements from other rules and laws.

The proposed rule establishes a process to determine if Ecology or Health is the lead agency or the non-lead agency in the permitting process. The lead agency is required to:

- Coordinate planning and review with the non-lead agency
- Incorporate any non-lead agency requirements into all reclaimed water permits issued as necessary.
- Ensure coordination with the relevant agencies, including the non-lead agency, local governments, health jurisdictions, and potable water suppliers.
- Ensuring consistency with other applicable statutes, ordinances, and codes.
- In addition, the proposed rule itself requires continued coordination with Health on reclaimed water planning, permits, and enforcement as well as with any other federal, state, or local codes, ordinances, or statutes.