

DEPARTMENT OF  
**ECOLOGY**  
State of Washington

## **Concise Explanatory Statement**

**Chapter 173-98 WAC**

**Uses and Limitations of the Water Pollution  
Control Revolving Fund**

**Chapter 173-95A WAC**

**Uses and Limitations of Centennial Clean  
Water Funds**

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*Summary of rule making and response to comments*

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## Publication and Contact Information

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Ecology publishes this document to meet the requirements of the Washington State Administrative Procedure Act (RCW 34.05.325)

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# **Concise Explanatory Statement**

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**Chapter 173-98 WAC  
Uses and Limitations of the Water Pollution Control  
Revolving Fund  
Chapter 173-95A  
Uses and Limitations of Centennial Clean Water Funds**

Water Quality Program  
Washington State Department of Ecology  
Olympia, Washington 98504-7600

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# Introduction

The purpose of a Concise Explanatory Statement is to:

- Meet the Administrative Procedure Act (APA) requirements for agencies to prepare a Concise Explanatory Statement (RCW 34.05.325).
- Provide reasons for adopting the rule.
- Describe any differences between the proposed rule and the adopted rule.
- Provide Ecology's response to public comments.

This Concise Explanatory Statement provides information on the Washington State Department of Ecology's (Ecology) rule adoption for:

Title: Uses and Limitations of the Water Pollution Control Revolving Fund, and Uses and Limitations of Centennial Clean Water Funds

WAC Chapter(s): 173-98 and 173-95A

Adopted date: September 21, 2011

Effective date: October 22, 2011

To see more information related to this rule making or other Ecology rule makings please visit our web site: [www.ecy.wa.gov/lawsandrules](http://www.ecy.wa.gov/lawsandrules)

## Reasons for Adopting the Rule

The Water Pollution Control Revolving Fund (Revolving Fund) program is funded in part through a grant from the Environmental Protection Agency (EPA) through the Clean Water Act. It is necessary to comply with new provisions in the federal appropriations under the federal Clean Water Act in order to receive the EPA funding. For State Fiscal Year 2012, Ecology received \$25 million in federal funds for the Revolving Fund program to provide to local governments for water quality projects. The goal for this rule update is to ensure that Ecology can continue to receive federal funds for the Revolving Fund program.

The 2012 Clean Water State Revolving Fund federal appropriation created a new set aside for green project reserves and required Ecology to provide forgivable principal loans. Under the previous Revolving Fund rule, neither of these two provisions was allowed.

The Revolving Fund is administered with the Centennial Clean Water Fund (Centennial) in a joint funding program. The Centennial rule has been added to this rule-making process because changes made to the Revolving Fund rule need to be made to the Centennial rule to maintain consistency between the joint funding programs.

# Differences Between the Proposed Rule and Adopted Rule

RCW 34.05.325(6)(a)(ii) requires Ecology to describe the differences between the text of the proposed rule as published in the *Washington State Register* and the text of the rule as adopted, other than editing changes, stating the reasons for the differences.

There are some differences between the proposed rule filed on July 6, 2011, and the adopted rule filed on September 22, 2011. Ecology made these changes for all or some of the following reasons:

- To ensure clarity and consistency.
- To meet the intent of the authorizing statute.

The following content describes the changes and Ecology's reasons for making them.

For Chapter 173-98 WAC, all occurrences of "preconstruction activities" are changed to "preconstruction" to avoid any confusion between the preconstruction phase of a construction project and nonpoint source *activity* project.



# Response to Comments

Ecology accepted comments from June 22, 2011 through August 3, 2011. This section provides summarized comments that we received during the public comment period and our responses.

## **Tori Hansen, Mercer Island and Marrowstone Island, WA**

### **Comment:**

Extend funding to include privately owned tidelands to address failing on-site sewage systems.

### **Response:**

The Revolving Fund program and Centennial program rules already allow for funding to address failing on-site sewage systems on marine shorelines. Types of eligible project funding include local loans for on-site sewage system repair and replacement programs, and wastewater treatment facilities and collection systems that replace failing on-site systems. No changes were made to the final rule because Ecology cannot provide funding directly to private landowners and project that address on-site sewage systems near marine waters are already eligible for funding.

## **Ryan Anderson, City of Yakima Wastewater Division**

### **Comment:**

The City of Yakima received funding for two projects on the State Fiscal Year 2012 Offer List and Intended Use Plan. The projects qualified for funding under the Green Project Reserves (GPR) category. The City is pleased to receive funding for both of its projects and would like to expand the GPR funding category to include additional project types.

### **Response:**

The Environmental Protection Agency (EPA) establishes project eligibility and definitions for GPR projects in four categories, green infrastructure, environmentally innovative, water efficiency, and energy efficiency. No changes were made to the final rule because Ecology cannot expand the list of project types that are eligible for GPR funding beyond the guidelines established by the EPA.

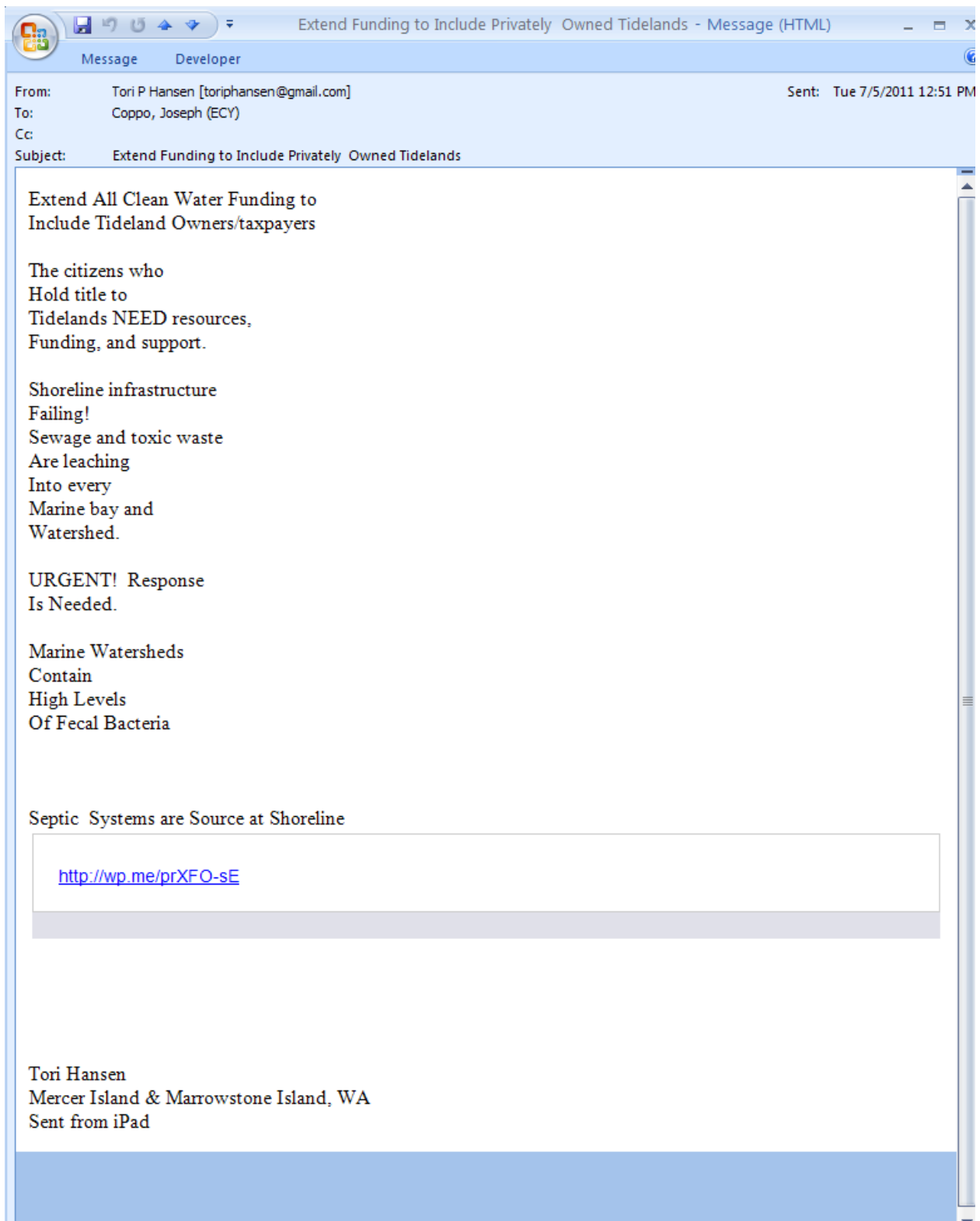
# Commenter Index

The table below lists the names of organizations or individuals who submitted a comment on the rule proposal and where you can find Ecology's response to the comment(s).

<b>Name of Organization or Individual Submitting Comments</b>	<b>Page Number for Ecology's Response</b>
Tori Hansen	3
Ryan Anderson, City of Yakima Wastewater Division	3

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# Appendix A: Copies of all written comments



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# Appendix B: Transcripts from public hearings.

**Lacey, WA – July 26, 2011**

Hello, my name is Bev Poston and I am the lead hearing officer located at the Ecology Headquarters Building in Lacey Washington for this afternoon's video-conference public hearing. On behalf of the Department of Ecology, I'd like to welcome you. Your hearings officers at the regional offices are:

Betty Leonard located in Bellevue at the Ecology Northwest Regional Office, Bonnie Wagoner located in Yakima at the Ecology Central Regional Office, and Karen Baldwin located in Spokane at the Ecology Regional Office.

Today we are here to discuss the rule amendments to:

Chapter 173-95A – Uses and limitations of the Centennial Clean Water Fund, and  
Chapter 173-98 – Uses and limitations of the Water Pollution Control Revolving Fund.

Joseph Coppo with the Ecology Water Quality Financial Management Section will give a brief presentation to quickly explain the rule amendments. When he is done, we will begin the formal hearing where we will record your comments for the public record. This hearing is being simultaneously video conferenced in Bellevue, Yakima, and Spokane. In the event that the video conference equipment fails, the hearing officer at each location will continue the hearing, including receiving formal testimony.

The presentation Joseph will give is not part of the formal record. If you have questions that were not addressed during the presentation and would like your questions recorded for the formal record, you will need to submit them either as oral comments during the formal hearing itself or as written comments. At this time, Joseph will not be responding to questions raised during the formal hearing. He will be preparing a document called a Concise Explanatory Statement which will address the questions and issues of concern raised during the public comment period. I will give you more information on that later.

As today's lead hearing officer, my job is to conduct the hearing. I have two main responsibilities.

- I need to make sure anyone who wants to, has the opportunity to comment on the proposed amendments; and
- I need to make certain Ecology obtains a clear record of the hearing. Each hearing officer has a recorder to capture the oral testimonies.

To do this, I need your cooperation. I am asking you to:

*please respect everyone's right to speak and be heard, regardless of any differences you might have*

*seek to present truthful information and nurture honest, open conversation, and*

*commit to making this a safe place for yourself and others, and to fully participate in a calm, respectful manner.*

We need to keep the noise down. We need to get a clear recording of what is being said during the formal hearing. The equipment we are using is very sensitive and the comments received will be transcribed.

Once the formal hearing begins, it is your turn to speak. You will be called upon to testify but, as previously mentioned, we will not be entering into any discussions. I encourage you to ask questions and state your issues of concern for the record. They will be addressed in the Concise Explanatory Statement.

During the public hearing, you will be called by name in the order you signed in. Because this hearing is being video conferenced in four locations, we will go from one location to the next. We will start with Bellevue, then move to Yakima then Spokane, and finish here at Lacey. I will then open the floor for anyone else who has decided to comment but did not indicate on the sign-in sheets. I will ask each location hearing officer if there is anyone else there who would like to make an oral comment for the public record.

Any questions??

I would like to introduce Joseph Coppo with the Ecology Water Quality Financial Management Section.

**Hearing Begins:**

Now we will begin the formal hearing which we will record for the public record. At this time, I need to read some information that is required for the record.

Let the record show it is 2:26 p.m. on July 26, 2011 and this public hearing is being held in the following locations via video-conferencing:

- Department of Ecology Northwest Regional Office
- 3190 – 160<sup>th</sup> Ave SE
- Bellevue, WA
  
- Department of Ecology Central Regional Office
- 15 West Yakima Ave, Suite 200
- Yakima, WA
  
- Department of Ecology Eastern Regional Office
- 4601 North Monroe Street
- Spokane, WA

- Department of Ecology Headquarters Building
- 300 Desmond Drive
- Lacey, WA

The purpose of this hearing is to receive public comments regarding the proposed amendments to Chapter 173-95A WAC – Uses and Limitations of the Centennial Clean Water Funds and Chapter 173-98 – Uses and Limitations of the Water Pollution Control Funds..

The legal notice of this public hearing was published in the Washington State Register, Issue Number 11-13-125 on June 22, 2011. In addition, an email notice was sent to the Water Quality Financial Management ListServ. Ecology also issued a news release and entered the hearing information on the Ecology Public Events Calendar.

The hearing officers at each location will call speakers in the order that they signed in. We'll start with the Northwest Regional Office, then move to the Central Regional Office, then the Spokane Regional Office, and finish here at the Headquarters Building.

- If no one attends the hearing, state the following:  
“Let the record show Ecology held the hearing on these rule amendments and no one attended the public hearing.”
- If no one wants to testify, state the following:  
“Let the record show that approximately \_\_\_\_\_ people attended this public hearing. No one wanted to provide oral testimony.”

No attendees at our NWRO or ERO.

Is there anyone else who wishes to provide testimony?

Ryan Anderson – City of Yakima Wastewater Division. The City of Yakima received funding for two projects on the State Fiscal Year 2012 Offer List and Intended Use Plan. Both projects received funding from the Green Project Reserves (GPR) funding category. The City thinks that this is an important funding category and would like to recommend expanding the list of projects that are eligible for GPR funding.

All testimony presented at this hearing as well as written comments received are part of the official record for this proposal and will receive equal weight in the decision making process.

The public comment period ends on August 3, 2011. Written comments must postmarked by August 3, 2011. Please submit written comments to: Joseph Coppo, Department of Ecology, PO Box 47600, Olympia WA 98504-7600. Comments may be submitted via email to: joseph.coppo@ecy.wa.gov. Comments may also be faxed to Joseph at 360/407-7151.

All oral and written comments received during the public comment period will be responded to in a document called the Concise Explanatory Statement. This document will state Ecology's official position on the issues and concerns raised during the public comment period. If you would like to receive a copy of this document, please contact Joseph.

Ecology is expecting to adopt these rule amendments no earlier than September 7, 2011. They would become effective 31 days later. If Ecology believes comments received either in writing or in oral testimony could substantially change the scope or conditions of the proposed rule amendments, another public notice of draft and comment period may be necessary which would result in a delay to adoption of the amendments.

Ecology Director Ted Sturdevant will look at the public comments, the Concise Explanatory Statement, other rule documentation, and staff recommendations and will be the one who ultimately makes the decision about adopting the rule amendments.

On behalf of the Department of Ecology, I'd like to thank you for coming to this public hearing. We appreciate your time and comments. This hearing is adjourned at 2:34 p.m.