

DEPARTMENT OF
ECOLOGY
State of Washington

Concise Explanatory Statement

Chapter 173-224 WAC

Wastewater Discharge Permit Fees

Summary of rule making and response to comments

October 2013

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Publication and Contact Information

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Concise Explanatory Statement

Chapter 173-224 WAC Wastewater Discharge Permit Fees

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: Wastewater Discharge Permit Fees
WAC Chapter(s): WAC 173-224
Adopted date: November 1, 2013
Effective date: December 2, 2013

To see more information related to this rule making or other Ecology rule making please visit our web site: www.ecy.wa.gov/laws-rules/index.html

Reasons for Adopting the Rule

State law (Chapter 90.48.465 – Water Pollution Control) requires Ecology to fund its wastewater and stormwater permit programs through annual fees to permit holders. Ecology uses wastewater and stormwater permits to ensure man-made activities that discharge into the various water bodies of the state (surface and ground water) discharge at a level that will not impair the uses of the water. Managing wastewater and stormwater are top priorities of the agency.

The Washington State Legislature passed language in Ecology's 2014-2015 biennial budget allowing an increase in fees because fee amounts already established do not recover all of Ecology's expenses in operating and managing the wastewater and stormwater permit programs. The budget language limits fee increases for wastewater and stormwater discharge permits to 4.55 percent for Fiscal Year 2014 (FY2014) and 4.63 percent for Fiscal Year 2015 (FY2015).

Ecology is increasing the specific fee categories where the current fees are not paying the costs for management of the permit. The permittees in those underpaying categories will see increases in their annual fee for both FY 2014 and FY 2015. These underpaying categories are:

- Aquatic Pest Control
- Boatyard
- Concentrated Animal Feeding Operations
- Dairies
- Construction Stormwater Individual and General Permits
- Industrial Stormwater Individual and General Permits

- Municipal Domestic Wastewater Treatment Plants with a residential equivalent total greater than 250,000.
- Private and Government-Owned Domestic Wastewater Treatment Plant.

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.

The proposed rule filed on August 21, 2013, and the adopted rule filed on November 1, 2013, are the same.

Response to Comments

Ecology accepted public comments on the proposed rule changes beginning August 21, 2013, and ending October 1, 2013. Each comment received is identified by the commenter using the Commenter Index below. Responses to the comments are directly below each comment. Appendix A of this document contains all of the comments received during the public comment period in their original form.

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). Identification codes beginning with “W” indicate comments submitted in writing. Identification codes beginning with “O” indicate comments submitted orally at the public hearing.

Commenter/Affiliation	Identification Code
James Martin, City of Clarkston	W-1
LeAnne Bremer, Miller Nash LLP	W-2
Tom Haworth, Adams Co. Mosquito Control District	W-3
Margaret Wiggins, Commissioner Northshore Utility District	W-4
Lloyd Ludtke, Ludtke Pacific Trucking Inc.	W-5
Brian Thompson	W-6
Truck Shops Inc	W-7
Jolene Rabey, Pat Rabey Trucking Inc.	W-8
Samantha Zimmerman, University Legal Assistance	O-1
Debbie Carter, Northwest Horticultural Council	O-2
Melissa White, Evans Fruit Co. Inc.	O-3

Comments and Responses

This section responds to the comments received during the public comment period. Ecology has responded to each comment individually instead of grouping the comments by subject matter,

Comments concerning proposed fee increases in general

Comment W-1

As with increases at the local level, our citizens expect to compare increases to the levels of streamlining attempts that have been made prior to the justification of an increase for increase sake. Municipalities are constantly working to decrease the burden of the tax payer only to be saddled with increased administrative fees out of our control. Is there anywhere on an Ecology site that indicates Ecology feeling the same pain as local jurisdictions and the measures taken to keep increases to a minimum?

Ecology Response: Managing costs in a responsible manner is a high priority. The state of Washington began implementing Lean, a tool to identify and implement the most efficient and value-added way to provide products and services that protect, enhance, and preserve Washington's environment. The basic principles of Lean are to review processes that will eliminate waste, produce at the rate of customer demand, focus on work flow and value streams to find and eliminate or reduce the non value-added work, focus on standard work, and pursue continuous improvement.

Ecology's Water Quality Program just completed a Lean review of the stormwater construction general permit program. In the future as other processes are reviewed it is expected more efficiencies will be identified and implemented.

Comment W-2

I am a land use attorney in Washington and regularly represent owners and developers on permitting issues. I am providing comments on the rule proposed by the Department of Ecology (A.O. #13-02) regarding wastewater discharge permit fees. We understand that the proposal is to increase fees for some wastewater and stormwater permit fee categories by 4.55% for 2014 and 4.63% for 2015. These increases will affect fees for construction stormwater individual and general permits and industrial stormwater individual and general permits which will adversely affect my clients. Accordingly, I oppose the fee increases.

Not only would a fee increase unnecessarily burden development that is needed to continue the economic recovery in this state, but I do not believe Ecology has provided the statutory justification for the fee increases. Information on the proposed rule states that it is being implemented under the authority of RCW 90.48.465 and 43.135.055, but Ecology has not demonstrated compliance with these statutes. RCW 43.135.055 does authorize the legislature to permit agencies to implement a fee increase but that is not the end of the inquiry. RCW 90.48.465 imposes an important limitation on fees that Ecology can charge:

All fees charged shall be based on factors relating to the complexity of permit issuance and compliance and may be based on pollutant loading and toxicity and be designed to encourage recycling and the reduction of the quantity of pollutants. Fees shall be established in amounts

to fully recover and not to exceed expenses incurred by the department in processing permit applications and modifications, monitoring and evaluating compliance with permits, conducting inspections, securing laboratory analysis of samples taken during inspections, reviewing plans and documents directly related to operations of permittees, overseeing performance of delegated pretreatment programs, and supporting the overhead expenses that are directly related to these activities.

The only justification Ecology has offered for the fee increases is that it will allow for the continued operation of the wastewater/stormwater permit program. There has been no showing that the increase is tied to an increase in costs in Ecology processing the permits, conducting inspections, etc. Without this justification, the fees are unauthorized, in addition to being ill-advised as an unnecessary impediment to growth.

Ecology Response: Ecology needs to fully recover its expenses in processing permits, in this case, for construction stormwater permits. If there was no limit by the legislative budget authorization, Ecology would need to increase fees by at least 15 percent to fully recover costs for the general stormwater permit fee category. Currently, stormwater permit holders do not pay the cost of issuing and managing their stormwater permits. Ecology revenues from State Fiscal Year's 2012 and 2013 (July 1, 2011 through June 30, 2013) was approximately \$6.3 million in revenue received from stormwater permit holders while expenditures totaled approximately \$8.1 million dollars.

Revenues currently received from other wastewater permit holders subsidize the expenditures for the stormwater permit program. Ecology is working toward eliminating this subsidy. While the proposed fee increases will bring in more money from stormwater permit holders, the revenue will still not be enough to eliminate the existing subsidies by other permit category types.

Comment W-3

If there are more permit fee categories why are the following singled out for increases:

- Aquatic pest control.
- Boatyards.
- Concentrated Animal Feeding Operations.
- Dairies.
- Industrial, Municipal, Construction Storm water General Permits and Individual Storm water General Permits.
- Private and Government-Owned Domestic Wastewater Treatment Plants.
- Municipal Domestic Wastewater Treatment Plants with a residential equivalent total greater than 250,000.

If these are the only permit fee categories, then can Ecology show the cost of their services for implementing these fees? These fees should not subsidize the whole Department of Ecology, but should only reflect on those that work on the fee process.

Why is the per cent of increase more than the rate of inflation? It has been a long time since the rate of inflation has been even 4%. Everyone else has to live within their means or go out of business, why not the Department of Ecology?

Ecology Response: Seven years ago, several wastewater permit holder types (food processors, fruit packers, pulp mills, sawmills, fish hatcheries, aluminum plants, etc.) requested Ecology to review and evaluate how fees were being assessed because they believed the costs to issue/manage their permits was lower than the fee they were paying.

Ecology developed and implemented a time management system to obtain data on how expenditures matched up with the revenue being received from fee category types. It soon became apparent that subsidies between permit categories existed. Ecology's time accounting data showed that expenditures for all stormwater fee categories and a few wastewater permit types were more than the revenues being received.

Using revenue information received from Fiscal Year's 2012 and 2013 (July 1, 2011 through June 30, 2013), the table below shows the permit fee category types where Ecology expenditures were greater than the revenues being received.

FEE CATEGORY	FY2012 & 2013 REVENUE (ANNUAL AVERAGE)	EXPENDITURES (ANNUAL AVERAGE)
Aquatic Pest Control	\$81,952	\$417,000
Boatyards	\$29,249	\$71,000
CAFO's/Dairies	\$17,614	\$103,000
Construction Stormwater General Permit	\$1,665,028	\$1,914,000
Industrial Stormwater General Permit	\$1,489,557	\$2,148,000
Municipal/Domestic Wastewater & Private & Government Owned	\$3,932,788	\$5,590,000
Municipal Stormwater	\$1,425,865	\$2,210,000
Individual Construction and Industrial Stormwater Permit	\$166,796	\$907,000

Ecology began addressing the subsidies between fee categories by amending the permit fee regulation over the last six years.

Ecology organized a permit fee restructuring task force in 2008 consisting of permit holders, government agencies, and environmental groups. The focus of this group was to aid Ecology in developing a new fee structure that would reduce the large number of permit fee categories and subcategories that exist in the current fee structure and assist in determining how to eliminate the subsidies between fee categories. Ecology met with the task force over the course of three years finally presenting them with a draft fee structure. However, the task force members could not agree with a final structure proposal. Because of this, the current fee structure remains in place.

Ecology also began addressing the subsidies between fee categories by amending the permit fee regulation over the last six years. These amendments increased fees in a range between four and five percent for those categories or permit fee types whose expenditures exceeded the fee revenues being received. Fees were not increased for those permit fee categories where revenues exceeded their expenditures.

The 2013 Legislature set the permit program budget appropriation level to include the fee increases. The language allows fee increases of 4.55 percent for FY2014 and 4.63 percent for FY2015, but for underpaying fee categories only.

This fee increase proposal will raise fees for only those permit fee types (listed in the table above) where Ecology is not recovering its costs for issuing and managing their permits. While this fee increase proposal does not increase fees to meet all expenditures, it does move toward the ultimate goal of eliminating the fee subsidy between fee categories.

Fees for aquatic pest control permits were initially set too low to recover costs. Fees in this category would need to be increased well beyond any cost of living rate to achieve equity.

Comment W-4

Toxins are measured in parts per million, ppm, or parts per billion, ppb, usually rules are written to the limit of the available test equipment. Can you tell me the reliability of the test equipment currently available on the market that will be needed to monitor the tighter toxin specs proposed? The cost for enough of these units to keep up with all of the testing you are proposing across this really big state? Your best guess will be good enough.

Please tell us if the higher fees proposed include this testing, or just the cost of increased monitoring and enforcement of the results by the DOE personnel. The wholesale cost to supply water and sewage treatment has been increasing in the double digits and is causing a jump in shutoffs here in our district. The health of people without these important utilities are definitely in jeopardy, not just “maybe”.

Please tell us if there are any peer reviewed studies that prove the tighter specs are better for the citizens of this state instead of education of small targeted groups that could possibly be affected by these extremely low level toxin amounts.

And, lastly, tell us if this new rule has any connection to the EPA superfund case on the lower Duwamish River. Is there any federal legislation to change the state’s surface water discharge toxin limits?

Ecology Response: The permit fee program began when Initiative 97 was passed by Washington State voters in 1987. It was then passed by the Washington State Legislature as Senate Bill 6085. This bill was subsequently codified as RCW 90.48.465 – Water Pollution Control and requires Ecology to fund its wastewater/stormwater permit programs through annual fees to permit holders.

The goal of the permit program is to protect the surface and ground water quality of the state. Permits issued by Ecology are used as primary tools to protect clean water, and annual fees charged to permit holders are what fund the permit program.

Inspection and monitoring by Ecology are fee-eligible costs of the permit program as established in RCW 90.48.465 – Water Pollution Control.

The question regarding toxin specs is not the subject of this rule-making.

Comment W-5

I would be remiss if I did not challenge you folks to tell me why you have to increase fees each year. I am just a small trucking firm in Bellingham and work very hard for the money we earn and find it very difficult to accept increases in fees when I can not give my employees a consistent increase in pay. Just so you know things are not as rosy as some of you may think because it is so easy for you to raise fees without explaining why you need it. Please accept this testimony in the

manner it is given and that is with respect for what you have to do in the workplace but with a sincere believe that you could hold the line once in a while.

Ecology Response: The Ecology Response for Comments W-2 and W-3 explains why fees are increasing for some permit fee category types. State law (RCW 90.48.465 – Water Pollution Control) requires Ecology to fund the wastewater and stormwater permit programs through annual fees to permit holders. Ecology collects less money from industrial stormwater general permit holders than what it spends on managing their permits.

Comment W-6

Regarding wastewater discharge fees.

Speaking as a fruit grower I know that an apple tree needs to be pruned to be productive. I view government as being like a fruit tree.

The proposed fee increases amount to government taking from private enterprises for the purpose of growing government. In my opinion government needs to be pruned.

I am opposed to the fee increases.

Ecology Response: Comment noted.

Comment W-7

We are commenting on the proposal to increase the annual permit fees because we want to make sure every company is paying what they should before we pay more. We suspect that companies have waste water running into Horseshoe Lake in Woodland Washington. We don't feel they are following your rules if they are washing their trucks in the center of their parking lot without containing their waste water. We have done everything we are supposed to do to contain ours. We want to make sure that all companies are following your rules and paying their fair share to the Department of Ecology before we pay more.

Ecology Response: The fee increases being proposed are to recover the expenses associated with managing the permits already issued for existing permit holders, not for finding and permitting any new businesses. New businesses that are permitted will be required to pay annual permit fees upon permit issuance. Concern expressed in this comment letter has been forwarded to the Ecology Southwest Regional Office so inspectors can make a determination if operations are being conducted in the area identified above that require wastewater and/or stormwater discharge permits.

Comment W-8

Please reconsider the permit fee increase and how the fee process is structured.

The Dept. of Ecology permit system should more fairly distribute ecological responsibility and fees among polluters and those with significant potential to pollute.

I find the gross revenue categories disproportionate and basing permit fees on the gross revenue gives the Department a false picture of a business regardless of other circumstances that would be important in determining a permit rate. If the Department's objective is truly to take care of our environment, then we need to address the pollution issues created by all businesses regardless of

classification as well as private citizens. Spread the responsibility for the health of the environment as well as the cost to run the Department of Ecology to all of us rather than overburdening some.

As a small business the cost of prevention, monitoring, training and permitting has put us at a disadvantage to our competitors who are not required to do so. We are also picking up the increased fees and expenses of our vendors who pass their costs on to us as well as the local municipality who charges us a hefty stormwater tax. We are not in a position to raise our rates to cover all of the government increases every year.

Ecology Response: In October 1987, the Washington State Legislature passed Senate Bill 6085 (later codified as RCW 90.48.465 – Water Pollution Control) requiring the Department of Ecology to fund the wastewater discharge permit program through annual fees to permit holders. It was the intent of the legislature to shift the cost of administering the program to permit holders rather than have the public pay. Ecology cannot increase permit fees without prior authorization from the legislature. The 2014-2015 Ecology biennial budget passed by the 2013 Legislature contains language authorizing an increase in fees to meet the actual costs of conducting business. Fee increases are limited to no more than 4.55 percent for fiscal year 2014 (July 1, 2013 through June 30, 2014) and 4.63 percent for fiscal year 2015 (July 1, 2014 through June 30, 2015). The table on Comment W-3 shows how Ecology’s cost for issuing and managing industrial stormwater general permit exceeds the revenues received from that permit category type. The proposed fee increases for this category will help narrow that gap.

The industrial stormwater general permit fee category was established during the 2004 permit fee rule-making. Ecology evaluated various ways to assess fees for this permit type and determined that the fees must be: (a.) simple to administer (not requiring an increased staffing need for Ecology); (b) unambiguous (more than one person can come to the same fee determination); (c) available to fund the stormwater industrial permit program; (d) verifiable (pass a state audit); and (e) fair (still must mitigate impacts of fees for small business).

In the evaluation of several options for fees, Ecology identified gross revenue for establishing a fee schedule as the most effective way for addressing all five criteria listed above but it does not reflect a relationship on the potential impacts of stormwater to waters of the state. Ecology does not have the scientific data needed to establish a stormwater fee structure based on contamination risk. Collection of the data would create additional cost for the program.

Oral Comment O-1

(This letter was read into the record and submitted to the hearing officer at the public hearing in Spokane)

We are writing on behalf of the Gonzaga University Environmental Law Clinic and the Spokane Riverkeeper.

The Gonzaga Environmental Law Clinic provides legal representation to not-for-profit environmental programs in the Inland Northwest, and strives to protect and restore the quality and integrity of the region’s waters through advocacy and public interest litigation.

The Spokane Riverkeeper (“Riverkeeper”) is a program of the Center for Justice (“CFJ”). CFJ is a not-for-profit legal organization which provides legal services to individuals and public interest

organizations in the Inland Northwest. CJF works to ensure that all individuals and public interest organizations of limited means have access to justice, including a clean and healthy environment. Riverkeeper conducts surveillance of the Spokane River and its tributaries and reaches out to river users who share its commitment to a river that is swimmable, fishable, and property regulated. To further these goals, Riverkeeper actively seeks Federal and State agency implementation of the Clean Water Act and, when necessary, directly initiates enforcement actions on behalf of itself and the public. The Riverkeeper may be contacted at:

Bart Mahailovich, Spokane Riverkeeper
Center for Justice
35 West Main, Suite 300
Spokane, Washington 99201
Phone: (509) 835-5211

As environmental advocates for and residents of the state of Washington, we understand the importance and the need for wastewater discharge permit fees. As we understand it, the Department of Ecology has proposed to increase fees for certain types of dischargers in order to promote equity among fee payers. It seems appropriate to raise certain fees over others to promote equity among dischargers, as the whole purpose of the discharge permit fee system is to hold each discharger accountable for his/her share of waste. Adjusting the fees so they accurately reflect the agency cost to provide and administer each permit is a good move towards promoting discharger accountability. If the fees are adjusted to establish a more direct relationship between fee rates and agency cost, it would eliminate confusion and create a more efficient and transparent permitting process.

We also agree with the decision to implement the minimum fee proposal. On a macro scale, selective fee increases promote equity between categories, but on a micro scale, a minimum fee would establish equity within categories. So combined, increasing fees for certain types of permits while establishing a minimum fee seems the best way to promote equity. A minimum fee allows the department to regulate individual dischargers more easily, thus giving the department the ability to hold the individual discharger responsible. Establishing a minimum fee also seems like a simpler and more efficient way to reduce fee inequity than the initial fee restructuring and rate proposal, which would have rearranged permit fee payers into fewer consolidated categories. Lastly we are not worried that this will put an undue burden on permit fee payers because the proposal retains the small business or hardship exceptions that already exist for certain facilities. In addition, the average cost of permit coverage has declined in recent years due mostly to the increased use of general permits in place of individual permits. Thus, the increased fee may not be much greater than some fee payers had to pay for individual permits in the past.

For the reasons above, we are in agreement with the Department of Ecology to increase wastewater permit discharge fees if the purpose or spirit behind the increase is to discourage the discharge of waste into our waters.

Ecology Response: It is the hope of Ecology that in the future, all permit fee types will be paying the full annual cost it takes to issue and manage that fee type and that no more subsidies will exist. However, Ecology is not there yet.

The draft proposal to establish a minimum fee that Ecology brought before the Permit Fee Task Force did not have enough support when brought to the Legislature. It is not being pursued at this time.

Oral Comment O-2

(This letter was read into the record and submitted to the hearing officer at the public hearing in Yakima)

The Northwest Horticultural Council represents growers, packers and shippers of the Pacific Northwest regarding certain state and federal technical and policy issues related to the deciduous tree fruit industry. We are here today to offer comments on proposed permit fee changes.

As an industry we support a fee structure that is based on administrative work load estimates. This is a key principle under the National Pollutant Discharge Elimination System (NPDES) Permit Fee Model. It is understandable that source categories that require extensive administration by Ecology's permit managers be assessed in accordance with the amount of oversight required.

Washington tree fruit industry fees have not been increased in the last several fee cycle periods since the annual revenue collected significantly exceeds the cost of permit administration. We expect that this will be the case this cycle as well. With this in mind, we ask that fruit packers' General Permit fees be reevaluated and reduced. From our last review of proposed fees (2010-2011), it was apparent that only two general permit categories out of nine support its General Permit administration. Fruit packing is one of those permitted categories that more than fully supports its permit administration. From the 2010/2011 cycle period, the proposed annual administrative costs for each of the other categories ranged from 1.8 times to 16 times more than the revenue received through fees from the permittees. At that same time, tree fruit packers paid approximately 1.7 times more in fees than the cost to administer its General Fresh Fruit Packing Permit. This is unfair and a major concern.

While we support the efforts of Ecology's Water Quality Programs, we expect even-handedness in implementing a fee structure where all permittees are responsible for their fair share. We request that before the final budget is approved, that the established mechanism of supporting Ecology's general permit programs be reviewed and administered equitably. Our industry's financial burden should be based on actual costs and, therefore, reduced.

Ecology Response: Ecology agrees the current fee structure is unequal in its assignment of fees to agency costs by category. In total, fees do not cover costs. Ecology has spent the last few years trying to develop a new structure that would address the subsidy issue but could not get the support needed from the Permit Fee Task Force and other interested parties to obtain approval for the fee structure change by the Washington State Legislature.

The new draft fee structure would have increased fees for those permit categories where expenditures exceed revenues received in a manner where subsidies would have been eliminated within six years. A minimum fee was also being proposed.

State law (RCW 90.48.465 – Water Pollution Control) requires Ecology to fund the permit program through annual fees which the current fee structure does. However, unless permittees and interested parties join Ecology in bringing this proposal before the Legislature and request its implementation, subsidies will remain.

Oral Comment O-3

I'm new to the industry and I'm learning about this, but I was reading through the 173-224 WAC, and it does say on here that any alternative that the department shall continue to examine the feasibility of adopting, when applicable, alternative permit fee systems.

And any alternative fee system, such as variable permit fees, shall ensure continued full recovery of eligible program costs, and may be based on pollution loading and toxicity, and may be designed to encourage recycling and reduction of the quantity of pollutants.

So it seems, given her comments (Debbie Carter) that this would be applicable in our case, in fruit packing, to maybe review that and come up with a more equitable fee system among our specific category.

Ecology Response: An equitable fee structure within each fee category was also proposed during the fee restructuring effort explained in response to comment 0-2. Currently, Ecology does not have the necessary data to establish a fee structure based on pollutant loading and toxicity. The cost to put together a data collection system that could be used for this purpose would be incredibly high and would be an added cost to all permit holders. In order to establish an incentive that encourages recycling and the reduction of the quantity of pollutants, fees would have to be increased for many permit holders to allow for a fee reduction to those facilities that undertake activities to reduce waste. The reason for this is because state law requires the permit program to be funded through annual fees. Ecology would need to maintain a level-operating base that would meet funding needs as appropriated by the Legislature. Incentives would have to be built on top of the existing operating base.

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Appendix A: Copies of all written comments

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Poston, Bev (ECY)

From: James Martin [jemartin@cableone.net]
Sent: Tuesday, August 27, 2013 11:19 AM
To: Poston, Bev (ECY)
Subject: Permit Increases

Bev,

As with increases at the local level, our citizens expect to compare increases to the levels of streamlining attempts that have been made prior to the justification of an increase for increase sake. Municipalities are constantly working to decrease the burden of the tax payer only to be saddled with increased administrative fees out of our control. Is there anywhere on an Ecology site that indicates Ecology feeling the same pain as local jurisdictions and the measures taken to keep increases to a minimum?

Thanks,
Jim

Poston, Bev (ECY)

From: Bremer, LeAnne M. [LeAnne.Bremer@MillerNash.com]
Sent: Thursday, August 29, 2013 2:28 PM
To: Poston, Bev (ECY)
Subject: Chapter 173-224 WAC Wastewater Discharge Fees-Proposed Rule

Dear Ms. Poston:

I am a land use attorney in Washington and regularly represent owners and developers on permitting issues. I am providing comments on the rule proposed by the Department of Ecology (A.O. #13-02) regarding wastewater discharge permit fees. We understand that the proposal is to increase fees for some wastewater and stormwater permit fee categories by 4.55% for 2014 and by 4.63% for 2015. These increases will affect fees for construction stormwater individual and general permits and industrial stormwater individual and general permits which will adversely affect my clients. Accordingly, I oppose the fee increase.

Not only would a fee increase unnecessarily burden development that is needed to continue the economic recovery in this state, but I do not believe Ecology has provided the statutory justification for the fee increase. Information on the proposed rule states that it is being implemented under the authority of RCW 90.48.465 and 43.135.055, but Ecology has not demonstrated compliance with these statutes. RCW 43.135.055 does authorize the legislature to permit agencies to implement a fee increase but that is not the end of the inquiry. RCW 90.48.465 imposes an important limitation on fees that Ecology can charge:

All fees charged shall be based on factors relating to the complexity of permit issuance and compliance and may be based on pollutant loading and toxicity and be designed to encourage recycling and the reduction of the quantity of pollutants. Fees shall be established in amounts to fully recover and not to exceed expenses incurred by the department in processing permit applications and modifications, monitoring and evaluating compliance with permits, conducting inspections, securing laboratory analysis of samples taken during inspections, reviewing plans and documents directly related to operations of permittees, overseeing performance of delegated pretreatment programs, and supporting the overhead expenses that are directly related to these activities.

The only justification Ecology has offered for the fee increases is that it will allow for the continued operation of the wastewater/stormwater permit program. There has been no showing that the increase is tied to an increase in costs in Ecology processing the permits, conducting inspections, etc. Without this justification, the fees are unauthorized, in addition to being ill-advised as an unnecessary impediment to growth.

LeAnne M. Bremer, P.C.

Partner

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Poston, Bev (ECY)

From: Tom Haworth [acmcd@qwestoffice.net]
Sent: Wednesday, September 04, 2013 4:15 PM
To: Poston, Bev (ECY)
Subject: Comments on Chapter 173-224-WAC Wastewater Discharge Permit Fees
Attachments: Dept. of Ecology 08262013.docx

Attached are my comments to the proposal for Chapter 173-224.

Thank you for the heads up and the opportunity to comment.

Tom Haworth, Manager
Adams Co. Mosquito Control District
PO Box 262
Othello, WA 99344

(509) 488-2661

Comment W-3

Adams County Mosquito Control District
PO Box 262
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PO Box 47600
Olympia, WA 98504-7600

Subject: Chapter 173-224-WAC Wastewater Discharge Permit Fees Proposal

If there are more permit fee categories why are the following singled out for increases?

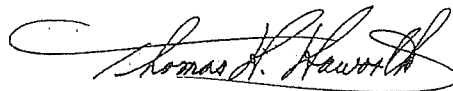
- Aquatic pest control.
- Boatyards.
- Concentrated Animal Feeding Operations.
- Dairies.
- Industrial, Municipal, Construction Storm water General Permits and Individual Storm water General Permits.
- Private and Government-Owned Domestic Wastewater Treatment Plants.
- Municipal Domestic Wastewater Treatment Plants with a residential equivalent total greater than 250,000.

If these are the only permit fee categories, then can Ecology show the cost of their services for implementing these fees? These fees should not subsidize the whole Department of Ecology, but should only reflect on those that work on the fee process.

Why is the per cent of increase more than the rate of inflation? It has been a long time since the rate of inflation has been even 4%. Everyone else has to live within their means or go out of business, why not the Department of Ecology?

Thank you for the opportunity to comment.

Sincerely,



Tom Haworth, Manager
Adams Co. Mosquito Control
PO Box 262
Othello, WA 99344

Poston, Bev (ECY)

From: Margaret Wiggins [wiggins.margaret@gmail.com]
Sent: Thursday, September 12, 2013 1:50 PM
To: Poston, Bev (ECY)
Cc: <blair@waswd.org>; R V Gidner
Subject: public comment on new rule on 173-224-WAC

Dear Ms. Poston,

Toxins are measured in parts per million, ppm, or parts per billion, ppb, usually rules are written to the limit of the available test equipment. Can you tell me the reliability of the test equipment currently available on the market that will be needed to monitor the tighter toxin specs proposed? The cost for enough of these units to keep up with all of the testing you are proposing across this really big state? Your best guess will be good enough.

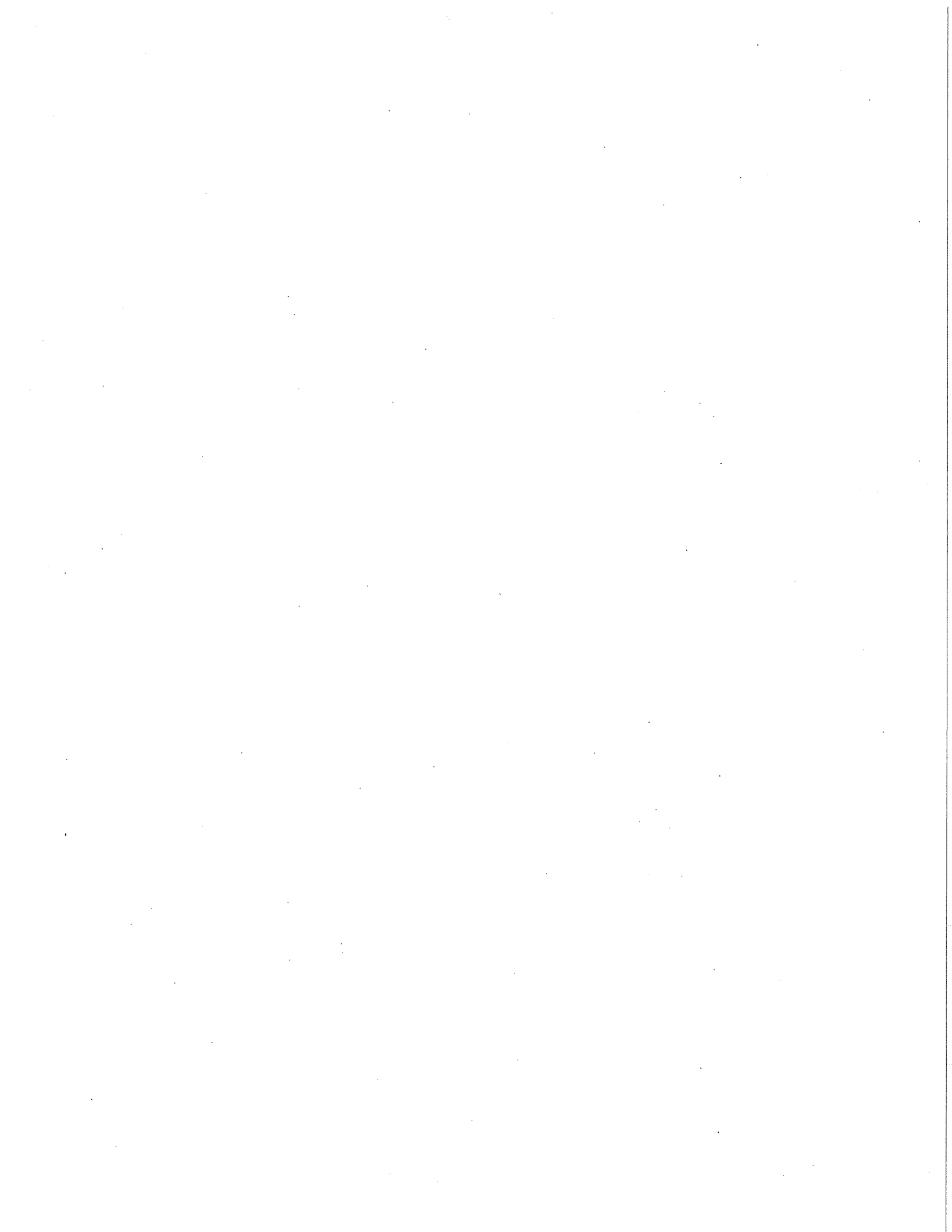
Please tell us if the higher fees proposed include this testing, or just the cost of increased monitoring and enforcement of the results by the DOE personnel. The wholesale cost to supply water and sewage treatment has been increasing in the double digits and is causing a jump in shutoffs here in our district. The health of people without these important utilities are definitely in jeopardy, not just 'maybe.'

Please tell us if there are any peer reviewed studies that prove the tighter specs are better for the citizens of this state instead of education of small targeted groups that could possibly be affected by these extremely low level toxin amounts.

And, lastly, tell us if this new rule has any connection to the EPA superfund case on the Lower Duwamish River. Is there any federal legislation to change the state's surface water discharge toxin limits?

Thank you,
Margaret Wiggins
Commissioner for Northshore Utility District, Kenmore, WA

Sent from my iPad

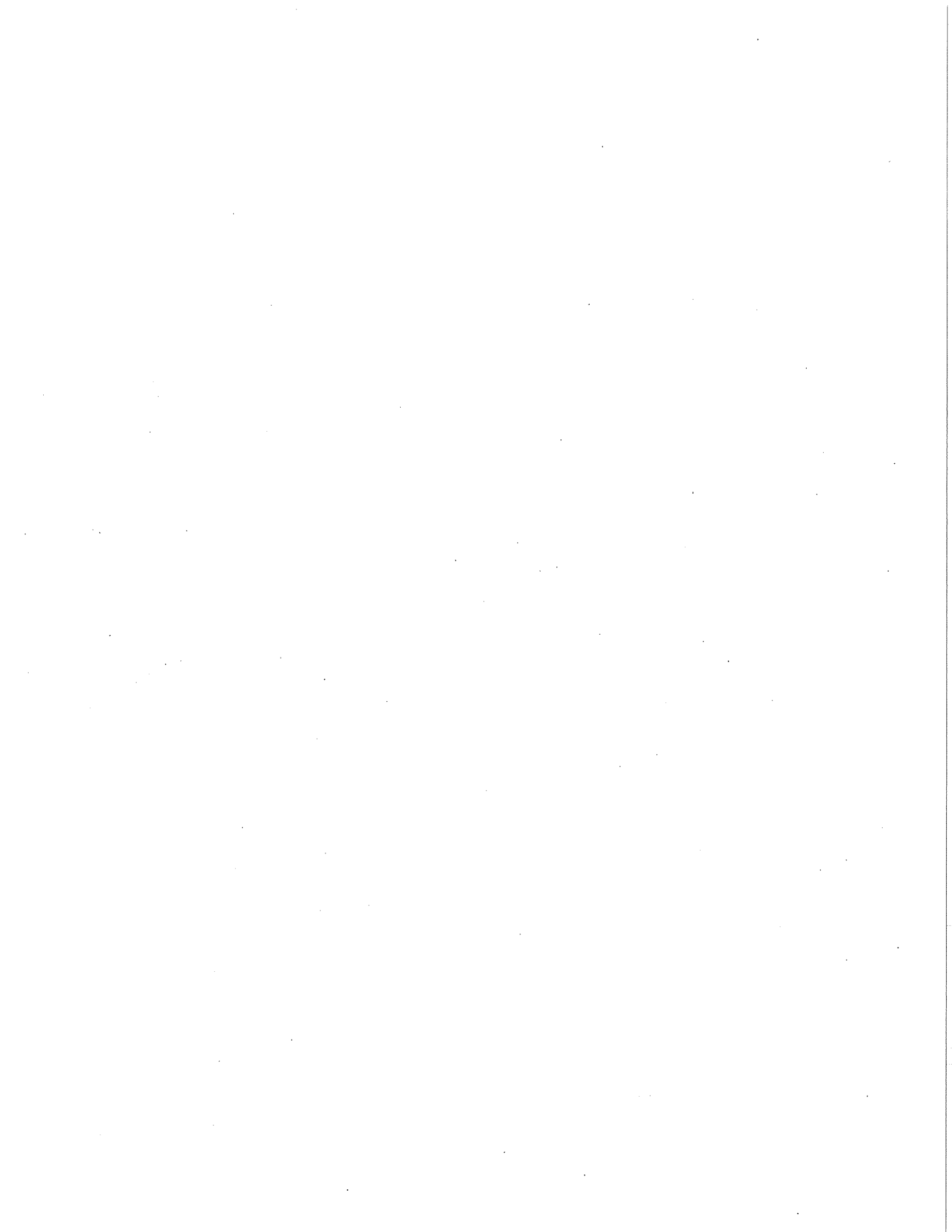


Poston, Bev (ECY)

From: LLOYD Ludtke [Lloyd@ludtke.com]
Sent: Friday, September 13, 2013 10:06 AM
To: Poston, Bev (ECY)
Subject: increase of fees

I would be remiss if I did not challenge you folks to tell me why you have to increase fees each year. I am just a small trucking firm in Bellingham and work very hard for the money we earn and find it very difficult to accept increases in fees when I can not give my employees a consistent increase in pay. Just so you know things are not as rosy as some of you may think because it is so easy for you to raise fees without explaining why you need it. Please accept this testimony in the manner it is given and that is with respect for what you have to do in the workplace but with a sincere belief that you could hold the line once in a while. respectfully, Lloyd A. Ludtke, President, Ludtke Pacific Trucking, Inc.

Comment W-5



Poston, Bev (ECY)

From: Brian Thompson [brianthompson@fairpoint.net]
Sent: Saturday, September 21, 2013 7:41 AM
To: Poston, Bev (ECY)
Subject: official comment

Bev,

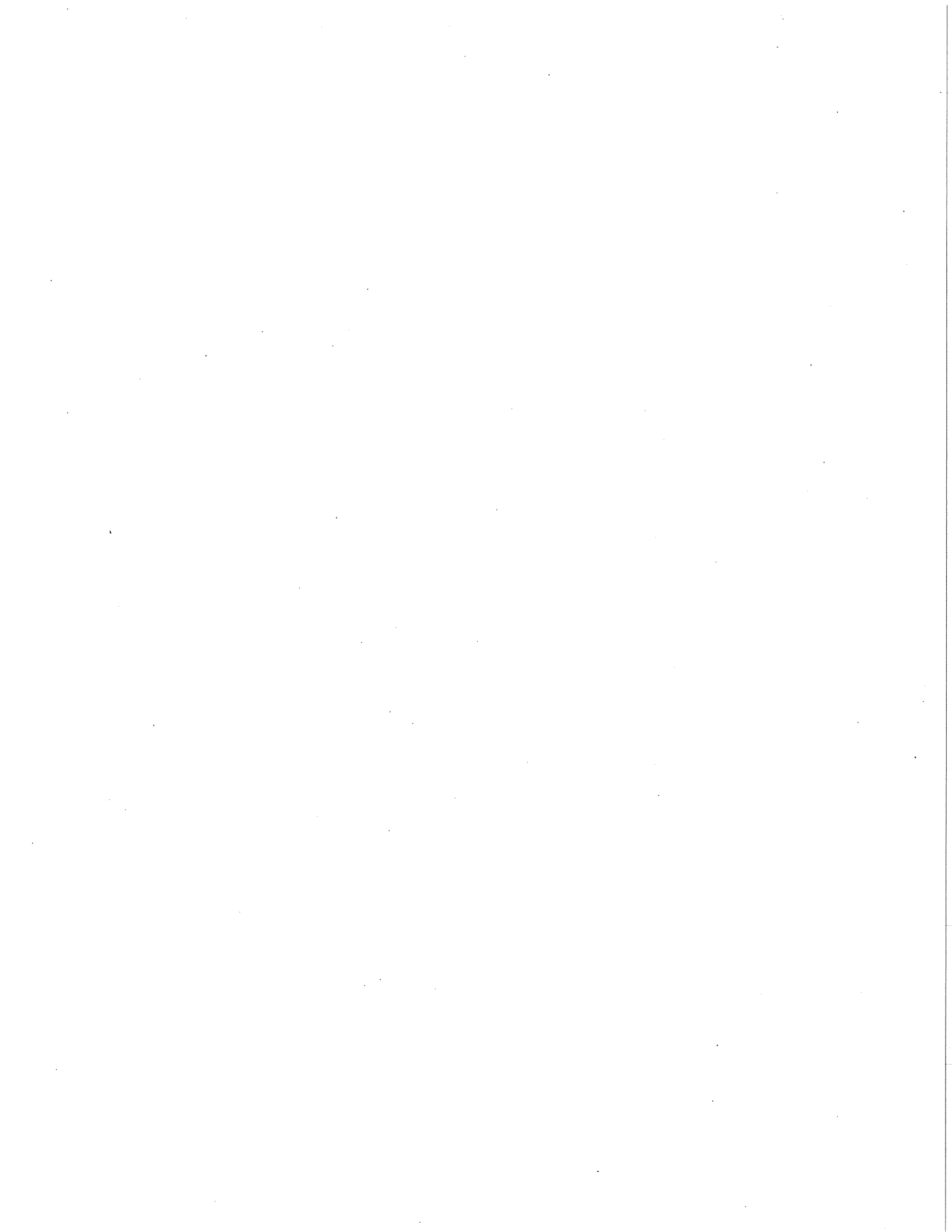
Regarding wastewater discharge fees.

Speaking as a fruit grower I know that an apple tree needs to be pruned to be productive. I view government as being like a fruit tree..

The proposed fee increases amount to government taking from private enterprise for the purpose of growing government. In my opinion government needs to be pruned.

I am opposed to the fee increases.

Brian Thompson



Truck Shops, Inc.

550 Columbia Street
P.O. Box 1007
Woodland, WA 98674
360-225-3971

WATER QUALITY PROGRAM
DEPARTMENT OF ECOLOGY

SEP 30 2013

September 26, 2013

Department of Ecology
Bev Poston
P.O. Box 47600
Olympia, WA 98504-7600

RE: Chapter 173-224-WAC Wastewater Discharge Permit Fees Increase

Dear Bev:

We are commenting on the proposal to increase the annual permit fees because we want to make sure every company is paying what they should before we pay more. We suspect that companies have waste water running into Horseshoe Lake in Woodland Washington. We don't feel they are following your rules if they are washing their trucks in the center of their parking lot without containing their waste water. We have done everything we are supposed to do to contain ours. We want to make sure that all companies are following your rules and paying their fair share to the Department of Ecology before we pay more.

Thank you,

Truck Shops Incorporated
Woodland Washington

Comment W-07

PAT RABEY TRUCKING, INC.

410 South Adams Street
P.O. Box 548
Hoquiam, WA 98550

September 30, 2013

Department of Ecology
Bev Poston bpos461@ecy.wa.gov

Re: Increase in annual permit fees

Please reconsider the permit fee increase and how the fee process is structured..

The Dept. of Ecology permit system should more fairly distribute ecological responsibility and fees among polluters and those with significant potential to pollute.

I find the gross revenue categories disproportionate and basing permit fees on the gross revenue gives the Department a false picture of a business regardless of other circumstances that would be important in determining a permit rate. If the Department's objective is truly to take care of our environment, then we need to address the pollution issues created by all businesses regardless of classification as well as private citizens. Spread the responsibility for the health of the environment as well as the cost to run the Department of Ecology to all of us rather than overburdening some.

As a small business the cost of prevention, monitoring, training and permitting has put us at a disadvantage to our competitors who are not required to do so. We are also picking up the increased fees and expenses of our vendors who pass their costs on to us as well as the local municipality who charges us a hefty stormwater tax. We are not in a position to raise our rates to cover all of the government increases every year.

Sincerely,
Jolene Rabey

Comment W-8

Appendix B: Transcripts from public hearings

One public hearing was held via video-conference in four locations around the state. The public hearing was held September 24, 2013, at 1:30 p.m. at the following locations:

Department of Ecology
Lacey Headquarters Office
300 Desmond Drive
Room ROA-05
Olympia, WA

Department of Ecology
Central Regional Office
15 W Yakima Avenue
Sundance Room 309
Yakima, WA

Department of Ecology
Northwest Regional Office
3190 – 160th Avenue SE
Room 1C
Bellevue, WA

Department of Ecology
Eastern Regional Office
4601 Monroe Street
Room 1-S-11
Spokane, WA

Transcript of the hearing follows:

DEPARTMENT OF ECOLOGY
WATER QUALITY PROGRAM
LACEY, WA HEADQUARTERS
BARI SCHREINER, HEARING OFFICER
SEPTEMBER 24, 2013

MS. SCHREINER: Let the record show that it is 1:48pm on September 24th 2013. Ecology is using video conferencing for this hearing. This hearing is to discuss the rule proposal for Chapter 173-224, Black Wastewater Discharge Permit Fee.

The hearing is being held using video conferencing at the following locations the Ecology Headquarters building with the Hearing Officer, Bari Schreiner. It's located 300 Desmond Drive, Lacey, WA, 98504 in Room ROA-05.

The hearing at the Ecology Central Regional Office with Hearing Officer Brian Neet is located at 15 West Yakima Avenue, Suite 200, Yakima, WA in the Sundance Room No. 309.

The hearing at the Ecology Eastern Regional Office with Hearing Officer Terry Costello is located at 4601 North Monroe Street, Spokane, WA, 99205 in Room 1-SW-11.

The hearing at the Ecology Northwest Regional Office with Hearing Officer Lori Levander is located 3190 160th Avenue Southeast, Bellevue, WA in Room 1C.

A legal notice of this hearing was published in the Washington State Register September 4th 2013 as Washington State Register 13-7-101.

In addition to notices of the hearing we - in addition, sorry -- notices of the hearing were directly mailed or emailed to 6,000 permit holders, the tribes, members of the Water Quality Advisory Committee, members of the Permit Fee Advisory Committee, and the agency email list WacTrac.

The hearing officers at each location will be calling people up to testify. We are going to rotate between the locations. We are going to start out in the Eastern Regional Office.

Is there any -- I mean we have one person say - so far ready to testify. I'm going to ask you release the mute button. And then if you could state your name and if you didn't provide your contact information on the sign-in sheet -- if you could provide that, so we can contact you after the hearing.

Testimony of Samantha Zimmerman (Oral Comment O-1)

Sure. I'm Samantha Zimmerman and I'm here on behalf of the Gonzaga University Legal Assistants Environmental Law Clinic

in the Spokane Riverkeeper. And you can reach me at -- my email is szimmerman3@lawschool.gonzaga.edu. Great. All right. Well, I will start. Well, thank you so much for your time. And like I said, I'm speaking on behalf of the Gonzaga University Environmental Law Clinic in the Spokane Riverkeeper.

The Gonzaga Environmental Law Clinic provides legal representation to not-for-profit environmental programs in the Northwest and strives to protect and restore the quality and integrity of the region's water through advocacy and public interest litigation.

The Spokane Riverkeeper is a program of the Center for Justice located here in Spokane, and it's a not-for-profit Legal organization, which provides legal services to individuals and public interest organizations in the northwest. And the Riverkeeper conducts surveillance of the Spokane River and its tributaries and reaches out to river uses who share its commitment to a river that's swimmable, fishable, and properly regulated.

So, environmental advocates for and residences of the Washington, we understand the importance and the need for wastewater discharge permit fees. As we understand it, the Department of Ecology has purposed to increase fees for certain types of dischargers in order to promote equity among fee payers.

It seems appropriate to raise certain fees over others and to promote equity among dischargers, because the whole purpose of the discharge permit system is to hold each discharger accountable for his or her share of the waste. So, adjusting fees so that they accurately reflect agency cost to provide and administer these permits seems like a good move to us towards promoting discharger accountability. If the fees are adjusted to establish a more direct relationship between fee rates and agency costs, we feel like it would help to eliminate confusion and create a more efficient and transparent permitting process.

And as aforementioned, we're not worried that this will put An undue burden on permit fee payers, because the proposal Still retains the exception for small businesses and that sort of thing as well.

It just -- establishing -- changing these fee just seems like the simplest and most efficient way to reduce fee inequity. And in addition, I'd like to point out the average cost of

permit coverage has declined in recent years due mostly to the increased use of general permits in place of individual permits.

So, the increased fee may -- really in comparison to that, may not be that much greater than what people had to pay for individual permits in the past.

So, to conclude, we are in agreement with the Department of Ecology to increase wastewater discharge fees as long as the purpose and spirit behind the increase is to discourage discharge of waste into our waters.

Thank you for consideration of these comments.

MS. SCHREINER: Thank you. Is there anyone else in the Eastern Office at this time that wants to provide testimony?

MS. COSTELLO: No, not at this time.

MS. SCHREINER: All right. Thank you. We'll move on then -- we'll go to the Central Office in Yakima. Is there anybody there that would like to provide comments?

Testimony of Debbie Carter (Oral Comment O-2)

Yes. I'm Deborah Carter, the Northwest Horticultural Council here in Yakima, WA, and I represent the tree fruit industry of Washington State. And I'm just going to read our comments, and I've given a copy, as I said earlier, to Brian for him to put in to the record for you. And I've also given him a copy of my card, which has my contact information on it.

So, the Northwest Horticultural Council represents the growers, packers, and shippers of the Pacific Northwest regarding certain state and federal technical and policy issues related to the deciduous tree fruit industry.

We're here today to offer comments on the proposed permit fee changes. As an industry, we support a fee structure that is based on administrative workload estimates. This is a key principle under the NPDES permit fee model, and it's understandable that source categories that require extensive administration by Ecology's permits managers be assessed according with the amount of oversight required.

Washington tree fruit industry fees have not been increased in the last several fee cycle periods since the annual revenue connected -- collected significantly exceeds the cost

of permit administration. We expect that this will be the case this cycle as well.

With this in mind, we ask that fruit packers general permit fees be reevaluated and reduced. From our last review of proposed fees -- and that was from the 2010-2011 cycle -- it was apparent that only two general permit categories out of the nine supports its general permit administration.

Fruit packing is one of those permitted categories that more than fully supports its permit administration. From the 2010-211 cycle period the proposed annual administrative cost for each of the other categories, ranged from 1.8 times to 16 times more than the revenue received through fees from the permittees.

At that same time tree fruit packers paid approximately 1.7 times more in fees than the cost to administer its general fruit packing permit. This is unfair and a major concern. While we support the efforts of Ecology's water quality programs, we expect even handedness in implementing a fee structure while all permittees are responsible their fair share.

We request that before the final budget is approved that the established mechanism for supporting Ecology's general permit programs be reviewed and administered equitably.

Our industry's financial burden should be based on actual cost and therefore reduced. So, the tree fruit industry is willing to work with Ecology on this matter, and we look forward to further communications with you. And we appreciate this opportunity to make these comments.

MS. SCHREINER: Thank you. Is there anybody else in the Yakima office that would like to provide comments?

MS. WHITE: I would just like to make a quick comment.

MS. SCHREINER: Okay. Please wait until the mic settles. All right. There you go. Thank you.

MS. WHITE: That's wonderful.

Testimony of Melissa White (Oral Comment O-3)

I'm new to the industry and I'm learning about this, but I was reading through the 173-224 WAC, and it does say on here that any alternative that the department shall continue to

examine the feasibility of adopting, when applicable, alternative permit fee systems.

And any alternative fee system, such as variable permit fees, shall ensure continued full recovery of eligible program costs, and may be based on pollutant loading and toxicity, and may be designed to encourage recycling and reduction of the quality of pollutants.

So, it seems, given her comments, that this would be applicable in our case, in fruit packing, to maybe review that and come up with a more equitable fee system among our specific category.

MS. SCHREINER: Thank you. Can you please state your name for the record?

MS. WHITE: Melissa White and I'm representing Evans Fruit Co. Inc.

MS. SCHREINER: Thank you. And if you didn't already give Brian your contact information, can you please make sure he gets that, so he could add you to the contact list?

MS. WHITE: Yes.

MS. SCHREINER: Thank you. Is there anybody else at the Yakima office that would like to testify?

MR. NEET: No.

MS. SCHREINER: All right. Thank you. To confirm one more time, is there anybody at Northwest?

MS. LEVANDER: No, there is not.

MS. SCHREINER: Okay. Thank you.

MS. LEVANDER: Thank you.

MS. SCHREINER: And would either of you like to provide testimony? Okay. Just going to check one more time. Just wave at the screen if anybody has changed their mind and would like to come up and provide testimony at this time. Okay.

So, if you would like to send Ecology written comments, please remember that they're due no later than October 1st 2013. Please send them to Bev Poston, Department of Ecology,

P.O. Box 47600, Olympia, WA 98504-7600. You can also email them to Bev at bpos461@ecy.wa.gov, or you can fax them to (360) 407-7151.

All testimony received at today's hearing and all written comments received no later than October 1st 2013 will be part of the official record for this proposal.

Ecology will prepare a document called, "The Concise Explanatory Statement," which will respond to the comments and concerns presented at any of the public hearings or submitted in writing.

This publication will be sent to everyone that provided written comments on this rule proposal and provided us contact information. As well as everyone that signed in at today's hearing that provided an email address. As well as posting it on the fee rule webpage.

If you'd like receive a copy, but you didn't give us contact information, please either let one of the hearing officers at your location know or you can contact Bev Poston at the address provided for submitting comments.

The next step is to move towards adoption. Ecology director Maia Bellon will consider the rule documentation and staff recommendations and will make a decision about adopting the proposal.

Adoption is currently scheduled for no earlier than October 30th 2013. If the proposed rule should be adopted that day and filed with the code reviser, it will go into effect 31 days later.

Please let us know if we would be of any further assistance to you, or you can contact Bev Poston directly if you have other questions.

On behalf of Department of Ecology, thank you very much for coming. I appreciate your patience this afternoon. Let the record show that this hearing is adjourned at 2:02pm.

Thank you very much.

(End of Hearing)

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Appendix C: Citation List

Chapter 173 – 224 WAC
Wastewater Discharge Permit Fees
AO # 13- 02

This citation list contains references for data, factual information, studies, or reports on which the agency relied in the adoption for this rule making (Chapter 34.05 RCW).

Peer-Reviewed Literature – not applicable

Additional Sources of Information

1. The 2013 Budget passed by the Washington State Legislature and signed by the Governor.