



DEPARTMENT OF  
**ECOLOGY**  
State of Washington

# **Small Business Economic Impact Statement**

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*Chapter 173-224 WAC  
Wastewater Discharge Permit Fee*

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## Publication and Contact Information

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## **Chapter 173-224 WAC Wastewater Discharge Permit Fees**

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Note: Due to size limitations relating to the filing of documents with the Code Reviser, the SBEIS does not contain full explanation of Ecology’s analysis. Additionally, it does not contain raw data or all summaries of data used in the analysis, or all of Ecology’s analysis of this data. However, this information is being placed in the rule-making file, and is available upon request for the rule file. A full analysis of compliance costs is available in the associated Cost-Benefit Analysis for this rule: <https://www.ecy.wa.gov/biblio/1510030.html>

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# Executive Summary

Based on research and analysis required by the Regulatory Fairness Act (RFA) – RCW 19.85.070 – Ecology has determined that the proposed rule, Wastewater Discharge Permit Fees (chapter 173-224 WAC) may have disproportionate impacts on small businesses. The RFA directs Ecology to determine if there is likely to be disproportionate impact, and if legal and feasible, reduce this disproportionate impact.

The Small Business Economic Impact Statement (SBEIS) is intended to be read with the associated Cost-Benefit Analysis (Ecology publication #15-10-030), which contains more in-depth discussion of the analysis.

This rule establishes a revised fee system for state waste discharge and Nation Pollutant Discharge Elimination System (NPDES) permits issued by Ecology pursuant to RCW 90.48.160, 90.48.162, or 90.48.260. RCW 90.48.465 authorizes the department to base fees on factors related to the complexity of permit issuance and compliance and to charge fees to fully recover, but not exceed the costs of the permit program.

Though many of the permitted categories have more than one fee level, these breakpoints are based on the scope and scale of the permitted activity, NOT the size of the business conducting the activity. Inherently, these constant values divided by a smaller number of employees (fewer than 50) will result in a larger cost-to-employee ratio than if divided by a larger number of employees (greater than 50).

The permit fee regulation contains language that helps mitigate the impact of fees on small businesses.

# **Section 1: Background and Introduction**

## **1.1 Introduction**

Based on research and analysis required by the Regulatory Fairness Act (RFA) – RCW 19.85.070 – Ecology has determined that the proposed rule, Wastewater Discharge Permit Fees (chapter 173-224 WAC) may have disproportionate impacts on small businesses. The RFA directs Ecology to determine if there is likely to be disproportionate impact, and if legal and feasible, reduce this disproportionate impact.

The Small Business Economic Impact Statement (SBEIS) is intended to be read with the associated Cost-Benefit Analysis (Ecology publication #15-10-030), which contains more in-depth discussion of the analysis.

## **1.2 Description of the proposed rule**

This rule establishes a revised fee system for state waste discharge and Nation Pollutant Discharge Elimination System (NPDES) permits issued by Ecology.

## **1.3 Reasons for the proposed rule**

The purpose of this rule is to establish a fee system for state waste discharge and NPDES permits issued by Ecology pursuant to RCW 90.48.160, 90.48.162, or 90.48.260. RCW 90.48.465 authorizes the department to base fees on factors related to the complexity of permit issuance and compliance and to charge fees to fully recover, but not exceed the costs of the permit program.

## **1.4 History and Rule Development**

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

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

- Processing permit applications and modifications
- Monitoring and evaluating compliance with permits
- Conducting inspections
- Securing laboratory analysis of samples taken during inspections
- Reviewing plans and documents directly related to operations of permittees

- Overseeing performance of delegated pretreatment programs
- Supporting the overhead expenses that are directly related to these activities

The Washington State Legislature has amended the authorizing statute resulting in inequities between fee categories because Ecology has not been allowed to establish fee amounts based on true costs for issuing and managing some fee types.

Inequities created within the law include:

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

Further inequities were established when Initiative 601 was passed in 1993 by Washington State Voters. This Initiative created a calculation that allows the Washington State Expenditure Limit Committee to determine the percentage rate that state fee programs could increase their fees. This rate typically averages between 3 and 5 percent per year<sup>1</sup>. These limited fee increases have not allowed Ecology to increase fees for those fee types whose revenues are less than what it costs to manage their permits. In order to fund as much of the permit program as possible, Ecology increased fees for all permit fee types by the fiscal growth factor limits. In addition, permits have become more complex and the permit program became federally required to issue and manage permits for industrial and construction stormwater discharges.

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

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

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

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<sup>1</sup> <http://www.elc.wa.gov/sub/fgf.asp>

# Section 2: Analysis of Compliance Costs for Washington Businesses

## 2.1 Introduction

We analyzed the impacts of the proposed rule relative to the baseline of the existing fees, within the context of all existing requirements (federal and state laws and rules). This context for comparison is called the baseline, and reflects the most likely fees that wastewater discharge permittees would face if the proposed rule were not adopted. It is discussed in detail in Section 2.2, below.

## 2.2 Baseline

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

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

## 2.3 Proposed rule amendments

The Office of Financial Management (OFM) fund balance sheet for Fund 176 – Water Quality Permit Fees contains fiscal growth factor increases for fees totaling 4.22% for state fiscal year 2016 and 4.19% for state fiscal year 2017.

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

1. Increase fees for the following fee types (overpaying fee payers) by:

3.25% for fiscal year 2016

3.21% for fiscal year 2017

These fee types include:

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



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

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

5.31% for fiscal year 2016

5.27% for fiscal year 2017

These fee types include:

- Aluminum Alloys,
- Aluminum and Magnesium Reduction Mills,
- Aluminum Forming,
- Aggregate Production – Individual and General Permits,
- Aquatic Pest Control,
- Boatyards – Individual and General Permits,
- Coal Mining and Preparation,
- Concentrated Animal Feeding Operations,
- Dairies,
- Iron and Steel,
- Metal Finishing,
- Nonferrous Metals Forming,
- Ore Mining,
- Private and State owned Facilities,
- Shipyards,
- Stormwater Construction Individual and General Permits,
- Stormwater Industrial Individual and General Permits,
- Stormwater Municipal Phase 1 and 2 Permits.

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

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

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

## **2.4 Fees**

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

- 3.25% for fiscal year 2016 and 3.21% for fiscal year 2017 for overpaying permit categories, and
- 5.31% for fiscal year 2016 and 5.27% for fiscal year 2017 for underpaying permit categories
- 12-cent per RE for fiscal year 2016 and 14-cent (overall) per RE for fiscal year 2017 for municipalities discharging domestic wastewater in excess of 250,000 REs.
- New fee categories for Winery general permits, In-Water Vessel Deconstruction, and Bridge Washing.

## **Section 3: Quantification of Cost Ratios**

### **3.1 Introduction**

The costs attributable to the proposed rule are the increase in fees for permittees.

### **3.2 Affected businesses**

Ecology currently manages nearly 5,600 permits in the various categories. Each of the permitted businesses would be impacted by the rule.

There is one municipality to which the wastewater fee increases apply, but this analysis under the RFA does not cover impacts to public entities.

The In-Water Vessel Deconstruction, Bridge Washing, and Winery general permits are new permits that have no current permittees or have not yet been issued. There are no businesses currently covered by them that would experience a fee increase as the new categories. Moreover, Bridge Washing will only apply to municipalities (not covered under the RFA), and many existing wineries are covered by individual permits, and would experience the increase resulting from the broad fee increases under this rulemaking (unless it later chose to switch to a less-burdensome general permit, as a cost-savings).

This analysis, therefore, only addresses the 5,600 permits with fee changes as described in #1 and #2 in Section 2.3, above.

### **3.3 Cost-to-employee ratios**

Though many of the permitted categories have more than one fee level, these breakpoints are based on the scope and scale of the permitted activity, NOT the size of the business conducting the activity. While it is often the case that smaller businesses conduct smaller permitted activities and larger businesses conduct larger activities, this is far from universal and the opposite may

also be the case. For this reason, permit fees were treated as constant in terms of the number of employees a business has.

Inherently, these constant values divided by a smaller number of employees (fewer than 50) will result in a larger cost-to-employee ratio than if divided by a larger number of employees (greater than 50).

Therefore, the proposed rule may have disproportionate impacts on small businesses.

## **Section 4: Actions Taken to Reduce the Impact of the Rule on Small Businesses**

The permit fee regulation contains language that helps mitigate the impact of fees on small businesses.

WAC 173-224-090 allows business to have their annual fee reduced by fifty percent if they meet the following criteria:

- (a) Be a corporation, partnership, sole proprietorship, or other legal entity formed for the purpose of making a profit;
- (b) Be independently owned and operated from all other businesses (i.e. not a subsidiary of a parent company);
- (c) Have annual sales of one million dollars or less of the goods or services produced using the processes regulated by the permit; and
- (d) Have an original annual fee assessment totaling five hundred dollars or greater.

## **Extreme Hardship Fee Reductions**

Any industrial or construction small business with annual gross revenue totaling one hundred thousand dollars or less of the goods or services produced using the processes regulated by the permit may apply for an extreme hardship fee reduction. If granted, the annual fee is reduced to a flat rate totaling \$128.00.

## **Section 5: The Involvement of Small Businesses and Local Government in the Development of the Proposed Rule**

When the fee regulation was first developed, an advisory committee consisting of representatives of large and small business, state and federal government agencies, municipalities, and environmental groups assisted Ecology in establishing fee category types and fee amounts. In addition, they provided input on how Ecology could mitigate the fees for small business by allowing small business or extreme hardship fee reductions.

Ecology has continued to work with this committee now called the “Water Quality Partnership” and meets when needed to discuss not only proposed fee rule amendments, but other issues surrounding the permit programs. Ecology met with the Partnership prior to the filing of the CR101 for this rule amendment.

Ecology also has a very intense public involvement process which allows permit holders consisting of large and small business, municipalities, state and federal governments, and The Tribes to provide comments on any amendments being proposed to the fee rule.

## **Section 6: The SIC codes of Impacted Industries**

The SIC (Standard Industry Classification) system has long been replaced by the North American Industry Classification System (NAICS). The proposed rule will impact the following industries:

1114	1121	1125	1151	2121	2122
2211	2213	311X	3121	3132	3133
3221	3241	325X	3311	3313	3366
4239	4841	5621	5622	8123	8129

## **Section 7: Impacts on Jobs**

We used the Washington State Office of Financial Management’s 2002 Washington Input-Output Model (OFM-IO) to estimate the proposed rule’s first-round impact on jobs across the state. This methodology estimates the impact as reductions or increases in spending in certain sectors of the state economy flow through to purchases, suppliers, and demand for other goods. Compliance costs incurred by an industry are entered in the OFM-IO model as a decrease in spending and investment. If that money is spent in another industry (in this case, it is in part spent on laboratory analysis), it is entered in the model as an increase in production.

We estimated that there would be a net decrease of 23 jobs, statewide over the two years covered by the proposed rule.