DEPARTMENT OF
ECOLOGY
State of Washington

Small Business Economic Impact Statement

Chapter 173-305 WAC
Hazardous Waste Fee Regulation

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Terminology

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

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Executive Summary

It is important to note that the proposed rule would codify current practice, which is not part of the baseline under the Regulatory Fairness Act (Chapter 19.85 RCW).

Based on research and analysis required by the Regulatory Fairness Act (RFA) – RCW 19.85.070 – Ecology has determined the proposed rule (Chapter 173-305 WAC; Hazardous Waste Fee Regulation) would have a *positive* disproportionate impact on small business, as compared to the baseline of the existing rule. This means, compared to the language of the existing rule, the proposed rule would reduce costs per employee for a typical small business, while leaving costs per employee unchanged for the typical largest ten percent of businesses it covers. Therefore, Ecology did not include disproportion-minimizing features in the rule.

A small business is defined by the RFA as having 50 or fewer employees. Estimated costs are determined as compared to the existing regulatory environment—the way Hazardous Waste fees would be regulated in the absence of the rule amendments, based solely on the rule language. The SBEIS only considers costs to "businesses in an industry" in Washington State. This means that impacts, for this document, are not evaluated for non-profit or government agencies.

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Chapter 1: Introduction and Background

Based on research and analysis required by the Regulatory Fairness Act (RFA) – RCW 19.85.070 – Ecology has determined the proposed rule (Chapter 173-305 WAC; Hazardous Waste Fee Regulation) would have a *positive* disproportionate impact on small business, as compared to the baseline of the existing rule. This means, compared to the language of the existing rule, the proposed rule would reduce costs per employee for a typical small business, while leaving costs per employee unchanged for the typical largest ten percent of businesses it covers. Therefore, Ecology did not include disproportion-minimizing features in the rule.

It is important to note that the proposed rule would not change fee calculations from current practice, which is not part of the baseline under the RFA.

This Small Business Economic Impact Statement (SBEIS) presents the:

- Background for the analysis of impacts on small business relative to other businesses.
- Results of the analysis.
- Cost-mitigating action taken by Ecology, if applicable.
- Expected net impact on jobs statewide.

This document is intended to be read with the associated Cost-Benefit Analysis (Ecology publication #16-04-025).

A small business is defined by the RFA as having 50 or fewer employees. Estimated costs are determined as compared to the existing regulatory environment—the way Hazardous Waste fees would be regulated in the absence of the rule amendments, based solely on the rule language. The SBEIS only considers costs to "businesses in an industry" in Washington State. This means that impacts, for this document, are not evaluated for non-profit or government agencies.

The existing regulatory environment and rule language are called the "baseline" in this document. It includes only existing laws and rules at federal and state levels. It is important to note that the proposed rule would codify current practice.

1.1 Description of the proposed rule

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

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

1.2 Reasons for the proposed rule

1.2.1 Price deflator

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

Ecology is proposing to use the BEA's updated "Implicit Price Deflator for gross ***Domestic*** Product". This is the measure currently reported on the table taken from the National Income and Product Accounts reported by the BEA.

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

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

1.2.2 Fee calculation exclusions

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

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

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

This rulemaking proposes to explicitly add the above wastes as exclusions to the calculation of hazardous waste pounds used in the fee calculation. This will clearly maintain these exclusions in future fee calculations, and bring the rule into line with current practice.
It is important to note that these proposals reflect the status quo of what has been carried out for many years by Ecology. If adopted, there will be no change to those specific fee calculation procedures.

1.3 Regulatory baseline

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

For this proposed rulemaking, the baseline includes:

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

It is important to note that the proposed rule would codify current practice. Under the RFA and for this analysis, current practice is not included in the baseline.

The Hazardous Waste Fee funds "implementation of RCW 70.95C.200 and 70.95C.040. These fees are to be used by the department, subject to appropriation, for plan review, technical assistance to facilities that are required to prepare plans, other activities related to plan development and implementation, and associated indirect costs."[1] The fee is based on a facility's pounds of dangerous waste and pounds of emissions per WAC 173-305-220.
Ecology must first calculate the total fees that they can collect based on the inflation-adjusted total from the previous year, then allocate individual fee burden based on the amounts of emissions, hazardous waste and extremely hazardous waste generated. The burden is affected by a 10-to-1 ratio for extremely hazardous waste versus hazardous waste.

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

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

[1] RCW 70.95.030
[2] Bullets 1, 2, and 4 are in 1990-dollars, and are annually adjusted for inflation.

Chapter 2: Compliance Costs

It is important to note that the proposed rule would codify current practice, which is not part of the baseline under the Regulatory Fairness Act (Chapter 19.85 RCW).

Every year, individual fees are calculated based on the most current year's emissions and hazardous waste generated as reported by individual planners. It's expected that emissions and amounts of hazardous waste generated change each year, both for planners and in total.

The proposed rule reallocates the aggregate fee across hazardous waste planners, as compared to the baseline rule language. This means some fees would be higher under the proposed rule than under the baseline existing rule, while others would be lower. However, the proposed exclusions have been in practice for many years. So, if the proposed exclusions are adopted, there would be no real change from existing fee practice.

Per the baseline and limitations set by the authorizing statute (see Chapter 1), the aggregate fee (total across all parties paying the fee) charged is not affected by the proposed rule. Under both the baseline and proposed rule, the total fees collected shall not exceed the maximum fee allowed by the authorizing statute (Chapter 70.95E RCW).

Ecology calculated and compared the fees for existing planners and potential new planners (who currently pay no fee) based on:

- Only the exclusions to the fee calculation listed in the existing baseline rule language.
- The additional exclusions to the fee calculation listed in the proposed rule language.

We found the following changes to fees across 543 of the roughly 630 existing or potential new fee-paying planners, as compared to the baseline.

Table 1: Number of planners with fee increases, decreases, or no change compared to the baseline rule[3]

Fee decreases	133
Fee increases	309
No change	101
TOTAL	543

[3] Comparison is an estimate based on 2015 Dangerous Waste reports and the 2014 Toxics Release Inventory.

The ranges of fee change are broad, with extremes of fees decreasing $11 – $20,063, or increasing $4 – $5,351. Only a few planners would experience the largest fee changes, as compared to the baseline language. More representative values for a typical planner are:

- Decreases: $1,861 average; $444 median
- Increases: $801 average; $316 median

Businesses that would be charged higher fees could experience reduced sales or revenues if the fee changes would significantly affect the prices of the goods they sell. Similarly, businesses that would be charged lower fees could experience increased sales or revenues if the fee changes would significantly affect the prices of the goods they sell. The degree to which this could happen is strongly related to each business's production and pricing model (whether fees significantly affect marginal costs), as well as the specific attributes of the markets in which they sell goods, including the degree of influence of each firm on market prices, as well as the relative responsiveness of market demand to price changes.

Chapter 3: Quantification of Cost Ratios

Ecology began quantification of cost ratios of fee change (compared to the baseline – the existing rule language) relative to employment by identifying small and large businesses. To determine employment at fee-paying planner businesses, Ecology used a representative random sample (99) of planners in Washington State. We collected employment information from available state records at the Employment Security Department, as well as company websites, reports to shareholders, and federal filings. This process also identified whether planners were not-for-profit or public entities. Because many employment values were ranges, we used the low-end employment number to maintain conservative assumptions about whether businesses were small or large.

Table 2: Proportions of planner businesses by size

Business Size	Percentage
Small (50 or fewer employees)	17.2%
Large (greater than 50 employees)	72.7%
Not-for-profit or government	10.1%
Total	100.0%

The average employment at a small business was 20 employees, while it was 746,500 at the largest ten percent of businesses.[4]

We then used the employment information for the representative sample, as well as the estimated fee change under the proposed rule as compared to the baseline, to estimate the average cost per employee at the sampled businesses. We found that on average the proposed rule:

- Reduces fees for small businesses (average reduction of over $21 per employee).
- Leaves fees relatively unchanged for the largest ten percent of businesses (average fee change of 0.35 cents per employee)

The proposed rule therefore does disproportionately impact small businesses, but does so positively in comparison to its impact on the largest ten percent of businesses. Recall that this is as compared to the baseline of the existing rule language, and is not likely to be reflected in practice. This is because the proposed rule would codify existing practice.

[4] Employment data is gathered from data reported to the state, business websites, reports, and filings, and third-party reporting sites.

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Chapter 4: Action Taken to Reduce Small Business Impacts

The proposed rule would have a *positive* disproportionate impact on small businesses, reducing fees by over $21 per employee, as compared to near $0 change per employee for the largest ten percent of businesses. This is as compared to the baseline existing rule language; actual change from current practice would be zero, as the proposed rule would codify current practice. Ecology, therefore, did not add elements to the proposed rule that reduce disproportionate costs to small businesses.

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Chapter 5: Small Business and Government Involvement

Ecology involved small businesses and local government in its development of the proposed rule, using:

- An informal public meeting in August 2016.
- An informal public webinar in September 2016.
- The Hazardous Waste Fee Rule listserv.

The likely interested audiences included:

- Hazardous waste planning fee payers.
- Local, state, and tribal governments.
- Environmental organizations.
- Business associations.

Webinar attendees included identified representatives from:

- Intel Corporation
- Columbia Machine, Inc.
- ConAgra Foods Lamb Weston
- Cordant Health Solutions
- General Dynamics NASSCO-Bremerton
- Abernathy FTC
- City of Spokane
- Sierra Pacific Industries
- Trident Seafoods
- AvtechTyee
- Rainier Ballistics
- Seattle City Light
- Columbia Machine, Inc.
- Washington State Dental Association
- Fiber-Tech Industries
- Interfor
- City of Kennewick
- Cellnetix
- Boeing
- Bonneville Power Administration
- WA Department of Corrections
- Allweather Wood
- Lake Union Drydock Co.

In-person public meeting attendees did not identify themselves as representing an organization or business.

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Chapter 6: NAICS Codes of Impacted Industries

The proposed rule covers planners in a variety of industries. Based on a representative sample of planners in Washington State, Ecology identified the following likely impacted North American Industry Classification System (NAICS) codes.

Table 3: NAICS codes of likely affected industries

2212	3255	3312	3329	3366	4244	4511	7139
2389	3259	3313	3331	3371	4246	4521	8111
3211	3261	3323	3344	3391	4412	4861	8114
3222	3262	3324	3345	3399	4441	4931	
3253	3272	3327	3364	4237	4461	5619	

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Chapter 7: Impact on Jobs

Ecology used the Washington State Office of Financial Management's 2007 Washington Input-Output Model[5] to estimate the impact of the rule on jobs in the state. The model accounts for inter-industry impacts and spending multipliers of earned income and changes in output.

The proposed rule would result in planners in various industries paying increased or decreased fees to the government sector, as compared to the baseline existing rule language. As the OFM model does not include the general public sector, we treated these increased or reduced fee expenditures as increased or decreased contribution to producing output, without transfers of money to another sector.

We based our jobs calculation on the same representative sample used to calculate costs per employee, for which we had NAICS codes and fee changes under the proposed rule as compared to the baseline, as well as the same conservative assumption that for businesses with a range of reported employees, the low-end number of employees determines whether we identify them as small or large businesses. **The OFM model determined that the proposed rule is not likely to affect the total number of jobs in the state.** Moreover, the proposed rule would codify existing practice, so planners would not see real changes in fees as a result of the proposed rule.

[5] See the Washington State Office of Financial Management's site for more information on the Input-Output model. http://www.ofm.wa.gov/economy/io/2002/default.asp