



DEPARTMENT OF
ECOLOGY
State of Washington

Concise Explanatory Statement

Chapter 173-224 WAC Water Quality Permit Fees

Summary of rulemaking and response to comments

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Publication and Contact Information

This report is available on the Department of Ecology's website at <https://fortress.wa.gov/ecy/publications/SummaryPages/1910030.html>

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Concise Explanatory Statement

*Chapter 173-224 WAC
Water Quality Permit Fees*

Water Quality Program
Washington State Department of Ecology
Olympia, Washington

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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: Water Quality Permit Fees

WAC Chapter(s): 173-224

Adopted date: June 26, 2019

Effective date: July 27, 2019

To see more information related to this rulemaking or other Ecology rulemakings please visit our website: <https://ecology.wa.gov/About-us/How-we-operate/Laws-rules-rulemaking>.

Reasons for Adopting the Rule

Adopting this rule allows Ecology to continue to fund wastewater and stormwater permit programs that protect surface and ground waters of the state.

Brief History Leading to this Rule Adoption

The Department of Ecology has been issuing federal National Pollutant Discharge Elimination System (NPDES) permits and State Waste Discharge Permits since the 1970's. The permit program was initially funded out of state general fund monies. 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.

The wastewater permit fee portion of Initiative 97 was later codified as RCW 90.48.465 – Water Discharge Fees and requires Ecology to establish fees to collect expenses for issuing and administering wastewater and stormwater permits. In response to this mandate, Ecology adopted Chapter 173-224 WAC – Wastewater Discharge Permit Fees that establishes annual fees for over 165 categories/subcategories of permit types. Over the years, this law has been amended by the Washington State Legislature and as a result of those amendments, inequities were created between fee categories because Ecology has not been allowed to recover its 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.

Due to these inequities created with state law, some fee category types became over-payers, meaning the fees they pay are greater than the costs of managing their permits, and some category types are under-payers, meaning the fees they pay are less than the costs of managing their permits. Monies received from the over-payers subsidize the costs of managing permits for the 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.

Current Proposed Amendments

In this rule-making proposal, Ecology is using its legislative authority for increasing fees and has begun addressing the inequities between fee payers by doing the following:

Increasing fees for the following fee types (overpaying fee payers) by:

- 0% for fiscal year 2020
- 0% for fiscal year 2021

Increasing fees for the following fee types (underpaying fee payers) by:

- 4.62% for fiscal year 2020
- 5.43% for fiscal year 2021

Differences Between the Proposed Rule and Adopted Rule

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

There are some differences between the proposed rule filed on March 7, 2019 and the adopted rule filed on June 26, 2019. Ecology made these changes for all or some of the following reasons:

- In response to comments we received.
- To ensure clarity and consistency.
- To meet the intent of the authorizing statute.

The following content describes the changes and Ecology's reasons for making them. Where a change was made solely for editing or clarification purposes, we did not include it in this section.

During this rulemaking, Ecology's initial proposed language for the market research and development fee reduction did not capture the intent to focus on the facility's wastewater permitted discharges that these fees are assessed against. Ecology determined the goals and objectives of the authorizing statute are better met by clarifying reduction eligibility criteria to more closely align with the potential to reduce wastewater discharge pollutants, permitting complexity, and the associated costs Ecology is required to recover.

List of Commenters and Response to Comments

Response to Comments

Ecology accepted comments beginning March 7, 2019 until April 23, 2019. Each comment is identified by the commenter using the Commenter Index below. Responses 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 individuals and the organizations they represent who submitted a comment on the rule proposal and where you can find Ecology's response to the comment(s).

No oral comments were received during the public hearing. Identification codes beginning with "E" indicate comments submitted via eComments.

Commenter/Affiliation	Identification Code
Anonymous Anonymous	E-1
John Girt N/A	E-2
William Emmerson N/A	E-3
Ken Gill City of Fife	E-4
Troy Wood WA Department of Natural Resources Derelict Vessel Removal Program	E-5
Josie Cummings Building Industry Association of Washington	E-6

Comments Concerning Expanding the Program or Services

Comment E-1

Ecology is proposing to increase fees for Fiscal Years 2020 and 2021 in order to collect the revenue needed to recover the costs of administering the wastewater and stormwater programs next biennium and move closer to payment equity between fee categories.

Rather than constantly trying to grow the program and thus create more need for administration, stream line the process, cut out the incompetent and entitled employees and stop demanding the public support this overinflated department. Demand your employees earn their paycheck.

Comment E-6

The Building Industry Association of Washington (BIAW) appreciates the opportunity to comment on the Department of Ecology's rulemaking on the amendment to Chapter 173-224 WAC, Water Quality Permit Fees. BIAW represents over nearly 8,000 Washington businesses engaged in all aspects of home construction and is the champion of affordable housing in Washington State. BIAW is dedicated to ensuring and enhancing the vitality of the building industry so members can meet the housing needs of Washington citizens.

A fee pays for a product or service. For the fees relating to residential construction and stormwater, or any fee increase, in general, there should be a measurable improvement to the product or service that is being provided. With the economy being the strongest it has been in over a decade increased fees every two years just doesn't make sense. We are in the midst of an affordable housing crisis and raising fees will be passed onto home buyers. How can homes be more affordable if government agencies are taking every opportunity to make it more expensive? BIAW opposes the fee increases in WAC Chapter 173-224.

Ecology Response

Per RCW 90.48.465, Ecology is required to recover the cost of issuing and administering each class of permit. The proposed fees only cover the existing cost to administer and do not grow the program.

Comments Concerning Reducing Fees

Comment E-3

The fee structure proposed needs to fairly assess the services used by each industry group. Overpaying fee categories should be reduced by the amount they are over paying; it is irresponsible to the citizens of Washington for this governmental organization to charge anymore [sic] than the actual cost to do the work associated with that industry group. Over charging (overpayment for government service) hurts growth, innovation and makes Washington less competitive in the global economy.

Underpaying categories should be increased to make up what they are not paying. Each industry must cover the cost for it to be regulated.

Fees have consistently grown and there has not been a noteworthy shift in industry, Ecology needs to become better equipped and more efficient.

Comment E-5

The Derelict Vessel Removal Program (DVRP) would like to reduce the overall time and costs associated with this permit so we might use those savings to remove more vessels. A ten-percent increase in the cost for a vessel deconstruction permit is harmful to not only DNR's DVRP, by reducing limited resources for vessel removals, but to Ecology's goal of protecting and minimizing the effects of vessel removals on the environment. We understand that Ecology is looking to recoup its employee-hour costs required to manage this permit. However, for every dollar Ecology charges for a permit, it costs the Derelict Vessel Removal Program an additional

15% by our contractors. Because State contracts allow a surcharge on permit fees, under the proposed permit cost of \$19,157, the full cost of the permit to the DVRP would be \$22,030. The permit funds saved by DVRP would benefit the whole State by:

- Removing approximately four more Vessel Turn-in Program (VTIP) vessels;
- Preventing potential Ecology emergency spill responses from non-removed vessels saving valuable employee-hours and resources;
- Removing more vessels from the environment with the savings from a reduced permit fee;
- A large permit fee could be a barrier to Ecology's goal of removing or preventing damaging contaminants from entering the State's ecosystem by preventing vessel removals.

The current permit fees were calculated from the costs associated with a 2011 very large vessel removal of the Davy Crockett, a 431-foot WWII Liberty Ship. Another vessel removal of that caliber has not occurred since. A more relevant comparison would be a three-day vessel deconstruction of a 70-foot wooden fishing trawler on a barge, which does not compare in permit costs to the 11-month in water deconstruction of the "Davy Crockett."

In accordance with WAC 173-224-015, "...Fee amounts contained in this chapter represent the department's true estimate of fee eligible permit program costs and reflect the department's commitment to fully recover all eligible expenses..." It seems that the permit fees are based on a one time, worst-case scenario, and that Ecology is not taking in to account all of the potential cost savings from a lower permit fee. The high fees for the vessel deconstruction permit present a barrier to achieving the purpose for Ecology's site engineering and inspection permit requirements - the prevention of unmitigated environmental damage. WAC 173-224 primarily applies to permits that respond to projects that present a risk to the environment, like Aluminum Forming, whereas the vessel deconstruction permits directly mitigate damages to the environment.

Ecology has the discretion to charge fees based on its estimation of permit program costs in accordance with the WAC. We are asking Ecology to take into account the benefit that a lower vessel deconstruction permit fee could have on the environment, rather than designing the fee to recoup the employee-hour expenditures that it has historically taken to manage this permit. Suggested scheme if a fee is required: (Recognizing that a free permit would provide the fewest barriers to vessel removal.)

1. Base the fee on the vessel's location, whether the vessel is in the water, on a barge, or near shore; and how the vessel will be removed.

- Example: If a vessel is being deconstructed on a barge, it requires a different set and amount of engineered safe guards than a vessel deconstructed in the water. The engineered safe guards and testing on a barge deconstruction will be the same for a 35' fiberglass hulled vessel as it would be for a 65' wooden hulled vessel. The same would apply to in water deconstructions.
- Adding a time component may be of use as well. Ecology's employee-hours and engineering commitment would vary based on the amount of time it would take to deconstruct a vessel. For example: a barge deconstruction typically take less than a month regardless of vessel size, while in water deconstructions take varying amounts of time depending on the size.

- Pricing scheme: Ecology's vessel deconstruction permit costs are based on the costs associated with the Davy Crockett, which cost \$22 million, or at least four times the cost of any vessel deconstruction in Washington history. These costs do not compare with nor represent any of the costs for permits issued since. Therefore, the permit costs should be based on the actual costs of the most recent permits issued and for the different types of deconstruction.

Other suggested improvements to the vessel deconstruction permit:

2. Regarding S2.A.1.b., at least 60 days prior to work starting, reduce to 15 days or less.
 - Reasoning: There is a high cost associated with waiting to deconstruct a vessel.
 - Example: In one case, the cost of the delay in starting work was over \$17,000 just for a barge rental. To put that in perspective, it costs the DVRP, an average of \$5,000 to \$6,000 to remove a recreational abandoned or derelict vessel. For \$17,000, the DVRP could have removed an additional three vessels.
3. Regarding G6, Reporting a cause for modification 60 days prior to making a change, reduce to three to four days.
 - Reasoning: Our vessel deconstructions usually do not take more than a few weeks unless they are being cut up in a shipyard. A 60-day delay to modify a permit would make our timelines difficult to achieve. A delay in deconstruction would not only be more costly, but it may not be feasible for an in-water deconstruction. Stopping work mid-project would place people and the environment at risk.
 - Example: If a vessel deconstruction behind a weir dam were delayed for two months for a permit change, personnel and equipment be needed to maintain the dam's structural integrity and dewatering efforts. Maintaining a deconstruction site's status quo for over 120 tidal cycles in a river has too many variables to maintain a safe working environment, not to mention the added costs of staffing the site 24-7 for 2 months (e.g. the Hero in the Palix River). It would be safer and more efficient to have a permit engineer on call to issue permit changes mid project allowing for a safer and more efficient process.

In the DVRP's most recent experience with the Vessel Deconstruction Permit, the six-week public comment period and its associated cost presented the largest barriers to achieving both DNR and Ecology's goals to safe guarding Washington waters.

Ecology Response

While Ecology continues to work towards fee equity, some fees are capped in statute, prohibiting Ecology for recovering the cost of administering the permit. In other cases, to raise the fees to completely recover those costs would drive many small operators out of the industry altogether. Ecology is committed to examining alternate fee systems to ensure continued full recovery of eligible program costs and continues to evaluate to data used to generate the fees for all categories.

Comment Concerning Smaller Tiers

Comment E-2

Small/start-up wineries have enough barriers that the [sic] should not be classified in the same level as those approaching 25,000 Gallans [sic]. That is over 10,000 cases of wine. Wineries starting production rarely make 2,000 cases there first couple of years. The fee structure proposed has significant impact on their cost per gallon. There should either be a lower tier where small producers are exempt or the tier structure should be dropped in favor of a per gallon fee. This is not burdensome for wineries as they already report the number to both the state and federal government. Tiered fees are unfair to those who produce at low end of range. Larger wineries have the ability to treat their waste water before it hits the environment. I see no accommodations for large producers who do not impact the environment at all.

Ecology Response

We understand the desire to further refine the lowest tier for smaller producers. However, the proposed tiers were developed with industry input and assistance. All fees consider the administrative requirements of permit processing and implementation. On a site producing 2,000 cases of wine (4,756 gallons), Ecology finds the cost of administering that permit to be similar to the cost of administering a permit on all sites producing less than 25,000 gallons. Ecology must recover these costs per RCW 90.48.465. Likewise, while treatment systems do reduce pollutants, they also require inspection and, in cases involving chemical treatment, require Ecology engineering review and approval.

Comment Concerning Current and Proposed Fee Rate

Comment E-4

What is Fife currently paying for our Stormwater Municipal Phase II permit and what will Fife pay if the current proposed fee increase is adopted?

Ecology Response

The fiscal year 2019 fee for this permit was \$3,354.41 (3769 housing units at \$.089 per unit). Assuming the housing units remain unchanged, the proposed fiscal year 2020 fee would be \$3,505.17 (3769 housing units at \$0.93 per unit).

Appendix A: Citation List

This citation list contains references for data, factual information, studies, or reports on which the agency relied in the adoption for this rule making (RCW 34.05.370(f)).

At the end of each citation is a number in brackets identifying which of the citation categories below the sources of information belongs. (RCW 34.05.272).

Citation Categories	
1	Peer review is overseen by an independent third party.
2	Review is by staff internal to Department of Ecology.
3	Review is by persons that are external to and selected by the Department of Ecology.
4	Documented open public review process that is not limited to invited organizations or individuals.
5	Federal and state statutes.
6	Court and hearings board decisions.
7	Federal and state administrative rules and regulations.
8	Policy and regulatory documents adopted by local governments.
9	Data from primary research, monitoring activities, or other sources, but that has not been incorporated as part of documents reviewed under other processes.
10	Records of best professional judgment of Department of Ecology employees or other individuals.
11	Sources of information that do not fit into one of the other categories listed.

1. Ecology’s fund balance sheet for Fund 176 – Water Quality Permit Fees [2]
2. RCW 90.48.465 – Water Pollution Control Water Discharge Fees [7]