



## **Preliminary Regulatory Analyses:**

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Including the:

- Preliminary Cost-Benefit Analysis
- Least-Burdensome Alternative Analysis
- Administrative Procedure Act Determinations
- Regulatory Fairness Act Compliance

*Chapter 173-224 WAC*

*Water Quality Permit Fees*

By

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For the

Water Quality Program

Washington State Department of Ecology

Olympia, Washington

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# Department of Ecology's Regional Offices

## Map of Counties Served



<b>Southwest Region</b> 360-407-6300	<b>Northwest Region</b> 425-649-7000	<b>Central Region</b> 509-575-2490	<b>Eastern Region</b> 509-329-3400
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Region	Counties served	Mailing Address	Phone
<b>Southwest</b>	Clallam, Clark, Cowlitz, Grays Harbor, Jefferson, Mason, Lewis, Pacific, Pierce, Skamania, Thurston, Wahkiakum	PO Box 47775 Olympia, WA 98504	360-407-6300
<b>Northwest</b>	Island, King, Kitsap, San Juan, Skagit, Snohomish, Whatcom	3190 160th Ave SE Bellevue, WA 98008	425-649-7000
<b>Central</b>	Benton, Chelan, Douglas, Kittitas, Klickitat, Okanogan, Yakima	1250 W Alder St Union Gap, WA 98903	509-575-2490
<b>Eastern</b>	Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Lincoln, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman	4601 N Monroe Spokane, WA 99205	509-329-3400
<b>Headquarters</b>	Across Washington	PO Box 46700 Olympia, WA 98504	360-407-6000

# Preliminary Regulatory Analyses

Including the:

- Preliminary Cost-Benefit Analysis
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*Chapter 173-224 WAC, Water Quality Permit Fees*

Water Quality Program  
Washington State Department of Ecology

Olympia, WA  
March 2021 | Publication 21-10-002



DEPARTMENT OF  
**ECOLOGY**  
State of Washington

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# Acronyms

APA	Administrative Procedure Act
CBA	Cost Benefit Analysis
COVID-19	Coronavirus disease 2019
DES	Washington Department of Enterprise Services
EPA	United States Environmental Protection Agency
GP	General Permit
LBA	Least-Burdensome Analysis
NCCW	Noncontact Cooling Water
RCW	Revised Code of Washington
RFA	Regulatory Fairness Act
VDGP	Vessel Discharge General Permit
WAC	Washington Administrative Code



# Executive Summary

This report presents the determinations made by the Washington State Department of Ecology (Ecology) as required under chapters 34.05 RCW and 19.85 RCW, for the proposed amendments to the Water Quality Permit Fees rule (chapter 173-224 WAC; the “rule”). This includes the:

- Preliminary Cost-Benefit Analysis (CBA)
- Least-Burdensome Alternative Analysis (LBA)
- Administrative Procedure Act Determinations
- Regulatory Fairness Act Compliance

Wastewater and stormwater discharge permits are the state’s primary tool to prevent water pollution. Ecology uses the permit system, authorized under the Federal Clean Water Act National Pollutant Elimination Discharge System and the state waste discharge programs, to protect water quality.

Ecology administers 16 different types of wastewater and stormwater general permits (GP) and many individual permits. General permits cover a category of similar dischargers, like Boatyards and Construction Stormwater. Individual permits are tailored for single, specific facilities or activities like food processing or pulp mills.

RCW 90.48.465 requires Ecology to establish, by rule, annual permit fees to recover the cost of administering the wastewater and stormwater permit programs. Ecology adopted Chapter 173-224 WAC – Water Quality Permit Fees in response to this law, after voters approved Initiative 97 in 1988 (later codified as RCW 90.48.465) and Initiative 601 in 1993 (later codified as RCW 43.165). These initiatives required that Ecology create a fee schedule to recover the costs associated with managing the program. Ecology adopted latest amendments to the rule on June 26, 2019.

Fee amounts are assessed based on a variety of factors, depending on the fee category. Most commonly they are assessed based on the permitted maximum gallons discharged per day. But for some categories, like fruit packers and wineries, the fee is based on annual production or type of industry.

The statute also requires that the department, in establishing the fees, consider the economic impact on small discharges and public entities, and provide appropriate adjustments where applicable. Ecology addresses this requirement through the small business and economic hardship discounts that are available to permittees that meet the criteria established in rule.

The proposed rule amendments would make the following changes:

- Maintaining permit fees at fiscal year 2021 levels.
- Updating Noncontact Cooling Water with Additives - Individual Permit fee.
- Creating new permit fee sub-categories for the Vessel Deconstruction General Permit
- Creating a fee category for the Puget Sound Nutrients General Permit

- Aligning the collections surcharge for delinquent payments with the statewide rate.

The proposed rule amendments would also make several technical changes to the document with no impact on costs or benefits, such as:

- Clarifying the structure for Dairy permits fee schedule by updating the formatting.
- Deleting fee category Facilities Not Otherwise Classified - General Permit Coverage.
- Clarifying that unpaid permit fees owed by a previous permittee are the liability of a new permittee.
- Clarifying that facilities covered under the Construction Stormwater General Permit are not eligible to apply for a fee reduction.

The Washington Administrative Procedure Act (APA; RCW 34.05.328(1)(d)) requires Ecology to evaluate significant legislative rules to “determine that the probable benefits of the rule are greater than its probable costs, taking into account both the qualitative and quantitative benefits and costs and the specific directives of the law being implemented.” Chapters 1 – 5 of this document describe that determination.

The APA also requires Ecology to “determine, after considering alternative versions of the rule...that the rule being adopted is the least burdensome alternative for those required to comply with it that will achieve the general goals and specific objectives” of the governing and authorizing statutes. Chapter 6 of this document describes that determination.

The APA also requires Ecology to make several other determinations (RCW 34.05.328(1)(a) – (c) and (f) – (h)) about the rule, including authorization, need, context, and coordination. Appendix A of this document provides the documentation for these determinations.

The Washington Regulatory Fairness Act (RFA; chapter 19.85 RCW) requires Ecology to evaluate the relative impact of proposed rules that impose costs on businesses in an industry. It compares the relative compliance costs for small businesses to those of the largest businesses affected. Chapter 7 of this document documents that analysis, when applicable.

All determinations are based on the best available information at the time of publication. We encourage feedback (including specific data) that may improve the accuracy of this analysis.

### **Costs**

Updating Noncontact Cooling Water with Additives individual permit fee would increase costs by three dollars (from \$1,713 to \$1,716) per year and affect one permittee.

### **Benefits**

The total annual permit fees for different types of Vessel Deconstruction General Permit would decrease by \$13,597 for on-land deconstruction, by \$12,297 for on barge deconstruction.

The total 20-year present value for the change caused by adding subcategories would result in decreased costs (increased benefits) for each permittee that range from \$174,861

in a scenario where all projects are on barge to \$203,446 in a scenario where all projects are on-land.

For an “All inactive” scenario we estimated a decrease in costs by \$4,274 annually (\$5,050 vs \$775 respectively).

After considering alternatives to the proposed rule’s contents, within the context of the goals and objectives of the authorizing statute, we determined that the proposed rule represents the least-burdensome alternative of possible rule contents meeting the goals and objectives.

We analyzed the costs of the proposed rule amendments in Chapter 3 of this document and benefits in Chapter 4. For the proposed rule amendments only benefits (avoided compliance costs) would accrue for permittees under the Vessel Deconstruction General Permit. According to RCW 19.85.030(1)(a)(i), which states “an agency shall prepare a small business economic impact statement if the proposed rule will impose more than minor costs on businesses in an industry” this rulemaking is exempt from the requirements of the Regulatory Fairness Act (“RFA”; chapter 19.85 RCW). By generating reductions in compliance costs, the proposed rule inherently imposes less than minor costs on these entities.

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# Chapter 1: Background and Introduction

## 1.1 Introduction

This report presents the determinations made by the Washington State Department of Ecology (Ecology) as required under chapters 34.05 RCW and 19.85 RCW, for the proposed amendments to the Water Quality Permit Fees rule (chapter 173-224 WAC; the “rule”). This includes the:

- Preliminary Cost-Benefit Analysis (CBA)
- Least-Burdensome Alternative Analysis (LBA)
- Administrative Procedure Act Determinations
- Regulatory Fairness Act Compliance

The Washington Administrative Procedure Act (APA; RCW 34.05.328(1)(d)) requires Ecology to evaluate significant legislative rules to “determine that the probable benefits of the rule are greater than its probable costs, taking into account both the qualitative and quantitative benefits and costs and the specific directives of the law being implemented.” Chapters 1 – 5 of this document describe that determination.

The APA also requires Ecology to “determine, after considering alternative versions of the rule...that the rule being adopted is the least burdensome alternative for those required to comply with it that will achieve the general goals and specific objectives” of the governing and authorizing statutes. Chapter 6 of this document describes that determination.

The APA also requires Ecology to make several other determinations (RCW 34.05.328(1)(a) – (c) and (f) – (h)) about the rule, including authorization, need, context, and coordination. Appendix A of this document provides the documentation for these determinations.

The Washington Regulatory Fairness Act (RFA; chapter 19.85 RCW) requires Ecology to evaluate the relative impact of proposed rules that impose costs on businesses in an industry. It compares the relative compliance costs for small businesses to those of the largest businesses affected. Chapter 7 of this document documents that analysis, when applicable.

All determinations are based on the best available information at the time of publication. We encourage feedback (including specific data) that may improve the accuracy of this analysis.

### 1.1.1 Background

Wastewater and stormwater discharge permits are the state’s primary tool to prevent water pollution. Ecology uses the permit system, authorized under the Federal Clean Water Act National Pollutant Elimination Discharge System and the state waste discharge programs, to protect water quality.

Ecology administers 16 different types of wastewater and stormwater general permits and many individual permits. General permits cover a category of similar dischargers, like boatyards and construction stormwater. Individual permits are tailored for single, specific facilities or activities like food processing or pulp mills.

RCW 90.48.465 requires Ecology to establish, by rule, annual permit fees to recover the cost of administering the wastewater and stormwater permit programs. Ecology adopted Chapter 173-224 WAC – Water Quality Permit Fees in response to this law, after voters approved Initiative 97 in 1988 (later codified as RCW 90.48.465) and Initiative 601 in 1993 (later codified as RCW 43.165). These initiatives required that Ecology create a fee schedule to recover the costs associated with managing the program. Ecology adopted latest amendments to the rule on June 26, 2019.

Fee amounts are assessed based on a variety of factors, depending on the fee category. Most commonly they are assessed based on the permitted maximum gallons discharged per day. But for some categories, like fruit packers and wineries, the fee is based on annual production or type of industry.

The statute also requires that the department, in establishing the fees, consider the economic impact on small discharges and public entities, and provide appropriate adjustments where applicable. Ecology addresses this requirement through the small business and economic hardship discounts that are available to permittees that meet the criteria established in rule.

## **1.2 Summary of the proposed rule amendments**

The proposed rule amendments would make the following changes:

- Maintaining permit fees at fiscal year 2021 levels.
- Updating Noncontact Cooling Water with Additives - Individual Permit fee.
- Creating new permit fee sub-categories for the Vessel Deconstruction General Permit.
- Creating a fee category for the Puget Sound Nutrients General Permit.
- Aligning the collections surcharge for delinquent payments with the statewide rate.

### **1.2.1 Technical corrections to the rule**

The proposed rule amendments would make several technical changes to the document with no impact on costs or benefits, such as:

- Clarifying with the formatting the structure for Dairy permits fee schedule.
- Deleting fee category Facilities Not Otherwise Classified - General Permit Coverage.
- Clarifying that unpaid permit fees owed by a previous permittee are the liability of a new permittee.
- Clarifying that facilities covered under the construction stormwater GP are not eligible to apply for a fee reduction.

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

### **Maintaining permit fees at fiscal year 2021 levels.**

Ecology adjusts permit fees every two years to keep pace with economic inflation and continue moving toward payment equity between fee categories. Underpaying fee categories develop

when initial fee setting assumptions and number of potential permittees are off for what it truly costs to administer a permit. And sometimes the statute caps the fee amount. For example, the 18 cents per residential equivalent cap for municipal wastewater facilities in RCW 90.48.465 that hasn't been increased since 2009. However, the proposed rule amendments would maintain existing fiscal year (FY) 2021 permit fees for FY 2022 and FY 2023 at FY 2021 rates, because the Governor's 2021-23 Budget proposal reduces costs to mitigate Coronavirus disease 2019 (COVID-19) pandemic and related major economic impacts.<sup>2</sup>

### **Updating Noncontact Cooling Water with Additives - Individual Permit fee.**

This amendment would increase Noncontact Cooling Water with Additives Individual Permit from \$1,713 to \$1,716. This is a correction of an error as this fee should have been greater or at least the same as the general permit fee for the same category (\$1,716) because administering general permits with similar discharge characteristics and requirements is less costly than developing a tailored and specific individual permit. This change affects one permittee only.

### **Creating new permit fee sub-categories for the Vessel Deconstruction General Permit.**

In response to Washington State Department of Natural Resources comments from the last rulemaking, Ecology is proposing to add fee subcategories for vessel deconstruction to assess a base permit fee plus fees based on the number and complexity of projects completed, instead of the current single fee.

### **Creating a fee category for the Puget Sound Nutrients General Permit.**

In the beginning of 2020, Ecology announced the decision to move forward with developing the Puget Sound Nutrients General Permit and expects to issue the permit in 2021. Ecology is proposing to create a fee category to reflect the costs of implementing the new permit.

### **Aligning fixed percentage of collection surcharge with statewide rate.**

Bringing the surcharge into line with statewide RCW 19.16.500 that allows collection agencies to charge a reasonable fee rather than a fixed percentage. Ecology contracts for these services through the state's Department of Enterprise Services (DES) Debt Collection Services Master Contract. Since the fee in the current contract is more than the percentage in rule, Ecology is not able to send delinquent accounts for collection until the rule is amended.

## **1.3.1 Reasons for technical corrections to the rule**

The proposed rule amendments would make several technical changes to the document with no impact on costs or benefits, such as:

- Changing formatting to clarify structure for the Dairy permits fee schedule, as they were renewed under the Concentrated Animal Feeding Operation Permit. This fee formatting change reflects the permit change and makes it clear that Dairy fees fall under the Concentrated Animal Feeding Operation permit.

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<sup>2</sup> <https://www.ofm.wa.gov/budget/state-budgets/gov-inslees-proposed-2021-23-budgets/agency-recommendation-summaries/461>

- Deleting fee category Facilities Not Otherwise Classified - General Permit Coverage, as there is no corresponding permit type. Instead, Ecology uses Facilities Not Otherwise Classified – Individual Permit for unique sites that do not fit well in the other industrial fee categories.
- Clarifying that unpaid permit fees owed by a previous permittee are the liability of a new permittee. Current business practice is based on permit conditions that state a new permittee assumes “permit responsibility, coverage, and liability” based on the transfer date specified when they sign the Transfer of Coverage form. Ecology proposes to add this clarification for transparency to encourage new permittees to check on outstanding fees owed before assuming permit liabilities.
- Clarifying that facilities covered under the Construction Stormwater General Permit (together with those covered by the Industrial Stormwater General Permit) are not eligible to apply for a fee reduction. Fee reductions are intended for businesses with “annual sales of one million dollars or less of the goods or services produced using the processes regulated by the waste discharge or stormwater discharge permit.”<sup>3</sup> Construction is not a business that produces goods or services from managing stormwater pollution on a property (the process that is regulated).

## 1.4 Document organization

The remainder of this document is organized in the following chapters:

- **Baseline and the proposed rule amendments (Chapter 2):** Description and comparison of the baseline (what would occur in the absence of the proposed rule amendments) and the proposed rule requirements.
- **Likely costs of the proposed rule amendments (Chapter 3):** Analysis of the types and sizes of costs we expect impacted entities to incur as a result of the proposed rule amendments.
- **Likely benefits of the proposed rule amendments (Chapter 4):** Analysis of the types and sizes of benefits we expect to result from the proposed rule amendments.
- **Cost-benefit comparison and conclusions (Chapter 5):** Discussion of the complete implications of the CBA.
- **Least-Burdensome Alternative Analysis (Chapter 6):** Analysis of considered alternatives to the contents of the proposed rule amendments.
- **Regulatory Fairness Act Compliance (Chapter 7):** When applicable. Comparison of compliance costs for small and large businesses; mitigation; impact on jobs.
- **APA Determinations (Appendix A):** RCW 34.05.328 determinations not discussed in chapters 5 and 6.

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<sup>3</sup> Water Quality Permit Fees - WAC 173-224-090 (2)(a)(iii)



# Chapter 2: Baseline and Proposed Rule Amendments

## 2.1 Introduction

We analyzed the impacts of the proposed rule amendments relative to the existing rule, 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 regulatory circumstances that entities would face if the proposed rule was not adopted. It is discussed in Section 2.2, below.

## 2.2 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 rulemaking, the baseline includes:

- Existing rule – Chapter 173-224 WAC – Water Quality Permit Fees
- Chapter 90.48 RCW Water Pollution Control; in particular, RCW 90.48-465 Water discharge fees – Report to the legislature.
- Chapter 19.16 RCW Collection Agencies; in particular, RCW 19.16.500.

## 2.3 Proposed rule amendments

The proposed rule amendments would make the following changes:

- Maintaining permit fees at fiscal year 2021 levels.
- Updating Noncontact Cooling Water with Additives - Individual Permit fee.
- Creating new permit fee sub-categories for the Vessel Deconstruction General Permit.
- Creating a fee category for the Puget Sound Nutrients General Permit.
- Aligning the collections surcharge for delinquent payments with the statewide rate.

### **2.3.1 Maintaining permit fees at fiscal year 2021 levels.**

#### **Baseline**

Ecology adjusts permit fees every two years to maintain pace with inflationary cost factors and continue moving toward payment equity between fee categories.

#### **Proposed**

Ecology is maintaining permit fees for FY 2022 and FY 2023 at FY 2021 rates, because the Governor's 2021-23 Budget proposal reduces costs to mitigate COVID-19 pandemic and related major economic impacts.<sup>4</sup>

#### **Expected impact**

Since fees are based on likely costs of administering permits, based on budget forecasts, Ecology has to keep the costs and value of its services at the same level. This amendment makes no change to the baseline, although Ecology may need to reduce some program services due to the Governor's 2021-23 Budget that proposed monthly one-day furloughs for most agency employees, which would result in more time needed to process applications, revisions, and renewals. We therefore do not expect costs or benefits from this proposed rule amendment, as compared to the baseline.

### **2.3.2 Updating Noncontact Cooling Water with Additives - Individual Permit fee.**

#### **Baseline**

The existing rule sets fees for Noncontact Cooling Water with Additives - Individual Permit fee at \$1,713.

#### **Proposed**

This amendment would increase NCCW with Additives - Individual Permit fee from \$1,713 to \$1,716. This is a correction of an error as this fee should have been greater or at least the same as the general permit fee for the same category (\$1,716) because administering general permits with similar discharge characteristics and requirements is less costly than developing a tailored and specific individual permit. This change affects one permittee only.

#### **Expected impact**

This proposed amendment would increase cost by three dollars per year for one permittee. At the same time this amendment would create a benefit of fully funding the incremental work necessary for the individual permit.

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<sup>4</sup> <https://www.ofm.wa.gov/budget/state-budgets/gov-inslees-proposed-2021-23-budgets/agency-recommendation-summaries/461>

### 2.3.3 Creating new permit fee sub-categories for the Vessel Deconstruction General Permit.

#### Baseline

The current Ecology Vessel Deconstruction General Permit flat fee of \$20,197 was calculated based on costs associated with a very large vessel removal in 2011 (the Davy Crockett, a 431-foot WWII Liberty Ship). Another vessel removal of that caliber has not occurred since, and is not likely to represent most vessel deconstruction activities.

#### Proposed

Ecology is proposing to add fee subcategories for vessel deconstruction to assess a base permit fee plus fees based on the number and complexity of projects completed, instead of the current single fee.

Table 1. Proposed Vessel Deconstruction Fee Schedule

Fee subcategory	Amount
Annual Base Fee	\$3,100.00
On-land (per project)	\$3,500.00
On barge (per project)	\$4,800.00
In-water (per project)	\$18,700.00

#### Expected impact

This proposed amendment would likely bring benefits for permittees. It provides a variety of permit fee amounts that better reflect the level of staff effort in managing the permits, and would reduce permittee costs for less complicated vessel deconstruction efforts.

### 2.3.4 Creating a fee category for the Puget Sound Nutrients General Permit.

#### Baseline

The current fee schedule does not have a category for the Puget Sound Nutrients General Permit.

#### Proposed

The proposed rule amendment would create a fee category to reflect the new Puget Sound Nutrients General Permit fee of \$0.31 per residential equivalent per year.

#### Expected impact

RCW 90.48.465 caps the total amount of fees that can be assessed for all domestic municipal wastewater permits to \$0.18 per residential equivalent per month, regardless of a higher fee in the proposed rule amendment. All existing municipal wastewater permits have already reached this cap for domestic wastewater facilities, as the annual permit fee for a permit held by a

municipality for a domestic wastewater facility issued under RCW 90.48.162 or 90.48.260 is determined as \$2.16 per year.<sup>5</sup> Therefore, this amendment has no impact on costs or benefits. Fees could potentially increase if the statute/law is amended by the Legislature, but that is not an impact considered within the scope of this rule.

### **2.3.5 Aligning fixed percentage of collection surcharge with statewide rate.**

#### **Baseline**

The current rule allows collection agencies to charge a fixed 20 percent surcharge of the delinquent amount owed by permittees.

#### **Proposed**

Align 20 percent collection surcharge with statewide RCW 19.16.500, which allows collection agencies to charge a reasonable fee rather than a fixed percentage.

#### **Expected impact**

Ecology does not have information about what has been collected in collection fees and interest, nor receives any of those charges, because that information and funding stays with the collection agency. However, Ecology by necessity analyzes the impacts of all proposed and adopted rules assuming full compliance. As any increase in delinquent fee collection surcharges would inherently be a result of noncompliance with the rule, it is not considered in the overall comparison of the CBA. Moreover, aligning the surcharge in rule, with the language in the governing statute, allows Ecology to resume collections of delinquent fees under the Debt Collection Services Master Contract.

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<sup>5</sup> The amount of \$2.16 is the twelve month sum of \$0.18 of monthly fees of municipal wastewater permits.

# Chapter 3: Likely Costs of the Proposed Rule Amendments

## 3.1 Introduction

We analyzed the likely costs associated with the proposed rule amendments, as compared to the baseline. The proposed rule amendments and the baseline are discussed in detail in Chapter 2 of this document.

## 3.2 Cost analysis

The proposed rule amendments would make the following changes:

- Maintaining permit fees at fiscal year 2021 levels.
- Updating Noncontact Cooling Water with Additives - Individual Permit fee.
- Creating new permit fee sub-categories for the Vessel Deconstruction General Permit.
- Creating a fee category for the Puget Sound Nutrients General Permit.
- Aligning the collections surcharge for delinquent payments with the statewide rate.

### 3.2.1 Maintaining permit fees at fiscal year 2021 levels.

There are no costs associated with this rule amendment. Please see Chapter 2 for discussion.

### 3.2.2 Updating Noncontact Cooling Water with Additives - Individual Permit fee.

Administering general permits with similar discharge characteristics and requirements is less costly than developing a tailored and specific individual permit, so this fee should have been greater or at least the same as the general permit fee for the same category (\$1,716). The latest amendments adopted by Ecology set the fee for Noncontact Cooling Water with Additives - Individual Permit fee at \$1,713. The proposed rule would increase costs by three dollars per year and affect one permittee only.

### 3.2.3 Creating new permit fee sub-categories for the Vessel Deconstruction General Permit.

There are no costs associated with this rule amendment. Please see Chapter 2 for discussion.

### 3.2.4 Creating a fee category for the Puget Sound Nutrients General Permit.

There are no costs associated with this rule amendment. Please see Chapter 2 for discussion.

### 3.2.5 Aligning fixed percentage of collection surcharge with statewide rate.

There are no costs associated with this rule amendment. Please see Chapter 2 for discussion.

# Chapter 4: Likely Benefits of the Proposed Rule Amendments

## 4.1 Introduction

We analyzed the likely benefits associated with the proposed rule amendments, as compared to the baseline. The proposed rule amendments and the baseline are discussed in detail in Chapter 2 of this document.

## 4.2 Benefits analysis

The proposed rule amendments would make the following changes:

- Maintaining permit fees at fiscal year 2021 levels.
- Updating Noncontact Cooling Water with Additives - Individual Permit fee.
- Creating new permit fee sub-categories for the Vessel Deconstruction General Permit.
- Creating a fee category for the Puget Sound Nutrients General Permit.
- Aligning the collections surcharge for delinquent payments with the statewide rate.

### 4.2.1 Maintaining permit fees at fiscal year 2021.

There are no benefits associated with this rule amendment. Please see Chapter 2 for discussion.

### 4.2.2 Updating Noncontact Cooling Water with Additives - Individual Permit fee.

The proposed rule amendment would add clarity to the logic about fee amount justification for the permittees, as administering general permits with similar discharge characteristics and requirements is less costly than developing a tailored and specific individual permit.

### 4.2.3 Creating new permit fee sub-categories for the Vessel Deconstruction General Permit.

Ecology received a comment from the Washington State Department of Natural Resources from the last rulemaking, that the Vessel Deconstruction General Permit (VDGP) should be revised. Their rationale included:

- The current Ecology Vessel Deconstruction General Permit fee was calculated from the costs associated with a very large vessel removal in 2011 of the Davy Crockett, a 431-foot WWII Liberty Ship.
- Another vessel removal of that caliber has not occurred since.
- A more relevant fee 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.

The proposed rule would add the following subcategories to the fee schedule.

Table 2. Proposed fee schedule for VDGP

Proposed Fee Structure	Risk	Assessed	Fee
Base fee	Low	Fixed	\$3,100.00
On barge or dry dock deconstruction	Mod	Per Project	\$4,800.00
Land-based deconstruction	Mod	Per Project	\$3,500.00
In-water deconstruction	High	Per Project	\$18,700.00 <sup>6</sup>
Inactive	Low	Fixed <sup>7</sup>	\$775.00

To estimate total costs, we developed a range for the difference between the existing Vessel Deconstruction General Permit flat fee and proposed fees for potential permittee behavior. We based possible behavior endpoints on two existing permittees. In the last five years, there have been three land and three barge vessel deconstructions. To be conservative<sup>8</sup> we assumed an average of one deconstruction per year by one of the two represented permittee types. To estimate 20-year present value costs (inflation-adjusted and opportunity cost-adjusted flows of annual costs from 2021 through 2040), we also forecast proposed fees based on assumed three-percent annual increases in program costs.

Table 3. Range for total annual permit fees for different types of VDGP

Project options	FY21	2022	2023	Change to FY 21
All land deconstruction	20,197	6,600	6,600	(\$13,597)
All on barge deconstruction	20,197	7,900	7,900	(\$12,297)

The “All inactive” scenario is possible, for example, if all permittees commit to not operate for a consecutive period of eighteen months. We compare inactive options under the baseline and under the changes (\$5,050 vs \$775 respectively) - we estimated a decrease in costs by \$4,274 annually per project.

<sup>6</sup> The total annual costs of in-water deconstruction would increase by \$1,603 for a project compared to the baseline. For this analysis, we do not assume permittees to execute this kind of project, because we assume that a permittee would search for a less expensive option to comply with the rule. Ecology has also not had another in-water deconstruction project in the past ten years.

<sup>7</sup> Permit describes being "inactive" when no projects are underway during an 18-month period. Fee WAC states any facility (except Sand and Gravel GP) must be in or commit to 18 months non-operational to get inactive status fee of 25 percent of base fee.

<sup>8</sup> In this context, “conservative” means to overestimate costs and/or underestimate benefits in response to uncertainty. This way, at worst we are underestimating quantified net benefits (benefits minus costs) in the overall analysis.



This scenario is only illustrative if permittees would ultimately plan to execute a project within the next few years, otherwise, they would drop the permit coverage. Therefore, we do not give an estimate for a 20-year present value in this scenario.

The total 20-year present value<sup>9</sup> for the change caused by adding subcategories would result in decreased costs (increased benefits) for each permittee that range from \$174,861 in a scenario where all projects are on barge to \$203,446 in a scenario where all projects are on-land.

#### **4.2.4 Creating a fee category for the Puget Sound Nutrients General Permit (PSNGP).**

There are no benefits associated with this rule amendment. Please see Chapter 2 for the discussion.

#### **4.2.5 Aligning fixed percentage of collection surcharge with statewide rate.**

There are no benefits associated with this rule amendment. Please see Chapter 2 for discussion.

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<sup>9</sup> All Ecology analyses look at a 20-year time span from the time of rule adoption, which is typically enough time to reflect consequences of a rulemaking. This standard is consistent with principles in federal guidance and historic analytical practices. Present value defined as the value of a consequence occurring at the present time that has the same effect on wellbeing as the future consequence, and calculated by discounting the monetary value of each future consequence by a factor that depends on the date it occurs. Ecology calculates present values based on a real discount rate of 0.98 percent, the historic average real rate of return on US Treasury I-Bonds since 1998. US Treasury Department (2020).

[http://www.treasurydirect.gov/indiv/research/indepth/ibonds/res\\_ibonds\\_iratesandterms.htm](http://www.treasurydirect.gov/indiv/research/indepth/ibonds/res_ibonds_iratesandterms.htm)

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# **Chapter 5: Cost-Benefit Comparison and Conclusions**

## **5.1 Summary of costs and benefits of the proposed rule amendments**

### **Costs**

In Chapter 3, we identified the following potential costs resulting from the proposed amendments.

Updating Noncontact Cooling Water with Additives - Individual Permit fee would increase costs by three dollars (from \$1,713 to \$1,716) per year and affect one permittee.

### **Benefits**

In Chapter 4, we identified the following potential benefits of the proposed rule.

The total annual permit fees for different types of Vessel Deconstruction General Permits would decrease by \$13,597 for on-land deconstruction, by \$12,297 for on barge deconstruction.

The total 20-year present value for the change caused by adding subcategories would result in decreased costs (increased benefits) for each permittee that range from \$174,861 in a scenario where all projects are on barge to \$203,446 in a scenario where all projects are on-land.

For the “All inactive” scenario we estimated a decrease in costs by \$4,274 annually (\$5,050 vs \$775 respectively).

## **5.2 Conclusion**

We conclude, based on a reasonable understanding of the quantified and qualitative costs and benefits likely to arise from the proposed rule amendments, as compared to the baseline, that the benefits of the proposed rule amendments are greater than the costs.

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# Chapter 6: Least-Burdensome Alternative Analysis

## 6.1 Introduction

RCW 34.05.328(1)(c) requires Ecology to "...[d]etermine, after considering alternative versions of the rule and the analysis required under (b), (c), and (d) of this subsection, that the rule being adopted is the least burdensome alternative for those required to comply with it that will achieve the general goals and specific objectives stated under (a) of this subsection." The referenced subsections are:

- (a) Clearly state in detail the general goals and specific objectives of the statute that the rule implements;
- (b) Determine that the rule is needed to achieve the general goals and specific objectives stated under (a) of this subsection, and analyze alternatives to rule making and the consequences of not adopting the rule;
- (c) Provide notification in the notice of proposed rulemaking under RCW 34.05.320 that a preliminary cost-benefit analysis is available. The preliminary cost-benefit analysis must fulfill the requirements of the cost-benefit analysis under (d) of this subsection. If the agency files a supplemental notice under RCW 34.05.340, the supplemental notice must include notification that a revised preliminary cost-benefit analysis is available. A final cost-benefit analysis must be available when the rule is adopted under RCW 34.05.360;
- (d) Determine that the probable benefits of the rule are greater than its probable costs, taking into account both the qualitative and quantitative benefits and costs and the specific directives of the statute being implemented.

In other words, to be able to adopt the rule, we are required to determine that the contents of the rule are the least burdensome set of requirements that achieve the goals and objectives of the authorizing statute(s).

We assessed alternative proposed rule content, and determined whether they met the goals and objectives of the authorizing statute(s). Of those that would meet the goals and objectives, we determined whether those chosen for inclusion in the proposed rule amendments were the least burdensome to those required to comply with them.

## 6.2 Goals and objectives of the authorizing statute

The authorizing statute for this rule is chapter 90.48 RCW, Water Pollution Control; specifically, RCW 90.48.465 Water Discharge Fees.

The primary goal and objective of the authorizing statute is for Ecology to:

- Collect enough fees in total to fully fund the water quality permitting program.
- Establish an initial fee schedule by rule and adjust the schedule no more than once every two years.
- Establish fees in amounts to fully recover and not to exceed expenses incurred by Ecology 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.

## **6.3 Alternatives considered and why they were excluded**

We considered the following alternative rule content, and did not include it in the proposed rule amendments for the reasons discussed in each subsection below.

- Not implementing fee changes
- Increasing fees for underpaying categories

### **6.3.1 Not implementing fee changes**

The consequence of not amending the rule would be that the fee schedule would not reflect Fiscal Year 2022 and Fiscal Year 2023 rates, and Ecology would not be able to make the technical corrections needed to keep in line with current management practices. This reduces transparency for permittees and could result in limitations to the permit program that impact water quality statewide. This alternative would not have met the objective of establishing and updating the fee schedule in rule.

### **6.3.2 Increasing fees for underpaying categories**

Ecology considered increasing fees for underpaying categories to work toward further fee equity between permit fee categories, but without knowing the full economic impact COVID 19 could have on revenue, it could exacerbate the inequities. For the most significant underpaying category, municipal wastewater treatment plants, a residential equivalent fee cap in RCW 90.48.465 that has been in place since 2009 restricts Ecology from raising fees since all permittees are already at the capped rate. This alternative would not have met the goals and objectives of RCW 90.48.465 to set fees that fully recover the costs of the program.

## **6.4 Conclusion**

After considering alternatives to the proposed rule’s contents, within the context of the goals and objectives of the authorizing statute, we determined that the proposed rule represents the least-burdensome alternative of possible rule contents meeting the goals and objectives.

## **Chapter 7: Regulatory Fairness Act Compliance**

We analyzed the costs of the proposed rule amendments in Chapter 3 of this document and benefits in Chapter 4. For the proposed rule amendments only benefits (avoided compliance costs) would accrue for Vessel Deconstruction General Permit permittees. According to RCW 19.85.030(1)(a)(i), which states “an agency shall prepare a small business economic impact statement if the proposed rule will impose more than minor costs on businesses in an industry” this rulemaking is exempt from the requirements of the Regulatory Fairness Act (“RFA”; chapter 19.85 RCW). By generating reductions in compliance costs, the proposed rule inherently imposes less than minor costs on these entities.

As the proposed rule does not impose compliance costs on any small businesses, this rulemaking is exempt from the requirements of the RFA according to RCW 19.85.025(4), which states, “This chapter does not apply to the adoption of a rule if an agency is able to demonstrate that the proposed rule does not affect small businesses.”

# References

RCW 34.05.272 requires Ecology to categorize sources of information used in significant agency actions made in the Water Quality Program.

**Independent peer review:** Review is overseen by an independent third party.

N/A

**Internal peer review:** Review by staff internal to Ecology.

N/A

**External peer review:** Review by persons that are external to and selected by Ecology.

N/A

**Open review:** Documented open public review process that is not limited to invited organizations or individuals.

N/A

**Legal and policy documents:** Documents related to the legal framework for the significant agency action, including but not limited to: federal and state statutes, court and hearings board decisions, federal and state administrative rules and regulations, and policy and regulatory documents adopted by local governments.

- Chapter 173-224 WAC. Water Quality Permit Fees.  
<https://app.leg.wa.gov/wac/default.aspx?cite=173-224>
- Chapter 19.16 RCW. Collection Agencies.  
<https://app.leg.wa.gov/rcw/default.aspx?cite=19.16>
- Chapter 43.165 RCW Dispositions. Community Revitalization Team — Assistance to Distressed Areas. <https://app.leg.wa.gov/RCW/dispo.aspx?cite=43.165>
- Chapter 90.48 RCW. Water Pollution Control.  
<https://app.leg.wa.gov/rcw/default.aspx?cite=90.48&full=true>

**Data from primary research, monitoring activities, or other sources, but that has not been incorporated as part of documents reviewed under independent, internal, or external peer review:**



- 2021-23 Gov. Inslee's proposed budgets. Agency recommendation summaries. Department of Ecology. <https://www.ofm.wa.gov/budget/state-budgets/gov-inslees-proposed-2021-23-budgets/agency-recommendation-summaries/461>
- Department of Enterprise Services. Debt Collection Services Master Contract. <https://apps.des.wa.gov/DESContracts/Home/ContractSummary/01120>
- Water Quality Permitting and Reporting Information System (PARIS) <https://apps.ecology.wa.gov/paris/PermitSearch.aspx>

**Records of the best professional judgment of Ecology employees or other individuals:**

N/A

**Other: Sources of information that do not fit into other categories:**

N/A

# **Appendix A: Administrative Procedure Act (RCW 34.05.328) Determinations**

**A. RCW 34.05.328(1)(a) – Clearly state in detail the general goals and specific objectives of the statute that this rule implements.**

See Chapter 6.

**B. RCW 34.05.328(1)(b) –**

**1. Determine that the rule is needed to achieve the general goals and specific objectives of the statute.**

See chapters 1 and 2.

**2. Analyze alternatives to rulemaking and the consequences of not adopting this rule.**

We considered only one alternative: not to do the rulemaking. The consequence of not amending the rule would be that the fee schedule would not reflect Fiscal Years 2022 and 2023 rates, and we would not be able to make the technical corrections needed to keep in line with current management practices. This reduces transparency for permittees and could result in limitations to the permit program that impact water quality statewide.

Please see the Least Burdensome Alternative Analysis, Chapter 6 of this document, for discussion of alternative rule content considered.

**C. RCW 34.05.328(1)(c) - A preliminary cost-benefit analysis was made available.**

When filing a rule proposal (CR-102) under RCW 34.05.320, Ecology provides notice that a preliminary cost-benefit analysis is available. At adoption (CR-103 filing) under RCW 34.05.360, Ecology provides notice of the availability of the final cost-benefit analysis.

**D. RCW 34.05.328(1)(d) – Determine that probable benefits of this rule are greater than its probable costs, taking into account both the qualitative and quantitative benefits and costs and the specific directives of the statute being implemented.**

See chapters 1 – 5.

**E. RCW 34.05.328 (1)(e) - Determine, after considering alternative versions of the analysis required under RCW 34.05.328 (b), (c) and (d) that the rule being adopted is the least burdensome alternative for those required to comply with it that will achieve the general goals and specific objectives stated in Chapter 6.**

Please see Chapter 6.

**F. RCW 34.05.328(1)(f) - Determine that the rule does not require those to whom it applies to take an action that violates requirements of another federal or state law.**

This rulemaking supports Ecology’s emphasis on supporting successful water management by maintaining its permitting program. Wastewater and stormwater discharge permits set

rigorous discharge limits, monitoring requirements, and management practices, usually specific to a discharge, which is designed to ensure a facility can meet both federal and state treatment and water quality standards. The permit program manages about 7,000 point source permits. Water quality discharge permits provide Ecology with a full range of tools to address statewide water quality needs (e.g., permitting, technical assistance, and compliance/inspections). Maintaining compliance with all other federal and state laws is a requirement specifically identified in all Ecology issued permit coverages.

**G. RCW 34.05.328 (1)(g) - Determine that the rule does not impose more stringent performance requirements on private entities than on public entities unless required to do so by federal or state law.**

Permittees consist of large and small industrial businesses, construction companies, school districts, federal agencies, state agencies, and city governments. The requirement to pay fees is the same for all permittees.

**H. RCW 34.05.328 (1)(h) Determine if the rule differs from any federal regulation or statute applicable to the same activity or subject matter.**

The amended rule does not differ from any federal regulation or statute applicable to the same activity or subject matter.

If yes, the difference is justified because of the following:

- (i) A state statute explicitly allows Ecology to differ from federal standards.
- (ii) Substantial evidence that the difference is necessary to achieve the general goals and specific objectives stated in Chapter 6.

**I. RCW 34.05.328 (1)(i) – Coordinate the rule, to the maximum extent practicable, with other federal, state, and local laws applicable to the same subject matter.**

Ecology notifies all permit holders about any proposed changes to the permit fee rule. We also notify all stakeholders, including federal, state, and local government offices, regarding all rule announcement, proposal, and adoption stages.