



# **Concise Explanatory Statement Chapter 173-224 WAC Water Quality Permit Fees**

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## **Summary of Rulemaking and Response to Comments**

Washington State Department of Ecology  
Olympia, Washington

June 2023, Publication 23-10-017

## Publication Information

This document is available on the Department of Ecology's website at:

<https://apps.ecology.wa.gov/publications/summarypages/2310017.html>

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<sup>1</sup><https://ecology.wa.gov/Water-Shorelines/Water-quality/Water-quality-permits/Fees>

# Department of Ecology's Regional Offices

## Map of Counties Served



<b>Southwest Region</b> 360-407-6300	<b>Northwest Region</b> 206-594-0000	<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	PO Box 330316 Shoreline, WA 98133	206-594-0000
<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

# Concise Explanatory Statement

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## Chapter 173-224 WAC Water Quality Permit Fees

Water Quality Program  
Washington State Department of Ecology  
Headquarters  
Olympia, WA

**June 2023 | Publication 23-10-017**



DEPARTMENT OF  
**ECOLOGY**  
State of 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):	Chapter 173-224
Adopted date:	June 29, 2023
Effective date:	July 30, 2023

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

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 is adopting these amendments on June 29, 2023. Previously, the last rule update occurred on June 22, 2021.

The adopted rule amendments will make the following changes:

- Adjusting permit fees at fiscal years 2024 and 2025
- Updating a Noncontact Cooling Water with Additives - Individual Permit fee
- Adding and revising permit fee sub-categories for the Construction Stormwater General Permit
- Adding and revising permit fee sub-categories for the Industrial Stormwater General Permit
- Creating a fee category for the Nonfinfish Hatching and Rearing Individual Permit
- Adding a Hazardous Waste Extreme Hardship fee reduction application process
- Updating the rule language to make it easier to understand

The adopted rule amendments will 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 the Dual Coverage waiver option
- Clarifying that unpaid permit fees owed by a previous permittee are the liability of a new permittee

## 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.

During the rulemaking, we found that there were several technical editing changes needed to correct statute references and to ensure clarity. These minor changes do not require a description of the differences between the text of the proposed rule filed on March 22, 2023 and the text of the adopted rule filed on June 29, 2023. Ecology made these changes to ensure clarity and to meet the intent of the authorizing statutes.



## List of Commenters and Response to Comments

Ecology accepted comments starting March 22, 2023 until May 12, 2023. This section provides original verbatim comments that were received during the public comment period and Ecology's responses. (RCW 34.05.325(6)(a)(iii)).

### Commenter Index

The table below lists the names of organizations and individuals who submitted a comment on the rule proposal and where you can find Ecology's response to the comments. Comments are sorted alphabetically by organization and commenter, and assigned a comment number. Ecology responses follow each comment. The full written comment submittals can also be viewed via our online ecomments system.

**Table 1 Comment Index**

Commenter Organization	Commenter Name	Comment Numbers
	Coleen Anderson	A-1
Friends of Toppenish Creek	Jean Mendoza	A-2
King County	Kamron Gurol	A-3
Western States Petroleum Association (WSPA)	Antonio Machado	A-4

## Comments and Responses

### A-1: Coleen Anderson

#### Comment A-1-1

I believe that WA Ecology should adjust annual fees for National Pollutant Discharge Elimination System (NPDES) permits in order to recover the cost of administering the wastewater and stormwater permit programs. The proposed fee adjustments for CAFOs are not sufficient to cover the costs of the NPDES program for CAFOs. The proposed fees for dairies are much lower than for other CAFOs. Since 1999 Ecology has charged dairies \$.50 per animal unit for NPDES permits. If Ecology had adjusted this fee, in accordance with the fiscal growth factor as provided for in RCW 90.48.465, the fee would now be \$.87 per animal unit. Unfortunately, Ecology is now proposing to increase fees for dairies to only \$.52 per animal unit. This will not cover expenses for implementing NPDES programs for dairy CAFOs. I believe everyone should pay their fair share to address the serious water pollution issues in Washington State. Fees for dairy CAFOs should be much higher.

## **Response to A-1-1**

Water Quality Program CAFO permit fees are governed under RCW 90.48.465 and Chapter 173-224 WAC. Ecology continues to work towards permit fee equity with each rulemaking. In the case of the CAFO dairy permit fees, the language in RCW 90.48.465(4) limits Ecology's ability to completely recover program costs. The per animal unit of \$0.50 has not been increased since 1999 when the rate was first established for fiscal year 2000. Ecology is applying a 4% increase to the per animal unit rate which is within the fiscal growth factor in order to move closer to permit fee equity for dairy general permits. This change will affect approximately half of the dairy general permits that are currently below the not-to-exceed maximum. The other half of the dairy general permit holders are paying the not-to-exceed. For these permit holders, the not-to-exceed amount will increase by 5.5% in fiscal year 2024 and 5.9% in fiscal year 2025. When certain fees, such as the rate per animal unit, are identified as needing to be raised to achieve fee equity, Ecology may adjust fees incrementally over time until fee equity is achieved, so as not to overly burden small operators with a one-time large increase.

Dairy permit fees may be adjusted moving forward within the limitations set in statute.

## **A-2: Friends of Toppenish Creek – Jean Mendoza**

### **Comment A-2-1**

Public Hearing Testimony: My name is Jean Mendoza. I'm the executive director for the Friends of Toppenish Creek in Yakima County, and I want to testify on the NPDES permit for CAFOs. Washington law says that fees for NPDES permits are supposed to cover the expenses for administering the program. For the category concentrated animal feeding operations, fees do not cover costs. Ecology's NPDES permit for CAFOs funds the salary for one full time equivalent at ecology and send this money to the Washington State Department of Agriculture.

One person cannot write and administer complex NPDES permits for all the CAFOs in Washington State that should be under permit. One person at the same time cannot also investigate these charges and compel polluting CAFOs to obtain permits. There are over 250 CAFOs in Washington state. Less than 10% of Washington CAFOs have permits. Those with permits continue to discharge excessive amounts of pollutants to waters of the state.

And I'm happy to provide evidence that supports that statement. There are CAFOs with well documented, egregious discharges that continue to flaunt the laws and operate without permits. So, to me, this proves that our NPDES permit program for CAFOs is not functioning the way it was intended to. In the 2018 and 2019 biennium, the average fee for NPDES CAFO permit was \$2,367.

The 2020 and 2021 biennium, the average fee for NPDES CAFO permit had decreased to \$1,695, and that is less than the average fee for aquaculture, for bridge washing, for food packing or for photo finishing. By my calculations, revenue from CAFO NPDES permits is less than half the expenditures needed to administer the program. For over 20 years the NPDES fees for dairies, have remained at \$0.50 per animal, for animal unit. Ecology has not increased the rate per

animal unit in accordance with the fiscal growth factor as provided for in the law. As a result, Washington dairies have enjoyed an unfair economic advantage over other types of animal agriculture in the marketplace, and this is contrary to Washington state law.

It's contrary to the Washington state constitution. Article one, Section 12. The current proposed fee schedule increases for dairy animals from \$0.50 per animal unit to \$0.52 per animal unit. The starting point is 1999. So, if we just keep going at that rate, we're always going to be 20 years behind. Dairies will be paying fees relative to an economy that existed 20 years ago and not the current economy.

\$1.00 in 2000 would be worth a \$1.75 today, a fee of \$0.50 per animal unit. In 2000, we equal \$0.87 per animal unit today. And because of this error, Washington dairies pay much less for NPDES permits than chicken or beef operations. Washington dairies do not pay their fair share. If you look at table two of Ecology's focus sheet for NPDES permits for CAFOs — are you, I guess you can't respond. Hopefully you're all familiar with that.

According to that fact sheet, an operation with 50 cows will pay an NPDES fee of \$350. A small CAFO dairy with 200 cows and 100 heifers will pay an NPDES fee of \$167. I hope, I wish that Ecology could justify this discrepancy, but I don't think you can, and that's what I have to say. Thank you.

### **Response to A-2-1**

The average fees paid by dairies varies annually by the animal count that is reported. Numbers of animals can shift from year to year due to variability in animal numbers, particularly for dry cows, heifers and calves. This is the main reason for variability in the average each year. The non-dairy numbers reported by permit holders (for feedlots, etc) are steadier year over year.

As previously mentioned under Responses A-1-1, Ecology continues to work towards permit fee equity with each rulemaking. The per animal unit of \$0.50 has not been increased since 1999 when the rate was first established for fiscal year 2000. Ecology is applying a 4% increase to the per animal unit rate which is within the fiscal growth factor in order to move closer to permit fee equity for dairy general permits. This change will affect approximately half of the dairy general permits that are currently below the not-to-exceed maximum. The other half of the dairy general permit holders are paying the not-to-exceed amount. For these permit holders, the not-to-exceed amount will increase by 5.5% in fiscal year 2024 and 5.9% in fiscal year 2025. When certain fees, such as the rate per animal unit, are identified as needing to be raised to achieve fee equity, Ecology may adjust fees incrementally over time until fee equity is achieved, so as not to overly burden small operators with a one-time large increase.

### **Comment A-2-2**

Washington dairies are major contributors to pollution of groundwater and surface waters. NPDES permits are the recognized best tool for addressing this pollution. Enforcement of NPDES permits for CAFOs is not a simple job. It requires hard work by skilled and experienced regulators. Competent experts do not work for free. Has Ecology documented how much it

costs to process a CAFO application, monitor and evaluate compliance, conduct inspections, and oversee implementation of NPDES permits for CAFOs?

### **Response to A-2-2**

Yes, Ecology conducts a cost analysis to manage all water quality permits and provide program administrative support when determining the revenue needed from water quality permit fees as directed in RCW 90.48.465(1).

### **Comment A-2-3**

Ecology did not report fees from dairies in 2020-2021. Presumably those fees were subsumed in the CAFO category. According to FOTC calculations there were 40,517 milk cows = 56,724 animal units on the 18 WA dairies with NPDES permits in 2020-2021. There were 12,528 heifers = 10,022 animal units on the 18 dairies with NPDES permits in 2021. The total is 66,746 animal units with fees of \$33,373.

According to records from Ecology's PARIS data base there were four large beef CAFOs and one large egg CAFO in 2020-2021 who would have paid  $5 \times \$3,094 = \$15,470$ . One mega beef feedlot with an Individual permit would have paid a much larger fee based on gallons discharged per day.

Expenditures have exceeded revenues for years. This limited evidence shows that fees from NPDES permits have been insufficient to cover necessary costs to administer NPDES programs for CAFOs in Washington State, and that expenditure to administer NPDES permits for CAFOs in Washington State have been insufficient to complete the complex tasks involved. The result is a violation of RCW 90.48.465 and a failure of Ecology's NPDES permits to protect the waters of Washington State.

### **Response to A-2-3**

Yes, the CAFO fees reported for fiscal years 2020-2021 reflect the CAFO fees for both dairy and non-dairy permits.

RCW 90.48.465(1) directs Ecology to establish fees to full recover costs to administer the water quality permit program. However, RCW 90.48.465(4) limits the amount Ecology can charge for dairy general and individual permits. Inherently, the subsections of this section are conflicting and constrains Ecology's ability to fully recover costs for dairy permits.

### **Comment A-2-4**

For over twenty years the NPDES fees for dairies have remained at \$.50 per animal unit. Ecology has not increased the rate per animal in accordance with the fiscal growth factor as provided for in the law. Consequently WA dairies have enjoyed an unfair economic advantage over other types of animal agriculture in the market place. This is contrary to the WA State Constitution, Article 1, Section 12.

The Friends of Toppenish Creek request that former Ecology Directors Jay Manning, Ted Sturdevant, and Maia Bellon be called upon to explain this error.

The current proposed fee schedule increases fees for dairy animals from \$0.50 per animal unit to \$0.52 per animal unit in 2024. The justification is the Fiscal Growth Factor. But the starting

point is the WA Economy in 1999. If Ecology chooses to continue with increases that began at \$0.50 per animal unit, the fee rate for dairies will always be twenty years behind the times.

A dollar in 2000 would be worth \$1.75 today.<sup>7</sup> A fee of \$0.50 per animal unit in 2000 would equal \$0.87 today. The Friends of Toppenish Creek request that current Ecology Director Laura Watson explain this decision that gives WA dairies a distinct economic advantage.

### **Response to A-2-4**

As previously mentioned, this rulemaking Ecology is applying a 4% increase to the per animal unit rate which is within the fiscal growth factor in order to move closer to permit fee equity for dairy general permits. Ecology may adjust fees incrementally over time until fee equity is achieved, so as not to overly burden small operators with a one-time large increase.

## **A-3: King County – Kamron Gurol**

### **Comment A-3-1**

While King County's Wastewater Treatment Division (WTD) supports adequate funding for Ecology's work related to the fees, the proposed increase from \$0.18 to \$0.29 per residential equivalent (RCE) per month or \$3.43 per RCE annually is substantial.

For example, in fiscal year 2022, WTD paid Ecology \$1,705,844 to administer permits for five treatment plants. The proposed increase will add approximately \$1 million annually which will be paid by WTD's ratepayers. This comes at a time when the burdens to comply with regulatory requirements, keeping up with an aging system and demands for capacity improvements are all falling on ratepayers, without sufficient relief from the state.

### **Response to A-3-1**

Ecology appreciates King County's support for increasing the municipal wastewater fee. We recognize the significant increase this is for jurisdictions and utilities. Ecology is prepared to support permittees with communicating the reason for the fee increases to ratepayers.

### **Comment A-3-2**

We believe that substantial cost increases must be accompanied by substantial increases in Ecology's services, such as reduced permit backlog and improved responsiveness. Also, while all permittees will pay more with this proposal, the difference between Ecology's actual costs to issue a permit and the permit fee charged to agencies serving larger numbers of RCEs will be further increased. While the passage of Senate Bill 5585 removed the cap per RCE in the Revised Code of Washington on municipal wastewater discharge permit fees, Ecology should consider no further increases beyond the current proposal until it can demonstrate the permit fee reflects the actual cost of service based on verifiable data to inform permit fee amounts.

### **Response to A-3-2**

Ecology is committed to achieving the backlog reduction goals established in SB 5585. Ecology does not plan to increase fees for municipal wastewater treatment plants without adequate cost analysis and justifiable need for additional staff.

### **Comment A-3-3**

As suggested during the Stakeholder Advisory Group meeting, we strongly urge Ecology to track staff time and administrative costs for each permit going forward. This information would serve as the basis for Ecology to implement a true “cost of service” permit fee structure for municipal wastewater permit fees that is equitable for all agencies and ratepayers. The data should be shared with the Stakeholder Advisory Committee, in advance of their next meeting in 2024, to inform fee structure options for 2025.

Ecology is tasked with reducing the permit backlog to 40 percent by 2025 and 20 percent by 2027. We look forward to Ecology reporting back to the Stakeholder Advisory Committee on progress made towards this important goal.

### **Response to A-3-3**

Ecology does track staff time and administrative costs when determining permit fee expenditure projections and setting fees. We will continue to do so and share progress made on the permit backlog with the Stakeholder Advisory Committee.

## **A-4: Western States Petroleum Association (WSPA) – Antonio Machado**

### **Comment A-4-1**

During 2007 – 2008, the Water Quality Program undertook a comprehensive analysis of the wastewater permit fee program. Ecology’s interests were to assess trends and needs in revenue generation, and to examine the permit fee structure and rates against RCW 90.48.465 criteria. This assessment was referred to as the “Permit Fee Task Force” and under the auspices of the Water Quality Partnership group.

A prominent finding from this assessment was that the ever-escalating fees for several source categories characterized as “large facility, individual NPDES permit,” including for Petroleum Refining, were much larger than could be supported by Ecology’s work-load evaluation. In short, the permit fee derivation did not match the RCW 90.48.465(1) criterion that fees “not exceed the expenses incurred by the department in...(all aspects of administering the NPDES permit).” Further, that there was a growing inequity gap between source categories with permits having similar workload, complexity, etc. The fee disparity was significant and growing. Ecology describes these as “over-paying” categories.

While acknowledging these facts, Ecology also recognized that measures to mitigate this structural inequity must necessarily be tied to significant step-change revenue increases. In particular, the agency identified the “Municipal and Domestic Wastewater Facilities” source category as under-paying and pointed to the fee cap in statute as the impediment for generating the needed revenue to support the permit fee program. A more equitable fee formula applied to municipal permits would ostensibly generate sufficient revenue to both sustain the wastewater permitting program and provide some relief to the “over-paying” source categories.

The 2022 Washington legislature took the needed action to lift the annual cap on permit fees charged to municipalities. With the assistance of an advisory committee, Ecology is now

proposing in this current rule-making a healthy increase in the fee assigned to the municipal facilities source categories.

In anticipation of the coming municipal fee increases, and consistent with the CR-101 scoping description, the Western States Petroleum Association submitted a request in mid-2022 to address the structural inequities in the permit fee program. WSPA received notification that consideration of this request was beyond the scope of the immediate rule revision effort.

The next WAC 173-224 fee adjustment will be for fiscal years 2026-2027, with some public involvement process likely in 2025. WSPA requests consideration of the earlier agency findings in support of the next rule revision process.

### **Response to A-4-1**

In reference to Western State Petroleum’s request in mid-2022, it was Ecology’s understanding that WSPA wanted to expand the scope of the Stakeholder Advisory Committee to include other permit types beyond municipal wastewater. Ecology’s response at the time was about keeping the focus of the advisory committee on municipal wastewater.

For this rulemaking, the fee increase for municipal wastewater permits is specifically intended to fully recover the costs of administering that permit type only, including a significant increase in permit staff to address permit backlog issues. This expenditure increase in staffing was supported by the legislature in the 2023-25 biennial budget and the revenue generated from the municipal wastewater permit fee increase is dedicated to this permit type. The municipal wastewater permit fee increase does not provide “relief” for other permit fee categories.

We have not raised fees for the Petroleum Refining Fee Category since 2019, and they are not proposed to increase for FY25 and FY26. Ecology will continue to evaluate other fee categories, including the Petroleum Refining fees, in future rulemakings to determine if a fee reduction is appropriate.

# Appendix A: Citation List

Chapter 173 – 224 WAC  
 WATER QUALITY PERMIT FEES  
 AO # 22 - 03

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

*Table 2 Citation Categories*

#	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.

- The Office of Management fund balance sheet for Fund 176 – Water Quality Permit Fees (#11).
- RCW 90.48.465 – Water Pollution Control (#7).



## Appendix B: Comment Letters

*See next page for comment letters*



*Friends of Toppenish Creek*

April, 2023

Ligeia Heagy  
Rulemaking Lead, WA Ecology  
PO BOX 47600  
Olympia, WA 98504-7600

Dear WA State Dept. of Ecology:

The Friends of Toppenish Creek appreciate the opportunity to comment on Ecology's proposed changes to permit fees under Washington's National Pollutant Discharge Elimination Permit (NPDES) program, pursuant to RCW 90.48.465 and WAC 173-224.

Friends of Toppenish Creek is a 501 C (3) non-profit with the following mission:

*Friends of Toppenish Creek is dedicated to protecting the rights of rural communities and improving oversight of industrial agriculture. FOTC operates under the simple principle that all people deserve clean air, clean water and protection from abuse that results when profit is favored over people. FOTC works through public education, citizen investigations, research, legislation, special events, and direct action.*

We have reviewed the proposed fees for NPDES permits, specifically fees for dairies and concentrated animal feeding operations (CAFOs). We believe that these proposed fee changes do not comply with Washington laws.

### **Fees Do Not Support the NPDES for CAFOs Program**

RCW 90.48.465 (1) says:

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

Washington dairies are major contributors to pollution of groundwater and surface waters. NPDES permits are the recognized best tool for addressing this pollution. Enforcement of NPDES permits for CAFOs is not a simple job. It requires hard work by skilled and experienced regulators. Competent experts do not work for free. Has Ecology documented how much it costs to process a CAFO application, monitor and evaluate compliance, conduct inspections, and oversee implementation of NPDES permits for CAFOs?

Over the past five years Ecology has reported the following fee revenues from CAFOs and from dairies.

	2013-2015 <sup>1</sup>	2015-2017 <sup>1</sup>	2018-2019 <sup>2</sup>	2020-2021 <sup>3</sup>
Revenue from CAFO Fees	\$26,436	\$31,922	\$85,224	\$98,333
Revenue from Dairy Fees	\$10,984	\$4,877	\$10,629	

Ecology did not report fees from dairies in 2020-2021. Presumably those fees were subsumed in the CAFO category. According to FOTC calculations there were 40,517 milk cows = 56,724 animal units on the 18 WA dairies with NPDES permits in 2020-2021. There were 12,528 heifers = 10,022 animal units on the 18 dairies with NPDES permits in 2021. The total is 66,746 animal units with fees of \$33,373.

According to records from Ecology’s PARIS data base there were four large beef CAFOs and one large egg CAFO in 2020-2021 who would have paid 5 x \$3,094 = \$15,470. One mega beef feedlot with an Individual permit would have paid a much larger fee based on gallons discharged per day.

Ecology did not report expenditures by NPDES fee category in 2018-2021. For the earlier years, according to Ecology, these were the expenditures.<sup>4</sup>

	2013-2015 <sup>1</sup>	2015-2017 <sup>1</sup>
CAFO Expenditures	\$88,385	\$214,159
CAFO FTE’s	0.51	1.12
Dairy Expenditures	\$2,736	\$1,002
Dairy FTEs	0.02	0.01

<sup>1</sup> *Wastewater and Stormwater Discharge Permit Fee Program Report to the Legislature State Fiscal Years 2014-2017*. Table C, page 20.

[https://apps.leg.wa.gov/ReportsToTheLegislature/Home/GetPDF?fileName=2017%20Wastewater%20and%20Stormwater%20Discharge%20Permit%20Fee%20Program%20Report\\_1e83a960-b1e1-4b37-93f3-9ea65affb396.pdf](https://apps.leg.wa.gov/ReportsToTheLegislature/Home/GetPDF?fileName=2017%20Wastewater%20and%20Stormwater%20Discharge%20Permit%20Fee%20Program%20Report_1e83a960-b1e1-4b37-93f3-9ea65affb396.pdf)

<sup>2</sup> *Wastewater and Stormwater Discharge Permit Fee Program Report to the Legislature State Fiscal Years 2018-2019*. <https://apps.ecology.wa.gov/publications/documents/2010004.pdf>

<sup>3</sup> *Wastewater and Stormwater Discharge Permit Fee Program Report to the legislature State Fiscal Years 2020-2021*. <https://apps.ecology.wa.gov/publications/documents/2110060.pdf>

<sup>4</sup> Ecology failed to publish NPDES permits for CAFOs between 2011 and 2016, another example of neglect.

Expenditures have exceeded revenues for years. This limited evidence shows that fees from NPDES permits have been insufficient to cover necessary costs to administer NPDES programs for CAFOs in Washington State, and that expenditure to administer NPDES permits for CAFOs in Washington State have been insufficient to complete the complex tasks involved. The result is a violation of RCW 90.48.465 and a failure of Ecology's NPDES permits to protect the waters of Washington State.<sup>5,6</sup>

### **For Twenty Years Ecology Failed to Increase Fees for Dairies**

RCW 90.48.465 (4) says:

*The fee for an individual permit issued for a dairy farm as defined under chapter 90.64 RCW shall be fifty cents per animal unit up to one thousand two hundred fourteen dollars for fiscal year 1999. The fee for a general permit issued for a dairy farm as defined under chapter 90.64 RCW shall be fifty cents per animal unit up to eight hundred fifty dollars for fiscal year 1999. Thereafter, these fees may rise in accordance with the fiscal growth factor as provided in chapter 43.135 RCW.*

For over twenty years the NPDES fees for dairies have remained at \$.50 per animal unit. Ecology has not increased the rate per animal in accordance with the fiscal growth factor as provided for in the law. Consequently WA dairies have enjoyed an unfair economic advantage over other types of animal agriculture in the market place. This is contrary to the WA State Constitution, Article 1, Section 12.

The Friends of Toppenish Creek request that former Ecology Directors Jay Manning, Ted Sturdevant, and Maia Bellon be called upon to explain this error.

The current proposed fee schedule increases fees for dairy animals from \$0.50 per animal unit to \$0.52 per animal unit in 2024. The justification is the Fiscal Growth Factor. But the starting point is the WA Economy in 1999. If Ecology chooses to continue with increases that began at \$0.50 per animal unit, the fee rate for dairies will always be twenty years behind the times.

A dollar in 2000 would be worth \$1.75 today.<sup>7</sup> A fee of \$0.50 per animal unit in 2000 would equal \$0.87 today. The Friends of Toppenish Creek request that current Ecology Director Laura Watson explain this decision that gives WA dairies a distinct economic advantage.

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<sup>5</sup> Three of the five dairies in the EPA "Dairy Cluster" in Yakima County have NPDES permits. The EPA has spent millions trying to mitigate groundwater pollution from these facilities. <https://www.epa.gov/wa/lower-yakima-valley-groundwater>

<sup>6</sup> The remaining two dairies have well demonstrated discharges to groundwater but have not been required to obtain permits. Decommissioning of lagoons on these facilities that were constructed into a draw years ago show massive leakage of pollutants into the groundwater that likely led to nitrate levels as high as 234 mg/L in a nearby monitoring well. <http://www.friendsoftoppenishcreek.org/cabinet/data/Manure%20Lagoons%20Leak%20LYV.pdf>

<sup>7</sup> CPI Inflation Calculator. <https://www.in2013dollars.com/us/inflation/2000>

## **Conclusion**

This evidence strongly suggests collusion between the WA State Dept. of Ecology and the WA Dairy Industry to give this form of animal agriculture benefits not enjoyed by others, at the expense of the environment.

Sincerely,

*Friends of Toppenish Creek*

Friends of Toppenish Creek

3142 Signal Peak Road

White Swan, WA 98952

Appendix A.

CAFOs with NPDES Permits in March 2023 – Ecology PARIS					
Name	Permit Number	County	# Milk Cows	# Heifers	# Beef Cattle
JLS Dairy	WAG994367	Benton	900	120	
Willamette Egg Farm	WAG994351	Grant			
PAR 4 Cattle Feeders	WA4400003	Grant			10,750
El Oro Cattle Feeders	WA4400001	Grant			44,205
Coulee Cattle Feeders	WA4400004	Grant			10,854
Beef Feeders Northwest	WA4400002	Grant			17,316
Danielson Farms	WAG994396	Island	470	410	
Keller Dairy	WAG994453	King	905	148	
JV Dairy	WAG994364	Whatcom	1235		
Carbee Harold Farm	WAG994410	Whatcom		190	
Bel Lyn Farms	WAG440001	Whatcom	450	136	
View Point Dairy	WAG994516	Yakima	2000	70	
T& D Dairy (Destiny Dairy)	WAG994378	Yakima	2200	150	
Sunnyside Dairy	WAG994442	Yakima	7691	250	
Spring Canyon Ranch	WAG994346	Yakima			
SMD Dairy	WAG015029	Yakima		2500	
Skyridge Farms	WAG015020	Yakima	3250		
Maple Grove Dairy	WAG994347	Yakima			
J & K Dairy	WAG994344	Yakima	2900	2900	
George DeRuyter & Son	WAG994350	Yakima	5100	4830	
DBD Dairy	WAG015000	Yakima	5216	424	
Cow Palace	WAG994354	Yakima	8200	400	
Total			40,517	12,528	53,045



## King County

Department of Natural Resources and Parks  
**Wastewater Treatment Division**

King Street Center, KSC-NR-5501  
201 South Jackson Street  
Seattle, WA 98104-3855

May 11, 2023

Ligeia Heagy  
Washington State Department of Ecology  
Water Quality Program  
P.O. Box 47600  
Olympia, WA98504-7600

Dear Ms. Heagy,

Thank you for the opportunity to comment on the Washington State Department of Ecology's (Ecology) proposed increase to municipal wastewater permit fees as part of the update to the water quality permit fee rule. We also appreciate the opportunity to serve on the Stakeholder Advisory Group on this subject.

While King County's Wastewater Treatment Division (WTD) supports adequate funding for Ecology's work related to the fees, the proposed increase from \$0.18 to \$0.29 per residential equivalent (RCE) per month or \$3.43 per RCE annually is substantial. For example, in fiscal year 2022, WTD paid Ecology \$1,705,844 to administer permits for five treatment plants. The proposed increase will add approximately \$1 million annually which will be paid by WTD's ratepayers. This comes at a time when the burdens to comply with regulatory requirements, keeping up with an aging system and demands for capacity improvements are all falling on ratepayers, without sufficient relief from the state.

We believe that substantial cost increases must be accompanied by substantial increases in Ecology's services, such as reduced permit backlog and improved responsiveness. Also, while all permittees will pay more with this proposal, the difference between Ecology's actual costs to issue a permit and the permit fee charged to agencies serving larger numbers of RCEs will be further increased. While the passage of Senate Bill 5585 removed the cap per RCE in the Revised Code of Washington on municipal wastewater discharge permit fees, Ecology should consider no further increases beyond the current proposal until it can demonstrate the permit fee reflects the actual cost of service based on verifiable data to inform permit fee amounts.

As suggested during the Stakeholder Advisory Group meeting, we strongly urge Ecology to track staff time and administrative costs for each permit going forward. This information would serve as the basis for Ecology to implement a true "cost of service" permit fee structure for municipal


Ligeia Heagy  
May 11, 2023  
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wastewater permit fees that is equitable for all agencies and ratepayers. The data should be shared with the Stakeholder Advisory Committee, in advance of their next meeting in 2024, to inform fee structure options for 2025.

Ecology is tasked with reducing the permit backlog to 40 percent by 2025 and 20 percent by 2027. We look forward to Ecology reporting back to the Stakeholder Advisory Committee on progress made towards this important goal.

Thank you for considering our comments. If you have any questions regarding our comments, please contact me at 206-549-1190 or [kgurol@kingcounty.gov](mailto:kgurol@kingcounty.gov).

Sincerely,

DocuSigned by:  


8E7ECDE169354C2  
Kamron Gurol

Division Director





**Antonio Machado**

Senior Manager, Northwest Technical

May 12, 2023

Electronic Submittal to: Ligeia.Heagy@ecy.wa.gov

Ms. Ligeia Heagy  
Washington State Department of Ecology  
Water Quality Program  
PO Box 47600  
Olympia, WA 98504-7600

Subject: *Water Quality Permit Fee* Regulation (Chapter 173-224 WAC)

Dear Ms. Heagy,

Western States Petroleum Association (WSPA) appreciates the opportunity to comment on proposed revisions to the Water Quality Permit Fee regulation. WSPA is a trade association that represents companies which provide diverse sources of transportation energy throughout the West, including Washington. This includes the transport and market petroleum, petroleum products, natural gas, and other energy supplies.

During 2007 – 2008, the Water Quality Program undertook a comprehensive analysis of the wastewater permit fee program. Ecology's interests were to assess trends and needs in revenue generation, and to examine the permit fee structure and rates against RCW 90.48.465 criteria. This assessment was referred to as the "Permit Fee Task Force" and under the auspices of the Water Quality Partnership group.

A prominent finding from this assessment was that the ever-escalating fees for several source categories characterized as "large facility, individual NPDES permit," including for Petroleum Refining, were much larger than could be supported by Ecology's work-load evaluation.<sup>1</sup> In short, the permit fee derivation did not match the RCW 90.48.465(1) criterion that fees "not exceed the expenses incurred by the department in...(all aspects of administering the NPDES permit)." Further, that there was a growing inequity gap between source categories with permits having similar workload, complexity, etc. The fee disparity was significant and growing.<sup>2</sup> Ecology describes these as "over-paying" categories.

While acknowledging these facts, Ecology also recognized that measures to mitigate this structural inequity must necessarily be tied to significant step-change revenue increases. In particular, the agency identified the "Municipal and Domestic Wastewater Facilities" source category as under-paying and pointed to the fee cap in statute as the impediment for generating the needed revenue to support the permit fee program. A more equitable fee formula applied to municipal permits would ostensibly generate sufficient revenue to both sustain the wastewater permitting program and provide some relief to the "over-paying" source categories.

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<sup>1</sup> The Department of Ecology conducted this study through the "Permit Fee Task Force." The study results are referenced in the 2008 WAC 173-224 regulation adoption package presented in WDOE Publication 08-10-065, July 31, 2008. A Public Disclosure Act request to Ecology to obtain the actual task force report yielded a "Page Not Found" response.

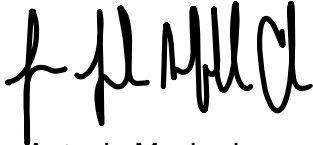
<sup>2</sup> The "Petroleum Refinery" category fee was about \$125,000+/- in 2008. The Permit Fee Task Force derived a work-load fee of \$50,000+/- per year. In comparison, the agency assessment found there are many source categories for individual industrial NPDES permits requiring a comparable agency management workload and with assigned fees in the \$4,000 to \$35,000 range.

The 2022 Washington legislature took the needed action to lift the annual cap on permit fees charged to municipalities. With the assistance of an advisory committee, Ecology is now proposing in this current rule-making a healthy increase in the fee assigned to the municipal facilities source categories.

In anticipation of the coming municipal fee increases, and consistent with the CR-101 scoping description, the Western States Petroleum Association submitted a request in mid-2022 to address the structural inequities in the permit fee program. WSPA received notification that consideration of this request was beyond the scope of the immediate rule revision effort.

The next WAC 173-224 fee adjustment will be for fiscal years 2026-2027, with some public involvement process likely in 2025. WSPA requests consideration of the earlier agency findings in support of the next rule revision process.

Sincerely,



Antonio Machado  
Sr. Manager, Northwest Technical

