

RESPONSIVENESS SUMMARY

For Amendments to Chapter 173-224 WAC
Wastewater Discharge Permit Fees

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Water Quality Program

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Wastewater Discharge Permit Fees

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Responsiveness Summary

For amendments to Chapter 173-224 WAC

Wastewater Discharge Permit Fees

Introduction and Background Statement

The Department of Ecology is authorized under state statutory law RCW 90.48.465 – Water Pollution Control to establish annual fees to fund the issuance and administration of wastewater and/or stormwater discharge permits under the Water Quality Wastewater Discharge Permit Program.

The law states that all fees charged shall be based on factors relating to the complexity of permit issuance and compliance and in addition, may be based on pollutant loading and the reduction of the quantity of pollutants.

On September 24, 1997, Ecology filed proposed amendments to Chapter 173-224 WAC – Wastewater Discharge Permit Fees with the State Code Revisers office. These amendments would allow funding of the permit program at the \$20.3 million appropriation level established by the Washington State Legislature for the 1997-99 biennium. Two of the most noted proposals consist of:

- a. Increasing permit fees for all existing permit holders by 4.05% for state fiscal year 1998 (July 1, 1997 through June 30, 1998) and 4.01% for state fiscal year 1999 (July 1, 1998 through June 30, 1999); and
- b. Revising the process for how Ecology will handle delinquent permit fee accounts.

Summary of Rule Purpose

These amendments are being proposed to allow Ecology to fund the operation of the Water Quality Wastewater Discharge Permit Program at the Fiscal Year 1997-99 biennial appropriation level established by the Washington State Legislature in 1997.

Summary of Public Involvement Actions

1. Initial Statewide Workshops

Ecology held statewide workshops to explain the proposed changes being recommended for Chapter 173-224 WAC. Every permit holder or potential permit holder was notified of these

workshops by direct mail. In addition, interested persons on the Water Quality Permit Fee Mailing List were also directly notified by mail. Materials identifying topics of discussion were sent before the workshops.

2. Draft Rule

A copy of the draft rule as well as a focus sheet highlighting proposed amendments to the draft rule, Chapter 173-224 WAC, as well as a copy of the draft rule itself was mailed to approximately 4,500 interested persons. The public comment period was established and comments had to be received by Ecology by November 25, 1997.

3. Public Workshops and Hearings

Official public notice for the proposed comment period and hearing schedule was published in the Washington State Register, Issue 97-20. Direct mailings of a focus sheet titled Public Workshops on Wastewater/Stormwater Discharge Permit fees were sent to approximately 4,500 interested persons. The public comment period began September 24, 1997 and ended November 25, 1997.

The public workshops on the proposed amendments were held as follows:

Yakima	August 11, 1997
Kennewick	August 12, 1997
Spokane	August 13, 1997
Wenatchee	August 14, 1997
Lacey	August 18, 1997
Bellingham	August 19, 1997
Longview	August 20, 1997

Public hearings were held on the following dates and locations:

Spokane	November 5, 1997	Ecology Eastern Regional Office
Yakima	November 6, 1997	Ecology Central Regional Office
Lacey	November 10, 1997	Ecology Headquarters Building

4. Declaration of Non-significance and Economic Impact Analysis

This rule has no environmental impact so neither an environmental checklist nor Declaration of Non-Significance is applicable.

Under certain conditions, rules changing fee schedules are exempt from Small Business Economic Impact Statement (RCW 19.85.025) and Significant Legislative Rule Cost Benefit

Analysis (RCW 34.05.328) requirements. The exemptions apply to rules, which set or adjust fees or rates pursuant to legislative standards

Legislative standards for these fees appear in 90.48.465 RCW (authorizing the fee) and in the biennial budget, which establishes the total revenue, which can be collected. Further legislative standards are set through the fiscal growth factors pursuant to Initiative 601. Ecology is proposing to increase fees to match the permit program-operating budget established by the Legislature. However, Ecology will not increase fees beyond the fiscal growth limits for both State Fiscal Years 1998 and 1999 as determined by the Washington State Office of Financial Management (OFM). Fiscal growth factors are set by OFM pursuant to Initiative 601 (43.135.055 RCW).

Economic analyses are required for impacts on small business and municipalities are required when establishing wastewater discharge permit fees. Established fees are not subject to this requirement.

Summary Description of Development of Proposed Rule

As mentioned in the background statement, Ecology proposes to increase fees for all permit holders by 4.05% for Fiscal Year 1998 and 4.01% for Fiscal Year 1999. In addition, Ecology proposes to make the following revisions:

- a. Change the language identifying inactive aggregate sites to nonoperating aggregate sites;
- b. Create separate fee categories for general permit holders;
- c. Eliminate duplicative language concerning fees for inactive aggregate sites;
- d. Add language that states if a facility receives permit coverage, they will be obligated to pay the assessed fee regardless of whether or not they are in operation;
- e. Add language that states Ecology will not refund any fee amount totaling less than \$100.00;
- f. Add language stating that aggregate sites operating less than ninety cumulative days in a calendar year will have their fees determined as a nonoperating site;
- g. Add language stating that holders of multiple permits issued for a single site will have pay one annual fee for the permit in the highest fee category;
- h. Add to language establishing the procedure for processing delinquent accounts.

Scheduled Adoption Date

The Wastewater Discharge Permit Fee Regulation is scheduled for adoption on January 15, 1998. If adopted, the rule will become effective February 16, 1998.

Comments and Responses

This section of the *Responsiveness Summary* addresses written and verbal comments received on the proposed amendments to Chapter 173-224 WAC – Wastewater Discharge Permit Fees. The comments are summarized or paraphrased and are divided into the following topics:

- A. Proposed fee increases.
- B. Specific fee category structures.
- C. One fee assessment for individual sites with multiple wastewater permits.
- D. Elimination of refunding any fee monies less than \$100.00.
- E. General Comments

Appendix B identifies the people who provided written and verbal comments and references where their comment (which is numbered) can be found within one of the sections listed above.

A. Comments concerning the proposed fee increase.

Written Comment #1:

“Regarding your fee increases for fiscal years 1998 and 1999, I think you are asking for too high a fee. While the general rate of inflation has been below 3% for several years, your department seems to think it needs more than that. My hunch is that the proposed rates are in fact the highest increases allowed under Initiative 601. It is because of state agencies spending money at higher growth rates than the rest of us that 601 even exists. I suggest you limit your increase to the general rate of inflation and live within the taxpayer’s means.”

“Cover sheet of hearing on proposed changes to 173-224 WAC in Yakima in 11-6-97 states proposed fee increase of 4.05% in fiscal year 1998 and another increase of 4.01% in fiscal year 1999. Compounded fee increase just short of 8.8% is not justifiable. Even if these exorbitant fee increases aren’t prohibited by the letter of Initiative 601, they certainly disregard the citizens

intent to hold increases at or near inflation. We are pretty much aware that we're in a 2% world (re: inflation), I've attached an economic indicator sheet to remind us. Recalculate fee increases to 2.2% for fiscal year 1998 and 1% for fiscal year 1999. This is still a compound rate of 3.2% for the biennium.

Ecology Response:

State law requires Ecology to recover its expenses for administering the wastewater discharge permit program. Initiative 601 restricts fee increases for any fiscal year that exceeds the fiscal growth factor (the average of the sum of inflation and population change for each of the prior three fiscal years) for that year without prior legislative approval. The Legislature through appropriation determines the dollar amount of biennial fee revenue Ecology can recover through permit fees. The Washington State Office of Financial Management (OFM) determines the fiscal growth factor pursuant to Initiative 601 (43.135.055 RCW). Ecology is required to match fees to the permit program-operating budget established by the Legislature, but it cannot increase fees beyond the fiscal growth limits for both State Fiscal Years 1998 and 1999. The operating budget passed sets the 1997-99 biennium funding limit at \$20.3 million dollars. This budget also matches the fiscal growth limits calculated by OFM.

Oral Comment #1:

“The wastewater program made no attempt to justify their request for annual fee increases at the maximum allowable rate allowed under I-601 during the last biennium and this biennium has been no different.”

“Not only are the fee increases at this point unjustified, but the base as to which the fee increase are applied also appear to be unjustified with no further information. Some basic justification and accountability by the program would go along way towards improving the attitudes of those who continue to fund the services provided by the program.”

Ecology Response:

As stated at the workshops, the fee increases are a result of the Washington State Legislature increasing the Ecology wastewater discharge permit program budget for fiscal years 1998 and 1999. The Legislature establishes the funding level for the permit program. By law (RCW 90.48.465) Ecology is required to fund the permit program through annual fees. Once the budget level is established and Ecology is assured it is compliance with I-601, the fee rule amendment process begins.

Ecology recognizes that it can improve information provided to the public on program accomplishments and needs. We are going to be working on that this biennium. The funding increase to the program, as provided by the Legislature, was needed due to escalating fixed costs such as an increase in the Ecology headquarters building lease, clerical and computer

support increases to the regional offices as well as a general salary increase. For the 1997-99 biennium, Ecology will issue permits primarily within designated watershed basins. For Fiscal Year 1998, the watershed basins include: The Upper Columbia, Pend Oreille, Columbia Gorge, Skagit/Stillaguamish and Horse Haven/Klicitat. For Fiscal Year 1999, the water shed basins will be: Island/Snohomish, South Puget Sound, Okanogan, Crab Creek and Esquatzel. The number of permits issued is based on workload, available staffing, and the numbers of permits within the watersheds scheduled in the five-year permitting cycle. We also retain some ability to respond to the need to issue permits outside of these designated watersheds. This workload is based on priorities such as high environmental risk, new permits, or substantially revised industrial processes. Ultimately, the increased level of funding is needed in order to have staff available to issue new and updated wastewater discharge permits. These permits are necessary to respond to changing business practices at many facilities and to improve public health and environmental protection.

The operating budget authorized by the Legislature for the 1997-99 biennium totals \$20,379,000. This money will fund approximately 133 full time employees to implement the wastewater discharge permit program. Anticipated monies are planned for expenditure in the following manner:

<u>Activity</u>	<u>% Total FTE'S</u>	<u>Agency Total Actual Dollars</u>
Management & Support	15.6%	\$ 2,461,191
Regional Office Clerical Staff	5.3%	662,094
Compliance	1.5%	240,904
Program Development	4.4%	721,596
Permit Processing	20.6%	3,380,392
Permit Management	.7%	160,707
Inspections	13.5%	2,916,390
Report Review	10.5%	1,772,764
Appeals	.2%	40,151
Data Management	3.5%	808,185
Technical Assistance	10.2%	1,653,268
Outreach & Education	.3%	32,344
Alternative Strategies	.5%	97,641
Administrative Services	13.2%	2,812,118

Ecology has prepared the 1995-97 biennial report to the Legislature detailing expenditures made during the biennium and anticipated expenditures for the 1997-99 biennium. Please contact Mr. Dan Wrye at (360) 407-6459 if you would like to receive a copy of this report.

Written Comment #19

“The proposed discharge permit fee rates also seem high. If the agency’s fee schedule is adopted, it looks as though these targeted businesses (food processors) will pay more than their fare share. I have not seen a good justification from your agency that these fees are directly related to the costs of running the pretreatment program.”

Ecology Response:

Ecology is assuming that this reference to a “pretreatment program” is the department’s administration of the wastewater discharge permit fee program. The proposed fee increases are a direct result of the increased budget appropriation established by the Legislature. All permit holders will be assessed the fee increase equally. Ecology has not targeted any industry to receive this increase alone. Please see the response to Oral Comment #1 for a listing of the planned expenditures for the 1997-99 biennium.

B. Comments concerning specific fee category structures.

Written Comment #2: (Shipyards)

“Once again I must go on record as disputing the categorizing of a marine ways with a synchrolift. Obviously the person or people doing the comparison, however well-intentioned, do not know the marine industry very well. Please allow me to point out some of the most important differences. First, a marine ways is used for only one purpose, that is the assembly and launch of a new vessel. When the vessel is launched, it is a one way trip. There are no means of bringing the vessel back into the ways. On the other hand, with a synchrolift, you can launch or retrieve a vessel as many times as you wish. There is no limit to how many times a synchrolift can be used. The only event is the time a vessel is on the lift, if it is not cradled and moved off. A ways, depending on vessel size, may only be used to launch a vessel about once or twice a year. The purpose of this description is to show that a synchrolift has the capacity to create a great deal more revenue for a company than does a ways, yet both are rated the same in the permit fee schedule. This, in our opinion, is grossly unfair and should be reviewed by those responsible for making these determinations.”

Oral Comment #5: (Shipyards)

“I’d like to make the comment and go on record as protesting the fees as scheduled based upon a comparison of marine ways in the same category as a synchrolift. I sent a letter to Bev earlier citing the differences between the synchrolift and marine ways where you can haul vessels on a synchrolift many times, a ways is imply for one time construction and launching. I would like some type of answer from Ecology as to why these got lumped in the same higher price.

Particularly when we are restricted in the size of vessel where often times cinchers and dry-docks are not restricted by size. If I could have an answer to that, I'd appreciate it."

Ecology Response:

When the original workload models were created, subcategories were established listing activities reflecting permitting complexity. We recognize that although synchrolifts and marine ways are very different, administration of the permit for facilities that have these types of operations is very similar. When establishing a fee category/subcategory, Ecology cannot consider the potential revenue a permit holder can generate by operating these various systems. However, Ecology does consider the impact of the fee on permit holders. This issue is addressed in the rule under section WAC 173-224-090.

Written Comment #12: (Shipyards)

"Ecology should modify the permit fee categories for shipyards to differentiate between large and small marine ways. Marine ways do not differ as much in length, as they do in width. Those dimensions, taken together, determine the capacity or tonnage of the vessel that can be worked on at the facility. We would suggest that the department adopt a fee structure for marine ways that recognizes that much smaller vessels (and thus less resulting revenue) can be worked on in a small marine way than in a large marine way."

Ecology Response:

As mentioned in the response to Written Comment #2, Ecology cannot consider the amount of potential revenue a facility can generate by operating various sizes of marine ways. As far as permitting is concerned, there is no significant difference in Ecology managing a permit issued to a facility with a small marine way as managing a permit issued to a facility that operates a large marine way. Ecology does recognize the impact of fees on small businesses. This issue is addressed in WAC 173-224-090.

Written Comment #3: (Water Plants)

"Please advise on the status of the General Discharge Permit fee for water treatment plants. Streamlining the application process for water treatment plants has reduced administrative costs. It was my understanding that these savings would be reflected in a fee reduction to 70% of the current individual Discharge Permit fee. It has come to my attention that the intended fee reduction has not been implemented."

"Add a water plants – general permit coverage fee category with charges equivalent to 70% of the cost of an individual permit.

Ecology Response:

Ecology erred when filing the draft rule by not including the general permit category for water plants since it is proposing to list all other general permits (with the exception of Stormwater) in the fee schedule. Ecology is proposing to add the following in WAC 173-224-040:

	FY98 Annual Permit Fee	FY99 Annual Permit Fee
Water Plants – Individual Permit Coverage	\$ 2,846.00	\$ 2,960.00
Water Plants – General Permit Coverage	1,992.20	2,072.00

Written Comment #13: (Water Plants)

“Industrial facility categories: Water Plants: a. Potable water treatment. The word “potable” should be deleted from this category to accommodate water treatment plants that produce industrial, not potable, water.

Ecology Response:

Ecology agrees with this recommendation. Please see reply to Written Comment #3.

Written Comment #15: (Water Plants)

“Consider basing the cost of general and individual discharge permits for water plants on equivalent residential units. Water utilities and the state Dept. of Health are moving toward use of ERU’s as the standard unit of measurement of water utility size. To be consistent with this trend, you should consider adopting ERU’s as the basis for calculating the cost of discharge permits for water treatment plants.”

Ecology Response:

At the present time, Ecology cannot make any major changes to the fee schedule without violating compliance with Initiative 601. Currently, there is a flat fee for water plants. To establish a fee structure using Equivalent Residential Units, some large water plants would need to pay a higher annual fee than is presently being assessed while water plants with a smaller number of ERU’s would pay a lower fee. Ecology can easily lower a permit fee and remain in compliance with Initiative 601, however, it cannot increase a permit fee to a level greater than the fiscal growth factor.

Written Comment #4: (Pulp, paper and paperboard – Chemical Pulp Mills w/chlorine bleaching)

“Please consider the following comments to the extent they are relevant to the proposed rule changes. The use of the terms w/Chlorine and w/o Chlorine to cover chemical pulp mills were part of the original Permit Fee rule in 1988. In 1988, all the bleached pulp mills in the state utilized molecular chlorine as the predominant pulp bleaching compound. The use of the word chlorine is understood by dictionary meaning, the industry, and Ecology’s Industrial Section to refer to molecular chlorine. Chlorine is distinguished as a bleaching compound from chlorine dioxide, sodium hypochloride, or any other chloride ion-containing bleaching agent. There is no information the WAC 173-224 adoption record to suggest chlorine would mean anything other than the common dictionary meaning or other than the accepted industrial use of the term in 1988 (or now). The regulatory categorization and description of Chemical Pulp Mills has not been modified from the 1988 rule. Both the Cosmopolis and Longview pulp mills have eliminated their use of chlorine as a bleaching compound. Your response letter offers that Ecology ‘believes its fee categories to be self-explanatory’ and also that “these two facilities are not chlorine free.” This reasoning is incongruous and only works if there has been creep since 1988 in interpreting the word “chlorine” to include the full set of related chloride-containing compounds. The agency should either reassign these facilities (Cosmopolis and Longview pulp mills) to the fee category based on the plain language application of the original (and unamended) fee category definitions, or propose a definition for the chlorine bleaching term and allow for public comment.

Ecology Response:

Ecology still believes the fee subcategory is self-explanatory. However, in order to make clear the intent of this subcategory, Ecology will add a definition for Chemical Pulp Mills W/Chlorine Bleaching to read as follows:

Chemical Pulp Mills W/Chlorine Bleaching means any pulp mill that uses chlorine or chlorine compounds in their bleaching process.

Ecology would consider amending the fee category to Pulp Mills who Bleach and Pulp Mills that do not Bleach. However, this would be a major category change and needs to be discussed extensively with all permit holders and other interested persons this change could potentially impact. Ecology will examine this issue for inclusion in the next fee rule revision process.

Oral Comment #4: (Iron and Steel Foundries)

“I am representing the American Foundrymen Society and basically came down to find out, get some more information on, ask for further studies on the increase that the foundries have, having received this notice from the \$200 dollars per year to \$11,000 dollars per year for the same

facility. We were under a general permit before and my last permit was \$291 and now they are saying we have to pay \$11,000 and it's just not our foundry, it is many foundries."

Ecology Response:

Any permit holder that has permit coverage under a general permit and has no other wastewater permit with Ecology will have its permit fee assessment classified under the general permit fee category. Foundries that have stormwater general permit coverage will continue to pay the fee in that permit category. The fee category "Iron and Steel" – A. Foundries is for facilities that have individual permit coverage. This fee category has been in existence for more than ten years and only has a very limited number of permit holders contained within it.

Written Comment #16: (Municipalities)

"WAC 173-224 –040(3) specifies annual permit fees for municipal/domestic facilities. RCW 90.48.465 gives authority to the department to establish annual fees for these facilities. RCW 90.48.465(l) goes on to state "All fees charged shall be based on pollutant loading and toxicity and be designed to encourage recycling and the reduction of the quantity of pollutants." We recommend that municipal wastewater discharge fee calculations be changed to a flow or loadings based fee as opposed to a calculation of RE's based on revenue. A fee based on RE's calculated from gross revenue may have little if anything to do with "complexity of permit issuance and compliance". We would like to see the fee calculation method changed since the biosolids fee will likely be based on the wastewater fee structure."

Ecology Response:

RCW 90.48.465(2) states: "The annual fee paid by a municipality, as defined in 33 U.S.C. Sec. 1362, for all domestic wastewater facility permits issued under RCW 90.38.162, 90.48.260, and 70.95J.020 through 70.95J.090 shall not exceed the total of a maximum of fifteen cents per month per residence or residential equivalent contributing to the municipality's wastewater system." Ecology cannot change the current fee structure for municipal facilities unless state law is amended by the Washington State Legislature.

C. Comments concerning Ecology's proposal to assess one fee for individual sites with multiple wastewater permits.

Written Comment #10:

“WAC 173-224-050(7) states that a facility with an existing NPDES and/or state waste discharge permit, which has also obtained an industrial and/or construction stormwater general permit, shall only pay an annual fee based on the permit with the highest permit fee category assessment. Ecology should clarify that it will not assess permit fees, if a facility’s primary wastewater and/or stormwater discharges are covered under a local permit and subject to a lower sewer utility’s permit fees.”

“We feel strongly that the Department should amend the regulations to eliminate the potential for assessment of double fees against facilities. Because local fees can be substantial, Ecology’s Permit Fee Program should be amended to clarify that the facility will not be assessed stormwater permit fees based on the industrial facility categories set forth in WAC 173-223-040(2). Rather, the facility should only be required to obtain a Baseline Industrial Stormwater General Permit and assessed the fee for that permit.

“If shipyards have the yard area sufficient to install infiltration basins for stormwater collection and treatment and elect to do so, they incur significantly greater capital costs than other shipyards to treat their stormwater discharges to surface water. Even if Ecology requires shipyards to treat their stormwater prior to discharging to surface waters in the future, the capital improvements are still not likely to be as great as that incurred for infiltration. To compensate for this uneven commitment of facility funds, shipyards with approved infiltration basins should be assessed the fee for individual industrial stormwater permits without regard to the other fee categories for shipyards.”

Ecology Response:

Any facility that receives permit coverage from Ecology is assessed an annual permit fee as long as that permit coverage continues with the Department. State law, RCW 90.48.465 requires Ecology to fund administration of the Water Quality Permit Program through annual permit fees assessed for all permit holders. The only exemption language provided (RCW 90.48.465(3)) states the following: “The department shall ensure that indirect dischargers do not pay twice for the administrative expense of a permit. Accordingly, administrative expenses for permits issued by a municipality under RCW 90.48.165 are not recoverable by the department.” Guidance from the Attorney General’s Office indicates that Ecology cannot assess a permit fee for facilities that have permit coverage from an Ecology delegated wastewater permit program. A change in state law would be needed to allow for further exemptions

If a facility receives permit coverage under a general permit, the permit fee assessment reflects general permit coverage. If a facility does not meet the requirements of general permit coverage and receives individual permit coverage, the fee assessment will be the amount indicated for that individual permit coverage. Ecology recognizes the many costs permit holders have made to address water quality improvement and protection. The fee rule does address the impacts of the fees on small businesses. WAC 173-224-090 contains language that allows for a reduction in fees if the permit holder meets the established criteria.

D. Comments concerning Ecology's proposal to not refund any fee monies less than \$100.00.

Written Comment #11

“Ecology is proposing to amend WAC 173-224-050(2) to excuse it from processing refunds of fees under \$350.00. For small facilities, the \$350.00 refund can amount to a significant source of revenue. Ecology has presented no factual basis or rationale for keeping refunds in any amount. Ecology's statement that “it is not cost effective...to process refunds of \$350.00 or less” is unsupported. Unless Ecology can provide statistics on the number of refunds of \$350.00 or less that it processes each year and the associated costs to Ecology associated with processing each refund, Ecology has no reasonable basis for withholding any refund amount. If Ecology insists on setting a floor on refund amounts, then the floor should be \$100.00.

Ecology Response:

When the fee schedule (173-224-040 WAC) was first established the various activities involved in the administration of the fee program were identified. Through that process, Ecology, with the help of an advisory committee, developed annual fees for the various categories of permit holders. However, Ecology did not have extensive experience administering a program of this type. Therefore all permit fee administration activities could not be identified since there was no experience to draw from. The process of issuing refunds to permit holders was not considered nor its impacts to the program. Ecology processed 141 refunds during fiscal year 1997. Since the time needed to process refunds was not considered in the information used to establish the fee schedule, Ecology felt it needed to determine a baseline amount at which it would not become cost effective to refund fee monies. Ecology originally estimated this amount to be \$350.00 but after listing all the activities performed by Ecology associated with making refunds this amount has been revised and lowered to \$100.00.

E. General comments.

Oral Comment #2

“The program administrators have made it clear that their course of action regarding fees has been pre-determined and that this public hearing process is merely a mandatory inconvenience for the program implementing these increases.”

Ecology Response:

This statement is partially correct when it refers to the fact that when Ecology does a rule amendment, the course of action regarding fees (as allocated by the budget) has been determined. However, the reason for having such an intensive public involvement process is to hear the concerns and issues raised regarding any of the rule amendments being proposed including the fee increases. Ecology received comments from less than five percent of the permit population regarding the fee rule amendments. Ecology held eight public workshops statewide. In total, 66 permit holders or interested persons attended. Several changes were made to the proposed amendments based on comments received. However, Ecology received very few comments protesting the fee increase itself. Ecology held three public hearings. In total, 26 permit holders or interested persons attended with three persons presenting testimony. Ecology received eight letters with comments regarding the proposed amendments. Because of comments received during this official comment period, some further changes will be made to the rule. There are approximately 4,000 permit holders. At no time has Ecology ever considered the public hearing process a “mandatory inconvenience”. Ecology feels very strongly that people who wish to be involved in a rule amendment/development process have the opportunity to do so. At this time, Ecology has no plans to change its public involvement process and will continue to hold statewide public involvement workshops and hearings as needed for rule development.

Oral Comment #3:

“This process has been less of a public hearing of public concerns regarding this proposal than a hearing of what is going to happen regardless of the public concern on fee increases.”

Ecology Response:

Ecology has only received minimal comments regarding the proposed fee increases during the statewide workshops and public hearings. Audience members consider the proposed increases “cost of living” increases. There was barely any concern expressed regarding this proposed amendment to the rule.

Written Comment #5:

“Facility operators should be required to compensate Ecology under the Permit Fee Program if the facility obtains a permit, but not prior to the facility commencing operation or subsequent to the facility ceasing continuous operation. While the facility is not operating, it ceases to impact the environment in a manner otherwise requiring Ecology oversight or other regulatory activity. Under the proposed amendment, operators of facilities, which are not in operation, will pay an inequitable share of the cost of regulating wastewater or stormwater flows. Ecology asserts that

a person who applies for a building permit must pay the fee associated with the issuance of the permit, whether the permit uses the permit or not. However, that logic is faulty for two reasons: (1) the holder of a building permit does pay the cost incurred by a government agency to process his application, but is not required to pay the costs the agency incurs to regulate the operation of the structure; and (2) permit applicants are already required to pay an initial application fee, which is intended to compensate Ecology for the cost of processing the permit application. If that initial fee is inadequate to cover those costs, then Ecology should amend its application fee provisions. Furthermore, Ecology could draft a provision creating a small fee (similar to the permit application fee) for termination of permits. This would allow Ecology to create additional revenue to cover the cost of processing permit terminations.”

Ecology Response:

The Water Quality Permit Program is funded through annual permit fees. Whether or not a facility can or chooses to begin operation upon its permit issuance is immaterial to the activities Ecology has already performed to issue the permit. The one-time application fee does support in funding some of the activities needed to even make an initial assessment of whether or not a permit is needed and/or will be issued. However, the application fee does not cover all the activities that occur with permit issuance. In addition, any facility that applies for and receives permit coverage under a general permit will not be assessed an application fee. The reason for this exemption is because permit issuance is very swift for facilities that apply for general permit coverage. Individual permits take several months before permit process and issuance is completed. In some rare cases, permit issuance can take up to a year or more if the facility needing permit coverage has complex operations. If a facility does not begin operation immediately, the fee regulation contains language that addresses the impact of fees on small business. WAC 173-224-090 addresses how businesses with limited revenue or no revenue may apply for a fee reduction that will either cut the annual fee in half or lower the fee to \$100.00 annually.

Written Comment #6:

“If a facility ceases operating or has not yet commenced operation, the operator is receiving no revenue from that facility. Operators are thus required to pay fees without receiving income to cover the cost. Given that the permit fees can run as high as several thousand dollars a year, that can represent a significant burden even on a prorated basis, especially for those industrial sectors, such as the fishing industry and governmental agencies. Moreover, many of the facilities covered by the Permit Fee Program are small family-owned operations. For these facilities, every additional fee creates an undue financial burden.”

Ecology Response:

The fee regulation contains a section (WAC 173-224-090) that allows a business to apply for relief from the impact of the permit fee. If a facility has gross revenue of less than \$100,000.00

annually from whatever activity the permit covers, it may apply for an extreme hardship fee reduction that will reduce the fee to \$100.00 annually.

Written Comment #7:

“Many factors outside the facility operators direct control contribute to a decision to discontinue operation of a facility. Therefore, we ask that Ecology consider a more equitable assessment of permit fees by adding language that allows facility operators to stop paying fees as of the date Ecology receives notice that the operator is discontinuing operation. This would allow the facility operator to pay the prorated fee from payments on any outstanding accounts receivable which are received after the termination notice is mailed.”

Ecology Response:

If a permit holder requests permit termination and knows that it is forthcoming, it may contact the Permit Fee Administration Office requesting information on what the prorated fee amount will be that they need to pay. The permit holder can then submit the amount calculated by the Permit Fee Administration Office with the printed invoice mailed to them. Permit fees are prorated for terminated permits according to WAC 173-224-050(2). It states “Permits terminated during the fiscal year will have their fees prorated as follows: a. Permit coverage for up to three months will pay twenty-five percent of the annual permit fee; b. Permit coverage for three to six months will pay fifty percent of the annual permit fee; c. Permit coverage for six to nine months will pay seventy-five percent of the annual permit fee; d. Permit coverage for nine months or greater will pay one hundred percent of the annual permit fee.”

Permit holders are responsible for notifying Ecology in writing when their operation ceases. After notification, the Department will then verify, usually through an on-site inspection, that the site is in a condition where termination of the permit will not cause environmental problems. If the permit inspector agrees with termination, the Fee Administration Office is notified and the fee is prorated to the permit termination date.

Written Comment #8:

“The proposed amendment ignores the fact that Ecology already insists on the permit fee covering the time period from the issuance, rather than the effective date, of the permit. Ecology now has the benefit of an additional thirty days of permit fee coverage even before the permit becomes effective. If Ecology continues to insist on the issuance date as the start date for calculating permit fees, that portion of the prorated fee covering those additional thirty days should be more than adequate to compensate Ecology for any inconvenience or staff time spent after a facility operator gives notice that it is discontinuing operation.”

“Ecology proposes to amend WAC 173-224-050(6) to provide that the permit fee for coverage under a construction or industrial stormwater general permit should begin to accrue

from the permit's issuance date. We would urge the Department to amend the Permit Fee Program to calculate fees from the date the permit takes effect, rather than from the date of issuance regardless of whether it is a general or individual permit. The permit takes effect on a certain date; it is inequitable to require facilities to pay for coverage under a permit that is not yet in effect. Therefore, we ask the Department also amend WAC 173-224-050(2) to calculate fees from the effective date of new individual permits.

Ecology Response:

Facilities are encouraged when they first contact the appropriate Ecology Regional Permitting Office not to apply for permit coverage until they are ready to begin operation. Ecology has always begun assessing the permit fee based on the permit issuance date. Ecology has already gone through considerable effort to issue the permit. When a facility actually begins operation may determine when inspections and other permit activities are conducted, but it does not effect the efforts that Ecology expends on issuance of the permit. Facilities that have early permit issuance but do not and will not begin operation for some time may apply for relief from the impact of the fee through the small business fee reduction provision contained in WAC 173-224-090.

Written Comment #9:

“We have been unable to locate any provisions in the permit fee regulations that specify the procedures, which Ecology is required to follow in terminating a permit. In the absence of such procedures, Ecology could take months to effectuate a permit termination. Therefore, if Ecology insists on promulgating the proposed amendments to WAC 173-223-050(3), then we request that language be added which places specific time limits on Ecology for processing a notice or request for termination of a permit. We would encourage Ecology to draft language allowing operators to immediately cease paying fees if Ecology is unable to meet these time limitations.”

Ecology Response:

Ecology makes every effort to process permit terminations within thirty days of receipt. This process begins after receiving notification from the permit holder. The permit inspector conducts an on-site inspection and makes the determination whether or not all environmental concerns have been addressed. If the site is clean, the termination notice is processed very quickly. If there are environmental issues that need to be addressed, permit termination could be delayed until those issues have been rectified. The fee regulation is not an appropriate place to address internal agency operations. This concern has been forwarded to Gary Bailey for consideration in the next edition of the Permit Writer's Manual.

Written Comment #14:

“Base the general and individual discharge permits for water plants on Ecology’s actual cost of the administering the permits. Currently, the cost for a water-treatment plant discharge permit “shall not exceed three dollars per residential equivalent” (WAC 173-224-040(2)(c)) up to approximately \$3,000.00. With the advent of Ecology’s general discharge permit for water plants, more and smaller water utilities probably will obtain these permits for the first time. They will want to know how Ecology developed its fees for these permits, and Ecology should be prepared to answer this question with information about the agency’s cost of issuing and administering the permits. The State Dept of Health recently analyzed its cost of regulating water utilities as the basis for proposed changes in its water system operating permit fees. The DOH analysis resulted in a proposed “capacity charge” that would be spread evenly across all systems, and a per-connection “service charge” that would vary by system size, reflecting DOH’s cost of regulating systems of different size.”

Ecology Response:

Ecology assesses a flat fee for water treatment plants. This flat fee has been in existence for more than ten years. The fee was determined by using a workload model that listed the various activities that are performed in administering this type of permit. Ecology has recently issued a general permit for water plants. By issuing a general permit, Ecology is able to implement cost-effective and efficiency in managing the permit. These efficiencies result in a thirty percent reduction to the annual fee for permit holders. At this time, there is no proposal under consideration to develop a fee structure that is based on system size since all systems, regardless of size, will receive permit coverage under the same general permit. However, Ecology would be interested in discussing this issue with the permit holders at a future date for consideration during the next rule revision process.

Written Comment #17:

“We suggest that the DOE establish an incentive for recycling and reduction as stated in the RCW. Currently we are not aware of the existence of any such incentive program.”

Ecology Response:

In order for this to be implemented, fees would have to be dramatically increased for many permit holders to allow for fee reductions to those facilities that undertake activities to reduce waste. The reason for this is because state law requires the permit program to be funded through annual fees. Ecology would maintain a level-operating base that would meet funding needs as appropriated by the Legislature. Incentives would have to be built on top of the existing operating base. Initiative 601 does not allow Ecology to increase fees above the fiscal growth factor level. Incorporating incentives would be a major restructuring of the existing fee

schedule which would force Ecology's non-compliance with all the terms and conditions of Initiative 601.

Written Comment #18:

“The City of Wenatchee feels that the DOE should be required to provide municipalities with documentation of the amount of time that is spent by Ecology staff processing the permits both for NPDES discharge compliance and for the biosolids permit fees. When an entity hires a consulting firm or an engineering firm to perform work, the entity pays for the services rendered from an invoice that shows labor and materials. Currently the DOE simply sends a bill with no documentation of the time spent performing the review.”

Ecology Response:

Ecology currently does not have the capability of tracking and accounting the time for individual wastewater permits. Developing and implementing such an accounting system would be very costly. These fees do not reflect a fee for service. Fees fund all aspects of the permit program, not just the direct issuance and management of the permit. State law (RCW 90.48.465) sets the fee calculation for municipalities. Municipal fees are based on a flat rate multiplied by the number of Residential Equivalents (i.e. single family households) serviced by the municipality. Comments concerning the biosolids program have been forwarded to Mr. Kyle Dorsey, Solid Waste and Financial Management Biosolids Project Manager.

Explanation for Changes to the Proposed Amendments

1. Add the following definition:

Chemical Pulp Mills w/Chlorine Bleaching means any pulp mill that uses chlorine or chlorine compounds in their bleaching process.

Reason for addition:

Weyerhaeuser requested clarification of this fee subcategory.

2. Change the fee structure for water plants to the following:

	FY98 Annual Permit Fee	FY99 Annual Permit Fee
Water Plants – Individual Permit Coverage	\$ 2,846.00	\$ 2,960.00
Water Plants – General Permit Coverage	1,992.00	2,072.00

Reason for change:

Other general permit holders have their fees reduced by thirty percent. Ecology erred by not proposing a general permit category for water plants when it initially filed this rule amendment.

Appendix A
Public Notices

Appendix B

Individuals and Organizations Providing Comment

<u>Document Number Received</u>	<u>Name and Affiliation</u>	<u>Date</u>
1.	Gerard R. Millman – Great Western Lumber Co.	10/16/97
2.**	F. William Lang – J.M. Martinac Shipbuilding Corp.	10/17/97
*	Dave Reed – Yakima Valley Growers & Shippers Assn.	11/06/97
*	Tom Nielson – Sunset Castings	11/10/97
3.	John Kounts – Washington Public Utilities District	11/20/97
4.	Ken Johnson – Weyerhaeuser Company	11/21/97
5.	Kim Maree Johannessen- J & A, P.S.	11/24/97
6.	James P. Jacobs – Washington Food Processors Council	11/24/97
7.	Dan Curry – City of Wenatchee	11/24/97
7.	Jayne Strommer – City of Wenatchee	11/24/97
8.	David McFadden – Yakima Co. Development Assn.	11/24/97

* Denotes verbal comments only. See hearing transcript.

** Denotes verbal and written comments received.

Comment Cross-reference Table

<u>Document Number</u>	<u>Name and Affiliation</u>	<u>Comment Number(s)</u>
1.	Gerard R. Millman – Great Western Malting Co.	1A
2.**	F. William Lang – J.M. Martinac Shipbuilding Co.	2B, 5A
*	Dave Reed – Yakima Valley Growers Shippers Assn.	1A, 2E, 3E
*	Tom Nielson – Sunset Castings	4B
3.	John Kounts – Washington Public Utility Districts	13B, 3B, 14E, 15B
4.	Ken Johnson – Weyerhaeuser Company	4B
5.	Kim Maree Johannessen – J & A, P.S.	5E, 6E, 7E, 8E, 9E, 10C, 11D, 12B
6.	James P. Jacobs – Washington Food Processors Council	1A
7.	Dan Curry – City of Wenatchee	16B, 17E, 18E
7.	Jayne Strommer – City of Wenatchee	16B, 17E, 18E
8.	David McFadden – Yakima Co. Development Assn.	19A

- * Denotes verbal comments. See hearing transcript.
- ** Denotes verbal and written comments received.