

DEPARTMENT OF
ECOLOGY
State of Washington

RULE DEVELOPMENT PLAN

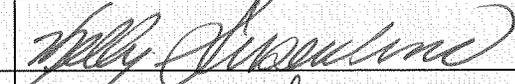
Chapter 173-224 WAC
Wastewater Discharge Permit Fees

AO# 13-02

Amended 9/5/2013

Signature Approval

The following signatures are required to approve this Rule Development Plan

RDP approved by:	Signature:	Date:
Rule Writer		9/5/2013
Agency Rules Coordinator		9/9/13
Program Manager		9/16/13

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RULE DEVELOPMENT PLAN

SECTION A: AUTHORIZATION



RULE-AUTHORIZATION DOCUMENT (RAD)

WASTEWATER DISCHARGE PERMIT FEES Chapter 173-224 WAC

1) Subject of possible rule making.

The Ecology Water Quality Program is proposing to amend Chapter 173-224 WAC - Wastewater Discharge Permit Fees to allow increases in annual fees by the state fiscal growth factors for some permit holders for state fiscal years 2014 and 2015. The fiscal growth factor amount for fiscal year 2014 totals 4.65%. The fiscal growth factor projection for fiscal year 2015 totals 4.72% but will be finalized in November 2013. These fee increases will only occur for those permit holders where the costs of managing their permits exceed the fees currently being assessed. The fee categories identified that would be subject to these proposed fee increases are: construction and industrial stormwater general and individual permits, aquatic pest control, boatyards, concentrated animal feeding operations, dairies, and private and government-owned domestic wastewater facilities including King County.

2) Select which type of rule-making process your program anticipates using:

- Standard rule making
- Expedited rule making
- Emergency rule making

3) Please indicate which are the one or two main reasons why your program is recommending moving forward with this rule making at this time?

The rule adoption/amendment/update:

- Is required by a federal/state law, court order, or to maintain federally delegated/authorized program.
- Is necessary for budget reasons.
- Is necessary to protect public health or the environment.
- Is requested by the regulated community or other interested parties.
- Would benefit the regulated community or other interested parties.
- Could potentially create or expand economic opportunities, including but not limited to new jobs, business opportunities, cost-savings or efficiencies, or community resources.
- Would assist economic recovery and/or job creation.
- Would streamline the rule or include other efficiencies (provide more detail in question 5.)
- Other reasons.

- 4) **Provide description of reasons why rules on this subject may be needed and what they might accomplish.**

Clean water is critical to all inhabitants of the state. Wastewater and stormwater permits are tools used by Ecology to ensure that man-made activities that discharge into the various water bodies of the state are discharged at a level where they will not impair the water. Management of wastewater and stormwater are top priorities of the agency. This rule amendment will allow continued recovery of Ecology's expenses in operating and managing the stormwater and wastewater permit programs.

- 5) **Would this rule streamline any existing requirements, improve rule clarity, or improve consistency (with other requirements in this chapter or with other state/federal laws and rules)? If yes, explain.**

No.

- 6) **What are the consequences if Ecology doesn't do this rule making now?**

If the fee rule is not amended, fee amounts already established will not recover a portion of Ecology's expenses in operating and managing the stormwater and wastewater permit programs. This will result in limitations to the permit program which will impact water quality statewide.

- 7) **Provide the specific statutory authority that allows Ecology to adopt this rule. Is it sufficient to adopt this rule?**

RCW 90.48.465 - Water Pollution Control requires Ecology to establish fees to collect expenses for issuing and managing wastewater and stormwater discharge permits.

- 8) **How does this rule making fit into the agency's strategic focus?**

This request is essential to implementing a strategic priority in Ecology's strategic plan because certain sectors or permit categories are underpaying for the cost of administering their permits. This results in lack of adequate funding to conduct inspections for facilities in the category. Many of these facilities are located on waters that ultimately drain to Puget Sound. These facilities and operations also handle toxic materials that may be carried along with discharges or are intentionally placed in the waters of the state. Ecology is Washington's principal environmental management agency with a focus on protecting humans and the environment from pollution. Ecology embraces this responsibility in its strategic priorities. These priorities are to:

- Protect and Restore Puget Sound.
- Reduce Toxic Threats.
- Support Successful Water Management and Healthy Watersheds.

This request supports Ecology's emphasis on supporting successful water management by building 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 treatment and water quality standards. The permit program manages approximately 5,400 point source permits and conducts approximately 600 compliance inspections of permitted facilities each year. Water quality discharge permits provide Ecology with a full range of tools to address water quality needs (e.g., permitting, technical assistance, and compliance/inspections).

- 9) **How would you rank this rule making? (1 = Low controversy, 2 = medium controversy, and 3 = High controversy)**

2 - Medium controversy.

This rule amendment proposal mirrors the last rule amendment that occurred in 2011. Specific fee categories where the cost to manage the permits is not being recovered through the current fee assessments are the only ones who would see an increase of their annual fees for fiscal years 2014 and 2015.

These categories are: industrial and construction stormwater general and individual permits, private and government-owned domestic wastewater facilities (including King County), aquatic pest control permits, boatyards, concentrated animal feeding operations, and dairies.

- 10) **Anticipated Timeline. When do you expect to file a CR 101, CR-102, and CR-103 (CR-105 if appropriate)? How does this timing relate to other activities in your program (permits, other rule making, etc.)?**

The tentative timeline for rule development will be as follows:

CR101 filing - April 2013

CR102 filing - June 2013

Public Hearing(s) - August 2013

CR103 filing - October 2013

This schedule does not conflict with other work the Water Quality Program is undertaking.

- 11) **Do you anticipate the need for cross program coordination/communication? Should this be done through the Environmental Program Management Team (EPMT)? What about other federal or state agencies?**

Ecology programs that receive permit fee monies will be directly notified of the rule amendment process. Federal and State agencies that are permit holders are directly notified by Ecology of any proposed changes to the permit fee regulation. Because of the direct notification, EPMT does not need to coordinate the communication between the Water Quality Program and its permit holders.

- 12) **What interested parties, stakeholders, etc. does this rule making most heavily impact? Why are they interested or concerned?**

All holders of wastewater and stormwater permits pay annual fees. Permit holders consist of large and small industrial businesses, construction companies, school districts, federal, state agencies, and city governments. All are interested in any proposed changes because of the impacts to their budgets.

13) How do you intend to *involve* regulated entities, interested parties, and tribes in the rule-making process?

All permit holders and stakeholders will be directly notified of the rule-making process through direct mailings. Ecology will hold one public hearing in Lacey, Yakima, and Spokane (simultaneously). Information on the rule timeline and public comment opportunities will be put on the Wastewater/Stormwater Permit Fee Web Page and the opening of the public comment period and information on the public hearing will be put on the Ecology Public Events Calendar.

14) How do you intend to communicate with small businesses and/or local governments on how the impact of the rule can be mitigated? (include other groups you will be consulting with, if applicable)

The fee rule contains language allowing businesses to apply for small business or extreme hardship fee reductions. Ecology directly notifies all permit holders how they can apply for these reductions. Information about these reductions is also contained on the Wastewater/Stormwater Permit Fee Web Page.

15) Does this rule raise taxes or impose or increase fees as defined in RCW 43.135.055 (Initiatives 960 and 1053)?

- Yes
 No

If the answer is yes,

Have you consulted with your Assistant Attorney General about the effect on your rule?

- Yes
 No

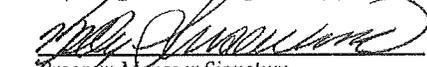
Does the fee have legislative approval if so when?

- Yes, when was the legislative approval granted (reference and date granted):
 No (Ecology is anticipating approval to appear in the agency budget language.)

Is there a deadline by when the agency must adopt the fee?

- Yes, when: December 2013 (invoicing becomes a problem after this date.)
 No

16) Program Manager's Approval

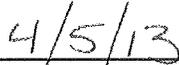

Program Manager Signature

4/4/13
Date

SMT Decision and Signature

- Authorized to proceed.*
- Not authorized to proceed.*
- Return with additional information, see notes below.*
- Authorization to proceed with conditions, see notes below.*


Signature of member of SMT


Date

Notes to rule writer:

SECTION B: TIMELINE

DEPARTMENT OF ECOLOGY

Rule Development Timeline

WAC # 173-224 - Wastewater Discharge Permit Fees

Action	Target Date
Planning Phase	
Rule Authorization Document (RAD) - Brief Senior Management Team (SMT)	4/4/2013
Rule Development Plan (RDP) - Signed by Agency Rules Coordinator	4/30/2013
CR-101 filing date, must have complete and in packet: <ul style="list-style-type: none"> • Cover memo • CR-101 form • Signed Rule Development Plan (RDP) • Rule-making notice to interested parties (summary of CR-101) • SEPA (if completed at this stage) 	5/22/2013
CR-101 publication date	6/5/2013
Drafting/Proposal Phase	
CR-102 filing date, must have complete and in packet: <ul style="list-style-type: none"> • Cover memo • CR-102 form • OTS copy of rule language (print out the PDF from OTS) • Focus sheets and/or hearing announcement • If required, must have complete: <ul style="list-style-type: none"> • Small Business Economic Impacts Statement (SBEIS) (10 page filing version and publication version) • Preliminary CBA • Draft Environmental Impact Statement or Determination of Non-Significance • Draft citation list 	8/21/2013
CR-102 publication date	8/22/2013
Public Comment Phase	
First hearing date	9/24/2013
Close of comment period (7 days after last hearing)	10/1/2013
Adoption Phase	
Intended date of adoption	10/31/2013
Adoption date	10/31/2013
CR-103 Filing date, must have complete and in packet: <ul style="list-style-type: none"> • Cover memo • CR-103 form • OTS copy of rule language (print out the PDF from O • Public Hearing Summary Memo • Draft Rule adoption notice (RAN) (finalize date after 	10/31/2013

adoption)	
Effective Date	12/1/2013
Implementation Phase	
Submit rule file to the Rules and Accountability Section (2 weeks after Adoption)	12/15/2013
<ul style="list-style-type: none"> • Tony Rossiter will set up a meeting to review file. 	

SECTION C: ISSUES AND CONCERNS

Describe the issues and/or concerns related to this rule making.

Since its inception, the Wastewater and Stormwater Permit Fee Program has experienced complex and challenging issues. Fee programs, in general, are not popular. They are particularly not popular in light of the economic downturn the state has experienced the last several years. However, fees for the wastewater/stormwater permit program need to cover program costs. Ecology is anticipating its budget passed by the 2013 Washington State Legislature will allow for fee increases for some permit holders of 4.55% for fiscal year 2014 and 4.63% for fiscal year 2015.

Ecology is planning the following actions

Industrial Permits - Increase fees up to the state fiscal growth factor for fiscal years 2014 and 2015 for some permit category types where fees have been determined by Ecology to exceed the cost of Ecology managing the permits. Fees will be increased up to the state fiscal growth factor for both fiscal years for the following permit fee categories:

- dairies,
- concentrated animal feeding operations,
- boatyards,
- aquatic pest control,
- industrial, municipal, and construction stormwater individual and general permits, and
- private and government-owned domestic wastewater treatment plants.

Fees for the remaining industrial permit categories will remain at the current fiscal year 2013 rate for both fiscal years 2014 and 2015.

Municipal Domestic Wastewater Permit Fees - All municipalities (with the exception of King County) have reached the fee cap set in RCW 90.48.465 - Water Pollution Control. Because of this, there will be no fiscal growth factor increases being proposed for them. However, the fee rate for King County is not at the cap so it will not be impacted by the fee cap. Because of this, Ecology is proposing to increase the fee rates for King County for both fiscal year 2014 and 2015 by the fiscal growth percentages listed above.

SECTION D: FINANCIAL AND LEGAL SUPPORT

D.1 Provide details about the extra resources and costs related to this rule making.

Revision of the fee rule is part of the existing Water Quality Program staff's regular duties and is a recurring procedure every two years after the biennial appropriation is approved. The estimated

time for staff to revise the rule totals approximately 0.5 FTE's for six months. There will be an additional cost for printing and mailing information and making copies of the proposed amendments available to permit holders and interested parties. Ecology staff will keep costs down by making documents available online for printing. Costs of printing and mailing are estimated not to exceed \$5,000.00. To save resources, Ecology will hold three simultaneous public hearings via videoconferencing.

D.2 Provide contact information for the AAG assigned to this rule making.

Name: Gordon Karg Phone: 360.586.4615 E-mail: GordonK1@ATG.WA.GOV

SECTION E: OTHER REQUIREMENTS

E.1 Does the rule have an impact on businesses within an industry (regardless of the size of the industry)?

Yes No

The fee regulation charges annual fees for all permitted businesses, large and small. Because of this, language was included years ago that provides relief from fees for small business with no more than one million dollars of gross revenue from the activity covered by the permit by reducing their annual fee by fifty percent. To the extent there may be disproportionate impacts on a small business, this provides mitigation, as would be required by the Regulatory Fairness Act (RCW 19.85.020) were a small business economic impact statement found to be necessary.

E.2 Provide contact information for the Economist assigned to your rule making.

Name: Phone: E-mail:

This rule development does not require an economist.

E.3 Does this rule making need to comply with SEPA (State Environmental Policy Act)?
For help with this decision call Ecology's SEPA unit at (360) 407-6922.

Yes No

This rule amendment is exempt from SEPA requirements.

SECTION F: COMMUNICATION STRATEGY



RULE-MAKING COMMUNICATION STRATEGY

WASTEWATER DISCHARGE PERMIT FEES CHAPTER 173-224 WAC

1. Topic/Issue

Ecology is proposing the following:

- Increase annual fees for the following permit fee categories: dairies, concentrated animal feeding operations, boatyards, aquatic pest control, municipal and industrial construction stormwater individual and general permits, private and government-owned domestic wastewater facilities.
- For municipal domestic wastewater permits, no increase is being proposed with the exception of King County where the fee per residential equivalent would be increased.

Fees would be increased by the state fiscal growth factor amounts totaling 4.65% for fiscal year 2014 (July 1, 2013 through June 30, 2014) and 4.72% for state fiscal year 2015 (July 1, 2014 through June 30, 2015).

Communication goals

The communication goals for this rule amendment process is to keep permit fee payers and interested parties informed of the rule making process and allow for public input regarding proposed changes to the permit fee regulation.

2. Brief Background

Ecology has amended the fee rule every two years since 1988. Permit holders and other interested parties are kept apprised of the fee rule amendment process through direct mailings from Ecology and the Agency ListServe. The Permit Fee WebPage is also updated with the rule amendment activities as they occur.

Target Audiences and Key Messages

Development and implementation of the wastewater and stormwater permit fee program has historically been the responsibility of the Water Quality Program. The Water Quality Program assumed lead status for the agency when the original rule was adopted in 1988 and has continued for the subsequent rule amendments since that time.

Several other Ecology programs share a funding relationship with the fee program. This relationship is largely based on programs receiving an allocation of fee revenue. In other words, since several Ecology programs share responsibility for implementing portions of the state's wastewater/stormwater permit program, they receive a portion of the fee revenue.

While other programs share a funding relationship with the fee system, they have not historically participated directly in the fee system design, fee rule development, or fee system implementation. However, they are kept apprised of proposed changes throughout the rule development process.

Solid Waste and Financial Assistance – Administers wastewater permits for all major industries in Washington State as well as some state waste discharge permits for those facilities that discharge into the treatment system of one of the major industries. This program receives revenue from the permit fee account to fund development and management of these permits.

Staff Contact: Garin Schriever, Supervisor, SWFAP - Ind-P&P

Financial Services – Provides centralized fiscal/accounting services, including timely maintenance of Ecology revenue and expenditure records. Ensures Ecology funds are received and disbursed in accordance with federal, state, and Ecology policy, as well as the General Accepted Accounting Principles for governmental entities. Responsibilities include cashing functions and acting as liaison between the collection agency and Ecology.

Staff Contact: Erik Fairchild, Chief Financial Officer

Information Services – Is responsible for maintenance and enhancement (if necessary) of the Billing and Revenue Tracking System.

Staff Contact: Debbie Stewart, Chief Information Officer

Nuclear Waste Program – Is responsible for issuance and maintenance of wastewater permits on the Hanford Reservation.

Staff Contact: Jane Hedges, Program Manager

Regional Offices – Regional office involvement in wastewater discharge permit fees is minimal because implementation and administration of the fee system is carried out by Water Quality Program headquarters staff. Regional Water Quality Program managers will be kept informed through periodic briefings if requested by the Water Quality Program Management Team.

Staff Contacts: Doug Allen, BFO WQ Program Regional Supervisor
Tom Tebb, CRO Regional Director
Charles McKinney, CRO WQ Program Regional Supervisor
Grant Pfeifer, ERO Regional Office Director
James Bellatty, ERO WQ Program Regional Supervisor
Jeannie Summerhays, NWRO Regional Director
Kevin Fitzpatrick, NWRO WQ Program Regional Supervisor
Sally Toteff, SWRO Regional Director
Bob Berquist, SWRO WQ Program Regional Supervisor

Other State and Federal Agencies - The following state agencies are fee payers and will be directly notified of the proposed changes to the permit fee regulation:

- Department of Fish and Wildlife
- Department of Corrections
- Parks and Recreation Commission
- Department of Transportation
- Department of Social and Health Services
- Department of Enterprise Systems
- Department of Agriculture

The following federal agencies are fee payers and will be directly notified of the proposed changes to the fee regulation:

- United States Department of Energy
- United States Navy

Tribal Entities - The Environmental Protection Agency is the main permitting authority for tribal entities. However, Ecology has issued a few tribes stormwater general permit coverage. They will be directly notified of the fee rule amendments.

Environmental Community - The environmental community listed on the Water Quality's Interested Parties Mailing List will be advised, through direct mailings and email, of proposed changes to the permit fee rule and invited to comment and participate. The environmental community is also represented on the Permit Partnership and Permit Fee Restructuring Committee.

General Public - The general public will be given an opportunity to comment and participate via the public hearings. A notice announcing the public hearing will be placed in the Ecology Public Events Calendar which is available to a mailing list, sent to the news media, and posted on the internet. Ecology will also prepare and mail out a news release announcing the public hearings. The news release will be timed to give sufficient notice to the news media to report they are being held, approximately 10 days prior to the public hearings.

Water Quality Partnership - This group consists of representatives of environmental organizations, large and small business, government agencies, and interested parties who discuss issues of concern to the Water Quality Program. They will be notified of the rule amendment process during the regularly scheduled meetings as well as receiving direct contact via email.

Permit Fee Restructuring Committee - This group consists of representatives of environmental organizations, large and small business, government agencies, and interested parties whose goal is to assist in the restructuring of wastewater and stormwater permit fee categories. They will be kept apprised of the rule amendment process via direct mailings.

3. Key Messages

If a state budget passes that contains Ecology’s recommendation for the fiscal growth factor increases, the following key messages will be presented:

- The new state budget, as approved by the Legislature, allows for fee increases in annual permit fees from wastewater and stormwater discharge permit holders where the cost of managing their permits exceed the revenue being received for Fiscal Years 2014 and 2015.

The fee increases will be the following:

- 4.55% for fiscal year 2014 (July 1, 2013 through June 30, 2014)
- 4.63% for fiscal year 2015 (July 1, 2014 through June 30, 2015)

- Ecology continues to work with a broad-based task force comprised of business, local, state, and federal governments, and environmental interests to identify alternatives to Ecology’s existing permit fee schedule.
- Wastewater and stormwater permits are Ecology’s primary tool to prevent pollution to the surface and ground waters of the state.

Potential products and activities

Identify the products and activities you will use to help communicate the messages you identified in Section III. Modify the table below to fit the purpose of your rulemaking.

Remember to consider need for translations to reach specific audiences

Product/Activity	Deadline
Public Outreach	
Direct Mailings via Post Office and E-mail	
Postcard announcing rule development	May 22, 2013
Focus Sheet announcing public hearing	August 22, 2013
Rule Adoption Notice	October 16, 2013
Public Hearings	September 24, 2013
Web page	
Post Rule Authorization Document	April 30, 2013
Post Rule Development Plan	April 30, 2013
Post CR101	May 24, 2013
Post CR102	August 22, 2013
Concise Explanatory Statement	October 10, 2013
Post CR103	November 1, 2013
Media:	
News release announcing public hearings	August 26, 2013
News release announcing adoption of final rule	November 1, 2013
Online resources and technology:	
Video conferencing -Public Hearings (HQ, CRO, ERO, BFO)	September 24, 2013

4. Consultation on mitigating the impact of the rule.

Executive Order 11-03 extends the Governor's moratorium on non-critical rule-making. The OFM exemption criteria states:

"If an agency decides to proceed with a rule that has a small business impact or an impact to local government, the agency must consult with small businesses and/or governments on how the impact can be mitigated."

This rule making is considered critical because monies are needed to support operation of the wastewater and stormwater permit programs. Monies are needed to protect surface and ground waters of the state.

The fee rule has always provided relief for small business with no more than one million dollars of gross revenue from the activity covered by the permit. To the extent there may be disproportionate impacts on a small business, this provides mitigation, as would be required by the Regulatory Fairness Act (RCW 19.85.020). Any business or government entity can request a hardship fee reduction by provided the revenues received from the activities covered under the permit are less than one hundred thousand dollars.

Are there other groups you will also involve?

No.

5. Q & A to prep for difficult questions

Why are fees increasing?

Like any business operating in the state, Ecology is not immune from increased costs for building, rent, transportation, utilities, etc. RCW 90.48.465 - Water Pollution Control requires Ecology to fund its Wastewater Discharge Permit Program through annual fees. Because of revenue shortfalls from previous years, the permit program has decreased in size. This has resulted in Ecology being unable to issue permits in a timely manner, conduct site inspections and/or provide technical assistance to permit holders as needed. These proposed increases will result in a very modest increase in revenues to the permit program which should help stabilize the existing program and not result in further cuts.

Why are fees not increasing for all permit holders?

Ecology time accounting data shows fees from specific categories are not paying for all the work/ activities being undertaken by Ecology employees within those categories. Because of this, fee payers from other categories have been paying higher fees to cover the program costs. This rule-making will only increase fees for those categories where fee revenues are less than the costs to manage the permits within those categories.

6. Concerns

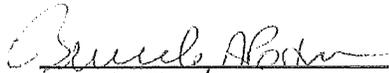
Identify any obstacles to adopting the rule.

- Past history has shown that proposing any type of fee increase is very unpopular. Concern will be expressed regarding why fees are increasing at a time the state is beginning to recover from a large downturn in the economy.

7. Evaluation – ongoing

After the rule is adopted with the CR-103 filing, prepare a list of pros and cons for how effective the communication plan was for the rule making. The rule team should meet to evaluate the list to identify how to improve the plan next time.

8. Signatures


Rule writer Signature

4/18/13
Date


Communications Manager Signature

4-18-13
Date