



# PROPOSED RULE MAKING

## CR-102 (July 2022) (Implements RCW 34.05.320)

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FILED

DATE: March 22, 2023

TIME: 9:13 AM

WSR 23-07-137

Agency: Department of Ecology AO 22-03

Original Notice

Supplemental Notice to WSR \_\_\_\_\_

Continuance of WSR \_\_\_\_\_

Preproposal Statement of Inquiry was filed as WSR 22-13-046 ; or

Expedited Rule Making--Proposed notice was filed as WSR \_\_\_\_\_; or

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or

Proposal is exempt under RCW \_\_\_\_\_.

**Title of rule and other identifying information:** (describe subject) Chapter 173-224 WAC – Water Quality Permit Fees. The purpose of this chapter is to establish a fee system for state waste discharge and National Pollutant Discharge Elimination System (NPDES) permits issued by Ecology pursuant to RCW 90.48.160, 90.48.162, or 90.48.260.

For more information on this rulemaking, visit: <https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-224>.

### Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
May 2, 2023	10:00 a.m. PST	Join the online hearing: <a href="https://waecy-wa-gov.zoom.us/meeting/register/tZUofuGsqt0qHdA29lfQIA26U27Rkr6D3P5e">https://waecy-wa-gov.zoom.us/meeting/register/tZUofuGsqt0qHdA29lfQIA26U27Rkr6D3P5e</a>	Ecology is hosting this event and will provide a presentation about the proposed rule, a question-and-answer session, and the formal hearing. You can attend from any computer using internet access.
May 4, 2023	6:00 p.m. PST	<a href="https://waecy-wa-gov.zoom.us/meeting/register/tZERcuGtpzgvGNJEz0kkYNxQ5BXwcPZd2ZL6">https://waecy-wa-gov.zoom.us/meeting/register/tZERcuGtpzgvGNJEz0kkYNxQ5BXwcPZd2ZL6</a>	Ecology is hosting this event and will provide a presentation about the proposed rule, a question-and-answer session, and the formal hearing. You can attend from any computer using internet access.

**Date of intended adoption:** June 5, 2023 (Note: This is **NOT** the effective date)

### Submit written comments to:

Name: Ligeia Heagy  
Address: Send US Mail at:  
Department of Ecology  
Water Quality Permit Fee Unit  
PO Box 47600, Olympia, WA 98504-7600

Or,  
Send parcel delivery services to:  
Department of Ecology  
Water Quality Permit Fee Unit  
300 Desmond Dr. SE, Lacey, WA 98503

Email: [wqfeeunit@ecy.wa.gov](mailto:wqfeeunit@ecy.wa.gov)

Fax: N/A

Other: Online: <https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-224>

### Assistance for persons with disabilities:

Contact Leslie Connelly  
Phone: 360-628-4381

Fax: N/A

TTY: People with speech disability may call TTY at 877-833-6341. People with impaired hearing may call Washington Relay Service at 711.

Email: [leslie.connelly@ecy.wa.gov](mailto:leslie.connelly@ecy.wa.gov)

By (date) May 12, 2023

Other: Visit: <https://ecology.wa.gov/About-us/Accessibility-equity/Accessibility/Request-for-reasonable-accommodation>  
By (date) April 26, 2023

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** Chapter 173-224 WAC implements RCW 90.48.465 that requires Ecology to establish, by rule, annual fees to recover the cost of administering the wastewater and stormwater permit programs. The rule amendment considers the economic impact on small dischargers and public entities, and provides appropriate adjustments where applicable.

Below is a brief explanation of the specific sections in chapter 173-224 WAC that will be updated for this rulemaking:

173-224-030 Definitions. Definitions are updated to align with current water quality permit terminology and to reflect changes in the permit fee schedule.

173-224-040 Permit fee schedule. Adjusts fees to reflect an increase in fees for underpayer fee categories, rounding of fee amounts, and expanding tiers to certain fee categories. Aligns fees for CAFO permits with new CAFO general permit and creates fees for CAFO individual permits. Creates minimum permit fees. The fees for municipal wastewater treatment plants that are based on residential equivalents are increased based on the recommendation of the Municipal Wastewater Permit Advisory Committee. Technical corrections.

173-224-050 Permit fee computation and payments. Removes the waiver of lesser permit fees when a facility has a discharge permit and stormwater general permit. Makes other technical corrections.

173-224-060 Permits issued by other governmental agencies. Technical corrections.

173-224-080 Transfer of permit coverage. Technical corrections.

173-224-090 Permit fee reductions. Clarifies requirements for an extreme hardship fee reduction. Adds a new fee reduction category for hazardous waste cleanup. Makes other technical corrections.

173-224-100 Administrative appeals to the department. Technical corrections.

**Reasons supporting proposal:** RCW 90.48.465 requires Ecology to re required to establish annual fees that fund our wastewater and stormwater permit programs. Ecology is proposing to amend Chapter 173-224 WAC – Water Quality Permit Fees to recover the program costs and move closer to payment equity between permit fee categories. Ecology uses these fees to recover operating expenses and manage permit programs to protect Washington’s waters from pollution.

This rule amendment allows Ecology to continue recovering expenses in operating and managing the permit programs. Ecology is proposing to adjust permit fees for Fiscal Years 2024 and 2025 to recover the projected program costs next biennium and move closer to payment equity between permit fee categories. Ecology is also We are also proposing technical changes, and rule language changes to improve clarity, reduce redundancy, and streamline information. Finally, we are proposing new permit fee categories, changes to structure of specific permit fee categories, and adjustment of some permit fees to account for increased costs and equity between permit fee categories.

**Statutory authority for adoption:** Chapter 90.48 RCW Water Pollution Control; RCW 90.48-465 Water discharge fees— Report to the legislature.

**Statute being implemented:** RCW 90.48.465

**Is rule necessary because of a:**

- Federal Law?  Yes  No
- Federal Court Decision?  Yes  No
- State Court Decision?  Yes  No

If yes, CITATION:

**Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:** N/A

**Type of proponent:**  Private  Public  Governmental

**Name of proponent:** (person or organization) Department of Ecology

**Name of agency personnel responsible for:**

	Name	Office Location	Phone
Drafting:	Ligeia Heagy	300 Demond Dr SE, Lacey, WA 98503	(360) 280-3697
Implementation:	Ligeia Heagy	300 Demond Dr SE, Lacey, WA 98503	(360) 280-3697
Enforcement:	Ligeia Heagy	300 Demond Dr SE, Lacey, WA 98503	(360) 280-3697

Is a school district fiscal impact statement required under [RCW 28A.305.135](#)?

Yes  No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name:

Address:

Phone:

Fax:

TTY:

Email:

Other:

Is a cost-benefit analysis required under [RCW 34.05.328](#)?

Yes: A preliminary cost-benefit analysis may be obtained by contacting:

Name: Ligeia Heagy

Address: Department of Ecology, Water Quality Program, PO Box 47600, Olympia, WA 98504-7600

Phone: (360) 280-3697

Fax: N/A

TTY: People with speech disability may call TTY at 877-833-6341. People with impaired hearing may call Washington Relay Service at 711.

Email: [wqfeeunit@ecy.wa.gov](mailto:wqfeeunit@ecy.wa.gov)

Other: N/A

No: Please explain:

### Regulatory Fairness Act and Small Business Economic Impact Statement

Note: The [Governor's Office for Regulatory Innovation and Assistance \(ORIA\)](#) provides support in completing this part.

#### (1) Identification of exemptions:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see [chapter 19.85 RCW](#)). For additional information on exemptions, consult the [exemption guide published by ORIA](#). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.061](#) because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by [RCW 34.05.313](#) before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of [RCW 15.65.570\(2\)](#) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025\(3\)](#). Check all that apply:

[RCW 34.05.310](#) (4)(b)

(Internal government operations)

[RCW 34.05.310](#) (4)(c)

(Incorporation by reference)

[RCW 34.05.310](#) (4)(d)

(Correct or clarify language)

[RCW 34.05.310](#) (4)(e)

(Dictated by statute)

[RCW 34.05.310](#) (4)(f)

(Set or adjust fees)

[RCW 34.05.310](#) (4)(g)

((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit)

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025\(4\)](#) (does not affect small businesses).

This rule proposal, or portions of the proposal, is exempt under RCW \_\_\_\_\_.

Explanation of how the above exemption(s) applies to the proposed rule:

#### (2) Scope of exemptions: *Check one.*

The rule proposal is fully exempt (*skip section 3*). Exemptions identified above apply to all portions of the rule proposal.

The rule proposal is partially exempt (*complete section 3*). The exemptions identified above apply to portions of the rule proposal, but less than the entire rule proposal. Provide details here (consider using [this template from ORIA](#)): Ecology baselines are typically complex, consisting of multiple requirements fully or partially specified by existing rules, statutes, or federal laws. Where the proposed rule differs from this baseline of existing requirements, it is typically subject to (i.e., not

exempt from) analysis required under the Regulatory Fairness Act (RFA; Chapter 19.85 RCW) based on meeting criteria referenced in RCW 19.85.025(3) as defined by the Administrative Procedure Act in RCW 34.05.310. The Small Business Economic Impact Statement (SBEIS) below includes a summary of the baseline for this rulemaking, and whether or how the proposed rule differs from the baseline. We identify relevant RFA exemptions (if any) for each set of requirements.

### **Baseline for this rulemaking**

The baseline for our analyses generally consists of existing rules and laws, and their requirements. This is how we make a consistent comparison between the state of the world with and without the proposed rule amendments.

For this rulemaking, the baseline includes:

- The existing rule, Chapter 173-224 WAC, Water Quality Permit Fees that sets the current fees and fee structures.
- The authorizing law, Chapter 90.48 RCW, Water Pollution Control. Among other requirements related to permitting, the statute requires Ecology to:
  - Establish fees to collect expenses for issuing and administering each class of permits.
  - Adjust the fee schedule at most every two years.
  - Base fees on factors relating to the complexity of permit issuance and compliance.
  - Charge fees that fully recover (and not exceed) costs of:
    - Processing permit applications and modifications.
    - Monitoring and evaluating compliance with permits.
    - Conducting inspections.
    - Securing laboratory analysis of samples taken during inspections.
    - Reviewing plans and documents directly related to operations of permittees.
    - Overseeing performance of delegated pretreatment programs.
    - Supporting the overhead expenses that are directly related to these activities.

### **The proposed rule**

#### **2.3.1 Adding, clarifying, or updating definitions**

##### **Baseline**

The baseline includes multiple definitions needed to implement the existing rule and authorizing law.

##### **Proposed**

The proposed rule amendments would add definitions needed to implement other proposed rule amendments, or to clarify implementation of the existing rule, including:

- Aluminum forming.
- Coal mining and preparation.
- Facilities not otherwise classified.
- Federally recognized tribe.
- Inactive.
- Inactive rate.
- Industrial wastewater.
- Industrial wastewater facility.
- Municipal sewerage system.
- Nonfish hatchling and rearing.
- Ore mining.

Amendments would also update or clarify definitions of:

- Animal unit.
- Combined sewer overflow system.
- Disturbed acres.
- Finfish hatchling and rearing.
- Industrial stormwater.
- Median household income.

Other definitions would be clarified without material change to their meaning (e.g.: separating “bbls/d” into separate definitions of “bbls” and “bbls per day”; or adding examples).

Finally, they would delete definitions no longer needed for rule implementation:

- Gross revenue for business.
- Municipal gross revenue.

### **Expected impact**

We don't expect the proposed amendments to definitions, in and of themselves, to result in likely impacts. Instead, likely impacts would be reflected in the rule requirements that use those definitions. Likely costs and benefits of these proposed rule amendments are reflected in the context of other rule language, in the sections below.

#### **2.3.2 Amending all fee schedules**

##### **Baseline**

The baseline rule includes Fiscal Year 2022 and 2023 fees for each baseline fee category. There is no baseline minimum fee, which results in some permittees being charged fees as low as approximately \$10.

In the past, some fees were capped under the authorizing law, including a cap on municipal wastewater facilities permit fees under RCW 90.48.465, but over time, amendments to the law have removed this cap. Fees set in the rule remain in place for subsequent years until the rule is amended.

## **Proposed**

The proposed rule amendments would make updates throughout the fee schedules for Fiscal Years 2024 and 2025, including changes based on intent specific to individual category fees reflecting corresponding workload in the permit program (see sections 2.3.3 through 2.3.7). Updates common to all fee schedules would include:

- Rounding fees to whole dollars.
- Restructuring fee schedules to reflect permittee attributes and associated workload.
- Setting a minimum fee of \$150 to cover costs of invoicing and staff time at a minimum.

## **Expected impact**

We expect these proposed rule amendments to result in fee increases or decreases, depending on the net effect of the above amendments in combination with amended fees specific to individual permit categories and tiers.

Permittees for which the net effect increases fees would incur costs, while permittees for which the net effect decreases fees would receive benefits (avoided costs). See sections 2.3.3 through 2.3.7 for discussion. Overall, however, the proposed rule amendments would result in the fee program:

- Funding the expected workload related to implementing the permit program.
- Having more equitable distribution of fees, reflecting individual permittees paying fees in line with the actual amount of work necessary to manage their permit(s).

### **2.3.3 Adding new industrial permit fee categories or subcategories**

#### **Baseline**

The proposed new industrial permit fee categories do not exist under the baseline. Permittees are charged fees based on the most appropriate existing category for their activities and discharges. RCW 90.48.465 also includes language addressing fees for general permits and individual permits for dairies.

Fees set in the rule remain in place for subsequent years until the rule is amended.

#### **Proposed**

The proposed rule amendments would add Fiscal Year 2024 and 2025 fee categories or subcategories for:

- Aquaculture: Nonfinfish hatching and rearing – Individual Permit (no existing permittees).
- Bridge and Ferry Terminals Washing: Multi Site Permit.
- Concentrated Animal Feeding Operation (CAFO) – Dairy Individual Permit (no existing permittees).
- Concentrated Animal Feeding Operation (CAFO) – Non-Dairy Individual Permit.

#### **Expected impact**

We expect these proposed rule amendments to result in fee increases or decreases, depending on the net effect of the above amendments in combination with overall fee schedule amendments (see Section 2.3.2).

Permittees for which the net effect increases fees would incur costs, while permittees for which the net effect decreases fees would receive benefits (avoided costs). For example:

- The availability of a separate fee for the Multi Site Permit for Bridge and Ferry Terminals Washing would reduce costs for the public agencies permitted for this activity, if they operate at multiple sites, compared to the larger total charge for multiple sites at the single site fee.
- One existing permittee has an CAFO Individual Non-Dairy Permit, with higher associated workload costs than the CAFO General Permit.

Overall, the proposed rule amendments would result in the fee program:

- Funding the corresponding workload necessary to implement the permit program.
- Having more equitable distribution of fees, reflecting individual permittees paying fees in line with the actual amount of work necessary to manage their permit(s).

### **2.3.4 Adjusting existing industrial permit fee categories or tiers**

#### **Baseline**

The baseline rule includes fee categories – some with tiers based on the amount of flow, acreage, or production – for multiple industrial activities.

#### **Proposed**

For Fiscal Years 2024 and 2025, the proposed rule amendments would:

- Realign subcategories for Aquatic and Invasive Species Control fees with categories of upcoming permit renewals.
- Increase fees for Aquatic and Invasive Species Control: State agencies permits, to reflect permit management for many sites at once that are permitted for state agencies.
- Increase fees for Bridge and Ferry Terminals Washing, to reflect the expected workload related to these permits to government agencies.
- Reduce fees for Coal Mining and Preparation. (Note there is only one inactive permittee currently paying a reduced rate.)
- Increase fees for Combined Food Processing Waste Treatment Facilities, to reflect the expected workload associated with these permits issued to government agencies.
- Increase fees for Commercial Laundry permits. (Note there are no current permittees in this category.)
- Align CAFO General Permit subcategories with US Environmental Protection Agency (EPA) definitions of small, medium, and large CAFOs by animal type and number. (Note that existing CAFOs under this General Permit are permitted for dairy, cattle, horse, or laying hen activities.)
- Increase fees for Flavor Extraction permits, to reflect expected workload.

- Increase fees for Fuel and Chemical Storage, to reflect expected workload and adjust for equity across permittees. (Costs of managing these permits are subsidized by other fee payers under the baseline fee structure.)
- Increase fees for individual permits for Noncontact Cooling Water with Additives, for facilities discharging 1,000 to 10,000 gallons per day, to reflect expected workload associated with an individual permit instead of the baseline general permit rate.
- Increase fees for Ore Mining permits, to reflect expected workload and adjust for equity across permittees. (Costs for managing these permits are subsidized by other fee payers under the baseline fee structure.)
- Increase fees for Power and/or Steam Plants permits, to reflect expected workload and adjust for equity across permittees. (Costs for managing these permits are subsidized by other fee payers under the baseline fee structure.)
- Increase fees for Radioactive Effluents and Discharges permits with fewer than three waste streams, to reflect expected workload.
- Increase fees for the Sand and Gravel General Permit, to reflect expected workload and adjust for equity across permittees. (Costs for managing these permits are subsidized by other fee payers under the baseline fee structure.)

In addition:

- The lowest fee in this category would increase to the proposed \$150 minimum fee.
- Fees for portable facilities would increase to reflect additional workload related to inspections at multiple locations.
- Increase fees for Sand and Gravel individual permits, to reflect expected workload. (Note that there are no current permittees in this category.)
- Increase fees for Shipyards permits, to reflect expected workload and adjust for equity across permittees. (Costs for managing these permits are subsidized by other fee payers under the baseline fee structure.)
- Increase fees for Vegetable/Bulb Washing Facilities permits, to reflect expected workload and adjust for equity across permittees. (Costs for managing these permits are subsidized by other fee payers under the baseline fee structure.)
- Increase fees for Vessel Deconstruction permits, to reflect expected workload and adjust for equity across permittees. (Costs for managing these permits are subsidized by other fee payers under the baseline fee structure.)
- Increase fees for the Wineries General Permit, for facilities discharging between 300,000 and 699,999 gallons per year, to reflect expected workload.
- Increase fees for Wineries individual permits, for facilities discharging less than 24,999 gallons per year or between 700,000 and 999,999 gallons per year, to reflect expected workload.

#### **Expected impact**

We expect these proposed rule amendments to result primarily in fee increases, with some fee reductions, depending on the net effect of the above amendments in combination with overall fee schedule amendments (see Section 2.3.2).

Permittees for which the net effect increases fees would incur costs, while permittees for which the net effect decreases fees would receive benefits (avoided costs).

Overall, the proposed rule amendments would result in the fee program:

- Funding the corresponding workload necessary to implement the permit program.
- Having more equitable distribution of fees, reflecting individual permittees paying fees in line with the actual amount of work necessary to manage their permit(s).

#### **2.3.5 Adjusting fees for Municipal and Domestic Wastewater Facilities**

##### **Baseline**

The baseline rule includes fees charged for:

- Domestic wastewater facilities owned by municipalities or federally recognized tribes. These fees are determined based on the number of Residential Equivalents (REs) served.
- State-owned domestic wastewater facilities, and domestic wastewater facilities that do not primarily serve residential customers. These fees are determined based on flow levels.

Previously, the authorizing statute capped municipal fees, in RCW 90.48.465(2). This cap was removed by the Legislature, as these rates were too low to recover costs. This resulted in a backlog of wastewater permitting work.

Fees set in the rule remain in place for subsequent years until the rule is amended.

##### **Proposed**

For facilities owned by municipalities or federally recognized tribes, for Fiscal Years 2024 and 2025, the proposed rule would:

- Add a minimum fee to capture cost recovery. This \$250 flat fee would be for municipalities serving fewer than 100 REs, and would recover the costs of invoicing and staff time.
- Increase the fee per RE for facilities serving at least 100 REs, to reflect the revenue needed to hire additional staff to manage the current permit backlog.

For facilities that do not primarily serve residential customers, the proposed rule would add tiers for low flow facilities, to distribute fee burden more equitably without impacting total revenues.

##### **Expected impact**

We expect the proposed rule amendments to generate costs for municipal wastewater facilities, relative to the baseline.

Ecology would use these fees to fund the expected workload related to managing these permits on an ongoing basis and recover costs related to processing the permit backlog. This would result in benefits because our permitting services would be provided in a timelier manner and reduce delays for permittees.

The proposed redistribution of fees using new tiers for facilities that do not primarily serve residential customers would result in fees that better reflect the expected workload related to managing different permits. Smaller facilities would subsidize less of the permit management costs associated with these facilities overall.

### **2.3.6 Adjusting fees for the Industrial Stormwater General Permit**

#### **Baseline**

The baseline rule includes fees charged for the Industrial Stormwater General Permit (ISGP) and a Dual Coverage provision for facilities who have another water quality permit and do not have to pay the ISGP fee.

Fees set in the rule remain in place for subsequent years until the rule is amended.

#### **Proposed**

The proposed rule would eliminate the Dual Coverage provision for Fiscal Years 2024 and 2025, resulting in requiring permittees to pay the ISGP fee even if they have another water quality permit.

The proposed rule would also add new tiers of gross revenue subcategories, adding incremental steps between existing fee levels, and higher fee tiers. These changes would:

- Reduce burden on small businesses (as defined by the fee rule using revenues).
- Distribute fees across the largest businesses (by revenue) to better reflect expected permit complexity and workload.

#### **Expected impact**

We expect these proposed rule amendments to result in fee increases or decreases, depending on the net effect of the above amendments in combination with overall fee schedule amendments (see Section 2.3.2).

Permittees for which the net effect increases fees would incur costs, while permittees for which the net effect decreases fees would receive benefits (avoided costs). Significantly, smaller permittees would receive benefits of reduced fees.

Overall, the proposed rule amendments would result in the fee program:

- Funding the corresponding workload necessary to implement the permit program.
- Having more equitable distribution of fees, reflecting individual permittees paying fees in line with the actual amount of work necessary to manage their permit(s).

### **2.3.7 Adjusting fees for the Construction Stormwater General Permit**

#### **Baseline**

The baseline rule includes fees charged for the Construction Stormwater General Permit (CSGP), based on covered acreage.

Fees set in the rule remain in place for subsequent years until the rule is amended.

#### **Proposed**

For Fiscal Years 2024 and 2025, the proposed rule amendments would:

- Add a lowest fee tier for projects less than one acre in size.
- Replace the baseline fees for projects affecting more than 20 acres, with multiple tiers to more equitably distribute fees across smaller and larger projects that require different levels of work.
- Eliminate the Dual Coverage provision for Fiscal Years 2024 and 2025, resulting in requiring permittees to pay the CSWGP even if they have another water quality permit.

#### **Expected impact**

We expect these proposed rule amendments to result in fee increases or decreases, depending on the net effect of the above amendments in combination with overall fee schedule amendments (see Section 2.3.2).

Permittees for which the net effect increases fees would incur costs, while permittees for which the net effect decreases fees would receive benefits (avoided costs). Significantly, smaller permittees would receive benefits of reduced fees.

Overall, the proposed rule amendments would result in the fee program:

- Funding the corresponding workload necessary to implement the permit program.
- Having more equitable distribution of fees, reflecting individual permittees paying fees in line with the actual amount of work necessary to manage their permit(s).

### **2.3.8 Adjusting Extreme Hardship Reduction fees**

#### **Baseline**

Under the baseline rule, small businesses with gross revenues up to \$100,000 can apply for an Extreme Hardship fee reduction. The rule sets a minimum hardship reduction fee of \$128.

Fees set in the rule remain in place for subsequent years until the rule is amended.

#### **Proposed**

For Fiscal Years 2024 and 2025, the proposed rule would:

- Increase the minimum fee to \$150, to match the overall minimum fee under the rule.
- Reduce the hazardous waste cleanup fee for small businesses who no longer operate a business at their site.

#### **Expected impact**

We expect these proposed rule amendments to result in additional costs for permittees currently paying the minimum fee under the Extreme Hardship fee reduction. We also expect these amendments to result in benefits of cost-reduction options for some small business permittees.

#### **Relevant exemptions**

Based on the comparisons of the baseline and proposed rule amendments above, we identified partial exemptions under:

- RCW 34.05.310 (4)(c)
- RCW 34.05.310(4)(d)
- RCW 34.05.310(4)(e)

The rule proposal is not exempt (*complete section 3*). No exemptions were identified above.

**(3) Small business economic impact statement:** *Complete this section if any portion is not exempt.*

If any portion of the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

No Briefly summarize the agency's minor cost analysis and how the agency determined the proposed rule did not impose more-than-minor costs. \_\_\_\_\_

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses and a small business economic impact statement is required. Insert the required small business economic impact statement here:

This Small Business Economic Impact Statement (SBEIS) presents the:

- Compliance requirements of the proposed rule.
- Results of the analysis of relative compliance cost burden.
- Consideration of lost sales or revenue.
- Cost-mitigating action taken by Ecology, if required.
- Small business and local government consultation.
- Industries likely impacted by the proposed rule.
- Expected net impact on jobs statewide.

A small business is defined by the Regulatory Fairness Act (chapter 19.85 RCW) as having 50 or fewer employees. Estimated costs are determined as compared to the existing regulatory environment—the regulations in the absence of the rule. The SBEIS only considers costs to “businesses in an industry” in Washington State. This means that impacts, for this document, are not evaluated for government agencies.

The existing regulatory environment is called the “baseline” in this document. It includes only existing laws and rules at federal and state levels.

This information is excerpted from Ecology's complete set of regulatory analyses for this rulemaking. For complete discussion of the likely costs, benefits, minimum compliance burden, and relative burden on small businesses, see the associated Regulatory Analyses document (**Ecology publication no. 23-10-008, February 2023**; we have retained section numbers for easier cross-referencing)

**COMPLIANCE REQUIREMENTS OF THE PROPOSED RULE, INCLUDING PROFESSIONAL SERVICES**

**Baseline for this rulemaking**

The baseline for our analyses generally consists of existing rules and laws, and their requirements. This is how we make a consistent comparison between the state of the world with and without the proposed rule amendments.

For this rulemaking, the baseline includes:

- The existing rule, Chapter 173-224 WAC, Water Quality Permit Fees that sets the current fees and fee structures.
- The authorizing law, Chapter 90.48 RCW, Water Pollution Control. Among other requirements related to permitting, the statute requires Ecology to:
  - Establish fees to collect expenses for issuing and administering each class of permits.
  - Adjust the fee schedule at most every two years.
  - Base fees on factors relating to the complexity of permit issuance and compliance.
  - Charge fees that fully recover (and not exceed) costs of:
    - Processing permit applications and modifications.
    - Monitoring and evaluating compliance with permits.
    - Conducting inspections.
    - Securing laboratory analysis of samples taken during inspections.
    - Reviewing plans and documents directly related to operations of permittees.
    - Overseeing performance of delegated pretreatment programs.
    - Supporting the overhead expenses that are directly related to these activities.

**The proposed rule**

The proposed rule amendments would make the following changes:

- Adding, clarifying, or updating definitions.
- Amending all fee schedules.
- Adding new industrial permit fee categories.
- Adjusting existing industrial permit fee categories or tiers.
- Adjusting fees for Municipal and Domestic Wastewater Facilities.
- Adjusting fees for the Industrial Stormwater General Permit.
- Adjusting fees for the Construction Stormwater General Permit.
- Adjusting Extreme Hardship Reduction fees.

**2.3.1 Adding, clarifying, or updating definitions**

We don't expect the proposed amendments to definitions, in and of themselves, to result in likely impacts. Instead, likely impacts would be reflected in the rule requirements that use those definitions. Likely costs and benefits of these proposed rule amendments are reflected in the context of other rule language, in the sections below.

**2.3.2 Amending all fee schedules**



We expect these proposed rule amendments to result in fee increases or decreases, depending on the net effect of the above amendments in combination with amended fees specific to individual permit categories and tiers.

Permittees for which the net effect increases fees would incur costs, while permittees for which the net effect decreases fees would receive benefits (avoided costs). See sections 2.3.3 through 2.3.7 for discussion. Overall, however, the proposed rule amendments would result in the fee program:

- Funding the expected workload related to implementing the permit program.
- Having more equitable distribution of fees, reflecting individual permittees paying fees in line with the actual amount of work necessary to manage their permit(s).

### **2.3.3 Adding new industrial permit fee categories or subcategories**

We expect these proposed rule amendments to result in fee increases or decreases, depending on the net effect of the above amendments in combination with overall fee schedule amendments (see Section 2.3.2).

Permittees for which the net effect increases fees would incur costs, while permittees for which the net effect decreases fees would receive benefits (avoided costs). For example:

- The availability of a separate fee for the Multi Site Permit for Bridge and Ferry Terminals Washing would reduce costs for the public agencies permitted for this activity, if they operate at multiple sites, compared to the larger total charge for multiple sites at the single site fee.
- One existing permittee has an CAFO Individual Non-Dairy Permit, with higher associated workload costs than the CAFO General Permit.

Overall, the proposed rule amendments would result in the fee program:

- Funding the corresponding workload necessary to implement the permit program.
- Having more equitable distribution of fees, reflecting individual permittees paying fees in line with the actual amount of work necessary to manage their permit(s).

### **2.3.4 Adjusting existing industrial permit fee categories or tiers**

We expect these proposed rule amendments to result primarily in fee increases, with some fee reductions, depending on the net effect of the above amendments in combination with overall fee schedule amendments (see Section 2.3.2).

Permittees for which the net effect increases fees would incur costs, while permittees for which the net effect decreases fees would receive benefits (avoided costs).

Overall, the proposed rule amendments would result in the fee program:

- Funding the corresponding workload necessary to implement the permit program.
- Having more equitable distribution of fees, reflecting individual permittees paying fees in line with the actual amount of work necessary to manage their permit(s).

### **2.3.5 Adjusting fees for Municipal and Domestic Wastewater Facilities**

We expect the proposed rule amendments to generate costs for municipal wastewater facilities, relative to the baseline.

Ecology would use these fees to fund the expected workload related to managing these permits on an ongoing basis and recover costs related to processing the permit backlog. This would result in benefits because our permitting services would be provided in a timelier manner and reduce delays for permittees.

The proposed redistribution of fees using new tiers for facilities that do not primarily serve residential customers would result in fees that better reflect the expected workload related to managing different permits. Smaller facilities would subsidize less of the permit management costs associated with these facilities overall.

### **2.3.6 Adjusting fees for the Industrial Stormwater General Permit**

We expect these proposed rule amendments to result in fee increases or decreases, depending on the net effect of the above amendments in combination with overall fee schedule amendments (see Section 2.3.2).

Permittees for which the net effect increases fees would incur costs, while permittees for which the net effect decreases fees would receive benefits (avoided costs). Significantly, smaller permittees would receive benefits of reduced fees.

Overall, the proposed rule amendments would result in the fee program:

- Funding the corresponding workload necessary to implement the permit program.
- Having more equitable distribution of fees, reflecting individual permittees paying fees in line with the actual amount of work necessary to manage their permit(s).

### **2.3.7 Adjusting fees for the Construction Stormwater General Permit**

We expect these proposed rule amendments to result in fee increases or decreases, depending on the net effect of the above amendments in combination with overall fee schedule amendments (see Section 2.3.2).

Permittees for which the net effect increases fees would incur costs, while permittees for which the net effect decreases fees would receive benefits (avoided costs). Significantly, smaller permittees would receive benefits of reduced fees.

Overall, the proposed rule amendments would result in the fee program:

- Funding the corresponding workload necessary to implement the permit program.
- Having more equitable distribution of fees, reflecting individual permittees paying fees in line with the actual amount of work necessary to manage their permit(s).

### **2.3.8 Adjusting Extreme Hardship Reduction fees**

We expect these proposed rule amendments to result in additional costs for permittees currently paying the minimum fee under the Extreme Hardship fee reduction. We also expect these amendments to result in benefits of cost-reduction options for some small business permittees.

### **COSTS OF COMPLIANCE: EQUIPMENT; SUPPLIES; LABOR; PROFESSIONAL SERVICES; ADMINISTRATIVE COSTS**

Compliance with the proposed rule, compared to the baseline, is not likely to impose these additional types of cost.

## **COSTS OF COMPLIANCE: OTHER**

### **3.2.1 Quantifiable cost calculations**

As discussed in Chapter 2, the multiple types of fee adjustment or change to fee structures under the proposed rule amendments would interact, resulting in overall proposed fee changes.

To estimate the costs of the proposed rule amendments, we examined nearly 7,000 existing permittee records and identified:

- Baseline fees: Current fees paid by each permittee.
- Proposed fees: Likely fee tiers and associated fees for Fiscal Years 2024 and 2025 for each permittee.

Based on the baseline rule, the baseline fee would remain constant over time. We made the simplifying assumption that the proposed Fiscal Year 2025 fees would also remain constant over time, though it is possible, under the proposed fee updating process, for the fees to change over time. Since fees reflect the cost of services (a minimum estimate of the value of services provided by Ecology permit managers), assuming a growth rate in total fees would reflect an equivalent increase in the value of services provided, leaving net benefits of the proposed rule amendments unchanged.

We were also unable to make confident assumptions about any future changes to fee distributions, as these would be based on public input as part of the proposed fee updating process.

We calculated the difference between baseline and proposed fees for Fiscal Years 2024 and 2025 for each permittee. As discussed in Chapter 2, some permittees are likely to have higher fees under the proposed rule amendments, while others would have lower fees. Most fee changes would be costs (increases in fees), reflecting the higher current costs of administering the permit program related to those permits. The distribution of costs (fee increases) per permittee is summarized below.

**Table 1: Distribution summary statistics of fee increases, by Fiscal Year (FY)**

<i>Statistic</i>	FY 2024	FY 2025
<i>Minimum</i>	\$0.03	\$0.03
<i>Median (central estimate)</i>	\$47	\$47
<i>Mode (most frequent)</i>	\$388	\$388
<i>Average</i>	\$791	\$800
<i>Maximum</i>	\$501,278	\$501,278

While some permittees would see significant increases in fees (large municipal wastewater permittees whose fees were previously capped under the authorizing law), most permittees would see lower increases in their fees.

- Only four permittees would have fees increase by more than \$100,000.
- Over 3,100 permittees would have fees increase by less than \$100, many of which are small changes (as low as a few cents) due to rounding.
  - Over 700 would have fees increase by less than \$10.
  - Over 800 would have fees increase by between \$10 and \$20.
  - 1,560 would have fees increase by between \$20 and \$50.
- The most common fee increases would be under \$400.

Over 1,300 permittees would not have their fees change at all under the proposed rule amendments.

#### **Total annual costs**

The total cost (total increase in fees) would be about \$3.9 million in Fiscal Year 2024, and nearly \$4.0 million in Fiscal Year 2025. Under our simplifying assumption (see discussion above in this section), this cost would continue in each subsequent year.

#### **Total present value costs**

Ecology calculates costs and benefits of proposed rules using 20-year present values. A present value converts streams of costs or benefits over time, into a single comparable value in current dollars. It accounts for inflation, and the opportunity cost of having funds or value later versus now, using a historic average real discount rate of 0.89 percent. The 20-year present value of costs of the proposed rule amendments would be \$72 million.

### **3.2.2 Qualitative costs**

#### **Uncertainty in quantified costs**

We note that estimated fees for each permittee are based on current permittee attributes (e.g., flow rates or acreage), and if those attributes change and result in classification under a different fee tier, those permittees may have either higher or lower fees than assumed in this analysis. For example, if a permittee is currently paying a fee in a tier that would be subdivided under the proposed rule, we based our assumption on the new fee tier into which they would fall. If that permittee expands in the meantime, and instead falls into a higher fee tier, this additional cost would not be reflected in the above quantified cost estimate.

#### **Dual coverage and distribution of fee burden**

The proposed removal of the Dual Coverage provision would also result in some permittees now paying fees related to the CSWGP or ISGP (which they do not pay under the baseline if they also pay the fee for another water quality permit). This cost is reflected in the total costs quantified in Section 3.2.1, but we note that it also affects the distribution of fees. These

permittees, like other permittees that have not paid fees that reflect the actual costs of services provided by the permit program, would bear a greater share of cost burden (all else equal), though this burden would not exceed the share of expected workload to manage their permits.

**COMPARISON OF COMPLIANCE COST FOR SMALL VERSUS LARGE BUSINESSES**

**7.2 Analysis of relative compliance cost burden**

We calculated the estimated per-business costs to comply with the proposed rule amendments, based on the costs estimated in Chapter 3 of this document. In this section, we estimate compliance costs per employee.

The average affected small business likely to be covered by the proposed rule amendments employs approximately 15 people. The largest ten percent of affected businesses employ an average of 10,627 people. Based on cost estimates in Chapter 3, we estimated the following compliance costs per employee.

**Table 2: Compliance costs per employee**

<i>Type of cost (or total cost)</i>	Low	High
<i>Average small business employment</i>	15	15
<i>Average employment at largest ten percent of businesses</i>	10,627	10,627
<i>Small business cost per employee</i>	\$35.67	\$36.07
<i>Largest business cost per employee</i>	\$0.05	\$0.05

We conclude that the proposed rule amendments are likely to have disproportionate impacts on small businesses, and therefore Ecology must include elements in the proposed rule amendments to mitigate this disproportion, as far as is legal and feasible.

**CONSIDERATION OF LOST SALES OR REVENUE**

Businesses that would incur costs could experience reduced sales or revenues if the proposed rule amendments significantly affect the prices of the goods they sell. The degree to which this could happen is strongly related to each business’s production and pricing model (whether additional lump-sum costs would significantly affect marginal costs), as well as the specific attributes of the markets in which they sell goods, including the degree of influence each firm has on market prices, as well as the relative responsiveness of market demand to price changes.

We used the REMI E3+ model for Washington State to estimate the impact of the proposed rule amendments on directly affected markets, accounting for dynamic adjustments throughout the economy. The model accounts for: inter-industry impacts; price, wage, and population changes; and dynamic adjustment of all economic variables over time. Our inputs to the model reflected total fees by industry.

The proposed rule amendments affect a wide variety of businesses (see 7.6, below). Across all industries there would be a minimal impact on output, estimating a total cost of \$1,000,000 annually. For context, we note that baseline state output is forecast to be over \$1.2 trillion by 2027. The following industries would have the largest impact on their output:

**Table 3: Impacts to output, percent**

<i>Industry</i>	<i>Initial Output Impact</i>	<i>Output Impact in 20 years</i>
<i>Hardware Manufacturing</i>	-0.001%	-0.005%
<i>Metal Ore Mining</i>	0.000%	-0.002%
<i>Support Activities for Mining</i>	-0.001%	-0.002%
<i>Clay Product and Refractory Manufacturing</i>	0.000%	-0.001%
<i>Water, Sewage, and Other Systems</i>	0.000%	-0.001%

**MITIGATION OF DISPROPORTIONATE IMPACT**

The RFA (19.85.030(2) RCW) states that:

“Based upon the extent of disproportionate impact on small business identified in the statement prepared under RCW 19.85.040, the agency shall, where legal and feasible in meeting the stated objectives of the statutes upon which the rule is based, reduce the costs imposed by the rule on small businesses. The agency must consider, without limitation, each of the following methods of reducing the impact of the proposed rule on small businesses:

- a) Reducing, modifying, or eliminating substantive regulatory requirements;
- b) Simplifying, reducing, or eliminating recordkeeping and reporting requirements;
- c) Reducing the frequency of inspections;
- d) Delaying compliance timetables;
- e) Reducing or modifying fine schedules for noncompliance; or
- f) Any other mitigation techniques including those suggested by small businesses or small business advocates.”

We considered all the above options, the goals, and objectives of the authorizing statutes (see Chapter 6), and the scope of this rulemaking. We limited compliance cost-reduction methods to those that:

- Are legal and feasible.
- Meet the goals and objectives of the authorizing statute.

- Are within the scope of this rulemaking.

Modifying regulatory requirements, changing reporting requirements, reducing the frequency of inspections, or delaying compliance timetables would not meet statutory objectives or are not feasible and within the scope of this rulemaking. Finally, we included the following elements in the proposed rule amendments to reduce costs to small businesses. WAC 173-224-090 allows small businesses to receive a fee reduction of fifty percent, but not less than the minimum permit fee of \$150, if they are determined to be eligible under the following criteria:

1. Be a corporation, partnership, sole proprietorship, or other legal entity formed for the purpose of making a profit;
2. Be independently owned and operated from all other businesses (i.e., not a subsidiary of a parent company);
3. Have annual sales of \$1,000,000 or less of the goods or services produced using the processes regulated by the waste discharge or individual stormwater discharge permit (we identified 605 small business permittees in Washington that meet this definition); and;
4. Have an original annual permit fee assessment totaling \$500 or greater.

In addition to the small business fee reduction, any small business with annual gross revenue totaling \$100,000 or less from goods and services produced using the processes regulated by the discharge permit may apply for an extreme hardship fee reduction. If the permit holder is determined eligible, the annual permit fee is reduced to the minimum annual permit fee of \$150.

### SMALL BUSINESS AND LOCAL GOVERNMENT CONSULTATION

We involved small businesses and local governments in its development of the proposed rule amendments, using:

- The Municipal Wastewater Permit Fees Advisory Committee had 10 meetings in 2022 that were open to comment and included representatives from several different local government entities.

### NAICS CODES OF INDUSTRIES IMPACTED BY THE PROPOSED RULE

The proposed rule amendments likely impact the following industries, with associated NAICS codes. NAICS definitions and industry hierarchies are discussed at <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?chart=2017>.

**Table 4: Likely affected NAICS codes**

NAICS Code	Description	NAICS Code	Description	NAICS Code	Description
111x	Agricultural Products	334	Computer and Electronic Products	512	Motion Picture and Sound Recording Industries
112x	Livestock and Livestock Products	335	Electrical Equipment, Appliances and Components	517	Telecommunications
113x	Forestry and Logging	336	Transportation Equipment	522	Credit Intermediation and Related Activities
114x	Fish, Fresh/Chilled/Frozen and Other Marine Products	337	Furniture and Fixtures	523	Securities, Commodity Contracts, and Other Financial Investments and Related Activities
115x	Support Activities for Agriculture and Forestry	339	Miscellaneous Manufactured Commodities	531	Real Estate
211x	Oil and Gas	423	Merchant Wholesalers, Durable Goods	532	Rental and Leasing Services
212x	Minerals and Ores	424	Merchant Wholesalers, Nondurable Goods	533	Lessors of Nonfinancial Intangible Assets (except Copyrighted Works)
213x	Support Activities for Mining	441	Motor Vehicle and Parts Dealers	541	Professional, Scientific, and Technical Services
221x	Utilities	444	Building Material and Garden Equipment and Supplies Dealers	551	Management of Companies and Enterprises
236x	Construction of Buildings	445	Food and Beverage Retailers	561	Administrative and Support Services
237x	Heavy and Civil Engineering Construction	449	Furniture, Home Furnishings, Electronics, and Appliance Retailers	562	Waste Management and Remediation Services
238x	Specialty Trade Contractors	455	General Merchandise Retailers	611	Educational Services
311x	Food and Kindred Products	456	Health and Personal Care Retailers	621	Ambulatory Health Care Services
312x	Beverages and Tobacco Products	457	Gasoline Stations and Fuel Dealers	622	Hospitals

313x	Textiles and Fabrics	458	Clothing, Clothing Accessories, Shoe, and Jewelry Retailers	623	Nursing and Residential Care Facilities
314x	Textile Mill Products	459	Sporting Goods, Hobby, Musical Instrument, Book, and Miscellaneous Retailers	624	Social Assistance
321	Wood Products	481	Air Transportation	711	Performing Arts, Spectator Sports, and Related Industries
322	Paper Manufacturing	482	Rail Transportation	712	Museums, Historical Sites, and Similar Institutions
324	Petroleum and Coal Products	483	Water Transportation	713	Amusement, Gambling, and Recreation Industries
325	Chemicals	484	Truck Transportation	721	Accommodation
326	Plastics and Rubber Products	485	Transit and Ground Passenger Transportation	722	Food Services and Drinking Places
327	Nonmetallic Mineral Products	486	Pipeline Transportation	811	Repair and Maintenance
331	Primary Metal Manufacturing	488	Support Activities for Transportation	812	Personal and Laundry Services
332	Fabricated Metal Product Manufacturing	492	Couriers and Messengers	813	Religious, Grantmaking, Civic, Professional, and Similar Organizations
333	Machinery, except Electrical	493	Warehousing and Storage		

#### IMPACT ON JOBS

We used the REMI E3+ model for Washington State to estimate the impact of the proposed rule amendments on jobs in the state, accounting for dynamic adjustments throughout the economy.

The proposed rule amendments would result in transfers of money within and between industries, as compared to the baseline. The modeled impacts on employment are the result of multiple small increases and decreases in employment, prices, and other economic variables across all industries in the state.

The results of REMI E3+ model show insignificant impact on jobs in the affected industries. The industries with the highest jobs impact are construction and state and local government. Construction is estimated to have one job loss per year from 2024 to 2033 and state and local government is estimated to have one job loss per year from 2031 to 2034.

**Table 5: Impacts on jobs, FTEs**

<i>Industry</i>	Initial Jobs Impact	Jobs Impact in 10 years	Jobs Impact in 20 years
<i>Whole State</i>	-3	-4	-4
<i>Construction</i>	-1	-1	0
<i>State and Local Government</i>	0	-1	0
<i>Retail Trade</i>	0	0	0

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name: Ligeia Heagy

Address: Department of Ecology, Water Quality Program, PO Box 47600, Olympia, WA 98504-7600

Phone: (360) 280-3697

Fax: N/A

TTY: People with speech disability may call TTY at 877-833-6341. People with impaired hearing may call Washington Relay Service at 711.

Email: [wqfeeunit@ecy.wa.gov](mailto:wqfeeunit@ecy.wa.gov)

Other: N/A

**Date:** March 22, 2023

**Name:** Heather Bartlett

**Title:** Deputy Director

**Signature:**

A handwritten signature in black ink that reads "Heather R. Bartlett". The signature is written in a cursive style with a large, stylized initial "H" and "B".