

Family Wineries of Washington State

Hi Stacey,

Thanks for getting back to me.

Many of our members would breathe a big sigh of relief if Ecology would simply raise the 7,500 case threshold to a more reasonable level in the next draft of the proposed permit. As drafted the proposed permit will effectively cap the growth of rural family wineries at 7,500 cases. That's exactly what the corporate wineries want so that they can maintain their dominant market share. Since Ecology has not been able to show any real adverse impact to waters of the state at the 7,500 case level, there is no compelling reason to cap the growth of tiny rural wineries at such a low level. If Ecology would raise the cutoff level to a more realistic figure in the next draft, Family Wineries could stand down and would not have to oppose the general permit when it is issued.

I also don't understand why you are not making the technical correction to S1.B.1. at this stage of the process. The current language is not consistent with other Ecology general permits. As currently drafted, if not corrected, every winery below the case threshold cutoff level will have to get an individual permit once the general permit is issued. That can't be what Ecology intends so the language needs to be fixed.

Dear Ms. Callaway,

Thank you for the opportunity to comment on the Department of Ecology's proposed winery general permit. Family Wineries of Washington State exists for the sole purpose of helping small family-owned wineries succeed. We represent small wineries from all over Washington State -- including urban and rural wineries and wineries on the east and west sides of the Cascades. We believe our organization is uniquely situated to comment on the proposed general permit as it directly impacts our members.

To briefly summarize, Family Wineries believes that Ecology has grossly overestimated the potential environmental impact posed by winery wastewater to waters of the state and provided little scientific evidence to back up its claims. Many small wineries have no impact on waters of the state and no small wineries have more impact than that posed by, for instance, a few typical homes or a rural restaurant. Further, the costs of the monitoring, reporting and discharge requirements of the proposed permit are way out of line for the minimal impact potentially posed. Family Wineries is particularly concerned that the Ecology effort has been encouraged and facilitated by large wineries intent on making small wineries pay for Ecology's program costs. These large wineries are already covered by individual permits and do not represent the interests of small wineries. Rather, they want small wineries to share in agency program costs that they should solely bear. Family Wineries believes Ecology has allowed these large wineries, through the Washington Wine Institute, to coopt the regulatory and fee development process at the expense of small family wineries who lack the resources to defend themselves.

In particular, Family Wineries objects to the proposed cutoff of 7,500 cases for application of the general permit as arbitrary. Ecology provides no rational basis for the cutoff. As explained below, considering the actual minimal environmental threat posed by wineries to waters of the state and the high costs of complying with the proposed monitoring, reporting and discharge requirements,

Family Wineries believes the cutoff should be set at 105,000 cases, which is the federal TTB definition of a small winery.

Our specific comments are as follows:

The general permit should specifically state that it does not apply to wineries that generate wastewater but do not discharge the wastewater to waters of the state. This includes many wineries, especially in Eastern Washington, who discharge wastewater but are located hundreds of feet above groundwater. These wineries have no impact on waters of the state because of the great distance to groundwater and the presence of a caliche layer that prevents wastewater penetration. These wineries should not be forced to comply with the onerous permitting, monitoring, reporting and fee requirements of the proposed general permit as they pose no threat to waters of the state.

Similarly, it is highly unlikely that using wastewater for beneficial purposes such as irrigation and road dust abatement will have any impact on waters of the state. Water is in short supply, especially in Eastern Washington where most wineries that would be covered by the proposed general permit are located. Ecology should be encouraging the reuse of winery wastewater, not making it more expensive. These small and periodic applications of dispersed water cannot penetrate through the caliche layer to groundwater hundreds of feet below the surface. The general permit is to protect waters of the state, not soil. No rational farmer would ever apply water that would harm his/her soil, so regulation to protect soil is unnecessary and should not come from Ecology's water program office. Beneficial uses of winery wastewater should be exempt from the onerous permit requirements that discourage instead of encourage their application.

The proposed general permit does not apply to wastewater discharges to surface water nor does it apply to storm water. Therefore the proposed general permit is not intended to protect surface water nor storm water and should not be justified on these bases.

As presently drafted, S1.B. states that certain activities are "NOT Covered under this General Permit." If taken literally, this language would mean that all of the exempt activities are not covered by the general permit and therefore need to get individual permits. Surely this was not Ecology's intention in drafting the exemptions. The beginning of S1.B. should be revised as follows:

B. Activities for Which a Permit is NOT required

1. Ecology has determined that the following facilities and activities do not have a reasonable potential to exceed Washington State Water Quality Standards or impact waters of the state.
 - a. A new or existing...

Similarly, the text in S1.B or the definitions should specifically state that small wineries are not "significant contributors of pollutants."

Footnote 2 states the assumption that 3 gallons of wastewater is generated for every 1 gallon of wine generated. Ecology provides no evidentiary support for this assumption and it is way out of line from the experience of our members. Our members never produce more wastewater than wine. Water is costly and our members do not waste it. Wine making is seasonal and most of the year small wineries use no water at all. In fact, most days of the year small wineries sit idle. Even during harvest a small winery may only run its equipment a few days. Typical barrel washing by our

members uses 2-3 gallons of water per barrel, not hundreds of gallons. A typical small winery floor is washed with a single garden hose a few times a year using much less water than the average home owner with a yard uses in a year. Even at the peak of the few days of harvest, typical small wineries use no more than two garden hoses at a time and that's only when cleaning up for an hour or two at the end of the day again much less than the typical residential home with a lawn or garden uses in the summer. It is also inappropriate for Ecology to include storm water in the estimate (see draft fact sheet at page 7) as the proposed general permit does not cover storm water. Ecology has grossly overestimated the volume of wastewater produced by the vast majority of Washington wineries. Section 2.2 of the fact sheet should be completely rewritten to reflect reality for small wineries or revised to make clear it applies only to large industrial operations.

In Section S2 Ecology increases the wastewater volume estimate from three to six gallons of wastewater per gallon of wine produced -- which is even more out of line with reality. Again Ecology provides no evidence to back up its assumption.

The proposed general permit and fact sheet also exaggerate the amount and toxicity of the pollutants allegedly present in winery wastewater. For instance, the permit and fact sheet fail to acknowledge that the suspended solids in small winery wastewater are all removed before the wastewater can reach groundwater and groundwater is the only "water of the state" addressed by the proposed general permit. Simply discharging the water to the ground very effectively removes the suspended solids before they can reach groundwater. The suspended solids are then easily scooped up and properly disposed of. The temporary presence of suspended solids in winery waste water before discharge is not a valid basis for imposing permit requirements.

Comparing winery wastewater to untreated domestic sewage is not appropriate. Unlike domestic sewage, there are no known pathogens that exist in winery waste. Similarly, winery wastewater cannot legitimately be compared to dairy wastewater.

Ecology's concern with dissolved solids in winery wastewater is also misplaced. These dissolved solids are not toxic and are easily biodegraded by soil microorganisms long before they can reach groundwater.

Ecology has failed to demonstrate any actual cases of adverse impact to waters of the state from the alleged "extreme pH" of winery wastewater. The only low pH material found in any quantity in winery wastewater is wine itself, and winemakers are loath to send much of their product out with their wastewater. The pH of wine can hardly be called "extreme." Further, unlike Western Washington, in Eastern Washington (where most facilities that will be covered by the proposed general permit are located) the soils can be basic and will actually benefit from the addition of slightly acidic wastewater. For instance, watering raspberries and other acid-loving plants is an excellent use for winery wastewater an effective reuse bio-swale that should be encouraged, not discouraged.

The only high pH material found in winery wastewater comes from cleaning chemicals, with Sodium Percarbonate being the principal cleaning agent used by small wineries. Sodium Percarbonate is a common ingredient in household laundry soap. Again, Ecology has not shown that small wineries have any more impact on waters of the state than a few typical households. In fact, winery wastewater has LESS potential impact on waters of the state than household wastewater because wineries do not use chlorine bleach.

The draft fact sheet concedes at page 12 that the largest source of salt in winery wastewater "is the water supplied to the winemaking facility." A typical small eastern Washington winery gets its water from a well with the salt already in it. Small winery use of Sodium Percarbonate, as discussed above, adds only tiny amounts of salt -- less than a typical home or two with a washing machine doing laundry every week. Discharge of this water back to the ground causes no deleterious impact to the already salty groundwater. And, as discussed above, it's highly unlikely that the wastewater would ever reach groundwater in any event in Eastern Washington. Washington State's Water Quality Standards for salts are set low to protect fresh water fish, not groundwater. Fish do not live in the groundwater. Further, preventing soil accumulation is not a valid reason for requiring a wastewater permit. If wineries are causing soil problems (and there is no evidence provided that they are), Ecology has other more appropriate program tools to protect the soils.

In section 2.4, the draft fact sheet grossly overstates the potential impacts of discharges from wineries. In fact, Ecology has been unable to show even one actual case where a small winery's discharge has harmed groundwater. Ecology has not demonstrated that winery wastewater has "extreme water pH ranges." Ecology has not identified any aquatic organisms that are affected by winery discharges to groundwater (again, surface water is not covered by the general permit). Alleged impacts to soil crops and vegetation are not valid bases for requiring wastewater discharge permits and Ecology has shown no examples of such impacts occurring in reality. Ecology has also provided no evidence that winery wastewater causes "nuisances like odors and vectors." In fact, Ecology's ill-advised suggestion that wineries confine their wastewater to ponds will serve to increase odors and vectors, not reduce them.

The only actual evidence of detrimental impacts from winery wastewater provided by Ecology is an anecdote about a winery overloading a domestic septic system. Ecology's concern is misplaced and not a valid basis for requiring wastewater permits. Septic systems are expensive to install and no rational winery would intentionally overload one. Certainly the winery that overloaded the septic system learned its lesson and will never do it again. Regulation is not necessary. Further, Ecology has not demonstrated that any septic system overloaded with winery waste has actually impacted groundwater or has a realistic potential to do so.

The limited potential impact from small winery wastewater makes the onerous reporting and monitoring requirements of the proposed permit completely inappropriate. Ecology is acting as if small family wineries are making toxic substances, not a safe, consumable, and biodegradable agricultural product. The extensive testing, monitoring and reporting is overkill compared to the potential risk and needs to be greatly reduced. The impact on small wineries is simply too great to justify considering the minimal impact on the environment. The monitoring and testing requirements are also redundant among many like-situated wineries. At a minimum, Ecology should aggregate the monitoring and testing to a few model wineries that represent the industry, rather than expect every permittee to conduct redundant and expensive testing, analysis and reporting over and over again.

Many of the above concerns would be alleviated if Ecology simply raised the applicability threshold from the currently proposed 7,500 cases to a more appropriate level that considers the minimal impact small wineries actually have on waters of the state. Ecology acknowledges in the draft fact sheet at page 24 that small wineries will "suffer disproportionate hardship from the costs related to compliance with the Winery General Permit" and that small wineries "are less likely to

impact groundwater quality." The problem is with how Ecology defines "small." In the wine industry, 7,500 cases is tiny, if not miniscule. And in terms of potential environmental impact, 7,500 cases is infinitesimal. Ecology provides no scientific or rational basis for the 7,500 case cutoff other than to provide a table (Table 6) that shows that such a cutoff will still capture 96% of the wastewater produced by wineries in Washington State. No scientific or rational basis is provided for picking the 96% figure either. Why not 90% or 80%? Given the lack of demonstrated impact on groundwater, Family Wineries believes the cutoff figure should be much higher. For instance, using the data provided to Ecology by the WSLCB for 2015, setting the cutoff at 100,000 cases would capture over 83% of winery wastewater while eliminating the burdensome permit costs for all but 17 wineries. Considering the absence of demonstrable impacts, 83% coverage is more than protective.

The only other argument Ecology provides for arbitrarily selecting 7,500 cases as the cutoff is legislation (HB 1040) proposed in the 2017 legislative session by Family Wineries of Washington State to provide "small winery tax relief" to wineries that sell less than 20,000 gallons of wine per year. Ecology notes that "this threshold nearly mirrors the applicability threshold proposed by Ecology." Ironically and tellingly, however, the 20,000 gallon figure was only used by Family Wineries because the Washington Wine Institute refused to support Family Wineries' original proposal of 250,000 gallons. The 250,000 gallon figure (105,000 cases) comes from the federal small domestic wine producer tax credit and is a much better definition of a "small" winery than the miniscule figure of 7,500 cases. Ecology should adopt the federal definition of a small winery of 250,000 gallons of wine produced per year. The federal definition is an established law, not a mere legislative proposal watered down by the intransigence of large corporate wineries. By setting the figure at 250,000 gallons or the equivalent of 105,000 cases, Ecology will limit the cost of complying with the permit requirements to those wineries that may actually threaten waters of the state and have the resources to meet Ecology's extensive and expensive permit requirements.

Ecology incorrectly states on page 26 of the fact sheet that the federal TTB definition of a small winery is 100,000 gallons. Rather a winery is defined as small and may continue to take the small winery tax credit until it exceeds 250,000 gallons the tax credit is simply gradually reduced between 100,000 and 250,000 gallons. 27 CFR 24.278. As discussed above, Ecology chose not to use either the 100,000 gallon figure or the 250,000 figure when it arbitrarily decided to define a small winery at 7,500 cases. Instead, Ecology decided to use 100,000 gallons to determine whether a winery falls within Group 1 or Group 2 under the proposed permit. Ecology should follow federal law and use the 250,000 gallon figure consistently. Only when a winery exceeds 250,000 gallons should it be considered "medium sized" and subject to the onerous Group 1 permit requirements.

In summary, Ecology has failed to show that the typical small winery has any more potential impact on waters of the state than a rural restaurant or a few typical rural homes that use laundry detergent and other household cleaners. Ecology's proposal is unduly burdensome considering the minimal threat posed. The monitoring and reporting requirements alone will bankrupt some small wineries. Therefore, the proposed general permit needs to be completely reconsidered, or the threshold definition of what is a small winery (7,500 cases in the proposal) needs to be raised substantially. Family Wineries recommends that the exemption level be set at the federal small winery definition of 250,000 gallons (105,000 cases). Ecology has not demonstrated an adverse impact on groundwater from wineries producing less than 250,000 gallons.

Thank you for considering our comments. Please let us know if you have any questions.

The Board
Family Wineries of Washington State

Board@familywineriesofwashington.org
<http://www.familywineriesofwashington.org>

1103 Grand Avenue | Seattle WA 98122

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