



Robert Poole
Director, Regulatory Affairs NW Region

May 4, 2021

Sent by Electronic Mail to ligeia.heagy@ecy.wa.gov

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

Subject: Comments on Proposed WAC 173-224 Water Quality Permit Fees

Dear Ms. Heagy:

Thank you for this opportunity to comment on the Dept of Ecology's proposed revisions to WAC 173-224. WSPA is a trade association that proudly represents companies that explore for, produce, refine, transport and market petroleum, petroleum products, natural gas, and other energy supplies in Washington and four other western states.

In the early 2000's the Dept of Ecology initiated a work-load assessment to understand agency costs to develop and implement the wastewater permitting program. It is our understanding the study results were then to be used to assign permit fees for each source category. In undertaking this significant study, it is our view Ecology was acknowledging that:

- 1) the statutory authority for WAC 173-224 recognized that an important factor in fee establishment was to consider the actual direct/indirect costs of administering wastewater permits, and this by source category.¹
- 2) over time the annual fee increases to cover rising program costs had resulted in a permit fee structure not aligned with actual agency costs.

It is also our view Ecology's assessment confirmed that larger individual NPDES permittees were disproportionately paying compared to actual expended agency costs by a factor of 3x – 4x.² In

¹ See RCW 90.48.465(1) "Fees shall be established in amounts...not to exceed expenses incurred by the department in processing permit applications and modifications, monitoring and evaluating compliance with permits, conducting inspections,..."

² The Ecology study revealed annual costs to administer an individual NPDES permit for a "large" industry (e.g., petroleum refineries, pulp and paper) was \$35-50,000/year, yet the annual permit fee exceeded \$150,000.

addition, the biennial percentage-based fee increases led to a wider divergence on the fees assigned and paid between source categories.³

At that time, Ecology did not recalibrate the WAC 173-224 fee structure based on the study outcomes. The result of which is permit fees inevitably shifted from large individual permittees to the hundreds of smaller individual permittees and the thousands of permittees authorized to discharge through general NPDES permits. Compounding this inequity, RCW 90.48.465 sets caps on some permit fee categories which would require legislative action to adjust those. Facing these realities, the solution selected by the agency was to increase permit fees for the large individual permittees by a slightly smaller percentage vs. other permit source categories (4.5% vs. 5%). This has been the practice for the last few permit fee revisions. Nevertheless, the underlying equity issue remains and the diverging fee structure strays further from statutory direction.

WSPA notes that the Least Burdensome Alternatives Analysis developed for this WAC 173-224 rule revision proposal acknowledges the realities of source category fee inequities but makes no mention of the large individual industrial vs. all other permit categories issue.⁴ This could have been discussed in the Analysis.

WSPA's request is that Ecology work with stakeholders to develop, communicate and implement a plan which addresses the systemic fee inequities in WAC 173-224. The agency has discretion to make meaningful adjustments in the regulation; these changes could be phased. Legislative action to update the fee structure will ultimately be required with Ecology in the best position to inform on the necessary statutory changes to achieve an adequate and equitably funded program.

We look forward to working with you on this request. Please feel free to contact me directly at bpooole@wspa.org or (805) 833-9760.

Sincerely,



CC:

Jessica Spiegel,
Director, NW Region
Western States Petroleum Association

³ For example, see "Petroleum refining, 50,000 bbls/day and greater" at \$157,075/year compared to 152 individual permit fee source categories assigned fees at less than \$10,000/year. The amount of time spent on the smaller permits does not correlate to these administration numbers.

⁴ See page 30 in "Preliminary Regulatory Analyses," Publication 21-10-002, March 2021



April 29, 2021

Ligeia Heagy
Department of Ecology
Water Quality Permit Fee Unit
PO Box 47600
Olympia, WA 98504-7600

Transmitted via Ecology Portal for Comments

Subject: Chapter 173-224 WAC, Water Quality Permit Fees Comments from Tacoma

Dear Ms. Heagy,

The City of Tacoma appreciates this opportunity to comment on the revisions to Chapter 173-224 WAC, Water Quality permit fees. Tacoma is concerned the permit fee revisions proposed will not be adequate to fund Ecology's water quality permitting program. Specifically the municipal permit program has been unable to keep up with the reissuance of NPDES permits. It is the City's understanding from Ecology that currently 57% of Municipal NPDES permits are administratively extended. This is presumably because Ecology lacks the resources to process these permits. Ecology proposes to keep municipal permit fees constant for 2022 and 2023 raising no new revenues to address this backlog. This proposed permit fee schedule does nothing to resolve this problem.

RCW 90.48.465 requires Ecology to establish, by rule, annual permit fees to recover the cost of administering the wastewater and stormwater permit programs. Ecology adopted Chapter 173-224 WAC – Water Quality Permit Fees in response to this law, after voters approved Initiative 97 in 1988 (later codified as RCW 90.48.465) and Initiative 601 in 1993 (later codified as RCW 43.165). These initiatives required that Ecology create a fee schedule to recover the costs associated with managing the program. The rule proposed clearly fails to do this.

We recognize that Ecology is constrained by RCW 90.48.465 which caps the total amount of fees that can be assessed for all domestic municipal wastewater permits to \$0.18 per residential equivalent per month, regardless of a higher fee in the proposed rule amendment. Despite this, we believe that Ecology cannot continue to ignore the real harm that is being done to both permittees and the environment by the failure to properly administer the NPDES program. Either legislative action must be taken to raise the cap or the Department must restructure the program to adjust for the resources that are available.

The establishment of a new fee category for the Puget Sound Nutrient General Permit seems premature. Ecology has given mixed signals as to if or when this new permit might be issued. In addition it is unclear what the permit will entail and what administrative burdens it might impose on Ecology. The establishment of a \$0.31 per ERU permit fee appears to be completely arbitrary and in fact not implementable because the municipal permit holders are already at the cap.



Tacoma suggests that Ecology hold off on creating this new fee category until more information regarding the costs of this program are available.

Thank you for this opportunity to comment on this proposal. We support Ecology's objective of creating a fee schedule that equitably and completely covers the cost of administering the water quality permitting program. We hope that are comments are helpful.

Sincerely,

Dan C. Thompson, Ph.D.

Dan C. Thompson PhD
Business Operations Division Manager
Tacoma Environmental Services