

September 8th, 2009

Bev Poston
Fee Program Administrator
Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

RE: WAC 173-224 Proposed Rule Changes

Dear Ms. Poston:

Thank you for the opportunity to comment on Ecology's proposed changes to WAC 173-224, Wastewater Discharge Permit Fees. BIAW represents nearly 12,000 member companies in the land development and building trades, many of whom currently hold or will apply for construction stormwater permits from the Department of Ecology. These members are directly impacted by the rule's proposed fee increases, especially those with small, seasonal construction projects. BIAW's comments to the proposed rule are detailed below.

1. Annual increase of 5.2% for 2010 and 4.61% for 2011.

While BIAW recognizes that these increases were approved by the Legislature, we believe it important to register our opposition to fee increases when the housing industry, particularly smaller companies, is struggling to stay afloat. Never before have so many small, family, and community based businesses shut their doors, encouraging more out-of-state corporations to take over local homebuilding. While a \$24 increase seems paltry, it is the steady, now annual, increase that suddenly puts a \$454 permit beyond the reach of a contractor.

Instead of raising fees to cover program costs, it would be a refreshing change for Ecology to limit the scope of the program to what is necessary to satisfy federal requirements and protect state waters. At a minimum, Ecology could scrub the construction stormwater permit of unnecessary or repetitious paperwork requirements (e.g., termination process, annual billing), especially for small projects. Ultimately, BIAW opposes the fee increases and asks that future fee increases (if done) revert to a biennial pattern.

2. Elimination of back-end proration.

BIAW strongly opposes the proposed elimination of computing fees on the quarter of termination. Unlike traditional permits, Ecology bills contractors annually based on its fiscal year. Assuming a contractor starts a project in May and completes it in October (a typical seasonal project timeline), he has, at a minimum, three written exchanges with Ecology's billing department: permit issuance in May, annual billing in July, and termination in October. Upon permit issuance he pays a prorated annual fee, is billed a full annual fee in July, and receives a prorated refund in November. This is an unnecessarily cumbersome and expensive process, both for Ecology and contractors.

First, BIAW opposes elimination of back-end proration because permit holders will pay for services not rendered by Ecology, in contravention of RCW 90.48.465. In the example above, if the contractor terminates in October, he will not receive a refund for the remainder of the year, even though his site is finished and no longer requiring any action by Ecology. RCW 90.48.465 authorizes Ecology to establish fees to "fully recover and not to exceed expenses incurred by the department."

Second, elimination of back-end proration disproportionately impacts small, seasonal projects because they are likely to terminate shortly after the annual billing in July and they can least afford a near \$500 bill (and for what in return?). The cost to comply with the construction stormwater permit is already egregiously expensive for small construction projects (Ecology estimates \$3,500 - \$5,000, without development of the SWPPP). Adding another annual fee, for which contractors didn't anticipate in their bidding or customer budgets, could put them between a rock and a hard place: anger the customer or go in arrears with Ecology? RCW 90.48.465 calls for fee adjustments for economically pressed small dischargers. Clearly the intent is for a downward adjustment, but Ecology is doing exactly the opposite with elimination of the back-end proration.

Finally, BIAW opposes proration elimination because it supports a flawed fee system. Construction projects—unlike industrial sites or municipal governments—are temporary. Employing an annual fee process is unwieldy and costly. Small contractors are ill-equipped to respond to multiple billings in a year, nor should they have to watchdog Ecology for proper refunds. Similarly, it is a poor use of taxpayer funds for Ecology to send repeated billings with invariable follow-up calls and/or letters.

While annual billing remains in effect, BIAW asks that you retain the language in WAC 173-224-050(8) that allows computation of fees based on the quarter of termination. BIAW further requests that Ecology institute one-time fees for different classes of construction stormwater permits. If this requires a statutory change, BIAW would be happy to work with you to develop a reasonable permit fee based on actual administration and enforcement of each permit class.

3. Wording of fee relief code and notice to contractors.

WAC 173-224-090 provides varying levels of fee relief for wastewater permit holders. However, the wording of the code conflicts with Ecology's historical application. The code provides in part:

Except as noted in subsection (6) of this section, a small business required to pay a permit fee *under an industrial facility category* may receive a reduction of its permit fee. (emphasis added)

A plain reading indicates that any relief provided under this section is only available to industrial permit holders. The language should clearly indicate that construction stormwater permit holders are eligible for relief.

Also, the extreme hardship reduction (5) is drafted as a subset of the small business fee reduction. This suggests that a permit applicant cannot take advantage of the extreme hardship provision unless he or she also satisfies the criteria under (1). Again, the section needs to be rewritten to clearly delineate what reductions are available and to whom. This is particularly important given that 173-224-090 is sent to permit holders when coverage is issued. The WAC needs to be understandable to the average lay person.

BIAW requests that Ecology redraft WAC 173-224-090 for accuracy and accessibility. Also, BIAW requests that Ecology send a simple paper explaining who may and how to apply for the small business reduction, extreme hardship reduction, and inactivity status with the annual billing in July. While Ecology sends something of this nature with the initial invoice, it is likely buried (and disregarded) in the other documents sent with the invoice. An uncluttered reminder at the time of annual billing is the most efficient and effective way to answer the burning question: "How am I going to pay for this?"

Sincerely,



Jodi C. Slavik
Of Counsel