

# Chapter 173-328 WAC

## MIXED WASTE MANAGEMENT FEES

### WAC

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**WAC 173-328-010 Purpose and authority.** (1) The purpose of this chapter is to implement the provisions of RCW 70.105.280, by establishing a means for the department of ecology to assess reasonable mixed waste management fees against facilities that treat, store, or dispose of mixed waste and against mixed waste facilities undergoing closure under chapter 70.105 RCW. The fee collected shall be sufficient to fund all costs of carrying out the department's duties under chapter 70.105 RCW at mixed waste facilities.

(2) This chapter establishes the method by which the department shall assess fees, describes entities subject to such fees, establishes provisions for appealing and enforcing fee assessments, and delineates associated responsibilities of the department and facility owners and operators.

[Statutory Authority: RCW 70.105.280, 93-09-065 (Order 91-24), § 173-328-010, filed 4/20/93, effective 5/21/93.]

**WAC 173-328-020 Applicability.** This chapter applies to any person who owns or operates a facility that treats, stores, or disposes of mixed waste. This also applies to mixed waste facilities undergoing closure under chapter 70.105 RCW. This chapter does not apply to facilities managing only low-level radioactive waste.

[Statutory Authority: RCW 70.105.280, 93-09-065 (Order 91-24), § 173-328-020, filed 4/20/93, effective 5/21/93.]

**WAC 173-328-030 Definitions.** (1) The following terms are used and shall have meanings as defined in chapter 70.105 RCW or WAC 173-303-040 as amended:

- (a) Closure;
- (b) Dangerous waste;
- (c) Department;
- (d) Disposal;
- (e) Facility;
- (f) Operator;
- (g) Permit;
- (h) Storage; and
- (i) Treatment.

(2) When used in this chapter, the following terms have the meanings given below.

(a) "Manage" or "management" means to treat, store, or dispose of mixed waste, or close a mixed waste facility, or perform other activities required under chapter 70.105 RCW.

(b) "Mixed waste" means a dangerous waste that contains both a nonradioactive hazardous component and source,

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special nuclear, or by-product material subject to the Atomic Energy Act of 1954.

(c) "Mixed waste management fee" or "fee" means an assessment imposed under RCW 70.105.280 against those facilities that store, treat, or dispose of mixed waste. The fee shall also apply to facilities undergoing closure under chapter 70.105 RCW.

(d) For facilities sited by the energy facility site evaluation council under chapter 80.50 RCW, the terms "owner" and "operator" in WAC 173-328-060 and 173-328-070 mean the energy facility site evaluation council.

[Statutory Authority: RCW 70.105.280, 93-09-065 (Order 91-24), § 173-328-030, filed 4/20/93, effective 5/21/93.]

**WAC 173-328-040 Fee establishment.** The department shall, on a biennial basis, determine all reasonable program costs necessary to carry out the department's duties under chapter 173-303 WAC for each mixed waste facility. The fee may be assessed at a mixed waste facility for the department's regulation of both mixed waste and nonradioactive dangerous waste. The department shall include, but not be limited to, the following items to determine fee amounts:

(1) Direct and indirect cost of:

(a) Office space and supplies, administrative staff, support staff, and staff training;

(b) The development of associated regulations and guidelines;

(c) Determination, assessment, and collection of fees;

(d) Tracking and accounting services;

(e) Public involvement, education, and outreach; and

(f) Data management.

(2) Direct and indirect permitting costs of:

(a) Staff, staff support, and staff training for reviewing, approving, and issuing dangerous waste permits and closure plans;

(b) Reviewing and issuing permit modifications and renewals;

(c) Travel; and

(d) Contract services.

(3) Direct and indirect compliance activity cost of:

(a) Staff, staff support, and staff training to prepare and conduct compliance inspections;

(b) Sampling and lab analysis;

(c) Contract services;

(d) Travel; and

(e) Preparation of compliance report(s).

[Statutory Authority: RCW 70.105.280, 93-09-065 (Order 91-24), § 173-328-040, filed 4/20/93, effective 5/21/93.]

**WAC 173-328-050 Fee review and comment.** Fee review process.

(1) On or before July 1st of even-numbered calendar years, the department shall notify, by registered mail, each

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facility owner/operator of its biennial estimated fee assessment and provide the opportunity to review and comment prior to submittal of the department's budget to the legislature.

(2) The facility owner/operator shall have forty-five days to submit written comments to the department for consideration in the fee assessment.

(3) Prior to submittal of the department's budget to the legislature, the department shall notify the facility owner/operator of any changes to their estimated fee assessment.

[Statutory Authority: RCW 70.105.280, 93-09-065 (Order 91-24), § 173-328-050, filed 4/20/93, effective 5/21/93.]

**WAC 173-328-060 Fee assessment.** (1) After legislative approval of a budget for the department, the department may bill the facility owner/operator the required fees necessary to fund all mixed waste management costs.

(2) Anticipated fees. Anticipated fees include, but are not limited to, costs for permit issuance, permit maintenance, closure plan approval, and compliance audits.

(a) The department shall annually bill the owners/operators of all mixed waste facilities on or before October 1st for anticipated department activities to be performed that fiscal year.

(b) The department shall notify a facility owner/operator of any changes to the biennial estimate prior to sending each annual bill.

(c) The fee shall be submitted by the facility owner/operator to the department within thirty days after receipt of the bill.

(d) Any fees collected in excess of the department's actual costs will be adjusted in the subsequent billing to reflect the department's actual activities.

(3) Unanticipated fees. Unanticipated fees include, but are not limited to, the direct and indirect costs, as outlined in WAC 173-328-040, for unplanned enforcement activities, compliance activities, and facility modifications.

(a) The department may bill the owner/operator of a mixed waste facility upon completion of the unanticipated activity.

(b) The facility owner/operator shall be billed the amount of all direct and indirect costs incurred by the department to complete the unplanned regulatory activity.

(c) The unanticipated fee shall be submitted by the facility owner/operator to the department within thirty days after the receipt of the bill.

(4) Fees collected by the department shall be deposited into the state toxics control account.

(5) The fee shall not exceed the amount necessary for the department to carry out its duties under chapter 173-303 WAC.

(6) The department shall maintain a system of accountability to track annual costs incurred by the department.

[Statutory Authority: RCW 70.105.280, 93-09-065 (Order 91-24), § 173-328-060, filed 4/20/93, effective 5/21/93.]

**WAC 173-328-070 Appeals and enforcement.** (1) The owner/operator of a facility who is assessed a fee under this chapter may appeal the fee to the department. The appeal must be received by the department within thirty days after

the facility owner/operator's receipt of the bill. Any appeal shall state the name and address of the facility to which the fee was assessed, and shall state reasons for challenging the fee.

(2) After receipt of an appeal, the department shall consider the reasons stated in the appeal and either issue a revised bill or a statement upholding the original bill. The issuance of either document shall constitute the final decision of the department.

(3) The department shall not take any enforcement action for failure to pay the assessed fee until resolution of the appeal.

(4) The fee stated in the department's final decision shall be submitted by the facility owner/operator to the department within thirty days after receipt of the final decision.

(5) Any person who fails to pay fees as required by this chapter shall be subject to enforcement actions consistent with chapter 70.105 RCW. Such enforcement may include penalties in accordance with RCW 70.105.080, 70.105.090, and 70.105.095.

(6) Payment of enforcement penalties shall not be deemed as payment of fees. Payment of fees after the assessment of an enforcement penalty shall not be deemed as a cause for reducing or eliminating the penalty.

[Statutory Authority: RCW 70.105.280, 93-09-065 (Order 91-24), § 173-328-070, filed 4/20/93, effective 5/21/93.]