



# PROPOSED RULE MAKING

## CR-102 (December 2017) (Implements RCW 34.05.320)

Do NOT use for expedited rule making

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STATE OF WASHINGTON  
FILED

DATE: October 15, 2021

TIME: 10:50 AM

WSR 21-21-057

Agency: WA Department of Natural Resources

Original Notice

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

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

Preproposal Statement of Inquiry was filed as WSR 21-13-034 ; 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) WAC 332-30-166 Open Water Disposal Sites. Open water disposal sites are established primarily for the disposal of dredged material obtained from marine or fresh waters. Disposal fees will be charged at rates sufficient to cover all departmental costs associated with management of the sites including science, monitoring, and program compliance costs. Fees will be reviewed and adjusted annually or more often as needed.

**Hearing location(s):**

**Date:**

**Time:**

**Location:** (be specific)

**Comment:**

December 01, 2021

6:00-7:30  
pm

Virtual

+1 564-999-2000

Phone Conference ID: 256 011 374#

**Date of intended adoption:** February 7, 2022 (Note: This is **NOT** the **effective** date)

**Submit written comments to:**

Name: Abby Barnes

Address: 1111 Washington St SE MS 47027, Olympia WA 98501

Email: dmmp@dnr.wa.gov

Fax: 360 902-1786

Other:

By (date) December 15, 2021

**Assistance for persons with disabilities:**

Contact \_\_\_\_\_

Phone:

Fax:

TTY:

Email:

Other:

By (date) \_\_\_\_\_

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** Disposal fees will be adjusted to ensure adequate funds for management, science and monitoring of disposal sites

**Reasons supporting proposal:** The fee amounts in the existing rule are insufficient to cover departmental costs associated with management and monitoring of disposal sites. After review of the current fund balance, projected revenue, and expected expenditures a deficit has been identified. To remain in compliance with WAC 332-30-166(9) fees will need to be adjusted to meet costs associated with management and monitoring of the disposal sites.

**Statutory authority for adoption:** RCW 43.30.150, 79.90.550, 79.90.555 and 79.90.560

**Statute being implemented:** RCW 43.30.150, 79.90.550, 79.90.555 and 79.90.560

**Is rule necessary because of a:**

Federal Law?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Federal Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
State Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

If yes, CITATION:

**Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:** DNR is initiating the process of rule making to develop a new fee structure that will address the funding shortfall and keep disposal sites open.

**Name of proponent:** (person or organization) WA Department of Natural Resources

<input type="checkbox"/> Private
<input type="checkbox"/> Public
<input checked="" type="checkbox"/> Governmental

**Name of agency personnel responsible for:**

	Name	Office Location	Phone
Drafting:	Abby Barnes	Olympia, WA	(360) 995-2419
Implementation:	Shannon Soto	Olympia, WA	(360) 999-8094
Enforcement:	Shannon Soto	Olympia, WA	(360) 999-8094

**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:  
Address:  
Phone:  
Fax:  
TTY:  
Email:  
Other:

No: Please explain: A cost benefit analysis is not needed for this rule change. A Small Business Economic Impact Statement was developed.

**Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:**

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). 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 \_\_\_\_\_.

Explanation of exemptions, if necessary:

**COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES**

If 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 analysis showing how costs were calculated. DNR believes that the increase in fees would represent a minimal financial impact compared to the overall costs of dredging and disposal for businesses. The impact would vary depending on the business, but in the hypothetical scenarios described in the SBEIS, fee increase would result in an additional \$0.15 - \$0.69 of costs per \$100 in sales for small businesses.

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

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

Name: Abby Barnes  
Address: 1111 Washington St SE, Olympia WA 98501  
Phone: (360) 995-2419  
Fax: (360) 902-1786  
TTY:  
Email: dmmp@dnr.wa.gov  
Other:

**Date:** October 14, 2021  
**Name:** Katrina Lassiter  
**Title:** Interim Deputy Supervisor for Aquatic Resources

**Signature:**  


**WAC 332-30-166 Open water disposal sites.** (1) Open water disposal sites are established primarily for the disposal of dredged material obtained from marine or fresh waters. These sites are generally not available for disposal of material derived from upland or dryland excavation except when such materials would enhance the aquatic habitat.

(2) Material may be disposed of on state-owned aquatic land only at approved open water disposal sites and only after ~~((authorization has been obtained))~~ authorized in writing from the department. Applications for use of any area other than an established site shall be rejected. However, the applicant may appeal to the ~~((interagency open water disposal site evaluation committee))~~ Dredged Material Management Program (DMMP) for establishment of a new site. DMMP consists of the following agencies: The Washington state department of natural resources; the Washington state department of ecology; the U.S. Environmental Protection Agency Region 10; and U.S. Seattle District Army Corps of Engineers.

(3) Application for use of an established site must be for dredged material that meets the approval of federal and state agencies and for which there is no practical alternative upland disposal site or beneficial use such as beach enhancement.

(4) The department will only ~~((issue authorization for use of))~~ authorize the site for disposal after:

(a) The U.S. Environmental Protection Agency and Washington department of ecology notify the department that, in accordance with Sections 404 and 401, respectively, of the Federal Clean Water Act, the dredged materials are suitable for in-water disposal and do not appear to create a threat to human health, welfare, or the environment; and

(b) All necessary federal, state, and local permits are acquired.

(5) Any use authorization granted by the department shall be subject to the terms and conditions of any required federal, state, or local permits.

(6) The department shall suspend or terminate any authorization to use a site upon the expiration of any required permit.

(7) All ~~((leases))~~ authorizations for use of a designated site must require notification to DNR in Olympia ~~((twenty-four))~~ 24 hours prior to each use. ~~((DNR Olympia must be notified five working days prior to the first use to permit an on-site visit to confirm with dump operator the site location.))~~

(8) Pipeline disposal of material to an established disposal site will require special consideration.

(9) The department will charge fees ~~((will be charged))~~ at rates sufficient to cover all departmental costs associated with management of the sites. Fees will be reviewed and adjusted annually or more often as needed. A ~~((penalty))~~ damage fee may be charged for unauthorized ~~((dumping))~~ disposal or ~~((dumping))~~ disposal beyond the ~~((lease))~~ authorized site. Army Corps of Engineers navigation channel maintenance projects where there is no local sponsor are exempt from this fee schedule.

#### **FEES**

(a) Puget Sound and Strait of Juan De Fuca: The cost of disposal at all disposal sites in the Puget Sound and Strait of Juan De Fuca is \$0.45 per cubic yard (c.y.) (~~7~~) until and including June 30, 2022. On July 1, 2022, the cost for disposal is \$0.75 (c.y.) until and including June 30, 2025. Beginning on July 1, 2025, the cost of disposal shall be \$0.95 (c.y.) and thereafter. All disposal site users shall pay a minimum fee of \$2,000 ((minimum)).

(b) Grays Harbor/Willapa Bay: The cost of disposal at all disposal sites in Grays Harbor/Willapa Bay is \$0.10 per cubic yard (c.y.) (~~7~~ minimum fee) until and including June 30, 2022. On July 1, 2022, the cost for disposal is \$0.15 (c.y.) until and including June 30, 2025. Beginning July 1, 2025, the cost of disposal shall be \$0.20 (c.y.) and thereafter. All disposal site users shall pay a minimum fee of \$300.00.

(c) Damage fee - \$5.00/cubic yard.

(10) Open water disposal site selection. Sites are selected and managed by the department with the advice of the ~~((interagency open water disposal site evaluation committee (a technical committee of the aquatic resources advisory committee). The committee is composed of representatives of the state departments of ecology, fisheries, game, and natural resources as well as the Federal Army Corps of Engineers, National Marine Fisheries Service, Environmental Protection Agency, and Fish and Wildlife Service. The department chairs the committee. Meetings are irregular. The committee))~~ DMMP. The DMMP has developed a series of guidelines ~~((to be used))~~ for use in selecting disposal sites. The objectives of the site selection guidelines are to reduce damage to living resources known to utilize the area, and to minimize the disruption of normal human activity that is known to occur in the area. The guidelines are as follows:

(a) Select areas of common or usual natural characteristics. Avoid areas with uncommon or unusual characteristics.

(b) Select areas, where possible, of minimal dispersal of material rather than maximum widespread dispersal.

(c) Sites subject to high velocity currents will be limited to sandy or coarse material whenever feasible.

(d) When possible, use disposal sites that have substrate similar to the material being ~~((dumped))~~ disposed of.

(e) Select areas close to dredge sources to insure use of the sites.

(f) Protect known fish nursery, fishery harvest areas, fish migration routes, and aquaculture installations.

(g) Areas proposed for dredged material disposal may require an investigation of the biological and physical systems ~~((which))~~ that exist in the area.

(h) Current velocity, particle size, bottom slope and method of disposal must be considered.

(i) Projects transporting dredged material by pipeline will require individual review.

(j) Placement of temporary site marking buoys may be required.

(k) The department will assure disposal occurs in accordance with permit conditions. Compliance measures may include, but are not limited to, visual or electronic surveillance, marking of sites with buoys, requiring submittal of operator reports and bottom sampling or inspection.

(l) Special consideration should be given to placing material at a site where ((~~it~~)) disposal will enhance the habitat for living resources.

(m) Locate sites where surveillance is effective and can easily be found by tugboat operators.

(11) The department shall conduct such subtidal surveys as are necessary for siting and managing the disposal sites.