

WSR 21-21-057
PROPOSED RULES
DEPARTMENT OF
NATURAL RESOURCES

[Filed October 15, 2021, 10:50 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-13-034.

Title of Rule and Other Identifying Information: 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): On December 1, 2021, at 6:00-7:30 p.m., virtual, +1 564-999-2000, Phone Conference ID 256 011 374#.

Date of Intended Adoption: February 7, 2022.

Submit Written Comments to: Abby Barnes, 1111 Washington Street S.E., Mailstop 47027, Olympia, WA 98501, email dmmp@dnr.wa.gov, fax 360-902-1786, by December 15, 2021.

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.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Department of natural resources (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: Washington DNR, governmental.

Name of Agency Personnel Responsible for Drafting: Abby Barnes, Olympia, Washington, 360-995-2419; Implementation and Enforcement: Shannon Soto, Olympia, Washington, 360-999-8094.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not needed for this rule change. A small business economic impact statement was developed.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of 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 small business economic impact statement, fee increase would result in an additional \$0.15 - \$0.69 of costs per \$100 in sales for small businesses.

A copy of the detailed cost calculations may be obtained by contacting Abby Barnes, 1111 Washington Street S.E., Olympia, WA 98501, phone 360-995-2419, fax 360-902-1786, email dmmp@dnr.wa.gov.

October 14, 2021
Katrina Lassiter
Interim Deputy Supervisor
for Aquatic Resources

OTS-3399.1

AMENDATORY SECTION (Amending WSR 94-23-006, filed 11/3/94, effective 12/4/94)

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.

FEEES

(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.

[Statutory Authority: RCW 43.30.150, 79.90.550, 79.90.555 and 79.90.560. WSR 94-23-006 (Order 628), § 332-30-166, filed 11/3/94, effective 12/4/94. Statutory Authority: RCW 79.90.560. WSR 90-02-085, § 332-30-166, filed 1/3/90, effective 2/3/90; WSR 88-13-082 (Order 537, Resolution No. 585), § 332-30-166, filed 6/17/88. Statutory Authority: RCW 79.90.100 and 43.30.150. WSR 85-15-050 (Order 451, Resolution No. 492), § 332-30-166, filed 7/16/85. Statutory Authority: RCW 43.30.150. WSR 80-09-005 (Order 343), § 332-30-166, filed 7/3/80.]