

Winery General Permit: What You Need to Know and Next Steps for Members of the Industry

Legal Alert
July 13, 2017

On April 11, 2017, the Department of Ecology issued a preliminary **draft** of the Winery General Permit (“Permit”). The Permit regulates discharges of winery process wastewater (water that touches processed wine or is used to sanitize winemaking equipment and facilities) into the ground or underground storage systems. Below are some key takeaways and next steps for winery owners:

Do You Need The Permit?

There are several exemptions that may apply to you. Some examples include: home manufacturers of wine and alcohol, small wineries (producing less than 7,500 cases of wine per year), wineries that discharge into a double-lined lagoon, and wineries that discharge into a delegated municipality’s wastewater treatment plant.

Collect Information

Wineries should begin to gather information regarding what they will need to do to meet the terms and conditions of the Permit. The Permit will not go into effect until July 2019, which will give wineries the opportunity to implement and adjust to the terms and conditions of the Permit slowly over time.

For almost all wineries, it will be necessary to begin measuring the amount of wastewater discharged from its facilities. While the exception for small wineries is currently based on the amount of wine produced, in future permit rounds, the exception will be based solely on the amount of wastewater discharged. For larger wineries, there are volumetric limits on the amount of wastewater that may be discharged to irrigate vegetation and to abate road dust. In addition, there are different benchmarks for wineries that discharge above and below 600,000 gallons of wastewater.

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Determine Compliance Cost (and Tell Ecology)

Both federal and state law require agencies proposing new rules to issue a Small Business Economic Impact Report. If there are more than minor impacts to small businesses (or businesses with fewer than 50 employees), which is the greater of 0.3 percent of revenue or \$100, Ecology must mitigate against such costs. Wineries have a say in what mitigation is required. Mitigation includes:

- Reducing, modifying, or eliminating substantive regulatory requirements;
- Simplifying, reducing, or eliminating recordkeeping and reporting requirements;
- Reducing the frequency of inspections;
- Delaying compliance timetables;
- Reducing or modifying fine schedules for noncompliance; or
- Any other mitigation techniques including those suggested by small businesses or small business advocates.

It will be important for small wineries to determine their costs and to inform Ecology. Washington state's audit from 2016 revealed that only 28 percent of all Small Business Economic Reports have all required information by law, and just 8.2 percent of all rules are determined by rule-making state agencies to have "more than minor" impacts on small businesses.

Engage in the Comment and Public Hearing Process

The Small Business Economic Impact Report and a final draft of the Permit are set for release in August 2017. A second comment period and public hearings will take place at that time. Members of the public have the right to challenge costs provided in the Small Business Economic Impact Report.

While Ecology has expertise in water quality, it does not have expertise in running a small business or winery. In addition, it is likely that the trend of the Permit will be to cover more wineries and be geared toward higher levels of water quality over time. Thus, now is the time to engage in the process and to have a say in the terms of the Permit. While the Permit acts as a shield against liability, the Permit also indicates Ecology's intent to scrutinize the wine industry more carefully. Non-compliance may result in fines of up to \$10,000 per violation (per day).

If you have questions about the Permit or how to engage in the comment process, please contact [Tacy Hass](#), Attorney at Foster Pepper PLLC, at (206) 447-8978.