WASHINGTON STATE ISSUES ITS FIRST WINERY GENERAL PERMIT

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On May 17, 2018, Washington issued its first Winery General Permit ("Permit") to regulate discharges of process wastewater from wineries to land, groundwater, and wastewater treatment plants under the authority of the State of Washington Water Pollution Control Act, Chapter 90.48 Revised Code of Washington. The Permit, which goes into effect on July 1, 2019, is Ecology's reaction to the rapid expansion of wineries in the state and the potential environmental impacts that may result. This alert distills the Permit's main components to help prepare wineries for future implementation.

BACKGROUND

Washington is the second-largest wine-producing state in the nation. [1] There are over 900 wineries in the state of Washington producing approximately 17.5 million cases of wine. [2] The total economic impact of the wine industry in Washington is $4.8 billion. [3] One of the byproducts of making this much delicious wine is corrosive winery process wastewater that, if not managed properly, "can damage soil and crops, kill aquatic life, degrade the infrastructure in wastewater treatment plants, and pull metals from the soil into groundwater that can harm people." [4]

Winery process wastewater is "any water that, during wine manufacturing or processing, comes in direct contact with, or results from, the production or use of any raw material, intermediate product, finished product, by product, or waste product." [5] Examples include pomace (grape skins and seeds), lees (deposits that accumulate at the bottom of a vat after fermentation and aging), and barrel rinse water.

To address the potentially negative impacts of corrosive wastewater while also ensuring that wineries are not unduly burdened by regulation, the Washington Department of Ecology ("Ecology") worked closely with winemakers to develop the Permit. According to Heather Bartlett, Ecology Water Quality Program Manager, "most of Washington's wineries already have good practices that protect clean water. This Permit will continue that standard of eco-friendly wastewater management as this industry rapidly grows." [6]

PERMIT COMPLIANCE

Any winery that discharges process wastewater of any kind to surface water is required to obtain an individual discharge permit from Ecology. There are no exceptions to this requirement, which has been on the books for some time. Examples of "surface water" include irrigation canals, ditches, streams, or wetlands.

Wineries may need coverage under the new general Permit if they typically discharge more than 53,505 gallons of wastewater in a calendar year and also discharge that wastewater to one or more of the following: (1) managed

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vegetation, (2) a lagoon or other liquid storage structure, (3) road dust abatement, (4) a subsurface infiltration system, (5) an infiltration basin, or (6) a wastewater treatment plant. [7]

There will also be numerous exceptions to the new general Permit. For example, wineries that typically produce less than 7,500 cases per year will not be required to apply for coverage. And, wineries that discharge to delegated publicly owned treatment works are not required to apply for coverage. [8] Delegated sewage treatment plants have authority to issue permits to industrial operations that discharge wastewater to their sewage treatment plant; there are approximately 20 throughout the state. [9]

For those wineries that must comply, key requirements of the Permit include implementing monitoring requirements (including monitoring flows and sampling wastewater discharges once per quarter each quarter a discharge occurs), best management practices, adaptive management actions (if an applicable benchmark is exceeded), and employee training. The most time-intensive requirement appears to be the Winery Pollution Prevention Plan ("WPPP"). [10] By the end of the second year after having received permit coverage, wineries must prepare and implement a WPPP. The WPPP must be reviewed and updated a least once per year or whenever there is a significant process change or if a benchmark is exceeded. Table 2 of the Permit provides a "Timeline of Compliance and Submittal Dates" detailing when all these requirements must be met. [11]

POTENTIAL PENALTIES AND COSTS

Penalties may be imposed for noncompliance. Wineries that are "found guilty of willfully violating the terms and conditions of this Permit will be deemed guilty of a crime" that is punishable by a fine of up to $10,000, costs of prosecution, and even imprisonment at the discretion of the court. [12] Each day on which a willful violation occurs may be considered a separate violation. [13] Wineries that violate the terms and conditions of a waste discharge permit will incur, in addition to other penalties as provided by law, a civil penalty up to $10,000 for each violation. [14] Each violation will be considered a separate offence, and every day's continuance will be deemed a separate and distinct violation. [15] Further, there are penalties for tampering with monitoring devices or knowingly making false representations in any record or document required to be submitted under the Permit, such as monitoring report. [16]

There are numerous costs to wineries associated with the Permit. In addition to permit fees, complying with discharge limits, monitoring requirements, best management practices, residual solid waste management, and WPPPs incur potentially substantial costs. [17] Ecology is aware of cost concerns and is revising and updating permit fee regulations and delaying permit effectiveness until the fee structure is well defined. [18]

In addition to concerns about the costs of compliance, there is also some concern in the winery industry that the Permit requirements will give a competitive edge to other spirit makers that do not currently have to comply with general discharge permits, like cideries, meaderies, breweries, and distilleries. In response to comments expressing this concern, Ecology explained that "[a]fter reviewing available data and speaking with industry experts, Ecology determined that the production process, annual schedule, and wastewater characteristics from meaderies, cideries, distilleries, and breweries is different enough from wineries, that this first permit cycle should focus on wineries only. In the future, Ecology may consider whether it is appropriate to cover discharges from these facilities by permit." [19] Given this language, other spirit makers should be on notice that general permits may be coming for their industries as well.

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NEXT STEPS

To receive updates, notices, and other information, wineries should sign up for Ecology's winery email Listserv here. Ecology plans to hold workshops for winery representatives about how to apply for permit coverage, inspect facilities, document progress, implement best management practices, and use Ecology's web portal, as well as develop guidance and templates for required documents. More information about these workshops and templates will be emailed to the Listserv as it becomes available. We will continue to monitor updates and are available to answer questions about the permitting process.

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[1] *Washington State Wine Fast Facts*, WASHINGTON STATE WINE (May 24, 2018 5:43 p.m.), https://www.washingtonwine.org/wine/facts-and-stats/state-facts

[2] *Id.*

[3] *Id.*

[4] *New Permit for Wineries Helps Protect Water Quality*, WASHINGTON DEP'T OF ECOLOGY (May 17, 2018), https://ecology.wa.gov/About-us/Get-to-know-us/News/2018/May-17-New-permit-for-wineries

[5] *Permit history and Frequently Asked Questions*, WASHINGTON DEP'T OF ECOLOGY (May 24, 2018 5:45 p.m.), https://ecology.wa.gov/Regulations-Permits/Permits-certifications/Winery-permit/History-FAQ

[6] *New Permit for Wineries Helps Protect Water Quality*, WASHINGTON DEP'T OF ECOLOGY (May 17, 2018), https://ecology.wa.gov/About-us/Get-to-know-us/News/2018/May-17-New-permit-for-wineries

[7] *Winery General Permit*, WASHINGTON DEP'T OF ECOLOGY (May 17, 2018), https://ecology.wa.gov/Regulations-Permits/Permits-certifications/Winery-permit; *Ecology also published Winery General Permit Applicability Decision Tree*, to help wineries determine if they need to apply for coverage, https://ecology.wa.gov/DOE/files/8b/8b54a26b-69d6-4c91-9e1d-0be1b94f6b9a.pdf

[8] *Permit and Frequently Asked Questions*, WASHINGTON DEP'T OF ECOLOGY (May 24, 2018 5:45 p.m.), https://ecology.wa.gov/Regulations-Permits/Permits-certifications/Winery-permit/History-FAQ

[9] *Id.*

[10] *Winery General Permit*, WASHINGTON DEP'T OF ECOLOGY, at 41–48 (May 17, 2018), https://ecology.wa.gov/Regulations-Permits/Permits-certifications/Winery-permit.

[11] *Id*. at Table 2.

[12] *Id.* at 63.

[13] *Id.*

[14] *Id.*

[15] *Id.*

[16] *Id*. at 63–64.

[17] *Economic Impact Analysis*, WASHINGTON DEP'T OF ECOLOGY, Section 2.1 (October 2017), https://fortress.wa.gov/ecy/publications/documents/1710031.pdf

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[18] *Appendix D -- Response to Comments*, WASHINGTON DEP'T OF ECOLOGY, Response to Comment 45, (May 17, 2018) https://ecology.wa.gov/Regulations-Permits/Permits-certifications/Winery-permit

[19] *Appendix D -- Response to Comments*, WASHINGTON DEP'T OF ECOLOGY, Response to Comment 3, (May 17, 2018) https://ecology.wa.gov/Regulations-Permits/Permits-certifications/Winery-permit

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