



As required by the Washington State Administrative Procedures Act, Chapter 34.05 RCW:

## **A Concise Explanatory Statement And Responsiveness Summary**

For the adoptions of Chapter 173-303 WAC, *Dangerous Waste Regulations*  
Proposed July 2004, Adopted November 2004, AO #03-10

### **Part A Background**

Washington State Department of Ecology  
Hazardous Waste and Toxics Reduction Program  
Publication Number 04-04-028a  
See also 04-04-028b through 04-04-028d

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Introduction and  
Summary of Public Involvement Actions

## **Part A Background**

Washington State Department of Ecology  
Hazardous Waste and Toxics Reduction Program  
Publication Number 04-04-028a



# Background

The Department of Ecology is authorized by the State Hazardous Waste Management Act (Chapter 70.105 RCW) to adopt rules regulating the management of hazardous waste. The purpose of the Hazardous Waste Management Act is to provide a comprehensive statewide framework for the regulation, control, and management of hazardous waste. Ecology's actions under this authority prevent land, air, and water pollution and conserve the natural, economic, and energy resources of the State.

## Scheduled Adoption and Effective Dates

The amendments to the *Dangerous Waste Regulations* are scheduled for adoption on November 30, 2004. The amendments will be effective on January 1, 2005.

The Hazardous Waste Management Act also gives Ecology the authority to carry out the federal hazardous waste program in Washington. Further authority to carry out the Federal Resource Conservation and Recovery Act (RCRA) amendments is contained in the Model Toxics Control Act at RCW 70.105D(3)(d). Ecology is authorized under Federal regulations (40 CFR Part 271) by the U.S. Environmental Protection Agency (EPA) to administer and enforce the Federal RCRA program in Washington.

The *Dangerous Waste Regulations*, Chapter 173-303 WAC, implement the Hazardous Waste Management Act. These regulations establish requirements for generators, transporters, and facilities that manage dangerous waste in Washington. Ecology amends the *Dangerous Waste Regulations* every two to four years to update the regulations to improve waste management in Washington for all stakeholders affected by the regulation including the public, businesses, state governmental agencies, and officials at Ecology and EPA.

As a state authorized to implement the federal hazardous waste program, Ecology must periodically incorporate newer federal rules into the state's regulations. The majority of the rules being adopted as part of this rulemaking are federal rules that EPA promulgated through 2003. EPA has already been implementing most of these rules in Washington with the exception of the less stringent requirements, which do not go into effect until the state adopts them. Therefore, most of the federal rules are not new requirements to the regulated community since they have already been required to comply with them. Adoption of federal rules enables Ecology, rather than EPA, to implement these rules in Washington. The transition of responsibility for implementation from the federal program to the state program simplifies regulation of hazardous waste in Washington since the result is that the regulated community has one rather than two regulatory agencies to deal with. The rule amendments adopted during the current rulemaking incorporate newer federal requirements, improve some state requirements, and implement the Hazardous Waste Facilities Initiative, which extends closure planning and financial responsibility rules to recycling and used oil facilities. These amendments improve hazardous waste management while continuing to provide protection to human health and the environment.

Federal requirements being adopted include updates to export requirements, coordination between air emission permitting and hazardous waste permitting, universal waste rule for mercury-containing equipment (although this has not yet been finalized by EPA), revisions to mixture and derived-from rules, and amendments to the corrective action management unit rule.

State-specific changes include technical and editorial corrections, clarifications, and changes to improve the waste management system including: updated reporting form name changes, addition of NAIC codes to replace SIC codes, modifying permit-by-rule requirements, clarification of waste analysis plan requirements, and a change to fertilizer registration requirements so that the same testing information does not have to be submitted year after year if it does not change.

The most significant state-initiated rule change is a result of the Hazardous Waste Facility Initiative. This change extended hazardous waste closure and financial responsibility requirements to recyclers and used oil processors/re-refiners. In 2002, Ecology published a report to the Legislature that outlined problems and inadequacies with the current system for regulating, permitting, maintaining public information, and funding Ecology's oversight responsibilities for TSDs, recyclers and used oil processors (see <http://www.ecy.wa.gov/biblio/0204028.html>). Representatives from the waste management industry, large and small businesses, public interest and environmental organizations, and government (local, state and federal) were consulted during the process of identifying these problems and proposing solutions.

## **Summary of public involvement actions**

Prior to official rulemaking, considerable work was done on the Hazardous Waste Facilities Initiative, including meeting with focus groups, to determine if rulemaking was an appropriate avenue and to ascertain the ideal regulatory approach. Much of the early work on this initiative and on other aspects of the rulemaking took place through meetings and phone conversations with stakeholders. A *Shoptalk* article (distribution approximately 25,000) was published several months prior to the pre-proposal notice to encourage stakeholders to subscribe to the electronic interested persons' list to receive periodic updates on the rulemaking.

At the beginning of the official rulemaking process, a letter was sent to Washington tribes inviting their participation in the rulemaking. Ecology filed a pre-proposal statement of inquiry (CR101) in the Washington State Register (WSR) on February 4, 2004 to announce upcoming rulemaking and invite preliminary public comments. As part of this early notification of upcoming rulemaking, comments were sought on options for the Hazardous Waste Facilities Initiative.

The next step was an informal draft of rule language. The draft rule language was made available for early review and comment. Electronic notification of availability of the early draft was sent to approximately 3000 people. The public comments that Ecology received on the early draft were incorporated into the proposed version of the rules which were filed with the Code Reviser's Office on July 6, 2004. Notification was made, again using both the Dangerous Waste Regulation list serve and Ecology's Rules list serve to interested parties. In addition, a *Shoptalk* article (distribution approximately 25,000) was published highlighting the proposed changes. The proposed rule and other related information were made available on Ecology's Rules web page as well as by paper copy.

Following formal proposal in the State Register, a simultaneous videoconference public hearing was held on the proposed amendments in Seattle, Tacoma, Yakima, and Spokane on August 10, 2004. A total of 15 people attended and public testimony was given by one person.

The public comment period was scheduled to close on September 10, 2004 and was extended until September 24, 2004. The responsiveness summary portion of this document contains all of the comments that were submitted on the proposed amendments and Ecology's responses.

This Concise Explanatory Statement and Responsiveness Summary has been divided into sections to make downloading quicker and includes the following chapters:

**Introduction and Background, 04-04-028a**

Differences Between Proposed and Final Rule, 04-04-028b

Responsiveness Summary, 04-04-028c

Appendices, 04-04-028d