



DEPARTMENT OF  
**ECOLOGY**  
State of Washington

**Concise Explanatory Statement**  
**Chapter 173-303 WAC**  
**Dangerous Waste Regulations**

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*Summary of rule making and response to comments*

December 2014  
Publication no. 14-04-052

## Publication and Contact Information

This publication is available on the Department of Ecology's website at <https://fortress.wa.gov/ecy/publications/SummaryPages/1404052.html>

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# **Concise Explanatory Statement**

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## **Chapter 173-303 WAC Dangerous Waste Regulations**

Hazardous Waste and Toxics Reduction Program  
Washington State Department of Ecology  
Olympia, Washington 98504-7600

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# Table of Contents

<a href="#">Introduction</a> .....	1
<a href="#">Reasons for Adopting the Rule</a> .....	1
<a href="#">Differences Between the Proposed Rule and Adopted Rule</a> .....	2
<a href="#">Response to Comments</a> .....	3
<a href="#">Commenter Index</a> .....	20
<a href="#">Appendix A: Copies of All Written Comments</a> .....	22
<a href="#">Appendix B: Transcripts from Public Hearings</a> .....	71
<a href="#">Appendix C: Preamble and Summary of Proposed Rules</a> .....	72
<a href="#">Appendix D: Excerpt from 2009 Concise Explanatory Statement</a> .....	85

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# Introduction

The purpose of a Concise Explanatory Statement is to:

- Meet the Administrative Procedure Act (APA) requirements for agencies to prepare a Concise Explanatory Statement (RCW 34.05.325).
- Provide reasons for adopting the rule.
- Describe any differences between the proposed rule and the adopted rule.
- Provide Ecology's response to public comments.

This Concise Explanatory Statement provides information on The Washington State Department of Ecology's (Ecology) rule adoption for:

Title: Dangerous Waste Regulations  
WAC Chapter(s): Chapter 173-303 WAC  
Adopted date: December 18, 2014  
Effective date: January 18, 2014

To see more information related to this rule making or other Ecology rule makings please visit our web site: <http://www.ecy.wa.gov/laws-rules/index.html>

## Reasons for Adopting the Rule

The Department of Ecology (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.

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 40 Code of Federal Regulations (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* periodically to update the regulations. These updates help 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.

This rule making is necessary to implement the federal hazardous waste program in Washington State. As EPA periodically updates their regulations, the state is required to amend the Dangerous Waste Regulations to keep our rules current with the federal program and maintain authorization. Some EPA and state initiated rules are optional, but are beneficial to the regulated public. This is because they provide corrections, clarifications or streamline requirements, resulting in easier compliance by regulated entities.

## Differences between the Proposed Rule and Adopted Rule

RCW 34.05.325(6)(a)(ii) requires Ecology to describe the differences between the text of the proposed rule as published in the *Washington State Register* and the text of the rule as adopted, other than editing changes, stating the reasons for the differences.

There are some differences between the proposed rule filed on August 18, 2014 and the adopted rule filed on December 18, 2014. Ecology made these changes for the following reasons:

- In response to comments we received.
- To ensure clarity and consistency.

The following content describes the changes and Ecology's reasons for making them. Rule language changes from the proposed rule to the final adopted rule are shown by using ~~strikeout~~ and underline.

### 1. WAC 173-303-620(8)(a)(i) Financial Assurance Minimum Coverage

(8) Liability requirements.

(a) An owner or operator of a TSD facility, off-site recycling or used oil processing/rerefining facility, or a group of such facilities must demonstrate financial responsibility for bodily injury and property damages to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must meet the requirements of 40 C.F.R. 264.147(a), which is incorporated by reference, with the following additional requirements:

(i) The owner or operator must have and maintain liability coverage for sudden accidental occurrences in the amount of at least ~~two million five hundred thousand~~ two million dollars per occurrence with an annual aggregate of at least ~~five~~ four million dollars, exclusive of legal defense costs. For facilities that meet the criteria listed in 40 C.F.R. 264.147(b), the owner or operator must have and maintain liability coverage for nonsudden accidental occurrences in the amount of ~~seven~~ five million dollars per occurrence with an annual aggregate of ~~fourteen~~ ten million dollars, exclusive of legal defense costs.

**Rationale for change:** As part of the rulemaking process, Ecology contacted numerous insurance brokers regarding the proposal to increase liability coverage minimums. Without exception, these industry experts commented that the minimum coverage amounts in Ecology's original proposal would be difficult for firms to comply with. These brokers informed Ecology that the insurance companies they represent typically do not write policies in increments less than \$1 million, and some insurance companies do not write policies for other unusual amounts (such as a \$3 million



policy). Ecology does not want to unduly burden regulated facilities or limit their choices for insurance providers.

Therefore, we are adopting slightly lower minimum liability coverage amounts than were previously proposed. The new minimum coverage amounts for sudden accidental occurrences will be \$2 million per incident (instead of \$2.5 million) with an annual aggregate of \$4 million (instead of \$5 million). The new minimum coverage amounts for nonsudden accidental occurrences will be \$5 million per incident (instead of \$7 million) with an annual aggregate of \$10 million (instead of \$14 million). The new amounts are common options for liability coverage from multiple companies. Ecology believes these new amounts still meet the original rulemaking goal of increasing minimums to account for inflation, but will be more readily available and easier for regulated facilities to obtain.

## **2. WAC 173-303-64620(5)(a) Financial Assurance for Corrective Action facilities**

(5) At a minimum, financial assurance for corrective actions as required in subsections (1) and (2) of this section must be consistent with the following requirements:

(a) States and the federal government are exempt from the requirements of this section. Operators of state or federally owned facilities are exempt from the requirements of this section, except subsections (c), (f), and (g) of this section. Operators of facilities who are under contract with (but not owned by) the state or federal government must meet all of the requirements of this section.

**Rationale for change:** A commenter pointed out that existing financial assurance rule language exempts states and the federal government from financial assurance requirements. They asked that the new financial assurance rules in section 64620 clarify this exemption. Ecology agrees that additional clarification about this issue would make it easier to understand. Ecology based the proposed rule on the existing closure and post-closure rules. This makes the various financial assurance rules as consistent as possible. It is important that any clarification be full, complete, and that it address other related situations. Under Washington's closure and post-closure rules, state and federal government entities are exempt from all aspects of the financial assurance regulations. However, operators of federal and state facilities are only exempt from the requirement to provide a financial assurance mechanism; they are required to provide cost estimates. Federal contractors are not exempt from any financial assurance requirement. These requirements may be superseded by permit conditions pursuant to WAC 173-303-610(1)(e). Ecology will add a new paragraph at the beginning of the proposed rule and renumber the remaining paragraphs accordingly.

## **Response to Comments**

Ecology accepted comments between August 18, 2014 and October 1, 2014. This section provides summarized and verbatim comments that we received during the public comment period and our responses. (RCW 34.05.325(6)(a)(iii)). The original comments are found in Appendix A of this document. Each individual comment number is followed by the commenter's last name. The Commenter Index also provides a key linking the comments to individuals and organizations.

## Comments and responses

### General Comments

**Comment 1 (Kolata):** I would like to know if this comment period would be an opportune time to approach the question ‘if the State of Washington would also consider adopting the EPA “Short-Term Generator” status in regards to dangerous waste regulations?’ In the EPA’s guidance for form 8700 there are provisions for waste generation, that are not categorized as episodic, that would allow normally small quantity generators to handle an unanticipated increase in a dangerous waste without the end effect of stepping up into a large quantity generator status. To the best of my knowledge, current rules in Washington State do not provide for such provisions.

**Response:** Washington State’s dangerous waste regulations currently align with EPA’s hazardous waste regulations regarding generator status terminology. The term “short term generator” is not found in the federal RCRA regulations, but as suggested it may be found in an EPA guidance document. Ecology cannot adopt a guidance document or terms used in a guidance document as a regulation. The Resource Conservation and Recovery Act (RCRA) and Dangerous Waste Regulations were written to allow generators to increase and decrease in generator status on a monthly basis. This encourages the generator to generate less dangerous waste each month, which has the effect of reducing their regulatory burden. Also, this request is beyond the scope of the current rule making, and Ecology will not be making any rule changes regarding generator status. If EPA does amend the federal RCRA regulations to account for “short-term generator” situations, then Ecology may consider the issue at that time.

**Comment 2 (Reynolds):** The commenter asks that Ecology consider adopting EPA’s new regulations which provide a conditional exclusion for solvent contaminated wipes.

**Response:** Thank you for your comment. Ecology will consider adopting this rule in the next rule making cycle. EPA promulgated this rule late in our rule making process so we were not able to evaluate and propose it as part of this rule amendment package.

### WAC 173-303-070

**Comment 3 (Jim):** The commenter expressed support for changes to WAC 173-303-070(1)(b) which clarify the requirement for a generator to designate their solid waste.

**Response:** Thank you for your support.

**Comment 4 (McKarns):** The proposed change to WAC 173-303-070(1)(b) is potentially confusing with regard to multiple or co-generator scenarios (i.e., situations where more than one person could be considered the generator). Are all generators (i.e., “Any person . . .”) required to designate the waste in such situations? Or only one (i.e., “a person”?) EPA guidance states that it’s preferable to have just one person perform the generator duties in these situations. (e.g., see 45 Federal Register 72026.) In lieu of finalizing the potentially confusing language in the proposed rule, Ecology should simply mirror the language in the corresponding federal rule at 40 CFR 262.11, which is well established and understood.

**Provide language for your recommended change or addition.**

“(b) The procedures in this section are applicable to a person . . . or by the department. A person who generates a solid waste must determine if that waste is a dangerous waste by following . . . A person who determines by these procedures . . .”

**Response:** Comment noted. As the proposal is written, every person who generates a solid waste must determine if that waste is a dangerous waste. In terms of co-generators, all persons recognized as a co-generator of a specific waste have the responsibility to ensure the waste is properly designated; this is EPA’s intention as well. By definition, “generator” means any person...whose act or process produces hazardous waste. As clearly stated in the *Federal Register* mentioned above, depending on the actual situation, the term “generator” can include all of the parties involved whose act or process produces hazardous waste or whose act first causes a hazardous waste to become subject to regulation. Since approximately 1980, Ecology has been in line with EPA’s guidance preferring one of the co-generators, through mutual agreement among themselves, to assume the generator responsibilities for all co-generators involved. EPA (as well as Ecology) also reserves the right to enforce against any and all persons who fit the definition of “generator” in a particular case if the generator requirements (for example, designation) are not adequately met (10/30/1980 *FR*, pg 72027). As mentioned, the definition of “generator” was amended by EPA to include “any person”; meaning all persons involved in the generation of a particular hazardous waste. The rule as proposed is more in line with EPA’s and Ecology’s intent in relation to co-generators. Finally, the existing citation at WAC 173-303-070(1)(b) already uses the term “any”, so Ecology is not changing the applicability with this new revision.

**WAC 173-303-073**

**Comment 5 (Jim):** We support this revision. The current rule does not give a time limit for holding special wastes at transfer stations. A regulatory time limit helps prevent special wastes from being accumulated for long periods of time at the transfer station, with a potential for releases.

**Response:** Thank you for your support.

**WAC 173-303-200**

**Comment 6 (Klein):** The commenter would like to amend the satellite accumulation rule at WAC 173-303-200(2) to remove the 55 gallon restriction and allow accumulation in DOT shipping containers. He recommends allowing accumulation of large bulky WT02 waste in super sacks.

**Response:** Ecology is currently amending this citation and two related citations to remove the “per waste stream” language. The suggestion to modify the container size is not within the scope of this rule making effort, and we will not be making the suggested change at this time.

**WAC 173-303-200**

**Independent Qualified Registered Professional Engineer (IQRPE)**  
**Amended sections include 400, 64690, 650, 660, 665, and 806**

**Comment 7 (Jim):** We support this revision. The 2009 dangerous waste regulatory amendments retained the requirement that independent professional engineers be used. With these changes, Ecology seeks to clarify that facilities use an independent P.E. in all situations where P.E. certifications are required. This change maintains consistency with other WAC 173-303 requirements where independent qualified registered professional engineer must be used.

**Response:** Thank you for your support. Ecology will adopt these rules as proposed.

**Comment 8 (McKarns):** In these proposed changes, Ecology proposes to require use of an “independent” professional engineer for various certifications. Ecology apparently believes that use of an independent engineer will result in less pressure than would be imposed on a facility’s in-house professional engineer to make these certifications. Ecology has not identified a single instance where an inappropriate certification can be attributed to use of an in-house professional engineer. Instead, Ecology appears to be accepting on faith that use of an independent professional engineer would alleviate any problems associated with use of a facility’s in-house engineer. However, this logic is flawed: Any professional engineer providing the certifications would be hired by the facility. As EPA explained in removing the “independent” requirement, “It is not clear to us that an in-house engineer faces a greater economic temptation than an independent engineer seeking to cultivate an ongoing relationship with a client.” (See 71 Federal Register 16869.) As EPA further explained, professional engineers are licensed by state licensing boards, and they face penalties and potential fines for failing to operate in accordance with the licensing criteria. In fact, EPA notes that in-house professional engineers may be more qualified to certify facility operations since they are more familiar “with its own particular situation and are in a position to provide more on-site review and oversight of the activity being certified.” (Ibid.) Thus, a good case can be made that a certification by an in-house professional engineer is more meaningful – and no more subject to economic pressures – than an independent professional engineer hired and paid by the facility. And, despite Ecology’s assertion to the contrary, the cost of hiring an independent professional engineer to provide the required certifications could represent a relatively significant cost to the facility.

As noted previously, Ecology has not identified a single instance where an inappropriate certification can be attributed to use of an in-house professional engineer. Nevertheless, Ecology proposes requiring a more costly, more stringent certification than mandated by corresponding federal regulation, with no substantial evidence that the difference is necessary (and, in fact, in direct contradiction to the determination made by EPA in promulgating the corresponding federal regulation). As a consequence, this proposal fails to comply with Revised Code of Washington 34.05.328(1)(h)(ii) (the Administrative Procedure Act), and is subject to repeal if promulgated as proposed.

**Response:** Ecology acknowledges the validity of Professional Engineer (P.E.) licensing rules and ethical standards as being a deterrent to unethical practices as it applies to P.E. certifications. At the same time, it is apparent that occasionally professional engineers do make unethical decisions. The Washington Board of Registration for Professional Engineers and Land Surveyors regularly reports infractions in their Biannual Journal. Clearly threat of penalties does not completely prevent unethical behavior. We continue to believe that certifications by independent engineers is important to ensure that critical construction work at treatment, storage and disposal facilities (TSD) is performed to the highest standards. Generally TSD’s are managing large amounts of dangerous waste, which is often highly toxic and is stored for long periods of time. RCRA and the Washington State Hazardous Waste Management Act strongly emphasize the importance of state

oversight of dangerous waste management facilities and ensuring those facilities are safely sited and well constructed. In addition, requiring that independent engineers certify certain TSD construction work provides an outside perspective and view on the activity, which an internal company employee may not have. Without the oversight and certifications by independent engineers, Ecology believes that the public will have reduced confidence that engineering reviews and certifications are unbiased. The public is more likely to suspect a conflict of interest and demand a more rigorous review by state agencies.

The 2009 dangerous waste rule amendments rejected EPA's removal of RCRA regulations requiring use of independent qualified registered professional engineers (IQRPE). Please see the June 2009 Concise Explanatory Statement (Publication # 09-04-013, page 18) explaining our reasoning for retaining the IQRPE requirements. For convenience, an excerpt of the comment and response is found in Appendix D of this document. Our rationale for proposing these additional IQRPE rules remains the same as it was in 2009. Adoption of the new IQRPE rules provides consistency throughout the dangerous waste regulations, so the public and Ecology staff know that regulatory certifications require use of an independent P.E. in almost all cases.

Prior to rule proposal Ecology made an effort to determine cases where an in-house P.E. employed by a facility improperly certified TSD construction projects. The state licensing board for professional engineers does track P.E. violations, but it was not feasible to find if those violations stemmed from dangerous waste regulatory requirements. Further, this type of information is not usually available to Ecology. Most of the dangerous waste regulations dealing with P.E. certifications have required use of IQRPE's since the TSD regulations were promulgated. Because of this fact, few opportunities exist within Washington State for an in-house engineer to perform these types of certifications. Given the sensitive nature of the issue, facilities themselves are unlikely to inform us if problems resulted because of improper certifications. Ecology is aware of a number of cases where facilities have submitted plans for permit renewals and modifications, and our agency engineers have discovered problems with the engineering. Additionally, during inspection of new facility work, our agency inspectors and engineers have found improper construction, in some cases due to faulty engineering. The fact that facility construction problems are discovered through Ecology review shows the importance of having an outside, independent certification of facility construction. With the IQRPE rules in place, environmental protection is increased by ensuring an outside review by a qualified engineering company.

Regarding the current IQRPE proposals, this past summer Ecology assessed the draft rules requiring IQRPE certification of construction projects and permit application technical data as it impacts large and complex facilities, such as the Hanford facility. We decided not to propose three of the draft rules that could have potential negative impacts to remediation efforts at TSD's like Hanford. Citations that will not include the IQRPE certification requirement are WAC 173-303-335(1)(a), 173-303-806(4)(a) and 173-303-810(14)(a)(i). We did propose and will adopt the other citations requiring IQRPE certifications for regulated unit construction activity. We believe these rules are similar to existing IQRPE requirements, and should likewise require use of independent engineers to perform regulatory certifications.

### **WAC 173-303-235**

**Comment 9 (Hill):** The proposed rule text defines a working container as a small container (i.e., two gallons or less) that is in use at a laboratory bench, hood, or other work station to collect

unwanted material from a laboratory experiment or procedure. This definition implies that working containers are subject to all of the same labeling requirements as unwanted materials, as defined. In a laboratory setting, containers used during a procedure may become working containers at unpredictable times, during unanticipated circumstances, and during problematic or extremely inconvenient steps during a procedure. An experimenter or laboratory worker may not be able to immediately stop the procedure in order to apply the special labels required for unwanted materials once he or she realizes the container has effectively become a working container. Under these circumstances, the laboratory may be out of compliance with the Dangerous Waste Regulations until the required labeling is applied to the working container.

Furthermore, the regulatory status and transition of a container to working container can be ambiguous and open to interpretation by an individual compliance inspector. For example, a vent hood may hold numerous containers of chemicals. Some may be working containers and some may be containers holding chemicals that are being actively used for a procedure. At some point, some of the active containers may become working containers and/or unwanted materials subject to the unwanted materials labeling requirements. The point in time this transition occurs may be known by only a single individual, and the conditions that trigger this requirement may be complicated. A compliance inspector evaluating this scenario with limited context is likely to cite the laboratory for labeling violations if the container's status cannot be quickly and easily explained.

Assuming the laboratory has in place a Chemical Hygiene Plan as required by OSHA/WISHA, all containers should be labeled and handled in accordance with HAZCOM/GHS requirements. This standard of care should not be deemed immediately inadequate to protect human health and the environment once a container is determined to be a working container in a controlled laboratory setting.

If working containers are determined to be unwanted materials or hazardous waste determinations are made on working containers at the end of the laboratory procedure or at the end of a work shift, and those containers have been labeled and handled in accordance with HAZCOM/GHS requirements up to that point, then those working containers should not be subject to unwanted material labeling requirements before those determinations are made. This recommendation will improve the rule amendment because it removes some ambiguity about labeling requirements during working laboratory sessions without risk to human health and environment and it removes requirements for potentially redundant labeling systems.

**Provide language for your recommended change or addition.**

The implication that working containers are unwanted materials is found in the definition of working container in WAC 173-303-235(n). By slightly modifying the definition, the implication that working containers are automatically unwanted materials is removed. A suggested definition is provided below.

WAC 173-303-235(n): "Working container" means a small container (i.e., two gallons or less) that is in use at a laboratory bench, hood, or other work station, that holds potentially unwanted material or is used to collect potentially unwanted material from a laboratory experiment or procedure. The determination that material inside a working container is unwanted material may occur after the laboratory experiment or procedure is completed so long as the working container has been labeled and handled in accordance with WAC 296-901-140.

**Response:** Comment noted. The correct citation at issue is WAC 173-303-235(1)(n); the federal counterpart is 40 CFR 262.200. In comparing the two regulatory citations, it is clear that Ecology adopted the definition for “working container” straight from the RCRA program as a matter of state authorization and equivalency. Use of ambiguous terms such as “potentially” creates regulatory problems and inconsistencies. The change, as suggested, will not be made. For more information on the development of the term “working container” and federal guidance on the working container provisions please refer to the December 1, 2008 *Federal Register*, pages, 72926-72927 and 72930-72932.

**Comment 10 (Doctor):** The commenter would like clarity on issues related to the Academic Laboratory Rule, and specifically about laboratory clean-outs. As drafted, it is unclear how the waste generated during a laboratory clean-out is counted toward the academic institution’s generator status. Ecology should expressly state: **(1)** the extent to which an academic institution, if it opts into the alternative lab waste management rules and conducts a lab waste clean out that exceeds 2,640 pounds, will be subject to requirements applicable to Large Quantity Generators (“LQGs”); **(2)** how waste generated by annual laboratory clean-out (for those colleges or universities that opt into the alternative lab waste rules would be reported on the academic institution’s Annual Report; **(3)** whether Ecology will impose hazardous waste planning fees and require Pollution Prevention Plans based solely on whether those Annual Reports have a checked Origin Code that says “recurrent” wastes; and **(4)** the circumstances that will subject those academic institutions that opt into the alternative lab waste management rules to annual hazardous waste planning fees and to the Pollution Prevention Plan requirements under RCW 70.95C.

**Response:** In response to the first question, a generator becomes a LQG once the generator generates over 2,200 lbs/month of dangerous waste, or generates greater than 2.2 pounds/month of an acutely hazardous waste or a State toxic extremely hazardous waste (WT01). The 2,640 pound limit suggested by the commenter is not the minimal generation quantity that qualifies a generator as a LQG; it is the amount which causes the pollution prevention planning law to be applicable. It was never EPA’s intent to exclude any generator (or the generator’s waste) who opts into the Subpart K rule\* from RCRA regulations, and it is not Ecology’s intent either. Instead, the laboratory clean-out provisions in the “lab rule” establish a set of alternative generator regulations that must be complied with for any size generator opting into the new rule. Ecology is adopting this less stringent federal rule with a few minor additions as proposed for public comment. As it is explained in the *Federal Register* (73 FR 72915) eligible academic entities may choose to be subject to Subpart K in lieu of the existing generator requirements for the management of the hazardous waste generated in the laboratories that they own. Academic laboratories operating under the “lab rule” must comply with performance based standards and must develop a laboratory management plan (LMP) that describes how the academic entity will comply with those standards. All generators opting into this rule will be required to designate the waste, apply LDR requirements at the point of generation (for example; the stock room for the laboratory), label containers, follow container management standards, accumulation time frames and annual reporting. The lab clean out provision provides an exemption from counting lab clean out wastes towards determining generator status. The provision does not exempt a generator from counting those wastes towards the 2,640 pound threshold and regulatory requirements for pollution prevention planning and hazardous waste fees.

In response to the second question, Subpart K lab clean out wastes are to be reported on the annual report. The academic lab waste rule was adopted December 2014. As a result the annual report and site identification forms will be modified after adoption to reflect how a generator opts into the

lab rule and does annual reporting. Modifications will include a checkbox on the Site ID form to opt in and opt out of the academic laboratory rules (EPA's Subpart K) and a checkbox and new source code on the GM form to identify these wastes. A separate communication will be provided to all eligible entities outlining specific guidance regarding submittal of notifications of Subpart K participation and annual dangerous waste reports.

Regarding the third question, Ecology will *not* impose hazardous waste planning fees and require Pollution Prevention Plans based solely on whether those Annual Reports have a checked Origin Code that says "recurrent" wastes. The planning and fee laws allow some wastes that are "recycled for beneficial use" to be excluded from calculations. Therefore, other parts of the Annual Report are also used, such as the Management Code and Recycling Percentage. EPA has developed G17 as the specific source code to be used for Subpart K laboratory waste clean out. EPA's Biennial Report instructions consider G17 to be a recurrent waste, as indicated by placing it into the "Other Intermittent Events or Processes" Table. The G17 source code and waste description are similar to the G11 source code, which is currently used for discarded, unused chemicals. The dangerous waste annual report instructions indicate that G11 receives the i-Recurrent origin code. These source and origin codes would be applied to discarded and unused chemicals from lab clean outs by schools which do not opt into the Subpart K rule. Because G11 wastes are considered recurrent wastes, likewise Ecology agrees with EPA and considers the G17 Subpart K lab clean out wastes to also be recurrent. Ecology believes these laboratory clean out wastes (as defined in the academic laboratory rule) are subject to waste planning fees and Pollution Prevention Plans. Waste generated from laboratory clean-outs are clearly recognized and managed as conditionally regulated dangerous (hazardous waste) that have been generated on a routine basis.

The fourth question asks what circumstances will cause academic institutions that opt into the alternative lab waste rule to be subject to annual hazardous waste planning fees and to the Pollution Prevention Plan requirements. In response, the state statute for Waste Reduction (RCW 70.95C) and the state statute for Hazardous Waste Fees (RCW 70.95E) contain no exclusions for dangerous waste generated from laboratory clean-outs, and the proposed academic laboratory rule does not and cannot amend them. The rule does provide relief to generators from counting lab clean out wastes towards generator status determination, and potential relief from increased regulation resulting from a step up in generator status. RCRA regulations do not have pollution prevention planning requirements and hazardous waste fees and were not a consideration when EPA wrote this rule. Washington State does have these laws, and their intent is to promote waste reduction for dangerous waste, including discarded laboratory chemicals.

*\*Subpart K is where the academic laboratory rule is located within the RCRA regulations, and a common name for these rules. For purposes of this response Subpart K is interchangeable with the state academic laboratory rule.*

### **WAC 173-303-240**

**Comment 11 (Barrow):** the commenter objects to changing the terminology from "Tracking" to "Movement" in several places within the rule. He feels that those working in the field already know what tracking documents are and there is not a good reason to change the wording.

**Response:** This amendment is based on federal import and export regulations. The motivation for this change is explained in the 2010 Federal Register notice for the rule (75 FR 1236-1262). Page 1240 of the federal register explains the terminology change. The relevant excerpt follows:



## 1. Changes in Terminology

In the Amended 2001 OECD Decision, the OECD Council updated several terms and definitions used in the 1992 Decision. EPA believes that these changes do not result in substantive changes to the intent of the requirements, but merely bring them in line with current terminology used in practice and in other international agreements. To limit any unnecessary confusion between the U.S. regulations and those of other OECD Member countries and to promote consistency with the Amended 2001 OECD Decision, this final rule adopts the following changes in terminology:

- “Transfrontier” to “transboundary”;
- “Tracking document” to “movement document”;
- “Amber-list controls” to “Amber control procedures”;
- “Notifier” to “exporter”; and
- “Consignee” to “importer.”

### **WAC 173-303-370**

**Comment 12 (McKarns):** The proposed change would appear to invoke manifest requirements to any recycling facility that receives dangerous waste from off-site sources. This conflicts with the exemptions for certain recyclable materials in WAC 173-303-120(2) and (3). As provided in WAC 173-303-120(4), application of manifest requirements do not apply to recycling of these materials, even if recycled at an off-site facility. I.e., “Unless specified otherwise in subsections (2) and (3) of this section . . .”

#### **Provide language for your recommended change or addition.**

“. . . and of dangerous waste recycling facilities operating under the requirements of this chapter who receive dangerous waste from off-site sources (unless exempted under WAC 173-303-120(2) and (3)).”

**Response:** Comment noted. Ecology will not be making the recommended change. The second sentence of section 370(1) (following the sentence that is being amended) is clear that “If” a facility receives dangerous waste with a manifest, then certain rules must be followed. This second sentence has been in the regulation for over 23 years, indicates that manifests may not be required at times (hence the word “if”) and seems not to be confusing to the regulated community. Permitted facilities and dangerous waste recycling facilities have been, currently do, and will continue to be allowed to accept solid wastes and dangerous waste that, for some regulatory reason, need not be accompanied by a manifest. There are other sections of the dangerous regulations where dangerous wastes are not required to be manifested. Making the change as suggested would cause confusion as to whether all other wastes outside of WAC 173-303-120(2) and (3) will indeed require manifesting.

### **WAC 173-303-400**

#### **Enforceable Documents in lieu of a Post Closure permit Amended sections also include 645, 800 and 806**

**Comment 13 (Pollet):** The change would dramatically undermine public participation and accountability for oversight at Hanford by not requiring a RCRA / HWMA post closure permit. RCRA has public process rights which MTCA lacks. Further, despite the Yakama Nation having

raised this point, Ecology appears to forget that the Yakama Nation is correct in noting below that USDOE refuses to acknowledge direct MTCA application to Hanford as a federal facility. Thus, MTCA cannot substitute for the post closure permit without the public losing all of its rights –and Ecology losing its direct oversight. Ecology cannot adopt such changes without explicitly addressing what the loss of process, oversight and participation means for disparate impacts, environmental impacts... and, address these impacts in a SEPA analysis.

We concur and support the following comments from the Yakama Nation on this proposal and related proposed changes. (*Editor's Note: this statement refers to comment 14. Ecology is providing one response to comments 13 and 14*)

**Comment 14 (Jim):** We do not support proposed changes to not require a post-closure permit. MTCA is not directly enforceable on the USDOE Richland Hanford site as it is a federal facility. The dangerous waste regulations (i.e., RCRA post-closure permits) are the means for Ecology to enforce MTCA standards on the Hanford site the dangerous waste regulations do not currently include the authority to enforce a MTCA order on the Hanford site.

The dangerous waste regulations were intentionally written to not circumvent the public involvement process and rights of stakeholder challenge inherent in the Closure Plan process. Acceptance of this change would negate that process for all interested parties other than the two entities who signed the agreed order (i.e., Ecology & USDOE). Furthermore, acceptance of this change weaken the need for a facility to ever come into compliance with final status permit requirements or for Ecology to ever issue a final RCRA facility permit. Consistent with the intent of MTCA and WAC 173-303 regulations, Ecology should not incorporate the use of “enforceable documents” in lieu of post-closure permits.

**Response to comments 13 and 14:** The rules allowing use of enforceable documents in lieu of a post closure permit are based on the interim status regulation in 40 CFR 265.121, which is incorporated by reference in the proposed rules at WAC 173-303-400(3)(a). This means that the proposed rule is only applicable to facilities having an interim status permit. This reasoning is supported by *Federal Register* 63 FR 56710 in an excerpt from page 56717 (underlining added): *“This rule limits the use of alternate mechanisms to facilities that have not received permits. Some commenters believed that the Agency should modify the rule to allow permits to be converted to orders and allow owners or operators of permitted facilities to address the post-closure period through another mechanism. EPA has not adopted the commenters suggestion, as this rulemaking deals only with alternative mechanisms for closed facilities that have not yet received post-closure permits.*

The Hanford facility has a **final status RCRA permit**. It also has units or unit groups that are required to meet **interim status standards** by the current operating dangerous waste **final status permit**. These units or unit groups do not have an **interim status permit**. From the moment the dangerous waste final status permit was issued, the interim status permit was terminated and replaced with the final status operating permit. Since the proposed amendment only applies to facilities with interim status permits, it does not apply to the Hanford facility. Hanford would not be able to use an alternative enforceable document in lieu of a post closure permit. Ecology has had several recent discussions with EPA Region 10 about adoption and authorization for this portion of the 1998 post-closure rule, and we were in agreement that this amendment could not be used at Hanford.

Regarding public involvement opportunities, 40 CFR 265.121(b) includes provisions for the public to be involved and provide comments at important stages of a remediation action. These provisions would be required conditions of any enforceable document, regardless if MTCA regulations did not require them.

### **WAC 173-303-573**

**Comment 15 (Barrow):** the commenter thinks all universal waste should be labeled with the term “universal waste”. Alternative wording should not be allowed to mark universal waste as provided in WAC 173-303-573(10) and (21).

**Response:** Universal waste generators have the option to label universal waste batteries, lamps, thermostats and mercury containing equipment with 1) “Universal Waste” followed by the type of waste, 2) “Waste” followed by the type of waste, and 3) “Used” followed by the type of waste. Washington state dangerous waste regulations mirror the EPA hazardous waste rules in this regard. The universal waste system is intended to be an easier management system for limited types of dangerous waste. Having different labeling options allows generators to pick wording that works best for them.

### **WAC 173-303-600**

**Amended related sections include 170 and 370**

**Comment 16 (Jim):** The commenter supports rule changes clarifying that facilities who accept dangerous waste from other generators must have a RCRA permit or be a dangerous waste recycling facility.

**Response:** Thank you for your support.

### **WAC 173-303-610**

**Comment 17 (McKarn). Citation: WAC 173-303-610(3)(a)(ix).** The proposed reference to the alternative requirements in WAC 173-303-620(1)(d)(i) is inconsistent with referencing in other locations of the proposed rule, which references WAC 173-303-620(1)(d). (e.g., see WAC 173-303-610(8)(d)(ii)(D).)

**Response:** The comment is valid and we will remove the (i) from WAC 173-303-620(1)(d)(i).

### **WAC 173-303-64620**

**Comment 18 (McKarns):** The proposed changes to this section incorporate specific requirements pertaining to financial assurance for corrective action. In accordance with federal law and as reflected elsewhere in WAC 173-303, this section should clarify that states and the federal government are exempt from the financial assurance requirements. (e.g., see WAC 173-303-620(1)(c)).

**Provide language for your recommended change or addition.**

Add the following sentence at the end of WAC 173-303-64620(1): “States and the federal government are exempt from the financial requirements of this section.”

**Response:** Ecology agrees that additional clarification about this issue would make it easier to understand and will make the change as suggested, with some additions. Ecology based the proposed rule on the existing closure and post-closure rules. This makes the various financial assurance rules as consistent as possible. It is important that any clarification be full, complete, and that it address other related situations. Under Washington’s closure and post-closure rules, state and federal government entities are exempt from all aspects of the financial assurance regulations. However, operators of federal and state facilities are only exempt from the requirement to provide a financial assurance mechanism; they are required to provide cost estimates. Federal contractors are not exempt from any financial assurance requirement. These requirements may be superseded by permit conditions pursuant to WAC 173-303-610(d)(ii). Ecology will add a new paragraph at the beginning of the proposed rule and renumber the remaining paragraphs accordingly.

**WAC 173-303-830**

**Comment 19 (McKarns):** The commenter states that the proposed “Note” following WAC 173-303-830(4); Appendix I; F.1.c, F.4.a, G.1.e, G.5.c and H.5.c says that the RCRA section referenced (i.e., 40 CFR 268.8(a)(ii)) is no longer in the RCRA regulations. The commenter agrees that this is correct; however, Ecology should revise the note to acknowledge that the associated Class 1 modification would still apply to the provision not tied to 40 CFR 268.8(a)(ii). The comment further states that the modification as initially promulgated by EPA allowed addition of units or processes for two circumstances: (1) to treat wastes that are restricted from land disposal to meet some or all of the applicable treatment standards; or, (2) to treat wastes to satisfy (in whole or in part) the “greatest environmental benefit” provision of 40 CFR 268.8(a)(2)(ii). Elimination of the latter provision in the federal regulation does not negate use of the Class 1 modification process for the former provision (i.e., to treat wastes that are restricted from land disposal to meet some or all the applicable treatment standards). This would include partial treatment that meets treatment standards for some of the hazardous constituents in a waste mixture.

**Provide language for your recommended change or addition.**

Add the following sentence to the end of the “Note”: “Modification or addition to treat wastes that are restricted from land disposal to meet some or all of the applicable treatment standards is still allowed as a Class 1 modification.”

**Response:** Comment noted. The suggestion will not be made. The federal RCRA-land disposal restriction (LDR) regulations (40 CFR subpart 268.8) that the permit modification regulation (40 CFR Part 270.42, Appendix I (F.1.c, F.4.a, G.1.e, G.5.c and H.5.c)) is derived from and developed for no longer exists. Today, hazardous waste (HW) that does not meet its respective LDR treatment standard(s) is prohibited from land disposal. Likewise, the federal RCRA-LDR regulations that are adopted into the State’s dangerous waste regulations are those as they existed on July 1, 2007; which do not include 40 CFR 268.8. The federal regulation 40 CFR 268.8 no longer exists. The permittee cannot use a state rule that is based on a nonexistent federal rule which is no longer adopted by reference in the dangerous waste regulations. WAC 173-303-830(4); Appendix I; F.1.c, F.4.a, G.1.e, G.5.c and H.5.c are basically dead rules. Bear in mind that

these citations are read as a complete whole and based entirely on the nonexistent 40 CFR 268.8. The reader cannot break out the section “treatment processes necessary to treat wastes that are restricted from land disposal to meet some or all of the applicable treatment standards” and interpret it to mean that provision is still a regulatory option.

Prior to May 8, 1990, bona fide HW could be land disposed without totally meeting all specific LDR treatment standards. This was conditioned on a good faith effort being made to contract with a treatment facility that was practically available. That facility had to treat the waste as best they could to provide greatest environmental benefit. Prior to June 1, 1990, EPA had not established treatment standards for many wastes, for example many of the first third list of wastes. They did promulgate temporary rules to allow for the continued land disposal of these waste; these rules were found in 40 CFR 268.8. The temporary authorization included partial treatment for some of the hazardous constituents in a waste to BDAT (best demonstrated available technology) standards and for soft hammer wastes a certification to be filed under 40 CFR 268.8. The permit modifications reflected this temporary allowance. In other words, it was hard to find a treatment, storage and/or disposal facility that could meet all LDR treatment standards that applied to a HW given the regulatory landscape in 1990. This is not the case today, since EPA has promulgated sufficient LDR treatment standards since that time.

EPA-headquarters is aware of this problem and intends to correct it in the future, along with other needed corrections. However, at this time they do not have the resources to do another mass correction *Federal Register* notice like they recently published (March 18, 2010 [75 *FR* 12989] and April 13, 2012 [77 *FR* 22229]). However, in order for Washington State to remain equivalent to EPA, the State will continue to cite these (dead) permit modification regulations until EPA removes them from their RCRA permit modification regulations. EPA has no given estimated time frame for removing them. We will proceed with adding a note to this permit modification rule similar to the one EPA added in 40 CFR Part 270.42, Appendix I concerning the same issue.

**Comment 20 (Perry). Citation: WAC 173-303-830(4)(c)(ii)(B).** The current rule text refers to a non-exist section (i.e., subsection “(c)(4)” does not exist). Correcting the rule text will reduce confusion.

**Provide language for your recommended change or addition.**

Suggest revising the rule text to delete “(4)” and replace with “(iv).”

**Response:** Thank you for submitting this edit. Ecology will correct the error as suggested.

### **WAC 173-303-9903**

**Comment 21 (Miller):** The commenter objects to Ecology guidance saying that epinephrine salts are included as a listed hazardous waste with the waste code P042. Ecology guidance contradicts EPA regulations only listing epinephrine as P042, not its salts. If Washington regulates epinephrine salts as a dangerous waste, it must do so using a state code so there is not an inconsistency with federal regulations. Also, Ecology guidance contradicts 40 CFR 271.4(a) because it restricts movement across the state border. Further, Ecology’s position on P042 listed waste increases cost of compliance for out-of-state generators and transporters of epinephrine salts.

**Response:** Comment noted. Although this issue is not part of the current rule amendment package, a response is appropriate for unused epinephrine and epinephrine salt solutions. To

qualify as a P listed dangerous waste a P-listed commercial chemical product must meet two conditions. The first is that the material is unused. The second is that the P listed constituent in the material or solution (or when in its pure chemical form) is the sole active ingredient. In the situation described above, the salt in the solution acts as a preservative for the epinephrine while the epinephrine in that solution is the sole active ingredient. As a result, based on the federal (40 CFR 261.33(d)) and state (WAC 173-303-040) definitions, the unused solution, described above, would qualify as a P listed waste (P042); an acutely hazardous waste. In summary, a commercial chemical product (example P-listed waste) refers to a manufactured or formulated chemical substance, and all formulations in which the P-listed constituent is the sole active ingredient. The dangerous waste regulations are consistent with the Federal program (40 CFR 271.4(b)) in applying the definition of commercial chemical products.

The Dangerous Waste Regulations identify more wastes as dangerous wastes than the RCRA program identifies as hazardous wastes. Some of those wastes identified by the dangerous waste regulations carry federal RCRA codes and are regulated as federal wastes in Washington State. Examples of this include the Bevill wastes, used oil mixed with ignitable wastes, used oil mixed with conditionally exempt small quantity generator's listed wastes, certain listed solvent contaminated wastes and certain nuclear mixed wastes. These particular wastes are regulated under Washington state dangerous waste rules. They carry federal RCRA wastes codes when brought in from out-of-state generators (for example, Oregon or Idaho) into Washington State for treatment and/or disposal. Since Washington State does not discriminate against out-of-state waste businesses and generators of listed P042 (or any other hazardous waste recognized by the dangerous waste regulations and not by RCRA), and does not favor in-state economic interests over out of state economic interests, the application and regulation of the P042 waste described above is being treated evenhandedly by the State and does not restrict the movement across State borders.

## Comments on Chemical Test Methods for Designating Dangerous Waste (Publication no. 97-407)

**Comment 22 (Brazil):** In section 3.8.3, the last sentence of the first paragraph contains a reference number 13 to “WAC 173-303”. This general reference to the entire chapter of Dangerous Waste Regulations is not very helpful to the user of this document. A more specific reference than the entire chapter should be included or the reference deleted.

**Response:** A specific reference to WAC 173-303-100 is added for clarity.

**Comment 23 (Brazil):** In section 3.8.3, in the paragraph numbered as “2” following Table 3.8.3, the redline change “~~general evaluation chemical~~ analysis” should read “~~general evaluation chemical~~ analysis” to be consistent with all other language in section 3.8 that is being revised to “evaluation analysis”.

**Response:** Ecology agrees there is an inconsistency in terms. For consistency “Evaluation Analysis” will be used when discussing the general evaluation methods, except where a specific method of analysis is indicated.

**Comment 24 (Brazil):** In section 3.8.3, the first paragraph on page 23 starts with “Note<sup>1</sup>:” indicating that an endnote number 1 should exist. The endnotes are numbered 1a and 1b. If this note 1 is intended to reference both 1a and 1b, it should contain both references. If it is intended to be a different reference, the reference should be corrected.

**Response:** Note<sup>1</sup> is changed to Note<sup>1a-b</sup> to reference endnotes 1a and 1b respectively.

**Comment 25 (Brazil):** In section 3.8.4, the first paragraph seems to *require* use of Method 9023 because of the statement “EPA Method 9023 is to be used...” even though the paragraph states that “Ecology recommends” several methods. This language should be corrected as revised in blue below. Several other places in this section contain revisions that are inconsistent with the format and intent of the current version of the document and revisions to correct the inconsistencies are also offered in blue below. (*Editor’s Note: see Appendix A on page 22 for the full comment and suggested changes.*)

**Response:** For clarity the first paragraph in section 3.8.4 is revised by changing “is to be used...” to “may be used...”. The Chemical Test Methods guidance recommends EPA Method 9023 as a method that **may be used** in the determination of total halide concentration in a waste stream. Other SW-846 methods could also be used in the determination of specific halide concentration in a waste stream. One limitation of Method 9023 is that it does not detect fluorine containing species. Another limiting factor is that polybrominated diphenyl ethers are not easily soluble in organic solvents. We agree that the extraction of certain inorganic salts is a method interference, but do not view this as a limitation of the method. The laboratory is required to demonstrate the ability to generate acceptable accuracy and precision with the method so as to eliminate the effect of interference on data quality.

**Comment 26 (Brazil):** In section 3.8.5, the designation flow chart contains a decision diamond labeled “Is total halogen concentration  $\geq$  100 ppm?”. This should clearly state “Is total organic halogen concentration  $\geq$  100 ppm?”. The chart also contains a box labeled “Do Fluorine Evaluation”. This box should clearly state “Do Organic Fluorine Evaluation”. These changes are necessary as the testing and DW standards for toxics are specific to organic halides and some of these methods (e.g., Method 9023) can capture inorganic halides as well as organic halides in the analysis.

**Response:** The flow chart has been changed to reflect organic halides.

**Comment 27 (McKarns): Citation: *Chemical Test Methods*, title page.** The revision date for this document should be changed from “June 2009” to “December 2014.”

**Response:** The revision date will be changed as suggested.

**Comment 28 (McKarns): Citation: *Formatting on Chapter 2 (throughout)*.** The section numbering throughout Chapter 2 is inconsistent with the numbering used in the rest of the document. For example, on page 5 the “Ignitibility” section in Chapter 2 is numbered “1.1” rather than “2.1,” as would be the correct format based on Chapter 3. The document should be edited to provide a consistent numbering system throughout the chapters.

**Response:** The formatting will be corrected to renumber the Chapter 2 sections to be consistent with the format used in Chapters 1 and 3.

**Comment 29 (McKarns): Citation: page 21, Section 3.8, penultimate paragraph.** The proposed language implies that additional analyses for halogenated organic compounds may be necessary when a generator doesn't know the type or concentration of HOC's in a waste stream. Certainly a generator has a responsibility to have reasonable knowledge about a waste stream they generate. However, in the case of HOCs, the regulation does not require that a generator know the concentration of all of the HOC constituents. As specified in WAC 173-303-100(6)(a), unless Ecology requires testing for a specific waste stream, "if a person knows only some of the persistent constituents in the waste, or only some of the constituent concentrations, and if the waste is undesignated for those known constituents or concentrations, then the waste is not designated for persistence under this subsection." Thus, the regulation itself establishes that knowing "some" of the constituents and concentrations provides sufficient knowledge to designate a waste for the persistence criteria; it is not necessary to know "all" the constituents or concentrations. A balance exists between knowing enough about a waste stream to perform an adequate designation, and knowing everything about a waste stream, as reflected in the regulatory language. As correctly indicated on the "Acknowledgements" section, a guidance document such as the *Chemical Test Methods* cannot alter regulatory requirements. Instead, changing of regulatory requirements would necessitate promulgation of revised regulatory language. The *Chemical Testing Methods* document should acknowledge the regulatory language that allows designation based on knowing "some" of the persistent constituents or concentrations.

**Provide language for your recommended change or addition.**

Add the following as the last sentence in this paragraph: "In accordance with WAC 173-303-100(6)(a), unless testing of a waste stream is specifically required by Ecology based on a belief that the waste stream has been improperly designated, if a person knows only some of the persistent constituents in a waste, or only some of the constituent concentrations, and if the waste is undesignated for those known constituents or concentrations, then the waste is not designated for persistence."

**Response:** Ecology will not be making the change as suggested. The paragraph in question says "*Because of the potential for a wide range of halogenated organic compounds to be in waste streams produced by generators, generators often don't know the type of HOC's or their concentration in their waste streams. When knowledge of the waste is insufficient, Ecology recommends that the generator rely on their analytical laboratory for the appropriate analytical method to determine the HOC content in the specific waste stream. WAC 173-303-071(3)(c)(ii) describes when knowledge can be use for waste designation.*" Ecology has found that generators of halogenated wastes often do not have enough knowledge about the HOC content in their waste to make a reasonable designation determination. In the proposed guidance as presented above, Ecology is not implying that a generator must know all of the HOC compounds in their waste. They do need sufficient information to do the designation, and testing is often needed to determine the HOC concentration. Adding the citation as suggested does not lend clarity to determining when enough information is available to do a proper waste designation. Ecology maintains that the underlying assumption with WAC 173-303-100(3)(a) is that the generators knowledge about "some" of the constituents and their concentrations is enough to determine if that waste designates or not.



**Comment 30 (McKarns): Citation: page 22, Section 3.8.3, item 2, last sentence.** The statement that to prove a waste failing the requirement “. . . can only be done by providing documented evidence . . .” is inappropriate. For example, a generator may know the HOCs present in a waste, but be unsure of the levels. In such situations, the generator may decide, as a first step, to use the halogen screen (due to cost) to estimate concentrations. If, based on these screening results, the waste appears to be designated, the generator may choose to utilize definitive test methods to detect and quantify the specific HOCs he knows to be in the waste. This would serve to identify the concentration of actual HOCs known to be present; it would not be necessary to prove the inorganic halide content in a situation such as this.

**Provide language for your recommended change or addition.**

Revise the sentence to read: “This proof may be done, for example, by showing that a significant portion of the total halide concentration . . .”

**Response:** Ecology will not be making the revision as suggested. The burden of proof is on the generator to determine the persistent constituents in a waste stream as defined under WAC 173-303-040. If a waste is designated as DW or EHW following the persistence criteria, generators have the option to demonstrate that the persistence is due to inorganic halogens.

**Comment 31 (McKarns): Citation: pages 20 - 29, Section 3.8.** Consistent terminology should be used throughout this section to identify the evaluation methods. These methods were formerly referred to as “general evaluation methods,” but in the proposed version the terms “general evaluation methods,” “general evaluation process,” “evaluation methods,” “test methods,” or simply “evaluation” are used.

**Response:** Ecology agrees there is an inconsistency in terms. The words “Evaluation Analysis” will be used when discussing the general evaluation methods, except where specific method of analysis is indicated.

**Comment 32 (McKarns): Citation: page 26, Decision Tree – Persistence Designation.** The flowchart is useful, but it does not work correctly in all cases due to the limitations of Method 9023 (which doesn’t detect fluorine) and Methods 5050/9056 (which don’t detect iodine). Two decision pathways should be shown depending upon which method(s) are being used; as currently shown the flowchart presumes that Method 9023 is being used as the screening method.

**Response:** The flow chart is updated to include decision pathways for Method 9023 and Methods 5050/9056.

**Comment 33 (McKarns): Citation: page 26, Decision Tree – Persistence Designation.** Fluorine is misspelled as “flourine” in the next-to-last decision box in the penultimate row of the decision tree.

**Response:** The spelling will be corrected. Thank you.

**Comment 34 (McKarns): Citation: page 50, “Appendix IX of 40 CFR 264,” “Suggested methods” entry for benzo[k]fluoranthene.** SW-846 Method 8310 is an approved method for analysis of benzo[k]fluoranthene, and should be added to this entry.

**Response:** Ecology agrees with the suggestion and will add Method 8310.

**Comment 35 (McKarns): Citation: page 55, “Appendix IX of 40 CFR 264,” “Suggested methods” entry for endosulfan II.** SW-846 Method 8270 is an approved analytical method for endosulfan II, and should be added to this entry.

**Response:** Ecology agrees with the suggestion and will add Method 8270.

## Commenter Index

The table below lists the names of organizations or individuals who submitted a comment on the rule proposal and where you can find Ecology’s response to the comment(s). Summarized or verbatim comments and Ecology’s responses are numbered and can be found in the Response to Comments starting on page 3. The comments relevant to each commenter are listed by number in the adjacent column. Comments provided on the Chemical Test Methods guidance are noted by **CTM**. All submitted comments are published in Appendix A.

Commenter Name and address	Comment Number
Jeff Barrow United Airlines 2230 S. 161 <sup>st</sup> St. Seattle, WA. 98158	11, 15
Brian Brazil TransAlta Centralia Generation LLC 913 Big Hanaford Road Centralia, WA. 98531	CTM: 22-26
Erica Doctor Johannessen & Associates, P.S. 5413 Meridian Ave. N., Suite B	10
David Hill DH Environmental, Inc. 1011 SW Klickitat Way, Suite 210 Seattle, WA. 98134	9
Russell Jim Yakama Nation ERWM Program P.O. Box 151, Fort Road Toppenish, WA 98948	3, 5, 7, 14, 16
Thomas Klein Agrium US Inc – Kennewick fertilizer Operations (KFO) 227515 Bowles Rd Kennewick, WA 99337	6
Matthew Kolata Targa Sound Terminal LLC	1

Commenter Name and address	Comment Number
Anthony McKarns RCRA/TSCA SME US DOE/RL 825 Jadwin Ave. Richland, WA 99352	4, 8, 12,17, 18, 19  CTM: 27-35
Wade Miller Wenck Associates, Inc 1802 Wooddale Drive, Suite 100 Woodbury, MN 55125-2937	21
Jon Perry Mission Support Alliance P.O. Box 650 MSIN H1-30 Richland, WA 99352	20
Gerry Pollet Heart of America Northwest 444 NE Ravenna Blvd #406 Seattle, WA 98115	13
Tania Reynolds Triumph Actuation systems – Yakima 2720 W. Washington Ave. Yakima, WA 98903	2

# Appendix A: Copies of all written comments



## Washington State Dangerous Waste Regulations Chapter 173-303 WAC Draft Amendments

### Commenting Instructions

Ecology is accepting formal comments on the proposed amendments. Submit your written comments by **October 1, 2014** using any of these methods:

**US Mail**

Robert Rieck  
Department of Ecology – HWTR  
PO Box 47600  
Olympia WA 98504-7600

**Fax**

360-407-6715

**Email**

[dwrw@ecy.wa.gov](mailto:dwrw@ecy.wa.gov)

Ecology encourages the use of this optional form. Please complete one form for each comment. Be clear and brief.

Jeff  
**First Name:** \_\_\_\_\_  
Barrow  
**Last Name:** \_\_\_\_\_  
United Airlines  
**Organization or Affiliation:** \_\_\_\_\_  
2230 S. 161<sup>st</sup> St.  
**Address:** \_\_\_\_\_  
Seattle / WA / 98158  
**City/State/Zip Code:** \_\_\_\_\_  
(Example: WAC 173-303-071(3)(oo)) **WAC 173-303-**  
**Citation:** \_\_\_\_\_

**State your comment, question, or recommendation.** Explain your concern. How will your recommendation improve the proposed rule amendments? As stated in 173-303-240 (11) I don't think that changing verbiage from 'Tracking' to 'Movement' throughout the document has any merit. Those working in the field know what tracking documents are. I see no need to change this verbiage.

Page 126 – Labeling Marking (a) I think all Universal Waste should be labeled as such. We can be more descriptive under the words Universal Waste to better describe the waste.

I saw no issues with the other proposed changes to the document

**Provide language for your recommended change or addition.**

Signature: Barrow

Date: 8-21-14

August 2014



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October 1, 2014

Mr. Robert Rieck  
Washington Department of Ecology  
PO Box 47600  
Olympia, WA 98504

**Re: Dangerous Waste Regulations, Chapter 173-303 WAC**

Dear Mr. Rieck:

TransAlta Centralia Generation (TCG) is submitting the following comments related to the proposed revisions to “Chemical Test Methods For Designating Dangerous Waste” included as part of the proposal to amend Chapter 173-303 WAC. Since the draft rule change adopts the revised “Chemical Test Methods” document as rule by reference, please address the following issues in the document.

In section 3.8.3, the last sentence of the first paragraph contains a reference Number 13 to “WAC 173-303”. This general reference to the entire chapter of Dangerous Waste Regulations is not very helpful to the user of this document. A more specific reference than the entire chapter should be included or the reference deleted.

In section 3.8.3, in the paragraph numbered as “2” following Table 3.8.3, the redline change “~~general evaluation chemical~~ analysis” should read “~~general~~-evaluation ~~chemical~~ analysis” to be consistent with all other language in section 3.8 that is being revised to “evaluation analysis”.

In section 3.8.3, the first paragraph on page 23 starts with “Note<sup>1</sup>,” indicating that an endnote number 1 should exist. The endnotes are numbered 1a and 1b. If this note 1 is intended to reference both 1a and 1b, it should contain both references. If it is intended to be a different reference, the reference should be corrected.

In section 3.8.4, the first paragraph seems to *require* use of Method 9023 because of the statement “EPA Method 9023 is to be used.” even though the paragraph states that “Ecology recommends” several methods. This language should be corrected as revised in **blue** below. Several other places in this section contain revisions that are inconsistent with the format and intent of the current version of the document and revisions to correct the inconsistencies are also offered in **blue** below.

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### 3.8.4 General Evaluation Methods

Ecology recommends that either SW-846 Method ~~9076~~ 9023 or Methods 5050 and 9056 be used in the determination of halide concentration in a waste stream. ~~Although the title of Method 9076 implies only petroleum products are analyzed, the method has an optional sample introduction procedure, allowing soil and liquid samples to be analyzed as well.~~

EPA Method 9023, Extractable Organic Halides (EOX) in Solids ~~is to~~ may be used for the determination of total extractable organic halides (EOX) in solid waste. Extractable organic halides containing chlorine, bromine, or iodine are detected. However, fluorine-containing species are not detected by this method. Polybrominated diphenyl ether (PBDE) such as Deca-BDE has limited solubility in organic solvent and may not be suitable for extraction with ethyl acetate. Laboratory should determine the suitability for extraction with ethyl acetate for specific known halides in a waste stream or use other extraction solvents if extraction with ethyl acetate results in low or no recovery.

Method 9056, Determination of Inorganic Anions by Ion Chromatography works well for aqueous waste streams. (Note: Organics in your waste can seriously affect the functioning of an ion chromatograph. Check with your laboratory if your waste contains organics.)

For solid waste samples, Method 9056 uses SW-846 Method 5050, Bomb Preparation Method for Solid Wastes. Method 5050 combusts the solid waste and converts the halogenated organics into carbon dioxide, water and fluoride, chloride, bromide or iodine inorganic species. These halogen inorganics are recovered and analyzed via Method 9056.

~~Ecology recognizes the following limitations with Method 9076:~~

- ~~• Method 9076 does not detect all halogens specified under the definition of HOC. This method only quantifies the chlorine, half of the bromine, half of the iodine, and none of the fluorine.~~
- ~~• This method may experience positive interferences from inorganic halides.~~

Ecology recognizes the following limitations with Method 9023:

- Fluorine containing species are not detected by this method.
- Polybrominated diphenyl ether (PBDE) such as Deca-BDE has limited solubility in organic solvent and may not be suitable for extraction with ethyl acetate.
- Certain inorganic halide salts (e.g., mercuric chloride) will be extracted and therefore interfere to some extent.

Ecology recognizes the following limitation with Method 5050:

- Samples with very high water content (>25%) may not combust efficiently and may require the addition of a mineral oil to facilitate combustion.

Ecology recognizes the following limitation with Method 9056:

- Method 9056 does not detect iodine but gives accurate results for chloride, bromide, and fluorine.

Ecology supports the use of Methods 9023/76 and 5050/9056 for the **general** evaluation of a waste stream containing HOCs **based on total organic halogens**. These methods are available on the Web at: <http://www.epa.gov/epawaste/hazard/testmethods/sw846/index.htm>

~~[www.epa.gov/epawaste/hazard/testmethods/sw846/index.htm](http://www.epa.gov/epawaste/hazard/testmethods/sw846/index.htm)~~. Ecology regional offices can also provide a copy of the method. See inside the front cover of this document for information on the closest regional office to you.

The total concentrations of chloride, bromide, and fluoride are compared against the regulatory limits identified in Table 3.8.3, to determine if the waste designates as a state-only persistent waste.

~~If the halide concentration obtained from the general evaluation methods exceeds the designation limits identified above, the generator retains the right to identify specific HOCs in the waste to prove the waste is not persistent. Please see Section 3.7.6, "Determinative Methods for HOC" for more details on this process.~~

Although Ecology supports the use of ~~general evaluation methods based on~~ SW-846 Methods 9076 9023 and 5050/9056 for the determination of HOCs as halogens, ~~several~~ other halogen specific analyses exist that could satisfy ~~the general~~ evaluation criteria. These methods as in method 5050/9056 would not provide total organic halogen concentration. The individual organic halides would need to be summed up to get the total organic halogens in the waste stream. Table 3.8.4: Methods for Determining Halogens, lists some of the analysis methods described in SW-846.

In section 3.8.5, the designation flow chart contains a decision diamond labeled "Is total halogen concentration  $\geq$  100 ppm?". This should clearly state "Is total organic halogen concentration  $\geq$  100 ppm?". The chart also contains a box labeled "Do Fluorine Evaluation". This box should clearly state "Do Organic Fluorine Evaluation". These changes are necessary as the testing and DW standards for toxics are specific to organic halides and some of these methods (e.g., Method 9023) can capture inorganic halides as well as organic halides in the analysis.

Please contact me at (360) 807-8031 or [brian\\_brazil@TransAlta.com](mailto:brian_brazil@TransAlta.com) if you have any questions about these comments.

Sincerely,



Brian Brazil  
Environmental Manager  
TransAlta Centralia Generation LLC



## Washington State Dangerous Waste Regulations Chapter 173-303 WAC Draft Amendments

### Commenting Instructions

Ecology is accepting formal comments on the proposed amendments. Submit your written comments by **October 1, 2014** using any of these methods:

**US Mail**

Robert Rieck  
Department of Ecology – HWTR  
PO Box 47600  
Olympia WA 98504-7600

**Fax**

360-407-6715

**Email**

[dwrn@ecy.wa.gov](mailto:dwrn@ecy.wa.gov)

---

Ecology encourages the use of this optional form. Please complete one form for each comment. Be clear and brief.

**First Name:** Erica \_\_\_\_\_

**Last Name:** Doctor \_\_\_\_\_

**Organization or Affiliation:** Johannessen & Associates, P.S. (on behalf of firm's academic institution clients) \_\_\_\_\_

**Address:** 5413 Meridian Ave. N., Suite B \_\_\_\_\_

**City/State/Zip Code:** Seattle, WA 98103 \_\_\_\_\_  
(Example: WAC 173-303-071(3)(oo)) **WAC 173-303-**

**Citation:** WAC 173-303-235 (new section) \_\_\_\_\_

**State your comment, question, or recommendation.** Explain your concern. How will your recommendation improve the proposed rule amendments?

As a law firm that represents small colleges and universities with academic laboratories in Washington state and the King County area, we appreciate the opportunity to comment on Ecology's proposal to provide alternative waste management rules for eligible academic laboratories. We would like clarification on some issues related to laboratory clean-outs. As drafted, it is unclear how the waste generated during a laboratory clean-out is counted toward the academic institution's generator status. We would like Ecology to expressly state: (1) the extent to which an academic institution, if it opts in to the alternative lab waste management rules and conducts a lab waste clean-out that exceeds 2,640 pounds, will be subject to requirements applicable to Large Quantity Generators ("LQGs"); (2) how wastes generated by annual laboratory clean-outs (for those colleges or universities that opt in to the alternative lab waste rules) should be reported on the academic institution's Annual Report; (3) whether Ecology will impose hazardous waste planning fees and require Pollution Prevention Plans based solely on whether those Annual Reports have a checked Origin Code that says "recurrent" wastes; and (4) the circumstances that will subject those academic institutions that opt in to the alternative lab waste management rules to annual hazardous waste planning fees and to the Pollution Prevention Plan requirements under RCW 70.95C.

**August 2014**



In our view, counting annual laboratory clean-outs toward the academic institution's generator status, for any purpose (whether it be for accumulation time limits and/or for disposal and reporting requirements), would undermine the purported benefit of and incentives behind EPA's adoption of the alternative rules. It may be that Ecology intends that the laboratory clean-out waste will **not** be counted toward generator status for any purpose, including for purposes of determining whether the academic laboratory will then be subject to hazardous waste planning fees and pollution prevention planning requirements, even if the annual clean-out causes them to exceed the 2,640-pound threshold for LQG status for that year and potentially for future years. If that is the case, then the proposed rules should expressly state that.

Ecology should clearly state, in the rules and in its responsiveness summary, how a laboratory clean-out must be reported on the academic institution's Annual Reports and whether the waste will be considered a "recurrent waste" (subject to hazardous waste planning fees and pollution prevention planning requirements) if an Origin Code on the Annual Report says "recurrent waste." As the Annual Report form is currently presented, it appears that the most appropriate Source Code selection for laboratory clean-out waste is "G11 - Discarding off-specification, out-of-date, and/or unused chemicals or products." That Source Code has an automatic, corresponding Origin Code of "i-Recurrent." That means that if academic institutions opt in to the new alternative rules and Ecology agrees that Source Code G11 is the waste code that must be used for any annual lab waste clean-out, the corresponding Origin Code ("i-Recurrent") will automatically subject those academic institutions to a requirement that they prepare a Pollution Prevention Plan and pay a hazardous waste planning fee, if the 2,640-pound threshold is exceeded for any annual clean-out. Academic institutions need to understand whether availing themselves of the alternative rules will subject them to additional fees and more onerous regulatory requirements that they might not otherwise have been subject to if they did not opt in to the new rules.

We believe that it was EPA's intent that unwanted material generated during a laboratory clean-out would **not** be counted toward an academic institution's generator status for any purpose. That would undermine the incentives that EPA was trying to create with the rule. The reasoning behind EPA's adoption of its academic laboratory waste rules should be applicable to Ecology's adoption of its proposed amendments to the Dangerous Waste Regulations. Laboratory clean-out incentives address a key issue that members of the academic community pointed out to EPA. The academic community noted that the generator regulations in existence at the time discouraged laboratory clean-outs *because the increased quantities of hazardous waste generated could change the academic entity's generator status*. To encourage academic laboratories to let go of unneeded chemicals, EPA adopted the laboratory clean-out provisions, which provide that once per 12 months per laboratory, a laboratory can have up to 30 days to conduct a clean-out, and will not have to count the hazardous waste that consists of unused commercial chemical products generated during that 30-day period toward its generator status.

To discourage academic institutions from retaining unwanted materials generated on a routine basis until a laboratory clean-out, thereby improperly manipulating their generator status, EPA limited the laboratory clean-outs to once per year, and required a laboratory to identify in its records the start date of the clean-out. EPA further bounded the incentive by specifying that only laboratory clean-out of hazardous wastes that are unused commercial chemical products are *not* counted toward an institution's generator status. In other words, any unwanted material that has been used and is a hazardous waste must be counted, even if it is removed during the 30-day laboratory clean-out period. EPA added a paragraph to indicate that for the purposes of *off-site management*, if an academic laboratory generates more than the monthly conditionally exempt small quantity generator ("CESQG") limits, then the laboratory must manage its hazardous waste according to the applicable regulations for small quantity generators ("SQG") and for LQGs. In other words, even when hazardous wastes are not counted toward a generator's status, if they are generated in excess of CESQG and SQG monthly limits, they are regulated as hazardous wastes when they are transported, treated, stored, or disposed of off-site.

August 2014

The point was to ensure that hazardous waste is properly managed and disposed of, even if it is not counted toward a generator's status. The point was not to subject academic laboratories to pollution prevention planning requirements and additional annual fees. Thus, while the hazardous waste would still have to be manifested, would still have to comply with land disposal restrictions, and would still have to be treated or recycled and disposed of at a permitted RCRA Subtitle C treatment, storage and disposal facility, the waste should not be counted toward a generator's status and should not be used by Ecology to trigger any other requirements imposed upon an LQG (e.g., annual hazardous waste planning fees and a Pollution Prevention Plan). I include this background only to provide some context for our concerns and requests for clarification.

If Ecology believes that lab clean-outs may (or should) trigger pollution prevention plan requirements and hazardous waste planning fees if an institution opts into the alternative rules, then we would urge Ecology to reconsider that position, as that would discourage academic institutions from availing themselves of the alternative lab waste management rules and create a further disincentive to conducting laboratory clean-outs. We request that Ecology explicitly address these issues in its responsiveness summary and affirmatively state whether an eligible academic laboratory that avails itself of the alternative rules will or will not be bumped into LQG status, thus triggering the pollution prevention planning requirements and hazardous waste planning fees, if it disposes of 2,640 pounds or more of waste as a result of a laboratory clean-out. Furthermore, we ask that Ecology expressly state how annual laboratory clean-out wastes should be reported on an academic institution's Annual Report, including Source and Origin Codes. If laboratory clean-out wastes cannot be reported using a different Source Code with an automatic corresponding Origin Code as non-recurrent waste, then we ask that Ecology either modify its current system to provide a "ii-Non-Recurrent" Origin Code option for Source Code selection G11 or direct academic institutions to use another Source Code that has an automatic non-recurrent Origin Code. Even if a lab clean-out generating more than 2,640 pounds of lab waste is conducted as a one-time or intermittent (non-recurrent) clean-out, it is clear that Ecology is basing its determination as to whether to require an academic institution to pay a hazardous waste planning fee and to prepare pollution prevention plan on whether the Origin Code on the Annual Report states that it is "recurrent." We presume that an academic laboratory would **not** want to risk being forced to prepare a Pollution Prevention Plan, and to pay large annual hazardous waste planning fees, if it would not otherwise be required to do so *but for* an annual laboratory clean-out exceeding the 2,640-pound threshold.

We appreciate the opportunity to provide comments to Ecology regarding the proposed academic laboratory waste rules. It is our hope that these comments will result in additional clarity to the regulated entities so that they can be better informed in deciding whether to avail themselves of this option.

**Provide language for your recommended change or addition.**

See comments, above.

Signature: 

Date: 10/1/2014

**August 2014**



## Washington State Dangerous Waste Regulations Chapter 173-303 WAC Draft Amendments

### Commenting Instructions

Ecology is accepting formal comments on the proposed amendments. Submit your written comments by **October 1, 2014** using any of these methods:

**US Mail**

Robert Rieck  
Department of Ecology – HWTR  
PO Box 47600  
Olympia WA 98504-7600

**Fax**

360-407-6715

**Email**

[dwrn@ecy.wa.gov](mailto:dwrn@ecy.wa.gov)

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Ecology encourages the use of this optional form. Please complete one form for each comment. Be clear and brief.

**First Name:** David  
**Last Name:** Hill  
**Organization or Affiliation:** DH Environmental, Inc.  
**Address:** 1011 SW Klickitat Way  
Suite 210  
**City/State/Zip:** Seattle, WA 98134  
**Code:** \_\_\_\_\_  
*(Example: WAC 173-303-071(3)(oo))* **WAC 173-303-**  
**Citation:** WAC 173-303-235(n)

**State your comment, question, or recommendation.** Explain your concern. How will your recommendation improve the proposed rule amendments?

The proposed Rule Text defines a working container as a small container (i.e., two gallons or less) that is in use at a laboratory bench, hood, or other work station to collect unwanted material from a laboratory experiment or procedure. This definition implies that working containers are subject to all of the same labeling requirements as unwanted materials, as defined. In a laboratory setting, containers used during a procedure may become working containers at unpredictable times, during unanticipated circumstances, and during problematic or extremely inconvenient steps during a procedure. An experimenter or laboratory worker may not be able to immediately stop the procedure in order to apply the special labels required for unwanted materials once he or she realizes the container has effectively become a working container. Under these circumstances, the laboratory may be out of compliance with the Dangerous Waste Regulations until the required labeling is applied to the working container.

Furthermore, the regulatory status and transition of a container to working container can be ambiguous and open to interpretation by an individual compliance inspector. For example, a vent hood may hold numerous

**August 2014**

containers of chemicals. Some may be working containers and some may be containers holding chemicals that are being actively used for a procedure. At some point, some of the active containers may become working containers and/or unwanted materials subject to the unwanted materials labeling requirements. The point in time this transition occurs may be known by only a single individual, and the conditions that trigger this requirement may be complicated. A compliance inspector evaluating this scenario with limited context is likely to cite the laboratory for labeling violations if the container's status cannot be quickly and easily explained.

Assuming the laboratory has in place a Chemical Hygiene Plan as required by OSHA/WISHA, all containers should be labeled and handled in accordance with HAZCOM/GHS requirements. This standard of care should not be deemed immediately inadequate to protect human health and the environment once a container is determined to be a working container in a controlled laboratory setting.

If working containers are determined to be unwanted materials or hazardous waste determinations are made on working containers at the end of the laboratory procedure or at the end of a work shift, and those containers have been labeled and handled in accordance with HAZCOM/GHS requirements up to that point, then those working containers should not be subject to unwanted material labeling requirements before those determinations are made.

This recommendation will improve the rule amendment because it removes some ambiguity about labeling requirements during working laboratory sessions without risk to human health and environment and it removes requirements for potentially redundant labeling systems.

**Provide language for your recommended change or addition.**

The implication that working containers are unwanted materials is found in the definition of working container in WAC 173-303-235(n). By slightly modifying the definition, the implication that working containers are automatically unwanted materials is removed. A suggested definition is provided below.

WAC 173-303-235(n): "Working container" means a small container (i.e., two gallons or less) that is in use at a laboratory bench, hood, or other work station, that holds potentially unwanted material or is used to collect potentially unwanted material from a laboratory experiment or procedure. The determination that material inside a working container is unwanted material may occur after the laboratory experiment or procedure is completed so long as the working container has been labeled and handled in accordance with WAC 296-901-140.



David J. Hill  
2014-10-01  
23:39-07:00

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**August 2014**

**From:** [Klein, Thomas](#)  
**To:** [Rieck, Robert \(ECY\)](#)  
**Cc:** [ECY RE Dangerous Waste Rule Making](#)  
**Subject:** Comment on: RE: Proposed amendments to the Dangerous Waste Regulations  
**Date:** Friday, August 22, 2014 8:53:44 AM  
**Attachments:** [image001.png](#)  
[2014 0822 - Comments on WA DW regulation revision - satellite accumulation.doc](#)

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Robert Rieck:

Below and attached is my comment on the proposed regulations. My contact information is provided in the signature bar below.

CITATION: WAC 173-303-200(2) Satellite Accumulation

(a) A generator may accumulate as much as one container ~~55-gallon drum~~ of dangerous waste or one quart of acutely hazardous waste (as defined in WAC 173-303-040) in containers at or near any point of generation where waste initially accumulates (defined as a satellite accumulation area in WAC 173-303-040).

Explanation – when the hazardous waste regulations were first written the 55-gallon steel drum was the standard disposal container and almost all hazardous waste was highly hazardous liquid. We handle a waste stream that is large bulky filters, dry, that are a WA state waste only (WT02). We change them out two or three times a year, and it is convenient to accumulate them in a super sack and dispose of them when the sack is full. This is protective of the environment and efficient management, but not allowed by the “55-gallon” language in the definition. I believe that satellite accumulation until you have one DOT shipping container filled would be a commendable change to the regulation.

Thank you,

Thomas J Klein  
Environmental Specialist



Agrium US Inc – Kennewick Fertilizer Operations (KFO)  
227515 Bowles Rd  
Kennewick, WA 99337

(509) 586-5488

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**From:** Rieck, Robert (ECY) [<mailto:RORI461@ECY.WA.GOV>]

**Sent:** Thursday, August 21, 2014 9:40 AM  
**Subject:** Proposed amendments to the Dangerous Waste Regulations

You are receiving this message because you are a dangerous waste generator and submit annual reports through TurboWaste. Please excuse any cross postings.

Proposed amendments to the Dangerous Waste Regulations, chapter 173-303 WAC, are ready for your [review and comment](#). The Rule Preamble summary lists all of the proposed changes and citations.

Several federal rules are being proposed, including EPA's Academic Laboratory Rule, changes to import/export rules, and numerous technical corrections and clarifications. Several state-initiated rule changes are also being proposed, and the Chemical Testing Methods publication is being updated.

Ecology will hold a public hearing on the proposed rules September 24, 2014. People can participate either through a webinar or attend in person. Formal comments will be taken at the hearing, or any time until the comment period ends October 1, 2014. All comments will be taken into consideration before the amendments are adopted into regulation. For details about the hearing, how to submit comments, and more information about the rule changes, visit our [rule development website](#).

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**WAC 173-303-200 Accumulating dangerous waste on-site.** (1) A generator, not to include transporters as referenced in WAC 173-303-240(3), may accumulate dangerous waste on-site without a permit for ninety days or less after the date of generation, provided that:

(a) All such waste is shipped off-site to a designated facility or placed in an on-site facility which is permitted by the department under WAC 173-303-800 through 173-303-845 or recycled or treated on-site in ninety days or less. The department may, on a case-by-case basis, grant a maximum thirty day extension to this ninety day period if dangerous wastes must remain on-site due to unforeseen, temporary and uncontrollable circumstances. A generator who accumulates dangerous waste for more than ninety days is an operator of a storage facility and is subject to the facility requirements of this chapter and the permit requirements of this chapter as a storage facility unless he has been granted an extension to the ninety day period allowed pursuant to this subsection;

(b) The waste is placed:

(i) In containers and the generator complies with WAC 173-303-630 (2), (3), (4), (5), (6), (8), (9), (10), and 40 C.F.R. Part 265 Subparts AA, BB, and CC incorporated by reference at WAC 173-303-400 (3)(a). For container accumulation (including satellite areas as described in subsection (2) of this section), the department may require that the accumulation area include secondary containment in accordance with WAC 173-303-630(7), if the department determines that there is a potential threat to public health or the environment due to the nature of the wastes being accumulated, or due to a history of spills or releases from accumulated containers. In addition, any new container accumulation areas (but not including new satellite areas, unless required by the department) constructed or installed after September 30, 1986, must comply with the provisions of WAC 173-303-630(7) and/or

(ii) In tanks and the generator complies with 40 C.F.R. Part 265 Subparts AA, BB, and CC incorporated by reference at WAC 173-303-400 (3)(a) and 173-303-640 (2) through (10), except WAC 173-303-640 (8)(c) and the second sentence of WAC 173-303-640 (8)(a). (Note: A generator, unless otherwise required to do so, does not have to prepare a closure plan, a cost estimate for closure, or provide financial responsibility for his tank system to satisfy the requirements of this section.) Such a generator is exempt from the requirements of WAC 173-303-620 and 173-303-610, except for WAC 173-303-610 (2) and (5); and/or

(iii) On drip pads and the generator complies with WAC 173-303-675 and maintains the following records at the facility:

(A) A description of procedures that will be followed to ensure that all wastes are removed from the drip pad and associated collection system at least once every 90 days; and

(B) Documentation of each waste removal, including the quantity of waste removed from the drip pad and the sump or collection system and the date and time of removal; and/or

(iv) In containment buildings and the generator complies with 40 C.F.R. Part 265 Subpart DD, which is incorporated by reference, and the

Deleted: August 22, 2014

generator has placed its independent qualified registered professional engineer certification that the building complies with the design standards specified in 40 C.F.R. 265.1101 in the facility's operating record no later than sixty days after the date of initial operation of the unit. Where subpart G and H are referenced in 40 C.F.R. 265.1102, replace them with WAC 173-303-610 and 173-303-620. After February 18, 1993, PE certification will be required prior to operation of the unit. The owner or operator must maintain the following records at the facility:

(A) A written description of procedures to ensure that each waste volume remains in the unit for no more than ninety days, a written description of the waste generation and management practices for the facility showing that they are consistent with respecting the ninety-day limit, and documentation that the procedures are complied with; or  
 (B) Documentation that the unit is emptied at least once every (90) ninety days.

(In addition, such a generator is exempt from all the requirements in WAC 173-303-610 and 173-303-620, except for WAC 173-303-610(2) and 173-303-610(5).)

(c) The date upon which each period of accumulation begins is marked and clearly visible for inspection on each container;

(d) While being accumulated on site, each container and tank is labeled or marked clearly with the words "dangerous waste" or "hazardous waste." Each container or tank must also be marked with a label or sign which identifies the major risk(s) associated with the waste in the container or tank for employees, emergency response personnel and the public (note(-)): If there is already a system in use that performs this function in accordance with local, state, or federal regulations, then such system will be adequate). The department may also require that a sign be posted at each entrance to the accumulation area, bearing the legend, "danger-unauthorized personnel keep out," or an equivalent legend, written in English, and legible from a distance of twenty-five feet or more; and

(e) The generator complies with the requirements for facility operators contained in:

(i) WAC 173-303-330 through 173-303-360 (personnel training, preparedness and prevention, contingency plan and emergency procedures, and emergencies) except for WAC 173-303-335 (Construction quality assurance program) and WAC 173-303-355 (SARA Title III coordination); and

(ii) WAC 173-303-320 (1), (2)(a), (b), (d), and (3) (general inspection); and

(f) The generator complies with all applicable requirements under 40 C.F.R. Part 268 (.7(a)(5)).

(g) In addition, such a generator is exempt from all the requirements in WAC 173-303-610 and 173-303-620, except for WAC 173-303-610 (2) and (5).

**(2) Satellite accumulation.**

Deleted August 22, 2014



(a) A generator may accumulate as much as one container of dangerous waste or one quart of acutely hazardous waste (as defined in WAC 173-303-040) in containers at or near any point of generation where waste initially accumulates (defined as a satellite accumulation area in WAC 173-303-040). The satellite area must be under the control of the operator of the process generating the waste or secured at all times to prevent improper additions of wastes to a satellite container. Satellite accumulation is allowed without a permit provided the generator:

- (i) Complies with WAC 173-303-630 (2), (4), (5) (a) and (b), (8)(a), and (9) (a) and (b); and
- (ii) Complies with subsection (1) (d) of this section.

Deleted: fifty-five gallons

(b) When one container of dangerous waste or one quart of acutely hazardous waste (as defined in WAC 173-303-040) is accumulated (per waste stream), the container(s) must be marked immediately with the accumulation date and moved within three days to a designated storage or accumulation area.

Deleted: fifty-five gallons

(c) On a case-by-case basis the department may require the satellite area to be managed in accordance with all or some of the requirements under subsection (1) of this section, if the nature of the wastes being accumulated, a history of spills or releases from accumulated containers, or other factors are determined by the department to be a threat or potential threat to human health or the environment.

(3) For the purposes of this section, the ninety-day accumulation period begins on the date that:

- (a) The generator first generates a dangerous waste; or
- (b) The quantity (or aggregated quantity) of dangerous waste being accumulated by a small quantity generator first exceeds the accumulation limit for such waste (or wastes); or

(c) one container of dangerous waste or one quart of acutely hazardous waste (, per waste stream,) (as defined in WAC 173-303-040) is accumulated in a satellite accumulation area.

Deleted: Fifty-five gallons

(4) (a) A generator who generates 2200 pounds or greater of dangerous waste per calendar month who also generates wastewater treatment sludges from electroplating operations that meet the listing description for the dangerous waste code F006, may accumulate F006 waste on-site for more than ninety days, but not more than one hundred eighty days without a permit or without having interim status provided that:

- (i) The generator has implemented pollution prevention practices that reduce the amount of any dangerous substances, pollutants or contaminants entering F006 or otherwise released to the environment prior to its recycling;
- (ii) The F006 waste is legitimately recycled through metals recovery;
- (iii) No more than 44,000 pounds of F006 waste is accumulated on-site at any one time; and
- (iv) The F006 waste is managed in accordance with the following:
  - (A) The F006 waste is placed:

Deleted: August 22, 2014

(I) In containers and the generator complies with the applicable requirements of WAC 173-303-630 (2), (3), (4), (5), (6), (8), (9), (10), and 40 C.F.R. Part 265 Subparts AA, BB, and CC incorporated by reference at WAC 173-303-400 (3) (a); and/or

(II) In tanks and the generator complies with the applicable requirements of 40 C.F.R. Part 265 Subparts AA, BB, and CC incorporated by reference at WAC 173-303-400 (3) (a) and 173-303-640 (2) through (10), except WAC 173-303-640 (8) (c) and the second sentence of WAC 173-303-640 (8) (a); and/or

(III) In containment buildings and the generator complies with subpart DD of 40 C.F.R. part 265 which is incorporated by reference at WAC 173-303-400(3), and has placed its independent qualified registered professional engineer certification that the building complies with the design standards specified in 40 C.F.R. 265.1101 in the facility's operating record prior to operation of the unit. The owner or operator must maintain the following records at the facility:

- A written description of procedures to ensure that the F006 waste remains in the unit for no more than one hundred eighty days, a written description of the waste generation and management practices for the facility showing that they are consistent with the one hundred eighty-day limit, and documentation that the generator is complying with the procedures; or
- Documentation that the unit is emptied at least once every one hundred eighty days.

(B) In addition, such a generator is exempt from all the requirements in subparts G and H of 40 C.F.R. part 265, except for 265.111 and 265.114 which are incorporated by reference at WAC 173-303-400(3).

(C) The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container:

(D) While being accumulated on-site, each container and tank is labeled or marked clearly with the words, "Dangerous Waste"; and

(E) The generator complies with the requirements for owners or operators in WAC 173-303-330, 173-303-340, and 173-303-350, and with 40 C.F.R. 268.7 (a)(5) which is incorporated by reference at WAC 173-303-140 (2)(a).

Deleted: August 22, 2014

**From:** [Kolata, Matthew](#)  
**To:** [Rieck, Robert \(ECY\)](#)  
**Subject:** RE: Proposed amendments to the Dangerous Waste Regulations  
**Date:** Friday, August 22, 2014 8:45:59 AM

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Mr. Rieck,

I would like to know if this comment period would be an opportune time to approach the question 'if the State of Washington would also consider adopting the EPA "Short-Term Generator" status in regards to dangerous waste regulations?' In the EPA's guidance for form 8700 there are provisions for waste generation, that are not categorized as episodic, that would allow normally small quantity generators to handle an unanticipated increase in a dangerous waste without the end effect of stepping up into a large quantity generator status. To the best of my knowledge, current rules in Washington State do not provide for such provisions. I have attached a link to the guidance document for your reference.

<http://www.epa.gov/osw/inforesources/data/form8700/8700-12.pdf>

Thank you,

Matthew Kolata  
Targa Sound Terminal LLC  
253-272-9348

---

**From:** Rieck, Robert (ECY) [<mailto:RORI461@ECY.WA.GOV>]  
**Sent:** Thursday, August 21, 2014 9:40 AM  
**Subject:** Proposed amendments to the Dangerous Waste Regulations

You are receiving this message because you are a dangerous waste generator and submit annual reports through TurboWaste. Please excuse any cross postings.

Proposed amendments to the Dangerous Waste Regulations, chapter 173-303 WAC, are ready for your [review and comment](#). The Rule Preamble summary lists all of the proposed changes and citations.

Several federal rules are being proposed, including EPA's Academic Laboratory Rule, changes to import/export rules, and numerous technical corrections and clarifications. Several state-initiated rule changes are also being proposed, and the Chemical Testing Methods publication is being updated.

Ecology will hold a public hearing on the proposed rules September 24, 2014. People can participate either through a webinar or attend in person. Formal comments will be taken at the hearing, or any time until the comment period ends October 1, 2014. All comments will be taken into consideration before the amendments are adopted into regulation. For details about the hearing, how to submit comments, and more information about the rule changes, visit our [rule development website](#).

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## Washington State Dangerous Waste Regulations Chapter 173-303 WAC Draft Amendments

### Commenting Instructions

Ecology is accepting formal comments on the proposed amendments. Submit your written comments by **October 1, 2014** using any of these methods:

**US Mail**

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360-407-6715

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**Last Name:** \_\_\_\_\_

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825 Jadwin Ave.

**Address:** \_\_\_\_\_

**City/State/Zip Code:** Richland/WA/99352  
(Example: WAC 173-303-071(3)(oo)) **WAC 173-303-**

**Citation:** Chemical Test Methods, title page

**State your comment, question, or recommendation.** Explain your concern. How will your recommendation improve the proposed rule amendments?

The revision date for this document should be changed from “June 2009” to “December 2014.”

**Provide language for your recommended change or addition.**

Change “June 2009” to “December 2014” on the title page.

Signature: \_\_\_\_\_

Date: 9/30/2014



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**City/State/Zip Code:** \_\_\_\_\_  
(Example: WAC 173-303-071(3)(oo)) **WAC 173-303-**

**Citation:** **Chemical Test Methods, Chapter 2 (throughout)**

**State your comment, question, or recommendation.** Explain your concern. How will your recommendation improve the proposed rule amendments?

Formatting comment: The section numbering throughout Chapter 2 is inconsistent with the numbering used in the rest of the document. For example, on page 5 the "Ignitability" section in Chapter 2 is numbered "1.1" rather than "2.1," as would be the correct format based on Chapter 3. The document should be edited to provide a consistent numbering system throughout the chapters.

**Provide language for your recommended change or addition.**

Renumber the Chapter 2 sections to be consistent with the format used in Chapters 1 and 3.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

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**City/State/Zip Code:** \_\_\_\_\_  
*(Example: WAC 173-303-071(3)(oo)) WAC 173-303-*

**Citation:** **Chemical Test Methods, page 21, Section 3.8, penultimate paragraph**

**State your comment, question, or recommendation.** Explain your concern. How will your recommendation improve the proposed rule amendments?

The proposed language implies that additional analyses for halogenated organic compounds may be necessary when a generator doesn't know the type or concentration of HOC's in a waste stream. Certainly a generator has a responsibility to have reasonable knowledge about a waste stream they generate. However, in the case of HOCs, the regulation does not require that a generator know the concentration of all of the HOC constituents. As specified in WAC 173-303-100(6)(a), unless Ecology requires testing for a specific waste stream, "if a person knows only some of the persistent constituents in the waste, or only some of the constituent concentrations, and if the waste is undesignated for those known constituents or concentrations, then the waste is not designated for persistence under this subsection." Thus, the regulation itself establishes that knowing "some" of the constituents and concentrations provides sufficient knowledge to designate a waste for the persistence criteria; it is not necessary to know "all" the constituents or concentrations. A balance exists

**August 2014**

between knowing enough about a waste stream to perform an adequate designation, and knowing everything about a waste stream, as reflected in the regulatory language. As correctly indicated on the "Acknowledgements" section, a guidance document such as the *Chemical Test Methods* cannot alter regulatory requirements. Instead, changing of regulatory requirements would necessitate promulgation of revised regulatory language. The *Chemical Testing Methods* document should acknowledge the regulatory language that allows designation based on knowing "some" of the persistent constituents or concentrations.

**Provide language for your recommended change or addition.**

Add the following as the last sentence in this paragraph: "In accordance with WAC 173-303-100(6)(a), unless testing of a waste stream is specifically required by Ecology based on a belief that the waste stream has been improperly designated, if a person knows only some of the persistent constituents in a waste, or only some of the constituent concentrations, and if the waste is undesignated for those known constituents or concentrations, then the waste is not designated for persistence."

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

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**Address:** \_\_\_\_\_

**City/State/Zip Code:** \_\_\_\_\_  
(Example: WAC 173-303-071(3)(oo)) **WAC 173-303-**

**Citation:** *Chemical Test Methods*, page 22, Section 3.8.3, item 2, last sentence  
\_\_\_\_\_

**State your comment, question, or recommendation.** Explain your concern. How will your recommendation improve the proposed rule amendments?

The statement that to prove a waste failing the requirement "... can only be done by providing documented evidence ..." is inappropriate. For example, a generator may know the HOCs present in a waste, but be unsure of the levels. In such situations, the generator may decide, as a first step, to use the halogen screen (due to cost) to estimate concentrations. If, based on these screening results, the waste appears to be designated, the generator may choose to utilize definitive test methods to detect and quantify the specific HOCs he knows to be in the waste. This would serve to identify the concentration of actual HOCs known to be present; it would not be necessary to prove the inorganic halide content in a situation such as this.

**Provide language for your recommended change or addition.**

Revise the sentence to read: "This proof may be done, for example, by showing that a significant portion of the total halide concentration ..."

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**City/State/Zip Code:** \_\_\_\_\_  
(Example: WAC 173-303-071(3)(oo)) **WAC 173-303-**

**Citation:** **Chemical Test Methods, pages 20 - 29, Section 3.8**

**State your comment, question, or recommendation.** Explain your concern. How will your recommendation improve the proposed rule amendments?

Consistent terminology should be used throughout this section to identify the evaluation methods. These methods were formerly referred to as “general evaluation methods,” but in the proposed version the terms “general evaluation methods,” “general evaluation process,” “evaluation methods,” “test methods,” or simply “evaluation” are used.

**Provide language for your recommended change or addition.**

One phraseology should be chosen and used throughout when discussing the general evaluation methods.

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Date: \_\_\_\_\_

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**City/State/Zip Code:** \_\_\_\_\_  
(Example: WAC 173-303-071(3)(oo)) **WAC 173-303-**

**Citation:** **Chemical Test Methods, page 26, Decision Tree – Persistence Designation**

**State your comment, question, or recommendation.** Explain your concern. How will your recommendation improve the proposed rule amendments?

The flowchart is useful, but it does not work correctly in all cases due to the limitations of Method 9023 (which doesn't detect fluorine) and Methods 5050/9056 (which don't detect iodine). Two decision pathways should be shown depending upon which method(s) are being used; as currently shown the flowchart presumes that Method 9023 is being used as the screening method.

**Provide language for your recommended change or addition.**

Revise the flowchart to show two decision pathways for Method 9023 and Methods 5050/9056.

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**City/State/Zip Code:** \_\_\_\_\_  
(Example: WAC 173-303-071(3)(oo)) **WAC 173-303-**

**Citation:** Chemical Test Methods, page 26, Decision Tree – Persistence Designation

**State your comment, question, or recommendation.** Explain your concern. How will your recommendation improve the proposed rule amendments?

Fluorine is misspelled as “flourine” in the next-to-last decision box in the penultimate row of the decision tree.

**Provide language for your recommended change or addition.**

Correct the spelling to “fluorine.”

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Date: \_\_\_\_\_



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**City/State/Zip Code:** \_\_\_\_\_  
(Example: WAC 173-303-071(3)(oo)) **WAC 173-303-**

**Citation:** *Chemical Test Methods*, page 50, "Appendix IX of 40 CFR 264,"  
"Suggested methods" entry for benzo[k]fluoranthene

**State your comment, question, or recommendation.** Explain your concern. How will your recommendation improve the proposed rule amendments?

SW-846 Method 8310 is an approved method for analysis of benzo[k]fluoranthene, and should be added to this entry.

**Provide language for your recommended change or addition.**

Add Method 8310 to the "Suggested methods" for benzo[k]fluoranthene.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_



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**City/State/Zip Code:** \_\_\_\_\_  
*(Example: WAC 173-303-071(3)(oo)) WAC 173-303-*

**Citation:** *Chemical Test Methods, page 55, "Appendix IX of 40 CFR 264,"*  
"Suggested methods" entry for endosulfan II

**State your comment, question, or recommendation.** Explain your concern. How will your recommendation improve the proposed rule amendments?

SW-846 Method 8270 is an approved analytical method for endosulfan II, and should be added to this entry.

**Provide language for your recommended change or addition.**

Add 8270 to the "Suggested methods" for endosulfan II.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_



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**City/State/Zip Code:** Richland/WA/99352  
\_\_\_\_\_  
(Example: WAC 173-303-071(3)(oo)) **WAC 173-303-**

**Citation:** WAC 173-303-070(1)(b)  
\_\_\_\_\_

**State your comment, question, or recommendation.** Explain your concern. How will your recommendation improve the proposed rule amendments?

The proposed change is potentially confusing with regard to multiple or co-generator scenarios (i.e., situations where more than one person could be considered the generator). Are all generators (i.e., “Any person . . .”) required to designate the waste in such situations? Or only one (i.e., “a person”)? EPA guidance states that it’s preferable to have just person perform the generator duties in these situations. (E.g., see 45 Federal Register 72026.) In lieu finalizing the potentially confusing language in the proposed rule, Ecology should simply mirror the language in the corresponding federal rule at 40 CFR 262.11, which is well established and understood.

**Provide language for your recommended change or addition.**

“(b) The procedures in this section are applicable to a person . . . or by the department. A person who generates a solid waste must determine if that waste is a dangerous waste by following . . . A person who determines by these procedures . . .”

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Date: 9/30/2014

**August 2014**



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**City/State/Zip Code:** \_\_\_\_\_  
(Example: WAC 173-303-071(3)(oo)) **WAC 173-303-**

**Citation:** WAC 173-303-370(1)  
\_\_\_\_\_

**State your comment, question, or recommendation.** Explain your concern. How will your recommendation improve the proposed rule amendments?

The proposed change would appear to invoke manifest requirements to any recycling facility that receives dangerous waste from off-site sources. This conflicts with the exemptions for certain recyclable materials in WAC 173-303-120(2) and (3). As provided in WAC 173-303-120(4), application of manifest requirements do not apply to recycling of these materials, even if recycled at an off-site facility. I.e., "Unless specified otherwise in subsections (2) and (3) of this section . . ."

**Provide language for your recommended change or addition.**

" . . . and of dangerous waste recycling facilities operating under the requirements of this chapter who receive dangerous waste from off-site sources (unless exempted under WAC 173-303-120(2) and (3))."

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Date: \_\_\_\_\_

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(Example: WAC 173-303-071(3)(oo)) **WAC 173-303-**

**Citation:** WAC 173-303-610(3)(a)(ix)

**State your comment, question, or recommendation.** Explain your concern. How will your recommendation improve the proposed rule amendments?

The proposed reference to the alternative requirements in WAC 173-303-620(1)(d)(i) is inconsistent with referencing in other locations of the proposed rule, which references WAC 173-303-620(1)(d). (E.g., see WAC 173-303-610(8)(d)(i)(D).)

**Provide language for your recommended change or addition.**

“(ix) For facilities . . . or WAC 173-303-620(1)(d), the closure plan . . .”

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**City/State/Zip Code:** \_\_\_\_\_  
(Example: WAC 173-303-071(3)(oo)) **WAC 173-303-**

**Citation:** WAC 173-303-64620(5)(b)

**State your comment, question, or recommendation.** Explain your concern. How will your recommendation improve the proposed rule amendments?

The proposed changes to this section incorporate specific requirements pertaining to financial assurance for corrective action. In accordance with federal law, and as reflected elsewhere in WAC 173-303, this section should clarify that states and the federal government are exempt from the financial assurance requirements. (E.g., see WAC 173-303-620(1)(c)).

**Provide language for your recommended change or addition.**

Add the following sentence at the end of WAC 173-303-64620(1): "States and the federal government are exempt from the financial requirements of this section."

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

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**City/State/Zip Code:** \_\_\_\_\_  
(Example: WAC 173-303-071(3)(oo)) **WAC 173-303-**

**Citation:** WAC 173-303-803 Appendix I, Note following F.1.c, F.4.b, G.1.e, and G.5.c  
\_\_\_\_\_

**State your comment, question, or recommendation.** Explain your concern. How will your recommendation improve the proposed rule amendments?

The proposed "Note" following these entries states that the RCRA section referenced (i.e., 40 CFR 268.8(a)(ii)) is no longer in the RCRA regulations. This is correct; however, Ecology should revise the note to acknowledge that the associated Class 1 modification would still apply to the provision not tied to 40 CFR 268.8(a)(ii). The modification as initially promulgated by EPA allowed addition of units or processes for two circumstances: (1) to treat wastes that are restricted from land disposal to meet some or all of the applicable treatment standards; or, (2) to treat wastes to satisfy (in whole or in part) the "greatest environmental benefit" provision of 40 CFR 268.8(a)(2)(ii). Elimination of the latter provision in the federal regulation does not negate use of the Class 1 modification process for the former provision (i.e., to treat wastes that are restricted from land disposal to meet some or all the applicable treatment standards). The fact that EPA intended this provision to cover both situations is evident in the promulgation of the final rule at 54 Federal Register 9596, March 7, 1989. E.g., "New Tanks and Containers to Perform Treatment. In the November 17 Federal Register notice, EPA requested comment on the establishment of a Class 1 modification with prior Agency approval for the addition of new waste codes (or a narrative description) where additional tanks and containers, or new treatment processes that take place in tanks and

**August 2014**

containers, are necessary to treat restricted wastes to meet treatment standards. (The amendment would also cover addition of new tanks or containers, or new treatment processes, without addition of new waste codes). This would include partial treatment that meets treatment standards for some of the hazardous constituents in a waste mixture. Treatment would include treatment according to BDAT standards, or for "soft hammer" wastes, treatment for which a certification will be filed pursuant to Sec. 268.8." (Underline added.) The distinction between treatment to meet BDAT standards and treatment to satisfy the "soft hammer" provisions of 40 CFR 268.8 is also clearly reflected in the proposed rule; i.e.:

"First, to address the treatment residue and contaminated environmental media issue, the Agency solicits comment on whether it would be appropriate to allow as a Class 1 modification, with prior Agency approval, the following change: The addition of new waste codes to a permit where the added waste is a restricted waste that meets the applicable treatment standards. This change would include treatment residues derived from restricted wastes treated to BDAT levels, as well as leachate, contaminated groundwater, or contaminated soils that are derived from or which contain restricted wastes and that meet the treatment standards. In addition, the Agency requests comment on whether these modifications should be restricted to cases where the receiving unit (if it is a landfill or surface impoundment) meets minimum technology requirements.

EPA also solicits comment on the issue of whether a permit modification allowing the receipt of residues from treating soft hammer wastes should also be a Class 1 modification. The logic for allowing Class 1 modifications for residues from treatment technologies which are BDAT for similar wastes could apply as well to soft hammer waste treatment residues. Soft hammer wastes must be treated by the practically available technologies that yield the greatest environmental benefit (§ 268.8(a)(2)(ii)). In many cases these will be technologies which approximate those which eventually will be BDAT. Thus, allowing expedited permit amendments to accommodate receipt of 'soft hammer' treatment residues serves the ultimate purpose of the land disposal restrictions and RCRA in general, in the same way as it would for residues resulting from BDAT processes." (53 Federal Register 46474.)

As noted in the preamble to the final rule, EPA promulgated the modification provision as proposed. Thus, EPA's intent was to include as Class 1 modifications both "soft hammer" wastes subject to the 40 CFR 268.8 certification, as well as other treatment in tanks and containers necessary to treat restricted waste to meet the land disposal restriction standards.

**Provide language for your recommended change or addition.**

Add the following sentence to the end of the "Note": "Modification or addition to treat wastes that are restricted from land disposal to meet some or all of the applicable treatment standards is still allowed as a Class 1 modification."

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**August 2014**



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 \_\_\_\_\_

**Address:** \_\_\_\_\_

**City/State/Zip Code:** \_\_\_\_\_

*(Example: WAC 173-303-071(3)(oo))* **WAC 173-303-**  
 \_\_\_\_\_

**Citation:** WAC 173-303-200(1)(b)(iv), -200(4)(a)(iv)(A)(III); -400(3)(c)(xxii)(B); -64690; -650(4)(c); -650(5)(d)(ii)(B); -660(6)(e)(ii); -665(2)(a)(i); -806(4)(d)(v); -806(4)(e)(iii)(A)(I); -806(4)(h)(ii)(A)(I)  
 \_\_\_\_\_

**State your comment, question, or recommendation.** Explain your concern. How will your recommendation improve the proposed rule amendments?

In these proposed changes, Ecology proposes to require use of an “independent” professional engineer for various certifications. Ecology apparently believes that use of an independent engineer will result in less pressure than would be imposed on a facility’s in-house professional engineer to make these certifications. Ecology has not identified a single instance where an inappropriate certification can be attributed to use of an in-house professional engineer. Instead, Ecology appears to be accepting on faith that use of an independent professional engineer would alleviate any problems associated with use of a facility’s in-house engineer. However, this logic is flawed: Any professional engineer providing the certifications would be hired by the facility. As EPA explained in removing the “independent” requirement, “It is not clear to us that an in-house engineer faces a greater economic temptation than an independent engineer seeking to cultivate an ongoing

**August 2014**

relationship with a client.” (See 71 Federal Register 16869.) As EPA further explained, professional engineers are licensed by state licensing boards, and they face penalties and potential fines for failing to operate in accordance with the licensing criteria. In fact, EPA notes that in-house professional engineers may be more qualified to certify facility operations since they are more familiar “with its own particular situation and are in a position to provide more on-site review and oversight of the activity being certified.” (Ibid.) Thus, a good case can be made that a certification by an in-house professional engineer is more meaningful – and no more subject to economic pressures – than an independent professional engineer hired and paid by the facility. And, despite Ecology’s assertion to the contrary, the cost of hiring an independent professional engineer to provide the required certifications could represent a relatively significant cost to the facility.

As noted previously, Ecology has not identified a single instance where an inappropriate certification can be attributed to use of an in-house professional engineer. Nevertheless, Ecology proposes requiring a more costly, more stringent certification than mandated by corresponding federal regulation, with no substantial evidence that the difference is necessary (and, if fact, in direct contradiction to the determination made by EPA in promulgating the corresponding federal regulation). As a consequence, this proposal fails to comply with Revised Code of Washington 34.05.328(1)(h)(ii) (the Administrative Procedure Act), and is subject to repeal if promulgated as proposed.

**Provide language for your recommended change or addition.**

Delete the term “independent” from these citations.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**August 2014**





## Washington State Dangerous Waste Regulations Chapter 173-303 WAC Draft Amendments

### Commenting Instructions

Ecology is accepting formal comments on the proposed amendments. Submit your written comments by **October 1, 2014** using any of these methods:

**US Mail**

Robert Rieck  
Department of Ecology – HWTR  
PO Box 47600  
Olympia WA 98504-7600

**Fax**

360-407-6715

**Email**

---

Ecology encourages the use of this optional form. Please complete one form for each comment. Be clear and brief.

**First Name:** Wade  
**Last Name:** Miller  
**Organization or Affiliation:** Wenck Associates, Inc  
**Address:** 1802 Wooddale Drive, Suite 100  
**City/State/Zip Code:** Woodbury, MN 55125-2937  
*(Example: WAC 173-303-071(3)(oo))* **WAC 173-303-**  
**Citation:** WAC 173-303-9903

**State your comment, question, or recommendation.** Explain your concern. How will your recommendation improve the proposed rule amendments?

Washington State's Website (<http://www.ecy.wa.gov/programs/hwtr/pharmaceuticals/pages/epinephrine.html>) provides guidance that Epinephrine Salts are included as a listed hazardous waste with the waste code P042. This is inconsistent with WAC 173-303-9903 which neither includes the word, "Salts" nor any CAS#s besides 51-43-4, which is for pure epinephrine. Because the Dangerous Waste rules use federal waste codes, this guidance is not compliant with 40 CFR 271.4 (a) because it restricts movement across the State border (a company in Idaho or Oregon shipping empty epinephrine pens for treatment in Washington would have use P042, unnecessarily subjecting these companies and the transporters of the pens to hazardous waste generator requirements when neither Idaho nor Oregon recognizes Epinephrine Salts as hazardous waste. Because Washington guidance includes use of a federal code, this creates an inconsistency with federal rules. If the state of Washington is to regulate Epinephrine Salts as a Dangerous Waste, it must do so using a State waste code that will not create inconsistency with Federal regulations.

**August 2014**



**Provide language for your recommended change or addition.**

If the State of Washington has reason to regulate Epinephrine Salts, such as Epinephrine Pens, and the determination is consistent with 40 CFR 271.4 (b), then the waste should be managed under a state-only dangerous waste code. P042 should NOT be used for Epinephrine Salts. Otherwise, the Department of Ecology should adopt US EPA guidance that Epinephrine Salts are not included as a P042 hazardous waste.

Signature: Wade Mill

Date: 9/30/14

**August 2014**



## Washington State Dangerous Waste Regulations Chapter 173-303 WAC Draft Amendments

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PO Box 47600  
Olympia WA. 98504-7600

**Fax**

360-407-6715

**Email**

[dwrn@ecy.wa.gov](mailto:dwrn@ecy.wa.gov)

Ecology encourages the use of this optional form. Please complete one form for each comment. Be clear and brief.

<b>First Name:</b>	Jon
<b>Last Name:</b>	Perry
<b>Organization or Affiliation:</b>	Mission Support Alliance
<b>Address:</b>	P.O. Box 650 MSIN H1-30
<b>City/State/Zip Code:</b>	Richland, WA 99352
<b>Citation:</b>	(Example: WAC 173-303-071(3)(oo)) <b>WAC 173-303-</b> WAC 173-303-830(4)(c)(ii)(B)

**State your comment, question, or recommendation.** Explain your concern. How will your recommendation improve the proposed rule amendments?

The current rule text refers to a non-existent section (i.e., subsection “(c)(4)” does not exist). Correcting the rule text will reduce confusion.

**Provide language for your recommended change or addition.**

Suggest revising the rule text to delete “(4)” and replace with “(iv)” → → *Announcement of the date, time, and place for a public meeting on the modification request, in accordance with (c)(iv)(4) of this subsection;*

Signature: \_\_\_\_\_

Date: 9/30/2014

**August 2014**



# Washington State Dangerous Waste Regulations Chapter 173-303 WAC Draft Amendments

## Comment Form and Instructions

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**US Mail**

Washington State  
Department of Ecology – HWTR  
PO Box 47600  
Olympia WA 98504-7600

**Fax**

(360) 407-6715

**E-mail**

<mailto:dwrn@ecy.wa.gov>

**First Name:** Gerry

**Last Name:** Pollet

**Organization or Affiliation:** Heart of America Northwest

**Address:** 444 NE Ravenna Blvd #406

**City/State/Zip Code:** Seattle, WA 98115

**Citation (Example: WAC 1730-303-071(3)(oo)): WAC 173-303-610(1)(e), various other locations**

**State your comment, question, or recommendation.** Explain your concern. How will your recommendation improve the proposed rule amendments?

We concur and support the following comments from the Yakama Nation on this proposal and related proposed changes

The change would dramatically undermine public participation and accountability for oversight at Hanford by no requiring a RCRA / HWMA post closure permit. RCRA has public process rights which MTCA lacks. Further, despite the Yakama Nation having raised this point, Ecology appears to forget that the Yakama Nation is correct in noting below that USDOE refuses to acknowledge direct MTCA application to Hanford as a federal facility. Thus, MTCA cannot substitute for the post closure permit without the public losing all of its rights –and Ecology losing its direct oversight. Ecology cannot adopt such changes without explicitly addressing what the loss of process, oversight and participation means for disparate impacts, environmental impacts... and, address these impacts in a SEPA analysis.

We join in the following and the related submissions:

We do not support proposed changes to not require a post-closure permit. MTCA is not directly enforceable on the USDOE Richland Hanford site as it is a federal facility. The dangerous waste

**March 2014**

regulations (i.e., RCRA post-closure permits) are the means for Ecology to enforce MTCA standards on the Hanford site. The dangerous wastes regulations do not currently include the authority to enforce a MTCA order on the Hanford site.

The dangerous waste regulations were intentionally written to not circumvent the public involvement process and rights of stakeholder challenge inherent in the Closure Plan process. Acceptance of this change would negate that process for all interested parties other than the two entities who signed the agreed order (i.e., Ecology & USDOE). Furthermore, acceptance of this change weakens the need for a facility to ever come into compliance with final status permit requirements or for Ecology to ever issue a final RCRA facility permit.

Consistent with the intent of MTCA and WAC 173-303 regulations, Ecology should not incorporate the use of "enforceable documents" in lieu of post-closure permits.

**Provide language for your recommended change or addition.**

None

**Signature:** Gerry Pollet, JD

**Date:** 10-1-14

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**March 2014**



# Washington State Dangerous Waste Regulations Chapter 173-303 WAC Draft Amendments

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PO Box 47600  
Olympia WA 98504-7600

**Fax**

360-407-6715

**Email**

[dwrn@ecy.wa.gov](mailto:dwrn@ecy.wa.gov)

Ecology encourages the use of this optional form. Please complete one form for each comment. Be clear and brief.

First Name: Tania

Last Name: Reynolds

Organization or Affiliation: Triumph Actuation Systems – Yakima

Address: 2720 W. Washington Avenue

City/State/Zip Code: Yakima, WA 98903

Citation: (Example: WAC 173-303-071(3)(oo)) WAC 173-303-071(3)

**State your comment, question, or recommendation.** Explain your concern. How will your recommendation improve the proposed rule amendments?

In January 2014 the EPA implemented legislation with a set of exemptions for the disposal of certain types of solvent saturated wipes, rags and pads. The rule is important to industrial facilities since EPA's estimate of annual savings per facility from this rule change is \$30,489 per large quantity generator (LQG) facility and \$4,207 per small quantity generator (SQG) facility. The criteria are if the wipes contain one or more of the F001-F005 listed solvents or the P and U listed solvents. The requirements for exclusion are that the wipes are in a liquid proof container with tight fitting lid, no free liquids, dispose within 180 days and keep records to ensure the exemption is used properly. The Solvent-contaminated wipes that are managed according to the conditions in the final rule are not hazardous wastes and thus generators do not need to meet the more stringent hazardous waste regulations. It reduces costs for thousands of businesses, and maintains protection of human health and the environment.

The EPA states that they are using the latest science to provide a regulatory framework for managing these wipes that is appropriate to the level of risk posed by these materials in a way that maintains protection. They completed a peer-reviewed comprehensive risk analysis to estimate the potential risk from disposal of solvent-contaminated wipes and laundry sludge in lined and unlined landfills and used state of the art landfill modeling

**August 2014**

to examine potential risks posed by possible releases from landfills to the air and groundwater. The risk analysis used conservative assumptions to ensure that potential risks from landfill disposal were assessed protectively. The results demonstrated that the wipes and sludge disposed in municipal solid waste landfills with composite liners do not pose significant risk to human health and the environment. The results support the conditional exclusion which requires the wipes be disposed in municipal landfills subject to certain design criteria, including composite liners. With this data, the EPA concluded that this is an appropriate basis to exclude solvent contaminated wipes from the definition of hazardous waste.

This rule is also in line with President Obama's Executive Order 13563, Improving Regulation and Regulatory Review, which charges federal agencies to monitor regulatory effectiveness and to help make agency regulatory programs more effective or less burdensome in achieving the regulatory objectives. We feel that the state is also bound to this order and should consider incorporating this exemption into the Washington State Dangerous Waste regulation WAC 173-303-071(3), Excluded categories of dangerous waste, that are currently being amended.

**Provide language for your recommended change or addition.**

**WAC 173-303-071(3) (??)** Solvent-contaminated wipes, except for wipes that are hazardous waste due to the presence of trichloroethylene, that are sent for disposal, are not hazardous wastes from the point of generation provided that

- (i) The solvent-contaminated wipes, when accumulated, stored, and transported, are contained in non-leaking, closed containers that are labeled "Excluded Solvent-Contaminated Wipes." The containers must be able to contain free liquids, should free liquids occur. During accumulation, a container is considered closed when there is complete contact between the fitted lid and the rim, except when it is necessary to add or remove solvent-contaminated wipes. When the container is full, or when the solvent-contaminated wipes are no longer being accumulated, or when the container is being transported, the container must be sealed with all lids properly and securely affixed to the container and all openings tightly bound or closed sufficiently to prevent leaks and emissions;
- (ii) The solvent-contaminated wipes may be accumulated by the generator for up to 180 days from the start date of accumulation for each container prior to being sent for disposal;
- (iii) At the point of being transported for disposal, the solvent-contaminated wipes must contain no free liquids as defined in §260.10 of this chapter.
- (iv) Free liquids removed from the solvent-contaminated wipes or from the container holding the wipes must be managed according to the applicable regulations found in 40 CFR parts 260 through 273;
- (v) Generators must maintain at their site the following documentation:
  - (A) Name and address of the landfill or combustor that is receiving the solvent-contaminated wipes;
  - (B) Documentation that the 180 day accumulation time limit in 40 CFR 261.4(b)(18)(ii) is being met;
  - (C) Description of the process the generator is using to ensure solvent-contaminated wipes contain no free liquids at the point of being transported for disposal;
- (vi) The solvent-contaminated wipes are sent for disposal
  - (A) To a municipal solid waste landfill regulated under 40 CFR part 258, including 40 CFR 258.40, or to a hazardous waste landfill regulated under 40 CFR parts 264 or 265; or
  - (B) To a municipal waste combustor or other combustion facility regulated under section 129 of the Clean Air Act or to a hazardous waste combustor, boiler, or industrial furnace regulated under 40 CFR parts 264, 265, or 266 subpart H.

Signature: Jania Reynolds

Date: 9/30/14

August 2014



# Washington State Dangerous Waste Regulations Chapter 173-303 WAC Draft Amendments

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**US Mail**

Washington State  
Department of Ecology – HWTR  
PO Box 47600  
Olympia WA 98504-7600

**Fax**

(360) 407-6715

**E-mail**

<mailto:dwrwm@ecy.wa.gov>

**First Name:** Russell

**Last Name:** Jim

**Organization or Affiliation:** Yakama Nation ERWM Program

**Address:** P.O. Box 151, Fort Road

**City/State/Zip Code:** Toppenish, WA 98948

**Citation (Example: WAC 1730-303-071(3)(oo)): WAC 173-303-610(1)(e), various other locations**

**State your comment, question, or recommendation.** Explain your concern. How will your recommendation improve the proposed rule amendments?

We do not support proposed changes to not require a post-closure permit. MTCA is not directly enforceable on the USDOE Richland Hanford site as it is a federal facility. The dangerous waste regulations (i.e., RCRA post-closure permits) are the means for Ecology to enforce MTCA standards on the Hanford site. The dangerous wastes regulations do not currently include the authority to enforce a MTCA order on the Hanford site.

The dangerous waste regulations were intentionally written to not circumvent the public involvement process and rights of stakeholder challenge inherent in the Closure Plan process. Acceptance of this change would negate that process for all interested parties other than the two entities who signed the agreed order (i.e., Ecology & USDOE). Furthermore, acceptance of this change weaken the need for a facility to ever come into compliance with final status permit requirements or for Ecology to ever issue a final RCRA facility permit.

Consistent with the intent of MTCA and WAC 173-303 regulations, Ecology should not incorporate the use of "enforceable documents" in lieu of post-closure permits.

**March 2014**

Provide language for your recommended change or addition.

None

Signature: Russell J. [Signature]

Date: 10-1-14

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March 2014





# Washington State Dangerous Waste Regulations Chapter 173-303 WAC Draft Amendments

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**E-mail**

<mailto:dwrwm@ecy.wa.gov>

**First Name:** Russell

**Last Name:** Jim

**Organization or Affiliation:** Yakama Nation ERWM Program

**Address:** P.O. Box 151, Fort Road

**City/State/Zip Code:** Toppenish, WA 98948

**Citation (Example: WAC 1730-303-071(3)(oo)): WAC 173-303- 070(1)(b)**

**State your comment, question, or recommendation.** Explain your concern. How will your recommendation improve the proposed rule amendments?

We support this revision. This paragraph does not clearly say that a generator must designate their solid waste. This change will more closely match the language in 40 CFR 262.11 to clarify that a generator must designate their solid waste.

**Provide language for your recommended change or addition.**

Many facilities have multiple waste generators. Each generator must clearly designate their solid waste for best tracking and reconciliation of errors, abnormalities, etc.

Signature: *Russell J*

Date: 10-1-14

March 2014



# Washington State Dangerous Waste Regulations Chapter 173-303 WAC Draft Amendments

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PO Box 47600  
Olympia WA 98504-7600

**Fax**

(360) 407-6715

**E-mail**

<mailto:dwrw@ecy.wa.gov>

**First Name:** Russell

**Last Name:** Jim

**Organization or Affiliation:** Yakama Nation ERWM Program

**Address:** P.O. Box 151, Fort Road

**City/State/Zip Code:** Toppenish, WA 98948

**Citation (Example: WAC 1730-303-071(3)(oo)): 200(1)(b)(iv);200(4)(a)(iv)(III);335(1)(a) 400(3)(c)(xxii)(B);-64690;-650(4)(c);-650(5)(d)(ii)(B);-660(6)(e)(ii);-665(2)(a)(i);-806(4)(a) 806(4)(d)(v);-806(4)(e)(iii)(A)(I);-806(4)(h)(ii)(A)(I);-810(14)(a)(i)**

**State your comment, question, or recommendation.** Explain your concern. How will your recommendation improve the proposed rule amendments?

We support this revision. The 2009 dangerous waste regulatory amendments retained the requirement that independent professional engineers be used. With these changes, Ecology seeks to clarify that facilities use an independent PE in all situations where PE certifications are required. This change maintains consistency with other WAC 173-303 requirements where independent qualified registered professional engineer must be used.

**Provide language for your recommended change or addition.**

None

**Signature:** *Russell Jim*

**Date:** 10-1-14

March 2014



# Washington State Dangerous Waste Regulations Chapter 173-303 WAC Draft Amendments

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**E-mail**

<mailto:dwrwm@ecy.wa.gov>

**First Name:** Russell

**Last Name:** Jim

**Organization or Affiliation:** Yakama Nation ERWM Program

**Address:** P.O. Box 151, Fort Road

**City/State/Zip Code:** Toppenish, WA 98948

**Citation (Example: WAC 1730-303-071(3)(oo)):** WAC 173-303-170(3);- 370(1);-600(2)

**State your comment, question, or recommendation.** Explain your concern. How will your recommendation improve the proposed rule amendments?

We support this revision. The regulations don't clearly say that a person or facility that accepts dangerous waste from other generators must have a RCRA permit or be a dangerous waste recycling facility. These rule changes would clarify who is allowed to receive dangerous waste.

**Provide language for your recommended change or addition.**

None

Signature: *Russell J.*

Date: 10-1-14

March 2014



# Washington State Dangerous Waste Regulations Chapter 173-303 WAC Draft Amendments

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**First Name:** Russell

**Last Name:** Jim

**Organization or Affiliation:** Yakama Nation ERWM Program

**Address:** P.O. Box 151, Fort Road

**City/State/Zip Code:** Toppenish, WA 98948

**Citation (Example: WAC 1730-303-071(3)(oo)):** WAC 173-303- 73(2)(e)

**State your comment, question, or recommendation.** Explain your concern. How will your recommendation improve the proposed rule amendments?

We support this revision. The current rule does not give a time limit for holding special wastes at transfer stations. A regulatory time limit helps prevent special wastes from being accumulated for long periods of time at the transfer station, with a potential for releases.

**Provide language for your recommended change or addition.**

None

Signature: *Russell*

Date: 10-1-14

March 2014

## **Appendix B: Transcripts from public hearings.**

A public hearing for this rule making was held on September 24, 2014 by webinar and at the following location:

Department of Ecology  
Headquarters  
300 Desmond Drive SE  
Lacey, WA 98503

A digital recording of the hearing was placed in the rule file. No one provided comments at the hearing.

**Appendix C: Preamble and Summary for the  
Proposed Amendments to the Dangerous Waste  
Regulations, #14-04-046**



**Washington State  
Dangerous Waste Regulations**

## **Proposed Amendments**

**Comments due:  
October 1, 2014**

**Submit comments to Robert Rieck at:  
Hazardous Waste and Toxics Reduction Program (HWTR)  
Department of Ecology  
PO Box 47600  
Olympia WA 98504-7600**

**Fax: (360) 407-6715  
E-mail: [dwrn@ecy.wa.gov](mailto:dwrn@ecy.wa.gov)**

### **[COMMENT FORM](#)**

*To request ADA accommodation for disabilities, or printed materials in a format for the visually impaired, please call the Hazardous Waste and Toxics Reduction Program at 360-407-6700. Persons with impaired hearing may call the Washington Relay Service at 711. Persons with speech disability may call TTY at 877-833-6341.*

*El Departamento de Ecología del Estado de Washington invita el comentario público sobre las enmiendas propuestas a las Regulaciones de los Desechos Peligrosos, Capítulo 173-303 WAC. El periodo de recepción del comentario público estará abierto a partir del 18 de agosto de 2014 hasta el 1º de octubre de 2014. Habrá una audiencia pública el 24 de septiembre de 2014. Para mayor información, favor de contactar a Luis Buen Abad (425) 649-4485 o por correo electrónica a [Luis.Buenabad@ecy.wa.gov](mailto:Luis.Buenabad@ecy.wa.gov).*

**Ecology publication 14-04-046**

Ecology publication 14-04-046



## Dangerous Waste Regulations, Chapter 173-303 WAC Proposed Amendments, August 2014

This document contains preamble explanations for the proposed amendments to the Dangerous Waste Regulations, Chapter 173-303 WAC. It lists all proposed changes to the regulations. The proposed rule language is in a separate document, as are the changes to the *Chemical Test Methods for Designating Dangerous Waste*, Ecology publication number 97-407\*. The draft amendments were made available for public review February 2014.

Some changes were made to the draft rules after considering this input, including several minor clarifications and corrections. Draft rules that will not be proposed include:

- A draft rule exclusion for fuel and water mixture draw waters.
- Three draft changes pertaining to independent qualified registered professional engineer certifications.
- An Environmental Protection Agency (EPA) rule that adds gasification technology as another method for processing refinery dangerous waste.

Amendments based on federal rules are listed in Table 1. The summary paragraph from each Federal Register Notice is followed by an explanation of differences in the draft state rule language. State differences are highlighted in gray. If no differences are listed, Ecology will adopt all changes made by the federal rule into the state rule. State-initiated changes are listed in Table 2. The citations column lists the section of the regulations where changes were made to the Dangerous Waste Regulations.

The formal comment period on the proposed amendments begins August 18, 2014. Submit comments by October 1, 2014 using the [comment form](#). Formal comments can also be given at the proposed rule amendment public hearing to be held September 24, 2014.

\*See Ecology's Hazardous Waste and Toxics Reduction [rule amendment website](#) for these documents and more information about the rule amendment process.

### [COMMENT FORM](#)

If you have questions about these changes or the rulemaking process, call Rob Rieck at 360-407-6751.

**Table 1. Federal Rule Summaries**

**COMMENT FORM**

Federal Rule Title, Date, Federal Register (FR) Notice Page Number, and EPA Summary-	State Citation(s) where the federal rule language is proposed to be incorporated into the <i>Dangerous Waste Regulations</i>
<b>Differences in the State Draft Rule</b>	<b>WAC 173-303-</b>
<p><b>Standards Applicable to Generators of Hazardous Waste; Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material at Laboratories Owned by Colleges and Universities, and Other Eligible Academic Entities Formally Affiliated With Colleges and Universities</b>  <b>December 1, 2008 - 73 FR 72912</b></p> <p>EPA SUMMARY: The Environmental Protection Agency (EPA or the Agency) is finalizing an alternative set of generator requirements applicable to laboratories owned by eligible academic entities, as defined in this final rule. The rule provides a flexible and protective set of regulations that address the specific nature of hazardous waste generation and accumulation in laboratories at colleges and universities, as well as other eligible academic entities formally affiliated with colleges and universities. This final rule is optional and colleges and universities, and other eligible academic entities formally affiliated with a college or university, have the choice of managing their hazardous wastes in accordance with the new alternative regulations as set forth in this final regulation or remaining subject to the existing generator regulations.</p> <p><b>Differences in the draft State rule:</b> The proposed state rule adds an additional labeling rule requiring laboratory waste accumulation containers to have the accumulation start date written on the label, which is physically attached to the container. The federal rule only requires that the accumulation start date be "associated" with the container (for example, recorded in a computer spreadsheet). The second change adds state-only unused commercial chemical products as eligible dangerous wastes that can be managed under the laboratory clean-out provisions. EPA's final rule allows for unused commercial chemical products (P, U, and characteristic) generated from lab clean-outs to not be counted toward generator status; the state rule extends this allowance to state-only unused commercial chemical products. Another minor change requires small quantity generators who notify Ecology of their participation in the program to obtain EPA/state identification numbers, if they do not already have one. The federal rule does not have this requirement.</p>	<p>070(7)(c)(vi)            070(7)(c)(vii)            170(7)            170(7)(a) and (b)            235</p>
<p><b>Technical Corrections to the Standards Applicable to Generators of Hazardous Waste; Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material at Laboratories Owned by Colleges and Universities and Other Eligible Academic Entities Formally Affiliated With Colleges and Universities</b></p> <p>EPA SUMMARY: EPA is taking direct final action for six technical corrections to an alternative set of hazardous waste generator requirements known as the "Academic Laboratories rule" or "Subpart K," which is applicable to laboratories owned by eligible academic entities. These changes correct errors published in the Academic Laboratories Final rule, including omissions and redundancies, as well as the removal of an obsolete reference to the National Environmental Performance Track program, which has been terminated. These technical corrections will improve the clarity of the Academic Laboratories rule.</p> <p><b>Differences in the draft state rule:</b> These corrections have been made.</p>	<p>These technical correction citations are listed in the original rule described above.</p>

Federal Rule Title, Date, Federal Register (FR) Notice Page Number, and EPA Summary-	State Citation(s) where the federal rule language is proposed to be incorporated into the <i>Dangerous Waste Regulations</i>
<b>Differences in the State Draft Rule</b>	
<p><b>Revisions to the Requirements for: Transboundary Shipments of Hazardous Wastes Between OECD Member Countries, Export Shipments of Spent Lead-Acid Batteries, Submitting Exception Reports for Export Shipments of Hazardous Wastes, and Imports of Hazardous Wastes</b>  <b>January 8, 2010 – 75 FR 1236</b></p> <p>EPA SUMMARY: This rule amends certain existing regulations promulgated under the hazardous waste provisions of the Resource Conservation and Recovery Act (RCRA) regarding hazardous waste exports from and Imports into the United States. Specifically, the amendments implement recent changes to the agreements concerning the transboundary movement of hazardous waste among countries belonging to the Organization for Economic Cooperation and Development (OECD) and establish notice and consent requirements for spent lead-acid batteries intended for reclamation in a foreign country. They also specify that all exception reports concerning hazardous waste exports be sent to the International Compliance and Assurance Division in the Office of Enforcement and Compliance Assurance's Office of Federal Activities in Washington, DC, and require U.S. receiving facilities to match EPA provided import consent documentation to incoming hazardous waste import shipments and to submit to EPA a copy of the matched import consent documentation and RCRA hazardous waste manifest for each import shipment.</p> <p><b>Differences in the draft state rule:</b> There are no differences in the state rule.</p>	<p><b>WAC 173-303-</b></p> <p>170(6)  230(1)  240(11)  290(1)(b)  370(3)  370(7)  520(1)(a) and (b)</p>
<p><b>Hazardous Waste Technical Corrections and Clarifications Rule</b>  <b>March 18, 2010 – 75 FR 12989 (see also 4/12/2012 Clarification Rule)</b></p> <p>EPA SUMMARY: The Environmental Protection Agency (EPA or the Agency) is taking Direct Final action on a number of technical changes that correct or clarify several parts of the Resource Conservation and Recovery Act (RCRA) hazardous waste regulations that relate to hazardous waste identification, manifesting, the hazardous waste generator requirements, standards for owners and operators of hazardous waste treatment, storage, and disposal facilities, standards for the management of specific types of hazardous waste and specific types of hazardous waste management facilities, the land disposal restrictions program, and the hazardous waste permit program. These changes correct existing errors in the hazardous waste regulations that have occurred over time in numerous final rules published in the <b>Federal Register</b>, such as typographical errors, incorrect or outdated citations, and omissions. Some of the corrections are necessary to make conforming changes to all appropriate parts of the RCRA hazardous waste regulations for new rules that have since been promulgated. In addition, these changes clarify existing parts of the hazardous waste regulatory program and update references to Department of Transportation (DOT) regulations that have changed since the publication of various RCRA hazardous waste final rules.</p> <p><b>Differences in the draft state rule:</b> The state will adopt most of these corrections and clarifications. A few will not be adopted because they do not apply to Washington state or we have not adopted the specific rule that EPA is correcting at this time.</p>	<p>040  016(5) (table 1)  070(8)(a)(iii)  090(7)(a)(vii)  120(3)  120(3)(d)  140(4)(b)(iv)  180(3)(f)  200(1)(f)  200(2)(a)  200(2)(b)  200(3)(c)  220(2)(e) and Note  230(2)  350(2)  370(5)(e)(vi)  370(5)(f)(i)  370(5)(f)(vii)  370(5)(f)(viii)  505(1)(b)(i)  810(8)(b)  9903 (U 239)  9904 (F037)  9904 (K107)</p>

Federal Rule Title, Date, Federal Register (FR) Notice Page Number, and EPA Summary-	State Citation(s) where the federal rule language is proposed to be incorporated into the <i>Dangerous Waste Regulations</i>
<b>Differences in the State Draft Rule</b>	
<p><b>Hazardous Waste Technical Corrections and Clarifications Rule</b>  <b>April 13, 2012 – 77 FR 22229</b></p> <p>SUMMARY: The Environmental Protection Agency (EPA or the Agency) is taking final action on two of six technical amendments that were withdrawn in a June 4, 2010, Federal Register partial withdrawal notice. The two amendments that are the subject of today's final rule are: A correction of the typographical error in the entry "K107" in a table listing hazardous wastes from specific sources; and a conforming change to alert certain recycling facilities that they have existing certification and notification requirements under the Land Disposal Restrictions regulations. The other four amendments that were withdrawn in the June 2010 partial withdrawal notice will remain withdrawn unless and until EPA determines action is warranted in the future.</p> <p><b>Differences in the draft state rule:</b> Ecology is adopting the two changes mentioned above, but is also adopting one of the withdrawn technical changes. This change deletes the previous 200(1)(b)(v)(B) and moves the text to a new 200(1)(g). This change clarifies that this rule exemption applies to all generators, not just to generators with containment buildings.</p>	<p>WAC 173-303-</p> <p>200(1)(g)  505(1)(b)(i)  9904 (K107)</p>
<p><b>Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Removal of Saccharin and Its Salts From the Lists of Hazardous Constituents, Hazardous Wastes, and Hazardous Substances</b>  <b>December 17, 2010 – 75 FR 78918</b></p> <p>EPA SUMMARY: The Environmental Protection Agency (EPA or the Agency) is amending its regulations under the Resource Conservation and Recovery Act (RCRA) to remove saccharin and its salts from the lists of hazardous constituents and commercial chemical products, which are hazardous wastes when discarded or intended to be discarded. EPA is also amending the regulations under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) to remove saccharin and its salts from the list of hazardous substances. This final rule is in response to a petition submitted to EPA by the Calorie Control Council (CCC) to remove saccharin and its salts from the above lists. EPA is granting CCC's petition based on a review of the evaluations conducted by key public health agencies concerning the carcinogenic and other potential toxicological effects of saccharin and its salts, as well as EPA's own assessment of the waste generation and management information for saccharin and its salts. This review/ assessment demonstrates that saccharin and its salts do not meet the criteria in the hazardous waste regulations for remaining on EPA's lists of hazardous constituents, hazardous wastes, and hazardous substances.</p> <p><b>Differences in the draft state rule:</b> There are no differences in the state rule.</p>	<p>9903 (U202)  9903  9905</p>

Federal Rule Title, Date, Federal Register (FR) Notice Page Number, and EPA Summary-	State Citation(s) where the federal rule language is proposed to be incorporated into the <i>Dangerous Waste Regulations</i>
<b>Differences in the State Draft Rule</b>	WAC 173-303-
<p data-bbox="394 407 954 457"><b>Hazardous Waste Manifest Printing Specifications Correction Rule</b> June 22, 2011 – 76 FR 36363</p> <p data-bbox="394 457 1081 705">EPA SUMMARY: The Environmental Protection Agency (EPA) is taking Direct Final action on a minor change to the Resource Conservation and Recovery Act (RCRA) hazardous waste manifest regulations that affects those entities that print the hazardous waste manifest form in accordance with EPA's Federal printing specification regulations. Specifically, this action amends the current printing specification regulation to indicate that red ink, as well as other distinct colors, or other methods to distinguish the copy distribution notations from the rest of the printed form and data entries are permissible. This change will afford authorized manifest form printers greater flexibility in complying with the federal printing specifications.</p> <p data-bbox="394 730 1081 779"><b>Differences in the draft state rule:</b> No differences in the state rule. No changes to 173-303 are needed. This rule is already incorporated by reference at 180(7)(a)</p>	180(7)(a)
<p data-bbox="394 785 1081 856"><b>Land Disposal Restrictions: Revision of the Treatment Standards for Carbamate Wastes</b> June 13, 2011 – 76 FR 34147</p> <p data-bbox="394 856 1081 1178">EPA SUMMARY: <b>SUMMARY:</b> The Environmental Protection Agency (EPA or the Agency) is issuing a Direct Final Rule to revise the Land Disposal Restrictions (LDR) treatment standards for hazardous wastes from the production of carbamates and carbamate commercial chemical products, off-specification or manufacturing chemical intermediates, and container residues that become hazardous wastes when they are discarded or intended to be discarded. Currently, under the LDR program, most carbamate wastes must meet numeric concentration limits before they can be land disposed. However, the lack of readily available analytical standards makes it difficult to measure whether the numeric LDR concentration limits have been met. Therefore, we are providing as an alternative standard the use of the best demonstrated available technologies (BDAT) for treating these wastes. In addition, this action removes carbamate Regulated Constituents from the table of Universal Treatment Standards.</p> <p data-bbox="394 1203 995 1251"><b>State rule:</b> There are no differences in the state rule. This federal rule is incorporated by reference at 140(2)(a).</p>	140(2)(a)

**Table 2. State-Initiated Rule Amendments**

Citation	Requirement	Reason for change
WAC 173-303-		
040	In the definition for "Enforceable document" the reference to 610(1)(d) is changed to 610(1)(e), and the reference to 620(8)(d) is changed to 620(1)(d).	Citation for alternative closure/post closure requirements is corrected.
040	Clarify the definition for "Dermal Rabbit LD 50" to read "...half <b>or more</b> ..."	Technical clarification.
040	In the definition for "Facility" change RCW 70.105D.20(4) to RCW 70.105D.20(8).	Citation corrected.
040	Clarify the definition for "Fish LC 50" to read "...fifty percent <b>or more</b> ..."	Technical clarification.
040	Clarify the definition for "Inhalation Rat LC50" to read "...kills within fourteen days half <b>or more</b> of a group of ten rats each."	Technical clarification.
040	In the definition for "Release" change RCW 70.105D.020(20) to RCW 70.105D.020(32).	Citation corrected.
045	Change the reference date of EPA's hazardous waste and permit regulations to June 30, 2013.	Dangerous waste regulations must reference the correct version of 40 CFR Parts 260 through 280 and Part 124.
070(1)(b)	The wording is changed to clarify that every person who generates a solid waste must designate it.	This paragraph does not clearly say that a generator must designate their solid waste. This change will more closely match the language in 40 CFR 262.11 to clarify that a generator must designate their solid waste.
072(1)(b)	Remove non-existent subsection (5) from second sentence.	Internal citation corrected.
073(1)	Cite the definition of special waste in 040.	Referencing the special waste definition in 073 (1) directs the reader to the criteria for special waste. The generator must know if their waste designates as a special waste in order to manage it as such.
073(2)(e)(v)	Limits special wastes held at transfer stations to no longer than 30 days. The transfer station operator has the option of applying to the solid waste permitting authority for a longer holding time.	The rule does not give a time limit for holding special wastes at transfer stations. A regulatory time limit helps prevent special wastes from being accumulated for long periods of time at the transfer station, with an increased potential for releases.
073(2)(g)	Clarify that transport of special waste must meet US DOT hazardous materials shipping requirements. Renumber current 073(2)(g) to (h).	The special waste bill of lading form in 9906 does not contain information needed to meet US DOT hazardous materials shipping requirements. This change clarifies applicability of US DOT shipping regulations to special waste.
073(2)(h)(i) and (ii)	Update references and language to match the revised WAC 173-351-300.	Clarify that special wastes disposed in alternative design solid waste landfills have an engineered liner with leachate collection.
100(5)(b)(i)	Insert hyper script "a" following parenthetical description of test endpoints.	Editing correction.
110(3)(a)	Update to latest edition of SW-846 and how it can be obtained.	Reference updated.
110(3)(c) 110(7)	Update Chemical Test Methods (CTM) guidance (publication number 97-407) Chapter 3.8 <i>Test Methods for Determining Halogenated Organic Compounds</i> , Chapter 3 endnotes, and Appendix 5.	The revision will clarify appropriate test methods to be used to designate persistent wastes.

Citation	Requirement	Reason for change
WAC 173-303-110(3)(g)(ix) 110(3)(h)(vii)	Update reference to API Manual of Petroleum Measurement Standards.	Reference updated.
110(3)(h)(i)	Update reference to NFPA 30 Flammable and Combustible Code.	Reference updated.
130	Delete WAC 173-303-130 "Containment and control of infectious wastes."	This action removes the section from the rule.
140(4)(d)(iii) 335(4) 400(3)(c)(vi)(B) 610(6) 610(11) 810(14)(a)(i) 830(4)(a)(i)(A)	Add language allowing facilities to submit information to Ecology via electronic format, such as email or fax. Sample language includes "other means that establish proof of receipt (including applicable electronic means)..."	These changes will be consistent with state law requiring state agencies to accept documents submitted electronically.
170(3) 370(1) 600(2)	Change three rules to better define facilities allowed to accept dangerous waste (DW): <ul style="list-style-type: none"> <li>170(3) is modified to clarify that the TSD facility requirements are the final facility standards found in section 600, which include sections 280-395 by reference.</li> <li>370(1) clarifies that the phrase "owners and operators" applies specifically to owners and operators of permitted TSD and DW recycling facilities.</li> <li>600(2) clarifies that only permitted dangerous waste facilities, DW recycling facilities, or exempted facilities can accept DW from off-site sources.</li> </ul>	The regulations don't clearly say that a person or facility that accepts dangerous waste from other generators must have a RCRA permit or be a dangerous waste recycling facility. These rule changes will clarify who is allowed to receive dangerous waste.
180(3)(c)	Delete 180(3)(c) dangerous waste shipment instructions. 180(3)(d), (e) and (f) are renumbered.	This rule isn't needed because it repeats the text in 180(1)(c). Also, it is inconsistent with the RCRA manifest rules for this section.
180(6)	Change "Item 11" to "Item 9b."	Correct error in manifest item number in order to keep rules up to date with current uniform hazardous waste manifest.
190(5)(b)(ii)	Change internal 180(7) reference to 180(6).	Correct citation error.
200(1)(b)(iv) 200(4)(a)(iv)(iii) 400(3)(c)(xxii)(B) 64690 650(4)(c) 650(5)(d)(ii)(B) 660(6)(e)(ii) 665(2)(a)(i) 806(4)(d)(v) twice 806(4)(e)(iii)(A)(i) 806(4)(h)(ii)(A)(i)	Add the requirement that facilities use an "independent qualified registered professional engineer" instead of a "qualified professional engineer" (or similar language) for certifications.	EPA's 2006 Burden Reduction Initiative Rule modified RCRA to allow use of in-house professional engineers (PE) for certification purposes. The 2009 dangerous waste regulatory amendments retained the requirement that independent professional engineers be used. With these changes, Ecology seeks to clarify that facilities use an independent PE in situations where PE certifications are required. In response to informal comments indicating compliance would be very difficult and impractical, we decided not to propose three of these rules affecting certification of long term projects.  This change maintains consistency with other Chapter 173-303 WAC requirements where an independent qualified registered professional engineer must be used.

Citation WAC 173-303-	Requirement	Reason for change
200(1)(b)(iv)(B)	Move second sentence to new 200(1)(g).	Correct rule placement error. This sentence is meant to apply to all generators subject to 200(1). Its current placement makes it applicable only to 200(1)(b)(iv) containment buildings.
200(5) 400(3)(c)(xxii)(B) 040	Delete definition of "Performance track member facility" and subsection 200(5) dealing with National Environmental Performance Track program.	The National Environmental Performance Track program (NEPT) was terminated by EPA on May 19, 2009. EPA does not intend to reinstate the program, but has not yet removed the NEPT regulations from RCRA. Ecology proposes to remove references to the program from our dangerous waste regulations.
200(2)(b) 200(3)(c)	Delete the phrase "per waste stream."	Changed for consistency with federal rules. The phrase was also found in 200(2)(a), but was deleted in the 2009 rule amendments. These two instances were overlooked.
240(6)	In the third sentence, remove capital letters from the words "Provided" and "That."	Editing correction.
330(1)(d)	The second sentence of existing 330(1)(c)(ii) is changed to 330(1)(d), and the current (d) is renumbered to (e).	Editing correction. The second sentence of 330(1)(c)(ii) is a distinctly different requirement than the preceding sentence, and needs to be cited separately.
380(1)(r)	Add a new sub sub section (r) requiring certificates of major tank system repair (as required by 640(7)(f)) to be retained in the operating record.	This requirement was in the federal 2006 Burden Reduction Initiative rule, but by oversight was not adopted during the last Dangerous Waste rule amendments.
400(3)(c)(ii)(G) 645(1)(e) 800(2) 800(12) 806(4)(a) 806(4)(c)	Adopt federal rules that allow use of enforceable documents in lieu of RCRA post closure permits.	This rule allows interim status facilities to use Model Toxics Control Act enforceable documents, such as agreed orders, in place of a RCRA post closure permit. This option provides an easier, more efficient regulatory process for facilities entering post closure while maintaining appropriate agency oversight.
505(1)(b)(iv)	In the second sentence, correct the citation reference (b)(v)(A) to read (b)(iv)(A).	Correct citation error.
573(9)(b)(ii)(A)	Add "and manages" after "Removes"	The rule is corrected to match the federal rule.
573(19)(iv) and (v)	Remove the reference to thermostats in subparagraph (iv), and revise the universal waste calculation in subparagraph (v) to delete thermostats from the example calculation.	Thermostats are no longer a separate universal waste category. They are now considered to be a type of mercury-containing equipment.
600(1)	Reword to say "Final facility standards are established in WAC <a href="#">173-303-600</a> through <a href="#">173-303-695</a> , and also include WAC <a href="#">173-303-280</a> through <a href="#">173-303-395</a> . Final facility standards are minimum statewide standards, which describe the acceptable management of dangerous waste.	This change clarifies which rules are the final facility standards.
610(3)(a)(ix) 610(3)(b)(ii)(D) 610(8)(b)(iv) 610(8)(d)(ii)(D) 040 "enforceable document"	The reference to 620(8)(d) is changed to 620(1)(d) for these rules.	Correction of citation error. 620(8)(d) is an incorrect reference to alternative requirements for financial assurance for post closure.
610(4)(c)	Change internal citations to match analogous RCRA rule at 40 CFR 264.113(c).	Technical correction.



Citation WAC 173-303-	Requirement	Reason for change
610(12)(f)	610(12)(f) is missing the word "the" before the word department.	Editing correction.
620(1)(d)(i)	Replace the reference to 610(1)(d) with 610(1)(e).	Correction of invalid reference.
620(3)(a)(ii) 620(6)(a) 620(9)(a)	Revise wording to be gender neutral.	Edit to meet Code Reviser standards.
620(3)(a)(ii) 620(5)(a)	Revise to ensure that cost estimates for financial assurance are done by a third party, and not by a related corporate entity.	Clarification of types of financial assurance estimates that meet the intent of the regulations.
620(3)(a)(iv) 620(4)(g) 620(6)(c)	Revise rules to clarify that cost estimates for closure and post-closure financial assurance must be in current dollars, and net present value adjustments are not allowed.	This clarification makes the rule easier to understand and comply with.
620(4)(a)(vi) 620(4)(d)(iv) 620(6)(a)(vi)	Revise rules to clarify that the financial test and the corporate guarantee are two separate but related options.	Correction of misleading rule language. The current wording of the rule technically requires both documents to be submitted, but only one document is actually required.
620(4)(d)(iv) 620(6)(a)(vi) 620(8)(a)(iv)	Raise the minimum tangible net worth requirement from \$20 million to \$25 million to qualify for use of the financial test or corporate guarantee option.	This change raises the tangible net worth requirement to keep pace with inflation.
620(4)(d)(v) 620(6)(a)(vii)	Add a rule allowing facility owners/operators requesting the use of the financial test or corporate guarantee to submit an "Agreed Upon Procedures" report in place of a "negative assurance" report as required in federal regulations.	Federal rules require a negative assurance financial report from a certified public accountant (CPA) attesting to the accuracy of the financial documents. Due to CPA conduct rules, CPA's are no longer allowed to submit this type of report. This rule allows submittal of a type of financial report that is acceptable to EPA.
620(8)(a)(i) (renumber (8)(a)(i), (ii), and (iii))	Update the minimum financial assurance amounts for liability coverage.	The amount of liability coverage is increased to keep pace with inflation.
620(11) 64620(5)	Add rules for corrective action financial assurance.	No federal or state financial assurance rules currently exist for corrective action sites. This rule codifies existing EPA guidance and current Ecology practice as it is used in MTCA Agreed Orders and Consent Decrees.
620(1)(d)(i)	Change the reference to 610(1)(d) to 610(1)(e).	Technical correction. 610(1)(d) is an incorrect reference for alternative requirements.
630(7)(d)	Remove the word "generators" and put in "owners and operators."	TSD applicability clarification: The section clearly applies to TSDs, and indirectly to generators through 200(b)(i).
110(3)(g)(ix) 110(3)(h)(i) 110(3)(h)(vii) 640 (2)(c)(v)(B) Note 640(4)(i)(iii) Note 640(9)(b)	Update test methods.	Update test method references to latest edition.
645(8)(c)	Add the phrase "...applicable to resource protection wells, which are..." to the fourth sentence.	Clarify that the standards applicable to resource protection wells apply to this rule.

Citation WAC 173-303-	Requirement	Reason for change
650(6)(b)(ii)	Change reference citation from (2)(j)(ii)(D) and (E) to (2)(j)(iii)(D) and (E).	Correct citation error.
806(4)(j)(iv)(C) 806(4)(k)(v)(C)	Delete the word "design."	The rule is corrected to match the federal rule. The intended meaning is not affected.
806(4)(n) 811 841	Add solid fuel boiler, liquid fuel boiler, and hydrochloric acid production furnace to facilities listed in 806(4)(n), 811, and 841.	Ecology adopted the NESHAPS Hazardous Waste Combustors rule in 2009. By oversight we did not include these types of boilers and furnaces, which are permitted to burn hazardous waste.
810(14)(a)(i) Note	Add the word "qualified" to the phrase Independent registered professional engineer.	Technical correction to match regulatory defined term.
830 Appendix I	Add new entry O. "Burden Reduction" to the permit modifications table in Appendix I.	In 2009, Ecology adopted EPA Burden Reduction rules allowing use of a single contingency plan and for changes to detection and compliance monitoring program. These changes are now added to the permit modification table in section 830.
830(4) Appendix I (F)(1)(c) (F)(4)(a) (G)(1)(e) (G)(5)(c) (H)(5)(c)	Add the following note at the end of these citations, "Note: The RCRA section referenced above, 40 CFR 268.8(a)(2)(ii), is no longer in the RCRA regulations. It was removed on April 8, 1996 (61 FR 15599)."	EPA has not corrected the analogous RCRA rules to remove this reference to a non-existent RCRA rule. Once EPA makes the corrections, Ecology will correct the dangerous waste regulations.
905	Delete rule.	This rule conflicts with Public Records Act (PRA) rules. PRA rules require state agencies to respond to public disclosure requests within 5 days, but do not require them to furnish public records within a specified time frame. 905 could be interpreted to require Ecology to provide requesters with dangerous waste records within 20 working days.
9903	Correct errors with waste codes, CAS numbers, and chemical names.	Technical corrections.
9904 K181 9904 K181 (iv) 9904(4)(b) 9904(4)(c) 9904(4)(c)(i) and (ii)	Correct an error in the K181 listing for non wastewaters from dye and pigment production. In addition, six internal references are corrected.	The K181 listing code number is not in effect because of an error when the rules were filed with the Code Revisers Office in July 2009. This error resulted in the listing number itself not becoming adopted during the 2009 rule amendment process, but the rule language was adopted. This correction makes the listing fully effective.
9904 K069 listing	Add an administrative stay note for sludge generated from secondary acid scrubber systems in 40 CFR 261.32. The note follows the K069 listing.	EPA dropped slurries from air pollution control devices from the listing. This change will match the federal K069 listing.

## Appendix D: Excerpt from the: 2009 Concise Explanatory Statement and Responsiveness Summary for the Adoption of Chapter 173-303 WAC, The Dangerous Waste Regulations

**Comment 26:** The commenters request that the word “independent” be removed from the phrase “independent qualified registered professional engineer.” They do not agree that the use of licensed, in-house Professional Engineers (PE) has the potential to lessen the level of environmental protection, and in some cases may actually improve environmental performance. Use of independent PEs to verify certifications required under the dangerous waste regulations will add more time and costs for generators.

**Response:** *Although removal of the “independent” clause was a part of the federal burden reduction initiative, Ecology did not choose to adopt this part of the federal rule change and it will remain. The proposed and final rule the word “qualified” is added to the description of a professional engineer. The reason is because the word “qualified”, although included in the definition of “independent qualified registered professional engineer”, was inadvertently left out in several places where the phrase is used in the dangerous waste regulations. The addition of the word “qualified” will make the phrase consistent with the phrase defined in section -040.*

*Ecology does not agree that use of an in-house PE to certify engineering documents will provide significant financial relief. Companies often hire PE consultants to perform engineering work, and the cost of an independent PE certification under ordinary circumstances is small compared to the consulting services paid to perform other engineering work. Note that facilities are still permitted to use qualified in-house engineers in preparing analyses that underlie these certifications and can potentially lower their costs by using this specific flexibility.*

*Independent review and certification minimizes the potential for conflict of interest that can result when in-house PEs are used. An in-house PE may face internal management pressure to certify an inadequate engineering document, whereas an independent PE will not face this same type of pressure. They are not a full time employee of the company, with potential negative impacts to their career.*

*Ecology also believes that the public would have reduced confidence in the accuracy and meaning of the engineering review and certification if it was conducted by an employee of the facility. The public is more likely to suspect a conflict of interest and demand a more rigorous review by state agencies (especially during RCRA permit decision public comment periods).*