DEPARTMENT OF ECOLOGY
State of Washington

Concise Explanatory Statement
Chapter 173-303 WAC
Dangerous Waste Regulations

Summary of rulemaking and response to comments

September 2020

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For more information contact:

Hazardous Waste and Toxics Reduction Program
P.O. Box 47600
Olympia, WA 98504-7600
Phone: 360-407-6700

Washington State Department of Ecology - www.ecology.wa.gov

- Headquarters, Olympia: 360-407-6000
- Northwest Regional Office, Bellevue: 425-649-7000
- Southwest Regional Office, Olympia: 360-407-6300
- Central Regional Office, Union Gap: 509-575-2490
- Eastern Regional Office, Spokane: 509-329-3400

Concise Explanatory Statement

Chapter 173-303 WAC
Dangerous Waste Regulations

Hazardous Waste and Toxics Reduction Program

Washington State Department of Ecology

Olympia, Washington

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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): 173

Adopted date: September 30, 2020

Effective date: October 31, 2020

To see more information related to this rulemaking or other Ecology rulemakings please visit our website: https://ecology.wa.gov/About-us/How-we-operate/Laws-rules-rulemaking.

Reasons for Adopting the Rule

Chapter 173-303 WAC implements Chapter 70.105 RCW and Subtitle C of the federal Resource Conservation and Recovery Act (RCRA). Chapter 70.105 RCW provides authority to adopt regulations for dangerous waste management.

The Department of Ecology (Ecology) plans to amend specific sections of the Dangerous Waste Regulations to incorporate new federal hazardous waste rules, including but not limited to:

1) Management Standards for Hazardous Waste Pharmaceuticals and Amendments to the P075 Listing for Nicotine. 84 FR 5816; February 22, 2019.

2) Safe Management of Recalled Airbags. 83 FR 61552; November 30, 2018.

3) User Fees for the Electronic Hazardous Waste Manifest System and Amendments to Manifest Regulations. 83 FR 420; January 3, 2018.

State-initiated amendments include:

1) Correcting and clarifying the Generator Improvements Rule and other dangerous waste rules adopted January 28, 2019.

2) Updating Biological Testing Methods for the Designation of Dangerous Waste publication 80-12.

3) Making other clarifications and corrections as necessary.

Why are we doing this rulemaking and what are we intending to accomplish?

The state dangerous waste regulations have been updated to clarify requirements, streamline compliance, and ensure that dangerous wastes are properly and safely managed. Under federal law, Ecology is required to adopt certain federal hazardous waste rules to maintain its authorization by the U.S. Environmental Protection Agency (EPA) and remain consistent with EPA regulations. Other new federal hazardous waste rules are optional for the state to adopt, such as the recalled airbag rule and portions of the pharmaceutical rule.

By adopting required and optional federal rules, we promote better waste management, environmental protection, consistency with the federal rules, and provide regulatory relief.

Federal rules and reasons for adoption:

1) Hazardous waste pharmaceutical rule and amendments to the P075 listing for nicotine:

    a. Set consistent, mandatory standards for health care facilities and reverse distributors, helping them better manage their waste streams and simplify compliance.

    b. Prohibit disposal of dangerous waste pharmaceuticals down the drain, resulting in fewer toxic chemicals in our waterways.

c. Remove over-the-counter nicotine replacement therapies—including nicotine-containing patches, gums, and lozenges—from being listed as P075 acutely hazardous waste when discarded. This may allow some retail stores and pharmacies with these waste streams to lower their generator category.

2) Safe management of recalled airbags:

   a. Provides regulatory relief to generators and transporters of airbag modules and inflators.

   b. Facilitates expedited removal of defective Takata airbag inflators from vehicles by Washington state dealerships, salvage yards, and other locations for safe and environmentally sound disposal.

3) User fees and amendments for the electronic hazardous waste manifest system:

   a. Set standards for determining electronic manifest user fees.

   b. Modify some existing manifest regulations.

   c. Improve generator and state regulator access to the hazardous waste manifest system for tracking dangerous waste shipments.

Ecology also adopted state-initiated amendments that improve the existing regulations:

1) Correct and clarify the recent state dangerous waste rule amendments adopted January 28, 2019.

2) Update the biological test methods publication to improve the static acute fish toxicity method, making it more usable and cost effective for designating dangerous waste. The acute oral rat toxicity test method is no longer needed; it is removed from the publication and regulatory citations.

3) Clarify and correct other regulations to improve the usability of the rules. As an example, we adopted a change to the final facility permit rule at WAC 173-303-806(4) to clarify professional engineer certification requirements for permit engineering documents submitted to us.

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 March 25, 2020 and the adopted rule filed on September 30, 2020. We made these changes for the following reasons:

- In response to comments we received.
- To ensure clarity and consistency.
- To meet the intent of the authorizing statute.

The following list describes the changes and our reasons for making them. We did not include changes made solely for minor editing corrections or clarification purposes in this section.

1. **WAC 173-303-017(8)(a), -017(8)(a)(viii), -017(8)(b), -200(15)(b)(i), -200(15)(b)(iii), -555(12)(a)(i) and (ii).** Corrected references to the site identification form.

   Reason for change: We updated references to the "Washington State Dangerous Waste Site Identification Form" so all citations use the same terminology.

2. **WAC 173-303-070(4).** Removed proposed rule requiring facilities to submit waste analysis plans to Ecology.

   Reasons for change: After considering public comments and internal input, we determined that existing rules provide adequate means for agency staff to work with generators and obtain representative sampling and analysis plans when needed to ensure accurate waste designation.

3. **WAC 173-303-170(5)(b).** Removed the term, "injunctive relief."

   Reason for change: We corrected an oversight. In the proposed rules, this phrase was deleted from section -170(5)(a) and in the first paragraph of -170(5)(b) because Ecology's penalties are only appealable to the Pollution Control Hearings Board, which does not have authority to grant injunctive relief. By mistake, "injunctive relief" was not deleted from the second paragraph of -170(5)(b), which is why we are removing it now.

4. **WAC 173-303-172(5)(a), -172(9)(a)(iv), -200(3)(a), -200(7)(a)(iv), -200(13)(a)(iv)(A)(III), -201(7)(e), - 201(14)(k)(i).** Replaced "owner or operator" with "generator."

Reason for change: These rules apply to generators, not to owners and operators of permitted treatment, storage, and disposal facilities. Using the term "generator" will avoid confusion about applicability of the rule.

5. **WAC 173-303-201(9)(b)(i).** Changed proposed internal references from "subsections (8) through (14)" to "subsections (8) and (14)."

   Reason for change: The proposed rule incorrectly referenced subsections (9) through (13) of section -201 as part of the contingency plan description of facility personnel emergency actions. The applicable subsections are (8) and (14). This change matches the references used in the analogous federal hazardous waste rule.

6. **WAC 173-303-220(3).** Removed the phrase "including, but not limited to," in the parenthetical statement and replaced it with, "for example." We also removed the proposed term "nonengineering reports."

   Reason for change: This change clarifies that the list of additional reports Ecology might request from a generator (provided in rule) are only examples for added clarification on types of reports concerning the quantities and disposition of the generator's dangerous waste and the generator's compliance with the chapter. The proposal to add the term "nonengineering reports" is no longer needed, since the plans, specifications, and engineering reports examples adequately explain the types of reports Ecology might request.

Response to Comments

Ecology accepted comments starting March 15, 2020 until May 26, 2020. This section provides original verbatim comments that we received during the public comment period and our responses. (RCW 34.05.325(6)(a)(iii))

Comments are sorted by organization and commenter's name. Our responses follow each comment.

Commenter Index

The table below lists the names of organizations and individuals who submitted a comment on the rule proposal and where you can find Ecology's response to the comments. Comments are sorted by organization and commenter, and assigned a comment number. Our response follows each comment.

Commenter Organization	Commenter Name	Comment Numbers
Seattle City Light	Aurana Lewis	A-1-1 through A-1-2
U.S. Department of Energy	Anthony McKarns	A-2-1 through A-2-5
City of Spokane	Kelle Vigeland	A-3-1 through A-3-5
PharmEcology Services, WMSS	Charlotte Smith and Kathleen Skibinski	B-1-1 through B-1-7
Boeing Company	Steve Shestag	B-2-1 through B-2-7

A-1: Aurana Lewis, Seattle City Light.

Comment A-1-1

The commenter requests that the sentence in WAC 173-303-141(2) not be deleted; the EPA/state identification number should continue not to be required in this situation. The requirement for an EPA State ID may limit the types of facilities that can accept these materials for treatment or recycling. The regulations in other states may allow for a broader use of materials than Washington State and it's unclear that Washington's rule should be applied in this manner.

Response to A-1-1

The commenter objects that this change to section -141 will reduce out-of-state treatment and disposal options for Washington generators. We are adopting this sentence as proposed. The adopted rule now requires that generators send their Washington state-only dangerous waste exclusively to out-of-state facilities that have an EPA/state identification (ID) number.

As background, WAC 173-303-141(2) had allowed generators to send state-only dangerous waste to out-of-state facilities that would legitimately treat or recycle the dangerous waste. The rule further allowed generators not to put the receiving facility EPA/state ID number on the manifest and generator annual reports. The rule implied that out-of-state receiving facilities did not need an EPA/state ID number in order to take Washington state-only waste for treatment or recycling.

We adopted this change because E-manifest rules now require that all facilities receiving hazardous waste have an EPA/state ID number, which is entered on the manifest. This rule change acknowledges that out-of-state receiving facilities, including facilities that take state-only dangerous waste, must have an EPA/state ID number, which the sending generator will indicate on the manifest and on annual reports.

Comment A-1-2

The broad request for reports in WAC 173-303-220(3) related to “the generator's compliance with this chapter” is vague and does not provide clarity to generator regarding what materials they should be keeping to provide or demonstrate compliance. The regulations clearly state what reports and paperwork are required to meet regulatory standards, and the possible request of materials outside of those identified by regulation creates uncertainty for generators' recordkeeping.

Response to A-1-2

We are adopting the proposed change to WAC 173-303-220(3), adding, “and the generator’s compliance with this chapter.” The intent of this addition is to reinforce our ability to ask for and receive available and regulatory required documents under Chapter 173-303 WAC. It is not intended to ask for new generator documentation beyond what the regulations support.

As background, the analogous federal regulation at 40 CFR 262.43 *Generator Reporting* only requires generators to furnish additional reports about amounts and disposition of their hazardous waste at agency request. No examples are given about what types of reports an agency might request.

The Washington state rule additionally gives examples of what types of reports would be included. These examples do not go beyond the intent of the federal rule, but are meant to clarify the types of documents we might request. In the adopted rule, we clarify that the reports are meant as examples, and are not limited to those listed in the text.

A-2: Anthony McKarns, U.S. Department of Energy, Hanford Contractor WRPS.

Comment A-2-1

WAC 173-303-070(4)

Ecology does not have regulatory authority over every element or component of a waste analysis plan (WAP). WAC 173-303-070(4) and -110 already specify testing methods, and the testing method in turn already controls typically how a sample is to be collected, transported, analyzed, and hold times. The requirement to create a WAP, much less the internal details contained in a WAP of how an Owner/Operator will perform accomplishing these requirements operationally is beyond Ecology's purview and regulatory authority. If Ecology were to make this a requirement, then they need to identify exactly which elements of the WAP that they will be reviewing that are within their regulatory authority to oversee and approve (which constrains them to simply verifying selected testing methods comply with -110), they must have appropriate constraints in place such as a time limit for review/approval, as well as identification of that dispute process that will be utilized to resolve issues when they do not approve a WAP.

Response to A-2-1

See related Boeing comment and response comment B-2-2. We have decided not to adopt the proposed change to WAC 173-303-070(4): "The department may require persons to submit a waste analysis plan to, and receive written approval from, the department prior to testing a waste."

After considering comments and internal input, we have determined there is no need for this change. Existing rules provide adequate means for us to work with generators and obtain sample and analysis plans when needed.

Comment A-2-2

WAC 173-303-100(5)

In accordance with the Washington State rule making requirements and process, please provide the technical justification and cost-benefit analysis that was used to justify removal of rat bioassays and limiting testing to only fish bioassays. Multiple bioassay options have always been needed as aquatic fish bioassays rarely adequately represent or provide for mammalian or terrestrial toxicity, nor does it adequately provide information on hydrophobic/insoluble compounds.

Response to A-2-2

We asked for informal input last fall on the draft rule proposals, including removal of the rat bioassay option from WAC 173-303-100 and the Biological Test Methods Publication 80-12. At that time, we did not hear any objections to removing the rat bioassay option. Also, we have surveyed Washington state labs that perform the fish bioassay, and none had objections to removing the rat bioassay procedure.

Our staff is not aware of any Washington state generators running the rat bioassay in designating their solid waste for state toxic criteria. We also are not aware of any accredited Washington labs that perform this test. Further, we have anecdotally heard it is very expensive to run this test, and Washington generators use the fish bioassay instead. Also, our team working on updates to the biological test method publication found that regulatory and scientific communities are moving away from animal testing, especially of mammals, for ethical reasons.

We agree the fish bioassay does not adequately represent mammalian toxicity. For purposes of determining if a waste should be classified and managed as a state toxic dangerous waste, we believe the fish bioassay is adequate, as it is a good way to determine effects on the environment and on aquatic species. Also, removing the rat bioaasay option does not affect book designation procedures. Rat bioassay data can continue to be used for book designation purposes (see WAC 173-303-100(5)(b)).

Comment A-2-3

173-303-172(9)(a)(v), 173-303-200(7)(a)(v)

Remove the new bullet in these sections that would require a Generator/Owner/Operator to perform specific actions in regards to label visibility purely to support an inspection. This bullet does not make sense as is. If the intent of this change is to ensure the weekly Generator inspections conducted under 5(d)/3(d) of the section also inspect labels (which is not presently even an inspection requirement in 5(d)/3(d)), then the criteria to look for obscured, missing, or illegible labels should be added to the inspection criteria in 5(d) itself. Otherwise anyone, inspector or not, trying to verify compliance with container labeling requirements should always enter the actual container storage area utilizing the same physical approach to see and inspect the labels on a container as a worker. The label requirements do not require labels be visible from all directions and angles of approach. One set of labels on a container is the requirement, and that means that no matter how a Generator tries, there will almost always be directions and angles of approach where the labels will not be visible. This is especially true of the containers in an outdoor or more open area. To meet the existing EPA and Ecology labeling requirements, including the intent, container labels are placed and arranged primarily to support the actual worker's needs and use as they have the highest risk and the greatest need to be able to readily see the labels on a daily basis. If an inspector were to approach the containers from a different avenue, where the labels are not readily visible, there is no requirement or technically sound reason to put workers or the environment at additional and unnecessary risk of harm or a spill, simply to turn or move containers when needed purely to demonstrate to the inspector that a container is properly labelled. Which is one way this change could be interpreted. This would in fact, be directly contradictory to the stated intent of the rule and requirements.

Response to A-2-3

We will keep the proposed rule change requiring labels to be readable in the course of inspection. This rule is not a new one, having been a generator requirement (by reference to WAC 173-303-630(3)) prior to the generator improvements rules adopted in 2019. By adding this rule back into the medium and large quantity generator container labeling requirements, we are correcting an oversight that occurred during the generator improvements rules reorganization.

This is why labels need to be visible:

- In large part, the RCRA hazardous waste regulations (although noted as the minimum standards for each state) and the state's dangerous waste regulations are a set of preventative rules to protect human health and the environment.

- Requiring labels to be visible and readable provides employees, emergency response personnel, and the public (such as contractors, repair persons, delivery persons, inspectors, family members, and other outside business personnel who find themselves on site) with quick, visual knowledge about the hazards posed by the container's contents. This gives the public and employees a choice whether they should get close to the container, and knowledge about the risk associated with that choice.

- Unobscured (visible) and readable labels also help during an evacuation, again to provide knowledge while approaching. It also provides clear and quick information to emergency responders so they can choose the best approach in responding.

- Readable labels help ensure that incompatible wastes will not be mixed together.

If a container's label is facing a wall, corner, inside rows, or facing an inaccessible area, as examples, those label placements would not meet the intent of the rule.

Having one label per hazard that is "visible" is the requirement; this also applies to the "dangerous/hazardous waste" label and the marking or label used for the start date.

Comment A-2-4

WAC 173-303-201(9)(b)

The change expands the contents of the contingency plan to include and address multiple other sections in 303-201. This change has no technical justification or basis as these items are already required to be addressed/complied with per this section in other avenues that Ecology already has authority over. Adding them to the contingency plan itself in addition, is therefore nothing but duplicative and unnecessary effort that will not add or provide any benefits to protecting human health and safety, or the environment. Making this is a substantial and significant change that will be incredibly burdensome (time and money) on an owner/operator/generator as well as Ecology to comply with. Ecology needs to provide the appropriate technical justification and cost benefit analysis required by State rule making regulations/process in order to support making this change.

Response to A-2-4

The commenter is objecting to the proposed rule including subsections (8) through (14) of section -201 to be part of the contingency plan description of facility personnel emergency actions. We agree that the contingency plan information as required in -201(9)(b) does not need to address section -201(9) **through** (13). The reference will continue to cite -201(8) *Contingency plan purpose and implementation (*in keeping with the federal rule at 40 CFR 262.261(a)) **and** -201(14) *Emergency Procedures*. Section -201(14) lists the key procedures that must be addressed in the contingency plan.

Comment A-2-5

WAC 173-303-806(4)(a)

In Ecology's official response to comments on the proposed draft of this rule revision, they claim the federal employee exemption in 18.43.130(6) RCW and WAC 196-29-200 which promulgates it, does not apply. However, Ecology has not provided an appropriate legal basis or technical justification to support their response for why that requirement in the statute or the associated WAC that promulgated it would not apply. WAC 173-303 on its own cannot, without an adequate legal basis, arbitrarily cherry pick and declare that only these parts of this RCW apply as needed to support the PE requirement in -303, but not this part of the RCW for the federal exemption simply because Ecology finds it undesirable. Despite the lack of an adequate legal basis, Ecology has already acknowledged that they do not intend to comply with, or consider the federal exemption in the RCW and WAC applicable, indicating they intend to implement and enforce these requirements in an illegally inconsistent and discriminatory fashion. Until Ecology can provide a legal basis for over-ruling and/or for why WAC 173- 303 is the only process that does not have to comply with 18.43.130(6) RCW as promulgated into WAC 196-29-200, Ecology needs to revise WAC 173-303 to state that any documents required per WAC 173-303 to be submitted for a Part B permit application that are also subject to 18.43 RCW (as promulgated into WAC 196-23 and 196-29), are subject to and must comply with those requirements as applicable and in their entirety. This includes acknowledging that at this time, the Federal exemption requirement also still applies.

Response to A-2-5

United States Department of Energy Hanford's comment suggests that we revise Chapter 173-303 WAC to say that documents submitted for a Part B permit application are subject to Chapter 18.43 RCW as applicable and in its entirety. The comment continues on to say that since WAC 196.29.200 and the underlying statute RCW 18.43.130(6) refer to the federal employee exemption, we should also acknowledge in rule the federal employee exemption applies.

We have considered this comment and have adopted the rule as proposed. WAC 196-29-200, as specified in the comment, applies independently of the reference to Chapter 18.43 RCW in the proposed rule. The proposed rule change is specifically dealing with this engineering statute and Chapter 196-23 WAC on engineering document requirements. The rule change does not pertain to other sections of Chapter 18.43 RCW, such as the citation dealing with the federal employee exemption. Therefore, we find that United States Department of Energy's suggested change would serve no purpose.

A-3: Kelle Vigeland, City of Spokane – Waste to Energy Facility.

Comment A-3-1

The City Of Spokane generally supports the proposed rulemaking by Ecology particularly with its focus on incorporating EPA's new pharmaceutical provisions. The proposed rule, once adopted, should address the pharmaceutical disposal challenges that led to Ecology's Interim Pharmaceutical Waste Policy and also improve consistency with the Drug Enforcement Agency's requirement for destruction. The City of Spokane Waste to Energy Facility currently accepts drugs and pharmaceuticals for disposal/destruction as allowed in the current Dangerous Waste rule, its

solid waste and air permits and the facility's Special Handling/Non-Typical Waste Program. The Special Handling/Non-Typical Waste Program was reviewed and mutually agreed to by the Spokane Regional Health District, the Spokane Regional Clean Air Agency, and the Department of Ecology Solid Waste and Hazardous Waste Divisions. The City of Spokane is committed to providing safe, cost effective, and environmentally protective disposal of waste while complying with all applicable laws, rules, regulations, and permits. The City offers the following specific comments related to the draft rule filed on March 25, 2020, particularly as it relates to operations at the City of Spokane Waste to Energy Facility. The City is committed to follow both the letter of the law and its intention and in accordance, we are asking for clarification regarding certain sections of the proposed rule that appear to introduce ambiguity regarding disposal/destruction of Dangerous Waste pharmaceuticals.

Response to A-3-1

Thank you for your comments.

Comment A-3-2

The proposed language in WAC 173-303-071(nn)(i) reads:

"Controlled substances, legend drugs, and over-the-counter drugs that are state-only dangerous wastes and are held in the custody of law enforcement agencies within the state of Washington, provided the drugs are disposed of by incineration in a controlled combustion unit with a heat input rate greater than 250 million British thermal units/hour, and a combustion zone temperature greater than 1500 degrees, or a facility permitted to incinerate municipal solid waste."

It is unclear from the wording whether the phrase "within the state of Washington" is describing the law enforcement agency (i.e., a law enforcement agency in the state of Washington) or whether it is describing the location of where the drugs are held in custody. e.g., located in Washington regardless of jurisdiction of the law enforcement agency. Did Ecology intend to exclude particular law enforcement agencies? Was consideration given to the fact that law enforcement, regardless of location, serves public health and safety? The incineration of contraband pharmaceuticals is safe and environmentally protective, providing complete destruction. If drugs are not managed safely across a state line, impacts can occur in Washington, e.g., the Spokane River and the Spokane Aquifer both originate in Idaho. Spokane's Waste to Energy Facility serves the Eastern Washington region for solid waste disposal needs. Allowing all law enforcement in the region (Washington, Tribal, Idaho, etc) to use the Spokane Waste to Energy Facility for final destruction and disposal provides many benefits to public health and safety and the environment. Please consider removing the phrase "within the State Of Washington". Pursuant to the Dangerous Waste rules contained in Chapter 173-303 WAC, if a generator outside the state disposes of waste within Washington, they would continue to follow the Washington rules as well as the rules of their State; it does not appear that extending the exclusion to Out Of State law enforcement would create any issues. Out Of State law enforcement would need to follow both applicable rules and the waste would be destroyed in a safe and environmentally beneficial manner. WAC 173-303-170(12) also addresses law enforcement (without any reference to within the State Of Washington or not). This section provides the option of using the new section, WAC 173-303-555(7) & (9) {NOTE; the proposed language says (9) but from context, it appears that it should refer to (10)} for dangerous waste pharmaceuticals. However, WAC 173-303-555(2)(f) states that WAC 173-303-555 applies only to health care facilities and reverse distributors and that all other generators are subject to this

chapter for the generation and accumulation of dangerous waste, including dangerous waste pharmaceuticals. It would add clarity to include a reference to WAC 173-303-170(12) in WAC 173-303-555(2) as a group that can, at their option, manage dangerous waste pharmaceuticals using the provisions in WAC 173-303-555. That appears to be the overall intent and should be consistent. Additionally, if law enforcement can follow WAC-303-555(10), please consider adding them to WAC 173-303-555(1)(d), which currently refers to health care facilities and reverse distributors- presumably Ecology would also want law enforcement to have the letter showing that the receiving incinerator or combustion facility may accept the waste.

Response to A-3-2

The phrase "within the state of Washington" is meant to apply to any Washington state law enforcement agency as defined by Chapter 69.50 RCW or Title 18 RCW and authorized to possess drugs within the state of Washington (within Washington state borders).

The exclusion in WAC 173-303-071(3)(nn) applies to all Washington state law enforcement agencies as outlined above. We did not intend to exclude any particular Washington law enforcement agency. In developing the exclusion, we gave consideration that all Washington law enforcement, regardless of location within Washington, serve public health and safety. This exclusion was initiated by and originally drafted for Washington law enforcement.

The issue at hand was that many of the drugs confiscated by Washington law enforcement were designated as dangerous waste, while the same drugs in other states, such as Idaho and Oregon, were designated as solid waste. In Idaho or Oregon, for example, those drugs could be disposed at a solid waste facility in Idaho or Oregon, respectively. Washington law enforcement could not dispose of the same types of drugs as solid waste if they were confiscated in Washington and simply driven over the border into Idaho or Oregon; those drugs confiscated in Washington would need to be managed as dangerous waste when leaving Washington and disposed of as such. This exclusion provides some relief, as requested by and for Washington law enforcement.

Each state across the country has hazardous waste regulations that apply only within their borders. For example, Idaho adopted the federal Bevill exemption. This RCRA exemption excludes a long list of waste from being a federal hazardous waste. Washington has not adopted those exclusions. The result is that “Bevill waste” generated in Washington (even by the same company that may be in Idaho) does not become exempted RCRA waste and is not allowed to be disposed in Idaho as solid waste (as allowed by the regulations in Idaho).

As another example, in Idaho certain hazardous wastes can be mixed with used oil and the mixture can be burned in the state as used oil. Washington has not adopted those less stringent rules. The result is, if the mixture was generated in Washington, it cannot be sent to Idaho for burning under the less stringent used oil rules; instead it must be designated as a dangerous waste fuel.

As another example, Texas has adopted into its state rules that paint and paint related wastes are universal waste. This does not apply to businesses in Washington or Idaho. So a Washington or Idaho generator cannot claim “universal waste handler status” and send those possibly F-listed wastes to Texas as universal waste. And in reverse, the Texas business cannot generate those paint wastes as universal waste and ship them outside of Texas, say to Washington or Idaho, as universal waste; the waste reverts back to being a hazardous waste at the Texas border.

A final example is moderate risk waste. This is a Washington state term and an option only for Washington small quantity generators. So wastes generated by an Idaho very small quantity generator cannot send their waste under the guise of "moderate risk waste" into Washington. This option is only for Washington generators.

There are many other examples where one state may give regulatory relief to the generators within its state borders, but that relief does not apply nationwide. Law enforcement agencies are not health care facilities and it would be an authorization issue with EPA if we declared them as such. The existing, long standing, exclusion for Washington state law enforcement was created by their request for the reasons mentioned earlier.

Comment A-3-3

WAC 173-303-555(10)(d)

In regards to the letter referenced in WAC 173-303-555(10)(d), it is not clear from the rule which agency(s) is/are intended to be the "local regulatory or permitting authority". Did you intend this to be the issuer of the solid waste permit? Or, the air permit? Or, combination of these? Or, was there another intent? Please clarify the term "local regulatory or permitting authority".

Response to A-3-3

First, it must be made clear that section -555 (the pharmaceutical rule) is written for and applies to pharmaceutical waste that designates as a dangerous waste. In other words, the pharmaceutical rule does not exempt any dangerous waste drug from being a dangerous waste that is managed under that rule. The second point is that subsection -555(10) deals with the combustion of state-only dangerous waste pharmaceuticals in combustion units listed in subsection -555(7)(b)(iii)(A – E), as well as in a RCRA permitted facility.

For clarity, the regulation in question (WAC 173-303-555(10(d)) is, "The health care facility or reverse distributor has on file a letter or copy of a letter signed by the local regulatory or permitting authority that the receiving incinerator or combustion facility may accept the waste."

In this context, then, the local regulatory or permitting authority can vary. For an RCRA incinerator, the permitting authority would be the Department of Ecology in Washington state. RCRA incinerators permitted in other states, such as Idaho, would be that state's agency, which EPA has given authorization to write such permits. For the Waste to Energy Facility located in Spokane, Washington, the local regulatory and permitting authority would be the local Spokane County Health Department, which is the permitting authority for that facility. This is the only permitted solid waste combustion unit in Washington state. This does not preclude that in the future other solid waste combustion units may be developed within Washington.

Comment A-3-4

Regarding state-only dangerous waste pharmaceuticals and record keeping. Both WAC 173-303-555(10)(c) and WAC 173-303-555(10)(d) require documentation or letters, but neither of these sections or the proposed rule provide for how long these documents must be maintained. Please provide clarity for the specific period of time the records should be maintained.

Response to A-3-4

Health care facilities that must notify under the pharmaceutical rule (section -555) must keep that related notification (record keeping) until the facility is no longer managing waste under this rule. We recommend the health care facility keep the document or letter listed in subsection -555(10)(d) for the same period. For shipping papers listed in subsection -555(10)(c) that are not federal uniform hazardous waste manifests, we recommend facilities keep such records for a period of five years.

Comment A-3-5

Both of the Dangerous Waste and Solid Waste rules use the term fully regulated under Chapter 173-303 WAC frequently, without any definition. Is there any information available as to what this term "fully regulated" means? It appears the following could be considered not fully regulated under Chapter 173-303 WAC because exemptions/exclusions from parts of Chapter 173-303 WAC are provided (most particularly, in the case of generators - the waste is not required to be disposed of at a permitted hazardous/dangerous waste disposal facility):

- Waste excluded under Chapter 173-303-071;
- Waste managed by small quantity generators. See RCW 70.105.000(10) which refers to this category of waste as "exempt or excluded from full regulation"; see also WAC 173-303-171(1), stating "the small quantity generator is not subject to regulation under this chapter except for WAC 173-303-050, 173-303-070, 173-303-145, 173-303-169, 173-303-170, 173-303-171 and 173-303-960;
- Pharmaceuticals managed under WAC 173-303-555 based on the following:
    - WAC 173-303-169(4)(j) which excludes pharmaceuticals managed under WAC 173-303-555 from being counted toward generator status;
    - WAC 173-303-555(7):, "Provided the conditions Of (b) Of this subsection are met, the following are exempt from this chapter except for WAC 173-303-050, 173-303-145, and 173-303-960"; and
    - The expanded list of disposal facilities that can be used for disposal.

The interpretation that pharmaceuticals are no longer "fully regulated" is important because it is likely a number of the listed allowed disposal facilities would not be able to accept or process the wastes unless they are exempted or otherwise considered not fully regulated hazardous/dangerous waste. While the provisions in WAC 173-303-555 allow the generator to take the waste to the specified alternate disposal facilities, what provision(s) in Chapter 173-303 WAC allow the alternate disposal facilities to accept the waste without meeting all of the requirements of a Dangerous Waste Treatment/Disposal facility? If Ecology has a different interpretation, please consider that under the rule as currently written, state-only Dangerous Waste pharmaceuticals generated by those licensed in the state of Washington, are exempted from the Dangerous Waste rules and can clearly be disposed of at the Spokane Waste to Energy Facility. Under the proposed revisions, this exclusion may be removed and in its place the newly proposed WAC 173-303-555 sets out further requirements in WAC 173-303-555(10). If these wastes become fully regulated under Chapter 173-303 WAC, these state only Dangerous Waste pharmaceuticals would no longer

be allowed to come to the Spokane Waste to Energy Facility, as they are no longer exempted from full regulation under Chapter 173-303 WAC[1]. Is this Ecology's intention?

[1] The Spokane facility's waste permit is issued under Chapter 173-350 WAC. WAC 173-350 does not apply to Dangerous Wastes fully regulated under Chapter 173-303 WAC [WAC 173-350-020(m)] such as those excluded under WAC 173-303-071(3).

Response to A-3-5

Fully regulated is not meant to be a complicated term and is associated with determining generator category and the related rules to be followed.

Generator category is a month-to-month determination based on the amount (weight) of dangerous waste (DW) generated per month. Each generator category is defined by the amount of DW they generate per month. There are some DWs a generator does not have to count toward their generator category; they are outlined in WAC 173-303-169(4) and (5).

In generating and counting wastes, if a small quantity generator (SQG) generates more than 220 pounds in a month, then that generator is no longer an SQG; they are subject to **full regulation** as a medium quantity generator (MQG) or a large quantity generator (LQG), depending on how much DW the generator generated.

For example, if a generator is **normally** an SQG, but this month they generated 500 pounds of DW, then that generator becomes **fully regulated**, meaning they are subject to all the MQG regulations—the full set of regulatory requirements of an MQG.

As another example, if an MQG generated 5,000 pounds of DW this month, then that generator becomes subject to **full regulation** as an LQG, meaning they are subject to all the LQG regulations—the full set of regulatory requirements of an LQG.

Pharmaceutical wastes managed under WAC 173-303-555 are regulated dangerous waste and eventually are to be disposed at a permitted treatment, storage, and disposal facility (TSD) unless otherwise allowed by section -555 (for example, state-only dangerous waste pharmaceutical disposal options).

Dangerous waste pharmaceuticals are conditionally regulated dangerous wastes under section -555. The federal and state intent is not to exclude these federal hazardous wastes and state dangerous waste from regulation, but to provide some regulatory relief in their management. The pharmaceutical rule applies only to health care facilities and reverse distributors. Law enforcement agencies are not subject to the pharmaceutical rule because they are not defined as health care facilities. To provide some regulatory relief for our Washington state law enforcement, we will retain the exclusion found in section -071(3)(nn) for them, which is a choice—not a mandate.

For the Spokane Waste to Energy Facility to accept any state small quantity generator (or federal very small quantity generator) waste, the facility has to simply make a permit modification in their solid waste permit. This will allow the Spokane Waste to Energy Facility to accept any type of dangerous waste from state small quantity generators as well as federal very small quantity generators from Idaho and across the nation.

B-1: Charlotte Smith and Kathleen Skibinski, PharmEcology Services, WMSS.

Comment B-1-1

With respect to slide 14 in the presentation, will you please re-iterate the position with respect to Washington State-only dangerous waste? Will healthcare facilities be able to send Washington State-only dangerous waste to incinerators that meet the requirements noted in the Conditional Exclusion. Or, must these wastes be sent to a RCRA permitted incinerator when Washington State adopts the EPA's Subpart P. Also, is there an additional exclusion for law enforcement? Is the differentiation between the controlled combustion requirements for law enforcement and the types of incinerators noted in slide 35?

Response to B-1-1

The commenter is referring to an Ecology slide presentation about the draft dangerous waste regulations presented on December 2, 2019.

- Slide 14 presents information about changes to the conditional exclusion for state-only drugs at WAC 173-303-071(3)(nn).

- Slide 35 describes the different types of incinerators that may be used for disposal of controlled substances and state-only dangerous waste pharmaceuticals.

- The notes for these slides explain the differences between combustion unit requirements for law enforcement and for health care facilities.

The revised and adopted conditional exclusion for state-only drugs restricts its use to Washington state law enforcement for disposal of drugs in their custody. This exclusion no longer applies to drugs possessed by any licensee as defined and regulated by chapter 69.50 RCW. As explained later, the pharmaceutical rules in WAC 173-303-555(10) provide an exclusion for health care facilities for disposal of state-only dangerous waste pharmaceuticals.

The revised conditional exclusion in section -071 maintains the original combustion unit specifications, including specific temperature and heat input requirements. There is an option for Washington State law enforcement agencies to incinerate their state-only dangerous waste pharmaceuticals within the pharmaceutical rules at WAC 173-303-555(10)(a)(ii), giving the same combustion unit specifications as found in the subsection -071(3)(nn) conditional exemption. Although law enforcement offices are not considered to be health care facilities, we have placed this option within this rule as another way to highlight the conditional disposal exemption for Washington State law enforcement. In addition, if a Washington State law enforcement agency is a **true** small quantity generator, meaning it meets the definition of a small quantity generator, they have additional disposal options for the dangerous waste drugs in their custody (see WAC 173-303-171).

As mentioned, subsection -555(10) replaces the conditional exclusion (WAC 173-303-071(3)(nn)) as it applies to health care facilities. In addition to disposal at a RCRA permitted incinerator, health care facilities may send their state-only dangerous waste pharmaceuticals for incineration to one of the disposal facilities listed in WAC 173-303-555(7)(b)(iii)(A) through (E).

Comment B-1-2

With respect to the delisting of OTC nicotine gums, patches, and lozenges from the P075 hazardous waste category on slide 15, we believe it's important to note that prescription nicotine replacement therapies are still regulated under P075. We don't believe that was mentioned during the webinar.

Also, with respect to slide 15, since the EPA's exemption of P075 OTC nicotine is a separate listing under 40 CFR 261.33, we do not see that as including nicotine cigarettes or vaping devices as pharmaceuticals, nor are they approved by FDA as such. We encourage the Dept. of Ecology not to include these under the new regulations as hazardous waste pharmaceuticals under section -555.

Response to B-1-2

Comments noted. To be consistent with EPA and to provide some regulatory relief, we are adopting the federal amendments to the P075 listing which only exclude the FDA approved nicotine gums, patches, and lozenges from the P075 listed hazardous waste category.

Comment B-1-3

On slide 24, we encourage the Dept. of Ecology to make it clear that while the terms "satellite accumulation" and "storage accumulation" may no longer apply, that healthcare facilities may store hazardous waste pharmaceuticals in what has previously been considered to be satellite storage areas e.g. the pharmacy and nursing units, and may move these to a central location for storage, e.g. where other hazardous wastes are being stored, as long as the one year total storage time has been documented and not exceeded. Perhaps consider editing slide 26 to "no SAA required" for clarity.

Response to B-1-3

Comments noted. Under the pharmaceutical rule (section -555) there are no satellite accumulation allowances. Therefore, those areas which previously may have been considered to be satellite storage areas must now comply with the storage (accumulation) and related container requirements of WAC 173-303-555(3) while accumulating pharmaceutical wastes, until those wastes are moved to the site’s central accumulation area.

Comment B-1-4

With respect to slide 25, it has been noted federally that the term PHARMS does not fit on the electronic hazardous waste manifest and EPA has now also authorized the term PHRM. We would encourage the Dept. of Ecology to also include this adjustment.

Response to B-1-4

Comment noted. The adopted rule uses the term PHRM.

Comment B-1-5

In EPA's Final Rule, potentially creditable hazardous waste pharmaceuticals are clearly defined as being in the original manufacturer packaging, undispensed, and unexpired or less than one year past expiration. There is no mention in Subpart P of the requirement to constantly check reverse distribution records to determine specific credit determinations and then adjust returns accordingly. Since manufacturers' policies are subject to change without notice, we strongly encourage the Dept. of Ecology to adopt EPA's definitions of potentially creditable hazardous waste pharmaceuticals as stated in the federal regulations and as delineated on slide 40 without additional restrictions as were discussed during the webinar.

Response to B-1-5

Our proposed and adopted rule definition of "potentially creditable dangerous waste pharmaceuticals" is the same as the federal term "potentially creditable hazardous waste pharmaceuticals," except that our term includes **all** pharmaceuticals that designate as dangerous waste. Both the federal and state terms include the same restrictions.

Comment B-1-6

To our knowledge, "trace chemotherapy" waste was not mentioned in the webinar and due to the exclusion of empty P-listed vials, ampules, syringes, and IV bags under the new rule, we would assume that any of these empty containers that held arsenic trioxide could now be managed as trace chemotherapy and regulated medical waste and would not need to be segregated. Please confirm this to be an accurate interpretation.

Response to B-1-6

The empty container rule in WAC 173-303-555(8) pertains to residues remaining in containers. If, for example, the pharmaceuticals are removed from a vial or stock bottle using commonly employed practices for those types of containers, the containers are considered empty and are not regulated as a dangerous waste. On the other hand, for a syringe to qualify as **empty**, it must be fully plunged. Likewise, the contents of an IV bag must be fully administered to qualify as **empty**. Please review section -555(8) to determine how a particular container holding pharmaceuticals qualify as **empty**.

Unused chemotherapy drugs are often P- listed dangerous wastes. The rule at -555(8) has no special requirements for arsenic trioxide. The federal or adopted state pharmaceutical rules do not define **trace chemotherapy** waste. Also, the term **regulated medical waste** is used to refer to solid wastes only.

Comment B-1-7

Thank you very much for your time and consideration of these comments and questions. We appreciate the time and effort that Washington State has consistently demonstrated over the years to encourage the healthcare facilities in your state to manage waste pharmaceuticals in an environmentally friendly manner. We are grateful to both EPA and the Department of

Ecology that there will now be more consistency and practicality in the management of both hazardous waste pharmaceuticals and all pharmaceutical waste.

Response to B-1-7

We thank the commenter for this positive comment.

B-2: Steve Shestag, The Boeing Company

Comment B-2-1

Thank you for the opportunity to submit comments on the proposed updates to Chapter 173-303 Washington Administrative Code, Dangerous Waste Regulations, issued by Washington State Department of Ecology. Boeing appreciates Ecology's intent to clarify requirements, streamline compliance, and ensure that state dangerous wastes are properly and safely managed. Boeing is committed to working with Ecology and other stakeholders to ensure that meaningful progress is made in developing effective, efficient, and sustainable means for achieving a cleaner environment and improved levels of human and environmental health. We encourage Ecology to adopt language that is concise, defined, and aligns with existing federal and state regulations and requirements. We look forward to providing any needed additional clarification or engagement on these issues, and appreciate the opportunity to share our concerns regarding the proposed updates.

Response to B-2-1

Comments noted. We appreciate the constructive input regarding state rule language.

Comment B-2-2

WAC 173-303-070 Designation of Dangerous Waste Section 4 of the proposed update to WAC 173-303-070 states, "The department may require persons to submit a waste analysis plan to, and receive written approval from, the department prior to testing a waste."

The proposed addition is unnecessary for the following reasons:

- Ecology already has the authority, per WAC 173-303-070(4), to require any person to test a waste according to the methods, or an approved equivalent method, set forth in WAC 173-303-110."

- Waste analysis planning is typically required only for TSD facilities or generators treating waste onsite. See WAC 173-303-300(5).

- There is no need to add a formal waste analysis planning requirement to the waste designation process. Current designation requirement provides flexibility to the generator to obtain representative samples and a waste analysis planning requirement such as that required of TSD facilities is unnecessary and burdensome.

Response to B-2-2

We have decided not to adopt the proposed change to WAC 173-303-070(4): "The department may require persons to submit a waste analysis plan to, and receive written approval from, the department prior to testing a waste."

After considering comments and internal input, we have determined there is no need for this change. Existing rules provide adequate means for us to work with generators to obtain representative sample and analysis plans when needed to ensure accurate waste designation.

Comment B-2-3

WAC 173-303-640 Tank systems

Section (2)(e) of WAC 173-303-640 states, "The owner or operator must develop a schedule for conducting integrity assessments over the life of the tank system to ensure that the tank system retains its structural integrity and will not collapse, rupture, or fail. The schedule must be based on the results of past integrity assessments, age of the tank system, materials of construction, characteristics of the waste, and any other relevant factors."

The proposed addition of "system" is problematic for the following reasons:

- The phrase "tank system" could be interpreted to incorporate additional components and piping not currently required in integrity assessments. Industry standard inspection and assessment publications are limited to tanks.

- Secondary containment and inspection requirements already in place adequately ensure structural integrity and the prevention of collapse, rupture, failure, or release to the environment.

- To include components beyond the tank in the integrity assessment could add a significant cost and burden to the generator. The impact to generators and costs associated with this change were not considered during the rule making process.

Response to B-2-3

Comments noted. We will keep the proposed change from "tank" to "tank system." These revisions in WAC 173-303-640(2)(e) and -640(3)(b) are a necessary clarification to be consistent with the rest of the chapter.

The underlying intent of the tank integrity assessments has always been to evaluate the whole tank system, to ensure it is adequately designed and has sufficient structural strength and compatibility with the waste to be stored or treated, and to ensure that it will not collapse, rupture, or fail. API 653 and STI SP001, the two most commonly used tank assessment standards in practice and referenced in WAC, evaluate not only the physical tank itself but also the other components that make up the tank system, such as piping entering and leaving the tank, anchoring, secondary containment, venting, and other related components.

Comment B-2-4

WAC 173-303-220 Generator Reporting

Section (3) of 173-303-220 states, "The ((director, as they)) department, as it deems necessary under chapter 70.105 RCW, may require a generator to furnish additional reports (including, but not limited to, engineering reports, nonengineering reports, plans, and specifications) concerning

the quantities and disposition of the generator's dangerous waste and the generator's compliance with this chapter."

The term "nonengineering reports" introduces regulatory uncertainty and the authority to request such documents is redundant.

- "Nonengineering reports" may imply that the generator create and retain reports not required by existing regulation.
- This creates regulatory uncertainty about what reports to retain and for how long.
- Existing language already gives Ecology the authority to request relevant documents regarding the quantities and dispositions of dangerous waste and the generator's compliance with the regulations.
- There is no need to change the existing language.

Response to B-2-4

Please see the related response to Seattle City Lights comment A-1-2.

We disagree with the comment stating that the term "nonengineering reports" creates regulatory uncertainty and implies that the generator creates and retains reports not required by existing regulation. We acknowledge some confusion could exist about interpreting the original parenthetical phrase listing types of reports, so we edited it to be clear these reports are only examples. We removed the term "nonengineering reports" and also removed the phrase "including, but not limited too" in the final rule. These terms are not needed to clarify the intent of the rule.

As background, the equivalent federal regulation—40 CFR 262.43 Generator Reporting—only requires generators to furnish additional reports about amounts and disposition of their hazardous waste at agency request. No examples are given about what types of reports an agency might request. The Washington state rule additionally gives examples of what types of reports would be included. These examples do not go beyond the intent of the federal rule. The parenthetical phrase is meant to give the reader some examples of possible reports Ecology might request, and is not intended to limit the types of reports requested.

The proposed rule also adds, "and the generator's compliance with this chapter." The intent of this addition is to reinforce our ability to ask for and receive available and regulatory required documents under Chapter 173-303 WAC. It is not intended to ask for new generator documentation beyond what the regulations support.

Comment B-2-5

Section (6)(b)(vi) of 173-303-172, should be revised to read: "This documentation must include a description of the established workplace practices to ensure leaks are promptly identified at the generator facility."

Response to B-2-5

We will not be making the revision to WAC 173-303-172(6)(b)((vi) as suggested by the commenter.

The documentation described in this citation is required if a generator chooses to use an alternate tank inspection schedule, and also chooses to implement established workplace practices to ensure leaks are promptly identified. In order to use the alternate inspection schedule, a generator must have full secondary containment under their dangerous waste accumulation tank, and either use leak detection equipment to alert personnel to leaks, or establish and implement work practices designed to ensure leaks are quickly identified.

The commenter suggests adding the phrase, "to ensure leaks are promptly identified," to the last sentence of WAC 173-303-172(6)(b)(vi). Although this addition clarifies the reason for creating a description of established workplace practices, it is also redundant to the first sentence of the citation. The first sentence clearly lays out the option of using established workplace practices for the purpose of ensuring leaks are promptly identified. Also, the commenter's revision suggestion is not part of the federal language at 40 CFR 262.16(b)(3)(iv), introducing possible confusion as to why we added this phrase to the rule, while RCRA does not.

Comment B-2-6

Section (3)(a) of 173-303-200(3)(a) should be revised to read, "... in accordance with the applicable provisions of WAC 173-303-145 and 173- 303-201(14)."

Response to B-2-6

Thank you for the comment. The reference will be corrected.

Comment B-2-7

173-303-201(9)(b)(i), should be revised to read, ". . . comply with subsection 14 of this section and WAC 173-303-145." Only section 14 describes required emergency procedures.

Response to B-2-7

See the related United States Department of Energy comment and response A-2-4.

The commenter is objecting to the proposed rule including subsections (8) through (14) of section -201 to be part of the contingency plan description of facility personnel emergency actions. We agree that the contingency plan information as required in -201(9)(b) does not need to address section -201(9) **through** (13). The reference will continue to cite -201(8) *Contingency plan purpose and implementation (*in keeping with the federal rule at 40 CFR 262.261(a)) **and** -201(14) *Emergency Procedures*. Section -201(14) lists the key procedures that must be addressed in the contingency plan.

Appendix A: Copies of all written comments

The first comment listed below was received after the comment period was over. We did not respond to this comment.

1. Mike Lafferty, P.S. Industries Inc.

Reverse distributors in Washington are essential in the goal of removing unwanted prescription medications from the environment and promotion of safety from diversion and/or accidental ingestion by society.

Reverse distribution is a business to business removal of unwanted medications (especially controlled substances) through secure destruction. Without local reverse distribution, medical facilities will be in a “catch 22” with meeting state and federal regulations. Medical facilities are not permitted to dispose of their unwanted medications into the Drug Take Back program or into residential/business waste.

Currently, P.S. Industries Inc. (PSI) uses Spokane Waste to Energy facility (WTE) to economically accomplish secure destruction that meets Federal and State regulations. PSI has about 500 active customers (Medical Clinics, Veterinarians, Labs, Government and re-packagers) that securely destroy their unwanted medications through WTE facility in Spokane. The next closest facility that meets the Federal and State requirements for secure destruction is in Texas. Most out of state reverse distributors no longer reverse distribute controls due to 30 day time limits on storage implemented by the DEA a few years ago. If WTE in Spokane cannot be permitted as a large municipal waste combustor under 40 C.F.R. Part 60 or Part 62 then PSI will have to shut down because of the prohibitive costs and regulations necessary to securely destroy unwanted controls and non-controls. The result will be a substantial increase in unwanted medications being thrown away in residential/business waste. This will increase environmental damage and increase the risk of controlled substance diversion.

I respectfully request that you continue to allow Reverse Distribution and safe medication disposal as currently practiced in Washington by continuing to license an Incinerator that meets Federal and State requirements for secure destruction like WTE.

The following comment letters were received during the formal proposed comment period and Ecology responded to them.

2. Aurana Lewis, Seattle City Light.

The commenter requests that the sentence in WAC 173-303-141(2) not be deleted; the EPA/state identification number should continue not to be required in this situation. The requirement for an EPA State ID may limit the types of facilities that can accept these materials for treatment or recycling. The regulations in other states may allow for a broader use of materials than Washington State and it's unclear that Washington's rule should be applied in this manner. The broad request for reports in WAC 173-303-220(3) related to "the generator's compliance with this chapter" is vague and does not provide clarity to generator regarding what materials they should be

keeping to provide or demonstrate compliance. The regulations clearly state what reports and paperwork are required to meet regulatory standards, and the possible request of materials outside of those identified by regulation creates uncertainty for generators' recordkeeping.

3. Charlotte A. Smith and Kathleen Skibinski, PharmEcology Services, WMSS.

TO: Rob Rieck Rulemaking Lead hwtrrulemaking@ecy.wa.gov 360-407-6751

FROM: Charlotte A. Smith, R. Ph., M. S., Senior Regulatory Advisor, PharmEcology Services, WMSS; Kathleen Skibinski, R. Ph., M.S., Manager, Regulatory and Compliance, PharmEcology Services, WMSS DATE: May 20, 2020

RE: Draft Amendments to the Dangerous Waste Regulations Chapter 173-303 WAC

Our comments are in the spirit of assuring complete understanding and consistency between the Washington State Dept. of Ecology and the regulated healthcare community with respect to the adoption of EPA's Final Rule: Management Standards for Hazardous Waste Pharmaceuticals and Amendment to the P075 Listing for Nicotine and is based on the webinar presented on this topic by the Washington State Dept. of Ecology on May 5th, 2020. With respect to slide 14 in the presentation, will you please re-iterate the position with respect to Washington State-only dangerous waste? Will healthcare facilities be able to continue sending Washington State-only dangerous waste to incinerators that meet the requirements noted in the Conditional Exclusion or must these wastes be sent to a RCRA permitted incinerator when Washington State adopts the EPA's Subpart P and is there an additional exclusion for law enforcement? Is the differentiation between the controlled combustion requirements for law enforcement and the types of incinerators noted in slide 35? With respect to the delisting of OTC nicotine gums, patches, and lozenges from the P075 hazardous waste category on slide 15, we believe it's important to note that prescription nicotine replacement therapies are still regulated under P075. We don't believe that was mentioned during the webinar. Also, with respect to slide 15, since the EPA's exemption of P075 OTC nicotine is a separate listing under 40 CFR 261.33, we do not see that as including nicotine cigarettes or vaping devices as pharmaceuticals, nor are they approved by FDA as such. We encourage the Dept. of Ecology not to include these under the new regulations as hazardous waste pharmaceuticals under section -555. On slide 24, we encourage the Dept. of Ecology to make it clear that while the terms "satellite accumulation" and "storage accumulation" may no longer apply, that healthcare facilities may store hazardous waste pharmaceuticals in what has previously been considered to be satellite storage areas e.g. the pharmacy and nursing units, and may move these to a central location for storage, e.g. where other hazardous wastes are 2 being stored, as long as the one year total storage time has been documented and not exceeded. Perhaps consider editing slide 26 to "no SAA required" for clarity. With respect to slide 25, it has been noted federally that the term PHARMS does not fit on the electronic hazardous waste manifest and EPA has now also authorized the term PHRM. We would encourage the Dept. of Ecology to also include this adjustment. In EPA's Final Rule, potentially creditable hazardous waste pharmaceuticals are clearly defined as being in the original manufacturer packaging, undispensed, and unexpired or less than one year past expiration. There is no mention in Subpart P of the requirement to constantly check reverse distribution records to determine specific credit determinations and then adjust returns accordingly. Since manufacturers' policies are subject to change without notice, we strongly encourage the Dept. of Ecology to adopt EPA's definitions of potentially creditable hazardous waste pharmaceuticals as stated in the federal regulations and as delineated on slide 40 without additional restrictions as were discussed during the webinar. To our knowledge, "trace

chemotherapy" waste was not mentioned in the webinar and due to the exclusion of empty P-listed vials, ampules, syringes, and IV bags under the new rule, we would assume that any of these empty containers that held arsenic trioxide could now be managed as trace chemotherapy and regulated medical waste and would not need to be segregated. Please confirm this to be an accurate interpretation. Thank you very much for your time and consideration of these comments and questions. We appreciate the time and effort that Washington State has consistently demonstrated over the years to encourage the healthcare facilities in your state to manage waste pharmaceuticals in an environmentally friendly manner. We are grateful to both EPA and the Department of Ecology that there will now be more consistency and practicality in the management of both hazardous waste pharmaceuticals and all pharmaceutical waste.

Please contact us with any comments or questions at the following: Charlotte Smith, csmith32@wm.com, 713-725-6363 Kathleen Skibinski, kskibin1@wm.com, (608) 698-0616

4. Steve Shestag, The Boeing Company.

May 26, 2020 Mr. Robert Rieck Rulemaking Lead Department of Ecology Hazardous Waste and Toxics Reduction Program PO Box 47600 Olympia, WA 98504-7600

Re: Chapter 173-303 Washington Administrative Code, Dangerous Waste Regulations

Dear Mr. Rieck:

Thank you for the opportunity to submit comments on the proposed updates to Chapter 173-303 Washington Administrative Code, Dangerous Waste Regulations, issued by Washington State Department of Ecology. Boeing appreciates Ecology's intent to clarify requirements, streamline compliance, and ensure that state dangerous wastes are properly and safely managed. Boeing is committed to working with Ecology and other stakeholders to ensure that meaningful progress is made in developing effective, efficient, and sustainable means for achieving a cleaner environment and improved levels of human and environmental health. We have identified below several concerns with the proposed updates and offer our recommendations to address those concerns. WAC 173-303-070 Designation of Dangerous Waste Section 4 of the proposed update to WAC 173-303-070 states, "The department may require persons to submit a waste analysis plan to, and receive written approval from, the department prior to testing a waste."

The proposed addition is unnecessary for the following reasons:

- Ecology already has the authority, per WAC 173-303-070(4), to "require any person to test a waste according to the methods, or an approved equivalent method, set forth in WAC 173-303-110."

- Waste analysis planning is typically required only for TSD facilities or generators treating waste onsite. See WAC 173-303-300(5).

- There is no need to add a formal waste analysis planning requirement to the waste designation process. Current designation requirement provides flexibility to the generator to obtain representative samples and a waste analysis planning requirement such as that required of TSD facilities is unnecessary and burdensome.

WAC 173-303-640 Tank systems

Section (2)(e) of WAC 173-303-640 states, “The owner or operator must develop a schedule for conducting integrity assessments over the life of the tank system to ensure that the tank system retains its structural integrity and will not collapse, rupture, or fail. The schedule must be based on the results of past integrity assessments, age of the tank system, materials of construction, characteristics of the waste, and any other relevant factors.”

The proposed addition of “system” is problematic for the following reasons:

- The phrase “tank system” could be interpreted to incorporate additional components and piping not currently required in integrity assessments. Industry standard inspection and assessment publications are limited to tanks.

- Secondary containment and inspection requirements already in place adequately ensure structural integrity and the prevention of collapse, rupture, failure, or release to the environment.

- To include components beyond the tank in the integrity assessment could add a significant cost and burden to the generator. The impact to generators and costs associated with this change were not considered during the rule making process.

WAC 173-303-220 Generator reporting

Section (3) of 173-303-220 states, “The ((director, as they)) department, as it deems necessary under chapter 70.105 RCW, may require a generator to furnish additional reports (including, but not limited to, engineering reports, nonengineering reports, plans, and specifications) concerning the quantities and disposition of the generator's dangerous waste and the generator's compliance with this chapter.”

The term “nonengineering reports” introduces regulatory uncertainty and the authority to request such documents is redundant.

- “Nonengineering reports” may imply that the generator create and retain reports not required by existing regulation.

- This creates regulatory uncertainty about what reports to retain and for how long.

- Existing language already gives Ecology the authority to request relevant documents regarding the quantities and dispositions of dangerous waste and the generator’s compliance with the regulations.

- There is no need to change the existing language.

Technical edits Boeing recommends the following practical edits:

- Section (6)(b)(vi) of 173-303-172, should be revised to read: “This documentation must include a description of the established workplace practices to ensure leaks are promptly identified at the generator facility.”

- Section (3)(a) of 173-303-200, should be revised to read, “... in accordance with the applicable provisions of WAC 173-303-145 and 173- 303-201(14).”

- Section (9)(b)(i) of 173-303-201, should be revised to read, ": . . . comply with subsection 14 of this section and WAC 173-303-145." Only section 14 describes required emergency procedures.

We encourage Ecology to adopt language that is concise, defined, and aligns with existing federal and state regulations and requirements. We look forward to providing any needed additional clarification or engagement on these issues, and appreciate the opportunity to share our concerns regarding the proposed updates. Please contact our focal, Heather Sheffer, at (206) 658-5618 or Heather.L.Sheffer@Boeing.com for any follow-up needs.

Sincerely,

Steve Shestag
Director, Environment
The Boeing Company
Telephone: 818-519-9882
Email: steven.l.shestag@boeing.com

5. Anthony McKarns, U.S. Department of Hanford Site Contractor Comments WRPS.

On March 25, 2020 Proposed WAC 173-303 Dangerous Waste Rule Changes

1. 173-303-070(4) Ecology does not have regulatory authority over every element or component of a waste analysis plan (WAP). WAC 173-303-070(4) and -110 already specify testing methods, and the testing method in turn already controls typically how a sample is to be collected, transported, analyzed, and hold times. The requirement to create a WAP, much less the internal details contained in a WAP of how an Owner/Operator will perform accomplishing these requirements operationally is beyond Ecology's purview and regulatory authority. If Ecology were to make this a requirement, then they need to identify exactly which elements of the WAP that they will be reviewing that are within their regulatory authority to oversee and approve (which constrains them to simply verifying selected testing methods comply with -110), they must have appropriate constraints in place such as a time limit for review/approval, as well as identification of that dispute process that will be utilized to resolve issues when they do not approve a WAP. WRPS

2. 173-303-100(5) In accordance with the Washington State rule making requirements and process, please provide the technical justification and cost-benefit analysis that was used to justify removal of rat bioassays and limiting testing to only fish bioassays. Multiple bioassay options have always been needed as aquatic fish bioassays rarely adequately represent or provide for mammalian or terrestrial toxicity, nor does it adequately provide information on hydrophobic/insoluble compounds. WRPS

3. 173-303-172(9)(a)(v), 173-303-200(7)(a)(v) Remove the new bullet in these sections that would require a Generator/Owner/Operator to perform specific actions in regards to label visibility purely to support an inspection. This bullet does not make sense as is. If the intent of this change is to ensure the weekly Generator inspections conducted under 5(d)/3(d) of the section also inspect labels (which is not presently even an inspection requirement in WRPS DOE Hanford Site Contractor Comments on March 25, 2020 Proposed WAC 173-303 Dangerous Waste Rule Changes 2 5/13/2020 # WAC Citation Comment DOE Contractor 5(d)/3(d)), then the criteria to look for obscured, missing, or illegible labels should be added to the inspection criteria in 5(d)

itself. Otherwise anyone, inspector or not, trying to verify compliance with container labeling requirements should always enter the actual container storage area utilizing the same physical approach to see and inspect the labels on a container as a worker. The label requirements do not require labels be visible from all directions and angles of approach. One set of labels on a container is the requirement, and that means that no matter how a Generator tries, there will almost always be directions and angles of approach where the labels will not be visible. This is especially true of the containers in an outdoor or more open area. To meet the existing EPA and Ecology labeling requirements, including the intent, container labels are placed and arranged primarily to support the actual worker's needs and use as they have the highest risk and the greatest need to be able to readily see the labels on a daily basis. If an inspector were to approach the containers from a different avenue, where the labels are not readily visible, there is no requirement or technically sound reason to put workers or the environment at additional and unnecessary risk of harm or a spill, simply to turn or move containers when needed purely to demonstrate to the inspector that a container is properly labelled. Which is one way this change could be interpreted. This would in fact, be directly contradictory to the stated intent of the rule and requirements.

4. 173-303-201(9)(b) The change expands the contents of the contingency plan to include and address multiple other sections in 303-201. This change has no technical justification or basis as these items are already required to be addressed/complied with per this section in other avenues that Ecology already has authority over. Adding them to the contingency plan itself in addition, is therefore nothing but duplicative and unnecessary effort that will not add or provide any benefits to protecting human health and safety, or the environment. Making this is a substantial and significant change that will be incredibly burdensome (time and money) on an owner/operator/generator as well as Ecology to comply with. Ecology needs to provide the appropriate technical justification and cost benefit analysis required by State rule making regulations/process in order to support making this change.

5. 173-303-806(4)(a) In Ecology's official response to comments on the proposed draft of this rule revision, they claim the federal employee exemption in 18.43.130(6)RCW and WAC 196-29-200 which promulgates it, does not apply. However, Ecology has not provided an appropriate legal basis or technical justification to support their response for why that requirement in the statute or the associated WAC that promulgated it would not apply. WAC 173-303 on its own cannot, without an adequate legal basis, arbitrarily cherry pick and declare that only these parts of this RCW apply as needed to support the PE requirement in -303, but not this part of the RCW for the federal exemption simply because Ecology finds it undesirable. Despite the lack of an adequate legal basis, Ecology has already acknowledged that they do not intend to comply with, or consider the federal exemption in the RCW and WAC applicable, indicating they intend to implement and enforce these requirements in an illegally inconsistent and discriminatory fashion. Until Ecology can provide a legal basis for over-ruling and/or for why WAC 173- 303 is the only process that does not have to comply with 18.43.130(6) RCW as promulgated into WAC 196-29-200, Ecology needs to revise WAC 173-303 to state that any documents required per WAC 173-303 to be submitted for a Part B permit application that are also subject to 18.43 RCW (as promulgated into WAC 196-23 and 196-29), are subject to and must comply with those requirements as applicable and in their entirety. This includes acknowledging that at this time, the Federal exemption requirement also still applies.

5. Kelle Vigeland, City of Spokane – Waste to Energy Facility.

Please see the attached comments being submitted by the City of Spokane Solid Waste Disposal Department/Waste to Energy Facility. If there are any questions regarding the comments, please do not hesitate to contact me (Kelle Vigeland, Environmental Manager, 509-225-6541, kvigeland@spokanecity.org) or Chris Averyt, Interim Plant Manager, 509-625-6540, caveryt@spokanecity.org.

SPOKANE SOLID WASTE DISPOSAL
2900 S. BLVD.
SPOKANE, WA 99224
509.625.6580

May 26, 2020

Robert Rieck
Department Ecology
Hazardous Waste and Toxics Reduction Program
PO Box 47600, Olympia, WA 98504-7600

RE: Comments on Chapter 173-303 WAC, as Proposed on March 25, 2020

Dear Mr. Rieck:

The City of Spokane provides these comments to Washington State Department of Ecologv's (Ecology) request for formal comments on the Dangerous Waste Regulations Chapter 173-303 WAC. Ecologv's proposal was filed on March 25, 2020.

The City Of Spokane generally supports the proposed rulemaking by Ecology particularly with its focus on incorporating EPA's new pharmaceutical provisions. The proposed rule, once adopted, should address the pharmaceutical disposal challenges that led to Ecology's Interim Pharmaceutical Waste Policy and also improve consistency with the Drug Enforcement Agencv's requirement for destruction. The City of Spokane Waste to Energy Facility currently accepts drugs and pharmaceuticals for disposal/destruction as allowed in the current Dangerous Waste rule, its solid waste and air permits and the facility's Special Handling/Non-Typical Waste Program. The Special Handling/Non-Tvpical Waste Program was reviewed and mutually agreed to by the Spokane Regional Health District, the Spokane Regional Clean Air Agency, and the Department of Ecology Solid Waste and Hazardous Waste Divisions. The City of Spokane is committed to providing safe, cost effective, and environmentally protective disposal of waste while complying with all applicable laws, rules, regulations, and permits.

The City offers the following specific comments related to the draft rule filed on March 25, 2020, particularly as it relates to operations at the City of Spokane Waste to Energy Facility.

The City is committed to follow both the letter of the law and its intention and in accordance, we are asking for clarification regarding certain sections of the proposed rule that appear to introduce ambiguity regarding disposal/destruction of Dangerous Waste pharmaceuticals. Accordingly, please clarify the following issues:

- The proposed language in WAC 173-303-071 reads:

(nn)(i) Controlled substances, legend drugs, and over-the-counter drugs that are state-only dangerous wastes and are held in the custody of law enforcement agencies within the state of Washington, provided the drugs are disposed of by incineration in a controlled combustion unit with a heat input rate greater than 250 million British thermal units/hour, and a combustion zone temperature greater than 1500 degrees Fahrenheit, or a facility permitted to incinerate municipal solid waste.

It is unclear from the wording whether the phrase "within the state of Washington" is describing the law enforcement agency (i.e., a law enforcement agency in the state of Washington) or whether it is describing the location of where the drugs are held in custody, e.g., located in Washington regardless of jurisdiction of the law enforcement agency. Did Ecology intend to exclude particular law enforcement agencies? Was consideration given to the fact that law enforcement, regardless of location, serves public health and safety? The incineration of contraband pharmaceuticals is safe and environmentally protective, providing complete destruction. If drugs are not managed safely across a state line, impacts can occur in Washington, e.g., the Spokane River and the Spokane Aquifer both originate in Idaho. Spokane's Waste to Energy Facility serves the Eastern Washington region for solid waste disposal needs. Allowing all law enforcement in the region (Washington, Tribal, Idaho, etc…) to use the Spokane Waste to Energy Facility for final destruction and disposal provides many benefits to public health and safety and the environment. Please consider removing the phrase "within the State Of Washington".

Pursuant to the Dangerous Waste rules contained in Chapter 173-303 WAC, if a generator outside the state disposes of waste within Washington, they would continue to follow the Washington rules as well as the rules of their state; it does not appear that extending the exclusion to out of state law enforcement would create any issues. Out of state law enforcement would need to follow both applicable rules and the waste would be destroyed in a safe and environmentally beneficial manner.

- WAC also addresses law enforcement (without any reference to within the state of Washington or not). This section provides the option of using the new section, WAC 173-303-555(7) & (9) **{NOTE — the proposed language says (9), but from context, it appears that it should refer to (10).},** for dangerous waste pharmaceuticals. However, WAC 173-303-555(2)(f) states that WAC 173-303-555 applies only to health care facilities and reverse distributors and that all other generators are subject to this chapter for the generation and accumulation of dangerous waste, including dangerous waste pharmaceuticals. It would add clarity to include a reference to WAC 173-303-170(12) in WAC 173-303-555(2) as a group that can, at their option, manage dangerous waste pharmaceuticals using the provisions in WAC 173-303-555. That appears to be the overall intent and should be consistent.

  Additionally, if law enforcement can follow WAC 173-303-555(10), please consider adding them to WAC 173-303-555(10)(d), which currently refers to health care facilities and reverse distributors— presumably Ecology would also want law enforcement to have the letter showing that the receiving incinerator or combustion facility may accept the waste.

  In regards to the letter referenced in WAC 173-303-555(10)(d), it is not clear from the rule which agency(s) is/are intended to be the "local regulatory or permitting authority". Did

you intend this to be the issuer of the *solid waste* permit? Or, the *air permit*? Or, combination of these? Or, was there another intent? Please clarify the term "local regulatory or permitting authority".

Regarding state-only dangerous waste pharmaceuticals and record keeping. Both WAC 173-303-555(10)(c) and WAC 173-303-555(10)(d) require documentation or letters, but neither of these sections or the proposed rule provide for how long these documents must be maintained. Please provide clarity for the specific period of time the records should be maintained.

- Both of the Dangerous Waste and Solid Waste rules use the term ***fully regulated under Chapter 173-303 WAC*** frequently, without any definition. Is there any information available as to what this term "fully regulated" means? It appears the following could be considered ***not fully regulated under Chapter 173-303 WAC*** because exemptions/exclusions from parts of Chapter 173-303 WAC are provided (most particularly, in the case of generators - the waste is not required to be disposed of at a permitted hazardous/dangerous waste disposal facility):
    - Waste excluded under Chapter 173-303-071;
    - Waste managed by small quantity generators. See, RCW 70.105.000(10) which refers to this category of waste as "exempt or excluded from full regulation"; see also WAC 173-303-171(1), stating "the small quantity generator is not subject to regulation under this chapter except for WAC 173-303-050, 173-303-070, 173-303145, 173-303-169, 173-303-170, 173-303-171 and 173-303-960;
    - Pharmaceuticals managed under WAC 173-303-555 based on the following:
        - WAC 173-303-169(4)(j) which excludes pharmaceuticals managed under WAC 173-303-555 from being counted toward generator status;
        - WAC 173-303-555(7): "Provided the conditions of (b) of this subsection are met, the following are exempt from this chapter except for WAC 173-303-050, 173-303-145, and 173-303-960"; and
        - The expanded list of disposal facilities that can be used for disposal.

  The interpretation that pharmaceuticals are no longer "fully regulated" is important because it is likely a number of the listed allowed disposal facilities would not be able to accept or process the wastes unless they are exempted or otherwise considered not fully regulated hazardous/dangerous waste. While the provisions in WAC 173-303-555 allow the generator to take the waste to the specified alternate disposal facilities, what provision(s) in Chapter 173-303 WAC allow the alternate disposal facilities to accept the waste without meeting an of the requirements of a Dangerous Waste Treatment/Disposal facility?

  If Ecology has a different interpretation, please consider that under the rule as currently written, state-only Dangerous Waste pharmaceuticals generated by those licensed in the state of Washington, are exempted from the Dangerous Waste rules and can clearly be disposed of at the Spokane Waste to Energy Facility. Under the proposed revisions, this exclusion may be removed and in its place the newly proposed WAC 173-303-555 sets out

further requirements in WAC 173-303-555(10). If these wastes become fully regulated under Chapter 173-303 WAC, these state only Dangerous Waste pharmaceuticals would no longer be allowed to come to the Spokane Waste to Energy Facility. as they are no longer exempted from full regulation under Chapter 173-303 WAC[1]. Is this Ecology's intention?

The final rule should provide clarity to the above issues. Spokane's Waste to Energy Facility is an environmentally responsible process for final destruction of these dangerous wastes which otherwise could harm the public safety and well-being.

Thank you for the opportunity to offer these comments on the proposed rule. Please don't hesitate to contact me should you have any questions or would like more information.

Sincerely,

Chris Averyt
Interim Plant Manager
City of Spokane Waste to Energy Facility

cc:
Scott Simmons
Kelle Vigeland

[1] The Spokane facility's waste permit is issued under Chapter 173-350 WAC. WAC 173-350 does not apply to Dangerous Wastes fully regulated under Chapter 173-303 WAC [WAC 173-350-020(m)] such as those excluded under WAC 173-303-071(3).

Appendix B: Transcripts from public hearings.

Olympia – May 5, 2020

Hazardous Waste and Toxics Reduction Program
Chapter 173-303 WAC – Dangerous Waste Regulations
Transcript for Public Hearing via Webinar

May 5, 2020

Hearing officer – Chanele Holbrook
Rulemaking lead – Rob Rieck
Technical lead – Tom Cusack

Good afternoon. I am Chanele Holbrook, the hearing's officer for this public hearing. This afternoon we are conducting a hearing on the proposed rulemaking for Chapter 173-303 Washington Administrative Code. This includes proposed rules for dangerous waste pharmaceuticals, e-manifest regulations and an exclusion for recalled airbags. We are also proposing some state-only technical changes, corrections, and clarifications.

Let the record show its 2:13 PM on May 5, 2020, and this hearing is being held via webinar.

Some legal notices. Notices of the hearing were emailed to approximately 900 people who subscribe to our Dangerous Waste rulemaking listserv. We also notified approximately 2,500 people listed as contacts in our dangerous waste annual report database, and a number of associations who are likely interested in this rulemaking.

The hearing notice was posted on the Ecology Dangerous Waste rulemaking website. This hearing and open comment period were posted to Ecology's Public Involvement calendar.

Testimony. I will now be calling people to provide testimony. If you have **not** done so already, please click the raise your hand icon to indicate you would like to testify. We will go in the order of participants listed on the screen.

When we call your name, it will be your turn to testify. We will unmute your line and once it is unmuted, please begin testifying. **State your name for the record**. And please lower your hand once you are done testifying.

So at this time Maria, do we have anyone that would like to testify?

Maria: I don't see any hands raised at the moment.

Ok. I'll go ahead and stand by and wait for just another moment, so folks who might want to change their mind may have the opportunity. Just remember, if you would like to testify, speak clearly so we can get a clear recording.

Ok, anything; any other hands Maria?

Maria: I don't see any hands raised.

Ok. I'll go ahead and move forward.

Let the record show that about **89 people** have attended this public hearing and no one wanted to provide oral testimony.

If you would like to send Ecology written comments, please remember they are due by midnight on May 26, 2020. We accept written comments in the following ways:

Online using our online comment form.

By mail. Note. They must be postmarked by 11:59 PM on May 26, 2020.

For this webinar hearing, we will only take oral testimony and will **not** be accepting written comments at this time. Please use either the electronic or postal method to submit written comments.

In the chat feature, Maria has provided the link to our rulemaking website explaining how you can submit comments. You can also contact Rob Rieck for details about commenting.

If you are **not** already part of the Hazardous Waste and Toxics Reduction Program's dangerous waste rulemaking listserv, please remember to give us your contact information if you want to receive updates on this rulemaking process. You can either email a physical address, or an email address, to the staff after the hearing.

In closing, all testimony received at this webinar hearing, along with all written comments received or postmarked **no** later than 11:59 PM on May 26, 2020, will be a part of the official hearing record for this proposal.

Ecology will send notice about the Concise Explanatory Statement or CES publication to:

- Everyone that provided written comments or oral testimony on this rule proposal and submitted contact information.
- To everyone that signed in for today's hearing that provided an email address.
- Other interested parties on the agency's mailing lists for this rule.

The CES, among other things, contains the agency's response to questions and issues of concern that were submitted during the public comment period. If you would like to receive a copy but did **not** give us your contact information, please let one of the staff at this hearing know, or contact Rob Rieck at the contact information provided for submitting comments.

Next steps. The next steps are to consider the comments and make a determination whether to adopt the rule. Ecology Director, Laura Watson, will consider the rule documentation and staff recommendations and will make a decision about adopting the proposal.

Adoption is currently scheduled for September 30, 2020. If the proposed rule should be adopted that day and filed with the Code Reviser, it will go into effect 31 days later.

If we can be of further assistance, please do not hesitate to ask or you can contact Rob Rieck or Tom Cusack if you have other questions.

On behalf of the Department of Ecology, thank you for participating. I appreciate your cooperation and courtesy.

Let the record show that this hearing is adjourned at 2:19 PM on May 5, 2020. Thank you again.