



RULE-MAKING ORDER PERMANENT RULE ONLY

CR-103P (December 2017) (Implements RCW 34.05.360)

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STATE OF WASHINGTON
FILED

DATE: August 01, 2018

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WSR 18-17-008

Agency: Department of Ecology AO# 13-08

Effective date of rule:

Permanent Rules

31 days after filing.

Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

Yes No If Yes, explain:

Purpose: Ecology is adopting comprehensive amendments to the Solid Waste Handling Standards in Chapter 173-350 WAC. Changes adopted in sections 220, 225 and 250 are intended only for the purposes of clarification and consistency with other sections of the rule.

Experience implementing the rule and input from stakeholders identified many areas in need of improvement. Issues identified as priorities included updating definitions, clarifying criteria for inert waste classification and when earthen material/soil is a solid waste, as well as streamlining recordkeeping and reporting requirements. In the preproposal statement of inquiry for this rulemaking, Ecology announced it would also address other issues that might result in substantive changes, as well as clarifications and corrections to language in the chapter not expected to change the overall effect of the rule. This rulemaking:

- Standardizes language and organization to improve usability and consistency across the rule.
- Improves user ability to identify solid wastes apart from commodities, and supports material recovery and recycling activities while protecting public health and the environment.
- Helps users more easily distinguish inert wastes from other materials requiring a higher standard of management.
- Clarifies applicability of the rule, operational requirements, and timeframes for managing solid wastes in piles.
- Distinguishes between clean and contaminated soils and dredged material, and clarifies management requirements.
- Makes other substantive as well as clarifying revisions to the rule.

Citation of rules affected by this order:

New:

Repealed:

Amended: Chapter 173-350 WAC

Suspended:

Statutory authority for adoption: RCW 70.95, 70.95.060, 70.95.215, 70.95.218, 70.95.260(6), 70.95.300, 70.95.305, 70.95.310, 70.95.440

Other authority:

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 18-03-165 on January 23, 2018 (date).

Describe any changes other than editing from proposed to adopted version: Ecology made changes other than strictly editorial, from the proposed rule to the adopted rule. These changes are summarized below. For details on why the changes were made see the Concise Explanatory Statement found here:

<https://fortress.wa.gov/ecy/publications/SummaryPages/1807017.html>

WAC 173-350-020 Applicability

We revised the rule to clarify that the exclusion for contaminated soil applies only to soil that is removed from the ground, without any alterations to its quality, and placed back at the location where it originates. The intent of the rule is to prevent the creation of new sites potentially subject to cleanup under the state Model Toxics Control Act.

We revised the exclusion for collection of pharmaceutical products. The 2018 Legislature adopted new laws governing the collection of pharmaceutical products, exempting that activity from solid waste handling standards. At the time the rule was proposed, we were waiting for the new law to be codified under the Revised Code of Washington. It was necessary to reflect the new law since affected facilities are not subject to the solid waste regulations as a result of accepting pharmaceutical products. The adopted language was updated to reflect the assignment of a number under the RCW.

WAC 173-350-021 Determination of solid waste

We found the language in 2(c) to be vague on its own, and Ecology believed it fit better under (d), with other changes clarifying the kinds of activities that relate to solid waste handling. Commenters objected to the use of the term “solid waste” in (e) because they felt it created circular logic in a section that was intended to determine whether something was solid waste. Commenters also pointed out that many things are stored at a solid waste facility – supplies and materials necessary for operation – that are not solid waste. We inserted language regarding separation of materials back in 3(b) because stakeholders believed it was important to capture the idea that commodities (things that are not solid waste) must be separated from solid waste.

WAC 173-350-030 Effective dates

We added an allowance for up to two, six-month permit extensions for existing facilities not previously subject to the rule. Ecology is aware that some elements of local permit processes are backlogged, including review of checklists and threshold determinations under the State Environmental Policy Act. Ecology wanted to ensure that existing facilities not previously subject to permitting would not become noncompliant for reasons beyond their control.

WAC 173-350-100 Definitions

We revised the definition of active life to clarify the line between the active life of a facility and its closure, and the post-closure period (if applicable).

We deleted this definition of by-product because the related use of this concept in the rule was eliminated.

Changes regarding clean soil and dredged material were made to clarify that when evaluating pollutants under the Model Toxics Control Act, current land use at the receiving site should be evaluated, not some possible future land use. We also provided examples to help clarify soils that are likely to be clean soil as defined.

We revised the definitions of contaminated soil and dredged materials to specify that the current land use is appropriate for consideration when making a determination under the Model Toxics Control Act (MTCA). Changes also clarify that contaminated soil is a solid waste and must be managed at an appropriately permitted facility. A revision also clarifies that screening or characterization requirements are based on solid waste facility acceptance policies, since the tie to MTCA criteria is based only on managing materials “on the ground,” not at solid waste facilities.

This definition of domestic septage was outdated, and we replaced it with the current definition in WAC 173-308 (see septage further below).

We revised the definition of drop box facility to reflect that they are designed to serve the general public, but collection vehicles are not prohibited from delivering to drop boxes.

We revised the definition of engineered soil to clarify that it does not include cured concrete or asphalt.

We replaced the definition of glass with an alternative definition that is more consistent with industry standards.

At the request of stakeholders, we inserted a definition of inert waste to support the requirements in section 410, which more specifically identifies the kinds of wastes that are acceptable for disposal in an inert waste landfill.

We clarified the definition of limited purpose landfills to recognize that they may have received waste in the past.

We reverted to the original definition of the lower explosive limit because it was consistent with other state and federal rules.

We revised the definition of manufactured topsoil to clarify that using solid waste, which includes yard debris, to manufacture topsoil is subject to standards in this chapter.

We added the definition for septage as found in Chapter 173-308, Biosolids Management.

We revised the definition of soil to clarify that incidental pieces of concrete and other solid materials (such as may occur on a construction site) do not mean that a material is not suitable for management as soil.

We added a definition for tipping floor to clarify the term as used in the rule, and to also clarify that drop boxes do not constitute a tipping floor.

We revised the definition of waste tires to clarify that waste tires include mixtures of waste tires and used tires.

We revised the definition of wood waste to remove a circular reference to solid waste (a determination to be made through referenced section 021). The change also clarifies that materials like sawdust may be, but are not necessarily solid waste.

WAC 173-350-210 Recycling and material recovery facilities

A significant intent in the revision of the rule was to distinguish between commodities and solid waste, and to curb the potential for the speculative accumulation of large amounts of waste disguised as recycling. Stakeholders suggested and Ecology concurs it is reasonable to recycle half of incoming material on an annual basis. We revised Table 210 A to reflect that requirement, which also better aligns section 210 with the standards in section 320 for the temporary accumulation of wastes in piles. Compliance with the requirements in WAC 173-345 is obligatory for applicable operations, and Ecology included a reference on request.

The amount of waste residual allowable in source-separated materials is limited to five percent under the adopted rule. In Table 210 A, Ecology had eliminated weight as a metric, in favor of volume, but stakeholders pointed out that the metric depends on the kind of material. Ecology returned weight as an appropriate measure, in addition to volume. This standard determines whether a permit may be required, and is not a threshold for determining whether the material is a solid waste.

We revised subsections (4) and 5(a) of section 210 to reflect that existing elements of a facility do not necessarily need to be documented in the same manner as proposed new elements or existing elements that are proposed to be modified. The revision also clarifies that an engineer does not have to prepare every document.

In 4(g) of section 210 we further specified that leachate collection must extend to areas other than the tipping floor if leachate is likely to be generated. This revision is necessary to ensure compliance with state water quality rules.

We revised subsection (6) of section 210 to accommodate local jurisdictional health department approval of operations that may desire or need to have extended hours of operation when an attendant is not on site.

WAC 173-350-240 Energy recovery and incineration facilities

We revised subsections (4) and 5(a) to reflect that existing elements of a facility do not necessarily need to be documented in the same manner as proposed new elements or existing elements that are proposed to be modified. The revision also clarifies that an engineer does not have to prepare every document.

WAC 173-350-300 On-site storage, collection, and transportation standards

We revised section 300 to require a separate container for nonrecyclable materials where recyclable materials are collected. This is consistent with state goals under Chapter 70.95 RCW to prioritize recycling ahead of disposal, and helps reduce the potential for contamination of recyclable materials with nonrecyclable solid wastes.

WAC 173-350-310 ((Intermediate solid waste handling)) Transfer stations and drop box facilities

We revised subsections (4) and 5(a) to reflect that existing elements of a facility do not necessarily need to be documented in the same manner as proposed new elements or existing elements that are proposed to be modified. The revision also clarifies that an engineer does not have to prepare every document.

In 4(a)(vii) we further specified that leachate collection must extend to areas other than the tipping floor if leachate is likely to be generated. This revision is necessary to ensure compliance with state water quality rules.

In the case of containers that may leak, the rule was revised to recognize that placement on a tipping floor with leachate collection is a reasonable alternative to protect water quality.

We revised subsection (6) to accommodate local jurisdictional health department approval of operations that may desire or need to have extended hours of operation when an attendant is not on site.

WAC 173-350-320 Piles used for storage or treatment

We revised subsection (2) of Table 320 A to reflect that the amount of material accumulated on a site during a year is based on what can be applied to a site, not strictly the site where the material is accumulated.

We revised subsection (3) of Table 320 A to specify cubic yards instead of tons, since yards are a more common metric.

We revised subsection (5) of Table 320 A to clarify that the requirement is to remove the material within 90 days and not continue to use the site afterward.

We added a new exemption in subsection (6) of Table 320 A to allow for unrestricted storage that is consistent with an approved Construction Stormwater General Permit.

We revised subsections (4) and 5(a) of section 320 to reflect that existing elements of a facility do not necessarily need to be documented in the same manner as proposed new elements or existing elements that are proposed to be modified. The revision also clarifies that an engineer does not have to prepare every document.

We also revised the language in subsection (6) of section 320 regarding annual reports to reflect cubic yards.

WAC 173-350-330 Surface impoundments and tanks

We revised subsections (4) and 5(a) of section 330 to reflect that existing elements of a facility do not necessarily need to be documented in the same manner as proposed new elements or existing elements that are proposed to be modified. The revision also clarifies that an engineer does not have to prepare every document.

WAC 173-350-350 Waste tire storage ((and transportation))

We revised subsection (1) to reflect input from stakeholders who told us that used heavy equipment tires can weigh several hundred pounds or more, making the standards for typical passenger and truck tires inappropriate. We broke out a category of tires that weigh five-hundred pounds or more, allowing an accumulation of up to twenty tons, typically carried on a flatbed trailer and not in an enclosed trailer. Heavy equipment tires must be segregated from tires that weigh less than 500 pounds to qualify for this provision. We also modified subsection (10) to reflect these respective limits as the threshold for permitting.

Changes in subsection (4) and 5(a) reflect that existing elements of a facility do not necessarily need to be documented in the same manner as proposed new elements, or existing elements that are proposed to be modified. The revision also clarifies that an engineer does not have to prepare every document.

WAC 173-350-355 Waste tire transportation

Ecology proposed a new section 355, moving content related to the transportation of waste tires out of the existing section 350, leaving section 350 to address the storage of waste tires. In the proposed rule, we also added the text in (1)(e) to clarify an existing reference to contractors. On further analysis, we found (e) redundant with (d) and consolidated the proposed language in (e) with the existing (d).

WAC 173-350-360 Moderate risk waste handling

We removed references to pharmaceutical collection programs in Table 360 A, following the adoption of new laws by the 2018 State Legislature, exempting pharmaceutical collection programs from regulation under solid waste laws.

We revised subsections (4) and 5(a) of section 360 to reflect that existing elements of a facility do not necessarily need to be documented in the same manner as proposed new elements or existing elements that are proposed to be modified. The revision also clarifies that an engineer does not have to prepare every document.

WAC 173-350-400 Limited purpose landfills

We revised subsections (4) and 5(a) to reflect that existing elements of a facility do not necessarily need to be documented in the same manner as proposed new elements or existing elements that are proposed to be modified. The revision also clarifies that an engineer does not have to prepare every document.

We revised language pertaining to landfill gas concentrations in subsections 4(b), (c) and (f) to specifically identify these concentration limits and points of compliance as a performance standard for limited purpose landfills generally.

The proposed rule established these standards once, as a design performance standard, and then cited it in the subsections establishing design requirements for liners and final covers in the operating requirements and the post-closure requirements. In the adopted rule, the concentration limits are identified as part of the performance standard for the liner. They are also repeated as part of the operating standards. Since other elements of landfill design and operations could also play a role in meeting these standards, Ecology determined that they should not be connected only to liner design and operating standards.

WAC 173-350-410 Inert waste landfills.

In Table 410 A, Ecology deleted a proposed conditional exemption provision for inert waste landfills between 250 and 2,000 cubic yards. This deletion was based on stakeholder feedback that a permit exemption for up to 2,000 cubic yards was excessive.

We revised subsections (4) and 5(a) of section 410 to reflect that existing elements of a facility do not necessarily need to be documented in the same manner as proposed new elements or existing elements that are proposed to be modified. The revision also clarifies that an engineer does not have to prepare every document.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

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Solid Waste Management Program
PO Box 47600
Olympia, WA; 98504-7600

Phone: 360-407-6559

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Web site: <https://fortress.wa.gov/ecy/publications/SummaryPages/1807017.html>

Other: N/A

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	___	Amended	___	Repealed	___
Federal rules or standards:	New	___	Amended	___	Repealed	___
Recently enacted state statutes:	New	___	Amended	___	Repealed	___

The number of sections adopted at the request of a nongovernmental entity:

New	<u>2</u>	Amended	<u>24</u>	Repealed	<u>1</u>
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The number of sections adopted on the agency's own initiative:

New	___	Amended	<u>3</u>	Repealed	___
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	<u>1</u>	Amended	<u>28</u>	Repealed	<u>1</u>
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The number of sections adopted using:

Negotiated rule making:	New	___	Amended	___	Repealed	___
Pilot rule making:	New	___	Amended	___	Repealed	___
Other alternative rule making:	New	<u>2</u>	Amended	<u>27</u>	Repealed	<u>1</u>

Date Adopted: August 1, 2018

Name: Maia D. Bellon

Title: Director

Signature:

