



DEPARTMENT OF
ECOLOGY
State of Washington

Chapter 173-350 WAC Solid Waste Handling Standards

1st Preliminary Draft

Responsive Summary

December 2016

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This report is available on the Department of Ecology's website:

<http://www.ecy.wa.gov/programs/swfa/rules/wac173350/1308ov.html>

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Washington State Department of Ecology
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General Comments

- Many comments/questions asked what requirements their specific facility would have to meet under the new rule. The wastes each facility handle ranged from processed and unprocessed concrete, scrap metal, wood waste, tires, etc.
The first place to look when determining whether WAC 173-350 applies to a waste or activity is the “Applicability” section of 020. After 020, the next place to look is in the “Determination of solid waste” section of 021. If these sections do not clarify whether or not solid waste rules apply, one must look to the applicability of each section in the rule to determine if the activity requires solid waste permitting or if it is conditionally exempt. Always consult with the health department and Ecology for assistance with determining the applicability to the rule.
- Exemption criteria in all sections were placed into a table format.
- A new sub-section was added in all sections to clarify the construction documentation needed for each facility type. The requirements are not new. This new sub-section is after the design requirements of each section.
- Restructured sections pertaining to a specific facility type; and reordered content to provide consistency across the rule. What may appear as “new text” in tracked changes may not be new, but may have moved to a new location. The following subsections appear in most sections:
 1. Applicability
 2. Permit Exemptions
 3. Permit Requirements – Location
 4. Permit Requirements – Design
 5. Permit Requirements – Documentation
 6. Permit Requirements – Operating
 7. Permit Requirements – Groundwater Monitoring
 8. Permit Requirements – Closure
 9. Permit Requirements – Financial assurance
 10. Permit application contents
- In previous versions of the rule, subsection headings display in italics font. The re-formatted headings appear in bold font. The change is to help with navigation by making subsections stand out more. These formatting changes will not appear as tracked changes.
- In the permit exemption sections, added standard language clarifying that if a facility does not operate in compliance with the terms and conditions established for an exemption under each subsection; then the facility may be subject to the permitting requirements for solid waste handling under this chapter.
- Section 405 on hybrid waste landfills (landfills managing a combination of inert waste and impacted soil or sediment) has been eliminated. Due to changes made to sections for managing impacted soil and sediment, the hybrid waste landfill section is no longer needed.
- Ecology received requests to prepare a concise and illustrative flow chart or organizational summary. The goal of the summary is to demonstrate when a Health

Department has a role to require a report, evaluate information for a permit issuance or appeal, conduct an inspection, provide notifications to, or receive notifications from an affected party, or any other actions required of a Health Department because of this rule making per each section. No flow charts creation is happening as part of this rule update effort.

The permitting section reflects roles and responsibilities of local health departments and Ecology as identified in statute. The majority of elements related to reporting, notice, inspection, etc. are not new. Changes from current language are largely for clarification.

173-350-010 – Purpose

No Substantive Changes

173-350-020 – Applicability

- Moved manure and crop residue land applied at agronomic rate back to 173-350-020. This activity was in section 230 as a conditional exemption in the first preliminary draft.
- Added on-farm vegetative waste and bedding to the same exclusion in section 020 for manure and crop residues.
- Revised language regarding dredged materials to clarify that the rule does not pertain to dredged materials managed in-water or on lands adjacent to surface water.

173-350-021 – Determination of solid waste

- Determination of solid waste, 173-350-110 in an earlier draft, moves to section 173-350-021. The change improves the overall flow of the rule when determining applicability of the rule.
- Reworded, added, and simplified language to provide clarity and direct the reader to go to other sections as appropriate. For example, some waste materials already have criteria for use, or standards to no longer consider solid waste in other sections of this rule. An example of such, composted materials that are regulated under WAC 173-350-220.
- Generalized the language concerning a material being a solid waste to clarify that the materials received at any solid waste handling facilities are solid waste and did not list specifically material recovery, recycling, storage, disposal, energy recovery, or incineration facilities.
- Following RCW 70.95.010(8), added language to clarify that energy recovery, incineration, and landfilling is on the same level within of Washington’s solid waste hierarchy. Added solid waste before recycling to clarify that recycling is a solid waste handling activity under RCW 70.95.030.
- Clarification for “available or sufficient” markets was added. Changed language to reflect that if “no” market is available for the materials and the stockpiles violate the provisions of WAC 173-350-040 the material would be a solid waste.

- Clarifications related to the requirement of the materials possessing “positive market value” was added. Changed language from “available or sufficient” to “established.” Added language to clarify that if a generator pays for management of a material then the material is a solid waste: Paying a person to remove or process the material for recycling, disposal, or incineration is not positive market value, nor is paying a discounted amount for removal or processing;
- Added language to promote consistency across statutes with respect to commercial recycling. Section (5) added: Nothing in this chapter shall impact the rights of a commercial recycler, non-profit, or commercial generator under RCW 70.95.903, 81.77.104, 36.58.160, and 35.21.158.

The following did not change based on comments:

- Many commenters expressed concerns on how the rule might be used by other entities to interpret and seek enforcement. The concerns related to the implications of a material being labelled as solid waste or solid waste handling activity. The currently effective rule is more restrictive than the currently proposed rule. Ecology believes most of these entities can remain outside the solid waste regulations through the determination of solid waste section in 173-350-021.
Whether a material is subject to regulation under this rule will be dependent on how a person manages the material. For example, some businesses may choose for their business model to operate in ways that would require regulation under this rule. This is an economic decision open to them. They would then be in the same position as they are in under the current rule.
- Some commenters requested a specific exemption for scrap metal to not be considered a solid waste. Ecology believes many entities in this industry will fall outside of the solid waste determination and a specific exemption is not necessary.
- Concerning the request for a list of potentially effected entities that would no longer handle solid waste under the proposed draft, Ecology does not have a list of these entities because it would be dependent on how businesses adapt to the new regulations. The focus is on the specific requirements under section -021 and not the number of facilities impacted.
- Some commenters are concerned about the potential for a negative impact to Washington’s recycling rate. If facilities are no longer considered recyclers or solid waste handling facilities, facilities will not be bound to mandatory recycling reporting requirements. Ecology recognizes there may be an impact to the recycling rate but believes that data on recyclable materials entering the system should still be captured, and if a material is not solid waste, then it does not fall within the rate. There will be an adjustment period to establish the “new” mean recycling rate.
- Some commenters are concerned that accepting a load of all mattresses or an entire car may be a commingled load. A mattress or a car is comprised of many types of materials. Ecology believes these items are individual items and do not fall under the definition of commingled.

- Some commenters are concerned that accepting materials from a material recovery facility. The concern is that accepting materials from a material recovery facility based on the rule causes reclassification as a solid waste handling facility. A commodity bale bought from a material recovery facility is not solid waste handling.

173-350-025 – Owner responsibilities for solid waste

No Substantive Changes

173-350-030 – Effective dates

- Added a subsection to section -030 to address effective dates of the new soils and sediments section, -995.

173-350-040 – Performance Standards

- Specific references to Water Quality and Clean Air statutes have been eliminated and a generic requirement to comply with all other applicable laws, regulations, and ordinances has been incorporated into sub-section (3) of this section.

173-350-100 – Definitions

- Changed manure definition to account for any livestock manure, no longer limited to only herbivorous animal manure.
- Changed “ecologically-sensitive properties” definition to align with soil and screening levels protective of ecological receptors as they would apply to cleanup sites under chapter 173-340 WAC, Model toxics control act, specifically WAC 173-340-7491.
- Revised “groundwater-sensitive properties” definition. Removed references to use as “fill,” referred to locations over existing drinking water sources only, and added considerations for a person to decide if there is potential for leaching to groundwater.
- Revised “solid waste” definition to ensure use of impacted soil/sediment consistent with criteria in the rule is not a solid waste handling activity.
- Added the definition of “street waste” that was created during the stakeholder workgroup process. This definition was inadvertently left out of the preliminary draft.
- Excluded alternative daily cover from the definition of “reuse.”
- Added manufacturing to the definition of “byproduct” before production process.
- Added landfill before disposal to help clarify that both landfilling and incineration are types of disposal in the recycling definition.
- Clarified the definition of “scavenging” to include the activity-taking place at any facility.
- Revised the definition of glass.
- Staff added all weather surface as a new definition. The definition draws on the U.S. Dept. of Housing and Urban Development definition of “all-weather surface” as a road surface over which emergency vehicles and typical passenger vehicles can pass in all types of weather.

- There was a question about what information contributed to supporting a statement in the definition of asphaltic materials. The statement was that waste roofing materials are not presumed to be inert.

The original language's intent was to draw distinction between monolithic asphalt pavement and asphalt-impregnated matting. The proposed definition simply strengthens the statement. Ecology conducted a study on ground asphalt shingles in 2009. Results and conclusions can be found at

<https://fortress.wa.gov/ecy/publications/summarypages/0907074.html>

173-350-200 – Beneficial use permit exemptions

- A comment was offered suggesting that the BUD language must be coupled with the changes to the definitions of what is considered solid waste and what is considered recyclable materials. If the definitions inadvertently preclude a material from being considered having beneficial use, it will be difficult for a commodity business like a scrap recycling facility to qualify for the beneficial use permit exemption. Generally speaking, BUD would not apply to this group of stakeholders. If a material is not solid waste per section 021, BUD is not applicable to its management. Recyclable materials, as identified in solid waste management plans, are by statutory definition considered solid waste. However, there are other regulatory pathways for managing these materials. There may be situational exceptions that come up but generally speaking, materials handled by this group likely are managed outside of the BUD process.
- A question asked about how the applicability language in this section would impact the use of ground roofing as a component of base fill below asphalt roadway. This does not change anything. To date, no proposals have come forward to use ground asphalt shingles as roadbed. If the ground shingles remain solid waste per [proposed] WAC 173-350-021, reuse in a non-bound manner needs consideration under BUD or a permit. If proposed, the applicant would need to demonstrate that the material meets a comparable specification for the project other than simply occupying space. Without such a demonstration, use of solid waste simply as fill becomes landfilling.
- A commenter stated, the requirement for providing “evidence that the material will perform as claimed in the beneficial use permit exemption application” could be an impossible ask since a newly proposed beneficial use may not have established such evidence. Also, based upon the limited number of efforts to acquire the BUD determination state wide, this appears to be an underutilized process to sustainability and movement away from landfilling. Consideration to reduce the burdensome requirements of this program is necessary.

The BUD program is not a “pilot” mechanism. It evaluates whether a proposed use of a solid waste poses little or no potential to harm human health or the environment and assumes there is evidence available to back up an asserted beneficial use. This can take the form of field tests (with local oversight), knowledge of the materials and process where the waste generates, literature research, etc.

173-350-210 – Recycling and material recovery facilities

- Language was added to conditionally exempt recycling of concrete or wood waste at the point of generation to use back on that site.
- Added “destination of material” as an item to be included in the annual report.

- Corrected language to clarify that the jurisdictional health department (not Ecology) may require additional information.

The following remains unchanged based on comments:

- A few commenters requested that “recycling” and “material recovery facilities” not be in the same chapter to support the distinction between sorting and recycling. However, many stakeholders over the past three years of rule writing requested combination of these sections. Ecology supports combining these two types of facilities under one section.
- Some commenters requested a further narrowing of exemptions for facilities in 173-350-210(2)(a)(ii) and (iii) to specify further that facilities receiving mixed construction and demolition materials could not qualify for exemption. Ecology believes the language addresses this concern.
- Some commenters have concerns that facilities will lose their recycling facility status if they accept materials that are not source separated. These facilities are still recycling facilities, but they will require a permit to operate. Oversight via a permit aims to reduce sham recycling.

173-350-220 – Composting

- Structural changes to the composting section align with other sections of the rule. For example, the added subsection 5 addresses construction documentation, although the language itself is not new. Renamed subsections and reformatted the section to align with other sections of the rule. Other minor corrections also appear.

173-350-225 – Other organic material handling activities

No Substantive Changes

173-350-230 – Land application

- Moved manure and crop residue land applied at agronomic rate back to 173-350-020. It was previously in this section -230 as a conditional exemption. In addition, bedding and on-farm vegetative waste exist in this exclusion.
- For permitted activities, added a reference to RCW 70.94, Washington Clean Air Act, which exempts agricultural practices from odor management.

173-350-235 – Soil and sediment criteria and use

- Eliminated this section. Section -995 absorbed the content that was from this section.
- See section -995 for more information.

173-350-240 - Energy recovery and incineration facilities

- Subsection (4) created to address design criteria. The moved language is not new but relocated from other places within the section.
- Subsection (5) created to address construction documentation.
- Language throughout the section was standardized to align with changes in other sections of the rule (i.e. exemption language, plan of operation language and annual reporting language was standardized.)

173-350-250 – Anaerobic digesters

- Updated the anaerobic digester section with structural changes to align with other sections of the rule. For example, added subsection 5 to address construction documentation, but the language itself is not new.
- Renamed subsections and reformatted language to align with other sections of the rule.
- Other minor corrections to language also appear.

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

No Substantive Changes

173-350-310 – Transfer stations and drop box facilities

- Clarified language regarding the removal of waste from the tipping floor daily as dictated by the terms of the permit.

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

- This title of this section and the “pile” definition changed back to “piles used for storage or treatment”.
- There is a revised exemption table. Exemptions are available for specific wastes at differing volume limits depending on the type of waste. In addition, exemptions are available for ongoing piles of specific wastes - provided the piles meet exemption criteria. There is a turnover requirement to remaining an exempt pile for certain wastes. Each exemption may exist on one site as long as the site meets existing exemption criteria.
- There were some concerns expressed about a perceived new requirement to have construction quality assurance plans for surfaces under piles. This is not a new requirement. It has always existed for permitted pile facilities, but not required for exempt facilities.

- An added provision allows a health department to waive the impervious surface requirement if the applicant can demonstrate how other design features or permits will protect soil and groundwater.

173-350-330 – Surface impoundments and tanks

- Modified language throughout the section with the intent of expanding phrasing referring to tightness testing to also include testing for leaks.
- Modified language to clarify that this section does not apply to elements of water-quality permitted waste and storm water systems, if the water-quality permits specify similar requirements to those of this section.
- Modified language to clarify that this section applies to piping systems “within the boundaries of solid waste facilities”.
- Modified language clarifies secondary containment requirements in regards to above ground tanks.

173-350-350 – Waste tire storage

- Some asked about removing “volume” as a unit of measure for tires removed from a site - as number of tires and weight in tons as identified in the beginning of the regulation as a means of quantifying tires on a given site. Many small waste tire storage facilities do not have scales. Eliminating the option of recording volume would not be feasible for these facilities. Volume will remain an option in the rule.
- Some commented that the definition of waste tires should include other forms of tires such as shredded and baled tires. If these forms are managed under the piles section (320) it is more difficult to get the financial assurance and other details of the waste tire storage section (-350) into the facility permit requirements. RCW 70.95.550 (3) defines waste tires: "Waste tires" means tires that are no longer suitable for their original intended purpose because of wear, damage, or defect. The regulation needs to reflect the law, and clarify it as needed, but not regulate beyond the scope of the law. Ecology believes that the proposed addition of altered forms (cut, baled, or shredded) to the definition of waste tires in WAC 173-350 extends beyond the scope of the definition provided in RCW 70.95. Any health jurisdiction can add financial assurance to their local regulation if they think it is necessary.
- Some commented that there is abuse of the exemption for tire storage inside a mobile container. Some requested modification to the waste tire storage section to prevent this abuse. Added language clarifies the applicability section to address this concern.
- Some were concerned about the change in setback requirements from 10 feet to 50 feet. This change is based on 2015 International Fire Code 3405.4. We have allowed some flexibility in the rule should the code change.

173-350-355 – Waste tire transportation

- Statements expressed that it may be appropriate to include language reflecting the exemptions for solid waste haulers regulated under RCW 81.77 to avoid any possible confusion. WAC 173-350-355 also includes an exemption for any waste hauler regulated by chapter 81.77 RCW, Solid waste collection companies. WAC 173-350-355 does have an exemption for the United States, the state of Washington or any local government, or contractors hired by these entities, when involved in the cleanup of illegal waste tire piles. This language is already included in the rule.

173-350-360 – Moderate risk waste handling

- Ecology is not proposing to expand exemptions for product take-back centers beyond the new addition of an exemption for law enforcement. We are expanding the requirements for product take-back centers to include common-sense measures. We believe collection sites should use common-sense measures to safely manage moderate risk waste (MRW). Ecology recognizes that under product stewardship programs, non-traditional collection infrastructure may be proposed. There are concerns about applicability of solid waste rules addressed in product stewardship legislation on a case-by-case basis, rather than offering all product stewardship programs, that do not currently exist, an exemption in the rule.
- No changes were made to the requirement to have trained staff present when accepting MRW.

173-350-400 – Limited purpose landfills

- A concern arose over requirements applying to wells in the waste mass. Chapter 173-160 WAC picks up landfill gas wells within the current scope of the resource protection well standards. This would be an inter-program issue that would need worked out when updating Chapter 173-160 WAC.
- Language was added to “notify the local fire authority” when explosive gas levels exceed the limits identified in this subsection.
- Language updated from “water well” to “water supply wells.”
- For post-closure care requirements, the removed reference to conducting post-closure for twenty years updates post-closure care so that it must continue until the time the landfill becomes functionally stable.
- Clarified alternative liner design requirements and process for approval of an alternate liner design.

173-350-410 – Inert waste landfills

- There were many commenters concerned with raising the amount of inert material from 250 cubic yards to 2,000 cubic yards in the applicability section. Ecology will maintain

the 2,000 cubic yard threshold for permitting. There is only one inert waste landfill facility permitted with a capacity below the proposed 2,000 cubic yard threshold. The oversight and enforcement mechanisms that exist under the current system at the 250 cubic yard threshold still exist. If the facility does not meet the conditions for exemption, it must obtain a permit, under the same authorities and process that currently exist in the regulatory framework.

- Changes in the applicability section clarify the specific materials an inert waste landfill can accept.

173-350-490 – Other methods of solid waste handling

No Substantive Changes

173-350-500 – Groundwater monitoring

- Minor language and formatting changes.

173-350-600 – Financial assurance requirements

- Clarified that when preparing a detailed cost estimate for the hiring of a third party under contract to complete closure/post-closure activities is subject to, chapter 39.12 RCW, Prevailing wages on public works applies.
- Changed language for post-closure cost estimates from planning for a 20-year period to conducting post-closure activities in accordance with the approved post-closure plan.

173-350-700 – Permits and local ordinances

No Substantive Changes

173-350-710 – Permit application and issuance

- The revised permit modification subsection includes providing notification of changes without necessarily going through the permit modification process.
- The revised permit deferral process requires “a detailed description how other environmental permits will provide an equivalent or superior level of environmental protection” rather than require a demonstration showing how other environmental permits will address each requirement of this chapter.

173-350-715 – General permit application requirements

No Substantive Changes

173-350-900 – Remedial action

- This rewritten section provides more clarity on the roles and responsibilities of Ecology and a jurisdictional health department when a 350-permitted solid waste facility ends up in remedial action under chapter 173-340 WAC; Model toxics control act (MTCA) authority. It attempts to clarify the interface of solid waste permitting and MTCA remedial actions, which can be complicated, depending on the type of clean-up action.
- The bulk of WAC 173-350 relies primarily on RCW 70.95 for authority. This sections authority arises from both RCW 70.95 (for health department responsibility) and RCW 70.105D (for Ecology’s responsibilities). RCW 70.95 clarifies health departments’ responsibilities to include those solid waste permitting functions that remain outside the scope of a cleanup action, and for Ecology’s responsibilities to review solid waste permit actions. RCW 70.105D clarifies Ecology’s responsibilities to include for remedial actions, for addressing substantive requirements of a solid waste permit in a cleanup action, and consultation with JHDs to identify substantive requirements.

173-350-995 – Soil and sediment use criteria

- Changed the title of the section to “Soil and sediment use criteria.”
- The section’s revised language specifies that management of impacted soil/sediment in accordance with management options in the section is not a solid waste handling activity. In keeping with this revised language, we removed all conditional permit-exemption references.
- Clarified language pertaining to management of soils/sediments within a cleanup site under chapter 173-340 WAC, Model toxics control act (MTCA), and from a MTCA cleanup site. Any management of soils within a MTCA site is subject only to MTCA, not the revised rule. This applies to formal cleanup sites, independent cleanups, and voluntary cleanup program. Conversely, materials managed outside a cleanup site must manage materials consistent with chapter 173-350 WAC.
- Addressed pile storage within the section to prevent readers from having to reference the piles storage section, WAC 173-350-320. Storage at intermediate locations outside the source site or site of final placement is limited to 90 days.
- Changed the management option allowing movement of materials impacted from “...routine, legal, human activities...” to similarly impacted properties. Rule now limits this option to “...routine, legal, *non-industrial* human activities...” Ecology based the change on higher levels of contaminants often associated with industrial properties. Industrial properties can still manage impacted soil/sediment from their sites under other options in the rule, but different conditions will apply.
- Clarified that the management option for placement of materials at sites with same contaminants at equal or greater values is for materials with contaminants above soil and sediment-screening levels associated with property classification levels in the draft rule.
- Removed management option that tie to a reclamation permit from the Washington Department of Natural Resources (DNR). This provision was confusing to some.

Comments asked for notification to health department for the larger handlers of impacted soil/sediment. If the DNR management option remained, notice would not go to applicable agencies. In addition, DNR has no commitment to include the revised rule standards into reclamation permits.

- Removed the option that the department can approve other uses. The option was there primarily to address increases to soil and sediment-screening levels (SSLs) based on more localized natural background or situations when a practical quantitation limit exceeds an SSL. Added language allows for these increases. In addition, without specifying criteria to assess other uses, this option could have been in violation of chapter 34.05 RCW, Administrative procedures act.
- Added notice requirements to jurisdictional health departments and Ecology for two of the management options when managing over 2,000 cubic yards (CY). One option requires notice when placing materials above the contaminant limits for “residential, agricultural, and high frequency contact properties.” The other option is allowing placement of materials above respective soil and sediment-screening levels associated with property classifications requires notice for any project over 2,000 CY. The rule text outlines information that must be in a notice, and no specific form is required for providing the information.
- Removed reference to placing 15 feet of material that meets future property use soil/sediment screening levels over impacted soil/sediment. This provision was originally there to help ensure there would be no restrictions on redevelopment. Instead of this, a person must now place a deed notice on properties receiving 2,000 CY or more of materials that exceed SSLs for “residential, agricultural, high frequency contact properties.” This helps ensure buyers are aware that materials at the site may not be suitable for all property uses.
- Removed 50-foot setback from surface water or critical area buffer. Commenters found this would be too limiting in many places in the state. They noted there is already language requiring placement of impacted soil/sediment to be protective of surface water quality. In addition, local restrictions/ordinances, not a statewide standard, are more appropriate for determining buffers from critical areas.

The following apply to soil and sediment screening levels:

- An additional added table in footnote (d) under the Soil and Sediment Screening Level (SSL) table outlines what considerations went into standards for setting SSLs for each property classification. This table was inadvertently omitted from the informal public review draft.
- Added consideration of “simplified terrestrial ecological evaluation” limits for determining soil and sediment-screening levels for “residential/agricultural/high frequency contact properties” to be consistent with how cleanup levels under Chapter 173-340 WAC, Model Toxics Control Act (MTCA) would be determined for such properties.
- Revised natural background concentrations to be consistent with statistical analysis recommended for establishing background under MTCA and also to address requests for

consideration of concentrations found in both soil A and C horizons, not just soil C horizon. Recent creation of sediment management standards utilized the statistical analysis recommended. The change resulted in some decreases and some increases to background limits previously calculated. Adjusted footnote explaining natural background calculations, including the statistics used.

- Removed footnote that provided higher natural background in certain counties. This approach would be in conflict with procedures in MTCA (specifically WAC 173-340-709) to address increases in natural background based on more localized conditions. Added language to the rule that addresses procedures a person can use to increase background.
- Changed cPAHs limit of 0.4 ppm for certain property classifications to 0.1 ppm. 0.1 ppm is based on MTCA Method A Unrestricted cleanup levels. 0.4 ppm was based on setting a background limit in this rule for cPAHs from results of tests on urban Seattle soils. The state has not officially set a background for cPAHs that could be applied to rules and would likely consider other studies and sampling before doing so.
- Recalculated groundwater protection limit that corresponds to the groundwater quality standards of Chapter 173-200 WAC using values for Henry's law constant and distribution coefficient figures that are consistent with values used in calculating cleanup levels in Washington. Had previously calculated using the United States Environmental Protection Agency values.

The following did not change based on comments:

- Did not change the allowable contaminant limits to limits set through the Dredged Material Management Program (DMMP). These limits are not appropriate; the limits reflect impacts in an aquatic environment and do not consider impacts in an upland environment.
- This section will not be removed due to comments that other rules already exist (MTCA, dangerous waste regulations) to regulate management of impacted materials, or that authority is lacking in solid waste statute to oversee the management of impacted soil or sediment:
 - MTCA rules apply only to setting cleanup levels at cleanup sites and apply only to sites with contaminants over a certain threshold. There is no authority in MTCA setting limits for management of materials outside a cleanup site. MTCA does not prevent creation of cleanup sites, nor does it restore cleanup sites to conditions that existed prior to the introduction of contaminants.
 - The dangerous waste regulation applies only to management of materials that designate as a dangerous/hazardous waste. There is no authority in the dangerous waste regulations setting standards for managing materials that are not dangerous/hazardous waste.
 - The Assistant Attorney General's office has provided their opinion that there is authority under Chapter 70.95 RCW, Solid waste management – Reduction and recycling, to set standards for management of soil/sediments containing contaminants. RCW 70.95 keeps the definition of "solid waste" open by

specifying the list of materials in the definition is “not limited to” the examples provided, and specifies that its purpose is to establish a program for solid waste handling that will prevent land, air and water pollution.

- Natural background concentrations remain unchanged to account for human-caused impacts. Natural background, as defined, does allow for consideration of global use of persistent substances. Impacts to soils based on local or regional human activities are not necessarily protective and could be harmful if used in different locations. Reviewers should keep in mind that soil/sediment screening levels are only set at natural background when the protective level was below a natural background.
- Soil and sediment screening levels are not based on MTCA alone because:
 - There is no one MTCA method or cleanup level that is universally protective. MTCA uses several methods to establish cleanup levels based on site-specific circumstances. Cleanup levels vary depending on the type of property, type of contact with contaminants, ecological importance, protection of drinking water, presence of a few or multiple contaminants, carcinogenic impacts, etc.
 - This new section will come with minimal oversight and will not require site-specific analysis that would occur at a cleanup site, where broadly protective contaminant concentration levels are considered. This helps to ensure uses of impacted soil/sediment will not create cleanup sites and will be protective of human health and the environment under most circumstances. With this in mind, contaminant concentrations for allowable uses are based on consideration of several MTCA standards for setting cleanup levels, EPA cleanup standards for federal sites, Washington State groundwater quality criteria, and Washington-specific natural background limits.
 - MTCA does not restore cleanup sites to conditions that existed before contaminants occurred. This rule attempts to prevent future degradation at locations before soils/sediment are moved in the first place.
- Street waste did not change use category to include soil with contaminants from routine, legal, and human activity. Street waste concentrates contaminants above that which the category intends to exclude, such as soil from people's yards. Additionally, management, treatment, and consideration on use of street waste is important for protecting surface water quality since runoff from paved surfaces and storm water conveyance structures associated with streets has a higher likelihood of potential impacts to surface water.
- Did not remove agricultural lands from residential, agricultural, high frequency contact properties. Agricultural lands are included in the more protective category (not the limited access property category). Agricultural lands are included, because these lands often convert to residential development. Management of soils on fields makes it difficult to prevent materials from traveling onto other properties from wind erosion or other means. There are also concerns about agricultural lands becoming disposal sites for materials with the highest contaminant levels.