

DEPARTMENT OF ECOLOGY
Hazardous Waste and Toxics Reduction Program

DATE: January xx, 2020
TO: Anthony McKarns
FROM: Department of Ecology. Hazardous Waste and Toxics Reduction Program (HWTR)
SUBJECT: Informal response to comments

The Department of Ecology HWTR program opened an informal comment period November 22, 2019 on amendments to the dangerous waste regulations, closed December 23, 2019. We received the following consolidated comments from the Department of Energy Hanford site contractors. Within this set of comments, Ecology is providing our responses and recommendations for changes to draft rule language.

U. S. Department of Energy – Richland Operations Office
Consolidated Hanford Site Contractor Comments on
November 2019 Preliminary Draft Amendments to WAC 173-303 Dangerous Waste Regulations

#	WAC Citation	Comment – (Ecology’s Response is added)	DOE Contractor
1	WAC 173-303-040 "Personnel or facility personnel" means all persons who work at, or oversee the operations of, a dangerous waste facility, and whose actions or failure to act may result in noncompliance with the requirements of WAC 173-	Should the definition be revised to also include reference generator requirements (e.g., WAC 173-303-200)? As written, the definition seems to only apply to persons who work at, or oversee the operations of TSD units. This comment/question is presented for attention because the term “facility personnel” is used in the generator requirements (e.g., WAC 173-303-200 and WAC 173-303-201)	Mission Support Alliance (MSA)

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	303-400 or 173-303-280 through 173-303-395 and 173-303-600 through 173-303-695.	<p>Response: No. The language used is consistent with the federal generator improvement rule. Compare, for example, WAC 173-303-200(9) <i>Personnel training</i> with 40 CFR 262.17(a)(7) <i>Personnel training</i>. In both citations the phrase “facility personnel” is used.</p> <p>Recommendation: No change.</p>	
2	<p>WAC 173-303-174(1)(a)</p> <p><i>...In addition, the <u>owner or operator</u> must address leaks and spills in accordance with the applicable provisions of WAC 173-303-145 and 173-303-<u>360</u>.</i></p>	<p>The following revisions are suggested ...In addition, <u>the generator</u> must address leaks and spills in accordance with the applicable provisions of WAC 173-303-145 and WAC 173-303-<u>201(14)</u>.</p> <p>Response: Ecology agrees the use of the term “generator” is appropriate in this rule. However, the suggestion to replace WAC 173-303-360 with the LQG emergency procedures in WAC 173-303-201 should also include MQG emergency procedures in WAC 173-303-172.</p> <p>Recommendation: -174(1)(a)</p> <ol style="list-style-type: none"> 1) Replace “owner or operator” with “generator”. 2) Replace the reference to section -360 with a reference to sections 172 and 201. 	MSA
3	<p>WAC 173-303-200(12)(b)(ii)</p> <p><i>Notify the department using the Washington State Dangerous Waste Site Identification Form within ninety days after closing the facility that it has complied with the closure performance standards of (c) or (d) of this subsection, respectively...</i></p>	<p>EPA guidance at the link below states: “<i>The large quantity generator should have met the closure performance standards in 40 CFR section 262.17(a)(8)(iii) on or before the date they submit the 90-day notification.</i>”</p> <p>Does Ecology also want LQGs to have met the WAC 173-303-200(c) closure standards before submitting the 90-day notification? If yes, should the rule be revised accordingly?</p>	MSA

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		<p data-bbox="716 269 1482 370">https://www.epa.gov/hwgenerators/frequent-questions-about-implementing-hazardous-waste-generator-improvements-final-rule#closure.</p> <p data-bbox="716 412 1289 581">Response: The language in 200(12)(b)(ii) is Consistent with federal language as adopted from the generator improvement rule at 40 CFR 262.17(a)(8)(iii). EPA’s guidance may be used for consistency.</p> <p data-bbox="716 623 1094 651">Recommendation: No change.</p>	
4	WAC 173-303-040	<p data-bbox="701 664 1656 727">The proposed definition of “Electronic Signature” from RCW 19.360.040 is much clearer than the current definition. We strongly support this change.</p> <p data-bbox="701 769 1026 797">Response: Support noted.</p>	Pacific Northwest National Laboratory (PNNL)
5	WAC 173-303-172(4)(a)	<p data-bbox="701 846 1688 906">We are in favor of the proposed increase to the maximum accumulation of DW for a Medium Quantity Generator to 6600 lb.</p> <p data-bbox="701 948 1703 1117">However, the low QEL and accumulation limit for Toxic EHW severely constrains our ability to manage facilities under the MQG regulations. We encourage Ecology to consider also raising the QEL and maximum accumulation of Toxic EHW. As an initial proposal, we suggest a QEL of 22 pounds per month and a maximum accumulation of 110 pounds.</p> <p data-bbox="701 1159 1688 1222">Response: Support noted for increasing the MQG maximum accumulation limit to 6600 pounds.</p> <p data-bbox="701 1265 1698 1404">Regarding raising the QEL for toxic extremely hazardous waste (EHW), ecology will remain in line with EPA’s strategy of regulating acute hazardous waste with a 2.2 lb. generation and accumulation limit (P listed, a few F listed wastes). All of these wastes are considered especially dangerous to human health and the environment</p>	PNNL

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		<p>and require greater control. The scope of the request would require redefining each generator category, as well as all related regulations, creating yet another regulatory tier. In addition, a result of raising the toxic EHW QEL to 22 lbs would mean small quantity generators could divert more toxic EHW waste to the local municipal solid waste landfills.</p> <p>Recommendation: No change.</p>	
6	WAC 173-303-573	<p>EPA finalized the rulemaking that adds aerosol cans to the Universal Waste regulations on 12/9/2019 (84FR 67202). Adopting this regulation in Washington would substantially increase recycling and improve management of aerosol cans. We encourage Ecology to adopt these regulations into WAC 173-303-573 as part of this rulemaking package or as soon as possible thereafter.</p> <p>Response: Ecology will be looking at adopting EPA’s aerosol can universal waste rule in a future rulemaking. The current rulemaking schedule does not give enough time to fully analyze and allow public input on this wide-sweeping exclusion.</p> <p>Recommendation: Not adopting this exclusion during the current rulemaking cycle.</p>	PNNL
7	WAC 173-303-806(4)(a)	<p>The scope of the proposed change is unclear. WAC 196-23-020 appears to relate specifically land surveying and construction. Referencing WAC 196-23-020(1) in isolation from its context might give the impression that any “report” would require a RPE stamp. There are many types of reports that might be part of a permit submittal for which an RPE stamp would not be applicable. Please clarify the text of 806(4) to limit the requirement for an RPE stamp to land surveying or construction documents.</p> <p>Response: The scope of WAC 196-23-020 applies to Engineers and Land Surveyors. WAC 196-23-020(1) was promulgated to implement Chapter 18.43 RCW, which requires the PE or Land Surveyor who prepared or directly supervised work to seal/stamp and sign any final documents “that are prepared and distributed for filing with public officials, use for construction, final agency approvals or use by</p>	PNNL

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		<p>clients[,]” including “plans, specifications, plats, surveys, as-built documents prepared by the licensee and reports.” WAC 196-23-020(1).</p> <p>Regarding “reports”, this requirement would be applicable to final engineering and land surveying reports prepared by an engineer or land surveyor, e.g., design reports, condition assessments, geotechnical reports, and other engineering reports. The intent of this change is to clarify that all final engineering documents that are submitted to Ecology (as prescribed in the general requirements for Part B permit applications) are required be signed and stamped by a professional engineer. This requirement also applies to engineering documents not prepared by an independent qualified registered professional engineer.</p> <p>5. WAC 173-303-806(4)(a) already requires a PE certification of engineering documents, “Certain technical data, such as design drawings and specifications, and engineering studies must be certified by a registered professional engineer.”. This change clarifies what types of documents must be certified, i.e., PE stamped and signed, and makes the regulations more consistent.</p>	

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8	WAC 173-303-806(4)(a)	<p>New wording concerning Professional Engineer stamps states: “All documents as defined in WAC 196-23-020(1) submitted under this section shall be subject to Chapter 196-23 WAC and Chapter 18.43 RCW”. Has Ecology implied the Federal employee exemption at WAC 196-29-200 by referencing Chapter 18.43 RCW? If not, please add to WAC 173-303-806(4)(a) a reference to WAC 196-29-200, “Federal employee exemption”, to clarify applicability.</p> <p>Response: The WAC 196-29-200 Federal employee exemption is not applicable to permit application materials submitted to Ecology as set forth in the general requirements for Part B permit applications.</p>	CH2MHill Plateau Remediation Company (CHPRC)
9	WAC 173-303-573(39)(a)	<p>Typo: “Except as provided in paragraph (d) of this subsection, any person seeking to add a dangerous waste or a category of dangerous waste to this section may petition for a regulatory amendment under subsections (39) and (40) of this section and WAC 173-303-910 (1) and (7).”</p> <p>Change first word “Except” to “Except.</p> <p>Response: Thank you for pointing out the typo.</p>	CHPRC
10	WAC 173-303-573	CHPRC encourages Ecology to adopt as part of this rulemaking package or as soon as possible thereafter, the EPA Final Rule adding aerosol cans to the list of universal wastes.	CHPRC

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		<p>Response: Ecology will be looking at EPA’s universal waste rule for the inclusion of aerosol cans in a future rulemaking.</p> <p>Recommendation: We will not add in the aerosol can universal waste rule during this rule amendment cycle, but will consider it for the next rulemaking.</p>	