

January 8, 2016

WAC 173-350-325, Soil and Sediment Criteria and Use - Workgroup Conference Call

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Agenda

- Rule language

Bulleted items that are not italicized are comments from the meeting. *Italicized wording represent the issues discussed.*

Rule Language

WAC 173-350-235

Clean soil/sediment definition: Marni changed the definition of clean soil/sediment to make it clear that only soil/sediment where a release has occurred is subject to the rule. If there has been no release, the soil/ sediment is clean soil/sediment, and the rule excludes clean soil/sediment from regulation in 173-350-020.

- What happens if someone determines there is not release, but testing shows limits above SSLs? Marni said that there might be concerns over limits, but that solid waste rules would not be the appropriate place to address management of these soils. Other environmental or public health rules would be better suited.
- Concern remains over the subjectivity of due diligence needed for deciding if a release has occurred. There is acknowledgment of the difficulty in trying to be flexible at the same time as trying to be clear on what is expected for due diligence. The subjectivity has legal ramifications that may ultimately be resolved in the court system should conflicts arise over a specific project.
- Can there be further clarification that the SSLs do not apply to soil/sediment unimpacted from a release? Marni did not feel the rule could be misinterpreted in a way that requires comparison to SSLs when no release has occurred. The rules excludes clean soil/sediment from regulation at the beginning the rule and the definition for clean soil/sediment is clearer than in previous drafts. However, Marni will consider this.

Release definition: Marni changed the definition of release to exclude “de minimus” amounts of contaminants from being considered a release. This was done to alleviate concerns over small engine leaks, concrete dust remnants, and other “contaminants” expected at any construction site from requiring management of soils removed from such sites as impacted soil.

- The group liked this change.

New definition – representative sampling: Representative sampling is addressed in the conditions for exemption section, and examples of publications are listed there to describe representative sampling, but we do not define representative sampling. A definition may help to more clearly indicate what we intend and plenty of regulatory definitions exist already. A definition might also alleviate concern over the publication examples that some feel are so complex as to be overwhelming or ignored.

- The group supported adding a definition.

Marni added a column to Table 235-A that allows testing for only parameters that may be present. This stemmed from a phone call from a refinery. The caller asked whether the draft rule language would allow testing for only petroleum materials since that is all they might expect when working in native soils around the refinery. Marni realized previous drafts of the rule would not allow this, but that it should.

- The group liked the additional column to Table 235-A.

WAC 173-350-995 Appendix I

Marni added a “note” column next to each SSL that corresponds to notes at end of the table. The notes specify what standard each individual SSL is based upon. This is similar to what Oregon has for their clean fill guidance.

Background numbers have been adjusted using United States Geologic Survey (USGS) report from sampling done from 2007-2010. At each location, USGS sampled the top 0-5 cm, A soil horizon (topsoil) and C soil horizon (weathered parent material). Marni used C soil horizon data to set the background as it would have the least impact from human activity and therefore best represent natural background. Also, most excavation work involves more than skimming the top layer of soil. Some limits are now higher (e.g. arsenic) while others became lower (e.g. lead) than Washington’s 1994 background report, which used a combination of the same soil layers and concentrated sampling in urbanized areas.

- Some still feel the background numbers are too low and not realistic.
- Some feel use of C soil horizon alone is too restrictive.
- A couple of the background limits thought to be too low are cadmium and selenium. Marni believes this may be more a problem with method detection limits than actual results. Some test results provided to Marni indicate detection limits are too high to be comparable to the SSL. One cannot tell if an SSL would be exceeded or not. Marni checked with a couple labs about adjusting detection limits when samples are submitted. Both labs said it simply needs to be specified on the order and there is no additional cost.
- In the cases where detection limits matter, a receiving site should have policies to ensure generators specify detection limits to labs that meet the SSLs. Footnote (a) to Appendix I specifies this.
- Most concerns on SSLs relate to clean soil/sediment SSLs. Marni reminded the group the idea behind the “limited use soils” and higher SSLs was for reclamation pits and the like in order to allow higher contaminant levels than “clean”, while still being protective. Some stated that they would still prefer to fall into the clean category.

Though the group decided at the last meeting against county-by-county background numbers, Marni attempted it anyway given the sometimes wide disparity in background concentrations between regions in the state. In footnote (f) to Appendix I, exceptions to the SSL in the Appendix I table are provided. Though only a rough draft, Marni can refine it if the group likes it.

- Group felt this is a good addition that should remain in the rule.

Close

- As of this meeting, the stakeholder workgroup part of the rule revision process has concluded. Ecology appreciates the time and effort you have all put into this process over nearly the last two years. How the time flies! A most sincere thanks to all of you.
- Next steps: Ecology will undertake an internal review of the entire rule. An informal public comment period will occur in the spring, and a formal public comment period in the fall. Please keep notes about concerns you have as you work through the draft language for submission during public comment periods.