

February 18, 2015

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

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Agenda

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

- Adjusting rule language to match statutory authorities – permitting vs. conditionally exempting vs. excluding/not applicable
 - Terminology – Soil Screening Limits
 - Sampling simplification
 - Guidance
 - Miscellaneous
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Adjusting rule language to match statutory authorities

Current rule language requires no permit for characterization or use of impacted soil/sediment. The rule is meant to be “self-authorizing” whereby handlers of impacted soil/sediment are responsible for following the rule with no oversight. We want to ensure the rule remains self-authorizing, but authorities provided in statute are going to lead to changes in how we do that.

[RCW 70.95](#) authorizes only two options for solid waste management – permit or a conditional permit exemption. To ensure consistency with these statutory authorities, Marni will revise what we have to conditional permit exemptions. We have conditional exemption language throughout the rule for recycling, some compost operations, inert waste piles, etc. Language now requiring representative sampling, etc. will become the conditions one must meet to be permit-exempt.

There are other “exclusions” elsewhere in the rule that also do not fit into the permit or conditional permit exemption categories that staff will be looking at during this revision process.

- Some expressed concern this change would mean a solid waste permit is needed for transporting impacted soil/sediment or accepting it. Marni clarified that this rule does not cover transportation as the WA Utilities and Transportation Commission oversees transport. Marni also clarified the language would not lead to permits required for characterization or use of impacted soil/sediment. Changes will be to accommodate permit exemption authorities only.
- This issue brought up a long discussion of who is responsible for ensuring they meet conditions. The generator, receiving facility, contractor, consultant, transporter? We have talked about this in the past without reaching a decision about who is ultimately responsible for ensuring compliance with the rule.
 - WSDOT has contractual language that requires contractor to properly characterize and take to appropriate disposal sites. WSDOT bears some responsibility if the contractor fails to handle materials properly, but feel it is the contractor and receiving site that violated the rule.
 - Health department typically put responsibility on the receiving sites for accepting materials they should not accept. If the generator or others responsible are known, they might pursue all parties for enforcement, but usually focus on the receiving site.
 - DNR pursues enforcement for fill that does not meet criteria against permit holders or “other persons authorized or directed to...”, which provides some room to not penalize the permit holder alone.

- Most large receiving sites require characterization by the generator prior to their agreeing to accept materials. If a generator falsifies results, the receiving facility will pursue removal/cost recovery from the generator. There should also be enforcement authority over that generator, rather than the receiving facility that thought they abided by rule requirements.

We want to protect all parties that follow the rule. As such, placing the burden of meeting rule requirements on a particular party is unfair and could lead to enforcement limitations against parties that should be held responsible. Any party should bear responsibility. Generator, receiving site, etc. We will look at ways to clarify this in rule language.

Terminology – “Soil Screening Limits” vs. “Contaminant Limit”

We have been referencing “Contaminant Limits” throughout this process. Marni asked if the group would have objection to using “Soil Screening Limits (SSL)” instead. SSLs is the term used for soils in other arenas (EPA’s SSLs and Eco-SSLs), it strikes a friendlier tone, and implies some flexibility rather than an absolute limit which may be fitting given the flexibility built into the rule as it stands right now.

- All were okay with use of Soil Screening Limits (SSLs).
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Sampling simplification

At our last meeting, we agreed the rule has become too complex and needs to be simplified in order to work. Some of the complex language has to do with sampling. Sampling currently varies depending on whether one is characterizing a large quantity of soil to be handled over months from one site, is taking small loads on an on-going basis, is managing heterogeneous vs. homogeneous soils, or is treating soils. It has been difficult to create rule language to accommodate all scenarios. Given this, Marni asked if the workgroup would be okay stripping much of the sampling language, including testing frequency, and requiring only that an impacted soil/sediment be characterized by “representative sampling.”

- All felt making that change would be an improvement. It would allow flexibility both industry and oversight agencies support.
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Guidance

At our last meeting, Marni mentioned that guidance was not looked at favorably, in part because rule language should be written so that guidance is not needed to understand it, and because it is not subject to public review in the ways that rules are. After our meeting and talking to other Ecology staff about this, it seems some expected at least the SSLs to be in guidance for ease of updating the limits when warranted. Marni feels guidance could also be a good way to clarify that the intent of the rule is not to require characterization of all soils, and to address the issue that came up today about who is responsible for ensuring compliance with the rule. The rule language would become more general, while specificity would be in the guidance.

- From a street waste point of view, guidance is what is used now and they like the flexibility it provides health departments.
- From a health department point of view and the street waste example, using guidance is a problem in that it has led to inconsistencies amongst health departments. Guidance will continue the problem of variability from county to county. A goal of this process is to provide consistency of standards. On the enforceability side, it is also more difficult to enforce guidance.
- We could reference guidance in rule. There are cases, such as with groundwater monitoring at landfills, where the rule requires adherence to a guidance document.
- Guidance does not receive the same public scrutiny as rule. Especially when it comes to SSLs, public input is desired and if only in guidance, this might not happen.
- Keeping all requirements in one place makes things clear.

The consensus after discussion was to stick to rule language and not pursue a guidance document.

Miscellaneous

- If a complicated rule is adopted, it punishes those that are the most compliant. Those that are non-compliant will not follow rule regardless. Good actors will be burdened by an overly complicated rule.
 - Concerns remain about “suspected” soil/sediment as that term is open to interpretation. A different “de minimus” standard perhaps could provide clarity.
 - Beginning of rule need to be very thoughtful about what is really intended, which is not to subject the vast majority of soils handled to rule requirements.
 - At DNR sites, they have not seen chemical problems related to handling of large volume soils. Most problems are with physical pieces – wood, concrete, asphalt, etc. We have defined “de minimus” in trying to acknowledge some level of physical contamination is expected and okay. We should revisit this language.
 - DNR asks for clean soils policy, but not by everyone and it is not a requirement. For large sites, often ask for a clean fill policy as part of the permitting process.
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Close

- Next meeting is scheduled for April 7 at the Ecology office in Lacey.