

Memo

Date: 19 December 2017

To: Washington Department of Ecology

From: Jean Lee and Romy Freier-Coppinger, Seattle Parks and Recreation

Subject: Comments on the Preliminary Draft Dangerous Waste Regulations 173-303 WAC

173-303-070(1)(b) and 070(3) “Any person who generates a solid waste or discovers an unknown material must make a determination if that waste or unknown material is a dangerous waste in order to ensure wastes are properly managed according to applicable dangerous waste regulations.”

General Comment:

The phrase “or discovers an unknown material” makes the rule vague and overly broad. Furthermore, this addition is not required by RCRA and should be deleted from all parts of the draft.

Specific Comment:

- The term “any person” is vague. This implies that any member of the general public, passerby or property owner would be responsible for illegally dumped waste.
- The term “discover” is not defined. For example, the requirements for “discovers unknown materials” does not appear to be limited to properties within the person’s jurisdiction.
- The term “unknown material” is not defined. As written, this requirement is not limited to solid waste, but appears to imply all unknown materials are wastes.

General Comment: 173-303-070 as it relates to the phrase “any person Who discovers an unknown material”.

- Clarify the intent of the addition of “discovers an unknown material”. If the intent of this comment is to transfer regulatory responsibility from the generator to discoverer, it may have the unintended effect of encouraging illegal dumping. Furthermore, it unfairly increases the potential liability of the discoverer (likely a representative of the property owner) and might provide an avenue for Ecology to penalize municipalities acting in good faith to protect the public.
- 170-303-070(3)(c) “When available knowledge is inadequate or absent to make an accurate designation, the generator must test the waste according to the methods, or approved equivalent method set forth in WAC 173-303-110.” Because it is likely that a person discovering “unknown material” will possess inadequate knowledge to make an accurate designation, the revision places significant cost and liability on municipalities and other government agencies, particularly Seattle Parks and Recreation with significant land holdings accessible to the public.

General Comment “authorized representative” definition. The proposed definition of “authorized representative” is too restrictive to be practical at non-industrial sites. The draft regulation defines “authorized representative” as “the person responsible for the overall operation of a generator site, facility, or operational unit (e.g., plant manager or superintendent).” At a municipal agency, the superintendent may not have technical background in hazardous waste compliance. Please

explain how Ecology intends to change the “authorized representative” to affect typical responsibilities under the rules.