

The Boeing Company

Boeing comment letter attached.



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15 December 2017
SS 15dec17 001

Washington Department of Ecology
ATTN: HWTR Program Rules Unit
P.O. Box 47600
Olympia, WA 98504-7600

REF: Boeing Comments on 2017 Draft Amendments to Dangerous Waste Regulations, Chapter 173-303
WAC

Dear Mr. Rieck and Dangerous Waste Staff,

The Boeing Company has reviewed the draft dangerous waste rule revisions dated Oct. 10, 2017, and offers comments and suggestions below. Boeing operates multiple dangerous waste generator locations in Washington, including some small quantity generator sites. For this reason, we support the adoption of the federal Episodic Generation rules and Waste Consolidation rules. However, we have concerns with some of the Washington-unique additions to these and other provisions in the latest draft.

Boeing generates hazardous waste in other authorized states that have already adopted or are in the process of adopting the federal Hazardous Waste Generator Improvements Rule. Boeing-host states of Utah and Pennsylvania have adopted the federal generator rule without state-unique additions. Oklahoma and Illinois intend to do the same. Other Boeing-host states are in the process of reviewing federal rule revisions and determining next steps. In all states where we generate hazardous wastes, Boeing is encouraging as much alignment with federal requirements as possible to contain compliance costs.

State-unique requirements complicate and increase the costs of developing and updating employee training. Boeing sites in states that deviate significantly from federal rules must develop unique training, rather than using a common RCRA training package with brief state supplements for minor deviations. Boeing employees who move or are temporarily assigned to a site in another state must "unlearn" state-unique requirements that were correct in their prior assignment and learn anew any state-unique requirements applicable to their new assignments. Compliance auditing is also complicated and more costly when authorized states have significantly different rules in Boeing locations that a RCRA auditor must evaluate.

The Washington Administrative Procedures Act (RCW 34.05.328) directs agencies to "coordinate the rule, to the maximum extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter." Some of the state-unique revisions in the draft dangerous waste revisions indicate that this statutory directive is not being observed. Specific examples are described below.

The dangerous waste revisions are in draft stage, but prior to adoption, the Administrative Procedures Act requires the Department of Ecology to "determine that the probable benefits of the rule are greater than its probable costs," [RCW 34.05.328(1)(d)] and "that the rule being adopted is the least burdensome alternative for those required to comply with it that will achieve the general goals and specific objectives" [RCW 34.05.328(1)(e)]. In many of the cases described below, we believe that state-unique additions to the federal rule impose significant costs on dangerous waste generators without any demonstrated environmental benefit, and that the federal rules provide a less burdensome alternative than the corresponding provisions in the Washington draft rule. Simply put, Ecology has no basis to conclude that its state-unique changes provide a net benefit or that the federal approach is not the least burdensome alternative. Ecology has only provided speculative hypotheticals, instead of data or even real-world



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anecdotal incidents, to presume benefits arising from these provisions, and has absolutely no idea of the costs to generators.

Container and Tank Hazard Labeling

Throughout the draft rule, the hazard/risk labeling language found in the existing Washington rule¹ has been modified in a manner which introduces new ambiguities and opportunities for varying interpretation by generators and inspectors. The federal Generator Improvements Rule hazard labeling requirements are more concise. The federal rule applies the following hazard labeling language for each category of waste generators:

“...marks its container(s) of hazardous waste with (1) The words “Hazardous Waste” and (2) An indication of the hazards of the contents (examples include, but are not limited to, the applicable hazardous waste characteristic(s) (i.e. ignitable, corrosive, reactive, toxic); hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E (labeling) or subpart F (placarding); a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association code 704).”

Hazard marking instructions in the draft Washington rule² incorporate the federal examples of “ignitable, corrosive, reactive, toxic” labels, but omit the other hazard communication options (DOT, OSHA, and NFPA) found in the federal rule. The draft also deletes a similar provision in the existing Washington rule which provides that “If there is already a system in use that performs this function in accordance with local, state, or federal regulations, then such system will be adequate.”³ Thus, the draft hazard marking provisions are both potentially more restrictive than the corresponding federal provisions and the existing WAC provisions, and are less clear than either.

Hazard Label Understandable to the Public and Visitors

As drafted, whatever hazard marking is used (even “ignitable, corrosive, reactive, toxic”), the warning must also pass a new second regulatory test that the hazard label be “understandable” to employees, first responders, the public, and (newly added) “visitors.” It is by no means certain that the public or visitors understand the particular hazard posed by the four waste characteristic terms any more than they might comprehend the hazard indicated by some DOT placards and labels, OSHA pictograms, or the numbers on a NFPA warning diamond. As drafted, the proposed rule language would require the generator to guess which words or symbols might be universally understood by the general public, and which might not be, and face inevitable second-guessing by Ecology inspectors (who themselves might not agree). The draft requirement that hazard labels be “understandable” by the general public and visitors is far too overbroad and subjective to be a basis for a regulatory requirement.

However, the words “dangerous waste” or “hazardous waste” are required to be on each container or tank. These words are sufficient to warn even the least knowledgeable English-speaking visitor or member of the public that he or she should not be approaching, touching, opening, or disturbing the

¹ At WAC 173-303-200(1)(d), the on-site accumulation rules for all generator categories.

² In the reorganized draft rule, hazard marking requirements are repeated for each category of generators and for satellite accumulation areas.

³ Existing WAC 173-303-200(1)(d).



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container or tank. As for smoking nearby, a separate rule⁴ addresses “no smoking” signage for ignitable and reactive wastes. Furthermore, RCW 70-160 makes it illegal to smoke in a workplace. At Boeing facilities, visitors are not allowed to wander unaccompanied through the plant, and we can hardly imagine that other dangerous waste generators in Washington allow the kind of open public access to dangerous waste that the draft hazard labeling rule seeks to address. Also, given the international nature of trade, Boeing and other Washington manufacturers frequently escort customers and dignitaries through manufacturing areas who do not understand the English language. Such visitors are escorted with a translator and by Boeing employees who are knowledgeable of the hazards present in that area. The draft Washington requirement that hazard labels (in English) be “understandable” to all visitors cannot be met in this situation. Foreign visitors may speak any one of a host of languages, so the dual English/Spanish warnings common in the U.S. or English/French warnings required in Canada are of little help. As a result, the “understandable” test is not only subjective, but simply cannot be complied with if a variety international visitors are involved. The impossibility of compliance renders this requirement overbroad and arbitrary and capricious.

The federal generator improvements rule requires hazard warnings in addition to the words “hazardous waste” or “dangerous waste,” but the compliance options found in the federal rule indicate an understanding that these additional warnings are primarily intended to inform employees including site personnel who move waste containers, first responders, internal and agency inspectors, and TSD/transporter personnel who come onto the generator site. These are the people who require specific information on hazard type to perform their functions safely, and these are the people who are familiar with RCRA characteristic descriptions, DOT, OSHA, and NFPA systems. There is no expectation in the federal rule that visitors or the general public will always be familiar with these more detailed hazard warnings. In fact, the general public is far more likely to be at risk of exposure to a dangerous waste after a highway accident than at a generator site, yet the DOT labels and placards are all that are, or may permissibly be, required during such transport. For visitors and the public at a generator site, the simple phrases “hazardous waste” and “dangerous waste” are sufficient warning that they should not be physically interacting with the containers or tanks.

The practice of using the DOT system, without modification, as a risk communication method is not only allowed by the federal rule, but is encouraged by EPA for its obvious benefit and streamlining of waste accumulation and shipping. As noted in the preamble to the final federal rule:

“...as a matter of practicality, it would benefit many generators to consider the use of DOT hazard communication, since such a method would not only satisfy EPA’s requirement, but it may also satisfy DOT requirements when the wastes are shipped off site...It is important to note that if generators choose to identify the hazards of the contents of their containers using the DOT, OSHA or NFPA labeling methods, those methods must be used appropriately. Furthermore, if a method other than DOT hazard communication is used while the waste is accumulating on site, when the waste is shipped off site, generators and transporters must ensure that those markings and labels are located away from and do not obscure DOT marking and labeling.”⁵

Department of Ecology staff have speculated that a DOT Class 9 label might not provide sufficient hazard warning. EPA addressed this issue in the preamble to the hazardous waste generator improvement proposal (80 FR 57949, Sept. 25, 2015). EPA correctly states that under DOT rule 49 CFR 172.301(b), general marking requirements, a generator using a DOT shipping name ending in N.O.S. (as is common

⁴ WAC 173-303-395(1)(a) in both existing and draft revised rules. This provision is based on federal RCRA rules which were written before subsequent state restrictions on smoking in the workplace or company policies in those few states that do not prohibit smoking in the workplace.

⁵ 81 FR 85758, November 28, 2016.



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for Class 9 wastes) must also provide the technical name of the hazardous material in association with the proper shipping name. It is this technical name that provides the hazard information needed by dangerous waste generator personnel, first responders, inspectors, and TSD contractors who must interact with the waste to perform their functions safely. As described above, the general public and visitors may or may not comprehend the specific hazard based on a Class 9 label and the technical name, but the words “hazardous waste” and “dangerous waste” provide sufficient hazard warning to the public and visitors. In EPA’s final rule, the agency does not distinguish between DOT Class 9 and other DOT hazardous waste markings. In all cases, DOT markings (including Class 9 with required technical name) are an acceptable form of hazard warning, and this is the approach that should be implemented in the Washington regulations.

Hazard Label Legibility

The draft Washington requirement of legibility at 25 feet, or lettering size at least a half inch in height, serves little purpose for routine waste handling, but may be of some value in case of leakage, fire, a container that has become pressurized due to chemical reaction, or other emergency situations. If the generator opts to meet hazard warning requirements using only words (such as ignitable, reactive, corrosive, or toxic), a state legibility requirement is a reasonable addition to the federal rule. However, if the generator uses DOT, OSHA, or NFPA hazard warnings, these warning systems have their own requirements of size, color, and contrast that are designed to ensure visibility, and a state legibility requirement is superfluous and a potential conflict subject to federal preemption. Also, emergency responders and fire marshals often have their own local requirements that are more effective and safer than any label on a tank or container. First responders entering an area are better informed and far safer if they encounter NFPA diamonds at the entrance to a building with hazardous substances, rather than on a container or tank which may be obscured by smoke or mist. **For all the reasons described above, Boeing recommends that the Washington dangerous waste rules use slightly modified federal hazard warning language below in lieu of the language found in multiple locations in the Oct. 10, 2017 draft:**

“...marks each container or tank of hazardous or dangerous waste with (1) The words “Hazardous Waste” or “Dangerous Waste” and (2) An indication of the hazards of the contents (examples include, but are not limited to, the applicable hazardous waste characteristic(s) (i.e. ignitable, corrosive, reactive, toxic) that is legible and recognizable from a distance of 25 feet or the lettering size is a minimum of one half inch in height. Alternatively, in addition to the words “Hazardous Waste” or “Dangerous Waste,” the generator may use a hazard warning system that provides hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E (labeling) or subpart F (placarding); a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association code 704).”

Definition of Weekly Inspections, draft section 173-303-040

The October 2017 draft would define weekly inspection as “no more than seven consecutive calendar days from the last inspection.” This definition unnecessarily constrains scheduling of facility personnel who are assigned and trained to conduct these inspections. It also results in inspections moving forward in time repeatedly as the year progresses, due to holidays or absences. For example, if inspection of an area normally occurs on Monday, and Monday is a holiday, the generator would either need to conduct two inspections in the previous week or bring in labor on overtime during the Monday holiday. In a large



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aerospace manufacturing facility, as many as 90 weekly inspections may be required, so inspection scheduling is not a minor issue or an insignificant cost.

As justification for the draft “seven consecutive calendar days from the last inspection,” Department of Ecology staff cite an improbable worst case concern that a facility might inspect an area on a Monday, but not again until Sunday of the following week (13 days between inspections). Such a long time lag between inspections is more theoretical than real, since a weekend inspection is likely to require the employer to pay the inspecting employee overtime, a practice that the employer will not willingly repeat on a regular basis. Under a once per calendar week inspection scheme, an equally improbable occurrence would be an inspection on Friday and then again on the following Monday, leaving 3 days between inspections. Clearly, neither the 3 day nor the 13 day interval is likely to occur on a regular basis. Regardless, Ecology has no data to indicate that its no more than seven calendar days approach is any more protective, on average, than the once per calendar week approach, while the costs to generators in terms of decreased flexibility and increased labor costs are undeniable, and Ecology has no basis to conclude that its approach is the least burdensome alternative. **If a definition of weekly inspection is needed, Boeing suggest the following language:**

“Weekly inspections” mean an inspection conducted at least once each calendar week.

Polychlorinated biphenyl (PCB) Waste, draft section 173-303-071(k)

The October 2017 draft would modify the current WAC PCB waste exclusion in the following way:

“PCB wastes containing dielectric fluid and electric equipment containing such fluid whose disposal is regulated by EPA under 40 CFR 761.60 (Toxic Substances Control Act) and that are dangerous because....”

While the draft modified exclusion is facially consistent with federal rule 40 CFR 261.8, the fact that Washington regulates state-only wastes that are not regulated under federal RCRA rules means that the draft revision should be further examined. There are TSCA regulated PCB wastes that are not dielectric fluid nor electric equipment containing such fluid, but would be state-only dangerous waste in Washington if not for the general exclusion of all TSCA-regulated PCB wastes in the existing rule. For example, a waste containing 100 mg/kg PCBs that is not hazardous under the federal rule would be regulated under TSCA (PCBs greater than 50 mg/kg) and would also be a WP02 state dangerous waste. Examples of this type of TSCA waste are PCB-containing building materials like caulk, paint, and architectural items. The draft exclusion above, which is limited to dielectric fluid, would cause these bulk PCB wastes to be regulated under both TSCA and the dangerous waste rules. Under TSCA rule 40 CFR 761.62, certain PCB bulk product wastes may be disposed of in a Subtitle D landfill. Because PCBs in the bulk product wastes listed in 761.62(b)(1)(i) of the TSCA rule are highly immobile and resistant to leaching, EPA has determined that disposal in a Subtitle D landfill does not “present an unreasonable risk of injury to health or the environment” (63 FR 35411, June 29, 1998). Such landfill disposal is constrained, however, by a host of other TSCA requirements on the generator and the landfill, and not every Subtitle D landfill is able or willing to subject itself to these extensive TSCA requirements.

Boeing agrees that the TSCA citation in the dangerous waste exclusion should be 40 CFR 761. Section 761.60 addresses only disposal requirements for PCBs, not the full range of PCB requirements. However, to avoid dual regulation of bulk PCB items that do not contain dielectric fluid, the draft addition of “containing dielectric fluid and electric equipment containing such fluid” should be omitted in the revised rule or some other approach to avoid the dual regulation for TSCA wastes that are also Washington-only dangerous waste must be adopted.



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Episodic Generation Event Annual Report, draft section 173-303-173(3)(d)

While the federal generator improvements rule requires the Very Small Quantity Generator (SQG in Washington) to maintain records associated with the episodic event(s), the draft Washington rule adds a requirement for an annual report covering all dangerous waste generated during the calendar year of the episodic event. The possibility of and timing of an episodic event will often not be known at the beginning of the year (especially those episodic events caused by a spill cleanup). This draft annual reporting requirement would require generators to produce detailed records for waste generated prior to the episodic event. Such records may or may not exist, since there is no requirement for a (Washington) SQG to record dangerous waste generated each month. The only requirement is that the generator ensure that the amounts generated or stored not exceed the SQG limits in WAC 173-303-171(a) and (c). For many SQGs, the processes that generate dangerous waste are inherently so small that the generator can maintain and demonstrate compliance with SQG limits without detailed recordkeeping. The draft rule would create a recordkeeping requirement where none otherwise exists, if there is any possibility that SQG might utilize the episodic event provisions. Furthermore, waste generated after an episodic event would also be subject to inclusion in the annual report. As for the more significant volume of waste generated during an episodic event, both the federal rule and the Washington draft require records and notifications to the Department of Ecology.

In short, the annual report triggered by episodic generation at draft section 173-303-173(3)(d) would be an unnecessary Washington addition to the federal episodic generation rules, which are already complex and burdensome to both generators and the agency.

Secondary Containment for MQG and LQG Central Accumulation Areas, draft sections 173-303-172(5)(e) and 173-303-200(3)(e)

Given the broad definition of Central Accumulation Areas⁶ (excluding only satellite accumulation), the draft requirement for such areas to meet TSD design standards (“in accordance with WAC 173-303-630(7)”) indicates that the Department has a certain subset of accumulation areas in mind. Specifically, the TSD design standards presume that a Central Accumulation Area is a relatively permanent dedicated area “constructed” to hold multiple waste containers until shipment. At many waste generator locations, Central Accumulation Areas consist of numerous mobile bulk containers of solid dangerous wastes (too large to meet the 55 gallon satellite limit) located indoors on the factory floor or staged temporarily for remediation work or construction/demolition jobs. Construction of secondary containment to meet TSD design standards at each of these locations provides little or no additional environmental protection, but at significant cost.

Rather than referencing the TSD secondary containment design standards for all Central Accumulation Areas, **Boeing suggests the following secondary containment language for MQG and LQG Central Accumulation Areas:**

“Secondary containment. For container accumulation, freestanding dedicated central accumulation area(s) must meet the requirements of WAC 173-303-630(7). However, central accumulation areas located inside a building with intact roof, walls, and impermeable floors need only be located away from open floor drains or exterior doorways and only if accumulating wastes with free liquids.”

⁶ Draft WAC 173-303-040.

Redundant Waste Characterization Instructions, draft section 173-303-070(3)(e)

The existing rule sets forth the choice of either testing the waste according to approved test methods [(3)(e)(i)] or applying knowledge of the waste in light of the materials or process used [(3)(e)(ii)]. The existing and draft rule constrains the use of the process knowledge option, however, by requiring that “Such knowledge can be demonstrated to be sufficient for determining whether or not it designated and/or designated accurately properly.” [(3)(e)(ii)(A)]. The latter part of this sentence, “it designated and/or designated” appears to be grammatically defective in the existing WAC and the October 2017 draft. Perhaps what was intended is “Such knowledge can be demonstrated to be sufficient for determining whether or not it is determined to be a dangerous waste and/or designated accurately.”

The draft addition of (3)(e)(ii)(C):

“When available knowledge is inadequate or absent to make an accurate determination, the generator must test the waste according to the methods, or an approved equivalent method, set forth in WAC 173-303-110”

is simply a restatement of the existing requirements that process knowledge be sufficient to make the determination [(3)(e)(ii)(A)], and that allowable test methods are set forth in WAC 173-303-110 [(3)(e)(i)]. The only substantive difference in the existing rule and the draft addition is the “can be demonstrated” phrase in the existing rule (3)(e)(ii)(A).

Rather than have redundant language that may be read as independent and somehow different, we recommend that the two be merged into a single requirement at (3)(e)(ii)(A) as follows:

“Such knowledge can be demonstrated to be sufficient to make an accurate dangerous waste determination and/or designation.”

This also provides a way to correct the defective language in the existing (3)(e)(ii)(A), described above.

Closure Records and Notifications for LQG Central Accumulation Areas, draft section 173-303-200(12)

The draft Washington proposal appears to follow the federal generator improvements rule closely with regards to recording closures of individual central accumulation areas and agency notification for closures of entire facilities. However, we envision a significant new burden of documentation in maintaining an “operating record” that captures the many accumulation area “closures” that are triggered by temporary construction or demolition, non-routine developmental manufacturing, assembly line rearrangements, and other dislocations that are a weekly occurrence in Boeing operations. We have no rule changes to suggest, but would be interested in exploring with Department of Ecology staff how to reasonably meet this record requirement.

Contingency Plan Scope, draft section 173-303-350(1)

The contingency plan needs to show that the facility is prepared to respond to a range of incidents. Subsection (1) attempts to describe the scope of these events or incidents, but the draft revision is overbroad.

The corresponding federal rule 40 CFR 262.260 has a well-defined list of such events:

“The contingency plan must be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water.”

The federal rule lacks two trigger events, natural disasters and releases to groundwater, which the draft Washington rule would include, and this addition is appropriate.

The draft addition of “hazardous substance” release is problematic, since this is a defined term under CERCLA and EPCRA rules, which have their own planning and response requirements. The dangerous waste rule should confine itself to dangerous wastes and dangerous waste constituents, and not purport to require the contingency plan to cover all “hazardous substances,” which under CERCLA and EPCRA may be fresh product, not waste. The Washington definition of “hazardous substances” at WAC 173-303-040 reinforces that this definition includes non-wastes, by including the terms “product” and “commodity.” While a dangerous waste generator may opt to maintain a single unified plan that covers dangerous waste, CWA, SPCC, CERCLA, and EPCRA requirements, such a unified plan is an option, not a requirement.

The federal rule does not use the term “emergency” in the context of contingency plan scope. The draft Washington deletion of “emergency” from WAC 173-303-350(1) is understandable, since “emergency” is undefined and implies a level of site-wide involvement or mobilization that would not be needed for some events triggering the contingency plan, such as a localized non-sudden release of hazardous constituents. If “emergency” is to be deleted from WAC 173-303-350(1), however, it should also be deleted from the next paragraph, WAC 173-303-350(2). In fact, the first sentence of WAC 173-303-350(2) should be modified, since it repeats some of the trigger circumstances described in subsection (1), but does so in an incomplete manner. To avoid this inconsistency, the first sentence of subsection (2) could be truncated to: “Each owner or operator must have a contingency plan at his facility.” This would be followed by the remainder of this paragraph regarding inclusion in a SPCC Plan or One Plan.

The draft substitution of “any event or circumstance” for “emergency,” along with the term “including, but not limited to” results in a scope that has no boundaries and is subject to varying interpretation. This can be remedied by patterning WAC 173-303-350(1) after the federal rule that names specific trigger events that the contingency plan must account for as regulatory minimum. **We suggest the following rewrite of WAC 173-303-350(1):**

“(1) Purpose. The purpose of this section and WAC 173-303-360 is to lessen the potential impact on the public health and the environment from fire, explosion, natural disaster, or unplanned sudden or non-sudden release of dangerous waste or dangerous waste constituents to air, soil, surface water, or groundwater by a facility. A contingency plan must be developed to lessen the potential impacts of these events, and the plan must be implemented immediately whenever such an event occurs.”

Emergency Procedures, draft section 173-303-360(2)

While the draft rule would remove the term “emergency” from the contingency plan scope in WAC 173-303-350(1), both the federal and Washington rules use the term in the context of “emergency coordinator,” “emergency equipment,” “imminent or actual emergency situation,” “emergency response contractor,” “emergency procedures,” etc. “Emergency” is not a defined term in WAC 173-303-040, so it is generally interpreted as an event more urgent than some of the contingency plan triggers (such as a non-sudden release of dangerous waste).

Draft section 173-303-360(2) would modify existing language as follows:



“(2) Emergency procedures. The following procedures must be implemented in the event of an emergency or any event or circumstance identified in WAC 173-303-350.”

The procedures that follow this heading, in (2)(a) through (2)(k), provide a context to interpret “emergency” as an urgent matter. Some of these urgent matters would be included in WAC 173-303-350, whether modified per Boeing suggestion above or left as shown in the October 2017 draft. Other events or circumstances in WAC 173-303-350 would not be the kind of “emergency” that would trigger the actions described in (2)(a) through (2)(k). Our recommendation is to delete the draft additional reference to events and circumstances identified in WAC 173-303-350, because it is over-inclusive.

LQG Contingency Plan Emergency Coordinator List, draft section 173-303-201(9)(b)(iv)

The draft proposal requires the Contingency Plan to include a current list of names and emergency telephone numbers for all persons qualified to act as emergency coordinators. However, this section, which pertains to Large Quantity Generators, has the following language that seems to be out of place:

“For new facilities only, this list may be provided to the department at the time of facility certification (as required by WAC 173-303-810(14)(a)(i)), rather than as part of the permit application.”

The facility certification is part of TSD permitting, and is not a large quantity generator requirement, but the notation above may confuse LQGs who may wonder whether some type of facility certification is required of them.

Quick Reference Guide for LQG Contingency Plans, draft section 173-303-201(11)(b)(iv)

The draft Washington proposal and the federal generator improvements rule have the same requirement for a Quick Reference Guide that includes: “A map of the facility showing where dangerous wastes are generated, accumulated, recycled and treated and routes for accessing these wastes.” A map showing all the points of generation at a Boeing manufacturing facility would include every workbench and work station where solvent wipes are used, sealant applied, or touch-up paint is hand applied, hardly a “quick reference guide.” Also, the precise locations where these activities occur on the shop floor are in constant flux, making a detailed map obsolete before it can be printed and distributed to emergency responders. This is one instance where some Washington language is needed to interpret the federal rule. We suggest adding the following:

“For situations where generation and accumulation locations within a building are frequently moved (for example, to follow moving assembly lines or moving work stations), the map shall indicate those general areas of the building where generation or accumulation may occur.”

LQG Management of Containers, draft section 173-303-200(3)(c)(iii)

The Washington requirement for a minimum of thirty inch aisle space separation between rows of containers, and the limit that a row of containers must be no more than two wide, has been in the dangerous waste rules for some time. However, the draft addition that the container configuration must also allow for “complete” inspection of each container introduces a new, overbroad and burdensome test. This test could only be met if each container were completely separated from every other container, so that the inspector can see the entire circumference of the container. Four drums placed on a pallet with sides touching will obscure a portion of the circumference and fail this test. Furthermore, if a container is sitting on the floor or in a secondary containment device, the bottom of the container is not visible. We



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strongly recommend that the words "...and allow for complete inspection of each container" be removed. The impossibility of complying with a literal application of this test renders the requirement arbitrary and capricious.

MQG General Facility Inspection, draft section 173-303-172(13)

The draft requirement for a written facility inspection schedule would impose another layer of paperwork on the two existing major inspection requirements, the weekly recorded inspection of central accumulation areas and tanks [WAC 173-303-172(5)(d) and (6)(b)(v)] and the testing and maintenance of alarm systems, fire protection equipment, spill control equipment, and decontamination equipment [WAC 173-303-172(11)(c)]. In a large facility, the latter equipment testing and maintenance is likely to be performed by security and fire prevention personnel, different from environmental staff who perform weekly accumulation area inspections. A consolidated inspection schedule and consolidated records of inspections and maintenance is an unnecessary burden on medium quantity generators. This section should be deleted.

Performance Standards for Closure of Waste Accumulation Units, draft section 173-303-200(12)(c)(ii)(A)

The draft closure performance standards for waste accumulation units is similar to the federal requirements, with one significant difference. The Washington draft requires cleanup levels for soils, groundwater, surface water, and air based on "unrestricted use" exposure assumptions according to the Model Toxics Control Act regulations. While this degree of cleanup is desirable, it may not be achievable at some sites. We suggest that this possibility be accounted for in the rule, perhaps by defaulting to a case-by-case agency determination if MTCA unrestricted use levels cannot be achieved, especially if the generator is able to effectively restrict future uses.

Unique Washington Nomenclature for LQGs, MQGs, and SQGs

Waste generators in Washington have long been accustomed to state nomenclature different from the descriptions of Large Quantity Generator, Small Quantity Generator, and Conditionally Exempt Small Quantity Generator used by federal EPA and most other states. Now that the federal nomenclature is changing to Large Quantity Generator, Small Quantity Generator, and Very Small Quantity Generator, most states either have or will soon follow suit, to prevent confusion among generators and RCRA trainees. For transporters and TSD facilities that serve customers in many states, a common language will facilitate understanding of whether a customer's site is subject to 90 day, 120 day, or 180 day storage time limits. Likewise, companies like Boeing that generate hazardous waste in multiple states would face one less employee training obstacle when employees relocate to other states, if the Washington-unique nomenclature were replaced at the same time that other states are aligning to the federal nomenclature. There is no valid reason why Ecology cannot coordinate this nomenclature with the federal rule.

Persons Who Discover Unknown Materials, draft section 173-303-070(1)(b)

While "person" is defined broadly in the definition section to include entities other than natural persons (such as companies, government agencies, etc.), the wording of draft section 070(1)(b) suggests that the individual person who discovers an unknown material must also be the one to determine whether the material is a dangerous waste:

"Any person who generates a solid waste or [emphasis added] discovers an unknown material must make an accurate determination if that waste or unknown material is a dangerous waste..."



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In any organization [company or government entity], the [individual] person who discovers an unknown material is unlikely to be qualified to determine whether it is a dangerous waste. Rather, organizational procedures or chain of command typically direct the discoverer to notify a supervisor or an environmental contact, who will engage a person who is qualified to make dangerous waste determinations. In small organizations, that person may be a consultant rather than an employee of the entity, so careful drafting is needed to avoid confusion.

Also, the applicability portion at the beginning of section 070(1)(b) includes not only those who generate a solid waste but anyone who discovers an unknown material, regardless of its location. As drafted, if a person discovers an unknown material anywhere in the state (not necessarily at a generator site) then he or she would be subject to the requirement to determine its dangerous waste status. For unknown materials discovered at a location other than a generator site, the average passerby would have no knowledge of Washington's dangerous waste classification rules. Ideally, that person would contact the Department of Ecology or local authority, rather than attempting to determine its dangerous waste status. To prevent this unintended reading of the rule, some limitation on the location of discovery is needed.

Boeing suggests the following clarifying language:

"Any person who generates a solid waste or discovers an unknown material at a location that is under the control of that individual or entity must either make an accurate determination if that waste or unknown material is a dangerous waste, or promptly notify the Department of Ecology, the local fire department, or another person who is qualified to make this determination."

Conditions for Exemption vs. Independent Requirements, draft section 173-303-170(1)

This federal "clarification" is in litigation, due to its potential to convert minor generator violations into an enforcement action for failure to obtain a RCRA TSD permit, and meet the numerous requirements placed on a TSD, but not on generators. The *ACC v. EPA* litigation is presently in the D.C. Circuit Court of Appeals, where motions have been filed, but the court has not yet ruled. While EPA states in the preamble that enforcement discretion lies with authorized states, if state rules incorporate the federal language as is, it opens generators to the risk of 3rd party suits or federal overfilling based on the state rule language.

Based on Ecology's rulemaking schedule, the D.C. Circuit should rule on this matter prior to finalization of the Washington rule. The present draft Washington language should be considered a placeholder, subject to revision consistent with the court's opinion.

Thank you for considering the comments and suggestions above at this pre-proposal stage of rulemaking. We look forward to continued engagement as this rulemaking progresses. For clarifications or technical discussions, please contact David Shanks at david.l.shanks@boeing.com or at (314) 777-9227.

Sincerely,

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cc: Susan Champlain, Manager, Government Operations