

CH2MHILL Plateau Remediation Company

Comments attached as PDF file "WAC 173-303 Preliminary Draft Rule Text".

PS: The field for "Submitted by" would not immediately allow the Business Name to be entered until after I hit "Continue" and then returned to the page via "Edit". And even then, it still took a minute or so until the field revealed itself and allowed a Business Name to be entered.

**DOE Hanford Site Contractor Comments on Ecology’s Preliminary Draft Rule Changes to
WAC 173-303 “Dangerous Waste Regulations”**

Paul W. Martin / CHPRC

Commenter’s Name

CH2MHILL Plateau Remediation Company

Contractor

Generator Improvement Rule Comments				
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70	173-303-040	“No free liquids”	“...and that there is no free liquid in the container holding the wipes.”	<p>CHPRC has reviewed Ecology’ Response to Comments (B-6-5) and is still not in favor of this proposed change because the definition of “No free liquids” under this exclusion is essentially unworkable. The last phrase of the definition states, “...and that there is no free liquid in the container holding the wipes”. As written, how will a generator know if any amount of liquid, e.g., a miniscule amount but still a free liquid, has been released from the wipes after the container has been filled and closed? Does Ecology expect generators to open full containers of wipes on some frequency while accumulating, or before shipment remove the wipes from the container, and confirm no free liquids in the bottom of the container? As proposed, a single drop of liquid would be a violation.</p> <p>Since this relates to the prohibition on liquids in landfills, could the wording be amended to clarify that the last phrase (“and that there is no free liquid in the container holding the wipes”) applies if the wipes are being sent for land disposal? If the wipes are being sent to a laundry service, conducting an initial paint filter test would suffice.</p>

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94	173-303-040	Definitions	<p>“Weekly inspections” means an inspection conducted no more than seven consecutive calendar days from the last inspection.</p>	<p>CHPRC noted in the Ecology’s Response to Comments (B-6-8) that Ecology acknowledges concerns with the draft weekly inspection definition and will consider revising it to make weekly inspection compliance easier. CHPRC reiterates that EPA provided guidance to the phrase “at least weekly in the Response to Comments Document on the Hazardous Waste Generator Improvements Final Rule, Docket # EPA-HQ-RCRA-2012-0121. CHPRC hopes that Ecology aligns with EPA’s guidance stating that:</p> <p>“The Agency believes the term “at least weekly” to mean “at least once each calendar week.” Under this interpretation, while the calendar day an inspection could occur may change from week to week, one inspection would be required to occur within the calendar week as identified by the generator. Thus one generator could define their calendar week as Monday through Sunday while another generator could define their calendar week as Wednesday to Tuesday of the following week. Whatever the prescribed calendar week would dictate the days an inspection would be required to occur.”</p> <p>The above wording would be compliant with the original intent of weekly inspections, i.e., looking for leaks and deterioration on a weekly basis will protect the environmental should not be a burden to generators.</p>

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34	173-303-040	Definitions	<p>“Authorized representative” means the person responsible for the overall operation of a generator site, facility, or an operational unit (e.g., plant manager or superintendent).</p>	<p>CHPRC is not in favor of this proposed change because it is less clear than the 40 CFR 261.10 equivalent wording.</p> <p>40 CFR 261.10 defines an “<i>Authorized representative</i>” as “the person responsible for the overall operation of a facility or an operational unit (i.e., part of a facility), e.g., the plant manager, superintendent or person of equivalent responsibility.”</p> <p>The suggested definition in 173-303-040 does not include the phrase “or person of equivalent responsibility” which appears to limit the delegation authority of the authorized representative to act as alternate authorized representatives.</p> <p>Ecology’s Response to Comments (B-6-9) stated that the concern is that an authorized representative is meant to be an employee of that business, and not the TSD or consultant.</p> <p>CHPRC would support the authorized representative definition if it included the phrase, “or an employee of the company of equivalent responsibility”.</p>
33 & 85	173-303-040	Definitions	<p>“Accumulation” refers to the definition of “storage.”</p> <p>“Storage” means the holding of dangerous waste for a temporary period. Accumulation” of dangerous waste, by the generator on the</p>	<p>Ecology’s Response to Comments (B-6-10) did not address CHPRC’s original concern.</p> <p>CHPRC requests clarification that defining accumulation as storage will not affect generator onsite treatment in tanks, containers or containment buildings. EPA clarified in the March 24, 1986,</p>

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			<p>site of generation, is storage of dangerous waste and can be managed under the applicable conditions for exemption of WAC 173-303-170(2)(b).</p>	<p>Federal Register that “accumulation” allowed not only storage but also and treatment without a permit assuming the generator standards of 40 CFR 262.34 were being met. By defining accumulation as storage, CHPRC hopes that Ecology is not impacting treatment by generator.</p> <p>Excerpt from March 24, 1986 Federal Register, page 10168.</p> <p><i>“Of course, no permitting would be required if a generator chooses to treat their hazardous waste in the generator's accumulation tanks or containers in conformance with the requirements of § 262.34 and Subparts J or I of Part 265. Nothing in § 262.34 precludes a generator from treating waste when it is in an accumulation tank or container covered by that provision. Under the existing Subtitle C system. EPA has established standards for tanks and containers which apply to both the storage and treatment of hazardous waste. These requirements are designed to ensure that the integrity of the tank or container is not breached. Thus. The same standards apply to a tank or a container, regardless of whether treatment or storage is occurring. Since the same standards apply to treatment in tanks as applies to storage in tanks, and since EPA allows for limited on-site storage without the need for a permit or interim status (90 days for over 1000 kg/mo generators and 180/270 days for 100-1000 kg/mo generators), the Agency believes that treatment in accumulation tanks or containers is permissible under the existing rules, provided the tanks or containers are operated strictly in</i></p>

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				<p><i>compliance with all applicable standards. Therefore, generators or 100-1000 kg/mo are not required to obtain interim status and a RCRA permit if the only on-site management which they perform is treatment-in an accumulation tank or container that is exempt from permitting during periods or accumulation (180 or 270 days)."</i></p> <p>A similar concern is whether defining accumulation as storage will impact satellite accumulation areas and the relief from the one-year storage prohibition for land disposal restricted wastes. EPA clarified in the January 14, 1986, Federal Register on page 1709:</p> <p><i>"The Agency does not interpret the statutory restriction on the storage of prohibited wastes as overriding the satellite accumulation rule contained in 40 CFR 262.34(c). That rule allows generators to accumulate up to 55 gallons of hazardous waste or 1 quart of acutely hazardous waste in a container, at or near the point of generation, without a permit, interim status, or compliance with the 90-day accumulation rule. The purpose of satellite accumulation is to allow the accumulation of certain quantities necessary to facilitate transportation, further treatment, or disposal and, thus, such accumulation falls under the section 3004(j) exemption."</i></p> <p>If Ecology defines accumulation as storage, it may create compliance confusion among regulators and the regulated community if an SAA accumulates hazardous wastes for more than one year. CHPRC</p>

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				would appreciate confirmation from Ecology that SAAs retain relief from the LDR one-year storage prohibition.
Various	173-303-174(1) (f)(i-ii), And associated citations at: 173-303-200(6)(b), 173-303-200(7)(a) and b)(ii), 173-303-200(13)(a)(iv)(C), 173-303-240(6)(i)	Various	(f) Container labeling or marking. A generator must clearly label or mark each container of dangerous waste with the following: (i) The words “dangerous waste” or “hazardous waste” where the label or marking is legible from a distance of 25 feet or the lettering size is a minimum of one half inch in height. (ii) An indication of the hazards of the contents (examples include, but not limited to, the applicable dangerous waste characteristic(s) and criteria of ignitable, corrosive, reactive and toxic and the applicable hazard(s) identified for listed dangerous wastes). The label or marking must be: (D) Legible and/or recognizable from a distance of 25 feet or the lettering size is a minimum of one half inch in height, and (E) Understandable to employees, emergency response personnel, the public and other visitors to the site.	CHPRC has reviewed Ecology’s Response to Comments and is still not in favor of this proposed change because Ecology’s additional requirements and deletion of EPA’s clarifying language has made the implementation unworkable. The proposed wording states, “example includes, but is not limited to, the applicable dangerous waste characteristic(s) and criteria of ignitable, corrosive, reactive and toxic and the applicable hazard(s) identified for listed dangerous wastes”). CHPRC agrees that if a waste exhibits the characteristic of ignitability, corrosivity or reactivity, e.g., D001, D002 and D003, those waste should have the applicable ignitable (or flammable), corrosive (or acid or base) or reactive hazard labels. And if a waste exhibits the toxicity characteristics of D004 to D043, those waste should have the applicable toxic hazard label if the waste actually exhibits the applicable characteristics. However, applying the same logic to listed waste is not appropriate. As stated by EPA in their document, “Introduction to Hazardous Waste Identification”, EPA530-K-05-012 , dated September 2005: <i>“Before listing any waste as hazardous, the Agency developed a set of criteria to use as a guide when determining whether or not a waste should be listed. These listing criteria provide a consistent frame of reference when EPA considers listing a</i>

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				<p><i>wastestream. Remember that EPA only uses these criteria when evaluating whether to list a waste; the listing criteria are not used by waste handlers, who refer to the actual hazardous waste lists for hazardous waste identification purposes.”</i></p> <p>Based on the above, the hazard labeling as proposed by Ecology should accurately identify the actual hazards exhibited with a particular container of waste as opposed to referencing criteria that EPA used when evaluating whether to list a waste. Using the basis of the listing as opposed to the actual hazards present, or not present, could adversely impact emergency response efforts and endanger emergency responders, workers and the public due to unnecessary responses or evacuations based on incorrect or nonexistent hazards.</p> <p>Emergency response must be based on the Actual hazards associated with listed dangerous waste codes which is some cases can be negligible, as is the case with debris waste. If the waste debris exhibits a characteristic, then it should be labeled with that hazard. However, if the debris (or soil) is a listed hazardous waste only due to contact with some other waste that carried a listed hazardous waste code via the mixtures, derived from or contained-in rules, but the debris itself does not exhibit a characteristic for dangerous waste, the waste should not be identified with a nonexistent actual hazard.</p>

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				<p>And concerning Washington State Criteria and specifically WT02, Ecology’s proposed hazard labeling system would require dangerous waste codes with WT02 to be labeled as “Toxic”. An example of WT02 is simple table salt. It is accepted that under Ecology’s rules, a material like table salt is a dangerous waste due to fish toxicity; however, to label a material this innocuous to humans as “Toxic” is misleading and potential dangerous to emergency responders and the general public, e.g., unnecessary responses or evacuations based on incorrect or nonexistent hazards. The containers will still be labeled “Hazardous Waste” or “Dangerous Waste” which would communicate an appropriate level of response. And the general public would have the same reaction to a container marked “Dangerous Waste” as they would to a container marked “Dangerous Waste” and “Toxic” – keep your distance and call the authorities.</p> <p>And as CHPRC stated in the first round of comments but to capture those points again in summary:</p> <ul style="list-style-type: none"> • The general public has no access to the Hanford site which is physically separate from the surrounding cities and access is controlled 24 hours per day and 7 days per week. Therefore, excluding EPA’s other options for hazard labeling due to a concern that the general public will not understand the hazard communication, is not applicable.

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				<ul style="list-style-type: none"> • If Ecology does not allow the use of DOT hazard labeling it will increase the cost of Hanford cleanup with no environmental benefit. • Ecology’s proposed regulations do not include the references to DOT, OSHA, which includes the Global Harmonized System (GHS), or NFPA. However, Ecology’s proposed regulations also do not prohibit the use of these nationally recognized systems, except that Ecology added that the hazard labels must be “understandable” to employees, emergency responders, waste handlers (whom are also employees), the public and visitors. CHPRC noted that Ecology’s Response to Comments (B-6-11) stated that Ecology is revisiting the term “understandable” and it is appreciated. • Another point to reiterate is that EPA stated in the Federal Register for the Generator Improvements Rule, that EPA “...is providing flexibility to generators in how they identify hazardous of the hazardous waste in the container, and using DOT hazard communication such as hazard class labels (or placards, if appropriate) is one option for complying with this requirement. ...” <p>Based upon the above, CHPRC recommends adoption of the equivalent federal requirement</p>

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				<p>wording at 40 CFR 262.15 and updating WAC 173-303-630(3) and all other sections referencing hazard labels to read as:</p> <p>“Clearly label or mark containers with an indication of the actual hazards of the contents (examples include, but are not limited to, the exhibited dangerous waste characteristic(s) and criteria of ignitable, corrosive, reactive and toxic, and the exhibited characteristic hazard(s) for listed dangerous wastes; or applicable DOT, OSHA or NFPA labels, or any nationally recognized system that communicates the hazard(s)). The label or marking must be legible and/or recognizable from a distance of 25 feet or the lettering size is a minimum of one half inch in height.</p>
241, 298, 690			“...allow for complete inspection of each container...”	CHPRC appreciates that Ecology will revisit the term “completely” and use a word that will be taken literally.
240, 275, 297, 687	173-303-630	Use and management of containers. (2) Condition of containers	(e.g., severe corroding, severe rusting, flaking, scaling, and/or apparent structural defects)	CHPRC is still not in favor of this proposed change. Ecology’s Response to Comments (B-6-18) stated that this change is needed due to generators arguing that containers are in “good condition” although piles of metal flakes are seen around severely flaking containers. The presence of metal flakes does not necessarily mean a container is no longer in good condition especially when a steel container retains over an 1/4 of an inch of thickness and the flaking can be attributed to being retrieved from a burial ground where metal from other deteriorating containers precipitates on a container, giving it the

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				<p>appearance of flaking, e.g., a drum’s condition is determined by its current integrity and not the appearance of flakes.</p> <p>And CHPRC did not disagree with the overall intent of the wording; we were just concerned that the adjective “severe” was only associated with corrosion and rusting and not flaking or scaling. This would imply that any amount of flaking or scaling is an example of a container not being in good condition, which is not always the case.</p> <p>CHPRC again recommends the following: (e.g. severe corroding, severe rusting, severe flaking, severe scaling, apparent structural defects)</p>

Comments on Ecology’s Response to Comments		
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O-1-58	<p>Ecology stated:</p> <p>“As for SQGs, under current federal and state regulations, the satellite accumulation standards are not, and have not, been available for SQGs to practice. To allow SQGs to practice satellite accumulation would be less stringent than the federal RCRA program. In addition, current regulations (which are not proposed to change) allow SQGs to treat their own waste if they are also a permitted final or interim status facility, or permitted to manage municipal solid waste, or permitted to manage moderate risk waste. Sections -170 and -200 allow LQGs and MQGs to practice TBG. <i>SQGs can’t take advantage of this set of regulations. To allow this by rule would be less stringent than the federal RCRA program.</i>” (Emphasis added)</p>	<p>Ecology’s statement that SQGs are not eligible to accumulate waste in satellite accumulation areas contradicts EPA guidance, “Hazardous Waste Generated in Laboratories”, RO 14618</p> <p>“Many of the hazardous wastes managed at academic institutions are produced and initially accumulated in research laboratories. The satellite accumulation provisions of 40 CFR 262.34(c) allow for reduced requirements for hazardous waste accumulated in containers at or near any point of generation. Both LQGs and SQGs may take advantage of the reduced requirements while hazardous waste is in satellite</p>

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			<p>accumulation areas, such as laboratories, provided the waste is managed in accordance with the provisions of 40 CFR 262.34(c) (e.g., properly labeled).”</p> <p>Note that the above guidance would apply to any LQG or SQG and was written before the academic entities regulations at 40 CFR 262, Subpart K.</p>