

Joseph Kohler

Please see attached. The attached document provides amended comments.

COMMENTS TO AUGUST 2018 PROPOSED AMENDMENT TO WAC 173-303  
REVISED COMMENT

This document includes two additional comments not contained in the document submitted on 10/3/18:

I appreciate the opportunity to comment on the proposed amendments to the Dangerous Waste Regulations, WAC 173-303. I provide the following comments for consideration.

Sincerely,

Joseph Kohler  
Silverdale, WA

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**173-303-180(10)(d).**

The proposed text reads as follows:

*“(d) Requirement for one printed copy. To the extent the hazardous materials regulation on shipping papers for carriage by public highway requires shippers of hazardous material to supply a paper document for compliance with 49 C.F.R. Part 177.817, a generator originating an electronic manifest must also provide the initial transporter with one printed copy of the electronic manifest. In addition, the one printed copy of the electronic manifest must provide the information required in subsection (6) of this section for state-only dangerous waste that designates only by the criteria under WAC 173-303-100 and as state listed WPCB and WSC2.”*

**49 CFR Requirements Independent of WAC 173-303:**

COMMENT: The requirement to provide a Shipping Paper per 49 CFR 177.817 has existed prior to the advent of the e-Manifest system. The requirements contained therein need not be repeated in WAC 173-303. Specific concerns are addressed in the comments below.

**Shipping Paper Certification Statements and Electronic Signatures:**

49 CFR 172.204 states in part, *“(a) General. Except as provided in paragraphs (b) and (c) of this section, each person who offers a hazardous material for transportation shall certify that the material is offered for transportation in accordance with this subchapter by printing (manually or mechanically) on the shipping paper containing the required shipping description the certification contained in paragraph (a)(1) of this section or the certification (declaration) containing the language contained in paragraph (a)(2) of this section. For transportation by rail only, the certification may be received verbally or with an electronic signature in conformance with paragraphs (a)(3)(i) and (a)(3)(ii) of this section.”*

49 CFR 172.204(d) states, *“(d) Signature. The certifications required by paragraph (a) or (c) of this section:*

*(1) Must be legibly signed by a principal, officer, partner, or employee of the shipper or his agent; and*

*(2) May be legibly signed manually, by typewriter, or by other mechanical means.*

*(3) For transportation by rail, when transmitted by telephone or electronically, the signature must be in one of the following forms: The name of the principal person, partner, officer, or employee of the offeror or his agent in a computer field defined for that purpose”*

49 CFR 177.817(b) also requires the Shipper's certification to be on the shipping paper provided to the transporter.

COMMENT: As written, the proposed text may unintentionally result some shippers supplying a printed copy not fully in conformance with DOT Shipping Paper requirements. Rationale: The printed copy of the electronic manifest is identical to EPA Form 8700-22. This form does not contain the certification statement as required by 49 CFR 172.204(a).

COMMENT: As written the proposed text may unintentionally result in the Shipper's certification not being in conformance with DOT Shippers Certification requirements. Rationale: A printed copy of the e-Manifest, with electronic signatures, may be misunderstood to represent all the necessary shipping paper requirements, as the proposed language now reads. Electronic signatures are only authorized for shipments by rail.

#### **EPA Frequently Asked Question #10 under "Federal and State Implementation":**

At EPA's e-Manifest Frequently Asked Questions (FAQ) page (<https://www.epa.gov/e-manifest/frequently-questions-about-e-manifest#federal>), question 10 reads, "How will use of e-Manifest relate to Department of Transportation (DOT) hazardous material regulations (HMR) requirement to use a shipping paper?" The answer provided states, "EPA is coordinating with DOT during the development of e-Manifest. The system will allow a user to produce a manifest that satisfies the DOT HMR requirement for a shipping paper. One key point is that DOT currently requires that a hard copy shipping paper be placed in the cab of the transport vehicle during transportation. Therefore, handlers using e-Manifest will still need to comply with that requirement (e.g., print the manifest from the e-Manifest system)."

COMMENT: 49 CFR 171.8 defines a "Shipping Paper" as "Shipping paper means a shipping order, bill of lading, manifest or other shipping document serving a similar purpose and prepared in accordance with subpart C of part 172 of this chapter." Thus, a shipping paper is not limited to a printed copy of an e-Manifest. If a printed copy of the e-Manifest is used, it must contain all the required elements of 49 CFR 172 Subpart C to be considered a "Shipping Paper". Although a hazardous waste manifest is required, it may not necessarily be the document that is considered the official "Shipping Paper". As written, the proposed text appears to be limited to use of a printed e-Manifest as the only option for use as a "Shipping Paper".

COMMENT: As written, the proposed text indicates, "...a generator originating an electronic manifest must also provide the initial transporter with one printed copy of the electronic manifest." This could be interpreted as a requirement as written. Rationale: Close examination of EPA's FAQ answer, in conjunction with the requirements of 49 CFR Subpart C, indicate that the printout of the e-Manifest is identified as one example of a document that that may be used to satisfy shipping paper requirements. As indicated in comment 2 above, a printed copy of the e-Manifest does not contain all the required information (e.g., certification statement) and could only partially satisfy the HMR shipping paper requirement. (The above comment relates).

COMMENT: The intent to assure a printed copy of the e-Manifest is supplied to the transporter, if it is being used to as a shipping paper per 49 CFR 172 Subpart C, has been communicated to stakeholders by EPA throughout development of the e-Manifest system. EPA has provided guidance to industry users to assure the 49 CFR 177.817 requirements are met. This provides a measure of confidence that printed copies will be provided to transporters as required and that this requirement need not be repeated in the WAC.

#### **Apparent Conflict with 40 CFR 262.24(a) and WAC 173-303-180(9)**

40 CFR 262.24(a) states in part,

*"(a) Legal equivalence to paper manifests. Electronic manifests that are obtained, completed, and transmitted in accordance with § 262.20(a)(3), and used in accordance with this section in lieu of EPA Forms 8700-22 and 8700-22A are the legal equivalent of paper manifest forms bearing*

handwritten signatures, and satisfy for all purposes any requirement in these regulations to obtain, complete, sign, provide, use, or retain a manifest.

(1) Any requirement in these regulations to sign a manifest or manifest certification by hand, or to obtain a handwritten signature, is satisfied by signing with or obtaining a valid and enforceable electronic signature within the meaning of 262.25.

(2) Any requirement in these regulations to give, provide, send, forward, or return to another person a copy of the manifest is satisfied when an electronic manifest is transmitted to the other person by submission to the system.

WAC 173-303-180(10)(a)(2) repeats 40 CFR 262.24(a)(2) requirements.

COMMENT: As written, the proposed text reads in part, “*In addition, the one printed copy of the electronic manifest must provide the information required in subsection (6) of this section for state-only dangerous waste that designates only by the criteria under WAC 173-303-100 and as state listed WPCB and WSC2.*” This appears to conflict with 40 CFR 262.24(a)(2). It is unclear if the Washington Department of Ecology intended to depart from 40 CFR 262.24(a)(2) (EPA’s intent to have a paperless manifest system in accordance with the Hazardous Waste Electronic Manifest Establishment Act (Public Law 112-195)). It is understood that the intent of the Act would also include all waste subject to hazardous waste manifesting requirements including state-only dangerous waste.

#### **State-Only Waste Codes Already E-Manifest, State Requirements Can Be Entered Into System:**

The second portion of the proposed text at WAC 173-303-180(10)(d) indicates that a printed copy of an e-Manifest is necessary to identify those state-only wastes identified under WAC 173-303-100, WSC2 and WPCB wastes.

COMMENT: The e-Manifest system accommodates Washington state-only dangerous waste codes. Thus, the data requested by WAC 173-303-180(10)(d) is incorporated into the e-Manifest system. Further, most data fields, including Proper Shipping Name, etc. allow for the user to enter and/or edit data to be as specific to the waste as required. This ability allows the e-Manifest to capture the desired information as well as additional information in WAC 173-303-180(6) (see comment below).

#### **Alignment with WAC 173-303-180(6):**

WAC 173-303-180(6) reads,

*“(6) Special instructions for state-only dangerous waste that designates only by the criteria under WAC 173-303-100 and is not regulated as a hazardous waste under 40 C.F.R. Part 261 or as a hazardous material under the 49 C.F.R. hazardous material regulations. For purposes of completing the uniform hazardous waste manifest, Item 9b, and Item 28 if continuation sheet 8700-22A is used, or to describe a state-only dangerous waste on a shipping paper, the shipping description must include the following in sequence with no additional information interspersed: (a) Material Not Regulated by DOT; (b) Washington State Dangerous Waste Only followed by the appropriate criteria designation of the waste that is either toxic, persistent, solid corrosive or a combination of these entered in parentheses; (c) Shipping description examples: Material Not Regulated by DOT (Washington State Dangerous Waste Only, Toxic); Material Not Regulated by DOT (Washington State Dangerous Waste Only, Toxic, Persistent); Material Not Regulated by DOT (Washington State Dangerous Waste Only, Solid Corrosive).”*

The proposed text at 173-303-180(10) reads in part, “*In addition, the one printed copy of the electronic manifest must provide the information required in subsection (6) of this section for state-only dangerous waste that designates only by the criteria under WAC 173-303-100 and as state listed WPCB and WSC2.*”

COMMENT: As written, it appears the intent of the proposed text at WAC 173-303-180(10)(d) would better be relocated to WAC 173-303-180(6). Rationale: This would appear to meet the Department of Ecology's intent to provide proper documentation to the transporter for state only wastes.

COMMENT: The following text modification is recommended:

- a) Delete proposed WAC 173-303-180(10).
- b) Amend WAC 173-303-180(6) to read as follows, “(6) *Special instructions for state-only dangerous waste that designates only under WAC 173-303-090(6)(b)(ii), by the criteria under WAC 173-303-100 or state sources, WPCB, under WAC 173-303-9904 and is not regulated as a hazardous waste under 40 C.F.R. Part 261 or as a hazardous material under the 49 C.F.R. hazardous material regulations. (a) For purposes of completing the uniform hazardous waste manifest (EPA Form 8700-22), Item 9b, and Item 28 if continuation sheet (EPA Form 8700-22A) is used, or to describe a state-only dangerous waste on a shipping paper, the shipping description must include the following in sequence with no additional information interspersed: (i) Material Not Regulated by DOT; (ii) “Washington State Dangerous Waste Only” followed by the appropriate criteria designation of the waste that is either toxic, persistent, solid corrosive, state-only PCB or a combination of these entered in parentheses; (iii) Shipping description examples: Material Not Regulated by DOT (Washington State Dangerous Waste Only, Toxic); Material Not Regulated by DOT (Washington State Dangerous Waste Only, Toxic, Persistent); Material Not Regulated by DOT (Washington State Dangerous Waste Only, Solid Corrosive) Material Not Regulated by DOT (Washington State Dangerous Waste Only, State-Only PCB. (b) If an electronic manifest is use in lieu EPA Form 8700-22 and EPA Form 8700-22A (if required), per WAC 173-303-180(9), the information from (a) of this section will be entered into the corresponding electronic manifest data fields. (c) If a shipping paper is not required by 49 C.F.R., the information of (a) of this section shall be included in shipping documentation (e.g. bill of lading, etc.) provided to the initial transporter to accompany the shipment.”*