

October 5, 2018

ROBERTY RIECK  
HAZARDOUS WASTE AND TOXICS REDUCTION PROGRAM  
WASHINGTON STATE DEPARTMENT OF ECOLOGY  
PO BOX 47600  
OLYMPIA, WA 98054-7600

Re: Comments on WAC 173-303 Update

Dear Mr. Rieck,

Seattle City Light has concerns over two of the proposed additions to the EPA's Generator Improvement Rules final rule.

**Comment: Discovery of Unknown Waste (non-mandated, state-only change)**

Oppose. Ecology seriously over-reaches when it tries to add dangerous waste responsibility for "unknown material" on any member of the public discovering it, passerby, or victim of illegal dumping, or even on the owner or lessee of land. There is no precedent in dangerous waste or solid waste law for this new, state-only idea. Suggest deleting these concepts from all parts of the draft. For example,

- delete "or who discovers an unknown material" from WAC 173-303-070(1)(b),
- delete "or upon the discovery of an unknown material" from WAC 173-303-070(3), and
- delete "A generator that accumulates dangerous waste on site is a person that stores dangerous waste" from WAC 173-303-170.

"Any person," "unknown material" and "discovering" are too broad as well as vague. Washington State prohibits depositing solid waste on property and the state statute requires the enforcement agency to do additional work to identify the person responsible rather than putting the burden on even the lessor or landowner. See RCW 70.95.240(5): *"When enforcing this section, the enforcing authority must take reasonable action to determine and identify the person responsible for illegally dumping solid waste before requiring the owner or lessee of the property where illegal dumping of solid waste has occurred to remove and properly dispose of the litter on the site."*

Ecology wrote, inaccurately, that the "unknown waste" amendment is only a clarification with no material impact on requirements. Ecology made no revisions in response to the public's comments on the preliminary draft, beyond clarifying that this regulation would apply to "unknown wastes not generated by the generator, ... but are abandoned on their property". The rule already requires action by generators, defined reasonably in federal and state law by what they have done in the past: "Generator" is *"any person, by site, whose act or process produces dangerous waste or whose act first*

causes a dangerous waste to become subject to regulation.” (40 CFR 262.10; WAC 173-303-040; see also 40 CFR § 262.10: “Purpose, scope, and applicability. (a) These regulations establish standards for generators of hazardous waste....”). This is clearly an expansion of the regulation, placing heavy liability on person’s who act or processes did not produce dangerous waste or cause it to become subject to regulation. Ecology failed to acknowledge or analyze any costs or benefits of the change in its Preliminary Regulatory Analysis. See Response Summary at 9-12, 63-67, and Preliminary Regulatory Analysis at 23, 43.

The change would be an improper shortcut. The current homelessness crisis in Washington State continues to bring to public attention that it is no simple matter to properly regulate against illegal dumping and dangerous waste accumulations on public and private properties. There is no quick fix, and the Dangerous Waste rules are not the place. We would be happy to discuss our concerns by phone or in person at your convenience.

**Comment: Hazardous and Dangerous Waste Labeling (non-mandated, state-only change)**

Oppose. The proposed rule as written adds the additional requirement that hazard labels be:

- Legible and recognizable to the general public from 25 feet away, or have lettering at least a ½” in height.
- Understandable to employees, emergency response personnel, the public and visitors.

It remains unclear why Washington State has proposed significantly more stringent labeling requirements, particularly banning the use of USDOT, OSHA, and NFPA labels as risk identification. The response to comments did not address why Ecology is requesting a unique labeling system or how that system would benefit the public or emergency responders. Ecology in it’s response to comments said “These [National] systems have some labels that do not clearly indicate the hazard of the materials being contained to inform or alert the public, employees, or all emergency personnel.” However, these systems are the most commonly used way to depict risk, in any situation. In particular, DOT labels consistent nationally and internationally, potentially providing information to non-English speakers that words like “reactive” cannot. Employees, first responders, and the public may be more familiar with the commonly used markings than risk words and gain more specific safety information from them than risk words.

We appreciate the opportunity to submit comments on this rule. If you have any questions or comments please contact me at 206-386-4581 or via email at [Aurana.Lewis@seattle.gov](mailto:Aurana.Lewis@seattle.gov).

Sincerely,



Aurana Lewis  
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Environment, Land, and Licensing Business Unit