



SOLID WASTE
DISPOSAL

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May 26, 2020

Robert Rieck
Department of Ecology
Hazardous Waste and Toxics Reduction Program
PO Box 47600, Olympia, WA 98504-7600

RE: Comments on Chapter 173-303 WAC, as Proposed on March 25, 2020

Dear Mr. Rieck:

The City of Spokane provides these comments to Washington State Department of Ecology's (Ecology) request for formal comments on the Dangerous Waste Regulations Chapter 173-303 WAC. Ecology's proposal was filed on March 25, 2020.

The City of Spokane generally supports the proposed rulemaking by Ecology particularly with its focus on incorporating EPA's new pharmaceutical provisions. The proposed rule, once adopted, should address the pharmaceutical disposal challenges that led to Ecology's Interim Pharmaceutical Waste Policy and also improve consistency with the Drug Enforcement Agency's requirement for destruction. The City of Spokane Waste to Energy Facility currently accepts drugs and pharmaceuticals for disposal/destruction as allowed in the current Dangerous Waste rule, its solid waste and air permits, and the facility's Special Handling/Non-Typical Waste Program. The Special Handling/Non-Typical Waste Program was reviewed and mutually agreed to by the Spokane Regional Health District, the Spokane Regional Clean Air Agency, and the Department of Ecology Solid Waste and Hazardous Waste Divisions. The City of Spokane is committed to providing safe, cost effective, and environmentally protective disposal of waste while complying with all applicable laws, rules, regulations, and permits.

The City offers the following specific comments related to the draft rule filed on March 25, 2020, particularly as it relates to operations at the City of Spokane Waste to Energy Facility.

The City is committed to follow both the letter of the law and its intention and in accordance, we are asking for clarification regarding certain sections of the proposed rule that appear to introduce ambiguity regarding disposal/destruction of Dangerous Waste pharmaceuticals. Accordingly, please clarify the following issues:

- The proposed language in WAC 173-303-071 reads:
(nn)(i) Controlled substances, legend drugs, and over-the-counter drugs that are state-only dangerous wastes and are held in the custody of law enforcement agencies within the state of Washington, provided the drugs are disposed of by incineration in a controlled combustion unit with a heat input rate greater than 250 million British

thermal units/hour, and a combustion zone temperature greater than 1500 degrees Fahrenheit, or a facility permitted to incinerate municipal solid waste.

It is unclear from the wording whether the phrase “within the state of Washington” is describing the law enforcement agency (i.e., a law enforcement agency in the state of Washington) or whether it is describing the location of where the drugs are held in custody, e.g., located in Washington regardless of jurisdiction of the law enforcement agency. Did Ecology intend to exclude particular law enforcement agencies? Was consideration given to the fact that law enforcement, regardless of location, serves public health and safety? The incineration of contraband pharmaceuticals is safe and environmentally protective, providing complete destruction. If drugs are not managed safely across a state line, impacts can occur in Washington, e.g., the Spokane River and the Spokane Aquifer both originate in Idaho. Spokane’s Waste to Energy Facility serves the Eastern Washington region for solid waste disposal needs. Allowing all law enforcement in the region (Washington, Tribal, Idaho, etc...) to use the Spokane Waste to Energy Facility for final destruction and disposal provides many benefits to public health and safety and the environment. Please consider removing the phrase “within the state of Washington”.

Pursuant to the Dangerous Waste rules contained in Chapter 173-303 WAC, if a generator outside the state disposes of waste within Washington, they would continue to follow the Washington rules as well as the rules of their state; it does not appear that extending the exclusion to out of state law enforcement would create any issues. Out of state law enforcement would need to follow both applicable rules and the waste would be destroyed in a safe and environmentally beneficial manner.

- WAC 173-303-170(12) also addresses law enforcement (without any reference to within the state of Washington or not). This section provides the option of using the new section, WAC 173-303-555(7) & (9) **{NOTE – the proposed language says (9), but from context, it appears that it should refer to (10).}**, for dangerous waste pharmaceuticals. However, WAC 173-303-555(2)(f) states that WAC 173-303-555 applies only to health care facilities and reverse distributors and that all other generators are subject to this chapter for the generation and accumulation of dangerous waste, including dangerous waste pharmaceuticals. It would add clarity to include a reference to WAC 173-303-170(12) in WAC 173-303-555(2) as a group that can, at their option, manage dangerous waste pharmaceuticals using the provisions in WAC 173-303-555. That appears to be the overall intent and should be consistent.

Additionally, if law enforcement can follow WAC 173-303-555(10), please consider adding them to WAC 173-303-555(10)(d), which currently refers to health care facilities and reverse distributors– presumably Ecology would also want law enforcement to have the letter showing that the receiving incinerator or combustion facility may accept the waste.

In regards to the letter referenced in WAC 173-303-555(10)(d), it is not clear from the rule which agency(s) is/are intended to be the “local regulatory or permitting authority”. Did you intend

this to be the issuer of the *solid waste* permit? Or, the *air permit*? Or, combination of these? Or, was there another intent? Please clarify the term “local regulatory or permitting authority”.

Regarding state-only dangerous waste pharmaceuticals and record keeping. Both WAC 173-303-555(10)(c) and WAC 173-303-555(10)(d) require documentation or letters, but neither of these sections or the proposed rule provide for how long these documents must be maintained. Please provide clarity for the specific period of time the records should be maintained.

- Both of the Dangerous Waste and Solid Waste rules use the term ***fully regulated under Chapter 173-303 WAC*** frequently, without any definition. Is there any information available as to what this term “fully regulated” means? It appears the following could be considered ***not fully regulated under Chapter 173-303 WAC*** because, exemptions/exclusions from parts of Chapter 173-303 WAC are provided (most particularly, in the case of generators - the waste is not required to be disposed of at a permitted hazardous/dangerous waste disposal facility):
 - Waste excluded under Chapter 173-303-071;
 - Waste managed by small quantity generators. See, RCW 70.105.000(10) which refers to this category of waste as “exempt or excluded from full regulation”; see also WAC 173-303-171(1), stating “the small quantity generator is not subject to regulation under this chapter except for WAC 173-303-050, 173-303-070, 173-303-145, 173-303-169, 173-303-170, 173-303-171 and 173-303-960;
 - Pharmaceuticals managed under WAC 173-303-555 based on the following:
 - WAC 173-303-169(4)(j) which excludes pharmaceuticals managed under WAC 173-303-555 from being counted toward generator status;
 - WAC 173-303-555(7):, “Provided the conditions of (b) of this subsection are met, the following are exempt from this chapter except for WAC 173-303-050, 173-303-145, and 173-303-960”; and
 - The expanded list of disposal facilities that can be used for disposal.

The interpretation that pharmaceuticals are no longer “fully regulated” is important because it is likely a number of the listed allowed disposal facilities would not be able to accept or process the wastes unless they are exempted or otherwise considered not fully regulated hazardous/dangerous waste. While the provisions in WAC 173-303-555 allow the generator to take the waste to the specified alternate disposal facilities, what provision(s) in Chapter 173-303 WAC allow the alternate disposal facilities to accept the waste without meeting all of the requirements of a Dangerous Waste Treatment/Disposal facility?

If Ecology has a different interpretation, please consider that under the rule as currently written, state-only Dangerous Waste pharmaceuticals generated by those licensed in the state of Washington, are exempted from the Dangerous Waste rules and can clearly be disposed of at the Spokane Waste to Energy Facility. Under the proposed revisions, this exclusion may be removed and in its place the newly proposed WAC 173-303-555 sets out further requirements in WAC 173-303-555(10). If these wastes become fully regulated under Chapter 173-303 WAC, these state only Dangerous Waste pharmaceuticals would no longer be allowed to come to the

Rob Rieck
May 26, 2020
Page 4 of 4

Spokane Waste to Energy Facility, as they are no longer exempted from full regulation under Chapter 173-303 WAC¹. Is this Ecology's intention?

The final rule should provide clarity to the above issues. Spokane's Waste to Energy Facility is an environmentally responsible process for final destruction of these dangerous wastes which otherwise could harm the public safety and well-being.

Thank you for the opportunity to offer these comments on the proposed rule. Please don't hesitate to contact me should you have any questions or would like more information.

Sincerely,



Chris Averyt
Interim Plant Manager
City of Spokane Waste to Energy Facility

cc: Scott Simmons
Kelle Vigeland

¹ The Spokane facility's waste permit is issued under Chapter 173-350 WAC. WAC 173-350 does not apply to Dangerous Wastes fully regulated under Chapter 173-303 WAC [WAC 173-350-020(m)] such as those excluded under WAC 173-303-071(3).