

**DOE Hanford Site Contractor Comments on
March 25, 2020 Proposed WAC 173-303 Dangerous Waste Rule Changes**

#	WAC Citation	Comment	DOE Contractor
1	173-303-070(4)	<p>Ecology does not have regulatory authority over every element or component of a waste analysis plan (WAP). WAC 173-303-070(4) and -110 already specify testing methods, and the testing method in turn already controls typically how a sample is to be collected, transported, analyzed, and hold times. The requirement to create a WAP, much less the internal details contained in a WAP of how an Owner/Operator will perform accomplishing these requirements operationally is beyond Ecology's purview and regulatory authority.</p> <p>If Ecology were to make this a requirement, then they need to identify exactly which elements of the WAP that they will be reviewing that are within their regulatory authority to oversee and approve (which constrains them to simply verifying selected testing methods comply with -110), they must have appropriate constraints in place such as a time limit for review/approval, as well as identification of that dispute process that will be utilized to resolve issues when they do not approve a WAP.</p>	WRPS
2	173-303-100(5)	<p>In accordance with the Washington State rule making requirements and process, please provide the technical justification and cost-benefit analysis that was used to justify removal of rat bioassays and limiting testing to only fish bioassays.</p> <p>Multiple bioassay options have always been needed as aquatic fish bioassays rarely adequately represent or provide for mammalian or terrestrial toxicity, nor does it adequately provide information on hydrophobic/insoluble compounds.</p>	WRPS
3	173-303-172(9)(a)(v), 173-303-200(7)(a)(v)	<p>Remove the new bullet in these sections that would require a Generator/Owner/Operator to perform specific actions in regards to label visibility purely to support an inspection.</p> <p>This bullet does not make sense as is. If the intent of this change is to ensure the weekly Generator inspections conducted under 5(d)/3(d) of the section also inspect labels (which is not presently even an inspection requirement in</p>	WRPS

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		<p>5(d)/3(d)), then the criteria to look for obscured, missing, or illegible labels should be added to the inspection criteria in 5(d) itself.</p> <p>Otherwise anyone, inspector or not, trying to verify compliance with container labeling requirements should always enter the actual container storage area utilizing the same physical approach to see and inspect the labels on a container as a worker. The label requirements do not require labels be visible from all directions and angles of approach. One set of labels on a container is the requirement, and that means that no matter how a Generator tries, there will almost always be directions and angles of approach where the labels will not be visible. This is especially true of the containers in an outdoor or more open area. To meet the existing EPA and Ecology labeling requirements, including the intent, container labels are placed and arranged primarily to support the actual worker's needs and use as they have the highest risk and the greatest need to be able to readily see the labels on a daily basis.</p> <p>If an inspector were to approach the containers from a different avenue, where the labels are not readily visible, there is no requirement or technically sound reason to put workers or the environment at additional and unnecessary risk of harm or a spill, simply to turn or move containers when needed purely to demonstrate to the inspector that a container is properly labelled. Which is one way this change could be interpreted. This would in fact, be directly contradictory to the stated intent of the rule and requirements.</p>	
4	173-303-201(9)(b)	<p>The change expands the contents of the contingency plan to include and address multiple other sections in 303-201. This change has no technical justification or basis as these items are already required to be addressed/complied with per this section in other avenues that Ecology already has authority over. Adding them to the contingency plan itself in addition, is therefore nothing but duplicative and unnecessary effort that will not add or provide any benefits to protecting human health and safety, or the environment. Making this is a substantial and significant change that will be</p>	WRPS

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		<p>incredibly burdensome (time and money) on an owner/operator/generator as well as Ecology to comply with.</p> <p>Ecology needs to provide the appropriate technical justification and cost-benefit analysis required by State rule making regulations/process in order to support making this change.</p>	
5	173-303-806(4)(a)	<p>In Ecology's official response to comments on the proposed draft of this rule revision, they claim the federal employee exemption in 18.43.130(6) RCW and WAC 196-29-200 which promulgates it, does not apply. However, Ecology has not provided an appropriate legal basis or technical justification to support their response for why that requirement in the statute or the associated WAC that promulgated it would not apply. WAC 173-303 on its own cannot, without an adequate legal basis, arbitrarily cherry pick and declare that only these parts of this RCW apply as needed to support the PE requirement in -303, but not this part of the RCW for the federal exemption simply because Ecology finds it undesirable. Despite the lack of an adequate legal basis, Ecology has already acknowledged that they do not intend to comply with, or consider the federal exemption in the RCW and WAC applicable, indicating they intend to implement and enforce these requirements in an illegally inconsistent and discriminatory fashion.</p> <p>Until Ecology can provide a legal basis for over-ruling and/or for why WAC 173-303 is the only process that does not have to comply with 18.43.130(6) RCW as promulgated into WAC 196-29-200, Ecology needs to revise WAC 173-303 to state that any documents required per WAC 173-303 to be submitted for a Part B permit application that are also subject to 18.43 RCW (as promulgated into WAC 196-23 and 196-29), are subject to and must comply with those requirements as applicable and in their entirety. This includes acknowledging that at this time, the Federal exemption requirement also still applies.</p>	WRPS