



RULE-MAKING ORDER

CR-103P (May 2009)
(Implements RCW 34.05.360)

Agency: Department of Ecology AO # 07-15

Permanent Rule Only

Effective date of rule:

Permanent Rules

31 days after filing.

Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

Yes No If Yes, explain:

Purpose: See Attachment A

Citation of existing rules affected by this order:

Repealed:

Amended: All sections in the chapter except 120. WAC 173-351-010, 100, 130, 140, 200, 210, 220, 300, 400, 405, 410, 415, 420, 430, 440, 450, 460, 465, 480, 490, 500, 600, 700, 710 (new), 720, 730, 740, 750, 760, 990.

Suspended:

Statutory authority for adoption: RCW 70.95.020(3); RCW 70.95.060(1); RCW 70.95.260(1); RCW 70.95.260(6)

Other authority :

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 12-11-097 on May 21, 2012 (date).

Describe any changes other than editing from proposed to adopted version: See Attachment B.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

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Date adopted: 11/7/12

NAME (TYPE OR PRINT)
Ted Sturdevant

SIGNATURE

TITLE
Director, Department of Ecology

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: November 08, 2012
TIME: 2:25 PM

WSR 12-23-009

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	_____	Amended	<u>1</u>	Repealed	_____
Federal rules or standards:	New	<u>1</u>	Amended	<u>9</u>	Repealed	_____
Recently enacted state statutes:	New	_____	Amended	<u>8</u>	Repealed	_____

The number of sections adopted at the request of a nongovernmental entity:

	New	<u>1</u>	Amended	<u>7</u>	Repealed	_____
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The number of sections adopted in the agency's own initiative:

	New	<u>1</u>	Amended	<u>29</u>	Repealed	_____
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

	New	<u>1</u>	Amended	<u>22</u>	Repealed	_____
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The number of sections adopted using:

Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	<u>1</u>	Amended	<u>29</u>	Repealed	_____

**Chapter 173-351 WAC Amendments
November 2012
Attachment A**

Purpose: Ecology is adopting rule amendments to Chapter 173-351 WAC, Criteria for Municipal Solid Waste Landfills. In 2004 EPA amended the federal rule (40 CFR Part 258) to allow Municipal Solid Waste Landfills (MSWLFs) to obtain Research, Development and Demonstration (RD&D) permits for new and existing landfills and lateral expansions. Ecology is adopting rule language to allow use of innovative or new technologies for run-on control systems, liquid restrictions and final cover requirements. The amended rule will allow facilities, with concurrence from the local health jurisdictions and the state solid waste program, to take advantage of these RD&D permits provided that MSWLF owners/operators demonstrate that compliance with the permit will not increase risk to human health and the environment.

Currently, we have partial approval from EPA for our MSWLF rule. By incorporating the recent RD&D and other federal amendments into chapter WAC 173-351, we anticipate achieving full approval of our state program from EPA.

Rule changes include:

- Adoption of new federal regulations which allow for issuance of Research, Development and Demonstration (RD&D) permits
- Elimination of equivalent and arid liner designs and greater flexibility for alternate liner designs consistent with federal regulations
- Elimination of arid closure cover design criteria
- Adoption of new post-closure care period standards, which are based on potential risk to human and environmental receptors
- Addition of a requirement to file an environmental covenant at closure in accordance with Chapter 64.70 RCW, Uniform Environmental Covenants Act
- Inclusion of prevailing wage law provisions for financial assurance for closure
- Changing dissolved metals groundwater monitoring parameters to total metals
- General “housekeeping” issues such as clarification of definitions, formatting changes and ensuring that the rule is consistent with Chapter 173-350 WAC, Solid Waste Handling Standards.

**Chapter 173-351 WAC Amendments
November 2012
Attachment B**

Describe any changes other than editing from proposed to adopted version:

There are some differences between the proposed rule filed on May 21, 2012 and the adopted version. Ecology made these changes for all or some of the following reasons:

- In response to comments we received.
- To ensure clarity and consistency.
- To meet the intent of the authorizing statute.

The changes and Ecology's reasons for making them are summarized below.

1. Multiple locations: Inserted "or through the permit modification process of WAC 173-351-720(5)."

Reason: Comments received requested provisions for making changes to plans, other documents, and permit provisions using a more flexible process. The change made in many locations in the rule allows owners or operators to use the permit modification process to seek changes.

2. WAC 173-351-010: Inserted text under the effective dates.

Reason: Changes were made under groundwater monitoring and post-closure requirements which included specific effective dates.

3. WAC 173-351-100: Changed the definition of "modification.

Reason: Comments received requested provisions for making changes to plans, other documents, and permit provisions using a more flexible process. The change in the definition allows owners or operators to use the permit modification process to seek changes.

4. WAC 173-351-130(2)(b): Changed requirements for when an owner or operator must notify the Federal Aviation Authority.

Reason: Ecology reviewed 49 USC § 44718 and the Federal Aviation Administration's Advisory Circular Number 150/5200-33A in response to comments and agrees that the six-mile notification would only apply to new landfill units.

5. WAC 173-351-200(11)(b)(ix): Revised annual reporting requirements for financial assurance.

Reason: The reporting requirements were made to reflect changes for financial assurance in WAC 173-351-600.

6. WAC 173-351-400: Deleted the note at the end of the section.

Reason: The note required groundwater sampling to be performed by or under the direct supervision of a geologist or other licensed professional. Chapter 18.220 RCW, Geologists, and Chapter 308-15 WAC, Geologic Licensing Services, establish the licensing requirements for persons practicing geology. The law is administered by Geologist Licensing Board at the Washington State Department of Licensing. Ecology does not want to include provisions that may be in conflict with the jurisdictional agency.

7. WAC 173-351-410(3): Deleted requirements to report groundwater data in printed electronic report form.

Reason: The proposed rule required groundwater data to be reported in multiple forms. Ecology eliminated the requirement to submit groundwater data in both a printed and electronic report form (i.e. spreadsheet) to simplify the process. Ecology will specify that groundwater data be submitted through the department's Environmental Information Management database.

**Chapter 173-351 WAC Amendments
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8. WAC 173-351-430(2): Inserted provisions for developing groundwater background data for MSWLF unit transitioning from dissolved metals sampling and analysis to total metals.

Reason: This rule changes the manner in which groundwater samples are sampled and analyzed for metal constituents. Existing landfills have accumulated historical data for dissolved metals for the purpose of establishing background conditions. The change provides a method for existing facilities to establish background concentrations for total metals.

9. WAC 173-351-440(2): Inserted provisions for developing groundwater background data for MSWLF unit transitioning from dissolved metals sampling and analysis to total metals.

Reason: This rule changes the manner in which groundwater is sampled and analyzed for metal constituents. Existing landfills under assessment monitoring have accumulated historical data for dissolved metals for the purpose of establishing background conditions. The change provides a method for existing facilities to establish background concentrations for total metals.

10. WAC 173-351-500(1)(a)(ii): Changed requirements for alternative final cover system designs.

Reasons: The alternative final cover design, having equivalent performance to the composite layer cover system, specified in the proposed rule was unintentional. Ecology understands that incorporating a geomembrane into the final cover design is not always necessary to prevent excess infiltration or exposure of waste from erosion. The adopted rule provides for alternative final cover designs having equivalent performance to the cover systems specified for arid areas in the earlier version of the rule.

11. WAC 173-351-500(2)(c): Inserted a one year effective date for updating post-closure plans to incorporate changes to requirements.

Reason: Owners or operators of existing MSWLF units are required to modify their post-closure plans to incorporate new functional stability criteria and environmental covenants. The change provides a one year period to update the plans.

12. WAC 173-351-600(2)(a)(v), (3)(a)(v), and (4)(a)(iv): Deleted requirement to annually submit findings of reviews performed to determine if cost estimates require adjustment for inflation.

Reasons: In response to comments, Ecology deleted the proposed sections, eliminating the requirement to annually submit findings of reviews performed to determine if cost estimates require adjustment for inflation. Owners or operators must still ensure cost estimates, and associated financial assurance mechanisms, are kept current.

13. WAC 173-351-600(5)(a)(ii): Inserted additional financial assurance mechanisms for municipal corporations.

Reasons: The additional financial assurance mechanisms were added to provide municipal corporations the same options that are available to private companies.

14. WAC 173-351-990 Appendix II: Changed iron and manganese sampling and analysis from total metals to dissolved metals.

Reasons: Iron and manganese are evaluated as geochemical indicator parameters using cation/anion balance calculations. Total metal values would include contributions from particulate matter which would skew dissolved ion values.