

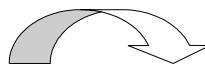


Implementation Plan

For the Adoption of Chapter 173-303 WAC *Dangerous Waste Regulations*

Washington State Department of Ecology
Hazardous Waste and Toxics Reduction Program
November 2004

Publication Number 04-04-031



Reduce Waste

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The Administrative Procedures Act requires that an Implementation Plan be placed in the rule file for all significant legislative rules that are adopted. Federal rules that are adopted or incorporated without material change are not subject to this requirement. Many of the rules adopted as part of this rulemaking are virtually identical to their federal counterparts; therefore, the Implementation Plan addresses the remainder of the requirements that are subject to the Administrative Procedures Act requirements for significant legislative rules. For the significant legislative rules, such as rules that implement the Hazardous Waste Facilities Initiative, this Implementation Plan describes how Ecology intends to:

- Implement and enforce the rule, including a description of the resources Ecology intends to use;
- Inform and educate affected persons about the rule;
- Promote and assist voluntary compliance; and
- Evaluate whether the rule achieves the purpose for which it was adopted, including to the maximum extent practicable, the use of interim milestones to assess progress and the use of objectively measurable outcomes.

In addition, this Implementation Plan describes, for all rule amendments, how Ecology intends to:

- Train and inform Ecology staff regarding new rules or rule amendments, and,
- Identify program documents that may need to be revised because of the new rule or rule amendment.

1. How will Ecology implement and enforce the rule? What resources will Ecology use?

The rule amendments were developed primarily by headquarters staff and regional staff who were assigned to special projects. Following adoption, the headquarters' focus will move toward a technical support function with a continued emphasis on statewide policy, and development of guidance and training. Headquarters staff will work on obtaining authorization from EPA for the federal regulations adopted (delegation of authority to implement the program instead of EPA).

No entirely new areas of regulation were added to the rules during this rulemaking. Instead, existing regulatory requirements were modified, enhanced, or in the case of the Hazardous Waste Facilities Initiative, extended to additional entities. Implementation of the new rules will be incorporated into ongoing program activities. Staff at the four regional offices are the primary implementers and enforcers of the *Dangerous Waste Regulations*. Industrial Section staff of the Solid Waste and Financial Assistance Program and Nuclear Waste Program staff also implement these regulations. Regional staff will continue to be the primary implementers of the amended regulations. Headquarters staff will provide training to regional staff and will continue to provide technical assistance, as needed. These rule changes will not require

Implementation Plan

Chapter 173-303, *Dangerous Waste Regulations*

additional staff for implementation or enforcement since they are part of the existing regulatory framework for managing dangerous wastes.

One key area where existing requirements were expanded is with the financial requirements that now apply to used oil and recycling facilities. There are approximately 26 facilities in Washington that may be impacted by the new financial requirements. As many as fourteen of those will be required, for the first time, to prepare closure plans, provide pollution liability coverage, and establish financial assurance for closure. Closure plans are to be prepared and submitted within 180 days of the effective date of the rule. Deadlines for demonstrating financial assurance vary depending upon the mechanism selected, but typically, within one year of the approval of a facility's closure plan. Ecology will implement the new requirements through involvement of Hazardous Waste and Toxics Reduction Program compliance staff located in its four regional offices and through the financial officer located in headquarters. Major actions involved with implementation will include, but are not limited to:

- notification of new requirements to facility owners and operators;
- preparation of updated guidance for closure plans and closure cost estimating;
- assisting individual facility owners and operators in preparing closure plans, cost estimates, and selecting financial assurance mechanisms;
- review, comment and approval or denial of closure plans, closure cost estimates, and financial mechanisms; and
- ongoing review and maintenance of closure plans and financial mechanisms.

A rough estimate of the total resources needed to conduct these actions is 1.0 to 1.5 FTE over a two year period. No additional staff or resources are anticipated to conduct these activities; however the HWTR Program is currently considering increasing the time assigned to the financial officer position to shift from 0.60 FTE to 1.0 or 1.5 FTE. The activities listed above will be absorbed into existing workload and priorities of the HWTR Program. As a result, other activities carried out by the Program will need to be delayed or replaced.

2. How will Ecology inform and educate people that are affected by the rule?

One of the first actions to inform and educate people affected by the rule will be presentations at the generator workshops early in 2005 on the new rules. A detailed focus sheet will also be distributed at these statewide workshops. Ecology will continue to publish articles in *Shoptalk* and other publications to explain the rule changes and will notify interested persons electronically of the rule adoption. Throughout the rulemaking, articles were published on the proposed rules in general, and on specific topics to familiarize the regulated community with the changes. These articles will continue to be written and published. Letters or some type of informative publication will be prepared and sent to those interested in or affected by the new financial responsibility requirements. As regional staff visit generators and treatment, storage, and disposal facilities, staff will work to educate them as to any of the new requirements that impact them or that they could benefit from.

Implementation Plan

Chapter 173-303, *Dangerous Waste Regulations*

Ecology uses a mail list of interested people to send out information related to the rule amendments including generators, counties, environmentalists, tribes and other interested people. Announcement of upcoming rulemaking, availability of draft rule language for review and comment, and other opportunities have been and will continue to be announced using the list serve for those interested in the *Dangerous Waste Regulations*. Another more general list serve is used at Ecology for people who are interested in any agency rule changes and this list is also used.

Widespread distribution of a focus sheet is being considered to everyone who has a Hazardous Waste ID#; this includes all known generators, transporters and treatment, storage, and disposal facilities.

Regional staff will be able to continue the education of effected parties regarding rule changes that may impact various businesses during site visits. Both regional and headquarters staff will respond to phone calls regarding the new changes, especially during the early stages of implementation. Additional organized training of the regulated community on some of the rule changes may take place later in 2005.

Additional implementation activities are planned for rules that impact recycling and used oil facilities. Ecology will continue to work with stakeholders through correspondence, site visits, and through the services of a consultant hired especially to work with facilities on closure plans and financial requirements. It is anticipated that the consultant will assist Ecology in preparing and providing training on guidelines for Ecology staff and facility owners and operators, research insurance topics, conduct assistance programs with facilities, and participate in workshops or meetings with stakeholders to explain the new requirements. The consultant will complete their tasks by June 30, 2005.

3. How will Ecology promote and assist voluntary compliance?

The actions mentioned above to inform and educate stakeholders on the changes also help promote voluntary compliance. The *Dangerous Waste Regulations* are rather complex regulations. *Shoptalk* articles that explain some of the key changes will help with voluntary compliance, as will the availability of guidance on the changes. Existing guidance will need to be updated to reflect the changes, and some new guidance materials may be prepared to explain the changes. Additionally, guidance for closure plans will need to be updated, and guidance on closure cost estimating will need to be completed for the used oil and recycling facilities that will be newly subject to closure planning and providing financial assurance.

Both compliance and toxics reduction staff will be able to inform the regulated community about relevant changes during their site visits. All program staff are available to respond to stakeholder phone and e-mail queries.

A number of other activities have proven to be useful in the past at helping to promote voluntary compliance. They include the following:

Implementation Plan

Chapter 173-303, *Dangerous Waste Regulations*

- An index was added to the regulations to assist the regulated community in finding relevant requirements. The index is updated with each rulemaking.
- The regulations and guidance documents are available on Ecology's web site.
- Routine training of regional staff on new and amended regulations.
- A file is maintained for comments and suggestions for improving the regulations. The file is used during each subsequent rule making. These suggestions come from both Ecology staff and the regulated community.
- Guidance documents are developed for particular waste streams or industries, including fact and focus sheets and industry specific booklets.
- Changes are incorporated to improve rule clarity. Early draft amendments are reviewed for clarity, and suggestions are incorporated prior to proposal.
- The number and types of phone calls are monitored to determine where additional guidance will be helpful.

As mentioned previously:

- Announcements of amendments and articles on specific rule changes appear in *Shoptalk*.
- Outreach is conducted by Ecology through its generator workshops and other site visits.

4. How will Ecology evaluate whether the rule achieves the purpose for which it was adopted, including to the maximum extent practicable, the use of interim milestones to assess progress and the use of objectively measurable outcome?

One of the ways Ecology will evaluate whether or not the rules achieve their purpose will be based on feedback during inspections and toxics reduction staff visits to businesses. Following initial implementation, the numbers of violations or necessary enforcement actions can be monitored.

Rules in specific areas, such as fertilizer registration, corrective action management unit designation, and waste analysis plans will be monitored by staff that work in these specialized areas. Rules that are more general will be monitored over a period of time and may be discussed at a variety of program staff meetings including Compliance Network, all staff meetings, and Toxics Reduction Network meetings.

Ecology will monitor the compliance of facility owners and operators with the new requirements for closure plans and financial assurance. Interim milestones will include the number of facilities submitting closure plans, and the number of facilities submitting pollution liability coverage and financial assurance for closure. The effectiveness of the new requirements will be measured on a site-by-site basis as incidents occur that result in claims made and paid against pollution liability coverage, and as facilities close and closure funds need to be drawn upon.

Implementation Plan

Chapter 173-303, *Dangerous Waste Regulations*

5. How will Ecology train and inform other Ecology staff regarding the new rule or rule amendment?

Each regional office was visited early in the rule development process to familiarize staff with, and provide an overview of, the changes to the regulations. Regional HWTR Program and other directly impacted staff have been kept in the information loop throughout the rule process via a contact person in each regional office and other related Ecology programs. Additional updates will be distributed using this contact person process.

Training is being considered on the rule changes that staff will encounter most commonly. Workgroups on specific topics will be informed more specifically for their areas of expertise, such as the group on corrective actions and the group that meets to discuss treatment, storage, and disposal facilities issues. Training will be conducted by Headquarters staff and regional staff who worked on various rule changes throughout the process.

6. How will supporting documents that may need to be revised or new documents that may need to be developed because of the rule amendments be identified?

A system exists in the HWTR Program whereby publications are reviewed for accuracy each time they need to be reprinted. In addition, the list of program publications will be reviewed to determine, based on content and focus, which guidance documents should be reviewed sooner to see if they need to be revised. Documents that need to be changed will be assigned to staff for modification.

Some guidance documents are already being revised or written. Guidance on the new financial assurance and closure plan requirements are being worked on, and a synopsis of the requirements will be developed so that it can be distributed soon after rule adoption. The amendments themselves will also be reviewed to identify any other potential new guidance.