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## I. INTRODUCTION

Wm. Dickson Company operates an inert solid waste landfill in Pierce County under a permit issued by the Tacoma Pierce County Health Department (“the Health Department”). CP at 5, 174. The landfill is permitted to accept only clean solid waste. CP at 170, 174. In September 2004 Dickson began accepting contaminated liquid waste in violation of his permit. CP at 49, 186-87. In January 2005 an Ecology water quality inspector told Dickson that the runoff from the liquid waste violated water quality standards. CP at 50, 56-57. On February 28, 2005, Ecology formally notified Dickson and the Health Department that the liquid waste was not solid waste, violated the landfill permit, and should be removed from the site. CP at 48.

Dickson stopped taking the waste and filed suit against the waste generator and transporters to recover his cleanup cost. That suit has settled. Almost four years later he filed this action against the Department of Ecology. He claims: (1) Ecology was negligent because Ecology did not prevent him from taking the waste sooner than it did and; (2) Ecology trespassed on his landfill wrongfully causing waste or injury to the property. Both claims are time-barred. Even if they were not, the negligence claim is not based on any legal duty and there was no trespass. The trial court granted Ecology’s motion for summary judgment.

Dickson had a mandatory duty under law to know the source and contents of the waste he accepted at the landfill. WAC 173-304-461.<sup>1</sup> Dickson's landfill permit required him to "develop and implement an approved waste screening program to insure that wastes exceeding [the criteria stated in the permit] are not accepted." CP at 170. Ecology had no duty to prevent Dickson from violating his permit or from violating state environmental statutes. Dickson was fully informed about the source and contents of the illegal waste not later than February 28, 2005. Although Dickson never had any cause of action for negligence against Ecology, if he did, it accrued on or before February 28, 2005.

## **II. STATEMENT OF ISSUES**

- A. Does the statute of limitations bar a negligence claim filed three years and nine months after the cause of action accrued?
- B. Does Dickson enjoy any benefit from the discovery of injury rule?
- C. Did Ecology owe Dickson any actionable duty to prevent Dickson from violating the terms of his landfill permit?

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<sup>1</sup> "Owners and operators of inert waste and demolition waste landfills shall not accept any other form of waste except inert waste and demolition waste." WAC 173-304-461(9). "Inert waste means noncombustible, nondangerous solid wastes that are likely to retain their physical and chemical structure under expected conditions of disposal, including resistance to biological attack and chemical attack from acidic rainwater." WAC 173-304-100(40). "Solid waste" does not include liquids that are the primary product of industrial or mining operations. WAC 173-304-100(73).

D. Does the statute of limitations bar a statutory trespass claim filed three years and nine months after the alleged trespass occurred?

### **III. STATEMENT OF THE CASE**

#### **A. Statement Of Facts**

Wm. Dickson Company operates a gravel mine and inert waste landfill on Waller Road in Pierce County, Washington. CP at 5. Dickson had an inert waste landfill permit from the Tacoma Pierce County Health Department. CP at 5, 168-74. The landfill permit states:

The permittee shall not accept materials other than concrete, bricks, asphalt, clean window glass, stainless steel, aluminum, and clean fill dirt (soils) as noted in WAC 173-350-990 Criteria for Inert Waste. Acceptance of materials other than these, for disposal at the Waller Road Inert Landfill without a Waste Disposal Authorization (WDA) and the express written consent of the Tacoma Pierce County Health Department, may result in revocation of the permit. CP 170.

On September 14, 2004, Dickson's landfill began receiving liquid waste from Sound Transit's Beacon Hill Tunnel Project ("the tunnel project"). CP at 49, 123. The landfill permit does not allow Dickson to accept industrial wastewater, or any liquid waste. CP at 170.<sup>2</sup>

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<sup>2</sup> The Health Department allowed Dickson to accept "mud and other inert materials" provided that they do not "contain any contaminants." CP at 176.

Dickson had a storm water and dewatering discharge permit from Ecology. CP at 5, 162-64. Under the terms of the permit the pH<sup>3</sup> limit for surface water discharge was 6.5-8.5 SU.<sup>4</sup> CP at 163.

Jason Shira is a permit manager for the water quality program of the Department of Ecology. CP at 49. Shira conducted water quality inspections at the landfill on December 16, 20 and 23, 2004. CP at 50. On January 18, 2005, Shira sent Dickson a Water Quality Compliance Inspection Report (dated 1/14/05) in which he advised Dickson that the “industrial wastewater” must be stored in a lined pond or pool, and the addition of a lined pond required Dickson to submit an engineering report or industrial wastewater treatment plan. CP at 53, 54.

On January 25, 2005, Shira conducted a follow-up inspection at Waller. CP at 50. Shira found that Dickson had not built a lined pond, had not submitted an engineering report, and was still accepting the industrial waste water. CP at 50. Shira tested the water in the existing retention pond and found it violated Dickson’s sand and gravel permit. CP at 50. The pH measured 11.4 SU, far above the 8.5 allowed under the permit. CP at 57. On February 10, 2005, Shira issued a letter to Dickson

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<sup>3</sup> “pH” is a measure of the acidity or alkalinity of a solution, numerically equal to 7 for a neutral solution. *Webster’s II New College Dictionary* 823 (1999). Technically,  $\text{pH} = -\log\{\text{H}\}$ , where  $\{\text{H}\}$  is the hydrogen ion concentration in moles per liter.

<sup>4</sup> “SU” means Standard Units where a pH of 0 is a very strong acid, a pH of 7 is neutral, and a pH of 14 is a very strong base.

about the violation and attached his inspection report dated January 25, 2005. CP at 56-58. Dickson still did not submit an engineering report. CP at 50.

The Health Department notified Dickson that he was in violation of his solid waste permit. CP at 186-87. Dickson stopped accepting the liquid waste on February 11, 2005. CP at 89. The Health Department notified Dickson that he had to dispose of the liquid waste at a permitted site or treat it on site. CP at 189-90.

On February 28, 2005, Steve Eberl of Ecology sent a letter to Dickson explaining Ecology's position that the waste should be removed from the Waller site. CP at 45, 48. Eberl based this on the fact that the waste material was not covered by Dickson's permit, the waste was received without notice to the Health Department or Ecology, and the facility was not designed to treat or monitor leachate<sup>5</sup> from the waste. CP at 45-46. Ecology did not take enforcement action but referred the matter to the Health Department. CP at 46. Dickson did not provide Ecology with a removal plan or respond to Eberl's letter concerning removal. CP at 46.

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<sup>5</sup> "Leachate means water or other liquid within a solid waste handling unit that has been contaminated by dissolved or suspended materials due to contact with solid waste or gases." WAC 173-350-100.

In correspondence dated March 18 and April 27, 2005, Dickson asked Ecology questions concerning its sand and gravel permit. CP at 50. Shira responded on May 12, 2005, stating in part: “The waste Dickson received from the Beacon Hill Tunnel Project is not covered under the Sand and Gravel General Permit.” CP at 50, 60-61. This is the last correspondence between Dickson and Ecology on the subject of the tunnel waste at the Waller site. CP at 50. Ecology did not order Dickson to remove the waste from the site. CP at 46. The Health Department ordered Dickson to stop accepting unauthorized “waste, slurry and mud . . . per the facility’s solid waste handling permit.” CP at 155, 186-87. “Water, slurry and mud are items that are not authorized for disposal at the WRI landfill per the facility’s solid waste handling permit.” CP at 186 (Notice of Violation, March 3, 2005).

Dickson sued Sound Transit and many other parties for cleanup cost under the Model Toxics Control Act, RCW 70.105D. CP at 90. Dickson did not join Ecology in that action.

**B. Statement Of Procedure**

On September 5, 2008, Dickson filed a claim for damages with the Office of Financial Management. CP at 29, 32. On December 1, 2008, Dickson filed the present suit in Pierce County Superior Court. CP at 1. On February 12, 2009, Dickson served the suit on the State of

Washington. CP at 42. The service date is just short of four years after Ecology told Dickson that he was in violation of his permit. Dickson amended the complaint on March 11, 2009. CP at 9-18.

Dickson's amended complaint alleged four causes of action: 1) negligence; 2) federal civil rights violation of 42 U.S.C. § 1983; 3) statutory trespass in violation of RCW 4.24.630; and 4) malicious prosecution. CP at 14-18. In response to Ecology's summary judgment motion, Dickson abandoned his civil rights claim and his malicious prosecution claim. CP at 82. Therefore, the trial court ruled only on the two remaining claims for negligence and trespass. The trial court granted Ecology's motion for summary judgment and Dickson appealed. CP at 208-09.

#### **IV. ARGUMENT**

##### **A. Summary Of Argument**

The appellant's negligence and statutory trespass claims are both time-barred. Even if the negligence claim was not time-barred, the claim is not supported by any legal duty. Even if the trespass claim was not time-barred, Ecology did not trespass upon the appellant's property. The only Ecology employee who entered the appellant's property was authorized by law and had the permission of the appellant to enter.

Ecology did the appellant a favor by informing him that he was receiving waste in violation of his inert waste landfill permit. The appellant avoided mounting cleanup cost and liability because Ecology told him to stop taking the unpermitted waste.

**B. Standard Of Review**

This court reviews a summary judgment order de novo. *Oltman v. Holland Am. Line USA, Inc.*, 163 W.2d 236, 243, 178 P.3d 981 (2008). Summary judgment is appropriate only if “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” CR 56(c). Facts and reasonable inferences are viewed in the light most favorable to the nonmoving party. *McNabb v. Dep’t of Corrections*, 163 W.2d 393, 397, 180 P.3d 1257 (2008).

Once the moving party meets its burden to show that there is no genuine issue as to any material fact, the nonmoving party must set forth specific facts rebutting the moving party’s contentions and disclosing that a genuine issue as to a material fact exists. *Strong v. Terrell*, 147 Wn. App. 376, 384, 195 P.3d 977 (2008). The appellate court may affirm the trial court “on any correct ground even though the trial court did not consider that particular ground.” *Wallace v. Lewis County*, 134 Wn. App.

1, 12, 137 P.3d 101 (2006), citing *Nast v. Michels*, 107 Wn.2d 300, 308, 730 P.2d 54 (1986).

**C. The Negligence Claim Is Time Barred**

**1. The Claim Accrued When The Injury Occurred**

Dickson's amended complaint alleges that he suffered injury to real property due to Ecology's negligence. CP at 14.

An action for negligent injury to real property is subject to a two-year statute of limitations. Such a negligence action accrues when the plaintiff suffers some form of injury to his real property. The injury or damage must be actual and appreciable.

*Wallace v. Lewis County*, 134 Wn. App. 1, 13, 137 P.3d 101 (2006), citing RCW4.16.130 (other internal cites omitted).

Statutes of limitation begin to run when a cause of action accrues. RCW 4.16.005. Usually a cause of action accrues when the party has the right to apply to a court for relief. *Gazija v. Nicholas Jerns Co.*, 86 Wn.2d 215, 219, 543 P.2d 338 (1975). "In many instances an action accrues immediately when the wrongful act occurs, but in some circumstances *where the plaintiff is unaware of harm sustained* a 'literal application of the statute of limitations could result in grave injustice.'" *1000 Virginia Ltd. Partnership v. Vertecs Corp.*, 158 Wn.2d 566, 575, 146 P.3d 423 (2006) (emphasis added). To avoid this injustice, courts have applied the discovery of injury rule, under which the cause of action accrues when the

plaintiff discovers, or in the reasonable exercise of diligence should discover, the elements of the cause of action. *Green v. A.P.C.*, 136 Wn.2d 87, 95, 960 P.2d 912 (1998). “This does not mean that the action accrues when the plaintiff learns that he or she has a legal cause of action; rather, the action accrues when the plaintiff discovers the salient facts underlying the elements of the cause of action.” *1000 Virginia Ltd. Partnership v. Vertecs*, 158 Wn.2d 566, 576 (2006).

Although Dickson doesn't have a negligence claim against Ecology, if he did, it accrued on the date when he learned that he suffered injury to his real property. On that date he knew or in the reasonable exercise of diligence should have known the salient facts underlying the elements of the cause of action. The action accrued not later than February 28, 2005, the date when Ecology formally informed Dickson that he disposed of contaminated waste on his property in violation of state law and his permit. By that date he knew that he had sustained a harm and he had three years in which to sue all persons who might be liable.

## **2. The Action Was Filed One Year and Nine Months Late**

By February 2005, Dickson knew that he had a right to recover cleanup costs from persons who sent the waste to his site. “From March 2005 through December 2007, Dickson attempted numerous times to get compensation from Sound Transit for damages caused by the cement

concealed in the vacuum waste mud.” CP at 90. Dickson filed suit against Sound Transit and its contractors in December 2007.” Appellants Br. at 3; CP at 90. In January 2005, Dickson knew that Ecology was aware of the source of the waste. CP at 50. On February 10, 2005, Ecology told Dickson that the pH and the total dissolved solids in the industrial wastewater “is a violation of the sand and gravel general permit.” CP at 56. In March 2005, he knew that he had a right to seek judicial relief as proven by his “numerous attempts to get compensation from Sound Transit for damages.” Nevertheless, he waited three years and nine months to file this action.

The Appellant’s brief does not state any date on which Dickson believes his cause of action accrued. In response to the summary judgment motion Dickson provided a declaration from his own consultant. The declaration states: “In preparation for its lawsuit against Sound Transit and its contractors, Dickson had submitted public records requests to Ecology from November 2005 through December 2007.” CP at 91. “Ecology provided some information, but significantly failed to disclose emails providing that Bob Penhale,<sup>6</sup> an Ecology inspector at the Beacon Hill site, was involved in weekly inspections of the project site and knew

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<sup>6</sup> Bob Penhale is an Ecology employee in the Storm Water Management Program in King County. He has nothing to do with the regulation or permitting of Dickson’s landfill in Pierce County.

the nature of the waste being sent to Dickson’s landfill.” CP at 91, 156-57. “These emails were only provided to Dickson after December 2007 via discovery responses from one of the parties in the Sound Transit litigation. CP at 90.” Appellants Br. at 4-5.

The argument about emails between Penhale and Sound Transit is a red herring. Dickson did not sustain any harm when he discovered the emails. Even if the discovery of these emails constituted an accrual date, which it does not, Dickson never says when he learned about them. The record is completely devoid of any date on which Dickson claims his action accrued.

### **3. The Discovery Rule Does Not Apply**

The discovery rule is a narrow exception that may delay the date on which an action for negligence accrues when the injured party does not or cannot know he has been injured. *Estates of Hibbard*, 118 Wn.2d 737, 744, 826 P.2d 690 (1992).<sup>7</sup> “Application of the rule is limited to claims in which the plaintiffs *could not have immediately known of their injuries* due to professional malpractice, occupational diseases, self-reporting or concealment of information by the defendant.” *Id.* at 749-50.

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<sup>7</sup> “In certain torts,...injured parties do not, or cannot, know they have been injured; in [those] cases, a cause of action accrues at the time the plaintiff knew or should have known all of the essential elements of the cause of action. This is an exception to the general rule and is known as the discovery rule.” *Hibbard*, 118 Wn.2d at 744, quoting *White v. Johns-Manville Corp.*, 103 Wn.2d 344, 348, 693 P.2d 687 (1985).

“Where there is a delay between the injury and the plaintiff’s discovery of it, the court may apply the discovery rule.” *Wallace v. Lewis County*, 134 Wn. App. 1, 13 (2006). The discovery of injury rule does not apply to this case because Dickson knew about his injury when it occurred. The discovery rule does not delay the accrual of an action until the plaintiff’s attorney invents a theory of liability.

The discovery rule is designed to balance policies underlying statutes of limitations against the unfairness of cutting off a valid claim where the plaintiff through no fault of his own, could not reasonably have discovered the claim’s factual elements until some time after the date of the injury. *Crisman v. Crisman*, 85 Wn. App. 15, 931 P.2d 163 *amended on denial of recon.*, rev. denied 132 Wn.2d 1008, 940 P.2d 653 (1997). A court may apply the discovery rule to toll the limitation period where the nature of the injury makes it extremely difficult for the plaintiff to learn the factual elements of his cause of action within the specified limitation period. *Crisman*, 85 Wn. App. at 15.

Dickson knew about his injury at the time it occurred. The record shows that Dickson knew about the injury and the cause of injury to his property in February 2005. He knew the source of the waste, the generator of the waste, and the transporters of the waste. In fact, an Ecology employee testing the waste told Dickson that the waste was too

alkaline for disposal at the landfill. In spite of the fact that Dickson was required to know the source and character of the waste, he claims this was Ecology's burden.

In his brief, Dickson blames everyone else for his trouble but takes none of the responsibility. He claims that "the contractors responsible for hauling waste to Dickson's landfill from the Beacon Hill site misrepresented the nature of the waste being deposited at Dickson's pit." Appellants Br. at 3. He claims that Shira told him the waste was "water, sand and bentonite." Appellants Br. at 4. But Dickson ignores his own mandatory duty to screen the contents of the waste and to refuse to accept waste that is so obviously not permitted in an inert solid waste landfill.

Dickson accepted unpermitted contaminated waste in exchange for fees. Soon after Dickson knew that the property was injured, he promptly sought to recover cleanup costs from Sound Transit and the transporters, proving that he knew he could seek judicial relief.

The discovery rule does not apply here because Dickson knew all facts necessary to pursue his claim for damages as of February 2005. He was aware that the industrial wastewater he accepted from Sound Transit was too alkaline due to contamination by cement. He knew that Sound Transit (and its contractors) sent it to him. He knew that he violated his own landfill permit when he accepted the waste. He knew that Ecology

knew the nature of the waste and the source of the waste. There is nothing about the injury that made it difficult for him to know the factual elements of his cause of action within the statute of limitations.

**4. If The Discovery Rule Applied, Dickson Enjoys No Benefit**

Even if the discovery rule applied, Dickson enjoys no benefit. Well within the three year statute of limitations, Dickson learned the additional facts that he now claims permit him to enjoy the benefit of the discovery rule. Dickson argues that he “did not know [he] had a potential claim against Ecology until after December 2007.” Appellants Br. at 12. The discovery rule does not delay accrual indefinitely until a plaintiff decides he may have a claim. In early 2005, Dickson knew that he was taking prohibited alkaline liquid waste from the tunnel project. He knew that Ecology knew the source and nature of the waste. Dickson’s negligence claim accrued in February 2005, when he sustained the injury to his property and learned about it.

**D. Dickson’s Claim That Ecology Concealed Evidence Or Information Is Incorrect And Not Supported by the Record**

Dickson claims that an Ecology employee (Bob Penhale) at the tunnel site knew that the waste taken from the site to the landfill contained contaminants not permitted at the landfill and failed to disclose that to him

before December 2004 when Shira visited the landfill.<sup>8</sup> Appellants Br. at

12. There is no evidence in the record supporting this claim.

Dickson's argument is based on the premise that the subsequent discovery of emails between Penhale and Sound Transit provided him with some critical facts he was not aware of. This argument is flawed for two independent reasons. First, the emails in the record do not support the claim that Penhale had information necessary for Dickson's claim against Ecology. Second, even if Penhale knew that the wastewater contained cement, Penhale had no duty to tell Dickson.

Dickson admits that he "discovered in February 2005 that the waste received from the Beacon Hill site might also contain cement, which was causing pH levels higher than the authorized limit for Dickson's pit." Appellants Br. at 3. He says that "while conducting discovery in its suit against Sound Transit, Dickson uncovered previously unknown information about Ecology's knowledge of the waste being removed from the Beacon Hill site." Appellants Br. at 4, citing CP at 90-91, 156.

Dickson argues that he is entitled to the discovery of injury rule because "Ecology failed to disclose emails proving that Bob Penhale, an Ecology inspector at the Beacon Hill site, was involved in weekly

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<sup>8</sup> This negligence claim is based upon the notion that an Ecology employee at a construction site in King County had a duty to tell a landfill operator in Pierce County about the contents of the waste taken from the construction site. There is no such duty, either statutory or common-law.

inspections of the project site and knew the nature of the waste being sent to Dickson's landfill." Appellants Br. at 5, citing CP at 91, 156-57. This allegation is incorrect and is not supported by the record. CP at 91 is a page from the declaration of David Kernan, Dickson's environmental consultant. Kernan claims that "during discovery in [the Sound Transit case] numerous documents surfaced showing evidence that Ecology involvement with and knowledge of Sound Transit's high pH waste." CP at 90. Kernan then refers to emails between Penhale (the Ecology employee) and Mark Menard (the Sound Transit environmental manager). CP at 129-32.<sup>9</sup> These emails show that Penhale was an Ecology storm water inspector who met with Sound Transit to discuss storm water containment during construction at the tunnel site. The emails do not prove or infer that Penhale knew that the industrial wastewater, which is not storm water, sent to Dickson was contaminated by cement, or that Penhale knew that it was sent to Dickson's inert solid waste landfill in violation of Dickson's permit. Kernan also cites emails between Penhale and "CDM"<sup>10</sup> to support his claim that Penhale knew the industrial wastewater was contaminated with cement. CP at 91.<sup>11</sup> These emails

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<sup>9</sup> Exhibit J to Kernan's declaration filed in opposition to Ecology's motion for summary judgment.

<sup>10</sup> Neither Kernan nor the record identifies "CDM" but "CDM" appears to be a consultant to Sound Transit.

<sup>11</sup> These emails are found at Exhibit K to Kernan's declaration.

show that in the fall of 2004 Penhale met with Sound Transit to discuss storm water management. These emails do not support Dickson's claim that Penhale knew that the industrial wastewater was contaminated by cement.

Dickson would have this court believe that the email traffic between Sound Transit and Bob Penhale is a smoking gun. It is neither smoking nor is it a gun. Dickson argues that he did not know the nature of his injury until he discovered these emails on some unstated date. The emails do not support this claim.

#### **E. Ecology Owed No Duty To Dickson**

Dickson violated several state statutes and his solid waste permit when he accepted contaminated liquid waste. While Ecology has authority to enforce environmental laws, Ecology does not owe Dickson a duty to prevent him from violating those laws or his permit. In the absence of any enforceable duty, Dickson's negligence claim must fail even if it were timely.

##### **1. Public Duty Doctrine**

Dickson's negligence claim is based on the false premise that Ecology owed him a duty to tell him everything that any Ecology employee knew about the waste being removed from the Beacon Hill site. He argues that "Ecology had knowledge of the chemical composition of

the Beacon Hill waste, but failed to properly regulate its disposal or inform Dickson that material exceeding the allowed pH levels was being disposed of at the Dickson pit.” Appellants Br. at 4. Neither the facts in the record nor the law support this claim. His claim is based upon the false premise that Ecology owed him a duty to regulate the waste and to inform him that he is not permitted to accept it.

In order to be actionable, a tort duty must be owed to the injured plaintiff, and not one owed to the public in general. *Babcock v. Mason County Fire Dist. No. 6*, 144 Wn.2d 774, 784-85, 30 P.3d 1261 (2001). “Under the public duty doctrine, no liability may be imposed for a public official’s negligent conduct unless it is shown that the duty breached was owed to the injured person as an individual and was not merely the breach of an obligation owed to the public in general.” *Taylor v. Stevens Cy.*, 111 Wn.2d 159, 163, 759 P.2d 447 (1988). So, for example, a building code may impose a duty that is owed to the public at large but it does not create any actionable duty to the permit holder. *Id.* at 165. Placing the burden on government to ensure compliance with permits “is unreasonable in light of budgetary and personnel constraints. Permit applicants, builders and developers are in a better position to prevent harm to a foreseeable plaintiff than are local governments.” *Id.* at 169.

The state water pollution control act (RCW 90.48), the solid waste management act (RCW 70.95), and the hazardous waste act (RCW 70.105) are adopted to protect the public health and safety.<sup>12</sup> Just like Stevens County in the *Taylor* case, Ecology cannot be held liable for alleged negligence in administering regulatory statutes. *Taylor*, 111 W.2d at 161. The duty to ensure that a landfill complies with local and state law rests with the permit holder and not with the Department of Ecology. *Id.*

## **2. MTCA; Strict Liability For Improper Disposal**

The Model Toxics Control Act (MTCA) creates a strict liability scheme for the cleanup of toxic waste. RCW 70.105D.040(2). MTCA defines the persons who may be liable for improper disposal of toxic substances with respect to a facility. RCW 70.105D.040(1). They include: the owner or operator, a former owner at the time of disposal, generators, arrangers, and transporters to the facility. RCW 70.105D.040(1). The legislature has determined that certain persons are strictly liable for the cleanup of toxic waste. Ecology is not a person who may be held liable under the statute. Therefore, Ecology is not liable for the waste that was illegally disposed at the landfill. Dickson sued the liable parties in a separate action, settled those claims, and has had his day in court.

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<sup>12</sup> See RCW 90.48.010, RCW 70.95.020, and RCW 70.105.007.

**F. The Statutory Trespass Claim Is Time-Barred**

Dickson has no claim for statutory trespass under RCW 4.24.630. Jason Shira, the only Ecology employee who went to the landfill, was there in December 2004 and January 2005. CP at 50.

**1. The Trespass Claim Is Time-Barred**

An action for trespass upon real property is governed by a three year statute of limitations. RCW 4.16.080(1); *Skokomish Indian Tribe v. U.S.*, 401 F.3d 979 (9th Cir. 2005). A cause of action for statutory trespass accrues when the defendant intentionally and wrongfully goes upon the land and causes the waste or injury.<sup>13</sup> Therefore, Dickson's trespass claim accrued when the alleged trespass occurred. A suit filed almost four years after the alleged trespass is barred by the statute of limitations.

**2. There Was No Trespass**

Even if this claim were not time-barred, there was no trespass to support the claim. In order to prove a claim based on the statute, Dickson must show that Shira entered the landfill without authority and intentionally and wrongfully caused injury or damage to it. RCW 4.24.630. Shira entered the property because it is a licensed facility

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<sup>13</sup> "An action for trespass must be brought within three years of the invasion of the plaintiff's premises." 16 DeWolf & Allen, *Washington Practice: Tort Law and Practice: Waste, trespass, and nuisance* § 9.14 (3d ed. 2006).

and he is authorized by law to inspect it. RCW 90.48.090;<sup>14</sup> WAC 173-220-230.<sup>15</sup> He did not cause any injury or damage to the property. He simply reported the water quality violation he observed and notified Dickson. His actions were lawful, reasonable and probably saved Dickson a great deal of money because Dickson learned that he was taking industrial wastewater that he was not allowed to receive and for which he was liable.

## V. CONCLUSION

Dickson's claims accrued on or before February 28, 2005, when Ecology formally notified the company that it was taking industrial waste water with a high pH in violation of its landfill permit and in violation of its discharge permit. On that date or before, Dickson knew all the facts necessary to understand the nature of its injury. The statute of limitations for Dickson's negligence claim is two years. The statute of limitations for Dickson's trespass claim is three years. Dickson filed suit three years and nine months after the claim accrued. Both claims are time-barred.

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<sup>14</sup> "The department or its duly authorized agent shall have the right to enter at all reasonable times in or upon any property, public or private, for the purpose of inspecting and investigating conditions relating to the pollution of or possible pollution of any waters of the state." RCW 90.48.090.

<sup>15</sup> "The department may enter any premises in which an effluent source is located or in which records are required to be kept under terms or conditions of a permit, and otherwise be able to investigate, inspect, or monitor any suspected violations of water quality standards, or effluent standards and limitations, or of permits or terms or conditions thereof." WAC 173-220-230(2).

Dickson claims that Ecology concealed information from him that prevented him from filing suit within the time allowed by law. This claim is completely unsupported by the record. He filed suit against numerous parties in 2007. He could have joined Ecology in that suit but chose not to. The emails to and from Penhale did not provide any information to Dickson that he did not already have in 2007.

Even if this suit were not time-barred, Dickson has no claims against Ecology. The negligence claim is not supported by any actionable duty. The trespass claim is based upon a compliance inspection authorized by law and therefore privileged. The order granting summary judgment should be affirmed.

RESPECTFULLY SUBMITTED this 6 day of November, 2009.

ROBERT M. MCKENNA  
Attorney General



MARK C. JOBSON  
Assistant Attorney General  
WSBA #22171  
P.O. BOX 40126  
Olympia, Washington 98504

**PROOF OF SERVICE**

I certify that I served a copy of *Brief of Respondent* on all parties or their counsel of record on the date below via legal messenger, as follows:

Kevin T. Steinacker  
Robert P. Dickson  
Dickson Steinacker PS  
1201 Pacific Avenue, Suite 1401  
Tacoma, Washington 98409

Douglas Hales  
915 Trospen Road SW, Suite 101  
Tumwater, Washington 98512

Office of the Clerk  
Washington State Court of Appeals  
Division Two  
950 Broadway, Suite 300  
Tacoma, WA 98402-4454

COURT OF APPEALS  
DIVISION II  
09 NOV 10 AM 9:15  
STATE OF WASHINGTON  
BY \_\_\_\_\_  
DEPUTY

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 9th day of November, 2009, at Tumwater, Washington.

  
CYNTHIA A. MEYER, Legal Assistant

# Appendices

**RCW 4.16.005**

**Commencement of actions.**

Except as otherwise provided in this chapter, and except when in special cases a different limitation is prescribed by a statute not contained in this chapter, actions can only be commenced within the periods provided in this chapter after the cause of action has accrued.

[1989 c 14 § 1.]

**RCW 4.16.080****Actions limited to three years.**

The following actions shall be commenced within three years:

- (1) An action for waste or trespass upon real property;
- (2) An action for taking, detaining, or injuring personal property, including an action for the specific recovery thereof, or for any other injury to the person or rights of another not hereinafter enumerated;
- (3) Except as provided in RCW 4.16.040(2), an action upon a contract or liability, express or implied, which is not in writing, and does not arise out of any written instrument;
- (4) An action for relief upon the ground of fraud, the cause of action in such case not to be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud;
- (5) An action against a sheriff, coroner, or constable upon a liability incurred by the doing of an act in his official capacity and by virtue of his office, or by the omission of an official duty, including the nonpayment of money collected upon an execution; but this subdivision shall not apply to action for an escape;
- (6) An action against an officer charged with misappropriation or a failure to properly account for public funds intrusted to his custody; an action upon a statute for penalty or forfeiture, where an action is given to the party aggrieved, or to such party and the state, except when the statute imposing it prescribed a different limitation: PROVIDED, HOWEVER, The cause of action for such misappropriation, penalty or forfeiture, whether for acts heretofore or hereafter done, and regardless of lapse of time or existing statutes of limitations, or the bar thereof, even though complete, shall not be deemed to accrue or to have accrued until discovery by the aggrieved party of the act or acts from which such liability has arisen or shall arise, and such liability, whether for acts heretofore or hereafter done, and regardless of lapse of time or existing statute of limitation, or the bar thereof, even though complete, shall exist and be enforceable for three years after discovery by aggrieved party of the act or acts from which such liability has arisen or shall arise.

[1989 c 38 § 2; 1937 c 127 § 1; 1923 c 28 § 1; Code 1881 § 28; 1869 p 8 § 28; 1854 p 363 § 4; RRS § 159.]

**NOTES:**

**Reviser's note:** Transitional proviso omitted from subsection (6). The proviso reads: "PROVIDED, FURTHER, That no action heretofore barred under the provisions of this paragraph shall be commenced after ninety days from the time this act becomes effective;"

RCWs > Title 4 > Chapter 4.24 > Section 4.24.630

4.24.611 << 4.24.630 >> 4.24.640

### **RCW 4.24.630**

## **Liability for damage to land and property — Damages — Costs — Attorneys' fees — Exceptions.**

(1) Every person who goes onto the land of another and who removes timber, crops, minerals, or other similar valuable property from the land, or wrongfully causes waste or injury to the land, or wrongfully injures personal property or improvements to real estate on the land, is liable to the injured party for treble the amount of the damages caused by the removal, waste, or injury. For purposes of this section, a person acts "wrongfully" if the person intentionally and unreasonably commits the act or acts while knowing, or having reason to know, that he or she lacks authorization to so act. Damages recoverable under this section include, but are not limited to, damages for the market value of the property removed or injured, and for injury to the land, including the costs of restoration. In addition, the person is liable for reimbursing the injured party for the party's reasonable costs, including but not limited to investigative costs and reasonable attorneys' fees and other litigation-related costs.

(2) This section does not apply in any case where liability for damages is provided under RCW 64.12.030, \*79.01.756, 79.01.760, 79.40.070, or where there is immunity from liability under RCW 64.12.035.

[1999 c 248 § 2; 1994 c 280 § 1.]

### **Notes:**

\***Reviser's note:** RCW 79.01.756, 79.01.760, and 79.40.070 were recodified as RCW 79.02.320, 79.02.300, and 79.02.340, respectively, pursuant to 2003 c 334 § 554. RCW 79.02.340 was subsequently repealed by 2009 c 349 § 5.

**Severability -- 1999 c 248:** See note following RCW 64.12.035.

**RCW 70.105.007**

**Purpose.**

The purpose of this chapter is to establish a comprehensive statewide framework for the planning, regulation, control, and management of hazardous waste which will prevent land, air, and water pollution and conserve the natural, economic, and energy resources of the state. To this end it is the purpose of this chapter:

(1) To provide broad powers of regulation to the department of ecology relating to management of hazardous wastes and releases of hazardous substances;

(2) To promote waste reduction and to encourage other improvements in waste management practices;

(3) To promote cooperation between state and local governments by assigning responsibilities for planning for hazardous wastes to the state and planning for moderate-risk waste to local government;

(4) To provide for prevention of problems related to improper management of hazardous substances before such problems occur; and

(5) To assure that needed hazardous waste management facilities may be sited in the state, and to ensure the safe operation of the facilities.

[1985 c 448 § 3.]

**NOTES:**

**Severability -- 1985 c 448:** See note following RCW 70.105.005.

RCWs > Title 70 > Chapter 70.105D > Section 70.105D.040

70.105D.030 << 70.105D.040 >> 70.105D.050

## **RCW 70.105D.040**

### **Standard of liability — Settlement.**

(1) Except as provided in subsection (3) of this section, the following persons are liable with respect to a facility:

(a) The owner or operator of the facility;

(b) Any person who owned or operated the facility at the time of disposal or release of the hazardous substances;

(c) Any person who owned or possessed a hazardous substance and who by contract, agreement, or otherwise arranged for disposal or treatment of the hazardous substance at the facility, or arranged with a transporter for transport for disposal or treatment of the hazardous substances at the facility, or otherwise generated hazardous wastes disposed of or treated at the facility;

(d) Any person (i) who accepts or accepted any hazardous substance for transport to a disposal, treatment, or other facility selected by such person from which there is a release or a threatened release for which remedial action is required, unless such facility, at the time of disposal or treatment, could legally receive such substance; or (ii) who accepts a hazardous substance for transport to such a facility and has reasonable grounds to believe that such facility is not operated in accordance with chapter 70.105 RCW; and

(e) Any person who both sells a hazardous substance and is responsible for written instructions for its use if (i) the substance is used according to the instructions and (ii) the use constitutes a release for which remedial action is required at the facility.

(2) Each person who is liable under this section is strictly liable, jointly and severally, for all remedial action costs and for all natural resource damages resulting from the releases or threatened releases of hazardous substances. The attorney general, at the request of the department, is empowered to recover all costs and damages from persons liable therefor.

(3) The following persons are not liable under this section:

(a) Any person who can establish that the release or threatened release of a hazardous substance for which the person would be otherwise responsible was caused solely by:

(i) An act of God;

(ii) An act of war; or

(iii) An act or omission of a third party (including but not limited to a trespasser) other than (A) an employee or agent of the person asserting the defense, or (B) any person whose act or omission occurs in connection with a contractual relationship existing, directly or indirectly, with the person asserting this defense to liability. This defense only applies where the person asserting the defense has exercised the utmost care with respect to the hazardous substance, the foreseeable acts or omissions of the third party, and the foreseeable consequences of those acts or omissions;

(b) Any person who is an owner, past owner, or purchaser of a facility and who can establish by a preponderance of the evidence that at the time the facility was acquired by the person, the person had no knowledge or reason to know that any hazardous substance, the release or threatened release of which has resulted in or contributed to the need for the remedial action, was released or disposed of on, in, or at the facility. This subsection (b) is limited as follows:

(i) To establish that a person had no reason to know, the person must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property, consistent with good commercial or customary practice in an effort to minimize liability. Any court interpreting this subsection (b) shall take into account any specialized knowledge or experience on the part of the person, the relationship of the purchase price to the value of the property if uncontaminated, commonly known or reasonably ascertainable information about the property, the obviousness of the presence or likely presence of contamination at the property, and the ability to detect such contamination by appropriate inspection;

(ii) The defense contained in this subsection (b) is not available to any person who had actual knowledge of the release or threatened release of a hazardous substance when the person owned the real property and who subsequently transferred ownership of the property without first disclosing such knowledge to the transferee;

(iii) The defense contained in this subsection (b) is not available to any person who, by any act or omission, caused or contributed to the release or threatened release of a hazardous substance at the facility;

(c) Any natural person who uses a hazardous substance lawfully and without negligence for any personal or domestic purpose in or near a dwelling or accessory structure when that person is: (i) A resident of the dwelling; (ii) a person who, without compensation, assists the resident in the use of the substance; or (iii) a person who is employed by the resident, but who is not an independent contractor;

(d) Any person who, for the purpose of growing food crops, applies pesticides or fertilizers without negligence and in accordance with all applicable laws and regulations.

(4) There may be no settlement by the state with any person potentially liable under this chapter except in accordance with this section.

(a) The attorney general may agree to a settlement with any potentially liable person only if the department finds, after public notice and any required hearing, that the proposed settlement would lead to a more expeditious cleanup of hazardous substances in compliance with cleanup standards under RCW 70.105D.030(2)(e) and with any remedial orders issued by the department. Whenever practicable and in the public interest, the attorney general may expedite such a settlement with persons whose contribution is insignificant in amount and toxicity. A hearing shall be required only if at least ten persons request one or if the department determines a hearing is necessary.

(b) A settlement agreement under this section shall be entered as a consent decree issued by a court of competent jurisdiction.

(c) A settlement agreement may contain a covenant not to sue only of a scope commensurate with the settlement agreement in favor of any person with whom the attorney general has settled under this section. Any covenant not to sue shall contain a reopener clause which requires the court to amend the covenant not to sue if factors not known at the time of entry of the settlement agreement are discovered and present a previously unknown threat to human health or the environment.

(d) A party who has resolved its liability to the state under this section shall not be liable for claims for contribution regarding matters addressed in the settlement. The settlement does not discharge any of the other liable parties but it reduces the total potential liability of the others to the state by the amount of the settlement.

(e) If the state has entered into a consent decree with an owner or operator under this section, the state shall not enforce this chapter against any owner or operator who is a successor in interest to the settling party unless under the terms of the consent decree the state could enforce against the settling party, if:

(i) The successor owner or operator is liable with respect to the facility solely due to that person's ownership interest or operator status acquired as a successor in interest to the owner or operator with whom the state has entered into a consent decree; and

(ii) The stay of enforcement under this subsection does not apply if the consent decree was based on circumstances unique to the settling party that do not exist with regard to the successor in interest, such as financial hardship. For consent decrees entered into before July 27, 1997, at the request of a settling party or a potential successor owner or operator, the attorney general shall issue a written opinion on whether a consent decree contains such unique circumstances. For all other consent decrees, such unique circumstances shall be specified in the consent decree.

(f) Any person who is not subject to enforcement by the state under (e) of this subsection is not liable for claims for contribution regarding matters addressed in the settlement.

(5)(a) In addition to the settlement authority provided under subsection (4) of this section, the attorney general may agree to a settlement with a person not currently liable for remedial action at a facility who proposes to purchase, redevelop, or reuse the facility, provided that:

(i) The settlement will yield substantial new resources to facilitate cleanup;

(ii) The settlement will expedite remedial action consistent with the rules adopted under this chapter; and

(iii) Based on available information, the department determines that the redevelopment or reuse of the facility is not likely to contribute to the existing release or threatened release, interfere with remedial actions that may be needed at the site, or increase health risks to persons at or in the vicinity of the site.

(b) The legislature recognizes that the state does not have adequate resources to participate in all property

transactions involving contaminated property. The primary purpose of this subsection (5) is to promote the cleanup and reuse of vacant or abandoned commercial or industrial contaminated property. The attorney general and the department may give priority to settlements that will provide a substantial public benefit, including, but not limited to the reuse of a vacant or abandoned manufacturing or industrial facility, or the development of a facility by a governmental entity to address an important public purpose.

(6) Nothing in this chapter affects or modifies in any way any person's right to seek or obtain relief under other statutes or under common law, including but not limited to damages for injury or loss resulting from a release or threatened release of a hazardous substance. No settlement by the department or remedial action ordered by a court or the department affects any person's right to obtain a remedy under common law or other statutes.

[1997 c 406 § 4; 1994 c 254 § 4; 1989 c 2 § 4 (Initiative Measure No. 97, approved November 8, 1988).]

**RCW 70.95.020****Purpose.**

The purpose of this chapter is to establish a comprehensive statewide program for solid waste handling, and solid waste recovery and/or recycling which will prevent land, air, and water pollution and conserve the natural, economic, and energy resources of this state. To this end it is the purpose of this chapter:

(1) To assign primary responsibility for adequate solid waste handling to local government, reserving to the state, however, those functions necessary to assure effective programs throughout the state;

(2) To provide for adequate planning for solid waste handling by local government;

(3) To provide for the adoption and enforcement of basic minimum performance standards for solid waste handling, including that all sites where recyclable materials are generated and transported from shall provide a separate container for solid waste;

(4) To encourage the development and operation of waste recycling facilities needed to accomplish the management priority of waste recycling, to promote consistency in the requirements for such facilities throughout the state, and to ensure that recyclable materials diverted from the waste stream for recycling are routed to facilities in which recycling occurs;

(5) To provide technical and financial assistance to local governments in the planning, development, and conduct of solid waste handling programs;

(6) To encourage storage, proper disposal, and recycling of discarded vehicle tires and to stimulate private recycling programs throughout the state; and

(7) To encourage the development and operation of waste recycling facilities and activities needed to accomplish the management priority of waste recycling and to promote consistency in the permitting requirements for such facilities and activities throughout the state.

It is the intent of the legislature that local governments be encouraged to use the expertise of private industry and to contract with private industry to the fullest extent possible to carry out solid waste recovery and/or recycling programs.

[2005 c 394 § 2. Prior: 1998 c 156 § 1; 1998 c 90 § 1; 1985 c 345 § 2; 1975-'76 2nd ex.s. c 41 § 2; 1969 ex.s. c 134 § 2.]

**NOTES:**

**Intent -- Severability -- 2005 c 394:** See notes following RCW 70.95.400.

**RCW 90.48.010**  
**Policy enunciated.**

It is declared to be the public policy of the state of Washington to maintain the highest possible standards to insure the purity of all waters of the state consistent with public health and public enjoyment thereof, the propagation and protection of wild life, birds, game, fish and other aquatic life, and the industrial development of the state, and to that end require the use of all known available and reasonable methods by industries and others to prevent and control the pollution of the waters of the state of Washington. Consistent with this policy, the state of Washington will exercise its powers, as fully and as effectively as possible, to retain and secure high quality for all waters of the state. The state of Washington in recognition of the federal government's interest in the quality of the navigable waters of the United States, of which certain portions thereof are within the jurisdictional limits of this state, proclaims a public policy of working cooperatively with the federal government in a joint effort to extinguish the sources of water quality degradation, while at the same time preserving and vigorously exercising state powers to insure that present and future standards of water quality within the state shall be determined by the citizenry, through and by the efforts of state government, of the state of Washington.

[1973 c 155 § 1; 1945 c 216 § 1; Rem. Supp. 1945 § 10964a.]

RCWs > Title 90 > Chapter 90.48 > Section 90.48.090

90.48.080 << 90.48.090 >> 90.48.095

**RCW 90.48.090**

**Right of entry — Special inspection requirements for metals mining and milling operations.**

The department or its duly appointed agent shall have the right to enter at all reasonable times in or upon any property, public or private, for the purpose of inspecting and investigating conditions relating to the pollution of or the possible pollution of any of the waters of this state.

The department shall have special inspection requirements for metals mining and milling operations regulated under chapter 232, Laws of 1994. The department shall inspect these mining and milling operations at least quarterly in order to ensure compliance with the intent and any permit issued pursuant to this chapter. The department shall conduct additional inspections as needed during the construction phase of these mining operations in order to ensure compliance with this chapter.

[1994 c 232 § 21; 1987 c 109 § 127; 1945 c 216 § 15; Rem. Supp. 1945 § 10964o.]

**Notes:**

**Severability -- 1994 c 232:** See RCW 78.56.900.

**Effective date -- 1994 c 232 §§ 6-8 and 18-22:** See RCW 78.56.902.

**Purpose -- Short title -- Construction -- Rules -- Severability -- Captions -- 1987 c 109:** See notes following RCW 43.21B.001.

**WAC 173-220-230 Enforcement.** (1) The department, with the assistance of the attorney general, may sue in courts of competent jurisdiction to enjoin any threatened or continuing violations of any permits or conditions thereof without the necessity of a prior revocation of the permit;

(2) The department may enter any premises in which an effluent source is located or in which records are required to be kept under terms or conditions of a permit, and otherwise be able to investigate, inspect, or monitor any suspected violations of water quality standards, or effluent standards and limitations, or of permits or terms or conditions thereof;

(3) The department may assess or, with the assistance of the attorney general, sue to recover in court, such civil fines, penalties, and other civil relief as may be appropriate for the violation by any person of (a) any effluent standards and limitations or water quality standards, (b) any permit or term or condition thereof, (c) any filing requirements, (d) any duty to permit or carry out inspection, entry, or monitoring activities, or (e) any rules, regulations, or orders issued by the department.

(4) The department may request the prosecuting attorney to seek criminal sanctions for the violation by such persons of (a) any effluent standards and limitations or water quality standards, (b) any permit or term or condition thereof, (c) any filing requirements.

(5) The department, with the assistance of the prosecuting attorney, may seek criminal sanctions against any person who knowingly makes any false statement, representation, or certification in any form or any notice or report required by the terms and conditions of any issued permit or knowingly renders inaccurate any monitoring device or method required to be maintained by the department.

[Order DE 74-1, § 173-220-230, filed 2/15/74.]

WACs > Title 173 > Chapter 173-304 > Section 173-304-100

173-304-015 << 173-304-100 >> 173-304-130

## **WAC 173-304-100**

No agency filings affecting this section since 2003

### **Definitions.**

When used in this regulation, the following terms have the meanings given below.

- (1) "Active area" means that portion of a facility where solid waste recycling, reuse, treatment, storage, or disposal operations are being, are proposed to be, or have been conducted. Buffer zones shall not be considered part of the active area of a facility.
- (2) "Agricultural wastes" means wastes on farms resulting from the production of agricultural products including but not limited to manures, and carcasses of dead animals weighing each or collectively in excess of fifteen pounds.
- (3) "Agronomic rates" means the rates of application of sludges, manures, or crop residues in accordance with rates specified by the appropriate fertilizer guide for the crop under cultivation.
- (4) "Air quality standard" means a standard set for maximum allowable contamination in ambient air as set forth in chapter 173-400 WAC, General regulations for air pollution sources.
- (5) "Aquifer" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of ground water to wells or springs.
- (6) "Ashes" means the residue including any air pollution flue dusts from combustion or incineration of material including solid wastes.
- (7) "Balefill" means a landfill which uses compacted bales of solid waste to form discrete lifts as the landfill is filled.
- (8) "Buffer zone" means that part of a facility that lies between the active area and the property boundary.
- (9) "Bulky waste" means large items of refuse, such as appliances, furniture, and other oversize wastes which would typically not fit into reusable or disposable containers.
- (10) "Clean soils and clean dredge spoils" means soils and dredge spoils which are not dangerous wastes or problem wastes as defined in this section.
- (11) "Closure" means those actions taken by the owner or operator of a solid waste site or facility to cease disposal operations and to ensure that all such facilities are closed in conformance with applicable regulations at the time of such closures and to prepare the site for the post-closure period.
- (12) "Collecting agency" means any agency, business or service operated by a person for the collecting of solid waste.
- (13) "Compliance schedule" means a written schedule of required measures in a permit including an enforceable sequence leading to compliance with these regulations.
- (14) "Composting" means the controlled degradation of organic solid waste yielding a product for use as a soil conditioner.
- (15) "Container" means a device used for the collection, storage, and/or transportation of solid waste including but not limited to reusable containers, disposable containers, detachable containers and tanks, fixed or detachable.
- (16) "Contaminate" means to allow to discharge a substance into ground water that would cause:
  - (a) The concentration of that substance in the ground water to exceed the maximum contamination level specified in WAC 173-304-9901, or
  - (b) A statistically significant increase in the concentration of that substance in the ground water where the existing concentration of that substance exceeds the maximum contaminant level specified in WAC 173-304-9901, or
  - (c) A statistically significant increase above background in the concentration of a substance which:
    - (i) Is not specified in WAC 173-304-9901, and

(ii) Is present in the solid waste, and

(iii) Has been determined to present a substantial risk to human health or the environment in the concentrations found at the point of compliance by the jurisdictional health department in consultation with the department and the department of social and health services.

(17) "Cover material" means soil or other suitable material that has been approved by the jurisdictional health department as cover for wastes.

(18) "Dangerous wastes" means any solid waste designated as dangerous waste by the department under chapter 173-303 WAC.

(19) "Demolition waste" means solid waste, largely inert waste, resulting from the demolition or razing of buildings, roads and other man-made structures. Demolition waste consists of, but is not limited to, concrete, brick, bituminous concrete, wood and masonry, composition roofing and roofing paper, steel, and minor amounts of other metals like copper. Plaster (i.e., sheet rock or plaster board) or any other material, other than wood, that is likely to produce gases or a leachate during the decomposition process and asbestos wastes are not considered to be demolition waste for the purposes of this regulation.

(20) "Department" means the department of ecology.

(21) "Detachable containers" means reusable containers that are mechanically loaded or handled such as a "dumpster" or drop box.

(22) "Disposable containers" means containers that are used once to handle solid waste such as plastic bags, cardboard boxes and paper bags.

(23) "Disposal" or "deposition" means the discharge, deposit, injection, dumping, leaking, or placing of any solid waste into or on any land or water.

(24) "Disposal site" means the location where any final treatment, utilization, processing, or deposition of solid waste occurs. See also the definition of interim solid waste handling site.

(25) "Drop box facility" means a facility used for the placement of a detachable container including the area adjacent for necessary entrance and exit roads, unloading and turn-around areas. Drop box facilities normally serve the general public with loose loads and receive waste from offsite.

(26) "Energy recovery" means the recovery of energy in a useable form from mass burning or refuse derived fuel incineration, pyrolysis or any other means of using the heat of combustion of solid waste that involves high temperature (above twelve hundred degrees Fahrenheit) processing.

(27) "Existing facility" means a facility which is owned or leased, and in operation, or for which construction has begun, on or before the effective date of this regulation and the owner or operator has obtained permits or approvals necessary under federal, state and local statutes, regulations and ordinances. A facility has commenced construction if either:

(a) A continuous on-site physical construction program has begun; or

(b) The owner or operator has entered into contractual obligations which cannot be cancelled or modified without substantial financial loss for physical construction of the facility to be completed within a reasonable time.

Lateral extensions of a landfill's active area on land purchased and permitted by the jurisdictional health department for the purpose of landfilling before the effective date of this regulation shall be considered existing facilities.

(28) "Expanded facility" means a facility adjacent to an existing facility for which the land is purchased and approved by the jurisdictional health department after the effective date of this regulation. A vertical expansion approved and permitted by the jurisdictional health department after the effective date of this regulation shall also be considered an expanded facility.

(29) "Facility" means all contiguous land (including buffer zones) and structures, other appurtenances, and improvements on the land used for solid waste handling.

(30) "Facility structures" means buildings, sheds, utility lines, and drainage pipes on the facility.

(31) "Final treatment" means the act of processing or preparing solid waste for disposal, utilization, reclamation, or other approved method of use.

(32) "Free liquids" means any sludge which produces measurable liquids when the Paint Filter Liquids Test, Method 9095 of EPA Publication Number SW-846, is used.

(33) "One hundred-year flood plain" means any land area which is subject to one percent or greater chance of flooding in any given year from any source.

(34) "Garbage" means unwanted animal and vegetable wastes and animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food, swill and carcasses of dead animals, and of such a character and proportion as to be capable of attracting or providing food for vectors, except sewage and sewage sludge.

(35) "Ground water" means that part of the subsurface water which is in the zone of saturation.

(36) "Holocene fault" means a fracture along which rocks on one side have been displaced with respect to those on the other side and that has occurred in the most recent epoch of the quaternary period extending from the end of the pleistocene to the present.

(37) "Incineration" means reducing the volume of solid wastes by use of an enclosed device using controlled flame combustion.

(38) "Interim solid waste handling site" means any interim treatment, utilization or processing site engaged in solid waste handling which is not the final site of disposal. Transfer stations, drop boxes, baling and compaction sites, source separation centers, and treatment are considered interim solid waste handling sites.

(39) "Industrial solid wastes" means waste by-products from manufacturing operations such as scraps, trimmings, packing, and other discarded materials not otherwise designated as dangerous waste under chapter 173-303 WAC.

(40) "Inert wastes" means noncombustible, nondangerous solid wastes that are likely to retain their physical and chemical structure under expected conditions of disposal, including resistance to biological attack and chemical attack from acidic rainwater.

(41) "Jurisdictional health department" means city, county, city-county or district public health department.

(42) "Landfill" means a disposal facility or part of a facility at which solid waste is permanently placed in or on land and which is not a landspreading disposal facility.

(43) "Landspreading disposal facility" means a facility that applies sludges or other solid wastes onto or incorporates solid waste into the soil surface at greater than vegetative utilization and soil conditioners/immobilization rates.

(44) "Leachate" means water or other liquid that has been contaminated by dissolved or suspended materials due to contact with solid waste or gases therefrom.

(45) "Local fire control agency" means a public or private agency or corporation providing fire protection such as a local fire department, the department of natural resources or the United States Forest Service.

(46) "Lower explosive limits" means the lowest percentage by volume of a mixture of explosive gases which will propagate a flame in air at twenty-five degrees centigrade and atmospheric pressure.

(47) "Medical waste" means all the infectious, and injurious waste originating from a medical, veterinary, or intermediate care facility.

(48) "New facility" means a facility which begins operation or construction after the effective date of this regulation (see also definition of "existing facility").

(49) "Nonconforming site" means a solid waste handling facility which does not currently comply with the facility requirements of WAC 173-304-400 but does comply with a compliance schedule issued in a solid waste permit by the jurisdictional health department.

(50) "Nuisance" consists in unlawfully doing an act, or omitting to perform a duty, which act or omission either annoys, injures, or endangers the comfort, repose, health or safety of others, offends decency, or unlawfully interferes with, obstructs or tends to obstruct, any lake or navigable river, bay, stream, canal, or basin, or any public park, square, street or highway; or in any way renders other persons insecure in life, or in the use of property.

(51) "Open burning" means the burning of solid waste materials in an open fire or an outdoor container without providing for the control of combustion or the control of emissions from the combustion.

(52) "Performance standard" means the criteria for the performance of solid waste handling facilities.

(53) "Permeability" means the ease with which a porous material allows liquid or gaseous fluids to flow through it. For water, this is usually expressed in units of centimeters per second and termed hydraulic conductivity. Soils and synthetic liners with a permeability for water of  $1 \times 10^{-7}$  cm/sec or less may be considered impermeable.

(54) "Permit" means an authorization issued by the jurisdictional health department which allows a person to perform solid waste activities at a specific location and which includes specific conditions for such facility operations.

(55) "Person" means an individual, firm, association, copartnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever.

(56) "Pile" means any noncontainerized accumulation of solid waste that is used for treatment or storage.

(57) "Plan of operation" means the written plan developed by an owner or operator of a facility detailing how a facility is to be operated during its active life and during closure and post-closure.

(58) "Point of compliance" means that part of ground water that lies beneath the perimeter of a solid waste facilities' active area as that active area would exist at closure of the facility.

(59) "Post-closure" means the requirements placed upon disposal sites after closure to ensure their environmental safety for at least a twenty-year period or until the site becomes stabilized (i.e., little or no settlement, gas production, or leachate generation).

(60) "Premises" means a tract or parcel of land with or without habitable buildings.

(61) "Problem wastes" means: (a) Soils removed during the cleanup of a remedial action site, or a dangerous waste site closure or other cleanup efforts and actions and which contain harmful substances but are not designated dangerous wastes, or (b) dredge spoils resulting from the dredging of surface waters of the state where contaminants are present in the dredge spoils at concentrations not suitable for open water disposal and the dredge spoils are not dangerous wastes and are not regulated by section 404 of the Federal Clean Water Act (PL 95-217).

(62) "Processing" means an operation to convert a solid waste into a useful product or to prepare it for disposal.

(63) "Putrescible waste" means solid waste which contains material capable of being decomposed by micro-organisms.

(64) "Pyrolysis" means the process in which solid wastes are heated in an enclosed device in the absence of oxygen to vaporization, producing a hydrocarbon-rich gas capable of being burned for recovery of energy.

(65) "Reclamation site" means a location used for the processing or the storage of recycled waste.

(66) "Reusable containers" means containers that are used more than once to handle solid waste such as garbage cans.

(67) "Runoff" means any rainwater, leachate or other liquid which drains over land from any part of the facility.

(68) "Run-on" means any rainwater or other liquid which drains over land onto any part of a facility.

(69) "Scavenging" means the removal of materials at a disposal site, or interim solid waste handling site without the approval of the owner or operator and the jurisdictional health department.

(70) "Septage" means a semisolid consisting of settled sewage solids combined with varying amounts of water and dissolved materials generated from a septic tank system.

(71) "Sludge" means a semisolid substance consisting of settled sewage solids combined with varying amounts of water and dissolved materials generated from a wastewater treatment plant or other source.

(72) "Sole source aquifer" means an aquifer designated by the Environmental Protection Agency pursuant to Section 1424e of the Safe Drinking Water Act (PL 93-523).

(73) "Solid waste" means all putrescible and nonputrescible solid and semisolid wastes, including but not limited to

garbage, rubbish, ashes, industrial wastes, swill, demolition and construction wastes, abandoned vehicles or parts thereof, and discarded commodities. This includes all liquid, solid and semisolid, materials which are not the primary products of public, private, industrial, commercial, mining, and agricultural operations. Solid waste includes but is not limited to sludge from wastewater treatment plants and septage, from septic tanks, woodwaste, dangerous waste, and problem wastes.

(74) "Solid waste handling" means the management, storage, collection, transportation, treatment, utilization, processing or final disposal of solid wastes, including the recovery and recycling of materials from solid wastes, the recovery of energy resources from such wastes or the conversion of the energy in such wastes to more useful forms or combinations thereof.

(75) "Solid waste management" means the systematic administration of activities which provide for the collection, source separation, storage, transportation, transfer, processing, treatment, and disposal of solid waste.

(76) "Storage" means the holding of solid waste materials for a temporary period.

(77) "Twenty-five year storm" means a storm of a particular duration and of such an intensity that it has a four percent probability of being equalled or exceeded each year.

(78) "Twenty-four hour, twenty-five year storm" means a twenty-five year storm of twenty-four hours duration.

(79) "Stream" means the point at which any confined freshwater body of surface water reaches a mean annual flow of twenty cubic feet per second.

(80) "Surface impoundment" means a facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), and which is designed to hold an accumulation of liquids or sludges. The term includes holding, storage, settling, and aeration pits, ponds, or lagoons, but does not include injection wells.

(81) "Surface water" means all lakes, rivers, ponds, streams, inland waters, salt waters and all other water and water courses within the jurisdiction of the state of Washington.

(82) "Transfer station" means a permanent, fixed, supplemental collection and transportation facility, used by persons and route collection vehicles to deposit collected solid waste from offsite into a larger transfer vehicle for transport to a solid waste handling facility. Transfer stations may also include recycling facilities.

(83) "Treatment" means the physical, chemical or biological processing of solid waste to make such solid wastes safer for storage or disposal, amenable for energy or material resource recovery or reduced in volume.

(84) "Utilization" means consuming, expending, or exhausting by use, solid waste materials.

(85) "Vadose zone" means that portion of a geologic formation in which soil pores contain some water, the pressure of that water is less than atmospheric pressure, and the formation occurs above the zone of saturation.

(86) "Vector" means a living animal, insect or other arthropod which transmits an infectious disease from one organism to another.

(87) "Waste recycling" means reusing waste materials and extracting valuable materials from a waste stream.

(88) "Waste reduction" means reducing the amount or type of waste generated.

(89) "Water quality standard" means a standard set for maximum allowable contamination in surface waters as set forth in chapter 173-201 WAC, Water quality standards for waters of the state of Washington.

(90) "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, estuaries, and similar areas.

(91) "Woodwaste" means solid waste consisting of wood pieces or particles generated as a by-product or waste from the manufacturing of wood products, handling and storage of raw materials and trees and stumps. This includes but is not limited to sawdust, chips, shavings, bark, pulp, hog fuel, and log sort yard waste, but does not include wood pieces or particles containing chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenate.

(92) "Zone of saturation" means that part of a geologic formation in which soil pores are filled with water and the

pressure of that water is equal to or greater than atmospheric pressure.

(93) "Buy-back recycling center" means any facility which collects, receives, or buys recyclable materials from household, commercial, or industrial sources for the purpose of accumulating, grading, or packaging recyclable materials for subsequent shipment and reuse, other than direct application to land.

(94) "Domestic wastewater facility" means all structures, equipment, or processes required to collect, carry away, treat, reclaim, or dispose of domestic wastewater together with such industrial waste as may be present.

(95) "Industrial wastewater facility" means all structures, equipment, or processes required to collect, carry away, treat, reclaim, or dispose of industrial wastewater.

(96) "Liquid" means a substance that flows readily and assumes the form of its container but retains its independent volume.

(97) "Reserved" means a section having no requirements and which is set aside for future possible rule-making as a note to the regulated community.

(98) "Limited purpose landfills" means a landfill that receives solid waste of limited types, known and consistent composition, other than woodwastes, garbage, inert waste, and demolition waste.

[Statutory Authority: RCW 70.95.215, 88-20-066 (Order 88-28), § 173-304-100, filed 10/4/88. Statutory Authority: Chapter 43.21A RCW, 85-22-013 (Order 85-18), § 173-304-100, filed 10/28/85.]

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### **WAC 173-304-461**

No agency filings affecting this section since 2003

## **Inert waste and demolition waste landfilling facility requirements.**

(1) Applicability. These standards apply to facilities that landfill more than two thousand cubic yards of inert wastes and demolition wastes, as defined in WAC 173-304-100, including facilities that use inert waste and demolition waste as a component of fill. Inert wastes and demolition wastes used as road building materials are excluded from this section. These standards do not apply to asbestos containing waste regulated under the federal 40 CFR Part 61 rules and the dangerous waste regulation, chapter 173-303 WAC.

(2) Inert wastes and demolition waste landfilling facilities shall not be subject to the Locational standards for disposal sites, WAC 173-304-130 except for WAC 173-304-130 (2)(f), slope.

(3) Owners or operators of inert waste and demolition waste landfill shall maintain a record of the weights or volumes and types of waste disposed of at each site.

(4) Owners or operators of inert wastes and demolition landfills shall employ measures to prevent emission of fugitive dusts, when weather conditions or climate indicate that transport of dust offsite is liable to create a nuisance. Preventative measures include watering of roads and covering.

(5) Timbers, wood and other combustible waste shall be covered as needed during the summer months to avoid a fire hazard.

(6) Owners or operators of inert wastes and demolition landfills shall close the facility by leveling the wastes to the extent practicable and shall fill any voids posing a physical hazard for persons after closure and to maintain an aesthetic appearance. A minimum of one foot of soil cover shall be used to close landfills.

(7) Owners or operators of inert waste and demolition waste landfills shall obtain a permit, as set forth in WAC 173-304-600 from the jurisdictional health department.

(8) Owners or operators of inert wastes and demolition landfills shall meet the requirements of WAC 173-304-405(7), recording with the county auditor.

(9) Owners or operators of inert waste or demolition waste landfills shall not accept any other form of waste except inert waste and demolition waste.

(10) Owners or operators of inert waste and demolition waste landfills shall prevent unauthorized disposal during off-hours by controlling entry (i.e., lockable gate or barrier) when the facility is not being used.

[Statutory Authority: Chapter 43.21A RCW. 85-22-013 (Order 85-18), § 173-304-461, filed 10/28/85.]

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## WAC 173-350-100

Agency filings affecting this section

### Definitions.

When used in this chapter, the following terms have the meanings given below.

**"Active area"** means that portion of a facility where solid waste recycling, reuse, treatment, storage, or disposal operations are being, are proposed to be, or have been conducted. Setbacks shall not be considered part of the active area of a facility.

**"Agricultural composting"** means composting of agricultural waste as an integral component of a system designed to improve soil health and recycle agricultural wastes. Agricultural composting is conducted on lands used for farming.

**"Agricultural wastes"** means wastes on farms resulting from the raising or growing of plants and animals including, but not limited to, crop residue, manure and animal bedding, and carcasses of dead animals weighing each or collectively in excess of fifteen pounds.

**"Agronomic rates"** means the application rate (dry weight basis) that will provide the amount of nitrogen or other critical nutrient required for optimum growth of vegetation, and that will not result in the violation of applicable standards or requirements for the protection of ground or surface water as established under chapter 90.48 RCW, Water pollution control and related rules including chapter 173-200 WAC, Water quality standards for ground waters of the state of Washington, and chapter 173-201A WAC, Water quality standards for surface waters of the state of Washington.

**"Air quality standard"** means a standard set for maximum allowable contamination in ambient air as set forth in chapter 173-400 WAC, General regulations for air pollution sources.

**"Below ground tank"** means a device meeting the definition of "tank" in this chapter where a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface of the tank that is in the ground.

**"Beneficial use"** means the use of solid waste as an ingredient in a manufacturing process, or as an effective substitute for natural or commercial products, in a manner that does not pose a threat to human health or the environment. Avoidance of processing or disposal cost alone does not constitute beneficial use.

**"Biosolids"** means municipal sewage sludge that is a primarily organic, semisolid product resulting from the wastewater treatment process, that can be beneficially recycled and meets all applicable requirements under chapter 173-308 WAC, Biosolids management. Biosolids includes a material derived from biosolids and septic tank sludge, also known as septage, that can be beneficially recycled and meets all applicable requirements under chapter 173-308 WAC, Biosolids management.

**"Buffer"** means a permanently vegetated strip adjacent to an application area, the purpose of which is to filter runoff or overspray from the application area and protect an adjacent area.

**"Cab cards"** means a license carried in a vehicle that authorizes that vehicle to legally pick up waste tires and haul to a permitted, licensed facility or an exempt facility for deposit.

**"Captive insurance companies"** means companies that are wholly owned subsidiaries controlled by the parent company and established to insure the parent company or its other subsidiaries.

**"Channel migration zone"** means the lateral extent of likely movement of a stream or river channel along a stream reach.

**"Clean soils and clean dredged material"** means soils and dredged material which are not dangerous wastes, contaminated soils, or contaminated dredged material as defined in this section.

**"Closure"** means those actions taken by the owner or operator of a solid waste handling facility to cease disposal operations or other solid waste handling activities, to ensure that all such facilities are closed in conformance with applicable regulations at the time of such closures and to prepare the site for the post-closure period.

**"Closure plan"** means a written plan developed by an owner or operator of a facility detailing how a facility is to close at the end of its active life.

**"Composted material"** means organic solid waste that has undergone biological degradation and transformation under controlled conditions designed to promote aerobic decomposition at a solid waste facility in compliance with the requirements of this chapter. Natural decay of organic solid waste under uncontrolled conditions does not result in composted material.

**"Composting"** means the biological degradation and transformation of organic solid waste under controlled conditions designed to promote aerobic decomposition. Natural decay of organic solid waste under uncontrolled conditions is not composting.

**"Conditionally exempt small quantity generator (CESQG)"** means a dangerous waste generator whose dangerous wastes are not subject to regulation under chapter 70.105 RCW, Hazardous waste management, solely because the waste is generated or accumulated in quantities below the threshold for regulation and meets the conditions prescribed in WAC 173-303-070 (8)(b).

**"Conditionally exempt small quantity generator (CESQG) waste"** means dangerous waste generated by a conditionally exempt small quantity generator.

**"Container"** means a portable device used for the collection, storage, and/or transportation of solid waste including, but not limited to, reusable containers, disposable containers, and detachable containers.

**"Contaminant"** means any chemical, physical, biological, or radiological substance that does not occur naturally in the environment or that occurs at concentrations greater than natural background levels.

**"Contaminate"** means the release of solid waste, leachate, or gases emitted by solid waste, such that contaminants enter the environment at concentrations that pose a threat to human health or the environment, or cause a violation of any applicable environmental regulation.

**"Contaminated dredged material"** means dredged material resulting from the dredging of surface waters of the state where contaminants are present in the dredged material at concentrations not suitable for open water disposal and the dredged material is not dangerous waste and is not regulated by section 404 of the Federal Clean Water Act (P.L. 95-217).

**"Contaminated soils"** means soils removed during the cleanup of a hazardous waste site, or a dangerous waste facility closure, corrective actions or other clean-up activities and which contain harmful substances but are not designated dangerous wastes.

**"Corrosion expert"** means a person certified by the National Association of Corrosion Engineers (NACE) or a registered professional engineer who has certification or licensing that includes education and experience in corrosion control.

**"Crop residues"** means vegetative material leftover from the harvesting of crops, including leftover pieces or whole fruits or vegetables, crop leaves and stems. Crop residue does not include food processing waste.

**"Dangerous wastes"** means any solid waste designated as dangerous waste by the department under chapter 173-303 WAC, Dangerous waste regulations.

**"Department"** means the Washington state department of ecology.

**"Detachable containers"** means reusable containers that are mechanically loaded or handled, such as a dumpster or drop box.

**"Disposable containers"** means containers that are used once to handle solid waste, such as plastic bags, cardboard boxes and paper bags.

**"Disposal"** or **"deposition"** means the discharge, deposit, injection, dumping, leaking, or placing of any solid waste into or on any land or water.

**"Domestic septage"** means Class I, II or III domestic septage as defined in chapter 173-308 WAC, Biosolids management.

**"Domestic wastewater facility"** means all structures, equipment, or processes required to collect, carry away, treat, reclaim, or dispose of domestic wastewater together with such industrial waste as may be present.

**"Drop box facility"** means a facility used for the placement of a detachable container including the area adjacent for necessary entrance and exit roads, unloading and turn-around areas. Drop box facilities normally serve the general

public with loose loads and receive waste from offsite.

**"Energy recovery"** means the recovery of energy in a useable form from mass burning or refuse-derived fuel incineration, pyrolysis or any other means of using the heat of combustion of solid waste that involves high temperature (above twelve hundred degrees Fahrenheit) processing.

**"Existing facility"** means a facility which is owned or leased, and in operation, or for which facility construction has begun, on or before the effective date of this chapter and the owner or operator has obtained permits or approvals necessary under federal, state and local statutes, regulations and ordinances.

**"Facility"** means all contiguous land (including buffers and setbacks) and structures, other appurtenances, and improvements on the land used for solid waste handling.

**"Facility construction"** means the continuous on-site physical act of constructing solid waste handling unit(s) or when the owner or operator of a facility has entered into contractual obligations for physical construction of the facility that cannot be canceled or modified without substantial financial loss.

**"Facility structures"** means constructed infrastructure such as buildings, sheds, utility lines, and piping on the facility.

**"Garbage"** means animal and vegetable waste resulting from the handling, storage, sale, preparation, cooking, and serving of foods.

**"Ground water"** means that part of the subsurface water that is in the zone of saturation.

**"Holocene fault"** means a plane along which earthen material on one side has been displaced with respect to that on the other side and has occurred in the most recent epoch of the Quaternary period extending from the end of the Pleistocene to the present.

**"Home composting"** means composting of on-site generated wastes, and incidental materials beneficial to the composting process, by the owner or person in control of a single-family residence, or for a dwelling that houses two to five families, such as a duplex or clustered dwellings.

**"Household hazardous wastes"** means any waste which exhibits any of the properties of dangerous wastes that is exempt from regulation under chapter 70.105 RCW, Hazardous waste management, solely because the waste is generated by households. Household hazardous waste can also include other solid waste identified in the local hazardous waste management plan prepared pursuant to chapter 70.105 RCW, Hazardous waste management.

**"Hydrostratigraphic unit"** means any water-bearing geologic unit or units hydraulically connected or grouped together on the basis of similar hydraulic conductivity which can be reasonably monitored; several geologic formations or part of a geologic formation may be grouped into a single hydrostratigraphic unit; perched sand lenses may be considered a hydrostratigraphic unit or part of a hydrostratigraphic unit, for example.

**"Incineration"** means reducing the volume of solid wastes by use of an enclosed device using controlled flame combustion.

**"Incompatible waste"** means a waste that is unsuitable for mixing with another waste or material because the mixture might produce excessive heat or pressure, fire or explosion, violent reaction, toxic dust, fumes, mists, or gases, or flammable fumes or gases.

**"Industrial solid wastes"** means solid waste generated from manufacturing operations, food processing, or other industrial processes.

**"Industrial wastewater facility"** means all structures, equipment, or processes required to collect, carry away, treat, reclaim, or dispose of industrial wastewater.

**"Inert waste"** means solid wastes that meet the criteria for inert waste in WAC 173-350-990.

**"Inert waste landfill"** means a landfill that receives only inert wastes.

**"Intermediate solid waste handling facility"** means any intermediate use or processing site engaged in solid waste handling which is not the final site of disposal. This includes material recovery facilities, transfer stations, drop boxes, baling and compaction sites.

**"Intermodal facility"** means any facility operated for the purpose of transporting closed containers of waste and the

containers are not opened for further treatment, processing or consolidation of the waste.

**"Jurisdictional health department"** means city, county, city-county or district public health department.

**"Land application site"** means a contiguous area of land under the same ownership or operational control on which solid wastes are beneficially utilized for their agronomic or soil-amending capability.

**"Land reclamation"** means using solid waste to restore drastically disturbed lands including, but not limited to, construction sites and surface mines. Using solid waste as a component of fill is not land reclamation.

**"Landfill"** means a disposal facility or part of a facility at which solid waste is permanently placed in or on land including facilities that use solid waste as a component of fill.

**"Leachate"** means water or other liquid within a solid waste handling unit that has been contaminated by dissolved or suspended materials due to contact with solid waste or gases.

**"Limited moderate risk waste"** means waste batteries, waste oil, and waste antifreeze generated from households.

**"Limited moderate risk waste facility"** means a facility that collects, stores, and consolidates only limited moderate risk waste.

**"Limited purpose landfill"** means a landfill which is not regulated or permitted by other state or federal environmental regulations that receives solid wastes limited by type or source. Limited purpose landfills include, but are not limited to, landfills that receive segregated industrial solid waste, construction, demolition and landclearing debris, wood waste, ash (other than special incinerator ash), and dredged material. Limited purpose landfills do not include inert waste landfills, municipal solid waste landfills regulated under chapter 173-351 WAC, Criteria for municipal solid waste landfills, landfills disposing of special incinerator ash regulated under chapter 173-306 WAC, Special incinerator ash management standards, landfills regulated under chapter 173-303 WAC, Dangerous waste regulations, or chemical waste landfills used for the disposal of polychlorinated biphenyls (PCBs) regulated under Title 40 CFR Part 761, Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions.

**"Liquid"** means a substance that flows readily and assumes the form of its container but retains its independent volume.

**"Liquid waste"** means any solid waste which is deemed to contain free liquids as determined by the Paint Filter Liquids Test, Method 9095, in *"Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,"* EPA Publication SW-846.

**"Lithified earth material"** means all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by crystallization of magma or by induration of loose sediments. This term does not include man-made materials, such as fill, concrete or asphalt, or unconsolidated earth materials, soil or regolith lying at or near the earth's surface.

**"Local fire control agency"** means a public or private agency or corporation providing fire protection such as a local fire department, the department of natural resources or the United States Forest Service.

**"Lower explosive limits"** means the lowest percentage by volume of a mixture of explosive gases that will propagate a flame in air at twenty-five degrees centigrade and atmospheric pressure.

**"Material recovery facility"** means any facility that collects, compacts, repackages, sorts, or processes for transport source separated solid waste for the purpose of recycling.

**"Mobile systems and collection events"** means activities conducted at a temporary location to collect moderate risk waste.

**"Moderate risk waste (MRW)"** means solid waste that is limited to conditionally exempt small quantity generator (CESQG) waste and household hazardous waste (HHW) as defined in this chapter.

**"MRW facility"** means a solid waste handling unit that is used to collect, treat, recycle, exchange, store, consolidate, and/or transfer moderate risk waste. This does not include mobile systems and collection events or limited MRW facilities that meet the applicable terms and conditions of WAC 173-350-360 (2) or (3).

**"Municipal solid waste (MSW)"** means a subset of solid waste which includes unsegregated garbage, refuse and similar solid waste material discarded from residential, commercial, institutional and industrial sources and community activities, including residue after recyclables have been separated. Solid waste that has been segregated by source and

characteristic may qualify for management as a non-MSW solid waste, at a facility designed and operated to address the waste's characteristics and potential environmental impacts. The term MSW does not include:

- Dangerous wastes other than wastes excluded from the requirements of chapter 173-303 WAC, Dangerous waste regulations, in WAC 173-303-071 such as household hazardous wastes;
- Any solid waste, including contaminated soil and debris, resulting from response action taken under section 104 or 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9601), chapter 70.105D RCW, Hazardous waste cleanup – Model Toxics Control Act, chapter 173-340 WAC, the Model Toxics Control Act cleanup regulation or a remedial action taken under those rules; nor
- Mixed or segregated recyclable material that has been source-separated from garbage, refuse and similar solid waste. The residual from source separated recyclables is MSW.

**"Natural background"** means the concentration of chemical, physical, biological, or radiological substances consistently present in the environment that has not been influenced by regional or localized human activities. Metals at concentrations naturally occurring in bedrock, sediments and soils due solely to the geologic processes that formed the materials are natural background. In addition, low concentrations of other persistent substances due solely to the global use or formation of these substances are natural background.

**"New solid waste handling unit"** means a solid waste handling unit that begins operation or facility construction, and significant modifications to existing solid waste handling units, after the effective date of this chapter.

**"Nuisance odor"** means any odor which is found offensive or may unreasonably interfere with any person's health, comfort, or enjoyment beyond the property boundary of a facility.

**"One hundred-year flood plain"** means any land area that is subject to one percent or greater chance of flooding in any given year from any source.

**"Open burning"** means the burning of solid waste materials in an open fire or an outdoor container without providing for the control of combustion or the control of emissions from the combustion.

**"Overburden"** means the earth, rock, soil, and topsoil that lie above mineral deposits.

**"Permeability"** means the ease with which a porous material allows liquid or gaseous fluids to flow through it. For water, this is usually expressed in units of centimeters per second and termed hydraulic conductivity.

**"Permit"** means an authorization issued by the jurisdictional health department which allows a person to perform solid waste activities at a specific location and which includes specific conditions for such facility operations.

**"Person"** means an individual, firm, association, copartnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatever.

**"Pile"** means any noncontainerized accumulation of solid waste that is used for treatment or storage.

**"Plan of operation"** means the written plan developed by an owner or operator of a facility detailing how a facility is to be operated during its active life.

**"Point of compliance"** means a point established in the ground water by the jurisdictional health department as near a possible source of release as technically, hydrogeologically and geographically feasible.

**"Post-closure"** means the requirements placed upon disposal facilities after closure to ensure their environmental safety for at least a twenty-year period or until the site becomes stabilized (i.e., little or no settlement, gas production, or leachate generation).

**"Post-closure plan"** means a written plan developed by an owner or operator of a facility detailing how a facility is to meet the post-closure requirements for the facility.

**"Premises"** means a tract or parcel of land with or without habitable buildings.

**"Private facility"** means a privately owned facility maintained on private property solely for the purpose of managing waste generated by the entity owning the site.

**"Processing"** means an operation to convert a material into a useful product or to prepare it for reuse, recycling, or disposal.

**"Product take-back center"** means a retail outlet or distributor that accepts household hazardous waste of comparable types as the products offered for sale or distributed at that outlet.

**"Public facility"** means a publicly or privately owned facility that accepts solid waste generated by other persons;

**"Putrescible waste"** means solid waste which contains material capable of being readily decomposed by microorganisms and which is likely to produce offensive odors.

**"Pyrolysis"** means the process in which solid wastes are heated in an enclosed device in the absence of oxygen to vaporization, producing a hydrocarbon-rich gas capable of being burned for recovery of energy.

**"Recyclable materials"** means those solid wastes that are separated for recycling or reuse, including, but not limited to, papers, metals, and glass, that are identified as recyclable material pursuant to a local comprehensive solid waste plan.

**"Recycling"** means transforming or remanufacturing waste materials into usable or marketable materials for use other than landfill disposal or incineration. Recycling does not include collection, compacting, repackaging, and sorting for the purpose of transport.

**"Representative sample"** means a sample that can be expected to exhibit the average properties of the sample source.

**"Reserved"** means a section having no requirements and which is set aside for future possible rule making as a note to the regulated community.

**"Reusable containers"** means containers that are used more than once to handle solid waste, such as garbage cans.

**"Runoff"** means any rainwater, leachate or other liquid that drains over land from any part of the facility.

**"Run-on"** means any rainwater or other liquid that drains over land onto any part of a facility.

**"Scavenging"** means the removal of materials at a disposal facility, or intermediate solid waste-handling facility, without the approval of the owner or operator and the jurisdictional health department.

**"Seismic impact zone"** means an area with a ten percent or greater probability that the maximum horizontal acceleration in lithified earth material, expressed as a percentage of the earth's gravitational pull, will exceed 0.10g in two hundred fifty years.

**"Setback"** means that part of a facility that lies between the active area and the property boundary.

**"Sewage sludge"** means solid, semisolid, or liquid residue generated during the treatment of domestic sewage in a treatment works. Sewage sludge includes, but is not limited to, domestic septage; scum or solids removed in primary, secondary, or advanced wastewater treatment processes; and a material derived from sewage sludge. Sewage sludge does not include ash generated during the firing of sewage sludge in a sewage sludge incinerator or grit and screenings generated.

**"Soil amendment"** means any substance that is intended to improve the physical characteristics of soil, except composted material, commercial fertilizers, agricultural liming agents, unmanipulated animal manures, unmanipulated vegetable manures, food wastes, food processing wastes, and materials exempted by rule of the department, such as biosolids as defined in chapter 70.95J RCW, Municipal sewage sludge -- Biosolids and wastewater, as regulated in chapter 90.48 RCW, Water pollution control.

**"Solid waste" or "wastes"** means all putrescible and nonputrescible solid and semisolid wastes including, but not limited to, garbage, rubbish, ashes, industrial wastes, swill, sewage sludge, demolition and construction wastes, abandoned vehicles or parts thereof, contaminated soils and contaminated dredged material, and recyclable materials.

**"Solid waste handling"** means the management, storage, collection, transportation, treatment, use, processing or final disposal of solid wastes, including the recovery and recycling of materials from solid wastes, the recovery of energy resources from such wastes or the conversion of the energy in such wastes to more useful forms or combinations thereof.

**"Solid waste handling unit"** means discrete areas of land, sealed surfaces, liner systems, excavations, facility structures, or other appurtenances within a facility used for solid waste handling.

**"Source separation"** means the separation of different kinds of solid waste at the place where the waste originates.

**"Storage"** means the holding of solid waste materials for a temporary period.

**"Surface impoundment"** means a facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), and which is designed to hold an accumulation of liquids or sludges. The term includes holding, storage, settling, and aeration pits, ponds, or lagoons, but does not include injection wells.

**"Surface water"** means all lakes, rivers, ponds, wetlands, streams, inland waters, salt waters and all other surface water and surface water courses within the jurisdiction of the state of Washington.

**"Tank"** means a stationary device designed to contain an accumulation of liquid or semisolid materials meeting the definition of solid waste or leachate, and which is constructed primarily of nonearthen materials to provide structural support.

**"Transfer station"** means a permanent, fixed, supplemental collection and transportation facility, used by persons and route collection vehicles to deposit collected solid waste from offsite into a larger transfer vehicle for transport to a solid waste handling facility.

**"Treatment"** means the physical, chemical, or biological processing of solid waste to make such solid wastes safer for storage or disposal, amenable for recycling or energy recovery, or reduced in volume.

**"Twenty-five-year storm"** means a storm of twenty-four hours duration and of such intensity that it has a four percent probability of being equaled or exceeded each year.

**"Type 1 feedstocks"** means source-separated yard and garden wastes, wood wastes, agricultural crop residues, wax-coated cardboard, preconsumer vegetative food wastes, other similar source-separated materials that the jurisdictional health department determines to have a comparable low level of risk in hazardous substances, human pathogens, and physical contaminants.

**"Type 2 feedstocks"** means manure and bedding from herbivorous animals that the jurisdictional health department determines to have a comparable low level of risk in hazardous substances and physical contaminants when compared to a type 1 feedstock.

**"Type 3 feedstocks"** means meat and postconsumer source-separated food wastes or other similar source-separated materials that the jurisdictional health department determines to have a comparable low level of risk in hazardous substances and physical contaminants, but are likely to have high levels of human pathogens.

**"Type 4 feedstocks"** means mixed municipal solid wastes, postcollection separated or processed solid wastes, industrial solid wastes, industrial biological treatment sludges, or other similar compostable materials that the jurisdictional health department determines to have a comparable high level of risk in hazardous substances, human pathogens and physical contaminants.

**"Universal wastes"** means universal wastes as defined in chapter 173-303 WAC, Dangerous waste regulations. Universal wastes include, but may not be limited to, dangerous waste batteries, mercury-containing thermostats, and universal waste lamps generated by fully regulated dangerous waste generators or CESQGs.

**"Unstable area"** means a location that is susceptible to forces capable of impairing the integrity of the facility's liners, monitoring system or structural components. Unstable areas can include poor foundation conditions and areas susceptible to mass movements.

**"Vadose zone"** means that portion of a geologic formation in which soil pores contain some water, the pressure of that water is less than atmospheric pressure, and the formation occurs above the zone of saturation.

**"Vector"** means a living animal, including, but not limited to, insects, rodents, and birds, which is capable of transmitting an infectious disease from one organism to another.

**"Vermicomposting"** means the controlled and managed process by which live worms convert organic residues into dark, fertile, granular excrement.

**"Waste tires"** means any tires that are no longer suitable for their original intended purpose because of wear, damage or defect. Used tires, which were originally intended for use on public highways that are considered unsafe in accordance with RCW 46.37.425, are waste tires. Waste tires also include quantities of used tires that may be suitable

for their original intended purpose when mixed with tires considered unsafe per RCW 46.37.425.

**"Wetlands"** means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

**"Wood derived fuel"** means wood pieces or particles used as a fuel for energy recovery, which contain paint, bonding agents, or creosote. Wood derived fuel does not include wood pieces or particles coated with paint that contains lead or mercury, or wood treated with other chemical preservatives such as pentachlorophenol, copper naphthanate, or copper-chrome-arsenate.

**"Wood waste"** means solid waste consisting of wood pieces or particles generated as a by-product or waste from the manufacturing of wood products, construction, demolition, handling and storage of raw materials, trees and stumps. This includes, but is not limited to, sawdust, chips, shavings, bark, pulp, hogged fuel, and log sort yard waste, but does not include wood pieces or particles containing paint, laminates, bonding agents or chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenate.

**"Yard debris"** means plant material commonly created in the course of maintaining yards and gardens and through horticulture, gardening, landscaping or similar activities. Yard debris includes, but is not limited to, grass clippings, leaves, branches, brush, weeds, flowers, roots, windfall fruit, and vegetable garden debris.

**"Zone of saturation"** means that part of a geologic formation in which soil pores are filled with water and the pressure of that water is equal to or greater than atmospheric pressure.

[Statutory Authority: Chapter 70.95 RCW. 05-11-033 (Order 04-12), § 173-350-100, filed 5/10/05, effective 6/10/05; 03-03-043 (Order 99-24), § 173-350-100, filed 1/10/03, effective 2/10/03.]

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## WAC 173-350-990

Agency filings affecting this section

### Criteria for inert waste.

(1) *Criteria for inert waste - Applicability.* This section provides the criteria for determining if a solid waste is an inert waste. Dangerous wastes regulated under chapter 173-303 WAC, Dangerous waste regulation, PCB wastes regulated under 40 CFR Part 761, Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions, and asbestos-containing waste regulated under federal 40 CFR Part 61 rules are not inert waste. For the purposes of determining if a solid waste meets the criteria for an inert waste a person shall:

(a) Apply knowledge of the waste in light of the materials or process used and potential chemical, physical, biological, or radiological substances that may be present; or

(b) Test the waste for those potential substances that may exceed the applicable criteria. A jurisdictional health department may require a person to test a waste to determine if it meets the applicable criteria. Such testing may be required if the jurisdictional health department has reason to believe that a waste does not meet the applicable criteria or has not been adequately characterized. Testing shall be performed in accordance with:

- (i) "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," U.S. EPA Publication SW-846; or
- (ii) Other testing methods approved by the jurisdictional health department.

(2) *Criteria for inert waste - Listed inert wastes.* For the purpose of this chapter, the following solid wastes are inert wastes, provided that the waste has not been tainted, through exposure from chemical, physical, biological, or radiological substances, such that it presents a threat to human health or the environment greater than that inherent to the material:

(a) Cured concrete that has been used for structural and construction purposes, including embedded steel reinforcing and wood, that was produced from mixtures of Portland cement and sand, gravel or other similar materials;

(b) Asphaltic materials that have been used for structural and construction purposes (e.g., roads, dikes, paving) that were produced from mixtures of petroleum asphalt and sand, gravel or other similar materials. Waste roofing materials are not presumed to be inert;

(c) Brick and masonry that have been used for structural and construction purposes;

(d) Ceramic materials produced from fired clay or porcelain;

(e) Glass, composed primarily of sodium, calcium, silica, boric oxide, magnesium oxide, lithium oxide or aluminum oxide. Glass presumed to be inert includes, but is not limited to, window glass, glass containers, glass fiber, glasses resistant to thermal shock, and glass-ceramics. Glass containing significant concentrations of lead, mercury, or other toxic substance is not presumed to be inert; and

(f) Stainless steel and aluminum.

(3) *Criteria for inert waste - Inert waste characteristics.* This subsection provides the criteria for determining if a solid waste not listed in subsection (2) of this section is an inert waste. Solid wastes meeting the criteria below shall have comparable physical characteristics and comparable or lower level of risk to human health and the environment as those listed in subsection (2) of this section.

(a) Inert waste shall have physical characteristics that meet the following criteria. Inert waste shall:

(i) Not be capable of catching fire and burning from contact with flames;

(ii) Maintain its physical and chemical structure under expected conditions of storage or disposal including resistance to biological and chemical degradation; and

(iii) Have sufficient structural integrity and strength to prevent settling and unstable situations under expected conditions of storage or disposal.

(b) Inert waste shall not contain chemical, physical, biological, or radiological substances at concentrations that exceed the following criteria. Inert waste shall not:

(i) Be capable of producing leachate or emissions that have the potential to negatively impact soil, ground water, surface water, or air quality;

(ii) Pose a health threat to humans or other living organisms through direct or indirect exposure; or

(iii) Result in applicable air quality standards to be exceeded, or pose a threat to human health or the environment under potential conditions during handling, storage, or disposal.

[Statutory Authority: Chapter 70.95 RCW. 03-03-043 (Order 99-24), § 173-350-990, filed 1/10/03, effective 2/10/03.]