



PROPOSED RULE MAKING

CR-102 (June 2012)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

Agency: Department of Health

- Preproposal Statement of Inquiry was filed as WSR ; or
- Expedited Rule Making--Proposed notice was filed as WSR ; or
- Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

- Original Notice
- Supplemental Notice to WSR
- Continuance of WSR

Title of rule and other identifying information: (Describe Subject)

WAC 246-249-010, Definitions, abbreviations, and acronyms; WAC 246-249-020, Site use permit; and WAC 246-254-165, Low-level radioactive waste site use permit fees for generator or broker. Transfer of the low-level radioactive waste site use program rules and fees from the Department of Ecology (Ecology) to the Department of Health (department) and make editorial changes.

Hearing location(s): Department of Health
Point Plaza East, Room 153
310 Israel Road SE
Tumwater, WA 98501

Date: 06/27/13

Time: 9:30 a.m.

Submit written comments to:

Name: Michelle K Austin, Rules Coordinator
Address: PO Box 47827
Olympia, WA 98504-7827
e-mail: <http://www3.doh.wa.gov/policyreview/>
fax 360-236-2266 by (date) 06/27/2013

Assistance for persons with disabilities: Contact

Michelle K Austin by 06/20/2013

TTY (800) 833-6388 or () 711

Date of intended adoption: 07/01/2013

(Note: This is NOT the effective date)

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

The Legislature passed House Bill 2304 (chapter 19, Laws of 2012) during the 2012 legislative session. The bill amends chapter 43.200 RCW and chapter 70.98 RCW to transfer authority for the low-level radioactive waste site use permit program from Ecology to the department. This allows the department to review permit applications and issue site use permits. The department is proposing to adopt Ecology's existing rules without material change and make some editorial changes.

The department's proposed rules replace the classification ratio with the actual fee amounts that are calculated when the current base fee of \$424 is applied to the classification ratio. This change does not increase or decrease the fees.

Reasons supporting proposal:

Before the legislation passed, the department and Ecology shared regulatory oversight of the generators and brokers who use the commercial low-level radioactive waste facility. Transferring the site use permit program to the department streamlines agency oversight and is consistent with the department's authority and responsibilities at the low-level radioactive waste site.

Statutory authority for adoption:

RCW 70.98.085

Statute being implemented:

RCW 70.98.050 and 70.98.085

Is rule necessary because of a:

- Federal Law? Yes No
 - Federal Court Decision? Yes No
 - State Court Decision? Yes No
- If yes, CITATION:

DATE 05/17/13

NAME (type or print)

John Wiesman, DrPH, MPH

SIGNATURE

TITLE

Secretary of Health

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: **May 20, 2013**

TIME: **11:13 AM**

WSR **13-11-097**

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

None

Name of proponent: (person or organization) Department of Health

- Private
- Public
- Governmental

Name of agency personnel responsible for:

Name	Office Location	Phone
Drafting..... Mikel J. Elsen	111 Israel Road SE, Tumwater WA 98501	360-236-3241
Implementation.... Mikel J. Elsen	111 Israel Road SE, Tumwater WA 98501	360-236-3241
Enforcement..... Mikel J. Elsen	111 Israel Road SE, Tumwater WA 98501	360-236-3241

Has a small business economic impact statement been prepared under chapter 19.85 RCW or has a school district fiscal impact statement been prepared under section 1, chapter 210, Laws of 2012?

Yes. Attach copy of small business economic impact statement.

A copy of the statement may be obtained by contacting:

Name:

Address:

phone

fax

e-mail

No. Explain why no statement was prepared.

A small business economic impact statement (SBEIS) was not prepared. Under RCW 19.85.025 and 34.05.310(4)(c), an SBEIS is not required for proposed rules that adopt or incorporate by reference, without material change, federal statutes or regulations, Washington state statutes, the rules of other Washington state agencies, or as referenced by Washington state law, national consensus codes that generally establish industry standards.

This rule adopts, without material change, Ecology's site use permit rules from chapter 173-326 WAC.

Is a cost-benefit analysis required under RCW 34.05.328?

Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name:

Address:

phone

fax

e-mail

No: Please explain: The agency did not complete a cost benefit analysis under RCW 34.05.328. RCW 34.05.328(5)(b)(iii) exempts rules that adopt or incorporate by reference, without material change, federal statutes or regulations, Washington state statutes, the rules of other Washington state agencies, or as referenced by Washington state law, national consensus codes that generally establish industry standards when the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

This rule adopts, without material change, Ecology's site use permit rules from chapter 173-326 WAC.

NEW SECTION

WAC 246-254-165 Low-level radioactive waste site use permit fees for generator or broker. (1) The following fees apply to a generator as defined in WAC 246-249-010:

(a) A generator with an active site use permit, other than a nuclear utility, shall pay an annual site use permit fee based on the total annual volume (cubic feet) of waste disposed during the previous calendar year. The fees by volume of waste are in Table 1 of this section.

(b) A new generator, other than a nuclear utility, shall pay an annual site use permit fee based on the estimated volume (cubic feet) of waste requiring disposal during the first calendar year. The fees by volume of waste are in Table 1 of this section.

(i) If a new generator's waste deposits exceed the generator's estimated volume, the department shall suspend the site use permit until the generator pays the additional fee amount corresponding to the actual volume of waste disposed.

(ii) If a new generator's waste deposits are less than the generator's estimated volume, consistent with WAC 246-08-560, the department shall refund the fee amount paid in excess of the required fee amount.

(c) A nuclear utility shall pay an annual site use permit fee of forty-two thousand four hundred dollars.

(d) A generator, other than a nuclear utility, who fails to renew an annual site use permit shall pay an annual site use permit fee based on the volume of waste disposed during the most recent calendar year in which waste was disposed and shall pay a reinstatement fee of one thousand dollars.

(e) A nuclear utility that fails to maintain annual renewal of the site use permit shall pay an annual site use permit fee of forty-two thousand four hundred dollars and shall pay a reinstatement fee of one thousand dollars.

Table 1: Fees by Volume of Waste

Classification	Fee
< 50 cubic feet	\$424
≥ 50 < 500 cubic feet	\$848
≥ 500 < 1000 cubic feet	\$2,120
≥ 1000 < 2500 cubic feet	\$4,240
≥ 2500 cubic feet	\$14,840

(2) The following fees apply to a broker as defined in WAC 246-249-010:

(a) A broker shall pay an annual site use permit fee of one thousand dollars.

(b) A broker who fails to maintain annual renewal of the site

use permit shall pay an annual site use permit fee of one thousand dollars and shall pay a reinstatement fee of one thousand dollars.

AMENDATORY SECTION (Amending WSR 11-03-020, filed 1/7/11, effective 2/7/11)

WAC 246-249-010 Definitions, abbreviations, and acronyms.

~~((As used in this chapter, the following definitions apply:))~~ The definitions, abbreviations, and acronyms in this section and in WAC 246-220-010 apply throughout this chapter unless the context clearly indicates otherwise.

(1) (a) "Broker" means a person who performs one or more of the following functions for a radioactive waste generator:

~~((a))~~ (i) Arranges for transportation of the radioactive waste;

~~((b))~~ (ii) Collects ~~((and/))~~ or consolidates shipments of radioactive waste (waste collector);

~~((c))~~ (iii) Processes radioactive waste in some manner ~~((, not including carriers whose sole function is to transport radioactive waste))~~ (waste processor);

(iv) Packages radioactive waste for disposal (waste packager).

(b) Does not mean a carrier whose sole function is to transport radioactive waste.

(2) ~~((**"By-product material"** means:~~

~~(a) Any radioactive material (except special nuclear material) yielded in, or made radioactive by, exposure to the radiation incident to the process of producing or using special nuclear material;~~

~~(b) The tailings or wastes produced by the extraction or concentration of uranium or thorium from ore processed primarily for its source material content, including discrete surface wastes resulting from uranium solution extraction processes. Underground ore bodies depleted by these solution extraction operations do not constitute by-product material within this definition;~~

~~(c)(i) Any discrete source of radium-226 that is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity; or~~

~~(ii) Any material that:~~

~~(A) Has been made radioactive by use of a particle accelerator; and~~

~~(B) Is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity; and~~

~~(d) Any discrete source of naturally occurring radioactive material, other than source material, that:~~

~~(i) The Nuclear Regulatory Commission, in consultation with the administrator of the Environmental Protection Agency, the Secretary of Energy, the Secretary of Homeland Security, and the head of any other appropriate federal agency, determines would pose~~

~~a threat similar to the threat posed by a discrete source of radium-226 to the public health and safety or the common defense and security; and~~

~~(ii) Before, on, or after August 8, 2005, is extracted or converted after extraction for use in a commercial, medical, or research activity.~~

~~(3))~~ **"Chelating agent"** means amine polycarboxylic acids ~~((e.g.)),~~ such as EDTA~~((7))~~ and DTPA~~((7))~~; hydroxy-carboxylic acids~~((7))~~; and polycarboxylic acids ~~((e.g.)),~~ such as citric acid, carboic acid, and glucinic acid).

~~((4))~~ (3) **"Chemical description"** means a description of the principal chemical characteristics of a radioactive waste.

~~((5))~~ (4) **"Computer-readable medium"** means the regulatory agency's computer can transfer the information from the medium into its memory.

~~((6))~~ (5) **"Consignee"** means the designated receiver of the shipment of radioactive waste.

~~((7))~~ (6) **"Decontamination facility"** means a facility operating under a commission or agreement state license whose principal purpose is decontamination of equipment or materials to accomplish recycle, reuse, or other waste management objectives, and, for purposes of this section, is not considered to be a consignee for radioactive waste shipments.

~~((8))~~ (7) **"Disposal container"** means a container principally used to confine radioactive waste during disposal operations at a land disposal facility (also see "high integrity container"). Note that for some shipments, the disposal container may be the transport package.

~~((9))~~ (8) **"DOT"** means the United States Department of Transportation.

(9) "EPA" means the United States Environmental Protection Agency.

(10) "EPA identification number" means the number assigned by the EPA administrator under 40 C.F.R. Part 263.

~~((10))~~ (11) **"Generator"** means any ~~((entity))~~ person including a licensee operating under a commission or agreement state license who:

(a) Is a waste generator as defined in this part; or

(b) Is the entity or licensee to whom waste can be attributed within the context of the Low-Level Radioactive Waste Policy Amendments Act of 1985 (e.g., waste generated as a result of decontamination or recycle activities).

~~((11))~~ (12) **"High integrity container ~~((HIC))~~"** means a container commonly designed to meet the structural stability requirements of this chapter, and to meet department of transportation Type A package requirements.

~~((12))~~ (13) **"Land disposal facility"** means the land, buildings, and equipment which are intended to be used for the disposal of radioactive wastes. For the purposes of this chapter, a land disposal facility does not include a geologic repository.

~~((13))~~ (14) **"Motor vehicle"** means any vehicle, truck, tractor, semi-trailer, or trailer (or any permitted combination of

these), driven by mechanical power and used upon the highways to carry property.

((+14)) (15) "**Motor common carrier**" means a person holding itself out to the general public to provide motor vehicle transportation for compensation over regular or irregular routes, or both.

((+15)) (16) "**Motor contract carrier**" means a person other than a common carrier providing motor vehicle transportation of property for compensation under continuing agreements with one or more persons.

((+16)) (17) "**Motor private carrier**" means a person, other than a motor carrier, transporting property by motor vehicle when the person is the owner, lessee, or bailee of the property being transported; and the property is being transported for sale, lease, rent, or bailment, or to further a commercial enterprise.

((+17)) (18) "**Motor carrier**" means a motor common carrier and a motor contract carrier.

((+18)) (19) "**NARM (naturally occurring and accelerator produced material ("NARM"))**" means any radioactive material of natural or accelerator origin; but does not include by-product, source or special nuclear material. Diffuse NARM is low activity NARM that has less than 2 nCi/g of 226-Ra.

((+19)) (20) "**NRC Forms 540, 540A, 541, 541A, 542, and 542A**" are official NRC Forms referenced in this section. Licensees need not use originals of these NRC Forms as long as any substitute forms are equivalent to the original documentation in respect to content, clarity, size, and location of information. Upon agreement between the shipper and consignee, NRC Forms 541 (and 541A) and NRC Forms 542 (and 542A) may be completed, transmitted, and stored in electronic media. The electronic media must have the capability for producing legible, accurate, and complete records in the format of the uniform manifest.

((+20)) (21) "**Nuclear utility**" means any operating or inactive nuclear utility.

(22) "**Package**" means the assembly of components necessary to ensure compliance with the packaging requirements of DOT regulations, together with its radioactive contents, as presented for transport.

((+21)) (23) "**Physical description**" means the items on NRC Form 541 that describe a radioactive waste.

~~((+22)) "**Radioactive waste**" means either or both low-level radioactive waste and naturally occurring and accelerator produced radioactive material.~~

~~(+23))~~ (24) "**Residual waste**" means radioactive waste resulting from processing or decontamination activities that cannot be easily separated into distinct batches attributable to specific waste generators. This waste is attributable to the processor or decontamination facility, as applicable.

((+24)) (25) "**Rollover volume**" means the difference, in a calendar year, between the volume of NARM disposed at the disposal site and the site volume limit (~~set forth~~) established under WAC 246-249-080(4).

~~((+25+))~~ (26) **"Shipper"** means the licensed entity ~~((+i.e.+))~~ including, but not limited to, the waste generator, waste collector, or waste processor~~(+)~~, who offers radioactive waste for transportation, typically consigning this type of waste to a licensed waste collector, waste processor, or land disposal facility operator.

~~((+26+))~~ (27) **"Shipment"** means the total radioactive waste material transported in one motor vehicle.

~~((+27+))~~ (28) **"Shipping paper"** means NRC Form 540 and, if required, NRC Form 540A which includes the information required by DOT in 49 C.F.R. Part 172.

~~((+28+))~~ (29) **"Transuranic waste"** means material contaminated with elements that have an atomic number greater than 92.

~~((+29+))~~ (30) **"Uniform Low-Level Radioactive Waste Manifest or uniform manifest"** means the combination of NRC Forms 540, 541, and, if necessary, 542, and their respective continuation sheets as needed, or equivalent.

~~((+30)~~ **"Waste"** means those low-level radioactive wastes containing source, special nuclear, or by-product material that are acceptable for disposal in a land disposal facility. For the purposes of this definition, low-level radioactive waste means radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or by-product material as defined in WAC 246-249-010 (2)(b), (c), and (d).~~)~~

(31) **"Waste collector"** means an entity, operating under a commission or agreement state license, whose principal purpose is to collect and consolidate waste generated by others, and to transfer this waste, without processing or repackaging the collected waste, to another licensed waste collector, licensed waste processor, or licensed land disposal facility.

(32) **"Waste description"** means the physical, chemical and radiological description of a radioactive waste as called for on NRC Form 541.

(33) **"Waste generator"** means an entity, operating under a commission or agreement state license, who:

(a) Possesses any material or component that contains radioactivity or is radioactively contaminated for which the licensee foresees no further use; and

(b) Transfers this material or component to a licensed land disposal facility or to a licensed waste collector or processor for handling or treatment prior to disposal.

(c) A licensee performing processing or decontamination services may be a "waste generator" if the transfer of radioactive waste from its facility is defined as "residual waste."

(34) **"Waste processor"** means an entity, operating under a commission or agreement state license, whose principal purpose is to process, repackage, or otherwise treat radioactive material or waste generated by others prior to eventual transfer of waste to a licensed low-level radioactive waste land disposal facility.

(35) **"Waste type"** means a waste within a disposal container having a unique physical description (i.e., a specific waste descriptor code or description; or a waste sorbed on or solidified

or stabilized in a specifically defined media).

AMENDATORY SECTION (Amending WSR 95-13-094, filed 6/21/95, effective 7/22/95)

WAC 246-249-020 Site use permit. (1) Each generator and each broker of radioactive waste shall:

(a) Possess ((a)) an active valid, and unencumbered site use permit prior to the shipment of such waste to, or the disposal of such waste at any commercial disposal facility in the state of Washington ((and shall have complied with the permit requirements of the department of ecology)).

~~((2) Suspension or revocation of permit.~~

~~(a) The failure of one or more packages in a shipment of waste to be in compliance with one or more of the requirements of the license issued to the commercial low-level radioactive waste disposal site operator, Title 246 WAC, the United States Nuclear Regulatory Commission, the United States Department of Transportation, or conditions of the disposal site operator's radioactive materials license may cause the suspension of the site use permit of the responsible generator and/or broker.~~

~~(b) The site use permit of a generator and/or broker may be suspended or revoked if any other licensed commercial low-level radioactive waste disposal site in the United States has refused to accept waste from that generator or broker.~~

~~(c) A suspended site use permit may be reinstated provided:~~

~~(i) The generator and/or broker submits a quality assurance procedure designed to correct previous problems and to achieve and maintain compliance with all applicable requirements; and~~

~~(ii) A point-of-origin inspection by the state of Washington, of the generator's and/or broker's waste management activities, indicates compliance with all applicable requirements and regulations.~~

~~(3) Brokered shipments.~~

~~(a) It is the broker's responsibility to assure that))~~

(b) Renew the site use permit annually to maintain the permit in active status.

(2) If a generator or broker does not renew the permit:

(a) The department shall place the permit in inactive status;
and

(b) The generator or broker shall pay a reinstatement fee in addition to the annual site use permit fee as required in WAC 246-254-165.

(3) Each generator and each broker of radioactive waste shall:

(a) Pay the site use permit fees required in WAC 246-254-165;

(b) Submit a completed application for a site use permit to the department on a form provided by the department;

(c) Ensure that each application is signed by the individual broker or generator or by an individual authorized to sign on

behalf of the entity generating or brokering the waste; and

(d) Submit the application for site use permit renewal a minimum of four weeks prior to the expiration date of the permit.

(4) Number of permits required by each generator.

(a) Generators who own multiple facilities may apply for one site use permit provided:

(i) All facilities are within the same state; and

(ii) The generator has identified a single contact person who is responsible for responding to the department on matters pertaining to waste shipments for all of the facilities.

(b) Generators who own multiple facilities shall apply for separate site use permits for each facility when:

(i) The facilities are located in different states; or

(ii) The generator has identified different contact persons for each facility who are responsible for responding to the department on matters pertaining to waste shipments.

(c) When a facility both generates and brokers waste, each generator and broker shall possess separate generator and broker site use permits.

(5) Each broker shall:

(a) Ensure a generator of waste has ((a)) an active, valid, and unencumbered site use permit prior to shipment of waste for disposal((-));

(b) ((A broker,)) Ensure the waste will arrive at the disposal facility prior to the expiration date of the generator's site use permit;

(c) Ensure all radioactive waste contained within a shipment accepted for disposal at any commercial radioactive waste disposal facility in the state of Washington is traceable to the original generators and states, regardless of whether the waste is shipped directly from the point of generation to the disposal facility or shipped through a licensed service facility, such as a facility for recycling, processing, compacting, incinerating, collecting, or brokering waste; and

(d) As consignor, assumes co-responsibility with a generator for all aspects of that generator's waste until it can be documented to the department's satisfaction that the broker's sphere of responsibility was limited.

(6) Any generator or broker shipping waste for disposal at the commercial low-level radioactive waste disposal site that was originally generated in the Rocky Mountain compact region shall attach to the shipping manifest and provide to the disposal site operator a copy of the letter granting approval to export waste from the Rocky Mountain compact region.

(7) Suspension or revocation of permit.

(a) The department may suspend the site use permit of the responsible generator, or broker, or both the generator and broker if one or more packages in a shipment of waste does not meet one or more of the requirements of the license issued to the commercial low-level radioactive waste disposal site operator, Title 246 WAC, NRC regulations, DOT regulations, or the conditions of the disposal site operator's radioactive materials license.

(b) The site use permit of a generator or broker may be

suspended or revoked if any other licensed commercial low-level radioactive waste disposal site in the United States has refused to accept waste from that generator or broker.

(c) A suspended site use permit may be reinstated provided:

(i) The generator or broker whose permit has been suspended submits a quality assurance procedure designed to correct previous problems and to achieve and maintain compliance with all applicable requirements; and

(ii) A point-of-origin inspection by the state of Washington of the waste management activities of the generator or broker whose permit has been suspended, indicated compliance with all applicable requirements and regulations.

(8) Additional generator and broker requirements. Permittees shall provide additional information as requested by the department for the safe management of radioactive waste in the state of Washington.