



RULE-MAKING ORDER

1-103 (June 2004)
(Implements RCW 34.05.360)

Agency: Department of Agriculture

Permanent Rule
 Emergency Rule

Effective date of rule:
Permanent Rules
 31 days after filing.
 Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Effective date of rule:
Emergency Rules
 Immediately upon filing.
 Later (specify) _____

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?
 Yes No If Yes, explain:

Purpose: This rule-making order is in response to a petition received from the Washington State Horticultural Association, requesting that the department amend WAC 16-229-010 (Definitions) to exempt pesticides containing kaolin clay from the definition of "pesticide". With this exemption, pesticides containing kaolin clay will no longer affect permanent mixing/loading site threshold values and, therefore, substantially reducing operating costs for pears producers while promoting the use of pesticide products that have proven effective and environmentally safe.

Citation of existing rules affected by this order:

Repealed:
Amended: WAC 16-229-010
Suspended:

Statutory authority for adoption: RCW 17.21.030(1)(a)

Other authority: chapter 34.05 RCW

PERMANENT RULE ONLY (Including Expedited Rule Making)

Adopted under notice filed as WSR 05-01-147 on December 20, 2004 (date).
Describe any changes other than editing from proposed to adopted version: None

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

Name: _____ phone () _____
Address: _____ fax () _____
e-mail _____

EMERGENCY RULE ONLY

Under RCW 34.05.350 the agency for good cause finds:

- That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding:

Date adopted: February 11, 2005

NAME (TYPE OR PRINT)
Valoria H. Loveland

SIGNATURE
Valoria H. Loveland

TITLE
Director

CODE REVISER USE ONLY

Stamp area containing:
- A box with "FEB 11 2005"
- Handwritten "1110" and "05-05-036"
- Labels "TIME" and "USER" with lines for input

(COMPLETE REVERSE SIDE)

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

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

The number of sections adopted in order to comply with:

Federal statute:	New	0	Amended	0	Repealed	0
Federal rules or standards:	New	0	Amended	0	Repealed	0
Recently enacted state statutes:	New	0	Amended	0	Repealed	0

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

	New	0	Amended	1	Repealed	0
--	-----	---	---------	---	----------	---

The number of sections adopted in the agency's own initiative:

	New	0	Amended	0	Repealed	0
--	-----	---	---------	---	----------	---

The number of sections adopted in order to clarify, streamline, or reform agency procedures:

	New	0	Amended	0	Repealed	0
--	-----	---	---------	---	----------	---

The number of sections adopted using:

Negotiated rule making:	New	0	Amended	0	Repealed	0
Pilot rule making:	New	0	Amended	0	Repealed	0
Other alternative rule making:	New	0	Amended	1	Repealed	0

AMENDATORY SECTION (Amending WSR 03-09-034, filed 4/8/03, effective 5/9/03)

WAC 16-229-010 Definitions. The definitions set forth in this section shall apply throughout this chapter unless the context otherwise requires:

(1) **"Approved air gap"** means a physical separation between the free-flowing end of a water supply pipeline and the overflow rim of an open or nonpressurized receiving vessel. To be an approved air gap, the separation must be at least:

(a) Twice the diameter of the supply piping measured vertically from the overflow rim of the receiving vessel, and in no case be less than one inch, when unaffected by vertical surfaces (sidewalls); or

(b) Threes time the diameter of the supply piping, if the horizontal distance between the supply pipe and a vertical surface (sidewall) is less than or equal to three times the diameter of the supply pipe, or if the horizontal distance between the supply pipe and intersecting vertical surfaces (sidewalls) is less than or equal to four times the diameter of the supply pipe and in no case less than one and one-half inches.

(2) **"Approved reduced pressure principle backflow prevention assembly (RPBA)"** means an RPBA of a make, model and size that is approved by the Washington state department of health.

(3) **"Appurtenances"** means all valves, pumps, fittings, pipes, hoses, metering devices, and mechanical devices which are connected to a storage container, or which are used to transfer a material into or out of such container.

(4) **"Bulk pesticide"** means any registered pesticide which is transported or held in an individual container in undivided quantities of greater than fifty-five U.S. gallons liquid measure or one hundred pounds net dry weight.

(5) **"Certified engineer"** means a licensed professional engineer, registered in the state of Washington in the discipline in which he/she is practicing.

(6) **"Department"** means the Washington state department of agriculture.

(7) **"Discharge"** means a spill, leak, or release, accidental or otherwise, from a storage container, container or appurtenance. It does not include a fully contained transfer of pesticide which is made pursuant to sale, storage, distribution or use.

(8) **"Dry pesticide"** means pesticide which is in solid form prior to any application or mixing for application, and includes formulations such as dusts, wettable powders, dry flowable powders, granules, and water dispersible granules.

(9) **"Liquid pesticide"** means pesticide in liquid form, and includes solutions, emulsions, suspensions, slurries, and pesticide

rinsates.

(10) **"Mini bulk pesticide"** means an amount of liquid pesticide greater than fifty-five gallons but not exceeding five hundred gallons which is held in a single container designed for ready handling and transport, which has been filled by the original pesticide manufacturer or repackager, and to which no substance has been added by any person.

(11) **"Not technically feasible"** means compliance is not physically or technically possible or feasible, and/or compliance cannot be achieved without compromising operational safety, and/or significantly compromising operational access. Monetary cost of compliance alone shall not be sufficient for the department to determine that compliance is not technically feasible.

(12) **"Operational area"** means an area or areas where pesticides are transferred, loaded, unloaded, mixed, repackaged, refilled or where pesticides are cleaned, or rinsed from containers or application, handling, storage or transportation equipment.

(13) **"Operational area containment"** means any structure or system designed and constructed to intercept and contain discharges, including storage container or equipment wash water, rinsates, and rainwater from the operational area(s).

(14) **"Permanent mixing/loading site"** means a site (location) at which more than three hundred gallons of liquid pesticide (formulated product) or three thousand pounds of dry pesticide or at which a total of fifteen hundred pounds of pesticides as active ingredients are being mixed, repackaged or transferred from one container to another within a calendar year: Provided, That wood preservative application systems already regulated by 40 CFR, Parts 264.570-575 and Parts 265.440-445 shall be exempt.

(15) **"Permanent storage facility"** means a location at which liquid bulk pesticide in a single container or aggregate quantities in excess of five hundred U.S. gallons or dry bulk pesticide in undivided quantities in excess of two thousand pounds is held in storage: Provided, That mini-bulk pesticide containers are exempt from this chapter.

(16) **"Pesticide"** means, but is not limited to:

(a) Any substance or mixture of substances intended to prevent, destroy, control, repel, or mitigate any insect, rodent, snail, slug, fungus, weed, and any other form of plant or animal life or virus, except virus on or in a living person or other animal which is normally considered to be a pest or which the director may declare to be a pest;

(b) Any substance or mixture of substances intended to be used as a plant regulator, defoliant or desiccant; and

(c) Any spray adjuvant.

(d) For the purpose of establishing permanent mixing/loading site threshold values petroleum oils and products containing only Kaolin clay as the active ingredient are exempt from this chapter.

(17) **"Primary containment"** means the storage of liquid or dry bulk pesticide in storage containers at a permanent storage facility.

(18) **"Rinsate"** means the liquid generated from the rinsing of

any equipment or container that has come in direct contact with any pesticide, including: Recovered sedimentation, washwater, contaminated precipitation, or other contaminated debris.

(19) **"Secondary containment"** means a device or structure designed, constructed, and maintained to hold or confine a discharge of a liquid pesticide from a permanent storage facility.

(20) **"Storage container"** means a container, including a rail car, nurse tank or other mobile container, that is used or intended for the storage of bulk liquid or dry pesticide. It does not include a mobile container at a storage facility for less than fifteen days if this storage is incidental to the loading or unloading of a storage container at the bulk pesticide storage facility. Storage container does not include underground storage containers or surface impoundments such as lined ponds or pits.

(21) **"Substantially similar protection"** means alternative containment and management practices that prevent or control releases to the environment to the same or similar degree as the protections afforded by full compliance with this chapter.

(22) **"Temporary field storage"** means a storage container with the capacity to store two thousand five hundred gallons or less of bulk liquid pesticide that remains in the same location for no more than fourteen consecutive days in any six-month period. Provided, That temporary field storage containers used to store soil fumigants shall be allowed a maximum capacity of ten thousand gallons or less. Containers must be chemically compatible with the material, which is being stored. Such containers can remain in the same location for no more than fourteen consecutive days in any six-month period. Liquid bulk pesticide application tanks directly attached to an apparatus for the purpose of chemigation are exempt from this chapter.

(23) **"Washwater"** means the liquid generated from the rinsing of the exterior of any equipment, containers or secondary containment or operational areas which have or may have come in direct contact with any pesticide.