

WAC 173-303-282 Siting criteria. (1) **Purpose.** This section establishes siting criteria which serve as an initial screen in the consideration of sites for dangerous waste management facilities. The purpose of the siting criteria is to immediately disqualify proposed dangerous waste facility sites in locations considered unsuitable or inappropriate for the management of dangerous wastes. Under RCW 70.105.200 (1)(d), siting criteria cannot prevent existing dangerous waste management facilities from operating at or below their present level of activity.

A proposed site which is not disqualified under these criteria will be further studied to determine if it qualifies under site specific rules. Compliance with the siting criteria does not imply that a given project at a given location poses an acceptable level of risk, nor does it commit the department to the issuance of a dangerous waste permit. Projects that demonstrate compliance with the siting criteria will be subjected to comprehensive environmental and technical review pursuant to applicable laws and regulations before the department makes a final decision on a dangerous waste permit.

The department may deny a permit or require protective measures such as engineering enhancements or increased setback distances from resources in order to ensure protection of human health and the environment.

(2) **Applicability.**

(a) Except as otherwise specifically provided, this section applies to:

- (i) Owners/operators of proposed facilities; and
- (ii) Owners or operators of existing land-based facilities at which an expansion of the land based unit is proposed;
- (iii) Owners or operators of existing incinerators at which an expansion is proposed; and
- (iv) Owners or operators proposing a significant expansion of other existing dangerous waste management facilities not subject to (a)(i), (ii) and (iii) of this subsection, unless the owner/operator can demonstrate to the satisfaction of the department that the proposed expansion will provide a net increase in protection to human health and the environment beyond that which is currently provided at the facility. However, demonstrations under this subsection (iv) must not result in treatment or storage facilities expanding into land-based or incineration facilities if siting criteria cannot be satisfied.

(b) This section does not apply to:

(i) Owners/operators of facilities or portions of facilities who are applying for research, development and demonstration permits, pursuant to section 3005(g) of the Resource Conservation and Recovery Act, codified in 40 C.F.R. Part 270.65 or WAC 173-303-809;

(ii) Owners/operators of facilities operating under an emergency permit pursuant to WAC 173-303-804;

(iii) Persons at facilities conducting on-site cleanup of sites under the Comprehensive Environmental Response Compensation and Liability Act, Sections 3004(u), 3004(v), and 3008(h) of the Resource Conservation and Recovery Act, chapter 70.105 RCW, or chapter 70.105D RCW, provided the cleanup activities are being conducted under a consent decree, agreed order, or enforcement order, or is being conducted by the department or United States Environmental Protection Agency;

(iv) Persons managing solid wastes who become subject to dangerous waste regulations through amendments to this chapter after the effective date of this section. This provision applies only to those ac-

tivities operated in accordance with local, state, and federal requirements and which were being conducted prior to becoming subject to dangerous waste regulations, chapter 173-303 WAC or expansions, if it can be demonstrated to the satisfaction of the department that the proposed expansion of such activities will provide a net increase in protection to human health and the environment beyond that which is currently provided at the facility; or

(v) Owners/operators of facilities who seek to obtain a dangerous waste permit for waste storage and satisfy all of the following:

(A) The facility recycles dangerous waste in a process that is exempt from dangerous waste permitting.

(B) Waste storage is used strictly to support the exempt recycling.

(C) Waste storage is in tanks, containers, or a containment building.

(D) Waste storage is indoors.

(3) **Definitions.** Any terms used in this section that are not defined below have the meanings provided in WAC 173-303-040. For the purposes of this section, the following terms have the described meanings:

(a) "Aquifer of beneficial use" means an aquifer that contains sufficient quality and quantity of water to allow it to be withdrawn for beneficial uses which include, but are not limited to, uses for domestic, stock watering, industrial, commercial, agricultural, irrigation, mining, fish and wildlife maintenance and enhancement, or recreational purposes.

(b) "Displacement" means the relative movement of any two sides of a fault measured in any direction.

(c) "Domestic water use" means any water used for human consumption, other domestic activities or livestock watering for which the department has issued a permit of water right for surface water diversions pursuant to chapter 90.03 RCW, or for a well pursuant to chapter 90.44 RCW, or for which the department has received a well water report pursuant to RCW 18.104.050, or for any other valid water right claimed in accordance with chapter 90.14 RCW. This does not apply to wells abandoned in compliance with chapter 173-160 WAC.

(d) "Existing facility" means a facility which has qualified for interim status under WAC 173-303-805 or for which the department has issued a final facility permit under WAC 173-303-806.

(e) "Expansion" means the enlargement of the land surface area of an existing facility from that described in an interim status permit application or final facility permit, the addition of a new dangerous waste management process, or an increase in overall design capacity of existing dangerous waste management processes at a facility. However, a process or equipment change within the existing handling code (not to include "other") as defined under WAC 173-303-380 (2)(d) will not be considered a new dangerous waste management process.

(f) "Fault" means a fracture along which rocks or soils on one side have been displaced with respect to those on the other side.

(g) "Holocene" means the most recent epoch of the Quaternary period, extending from the end of the Pleistocene to the present.

(h) "Land-based facility" means a dangerous waste management facility which falls under the definition of land disposal as defined in Section 3004(k) of the Resource Conservation and Recovery Act. These facilities use the land as an integral part of their waste management method and include, but are not limited to, landfills, surface impoundments, waste piles, and land treatment facilities. For the purpose

ses of this section, this would not include waste piles in which the dangerous wastes are stored inside or under a structure that provides protection from precipitation and when runoff, leachate, or other types of waste dispersal are not generated under any conditions.

(i) "Nonland based facility" means a facility which does not use the land as an integral part of its waste management method and is not subject to the requirements of WAC 173-303-806 (4)(a)(xxi). These facilities include, but are not limited to, tanks, containers, and incinerators.

(j) "Perennial surface water body" means a surface water body which is normally continuous with natural flows throughout the year or an annually recurring body of water including lakes, rivers, ponds, streams, reservoirs, inland waters, and saltwaters. This does not include roadside ditches or storm drains. However, this definition does apply to irrigation or domestic water supply channels existing, or planned and approved by a governmental agency, at the time an owner/operator submits a notice of intent.

(k) "Preempted facility" means any facility that includes as a significant part of its activities any of the following operations: (i) Landfill; (ii) incineration; (iii) land treatment; (iv) surface impoundment to be closed as a landfill; or (v) waste pile to be closed as a landfill.

(l) "Prime farmland" means the land which has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber or oilseed crops, and is also available for these uses. It has the soil quality, growing season, and moisture supply needed to economically produce sustained high yields of crops when treated and managed, including water management, according to acceptable farming methods. In general, prime farmland has an adequate and dependable water supply from precipitation or irrigation, a favorable temperature and growing season, acceptable acidity or alkalinity, acceptable salt and sodium content, and few or no rocks. It is permeable to water and air. Prime farmland is not excessively erodible or saturated with water for a long period of time, and it either does not flood frequently or is protected from flooding. Prime farmland will be determined by those general and specific criteria as defined in the National Soils Handbook, Soil Conservation Service, United States Department of Agriculture, Washington, D.C. and 7 C.F.R. 2.62. Areas of prime farmland are identified in the most recent county soil survey maps prepared by the National Cooperative Soil Survey.

(m) "Proposed facility" means a facility which has not qualified for interim status under WAC 173-303-805 or for which the department has not issued a final facility permit under WAC 173-303-806.

(n) "Public gathering places" means a place such as a public or private health care or child care facility; an educational institution; a church; a government institution not associated with dangerous waste management; or a retail shopping center.

(o) "Residence" means any dwelling including, but not limited to, private homes, rental homes, boarding houses, apartments, motels, or hotels.

(p) "Significant expansion" means an expansion of an existing facility, operating under interim status or a final status permit, that is considered a class three modification as designated by 40 C.F.R. Parts 270.41 and 270.42. Examples include, but are not limited to, a modification or addition of container units resulting in greater than a twenty-five percent increase in the facility's container storage capacity, storage of different wastes in containers that require addi-

tional or different management practices from those authorized under interim status or by a final status permit, and a modification or addition of tank units resulting in greater than twenty-five percent increase in the facility's capacity. In addition, for the purposes of this section, a significant expansion is a single or cumulative increase of greater than twenty-five percent of the storage design capacity as described in the facility's original Part A permit application, or of the storage capacity approved for the previous significant expansion, whichever is more recent.

(q) "Slope and soil instability" means areas for which there is credible evidence of, or the potential for, landslides, slumps, avalanches, earth or mud flows, or other unsuitable slope conditions.

(r) "Subsidence" means areas for which there is credible evidence of, or potential for, sinking of the land surface. Areas of subsurface mines, caves, cavernous materials, or where there has been significant removal of fluids may provide credible evidence of subsidence.

(s) "Wetland" means land transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. For purposes of this classification a wetland must have one or more of the following three attributes: (i) At least periodically, the land supports predominantly hydrophytes; (ii) the substrate is predominantly undrained hydric soil; and (iii) the substrate is nonsoil and is saturated with water or covered by shallow water at some time during the growing season of each year. The *Joint Federal Methodology for Identifying and Delineating Wetlands* must be used for defining the upland boundary of wetlands.

(4) Implementation.

(a) Submittal of information to demonstrate compliance. Documentation that a proposed facility or expansion site meets the siting criteria must be submitted to the department in the notice of intent.

(b) Consultation by department. The department will consult with the lead local government as defined in WAC 173-303-902 (4)(h) and consider those local land use, building, fire, air quality, and transportation standards to the extent they add to and do not conflict with the requirements of this section. Such consultation and consideration will be made prior to the department's rendering of a tentative decision under subsection (4)(c) of this section.

(c) Response by department. Within sixty days of receipt of a demonstration of compliance, the department will undertake one of the following actions:

(i) Return the demonstration of compliance as incomplete with written comments identifying the need for additional information. The owner or operator may resubmit the demonstration of compliance with complete information; or

(ii) Render a written tentative decision to approve or deny the demonstration of compliance.

(d) Public notice and hearing process. The department in making a tentative decision to approve or deny a demonstration of compliance with this section will take the following actions:

(i) For land-based facilities and incinerators:

(A) The department will publish a notice of its tentative decision in a daily or weekly newspaper of general circulation in the potentially affected area, and will give notice by other reasonable methods to persons potentially affected.

(B) The department will hold a public hearing at a location convenient to the public in the potentially affected area. Notice of the

date, time, purpose, and place of the hearing will be provided in the publication of notice.

(C) The department will accept comments on its tentative decision for a minimum of forty-five days.

(D) After evaluating all public comments the department will make a final decision in accordance with chapter 34.05 RCW. The department will either approve or deny the owner/operator's demonstration of compliance.

(ii) For nonland-based facilities, excluding incinerators:

(A) The department will publish a notice of its tentative decision in a daily or weekly newspaper of general circulation in the potentially affected area, and will give notice by other reasonable methods to persons potentially affected.

(B) Upon the written request of any interested person, the department may hold a public hearing to consider public comments on the owner or operator's demonstration of compliance. A person requesting the hearing must state the issues to be raised and explain why written comments would not suffice. In any case, if ten or more persons request a public hearing on the subject of the department's tentative decision, the department will hold a public hearing for the purpose of receiving comments.

(C) The department will accept comments on its tentative decision for a minimum of forty-five days.

(D) After evaluating all public comments the department will make a final decision in accordance with chapter 34.05 RCW. The department will either approve or deny the owner or operator's demonstration of compliance.

(5) **Appeal of a department decision.** Any person who is adversely affected by a decision of the department under this section may appeal the decision to the pollution control hearings board pursuant to the authority of WAC 173-303-845.

(6) **Criteria for elements of the natural environment.** The following siting criteria establish locations from which facilities are excluded and establish minimum setback distances from identified resources. Unless otherwise stated, setback distances are measured horizontally from the dangerous waste management unit boundary to the identified resource.

These criteria will be used as an initial screening tool in the selection of sites which may be considered by the department for the purpose of managing dangerous waste. A more comprehensive evaluation of locational factors will occur during the department's review of a permit application. The department may deny a permit or impose additional setback distances or other permit requirements if necessary to protect human health and the environment.

(a) Earth. The intent of this subsection is to reduce the potential for the release of dangerous waste into the environment because of structural damage to facilities subject to the hazards identified below. The owner/operator must provide supportive geologic, geotechnical, and soils information.

(i) Seismic risk. All dangerous waste management facilities must be located such that the dangerous waste management unit boundary is located at least five hundred feet from a fault which has had displacement in Holocene times.

(ii) Subsidence. No dangerous waste management facility may be located such that the dangerous waste management unit is within an area of subsidence.

(iii) Slope or soil instability. No dangerous waste management facility may be located such that the dangerous waste management unit is within an area of slope or soil instability, nor in the areas affected by unstable slope or soil conditions.

(b) Air. The intent of this subsection is to reduce the potential for further degradation of air quality in areas currently experiencing air quality impacts.

(i) Incineration facilities may not be located in a Class I area designated in accordance with Section 162 or 164 of the Federal Clean Air Act (under WAC 173-300-030(13)).

(ii) Incineration facilities may not be located in a nonattainment area designated by the department unless compensating emission offset can be achieved.

(iii) Proposed incineration facilities must comply with WAC 173-303-806 (4)(a)(xxii) during the permitting process.

(c) Water. The intent of this subsection is to reduce the potential for contaminating waters of the state in the event of a release of dangerous wastes.

(i) Surface water.

(A) Flood, seiche, and tsunami protection.

(I) No dangerous waste management facility or dangerous waste management unit may be located within the one hundred-year flood plain as indicated in the most current Federal Emergency Management Agency maps.

(II) The owner/operator of a nonland-based facility must identify whether the facility is intended to be located within the five hundred-year flood plain, as indicated in the most current Federal Emergency Management Agency maps. Nonland-based facilities will require special design features so as to prevent flooding of the dangerous waste management unit in the event of a five hundred-year flood.

(III) Land-based facilities may not be located within the five hundred-year flood plain as indicated in the most current Federal Emergency Management Agency maps.

(IV) Dangerous waste management facilities may not be located in areas subject to seiches, or coastal flooding including tsunamis or storm surges as indicated in the most current maps of the National Flood Insurance Program of the Federal Emergency Management Agency.

(B) Perennial surface water bodies.

(I) Nonland-based facilities must be located such that the dangerous waste management unit boundary is at least five hundred feet from a perennial surface water body.

(II) Land-based facilities must be located such that the dangerous waste management unit boundary is at least one-quarter mile from a perennial surface water body.

(C) Surface water supply.

(I) No dangerous waste management facility may be located in a watershed identified in the report submitted to, and approved by, the department of health under the authority of WAC 246-290-135(5), Watershed control.

(II) Nonland-based facilities must be located such that the dangerous waste management unit boundary is at least five hundred feet from the nearest surface water intake for domestic water.

(III) Land-based facilities must be located such that the dangerous waste management unit boundary is at least one-quarter mile from the nearest surface water intake for domestic water.

(ii) Groundwater. To the extent feasible, proponents of land-based facilities should seek sites with natural site characteristics

which are capable of providing protection of groundwater resources. Natural features such as low permeability soils and substrata, relatively simple geologic formations, and high rates of evapotranspiration in relation to the seasonal occurrence of precipitation are preferable for the locations of land-based facilities. Proposed land-based facilities must comply with the contingent groundwater protection program, WAC 173-303-806 (4) (a) (xxi), during the permitting process.

(A) Depth to groundwater.

(I) Nonland-based facilities may not be located in areas where there is less than ten feet vertical separation between the lowest point of the dangerous waste management unit and the seasonal high water level of the uppermost aquifer of beneficial use.

(II) Land-based facilities may not be located in areas where there is less than fifty feet vertical separation between the lowest point of the dangerous waste management unit and the seasonal high water level of the uppermost aquifer of beneficial use.

(B) Sole source aquifer. No land-based facilities may be located over an area designated as a sole source aquifer under section 1424(e) of the Federal Safe Drinking Water Act (P.L. 93-523).

(C) Groundwater management areas. Owners/operators of facilities must identify whether the proposed facility location is within a groundwater management area, as proposed or certified pursuant to RCW 90.44.130. In order to maintain consistency with the purpose and substantive requirements of certified groundwater management area plans, the department may require additional protective measures or reject inconsistent projects.

(D) Groundwater intakes.

(I) Nonland-based facilities must be located such that the dangerous waste management unit boundary is at least five hundred feet from the nearest groundwater intake for domestic water.

(II) Land-based facilities must be located such that the dangerous waste management unit boundary is at least one-quarter mile from the nearest groundwater intake for domestic water.

(E) Special protection areas. Land-based facilities must not be located within groundwater special protection areas designated by ecology under the authority of chapter 90.48 RCW.

(d) Plants and animals: Intent. To reduce the potential for dangerous waste contaminating plant and animal habitat in the event of a release of dangerous wastes.

(i) Nonland-based facilities must be located such that the dangerous waste management unit boundary is at least five hundred feet from the following areas:

(A) Wetlands;

(B) Designated critical habitat, for federally listed threatened or endangered species, as defined by the Endangered Species Act of 1973 (P.L. 93-205);

(C) Habitat designated by the Washington department of wildlife as habitat essential to the maintenance or recovery of any state listed threatened or endangered wildlife species;

(D) Natural areas which are acquired or voluntarily registered or dedicated by the owner under chapter 79.70 RCW, Natural area preserves; and

(E) State or federally designated wildlife refuge, preserve, or bald eagle protection area.

(ii) Land-based facilities must be located such that the dangerous waste management unit boundary is at least one-quarter mile from those areas specified in item (i) above.

(e) Precipitation. The intent of this subsection is to reduce the potential for contaminating waters and soils of the state in the event of a release of dangerous wastes.

Land-based facilities must not be located in areas having a mean annual precipitation level of greater than one hundred inches. The mean annual precipitation map in the U.S. Geological Survey Water-Resources Investigations Report 84-4279 must be used to determine whether a land-based facility is proposed to be located in such an area.

(7) **Criteria for elements of the built environment.** The following siting criteria establish locations from which facilities are excluded or which require separation from identified land uses. Unless otherwise stated, setback distances are measured horizontally from the dangerous waste management unit boundary to the identified land use.

These criteria must be used as an initial screening tool in the selection of sites which may be considered by the department for the purpose of managing dangerous waste. A more comprehensive evaluation of locational factors will occur during the department's review of a permit application. The department may deny a permit or impose additional setback distances or other permit requirements if necessary to protect human health and the environment.

(a) Adjacent land use.

(i) Nonland-based facilities must be located such that the dangerous waste management unit boundary is at least two hundred feet from the nearest point of the facility property line.

(ii) Land-based facilities must be located such that the dangerous waste management unit boundary is at least five hundred feet from the nearest point of the facility property line.

(b) Special land uses.

(i) Wild and scenic rivers. Dangerous waste management facilities must not be located within the viewshed of users on wild and scenic rivers designated by the state or federal government.

(ii) Nonland-based facilities must be located such that the dangerous waste management unit boundary is at least five hundred feet from the following:

(A) State or federally designated park, recreation area, or national monument;

(B) Wilderness area as defined by the Wilderness Act of 1964 (P.L. 88-577); and

(C) Land identified as prime farmland at the time a notice of intent is submitted to the department.

(iii) Land-based facilities must be located such that the dangerous waste management unit boundary is at least one-quarter mile from those land uses specified in item (ii) above.

(c) Residences and public gathering places.

(i) Nonland-based facilities with the exception of incineration facilities must be located such that the dangerous waste management unit boundary is at least five hundred feet from residences or public gathering places.

(ii) Incineration and land-based facilities must be located such that the dangerous waste management unit boundary is at least one-quarter mile from residences or public gathering places.

(d) Land use compatibility. Owners/operators of nonpreempted facilities must conform with local land use zoning designation requirements, as approved by the department under chapter 70.105 RCW.

(e) Archaeological sites and historic sites. No dangerous waste management facility must be located in an archaeological site or historic site designated by the state or federal government.

[Statutory Authority: Chapters 70.105 and 70.105D RCW. WSR 09-14-105 (Order 07-12), § 173-303-282, filed 6/30/09, effective 7/31/09; WSR 98-03-018 (Order 97-03), § 173-303-282, filed 1/12/98, effective 2/12/98; WSR 95-22-008 (Order 94-30), § 173-303-282, filed 10/19/95, effective 11/19/95; WSR 94-01-060 (Order 92-33), § 173-303-282, filed 12/8/93, effective 1/8/94. Statutory Authority: RCW 43.21A.080 and 70.105.210, et seq. WSR 90-20-016, § 173-303-282, filed 9/21/90, effective 10/22/90.]