



Cost Benefit Analysis (CBA)
Least Burden Analysis (LBA)
and

Small Business Economic Impact Statement (SBEIS)
Publication # 05-07-001
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Chapter 173-350 WAC, Solid Waste Handling Standards

This proposed rule amendment will amend the definitions of "Clean soils and clean dredged material", "Contaminated dredged material" and "Contaminated soils". This would have the affect of changing Ecology's approach to managing soils containing contaminants, as set forth in chapter 173-350 WAC, Solid Waste Handling Standards. Numerous stakeholders have expressed concern with the current approach to managing soils containing contaminants.

COSTS

The proposed rule amendment is not expected to have any cost impact to public or private entities and is not expected to have any impact on the environment for the following reasons:

1. In the last two years, the change from the prior language, which is being used in this proposed amendment, has had little impact.¹
2. For purposes of an SBEIS, no small business was affected in the last two years.
3. Significantly, this proposed rule change is intended as a temporary adjustment lasting only a few months, to deal with implementation problems arising from the adoption of the definitions listed above. This proposal is intended to be a very short term measure that will give both Ecology and stakeholders the opportunity to develop and adopt a rule that will avoid the implementation and compliance problems experienced under the current rule.

This proposed rule amendment is intended as a temporary solution to concerns and problems encountered as Ecology attempted to implement the definitions. Ecology expects this proposed amendment to be in effect for a few months. Given the infrequency with which the definitions have been applied and given the expected adoption date of revisions to this proposed rule amendment, it is unlikely that this rule can have any cost impact.

¹ The existing definitions have only been applied to two cases and has not really had an effect in either case:

1. Port Angeles Graving Dock The proponent (WSDOT) wanted to take slightly contaminated soils to a topsoil broker named Shotwell. The local health jurisdiction, with our backing, asked that soils go either to the nearby landfill or to a nearby cleanup site for grading use. WSDOT didn't like our options, which they claimed would cost more (this is a matter of dispute.) We worked with the locals to craft a way whereby soils could go to Shotwell. This caused neither delay nor any additional costs. No small business was affected.

2. Blair Waterway Dredge Material Dredge spoils from a Commencement Bay cleanup were destined for the LRI landfill several miles away. This would have cost the cleanup PRP significant transportation and disposal monies. We worked with the local health department to find an alternate solution. Another Commencement Bay cleanup site at the former Kaiser plant needed soils for grading. Because we had knowledge of the dredge spoils and the Kaiser site, we quickly concluded that the dredge material would be suitable for use at the Kaiser site. This saved costs. However there is flexibility on cleanups and the cost savings may have resulted in some other way. Further for purposes of an SBEIS no small business was affected.

The proposed rule is expected to be adopted in March of 2005.

Ecology expects to submit a CR101 at the time of the February hearings, a CR102 with a proposed revision addressing the problems previously encountered by mid March of 2005, and a CR103 adopting the final solution in June of 2005. This change is expected to deal with any potential in-congruency between definitions from WAC 173-350-100 and WAC 173-304-100

Given that the rule is unlikely to have a cost impact at all, the likelihood of having an impact on a small business is then extremely small. Thus no ratios can be constructed for the SBEIS. Further Ecology will soon (spring 2005) revise the soil standards. This process will include an SBEIS and full cost benefit analysis.

BENEFITS

This proposed rule amendment is intended to reduce the burden of uncertainty for individuals, companies, and public sector entities involved in soil movement or dredging. The shift from the definitions of two years ago, to the current definitions and finally to the permanent definitions, and the potential for a discrepancy between definitions in 173-304 and 173-350, could create unnecessary confusion in the planning of both normal soil movement and cleanups. Thus this proposed rule amendment could constitute a cost reducing feature under RCW 19.85 and a lowering of burden under RCW 34.05.328.

The benefit of this rule amendment is that individuals and companies will be able to move forward in planning their work in the way that they are accustomed to doing soil movement, dredging, and cleanup without having to change their planned compliance activities twice.

This proposed rule reverts to the definitions that were in place two years ago before the current definitions were adopted. The proposed definitions are comparable to the definitions that have been in effect in WAC 173- 304-100 since 1985.

Given that the definitions being revised have not affected the environment over the last two years and given that the proposed rule amendment is expected to be temporary, it is unlikely that there will be any environmental impact. There may be some potential that reduced confusion will allow cleanup planning to proceed more quickly, thus benefiting the environment.

We will begin a second rule making in the spring of 2005 to address soils management. In that revision, we will include topsoil brokers, contractors, and landscapers. These are the majority of impacted small businesses working with soils. If other small businesses are identified, we will attempt to work with them as well.



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