



July 6, 2017

Ms. Tami Ramsey  
Department of Ecology  
Waste 2 Resources Program  
PO Box 47600 Olympia, WA 98504-7600

**RE: Comments on proposed revisions to the rules in Chapter 173-312 WAC, “Coordinated Prevention Grants,” and Chapter 173-313 WAC, “Local Solid Waste Enforcement Grant Regulation.”**

Dear Ms. Ramsey,

The Washington Association of County Solid Waste Managers (WACSWM) is an association of all the county solid waste departments of the state. We are an affiliate of the Washington State Association of Counties (WSAC), chartered by local elected officials to fulfill the following roles:

- Create a forum for appointed county officials who oversee solid waste operations to interact, discuss, engage and recommend policy positions to WSAC.
- Provide collective voice for local solid waste officials in Washington State.
- Advocate for a strong, effective and efficient solid waste system throughout Washington State.
- Provide advice and guidance to WSAC members on solid waste issues.

On behalf of WACSWM members, we provide the following as our formal comments regarding this rule update.

***In a letter dated May 18, 2017 we requested a delay in this rule update and we stated the following reasons:***

1. The CPG distribution allocation should remain as it is currently. Leave the base amount for implementation at \$100,000.00 dollars and the ratio split between implementation and enforcement at 80% / 20%.
2. We have concerns with the performance penalties associated with the additional performance criteria being proposed for the rule update.
3. We have concerns with the timelines involved with a potential state shut down, rule update in the middle of the grant application cycle and the proposed performance penalties.

Ecology declined to delay the rulemaking process and we again request you stop the rulemaking process and consider the impacts of the changes currently proposed. In short, the proposed rule is the product of an inadequate stakeholder outreach process, inappropriately relies on “guidelines” and funding formulas that have yet to be published, and will harm local governments’ ability to fulfill responsibilities assigned in Chapter 70.95 RCW.

This proposed rule revision creates an unbalanced approach between prevention/implementation and enforcement. Effective pollution prevention and implementation systems are necessary to prevent or minimize environmental contamination by hazardous and solid waste. Funding for planning, implementing and collecting of these waste streams is the largest share to prevent the need for more costly cleanups. Yet the proposed changes will create real and lasting harm to local governments’ abilities to provide hazardous and solid waste programs. See the comments below on Section 173-312.

Section 173-312-050 (5) mentions that eligibility of programs could be subject to “guidelines” not yet determined. Ecology staff has said that the guidelines are in progress and they plan to bring stakeholders in to the process in July to roll the guidelines out by the adoption date of the rule in August. Guidelines can lay out details of the process, but not set further regulatory requirements. Stating otherwise, as in section 173-312-050 (5) is simply inappropriate. The Department has a responsibility to publicize the full set of eligibility and evaluation requirements in advance, accept public comment, and include only vetted requirements in a revised draft of the rule.

Likewise, section 173-312-070 raises a similar concern, allowing the Department to set application approval and funding priority criteria in the guidelines. Guidelines cannot be de facto rules; and regulatory criteria or requirements must be in rule, not guidelines.

Section 173-312-080 changes the allocation of funds. In 2(a) “or an amount equal to the total sum of seventy-five thousand dollars per jurisdictional health department, whichever is greater.” This proposal creates an imbalance in the levels of funding needed to sustain any type of implementation program. This language would likely prove unnecessary when larger funding levels are appropriated by the legislature; when lower funding levels are under consideration, such as the 2017-2019 budget, it creates harm to the implementation side yet no cut to the enforcement side. When asked to provide a jurisdiction-by-jurisdiction funding table to better allow local governments to review and comment on the impact of Section 173-312-080, Ecology staff refused.

Additionally, a threshold dollar amount for a low funding biennium is not identified in the rule. It is only found in the Preliminary Regulatory Analyses, Publication 17-07-009, set at \$14.625 million. It should also be noted that the Analyses is silent on the impact the proposed funding allocation will have on local government agencies other than health departments. As you are aware, local governments are required to plan and implement solid waste, recycling and hazardous waste programs. The Analyses only addresses the benefits of the proposed rule change in providing sufficient funding to jurisdictional health departments. It does not discuss, or even contemplate how reduced funding issues to local government will be result in program reductions, or their elimination altogether with this new financial schema.

***Lacking anything in writing and based solely on Ecology staff verbal representations, county governments believe the following represents the disproportionate impact of this rule on local government agencies in light of the anticipated \$10 million allocation in the 17-19 biennium.***

**Allocation comparison:**

2013-2015 implementation \$22,592,000

2015-2017 implementation \$12,000,000 (a 47% cut from 2013-2015)

2017-2019 implementation \$7,000,000 (proposed) (a 42% cut from 2015-2017)

Net cut from 2013-2015: 69 percent

2013-2015 enforcement \$5,648,000

2015-2017 enforcement \$3,000,000 (a 47% cut from 2013-2015)

2017-2019 enforcement \$3,000,000 (proposed) (a 0% cut from 2015-2017)

Net cut from 2013 – 2015: 47% cut

Also in section 173-312-080 is new language on performance requirements. See subsection (3), “will develop criteria to evaluate a recipient’s performance during a biennium and may reduce their award in the next biennium by ten percent”. These performance requirements do not have criteria laid out in the rule draft, again waiting on pending guidelines. These performance requirements will have a fiscal penalty attached to them and criteria should be laid out in rule, not agency guidelines. Guidelines do not have the same level of public participation and scrutiny as rulemaking. Criteria that has a fiscal impact on a jurisdiction must be stated clearly in rule. Additionally, there is no appeal process identified in the rule for a funding reduction to a local government. It is also unclear when said funding reductions would be

reinstated and to what amount for future biennia.

Section 173-312-100 also references guidelines “that may be more stringent.” For the reasons stated above, we oppose regulations not clearly specified in rule.

Given the degree of technical changes, and the impacts of the funding changes, we reiterate that this rule update process should be stopped and take the time to readdress these concerns before the next biennia grant cycle.

Rulemaking is a separate process than the grant funding and should be decoupled from delays to the current funding cycle.

Guidelines should be fully vetted with all stakeholders in a transparent and unbiased manner. This will allow local governments and local elected officials an opportunity to understand the financial impacts and “guideline requirements” before the draft rule language is finalized.

Please consider our request and reply with your decision.

Regards,



Brenda Blanchfield, Chelan County  
WACSWM Co-Chair



Stephen C. Wamback, Pierce County  
WACSWM Co-Chair

cc: Maia Bellon, Director, Department of Ecology  
Laurie Davies, Waste 2 Resources, Department of Ecology  
Eric Johnson, Executive Director, Washington State Association of Counties  
WACSWM Members