



July 7, 2017

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

Subject: **Comments on Chapter 173-312 and 173-313 WAC Rulemaking**

Dear Ms. Ramsey:

The Pierce County Planning and Public Works Department reviewed the proposed changes to Chapters 173-312 and 173-313 WAC. We concur with the comments provided by the Washington Association of County Solid Waste Managers (WACSWM) and the Washington State Association of Counties (WSAC). Along with those organizations, we request that the Department of Ecology immediately cease work on this rulemaking.

The current rulemaking process has failed and harmed Pierce County and other stakeholders:

1. **Release and review has been poorly timed.** Without a doubt, both sections of the WAC needed updating. The last comprehensive update to Chapter 173-312 was in 2002; for Chapter 173-313 it was 1989. Much has changed in that time and much is still changing.

Ecology filed the CR-102 on May 22, 2017 in the midst of the most contentious budget cycle this state has experienced. At the time of filing, Ecology and stakeholders knew funding for any grants would not come until the legislature adopted an operating budget responsive to *McCleary* and a capital budget responsive to *Hirst*. As of July 7, we are still waiting on the latter.

Throughout the multiple sessions of the Legislature, proposals to maintain funding at the current level, or restoring funding to historic levels, floated, and died. The alternative still on the table will result in an additional twenty percent cut to grants from the 15-17 biennium, following the nearly fifty percent cut from the 13-15 biennium.

Going forward with a rulemaking that results in further cuts to solid and hazardous waste management programs while at the same time proposing new compliance requirements, is ill timed.

2. **Stakeholder outreach was, at best, inconsistent; and at worst, biased.** Counties are the responsible lead agencies for preparing solid waste management plans required under Chapter 70.95 RCW. Counties, with cities and towns, hold "primary responsibility for solid waste management and to develop and implement aggressive and effective waste reduction and source separation strategies. [RCW 70.95.010 (6) (c)] Jurisdictional Health Departments (JHD) are important partners, but do not share in this lead role EXCEPT where county elected officials have delegated the JHD as lead planning agency (e.g. Clark County and Whatcom County).

Whether the stakeholder process for this rulemaking exhibited simple inconsistency or outright bias is likely open to debate. Clearly, the Ecology – JHD relationship is different from the Ecology – Solid Waste Management/Operating Agency relationship. Ecology and the JHDs share a common root in the delegation of federal regulatory authority and often work together to achieve regulatory outcomes. In contrast, Ecology and management/operating agencies often compete on policy and budgetary matters where local initiatives may not be reflective of Ecology’s statewide perspective.

These differences are OK, and in fact, healthy, as long as all parties guard themselves against allowing comfortable working relationships to evolve into policy-making bias. That happened in this rulemaking. Section 173-312-080 ensures that JHDs receive “not less than twenty percent of the total allocation available each biennium for local solid waste financial assistance or an amount equal to the total sum of seventy-five thousand dollars per county, whichever is greater” sounds like it is preserving the traditional 80/20 split. Any legislative appropriation less than \$14,625,000 – including the current \$10,000,000 proposal – results in Ecology taking implementation dollars from solid waste agencies and giving those to JHDs.

A further example of bias is evident in the interplay between the funding allocation in the section 173-312-080 and the project eligibility requirements listed in section 173-312-050 (2). The funding section guarantees the enforcement grant for JHD use, even when a county legislative authority has affirmatively assigned one or more of the responsibilities listed in 173-312-050 (2) to a county department other than the JHD.

3. **Ecology “moved the goalposts.”** Prior to releasing the CR-102, Ecology prepared and shared charts with grant allocation options. Local governments reviewed and commented through WACSWM and WSAC, arguing in favor of an 80/20 split between implementation programs and enforcement programs.

At the June 20 WACSWM meeting, Peter Lyon confirmed that Ecology’s intent to provide floor funding of \$75,000 per county for JHD purposes would result in an effective split of 70.75/29.25. Ecology would not prepare and share a new allocation chart to show, in the most transparent way possible, the impact this change would have on each county and agency. After decades of splitting the grant 80/20, this was a shock.

In the same vein, sections such as 173-312-050 (5) refer to guidelines which are yet unpublished and which, if taken at the word of what is drafted in the WAC, would have the force of law in guiding how Ecology would choose to allocate grant dollars and review performance:

Please do not misunderstand: performance measures are a good thing! It is both appropriate and necessary that Ecology and all grant recipients demonstrate they are spending public dollars in the most effective and efficient manner. Ecology has a responsibility to publish those performance measures as part of, and not separate from, the WAC.

- 4. The funding scheme disrespects the authority of local elected officials.** As cited above, Chapter 70.95 RCW grants to local governments the responsibility and authority to design and manage its solid waste system. RCW 70.95.160 and Chapter 36.58 RCW provide explicit authority for the county to adopt a host of system implementation regulations. In Pierce County, the County Executive and County Council determined that the Planning and Public Works Department – already the lead solid waste management agency – would be a better home for solid waste enforcement.

Effective January 1, 2017, enforcement of complaints about illegal dumping, improper storage and other nuisance accumulations of solid waste, including those at “facilities” (both permitted and permit-exempt) are the responsibility of Pierce County Planning and Public Works rather than the JHD. Through its development regulations and nuisance code, Pierce County has restricted the number, location and impact of solid waste/recycling facilities consistent with direction from the public we serve. Moreover, through its interagency funding partnership with the JHD, Planning and Public Works serves as the sole and final arbiter as to which facilities are compliant with the Tacoma-Pierce County Solid Waste Management Plan, and therefore eligible to receive a solid waste handling permit or be considered permit-exempt.

By reassigning traditional JHD functions, Pierce County’s elected officials have demonstrated leadership consolidating services to the benefit the community. Large and small counties across Washington are likewise reorganizing and shifting functions to eliminate silos. When solid waste management agencies are assigned enforcement roles, they should be eligible to receive the enforcement grant.

The Department of Ecology should be helping, not hindering, this move to efficiency and greater effectiveness. The WAC, as proposed, undermines local government authority and is patently unfair. As discussed in detail in the WSAC letter, county elected officials, not the Department of Ecology, should be the final arbiter for allocating grant dollars between functions. The WAC should not cement into regulation a division of authority rejected by an increasing number of local governments. The WAC should not guarantee funds to JHDs for services they do not provide.

Chapters 173-312 and 173-313 need updating, but not in the manner proposed. Pierce County Planning and Public Works recommends four next steps to mitigate the harm and bias present in the final draft:

1. **Decouple** the rulemaking process from this biennium’s grant cycle. Do not adopt this rule as drafted.
2. **Provide an effective, unbiased, stakeholder process.** We recommend that Ecology contract with the Washington State Association of Counties to manage stakeholder engagement. WSAC is the parent organization for the associations representing county solid waste managers (WACSWM) and county health departments (WSALPHO). WSAC maintains effective working relationships with other public and private sector stakeholders involved with solid waste management. Moreover, WSAC has demonstrated success in providing a similar role to other state agencies.

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3. **Commit to transparency.** Withholding public release of allocation charts and guidelines until after the close of the comment period has been troubling and cannot be repeated.
4. **Discuss alternatives.** The WSAC letter addresses allowing each county to allocate its share of grant dollars between enforcement and implementation commensurate with the needs of the county. There are other alternatives as well. Earlier this year, for example, WSAC spoke to the Legislature about copying the "direct distribution" methodology successfully used by the Washington Department of Health in the allocation of public health dollars. Any of these – and more – would support the goal of WAC 173-312-010 "to prevent or minimize environmental contamination."

Pierce County encourages Ecology to remain true to the goals and purposes of Chapter 70.95 RCW, WAC 173-312, WAC 173-313 and the Model Toxics Control Act. The proposed amendments to Chapter 173-312 and 173-313 break faith with those goals and must not be implemented.

Respectfully,



Stephen C. Wamback, MPA PWLF

Sustainable Resources Division Administrator

ec: WACSWM co-chair and leadership team
WSAC (Laura Berg, Eric Johnson)