

March 19, 2018

Mr. Kyle Dorsey
Rules and Policy Specialist
Waste 2 Resources Program
Washington State Department of Ecology
PO Box 47600
Olympia, WA 98504-7600

RE: Comments Concerning Proposed Revisions to Chapter 173-350 WAC

Dear Mr. Dorsey,

We submit our comments for the proposed revisions of the Chapter 173-350 WAC regulation (proposed regulation) addressing solid waste in the State of Washington. The Port of Tacoma (Port) integrates the values of environmental stewardship, sustainable practices, and operational efficiency into all aspects of our organization. We reviewed the proposed regulation draft closely with these values in mind, and offer comments regarding the sections that potentially apply to temporary stockpiles of pavement rubble, contaminated soil, and contaminated dredged material used in development activities. We understand that at the CR-102 rule proposal phase, formal comments are needed to consider clarification to the rule. Accordingly, the Port offers comments on proposed revisions that we believe merit clarification, and comments on topics where the Port understood changes were planned that were not included in the proposed regulation.

Background

Port representatives met with the Washington State Department of Ecology (Ecology) in September 2017 regarding options to eliminate unnecessary permitting requirements, control the cost of operations, and increase efficiency of the likely process that would be imposed related to temporary stockpiles of contaminated soil, contaminated dredged materials, and paving demolition materials under the revised draft of WAC 173-350. The Port expressed concern to Ecology that the regulation, as written in the September 2017 draft, would require that construction projects with temporary stockpiles of pavement rubble, contaminated soil, and contaminated dredged material obtain a solid waste facility permit. Ecology stated that it was not the intent of the proposed regulation to regulate public and private infrastructure projects as solid waste facilities.

Unnecessary Regulation of Construction Stockpiles as Solid Waste

During the September 2017 meeting, Port representatives described how commercial and industrial infrastructure development projects temporarily stockpile import and export materials. Some stockpiled materials, especially in industrial and urban areas, could meet the new definitions of contaminated soil and contaminated dredged material in WAC 173-350-100 and/or inert waste in WAC 173-350-410(1). These development projects provide excellent

opportunities to contain and beneficially reuse materials that might otherwise be landfilled. For large infrastructure projects, the temporary stockpiles would often exist longer than the 90-day permit exemption limit offered in Table 320-A.

The Port offered a solution consistent with existing state regulations so that construction projects would not require solid waste facility permits. Most construction activities with temporary stockpiles were commonly also covered by applicable National Pollution Discharge Elimination System (NPDES) permits. These permits require environmental management, active monitoring, and reporting of conditions. The Port suggested that temporary stockpiles managed under applicable NPDES permits be exempt from solid waste facility regulation. The Port understood, based on the meeting, that Ecology agreed and would include an exemption to the requirement for solid waste permitting for activities with applicable NPDES permits.

Opportunities for Clarification

Section 020, Applicability. The Applicability Section (WAC 173-350-020[2]), is one of the sections that is consulted to determine if the proposed regulation applies to temporary stockpiles of potentially contaminated soil, contaminated dredged materials, and pavement rubble. Section WAC 020(2)(y) states that the proposed regulation does not apply to *“contaminated soil, as defined in WAC 173-350-100, placed at or near the location of generation within a project site.”*

- The Port understands that Ecology’s intent in Section 020(2)(y) is to exclude construction stockpiles. Port discussions in March 2018 with Ecology confirm that Section 020(2)(y), as currently written, would still apply to many temporary stockpiles associated with construction projects.
- The terms “project site” and “near,” used in section 020(2)(y), are not defined in WAC 173-350-100. This lack of clarity raises uncertainty related to how project boundaries are defined and movement of contaminated material. This uncertainty will result in increased costs to project owners, real estate buyers and sellers, and contractors as they seek to manage the associated liability.
- As noted below, the Port offers a clarification that may serve to address Ecology’s intent not to regulate construction soil stockpiles.

Section 320, Table 320-A, items 4 and 5. Section 320 addresses piles (of solid waste) used for storage or treatment. Portions of this section, as written, apply to temporary stockpiles of contaminated soil and/or contaminated dredged materials used for construction.

- The section currently treats contaminated soil and dredged material stockpiles differently from piles of Portland cement concrete and asphalt. We encourage Ecology to include a clarification or to include an exemption to solid waste permitting requirements for stockpiles as noted below. This suggestion follows the approach for Portland cement concrete and asphalt paving stockpiles in Section 320, Table 320 A, Item 4.
- The volume, storage time, and capacity column entry in Table 320-A item 5 states “no volume limit.” While this would allow very large piles, which is important, it includes no lower limit for contaminated soil or contaminated dredged material piles.

Suggested Clarification

The Port requests that Ecology include clarification or revision to the regulation to address concerns identified above. The Port offers clarification wording for Ecology's consideration that would:

- a.) confirm that the regulation does not apply to construction-related contaminated soil and contaminated dredged materials stockpiles (Section 020);
- b.) exempt temporary material stockpiles from regulation (Section 320) from construction activities on properties covered by an applicable NPDES permit; and
- c.) better define selected terms.

Suggested clarifications offered by the Port related to project stockpiles are:

- In Section WAC 173-350-020(2)(y) add a phrase following "...within a project site" to the effect of "...or stored at a location addressed by an appropriate National Pollution Discharge Elimination System (NPDES) permit and identified in a Construction Stormwater Pollution Prevention Plan (SWPPP) prepared pursuant to Construction Stormwater NPDES Permit requirements."
- In section 020(2)(y) the terms "project site" and "near" introduces uncertainty regarding what is acceptable. If the clarification to allow stockpiles to be managed under an applicable NPDES permit is included by Ecology, the "project site" would be defined specifically by the NPDES SWPPP, and "near" would not be needed.
- In Section 320, include an exemption to solid waste permitting requirements for contaminated soil and sediment stockpiles that are managed within boundaries as defined in a Construction SWPPP prepared pursuant to Construction Stormwater NPDES Permit requirements. This exemption could be included in Table 320-A Item 5. The exemption would function similarly to the exemption afforded temporary stockpiles of Portland cement concrete and asphalt under Table 320-A item 4.
- We suggest Ecology specify the applicable volume for contaminated soil and dredged materials with a lower volume limit such as "more than 250 cubic yards" as included in Table 320-A items 3 and 4.

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Thank you for considering our comments. You are welcome to contact me if you wish to discuss these suggestions.

Sincerely,



Tony Warfield
Senior Manager, Port of Tacoma