



**Snohomish County**

**Public Works**

March 20, 2018

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Kyle Dorsey  
Statewide Resources Section  
Waste 2 Resources Program  
Washington State Department of Ecology  
PO Box 47600  
Olympia, WA 98504-7600

**Dave Somers**  
*County Executive*

Re: Chapter 173-350 WAC – Solid Waste Handling Standards proposed rule

Dear Mr. Dorsey:

Snohomish County (County) appreciates the opportunity to comment on the 173-350 WAC – Solid Waste Handling Standards proposed rule (proposed rule). The County supports the purpose of the Washington State Department of Ecology (Ecology) in this rulemaking process to establish a comprehensive statewide program for solid waste handling, and solid waste recovery and/or recycling which will prevent land, air, and water pollution and conserve the natural, economic, and energy resources of this state. At this time the County has concluded that the proposed rule falls short of providing sufficient clarity to the regulated community; and impacts of the proposed rule are not analyzed in the Preliminary Regulatory Analysis or State Environmental Policy Act (SEPA) documentation. The County respectfully requests:

- Ecology provide clarity to the proposed rule and undergo an additional round of public review and comment, and
- Ecology consider the impacts of the proposed rule on agencies that manage transportation infrastructure and municipal separate storm sewer systems. Ecology should consider the impact of regulating materials that are not currently regulated under the Solid Waste Handling Standards or as a hazardous substance under the Model Toxics Control Act - Cleanup.

Please refer to the comments submitted by the County Road Maintenance Division for further information on the above concerns as well as additional remarks on the proposed rule. If you have questions, please contact Natalie Seitz at [natalie.seitz@snoco.org](mailto:natalie.seitz@snoco.org) or by phone at 425-388-7558. The County looks forward to working with Ecology to ensure that materials generated from regular maintenance of transportation infrastructure and the municipal separate storm sewer system are managed in a way that prevents pollution and conserves the natural and economic resources of the County.

Sincerely,

Douglas W. McCormick, P.E.  
Deputy Director/County Engineer

cc: Ken Klein, Executive Director  
Steven Thomsen, P.E., Public Works Director

WAC 173-350 Proposed Rule, Letter for Executive Signature – Supporting Information

This document contains a high-level summary of Road Maintenance Division major comments on the WAC 173-350 Solid Waste Handling Standards proposed rule.

1. **The proposed rule would reduce the County's ability to comply with the underlying statute.** The Revised Code of Washington 70.95 generally prioritizes recycling above disposal,<sup>1</sup> and specifically requires the department of transportation and certain government entities to reuse construction aggregate and recycled concrete.<sup>2</sup> The proposed rule would impact (lower) the County's ability to reuse engineered soil and construction aggregate, and increase the costs of awarding contracts that stipulate reuse of these materials.
2. **It is unclear how engineered soil would be regulated.** The proposed rule identifies engineered soil as excluded from the rule in the applicability section, however engineered soil is included as an example of contaminated soil in the definitions section. If engineered soil is regulated as interpreted from the proposed rule, then it would impact the reuse of materials from the demolition of concrete-based transportation infrastructure.
3. **The proposed rule would disrupt the reuse market.** The proposed rule would require soil testing levels to be set through scoping process under the Model Toxics Control Act – Cleanup (MTCA, WAC 173-340) at the site materials are deposited<sup>3</sup>. Therefore a specific reuse site must be known at the time of soil excavation. It is unclear how the reuse market could function if the end deposit site is unknown at the time materials enter the market.
4. **It is unclear how the proposed rule would be implemented.** The proposed rule would require soil testing levels to be set through a MTCA scoping process. Soil testing levels would be used to determine if excavated materials are "clean" versus "contaminated." However all scoping processes under MTCA require a terrestrial ecological evaluation for contaminated soil. Therefore the regulated community would first have to determine if a soil is clean or contaminated before performing the scoping process for the end disposal site.
5. **The proposed rule would increase costs for maintenance of the road network and Municipal Separate Storm Sewer System.** In general, street wastes would change from being considered a clean soil under the current regulation to a contaminated soil under the proposed rule. The proposed rule would also require a significant increase in soil testing and changes to the reuse market (see comments 2-4). It is anticipated that the proposed rule would result in increased costs associated with: additional permits, structural improvements, testing, record keeping, staff to determine cleanup levels, staff and equipment to manage soils, and cost of contaminated soil disposal. It is also anticipated that costs would be associated with testing and handling materials that would not meet proposed standards for contaminated soils.
6. **Ecology has not met requirements under the Administrative Procedures Act.** Ecology is required to determine that the probable benefits of the rule are greater than its probable costs.<sup>4</sup> However Ecology has not included costs to agencies that manage transportation infrastructure or the municipal separate storm sewer system in the Preliminary Regulatory Analysis or State Environmental Policy Act documentation.

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<sup>1</sup> RCW 70.95.010 *paraphrased*

<sup>2</sup> RCW 70.95.805 *paraphrased*

<sup>3</sup> Soils from transportation infrastructure and the built environment are assumed to have been subject to a release based on coordination with Department of Ecology staff.

<sup>4</sup> RCW 34.05.328 (d)