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March 20, 2018

BY EMAIL

Kyle Dorsey (w2rrulemaking@ecy.wa.gov)
Washington Department of Ecology
PO Box 47600
Olympia, WA 98504-7600

Re: Comments on Solid Waste Rulemaking

Dear Mr. Dorsey:

Longview Fibre Paper and Packaging, Inc. dba KapStone Kraft Paper Corporation ("KapStone") has reviewed the draft rules that are currently on public comment. KapStone operates an integrated pulp and paper mill in Longview, WA. The mill has operated on this site for over 90 years utilizing a mix of virgin and recycled fiber to produce containerboard and specialty paper. As part of the company's efforts to minimize its environmental footprint, KapStone supplements its fossil fuels with carbon neutral biomass, in the form of conventional hogged wood (hog fuel), Paper Recycling Residuals (referred to as PRR or OCC rejects) and recovered fiber (wastewater treatment sludge). KapStone also moves various materials in and out of processes to enable optimal operation and to minimize raw material usage. We recognize that there is a need for regulation to ensure proper waste management. However, we are concerned about the potential for the proposed regulations to be misinterpreted to encompass process materials such as those listed above that are part of the essence of our manufacturing process and are definitively not solid waste. Therefore, we respectfully submit the following comments.

WAC 173-350-021

A key concern for KapStone is the lack of clarity in defining what constitutes a solid waste. Inherent to the concept of a material constituting a waste is whether it has been discarded, abandoned or disposed of. This concept is well stated in proposed WAC 173-350-021(2)(a). However, the introductory language to proposed WAC 173-350-021(2) states that a material is a solid waste if it meets *any* of the criteria in the proposed rule (i.e., (2)(a) through (2)(g)). This language deviates from the intent of RCW 70.95.030 in that it potentially expands the scope of what is considered solid waste. One could read (b) through (g) to all be subsets of (a) or examples of (a). In other words a material "that has been permanently placed in or on the land" (the language in (b)) has necessarily been disposed of, a material that has been "placed on the land for beneficial use" has necessarily been disposed of (the language in (c)), a material that has been collected through a solid waste collection program has necessarily been disposed of (the language in (d)), etc. Conversely, none of these materials have become wastes unless or until they have been

discarded, abandoned or disposed of. Therefore, we request that proposed WAC 173-350-021(2) be revised to read:

(2) **A material is a solid waste if it meets any of the criteria in (a) through ~~(g)~~** of this subsection:

(a) The material has been discarded, abandoned, or disposed of including, but not limited to, the following activities:

~~(b)~~ The material has been permanently placed in or on land for the purpose of disposal;

~~(c)~~ The material is a by-product generated from the manufacturing or processing of a product, and is placed on the land for beneficial use;

~~(d)~~ The material has been collected through residential or commercial solid waste or recyclable material collection;

~~(e)~~ The material has been received at a solid waste handling facility;

~~(f)~~ The generator has paid for or will need to pay for removal or processing of the material for solid waste recycling, storage, incineration, or landfilling; or

~~(g)~~ The material has been stockpiled for recycling, reuse, or use after recycling, but no market is available and stockpiles provide vector attraction or harborage, or release pollutants into the environment in violation of other human health or environmental rules and regulations.

We recognize in making this comment that in the second response to comments document for the preliminary draft rules, Ecology stated:

The definition of "wood waste" in WAC 173-350-100 has been amended to remove the term "hogged fuel" to acknowledge that this material by its nature is a commodity and not a solid waste. Note that producers may be solid waste handlers (recyclers), but the hogged fuel produced is a marketable product. This should address the issue of Table 240 as related to "wood waste". Proposed section 021 will help determine whether other materials still listed as "wood waste" or "wood derived fuel" are solid waste. If processed (recycled) to specifications and managed as a valuable commodity, process materials would not likely be viewed as solid waste.

We appreciate the clarification that hogged fuel is not a solid waste but request that this clarification be carried into the rule language itself. We also request that it be clarified in 173-350-100 that the distinction between "wood waste" and "hogged fuel" is that wood waste is biomass that is discarded, abandoned or disposed of. Sawdust, chips, shavings, and bark, to name a few, are valuable commodities for which good money is paid. They are not routinely discarded, abandoned or disposed of. If they are discarded, abandoned or disposed, we recognize the potential for them to be regulated as solid waste. However, if they are not discarded, abandoned or disposed of, there is no authority to regulate them as solid waste. In the second response to comments document for the preliminary draft rules, there is the following statement:

Question: Does Table 320-A include all mills and boilers using wood waste as fuel, since they are not exempted in the applicability section?

Response: We anticipate that wood waste recycled into hogged fuel will fall out of the rule under new section 021. Storage of wood waste prior to conversion into hog fuel is subject to the piles section.

We strongly recommend that Ecology revise this statement and clarify the rules accordingly. The response to the question indicates a misunderstanding about the nature of hog fuel and hog fuel markets. Hogging is simply a process to ensure that the wood fuel is properly sized for a particular boiler. If wood fuel has been sold to a mill and is yet to be hogged, that is no indication that the wood fuel is a waste. To the contrary, this is a valuable product in commerce. If biomass has been discarded, abandoned or disposed of, and processing is necessary to return it to commodity status, then it might be appropriate to classify its storage as subject to solid waste permitting. However, where valuable fuel is delivered to a mill site and is awaiting hogging to properly size the fuel, there is no basis in law to subject that material to solid waste regulation. We request that the draft rules be revised to specifically clarify this fact.

We also request clarification in the rule itself that materials like PRR, which could be never discarded, abandoned or disposed of, and therefore not solid wastes. These are valuable fiber sources which are a component of purchased materials and a valuable source of heat input. If they are never discarded, abandoned or disposed of, they cannot be considered waste. We request that the draft rules be revised to specifically clarify that materials which are never discarded, abandoned or disposed of, are not solid wastes.

Similarly, the contents of our lime kiln are removed when the unit is taken down for maintenance. That partially calcined material is never discarded, abandoned or disposed of, and is returned to the kiln to complete the calcination process as soon as maintenance is complete. We request that the draft rules be revised to specifically clarify that materials which are never discarded, abandoned or disposed of, are not solid wastes.

Alternatively, we would appreciate clarification in response to our comments that materials such as those described above would not be considered solid wastes so long as they are used in the normal scope of our manufacturing process in the manner they have been used without issue for decades. RCW 70.95.030 defines the scope of Ecology's regulatory authority and that authority does not extend to regulating process materials and valuable fuels which are never discarded, abandoned or disposed of.

Wastewater Treatment Sludge

We are concerned about the suggestion in the proposed rule language that wastewater treatment sludge which is being actively managed and returned to the process is a waste. In the second response to comment document for the preliminary draft rules, Ecology states the following:

Pulp waste (wastewater treatment sludge) remains solid waste for purposes of this section. Table 240 remains appropriate for combustion units burning material that is not suitably processed, and for wastewater treatment sludge.

We agree with this comment to the extent that pulp waste must be managed as a solid waste. However, it would be relatively rare for our wastewater treatment sludge to be managed as a waste. Wastewater treatment sludge is overwhelmingly fiber that is too short to be used in the pulp making process. However, this fiber is still good wood fiber that we have paid for and wish to put to good use. An inherent part of our process is to take that

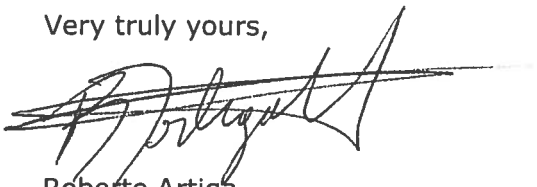
fiber and manage it akin to our hog fuel. Specifically, the fiber is returned to the process in the form of fuel for our hogged fuel boiler. Were we to decide to manage the sludge as waste, we recognize that it would be subject to solid waste regulation. However, there is no basis under the definition of "solid waste" found in RCW 70.95.030 to regulate that this useful material as a solid waste when it is being used within the process as described here. We appreciate that the proposed Table 240-A exempts wastewater treatment sludge generated from the manufacturing of wood pulp or paper, but the exemption presumes that actively managed sludge is a solid waste which is fundamentally inaccurate. We request that the rules be revised to clarify that wastewater treatment sludge generated from the manufacturing of wood pulp or paper that is actively managed within the process as a fuel is not solid waste.

Compliance with SEPA

It is imperative that the final rules be clear that materials which are never discarded, abandoned or disposed of, are not solid wastes. The Washington legislature has clarified the importance of the continued use of biomass materials such as those discussed above to reducing greenhouse gas emissions and combating climate change. The proposed regulations appear to change the manner in which such materials are regulated and will create a barrier to the continued use of these materials. As such, the proposed rules will have a significant impact on Washington's efforts to combat climate change, a consideration that was not evaluated by Ecology in completing its SEPA checklist and issuance of a Determination of NonSignificance. If Ecology seeks to change the regulation of biomass materials in the proposed manner, then it is necessary to conduct a complete life cycle analysis of the greenhouse gas impacts of this rule, consistent with recent court opinions. We believe that the changes proposed above would resolve the need for a life cycle greenhouse gas assessment, but, in the absence of such changes we believe that the rulemaking cannot proceed until SEPA has been complied with.

We appreciate this opportunity to comment on the proposed rules and welcome any questions that you might have about these comments.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Roberto Artiga', with a long horizontal stroke extending to the right.

Roberto Artiga
Environmental Services Manager