



Citizens for a
Healthy
Bay

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Kyle Dorsey
Rulemaking Lead
Washington State Dept. of Ecology
PO Box 47600
Olympia, WA 98504-7600
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Executive Director
Melissa Malott

Re: Comments on updated Solid Waste Handling Standards, Chapter 173-350 WAC

Dear Mr. Dorsey,

Thank you for providing the opportunity to review and comment on the updated Solid Waste Handling Standards (173-250 WAC.)

Board of Directors

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Brice Boland
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Citizens for a Healthy Bay (CHB) is a 28-year-old organization whose mission is to represent and engage people in the cleanup, restoration and protection of Commencement Bay, its surrounding waters and natural habitat. We are a 501(c)3 nonprofit providing practical, solutions-based environmental leadership in the Puget Sound area. We work side-by-side with local citizens, businesses and governments to prevent water pollution and make our community more sustainable.

Staff and expert members of CHB's Policy and Technical Advisory Committee have reviewed the updated Solid Waste Handling Standards ("the standards") and related materials.

Background:

The Washington State Department of Ecology (Ecology) is proposing to amend Solid Waste Handling Standards in Chapter 173-350 WAC, which regulates transport, storage, processing, and disposal.

Comments:

CHB is concerned about several components in the proposed amendment of WAC 173-350, including less required documentation and permit exemptions for on-site storage of contaminated soil and dredged material.

On-site Storage

While the goal of this amendment may have been to simplify the process of solid waste handling in Washington, one concerning result is the encouragement of storing solid waste on-site. The proposed standards combine significant permit exemptions, less required documentation and reporting, and expanded regulatory flexibility over impervious surfaces and weather protections – all changes that make for less environmentally protective standards. The encouragement of on-site storage makes leachate from those materials into the surrounding environment, especially groundwater, more likely.

1. R&D Loophole

According to the proposed amendment:

“Materials used in research and development activities intended to evaluate, develop, or demonstrate potential new or improved beneficial use, reuse, or recycling methods or technologies for solid wastes conducted by qualified persons in controlled laboratory, bench scale, or pilot study conditions at the facility at which the materials are generated, at another facility owned or operated by the generator, at an institution of higher education as defined in RCW 28B. 10.016, at a higher education institution as defined in RCW 28B. 07.020, or at a public or private laboratory or other facility contracted by the waste generator or institution to conduct such activities. These activities include the research and development operations, the separation, collection, transport, and transfer of such materials in support of those operations. Solid wastes handled in connection with such activities shall be reasonably limited to quantities needed to conduct the research and development project(s), and any excess or residual of such materials remaining after such activities and any solid waste generated by such activities shall be handled in accordance with this chapter or chapter 173-303 WAC, Dangerous waste regulations, as applicable.”¹

This new section creates a significantly problematic loophole as the criteria for R&D us are extremely vague.

While the amendment does place some requirements on the sites, such as the nature of research and development, there is limited clarity over many of these requirements. The terms underneath the nature of the R&D are defined in the chapter, but neither “qualified persons” nor “reasonably limited quantities” are defined. Nor is the quantity of waste or duration of time that can still be considered “pilot scale”. CHB requests these terms are clearly and reasonable defined, and that the standards require the draft and submissions of research proposals, including the amount of material necessary, to be approved and overseen by Ecology.

¹ Proposed Rule Language: <https://ecology.wa.gov/DOE/files/c0/c0f67204-c83f-40ae-a47c-ce3ddc1bf520.pdf>.

Furthermore, the exclusion applies to the “separation, collection, transport, and transfer or such materials in support of those operations,” allowing an even broader range of activities to be excluded from the standards.

2. Temporary Piles

The proposed amendment creates an exclusion for “temporary” piles of contaminated soils and contaminated dredge material. This exclusion has no volume limit and no notification or reporting requirements. This language is unacceptable.

While the standards state that all contaminated soils and contaminated dredge materials must be removed from the site within 90 days, with no notification or, at a minimum, documentation requirements, storage time on-site will be nearly impossible to know. Ecology states, in response to previous comments about this concern, that “The ninety-day clock can begin when the health department becomes aware of the pile if no other information is available.” This response is inadequate as there are no clear mechanisms by which the Health Department will become aware of “temporary” piles with no required documentation or notification.

The reduced documentation would make this more difficult to track by the jurisdictional Health Department, and, thus, more difficult to regulate. Further, there seems to be little to nothing stopping “temporary” piles from becoming long-term or permanent: a facility could feasibly move a pile of contaminated soil or dredged materials around their site every 89 days and never need to report or document anything.

The final amendment must include clear notification, documenting, and reporting requirements for temporary storage piles for the standards with oversight from Ecology to accomplish their goal of preventing water pollution. Documentation should include, at a minimum: the volume of the pile, the volume moved, the location moved from, the location moved too, and the state of the material in the pile.

CHB also requests a requirement that on-site storage of contaminated soil and dredged materials, including temporary piles, must be at least 150 feet from surface water, and must not drain directly into the surface water, to avoid contaminated runoff entering the waters of Washington.

Furthermore, once a pile has passed the threshold for not requiring tracking, it’s exempt from then on. The problem with this is that a pile could change between the state it was in during use/construction and the state it is in when put into piles, thus the same pile could move from not requiring tracking to requiring tracking. CHB asks Ecology to add to the amendment that waste is reported and studied to note whether its condition has changed.

Conclusion

Citizens for a Healthy Bay is highly concerned with the clear narrative of facilitating on-site storage of contaminated materials through standards exclusions and permit exemptions,

increasing the threat of standing piles contaminating groundwater, soil, sediments and nearby surface water. Due to this serious concern, we strongly urge Ecology to implement the changes outlined above. The current proposed amendment is not sufficient in ensuring the purpose of the chapter to protect public health, and to prevent land, air, and water pollution.²

Please contact me if there are questions regarding my comments. Thank you for the opportunity to provide feedback on the proposed updates to Washington's solid waste handling standards.

Sincerely,

A handwritten signature in black ink that reads "Melissa Malott". The signature is written in a cursive, flowing style.

Melissa Malott
Executive Director, Citizens for a Healthy Bay
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² WAC 173-350-010.