

TO: Department of Ecology
Waste 2 Resources Program
C/O Kyle Dorsey
Via web portal
<http://wt.ecology.commentinput.com/?id=N3EMG>

RE: Comments on 3rd Draft Rule

Kyle,
Again I would like to thank you for the opportunity to comment on the proposed revisions to WAC 173-350 and for your consideration of my previously submitted comments. The following are comments that I have or that have been forwarded to me by others to submit on their behalf. In general, the language below the underlined sections of the rule has been copied from the proposed text.

Please feel free to call or email if you have any questions.
Thanks
Troy

WAC 173-350-110 Determination of solid waste

(3) A material is no longer a solid waste if it meets all of the criteria in (a) through (f) below:

(d) The material has positive market value, as indicated by available or sufficient markets for the material.

Paying a person to remove or process the material for recycling, disposal, or incineration is not positive market value, nor is paying a discounted amount for removal or processing;

Comment:

The issue of concern is that if of a recycling facility is being paid to take a commodity than it must get a permit. This will be a deterrent to advancing recycling opportunities.

During the public hearing Ecology staff expressed concerns of what I view as “speculative stockpiling”. We agree this is a legitimate and valid concern for regulators as well as industry. This situation can turn bad for the environment and give recycling a black eye. However, requiring a “positive” market and further defining it to require payment by the receiving company will have a negative effect on the development of

remanufacturing facilities and end users since getting a solid waste handling permit is onerous and can act as a deterrent. Additionally, some “would-be” facilities may not be able to obtain a Solid Waste Handling Permit due to locational zoning.

Examples where the market is such that an operator can charge to take a commodity is our roofing industry and sheetrock recycling industry and in the past our cardboard markets have been negative as well. Clearly, we want to promote these markets not hinder.

We propose the following language (or similar) to address speculative stockpiling. Please keep in mind that other proposed changes in sections 210 and 320 will also help in responding to speculative stockpiling.

Paying a person who does not have an established use and associated recycling facility to remove or process the material for recycling, disposal, or incineration is not positive market value, nor is paying a discounted amount for removal or processing;

WAC 173-350-100 Definitions.

“De minimis” The presence of man-made materials such as, but not limited to, paper, plastic, metal, and demolition debris that can reasonably be removed or may become a litter problem is not de minimis.

Comment:

We request Ecology use established definitions for de minimis.

De minimis is defined by Merriam-Webster as; *lacking significance or importance: so minor as to merit disregard...*

Changing the definition for the purposes of this regulation may have significant unintended consequences. Specifying that paper or plastic that could be “reasonably” removed as not de minimis is counter productive by setting an unclear standard

Without setting a concentration relationship to an overall quantity this definition totally changes the meaning and intent of the word.

An additional concern is the use of definitions by other agencies, particularly UTC, enforcing their rules. Such language may make moving a box of commercial recyclable C&D illegal if “de minimis” amount of insulation is present. This definition should conform to existing definition.

"Drop box facility" means a facility used for the placement of a detachable container including the area adjacent for necessary entrance and exit roads, unloading and turn-around areas. Drop box facilities receive waste from off-site, require waste placement directly into a container and not a tip floor, and serve the general public and not route collection vehicles.

Comment:

Propose deleting the following added language

and serve the general public and not route collection vehicles.

If the material is dropped directly into a container and it can be demonstrated to have no environmental impact the practice should be allowed.

In some circumstances, tipping from a commercial collection vehicle into a drop box is all that is practical due to available revenue and/or frequency.

"Material recovery facility" means any facility that ~~collects~~, receives, compacts, repackages, or sorts, ~~or processes for transport~~ source separated solid waste for the purpose of recycling.

Comment: Does a material recovery facility also receive Non source separated material for the purpose of recycling?

"Transfer station" means a ((permanent, fixed, supplemental collection and transportation)) facility((, used by)) that receives solid waste (e.g., municipal solid waste, contaminated soil, or other solid wastes) from off-site from persons ((and)) or route collection vehicles ((to deposit collected solid waste from off-site into a larger)) for consolidation into transfer vehicles, vessels, or containers for transport to a solid waste handling facility.

Comment: With the elimination of intermediate solid waste handling facility standards and limitation on conditional exemptions, will simple trans-load facilities for co-mingled recyclable materials now have to be permitted as a transfer station? This may have a profound impact on recycling in that collection vehicles may need to transport directly to recycling facilities rather than consolidating for bulk shipment. This can have a negative impact on recycling and negative environmental impact.

WAC 173-350-200 Beneficial use permit exemptions.

(iii) Use of a solid waste as a component of fill unless a demonstration shows that the material meets specific engineering needs and specifications other than occupying space. Any proposal made under this section to use solid waste as a component of fill must be certified by a professional engineer registered in the state of Washington, in an engineering discipline appropriate for the proposed activity.

Comment:

Propose deleting: ~~other than occupying space.~~ as a clarifier statement.

The proposed language specifies that a material reuse must provide contribution other than to “occupy space”. This restrictive language should be deleted. Occupying space may provide environmental value in that a material may take the place of virgin materials thereby reducing environmental impact.

As an example, one could apply for a beneficial use request to utilize prepared / processed roofing to be used as a component of road base fill to be covered by asphalt. This addition may provide little if any engineering benefit and is therefore likely just “occupying space”. However this use would have benefit in that it would take the place of natural products, sand and gravel, and reduce the burden on landfills and associated transport impacts.

WAC 173-350-210 Table 210-A Terms and Conditions for Solid Waste Permit Exemption

(c) Dispose of an incidental and accidental residual not to exceed five percent of the total waste received, by weight per year, and five percent by weight per load;

Comment: This number has been reduced from 10% per load. Although this language is intended to distinguish when a facility needs to obtain a permit, this language is routinely used by other agencies and counties with flow control to determine when a load of recyclable material actually constitutes as load of garbage (regulated solid waste haul). This usage has had a negative impact on recycling, therefore the language should be revised to insure and make clear that this language is not to be utilized for such purpose.

WAC 173-350-210 Recycling and material recovery facilities. (And many other sections of the proposed rule)

(4) Recycling and material recovery facilities – Permit requirements - Design. Recycling and material recovery facilities must be de-signed so that the facilities can be operated to meet the performance standards of WAC 173-350-040. The owner or operator of a recycling or materials recovery facility must prepare engineering reports/plans and specifications to address the following design standards:

Comment: The underlined language here is also similarly used in several locations throughout the document (section 310 et al) and should be revised to make it clear that the Jurisdictional Health Department has the discretion to determine which elements of the facility need engineering.

On many elements of a facility, standard construction practices and/or those permitted through local permitting provide sufficient safeguards. Duplicating the review of structures that require local building permits is not cost effective. Obtaining engineering on existing structures or slabs can be very expensive and not necessary to protect human health and the environment. Concrete slabs and roadways, ecology block bunkers, pre-manufactured drainage structures/vaults are features that likely do not need engineering.

During the public hearing on these proposed changes, Staff made clear the language requiring engineering reports / plans and specifications were applied throughout the document for “consistency” and further noted that engineering is not always required but is at the direction of the permitting agency. This language, and as printed elsewhere within the document, needs to be revised to reduce the financial burden on facilities as described in the Preliminary Regulatory Analysis for this rule.

WAC 173-350-210 (5) Recycling and material recovery facilities Permit requirements Documentation

Comment: Similarly to subsection (4) of this section and elsewhere within the document, substantial engineering is proposed to required for the layout/ design and facility features along with scale drawings and construction quality control and construction monitoring documentation. This proposal will add, at a minimum, 20% or more to the cost of a facility. This language, and as printed elsewhere within the document, needs to be revised to reduce the financial burden on facilities as described in the Preliminary Regulatory Analysis for this rule.

To further the discussion on the aforementioned:
Ecology Responsiveness Summary to previous comments provided the following:

***Ecology Remark:** The requirement for a quality assurance plan for constructed elements of a proposal for permitted facilities is implicit in the current rule. The addition of a requirement for a Construction Quality Assurance plan just makes*

obvious what would already be required for engineering approval as required in WAC 173-350-715(2). Language requiring a CQA plan for permitted facilities already exists in these sections:

- *_320 - Piles used for storage or treatment*
- *_330 - Surface impoundments and tanks*
- *_360 - Moderate risk waste handling*
- *_400 - Limited purpose landfills*

The proposed language establishes a new requirement for a CQA plan for permitted facilities in these sections:

- *_210 - Recycling and material recovery facilities*
- *_240 - Energy recovery and incineration facilities*
- *_310 - Transfer stations and drop box facilities*
- *_410 - Inert waste landfills.*

Additional Ecology Remark / Response on same subject:

Response: *The requirements for submittal, review, and approval of engineering documents in Sections 320, 400, and 410 are not new. The adopted rule language already includes functionally similar requirements. See WAC 173-350-320(3)(a), WAC 173-350-320(8)(b), WAC 173-350-320(9), WAC 173-350-330(3)(a), WAC 173-350-330(3)(b), WAC 173-350-330(8)(a), WAC 173-350-330(9), WAC 173-350-410(3), and WAC 173-350-410(8)(a). Section 360 has similar requirements for submittal of engineering documents. We adopted similar submittal requirements in Sections 220 and 250 during a previous update of the Solid Waste Handling Standards.*

Comment: Ecology response seems to imply that existing language (or implied language) is somehow protected from revision. This language needs to be changed to reflect the directives of the legislation and those identified in the Preliminary Regulatory Analysis for this rule that clearly seek to break down barriers for recycling and burdensome regulation. Again, staff made clear at the public hearing that engineering requirements are flexible based upon specific needs of a proposed facility and are at the direction of the permitting agency. The current language does not reflect this and needs to be changed.

WAC 173-350-240 Energy recovery and incineration facilities

Table 240-A Terms and Conditions for Solid Waste Permit Exemption

Comment: Wood waste and Wood derived fuel and pulp waste are identified as “Waste Materials” that qualify for a permit exemption upon compliance with conditions (a) through (d) within this table.

Question: If these materials are properly prepared to specification prior to entering the facility, (such as a pulp mill), and the mill properly handles the material as a commodity, does proposed section 021, that defines what is a solid waste, move this material out of

solid waste realm therefore making the conditions set forth under Specific Requirements in this table irrelevant unless the material becomes a waste once again? In other words, the Health Department does not need to be allowed to inspect or approve in writing the material that now qualify as products that are stored, since the facility is not handling a solid waste?

WAC 173-350-250 Anaerobic digesters.

(2) **Anaerobic digesters** - Permit exemptions. In accordance with RCW 70.95.305, anaerobic digester facilities processing the types and volumes of materials identified in Table 250-A are subject solely to the requirements of Table 250-A and (b) of this subsection and are exempt from solid waste handling permitting. Feedstocks not listed in Table 250-A must be approved by the department. Violations of the terms and conditions of Table 250-A and (b) of this subsection may be subject to ((penalty)) enforcement provisions of RCW 70.95.315.

(a) An owner or operator that does not comply with the terms and conditions of Table 250-A and (b) of this subsection must((:

•)) obtain a solid waste handling permit from the jurisdictional health department((;)) and ((•)) comply with all applicable requirements of this chapter.

((Violations of the terms

Comment: Subsection (a) implies a permit is required or a “must” if one fails to comply. It does not appear to give deference to the situation or type or frequency of violation.

In other sections throughout this document where permit exemptions are allowed the language requiring a permit if there is a problem has been changed to make it clear that the health department has an option and that a permit is not mandatory. This section needs to change as well.

I would propose using language that is used elsewhere in the document such as section 210 (2):

Example From 173-350-210 (2):If a facility does not operate in compliance with the terms and conditions established for an exemption under this subsection, the facility may be subject to the permitting requirements for solid waste handling under this chapter.

WAC 173-350-310 Transfer stations and drop box facilities

Comment: This section applies similar engineering and construction documentation requirements as discussed previously in Section 210 comments.

Comment: With the removal of intermediate solid waste handling facilities, and by way of definition this section will regulate simple trans-load stations where materials are consolidated for transportation efficiencies. This can occur in a building with concrete floor. This section should make permit exemption, engineering and design allowances for low or no threat operations.

WAC 173-350-320 Piles used for storage, treatment

Table 320-A Terms and Conditions for Solid Waste Permit Exemptions

At the end of each calendar year, the facility must have removed at least 50 percent of the sum of the volume of all waste present at the start of the calendar year and of the volume of all waste accepted during the calendar year.

Comment: It may not be possible to use 50% of asphalt received during a year plus what was stockpiled. As evidenced by the recent market crash, asphalt was not being used since building was not taking place and the transportation agencies did not have any money. This could be a similar concern for concrete use.

Proposal: This language should be changed to provide latitude as approved by the permitting agency

WAC 173-350-330 Surface impoundments and tanks.

(a) These standards are applicable to:

(ii) Tanks with a capacity greater than one thousand gallons holding solid waste associated with solid waste handling facilities used to store or treat liquid or semisolid wastes or leachate associated with solid waste handling facilities; and

(iii) Piping systems within solid waste facilities that convey solid waste to or from surface impoundments and tanks as described in (i) or (ii) of this subsection.

Comment: Ecology Response to Comments provided clarification to acceptable means of testing small tanks but did not address acceptable testing methods for gravity lines leading to small tanks. Please revise language regarding piping or provide additional guidance.

Inclosing, it is important for Ecology to not lose sight of the following as presented in the Preliminary Regulatory Analysis prepared for this rule making:

Regulatory fairness act compliance:

The RFA (19.85.030(2) RCW) states that:

Based upon the extent of disproportionate impact on small business identified in the statement prepared under RCW 19.85.040, the agency shall, where legal and feasible in meeting the stated objectives of the statutes upon which the rule is based, reduce the costs imposed by the rule on small businesses. The agency must consider, without limitation, each of the following methods of reducing the impact of the proposed rule on small businesses:

- a) Reducing, modifying, or eliminating substantive regulatory requirements;
- b) Simplifying, reducing, or eliminating recordkeeping and reporting