



WASHINGTON REFUSE & RECYCLING ASSOCIATION

March 20, 2018

Mr. Kyle Dorsey
Department of Ecology
300 Desmond Drive SE
Lacey, WA 98503

Dear Kyle Dorsey:

The Washington Refuse and Recycling Association (WRRA) represents the private sector solid waste industry in Washington. WRRA member companies and the solid waste industry serve a vital role in public health, safety, and environmental protection. WRRA members are the largest real recyclers in Washington. As such, WRRA and the industry has taken an active role in the WAC 173-350 Rule Update process, which originally began almost 10 years ago. WRRA staff and members have participated in workgroups and have submitted several sets of written comments on key sections of this rule update (First comments submitted December 1, 2015; second March 16, 2016; third September 6, 2016; and fourth February 9, 2017). We reiterate and incorporate all of those comments, but will not duplicate them here.

WRRA views the WAC 173-350 update process as a perfect opportunity to strengthen and preserve the integrity of Washington's excellent solid waste system by strengthening regulation, eliminating exemptions, and bolstering much needed reporting and enforcement efforts. The current draft of the rule is an improvement over the existing rule in many ways, but we offer the following comments to improve and ensure that it achieves its goals and serves Washington's solid waste handling system.

I. WAC 173-350-021 Determination of Solid Waste.

The determination of waste test provides much needed clarity and support for the definition of solid waste in RCW 70.95. The factors of this test that deal with "positive market value" and incorporate other elements of similar value tests in Oregon and California, are particularly important and timely. If successfully implemented and applied, this section should provide clarity for both industry and regulators.

The latest iteration of the test deletes a factor present in virtually all earlier iterations of this test which stated that a material must be "separated from solid wastes" to no longer be a solid waste. This factor should be included in the final rule and the word "separation" should be

defined. Source separation of recyclables is a key component of Washington law in RCW 81.77 and 70.95, and the concept of recycling itself. The final rule should contain a factor requiring materials to be separated from other wastes to not be considered a solid waste.

Separation should also be defined to clarify the degree to which a material needs to be separated from other solid wastes to no longer be considered a waste. WRRRA was heavily involved in the workgroup that developed this section, and earlier versions did define separation. This crucial definition and factor should be included in the final rule. WRRRA recommends adopting the earlier definition of “separation” with several edits to bring it into line with the new WAC 173-350-210 facilities sections:

“Separation” or “separated” means source-separation into individual material streams to remove or separate recyclable materials from other non-recyclable solid waste, resulting in less than 5% by weight non-recyclable materials, for the purpose of reuse or recycling.

The definition above was heavily discussed and vetted by the stakeholder workgroup. This definition also supports and highlights the crucial statutory provision, source separation of recyclable materials.¹

Finally, the Department should develop a robust implementation and education plan alongside the formal rule proposal to ensure this test achieves the desired results. The determination of waste test, along with changes in the facilities, piles, and definitions section have the potential to improve the landscape of solid waste handling in Washington State. The Department will also need to play an active role in the implementation process to ensure localities understand and follow the intent of the new rules.

Determination of Waste Comments Summary:

- Elements of test that incorporate “positive market value” and markets are crucial.
- Factor from previous rule versions which specifies “separation from other solid wastes,” should be included.
- Separation should be defined, specifying source-separation and the “5% rule” to align the definition with the facilities section updates.
- A robust implementation plan from the Department will be required for this and all other sections to achieve their goals.

II. Definitions and Applicability.

Applicability: The applicability section 173-350-020 lists a number of materials which are not regulated under 173-350. However, many of the materials or situations listed could certainly become solid waste or result in a solid waste handling activity depending on how the material is managed or where it is ultimately used or sent for disposal. This section should clarify that all materials could become a solid waste and be subject to the determination of waste test in WAC 173-350-021, consistent with how they are managed.

¹ RCW 70 95 010(5) “Source separation of waste must become a fundamental strategy of solid waste management Collection and handling strategies should have, as an ultimate goal, the source separation of all materials with resource value or environmental hazard ”

Definition of Recycling: WRRRA appreciates changes to clarify the definition of recycling by deleting proposed new language from the previous draft of this rule. However, the latest proposal loses an important distinction by deleting the sentence “recycling does not include collection, compacting, repackaging, and sorting for the purpose of transport.” The definition of recycling in the final rule should read:

"Recycling" means transforming or remanufacturing waste materials into usable or marketable materials for use other than landfill disposal or incineration. Recycling does not include collection, compacting, repackaging, and sorting for the purpose of transport. Recycling includes processing waste materials to produce tangible commodities.

Maintaining the distinction between mere preparation and true transformation into something of value is crucial for the new “commodity” definition to have any real meaning.

Definition of Commodity: WRRRA has supported the efforts throughout this rulemaking to support the underlying statutory definitions of solid waste and recycling by incorporating elements of positive market value in the determination of solid waste. The definition of commodity is an important piece of that effort. However, the example used in the definition “commodity-grade scrap metal” should be more specific than the generic terminology used here.

Definition of Clean & Contaminated Soil: WRRRA generally supported the objective of the previous proposed contaminated soils section, but had concerns with the “self-enforcing” nature of the proposed rule. Contaminated soils are solid waste and regulation to ensure that they are safely and responsibly managed is warranted like with any waste. The approach taken in the new rule appears consistent with statutory authority and relies on established standards from the Model Toxics Control Act. WRRRA still supports the objective of these changes, but reiterates that effective regulation requires effective enforcement.

Applicability and Definitions Comment Summary:

- Additional clarity is required in the applicability section to note that materials in that section managed improperly can become solid waste under the determination of waste test.
- The definition of recycling in the draft rule should include language which specifies that a true transformation into something of value is required for a material to be recycled.
- Definition of commodity should use more specific examples.
- Successful regulation for contaminated soils and any other waste requires effective enforcement.

III. WAC 173-350-210 Recycling and Material Recovery Facilities.

The rule proposal makes some progress in addressing longstanding issues caused by a lack of enforcement and oversight of recycling facilities. The change to require permits for any facility accepting commingled recyclable materials is a positive change in limiting the scope of this problematic exemption. WRRRA supports this change and views it as a key component of this

rule proposal. WRRRA also supports the change from the old “5%/10%” limit for recycling residuals to a clear and consistent 5% by weight. Earlier drafts of the rule proposed changing the measurement to 5% by volume, but ultimately reverted back to weight. Weight is an inherently more precise measurement that is easily recorded and documented for recordkeeping purposes, such as Transporter Law records, and should not be abandoned. However, volume may also provide a useful measurement in certain situations, such as visual inspection of a container. The rule should not eliminate weight in favor of volume, but provide for the consistent use of both units of measurement.

The changes discussed above represent a good, but first step, towards effective enforcement of recycling facilities in Washington. The next step should include finally implementing the Transporter Law in 173-345, and annual inspections with periodic audits of facility records and reports. At a minimum, it must include an initial opening inspection and annual verification to maintain an exemption. Transporter Law requirements should also be referenced in the permit exemption table.

WAC 173-350-210(2) states that an exempt facility *may* be subject to permitting requirements if it violates the terms of its exemption. The “may” should be changed to “shall” or “must” to both comply with statutory authority in RCW 70.95.305 and to provide the regulation with any real chance of effective enforcement. Violators should be subject to penalty, with a 30 day window to bring violations into compliance:

...If a facility does not operate in compliance with the terms and conditions established for an exemption under this subsection, the facility ~~may~~ shall be subject to the permitting requirements for solid waste handling under this chapter after 30 days. (Italics added).

This change provides operators with a reasonable but rightly limited time to receive technical assistance from the Department and achieve compliance. If the operators continue illegal activity for more than 30 days, they must, and rightly so, become permitted to continue operation.

Finally, WRRRA’s understanding was that the changes in this section would shrink the number of exempt facilities and require many more to become permitted. The economic analysis indicates the changes to this rule may only impact ten facilities. Our understanding was based in part on the list of solid waste facilities and their status as permitted or exempt posted on the Department website. Since that time, Department staff has indicated that this publicly accessible resource is inaccurate and no accurate listing of the solid waste facilities and their permit status is available.

Despite numerous requests throughout this process, the Department has not only been unable to produce a list of potentially affected entities that will need to become permitted based on the changes in this rule, but does not appear to possess an accurate listing of the facilities it is tasked with regulating. As such we are unable to fully support or understand the scope of these changes. We continue to question the legitimacy of any economic impact statements by the Department that does not take into consideration which facilities are impacted, and will not be able to do so until the information is provided and verified. WRRRA continues to assert the

absolute necessity for the Department, tasked as the statewide overseer of solid waste facilities, to keep and make available an accurate listing of the facilities it purports to regulate.

Recycling and Material Recovery Facilities Comment Summary:

- Good first step in addressing longstanding issues, change to limit scope of exemption and 5% overall residual rate to maintain exemption are positive.
- Exempt facilities “must” become permitted or cease operation if they fail to achieve compliance, exemption table should reference Transporter Law and require compliance as condition of exemption.
- Department needs to keep and maintain an accurate list of facilities it is tasked with regulating, including permit status and physical location, at a minimum.

IV. WAC 173-350-320 Piles used for Storage or Treatment.

Clarification on when the rule applies and limiting the scope of the exemption under this section is a positive change, but more clarity is needed on several points. Our understanding is that exempt facilities under the new WAC 173-350-210 cannot store materials outside in piles and remain exempt under the new rules. This is an improvement, but both the piles section and exempt facilities section should make this more evident to operators and include this requirement in the “table” for each section. It is also an improvement to limit the piles exemption to only the materials listed and require all other wastes stored outdoors in piles to obtain solid waste handling permits. Problematic materials like glass and asphalt shingles stored outdoors in large piles should require a solid waste permit. Finally, the rule should clearly state that for piles to be considered “indoors,” structures must be fully enclosed, a mere covering, be it a tarp or a free standing roof will not suffice.

The current draft rule maintains the higher threshold for exemption adopted in the previous draft, at 2,000 cubic yards for several materials, up from 250 in the current rule. WRRRA opposes this tenfold increase in pile size. In reality, 2,000 cubic yards is a huge amount of material. With an average dump-truck somewhere in the range of 10-14 cubic yard capacity, the new rule anticipates up to 200 truckloads of material before a permit is required. This expansion is ill advised given Washington’s history with exempt facilities and clean-up sites.

V. WAC 173-350-400-410 Limited Purpose and Inert Waste Landfills.

WRRRA opposes expanding exemptions for these facilities and questions how the department could possibly support this position given the problematic history of these facilities. Some limited purpose and inert waste landfills, particularly several facilities located in the Naches River Valley, have proven to be a crucial component of the sham recycling business model: cheap disposal without oversight. WRRRA is disappointed that the Department did not use this rule as an opportunity to address these issues, but instead open the door for more sham recycling, abuse, and potential environmental damage.

Under the new rule, entities can create unlined landfills with up to 250 yards of material- up to 25 dump trucks- without notifying local health or seeking any approval from the Department. The new rule also allows for the creation of unlined landfills up to 2,000 yards – up

to 200 dump trucks– with only minimal notice and reporting requirements. These changes are reckless and irresponsible both from the standpoint of enabling sham recycling, creating clean-up sites, and environmental hazards.

WRRRA also opposes adding contaminated soils and dredged materials to the list of acceptable items at a limited purpose landfill. Even putting aside the problematic history of these facilities, it is difficult to understand why contaminated soils should be transported to potentially exempt, unlined landfills as opposed to a highly regulated state of the art “40 CFR Part 258” or “Subtitle D” landfill.

To help provide for accountability and enforcement, inert waste and limited purpose landfills should be required to have a scale to meet design requirements. Volume is too subjective for an effective unit of measurement and provides ambiguity for sham recyclers– weight is more precise. The new draft requires “a description of how operators will maintain operating records” on the amount of waste received in WAC 173-350-400(4)(ix). This section should be reworded to specify that accurate and truthful record keeping is a permitting requirement and provide for enforcement, reporting, and auditing of these numbers to address consistent problems with this class of facilities.

Limited Purpose & Inert Waste Landfills Comment Summary:

- These facilities have provided an avenue for sham recyclers to achieve cheap disposal and require additional oversight.
- The goals of other rule sections will be compromised if action is not taken here.
- Limited purpose landfills should not be allowed to accept contaminated soils.
- All inert waste or limited purpose landfills should be equipped with scales and required to keep accurate and audited logs on the materials they are accepting.

VI. Conclusion.

WRRRA appreciates consideration of the solid waste industry’s concerns. We will continue to question any cost-benefit or economic analysis on this proposal until sufficient information is provided on the affected entities. Please feel free to contact Rod Whittaker (rod@wrra.org) or myself at 360-943-8859. We are eager to elaborate on these comments and offer any perspective or resources necessary to assist DOE staff with the development of this rule.

Sincerely



BRAD LOVAAS

Executive Director