



## WASHINGTON REFUSE & RECYCLING ASSOCIATION

December 1, 2015

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

Dear Mr. Dorsey:

The Washington Refuse and Recycling Association (WRRA) has taken an active role in the 173-350 Rule Update process. Representatives of the association and member solid waste companies have participated in the workgroup process whenever and wherever allowed by the Department of Ecology (DOE). WRRA is proud, as DOE should be, that Washington State is known nationally for having one of the premier solid waste handling systems in the country. Washington State's recycling rate of 50% which is 50% higher than the national recycling rate of 34% is just one point of reference to our excellent collection and solid waste handling system.

The success of Washington's solid waste system is due in large part, to robust regulation and compliance as well as the enforcement of those regulations. However, a significant amount of solid waste handling activity goes effectively unregulated in Washington under current DOE rules and the lack of enforcement of other existing DOE laws and rules. This opens the door to sham recyclers who hurt cities, counties, the state and legitimate lawful companies while exposing Washington citizens to unnecessary environmental risks. WRRA is concerned that several rule sections, particularly those on definitions, exempt facilities and soils, do not or have not yet offered solutions to these problems, but in fact make them worse. Please find our consolidated comments on the 173-350 Rule Update.

A number of workgroups have not yet been formed. As the WRRA membership handles the majority of solid waste in Washington, and this chapter deals explicitly with solid waste handling standards, we must again insist upon WRRA or solid waste industry representation on all future and current workgroups involved in the 173-350 Solid Waste Handling Standards Update.

## **I. WAC 173-350-100 - Definitions**

Early in the process, the group decided against altering the definition of solid waste, but attempted to draft a new WAC section to clarify what materials are NOT solid waste. The group developed several factors to apply to any given material to determine if it should not be classified as a solid waste. If a waste or material meets the factors of this test, it becomes exempt from any solid waste handling standards. This means a waste is no longer subject to solid waste regulation ranging from those designed to prevent release into the environment or to the reporting requirements from which Washington's recycling rate is determined. Beyond that, in all reality, this rule proposal overreaches and effectively changes the statutory definition of solid waste, a change that cannot and should not be accomplished through a rule.

After consulting with county and other local government representatives, who were not included in the definitions workgroup, WRRRA believes the factors in the rule language are vague and overbroad. The rule is "self-authorizing" and lacks any real oversight or clear direction on who applies the factors, be it the generator of the waste, the local health department, or DOE itself. Further, the rule's "self-authorizing" nature is bereft of oversight or enforcement, either by DOE or a local health department, neither of which are required to be notified under the draft rule. Moreover, the factors are so broad that the outcome of the test appears dependent upon the varying opinion or outcome sought by any individual applying the rule. Based on this, the rule is unlikely to be consistently applied and even less likely to be enforced. Early in the process, WRRRA suggested consulting with the Department's Assistant Attorney General on what authority the Department had to expand or modify the statutory definition in the rule process. While this request was found to not be timely, we still believe that your own attorneys will find that the department lacks the ability to materially change the definition.

In Washington State, local governments have always had jurisdiction over certain aspects of solid waste and recycling. If a local government desires to treat some materials differently than others, it can be accomplished through their solid waste plan or by ordinance. WRRRA is concerned there are unintended consequences associated with the proposed rule which will have a detrimental impact on public safety and the environment and will compromise a well-functioning solid waste system.

## **II. WAC 173-350-210 & 310 – Recycling & Exempt Facilities**

WRRRA opposed the exemption of solid waste facilities from registration and inspection over a decade ago, and since then, our worst fears have been realized. The process, or lack of process, for exempt status, the self-reporting without auditing and the lack of control over the exemption process have all become a sad reality. WRRRA continues to oppose exempting facilities from solid waste oversight by DOE and Jurisdictional Health Departments (JHDs), which lack the resources to provide inspections without the support of permitting fees. The workgroup process has yet to reach the issue of exempt facilities in earnest, however this issue is of key importance to the association and solid waste industry. Currently, exempt facilities lack

any solid waste oversight at the state and local level due to the exemptions, the management of the process and the lack of permitting fees to support inspections at the local level. This system has hurt Washington's solid waste system by providing a haven for sham recyclers and hurts cities and counties and legitimate state authorized and municipal contract collection and handling companies.

Currently Washington has two types of exempt facilities by rule, and a third informal category of unregulated solid waste facilities. WAC 173-350-210 & 310. Exempt facilities may accept only source separated recyclable materials and dispose of an incidental and accidental residual not to exceed 5% of the total waste received, by weight per year, or 10% by weight per load. WAC 173-350-310. However, these numbers are never verified by an on-the-ground-inspection or enforced by the department. Taken alone, this fact represents a true problem and a clear call for more regulation, permitting and oversight. The need for regulation and enforcement becomes even more apparent upon consideration of the possible environmental risks posed by these facilities, which go without inspection under the current system. The lack of inspection and oversight provides a haven for sham recyclers and threatens the integrity of Washington's solid waste system. When these facilities are walked away from by their operators, the taxpayers and rate payers bear their clean-up costs. WRRRA opposes exempt solid waste facilities.

The sections regarding exempt facilities are the most important and concerning for the solid waste industry. At this time, we believe the definitions workgroup should move on to addressing exempt facilities as planned. The drafts produced by the definitions group appear to open the door even wider on exempt facilities, and go beyond the statutory definition of solid waste. Furthermore, DOE has indicated that the test developed by the definitions workgroup was intended to help DOE and the JHD address sham recycling. Yet the real issue begins with exempt facilities which have yet to be addressed, not the definition of solid waste. WRRRA requests that the definitions workgroup be placed on hold and transition to the real issue, exempt facilities and sham recycling.

### **III. WAC 173-350-235 & 995 - Soil and Sediment Criteria and Use**

WRRRA opposes the spreading of contaminated soils throughout the state. We believe that Governor Inslee and the Department share this concern, as evidenced by a number of initiatives dealing with toxic products and their effects on human health and safety and the environment. The current workgroup's draft rule lacks adequate oversight and enforcement by DOE and local JHDs and allows contaminated soils to be used across the state, even in publicly accessible sites in some instances. Neither WRRRA, nor any representative from the solid waste industry nor a landfill operator were invited to participate in this workgroup or allowed to join upon request. The soils group also lacked participation by other interested parties, including any environmental groups, county solid waste divisions, or the Tribes of Washington, all of which could be concerned with the environmental and storm water impacts associated with spreading contaminated soils across the state.

It is unclear to us why the rule moves away from Model Toxic Control Act standards on certain contaminants or how this rule benefits environmental efforts at all. Tacitly allowing contaminated soil to be spread across the state seems in clear conflict with DOE's mission statement to, "protect, preserve and enhance Washington's environment for current and future generations." The potential effects of spreading contaminated soils on storm water and water quality issues appears even more at odds with Governor Inslee's recent prioritization of clean water, "My goal all along has been to update Washington's clean water rule with one that assures the health of Washington's people, fish and economy."<sup>1</sup> Some of the soil screening limits do not appear to have a clear source in MTCA, or any citable source beyond the negotiations of the workgroup.

WRRRA opposes exempt facilities, and the soils rule essentially creates another exemption from solid waste handling activities with even weaker record keeping, oversight, and enforcement requirements. The draft rule requires that a company using contaminated soils perform "due diligence" to determine whether a soil may be contaminated. However, the due diligence requirement can be satisfied in various ways short of actually performing analytical tests on soils, and it's not clear that the company needs to provide any documentation or keep records of whatever steps it took to meet its "due diligence" requirement. As written now, a company, on its own, can make the determination not to test a soil for contaminants and use it across the state without keeping any record of where the soil originated, where it was placed, and what if anything was done to ensure the soil fell below the soil screening limits. Today, many contaminated soils go to highly regulated lined landfills with groundwater monitoring, stormwater controls, and gas collection and air emissions monitoring, in deep contrast to the unmonitored land application of contaminated soils throughout the state.

Additionally, the soils workgroup purports to change the definition of solid waste in WAC 173-350. Solid waste is defined by statute in 70.95, changing that definition by rule to accommodate contaminated soils is unnecessary and, as with definitions, an overreach. Furthermore, the change appears largely cosmetic by rebranding formerly contaminated soils as "impacted soils." WRRRA supports the existing definition of solid waste, this change appears unnecessary and disingenuous as contaminated soils and sediment are already covered in the existing definition. WRRRA opposes the current soils rule and requests industry representation on the soils and all other workgroups convened as part of the 173-350 rule update.

#### **IV. Conclusion**

A number of other workgroups have not convened, have not met for quite some time, or stalled contingent on another group. Most of these groups have yet to put forth a draft rule or appraise stakeholders of the actual issues targeted for revision within a given rule section. Going forward, WRRRA requests clarification on "What's the Problem?" and further direction by the department on the key issues associated with each section and solid waste industry representation on all workgroups that are part of the 173-350 Solid Waste Handling Standards update process.

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<sup>1</sup> Inslee announces new path on water quality rule, continues work on broader toxics reduction efforts.  
<http://www.governor.wa.gov/news-media/inslee-announces-new-path-water-quality-rule-continues-work-broader-toxics-reduction>

Thank you for the opportunity to offer comments on this broad and complicated rulemaking process. WRRRA and its member companies view our regulators as our partners and wish to work together effectively to ensure these important problems are addressed and that solutions can be found.

Sincerely,

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

BRAD LOVAAS  
Executive Director,

cc: Maia Bellon, Director, Department of Ecology  
Laurie Davies, Program Manager, Waste 2 Resources Program  
Wayne Krafft, Section Manager, Waste 2 Resources Program  
Marc Torre, President, Washington Refuse & Recycling Association  
Vicki Christophersen, Lobbyist, Washington Refuse & Recycling Association