Washington State Department of Transportation

Transportation Building
310 Maple Park Avenue S.E.
P.O. Box 47300
Olympia, WA 98504-7300
360-705-7000
TTY: 1-800-833-6388
www.wsdot.wa.gov

March 20, 2018

Ms. Polly Zehm
Deputy Director
Washington State Department of Ecology
PO Box 47600
Olympia, WA 98504-7996

RE: WSDOT Comments on the Final Public Draft Solid Waste Handling Rule Revision to Chapter 173-350 WAC

Dear Ms. Zehm:

The Washington State Department of Transportation (WSDOT) appreciates the opportunity to provide comments on the Department of Ecology's (Ecology) Final Public Draft Solid Waste Rule Revision to Chapter 173-350 WAC.

The proposed rule differs substantially from the preliminary rule revision that resulted from a significant stakeholder participation process. It represents a missed opportunity to improve solid waste handling in the state particularly with respect to managing construction and maintenance soils. The proposed rule establishes new soils disposal requirements that are unclear and, as a result, will be subject to differing interpretations by Jurisdictional Health Departments (JHDs) across the state. This lack of clarity creates regulatory uncertainty for WSDOT and our contractors in terms of identifying disposal options for routine maintenance operations and construction projects. We expect that the rule will lead to more soil disposal in landfills that, instead, could be safely reused. As an example, the proposed rule would not allow excess soils from WSDOT construction and maintenance operations to be used as alternate daily cover at landfills.

We expect the cost associated with soils handling/disposal to rise, particularly for WSDOT's maintenance operations. As an example, we estimate that the changes associated with managing street waste and material from maintaining drainage conveyances will increase WSDOT's maintenance costs by over $6M annually.

Below are specific issues and recommendations to improve the rule to reduce the unintended consequence of requiring expensive testing and disposal requirements for material that could be safely handled in a more cost effective manner.

<u>Chapter 173-350-100 WAC Definitions</u>

1. "Beneficial Use"

This definition narrows the meaning in a way that would significantly reduce the types of material suitable for beneficial use purposes. WSDOT recommends Ecology provide further clarification of this definition that allows for appropriate reuse while protecting human health and the environment. As the language currently exists, we expect to see a decrease in beneficial use of materials, which would increase costs to operate the state's transportations system.

2. "Clean Soil"
   A) This definition is unclear especially with regard to MTCA references. Lack of clarity will lead to differing interpretations by JHDs. As an example of implications, WSDOT is currently permitted to place/reuse road maintenance materials that contain elevated concentrations of Carcinogenic Polycyclic Aromatic Hydrocarbons (cPAH) on WSDOT-owned property (e.g., for use on highway shoulders). Under the proposed new definition, this would likely no longer be allowed. This problem is a consequence of not including an 'impacted soils' section as was contained in a prior proposal. We strongly recommend that Ecology insert provisions into the rule that specifically address impacted soils, instead of attempting to regulate these soils in the definitions section.

   B) The definition infers sampling is required for moving any material. The outcome will increase costs without clear rationale. In practice, the new definition will require WSDOT and its contractors to characterize all materials to be moved, and test all locations were the materials are to be placed, in order to establish site-specific conditions.

   C) The rationale supporting a new pH requirement is unclear. This new restriction is inconsistent with the intent of RCW 70.95.805, in which the Legislature directed WSDOT and its contractors to utilize more recycled concrete in projects. The new requirement will further limit what types of material qualify as clean, increasing costs and requiring disposal of potentially reusable material into a landfill. pH is already addressed by water quality and dangerous waste regulations. Information supporting further pH regulations hasn't been identified and these requirements could curtail common sense handling of material outside the 4.5 to 9.5 pH range. WSDOT recommends removing pH from this definition.

3. "Contaminated Soil"
   A) The proposed modification to the current definition will create an uncertain process for establishing site-specific standards that will add substantial difficulty in managing soils from construction projects and other transportation activities. The proposed definition will require WSDOT and its contractors to characterize all materials to be moved, and test all locations were the materials are to be placed, resulting in substantial increases in time and cost to construction and road maintenance activities.

   B) The basis for the new pH provision is unclear, and WSDOT is concerned about creating a restrictive new environmental standard without appropriate justification. WSDOT recommends Ecology remove the pH proposal from the rule, as there is no

demonstrated environmental need related to solid waste. Existing water quality and dangerous waste regulations can be used to address pH concerns.

C) Per a conference call discussion convened by Ecology on July 11, 2017, WSDOT requested that "street waste" be removed as an example of contaminated soils. The nature of street waste varies considerably, from clean to contaminated, and as such it is not an example of 'contaminated soil' or 'clean soil'. If this term is used as an example, regulators will assume that all street waste is contaminated, which it is not. WSDOT does not agree that street waste is typically contaminated to the degree that would require disposal in a solid waste landfill. Because of the lack of information demonstrating that street waste is illustrative of 'contaminated' material, WSDOT continues to recommend removing "street waste" as an example of this definition.

D) The modified definition refers to engineered soils as an example of contaminated soil. WSDOT is not aware of any information provided by Ecology that suggests engineered soils should be considered contaminated. WSDOT requests that this example be removed from the contaminated soil definition.

E) The revised definition will significantly impact WSDOT's maintenance operations. With the changes proposed, WSDOT would be required to test all materials from maintenance operations even when there is no reason to assume material is contaminated. And, most materials would require landfill disposal. Current regulations allow street waste to be placed on WSDOT property if certain site criteria are met. WSDOT's construction and road maintenance costs would likely increase dramatically with this modified definition.

4. "Cured Concrete"
   A) This new definition does not clearly define what cured "off-specification concrete" means, provides no testing methodology or criteria, and states that it will be evaluated on a case-by-case basis. This definition would make the current regulatory environment more uncertain, has no demonstrated environmental benefit, and would increase costs and require the disposal of potentially reusable materials.

   B) This new definition has the potential to interfere with the intent of RCW 70.95.805, requiring WSDOT to use recycled concrete. WSDOT recommends removing this definition or revising it in a way that would allow for more concrete to be considered cured, clearly define the criteria, and provide a testing method.

5. "Inert Waste" Definition Elimination
   The proposal excludes an 'inert waste' definition – this is problematic because the proposed rule includes a section that relates to specific requirements for inert waste landfills (WAC 173-350-410). The term "inert waste" appears repeatedly in the proposed rule. WSDOT recommends Ecology include a definition relating to inert material in the final rule.

6. "Petroleum Contaminated Soil"
   The new definition is unclear – WSDOT recommends that the definition and associated requirements be appropriately synchronized with other applicable regulations and guidance that govern petroleum contaminated soils to avoid confusion (i.e., MTCA, Dangerous Waste, UST, and Guidance for Remediation of Petroleum Contaminated Sites, Section 12, Publication No. 10-09-057, Ecology published revision 2016).

7. "Release"
   The new definition creates confusion with other applicable regulations. WSDOT recommends removing this definition or replacing it with a definition that references existing regulations that define or otherwise address releases.

8. "Reuse"
   This new definition is unclear and would significantly limit what types of WSDOT road maintenance and construction materials could be reused. In addition, the new definition is contrary to the Ecology Guidance for Remediation of Petroleum Contaminated Sites (Section 12). WSDOT recommends removing the definition or revising it to eliminate inconsistencies with existing guidance and allow for improved material reuse flexibility.

9. "Street Waste"
   The new definition groups street sweepings and drainage conveyance material together, and establishes these materials as 'waste.' WSDOT does not agree with this assumption, as these materials vary greatly from region to region across the state. Urban areas could expect to see a higher potential for contamination compared to more rural areas that have less traffic and development. WSDOT recommends that Ecology remove this definition or replace it with a version based on threats to human health and the environment, and provides a method for considering regional differences.

WSDOT appreciates the opportunity to provide comments on the final Solid Waste Handling Rule proposal. Our comments focus on providing more consistency and certainty in how solid waste regulations will be implemented in our state. Should you have any questions regarding these comments, please contact Megan White at whitem@wsdot.wa.gov or (360) 705-7480.

Sincerely,

Keith Metcalf, P.E.
Deputy Secretary of Transportation