

Associated General Contractors (AGC) of WA

Associated General Contractors (AGC) of Washington appreciates the opportunity to provide these comments regarding the Department of Ecology's Solid Waste Handling Standards CR-102 rule.

AGC thanks DOE for removing Section 995 that was in previous drafts of the rule. We were concerned that the transfer of impacted soils or impacted sediments permitted under the previous draft rule may expose contractors to potential liability under MTCA or SWHS, including citizen suit liability, for releases or potential releases of contaminants at levels above those for clean soil and clean sediment in WAC 173-350-995, but not above existing levels at the receiving site. Therefore, we are pleased to have Section 995 removed.

Our comments regarding the CR-102 are:

1. Positive market value: The CR-102 says that one of the criteria to not be a solid waste is for the material to have "positive market value". Part of the determination of "positive market value" is to not pay for removal, but it may often be possible for contractors to pay for the removal of material, yet the material still retains a net positive market value. Broken concrete, in particular, is heavy and costly to transport. But these transport costs, plus the costs of reprocessing the material, minus the proceeds from selling the material for re-use is still significantly less than the cost of disposing at a landfill. Recycling the concrete saves money and helps WSDOT fulfill the directive it received from the Legislature to use more recycled concrete in products. We suggest a definition of "net" positive market value that reflects this scenario.

2. pH: The language in the CR-102 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. Many soils naturally occur with a pH of 10.0. Plus, composted soils are allowed a pH range of 5 to 10.0. It is contradictory to allow composted soils to have an upper pH limit of 10.0, when the clean soil definition only allows a pH of 9.5. And again, here the CR-102 conflicts with RCW 70.95.805, requiring WSDOT to use recycled concrete. We suggest removing the pH language from the rule, or at least allow clean soils up to a pH of 10.0.

3. Definition of cured concrete: The CR-102 uses an unsupported time period of 28 days and a compressive strength of 1200 psi to define cured concrete. We recommend adopting language similar to that found in the Sand and Gravel General Permit regarding unhardened concrete. Plus, we know of no ASTM standard test or other method to test the compressive strength of broken concrete. Therefore, we suggest the reference to compressive strength of 1200 psi be removed.

4. JHD jurisdiction: Table 210-A (2) provides the specific exemption requirements for facilities recycling concrete. This requires any facility recycling concrete for re-sale to allow inspections by the jurisdictional JHD as well as annual throughput reporting. There are many concrete plants that accumulate return concrete, crush and resell this material, but do not accept concrete from outside sources. These facilities are not currently under JHD jurisdiction and this rule represents a change in reporting obligations. These same facilities are also subject to the Piles section of the rule but will receive Piles Permit exemptions when the facility has a Sand and Gravel General Permit. In these cases, there is no need for both the JHD and the DOE Sand and Gravel Permit Inspector to inspect and regulate the site. Both agencies would be regulating the same things; this is redundant and

unnecessary. We suggest amending the proposed rule so that only DOE has jurisdiction in these situations.

5. Street waste: The proposed rule uses "street waste" as an example of contaminated soils. However, street waste is not always contaminated, and this rule would cause otherwise clean street waste to be disposed of in a solid waste landfill, unnecessarily adding costs to a project. We recommend removing street waste as an example of contaminated waste.

Thank you for your consideration of these remarks.

Sincerely,

Jerry VanderWood
Chief Lobbyist.