WASHINGTON REFUSE & RECYCLING ASSOCIATION

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Mr. Kyle Dorsey:

The Washington Refuse and Recycling Association (WRRA) is the oldest Solid Waste Trade Association operating on the West Coast of the United States, founded 69 years ago. WRRA member companies and the solid waste industry serve a vital role in public health, safety, and environmental protection. WRRA represents the private sector solid waste and real recycling industry in Washington, including curbside collection service, state of the art recycling facilities, landfills, and virtually every other aspect of the solid waste system. WRRA members are the largest real recyclers in Washington. As such, WRRA and the industry have taken an active role in the WAC 173-350 Rule Update process. WRRA staff and members have participated in workgroups where allowed and submitted two sets of early comments on key sections of the rule, which we reiterate but will not duplicate.

WRRA is proud, as the Department of Ecology (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 impressive recycling rate, well above the national recycling rate, 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 which also requires adequate enforcement.

WRRA is concerned with the overall theme of "deregulation" present in this draft of the WAC 173-350 update. With a series of new exemptions regarding contaminated soils and hybrid waste landfills to complete deregulation of an unknown number of recycling and material recovery facilities through changes to key definitions, and the continuance of problematic exemptions coupled with a lack of enforcement regarding exempt Material Recovery Facilities (MRFs), we observe a strong trend toward deregulation and believe it to be the wrong direction for Washington. The success of Washington's system has proven that regulation not only works for solid waste, it is necessary at both the transportation and facility level.

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WRRA views the 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. All solid waste facilities in Washington should be subject to robust regulation, including regular inspections and reporting requirements which are subject to verification and robust enforcement should be pursued to ensure the success of the regulated system. The 173-350 update makes several commendable steps towards this goal, but falls short in many others as it shifts toward deregulation of solid waste facilities.

I. WAC 173-350-110 Determination of Solid Waste.

WRRA believes that the "criteria" put forth in WAC 173-350-110 to assist in making the all-important determination, whether or not a material is solid waste, are well stated and should be of significant assistance to both regulators and industry. When taken on their own, without regard to key definitional changes which will be discussed later, the factors or "tests" are solid and most importantly, support the statutory definition of solid waste in RCW 70.95. The "tests" are similar to those in other states, California being one where they have been successfully applied. The proposal that material is solid waste if it meets "any" of the criteria would be particularly helpful as it would allow for the broad decision making parameters which are necessary here. Similarly, the requirement that in order to be no longer a solid waste, a material must meet "all" criteria is a common sense approach that, again, will be of substantial assistance to regulators. A definitive test with this level of specificity has long been needed.

We are mindful that these decision cannot be made in a regulatory vacuum. We have, throughout this process, been mindful of the necessity of DOE and the Washington Utilities and Transportation Commission (WUTC) working together on these issues. Thus we are pleased that the proposed criteria and the WUTC "factors" in WAC 480-70-160 are complimentary to each other, and certainly can be applied jointly in some situation. That being said, different statutes and agencies define solid waste differently, particularly with respect to commercial recycling. To promote consistency across these statutes we recommend adding the following passage, citing to existing law for clarity, as section 5 of the test: "Nothing in this chapter shall impact the rights of a commercial recycler, non-profit, or commercial generator under RCW 70.95.903, 81.77.140 36.58.160, and 35.21.158."

WRRA was heavily involved in the workgroup that developed this test and notes that a key definition developed in that process and relevant to this section has been omitted. In 173-350-110(3)(b), the test specifies that a material must be separated from other solid wastes, though the extent or type of separation is not specified. Early drafts of this rule section from the workgroup process, particularly the draft dated 12-30-15 clarified this section by proposing a definition for "separation." WRRA recommends adopting the 2-25-15 definition of "separation" with one edit:

> "Separation" or "separated" means source-separation ~~or other processing~~ to substantially remove or separate recyclable materials from other non-recyclable solid waste, resulting in less than 10% by weight non-recyclable materials, for the purpose of reuse or recycling.

Defining "separation" provides needed clarity, supports existing regulation, and should be incorporated into the more recent drafts as the term "separated" is ambiguous standing alone. This definition also supports and highlights the crucial statutory provision, source separation of recyclable materials.[1]

II. An unknown level of widespread deregulation through definitional changes and application of the WAC 173-350-110 Determination of Solid Waste Test.

As previously discussed, the determination of waste test in the proposed 173-350-110 develops a useful list of factors which support the statutory definition of solid waste in RCW 70.95. WRRA supports the factors and test in 173-350-110 standing alone. However, when read in conjunction with key definitional changes, the practical effect of the test goes far beyond its apparent purpose as a tool to provide consistency across jurisdictions and serves as the vehicle to deregulate a large swath of the solid waste and recycling industry in Washington which is not supported by the governing RCW 70.95.305.

One of the factors for a material to escape classification in 173-350-110(3)(C) is that "The material has been recycled, or is ready for reuse." The rule proposal substantially changes the definition of recycling to include materials processed into "commodities" which fall short of the fully remanufactured materials previously required by the rule, the new definition reads:

> "Recycling" means transforming or remanufacturing waste materials into usable or marketable materials for use other than disposal or incineration. Recycling includes processing waste materials to produce tangible commodities. Recycling does not include crushing, shredding, compacting, sorting, baling, or repackaging when those activities are part of collection, intermediate processing, or preparation for the purpose of transport. ~~Recycling does not include collection, compacting, repackaging, and sorting for the purpose of transport.~~

The rule also defines commodity somewhat liberally in 173-350-100, as essentially any material which meets broad industry specifications, which "is mutually interchangeable with other materials meeting the same specifications, and that has well-established markets."

Taken together, applying the WAC test in conjunction with these definitional changes will declassify a number of facilities as handling solid waste at all, not merely grant the facility an exemption under WAC 173-350-210 or 310, but completely remove any number of facilities from regulation under 173-350 at all. Previously, recycling required the remanufacturing of waste into new products. Under the new rule, many previously regulated WAC 173-350-210 or 310 facilities will be deregulated. It is not clear nor likely that DOE has the authority to deregulate these solid waste facilities under 70.95.305, and to date, DOE has not provided stakeholders with a list of potentially effected entities for deregulation, despite several requests.

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[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."

With these changes, DOE is deregulating an unknown number of solid waste handling facilities. WRRA cannot support these changes, especially without some idea with regards to the scope of these changes or the facilities affected. We also believe that DOE cannot hope to receive meaningful feedback on the rule without providing stakeholders some understanding of the scope of the deregulation proposed.

Furthermore, deregulation of an unknown number of facilities may have an unintended and negative impact on Washington's recycling rate. Deregulating these facilities also means many large recyclers will not be bound to the same mandatory reporting requirements found in the current WAC 173-350-210 & 310. Our understanding is that these deregulated facilities would only be sent a recycling survey, which is optional and lacks the specificity of the current reporting requirements. In the long run, this will surely have a detrimental effect on Washington's recycling rate. Washington's recycling rate is a number which WRRA, the industry, and DOE should celebrate, not artificially deflate through deregulation.

WRRA has opposed exempt facilities and believes all solid waste handling facilities should be subject to permitting, inspection, reporting, and enforcement to protect human health and the environment, ensure real recycling, and the proper handling and disposal of solid waste. The changes here have the potential to go far beyond any exemption and offer a pathway for total deregulation under 173-350. Stakeholders require more information on the proposed scope of deregulation. WRRA formally requests that DOE supply stakeholders with information regarding potentially effected entities in order to offer meaningful comments on the subject.

III. WAC 173-350-210 Recycling and Material Recovery Facilities and 173-350-310 Transfer Stations and Drop box facilities.

A significant amount of solid waste handling activity in Washington already goes effectively unregulated under current DOE rules, due in part to a lack of enforcement on existing DOE laws and rules. This has opened the door to sham recyclers who hurt cities, counties, the state and legitimate lawful companies while exposing Washington citizens to unnecessary environmental risks. Washington's system has proven that regulation works for solid waste. All solid waste facilities, including MRFs, landfills, recycling facilities, and transfer stations in Washington should be subject to robust regulation with regular inspections and reporting requirements which document all materials received and what ultimately happens to the materials as part of a robust enforcement regime to ensure the integrity of Washington's excellent system.

Permit exempt facilities, with lacking reporting and inspection requirements under WAC 173-350-210 & 310, have proven extremely problematic and provided a cover for cheap disposal operations. WRRA opposed the exemption of solid waste facilities from permitting and inspection over a decade ago. Early on in the 173-350 rule update process, WRRA identified exempt facilities as a key concerns for the industry. Despite this, neither a dedicated workgroup nor ongoing forum for discussion on this issue was included in the stakeholder process. WRRA provided two sets of early comments which outline our concerns with the exemption process. We incorporate and reference that analysis here, but will not duplicate it and instead focus on newer sections of the rule.

Regarding the most recent rule proposal, we support, to an extent, the clarification in the titles and organization of section 173-350-210 & 310, changing 210 "recycling" facilities to "recycling and material recovery facilities" and 310 "intermediate solid waste handling facilities" to "Transfer stations and drop box facilities." However, we believe that recycling facilities and MRFs should remain in their own distinct chapters to further clarify that the primary sorting, bundling, and processing activities of a MRF are distinct from the actual recycling that occurs at a recycling facility. Commendably, the rule update clarifies this distinction in the definition of recycling and WAC 173-350-110. Recycling facilities and MRFs should have their own distinct sections to support the distinction between sorting and recycling drawn elsewhere in the rule.

The update to WAC 173-350-210 Recycling and Material Recovery Facilities appears to take some steps to shrink the scope of the exemption, though it's not clear what practical effect the changes will have. For example, 173-350-210(2)(a)(ii) requires that an exempt facility:

> Accept only source separated waste materials segregated into individual material streams for the purpose of recycling, processing, baling, or repackaging for use other than disposal or incineration...

173-350-210(2)(a)(iii) notes that:

> Examples of individual material streams are loads composed solely of cardboard, mattresses, or glass of one type or several types. More than one individual material stream may be accepted at the same facility, but mixed waste materials, including comingled recyclable materials such as construction and demolition materials, may not be accepted under this exemption;

First, as added above, we believe the rule should specify that mixed C&D materials do not qualify as an individual material stream for purposes of this rule, only a box of entirely clean wood or some other material could qualify. Source separation is key in this area. Historically, C&D facilities have proven to be the most problematic exempt facilities, offering avenue's for cheap disposal and sham recycling under the cover of recycling, operating more like a transfer station than a MRF or recycling facility. Due to that context, we initially viewed this change as a step in the right direction toward eliminating the most problematic exempt facilities, which often take a mix load of largely garbage, often highly contaminated C&D, claim to haul it as recycling and ultimately dispose of the bulk of the contents.

Since our optimism with the original draft which specified exempt MRFs could only accept individual material streams, we have heard from staff that this change would likely only effect several facilities in the state, perhaps 6 at the most. Again, it's impossible for the industry or WRRA to offer meaningful comments without some idea of the facilities effected by the changes. As the amount of facilities affected by this change is apparently small, and apparently already identified, WRRA formally requests DOE to provide information naming potentially effected entities by these changes.

The draft also alters "5% and 10% rule" for exempt facilities, by changing the unit of measurement from weight to volume in 173-350-210(2)(a)(iii). The rationale behind this change is unclear. In some circumstances, volume may provide a useful measurement, such as visual inspection. However, weight is an inherently more precise measurement that is easily recorded and documented for recordkeeping purposes, such as Transporter Law records. Everything in the solid waste industry is weighed at some point, weight should be kept in the rule as the more accurate measurement. The rule should not eliminate weight in favor of volume, but provide for the consistent use of both units of measurement.

In the new WAC 173-350-310 Transfer stations and drop box facilities, a pre-existing exemption from permitting for drop boxes used solely for collecting recyclable materials is transferred from WAC 173-350-020. DOE should take this opportunity to also recognize the "two box rule" from WAC 173-350-345, which states:

> All sites where recyclable materials are generated and transported for recycling must provide a separate container for nonrecyclable materials (solid waste), using collection practices consistent with chapter 173-350 WAC.

This important rule has not been consistently enforced or applied, but is absolutely necessary to ensure real recycling and prevent contamination of recyclable materials containers. This rule recognizes the reality that rarely does a box contain 100% recyclable materials, and should be recognized in 173-350. If only a single container is present, all of the waste from a site will go in that container. DOE should take this opportunity to add the "two box rule" to 173-350 to have all applicable regulations in a single place for operators to consider and reinforce the statutory requirement of source separation for recyclable materials.

WRRA 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. Currently, exempt facilities lack any real 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. 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. WRRA opposes exempt solid waste facilities.

IV. WAC 173-350-410 Inert Waste Landfills.

WRRA opposes deregulation and exemption of solid waste facilities. Accordingly, we oppose increasing the threshold for exemption, from 250 cubic yards to 2000 cubic yards, an almost tenfold increase in the size of the exemption. This change is in keeping with the overall theme of "deregulation" found in the preliminary rule draft, though it is not clear what DOE wishes to accomplish by exempting more and larger facilities.

Again we must question what facilities will be deregulated under this exemption, and how will the exemption requirements be enforced? How many existing permitted facilities would be exempt under this rule? What facilities? How many new facilities are anticipated to take advantage of this tenfold increase in the exemption? Under the rule, the operator must provide notification of intent to the local JHD and DOE for a facility under 2000 cubic yards. With a lack of any permitting fees with the exemption, what is the enforcement mechanism to ensure that an exempt facility remains under 2000 cubic yards? What oversight does the rule provide? What is the process if a facility exceeds 2000 cubic yards? Facilities under 250 yards do not require notification to the JHD. How can the rule provide for any oversight or enforcement if neither the JHD nor DOE is ever even notified of their existence?

This section is also problematic because, based on staff comments at workshops, the increase to 2000 cubic yards in this section has also driven expansions to 2000 cubic yards in the piles and hybrid waste landfills sections. Inert waste landfills, and related sections, should, at a minimum keep the current 250 cubic yard standard for exemption. Optimally, all solid waste facilities should be subject to oversight, inspection, reporting, and diligent enforcement- not deregulation.

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

The updates to the piles section represent a strong step in the right direction by requiring permits for most non-temporary piles and setting clear limits on time and volume allowed before a permit is required. WRRA suggests DOE follow a similar model for other facilities and exemptions in 173-350. The approach laid out in this section is clear and avoids the ambiguity of the current 173-350-210 and 310 facilities, and allows for easy identification and classification of facilities; something which is greatly needed for stakeholders to understand the scope of changes to the rule. WRRA questions why DOE has only found the approach taken here appropriate for piles and why it should not be applied to other sections along with more robust reporting requirements for input and output of material.

VI. WAC 173-350-350 & 355 Waste Tire Storage and Transportation.

WRRA has monitored the progress of changes to this section, and was part of the stakeholder workgroup for the rule. In general, we are in support of increased regulation of storage and transportation of waste tires. Improper handling of these tires is a very real danger to public health and the environment, and must be closely monitored, not only by DOE, but by local health and fire departments.

It seems a good idea to give transportation its own section, while retaining the exemption for solid waste haulers regulated under RCW 81.77. We think the exemption has always been intended to include cities which either contract for solid waste collection or provide service by a municipal department. It may be appropriate to include language reflecting these exemptions to avoid any possible confusion.

VII. WAC 173-350-235 & 995 - Soil and Sediment Criteria and Use

WRRA supports the safe and environmentally responsible handling of solid waste, including contaminated soils. WRRA appreciates that DOE has made an effort to more effectively regulate the movement of contaminated soils, and believe the rule has improved overall from earlier drafts with the addition of more SSL's for different sites. However, the rule still falls short in crucial areas which threaten to undermine both the goals of the rule and Washington's system for the safe and responsible disposal of solid and contaminated waste to ensure public safety and environmental protection.

WRRA, several individual solid waste companies who own landfill requested representation on the workgroup that developed this rule to voice these concerns, but were repeatedly denied. Our companies have vast experience in analyzing, transporting and receiving these type of materials and still know our knowledge and expertise would have been relevant, meaningful, and offered significant contributions to DOE in development of this rule. The workgroup also lacked participation by other relevant parties, including environmental groups, county solid waste divisions, or the Tribes of Washington, all groups which could be concerned with the environmental and storm water impacts associated with spreading contaminated soils across the state.

Initially we must ask, who will be responsible for the "self-regulating" community under this rule? Will it simply be a complaint based system? A system which only steps in after the damage has been done for clean-up and remediation efforts? For solid waste, a history and experience has proven that a more proactive regulatory approach is required. WRRA's chief concerns are the high potential of abuse with the lack of notice to DOE or local JHD's regarding the movement of contaminated soul, the weak "due diligence" requirement defined in WAC 173-350-100, and other changes to longstanding definitions in service to this section.

First, the latest draft rule eliminates baseline notice requirements to local JHD's regarding the movement of contaminated soil. The elimination of notice requirements has the potential to severely undermine the rule. Regulators will face difficulties even locating parties accountable under the rule if they are unaware contaminated soil is moved and by who, or which contractor on a large project. This task is made even more difficult because the "due diligence" component of the rule does not require parties to keep records either. The local JHD should be notified regarding the transportation or use of contaminated soils.

Second, 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 the company does not need 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 sophisticated controls to prevent accidental release or harm to the environment, in deep contrast to the unmonitored land application of contaminated soils throughout the state.

Additionally, the draft purports to change the definition of solid waste in WAC 173-350-100 to replace "contaminated soils" with "impacted soils". Changing the definition of solid waste to accommodate contaminated soils is unnecessary and confusing. The term "impacted soils" is ambiguous and lacks clear meaning to a casual observer. The rule section and definitions should proceed with the existing and self-evident definitional term "contaminated soil." Furthermore, the change appears largely cosmetic by rebranding formerly contaminated soils as "impacted soils." WRRA 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.

It is unclear to us why the rule moves away from Model Toxic Control Act standards on certain contaminants. In the end, this proposal seems to be the end result of several years of remedies rejected by the legislature. Furthermore, the effects of allowing the movement of contaminated soil throughout the state without even so much as notice to the local JHD seems at odds with other DOE goals regarding storm water and water quality issues, with a huge potential for surface water contamination along street ditches and other surface water implications. The rule is also at odds with DOE's mission statement, to "protect, preserve and enhance Washington's environment for current and future generations." Under the current rule, future generations will not know where contaminated soils have been used due to the lack of notice nor the level of contaminated soil due to the weakness of the due diligence requirement.

VIII. WAC 173-350-405 Hybrid waste landfills.

WRRA questions the need for this new section and exemption given existing issues with inert waste landfills, the potentially dangerous nature of hybrid waste, failures with other exempt facilities, and the availability of state of the art highly regulated landfills which are ready, willing, and highly equipped to safely dispose of contaminated soil.

Hybrid waste is defined as "a combination of impacted soil and /or impacted sediment, and inert waste." Impacted soil and sediment is contaminated soil and:

> "...contains one or more contaminants from a release at concentrations above those for clean soil and clean sediment... [and] may include... street waste, petroleum contaminated soil, sediment from surface waters containing contaminants, engineered soils, and soils likely to have contaminants from industrial or historical activities."

By definition, contaminated or "impacted" can pose potential harm to human health or the environment and ought to be disposed of in a safe, reliable, and highly regulated environment.

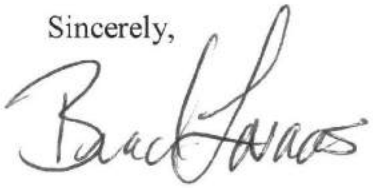
Inert waste landfills have proven to be problematic for several reasons. First, inert waste landfills have provided a haven for sham recyclers to achieve cheap disposal. Second, inert waste landfills are much more likely to become a "problem" in the long term. Whether as a clean-up site with no operator in sight or ability to cover the costs. Based on these factors, 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.

Today, many contaminated soils go to lined landfills which are highly regulated at both the state and federal level, with sophisticated groundwater monitoring, storm water controls, and gas collection and air emissions monitoring, in deep contrast to an unlined hole in the ground likely maintained by smaller and less reliable operators. WRRA opposes exempt facilities, and hybrid waste landfills represent not only another problematic exemption for permitting requirements, but a dangerous one.

IX. Conclusion

WRRA appreciates the opportunity to comment on these rules still in development and DOE's consideration of WRRA and the solid waste industry's concerns. We will continue to call into 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) 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,



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