

King County Solid Waste Division

King County Solid Waste Division's comments are in the uploaded file.

The King County Solid Waste Division appreciates Ecology's ongoing work to update WAC 173.350 and also the chance to comment on proposed revisions. While we support the majority of revisions, we have grave concerns with the proposed changes to *WAC 173-350-021, Determination of Solid Waste*. We appreciate the need for broad regulations to protect public and environmental health, but believe that this section will prove highly disruptive to the solid waste and recycling industries. It raises more questions than it answers, it should not be enacted now, and we should instead continue developing tools to address this valid regulatory need.

Requiring that recyclable materials have "positive market value" is particularly worrisome and, we expect, will cause a cascade of negative consequences and grey areas. Determining market value is problematic and complex. Commodity markets change and will cause uncertainty in the recycling industry as processors won't know what's regulating their business. Market value may urge processors to contract with less reputable recyclers with marginal markets, rather than with known recyclers who must charge to keep their proven end markets viable.

With a market value criteria, numerous materials in the recycling stream will be considered "solid waste" and will be subject to various solid waste handling regulations. Green waste and wood waste for example incur a charge to haul away which would seem to classify them as solid waste. Questions and concerns for the recycling industry include:

- Would a recyclables hauler and/or processor then need to acquire solid waste handling permits?
- Will processing facilities be un-permittable and have to move if reclassified as solid waste facilities?
- Does that recyclable material become subject to solid waste flow control regulations?
- Will the recyclable material count toward state recycling totals?

Public policy can incentivize programs that provide a public good but are not self-sustaining. This "positive market value" metric dis-incentivizes recycling and waste diversion programs. We urge you to consider a different approach that will support one of the goals of the authorizing statute: to develop stable and expanding markets for recyclable materials.

The remainder of this document comprises additional comments and concerns on this and other WAC 173.350 revisions. Thank you for your consideration.

Issue #1: Proposed Revision to the Determination of Solid Waste May Disrupt the Recycling Industry with Permitting, Facility Siting, and Material Handling Impacts

Under the proposed code revision, a material is considered a solid waste unless it meets multiple criteria including that it “has been recycled, or “is ready for reuse” and “has positive market value”. Potential impacts include:

This may require processors of recyclable materials to be classified as solid waste handling facilities, rather than recycling facilities. If defined as “solid waste”, companies are required to have solid waste handling permits from local health authorities and may be unable to renew site permits for their current locations. This uncertainty will impact different material types as well as different material handling phases of the recycling industry.

The “positive market value” criteria is dependent on a current valuation of a material within changing markets, so a recyclable material’s classification may change as commodity markets change. It may also encourage sending material to international markets that will pay, but may not provide the highest environmental benefit and may have marginal end markets for the processed product. SWD pays to have green waste and scrap wood hauled away. Does that make those materials “solid waste”?

We recommend that this section be revised so that it still addresses the relevant regulatory goals but does not hamper other sectors of the recycling industry with uncertain cost, permitting, supplier, and end-market impacts.

Issue #2: Existing Code Regulating Moderate Risk Waste Facilities – Design Standards May Require Significant Added Capital Expenditures

SWD staff are concerned the regulations require significant capital expenditure on spill containment that does not seem to be justified based on the environmental/public health risk associated with handling limited quantities of household-type hazardous wastes for very short durations.

Reference:

Regulation: 173-350-360

“...5) *Moderate risk waste facilities - Design standards.*

(a) The owner or operator of a moderate risk waste facility shall prepare engineering reports/plans and specifications, including a construction quality assurance plan, to address the following design standards. Each MRW facility shall:

...(iii) Provide secondary containment to capture and contain releases and spills, and facilitate timely cleanup in areas where MRW is handled. All secondary containment shall:

(A) Have sufficient capacity to:

...(III) Provide additional capacity to hold twenty minutes of flow from an automatic fire suppression system, where such a suppression system exists”

Comment:

The requirement for containing 20 minutes of sprinkler discharge in areas “where MRW is handled” is overly broad and may be interpreted to cover areas that are not required by fire or building code to have this degree of containment. Under fire and building codes the requirement applies only to areas of the facility that are designated as a high hazard (H) occupancy and which store quantities of hazardous materials in excess of specified thresholds. Applying this overly broad requirement to customer unloading and sorting areas or to storage areas where the quantity of hazardous materials is limited does not appear necessary to protect public health or the environment, particularly if those areas are equipped with levels of secondary containment that meet the criteria of “greater than ten percent of the volume of all containers or the volume of the largest container, whichever is greater”.

The existing requirements under WAC 173-350-360 are stricter than those that apply to fully regulated ‘RCRA’ treatment and storage facilities (WAC 173-303-630). For example, there is no requirement under WAC 173-303-360 for containment of sprinkler discharge.

At King County MRW facilities, customers are limited to containers of 5 gallons or less (with rare exception) and the types of materials handled are generally of low to moderate hazard. At our new Factoria facility in Bellevue, Washington, containment of 20 minutes of sprinkler discharge within the customer unloading area alone would require a containment system with over 20,000 gallons capacity, which is the approximate volume of a home swimming pool.

We recommend that the regulation (173-350-360 (5) (a) (iii) (A) (III) be changed to read:

“(III) Provide additional capacity to hold twenty minutes of flow from an automatic fire suppression system, ~~where such a suppression system exists~~ in areas of the facility as required by the local fire or building code.”

Alternatively, the secondary containment requirements in WAC-173-303 could be adopted under WAC 173-350-360. While the Division does not advocate regulating MRW facilities to the same degree as RCRA facilities, in this instance compliance with the RCRA regulations would be less burdensome. Either way, it is easier for compliance and enforcement purposes if there are fewer different design standards to comply with.

Issue #3: Existing Code Regulating MRW Drum Storage Standards May Impact MRW Facility Construction Costs and MRW Collection Costs

Under the existing WAC 173-350-360(6)(a)VI), the 30-inch drum clearance rule greatly reduces available space for accumulating MRW, particularly at urban locations where space is

limited. To comply, the MRW facility must increase the frequency of pickups or in some cases shut down due to lack of storage space. MRW facilities in urban areas also typically store MRW for limited duration (typically less than two weeks). As such, these facilities act as collection and transfer facilities and not as long term storage facilities. The 30-inch clearance rule should not apply to MRW storage areas when the drums are stored for no longer than 10 days. This would be consistent with the exemption for transportation facilities that store dangerous waste for up to 10 days while in transit.

The rule adds program costs by requiring larger facilities, and/or increasing transport costs and greenhouse gas/energy consumption by requiring increased frequency of MRW pickup.

SWD staff recommend the following language inserted:

(vi) Containers of MRW shall be stored in a manner that allows for easy access and inspection. Drums containing MRW stored for longer than 10 days shall have at least one side with a minimum of thirty inches clear aisle space;

Issue #4: Regarding unprocessed and ground asphalt shingles, recommended revisions to *Definitions and Piles used for storage or treatment* sections, and a request regarding Department of Ecology's interpretation of specific provisions of *Determination of solid waste*.

WAC 173-350-100, Definitions

This section adds a definition of asphaltic material and specifies that asphalt shingles are not covered, but does not provide a separate definition of asphalt shingles.

WAC 173-350- 021, Determination of Solid Waste

King County Solid Waste Division's interpretation of Section 021 is that asphalt shingles possessed by asphalt producers, once ground and ready for use in asphalt mix production, would NOT be considered a solid waste, so long as the material is stored and managed to preserve its value, and is stored in a manner that presents little or no risk to human health and the environment. Asphalt producers already operate under Sand & Gravel stormwater monitoring and management permits, so the ground asphalt shingles material onsite at these facilities would be subject to those existing permit requirements, which involve stormwater discharge monitoring and management. We assume that operations which meet those requirements would be considered to be in compliance with the requirements of Section 021 (3). **Please confirm that our interpretation of this section as it pertains to recycled asphalt shingles is correct.**

WAC 173-350-320, Piles Used for Storage and Treatment

Table 320-A provides the possibility of exemption from solid waste permits for holders of Sand & Gravel Permits with asphaltic material onsite but does not currently extend the same exemption for asphalt shingles that would be used in asphalt production in a similar manner as asphaltic material.

Asphalt plants already operate under Sand & Gravel General Permits that set explicit requirements for stormwater discharge monitoring and management. Our review suggests that the requirements set forth under the Sand & Gravel General Permits related to stormwater management and dust control are equal to or more stringent than the requirements laid out for outdoor piles under the solid waste handling regulations.

Asphalt plants are already required to be permitted, already subject to local health department oversight, and responsible for regular monitoring and reporting related to stormwater management. For these permitted facilities that have asphalt shingles onsite for processing and use in asphalt production, King County Solid Waste Division strongly encourages the Department of Ecology to include an allowance in Table 320-A for the Sand & Gravel General Permit to apply to asphalt shingles in lieu of a solid waste handling permit, in line with the allowance made for asphaltic material.

King County Solid Waste Division recommends the following revisions be made:

Add definition to *WAC 173-350-100* as follows:

“Asphalt shingles” means a type of wall or roofing shingles, including 1-/2-/3-tab, architectural and dimensional shingles, that are made from asphalt, fiber (commonly fiberglass or cellulose), and surface granules of stone, ceramic, brick, or other materials. Asphalt shingles does not include modified bitumen, built-up, rolled roofing, or other types of non-asphalt roofing.

Add line to *WAC 173-350-320*, Table 320-A as follows:

Waste Materials	Volume, Storage Time, and Capacity Requirements	Specific Requirements for Activity or Operation
Asphalt shingles	None	(a) Store on impervious surface. (b) Facility must hold and be in compliance with an active Sand & Gravel Stormwater Permit. (c) Use 100% of asphalt shingles onsite in asphalt pavement mix production.

Other Comments:

In addition to the major issues listed above, SWD staff also identified other definitions and sections within the proposed revisions that required clarification. All SWD staff comments are included below.

Inconsistent code structure:

WAC 173-350-310 (6) ... The owner or operator of a transfer station or drop box facility must: ...

- (a) Operate the site in compliance with the performance standards of WAC 173-350-040 and this subsection. In addition, the owner or operator must develop, keep, and follow a plan of operation...
- (b) For transfer stations, the plan of operations must also address how the operators will: this follows from (a) which mentions the plan of operations rather than (6) as the hierarchy would indicate. Should be able to directly read (b) after (6) and have it make sense.

Suggested correction of structure:

(6)(a) Operate the site in compliance with the performance standards of WAC 173-350-040 and this subsection.

(6)(b) Develop, keep, and follow a plan of operation...

(6)(c) Prepare and submit an annual report....

WAC 173-350-310 (6)(a)(iv)(E) Ensure that waste capable of attracting birds does not pose an aircraft safety hazard.

Concern:

As written it states that waste is the aircraft safety hazard rather than the birds.

It is also regulatory overreach creating legal risk and liability to operators to provide absolute control over facility airspace.

It is already regulated in (6)(a)(iv)(B) with operator responsibility to control vectors (aka birds).

WAC 173-350-310 (6)(b)(i) (the plan of operations must also address how the operators will) Prove attendant(s) are on-site during hours of operations;

Concern:

Regulatory intent is not clear. Presumably it is for transfer stations to be staffed during hours of operation. However, stating operators will “prove” attendant(s) are on-site needs clarity as to what type or level of “proof” is sufficient.

WAC 173-3350-310 (6)(c) For drop box facilities, the plan of operations must also address how the operators will service the facility as often as necessary to ensure adequate dumping capacity at all times.

Concern:

Intent is unclear: “how” and “as often as necessary” are separate concepts of operations that do not provide clarity as to the expectation for the operating plan (is including staffing plans and work schedules in the operating plan the expectation?).

It is also regulatory overreach with respect to requiring operators to “ensure adequate dumping capacity at all times.” Conditions may arise in which a facility could reach capacity and the proper operator response would be to divert further waste acceptance and close the facility to guard against “storage of waste outside the drop box”—which is presumably the whole point of this language.

WAC 173-350-021.2.g “The material has been stockpiled...”

Is there a time-period somewhere else in the WAC that would apply to this? If not, a time period should be defined. Otherwise some jurisdictions might decide it applies after a stockpile has been in place for 48 hours and some might interpret it to mean 6 months.

WAC 173-350-100 “Commingled recyclables...”

This definition is good but what term shall we now use to describe when recyclables and waste are mixed together? This has sometimes been termed “commingled” and sometimes “mixed”. Perhaps we need to have “mixed recyclables and waste” in the definitions and clarify that this would be considered solid waste.

WAC 173-350-100 “Inert Waste Landfill”

This definition was removed. Is this not a term that will be used anymore by Ecology? It is used in the definition of “Limited Purpose Landfill”. Does that mean the definition of Inert Waste Landfill needs to stay?

WAC 173-350-100 “Wood derived fuel”

Is creosote still considered appropriate for wood derived fuel? Seems like perhaps that should be struck.

WAC 173-350-410.1.a The allowance of several of the materials allowed here in inert landfills are materials that are banned by King County ordinance from being disposed of in a landfill (cured concrete, asphaltic materials, and brick). We need language added to allow for local bans on the landfilling of these materials to trump these allowances.

WAC 173-350-020(2)(q) Landfills regulated under 173-351 are clearly not subject to this chapter, but surface impoundments present at 173-351 landfills are subject to section 330 of this rule. That distinction isn't made clear up front in the applicability section, potentially resulting in a 351 landfill owner/operator mistakenly concluding that no portion of 173-350 applies to their landfill. Recommend clarifying that applicability up front.

WAC 173-350-021(2)(e) This is worded very loosely. It could be interpreted to include materials delivered to a solid waste handling facility for the purpose of operating the facility (e.g., fuel, equipment, supplies). Recommend restating for added clarity.

WAC 173-350-030 (1) Is the intent of this language to indicate that all units at a facility (including existing) must conform to the standards in this chapter if/when a new unit is added to the facility? Or are these standards limited to the new units themselves? (**Note: this section is called "Effective Dates"**).

WAC 173-350-100 "De minimis" This definition does not speak to what constitutes a de minimis release. The definition of release, however, alludes to a de minimis release. Expand this definition to elaborate on a de minimis release.

WAC 173-350-310.4.b.2 Detached containers used at drop box facilities are provided by the hauler that is awarded franchise rights for a given geographic region by the WA UTC. Owners/operators have no authority to require franchise haulers to comply with this requirement, putting owners and operators in a difficult position if the detached containers do not meet these criteria.

WAC 173-350-330(1)(a)(i) See related comment in applicable section above, WAC 173-350-020(2)(q). (**Surface impoundments, WAC 173-350-020(2)(q)**)

WAC 173-350-710(3)(d) Re-write to clarify what would happen if: 1) Ecology fails to complete its review within the timeframe specified (rendering the reissued permit invalid); or, 2) Ecology does not concur with the jurisdictional health department's issuance of a permit renewal. In either of those situations, would the permit holder be operating without a valid permit?