



WASHINGTON REFUSE & RECYCLING ASSOCIATION

March 16, 2016

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

Dear Mr. Dorsey: *Kyle*

The Washington Refuse and Recycling Association (WRRA) is very interested in the 173-350 Rule Update process and has participated whenever allowed. WRRA appreciates the invitation to offer further comments while the draft rule sections are still under construction and the rules update presented at the March Waste 2 Resources Advisory Committee meeting. First, we reiterate and incorporate by reference our comments from our original letter dated December 1, 2015. Second, WRRA offers several updated comments and concerns regarding more recent drafts, which were developed after our initial letter.

I. WAC 173-350-XXX Determination of Solid Waste (Definitions):

WRRA supports the statutory definition of solid waste. The draft definitions section presented to the workgroup in the 12-30-15 draft demonstrated a workable determination of waste test which supported the statutory definition of solid waste.

Like earlier drafts, the 12-30-15 draft uses the term "separated" in WAC 173-350-XXX(3)(b), but did not carry over this important definition from previous drafts. 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.

This definition provides needed clarity, supports existing regulation, and should be incorporated into the more recent drafts as the term "separated" is ambiguous standing alone.

The proposed language in this section only recently reached the precision necessary to prevent abuse by sham recyclers. Adding additional factors or exemptions on internal review will reopen the potential for abuse. In erring on the side of caution, and with respect to the statutory definition of solid waste, WRRA supports the most recent publically available draft of this section because it supports the definition of solid waste in RCW 70.95.030(22).

II. WAC 173-350-210 Recycling & 310 Intermediate Solid Waste Handling Facilities:

WRRA incorporates its original comments from our original comments and opposes exempt facilities. However, the WAC 173-350-310 draft revisions appear to take some positive steps and shrink the scope

of the exemption. Going forward, it would be helpful to stakeholders if DOE could identify the facilities or entities that will be affected by this change in breadth of the exemption. DOE may also wish to draw from Seattle and King County's facility and certification rules which include more robust reporting requirements, regular inspections, clear classification of the materials they accept, and material diversion levels.

First, WAC 173-350-310(1)(d)(ii) specifies that to maintain an exemption, facilities may only accept materials separated into distinct individual material streams. This language should be further clarified to specify that simply having a container comprised of mixed materials, each perhaps individually recyclable, is not enough to sustain an exemption under the rule. The materials must be separated and stored separately prior to arrival. WRRRA suggests the following edits:

WAC 173-350-310(1)(d)(ii) Accept only recyclable materials that have been separated prior to arrival at the facility into distinct individual material streams stored apart from other materials comprised of a single commodity, such as cardboard. Dispose of an incidental and accidental residual not to exceed five percent of the total waste received, by volume per year, and five percent by volume per load. Commingled recyclable materials, as defined in this chapter, may not be accepted under this exemption;

This change should provide the needed specificity to operators and leave no question as to the new requirements for the exemption.

Second, the draft alters the "10% rule" for exempt facilities, by changing the unit of measurement from weight to volume. The rationale behind this change is unclear. In some circumstances, volume may provide a useful measurement. However, weight is an inherently more precise measurement that is easily recorded and documented for recordkeeping purposes, such as Transporter Law records. As virtually 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.

III. WAC 173-350-235 and 173-350 995 Soil and Sediment Criteria:

WRRRA has serious concerns regarding the proposed sections on Soil and Sediment Criteria. WRRRA and several member solid waste companies requested representation on the workgroup to voice these concerns and were repeatedly denied.

The "due diligence" requirements are very weak and place discretion for the use of contaminated soils in the hands of a company which receives effectively no oversight under the proposed rule. The final draft rule does not require any formal assessment. Many operators will simply complete a visual inspection or an ownership/use review. This type of evaluation conducted by unqualified observers without a specific regulatory protocol is extremely open to abuse. While the goal of more tightly regulating contaminated soils may be worthwhile, the weak due diligence requirement provides a safe harbor for those looking to cheat an easily exploited system.

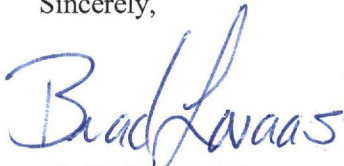
Moreover, there is an existing protocol to handle and manage soils, such as petroleum contaminated soils, with DOE's Guidance for Remediation of Petroleum Contaminated Sites, originally published in November 1995 and updated in September 2011. This document provides direction to owners, operators, consultants, and DOE on remediation of contaminated sites and soils, including compliance with cleanup standards, under the singularly relevant Model Toxics Control Act (MTCA), Chapter 70.105D. This important document also addresses guidelines for the reuse the contaminated soils, including specified

categories for the use of soils. These categorized uses of contaminated soil, if they meet certain standards, can be acceptably used for various projects such as backfill at cleanup sites above the water table, road and bridge embankment construction, and road base material. Thus, a workable protocol exists and does not need to be recreated and modified in the solid waste handling standards. MTCA should continue to be the controlling and implementing law in the remediation and use of contaminated soils, as it remains now.

Several Soil Screening Limits (SSLs) appear at odds with DOE's own priorities with regards to stormwater. Regarding total petroleum hydrocarbons (TPH), TPH clean soil targets for heavy oil (2000 mg/kg) and mineral oil (4000 mg/kg) appear too high to be consistent with DOE's oil spill reporting criteria and their stormwater "sheen" benchmark. Additionally, copper is not included in the basic soil or street waste screening parameters. This absence conflicts with DOE's enforcement of copper in stormwater regulations. The copper stormwater benchmark in Western Washington is 14 micrograms/liter or a 700 to 7000 dilution from a typical street sweeping concentration.

WRRRA appreciates the opportunity to comment on these rules still in development and DOE's consideration of WRRRA and the solid waste industry's concerns.

Sincerely,



BRAD LOVAAS,
Executive Director

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