

March 20, 2018

Department of Ecology  
Attn: Mr. Kyle Dorsey  
Waste to Resources Program  
P.O. Box 47600  
Olympia, Washington 98504-7600

Subject: Comments to Draft Solid Waste Rules WAC 173-350

Kyle,

On behalf of our Association and our Environmental committee, I wanted to extend my appreciation for the many months of effort on your part as well the discussion and debate on this rule making. We appreciate the opportunity to offer comments and suggestions on the formal draft Solid Waste rule.

We might agree it's been a long process and one that did not always bring stakeholders and the work groups together well. Regardless, I do appreciate the opportunities to work with AI and his efforts on piles, the soils group and the vetting of differences and Wayne Kraft was a very helpful resource in emphasizing the positive value of our materials during our Winter Workshop. Although the Inert waste group was abruptly disbanded, we remain concerned the draft continues to reflect predetermined outcomes. In contrast, the Department did make many significant changes in response to stakeholder comments. Thank you for taking the time to create a meaningful outreach to stakeholders during this extensive process.

We are pleased to provide the following comments and request your strong consideration of these in the final rule. We recognize the agency is dealing with a myriad of waste generators over a wide range of wastes and conditions and the rule is an attempt to manage that. However, we also believe that when the agency has the ability to identify specific opportunities to work with specific recycling segments, we can collaboratively produce a better pathway to better management of waste streams and create true recycling. We would ask that dialogue continue. As always, we extend that invitation and opportunity to you. I think we represent a material that with industry and agency dialogue and a working relationship, we can generate good recycling outcomes and provide the Department good best management practices.

Our comments:

Definition of Clean Soil We agree with the comments as submitted by Matt Hinck of CalPortland. *The agency has chosen to define clean to include a pH range of 4.5 to 9.5 for soils, which may contain a constituent that could affect pH. This is an unrealistic standard*

- a. *First - many soils naturally occur up to a pH of 10.0 (CalPortland can provide data upon request) and the standard for impacted soils should mimic the pH found in nature*
- b. *Second, composted soils are allowed a pH range of 5 to 10 (see page 41). A composted soil is an amalgamation of many raw materials, which may impact the pH of the soil. Ultimately, composted soils are typically placed at the ground surface and are exposed to precipitation and runoff. It seems contrary to allow composted soils to have an upper pH limit of 10.0, when otherwise the clean soil definition only allows a pH of 9.5*

*We support CalPortland's request to the Agency correct this discrepancy and harmonize the standard to allow clean soils up to a pH of 10.0.*

Definition of Commodity: We can support the definition of commodity as written. We ask the Dept. recognize this definition can equally apply directly to our materials as they “*meet widely recognized standards and specifications*”. We demonstrated this by revising the same definitions as they would apply to our products. From our comments of September 2018:

*These are assets to be managed rather than wastes to be regulated. We would ask Ecology to reconsider their approach as it based on old and no longer contemporary perspectives for recycling of these valuable construction materials.*

Similar to the steel slag exemption;

- *Recycled concrete, aggregate and asphalt construction materials are a primary or secondary product of necessary construction processes and production, produced to a specification, managed as an item of commercial value, and placed in commerce for general public, public works and private consumption, and if the construction materials are not abandoned or discarded or placed in a solid waste stream.*

"Commodity"

- *Means a material that meets widely recognized standards and specifications such as those in ASTM International, American Concrete Institute (ACI) WSDOT, FAA and FHWA, is described as a necessary and desirable outcome in the recycling and reuse of these materials by state and federal agencies such as EPA and FHWA, and are mutually compatible with other materials meeting the same specifications and has well established markets.*

These definitions as illustratively revised are fundamental to our recyclable concrete and aggregate products as we can quantify existing and specific industry specifications and standards for these materials. Once considered per above, our concrete and aggregate materials meet the same intent and considerations given to others to qualify their products for exemption with equal and positive value. Given these definitions can easily be modified to become essentially product neutral, we request the same acknowledgment and consideration be extended to concrete and aggregate products.

## 2. Definition of Cured Concrete:

We provided the following comments in the Preliminary Draft permit with regard to this unworkable and not viable definition. In our August 2016 comments we said;

*Definition of Cured Concrete – P. 23. The Agency has produced arbitrary and capricious standards by which a “cured” concrete material can be evaluated. As written, there is no logical consideration of the material in a hardened state. I suspect the Dept. has subjectively tried to determine the distinction between a slurry material (IE: jet grout) versus what has been referred to a “cured structural” material. The dept. misses its mark in this effort. Regardless of psi (an arbitrary measure) all these materials are valuable recyclable materials. Not all concrete is tested in the field so the information is either not obtainable nor is it tested for psi in a broken conditions. Concrete will continue to gain strength while moisture is present so even less than 1200 psi material will qualify if given the time. We recommend this section be deleted, as it has no basis in logic as written.*

Our comments remain the same for the formal draft. *No test exists to be able to measure or qualify a response to the request, making this condition essentially meaningless.* If a jurisdiction were to ask for substantiation that a given broken concrete material had achieved the 1200-psi at a 28-day stage we *cannot comply.* This may be an attempt to establish a baseline condition. Regardless, we can't prove what we can't demonstrate. This puts our industry and members in unnecessary jeopardy and risk to third party liability of non-compliance with a jurisdiction. This same concern and jeopardy, risk and exposure would extend to WSDOT, Ports, Cities and Counties, AGC and other construction companies.

With the extensive work we have done with the WQ group on the S&G and CSWP NPDES permits, it is likely there is an opportunity to provide consistency between the two documents and or determine an acceptable industry measurement that may apply once we better understand what you are chasing.

*Given the inability of industry to meet this requirement, we strongly urge you to remove the language as proposed. We would be happy to work with you on alternative language.*

Section 021-: Determination of solid waste:

In attending the public hearings, it is clear the agency is getting a significant amount of comments and push back on this section. We share the same concerns.

The agency has made some good progress in determining what a solid waste is or is not. However, specific triggers will likely and unnecessarily prevent responsible recycling and not meet the goals of Waste 2 Resources. This will only serve to restrict quality recycling and lead some to find alternative methods to dispose of materials outside of this rule. A very predictable consequence.

Our primary concern is 021 3(c). Previously, we have commented, in our industry it is the usual and customary past and existing practice for a generator to pay a fee to our production facilities. As our facilities are not disposal facilities, the fee is to help in offsetting costs for processing of the raw material into finished process materials. This improves the construction economics of recycling concrete and aggregate materials and provides an incentive for the material to be recycled versus landfilled. With the volumes of concrete and aggregate materials being returned it is necessary an avenue for effective and cost effective recycling be maintained.

Sept. 2017; As we commented earlier regarding section -021

*These materials meet the criteria outlined in (2):*

- *That is not abandoned or discarded,*
- *Is not placed on land for disposal,*
- *Is placed on land for beneficial use,*
- *Is a material collected for the purposes of recycling (outside of the non related facilities listed),*
- *By standard practice, generators pay our facilities to accept the material for recycling for project economics*
- *Have markets readily available.*

In -021 (3)

- *These materials meet the criteria as outlined in (3) (a) – (f). Our “feedstock” or raw materials to make finished product do not differ from our finished product and are the same materials.*

The occurrence of a simple transaction taking place should NOT disqualify the positive value criteria that has been met. The same value determination for materials to not be considered a solid waste are in play regardless of whether or not a transaction has taken place. These same materials in our industry segment also meet the definition of commodity as described above, further validating the positive value of the material. *We would request the ability to link the value of a commodity as written and the positive value determination in 021 be used as a brightline to advance positive value versus being defined by a transaction for concrete and aggregate materials.*

As written, 021 undermines the economic and positive value test the agency has worked to accomplish. We operate in much larger volumes than general commercial recycling operations. Regardless if a transaction takes place, our materials remain the same and retain the same intrinsic positive value in either form.

The value of the material itself and not a transaction must be allowed to determine the “positive market value “ of the material. The agencies test pre-determines that a process, not the material itself as the determining criteria to be considered a solid waste. This is counter intuitive and can easily be reconciled.

*We request the Department reconsider its position in Section 021 and make the changes necessary to reasonably and responsibly reduce waste material and increase recycling as state and federal laws and guidance require.*

We recognize other industries prefer to preserve their existing practices and transactional history and this language may support them. However, If the language does not work for all stakeholders, the language should be reconsidered and an acceptable balance should be achieved. We request the department convene any necessary discussion between stakeholders.

In our comments to Al Salvi, September 2017;

To meet the intents and stated objectives of EPA, FHWA, WSDOT, Governor Executive Orders and the 2015 Legislature; these materials need to be properly considered for their intended purpose to advance recycling and help Ecology meet its stated Waste 2 Resources goal.

- The materials are not discarded or abandoned.
- The materials are generally unique sources of materials that have already have been approved for use and remain substantially in the same original form. Although as we mentioned, adding brick to these materials would include other common inert materials removed in the greater Seattle market and other areas. Our recycling facilities separate materials as necessary to meet specifications.
- The materials are clearly a valuable product and are clearly used as a valuable product in its intended application
- These products have a strong economic value as it is specified for use and sold
- Has significant value in its intended use as it can replace or is an effective substitute for an alternative product (virgin materials) that would have to be purchased or acquired
- The generator and processor of the materials stores, handles, manages, transports these products as a valuable product rather than a waste, manages these materials according to environmental permit criteria to minimize and reduce environmental risk.
- Storage of these materials is subject to many criteria that contribute to throughput and use. As recycling of these materials becomes more commonplace, consumption will return to the widely acceptable levels prior to 2008. Essentially, we couldn’t make enough material and keep it in stock. Product and ease of use acceptance produces or exceeds a reasonable cycle of storage and use.

These are assets to be managed rather than wastes to be regulated. We would ask Ecology to reconsider their approach as it based on old and no longer contemporary perspectives for recycling of these valuable construction materials.

#### Section 320 and Table 320A

We appreciate the discussion and efforts of working with Al Salvi on this section and the recognition of the agency’s Sand and Gravel NPDES and CSWP as a primary document to manage concrete and aggregate material at our facilities and on construction sites. The NPDES permits now provide a clear pathway to allow one set of best management practices to manage these materials without creating a redundant or conflicting regulatory process. This effort towards simplicity for both documents is appreciated.

The document will likely continue to be controversial. Overall, I remain concerned with the ability for subjective application, interpretation and decision making that can take place at both ECY and JHD levels. Generally I see good improvements from where we started this discussion.

Thank you for your efforts in managing this process, for your outreach and making better determinations. We continue to extend an invitation to you to discuss any areas that require additional clarification or insight we as an experienced industry can provide with regard to our materials and practices. To achieve your goals, we are your best resource for our materials.

Sincerely,

Bruce Chattin  
Executive Director  
Cc: WACA Environmental Committee