

Submitted by former Washington State Senator Ann Rivers

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Thank you for the opportunity to comment on this rulemaking relating to the update of organic materials management regulations to address contamination in food waste feedstocks and finished products at organic waste handling facilities. As you may be aware, this rulemaking process was initiated by a provision in HB 2301 that I helped amend during my time on the Senate Ways & Means Committee during the 2024 legislative session (February 24, 2024, 9:00am [committee hearing](#)).

Before this bill arrived before our committee, the following amendment had been added to it:

*Ecology must adopt new rules or amend existing rules requiring Anaerobic Digestion facilities or other facilities preparing organic materials for delivery to Anaerobic Digestion facilities to achieve a 90 percent recycling rate for all collected materials, and to develop procedures and criteria to ensure only source-separated organic material feedstocks described will be accepted. The procedures must contain a plan to reject feedstocks contaminated with more than 10 percent physical contaminants, by volume, and a prohibition against knowingly accepting solid waste that cannot be digested. Ecology may require a facility to submit a monthly report demonstrating the 90 percent recycling rate was achieved, and contain other information.*

I was among the Senators who sought to remove this provision in our committee, because it was an arbitrary limit that is incompatible with the benefits Anaerobic Digestion offers for processing the type of organic material that HB 2301 attempted to divert from the landfill. I have firsthand knowledge of this, because of my own experience with Divert's proposed Integrated Diversion & Energy Facility in Longview, the first privately funded project in the state that is being constructed to meet the goals of HB 1799 and HB 2301. We understood that this arbitrary 90 percent recycling standard was impractical and ran counter to the goals of Divert's project: to process hard to recycle organic material, such as commercially generated food waste – material that still has productive value as a resource, but would otherwise be sent to the landfill. I had been eager to see Divert locate its facility in Longview and am delighted that it has decided to do so. This facility will provide an outlet for commercially generated wasted food products that would be unsuitable for the vast

majority of existing organics processing infrastructure in the state due to their high moisture content, high levels of difficult to process organic residual material (e.g., peach pits, watermelon rinds, corn husks), and incidental amounts of inorganic material from plastic packaging and other glass and metal contaminants. We knew that existing standards that addressed contamination in source separated material were simply incompatible with, in some cases decades old, guidance that did not take into account new processes and facilities that incorporated advanced depackaging and anaerobic digestion to take on organic material that would otherwise be unable to be recovered and processed. As a result, we replaced the aforementioned provision with the following:

*“The department must adopt new or amend existing rules adopted under this chapter establishing permit requirements for organic materials management facilities requiring a solid waste handling permit addressing contamination associated with incoming food waste feedstocks and finished products, for environmental benefit.”*

Our legislative intent with this provision change was an acknowledgement to the Department of Ecology that existing processes and procedures for examining the contamination levels in organics processing facilities lack clarity, are incompatible with the latest organics management laws, and must be addressed. To require organics processors to only accept the type of clean material more likely to meet a 90% recovery rate, would disincentivize the processing of the very material the latest organics management laws are targeting. It would effectively suggest that any organic materials not free of contaminants should be rejected and sent to the landfill, regardless of whether existing facilities have advanced technology in place to process material into a clean finished product. Instead of policing what amount of contamination should be allowed in incoming organic material and preventing an entire class of organic products from meeting the goals of HB 1799 and HB 2301, we should be more effectively policing what amount of contamination ends up in finished products made for beneficial use by organics processors (otherwise we would be presuming that any amount of incoming contamination up to 10% would be an acceptable level of contamination in finished organics products).

This provision replacement was meant to ensure that an entire category of organic material could be recovered, not just those that can easily achieve a 90 percent recovery rate. It would include industrial-level pre-consumer organic material such as:

- Food manufacturing byproducts
- Packaged food manufacturer products that have been rejected due to specification or packaging defects
- Packaged food retail products that remain unsold

- Packaged food products that are deemed inedible by food banks for human or animal consumption

If the Department of Ecology is going to make strides in addressing organic material and preventing it from ending up in landfills, then it cannot limit the state's waste generators from accessing technologies and capabilities beyond that of legacy entities or jurisdictions that have only historically been able to recycle material that would achieve a 90% or above recovery rate.

If the rulemaking team has any further questions about our legislative intent, please don't hesitate to reach out.

Sincerely,

*Ann Rivers*

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