Chris Thomas

I'm attaching a copy of a letter I submitted on behalf of Divert, Inc. for the Organics Management Rulemaking process. Divert played an instrumental role in the legislative provision that initiated this rulemaking process and has made a $100 million investment in Washington state to help advance the goals of its Organics Management Laws. Given our leadership in organics management, I hope the Ecology team is able to give thorough consideration to these comments.

As I noted in the letter, former Senator Ann Rivers helped insert the language within HB 2301 that led to this rulemaking process. As such, she recently submitted a letter to the Department that expressed her legislative intent. I'm attaching that letter here. As this rulemaking process commences, I would encourage the Department to reach out directly to former Senator Rivers as well as former Senator Nguyen, who also advanced this legislative provision. Both were instrumental in ensuring HB 2301 included this rulemaking provision and I'm sure their additional feedback would be helpful.

Best regards,
Chris Thomas
VP of Public Affairs
Divert, Inc.

Washington Department of Ecology
Chapter 173-350 WAC – Organics Management Rulemaking
Divert, Inc. Response

March 31, 2025

Solid Waste Management Program Rule Coordinator
Organicsrule@ecy.wa.gov

Thank you for the opportunity to comment on this rulemaking on organic materials management regulations to address the contamination in food waste feedstocks and finished products at organic waste handling facilities. Divert is a circular economy company on a mission to prevent food from being wasted. Since 2007, we've worked with prominent retailers like Kroger, Albertsons, Safeway, Target, and CVS to ensure that food is prevented from going to waste, rescued for communities in need, diverted from landfills, and transformed into renewable energy by utilizing a mix of infrastructure and technology solutions.

Divert currently operates 14 facilities across the U.S. and supports nearly 8,000 customer locations in the food manufacturing and food retail industry. Divert works across the food supply chain, helping customers manage unsold food products responsibly through training, data, and sophisticated depackaging technology. We provide insights that enable them to change behaviors and ultimately reduce waste. For inedible food, we have created the first FDA Food Safety Modernization Act (FSMA)-compliant reverse logistics process to aggregate inedible pre-consumer food from retail food stores. Once aggregated, we transform these inedible products into carbon negative renewable energy.

We offer a variety of comments below in response to the questions asked by the Department of Ecology and look forward to an ongoing dialogue with the Department as this rulemaking unfolds.

Key Rulemaking Questions

A key question Washington's latest Organics Management Law (HB 2301) asks Ecology to address in this rulemaking process is whether existing rules and regulations incentivize and require organics processors to reduce contamination. Divert actively helped craft the legislative provision that relates to this rulemaking and understands firsthand the key questions that legislators were asking Ecology to address.

A key question this legislation raises is whether *current incoming feedstock regulations are discouraging organics processors from taking on incoming feedstock loads where it is difficult to extract or separate inorganic solid waste from organic material.* Legacy organics regulations place subjective and arbitrary limits on the amount of visible contamination within incoming feedstock organics that processors should tolerate. This often prevents entire classifications of industrial-level organic material from being processed, especially pre-consumer food manufacturing and food retail byproducts such as rejected/off-specification packaged food products, unsold packaged food products, and food products deemed inedible at food banks. In the absence of regulatory clarification, many organics processors are hesitant to accept this material. This exposes many waste generators to non-compliance, since this material inevitably

ends up in the landfill when organics processing alternatives are limited, unavailable, or insufficient to address this material. These existing regulatory limitations run counter to Washington's recently passed Organic Management Laws (HB 1799 and HB 2301), which require industrial-scale waste generators like these to comply with landfill diversion requirements.

The other question HB 2301 asks Ecology to address through this rulemaking process is whether current rules and regulations ensure that the byproducts of organics processing, such as compost and soil amendments created for beneficial environmental use, have adequate standards in place. *If organics processors receive incoming organic material that is difficult to process, are they equipped to prevent their finished byproducts from causing harm and do existing regulations ensure they won't cause harm?* Citizens in our state are negatively impacted when contaminants are not removed from finished compost or soil amendment products. Ecology has a responsibility and a unique opportunity to address this persistent problem during the rulemaking process. There are many benefits from compost and soil amendments such as digestate. These products close the circularity loop by improving soil health to grow healthy food. Some organics processing companies have taken on an increased volume of organic material to meet the increased supply of feedstock being diverted from the landfill. Unfortunately, some of these processors are accepting contaminated material without having adequate infrastructure in place to remove contamination. The amount of feedstock, especially feedstock from commercial food waste, is increasing as more and more waste generators take action to comply with Washington's new Organics Management Laws (HB 1799 and HB 2301). As a result, an ongoing contamination problem will likely get worse if organic products that intend to improve soil health introduce more plastics, glass, and metal that are not removed during the composting process.

During Ecology's first HB 2301 "listening session" on February 6th, 2025, two commenters noted that improving source separation by waste generators needs to be the primary focus of this rulemaking process. This is in stark contrast to what one of these commenters suggested during an August Presentation at the King County 2024 Organics Regional Summit. In this presentation, a leader from this well-known composting company noted that contamination is not a "set it and forget it" issue, but instead, "it is an issue where there is no single thing is to be done – there is a shared accountability in addressing the problem."[1] Divert shares the sentiment raised during that August presentation.

Divert recommends that *Ecology require parties along every step of the chain of custody, especially organics processors, to be responsible for addressing this ongoing contamination problem.*

- *Waste generators should initially be responsible for ensuring that contamination is removed, or they must demonstrate that they have a plan to contract with an entity/facility permitted by the Department of Ecology to remove it.*

[1] "King County 2024 Organics Stakeholder Meeting, Day 1" YouTube, Uploaded by KingCounty SolidWasteDivision, begin at the 1:41 time mark, 9/5/2024.

- *A hauling entity should also be responsible for ensuring that loads do not have visible contamination unless the materials' destination is a processing facility permitted by the Department of Ecology.*
- *Any organics processor that is contracted by a waste generator to accept contaminated food waste should be responsible for removing contamination through a Department of Ecology permitted separation process. Ecology should consider whether testing standards should be narrowed, and whether the frequency, recordkeeping, and enforcement of testing should be more rigorous.*
- *If organics processors are unable to invest in a Department of Ecology permitted separation process to separate this material, then they must ensure customers are willing to take responsibility for removing physical contaminants before it is collected and hauled to permitted solid waste facilities. If organics processors are unable to do this, then they must reject contaminated loads.*

Options to consider at solid waste facilities

During the last few years, the persistence of glass, metal, and plastics in recycled organic compost and soil amendments has emerged as an important topic amongst organics regulators and industry professionals, as well as farmers and consumers who purchase this material for agricultural use, landscaping, or home gardening. These small and sometimes barely visible contaminants are referred to as "physical contaminants" by the state of California (items greater than 4mm). These physical contaminants are typically greater than 4mm and less than 13mm across various state standards (as noted in a recent EPA report[2]). Compost contamination is a common topic in local government organics management forums (as noted above), in local government solid waste associations[3], and industry associations[4]. Compost contamination has also become a trending topic for consumers on product review websites at big-box stores[5] and common Pacific Northwest gardening forums[6]. This has led to increased interest from consumer and retail industry associations. The time has come to address the harm caused by this "micro-landfilling" process. This HB 2301 rulemaking process presents an opportunity to open the compost and soil amendment market back up to consumers and those in the agricultural industry that have avoided compost and soil amendment products in recent years due to the failure of some organics processors to address the contamination problem.

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[2] Page 25, "Emerging Issues in Food Waste Management – Plastic Contamination, US EPA, August 2021

[3] "2024 Preliminary Annual Meeting Agenda" Washington Association of County Solid Waste Managers, June 11-12, 2024, Hotel Windrow in Ellensburg, WA.

[4] Chris Thomas, Kevin Kelly, Troy Lautenbach and Ryan Cooper, Depackaging and Extrusion Technologies, Washington Organic Recycling Council, September 11, 2024.

[5] Home Depot product review page for Cedar Grove Compost

[6] "r/pnwgardening", commonly known as "PNW Gardening", is a subreddit forum "for the wonderful gardeners here in the Pacific Northwest to come together and discuss region-specific gardening topics including lessons learned, request advice, and share successes (or failures) as we progress along our gardening journeys". A sampling of typical contamination concerns are outlined here in Conversation 1, Conversation 2, Conversation 3, Conversation 4, and Conversation 5.

Ecology will need to ensure that there is at least one obligated party responsible for addressing contamination along the chain of custody when organic material moves from the waste generator to organics processing facilities. In current practice, some organics processing facilities suggest that they only accept “clean” source-separated organic material, where the waste generator is instructed to manually separate all packaging and incidental contamination. In theory, this keeps them from needing to take additional mechanical or manual depackaging steps to separate any incidental contamination from the organic material. This process generally results in lower contamination rates for residentially collected post-consumer organic materials that have already been “consumed”. However, accepting “clean” source-separated organic material is far more challenging for commercially generated food waste, and especially pre-consumer food waste, where packaging comes in an almost infinite variety of materials, shapes, weights, and densities, from tiny produce stickers to airtight cucumber sleeves, mesh produce bags, plastic jugs, and everything in between. In practice, the complexity of different types of packaging makes it difficult to depackage that food by hand; even the most well-trained teams will likely not be able to achieve 100% purity of source separated organics, and in many cases, the results are significantly less. As a result, organics processors that try to accept this supposedly “clean” material while not deploying processing equipment to address it, are perpetuating this contamination problem. *This is the primary reason why contamination in finished compost was addressed through the new HB 2301 law.*

While source separation improvement is certainly a worthy effort, the purpose of the HB 2301 rulemaking session is to develop *“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.”* The intent of HB 2301 is clear: 1) current regulations do not adequately clarify who has responsibility for ensuring that contaminated organic material – especially pre-consumer commercial food products – meet the diversion objectives of the latest organics management laws, and 2) the status quo – where waste generators are expected to send only perfectly clean organic feedstock to organics processors that are unequipped to separate incidental contamination and produce clean compost material – has simply not worked.

Former Senator Ann Rivers, one of the lawmakers who inserted the HB 2301 legislative provision that created this rulemaking process, recently sent a letter to the Department Ecology commenting on this rulemaking process. In that letter she made her legislative intent very clear – that the state’s organics processing apparatus should not be limited to the capabilities of incumbent organics processors, and the state’s permitted solid waste facilities should do more to address contamination. She said that the legislative intent of the provision that initiated this process "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” and 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.”

The legislative provision that created this rulemaking process expressly acknowledges the importance of addressing contamination in an entire category of organic material that needs to be responsibly processed. Not every waste generator is capable of deploying manual separation processes to ensure every piece of incidental contamination is removed. The current organics management laws require industrial-level organic material to be processed, especially pre-consumer food manufacturing and food retail byproducts such as rejected/off-specification packaged food products, unsold packaged food products, and food products deemed inedible at food banks. It's unrealistic to expect that their source separation processes will address all incidental contamination. These waste generators are mindful that their commercial food waste should not be handled by an organics processor that's incapable of removing all incidental contamination. At Divert, we are motivated to minimize incoming feedstock contamination because it can distract from our primary goal of providing preventative data analytics to waste generators and adds significant processing and disposal costs to our operations. Divert's customers are financially incentivized to reduce waste with contracts structured to reduce the amount of inorganic material that ends up in collection bins. Customer agreements prohibit miscellaneous trash, coffee cups, rigid plastics, waxed cardboard, corrugated cardboard, soft and film plastics, and yard waste from entering Divert bins. These agreements include enforcement mechanisms, including financial penalties, if customers intentionally place prohibited materials in these bins. As a result, customers are motivated to separate recyclable packaging from organic material; the only incidental inorganic packaging that typically ends up at Divert facilities is ancillary packaging that is inherent to the preservation of food during transport and merchandizing and requires further separation.

Retail food customers also have a financial incentive to reduce the amount of organic materials that end up in Divert bins. Contracts incentivize waste prevention strides through source reduction and food donations. When unsold food products go into the Divert bin, we leverage our proprietary data and technology to build a communication loop with customers, so that we can consistently provide store level insights and improve daily decision-making. Over time, we're able to monitor the contents of each Divert bin, report that data back to each store, and help customers refine and reduce the material they send to our facilities to prevent donatable food and recyclable packaging from being processed. Divert can provide customers with assurance that it has infrastructure in place to separate incidental packaging from commercially generated food waste, while providing feedback that encourages further improvements in source reduction and food donation.

Senator Rivers' letter noted that "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)." The letter recognized that if Ecology is going to make strides in preventing large amounts of packaging from ending up in finished organic byproducts, then it cannot limit the state's waste generators from accessing capabilities beyond what the Washington's legacy collection, hauling, and processing community offer.

We agree that to fulfill the goals of HB 2301, Ecology should require parties along every step of the chain of custody, especially organics processors, to be responsible for addressing this ongoing contamination problem in accordance with the recommendations noted above.

Incoming feedstock contamination threshold

5% eyeball test is too subjective and incompatible with current law

Ecology's current regulations require organics processing facilities to reject feedstock loads that appear to have 5% or more contamination by volume or have a plan for removing contaminants prior to composting. Given how problematic contamination levels continue to be, it's reasonable that an "eyeball" test is too subjective to determine whether a feedstock load is contaminated at a 5% specificity level. Some loads might have visible contamination throughout, while others might have concentrated levels of contamination in areas not visible at the surface level but enough to meet the 5% by volume threshold. Since there are no objective requirements in place, compost operators are often disincentivized to reject feedstock loads that appear to have contamination, given they likely don't want to lose customers and the large volume necessary to sustain their operations. It's not unreasonable to assume that some composters may avoid self-policing, and this moral hazard was referenced as a key reason behind a recent "load rejection" provision proposed in the organic stakeholder group that prepared HB 1497 for the 2025 legislative session[7]. Aside from the problematic nature of an ambiguous 5% threshold, this subjective "eyeball test", which was implemented over a decade ago, is incompatible with Washington's latest Organics Management Laws (HB 1799 and HB 2301). The load rejection of feedstock that appears to be contaminated at or above a 5% threshold results in the landfilling of countless loads of organic material, running counter to Washington's landfill diversion requirements.

Obligate parties along the chain of custody

Multiple parties handle organic material as it makes its way upstream through production and consumption, and then downstream through collection, hauling, and processing. Rather than putting the burden on composters to be the arbiter of what organic material is processed or landfilled, waste generators, composters, and other organics processors should be obligated to address this along each step in the chain of custody. Waste generators have the first opportunity to remove contamination themselves through pre-processing. They often need to better understand what is considered a contaminant and why reducing it at some point along the chain of custody is important. The Department of Ecology Center for Sustainable Food Management should be required to inform waste generators about this importance. Waste generators should also be afforded the benefit of optionality to address contamination in the most efficient manner for the type of organic material being diverted. If waste generators are unwilling to control contamination themselves, or if pre-consumer contamination is too difficult to separate manually without landfilling more organic material, then they should be afforded the

[7] Herd, Julie. "Agenda/Overview and Notes Meeting 6 – 2024: Bin Colors; Load Rejection." *Organics Management to Reduce Methane and Combat Climate Change*, Organics Management to Reduce Methane and Combat Climate Change Workgroup, 10 Dec. 2024, organicsworkgroup.org/page/6/.

opportunity to comply with the Organics Management Law. The regulations should clarify that they are permitted to contract with collection and hauling services or with organic processors that have the capability to ensure contamination is removed at organics processing facilities permitted by Ecology. The entity responsible for collection and hauling of this material should also be responsible for inspecting the material to ensure there is no visual contamination. Any visible contamination should be removed, or the pickup should be rejected if the material is not going to otherwise be sent to a facility permitted by Ecology to remove contamination.

Education campaigns are not enough

Food waste often contains incidental contamination from plastic packaging and other inorganic material such as glass and metal. Education campaigns often increase contamination awareness by reminding consumers and businesses to correctly separate non-recyclable waste, recyclable material, and organic material to reduce adverse environmental impacts. Progress has been made in residential environments, where the simple act of consumption usually results in the proper separation of solid waste from recyclables and organics. However, for pre-consumer organic waste that originates from food manufacturers, food retailers, and food banks, contamination is more common because so many parties are handling the unconsumed and inedible material at different points along the chain of custody. Even if strides are made on education and incoming feedstock contamination levels remain below the 5% "eyeball test", organics processors still must process up to 5% contaminated material. This simply results in organics processors creating finished products that contain up to 5% contamination levels if they are not investing in depackaging equipment.

Accountability must be part of the process

With respect to incoming feedstock, Ecology must ensure there is accountability somewhere along the chain of custody and that at least one of those obligated parties has the tools and processes in place to manage it. Waste generators must ensure contamination is removed, either manually at the source of waste generation, or by a contracted organics processor that can depackage and separate contamination from organic material at an Ecology permitted facility. Entities responsible for pickup and hauling should also be responsible for ensuring that there is no visible contamination present, unless the organic material is bound for an Ecology permitted facility with an additional separation process to depackage all incidental contamination.

Recordkeeping

While it’s critical to ensure each party along the chain of custody is obligated and accountable in ensuring contamination is either not present or will be removed, this will be more challenging for Ecology to enforce. Each waste generator, collection and hauling entity, and permitted organics processing facility should be able to demonstrate that contamination removal has been or will be addressed at some specific point along the chain of custody. As part of its enforcement to determine if waste generators are compliant with HB 1799 and HB 2301, the Department of Ecology or each jurisdictional enforcement agency can verify whether the waste generator is responsible for contamination removal or has contractually transferred that responsibility to its organics processor. The collection and hauling entity that transports this material should also be able to demonstrate that contamination has been removed or the material is being sent to an

Ecology permitted facility that will address contamination. While it would be challenging to enforce this at every waste generation location, each permitted collection and hauling entity and each organics processing facility should be held accountable to demonstrate which party is contractually obligated to address contamination along the chain of custody from the waste generator through the organics processor.

Enforcement

The waste generator should be allowed the opportunity and optionality of being able to deploy manual separation processes before sending clean material elsewhere for processing, but if their operation is too large and complex, they should also be able to contract with organics processors that can effectively address depackaging and contamination removal through industrial scale processing at a permitted facility. The responsibility to address contamination should first reside with the waste generator or transferred contractually to obligate the organics processor to address it and meet Ecology contamination standards. If an organics processor is not able to demonstrate that the contamination level has been effectively addressed by another party upstream in the chain of custody, then they should be held accountable for the Ecology enforcement action. If the permitted collection and hauling entity picks up and transports contaminated material without a plan to route material to an Ecology permitted facility that can remove contamination, then they should be held accountable for the enforcement action. If the permitted organics processor is obligated to address contamination but fails to remove it from their finished product to the standard set by Ecology, then they should be held accountable for the Ecology enforcement action.

Finished compost product threshold limit

Addressing incoming feedstock will ensure that at least one party along the chain of custody of organic material is obligated to remove contamination. However, under current regulations, if a permitted facility is only required to reject feedstock that appears to be contaminated at or above a 5% threshold, then any amount of contamination below this 5% threshold will inevitably end up in finished organic byproducts if the organics processor is not equipped to remove it. If organics processors are not equipped to address it, then contamination will result in the “micro-landfilling” of countless loads of contaminants into our soils. The only way to remove visible pieces of plastics, metals, glass, and other physical contaminants and prevent finished compost products from polluting farmlands, public waters, public parks, public playgrounds, and backyard gardens is to require these products to undergo regular testing. Ecology’s current screening standards require compost products to pass through a ¼ inch screening size. Contamination screening should be more rigid to match those standards in other states (4mm to 13mm) and prevent these physical contaminants from becoming embedded in finished compost and soil amendment products.

In addition, some compost products that have observable amounts of contamination are labeled as meeting OMRI (organic) certified. Ecology should require any entity that certifies its product as meeting OMRI or another organic certification and sells these products to the general public must meet its labeling disclosure standards so consumers are not misled into thinking these products are safe for soil and our food supply chain.

Depackaging equipment standards

The technology that depackages unsold food needs to be sophisticated and precise in its ability to separate non-organic material from unsold food without shredding it and creating smaller pieces of packaging that would be difficult to extract from processed organic material. There are many turnkey, off-the-shelf depackaging solutions in the market today, and many are limited in their degree of effectiveness. For this reason, Divert has engineered its own proprietary depackaging solution to reliably process unsold food on an industrial scale without shredding packaging material and other incidental contaminants. This solution more effectively reduces the environmental challenges of processing pre-consumer unsold food products. Given our own experience with this technology, and the significant investment in time and resources to create a depackaging solution that would effectively address contamination, Divert would encourage Ecology to avoid specifying certain depackaging equipment or models. Instead, we would encourage Ecology to focus on effectiveness in removing contamination. Depackaging equipment, or other means of addressing contaminants, should be measured by an organics processors' effectiveness in removing inert (inorganic) material of a certain size from its end products. This would be consistent with how other states are addressing physical contaminants.

Recovery rate

Recovery rates can be complicated and should generally be avoided because they can mean so many different things to different types of processing operations. For example, if Ecology were to create a minimum recovery rate, then it would impose a disincentive for organics processors to take on difficult-to-process material. As a result, processors would avoid processing entire classes of industrial-scale and pre-consumer food manufacturing products and retail food products. These products invariably include packaging material that is inherent to how material is preserved when transported through the chain of custody. If these products were not processed, then countless amounts of nutrient-rich organic material would simply be landfilled and waste generators and organics processors would fail to meet rigid recovery rate standards. This would run counter to the goals of Washington's recent Organics Management Laws (HB 1799 and HB 2301) and put many waste generators out of compliance. The authors of the legislative provision in HB 2301 that initiated this rulemaking process acknowledged this challenge. Senator Rivers' comment letter to the Department of Ecology notes how an arbitrary recovery rate would prevent "an entire class of organic products from meeting the goals of HB 1799 and HB 2301". That's precisely why the Senate Ways & Means Committee removed a provision that placed an arbitrary 90% recovery rate on anaerobic digestion and replaced it with the provision that initiated this rulemaking process.

How one measures recovery can also be difficult and could result in certain organics processing operations being disincentivized to take on hard to process organic material. For example, anaerobic digestion is well suited for commercially generated food waste, because it has a high moisture content and has significant contamination from packaging and other incidental material. Anaerobic digestion is often better suited to process material that has high moisture content because in composting it can be more difficult to control the leachate. In anaerobic digestion, the water (which makes up nearly 80-90% of food) is treated and reintroduced back

into the food supply chain instead of becoming harmful groundwater leachate. While this is an effective way to process commercially generated food waste, if an overall organic material recovery rate were applied to an anaerobic digestion process, it would fail to result in a high recovery rate since the so much of the incoming organic material ends up as disparate components such as water, biogas, and digestate soil amendment.

Recovery rates would also be distorted by non-digestible/non-compostable organics (pits, husks, and other material) that lack nutrient value and are not processed into biogas or digestate. Because commercially generated pre-consumer food waste is usually unconsumed, it is more likely to contain incidental organic material that is low in nutrient value and unsuitable to the composting or anaerobic digestion process (these include pits, husks, and other difficult to digest material).

Finally, if one were to simply measure the overall effectiveness of inorganic recovery, then that could inadvertently result in artificially low recovery rates that might prevent organics diversion from happening at all. For example, if an organics processor was only receiving clean material where the contaminants were manually removed or screened through some other means, then the resulting recovery rate of inorganic material might be quite low, compared to a processor that was taking on only very highly contaminated organic material that would otherwise be landfilled.

It's best to focus on measuring an organics processor's end products and effectiveness in removing particles of a certain size. This would be consistent with how other states are addressing physical contaminants, including California, which does not pose restrictions on incoming feedstock, but instead measures effectiveness through very specific measurements tailored to each process and rigid screening standards.

Digestate requirements

Land application

At its newest Integrated Diversion & Energy facilities, the digestate produced by Divert is made available to composters that use this material to enhance the nutrient value of their finished organic products. In its new Turlock, California facility, Divert works closely with some of the largest compost entities in California. These composters use Divert's nutrient-rich digestate byproduct from unsold and unconsumed food products to reintroduce circularity as local jurisdictions implement compost procurement programs in compliance with California SB 1383.

There are a variety of potential land application uses for digestate, and agricultural users should have transparent assurance that the makeup of digestate would be appropriate for their selected use. One's selection criteria for land application might be different for digestate from food waste than it might be for digestate from dairy or poultry manure or wastewater. The American Biogas Council worked with EPA to create a Digestate Certification Program[8] to provide transparency on testing parameters and certification of digestate quality. It provides guidance on what types of testing are appropriate for Restricted Land Application and Unrestricted Bulk Sales or Land Application. The program considers a number of testing

parameters, including nutrients, acidity, solids / moisture, salts, metals, and physical contaminants.

While some limitations on land use are appropriate, depending on feedstock source and testing parameters, the outright restriction of digestate land application or its addition as a soil amendment to compost products, without reason, is counter to the goals of organics recycling and circular economy strategies. Any outright restriction would simply prevent more organic material from being diverted and would be incompatible with Washington's new Organics Management Laws (HB 1799 and HB 2301). Additionally, any organic material that does get digested would result in the re-routing of organic material derived from digestate back to landfills. It would disrupt the circularity loop, because organics that would be diverted from landfills would be partially re-routed back to landfills, at an additional cost to local jurisdictions and its rate payers, agricultural users, and organics processors and their customers.

The industry needs to work with regulators, EPA, and universities to establish reasonable quality criteria, with agronomic application rates and practices in mind. Where needed, it needs to create incentives for nutrient management/export, through programs that create commercial fertilizers and other uses for digestate and organics byproducts.

Conclusion

Divert is committed to working with Washington state to develop organics diversion solutions that work for all waste generators and is encouraged by the efforts the Department is making to ensure that contamination is addressed in all the steps of the food supply chain. We encourage the Department to consider the above points, and hope that it recognizes the need to embrace alternative solutions, rather than limit waste generators to only one industry. It's critical that while we solve one environmental problem, we are not creating another one by harming the soil we intend to regenerate with this wasted food material. With so many states seeking innovative opportunities to develop truly circular solutions. We applaud the steps that Washington state is taking to meet its organics diversion goals and welcome the conversations that will unfold as the state pushes forward on this initiative. We are committed to engaging further with the Department on the topics raised in this rulemaking and other matters. Thank you for your time and your consideration.

Chris Thomas
Vice President of Public Affairs
Divert Inc.

Submitted by former Washington State Senator Ann Rivers

March 31, 2025

SWM Program Rule Coordinator

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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

Ann Rivers