CEDAR GROVE®

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December 12, 2025

Mr. Chris Fredley
Department of Ecology
300 Desmond Drive Southeast
Lacey, WA 98503

Dear Mr. Fredley,
On October 21, 2025 Ecology opened an "informal comment period" on draft amendments to WAC ch. 173-350 that Ecology describes as the "Organic Materials Management Rulemaking." Thank you for the opportunity to submit informal comments as part of this process. The latest version of the amendments was posted on or near November 5, 2025, and these comments refer to it as the "November 5 proposal."

As one of Washington's largest primary organics management companies, Cedar Grove supports the Legislature's goal of building a sustainable, low-contamination organics recovery system that prioritizes source-separated materials, ensures environmental integrity, and provides a level playing field among all organics management technologies. Unfortunately, the current Ecology proposal diverges from both the spirit and intent of the enabling legislation and will have the opposite effect: increased landfilling of organics, weakened recycling and food donation programs, and disproportionate regulatory burdens on compost facilities who already achieve strong environmental outcomes. Cedar Grove respectfully requests that its comments, along with similar comments from other stakeholders, are given meaningful consideration as part of the rule development process.

Executive Summary
This rulemaking was required by Section 301 of ESSHB 2301 (2024), which directed Ecology to amend its Solid Waste Management Act rules to address "contamination associated with incoming food waste feedstocks and finished products" at organic materials management facilities.[1] The intent of the rulemaking legislation was two-fold:

1. Establish reasonable guardrails on depackaging technologies to ensure environmental outcomes, prevent mismanagement, and maintain equity among processing facilities; and
2. Support and grow composting infrastructure through contamination reduction policies without increased burdens on compost facilities.

Ecology's proposed rules run counter to these objectives. Rather than setting standards for depackaging or maintaining generator-level source separation, the proposal relaxes requirements for large food waste generators and shifts additional compliance burdens to compost facilities.

[1] CR-101, WSR 25-01-038 (December 10, 2024).

As we have explained in several stakeholder meetings with Ecology staff, the proposed amendments seek to legitimize a mixed waste processing scheme that conflicts with the waste management priorities codified in Washington's Solid Waste Management Act. The "depackaging" business model that Ecology proposes to authorize would allow grocery chains and other retailers to circumvent the source separation mandate of RCW 70A.205.545 by tendering containers of food waste mixed with packaged foods to a contractor for processing at a "source separation facility." A byproduct of this facility, by mass or volume, will be a semisolid residual, containing organic waste and plastic packaging, that can only be landfilled.

To enable this business model Ecology proposes to amend the statutory definition of "source separation" and to exempt businesses that generate organic waste from the statutory mandate to route source-separated organic waste to a facility that conducts "organic materials management," a term defined by the legislature to include composting and other waste recovery technologies but not depackaging.

By allowing commercial generators of food waste to avoid the source separation mandate, Ecology would enable a business model that extracts a relatively small stream of feedstock from a large mass of mixed waste, with the balance going to a landfill. This feature of the proposed rules would gravely harm the composting industry, increase the landfilling of organic waste and undercut Washington's waste management priorities. These comments document these impacts, and establish that the proposed rules in their current form would cause significant adverse environmental impacts that require detailed analysis under the State Environmental Policy Act ("SEPA").

A. RCW ch. 70A.205 mandates source separation of organics from other waste materials.

The legislature has defined source separation as a "fundamental strategy of solid waste management." RCW 70A.205.005(5). The Solid Waste Management Act ("SWMA") decrees priorities for waste management. In that hierarchy, recycling is second only to waste reduction, and source separation is the preferred method to achieve recycling. RCW 70A.205.005(6). The 2024 legislature enacted findings that explain why source separation is so important:

> Compost and other products of organic material management facilities have beneficial applications and can improve soil health, water quality, and other environmental outcomes. However, in order for the products of organic material management facilities to lead to improved environmental outcomes and for the economics of the operations of these facilities to pencil out, it is important that inbound sources of organic material waste are free of plastic contamination, pesticides, and other materials that will reduce compost quality;

ESSHB 2301, Section 101(f), 68th Washington Legislature, 2024 Session.

To achieve source separation, the 2022 legislature directed that a business that generates threshold quantities of "organic material waste" must "arrange for organic materials management services specifically for organic material waste." ESSHB 1799, Section 201, 67th Legislature, 2022 Session, codified at RCW 70A.205.545(2). To achieve that mandate the legislature approved a handful of management practices. The primary pathway that works for most commercial food waste generators is "[s]ource separating organic material waste from other waste, subscribing to a service that includes organic

material waste collection and organic materials management, and using such a service for organic material waste generated by the business." RCW 70A.205.545(3)(a).

The SWMA includes definitions that clarify the management requirements summarized above. "Source separation" means "the separation of different kinds of solid waste *at the place where the waste originates."* RCW 70A.205.015(26) (emphasis added). "Organic materials" include "manure, yard debris, food waste, food processing waste, wood waste and garden waste." RCW 70A.205.015(16)(a)(ii). "Organic materials management" means the management of organic materials *through composting, anaerobic digestion, vermiculture, black soldier fly, or similar technologies."* RCW 70A.205.015(17). The common feature of these technologies is that they biologically transform organic waste into useful products.

In short, the 2022 legislature directed larger businesses that generate organic waste materials to separate those materials from other wastes at the "place where the waste originates" and to route them to a compost facility or other facility equipped to recycle organic wastes through biological processes. These requirements, known as "the BOMA mandate," support two key statutory policy goals: to maximize recycling and to reduce landfill disposal of organic waste. RCW 70A.205.007.

B. The process of "depackaging" mixed waste streams of organic materials and plastic packaging at a remote facility circumvents the legislature's organic materials recovery policies.

The legislature correctly found that source separation at the point of origin is essential to achieve the environmental benefits of organic materials management. ESSHB 2301, Section 101(f). The source separation mandate imposes some processing burdens on waste generators. Grocery stores, for instance, an important source of organic food waste, must sort plastic and other packaging from expired, damaged or unsellable food products, and place them in the applicable separate containers. The legislature acknowledged the burdens imposed by the BOMA mandate by phasing it in over a three-year period, exempting businesses in areas of the state that lack organic materials management options, and exempting businesses that generate only small volumes of waste. RCW 70A.205.545(1)(b) and (2)(a). Today many groceries have implemented source separation, and food waste from groceries is an important feedstock for the production of Cedar Grove compost.

PCC Co-Op, Burien

QFC, Factoria

These successes have not prevented a handful of venture capital-backed entrepreneurs from approaching grocery chains with offers to accept mixed waste streams that have not been source separated. These streams include food waste together with the plastic and other materials that package the food. Here is a poster that one depackager supplies to grocery stores to illustrate the materials that employees can toss into a single container:

Here are photos of the mixed waste deposited in a storage container awaiting pick-up by a depackager.

Western WA Safeway stores

Depackagers pick up mixed waste from grocery stores or distribution centers and truck it to a source separation facility. There the waste passes through mechanical presses, blades and sieves to remove the packaging and to extract a stream of liquid slurry that can be routed to an anaerobic digester for biogas production. This organic slurry is the only component of the mixed waste feedstock that gets recovered in the depackaging process. The anaerobic digester generates biogas and a digestate, some of which is de-watered and marketed as a soil amendment. A substantial portion of the organic waste passes through the source separation equipment, together with the plastic and other non-organic items. That "residual" stream is shipped to a landfill.

Washington state has limited operating history with commercial scale depackaging facilities. Because the technology is relatively new to Washington and because depackaging facilities decline to disclose many details about their operations, there is minimal data on recovery rates for the organic wastes received by depackaging facilities. Published recovery rates for out-of-state depackaging facilities average around only 60%.[2] There is also limited public information on the residual waste streams that

[2] Data reported by Divert Inc. for a depackaging facility in Turlock, California between 2022 and 2024 shows an average organics recovery rate of 51 percent. An operating plan for a Divert depackaging facility in Albany, Oregon estimates a recovery rate of "60 to 72 percent," but this estimate may be aspirational.

depackagers ship to landfills. This residual stream consists primarily of de-watered food waste mixed with the plastic packaging collected by the source separation equipment.

Residuals from a depackaging facility being landfilled in Oregon

Depackaging operations do not comply with the objectives or the detailed requirements of the Solid Waste Management Act. First, depackaging circumvents the source separation mandate, which requires businesses to separate different kinds of solid waste *at the place where the waste originates"*[3] and to deliver organic waste to a service that practices "organic materials management."[4] Composting and anaerobic digestion are approved types of organic materials management.[5] Feeding mixed waste to a separator that diverts good portion of the waste including residual food waste to a landfill is not "organic materials management."

The features of depackaging that undercut the waste management hierarchy of RCW ch. 70A.205 make it attractive to some generators of organic waste. Why invest staff time to separate plastic packaging from organic waste if you can pay a contractor to pick up the mixed waste and ship it off for disposal? The 2024 legislature had a ready answer to that question. To obtain improved environmental outcomes and to ensure that organic waste management "pencils out" it is it is important that inbound sources of organic material waste are free of plastic contamination. ESSHB 2301, Section 101(f). Unfortunately, the proposed rules undercut this finding.

C. The proposed regulations would abandon the legislature's organic materials recovery policies to promote "depackaging."

Ecology's proposed regulations seek to enable depackaging by circumventing those features of the SWMA that require delivery of source-separated organic waste to an organic materials management facility.

First, Ecology proposes to revise the statutory definition of source separation: "the separation of different kinds of solid waste at the place where the waste originates." RCW 70A.105.015(26). The BOMA mandate in RCW 70A.105.545(3) imposes this burden on businesses that generate organic waste, notably grocery stores and other food retail businesses. Ecology proposes to relieve groceries of the requirement to separate plastic packaging from organics by adopting "examples" of source separation that include "a grocery store that places *packaged or unpackaged* food for purposes of recovery of the organic materials in one container and other solid wastes the store generates in separate containers." Proposed amendment to WAC 173-350-100 (definition of "source separation").

Ecology's "improved" definition would allow food retailers to comingle packaged and unpackaged food in one storage bin. But plastic packaging and food waste are separate types of solid waste. The effect of Ecology's proposed "example" would be to allow groceries to avoid the source separation mandate. The responsibility to separate food waste from packaging would then shift to downstream processors, including compost facilities.

One obvious effect of exempting food waste generators from the source separation mandate would be to increase physical contamination levels in compost feedstocks. This very concern was the basis for the

[3] RCW 70A.205.015(26)

[4] RCW 70A.205.545(3)(a)

[5] RCW 70A.205.015(17)

legislature's finding that inbound sources of organic material waste must be free of plastic contamination to enable organic materials management operations to "pencil out."[6] The proposed regulations, however, would force composters to remove the plastics from their incoming feedstocks.

Cedar Grove strongly supports codifying the Two-Box Rule, as it has been one of the most effective tools for maintaining clean organics through clear, generator-level separation. From the standpoint of both collectors and composting facilities, this clarity is essential to producing high-quality compost. However, the proposed revisions to key definitions and the introduction of new pre-processing pathways move in the opposite direction. These changes would open the door to mixed-waste collection systems that blur the line between source-separated organics and garbage. This shift not only undermines the integrity of the Two-Box Rule but also reverses decades of public education and operational practice that have built Washington's successful composting programs.

WAC ch. 173-350-220 currently requires composters to reject feedstocks containing more than five percent physical contaminants and the industry standard. WAC 173-350-220(6)(f)(iii). Cedar Grove designed its processing system to meet this requirement. Cedar Grove monitors incoming feedstocks to meet the five percent inbound limit, and operates best-in-Washington screening components to remove incidental contaminants from finished compost. As a result of these investments, Cedar Grove effectively processes and recovers 95%+ of all inbound feedstocks. This compares with the 50-60 percent recovery rate reported by depackaging facilities in California.

The proposed rules would repeal the five percent inbound contamination limit for composters and replace it with a two percent limit.[7] Cedar Grove questions whether organics feedstocks arriving at a composting facility can meet a two percent contamination limit as a majority of residential organics contain higher amounts. During meetings on the proposed amendments stakeholders questioned Ecology staff on the feasibility of meeting the proposed limit. Ecology was unable to produce any data supporting it.

The proposed amendments would exempt depackagers from the two percent inbound contamination limit. To achieve this result Ecology would invent a new set of standards for what it calls "pre-processing facilities." The Solid Waste Management Act says nothing about "pre-processing." Ecology proposes a new category of rules for "organic materials pre-processing" to encompass "processing of organic feedstocks and packaged food to remove physical contaminants . . ." November 5 proposal at 43. The definition states that pre-processing occurs "prior to organic materials management." *Id.* Ecology's proposal is to apply the two percent limit to the slurry produced by the source separation equipment, leaving the depackager free to ship the residuals from the source separation facility to a landfill. Where pre-processing facilities are co-located with composting, anaerobic digestion or other organic materials handling facilities, the two operations must be "kept distinct . . ." Proposed 173-350-215(6)(a)(vi), November 5 proposal at 69.

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[6] ESSHB 2301, Section 101(f), 68th Washington Legislature, 2024 Session.

[7] Proposed amendment to WAC 173-350-220(6)(a)(iii) (composters must have "a plan for rejecting feedstocks contaminated with greater than two percent physical contaminants by volume"). November 5 proposal at 83.

What about the organics embedded in the residuals from the source separation facility? Ecology has provided extremely limited information about the amount of the residual stream or the concentration of organics in the residual stream, because depackagers claim that much of that information as proprietary. It is critical to recognize, however, that a source separation facility is designed to produce a liquid slurry suitable for use as a feedstock for an anaerobic digester. The residuals stream, a mash of packaging and de-watered food waste, is just a waste product from the source separation process. The residual stream is a form of garbage suitable only for landfilling.

Allowing depackagers to accept garbage fundamentally breaks the source-separated system Washington has spent decades building. If garbage becomes acceptable in commercial organics, contamination will increase statewide and the beneficiaries will be grocery chains and landfills, not the environment. For these reasons, Ecology should heed the concerns of numerous stakeholders and address the serious issue of promoting landfilling recyclable materials in contravention of state policies and law (see RCW 70A.205.310 that makes it illegal for waste transporters to deliver recyclable materials to a landfill).

Moreover, allowing mixed-waste organics with packaging fundamentally jeopardizes existing municipal collection contracts. These contracts clearly define organics as source-separated material free of packaging, and cities rely on that definition to ensure program integrity, control contamination, and meet diversion goals. By introducing a new category that permits organics mixed with garbage, the proposal effectively creates an unregulated pathway for large volumes of garbage to leave the jurisdiction. This will put cities and haulers in immediate contractual conflict, and risks eroding the local solid-waste system, undermining franchise authority, and reducing city tax revenue at a time when municipalities depend on those funds to operate essential services.

Ecology has no authority to amend a statutory definition in a way that changes the coverage of the term. "[A] regulation may not modify or amend a statute." *Littleton v. Whatcom County*, 86 P.3d 1253, 1258 (Div. 1 2004). The limits on agency power to amend statutes are especially forceful when the term in question is a definition. An agency may not expand the scope of a term defined by the legislature. *P.E.L. v. Premera Blue Cross*, 24 Wash. App. 2d 487, 499 (2022), aff'd in part, rev'd in part, 2 Wash. 3d 460, 540 (2023). In *Littleton* the Court of Appeals overturned an Ecology regulation that defined the term "solid waste" to include materials that the legislature excluded. 86 P.3d at 1258.

The 2024 legislature recognized that separating food waste and plastics at the point of origin is necessary to the economic viability of organic waste management facilities. ESSHB 2301, Section 101(f). To achieve this policy the legislature defined source separation to mean separation at the place where the waste originates. Ecology cannot avoid that provision by adopting by rule an "example" of source separation that includes a mixture of organics and plastic and other packaging.

The proposed regulations undercut the BOMA mandate in other ways as well. The proposed amendments to WAC 173-350-025 would reduce the responsibilities of a food waste generator from "the satisfactory and legal arrangement for the solid waste handling of all solid waste generated or accumulated on the property" to "safe and sanitary handling and storage" of that waste. November 5 proposal at 8-9. "Legal arrangement for solid waste handling" includes the BOMA mandate that business waste generators must source separate "organic material waste from other waste . . ." and subscribe to a service that includes organic material collection and management. RCW

70A.205.545(3)(a). Consistent with Ecology's proposal to relieve grocery stores from the source separation mandate, Ecology also proposes to reduce the waste generator's responsibilities from those prescribed by the legislature to safe storage of mixed waste until a transporter picks it up for delivery to a depackaging facility.

D. Reasonable guardrails for depackaging should be included in the draft rules.

A majority of stakeholder comments urged Ecology to impose meaningful standards on pre-processing for a variety of reasons.[8] Yet the proposed rules provide no meaningful standards or performance criteria for depackaging facilities. Moreover, the rules appear to allow depackagers to take legal ownership of generator bins and classify that material as "organic material" regardless of what the bin contains. A proposed amendment to WAC 173-350-100 would narrow the definition of "physical contaminants" from constituents that are not readily decomposed during the organic materials management process (including packaging and plastics) to constituents that "are not accepted by the receiving facility . . ." Plastics and packaging would no longer be physical contaminants if they are accepted by the receiving facility. November 5 proposal at 45. A hyperbolic case under the proposal would allow a pre-processing facility to accept loads with up to 99% MSW and 1% organics (or even 100% MSW) so long as some organic material is recovered. This approach mirrors previous regulatory missteps in "take-all" recycling under C&D programs, which led to high contamination, low recovery rates, and ongoing environmental impacts. Rather than learning from those lessons, the current proposal repeats them.

Critically, Ecology's proposed amendments omit any provisions that distinguish between easily separable organic materials and heavily packaged streams, nor does it require separate handling of packaged foods. Stakeholders, including Cedar Grove, are not opposed to depackaging so long as there are reasonable guardrails in place. For this reason, numerous stakeholders have requested definitional changes to clearly define what should be defined as heavily packaged food and how those materials should be managed. This group of stakeholders has also provided a middle-ground approach with common sense policies to ensure the best environmental outcomes across collection streams. Those policies include:

- Continue to require generators to separate recyclable materials from organics before the material is sent for pre-processing.
- Establish performance-based recovery benchmarks supported by independent verification of actual organic recovery rates.
- Prohibit pre-processing facilities from receiving any materials identified as designated recyclables.
- Prohibit commingling heavily packaged food with pure food waste.

[8] 8/25/25, King County Solid Waste Comment Letter, page 1
7/17/25, Seadrunnar Comment letter, page 1
8/3/25, Winton MFG Letter, page 8
8/3/25, Compost Manufacturing Alliance, page 1
8/3/25, Zero Waste Washington, page 1
8/1/25, Basin Disposal, page 2
8/1/25, Washington Refuse & Recycling Association, pages 2, 3, 9
8/1/25, United States Compost Council, pages 1-2
7/31/25, Seattle Public Utilities, page 3

- Require clear, public reporting on the composition of incoming loads and the final disposition of all residual fractions.

These policies could help achieve the best environmental outcomes while protecting source separated programs with 95%+ recovery rates.

At minimum, before revising Washington's solid waste management rules to support depackaging and undercut composting, Ecology should take the time to gather quantitative data on the incoming and outgoing volumes of products and residuals from the depackaging process. This should include the types and volume of commodity-grade recyclable materials that were previously being recycled but will now be landfilled. It would also include a study of the current environmental outcomes being achieved in areas with strong source separation programs for organics and recyclables and a thorough assessment of inbound and outbound residuals tons from new facilities. This information is critical to sound policy development and to SEPA review of the November 5 proposal. If depackagers want the State of Washington to endorse their business model they should share the data needed to evaluate its environmental impacts.

E. **The proposed amendments threaten significant adverse environmental impacts.**

SEPA requires that state agencies prepare an EIS for "major actions having a probable significant, adverse environmental impact."[9] The purpose of SEPA review is to ensure that agencies fully disclose and carefully consider a proposal's environmental impacts *before* adopting it and "at the earliest possible stage."[10] In deciding whether a proposed action requires an EIS, the agency "shall not balance whether the beneficial aspects of a proposal outweigh its adverse impacts . . . . [P]roposals designed to improve the environment, such as . . . pollution control requirements, may also have significant adverse environmental impacts."[11]

Ecology has not yet written a SEPA checklist or issued a threshold determination on the proposed amendments. It would be premature to do so while the content and scope of the proposal remain in play. If, however, Ecology decides to move ahead with the changes presented in the November 5 proposal the amendments likely would cause significant environmental impacts that require analysis in an EIS.

The amendments presented in the November 5 proposal would over time shift a substantial portion of the region's food waste stream to depackaging, because the depackager business model relieves commercial food waste generators from the burdens of source separation. The practical environmental difference between the organic materials management practices that the legislature endorsed in RCW 70A.205.545 and what happens at a depackaging facility is that most compost facilities recover around 95 percent of the organic materials delivered to their facilities. Depackagers achieve much lower recovery rates (estimated in the 50-60% range), and the balance goes to the landfill. The SEPA review of

[9] RCW 43.21C.031

[10] *King County v. Wash. State Boundary Review Bd.,* 122 Wn.2d 648, 663-64, 666, 860 P.2d 1024 (1993); *see also* WAC 197-11-060(4)(c)-(d)

[11] WAC 197-11-330(5); *Seeds, Inc. v. State of Washington Dept. of Ecology*, 98 Wn.App. 1022 at *5 (1999).

the November 5 proposal will need to analyze the predictable, adverse environmental consequence of routing a new waste stream of mixed waste residuals to landfills.

The SEPA review also will need to evaluate the impacts of the proposed amendment to WAC 173-350-220(6)(a)(iii) that would require composters to have "a plan for rejecting feedstocks contaminated with greater than two percent physical contaminants by volume". November 5 proposal at 83. As noted above, Cedar Grove knows of no cost-effective method to comply with this limit at a composting facility. This change would drive additional shifts in the organic materials management market from composting to less environmentally beneficial disposal methods or outright landfilling.

F. Proposed amendments to WAC 173-350-220 addressing air pollution control measures for composting facilities conflict with the state Clean Air Act.

A proposed amendment to WAC 173-350-220(4) would add "pollution control measures to protect air quality" to the list of design standards for composting facilities. A companion amendment to WAC 173-350-220(5) would compel the owner/operator of a composting facility to submit those air pollution control measures to the health department for review and approval. November 5 proposal at 94 and 95.

In the state Clean Air Act, RCW 70A.15.2040, the legislature vested local air authorities with exclusive authority to permit emissions sources within their jurisdictions. In RCW 70A.15.2540 the legislature specified (with exceptions not relevant here) that rules adopted by a local air authority "supersede" the regulations, resolutions and ordinances of "component bodies" included within an authority. In RCW 70A.15.3110 the legislature vested Ecology with authority to divest a local air authority of jurisdiction upon a finding that the local air authority is not effectively implementing an air pollution control program. With that exception, Ecology has no authority to supplement local air authority control measures in a solid waste management plan, or to engage county health departments to establish new air pollution control measures for composters.

The Puget Sound Clean Air Agency comprehensively regulates air emissions from both of Cedar Grove's Puget Sound composting facilities. There is no need or authority for the Solid Waste Division to inject itself into that sphere. The proposed amendments referenced above should be omitted from the proposal.

G. Proposed amendments to WAC 173-350-220(6) requiring composters to include a "progressive odor management plan" in their plan of operations exceed Ecology's authority.

A proposed addition to WAC 173-350-220(6)(a)(x) would add a "progressive odor management plan" to the solid waste permitting requirements for composting facilities. November 5 proposal at 111. This new mandate exceeds Ecology's authority. Odors are regulated under the state Clean Air Act, and local air authorities administer their own odor regulations. *See*, e.g. PSCAA Regulation 1 Section 9.11. The Solid Waste Management Act in RCW 70A.205.125 specifies the content of solid waste permits. It directs the jurisdictional health department to investigate every application to determine whether proposed or modified facilities "meet all solid waste, air and other applicable laws and regulations . . ." It does not invite the Solid Waste Division or health departments to invent new air regulations.

With respect to odors the applicable laws and regulations for composting facilities operating under the jurisdiction of a local air authority are that authority's odor control rules. PSCAA Regulatioin 1 Section 9.11 does not require a "progressive odor management plan," nor does it invite health departments to specify the content of such a plan.

"Administrative agencies are 'creatures of the legislature without inherent or common-law powers, and they may exercise only those powers conferred on them 'either expressly or by necessary implication.'"[12] The legislature did not authorize the Solid Waste Division to establish its own odor control regulations. The current odor management requirements in WAC 173-350-220(6) give local health departments adequate authority to regulate composting odors, and those provisions should not be changed at this time.

H. Any changes related to the legal ownership of waste need to be consistent with current state law.

The proposed amendments to WAC 173-350-025 would assign the legal responsibility for waste shipments from the owner of the waste to the entity that "collects and transports solid waste." Where a solid waste management facility rejects a load, the transporter would assume the responsibility for management of the load. These amendments serve no practical purpose. Composting facilities already possess, and routinely use, the authority to reject loads that contain unacceptable levels of contamination. Because this right is well-established and exercised routinely in the field, it is unclear why the rule proposes this fundamental change.

This new framework is difficult to reconcile with RCW 36.58.060, which specifies that title to solid waste vests in the operator of the disposal or recovery facility upon the waste's arrival, subject only to limited exceptions for the original generator. Judicial and administrative interpretations reinforce this statutory structure. In the WUTC's Sure-Way decision[13], the agency rejected attempts to redefine ownership in a manner inconsistent with RCW 36.58.060 and emphasized that "the statute clearly states that title remains with the waste generator" until the waste reaches the disposal or recovery facility. Efforts to shift ownership timing outside this statutory scheme have met skepticism for decades, and the proposed rule appears to invite similar conflict with existing contracts and regulatory expectations that rely on the statute's distinctions.

During the November 5 listening session, the WRRA sought clarification from Ecology staff regarding the intent and legal basis for this change, and staff were unable to substantively respond. Before advancing any amendment to the ownership framework, Ecology should provide stakeholders with (1) confirmation of whether Ecology or the Attorney General has evaluated the proposed language against RCW 36.58.060, and (2) an explanation of the authority under which Ecology believes it may alter waste-ownership law in a way that diverges from the statute.

I. Proposals related to contamination reduction should benefit compost facilities of all sizes and levels of contamination reduction investment.

Before considering new obligations for compost facilities, it is essential that Ecology apply comparable standards to pre-processing operations. Without parity, the rule creates a structural imbalance and

[12] *Wash. Indep. Tel. Assn. v. Telecom. Ratepayers Ass'n,* 75 Wn.App. 356, 363, 880 P.2d 50 (1994).
[13] *Application GA-868 of Sure-Way Incineration, Inc.*, 1990 Wash. UTC LEXIS 116, *25-26 (Nov. 30, 1990).

unlevel playing field for business in this space. Many stakeholders have requested parity in regulation to prevent inequity between business and less favorable environmental outcomes. Moreover, verbal comments from small composters should not dictate statewide rules. The legislative intent was to improve compost quality and expand service, it was clearly was not to advantage small facilities that do not yet exist, or to hold back facilities with "deep pockets" that are processing the majority of the state's organic material. It remains concerning that Ecology has repeatedly referenced "deep-pocketed composters" as a justification for more restrictive provisions. This was never part of the legislative intent or stakeholder discussions and one that unfairly pits segments of our industry against each other rather than strengthening composting as a whole.

What is being proposed essentially punishes those who have already invested in real, demonstrable solutions. This was a concern raised by the Pierce County Health Department at the November 5 meeting. Cedar Grove and other larger-scale compost facilities have committed significant financial and operational investment to effectively process inbound feedstocks containing higher than 2% contamination by volume because most residential programs currently exceed that threshold. The proposed 2% contamination limit therefore would effectively nullify compost facility investments that remove contamination on the back-end. This will also preclude future innovation and use of back-end contamination removal technology based on verbal comments from small compost facilities not yet provided in the record. Many current compost facilities have made significant long-term investments based on regulatory requirements and deep experience and understanding of local feedstock profiles. The proposed revisions would render portions of that infrastructure unusable or noncompliant, effectively stranding assets that were developed in good-faith reliance on prior rules. This outcome raises serious concerns about regulatory certainty and fairness.

The proposal to impose a 2% inbound contamination limit on all compost feedstocks presents some other issues as well. Composting facilities do not control curbside behavior, collection routes, or municipal programs, education, and enforcement. The proposal would hold facilities accountable for contamination levels determined entirely upstream. Current compost facilities have made significantly investment in technology and operations to manage contamination based on its unique conditions and feedstock profile. This flexible, performance-oriented approach drives higher diversion rates than a rigid statewide cap that does not reflect real-world operating conditions.

Although Ecology has indicated that cities and haulers will bear primary responsibility for ensuring compliance, that shift imposes major new costs on local governments and service providers who are being tasked with implementing other organics management laws without necessary funding. Adding additional costly enforcement and implementation requirements will discourage participation, suppress diversion, and create new friction with the jurisdictions we depend on.

The proposal to tighten finished compost specifications adds another compliance layer for composters without corresponding improvements to upstream controls or parallel requirements for alternative processors. The 0.1% outbound standard is deeply troubling when current market conditions for finished compost are healthy. An isolated sample from one pile could hit 0.1% even if the overall product meets market expectations. There is no clarity on what a facility must do with a batch that fails a single test. Are

compost facilities expected to landfill that batch? Do they incur the costs of reprocessing it indefinitely? No guidance has been provided. Policy changes should be focused on upstream contamination and not placing compost facilities in regulatory jeopardy and undue financial burden over a failed sample.

Demand for compost continues to grow, and facilities are consistently producing high-quality material with minimal complaints. As a recycled product, compost inevitably contains minor impurities, which operators effectively manage at current regulatory levels. Raising the bar without addressing upstream contamination simply shifts costs onto composters and their customers without improving systemwide outcomes.

J. Actual upstream contamination solutions exist and should be prioritized.

Cedar Grove offers the following potential solutions for supporting compost facilities as a whole. We are a small industry that is busy providing this critical service and we should be using this process as an opportunity to collaborate and improve. The draft rules, unfortunately, contain no actual upstream solutions. Compost facilities do not want contamination and we appreciate any effort to reduce the amount of contamination that arrives at our facilities. The contamination present is the result of a public-facing recycling program with hundreds of thousands of users in our region. For this reason, Cedar Grove provides the following suggestions for positive change and improved outcomes:

- Prohibit embedded or" free" compost service
- Fund upstream community education and initiatives
- Required curbside contamination protocols (aka cart tagging)
- Fund or subsidize contamination removal equipment
- Weekly collection (at least during peak season)

There are many options to improve contamination in feedstocks that do not serve as another cost center for compost facilities to manage and enforce. We will continue to explore collaborative solutions with all stakeholders to address this issue.

K. Proposed rules for anerobic digestors should be level with compost facilities.

Training Requirements

The proposed rule imposes more training requirements on composting facilities than on anaerobic digesters, despite the fact that both types of operations handle similar feedstocks and present environmental and operational risks. This imbalance may unintentionally disadvantage composting operators and create inconsistent expectations across the organics sector. Ecology should ensure that training standards are risk-based and applied equitably so that all organics management facilities are held to a consistent level of operational competency.

Finished Product Standards

The proposed finished product standards also create a concerning disparity between compost and digestate. Compost facilities must comply with Table 220B as well as tighter limits on physical contaminants, metals, and pathogens, while digestate would only be subject to the physical contaminant standard. This is a significant departure from other jurisdictions, where digestate and compost must meet the same thresholds to ensure comparable protection of soil, water, and public health. Ecology

should align finished product standards across processes so that the regulatory framework evaluates final products based on risk and intended use.

L. Other proposed regulation changes that require additional consideration.

- Sampling (page 83). Even in a regulated industry, inspections must be reasonable, limited to regulatory purposes, and tied to specific statutory standards. Open-ended authority to seize samples of "anything" at a compost facility likely violates basic legal protections. Rulemaking is the appropriate venue for Ecology to clearly identify in advance which materials or processes are subject to sampling, so regulated entities know precisely what is within scope; adopting an open-ended right to sample lacks that necessary transparency.
- Organic materials reference (page 6). Adding "packaging" conflicts with the current definition. This change should be reconsidered as it would allow packaged foods (i.e., MSW) to be flowed to animal feed unregulated.

In conclusion, we appreciate the efforts from Ecology and all stakeholders on these important regulation changes. There are many available polices and proposed regulation changes that can strengthen composting programs and other organics management infrastructure. We will need to work together with a focus on these positive changes as the current direction seems to be aimed at legitimizing one model at the expense of another without a reasoned and well-supported basis. We look forward to the next round of proposed rules and are available any time to discuss our perspectives on the various components impacting organics management in Washington.

Respectfully,
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