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Chris Fredley
Rule Coordinator, Department of Ecology
300 Desmond Drive SE
Lacey, WA 98503

RE: Comments on Proposed Organics Management Rule Amendments

Dear Mr. Fredley,

Torre Refuse Recycling, LLC, which does business as Sunshine Disposal & Recycling ("Sunshine Disposal & Recycling"), is a solid waste collection company that operates in Washington State. Sunshine Disposal & Recycling is the holder of UTC Certificate No. G-260, which provides authority to provide full and complete solid waste collection services in Ferry County, Stevens County, and Spokane County.

On October 21, 2025, the Department of Ecology (the "Department") opened an informal comment period on draft amendments to Washington Administrative Code, chapter 173-350. Sunshine Disposal & Recycling appreciates the opportunity to comment on the Department's draft rule language and requests that its comments are given meaningful consideration by the Department as part of its rulemaking process.

Ownership and Responsibility for Rejected Loads Pursuant to WAC 173-350-025

The Department's proposed amendment to WAC 173-350-025 seeks to drastically change the party that is legally responsible for solid waste shipments in contravention of clear statutory authority. Specifically, the proposed amendment seeks to shift responsibility and liability to the entity that "collects and transports solid waste." This includes the situation in which a solid waste management facility rejects a load, thereby assigning continued responsibility to the collection company after it has already relinquished physical control and custody of the solid waste at a permitted facility. Washington statutes clearly assign ownership to the waste generator in this scenario, and it is unclear what benefit this provides the composting facilities. Such facilities already maintain the right to reject loads that contain unacceptable levels of contamination and reassigning responsibility for the rejected load provides no benefit to the composting facility, but does increase responsibility to the solid waste collection company.

The proposed rule directly conflicts with RCW 36.58.060, which provides:

> Ownership of solid wastes shall be vested in the person or local jurisdiction managing disposal and/or resource recovery facilities upon the arrival of said solid wastes at said facility: provided, that the original owner retains ownership of the solid wastes until they arrive at the disposal site or transfer station or detachable container, and the original owner has the right of recovery to any valuable items inadvertently discarded: provided further, that the person or agency providing the collection service shall be responsible for the proper handling of the solid wastes from the point of collection to the disposal or recovery facility.

While there is scant case law interpreting RCW 36.58.060, the Utilities and Transportation Commission ("Commission") has held that its language is "clear." For example, when a party attempted to establish ownership of waste in a manner inconsistent with the statute, the Commission rejected such an argument and emphasized that "the statute clearly states that title remains with the waste generator" until the waste reaches the disposal or recovery facility. Application GA-868 of Sure-Way Incineration, Inc., Order M. V. G. No. 1451, 1990 WL 10702625 (Nov. 30, 1990). The proposed rule language directly conflicts with the operation of RCW 36.58.060 and the case law from the Commission interpreting the statute.

It is unclear what the Department's continued position is on this issue, as Staff appeared to be relatively unfamiliar with the proposed change at the November 5 Listening Session. Sunshine Disposal & Recycling strongly encourages the Department to reconsider this amendment as it has broad implications on solid waste collection companies and is in direct conflict with a clear statutory mandate.

Definitions of "Source Separation" and "Organic Materials" – WAC 173-350-100

The Department's proposed changes to various definitions within WAC 173-350-100, including its definition of "source separation," directly conflict with the enabling statute, various other state statutes, and undermine decades of public investment in Washington's source-separated organics and recycling infrastructure. The State of Washington has long promoted source separation at the waste generator level, and its statutes reflect this clear policy. Yet, the proposed language clearly allows large waste generators to sidestep the obligation of source separation at their facility and the result will push solid waste downstream and send higher waste volume to the landfill. This change will upend decades of clear legislative policy and directives.

Despite the contrary intent of the rulemaking legislation, the proposed amendments seek to affirm a mixed waste processing scheme that conflicts with the priorities codified in Washington's Solid Waste Management Act. The "depackaging" model that the Department

appears to be pushing forward 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 food packaging to a contractor for processing at a "source separation facility." A byproduct of this facility will be a semi-solid residual containing organic waste and plastic packaging. The only destination for such residual waste is a landfill, which of course runs contrary to clear legislative enactments.

The Legislature has mandated that source separation be a "fundamental strategy of solid waste management." RCW 70A.205.005(5). This stems in part from the Solid Waste Management Act's ("SWMA") hierarchy for waste management. In its designated hierarchy, after waste reduction, recycling is the second most important method of waste management, **and source separation is the preferred method to achieve recycling**. RCW 70A.205.005(8). Moreover, the SWMA has defined "source separation" as "the separation of different kinds of solid waste **at the place where the waste originates**." RCW 70A.205.015(26) (emphasis added). This is bolstered by the recently adopted Organics Management Law (OML), which makes clear that source separation occurs at the point of generation, and includes the removal of packaging and non-organic contaminants. RCW 70A.205.545(3)(a) (a business may comply with its BOMA obligations by "source separating organic material waste from other waste . . . .").

Further, the SWMA defined "organic materials" as "manure, yard debris, food waste, food processing waste, wood waste and garden waste. RCW 70A.205.015(16)(a)(ii). Notably, food packaging is not included. The legislature then defined "organic materials management" as the "management of organic materials through composting anaerobic digestion, vermiculture, black soldier fly, or similar technologies." RCW 70A.205.015(17). Again, none of these definitions can be interpreted in a way that includes food packaging, as it is a separate form of solid waste.

As a result, in 2022, the legislature directed large organic waste generators 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 support two key legislative goals: (1) maximize recycling, and (2) reduce landfill disposal of organic waste. RCW 70A.205.007.

The Department's proposed regulations seek to sidestep the features of the SWMA that require delivery of source-separated organic waste to organic management facilities. Most notably, the Department proposes to revise the definition of source separation itself by providing "examples" of activities that clearly contradict the statutory definition. One "example" of alleged source separation includes "a grocery store that places **packaged or unpackaged food for purposes of recovery of the organic materials within in one container** and other solid

wastes the store generates in separate containers . . . ." Proposed amendment to WAC 173-350-100 (definition of "source separation") (emphasis added).

This proposed definition would plainly allow grocery stores and food retailers to comingle packaged and unpackaged food in one storage bin, which is the antithesis of source separation. Plastic packaging and food waste are separate types of solid waste. It would then shift the responsibility of separation of the solid waste to downstream processors. This definition expressly allows these entities to comingle separate types of solid waste at the point of the waste generation, contrary to the enabling statute and clear legislative policy.

Administrative rules are invalid if "the rule exceeds the statutory authority of the agency." RCW 34.05.570(2)(c). Administrative "[r]ules must be written within the framework and policy of the applicable statutes," and they "cannot amend or change legislative enactments." Ctr. For Biological Diversity v. Dep't of Fish & Wildlife, 14 Wn. App. 2d 945, 967, 474 P.3d 1107 (2020). Rules that are not consistent with or are broader than the statutes they implement are invalid. Id.

Here, the proposed definition of "source separation" ignores the clear policies outlined in the SWMA and the OML, and expands the definition far broader than the clear definition contained in RCW 70A.205.015(26). By redefining "source separation" to include scenarios where food waste and packaging are commingled until mechanical pre-processing occurs, the draft rule contradicts the statute's express language and conflicts with the Legislature's directive to prioritize generator-level separation of recyclable and compostable materials. *See* RCW 70A.205.005(4)-(8). Allowing commingled, packaged food waste to qualify as "source separated" dilutes the integrity of the system and risks diverting recyclable packaging into downstream disposal pathways. Thus, the proposed changes to the definitions exceed the scope of the Department's rulemaking authority because they substantially alter the meaning, intent, and application of the controlling statutes, rather than interpret or clarify them.

The proposed rules also create operational, systemic, and environmental problems. Under the current system, waste materials that are required to be source-separated at the waste generator level will immediately direct recyclable packaging to recycling markets and organic food waste to compost or digestion markets. However, the proposed rule changes will allow the commingled waste to be routed to processing facilities, where the packaging will be combined with organic residual waste and landfilled. Allowing downstream processors to accept commingled waste is fundamentally at odds with the longstanding source-separated system in Washington. If garbage becomes acceptable in commercial organics, contamination will increase statewide and the beneficiaries will be grocery chains and landfills, not the environment. Overall, this will result in a decrease in recycling and will directly contravene the Legislature's waste hierarchy and organics management law. See RCW 70A.205.010 and .545.

Accordingly, Sunshine Disposal requests that the Department reconsider is proposed definition of "source separation" and maintain a definition and system that is consistent with the SWMA and OML.

Sunshine Disposal & Recycling appreciates the Department's willingness to accept input and work with stakeholders during this rulemaking process. Sunshine Disposal & Recycling encourages continued dialogue and appreciates the ability to participate in ongoing sessions regarding the rulemaking process. Please direct any questions or future notices to Reid G. Johnson at rjohnson@lukins.com.

Best Regards,

REID G. JOHNSON