STEVE VANDER HAAK

TO: WA Department of Ecology – Solid Waste Section
From: FPE Renewables, LLC.
RE: Comments on Draft 2025 Draft Revisions – Chapter 173-350

As the Operational Manager for FPE Renewables and as a Substrate Service Provider to several anaerobic digesters within the State I request Ecology place the rule making portion regarding anaerobic digesters on pause to allow time for our industry to understand the breadth of the perceived digestate contaminant problem and the impact the proposed rules will have, and to ensure that the rule making's current direction is not in conflict with the clear legislative direction provided in SSB 5797 that exempted digestate from solid waste regulation if specific steps were taken. Additionally, as a farmer, the current rule seems to be in conflict with "right-to-farm" legislation that limit regulating nuisance odors associated with farming activities and there appears to be regulatory merging into oversight powers granted to the Department of Agriculture.

My family and I have been intimately involved with the agricultural anaerobic digestion development in Washington State since it's inception, having the first digester in the state. Since that time we have worked with regulators and fellow digesters to address problems as they arrive through management/operational procedures changes or regulation if needed. This "organic rule" making session seems much different in that there has been no working together to understand the problem and identify workable solutions to my knowledge.

Not withstanding the primary conflict between Ecology jurisdiction and Department of Agriculture questions above, I feel the most basic additional questions that need answered before proceeding are as follows:

On the front end, the proposal is to limit incoming physical contamination to no more than 2% by volume. We would need to know what that looks like in order to stop it. Additionally, the material arrives in tankers or large drop boxes and is deposited directly into our feed pit as required by regulation. How are we to reasonably comply with this regulation?

On the back end, (which may not fall under Ecology review) what does 0.5% physical contamination by dry weight and 0.1% film plastic by dry weight visually look like in a lagoon or in a pile of separated solids digestate?

Table 250-A: All land where digestate is applied must be under the direct control of the dairy with which the plan is associated". What does "under direct control means"?

Table 250-A: Provide to partner dairies land applying under a nutrient management plan, "at least quarterly nutrient analysis or more often if feedstocks change significantly"? (Again, this is likely not in Ecology's purview) but this implies quarterly nutrient analysis is required on digestate. In cases where the digester operator is the land applicator, quarterly testing may not be necessary as they would understand what went into thedigester over the wet season and can prepare based upon the feedstocks received and test prior to land application to confirm nutrient status of the digestate.

Table 250-A: The statement "Any additional information required by the department" seems broad and needs guard rails to limit what can be asked of us.

The proposed solid waste regulation discusses management to prevent the migration of pests and disease. For dairies at least, I believe this is clearly outside the jurisdiction of Ecology's Solid Waste Section and is regulated by the Department of Agriculture.

In the case of a dairy digester, the requirement of stormwater runoff, collection and discharge from a 25year storm should be exempt from this solid waste regulation as it is regulated by the Department of Agriculture.
It should be clear within the regulation that facility design, construction documentation, inspections, general daily management and other design criteria within the solid waste regulations are not applicable to dairy farms in general and/or dairy manure ponds and tanks, (with or without digestate or allowed feedstocks) as they are regulated by the Department of Agriculture.
In general, FPE does not have a significant problem with Ecology collecting samples however once the digestion occurs, the digestate is believed to be no longer a solid waste therefore, some other rationale/justification would be required.
It is unclear if the term "distribution" applies to application to fields under the management of a Dairy Nutrient Management Plan or not, thereby requiring sampling and analysis. This needs to be clarified.
The proposed sampling schedule of testing every 50,000gallons and 5,000 cubic yards to assure 0.5% physical contaminants by dry weight and reconsideration or justification for the following reasons:
• As stated, the digestate is believed to no longer be a solid waste by statute.
• At the volume of manure and digestate mix FPE handles this would require around 457 samples per year. This would be excessive if it is determined to be applicable.
• FPE is unaware of a defined sample methodology Ecology is expecting to be used. Has Ecology specified the sample collection method other than general criteria (i.e. representative sampling, etc.)?
• Has Ecology established an estimated cost budget per sample?
• Has Ecology worked out how test results would be applied to specific volume lots and what happens if the criteria are exceeded on either end of the digester?

In summary, if Ecology is not able to address each of the concerns much more discussion is needed prior to proceeding with the process. We would be happy to participate in that discussion.

Thank you for your consideration.
Steve