

RE: Informal Comments on Organics Material Management Rulemaking (Chapter 173-350)

The Association of Washington Cities appreciates that the agency is holding an informal public process on the proposed changes prior to filing a CR-102. We have several concerns with the proposed changes.

Key issues:

1. Incoming contamination rates capped at 2%
2. Definition of *source separation* includes packaged food example
3. Definition of *recyclable materials* includes organics materials
4. Exemption of packaged organic materials used for animal feed
5. Ownership of waste

While we understand that the agency is directed by RCW 70.205.540(8) to “adopt new rules 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**”, we believe the chosen path will create unintended consequences that contradict the direction to achieve environmental benefit.

1. Incoming contamination rates capped at 2% is arbitrary, will add costs to collection, increase landfilling of organic materials, and is infeasible

Although the agency is directed to establish a permit requirement to address contamination, it is not required to set an incoming contamination threshold. The agency chose 2% based on what appeared to be a selective, anecdotal survey of smaller facilities in the state. This limit will coincide with increased – and mandatory – collection of organic wastes from businesses and residents who have never used this service before – and for some, who have no desire to but are required to by law. Setting an arbitrary statewide limit will defeat the purposes of the Organics Management Law by having loads rejected and landfilled. These increased costs will be passed on to the ratepayer.

In addition, the proposed rules will measure this incoming contamination by volume when the facilities are held to a weight standard for finished product. This results in an apples to oranges measurement method.

Recommendation: Instead of setting a statewide incoming contamination limit, we propose that the agency can meet its directive by including a permit requirement that each organic management facility have a contamination reduction plan and implement it to achieve the finished material requirements. Each facility can then tailor its plan based on the characteristics of its incoming feedstocks and its processing technology. It is an equal standard that does not advantage or disadvantage any facility.

2. Definition of *source separation* conflicts internally and with statutory definition

Ecology's proposed rules defining *source separation* as including "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" contradicts the underlying definition of "the separation of *different kinds of solid waste* at the place where the waste originates"—found in rule and based on statute (emphasis added). Ecology cannot adopt rules that conflict with statute. "Organic materials" means any solid waste that is a biological substance of plant or animal origin capable of microbial degradation. RCW 70A.205.010(16). The broad inclusion of "packaged food" proposed in rule conceivably includes packaging that is not of plant or animal origin, which would then be a *different kind of waste*—requiring separation under statute. This creates an internal conflict in the rule and a statutory conflict.

Ecology's approach also has implications for flow control and down-grading recyclable materials and edible food resources, in conflict with the priorities and goals of Chapter 70A.205 RCW.

Recommendation: Strike examples provided in draft rule definition of *source separation*.

3. Exemption of packaged organic materials used for animal feed

We echo the concerns raised above for the inclusion of organic materials "in packaging" for the exemption of organic materials used for animal feed under the proposed Applicability section, WAC 173-350-020(aa).

Recommendation: Strike "in packaging or unpackaged" in proposed WAC 173-350-020(aa).

4. Definition of *recyclable materials* conflicts with statutory definition and use

Ecology's proposed rules define *recyclable materials* as including "organic materials." But the Legislature has clearly delineated "organic materials" throughout statute:

- RCW 70A.205.040(1)(a): Source separation of *recyclable materials* and products, *organic materials*, and wastes by generators;
(b) Collection of source separated materials;
(c) Handling and proper preparation of materials for reuse or *recycling*;
(d) Handling and proper preparation of *organic materials* for organic materials management; and
(e) Handling and proper disposal of nonrecyclable wastes.
- RCW 70A.205.045 (7)(A)-(B): (A) Until January 1, 2030, these programs shall include collection of source separated *recyclable materials* from single and multiple-family residences, in urban areas, unless the department approves an alternative program, according to the criteria in the planning guidelines. ...
(B) Except as provided in (b)(i)(C) of this subsection, beginning January 1, 2030, these programs shall:
(I) Provide curbside collection of source separated *recyclable materials* from single-family and multiple-family residences wherever curbside garbage collection services are provided to these entities; ...

These do not refer to organics materials as the statute identifies "programs to collect food and food waste" separately.

- RCW 70A.205.750(2): (2)(a)(i) In a jurisdiction where source-separated *recyclable materials* and source-separated *organic materials* are collected separately, a gray or black container may be used only for the collection of solid waste that is not a source-separated *recyclable material* or a source-separated *organic material*.
(ii) In a jurisdiction where source-separated *recyclable materials* or *organic materials* are not collected separately, a gray or black container may be used for any solid waste, including *organic material* or *recyclable material* that is not separately collected in the jurisdiction.
(b) A blue container may be used only for source-separated *recyclable materials*. The contents of the blue container must be intended for transport, directly or indirectly, to a facility that recovers the materials designated for collection in the blue container.
(c) A green or brown container may be used only for source-separated *organic materials* ...

Recommendation: Remove *organics materials* from the definition of *recyclable materials* definition.

5. Ownership of waste

The proposed rule language under WAC 173-350-025 *Owner responsibilities for solid waste* also appears to conflict with longstanding law under RCW 36.58.060, enacted in 1976 and never amended:

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.

Recommendation: Remove language that changes the legal ownership of waste.

Respectfully,



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