LUKINS & ANNIS
ATTORNEYS

August 13, 2026

Washington State Department of Ecology
Attn: Chris Fredley
PO Box 47600
Olympia, WA 98504-

Subject: Proposed Organics Management Law Rulemaking

Dear Mr. Fredley,

Thank you once again for the opportunity to comment on the Department of Ecology's proposed Organics Management Law rulemaking. 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. As such, we continue to appreciate the Department's efforts to implement legislation for organics management, and the opportunity to comment on the Department's draft rule language. We request that these comments are given meaningful consideration by the Department as part of its rulemaking process.

In our December 2025 comment letter, we noted at that time that the current rulemaking proposal, as written, risked undermining our state's goals related to solid waste management and the well-established source-separated collection system that plays a critical part in achieving those goals. Unfortunately, those concerns, which were shared by the vast majority of stakeholders, remain unmet by the most recent proposal from the Department.

Lack of Standards for Depackaging Facilities

The proposed rules fail to establish clear, enforceable standards for "depackaging" (pre-processing) operations, despite broad stakeholder agreement that such industry standards are essential. We are once again requesting that the Department seriously explore implementing some level of standards for these pre-processing operators. Without them, the operators will legally be allowed to accept highly contaminated loads that are commingled with otherwise recoverable recyclables – including mixed solid waste – and classify them as "organic materials." In a highly regulated industry, it is surprising that the Department has not enacted specific standards for this stage of processing.

Several specific features of the current proposal illustrate why standards are needed:

- There are no limits on what depackagers may accept and no minimum recovery requirement. Without a recovery floor, this amounts to a lower grade of "recycling".
- The practical result is that a large volume of recoverable recyclables ends up landfilled rather than recycled or composted.

- Allowing depackagers to pull solid waste out of the regulated system, without corresponding oversight, conflicts with flow control requirements and existing city solid waste contracts. It also reduces local tax revenue that depends on that material moving through the regulated system.

We encourage the Department to impose meaningful residual limits, capping how much residual waste these facilities may landfill, along with inbound contamination limits, to help ensure these facilities do not end up landfilling high percentages of previously recyclable or compostable materials. From our perspective, it is critical that the final rule impose meaningful standards on depackagers, including reporting on what they accept, so that the material is actually being recycled or composted rather than simply relocated to a landfill under a different label. Without these requirements, it will be difficult to determine whether the facilities are actually reducing landfill waste or instead shifting the waste to different aspects of the system.

Erosion of Source Separation and Generator Accountability

We appreciate that the proposed draft rule no longer includes the identification of commingling food waste and food packaging in grocery stores as an example of source separation. However, our understanding is that the Department is still treating mixed waste collected in a single bin as "source separated." Nearly every stakeholder we have spoken with disagrees with that reading. The current draft rules remain vague and lack clarity on how food packaging should be treated, yet food packaging is clearly a targeted commodity for these regulations.

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, 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.

The Department does not have the authority to expand the definition of source separation. RCW 70A.205 establishes source separation as the foundational basis of the state's recycling and composting system, and it specifically requires generators within Business Organics Management Areas (BOMAs) to source separate organic waste from other waste. By treating a mixed waste bin

as "source separated," the proposed rule effectively rewrites this statutory generator obligation through rulemaking rather than through the legislative process. As proposed, the rule exceeds Ecology's rulemaking authority and should be corrected before the final rule is adopted.

Source separation is a best practice. It is straightforward to implement, it works, and our industry has been doing it successfully for many years. We think it is clear, based on stakeholder feedback to date, that except for hard-to-separate situations, food waste must continue to be separated at the generator level from its packaging. This ultimately results in the highest rate of landfill diversion.

To make this workable, the rule should define "heavily packaged food". This is the category of material that industry actors agree needs to go to a depackaging machine. Consistent with the approach the State of Vermont has taken, the rule should not allow clean, source-separated food waste to be commingled with heavily packaged food; the two should be kept as separate streams. This is consistent with the approach Seattle Public Utilities (SPU) has promoted in their comments. Accordingly, a clear definition of "heavily packaged food" and its impact on the waste stream should be addressed in the rulemaking process.

Increased and Unbalanced Burdens on Compost Facilities

We also appreciate that, in response to our feedback last time, the Department of Ecology removed the 2% inbound contamination limit for composters. However, we are disappointed to see that the latest proposal continues to add new burdens on compost facilities without corresponding support. Specifically:

- The proposal adds costly new finished product testing requirements for composters, set at an unnecessarily tight standard, which will ultimately make it harder and more costly for composters to increase diversion.
- The proposal sets a 5% contamination limit by volume, but Ecology has not provided guidance on how that 5% is actually measured or calculated in practice. What is perceived as a simple eye test is not workable, practically or legally. Due to the debate over measuring volume, it is only fair that Ecology issue guidance before the rule is filed.

Sunshine Disposal & Recycling requests the final rule address the following:

- Establish clear performance standards for depackaging facilities, including recyclable recovery rate minimums, inbound contamination thresholds, and outbound landfilling limits, so these operations do not result in a net increase in landfilled material, along with reporting requirements on what depackagers accept and recover.
- Revise the source separation definition to make clear that food embedded in packaging is not considered a source-separated material, and to define "heavily packaged food" so that only that material kept separate from clean source-separated organics, consistent with Vermont's and SPU's approach is directed to depackaging.

- Correct the proposed rule so that it does not treat mixed waste bins as "source separated" within Business Organics Management Areas (BOMAs). Ecology does not have authority to redefine this statutory generator requirement through rulemaking, and the definition as proposed unlawfully expands what the law requires.
- Maintain the existing standards for finished compost. Tightening the standards in an arbitrary fashion will drive up processing costs that will ultimately be passed on to ratepayers.

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