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August 13, 2026

Mr. Chris Fredley
Department of Ecology
Solid Waste Management Program
300 Desmond Drive Southeast
Lacey, WA 98503

Re: Organic Materials Management Rulemaking, WSR 26-14-021

Dear Mr. Fredley,

Cedar Grove Composting (“Cedar Grove”) welcomes the opportunity to comment on the WAC ch. 173-350 amendments published at WSR 26-14-021 (“the 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 Proposal undercuts the letter and the 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 that already achieve strong environmental outcomes.

Cedar Grove respectfully requests that Ecology withdraw the Proposal’s depackaging-related provisions and pursue a separate, dedicated rulemaking to regulate pre-processing and depackaging facilities grounded in clear statutory authority and informed by the environmental and operational data Ecology currently lacks. If Ecology declines to do so and proceeds within this rulemaking, Cedar Grove requests that the final rule include meaningful guardrails on depackaging operations, protect true source separation at the generator level consistent with the BOMA mandate, and maintain the current finished compost standards rather than imposing new, unsupported costs on an industry already achieving strong environmental outcomes.

Executive Summary

Between 2022 and 2024 the Washington legislature enacted a series of measures to reduce methane emissions from landfills by diverting organic materials in solid waste streams to “organic materials management facilities” that convert the organics into useful products. The intent of the legislation was to promote composting and other organic materials management

processes by ensuring that inbound feedstocks are free of plastic contamination, pesticides and other materials that will reduce compost quality.¹ To achieve this goal the legislature required large generators of commercial food waste to source separate organics for recovery. The 2024 legislature 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.²

The proposed rule's "organic materials pre-processing" category, as drafted, extends well beyond this directive and the Proposal undercuts these statutory mandates. Rather than implementing the source separation strategy prescribed by the legislature, the Proposal relaxes requirements for large food waste generators and burdens compost facilities with new compliance requirements. 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 packaging to a contractor for processing at a “source separation facility” rather than source separation at the point of generation.

Byproducts of the “depackaging” process include a semisolid residual stream containing organic waste and plastic packaging, that can only be landfilled, as well as process wastewater and stormwater. The Proposal does not adequately address these byproducts, and the SEPA environmental checklist that Ecology prepared on the Proposal ignores them. The Proposal includes permitting standards for depackagers, but it would exempt most depackaging operations from those standards, including the requirement to obtain a permit.

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 Proposal would gravely harm the composting industry, increase the landfilling of organic waste and undercut Washington’s waste management priorities. These comments document these impacts, including Ecology’s failure to evaluate the environmental impacts of the depackaging business model that the Proposal would enable.

The comment record strongly favors meaningful regulation of depackaging and policy that supports composters with the fight against contamination. Compost facilities must meet defined limits on inbound contamination and finished product quality. These standards carry real cost and real consequence. Depackaging facilities face no comparable standards including broad allowance acceptable materials, no recovery rate requirement, and no limits to residuals sent to landfills. The record does not support tight regulation of one pathway and minimal for the other.

¹ ESSHB 2301, Section 101(f).

² ESSHB 2301, Section 301(7) (2024).

Ecology should also weigh the source of the record on this point. Depackaging interests have taken an active role in this rulemaking and has criticized the composting industry throughout the process. These interests have a direct financial stake in the outcome. Their comments favor loose standards for its own facilities and tight standards for its competitors. Ecology should give that position minimal weight. A commercial operator should not shape the standards applied to its rivals while facing none itself. Ecology should hold every organics management pathway to comparable standards before finalizing this rule.

A. Ecology lacks statutory authority to regulate depackaging under this rulemaking.

We agree with Seattle Public Utilities on this threshold issue. The statutory directive under RCW 70A.205.540 authorizes Ecology to establish permit requirements for organic materials management facilities addressing contamination in incoming feedstocks and finished products. The proposed "organic materials pre-processing" category goes well beyond that directive, primarily because of how broadly it defines what these facilities are permitted to accept. Instead of limiting eligible inbound material to "organic materials" as defined in Chapter 70A.205 RCW, the rule allows any facility receiving "source separated solid wastes" of any kind to qualify for an organic materials pre-processing permit, regardless of how much of that material is actually organic. As drafted, this creates an extraordinarily broad new category of solid waste facility, not a narrowly tailored contamination-control measure tied to the statute's actual purpose. Ecology must address depackaging through a separate rulemaking grounded in clear statutory authority.

If Ecology proceeds to regulate depackaging within this rulemaking notwithstanding these concerns, it must include significant limitations and guardrails, including a separate collection of heavily packaged food, mandatory recovery rates, an inbound contamination limits comparable to what composting facilities are held to, a cap on residual material sent to landfill, and reporting sufficient to verify actual performance.

B. The Solid Waste Management Act mandates source separation of organics from other waste materials.

Beginning in 2022 the Washington legislature amended the Solid Waste Management Act (SWMA) to reduce methane emissions from landfills and to divert organic wastes to organic materials management facilities, mainly composting and anaerobic digesters.³ To achieve these goals the legislature enacted a strategy of separating organic waste, recyclable materials and MSW at the point of origin, and routing the source-separated organics to an organics management facility.

The SWMA has long defined source separation as a "fundamental strategy of solid waste management." RCW 70A.205.005(5). The 2023 legislature declared that "there is urgency in the state's efforts to ensure that compost streams are limited to compostable organic materials

³ Organic Materials Management Act of 2022, Section 101 ("the 2022 Act").

and are not hindered by unsuitable contaminants.”⁴ 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;⁵

The 2022 Act prescribed different strategies to achieve source separation of organic waste generated by residential and business customers. For larger business generators, e.g. grocery stores and food distributors, the 2022 Act 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). The practical option for most 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 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) (emphasis added). 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 composter or other facility equipped to recycle organic wastes through biological processes. The 2024 legislature broadened the coverage of these mandates within the applicable statutes. See RCW 70A.205.545. These requirements, known collectively as “the BOMA mandate,”⁶ support two key statutory policy goals: to reduce the volume of landfill

⁴ ESHB 1033, Section 1, 68th Washington Legislature 2023 Session.

⁵ ESSHB 2301, Section 101(f), 68th Washinton Legislature, 2024 Session.

⁶ “BOMA” refers to Business Organics Management Areas, counties and cities in which businesses generating organic wastes must arrange organics management services to reduce organic waste going to landfills. RCW 70A.205.545(2); Ecology Preliminary Regulatory Analyses: Chapter 173-350, Solid Waste Handling Standards (Organics Management) (June 2026) at 20 (hereafter “PRA”).

disposal of organic materials by 75 percent by 2030 and to recover at least 20 percent of the volume of edible food disposed of by 2025. 2022 Act Section 101, codified at RCW 70A.205.007.

The BOMA mandate has been in effect in western Washington since 2024. Many grocery stores and other businesses have implemented source separation as a routine part of their operations. *See, e.g.* the comments filed on the Proposal by PCC Community Markets:

PCC already separates food waste from packaging in our stores. This process is straightforward, requires only basic staff training, and has proven effective in daily operations. It keeps recyclable packaging in the recycling stream while ensuring clean food waste is directed to composting.



PCC Co-Op, Burien



QFC, Factoria

Source separation at the point of origin is a proven management practice for commercial organic waste streams. It is also critical to achieving the legislature’s goal of diverting more organic materials from landfills to composting. Compost facilities are financially viable only when inbound feedstock arrives with low levels of plastic contamination. Contaminated loads require more labor for monitoring and sorting, more wear and downtime on screening equipment and more energy to run material through additional processing passes.⁷ That is why the SWMA defines “[s]ource separation” as “the separation of different kinds of solid waste at the place where the waste originates.” RCW 70A.205.015.

C. The Proposal would abandon the legislature’s source separation mandate to endorse “depackaging” of organic waste materials.

⁷ “Physical contaminants can be a serious issue for organic materials management facilities. . . . In recognition of contamination as a potentially serious issue, the Washington legislature directed Ecology to address contamination associated with incoming food waste and finished organic products.” PRA at 15.

The Proposal acknowledges the policies that drove the legislature to change Washington's rules for management of organic waste. Ecology acknowledges that organic materials disposed at a landfill are a major source of methane emissions and that the legislature enacted a series of organics management laws to achieve a 75 percent reduction in the amount of organic waste going to the landfill by 2030. Preliminary Regulatory Analyses ("PRA") at 15. Ecology notes that contaminants in organic waste materials are an obstacle to composting and other organic materials recovery technologies. Id.

Notwithstanding this consensus on the goals of the BOMA amendments, Ecology decided to pursue a different approach to recovery of organic waste materials than the one enacted by the legislature. The Proposal would authorize a new class of waste management operation that Ecology calls "organic materials pre-processing." Proposed Amendments to WAC 173-350-100 (new definition of "organic materials pre-processing). While pre-processing includes different methods of screening waste feedstocks, the overwhelming focus throughout the rulemaking process has been on a mechanical process known as "depackaging."

Instead of asking commercial food processing businesses to source separate organic wastes from plastic packaging, the Proposal invites businesses that generate organic wastes to hire outsource separation to a third-party contractor at a remote location. Depackagers pick up mixed waste from grocery stores or distribution centers and truck it to a processing facility. There the waste passes through mechanical presses, blades and sieves to remove the packaging and to extract a liquid slurry that is routed to an anaerobic digester (or other management facility) for energy production. The anaerobic digester generates biogas and a digestate, some of which can be marketed as a soil amendment. But much of the organic content in the feedstock cannot be reduced to a slurry. The source separation equipment at the frontend of the depackager discharges a large stream of fibrous organic waste, comingled with plastic and other contaminants. That comingled "residual" stream is shipped to a landfill.

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



Western WA Safeway stores

Here is a poster that one depackager supplies to grocery stores to illustrate the materials that employees can toss into a single container:



The depackaging business model shifts the burden of source separation from grocery stores and food distributors to the depackaging facility. Ecology staff confirmed this shift, describing the draft rule as giving businesses the option to pay for one depackaging service rather than

maintaining separate recycling and composting streams.⁸ Unfortunately, the source separation equipment at the front end of a depackager is less efficient at segregating organic waste from contaminants than the point of origin screening process required by the BOMA mandate. Much of the organic waste passing through the source separation equipment is not recovered. The “residual” waste stream comprised of organic debris and plastic is shipped to a landfill.



Residuals from a Divert depackaging plant in Albany, OR being unloaded at the Coffin Butte Landfill, Corvallis, OR



⁸ Separation anxiety over organic waste, *The Herald* (Everett, WA), May 23, 2026.

Divert Residuals at Coffin Butte Landfill

Washington state has limited operating history with commercial scale depackaging facilities. Because the technology is relatively new to Washington and because depackagers do not voluntarily report the volume of the residual stream, there is no local data on recovery rates for the organic wastes received by depackaging facilities. Published recovery rates for out-of-state depackaging facilities average around 60%.⁹ There is no public information on the content of the residual streams that depackagers ship to Washington landfills because Ecology does not require depackagers to report this information now nor does the Proposal expressly require it. The pre-processing standards in the Proposal include no minimum on the recovery rate of organic materials in the pre-processing process. Ecology considered regulating the recovery rate. The PRA states:

We considered adding a recovery rate to organic materials pre-processors. However, we lack data available nationally to set an informed organic materials pre-processing recovery rate. Additionally, measuring recovery is imperfect given the water weight of incoming feedstocks, which easily evaporates and/or is separated from organic material. This alternative may have resulted in a standard that was not equitable and more burdensome for organic materials pre-processors.¹⁰

Ecology does not know how much of the organic content in the mixed waste stream arriving at a depackager gets recovered and how much gets landfilled. Without that information, Ecology has no evidentiary basis to determine whether the depackaging business model will increase or decrease methane emissions from landfills. Nor can Ecology draw credible conclusions about whether pre-processing will enhance recovery of organics in the waste stream, as compared with the “organic materials management” technologies that the legislature directed Ecology to nurture.

More fundamentally, the legislature did not delegate to Ecology the discretion to decide how to enhance organics recovery in Washington. The legislature made that decision in the 2022 Act. To enable “pre-processing” as an organics management option the Proposal rewrites requirements codified in the 2022 Act. For instance:

- RCW 70A.205.545(2) states that a business that generates more than threshold quantities of “organic material waste” must arrange for “organic materials management services *specifically for organic material waste* . . .” Composting and anaerobic digestion

⁹ 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.

¹⁰ PRA at 71.

are approved types of organic materials management.¹¹ Routing mixed waste to a separator that diverts some residual food waste to a landfill is not “organic materials management.” The Proposal would undermine these requirements by adopting a new definition of “Organic materials pre-processing”: “the processing of source separated solid waste to remove physical contaminants and packaging prior to organic materials management.” Proposed Amendments to WAC 173-350-100. Under this definition, “source separated solid waste” includes plastic packaging. This definition conflicts with the Act because RCW 70A.205.015(26) defines source separation to mean “the separation of different kinds of solid waste *at the place where the waste originates.*” RCW 70A.205.015(26). To enable the depackaging business model, Ecology’s Proposal would revise RCW 70A.205.545(2) to read “specifically for organic material waste *and plastic packaging.*”

- RCW 70A.205.545(3)(a) establishes “source separating organic material waste from other waste” as a compliance pathway for covered businesses. The statutory definition of “organic materials,” RCW 70A.205.015(16)(a)(ii), limits “organic materials” to categories such as manure, yard debris, food waste, food processing waste, wood waste, and garden waste—biological substances capable of being managed through composting, anaerobic digestion, or similar technologies. Plastic packaging is not, and cannot be, an “organic material” under this definition. As Cedar Grove’s prior comments to Ecology made clear, non-biodegradable packaging is categorically a different kind of solid waste than organic material, and the Legislature did not authorize Ecology to expand the statutory definition to erase that distinction. It follows that a load combining food waste with its plastic packaging necessarily contains two different kinds of solid waste (“organic material” and “other waste” in the form of packaging) that RCW 70A.205.545(3)(a) requires businesses to separate at the source.

“[A] regulation may not modify or amend a statute.” *Littleton v. Whatcom County*, 86 P.3d 1253, 1258 (Div. 1 2004). In an attempt to avoid the conflicts noted above, Ecology promotes an implausible interpretation of the term “source separation.” The legislature defined this term in RCW 70A.205.015: “Source separation means the separation of different kinds of solid waste at the place where the waste originates.” In an October 2025 draft of the WAC 173-350 amendments Ecology proposed to codify “examples of source separation,” including “a grocery store that places packaged or unpackaged food for purposes of recovery of the organic materials within one container and other solid wastes the store generates in separate containers.” In response to numerous public comments challenging the lawfulness of this “example”, Ecology omitted it from the Proposal. But Ecology has not revised its position. In response to a June 2026 press inquiry from *BioCycle*, Dawn Marie Maurer, Solid Waste Facilities Specialist, confirmed that “under our proposed rule, an organic materials pre-processing facility may only [*sic*] accept only source-separated waste. This precludes them from receiving unseparated municipal solid waste (MSW). *Packaged food separated from MSW is source*

¹¹ RCW 70A.205.015(17)

separated.” [Washington State Draft Rules Prioritize Organics Pre-Processing To Manage Contamination, BioCycle \(June 30, 2026\)](#).

Packaged food and unpackaged food are different kinds of solid waste under the plain terms of the statute. By designating packaged food as “source separated” Ecology’s position conflicts with state law.

Source separation, however, is not achievable for all organic waste materials. Certain heavily packaged food waste streams, e.g. yogurt containers, cannot efficiently be separated at the point of origin. There is a role for depackaging in extracting the organic content from heavily packaged food waste streams and the comment record strongly supports a carve out for “heavily packaged food” to be depackaged.

It is critical that regulatory programs establish clear boundaries to prevent readily separated organics and recyclables from going through the mechanical separation equipment at a depackager. The Vermont Department of Environmental Conservation recently published proposed rules to regulate the depackaging industry. Those rules will prohibit treatment of manually source separated food residuals by depackaging.¹² They include operating standards for “mechanical depackaging facilities,” including a requirement that packaged food comingled with manually source separated food waste is not processed by mechanical depackaging.¹³ Similar requirements in Washington would optimize the recovery of organics from heavily packaged food waste, while protecting the BOMA mandate to route source-separated organics to composters and to other organic materials management services.

D. The Proposal could largely exempt depackaging operations from regulation and permitting absent clarification from Ecology.

The exemption found in Proposed WAC 173-350-215 was the subject of numerous questions and comment at the August 5, 2026 Ecology presentation, Q&A, and public hearing. Cedar Grove requests clarity from Ecology on how and when this exemption will work in practice.

The Preliminary Regulatory Analyses acknowledge this exemption: “The proposed WAC 173-350-215 standards create a permit exemption for pre-processing at organic materials management facilities, such as regularly occurs now under the current rule, for incoming feedstocks below five percent contamination.” *Id.* at 29-30. But the limitation of the exemption to incoming feedstocks below five percent contamination could be read to apply to the anaerobic digester, not to the pre-processing facility. The pre-processing facility is exempt from the standards because it is linked to an anaerobic digester, and the digester is exempt because its feedstock contains less than 5 percent physical contaminants. The performance standards in subsections (3) through (10) could theoretically apply to no one.

¹² Proposed Vermont Solid Waste Management Rules (Rule 26P011) under § 6-304 (Prohibitions).

¹³ *Id.* Section 6.905(m)

Cedar Grove hopes that the reference quoted above to “the standards of this subsection” is a drafting error. Hopefully Ecology meant to reference “the standards of this section.” With that correction, depackagers would have to meet the performance standards Ecology has proposed in WAC 173-350-215 for depackaging operations.

E. The Proposal will result in increased landfilling of recyclable materials in violation of RCW 70A.205.310

Ecology considered, but rejected, numerous comments asking that pre-processors be prohibited from accepting common, easily separable recyclable materials, such as cardboard and clamshells, from mixed waste feedstocks. Under the current Proposal, depackaging facilities are allowed to accept “source-separated solid waste.”¹⁴ But the rule does not say what counts as source separated, and “solid waste” itself is not limited in any way. Cardboard, glass, metal, and plastic packaging are all solid waste too. As written, this section does not stop a depackager from accepting a bin full of recyclable material mixed in with food waste, so long as that bin was kept apart from a garbage can. Once that material goes through a depackaging machine, it cannot and will not be recycled; rather, it is shredded, coated in food residue, and landfilled. Defining what can be accepted at such facilities in such a broad manner will promote and increase the volume of recoverable recyclable materials that are landfilled in our state.

The Preliminary Regulatory Analysis states only that “recovering such materials is not required by statute.” PRA at 71. That response overlooks RCW 70A.205.310, which directs that “no person may knowingly dispose of recyclable materials in a landfill”. Cardboard and recyclable plastic packaging swept into a depackaging feedstock and later landfilled as residual are recyclable materials within the meaning of that statute. Ecology cannot authorize a process that predictably results in the disposal of recyclable material and then decline to address that outcome on the ground that no statute requires recovery. Under current state statutes for source separation, generators must continue to separate recyclable materials when required.

F. Ecology has not analyzed or acknowledged the adverse environmental impacts of the Proposal.

The Proposal would amend Washington’s organic solid waste management rules to authorize a pre-processing operation that those rules currently do not authorize. Ecology contends that “many” organic materials pre-processing operations have been permitted under the recycling and material recovery facility standards in WAC 173-350-210. PRA at 26-27. Ecology concedes, however, that only two depackaging operations have been permitted in Washington. PRA at 27. Ecology does not mention that those facilities largely operate due to decisions by regulators to forgo enforcement of the source separation mandate in RCW 70A.205.545 against food waste generators that tendered mixed waste to a depackager. Ecology delicately observes that “there

¹⁴ WAC 173-350-215(6)(a)(i): “Organic materials pre-processing facilities may receive only source-separated solid waste.”

may be some indirect impacts from the proposed amendment. It could be perceived to add certainty and stability to the regulatory status of pre-processing in Washington state. This could change investors' perception of risk and may attract more investment in Washington's pre-processing sector." PRA at 30. Elsewhere in the PRA Ecology more directly projects a large increase in the "potential volume of pre-processed material."¹⁵

Setting aside the question of whether the Proposal is consistent with the SWMA, Ecology has an independent responsibility under SEPA to evaluate the environmental impacts of its proposed rule changes. RCW 43.21C.030(2)(c); RCW 43.21C.031. Those changes include infrastructure development enabled or encouraged by the adoption of the Proposal. *King Cnty. v. Friends of Sammamish Valley*, 3 Wash. 3d 793, 815, 556 P.3d 132, 143 (2024). The foreseeable impacts of the Proposal include the expansion of the prepackaging industry in Washington. In evaluating the SEPA impacts of the Proposal, Ecology must analyze the environmental impacts of the depackaging operations that the Proposal would authorize. *Friends of Sammamish Valley*, 3 Wash. 3d at 818, 822 (affirming that an entity "must evaluate the potential impacts allowed" by a proposed nonproject action where the "'impacts are not merely hypothetical but can be known or are reasonably foreseeable'" and finding a nonproject proposal's SEPA documentation was insufficient where it "did not address all future project actions the proposal would allow and, in fact, did not consider impacts of any future actions in the SEPA checklist . . . [instead] defer[ing] all environmental review to the individual project action stage") (internal citations omitted).; *Spokane Cnty. v. E. Washington Growth Mgmt. Hearings Bd.*, 176 Wash. App. 555, 579, 309 P.3d 673, 685 (2013) (upholding a hearings board's decision invalidating a regulatory amendment in part because the SEPA checklist for the amendment "ignored the probable impacts of any future commercial development [that the] amendment [] would allow and improperly postponed environmental analysis to the project review stage"); *King Cnty. v. Washington State Boundary Rev. Bd. for King Cnty.*, 122 Wash. 2d 648, 663, 860 P.2d 1024, 1032 (1993) (finding that an EIS is required, even in the absence of a specific development proposal or immediate change, if "based on the totality of the circumstances, future development is probable following the action and if that development will have a significant adverse effect upon the environment."

Ecology issued a SEPA DNS on the Proposal, based on an Environmental Checklist¹⁶ that characterizes the Proposal as having no adverse environmental impacts. Ecology declined to fill out Part B of the Checklist, relying on authority in WAC 197-11-315(1)(e) that the agency sponsor of a non-project proposal may waive completion of Part B where it determines that the questions in Part B "do not contribute meaningfully to the analysis of the proposal." *Id.* at 3. In response to the Part D question on how the Proposal would be likely to increase discharge to water and emissions to air, Ecology stated that the Proposal would reduce stormwater

¹⁵ The PRA projects a potential volume of pre-processing feedstocks of 1.77 million tons in 2025, growing to 2.22 million tons in 2035. *Id.* at 52.

¹⁶ SEPA Environmental Checklist on Organic Materials Management Rulemaking (4/21/26) ("SEPA Checklist")

discharges. It said nothing about air emissions, other than a statement that “Emissions to air are addressed through dust suppression and odor containment requirements at facilities.” *Id.* at 4. The Checklist does not mention the development of depackaging facilities as a likely product of the rulemaking, nor does it discuss the environmental impacts of the depackaging process including the loss of recyclables to landfills which was raised repeatedly in public comments. The Checklist does not acknowledge the existence of a residual waste stream from depackaging, what becomes of that waste stream, or its contribution to methane emissions from the landfills that receive it.¹⁷

Nor does the Checklist acknowledge, quantify or characterize discharge process wastewater and stormwater from depackaging operations. The statement in the Checklist that the pre-processing standards “target reductions or no total gain in discharges at regulated facilities” conflicts with at least one recent Ecology NPDES permit, issued for a depackager in Longview. The Fact Sheet for the Divert Integrated Food Recovery facility (NPDES Permit WA0991060) states that Divert will discharge a monthly average process wastewater flow of 100,000 gallons per day. Fact Sheet at 11.

The proposed finding that the Proposal has no environmental impacts is not accurate. A more realistic assessment is that Ecology made no effort to analyze the environmental impacts of the depackaging operations that the proposal would enable.

Ecology may not ignore the foreseeable environmental impacts of the Proposal based on the fact that specific depackaging projects have not yet filed for permits or exemptions under the lenient regulatory scheme that the Proposal would authorize. The *Friends of Sammamish Valley* decision cited above overturned a DNS issued for a zoning plan that was designed to promote wineries in an agricultural zone. Like Ecology here, King County attributed no environmental impacts to the nonproject action of changing the zoning rules. It deferred all environmental review to the individual project action stage. 3 Wash. 3d at 818. The Supreme Court held that the proposed action creates opportunities for new and existing wineries to open or expand operations, and that a proposed land use action is not exempt from SEPA review “just because there are no current, specific development proposals or immediate land use changes that will result from the proposed action.” 3 Wn. 3d at 821. The Court reinstated an administrative decision that overturned the ordinance and remanded for SEPA compliance. 3 Wn.3d at 826.

Ecology must revise the Environmental Checklist to evaluate the foreseeable environmental impacts of developing more depackaging facilities in Washington. Those impacts include analysis of the volume and composition of the residuals stream that will be landfilled including large volumes of recyclable materials, and the incremental greenhouse gas and other emissions that will result from landfilling the residuals stream. The Checklist also must analyze the wastewater discharge that depackagers will deliver to local treatment works. SEPA review of

¹⁷ Ecology projected that 587,000 tons per year of “vegetative food waste” are landfilled, and that that volume of organic materials generates 384,000 tons of greenhouse gas emissions *above* the GHG emissions that would result from composting the same material. PRA at 14-15.

the Proposal is not the venue to evaluate the particular discharge from Divert's Longview facility. But SEPA review of a rule change that authorizes a new solid waste management technology must evaluate the environmental impacts of that technology, including information on the contaminants in the wastewater.

G. Finished compost standards are working at current levels.

The current finished compost standard is working, and the evidence supports that conclusion. Compost product sales have remained strong and Ecology's own compost market study reflects that same trend. The vast majority of Cedar Grove customers remain satisfied with product quality and have not raised concerns about it failing to meet its intended use. Product users and market participants, not regulatory assumptions, should be driving any change to this standard.

It is worth noting how other states have approached this issue. California adopted a comparably strict finished compost standard, but paired that tightening with substantial state investment: hundreds of millions of dollars in facility subsidies, alongside one of the strongest compost procurement requirements in the country to help build the market for the resulting product. Ecology's Proposal includes no comparable support. There is no subsidy, no procurement commitment, and no funding mechanism to help facilities absorb the cost of meeting a stricter standard. The entire cost of this change would fall on compost facilities in the first instance, and on ratepayers thereafter. If Ecology intends to follow California's approach on the standard itself, we would ask that Ecology also follow California's approach on the support that made that standard workable.

WSDOT's compost specification garners discussion on the record since it is one of the more rigorous standards compost facilities have to meet in practice. WSDOT requires physical contaminants at or below 0.5 percent, but does not typically include a separate film plastic limit¹⁸. It is somewhat misleading to say the proposed new standard is the same when it includes only one limit. Additionally, WSDOT has not submitted comments in this rulemaking, and has not suggested that compost meeting today's standard falls short of what they need for their projects.

Moreover, there is an apparent inequity related to finished product testing frequency and available variance that is more restrictive on compost facilities. The Proposal states in WAC 173-350-220(6)(a)(x)(H): "Testing frequency is based on amount of composted material produced... The jurisdictional health department may modify the frequency of testing based on historical laboratory test records for a particular facility." Yet across the four sections¹⁹ that include a variance mechanism (220, 215, 225, 250), composting is the outlier: it is the only one where the

¹⁸ See 2026 Standard Specifications M 41.10

¹⁹ E.g., WAC 173-350-250(6)(a)(v)(A): "Test processed solid material every 5,000 cubic yards or every three months... An alternative frequency may be approved by the jurisdictional health department."

department's ability to change frequency is expressly conditioned on the facility having "historical laboratory test records." The other three let the department approve an alternate frequency without any stated precondition. This needs to be corrected for fairness and equivalent standards.

H. The 5% inbound and outbound contamination standard is arbitrary without a defined measurement methodology.

We renew our objection to the proposed 5% inbound contamination standard measured by volume. Stakeholders across this rulemaking have repeatedly identified the same defect as it lacks a defined measurement methodology. A standard that regulated parties cannot reliably measure is arbitrary as applied. Ecology has not established a testing protocol for this threshold and should not treat this as a detail to be resolved later through informal guidance. Guidance must be issued prior to rule implementation to avoid due process issues. This standard is far too critical to defer until after the fact as it is also used as the trigger mechanism for other permitting requirements and exemptions. We can expect completely different treatment for facilities across the state due to this subjective standard.

We also ask Ecology to preserve discretion for facilities with proven back-end contamination removal technology. Some composting facilities have already invested in equipment that reliably removes contamination from composted material. These facilities should not be bound to a single statewide numeric threshold without regard to demonstrated performance. Local health departments should retain discretion to work directly with facilities that can demonstrate this capability. This approach protects against genuinely contaminated loads. It also avoids imposing a uniform standard on facilities that have invested in back-end technology that reliably addresses contamination in finished products.

I. The Proposal Fails to account for Its foreseeable impacts on municipal solid waste programs, flow control, and local revenue

The proposed rules will have significant, unaddressed impacts on municipal solid waste programs across the state. By authorizing an extremely broad class of material, including material that functions as MSW, to move to pre-processing facilities under a permissive reading of "source separated," the Proposal effectively pulls material out of the regulated local collection systems local jurisdictions have built and rely on. Allowing MSW to be hauled in this manner for pre-processing is in direct conflict with current city contract and G-certificated haulers of MSW. City commenters have already flagged the practical consequences of this shift: conflicts with local flow control authority, loss of tax revenue tied to certificated hauling and disposal, confusion among generators about collection streams, and exposure under existing municipal hauling and processing contracts that were not built to account for this kind of leakage. These are not speculative concerns. They are the direct, foreseeable result of authorizing a parallel, lightly regulated pathway for a broad class of material in conflict with local authority.

The Preliminary Regulatory Analysis says nothing about the impacts this Proposal will have on municipal solid waste programs, flow control, lost tax revenue, or existing city contracts or UTC territories, despite these being direct and foreseeable consequences of the rule as drafted. This omission is inconsistent with RCW 34.05.328(1)(d)-(e), which requires Ecology to determine that the probable benefits of a significant legislative rule are greater than its probable costs, and to consider the costs imposed on all parties likely to be affected by the rule.

J. Training requirements at other organics management facilities should be set to equivalent standards as current compost facility requirements that have worked well historically.

Cedar Grove supports WORC's comment letter opposing the removal of statewide training standards for compost facility operators. Washington has long led the nation in organics management, and we believe that leadership was built on a well-trained workforce. We are asking that this change in the Proposal be reconsidered and similar training standards developed for analogous organics management facilities.

K. The Proposed "Legal management" language and conflict with RCW 36.58.060

Cedar Grove requests that Ecology clarify or revise the term "legal management" as used in WAC 173-350-025(1)(b).²⁰ As drafted, "legal management" is undefined in this chapter, and its proximity to the "takes no ownership of a rejected load" language in (4)(e) invites the inference that a collector, hauler, or receiving facility acquires legal ownership of waste upon accepting it. That inference directly conflicts with RCW 36.58.060, which provides that "the original owner retains ownership of the solid wastes until they arrive at the disposal site or transfer station or detachable container." Under the statute, ownership does not transfer to a hauler or collector simply by virtue of collecting the waste, and it does not transfer at the curb.

We raise this because some solid waste collectors and processors have taken the contractual position that they acquire legal title to waste at the point of curbside collection. Retaining undefined "legal management" language in WAC 173-350-025 risks being cited by such processors as regulatory support for that position, notwithstanding RCW 36.58.060's clear retention of ownership with the original generator. This language in the Proposal appears unnecessary for the purpose of clarifying rights surrounding rejected loads with major unintended consequences and should be removed.

L. Recommendations

1. Ecology should withdraw the Proposal and gather information on the composition and volume of the residuals, byproducts and waste streams from various depackaging technologies. Depackagers claim that the mechanical source separation

²⁰ [a]rranging for legal management of the waste" and (4)(e) ("responsible for legal management of the waste by ensuring delivery only to solid waste handling facilities that have approval...").

equipment at the front end of the depackaging process strips almost all of the organic content out of the mixed waste. Published data from other states and photographic evidence of organics in the residuals stream undercuts the credibility of these assertions.²¹ Ecology needs quantitative data to determine whether depackaging operations will support or subvert the statutory goal to reduce landfill disposal of organic waste material²² and to analyze the environmental impacts of routing business organic waste materials to depackaging facilities rather than organic materials management services.

2. Ecology should revise the Proposal to comply with the BOMA mandates in RCW 70A.205.545. Businesses that generate threshold quantities of organic material waste should be required to source separate the organics from other types of solid waste “at the place where the waste originates.” RCW 70A.205.015(26) and RCW 70A.205.545(3). The Proposal should include a carefully defined carve-out to authorize use of a pre-processing source separation process for heavily packaged food waste that cannot practicably be source separated by the generator. This class of material must be kept separate. If Ecology declines to do so, please acknowledge in the rulemaking record that generators remain free to commingle packaged and unpackaged food and still be considered source separation under RCW 70A.205.015(26) and RCW 70A.205.545(3), so that the practical effect of the rule is transparent to the public and reviewing courts.

3. If Ecology proceeds to regulate depackaging within this rulemaking notwithstanding the concerns raised in Section A, every depackaging facility should be subject to solid waste permitting as required by RCW 70A.205.265(c) and to the substantive design and operational standards Ecology included in the proposed WAC 173-350-215 to regulate organic materials pre-processing facilities, without exception for facilities integral to or affiliated with a permitted compost or anaerobic digestion facility.

4. Ecology should withdraw the Environmental Checklist and DNS published for this rulemaking and prepare a checklist that discloses the environmental impacts of building depackaging facilities to process the 740,000 tons of commercial organic materials that Ecology projects could require pre-processing in Washington in 2035.²³ Those impacts must include the impacts of disposing of the residuals stream in landfills and discharging process wastewater to publicly owned treatment works.

5. Ecology should maintain the current finished compost standards.

Cedar Grove encourages Ecology to update its solid waste management rules to implement the BOMA mandates and to realize the legislative direction to reduce the disposal of organic materials in landfills. Cedar Grove respectfully maintains that the place of origin source

²¹ See data and photographs cited above.

²² RCW 70A.205.007(1).

²³ PRA at 52.

separation requirements the legislature codified for commercial organic waste generators is the most effective way to achieve those goals for most organic waste materials. We urge Ecology to work with the composting industry to ensure that the new rules realize the hierarchy of waste management practices that the legislature codified in RCW 70A.205.005(8), and that the rules do not create a free pass for business waste generators seeking to avoid the source separation requirements of RCW 70A.205.545.

Respectfully,
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