

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

The Association of Washington Cities submits these comments in response to the formal rule proposal released with the CR-102. We appreciate the changes made from the proposal under consideration during the informal public process. Unfortunately, the crux of our concerns remain—the agency’s approach seems counter to its directive to address contamination for environmental benefit.

Key issues:

1. New definitions will lead to increased contamination
2. Agency interpretation of source separation is counter to, and conflicts with, the Organics Management Law
3. Pre-processing facility approach expands beyond organics management

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.**” Confoundingly, the agency’s approach seems to encourage contamination by creating rules to enable two different types of waste—organic waste and packaged food—to be mixed for the benefit of convenience but contrary to state law and the goals of the Organics Management Law (OML).

1. New definitions will lead to increased contamination

As examples:

1. Proposed definition of “food processing waste” removes the requirement to source-separate.
2. Proposed definition of “physical contaminants” expands to allow for contaminants.
3. Proposed definition of “organic materials pre-processing” includes “source separation of solid waste” rather than of “organic waste”

None of these reduce contamination but, instead, go backwards in materials management by creating a regulatory pathway to commingle food with non-food waste. However, the definition of “food-processing waste” still requires “organic materials.” It’s unclear what

purpose is intended to remove “source-separation” from the definition. And although “source-separation” appears in the proposed definition of “organic material pre-processing,” it expands to include processing “solid waste” rather than “organic waste.” In some places source separation is removed, in others its scope is redefined – both have the effect of undermining the purpose of the rulemaking: to address contamination for environmental benefit.

2. Agency interpretation of source separation is counter to, and conflicts with, the Organics Management Law

Source separation is a foundational underpinning of state solid waste management laws. As such, we appreciate the removal of the example of “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” in the previously amended definition of “source separation.” However, public comments made by the agency on interpretation remain unchanged.

Ecology staff were quoted in a leading industry publication confirming their interpretation follows the previous version, despite the rule change in the public draft:

[U]nder our proposed rule, an organic materials pre-processing facility may only accept only source-separated waste. This precludes them from receiving unseparated municipal solid waste (MSW). Packaged food separated from MSW is source separated.¹

If Ecology intends to interpret source separation in that manner, they are encouraged to formalize their advisory opinion per RCW 34.05.230(1).

We agree that packaged food separated from municipal solid waste as a singular category is source separated; we do not agree that packaged food and non-packaged food commingled together at the source of generation is source separation. In defining “source separation,” RCW 70A.205.015(26) requires the “separation of different kinds of solid waste at the place where the waste generates” (See also *Skagit Cnty. v. Waldal*, 163 Wn. App. 284, 289 (2011) (The two “different kinds of solid waste” would have to be separated where the waste originates.)). If a container at the back of a grocery store contains discarded produce and packaged deli food, what kind of waste is it? It isn’t organic waste because “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).

¹ [Washington State Draft Rules Prioritize Organics Pre-Processing To Manage Contamination | BioCycle.](#)

The priority to separate waste is elemental to the management of solid waste in Washington. Jurisdictions are required to prepare solid waste management plans that consider and plan for

(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.205.040(1)(emphasis added). Under the same authority that the agency derives this rulemaking, the OML, it states: (e) Beginning April 1, 2030, *all persons*, when using curbside collection for disposal, may use only *source separated organic solid waste* collection services to discard unwanted organic materials. RCW 70A.205.540 (emphasis added). The Legislature did not enact an organics collection mandate for residents and businesses, requiring organics to be separated from non-organics waste, and then direct the agency to adopt rules to “address contamination” only to have the rules redefine what constitutes contamination and organic waste.

Instead, the direction was, in part, “to address contamination from incoming *food waste feedstocks*.” The proposed definition of “food waste” does not contain non-food items and the definition of “feedstock” includes “source-separation.” This a clear mandate on the plain language of the law.

3. Pre-processing facility approach expands beyond organics management

During the public hearing, Ecology acknowledged the need to address the “emerging technology” of depackagers. It also admitted that it did not have data on how much organic waste versus packaging waste is recovered at such facilities. These facilities exist in Washington now and will continue to play a critical role in recovering organic material from packaged food waste. In fact, they are the appropriate facilities to do so.

Notably, a regulatory approach is already in place for these facilities and one that they built their businesses relying on—the material recovery facility standards. Ecology stated that the proposed pre-processing facility rule is more than 90% identical to those facilities’ existing permits. That means that the existing permitting system for depackagers is consistent with a pre-processing permit for source separated *organic materials*, meeting

WAC 173-350-010. However, that also makes the proposed pre-processing facility rule, as written to include source separated *solid waste*, unnecessary as duplicative. See RCW 34.05.330(4)(c).

If there is a need to further regulate depackaging facilities, we recommend doing so through the existing regulatory regime and backed with data. The agency need not go beyond its legislative mandate to shoehorn in an emerging technology prematurely. To do so is unnecessary, contrary to law, and carries significant risk of downgrading organic waste.

Recommendation: Create a permit requirement for organics management facilities that packaged food waste and unpackaged food waste are received having been separated at the generator and define “packaged food waste.” For your consideration: “Packaged food waste” means discarded food that is contained in its original packaging.

Respectfully,

A handwritten signature in dark ink, appearing to read 'CS', with a long horizontal stroke extending to the right.

Carl Schroeder
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Association of Washington Cities