Comments on Draft Revisions to Chapters 173-350 and 173-351 WAC

Submitted by: Snohomish County Public Works - Solid Waste Division

Introduction

Snohomish County Public Works - Solid Waste Division 'County' submits the following comments on the draft revisions to Chapters 173-350 and 173-351 WAC concerning Solid Waste Handling Standards and Municipal Solid Waste Landfill Standards.

The rulemaking contains a combination of statutory implementation provisions, technical updates, and broader policy revisions. While the County agrees with several proposed changes, it has concerns regarding others and offers the following comments to improve clarity, consistency, enforceability, and implementation. Particular attention is needed where new requirements could affect local flow control, facility classification, permitting, or the operation of county solid waste systems.

Snohomish County operates a long-established, flow-controlled solid waste system and has capacity to manage the municipal solid waste generated within the County. Clear material classifications, defined facility roles, coordinated agency responsibilities, and predictable enforcement expectations are therefore essential to protecting the integrity of the County system while advancing statewide environmental goals.

1. General Comments on Rulemaking Coordination and Sequencing

The proposed revisions address issues that overlap with recent work by the Washington Utilities and Transportation Commission concerning the transportation and disposal of residual waste. Ecology and the UTC should coordinate closely and, where appropriate, sequence implementation to ensure consistent definitions, aligned regulatory intent, and compatible enforcement. Consistency is especially important for the terms residuals, municipal solid waste, material recovery facility, commingled materials, recycling, and flow control.

The County recommends that Ecology finalize the rules governing how solid waste and residuals are defined and determined before those classifications are relied upon in transportation and disposal determinations. This order of operations would reduce conflicting interpretations, close avoidable regulatory gaps, and make local implementation more predictable.

2. Definition of 'Flow Control Ordinance'

The proposed definition is limited to requirements imposed on 'trash haulers.' That phrasing does not reflect the full range of entities that may transport solid waste or residuals within a local jurisdiction, including recyclers, reclamation facilities, self-hauling businesses, contractors, and other processors.

Recommended revised definition

> *'Flow Control Ordinance' means a local law that requires trash haulers, recyclers, self-hauling businesses, or any other entity transporting solid waste or residuals within the jurisdiction to deliver such materials to a designated facility for processing or disposal.*

This revision would align the definition with how local flow control systems operate, clarify its applicability to residuals generated by material recovery and reclamation activities, and reduce opportunities to bypass locally designated solid waste systems based solely on the identity or business model of the transporter.

3. Definition of 'Residuals' (WAC 173-350-100)

The revised definition of 'Residuals' provides needed clarity regarding waste remaining after recycling, material recovery, organic materials processing, reuse, salvaging, or other diversion activities. Additional language would further strengthen implementation and address recyclable materials that are collected but are not actually recycled.

Comment 1: Recyclable materials that are not actually recycled

Materials may be accepted as recyclable under a local comprehensive solid waste management plan or a facility operating plan, but later remain unrecycled because of contamination, lack of markets, operational choices, or changes in processing. Once a material is destined for disposal rather than recycling, its prior designation as recyclable should not prevent it from being treated as a residual.

The County recommends adding the following sentence:

> *Residuals also include recyclable materials that are collected but not actually recycled, including materials stockpiled without a viable and timely market.*

Comment 2: Stockpile time limits

The rules should establish a time-based standard, or another objective and enforceable criterion, for determining when materials stockpiled for recycling without a viable market become residuals. Without a defined standard, materials may be stored indefinitely based on a speculative future market, creating uncertainty for operators and regulators and increasing the risk of abandonment or environmental impacts.

Comment 3: Cross-reference solid waste determination criteria

The residuals definition should be aligned with, or cross-referenced to, WAC 173-350-021. Linking the definition to the solid waste determination criteria would help jurisdictions consistently determine when recyclable material becomes solid waste or a residual and must be managed accordingly.

4. Definition of 'Municipal Solid Waste (MSW)'

The revised MSW definition should provide additional clarity regarding processed materials such as fines, 'unders,' and waste rendered unrecognizable through grinding, crushing, shredding, or other size-reduction processes.

Comment: Processed mixed waste remains MSW

Processing does not, by itself, change the regulatory classification of waste or make the material recyclable. 'Unders' or fines derived from mixed waste streams should be treated as MSW unless they satisfy the rule's substantive definition of recycling and are actually directed to a legitimate recycling market.

Ecology should also clarify that using unders or processed residuals as alternate daily cover is a disposal activity, not recycling or a self-declared beneficial use of unders. This clarification would prevent disposal from being reported or characterized as recycling and would support consistent application of flow control and disposal requirements.

5. Material Recovery Facilities - 75 Percent Recovery Threshold (WAC 173-350-210)

The proposed 75 percent recovery threshold represents a significant change for material recovery facilities. Additional clarification is needed regarding the definition of recovery, the facilities to which the threshold applies, the treatment of the non-recovered fraction, the consequences of falling below the threshold, and the information needed to evaluate compliance.

Concern 1: Clarifying 'Recovery' Under a Volume-Based Standard

The draft rule indicates that the 75 percent recovery requirement is measured by volume. Volume-based inbound assessment presents practical challenges for both operators and regulators. Visual estimates are inherently subjective, vary with load composition, compaction, container type, moisture content, and processing method, and may differ significantly among facilities and inspectors. While visual volume estimates may be useful for screening individual loads, they are difficult to use as the sole basis for determining compliance with a formal facility-wide recovery threshold.

By contrast, outbound residuals and recovered commodities are routinely measured and reported by weight. Certified scales, commodity transactions, disposal fees, contracts, and facility reporting systems generally rely on tons. The rule therefore creates a mismatch between a volume-based recovery threshold and the weight-based data most facilities use to document actual material movement.

Many facilities that may be subject to the proposed recovery requirements already weigh incoming loads and charge customers based on tonnage. As a result, these facilities possess objective inbound and outbound weight data that may provide a more reliable measure of facility performance than volume estimates alone.

Ecology should clearly define how "recovery" is calculated and reported for purposes of demonstrating compliance with the 75 percent standard. The rule or accompanying guidance should explain:

- Whether the threshold is evaluated per load, over a reporting period, or as an annual facility metric;
- How inbound volume estimates are reconciled with outbound commodity and residual tonnage;
- How inbound tonnage data should be used when a facility already weighs incoming loads;
- What records are required to demonstrate recovery;
- How differences in material density, contamination levels, and processing methods affect the calculation; and
- How local health jurisdictions and Ecology may audit or verify the result.

The County recommends that facilities using certified scales and charging by weight report inbound tonnage, outbound commodity tonnage, and residual tonnage as part of any recovery reporting program. While Ecology may choose to retain a volume-based recovery standard, collecting this information would provide an objective dataset that Ecology, local health jurisdictions, and facility operators could use to verify performance, compare facilities, and better understand actual recovery rates statewide.

This information would also support future evaluation of whether the volume-based recovery threshold is producing the intended outcomes and would provide a more consistent basis for compliance audits and enforcement actions.

Outbound commodity and residual tonnage should remain a core component of evaluating compliance with the 75 percent recovery requirement because these are the most objective and routinely collected measures of actual facility performance. Ecology should not rely solely on visual inbound volume estimates without a transparent and auditable methodology that incorporates available scale data and permits comparison with actual outbound material flows.

The County recognizes that residuals are an unavoidable byproduct of legitimate recycling and material recovery operations and that recovery rates will vary among material streams and facility types. However, the fact that a facility recovers some material should not, by itself, justify the acceptance of large quantities of municipal solid waste or other materials that are not primarily intended for recovery. Material recovery facilities should be expected to operate principally as recovery facilities, not disposal facilities. Establishing objective, auditable recovery standards is necessary to ensure that facilities accepting recyclable materials are performing meaningful recovery and that incidental residual disposal remains within clearly defined and enforceable limits.

Failure to establish an objective, verifiable, and enforceable recovery methodology creates an opportunity for sham recycling. For purposes of this comment, sham recycling includes operations that characterize materials as recyclable or claim recycling status without demonstrating that the

materials are actually recovered and transferred to legitimate recycling markets. It may also include operations that accept substantial quantities of material for purported recycling but generate disposal volumes inconsistent with functioning primarily as a recycling or material recovery operation.

Ambiguous standards could allow an operator to select favorable assumptions, characterize disposal-bound residuals as recovered material, or treat the allowable non-recovered fraction as a standing allowance to accept inappropriate waste. This would enable facilities to present themselves as recycling operations while functioning, in whole or in substantial part, as unpermitted transfer or waste consolidation facilities.

These loopholes would undermine Ecology's recovery requirements, interfere with UTC determinations concerning the transportation of recyclables and solid waste, disadvantage legitimate recyclers that document actual recovery, and weaken enforcement of local flow control ordinances. The County therefore recommends that Ecology establish an objective recovery calculation, require reporting of available inbound and outbound scale data, identify the records needed to substantiate legitimate recycling markets, and authorize verification through audits by Ecology and jurisdictional health departments.

A facility should not retain MRF status based merely on its stated intent to recycle. It should be required to demonstrate, through auditable material-flow records, that the required proportion of incoming material is actually recovered and directed to legitimate recycling or reuse markets.

Concern 2: Clarification of the MRF Definition and Applicability of the Threshold

The 75 percent recovery requirement may be difficult to apply consistently because the underlying statutory definition of a material recovery facility is broad. RCW 70A.208.020(23) defines a MRF as a facility that receives, compacts, repackages, or sorts source-separated solid waste for the purpose of recycling.

That definition may encompass substantially different facility types and operating models, including:

- Facilities that receive source-separated organics and packaging from grocery stores and perform de-packaging or pre-processing;
- Compost facilities that remove contaminants before processing;
- Construction and demolition processing facilities that recover multiple commodities from incoming loads;
- Reclamation facilities that receive source-separated recyclable materials but generate varying quantities of residuals; and
- Traditional recycling material recovery facilities.

These facilities handle different feedstocks, use different processing methods, experience different contamination rates, rely on different end markets, and generate different types and quantities of residuals. Applying a single recovery threshold without defining its scope may lead to inconsistent permitting and enforcement.

The County recommends that Ecology clarify:

- Which facility types are subject to the 75 percent recovery requirement;
- Whether different recovery methodologies are appropriate for different facility categories;
- Whether recovery is intended to be measured consistently across recycling MRFs, de-packaging facilities, compost facilities, reclamation facilities, and C&D processing operations; and
- How facilities performing contamination removal, packaging separation, or other pre-processing should calculate recovery rates.

Concern 3: Relationship to Existing Recycling Definitions

Current rules recognize concepts such as source-separated recyclable materials, commingled recyclable materials, single-stream recycling, and residuals generated from recycling activities. However, the proposed rulemaking introduces significant new requirements related to recovery rates, residual generation, and material recovery facility classification without clearly explaining how these existing concepts apply within the new recovery framework.

Facilities managing source-separated recyclables, commingled recyclables, single-stream recyclables, source-separated organics, organics with embedded packaging, de-packaging operations, contamination removal processes, and other preprocessing activities may all operate differently, yet could potentially be subject to the same recovery requirements. Without additional clarification, facilities performing similar functions may be classified differently or evaluated using different recovery assumptions, resulting in inconsistent implementation and enforcement.

The County encourages Ecology to clarify how existing definitions and industry terms, including source-separated recyclable materials, commingled recyclable materials, single-stream recycling, residuals, and related recycling concepts interact with the proposed recovery standards and MRF requirements. Additional guidance would improve consistency among local jurisdictions, facility operators, Ecology, and the UTC when determining facility classification, recovery calculations, and residual management obligations.

Concern 4: Nature of the Non-Recovered Fraction

The rule should clarify that the portion of incoming material not counted toward the 75 percent recovery threshold is not automatically allowable, incidental, or consistent with the facility permit. A facility remains responsible for accepting only materials authorized by its permit and plan of operation and for applying appropriate inbound screening requirements.

The County recommends that Ecology clarify that the non-recovered fraction may not be used as a standing allowance to accept loads that are predominantly MSW, materials outside the approved operating plan, or materials for which the facility lacks a legitimate recycling process or end market. Residual fines and unders generated by grinding, shredding, sorting, or similar processing should be specifically tracked and reported as residuals.

Ecology should also identify corrective-action triggers when residual generation indicates that a facility is not functioning primarily as a recovery operation. Potential responses could include enhanced load inspection, revised acceptance criteria, limits on problematic inbound streams, additional reporting, improvements to sorting process, and a corrective action plan.

Concern 5: Permit Consequences and Local System Integrity

The County is strongly opposed to the automatic reclassification of a MRF as a transfer station solely because it fails to achieve the recovery threshold. In jurisdictions with flow control, transfer stations are integral components of the approved solid waste system. Automatic conversion could authorize facility activities that are inconsistent with the local comprehensive solid waste management plan, undermine local flow control, and create an unintended pathway for private consolidation and transfer of MSW.

Snohomish County has developed public transfer capacity to manage the County's MSW needs. A private facility that fails to meet its recovery obligations should not gain authority to continue operating as a transfer station simply because it did not enforce its material acceptance criteria or achieve its required recovery rate.

Instead, the rules should establish a defined compliance process that may include:

- A written notice of noncompliance;
- A corrective action plan identifying the causes of the failure and specific remedies;
- Enhanced oversight and auditing;
- Temporary restrictions on inbound waste streams associated with excessive residual generation;
- Suspension of the MRF permit if compliance is not restored; and
- Clear criteria for returning to full operation after sustained compliance is demonstrated.

Any proposal to permit the facility as a transfer station should require a separate application and independent determination that the facility is consistent with the local comprehensive solid waste management plan, applicable flow control ordinances, local system capacity, and all transfer station siting and operating requirements. Failure to meet a MRF recovery rate should not itself establish eligibility to operate as a transfer station.

Concern 6: Statewide Reporting Platform

Ecology should establish a standardized statewide reporting framework for MRFs and other regulated facilities. The framework should capture inbound volume and tonnage information, outbound recovered commodity tonnage, residual tonnage, material destinations, and the reporting period used to calculate recovery.

A consistent reporting system would improve comparability among facilities, support permit and flow control enforcement, reduce inconsistent local reporting formats, and provide the data necessary to evaluate the 75 percent threshold. The system should be designed to complement, rather than duplicate, existing local reporting requirements.

6. Limited Purpose Landfills (WAC 173-350-400)

The proposed references to local flow control ordinances are important because they acknowledge that a landfill permit and a local flow control ordinance address different questions. Additional clarification is needed regarding the order in which those requirements apply and the responsibilities of generators, haulers, landfill operators, local jurisdictions, local health departments, and Ecology.

Comment 1: Order of Operations and Regulatory Precedence

Flow control ordinances are adopted at the local level and determine where specified waste generated within the jurisdiction must be delivered. An LPL permit determines what waste the facility is authorized to accept based on environmental, engineering, and operational criteria. Residuals from a MRF can only be disposed of in an LPL if the composition of the residual waste meets the acceptance criteria in the LPL operating permit.

Ecology should clarify in rule or guidance that:

1. Local flow control requirements apply first when determining the authorized destination of waste. A generator or hauler must follow the applicable local ordinance even when another facility is technically permitted to accept that type of waste.
2. An LPL permit governs what the facility may accept, but it does not override a local flow control requirement. Likewise, a local flow control ordinance does not require an LPL to accept material outside its permit.
3. Both requirements must be satisfied for disposal at an LPL to be lawful. The material must be authorized for delivery to the LPL under applicable local flow control requirements and must meet the facility's permit acceptance criteria.

This clarification would reduce the risk that a permit allowance is misinterpreted as authorization to bypass a local solid waste system. It would also support consistent enforcement when material crosses county boundaries.

Comment 2: Existing County-of-Origin Documentation

LPLs are already required to document the county of origin of inbound waste. Ecology should build on that existing requirement rather than create duplicative documentation.

The County recommends that Ecology clarify what level of inquiry is expected of an LPL operator when waste originates from a jurisdiction with flow control requirements. Guidance should address how origin information is used, what additional material classification or authorization documentation is reasonably necessary, and how an operator should respond when a load appears inconsistent with the originating jurisdiction's flow control requirements.

The purpose should be to make existing origin records useful for compliance and enforcement while avoiding unnecessary duplication or requiring an LPL operator to make legal determinations on behalf of the originating jurisdiction.

Comment 3: Periodic Waste Characterization

Ecology should consider requiring periodic waste characterization at LPLs to verify that inbound materials remain consistent with permitted waste categories. A characterization program could include randomized load observations or sampling at an appropriate interval, documentation of MSW or residual content, and review of whether waste profiles have changed over time.

The requirement should be scalable to the facility's size, waste streams, and compliance history. Results should be available to Ecology, the jurisdictional health department, and the local jurisdiction of origin when relevant to flow control enforcement.

7. Operating Criteria and Plans of Operation (WAC 173-351-200, -210, and -220)

The inclusion of residual management in facility operating criteria and plans of operation is appropriate. Plans should explain how residuals are identified, segregated, tracked, stored, transported, and directed to an authorized disposal facility. They should also address material acceptance protocols, documentation, contingency measures, and corrective actions when residual volumes exceed expected levels.

Residuals and marketed commodities are routinely tracked and reported in tons. As Ecology develops volume-based recovery standards for MRFs, the County encourages Ecology to establish a standardized statewide reporting framework that clearly reconciles volume-based recovery calculations with tonnage-based reporting requirements.

Comment: Standardize Statewide Reporting

A single Ecology-managed reporting framework could improve data consistency, support enforcement, reduce duplicative administrative work, and increase transparency. The reporting framework should establish common definitions, units of measure, reporting periods, destination information, and data quality expectations, while allowing existing local systems to provide equivalent data where appropriate.

8. Relationship Between the Rulemaking and 2SHB 1154

Snohomish County supported portions of 2SHB 1154 but strongly opposed extending the legislation's permitting and enforcement framework to all solid waste facilities rather than focusing on the limited purpose landfill issues that prompted the legislation. That concern remains relevant as Ecology implements the bill through revisions to Chapters 173-350 and 173-351 WAC.

The County recognizes that portions of the proposed rulemaking are necessary to implement 2SHB 1154. However, the draft also contains numerous changes related to facility operations, permit administration, landfill design and closure, monitoring, reporting, plan approvals, and Ecology's role in local permitting and enforcement that were not specifically addressed by the legislation.

While Ecology may have separate authority under other provisions of state law to consider broader technical or policy changes, the County recommends that Ecology clearly distinguish:

- Changes required to implement 2SHB 1154;
- Changes proposed under Ecology's existing general solid waste authority; and
- Changes that may require additional stakeholder engagement, cost analysis, or separate rulemaking because of their operational or financial significance.

This distinction is important because the County is not taking the position that Ecology may never consider standards beyond the express language of 2SHB 1154. In several areas, including residual classification, recovery reporting, and coordination with local flow control, the County is requesting additional clarification or implementation measures. Those requests are intended to make adopted requirements administrable and enforceable, not to endorse an open-ended expansion of Ecology's role beyond the statutory framework.

The County is particularly concerned where the draft appears to:

- Expand Ecology pre-approval or suspension authority beyond the facilities or circumstances addressed by the bill;
- Create duplicate approval processes for plans, schedules, or operational decisions already administered by local health jurisdictions;
- Add substantive design, monitoring, closure, or operating standards without clearly identifying the statutory basis, problem being addressed, cost, and implementation schedule; or
- Create open-ended review periods or unclear enforcement triggers that could affect continued operation of public facilities.

For provisions extending beyond direct implementation of 2SHB 1154, Ecology should identify the legal basis, policy objective, expected benefit, estimated local government impact, and transition process. Material changes that require substantial capital investment, alter pre-approved operating plans, or significantly expand Ecology's role should be considered through a process that provides focused stakeholder review and adequate implementation time.

The County also recommends that Ecology preserve the Legislature's assignment of local health departments as the primary permitting and enforcement authority, with Ecology acting in the supportive, review, and backstop capacity established by the bill. Clear standards for coordination, assistance, intervention, and documentation of inadequate local action are necessary to avoid overlapping or inconsistent direction to county-owned facilities.

Conclusion

Snohomish County Public Works - Solid Waste Division submits these comments to support clear, workable, and consistently enforced solid waste rules. The County agrees with revisions that improve residual classification, accountability, and data consistency, while requesting changes where the draft could conflict with local flow control, create unintended facility classifications, duplicate permitting responsibilities, or extend beyond the implementation framework established by 2SHB 1154 without sufficient explanation and review.

The County encourages Ecology to address these issues before adopting the final rules and to continue coordinating with local solid waste programs, local health jurisdictions, and the UTC on implementation guidance and reporting expectations.