

October 19, 2026

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Washington State Department of Ecology
Solid Waste Management Program
Submitted via Ecology online comment portal

Subject: Informal Comments on Draft Rule Language — Chapters 173-350 and 173-351 WAC, Solid Waste Facilities Rulemaking

Dear Mr. Fredley:

Kittitas County Solid Waste appreciates the opportunity to comment on the Washington State Department of Ecology's draft rule language for Chapters 173-350 and 173-351 WAC. The County supports clear, protective, and consistently administered solid waste standards and recognizes the Legislature's direction that Ecology approve landfill permits alongside jurisdictional health departments. These comments focus on the proposed changes affecting limited purpose landfills under WAC 173-350-400 and the related permitting provisions in WAC 173-350-710, with particular emphasis on agency roles, conflict resolution, permit continuity, transition of previously approved closure plans, and performance-based implementation.

Limited purpose landfills manage non-municipal waste streams with very different physical, chemical, and gas-generation characteristics. For that reason, the County encourages Ecology to retain risk-based and performance-based flexibility while implementing the Legislature's new requirement for Ecology approval of landfill permits. The County is also concerned that the draft creates a two-agency approval structure without sufficiently defining agency roles, dispute resolution, transition of previously approved closure plans, or the operating status of a facility when Ecology and a jurisdictional health department reach different permit-renewal conclusions.

These comments are submitted during the informal draft-rule comment period and are not intended to be exhaustive. The County reserves the opportunity to provide additional or revised comments when Ecology files the formal CR-102 proposal and supporting regulatory analysis.

Priority requests

- Designate a lead coordinating agency for landfill permitting and identify the respective decision-making responsibilities of the jurisdictional health department and Ecology.
- Establish a mandatory conflict-resolution process for disagreements between Ecology and jurisdictional health departments before a permit dispute proceeds to formal appeal.
- Clarify the status of previously approved closure plans and identify when, if ever, an existing closure plan must be revised or reapproved solely because the new rules become effective.
- Specify the legal and operational status of a landfill when a jurisdictional health department supports permit renewal but Ecology denies, conditions, or requires amendments to the renewal, including the facility's status during any appeal.
- Provide explicit transition and grandfathering provisions for existing permitted unlined limited purpose landfills, particularly facilities receiving construction and demolition waste.
- Use performance-based alternatives for daily cover, working slopes, landfill-gas monitoring, environmental monitoring, and final-cover design where site-specific conditions demonstrate equivalent protection.
- Define incidental prohibited-material contamination and establish practical procedures for loads in which prohibited items are discovered after unloading.
- Coordinate Ecology and jurisdictional health department reviews concurrently, with objective completeness criteria, consolidated comments, and defined decision timelines.
- Quantify capital, operating, airspace, monitoring, and financial-assurance impacts in the CR-102 regulatory analysis.

1. Lead coordinating agency for dual-agency landfill permitting — WAC 173-350-710, 173-350-730, 173-351-700, and 173-351-770

Concern. The draft states in the cooperative enforcement provisions that local government has primary responsibility for issuing permits and administering the regulatory program, while Ecology acts primarily in a supportive and review capacity. At the same time, the draft requires Ecology approval before a landfill permit, renewal, or modification is valid. The draft does not clearly identify which agency is responsible for coordinating the permit review, controlling the official review schedule and record, communicating consolidated comments to the applicant, or resolving procedural questions when both agencies are exercising approval authority. Without a designated coordinating agency, applicants may receive duplicative or inconsistent direction and review schedules may become difficult to manage.

Requested change. The County requests that the rule expressly designate the jurisdictional health department as the lead coordinating agency for the local solid waste permit process, while preserving Ecology's statutory approval authority for landfill permits under RCW 70A.205.130(4). The rule should identify the responsibilities of each agency, require concurrent review where practicable, establish one official channel for comments and submittals, and require a consolidated written list of deficiencies or requested amendments.

2. Conflict resolution between Ecology and jurisdictional health departments — WAC 173-350-710/725 and 173-351-700/760

Concern. The draft provides appeal rights when Ecology denies a landfill permit, renewal, or modification, but it does not establish an administrative process for resolving disagreements between Ecology and the jurisdictional health department before the matter reaches the Pollution Control Hearings Board. Routine technical or permit-condition disagreements should not automatically require formal litigation or leave a facility without a clear regulatory path forward.

Requested change. The County requests a mandatory pre-appeal dispute-resolution process. At a minimum, the rule should require the agencies to identify disputed issues in writing, conduct a technical-level resolution meeting, provide for management-level escalation when necessary, include the applicant or permittee in discussions affecting its permit, and issue a written resolution or final agency position within a defined period. The rule should also explain which decision controls while the dispute-resolution process is underway.

3. Treatment of previously approved closure plans — WAC 173-350-030 and 173-350-400(8)

Concern. The draft requires a limited purpose landfill closure plan to be approved by both the jurisdictional health department and Ecology as part of the permitting process. The existing-facility transition provisions require a permit modification when changes to a facility are needed to meet new or updated requirements, but the draft does not expressly state whether an existing closure plan that was lawfully approved before the new rule takes effect must be revised or reapproved. This creates uncertainty for facilities that have already designed closure systems, established financial assurance, or made long-term capital plans based on an approved closure plan.

Requested change. The County requests explicit transition language stating that a previously approved closure plan remains valid after the effective date unless: (1) the owner or operator proposes a substantive facility modification that affects closure; (2) the closure plan no longer complies with an expressly applicable new requirement; or (3) the jurisdictional health department and Ecology jointly determine, based on documented site-specific conditions, that an update is necessary to protect human health or the environment. If an update is required, the rule should establish a reasonable schedule and clarify whether the new requirements apply to the entire closure system or only to portions not yet constructed or finally closed.

4. Permit renewal disagreement and facility operating status — WAC 173-350-710/725 and 173-351-700/760

Concern. The draft allows an owner or operator to continue activities under the most recent expired permit when a timely renewal is pending and the jurisdictional health department and Ecology have not rendered a decision by the expiration date. The draft also allows the jurisdictional health department or applicant to appeal an Ecology denial. It does not clearly address the different situation in which the jurisdictional health department supports renewal but Ecology denies the renewal, requires amendments that the JHD disputes, or otherwise withholds approval. The facility needs to know whether it may continue operating, what permit conditions govern, whether new construction or expansion may proceed, and what happens during a timely administrative appeal.

Requested change. The County requests that the rule expressly define the status of the existing permit and authorized operations during an interagency disagreement and any timely appeal. To the extent authorized by statute, an existing facility that submitted a timely and complete renewal application should be allowed to continue operating under the most recent permit while the dispute or appeal is pending, unless the agencies determine that continued operation presents an immediate and substantial threat to human health or the environment. The rule should separately address continuation of routine existing operations versus authorization of new cells, expansions, or other new activities, and should establish clear deadlines for agency action.

5. Existing unlined C&D limited purpose landfills — WAC 173-350-400(4)(c)(ii)(C)

Concern. The draft excludes landfills receiving construction and demolition waste, contaminated soils, contaminated dredged material, industrial wastewater treatment sludges, and certain variable waste streams from the option to operate without an engineered liner. This is a substantial change from the current rule, which allows an unlined design when the owner or operator demonstrates protective waste/leachate characteristics and protective natural soils.

Requested change. The County requests explicit transition language that separately addresses waste already in place, currently active permitted cells, vertical expansion within an approved footprint, and new lateral cells. Existing lawful unlined facilities should not be required to reconstruct previously approved disposal areas. Ecology should also consider retaining a site-specific demonstration pathway for source-controlled, well-characterized C&D waste where hydrogeology and monitoring data show that an engineered liner is not necessary to meet WAC 173-350-040 performance standards.

6. New siting setbacks — WAC 173-350-400(3)(e)–(h)

Concern. The draft adds zoning-based property-line setbacks, a 1,000-foot setback from state and national parks, and additional siting restrictions for certain very large new landfills. The proposed 250-foot setback from residentially zoned adjacent property could materially reduce usable disposal capacity at an existing site if applied to previously approved areas or expansions already contemplated in a permit or solid waste plan.

Requested change. The County requests that the rule state clearly that new setbacks apply prospectively to new disposal areas approved after the effective date and do not invalidate existing permitted footprints. Ecology should also reconcile the new 100/250-foot siting provision with the existing 100-foot design setback in WAC 173-350-400(4)(j), including how later zoning changes affect an already approved disposal area.

7. Waste acceptance and prohibited materials — WAC 173-350-400(6)(a)(ii)

Concern. The draft replaces the current general waste-exclusion language with a detailed list of prohibited materials, including furnishings, appliances, electronics, certain vehicle components, recyclable materials intended for recycling markets, food and yard wastes, and other categories. Clear exclusions are useful, but mixed C&D loads can contain isolated prohibited items that are not reasonably visible until a load is tipped.

Requested change. The County requests an objective incidental-contamination standard and a compliant procedure for prohibited items discovered after unloading. The rule should distinguish an isolated incidental item from acceptance of a prohibited waste stream. Ecology should also clarify the phrase “recyclable materials intended for recycling markets” so a disposal facility is not placed in violation based on the theoretical recyclability of a material for which no practical market or recovery pathway exists.

8. Daily compaction and daily cover — WAC 173-350-400(6)(a)(vi)

Concern. The draft substantially broadens the daily-cover requirement. Instead of applying specifically to putrescible waste, the proposed language requires six inches of earthen cover for waste that may attract vectors, cause fires, create odors, result in litter, or attract scavenging, unless an alternative is approved. For C&D and wood-rich waste streams, the fire and litter triggers could make six inches of daily soil cover the default even when putrescible waste is not accepted.

Requested change. The County requests a performance-based alternative that allows an approved working-face, litter-control, and fire-prevention plan to satisfy the requirement without mandatory daily soil cover where equivalent protection is demonstrated. Alternative daily cover should be approvable through the operating plan using objective criteria. Ecology should also clarify whether “adequate daily compaction” will remain performance based or whether specific density, lift-thickness, or testing requirements are intended.

9. Working-slope limitation — WAC 173-350-400(6)(a)(vii)

Concern. The draft adds a 33 percent (3H:1V) limit for waste-placement slopes to support fire response, cover placement, and final closure. A continuous 3H:1V limit on temporary operating faces may increase the size of the active face, increase cover requirements, and reduce operational flexibility without a corresponding environmental benefit at every facility.

Requested change. The County requests clarification that the 3H:1V criterion applies to sustained or completed working slopes and does not prohibit short-duration steeper operating faces when an approved operating and fire-response plan demonstrates safe equipment access, effective fire control, and compliance with final closure grades.

10. Prescriptive landfill-gas monitoring — WAC 173-350-400(6)(a)(viii)

Concern. The draft adds detailed perimeter soil-gas well construction and spacing requirements, generally including spacing of no more than 500 feet unless a wider spacing is approved. Limited purpose landfill waste streams can have very low organic content and correspondingly low methane-generation potential.

Requested change. The County requests a risk-based pathway allowing reduced well density, alternative monitoring, or no perimeter gas-well network where waste composition, historical monitoring, site geology, and proximity to structures demonstrate low gas-generation and migration potential. A uniform 500-foot spacing criterion should not operate as the default engineering requirement for every limited purpose landfill regardless of waste type.

11. Environmental monitoring and EIM reporting — WAC 173-350-400(7)

Concern. The draft expands subsection (7) from groundwater monitoring to a broader environmental monitoring plan that may address groundwater, leachate, soil gas, ambient air, leak-detection liquids, hydraulic-gradient systems, and surface water, and it requires monitoring results to be entered into Ecology’s Environmental Information Management system.

Requested change. The County requests that the final rule expressly state that each monitoring medium is required only where applicable to the facility design, accepted waste stream, and credible environmental pathway. The rule should authorize reduced sampling frequency after a documented period of stable results and should provide standard EIM templates, data-validation guidance, reasonable submittal deadlines, and the ability for accredited laboratories or consultants to submit data directly on behalf of permittees.

12. Final-cover design — WAC 173-350-400(4)(f)

Concern. The draft adds or strengthens elements of the presumptive final-cover design, including a drainage layer, a 60-mil minimum for HDPE geomembrane, and additional hydraulic-performance criteria for facility-specific covers. These changes can materially increase closure construction cost and financial-assurance obligations.

Requested change. The County requests that Ecology retain a practical performance-based alternative for arid and semi-arid sites where site-specific covers can provide equal or better long-term infiltration control. The final rule should clarify applicability to previously approved closure plans and should identify accepted hydrologic models, climate datasets, design storms, and methods for demonstrating the proposed head-over-liner criterion.

13. Construction approval and authorization to operate — WAC 173-350-400(5)

Concern. The draft requires both the jurisdictional health department and Ecology to determine that construction complies with approved engineering documents before a newly constructed portion of a landfill may begin operating. While coordinated oversight is appropriate, a completed disposal cell could be unavailable for use if agency reviews occur sequentially or if comments are not resolved promptly.

Requested change. The County requests concurrent review of construction-quality-assurance documentation, one consolidated deficiency list, an objective standard for a complete submittal, and a defined decision period. The rule should also establish an escalation process when the jurisdictional health department and Ecology reach different conclusions on the same construction issue.

14. Ecology/JHD landfill permit review — WAC 173-350-710

Concern. The County recognizes that recent statutory changes require Ecology approval of landfill permits. The draft implements that requirement by making Ecology approval necessary for permit issuance, renewal, modifications, transfers, and related decisions. Without clear process controls, dual-agency review may add substantial uncertainty to capital-project schedules and routine permit administration.

Requested change. The County requests a concurrent, coordinated review process with a single consolidated set of agency comments, objective completeness criteria, and firm or presumptive review timelines. Ecology should also create an expedited pathway for minor changes that do not increase disposal capacity or environmental risk, so routine operational or monitoring changes do not unnecessarily trigger a full modification process.

15. Twenty-four-hour incident reporting — WAC 173-350-400(6)(a)(x)(E)

Concern. The draft requires fires, leachate leaks or spills, and gas leaks to be reported to both the jurisdictional health department and Ecology as soon as possible, but no later than 24 hours after discovery. The reporting concept is reasonable, but the draft does not clearly distinguish significant releases from minor, fully contained operating events.

Requested change. The County requests defined reportability thresholds or examples for fires, leachate spills, and gas leaks, together with one notification mechanism that satisfies both agencies. Minor contained events that are promptly controlled and do not reach the environment should be documented in the operating record without automatically triggering dual-agency emergency reporting unless specified thresholds are exceeded.

16. Regulatory and economic analysis

Concern. Several proposed requirements could materially increase capital cost, operating cost, loss of airspace, monitoring expense, consultant expense, and financial assurance. The combined effect may be significant for publicly owned or small limited purpose landfills even when each requirement is considered individually.

Requested change. For the CR-102 proposal, the County requests that Ecology separately quantify the expected cost of engineered liners for affected LPL waste streams, expanded daily cover and resulting airspace consumption, gas-monitoring well installation and quarterly monitoring, expanded environmental sampling and EIM reporting, final-cover changes, and additional permitting/engineering review. The analysis should evaluate lower-cost regulatory alternatives that provide equivalent environmental protection and identify transition periods necessary for public agencies to budget for capital improvements.

Additional observations

Post-closure care. The current limited purpose landfill rule uses a functional-stability standard rather than a fixed 30-year post-closure term. The County recommends preserving that risk-based approach in the final rule. Post-closure care should continue as long as necessary to protect human health and the environment, while allowing maintenance and monitoring to end when the facility has demonstrated functional stability under approved criteria.

Implementation guidance. Because the rule will substantially increase direct Ecology participation in landfill permitting and oversight, the County recommends that Ecology publish implementation guidance, standard submittal checklists, agency roles, review timelines, and points of contact before the rule becomes effective. Early guidance will reduce inconsistent interpretation and avoid avoidable delays during the transition.

Suggested governance principle for the rule

The County recommends that Ecology add a general coordination provision stating, in substance: "The jurisdictional health department is the lead coordinating agency for administration of the solid waste permit. For landfill permits, Ecology retains the approval authority required by RCW 70A.205.130(4). The jurisdictional health department and Ecology shall conduct coordinated review, identify and attempt to resolve conflicting technical or permit-condition determinations before final action, and provide the applicant with a written explanation of unresolved issues and the effect of any disagreement on permit validity and continued operation."

Conclusion

Kittitas County appreciates Ecology's work to update the solid waste facility rules and the opportunity to provide input before the formal proposal. The County's primary request is that the final rule create a workable two-agency permitting structure: one that clearly identifies the coordinating agency, provides a defined method for resolving disagreements, protects the validity of previously approved plans unless a documented regulatory need requires revision, and gives operating facilities certainty during permit-renewal disputes and appeals. The County also requests that Ecology preserve site-specific, performance-based compliance pathways where they provide equal or better protection of human health and the environment.

We welcome continued coordination with Ecology as the rule moves toward the CR-102 stage and would be available to discuss the operational and cost implications of these provisions.

Sincerely,

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