

Comments on Proposed Amendments to WAC 173-350

To Whom It May Concern:

Thank you for the opportunity to comment on the proposed amendments to chapter 173-350 WAC. These comments focus on provisions that may affect construction and demolition material recovery, transportation, facility permitting, and regulatory certainty. We respectfully request the revisions and clarifications below.

Material Recovery Facility Threshold

Rule summary. The proposed definition classifies a facility as a material recovery facility only if it recycles or reuses at least 75 percent, by volume, of the solid waste received. A facility accepting loads containing 25 percent or more material without a demonstrable market or intent to recycle would not qualify.

Concern. A volume-based threshold of 75% per load by volume will prohibit the existence of current day MRF's. Experience has shown that an insufficient number of loads would meet this criterion to financially support a MRF operating costs. Such a limitation also creates substantial measurement, staffing, compliance, and enforcement uncertainty. It will also classify facilities according to load composition rather than environmental performance, restrict lawful transportation of mixed construction and demolition material, and discourage recovery when no qualifying facility is reasonably available.

Additionally, converting a MRF to a Transfer Station designation may not be possible due to zoning and/or local solid waste management desires or allowances.

Recommendation. Remove the fixed threshold or adopt a more workable standard based on documented recovery practices and legitimate markets. If a percentage is retained, it should be focused on facility wide performance and no stricter than 51 percent recyclable material to 49 percent nonrecyclable material, with clear measurement methods, recordkeeping requirements, compliance periods, and enforcement criteria.

Flow Control and Residuals

Rule summary. The proposal defines a flow control ordinance as a local law requiring solid waste haulers within a jurisdiction to deliver solid waste to a designated facility for processing or disposal. The proposed residuals definition relies on such an ordinance to authorize alternative management of specified waste streams.

Concern. Not every county has adopted flow control. In addition, a flow control requirement may not be enforceable unless all of the applicable legal criteria are satisfied. Tying management options exclusively to a flow control ordinance may therefore leave some jurisdictions and facilities without a lawful or practical pathway.

Recommendation. Do not make a flow control ordinance the exclusive basis for alternative management. Allow authorization through either a valid and enforceable flow control ordinance or an approved solid waste handling permit, and clarify the criteria that must be satisfied before flow control may be relied upon or enforced.

Transportation

Rule summary. The proposed definitions distinguish material recovery facilities from transfer stations and may affect where recyclable and mixed construction and demolition materials may be delivered.

Concern. The proposed distinctions may unnecessarily limit delivery to permitted facilities capable of salvage or recovery. WAC 173-345-060(1) prohibits delivery of recyclable materials for disposal; it does not, on its face, prohibit delivery to a transfer station for legitimate salvage however, “transfer stations” have become the local landfill replacement and are primarily focused on disposal.

Additionally, recovery rates from co-mingled “transfer stations” co-located with “MRF’s” is dependent on defining what is included within the denominator.

Recommendation. Abort the effort to define a MRF vs. Transfer station based on incoming load recyclable percentage.

Engineered Features

Rule summary. The proposed definition may encompass most physical elements of a facility.

Concern. Requiring engineering for every facility element would be overly broad where the material handled presents minimal environmental or public-health risk.

Recommendation. Preserve existing flexibility for nonengineered features that reasonably satisfy chapter requirements, while requiring engineering where warranted by risk or complexity.

Salvaging and Scavenging

Rule summary. New definitions address salvaging and scavenging at disposal facilities.

Concern. The definitions do not clearly distinguish incidental reuse from larger-scale recovery operations or explain the respective authority of the department and jurisdictional health departments.

Recommendation. Clarify the operational boundary between salvaging, scavenging, material recovery, and transfer activities, together with the applicable approval authority.

Post-Closure Care

Rule summary. The proposal addresses the duration of landfill post-closure care.

Concern. Removing a 30-year baseline may reduce certainty for financial planning.

Recommendation. Retain “thirty years” together with “or as long as necessary for the landfill to become functionally stable.”

Permit Modifications

Rule summary. The proposal adds a definition of “modification” to include any change in design, operation, environmental monitoring, or other aspect of a facility and requires permit modifications be submitted 90 days prior to initiation of change. Additional

language requires JHD to provide modification request to the department. The department has 45 days to note issues needing clarity or deficiencies, and what appears to be an additional 45 days on subsequent submittals. The JHD will approve or deny the modification 90 days, or when it expects to provide its findings after exhausting efforts to receive information needed to assure compliance.

Concern. Modifications are typically financially or operationally driven where time is of the essence. Proposed review timelines for most modifications at established facilities are excessive and yet provide for additional extended regulatory review by either the JHD or department.

Recommendation. Require 30day review comments by both agencies upon application of modification submittal and 30day review timeline on any follow up submittal. If no comment or request for additional information is received, the proposal is considered acceptable to the non-responding agency for the purpose of modification acceptance.

Applicability and Permit Suspension

Rule summary. Authorizes permit suspension when either the jurisdictional health department or the department determines that a facility is operating in violation of the chapter.

Concern. Permit suspension has a profound impact on a business that a business may not recover from. Allowing either agency to suspend a permit without the written agreement of the other regulating agency is confounding

Recommendation. Require complete written agreement between the two agencies specifying, in detail, the reason for the suspension before either agency issuing a suspension.

Rule summary. The proposal deletes an applicability provision concerning certain single-family residences and farms.

Concern. Although proposed deletion may be prudent, the deletion may conflict with existing statutory or regulatory authority and should be reviewed.

Recommendation. Confirm the legal basis for deleting the applicability provision.

Performance Standards, Inspection and Sampling Collection

Rule summary. The proposal allows for the Jurisdictional health department and/or the department and, any duly authorized representative to conduct inspections and sample collection at any reasonable time.

Concern. Sample collection without prior notification does not allow for the operator to review proposed sampling procedures and prepare for “split” sampling for comparison purposes. Additionally, “authorized representative” is excessively broad and does not assure conflict of interest concerns, confidentiality concerns or non-complete concerns are addressed with the third party prior to entering the property

Recommendation. Delete the proposed language and maintain existing inspection and sampling language with the exception of including inspection by the department as/where legally allowed.

We appreciate consideration of these comments and respectfully request revisions that preserve material recovery opportunities, provide workable compliance pathways, and ensure clear and consistent administration.

Sincerely,
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