



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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January 8, 2010

David W. Danner
Executive Director and Secretary
Washington Utilities & Transportation Commission
PO Box 47250
Olympia, WA 98504-7250

Dear Mr. Danner:

Subject: Comments on Proposed Rulemaking - Docket TG-080591

The Department of Ecology would like to thank you for the opportunity to comment on the Washington Utilities & Transportation Commission's (WUTC) proposed rule making amending Chapter 480-70 WAC. Ecology's comments are divided into two sections: comments on the filing and comments on the discussion draft of the proposed rule language.

Notice of Opportunity to File Written Comments

Page 2

- There is an incorrect citation: RCW 81.53 (railroads - crossings) for motor freight carriers should be RCW 81.80 in the filing document.

Page 3

- Ecology has concerns about WUTC's ability to confirm the 75 percent recycling rate for MRFs. Ecology's rule (WAC 173-350-310) allows permit exempt MRFs a 10 percent per load and/or a 5 percent annual residual rate (converts to a 90 percent per load recycling rate and/or a 95 percent annual recycling rate). Although MRFs are required to report annually on their activities, because we do not review the actual records we cannot confirm reporting accuracy. Ecology is reviewing this issue and considering options as it initiates the rule amendment process for Chapter 173-350 WAC.

Ecology also requests that WUTC work closely with Ecology staff to develop options to determine/confirm the 75 percent recycling rate at MRFs allowed to receive C&D wastes.

- The drawing on Page 3 should be modified to allow for some delivery of recyclables and C&D waste to transfer stations and landfills. While WUTC's definitions of transfer stations and landfills indicate the material is destined for final disposal, the solid waste statute and rule do not limit these definitions to just disposal. A solid waste handling facility with a transfer station and/or a landfill unit can also include a number of other activities that are not defined as disposal, including materials recovery or recycling areas. Ecology suggests references to "transfer station" or "landfill" also include the phrase "for disposal."

Page 4

- Ecology finds the “Boiler Fuel” discussion confusing. Ecology considers boiler fuel a commodity if purchased; otherwise, it would be considered a waste.

Page 5

- Ecology has a concern with the following sentence: *“The company might also need to show that the customers from which it collects recyclable C&D waste provide an appropriate-sized onsite container (emphasis added) for non-recyclable waste.”* Why would a transporter need to show that its customers have containers for solid waste? Ecology believes this is primarily the responsibility of the site owner or generator -- not the contracted transporter. Ecology also believes that WUTC’s specification for “appropriate sized onsite container” will be difficult to define.

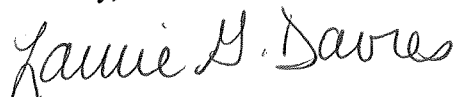
The purpose statement in RCW 70.95.020(3), the solid waste statute, states: *“To provide for the adoption and enforcement of basic minimum performance standards of solid waste handling, including that all sites where recyclable materials are generated and transported from shall provide a separate container for solid waste.”* While Ecology developed Chapter 173-345 WAC, Ecology wrestled with rule language to meet this requirement. Ecology’s final rule language specifies a container must be provided, but does not state who is responsible to provide the container or container size.

Comments on Proposed Rule Language (New Section to WAC 480-70)

- (2)(a) regarding the definition of “construction and demolition waste:” The definition should not include the phrase about hiring a carrier.
- (3)(b) states *“the generator of construction and demolition waste has provided a container of an appropriate size for non-recyclable waste (emphasis added) generated on the site, as required by RCW 70.95.020(3) and WAC 173-345-040 . . .”* The solid waste statute and rule do require a container where recyclable material is collected onsite, but the statute and rule are silent on the subject of container size.
- (3)(d)(ii): Again, there are landfill and transfer station facilities where C&D can also be taken for recycling. Ecology suggests rewording to prevent C&D waste from being disposed and not base it on particular MRF facilities. Section (3)(d) would be better constructed to prohibit delivery for disposal, period.

Ecology looks forward to working with WUTC to amend Chapter 480-70 WAC. If you have any questions, please contact Randy Martin at 360-407-6136 or rama461@ecy.wa.gov.

Sincerely,



Laurie G. Davies
Program Manager
Waste 2 Resources Program

slm

cc: Lorie Hewitt
Randy Martin