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VIA E-MAIL AND U.S. MAIL

David W. Danner, Executive Secretary and Director
Washington Utilities and Transportation Commission
1300 South Evergreen Park Drive, SW
P.O. Box 47250
Olympia, Washington 98504-7250

**RE: Solid Waste Definitions Rulemaking, Chapter 480-70 WAC – “Discussion Draft”
Docket TG-080591**

Dear Mr. Danner:

On behalf of Waste Management of Washington, Inc. (“WM”), I am submitting the following comments on the Commission’s new “discussion draft” of proposed regulations addressing transportation of mixed construction and demolition waste under Chapter 480-70 WAC. As we stated in our comments to the first proposal last spring, WM is particularly interested in this rulemaking because WM performs both regulated and unregulated collection, and it also operates solid waste disposal facilities, as well as processing facilities for recyclables.

Comment 1: Waste Management urges the Commission to emphasize that this rule supplements its existing authority to enforce regulated collection of solid waste.

WM commends the authors of the Notice of Opportunity to File Written Comments (“Notice”) for the clarity of the analysis, and the illustrations of how the proposed rule will work. We suggest, however, that the record for this rulemaking needs to more emphatically reflect the fact that the proposed regulation clarifies, and does not change, the Commission’s existing authority to bring enforcement actions against illegal haulers.

The text in the Notice points out that this rule is not intended to replace the existing standards set forth in WAC 480-70-016, which guide the determination of when solid waste authority is required. We agree, and therefore recommend that this proposed rule, if adopted, include a preface in Subsection (1) that states, “In addition to the factors considered in WAC 480-70-016(4), this rule further defines when a person engaged in business as a mixed recyclable construction and demolitions waste”

Also, WM continues to believe that there is hardly any instance in which regular, scheduled, and routine collection of solid waste from residences, businesses, and institutions would not be regulated, unless it is being conducted under the auspices of a municipal contract. The risk remains that commercial customers will replace this sort of “universal” solid waste collection service with regular, scheduled and routine collection by uncertificated haulers holding themselves out as recyclers. We do not believe this proposed rule changes the Commission’s ability to bring classification proceedings against such carriers. WM therefore wishes the record to reflect that universal services must be performed by certificate holders, except in rare instances, and the Commission’s powers to police that sort of unauthorized transportation is unaffected by this rule.

Comment 2: Waste Management disagrees with the inference that application of cover materials constitutes “disposal.”

WMW agrees that solid waste placed for disposal in a landfill cell is regulated solid waste, no matter how placement “in the hole” may enhance the operational efficiencies of the facility. Material strategically placed as “industrial waste stabilizer” is being disposed of, albeit in order to maximize landfill airspace.

We do however strongly disagree with several statements made in the Notice that imply or incorrectly assume that Ecology’s regulations, Chapter 173-345 WAC, state that the use of alternative daily cover (“ADC”) at a landfill constitutes “disposal”. Specifically, the Notice cites a comment from Ecology that “if a hauler of recyclables were to deliver recyclable materials to a landfill for ADC, ‘this activity could subject the hauler to fines under DOE rules (WAC 173-345).’” This statement fails to recognize that Ecology’s regulations and the statute itself only prohibit delivery of recyclables to landfill **“for disposal.”** See WAC 173-345-010 (“for disposal”); WAC 173-345-060(1) (“for disposal”); RCW 70.95.410(1) (“A transporter may not deliver any recyclable materials for disposal to a transfer station or landfill.”). The regulations and statute do not prohibit delivery of recyclables materials for uses other than disposal.

The use of materials for required landfill cover – whether daily or not, whether soils or alternative materials – is not “for disposal.” They are a design or operational component that is used to meet specific regulatory requirements. See WAC 173-351-200(2). As we have said before, just because a material is driven through the gates of a landfill, it does not automatically become a solid waste – not because of the inherent qualities of the material, but because of how it is used. For instance, glass cullet is often used as a rock substitute for road bed and tipping area floors. Crushed aggregate is placed in drainage layers in liner systems. Shredded tires can be used to provide drainage. While these activities could be considered “recycling” or “reuse”, WM does not believe it necessary to reach that conclusion in this rulemaking. WM believes the important inquiry is whether these materials are serving an important function at the landfill, such as in construction of landfill cells, roads or ancillary facilities – or as a substitute for a daily cover. Indeed, the WUTC regulations already recognize, for example, that soils transported to a landfill “to become part of the cover of the landfill” are not solid wastes subject to Chapter 81.77 RCW. WAC 480-70-016(3).

The Notice wrongly states that the Commission “propose[s] to define ADC as disposal consistent with the interpretation already adopted by DOE.” First, Ecology’s regulations do not define ADC as disposal. ADC is a legitimate alternative to earthen cover materials. WAC 173-351-200(2)(b). Second,

it is not necessary for the Commission to even reach this question because the rule need not define ADC as disposal in order for the Commission to exclude ADC volumes from the calculation of the diversion percentage that qualifies a MRF as an eligible receiving facility.

WM suggests that collection of construction and demolition waste that potentially can be processed for use as ADC is something different from hauling processed cover material to a landfill. The former is most likely regulated collection of solid waste. The latter is outside the rubric of universal solid waste collection, and we do not perceive this rule as requiring economic regulation of that specific transportation activity. We understand the Commission's focus, and the orientation of this proposed rule, is the collection from job sites of mixed loads of construction and demolition waste that could be processed for use as ADC. WM agrees that allowing this potential use to justify unregulated collection of mixed materials from construction projects is not appropriate. The emphasis in these rules on the qualifications of the receiving MRF will likely curtail the ability of sham recyclers to characterize the "front-end" haul as unregulated commercial recycling, if not immediately then at least over time.

Comment 3: Waste Management supports the Commission's objective of requiring unregulated haulers to ensure the eligibility of the receiving MRFs.

WM supports the rule's distinction between transportation of recyclable materials from a commercial or industrial generator directly to a manufacturer or industrial facility that reuses or reclaims the material by transforming or remanufacturing it into usable materials, on the one hand; and transportation to a materials recovery facility that "collects, compacts, repackages, sorts, or processes" for recycling, on the other. WM suggested that the rule expressly acknowledge the difference in our first comments and we appreciate the Commission's response to that recommendation.

We applaud the Commission for imposing obligations on the transporter to verify that the receiving MRF is legitimate. We are not certain whether the proposed rule's focus on diversion percentages is workable, but WM remains open to further consideration of the concept.

As an alternative means of verifying eligibility of the receiving facility, WM reiterates its recommendation that local governments in which the processing facilities are located be allowed to identify legitimate MRFs, either in the solid waste management plan or by ordinance. This would let local regulators, who have the best knowledge about facilities within their jurisdiction, make the determination. Various jurisdictions may be able to achieve higher, or lower, diversion percentages based on geographic locations, distance to markets, and service level ordinances.

Instead of using a diversion percentage, WM therefore recommends the Commission consider a rule stating that collection of mixed construction and demolition waste from commercial or industrial generators by uncertificated haulers may be performed if they deliver the materials to a MRF that is designated as a legitimate processing facility by the local solid waste division in which it is located.

Comment 4: Waste Management supports the requirement for requiring the transporter to verify the presence of an appropriately-sized solid waste container.

WM requires all commercial recycling customers to have a solid waste container, whether the collection is in WM's certificated territory or not. Using separate boxes for solid waste and recyclable

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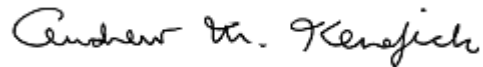
materials is the only way to ensure some level of the quality to the source-separated materials. We support the regulatory mandate of requiring transporters to enforce this requirement. The Commission's proposed draft addresses this issue, and WM supports emphasizing the need for at least two separate containers in these rules.

As we noted previously, however, although we are pleased to see the Commission's focus be on the heart of the problem, i.e., construction and demolition debris, there nonetheless exists potential for other problematic situations we have seen, where customers who generate a large volume of recyclables are convinced that they do not need solid waste collection at all. To address that situation, we suggest that the requirement for having two separate containers for solid waste and for sorted recyclable materials be brought forward into WAC 480-70-016(4) because in any case where collection of recyclable materials is being provided, a solid waste container will likely be necessary even if the customer is not engaged in construction or demolition activities.

* * *

In conclusion, WM appreciates the opportunity to review and comment on these draft rules. We generally support the concepts presented, and we look forward to hearing what other stakeholders may say and working with the Commission in finalizing a rule that will provide both regulated and unregulated collection companies a modicum of assurance that they are doing the right thing.

Sincerely,



Andrew M. Kenefick