



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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April 10, 2009

Dave Danner, Executive Secretary
Washington Utilities and Transportation Commission
1300 S Evergreen Park Drive SW
PO Box 47250
Olympia, WA 98504-7250

RE: Solid Waste Definitions Rulemaking, WAC 480-70 - **Docket # TG-080591**

Dear Mr. Danner,

Ecology would like to thank WUTC for the opportunity to comment on your proposed rulemaking. Ecology has identified potential conflicts between WUTC's draft proposed rule language and Ecology regulations, including RCW 70.95, WAC 173-350, and proposed rulemaking WAC 173-345. Several sections of the proposed rule may require significant changes and/or further clarification. Ecology looks forward to working closely with WUTC on a revised version and providing additional review.

General comments

Solid waste rules and WUTC rules address different parts of the solid waste management process. Statutes and rules that apply often use the same terms but have different meanings. As the WUTC updates this rule, every effort should be made to ensure terms have consistent meanings and the agency's rules are as consistent as possible.

As written, it appears that a system is being created where a hauler of recyclable materials (as defined under WUTC statute) may deliver recyclable materials to a landfill for alternative daily cover and be compliant with WUTC requirements. But the delivery of the same material to the facility for the same use could subject the hauler to penalties by Ecology in accordance with WAC 173-345. Our agencies need to work together to ensure that rule development efforts do not result in a regulatory Catch-22.



The statutory formatting is not consistent throughout the proposed rule language. Some citations start with chapter _____ RCW while others start RCW _____.

Subsection 1

As a general observation, when labeling subparts of a section or subsection of a rule, WUTC should not write an a) without a b). Ecology suggests eliminating the a) and making a) the second sentence, then list the two points.

1) a) ii The term source separated is hyphenated in the proposed rule (also in 2c)) but not in RCW 81.77.010. Ecology suggests deleting the hyphen.

Subsection 2

2) c) The reference to RCW 36.58.041 (1-2) is incorrect; the citation does not exist. Ecology believes WUTC meant to cite RCW 36.58.040 (1).

2) c) There is no reference to cities having the ability to collect their own solid waste or contract to have the solid waste collected. Ecology recommends a statement regarding cities' responsibilities in the collection of solid waste.

Subsection 3

The subsection discusses both collection and transportation (added text). The title of Subsection 3 should reflect the subject, including transportation.

The subsection title uses the term motor carrier; however, motor carrier is not defined in WAC 480.70. The term is defined in the statute (RCW 81.80.010(7)) but it is not in the permit section of the statute. RCW 81.80.070, Permit required—Penalty—Cease and desist orders states that, “only common carrier, contract carrier, private carrier, and exempt carriers” must have permits. An issue could arise with regard to violations and penalties for a “motor carrier”. Ecology suggests replacing “motor carrier” with “carrier” throughout this section of the rule.

Part b) states “carriers may not(emphasis added) collect and transport recyclable materials that contain solid waste.” May is a discretionary term; therefore, carriers could collect recyclable materials that contain solid waste. If the intent was to prohibit this then “may not” should be replaced with “must not” and then cite the applicable RCW, which provides UTC authority to limit collection and transportation of recyclable materials. Also, if the intent of the language in 3 b) is to prohibit “residual” collection and transport of solid waste, there is an inconsistency

with Ecology's rules. Ecology's solid waste rule, WAC 173-350, allows material recovery facilities to accept up to 10% per load or 5% per year collection of "residual" solid waste. Ecology would like to work with WUTC further on this issue to ensure consistency between rules.

Part c) of the subsection is inconsistent with proposed WAC 173-345 and RCW 70.95. Ecology's regulations require that recyclable materials can only be transported to a facility that "transforms or remanufactures recyclable material for reuse." Ecology suggests using the following language for clarity: "Transportation of recyclable materials must be for recycling, reprocessing, reclamation or for a process that extracts or modifies the commodity for reuse other than disposal." By using this terminology, the definition section of WAC 480-70 would need to be amended to include "reprocessing" and "reclamation."

Part d) of this subsection states that "transportation of recyclable materials must not be sent to a transfer station, landfill, or other disposal facility for disposal". Please clarify what "other disposal facility" types WUTC is referring to.

Part e) use of the term transporters (emphasis added) of recyclable materials could be confusing. Ecology suggests part e) be changed to read, "Transporters of commercial and industrial recyclable materials must also register with the Department of Ecology as a transporter, in accordance with the requirements set forth in WAC 173-345."

Subsection 4

Please clarify what a "byproduct" is. Are byproducts solid waste, recyclables or are they the same as residuals? Ecology believes a byproduct could be interpreted as a solid waste, recyclable materials, and/or a residual. As stated in comments in Subsection 5, Ecology suggests WUTC define the term "byproduct".

"Disposal" is also not defined in rule. Ecology suggests WUTC consider replacing disposal with "disposal site," which is defined in WAC 480-70.

In parts a), b), c), d), and e) it is stated that these uses are not considered disposal. Ecology suggests that after each use, WUTC cite the statutory authority to make that determination. This approach assures consistency with Ecology definitions of what is or is not for disposal.

Ecology suggests the language in part 4 e) should be changed to read, "Land application for beneficial use ~~to enrich soil~~, or for composting, when either is approved in accordance with WAC 173-350." ~~to allow organic material to decay to amend soil that is beneficial to plants.~~

Ecology's position on part f) regarding whether the use of waste material as alternative daily cover can be classified as "recycling/reuse" is as follows: material being deposited in a landfill

is, in fact, disposal. Recycling is defined in Ecology's solid waste statute (RCW 70.95.030) as "transforming or remanufacturing waste materials into usable or marketable materials for use other than landfill disposal or incineration." Historically, no use of daily landfill cover or alternative daily cover has ever been counted as recycling in Ecology's annual recycling survey, nor has any other alternative daily cover been defined as recycling in this state. Let me reemphasize that Ecology has never and would not in the foreseeable future categorize use of waste materials for daily cover as recycling.

Subsection 5

The term "byproduct" is used regarding commercial and industrial byproducts for disposal. Please clarify "byproduct" with regard to its relation to solid waste and/or recyclable materials? Ecology believes a byproduct could be interpreted as both solid waste, recyclable material, and/or residual. As stated in comments in subsection 4 Ecology suggests WUTC define the term "byproduct".

Ecology recognizes WUTC's authority to require solid waste collection companies have a collection certificate from WUTC, however, it would be helpful to cite the statutory authority.

Part a) Ecology suggests WUTC insert, after landfill, the following: "which is not a land treatment facility (RCW 70.95.030)".

Part b) states that incineration at a disposal facility that does not produce energy is disposal. Ecology's position is that incineration of solid waste is disposal, period. Energy recovery is a byproduct of the incineration of solid waste. Energy recovery at a solid waste incinerator can help defray costs but that is not the primary purpose of the incinerator.

Subsection 6

This subsection has a number of terms that should be defined to ensure clarity, i.e. sorting facility, mixed recyclable materials, and motor carrier. Please note, Ecology suggests replacing "motor carrier" with "carrier" to ensure consistency with RCW 81.80.070, Permit required—Penalty—Cease and desist orders.

Part a) requires that any residual left over after sorting out material for non-disposal purposes must be transported from the sorting facility to a disposal site by a certified solid waste collection company. Ecology would like clarification if that means a certified solid waste collection company must transport all allowable residual material? If the sorting facility owns the residual, is the facility then prohibited from taking residual for disposal? Please clarify material recovery facilities (MRFs) requirements. Ecology's solid waste rule, Chapter 173-350 WAC, allows

MRFs to collect up to 10% of incidental or accidental residuals per load or 5% total of incidental or accidental residual a year. Also, part a) is not a condition but rather a requirement for transporters. Parts b) and c) are conditions for the carrier. Ecology suggests moving a) out of this paragraph and creating a separate requirement with appropriate citation from statute giving WUTC the authority to require this. Also, in parts b) and c) please clarify what conditions (all or one or both) conditions must be met.

In part c), the second sentence specifies that a carrier must demonstrate to the commission that the shipper is transporting its own solid waste for disposal. However, part a) requires residual to be transported by a certified solid waste collection company. Ecology believes proposed rule should cite the statutory authority for this demonstration. Are there criteria for a carrier to demonstrate it is their own solid waste being transported for disposal? Whenever the words "require" or "demonstrate" are used in a rule, the rule implies authority given to WUTC and then criteria should be given in order to demonstrate those requirements.

Ecology appreciates the opportunity to comment on the proposed rulemaking.

Sincerely,

A handwritten signature in cursive script that reads "Laurie G. Davies".

Laurie G. Davies, Program Manager

Solid Waste & Financial Assistance Program

