

DEPARTMENT OF
ECOLOGY
State of Washington

As required by
The Washington State Administrative Procedures Act
Chapter 34.05 RCW

CONCISE EXPLANATORY STATEMENT
AND
RESPONSIVENESS SUMMARY
FOR THE ADOPTION OF
Chapter 173-345 WAC
Recyclable Materials—Transporter & Facility Requirements

3/23/09

Publication: 09-07-010

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CHAPTER 173-345 WAC, Recyclable Materials—Transporter & Facility
Requirements

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CONCISE EXPLANATORY STATEMENT

I. Introduction

Chapter 173-345 WAC, Recyclable Materials—Transporter and Facility Requirement implements Senate Bill 5788, passed by the 2005 legislature. Chapter 70.95 RCW, Solid Waste Management—Reduction & Recycling Act was amended, requiring transporters of recyclable material to register with Ecology, transport recyclable materials only to locations where recycling occurs, keep records of all activities for two years, and requires recycling facilities to notify Ecology of their existence 30 days before operation commences (90 days for existing facilities). In addition, Ecology can require financial assurance for recycling facilities if Ecology determines it is necessary.

Ecology determined the most effective way to implement these requirements was to develop a rule.

Ecology intends to adopt the rule in March 2009 and the effective date is 31 days after filing with the Office of the Code Reviser.

II. Differences Between Proposed and Final Rule

The final rule language has differences in sections 010, 020, 030, 040, 050, 060, and 080 from the proposed rule language

- 1.) In section 010 Authority and purpose some words were deleted and material recovery facility was added for clarity

WAC 173-345-010 Authority and purpose. The purpose of this chapter is to establish minimum standards for the transportation of recyclable materials; establish notice and reporting standards for ~~solid waste~~ recycling facilities and material recovery facilities (MRFs); ensure that recyclable materials are not delivered ~~to transfer stations, solid waste incinerators, or landfills~~ for disposal; establish penalties for transporters of recyclable materials, recycling facilities, and material recovery facilities (MRFs) that do not meet the standards of this chapter.

- 2.) In section 020 Applicability reference to chapter 81.77 RCW is included.

WAC 173-345-020 Applicability. This rule applies to businesses that transport recyclable materials from commercial or industrial generators over the public highways of the state of Washington for compensation that are required to possess a common carrier permit to operate issued by the Washington utilities and transportation commission under chapter 81.80 RCW. Transporters include commercial recycling operations of certified solid waste collection companies regulated under chapter 81.77 RCW.

This rule also applies to facilities that recycle solid waste and MRFs except for those facilities with current solid waste handling permits issued under RCW 70.95.170. Businesses that transport covered electronic products exclusively for recycling are exempt only from transporter registration and reporting requirements under this rule.

3.) In section 030 Definitions:

The following terms and definitions were deleted from the final rule language: “disposal site”, “energy recovery”, “incidental”, “transfer station”, “landfill” and “transformation”.

The definition for “covered electronic product” was deleted, and the definition in WAC 173-900 was referenced.

“Covered electronic product” means as defined in chapter 173-900 WAC.

The term “facility” was changed in the final rule language for clarity. “Facility” means all contiguous land (including buffers and setbacks) and structures, other appurtenances, and improvements to the land used for solid waste handling, including recycling.

Due to requests from commenter’s the term “person” was added in the final rule language.

“Person” means an individual, firm, association, copartnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever.

Due to requests from commenter’s the term “recycling facility” was added in the final rule language.

“Recycling facility” means a facility where recyclable materials are transformed or remanufactured into useable or marketable materials.

4.) Section 040 was changed by deleting “recyclable materials” to allow for accumulation of some recyclables in piles rather than containers. Ecology clarified “a separate container” must be provided.

WAC 173-345-040 Collection of solid waste and recyclable materials.

All sites where recyclable materials are generated and transported for recycling must provide a separate containers for ~~recyclable materials and~~ nonrecyclable materials (solid waste), using collection practices consistent with chapter 173-350 WAC.

5.) Section 050 was changed moving the part of the last sentence up to the first sentence for clarity.

WAC 173-345-050 Transporter registration subsection 3 Prior to the transportation of recyclable materials, all transporters of recyclable material shall register with the department, and possess a common carrier permit issued by the Washington utilities and transportation commission, ~~prior to the transportation of recyclable materials on forms provided by the department.~~

6.) Section 060 was changed to delete part of the first sentence.

WAC 173-345-060 Transporter delivery of recyclable materials.

(1) A transporter of recyclable materials may not deliver any recyclable materials for disposal ~~to a transfer station, solid waste incinerator, or landfill.~~

(2) A transporter of recyclable materials who violates the provisions of this section is subject to a civil penalty of up to one thousand dollars per violation.

7.) Section 080(1) sentence structure was reorganized for clarity.

III. Summary of public comments and Ecology’s response

This section contains Ecology’s responses to comments received during the formal public comment period. Ecology has summarized and edited some of the comments in this section for clarity. You can see the original content of the comments we received in Appendix A of this document. The table below contains the commenter name, organization, and identifies what page in Appendix A the original content of the comment may be found.

Comment #	First Name	Last Name	organization name	Appendix A Original Content of Comment (page #)
1	Mike	Noder	citizen	A-3, A-20
2, 21,	John	Yeasting	Glacier Recycling	A-5
3, 4, 5, 6, 22, 23, 24	Tom	Dooley	Renew Recycling/New Pecan LLP	A-6
19, 23, 25, 26, 27, 44	Preston	Horne-Brine	Construction Materials Management Assn. NW Chapter	A-8, A-14
7, 8, 29, 39, 53, 56	Allen	Bluhm	Hub-City Recycling	A-10, A-27
40	Rose	Swier	Mason County Dept. of Health Services	A-18
20, 47	Nelle	Jacobson	Bobby Wolford Trucking & Demolition, Inc.	
52, 55, 57, 58	Art	Starry	Thurston County Public Health & Social Services	A-43
45, 50	Wendy	Mifflin	Yakima County Dept. of Public Services	A-17
9, 23, 30, 31, 32,	Brad	Lovass	Washington Refuse & Recycling Association	A-23
10, 11, 12, 23, 28, 33, 34, 35, 36, 41, 46, 48, 49, 51, 54, 59,	Andrew	Kenefick	Waste Management, Inc.	A-37
13, 14, 15, 16, 17, 18, 37, 38, 42, 43	Polly	NcNeill	Summit Law Group	A-31

General comments

Comment 1

The pending Department of Ecology actions would give a few special groups further incentives to manipulate local markets, which seem to have occurred repeatedly over the last couple of decades.

This has been detrimental to county rate payers that have been forced to rely on the government controlled Solid Waste System. High disposal costs have been a major contributor to a stagnant local economy which has lagged far behind most of the Northwest and greater nation for many years. If the state feels they should provide incentives, the state incentive package should include incentives for more disposal and recycling options rather than fewer. They should work to remove the regulatory barriers that have held disposal rates far above the national average in Spokane County for many years. With more disposal options at competitive rates, many activities that are currently considered “illegal” could be substantially reduced due to the reduced number of Department of Ecology rules.

Ecology response

Ecology regulations and standards are statewide and place the same potential financial burden on all citizens. Local cost differences are reflective of a number of factors: level of service provided, type of services provided, hauling distances, debt service, etc.. In this rule process, Ecology effort has been to try and clarify statutory language.

Comment 2

I am concerned that the applicability of the way this rule, as written, is not even-handed and extends to all people purported to recycle materials. I am concerned that companies may have an exemption, including the 81.77 RCW G permits, which would provide an exemption to meeting the requirements as a transporter. I would ask that it be clarified that if a company is performing non tariff freight hauls that they be subject to the same requirements so that the legislative intent of this bill is not subverted. For instance, if a transporter collects something as a recyclable, it goes through a process where it is actually recovered for recycling.

Ecology response

The revision will impact all transporters of recyclable materials and recycling facilities in the state. The final rule language makes it clearer that this rule applies to applicable G-certificated haulers.

The purpose of this rule is to assure that recyclable materials go to facilities that reprocess or remanufacture the material. Ecology recognizes that some residual from the recycling process has to be disposed, but our goal is to minimize that amount.

Comment 3

I recommend that the department reconsider its adoption of these rules and allow the statute that was very specifically and delicately put together to exist on it's own with interpretive definitions and language.

Ecology response

Ecology agrees that the statutory language is sufficient and does not want to change the intent of the language set forth by the legislature. However, clarification was needed in some sections, including the penalties section, in order to implement this rule.

Comment 4

The forms supplied by the department for the annual report need clarification. This was an issue in the statute that is not being addressed by the department in rule, which might be helpful.

Ecology response

The transporter registration form was created in November, 2005. It has evolved since 2005 to a slightly different form because this form was merged with the form for transporter of electronic products registration. The Department's intent was to create one form for both transporter programs. The recycling facility notification form has not been developed; however, the requirements for notifying Ecology are straightforward: company name, address, types of recyclables.

Ecology has determined not to put the registration and notification forms in rule because this approach allows Ecology to adjust the form, when necessary, without going through the formal rule adoption process.

Comment 5

The Department was given authority to adopt financial assurance requirements and forms for registration of transporters of recyclable materials. The proposed rule did not address either issue

Ecology response

The statute provides Ecology discretion in whether to issue financial assurance requirements for recycling facilities. Chapter 70.95.440 RCW states; “(1) the department may (emphasis added) adopt rules that establish financial assurance requirements for recycling facilities that do not already have financial assurance requirements under this chapter or are not already specifically exempt from financial assurance requirements under this chapter”.

Ecology determined that financial assurance was not required for recycling facilities for the following reasons (1) WAC173-350, Solid Waste Handling Standards already includes criteria for when it is necessary, and (2) staff experience with recycling facilities and associated environmental problems over the years has shown that these facilities have minimal risk to human health and the environment.

Refer to comment 4 for Ecology’s response about forms.

Comment 6

The last thing I want to have happen is for the department to come out with a rule and push another very lengthy and bitter fight within the legislative process over an issue that was resolved in 2005. The rule appears to have opened up the debate again because of the rule interpretation.

Ecology response

The intent of the proposed rule is to further clarify the statute, not create new issues. Ecology does not expect that there will be any new issues created by adoption of this rule because changes to statutory language have been kept to a minimum.

Comment 7

Since House Bill 1671 was passed in 1989, the recycling industry has been going downhill, in my opinion, even though the market has been good and people have made a lot of money. The state continues to chip away at the private recycling infrastructure and this is another example. Ecology is claiming is that this proposed rule has no economic impact on small business. A SBEIS was prepared under RCW 19.85 but the state did not go out and talk to the recycling industry, to the experts, and to small business to determine how the proposal is going to impact them.

Ecology response

As part of the rule process Ecology is required to review the potential economic impacts of a proposed rule, including impacts on small business. For this

proposed rule, an agency economist reviewed the proposed language and determined the rule was exempt from RCW 19.85 and from Cost Benefit Analysis and Least Burden Analysis under RCW 34.05.328. The proposed rule was exempt because it only clarifies the intent of the law and uses existing language from RCW 70.95.400 through 440 and WAC 173-350. This rule does not increase already existing activities or responsibilities of small or large business under the law. Therefore, there was no cost to analyze for this rule.

Comment 8

This rule opens the door to more red tape, which we do not need. If the state wants to increase and improve recycling, we are going backwards by all this extra language and regulation that is unneeded and unwanted.

Ecology response

The proposed rule language was specifically designed to meet the intent of the law, with minimal impact on those required to meet the rule requirements. Transporter registration began in 2006. We have streamlined the registration process so that a registration form that can be filled out online or by mail. No fees are involved for registration. In November 2005, letters were sent to existing recycling facilities informing them that this letter fulfilled the notification requirement in statute. New recycling facilities must notify Ecology 30 days prior to starting operation. Information about the notification requirement was sent to all local health departments as part of the information packet provided to prospective recycling facilities.

Comment 9

GENERAL COMMENT: As you know, WRRRA was a primary proponent of ESSB 5788 of 2005, which resulted in the statute upon which these proposed rules are based. Overwhelming majorities within both Houses of the Washington State Legislature passed the legislation. Many legitimate private sector commercial recyclers, local government, and state agencies, including the Department of Ecology, supported it.

The legislation was known as the Recycling Enforcement and Accountability Law (REAL). Our goal then was the same as it is now, to eliminate “sham recyclers,” and ensure that commercial recyclable materials are actually recycled, rather than taken to a disposal facility or, worse, dumped on public or private property creating dangerous health and safety issues. In support of eliminating these practices, the REAL Law was intended to give the DOE statutory authority to provide for enforcement and accountability within commercial recycling operations.

Another goal of the legislation that became effective on July 24, 2005 was to strengthen the statutory system for solid waste collection and transportation that has successfully served the people of our state for more than 40 years. Illegal collection and transportation of solid waste by non-certificated or non-city contracted haulers continues to be a major problem for the industry, local governments and the various regulatory agencies involved, DOE included. WRRRA has long been concerned that swift and sure punishment of these illegal haulers is the only effective method of controlling, and eventually eliminating, these practices. This is why ESSB 5788 contained new reporting, record keeping requirements, and significant enforcement language, particularly fines. We trust that our enthusiasm for enforcement will be carried forth in the rule once it is adopted, and implemented strongly by the Department.

We have tried to avoid duplicating comments made by others, particularly those by Mr. Kenefick, which we find to be valuable and urge you to seriously consider. His comment regarding the appeal process should especially be considered, and WRRRA joins in it. The elimination, or even minimization of procedural hurdles and conflicts, can only result in better administrative and judicial processes for all involved.

Finally, we urge the Department to continue to work closely with the WUTC in not only this rule making, but in that agency's upcoming rule revision. We have urged the WUTC to do the same, that is, to work closely with DOE on rule makings. Although sometimes necessary, it is frustrating for our members to be confronted with different rules from different agencies on the same subject. To the extent possible, uniformity and consistency should be a primary goal for both agencies.

Ecology response

Comment noted. Ecology will continue to work with the WUTC on this and future rulemaking to ensure uniformity and consistency between regulations.

Comment 10

Waste Management recognizes that the Proposed Rules are intended to implement and interpret the requirements of SB 5788, primarily codified at RCW 70.95.400 through .440. While the regulations, for the most part, follow the text of SB 5788, they do little to provide additional guidance or interpretation of the statute. As such, these regulations are likely to be of minimal benefit beyond the language of the statute itself. WM recommends that Ecology undertake a more comprehensive and detailed rulemaking that provides more detailed and practical guidance.

Ecology response

Ecology made a decision to follow statutory language as much as possible in this proposed rule. Ecology clarified statutory language only when necessary.

Comment 11

The proposed rules should provide more detailed guidance than merely repeating the statutory language.

Ecology response

Refer to response for comment 10.

Comment 12

The proposed rules should address the proper management of “recyclable materials” that can no longer be recycled. Given the recent collapse of the global markets for recyclables, the press has reported that many processors have been forced to warehouse baled recyclables for which there is no purchaser. Given the limited “shelf-life” for recovered newsprint, corrugated containers, other fibers, and some plastics, the department should provide guidance in these regulations dealing with circumstances where recyclable materials, having been stored due to the absence of any viable market, have deteriorated to a level that they are no longer an acceptable recyclable feedstock. Ecology should consider a tightly-controlled waiver or exemption process to address the local code violations and fire hazards from extended storage of these materials during these extraordinarily poor market conditions.

Ecology response

Ecology recognizes that in the present economic situation, circumstances could arise regarding the “shelf-life” of recyclable materials. Questions may arise about what happens when the recyclable materials’ shelf-life is over and no market exists for the material. When a material is no longer recyclable, it becomes solid waste and should be handled according to requirements set forth in WAC 173-350, Solid Waste Handling Standards and WAC 173-351, Criteria for Municipal Solid Waste Landfills.

Comment 13

The draft regulation does little “to ensure that recyclable materials diverted from the waste stream for recycling are routed to a facility in which recycling occurs.” RCW 70.95.020(4). We understand this is a challenging and sensitive area and one in which current regulations are not particularly helpful. However, this

rulemaking could assist transporters and regulators in clarifying which facilities might or might not meet the goal.

Ecology response

In this rule, Ecology elected to prohibit delivery of recyclables for disposal. WAC 173-350, Solid Waste Handling Standards, provides more details about facilities where recycling occurs.

Comment 14

There are several different, but related, issues worth considering about the type of facility to which transporters may legally deliver recyclable materials. This rule approaches it only from one perspective, and it identifies in exceedingly broad terms the locations to which recyclable material may not be delivered. For this rule to be enforceable, more detail is required describing those prohibited destinations. On the other hand, the regulation ignores the other perspective and fails completely to describe the facilities to which delivery of recyclable materials would be permissible.

Ecology response

Ecology clarified types of facilities that could accept recyclable material. See comment 13.

Comment 15

These facilities can rarely, if ever, qualify for a “clean MRF” exemption in accordance with WAC 173-350-310(2) (b), yet they commonly operate under the regulatory radar of the Standards, which are oriented to environmental risks, not social policy. Permitting Standards are not appropriate for facilities under this rule. Rather, performance standards are far more effective at providing incentives for recycling, and tools for enforcement. This rule is instead intended to assist in eliminating sham recycling. Some permitted MRFs are quite legitimately focused on processing for recycling, not disposal, and are valid delivery destinations. Some permitted transfer stations have rudimentary sorting and if that is the best local alternative, then delivery to such a facility might be legal, but if it is only being used to justify sham recycling, it is not.

Ecology response

The language in the proposed rule and the final rule states that recyclable material cannot be delivered for disposal. Therefore, the rule prohibits delivery of recyclables to transfer stations or landfills if the intended purpose is for disposal.

Comment 16

There are ways to identify a legitimate processing facility and stating them in this rule would be enormously helpful to all stakeholders.

Ecology response

Ecology elected not to provide details in this rule about processing facilities. These are facilities that convert materials into useful products, or prepare materials for reuse, recycling, or disposal. The specifics about facilities that reprocess recyclable materials can be found in WAC 173-350. Instead, Ecology added the statutory definition of “recycling” from RCW 70.95 in this rule to help ensure that recyclable materials are sent to facilities that “recycle”, “transform”, or “remanufacture” waste materials into usable or marketable materials for use.

Comment 17

At one end of the spectrum, the rule should state the obvious, and expressly allow transporters to deliver recyclable materials to a facility that actually recycles. It should specifically permit delivery to “a facility that transforms or remanufactures recyclable materials into usable or marketable products,” which is a slight variation to the definitions in the Solid Waste Handling Standards. The rule could also state, for instance, that a MRF that accepts only source separated recyclable materials and disposes of an incidental and accidental residual of less than five percent of the total waste received, by weight per year, or ten percent by weight per load is a legal destination. In short, the rule could state that facilities that have filed notifications in accordance with WAC 173-345-080 are legitimate destinations. Requiring notification and reporting from those facilities under this rule protects against the permit exemption being used as a loophole.

Ecology response

Ecology elected to stay close to the statutory language of prohibiting delivery of recyclable materials for disposal. The proposed rule language does not set specific levels of incidental or accidental residuals because of the complexity in measuring percentages per load. Additionally, WAC 173-350 already includes a process for exemptions of recycling facilities. Exempt facilities must provide Ecology with annual reports of their activities.

Comment 18

The rule should give some guidance for transporters to distinguish between a transfer station that happens to prepare some material for reuse and recycling but “processes” most material for disposal, and a MRF that prepares most of its material for recycling. Both might be excused from notification under -80 by

virtue of being “facilities with a current solid waste handling permit.” Yet, some are nonetheless valid destinations, and some are not.

Guidance might be found by referencing local solid waste management plans. If the local planners have identified facilities, which are predominantly devoted to preparing material for recycling, then deference may be given to that determination. The rule could state that possible means of determining which facilities are acceptable is whether they are identified as recycling processors in the local plan.

Ecology could consider listing in the rule other legitimate destinations, none of which would be determinative in and of themselves but any of which might be helpful in distinguishing between valid and invalid destinations. A facility that is predominately devoted to processing source-separated recyclable materials by reference to the complexity of machines, equipment or infrastructure would be preferred over an interim handling facility that secondarily processes recyclable materials in a rudimentary fashion, depending on the reasonably available alternatives. Another factor could be the degree to which more materials are taken from the facility are solid waste residuals transported for disposal or MSW incineration regardless of market conditions or are prepared as commodities for reuse or recycling to the maximum extent market justify.

We urge Ecology to solicit input on a second draft with more specific descriptions and indicators to assist commercial recyclers in making sure they are legitimately transporting unregulated materials.

Ecology response

Ecology recognizes the advantage of more specific descriptions and indicators in a rule. However, the disadvantage of more specificity is that it does not allow flexibility and we believe that flexibility is more important for those affected by this rule. In addition, Ecology is not referencing local solid waste management plans in this rule because local plans contain general guidance for kinds of facilities needed in the future, and would not be specific enough to serve as identification of current recycling processors.

Section 010

No comments on this section of the proposed rule.

Section 020

Comment 19

Include our suggested, additional wording:

“WAC 173-345-020 Applicability. This rule applies to businesses that transport recyclable materials from commercial or industrial generators over the public highways of the state of Washington for *non-tariff rate* compensation that are required to possess a common carrier permit *or possess a certificate of need* to operate issued by the Washington utilities and transportation commission under chapter 81.80 RCW *or 81.77 RCW*”

“WAC173-345-020, Processors and Processing Facilities, whom are not a garbage company affiliate, and whose sole business is to process non-hazardous source separated recyclable materials should be "EXEMPT" from this rule”.

Ecology response

Comment noted. Ecology elected to use rule language that is closer to statutory language.

Comment 20

Your regulations do not fit reality. (1) a trucking firm doing local dump trucking and drop box trucking for construction firms which includes hauling CDL waste and recyclable material; (2) A recycle yard processing site-sorted wood waste, debris, concrete and asphalt; (3) A construction company doing site preparation including demolition. The Dept of Revenue says we own the recyclable material when our truck picks it up from a customer and delivers the recyclable material to our own recycle yard for processing. We do not own the material when we pick recyclable material up from a customer and take it to another recycle yard. Our computer accounting cannot keep track of the difference. Small firms use packaged accounting software that does not allow the business to slice and dice the billing information. The sophisticated custom data bases necessary to provide the information requested are out of reach of small business.

Ecology response

Ecology recognizes that situations do arise that do not lend themselves to off-the-shelf business software; however, Ecology cannot write a rule that addresses all possible scenarios.

Section 030

Comment 21

As far as definitions in this rule, I do not feel that the definition of “incidental” meets the context that it is used here. I do not think it is appropriate, I think they were referring to businesses that may also haul things secondary in nature to their primary business of cleanup, recycling, or something else. I do not see any relevance for the definition of “disposal site” to be here because it is not referred to or used in the legislation. Nor is “transformation”, I do not see that language in the statute.

Ecology response

Ecology agrees and the definitions of “disposal site”, “incidental”, and “transformation” will be deleted from the definitions section of the final rule.

Comment 22

The big recommendation that I have for the department and it is becoming clearer as time goes on, that the more you try to make things specific, the more issue you bring up. The legislature, for example, chose not to use the term “source separated” yet the rule does. The department submits that kind of language in the definition of what a transporter of recyclable materials is. You will never see that term within the statute.

Ecology response

Ecology attempted to minimize changes from statutory language recognizing the issue you identified. The final rule language will not include the definition of “source separated”.

Comment 23

A number of commenter’s expressed concerns about term “incidental” in the proposed rule. Two comments want the definition deleted. Two other commenter’s suggested that we review the definition of “incidental” in RCW 81.80 and incorporate that language into the definition. The full text of the comments can be found in appendix A.

Ecology response

Ecology reviewed the comments and decided that the final rule language will not include the definition of “incidental”.

Comment 24

The term “incineration” was added to the list of disposal options in the rule. The legislature did not bring up incineration.

Ecology response

Ecology has removed “incineration” from the list of disposal options in the final rule. However, it is important to clarify that incineration is disposal because ash, with some exceptions, goes to a landfill for disposal. Also RCW 70.95.030(19) definitions specifically excludes incineration from the definition of recycling.

Comment 25

All transporters of recyclables should be regulated by the proposed rule.

The definition of "Transporter of recyclable material" means any person or entity that transports source-separated recyclable materials from commercial or industrial generators over the public highways of the state of Washington for compensation, and who is required to possess a common carrier permit to operate from the Washington utilities and transportation commission under chapter 81.80 RCW. Transporters include *non-tariff rate* commercial recycling operations of certified solid waste collection companies regulated under chapter 81.77 RCW.

According to the intent and purpose sections of the Sham Recycling law, (Chapter 70.95.400-430 RCW - Sections (1) (2) & (4) and the intent paragraph): ANY & ALL companies (other than the specified exemptions) that are transporting recyclable materials for compensation must register with the department and deliver to facilities that actually recycle the materials, thus eliminating “sham recycling”.

By statute and the definition in this draft language, “*Transporters of recyclable material*” includes “*commercial recycling operations of certified solid waste collection companies regulated under chapter 81.77 RCW*”. Such divisions make recycling hauls and charge non-tariff rates for them in the competitive marketplace. As long as these divisions keep their operations completely separate from those of the other solid-waste (garbage) hauling divisions in their corporations, then the intent and purpose of the law is upheld.

However, it has become clear that some certified solid waste collection companies are regularly using their solid waste (garbage) collection containers to frequently transport recyclables and are charging competitive, non-tariff rates for those hauls. Further, there is no subsequent control over whether or not those materials are actually recycled. Such activity circumvents the intent and purpose of the law. It is “sham recycling”.

This rule should reflect this reality, eliminate this abuse, and prevent it in the future. It should validate the intent, purpose, and implementation of the “sham recycling” law.

Our recommended wording change will accomplish this by:

Simply and clearly recognizing that all hauls of recyclable materials or solid waste, which occur at “non-tariff rates”, are actual recycling hauls and the companies involved must be regulated as such. Any company or division of a company (certified or other) that hauls at non-tariff rates should be bound by these transporter requirements or it should be considered in violation of the Sham Recycling statute and should be subject to the penalties prescribed herein and by statute RCW 70.95.400(3).

Under WAC 480-70-016 the UTC has the authority and discretion to determine whether it will regulate the transportation of a certain material as a solid waste as an operation under 81.77 and/or as a transporting operation under 81.80. It may do so in instances where “*carriers may be engaged extensively in both motor freight and solid waste collection operations*”. Notably it makes such determinations “*In cases where such operations are separable, in order to provide both services*”. We ask that DOE exercise such discretion and fully regulate all Transporters of Recyclables here.

Ecology response

Ecology agrees that application of the rule should apply to all transporters of recyclable materials as defined in RCW 70.95.400-440. Therefore, we have written the applicability section using language similar to the law.

Comment 26

Delete the entire definition of “Disposal Site”.

This definition, as stated in the proposed language, is unbounded and does not recognize that recycled material becomes a product at some point.

It is detrimental to recycling since all sites where recovered and recycled solid waste are placed in “final use” or final deposit” would need to be permitted as a “solid waste” site. This would include paper mills that utilize urban wood/recycled paper as a pulp feedstock, wood derived fuel sites, wood mulch/compost users, sheetrock manufacturers using recovered sheetrock feedstocks, and plastic manufacturers using recycled plastics pellets, etc.

Moreover, this particular phrase does not show up in the statute and a definition in the rule for the statute is inappropriate.

Ecology response

Ecology agrees that defining “disposal site” in the proposed rule language created confusion. The final rule language does not include the definition of “disposal site”.

Comment 27

The proposed rule language is a change from legislative intent.

Existing RCW 81.80.010(6) defines “a private carrier” as “a person who transports by his or her own motor vehicle, with or without compensation, property which is owned or being bought or sold by the person, or property where the person is the seller, leasee, or bailee and the transportation is incidental to and in furtherance of some other primary business conducted by the person in good faith.”

WAC 480.70.011 (2) The following collection and hauling operations are not regulated by the commission as solid waste.

(a) “The operations of carriers operating under a permit issued by the Commission 81.80 that occasionally transports to a disposal site, but whose primary business is not the collection of solid waste. This exemption does not apply if the carrier holds itself out to the public as a transporter of solid waste. Examples of this type of operation include but are not limited to:

- (i) a dump truck operator who as part performing dump truck operations hauls an occasional load to a disposal site, or
- (ii) a household goods carrier who transports to a disposal Site used packing materials from a shipment of household goods that the carrier transported”.

The proposed new language is a change from the legislative intent of the Sham recycling bill. It would eliminate exemption:

the Got Junk, clean-up people who hand load,
the gravel and compost people who haul product to customers and back-haul, some junk to the dump, and the
the demolition people and roofing people hauling away the demo debris and roofing tear-off waste that they generate.

Ecology response

Ecology will ensure the final rule language describes “transporters” nearly the same as the definitions in RCW 70.95.400-.440 (this rule’s authorizing statute). Ecology will try to be consistent with the UTC definitions and exemptions under RCW 81.80 when our purposes are similar.

Comment 28

Please clarify how the conduct of an activity which is carried out by a person or activity and which is related to the conduct of that person/entity's primary business can be carried out by that person/entity "by chance or without intention". This makes no sense.

Moreover, the draft language also seems inconsistent with exemption 050(2) (e) of these very rules (and statute) which is talking about the lesser amount/proportion of the "primary business" activity of a common carrier.

Ecology response

Comment noted. The final rule language will clarify and eliminate the inconsistency by eliminating the definition of "incidental".

Ecology disagrees that the draft rule language is inconsistent with exemption 050(2)(e). If this exemption applies to a common carrier, the carrier is not required to register as a transporter and is not subject to this rule.

Comment 29

Under the definition of transporter of recyclable material, it says that if you are compensated to haul recyclable materials, you are a transporter. Whether you are compensated is a UTC issue. I really think that should be deleted from the definition of transporter.

The definition of "recyclables" is incorporated into the definition of solid waste. Why?

Ecology response

In the proposed rule, Ecology used the statutory definition of "transporter" of a recyclable material, which comes directly from RCW 70.95.400-410. If a company meets the definition, set forth in the law, that company must meet the requirements of this rule. That does not negate a company's responsibility to meet any other regulatory requirements of another state agency or commission.

Recyclables are incorporated into the definition of solid waste to be consistent with the RCW 70.95.030(23) statutory definition of solid waste.

Comment 30

The proposed rule's definition of "transfer station" differs from that found in WAC 480-70-041, in that it does not seem to include an exception for "detachable containers" as transfer stations, which, as you know, are used to provide services

for sparsely populated areas in Eastern Washington. The definitions should be consistent.

Ecology response

The final rule no longer contains the definition of transfer station because it has been removed from the rule text.

Comment 31

The word “person” appears in the definitional section in various places, but the word itself is not defined. The usual statutory definition of a person as an individual, corporation, LLC, partnership, etc., which should be included to avoid any future confusion as to the coverage of the rule.

Ecology response

Ecology agrees and has included a definition of “person” in the final rule.

Comment 32

The proposed rule contains language regarding the placement of solid waste containers at sites where there is a recyclables container. As you know, WRRRA considers this provision essential to achieve the purpose of the legislation, and appreciates the inclusion of the appropriate language in the rule. There is, perhaps, one clarification, which should be added to strengthen and explain the provision even further. That would be to add the words “and provided to the site and transported in accordance with RCW Chapter 81.77,” at the end of the section. We are dealing with some very resourceful and, we believe, completely unethical illegal haulers who certainly are not above placing their own container on a site with the words “garbage only” spray painted on the side, then hauling it away themselves. That, of course, would defeat the entire intent of this section.

We believe this provision may prove to be the best evidence a transporter of commercial recyclables can provide in establishing his intent that the collected solid waste materials are destined for ultimate recycling. It is our hope that DOE will incorporate this language into the rule so that it can be included in the upcoming updates to the counties’ solid waste management plans that DOE is overseeing.

Ecology response

Comment noted. Ecology addressed the placement of solid waste containers in the proposed rule and clarified the final rule language pertaining to collection of solid waste and recyclable materials. Ecology did not see the need to add “and provided to the site and transported in accordance with RCW Chapter 81.77”

because this rule section refers to both recyclables and solid waste. RCW 81.77 applies to solid waste.

The term “garbage” is not used in the rule; rather, in the final rule language Ecology differentiated solid waste containers as those containers with nonrecyclable materials (solid waste). Ecology also clarified “collection” as those practices consistent with chapter 173-350 WAC.

Comment 33

Rather than define “covered” electronic product”, simply cross-reference to the definition in Chapter 173-900 WAC.

Ecology response

Comment noted. The final rule language references chapter 173-900 WAC.

Comment 34

Since the terms “disposal site” and “energy recovery” are not included anywhere in the statute or regulations, it appears unnecessary to define them in WAC 173-345-030. The terms are extraneous and do not appear elsewhere in the regulations and therefore should be deleted.

Ecology response

Comment noted. “Disposal site” and “energy recovery” will be deleted in the final rule language.

Comment 35

The proposed rules fail to provide guidance as to what a “recycling facility” or how to access whether something is “for the purpose of recycling”. A glaring omission from the proposed rules is any definition or guidance as to what constitutes a “recycling facility”. Since a primary purpose of SB 5788 is to “ensure that recyclable materials diverted from the waste stream for recycling are routed to facilities in which recycling occurs,” it seem incumbent upon Ecology to better articulate what a “recycling facility” is. While the proposed rules define “recycling”, they provide no further guidance as to how much recycling qualifies a facility as a recycling facility. (It would not be helpful, for example, to merely define a “recycling facility” as a facility where recycling occurs.) Likewise, a facility can qualify as material recovery facility if it “collects, compacts, repackages, sorts, or processes for transport source separated solid waste for the purpose of recycling.” Again, there is little guidance for distinguishing between a MRF whose primary function is to sort and prepare materials for

recycling, and those facilities claiming to be MRFs where materials are only incidentally or nominally prepared for subsequent recycling.

Ecology response

Ecology defined “recycling” in WAC 173-345 Definitions. Chapter 173-350 WAC defines what a recycling facility is and provides language to determine if a facility is complying with solid waste handling standards. Under WAC 173-350 local health departments must ensure a recycling facility or MRF is carrying out recycling activities. Under WAC 173-345, recycling facilities and MRFs must notify Ecology and local health jurisdictions of their existence and transporters of recyclable material may not deliver these materials for disposal. If transporters have questions about whether an identified recycling facility or MRF is complying with the requirements of WAC 173-350 they should contact the local health jurisdiction.

Comment 36

The term “facility” is defined and used inconsistently throughout the proposed rule. The proposed rule defines “facility” as “all contiguous land (including buffers and setbacks) and structures, other appurtenances, and improvement to the land used for recycling.” Yet, the term “facility” refers to operation where activities other than recycling occur. For example, “landfill” is defined as “a disposal facility or part of a facility...” A “transfer station” is also defined as a “facility” although the transfer operations would not be considered recycling.

Ecology response

The final rule language clarified the term “facility” and removes the definition of “transfer station”.

Comment 37

The definition of “processing” includes both converting the material into a useful product (i.e., recycling) and preparation for disposal (i.e., not recycling). Adoption of the definition for “processing” in these rules only obscures the distinctions, and is not particularly helpful.

Ecology response

Ecology reviewed the definition of “processing”. In order to maintain consistency with WAC 173-350 and WAC 173-900, the definition of “processing” was not revised.

Comment 38

A narrow definition of “recycling” is the scheme established under the proposed rules but it is commonly misunderstood. Many people think “recycling” is what happens at a MRF, and there are well-intentioned operators all over the state believing themselves to be exempt from permitting because they are “recycling” when really they are operating a MRF. This is an opportunity to emphasize that the definition of “recycling” applies to plants and remanufacturers; and many of the operations claiming to recycle are actually MRF facilities that collect, compact, repackage, sort, or process. The former is definitely an acceptable destination for commercial recyclables; the latter is not always.

Ecology response

Ecology reviewed the definition of “recycling”. In order to maintain consistency with WAC 173-350 and WAC 173-900, the definition of “recycling” was not revised.

Section 040

Comment 39

This paragraph does not make sense. It must be better defined or deleted. A recycling company, who provides on-site containers for collecting separated recyclable materials, should be "EXEMPT" from having to provide solid waste containers.

Ecology response

The statute does not specify responsibility for assuring on-site solid waste containers therefore the rule specifies that the owner or operators of the “site” where recyclable materials are generated are required to provide separate containers.

Comment 40

The wording in section 040 reads as if it would be unlawful to have any materials on site in a container. Right now all over the state, we have intermediate facilities that recycle scrap metal and it is being stored in huge piles on the ground. It would be incredibly impractical to insist, that they store it in a container.

Ecology response

Wording in this section has been changed to recognize that recyclable materials can be stored in a number of ways, (i.e. containers, piles, etc.).

Comment 41

Chapter 173-345-040 is ambiguous. Proposed WAC 173-345-040 requires separate container at “all sites where recyclable materials are generated and transported for recycling.” While it seems clear that sites where recyclable are generated must have separate containers, the language “transported for recycling” is ambiguous. Parsing this language, it reads, “All sites where recyclable materials are ... transported for recycling.” Read literally, this regulation would require sites to which recyclables are transported to have separate containers. The language could be clarified as follows: WAC 173-345-040. All sites where recyclable materials are generated and collected for transportation for recycling must provide separate containers for recyclable materials and nonrecyclable materials (solid waste), using collection practices consistent with chapter 173-350 WAC.

Ecology response

The final rule language will be clarified.

Comment 42

Collection site- Unless the material in a truck is source separated, the transporter is not carrying recyclable material. Therefore, a separate container on each customer site for non-recyclable material is compelling evidence that a generator intends recycling, and the absence of the container is a fatal flaw. Separating recyclable materials from other solid waste at the source is a mandatory prerequisite to the site-preparation of materials that can be hauled by any transporter under the statute, and there is no situation in which a generator can produce only recyclable materials, i.e., all customers generate some non-recyclable items or materials. It would seem to be in the best interest of the entire state to mandate that separate containers be present. The rules should require the transporter to verify the presence of separate containers. Transporters ignoring this requirement would put themselves at risk of violating the law, and there is no good reason for opposing it.

Ecology response

Refer to comment 39.

Comment 43

Separate containers are at the heart of the enacting legislation. Without them, there can be no sorting evidenced. Indeed, a careful transporter should ensure not only that separate containers are present, but also that they are of the appropriate size. Requiring the transporter to check that the container for non-

recyclable materials is large enough may be asking too much. Surely verifying only that separate systems exist is not an inappropriate burden.

Ecology response

Refer to comment 39.

Section 050

Comment 44

This section should be deleted. Hauling over a public roadway is solely regulated and enforced by the WUTC. However, if not deleted, the words: "a transporter of materials who is not compensated for hauling" should be "exempt" (as stated in WAC 173-345-020)

Although this may be implied, the recommended language would assure compliance with the statute's intent and purposes.

Ecology response

This section is needed as part of this rule to clarify transporter registration requirements.

Comment 45

Yakima County SW is requesting that the county SW department be specifically excluded from the rule. Yakima County expresses concern regarding the haul of recyclables by county owned and operated vehicles and county contractors. The rule does not specifically exclude counties.

Ecology response

Chapter 70.95.400(1) (d) RCW exempts cities from the requirements of transporters of recyclable materials but does not exempt counties. Ecology cannot expand exemptions from the requirements of this rule beyond what the statute specifies.

Comment 46

The exemption for transporters hauling their "own" recyclables should be clarified and narrowed. Ecology should provide better guidance through the proposed rules for these exemptions, otherwise, some transporters may seek to circumvent the purpose of the statute by merely taking title to the recyclables and thereby—arguably—becoming the "owner" of the recyclables. As the "owner" of the

recyclables, a transporter would arguably be exempt from these regulations and could avoid the requirements of SB 5788 altogether. For example, a transporter might offer to “buy” recyclables from a generator for \$1.00 per ton, but then charge \$40.00 per ton to collect and transport the recyclables from the generator’s facility. Indeed, even if no payment were made, the transporter could become the “owner” of the recyclables merely by agreeing with the generator to transfer title to the recyclables. Once the transporter had title to the recyclables, it could argue that he is exempt from the registration requirements, the prohibition on disposal of recyclables, the recordkeeping and reporting requirements, and every other provision in Chapter 173-345 WAC. Ecology’s regulations should prevent such an easy artifice for circumventing SB 5788.

Ecology response

Ecology is aware of the issue but had decided not to change the present language. Trying to anticipate the many possible scenarios that could happen and define them in the rule would make the rule language too lengthy and complicated

Comment 47

Construction recycling was created by and has flourished under small business management. For over 15 years firms like ours have been taking construction waste wood, land clearing debris, used concrete and asphalt out of the waste stream. These regulations are an attempt by the large garbage haulers to monopolize the business and eliminate small businesses. Small trucking firms can provide the flexibility and speed necessary to meet contractor's disposal needs. Site sorting requires hour by hour changes in delivery and pick up schedules. The large garbage haulers cannot provide that kind of service. Putting one-size-fits all regulations on these small trucking firms will reduce the amount of recycled material. If a contractor cannot get a drop box for recyclable material delivered on a moment's notice, then everything from that site goes into the waste can. There is no reason to regulate the transporters. All decisions about recycling are made by the firms hiring the transporters. The firm hiring the transporter also pays for the disposal of the material. What is accomplished by regulating the transporters?

Ecology response

Comment noted. The legislature has made the determination, through law, that transporters of recyclable material have certain minimum requirements. Ecology has made every effort to work with business and not place an undue burden on transporters. Ecology has not placed additional requirements on transporters.

Comment 48

Please clarify who has enforcement and civil penalty authority under part 4 of this section.

Ecology response

The legislature in chapter 70.95.400 RCW directs Ecology to register all transporters of recyclable materials. Transporters that do not register with Ecology are subject to a penalty. Ecology has been given the responsibility for transporter registration. This rule helps clarify the statute and enforcement requirements.

Comment 49

The exceptions under WAC 173-345-050(2) are somewhat murky. We acknowledge they are straight from the legislative language, but some descriptions might help in understanding the intent. For instance, the classic example of a carrier hauling its own material that is exempt under section 050(2) (a) when such activity is “incidental” to its primary business is a landscaper who hauls compostable materials to the job sites. The landscaper’s primary business is not hauling recyclable materials and would not be considered a “transporter.” (Also, we do not believe the proposed definition of “incidental” actually captures that activity, since the landscaper’s haul is not by chance or unintentional.) The difference between the incidental hauler and the exemption in subsection - 050(2) (e) could also be clearer by providing illustrations or embellishments. The landscaper is not a common carrier, clearly. A dump truck operator who hauls a load of glass cullet occasionally typifies this exemption.

Finally, we are somewhat troubled by subsection -050(2) (b), and the potential for misinterpreting the exemption for entities who have “purchased” recyclables. First, to the extent the distinction turns on the exchange of money, it must be made clear that the cost of transportation must be factored into whether or not the material is purchased. The legislative intent, we believe, was to address straightforward situations where recyclers are being compensated solely by virtue of the value of the commodity. In current market conditions, of course, this is not happening. There have been times, however, when the value of the commodity was sufficient to cover the transportation and overhead costs. That is a narrow situation contemplated here.

Ecology response

Comment noted. Ecology recognizes this is an issue and removed the definition of “incidental” that was in the proposed rule. Ecology does not believe that adding examples to the rule can clarify the situation. Ecology will provide guidance in the future to address this issue.

Section 060

Comment 50

The county is requesting that additional language be added specifically giving authority to county SW departments and local health jurisdictions to grant a variance from this rule, on a case-by-case basis, due to local conditions such as economics, market availability, health and safety issues or local SW planning requirements.

Ecology response

Ecology recognizes the concern about the present economic climate; however, the statute does not provide Ecology the authority to delegate any of its responsibilities to local government.

Comment 51

WAC 173-345-060 cannot prohibit transporters from delivering recyclables to solid waste incinerators because SB 5788 did not include such a prohibition. While most of the proposed rule includes language that is similar to, if not identical to, the statutory text, WAC 173-345-060(1) includes “solid waste incinerators” in the prohibition even though the statute does not contain this prohibition. By adding “solid waste incinerator” to the proposed regulations, Ecology has gone beyond the statutory authority it purports to implement. The regulation should be revised to delete references to “solid waste incinerator.”

Ecology response

The final rule language eliminates the solid waste incinerator prohibition. However, this revision does not allow a transporter of recyclable material to take material to a solid waste incinerator. A transporter can only take recyclable material to places where recycling occurs, not disposal. Ecology considers solid waste incineration to be disposal. In addition RCW 70.5.030(19) specifically excludes incineration from the definition of recycling.

Comment 52

Please clarify who has enforcement and civil penalty authority under part 2 of this section.

Ecology response

Ecology has enforcement authority for section 400 through 440 of the solid waste statute and this rule. RCW 70.95.410 states, “a transporter may not deliver any

recyclable materials for disposal to a transfer station or landfill”. If a registered transporter delivers recyclable material for disposal, the transporter is violating requirements for a registered transporter and is subject to the penalties prescribed in this section.

Even though Ecology has enforcement authority, local health departments could also have enforcement authority if the material hauled to a transfer station or landfill does not comply with state laws, solid waste rules, or local ordinances.

Section 70

Comment 53

Transporters, who transport source separated recyclable materials to their own processing facility, should be "EXEMPT" from this section.

Ecology response

Transporters who do not meet the “Applicability” requirements of this rule under WAC 173-345-050 do not have to meet the requirement of section .070. If a transporter must register with the department (is not exempt under section 50) then the transporter must meet the requirement of section 070. Under section 050 if you are hauling your own recyclables or recyclables you generated or purchased, you are exempt.

Comment 54

The transporter recordkeeping requirements must include provisions to ensure the confidentiality of proprietary business information. WAC 173-345-070 requires transporters to keep records of recyclables, including information that many companies would consider confidential and proprietary business information, such as information about invoices. Even though the proposed regulations do not require the transporter to submit this information to Ecology, it does require that the information be made accessible to Ecology for inspection. Often, however, Ecology will require persons to provide copies of such documents to the agency. The proposed regulations should include provisions to ensure that this information can be deemed confidential and that Ecology will not disclose it to other persons. WM recommends that Ecology adds the following subsection “the transporter may request that the records be made available only for the confidential use of the Department, pursuant to RCW 43.21A.160.

Ecology response

RCW 42.56.270 provides details of proprietary information protocols, which the Department follows. This rule does not need additional proprietary language.

Comment 55

Please clarify who has authority for issuing civil penalties under part 3 of this section.

Ecology response

Ecology has the enforcement authority to implement sections 400 through 440 of chapter 70.95 RCW. This rule implements those sections of the statute.

Section 080

Comment 56

Section 173-345-080, Processing Facilities and Buy-Back Centers that primarily engage in the processing of source separated recyclable materials should be "exempt" from this section.

Ecology response

No, the statute requires that recycling facilities notify Ecology of their existence. A processing facility could also meet the definition of a recycling facility under WAC 173-350. If a processing or buy-back center does not meet the definition of a recycling facility, it would be exempt from the requirements of this section.

Comment 57

Section 173-345-080 Please clarify who has enforcement and civil penalty authority under part 2 of this section.

Ecology response

The rule directs recycling facilities to notify both Ecology and the local health department 30 days prior to commencing operation. Ecology has the enforcement responsibility for this section, however, local health departments may enforce if there are violations of WAC 173-350, or local ordinances.

Section 090

Comment 58

Section 173-345-090 It would be very helpful if the enforcement authorities and responsibilities were summarized in the rule. While this can be determined by carefully reading the draft rule and authorizing RCWs, a quick summary here would save people time.

Ecology response
Comment noted.

Section 100

Comment 59

WAC 173-345-100 should specify where appeals can be taken. One primary purpose in promulgating regulation is to provide the regulated community with clear guidance. As drafted, WAC 173-345-100 does not provide any guidance as to appeals of penalties issued under WAC 173-345. For example, the regulations should clearly state whether an appeal could be brought before the Pollution Control Hearings Board, in Superior Court, or elsewhere. It is therefore incumbent on Ecology to identify clearly what board or court has jurisdiction to hear appeals of civil penalties issued under WAC 173-345.

Ecology response

The language in this section is the same appeal language used in chapter 173-350 WAC and chapter 173-308 WAC.

IV. Summary of public involvement opportunities

Please provide a summary of public involvement opportunities for this rule adoption:

List or describe:

- The following workshops were held:
 - March 18, 2008 Ecology NWRO office in Bellevue
 - March 20, 2008 Ecology ERO office in Spokane
 - March 25, 2008 Ecology HQ office in Lacey

- The public hearing was held:
 - December 15, 2008 at Ecology HQ in Lacey

 - Prior to the workshops approximately 200 emails and 500 postcards were sent out to prospective interested person's notifying them of the workshop and providing workshop information.
 - A FOCUS sheet was prepared
 - Website was created and is updated as needed
<http://www.ecy.wa.gov/laws-rules/activity/SB5788.html>

- The public notice was placed in the state register. Additionally, notices were sent to persons expressing interest (interested parties list) and 700 persons sent workshop notices in January 2008.

V. Appendices

Appendix A **Copies of all comments, both written and oral comments received at the public hearing**

Appendix B **All public notices**

Appendix C **Final Rule text**

Appendix A

Copies of all comments, both written and oral comments received at the public hearing

Public hearing transcription of taped minutes

12.15.08 hearing for proposed rule 173-345 WAC

Hearing officer: Aleta DeBee

Transcribed by Millie White

INTRODUCTORY REMARKS

1:04 p.m. on Monday December 15th 2008 and this hearing is being held , and there is an attendance sheet going around as well and if you would like to give public comment today, make sure to get those cards up to me so that I can call you name o.k and put a big check mark on it so that I know that you want to talk, so we'll start this: Let the record show that it's 1:05 p.m. Monday December 15th 2008 and this hearing is being held in, at the Department of Ecology at 300 Desmond Drive in Olympia, Lacey Washington. Legal notices of this hearing were published in the Washington State Register on November 19, 2008. In addition, notices of the hearing were mailed to about 500 persons and emailed to about 200 more with follow ups to interested persons. Many of you may have received that notice. As hearings officer, my job is to conduct the hearing. I have two main responsibilities. First I need to make sure everyone who wants to has the opportunity to come up and comment. Second, I need to make sure that the Department obtains a clear record of the hearing that is what this recorder is for. First ground rule is about speaking in order. I'll call you by name and I'll attempt to get it in the order in which you walked into the room and handed in your cards and I'll record you. What I'd like to have you do is come up front here right by the recorder, there is another sheet someplace, is there a second sheet? O.k, great. Make sure everybody gets a chance to fill out the card and the sheet. And if you'd like to make a public comment, please come to this side and speak into this little microphone right here. State your name for the record at that time and you have the floor and you should be the only one speaking at that time. The second ground rule is about the length of your comments. I'd like to make sure that you and your neighbors get to comment so we know you took the time and trouble to

come on this day and that you want to leave at a reasonable hour too so I'd like everyone to limit their comments to about five minutes give or take a minute and I'll kind of signal you when it's time. Does that sound o.k.? The third ground rule is about questions. Today there will be a short fifteen to thirty minute question and answer period after the Department's presentation. Once the formal public hearing segment begins, it's your turn. You can ask questions for the record when you speak but at this point we can not enter into any discussions at that point. After the hearing is adjourned you are certainly welcome to come up and talk with program staff. After the written comment period which follows is over, staff will prepare a responsiveness summary which identifies questions and comments. You all get a copy of these written responses if you fill out one of those cards. And my fourth and final ground rule involves noise from the audience. This is kind of a strange little machine and it picks up everything so if there's talk in the background it will be hard to hear the speaker. So one person at a time talking and the comments to about five minutes. Questions can be asked for the record during that comment period but will not be answered at that time right before then and after and hold down the noise in the background. First we'd like Randy Martin to give a brief presentation on the proposal Chapter 173-345 Recyclable Materials Transporter and Facility Requirements. He is an environmental planner at Ecology's Solid Waste Program. And then we'll take fifteen to thirty minutes for questions and I'll go to your registration cards and begin calling your name for you to provide comment so make sure those cards are up here o.k, put a big check mark on there if you would like to make comment. And make sure you fill out that piece of paper that's going around also. And now it's your turn, and now it's Randy's turn to give us a brief explanation. Good afternoon. My name is Randy Martin and I work at the Department of Ecology. I am the lead staff relative to proposing and or drafting and implementing the WAC, the proposal WAC 173. I'm just going to give you a brief summary of the main components of this particular bill because I believe that Ecology probably read this proposed bill and you're well aware of various facets of it. As a brief background, this particular rule basically was a result of a piece of legislation passed in 2005, Senate bill 5788 and that bill is clarified as in the Solid Waste statute as 70954003440, there's also a slight addition to the I believe it's a purpose statement 020 and that was just basically a

small limitation. In November 2007, we filed the first phase of this process to basically let the public know that we're starting a rule process in March 303 workshops in which we received over a 100 comments and lo and behold they were incorporated into this proposed bill. Now then, about the rule itself, the rule, I won't go down section by section in explanation, I'll just cover the highlights, when we get to the question and answer period, if you wish t me to go into further detail, I would be happy to do that. Basically the major componants. It's on now and I'd like to give you a turn to give us oral testimony. I'll be starting with people in the order I received their cards sort of. And if you haven't turned in a card please send them on up here and if you'd like to give testimony, check off that box at the bottom so that I'll know so that I can call on you. Remember, one at a time, these questions are for the record and these comments are for the record and I'd like to limit the comments to about 5 minutes and we'll keep the noise down in the room so that we can hear them really well so that we can answer them. When I call your name, step to the front, grab this microphone, you can have a seat here and state your name and address for the record. We'll begin with Mike Noder and anyone else who wishes to add something, please remember to tell us your name and your address when you come up and if you haven't checked the little box at the bottem, that's o.k, you can decide later on if you'd like to comment and in case you need to leave early I just want you to know that you can send ecology written comments. They must be received no later than 5 p.m. on December 23rd, 2008. Send them to Randy Martin at the Department of Ecology at PO Box 47600, Olympia Washington, 98504-7600 or send by email to rama461@ecy.wa.gov. That's WA.GOV. And we'll begin with Mike.

PUBLIC COMMENTS

Mike Noder

Thank you, my name is Mike Noder, 1223 E 38th Spokane Washington, speaking as a citizen of Spokane in the state of Washington. My comments are interwoven with Spokane County issues which at their foundation involve Department of Ecology rules. The new transporter and facility requirements pending

requirements will only contribute to an expensive and escalating problem in Spokane County and will increase regulatory burden. The Spokane Regional Solid Waste system is projected to lose as much as 9 million dollars in 2009. The cost of this system is in the neighborhood of 60 million dollars annually adding the cost of collection; this total may be over 100 million dollars per year in a county with only 420,000 people. The Spokane Regional Solid Waste system has recently reported having great difficulty dealing with large volumes of a variety of a supposedly recyclable materials because no viable markets for these materials exist. The Spokane Solid Waste Advisory Committee in the past requested that the directors of this system provide an accounting of current recycling program costs. The director of the system responded by saying the cost will shock you and has thus far not complied with the committee's request for cost and volume information. One example of the shockingly expensive recycling program is the clean green program. This program trucks grass clippings 700 miles out of our traditionally agricultural county at a cost of around 2.5 million dollars a year. Local private sector solutions are available at a small fraction of this cost. 25 million over 10 years to handle what many local providers could handle for closer to 5 million and make a profit is not permitted however the system representatives claim the program is required to meet Department of Ecology requirements. A small number of private sector companies which are recipients of an overwhelming percentage of the systems budget appear motivated to maintain and extend current Department of Ecology rules that effectively increase barriers to any other company seeking to participate in local waste and recycling markets. These few companies under contract with the Spokane Regional Solid Waste System appear to have benefitted disproportionately by the quasi monopoly statuses afforded the system. Adding to Spokane's problems is a growing incident of illegal dumping. Politicians, system staff routinely bemoan this criminal behavior but thus far have failed to move to reduce the cost of disposal and recycling within the county. The Solid Waste Advisory Committee has called for changes in administrative practices and to increase competition and private sector options to battle these rapidly escalating costs of disposal and recycling. The system staff have resisted these efforts to the point of legislation which has lead to the Solid Waste Advisory Committee's recent withdrawal of support for the current proposed Solid Waste

Management Plan update. This was largely due to a re-occurring deception and misrepresentation by staff. Unresolved accounting irregularities have lead to a current Washington State audit and there's a separate independent performance audit recently initiated. The resolution of these investigations and the adoption of an updated Regional Solid Waste Management occur prior to the adoption of additional rules that would add to the restrain of trade, reduce recycling and increase disposal costs within Spokane County. The pending Department of Ecology's actions would only give a few special interest groups further incentives to manipulate local markets which seem to have occurred repeatedly over the last couple of decades. This has been detrimental to county rate payers that have been forced to rely on the government controlled Solid Waste System. High disposal costs have been a major contributor to a stagnant local economy which has lagged far behind much of the Northwest and greater nation for many years. If the state feels they should provide, the state should provide incentives for more disposal and recycling options rather than fewer. They should work to remove the regulatory barriers that have held disposal rates far above national average in Spokane County for many years. With more disposal options at competitive rates, many illegal activities some of which are illegal only because of Department of Ecology rules could be substantially reduced. If those responsible for the illegal dumping were leaving their garbage only in the parking lot of the Department of Ecology instead of all around Spokane County, the state would be far less oblivious to the misguided and counter productive Department of Ecology recycling and reuse regulations. Thank you.

Thank you Mr. Noder.

Malcom McClaski, and next will be Todd Smith, John Yeasting?

John Yeasting

Yeah hi, John Yeasti on behalf of Glacier Recycle, 2300 148th Ave SE Auburn Washington. Just briefly like to comment on the applicability of this, I think that the legislative intent was very clear with 5788 to the title of the bill which is known

as the Sham Recycling Bill, we wanted to make sure that real recycling was happening when recyclables were collected for that purpose and I'm concerned that the applicability of the way this rule is written is even handed and extends to all people purported to recycle materials and I am concerned that some companies may have an exemption, the other 8177 G permit would provide an exemption to meeting the requirements as a transporter and I would ask that it be clarified that if a company is performing non terra freight hauls that they be subject to the same requirements so that the legislative intent of this bill is not subverted and not able to for instance collect something as a recyclable and then have it go through a process that where it's not actually recovered for recycling and as far as definitions in this rule, I don't fee that the definition of incidental meets the context that it's used here, I don't think it's appropriate, I think they were referring to businesses that may also haul things secondary in nature to their primary business of cleanup or recycling or something else and disposal site, I don't see any relevance for that definition to be in here cause it's not referred to or used in this bill nor is transformation, I don't see that in the language of the statute. And that's it, thanks.

O.k. Mr. Tom Dooley, (do you think it would handle me from over here, will it pick me up?) Let's just see if we can set this away.

Tom Dooley

Tom Dooley here on behalf of New Pecan LP as well as Renew Recycling, 4229 Park Drive SW Olympia Washington, 98512. My comments are going to be probably broader than most, we'll let our association deal with some of the more specific issues. I brought these up within the question and answer session but having been a party to the process with regard to 5788, the statute that lead to the promigation of this kind of rule, I guess the big recommendation that I would have for the department and I guess it's becoming clearer as time goes on that the more you try to make things specific, the more issues you bring up. The legislature tried this very same issue, we had ringlings over a lot of these very same issues and that's why I think you're seeing so many reactions here from some of the folks within the industry. The legislature for example chose not to use the term "source

seperated" yet in the rule it actually, the department actually submits that kind of language in the definition of what a transporter of recyclable materials is, you'll never see that term within the statute, so that's something new that's being pushed out there. The incidental was an issue also addressed by the legislature I think you'll see in the history of 5788, they tried to use even percentages and issues like that and those were rejected by the legislature in favor of a more generic term that could easily be dealt with by the department under the normal rules of defining issues and statutes, I don't think there's a necessity for those things in rule. In addition, if the department's goal is to try to mimic the legislation and it's not our fight but I think it something that kind of indicates the moves that things have been done in this rule is it added the term incineration to the list of for disposal which the legislature didn't bring up but obviously, somebody's got an axe to grind with regard to incineration and they didn't bring it up within the legislative context and the legislature did not deal with that issue with regard to disposal, I would encourage that if that is the case that those folks go to the legislature and ask them for that if they have issues. But in the broader scope, I would recommend that the department reconsider it's adoption of rules with regard to this and allow the statute that was very specifically and delicately put together, allow it to exist on it's own without interpretive definitions and language. I think ultimately the department would have to come forward and interpret this if they get complaints and if they get issues and those things would be argued within the court systems as they always are or in the regulatory system as they are but not to try to assume what the legislature wanted to do or was doing and make definitions that the legislature chose to stay out of so I think there are issues that probably lend themselves to more clarification that were identified by the legislature, the forms being supplied by the department for the annual report which was an issue that was in the statute that had not be propogated by the department in rule which might be helpful. The financial requirements for assurances that the department was given some authority to do had not been done as well as the forms for registration and that sort of issue so I guess I would encourage the department and others would get into more of the specifics about the individual definitions but I think in the broader scheme, the last thing we want to have happen is the department come out with a rule and push another very

lengthy and bitter fight within the legislative process over an issue that has been put to bed back in 2005 and has not reared it's head since then luckily and open up that whole can of worms again because of it's interpretation so, I encourage you to look at that so. Thank you.

Thank you Mr. Dooley.

Preston Horne- Brine

My name is Preston Hornbran, I'm the executive director of the Construction Materials Recycling Association the NW Chapter, PO Box 78366, Seattle Washington 98178. The Construction Materials Recycling Association NW Chapter is a coalition of independent fair trade recyclers, transporters, contractors, manufacturers, and generators involved in the recycling of construction and demolition C&D related materials in the competitive market place across the NW. We're a regional chapter of a national construction materials recycling association which has been active in promoting and advocating for the development of our industry for over ten years having over 250 members. I have given you all copies of my specific comments; I'm going to make 4 specific points so you have the wording so I will refer to those without trying to explain it in my comments. Our first comment is with regard to applicability and the definition of transporter of recyclable materials. According to the intent and purpose sections of the law, any and all companies other than the exemptions specified that are transporting recyclable materials for compensation must register with the department and deliver to facilities that actually recycle materials thus eliminating sham recycling. By statute in this draft rule language, transporters, according to the definition, transporters of recyclable materials includes commercial recycling operations of certified solid waste collection companies regulated under 8177. Such divisions do make recycling hauls and they charge non tariff rates afforded them in the competitive market place. As long as these divisions keep their operations completely separate from those of other solid waste garbage hauling divisions in their corporations then the intent and the purpose of the law is upheld. However, it has become clear that some certified solid waste collections companies are regularly using their solid waste garbage collection containers to

frequently transport recyclables and are charging competitive non tariff rates for those hauls. Further there is no subsequent control over whether or not those materials are actually recycled or not. Such activity circumvents the intent and purpose of the law. It is Sham Recycling. This rule should reflect this reality, eliminate this abuse and prevent it in the future. It should validate the intent purpose and implementation of the Sham Recycling Law. Our recommended wording would insert the phrase non-tariff rate in front of compensation in the applicability and that definition of transporter of recyclable materials. It would recognize that any and all hauls of recyclable materials of solid waste which occur at non tariff rates are actually recycling hauls and the companies involved must be regulated as such or that company should be considered in violation of the Sham Recycling Statute and should be subject to the penalties prescribed herein. What's fair for the goose is fair for the gander. Second comment. We would strongly suggest the deletion of the entire definition of disposal site. This has been discussed earlier in the section. This definition is stated in the proposed language. Not only does it show up in the statute but as stated it's unbounded, it doesn't recognize that recyclable material becomes a product at some point and it's very detrimental to recycling since many many sites were recovered and recycled solid waste are placed in final use or final deposit of recycled product in uses. Third comment; suggest the deletion of the entire definition of incidental. It's a new definition in these draft rules. The term as defined in the current version reflects the concept of random and infrequent activity having no intent rather than the concept of transporting activity at some smaller but regular portion of a primary business activity as conducted by that person or entity doing the transporting clearly with intent. The draft definition as it stands now is not consistent with the meaning as expressed in a wide variety of other provisions in state law and state rules, most notably the private carrier definitions that exist in 8180, 8177, 480.14, 480.70. It's simply not consistent the way that this is phrased now is not consistent with that. There are other exemptions in 480.70 for solid for hauls, solid waste hauls that exempts them from solid waste regs again; the meaning is more consistent with some smaller but regular portion of a primary business activity. Following up from what Mr. Dooley said, it also frankly violates the intent of the Sham Recycling Law, as we recall from testimony during the development of

the legislation, and I would suggest it's internally inconsistent too even with the exemption in subsection E down below. Our next recommendation, our final recommendation is to include in section 050 item 2D, city municipal solid waste departments or city solid waste contractors as an exempt, as exempt entities that we add the language that you see there when the contracts that they're exempt, city solid waste contractors are exempt when the contract specifies similar handling requirements for recyclable materials. Although this may be implied by the language that you have here, we would add, our recommended language to ensure compliance with the statute. That's all we have, thank you very much.

Allen Bluhm

Hi my name is Allen Bloom representing Upcity Recycling down in Centralia. I'm probably one of the few small recyclers here at this table and a few small recyclers left in the state. I'd like to make a couple points regarding this but first of all I'd like to go back in history a little bit, late 80's House Bill 1671, Clean up Washington Act, I was directly personally involved, I was involved with the WSRA at the time as was Preston in drafting that in conjunction with the state for two reasons at that time and that was to (1) further recycling in this state and (2) protect the recycling industry. Since that law has been passed, the recycling industry has been going down hill in my opinion even though markets have been good; people have made a lot of money. The state continues to chip away at the recycling, the private recycling infrastructure. O.k and this is another example of it. Now, one of the things that the DOE is claiming in effect to the rewriting of this particular document, there was one question asked and I don't want to bring any names up but Randy specifically, had there been a small business economic impact statement been prepared under RCW 19.85 in relation to this, in other words, is the state required to go out and talk to the recycling industry, talk to the experts, talk to the small businesses and see how it's going to impact them? I would think so, but the answer was no, no, we the DOE do not have to talk to the recyclers. We don't have to do that because, this is simply a clarification of rules, and or dictated by statute which refers to readers of another rule, well I submit, I submit that these rules are being changed not simply clarified or referenced. Recycling companies, especially small ones like myself are highly impacted by these kind of

language changes and their not clear, again, they're not clarifications in my opinion, they're changes. With these changes it's simply and I think we've heard it here from several people, it opens the door for more red tape which we don't need especially in this economy, you know, we're a crumbling industry right now, we don't need more of this stuff going on. It's just going to further, and that's not what the state is all about, the state wants to increase recycling, better it and improve it and we're going backwards by all this extra language and regulation that is unneeded and unwanted and that being said there is a couple of changes I would like to propose to the definitions, first and foremost, and I mentioned this on the comment period, under the definition of transporter recyclable material. It says if you are compensated to haul recyclable materials, you are a transporter. I asked that question at the meeting today and I got the answer that just because you charge compensation doesn't necessarily make you a transporter so I think that needs to be deleted. Whether you compensate, that's a UTC issue, you know, the DOE, UTC are kind of becoming intertwined in that respect, I really think that should be deleted out of that as a part of the definition for a transporter of recyclable material and furthermore, the definition of recyclables in itself is defined by the state as solid waste, o.k, I've got a container out there for cardboard, can the state say it's solid waste? Sure they can by definition of they're rules, they can say "sorry Upcity, you're hauling solid waste, you've got to have a solid waste hauling permit for that, now that may not happen but there the door is open for that kind of stuff and I think we really need to redefine recyclable materials especially source separated materials, when source separated materials are placed in a container for recycling, they're a commodity, they are a commodity, they're not a solid waste and I think we're going backwards by defining that type of material as solid waste. And that's all I have for now, thank you.

Thank you.

CLOSURE OF PUBLIC TESTIMONY

And I believe the cards that I have that's all folks who would like to give testimony. Are there any others? No further comments. O.k, adoption is currently scheduled

for January 15, 2009 if the proposed rule should be adopted that day and filed with the code reviser will go into effect 31 days later. If we can be of further help for you please don't hesitate to ask, Randy Martin is your technical assistant contact. On behalf of the Department of Ecology, thank you for coming today, I appreciate your cooperation and courtesy and I would suggest that if you have written comments, be sure to get them in. Did you have a question?

Yes, to clarify, the comments are due December 23rd?

Yes, December 23rd at 5 o'clock.

And the adoption on Jan.

15, 2009

Is there a public hearing?

It's, the way it works is it's up to the Director of the agency whether he determines. It's their option, realistically; they will probably be a request for a public hearing

There will be other testimony, how will anybody know.

If that were the determination, we would make sure that number one, every person that we have on our mailing list would be contacted and two we would obviously put a public notice in to ensure that any person in the general public that wish to come and say something would be allowed to do that also.

Thank you.

O.k, I think that I just want to remind you of the addresses, to send Ecology written comments by 5 p.m. December 23rd, send them to Randy Martin at Department of Ecology, PO Box 47600, Olympia Washington 98504-7600 or by email to rama461@ecy.wa.gov, wa is WA and for accuracy it's probably a good idea to send those written comments. So, we want you to be safe driving home.

Let the record show that this hearing is adjourned at 2:15 in the afternoon. Thank you.

Martin, Randy (ECY)

From: Preston Horne-Brine [preston.flux@comcast.net]
Sent: Wednesday, December 17, 2008 11:40 AM
To: Martin, Randy (ECY)
Cc: director@greatnwrecyclers.org; Glacier Recycle LLC; T & T Recycling; Re Nu Recycling Svc - Nuprecon; Hungry Buzzard Recovery; 'William Turley'
Subject: Filing of proposed rule language for Chapter 173-345 WAC, Recyclable Materials-Transporter & Facility Requirements
Attachments: CMRA Comments on Chapter 173-345 rulemaking language12-08Final&Submitted.doc

Randy,

I am submitting written comments to you on the latest draft rulemaking language for the Recyclable Materials – Transporter & Facility Requirements as per Chapter 173-345 WAC. They are attached.

I am submitting these comments on behalf of the Construction Materials Recycling Association – Northwest Chapter. These written comments reiterate and provide supporting detail to the verbal testimony that I provided for the CMRA-NW at your public hearing last Monday.

On a related issue.

Our Association is having another membership meeting on the afternoon of January 28, 2009 in Bellevue. We will be having a number of very interesting presentations on asphalt shingle (tear-off) recycling and the development of new methods and markets for this recyclable C&D material. We will probably have an attendance of 50 people or so.

I would like to invite you to the meeting to talk about the final Transporter Rule language and take questions on it. I'm sure there would be a lively and informative give and take.

If you going to develop a fact sheet or other information piece on the rule then your attendance and the discussion at this meeting could be a good "dry run" on some of the messages, on the rule, that you intend to put out to the general public. I know that my members would like and benefit from the direct and personal interaction that your attendance would provide.

Please let me know if you accept my invitation.

Thank you for all your work on this Rule, Randy. I know it has been a complex and largely thankless task without clear outcomes. Your effort is appreciated.

Preston Horne-Brine
Construction Materials Recycling Assoc. - NW Chapter
e-mail: director@greatnwrecyclers.org
cell: (425) 283.8935



Northwest Chapter -
P.O. Box 78366
Seattle, WA. 98178

December 15, 2008

Mr. Randy Martin
Washington Department of Ecology
P.O. Box 47600
Olympia, WA. 98504-7600

Re: Comments on proposed new rules in Chapter 173-345 WAC Recyclable Materials –
Transporter and Facility Requirements.

The Construction Materials Recycling Association – Northwest Chapter (CMRA-NW) is coalition of independent fair-trade recyclers, transporters, contractors, manufacturers, and generators involved in the recycling of construction and demolition (C&D) related materials in the competitive marketplace across the Northwest. Our website is: www.greatnwrecyclers.org .

CMRA-NW is a regional chapter of the national Construction Materials Recycling Association which has been active in promoting and advocating for the development of our industry for over ten years. The national Association boasts 250 members across the county. Website : www.cdrecycling.org .

We are vitally concerned with these rules and the related statute for they fundamentally regulate our members who provide much of the existing C&D recycling capacity in Washington state and who also represent the future: including the expansion of that capacity; improvements in recovery levels; and development of better, higher-value, and more varied markets for processed C&D materials.

Comments on proposed new rules in Chapter 173-345 WAC

1. Include our suggested, additional wording (in red)

NEW SECTION

WAC 173-345-020 Applicability. This rule applies to businesses that transport recyclable materials from commercial or industrial generators over the public highways of the state of Washington for *non-tariff rate* compensation that are required to possess a common carrier permit *or possess a certificate of need* to operate issued by the Washington utilities and transportation commission under chapter 81.80 RCW *or 81.77 RCW.*

AND

NEW SECTION

WAC 173-345-030 Definitions. "**Transporter of recyclable material**" means any person or entity that transports source-separated recyclable materials from commercial or industrial generators over the public highways of the state of Washington for compensation, and who is required to possess a common carrier permit to operate from the Washington utilities and transportation commission under chapter 81.80 RCW. Transporters include *non-tariff rate* commercial recycling operations of certified solid waste collection companies regulated under chapter 81.77 RCW.

2. Delete the entire definition of "Disposal Site" Sec.-030

3. Delete the entire definition of "Incidental" Sec.-030
OR as a third best alternative

4. Include our suggested, additional wording (in red)

NEW SECTION

WAC 173-345-050 Transporter registration. (1) The rule applies to all transporters of recyclable materials as defined in WAC 173-345-030.

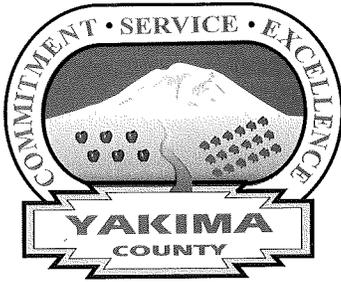
(2) For purposes of this rule "transporters" do not include

(d) City municipal solid waste departments or city solid waste contractors *when the contract specifies similar handling requirements for recyclable materials;*

I thank the Department for this opportunity to comment.



Preston Horne-Brine
Executive Director
Construction Materials Recycling Association – Northwest Chapter
P.O. Box 78366
Seattle, WA. 98178



Public Services

128 North Second Street • Fourth Floor Courthouse • Yakima, Washington 98901
(509) 574-2300 • 1-800-572-7354 • FAX (509) 574-2301 • www.co.yakima.wa.us

VERN M. REDIFER, P.E. - Director

RECEIVED

December 15, 2008

DEC 19 2008

Ecology - SWFA

Mr. Randy Martin
Department of Ecology
P.O. Box 47600
Olympia, WA 98504

RE: Yakima County Comments on Recyclable Materials-Transporter and Facility Requirements Rule – WAC 173-345

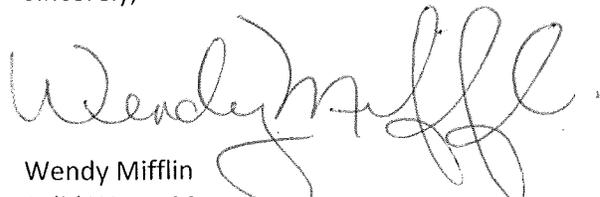
Dear Mr. Martin:

Please accept the following official comments from Yakima County Public Services – Solid Waste Division regarding the Recyclable Materials-Transporter and Facility Requirements – WAC 173-345:

1. **Section WAC 173-345-050** – Yakima County Solid Waste is requesting that County Municipal Solid Waste Departments/Divisions or County Solid Waste Contractors be specifically excluded from the rule - In conversation with Randy Martin in 2005, Yakima County Solid Waste expressed concern regarding the haul of recyclables by county owned and operated vehicles and county contractors. During that discussion, we were assured that the County Solid Waste Departments/Divisions would be specifically excluded from the rule. It appears that this has been overlooked in the rule making.
2. **Section WAC 173-345-060** – Yakima County Solid Waste is requesting that additional language be added to this section. Specifically that authority be given to County Municipal Solid Waste Departments/Divisions and the local health jurisdictions to grant a variance from this rule, on a case-by-case basis due to local conditions such as economics, market availability, health and safety issues or local solid waste planning requirements.

Thank you for your consideration. We look forward to the above changes being incorporated into the rule. If you have any questions, please feel free to contact me at (509) 574-2455.

Sincerely,


Wendy Mifflin
Solid Waste Manager

Cc: Donald Gatchalian, P.E., Assistant Director for Public Services
Gordon Kelly, Environmental Health Director

Martin, Randy (ECY)

From: Rose Swier [RoseE@co.mason.wa.us]
Sent: Tuesday, November 18, 2008 3:56 PM
To: Martin, Randy (ECY)
Subject: comments

I'm writing to comment on the proposed new rule. The wording in one section in particular 173-345-040. It reads as if it will be unlawful to have any materials on site with out them/it being in a container. Right now all over the State we have Intermediate facilities that are recycling scrap metal and it is being stored in huge piles on the ground. It would be incredibly impractical to insist, by mandating it in this rule, that they store it in a container.

There is already some confusing language in WAC 173-350 regarding Recycling and Intermediate waste handling...

Rose Swier,
Public Health
Environmental Health Specialist III

Mason County Department of Health Services
PO Box 1666
Shelton, WA 98584
(360) 427-9670 ext. 584

Martin, Randy (ECY)

From: John Leber [john@swansonbark.com]
Sent: Wednesday, December 24, 2008 11:35 AM
To: Martin, Randy (ECY)
Subject: Good Job

Randy:

Good job,

We (Swanson Bark and Wood Products) have very few challenges or even questions with this, but we do need one clarification.

In the new section, 173-345-040 - "must provide separate containers" - in the case of sawmills and that type of thing, they will always have a garbage container of some kind and they (or we) will provide drop boxes or bunkers, so I'm assuming the intent of the rule would be met by having those two containers.
Thoughts?

Merry Christmas and Happy New Year.

John Leber
President
Swanson Bark & Wood Products
360-414-9663

Martin, Randy (ECY)

From: mike@momike.com
Sent: Wednesday, December 17, 2008 11:48 AM
To: Martin, Randy (ECY)
Subject: Pending D.O.E. Recycling Regulations
Attachments: D.O.E. December 13, 2008.doc

Comments attached.

Mike Noder

RE: Recyclable Materials—New Transporter and Facility Requirements

These pending requirements will only contribute to an expensive and escalating problem in Spokane County and will increase regulatory burden unnecessarily. The Spokane Regional Solid Waste System (SRSWS) is projected to lose as much as \$9 million dollars in 2009. The cost for this system is in the neighborhood of \$60 million annually; add in the cost of collections and this total may be over \$100 million per year, in a county with only about 420 thousand people

The SRSWS has recently reported having great difficulty dealing with large volumes of a variety of supposedly recyclable materials because no viable markets for these materials exist. The Spokane Solid Waste Advisory Committee (SWAC) in the past requested that the Director of the SRSWS provide an accounting of current recycling program costs. The director responded by saying, “the cost will shock you” and has thus far not complied with the committee’s request for cost and volume information.

One example of a shockingly expensive recycling program is the Clean Green Program. This program trucks grass clippings several hundred miles out of our traditionally agricultural county at a cost of around \$2.5 million per year. Local private sector solutions are available at a small fraction of this cost. \$25 million over 10 years to handle what many of local providers could handle for closer to \$5 million and still make a profit. System representatives claim this wasteful program is necessary to meet D.O.E requirements.

A small number of private sector companies, which are recipients of an overwhelming percentage of the SRSWS budget, appear motivated to maintain and extend current D.O.E. rules that effectively increase barriers to any other companies seeking to participate in the local waste and recycling markets. These few companies under contract with the SRSWS appear to have benefited disproportionately by the quasi-monopoly status afforded the SRSWS.

Adding to Spokane’s problems is the growing incidents of illegal dumping in Spokane County. Politicians and SRSWS staff routinely bemoans this criminal behavior, but thus far have failed to move to reduce the cost of disposal and recycling within the county. The SWAC has called for changes in administrative practices and for increased competition and private sector options, to battle the rapidly escalating cost of disposal and recycling. SRSWS staff has resisted these efforts to the point of deception, which has led to the SWAC’s recent withdrawal of support for the SRSWS proposed Solid Management Plan update. This was largely due to recurring deception and misrepresentations by SRSWS staff.

Unresolved accounting irregularities have led to a current Washington State Audit and there is also a separate independent performance audit that has recently been initiated. The resolution of these investigations and the adoption of an updated regional solid waste management plan should occur prior to adoption of additional D.O.E. rules that will add

to the restraint of trade, reduce recycling and increasing disposal costs within Spokane County.

The pending D.O.E. actions will only give a few special interest groups further incentive to manipulate local markets, which seems to have occurred repeatedly over the last couple of decades. This has been detrimental to county rate payers that have been forced to rely on a government controlled solid waste system. High disposal costs have been a major contributor to a stagnant local economy, which has lagged far behind much of the Northwest and greater nation for many years.

The state should be providing incentives for more disposal and recycling options rather than fewer. It should work to remove the regulatory barriers that have held disposal rates far above the national average in Spokane County for many years.

With more disposal options at competitive rates many illegal activities, some of which are illegal only because of D.O.E. rules, could be substantially reduced. If those responsible for illegal dumping were leaving their garbage only in the parking lot of the D.O.E. instead of all around Spokane County, the state would be far less oblivious to misguided and counterproductive D.O.E. regulations governing disposal and recycling regulations.

Mike Noder
Spokane, WA

Martin, Randy (ECY)

From: Brad Lovaas [Brad@wrra.org]
Sent: Tuesday, December 23, 2008 4:33 PM
To: Martin, Randy (ECY)
Cc: JamesSells@comcast.net; Jim Sells; Steve Wheatley; Canman_8@hotmail.com
Subject: WRRRA Comments on Transporter and Facility Proposed Rule
Attachments: WRRRA LTR TO DOE RE PROPOSED CHAPTER 173-345 WAC 12-23-08.doc

Importance: High

Mr. Martin,

Attached are the comments of the Washington Refuse & Recycling Association (WRRRA) on the proposed Transporter Registration Rule.

I am sending a signed hardcopy via US Mail as well.

Please call me with any questions.

Brad

Brad Lovaas
Executive Director



4160 6th Ave. SE Suite 205
Lacey, WA 98503
Phone: 360-943-8859
Fax: 360-357-6958
Web: www.wrra.org



This message is intended for the sole use of the individual and entity to whom it is addressed, and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If you are not the intended addressee, nor authorized to receive for the intended addressee, you are hereby notified that you may not use, copy, disclose or distribute to anyone the message or any information contained in the message. If you have received this message in error, please immediately advise the sender by reply email and delete the message. Thank you very much.



Washington Refuse & Recycling Association

December 23, 2008

VIA E-MAIL – RAMA461@ECY.WA.GOV

Washington State
Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

Re: Comments on Proposed Chapter 173-345 WAC

Dear Mr. Martin:

Please consider this to be comments submitted by Washington Refuse and Recycling Association (WRRA) on the above-referenced proposed rules.

GENERAL COMMENT: As you know, WRRA was a primary proponent of ESSB 5788 of 2005, which resulted in the statute upon which these proposed rules are based, and seek to implement. The legislation was passed by overwhelming majorities within both Houses of the Washington State Legislature. It was supported by many legitimate private sector commercial recyclers and local government and state agencies, including the Department of Ecology.

The legislation was known as the Recycling Enforcement and Accountability Law (REAL). Our goal then was the same as it is now, i.e., to eliminate “sham recyclers,” and ensure that commercial recyclable materials are actually recycled, rather than taken to a disposal facility or, worse, dumped on public or private property creating dangerous health and safety issues. In support of eliminating these practices, the REAL Law was intended to give the DOE statutory authority to provide for enforcement and accountability within commercial recycling operations.

Another goal of the legislation that became effective on July 24, 2005 was to strengthen the statutory system for solid waste collection and transportation that has successfully served the people of our state for more than 40 years. Illegal collection and transportation of solid waste by non-certificated or non-city

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contracted haulers continues to be a major problem for the industry, local governments and the various regulatory agencies involved, DOE included. WRRRA has long been concerned that swift and sure punishment of these illegal haulers is the only effective method of controlling, and eventually eliminating, these practices. This is why ESSB 5788 contained new reporting and record keeping requirements and significant enforcement language, particularly fines. We trust that our enthusiasm for enforcement will be carried forth in the rule once it is adopted, and implemented strongly by the Department.

With this in mind, we have some specific comments:

“INCIDENTAL” DEFINITION: We have been troubled by the definition and use of this word since the initial draft. Even when defined, it seems out of place in the context of this rule. We think there are at least two better approaches here. One would be to follow the lead of many local jurisdictions and substitute the word “*de minimus*” to describe the occasional transportation of recyclables by, for example, a small business. Certainly we recognize that this happens, and can be legitimate. However, it is not occurring “merely by chance or without intention or calculation.” It occurs because it is a necessary, but very small, part of some businesses’ operations. The occasional trip to a recycling facility will happen, but not by chance.

A second and even better solution is that proposed by Mr. Kenefick in his comments on behalf of Waste Management, Inc. He proposed using a term already contained in RCW 81.77.010(5) describing the situation where a business is allowed to transport the occasional load of solid waste when the transportation is “. . . purely as an incidental adjunct to some other established private business.” This phrase has worked well for WUTC enforcement purposes and is self-defining, eliminating the need for definition.

“TRANSFER STATION” DEFINITION: The proposed rule’s definition of “transfer station” differs from that found in WAC 480-70-041, in that it does not seem to include exception for “detachable containers” as transfer stations, which, as you know, are used to provide services for sparsely populated areas in Eastern Washington. The definitions should be consistent.

“PERSON”: The word “person” appears in the definitional section in various places, but the word itself is not defined. The usual statutory definition of a person as an individual, corporation, LLC, partnership, etc., should be included to avoid any future confusion as to the coverage of the rule.

SOLID WASTE CONTAINER: The proposed rule contains language regarding the placement of solid waste containers at sites where there is a recyclables container. As you know, WRRRA considers this provision to be essential to

achieve the purpose of the legislation, and appreciates the inclusion of the appropriate language in the rule. There is, perhaps, one clarification which should be added to strengthen and explain the provision even further. That would be to add the words "and provided to the site and transported in accordance with RCW Chapter 81.77," at the end of the section. We are dealing with some very resourceful and, we believe, completely unethical illegal haulers who certainly are not above placing their own container on a site with the words "garbage only" spray painted on the side, then hauling it away themselves. That, of course, would defeat the entire intent of this section.

We believe this provision may prove to be the best evidence that a transporter of commercial recyclables can provide in establishing his intent that the collected solid waste materials are destined for ultimate recycling. It is our hope that DOE incorporate this language into the rule so that it can be included in the upcoming updates to the counties' solid waste management plans that DOE is overseeing.

We have tried to avoid duplicating comments made by others, particularly those by Mr. Kenefick, which we find to be valuable and urge you to seriously consider. His comment regarding the appeal process should especially be considered, and WRRRA joins in same. The elimination, or even minimization of procedural hurdles and conflicts, can only result in better administrative and judicial processes for all involved.

Finally, we urge the Department to continue to work closely with the WUTC in not only this rule making, but in that agency's upcoming rule revision. We have urged the WUTC to do the same, i.e., work closely with DOE on rule makings. Although sometimes necessary, it is frustrating for our members to be confronted with different rules from different agencies on the same subject. To the extent possible, uniformity and consistency should be a primary goal for both agencies.

Thank you again for the opportunity to submit comments on this most important rule. This has been a long and, I know, somewhat frustrating process for all involved, but we trust the results will be well worth the effort.

Sincerely,

WASHINGTON REFUSE AND RECYCLING ASSOCIATION

BRAD LOVAAS
Executive Director

Martin, Randy (ECY)

From: Martin, Randy (ECY)
Sent: Monday, November 17, 2008 9:46 AM
To: 'allenbluhm@comcast.net'
Subject: RE: 173-345 proposal

Thank you for your responses to the proposed rule. Because we have begun the formal rule adoption process I cannot respond to your comments until after the close of the rule comment period, which is December 23, 2008. The proposed rule is in response to legislation enacted in 2005. Here is the link to that legislation:

<http://apps.leg.wa.gov/billinfo/summary.aspx?bill=5788&year=2005> . Scroll down until you see session law language and that is the adopted language. The prior versions are the various changes that occurred during the session. The final language was codified in chapter 70.95 RCW, specifically sections .020 and .400 through .440. Here is a link to the statute: <http://apps.leg.wa.gov/RCW/default.aspx?cite=70.95> .

Randy Martin

From: allenbluhm@comcast.net [mailto:allenbluhm@comcast.net]
Sent: Saturday, November 15, 2008 9:42 PM
To: Martin, Randy (ECY)
Subject: 173-345 proposal

Mr. Martin,

I have several questions about your WAC 173-345 proposal. First, I must state that I am not a proponent of more regulation, and I simply do not understand why the DOE insists on its continued burdening of the recycling industry. Additional "language" guises as rule clarification is, in fact, further regulation.

That being said, I do agree with your office's concern with recyclable materials being diverted to a landfill. However, I would like to hear evidence that this, in fact, is happening, in order to agree with the DOE 's push for more language in that regard. I believe it is not, nor have I ever heard of a rumor of such happening. Surely the DOE must have a fair amount of documented evidence to support that claim? Municipal Recycling Programs already mandate that materials are not disposed of.

***Please explain to me how, why, and from where are materials being collected under a recycling program, then taken to a landfill or transfer station.**

Below is text from the proposed revisions.

WAC 173-345-040 Collection of solid waste and recyclable materials. All sites where recyclable materials are generated and transported for recycling must provide separate containers for recyclable materials and nonrecyclable materials (solid waste), using collection practices consistent with chapter 173-350 WAC.

Excuse my ineptness, but what does this statement mean? A "site" is a physical location. Thus, I assume you mean a "generator" or "collector" must provide separate containers. Recycling companies provide recycling services and may provide containers for such programs.

*** Are you suggesting that recycling companies must supply garbage containers and service**

in order to provide a recycling service?

Please explain your unwillingness to confront the recycling industry professionals on these propose rule changes. Below, is copy of text:

Has a small business economic impact statement been prepared under chapter 19.85 RCW?

No. Explain why no statement was prepared. The proposed rule is exempt from RCW 19.85 because all components of the rule either provide clarification or are dictated by statute or refers readers to another rule. RCW 19.85. 025 which refers to 34.05.310 (4)(d) exempts clarifications without changing the effect of the rule and RCW 19.85. 025 which refers to 34.05.310 (4)(e) exempts language that is dictated by statute and RCW 19.85. 025 which refers to 34.05.310 (4)(c) exempts language that creates a reference to other existing rules.

"exempts language that creates a reference to other existing rules", "exempts clarifications without the effect of the rule". Mr. Martin, I submit that the rules are being changed, not simply clarified or referenced. All recycling companies will be highly impacted by your language changes. Not consulting with the affected industry demonstrates a lack of understanding of the issues, and a gross disrespect for an industry which the DOE is supposedly "working together" with.

*** Why is the DOE not concerned with the negative economic impact these changes will have on small business?**

It is to no credit of the DOE that recycling in this State is far above national average. Doe's the DOE actually not realize that private sector recycling companies formed a very complex and comprehensive recycling infrastructure long before the term "recycling" was even defined by the State?

*** Why do those same forces now need guidance and supervision?**

As a public employee, you most likely feel your proposed new language and motives for writing such, are to benefit and/or protect the citizens of the State of Washington. I use the term "your" language. If you would, please inform me of the individuals, entities, groups, or associations in which you have collaborated with on the draft of this proposal.

It seems that one of purposes of this proposal is to allow the DOE indiscriminate access to the records and business practices of legitimate recycling companies. Again, this is not simply language clarification, is it heightened regulation. The DOE currently requires recycling businesses to annually report detailed volumes and from where to where the material goes.

*** Reporting is already in force, what is the point of redundancy?**

Mr. Martin, no disrespect intended, but from my position, voicing a concern to the draftee of this proposal, may not be the most productive way to voice such a concern.

*** I would like to know to whom, or to what committee, in addition to yourself, I can voice my concerns too**

In closing, I would like to remind you that those of us in the private sector, especially in commodities, are severely suffering financially. It is easy for those of us in public service to overlook those hardships, and to justify actions by claiming it is for the good of the people.

*** Is further erosion of the fragile recycling infrastructure a benefit to the public?**

The economic state of the recycling industry MUST be taken into consideration. In the near future, you will see many small recycling business fold. Now is not the time to impose further hardship, and to hasten the demise of them by choking what little profit is available with paperwork and permit requirements. This proposal will cause unrecoverable damage to business. "Permitting" and "Regulation" is for the intent purpose of public safety. What recycling business have been doing for 60 years, with no harm to people or property, is now suddenly a shady industry causing harm? The answer is NO. Then why the regulation?

I submit to you and your supervisory board, this proposal should be disregarded.

**Thank you,
Allen Bluhm**

Martin, Randy (ECY)

From: allenbluhm@comcast.net
Sent: Saturday, November 15, 2008 9:42 PM
To: Martin, Randy (ECY)
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I submit to you and your supervisory board, this proposal should be disregarded.

**Thank you,
Allen Bluhm**

Martin, Randy (ECY)

From: Kathy Moll [kathym@SummitLaw.com]
Sent: Tuesday, December 23, 2008 1:52 PM
To: Martin, Randy (ECY)
Subject: Comments on Ecology's Proposed Chapter 173-345 WAC Recyclable Materials - Transporter And Facility Requirements
Attachments: Martin re Transporter Regulations final 12-23-2008.PDF

Attached please find Polly McNeill's December 23, 2008 letter regarding comments on Ecology's Proposed Chapter 173-345 WAC Recyclable Materials - Transporter and Facility Requirements. If you have any problems retrieving the document, please contact me. Thank you very much.

Kathy Moll, Legal Assistant to Polly L. McNeill | SUMMIT LAW GROUP PLLC
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----- Summit Law Group -----

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SUMMIT LAW GROUP®

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December 23, 2008

VIA E-MAIL - RAMA461@ECY.WA.GOV

Department of Ecology
Randy Martin
P.O. Box 47600
Olympia, WA 98504-7600

**Re: Comments on Ecology's Proposed Chapter 173-345 WAC
Recyclable Materials – Transporter And Facility Requirements**

Dear Randy:

As you know, my practice involves representation of solid waste collection companies, and on behalf of several of my clients, these comments are submitted to the Department of Ecology on the above-referenced proposed regulations, *Chapter 173-345 WAC, Recyclable Materials – Transporter And Facility Requirements*. We support the intent of Engrossed Substitute Senate Bill 5788 (SB 5788), enacted by the Legislature in 2005 and primarily codified at RCW 70.95.400 through -440, to eliminate illegal disposal of recyclable materials and protect consumers from sham recycling.

While we appreciate the efforts made by Ecology in proposing these rules, we believe there is much work to do and many details to address before a final regulation can be adopted. In addition to the substantive comments provided in this letter, on the procedural level we recommend Ecology consider the input provided and issue another draft with more detail and more guidance than these rules offer. The current proposal does little more than restate statutory language.

As a point of context, the whole reason this regulation is needed is because of the pre-existing statutory exemption which states:

Nothing in this chapter shall be construed as prohibiting a commercial or industrial generator of commercial recyclable materials from selling, conveying, or arranging for transportation of such material to a recycler for reuse or reclamation.

See RCW 70.95.903; RCW 81.77.140; RCW 36.58.160; RCW 35.21.158. In enacting this exemption, the legislature created a gray area for transportation of commercial recyclables. It is to assist in understanding when a hauler is transporting commercial recyclable that SB 5788 was enacted. Although SB 5788 does not restate the existing statutory underpinning, it cannot and should not be ignored. We offer the following

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comments with the goal of more clearly specifying when commercial recycling is taking place, and when it is being used as a means of avoiding regulatory oversight and commensurate taxes and fees. We seek assistance in having a commonly understood “level playing field.”

Collection Site

Unless the material in the truck is source-separated, the transporter is not carrying commercial recyclables. Therefore, a separate container on each customer site for non-recyclable material is compelling evidence that a generator intends recycling, and the absence of a container is a fatal flaw. Separating recyclable materials from other solid waste at the source is a mandatory prerequisite to the site-preparation of materials that can be hauled by any transporter under the statute, and there is no situation in which a generator can produce only recyclable materials, i.e., all customers generate some non-recyclable items or materials. It would seem to be in the best interest of all the stakeholders to mandate that separate containers be present. The rules should require the transporter to verify the presence of separate containers. Transporters ignoring this requirement will put themselves at risk of violating the law, and there is no good reason for opposing it.

Separate containers are at the heart of the enacting legislation. Without them, there can be no sorting evidenced. Indeed, a careful transporter should ensure not only that separate containers are present, but also that they are of the appropriate size. Requiring the transporter to check that the container for non-recyclable materials is large enough may be asking too much of this rule. Surely verifying only that separate systems exist is not an inappropriate burden.

Delivery Site

The draft regulation does little to “to ensure that recyclable materials diverted from the waste stream for recycling are routed to a facility in which recycling occurs.” RCW 70.95.020(4). We understand this is a challenging and sensitive area and one on which current regulations are not particularly helpful. However, this rulemaking could assist transporters and regulators in clarifying what facilities might or might not meet this goal.

There are several different, but related, issues worth considering about the type of facility to which transporters may legally deliver recyclable materials. This rule approaches it only from one perspective, and it identifies in exceedingly broad terms the locations to which recyclable materials may not be delivered. For this rule to be enforceable, more detail is required describing those prohibited destinations. On the other hand, the regulation ignores the other perspective and fails completely to describe the facilities to which delivery of recyclable materials would be permissible.

Part of this conundrum may be attributed to the definitions in the existing Solid Waste Handling Standards, chapter 173-350 WAC (the Standards), where the lines between “material recovery facility” and “transfer station” are not clearly drawn. Under the

Standards, both MRFs and transfer stations are regulated as “interim solid waste handling facilities,” and the only meaningful distinction is for those MRFs meeting the exemption requirements. Because the Standards are directed to protecting human health and the environment, it is not necessary to have a bright line demarcation and therefore adopting those definitions may not be appropriate to this rule. Ecology should consider articulating different definitions or at least describing more clear operational distinctions in this rule.

Another part of the problem is that the definition of “processing” includes both converting a material into a useful product (i.e., recycling) and preparation *for disposal* (i.e., not recycling). Adoption of that definition in these rules only obscures the distinctions, and is not particularly helpful.

A narrow definition of “recycling” is the scheme established under the Standards, but it is not commonly understood. Many people think “recycling” is what happens at a MRF, and there are well-intentioned operators all over the state believing themselves to be exempt from permitting because they are “recycling” when really they are operating a MRF. This is an opportunity to emphasize that the definition of “recycling” applies to plants and remanufacturers; and many of the operations claiming to recycle actually are MRF facilities that collect, compact, repackage, sort, or process. The former is definitely an acceptable destination for commercial recyclables; the latter is not always.

These facilities can rarely, if ever, qualify for a “clean MRF” exemption in accordance with WAC 173-350-310(2)(b), yet they commonly operate under the regulatory radar of the Standards, which are oriented to environmental risks, not social policy. Permitting Standards are not the right indicia for facilities under this rule – performance standards are far more effective at providing incentives for recycling, and tools for enforcement. This rule is instead intended to assist in eliminating sham recycling. Some permitted MRFs are quite legitimately focused on processing for recycling, not disposal, and are valid delivery destinations. Some permitted transfer stations have rudimentary sorting, and if that’s the best local alternative then delivery to such a facility might be legal, but if it’s just being used to justify sham recycling, it is not.

There are ways to identify a legitimate processing facility and stating them in this rule would be enormously helpful to all stakeholders.

Thus, at one end of the spectrum, the rule should state the obvious, and expressly allow transporter to deliver recyclable materials to a facility that actually recycles. It should specifically permit delivery to “a facility that transforms or remanufactures recyclable materials into usable or marketable products,” which is a slight variation to the definitions in the Solid Waste Handling Standards.

The rule could also state, for instance, that a MRF that accepts only source separated recyclable materials and disposes of an incidental and accidental residual of less than five percent of the total waste received, by weight per year, or ten percent by weight per load (i.e., an “exempt” MRF) is a legal destination. In short, the rule could state that facilities

that have filed notifications in accordance with WAC 173-345-080 are legitimate destinations. Requiring notification and reporting from those facilities under this rule protects against the permit exemption being used as a loophole.

In the middle, the rule should give some guidance for transporters to distinguish between a transfer station that happens to prepare some material for reuse and recycling but “processes” most material for disposal; and a MRF that prepares most of its material for the purpose of recycling. Both might be excused from notification under -080 by virtue of being “facilities with a current solid waste handling permit.” Yet, some are nonetheless valid destinations, and some are not.

Guidance might be found by reference to local solid waste management plans. If the local planners have identified facilities which are predominantly devoted to preparing material for the purpose of recycling, then deference may be given to that determination. The rule could state that as a possible means of determining what facilities are acceptable is whether they are identified as recycling processors in the local plan.

Ecology could consider listing in the rule other indicia of legitimate destinations, none of which would be determinative in and of themselves but any of which might be helpful in distinguishing between valid and invalid destinations. A facility that is predominantly devoted to processing source-separated recyclable materials by reference to the complexity of machines, equipment or infrastructure would be preferred over an interim handling facility that secondarily processes recyclable materials in a rudimentary fashion, depending on the reasonably available alternatives. Another factor could be the degree to which more materials taken from the facility are solid waste residuals transported for disposal or MSW incineration regardless of market conditions or more are prepared as commodities for reuse or recycling to the maximum extent markets justify.

We urge Ecology to solicit input on a second draft with more specific descriptions and indicators to assist commercial recyclers in making sure they are legitimately transporting unregulated materials.

Exceptions

The exceptions under WAC 173-345-050(2) are somewhat murky. We acknowledge they are straight from the legislative language, but some descriptions might help understanding the intent. For instance, the classic example of a carrier hauling its own material exempt under subsection 050(2)(a) when such activity is “incidental” to its primary business is a landscaper who hauls compostable materials from job sites. The landscaper’s primary business is not hauling recyclable materials and it would not be considered a “transporter.” (Also, we do not believe the proposed definition of “incidental” actually captures that activity, since the landscaper’s haul is not by chance or unintentional.)

The difference between the incidental hauler and the exemption in subsection -050(2)(e) could also be clearer by providing illustrations or embellishments. The landscaper is not

a common carrier, clearly. This exemption is instead typified by a dump truck operator who hauls a load of glass cullet once in a while.

Finally, we are somewhat troubled by subsection -050(2)(b), and the potential for misinterpreting the exemption for entities who have "purchased" recyclables. First, to the extent the distinction turns on the exchange of money, it must be made clear that the cost of transportation must be factored into whether or not the material was purchased. The legislative intent, we believe, was to address straightforward situations where recyclers are being compensated solely by virtue of the value of the commodity. In current market conditions, of course, this is not happening. There have been times, however, when the value of the commodity was sufficient to cover the transportation and overhead costs. That is the narrow situation contemplated here. Any inference about taking title is dangerously misleading. Many garbage collectors take title when they pick up waste. They cannot then claim they "own" the materials and therefore transport outside the solid waste regulations and avoid paying taxes.

On behalf of my client, we thank you for allowing us to submit these comments. We urge you to take advantage of this opportunity for clarification. Solid waste collection companies embrace the requirements of compliance with this law, and appreciate Ecology's efforts to bring consistency to the realm of commercial recycling.

Very truly yours,

SUMMIT LAW GROUP PLLC


Polly L. McNeill (by KMM)

Martin, Randy (ECY)

From: Kenefick, Andrew M [AKenefick@wm.com]
Sent: Tuesday, December 23, 2008 3:48 PM
To: Martin, Randy (ECY)
Subject: Comments on Ecology's Proposed Chapter 173-345 WAC
Attachments: LL to Ecology re WAC 173-345 Rules.pdf

Attached are Waste Management's comments on the above-referenced proposed rule. Thanks.

<<LL to Ecology re WAC 173-345 Rules.pdf>>

Andrew M. Kenefick

Senior Legal Counsel
Waste Management
Western Group Legal Department
801 2nd Avenue, Suite 614
Seattle, WA 98104
206-264-3062 (direct)
866-863-7961 (direct fax-toll free)
206-264-8212 (main fax)
akenefick@wm.com
admitted in Washington

Waste Management's landfills provide over 17,000 acres of protected land for wildlife habitats and 15 landfills are certified by the Wildlife Habitat Council.

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December 23, 2008

VIA E-MAIL - RAMA461@ECY.WA.GOV

Department of Ecology
Randy Martin
P.O. Box 47600
Olympia, WA 98504-7600

**RE: Comments on Ecology's Proposed Chapter 173-345 WAC
Recyclable Materials – Transporter And Facility Requirements**

Dear Mr. Martin:

Waste Management of Washington, Inc. ("WM") appreciates the opportunity to submit the following comments to the Department of Ecology on the above-referenced proposed regulations, *Chapter 173-345 WAC, Recyclable Materials – Transporter And Facility Requirements* (the "Proposed Rules"). WM is especially interested in these regulations because WM and its affiliated companies operate solid waste collection and disposal facilities, as well as collection and processing facilities for recyclables. WM supports the intent of these rules to ensure that recyclable materials are actually recycled and that so-called "sham recyclers" are not allowed to circumvent regulation, including those of the Washington Utilities & Transportation Commission, by claiming to haul recyclables that are actually destined for disposal. This effort is especially important at this time because of the unprecedented decline in the recyclables markets, which may in turn result in unscrupulous transporters seeking other alternatives to actual recycling or reuse.

As a general matter, however, WM had hoped that these regulations would have provided more substance. WM recognizes that the Proposed Rules are intended to implement and interpret the requirements of SB 5788, enacted by the Legislature in 2005 and primarily codified at RCW 70.95.400 through -440. While the regulations, for the most part, follow the text of SB 5788, they do little to provide additional guidance or interpretation of the statute. As such, these regulations are likely to be of minimal benefit beyond the language of the statute itself. WM recommends that Ecology undertake a more comprehensive and detailed rulemaking that provides more detailed and practical guidance. Nonetheless, WM offers the following comments on the Proposed Rules.

* * *

Comment 1. The Proposed Rules should provide more detailed guidance than merely repeating the statutory language.

As stated above, the Proposed Rules provide little additional guidance beyond what the statute already states, WM recommends that Ecology provide more detailed and practical guidance than the current proposal.

Comment 2. Ecology's definition of "incidental" does not make sense.

The Proposed Rules' definition of "incidental" does not fit the context for which it is being used. The term "incidental" appears only once in the statute, now codified in RCW 70.95.400(1)(a):

Carriers of commercial recyclable materials, when such materials are owned or being bought or sold by the entity or person, and being carried in their own vehicle, when such activity is incidental to the conduct of an entity or person's primary business.

The same language also appears in WAC 173-345-050(2)(a). As used in the statute and regulations, the term "incidental" means an activity that is not a transporter's main business, but is merely in addition to or of secondary importance to the transporter's main business. However, the Proposed Rule adopts an alternative dictionary definition of "occurring merely by chance or without intention or calculation." This definition is not appropriate because a transporter who transports recyclables "incidental" to its primary business presumably intends to transport the recyclables and is aware that it is transporting recyclables. Under Ecology's proposed definition, this would not be "incidental" to the transporter's primary business. Since the term "incidental" has a common understanding when considered in the context used, it is not necessary for Ecology to define the term. For example, the WUTC statute, RCW 81.77.010(5), includes the phrase "transports solid waste purely as an incidental adjunct to some other established private business." No further definition is provided or needed. If, however, Ecology elects to define the term, it should adopt a definition that fits the context in which it is being used – i.e., to mean "in addition to", "as an adjunct to", or "of secondary importance to" the transporter's primary business.

Comment 3. Rather than define "Covered Electronic Product", simply cross-reference to the definition in Chapter 173-900 WAC.

To streamline the Proposed Rule, WM recommends that the term "Covered Electronic Product" should be defined merely by cross-referencing to the definition in Chapter 173-900. The substantive provisions of the Proposed Rule use the term "Covered Electronic Product" only once, in WAC 173-345-020, yet the rule requires a half-page of text to define the term even though the exact same definition is provided in WAC 173-900-030.

Comment 4. Since the terms "disposal site" and "energy recovery" are not included anywhere in the statute or regulations, it appears unnecessary to define the term "disposal site" or "energy recovery" in WAC 173-345-030.

The terms "disposal site" and "energy recovery" are extraneous terms that do not appear elsewhere in the regulations and therefore should be deleted.

Comment 5. The exemption for transporters hauling their “own” recyclables should be clarified and narrowed.

The statute includes an exemption from the regulations for persons who “own” the recyclables they are transporting. Specifically, RCW 70.95.400(1)(a) exempts:

Carriers of commercial recyclable materials, when such materials are owned or being bought or sold by the entity or person, and being carried in their own vehicle, when such activity is incidental to the conduct of an entity or person's primary business;

Likewise, RCW 70.95.400(1)(b) exempts:

Entities or persons hauling their own recyclables or hauling recyclables they generated or purchased and transported in their own vehicles.

Ecology should provide better guidance through the Proposed Rules for these exemptions, otherwise, some transporters may seek to circumvent the purpose of the statute by merely taking title to the recyclables and thereby – arguably – becoming the “owner” of the recyclables. As the “owner” of the recyclables, a transporter would arguably be exempt from these regulations and could avoid the requirements of SB 5788 altogether. For example, a transporter might offer to “buy” recyclables from a generator for \$1.00 per ton, but then charge \$40.00 per ton to collect and transport the recyclables from the generator’s facility. Indeed, even if no payment were made, the transporter could become the “owner” of the recyclables merely by agreeing with the generator to transfer title to the recyclables. Once the transporter had title to the recyclables, it could argue that it is exempt from the registration requirements, the prohibition on disposal of recyclables, the recordkeeping and reporting requirements, and every other provision in Chapter 173-345 WAC. Ecology’s regulations should prevent such an easy artifice for circumventing SB 5788.

Comment 6. The Proposed Rules fail to provide guidance as to what is a “recycling facility” or how to assess whether something is “for the purpose of recycling”.

A glaring omission from the Proposed Rules is any definition or guidance as to what constitutes a “recycling facility.” Since a primary purpose of SB 5788 is to “ensure that that recyclable materials diverted from the waste stream for recycling are routed to facilities in which recycling occurs,” it seems incumbent on Ecology to better articulate what is a “recycling facility.” While the Proposed Rules define “recycling”, they provide no further guidance as to how much recycling qualifies a facility as a recycling facility. (It would not be helpful, for example, to merely define a “recycling facility” as a facility where recycling occurs.) Likewise, a facility can qualify as material recovery facility if it “collects, compacts, repackages, sorts, or processes for transport source separated solid waste for the purpose of recycling.” Again, there is little guidance for distinguishing between a MRF whose primary function is to sort and prepare materials for recycling, and those facilities claiming to be MRFs where materials are only incidentally or nominally prepared for subsequent recycling.

Comment 7. The term “facility” is defined and used inconsistently throughout the Proposed Rule.

Proposed WAC 173-345-030 defines “facility” as “all contiguous land (including buffers and setbacks) and structures, other appurtenances, and improvements to the land used for recycling.” Yet, elsewhere the term “facility” refers to operations where activities other than recycling occur. For

example, “landfill” is defined as “a disposal facility or part of a facility ...” A “transfer station” is also defined as a “facility” although the transfer operations would not be considered recycling. Likewise, “material recovery facility” is defined as a “facility” even though most activities at a MRF would not be considered “recycling” (although they could be considered preparing materials for recycling).

Comment 8. WAC 173-345-040 is ambiguous.

Proposed WAC 173-345-040 requires separate containers at “[a]ll sites where recyclable materials are generated and transported for recycling.” While it seems clear that sites where recyclables are generated must have separate containers, the language “transported for recycling” is ambiguous. Parsing this language, it reads, “All sites where recyclable materials are ... transported for recycling.” Read literally, this regulation would require sites to which recyclables are transported to have separate containers. The language could be clarified as follows:

WAC 173-345-040 Collection of solid waste and recyclable materials. All sites where recyclable materials are generated and collected for transportation ~~transported~~ for recycling must provide separate containers for recyclable materials and nonrecyclable materials (solid waste), using collection practices consistent with chapter 173-350 WAC.

Comment 9. WAC 173-345-060 cannot prohibit transporters from delivering recyclables to solid waste incinerators because SB 5788 did not include such a prohibition.

While most of the Proposed Rules include language that is similar to, if not identical to, the statutory text, WAC 173-345-060(1) includes “solid waste incinerators” in the prohibition even though the statute does not contain this prohibition. RCW 70.95.410(1), states, “A transporter may not deliver any recyclable materials for disposal to a transfer station or landfill.” Yet, proposed WAC 173-345-060(1) states, “A transporter of recyclable materials may not deliver any recyclable materials for disposal to a transfer station, solid waste incinerator, or landfill.” By adding “solid waste incinerator” to the proposed regulations, Ecology has gone beyond the statutory authority it purports to implement. The regulation (WAC 173-345-010 and -060) should be revised to delete the reference to “solid waste incinerator.”

Comment 10. The transporter recordkeeping requirements must include provisions to ensure the confidentiality of proprietary business information.

WAC 173-345-070 requires transporters to keep records of recyclables, including information that many companies would consider to be confidential and proprietary business information, such as information from invoices. Even though the Proposed Rules do not require the transporter to submit this information to Ecology, it does require that the information be made accessible to Ecology for inspection. Often, however, Ecology will require persons to provide copies of such documents to the agency. The Proposed Regulations should include provisions to ensure that this information can be deemed confidential and that Ecology will not disclose it to other persons. WM recommends that Ecology adding the following subsection (3) and renumbering the current subsection (3) as subsection (4):

(3) The transporter may request that the records be made available only for the confidential use of the Department, pursuant to RCW 43.21A.160.

Comment 11. WAC 173-345-100 should specify where appeals can be taken.

One primary purpose in promulgating regulations is to provide the regulated community with clear guidance. As drafted, WAC 173-345-100 does not provide any guidance as to appeals of penalties issued under Chapter 173-345 WAC. For example, the regulations should clearly state whether an appeal could be brought before the Pollution Control Hearings Board, in Superior Court, or elsewhere. By merely referencing the right to appeal “only as provided by applicable law including, but not limited to chapters 43.21B and 34.05 RCW”, an aggrieved party is given little direction where to appeal. For example, RCW 43.21B.110 grants the PCHB jurisdiction to hear only certain enumerated appeals of civil penalties issued by Ecology. Insofar as penalties issued under SB 5788 are not identified, it would appear that the PCHB may not have jurisdiction to consider such appeals, notwithstanding the ambiguous reference in WAC 173-345-100. It is therefore incumbent on Ecology to identify clearly what board or court has jurisdiction to hear appeals of civil penalties issued under Chapter 173-345 WAC.

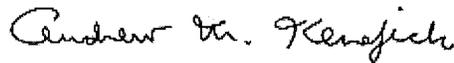
Comment 12. The Proposed Rules should address the proper management of “recyclable materials” that can no longer be recycled.

Given the recent collapse of the global markets for recyclables, the press has reported that many processors have been forced to warehouse baled recyclables for which there is no purchaser. Given the limited “shelf-life” of recovered newsprint, corrugated containers, other fibers, and some plastics, the Department should provide guidance in these regulations dealing with circumstances where recyclable materials, having been stored due to the absence of any viable market, have deteriorated to a level that they are no longer an acceptable recyclable feedstock. Ecology should consider a tightly-controlled waiver or exemption process to address the local code violations and fire hazards from extended storage of these materials during these extraordinarily poor market conditions.

* * *

Waste Management appreciates the opportunity to submit these comments and looks forward to working with Ecology on subsequent drafts or their implementation. If you have any questions, please feel free to call me at (206) 264-3062.

Sincerely,



Andrew M. Kenefick

Art Starry comments (web comments)
Director of Environmental Health
Thurston County Public Health & Social Services

73-345-050<comma>Please clarify who has enforcement and civil penalty authority under part 4 of this section. Please clarify.

73-345-060<comma>Please clarify who has enforcement and civil penalty authority under part 2 of this section.

173-345-080<comma>Please clarify who has enforcement and civil penalty authority under part 2 of this section.

173-345-090<comma>It would be very helpful if the enforcement authorities and responsibilities were summarized in the rule. While this can be determined by carefully reading the draft rule and authorizing RCWs<comma> a quick summary here would save people time.

Nelle Jacobsen
Bobby Wolford Trucking & Demolition, Inc.
22014 West Boston Road
Woodinville, WA. 98072

Web comments on Chapter 713-345 WAC

173-345-020<comma>Your regulations do not fit reality.

Bobby Wolford Trucking & Demolition is:
1. a trucking firm doing local dump trucking and drop box trucking for construction firms which includes hauling CDL waste and recyclable material;
2. A recycle yard processing site-sorted wood waste<comma> debris<comma> concrete and asphalt;
3. A construction company doing site preparation including demolition.

The Dept of Revenue says we own the recyclable material when our truck picks it up from a customer and delivers the recyclable material to our own recycle yard for processing.

We do not own the material when we pick recyclable material up from a customer and take it to another recycle yard.

Our computer accounting cannot keep track of the difference. Small firms use packaged accounting software that does not allow the business to slice and dice the billing information. The sophisticated custom data bases necessary to provide the information requested are out of reach of small business.

173-345-050<comma>Construction recycling was created by and has flourished under small business management. For over 15 years firms like ours have been taking construction waste wood<comma> land clearing debris<comma> used concrete and asphalt out of the waste stream. These regulations are an attempt by the large garbage haulers to monopolize the business and eliminate small businesses.
Small trucking firms can provide the flexibility and speed necessary to meet contractor's disposal needs. Site sorting requires hour by hour changes in delivery and pick up schedules. The large garbage haulers cannot provide that kind of service. Putting one-size-fits all regulations on the small trucking firms will reduce the amount of recycled material. If a contractor can't get a drop box for recyclable material delivered on a moment's notice<comma> then everything from that site goes into the waste can.

There is no reason to regulate the transporters. All decisions about recycling are made by the firms hiring the transporters. The firm hiring the transporter also pays for the disposal of the material. What is accomplished by regulating the transporters??

Appendix B
All public notices

WSR 07-22-088

PREPROPOSAL STATEMENT OF INQUIRY

DEPARTMENT OF ECOLOGY

[Order 07-16 -- Filed November 5, 2007, 3:47 p.m.]

Subject of Possible Rule Making: Department of ecology is proposing new rules to regulate transporters of recyclable materials and recycling facilities. These rules will implement SB 5788, passed by the 2005 legislature.

The new rules will focus on:

Statutes Authorizing the Agency to Adopt Rules on this Subject: [Chapter 70.95 RCW](#) and SB 5788 ([RCW 70.95.400](#) - [70.95.]430).

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The rule making is necessary to implement SB 5788. It will also help clarify enforcement and compliance rules for transporters of recyclables and recycling facilities found in [chapter 70.95 RCW](#). It will assure that recyclables are transported by registered haulers to recycling facilities and not deposited in drop boxes, transfer stations or landfills.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: The rule will be reviewed by stakeholders. Ecology will hold 1-2 informal public workshops where interested persons can comment on the rule before it is proposed. The public is invited to these informal public workshops. Ecology will post information on its web site and send information to interested parties.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Randy Martin, Washington Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6136, e-mail rama461@ecy.wa.gov. Ecology will post information on its web site, send information to interested parties, and hold 1-2 informal public workshops.

October 31, 2007

Lorie Hewitt

for Cullen Stephenson

Program Manager

Solid Waste and

Financial Assistant Program

Appendix C
Final Rule text

Chapter 173-345 WAC

RECYCLABLE MATERIALS--TRANSPORTER AND FACILITY REQUIREMENTS

NEW SECTION

WAC 173-345-010 Authority and purpose. The purpose of this chapter is to establish minimum standards for the transportation of recyclable materials; establish notice and reporting standards for recycling facilities and material recovery facilities (MRFs); ensure that recyclable materials are not delivered for disposal; establish penalties for transporters of recyclable materials, recycling facilities, and material recovery facilities (MRFs) that do not meet the standards of this chapter.

[]

NEW SECTION

WAC 173-345-020 Applicability. This rule applies to businesses that transport recyclable materials from commercial or industrial generators over the public highways of the state of Washington for compensation that are required to possess a common carrier permit to operate issued by the Washington utilities and transportation commission under chapter 81.80 RCW. Transporters include commercial recycling operations of certified solid waste collection companies regulated under chapter 81.77 RCW. This rule also applies to facilities that recycle solid waste and MRFs except for those facilities with current solid waste handling permits issued under RCW 70.95.170. Businesses that transport covered electronic products exclusively for recycling are exempt only from transporter registration and reporting requirements under this rule because these transporters must comply with chapters 70.95N RCW and 173-900 WAC.

[]

NEW SECTION

WAC 173-345-030 Definitions. **"Container"** means a portable device used for the collection, storage and/or transportation of solid waste including, but not limited to, reusable containers, disposable containers, and detachable containers.

"Covered electronic product" or **"CEP"** means as defined in chapter 173-900 WAC.

"Department" means the department of ecology.

"Facility" means all contiguous land (including buffers and setbacks) and structures, other appurtenances, and improvements to the land used for solid waste handling, including recycling.

"Material recovery facility (MRF)" means a facility that collects, compacts, repackages, sorts, or processes for transport source separated solid waste for the purpose of recycling.

"Permit" means an authorization used by the jurisdictional health department which allows a person to perform solid waste activities at a specific location and which includes specific conditions for such facility operations.

"Person" means an individual, firm, association, copartnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatever.

"Processing" means an operation to convert a material into a

useful product or to prepare it for reuse, recycling, or disposal.

"Recycling facility" means a facility where recyclable materials are transformed or remanufactured into useable or marketable materials.

"Recyclable materials" means those solid wastes that are separated for recycling or reused, including but not limited to, papers, metals, glass, that are identified as recyclable material pursuant to a local solid waste management plan.

"Recycling" means transforming or remanufacturing waste materials into usable or marketable materials for use other than landfill disposal or incineration. Recycling does not include collection, compacting, repackaging, and sorting for the purpose of transport.

"Source separated" means the separation of different kinds of solid waste at the place where waste originates.

"Solid waste" or **"wastes"** means all putrescible and nonputrescible solid and semisolid wastes including, but not limited to, garbage, rubbish, ashes, industrial wastes, swill, sewage sludge, demolition and construction wastes, abandoned vehicles or parts thereof, contaminated soils and contaminated dredged material, and recyclable materials.

"Transporter of recyclable material" means any person or entity that transports source-separated recyclable materials from commercial or industrial generators over the public highways of the state of Washington for compensation, and who is required to possess a common carrier permit to operate from the Washington utilities and transportation commission under chapter 81.80 RCW. Transporters

include commercial recycling operations of certified solid waste collection companies regulated under chapter 81.77 RCW.

[]

NEW SECTION

WAC 173-345-040 Collection of solid waste and recyclable materials. All sites where recyclable materials are generated and transported for recycling must provide a separate container for nonrecyclable materials (solid waste), using collection practices consistent with chapter 173-350 WAC.

[]

NEW SECTION

WAC 173-345-050 Transporter registration. (1) The rule applies to all transporters of recyclable materials as defined in WAC 173-345-030.

(2) For purposes of this rule "transporters" do not include:

(a) Carriers of commercial recyclable materials, when such materials are owned or being bought or sold by the entity or person,

and being carried in their own vehicle, when such activity is incidental to the conduct of an entity or person's primary business;

(b) Entities or persons hauling their own recyclables or hauling recyclables they generated or purchased and transported in their own vehicles, including material recovery facilities hauling their own recyclable material;

(c) Nonprofit or charitable organizations collecting and transporting recyclable materials from a buyback center, drop box, or from a commercial or industrial generator of recyclable materials;

(d) City municipal solid waste departments or city solid waste contractors; or

(e) Common carriers permitted under chapter 81.80 RCW whose primary business is not the transportation of recyclable materials.

(3) Prior to the transportation of recyclable materials, all transporters of recyclable materials shall register with the department, and possess a common carrier permit issued by the Washington utilities and transportation commission.

(4) A transporter of recyclable materials who transports recyclable materials within the state without a transporter registration required by this section is subject to a civil penalty of up to one thousand dollars per violation.

[]

NEW SECTION

WAC 173-345-060 Transporter delivery of recyclable materials. (1) A transporter of recyclable materials may not deliver any recyclable materials for disposal.

(2) A transporter of recyclable materials who violates the provisions of this section is subject to a civil penalty of up to one thousand dollars per violation.

[]

NEW SECTION

WAC 173-345-070 Transporter recordkeeping. (1) A transporter of recyclable materials shall keep records of locations and quantities specifically identified to the generator.

(a) Name;

(b) Address;

(c) Service date;

(d) Invoice documenting where recyclables were sold, delivered for processing, or otherwise marketed.

(2) The records must be retained for two years from the date

of collection and must be accessible for inspection by the department and the local health department.

(3) Violations of this section subject the transporter of recyclable materials to a civil penalty of up to one thousand dollars per violation.

[]

NEW SECTION

WAC 173-345-080 Recycling and materials recovery facility notification. (1) All material recovery facilities and all facilities that recycle solid waste, except for those facilities with a current solid waste handling permit issued under RCW 70.95.170, must notify the department and the jurisdictional health department in writing within thirty days prior to operation, of the intent to conduct recycling in accordance with this section. Notification must be in writing, and include:

(a) Contact information for the person conducting the recycling activity;

(b) A general description of the recycling activity;

(c) A description of the types of solid waste being recycled;

and

(d) A general description of the recycling processes and methods.

(2) Any facility, except product take-back centers, that accepts recyclable materials within the state without first meeting the requirements of subsection (1) of this section, is subject to a civil penalty of up to one thousand dollars per violation.

(3) Facilities exempt from the notification requirements in chapter 173-350 WAC are exempt from the requirements in this section.

[]

NEW SECTION

WAC 173-345-090 Penalties. Any transporter of recyclable materials violating the provisions of WAC 173-345-050, 173-345-060, or 173-345-070, is subject to penalties prescribed in those sections. All recycling facilities and material recovery facilities violating the provisions of WAC 173-345-080 are subject to the penalties prescribed in that section.

[]

NEW SECTION

WAC 173-345-100 Appeals. Any person aggrieved by a penalty of the department may appeal that decision only as provided by applicable law including, but not limited to chapters 43.21B and 34.05 RCW.

[]