

# 173-350 Solid Waste Definitions Update Work Group

November 18, 2014

1:00-4:00

Ecology Headquarters: 300 Desmond Drive, Lacey, WA 98503

Room: R0A-05

Phone in option: (360) 407-3780 PIN Code: 307256 #

## Agenda

### Attendees:

|          |                 |  |
|----------|-----------------|--|
| X        | Andrew Kenefick | Waste Management                                   |
|          | Ann Rendahl     | Washington Utilities and Transportation Commission |
| X        | Art Starry      | Jurisdictional Health Authorities                  |
|          | Brad Lovaas     | Washington Refuse and Recycling Association        |
| X        | Bruce Chattin   | Washington Aggregates & Concrete Association       |
|          | Carolyn Logue   | Government Relations Consultant                    |
| X        | Ken Stone       | Washington State Department of Transportation      |
|          | Scott Windsor   | Local Government - City of Spokane                 |
| X        | Sego Jackson    | Local Government - Snohomish County                |
| X        | Suellen Mele    | Zero Waste Washington                              |
| X        | Ted Silvestri   | Jurisdictional Health Authorities                  |
| X        | Troy Lautenbach | Washington State Recycling Association             |
| Ecology: |                 |  |
| X        | Gary Bleeker    | Washington Department of Ecology                   |
| X        | Alli Kingfisher | Washington Department of Ecology                   |
| Guests:  |                 |  |
| X        | Jim Sells       | Washington Refuse and Recycling Association        |
| X        | Penny Ingram    | Washington Utilities and Transportation Commission |
| X        | Pam Smith       | Washington Utilities and Transportation Commission |
| X        | Betty Young     | Washington Utilities and Transportation Commission |
|          | Susan Thoman    | Cedar Grove  |
| X        | Bart Kale       | Bart Kale & Associates/Nucor Steel                 |

**Project Objective:** The definitions of Solid Waste, Recyclable Materials, and Recycling are the basis for all solid waste handling activities. These terms are defined in statute, but subject to some interpretation. The work group will focus on these terms and determine if they can be clarified or improved within the limits of existing statutes.

**Meeting Objectives:**

- Review draft language from Andrew Kenefick
- Discuss definitions of reuse

**Ground Rules**

- Turn off distractions (phone, email etc)
- Success depends on participation
- Avoid acronyms
- Share air time
- Share the why as well as the what
- These are preliminary thoughts
- Feedback loops with constituent groups/gatekeepers
- Regular attendance – if you can't attend, designate a proxy

**Homework:**

1. Review and prepare to provide comments on draft: *173-350-XXX Identifying solid wastes rv2 AMK*.
2. Review and prepare to discuss definitions of reuse

| <b>Time</b>    | <b>Topic</b>                                      | <b>Additional Details</b>   |
|----------------|---|---|
| <b>5 min</b>   | Welcome, Check in, Roll call                      |   |
| <b>5 min</b>   | Review Group Process to Date                      | Conform changes to meeting notes for 11-4-14                                    |
| <b>120 min</b> | Factors to consider for recycling and solid waste | Review and discuss draft: <i>173-350-XXX Identifying solid wastes rv2 AMK</i> . |
| <b>45 min</b>  |   | Discuss definitions of reuse and possibly speculative accumulation and others   |
| <b>5 min</b>   | Wrap-up & Check-out                               |   |

Additionally, we discussed the need to find another meeting room for our face to face meeting in December. Betty Young offered to find a room at the WUTC for our next meeting.

PRELIMINARY DRAFT – FOR DISCUSSION ONLY

WAC 173-350-XXX

(1) The purpose of this section is to identify those materials that are solid wastes under Chapter 70.95 RCW.

(2) When determining whether a material that was a solid waste is no longer a solid waste, the department shall consider whether the material meets the following factors:

(a) Whether the materials are not or are no longer discarded or abandoned<sup>1</sup>;

(b) Whether the materials have been source-separated from other SW for recycling or reuse, where “source-separated” means the separation of recyclables from other solid wastes at the place where waste originates;<sup>2</sup>

(c) Whether the material is or can will be used to produce a valuable product or intermediate, including whether there are established markets for sale, or otherwise transfer of ownership, of the material;<sup>3</sup>

(d) Whether the generator or owner of the material treats the material as a valuable commodity rather than as a waste, including consideration of how the materials are stored and whether the storage of the materials prior to use or sale exceeds reasonable time frames; and

(e) Whether the material does not contain harmful substances that require special handling to prevent harm to human health and the environment;

**Comment [AK1]:** Handling of those materials  
Do you need this section?  
Consistent language “are SW” or “are not SW?”

**Comment [AK2]:** Some materials were never a SW

**Comment [AK3]:** “Is not or is no longer a SW”  
Under the premise that it is a SW to begin with – that it can transition out of the system.

**Comment [AK4]:** The local health jurisdiction  
Almost want to write it w/o who makes the determination. Eliminate the ‘who’

**Comment [AK5]:** Add a definition of “abandoned”  
Add definition of “accumulated speculatively” or EPA definition of “reasonable”

**Comment [AK6]:** Why limit it to source separated?

**Comment [AK7]:** “Separated” how does that feed into “comingled source separated”.  
The definition only says “separated”  
Separation – separated from garbage; and separated of recyclables from each other  
Need to have a SW handling permit

Get language from Andrew.

**Comment [AK8]:** Money is transferred or??  
Something that someone wants or is used but there is not

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**Comment [AK9]:** From EPA rule.. not clearly defined here. Product or ingredient to a product... definition of valuable – economic value or more *intrinsic value to end user*.  
Also

Transfer of ownership.

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<sup>1</sup> *United States v. Hoffman*, 154 Wn.2d 730, 743-744 (2005) (Under the federal Resource Conservation & Recovery Act (RCRA), a material that has not been discarded or otherwise abandoned is not a “solid waste.”)

<sup>2</sup> *WAC 173-345-030 (“Source separated” means the separation of different kinds of solid waste at the place where waste originates.)*

<sup>3</sup> Department of Ecology’s Reply Brief, *PT Air Watchers v. Dept. of Ecology*, No. 11-2-01270-8 (Thurston Cty. Super. Ct. Feb. 21, 2012) (“[Forest biomass and urban wood that] are useable, tradeable commodities ... do not constitute waste.”). *Frequently the market dictates that a commodity requires payment to be recycled.*

(3) The following are examples of materials that are not considered solid waste:

(a) animal and vegetable manures that are re-used by applying to farmlands at agronomic rates for agricultural purposes.<sup>4</sup>

(b) scrap metal materials which are purchased for resale to will be recycled or reused and are not destined for disposal and do not contain harmful-

(c) soils, sediments, and other materials used for daily, intermediate, or final cover at landfills.<sup>5</sup>

(d) municipal sewage sludge used in agriculture, silviculture, and in landscapes as a soil conditioner and meeting standards of Chapter 70.95J.<sup>6</sup>

(e) spent rice hulls that are mixed with fruit cores, skins, and seeds to manufacture pomace for use as cattle feed and fertilizer.<sup>7</sup>

(f) Glass cullet purchase and used as backfill or bedding in road or facility construction.<sup>8</sup>

(g)

Comment [AK10]: exempt

Comment [AK11]: Delete this item? Ecology letter (P. Christiansen) ADC is SW that is used to cover SW. (get a copy of June 27 2007 letter)  
Glacier case as well.

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(4) The following are examples of materials that are considered solid waste:

(a) Mixed loads of demolition and construction materials that have not been source-separated by commodity (e.g., concrete, wood, drywall, metal, plastic) for recycling or reuse that are disposed of legally or illegally. Such comingled loads delivered to a recycling facility for the purpose of recycling are not considered solid waste.

<sup>4</sup> *Littleton v. Whatcom County*, 121 Wn. App. 108, 116-117 (2004) (“[Chicken] manure, as a reusable substance, does not constitute waste” for purposes of Chapter 70.95 RCW.).

<sup>5</sup> WAC 480-70-016(3). *The Disposal Group, Inc. v. Waste Management Disposal Services of Oregon, Inc.*, Initial Order, Docket No. TG-941154 (Dec. 19, 1994), adopted by *The Disposal Group, Inc. v. Waste Management Disposal Services of Oregon, Inc.*, Commission Decision, Docket No. TG-941154 (Jan. 27, 1995) (Wastewater sludge generated at an aluminum mill has value as alternative daily cover at a landfill; therefore, transportation of the sludge is not “for disposal” for purposes of Chapter 81.77 RCW. Evidence that the landfill charged to receive the material – albeit at substantially lower rate – did not mean that the sludge did not have commercial value.).

<sup>6</sup> RCW 70.95J.005(1)(d) (“Properly managed municipal sewage sludge is a valuable commodity and can be beneficially used in agriculture, silviculture, and in landscapes as a soil conditioner.”); *In re Petition for Correction of Assessment*, No. 92-035, 12 Wash. Tax Dec. 85, 1992 Wash. Tax LEXIS 1468 (Dept. of Revenue, Appeals Division 1992) (Sludge that is to be applied to lands as a fertilizer and soil amendment is “collected primarily for recycling or salvage” and therefore was not “waste” as defined in RCW 82.18.010(3), and not subject to the refuse collection tax.).

<sup>7</sup> *In re Petition for Correction of Assessment*, No. 98-133, 18 Wash. Tax Dec. 153, 1998 Wash. Tax LEXIS 881 (Dept. of Revenue, Appeals Division 1998) (pomace, which is generated from the production of fruit juices and then transferred through a barter transaction for use as cattle feed or fertilizer, is not worthless and has value; therefore, it is not a waste.).

<sup>8</sup> Dept. of Ecology, *Technical Information Memorandum No. 93-1, “Recycling of Glass Cullet as Construction Material”* (Nov. 9, 1993) (“[Solid waste rules] were not intended for recycled materials purchased by a manufacturer or contractor as products and used for the purpose of producing new materials or providing material additives used as backfill or bedding in road or facility construction.”).

(b) Yard debris, food waste, and other organic materials collected for composting *or digestion*.<sup>9</sup>

(c) Piles of waste tires stored outside for \_\_\_ months without any significant efforts to recycle or sell ... [need further Ecology input].

(d) Ash from incinerated vehicle tires, but containing significant concentrations of lead and cadmium, re-sold for use in plant fertilizers.<sup>10</sup>

DRAFT

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<sup>9</sup> Informal Opinion Letter from K. Gerla, Assistant Attorney General to Rep. P. Kremen (Oct. 31, 1994). (“[R]eliance on a use and a market as the only criteria for determining when a recycled material is no longer a solid waste could allow a person to collect solid waste, perhaps minimally process it, and resell it for use as a fill material at locations other than approved solid waste disposal sites.”).

<sup>10</sup> The Seattle Times, “Toxic Ash from Tires Used in Fertilizer” (Nov. 23, 1997).