



DEPARTMENT OF
ECOLOGY
State of Washington



Report to the Legislature on Rule Amendments to Chapter 173-350 WAC, Solid Waste Handling Standards

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Rule Amendments to
Chapter 173-350 WAC, Solid Waste
Handling Standards**

Waste 2 Resources Program
Washington State Department of Ecology
Olympia, Washington

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Executive Summary

Substitute Senate Bill 5883, Chapter 1, laws of 2017, requires that by September 1, 2017, the Washington Department of Ecology (Ecology) report to the Washington State Legislature on the revision of Chapter 173-350 Washington Administrative Code (WAC):

“(5) Within existing resources, the department of ecology must engage stakeholders in a revision of WSR 13-22-073, rule amendments to chapter 173-350 WAC, to revise the proposed rule and submit a report to the senate local government and energy, environment, and telecommunications committees and the house of representatives local government and environment committees by September 1, 2017. The report must include a summary of areas of consensus and dispute, proposed resolution of disputes, a list of engaged stakeholders, a proposed timeline for potential rule adoption, and the most recent draft of proposed amendment language, if any.”

This report provides brief information about Chapter 173-350 WAC, Solid Waste Handling Standards and the process to develop amendments to the rule. It details stakeholder workgroups that were formed to participate in the process, including lists of stakeholders involved and summaries of the issues explored. It identifies areas of consensus and dispute for three key topics. The report concludes with a recommendation to continue the rule process, and a proposed timeline for next steps to propose and adopt rule amendments. The most recent draft rule amendment language is in Appendix A-1.

Chapter 173-350 WAC addresses waste management issues as diverse as used tires, surface impoundments, and incineration. These rules govern how individuals, businesses, and governments can handle solid waste, what materials can be recycled, when permits are required, and many other technical details. The rule was initially adopted in 2003 and most requirements have never been updated. Feedback from regulated entities, local governments, and Ecology staff indicated that a comprehensive review and update was necessary.

Ecology began rulemaking in 2013 with the intention of adopting an amended rule in 2016. Ecology began working with stakeholders to identify issues, evaluate solutions, and craft draft rule language to improve requirements and increase clarity. Due to the complexity of the rule and the significant interest of stakeholders, Ecology extended the informal public involvement time for the draft rule and delayed its adoption until 2018.

In addition to stakeholder meetings held to address specific areas, Ecology conducted two informal comment periods on a comprehensive draft, seeking review and comments beyond what the Administrative Procedure Act requires. Ecology carefully reviewed feedback on each draft and continued to work with stakeholders to craft language responsive to their comments and concerns, recognizing that not all of them would be satisfied with the resulting language.

Throughout this process, Ecology relied on cooperative relationships to develop rule amendments that protect Washington’s environment while promoting a strong economy. Ecology has and will continue to implement an open, transparent rule development process.

Ecology will continue to meet with stakeholders to listen, discuss, and problem solve before formally proposing the rule for public review and comment in November 2017.

The most significant areas of proposed changes to the rule are:

- A new section that provides a tool to help determine if something is a solid waste and therefore regulated under this rule;
- Changes to how solid waste is managed in piles; and
- Management of contaminated soil and contaminated dredged material.

Introduction

In 2013, the Washington State Department of Ecology (Ecology) initiated rulemaking to update Chapter 173-350 of the Washington Administrative Code (WAC), Solid Waste Handling Standards. This regulation was originally adopted in 2003. With the exception of changes to sections pertaining to management of organic wastes in 2013, the rule has not been updated, even though the amount and type of solid waste generated in Washington have dramatically changed.

After three years of working with a broad array of stakeholders, including holding two informal comment periods, Ecology is now working on a formal rule proposal for release in November 2017. This report provides the Legislature a summary of the rulemaking process, a list of engaged stakeholders, areas of consensus and dispute, a proposed timeline for rule adoption, and the most recent draft of proposed rule language.

Background

In Washington State, local governments have the primary authority to manage and regulate solid waste. Ecology's responsibility is to review and approve local comprehensive solid waste management plans and to adopt regulations that govern these plans, including solid waste collection and permitting solid waste facilities.

The primary state regulation governing solid waste in Washington is Chapter 173-350 WAC, Solid Waste Handling Standards. Chapter 173-350 WAC was originally adopted in 2003, repealing earlier versions of solid waste management rules dating back to the late 1960s. Over the last 14 years, the nature and character of the solid waste stream have changed as products and consumer behaviors have evolved. Materials that are disposed today often contain higher levels of toxic chemicals than materials disposed in the 1970s and 1980s. In addition, solid waste handling and disposal facilities have evolved to better manage new waste streams. Based on the changes in the solid waste system, Ecology, with the advice and encouragement of stakeholders, initiated a process to update the solid waste regulations.

The Rulemaking Process

On November 5, 2013, Ecology initiated rulemaking to update Chapter 173-350 WAC, the Solid Waste Handling Standards, by filing a CR-101 form with the Code Reviser's Office. The CR-101 identified the authorizing statute and section(s) of the rule under consideration for revision. Ecology proposed to revise all sections of the rule except -220, -225, and -250. Those sections pertain to management of organic wastes and were amended earlier in 2013.

Ecology assigned lead technical staff to the various sections of the rule and organized stakeholder workgroups to advise Ecology on policy issues and rule language. The workgroups held meetings for two years before Ecology released the first public draft of the rule in June 2016. Following the release of the preliminary draft, three public workshops were held in July

2016 in Lacey, Ellensburg, and Spokane. Comments on the preliminary draft were accepted until September 2016. A second public draft was developed incorporating comments received on the first draft. The second draft was released in December 2016 and available for public comment until February 2017.

Ecology is currently developing a formal rule proposal based on stakeholder comments on the first two drafts of the rule. This will signal the formal public comment period, with adoption scheduled for spring 2018.

Stakeholder Engagement

At the onset of rulemaking, Ecology organized stakeholder workgroups around various sections of the rule. The committees advised Ecology on policy issues and rule language. Ecology created a webpage for the rule process, and has maintained a Listserv of several hundred stakeholders and organizations that are interested in the rule. Messages were sent out via the Listserv to update stakeholders throughout the process. In addition to hosting rule process documents such as the CR-101, the webpage identifies stakeholder workgroups, shares summaries of discussions, and includes focus sheets for the major sections of the rule identifying issues and proposed changes.

In June 2016, Ecology notified interested parties that a draft rule was available for review and announced upcoming public workshops. Three public workshops were held around the state in July 2016 to share draft rule changes to help stakeholders prepare for submitting comments. Written comments were accepted until September 2016 and individual meetings were held with stakeholders upon request.

Ecology revised the draft rule based on comments received and issued a second draft rule for public comment in December 2016. Comments were accepted until February 2017. All stakeholders were offered the opportunity to review the second draft rule before Ecology began working on the formal rule proposal. In addition, the Senate Energy, Environment and Telecommunications Committee held a work session on the rule in March 2017. Ecology held additional meetings with stakeholders including the Associated General Contractors of Washington, the Washington Aggregates and Concrete Association, the Ports Association, the Building Industry Association of Washington, the Institute of Scrap Recycling Industries, the Washington State Association of Counties, and environmental health directors.

Ecology is currently revising the draft rule language based on comments stakeholders provided on the second draft and from other discussions. Following review by Ecology's economist, Ecology plans to formally propose amendments in November 2017 by filing a CR-102 as the Administrative Procedure Act requires.

Stakeholder Workgroups, Sections of the Rule, and Issues

Following is a list of the sections of the rule and members of the stakeholder workgroups that were formed early in the rulemaking process. Representatives changed over time for some organizations. Over the course of the project, representatives may have changed organizations, and in some cases members attended multiple workgroup meetings.

WAC 173-350-100 - Definitions and Determination of Solid Waste

Ecology Staff Leads: Gary Bleeker, Allison Kingfisher, Dawn Marie Maurer

Workgroup Members:

- Bruce Chattin, Washington Aggregates & Concrete Association
- Jennifer Hill, Washington State Department of Transportation
- Penny Ingram and Pam Smith, Washington Utilities and Transportation Commission
- Sejo Jackson, Local Government - Snohomish County
- Andrew Kenefick, Waste Management
- Troy Lautenbach, Washington State Recycling Association
- Suellen Mele, Zero Waste Washington
- Ted Silvestri, Jurisdictional Health Authorities
- Jody Snyder, Waste Connections
- Art Starry, Jurisdictional Health Authorities
- Rod Whittaker, Washington Refuse and Recycling Association (WRRRA)
- Scott Windsor, Local Government - City of Spokane

Others who attended meetings include:

- Jerry Bartlett, Cedar Grove
- Holly Chisa, Institute of Scrap Recycling Industries, Inc.
- Kinley Deller, King County Solid Waste
- Bart Kale, Bart Kale & Associates/Nucor Steel
- JR Myers, Snohomish County
- Jim Sells, Washington Refuse and Recycling Association
- Susan Thoman, Cedar Grove
- Matt Zybas, Snohomish County

Workgroup Focus: 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 workgroup met to determine if these terms could be clarified or improved within the limits of existing statutes.

The workgroup concluded there needs to be a new section: WAC 173-350-021, Determination of Solid Waste. This new section helps industry determine if materials they generate are solid waste, and provides a tool to provide clarity and consistency in enforcement of the regulation. This section of the rule attracted significant interest.

WAC 173-350-230 - Land Application

Ecology Staff Lead: Marni Solheim

Workgroup Members:

- Pam Barrow, Northwest Food Processors Association
- Rick Dawson, Jurisdictional Health Authority - Benton-Franklin County Health
- Samantha Fleischner, Washington Organics Recycling Council
- Jeff Hegedus, Jurisdictional Health Authority - Whatcom County Health

Workgroup Focus: This section concerns the land application of wastes for beneficial purposes. The workgroup met twice and agreed that not many changes were needed to this section. They agreed that exclusions from the rule for agronomic land application of manure and crop residue should be expanded to include on-farm vegetative waste.

WAC 173-350-240 - Energy Recovery and Incineration Facilities

Ecology Staff Lead: Gary Bleeker

Workgroup Members:

- Kevin Barry, Klickitat County Public Health
- Michael LaScuola, Spokane Regional Health District
- Art Mains, Roosevelt Regional Landfill
- Jeff Martin, Klickitat County Public Health

Workgroup Focus: Facilities that burn solid waste to produce energy can earn exemptions from some solid waste management regulations. The workgroup looked at clarifying applicability of this section, especially if this section should regulate facilities that burn wood or wood derived fuel. The workgroup also looked at streamlining and simplifying the process to determine if an energy recovery facility or incinerator is required to obtain a solid waste handling permit, or eligible for an exemption from obtaining one.

WAC 173-350-320 - Piles Used for Storage or Treatment

Ecology Staff Lead: Al Salvi

Workgroup Members:

- Jan Brower, Jurisdictional Health Authority - Kitsap County Health
- Bruce Chattin, Washington Aggregates & Concrete Association
- Rebecca Craig, Small business/contractors
- Andrew Kenefick, Waste Management
- Chris Martin, Ecology – Water Quality Program

- Jeff Rudolph, Pierce County Public Works - Road Shop
- Dan Watts, Jurisdictional Health Authority – Tacoma-Pierce County Health Department
- Rod Whittaker (replaced Jody Snyder), Washington Refuse and Recycling Association
- Ben Wilkinson (replaced Jennifer Hill), Washington State Department of Transportation

Workgroup Focus: This section includes applicability and requirements associated with the storage and treatment of solid waste in piles. The workgroup looked at clarifying requirements for the throughput of certain materials. For exempt piles facilities, the workgroup evaluated the requirements to meet for piles to remain exempt. They discussed adding requirements such as notification, reporting, and an operations plan. For permitted piles facilities, the workgroup wanted to clarify existing requirements and discussed the need for any new ones, including financial assurance. The workgroup met twice and members voiced opposing views on certain requirements. Further discussion is included later in this report.

WAC 173-350-330 - Surface Impoundments and Tanks

Ecology Staff Lead: Bill Harris

Workgroup Members:

- Jan Brower, Kitsap Public Health District
- David Lowe, Waste Management
- Chris Martin, Ecology - Water Quality Program
- Wendy Mifflin, Yakima County Solid Waste Division
- Ted Silvestri, Yakima Health District
- Jody Snyder, Waste Connections
- Rod Whittaker, Washington Refuse and Recycling Association

Workgroup Focus: This section’s primary application is to systems for handling leachate at landfills. It also regulates activities ancillary to primary functions of the solid waste system, including surface impoundments associated with solid waste recycling and piles activities. The workgroup focused on clarifying the section’s applicability and aspects of the operating standards. The workgroup identified a few concerns regarding the applicability to manure lagoons, financial assurance, and the relationship between facility siting and groundwater protection.

The proposed changes clarify when an impoundment or tank should be regulated under a solid waste or water quality permit, and add piping systems that connect impoundments and tanks permitted under the rule into the scope of this section. Language also clarifies operating requirements for detecting leaks, maintaining and cleaning impoundments and tanks, how new facilities must be located in relation to existing water wells, and how nearby property owners must be notified of possible impacts on future well placement.

WAC 173-350-350 - Waste Tire Storage; WAC 173-350-355 - Waste Tire Transport (New Section)

Ecology Staff Lead: Isaac Standen

Workgroup Members:

- Nina Baston, Walla Walla County Code Enforcement
- Rick Dawson, Benton-Franklin Health District
- Pat Dunn, Les Schwab
- Trooper T. Giddings, Washington State Patrol
- Mark Hope, Tire disposal and recycling
- Chris Kitchen, Ash Grove Cement
- Dean Large, Washington Refuse and Recycling Association
- Dick Nordness, Northwest Tire Dealers Association
- Christopher Piercy, Kitsap County Public Works Solid Waste Division and Northwest Product Stewardship Council
- Jim Sells, Washington Refuse and Recycling Association
- John Sheerin, Rubber Manufacturers Association
- Steve Skinner, Lewis County Public Works
- Gary Smith, Automotive Recyclers of Washington
- Robert Vantuyl, Ash Grove Cement
- Dan Watts, Tacoma-Pierce County Health Department

Workgroup Focus: Currently, only waste tire storage that occurs outdoors is regulated under this section. The proposed changes would add facilities that store waste tires indoors to be regulated as waste tire storage facilities. Tires stored in mobile containers used for transport would still be exempt from regulation as tire storage facilities, provided they move tires offsite annually.

Updates are proposed to facility design requirements to reflect changes to the fire code. Various parts of this section were modified to make it consistent with other parts of the rule. Waste tire storage will still be regulated under WAC 173-350-350, but waste tire transport will be regulated under a new section (WAC 173-350-355).

WAC 173-350-360 - Moderate Risk Waste Handling

Ecology Staff Leads: Al Salvi and Megan Warfield

Workgroup Members:

- Cheryl Christian, Washington Department of Labor & Industries
- Alan DenAdel, Pend Oreille County Public Works
- Rick Gilbert, Kitsap County Public Works
- Bryan Hunt, Jurisdictional Health Authority - Northeast Tri-County Health District
- Patti Johnson, Kittitas County Solid Waste

- Keith Lund, Stericycle
- Jon Napier, Washington State Association of Fire Marshals
- Rob Rieck, Ecology - Hazardous Waste and Toxics Reduction Program
- Gerald Tousley, Jurisdictional Health Authority - Thurston County Public Health and Social Services Department

Workgroup Focus: This section outlines requirements for managing moderate risk waste (MRW). Proposed changes focus on clarifying current design and operational standards for MRW facilities, and improving consistency with other regulations such as the Dangerous Waste Regulations (Chapter 173-303 WAC) and requirements of the Washington State Department of Labor & Industries. Proposed language modifies conditional exemption requirements to ensure proper management of materials and provide stronger worker and environmental protections. Proposed language also adds a new exemption for management of waste pharmaceuticals in certain programs. The workgroup also evaluated the definition of limited MRW to see if expansion of the limited MRW category was warranted. No changes were made.

WAC 173-350-400 - Limited Purpose Landfills

Ecology Staff Lead: Bill Harris

Workgroup Members:

- Rod Whittaker, Washington Refuse and Recycling Association
- Jody Snyder, Waste Connections
- Ted Silvestri, Yakima Health District
- David Lowe, Waste Management
- Chris Martin, Ecology - Water Quality Program
- Jana McDonald, Central Pre-mix Concrete Company
- John Bromley, Washington Department of Natural Resources
- Kathy Pierson, Snohomish Health District
- Kevin Scott, Port Townsend Paper

Workgroup Focus: This section establishes standards, criteria, and requirements for landfills receiving a wide range of solid wastes. Only dangerous waste, municipal solid waste, and inert waste disposed in inert waste landfills are excluded from this section. The workgroup discussed how the rule explains alternative design options for liners and covers, requirements for environmental monitoring and reporting, the end points for post-closure care, and how financial assurance requirements relate to those end points.

Proposed language highlights the flexibility already available for liner and cover designs to better describe what data needs to be collected and how to report it; align the post-closure framework with the framework for municipal solid waste landfills; and clarify how new facilities must be located in relation to existing water wells, and how nearby property owners must be notified of possible impacts on future well placement.

WAC 173-350-410 - Inert Waste Landfills

Ecology Staff Lead: Bill Harris

Workgroup Members:

- John Bromley, Washington Department of Natural Resources
- David Lowe, Waste Management
- Chris Martin, Ecology - Water Quality Program
- Jana McDonald, Central Pre-mix Concrete Company
- Kathy Pierson, Snohomish Health District
- Kevin Scott, Port Townsend Paper
- Ted Silvestri, Yakima County Health District
- Jody Snyder, Waste Connections
- Rod Whittaker, Washington Refuse and Recycling Association

Workgroup Focus: This section establishes standards, criteria, and requirements for landfills receiving inert wastes as they are defined in WAC 173-350-990. The workgroup discussed the volume limit for exemption from solid waste permitting, the interplay between inert waste landfilling and gravel mine reclamation under Washington Department of Natural Resources permits, and a conflict in setback requirements with the well construction standards in Chapter 173-160 WAC. The workgroup raised a few additional concerns about inert waste landfills in current practice, notably the varying interpretations of what wastes may be disposed in inert waste landfills and the existing requirement for notification to nearby property owners when proposing a new facility.

Proposed language raises the limit on the volume of inert waste that can be disposed without a permit under a conditional exemption from 250 cubic yards to 2,000 cubic yards. New language also clarifies how new facilities must be located in relation to existing water wells, and how nearby property owners must be notified of possible impacts on future well placement.

WAC 173-350-500 - Groundwater Monitoring

Ecology Staff Leads: Tom Culhane, Cole Carter

Workgroup Members:

- Brian Butler, Port Townsend Paper
- Jennifer Garcelon, Clallam County Environmental Health Services
- Bryan Hunt, Northeast Tri-County Health District
- Patti Johnson, Kittitas County Solid Waste
- Dennis Moore, Trans-Alta USA
- James Obereiner, Waste Management
- Pat Shanley, Ecology - Waste 2 Resources Program

Workgroup Focus: Groundwater monitoring is a key to protecting the environment. This section addresses groundwater protection and sets monitoring standards for two types of facilities identified in the rule: limited purpose landfills and certain surface impoundments. The workgroup considered several issues including requiring submittal of quarterly monitoring reports, requiring electronic submission of quarterly monitoring data through Ecology's Environmental Information Management System, determining if analyses for metals must be conducted for dissolved or total constituents, and clarifying what happens if monitoring indicates that corrective action steps need to be taken.

Most changes to -500 in the latest draft are minimal, and are for clarification and simplification. However, there are two significant changes:

1. All groundwater monitoring data must be submitted in an electronic format by April 1 of each year.
2. For metals analyses, since groundwater standards refer to “total metals,” but ion analyses require “dissolved metals,” both types of analyses will be required for some constituents.

WAC 173-350-990 - Criteria for Inert Waste

Ecology Staff Lead: Dawn Marie Maurer

Workgroup Members:

- Bruce Chattin, Washington Aggregates & Concrete Association
- Andy Comstock, Jurisdictional Health Authorities - West Side
- Chris Martin, Ecology – Water Quality Program
- John Bromley, Washington Department of Natural Resources
- Jennifer Hill, Washington Department of Transportation
- Zachary Fiorito, Inert Waste Landfill Operators

Workgroup Focus: This section provides criteria for determining if a solid waste is an inert waste. Jurisdictional health authorities use the criteria for inert waste to determine if a waste qualifies for less stringent management standards. While this section lists some specific wastes (cured structural concrete, brick, glass, aluminum, and stainless steel) non-listed wastes should have comparable physical characteristics and risks as the listed wastes. The waste must demonstrate a threshold of low risk and physical durability.

The Washington Department of Natural Resources uses different criteria for its surface mining reclamation program. In some cases, both sets of standards may apply. The workgroup had the goal of improving efficiency and clarity of the classification process, while continuing to provide adequate levels of health and environmental protection. After consideration of alternatives, the workgroup recommended eliminating this section instead relying on statutory provisions and revised definitions in the rule.

Soil and Sediment Criteria and Use (New Section)

Ecology Staff Lead: Marni Solheim

Workgroup Members:

- Janusz Bajsarowicz, Pacific Topsoils
- John Bromley, Washington Department of Natural Resources
- Andy Comstock, Jurisdictional Health Authority – Tacoma-Pierce County Health Department
- Jake Finlinson, King County
- Matt Hinck, Cal Portland
- Chris Martin, Ecology - Water Quality Program
- Adrienne Pearson, City of Spokane Wastewater Management
- Rob Bonnett (replaced Michael Shaw), J.R. Hayes (on behalf of Association of General Contractors)
- Alex Smith, Port of Olympia
- Stuart Whitford (replaced Jared Keefer), Jurisdictional Health Authority - Jefferson County Health
- Ben Wilkinson (replaced Jennifer Hill), Washington Department of Transportation

Others who attended meetings include:

- Jimmy Blais, Gary Merlino Construction
- Rod Whitaker, Washington Refuse and Recycling Association

Workgroup Focus: This section of the rule attracted significant interest. The proposed new section would address use and disposal options for soils and sediments containing substances such as industrial chemicals and petroleum materials. Examples are street waste, petroleum-contaminated soil, engineered soil, and dredged material from water containing contaminants.

The draft section lists test parameters, sets contaminant limits, and focuses on characterization and use of soils. Other sections in the rule address standards related to storage, treatment, and disposal. In response to comments, Ecology is not including this section. Instead, Ecology proposes to revise definitions for “clean” versus “contaminated” soil and dredged material to clarify what types of soil and dredged material containing contaminants can be managed as “clean” materials not subject to solid waste regulation, and what must be managed as “contaminated” material in accordance with applicable sections in the rule, such as those for limited purpose landfills or treatment.

Areas of Consensus/Disputes

At the conclusion of the second public review and comment of the draft rule, consensus was reached on most sections of the rule. Three sections of the rule needed further work and discussion with stakeholders, which are identified below.

WAC 173-350-320 - Piles Used for Storage or Treatment

After the second public review of the draft rule, Ecology revised this section and went back to stakeholders for their review and input. The following proposed changes were shared by e-mail and discussed with two members of the piles workgroup who participated in a meeting by conference call. Ecology will reach out to the stakeholder workgroup again to gauge agreement on the areas of consensus since most of them were not able to participate in the conference call.

Areas of Consensus

Reference to Proposed Section -995, Soil and Sediment Criteria and Use

When the new section was proposed, impacted soils and impacted sediment managed under -995 was removed from the applicability subsection of the piles section. When Ecology decided not to include -995 in the next draft, this exclusion was removed.

Reference to “Impacted Soil” and “Impacted Sediment”

The proposed language removes all references in the piles section to “impacted soils” and “impacted sediments.” These terms were originally added in conjunction with a new section (-995) of the rule that addressed management of impacted soils and impacted sediment. When Ecology decided to not add section -995, all references to it were removed and language reverted back to “contaminated soils” and “contaminated dredged material.”

Reference to Proposed Section -995

The piles section changed quite a bit in an earlier draft to correlate with the proposed new section -995 on impacted soils and impacted sediments. References to -995 were removed from the piles section with the decision not to include the new section. Therefore, all requirements for permitted sites handling contaminated soils and contaminated dredged materials reverted back to the original language in the existing regulation.

Combining Exemptions

The requirements for conditional exemptions for cured concrete and asphaltic materials were the same, so they were combined into one exemption.

Clarifying Volume Limits

Proposed language adds a new requirement clarifying limits for the volume of waste that may be stored at one permit exempt site. For example, the limit for waste allowed to be stored at a site is 2,000 cubic yards of total material, not 2,000 yards of each material stored in a pile onsite. WRRRA and the health departments supported this change, but suggested further clarification. Additional changes are under consideration.

Compliance with Fire Code

Proposed language adds a new requirement that all exempt piles must comply with the International Fire Code as implemented through the local fire control agency.

Safety and Emergency Plans

The workgroup members discussed clarification on what safety and emergency plans are required to be included in the plan of operation. It was decided to incorporate language from other sections of the rule into this section to help clarify the safety and emergency plan requirements. Items like emergency safety equipment location maps and incident protocols will be added.

Areas Still Under Dispute

Title

The title of the section is changed back to “Piles used for storage or treatment” from “Piles used for storage, treatment, or recycling.” Some think that removing “recycling” could lead to sham recycling.

Addition of “Documented Date”

Proposed language adds “documented date” regarding throughput requirements for contaminated soils and dredged material. The current draft language is “*All piles removed within 90 days from the first documented date storage began.*” While some stakeholders support this change, others do not. They would rather require notification to clearly identify when the resident time for a material to be stored or treated in a pile begins.

Notification, Reporting, and Resident Times for Waste Stored Treated or Recycled in a Pile

Some stakeholders want notification and reporting requirements included in all pile exemptions. Others believe notification, reporting, and throughput requirements are burdensome and could be impediments to recycling certain materials.

Ongoing Piles

Some expressed concerns about how long a pile could be allowed to grow and still be exempt from permitting. One suggestion is to increase the yearly percentage requirement of materials recycled to minimize the potential for piles to increase in size over time.

Piles Used for Recycling Solid Wastes

Several stakeholders commented on expansion of this section to include piles that are used for recycling and impacted soil, including inert materials such as concrete and asphalt. Recycling these types of materials in facilities that handle significant volumes of material that are constantly processed could be an issue for operators at these sites. The piles by nature are large and difficult to move or deplete. By including these recycling activities in this provision, facilities will be subject to rigorous standards such as having to place all of the piles on sealed surfaces.

Some stakeholders commented it is impractical to completely deplete these piles, and pave or seal the surfaces beneath them, and the cost of such sealing would be in the millions of dollars per site. Some believe these provisions could force the closure of numerous recycling facilities, deplete valuable landfill space, and reduce the state's total recycling tonnage by more than 20 percent.

Contaminated Soils Managed in Piles

Many stakeholders believe the storage of contaminated soils from construction projects needs further evaluation. Construction projects with a large earthwork component may last for six months to several years, requiring soil and other materials to be staged. Requiring facilities to meet the exemption criteria for storage in piles will make staging and handling of all construction "fill" soil more expensive and increase administrative requirements. If impacted soils are included in staged materials, the proposed revisions to this section would require solid waste facility permits (with supporting engineering, compliance, reporting, and closure plans).

Source Separated Recyclable Materials is Problematic for Concrete and Asphalt Recyclers

The source separation requirement for permit exemption is problematic because asphalt and concrete hauled for recycling does not always arrive at the facility source separated due to the nature of the material. The requirement to obtain a permit for these activities will likely increase the cost of recycling and the amount of material disposed rather than recycled. It would be a disincentive to increase recycling and reuse.

Exemption for Non-Putrescible Solid Waste

The first exemption in Table 320-A regarding non-putrescible solid wastes is still under review.

Contaminated Soil and Contaminated Dredged Material Management

The areas of consensus and dispute listed below are based on a stakeholder meeting following review and comment on the second draft. Six of the original committee members attended the meeting and two additional organizations participated. Completely revised draft language was presented for discussion.

Ecology received a substantial number of comments from multiple entities on draft language for management of “impacted soil and impacted sediment.” The second informal draft included a new section, WAC 173-350-995, focused on the use of “impacted soil and impacted sediment” and set contaminant concentrations (soil/sediment screening levels or SSLs) based on land use where materials would be placed. Contaminant concentrations were primarily based on state and federal cleanup levels, protection of groundwater under the state’s groundwater quality and drinking water protection standards, and the most current natural background concentrations.

Commenters overwhelmingly found the rule too complex, subjective, and difficult to follow, and asserted it would lead to delays and increase costs for management of soil and sediment from project and construction sites. Many suggested Ecology reference MTCA cleanup levels (Chapter 173-340 WAC, Model Toxics Control Act - Cleanup) for managing these materials, which they believe is currently practiced by most in the industry.

To address comments and improve the rule to provide a framework for contaminated soil and dredged material management, Ecology simplified how the rule will apply to management of soil and sediment containing contaminants from a release. In the latest draft, -995 is removed in its entirety including all cross references in other sections of the rule. Instead, existing definitions for “clean” versus “contaminated” soil and sediment were revised.

New definitions will allow soil or sediment containing contaminants to be placed at any location provided it would not exceed MTCA cleanup levels that would apply to that location. Since MTCA does not address pH, Ecology has also set a pH standard that must be met for soil or sediment where the pH has been altered. Uses that do not meet MTCA or pH standards are subject to regulation and permitting as solid waste management, similar to the standards under sections of the rule for limited purpose landfills or treatment in piles.

New proposed language provides clarity to operators in deciding where they can place materials in a manner that has protective concentrations that have already been assessed by a regulatory body. The language also provides authority to jurisdictional health departments to stop an entity from placing contaminated materials where they should not be placed.

Areas of Consensus

Need for Statewide Standard

There is need for a statewide standard to ensure consistency among jurisdictions.

Areas of Dispute

Removal of the Detailed Section of the Rule

Removal of details drafted in -995 is a disappointing setback to some. Some who attended the meeting expressed their disappointment, but did not provide comments in support of the second informal draft because they mostly supported the draft language. They also did not support guidance for contaminant concentrations that could be developed following the adoption of amended rule language. These stakeholders do not believe guidance is enforceable.

Notice of Movement/Use of Contaminated Soil/Dredged Material

While the requirement to provide notice of projects over a certain volume and contaminant concentration has been removed, some feel notice is warranted, even more than in earlier rule drafts, while others contend providing notice is unrealistic for the number of potential construction projects occurring at any time in a local jurisdiction.

WAC 173-350-100 and New Section WAC 173-350-021 – Select Definitions and Determination of Solid Waste

The goal of the determination of solid waste section was to provide a tool to increase clarity and uniformity across the state to define what is a solid waste. The tool clarifies the types of materials that are solid waste and those that are not. In addition, it allows waste materials that have been processed to become legitimate commodities or products no longer subject to solid waste regulatory oversight.

Recyclable materials were never meant to be excluded from regulatory oversight. The statutory definition of recyclable materials makes them a subset of solid waste. Mismanagement of recyclable solid waste historically has caused environmental and human health impacts.

Areas of Consensus

Definition of Recycling

Comments on the second draft resulted in changes to the draft language of the definition of recycling and the determination of solid waste section. These changes reflect a general consensus from those who commented. The draft definition of recycling is now the following: *“Recycling” means transforming or remanufacturing waste materials into usable or marketable materials for use other than landfill disposal or incineration.* Recycling includes processing waste materials to produce tangible commodities.

Areas of Dispute

Connecting Recycling to “Well-Established Markets” and “Positive Market Value”

The main themes that generated comments and did not result in changes to draft language are the concepts of tying recycling to “well-established markets” and “positive market value.” Both concepts are to be evaluated when making a determination that a waste material has value, is a commodity and a product, and no longer solid waste. Some stakeholders requested that we remove these terms to broaden the types of materials that would no longer be considered solid waste and therefore remove regulatory oversight of the management of those materials. Other stakeholders wanted us to impose additional restrictions on these terms to tighten any loopholes in the system and keep more materials under regulatory oversight.

There is a general interest from the recycling industry to exclude as many materials as possible from regulation, while conversely, solid waste management companies and some local jurisdictional health departments want to retain authority to regulate recyclable materials. After analysis, Ecology concluded these concepts were vital to prevent sham recycling in the state and prevent pollution from improper waste handling, and that the draft rule language should not be expanded to include even more materials.

What Should be Regulated as Solid Waste

While there is no consensus on what materials should still be regulated as solid waste, the draft rule provides a tool that will allow local governments to evaluate what materials are legitimate commodities and products, and no longer regulated as solid waste. This rule change will provide a financial gain for the recycling industry, while retaining regulatory authority over recyclable materials as required in statute.

Recommendations and Conclusion

Chapter 173-350 WAC covers a broad range of issues and is very complex. Due to the complexity of the issues and interest of stakeholders, Ecology extended the typical rulemaking timeline to allow for multiple informal comment periods. Ecology engaged hundreds of stakeholders, and staff worked diligently to draft language and incorporate comments. Ecology has and will continue to implement an open, transparent rule development process.

Ecology began working with stakeholders four years ago to identify issues, evaluate solutions, and craft draft rule language to improve requirements and increase clarity. In addition to stakeholder meetings held to address specific areas, Ecology conducted two informal comment periods on a comprehensive draft, seeking review and comments, which is beyond what is required by the Administrative Procedure Act. Ecology carefully reviewed feedback on each draft and continued to work with stakeholders to craft language responsive to their comments and concerns, recognizing that not all stakeholders will be satisfied with the resulting language.

Ecology has continued to meet with numerous stakeholders to listen, discuss, and problem solve. Throughout this process, Ecology relied on cooperative relationships to develop amendments that protect Washington's environment while promoting a strong economy.

The majority of the draft amendments to the rule have stakeholder support and consensus. Ecology is committed to continuing discussions on the remaining issues before formally proposing the rule for public review and comment in November 2017. Ecology recommends continuing the rule process and reporting back to the Legislature during the 2018 Legislative Session to describe the final rule proposal.

Next Steps

Staff are continuing work on rule language and intend to present a draft rule to Ecology’s economist by September 13, 2017. The economist will prepare the required preliminary regulatory analysis for release with the proposed rule. The analysis includes the Preliminary Cost-Benefit Analysis and Least Burdensome Alternative Analysis, as well as related determinations required under the Administrative Procedure Act, and an evaluation of compliance under the Regulatory Fairness Act (Small Business Economic Impact Statement). Ecology will also prepare and publish an environmental checklist and threshold determination under the State Environmental Policy Act (SEPA).

The Proposed Rulemaking Notice (CR-102) is expected to be filed with the Office of the Code Reviser on November 22, 2017, followed by formal hearing(s) in mid or late January. Public comments will be accepted during the hearing and for a period of time afterward. Ecology implemented a new online eComments tool that makes it easier for stakeholders to submit comments electronically.

Ecology will prepare the Concise Explanatory Statement, including a response to comments received during the formal comment period. If adopted, the revised rule is scheduled to be filed with the Code Reviser on March 21, 2018, effective on April 21, 2018.

What Happens	When
September 13, 2017	Rule language and supporting input delivered to agency economist
November 22, 2017	Proposed rule filed with Code Reviser. Official comment period begins.
Public hearing/meeting/webinar	Mid to late January 2018 – to be announced
Final rule and regulatory analyses returned to agency economist.	February 21, 2018
Rule adopted	March 21, 2018
Rule effective	April 21, 2018

Appendix A-1

173-350 Draft Rule Current as of August 3, 2017