



DEPARTMENT OF
ECOLOGY
State of Washington

Concise Explanatory Statement
Chapter 173-312 WAC
Local Solid Waste Financial Assistance

*Summary of rulemaking and response to
comments*

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Concise Explanatory Statement

Chapter 173-312 WAC Local Solid Waste Financial Assistance

Waste 2 Resources Program
Washington State Department of Ecology
Olympia, Washington 98504-7600

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Introduction

The purpose of a Concise Explanatory Statement is to:

- Meet the Administrative Procedure Act (APA) requirements for agencies to prepare a Concise Explanatory Statement (RCW 34.05.325).
- Provide reasons for adopting the rule.
- Describe any differences between the proposed rule and the adopted rule.
- Provide Ecology's response to public comments.

This Concise Explanatory Statement provides information on The Washington State Department of Ecology's (Ecology) rule adoption for:

Title: Local Solid Waste Financial Assistance (formerly Coordinated Prevention Grants)
WAC Chapter(s): Chapters 173-312
Adopted date: September 8, 2017
Effective date: October 9, 2017

To see more information related to this rulemaking or other Ecology rulemakings please visit our web site: <http://www.ecy.wa.gov/laws-rules/index.html>

Reasons for Adopting the Rule

This rulemaking amends Chapter 173-312 WAC – *Local Solid Waste Financial Assistance* (formerly *Coordinated Prevention Grants*), and repeals Chapter 173-313 WAC - *Local Solid Waste Enforcement Grant Regulation*.

These two closely aligned rules implement grant programs managed by the Waste 2 Resources Program, and draw funds from the same source. The largest portion of funds goes to support the development and implementation of local solid and hazardous waste management plans. A smaller allocation targets related local enforcement activities, including but not limited to permitting and inspections.

Historical funding has been two to three times higher than projected for the current biennium. The reduction in available funds has lowered the allocation available for solid waste enforcement activities under the current rule. While we look forward in future biennia to the availability of more funding, the approach under the current rule jeopardizes the viability of local enforcement programs in some cases.

Adopting the revised rule:

- Responds to stakeholder requests for clarification and other modifications including updating the name of the program.

- Clarifies the scope and purpose of the programs, and improves the focus on funding projects that yield the best return on the investment.
- Improves coordination of planning across local jurisdictions.
- Addresses changes that have occurred with evolution of the program, where criteria and limitations described in the current rule no longer reflect the best approach.
- Ensures the continued viability of local solid waste enforcement activities.
- Incorporates an approach that encourages better performance by creating a consequence for non-performance that is notable, but not overly punitive.

Repealing the Local Solid Waste Enforcement Regulation rule eliminates redundancy, and consolidates two closely aligned grant programs drawing funds from the same source under one rule. This improves program visibility for stakeholders, and eliminates a chapter in the Washington Administrative Code.

Differences Between the Proposed Rule and Adopted Rule

RCW 34.05.325(6)(a)(ii) requires Ecology to describe the differences between the text of the proposed rule as published in the *Washington State Register* and the text of the rule as adopted, other than editing changes, stating the reasons for the differences.

There are some differences between the proposed rule filed on May 24, 2017 and the adopted rule filed on September 8, 2017. Ecology made these changes for all or some of the following reasons:

- In response to comments we received.
- To ensure clarity and consistency.
- To meet the intent of the authorizing statute.

The following content shows the changes. Stakeholder comments and requests were the primary reason for making these changes.

WAC 173-312-020 Definitions (these changes were for clarification):

- Deleted “Contributed services”
- Under “In-kind interlocal”, deleted the word “local” in the first sentence
- Under “Local contribution”, replaced “contributed services” with “in-kind interlocal”

WAC 173-312-060 Application process (this change was for clarification):

- Under subsection (3), replaced “contributed services” with “in-kind interlocal”

WAC 173-312-070 Application evaluation (these changes were in response to stakeholder concerns about establishing criteria in guidelines).

- (2)(b) The extent to which projects proposed in the application serve statutory priorities or priorities identified in the local solid and/or hazardous waste plans;

- Deleted subsection (e)

WAC 173-312-080 Allocation of state financial assistance (these changes were in response to stakeholder concerns about criteria, and the need to be flexible in reducing awards. The department added language to formally recognize a stakeholder opportunity to ask the agency for reconsideration of an award reduction).

- (3) If a recipient fails to comply with the terms of its award or administrative requirements, the department may reduce their award in the next biennium by up to ten percent for failure to meet performance expectations. The department will make this determination after receiving applications in the next biennium. A recipient may request the department's reconsideration within seven calendar days of the award reduction notification and must submit the request in writing detailing the reasons for the request.

WAC 173-312-090 Local contribution (this change was for clarification)

- (2) The local contribution may be met by cash expenditures and in-kind interlocal. The applicant's intent to use in-kind interlocal must be stated in the application. The department will confirm the costs meet department requirements, and prepare the agreement to reflect the local contribution prior to offering the agreement.

Response to Comments

Description of comments: The comment documents as they were originally received from each commenter can be found here: <http://wt.ecology.commentinput.com/comment/extra?id=EKhRf>. A full transcript from oral testimony at the public hearing can be found in Appendix A of this document. Ecology identified topic headings based on commonalities in comment subject matter. Subject matter content was extracted from its original format (letter, email or transcript of oral testimony), grouped verbatim by topic heading and assigned a distinct "comment number". The commenter name or affiliation is also a unique identifier for each comment.

The Concise Explanatory Statement includes one response to each group of comments for each topic. Commenters can find their comments using the assigned comment number and associated topic heading. Ecology's response immediately follows the last comment under each topic heading.

Commenter identification: Ecology accepted comments from May 23, 2017 through July 7, 2017. Ecology reviewed all comments and identified topic headings based on commonalities in comment subject matter. This section provides comments and Ecology responses (RCW 34.05.325(6)(a)(iii)) Ecology grouped comments under the following topic headings:

- Independent City Status
- Performance Measures and Reducing Awards
- Sustainable Solid Waste Funding
- 80/20 Split and Allocation Table
- Suspend Rulemaking
- Guidelines
- Support for Revision

- Unallocated Funds
- Project Costs
- In-kind Interlocal
- Organics
- Name Change
- Rulemaking Process

Independent City Status

Commenter: Susan Fife-Ferris - Comment A-4-1

The City of Seattle operates its own solid waste system and is a solid waste planning authority with its own Ecology-approved Solid Waste Management Plan. Seattle also has a diverse and actively engaged Solid Waste Advisory Committee (SWAC). Seattle's first solid waste plan was the 1989 Integrated Solid Waste Management Plan, On the Road to Recovery. In the proposed amendment to WAC 173-312, Seattle would be considered an "Independent City." In our letter submitted March 29, 2017, we commented that the definition for "Independent City" was unworkable and would impact Seattle's long-standing status as a planning authority eligible for financial assistance. Thank you for incorporating our proposed solution and addressing our concern. It is our understanding that the definition of "Independent City" combined with the inclusion of transfer stations in the definition of "Disposal Site" is meant to and will ensure Seattle's continued status as a planning authority eligible for financial assistance.

Ecology's Response to Independent City Status

Comment noted. (Fife-Ferris A-4-1)

Performance Measures and Reducing Awards

Commenter: Meg Moorhead - Comment A-5-3

In terms of the potential penalty for CPG recipients that do not comply with administrative requirements, I'm neutral on that topic. It seems reasonable to ask recipients to meet Ecology's requirements but I don't know enough about other jurisdictions' administrative challenges to make a judgment on whether a penalty is reasonable.

Commenter: Kyle Dodd - Comment A-6-4

I also agree that there should be criteria to evaluate performance, and that I know that Ecology drafted the criteria and circulated them amongst the local solid waste financial assurance workgroup, and that local health jurisdictions did submit comments. So, my comment is that once a final version of the criteria and the implementation plan are finalized, that they be reviewed again by the workgroup with an opportunity to comment. I also did hear earlier on the call that staff did recommend delaying the implementation of any penalties to 2021 cycle, and I also support that. Thank you.

Commenter: Andy Comstock - Comment A-13-1

My name is Andy Comstock, I'm with Tacoma Pierce County Health Department. Thank you for the opportunity to comment. The first comment that I wanted to focus on was some of the language regarding the potential ten percent penalty that is in section 173-312-080. The language that I would like to see amended or changed is the inclusion of the terminology up to ten percent for these penalties. The way it's currently written, when the determination at some point in time that a penalty would be imposed, the way I read this language is that it would automatically be a ten percent penalty. I think there's room to include a sliding scale, gravity criteria, etcetera, for the imposition of said penalties etcetera, for those entities that are not administering their grants correctly. Obviously, you know, the intent here is to encourage people to appropriately manage their grants etcetera. I certainly endorse that and support that concept, but I think having some additional implementation criteria here or sliding scale would be helpful.

Commenter: Brenda Blanchfield - Comment A-10-3

173-312-060 Application process (2) Initial application period should include the time frame of availability such as 2 weeks within approval of legislature's budget. The Department of Ecology should provide timely grant applications as well as agreements. Delays in applications and agreements are often 4 - 6 months after the legislation passes the budget. Receiving funds late affects the ability to conduct the work. The following comment addresses the Performance Evaluation, of which penalties or reducing future grants is tied to work performance. Delays in the award should be included and reflected in the proposed performance evaluation. Chapter 173-312-070 Application evaluation (2)(c) Applicants past performance may be subjective to inconsistency in the department and allow too much discretion in making a determining of eliminating a grant recipients future funding. Criteria are already outlined and required for applicants. By allowing the department to broadly determine the past performance in "guidelines" does not allow for partners review. As previously stated, late grant agreements cause delayed project performance.

Commenter: Kyle Dodd - Comment A-6-3

173-312-080(3) - I agree that there should be criteria to evaluate performance, however the 10% penalty should only be applied when several of the criteria are not being met to address repeated patterns of underperformance. It shouldn't be a one strike and you're out system. I would welcome the opportunity to continue to work with the Department on developing and implementing the performance evaluation program.

Commenter: Al French, et al - Comment A-8-1

WAC 173-312-080 (3) - Ecology plans to implement a 10% penalty on grant recipients that don't meet Performance Expectations. The addition of placing performance criteria and associated 10% penalty only adds more burden to counties while allowing Ecology the ability to micro-manage local programs. Unfortunately, the process of grant oversight across the state is not consistent, there are no current performance criteria guidelines to review, and there is no appeal process in place. We recommend that the performance penalty be delayed until there is a consensus on applied criteria.

Commenter: WACSWM - Comment O-2-5

Also in section 173-312-080 is new language on performance requirements. See subsection (3), "will develop criteria to evaluate a recipient's performance during a biennium and may reduce their award in the next biennium by ten percent". These performance requirements do not have criteria laid out in the rule draft, again waiting on pending guidelines. These performance requirements will have a fiscal penalty attached to them and criteria should be laid out in rule, not agency guidelines. Guidelines do not have the same level of public participation and scrutiny as rulemaking. Criteria

that has a fiscal impact on a jurisdiction must be stated clearly in rule. Additionally, there is no appeal process identified in the rule for a funding reduction to a local government. It is also unclear when said funding reductions would be reinstated and to what amount for future biennia.

Commenter: Eric Johnson - Comment O-1-6

The draft language has added performance requirements that are accompanied by a ten percent penalty if standards are not met. Without clear language on criteria, appeal process and how to regain full funding in the rule itself, we oppose this addition until it is fully discussed with counties. The draft contains multiple reference to guidelines that are not available for review and may not be available for review till final rule adoption. Guidelines cannot become de-facto rule making and criteria cannot be changed whenever Ecology wants to without the protections awarded implementers in the rule making process.

Commenter: Art Starry - Comment O-3-2

Like Andy said, I think the penalty provisions could possibly be modified to be a sliding scale, we would support that.

Ecology's Response to Performance Measures and Reducing Awards

Ecology revised proposed WAC 173-312-080(3) based on comments received. The award reduction may now be “up to” ten percent for failing to meet performance expectations. We also added a provision for the recipient to request Ecology reconsideration of an award reduction. As a point of clarification, Ecology views this as both an incentive and a means to make the best use of limited state financial assistance; Ecology does not view this as a penalty.

Both Ecology and stakeholders have experienced challenges related to transitioning the program from calendar year to operating within the biennium, introducing Ecology's online system for Administration of Grants and Loans (EAGL), and the delay in capital budgets in 2015 and 2017.

Ecology will develop training materials and workshops to deliver to recipients over the 2017-19 cycle. We will also enlist the assistance of the LSWFA Work Group in the 17-19 biennium as we finalize the measurements used to evaluate recipient performance. Ecology plans to begin evaluating recipient performance in the 2019-21 funding cycle.

Because it is not possible to predict when the Governor will sign the capital budget for any biennium or to know in advance the amount allocated for LSWFA, Ecology can only estimate the available funding levels and provide them “by the start of the initial application period”. We do our best to provide the final allocation table as soon as the capital budget is signed. Recipient performance due to delays in allocating funds or awarding grants will not lead to performance findings against the recipient.

Financial assistance is obligated for a maximum period of two years and aligns with the state fiscal biennium: July 1 of the first fiscal year through June 30 of the second fiscal year. When the Legislature passes a state capital budget, Ecology anticipates conducting the application period in the third quarter of that year (7th quarter of the grant cycle) in

preparation for the new biennium. Under this scenario, Ecology strives to offer agreements on July 1.

It is Ecology's desire that no recipient experiences a budget reduction due to poor performance. Rather it is Ecology's goal to work with recipients to improve performance. Improving performance will decrease the time it takes the recipient and Ecology to administer the program. That said, the soonest a recipient may experience a reduced award due to poor performance in the previous biennium, is at the onset of the 21-23 biennium. See also, Ecology's Response to Guidelines.

(Moorhead A-5-3; Comstock A-13-1; Blanchfield A-10-3; Dodd A-6-3, A-6-4; French, et al A-8-1; WACSWM O-2-5; Johnson O-1-6; Starry O-3-2)

Sustainable Solid Waste Funding

Commenter: Meg Moorhead - Comment A-5-2

Of course lower population counties also have important hazardous and solid waste functions that rely on the CPG program. But in that case the funding of essential services with declining state grants seems to be a more fundamental problem than the allocation formula. A more sustainable funding source should be identified to support essential programs.

Ecology's Response to Sustainable Solid Waste Funding

Comment noted. This subject matter is not within the scope of this rulemaking. However, more information on research to fund mechanisms for solid waste can be found in "Financing Solid Waste for the Future" available on Ecology's web site:

<http://www.ecy.wa.gov/programs/swfa/nav/financing.html>.

(Moorhead A-5-2)

80/20 Split and Allocation Table

Commenter: Meg Moorhead - Comment A-5-1

My advice is to stay with the \$100,000 fixed component. Urban counties are the source of significant revenues to the state and have large populations to serve. King County allocates much of its CPG funding to our partner cities. Some King County partner cities have larger populations than rural counties, with commensurate demand for hazardous and solid waste services. They rely on CPG funds to leverage other funding sources. So given urban counties' contributions to state revenues and large populations to serve, retaining the current fixed/per-capita allocation components make sense.

Commenter: Stephen Wamback - Comment A-7-10

Commit to transparency. Withholding public release of allocation charts and guidelines until after the close of the comment period has been troubling and cannot be repeated.

Commenter: WSAC - Comment O-1-3

WSAC staff was told verbally that "multi county jurisdictions" will now only get one share, not a proportional share, even at Tri-County Health. This is not clearly specified in the draft rule language and we would oppose that policy change until fully vetted by county decision makers.

Commenter: Andy Comstock - Comment A-13-2

I do want to talk about the allocation table as well. As a local public health agency I know that the framework for the enforcement grants are trying to keep some of the smaller jurisdictional health departments around the state of Washington whole, and to be able to continue their enforcement grant activities. So, we are in support of the allocation table the way it is set up to continue to enforce those small jurisdictional health departments. Thank you.

Commenter: James Dawson - Comment A-11-2

Section 080 Setting a minimum level of funding for solid waste enforcement activities will allow many local health departments to continue at least minimally effective program and response to complaints, illegal dumping and facility monitoring/permitting. It should be noted that this will be at the minimum funding level proposed minimal. Population increase has driven an increase in complaints, permitted facilities and public inquiries that continue to tax our existing programs at the current staffing levels. The expected, even with the suspension of the 80/20 split will result in an additional 10 percent reduction in funding thus resulting in fewer staff available to respond or additional funding from local sources in an increasingly difficult time. The funding provided through this program allows BFHD to respond to citizen complaints and inquiries quickly and efficiently. Our complaint response can usually be measured in days with our current staffing level with the ability to continue working on an issue until resolution is obtained. Our success rate is approximately 90% with a 12 month period. We also use these funds to monitor, permit and inspect 20 facilities completing on average over 190 inspections per year. Proposed changes to WAC 173-350 will increase the number of regulated facilities expanding the needs and demands further. While it would be nice to find a way to fund programs both implementation and enforcement at a level to achieve the goals found in the "Beyond Waste Plan" this proposal at least allows some certainty in operating required enforcement activities state wide.

Commenter: Brenda Blanchfield - Comment A-10-4

Chapter 173-312 050 (2) (a) The amount set aside for solid waste enforcement will not be less than twenty percent of the total allocation available each biennium for local solid waste financial assistance or an amount equal to the total sum of seventy-five thousand dollars per jurisdictional health department, whichever is greater. We are not in favor of the new language and in favor of keeping the language as is due to program cuts.

Commenter: Brenda Blanchfield - Comment A-10-5

Preliminary Regulatory Analysis for the rule change of Chapter 173-312 and Chapter 173-313 WAC, May 2017 per Department of Ecology brings the determination to understand it isn't any cost, but it is a lowering of funds for solid waste implementation beyond the Legislature's budget. Chapter 3.2 the Cost Analysis states that "While the proposed rule potentially reallocates grant funds across local jurisdictions, it does not change the total amount of funding available. Therefore, while potential funding for individual grant recipients may increase or decrease as a result of the proposed rule amendments, there is no resulting net cost. This proposal does indeed specify that the local solid waste implementation funding will decrease within this budget cycle. It fairly unclear with this language the effects on solid waste implementation because it is a biased analysis reviewing primarily the enforcement funding.

Commenter: Melissa Sutton - Comment A-15-1

This is Melissa Sutton environmental health specialist with Clark County Public Health. As a local health jurisdiction it's imperative to fund mandated programs such as solid waste enforcement. And Clark County Public Health is supportive of ensuring that solid waste enforcement is able to fully fund LHJ's solid waste enforcement as proposed in the draft allocation table, during budgetary shortfalls.

Commenter: Art Starry - Comment A-12-2

The proposed amendments to funding allocation are needed and appropriate. Assuring solid waste is properly managed is a core public health function. The only funding many jurisdictional health departments have for solid waste enforcement activities is financial assistance provided by the state. The funding mechanism in current code will not provide sufficient solid waste enforcement funding for some health jurisdictions when levels of state solid waste financial assistance are low. While the proposed fund distribution method would reduce funding for solid and hazardous waste planning and implementation activities slightly below 80 percent, this only occurs when state funding is less than \$13,125,000 per biennium. While this seems likely for FY 2017-19, it is the first time, and hopefully the last time, solid waste funding will be so low.

Commenter: Ed Dzedzy - Comment A-2-1

I would like to provide comment on the proposed CPG rule, WAC 173-312. As a local health jurisdiction, it is important to maintain the ability to meet our obligations as defined under RCW's and WAC's for solid waste enforcement. This not only includes permitting solid waste facilities, but it also includes complaint response and illegal dumping investigations. Although support for our solid waste program can be somewhat supported through fees, many of our activities such as complaint response and illegal dumping investigations do not provide a fee revenue source and can be complex and expensive. The redesign of the funding structure in WAC 173-312 truly helps in supporting our ability to meet the mandates required for solid waste enforcement as well as assures more consistent solid waste enforcement capabilities state wide. Furthermore, establishing a minimum funding allocation to support solid waste enforcement also assure state wide solid waste enforcement capability to protect public health and the environment during low budget years. These funding assurances for solid water enforcement are critical to assure local health jurisdictions can maintain the capacity to conduct the mandated responsibilities of solid waste enforcement. This assurance is critical given our role is not only oversight of permitted solid waste facilities, but also over other solid water activities such as complaint investigations and illegal dumping response. Furthermore, with proposed changes in the Washington Administrative Code, many currently exempt solid waste facilities will lose their exempt status and require permits placing an added burden on local health jurisdiction to issue permits and oversee their operation. The proposed redesign of the funding allocation structure in the rule will support and assure local health jurisdiction maintain the capacity to conduct solid waste enforcement consistently across Washington state for the protection of public health and the environment.

Commenter: Alyssa Spradley - Comment A-3-1

We, at Northeast Tri County Health District, support the proposed revisions to the CPG rule. The bulk of our duties include responding to illegal dumping activities and complaint response which are not fee-funded activities. The proposed structure allows greater capability for enforcement activities and baseline funding for protecting public health.

The added responsibility of permitting previously exempt activities will most likely better protect public health and result in fewer complaint investigations. The minimum funding allocation will allow for stable management of this facilities.

Commenter: Stephen Wamback - Comment A-7-4

Section 173-312-080 ensures that JHDs receive "not less than twenty percent of the total allocation available each biennium for local solid waste financial assistance or an amount equal to the total sum of seventy-five thousand dollars per county, whichever is greater" sounds like it is preserving the traditional 80/20 split. Any legislative appropriation less than \$14,625,000-including the current \$10,000,000 proposal-results in Ecology taking implementation dollars from solid waste agencies and giving those to JHDs.

Commenter: Stephen Wamback - Comment A-7-5

Ecology "moved the goalposts." Prior to releasing the CR-102, Ecology prepared and shared charts with grant allocation options. Local governments reviewed and commented through WACSWM and WSAC, arguing in favor of an 80/20 split between implementation programs and enforcement programs. At the June 20 WACSWM meeting, Peter Lyon confirmed that Ecology's intent to provide floor funding of \$75,000 per county for JHD purposes would result in an effective split of 70.75/29.25. Ecology would not prepare and share a new allocation chart to show, in the most transparent way possible, the impact this change would have on each county and agency. After decades of splitting the grant 80/20, this was a shock.

Commenter: Stephen Wamback - Comment A-7-7

The funding scheme disrespects the authority of local elected officials. As cited above, Chapter 70.95 RCW grants to local governments the responsibility and authority to design and manage its solid waste system. RCW 70.95.160 and Chapter 36.58 RCW provide explicit authority for the county to adopt a host of system implementation regulations. In Pierce County, the County Executive and County Council determined that the Planning and Public Works Department- already the lead solid waste management agency -would be a better home for solid waste enforcement. Effective January 1, 2017, enforcement of complaints about illegal dumping, improper storage and other nuisance accumulations of solid waste, including those at "facilities" (both permitted and permit-exempt) are the responsibility of Pierce County Planning and Public Works rather than the JHD. Through its development regulations and nuisance code, Pierce County has restricted the number, location, and impact of solid waste/recycling facilities consistent with direction from the public we serve. Moreover, through its interagency funding partnership with the JHD, Planning and Public Works serves as the sole and final arbiter as to which facilities are compliant with the Tacoma-Pierce County Solid Waste Management Plan, and therefore eligible to receive a solid waste handling permit or be considered permit-exempt. By reassigning traditional JHD functions, Pierce County's elected officials have demonstrated leadership consolidating services to the benefit the community. Large and small counties across Washington are likewise reorganizing and shifting functions to eliminate silos. When solid waste management agencies are assigned enforcement roles, they should be eligible to receive the enforcement grant. The Department of Ecology should be helping, not hindering, this move to efficiency and greater effectiveness. The WAC, as proposed, undermines local government authority and is patently unfair. As discussed in detail in the WSAC letter, county elected officials, not the Department of Ecology, should be the final arbiter for allocating grant dollars between functions. The WAC should not cement into regulation a division of authority rejected by an increasing number of local governments. The WAC should not guarantee funds to JHDs for services they do not provide.

Commenter: Stephen Wamback - Comment A-7-11

Discuss alternatives. The WSAC letter addresses allowing each county to allocate its share of grant dollars between enforcement and implementation commensurate with the needs of the county. There are other alternatives as well. Earlier this year, for example, WSAC spoke to the Legislature about

copying the "direct distribution" methodology successfully used by the Washington Department of Health in the allocation of public health dollars. Any of these -and more -would support the goal of WAC 173-312-010 "to prevent or minimize environmental contamination."

Commenter: Ngozi Oleru - Comment A-1-1

Public Health supports the funding mechanism/formula that has been developed by Ecology for administering the CPG grant.

Commenter: Ngozi Oleru - Comment A-9-2

We are in support of revising the 80/20 percent allocation of funds between planning/implementation funding, and enforcement funding, and establish a minimum allocation for funding enforcement grants as proposed in the draft. This will allow for more funding support for enforcement after planning and implementation imposes waste diversion requirements. We are in support for adding a population criteria element to the base level funding for solid waste enforcement grant funding, consistent with the approach for planning and implementation grants. As the most populated county in the state of Washington, this will allow us to provide oversight to ensure the plans for permitted and exempt facilities needing additional oversight are being implemented as written.

Commenter: Kyle Dodd - Comment A-6-2

173-312-080(2) - The revised allocation is reasonable. The 80/20 split was acceptable and allowed for adequate funding of both enforcement and implementation during historically higher CPG funding levels. However, the allocation needs to be revised based on the current decreasing CPG funding trend to allow LHJs to retain the capacity to carry out our mandated enforcement programs.

Commenter: Al French - Comment A-8-2

Comment #2: WAC 173-312-080- It is proposed to revise the eighty/twenty percent allocation of funds between planning/implementation funding (Solid Waste) and enforcement funding (Health Jurisdictions). This revision creates even greater reduction for the planning/implementation portion from the current funding level, with no reduction for the enforcement side. The implementation/planning sectors in many of the counties are already burdened with a share of enforcement costs. We recommend that the eighty/twenty percent allocation remain with the option given to each respective County to decide a different local allocation.

Commenter: WACSWM - Comment O-2-2

This proposed rule revision creates an unbalanced approach between prevention/implementation and enforcement. Effective pollution prevention and implementation systems are necessary to prevent or minimize environmental contamination by hazardous and solid waste. Funding for planning, implementing and collecting of these waste streams is the largest share to prevent the need for more costly cleanups. Yet the proposed changes will create real and lasting harm to local governments' abilities to provide hazardous and solid waste programs. See the comments below on Section 173-312.

Commenter: WACSWM/WSAC - Comment O-2-4

Section 173-312-080 changes the allocation of funds. In 2(a) "or an amount equal to the total sum of seventy-five thousand dollars per jurisdictional health department, whichever is greater." This proposal creates an imbalance in the levels of funding needed to sustain any type of implementation program. This language would likely prove unnecessary when larger funding levels are appropriated by the legislature; when lower funding levels are under consideration, such as the 2017-2019 budget, it creates harm to the implementation side yet no cut to the enforcement side. When asked to provide

a jurisdiction-by-jurisdiction funding table to better allow local governments to review and comment on the impact of Section 173-312-080, Ecology staff refused. Additionally, a threshold dollar amount for a low funding biennium is not identified in the rule. It is only found in the Preliminary Regulatory Analyses, Publication 17-07-009, set at \$14.625 million. It should also be noted that the Analyses is silent on the impact the proposed funding allocation will have on local government agencies other than health departments. As you are aware, local governments are required to plan and implement solid waste, recycling and hazardous waste programs. The Analyses only addresses the benefits of the proposed rule change in providing sufficient funding to jurisdictional health departments. It does not discuss, or even contemplate how reduced funding issues to local government will be result in program reductions, or their elimination altogether with this new financial schema. Lacking anything in writing and based solely on Ecology staff verbal representations, county governments believe the following represents the disproportionate impact of this rule on local government agencies in light of the anticipated \$10 million allocation in the 17-19 biennium. Allocation comparison:

2013-2015 implementation \$22,592,000

2015-2017 implementation \$12,000,000 (a 47% cut from 2013-2015)

2017-2019 implementation \$7,000,000 (proposed) (a 42% cut from 2015-2017)

Net cut from 2013-2015: 69 percent

2013-2015 enforcement \$5,648,000

2015-2017 enforcement \$3,000,000 (a 47% cut from 2013-2015)

2017-2019 enforcement \$3,000,000 (proposed) (a 0% cut from 2015-2017)

Net cut from 2013 – 2015: 47% cut

Commenter: WACSWM - Comment O-4-2

We think that this is an imbalanced approach. You have implementation and enforcement. Implementation is the largest function of the goals to prevent and minimize environmental contamination by hazardous and solid waste. Funding is also the largest portion for the planning, implementation, and collection of these waste streams. And that the changes proposed in rule create an imbalance in that. The rulemaking has changed the amount for implementation, and when rulemaking affects the dollars coming from the Legislature, we feel that the legislative body of a county needs to be involved, and the county commissioners and council members will be made aware and plan to weigh in as soon as possible. I will be sending in formal comments. We have real concerns that the allocation changes create further cuts to implementation where there is not necessarily a cut to enforcement, and we'll be providing that in writing.

Commenter: WSAC - Comment O-1-1

These are both county departments under the direction and budgetary control of the County Commissioners, Council members and Executives. State shared revenues and financial assistance is budgeted locally under locally adopted plans and goals. Counties must prioritize and fund these functions based on differing local circumstances and ask that division of these funds be determined locally. Under the proposed Coordinated Prevention Grant (CPG) rulemaking, the distribution of funds is being changed by the Department of Ecology (Ecology) and we oppose that change. We understand the complete allocation is based on funds from the legislature each biennium, yet the allocation is split up by Ecology. Over the last several biennium, funding has decreased, and allocation formulas have changed. In 2013-2015 enforcement dollars were shared equally except for the multi county jurisdictions. In the 2015-2017 biennium, a base amount plus population formula was applied to the enforcement dollars yet distributed inconsistently with 3 counties receiving less than an equal share. The proposed rule language takes that formula and allocation change done administratively by Ecology and adds a minimum allocation amount to the local health jurisdiction of \$75,000 dollars. While we appreciate the goal of stable funding for our health jurisdictions, it

comes at a cost to our solid waste departments. Counties determine and prioritize the functions of each department and have local discussion if additional revenue is needed by raising fees in either department. Counties have determined locally what department is handling each required function, such as when solid waste departments take on some of the enforcement functions and when local revenues are shifted to meet the local needs (tipping fees shared with health jurisdictions). Because of this, we request the allocation be sent to counties in total, to allocate to each department as fits local plans and goals.

Commenter: WSAC - Comment O-1-2

In section 713-312-080, draft language proposes the minimum allocation to the local health jurisdictions. In the 2015-2017 allocation, Ecology only funded Columbia County at 24% of the base amount, Garfield County at .075% of the base amount and Lincoln County at 47% of the base amount. None of these three counties received any additional funds for a per capital amount. It is unclear why these counties were not given the administratively changed formula allocation. Counties should have a direct say in how funds are allocated. Section 713-312-080 2 (a)(i) states that a "fixed amount for each single jurisdictional health department regardless of size, or the fixed amount multiplied by one hundred fifty percent for each multicounty jurisdictional health district regardless of size" yet Tri-County Health in Pend Oreille, Stevens and Ferry counties receive less than a proportional share.

Commenter: WSAC - Comment O-1-4

Section 173-312-080 also has an unbalanced cut to county solid waste departments by the minimum amount applied to the enforcement allocation. This change would shift the burden of the legislative cut wholly to the implementation side. Implementation would see a cut from \$12 million to \$7 million (a 42% cut). Enforcement would see no cut, getting \$3 million the same as in 2015-2017.

Commenter: WSAC - Comment O-1-5

Without county budget decision maker input on these proposed changes, and with the broader discussion of ongoing funding for solid waste, implementation and enforcement programs that may require local decisions on priorities and local revenue options, we request direct distribution of the full amount to the counties for allocation between departments.

Commenter: WSEHD - Comment O-3-4

And we do concur that there, I guess we believe that, there is a need for some sort of... to give Department of Ecology some latitude in how funds are distributed between solid waste enforcement, and solid waste implementation and planning, especially when coordinated prevention grant funding is reduced. As we're likely to see this coming year, with CPG reduced to ten million dollars or less, using the traditional 80/20 split is going to make it difficult for local health jurisdictions to provide adequate solid waste enforcement. We're seeing that with smaller jurisdictions that are solely funded by CPG for solid waste enforcement, if you do the math and take the 20% of the ten million dollars, that that's going to really reduce their ability to do stuff, and we're afraid that they won't be able to have any solid waste enforcement activities. So we believe that again it is appropriate for Ecology to have some latitude in that.

Ecology's Response to 80/20 Split and Allocation Table

Comments noted. Since the mid-1990s, the existing rule has maintained a "firewall" between Planning & Implementation and Solid Waste Enforcement work. The purpose was to recognize the statutory separation between the governmental department that requires facility

permits and the governmental department that provides those permits when both departments report to the same governing board. Ecology believes it is important to maintain a separation of duties and responsibilities.

Proposed language for disbursing the total allocation of LSWFA between Planning & Implementation and Solid Waste Enforcement preserves the traditional eighty – twenty split. The proposal ensures that the amount available for enforcement would never drop below a minimum level. We will not experience a change in disbursement until legislative appropriation in a biennium drops below \$14.625 million. This amount is derived from a simple math calculation using a formula in the regulation. If legislative appropriation drops below \$14.625M, twenty percent would be \$2.925M. Even if the appropriation was lower, a minimum of \$2.925M (or not less than twenty percent of the total allocation, whichever is greater) would be retained for enforcement.

Having a minimum level of funding for enforcement work helps preserve a balanced solid waste system in Washington State in times of reduced funding. The enforcement program monitors, inspects and permits solid waste facilities such as recycling, composting, and moderate risk waste facilities. On the implementation side, many local governments use LSWFA to pay for the operation of these facilities. A valid solid waste permit is a necessary eligibility component for reimbursement of these costs. Without inspections for compliance, and permits to operate, costs to operate these solid waste facilities may not be reimbursable.

Jurisdictional Health Departments (JHDs) are statutorily responsible to protect public health and the environment. JHDs that are supported by other local revenue may not need or request the full amount available in a biennium. Under the proposed rule, when the portion set aside for solid waste enforcement is more than what is needed in a biennium, the surplus is then made available for planning and implementation projects and vice versa. See Ecology Response to comments on *Unallocated Funds*.

Further distribution within each portion, Planning & Implementation or Solid Waste Enforcement, are shown in the Allocation Table. During rule development, Ecology convened stakeholders to discuss distribution strategies. JHD stakeholders agreed on and recommended distribution amounts for solid waste enforcement work and draft rule language to implement the distribution methodology. The distribution structure within the solid waste enforcement portion of funding that we proposed for adoption is a result of that effort.

Ecology recognizes there are multi-county JHDs that have historically received 150% of the single-JHD amount under the existing rule. Under the proposed rule, each JHD, including single and multi-county, may receive a fixed amount plus population. Ecology plans to consult with the JHDs each biennium for a recommendation on disbursement amounts of the solid waste enforcement portion including but not limited to a fixed amount and cap for each JHD. Ecology can provide the Allocation Table when the Legislature appropriates funding to Ecology through the Capital budget.

The Regulatory Analyses (RA) address the aggregate direct costs and benefits of rule amendments. The total amount of funding is decided by the Legislature, not Ecology. The distribution of those funds is made in accordance with the funding formula established in the rule. The Preliminary Regulatory Analyses (PRA) includes discussion of the benefit of Jurisdictional Health Departments likely having sufficient funds to run a lean solid waste

enforcement program, reducing the risk that jurisdictions would potentially have no such program. We acknowledge that the tradeoff for this risk reduction (only in years in which total funding is below the minimum specified in rule) is a reduction in the services able to be provided by planning departments, but believe that the need for solid waste enforcement programs outweighs potential incremental planning reductions under the rule amendments. We have included language in the final RA to reflect this tradeoff.

(Moorhead A-5-1; Wamback A-7-4, A-7-5, A-7-7, A-7-10, A-7-11; WSAC O-1-1, O-1-2, O-1-3, O-1-4, O-1-5; Comstock A-13-2; Dawson A-11-2; Blanchfield A-10-4, A-10-5; Sutton A-15-1; Starry A-12-2; Dzedzy A-2-1; Spradley A-3-1; Oleru A-1-1, A-9-2; Dodd A-6-2; French A-8-2; WACSWM O-2-2; WACSWM/WSAC O-2-4, O-4-2; WSEHD O-3-4)

Suspend Rulemaking

Commenter: Brenda Blanchfield - Comment A-10-6

The 2017 allocations will be held hostage until this ruling is adopted. This is an inappropriate method to pass the changes to the rule. The grants should be distributed upon legislatures passing the budget.

Commenter: Stephen Wamback - Comment A-7-2

The Pierce County Planning and Public Works Department reviewed the proposed changes to Chapters 173-312 and 173-313 WAC. We concur with the comments provided by the Washington Association of County Solid Waste Managers (WACSWM) and the Washington State Association of Counties (WSAC). Along with those organizations, we request that the Department of Ecology immediately cease work on this rulemaking. The current rulemaking process has failed and harmed Pierce County and other stakeholders:

Release and review has been poorly timed. Without a doubt, both sections of the WAC needed updating. The last comprehensive update to Chapter 173-312 was in 2002; for Chapter 173-313 in 1989. Much has changed in that time and much is still changing. Ecology filed the CR-102 on May 22, 2017 in the midst of the most contentious budget cycle this state has experienced. At the time of filing, Ecology and stakeholders knew funding for any grants would not come until the legislature adopted an operating budget responsive to McCleary and a capital budget responsive to Hirst. As of July 7, we are still waiting on the latter. Throughout the multiple sessions of the Legislature, proposals to maintain funding at the current level, or restoring funding to historic levels, floated, and died. The alternative still on the table will result in an additional twenty percent cut to grants from the 15-17 biennium, following the nearly fifty percent cut from the 13-15 biennium. Going forward with a rulemaking that results in further cuts to solid and hazardous waste management programs while at the same time proposing new compliance requirements, is ill timed.

Commenter: Stephen Wamback - Comment A-7-8

Chapters 173-312 and 173-313 need updating, but not in the manner proposed. Pierce County Planning and Public Works recommends four next steps to mitigate the harm and bias present in the final draft: Decouple the rulemaking process from this biennium's grant cycle. Do not adopt this rule as drafted.

Commenter: Al French - Comment A-8-3

Spokane County is sending this letter to express concern with respect to the Coordinated Prevention Grant (CPG) program funding and Ecology's associated rulemaking of WAC 173- 312 and 313. The

appropriation of CPG statewide funding been drastically reduced from \$28 million to \$10 million in the last three grant cycles. This has a significant impact on the implementation of Spokane County's state mandated Solid Waste and Moderate Risk Waste Plan as well as our ability to continue providing the associated programs and services to our citizens. In addition, the current rulemaking creates even more burden on the County for Solid Waste programs and services. Spokane County formally submits the following comments to Ecology's proposed rulemaking regarding WAC 173-312. Comment #3: It is our understanding that until the current proposed rulemaking for WAC 173-312 has been finalized and adopted, distribution for the upcoming July 2017 grant cycle will be delayed. We recommend that the CPG funding continue "as is" for the upcoming 2017-2019 biennium with the idea that the proposed rule changes will take effect during the next biennium starting in 2019. This will avoid any delay in funding to solid and hazardous waste programs throughout the state as Ecology considers incoming comments and implements any changes in response to those comments.

Commenter: WACSWM/WSAC - Comment O-2-1

In a letter dated May 18, 2017 we requested a delay in this rule update and we stated the following reasons: The CPG distribution allocation should remain as it is currently. Leave the base amount for implementation at \$100,000.00 dollars and the ratio split between implementation and enforcement at 80% / 20%; we have concerns with the performance penalties associated with the additional performance criteria being proposed for the rule update; we have concerns with the timelines involved with a potential state shut down, rule update in the middle of the grant application cycle and the proposed performance penalties. Ecology declined to delay the rulemaking process and we again request you stop the rulemaking process and consider the impacts of the changes currently proposed. In short, the proposed rule is the product of an inadequate stakeholder outreach process, inappropriately relies on guidelines" and funding formulas that have yet to be published, and will harm local governments' ability to fulfill responsibilities assigned in Chapter 70.95 RCW.

Commenter: WACSWM/WSAC - Comment O-2-7

Given the degree of technical changes, and the impacts of the funding changes, we reiterate that this rule update process should be stopped and take the time to readdress these concerns before the next biennia grant cycle. Rulemaking is a separate process than the grant funding and should be decoupled from delays to the current funding cycle.

Commenter: WACSWM - Comment O-4-1

My name is Laura Berg. I am with the Washington Association of County Solid Waste Managers, a recently formed affiliate under the state association of counties. On May 18th we sent a letter requesting a delay in this rule update for several reasons, and those reasons still stand. We have concerns with changing the allocation in rule, we have concerns with the performance penalties and criteria, and we have concerns with the timelines involved. When you add a potential state shutdown, a rule update in the middle of a grant cycle, the possibility of penalties, you have the state fiscal year versus the county fiscal year, and this all creates real issues for some county solid waste at this point.

Commenter: WSAC - Comment O-1-7

Ecology has stated that the rule should be adopted by late August 2017. Given the above stated concerns and the fact that Ecology is delaying the grant cycle until the rule is adopted, Counties ask that the current rulemaking process be stopped, decoupled from the 2017-2019 grant cycle and reconsidered with full input on the guidelines and rule language with all the county concerns addressed.

Ecology's Response to Suspend Rulemaking

We heard the concerns and have noted the requests of stakeholders on the planning and implementation side of local solid waste programs to delay the rulemaking. Ecology believes changes to the rule are necessary for the best implementation of the financial assistance program, and that it is in the best overall interest of the financial assistance program to move forward with the rulemaking process.

Ecology hosted two informal meetings with eight peer-selected stakeholder representatives to obtain their input during the early stages of this rule process. This was followed by two additional informal meetings where current recipients and other interested parties were invited to ask questions and provide input. These sessions helped Ecology staff identify gaps that needed to be addressed, and to edit the draft rule language for clarity.

See also, Ecology's Responses to *Performance Measures and Reducing Awards*, and *Allocation Table*.

(Blanchfield A-10-6; Wamback A-7-2, A-7-8; French A-8-3; WACSWM/WSAC O-2-1, O-2-7; WACSWM O-4-1; WSAC O-1-7)

Guidelines

Commenter: Stephen Wamback - Comment A-7-6

In the same vein, sections such as 173-312-050 (5) refer to guidelines which are yet unpublished and which, if taken at the word of what is drafted in the WAC, would have the force of law in guiding how Ecology would choose to allocate grant dollars and review performance; Please do not misunderstand: performance measures are a good thing! It is both appropriate and necessary that Ecology and all grant recipients demonstrate they are spending public dollars in the most effective and efficient manner. Ecology has a responsibility to publish those performance measures as part of, and not separate from, the WAC.

Commenter: WACSWM/WSAC - Comment O-2-3

Section 173-312-050 (5) mentions that eligibility of programs could be subject to "guidelines" not yet determined. Ecology staff has said that the guidelines are in progress and they plan to bring stakeholders in to the process in July to roll the guidelines out by the adoption date of the rule in August. Guidelines can lay out details of the process, but not set further regulatory requirements. Stating otherwise, as in section 173-312-050 (5) is simply inappropriate. The Department has a responsibility to publicize the full set of eligibility and evaluation requirements in advance, accept public comment, and include only vetted requirements in a revised draft of the rule. Likewise, section 173-312-070 raises a similar concern, allowing the Department to set application approval and funding priority criteria in the guidelines. Guidelines cannot be de facto rules; and regulatory criteria or requirements must be in rule, not guidelines.

Commenter: WACSWM/WSAC - Comment O-2-6

Section 173-312-100 also references guidelines "that may be more stringent." For the reasons stated above, we oppose regulations not clearly specified in rule. Guidelines should be fully vetted with all stakeholders in a transparent and unbiased manner. This will allow local governments and local

elected officials an opportunity to understand the financial impacts and "guideline requirements" before the draft rule language is finalized.

Ecology's Response to Guidelines

Ecology revises program guidelines every biennium to include the allocation table and to reflect the amount appropriated by the Legislature to administer the program. The guidelines are necessary in providing the description for how to implement the regulation governing this financial assistance program.

Ecology publishes guidelines for each grant or loan program it administers. Ecology agrees that guidelines should be vetted with stakeholders in a transparent and unbiased manner and intends to accomplish this for the 2017-19 cycle. Ecology will convene the LSWFA Work Group periodically to obtain input on Legislative items, recommending fixed amounts in the allocation table, evaluating and improving performance measures, and other program elements including guidance documents.

(Wamback A-7-6; WACSWM/WSAC O-2-3, O-2-6)

Support for Revision

Commenter: James Dawson - Comment A-11-1

Thank you for the opportunity to comment on the proposed changes to WAC 173-312 and the repeal of WAC 173-313, as a member of the committee that provided input to this proposal I appreciate the level of effort and consideration put into this project by Ecology staff. Overall the proposal is sound and we at BFHD support it fully, that being said we do have some comments regarding the rule.

Commenter: Art Starry - Comment A-12-1

I support the proposed revisions to Chapter 173-312 WAC and 173-313 WAC. The proposed changes clarify the intent of the solid waste financial assistance program, identify clear priorities for the program, update relevant code sections, and repeal outdated Chapter 173-313 WAC.

Commenter: Kyle Dodd - Comment A-6-1

Overall, I support the draft rule as written. Speaking from the perspective of a small LHJ with minimal resources I make the following comments:

Commenter: WSEHD - Comment O-3-1

I'm Art Starry. I'm the environmental health director for Thurston County Public Health and Social Services. And I'm also here today representing the Environmental Health Directors for the state of Washington. And we're generally in support of the proposed WAC. Both in terms of eliminating 313 and combining it with 312 and having a kind of a single coordinated prevention grant WAC which I guess is going to be retitled as solid waste financial assistance, and we concur also with the language changes because we think that's much clearer, and explains better what the purpose of the programs are.

Ecology's Response to Support for Revision

Comments noted. (Dawson A-11-1; Starry A-12-1; Dodd A-6-1; WSEHD O-3-1)

Unallocated Funds

Commenter: Art Starry - Comment A-12-3

Conversely, the proposed code provides a way to efficiently redistribute unallocated solid waste enforcement funds when higher levels of financial assistance are provided.

Commenter: Ngozi Oleru - Comment A-9-1

We are in support of eliminating the concept of a separate offset grant cycle for newly appropriated funds or re-obligated funds, in favor of an emphasis on the soonest possible distribution of available funds. This allows funding to be available without having to wait for an offset cycle (i.e. 2nd year of biennium.)

Ecology's Response to Unallocated Funds

Proposed rule language greatly reduces the likelihood of a formal offset cycle (subsequent funding opportunity). Ecology will provide a feature in the application process where eligible recipients will identify need for additional funds. This feature will assist Ecology in determining which agreement budgets to increase at the onset of the cycle thereby expediting offers and reducing amendments. As indicated in rule, disbursement of unrequested/unallocated funds will occur at the onset of the biennium and is first offered to other applicants of the same funding category (SWE to SWE, IMP to IMP) before the funding becomes available to the other funding category. Therefore, we do not anticipate unallocated funds after the initial LSWFA agreements are finalized.

(Starry A-12-3; Oleru A-9-1)

Comments on Project Costs

Commenter: Brenda Blanchfield - Comment A-10-2

Chapter 173-312-050 Project and Cost Eligibility 4 (h) Natural disasters where there is no hazardous substance contamination. We prefer that recycling be allowed as an eligible expense in a natural disaster. The states air quality program has aided with locals to be prepared with organic handling methods: These materials may be processed better to follow the state goals, if finances afforded.

Ecology's Response to Project Costs

Ecology plans to provide more information in guidelines to help identify the costs that could be eligible under these circumstances.

(Blanchfield A-10-2)

In-kind Interlocal

Commenter: Susan Fife-Ferris - Comment A-4-2

Section 020 –Definitions

Contributed Services- "Contributed services" means project-eligible services performed for the benefit of a project under a valid interlocal agreement by a third party without direct monetary compensation."

There appears to be some issues with the interplay of several definitions, proposal to strike out definitions, and Section 173-312-090. Upon more careful review of the existing rule, 173-312-090 restricts local cash match to cash expenditures and interlocal costs, which by definition are through agreement with other government entities. This would not allow in-kind contributions by non-government parties or volunteer labor, though the basis for this in statute is unclear. The potential issues are outlined below. 1. Unlike the existing text in 173-312-020 for "In-kind contributions," the definition of "Contributed services" introduces the need for a "valid interlocal agreement." Interlocal agreements exist between governments. This would in effect prevent businesses, NGOs, or others from providing in-kind services. That may be intended. If so, a preferred approach would be to simply state it by rewriting the definition to read: "Contributed services" means project-eligible services performed for the benefit of a project under a valid interlocal agreement by a third-party another government entity without direct monetary compensation." 2. Also, the term "interlocal agreement" will have varied interpretations by various governments and our attorneys. Some will interpret the term to mean a specific legal instrument with specific requirements for adoption, such as adoption by a City or County Council. There is often no need for that level of approval for a valid agreement to be put in place and this rule should maintain flexibility as to the actual instrument used. This can be addressed with an additional change by striking the term "interlocal" from the definition, such that it would read: "Contributed services" means project-eligible services performed for the benefit of a project under a valid inter-local agreement by a third-party another government entity without direct monetary compensation."

In-kind interlocal - "In-kind interlocal" means in-kind contributions ...

This would make more sense and perhaps be more useful if rewritten to read: "In-kind interlocal contributions" means in-kind contributions... Then, if WAC 173-312-090 (2) was rewritten from:

"The local contribution may be met by cash expenditures and contributed services." To: "The local contribution may be met by cash expenditures and in-kind local contributions contributed services." These changes could eliminate the need for the new proposed definition "contributed services" and avoid the issues outlined above.

Commenter: WSEHD - Comment O-3-3

We believe that the language within the other proposed language as far as the contributed services and providing a new way for some alternative mechanisms for providing match is a step in the right direction and might help both solid waste enforcement activities as well as the folks who are responsible for implementing and planning.

Ecology's Response to In-kind Interlocal

Ecology agrees that clarity is needed to support the intention. The following changes were made to the proposed rule language as it relates to local contribution, specifically, in-kind interlocal:

1. WAC 173-312-090 (2) - "in-kind interlocal" replaces "contributed services".
2. WAC 173-312-060 (3) - "in-kind interlocal" replaces "contributed services".
3. WAC 173-312-020 - Under "Local contribution" definition: "in-kind interlocal" replaces "contributed services".
4. WAC 173-312-020 – Under "In-kind interlocal" definition: "local" was deleted".
5. WAC 173-312-020 – Under "Contributed services" definition: entire definition was deleted.

Additionally, Ecology plans to develop training documents that will assist the recipient in knowing how it can take advantage of in-kind interlocal to satisfy the required local contribution.

(Fife-Ferris A-4-2; WSEHD O-3-3)

Organics

Commenter: Susan Fife-Ferris - Comment A-4-3

Lack of Composting or Organic Materials Management definition - Note there is no definition for composting or organics materials management, but there is for recycling. WAC 173-350 provides separate definitions for composting and recycling. Past financial assistance has covered organics management, including prevention, and should continue to do so. Therefore, Seattle requests the inclusion of a reference to "organic material management" and a definition. "Organic material management" would span the range of activities related to prevention and processing organic materials, and would complement the definition of "organic materials" in WAC 173-350.

Commenter: Susan Fife-Ferris - Comment A-4-4

WAC 173-312-050 - Project and cost eligibility • WAC 173-312-050 (3)(b) pertains to local solid waste plans and programs that are eligible for financial assistance, including plans and programs that "reduce waste and recycle" (WAC 173-312-050 (3)(b)(ii)). While we understand that "reduce waste and recycle" might be a broad description that can include waste prevention and organics management, these are critical areas that have been funded by the program in the past and it would

be beneficial to have them called out separately here. Sub-section (3)(b)(ii) could be revised to read: "Reduce and prevent waste, manage organic materials, and recycle."

Ecology's Response to Organics

Organics and organic material management are covered in the Solid Waste Handling Standards, WAC 173-350. To be eligible for LSWFA, projects and programs related to organics must meet those definitions. Adding the definitions to this rule, while convenient, isn't necessary and could cause confusion if the definitions are modified at any time in WAC 173-350.

(Fife-Ferris A-4-3, A-4-4)

Name Change

Commenter: Brenda Blanchfield - Comment A-10-1

Changing the name of Coordinated Prevention Grants is a helpful step however the proposed name is too long. We would prefer Local Solid Waste Funding, not Local Solid Waste Financial Assistance.

Ecology's Response to Name Change

Comments noted. The term "financial assistance" is used in statute and represents how the funds are used: to assist local governments with solid waste planning, implementation and enforcement. Additionally, the LSWFA Work Group discussed and agreed on Local Solid Waste Financial Assistance as the new name.

(Blanchfield A-10-1)

Rulemaking Process

Commenter: Stephen Wamback - Comment A-7-3

Stakeholder outreach was, at best, inconsistent; and at worst, biased. Counties are the responsible lead agencies for preparing solid waste management plans required under Chapter 70.95 RCW. Counties, with cities and towns, hold "primary responsibility for solid waste management and to develop and implement aggressive and effective waste reduction and source separation strategies. [RCW70.95.010 (6) (c)] Jurisdictional Health Departments (JHD) are important partners, but do not share in this lead role EXCEPT where county elected officials have delegated the JHD as lead planning agency (e.g. Clark County and Whatcom County). Whether the stakeholder process for this rulemaking exhibited simple inconsistency or outright bias is likely open to debate. Clearly, the Ecology -JHD relationship is different from the Ecology-Solid Waste Management/Operating Agency relationship. Ecology and the JHDs share a common root in the delegation of federal regulatory authority and often work together to achieve regulatory outcomes. In contrast, Ecology and management/operating agencies often compete on policy and budgetary matters where local initiatives may not be reflective of Ecology's statewide perspective. These differences are OK, and in fact, healthy, as long as all parties guard themselves against allowing comfortable working relationships to evolve into policy-making bias. That happened in this rulemaking... A further example of bias is evident in the interplay between the funding allocation in the section 173-312-080 and the project eligibility requirements listed in section 173-312-050 (2). The funding section

guarantees the enforcement grant for JHD use, even when a county legislative authority has affirmatively assigned one or more of the responsibilities listed in 173- 312-050 (2) to a county department other than the JHD.

Commenter: Stephen Wamback - Comment A-7-9

Provide an effective, unbiased, stakeholder process. We recommend that Ecology contract with the Washington State Association of Counties to manage stakeholder engagement. WSAC is the parent organization for the associations representing county solid waste managers (WACSWM) and county health departments (WSALPHO). WSAC maintains effective working relationships with other public and private sector stakeholders involved with solid waste management. Moreover, WSAC has demonstrated success in providing a similar role to other state agencies.

Commenter: Stephen Wamback - Comment A-7-12

Pierce County encourages Ecology to remain true to the goals and purposes of Chapter 70.95 RCW, WAC 173-312, WAC 173-313 and the Model Toxics Control Act. The proposed amendments to Chapter 173- 312 and 173-313 break faith with those goals and must not be implemented.

Ecology's Response to Rulemaking Process

Comments noted.

(Wamback A-7-3, A-7-9, A-7-12)

Commenter Index

The table below lists the names of organizations or individuals who submitted comments on the rule proposal. Ecology identified topic headings based on similarities in comment subject matter. Comments were extracted from their original format (letter, email or transcript of oral testimony), and assigned a “comment number”. Each comment number is associated with the pertinent topic heading. You can find Ecology’s single response to each topic under that heading.

Commenters can find their comment using the assigned comment number and associated topic heading.

Affiliation	Commenter Name	Topics where comments were assigned	Associated Comment numbers
I - Individual			
A - Agency			
Tacoma-Pierce County Health Department	Comstock, Andy	Performance Measures and Reducing Awards	A-13-1
		80/20 Split and Allocation Table	A-13-2
Benton-Franklin Health District	Dawson, James	80/20 Split and Allocation Table	A-11-2
		Support for Revision	A-11-1
Chelan County Public Works	Blanchfield, Brenda	Performance Measures and Reducing Awards	A-10-3
		80/20 Split and Allocation Table	A-10-4 , A-10-5
		Suspend Rulemaking	A-10-6
		Project Costs	A-10-2
		Name Change	A-10-1
Clark County Public Health	Sutton, Melissa	80/20 Split and Allocation Table	A-15-1
Environmental Health Division, Thurston County Public Health and Social Services	Starry, Art	80/20 Split and Allocation Table	A-12-2
		Support for Revision	A-12-1 , O-3-1
		Unallocated Funds	A-12-3
		In-kind Interlocal	O-3-3
King County Solid Waste Division	Moorhead, Meg	80/20 Split and Allocation Table	A-5-1
		Performance Measures and Reducing Awards	A-5-3
		Sustainable Solid Waste Funding	A-5-2
Lincoln County Health Department	Dzedzy, Ed	80/20 Split and Allocation Table	A-2-1

Northeast Tri County Health District	Spradley, Alyssa	80/20 Split and Allocation Table	A-3-1
Pierce County Planning and Public Works	Wamback, Stephen	80/20 Split and Allocation Table	A-7-4 , A-7-5 , A-7-7 , A-7-10 , A-7-11
		Suspend Rulemaking Guidelines	A-7-2 , A-7-8 , A-7-6
		Rulemaking Process	A-7-3 , A-7-9 , A-7-12
Public Health Seattle & King County	Oleru, Ngozi	80/20 Split and Allocation Table	A-1-1, A-9-2
		Unallocated Funds	A-9-1
San Juan County Health & Community Services	Dodd, Kyle	Performance Measures and Reducing Awards	A-6-4, A-6-3
		80/20 Split and Allocation Table	A-6-2
		Support for Revision	A-6-1
City of Seattle, Seattle Public Utilities	Fife-Ferris, Susan	Independent City Status	A-4-1
		In-kind Interlocal	A-4-2
		Organics	A-4-3 , A-4-4
Spokane County Commissioners	French, Al Kerns, Josh O'Quinn, Shelly	Performance Measures and Reducing Awards	A-8-1
		80/20 Split and Allocation Table	A-8-2
		Suspend Rulemaking	A-8-3
B – Business			
O – Organization			
Washington Association of County Solid Waste Managers	Blanchfield, Brenda Wamback, Stephen	Performance Measures and Reducing Awards	O-2-5
		80/20 Split	O-2-2 , O-2-4
		Suspend Rulemaking	O-2-1 , O-2-7
Washington State Association of Counties		Guidelines	O-2-3 , O-2-6
Washington Association of County Solid Waste Managers	Berg, Laura	80/20 Split	O-4-2
		Suspend Rulemaking	O-4-1
Washington State Association of Counties	Johnson, Eric	Performance Measures and Reducing Awards	O-1-6
		80/20 Split and Allocation Table	O-1-1 , O-1-2 , O-1-3, O-1-4, O-1-5
		Suspend Rulemaking	O-1-7
Washington State Environmental Health Directors	Starry, Art	Performance Measures and Reducing Awards	O-3-2
		80/20 Split and Allocation Table	O-3-4
		Support for Revision	O-3-1
		In-kind Interlocal	O-3-3

Appendix A: Transcript from public hearing

Lacey – June 27, 2017

Note to reader. A recording of this hearing is contained in the electronic file record for this rulemaking. The transcription that follows here is intended to be a faithful rendering. Verbal pauses (um, er, etc.) have been omitted, and immediately corrected misstatements have been accepted.

Kirsten Miller: I'm Kirsten Miller, hearings officer for this hearing. This afternoon we are conducting a hearing on the proposed amendments for chapter 173-312 of the Washington Administrative Code, *Coordinated Prevention Grants*. We are proposing to repeal chapter 173-313 *Local Solid Waste Enforcement Regulation* at the same time. Let the record show it's 2:28 on June 27th, 2017, and this hearing is being held at the Department of Ecology Lacey Building in ROA 36, 300 Desmond Drive, Lacey 98503. We also have people attending via webinar.

Legal notices of this hearing were published in the Washington State Register on May 24th, 2017 with the Washington State Register number 17-11-139. In addition, notices of the hearing were emailed to 1,199 members of Ecology's WAC Track ListServ on May 31st, 2017, emailed to 218 members of the Waste 2 Resources Program Solid Waste Financial Assistance ListServ on May 25th, 2017, and mailed to chairpersons and natural resource managers of Indian tribes recognized by the state of Washington on May 25th, 2017. Ecology is accepting both written and oral comments for the proposed amendments. I note that so far four people have indicated that they'd like to provide formal comment. After they're done, I'll give others who have not commented already a final opportunity to do so. So when I call your name please come forward, clearly state your name and affiliation if you'd like to, and then I'll start the timer and you can begin your comments. For those of you participating by webinar please use the chat feature to type your name and desire to comment and Dawn will let me know. She'll be unmuting your line when it's your turn to comment. Okay, so first we'll have Laura. And then will be followed by Andy and then Art. And then we'll go to the webinar participants. Okay, I'm going to start the timer.

Laura Berg: My name is Laura Berg. I am with the Washington Association of County Solid Waste Managers, a recently formed affiliate under the state association of counties. On May 18th we sent a letter requesting a delay in this rule update for several reasons, and those reasons still stand.

We have concerns with changing the allocation in rule, we have concerns with the performance penalties and criteria, and we have concerns with the timelines involved. When you add a potential state shutdown, a rule update in the middle of a grant cycle, the possibility of penalties, you have the state

fiscal year versus the county fiscal year, and this all creates real issues for some county solid waste at this point.

We think that this is an imbalanced approach. You have implementation and enforcement. Implementation is the largest function of the goals to prevent and minimize environmental contamination by hazardous and solid waste. Funding is also the largest portion for the planning, implementation, and collection of these waste streams. And that the changes proposed in rule create an imbalance in that, The rulemaking has changed the amount for implementation, and when rulemaking affects the dollars coming from the Legislature, we feel that the legislative body of a county needs to be involved, and the county commissioners and council members will be made aware and plan to weigh in as soon as possible.

I will be sending in formal comments. We have real concerns that the allocation changes create further cuts to implementation where there is not necessarily a cut to enforcement, and we'll be providing that in writing.

Kirsten Miller: Thank you, Laura. So Andy, when you're ready.

Andy Comstock: My name is Andy Comstock, I'm with Tacoma Pierce County Health Department. Thank you for the opportunity to comment. The first comment that I wanted to focus on was some of the language regarding the potential ten percent penalty that is in section 173-312-080. The language that I would like to see amended or changed is the inclusion of the terminology up to ten percent for these penalties. The way it's currently written, when the determination at some point in time that a penalty would be imposed, the way I read this language is that it would automatically be a ten percent penalty. I think there's room to include a sliding scale, gravity criteria, etcetera, for the imposition of said penalties etcetera, for those entities that are not administering their grants correctly. Obviously, you know, the intent here is to encourage people to appropriately manage their grants etcetera. I certainly endorse that and support that concept, but I think having some additional implementation criteria here or sliding scale would be helpful.

I do want to talk about the allocation table as well. As a local public health agency I know that the framework for the enforcement grants are trying to keep some of the smaller jurisdictional health departments around the state of Washington whole, and to be able to continue their enforcement grant activities. So, we are in support of the allocation table the way it is set up to continue to enforce those small jurisdictional health departments. Thank you.

Kirsten Miller: Thank you. Okay, and Art.

Art Starry: I'm Art Starry. I'm the environmental health director for Thurston County Public Health and Social Services. And I'm also here today representing the

Environmental Health Directors for the state of Washington. And we're generally in support of the proposed WAC. Both in terms of eliminating 313 and combining it with 312 and having a kind of a single coordinated prevention grant WAC which I guess is going to be retitled as solid waste financial assistance, and we concur also with the language changes because we think that's much clearer, and explains better what the purpose of the programs are. Like Andy said, I think the penalty provisions could possibly be modified to be a sliding scale, we would support that.

We believe that the language within the other proposed language as far as the contributed services and providing a new way for some alternative mechanisms for providing match is a step in the right direction and might help both solid waste enforcement activities as well as the folks who are responsible for implementing and planning. And we do concur that there, I guess we believe that, there is a need for some sort of... to give Department of Ecology some latitude in how funds are distributed between solid waste enforcement, and solid waste implementation and planning, especially when coordinated prevention grant funding is reduced. As we're likely to see this coming year, with CPG reduced to ten million dollars or less, using the traditional 80/20 split is going to make it difficult for local health jurisdictions to provide adequate solid waste enforcement. We're seeing that with smaller jurisdictions that are solely funded by CPG for solid waste enforcement, if you do the math and take the 20% of the ten million dollars, that that's going to really reduce their ability to do stuff, and we're afraid that they won't be able to have any solid waste enforcement activities. So we believe that again it is appropriate for Ecology to have some latitude in that.

And so thank you for the opportunity to comment. If there is additional work or this is continued we would welcome the opportunity to work with Ecology and with the other partners to try to make this work as well as possible. Thank you.

Kirsten Miller: Thank you. Okay, so we have one person on the webinar.

Dawn Drake: Kyle Dodd would like to testify.

Kirsten Miller: Okay.

Kyle Dodd: Hello, Dawn can you hear me?

Kirsten Miller: Yes, so you can begin now.

Kyle Dodd: Thank you. Kyle Dodd Environmental Health Manager, San Juan County Health and Community Services. And I coming from the perspective of a small local health jurisdiction with minimal resources. Overall, I support the draft that Ecology has proposed, and I have a couple of comments related to the significant changes that were made.

First comment is related to 080 (2), the allocation. And I think that the allocation is reasonable and considers that the hard and fast 80-20 split was acceptable and allowed for both enforcement and implementation to both perform their duties during historic levels of CPG funding, but that the allocation needs a revision based on the current decreasing CPG funding trend, to allow local health jurisdictions to retain the capacity to carry out our mandated enforcement programs if the funding level continues to decrease.

The second comment is related to 080 (3) the evaluation. I also agree that there should be criteria to evaluate performance, and that I know that Ecology drafted the criteria and circulated them amongst the local solid waste financial assurance workgroup, and that local health jurisdictions did submit comments. So, my comment is that once a final version of the criteria and the implementation plan are finalized, that they be reviewed again by the workgroup with an opportunity to comment. I also did hear earlier on the call that staff did recommend delaying the implementation of any penalties to 2021 cycle, and I also support that. Thank you.

Kirsten Miller: Thank you. Is there anyone else that wishes to comment on the webinar?

Dawn Drake: I believe we have one more participant that would like to comment. You've been unmuted, if you would like to provide your comment directly for the record, you are unmuted and are able to begin.

Melissa Sutton: Perfect. This is Melissa Sutton environmental health specialist with Clark County Public Health. As a local health jurisdiction it's imperative to fund mandated programs such as solid waste enforcement. And Clark County Public Health is supportive of ensuring that solid waste enforcement is able to fully fund LHJ's solid waste enforcement as proposed in the draft allocation table, during budgetary shortfalls.

Kirsten Miller: Okay. Thank you. So, we've heard from everyone in the room. Is there anyone else on the webinar that wishes to comment?

Dawn Drake: No, I do not believe anyone else would like to comment today.

Kirsten Miller: Okay. So, just as a final reminder, all the comments received today, whether in person or by webinar, and those provided to Ecology at any time during the public comment period, are a part of the official record for this process, and will receive the same consideration. You can also provide comments on the proposed amendments online, or by regular mail postmarked by July 7th, 2017. You can send written comments to Tami Ramsey at the Department of Ecology, Waste 2 Resources Program, PO Box 47600, Olympia, WA 98504-7600, or email Tami at tami.ramsey@ecy.wa.gov.

Ecology will send notice about the concise explanatory statement publication to everyone that provided written comments or oral testimony

on this rule proposal and submitted contact information, everyone that signed in for today's hearing and provided an email address, and other interested parties on the agency's mailing list for this rule.

The concise explanatory statement will contain the agency's response to questions and issues of concern that were submitted during the public comment period. If you'd like to receive a copy please make sure that your contact information is on the sign in sheet, or contact Tami Ramsey. You can find her contact information on the PowerPoint handout and the other handouts in the back of the room. The next step is to review the comments and make a determination whether to adopt the rule. Ecology Director Maia Bellon will consider the rule documentation and staff recommendations, and will make a decision about adopting the proposal. Adoption is currently scheduled for August 23rd, 2017. If the proposed rule should be adopted that day and filed with the code reviser, it will go into effect 31 days later.

So those are the next steps for the rule update. I think everyone signed in on the sign in sheet, and if you have other questions about the presentation today, staff can stay a couple of minutes after the hearing and answer some of the questions. So, on the behalf of the Department of Ecology, thank you for coming today and participating by webinar. We appreciate your time, comments, and participation. Let the record show that this hearing is adjourned at 2:44 PM.