

Legal Authority, Organizational Structure and Enforcement



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4. Legal Authority, Organizational Structure and Enforcement

4.1. Legal Authority Overview

Legal authority for the Program is based on Washington State statute and King County Board of Health Code. Federal law exempts household hazardous waste (HHW) and small quantity generators (SQGs) from federal regulation.

4.1.1. Federal Law

The 1976 Resource Conservation and Recovery Act (RCRA) makes the management of hazardous waste a priority. While it addresses large generators of hazardous waste, RCRA exempts SQGs and HHW from regulation at the federal level. It also delegates the management of hazardous wastes to the states, at their request. In Washington State, the management of hazardous waste was delegated to the Washington State Department of Ecology (Ecology) by the United States Environmental Protection Agency (EPA) through the RCRA State Authorization rulemaking process.

4.1.2. State Laws and Regulations

Hazardous wastes in Washington State are primarily regulated under RCW 70.105, the Hazardous Waste Management Act of 1985, and as amended. In the case of our Program, RCW 70.105.220(1)(a) specifically directed local governments to develop plans to address moderate-risk wastes (MRW). It also required waste characterization studies to help develop a locally appropriate system of managing MRW that would ensure the protection of the environment and public health. Subsection (b) required ongoing public education about MRW and involvement in programs to address it. Subsection (c) required an inventory of all existing generators of hazardous waste and facilities managing hazardous waste within the jurisdiction from data provided by Ecology. Subsections (d), (e) and (f) addressed the public involvement process used in developing the plan; zoning for HHW/SQG facilities; and providing for local government additions to the plan.

Other sections of the Act addressed coordination with other hazardous materials-related plans and policies and with privately-owned hazardous and moderate-risk waste facilities and services. The Act also specified statutory deadlines for local governments to complete their plans, by June 30, 1990; for Ecology approval, by December 31, 1990, or ninety days after submission, whichever was later; and for local government implementation, by December 31, 1991.

While local plans and their implementation were intended to be fluid, allowing for revisions over time, the statute mandated that certain elements be addressed and satisfied by the end of 1991. The Program satisfied these requirements in 1991, as evidenced by Ecology's approval of the 1990

Final Plan.¹ While RCW 70.105.220(6) allowed local governments to amend their plans from time to time, the Act did not require local governments to update their plans and was silent on what the amendments should contain.

In addition to defining the elements required in local plans, the Act defined MRW as “any waste that exhibits any of the properties of hazardous waste but is exempt from regulation under this chapter solely because the waste is generated in quantities below the threshold for regulation and any household wastes which are generated from the disposal of substances identified by the department as hazardous household substances” {RCW 70.105.010(17) (a) and (b)}. The Act also described characteristics that could make substances, chemicals and materials fall under the definition of MRW. In addition to providing definitions, the Act required Ecology to promulgate regulations providing more detailed definitions of household hazardous substances and listings of known hazardous substances at the time.²

Some characteristics of MRW defined by the Act and the Dangerous Waste Regulations include being toxic, mutagenic, teratogenic, carcinogenic, corrosive, reactive, explosive, flammable, and radioactive. Other characteristics have to do with how the substance physically or chemically reacts with the environment. These include: how the waste decomposes, for example, does it generate pressure through decomposition; does it bioaccumulate and concentrate in the food chain; is it persistent, or does it fail to decompose over time; and, does it combine with, or become a part of, other hazardous substances. Finally, the Act was clear in its direction that efforts to address MRW must address impacts to wildlife and the broader environment as well as impacts to humans and public health.

Requirements for the collection and disposal of MRW are set forth in WAC 173-350 Solid Waste Handling Standards. This regulation specified the minimum functional standards for the design and operation of MRW storage and processing facilities, including spill containment, employee training, emergency planning, control of toxic and flammable vapors, and container management. According to the statute, MRW collection staff, hazardous waste transporters, garbage haulers, and solid waste and wastewater employees must be trained in worker right-to-know requirements and receive other safety and health training as specified in RCW 49.17 Washington Industrial Safety and Health Act and under U.S. Department of Transportation regulation 49 CFR 172.704 Hazardous Materials Training.

4.1.3. Local Laws and Agreements

Several local laws, ordinances, and agreements govern how MRW is addressed by the Program and other agencies. Local authority for the Program comes from the King County Board of Health, which is an intergovernmental body composed of health professionals and elected officials from

1 Letter from Washington State Department of Ecology to Diana Gale, Director of the Seattle Solid Waste Utility, dated January 22, 1992.

2 Those further definitions, and a list of substances, are contained in WAC 173-303, the Dangerous Waste Regulations.

the King County Council, Seattle City Council, and Suburban City governments. The Board of Health has authority to enact local ordinances, apply civil penalties for violations, and request criminal prosecution if the violator does not comply with civil enforcement actions. The Board of Health's powers are delineated in RCW 70.05.060, Powers and duties of local board of health. Powers relevant to the Program include maintaining health and sanitary measures; preventing, controlling and abating nuisances; enacting and enforcing local rules and regulations; and setting surcharge fees to fund these activities.

The King County Board of Health provided local authority to the Program through Board of Health Code 2.08, Hazardous Waste Management Coordination Committee (MCC). That code directs the Program to work to ensure that MRW is not commingled with solid waste or disposed of in sewage treatment systems. It concludes that enhanced public education and the enforcement of existing regulations will reduce the quantity of moderate risk waste entering the solid waste stream and sewage treatment systems, and it affirms a regional intergovernmental approach in addressing MRW in King County.

To enable an intergovernmental approach, the code established the MCC, defined its membership, delineated its powers, and assigned it specific duties. Those duties include developing annual budgets and management plans. The code also established the Program's financing mechanism. It directed that surcharge fees be charged on solid waste and sewer utility accounts and on landfill and transfer station usage. The surcharge fees were to be used by King County, the City of Seattle, the suburban cities and the sewer districts, through contracts, to implement the management plan.

King County Code 10.24.040, Hazardous Waste Management Plan, directed King County Solid Waste Division to develop a hazardous waste management plan for the unincorporated portions of King County. The plan was to be a regional plan, developed cooperatively with other agencies in the Program, in accordance with RCW 70.105.220. The Code allowed for the possibility of interlocal agreements between King County and the cities in King County to address MRW. King County has negotiated agreements with all but two of the cities.³ In these agreements, the cities have delegated planning for their MRW to King County.⁴ The duration of those agreements is 30-years, and all extend beyond 2020.

In addition to the Program's authority to address MRW, many local governmental agencies have regulatory authority that affects the handling and disposal of HHW and SQG hazardous waste. These include the authorities, rules and regulations that pertain to solid waste, wastewater, stormwater, public health, city and fire districts, and air pollution control.

3 The exceptions are Seattle and Milton. Seattle addresses MRW as a direct Partner in the Program. Milton has an interlocal agreement with Pierce County to address its solid and hazardous wastes.

4 See King County Solid Waste Interlocal Agreements. Identical standard language is used in all of the agreements that delegate the planning for MRW to King County.

Solid waste ordinances and regulations prohibit disposal of HHW and SQG wastes into the solid waste stream. For example, municipal solid waste programs for both King County and Seattle ban disposal of all SQG MRW, as well as many types of HHW, in municipal solid waste. Many suburban cities have similar prohibitions in their municipal codes and solid waste contracts with commercial haulers.

Wastewater ordinances and regulations limit the discharge of hazardous materials into sanitary sewers or surface water drainage systems under their jurisdiction. The King County Wastewater Treatment Division, which manages the sewerage system for seventeen cities and seventeen sewer utilities in King County, requires notification and preapproval for any discharge of hazardous waste into its system in King County Code 28.84.060. Seattle, suburban cities, and other sewer authorities in King County also have ordinances that prohibit or regulate the discharge of hazardous materials into their sanitary sewers. These prohibitions and limitations, as well as the required monitoring, recordkeeping and management provisions, make it difficult for most SQGs to use a publically owned treatment facility for disposal of hazardous wastes.

Stormwater ordinances and regulations generally prohibit the discharge of petroleum products and hazardous materials into stormwater or storm drains within their jurisdictions. Many cities address stormwater in their comprehensive plans. Some cities, such as Renton and Redmond, have enacted aquifer protection ordinances with strict provisions affecting the use, storage and disposal of hazardous materials within designated aquifer recharge areas.

Local public health statutes, rules and regulations address solid waste and hazardous waste disposal. For example, in King County, the Board of Health Code Title 10 Solid Waste Handling makes Seattle and King County Public Health (Public Health) responsible for issuing operating permits and inspecting solid waste and MRW facilities and collection events. Public Health is also responsible for permitting and inspecting on-site sewage treatment systems. Cities and fire districts have code requirements mandating the safe handling and use of hazardous materials and have inspection and enforcement roles with regard to MRW.

Air pollution control standards, laws and regulations are administered by the Puget Sound Clean Air Agency (PSCAA), the regional air quality authority. The agency sets regulatory limits on the release of volatile organic compounds and other hazardous materials into the air and enforces those regulations.

4.1.4. 1990 Final Plan

The 1990 Final Plan provides support and direction for the Program in diverting MRW from the solid waste stream, sewers and storm drains. Its overall goal is "to protect the environment and public health from the adverse effects of improper handling and disposal of HHW and SQG hazardous wastes," and the 1990 Plan sets forth the following objectives:

- "Reduce the input of hazardous substances to municipal waste streams and the environment by a significant, measurable amount.

- Minimize accidents resulting in worker and public exposure to hazardous waste.
- Emphasize waste management strategies that give priority to waste reduction and recycling.
- Foster an ethic of personal responsibility for waste management decisions among the public, businesses and government.
- Be comprehensive; address all aspects of the issue, including all areas of the county, all waste streams and targeted audiences.
- Emphasize education over enforcement as a means of attaining compliance.
- Be flexible; allow for changes in the legal and planning environment.
- Have the practical resources and support to ensure implementation while recognizing the unique capabilities and limitations of different governments.
- Involve all key parties, public and community organizations, state and local public agencies, small businesses and hazardous waste management companies in Plan development and implementation.”⁵

4.1.5. 1997 Plan Update

The mission set forth in the revised 1997 Plan was “to protect public health and the environment from adverse effects of improper handling and disposal of household hazardous waste and small quantity generator hazardous waste.” It was to be implemented through the following general goals:

- “Continually improve the efficiency and effectiveness of LHWMP [Local Hazardous Waste Management Program] in accomplishing the Plan’s mission.
- Foster an ethic of responsibility among those who produce, sell, and use hazardous products for minimizing risks to public health and the environment from hazardous wastes.
- In priority order, promote the following state hazardous waste management strategies, as appropriate to the waste type: waste reduction; recycling; physical, chemical, and biological treatment; incineration; solidification or stabilization; and landfill.
- Be responsive to the needs and expectations of the public.
- Encourage cooperation and coordination among all levels of government, citizens, and businesses in managing hazardous wastes.
- Minimize gaps and overlaps in responsibilities of governmental agencies addressing hazardous waste management issues.”

It proposed to accomplish that mission and those goals through HHW education and collection; SQG education, technical assistance and waste management; compliance assistance; and evaluation.⁶

5 Solid Waste Interlocal Forum, *Local Hazardous Waste Management Plan for Seattle-King County: Final Plan and Environmental Impact Statement for the Management of Small Quantities of Hazardous Waste in the Seattle-King County Region & Appendices A & B*, (Seattle: LHWMP, November 1990), pp. 1-4 – 1-6. Cited hereafter as *1990 Final Plan*.

6 Local Hazardous Waste Management Program in King County, *Local Hazardous Waste Management Plan for King County: Final Plan*, (Seattle: LHWMP, May 1997), pp. 1-4 – 1-5. Cited hereafter as *1997 Plan Update*.

4.1.6. Annual Work Plans and Budgets

Annual project work plans and budgets are developed by the Program staff and supervisors and approved by the MCC. Project work plans allocate resources for staff and contractors, and for direct and indirect costs required to accomplish the outcomes specified in the work plan.

Project work plans and their associated budgets direct Program work both substantively and procedurally. Substantively, the Program focuses on specific: hazards, for example certain chemicals, pesticides, products; places, such as businesses with onsite sewage systems, nail salons, school chemistry labs, subsidized housing facilities; and people like the elderly, homebound, immigrant and non-English speaking populations, children, pregnant women and women of child-bearing age. Procedurally, policy is developed as projects are implemented. Program procedures develop over time, using staff expertise, and through trial and error, when new projects are developed or new issues arise.

4.1.7. MCC Policies and Decisions

In addition to the federal, state and local statutes and codes directing the Program, the policies and decisions of the MCC provide direction to the Program, especially with regard to issues not addressed elsewhere. For example, the MCC oversees the Program's policies and procedures related to revenues, expenditures, budget development, fund management, and the allocation of capital facilities costs. Other examples include approving new collection facilities or services, changing existing services, determining legislative priorities and approving annual work plans and budgets. The MCC also makes decisions on unique issues or situations that arise within the Program on an as needed basis.

4.2. Organizational Structure

4.2.1. Organizational Structure Overview

The organizational structure of the Program was defined in the 1990 Plan and based on the idea that certain agencies should be involved and represented. The political entities involved in developing the 1990 Plan, including the City of Seattle, King County and the Suburban Cities, made recommendations about the Management Coordination Committee's (MCC) composition and decision-making process.⁷ These recommendations were then considered and approved by the Solid Waste Interlocal Forum (Forum), comprised of elected officials from the City of Seattle, King County and the Suburban Cities in King County. After the Plan had been approved by the Seattle City Council, the King County Council, and the city councils in a majority of the Suburban Cities, the Forum adopted a resolution to approve the Plan.⁸ The Plan was then submitted to Ecology for final approval.

⁷ 1990 Final Plan, p. 3 of the Forward.

⁸ Solid Waste Interlocal Forum Resolution 90-001, passed on January 12, 1990.

4.2.2. Codification of the MCC and the Role of the Board of Health

Implementation of the 1990 Plan included submitting a package of proposed surcharge fees and language establishing the MCC to the Seattle City Council, acting as the Seattle Board of Health, and to the King County Board of Health. The City of Seattle adopted the proposals in the Seattle City Code,⁹ and King County adopted identical language in the Board of Health Code.¹⁰ When the two Boards of Health were merged in 1995, maintenance and review of the Program's enabling code language moved to the new joint Board of Health, known as the King County Board of Health.

The Board of Health plays an ongoing role in the Program by providing direction and by reviewing and approving surcharge fees to finance the Program. The Board of Health has the authority to set our surcharges to sewer and solid waste utility fees, landfill fees and transfer station tipping fees, countywide. Surcharges to all of those fees are used to fund the Program. In addition, as an intergovernmental legislative body, the Board of Health provides legislative branch oversight to complement the executive oversight exercised by the MCC.

4.2.3. Ecology Recognition of MCC

In a 1992 letter to the Program, Ecology specifically accepted the MCC as the entity responsible for implementing and updating the Plan.¹¹

4.2.4. MCC Composition

The original five representatives to the MCC were from the Municipality of Metropolitan Seattle (METRO), the City of Seattle, King County, the Seattle-King County Health Department, and the Suburban Cities Association.¹² Over time, as governments reorganized and agencies merged, the MCC membership changed. Its current composition is delineated in Board of Health Code 2.08.080, which says: "The committee shall be composed of five members:

1. The director of the King County Department of Natural Resources – Solid Waste Division or his/her designee;
2. The director of City of Seattle Public Utilities or his/her designee;
3. A representative appointed by the Suburban Cities Association;
4. The director of the King County Department of Natural Resources – Water and Land Resources Division or his/her designee; and
5. The director of the Seattle-King County Department of Public Health or his/her designee."

9 Seattle Municipal Code 10.76.

10 King County Board of Health Code 2.08.

11 Letter from Washington State Department of Ecology to Diana Gale, Director of the Seattle Solid Waste Utility, dated January 22, 1992.

12 1990 *Final Plan*, pp. 3-50 – 3-51 and figure 3-5.

4.2.5 MCC Powers, Duties and Decision-making

The powers and duties of the MCC were also delineated in Board of Health Code 2.08.085. That title directs the MCC to develop an annual management plan and budget to address MRW. It directs the MCC to make decisions by consensus, and if consensus can not be reached, to submit the issue to the Board of Health for a decision. Code provisions empower the MCC to contract with the City of Seattle, suburban cities and suburban sewer districts to undertake portions of the Program's work.

In addition to approving annual plans and budgets for the Program, the MCC periodically recommends surcharge fee rate changes to the Board of Health to fund the Program. To accomplish these tasks, background work is undertaken by staff from the Program partner agencies.

4.2.6. Office of the Program Administrator

In 1999, the MCC created the position of Program Administrator to provide support in accomplishing the MCC's mandated duties and the Program's mission. The first person was hired to fill that position in 2000. The Program Administrator accepts direction from the MCC, and works with the MCC to fulfill its obligation to provide Program services to the ratepayers and the public at large. The Program Administrator coordinates and works with senior staff from the Program Partner agencies and provides general leadership to Program staff. Specific duties of the Program Administrator include: Planning the Program's work and financing so that our services are current and relevant to the community's needs;

- Increasing equity with respect to the Program's services;
- Effectively managing and coordinating implementation of the Program;
- Stewarding the Program fund and its HHW and SQG sub-funds;
- Evaluating the results, and adjusting efforts based on that evaluation; and
- Being accountable to the public by reporting results to our customers, ratepayers, Program Partner agencies, elected officials and others.

4.2.7. Core Team

In addition to the Office of the Program Administrator, a group of senior staff from each Program Partner agency, known as the Core Team, works together to implement the Program. The Core Team, mirroring the MCC, is composed of senior staff from Seattle Public Utilities, King County Solid Waste Division, King County Water and Land Resources Division, Public Health - Seattle & King County, and some Suburban Cities. The Core Team implements the Program by directing staff at each of the Program Partner agencies.

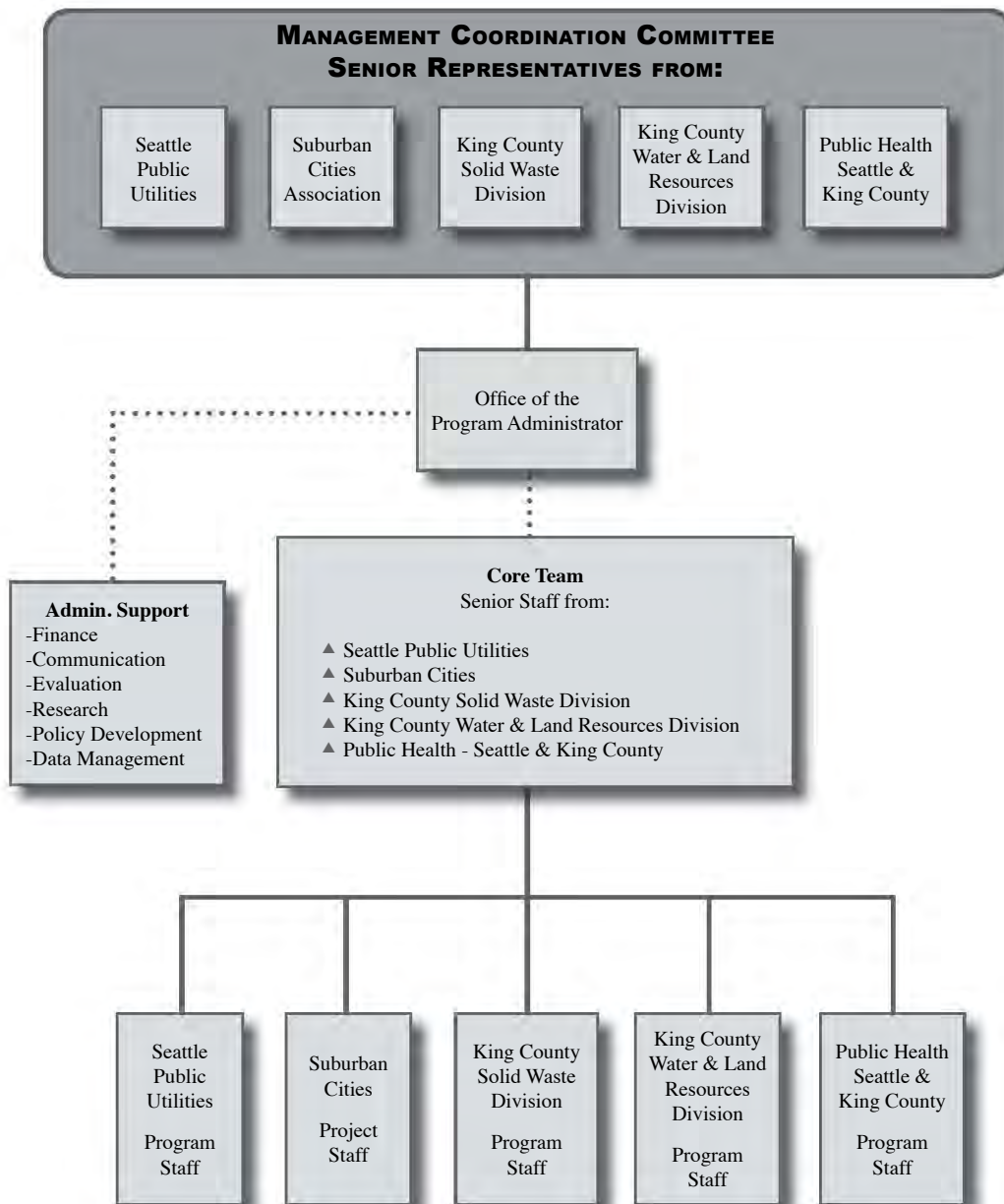
4.2.8. Other Work Teams

Numerous standing and *ad hoc* committees and work teams have been developed that address specific Program areas, such as Program service levels. Two current standing committees address

Program communications (the Communications Advisory Committee) and HHW collection services (the HHW collection committee). Work teams formed through the office of the Program Administrator to serve cross-Program functions include:

- Communications and Web Applications
- Data Management
- Service Equity
- Administration
- Research Services
- Policy Development
- Fund Management
- Evaluation

Figure 4-1. Program Organizational Chart



4.3. Regulatory Review, Compliance and Enforcement

Many federal, state, and local regulations govern or affect management of HHW and SQG hazardous waste. Unless otherwise indicated, the laws and regulations summarized in this section were in effect at the time of the 1997 Plan Update.

4.3.1. Federal Regulations

This section describes key provisions of the federal laws address hazardous materials and wastes.

Resource Conservation and Recovery Act

The 1976 Resource Conservation and Recovery Act (RCRA) provides a comprehensive framework for managing solid and hazardous waste so as to eliminate or minimize public health threats and environmental contamination. RCRA was modified by the Hazardous and Solid Waste Amendments (HSWA) in 1984. HSWA revised the minimum technical standards for the design and operation of solid waste facilities as a result of concerns about the disposal of unregulated quantities of hazardous waste at municipal landfills.

RCRA Subtitle C, the hazardous waste management program, and Subtitle D, the solid waste program, provide the primary sources of federal regulation associated with household and SQG hazardous waste. Subtitle C establishes a framework for managing hazardous waste by regulating generators who produce and accumulate hazardous waste in quantities above limits specified by EPA or state rules; waste transporters; and treatment, storage and disposal facilities (TSDs) handling the waste.

Hazardous waste generated or stored in quantities above the limits specified by EPA or state rules must be tracked by manifest from the point of generation to the ultimate disposal site, better known as “cradle-to-grave” tracking. Business and institutional generators producing and storing hazardous wastes below the specified limits are not fully regulated provided that they comply with rules regarding the designation, management and reporting of wastes. HHW is categorically exempt from RCRA regulation.

The EPA implements and enforces RCRA, although Subtitle C administration and enforcement may be delegated to states that meet or exceed Subtitle C requirements. Washington State has been authorized to implement the RCRA Subtitle C program, and Ecology administers it.

RCRA, Subtitle D, encourages state-governed solid waste management plans and sets out the minimum technical standards for construction and operation of solid waste disposal facilities. Subtitle D requires a permit program to ensure that landfills receiving HHW and SQG hazardous waste meet minimum standards to prevent the release of contaminants.

Universal Waste Rule

In 1995, the EPA adopted the Universal Waste Rule, 40 CFR Part 273, to allow generators of certain hazardous wastes to use alternative regulatory requirements for those wastes in place of the more complex hazardous waste requirements. Wastes covered by the Universal Waste Rule (UWR) are typically generated in small quantities by numerous businesses. They include batteries, mercury-bearing thermostats and fluorescent lamps. UWR are intended to promote recycling as well as proper disposal, and they ease some of the regulatory requirements for storing, collecting, and transporting universal wastes.

Since states are free to adopt any portion of the UWR, there is flexibility in regulating the specific waste streams. States may also petition to allow additional wastes to be managed under the UWR at the state level, without having them added to the list of federal universal wastes. The easing of full RCRA Subtitle C regulations for certain universal wastes is intended to encourage more extensive collection and recycling programs for these wastes.

Mercury-Containing and Rechargeable Battery Management Act

The 1996 Federal Mercury-Containing and Rechargeable Battery Management Act, Public Law 104-142, provides for uniform labeling of batteries, requires products using rechargeable batteries to allow for their easy removal, streamlines regulation of used nickel-cadmium batteries, and prohibits the sale of mercuric-oxide button cell batteries and other mercury-added batteries. The industry-supported nonprofit Rechargeable Battery Recycling Corporation (RBRC) was established to educate the public about rechargeable battery recycling and to implement recycling programs where none exist. RBRC is helping local agencies, institutions, retailers, and other businesses set up collection and recycling programs, and is paying for battery shipment and recycling costs. Batteries are sent to a metals reclamation facility for recovery of their nickel, cadmium, and steel content.

Comprehensive Environmental Response, Compensation, and Liability Act

The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), more commonly known as the "Superfund" act, complements RCRA by providing for the cleanup of sites contaminated by hazardous waste. Many of the sites addressed under CERCLA are inactive or abandoned, having been contaminated before RCRA was enacted, when little was known about the effects of hazardous chemicals on human health and the environment. CERCLA provides EPA with the financial resources and authority to clean up contaminated sites. EPA, along with state regulatory agencies, may arrange for the cleanup of contaminated sites by entering into agreements with responsible parties, issuing orders to require cleanup, or directly performing the cleanup. The Superfund sites in King County are listed in Appendix B.

Emergency Planning and Community Right to Know Act (EPCRA)

The 1986 Superfund Amendments and Reauthorization Act (SARA) created the Emergency Planning and Community Right-to-Know Act (EPCRA), also known as SARA Title III. The statute improves community access to information about chemical hazards, and it helps states, tribes and local

governments develop chemical emergency response plans. EPCRA requires creation of state/tribal emergency response commissions (SERCs/TERCs) to coordinate certain response activities, mandates local emergency planning committees (LEPCs), and requires notifications about emergency planning, emergency releases, and chemical inventories and releases under 40 CFR Parts 350-372. EPCRA establishes a public right to know about toxic chemicals released into the environment by requiring facilities in certain industries to report annually on the chemicals released to the air, water and land. Started in 1988, the Toxics Release Inventory contains information on releases of nearly 650 chemicals and categories. SQGs are not typically required to report on chemicals they store or release because their quantities are too small.¹³

Other Federal Laws

Other federal legislation related to hazardous waste management include the:

- Hazardous Materials Transportation Act and the Hazardous Materials Transportation Uniform Safety Act - regulates the transportation of hazardous materials, including wastes;
- Toxic Substances Control Act - regulates the manufacture and use of chemicals that pose unreasonable risks to human health or the environment;
- Federal Insecticide, Fungicide and Rodenticide Act - regulates the manufacture, labeling, application, storage and disposal of pesticides;
- Safe Drinking Water Act - sets maximum contaminant levels for drinking water supplies, including surface and groundwater sources;
- Clean Air Act - regulates air pollutant emissions. (A 1996 rule set standards for controlling emissions of methane and other organic compounds at municipal solid waste landfills.); and
- Clean Water Act, - regulates discharges to waters through the National Pollutant Discharge Elimination System (NPDES), a permit program that regulates direct discharges of pollutants to navigable waters, and through pretreatment standards that regulate discharges to publicly-owned treatment facilities.

Ecology has been delegated authority to issue NPDES permits in Washington State to facilities that discharge wastewater directly into surface waters. Locally, all sewage treatment plants have NPDES permits. Permit conditions specify allowable effluent concentrations, including limitations for certain priority pollutants such as heavy metals.

4.3.2. State Regulations

This section describes state solid and hazardous waste management laws and regulations, as well as the State's Waste Management Priorities, the Model Toxics Control Act, the Used Oil Recycling Act and the Electronic Product Recycling Act.

¹³ The threshold levels for Emergency and Hazardous Chemical Inventory Reporting (Section 312, SARA Title III) are 500 pounds at any one time of extremely hazardous substances or 10,000 pounds at any one time for hazardous substances. The thresholds for reporting releases are even higher for most compounds, except for certain persistent bioaccumulative and toxic chemicals (PBTs). Some businesses, such as distributors, may not generate hazardous wastes, but may store large quantities of chemicals on-site.

Solid Waste Management Act

Solid waste handling and disposal are regulated under the Solid Waste Management Act (SWMA), Chapter 70.95 Revised Code of Washington (RCW). SWMA provides for the development of both statewide and local solid waste management plans; establishes minimum functional standards for solid waste handling and disposal; and sets criteria for siting solid waste facilities. The statute establishes a waste management hierarchy in which waste reduction and recycling are the most preferred options and land disposal is least preferred. These requirements are codified in the State Solid Waste Handling Standards, WAC 173-350, were adopted in 2003, and became effective in 2005.

WAC 173-350-360 specifies standards for facilities that accept segregated moderate risk waste, certain MRW transporters, mobile collection systems like the Wastemobile, collection events, limited MRW facilities, and product take-back centers. Mobile systems and collection events are exempt from solid waste handling permitting requirements, per RCW 70.95.305.¹⁴ In addition, the standards do not apply to fully regulated dangerous wastes, universal wastes regulated under WAC 173-303, or conditionally exempt SQGs managing their own wastes in compliance with required standards.¹⁵

The SWMA defines proper handling requirements for vehicle batteries, in RCW 70.95.610-670, and prohibits their disposal in the solid waste stream. Retailers selling new auto batteries are required to accept used vehicle batteries for recycling. Purchasers are encouraged to return used batteries to retailers, since a \$5.00 minimum charge is applied to the sale of new batteries. These requirements are codified in WAC 173-331.

Hazardous Waste Management Act

The state Hazardous Waste Management Act (HWMA), 70.105 RCW, regulates the transport, treatment, storage and disposal of hazardous waste. The statute requires a comprehensive statewide hazardous waste plan; local hazardous waste management plans; dangerous waste regulations that address hazardous waste generation, handling and disposal; criteria for siting hazardous waste management facilities; and identification of local areas that meet siting criteria and zoning for hazardous waste management facilities.

Ecology has provided rules to implement the HWMA. The Dangerous Waste regulations, Chapter 173-303 WAC, address the designation of dangerous wastes and the requirements for generators, transporters, and facilities handling these wastes. Waste generators must identify hazardous wastes at the business site, properly store and label wastes, and ensure that wastes are handled by qualified transporters and are disposed at a permitted facility. Generators are responsible for their wastes until

¹⁴ See RCW 70.95.305 and WAC 173-350-360(2).

¹⁵ See WAC 173-350.040 and 173-303-070(8) (b).

such point as the wastes are no longer hazardous.¹⁶ Failure to comply with requirements can result in civil and criminal penalties.¹⁷

Businesses and institutions that generate small quantities of waste (SQGs) are conditionally exempt from most of the requirements of WAC 173-303, provided that they do not generate more than 220 pounds of dangerous waste or 2.2 pounds of extremely hazardous waste per month and never accumulate more than 2,200 pounds at any one time. They must also properly store, transport and recycle/dispose of their wastes at a permitted hazardous waste facility. SQGs that fail to comply with these requirements become fully regulated generators and must satisfy all requirements of WAC 173-303.¹⁸ These regulations do not apply to hazardous wastes generated in households.¹⁹

The Dangerous Waste Regulations are amended from time to time to streamline requirements, incorporate federal rules and otherwise improve the hazardous waste management system. For instance, a November 1995 amendment to the Dangerous Waste Regulations allowed SQGs to accumulate up to 2,200 pounds of dangerous waste, up from the previous 220-pound limit. This change allowed businesses that had been regulated because they stored between 220 - 2,200 pounds of hazardous waste to assume SQG status.

Similarly, changes to the definition of what is “counted” as a hazardous waste affect a generator’s regulatory status. For instance, waste antifreeze is no longer counted as a hazardous waste when best management practices, such as recycling, are used. Although changes to regulatory definitions help some businesses and institutions become SQGs instead of fully regulated generators, many businesses/institutions also accomplish this by reducing the amount of hazardous waste they generate through pollution prevention planning and technical assistance.

Waste Management Priorities

The HWMA establishes a hierarchy for managing wastes, with waste reduction and recycling being the highest priorities. These are followed, in order of priority, by physical, chemical and biological treatment, incineration, solidification/stabilization treatment, and landfilling. These priorities are reflected in the state’s updated solid and hazardous waste plan, called the Beyond Waste Plan. The

¹⁶ These requirements are contained in WAC 173-303.

¹⁷ According to WAC 173-303-950, violations include transporting dangerous waste to a facility which does not have a permit; transferring, treating, storing or disposing of dangerous waste without a permit; or falsely representing information in labels, manifests, or other documents used for the purpose of compliance with the chapter. The penalties are described in Chapter 70.105 RCW.

¹⁸ See Ecology’s fact sheet comparing the regulatory requirements for SQGs with those for medium and large quantity generators at www.ecy.wa.gov/pubs/981252hwtr.pdf.

¹⁹ WAC 173-303-071(3) (c). Following federal RCRA language, Washington State defines household waste to include waste from single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day use recreation areas.

Beyond Waste Plan emphasizes preventing environmental and health problems by reducing the use of hazardous materials and generation of hazardous wastes.²⁰

The HWMA required local jurisdictions to develop and implement local hazardous waste management plans by December 31, 1991.²¹ Local hazardous waste plans are intended to identify regional hazardous waste management needs and provide long-term programs for meeting those needs. They are intended to address those hazardous wastes generated by residents (HHW) and in small volumes by businesses and other conditionally exempt small quantity generators (SQGs). Control of HHW and SQG wastes falls primarily to local governments. Local governments, as well as hazardous waste management firms, provide waste collection, transfer, recycling, and disposal services for their communities. Local governments maintain the bulk of regulation and enforcement responsibilities for moderate risk waste management, including activities related to facility siting, permitting, and inspections.

The adoption of the 1990 Local Hazardous Waste Management Plan in King County established the Local Hazardous Waste Management Program in King County. Implementation of that Plan began in 1991.

Model Toxics Control Act

The Model Toxics Control Act, RCW 70.105D, provides for the identification and cleanup of contaminated sites in Washington State. The act assigns liability for damages to the environment and human health, provides enforcement authority to Ecology, and establishes penalties for failure to comply with Ecology orders. The state toxics control account, created by the statute, funds state hazardous and solid waste planning, enforcement and technical assistance, remedial actions, public education, and emergency response training. Local accounts created by the statute provide grants to local governments for remedial actions and local solid waste and hazardous waste programs. See Appendix B for a list of known and suspected sites in King County.

Used Oil Recycling Act

The 1991 Used Oil Recycling Act, Chapter 70.951 RCW, required each local hazardous waste management plan to establish used oil collection sites based on local goals, enforce sign and container requirements, educate the public on used oil recycling, and create funding estimates for used oil collection. Local governments must also submit annual reports to Ecology describing the number of collection sites and amounts of used oil collected from households. Requirements for transport, treatment, recycling and disposal of used oil are also specified in the Used Oil Recycling Act. In 1993, the Program developed a used oil recycling element to supplement the 1990 Plan, and it submits annual reports describing used oil collection sites and quantities.

²⁰ The 2004 *Beyond Waste Plan* is available on Ecology's Web site (Washington State Department of Ecology, *Beyond Waste: The Summary of the Washington State Hazardous Waste Management Plan and Solid Waste Management Plan* (Pub. No. 04-07-22), (Olympia, WA, November 2004). Guidance on reducing small volume wastes generated by households and businesses can be found at www.ecy.wa.gov/beyondwaste/reduceToxics.html.

²¹ See RCW 70.105.220 (8).

Electronic Product Recycling Act

In 2006, the Washington legislature passed the Electronic Product Recycling Act, RCW 70.95N, requiring a convenient, safe and environmentally sound system for collecting and transporting covered electronic products. Covered electronics include televisions, computers, computer monitors and portable or laptop computers. The statute mandated a system that encouraged the design of less toxic and more recyclable electronic products and that shared responsibility for the system among all stakeholders. Manufacturers must finance the collection, transportation and recycling system. Regulations set by Ecology in WAC 173-900 govern program implementation.

The E-Cycle Washington program, launched January 1, 2009, provides recycling for unwanted TVs, monitors, computers and laptops from residents, small businesses, charities, school districts, and small governments. The system is available at no charge at registered collection sites throughout Washington.

4.3.3. Local Regulations

Numerous local agencies have regulatory authority that affects the handling and disposal of moderate risk waste.

Public Health Regulations

Public Health – Seattle & King County (Public Health) is responsible for enforcing State Board of Health statutes, rules and regulations, and local health department rules and regulations. Public Health has broad authority to adopt regulations pertaining to hazardous waste in order to protect public health. This includes authority to regulate disposal of HHW and SQG hazardous waste. Public Health issues operating permits to solid and moderate risk waste facilities, inspects the facilities, and reviews waste screening and disposal of special wastes. Public Health also reviews suburban city HHW collection events. Additionally, Public Health permits and inspects on-site sewage systems, or septic systems. In 2008, Public Health worked with the Program to strengthen on-site septic system codes related to hazardous wastes.

Title 10 of the King County Board of Health Code requires solid waste facilities to conform, as applicable, to the Local Hazardous Waste Management Plan, and it regulates moderate risk waste facilities, ten-day storage facilities, mobile collection services, and collection events. Title 13 of the King County Board of Health Code prohibits putting hazardous materials into an on-site sewage system and also prohibits the following: strong bases and acids, organic solvents used for cleaning, sewage system additives not specifically approved by the Washington State Department of Health, industrial wastewater, and any other waste components atypical of residential sewage.

Solid Waste Regulations

King County Solid Waste Division coordinates regional solid waste planning on behalf of unincorporated areas and all suburban cities in King County. King County Code 10.08.050 prohibits

the disposal of hazardous wastes from SQGs or fully regulated generators at solid waste transfer and disposal facilities. The Cedar Hills Regional Landfill does accept “special wastes” as defined by King County rules. Special wastes, like asbestos and contaminated soil, usually require specific handling and disposal, and must be approved for landfill disposal by either King County Solid Waste Division or by Public Health.

While King County transfer facilities and landfills currently do accept some types of HHW for disposal, other types of wastes are not accepted. For example King County does not accept petroleum-containing wastes, such as motor oil, oil-based paints, wood preservatives, extremely hazardous wastes, such as banned or restricted-use pesticides, vehicle batteries, or mercury-containing products like thermostats, thermometers, fluorescent bulbs and tubes, button batteries and switches. Although King County solid waste facilities can receive certain types of HHW, the public is encouraged to use up hazardous products or dispose of these materials through HHW collection facilities or special collection events.

Waste screeners at the transfer facilities and landfill remove hazardous and other unacceptable wastes from the solid waste stream before it is landfilled. The Solid Waste Division has the authority to impose fines and penalties for violations under King County Code 10.08.100.

Seattle Public Utilities oversees the City of Seattle’s solid waste system. Seattle Municipal Code 21.36.025 prohibits SQG hazardous wastes from commercial and residential garbage containers, and Municipal Code 21.36.026 recommends that no household hazardous wastes be put in garbage containers. The code specifically prohibits disposal of the following items into the garbage: non-edible oils; flammable liquids and solids including fuels, solvents, paint thinners, and degreasers; pesticides, including herbicides, insecticides and wood preservatives; corrosive materials; PCB capacitors and ballasts; mercury, such as thermometers and mercury switches; vehicle batteries; hobby chemicals and artists’ paints; and liquid paints. Empty containers that formerly held hazardous products can be discarded as refuse. The code mandates disposal of HHW at special collection facilities and/or events. SQG hazardous wastes must be managed according to the provisions of Chapter 173-303 WAC, the State Dangerous Waste Regulations.

Waste screeners at Seattle transfer facilities help prevent the disposal of hazardous and other unacceptable wastes into the solid waste system. Similarly, loads of garbage arriving at the Columbia Ridge Landfill in Arlington, Oregon are screened by Washington Waste Systems.²²

The contracts between cities and their solid waste haulers typically specify that haulers are not required to empty dumpsters containing hazardous waste. The contracts generally contain language prohibiting disposal of hazardous waste in the trash.

²² Special wastes from the City of Seattle must be approved for disposal by Public Health. (Steve Burke, Public Health Waste Characterization Program, personal communication with Liz Tennant, Local Hazardous Waste Management Program, December 7, 2009.)

Wastewater and Stormwater Regulations

Wastewater is regulated by King County and by independent and municipal sewer districts. Discharges into the stormwater drainage system are regulated by King County, the City of Seattle, and other municipalities under a National Pollutant Discharge Elimination System (NPDES) General Permit issued by Ecology.

King County Wastewater Treatment Division (WTD) treats wastewater for most of the urban areas in the county. The main sewerage conveyance trunk is managed by WTD, and the side sewer lines are managed by the direct sewer service providers, including the sewer districts and cities. Each treatment plant operates under a state-issued NPDES permit that governs the quality of effluent discharged from the treatment plant to surface waters. WTD's Industrial Waste Division (IW) is a delegated Pretreatment Authority under the federal Clean Water Act, 33 U.S.C. 1251 et seq., and the General Pretreatment Regulations, 40 CFR 403. IW's role is to monitor the wastes that pass through or interfere with publically operated treatment works (POTWs) in order to protect the wastewater treatment plants, ensure worker safety, and ensure that the County is in compliance with its NPDES permits. Businesses and other non-domestic wastewater sources are prohibited from discharging wastewater that creates a fire or explosion hazard, is corrosive (pH < 5), or contains solid or viscous pollutants that could obstruct flow or exceed temperature limits.²³ There are also discharge limits for heavy metals and cyanides, corrosives (pH), hydrogen sulfide, and organic compounds.²⁴ In addition, many industries must pretreat wastewater before discharging it into the sewer system.²⁵ IW issues varying types of permits, including permits for industrial users of its system, discharge authorizations, and letters of approval.

The municipal and regional sewer districts that contribute wastewater to the King County system may impose their own, more stringent discharge limits, and independent sewer districts set their own discharge limits. The independent districts are Lakehaven Utility District, Midway Sewer District, Southwest Suburban Sewer District, and sewer operations in the cities of Duvall, Enumclaw, North Bend and Snoqualmie.

King County's Water and Land Resources Division (WLRD) works in collaboration with other entities to protect watersheds and wastewater systems, minimize flood hazards and protect water quality in King

²³ Prohibited discharge standards can be found at www.kingcounty.gov/environment/wastewater/IndustrialWaste/Limits/Prohibited_discharges.aspx

²⁴ For the full list of discharge limits see www.kingcounty.gov/environment/wastewater/IndustrialWaste/Limits/KCLimits.aspx.

²⁵ The federal government has established discharge limits for 20 specific industries. These businesses must obtain a full King County permit regardless of the volume of their wastewater discharge. Information about these requirements can be found at: www.kingcounty.gov/environment/wastewater/IndustrialWaste/Limits/CategoricalLimits.aspx.

County. King County Code, 9.12.025, prohibits the discharge of many contaminants²⁶ into surface and stormwater, ground water, and Puget Sound. WLRD responds to complaints concerning discharges of problem materials into drainage systems within its jurisdiction and provides technical assistance to businesses on drainage quality issues.

The City of Seattle's Stormwater Code, SMC 22.800²⁷, prohibits the discharge of non-stormwater to the municipal storm sewer system in the City of Seattle. The list of prohibited discharges is similar in scope and nature to King County's, and Seattle has programs to regulate these. Seattle Public Utilities provides technical outreach, conducts inspections of pollution-generating activities, responds to water quality complaints, and enforces compliance.

Many suburban cities have ordinances that prohibit or regulate the discharge of hazardous substances to their sanitary sewers and/or drainage systems, often using language similar to that in the King County code. Renton and Redmond have also enacted aquifer protection ordinances with strict provisions governing the use, storage, and disposal of hazardous materials within sensitive aquifer recharge areas. Some of the larger cities, such as Bellevue, offer business technical assistance on drainage issues. Bellevue also has an active stormwater source control program.

Fire Department Regulations

City fire departments and fire districts require the safe handling, use and storage of hazardous materials in their jurisdictions. These agencies provide inspection, compliance, and enforcement services under national, state and local regulations. Cities and fire districts may also have municipal codes that vary from city to city or district.

Washington State has adopted the International Fire Code (IFC) through RCW 19.27.031. Chapters 27-44 of the IFC mandate specific requirements for the storage and use of hazardous materials. While local codes are based upon the IFC, they reflect the special needs of a city or district. In some instances, local codes are more stringent than the IFC provisions.

Air Pollution Control Regulations

The Puget Sound Clean Air Agency (PSCAA) is a special-purpose, regional agency chartered by the state, which works in partnership with the EPA and Ecology. PSCAA's jurisdiction covers King, Kitsap, Pierce and Snohomish Counties. That area covers 6,300 square miles and more than 3.5 million people, which is over half the State's population.

²⁶ Contaminants prohibited from discharge into King County's surface and stormwater include: petroleum products including oil and gasoline; antifreeze and other automotive products; flammable or explosive materials; batteries, acids, alkalis or bases; paints, stains, resins, lacquers, or varnishes; degreasers and solvents, drain cleaners; pesticides, herbicides or fertilizers; ammonia, chlorine, bromine and other disinfectants; chemicals not normally found in uncontaminated water; or "any hazardous material or waste not listed above."

²⁷ For more information on the City of Seattle Stormwater Code, see www.seattle.gov/dpd/Planning/Stormwater_Grading_and_Drainage_Code_Revisions/Overview/default.asp.

Several air quality issues overlap the Program's focus. The release of solvents and other volatile organic compounds (VOCs) to the air from painting, refinishing and other activities, and the incidental releases of vapors from materials that otherwise would be hazardous waste are two of these. To minimize the release of pollutants to the air, PSCAA requires high volume, low-pressure equipment in spray coating operations in autobody, fiberglass and aerospace industries. It also requires the use of low VOC solvents or the capture/containment of high VOC solvents.

PSCAA also regulates asbestos-related activities by requiring the following: asbestos surveys in renovation and demolition projects; project notification; specific asbestos removal procedures; and special disposal of asbestos-containing waste materials. The Program is not directly involved in asbestos management.

Health and Safety Regulations

State and federal regulations govern employee exposure to hazardous chemicals. The federal Occupational Safety and Health Act (OSHA), and the Washington Industrial Safety and Health Act (WISHA), require that employees receive hazardous substance training and information under worker "right-to-know" laws. These acts mandate proper labeling of hazardous materials and information on the dangers associated with exposure to hazardous materials.

Workers handling hazardous wastes, including those at MRW collection facilities, must have health and safety, and hazard communication training. The U.S. Department of Transportation requires hazardous waste transporters to provide safety and regulatory training for their employees.

Employees of solid waste and wastewater facilities must be trained in worker right-to-know requirements, blood borne pathogens, hazardous materials awareness, and asbestos awareness. Additional training may include hearing conservation, use of protective equipment, CPR and first aid.

Garbage haulers are required to have worker right-to-know and blood borne pathogen training. They must also receive appropriate training and equipment to protect their health and safety.

4.3.4. Compliance and Enforcement Efforts

Since its inception, the Program has used a combination of technical assistance, incentives, and collection services to encourage residents and conditionally exempt SQGs to reduce their use of hazardous materials and to properly use, store and dispose of hazardous wastes. The 1990 Plan did not include explicit enforcement authority. The Program's compliance strategy has been to work with businesses and other SQGs until they comply, and if they do not, to refer them to agencies that have enforcement authority. These strategies have proven effective for approximately 85 percent of the businesses contacted by the Program. These efforts complement wastewater source control programs by helping to reduce the use of hazardous materials, as well as the quantities of hazardous waste going into municipal wastewater and solid waste streams, and the environment.

Waste Reduction and Compliance with Dangerous Waste Regulations

The Program promotes waste reduction and regulatory compliance by providing SQG businesses and other organizations with specific information, as well as general guidance, about waste management and disposal. For example, the Hazardous Waste Directory describes how specific waste streams must be handled and provides a list of vendors that will manage each type of waste. The Program also provides information about reducing the use of hazardous materials. The Hazardous Waste Directory, fact sheets, and other reports are available on the Web site, in print, and by calling the Business Waste Line.

The Program also provides technical assistance to businesses, schools and other SQGs to help them reduce their use of hazardous materials and properly manage and dispose of hazardous wastes. In 2009, for example, Program staff worked with SQGs that have on-site sewage systems, and with nail salons and schools. The Program also collaborates with other agencies to reduce hazardous materials contamination in flood zones and in groundwater/well head recharge zones. SQGs can schedule technical assistance visits through the Program's Web site and by calling the Business Waste Line.

The Program provides up to \$500 in matching funds as an incentive for purchasing approved items or services. These include hazardous waste disposal costs or the purchase of equipment to ensure proper storage of hazardous materials, such as a flammable storage cabinet. The Program also provides an opportunity for the recognition and certification of businesses that take steps to reduce their use of toxic and hazardous materials. That recognition/certification program is called EnviroStars.

Finally, the Program promotes compliance by investigating hazardous waste complaints and working with enforcement authorities to resolve these. Citizens can call or e-mail the Program with hazardous waste complaints; the Program will either investigate the complaint or refer it to the appropriate agency for investigation.

Partnering to Promote Compliance and Enforce Regulations

The Program promotes regional enforcement coordination by bringing regulatory and enforcement staff together to address items of mutual concern. The Interagency Resource for Achieving Cooperation (IRAC)²⁸ was established in 1991 to review and update local regulations related to HHW and SQG wastes, and to ensure a consistent regulatory framework across the region.²⁹ The 1997 Plan Update affirmed IRAC's role in promoting interagency coordination and providing technical assistance. IRAC also focused on education and compliance inspections of businesses, organizations or residential properties handling hazardous waste. It coordinated with state and federal regulatory agencies, and code development organizations, to develop rules, policies and procedures that balanced conflicting interests, minimized unnecessary burdens on agencies and waste generators, and were consistent with the Program's goals.³⁰

²⁸ IRAC was originally called the "Interagency Regulatory Analysis Committee." Its name was changed in 2005.

²⁹ 1990 *Final Plan*, page 3-28.

³⁰ 1997 *Plan Update*, page 5-30, Recommendations 34 and 35.

IRAC continues to provide a structure for regulators from federal, state and local agencies to share diverse perspectives and work together to resolve regulatory conflicts, gaps or overlaps. Through the work groups organized within IRAC, representatives from these agencies have introduced new legislation and have brought changes to local, state and national regulations and codes. Examples include work on Titles 10 and 23 of the King County Code and on King County's Industrial Waste Pretreatment Septage Acceptance Policy; work on state regulation of pharmaceuticals {WAC 173-303-071(3)(nn) Conditional Exclusion for Pharmaceuticals}; and work on national regulations such as the definition of spray area for Uniform Fire Code Article 80, codes and standards like ANSI Standard 2208 on solvent distillation units.

IRAC work groups have fashioned working agreements on interpretations of regulations that overlapped or conflicted and provided new regulations where gaps previously existed, such as with the spray coating regulatory matrix, public pool barriers and chlorine storage. IRAC's interagency work groups have also developed best management practices for specific materials and waste streams. For example, interagency IRAC work groups developed guidance on chlorine use and storage in 2008, and developed guidelines to protect children and residents from exposure to lead-based paint in 2005-2007. IRAC work groups develop guidance for inspectors of regulatory agencies to address all aspects of regulation that can impact hazardous chemicals. Additionally, IRAC provides trainings and workshops for state and local regulators and inspectors, publishes quarterly newsletters for IRAC members, and posts publications and guidance on the IRAC Web site.

The Program coordinates the regional Interagency Compliance Team (ICT), which grew out of an IRAC workgroup convened to address problem sites. Started in 2001, in partnership with Ecology, the ICT sets priorities and develops a coordinated response to troublesome sites. Any particular site may present a number of environmental, health, and safety violations, and these typically fall within the jurisdictions of different agencies. Coordinating the responses of various agencies prevents a situation in which different agencies with overlapping jurisdictions unknowingly work at cross-purposes at the same location.

The ICT is comprised of inspectors, investigators and law enforcement officers from agencies in the Puget Sound region who work together to bring owners of troublesome sites into compliance. The ICT uses a variety of methods to achieve compliance, including coordination, information-sharing, negotiated compliance, and leveraging of resources. The partnership allows ICT members to pursue investigations which no single agency would have the resources to complete on its own. The ICT has worked with property owners and operators on over forty sites in King County to improve management and compliance with environmental regulations. Many of the sites have been cleaned up, brought into compliance, or closed down.³¹

³¹ For additional information and case studies, see *Local Hazardous Waste Management Program in King County, ICT Interagency Compliance Team*, (Seattle: LHWMP, Publication Number: IRAC-ICT-1 (7/082008), 2008).

4.3.5. Assessment of Existing Regulations and Regulatory Program

It appears that for the most part, regulations and contracts are in place to prevent hazardous materials and waste from entering into the environment, solid waste stream, sanitary sewer, and stormwater system. It also appears that many businesses demonstrate a willingness to correct their hazardous waste management practices when given information and adequate options for disposal. However, a small percentage of businesses refuse to comply.

Technically, once an SQG business fails to follow hazardous waste management regulations, that business's SQG status is revoked, and it becomes a 'regulated generator' under the jurisdiction of Ecology. However, budget and staffing limitations at Ecology encumber their ability to enforce against this category of generator. Similar problems occur when noncompliant businesses are referred to other agencies; in many cases, the referral is a low priority for the enforcement agency. These problems have worsened with cuts in enforcement funding and staffing.

A review of compliance programs in the United States shows that multi-agency enforcement teams such as the ICT are successful at bringing chronic, multi-violation sites into compliance.³² For example, the State of California has encouraged and supported the development of regional task forces dedicated to the deterrence, detection, investigation and prosecution of environmental violations. Since 1999, every county in the state has been covered by such a county or regional task force.³³ Studies have also shown that an enforcement component in compliance programs is essential.³⁴ Programs are most effective if the consequences are significant.³⁵ A stronger enforcement component and a more successful collections process for agencies with enforcement authority would recover more fines and send a clear message that enforcement actions cannot be ignored.

4.3.6. Future Directions

The Program plans to continue to provide technical assistance and incentives to promote waste reduction, and proper hazardous waste management and disposal. It will explore strategies for

32 King County Solid Waste Division, *Report and Recommendations of the King County Streamlining Enforcement Work Group*, (Seattle, WA: King County SWD, 2007), page 13. Cited hereafter as *2007 Streamlining Enforcement Workgroup Report*.

33 Environmental Task Force. *Environmental Task Force-California Environmental Protection Agency*. 2005. Accessed November 9, 2009. www.calepa.ca.gov/Enforcement/TaskForce.

34 According to the International Network for Environmental Compliance and Enforcement (INECE), "Enforcement is the backbone to any compliance program. Strategies involving education and assistance, monitoring and inspections, and incentives are only effective if backed by a credible threat of enforcement sanctions. Effective enforcement programs deter illegal conduct by creating negative consequences for those who violate the law." International Network for Environmental Compliance and Enforcement, *Principles of Environmental Compliance and Enforcement Handbook* (Washington D.C: INECE, 2009), p. 65. Cited hereafter as *INECE Compliance and Enforcement Handbook*.

35 The INECE states that "For deterrence to be effective there must be: 1) a high likelihood that the violation will be detected; 2) swift and predictable responses to violations; 3) responses that include appropriate sanctions; and 4) a perception among violators that all of these elements are present." *INECE Compliance and Enforcement Handbook*, p. 65.

providing clear, accessible guidance to businesses and other SQGs to assist them in reducing the use of toxic and hazardous materials, and in complying with regulatory requirements. The Program also will continue to partner with other agencies through IRAC and the ICT. At the same time, the Program will explore ways to strengthen enforcement efforts and establish an even more coordinated regional approach. Options include strengthening the ICT program, establishing memoranda of understanding, utilizing existing enforcement code provisions, promoting centralized approaches to enforcement and prosecution of environmental violations, and consideration of other legal and regulatory approaches.

Strengthening the ICT program requires support from participating agencies. The management of each participating agency must support the enforcement actions that ICT determines necessary to achieve compliance at a particular site. The ICT also needs the involvement and cooperation of all agencies involved at a troublesome site; failure to achieve this could result in an ICT action plan being developed without the knowledge/participation of an affected agency, possibly resulting in procedural errors or incomplete compliance. Finally, combining and leveraging the resources of all involved agencies conserves resources and streamlines the enforcement process.

It is also important to strengthen partnerships and referral services among enforcement agencies, including Ecology, PSCAA, and others. The Program will consider establishing Memoranda of Understanding (MOUs), where appropriate. This could include forming MOUs with public utility agencies to prevent noncompliant sites from receiving utilities until compliance with all rules and regulations have been met. The City of Tacoma has found this strategy to be very effective.³⁶

The Program will consider options for strengthening enforcement actions such as providing financial support to the King County Prosecuting Attorneys Office (PA). The PA's workload means that, in practice, most environmental code violations end up at the lower end of their long list of priorities. This financial support could be shared by the agencies and programs that would benefit from that additional support.³⁷ Establishing a client-funded, full-time, dedicated position in the PA's office to handle criminal and civil cases involving environmental, health and safety issues, including illegal dumping, could increase the number of enforcement cases successfully completed. Funds could potentially be generated through the collection of civil penalties.

Finally, the Program will look at how to improve enforcement by using the existing provisions and appeals processes established under King County Code Title 23 that addresses "Code Compliance." An IRAC workgroup on Streamlining Enforcement recommended using this regulation to enforce against illegal dumpers. The work group also recommended using Board of Health Code Chapter 1.08, which allows Public Health to issue Notice and Orders requiring corrective actions and to

³⁶ Michael Kennedy, City of Tacoma Environmental Compliance, Science & Engineering Section, personal communication with Sue Hamilton, Local Hazardous Waste Management Program, November 13, 2009.

³⁷ See the 2007 *Streamlining Enforcement Workgroup Report*, page 16.

assess civil penalties. The work group recommended making changes in both codes to increase their effectiveness,³⁸ and identified additional regulatory authority in King County. The Program may consider empowering staff to issue citations to businesses that fail to voluntarily comply with regulatory requirements; this is contemplated as a limited—last resort—effort, conducted by staff who have received special enforcement training. Citations could be issued using the generic field citation recently developed by the Streamlining Enforcement Workgroup.³⁹

38 Specific Recommendations can be found in the *2007 Streamlining Enforcement Report*, pages 13-17.

39 According to Dinah Day, Streamlining Enforcement Work Group Lead, King County Code Title 23 was recently amended to include generic field citations. This mechanism has not yet been implemented. Dinah Day, King County Solid Waste Division, personal communication with Sue Hamilton, Local Hazardous Waste Management Program, November 13, 2009.