



Investigation Report

Waste Management of Washington, Inc.

TG-210689

**Jacque Hawkins-Jones
Compliance Investigations**

October 2021

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PURPOSE, SCOPE AND AUTHORITY

Purpose

The purpose of this investigation is to determine if Waste Management of Washington, Inc., (Waste Management or Company) is complying with laws and rules enforced by the Washington Utilities and Transportation Commission (commission) set forth in Chapter 81.77 Revised Code of Washington (RCW), Chapter 480-70 Washington Administrative Code (WAC), and Waste Management's Tariff No. 20, Certificate No. G-237, on file at the commission.

Scope

Staff focused its investigation on Waste Management's business practices related to missed yard waste and recycle pickups.

Authority

Staff undertakes this investigation under the authority of RCW 81.04.070 and consistent with the commission's compliance policy in WAC 480-70-216 addressing solid waste collection companies.

Staff

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EXECUTIVE SUMMARY

Commission staff (staff) initiated this investigation as a follow-up to numerous complaints made by Waste Management customers regarding missed yard waste and recycling service pickups in Kitsap County. Staff conducted this investigation to evaluate Waste Management's business practices regarding missed service pick-ups. The investigation focused on Waste Management's yard waste service failures during the month of July 2021, and recycling service failures during the month of August 2021 in Kitsap County.

Within the timeframe of this investigation, staff found the Company failed to perform a total of 3,810 yard waste service pickups, impacting 1,905 individual customers, and failed to perform recycling pick-ups for 12,820 customers.

In response to staff inquiries, Waste Management acknowledged the missed pickups and disclosed that the Company has a staffing shortage. The Company stated that it has taken steps to increase staffing levels of qualified drivers and that it provided a one-time credit to yard waste customers who experienced missed pickups two service dates in a row.

Staff found that Waste Management failed to follow its approved tariff for Brem-Air Disposal, Tariff No. 20. Item 100 of the tariff provides rates for every-other-week (EOW) collection of recycling and yard waste from residences. Item 30 – Limitations of Service, provides circumstances under which the Company may miss a scheduled pickup, and it does not include the reasons provided by the Company for missed recycling and yard waste pickups. Staff concluded that the Company violated RCW 80.28.080 and WAC 480-70-236, which require solid waste collection companies to follow their tariffs, because Waste Management's customers did not receive the EOW collection services associated with the recycling and yard waste rates set forth in Waste Management's tariff.

Staff Recommendation

Staff recommends the commission issue a formal complaint against Waste Management and assess penalties in the amount of \$83,150 for the following violations:

- Up to \$5 for each of the 16,630 violations of RCW 81.28.080 and WAC 480-70-236 for failure to provide EOW yard waste and collection, in violation of the Company's tariff, for a total of up to \$83,150. While staff could recommend a penalty of up to \$1,000 per violation, staff believes that the full penalty is disproportionately punitive relative to the harm caused, and Staff's recommended penalty amount provides a significant incentive for the Company to avoid repeat violations in the future.
- Staff also recommends the Company take further action to maintain tariff compliance going forward, consistent with local service level requirements. Such action might include updating its tariff with respect to limitations of service or otherwise, or seeking an exemption, but the Company should start by consulting commission regulatory staff.

BACKGROUND

Company Information

Waste Management of Washington, Inc., is a for-profit corporation. Jim Fish is the President, and John Morris, Devina Rankin, Steven Batchelor, Chuck Boettcher, Tara Hemmer, Tamla Oates-Forney, Nikolaj Sjoqvist, Michael Watson, and Rafael Carrasco each hold the title of Vice President.

Waste Management provides solid waste collection services in 15 Washington counties, including Kitsap County, under a certificate of public convenience and necessity from the commission, G-237. This investigation concerns service provided in Kitsap County by Waste Management of Washington, Inc., d/b/a Brem-Air Disposal pursuant to its Tariff No. 20.

Based on Waste Management's 2020 annual report, the Company services 260,891 customers for residential garbage, 240,093 customers for recycling, and 98,498 customers for yard waste. Recent annual reports filed with the commission by Waste Management reflect the following annual gross intrastate revenue:

Report Year	Gross Revenue
2018	\$146,686,777.00
2019	\$152,607,871.00
2020	\$163,523,159.00

July 2021 Informal Multi-Customer Consumer Complaint – Yard Waste Service

On July 16, 2021, a consumer in Kitsap County filed an informal complaint with the commission against Waste Management. The customer experienced missed yard waste pickups for two consecutive collection periods: the weeks of July 11 and July 25. Following receipt of several more consumer complaints pertaining to the same issue, the commission's Consumer Protection Section opened a multi-customer complaint, identified as CAS-28786-M8N5R8.¹ Ultimately, there were 41 consumer complaints associated with this multi-customer complaint. At the conclusion of the complaint investigation, staff recorded 3,810 rule violations:

WAC 480-70-236	3,810 violations: Failure to comply with provisions of approved tariff. Tariff No. 20, Item 30 – Limitations of Service does not provide for a shortage of staff as a circumstance that Waste Management may miss a scheduled pickup.
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Aug. 2021 Informal Multi-Customer Consumer Complaint – Recycling Service

On Aug. 12, 2021, a consumer in Kitsap County filed an informal complaint with the commission against Waste Management. The customer's recycling service had not been collected. The commission's Consumer Protection Section received several more consumer

¹ A summary of complaint CAS-28786-M8N5R8 is attached as Attachment A. A copy of the entire multi-customer complaint, including all informal complaints related to the multi-customer complaint, is available upon request.

complaints pertaining to the same issue and opened a multi-customer complaint, identified as CAS-28903-L5V4B0, to investigate missed recycle pickups between Aug. 8 and Aug. 14, 2021. Ultimately, there were 15 consumer complaints associated with this multi-customer complaint.² At the conclusion of the complaint investigation, staff recorded 12,820 rule violations:

WAC 480-70-236	<p>12,820 violations: Failure to comply with provisions of approved tariff.</p> <p>Tariff No. 20, Item 30 – Limitations of Service does not provide for a shortage of staff as a circumstance that Waste Management may miss a scheduled pickup.</p>
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A copy of relevant pages from Tariff No. 20 is attached to this investigation report.³

INVESTIGATION

Investigation – Yard Waste Service

After Consumer Protection Section staff closed informal multi-customer complaint CAS-28786-M8N5R8 pertaining to customers’ yard waste not being picked up, the matter was referred to the commission’s compliance investigations unit, and staff opened a formal investigation.⁴

Staff reviewed the multi-customer complaint and found the first informal complaint regarding missed yard waste pickups was received on July 16, 2021, and a total of 41 complaints were received between July 16 and August 5. Customers complained that their yard waste had not been picked up two service dates in a row. Customers also stated the Company offered to collect accumulated yard waste yet required the customer to purchase additional containers or acquire the supplies to store the extra yard waste. Customers also said the Company continued to improperly charge them for yard waste services that were not being delivered.

The multi-customer complaint record contains communication from Waste Management in which the Company acknowledges it did not collect yard waste on July 15, as scheduled. Records show the Company notified customers that accumulated yard waste would be picked up on July 29, 2021, the next regularly scheduled service date. To accommodate the accumulated yard waste, the Company recommended customers purchase an additional container and hold on to the yard waste until the next service date. However, on July 29, Waste Management notified customers that it would again not collect yard waste and that collection would be made on Aug. 12, 2021, at no extra charge.

Waste Management attributes the cause of the missed pickups to an industry-wide lack of qualified drivers and the Company’s challenges filling those open positions. The Company stated

² A summary of complaint CAS-28903-L5V4B0 is attached as Attachment B. A copy of the entire multi-customer complaint, including all informal complaints related to the multi-customer complaint, is available upon request.

³ See Attachment C.

⁴ See Attachment A, page 1.

it was down six drivers in the Kitsap County area, and prioritized the collection of all garbage and recycling for the following reasons:

- Garbage and recycle are part of Kitsap County's service level ordinance, and yard waste is a separate subscription service.
- Fewer customers are subscribed to yard waste.
- Yard waste containers are a 96-gallon cart compared to recycling containers, which use a 64-gallon cart.

Waste Management stated it is committed to rescheduling and adjusting current service routes to ensure that no customer will experience repeat missed pickups while the Company works to obtain adequate staffing levels. Staff advised Waste Management that if the Company believes it is unable to meet the service levels outlined in its commission-approved tariff, it should file a revision detailing a service level that the Company believes it can provide or request an exemption from the current service level. As of the date of this report, the Company has yet to reach out to the commission or staff to discuss either option.

Waste Management maintained that it is addressing the staffing issue by making changes to its current incentives program, such as increasing its employee referral bonus, adding a signing bonus, and paying the toll charges for potential candidates who may face such a charge during their commute. Waste Management said that even with these added incentives, the onboarding process for selected candidates is slow due to the background check process that the Company claims has been backlogged for months.

During the investigation, staff found that 1,905 customers in Kitsap County were affected by the two consecutive missed yard waste pickups during the weeks of July 11, 2021, and July 25, 2021, resulting in a total of 3,810 missed pickups. The Company said it applied a one-month yard waste credit of \$8.47 to each of those customer accounts. However, Waste Management said it will now only be offering credits for customers if the same service type is missed for two consecutive service dates in a row.

Findings – Yard Waste Service

RCW 81.28.080 provides that a solid waste collection company operating in Washington cannot charge, collect, or receive a greater or less or different compensation for solid waste collection or any related service than the rates and charges in its tariff. Under WAC 480-70-236, no company may provide solid waste collection service in the state of Washington until it files, and the commission approves, a tariff. The rule further provides that no company may assess rates and charges for solid waste collection service that are higher, lower, or different from those contained in its approved tariff. The Company's Tariff 20, Item 100, provides the rates and terms for residential service, including yard waste collection. The frequency of service listed for yard waste is every other week. Item 30 outlines approved circumstances that allow the Company to miss a service, such as unsafe weather, labor disputes or declared public health emergencies.

Staff found that the Company missed yard waste service pickups during the weeks of July 11 and July 25, 2021. The Company stated the two missed pickups were due to difficulties recruiting qualified drivers and maintaining sufficient staffing levels. This circumstance is not an approved limitation of service in Waste Management's Tariff No. 20. And while staff recognizes that Waste Management provided service credits for the missed pickups, Tariff No. 20 provides rates

and service levels for EOW collection only. Staff finds that Waste Management violated RCW 81.28.080 and WAC 480-70-236 when it failed to provide two-yard waste service pickups in July 2021 to 1,905 customers in Kitsap County.

Recommendation – Yard Waste Service

Staff recommends a penalty of \$5 for each of the 3,810 yard waste pickups that the Company failed to collect in accordance with Tariff No. 20, which impacted 1,905 customers, in violation of RCW 81.28.080 and WAC 480-70-236.

Investigation – Recycling Service

During the investigation into missed yard waste pickups, staff received another informal multi-customer complaint regarding Waste Management’s failure to pick up recycling in the same Kitsap County area.⁵ A total of 15 complaints were received between August 12 and August 23, 2021. Customers complained that their recycling had not been picked up the week of Aug. 8, 2021. Customers said Waste Management sent notice that the Company adjusted certain recycling routes within Kitsap County to provide accumulated yard waste service pickups stemming from the labor shortage issues discussed above. The notice said the Company would pick up the customers’ accumulated recycling at the next service date.

Customers said they were also denied account credits because Waste Management would only provide credits to customers if they experienced two consecutive missed pickups for the same service type. In this case, Waste Management did eventually pick up the accumulated recycling of those customers who were missed during the week of Aug. 8, 2021, but did not offer any credit for the missed recycling pickup.

Waste Management explained that, as it continued to find itself short staffed with drivers, the Company elected to focus its current drivers on garbage and yard waste, which resulted in no service for one service cycle for some recycle customers. The Company said it continues to review affected customer routes and ensure that it does not miss pickups for the same customers and same service type two service dates in a row. As of Sept. 20, 2021, the Company had four drivers going through its training program, with one expected to start a route Sept. 13, another to start a route on Sept. 20, and the remaining two to complete their training by mid-October.

Again, Waste Management said it was addressing the staffing issue by making changes to its current incentives program. The Company also restated its commitment to rescheduling and adjusting current service routes to ensure that no customer will experience repeat missed pickups of the same service type while the Company works to obtain adequate staffing levels.

The investigation found that Waste Management cited the cause of the missed recycling pick up as due to insufficient staffing levels. The Company stated it made the decision to reroute some of its current drivers’ recycling routes due to missed yard waste pickup complaints, and by doing so, the Company elected to not provide 12,820 recycling pickups during the week of Aug. 8, 2021.

⁵ See Attachment B.

Findings – Recycling Service

RCW 81.28.080 provides that a solid waste collection company operating in Washington cannot charge, collect, or receive a greater or less or different compensation for solid waste collection or any related service than the rates and charges in its tariff. Under WAC 480-70-236, no company may provide solid waste collection service in the state of Washington until it files, and the commission approves, a tariff. The rule further provides that no company may assess rates and charges for solid waste collection service that are higher, lower, or different from those contained in its approved tariff. The Company's Tariff 20, Item 100, provides the rates and terms for residential service, including recycling collection. The frequency of service listed for recycling is every other week. Item 30 outlines approved circumstances that allow the Company to miss a collection, such as unsafe weather, labor disputes or declared public health emergencies.

Staff found that the Company missed recycling service pickups between Aug. 8 and Aug. 14, 2021. The Company stated that the missed pickups were the result of the difficulties recruiting qualified drivers and maintaining sufficient staffing levels. This situation is not an approved limitation of service as outlined in Tariff No. 20. Tariff No. 20 provides rates for service levels of EOW collection, and Waste Management failed to provide EOW recycling service to 12,820 customers in Kitsap County. This failure to follow the tariff violated RCW 81.28.080 and WAC 480-70-236.

Recommendation – Recycling Service

Staff recommends a penalty of \$5 for each of the 12,820 recycling pickups that the Company failed to collect in accordance with Tariff No. 20, in violation of RCW 81.28.080 and WAC 480-70-236.

RECOMMENDATIONS

Staff believes that many of Waste Management's actions conflict with the Company's tariff. Accordingly, staff believes the following information supports the recommended penalties:

1. How serious or harmful the violation is to the public

The violations are both serious and harmful to the public. Customers rely on the Company's service schedule to collect garbage, yard waste and recycling to rid their homes of waste. Yet the Company failed to collect two yard waste pickups for customers during the middle of one of the hottest summers in Washington state. While staff understands that certain situations will arise and warrant the Company to alter its service schedule, these circumstances are set forth clearly in the Company's Tariff No. 20. Waste Management's lack of qualified staff is not an approved reason for limiting its service to its customers, as outlined in its tariff.

2. Whether the violation is intentional

Staff believes the violations were intentional. The Company understands its obligation to follow its commission-approved tariff. The Company said, when it realized the staffing issues, it chose to alter its service routes to maintain garbage and recycling services as required by the Kitsap County service level ordinance. Therefore, the Company missed yard waste pickups due to this decision.

Furthermore, during the first informal multi-customer complaint regarding missed yard waste pickups staff informed the Company of ways to address the tariff violation, including requesting an exemption to its tariff or altering its current commission-approved service level. The Company has not contacted the commission or staff regarding either of those options.

3. Whether the company self-reported the violation

The Company did not self-report the violations discussed in this report. This investigation was initiated because of multiple informal customer complaints.

4. Whether the company was cooperative and responsive

Staff found the Company to be cooperative and responsive to requests for data and information.

5. Whether the company promptly corrected the violations and remedied the impacts

The violations noted in this report have not been corrected. To the contrary, the Company's statement to customers that it will not provide a credit unless it misses two consecutive pickups indicates that the Company plans to continue providing service that deviates from its tariff.

6. The likelihood of recurrence

Staff believes that the Company will eventually correct violations brought to the Company's attention; however, it is staff's understanding that, in the meantime, customers continue to experience missed collections.

- 7. The company's past performance regarding compliance, violations, and penalties**
Waste Management is the subject of a number of informal consumer complaints that have been filed with the commission in recent years and also has had previous formal enforcement actions taken against it by the commission.

Most notably, in 2013, the Commission issued a formal complaint against Waste Management for failure to collect solid waste in King County and Snohomish County during and immediately following a labor disruption. Docket TG-121265. During and immediately following a labor strike, Waste Management had provided reduced levels of service in conflict with the frequency of service requirements in its tariffs. Pursuant to a settlement approved by the commission, Waste Management paid a penalty of \$20,000 and issued one-time bill credits to its customers.

Since 2019, the commission has received 490 informal consumer complaints filed against Waste Management. Of those 490 complaints, 123 were consumer upheld, each resulting in violations against the Company.

Furthermore, as of the date of this report, staff continues to receive complaints against Waste Management regarding the issue of missed pickups even though staff has communicated the violation of state law and rule to the Company.

- 8. The company's existing compliance program**
Staff is not aware of any compliance program.

- 9. The size of the company**
Waste Management reported gross intrastate revenue of \$163,523,159.00 for the 2020 reporting period.

Staff Recommendation

Staff recommends the commission issue a formal complaint against Waste Management and assess penalties in the amount of \$83,150 for the following violations:

- \$5 for each of the 16,630 violations of RCW 81.28.080 and WAC 480-70-236 for failure to provide EOW yard waste and collection, in violation of the Company's tariff, for a total of up to \$83,150. While staff could recommend a penalty of up to \$1,000 per violation, staff believes that the full penalty is disproportionately punitive relative to the harm caused, and Staff's recommended penalty amount provides a significant incentive for the Company to avoid repeat violations in the future.
- Staff also recommends the Company take further action to maintain tariff compliance going forward, consistent with local service level requirements. Such action might include updating its tariff with respect to limitations of service or otherwise, or seeking an exemption, but the Company should start by consulting commission regulatory staff.