

Memo

To: Washington State Utilities and Transportation Commission
From: Robert Beaumier, Assistant City Attorney
CC: Dennis Hein, Director of Solid Waste Management, City of Spokane
Date: 12/13/99
Re: Comments on Proposed WUTC Rules relating to Solid Waste Collection Companies; Docket No. TG 990161

1. Your draft only references "contracts" under "city regulation". Consider:

WAC 480 70 026 (6) "**City regulation**" refers to the circumstance where a city has assumed jurisdiction for regulation of local solid waste collection activities and may be doing so through use of a solid waste collection company, whether by contract, franchise or ordinance.

Comment: we have solid waste collection franchises, issued under RCW 35.13.280, but no contracts. Your later analysis under this topic (Tukwila case) is correct, but franchises also have the status of regulatory documents. In this context, a franchise is a legislative sanction by a local government to a private individual or company to use the public right of way for a business purpose other than that reserved to the general public. Your comments correctly indicate a further difference arises between a city issuing a simply street use type franchise and a city that has assumed collection functions issuing a franchise under its local power to assume responsibility for solid waste collection functions to delegate collection functions. I agree it is a good idea to make these concepts clear and separated.

2. . Definitions- local governments must adopt solid waste management plans under ch. 70.95 RCW. Consider further integration of definitions, even though I understand yours may need to be much more content specific for clarity.

WAC 480 70 026 (16) (18) (25) (29) "garbage" "refuse" "solid waste" our commonly used definition includes "putrescibles" for garbage. You may also want to compare the solid waste management act definitions in RCW 70.95.030. Why not include a definition of recyclables, since you have in it your solid waste definition? Here are some other RCW 70.95.030 definitions:

(4) "Composted material" means organic solid waste that has been subjected to controlled aerobic degradation at a solid waste facility in compliance with the requirements of this chapter. Natural decay of organic solid waste under uncontrolled conditions does not result in composted material.

(17) "Recyclable materials" means those solid wastes that are separated for recycling or reuse, such as papers, metals, and glass, that are identified as recyclable material pursuant to a local comprehensive solid waste plan. Prior to the adoption of the local comprehensive solid waste plan, adopted pursuant to RCW >> 70.95.110 <<(2), local governments may identify recyclable materials by ordinance from July 23, 1989.

(18) "Recycling" means transforming or remanufacturing waste materials into usable or marketable materials for use other than landfill disposal or incineration.

(20) "Sewage sludge" means a semisolid substance consisting of settled sewage solids combined with varying amounts of water and dissolved materials, generated from a wastewater treatment system, that does not meet the requirements of chapter >> 70.95J << RCW.

(22) "Solid waste" or "wastes" means all putrescible and nonputrescible solid and semisolid wastes including, but not limited to, garbage, rubbish, ashes, industrial wastes, swill, sewage sludge, demolition and construction wastes, abandoned vehicles or parts thereof, and recyclable materials.

(23) "Solid waste handling" means the management, storage, collection, transportation, treatment, utilization, processing, and final disposal of solid wastes, including the recovery and recycling of materials from solid wastes, the recovery of energy resources from solid wastes or the conversion of the energy in solid wastes to more useful forms or combinations thereof.

(24) "Source separation" means the separation of different kinds of solid waste at the place where the waste originates.

3. change of address

WAC 480 70 036: they should also notify the City Clerk of any city or town they collect in.

4. Records retention WAC 480 70 051. We are required prior to taking over territory under RCW 35.13.280 to issue a 7 year franchise. All customer records and route information should be retained until turnover to a city assuming collection jurisdiction.

5. WAC 480 70 066- each year changing regulatory fees: not very responsive to I 695

6. WAC 480 70 086: what about provision for a city assuming jurisdiction? Sub (4): should include service provided under a municipal franchise (must be issued under RCW 35.13.280) as well as contract. Also, we have had applications for certificates in our territory. Sub (2) only references "certificate holders" as being allowed to file protests; why not say: "or other holder of a claim of right" or "other interested party" or simply "or municipality"

7. WAC 480 70 111: same comment that aggrieved cities may want to protest temporary certificates.

8. WAC 480 70 116: question: do you require your residential haulers to offer curbside recycling?

9. WAC 480 70 121 (1): good language: important to say this
(2) likewise well written
(3) or by municipal franchise

10. Regarding the 7 year franchise post annexation, in Spokane, we have always simply assumed jurisdiction, as we regard the commission's jurisdiction as cancelled upon annexation per the statute, provided we have given notice. Thus, we do not really need Commission involvement during the time of our 7 year franchises, even though our franchise provide 1) that the hauler must provide safe and reliable service at reasonable prices, but 2) conformity with WUTC requirements which would otherwise apply creates a rebuttable presumption of compliance with this franchise term. (We basically assume control, but tell them they may continue to follow Commission approved pricing and practices until we take over upon franchise expiration.)

Having made these comments, I sympathize with the concerns of Kris Bauer from Shoreline, and perhaps the Commission could consider simply retaining jurisdiction during the 7 year franchise period. In this case, the City would advise the Commission it had issued a 7 year franchise and intended to take over the territory thereafter, or otherwise negotiate a resolution. This may reduce haulers' anxiety that they may be forced to serve two masters. But again, in Spokane we have had good luck with our haulers simply by taking over, but stipulating in the franchise contract with the hauler that so long as the hauler follows WUTC requirements, the City will accept these in satisfaction of its franchise terms, absent further information (eg. inside city hauling needs differ from outside city; information of bad rate subsidy of outside accounts by inside accounts- this has never arisen to date).

Commission acknowledgement of status of municipal self governance of solid waste

It would be nice if we had some responsive letter or acknowledgement from the Commission stating that the Commission has received our notice of intent to manage our own solid waste collection, and, until

further notice, the Commission recognizes that decision to “opt out” and is withdrawing its jurisdiction. I wrote many years ago to assert self management, and have never received any formal acknowledgment. Why don't you make some provision for this?

It would also be appreciated if the Commission's acknowledgement is clear that it includes any territory hereafter annexed. Otherwise, some goofy hauler will say we have no right to issue a franchise unless we notify the Commission for each annexation. This creates possibilities of error etc.

It would also be appreciated if the Commission could maintain an updated website with

a) maps and legal descriptions of all hauler certificates, including any limitations.

b) updated information on applications for new or transfer certificates.

The Commission might also work with the Association of Washington Cities and Municipal Research Services to maintain updated maps of municipal annexations so there is a common reliable data base.

Thank you for the opportunity to comment. Please call me if I can be of any further help. Personal number (509) 625 6284. email: rbeaumier@spokanecity.org