



January 8, 2010

Mr. David W. Danner
Executive Director and Secretary
Utilities and Transportation Commission
1300 South Evergreen Park Drive S.W.
P.O. Box 47250
Olympia, WA 98504-7250

SENT VIA
records@utc.wa.gov

RE: Docket # TG-080591

Dear Mr. Danner:

The Construction Materials Recycling Association – Northwest Chapter (CMRA-NW) is a local chapter of the National CMRA, which represents recycling facilities and recyclable material transporters nationwide. Our Northwest Chapter represents a majority of the recycling facilities and recyclable material transporters west of the Cascades. We appreciate the opportunity to submit these comments on behalf of the CMRA-NW members and look forward to working with you as these discussions continue.

The CMRA-NW has reviewed the WUTC's proposed addition of a new section to WAC 480-70 relating to the transportation of commingled construction, demolition, and land clearing debris (CDL).¹ We realize that the application of RCW Chapters 81.80 or 81.77 to the transportation of CDL debris has been a very contentious issue for the WUTC. However, in our view, the application of current State statutes to CDL has to be taken in light of the overarching public policy recycling goals of the State.

¹ Please see foot note 2.

More and more, the State and its local governments are moving to a zero waste paradigm, which requires aggressive recycling efforts in our great State. Therefore, any regulatory actions by the UTC to clarify this issue must ensure that these recycling policies and efforts are not impeded, constricted, or worse, eliminated by regulations.

As you probably know, the State legislature, in 2005, wrestled with the very issues the WUTC proposed rules are attempting to address. When it enacted Senate Bill 5788 in 2005, the Legislature regulated transporters of recyclable materials and placed the regulatory authority of those transporters squarely with the Department of Ecology. While the Legislature studied and discussed many options to address this issue, including mandatory per-load recycling percentages, it chose to look to the type of facility to which the materials were taken. RCW 70.95.410(1) states simply and clearly that “a transporter may not deliver any recyclable materials for disposal to a transfer station or landfill.” This means that as long as a transporter takes recyclable materials to a recycling facility for recycling activity they are in compliance with this statute. In our judgment, the Legislature took this policy position because it recognized that establishing artificial percentages of any kind would have significant, unintended, stifling, and detrimental consequences on the recycling industry. It is our opinion that the WUTC should align with the same policy as the Legislature and follow the existing statutes intent.

We are also concerned about the statutory authority of the WUTC to preside over performance standards at material recycling facilities (MRFs) in any manner. This activity is clearly under the jurisdiction of the Department of Ecology and local public health agencies. In earlier commentary on this proposed rulemaking, the Department of Ecology questioned the WUTC authority in this regard. *See also* the comments to the current proposed rule from Kitsap County We strongly urge you to refrain from adopting any rules attempting to regulate MRFs and allow the Department of Ecology and local public health officials to determine the proper or improper activities of MRFs.

Having said all this, should the WUTC move forward with this regulatory action, we suggest the following amendatory language below. For ease of reference, we have underscored new language and struck language we would suggest be removed. We have also used the same format used by the WUTC, in that our footnotes describe the basis of our recommended amendments.

NEW SECTION (WAC 480-70-XXX)

(1) This rule defines when a person engaged in business as a carrier of mixed recyclable construction and demolition waste over the public roadways of this State requires a solid waste collection certificate. The rule applies only outside the limits of cities that provide their own solid waste collection service or contract for the service.

(2) For the purposes of this section:

(a) “Mixed recyclable construction and demolition and land clearing² waste” means any construction, demolition, or land clearing wastes¹ that contain, in a commingled State, commodities suitable for recycling or diversion from disposal, and which the person who generated the waste has hired the carrier to transport from the generator’s site over the public roadways for the expressed purpose of having the material recycled³. The term does not include materials the generator has separated, at the source, into distinct marketable commodities (e.g., soil, clean wood, metal, drywall, concrete, asphalt roofing) ~~for direct transportation to recycling facilities without an intermediate stop at a material recovery facility.~~⁴

(3) Any person transporting for compensation, mixed recyclable construction, demolition and land clearing waste with the expressed intent of having them recycled⁵, must first obtain a solid waste collection certificate, unless the following conditions (a) through ~~(d)~~ (c) apply:

(a) The generator of the construction and demolition waste is a commercial or industrial enterprise or otherwise generated as a non-typical residential activity⁶.

² Adds land clearing to conform with the definition provided. Construction, demolition and land clearing (CDL) are routinely and consistently grouped for purposes of distinguishing them from other forms of solid waste.

³ Adding this language provides for a distinction between a certificated hauler transporting recyclable materials simply for disposal purposes under tariff rates and certificated haulers and/or their affiliates hauling recyclable materials for the purpose of recycling at non-tariff rates thereby acting as “Transporter of recyclable material” as defined in WAC 173-345-030.

⁴ Source- separated materials are kept separate as they are transported to recycling facilities without any intermediate stop for sorting. Such individual commodities may be transported to and from intermediate locations for accumulation, consolidation, densification, size-reduction and other logistical reasons to best manage their value and highest use in the supply-chain.

⁵ New language inserted here for the same reasons described in footnote #1 and to reaffirm that materials that are purported to be collected and transported for recycling purposes are actually delivered to a bona fide recycling facility.

⁶ The intent for the proposed additional language is to clarify that ‘commercial or industrial solid waste generator’ includes residentially generated recyclable materials when the materials are generated on a non-routine basis, are collected on a non-scheduled basis, and are not suitable to be collected with traditional residential waste collection vehicles.

Furthermore, including residential recyclable materials within the definition of solid waste is contrary to the definition of “waste” since it often has a positive value and is easily recyclable. Cans, bottles, paper, cardboard and similar components of the “traditional” waste stream were included within the definition of solid waste for transportation purposes so as to assure a whole or complete material stream, (generated on a
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~~(b) The generator of the construction and demolition waste has provided a container of an appropriate size for non-recyclable waste generated on the site, as required by RCW 70.95.020(3) and WAC 173-345-040, and the container is separate from the container the carrier provides for placement of mixed recyclable construction and demolition waste.⁷~~

(eb) The carrier has conspicuously marked or placarded its recyclable materials container with a description of the types of materials that are acceptable for recycling or diversion

(~~dc~~) The carrier transports the mixed construction and demolition material either to a recycling facility or to a material recovery facility as defined by WAC 173-345-030.

~~If the destination is a material recovery facility, that facility must either:~~

~~(i) comply with all of the terms and conditions of WAC 173-350-310(2) for exemption from permitting as an intermediate solid waste handling facility, or~~

~~(ii) have a current solid waste handling permit as required by WAC 173-350-310(9) and RCW 70.95.170 and be able to demonstrate that at least 75 percent of the materials that the material recovery facility receives, by weight, are ultimately either delivered to recycling facilities for recycling or used as industrial boiler fuel. To determine whether a material recovery facility meets this 75 percent recycling or diversion standard, the commission shall use the prior twelve months of facility operation or the time during which the facility has been in operation, whichever is longer. No materials taken from the material recovery facility to a landfill, transfer station, or incinerator may be counted as recycling or diversion, even if the material is used as alternative daily landfill cover or mixed with other wastes to help meet landfill slope or permeability requirements.⁸~~

routine or consistent basis) capable of supporting a universal scheduled residential curbside collection programs.

This perspective is supported by the additional legislation that provides for a certificated hauler to share in the resale profits of recyclable materials collected from residences. Including (CDL) would negatively impact this revenue sharing. Contrary, CDL materials are of negative resale value in an 'as-is' collected form, and inclusion would cause non-generators of these types of debris to share in their disposal/recycling costs. Universal service is not intended to subsidize the disposal of large (and heavy) quantity generators of solid waste.

⁷ This requirement is already in statute and rule and is imposed on the "generator" of waste. This should not be a burden placed on the "transporter" since the transporter has no legal responsibility or authority to ensure that a container of an appropriate size for non-recyclable waste is on the site.

⁸ As noted above, our view is that the WUTC lacks the statutory authority to ensure compliance with any regulation of material recycling facilities or to create any new regulatory performance standard criteria for those facilities. Ending with subsection (3)(c) sufficiently follows the requirements contained in RCW 70.95.410 and its corresponding rules contained in WAC 173-350.310.

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(4) All companies offering recycling hauling services shall conform to WAC 173-345. It shall be unlawful for Certificated Solid Waste Collection companies to transport “Mixed recyclable construction and demolition waste” to transfer stations or landfills for disposal⁹.

Thank you, again, for your willingness to accept our comments on behalf of the CMRA-NW. If you have any questions, please feel free to contact me.

Sincerely,

Michael Transue, Executive Director
CMRA – NW Chapter

⁹ This proposed new section reaffirms and restates the proposed changes as noted in Sections 1 and 2 above. “G” Certificated haulers that haul commingled recyclable materials for generators must deliver them to a material recovery facilities meeting the standards in WAC 173-350-310(2).