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January 8, 2010

David W. Danner
Executive Secretary and Secretary
P.O. Box 47250
1300 S. Evergreen Park Dr. SW
Olympia, WA 98504-7250

Re: Solid Waste Rulemaking (Docket TG-080591)

Dear Mr. Danner

Sanitary Service Company, Inc. and Recycling Services, Inc. (together, "SSC") appreciate the opportunity to comment to the Washington Utilities and Transportation Commission ("WUTC") on the new proposed draft rules governing solid waste collection companies and, more importantly, providing guidance to transporters holding themselves out as commercial recyclable materials collection companies.

At the outset, SSC applauds Staff for recognizing that the services creating the greatest consternation involved collection of mixed construction and demolition waste from job sites. For the most part, collection of recyclable materials from other commercial and industrial generators has not been as controversial. In our experience in Whatcom County, other types of commercial customers are careful about sorting recyclables, and we work with those customers to maximize the market value of the commodities they tender for collection.

Further, the approach suggested by the proposed rule is, in our view, a simple and elegant solution. There seems no way to resolve the debate among transporters about what is actually recyclable versus what is potentially recyclable, but measuring it by what happens to the material alleviates the need to resolve the philosophical argument. Making the transporter responsible for ensuring that loads of commercial recyclables are delivered either directly to market, or to a material recovery facility that affirmatively focuses its operations on maximizing the output of materials for market, in our view ensures the focus is kept appropriately on what is actually recyclable and removes the potentiality from the equation.

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We offer a few comments below, which we hope will enhance Staff's laudable efforts.

As the footnotes to the rule text recognize, as a starting point "construction debris," "construction waste," demolition waste," and "demolition debris" are all considered regulated solid waste and therefore must presumptively be hauled by a certificated hauler. SSC supports the approach of the rule which starts with that presumption, and then requires a transporter to meet certain qualifications for any given haul to be performed by a noncertificated hauler.

SSC appreciates the requirement for a minimum of two containers, one for source-separated recyclable materials and another for remaining solid waste. We also support requiring companies transporting commercial recyclable materials to adhere labels or placards to the recyclable materials boxes stating what is acceptable, as a further measure to ensure the materials are in fact actually recyclable. Finally, we concur wholeheartedly with the need for the solid waste container to be "of an appropriate size." Based on the standard later in the rule, SSC suggests that the "appropriate size" would be capable of handling a minimum of 25% of the material being generated at the job site.

With regard to the destination facility, we like the way the proposed rule puts the burden on the transporter to monitor and verify the performance of the MRFs. Obviously, transportation of materials taken directly to market (i.e., delivered to a recycler) would be a noncertificated haul, and the rule seems to make that clear in several places.

Transportation to interim processing and sorting facilities has always been where the risk of a shell-game takes place. The Commission, obviously, has no authority over those facilities, and its enforcement staff cannot be expected to police whether they are genuine MRFs or not. This rule allows the market to control the outcome. Over time, if a sham recyclable collector continues to deliver low-grade (or even no-grade) materials to a MRF, eventually the MRF will not be able to meet the performance standard. SSC likes that approach. We are not certain that 25% is the right standard, but since it excludes ADC the ability of MRFs that accept junk loads to meet the standard will be difficult.

One point to make is that many of the noncertificated haulers operate their own MRFs. We understand the WRRRA has suggested the transporters submit an affidavit verifying that the facilities to which they deliver loads comply with the rule. Although untrustworthy individuals may not be daunted by the risk of perjury, most of the commercial recyclable collection businesses we know would only sign such a document if it were true. Since we perform collection of commercial recyclables ourselves, we would obviously have to sign an affidavit ourselves, and we are more than willing to do so. SSC supports WRRRA's suggestion.

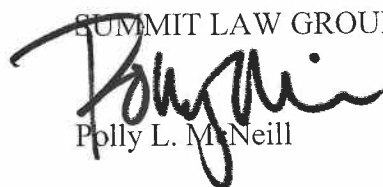
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As we mentioned in our first comments, we also think the Commission should add an annual reporting requirement for motor carriers collecting commercial recyclables. Recyclable materials collection companies could easily submit facility affidavits, along with copies of the labels they have used, and documentation of compliance with the two-box rule could also be submitted. They could include a copy of the annual report they file with the Department of Ecology, showing the facilities to which materials are delivered and quantities collected and delivered. The WUTC has some authority over motor carriers, and asking for evidence of compliance with performance standards is reasonable.

Finally, while SSC thinks the MRF-oriented approach is a sound concept, we still would ask the Commission to retain the ability to police illegal solid waste collection by reference to the individual load. SSC understands and has first-hand experience with the difficulties staff has in using that benchmark. It may be a standard that is rarely used, and yet nonetheless SSC believes the Commission should include the requirement in its rule rather than abandon a per-load performance inquiry entirely. It may be possible, for instance, for a MRF to be so dramatically successful in its output that it can accept junk loads for a period of time, or from a limited number of haulers. There are other hypothetical scenarios that we can envision. But since the definition of "mixed recyclable construction and demolition waste" only requires that it "contain" commodities suitable for recycling, and since a soda can or bit of cardboard can be found in almost any load of solid waste, we are not comfortable leaving the per-load inquiry unaddressed. By reference to other jurisdictions, SSC suggests the Commission incorporate a 90/10 performance standard for loads.

In conclusion, SSC supports many of the concepts presented in the discussion draft rules. We look forward to further opportunities to clarify and comment.

Sincerely,

SUMMIT LAW GROUP PLLC

Polly L. McNeill

cc: Rodd Pemble
Paul Razore