



WASHINGTON REFUSE & RECYCLING ASSOCIATION

January 8, 2010

VIA EMAIL and US Mail

Mr. David M. Danner
Executive Director and Secretary
Washington Utilities and Transportation Commission
PO Box 47250
Olympia, WA 98504

Re: Docket TG-080591

Dear Mr. Danner:

Thank you for the opportunity to comment on the above-referenced rulemaking. As you know, WRRA is a non-profit trade association representing the vast majority of solid waste haulers in Washington. We remain completely dedicated to, and supportive of, the "G" permit and the underlying statutes and rules which provide for, we believe, the most effective and consumer-oriented system of solid waste collection and handling in the country. We are appreciative of the opportunity to comment on proposed rule changes, as well as being supportive of the willingness of the WUTC to periodically review and revise its rules to keep pace with the continuing evolution of the industry.

This letter will address each of the proposals as it appears in the Commission's "Discussion Draft" of November 16, 2009, as well as the comments in the "Notice of Opportunity" of the same date. The latter, I should add, has been very helpful in explaining staff's reasoning, and I hope to see that sort of discussion included in future rulemakings.

With that in mind, we offer the following comments:

NEW SECTION: WAC 480-70-~~xxx~~¹

In general, we support the objectives and substance of the rule, with some reservations, and one point of disagreement on what we consider a major issue.

¹ Pg. -1- of "Discussion Draft"

As we all are sometimes painfully aware, the subject of collection and transportation of “mixed waste” and/or “mixed construction and demolition waste” has been a topic of active discussion and sometimes disagreement in recent years. WRRRA has, and will continue to, approach this issue by keeping in mind that construction and demolition waste is, by statute, solid waste RCW 81.77.010. This, of course, does not mean there is not the opportunity (and perhaps the obligation) to recycle as much of this material as possible. However, unless recyclables are properly sorted and separated at the jobsite, the transportation of same must be by the certificated hauler. The proposed rule correctly points this out.

The “conditions” recited in (3)(a) through (d) are appropriate. We have concluded that perhaps the most effective measure to enforce these conditions is the “two box rule;” i.e., each site upon which a recycling container or containers is located must also have an appropriately-sized solid waste box on site. It is a simple, but sometimes ignored, truth that not everything is recyclable. That which is not is solid waste and needs to be collected, transported and disposed of properly. That is for the certificated hauler to do, as the proposed rule acknowledges. Implementation of these conditions will go a long way toward preventing contamination of genuine recyclable materials at the facility itself.

Closely related to this issue is our concern over “sham recyclers” or, in popular parlance, “greenwashers.” Among the many, many legitimate recyclers there remain those who continue to cheat the system and the public by promising well-meaning customers that material will be recycled when, in fact, it is being transported to out-of-county, low fee landfills for disposal. This not only is blatantly illegal on its face but deprives the state public works trust account and local governments of much needed revenue in these most financially challenging of times. There are obvious and legitimate reasons for the existence of the solid waste collection tax; and for the counties’ ability and responsibility to direct the flow of solid waste. Lack of enforcement at the state and local levels costs the already hard-pressed taxpayers of our state significant revenue, and we all need to coordinate efforts to see that these activities come to an abrupt halt, and that those responsible are held accountable.

One suggestion WRRRA can offer is to require transporters to execute a simple document, under penalty of perjury, which states they are in compliance with all applicable laws and rules. Legitimate recyclable transporters should have no problem doing so, and those who would be reluctant to do so certainly should be, at the least, closely scrutinized by the Commission and local law enforcement. I have no illusions that a very few of those who are illegally transporting solid waste would not sign the document and simply continue their illegal activities. However, such a document could

well be a starting point for Commission action and/or law enforcement scrutiny.

WRRRA also agrees with the WUTC intent in this rulemaking that alternative daily cover (ADC) should remain defined as disposal consistent with the interpretation adopted by the Department of Ecology.

Lastly, while we are in agreement with a "percentage rule" ((3)(d)(ii)), the proposed rule seems to ignore what has become the standard percentage of solid waste in mixed material, 10%, in favor of a 25% standard. The "10% rule" has been adopted by the City of Seattle and is in Snohomish County's proposed rules. It was approved, at least tacitly, by the 9th Circuit Court of Appeals in *AGG v. Washington County*, an appeal in which WRRRA participated as *amicus curiae*.

There is no explanation, nor justification, of the staff's significant departure from what other jurisdictions seem to have universally accepted and adopted. I strongly urge reconsideration of this aspect of the proposed rule, and am certainly willing to take an active role in any such discussion.

Again, thank you for the opportunity to comment on the rule draft. WRRRA looks forward to working with staff and other stakeholders to reach a consensus that will result in a rule that is reasonable, workable and enforceable.

Sincerely,

A handwritten signature in cursive script that reads "Brad Lovaas". The signature is written in black ink and is positioned to the right of the word "Sincerely,".

Washington Refuse & Recycling Association
Brad Lovaas, Executive Director