



SOLID WASTE FACILITY PERMIT # SW-237


Issued by the Snohomish Health District in accordance with the provisions of Chapter 70.95 of the Revised Code of Washington (RCW), Chapter 173-350 of the Washington Administrative Code (WAC) and the Snohomish Health District Sanitary Code, Chapters 3.1 and 3.2 (Adopted text of WAC 173-350).

PERMIT PERIOD: JULY 1, 2013 TO JUNE 30, 2014

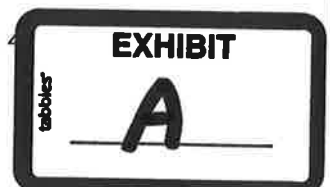
PERMITTEE AND ADMINISTRATIVE INFORMATION

NAME OF FACILITY: Maltby Container
FACILITY LOCATION: 20225 Broadway Ave, Snohomish, Washington 98296
FACILITY OWNER: Tony McAuliffe
FACILITY OPERATOR: Tony McAuliffe
PHONE: 206-501-8214
PERMIT TYPE: Intermediate Solid Waste Handling Facility
ANNUAL FEE: \$3,192.00

The conditions of this permit are contained on the following pages. This permit is the property of the Snohomish Health District and may be suspended or revoked upon violation of any rules and regulations applicable hereto. This permit is not transferable to a different site, and must be renewed annually. This permit or a legible copy must be displayed or stored in a manner that allows easy access by operating personnel.


Phebe Wall, RS
Solid Waste and Toxics Section
Environmental Health Division

7/25/13
Date of Issuance



[Service Date March 26, 2012]

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of Determining the Proper Carrier Classification of, and Complaint for Penalties against:	)	DOCKET TG-120308
)	
	)	ORDER 01
)	
MCAULIFFE AUTO SALES, INC. DBA MALTBY CONTAINER & RECYCLING	)	ORDER INSTITUTING SPECIAL PROCEEDING; COMPLAINT SEEKING TO IMPOSE PENALTIES and NOTICE OF HEARING (Set for May 1, 2012, at 1:00 p.m.)
.....)	

INTRODUCTION

- 1 The Washington Utilities and Transportation Commission (Commission), pursuant to RCW 81.04.510, institutes this special proceeding on its own motion to determine whether McAuliffe Auto Sales, Inc. d/b/a Maltby Container & Recycling (“Maltby Container” or “Company”), is operating for the hauling of solid waste for compensation over the public highways in the state of Washington without the necessary certificate required for such operations by RCW 81.77.040. Operating for the hauling of solid waste for compensation includes advertising, soliciting, offering, or entering into an agreement to provide that service.

- 2 The Commission has information from which it believes and therefore alleges that Maltby Container is operating for the hauling of solid waste by advertising, soliciting, offering, or entering into an agreement to provide solid waste collection services over the public highways of the state of Washington without the necessary certificate required for such operations by RCW 81.77.040.

- 3 Pursuant to RCW 81.04.510, upon proof of these allegations, the Commission is authorized to issue an order requiring Maltby Container to cease and desist activities subject to regulation under Title 81 RCW. In addition, RCW 81.04.110 authorizes the Commission to file a complaint on its own motion setting forth any act or omission by Maltby Container that violates any law, or any order or rule of the



Commission. The Commission may impose financial penalties of up to \$1,000 for each violation shown.

- 4 At the hearing in this special proceeding that will be conducted pursuant to Part IV of the Administrative Procedure Act (APA), RCW 34.05, of which notice is given here, the Commission will also consider its Complaint against Maltby Container alleging the violations of law as specified below and decide whether Maltby Container should be penalized.

ORDER AND NOTICE OF HEARING

- 5 The Commission has jurisdiction to institute a special proceeding to determine whether Maltby Container is conducting business requiring operating authority, or has performed or is performing any act requiring Commission approval without securing such approval pursuant to RCW 80.01.040, RCW 81.01.010, and RCW 81.04.510. In addition to the foregoing statutes, this matter involves Title 81 RCW, including but not limited to RCW 81.01.010; RCW 81.04.020; RCW 81.77.010, RCW 81.77.040, and RCW 81.77.090. This matter also involves the administrative rules set forth in WAC 480-70 and WAC 480-07.

- 6 **IT IS HEREBY ORDERED** That Maltby Container appear before the Commission in this special proceeding conducted under the authority of RCW 81.04.510 at 1:00 p.m. on Tuesday, May 1, 2012, in Room 206, Richard Hemstad Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington, to give testimony and evidence under oath as to its operations. Maltby Container shall appear at the time and place set forth above unless the Executive Director and Secretary of the Commission, by notice of hearing, specifies a different time and place. This is ordered pursuant to the subpoena powers granted in RCW 34.05.446, RCW 80.01.060(1), and RCW 81.04.510.

- 7 **IT IS FURTHER ORDERED** that at the hearing in this special proceeding the burden of proving that the alleged operations are not subject to the provisions of Title 81 RCW shall be upon Maltby Container as provided by RCW 81.04.510.

8 **NOTICE IS FURTHER GIVEN THAT ANY PARTY WHO FAILS TO ATTEND OR PARTICIPATE IN THE HEARING SET BY THIS NOTICE, OR ANY OTHER STAGE OF THIS PROCEEDING, MAY BE HELD IN DEFAULT IN ACCORDANCE WITH RCW 34.05.440 AND WAC 480-07-450.**

9 If a limited English-speaking or hearing-impaired party needs an interpreter, a form is attached to this notice to be filled out and returned as indicated, so that a qualified interpreter may be appointed at no cost to the party or witness.

10 The names and mailing addresses of all parties and their known representatives are shown as follows:

Carrier: Tony McAuliffe
Maltby Container & Recycling
PO Box 1565
Snohomish, WA 98291-1565

Representative: Unknown

Commission: Washington Utilities and
Transportation Commission
1300 S. Evergreen Park Drive S.W.
P.O. Box 47250
Olympia, WA 98504-7250
(360) 664-1160

Representative: Fronda Woods
Assistant Attorney General
1400 S. Evergreen Park Drive S.W.
P.O. Box 40128
Olympia, WA 98504-0128
(360) 664-1225

COMPLAINT SEEKING PENALTIES

PARTIES

- 11 Complainant, the Washington Utilities and Transportation Commission, is an agency of the State of Washington, authorized by state law to regulate the rates, services, facilities, and practices of public service companies, including solid waste collection companies, under the provisions of Title 81 RCW.
- 12 Respondent, McAuliffe Auto Sales, Inc. d/b/a Maltby Container & Recycling (Maltby Container) is a solid waste collection company that does business in the state of Washington.

JURISDICTION

- 13 The Commission has jurisdiction over this matter pursuant to RCW 80.01.040, RCW 80.04.110, RCW 81.01.010, RCW 81.04.160, RCW 81.04.460, and RCW 81.77.

BACKGROUND

- 14 The following facts, set forth in a Staff Investigation Report of this matter, establish probable cause for the Commission to complain against the activities of Maltby Container and to seek penalties in accordance with applicable law.
- 15 At all times pertaining to this matter, Maltby Container has not held certificate authority from the Commission to operate for the hauling of solid waste for compensation.
- 16 In 2010, the Washington State Legislature passed a law making it illegal to advertise, solicit, offer, or enter into an agreement to haul solid waste for compensation without a solid waste certificate from the Commission (2010 Wash. Sess. Laws 426, codified at RCW 81.77.040). In early 2011, Commission Staff began an enforcement program targeting carriers advertising solid waste collection services without the required certificate.

- 17 In July 2011, Commission Staff found Internet advertisements by Maltby Container. The company advertises collection of recyclables through dumpster or drop box rentals, which is considered solid waste collection if offered or provided to residences.
- 18 Staff's investigation confirmed that Maltby Container advertises, solicits or offers to provide solid waste collection services, including residential recycling, on Maltby Container's website, as well as two other sites documented in Staff's report.
- 19 On July 15, 2011, Commission Staff sent a letter to Maltby Container to the attention of Mr. McAuliffe. The letter instructed Maltby Container to respond and describe the company's operations. Paul Grass, Project Coordinator for Maltby Container, responded stating that Maltby Container is a recycling company that does not accept solid waste. Mr. Grass cited a Department of Ecology rule, WAC 173-350-210, regarding permits for solid waste handling facilities under RCW 70.95.170.
- 20 On July 22, 2011, Commission Staff sent a follow-up letter to Mr. McAuliffe. At that time, staff believed that Maltby Container offered only commercial recycling services, which are not regulated as solid waste collection. The letter informed Mr. McAuliffe that if the company continued to operate under its existing business model, the business was not subject to Commission regulation. The letter went on to explain that Maltby Container could not provide regulated solid waste collection services, including picking up residential solid waste or recycling from the curbside or dropping off a drop box for a customer to fill for later transportation to a material recovery facility or a disposal site, without a solid waste certificate from the Commission.
- 21 In January 2012, the matter was turned over to the Commission's senior enforcement staff for further review and action. Staff reviewed the documentation in the file as well as the company's website.
- 22 On January 24, 2012, Commission Staff sent Mr. McAuliffe a letter clarifying Staff's earlier communication and provided additional technical assistance about drop box and container services. The letter explained that solid waste collection includes residential recycling and drop box services and that Maltby Container may not provide these services without a solid waste certificate from the Commission. Mr. McAuliffe was asked to respond by February 7, 2012, advising how he planned to proceed.

- 23 On January 31, 2012, Mr. McAuliffe spoke with David Pratt, Assistant Director for Transportation Safety, and Betty Young, Compliance Investigator, by phone regarding the January 24 letter. Mr. McAuliffe committed to sending a letter to Commission Staff, by the deadline requested, about how the company would proceed.
- 24 On February 3, 2012, Mr. McAuliffe sent an email to Commission Staff seeking clarification about recycling a residential customer's wood fence. Staff responded on the same day, providing technical assistance about regulated solid waste collection. Through February 7, Commission Staff exchanged several additional emails with Mr. McAuliffe and provided technical assistance regarding his specific questions on residential recycling.
- 25 On February 7, 2012, Mr. McAuliffe sent Commission Staff an email stating specifically that Maltby Container delivers drop box containers to homeowners for repairs of small fences and wood deck projects, concrete driveway repairs, yard cleanups and metal recycling.
- 26 On February 23, 2012, David Danner, the Commission's Executive Director, sent a letter to Mr. McAuliffe providing additional technical assistance on the Commission's solid waste regulations. The letter informed Mr. McAuliffe that until and unless the Commission grants the company the proper authority, Maltby Container must cease advertising and providing all forms of solid waste collection services that require a certificate from the Commission, including residential recycling service, whether the contents of the container are taken to a landfill, transfer station or are recycled. Because Commission Staff had not received a response from Maltby Container by February 7 as requested, the letter also reminded Mr. McAuliffe to provide staff with a written response on how the company planned to proceed.
- 27 On February 27, 2012, Commission Staff sent an email to Mr. McAuliffe, along with a copy of Mr. Danner's February 23 letter, requesting a response by March 5. Mr. McAuliffe was advised that if a response was not received by March 5, Staff would pursue enforcement action. In addition, if Staff found that Maltby Container continued to provide or advertise to provide solid waste collection services after March 5, Staff would pursue enforcement action. Mr. McAuliffe did not respond by March 5.
- 28 On March 6, 2012, Mr. McAuliffe sent an email to Commission Staff with a question about metal recycling. Commission Staff responded to Mr. McAuliffe's question on

March 7 and reminded him that staff had received no response about how Maltby Container planned to proceed with its operations.

29 On March 7, 2012, Mr. McAuliffe responded to Commission Staff by email, stating that Maltby Container “does not solicit homeowners on our website or by any other form of advertising.”

30 On March 6 and 8, 2012, Commission Staff posed as a customer and inquired about residential drop box service from Maltby Container. Maltby Container responded with information about its container hauling rates and delivery information, truck rental rates and disposal fees.

APPLICABLE LAW AND REGULATIONS

31 Under state law, the definition of “solid waste collection company” includes every person “owning, controlling, operating, or managing vehicles used in the business of transporting solid waste for collection or disposal, or both, for compensation . . . over any public highway in this state as a ‘common carrier’ or as a ‘contract carrier.’” RCW 81.77.010(7). See also WAC 480-70-041.

32 The term “person” can mean a firm as well as an individual. RCW 81.04.010(6). Specifically included in this term are lessees, receivers, or trustees. WAC 480-70-041; see RCW 81.77.010(7).

33 A “common carrier” is “any person who collects and transports solid waste for disposal by motor vehicle for compensation, whether over regular or irregular routes, or by regular or irregular schedules.” RCW 81.77.010(3); see WAC 480-70-041. A “contract carrier” includes “any person who under special and individual contracts or agreements transports solid waste by motor vehicle for compensation.” RCW 81.77.010(4).

34 Solid waste collection companies are common carriers. RCW 81.04.010(11). For the purposes of Title 81 RCW, every common carrier is a public service company. RCW 81.04.010(16).

35 The term “solid waste collection” does not include collecting or transporting recyclable materials from a drop-box or recycling buy-back center, or collecting or transporting recyclable materials by or on behalf of a commercial or industrial

generator of recyclable materials to a recycler for use or reclamation. Transportation of these materials is regulated under chapter 81.80 RCW. RCW 81.77.010.

36 For purposes of RCW 81.77, “solid waste” means the same as defined under RCW 70.95.030, except it does not include recyclable materials except for source separated recyclable materials collected from residences. RCW 81.77.010.

37 Solid waste is defined as, but not limited to, all putrescible and non-putrescible solid and semisolid wastes including, but not limited to: garbage, rubbish, refuse, swill, ashes, industrial wastes, sewage sludge, demolition and construction wastes, and source-separated recyclable materials collected from single and multi-family residences. RCW 79.95.030(22); WAC 480-70-041.

38 “Source separation” means the separation of different kinds of solid waste at the place where the waste originates. RCW 70.95.030(24); WAC 480-70-041. “Recyclable materials” means materials that are transported for recycling, reprocessing, reclamation, or for any process that extracts or modifies the commodity for reuse or another commercially valuable purpose. WAC 480-70-041; see RCW 79.95.030(17).

39 It is illegal for any person to operate for the hauling of solid waste for compensation without first obtaining a solid waste certificate from the Commission. Operating for the hauling of solid waste for compensation includes advertising, soliciting, offering, or entering into an agreement to provide that service. RCW 81.77.040. Each advertisement reproduced, broadcast, or displayed via a particular medium constitutes a separate violation of the law. RCW 81.77.090.

40 By law, every public service company that violates any Commission rule or provision of Title 81 RCW is subject to a penalty of up to one thousand dollars for every such violation. RCW 81.04.380. In the case of a continuing violation, every day’s continuance thereof shall be and be deemed to be a separate and distinct offense. *Id.*

41 The Commission is authorized to file a complaint on its own motion setting forth any act or omission by any public service company that violates any law or any order or rule of the Commission. RCW 81.04.110.

COMPLAINT

- 42 The Commission, through its Staff, re-alleges the allegations contained in paragraphs 14 through 30 above.
- 43 Maltby Container has violated RCW 81.77.040 at least three (3) times by operating for the hauling of solid waste for compensation by advertising, soliciting, offering, or entering into an agreement to provide that service.

REQUEST FOR RELIEF

- 44 Staff requests that the Commission, pursuant to its authority under RCW 81.04.380 assess penalties of up to \$1,000 per violation against Maltby Container. Staff will present testimonial evidence at hearing to address the above-referenced statutory factors for determining an appropriate penalty amount. Further, Staff may request that some portion of any penalty actually imposed be suspended for a period of time sufficient to demonstrate Maltby Container's intent to comply with all applicable laws and rules governing the solid waste collection industry.

PROBABLE CAUSE

- 45 Based on a review of the Staff Investigation Report of this matter, and consistent with RCW 80.01.060 and WAC 480-07-307, the Commission finds probable cause exists to issue this Complaint.

NOTICE OF HEARING

- 46 **THE COMMISSION GIVES NOTICE THAT it will conduct a hearing concerning this Complaint concurrently with the special proceeding noticed above, which will commence at 1:00 p.m. on Tuesday, May 1, 2012, in Room 206, Richard Hemstad Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington.**

- 47 Administrative Law Judge Martin Lovinger, from the Utilities and Transportation Commission's Administrative Law Division, 1300 S. Evergreen Park Drive S.W., Olympia, Washington 98504-7250, is designated to preside at the hearing of these matters.

DATED at Olympia, Washington, and effective March 26, 2012.

GREGORY J. KOPTA
Administrative Law Judge
Administrative Law Division

Inquiries should be addressed to:

Executive Director and Secretary
Washington Utilities and
Transportation Commission
Richard Hemstad Building
1300 S. Evergreen Park Drive S.W.
P. O. Box 47250
Olympia, WA 98504-7250
(360) 664-1160

NOTICE

PLEASE NOTE: The hearing facilities are accessible to interested people with disabilities; that smoking is prohibited; and, if limited English-speaking or hearing-impaired parties or witnesses are involved in a hearing and need an interpreter, a qualified interpreter will be appointed at no cost to the party or witness.

The information needed to provide an appropriate interpreter or other assistance should be stated below and returned to Washington Utilities and Transportation Commission, Attention: David W. Danner, 1300 S. Evergreen Park Drive SW, P.O. Box 47250, Olympia, WA 98504-7250. (PLEASE SUPPLY ALL REQUESTED INFORMATION)

Docket: _____

Case Name: _____

Hearing Date: _____ Hearing Location: _____

Primary Language: _____

Hearing Impaired: (Yes) _____ (No) _____

Do you need a certified sign language interpreter?

Visual _____ Tactile _____

Other type of assistance needed: _____

English-speaking person who can be contacted if there are questions:

Name: _____

Address: _____

Phone No.: () _____

Appendix B

[Service Date June 19, 2012]

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of Determining the Proper	)	DOCKET TG-120308
Carrier Classification of, and Complaint)	
for Penalties against.	)	ORDER 02
)	
MCAULIFFE AUTO SALES, INC. DBA	)	INITIAL ORDER APPROVING
MALTBY CONTAINER & RECYCLING	)	SETTLEMENT AGREEMENT;
	)	REQUIRING RESPONDENT TO
	)	CEASE AND DESIST
	)	OPERATIONS; IMPOSING
	)	PENALTIES
.....)	

Synopsis: This is an Administrative Law Judge's Initial Order that is not effective unless approved by the Washington Utilities and Transportation Commission on review or allowed to become effective as described in the Notice at the end of this Order. This Order determines that McAuliffe Auto Sales, Inc., doing business as Maltby Container & Recycling (Maltby Container), has conducted or is conducting solid waste collection services in Washington that require a certificate from the Commission conferring operating authority, without securing such authority. As required under RCW 81.04.510, Maltby Container must cease and desist immediately from advertising or providing such services. In addition, this Order imposes penalties for violations of law, suspending a portion of those penalties on the condition that Maltby Container complies with the requirements of the Settlement Agreement and this Order.

- 1 **NATURE OF PROCEEDING.** The Washington Utilities and Transportation Commission (Commission), pursuant to RCW 81.04.510, instituted this special proceeding on its own motion to determine whether McAuliffe Auto Sales, Inc. d/b/a Maltby Container & Recycling (Maltby Container or Company), is operating for the hauling of solid waste for compensation over the public highways in the state of Washington without the necessary certificate required for such operations by RCW 81.77.040. Operating for the hauling of solid waste for compensation includes advertising, soliciting, offering, or entering into an agreement to provide that service.



DOCKET TG-120308
ORDER 02

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Commission staff (Staff),¹ also complained against Maltby Container asserting three violations of RCW 81.77.040, and requested that the Commission, pursuant to RCW 81.04.380, impose penalties of \$1,000 per violation for a total of \$3,000.

- 2 **PROCEDURAL HISTORY.** On March 26, 2012, the Commission issued a notice of hearing in this docket for May 1, 2012. On April 19, 2012, Maltby Container requested a continuance of the hearing. The Commission granted that request and continued the matter until June 11, 2012.
- 3 On June 7, 2012, Staff notified the Commission that the parties had reached a settlement agreement in this matter and requested on behalf of all parties that the procedural schedule be suspended pending a decision on whether to approve the settlement. The Commission granted the parties' request. On June 8, 2012, the parties filed a Motion to Approve Settlement Agreement, Settlement Agreement and Narrative Supporting Settlement Agreement.
- 4 **PARTY REPRESENTATIVES.** Tony McAuliffe, Everett, Washington, represents McAuliffe Auto Sales, Inc. d/b/a Maltby Container & Recycling, pro se. Fronda Woods, Olympia, Washington, represents Commission Staff.
- 5 **SETTLEMENT.** All parties in this matter have signed the Settlement Agreement,² which has four provisions relating to the issues before the Commission. First, the parties agree that Maltby Container should be directed to cease and desist from advertising and providing all forms of solid waste collection services that require a certificate from the Commission, including residential recycling service, for compensation over public roads in Washington pursuant to RCW 81.04.510.³
- 6 Second, Maltby Container admits that three violations of RCW 81.77.040 occurred, as was alleged in Order 01. Based on that admission, Staff recommends and the

¹ In formal proceedings, such as this, the Commission's regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners' policy and accounting advisors do not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. See RCW 34.05.455.

² Settlement Agreement p. 8.

³ Settlement Agreement p. 5.

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ORDER 02

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parties agree that the Commission should assess a penalty of \$1,000 for these violations, \$300 of which would be due and payable upon the Commission issuing its order approving the Settlement Agreement.⁴

- 7 Third, the parties agree that the remaining \$700 penalty amount should be suspended and waived after one year from the date the Commission approves this Settlement Agreement, provided that Maltby Container incurs no repeat violations of RCW 81.77.040 during that year.⁵
- 8 Fourth, Staff will conduct a review within one year from the date the Commission approves this Settlement Agreement and will provide a recommendation to the Commission on whether the suspended \$700 penalty should be waived or imposed.⁶
- 9 **Evaluation of Settlement.** WAC 480-07-750(1) states in part: "The commission will approve settlements when doing so is lawful, the settlement terms are supported by an appropriate record, and when the result is consistent with the public interest in light of all the information available to the commission." Thus, the Commission considers the individual components of the Settlement Agreement under a three-part inquiry, asking:
- Whether any aspect of the proposal is contrary to law.
 - Whether any aspect of the proposal offends public policy.
 - Whether the evidence supports the proposed elements of the Settlement Agreement as a reasonable resolution of the issue(s) at hand.
- 10 The Commission must determine one of three possible results:
- Approve the proposed settlement without condition.
 - Approve the proposed settlement subject to conditions.
 - Reject the proposed settlement.

⁴ Settlement Agreement p. 6

⁵ Settlement Agreement p. 6.

⁶ Settlement Agreement p. 6

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ORDER 02**

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- 11 **Discussion.** The terms in the Settlement Agreement are consistent with law and policy, and reasonably resolve all issues in this proceeding. The parties made concessions relative to their respective litigation positions to arrive at end results that are supported by the evidence in the record. Maltby Container admits that on three occasions it violated RCW 81.77.040, which requires regulation and certification by the Commission of solid waste collection companies. The parties agree that Maltby Container must cease and desist from conducting business as a provider of solid waste collection services. The settlement also furthers the Commission's goal of bringing the company into compliance with applicable law within the Commission's jurisdiction, and suspending a portion of the penalty will provide an incentive for Maltby Container to stay in compliance without undue financial impact on its business.
- 12 **Commission Decision.** The Settlement Agreement is approved without condition. A cease and desist order will be issued directing Maltby Container from operating under the Commission's jurisdiction without appropriate certification in the future. The penalty should be set at \$1,000 with \$700 suspended for a one year period on condition that Maltby Container complies with the Commission's cease and desist order and has no other violations of RCW 81.77.040 for a period of one year from the effective date of this Order.
- 13 Staff shall conduct a review of Maltby Container's business operations on or before one year from the effective date of this Order to ensure compliance with its terms. Staff shall then recommend whether the suspended penalty should be imposed or allowed to expire and be waived in accordance with the terms of the Settlement Agreement and this Order.

ORDER

THE COMMISSION ORDERS:

- 14 (1) Maltby Container shall cease and desist advertising and providing all forms of solid waste collection services that require a certificate from the Commission, including residential recycling service, for compensation over public roads in Washington pursuant to RCW 81.04.510. This order will remain in place until

**DOCKET TG-120308
ORDER 02**

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such time as Maltby Container applies for and receives a certificate from the Commission to operate as a solid waste collection company.

- 15 (2) A penalty of \$1,000 is imposed on Maltby Container with \$700 suspended for a one year period on condition that Maltby Container commit no further violations of RCW 81.77.040.
- 16 (3) The \$300 portion of the penalty imposed on Maltby Container that was not suspended shall be due and payable immediately.
- 17 (4) Commission Staff shall conduct a compliance review and inspection of the business operations of Maltby Container on or before one year from the effective date of this Order to ensure compliance with its terms. Commission Staff shall then recommend whether the suspended penalty should be imposed or allowed to expire and be waived in accordance with the terms of the Settlement Agreement and this Order.
- 18 (5) The Commission retains jurisdiction over the subject matter and the parties to this proceeding to effectuate the terms of this Order.

DATED at Olympia, Washington, June 19, 2012.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARTIN LOVINGER
Administrative Law Judge

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ORDER 02

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NOTICE TO PARTIES

This is an Initial Order. The action proposed in this Initial Order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order, and you would like the Order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this Initial Order to file a *Petition for Administrative Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-825(3). WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review within ten (10) days after service of the Petition.

WAC 480-07-830 provides that before entry of a Final Order any party may file a Petition to Reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such answer.

RCW 80.01.060(3) provides that an Initial Order will become final without further Commission action if no party seeks administrative review of the Initial Order and if the Commission fails to exercise administrative review on its own motion.

One copy of any Petition or Answer filed must be served on each party of record with proof of service as required by WAC 480-07-150(8) and (9). An Original and seven (7) copies of any Petition or Answer must be filed by mail delivery to:

Attn: David W. Danner, Executive Director and Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, Washington 98504-7250

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

**In the Matter of Determining the Proper
Carrier Classification of, and Complaint
for Penalties against:**

DOCKET TG-120308

SETTLEMENT AGREEMENT

**MCAULIFFE AUTO SALES, INC. DBA
MALBY CONTAINER & RECYCLING**

1 This Settlement Agreement is entered into by both parties to this proceeding for the
purpose of resolving all issues raised in the above docket.

I. PARTIES

2 The parties to this Settlement Agreement are McAuliffe Auto Sales, Inc. d/b/a
Maltby Container & Recycling ("Maltby Container") and the Staff of the Washington
Utilities and Transportation Commission ("Staff") (collectively, "the Parties").

II. AGREED FACTS

3 In 2010, the Washington State Legislature passed a law making it illegal to advertise,
solicit, offer, or enter into an agreement to haul solid waste for compensation without a solid
waste certificate from the Commission (2010 Wash. Sess. Laws 426, codified at RCW
81.77.040). In early 2011, Commission Staff began an enforcement program targeting
carriers advertising solid waste collection services without the required certificate.

4 In July 2011, Commission Staff found Internet advertisements by Maltby Container.
The company advertises collection of recycling through dumpster rentals, which is legally
considered solid waste collection if offered or provided on a residential basis.

5 Staff's investigation determined that Maltby Container advertises, solicits or offers to
provide solid waste collection services, including residential recycling, on Maltby

Container's website, as well as two other sites documented in a report entitled "Staff Investigation of McAuliffe Auto Sales, Inc. d/b/a Maltby Container & Recycling," dated March 2012.

6 On July 15, 2011, Commission Staff sent a letter to Maltby Container to the attention of Tony McAuliffe. The letter instructed Maltby Container to respond and describe the company's operations. Paul Grass, Project Coordinator for Maltby Container, responded stating that Maltby Container is a recycling company that does not accept solid waste. Mr. Grass cited a Department of Ecology rule, WAC 173-350-210, regarding permits for solid waste handling facilities under RCW 70.95.170.

7 On July 22, 2011, Commission Staff sent a follow-up letter to Mr. McAuliffe. At that time, Staff believed that Maltby Container offered only commercial recycling services, which are not regulated as solid waste collection. The letter informed Mr. McAuliffe that if the company continued to operate under its existing business model, the business was not subject to Commission regulation. The letter went on to explain that Maltby Container could not provide regulated solid waste collection services, including picking up residential solid waste or recycling from the curbside or dropping off a drop box for a customer to fill for later transportation to a material recovery facility or a disposal site, without a solid waste certificate from the Commission.

8 In January 2012, Staff reviewed the documentation in the file as well as the company's website.

9 On January 24, 2012, Commission Staff sent Mr. McAuliffe a letter clarifying Staff's earlier communication and provided additional technical assistance about drop box and container services. The letter explained that solid waste collection includes residential

recycling and drop box services and that Maltby Container may not provide these services without a solid waste certificate from the Commission. The letter asked Mr. McAuliffe to respond by February 7, 2012, advising how he planned to proceed.

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15 On March 6, 2012, Commission Staff posed as a customer and requested residential dumpster service from Maltby Container. The company offered information about its container hauling rates and delivery information, truck rental rates and disposal fees.

16 On March 6, 2012, Mr. McAuliffe sent an email to Commission Staff with a question about metal recycling. Commission Staff responded to Mr. McAuliffe's question on March 7 and added that Staff had received no response about how Maltby Container planned to proceed with its operations.

17 On March 7, 2012, Mr. McAuliffe responded to Commission Staff by email, stating that Maltby Container "does not solicit homeowners on our website or by any other form of advertising."

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01). Order 01 alleged that Maltby Container had violated RCW 81.77.040 three times by operating for the hauling of solid waste for compensation by advertising, soliciting, offering, or entering into an agreement to provide that service. Accompanying Order 01 was a copy of the Staff report described above in Paragraph 5. Appendices C, E, and F of the report contained images of the three websites described above in Paragraph 5, which were the basis for the three alleged violations of RCW 81.77.040.

19 The Commission scheduled the matter for hearing on May 1, 2012. On April 19, 2012, Mr. McAuliffe submitted a request that the hearing be postponed until after June 5, to allow him time to prepare for the hearing. Commission staff filed a statement supporting the postponement of the hearing. The Commission issued a Notice of Continuance of the hearing until June 11, 2012. Prior to the hearing, the Parties engaged in settlement discussions, which resulted in this Settlement Agreement.

III. AGREEMENT

20 The Parties have reached agreement on the issues raised in the above docket and present their agreement for the Commission's consideration and approval. The Parties therefore adopt the following Settlement Agreement, which the Parties enter into voluntarily, to resolve the matters in dispute between them and to expedite the orderly disposition of this proceeding.

21 Staff recommends and the Parties agree that Maltby Container should be directed to cease and desist from advertising and providing all forms of solid waste collection services that require a certificate from the Commission, including residential recycling service, for compensation over public roads in Washington pursuant to RCW 81.04.510.

22 Maltby Container admits that three violations of RCW 81.77.040 occurred, as
alleged in Order 01. Staff recommends and the Parties agree that the Commission should
assess penalties in the amount of \$1,000 for these violations. Staff recommends and the
Parties agree that Maltby Container will pay to the Commission penalties totaling \$300. The
amount shall be ordered due and payable after the Commission issues its order approving
this Settlement Agreement.

23 Staff recommends and the Parties agree that the remaining \$700 penalty amount
shall be suspended for, and waived after, one year from the date the Commission approves
this Settlement Agreement, provided that Maltby Container, upon inspection by Staff, incurs
no repeat violations of RCW 81.77.040 during that year.

24 Staff will conduct a review within one year from the date the Commission approves
this Settlement Agreement and will provide Staff's recommendation on whether the
suspended penalty in paragraph 23 should be waived or imposed.

IV. GENERAL PROVISIONS

25 The Parties agree that this Settlement Agreement reflects the settlement of all
contested issues between them in this proceeding. The Parties understand that this
Settlement Agreement is not binding unless and until accepted by the Commission.

26 The Parties agree to cooperate in submitting this Settlement Agreement promptly to
the Commission for acceptance. The Parties agree to support adoption of this Settlement
Agreement in proceedings before the Commission through testimony or briefing. No party
to this Settlement Agreement or their agents, employees, consultants, or attorneys will
engage in advocacy contrary to the Commission's adoption of this Settlement Agreement.

27 The Parties agree (1) to provide each other the right to review in advance of publication any and all announcements or news releases that the other party intends to make about the Settlement Agreement (with the right of review to include a reasonable opportunity to request changes to the text of such announcements) and (2) to include in any news release or announcement a statement that the Staff's recommendation to approve the settlement is not binding on the Commission itself.

28 Nothing in this Settlement Agreement shall limit or bar any other entity from pursuing legal remedies against Maltby Container or Maltby Container's ability to assert defenses to such claims.

29 The Parties have entered into this Settlement Agreement to avoid further expense, inconvenience, uncertainty, and delay of continuing litigation. The Parties recognize that this Settlement Agreement represents a compromise of the Parties' positions. As such, conduct, statements, and documents disclosed during negotiations of this Settlement Agreement shall not be admissible as evidence in this or any other proceeding, except in any proceeding to enforce the terms of this Settlement Agreement or any Commission order fully adopting those terms. This Settlement Agreement shall not be construed against either party because it was a drafter of this Settlement Agreement.

30 The Parties have negotiated this Settlement Agreement as an integrated document to be effective upon execution and Commission approval. This Settlement Agreement supersedes all prior oral and written agreements on issues addressed herein. Accordingly, the Parties recommend that the Commission adopt this Settlement Agreement in its entirety.


31 The Parties may execute this Settlement Agreement in counterparts and as executed shall constitute one agreement. Copies sent by facsimile are as effective as original documents.

32 The Parties shall take all actions necessary, as appropriate, to carry out this Settlement Agreement.

33 In the event that the Commission rejects or modifies any portion of this Settlement Agreement, each party reserves the right to withdraw from this Settlement Agreement by written notice to the other party and the Commission. Written notice must be served within ten (10) business days of the Order rejecting part or all of this Settlement Agreement. In such event, neither party will be bound or prejudiced by the terms of this Settlement Agreement, and either party shall be entitled to seek reconsideration of the Order

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

ROBERT M. MCKENNA
Attorney General


FRONDA WOODS
Assistant Attorney General
Counsel for the Utilities and
Transportation Commission Staff

Dated: June 8, 2012

MCAULIFFE AUTO SALES, INC. DBA
MALTBY CONTAINER & RECYCLING


TONY MCAULIFFE
Owner

Dated: June 6, 2012

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of Determining the Proper
Carrier Classification of, and Complaint
for Penalties against:

MCAULIFFE AUTO SALES, INC. DBA
MALTBY CONTAINER & RECYCLING

DOCKET TG-120308

NARRATIVE SUPPORTING
SETTLEMENT AGREEMENT

I. INTRODUCTION

This Narrative Supporting Settlement Agreement (Narrative) is filed pursuant to WAC 480-07-740(2)(a) on behalf of both McAuliffe Auto Sales, Inc. d/b/a Maltby Container & Recycling ("Maltby Container" or "the Company") and the Staff of the Washington Utilities and Transportation Commission ("Staff"). Both parties have signed the Settlement Agreement, which is included with this Narrative. This Narrative summarizes the Settlement Agreement. It is not intended to modify any terms of the Settlement Agreement.

II. PROPOSALS FOR REVIEW PROCEDURE

The Parties submit that this matter is considerably less complex than a general rate proceeding and request that review proceed on a timetable for less complex matters, as provided in WAC 480-07-740(1)(b). To the knowledge of both Parties, there are no opponents of the settlement. Because of the less complex nature of this matter and the uncontested status of the settlement, the Parties suggest that a formal settlement hearing along with the opportunity for public comment are unnecessary in this case.

3 The Parties do not intend to file documentation supporting the Settlement
Agreement, with the exception of the Settlement Agreement itself and this Narrative. If the
Commission requires supporting documents beyond the Settlement Agreement, Narrative,
and the other documents on file in this docket, the Parties will provide documentation as
reasonably needed.

4 In keeping with WAC 480-07-740(2)(b), the Parties are prepared to present one or
more witnesses each to testify in support of the proposal and answer questions concerning
the details of the Settlement Agreement, and its costs and benefits, should such testimony be
required. In addition, both Staff and the Company are available to respond to any questions
the Commission may have regarding the proposed Settlement Agreement.

5 The Parties request a streamlined review of the proposed Settlement Agreement. To
that end, the Parties would prefer an informal review on a paper record. In accordance with
WAC 480-07-730, the Parties propose the foregoing procedural alternatives for review of
the proposed Settlement Agreement.

III. SCOPE OF THE UNDERLYING DISPUTE

6 The underlying dispute concerns Internet advertisements by Maltby
Container advertising collection of recycling through dumpster rentals, which is legally
considered solid waste collection if offered or provided on a residential basis.

7 Staff's investigation determined that Maltby Container advertises, solicits or offers to
provide solid waste collection services, including residential recycling, on Maltby
Container's website, as well as two other sites documented in a report entitled "Staff

Investigation of McAuliffe Auto Sales, Inc. d/b/a Maltby Container & Recycling," dated March 2012.

8 On July 15, 2011, Commission Staff sent a letter to Maltby Container to the attention of Tony McAuliffe. The letter instructed Maltby Container to respond and describe the company's operations. Paul Grass, Project Coordinator for Maltby Container, responded stating that Maltby Container is a recycling company that does not accept solid waste. Mr. Grass cited a Department of Ecology rule, WAC 173-350-210, regarding permits for solid waste handling facilities under RCW 70.95.170.

9 On July 22, 2011, Commission Staff sent a follow-up letter to Mr. McAuliffe. At that time, Staff believed that Maltby Container offered only commercial recycling services, which are not regulated as solid waste collection. The letter informed Mr. McAuliffe that if the company continued to operate under its existing business model, the business was not subject to Commission regulation. The letter went on to explain that Maltby Container could not provide regulated solid waste collection services, including picking up residential solid waste or recycling from the curbside or dropping off a drop box for a customer to fill for later transportation to a material recovery facility or a disposal site, without a solid waste certificate from the Commission.

10 In January 2012, Staff reviewed the documentation in the file as well as the company's website.

11 On January 24, 2012, Commission Staff sent Mr. McAuliffe a letter clarifying Staff's earlier communication and provided additional technical assistance about drop box and container services. The letter explained that solid waste collection includes residential

recycling and drop box services and that Maltby Container may not provide these services without a solid waste certificate from the Commission. The letter asked Mr. McAuliffe to respond by February 7, 2012, advising how he planned to proceed.

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The letter also reminded Mr. McAuliffe to provide staff with a written response on how the company planned to proceed.

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of the Staff report described above in Paragraph 5. Appendices C, E, and F of the report
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for the three alleged violations of RCW 81.77.040.

21 The Commission scheduled the matter for hearing on May 1, 2012. On April 19,
2012, Mr. McAuliffe submitted a request that the hearing be postponed until after June 5, to
allow him time to prepare for the hearing. Commission staff filed a statement supporting the
postponement of the hearing. The Commission issued a Notice of Continuance of the
hearing until June 11, 2012. Prior to the hearing, the Parties engaged in settlement
discussions, and subsequently agreed to a resolution of all issues raised in this docket.

IV. SUMMARY OF PROPOSED SETTLEMENT

22 The Settlement Agreement resolves all of the issues in dispute. Staff recommends
and the Parties agree that Maltby Container should be directed to cease and desist from
advertising and providing all forms of solid waste collection services that require a

certificate from the Commission, including residential recycling service, for compensation over public roads in Washington pursuant to RCW 81.04.510.

23 Maltby Container admits that the three violations of RCW 81.77.040 occurred, as alleged in Order 01. Staff recommends and the Parties agree that the Commission should assess penalties in the amount of \$1,000 for these violations. Staff recommends and the Parties agree that Maltby Container will pay to the Commission penalties totaling \$300. The amount shall be ordered due and payable after the Commission issues its order approving this Settlement Agreement.

24 Staff recommends and the Parties agree that the remaining \$700 penalty amount shall be suspended for, and waived after, one year from the date the Commission approves this Settlement Agreement, provided that Maltby Container, upon inspection by Staff, incurs no repeat violations of RCW 81.77.040 during that year.

25 Staff will conduct a review within one year from the date the Commission approves this Settlement Agreement and will provide Staff's recommendation on whether the suspended penalty in paragraph 24 should be waived or imposed.

V. STATEMENT OF PARTIES' INTERESTS AND THE PUBLIC INTEREST

26 As stated in the Settlement Agreement, the settlement represents a compromise of the positions of the two parties. The Parties find it is in their best interests to avoid the expense, inconvenience, uncertainty, and delay inherent in a litigated outcome. It is in the public interest that this dispute conclude without the further expenditure of public resources on litigation expenses. The Commission will receive the \$300 penalty amount without

NARRATIVE SUPPORTING
SETTLEMENT AGREEMENT - Page 7 of 9

expending resources on litigation. Likewise, it is in the public interest that the Settlement Agreement contains a provision that the suspended \$700 penalty may be waived if the Company complies with the conditions in the Settlement Agreement, or imposed if the Company does not so comply. The review of Maltby Container that Staff will commence within one year will enable the Commission to ascertain the Company's compliance with the Settlement Agreement's provisions, and to determine whether the suspended penalty should be imposed or waived.

- 27 For the reasons explained above, these commitments, and the Settlement Agreement as a whole, are in the public interest, as well of interests of the Parties. Staff and Maltby Container, therefore, recommend that the Commission approve the Settlement Agreement in its entirety.

VI. LEGAL POINTS THAT BEAR ON PROPOSED SETTLEMENT

- 28 In WAC 480-07-700, the Commission states its support for parties' informal efforts to resolve disputes without the need for contested hearings when doing so is lawful and consistent with the public interest. The Parties have resolved all of the issues in dispute between them, and their resolution complies with Commission rules and, as explained above, is consistent with the public interest.

VII. CONCLUSION

29 Because the parties have negotiated a compromise on all of the issues in this dispute and because the settlement is in the public interest, both Parties request that the Commission issue an order approving the Settlement Agreement in full.

Respectfully submitted this 6th day of June 2012.

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

MCAULIFFE AUTO SALES, INC. DBA
MALTBY CONTAINER & RECYCLING

ROBERT M. MCKENNA
Attorney General



Fronda Woods
FRONDA WOODS
Assistant Attorney General
Counsel for the Utilities and
Transportation Commission Staff

TONY MCAULIFFE
Owner

Dated: June 8th, 2012

Dated: June 6th, 2012