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VIA U.S. MAIL AND E-MAIL records@utc.wa.gov

Carole J. Washburn, Executive Secretary
Washington Utilities & Transportation Commission
1300 South Evergreen Park Drive, SW
P.O. Box 47250
Olympia, WA 98504-7250

**RE: Solid Waste Definitions Rulemaking, Chapter 480-70 WAC
Docket TG-080591**

Dear Ms. Washburn:

Waste Management of Washington, Inc. welcomes the opportunity to participate in the Commission's development of revisions to the solid waste definitions in its Solid Waste and/or Collection Companies regulations, Chapter 480-70 WAC. Waste Management is keenly interested in this rulemaking and the opportunity to clarify what transported materials are subject to the Commission's regulation of solid waste collection companies. As you know, Waste Management has significant operations throughout Washington State involving the collection, transportation, and disposal of solid waste, as well as the collection, transportation, and processing of recyclable materials. We look forward to working with the Commission on this rulemaking. In advance of the start of the formal rulemaking process, Waste Management offers the following two general comments.

Comment 1: Waste Management urges the Commission to coordinate this rulemaking with the Department of Ecology, especially in light of Ecology's current rulemaking on transportation and facility requirements for recyclable materials, Chapter 173-345 WAC.

It is imperative that the Commission coordinate any revisions to its definition of "solid waste" and other related terms (e.g., "recyclable materials", "recycling", etc.) with the Department of Ecology. As these definitions are statutorily entwined with Ecology's definitions, any revision to the regulations must necessarily be consistent with Ecology's regulations and Ecology's interpretation and implementation of those terms.

The most obvious example is the Commission's definition of "solid waste." RCW 81.77.010 expressly adopts Ecology's statutory definition, with one exclusion:

“Solid waste” means the same as defined under RCW 70.95.030, except for the purposes of this chapter solid waste does not include recyclable materials except for source separated recyclable materials collected from residences.

RCW 81.77.010(9) (emphasis added). Ecology’s statutory definition in RCW 70.95.030 is then codified verbatim into Ecology’s solid waste regulations. WAC 173-350-100; WAC 173-351-100. The same statutory definition is likewise codified in the Commission’s regulations, along with the exemption for source-separated residential recyclables. The slight difference between the two agency definitions is intentional, but even that difference may over time create confusion if not clearly documented in the rules themselves. This current rulemaking provides an opportunity to clarify the reasons for any differences between the two sets of regulations, and also a chance to affirmatively guard against unintended differences. We would similarly urge Ecology to participate in the Commission’s rulemaking. Given the shared statutory source of the “solid waste” definition, any attempt by the Commission to unilaterally revise the solid waste definition in its regulations risks creating inconsistencies with Ecology’s definitions, interpretation, and implementation, which may be minimized by Ecology involvement.

Likewise, the WUTC’s definitions of “recyclable materials” and “recycling” are closely related to Ecology’s. If, for example, the WUTC expanded the definition of “recyclable materials”, then it is possible that certain materials might be recyclable under the WUTC definition, but not under Ecology’s. Conversely, the opposite result could occur if the WUTC were to narrow the definitions. There may be legitimate reasons for difference between the two sets of regulations, and we do not necessarily foreclose that possible outcome. Nonetheless the risk of inconsistencies between the Commission’s regulatory definition and Ecology’s warrants coordination between the two agencies to prevent unintended consequences.

This need for close coordination is especially critical because Ecology has begun rulemaking to establish minimum standards for the transportation and proper management of recyclable materials under RCW 70.95.400 *et seq.* If Ecology’s and the WUTC’s rulemakings are not closely coordinated, the risk is significant that the results will be divergent and inconsistent.

Comment 2: Coordinated revisions of the WUTC’s and Ecology’s solid waste definitions are needed to better clarify the distinction between the unregulated transportation of recyclables and the regulated transportation of solid waste.

Waste Management views the upcoming rulemaking process as a useful forum for the Commission to provide greater clarity with respect to the distinction between the unregulated transportation of recyclables and the regulated transportation of solid waste. The company believes that a number of unregulated haulers have attempted to circumvent the Commission’s jurisdiction by claiming that they are hauling recyclables and not solid waste, when in reality the materials being hauled are not recyclables. This “sham” recycling undermines the integrity of the WUTC’s regulatory system and hurts those haulers who have invested the time and resources in obtaining and maintaining their G-certificates.

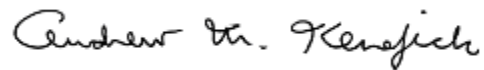
In the rulemaking, Waste Management will focus on how the distinction between recyclables and solid waste can be better defined and more easily implemented. A system that relies in part on a hauler’s subjective opinion that a particular load is unregulated “recyclables” is a system with the

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potential for abuse. Unscrupulous unregulated haulers could collect a load of solid waste under the guise that the load is “recyclables”. The hauler could then purport to deliver the load to a “recycler” yet still divert the load to direct landfill disposal. Conversely, the state’s interest in promoting recycling and reuse can be undermined if the uncertainty and risk of infringing on a G-certificated hauler’s territory discourages legitimate recycling. Indeed, further clarification is needed because there can be legitimate good faith differences of opinion as to whether any particular load is recyclable or not.

Again, we look forward to working with you on this rulemaking.

Sincerely,



Andrew M. Kenefick

cc: Randy Martin – Department of Ecology (rama461@ecy.wa.gov)
Polly McNeill – Summit Law Group

[LL to WUTC re Solid Waste Definition Revisions \(6/6/08\)](#)