

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

TOPSOIL INC. D/B/A UNITED
RECYCLING & CONTAINER

DOCKET TG-150233

NARRATIVE SUPPORTING
SETTLEMENT AGREEMENT

I. INTRODUCTION

1 This Narrative Supporting Settlement Agreement (“Narrative”) is filed pursuant to
WAC 480-07-740(2)(a) on behalf of both Topsoil Inc. d/b/a United Recycling & Container,
 (“United Recycling” or “Company”) and staff of the Washington Utilities and
 Transportation Commission (“Staff”) (hereinafter collectively referred to as “Parties” and
 individually as a “Party”). This Narrative summarizes the Settlement Agreement
 (“Settlement”). It is not intended to modify any terms of the Settlement.

II. PROPOSALS FOR REVIEW PROCEDURE

2 The Parties do not request a hearing to present the Settlement. The Parties instead
 respectfully request a streamlined review of the proposed Settlement on a paper record. If
 the Commission requires a hearing, the Parties are prepared to present one or more witnesses
 to testify in support of the Settlement. In addition, counsel for each Party will be available to
 respond to any legal questions that the Commission may have regarding the proposed
 Settlement.

III. SCOPE OF THE UNDERLYING DISPUTE

3 The underlying dispute concerns advertisements and offers by United Recycling to
 haul solid waste for compensation without a Commission-issued certificate of convenience

and necessity. In general, persons or entities may not advertise, solicit, offer, or enter into an agreement to transport solid waste for compensation without first obtaining a solid waste certificate from the Commission. RCW 81.77.040. Common carriers, whose primary business is not the collection of solid waste, normally will also need to obtain a certificate of public convenience and necessity if they transport solid waste to a disposal site on more than an occasional basis, or if they hold themselves out to the public as providing solid waste collection service. WAC 480-70-016(1). United Recycling holds a common carrier permit from the Commission and is registered with the Washington Department of Ecology as a Transporter of Recyclable Materials.

4

Staff began an investigation into United Recycling in January 2015 after receiving an informal complaint alleging that the Company was offering services that required a solid waste certificate. On January 29, 2015, Staff reviewed the Company's advertising on its website. The website stated, in part: "We provide recycling container service for homeowners, construction projects, manufacturing and industrial uses" The website also featured a "Frequently Asked Questions" tab. Under the heading of "Container Service," one question posed: "Can you help load the container at my home/job site?" The answer provided stated: "All containers have doors that open at one end, making loading much simpler. We provide drop off and pick up of the container, however all loading must be handled by you." Another question posed: "How high can I load my container?" The answer stated: "Please only load to the top edge of your container. Also, the weight of the material you load into the container should not exceed 10 tons or 20,000 lbs. (no matter the size of the container)"

5 On January 29, 2015, Staff, posing as a customer named Rachel, also filled out a contact form on the Company's website. In the contact form, Staff explained that she was cleaning out a garage and would like a container delivered on a Thursday. She indicated that she would load the container herself and would like it removed the following Monday. On February 12, 2015, Morgan Aggers of United Recycling responded via email, stating in part: "I'm sure we can help. Just for simplicities sake we can happily take the contents of your garage." The email also provided pricing information for container delivery and debris removal per ton.

6 On April 9, 2015, the Commission served on United Recycling an Order Instituting Special Proceeding and Notice of Hearing; Complaint Seeking to Impose Penalties, and Notice of Hearing ("Order 01"). Order 01 alleged that United Recycling violated RCW 81.77.040 on two (2) occasions by advertising and offering to haul solid waste for compensation without first having obtained from the Commission a certificate of public convenience and necessity. With Order 01, the Commission sent a Subpoena and Subpoena Duces Tecum ("Order 02") and a copy of Staff's investigation report. The Commission scheduled the matter for hearing on May 29, 2015.

7 The Parties subsequently engaged in settlement discussions, which resulted in a full settlement. The Parties' agreement is reflected in the Settlement document, which was entered into voluntarily to resolve all matters that were in dispute.

IV. SUMMARY OF PROPOSED SETTLEMENT

8 The Settlement resolves all of the issues in dispute between the Parties. The Parties agree that United Recycling should be directed to cease and desist from providing all forms of solid waste collection services that require a certificate from the Commission pursuant to

RCW 81.04.510. This includes, but is not limited to, delivering containers or drop-boxes to a customer's residence for the customer to fill with solid waste or recyclable materials unless the Company first obtains a solid waste certificate from the Commission.

9 United Recycling admits that two (2) violations of RCW 81.77.040 occurred, as alleged in Order 01. The Parties agree that the Commission should assess a total penalty in the amount of \$2,000. The amount shall be ordered due and payable no later than ten (10) days after the Commission issues a final order approving this Settlement.

V. STATEMENT OF THE PARTIES THAT THE SETTLEMENT AGREEMENT SATISFIES THEIR INTERESTS AND THE PUBLIC INTEREST

10 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. Likewise, the public interest is served by concluding this dispute without the further expenditure of public resources on litigation expenses.

11 The Settlement satisfies both Staff's interest and the public interest because United Recycling admits to its violations, and commits to cease and desist from providing all forms of solid waste collection services that require a certificate from the Commission. Additionally, the Commission will receive the \$2,000 penalty amount without expending further resources on litigation.

12 The Settlement also satisfies the public interest and the interests of the Parties because United Recycling has taken steps to conform to state laws and regulations. The Company engaged in further technical assistance discussions with Staff to ensure an understanding of compliance standards. As a result of the technical assistance, United Recycling revised its website to clarify the services that it provides.

13

For these reasons, the Settlement as a whole is in the public interest, as well as the interests of the Parties. Staff and United Recycling, therefore, recommend that the Commission approve the Settlement in its entirety.

VI. LEGAL POINTS THAT BEAR ON PROPOSED SETTLEMENT

14

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

15

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 in full.

Respectfully submitted this 19th day of May, 2015.

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

TOPSOIL INC. D/B/A UNITED
RECYCLING & CONTAINER

ROBERT W. FERGUSON
Attorney General

DAN MCAULIFFE
Owner



Dated: _____, 2015

CHRISTOPHER M. CASEY
Assistant Attorney General
Counsel for the Utilities and
Transportation Commission Staff

DAVIS WRIGHT TREMAINE LLP

Dated: May 19, 2015

Mark Bartlett
Counsel for Topsoil Inc. d/b/a United
Recycling & Container

Dated: _____, 2015

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WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

ROBERT W. FERGUSON
Attorney General

CHRISTOPHER M. CASEY
Assistant Attorney General
Counsel for the Utilities and
Transportation Commission Staff


Dated: _____, 2015

TOPSOIL INC. D/B/A UNITED
RECYCLING & CONTAINER


DAN MCAULIFFE
Owner

Dated: 5/18, 2015

DAVIS WRIGHT TREMAINE LLP


Mark Bartlett
Counsel for Topsoil Inc. d/b/a United
Recycling & Container

Dated: 5/19/1, 2015