

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

In the Matter of Amending Chapter)
480-70 WAC,) DOCKET NO. TG-990161
)
) GENERAL ORDER NO. R-479
Relating to)
Solid Waste Collection Companies) ORDER
) REPEALING RULES AND
) ADOPTING RULES
.....) PERMANENTLY

1 STATUTORY OR OTHER AUTHORITY: The Washington Utilities and
Transportation Commission takes this action under Notice WSR No. 00-23-132 filed
with the Code Reviser on November 22, 2000. The Commission brings this
proceeding pursuant to RCW 81.04.160, RCW 81.77.030, and RCW 80.01.040.

2 STATEMENT OF COMPLIANCE: This proceeding complies with the Open Public
Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.05
RCW), the State Register Act (chapter 34.08 RCW), the State Environmental Policy
Act of 1971 (chapter 34.21C RCW), and the Regulatory Fairness Act (chapter 19.85
RCW).

3 DATE OF ADOPTION: The Commission adopts these rules on the date this Order is
entered.

4 CONCISE STATEMENT OF PURPOSE AND EFFECT OF THE RULE: RCW
34.05.325 requires that the Commission prepare and provide to commenters a concise
explanatory statement about an adopted rule. The statement must include the
identification of the reasons for adopting the rule, a summary of the comments
received regarding the proposed rule, and responses reflecting the Commission's
consideration of the comments.

5 The Commission often includes a discussion of those matters in its rule adoption
order. In addition, most rulemaking proceedings involve extensive work by
Commission Staff that includes summaries in memoranda of stakeholder comments,
Commission decisions, and Staff recommendations in each of those areas.

6 In this docket, to avoid unnecessary duplication, the Commission designates the
discussion in this order as its concise explanatory statement, supplemented where not
inconsistent by the staff memoranda presented at the adoption hearing, held
December 27, 2000, and at the open meetings where the Commission considered
whether to begin a rulemaking, held March 24, 1999, and whether to propose

adoption of specific language, held November 29, 2000. Together, these documents provide a complete but concise explanation of the agency actions and its reasons for taking those actions.

7 REFERENCE TO AFFECTED RULES:

8 This order adds the following new sections to Washington Administrative Code 480-70:

PART 1 – GENERAL ADMINISTRATIVE RULES

WAC 480-70-001	Purpose of chapter.
WAC 480-70-006	Application.
WAC 480-70-011	Exempt operations.
WAC 480-70-016	Determination of authority required to transport specific commodities or provide specific services.
WAC 480-70-021	Additional requirements.
WAC 480-70-026	Severability.
WAC 480-70-031	Resolving disputes about the meaning of these rules.
WAC 480-70-036	Rules of practice and procedure.
WAC 480-70-041	Definitions, general.
WAC 480-70-046	Change of address or telephone number.
WAC 480-70-051	Exemptions from rules.
WAC 480-70-056	Mapping.
WAC 480-70-061	Records retention.

PART 2 – ACCOUNTING REQUIREMENTS, REPORTING REQUIREMENTS, AND REGULATORY FEES

WAC 480-70-066	Accounting requirements.
WAC 480-70-071	Reporting requirements.
WAC 480-70-076	Regulatory fees.

PART 3 -- CERTIFICATES

WAC 480-70-081	Certificates, general.
WAC 480-70-086	Certificates, application fees.
WAC 480-70-091	Certificates, applications.
WAC 480-70-096	Certificates, acquisition of control.
WAC 480-70-101	Certificates, initiating service.
WAC 480-70-106	Certificates, application docket, protests, and intervention.
WAC 480-70-111	Certificates, overlapping applications.
WAC 480-70-116	Certificates, sale, lease, assignment, transfer or mortgage.
WAC 480-70-121	Certificates, name change.

WAC 480-70-126	Certificates, refiling of application prohibited for six months.
WAC 480-70-131	Certificates, temporary.
WAC 480-70-136	Certificates, temporary, expedited application.
WAC 480-70-141	City service and cancellation of certificated authority.
WAC 480-70-146	Contracts.
WAC 480-70-151	Service agreements between companies.
WAC 480-70-156	Contracts or service agreements with third-party waste brokers.
WAC 480-70-161	Suspending certificates.
WAC 480-70-166	Canceling certificates.
WAC 480-70-171	Certificates, reinstatement.
WAC 480-70-176	Certificates, discontinuance of operations.

PART 4 – INSURANCE

WAC 480-70-181	Public liability and property damage insurance.
WAC 480-70-186	Insurance cancellation.

PART 5 – EQUIPMENT AND DRIVERS

WAC 480-70-191	Vehicle licensing.
WAC 480-70-196	Commercial vehicle defined.
WAC 480-70-201	Vehicle and driver safety requirements.
WAC 480-70-206	Motor vehicle identification.
WAC 480-70-211	Leasing vehicles.

PART 6 – COMPLIANCE

WAC 480-70-216	Commission compliance policy.
WAC 480-70-221	Sanctions for operating without a valid certificate.

PART 7 – TARIFFS, RATES, AND RATE FILINGS

WAC 480-70-226	Tariffs, definitions used in.
WAC 480-70-231	Tariffs, general.
WAC 480-70-236	Tariffs, all companies must file tariff and must comply with the provisions of approved tariffs.
WAC 480-70-241	Tariffs, content.
WAC 480-70-246	Tariffs, posting.
WAC 480-70-251	Tariffs, rates and charges, general.
WAC 480-70-256	Tariffs, rejection.
WAC 480-70-261	Tariffs requiring one-day notice to the commission.
WAC 480-70-262	Tariffs requiring seven-day notice to the commission.
WAC 480-70-266	Tariffs requiring notice forty-five-day to the commission.
WAC 480-70-271	Customer notice requirements.
WAC 480-70-276	Tariffs, less than statutory notice handling.

WAC 480-70-281	Tariffs, format and size requirements.
WAC 480-70-286	Tariffs, changes must be identified.
WAC 480-70-291	Tariffs, title pages.
WAC 480-70-296	Tariffs, page format.
WAC 480-70-301	Tariffs, maps.
WAC 480-70-306	Tariffs, rules.
WAC 480-70-311	Tariffs, changes.
WAC 480-70-316	Tariffs, supplements.
WAC 480-70-321	Tariffs, filings after name change or change in ownership.
WAC 480-70-326	Tariffs, filing procedures.
WAC 480-70-331	Tariffs, approval.
WAC 48 0-70-336	Tariffs, free and reduced rates.
WAC 480-70-339	Tariffs, suspension by the commission.
WAC 480-70-341	Pass-through disposal fees.
WAC 480-70-346	Rates, general rate increases and fuel cost update.
WAC 480-70-351	Rates, recycling programs, credits, or charges.

PART 8 – CONSUMER RULES

WAC 480-70-361	Availability of information.
WAC 480-70-366	Refusal of service.
WAC 480-70-371	Service cancellation, customer.
WAC 480-70-376	Service cancellation, company.
WAC 480-70-381	Reinstatement of service following cancellation.
WAC 480-70-386	Complaints.
WAC 480-70-391	Credits as compensation in consumer complaints or problems.
WAC 480-70-396	Billing.
WAC 480-70-401	Payment options.
WAC 480-70-406	Refunds.
WAC 480-70-411	Establishing credit and deposits.
WAC 480-70-416	Prepayments, temporary container and drop-box service.
WAC 480-70-421	Fair use of customer information.

PART 9 – BIOMEDICAL WASTE RULES

WAC 480-70-426	Biomedical Waste, purpose.
WAC 480-70-431	Biomedical Waste, adoption of federal regulations.
WAC 480-70-436	Biomedical Waste, operational requirements.
WAC 480-70-441	Biomedical Waste, training requirements.
WAC 480-70-446	Biomedical Waste, cooperative agreements.
WAC 480-70-451	Biomedical Waste, packaging and containment.
WAC 480-70-456	Biomedical Waste, transfer to off-site treatment and disposal facilities.

WAC 480-70-461	Biomedical Waste, compaction not allowed.
WAC 480-70-466	Biomedical Waste, vehicle requirements.
WAC 480-70-471	Biomedical Waste, shipping-paper requirements.
WAC 480-70-476	Biomedical Waste, inspections.

PART 10 – HAZARDOUS WASTE RULES

WAC 480-70-481	Hazardous Waste, purpose.
WAC 480-70-486	Hazardous Waste, adoption of federal regulations.

PART 11 – ADOPTION BY REFERENCE

WAC 480-70-999	Adoption by reference.
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9 This order repeals following sections of the Washington Administrative Code:

WAC 480-70-010	Communications.
WAC 480-70-020	Documents--When filed.
WAC 480-70-030	Remittances.
WAC 480-70-040	Change of address.
WAC 480-70-050	Definitions.
WAC 480-70-055	Adoption by reference defined.
WAC 480-70-060	Licenses.
WAC 480-70-070	Certificates, no operation without.
WAC 480-70-080	Operation under trade name.
WAC 480-70-090	Certificates, must be filed main office.
WAC 480-70-100	Certificates, secured by false affidavit.
WAC 480-70-110	Certificates, sale, etc.
WAC 480-70-120	Certificates, application for.
WAC 480-70-130	Temporary certificates, application for.
WAC 480-70-140	Certificates, description, hearing for clarification.
WAC 480-70-150	Certificates, applications--Notice to existing carriers.
WAC 480-70-155	Contemporaneous applications.
WAC 480-70-160	Certificates, qualifications for.
WAC 480-70-170	Certificate, must abide by.
WAC 480-70-180	Certificate, sale, etc.
WAC 480-70-190	Miscellaneous fees.
WAC 480-70-200	Certificates, duplicates.
WAC 480-70-210	Certificates, reinstatement.
WAC 480-70-220	Application fees forfeited--denied application, no renewal for six months.
WAC 480-70-230	Dual operation.
WAC 480-70-240	Tariff, naming rates and charges.
WAC 480-70-245	Agreements to operate certificates.
WAC 480-70-250	Insurance.
WAC 480-70-260	Insurance endorsement.

WAC 480-70-270	Insurance termination.
WAC 480-70-280	Surety bond.
WAC 480-70-290	Equipment of motor vehicles.
WAC 480-70-300	Motor vehicles, identification.
WAC 480-70-310	Motor vehicles, safety, sanitary, inspection.
WAC 480-70-320	Motor vehicles, safe operation.
WAC 480-70-325	Equipment--Inspection--Ordered for repairs.
WAC 480-70-330	Drivers, hours of work.
WAC 480-70-335	Out-of-service criteria.
WAC 480-70-340	Annual fee.
WAC 480-70-350	Accounts--Uniform system adopted--Reports.
WAC 480-70-360	Contracts.
WAC 480-70-370	Disabled motor vehicles--Substitution.
WAC 480-70-380	Equipment--Order for repairs.
WAC 480-70-390	Discontinuance of service, commission approval required.
WAC 480-70-400	Driver qualifications, hazardous materials transportation, and equipment safety.
WAC 480-70-405	Accident reporting.
WAC 480-70-410	General application of rules.
WAC 480-70-420	Penalty assessments.
WAC 480-70-430	Rules, waiver.
WAC 480-70-440	Solid waste collection companies statute applicable.
WAC 480-70-500	Operational requirements.
WAC 480-70-510	Training requirements.
WAC 480-70-530	Packaging and containment.
WAC 480-70-540	Transfer of biohazardous or biomedical waste to off-site treatment and disposal facilities.
WAC 480-70-550	Shipping paper requirements.
WAC 480-70-560	Insurance requirements.
WAC 480-70-570	Reporting of accidents.
WAC 480-70-700	Availability of information.
WAC 480-70-710	Discontinuance of service.
WAC 480-70-720	Reinstatement of service following discontinuance.
WAC 480-70-730	Refusal of service.
WAC 480-70-740	Refusal or discontinuance of service to premises because of former occupant's unpaid account.
WAC 480-70-750	Deposits.
WAC 480-70-760	Refunds--Other than deposits.
WAC 480-70-770	Form of bills.
WAC 480-70-780	Pass through disposal fees.
WAC 480-70-790	Complaints and disputes.

The Commission filed a Preproposal Statement of Inquiry (CR-101) on March 26, 1999, at WSR # 99-08-017.

- 11 **ADDITIONAL NOTICE AND ACTIVITY PURSUANT TO PREPROPOSAL STATEMENT:** The Preproposal Statement of Inquiry advised interested persons that the Commission was considering opening a rulemaking on Chapter 480-70 WAC, the purpose of which was:
- (a) To review rules relating to the regulation of for-hire solid waste collection companies for clarity, intent and statutory authority, need, effectiveness and efficiency, coordination, cost, and fairness, and
 - (b) To provide clear, objective standards and guidance to the regulated solid waste collection industry, the consumers they serve, and other entities that interact with the companies by ensuring that the rules relating to the regulation of the for-hire solid waste industry are clear and concise.
- 12 The Commission also informed persons of the inquiry into this matter by providing notice of the subject and the CR-101 to all persons on the Commission's list of persons requesting such information pursuant to RCW 34.05.320(3) and by sending written notice to: all known organizations representing consumers; all known associations and organizations with interest in solid waste, medical waste, and/or recycling issues; Washington granges; all companies holding solid waste collection authority on March 26, 1999; Washington hospitals and hospital associations; consumers who had filed complaints with the Commission in the year preceding March 26, 1999; known transportation attorneys; Washington city governments; Washington county governments; Washington Chambers of Commerce; and accountants and consultants representing solid waste or recycling companies.
- 13 Pursuant to the notice and prior to any drafting processes, the Commission sponsored meetings at various locations throughout the state to discuss the pending rulemaking. Two separate meetings were held at each location. One meeting discussed issues related to transport of biohazardous solid waste. The second discussed other solid waste issues. Meetings were held in Vancouver on May 17 and 18, 1999, in Yakima on May 19, 1999, in Spokane on May 20 and 21, 1999, and in Everett on May 24, 1999.
- 14 Commission Staff developed an issues paper that was distributed to stakeholders before the meetings, concurrent with service of the CR-101. The issues paper detailed suggestions as to rules that should be retained, rules that should be repealed, rules that should be amended, and issues that should result in additional rules. Commission Staff and stakeholders used the issues paper at the meetings as to focus and stimulate discussion. Stakeholders assisted Staff in refining the issues paper to use as a tool in drafting proposed rule amendments.

- 15 Attending the Vancouver meetings were: Kathy Kiwala, Clark County Solid Waste; Tami Kihs, City of Vancouver; Jim Kalkus, LeMay Enterprises; Nanette Walker, CPA; Gary McLeskey, Cascade Container Fabricating Co.; Jeff Ribach, Vancouver City Attorney's Office; J.P. Jones, Washington Refuse and Recycling Association (WRRRA); James Sells, WRRRA; Scott Carlson, Clark County; Gary Bickett, Southwest Washington Health District; Rich McConoghy, City of Vancouver; Michael Davis, Lewis County Solid Waste; Toni Clement, Mason County; Mike Vail, Pacific Coast Shredding; Joe Jimenez, Stericycle; Ted Lehman, Skamania County; Weldon Burton, CPA; David W. Wiley, Williams, Kastner & Gibbs; and, Eric Merrill, Waste Connections, Inc.
- 16 Attending the Yakima meetings were: Scott Robertson, Yakima Waste Systems, Inc.; Tony Segale, Yakima Waste Systems, Inc.; Steve Wheatley, Yakima Waste Systems, Inc.; Darlene Frye, Department of Ecology, Solid Waste & Financial Assistance; James Sells, WRRRA; J.P. Jones, WRRRA; Matt Zybas, City of Richland; Glen Austin, Zippy Disposal Service; Leonard Dietrich, Basin Disposal, Inc.; Mark Wash, Consolidated Disposal Services, Inc.; and, Mike Dietrich, Consolidated Disposal.
- 17 Attending the Spokane meetings were: Ben Haworth, Sacred Heart Medical Center; Damon Taam, Spokane Regional Solid Waste System; Joe Jimenez, Stericycle; J.P. Jones, WRRRA; James Sells, WRRRA; Scott Windsor, Spokane Solid Waste Management; Joe Destefano, consumer; Clifford Couse, Couse's Sanitation and Recycling; Shirley Couse, Couse's Sanitation and Recycling; Frank Lawhead, Empire Disposal, Inc.; Marc Torre, Sunshine Disposal, Inc.; Richard Koss, Ada-Lin Waste Systems, Inc.; Michael Hibbler, Department of Ecology; Michael Torre, Sunshine Disposal; Bill Stansberry, Waste Management; and, Devon Felsted, Pullman Disposal.
- 18 Attending the Everett meetings were: Ed Nikula, Sanitary Services, Inc.; Peter Christiansen, Department of Ecology; Terry Gillis, Recovery 1, Inc; Bob Jones, King County; John Lloyd, LeMay Enterprises; Judy Almborg, Nexus Communication; Bill Rowe, University of Washington; Robert Culver, Nalley's Fine Foods; Tarry Mercer, Grayhawk; John Brigham, Northwest Waste; Jamie Cole, Democon; Larry Wilson, Democon; Terry Becker, Waste Management; JoAnn Zerfoss, Waste Management; Stephen Wambach, Pierce County; Allen Stafford, Kleensweep; James Wilson, Rabanco; Jeff Kelley-Clarke, Snohomish County; Ken Roberts, Kenco; Shirley Roberts, Kenco; Stan Hanen, Institute of Scrap Recycling Industries and Seattle Iron; John Swartz, Washington Trucking Associations, Dump Truck Conference; Tom Rubatino, Rubatino Refuse Removal; Nels Johnson, Rabanco; Bob Schille, Waste Management; Bob Cole, Cole Associates; Ed Rubatino, Rubatino Refuse Removal; Linda Kay Dennis, Smedes & Associates; Evelyn Nicholson, Sound Disposal; Jerry Smedes, Smedes & Associates; Don Hawkins, Murrey's Disposal; Norm LeMay,

LeMay, Inc.; Don Kuzmer, Metals Express; Mark Buscher, King County Solid Waste; Rodney Gilroy, Overboard Express; Tracey Gilroy, Overboard Express; J. Crosse, New West Gypsum, Dave Bonyouloir, Island County; Jeff Brown, EA, Inc.; Polly McNeill, Summit Law Group; David W. Wiley, Williams, Kastner & Gibbs; J.P. Jones, WRRRA; David Bader, CCR; Troy Laudenbach, T & T Recovery; Mike Weinstein, Waste Management; Jeff West, Waste Management; Brad Rinker, Northwest Metals; Tom Cantrell, Metier Construction; Chuck Merritt, BFI; Sandra Waalk, BFI, Gary Gorsha, Harborview Medical Center; Robb Menaual, Washington State Hospital Association; Rose Goulet, Rubatino Refuse Removal; Ed Halasz, Whatcom County Health and Human Services; George Sidles, Department of Ecology; Marc Krueger, City of Anacortes; Calvin DenHartog, Nooksack Valley Disposal and San Juan Sanitation; Sonia Wright, Eastside Hauling, Inc.; Shawn Doherty, Construction Waste Management; and, David Firimoto, City of Issaquah.

19 Comments at these meetings addressed:

20 **(a) Annexation and incorporation.** Requested results: That rules resolve ambiguities in recent legislation and make clear to all parties the Commission's interpretation of the statute, define the processes the Commission will use in canceling certificate authority, and define the roles of the Commission, the cities, and the carriers.

21 **(b) Customer notice requirements.** Requested results: That rules address notice required on rate decreases and other rate filings, allow flexibility so that carriers may comply with directions of local jurisdictions, and encourage cooperation with local jurisdictions in notice issues. Further, that rules strike a balance between ensuring sufficient information allowing consumers to make informed service choices versus the process not being unduly burdensome on carriers.

22 **(c) Definitions.** Requested results: That the new rules clearly define the terms "recyclable materials," "incidental," "source-separated," "Class A, B, and C carriers," "private carriers/carriage," "specialized carriers," "solid waste," and "construction, demolition, and land-clearing debris."

23 **(d) Compliance and enforcement.** Requested results: That rules include information on how the Commission will handle consumer complaints as well as company-versus-company complaints, that compliance practices be consistent, and that the rules list consequences of non-compliance with laws and rules. Further, that the rules provide adequate sanctions for illegal haulers, are less punitive toward regulated carriers, and provide for adequate consumer protection.

24 **(e) Consumer education.** Requested results: That the rules encourage cooperation with local jurisdictions to foster educational programs, validate local jurisdictions' education programs, and encourage companies to use the Commission's consumer

brochure and build upon it to provide adequate information to customers as to their rights and responsibilities.

- 25 **(f) County authority.** Requested results: That the Commission support providing counties with the authority to operate in the same manner that is now allowed cities. That rules clarify the activities that are under the Commission's authority to regulate versus what is under counties' authority to regulate. That the rules allow for greater flexibility in relationships between carriers and counties.
- 26 **(g) Rates.** Requested results: That the Commission encourage flexibility and innovation in ratemaking, recognize rate-setting methodologies mandated by county solid waste plans, and allow for additional pilot programs.
- 27 **(h) Free and reduced rates.** Requested results: That decisions rendered in a recent Commission Declaratory Ruling on this subject be reflected in the rules.
- 28 **(i) Medical waste.** Requested results: That the new rules are consistent with rules of other regulatory jurisdictions, that definitions are uniform, and that federal statutes and rules be recognized.
- 29 **(j) Consumer rules.** Requested results: That the rules allow for differing treatment of temporary accounts than is required for permanent service, allowing carriers to require prepayment before providing service to temporary accounts, allowing carriers to accept credit cards for payment of bills, and allowing carriers to refuse to serve companies with past due accounts.
- 30 **(k) Third-party waste brokers.** Requested results: That the rules identify these companies and clearly define the permissible interaction between the brokers and the carriers.
- 31 **(l) Privacy of customer information.** Requested results: That the rules clearly and adequately define fair use of customer information.
- 32 **(m) Dump truck operations versus solid waste collection and transportation.** Requested results: That the rules clearly define those instances when a dump truck operator may transport solid waste without a certificate and those instances for which a certificate is required.
- 33 Following completion of these four meetings and review of comments from those meetings, Commission Staff prepared a rough draft of proposed rule amendments. This draft incorporated suggestions from the issues paper and comments from the stakeholder meetings. The draft was served to interested persons for comment.
- 34 Pursuant to notice, the Commission sponsored meetings in Fife on December 14,

1999, and in Yakima on December 16, 1999, to discuss the rough draft.

- 35 Attending the Fife meeting were: Ed Nikula, Sanitary Service Company, Inc.; Peter Guttchen, City of Olympia; Evelyn Nicholson, Sound Disposal; Ed Rubatino, Rubatino Refuse; Tom McCabe, City of Port Angeles; Gorden Walgren, WRRRA; David W. Wiley, Williams, Kastner & Gibbs; Damon Defrates, Brem-Air Disposal; Calvin Den Hartog, Nooksack Valley Disposal; John Swartz, Washington Trucking Associations, Dump Truck Conference; Ron Larson, Rabanco; Jim Wilson, Rabanco; Ron Rosenbloom, Association of Washington Cities; Polly McNeill, Summit Law Group; Troy Lauterbach, T & T Recovery, Inc.; Michele Jenkins, Whatcom County Health Department; Mike Weinstein, Waste Management; Norman LeMay, LeMay, Inc.; John Lloyd, LeMay, Inc.; Bob Schille, Waste Management; Laura Reisdorph, Washington Refuse and Recycling Association; Don Hawkins, Murrey's Disposal; Irmgard Wilcox, American Disposal; Kathy Kiwala, Clark County Solid Waste; Carol Devenir-Moore, Clark County Solid Waste; Rob Van Orson, City of Federal Way; Bob Cole, Cole & Associates; Eric Merrill, Waste Connections; James Sells, WRRRA; Malcolm Eftin, Stericycle; and Michelle Tsalaky, Thurston County Solid Waste Division.
- 36 Attending the meeting in Yakima were: Dennis Nally, City of Walla Walla; Scott Robertson, Yakima Waste Systems; Keith Kovalenko, Superior Refuse Waste Connections; Dana Christianson, Methow Valley Disposal; Steve Wheatley, Yakima Waste Systems; Mark Wash, Consolidated Disposal Service; Don Davidson, Methow Valley Sanitation Service; Glen Austin, Zippy Disposal Service; Loretta Lammarchi, Yakima County Solid Waste Division; Paul Glasgow, Rabanco/Allied Waste; Teresa Eturaspe, Yakima County Solid Waste Division; Matt Zybus, City of Richland; David W. Wiley, Williams, Kastner & Gibbs; Ron Draggoo, Douglas County Solid Waste; and, Dennis Henne, City of Union Gap.
- 37 During the meetings to discuss the rough draft, oral comments addressed the following issues:
- 38 **(a) Billing.** Requested results: That the Commission not require companies to disclose as line items all services provided and instead allow companies to bill a single rate, with rates for services such as yard waste and recycling embedded in that single rate.
- 39 **(b) Rate setting.** Requested results: That ratemaking issues be separated from the rule making process and be handled in a policy forum such as a Notice of Inquiry. Include in that policy forum discussion of the Commission allowing incentive rates and linear rates rather than staying with cost-of-service ratemaking. Further, include in that forum technical issues such as audit practices and depreciation schedules.

- 40 **(c) Competitive commercial class of company.** Requested results: That the proposal to institute a new classification of company, competitive commercial service, not be included the rules. The provisions to establish a competitive commercial classification resulted in a number of comments expressing adamant opposition to this new type of service.
- 41 **(d) Definitions.** Requested results: That the rules contain clearer definitions of the terms "incidental," "occasional," "recyclable materials," "source-separated," "recycler," "construction, demolition and land-clearing debris," "Class A, B and C companies," "private carriage/hauler," "specialized carrier," "dump truck operations" and "solid waste."
- 42 **(e) Exempt operations.** This issue received a number of comments. Parties were polarized on the topic -- two distinct positions were represented among stakeholders. There were four main requested results presented through oral comments: 1) Draft rules to state that everything taken to a landfill for disposal is solid waste, and the carrier transporting it needs a solid waste certificate; 2) Draft rules to close perceived loopholes allowing more transportation of solid waste by companies other than those holding solid waste certificates; 3) Draft rules to allow companies other than those holding solid waste certificates to continue to participate in transportation of solid waste for disposal; and 4) Clarify when a solid waste certificate is required, and when those holding common carrier permits may transport solid waste.
- 43 **(f) Annexation/incorporation.** Requested results: Amendment of the rule to include additional information to clarify the use of franchises, define compensation, define damages, and outline the process for returning a certificate to the prior certificate holder when a city opts out of providing service itself. A clearer statement of the processes outlined in the rule.
- 44 **(g) Acquisition of control.** Requested results: That the Commission adopt a process related to acquisition of control that requires only provision of written notice to the Commission, not an application.
- 45 **(h) Temporary certificate authority.** Requested results: Clarify the processes for granting temporary authority, protesting applications, intervening in application proceedings, docketing and notice of applications, and restricting commercial temporaries to only those customers submitting written support statements. More clearly define the rights of cities and counties to provide input.
- 46 **(i) Mapping.** Requested results: That the rule be amended to eliminate a requirement that companies file a new map within 90 days of the adoption of the rules. Clarify the benefits that would derive from better mapping for the regulated companies, the Commission and the general public.

- 47 **(j) Customer notice.** Requested results: That the rule be rewritten to be less burdensome to regulated companies. Companies also want to retain the current process of providing notice through use of post cards.
- 48 **(k) Compliance and enforcement.** Requested results: That the rules be amended to strengthen the provisions related to illegal haulers, and at the same time develop policies that are less punitive toward regulated companies.
- 49 **(l) Sanctions for illegal haulers.** Requested results: Strengthen the sanctions against illegal haulers, eliminate technical assistance as the first option, and provide better protection for the regulated haulers.
- 50 **(m) Annual reports.** Requested results: That the annual report form be streamlined.
- 51 **(n) Savings clause.** Requested results: That this rule be deleted in its entirety, or that it be strengthened by including requirement that regulated carriers must also comply with all local government ordinances, regulations, etc.

52 Pursuant to notice, an issue-specific meeting addressing transportation of biomedical waste was held in Olympia on April 13, 2000. James Sells, WRRRA, attended the meeting. Mr. Sells for the most part expressed agreement with the draft rules, suggesting only a few minor amendments for the sake of clarity. His suggestions were incorporated into the succeeding draft of the proposed rules. With that action, it appeared that consensus had been achieved on the rules relating to transportation of biomedical waste.

53 Pursuant to notice, an issue-specific meeting addressing the transportation of construction, demolition, and land-clearing debris was held in Olympia on May 15, 2000. Stakeholders in attendance were: William Hearn, Skamania County Sanitary Service; Shane Hearn, Bingen Garbage Service; Michelle Tsalaky, Thurston County Solid Waste Division; Don Nicholson, Sound Disposal; Jim Boldt, Rabanco; Andrew Shafer, Washington Trucking Associations, Dump Truck Conference; John Swartz, Washington Trucking Associations, Dump Truck Conference; Gerry Eglund, Washington Dump Truck Conference; Rick Thompson, Harold LeMay Enterprises; Kathy Kiwala, Clark County Solid Waste Division; Ed Nikula, Sanitary Service Company; Ron Draggoo, Douglas County Solid Waste Division; John Lloyd, Harold LeMay Enterprises; Irmgard Wilcox, Murrey's Disposal; Tom Segale, Yakima Waste Systems; Don Hawkins, Murrey/American Disposal; James Sells, WRRRA; Charlie Maxwell, Lakewood Refuse; Rob Nielson, Waste Connections; and, Ed Rubatino, Rubatino Refuse.

54 During the meeting, oral comments were received on the following issues:

- 55 (a) **Exempt operations.** Requested results:
- Development of clearer definitions of the terms "occasional," "incidental," "recyclable material," and "dump truck operations."
 - Development of language that defines the roles of solid waste collection companies and dump truck operators in transportation of contaminated soils and construction, demolition, and land-clearing debris. Retain "historical" hauling rights of both solid waste collection companies and dump truck operators.
 - Include language defining "dump truck operations" formerly found in WAC 480-12-990 in the solid waste rules.
- 56 (b) **Competitive commercial services.** Requested results: Eliminate the provisions establishing the new classification of service called "competitive commercial service" in their entirety. In their place, draft rules to grant emergency or expedited temporary authority to serve the needs of customers unable to get service in specific circumstances.
- 57 Pursuant to notice, an issue-specific meeting addressing only the topic of fuel surcharge tariff filings was held in Tumwater on June 6, 2000. Stakeholders in attendance were: Ed Nikula, Sanitary Service, Inc.; John Lloyd, LeMay, Inc.; Bill Chatham, CPA; Irmgard Wilcox, Murrey/American Disposal; Bob Schille, Waste Management; Mike Philpott, Stericycle; James Sells, WRRRA; David W. Wiley, Williams, Kastner & Gibbs; Polly McNeill, Summit Law Group; Nanette Walker, CPA; Laura Reisdorf, WRRRA; and, Mike Weinstein, Waste Management.
- 58 During the meeting, oral comments were received that stated:
- 59 (a) The participants believe that the Commission needs to acknowledge that fuel cost spikes are easily recognized, can be easily-isolated in company books and records, and a simple, quickly-initiated process should be developed to help regulated companies recover the increased costs.
- 60 (b) Fuel surcharge filings shouldn't require rate case treatment, the company shouldn't have to sustain a heavy burden of proof.
- 61 (c) Solid waste collection companies should enjoy a "level playing field" with other regulated companies as relates to grant of fuel surcharges.
- 62 (d) Solid waste collection companies, and small companies especially, need a simple, easy to use methodology to be developed and adopted.
- 63 **Requested results:** That the Commission authorize a simple methodology that

allows carriers to recover spiking fuel costs without having to sustain a heavy burden of proof.

64 NOTICE OF PROPOSED RULEMAKING: The Commission filed a notice of Proposed Rulemaking (CR-102) on November 22, 2000, at WSR #00-23-132. The Commission scheduled this matter for oral comment and adoption under Notice WSR #00-23-132 at 9:30 a.m., Wednesday, December 27, 2000, in the Commission's Hearing Room, Second Floor, Chandler Plaza Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington. The Notice provided interested persons the opportunity to submit written comments to the Commission.

65 COMMENTERS (WRITTEN COMMENTS): The Commission received written comments from Jeff Kelley-Clarke, Solid Waste Utility Director, Snohomish County; Lisa Friend, recycling educator; John Yeasting, President, WRRRA Board of Directors; Rodney G. Hansen, Manager, King County Solid Waste Division; Kathy Kiwala, Solid Waste Program Manager, Clark County Department of Public Works; Polly L. McNeill, Summit Law Group, representing Waste Management of Washington, Inc.; David W. Wiley, Williams, Kastner & Gibbs, representing Waste Connections of Washington, Inc., Murrey's Disposal/Waste Connections, and Rabanco Companies; Jesse Tanner, Mayor, City of Renton; Michelle Tsalaky, Executive Director, WRRRA (Ms. Tsalaky previously represented Thurston County during this rulemaking); Karen Van Gelder, Director, Environmental Services, MultiCare Health System; Fred Sheldon, Omak, Washington; Jeff Jarvis, Facilities Manager, Pike Place Preservation and Development Authority. Telephone comments were received from Ed Nikula, Sanitary Services, Inc.; John Lloyd, LeMay Enterprises; and, Peter Dodds, Senator Tracey Eide's office.

66 The written comments addressed the following issues:

67 **(a) Request for inclusion of an amended definition.** Rodney Hansen, King County, requested that the Commission amend the rules to include additional definitional language that would allow small businesses to, at their option, choose to sign up for solid waste collection service under single-family residential tariffs. The Commission did not follow this suggestion because RCW 81.77.020(8) states that solid waste collection service does not include collection or transporting recyclable materials from commercial or industrial generators, and RCW 81.77.020(9) states that solid waste collection does not include the transportation of recyclable materials except those collected from residences. The Commission, thus, concluded that it does not have the authority to include the provisions requested by Mr. Hansen.

68 **(b) Support of the rules.** Fred Sheldon of Omak, Washington, commented only that he supported the solid waste rules. He did not address specific provisions.

69 **(c) WAC 480-70-011 Exempt operations.** Three comments were received regarding subparagraph (1)(e) of this proposed rule.

- Rodney Hansen of King County and Jeff Kelley-Clarke of Snohomish County asked the Commission to modify the draft of WAC 480-70-011(1)(e) to state that transportation of agricultural animal wastes, particularly that from what they termed to be “hobby stables,” would be exempt from regulation as solid waste. The Commission rejected this suggestion because it concluded that the waste from “hobby stables” is collected from residences and, thus, included in the definition of solid waste in RCW 81.77.010(9). To the extent that the stables are commercial operations, the current statutes would not define the manure as solid waste if it was recyclable, and would allow exempt operations by a recycling company or a non-profit program for recycling and transporting the stable output for recycling through composting. RCW 81.77.010(8), (9). To the extent that the stable owners described are residential customers, this exemption is not available. The counties may, of course, determine levels of service for residential recycling programs in their solid-waste plans, and may institute programs for on-site composting or recycling animal waste in the same manner as they have used for yard waste.
- Polly McNeill, Summit Law Group, requested that the Commission, revise the proposed rules to strike the word “landfill” from the final sentence of paragraph (1)(e). She stated that currently most solid waste is transported to a transfer station, not to a landfill, and deleting the word “landfill” would clarify the rule to reflect current practice. The Commission adopted this suggestion.

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(d) WAC 480-70-016 Determination of authority required to transport specific commodities or provide specific services. Two comments were received on this proposed rule. The commenters, David W. Wiley, Williams, Kastner & Gibbs, and Polly McNeill, Summit Law Group, both suggested that paragraph (1) be amended to include additional language clarifying that persons operating under common carrier permits issued subject to the provisions of Chapter 81.80 RCW might also be required to obtain certificates of public convenience and necessity authorizing solid waste collection if they were holding themselves out as providing solid waste transportation. The Commission adopted this suggestion, including alternate language provided by Ms. McNeill.

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(e) WAC 480-70-041 Definitions, general. The Commission received twelve written comments addressing specific definitions. The comments were:

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(1) Business of transporting solid waste for collection and/or disposal for compensation. Michelle Tsalaky, WRRRA, suggested that the Commission amend this definition to include at the end of the definition a phrase which reads, “. . . and serve customers in a particular defined area.” The reason offered for making this change

was that the additional language would serve to emphasize that only carriers with certificate authority could be engaged in the “business of transporting solid waste for collection and/or disposal for compensation.” The Commission rejected this suggestion. WAC 480-70-016 and WAC 480-70-081 already state that carriers transporting solid waste for compensation must first obtain a certificate from the Commission, and that operations conducted without having first obtained a certificate are unlawful. Adding the phrase to this rule would be redundant. Additionally, the Commission cites this definition when conducting classification proceedings. In such hearings, the Commission determines whether a company is operating in the “business of transporting solid waste for collection and/or disposal for compensation” without having proper certificate authority. If yes, then the Commission orders the offending company to cease and desist unlawful operations. The additional phrase would not add clarity to the rule; it could instead complicate classification hearings.

- 73 **(2) Classes of companies.** Michelle Tsalaky, WRRRA, David W. Wiley, Williams, Kastner & Gibbs, and Polly McNeill, Summit Law Group, all suggested that the Commission adopt a figure of five million dollars as the threshold dividing Class A from Class B companies. They stated that with the increase in disposal fees and other operating costs experienced by the solid waste industry in recent years, the current one million dollar threshold is too low, and an update of the threshold to five million dollars is appropriate. The Commission adopted this suggestion.
- 74 **(3) Commercial recycling service.** Rodney Hansen of King County and Jeff Kelley-Clarke of Snohomish County requested that the Commission amend the definition to add “agricultural generator” to the list of entities identified as participating in commercial recycling. The Commission rejected this suggestion. RCW 81.77.010(8) and (9) define commercial recycling. If the “hobby stables” referred to by the commenters are commercial establishments, they are already included in this definition, and inclusion of the term would be redundant. If the “hobby stables” are residential rather than commercial establishments, inclusion would conflict with the statutory definitions.
- 75 **(4) Occasional.** Polly McNeill, Summit Law Group, suggested the phrase “Any company holding itself out to the public to transport solid waste will be deemed to be providing solid waste collection services, even if the collection of solid waste is only a small portion of the company's operations or is performed only occasionally” be added to the definition of the term “occasional.” The Commission rejected this suggestion. The recommended language does not enhance or clarify the definition of the term “occasional.” Further, WAC 480-70-011 and WAC 480-70-016 already adequately address the concept engendered in the recommended addition; adding it to this definition would be redundant.
- 76 **(5) Private carrier.** Polly McNeill, Summit Law Group, suggested that the definition of private carrier be amended to indicate that a private carrier transports

solid waste in the person's own vehicle, arguing that the definition has always included the phrase and the carriers believe it is an important qualifier that should be retained. The Commission adopted this suggestion.

- 77 **(6) Solid waste or solid wastes.** Michelle Tsalaky, WRRRA, suggested that “refuse” be added to the list of commodities that may be transported as solid waste, arguing that the term would add clarity. The Commission adopted this suggestion.
- 78 **(7) Solid waste collection.** Polly McNeill, Summit Law Group, suggested this definition be amended to revert to the definition contained in the current rules, as the older definition consisted of more familiar phrasing and was largely a restatement of statutory language. The Commission adopted this suggestion in part, combining Ms. McNeill's suggestion with language developed by Staff. The resulting definition adopted by the Commission reads as follows: “Solid waste collection means collecting solid waste from residential or commercial customers and transporting the solid waste, using a motor vehicle, for collection and/or disposal over the highways of the state of Washington, for compensation.”
- 79 **(8) Traditional solid waste collection company.** Michelle Tsalaky, WRRRA, and Polly McNeill, Summit Law Group, filed substantially duplicative comments on this definition. First, both suggested that language be added to the definition to indicate that traditional solid waste collection companies may also provide specialized solid waste collection service unless their certificates of authority restrict such activity. The Commission adopted this suggestion. Second, both suggested that the term “regular” be stricken from the sentence defining the schedule under which traditional solid waste companies operate. Both stated that to do so would recognize the fact that traditional companies also provide on-call service. The Commission rejected this suggestion. The definition of specialized service added to the rule in adopting the first suggestion includes providing on-call service. Thus, this second suggestion is unnecessary and duplicative.
- 80 **(f) WAC 480-70-076 Regulatory fees.** The Commission received comments from three persons on this rule: David W. Wiley, Williams, Kastner & Gibbs; Polly McNeill, Summit Law Group; and Michelle Tsalaky, WRRRA. Each requested that the date for filing of regulatory fees be changed from April 1 of each year to May 1. In addition, Ms. McNeill requested that a statement be included in the rule indicating the Commission would not begin assessing late fees until May 1. The Commission rejected these suggestions. RCW 81.77.080 requires that solid waste collection companies pay their regulatory fees by the April 1. Further, RCW 81.24.075 establishes the timeline for assessment of late fees. The suggested changes would conflict with those statutory provisions.
- 81 **(g) WAC 480-70-131 Certificates, temporary.** The Commission received

comments from three persons on this rule: Michelle Tsalaky, WRRRA; Kathy Kiwala, Clark County; and Polly McNeill, Summit Law Group.

- All three suggested the Commission amend paragraph (4) of the rule. Ms. Tsalaky and Ms. Kiwala asked the Commission to substitute the word “will” for the word “may” in the first sentence. Ms. McNeill suggested that the second sentence of the paragraph be stricken and replaced with a sentence reading, “The commission will normally limit temporary authority to allow a company to provide service to only those commercial customers whose support statements are submitted with an application.” The Commission rejected these suggestions. These changes would unnecessarily limit the Commission's discretion in granting temporary certificate authority. The proposed rule already limits the time a temporary certificate is effective, and provides for imposition of additional limitations and conditions if the Commission decides they are warranted. The Commission will decide what limits to impose on a case-by-case basis, depending on its examination of the facts demonstrating the need for the proposed service.
- Ms. McNeill recommended that paragraph (2) be amended to delete the examples enumerated in subparagraphs (b)(i), (ii), and (iii). She recommended that the language instead be relocated to paragraph (1) of proposed WAC 480-70-136(1). The Commission partially rejected this suggestion, deciding that the language contained in the three subparagraphs provides clarity and, thus, should remain in the rule. The Commission did, however, adopt the suggestion that the language also be contained in WAC 480-70-136.
- Ms. McNeill suggested that language be added to this rule stating that the Commission will conduct a factual investigation into the need for proposed service before it grants temporary authority. The Commission adopted this suggestion by adding a paragraph to the rule that states, “Before granting or denying an application for temporary authority, the commission will conduct an investigation to examine the facts relating to the need for the proposed service.”

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(h) WAC 480-70-136, Certificates, temporary, expedited application. Polly McNeill, Summit Law Group, submitted three comments regarding this rule:

- Ms. McNeill suggested that language from WAC 480-70-131(2) be relocated to this rule. The Commission instead included the language in this rule as well as leaving it in WAC 480-70-131. Ms. McNeill suggested that language be added that states the Commission will normally limit a grant of temporary authority to allow an applicant to serve only those commercial customers whose support statements are submitted with the application. The

Commission rejected this suggestion. The rule already states that the Commission may limit expedited authority to service within a specific county, a specific city, a specific geographical area, a specific route, or a specific site. The Commission believes this language is sufficient, and that to adopt Ms. McNeill's suggestion would unduly limit the Commission's discretion.

- Ms. McNeill suggested that language be added to this rule to reflect that the Commission will conduct an investigation into the facts relating to the need for proposed service before it grants temporary authority. The Commission adopted this suggestion by adding a paragraph to the rule that states, "Before granting or denying an application for temporary authority, the commission will conduct an investigation to examine the facts relating to the need for the proposed service."

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WAC 480-70-141 Certificate authority canceled by city annexation or incorporation. The Commission received written comments from four persons on this rule: Kathy Kiwala, Clark County; Michelle Tsalaky, WRRRA; Polly McNeill, Summit Law Group; and Jesse Tanner, City of Renton.

- Ms. Kiwala suggested that the rule be amended to require notification to a county and/or input by the county in the processes involved in reinstatement of solid waste certificates due to city actions to opt into, or out of, providing collection services. The Commission rejected this suggestion. RCW 81.77.120 already provides that counties will periodically provide information to the Commission regarding solid waste issues. Further, the Commission maintains mailing lists of persons interested in various issues or subjects. By notifying the Commission of its interest in specific issues or subjects, the County will receive information on applications, dockets, and other Commission actions. Including additional provisions in this rule would be duplicative and is unnecessary.
- Ms. Tsalaky suggested changes to the proposed rule to: (a) clarify the date on which Commission regulation ceases in annexed territory; (b) state that canceled certificate authority shall be reinstated instead of may be reinstated as is provided in the rules; (c) state that the previous certificate holder shall petition the Commission instead of may petition the Commission as is provided in the draft rules; and (d) replace the phrase "compensated for" with the phrase "purchased or condemned."
- Ms. McNeill suggested changes to the rule to: (a) clarify that the rule applied to both annexations and incorporations; (b) clarify that authority is not canceled until the city complies with statutory requirements; (c) clarify that canceled authority shall be reinstated, rather than may be reinstated, where the appropriate standards have been met; (d) change the permissive language in

subsection (5)(c) to a positive requirement; (e) recognize that certificates, and portions of certificates, may be transferred, thus effecting to whom authority is reinstated; and (f) delete the phrase “compensated for” by using instead the phrase “purchased or condemned.”

- Mr. Tanner requested clarification as to whether Commission regulation ceased on the date the Commission received notification from the City or on the date the City made the decision to take over service.

84 It being evident from the number and scope of comments received that the original draft was not drafted clearly enough to be understood by various audiences, a new draft of this rule was developed and distributed to those persons who had previously commented. The second draft is not substantively different from the text noticed at WSR #00-23-132. The second draft merely clarifies and expands upon the first draft, making the rule more easily understood. Polly McNeill, Summit Law Group, is the only person who filed written comments regarding the second draft. For the most part her comments supported that second draft. She did, however, suggest some minor modifications. She suggested that to clarify that the rules apply in instances where cities only partially provide service, the phrase “To the extent solid waste collection service is provided within the limits of a city, it must be provided by: . . .” should be added. She also suggested paragraph (5)(a) be amended to include similar language. She also suggested that paragraph (2)(b) be amended to contain the phrase, “. . . the Commission will not cancel the affected certificate authority and cease regulation in the affected area until the date of receipt of the city's or town's written notice.” These suggestions were included in the draft rules attached to Staff's open meeting memorandum (December 27, 2000, meeting) and recommended for adoption by the Commission. The Commission adopted the second draft of this rule, and incorporated the comments Ms. McNeill filed relating to that draft.

85 **(j) WAC 480-70-151 Service agreements between companies.** Michelle Tsalaky, WRRRA, and David W. Wiley, Williams, Kastner & Gibbs, commented on this rule. Both suggested the rule be amended to indicate that companies wishing to enter into service agreements must first hold exclusive traditional solid waste collection authority rather than just exclusive authority as was stated in the proposed rule. They stated that this was necessary because the overlap of Class C specialized solid waste certificates, such as those authorizing statewide collection of medical waste, technically means that there are no exclusive solid waste certificates in the state of Washington. The Commission adopted this suggestion.

86 **(k) WAC 480-70-271 Customer notice requirements.** The Commission received comments on this rule from: Jeff Kelley-Clarke, Snohomish County; Polly McNeill, Summit Law Group; David W. Wiley, Williams, Kastner & Gibbs; and Michelle Tsalaky, WRRRA.

- Mr. Kelley-Clarke suggested that paragraph (1)(b)(ii) be amended to require that notice be sent to county commissioners or county council members. The proposed rule, requiring notice only to county commissioners, failed to acknowledge that some counties are governed by county councils and not by county commissions. The Commission adopted this suggestion.
- Mr. Kelley-Clarke also suggested that paragraphs (1)(b)(ii) and (iii) be amended to require the company to notify designated county solid waste managers in addition to council or commission members. He stated that often materials mailed to elected officials do not get passed down to proper department heads in time to comment or answer questions from ratepayers. The Commission rejected this suggestion. The Commission believes notifying county commissioners or county council members is sufficient and that ensuring appropriate county staff members receive that notification is an obligation of the county, not the company.
- Ms. McNeill, Mr. Wiley, and Ms. Tsalaky suggested that paragraph (1)(c)(iv)(D) be amended to indicate that separately stated costs for recycling service, yardwaste service, and solid waste service need not be shown on a customer notice if prohibited by local governments. The Commission rejected this suggestion. The proposed rule governing the contents of bills to customers, WAC 480-70-391, requires separate line items for these services, if the company has separately tariffed rates for those services. The Commission encourages the separate tariffing of these items. However, if they are not separately tariffed, then the requirement in the customer notice rule would not require that they be separately stated; it only requires this “if applicable,” which would cover the concern the commenters express.
- Ms. McNeill, Mr. Wiley, and Ms. Tsalaky also suggested that paragraph (2)(a)(vi) be amended to state that notice is not required until after the Commission makes a final decision related to increases in either credits or charges to customers for recycling commodity adjustments. The draft rule addressed only commodity credits. The Commission adopted this suggestion.
- Mr. Wiley suggested that the title of paragraph (2) be amended to read “Customer notice after final commission action for rate adjustments outside the control of the solid waste collection company.” He stated that the title of the paragraph was unclear, and additional cross-referencing of issues was required. The Commission rejected this suggestion, electing instead to insert additional language in the rule to clarify application and cross-references.
- Mr. Wiley suggested that paragraph (1)(c)(iii) be amended to require less verbiage on the customer notice to describe “a clear explanation of the reason the company has requested the rate change.” Mr. Wiley stated that requiring

this information might preclude short-form (postcard) notices currently used by some companies. The Commission rejected this suggestion. The explanation of the reasons leading to filing for a rate increase need not be lengthy. A phrase such as “increased operating costs” or “increased labor costs” is sufficient to provide information to the company's consumers.

- Mr. Wiley suggested that paragraph (1)(c)(iv)(B) be amended stating that requiring the listing of “the five most used services” was unnecessarily burdensome. The Commission adopted this suggestion, changing the paragraph to require listing only four services.
- Mr. Wiley suggested that paragraph (1)(c)(iv)(E) be amended to eliminate the requirement that a company must include a statement using a range of percentage increase and explaining how a customer could get more information, if a service is not listed on the customer notice but is, in fact, impacted by the filing. An example of the statement to be included is: “Rates for other services, not listed in this notice, will increase by XX% to YY%. For additional information you may contact (toll-free phone number).” Mr. Wiley stated that requiring such a statement could be confusing to the consumer and could result in additional calls to both the company and the Commission by consumers requesting clarification. The Commission rejected this suggestion. The requirement adds flexibility for the companies to make decisions on how to notice their customers. The company may list each service affected by the proposal, or include only some services and include the statement shown above. This information may be a key tool for customers to know whether to make further inquiries about the effect of the company's proposal.
- Ms. Tsalaky, WRRRA, suggested that the provisions of paragraph (1)(c)(iv)(E) be stricken from the draft. She stated no reasons in her written comments for the suggestion. Staff spoke with Ms. Tsalaky about WRRRA’s concerns regarding the proposal and explained the intent of the rule. Ms. Tsalaky submitted no further comments. As explained in the paragraph above addressing Mr. Wiley’s comments on the same provision of the draft rules, the Commission rejected this suggestion.

87

(I) WAC 480-70-316 Tariff supplements. Polly McNeill, Summit Law Group, suggested that in paragraph (3) the phrase “forty-five day notice to customers and the commission” be amended to the phrase “notice to customers and the commission.” She pointed out that there are filings that do not require forty-five day's notice. The Commission adopted this suggestion.

88 **(m) WAC 480-70-351 Recycling programs.** The Commission received comments from: Polly McNeill, Summit Law Group; Rodney Hansen, King County; Ed Nikula, Sanitary Service Company; and David W. Wiley, Williams, Kastner & Gibbs. They suggested the rule be amended to include charges as well as credits already contained in the proposed rule. The Commission adopted this suggestion.

89 **(n) WAC 480-70-361 Availability of information.** The Commission received comments from: Polly McNeill, Summit Law Group; Rodney Hansen, King County; Ed Nikula, Sanitary Service Company; Lisa Friend, recycling educator; Jeff Jarvis, Pike Street Market; Jeff Kelley-Clark, Snohomish County; John Yeasting, Washington State Recycling Association; Loretta Zammarchi, Yakima County Solid Waste; Gwen McCamley, New West Gypsum (USA); Frances Ambrose, Skagit County Public Works; New West Gypsum Company (USA); and David W. Wiley, Williams, Kastner & Gibbs.

- Ms. Zammarchi, Ms. McCamley, Ms. Ambrose, Ms. Friend, Mr. Yeasting, Mr. Hansen, Mr. Jarvis, and New West Gypsum (USA) stated their support for the rule as drafted.
- Ms. McNeill, Ms. Tsalaky, and Mr. Wiley suggested that the rule be amended to eliminate any provisions requiring companies to develop or distribute information that contained references to commercial recycling companies that operate as competitors to solid waste companies. They expressed concern about liability if a solid waste company overlooked a recycling company in developing material, and also about the propriety of passing costs of developing and distributing materials about non-regulated entities through to their regulated customers. Further, they stated that the provisions of the proposed rules would unfairly shift the responsibility regarding recycling and waste reduction education from the local jurisdictions to the companies.

90 It being evident from the number and scope of the comments received that the original draft did not meet the concerns of the regulated industry, a second draft was developed by Commission Staff and distributed to those persons who had commented previously. Oral comments were received on this second draft at the Commission's open public meeting on December 27, 2000. Those oral comments are discussed in paragraph 99 of this order.

91 **(o) WAC 480-70-381 Reinstatement of service following cancellation.** David W. Wiley, Williams, Kastner & Gibbs, and Polly McNeill, Summit Law Group, commented on this rule. Both suggested the Commission amend the rule to recognize that some customers may not wish to have service reinstated after they correct the causes leading to cancellation of service. The Commission adopted this suggestion by adding language that states that following correction of the circumstances leading to

cancellation, service will be reinstated unless the customer asks the company not to do so.

- 92 **(p) WAC 480-70-396 Billing.** The proposed rule states that if a company receives partial payment for a billing that contains charges for both regulated and non-regulated services, the company should apply payment first to regulated services. Kathy Kiwala of Clark County suggested that the rule be amended to add the phrase, “. . . unless the customer indicates otherwise.” The Commission rejected this suggestion. A regulated company should not have to accept and process payment on behalf of non-regulated entities when payments for regulated services are due and payable.
- 93 **(q) WAC 480-70-416 Prepayments.** Michelle Tsalaky of WRRRA and Ed Nikula of Sanitary Service, Inc., suggested that the rule be amended to apply to both container and drop-box service, stating that carriers experience as many bad-debt problems with provision of temporary container service as they do with provision of temporary drop-box service. The Commission adopted this suggestion.
- 94 **(r) WAC 480-70-421 Fair use of customer information.** The Commission received comments from: Ed Nikula, Sanitary Service, Inc.; Michelle Tsalaky, WRRRA; David W. Wiley, Williams, Kastner & Gibbs; and Kathy Kiwala, Clark County.
- Mr. Nikula, Ms. Tsalaky, and Mr. Wiley suggested that the rule be amended to allow companies to provide, absent written consent, customer information to title insurance and escrow companies when those companies request the information in the process of researching real estate titles or closing real estate transactions. They stated that title companies must inquire into the status of all utility bills when researching titles or closing real estate transactions. The Commission rejected these suggestions. RCW 60.80.020 lists those utilities that must provide information to escrow and title agents. Solid waste collection provided under the provisions of Title 81.77 RCW is not included in that list. If consumers wish the information be provided to title and escrow agents the consumer can give written authorization for release of the information.
 - Ms. Kiwala suggested that provisions be added to the rule allowing release of customer information to cities, counties, and companies providing solid waste collection or recycling services under contract with a city or county. The information would be used by cities or counties to provide recycling service, distribute educational information, and perform public outreach. The Commission rejected this suggestion. WAC 480-70-361 already establishes processes of distribution of educational materials, thus it need not be addressed in WAC 480-70-421 as well. Further, the Commission believes that cities and counties have adequate sources of information available to them, such as business licenses and tax records, from which they can prepare

mailing lists for providing customer information, noting that the universe of solid waste collection customers is only a subset of the universe of city or county citizens.

95 **(s) WAC 480-70-451 Biomedical waste, packaging and containment.** Karen Van Gelder of MultiCare suggested the rule be amended to allow flexibility in the manner in which packages containing biomedical waste are labeled. The Commission adopted this suggestion by amending the rule to state that packages must be labeled in a manner complying with applicable federal standards.

96 **(t) WAC 480-70-461 Biomedical waste, compaction not allowed.** Karen Van Gelder of MultiCare suggested that this rule be amended to allow compaction of biomedical waste that had been processed and rendered inert and non-infectious. The Commission rejected this suggestion. Materials that have been rendered inert no longer meet the definition of biomedical waste, and are thus not subject to the provisions of this rule. Amending the rule is unnecessary.

97 **RULEMAKING HEARING:**

98 The rule proposal was considered for adoption, pursuant to notice, at a rulemaking hearing scheduled during the Commission's regularly scheduled open public meeting on December 27, 2000, before Chairwoman Marilyn Showalter, Commissioner Richard Hemstad, and Commissioner William R. Gillis. The Commission heard oral comments from Cathie Anderson, Penny Hansen, Jeff Goltz, C. Robert Wallis, Gene Eckhardt, Mary Tennyson, and Diana Otto representing Commission Staff, and from Michelle Tsalaky, representing the WRRRA; Ed Nikula, representing Sanitary Service, Inc.; Bob Schille, representing Waste Management; David W. Wiley, attorney, representing Waste Connections and Rabanco Companies; James Sell, attorney, representing WRRRA; John Lloyd representing LeMay Enterprises and Pacific Disposal; Marsha Patrick, representing MultiCare Health Systems; Ed Rubatino representing Rubatino Refuse Service; Don Kneass representing the Washington State Recycling Association; Robert Vern Pontius representing Pontius Trucking; and Bill Reed representing the King County Solid Waste Division (via the Commission's telephone conference bridge). Oral comments addressed the following issues:

99 **(a) WAC 480-70-361 Availability of Information.** Six persons commented on this proposed rule.

- Don Kneass, Washington State Recycling Association, suggested the Commission adopt the version of WAC 480-70-361, Availability of Information, published in the text noticed at WSR #00-23-132, rather than the amended version recommended in the Staff's open meeting memorandum. He stated that the new language reverts to the status quo and will not result in

additional persons receiving notice of recycling and waste reduction options. It was his belief that the previous language would be more beneficial in stopping the decline in the state's recycling rate, reviving the state's leadership in recycling, protecting the recycling industry's investment, and responding to the public's need to know about recycling opportunities.

- Michelle Tsalaky, WRRRA, supported the revised draft of this rule, and opposed Mr. Kneass' suggestion that the Commission adopt the earlier text of the rule. She did, however, indicate that additional language could be included to more clearly indicate that the options listed in paragraph (7)(b)(i), (ii), and (iii) were a hierarchical progression. Ms. Tsalaky reiterated the solid waste haulers' concerns about being required to develop and distribute information that contained reference to other companies that compete with the haulers for commercial recycling accounts. Further, she stated that some companies had expressed concern about notifying customers of commercial recycling services they themselves offered under common carrier authority granted by the Commission under Chapter 81.80 RCW. Ms. Tsalaky further suggested that it be clarified in the rule that expenses incurred in distribution of information would be recoverable in rates.
- Bob Schille, Waste Management, stated that he supported the revised draft of the text, but also suggested that additional emphasis should be placed on collaboration between companies and local governments in developing required information. Mr. Schille, too, stated that he had concerns about notifying customers about services offered by competitors in the commercial recycling arena.
- Bill Reed, King County Solid Waste, supported the language in the text noticed at WSR #00-23-132, but believed that the hierarchy of options should be amended. He suggested that the first, most preferable option should be that contained in paragraph (7)(b)(ii) of the draft and that the second option should be that contained in paragraph (7)(b)(i) of the draft.
- Ed Nikula, Sanitary Service, Inc., suggested that paragraph (7)(a)(i) be amended to delete the word "all." He stated that including the word "all" was too broad and could result in the companies being required to develop a voluminous document.
- James Sells, WRRRA, suggested that paragraph (7)(b)(iii) be amended to state, ". . . about all regulated service options and service levels . . ." He stated that by changing the phrase the intent of the rule would be more clearly reflected.

- 101 The Commission rejected Mr. Kneass' suggestion that the text noticed at WSR #00-23-132 be adopted instead of the amended language recommended in Staff's open meeting memorandum. Following analysis of the original text, the Commission believes the proposed provisions place too heavy a burden on companies to develop information, may expose the companies to unintended liabilities if in developing the information they overlook service providers, and may infringe on companies' free speech rights.
- 102 (2) The Commission adopted the suggestions of Ms. Tsalaky and Mr. Reed to clarify and reorder the hierarchy of distribution options from that shown in the text noticed at WSR #00-23-132. The Commission decided that requiring companies to distribute information developed, published, and provided by local governments is reasonable even if that information contains reference to waste reduction and/or other entities that provide commercial recycling services. The Commission does agree with the solid waste companies, however, that if the company must develop and distribute information, due to the local government's choice not to do so, the company should not be required to reference competitive commercial recycling companies or even commercial recycling services provided by the company itself under permits issued under Title 81.80 RCW. Companies may include reference to their commercial recycling services if they wish, but the Commission does not believe they should be required to do so. (3) The Commission rejected Ms. Tsalaky's suggestion that the rule contain language stating that costs incurred by the company in complying with the provisions of this rule would be properly recoverable in rates. To include such language in only this rule might imply that these costs are to receive special or different handling than the cost of complying with other rules. Further, the language is unnecessary as Commission policies and regulatory accounting practices sufficiently describe the costs that are recognized in ratemaking.
- 103 (4) The Commission rejected Mr. Nikula's suggestion to delete the word "all." In adopting suggestions made by other parties to clarify portions of the rule, the concerns Mr. Nikula addressed were also resolved.
- 104 (5) The Commission adopted Mr. Sells' suggestion to clarify reference to regulated service options by amending the rule to indicate information a company develops, publishes, and distributes (when local governments do not provide the information) may include reference to a company's commercial recycling services, regulated under the provisions of Title 81.80 RCW, but there is no requirement that they do so.
- 105 **(b) WAC 480-70-041 Definitions, general.** Three persons submitted oral comments on this issue:
- Robert Vern Pontius suggested that the provisions related to defining the differences between solid waste collection companies and dump truck

operators be amended to allow those dump truck operators holding common carrier authority on January 1, 1994, to transport solid waste. Mr. Pontius stated that it has long been a traditional practice for dump truck operators to provide transportation of contaminated soils and construction, demolition, and land-clearing debris to disposal sites. He stated that is the reason many dump truck operators invested in specific types of equipment, and believed that adoption of the proposed rules would restrict dump truck operators from providing services that they had been providing for over forty years. He further stated that this is an unfair erosion of the authority he, and other dump truck operators, have exercised for many years.

- James Sells, attorney for WRRRA, asked the Commission to reject Mr. Pontius' suggestion, citing the Commission's past policies and orders regarding the need for a solid waste certificate. He stated that the proposed rules clarified rather than restricted the lawful authority of dump truck operators.
- David W. Wiley, attorney, also asked that the Commission reject Mr. Pointius' suggestion. He concurred with Staff testimony that the text noticed at WSR #00-23-132 accurately reflected the distinction between solid waste operations and dump truck operations that had existed since 1961. He also agreed with Staff testimony that Commission orders, policies, and interpretations since 1961 have consistently reflected this same distinction.

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COMMISSION ACTION ON ORAL COMMENTS RECEIVED ON WAC 480-70-041. The Commission rejected Mr. Pontius' suggestion. The Commission has been asked many times to clarify the issues addressed by Mr. Pontius and has consistently held that a motor freight carrier may not transport waste, except incidentally to its carrier activities. Further, the Commission has also consistently held that although it appears to some that it has been a traditional practice for dump truck operators to provide this type of service, the transportation policies of the state are set by the legislature, not by industry practice. The legislature requires that the Commission regulate the collection and/or disposal of solid waste under Chapter 81.77 RCW. To allow dump truck operators to hold themselves out as providing solid waste service without first having obtained proper solid waste collection certificate authority would conflict with statute and the authority granted the Commission by the legislature.

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(c) WAC 480-70-271 Customer Notice Requirements. David W. Wiley, attorney representing Waste Connections and Rabanco, suggested that paragraph (c)(iv)(E) be amended to read, "A statement that if a service is not listed in the notice, but is the subject of an increase contained in the proposal, the company also must explain how the customer can obtain more information on the rate increase proposal, if needed, and list a toll-free telephone number." He recommended this language, that eliminates the requirement that the company list a percentage range of proposed

changes, because he believes that the proposed language of the rule will confuse customers.

- 108 The Commission rejected Mr. Wiley's suggestion. Listing a percentage range in the rule provides a key tool that consumers may use to determine whether they need to inquire further into the specifics of a rate proposal. Further, these proposed notice requirements are designed to allow flexibility to the company in delivering customer notice. The company may list each service rate and accessorial service rate that will be changed by a proposal, or it may list some of those changes and include a statement to the effect that, "In addition to the items listed, other rates and charges will be increased between XX-percent and YY-percent. For additional information you may contact our toll-free number, (xxx)xxx-xxx." This proposal strikes a balance between the customer's right to know the details of a rate change and the company's burden in publishing a lengthy notice.
- 109 **(d) WAC 480-70-456 Compaction not allowed, biomedical waste.** Marsha Patrick, MultiCare Health Systems, suggested this rule be amended by adding language stating: "A company must not compact biomedical waste or any material in a container labeled as containing biomedical waste, unless it has been rendered non-infectious." The Commission rejected this suggestion. Materials that have been rendered non-infectious (inert) cannot be shipped as biomedical waste or in containers labeled as containing biomedical waste. The material is no longer biomedical waste, and is not subject to this rule. Therefore, adding the suggested language to the rule is not necessary.
- 110 **(e) WAC 480-70-151 Service agreements between companies.** Ed Rubatino suggested that the word "traditional" be stricken from paragraph (1)(a) of the proposed rule. He stated his belief that inclusion of the word "traditional" might limit his company's ability to lease equipment. The Commission rejected this suggestion. The word "traditional" was included in the proposed rule at the specific request of those persons filing written comments on the draft rules. The inclusion of this word clarifies rather than restricts application of the rule. Further, this rule does not affect leasing of equipment to augment a company's fleet. Leasing, a separate issue, is addressed in WAC 480-70-211.
- 111 **(f) WAC 480-70-396 Billing.** John Lloyd, LeMay Enterprises and Pacific Disposal, suggested the rule be amended to allow companies that issue bimonthly bills to bill for two months in advance, or in lieu thereof, to clarify that the phrase "One-month advanced billing allowed" could be interpreted to mean the current month the bill is issued, plus one additional month in advance. Further, he asked if a billing issued on the first day of a month would be considered as meeting the definition of "current month, plus one additional month in advance." The Commission rejected this suggestion. The Commission does, however, clarify through this order that billing on the first day of a month for that month and the immediately following month does

meet the intent of the phrase “current month, plus one additional month in advance.” [See, paragraph 118].

- 112 CHANGES FROM PROPOSAL: The Commission adopts the proposal with the following changes from the text noticed at WSR #00-23-132.
- 113 (a) Those changes indicated as having been adopted by the Commission and described in paragraphs 66 through 111 of this order.
- 114 (b) **WAC 480-70-376 Service cancellation, company.** Paragraph (2) was amended to add delivery of a notice of impending cancellation of service by placing a written notice on the customer's primary residence door as another acceptable form of notice. This amendment was suggested by the Commission's Consumer Affairs Staff to allow companies greater flexibility in providing notice to consumers.
- 115 (c) **WAC 480-70-386 Complaints.** Paragraph (1)(b)(i) was amended to clarify that extensions of time to report investigation results to the Commission may be granted if requested and warranted. This amendment was suggested by the Commission's Consumer Affairs Staff to codify current practice.
- 116 (d) **WAC 480-70-396 Billing.** The chart contained in the rule was amended to indicate that the delinquency date could not be earlier than the last day of the second month if the company bills each two months, or the last day of the third month if the company bills on a quarterly basis. This amendment was suggested by the Commission's Consumer Affairs Staff to simplify the rule and make it more easily understood.
- 117 (e) **WAC 480-70-411 Establishing credit and deposits.** The first paragraph was amended to delete the sentence that read, “Deposits guarantee payment for the final billing period plus one month.” This amendment was suggested by the Commission's Consumer Affairs Staff because they felt the statement was misleading as deposits do not guarantee payment.
- 118 (f) Typographical errors were corrected.
- 119 STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE: In reviewing the entire record, the Commission determines that Chapter 480-70 WAC should be amended to read as set forth in Appendix A, as rules of the Washington Utilities and Transportation Commission, to take effect pursuant to RCW 34.05.380(2) on the thirty-first day after filing with the code reviser.

ORDER

- 120 THE COMMISSION ORDERS:

121 Chapter 480-70 WAC is amended to read as set forth in Appendix A, as rules of the Washington Utilities and Transportation Commission, to take effect on the thirty-first day after the date of filing with the Code Reviser pursuant to RCW 34.05.380(2). The WAC sections listed in paragraph 8 of this Order are adopted. The WAC sections listed in paragraph 9 of this Order are repealed.

122 This order and the rules set out in Appendix A, after being recorded in the register of the Washington Utilities and Transportation Commission, shall be forwarded to the Code Reviser for filing pursuant to chapters 80.01 and 34.05 RCW and chapter 1-21 WAC.

DATED at Olympia, Washington, this day of March, 2001.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, amended 0, repealed 0; Federal Rules or Standards: New 7, amended 0, repealed 1; or Recently Enacted State Statutes: New 1 amended 0, repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, amended 0, repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, amended 0, repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 100, amended 0, repealed 67.

Number of Sections Adopted using Negotiated Rule Making: New 0, amended 0, repealed 0; Pilot Rule Making: New 0, amended 0, repealed 0; or Other Alternative Rule Making: New 0, amended 0, repealed 0.