

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

DTG ENTERPRISES, INC.,

Respondent.

DOCKET TG-240761

DTG ENTERPRISES, INC.'S
ANSWER TO COMPLAINT AND
AFFIRMATIVE DEFENSES

INTRODUCTION

1 The representatives of DTG Enterprises, Inc. (“DTG”) for purposes of this proceeding
are:

David A. Perez, Lead Attorney (DPerez@perkinscoie.com)
David S. Steele (DSteele@perkinscoie.com)
Stephanie Olson (SOlson@perkinscoie.com)
Jonathan P. Hawley (JHawley@perkinscoie.com)
Perkins Coie LLP
1201 Third Ave, Suite 4900
Seattle, Washington 98101
Telephone: +1.206.359.8000
Facsimile: +1.206.359.9000

2 DTG recognizes that the Washington Utilities and Transportation Commission (the
“Commission”) has important responsibilities regulating solid-waste collection services in the
state. DTG is committed to operational excellence and to full compliance with federal and
state regulations.

3 DTG answers the Complaint of the Commission dated December 18, 2024, as stated
below.

DTG’S ANSWER TO COMPLAINT – 1

ANSWER

4 Paragraph 1 contains legal conclusions or allegations to which no answer is required.

I. OVERVIEW

5 Paragraph 2 contains legal conclusions or allegations to which no answer is required.
If an answer is required, DTG denies that it has violated any state laws or administrative rules
or that it has operated as a solid-waste company for compensation in Washington without the
necessary certificate for such operations.

II. PARTIES

6 Paragraph 3 restates provisions of Washington law and contains legal conclusions to
which no answer is required. If an answer is required, the referenced statutes speak for
themselves and DTG denies the allegations to the extent they mischaracterize the referenced
statutes.

7 Answering paragraph 4, DTG admits that it operates in Washington and currently
holds a common-carrier permit. DTG otherwise denies the allegations in paragraph 4.

III. JURISDICTION

8 Paragraph 5 restates provisions of Washington law and contains legal conclusions to
which no answer is required. If an answer is required, the referenced statutes and regulations
speak for themselves and DTG denies the allegations to the extent they mischaracterize the
referenced statutes and regulations.

IV. FACTUAL ALLEGATIONS

9 Answering paragraph 6, DTG admits it holds a common-carrier permit from the
Commission.

10 DTG has insufficient information to admit or deny the allegations in paragraph 7 and,
on that basis, denies the allegations.

DTG'S ANSWER TO COMPLAINT – 2

11 DTG has insufficient information to admit or deny the allegations in paragraph 8 and,
on that basis, denies the allegations.

12 DTG has insufficient information to admit or deny the allegations in paragraph 9 and,
on that basis, denies the allegations.

13 DTG has insufficient information to admit or deny the allegations in paragraph 10 and,
on that basis, denies the allegations.

14 Answering paragraph 11, DTG admits that, in response to informal data requests
propounded by Commission Staff, DTG stated that, between January 1 and June 30, 2023, it
received at its Snohomish County facilities 63,134 tons collected by DTG from outside
sources; 110,766 tons from non-DTG persons; and 12,998 tons from DTG facilities outside
Snohomish County. DTG further stated that approximately 73,279 tons were transported to
disposal facilities. Except as expressly admitted, DTG denies the allegations in paragraph 11.

15 Answering paragraph 12, DTG admits that it applied for a solid-waste certificate for
the collection and transportation of e-waste in Washington. Except as expressly admitted,
DTG denies the allegations in paragraph 12.

16 Answering paragraph 13, DTG admits that, at the express instruction of Commission
Staff, it applied for a solid-waste certificate to transport residual materials originating from its
material recovery facilities even though it did not (and does not) believe that this activity
required a solid-waste certificate and even though it does not seek to expand its operations to
include the collection and transport of solid waste. Except as expressly admitted, DTG denies
the allegations in paragraph 13.

V. APPLICABLE LAW

17 Paragraph 14 restates provisions of Washington law and contains legal conclusions to
which no answer is required. If an answer is required, the referenced statutes speak for

themselves and DTG denies the allegations to the extent they mischaracterize the referenced statutes.

18 Paragraph 15 restates provisions of Washington law and contains legal conclusions to which no answer is required. If an answer is required, the referenced statutes speak for themselves and DTG denies the allegations to the extent they mischaracterize the referenced statutes.

19 Paragraph 16 restates provisions of Washington law and contains legal conclusions to which no answer is required. If an answer is required, the referenced statute speaks for itself and DTG denies the allegations to the extent they mischaracterize the referenced statute.

20 Paragraph 17 restates provisions of Washington law and contains legal conclusions to which no answer is required. If an answer is required, the referenced statute speaks for itself and DTG denies the allegations to the extent they mischaracterize the referenced statute.

21 Paragraph 18 restates provisions of Washington law and contains legal conclusions to which no answer is required. If an answer is required, the referenced statute speaks for itself and DTG denies the allegations to the extent they mischaracterize the referenced statute.

VI. CAUSE OF ACTION (RCW 81.77.040)

22 DTG incorporates by reference its answers to paragraphs 2 through 18 of the Complaint as set forth above.

23 DTG denies the allegations in paragraph 20.

VII. REQUEST FOR RELIEF

24 Paragraph 21 contains legal conclusions or allegations to which no answer is required. If an answer is required, DTG denies that it violated RCW 81.77.040 and disputes the relief requested by Commission Staff.

25 Answering paragraph 22, DTG admits that it applied for solid-waste certificates
relating to the collection and transportation of e-waste and the transport of residual materials
originating from its material recovery facilities, and that it applied for the latter certificate only
at the instruction of Commission Staff. Paragraph 22 otherwise contains legal conclusions or
allegations to which no answer is required. If an answer is required, DTG denies that it
operated as a solid-waste collection company in Washington without the necessary certificate
during the periods alleged in the Complaint.

26 Paragraph 23 contains legal conclusions or allegations to which no answer is required.
If an answer is required, DTG denies that it violated RCW 81.77.040 and disputes the relief
requested by Commission Staff.

27 Paragraph 24 contains legal conclusions or allegations to which no answer is required.
If an answer is required, DTG denies that any form of relief is warranted.

VIII. PROBABLE CAUSE

28 DTG is not required to respond to paragraph 25. If an answer is required, DTG denies
that probable cause exists to issue the Complaint.

IX. NOTICE OF PREHEARING CONFERENCE

29 DTG is not required to respond to paragraph 26.

30 DTG is not required to respond to paragraph 27.

31 DTG is not required to respond to paragraph 28.

32 DTG is not required to respond to paragraph 29.

33 DTG is not required to respond to paragraph 30.

34 DTG is not required to respond to paragraph 31.

35 DTG is not required to respond to paragraph 32.

36 DTG is not required to respond to paragraph 33.

DTG'S DEFENSES AND AFFIRMATIVE DEFENSES

I. FACTUAL BACKGROUND

37 Maximizing commercial and industrial recycling is a core component of Washington's waste-management paradigm. As the State's recent online waste-management report explains, "[t]he response by our state to the ongoing recycling crisis wasn't to find short-term alternatives to the disposal locations and methods that were closed when China implemented its Blue Sky policy in 2018. It was to create long-term solutions that provide incentives to use and waste less, and responsibly manage what remains."¹ Consistent with this objective, the State lists "[m]aximiz[ing] effectiveness of recycling and organic processing systems" among its current priorities, and its report notes that "[r]ecycling and recovering materials for other beneficial uses reduces harmful emissions, conserves resources, and creates more jobs."² To achieve these aims, state law "encourage[s] local governments] to use the expertise of private industry and to contract with private industry to the fullest extent possible to carry out . . . recycling programs."³

38 Of particular importance to statewide waste-management efforts is commercial, industrial, and construction recycling. As the Washington Department of Ecology has explained, "[w]hile much attention is given to residential waste and materials management issues, the commercial sector . . . generates more waste and recycles more material than the residential sector."⁴ Notably, "[i]n 2021, the commercial sector accounted for 63% of all of the materials collected for recycling. This includes typical recyclable materials like cardboard

¹ *Waste in Washington*, Wash. Dep't of Ecology (Nov. 4, 2024), <https://arcg.is/18KSS5>.

² *Id.*

³ RCW 70A.205.010.

⁴ *The State Solid and Hazardous Waste Plan*, Wash. Dep't of Ecology 38 (Dec. 2021), <https://apps.ecology.wa.gov/publications/documents/2104050.pdf>.

and metals, and also construction and demolition materials like wood that are recycled and recovered for beneficial uses.”⁵ A recent academic study stated similarly that “[r]ecycling construction and demolition waste [] reduces the quantity of waste sent to the landfill, the least environmentally friendly option; it helps avoid the use of natural resources, prevents their rapid depletion, [] saves on the expenses and damages associated with their exploitation,” and “contributes to minimizing the carbon footprint of aggregate production.”⁶ The environmental benefits of recycling commercial and industrial waste have been well documented: The carbon footprint of asphalt can be reduced up to 64% by using recycled asphalt,⁷ and lowered emissions have been associated with recycled drywall,⁸ recycled mattresses,⁹ and recycled cardboard.¹⁰

39 The State’s prioritization of recycling—commercial and industrial recycling in particular—is shared by Snohomish County, which has adopted a waste-management plan that emphasizes sustainability and efficiency and in which recycling plays a central role.¹¹ The

⁵ *Waste in Washington*, *supra* note 1; see also *State Solid and Hazardous Waste Plan*, *supra* note 4, at 38 (reporting that industrial, commercial, and institutional sector “is accountable for 55 percent of disposed wastes and 85 percent of recovered materials”).

⁶ Ioannis Bampanis & Charalampos Vasilatos, *Recycling Concrete to Aggregates. Implications on CO₂ Footprint*, *Materials Proc.* (Nov. 3, 2023), <https://www.mdpi.com/2673-4605/15/1/28>.

⁷ See Diana Eliza Godoi Bizarro et al., *Potential Carbon Footprint Reduction for Reclaimed Asphalt Pavement Innovations: LCA Methodology, Best Available Technology, and Near-Future Reduction Potential*, *Materials Proc.* (Jan. 28, 2021), <https://www.mdpi.com/2071-1050/13/3/1382>.

⁸ See generally *Drywall*, U.S. Env’t Prot. Agency (Mar. 2015), <https://archive.epa.gov/epawaste/conserve/tools/warm/pdfs/Drywall.pdf>.

⁹ See *LCA Independent Review Confirms the Substantial Environmental Benefits of Mattress Recycling*, Mattress Recycling Council (June 2024), <https://mattressrecyclingcouncil.org/lca-report>.

¹⁰ See *Recycling and Climate Protection*, StopWaste, <https://www.stopwaste.org/at-work/recycling-business-waste/recycling-and-climate-protection> (last visited Jan. 6, 2025).

¹¹ See *Comprehensive Solid and Hazardous Waste Management Plan—2021*, Snohomish Cnty. Pub. Works 6, 11 (Jan. 3, 2022), <https://www.snohomishcountywa.gov/DocumentCenter/View/87771/Comprehensive-Solid-and-Hazardous-Waste-Management->

Snohomish County plan stresses the importance of domestic recyclers and the “cultural shift” that has occurred in favor of recycling, with “[m]any items that were formerly disposed of [] now part of countywide diversion programs that recycle or reuse them.”¹² Of particular importance to Snohomish County’s recycling efforts is construction and demolition (“C&D”) materials, which in the past has amounted to more than half of all recyclables collected in the county.¹³ The Snohomish County plan notes that “[m]arkets for some of these materials (concrete, asphalt paving, bricks and ceramics) are generally strong and have the added advantage that most are local markets.”¹⁴ Because Snohomish County’s Solid Waste Division does not have the capacity to recycle C&D recycling or otherwise process specialized materials, such as clean wood, metal, concrete, and hard-to-handle items like mattresses and Styrofoam, it relies on private entities to perform this essential undertaking—including DTG.

40 Since its founding in 1999, DTG has emerged as the foremost recycler of construction, demolition, industrial, and manufacturing waste in the Pacific Northwest, offering a variety of recycling and sustainability services. DTG is the largest C&D recycler in Snohomish County.

41 DTG currently employs over 600 people and operates more than 20 facilities across Washington and Oregon. Among other customers, DTG works with Costco Wholesale Corporation, the Boeing Company, and the Bill & Melinda Gates Foundation. DTG is also the recycling partner for Seattle’s Lumen Field and handles all traditional recycling and compost for the venue.

Plan. Because the Snohomish County plan includes restarting internal pagination, DTG cites to the pagination of the combined PDF.

¹² *Id.* at 7–9.

¹³ *See id.* at 54, 64.

¹⁴ *Id.* at 67.

42 DTG is proud to be a recognized leader in sustainable practices and has received multiple awards recognizing its industry leadership, including the Construction & Demolition Recycling Association’s 2020 Recycler of the Year Award and the Association of Washington Business’s 2021 Washington Leading Environmental Practices Award.

43 In 2024, DTG processed more than 550,000 tons of materials, of which more than 250,000 tons originated from various waste-management companies the Commission regulates. Each month, DTG served around 2,000 unique customers, performing tens of thousands of individual jobs. By the end of last year, 2,200 active construction sites throughout Washington used DTG’s recycling services.

44 These activities make DTG indispensable to Washington’s recycling infrastructure. In fact, Snohomish County—the geographic focal point of the Complaint’s allegations—views DTG as critical to the collection and recycling efforts in its jurisdiction.

45 DTG in no way operates as or seeks to be a solid-waste collection company. Indeed, DTG’s business model is fundamentally different from solid-waste collection companies in Washington. While those companies’ primary source of profit is the hauling of solid waste, DTG’s profits come from the recycling and reclamation of the materials it collects—*not* the transport of those materials at any stage of the recycling process.

46 As part of its recycling operations, DTG accepts asphalt and concrete, cardboard, carpet, drywall, mattresses, plastics, roofing, Styrofoam, wood wastes, and organic materials. These materials are processed at DTG’s material recovery facilities (“MRFs”) using various mechanical and manual systems. Recyclable materials are stored for further onsite processing, while any residual materials generated by DTG’s recycling operations—which is to say, materials that DTG does not recycle—are disposed of offsite.

Residuals are an unavoidable and undesirable byproduct inherent in all recycling operations—commercial and industrial recycling in particular.¹⁵ Every recycling company inevitably processes residuals as part of its recycling processes. But the disposal of residuals is not one of DTG’s desired objectives. That is why DTG employs various policies and strategies to minimize the nonrecyclable materials it collects from customers. For example, DTG offers planning and support services to facilitate its customers’ onsite separation of materials, incentivizes source-separated loads with a discounted per-ton rate, and even penalizes customers who include for collection materials DTG does not recycle. DTG also invests heavily in automated and digital tools to comply with federal, state, and local regulations and to achieve its goal of diverting (recycling and reclaiming) 90% of source-separated loads. In short, DTG is committed to both maximizing the recyclable materials it reclaims and minimizing the residuals generated through its recycling processes. Ideally, DTG would reduce the amount of residuals it must process and dispose of to *zero*.

Any residuals generated by DTG’s recycling processes are transported from its MRFs to disposal facilities. During the time period alleged in the Complaint, DTG contracted with Golden Eagle Freight (“Golden Eagle”) to transport the residuals from its two Snohomish County MRFs for ultimate disposal. In other words, DTG did not transport the 3,389 loads that form the basis of the alleged violations of RCW 81.77.040. Instead, *Golden Eagle* hauled these loads. Thus, the factual predicate at the core of the Complaint is simply wrong.

¹⁵ Indeed, the Washington Administrative Code recognizes this: Whereas recycling facilities and MRFs that handle source-separated recyclable materials are exempted from a solid-waste handling permit only if residuals comprise 5% or less of the total waste received, handlers of comingled brick, cured concrete, and asphaltic materials—which is to say, industrial recyclers—are exempted so long as at least 50% of incoming material is recycled. *See* WAC 173-350-210 tbl.210-A.

49 Moreover, Golden Eagle transported these residuals *not*, as the Complaint implies, to landfills or similar “solid waste facilities,” but instead to a Snohomish County-owned railyard in Everett where Rabanco Company (now Republic Services)—a solid-waste disposal company charged with handling Snohomish County’s waste—loaded the residuals onto freight trains for shipment to a landfill in Klickitat County. The residuals were transported in intermodal containers that could be efficiently loaded onto trains and shipped for permanent disposal. Golden Eagle thus transported the residuals approximately 20 miles to the railyard where Rabanco/Republic then facilitated their transport by rail 250 miles to the Snohomish County’s designated landfill in southern Washington. DTG did nothing wrong.

50 In fact, DTG’s direct transfer of residuals to the Everett railyard was expressly authorized by Snohomish County as part of its Residual Reclamation Waste (“RRW”) program. The RRW program utilizes a “waste-by-rail” system—of which the disposal of DTG’s residuals at issue in the Complaint was a part—that “has proven to be a reliable and environmentally-sound method to manage the County’s wastes.”¹⁶ In 2011, to improve recycling efficiency and establish rules and expectations related to the operation of reclamation facilities, the Snohomish County Council added a new section to its county code. Snohomish County Code 7.35.125(6) specifically allows the direct transportation of residuals from recycling facilities to intermodal facilities like the Everett railyard. Only approved reclamation facilities may utilize the RRW program and bring containers directly to the intermodal yard.

51 DTG is an integral component of the RRW program. As an authorized reclamation facility in Snohomish County and an approved user of its RRW program, DTG is currently

¹⁶ *Comprehensive Solid and Hazardous Waste Management Plan*, *supra* note 11, at 14.

authorized by Snohomish County’s Solid Waste Division to transport residual materials directly from its MRFs to the county’s intermodal facility. DTG is thus not merely in compliance with Snohomish County’s waste-management regime, but a recognized and indispensable part of it, ensuring both that C&D materials are recycled and reclaimed in the county *and* that any residuals are efficiently transported to the county railyard for transportation and disposal by Snohomish County’s designated solid-waste disposal company.

52 The RRW program facilitates the transportation and disposal of residuals in Snohomish County. DTG is thus complying with the county’s program for efficiently disposing of residuals—*not* seeking to haul residuals for compensation. DTG does not offer to its customers, and customers do not contract with DTG for, the transport of solid waste to disposal facilities. Instead, DTG charges its customers a per-ton “tipping fee” for materials recycled at its MRFs. For solid-waste collection, DTG directs its customers to their designated solid-waste collection companies.

53 DTG currently holds a common-carrier permit issued by the Commission. Although it submitted an application for a solid-waste certificate on July 31, 2024, it did so only at the instruction of Commission Staff after DTG proactively reached out to confirm its compliance with applicable rules and regulations—not because DTG believed its recycling operations required a solid-waste certificate or because it sought to expand its activities to include hauling solid waste for compensation. DTG does not desire or seek to be a solid-waste collection company.

54 The amount of residual byproduct DTG generated in this case was far lower than Commission Staff alleges in the Complaint. As stated in the Complaint and reflected in Commission Staff’s investigative report, between January 1 and June 30, 2023, DTG sorted a total of 60,781 loads at its Snohomish County MRFs, amounting to 186,898 tons of materials.

Although DTG ultimately disposed of 73,279 tons of residuals—approximately 39% of the materials processed at the MRFs based on weight—only 3,389 loads of residuals were transported to the Snohomish County intermodal facility. In other words, less than 6% of the loads processed at DTG’s Snohomish County MRFs were disposed of as residuals. Because loads equate to the volume of materials actually processed, this is the proper metric for demonstrating the efficiency of DTG’s operations.

55 As explained by Waste Management of Washington, Inc.—an intervening party in DTG’s solid-waste application proceeding—“[a]ssuming DTG itself generates [residual] waste in the process of sorting and processing recyclable materials it collects from commercial and industrial generators—which it does—“it is not clear that DTG hauls its residuals ‘for compensation’” and thus “that activity does not appear to make DTG a ‘solid waste collection company’ under Washington law” and does not “require a certificate.”¹⁷

II. DEFENSES AND AFFIRMATIVE DEFENSES

56 RCW 81.77.040 provides that “[a] solid waste collection company shall not operate for the hauling of solid waste for compensation without first having obtained from the commission a certificate declaring that public convenience and necessity require such operation.” Under the plain text of the statute, a certificate is needed only if four threshold elements are satisfied: An entity must be (1) “[a] solid waste collection company” that “(2) “operate[s] for the hauling” (3) “of solid waste” (4) “for compensation.”

57 The Complaint fails to state a claim on which relief can be granted because it does not allege each of the required elements under RCW 81.77.040. Specifically, the Complaint fails to allege that DTG either hauled waste or received any compensation for doing so. Without

¹⁷ Protest of Waste Management of Washington, Inc. ¶ 6, *In the Matter of the Appl. of DTG Enters., Inc. for Permanent Solid Waste Carrier Auth.*, Docket TG-240584 (Sept. 26, 2024).

pleading all essential elements of a claim under RCW 81.77.040, the Complaint fails as a matter of law and must be dismissed.

58 Moreover, DTG’s transport of residuals from its MRFs did not during the time period alleged in the Complaint—and does not today—require a solid-waste certificate.

59 First, DTG was not and is not “[a] solid waste collection company” under RCW 81.77.040 for at least two reasons.

60 WAC 480-70-011(1)(g) includes among “collection and hauling operations [that] are not regulated by the commission” “[t]he operations of private carriers who, in their own vehicles, transport solid waste purely as an incidental adjunct to some other established private business owned or operated by them in good faith.” RCW 81.77.010(5) further defines a “[p]rivate carrier” as “a person who, in his or her own vehicle, transports solid waste purely as an incidental adjunct to some other established private business owned or operated by the person in good faith.” Here, DTG’s transport of residual materials from its MRFs to the Snohomish County intermodal facility under the RRW program—the *only* conduct alleged to have violated RCW 81.77.040—was and is an “incidental adjunct” to its recycling operations because it is merely an ancillary byproduct of DTG’s primary activity of processing and sorting materials for recycling and reclamation. Therefore, DTG acted as a private carrier when it transported its residuals to the Snohomish County facility, and these operations are exempt from the Commission’s regulations and RCW 81.77.040’s certificate requirement.

61 WAC 480-70-011(2)(a) further includes among “collection and hauling operations [that] are not regulated by the commission as solid waste” “[t]he operations of a carrier operating under a permit issued by the commission under chapter 81.80 RCW (motor freight) that occasionally transports to a disposal site, but whose primary business is not the collection of solid waste.” DTG operates under a common-carrier permit and does not hold itself out to

the public as a transporter of solid waste. Rather, DTG holds itself out to the public as a *recycling* company—and, indeed, its primary business is recycling and reclamation, not solid-waste collection and hauling for compensation. Therefore, DTG was not acting as “[a] *solid waste* collecting company” when it transported its residuals to the Snohomish County intermodal facility, and it is exempt from RCW 81.77.040’s certificate requirement.

62 *Second*, the activities that allegedly violated RCW 81.77.040 did not constitute “the hauling of solid waste.” During the time period alleged in the Complaint, DTG did not haul residuals from its Snohomish County MRFs to the intermodal facility. Instead, DTG contracted with a third-party hauler, Golden Eagle, to physically transport the 3,389 loads of residuals to the Snohomish County intermodal facilities between January 1 and June 30, 2023. Therefore, DTG did not “operate for the hauling” of materials, solid waste or otherwise, during the time period and at the locations alleged in the Complaint.

63 *Third*, DTG did not haul residuals from its facilities “for compensation.” DTG charges its customers a per-ton “tipping fee” for materials that are received and processed at its MRFs. Customers do not pay DTG to transport and dispose of their solid waste. Accordingly, during the time period alleged in the Complaint, DTG was not separately compensated for the transport of residuals from its MRFs to disposal facilities and did not offer to transport solid waste for compensation. The same is true today.

64 Additionally, any transport of residual materials from DTG’s MRFs to the Everett intermodal railyard is expressly permitted by Snohomish County’s waste-management plan—in particular, Snohomish County Code 7.35.125(6)—which established the RRW program under which authorized recyclers like DTG can transport residuals directly to intermodal facilities for disposal by the county’s designated solid-waste collection company. The RRW program thus facilitates the proper and efficient disposal of residuals. Indeed, DTG’s

operations are a critical component of Snohomish County’s recycling efforts and overall waste-management regime.

65 The Complaint is further barred, in whole or in part, by laches, waiver, and estoppel.

66 Although DTG denies that the Commission should impose any penalties, if the Commission determines that DTG violated RCW 81.77.040, the penalty requested is not appropriate or commensurate under the facts and circumstances of this case. The Commission has explained that “[t]he assessment of penalties for violations of law is meant to be corrective, not retributive. The purpose is to secure compliance by incenting reasonable and appropriate conduct by the offending party.”¹⁸ Here, Commission Staff seeks the maximum penalty of \$1,000 for each alleged violation.¹⁹ Commission Staff’s investigative report accompanying the Complaint, however, demonstrates that the purpose of the proposed \$3,389,000 penalty is retributive in nature, as the majority of the report is devoted to prior, unrelated allegations of wrongdoing and not to the alleged violations of RCW 81.77.040 underlying the Complaint.

67 Moreover, the penalty sought by Commission Staff is not reasonable based on the factors set forth by the Commission in its policy statement governing its enforcement authority, including how serious or harmful the violation is to the public (here, there are no allegations that any members of the public were harmed by the alleged violations, and DTG’s recycling operations—including its disposal of residuals—are an indispensable part of Snohomish County’s recycling infrastructure and expressly permitted by Snohomish County Code 7.35.125(6)); whether the company self-reported the violation and whether the company was cooperative and responsive (here, DTG proactively reached out to Commission Staff to confirm its compliance with applicable rules and regulations); and the number of customers

¹⁸ *MCImetro Access Transmission Servs., Inc. v. U S W. Commc’ns, Inc.*, Docket UT-971063, ¶ 154 (Feb. 10, 1999).

¹⁹ See RCW 81.04.380.

affected (here, the Complaint does not allege how many customers were affected by the alleged violations, let alone that they were negatively affected).²⁰ Because “the facts considered by the Commission underlying the assessment [are] incorrect [and] do not support the penalty assessed,” mitigation or suspension of any penalty is appropriate.²¹

68 Finally, Commission Staff’s request for a cease-and-desist order should be dismissed for the additional reason that the Complaint does not allege (much less substantiate) any ongoing violations of RCW 81.77.040 in need of remediation.

69 DTG reserves the right to amend these defenses and affirmative defenses, and to assert additional defenses and affirmative defenses, as further information is obtained.

Dated: January 7, 2025

PERKINS COIE LLP

s/ David A. Perez

David A. Perez, WSBA No. 43959
DPerez@perkinscoie.com
David S. Steele, WSBA No. 45640
DSteele@perkinscoie.com
Stephanie Olson, WSBA No. 50100
SOlson@perkinscoie.com
Jonathan P. Hawley, WSBA No. 56297
JHawley@perkinscoie.com
1201 Third Ave, Suite 4900
Seattle, Washington 98101
Telephone +1.206.359.8000
Facsimile +1.206.359.9000

Attorneys for DTG Enterprises, Inc.

²⁰ See *In the Matter of the Enf’t Pol’y of the Wash. Utils. & Transp. Comm’n*, Docket A-120061, ¶ 15 (Jan. 7, 2013).

²¹ *Id.* ¶¶ 19–20.