

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

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

DOCKET TG-150233

SETTLEMENT AGREEMENT

**I. INTRODUCTION**

1 This Settlement Agreement (“Settlement”) is entered into by the parties in this case:  
Topsoil Inc. d/b/a United Recycling & Container (“United Recycling” or “Company”) and  
staff of the Washington Utilities and Transportation Commission (“Staff”) (hereinafter  
collectively referred to as “Parties” and individually as a “Party”).

2 This Settlement is a “full settlement” as the term is defined in WAC 480-07-730(1)  
because it is entered into by all Parties, and it resolves all issues raised in the above docket.

**II. AGREED FACTS**

3 Under Washington law, a solid waste collection company may not advertise, solicit,  
offer, or enter into an agreement to haul solid waste for compensation without a  
Commission-issued certificate of convenience and necessity. RCW 81.77.040.

4 Staff began an investigation into United Recycling in January 2015 after receiving an  
informal complaint alleging that the Company was offering services that required a solid  
waste certificate. On January 29, 2015, Staff reviewed the Company’s advertising on its  
website. The website stated, in part: “We provide recycling container service for  
homeowners, construction projects, manufacturing and industrial uses . . . .” The website  
also featured a “Frequently Asked Questions” tab. Under the heading of “Container  
Service,” one question posed: “Can you help load the container at my home/job site?” The  
answer provided stated: “All containers have doors that open at one end, making loading  
SETTLEMENT AGREEMENT - Page 1 of 5

much simpler. We provide drop off and pick up of the container, however all loading must be handled by you.” Another question posed: “How high can I load my container?” The answer stated: “Please only load to the top edge of your container. Also, the weight of the material you load into the container should not exceed 10 tons or 20,000 lbs. (no matter the size of the container) . . . .”

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

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

7           The Parties subsequently engaged in settlement discussions, which resulted in a full settlement. The Parties’ agreement is reflected in this Settlement document, which was entered into voluntarily to resolve all matters that were in dispute. The Parties now wish to  
SETTLEMENT AGREEMENT - Page 2 of 5

present their Settlement for the Commission's consideration and approval. This Settlement is filed in the interest of expediting the orderly disposition of this proceeding. The Parties understand that this Settlement is subject to Commission approval, and hereby respectfully request that the Commission issue an order approving this Settlement in its entirety. The Parties will jointly file supporting documentation, as required by WAC 480-07-740(2).

### **III. AGREEMENT**

8           The Parties agree that United Recycling should be directed to cease and desist from providing all forms of solid waste collection services that require a certificate from the Commission pursuant to RCW 81.04.510. This includes, but is not limited to, delivering containers or drop-boxes to a customer's residence for the customer to fill with solid waste or recyclable materials unless the Company first obtains a solid waste certificate from the Commission.

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

### **IV. GENERAL PROVISIONS**

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

11           The Parties agree to cooperate in submitting this Settlement promptly to the Commission for acceptance. The Parties agree to support adoption of this Settlement in proceedings before the Commission through testimony or briefing. No party to this

Settlement or their agents, employees, consultants, or attorneys will engage in advocacy contrary to the Commission's adoption of this Settlement.

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

13           Nothing in this Settlement shall limit or bar any other entity from pursuing legal remedies against United Recycling or United Recycling's ability to assert defenses to such claims.

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

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

16           The Parties may execute this Settlement in counterparts, and as executed shall constitute one agreement. Copies sent by facsimile or electronic mail are as effective as original documents.

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

18 In the event that the Commission rejects or modifies any portion of this Settlement, each Party reserves the right to withdraw from this Settlement by written notice to the other Parties and the Commission. Written notice must be served within ten (10) business days of the Order rejecting part or all of this Settlement. In such event, no Party will be bound or prejudiced by the terms of this Settlement, and any Party shall be entitled to seek reconsideration of the Order.

Respectfully submitted this 19<sup>th</sup> day of May, 2015.

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION

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

ROBERT W. FERGUSON  
Attorney General



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

Dated: May 19, 2015

\_\_\_\_\_  
DAN MCAULIFFE  
Owner

Dated: \_\_\_\_\_, 2015

DAVIS WRIGHT TREMAINE LLP

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

Dated: \_\_\_\_\_, 2015

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Respectfully submitted this \_\_\_\_\_ day of May, 2015.

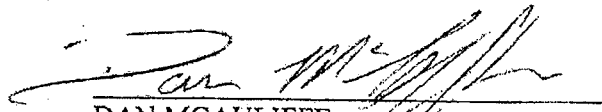
WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION

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Counsel for the Utilities and  
Transportation Commission Staff


Dated: \_\_\_\_\_, 2015

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

  
\_\_\_\_\_  
DAN MCAULIFFE  
Owner

Dated: 5/18/15, 2015

DAVIS, WRIGHT TREMAINE LLP

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

Dated: 5/18/15, 2015