



WASHINGTON REFUSE & RECYCLING ASSOCIATION

January 13, 2017

Mr. Steve King
Executive Director
Washington Utilities and
Transportation Commission
1300 S. Evergreen Park Dr. SW
Olympia, WA 98504-7250

Re: Comments: Docket A-130355

Dear Mr. King:

Please consider the following comments on behalf of the Washington Refuse and Recycling Association (WRRA) regarding the draft procedural rules in Docket A-130355.

Generally speaking, WRRA believes the rules do a commendable job of updating the procedural rules for the 21st century, and clearly address and update the sort of minutiae associated with any set of procedural rules. A successful update of this sort is no small task and the Commission should receive credit where credit is due. However, despite being procedural rules, there are certain issues of real substance present in the rules as well, which WRRA and the solid waste industry believe could and should have been better addressed. As we close on this multiyear process and move closer to the adoption of a final rule, WRRA is disappointed that this proposal does not reflect changes on issues of real substance suggested in multiple sets of comments submitted on behalf of the industry over the last several years. We reference and incorporate those comments here, but reiterate and emphasize several key issues:

WAC 480-07-160 Confidential information under RCW 80.04.095 or RCW 81.77.210:
WRRA actively supported the legislation which resulted in 81.77.210, legislation which was intended to allow regulated solid waste collection companies to mark certain information as confidential in filings. Since that time, the Commission has gone beyond the scope of the original bill in implementing 81.77 confidentiality. The Commission has now ostensibly granted 81.77 confidentiality to *applicants* for certificates, well beyond the original intent of the law. The legislative intent of this bill is clear and WRRA can provide that legislative history if necessary. A portion of this history is present even in this rulemaking docket in the comments opposing confidentiality in 81.77 by entities that later invoked the same confidentiality in certificate applications (See *Comments on behalf of the Construction Demolition Recycling Association (CDRA)* dated 10/31/13). The procedural rules are the ideal place to clarify this misapplication of the original bill and we strongly urge the Commission to adopt a rule in line with the true intent of the law.

WAC 480-07-175 Inspection and production of documents in commission investigations:

This section appears to simply reiterate existing law found in 81.04.070, but it relates back to the confidentiality issues discussed above. The Commission should apply this new section to unregulated applicants seeking certificates for public convenience and necessity under RCW 81.77 to make applicant information available. Currently, companies without certificates under 81.77 are receiving confidentiality under 81.77.210, but are not under the same reciprocal obligations as regulated companies to produce documentation when requested. Currently, unregulated companies are receiving benefits intended only for regulated companies, but do not face the same regulatory obligations. This situation is unintended and presents challenges for the industry in mounting an effective investigation or protest without some way to evaluate the baseline fitness of an applicant.

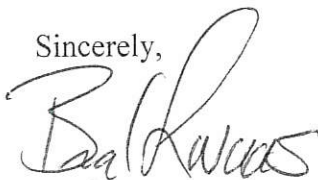
WAC 480-07-310 Ex parte communication: As we stated in previous contacts, WRRRA appreciates the updates to the ex parte contacts rules. However, this rule update is a good opportunity to address longstanding issues with regards to advisory staff in adjudications. Currently, it is possible and not considered an ex parte contact for the same advisory staff to be involved throughout an adjudication and appeal. A petition for administrative review should offer the parties a second look at the record by another impartial body, but this is compromised when a proceeding involves the same staff at each stage of consideration. After a petition for administrative review is filed in an adjudication, the rule should prohibit contacts with advisory staff involved in developing the initial order in the interest of fairness and preserving the true appearance of impartiality.

WRRRA and the solid waste industry have been active participants throughout this rule update and will continue to participate in the future. Embedded in these procedural rules are substantive issues that the Commission can and should address here.

However, we understand that another opportunity to address these issues will arise in the context of the solid waste specific rule update. WRRRA is eager to work with the Commission and dedicate the significant time required when the time comes. WRRRA views the upcoming look at solid waste specific substantive issues as one of the most important issues facing our industry. We hope to work openly with the Commission and engage in a substantial dialogue on a number of outstanding and long-awaited issues.

Please feel free to contact me for any further information or clarification regarding these comments or the legislative history on 81.77 confidentiality.

Sincerely,



Brad Lovaas
Executive Director