

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Docket No. TG-971167

In the Matter of the Petition of
 Recycling and Disposal Systems, Inc.
 for a Declaratory Order

) REPLY BRIEF OF
) RECOMP OF WASHINGTON, INC.

JURISDICTION ISSUE

In their respective opening briefs, RDS and Staff have taken opposite positions with respect to the Commission's authority to regulate the rates charged by SSC for non-residential collection services in within the City.

RDS and Staff both contend that Chapter 81.77 RCW does not allow a city to contract with a collection company for disposal of solid waste without thereby assuming jurisdiction over all aspects of the operations of the collection company involving the waste in question. However, RDS argues that the City in this case did not contract with SSC for disposal of non-residential waste, and therefore the Commission alone has regulatory authority over all aspects of SSC's operations involving non-residential City waste. Staff, on the other hand, acknowledges that the disposal provisions of the City's contract with SSC cover non-residential waste as well as residential waste, and argues from that fact that the Commission has no regulatory authority over either category of waste.

A. RCW 81.77.020, Like RCW 81.77.160(1), Contemplates The Exercise Of Commission Regulatory Authority Over Solid Waste Collection Notwithstanding A City's Exercise Of Dominion Over Solid Waste Disposal, Except To The Extent That A City Has Contracted For Collection.

The positions of both RDS and Staff rest upon a faulty premise--i.e., the proposition that the Commission's regulatory authority over solid waste collection companies under Chapter 81.77 RCW is an "all-or-nothing" proposition. The language of RCW 81.77.020--which all of the parties concede in their briefs is

1 determinative--exempts from Commission regulation only those "operations of [a]
2 solid waste collection company" which fall "under a contract of solid waste disposal
3 with a city or town." Operations of a collection company which are not subject to
4 such a contract are ones subject to Chapter 81.77 RCW and thus within the
5 Commission's regulatory authority.

6 SSC operates "under a contract of solid waste disposal with a city or town" in
7 its *disposal* of non-residential City waste at Recomp's facility, because its contract
8 with the City requires it to dispose of that waste as directed by the City. It does not
9 operate under such a contract, however, in its *collection* of non-residential solid
10 waste which it collects within the City, because its contract with the City is not one
11 requiring it to collect non-residential waste within the City.

12 Where a city and a solid waste collection company contract for disposal of
13 waste but not for its collection, RCW 81.77.020 has precisely the same effect as
14 RCW 81.77.160(1)(a) has where a city by ordinance or by comprehensive solid
15 waste management plan requires a particular disposal facility to be used. In both
16 instance, the Commission continues to regulate the company's collection operations
17 (including the rates it may charge for collection service) while giving effect to the
18 city's decision concerning disposal of its waste. If the Legislature meant for such a
19 result to obtain where use of a facility is required by ordinance or plan--and everyone
20 concedes that it did--why should we assume that the Legislature intended a different
21 result in cases, like this one, in which the city's decision is implemented by
22 contract?¹ There is no reason, logically or as a matter of policy, to distinguish the
23 two situations, and the language employed by the Legislature in RCW 81.77.020
24 does not lend itself to such a distinction.

25 ¹ The constitutional and statutory authority of cities in our state to enter into exclusive contracts for disposal
26 is well-established by statutes and case law which both RDS and Staff completely ignore. RCW 35.21.120;
27 RCW 35.21.152; RCW 35.23.351; *Shaw Disposal, Inc. v. Auburn*, 15 Wn.App. 65, 68, 546 P.2d 1236
28 (1976) Solid waste collection and disposal is, after all, a governmental function, *King County v. Algona*,
101 Wn.2d 789, 794, 681 P.2d 1281 (1984), for which local governments have the principal and ultimate
responsibility. *Weyerhaeuser v. Pierce County*, 124 Wn.2d 26, 873 P.2d 498 (1994); *Citizens For Clean
Air v. Spokane*, 114 Wn.2d 20, 34, 785 P. 2d 447 (1990). Our state's law recognizes, appropriately we
believe, decisions concerning local solid waste disposal are best made by the people's local directly-elected
representatives, who are in the best position to deal with the wide variety of considerations which must be
taken into account (cost being only one of them).

1 Both RDS and Staff suggest that it is somehow inconsistent with the idea of
2 Commission rate regulation to allow a municipality to determine what disposal
3 facility is to be used, and thus what disposal costs are going to be incurred by the
4 regulated collection company. The idea seems to be that if the Commission has the
5 right to determine the rate which a collection company may charge, it necessarily
6 must be the Commission, and only the Commission, which decides which costs the
7 collection company may incur. However, collection companies day in and day out
8 incur costs as a consequence of non-Commission governmental action--federal, state
9 and local taxes, costs of compliance with health, occupational, labor and other
10 requirements, etc. Until now, no one has ever suggested that this "piecemealing" (as
11 Staff characterizes it) of governmental authority over the operations of collection
12 companies prevents the Commission from effectively exercising its rate-regulation
13 authority.

14 While the Legislature has delegated to the Commission important authority
15 over collection companies, it has not delegated to the Commission *exclusive* authority
16 over them. The Commission necessarily exercises its regulatory authority over
17 collection companies in tandem (and, we would hope, in harmony) with the exercise
18 by other governmental entities, both federal, state and local, of authority which has
19 been vested in them.

20 RCW 81.77.020 is a statute which harmonizes the role of the Commission with
21 that of cities in this state. It, like RCW 81.77.160(1), strikes a balance, giving
22 deference to local decisions involving solid waste disposal while preserving the
23 Commission's authority over aspects of a collection company's operations which are
24 subject to a contract with a city. Neither the language nor the historical application
25 of that statute suggest the "all-or-nothing" approach which RDS and Staff have urged
26 upon the Commission.²

27 ² Although we disagree with Staff's contention that RCW 81.77.020 contemplates either complete
28 Commission jurisdiction or none at all, we concede that if Staff were correct in its construction of that
statute, the result in this case necessarily would be that the Commission has no jurisdiction over non-
residential City waste, in which case it would be beyond the Commission's jurisdiction to enter a
declaratory order with respect to the disposition of that portion of the City's non-residential waste which is
collected in drop boxes.

1 B. The Contract Between The City And SSC Is A Contract For Disposal Of Non-
2 Residential City Waste.

3 Among the parties to this proceeding, only one--RDS--contends that the
4 provision of the City's contract with SSC which requires SSC to deliver "all solid
5 waste" which it collects within the City to the City's designated disposal facility does
6 not really mean what it says. Every other party--including, most significantly, the
7 two parties who made that agreement--acknowledge that it requires SSC to deliver to
8 Recomp's facility not only residential solid waste which SSC collects within the City,
9 but non-residential solid waste as well.³

10 RDS bases this contention upon the following *non-sequitur*: The contract
11 between SSC and the City is entitled "Contract For Residential Solid Waste
12 Collection" and the collection services it provides under that contract apply only to

13 ³ Although Staff concedes that the City by its contract with SSC "has effectively exercised jurisdiction over
14 residential and commercial solid waste, pursuant to RCW 81.77.020," it then suggests that SSC in the past
15 may have construed its contract as requiring disposal at Recomp's facility of only residential waste. Staff
16 has attached to and referred to in its brief transcripts of proceedings from a 1989 rate review. The unsworn
17 statements of SSC's counsel during that hearing are not evidence and may not be considered, *Convention*
18 *Center Coalition v. Seattle*, 107 Wn.2d 370, 379, 730 P.2d 636 (1986); *State v. Evans*, 96 Wn.2d 119,
19 124, 634 P.2d 845 (1981); *Drolesbaugh v. Market Operating Corp.*, 174 Wash. 299, 300, 24 P.2d 627
20 (1933); and the sworn testimony of SSC's *outside* accountant to the effect that SSC had looked at disposal
21 options other than Recomp's facility are not probative as to SSC's understanding of its contract with the
22 City. SSC was entirely free in 1989 to deliver the substantial amount of *non-City* waste which it collected
23 within Whatcom County wherever it might choose (the rate adjustment SSC was then requesting was for
24 *both* the City waste and *non-City* waste it collected). Nowhere in his testimony did the accountant indicate
25 that any of the alternatives considered were for City waste; and the fact that SSC may have considered
26 alternatives for non-City waste is irrelevant, since its contract by that point only required it to deliver all
27 City solid waste to the City's designated disposal facility. Exhibit 7, §§ 5.1, 5.2.

28 In any event, if Staff had wished to create a factual issue by the submission of such materials, it should have
done so *before* the Statement Of Facts were worked out by the parties, and while the opportunity existed for
an evidentiary hearing (where objections to evidence might have been heard and ruled on, and rebuttal
evidence might have been offered), not by springing materials on the parties with its opening brief. The
whole idea behind the procedure established by the Administrative Law Judge and the parties in this case
was to prevent anyone from being sandbagged in such a fashion. Staff did not seek or obtain our consent to
the submission of these materials. Recomp objects to their introduction and consideration, and moves that
they and all references to them in Staff's brief(s) be stricken. It most certain does not consent to any
declaratory order which substantially prejudices its rights which is based upon evidence which has been
improperly offered.

1 residential solid waste, which is the only waste subject to mandatory collection under
2 the City's ordinances; *ergo*, the provisions of that contract requiring SSC to deliver
3 "all the City's solid waste" to the City's designated disposal facility, it
4 "unambiguously" does not really mean "all the City's solid waste," but only the
5 City's residential solid waste.

6 It does not follow, of course, that because the parties contracted in terms of
7 *collection* with respect only to residential waste that they either could not or did not
8 contract in terms of *disposal* for all solid waste collected within in the City. They
9 were entirely free to establish collection obligations limited to residential waste,
10 while establishing disposal obligations applicable to all solid waste.

11 That is, in fact, precisely what they did, as the evidence conclusively
12 demonstrates:

13 1. Provisions of the contract dealing with waste collection speak in terms of
14 "residential solid waste." Sections 5.1 and 5.2 unambiguously (and repeatedly)
15 indicate that SSC is to deliver "*all* the City's solid waste" to the City's designated
16 facility.⁴ Had the parties intended SSC's disposal obligations to refer only to
17 residential solid waste, they obviously would not have applied those obligations were
18 to apply to "all the City's solid waste."

19 2. The history of their previous agreements make it clear what was intended.
20 Their 1974 Contract For Residential Refuse Collection And Disposal in explicit terms
21 provided for "complete collection and disposal service for all residential solid waste"
22 and "disposal of *commercial* solid waste generated within the city." Exhibit 1, § 1.
23 The 1983 Modification To Residential Refuse Collection Contract" clearly stated that
24 "in consideration of the City's agreement to raise residential refuse collection rates":

25 For the term of this agreement, it shall be the obligation of the
26 Company [SSC] to exclusive use the Thermal Reduction disposal
27

28

4 RDS urges a construction of Sections 5.1 and 5.2 inconsistent with their literal meaning. RDS draws upon extraneous evidence in an attempt to create an ambiguity, and then in conclusory "I'm-right-and-you're-wrong" fashion announces that its construction is unambiguously the correct one! If a contract provision on its face says one thing, it cannot "unambiguously" mean something different.

1 facility for *all the refuse and solid wastes it collects . . .*, including
2 but not limited to that refuse and solid wastes described by the 1974
3 agreement referenced above [and] *all industrial and commercial*
4 *wastes collected within the City of Bellingham. . . .*

5 Exhibit 3, § 2. Their 1985 Contract For Residential Refuse referred to the fact that
6 the City had “amended its disposal agreement with TRC [Thermal Reduction
7 Company, Recomp’s name at the time] . . . to provide for a long term disposal
8 arrangement for the City’s residential *and commercial refuse*” and that the
9 amendment “affects the City’s agreement with the Company for refuse collection.”
10 Exhibit 6, Recital A. It went on to require SSC to provide “a complete collection
11 service for all residential solid waste in the City,” but to “use the TRC disposal
12 facility for disposal of all refuse and solid wastes the Company collects within the
13 City of Bellingham which is acceptable to TRC for incineration.” Exhibit 6, §§ 1,
14 5.2. The 1985 agreement made it clear that this language was meant to be a
15 simplification and consolidation of the provisions described above. Exhibit 6, Recital
16 C. The simplified language by which the City and SSC provided in 1985 for the
17 collection of residential waste and the disposal of all solid City solid waste is carried
18 forward virtually word-for-word in the current agreement. Exhibit 7, §§ 1, 5.1, 5.2.

19 3. SSC and the City both interpret Sections 5.1 and 5.2 to mean that SSC must
20 deliver all waste which it collects within the City, both commercial and residential, to
21 Recomp as the City’s designated disposal facility. RDS does not deny that this was
22 the parties’ mutual intention, but asserts the incredible proposition that “[t]he intent
23 of the parties is not relevant.”

24 The intent of the parties is, of course, *the* relevant consideration, a contract
25 being “the creature of the parties’ intent.” *Rock Transport Properties Corp.*
26 *Hartford Fire Insurance Co.*, 312 F.Supp. 341, 346 (S.D.N.Y. 1970). The
27 intention of the parties is “the very foundation of all the rules for . . . construction or
28 interpretation” of contracts. 17 Am.Jur.2d Contracts § 350. As our state’s Supreme
Court recently said in *Tanner Electrical Cooperative v. Puget Sound Power &*
Light, 128 Wn.2d 656, 674, 911 P.2d 1301 (1996), a case in which the Commission
was a party:

The touchstone of contract interpretation *is the parties’ intent.*

1 (Emphasis added.) In a dispute over a contract, “[t]he main function of the court is
2 to find out what the parties intended *and give effect to their intentions.*” (Emphasis
3 added.) *Schauerman v. Haag*, 68 Wn.2d 868,, 873, 416 P.2d 88 (1966). As the
4 court put it in *Grant County Constructors v. E. V. Lane Corporation*, 77 Wn.2d
5 110, 120, 459 P.2d 947 (1969):

6 [T]he courts are in nearly universal agreement in construing written
7 contracts that the primary purpose of a judicial interpretation is to
8 ascertain the parties’ intentions, give effect to them *and make the*
9 *parties’ intentions controlling.* [Citations omitted.]

10 (Emphasis added.)

11 Professor Corbin, perhaps the foremost authority on American contract law,
12 has gone so far as to say that even where a contract would mean something different
13 to the rest of the world than it does to the parties, their understanding still controls:

14 Two parties may give the same meaning to the words of their
15 contract, even though neither one had reason (in the light of the
16 usage of other men) to suppose that the other would so understand,
17 and even though no reasonable person put in the shoes of either one
18 of them would so have understood. When such is the case, conflict
19 is unlikely and litigation will probably not occur. In case this
20 improbable litigation does occur, there is no good reason for
21 refusing to enforce the contract.

22 **3 Corbin on Contracts** (1960) § 538.

23 The single case cited by RDS in support of its bizarre proposition that the
24 parties’ intention is irrelevant not too surprisingly does not stand for that proposition
25 at all. In *Lynott v. National Union Fire Insurance Co.*, 123 Wn.2d 678, 871 P.2d
26 146 (1994), the parties to a contract of insurance *disagreed* on the meaning of their
27 contract. In construing the contract in favor of one of the two parties, the court cited
28 the rule that *one party’s* unilateral or subjective purposes and intentions about the
meaning of the contract is not evidence of the parties’ *mutual* intentions. The rule

1 has no applicability to this case, where the contracting parties both agree as to their
2 mutual intentions.

3
4 4. Finally, and importantly, the City and SSC consistently have treated their
5 agreement as requiring SSC to deliver not just residential, but also non-residential,
6 waste collected within the City to Recomp's facility. The City, for its part, entered
7 into an Amended And Restated Solid Waste Disposal Agreement with Recomp in
8 1993 under which it obligated itself throughout the term of that contract (which has
9 another nine years to run) to assure "by ordinance, contract or other effective
10 means" that all solid waste generated within the City is delivered exclusively to
11 Recomp's facility--something which it would have been stupid for the City to do if
12 SSC was free under its contract to deliver non-residential waste anywhere SSC might
13 want. Exhibit 9, § 3.1. When SSC--out of fear caused by the positions taken by
14 Commission Staff--delivered commercial drop boxes to RDS, the City wrote to SSC
15 threatening a declaration of default, something it again obviously would not have
16 done if it understood SSC to be free dispose of it anywhere.

17
18 SSC, for its part, consistently has delivered non-residential City waste to
19 Recomp's facility even when RDS was offering a substantially lower price--
20 something SSC would not have done if SSC considered itself to be free to take that
21 waste anywhere.⁵ The interpretation which the parties have given to their contract by
22 their performance of it is "entitled to great, if not controlling, weight in determining
23 its interpretation." *Fancher v. Landreth*, 51 Wn.2d 297, 301, 317 P.2d 1066
24 (1957); *Thayer v. Brady*, 28 Wn.2d 767, 770, 184 P.2d 50 (1947).

25
26 Sections 5.1 and 5.2 of the agreement between SSC and the City mean
27 precisely what they say--that SSC is required to deliver to the City's designated
28 disposal facility *all* solid waste collected by SSC within the City.

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⁵ Prior to the recent amendment of Recomp's agreement with the City, Recomp was still incinerating the City's residential and non-residential waste at a fee exceeding \$100.00 per ton, Exhibit 9, §§ 6.1, 6.2, whereas RDS was charging \$71.00 to long-haul waste to landfill. Facts, ¶ 27. SSC was delivering non-City solid waste which it collected within Whatcom County to RDS's facility (which it was free to do), but continued to deliver all City waste, both residential and commercial, to Recomp, as its contract with the City required it to do. Facts, ¶ 8.

1 **DROP BOX ISSUE**

2
3 Both Staff and RDS argue that a person depositing garbage in a drop box has
4 the right to tell its collection company who the collection company in turn must
5 purchase disposal service from.

6 Both of them rely upon RCW 36.58.060 as the only authority for this strange
7 proposition.⁶ That statute does not apply, however; and even if it did, it does not
8 stand for the proposition for which it is cited by Staff and RDS. Indeed, if anything,
9 it indicates that drop box users do *not* have the right to dictate to the collection
10 company from which they receive service how the collection company is to dispose
11 of the waste it collects from them.

12 **A. RCW 36.58.060 Only Applies To Solid Waste Within Areas Subject To County
13 Jurisdiction, Not To Solid Waste Within The Jurisdiction Of A City.**

14 RCW 36.58.060 does not apply within cities. It is a statute which was passed
15 as part of a statute dealing with management by counties of solid waste in
16 unincorporated areas administered by county governments. See, Ch. 58, 1975-76
17 2nd Ex. Sess. It is part of Title 36 RCW, the title within the Revised Code of
18 Washington which deals exclusively with county government. Codification of the
19 section as part of Title 36 was a decision not of the Code Reviser, but of the
20 Legislature itself, which directed that it was to be "added to chapter 36.58." Ch. 58,
21 § 3, 1975-76 2nd Ex. Sess.

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⁶ The delivery of waste to a collection company is not a sale of "goods," but of a service. Nobody pays for
garbage--people pay *to get rid of it*. When garbage is collected, the only thing "bought" is the *service* of the
collection company in taking the garbage off the hands of the person from whom it is received. Once a
person's garbage has been collected (whether it is in a drop box or a garbage can), the collection company's
service has been performed. The solid waste collection company then in turn must itself get rid of the
garbage, which it does by having a disposal facility "collect" the waste from it at the disposal facility. Once
again, the only thing "sold" are the services of the recipient of the garbage (in this case, the disposal
facility), and those services (at least as far as the collection company is concerned) consist simply of taking
the stuff off of the collection company's hands, for which it pays the disposal facility. There is no more
reason to think that a person who has received collection service may dictate to the collection company
where it must purchase the "collection" service it in turn requires from a disposal company than it is to
think that he or she has the right to dictate where the collection company must obtain its legal or accounting
services, or long-distance telephone service, or any of the myriad other services which a collection company
needs in order to operate. The very idea is goofy.

1
2 Chapter 36.58 RCW is a chapter which deals only with solid waste disposal
3 within unincorporated county areas, not with solid waste collection or disposal within
4 cities. Statutory provisions dealing with a city's collection and disposal of solid
5 waste are codified in Chapter 35.21 RCW. There is no counterpart to RCW
6 36.58.060 within that chapter or within any other part of Title 35.⁷

7 RCW 36.58.060 has no more applicability to waste collected within the City
8 than do any of the other provisions of Chapter 36.58.

9 B. RCW 36.58.060 Expressly Provides That Ownership Is *Not* Retained By A
10 Person Who Deposits Waste In A Drop Box.

11 Even if RCW 36.58.060 could be construed to apply to waste collected within
12 cities, the statute makes it clear that when waste is placed in a drop box, it no longer
13 is owned by the person putting it there. The proviso which RDS and Staff rely upon
14 states that "the original owner retains ownership of the solid wastes until they arrive
15 at the disposal site or transfer station *or detachable container.*" There can be no
16 serious dispute that a drop box is a "detachable container." Under the express
17 language of RCW 36.58.060, ownership of the waste in such a container passes at
18 the point that the solid waste is placed within that container (or, at a minimum, when
19 the container itself is no longer within the possession and control of the drop box
20 user).

21 C. Even If RCW 36.58.060 Could Be Construed As Conferring "Ownership" Of
22 Solid Waste In SSC's Possession Upon The Original Owner Of That Waste, The
23 Statute Cannot Be Construed To Give The Original Owner The Right To Control
24 SSC's Handling And Disposition Of That Waste.

25 Nowhere in RCW 36.58.060 does it say that a person who retains "ownership"
26 of solid waste in the hands of a collection company has the right to specify who the
27 collection must deal with in disposing of that waste. Such a right, if it is to be found
28

⁷ Where the Legislature intended provisions applicable to solid waste to apply to both counties and cities, it has enacted them as new sections in *both* titles, not just one of them. *Cf.*, RCW 35.21.156 and RCW 36.58.090.

1 in RCW 36.58.060 at all, would have to be *inferred*. The language of the statute is
2 thus at best ambiguous on the point.

3 Application of well-established rules of statutory construction can lead only to
4 one conclusion, we submit: That the right which the statute meant to confer upon the
5 original owner of solid wastes is a right to reclaim valuables inadvertently discarded,
6 not a right to usurp the constitutional and statutory authority of cities to determine by
7 contract where, how and by whom solid waste collected within their boundaries is to
8 be disposed of.

9 1. RCW 36.58.060 Must Be Construed To Give Effect To Its Intended
10 Purpose.

11 It is an elemental rule of statutory construction that statutes are to be construed
12 so as to give effect to their intended purpose. *Addleman v. Board of Prison and*
13 *Parole Terms*, 107 Wn.2d 503, 509, 703 P.2d 1327 (1986); *reconsideration denied*;
14 *Anderson v. O'Brien*, 84 Wn.2d 64, 67, 524 P.2d 390 (1974).

15 What was the intended purpose of RCW 36.58.060? We submit that its
16 purpose can be gleaned from the language of the section itself, which states:

17 Ownership of solid wastes shall be vested in the person or local
18 jurisdiction managing disposal and/or resource recovery facilities
19 upon the arrival of said solid wastes as said facility: PROVIDED,
20 That the original owner retains ownership of the solid wastes until
21 they arrive at the disposal site or transfer station or detachable
22 container, *and the original owner has the right of recovery to any*
23 *valuable items inadvertently discarded*: PROVIDED FURTHER,
24 That *the person or agency providing the collection service shall be*
25 *responsible for the proper handling of the solid wastes from the point*
26 *of collection to the disposal or recovery facility.*

27 The purpose of the section, as indicated by the language of the section itself, was to
28 give person who inadvertently put items of value in the garbage a right to reclaim
them.. It was not meant to confer upon those receiving collection service a right to

1 dictate what it is done with that waste once it is collected. As the second proviso of
2 RCW 36.58.060 itself indicates, that is the responsibility of the collection company.

3 That the section's intended purpose was to give people the right to reclaim
4 valuables from waste is apparent from the legislative history, which includes the
5 following point of inquiry raised during discussion of the statute on the Senate floor:

6 Senator Bottiger: "Would Senator North yield to a question,
7 please? Senator North, in section four there is a proviso that
8 provides that the ownership of the waste material will remain with
9 the original owner until some kind of transfer. Is there anything else
10 in this bill or the intent of the committee that would permit the
11 county to restrict the methods by which an owner might do
reclaiming himself?

12 Senator North: "None at all, Senator Bottiger."

13
14 III Senate Journal, 1975-76 2nd Ex. Sess., at 513. That same discussion nevertheless
15 indicates that it was affected municipalities, not customers of collection companies,
who were to control final disposal:

16
17 Senator Guess: "I suppose I did not ask my question correctly. Can
18 [counties] levy a tax on all of the individual households within the
19 county to defray the cost of picking up the garbage at these sites? I
20 don't see it in the language is the reason I asked. It says that the
21 legislative authority of each county may, by ordinance, provide for
22 the establishment of a system but it does not say in the
unincorporated areas but it does not say that they can establish a tax
for that."

23
24 Senator North: "No, Senator Guess, it is my understanding that the
25 county is not permitted to go into the collection business at all. That
26 is strictly in the hands of the present people who hold the franchises.
27 It is done by a private enterprise system and [counties] are not in the
28 garbage collection [business]. *This is to allow them to control the
final disposal, the end disposing of the garbage, and that is all.*

1
2 III Senate Journal, 1975-76 2nd Ex. Sess., at 513.

3 The legislative history thus indicates that the purpose of RCW 36.58.060 was
4 to permit reclamation of discarded valuables, not to undermine the authority of local
5 governments to determine where, how and by whom solid waste is to be disposed of.

6 2. The Statute Must Be Construed In Harmony With Other Statutes Dealing
7 With Solid Waste Collection And Disposal.

8 It is also an well-established rule of statutory construction that statutes touching
9 upon the same subject are to be interpreted so as to harmonize and give effect to both
10 of them. *Vashon Island Committee For Self-Government v. Washington State*
11 *Boundary Review Board*, 127 Wn.2d 759, 771-72, 903 P.2d 953 (1995); *Martin v.*
12 *Triol*, 121 Wn.2d 135, 148, 847 P.2d 471 (1993); *State ex rel. Royal v. Board of*
13 *Yakima County Commissioners*, 123 Wn.2d 451, 459-60, 869 P.2d 56 (1994).

14 Washington by statute express confers upon cities the right to engage in solid
15 waste collection and disposal, either using their own facilities or by contracting out
16 such service to others. See, authorities cited at n.1 above. When a city does so, it is
17 fulfilling a constitutionally-and statutorily authorized function.

18 If everyone who receives garbage collection service were to have the right to
19 tell the collection company where the waste collected from them is to be delivered--
20 and, as discussed below, that *is* the result which necessarily would flow from
21 acceptance of Staff's and RDS's position--a local government could not effectively
22 manage waste by contract, as the law expressly permits it to do. Thus, even if RCW
23 36.58.060 applied to cities (and as discussed above it does not), the only way to
24 harmonize that statute with those which confer upon cities the right to specify by
25 contract how and where waste generated within the city is to be disposed of is to
26 construe RCW 36.58.060 as giving "owners" of waste the right to reclaim values,
27 not the right to usurp the exercise of by cities of their constitutional and statutory
28 prerogatives.

1 3. RDS And Staff Argue For A Construction Of RCW 36.58.060 Which
2 Would Lead To Strained, Absurd And Unintended Results.

3 Our courts have held that statutes are not to be interpreted so as to lead to
4 absurd or strained results, or unintended consequences. *State v. Mierz*, 127 Wn.2d
5 460, 480, 901 P.2d 286 (1995); *Ski Acres, Inc. v. Kittitas County*, 118 Wn.2d 852,
6 857, 827 P.2d 1000 (1992); *Cherry v. Municipality of Metropolitan Seattle*, 116
7 Wn.2d 794, 802, 808 P.2d 746 (1991). Staff and RDS ask the Commission to
8 interpret RCW 36.58.060 in just such a strained fashion.

9 The “ownership” proviso of RCW 36.58.060, assuming it applies at all to
10 waste deposited in drop boxes, quite obviously is not limited to drop box waste. It
11 applies by its terms to all solid waste, residential and commercial, regardless of the
12 nature of the receptacle from which it is collected. If RCW 36.58.060 is interpreted
13 to give drop box users the right to specify where “their” waste is to be taken, it must
14 also be construed to confer such a right on every other person or business receiving
15 collection service, because the statute does not distinguish between waste collected in
16 drop boxes and any other waste.⁸ Indeed, if any waste is excluded from application
17 of the “ownership” proviso in RCW 36.58.060, it is drop box waste, not other
18 waste.

19 ⁸ Staff suggests that waste which a collection company commingles may be excluded from application of
20 RCW 36.58.060. Nothing in the statute suggests any such distinction, Staff’s proffered rule being one more
21 example of Staff’s “rule-making off the cuff.” The reason solid waste collection companies commingle non-
22 drop box waste is precisely *because* persons they serve do *not* have the right to dictate where waste
23 collected from them is to be taken. If such a right exists, then in order to for persons to exercise that right,
24 it follows that a collection company may not commingle all waste collected within an area in which different
25 customers direct “their” waste to different facilities. It is the construction of RCW 36.58.060 which must
26 determine whether collection companies commingle waste, and not the other way around.

27 In any case, Staff’s proffered distinction, if accepted, would lead to the conclusion that drop boxes in most
28 cases are *not* subject to RCW 36.58.060. Staff assumes, incorrectly, that solid wastes deposited in drop
boxes are not solid wastes of commingled original ownership. In fact, just the opposite is typically the case.
Take drop boxes used by Bellis Faire Mall in Bellingham, for instance. There is no one single “original
owner” of the solid wastes deposited in those drop boxes; there are hundreds if not thousands of different
“original owners” of those solid wastes every day. If the commingling of solid wastes of different “original
owners” precludes the application of RCW 36.58.060, then drop boxes containing the commingled solid
wastes of multiple “original owners” obviously must be excluded. How, precisely, does Staff suppose that
a collection company is supposed to be able to tell whether solid wastes in a drop box “belong” to only one
“original owner” or to multiple “original owners”? By sifting through the stuff for indicia of “ownership”?

1
2 If each person receiving drop box service were to have the right to specify
3 where the waste collected is to be taken, collection companies would have to double
4 or triple up on their routes, or purchase additional collection vehicles, in order to
5 comply with the varying requests of their customers. The result would be
inefficiency and greater overall collection costs.

6 Furthermore, as the WRRRA has noted, the collection company's disposal costs
7 would constantly be varying with changes in the directions received from the
8 thousands of recipients of their collection services. The result--more cost and
9 inefficiency, and a greater regulatory burden on the Commission.

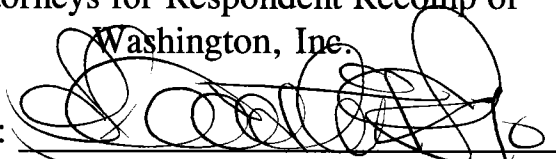
10 The idea that the Legislature intended such a result is quite absurd. It flies in
11 the face of an efficient, economical collection system and is entirely inconsistent with
12 the notion of a coordinated local system of solid waste disposal.

13 **CONCLUSION**

14 The Commission has jurisdiction over the collection, but not the disposal, of
15 non-residential solid waste collected by SSC within the City, and should declare that
16 SSC is to be permitted to include in its collection rate base disposal charges it incurs
17 in fulfilling its contractual obligation to deliver to Recomp all solid waste which SSC
18 collects within the City, including that collected in drop boxes.

19 DATED this 10th day of October, 1997.

20 KARR TUTTLE CAMPBELL,
21 A Professional Service Corporation
22 Attorneys for Respondent Recomp of
23 Washington, Inc.

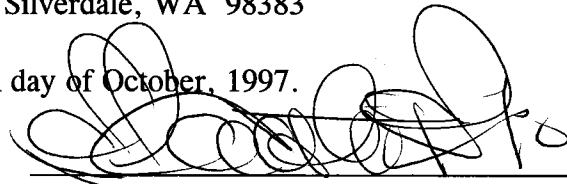
24 By: 
25 James L. Austin, Jr., WSBA #2786

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon petitioner Recycling and Disposal Services, Inc. and upon all of the additional parties and/or other persons in this proceeding listed on the below by depositing a copy of said document in the United States mail, addressed as shown on said list, with first class postage prepaid:

<u>Service Effected Upon:</u>	<u>By Mailing Copy Addressed To:</u>
Recycling and Disposal Services, Inc.	Robert A. Rowland, Esq. Attorney At Law 2602 Westridge Ave. W., Suite M-301 Tacoma, WA 98466
Commission Staff	Mary M. Tennyson, Esq. Ann E. Rendall, Esq. Attorney General of Washington Utilities and Transportation Division P.O. Box 40128 Olympia, WA 98504-0128
Sanitary Service Company, Inc.	Polly McNeil, Esq. Summit Law Group P.L.L.C. 1505 Westlake Avenue N., Suite 300 Seattle, WA 98109
City of Bellingham	Richard N. Little, Esq. Bellingham City Attorney 210 Lottie Street Bellingham, WA 98225
Washington Refuse & Recycling Association	James K. Sells, Esq. Ryan, Sells, Uptegraft & Decker 9657 Levin Rd. N.W., Suite 240 Silverdale, WA 98383

DATED at Seattle, Washington, this 10th day of October, 1997.



JAMES L. AUSTIN, JR.