

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

MCAULIFFE AUTO SALES, INC. D/B/A  
MALTBY CONTAINER & RECYCLING

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In the Matter of the Penalty Assessment  
Against

MCAULIFFE AUTO SALES, INC. D/B/A  
MALTBY CONTAINER & RECYCLING

In the Amount of \$27,100

DOCKETS TG-120308 and  
TG-140512 (*consolidated*)

SETTLEMENT AGREEMENT

1           This Settlement Agreement is entered into by two parties to this proceeding, for the  
purpose of resolving all of the issues raised in the above docket. This settlement is a  
multiparty settlement pursuant to WAC 480-07-730 because the three intervenors in this  
docket are not parties to the Settlement Agreement.

**I. PARTIES**

2           The parties to this Settlement Agreement are McAuliffe Auto Sales, Inc. d/b/a  
Maltby Container & Recycling (“Maltby Container”) and the Staff of the Washington  
Utilities and Transportation Commission (“Staff”) (collectively, “the Parties”).

**II. AGREED FACTS**

3           On June 19, 2012, the Washington Utilities and Transportation Commission  
(Commission) entered Order 02 in Docket TG-120308, Initial Order Approving Settlement  
Agreement; Requiring Respondent to Cease and Desist Operations; Imposing Penalties  
 (“Order 02”). In Order 02, the Commission ordered Maltby Container to cease and desist  
advertising and providing all forms of solid waste collection service; imposed a penalty of

\$1,000, of which \$700 was suspended for a one year period on condition that Maltby Container commit no further violations of RCW 81.77.040; and ordered Staff to conduct a compliance review and inspection of the business operations of Maltby Container in one year and then recommend whether or not the suspended penalty should be imposed. Order 02 became final, pursuant to RCW 80.01.060(3), on July 10, 2012.

4           On July 10, 2013, Staff requested an extension of time until September 10, 2013, from the Commission to complete the compliance review. The Commission granted the extension of time.

5           On July 23, 2013, Staff requested records and information from Maltby Container concerning Maltby Container's hauls to the Anderson Rock and Demolition Pits (Anderson). On July 30, Maltby Container requested an extension from Staff's requested response date of August 13, 2013, to August 30, 2013. Staff agreed to the extension.

6           On August 15 and 28, 2013, counsel for Maltby Container challenged the relevance of Staff's request for records and information. Staff replied on August 26 and, through counsel, on August 30, 2013, noting the Commission's authority under RCW 81.04.070 and RCW 81.04.010(16) to inspect the accounts, books, papers, and documents of any public service company, which includes Maltby Container. On August 30, 2013, Staff received a response from Maltby Container via email to the request for records and information.

7           On September 5, 2013, Staff sent Maltby Container a request for information via email to clarify the company's responses sent August 30th. On September 9, 2013, Staff sought and subsequently obtained from the Commission a further extension, until October 10, 2013, to complete its compliance review. Following a status inquiry from Staff, Maltby Container responded to Staff on September 27, 2013. The response generated additional questions for Staff requiring further investigation. On October 7, 2013, Staff sought and

subsequently obtained from the Commission an extension, until December 31, 2013, to complete the compliance review.

8           On October 11, 2013, Staff sent a request for follow-up information and clarification via email to Maltby Container. The company responded, on October 17, 2013. Maltby Container did not provide any documents but invited Staff to tour the company's intermediate solid waste handling facility. Staff accepted the invitation and, on October 25, 2013, provided Maltby Container with a list of documents and information Staff wanted to review at the time of the site visit. Staff visited Maltby Container's facility on October 29, 2013. Maltby Container did not provide Staff with the requested documents and information. Staff agreed to wait an additional week for the documents and information it had requested. On November 6, 2013, Staff received an email requesting an extension until November 20, 2013, to provide the requested information and documents. Staff also received a letter from counsel for Maltby Container dated November 20, 2013, declining to answer Staff's questions or send Staff any documents but committing to make the records available for Staff's inspection and review at Maltby Container or counsel's office. Maltby Container subsequently provided information and documents, many of which had been redacted, to counsel for Staff via email on December 6, 2013.

9           On December 23, 2013, Staff requested an extension from the Commission to February 1, 2014, to complete its compliance investigation of Maltby Container, based on Maltby Containers' request for additional time to respond to Staff's requests for information. The Commission granted Staff a final extension of time until February 1, 2014.

10           On January 30, 2014, Staff filed its report of its compliance review and inspection of Maltby Container. Staff concluded that Maltby Container had transported 271 loads of material from Maltby Container's facility to Anderson for disposal during the compliance

period, from July 10, 2012, to July 10, 2013, and that these deliveries constituted transportation of solid waste to a disposal site on more than an occasional basis.

11           The Commission issued a penalty in the amount \$27,100, against Maltby Container on April 1, 2014, in Docket TG-140512, for providing solid waste collection services requiring a Commission certificate, in violation of Order 02, when it transported solid waste to a landfill for disposal 271 times. In addition, on April 2, 2014, the Commission issued a Notice of Intent to Impose Suspended Penalty in Docket TG-120308.

12           Maltby Container requested a hearing and, on May 14, 2014, the Commission consolidated Dockets TG-120308 and TG-140512 and set the matter for hearing. On June 13, 2014, Staff and Maltby Container jointly moved to continue the hearing and hold a prehearing conference. The Commission granted this motion and conducted a prehearing conference on July 8, 2014. On July 10, 2014, the Commission served Order 03, Prehearing Conference Order; Notice of Hearing, reflecting the Administrative Law Judge's decisions at the prehearing conference to make the Commission's discovery rules available, enter a protective order, adopt the procedural schedule that the parties had agreed to at the prehearing conference, and grant the motions for intervention of three additional parties, the Washington Refuse and Recycling Association, Waste Management of Washington, Inc., and Lauts, Inc. d/b/a Lautenbach Industries, Inc.

13           On September 25, 2014, Staff filed written testimony. Staff's testimony supported its conclusion from its investigation, which was that Maltby Container had transported 271 loads of material from Maltby Container to Anderson for disposal. Staff acknowledged, however, that Maltby Container had recently stated, in response to Staff discovery, that the loads delivered to Anderson during the compliance period were materials hauled directly from demolition jobs that Maltby Container had conducted itself. Maltby Container had

obtained its general contractor license, which is required to conduct demolition activities, on May 1, 2013, which was near the end of the compliance period.

14 Maltby Container subsequently amended its discovery response and stated that all of the loads that were delivered to Anderson subsequent to Maltby Container's acquisition of its general contractor license on May 1, 2013, were materials resulting from Maltby Container's own demolition work. These hauls accounted for 81 of the deliveries to Anderson during the compliance period.

15 Maltby Container filed testimony on November 6, 2014. In testimony for Maltby Container, Tony McAuliffe, Maltby Container's sole shareholder and governing person, stated that part of Maltby Container's business model includes cleanup services at demolition sites and that it expanded its business to include demolition work once it received its general contractor license on May 1, 2013. Mr. McAuliffe testified that Maltby Container typically transported the materials from its cleanup and demolition services to its intermediate solid waste handling facility or to Anderson, but that the 81 loads transported after May 1, 2013, went to Anderson directly from the job sites.

16 The Parties subsequently engaged in settlement discussions, which resulted in this Settlement Agreement.

### III. AGREEMENT

17 The Parties have reached agreement on the issues raised in the above docket and present their agreement for the Commission's consideration and approval. The Parties therefore adopt the following Settlement Agreement, which the Parties enter into voluntarily, to resolve the matters in dispute between them and to expedite the orderly disposition of this proceeding.

18 Maltby Container admits that it violated RCW 81.77.040 and Order 02 during the period from July 10, 2012, to July 10, 2013, when it transported solid waste approximately 190 times to a landfill for disposal either from its intermediate solid waste handling facility on more than an occasional basis or from demolition job sites where Maltby Container was not the demolition contractor.

19 The Parties agree that Maltby Container will pay \$15,000 in penalties for violating RCW 81.77.040.

20 The Parties agree that Maltby Container will pay the \$700 in suspended penalties for violating Order 02.

21 Maltby Container agrees to cease and desist from providing all forms of solid waste collection services that require a certificate from the Commission under chapter 81.77 RCW.

22 The Parties agree that Maltby Container will pay the penalties, totaling \$15,700, in three installments, according to the following schedule:

1. First installment, of \$5,700, is due January 15, 2015.
2. Second installment, of \$5,000, is due April 15, 2015.
3. Third and final installment, of \$5,000, is due June 15, 2015.

#### IV. GENERAL PROVISIONS

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

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

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

25           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 Agreement (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.

26           Nothing in this Settlement Agreement shall limit or bar any other entity from pursuing legal remedies against Maltby Container or Maltby Container's ability to assert defenses to such claims.

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

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

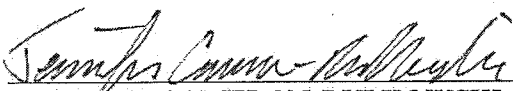
29 The Parties may execute this Settlement Agreement in counterparts and as executed  
shall constitute one agreement. Copies sent by facsimile or by email in PDF format are as  
effective as original documents.

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

31 In the event that the Commission rejects or modifies any portion of this Settlement  
Agreement, each party reserves the right to withdraw from this Settlement Agreement by  
written notice to the other party and the Commission. Written notice must be served within  
ten (10) business days of the Order rejecting part or all of this Settlement Agreement. In  
such event, neither party will be bound or prejudiced by the terms of this Settlement  
Agreement, and either party shall be entitled to seek reconsideration of the Order.

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION

ROBERT W. FERGUSON  
Attorney General

  
JENNIFER CAMERON-RULKOWSKI  
Assistant Attorney General  
Counsel for the Washington Utilities and  
Transportation Commission Staff

Dated: November 24, 2014

McAULIFFE AUTO SALES, INC.  
D/B/A MALTBY CONTAINER &  
RECYCLING

\_\_\_\_\_  
TONY McAULIFFE  
Owner

Dated: November \_\_\_\_\_, 2014

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ALLAN B. BAKALIAN  
Counsel for McAuliffe Auto Sales, Inc.  
d/b/a Maltby Container & Recycling

Dated: November \_\_\_\_\_, 2014



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WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION

ROBERT W. FERGUSON  
Attorney General

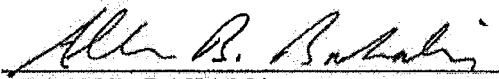
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JENNIFER CAMERON-RULKOWSKI  
Assistant Attorney General  
Counsel for the Washington Utilities and  
Transportation Commission Staff

Dated: November \_\_\_\_\_, 2014

McAULIFFE AUTO SALES, INC.  
D/B/A MALTBY CONTAINER &  
RECYCLING

  
\_\_\_\_\_  
TONY McAULIFFE  
Owner

Dated: November 24, 2014

  
\_\_\_\_\_  
ALLAN B. BAKALIAN  
Counsel for McAuliffe Auto Sales, Inc.  
d/b/a Maltby Container & Recycling

Dated: November 24, 2014