



900 S.W. Fifth Avenue, Suite 2600  
Portland, Oregon 97204  
main 503.224.3380  
fax 503.220.2480  
www.stoel.com

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GEOFFREY B. TICHENOR  
*Direct (503) 294-9389*  
gbtichenor@stoel.com

**VIA E-MAIL (PINGRAM@UTC.WA.GOV)  
AND U.S. FIRST-CLASS MAIL**

Penny Ingram  
Washington Utilities and Transportation Commission  
1300 South Evergreen Park Drive S.W.  
P.O. Box 47250  
Olympia, Washington 98504-7250

**Re: Solid Waste Definitions Rulemaking WAC 480-70, Docket TG-080591**

Dear Penny:

I am writing on Schnitzer Steel Industries Inc.'s behalf concerning the Commission's proposal to revise WAC 480-70, which regulates solid waste collection companies. A leader in Washington's metals recycling industry, Schnitzer is responsible for a significant portion of ferrous and nonferrous metals recycled statewide. Schnitzer has a commercial interest in this proposed rulemaking.

In its Preproposal Statement of Inquiry, the Commission indicated that the rulemaking would focus on: (1) the definitions for "solid waste" in Chapter 480-70; and (2) clarifying the distinction between solid waste transporters and common carriers of property. However, at the July 1, 2008 stakeholder workshop, Commission staff stated they likely would not pursue revisions to WAC 480-70 unless the stakeholders found the existing rules inadequate.

As detailed below, Schnitzer believes Chapter 480-70 adequately defines the term "solid waste" and capably distinguishes solid waste collectors from unregulated haulers collecting "recyclable materials" for "recycling." Thus, from Schnitzer's perspective, the Commission need not revise Chapter 480-70.

Revising WAC 480-70 is Unnecessary to Curb "Sham" Recycling

Per RCW 81.77, the Commission's existing solid waste collection rules, set forth in WAC 480-70, apply to carriers primarily engaged in transporting solid waste for collection and/or disposal. The rules do not regulate entities collecting and hauling recyclable materials. Some stakeholders

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California  
Utah  
Idaho



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have expressed concern about “sham” recyclers, who claim to haul recyclable materials but actually collect or transport solid waste for disposal.

As written, WAC 480-70 provides the Commission with several means of distinguishing haulers requiring a solid waste certificate from unregulated haulers. The factors include:

- (a) The intent of the shipper;
- (b) The intended destination of the shipment;
- (c) The actual destination of the shipment;
- (d) Special handling or conditions placed on the shipment by the shipper and/or receiver;
- (e) The value of the commodity being transported;
- (f) Whether the carrier is primarily engaged in the business of providing solid waste collection or is primarily engaged in the business of providing a service other than the collection of solid waste; and
- (g) Whether the carrier holds itself out to the public as a transporter of solid waste.

WAC 480-70-016(4).

Schnitzer believes these factors adequately enable the Commission to identify regulated haulers. Thus, to allay concern expressed by G-certified solid waste collectors about “sham” recycling, Schnitzer encourages the Commission to more vigorously enforce its existing rules, not to revise them.<sup>1</sup> Such would satisfy the concerns of G-certified solid waste collectors without imposing any additional (and potentially unlawful) regulatory burden on carriers or collectors of recyclable materials.

#### Mixed Solid Waste

At the July 1 workshop, Commission staff introduced the possibility of defining as “solid waste” loads of recyclable materials mixed with a given percentage of solid waste. Schnitzer opposes adopting such a percentage-based, bright-line rule for distinguishing solid waste from recyclable materials. Depending on the exact percentage imposed, such a rule could threaten existing markets for recycling finished goods such as automobiles, which include some components that

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<sup>1</sup> WAC 480-70-221 enables the Commission to pursue a range of sanctions—including cease and desist orders—against solid waste collection companies operating without a certificate.



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are not recycled. Moreover, it would be impractical and unnecessarily burdensome to require haulers or facilities accepting recyclable materials to calculate the exact percentage of solid waste in each load. To the extent haulers of recyclable materials would be regulated by a percentage-based rule (e.g. by being required to calculate the percentage of solid waste in a load), such a rule also could run afoul of the Federal Aviation Administration Authorization Act of 1994, which preempts state regulation of property carriers.

#### Presumptive Recyclers

Multiple stakeholders participating in the July 1 workshop emphasized that the destination of hauled materials factors hugely in determining whether the materials constitute solid waste or recyclables. One stakeholder proposed to amend WAC 480-70 to specify that haulers taking materials to facilities specifically designated as recyclers would be presumptively unregulated. As indicated above, the Commission's existing rules call for consideration of the intended and actual destination of the shipment in identifying solid waste haulers. Accordingly, Schnitzer does not believe revising WAC 480-70 to further address the destination of the shipment is required.

If the Commission adopts this proposal, Schnitzer requests that its metals recycling operations be included on the list of facilities designated as legitimate recycling facilities. Moreover, Schnitzer requests that the Commission avoid imposing new regulatory requirements (e.g. those related to recordkeeping, reporting, etc.) on legitimate recycling facilities selected for inclusion on the list of designated facilities.

#### Washington Department of Ecology Rulemaking as Cause for Delay

Certain stakeholders have encouraged the Commission to coordinate its revision of WAC 480-70 with rules being developed by the Washington Department of Ecology (Ecology) to regulate transporters of recyclable materials and recycling facilities. Schnitzer agrees with these stakeholders. Ecology's proposed rules seek to ensure that recyclables transported by registered haulers end up at recycling facilities, not landfills. Ecology's rules will almost certainly inform the Commission's analysis of WAC 480-70. By revising WAC 480-70 before Ecology finalizes its recycling rules, the Commission could create unintended regulatory uncertainty and burden for transporters of recyclables and recycling facilities. Thus, if the Commission elects to revise WAC 480-70, Schnitzer encourages it to wait until Ecology finalizes its recycling rules to do so.



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Conclusion

As written, WAC 480-70 adequately defines the term “solid waste” and enables the Commission and other interested parties to differentiate between regulated solid waste collection operations and operations exempt from regulation. Consequently, Schnitzer urges the Commission not to pursue its proposed rulemaking to revise WAC 480-70. If the Commission does proceed with this rulemaking, Schnitzer requests that it delay action until Ecology finalizes its rules for transporters of recyclables and recycling facilities. Finally, if this rulemaking goes forward, Schnitzer emphasizes the need to act carefully to avoid harming the state’s metals recycling industry.

Thank you very much for this opportunity to comment on the Commission’s proposal to revise WAC 480-70.

Very truly yours,

Geoffrey B. Tichenor