

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND)	DOCKETS TG-080913
TRANSPORTATION COMMISSION,)	TG-080914 (<i>consolidated</i>)
)	
Complainant,)	ORDER 03
v.)	
)	
POINTS RECYCLING AND REFUSE,)	
LLC,)	
)	
Respondent.)	
.....)	
WHATCOM COUNTY,)	DOCKET TG-081089
)	(<i>consolidated</i>)
Complainant,)	
v.)	ORDER 03
)	
POINTS RECYCLING AND REFUSE,)	
LLC,)	
)	
Respondent.)	
.....)	
RENEÉ COE, SHELLEY)	DOCKET TG-082129
DAMEWOOD, and SHANNON)	(<i>consolidated</i>)
TOMSEN,)	
)	ORDER 01
Complainants,)	
v.)	
)	
POINTS RECYCLING AND REFUSE,)	
LLC, and WHATCOM COUNTY,)	
)	
Respondents.)	
.....)	

NOTICE OF PREHEARING CONFERENCE
(Set for January 20, 2009, at 1:30 p.m.)

ORDER CONSOLIDATING DOCKETS,
ORDER SUSPENDING PROCEDURAL SCHEDULE, AND
NOTICE OF OPPORTUNITY TO RESPOND
(By Friday, January 9, 2009)

INTRODUCTION

- 1 **NATURE OF PROCEEDING.** Docket TG-080913 involves a tariff filing by Points Recycling and Refuse, LLC (Points Recycling or the Company) with the Washington Utilities and Transportation Commission (Commission) to remove curbside recycling from the Company’s tariff. Docket TG-080914 involves a tariff filing by Points Recycling to add the company-specific definition of “Alternative Daily Landfill Cover” to Points Recycling’s tariff.¹ Docket TG-081089 involves the complaint filed by Whatcom County against Points Recycling to revoke the Company’s certification as the designated hauler for Point Roberts, Washington. Docket TG-082129 also involves a complaint (Coe Complaint) against Points Recycling and Whatcom County filed by Reneé Coe, Shelley Damewood, and Shannon Tomsen (Complainants).

- 2 **APPEARANCES.** Dan Gibson, Whatcom County Deputy Prosecutor, Bellingham, Washington, represents Whatcom County. James Sells, Ryan Sells and Uptegraft, Inc., Silverdale, Washington, represents Points. Jonathan Thompson, Assistant Attorney General, Olympia, Washington, represents the Commission’s regulatory Staff (Commission Staff or Staff).² Complainants, Point Roberts, Washington, are appearing pro se.

- 3 **PROCEDURAL HISTORY.** On May 23, 2008, Points Recycling filed two tariff revisions with the Commission that would:
 1. Remove residential curbside recycling from its tariff under Docket TG-080913; and

¹At the December 8, 2008, prehearing conference, Point Recycling indicated that it would be requesting to withdraw its tariff revision request in Docket TG-080914. To date, the Commission has not received a request to withdraw the tariff filing.

² In formal proceedings, such as this, the Commission’s regulatory staff functions as an independent party with the same rights, privileges, and responsibilities as other parties to the proceeding. There is an “*ex parte* wall” separating the Commissioners, the presiding Administrative Law Judge, and the Commissioners’ policy and accounting advisors from all parties, including regulatory staff. *RCW 34.05.455*.

2. Add a definition of “Alternate Daily Landfill Cover” to its tariff under Docket TG-080914.
- 4 On June 11, 2008, the Commission received a letter from Whatcom County asking the Commission to schedule a hearing to determine whether Points Recycling’s operating authority should be revoked for failing to provide curbside recycling as required by the County’s code and Comprehensive Solid Waste Management Plan. The Commission is treating that letter as a formal complaint in Docket TG-081089.
- 5 On June 27, 2008, the Commission issued Order 01 consolidating Dockets TG-080913, TG-080914, and TG-081089 (consolidated dockets).
- 6 The Commission convened a prehearing conference in the consolidated dockets at Olympia, Washington on December 8, 2008, before Administrative Law Judge Marguerite E. Friedlander.
- 7 On November 26, 2008, Complainants filed the Coe Complaint, under Docket TG-082129, against Points Recycling and Whatcom County alleging that the Company has failed to comply with state law and county code and has abused the public trust. Complainants request that the Commission cancel Points Recycling’s operating certificate, G155.
- 8 On December 12, 2008, the Commission issued Order 02 in the consolidated dockets, establishing a procedural schedule.
- 9 On December 22, 2008, Whatcom County filed its Answer to the Coe Complaint. On December 24, 2008, the Commission received a letter from Points Recycling requesting that the Commission dismiss the Coe Complaint in Docket TG-082129 (Points Recycling’s Letter) claiming that many of the issues raised by Complainants are outside of the Commission’s regulatory jurisdiction.

NOTICE OF PREHEARING CONFERENCE

- 10 Reneé Coe, Shelley Damewood, and Shannon Tomsen on November 26, 2008, filed with the Commission a complaint against Points Recycling and Whatcom County. The Complainants: (1) request the Commission cancel Certificate G-155 held by

Point Recycling, (2) prohibit Whatcom County from enacting any law or ordinance exempting Point Roberts from curbside recycling, and (3) impose maximum penalties allowed under all applicable RCW's. Whatcom County filed an answer to the complaint pursuant to WAC 480-07-370(1)(c)(ii) on December 22, 2008, and Points Recycling filed an answer to the complaint on December 24, 2008. A more detailed account of the dispute is reflected in the complaint, which is available for inspection at the Commission's office located at Richard Hemstad Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington, and on the Commission's web site at www.utc.wa.gov/082129. It is appropriate that the matters raised in the pleadings be brought for hearing before the Commission.

- 11 **STATUTORY AUTHORITY:** The Commission has jurisdiction over the Coe Complaint under RCW Title 81, and has legal authority to regulate the rates services, and practices of solid waste collection companies pursuant to RCW 81.77. The statutes that apply to this matter include RCW 80.01, RCW 81.04, and RCW 81.77 relating to rates, including but not limited to RCW 81.01.010, and RCW 81.04.020. The rules that apply to this matter include those within WAC 480-70, relating to solid waste collection companies.
- 12 The Commission will hear the Coe Complaint under the Administrative Procedure Act (APA), particularly Part IV of RCW 34.05 relating to adjudications. The provisions of the APA that relate to this proceeding include, but are not limited to RCW 34.05.413, RCW 34.05.431, RCW 34.05.440, RCW 34.05.443, RCW 34.05.449, RCW 34.05.452, and RCW 34.05.455. The Commission will also follow its procedural rules in WAC 480-07 in this proceeding.
- 13 **THE COMMISSION GIVES NOTICE That the Commission will hold a prehearing conference in the Coe Complaint and other consolidated matters at 1:30 p.m., on January 20, 2009, in the Commission's Hearing Room, Second Floor, Richard Hemstad Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington.** If you are unable to attend the prehearing conference in person, you may attend via the Commission's teleconference bridge line, **360-664-3846**. Please appear on the teleconference bridge five minutes before the conference is scheduled to begin.

- 14 The purpose of the prehearing conference is to consider requests for intervention in the Coe Complaint, resolve scheduling matters in the consolidated dockets, including establishing dates for distributing evidence and workpapers, to, identify the issues in the proceeding and determine other matters to assist the Commission in resolving the matter, as listed in WAC 480-07-430.
- 15 **INTERVENTION:** Persons who wish to intervene in the Coe Complaint should file a petition to intervene in writing at least three business days before the date of the prehearing conference. *See WAC 480-07-355(a)*. The Commission will consider oral petitions to intervene during the conference, but strongly prefers written petitions to intervene. Party representatives must file a notice of appearance with the Commission no later than the business day before the conference. *See WAC 480-07-345(2)*. Any party or witness in need of an interpreter or other assistance should fill out the form attached to this notice and return it to the Commission. The Commission will set the time and place for any evidentiary hearings at the prehearing conference, on the record of a later conference or hearing session, or by later written notice.
- 16 **THE COMMISSION GIVES NOTICE that any party who fails to attend or participate in the prehearing conference set by this Notice, or any other stage of this proceeding, may be held in default under RCW 34.05.440 and WAC 480-07-450.**
- 17 The names and mailing addresses of all known parties and their known representatives are as follows:

Complainants:

Reneé Coe
1986 Cedar Park Drive
Point Roberts, WA 98281
(360) 945-3090

Shelley Damewood
119 Kilarney
Point Roberts, WA 98281

(360) 945-6966

Shannon Tomsen
2125 Whalen Drive
Point Roberts, WA 98281
(360) 945-0207
shannon@uird.com

Respondent: Points Recycling and Refuse, LLC
Arthur Wilkowski
145 Tyee Drive
PMB 1542
Point Roberts, WA 98281-9602
(360) 945-1516
arthur@pointroberts.net

Respondent: Whatcom County Executive's Office
Pete Kremen, County Executive
311 Grand Avenue, Suite 108
Bellingham, WA 98225

Representative: Dan Gibson
Whatcom County Deputy Prosecutor
311 Grand Avenue, Suite 201
Bellingham, WA 98225
(360) 676-6784
dgibson@co.whatcom.wa.us

Commission: Washington Utilities and
Transportation Commission
1300 S. Evergreen Park Drive S.W.
P.O. box 47250
Olympia, WA 98504-7250
(360) 664-1160

Representative: Jonathan Thompson
Assistant Attorney General
1400 S. Evergreen Park Drive S.W.
P.O. Box 40128
Olympia, WA 98504-0128
(360) 664-1225
jthomps@utc.wa.gov

- 18 The Commission will give parties notice of any other procedural phase of the proceeding in writing or on the record, as appropriate during this proceeding.

CONSOLIDATON

- 19 Pursuant to WAC 480-07-320, the Commission may, on its own motion, consolidate two or more proceedings in which the facts or principles of law are related. The Coe Complaint and the consolidated dockets involve common issues of law and fact under RCW 81.77.010, *et seq.* The Commission finds that consolidation of these dockets for purposes of hearing will promote efficient resolution of these issues, and efficient use of the parties' and the Commission's resources.

PROCEDURAL SCHEDULE

- 20 The Commission had established a procedural schedule in Dockets TG-080913, TG-080914, and TG-081089, which imposed a deadline of January 20, 2009 for the filing of direct testimony. Given the consolidation of the Coe Complaint with these three dockets, the Commission finds that the procedural schedule set forth in Order 02 in the consolidated dockets should be suspended pending a prehearing conference in the four consolidated dockets.

NOTICE OF OPPORTUNITY TO RESPOND TO MOTION

- 21 As stated above, the Commission received a letter from Points Recycling on December 24, 2008, requesting that the Commission dismiss the Coe Complaint for

various reasons including the allegation that many of the issues raised in the Coe Complaint are beyond the Commission's jurisdiction.

22 Pursuant to WAC 480-07-395(4), the Commission shall liberally construe pleadings and motions in order to promote justice among the parties. The Commission has construed the Points Recycling's Letter as both an answer to the Coe Complaint and a motion to dismiss under WAC 480-07-380(1)(a).

23 The Commission's rules authorize a respondent to file a response to a motion to dismiss within ten days after service of the motion or at such time as is determined by the Commission.³ As the Complainants are representing themselves and are likely unfamiliar with the Commission's procedural regulations, the Commission finds that the public interest would best be served by allowing Complainants and all parties to the four consolidated dockets a brief extension of the response time. Responses to Points Recycling's Motion to Dismiss from Complainants and interested persons must be filed with the Commission by Friday, January 9, 2009.

24 **THE COMMISSION GIVES NOTICE That responses to Point Recycling's Motion to Dismiss are due by Friday, January 9, 2009.**

ORDER

THE COMMISSION ORDERS:

25 (1) The tariff revisions in Dockets TG-080913 and TG-080914 and the complaint by Whatcom County against Points Recycling and Refuse, LLC in Docket TG-081089 are consolidated with the complaint by Reneé Coe, Shelley Damewood, and Shannon Tomsen against Points Recycling and Refuse, LLC and Whatcom County in Docket TG-082129.

³WAC 480-07-380(1)(c).

- 26 (2) The procedural schedule established in Dockets TG-080913, TG-080914, and TG-081089 in Order 02 is suspended.

Dated at Olympia, Washington, and effective December 31, 2008.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

MARGUERITE E. FRIEDLANDER
Administrative Law Judge