

## **EXHIBIT 1**

**DTG Enterprises, Inc.'s Motion to Suspend or,  
Alternatively, Withdraw Application  
(Docket TG-240584 – Jan. 21, 2025)**

BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Application of  
  
DTG ENTERPRISES, INC., D/B/A  
DTG RECYCLE  
  
for Authority to Operate as a Solid Waste  
Collection Company in Washington.

DOCKET TG-240584  
  
DTG ENTERPRISES, INC.'S  
MOTION TO SUSPEND OR,  
ALTERNATIVELY,  
WITHDRAW APPLICATION

**INTRODUCTION**

1 DTG Enterprises, Inc. (“DTG”) respectfully requests that the Washington Utilities and Transportation Commission (“Commission”) suspend the procedural schedule in this proceeding pursuant to WAC 480-07-375 and -385 pending resolution of Commission Staff’s Complaint in Docket TG-240761 (the “Complaint proceeding”) or, alternatively, allow DTG to withdraw its pending application to operate as a solid-waste collection company (the “Application”) pursuant to WAC 480-07-380(3).

2 DTG is a recycler, not a hauler of solid waste. It submitted the Application only with respect to its disposal of residual materials and only at the instruction of Commission Staff—not because DTG seeks to expand its operations and become a regulated solid-waste hauler. Last month, Commission Staff filed an enforcement action alleging that, during the first half of 2023, DTG hauled solid waste in Snohomish County without a requisite certificate under RCW 81.77.040. Given this claim, the Complaint proceeding might inform whether DTG needs a solid-waste certificate to dispose of residuals generated at its material recovery facilities (“MRFs”). Accordingly, suspending this proceeding (or, alternatively, allowing DTG to withdraw the Application) is the most sensible and efficient path forward because it would ensure that the Commission, DTG, and the other parties do not unnecessarily expend resources litigating a certificate that DTG might ultimately neither want nor need.

DTG’S MOTION TO SUSPEND OR,  
ALTERNATIVELY, WITHDRAW – 1

**Perkins Coie LLP**  
1201 Third Avenue, Suite 4900  
Seattle, WA 98101  
Phone: (206) 259-8000  
Fax: (206) 359-9000

3 Although no party to this proceeding directly opposes suspension, some have suggested that suspension be conditioned on consolidation with the Complaint proceeding or automatic intervention in the Complaint proceeding. Neither is appropriate. Consolidation would not promote judicial economy because, apart from the narrow legal question above, the two proceedings have fundamentally different factual and legal scopes. And granting intervention *carte blanche* is not contemplated by the Commission’s rules; to the contrary, any party seeking to intervene in the Complaint proceeding bears the burden of establishing standing under WAC 480-07-355, and there is no authority allowing that requirement to be circumvented.

4 Ultimately, no party has claimed that suspending this proceeding or allowing withdrawal of the Application would undermine the public interest or administrative needs—the *only* criteria the Commission is obligated to consider under the applicable regulations. Given the efficiencies that would otherwise result from delaying this proceeding, suspension or withdrawal should be granted, and any requests for consolidation or automatic intervention should be denied.

### BACKGROUND

5 DTG is the foremost recycler of construction, demolition, industrial, and manufacturing waste in the Pacific Northwest, “collect[ing] construction and demolition wastes for recycling from various material streams throughout [its] service areas in” Washington.<sup>1</sup> DTG is not a solid-waste collection company and does not offer hauling services to its customers.

6 At times, DTG “us[es] various regional landfills for disposal of residual wastes originating from [its] MRF facilities after sorting and processing recyclable materials.”<sup>2</sup> Given these activities, as explained in its Answer in the Complaint proceeding, DTG “proactively reached out [to Commission Staff] to confirm its compliance with applicable rules and regulations.”<sup>3</sup> Commission Staff instructed DTG to apply for a solid-waste certificate, and DTG accordingly filed the Application on July 31, 2024. DTG seeks a solid-waste certificate *only* because Commission Staff

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<sup>1</sup> Appl. 5.

<sup>2</sup> *Id.*

<sup>3</sup> DTG Enterprises, Inc.’s Answer to Compl. & Affirmative Defenses ¶ 53, *Wash. Utils. & Transp. Comm’n v. DTG Enters., Inc.*, Docket TG-240761 (Jan. 7, 2025).

instructed it do so—“not because DTG believed its recycling operations required a solid-waste certificate or because it sought to expand its activities to include hauling solid waste for compensation.”<sup>4</sup> Indeed, “DTG does not desire or seek to be a solid-waste collection company.”<sup>5</sup>

7 Even though DTG filed the Application as Commission Staff instructed, on December 18, 2024, Commission Staff initiated the Complaint proceeding. Commission Staff alleges that, “[b]etween January 1, 2023, and June 30, 2023, DTG committed 3,389 violations of RCW 81.77.040 when it, without the required certificate, knowingly transported 3,389 loads of residual solid waste from its material recovery facility to Snohomish County solid waste facilities.”<sup>6</sup>

8 Given the Complaint’s sole claim, that proceeding might inform whether DTG needs a solid-waste certificate under RCW 81.77.040 to dispose of residual materials—one of the legal issues underlying this proceeding. Specifically, if the Commission determines in resolving the Complaint that a certificate was *not* needed for that activity, then DTG will no longer seek a solid-waste certificate in this proceeding.

9 However, although the two proceedings share this overlapping legal question, they otherwise have significantly different scopes. For example, in the Application, DTG seeks a solid-waste certificate for *statewide* disposal of residuals on an ongoing basis. By contrast, the Complaint addresses *only* DTG’s activities in Snohomish County and *only* between January 1 and June 30, 2023.

10 DTG proposed suspension to the parties in this proceeding to gauge their positions. Notably, the Public Counsel Unit of the Attorney General’s Office (“Public Counsel”) responded that it does *not* oppose suspension.<sup>7</sup> The positions of the other parties were soon after communicated in a series of responses to the Administrative Law Judge (“ALJ”) following an

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<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> Compl. & Notice of Prehearing Conference ¶ 20, *Wash. Utils. & Transp. Comm’n v. DTG Enters., Inc.*, Docket TG-240761 (Dec. 18, 2024).

<sup>7</sup> Email correspondence from Robert D. Sykes to David S. Steele (Jan. 16, 2025).

inquiry about the pending procedural schedule. In brief, the other parties' positions on suspension as communicated to the ALJ are as follows:

- **Commission Staff** does not oppose suspension provided that this proceeding is consolidated with the Complaint proceeding.<sup>8</sup>
- **Waste Management of Washington, Inc.** does not oppose suspension.<sup>9</sup>
- **Sanitary Service Company, Inc.; Waste Connections of Washington, Inc.; Basin Disposal, Inc.; Bainbridge Disposal, Inc.; Rabanco Ltd.; and Kent-Meridian Disposal Co.** do not oppose suspension provided that this proceeding is consolidated with the Complaint proceeding such that the protestants/intervenors in this proceeding "would be granted the right to participate/intervene in the [Complaint proceeding] should they so elect."<sup>10</sup>
- **Rubatino Refuse Removal, LLC and Torre Refuse Recycling LLC** do not oppose suspension provided that they "be permitted to participate in [the Complaint proceeding] through intervention and/or consolidation of the two actions."<sup>11</sup>
- **Washington Refuse and Recycling Association** does not oppose suspension ("given the potential administrative convenience, resource savings and the potential avoidance of duplicate evidentiary showings") provided that "DTG and Commission Staff stipulate to supporting or not opposing any filed motions to intervene in the . . . Complaint [p]roceeding by any parties to" this proceeding.<sup>12</sup>

## ARGUMENT

### A. **There is a presumption in favor of suspension or withdrawal unless it violates the public interest.**

11 There is a presumption in favor of suspension of Commission proceedings unless it is inconsistent with the public interest or administrative needs: "The commission *will* grant [] a request [for suspension] *unless* it is inconsistent with the public interest or the commission's administrative needs."<sup>13</sup> The Commission applies a similar presumption to applications for withdrawal: "The commission *will* grant [] a motion [to withdraw] when the requested withdrawal is in the public interest."<sup>14</sup>

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<sup>8</sup> Email correspondence from Lisa W. Gafken to Judge Bijan Hughes (Jan. 17, 2025).

<sup>9</sup> Letter from Walker Stanovsky to Judge Bijan Hughes (Jan. 17, 2025).

<sup>10</sup> Letter from David W. Wiley to Judge Bijan Hughes (Jan. 17, 2025).

<sup>11</sup> Letter from Reid G. Johnson to Judge Bijan Hughes (Jan. 17, 2025).

<sup>12</sup> Letter from Rod Whittaker to Judge Bijan Hughes (Jan. 17, 2025).

<sup>13</sup> WAC 480-07-385(2)(b) (emphases added).

<sup>14</sup> WAC 480-07-380(3)(b) (emphasis added).

12           Motions to suspend or withdraw are rarely (if ever) denied; indeed, DTG has yet to find an instance where an analogous motion to suspend or withdraw an application for a solid-waste certificate was denied. This makes sense: A party that seeks a certificate should be allowed to suspend or withdraw that application if it so chooses.

**B.     No party disputes that suspension of this proceeding would serve the public interest and administrative efficiency.**

13           Having solicited the positions of the other parties to this proceeding and reviewed their responses to the ALJ, no party opposes or disputes that suspension would serve the public interest—indeed, Public Counsel, which serves “to represent and appear for the people of the state of Washington,”<sup>15</sup> informed DTG that it does *not* oppose suspension. Nor do the other parties dispute that suspension would serve the interest of administrative efficiency or even directly oppose suspension at all. This disposition not only is consistent with typical motions for suspension and withdrawal (which are rarely opposed), but also underscores that suspension is appropriate here because it will conserve the Commission’s resources and resolve both this and the Complaint proceedings in the most efficient manner possible.

14           Suspending any further action on the Application until the Complaint proceeding is resolved makes sense. If the Commission determines in the Complaint proceeding that DTG did not need a solid-waste certificate to dispose of residuals, then DTG will no longer pursue the Application, since that is the *only* activity for which it seeks a certificate. This would efficiently terminate this proceeding without any further expenditure of the Commission’s or any other party’s resources. Indeed, it makes no sense to expend resources litigating a certificate that might prove unnecessary. In contrast, that same efficiency would not exist if the Application proceeding were resolved before or concurrently with the Complaint proceeding: Whether the Commission decides

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<sup>15</sup> RCW 81.04.500.

to affirmatively grant DTG a solid-waste certificate will not necessarily determine whether DTG violated RCW 81.77.040 as alleged in the Complaint.<sup>16</sup>

15           Additionally, DTG would be prejudiced if it is unable to suspend the Application while the Complaint proceeding is pending. DTG should not be required to litigate a statewide solid-waste certificate—a complicated and time-consuming proceeding, particularly given the number of intervening and protesting parties here—while simultaneously defending itself in the Complaint proceeding where Commission Staff seeks over \$3.3 million in penalties. DTG justifiably needs to focus its resources on the Complaint proceeding. Suspension will not prejudice any party to this proceeding—after all, the other parties *oppose* the Application and do not want DTG to receive a solid-waste certificate—but denying suspension will significantly prejudice DTG’s ability to defend itself in the Complaint proceeding.

16           In short, because suspension would, at worst, merely delay this proceeding—but would, at best, serve to obviate it entirely and conserve the Commission’s resources—suspension is appropriate.<sup>17</sup>

**C.     Suspension should not be conditioned on consolidation or intervention.**

17           Although no party directly opposes suspension, some condition their consent on consolidation with the Complaint proceeding, intervention in the Complaint proceeding, or both. Neither of these additional requests is necessary or appropriate.

18           *First*, some parties seek to consolidate this proceeding with the Complaint proceeding. Though “[t]he commission, in its discretion, may consolidate two or more proceedings in which the facts or principles of law are related,”<sup>18</sup> consolidation would not be appropriate here and, in fact, would be prejudicial to DTG. Although the two proceedings share a related legal question—

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<sup>16</sup> See RCW 81.77.040 (enumerating various factors to be considered when issuing certificates of necessity, none of which is that certificate is otherwise legally required to undertake applicant’s operations).

<sup>17</sup> See *In re Appl. of Freedom 2000, LLC*, Docket TG-081576, Order 01 ¶ 10 (Dec. 9, 2008) (finding good cause to delay application proceeding where pending “complaint proceeding could have a direct impact on [the] application”).

<sup>18</sup> WAC 480-07-320.

which, as discussed above, supports delaying this proceeding in the event that the issue is resolved in a way that obviates DTG's need for the Application—that is the extent of the overlap between the proceedings. Legally, this proceeding and the Complaint proceeding otherwise involve divergent inquiries. The Complaint addresses whether DTG violated RCW 81.77.040; whether the Application should be granted, however, implicates a host of other, unrelated issues.<sup>19</sup> The disconnect between the two proceedings is even more pronounced as a factual matter: The Complaint addresses DTG's past activities in a single county over a period of only six months, whereas the Application seeks a certificate for solid-waste hauling statewide on an ongoing basis. The two proceedings thus have fundamentally different scopes that will in turn lead to different evidentiary requirements, different discovery needs, different motions practices, and different demands on DTG's and the Commission's resources. Accordingly, consolidation will not yield efficiencies in discovery, adjudication, or anything else—the two proceedings are just too different.<sup>20</sup>

19 Commission Staff, for its part, proposes that the proceedings should be consolidated *and then* the Application proceeding be suspended. It is unclear why Commission Staff favors this approach or what value it would add. The purpose of consolidation is to “increas[e] efficiency or judicial economy,”<sup>21</sup> and it is hard to see what efficiencies would be gained by consolidating the Complaint proceeding with a suspended proceeding.<sup>22</sup> And, at any rate, consolidating now is entirely unnecessary until it is determined if the Application proceeding is even necessary.

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<sup>19</sup> See RCW 81.77.040 (“Issuance of the certificate of necessity must be determined on, but not limited to, the following factors: The present service and the cost thereof for the contemplated area to be served; an estimate of the cost of the facilities to be utilized in the plant for solid waste collection and disposal, set out in an affidavit or declaration; a statement of the assets on hand of the person, firm, association, or corporation that will be expended on the purported plant for solid waste collection and disposal, set out in an affidavit or declaration; a statement of prior experience, if any, in such field by the petitioner, set out in an affidavit or declaration; and sentiment in the community contemplated to be served as to the necessity for such a service.”).

<sup>20</sup> Nor would consolidation make sense or yield efficiencies if the Application were withdrawn, as DTG alternatively requests.

<sup>21</sup> *Qwest Corp. v. Level 3 Comm'cns, LLC*, Docket UT-063038, Order 09 ¶ 22 (Feb. 15, 2008).

<sup>22</sup> Indeed, DTG would immediately move to withdraw the Application if this option is pursued, for all the reasons raised in this motion.



Consolidation could be taken later if and when the Application proceeding is *unsuspended*. Commission Staff's proposal for simultaneous consolidation and suspension should thus be rejected out of hand.

20           *Second*, some of the protesting/intervening parties to this proceeding have conditioned their consent on being granted *carte blanche* to intervene in the Complaint proceeding. This is even more inappropriate: Intervention may be granted *only* “if the petitioner has a substantial interest in the subject matter of the hearing or if the petitioner’s participation is in the public interest.”<sup>23</sup> It is hard to imagine what interest the protestors/intervenors here have in events that took place in a single county more than eighteen months ago—especially since some of them do not even operate in Snohomish County. Nor is it clear that either the ALJ or the Commission in *this* proceeding is procedurally able to *sua sponte* allow intervention in *another* proceeding—no matter how much the protesters/intervenors might want to participate in the Complaint proceeding without establishing a basis for doing so.

21           At the very least, any party interested in intervening in the Complaint proceeding must petition for intervention in accordance with WAC 480-07-355(1) so that the propriety of intervention can be assessed by the Commission, Commission Staff, and DTG. A free pass to intervene in a decidedly narrow enforcement proceeding is not contemplated by the Commission’s rules—unsurprisingly, given that it would be highly prejudicial to require DTG to litigate against not only Commission Staff, but also a half-dozen third parties in a proceeding where a penalty of more than \$3.3 million is sought.<sup>24</sup> Suspension of this proceeding should not be made contingent on an unreasonable request that is inconsistent with the Commission’s rules.

**D.       Alternatively, DTG should be allowed to withdraw the Application.**

22           Alternatively, DTG should be permitted to withdraw the Application and thus conserve its resources and avoid any additional prejudice.

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<sup>23</sup> WAC 480-07-355(3).

<sup>24</sup> See Compl. & Notice of Prehearing Conference ¶ 21, *Wash. Utils. & Transp. Comm’n v. DTG Enters., Inc.*, Docket TG-240761 (Dec. 18, 2024).

23 DTG seeks to withdraw the Application because, as discussed above, efficiency and economy favor resolution of the Complaint proceeding first, which might inform whether a solid-waste certificate is legally required. DTG should not be forced to pursue an application that it might ultimately not want or need, especially since DTG would incur expenses related to discovery and other obligations in the process. Practical considerations like this often compel the Commission to grant withdrawal motions when parties no longer wish to pursue their applications.<sup>25</sup> Moreover, no party disputes that withdrawal is in the public interest—nor would they, given that they all oppose the Application.

24 Finally, as discussed above, DTG submitted the Application only at the instruction of Commission Staff, not because DTG believes that its operations require a solid-waste certificate. It would thus be patently unfair to force DTG to pursue an application—and incur associated costs—that it never wanted in the first place, particularly while it is defending itself in the Complaint proceeding.

### CONCLUSION

25 For the foregoing reasons, this proceeding should be suspended pursuant to WAC 480-07-385 pending resolution of the Complaint proceeding (Docket TG-240761). Alternatively, DTG should be allowed to withdraw the Application pursuant to WAC 480-07-380(3).

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<sup>25</sup> See, e.g., *In the Matter of the Appl. of Westside Waste, LLC*, Docket TG-190653, Order 02, ¶ 4 (May 6, 2020) (allowing withdrawal where applicant stated that it “has come to believe that proceeding with this application (or an application for more limited authority) would be very costly and, likely, futile”); *In the Matter of the Appl. of Spartan Env’t LLC*, Docket TG-112025, Order 02, ¶ 5 (May 1, 2012) (allowing withdrawal where applicant “no longer wishe[d] to pursue its application”); *In the Matter of the Appl. of Aqua Express, LLC*, Docket TS-050127, Order 01 ¶ 6 (July 16, 2007) (allowing withdrawal where application had been pending for several years “during which time the Company’s business may have undergone substantial change” such that “[i]t is reasonable and in the public interest to honor the Company’s request to withdraw the application”).

Dated: January 21, 2025

**PERKINS COIE LLP**

*s/ David A. Perez*

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David A. Perez, WSBA No. 43959

DPerez@perkinscoie.com

David S. Steele, WSBA No. 45640

DSteele@perkinscoie.com

Jonathan Hawley, WSBA No. 56297

JHawley@perkinscoie.com

1201 Third Ave, Suite 4900

Seattle, Washington 98101

Telephone +1.206.359.8000

Facsimile +1.206.359.9000

*Attorneys for DTG Enterprises, Inc., d/b/a  
DTG Recycle*