

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

T&T RECOVERY, INC.,

Respondent.

DOCKET NO. TG-041481

**NARRATIVE SUPPORTING
SETTLEMENT AGREEMENT**

I. INTRODUCTION

1 This Narrative Supporting Settlement Agreement (Narrative) is filed pursuant to WAC 480-07-740(2)(a) on behalf of the signatories to the Settlement Agreement filed in this docket. This Narrative summarizes the major terms of the Settlement Agreement, and it is not intended to modify any of the Settlement Agreement terms.

2 The signatories to the Settlement Agreement are T & T Recovery, Inc. (“T&T”), Staff of the Washington Utilities and Transportation Commission (“Staff”),

Washington Refuse and Recycling Association (“WRRRA”), Sanitary Service Company, Inc. (“SSC”), and Island Disposal, Inc. (“Island Disposal”) (collectively, the “Parties”). Although Administrative Law Judge Theodora Mace (ALJ Mace) has not formally ruled on the party status of WRRRA, SSC and Island Disposal, the Parties stipulate that they should be granted party status for purposes of the Settlement Agreement.

3 The Parties do not intend to file documentation supporting the Settlement Agreement in addition to the Settlement Agreement and this Narrative. The Parties are willing to provide additional supporting documents in the event the Commission deems such documents necessary or appropriate.

4 The Parties urge the Commission to schedule proceedings to consider the Settlement Agreement as soon as practicable.

II. UNDERLYING DISPUTE

5 The dispute in this case is whether T&T is illegally collecting solid waste without a certificate of public convenience and necessity as required by RCW 81.77.040. The Commission issued an Order to Show Cause and Notice of Hearing (“Order No. 01”) on September 20, 2004, in which a Show Cause Hearing was set. T&T was to appear and bear the burden of proving that its operations were not

subject to the provisions of RCW 81.77.040. The Show Cause Hearing was rescheduled and ultimately continued pending settlement negotiations.

6 T&T alleges that its operations include transporting mixed and segregated recyclables to recycling facilities. T&T also alleges that its operations include demolition and site clean-up services, and that it legally transports only solid waste generated pursuant to those activities to disposal sites pursuant to RCW 81.77.010(5). The Settlement Agreement provides for data collection to substantiate these allegations.

III. OVERVIEW OF SETTLEMENT AGREEMENT

7 The Settlement Agreement consists of four documents: (1) the Settlement Agreement, (2) Attachment A, (3) Attachment B, and (4) Attachment C. The Settlement Agreement describes the terms of the Parties' agreement. Attachment A contains sample reporting forms T&T is to use during the reporting period of the Settlement Agreement. Attachment B contains a listing of Recyclable and Non-recyclable materials, which T&T will provide its commercial recycling customers. Attachment C contains the service agreement T&T will require from its commercial recycling customers.

8 The Settlement Agreement imposes certain reporting and recordkeeping requirements on T&T. The reporting and recordkeeping requirements, found

under Item 9 of the Settlement Agreement,¹ focus on both T&T's commercial recycling service and its demolition and site clean-up services.

9 The Settlement Agreement also provides reasonable measures that T&T is required to take to prevent collection of solid waste while performing legitimate commercial recycling services. These measures, found under Item 10 of the Settlement Agreement,² focus on methods of minimizing solid waste in recycling containers.

A. Reporting and Recordkeeping Requirements under the Settlement Agreement.

10 The reporting and recordkeeping requirements are designed to provide a clear and comprehensive view of T&T's operations to evaluate whether its operations are subject to RCW 81.77.040. The reporting and recordkeeping requirements are to continue on a monthly basis for 18 complete months after the Commission's approval of the Settlement Agreement.³

11 Under the Settlement Agreement, the term "T&T Generated Solid Waste" means "solid waste that is generated as a result of work by full-time, part-time or temporary employees of T&T and others under the direct supervision of T&T either from demolishing or razing buildings or other man-made structures or from site

¹ Settlement Agreement ¶¶ 9-28.

² Settlement Agreement ¶¶ 29-45.

³ Settlement Agreement ¶ 28.

clean-up operations, (2) loaded by full-time, part-time or temporary employees of T&T and others under the direct supervision of T&T into a container owned or leased by T&T, and (3) transported for disposal in vehicles owned or leased by T&T and operated by full-time, part-time or temporary employees of T&T (and not contractors or subcontractors).”⁴

12 With regard to T&T Generated Solid Waste, T&T will require service contracts from its customers, detailing the nature of and the terms under which service is provided. T&T will retain copies of the service contracts and will provide copies to Staff upon request.⁵

13 T&T will also retain copies of delivery receipts issued for loads of T&T Generated Solid Waste delivered to a disposal facility. The receipts are to reflect the location from which T&T removed the T&T Generated Solid Waste; the applicable category of T&T Solid Waste; and the certified weight of solid waste from each location, unless otherwise clearly stated on the receipt. T&T will provide copies of the retained receipts to the Parties by the 10th of each month for services performed during the prior month.⁶

⁴ Settlement Agreement ¶ 10.

⁵ Settlement Agreement ¶ 11.

⁶ Settlement Agreement ¶¶ 12-16.

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The Settlement Agreement also imposes reporting and recordkeeping requirements regarding T&T's commercial recycling services.⁷ The Settlement Agreement applies to T&T's current commercial recycling operation and will be amended to reflect any material changes to that operation.⁸ The Parties defined the term "Commercial Recycling" to mean collecting both Mixed Recyclables and Segregated Recyclables at the source of generation and delivering the load directly to a recycling facility with no intervening stops at which materials are sorted and reloaded. "Mixed Recyclables" means dry solid waste separated from other solid waste for recycling or reuse, but not sorted by commodity, by the customer at the job site. "Segregated Recyclables" are solid waste separated from other solid waste for recycling or reuse, but is sorted by commodity, by the customer at the job site.⁹

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For each Mixed Recyclables and Segregated Recyclables, T&T will follow certain reporting and recordkeeping requirements under the Settlement Agreement. For Mixed Recyclables, T&T will retain delivery receipts from the recycling facility to document the amount of material delivered. T&T will prepare documentation showing the location from which Mixed Recyclables were removed and the

⁷ Settlement Agreement ¶¶ 17-26.

⁸ Settlement Agreement ¶ 17.

⁹ *Id.*

certified weight removed from each location. T&T will provide copies to the Parties by the 10th of each month for services provided during the prior month.¹⁰

16 For Segregated Recyclables, T&T will retain delivery receipts from the recycling facility to document the quantities of material delivered. T&T will also prepare documentation showing the location from which the Segregated Recyclables were removed and the certified weight of material removed from each location. T&T will provide non-redacted copies to Staff by the 10th of each month for services provided during the prior month. T&T will provide the same information to the Parties with proprietary information redacted. Proprietary information includes the location from which the Segregated Recyclables were removed and the delivery site to which they were delivered.¹¹

17 The Parties agree that Mixed Recyclables are to be delivered to Recovery One, Inc., in Tacoma, unless T&T reports an alternative recycling facility to Staff. The Parties also agree that Segregated Recyclables are to be delivered to County Construction Recyclers, unless T&T reports an alternative recycling facility to Staff.

¹⁰ Settlement Agreement ¶¶ 18-21.

¹⁰ Settlement Agreement ¶¶ 22-25.

18 In addition to reporting and recordkeeping requirements, the Settlement Agreement provides measures to reduce incidents of solid waste in Commercial Recycling containers.

B. Measures to Minimize Incidents of Solid Waste in Recycling Containers under the Settlement Agreement.

19 Under the Settlement, T&T is to label its containers on all four sides to indicate that recyclable materials only are to be placed in the containers, that garbage is to be excluded, and that certain materials are banned.¹² T&T is required to provide each job site supervisor with a brochure identifying acceptable recyclable materials and banned materials.¹³ T&T is also to require a signed document from its customers at the time Commercial Recycling services commences. T&T is to retain copies of the signed documents and provide copies to Staff upon request.¹⁴

20 T&T will periodically monitor its containers while they are in use to ensure that they contain only Mixed or Segregated Recyclables. T&T will record instances in which it finds unacceptable materials in its containers and any action taken to remove such materials. T&T will retain such records and provide copies to Staff upon request.¹⁵

¹² Settlement Agreement ¶ 30.

¹³ Settlement Agreement ¶ 31.

¹⁴ Settlement Agreement ¶ 32.

¹⁵ Settlement Agreement ¶ 33.

21 T&T's drivers will be required to inspect each container at the time of pick-up. T&T must refuse to pick up any container with unacceptable quantities of solid waste or banned materials. Unacceptable quantities of solid waste, under the Settlement Agreement, are quantities exceeding the requirements of Recovery One, Inc., or other recycling facility reported to Staff. Banned materials are those items that would cause Recovery One, Inc., or other recycling facility reported to Staff, to reject a load based on the presence of such materials.¹⁶

22 The Settlement Agreement requires T&T to record instances in which it refuses to pick up a container with objectionable materials and to provide such records to the Parties by the 10th of each month for services provided the prior month.¹⁷ If Recovery One rejects a load from a customer more than once, or if the customer refuses to remove objectionable materials from the container, T&T is required to discontinue service to that customer. T&T is required to keep records of such instances and provide copies to the Parties by the 10th of each month for the prior month.¹⁸ T&T is also required to record instances in which loads are rejected by Recovery One and provide copies of such records to the Parties by the 10th of each month.¹⁹

¹⁶ Settlement Agreement ¶ 34.

¹⁷ Settlement Agreement ¶ 37.

¹⁸ Settlement Agreement ¶ 38.

¹⁹ Settlement Agreement ¶ 39.

23 The Settlement Agreement also addresses enforcement of the terms.

C. Enforcement and Compliance under the Settlement Agreement.

24 The Settlement Agreement requires good faith compliance with the Settlement Agreement terms and addresses how claims of violations should be handled. If Staff, WRRRA, SSC, or Island Disposal become aware of instances in which they believe T&T is violating the terms of the Settlement Agreement, they must notify T&T of the claimed violations. WRRRA, SSC, and Island Disposal must also inform Staff of the claimed violations. T&T must investigate the claim and document any measures taken in response. T&T is required to provide the documentation to Staff by the 10th of each month for the prior month.²⁰

25 The Parties will request that the proceeding be continued until the reporting period is completed and the Parties have evaluated the reports submitted by T&T. After such evaluation has been conducted, Staff will bring a motion to either close the docket or to schedule a Show Cause Hearing. Anytime during the reporting period, Staff may, after consultation with WRRRA, SSC, and Island Disposal, bring a motion to either reschedule a Show Cause Hearing or to request the proceeding be dismissed based on T&T's submissions. No such motion may be made prior to six

²⁰ Settlement Agreement ¶ 44.

months after the Commission approves the Settlement Agreement, unless Staff believes that T&T is willfully violating the Settlement Agreement conditions.²¹

D. Effective Date

26 The effective date of the Settlement Agreement is the date the Commission enters an order fully accepting the Settlement Agreement. If the Commission accepts the Settlement Agreement upon conditions not proposed by the Parties, the effective date is five days after the date of the Commission’s order if no Party files an objection to the conditions. If the Commission accepts the Settlement Agreement upon conditions not proposed by the Parties and a Party files a timely objection to the conditions, the Settlement Agreement is not effective.²²

IV. STATEMENT OF PARTIES’ VIEW ABOUT WHY THE SETTLEMENT SATISFIES THEIR INTERESTS AND THE PUBLIC INTEREST

27 WAC 480-07-740(a) requires this Narrative to include a “statement of parties’ views about why the proposal satisfies both their interests and the public interest.” Each Party has contributed the following separate statements, except the Intervenors have contributed a joint statement.

²⁰ Settlement Agreement ¶ 43.

²¹ Settlement Agreement ¶ 52.

A. Statement by Commission Staff

28 Staff believes the Settlement Agreement proposed by the Parties is a fair and reasonable resolution of the current docket. The Settlement Agreement provides all Parties a degree of confidence that T&T's operations will comply with the applicable Commission statutes and rules on a going-forward basis, and provides mechanisms to address violations of the Settlement Agreement if any arise. The Settlement Agreement also provides T&T with an opportunity to substantiate its position that its operations do not violate chapter 81.77 RCW and that it is not required to obtain a certificate of public convenience and necessity under RCW 81.77.040.

29 The Settlement Agreement advances the public interest because it provides a clear resolution of this docket without the cost and uncertainty often associated with presenting a matter at hearing. It allows for data collection that will provide a more clear view of T&T's operations than would be achieved through litigation.

30 The Settlement Agreement also provides a structure in which T&T and the certificated haulers in Whatcom and Island Counties can communicate with one another when issues arise. Staff believes that structuring the communication among these Parties during the reporting period will build relationships among

them that can be maintained after the reporting period ends. Such relationships will help strengthen the industry.

31 Therefore, Staff recommends the Commission adopt the Settlement Agreement filed in this docket.

B. Statement by T&T

32 In T&T's view, the proposed Settlement Agreement establishes a fair and reasonable resolution to this matter. The terms of the Settlement Agreement permit T&T to fairly and adequately establish that it is not operating in violation of Chapter 81.77 RCW or any other applicable law or rule, and permit T&T to continue its operations both during the term of the Agreement and on a going-forward basis. The Settlement Agreement establishes reasonable communication channels among the parties in the event of any alleged violations of the Agreement, and provides appropriate remedies if alleged violations occur.

33 T&T submits that resolving this matter by settlement advances the public interest by providing resolution to this matter without the time and costs associated with a hearing. The interests of all parties are served by instituting mediated resolutions that resolve the parties' concerns and by providing greater certainty with respect to those resolutions than may have been produced in a contested hearing.

34 T&T therefore recommends that the Commission adopt the Settlement Agreement filed in this docket.

C. Statement by Intervenors SSC, Island Disposal, and WRRRA

35 From the standpoint of Island Disposal, SSC, the proposed settlement establishes what Intervenor Island Disposal believes is an appropriate and efficient protocol for transportation and collection of solid waste materials and properly characterizes various aspects of T&T's ongoing business operations in a way which will likely avoid violations of RCW 81.77.040. Resolving this matter by settlement adds much greater clarity to the outcome and provides appropriate remedies if the Settlement Agreement is abrogated. In the views of Island Disposal, approval of the Settlement Agreement is consistent with the public interest in reducing the time and expense necessary to present a contested case hearing, and assists in assuring compliance in a way that conventional enforcement proceedings do not provide. In other words, it adds much more certainty both to the implementation of and prospective violation of the Settlement Agreement and represents beneficial cost savings for all parties to the proceeding.

V. SUMMARY OF LEGAL POINTS THAT BEAR ON THE SETTLEMENT

36 Chapter 81.77 RCW and chapter 480-70 WAC govern the transportation of solid waste in Washington. Carriers are prohibited from transporting solid waste

without a certificate of public convenience and necessity.²³ Transportation of commercial recycling is exempt from regulation under chapter 81.77 RCW.²⁴ In addition, transportation of solid waste as an incidental adjunct to its primary business activity is likewise exempt from regulation.²⁵ The Settlement Agreement is consistent with chapter 81.77 RCW and chapter 480-70 WAC.

37 Under WAC 480-07-730(1), parties may file a full settlement, which is a settlement entered into by all parties of a proceeding that resolves all issues presented. The Commission has discretion to accept such a settlement, impose conditions on its acceptance, or reject such a settlement.²⁶ The Settlement Agreement filed in this case represents the entire agreement among the Parties. The Parties recommend the Commission accept the Settlement Agreement in its entirety.

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²³ RCW 81.77.040.

²⁴ RCW 81.77.010(8); WAC 480-70-011(2)(b); WAC 480-70-041 (commercial recycling service).

²⁵ RCW 81.77.010(5).

²⁶ WAC 480-07-750.

VI. CONCLUSION

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The Parties strongly recommend the Commission adopt the Settlement Agreement filed in this docket. The Settlement Agreement fully resolves the issues presented in this docket in a manner that is consistent with the public interest.

DATED this 2nd day of March 2005.

T & T Recovery, Inc.

Staff of the Washington Utilities and Transportation Commission

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