

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of Penalty Assessment Against
POINTS RECYCLING & REFUSE, LLC,
in the Amount of \$100

DOCKET NO. TG-061052

DECLARATION OF
SHERI HOYT

SHERI HOYT, under penalty of perjury under the laws of the state of Washington, declares as follows:

1. I am over 18 years of age, a citizen of the United States, a resident of the state of Washington, and competent to be a witness.
2. I am employed by the Washington Utilities and Transportation Commission (Commission) as a Compliance Specialist in the Business Practices Investigations Section. I have been employed at the Commission for over 13 years, holding various positions. As a Compliance Specialist, my responsibilities include conducting investigations regarding the business practices of regulated utility or transportation companies. As part of those duties, I investigate solid waste carriers that may be operating in violation of Commission statute, rule, or tariff.
3. On July 25, 2006, Points Recycling & Refuse, LLC (Points) filed with the Commission an Application for Mitigation of Penalties (Mitigation Application) in Docket No. TG-061052. I have read the Mitigation Application. The company admits the violation, waives a hearing and asks for an administrative decision.
4. This Mitigation Application arises from a Notice of Penalties Incurred and Due for Violations of Laws and Rules issued by the Commission on July 5, 2006, in Docket No. TG-061052. In that Notice, the Commission issued a penalty of \$100 for a violation of Washington Administrative Code 480-70-071, which requires solid waste carriers to file annual reports with the Commission no later than May 1 each year.
5. Before recommending the Commission issue penalties, as part of my job, I conducted an investigation of Points' records. My investigation resulted in an investigation report titled, "Staff Investigation - 2005 Annual Reports." A true and accurate copy of that investigation report is attached to this declaration as Attachment A.
6. I identified the violation in this case from records maintained by the Commission.

Specific Issues Addressed by Points in its Mitigation Application

The company has several issues before Commission Staff that are not being addressed to the company's satisfaction.

7. Points stated in its Mitigation Request that when the Commission finds the time to address the company's problems, it will comply with the Commission. See Attachment B for a copy of the documents received with the company's Mitigation Application.
8. Points Recycling & Refuse, LLC, holds a solid waste certificate issued by the Commission. It cannot pick and choose which rules it will comply with and when it will comply.

Staff Recommendation

9. The Commission should reject Points' Mitigation Application because dissatisfaction with the Commission's actions does not excuse the company from paying the penalty or excuse the company from the requirement of timely filing its annual report.

DATED this 3rd day of August 2006 at Olympia, Washington.

SHERI HOYT

Attachment A

Solid Waste Carriers Staff Investigation - 2005 Annual Reports June 20, 2006

Purpose

The purpose of this investigation is to determine if 20 solid waste carriers¹ are in violation of Washington Administrative Code (WAC) 480-70-071. WAC 480-70-071 requires solid waste carriers to furnish annual reports to the commission no later than May 1 each year.

Background

This investigation was prompted by commission staff's yearly review of annual reports for solid waste carriers certificated in the state of Washington.

On March 8, 2006, the commission mailed 2005 Annual Report forms and 2006 Regulatory Fee packets to solid waste carriers certificated in Washington State. A letter signed by Executive Secretary Carole Washburn instructed companies to file annual reports and pay regulatory fees by May 1, 2006. Further, the letter stated failure to file the annual report or pay the regulatory fees by May 1 would result in a penalty and possible revocation of the company's permit to operate in Washington. Those companies wishing to request an extension to file the annual report were asked to do so prior to May 1, providing a reason for the requested extension².

Investigation

The 20 solid waste carriers listed in attached Appendix A failed to file their annual reports by the May 1 deadline. A review of the commission's Records Management System revealed that none of the solid waste carriers requested an exemption from WAC 480-70-071 to late file their 2005 annual report.

Recommendation:

Penalize the 20 solid waste carriers that filed their 2005 annual report after the May 1 deadline, \$100 each for a violation of WAC 480-70-071.

¹ See Appendix A for a list of the 20 solid waste carriers.

² See Appendix B for a copy of the March 8, 2006, letter sent to solid waste carriers.

Appendix A

	Company Name	Received Yes or No	If yes, Date Received
1.	Bed Rock, Inc.	Yes	May 10, 2006
2.	Blaine-Bay Refuse, Inc.	Yes	May 2, 2006
3.	Consolidated Disposal Services, Inc.	Yes	May 3, 2006
4.	DB Hauling, LLC	No	
5.	Emerald Services, Inc.	No	
6.	Fiorito Enterprises, Inc. & Rabanco Companies	Yes	May 3, 2006
7.	Hearn, William D.	No	
8.	LTI, Inc.	Yes	May 30, 2006
9.	Ludtke-Pacific Trucking, Inc.	Yes	May 2, 2006
10.	Peninsula Sanitation Service, Inc.	Yes	May 2, 2006
11.	Petland Cemetery, Inc.	Yes	May 16, 2006
12.	Points Recycling and Refuse, LLC	No	
13.	Pontius, Robert Vern	No	
14.	Rabanco LTD	Yes	May 3, 2006
15.	Robert L. Nichols	Yes	May 3, 2006
16.	Skamania County Sanitary Service, Inc.	No	
17.	Stericycle of Washington, Inc.	Yes	May 5, 2006
18.	Trashbusters of Washington State, LLC	Yes	May 2, 2006
19.	Waste Paper Services, Inc.	Yes	May 3, 2006
20.	West Waste & Recycling, Inc.	Yes	June 2, 2006

Appendix B



STATE OF WASHINGTON

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

1300 S. Evergreen Park Dr. S.W., P.O. Box 47250 • Olympia, Washington 98504-7250
(360) 664-1160 • TTY (360) 586-8203

March 8, 2006

Subject: Your Solid Waste Annual Report and Regulatory Fees are Due May 1

State law requires you to file an annual report and pay regulatory fees to the Washington Utilities and Transportation Commission.

What is required of me?

By May 1, you must:

- Complete and file the enclosed 2005 annual report form
- Pay your 2006 regulatory fees

Failure to file your annual report or pay regulatory fees by May 1 will result in a penalty and possible cancellation of your permit to operate in Washington. This is the only notice you will receive from the commission.

What happens if I do not pay my regulatory fees by May 1?

If regulatory fees are not paid by May 1, you will incur:

- a 2 percent penalty on the amount due; and
- a 1 percent monthly interest charge on the unpaid balance.

Can I request an extension of time if I am unable to file the annual report by May 1?

Yes, you must provide the request in writing, including a valid reason for the extension by May 1. We will notify you when your request is approved or denied. You will still be liable for penalty and interest payments if you fail to pay your regulatory fees by May 1. If you are late filing your annual report or fail to file, you could incur additional penalties up to \$100 a day.

Where do I mail the completed annual report form and regulatory fee payment?

Washington Utilities and Transportation Commission
PO Box 47250
Olympia, WA 98504-7250



March 8, 2006

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Where can I obtain an electronic version of the annual report?

Forms are available on our website at www.wutc.wa.gov. Locate "Quick Links" then select "2005 annual reports".

Who do I contact if I have questions?

You may call 360-664-1201 or e-mail us at: annualreports@wutc.wa.gov. If you need this information in an alternate format, please call 360-664-1133. TTY Toll Free phone number is 1-800-416-5289 or 360-586-8203.

Sincerely,



Carole J. Washburn
Executive Secretary

Enclosures

Attachment B

Point Recycling and Refuse

P.M.B. 1542, 145 Tye Drive, Point Roberts, WA 98281
Business Phone: (360) 945-1516

July 24, 2006

Eugene Eckhardt
Assistant Director for Transportation and Water
Washington Utilities and Transportation Commission
PO Box 47250
Olympia, WA 98504-47250

RECEIVED
RECORDS SECTION
05 JUL 25 AM 11:08
UTILITY TRAFFIC
COMMUNICATIONS SECTION

RE: Point Recycling and Refuse Company's curbside recycling program

Dear Mr. Eckhardt:

I have received your letter dated July 20th, 2006. You have informed me that Commission Staff does not comment on the "value" of any county programs.

You are mistaken in your conclusions. In my review of the pertinent RCWs which I have attached, it is very clear that the State Legislature designated the WUTC as the financial oversight organization for County mandated recycling programs. The intent of the Legislature was that recycling programs be designed to meet the needs of each specific community and be economically feasible and reasonable. The WUTC is required to ensure these goals.

The Commission has consistently failed these mandates in regards to Point Roberts. The Commission Staff have reviewed several versions of the County Solid Waste Management Plan without specifically looking at the financial impacts on my customers. The Commission Staff have twice audited this company and auditors have been unwilling to determine the viability of the recycling program. In 1990, I expressed serious concerns about this system design and could not get reasonable evaluation from Staff. At this time, I am requesting a feasibility review, and since under RCW 81.77.030, the Commission controls and regulates every aspect of my Company, when I say that there is a problem, the Commission must listen and take action.

This is not a situation where I will tolerate being punted back and forth between the WUTC and the County.

This system is an economic model, in order to achieve optimum regulated rates and reasonable levels of service, the system must be actually designed. The current unreasonable design is destined for failure and collapse.

I understand my job of serving this community and take it quite seriously. There are problems here that, since I do not control the system design, require the full participation of the Commission and the County.

I expect the Commission Staff to actually look at the economics of this small system and then communicate to the County, that there are concerns and potential problems which need to be addressed.

Sincerely,

A handwritten signature in cursive script, appearing to read "Arthur".

Arthur Wilkowski, Owner/Operator

Cc: Penni Lemperes, Whatcom County Solid Waste Specialist

RCW 70.95.010

Legislative finding – Priorities – Goals.

The legislature finds:

(3) Considerations of natural resource limitations, energy shortages, economics and the environment make necessary the development and implementation of solid waste recovery and/or recycling plans and programs.

(b) It is the responsibility of state, county, and city governments to provide for a waste management infrastructure to fully implement waste reduction and source separation strategies and to process and dispose of remaining wastes in a manner that is environmentally safe and economically sound. It is further the responsibility of state, county, and city governments to monitor the cost-effectiveness and environmental safety of combusting separated waste, processing mixed municipal solid waste, and recycling programs.

(c) It is the responsibility of county and city governments to assume primary responsibility for solid waste management and to develop and implement aggressive and effective waste reduction and source separation strategies.

(d) It is the responsibility of state government to ensure that local governments are providing adequate source reduction and separation opportunities and incentives to all, including persons in both rural and urban areas, and nonresidential waste generators such as commercial, industrial, and institutional entities, recognizing the need to provide flexibility to accommodate differing population densities, distances to and availability of recycling markets, and collection and disposal costs in each community; and to provide county and city governments with adequate technical resources to accomplish this responsibility.

(7) Environmental and economic considerations in solving the state's solid waste management problems requires strong consideration by local governments of regional solutions and intergovernmental cooperation.

(11) Steps should be taken to make recycling at least as affordable and convenient to the ratepayer as mixed waste disposal.

RCW 70.95.090

County and city comprehensive solid waste management plans – Contents.

Each county and city comprehensive solid waste management plan shall include the following:

(1) A detailed inventory and description of all existing solid waste handling facilities including an inventory of any deficiencies in meeting current solid waste handling needs.

(2) The estimated long-range needs for solid waste handling facilities projected twenty years into the future.

(3) A program for the orderly development of solid waste handling facilities in a manner consistent with the plans for the entire county which shall:

(c) Contain a six year construction and capital acquisition program for solid waste handling facilities; and

(d) Contain a plan for financing both capital costs and operational expenditures of the proposed solid waste management system.

(5) A current inventory and description of solid waste collection needs and operations within each respective jurisdiction which shall include:

(a) Any franchise for solid waste collection granted by the utilities and transportation commission in the respective jurisdictions including the name of the holder of the franchise and the address of his or her place of business and the area covered by the franchise;

(c) The population density of each area serviced by a city operation or by a franchised operation within the respective jurisdictions;

(d) The projected solid waste collection needs for the respective jurisdictions for the next six years.

(6) A comprehensive waste reduction and recycling element that, in accordance with the priorities established in RCW 70.95.010, provides programs that (a) reduce the amount of waste generated, (b) provide incentives and mechanisms for source separation, and (c) establish recycling opportunities for the source separated waste.

(b) Source separation strategies, including:

(i) Programs for the collection of source separated materials from residences in urban and rural areas. In urban areas, these programs shall include collection of source separated recyclable materials from single and multiple family residences, unless the department approves an alternative program, according to the criteria in the planning guidelines. **Such criteria shall include:** Anticipated recovery rates and **levels of public participation**, availability of environmentally sound disposal capacity, access to markets for recyclable materials, **unreasonable cost impacts on the ratepayer over the six-year planning period**, utilization of environmentally sound waste reduction and recycling technologies, and other factors as appropriate. In rural areas, these programs shall include but not be limited to drop-off boxes, buy-back centers, or a combination of both, at each solid waste transfer, processing, or disposal site, or at locations convenient to the residents of the county. The drop-off boxes and buy-back centers may be owned or operated by public, nonprofit, or private persons;

(8) An assessment of the plan's impact on the costs of solid waste collection. The assessment shall be prepared in conformance with guidelines established by the utilities and transportation commission. The commission shall cooperate with the Washington state association of counties and the association of Washington cities in establishing such guidelines.

RCW 70.95.092

County and city comprehensive solid waste management plans – Levels of service, reduction and recycling.

Levels of service shall be defined in the waste reduction and recycling element of each local comprehensive solid waste management plan and shall include the services set forth in RCW 70.95.090. In determining which service level is provided to residential and nonresidential waste generators in each community, counties and cities shall develop clear criteria for designating areas as urban or rural. In designating urban areas, local governments shall consider the planning guidelines adopted by the department, total population, population density, and any applicable land use or utility service plans.

RCW 70.95.096

Utilities and transportation commission to review local plan's assessment of cost impacts on rates.

Upon receipt, the department shall immediately provide the utilities and transportation commission with a copy of each preliminary draft local comprehensive solid waste management plan. Within forty-five days after receiving a plan, the commission shall have reviewed the plan's assessment of solid waste collection cost impacts on rates charged by solid waste collection companies regulated under chapter 81.77 RCW and shall advise the county or city submitting the plan and the department of the probable effect of the plan's recommendations on those rates.

[1989 c 431 § 12.]

RCW 81.77.030

Supervision and regulation by commission.

The commission shall supervise and regulate every solid waste collection company in this state,

- (1) By fixing and altering its rates, charges, classifications, rules and regulations;
- (2) By regulating the accounts, service, and safety of operations;
- (3) By requiring the filing of annual and other reports and data;

(4) By supervising and regulating such persons or companies in all other matters affecting the relationship between them and the public which they serve;

(5) By requiring compliance with local solid waste management plans and related implementation ordinances;

(6) By requiring certificate holders under chapter 81.77 RCW to use rate structures and billing systems consistent with the solid waste management priorities set forth under RCW 70.95.010 and the minimum levels of solid waste collection and recycling services pursuant to local comprehensive solid waste management plans. The commission may order consolidated billing and provide for reasonable and necessary expenses to be paid to the administering company if more than one certificate is granted in an area.