

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

T & T RECOVERY, INC.,

Respondent.

DOCKET NO. TG-041481

SETTLEMENT AGREEMENT

I. PARTIES

1 1. This Settlement Agreement is entered into by 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”) regarding the matters at issue in this proceeding.

II. RECITALS

2 2. On September 20, 2004, the Washington Utilities and Transportation Commission (“Commission”) issued an Order to Show Cause and Notice of Hearing (“Order No. 1”) in this proceeding. The purpose of the proceeding,

according to Order No. 1, is to “determine whether [T&T] is transporting solid waste for collection or disposal for compensation over the public highways in Washington State without a certificate of public convenience and necessity as required by RCW 81.77.040.” Order No. 1 further states that “[t]he Commission has information from which it believes and therefore alleges that T&T is engaged in” such activities. Order No. 1 set a hearing (“Show Cause Hearing”) for November 17, 2004, in Bellingham in which T&T was to appear and to bear the burden of proving that its alleged operations are not subject to the provisions of RCW 81.77.040.

3 3. By subsequent Notice issued October 29, 2004, the Show Cause Hearing was continued to December 1 and 2, 2004 in response to a request for a continuance from T&T’s counsel.

4 4. Petitions to Intervene in this proceeding were filed by WRRRA, SSC, and Island Disposal. Administrative Law Judge Theodora M. Mace has not ruled upon the Petitions to Intervene.

5 5. T&T and Staff met on November 23, 2004, for purposes of discussing informally the issues in this proceeding and the evidence to be presented by Staff at the Show Cause Hearing. Following this meeting, T&T on November 24, 2004, forwarded to Staff an outline of possible settlement terms to resolve the issues in this proceeding.

6 6. Staff determined that further settlement discussions would be productive and beneficial. On November 24, 2004, Staff filed a Notice of Settlement Negotiations and Motion to Continue Hearing, to enable settlement discussions among the Parties to occur.

7 7. ALJ Mace on November 29, 2004, issued a Notice Vacating the Show Cause Hearing scheduled for December 1-2, finding “good cause to continue this proceeding for a limited period of time while [settlement] negotiations are taking place.” She held a status conference on December 27, 2004, for a report from the Parties on the progress of these settlement negotiations, at which ALJ Mace continued this proceeding further and scheduled a prehearing conference for February 1, 2005. On February 1, 2005, the Parties committed to either filing a settlement agreement or a proposed hearing schedule with the Commission by March 1, 2005.

8 8. The Parties met at the Commission’s offices in Olympia on December 1, 2004, and subsequently on January 19, 2005, for settlement negotiations regarding the issues in this proceeding. Based on these negotiations and the further discussions that occurred among the Parties following those meetings, the Parties have reached agreement on the contested issues in this proceeding and wish to present their agreement for the Commission’s consideration. The Parties therefore adopt the following Settlement Agreement,

which is entered into by the Parties voluntarily to resolve matters in dispute among them in the interests of expediting the orderly disposition of this proceeding. The Settlement Agreement is being filed with the Commission as a "Full Settlement" pursuant to WAC 480-07-730(1).

III. AGREEMENT

9. Reporting and Recordkeeping Requirements.

9 a. Background. Prior to commencing this proceeding, Staff compiled substantial evidence which it believes indicates T&T has been illegally collecting solid waste. The Parties agree that additional information should be gathered to provide a further basis for evaluating T&T's compliance with Washington statutes and Commission regulations. T&T alleges that it delivers mixed recyclable material to Recovery One, Inc., in Tacoma and segregated recyclable material to bona fide recycling facilities. T&T also alleges that it disposes at disposal sites only material generated in connection with its business operations providing demolition and clean-up services. The Parties wish to gather information to substantiate that T&T is not illegally performing solid waste collection in carrying out these services. The Parties require documentation that any materials delivered to disposal sites by T&T are in fact (1) T&T-generated demolition debris or (2) T&T-generated clean-up debris, and are thus solid waste transported purely as an incidental adjunct to its primary business activity exempt from regulation

under chapter 81.77 RCW. RCW 81.77.010(5). The Parties further require documentation of materials collected for, delivered to, or accepted by recycling processing facilities to substantiate that T&T collections are legitimately for commercial recyclable materials exempt from regulation under chapter 81.77 RCW. RCW 81.77.010(8); WAC 480-70-011(2)(b); WAC 480-70-041 (commercial recycling service).

10 b. Requirements re T&T Generated Solid Waste. For purposes of this Settlement Agreement, the term “T&T Generated Solid Waste” shall be limited to solid waste that is (1) 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 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). T&T Generated Solid Waste consists of two categories, the first being demolition and the second being site clean-up. With regard to T&T Generated Solid Waste, T&T shall comply with the following reporting and recordkeeping requirements:

11 (i) T&T will require service contracts from its customers
prior to commencing service pursuant to which T&T will haul T&T Generated Solid
Waste. The contracts will describe the nature of the service and the terms under
which the service will be rendered. The service contracts must include or attach a
written statement specifically limiting use of T&T's container to T&T employees or
others under T&T's direct supervision. T&T will retain copies of the contracts and
will provide copies to Staff upon request.

12 (ii) Whenever T&T delivers any load containing T&T
Generated Solid Waste to a disposal facility, the T&T driver shall mark each
delivery receipt issued by such disposal site to identify the following:

- 13 1. the location from which the T&T Generated Solid
Waste was removed,
- 14 2. the applicable category for such T&T Generated
Solid Waste, and
- 15 3. the certified weight of solid waste from each
location, unless otherwise clearly stated on the weight slip provided by the disposal
facility.

16 (iii) T&T shall retain such delivery receipts and source
documentation and shall provide copies to the Parties no later than the 10th of each
month for services performed during the prior month.

c. Requirements re Commercial Recyclables. T&T agrees that this

Settlement Agreement applies to its entire Commercial Recycling operation as it currently exists. In the event T&T's Commercial Recycling operations materially change during the term of this Settlement Agreement, the requirements under the Agreement will be amended to reflect those changes. For purposes of this Settlement Agreement, the term "Mixed Recyclables" shall mean dry solid waste that is separated for recycling or reuse from other solid waste, but not sorted by commodity type, by the customer at the job site. The term "Segregated Recyclables" shall mean solid waste that is separated for recycling and reuse from other solid waste, and sorted by commodity type, by the customer at the job site. The term "Commercial Recycling" shall mean collecting both Mixed Recyclables and Segregated Recyclables at the source of generation and delivering the load directly to a recycling facility identified to Staff, with no intervening stops at which materials are sorted and reloaded. For purposes of this Settlement Agreement, "sorted" means separating solid waste that is required to be landfilled from Mixed Recyclables or Segregated Recyclables at any location other than the job site prior to collecting a container. The term does not mean separating certain recyclable commodities from loads of Mixed Recyclables. For purposes of this Settlement Agreement, "reloaded" shall not mean consolidation of Commercial Recycling loads for transportation, which is permitted so long as certified weight slips for

loads collected from each Commercial Recycling location are retained. To substantiate that it is only performing legal Commercial Recycling, T&T shall comply with the following reporting and recordkeeping requirements:

18 (i) Whenever T&T performs Commercial Recycling of any load containing Mixed Recyclables, T&T shall:

19 1. compile delivery receipts to document quantities of Mixed Recyclables delivered;

20 2. prepare documentation showing each location from which the Mixed Recyclables were removed and the quantity of Mixed Recyclables collected from each location by certified weight (calculated prior to any consolidation of containers or loads); and

21 3. provide copies of such receipts to the Parties no later than the 10th of each month for services performed during the prior month.

22 (ii) Whenever T&T performs Commercial Recycling of any load of Segregated Recyclables, T&T shall:

23 1. compile delivery receipts to document quantities of Segregated Recyclables delivered to each delivery site;

24 2. prepare documentation showing each location from which the Segregated Recyclables were collected and the quantity of

Segregated Recyclables from each location by certified weight (calculated prior to any consolidation of containers or loads); and

25 3. provide non-redacted delivery receipts and source documentation to Staff and to the Intervening Parties with proprietary information redacted no later than the 10th of each month for services performed during the prior month. Proprietary information includes the location from which the Segregated Recyclables were removed and the delivery site to which the Segregated Recyclables were delivered.

26 (iii) During the term of this Settlement Agreement, all loads of Mixed Recyclables shall be delivered by T&T to Recovery One, and all loads of Segregated Recyclables shall be delivered by T&T to County Construction Recyclers or an alternative recycling facility reported by T&T to Staff. T&T shall cease transportation to any facility determined by Staff not to be a valid recycling facility. Such determination shall include consideration of whether (1) the facility has a permit from the appropriate jurisdictional health department, (2) the facility is formally exempt from such permitting requirements, and (3) the facility is a bona fide recycling facility (*i.e.*, it recycles the materials delivered to it).

27 d. T&T will provide the Parties no later than the 10th of each month a monthly summary of its container status, stating for each month during the reporting period: (i) the total number of containers owned and the total number

of containers leased; (ii) the total number of Commercial Recycling jobs for which a container was provided, the total number of containers hauled, and the total certified weight of Mixed and Segregated Recyclables collected (calculated prior to any consolidation of containers or loads) and hauled (calculated after any consolidation of containers and loads); and (iii) the total number of jobs for which a solid waste container was used for collection of T&T Generated Solid Waste, the total number of containers hauled, and the total certified weight collected and hauled.

28 e. Term. The reporting and recordkeeping requirements shall continue on a monthly basis for 18 complete months following the date of the Commission's approval, or such later date as may be mutually agreed upon by the Parties. Sample reporting forms are attached to this Settlement Agreement as Attachment A.

10. Minimizing Incidents of Solid Waste in Recycling Containers.

29 a. Background. T&T agrees that it and its affiliates, subsidiaries, or assigns have an obligation to comply with the legal requirements of chapter 81.77 RCW and chapter 480-70 WAC prohibiting collection of solid waste without a certificate. The Parties agree that the following are reasonable measures that T&T is required to undertake to prevent collection of solid waste while performing legal Commercial Recycling services.

b. Requirements.

30 (i) Each T&T Commercial Recycling container shall be
labeled prominently on all four sides to indicate recyclable material only, to exclude
garbage, and to list banned materials.

31 (ii) Each job site supervisor shall be provided a brochure
substantially in the form of Attachment B identifying acceptable recyclable
materials and banned materials.

32 (iii) Job site supervisors shall be provided with notification
in writing that each work site is required to have a separate container in which to
collect solid waste. T&T shall provide information to the job site supervisor and the
customer (if different) regarding the certificated hauler in the area and, if requested
by the job site supervisor or the customer, coordinate with the certificated hauler to
ensure that adequate solid waste containers are present on the site and pick-up is
sufficiently frequent. T&T shall require a signed document, substantially in the
form as Attachment C, from each job site supervisor at the time service commences
with respect to each job site acknowledging (1) that solid waste will not be accepted
by T&T, (2) that a separate solid waste container is required at the site, (3) a
description of the solid waste handling procedures for the site, (4) that service shall
be refused with respect to any Commercial Recycling container with unacceptable
quantities of solid waste, and (5) that the customer will be responsible for removal

of unacceptable quantities of non-recyclable materials or for arranging for a certificated hauler to haul the material for disposal. Copies of such signed documents shall be provided to Staff upon request.

33 (iv) T&T shall periodically monitor material deposited in its Commercial Recycling containers while they are in-use at the job site to ensure that they contain only Mixed Recyclables or Segregated Recyclables. T&T shall record instances in which it finds unacceptable materials in its containers while they are in-use at the job site and any action taken to remove the unacceptable materials. T&T shall provide copies of such records to Staff upon request.

34 (v) T&T drivers will be required to inspect each Commercial Recycling container at the time of pick-up and shall refuse to pick up any container with unacceptable quantities of solid waste or banned materials. Unacceptable quantities of solid waste are quantities that exceed the requirements of Recovery One, or other recycling facility reported to Staff. Banned materials are those items that would cause Recovery One, or other recycling facility reported to Staff, to reject a load based on the presence of such materials. Banned materials include but are not limited to lead; paints, oils and solvents; and Hazardous Waste as defined in Chapter 70.105 RCW. If the T&T driver at the time of container pick-up reasonably concludes in good faith that any solid waste in the recycling container is in such immaterial amounts that the container would be acceptable for delivery to Recovery

One, or other recycling facility reported to Staff, or that the container does not hold banned materials or unacceptable quantities of solid waste, the container may be picked up by T&T.

35 1. If a Commercial Recycling container includes solid waste in unacceptable quantities, the objectionable materials must be removed from the container, either by T&T personnel or by the customer, before T&T may pick it up.

36 2. If the objectionable materials are not removed and the container must be delivered to a disposal facility, T&T shall not provide hauling service with respect to such container. T&T shall immediately inform the customer that the container is unacceptable for collection by T&T and that alternative arrangements for hauling the container must be undertaken.

37 3. T&T shall keep records identifying instances in which pick-up was refused on this basis and shall provide such records to the Parties by the 10th of each month for the prior month.

38 4. If Recovery One rejects a load from a customer more than once, or if the customer refuses to remove solid waste from the container, T&T shall immediately discontinue service to that customer. T&T shall keep records identifying instances in which service was discontinued on this basis and shall provide such records to the Parties by the 10th of each month for the prior

month. If such customer desires to reinstate service, T&T personnel shall meet with the customer to inform the customer of its responsibility and sign an agreement to abide by such requirements. T&T shall retain such agreements and provide copies to Staff review upon request.

39 (vi) T&T shall keep records identifying any load of Mixed Recyclables rejected for delivery by Recovery One and shall provide such records to the Parties by the 10th of each month for the prior month. When possible, T&T shall inform the customer or customers whose materials were in the container that the load was rejected.

40 (vii) Once every six months and in all cases prior to employment, T&T will provide training to drivers with respect to the above guidelines and compliance measures.

41 c. Satisfaction of Requirements. So long as T&T is complying with the requirements set forth in Section 10.b of this Settlement Agreement, the Parties agree that T&T is making reasonable efforts to operate in compliance with RCW 81.77.040.

11. Enforcement and Compliance.

42 a. Continuance of Current Docket. The Parties agree that this proceeding should be continued until the reporting requirements have been met and the Parties have evaluated the materials submitted during the reporting period.

After such evaluation, Staff will either (1) file a motion to close the docket if it believes T&T has satisfied all requirements and has shown that it is not illegally hauling solid waste without a permit, or (2) request the Commission schedule a Show Cause Hearing if it believes T&T is operating in violation of RCW 81.77.040.

At any time during the reporting period, on the basis of the reports submitted pursuant to this Settlement Agreement and after consulting with WRRRA, SSC, and Island Disposal, Staff may request this proceeding be dismissed or may request the Commission reschedule the Show Cause Hearing in Bellingham requiring T&T to bear the burden of proving that it is not violating the provisions of RCW 81.77.040.

Except as provided in Section 11.d below, the Parties agree that no such request shall be made prior to six months after the Commission's approval of this Settlement Agreement, unless Staff finds that T&T is willfully violating the conditions herein.

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b. Requirement of Good Faith Compliance. T&T shall in good faith comply with the requirements of this Settlement Agreement as well as the legal requirements of applicable Commission statutes and regulations, including chapter 81.77 RCW and chapter 480-70 WAC. The Parties' agreement in Section 11.a to refrain from seeking commencement of any enforcement action against T&T for six months is expressly conditioned upon T&T's good faith efforts to comply with the requirements of this Settlement Agreement.

c. Notification of Claimed Violations. If Staff, WRRRA, SSC, or Island Disposal become aware of instances in which they believe T&T is violating the terms of this Settlement Agreement, such Party shall notify T&T and Staff of the claimed violation. For purposes of such notification, T&T's contact information is as follows:

T&T:	Troy Lautenbach
Telephone:	(360) 671-0722
Facsimile:	(360) 671-3112
Electronic Mail:	troylaut@comcast.net

Staff contact information is as follows:

Staff:	Sheri Hoyt
Telephone:	(360) 664-1149
Facsimile:	(360) 586-1150
Electronic mail:	shoyt@wutc.wa.gov

If the contact information changes during the reporting period, corrected contact information will be provided to the Parties. Upon receiving notification of a claimed violation, T&T shall investigate the claim and document the measures taken in response. Such documentation shall be provided to Staff by the 10th of each month for the prior month.

d. Asserted Failure of Good Faith Compliance with Settlement Agreement. In the event of more than three claimed violations within any calendar month during the term of the Settlement Agreement that are not resolved to the complaining Party's satisfaction, Staff shall notify T&T of the claim of non-

compliance and provide T&T with a reasonable opportunity to respond to the claim and cure the claimed non-compliance. After evaluating the claimed violation and any response by T&T thereto, if Staff determines that T&T is not complying in good faith with the requirements of this Settlement Agreement, Staff shall request a Show Cause Hearing be scheduled, and the prohibition against recommencing the enforcement against T&T during the first six months of the Settlement term shall be lifted.

46 12. Confidentiality Arrangements. T&T may provide the reports required under Section 9 to Staff on a confidential basis in accordance with the Protective Order entered in this docket on February 7, 2005.¹ WRRRA, SSC, or Island Disposal may have access to such reports for purposes of verifying T&T's compliance with this Settlement Agreement; provided, however, that Parties other than Staff seeking access to such reports shall execute an agreement to be bound by the Protective Order. Such agreements are attached to the Protective Order as Exhibit A and Exhibit B. Paragraph 8 of such Protective Order provides that access to Confidential Information may be authorized by counsel, solely for purposes of this proceeding, to those persons designated by Parties as their experts in this matter. The Parties agree that solely for purposes of providing interpretative review of data provided pursuant to this Settlement Agreement, "experts" may include a

¹ *WUTC v. T&T Recovery, Inc.*, Docket No. TG-041481, Protective Order, Order No. 04 (February 7, 2005).

designated employee of a Party, notwithstanding the provisions of paragraph 8 of the Protective Order. WRRRA, SSC, and Island Disposal agree that their rights to access to information filed by T&T pursuant to Section 9 of this Settlement Agreement shall be as defined by the terms of this Settlement Agreement and the Protective Order. WRRRA, SSC, and Island Disposal also agree that information designated as confidential by T&T is likely valuable formulae under RCW 42.17.310(1)(h), and as such would be exempted from disclosure under the Public Disclosure Act, chapter 42.17 RCW.

13. General Provisions.

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a. For purposes of this Settlement Agreement, the Parties stipulate that WRRRA, SSC, and Island Disposal shall be granted party status in this proceeding pursuant to WAC 480-07-355. In the event this Settlement Agreement is not accepted by the Commission, T&T reserves the right to oppose the Petitions to Intervene submitted by WRRRA, SSC, and Island Disposal.

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b. The Parties agree that this Settlement Agreement is in the public interest. The Parties agree to support this Settlement Agreement as a settlement of all contested issues in this proceeding. The Parties understand that the terms identified under Items 9 thru 12 of this Settlement Agreement are not binding on the Commission unless and until the Commission approves such terms.

49 c. The Parties agree that this Settlement Agreement represents a
compromise in the positions of the Parties. As such, conduct, statements, and
documents disclosed in the negotiation of this Settlement Agreement shall not be
admissible as evidence in this or any other proceeding, except in any proceeding to
enforce the terms of this Agreement or any Commission Order adopting those
terms.

50 d. This Agreement shall not be construed against any Party
because it was the drafter of the Agreement.

51 e. The Parties have negotiated this Settlement Agreement as an
integrated document. Accordingly, the Parties recommend that the Commission
adopt this Settlement Agreement in its entirety.

52 f. The Parties shall cooperate in submitting this Settlement
Agreement promptly to the Commission for acceptance, and shall cooperate in
developing supporting testimony as required by WAC 480-07-740(2)(b). The Parties
agree to support the Settlement Agreement throughout this proceeding, provide
witnesses to sponsor the Settlement Agreement at any hearing the Commission may
schedule in this proceeding, and recommend that the Commission issue an order
adopting the settlements contained herein. In the event the Commission rejects this
Settlement Agreement, the provisions of WAC 480-07-750(2)(a) shall apply. In the
event the Commission accepts the Settlement Agreement upon conditions not

proposed herein, each Party reserves the right, upon written notice to the Commission and the other Parties within five (5) days of the Commission's order, to state its rejection of the conditions, whereupon the provisions of WAC 480-07-750(2)(b) shall apply. In such event, the Parties will immediately request a prehearing conference be promptly reconvened to establish a procedural schedule for the completion of the case pursuant to WAC 480-07-750(2)(a).

53 g. The Parties enter into this Settlement Agreement to avoid further expense, inconvenience, uncertainty, and delay. By executing this Settlement Agreement, no Party shall be deemed to have approved, admitted, or consented to the facts, principles, methods, or theories employed in arriving at the terms of this Settlement Agreement, nor shall any Party be deemed to have agreed that any provision of this Settlement Agreement is appropriate for resolving issues in any other proceeding.

54 h. This Settlement Agreement may be executed in counterparts and each signed counterpart shall constitute an original document.

55 i. The Parties shall take all actions necessary and appropriate to carry out this Agreement.

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This SETTLEMENT AGREEMENT is entered into by each Party as of

March 2, 2005.

T & T Recovery, Inc.

**Staff of the Washington Utilities and
Transportation Commission**

By _____
Troy Lautenbach

By _____
Rob McKenna
Attorney General
Lisa Watson
Assistant Attorney General

Sanitary Service Company, Inc.

Island Disposal, Inc.

By _____
Polly L. McNeill
Summit Law Group PLLC

By _____
David W. Wiley
Williams, Kastner & Gibbs PLLC

**Washington Refuse and Recycling
Association**

By _____
James K. Sells
Ryan Sells Uptegraft, Inc. P.S.