

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

WASTE MANAGEMENT OF
WASHINGTON, INC.

Respondent.

DOCKET TG-210689

SETTLEMENT AGREEMENT

1 This settlement agreement (Agreement) is entered into by all parties to this proceeding for the purpose of resolving all issues raised in the docket shown above.

I. PARTIES

2 The parties to this Agreement are Waste Management of Washington, Inc. (“Waste Management” or “Company”), Kitsap County, Washington (“Kitsap County”), and the Staff of the Washington Utilities and Transportation Commission (“Commission Staff”) (collectively, “the Parties”).

II. RECITALS

3 Waste Management, doing business as Brem-Air Disposal, provides solid waste collection services to approximately 48,419 customers in unincorporated areas of Kitsap County. The applicable tariff, Brem-Air Disposal Tariff 20, provides for every-other-week collection of residential yard waste and residential recycling (Item 100).

4 In the summer of 2021, the Commission received complaints from Waste Management customers about missed recycling and yard waste collections in Kitsap

County. Commission Staff opened an investigation focusing on missed residential pickups during the months of July and August 2021. Commission Staff determined that there were 3,810 missed yard waste collections in July and 12,820 missed recycling collections in August.

5 Waste Management explained to Commission Staff that, like other industries during the COVID-19 pandemic, the Company was experiencing a shortage of qualified drivers, that it was actively taking steps to resolve its staffing shortage in Kitsap County, and that it had provided credits to customers with two consecutive missed yard waste collections in July. At the conclusion of its investigation, Commission Staff recommended that the Commission issue a complaint for penalties against Waste Management and impose penalties of \$83,150, based on \$5 per missed pickup.

6 The Commission received additional complaints about missed recycling and yard waste collections from Waste Management customers in Kitsap County into the fall of 2021. On November 15, 2021, the Commission issued a complaint against Waste Management, alleging 16,630 violations of RCW 81.28.080 and WAC 480-70-236, which prohibit a solid waste collection company from charging, demanding, collecting, or receiving a greater or less or different compensation than the rates and charges specified in a company's tariff. In the complaint, the requested relief includes penalties under RCW 81.04.380 of up to \$1,000 for each violation.

7 During the course of this case, Waste Management explained that it had provided additional credits for consecutive missed residential recycling and yard waste collection services for the months of August and September. Additionally, in recognition of the ongoing inconvenience to Kitsap County residential recycling

customers due to the driver shortage in the months of October and November, Waste Management issued to all residential recycling customers in Kitsap County with current service under Brem-Air Disposal Tariff 20 an “inconvenience” credit worth one month’s recycling service charge.

8 Waste Management also asserted that as of December 3, 2021, it had remedied its shortage of qualified drivers and did not miss residential pickups after that date as a result of staffing levels. During the driver shortage, when collections were missed, the Company collected accumulated recycling and yard waste set out by customers at the next pickup. Waste Management calculates that its credits to its Kitsap County residential customers under Commission jurisdiction totaled \$448,389.39 for recycling and yard waste collections missed from July to December due to the Company’s driver shortage.

9 Upon further review, Waste Management identified additional customers who experienced consecutive missed recycling and yard waste pickups in August and September but who did not receive credits for those missed services. Waste Management calculates that the outstanding recycling credits total \$3,849.89, and that the outstanding yard waste credits total \$1,438.88.

10 On December 14, 2021, the Commission conducted a prehearing conference, at which it granted the intervention of Kitsap County and set a procedural schedule (see Order 01). Pursuant to the procedural schedule, the Parties met to discuss settlement on January 7, 2022. Subsequently, the Parties continued to negotiate and ultimately entered into this Agreement.

III. AGREEMENT

11 The Parties have reached agreement on the issues raised in this proceeding and
present their agreement for the Commission’s consideration and approval. The Parties
therefore adopt the following Agreement, which the Parties enter into voluntarily, to
resolve the matters in dispute between them and to expedite the orderly disposition of
this proceeding.

12 Waste Management admits to 16,630 violations of RCW 81.28.080 and WAC
480-07-236, as set forth in the Complaint and Notice of Virtual Prehearing Conference
served November 15, 2021.

13 Waste Management agrees to pay a penalty to the Commission of \$83,150, the
amount recommended in Commission Staff’s investigative report.

14 Commission Staff has reviewed information obtained from Waste Management
concerning missed recycling and yard waste pickups in unincorporated Kitsap County
for the period following the July-August timeframe of the Staff investigation through
December 3, 2021, when the Company resolved its staffing shortage. Staff will not
pursue penalties for missed recycling and yard waste pickups during this period, from
September 1, 2021, through December 3, 2021.

15 Waste Management commits to issuing \$3,849.89 in credits to customers for
additional missed recycling pickups and \$1,438.88 for additional missed yard waste
pickups in August and September 2021.

16 Waste Management further agrees to issue additional inconvenience credits,
calculated as explained in Appendix A. Waste Management calculates that these credits
will total approximately \$34,658.63 to residential recycling and yard waste customers
who experienced missed pickups between July 1, 2021, and December 3, 2021. The

calculation is designed to assure a minimum level of credit per missed service for each customer, considering both these additional credits and credits already issued by Waste Management as described above.

17 Waste Management commits to working with Commission Staff and Kitsap County to develop a Company-wide Communication and Customer Outreach Plan for major service disruptions in Washington that occur in areas where the Company provides solid waste collection service that is regulated by the Commission. Within 60 days following the Commission's approval of this Agreement, Waste Management will file the plan in Docket TG-210689 for Commission approval. The Communication and Customer Outreach Plan will establish minimum requirements for customer outreach and education, particularly concerning service pick-ups that are missed for reasons other than those listed in Tariff Item 30 during a major service disruption. Further, the Plan will identify when communications are necessary based on the breadth and duration of the service disruption; the frequency and method of communications to customers, the Commission, and affected counties and cities in the Company's Commission-regulated service territory; and will describe when credits or refunds will be provided.

18 Waste Management commits to working with Commission Staff and Kitsap County to develop a detailed Contingency Plan for areas in Kitsap County where the Company provides solid waste collection service that is regulated by the Commission. Within 60 days following the Commission's approval of this Agreement, Waste Management will file the plan in Docket TG-210689 for Commission approval. The Contingency Plan must include procedures the Company has implemented or will implement to maintain adequate staffing levels; steps the Company will take to mitigate

impacts to customers if certified driver levels decrease again; and steps the Company will take to return as quickly as possible to adequate staffing levels.

19 Finally, Waste Management agrees to provide to Commission Staff and to Kitsap County quarterly staffing reports regarding Waste Management employees providing collection service in the Brem-Air Disposal service territory. Reports will include the number of qualified drivers needed for each collection service, the number of qualified drivers currently employed for each collection service, and the number and status of drivers going through the onboarding process for each collection service. Waste Management will submit a total of four quarterly reports over a reporting period of approximately one year, with the first report due 30 days after the date the Commission approves this Agreement or April 15, 2022, whichever is later, reflecting data through March 30, 2022, and with subsequent reports due on the fifteenth of the month following each quarter, reflecting data through the end of that quarter.

IV. GENERAL PROVISIONS

20 The Parties agree that this Agreement is in the public interest. The Parties further agree that this Agreement reflects the settlement of all contested issues among them in this proceeding. The Parties understand that this Agreement is not binding unless and until accepted by the Commission. If the Commission does not accept this Agreement, including all of its terms and conditions without change, then the Parties shall be free to assert their pre-settlement positions and agree that neither this Agreement nor any statements or admissions contained herein shall be admissible or used for any purpose in this docket or any other proceeding for any purpose.

21 The Parties agree to cooperate in submitting this Agreement promptly to the

Commission for acceptance. The Parties agree to support adoption of this Agreement in proceedings before the Commission. No party to this Agreement or its agents, employees, consultants, or attorneys will engage in advocacy contrary to the Commission's adoption of this Agreement.

22 The Parties agree (1) to provide each other the right to review in advance of publication any and all announcements or news releases that the other party intends to make about the Agreement (with the right of review to include a reasonable opportunity to request changes to the text of such announcements) and (2) to include in any news release or announcement a statement that the Staff's recommendation to approve the settlement is not binding on the Commission itself.

23 Nothing in this Agreement shall limit or bar any other entity other than a Party from pursuing legal remedies against Waste Management or affect the Company's ability to assert defenses to such claims.

24 The Parties have entered into this Agreement to avoid further expense, inconvenience, uncertainty, and delay. The Parties recognize that this Agreement represents a compromise of the Parties' positions. As such, conduct, statements, and documents disclosed during negotiations of this 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 fully adopting those terms. This Agreement shall not be construed against any party on the grounds that it was a drafter of this Agreement.

25 By executing this 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 Agreement, nor shall any Party be deemed to have agreed that any provision of this Agreement is appropriate for resolving issues in any other proceeding, except to the extent expressly set forth in the Agreement.

26 The Parties have negotiated this Agreement as an integrated document to be effective upon execution. This Agreement supersedes all prior oral and written agreements on issues addressed herein. Accordingly, the Parties recommend that the Commission adopt this Agreement in its entirety.

27 The Parties may execute this Agreement in counterparts and as executed shall constitute one agreement. A signed signature page sent by email is as effective as an original document.

28 The Parties shall take all actions necessary as appropriate to carry out this Agreement.

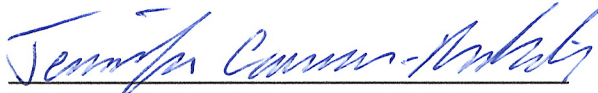
29 In the event the Commission approves this Agreement, but with additional or revised conditions, the provisions of WAC 480-07-750(2)(b) will apply, and each Party may accept or reject each such condition. If all Parties timely notify the Commission that they accept the conditions, the terms in this Agreement and the Commission's conditions will resolve the issues identified in the Agreement, and the Commission's order conditionally approving the Agreement will then become final by operation of law with respect to those issues without further action from the Commission. If a Party rejects any condition added or revised by the Commission, this Agreement is deemed rejected and void and the Parties agree to request the prompt reconvening of a prehearing conference to address procedural matters and to cooperate in developing a procedural schedule.

30 In the event that the Commission rejects this Agreement, the provisions of WAC

480-07-750(2)(c) will apply. In such event, none of the Parties will be bound or prejudiced by the terms of this Agreement, and the Parties agree to request the prompt reconvening of a prehearing conference and to cooperate in developing a procedural schedule.

**WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION**

ROBERT W. FERGUSON
Attorney General



JENNIFER CAMERON-RULKOWSKI
Assistant Attorney General

Counsel for the Washington Utilities and
Transportation Commission Staff

Dated: February 15, 2022.

**WASTE MANAGEMENT OF
WASHINGTON, INC.**

ADAM C. WINSTON
Vice President
Waste Management of Washington, Inc.

Dated: _____, 2022.

Approved as to form only:

KITSAP COUNTY

LISA J. NICKEL
Senior Deputy Prosecuting Attorney
Kitsap County

Dated: _____, 2022.

AME WELLMAN LEWIS
Senior Legal Counsel
Pacific Northwest Area
Waste Management of Washington, Inc.

Dated: _____, 2022.

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TRANSPORTATION COMMISSION**

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Attorney General

JENNIFER CAMERON-RULKOWSKI
Assistant Attorney General

Counsel for the Washington Utilities and
Transportation Commission Staff

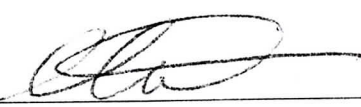
Dated: _____, 2022.

KITSAP COUNTY

LISA J. NICKEL
Senior Deputy Prosecuting Attorney
Kitsap County

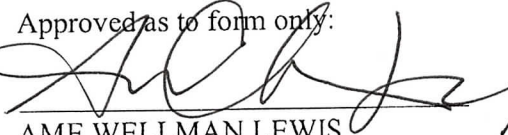
Dated: _____, 2022.

**WASTE MANAGEMENT OF
WASHINGTON, INC.**



ADAM C. WINSTON
Vice President
Waste Management of Washington, Inc.

Dated: 2/16/22, 2022.

Approved as to form only:


AME WELLMAN LEWIS
Senior Legal Counsel
Pacific Northwest Area
Waste Management of Washington, Inc.

Dated: 2/16/, 2022.

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**WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION**

ROBERT W. FERGUSON
Attorney General

JENNIFER CAMERON-RULKOWSKI
Assistant Attorney General

Counsel for the Washington Utilities and
Transportation Commission Staff

Dated: _____, 2022.


**WASTE MANAGEMENT OF
WASHINGTON, INC.**

ADAM C. WINSTON
Vice President
Waste Management of Washington, Inc.

Dated: _____, 2022.

Approved as to form only:

KITSAP COUNTY



LISA J. NICKEL
Senior Deputy Prosecuting Attorney
Kitsap County

Dated: February 16, 2022.

AME WELLMAN LEWIS
Senior Legal Counsel
Pacific Northwest Area
Waste Management of Washington, Inc.

Dated: _____, 2022.

**APPENDIX A – CALCULATION OF ADDITIONAL INCONVENIENCE
CREDITS**

After Commission approval of this Agreement, Waste Management will issue additional customer credits based on the number of missed recycling and yard waste services experienced by each customer from July 1, 2021 through December 3, 2021, as follows.

1. Determine minimum credit amount for each customer.

For each single-family residential recycling customer, multi-family residential recycling customer, and single-family yard waste customer under Tariff 20, Waste Management will calculate a minimum credit amount the customer should receive based on the missed pickups actually experienced by that customer.

The minimum credit for each missed pickup will be based on the collection service cost component of that pickup (i.e., the average actual cost for WM to provide one curbside collection service, not including disposal and processing costs). The service cost for each individual service is approximately 60% of the total monthly charge for recycling or 80% of the monthly charge for yard waste, divided by 2.17 bi-weekly collection cycles per average month.

Therefore, each single-family customer's minimum credit amount will be the total of:

- **\$2.05** per missed recycling service ($\$7.40 \text{ monthly charge} \times 0.6/2.17$); plus
- **\$3.12** per missed yard waste service ($\$8.47 \text{ monthly charge} \times 0.8/2.17$).

Each multi-family recycling customer's minimum credit amount will be **\$1.22 per unit**, per missed service ($\$4.40 \text{ per unit per month} \times 0.6/2.17$). (Multi-family buildings are invoiced with a single account depending on number of units at the address, and there are no customers who missed service for both yard waste and multi-family recycling.)

2. Issue additional credits as needed so that each customer has received at least their minimum credit amount, including credits previously issued.

All customers who missed service due to the driver shortage already received the October-November inconvenience credit, and many also received one or more individualized credits for missed service in July through September. Waste Management will compare the total already credited to each customer against their individual minimum credit amount calculated in Step 1.

For each customer whose minimum credit amount is greater than the credits they already received, Waste Management will issue an additional credit for the difference.

Customers who already received more than the minimum credit amount will retain that benefit, but will not receive further credits under this Agreement.

3. Example calculations.

A single-family customer that was missed twice for recycling and three times for yard waste would have a minimum credit amount of $(\$2.05 \times 2) + (\$3.12 \times 3) = \$13.46$.

- If the customer previously received only the October-November inconvenience credit of \$7.40, Waste Management would issue an additional credit for the difference, \$6.06.
- If the customer previously received the October-November inconvenience credit of \$7.40 *and* two earlier credits of \$3.91 each for missed yard waste service, they would have received a total of \$15.22. No additional credits would be due because the customer had already received more than their minimum credit.

A multi-family recycling customer with 10 units that experienced four missed services would have a minimum credit amount of $\$1.22 \times 10 \text{ units} \times 4 \text{ missed services} = \48.80 . The customer's October-November inconvenience credit would have equaled $\$4.40 \text{ per unit} \times 10 \text{ units} = \44.00 . If the customer had received only the October-November credit, Waste Management would issue an additional credit for the difference, \$4.80.