



WASHINGTON REFUSE & RECYCLING ASSOCIATION

April 10, 2009

Mr. Dave Danner
Executive Director and Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Dr. S.W.
P.O. Box 47250
Olympia, WA 98504-7250

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RECEIVED
OFFICE OF THE
COMMISSIONER

Re: Rulemaking Docket TG-080591

Dear Mr. Danner:

Thank you for the opportunity to comment on the initial, informal proposals for revision of the definitional rules regarding solid waste. WRRRA understands the necessity to "update" the rules and appreciates the opportunity to take an active role at this early stage.

What follows are some general comments regarding specific areas that we feel are important, followed by a few suggestions as to language. Please understand these are initial comments on behalf of WRRRA's members in general, and may well be modified and/or expanded upon as this process goes on.

There are two major situations which we see a need to address, and believe that once addressed vigorously and fairly will be a significant inroad in, not only combating illegal hauling and sham recycling, but will greatly benefit the admirable goal of increasing legitimate recycling and the viability of other "green" enterprises.

First is enforcement of what we refer to as the "two box rule." RCW 70.95.020(3) provides that on any site with a recyclables box, there must also be a solid waste container. This is not only the law, it is common sense. The Commission's rules should reflect the law and what we expect to see in the

soon to be revealed DOE rules. There should be strong language that not only must there be a solid waste container on site, it must be of appropriate, proportional size. That is, if the solid waste residual from a particular site is 50%, then it would seem logical that there would be equal size containers for recyclables and solid waste. If the percentages are different, then the number or size of the boxes would reflect that as well. In addition, the number of hauls should be proportional as well.

Secondly, we see enforcement as a major issue which needs to be addressed. Although it may be a somewhat overused phrase these days, "boots on the ground" are needed. Certainly we are aware of budget restrictions, but effective enforcement, we believe, will result in increased revenue to the Commission which, in turn, benefits the ratepayers who, after all, are the ultimate focus of this entire exercise.

We believe the Commission needs to work with local law enforcement, public works departments, and health agencies to ensure that the laws/rules, both local and state, are being enforced and, if appropriate, fines and penalties are being imposed. One seemingly simple method of ensuring that recyclables are being recycled and solid waste is being properly and legally collected and transported would be to monitor advertisements, "yellow pages," web sites and the like to be sure non certificated entities are not offering solid waste services. Another would be to require that recyclable containers at any site clearly be labeled as to who owns them and what materials are appropriate to be deposited in them. It simply is not sufficient to spray paint "recyclables only" on the side of a large roll-off at a construction site; there must be more specificity. Contractors, unions and employees want to do what is right, but some direction obviously is needed. There is no reason why every box at every site cannot be labeled with notice of what is, and is not, appropriate for the particular receptacle.

This, of course, is nothing more, or less, than "source separation" of commercial solid waste. Separation of what is truly recyclable at the source is the key to solving sham recycling and illegal hauling of solid waste. It works very well in residential applications, and there is no reason why it cannot work just as well in a commercial setting.

This leads us to the issue of percentages of contamination of recyclable loads. We are not naïve enough to not realize that virtually every load of recyclables will contain some solid waste. The City of Seattle has, it seems, effectively addressed this issue. Seattle's ordinance is in harmony with the Ninth Circuit

Court of Appeals in its "AGG" decision and should be, at the very least, an acceptable starting point for discussions concerning contamination/residual solid waste.

The issue of residual solid waste from legitimate recycling facilities is of significant importance. Staff's language in 6(b) is appropriate. That is, the solid waste residual from a recycling/reprocessing facility is just that – solid waste. Whatever percentage it may be, it is garbage and therefore must be collected and hauled by the certificated hauler (or city/city contractor) for the particular area. That is the law, and Staff's proposed language complies with the law.

Staff has requested opinions regarding "Alternate Daily Cover" (ADC), and we agree that is an appropriate issue to address in this Docket. The obvious problem is definitional; i.e. is it solid waste or recycling. The answer is that it is neither. It is solid waste that is put to a "beneficial use," when properly applied in accordance with DOE and local regulations. As such, it is not solid waste and therefore not subject to the Solid Waste Tax. However, it is extremely important that, when categorized, ADC application complies with all the rules, and whatever contracts/agreements with local government that may be in place. For example, if the applicable regulations call for six inches of ADC, then anything over that goes "into" rather than "on" the landfill and is solid waste, not ADC. Our landfill members strictly comply with these restrictions, and we expect all landfills, municipal or private, to do the same.

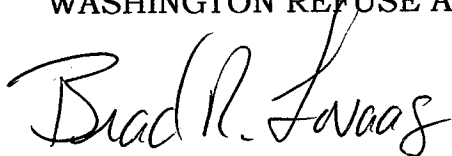
Also, to be kept in mind is the Commission's finding in the "Glacier" matter that "stabilizing material" which is placed "in" (as opposed to "on") a landfill is not ADC, or anything other than solid waste. Perhaps it would be appropriate to note the distinction in the new rule. It may be obvious, but was a distinction that apparently went unrecognized for a significant period of time, costing local governments considerable solid waste tax revenue.

Rather than propose specific language to insert/replace the language of Staff's initial, informal proposals, we would prefer to wait and see the actual proposed rule and certainly will offer very specific suggestions as that time. In the meantime, we trust the above will be of value in setting forth WRRRA's general observations, and hopefully be of assistance in the drafting of the proposed rule.

As always, please feel free to contact me and/or our General Counsel, James K. Sells, with any questions or comments. Be assured that we appreciate the obvious effort and thought that has resulted in reaching this stage of the process. Staff is to be commended for providing the basis for a useful and successful rule revision.

Very truly yours,

WASHINGTON REFUSE AND RECYCLING ASSOCIATION

A handwritten signature in cursive script that reads "Brad R. Lovaas". The signature is written in black ink and is positioned to the left of the typed name.

BRAD LOVAAS
Executive Director