

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

v.

WASTE MANAGEMENT OF  
WASHINGTON, INC.,

Respondent.

DOCKET TG-210689

ORDER 02

APPROVING AND ADOPTING  
SETTLEMENT AGREEMENT;  
DISMISSING COMPLAINT;  
AUTHORIZING COMPLIANCE  
FILING

**BACKGROUND**

- 1 On November 15, 2021, the Washington Utilities and Transportation Commission (Commission), through Commission staff (Staff), issued a complaint against Waste Management of Washington, Inc., (Waste Management or Company) for 16,630 violations of state law and administrative rule when the Company missed yard waste and recycling pickups in Kitsap County in July and August 2021 and seeking monetary penalties of up to \$1,000 per violation against Waste Management (Complaint). In its investigative report, Staff recommended the Commission assess an \$83,150 penalty against the Company.
- 2 On December 17, 2021, the Commission issued Order 01, Prehearing Conference Order (Order 01). Order 01 scheduled an evidentiary hearing for February 17, 2022.
- 3 On February 10, 2022, Staff submitted a letter to this docket indicating that the parties had reached a full settlement and requesting the Commission suspend the procedural schedule and allow the parties to file their settlement by February 18, 2022. On that same date, the Commission granted Staff's request and issued a Notice Suspending Procedural Schedule, which also required the Parties to file their settlement with the Commission by February 18, 2022.

**Pursuant to RCW 80.01.060(3)  
This packet is the final  
Order in this docket.**

- 4 On February 18, 2022, the Parties filed with the Commission a proposed settlement agreement resolving all issues raised in this docket (Settlement).
- 5 On February 25, 2022, the Parties filed with the Commission a narrative supporting the Settlement.
- 6 Jennifer Cameron-Rulkowski, Assistant Attorney General, Lacey, Washington, represents Staff.<sup>1</sup> Walker Stanovsky and Craig Gannett, of Davis Wright Tremaine LLP, Seattle, Washington, and Ame Lewis, Senior Legal Counsel for Waste Management, Portland, Oregon, represent Waste Management. Lisa J. Nickel, Senior Deputy Prosecuting Attorney for Kitsap County, represents Kitsap County.

### SETTLEMENT

- 7 Staff's investigation in this case addressed missed recycling and yard waste collection services for Waste Management's residential customers in unincorporated Kitsap County, credits owed to those customers for missed services, and the Company's driver shortage that ultimately led to the missed services. The Settlement filed by the Parties on February 18, 2022, resolves all issues in this docket.
- 8 Preliminarily, the Settlement explains that Waste Management experienced a shortage of qualified drivers between July and December 2021. Waste Management remedied this shortage of qualified drivers by December 3, 2021. During the July-December 2021 period, residential customers in Kitsap County missed recycling and yard waste collection services. Waste Management calculates that it has already credited Kitsap County residential customers a total of \$448,389.39 for recycling and yard waste collections missed during this period.
- 9 As part of the Settlement, Waste Management admits to the 16,630 violations of RCW 81.28.080 and WAC 480-07-236, as set forth in the Complaint and also agrees to pay a penalty of \$83,150 to the Commission. These terms encompass all violations identified by Staff in its investigation and the full penalty amount recommended by Staff in its

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<sup>1</sup> In proceedings such as this, the Commission's regulatory staff participates like any other party, while the presiding officer(s) makes the decision. To assure fairness in such proceedings, the Commissioners, the presiding administrative law judge, and the Commissioners' policy and accounting advisors do not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455. Here, Judge O'Connell has been assigned to preside in this proceeding.

investigation report. In addition, Waste Management commits to issuing additional recycling and yard waste credits to customers previously identified by the Company. These credits will total \$3,849.89 for recycling and \$1,438.88 for yard waste. Waste Management also agrees to issue additional inconvenience credits, calculated as shown in Appendix A to the Settlement and estimated to be \$34,658.63.

- 10 Because Staff's investigation report and penalty recommendation pertain only to the July-August 2021 period, the parties agree that Staff will not pursue additional penalties for missed recycling and yard waste pickups between September 1 and December 3, 2021.
- 11 The Parties agree that Waste Management will develop with Staff and Kitsap County a Company-wide Communication and Customer Outreach Plan and a detailed Contingency Plan. Waste Management commits to filing each of the plans in this docket within 60 days of this Order. Waste Management will also provide Staff and Kitsap County with quarterly staffing reports over the next year, beginning the later of 30 days after the date of this Order or April 15, 2022, regarding its employees providing collection services in the Brem-Air Disposal service territory.<sup>2</sup>

### DISCUSSION AND DECISION

- 12 WAC 480-07-750(1) states in part: "The commission will approve settlements when doing so is lawful, the settlement terms are supported by an appropriate record, and when the result is consistent with the public interest in light of all the information available to the commission." Thus, the Commission considers the individual components of the Settlement Agreement under a three-part inquiry, asking:

- Whether any aspect of the proposal is contrary to law.
- Whether any aspect of the proposal offends public policy.
- Whether the evidence supports the proposed elements of the Settlement Agreement as a reasonable resolution of the issue(s) at hand.

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<sup>2</sup> Waste Management does business as Brem-Air Disposal to provide solid waste collection service to approximately 48,419 customers in unincorporated areas of Kitsap County.

The Commission must determine one of three possible results:

- Approve the proposed settlement without condition.
- Approve the proposed settlement subject to conditions.
- Reject the proposed settlement.

*13* We approve the Settlement without condition because it appropriately addresses and resolves the violations set out in the Complaint. The Settlement requires Waste Management to pay the full penalty recommended by Staff and to issue additional credits that are due to Waste Management's residential customers in unincorporated Kitsap County. The Settlement also establishes a pathway going forward to help avoid repeat violations. Each of these factors is consistent with the public interest and supports the Commission's goal of increasing compliance to protect consumers.

*14* The terms of the Settlement are not contrary to law or public policy and reasonably resolve all issues in this proceeding. Given these factors, we find the Settlement Agreement is consistent with the public interest and should be approved.

**ORDER**

**THE COMMISSION:**

- 15 (1) Approves and adopts the proposed settlement agreement, attached hereto as Attachment A and incorporated by reference.
- 16 (2) Dismisses the complaint against Waste Management of Washington, Inc.
- 17 (3) Authorizes the Secretary to accept by letter, with copies to all Parties to this proceeding, filings that comply with the requirements of this Order.
- 18 (4) The Commission retains jurisdiction to effectuate the terms of this Order.

DATED at Lacey, Washington, and effective March 14, 2022.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ *Andrew J. O'Connell*  
ANDREW J. O'CONNELL  
Administrative Law Judge

### NOTICE TO PARTIES

This is an Initial Order. The action proposed in this Initial Order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order, and you would like the Order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-825(2)(a) provides that any party to this proceeding has twenty (20) days after the entry of this Initial Order to file a *Petition for Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-825(2)(b). WAC 480-07-825(2)(c) states that any party may file and serve an *Answer* to a Petition for Review within ten (10) days after the Petition is filed.

WAC 480-07-830 provides that before entry of a Final Order any party may file a Petition to Reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such answer.

RCW 80.01.060(3) provides that an Initial Order will become final without further Commission action if no party seeks administrative review of the Initial Order and if the Commission fails to exercise administrative review on its own motion.

Any Petition or Response must be electronically filed through the Commission's web portal as required by WAC 480-07-140(5). Any Petition or Response filed must also be electronically served on each party of record as required by WAC 480-07-140(1)(b).

## ATTACHMENT A

Settlement Agreement and Appendix A