

TG-080913 + 914

RECEIVED
JUN 20 2008
WASH. UT. & TP. COMM

June 19, 2008

WUTC
Attn: Dave Danner, Executive Director
PO Box 47250
Olympia, WA 98504-7250

Re: Point Recycling and Refuse/Point Roberts, WA

Dear Mr. Danner,

I am writing to request that you do *not* grant Point Recycling and Refuse in Point Roberts, WA their Tariff Filings as requested by Arthur Wilkowski on behalf of his company.

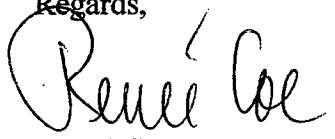
It is unfortunate that Mr. Wilkowski has alienated and denigrated his business within our community with his misguided attempts to bully people into his way of handling garbage.

Why does garbage and recycling service in Point Roberts have to be so controversial and complicated that it requires pages of pages of intimidation letters written to homeowners by Mr. Wilkowschi regarding a very simple thing? Why do homeowners have to sign an affidavit swearing that they will follow his 9 paragraphs of rules, which are at most illegal and non-enforceable by either himself, Whatcom County Health Department or Whatcom County Solid Waste?

Now he is writing letters again to the community hoping that *we* will write letters in support of his latest complaints against Whatcom County Solid Waste.

In am aware that Mr. Wilkowski's contract with Whatcom County Solid Waste is up for renewal in October of this year. It is my hope that you do not grant his tariff filing request, rate increase or any other request made by Mr. Wilkowski. It is also my hope that Whatcom County Solid Waste does not renew his contract but finds another leaseholder willing to work with all groups in our community who request and require committed solid waste management and recycling.

Regards,



Renee Coe
1986 Cedar Park Dr. Point Roberts, WA 98281 (360) 945-3090

cc Whatcom County Solid Waste, Whatcom County Council - Barbara Brenner,
Whatcom County Executive - Pete Kremen

Point Recycling and Refuse

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

May 23, 2008

Cindi L. Holmstrom, Director
Washington State Department of Revenue
Executive Office
PO Box 47450
Olympia, WA 98504-7450

Dear Director,

Point Recycling and Refuse Company is the WUTC regulated solid waste company in Point Roberts, Washington. The Company has made a Tariff filing with the WUTC which is of concern to the Department of Revenue.

Solid waste as a material is subject to Washington State Solid Waste Tax. All legal companies which handle solid waste are subject to collecting that tax and remitting to the Department of Revenue.

The WUTC regulates solid waste collection companies and is responsible to take enforcement action against companies which illegally haul solid waste. The WUTC staff refused to take enforcement action against illegal haulers and have created their own definitions of Solid Waste and Recycling in order to justify their lack of enforcement. In doing so, they have moved a large quantity of waste material which is subject to tax as garbage into a non-taxed category as recycling; and allowed illegal companies to avoid paying Solid Waste Tax and other State Fees and Taxes.

The Commission policy on enforcement has a profound impact on Solid Waste Tax revenue.

Your department should be aware of this issue and comment to the Commission as needed.

The WUTC Dockct Item is under G-155, Points Recycling and Refuse, L.L.C.

Sincerely,

Arthur Wilkowski
Owner/ Operator

Cc: WUTC
Washington State Department of Ecology



STATE OF WASHINGTON
DEPARTMENT OF REVENUE

June 16, 2008

Arthur Wilkowski
Point Recycling and Refuse
PMB 1542
145 Tyee Drive
Point Roberts, WA 98281

Dear Mr. Wilkowski:

Thank you for your letter to Director Cindi Holmstrom dated May 23, 2008, expressing your concerns regarding the lack of enforcement by the Washington Utilities and Transportation Commission (WUTC) of companies illegally hauling solid waste. She has asked me to respond on her behalf.

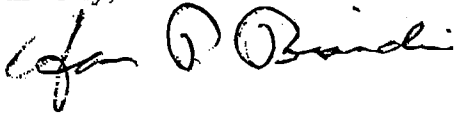
In your letter, you explained that the WUTC regulates solid waste collection companies and is responsible to take enforcement action against companies which illegally haul solid waste. You further suggest that the WUTC created its own definitions of "solid waste" and "recycling" to justify its lack of enforcement of illegal haulers. By using these definitions some materials hauled are considered recyclable instead of waste products. Thus, companies avoid collecting and paying the solid waste tax and other state fees.

We certainly appreciate your concern over the potential impact this could have on the revenue stream in our state. The Department of Revenue (DOR) considers recycling as remaking of materials for use other than for landfill disposal. Under DOR's rule, WAC 458-20-250 (Rule 250), materials collected primarily for landfill disposal are considered solid waste and subject to the solid waste collection tax. This is true irrespective of the WUTC's apparent change in definitions. From DOR's perspective the solid waste is taxable if it is discarded as worthless or not economically viable for further use. Please refer to the enclosed copy of Rule 250 for more information on the solid waste collection tax.

Arthur Wilkowski
June 16, 2008
Page 2

Again, thank you for your letter. I hope the enclosed rule will be helpful. If you have additional questions or concerns, please contact me directly at (360) 570-6147, or by email at JanB@dor.wa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Janis P. Bianchi". The signature is written in a cursive style with a large initial "J" and "P".

Janis P. Bianchi
Assistant Director

Enclosure

cc: Cindi Holmstrom, Director
Washington Utilities and Transportation Commission
Department of Ecology

**WHATCOM COUNTY
HEALTH DEPARTMENT**



REGINA DELAHUNT
Director

GREG STERN, M.D.
Health Officer

September 19, 2007

Point Recycling and Refuse Company
PMB 1542
145 Tyee Drive
Point Roberts, WA 98281

RE: Request for Clarification of Recycling and Beneficial Use Status for
Alternative Daily Landfill Cover

Dear Mr. Wilkowski:

This letter is in response to your letter dated August 29, 2007, where you requested an official opinion and determination of whether the use of solid waste as alternative daily cover was considered recycling or beneficial use. It is the position of the Whatcom County Health Department (WCHD) that the use of solid waste for alternative daily cover does not constitute recycling or a beneficial use.

WCHD uses the definition of recycling outlined in WAC 173-350, *Solid Waste Handling Standards* as adopted by reference in Whatcom County Code 24.06 *Solid Waste Rules* to determine whether or not an activity is considered recycling. This definition states: "Recycling means transforming or remanufacturing waste materials into usable marketable materials for use other than landfill disposal or incineration. Recycling does not include collection, compacting, repackaging, and sorting for the purpose of transport." It is the position of WCHD that use of material for daily cover clearly constitutes landfill disposal and therefore by definition is not recycling. This WCHD interpretation is consistent with that of the Washington State Department of Ecology (DOE), as described in the attached correspondence.

The Whatcom County Solid Waste Comprehensive Plan defines recyclable materials. This definition is quite broad and is intended to promote a broad interpretation of materials that can be recycled. Materials that are presently used for alternative daily cover may be recyclable materials by this definition. However, if used as alternative daily cover, these recyclable materials are not being recycled. They are no different than an aluminum can that could be recycled but is instead ground and disposed of as alternative daily cover.

ENVIRONMENTAL HEALTH
HUMAN SERVICES
ADMINISTRATION
DISEASE RESPONSE

509 Girard Street
Bellingham, WA 98225-4005
(360) 676-6724
FAX (360) 676-7646

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(360) 676-4593
FAX (360) 676-6762

**WHATCOM COUNTY
HEALTH DEPARTMENT**



REGINA DELAHUNT
Director

GREG STERN, M.D.
Health Officer

It is also the position of WCHD that the use of solid waste or recyclable materials for alternative daily cover does not constitute a "beneficial use." Chapter 173-350 WAC defines beneficial use and provides a process for determining whether a specific use of solid waste is a beneficial use. Beneficial use is defined in WAC 173-350 as "the use of solid waste as an ingredient in a manufacturing process, or as an effective substitute for natural or commercial products, in a manner that does not pose a threat to human health or the environment. Avoidance of processing or disposal cost alone does not constitute beneficial use."

Daily cover is clearly not part of a manufacturing process. Some materials used as alternative daily cover may be an effective substitute for a natural or commercial product used as daily cover. However, use of a material as alternative daily cover does not constitute a beneficial use. This is because the only real benefit is the reduction in disposal cost, as the material is still being disposed of. It is also not considered a beneficial use because it has never been determined to be a beneficial use, as required through the process outlined in WAC 173-350.

The comprehensive plan also speaks to the designation of materials as recyclables through a beneficial use determination process. It states, "Non-sources separated materials recovered from municipal solid waste (such as Waste Processing Facility-recovered recyclables and compost derived from MSW) will be considered designated recyclables, once they have been refined to meet market or beneficial use requirements through a process meeting all Health Department and other jurisdictional requirements." At this time no materials for use as daily cover have gone through a beneficial use determination process by WCHD or DOE. Without an official beneficial use determination, the use of solid waste as alternative daily cover is not considered a beneficial use and the material used as daily cover is not a recyclable material for the purpose of the Comprehensive plan.

If you have any questions feel free to contact me at (360) 676-6724.

Sincerely,

Charles Sullivan
Environmental Health Specialist

Higgins, Joni (UTC)

From: Ingram, Penny (UTC)
Sent: Wednesday, June 25, 2008 12:07 PM
To: UTC DL Records Center
Subject: FW: comments on ADLC - please add to TG-080914
Attachments: Alternative Daily Cover is Not Recycling.doc

Thank you!

From: arthur wilkowski [mailto:arthur@pointroberts.net]
Sent: Wednesday, June 25, 2008 8:50 AM
To: Ingram, Penny (UTC)
Subject: comments on ADLC

Penny,

This is some of my analysis on the ADLC issue. I believe that Staff investigation was inadequate and fails to look at the material in the marketplace. Since Staff have determined ADLC to be a commodity, then you must compare it to other commodities in the marketplace. Pretty simple, if a landfill charges for the material, and it cannot go anywhere other than a landfill, then it is garbage. Furthermore, in WAC 480-70-016 the intent is very clear, if soil (a commodity that has unlimited restrictions in the marketplace) is sold to a landfill then it is soil, but if restrictions are placed on the soil (must go into a landfill) and the landfill charges for it, then it is garbage. A pretty reasonable rationale, that does not preclude that landfill from strategically placing the soil which is garbage. Ground construction waste does not have unlimited restrictions in the marketplace, and the landfill charges for it. Therefore, in this case, it is garbage. Staff have incorrectly interpreted the WAC in wording and intent. Also, Staff have not formally fulfilled the requirements of WAC 480-70-016 (4) and made a detailed determination.

Please let me know that you have received this.

Also, for tomorrow's hearing, I want the two dockets dealt with separately. I know that recycling will be rejected, but the ADLC issue needs to be addressed and should get separate consideration. Even though you are reviewing your rules, that does not preclude Staff from addressing this specific issue and working with me on it.

I still think that the burden of proof should be on the recyclers not the Haulers. The WUTC should shut these companies down and then they can try and prove that they are legally recycling as legal companies.

Thanks

Arthur

Point Recycling and Refuse

P.M.B. 1542, 145 Tyee Drive, Point Roberts, WA 98281

Business Phone: (360) 945-1516

April 22, 2008

Point Recycling and Refuse Company requests that the WUTC take enforcement action against Timbers Disposal and Light Weight Recycling for illegally hauling solid waste from G-155 in violation of State, County and WUTC laws and regulations. WUTC has refused to take enforcement action in the past and have erroneously classified the operations of these two companies as recycling. This staff classification is in violation of Washington State and Whatcom County laws and a failure of the WUTC regulatory system established to protect the consumers. WUTC Staff have allowed illegal companies to continue to operate and have classified Alternative Daily Cover as recycling and as a commodity such as soil.

Alternative Daily Cover is Not Recycling

1. Does not meet the Washington State Department of Ecology's definition of Recycling (see attachment #1)
2. Does not meet Whatcom County's Definition of Recycling (see attachment #2)
3. Grinding/volume reduction/compaction and strategic placement of materials is common landfill operational practices but those practices at no time change the intent of the facility which is to dispose of the material.
4. Does not meet the Province of B.C. or City of Vancouver's Definition of Recycling.

The WUTC's conclusion that Alternative Daily Cover is a commodity is erroneous.

1. Unlike other real recyclables, At no time, does ground construction waste ever change from meeting the criteria for solid waste, it cannot ever be placed anywhere except inside a permitted landfill, therefore it has not been transformed into a recycled product but remains solid waste by definition.
2. Compared to a similar processed construction material, ground concrete; ground concrete can be accepted at processing sites which are not required to have a solid waste permit, can actually be legally placed as fill without processing, can be stored directly on the ground without environmental protections, once processed has a positive value, can be reused and resold again and again, and is priced in the marketplace with other similar soil and rock products. Mixed construction waste cannot be accepted at sites without Solid Waste Permits, cannot be stored without environmental protections, cannot be sold into the marketplace for any destination other than a landfill, is not resalable or useable, never has a positive value and is priced in the marketplace for disposal not in competition to other cover materials.
3. The State gave authority to determine what is recycling to the Department of Ecology and to Whatcom County, not to the WUTC. In making a new definition

of recycling contrary to Ecology and Whatcom County, the WUTC has exceeded its authority and mandate.

4. By creating its own definition of recycling contrary to State and County policy and industry standards, the WUTC has usurped the State Department of Revenue and Whatcom County's right to tax solid waste.

Alternative Daily Cover is not recycling at the Vancouver Landfill because:

The City of Vancouver classifies construction waste, even if used for a purpose in the landfill, as disposal, charges disposal fees and also pays host community disposal royalties to the Corporation of Delta for construction waste. See attachment # 3 "Administrative Report File No. 4603-6

The City of Vancouver continues to use ground construction waste as daily cover because it is a revenue stream. The landfill has other cover options such as tarping which conserve landfill space. The City is moving away from using even surplus soil which it must pay to dispose of if not used for cover, so continuation of using ground construction waste is a desire to continue receiving disposal fees. See attachment # 4 Administrative Report CC File No. 3757

The City of Vancouver Landfill is using ground construction waste for the closure and recontouring of a closed portion of the landfill. The intent is to achieve revenue, in essence to operate a demolition landfill on top of the closed solid waste landfill. This is not recycling or beneficial use but disposal. See attachment # 5 "Memorandum 13 January 2003"

The landfills charge volume based fees for construction waste, so grinding of waste before hauling not only lowers transportation costs per ton but also lowers disposal costs per ton. The City of Vancouver sets disposal fees for ground construction waste as a market player attempting to get the highest fees possible in competition with private construction landfills. The City is a market player for disposal. See attachment # 6 "Policy Report Finance/Environment RTS No. 01629.

Urban Woodwaste Recovery is a construction waste transfer station not a recycling facility:

Primary purpose in the market place is for the efficient collection and size reduction of construction waste to decrease trips to the landfill for haulers. Some materials recovery does occur on a very limited level but the main purpose is to ship materials to the landfills for disposal.

See attachment # 7 "City of Vancouver Administrative Report RTS No.2648"

This report outlines the business model for the City to operate a concrete/asphalt grinding operation within the city as opposed to direct hauling the material to the landfill. The transportation economics and rational directly correlates to the hauling of construction waste and explains the existence of Urban Woodwaste Recovery as a construction waste

transfer station. Compared to processed Concrete/asphalt: landfill actually pays for concrete and rubble, yet charges a market disposal price for ground construction waste

Not all ground construction waste goes to landfill for daily cover but goes to private construction landfills for disposal

Material from Urban Woodwaste Recovery is delivered to both the Vancouver Landfill and Ecowaste Industries construction landfill. While the Vancouver Landfill may install the material in a useful manor, Ecowaste Industries is not applying ground waste in any unique method compared to unground construction waste.

Urban Woodwaste Recovery is a Transfer Station that exists to:

Consolidate Solid Waste for efficient transport to several Landfills.

Grind solid waste to reduce tipping fees (fees are volume based)

Separates waste into different characteristics to meet lower disposal prices (80% ground wood/20% ground other)

Delivers ground construction waste to several landfills where it may or may not be placed in a useful manor.

Pays disposal fees at the landfills for all materials.

Does recover a limited amount of recyclables (metal/cardboard)

Does make ground wood fuels (post industrial and pure wood loads)

Does not separate mixed loads for fuels.

The Vancouver Landfill

Does not classify Alternative Daily Cover as recycling.

Charges disposal fees for ground construction waste and pays royalties on the waste.

Operates as a market player in the disposal of construction waste.

The Province of British Columbia

Does not classify Alternative Daily Cover as recycling. See Attachment #8

All of the agencies empowered to regulate and manage solid waste and recycling in British Columbia have the same viewpoint as the Washington State Department of Ecology in regards to Alternative Daily Cover, "it is not counted as recycling, never was counted and is not recycling."

Timbers Disposal and Light Weight Recycling

Are not legal companies:

Both these companies lack Federal and State licenses and permits. They are making no attempt to operate under basic business laws let alone solid waste laws. Only legal

companies can legally haul defined source separated recyclables, illegal companies are by definition then illegally hauling garbage.

Intent is hauling garbage not recycling:

The goal of these companies is to haul garbage, anything other than food waste can be taken across the Border and to the Urban Woodwaste Recovery or directly to the landfill. Since these companies file no reports and are absolutely uncontrolled, the WUTC cannot determine if anything they collect is actually recycled. The burden of proof of recycling should be upon the so called recyclers to prove that what is hauled is legal source separated recyclables and actually recycled. These companies have no labeling on their containers to specify items accepted or prohibited and have never rejected a box for contamination because to them, it doesn't matter because it is all going to the landfill eventually. Their intent and purpose is to haul garbage.

Conclusion:

The WUTC Staff do not have the legislative authority to define recycling. Staff do not have the technical expertise to analyze solid waste systems and make determinations contrary to the Department of Ecology or the County. Staff certainly have not done the research necessary to make a determination upon the solid waste system in a foreign county especially when even that system does not define Alternative Daily Cover as recycling. The fundamental goal of the Regulatory System is to insure reliable and reasonably priced solid waste services. By allowing illegal companies to continue to undermine the regulated solid waste company, the WUTC has failed to protect the consumers and is responsible for higher rates.

Sincerely,

Arthur Wilkowski