



WASHINGTON REFUSE & RECYCLING ASSOCIATION

March 28, 2003

Ms. Carole Washburn, Secretary
Washington Utilities and Transportation Commission
P. O. Box 47250
Olympia, WA 98504-7250

RECEIVED
RECORDS MANAGEMENT
03 MAR 31 AM 8:38
STATE OF WASH.
UTIL. AND TRANSP.
COMMISSION

Re: Proposed Rules – Docket A-021178

Dear Ms. Washburn:

Thank you for the opportunity to submit comments on the above-referenced rule making. WRRA has previously submitted written comments and has taken part in the stakeholder meetings, as we shall continue to do as the process proceeds.

As we have previously indicated, we do not feel that it is necessary to implement a change in policy relative to the solid waste industry. While the Commission certainly has valid concerns regarding regulated industries, and must address those concerns, it seems unfair and economically unwise to include our industry in an omnibus rulemaking and policy initiative, which clearly is not directed at our industry. As both industry and staff concur, scrutinizing these issues and relationships through the rate review process has heretofore protected solid waste consumers.

We will provide detailed comments on specific language following the workshop on April 10, but for now would like to use this opportunity to express general areas of concern and topics that might be addressed for clarification at the workshop itself. Our areas of concern are as follows:

1) We note that the draft rules contain two parts. One part of the proposal is for general applicability, and the other is an industry-specific filing regulation. We also note that many industries are not the subject of industry-specific rules. Just in the transportation industry alone, this includes household goods moving companies, commercial ferry companies, and pipeline companies. We wonder why only certain industries were selected and others not. An explanation of this selective rulemaking would assist our understanding of the Commission's intent.

2) Secondly, we are uncertain about the statutory authority for several aspects of the proposed rule, and would ask for further clarification before we are able to provide specific comments. The most obvious, of course, is the addition of "subsidiaries" to the scope of filings. Putting aside the potential for a management or services contract to trigger affiliated relations, we are still not clear what the basis is for including "subsidiaries" in this rule. Also, we were unable to locate statutory authority for the proposed modification of WAC 480-70-071(2)(a) which requires reports "twenty days prior to the transfer of cash, credit, or any

pecuniary interest between a company, its subsidiaries or its affiliates. . ." We have reviewed the applicable statutes and fail to find authority for this kind of pre-approval of transactions which may be as innocuous as the purchase of tires or the servicing of trucks. Finally, within the rules of general applicability are sections requiring filings for matters that we believe are inapplicable to solid waste companies. For instance, the "Securities" statute expressly excludes "garbage and refuse" collection companies regulated under Ch. 81.77 RCW from the definition of "public service company" RCW 81.08.010. So filings of indebtedness have never been required of our industry. Similarly, RCW 81.12.010 expressly excludes "garbage and refuse" companies from the term "public service company" for purposes of Ch. 81.12 RCW ("Transfers of Property"). Neither of those statutory schemes has ever been raised in the solid waste industry and doing so now thus appears inconsistent with well-settled law.

3) In terms of the practical realities of implementing these laws, our primary concern has to do with the risk of disclosure of confidential material unprotected in the WUTC's public records files. As Assistant Attorney General Trotter has correctly observed, in contrast to laws applicable to other utilities, the solid waste statutes and rules do not provide for confidentiality of the kind of information that would be filed and become public record under the Commission proposal. Our industry thus lacks statutory protection for disclosure of confidential information or material that would put its members at a competitive disadvantage.

A specific example would be financial statements for an unregulated affiliate who may be bidding for a city contract. That is, a regulated company or its affiliate would have to produce these documents to the WUTC, and a competitive bidder for an unregulated service could then examine them. This obviously would create an extremely unfair advantage, and essentially render the bidding process meaningless.

In the future, there may be a need for a legislative correction of the confidentiality limitations. The Commission has expressed interest in the past in pursuing such a correction; we hope to be able to rely on a joint cooperative effort to address the existing gaps in the law.

4) Finally, we are concerned about the risks of unintentional rule violations, (particularly for the smaller companies who do not have in-house accountants) in what would be a time-consuming and expensive task. Ironically, regardless of the size of the company, we expect these rules to result in increased costs to the ratepayers, the very group we all seek to protect. We have previously suggested that the Commission could address these risks by creating a materiality threshold that would relieve companies with relatively low gross revenues, or perhaps by setting a dollar-amount for transactions above which filings would be required. We also continue to believe that the rate review process should be considered as a surrogate for the filing requirements, regardless of company size. Again, in the past, the rate review process has worked well to address whatever concerns the Commission may have about unreasonable affiliated transactions. We recognize that some modifications to the rate review procedures may be necessary, but nonetheless would be more compatible with industry practice. It would allow the rules to be administered according to past practice, and prevent increased costs of compliance as well.

March 28, 2003

If you have any questions or would like to discuss our comments further please feel free to call me at anytime at 943-8839.

Very truly yours,

WASHINGTON REFUSE AND RECYCLING ASSOCIATION

A handwritten signature in black ink that reads "Brad Lovaas". The signature is written in a cursive style with a large, looping initial "B".

BRAD LOVAAS
Executive Director

cc: WRRRA Board Members