

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of Determining the
Proper Carrier Classification of, and
Complaint for Penalties Against

PAUL HENRICKSON, d/b/a
CONCRETE AND MORE,

DOCKET TG-190793

ORDER 05

INITIAL ORDER CLASSIFYING
RESPONDENT AS A SOLID WASTE
COLLECTION COMPANY;
ORDERING RESPONDENT TO
CEASE AND DESIST; IMPOSING
PENALTIES

BACKGROUND

- 1 **Nature of Proceeding.** The Washington Utilities and Transportation Commission (Commission) initiated this special proceeding to determine whether Paul Henrickson d/b/a Concrete and More (Concrete and More or Company) has engaged, and continues to engage, in unlawful operations without first obtaining a solid waste collection company certificate.
- 2 **Procedural History.** On October 1, 2019, the Commission issued Order 01, Order Instituting Special Proceeding; Complaint Seeking to Impose Penalties; and Notice of Mandatory Appearance at Hearing, pursuant to RCW 81.04.510, initiating this docket on its own motion (Complaint). The Complaint alleges that Concrete and More violated RCW 81.77.040 by:
 - 1) Offering on at least one occasion to provide solid waste collection service in the state of Washington and
 - 2) Advertising on at least one occasion to provide solid waste collection service in the state of Washington without having the required permit for such operations.
- 3 On the same date, the Commission issued a *subpoena and subpoena duces tecum for production of documents* (subpoenas) to the Company commanding Henrickson, owner of Concrete and More, to appear before the Commission at a special proceeding scheduled for 9 a.m. on November 25, 2019, in the Commission's offices at 621

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

Woodland Square Loop S.E., Lacey, Washington, and to bring the documents specified in the subpoenas.

4 On November 25, 2019, the Commission convened the special proceeding and heard testimony from witness Kathryn McPherson, who testified on behalf of Commission staff (Staff).¹ The Company did not appear at the special proceeding.

5 On that same day, the Commission entered Order 02, Initial Order Classifying Respondent as a Solid Waste Collection Company; Ordering Respondent to Cease and Desist; Imposing Penalties; Default Order (Order 02).

6 On December 11, 2019, Concrete and More filed with the Commission a Motion to Vacate Default Order.

7 On December 16, 2019, the Commission entered Order 03, Vacating Default Order; Reopening Proceeding for Further Process.

8 On December 18, 2019, Staff submitted a letter requesting that the Commission again set the matter for hearing.

9 On October 20, 2020, the Commission noticed a brief adjudicative proceeding for November 17, 2020, at 10 a.m.

10 On November 17, 2020, the Commission convened the brief adjudicative proceeding. Both Staff and the Company appeared. Concrete and More requested a continuance, which was granted orally at the hearing. The presiding administrative law judge converted the hearing to a prehearing conference to discuss scheduling and other procedural matters.

11 On November 18, 2020, the Commission entered Order 04, Prehearing Conference Order; Notice of Brief Adjudicative Proceeding (Order 04). Order 04 noticed a brief adjudicative proceeding set for January 22, 2021, at 1:30 p.m. Due to internal scheduling conflicts, Order 04 also reassigned the matter to a new administrative law judge.

¹ In formal proceedings such as this, the Commission's regulatory staff participates like any other party, while an administrative law judge make the decision. To assure fairness, the presiding administrative law judge, the commissioners, and the Commissioners' policy and accounting advisors do not discuss the merits of this proceeding with Commission staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

- 12 On January 12, 2021, the Commission issued a notice rescheduling the brief adjudicative proceeding to February 25, 2021, at 1:30pm.
- 13 On February 25, 2021, the Commission convened the brief adjudicative proceeding. Both Staff and Concrete and More appeared and offered testimony.
- 14 On March 24, 2021, the Commission issued a Notice of Brief Adjudicative Proceeding and Notice of Substitution of Presiding Officer. The Commission indicated that Concrete and More would be provided a new hearing on May 26, 2021, at 9:30 a.m. The Commission noted that Henrickson expressed concerns about bias. To alleviate the Company's concerns, the Commission assigned a new administrative law judge.
- 15 On May 19, 2021, Concrete and More filed a written response to the docket (Response). In its Response, the Company objected to all hearsay evidence and denied that it offered to collect solid waste or advertised such services.
- 16 **Hearing.** On May 26, 2021, the Commission convened a brief adjudicative proceeding before administrative law judge Michael S. Howard. Both Staff and Concrete and More appeared and offered testimony.
- 17 McPherson again testified on behalf of Staff. McPherson explained that she works as a solid waste investigator for the Transportation Safety Division.² On May 3, 2018, McPherson was searching Craigslist for possible solid waste advertisements, and she found an advertisement from Concrete and More.³ While the advertisement provided only a phone number: (425-686-5270), McPherson explained that she did further research on the HireRush website and found that this phone number belongs to Henrickson.⁴ McPherson observed that the HireRush website also noted that the Company would be using the same model truck as identified in the Craigslist advertisement, an F-250 pickup.⁵
- 18 McPherson testified that she spoke to Henrickson on the phone on several occasions and sent him a letter to provide technical assistance and explain Commission rules.⁶ McPherson believes that the second letter she sent Henrickson, to the address 22720

² McPherson, TR 115:14-16.

³ *Id.* 117:15-118:5. *See also* McPherson, Exh. KM-1 (Craigslist Advertisement).

⁴ *Id.* 120:14-121:16. *See also* McPherson, Exh. KM-2 (HireRush Advertisement).

⁵ *Id.* 123:7-23.

⁶ *Id.* 127:11-128:23.

Third Avenue A, Lake Stevens, Washington reached him, because she later spoke to him on the phone.⁷

- 19 McPherson searched Craigslist again on September 4, 2019, and again found a Craigslist advertisement for solid waste collection services.⁸ This advertisement provided the same phone number (425-686-5270) as the advertisement she found on May 4, 2018.⁹
- 20 After seeing the advertisement on September 4, 2018, McPherson testified that she then attempted to book solid waste collection services from Concrete and More by responding to the Company's Craigslist advertisement via email using an alias.¹⁰ In her email, McPherson described having "a ton of old stuff" and asked the Company "[d]o you haul garbage?"¹¹ McPherson received a response asking for her to text a picture to the phone number (425) 686-5270, and another response saying "[s]ounds like junk from your attic so Yes I can."¹² McPherson then texted a picture of items she needed taken to the "dump" to (425) 686-5270.¹³ She received the following response: "Where are you and I can do a.s.a.p."¹⁴ She asked for a price and was told "100."¹⁵
- 21 McPherson recommends that the Commission assess a penalty of \$2,000 for the Company's violations of RCW 81.77.040: a \$1,000 penalty for advertising and a \$1,000 penalty for offering solid waste collection services without the required certificate.¹⁶ She noted that Staff attempted to work with the Company to provide technical assistance on more than one occasion, but the Company failed to come into compliance.¹⁷ On cross-examination, McPherson said that Henrickson agreed to take down the Craigslist

⁷ *Id.*

⁸ *Id.* 130:11-24. *See also* McPherson, KM-3 (Craigslist Advertisement).

⁹ *Id.* 131:21-132:4.

¹⁰ *Id.* 132:5-135:19.

¹¹ McPherson, Exh. KM-4.

¹² *Id.*

¹³ McPherson, Exh. KM-5.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ McPherson, TR 137:20-138:6.

¹⁷ *Id.*

advertisement, but failed to do so. According to McPherson, the Company was still advertising on September 4, 2019.¹⁸

22 Henrickson testified that he previously owned a company but denied hauling garbage.¹⁹ Henrickson suggested that HireRush advertised without his permission and asserted that he tried to close his account with that service.²⁰

23 Henrickson testified that he received harassing phone calls from McPherson, asking him whether his fridge was running and also telling him that he “won the lawsuit.”²¹ He said that he considered “suing UTC because I could prove it with all the phone calls and everything.”²²

24 On cross-examination, Henrickson admitted that 425-686-5270 was his phone number.²³ He admitted that he no longer had the names of the people who allegedly posted advertisements on his behalf.²⁴

25 **Appearances.** Jeff Roberson, Assistant Attorney General, Olympia, Washington, represents Staff. Henrickson, owner of Concrete and More, represents the Company, *pro se*.

DISCUSSION

A. Operating as a solid waste collection company

26 RCW 81.77.010(7) defines “solid waste collection company” as:

Every person or his or her lessees, receivers, or trustees, owning, controlling, operating, or managing vehicles used in the business of transporting solid waste for collection or disposal, or both, for compensation.

27 RCW 70.95.030(23) defines “solid waste handling” as:

¹⁸ *Id.* 159:8-23.

¹⁹ Henrickson, TR 164:11-15.

²⁰ *See id.* 165:18-166:7. *See also id.* 167:16-22.

²¹ *Id.* 166:13-21.

²² *Id.* 171:8-11.

²³ *Id.* 172:6-10.

²⁴ *Id.* 173:23-174:14.

The management, storage, collection, transportation, treatment, utilization, processing, and final disposal of solid wastes, including the recovery and recycling of materials from solid wastes, the recovery of energy resources from solid wastes or the conversion of the energy of solid wastes to more useful forms or combinations thereof.

28 RCW 81.77.040 defines “conduct any operations” as:

Operating for the hauling of solid waste for compensation includes advertising, soliciting, offering, or entering into an agreement to provide that service.

29 WAC 480-70-081 requires a person to have a certificate of public convenience and necessity from the Commission before operating as a solid waste collection company in the state of Washington. Upon proof of unauthorized operations, RCW 81.04.510 authorizes the Commission to order the non-certificated company to cease and desist its activities. Additionally, RCW 81.04.110 authorizes the Commission to file a complaint on its own motion setting forth any act or omission by a company that violates any law, order, or rule of the Commission.

30 RCW 81.04.380 subjects persons who conduct operations as a solid waste collection company in violation of RCW 81.77.040 to a penalty of up to \$1,000 for each violation.

31 In a proceeding initiated under RCW 81.04.510, the responding company has the burden of proving that its alleged operations are not subject to the provisions of RCW 81.77.040.

32 If the company is found to be operating unlawfully as a solid waste collection company, the Commission is authorized and directed to enter an order requiring the company to cease and desist activities subject to regulation under Title 81 RCW.

33 The evidence clearly establishes that Henrickson operated as a solid waste collection company. Staff witness McPherson credibly describes the Company advertising for solid waste collection services on May 3, 2018, on Craigslist and on HireRush.²⁵ Both advertisements plainly state that the Company will haul “garbage.”²⁶

²⁵ McPherson, TR 117:15-118:5. *See also* McPherson, Exh. KM-1 (Craigslist Advertisement), McPherson, Exh. KM-2 (HireRush Advertisement).

²⁶ McPherson, Exh. KM-2; McPherson, Exh. KM-3.

- 34 Although McPherson sought to provide the Company technical assistance to assist the Company with complying with Commission rules,²⁷ McPherson found that the Company continued to advertise on Craigslist for solid waste collection several months later, on September 4, 2018.²⁸
- 35 McPherson then booked solid waste collection services from Concrete and More through a series of email and text exchanges on September 17, 2019.²⁹ The Company indicated by both email and text that it could provide these services.³⁰ The evidence therefore supports at least three violations of RCW 81.77.040.
- 36 The Company failed to meet its burden to establish that its operations were not subject to the provisions of Chapter 81.77 RCW. Although Henrickson gave various arguments and explanations, none of his claims are supported by any persuasive evidence.
- 37 For example, it is not plausible that another company, such as HireRush, maintained these advertisements without Henrickson's permission. Henrickson has had *more than a year* to obtain evidence indicating that a third party posted advertisements without his consent, but he has failed to produce any evidence from HireRush or any other source that substantiates these claims.
- 38 Instead, his claims about HireRush appear to be completely unsupported. Henrickson admitted that (425) 686-5270 is his phone number.³¹ When McPherson solicited solid waste collection services, she was told to text photos to this number,³² and McPherson received a response from this same number agreeing to haul garbage.³³ It is not plausible that HireRush or any other third-party used Henrickson's phone number to make these agreements. Ultimately, Henrickson's claims related to this issue diminish his credibility as a witness.
- 39 It is similarly unpersuasive for Henrickson to argue that McPherson was motivated by some personal animus. McPherson works as a solid waste investigator for the

²⁷ *Id.* 127:11-128:23.

²⁸ *Id.* 130:11-24. *See also* McPherson, KM-3 (Craigslist Advertisement).

²⁹ *See, e.g.*, McPherson, Exh. KM-4.

³⁰ *Id.* *See also* McPherson, Exh. KM-5.

³¹ *Id.* 172:6-10.

³² McPherson, Exh. KM-4.

³³ McPherson, Exh. KM-5.

Transportation Safety Division.³⁴ There is no evidence that she knew Henrickson prior to investigating Concrete and More or that she had any personal conflicts with him. Henrickson suggests that McPherson acted out of spite after he insulted her education during a phone call.³⁵ Yet this would have occurred after McPherson found evidence that the Company advertised for solid waste collection services. McPherson then obtained additional evidence that the Company continued to advertise for solid waste collection services.

40 Despite allowing Henrickson great leeway in his cross-examination, he did not bring forward any persuasive evidence suggesting that Staff fabricated evidence or otherwise proceeded on the basis of personal animus. The complete lack of evidence supporting Henrickson's claims on this issue further diminish the Commission's view of his veracity and his credibility as a witness.

41 The evidence in this case is therefore straightforward and clear. Concrete and More operated as a solid waste collection company in violation of RCW 81.77.040 on at least three occasions.

B. Consideration of the appropriate penalty

42 The Commission considers several factors when deciding the level of penalty to impose, including, *inter alia*, how harmful or serious the violation is to the public, whether the violation was intentional, whether the company promptly corrected the violation, the likelihood of recurrence, the company's past performance, and the size of the company.³⁶

43 While there is no evidence of serious harm to the public, it appears that these violations were willful and intentional. Henrickson failed to promptly correct any of the violations at issue. He continued to advertise and agree to provide solid waste collection services after Staff's communications, and he continued these activities *more than a year* after the initial violation on May 4, 2018.

44 A company is entitled to vigorously defend itself during a classification proceeding, and it is appropriate to give *pro se* parties leeway as they attempt to present their case. But in this case, Henrickson made a number of arguments that were unsupported by any evidence. He made several pointed personal attacks against Staff's witness but failed to

³⁴ McPherson, TR 115:14-16.

³⁵ *E.g.*, Henrickson, TR 170:1-6.

³⁶ Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission ¶ 15. (January 7, 2013).

support these claims with any evidence. He has claimed that Staff's investigation is based on "lies" and "deceit" but, again, has failed to support these dramatic claims with any evidence.³⁷ These actions raise a serious concern about Henrickson's credibility and suggest that these violations will continue if the Commission does not impose a penalty.

45 Given these circumstances, the Commission agrees with Staff's recommended penalty of \$2,000.³⁸ This represents two violations of RCW 81.77.040.³⁹

FINDINGS AND CONCLUSIONS

- 46 (1) The Commission is an agency of the state of Washington vested by statute with authority to regulate persons engaged in the business of operating as a solid waste collection company for compensation over public roads in Washington.
- 47 (2) The Commission has jurisdiction over the subject matter of this proceeding and over Concrete and More.
- 48 (3) On at least one occasion, Concrete and More offered to conduct operations without first obtaining a certificate from the Commission, in violation of RCW 81.77.040.
- 49 (4) On at least one occasion, Concrete and More advertised to conduct operations prior to obtaining a certificate from the Commission, in violation of RCW 81.77.040.
- 50 (5) Concrete and More is classified as a solid waste collection company within the state of Washington, pursuant to RCW 81.77.040 and WAC 480-07-081.
- 51 (6) Concrete and More should be assessed a penalty of \$1,000 for each violation of RCW 81.77.040, for a total penalty of \$2,000.

³⁷ *E.g.*, Henrickson, TR 167:6:8.

³⁸ *See* McPherson, TR 137:20-138:6.

³⁹ While the evidence establishes at least three violations of the statute, it appears that Staff may not be seeking a penalty for the Company's advertising on May 4, 2018, which occurred before the Company received any technical assistance. This decision therefore limits its consideration to the \$2,000 penalty Staff recommends.

- 52 (7) The Commission is authorized and required by RCW 81.04.510 to order Concrete and More to cease and desist immediately from engaging in unauthorized solid waste collection activities.

ORDER

- 53 (1) Paul Henrickson d/b/a Concrete and More is classified as a solid waste collection company within the state of Washington.
- 54 (2) Paul Henrickson d/b/a Concrete and More is ordered to immediately cease and desist operations as a solid waste collection company within the state of Washington.
- 55 (4) Paul Henrickson d/b/a Concrete and More is assessed a penalty of \$2,000. The penalty is due and payable within 10 days of the effective date of this Order.
- 56 (5) The Commission retains jurisdiction over the subject matter and the parties to this proceeding to effectuate the terms of this Order.

DATED at Lacey, Washington, and effective June 14, 2021.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ Michael S. Howard

MICHAEL HOWARD

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 480-07-610(7) provides that any party to this proceeding has 21 days after service of this initial order to file a petition for administrative review (Petition). Section (7)(b) of the rule identifies what you must include in any Petition as well as other requirements for a Petition. WAC 480-07-610(7)(c) states that any party may file a response to a Petition within 7 days after service of the Petition.

WAC 480-07-830 provides that before the Commission enters a final order any party may file a petition to reopen a contested proceeding to permit receipt of evidence that is essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. The Commission will give other parties in the proceeding an opportunity to respond to a motion to reopen the record, unless the Commission determines that it can rule on the motion without hearing from the other parties.

WAC 480-07-610(9) 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 does not 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).