

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of	DOCKET TV-210186
MP ENVIRONMENTAL SERVICES, INC.,	ORDER 01
Petitioner,	GRANTING PETITION FOR EXEMPTION
For an Exemption from WAC 480-14- 250(1)(a)	

BACKGROUND

- 1 On March 11, 2021, MP Environmental Services, Inc., (MP Environmental or Company) filed with the Washington Utilities and Transportation Commission (Commission) a Petition for an exemption (Petition) from WAC 480-14-250(1)(a). The company currently operates in the state of Washington under common carrier permit number CC058391.
- 2 Under WAC 480-14-250(1), each common carrier must file with the Commission evidence of currently effective liability and property damage insurance written by a company authorized to write such insurance in the state of Washington.
- 3 MP Environmental is a national transportation company that specializes in the transport of hazardous materials. WAC 480-14-250(1)(a) stipulates that insurance requirements for transporters of hazardous materials as defined in Title 49 Code of Federal Regulations must be a minimum of \$5,000,000 in liability coverage.
- 4 The Company currently has an active \$2,000,000 commercial automobile liability policy underwritten by Zurich American Insurance Company (Zurich) on file with the Commission. Zurich is authorized to write insurance in the state of Washington, and \$2,000,000 meets the insurance requirements for common carriers of non-hazardous materials under WAC 480-14-250(1)(a).
- 5 MP Environmental requests in its Petition to retain the remaining \$3,000,000 in liability coverage required to transport hazardous materials from Steadfast Insurance Company, a

surplus lines insurer that is not authorized to write insurance in the State of Washington. Surplus lines insurance is used when licensed insurers in the standard market will not provide coverage because the risk is too high, too unfamiliar, or does not otherwise meet the insurers' guidelines. Surplus line insurers have more flexibility to design and price their policies and generally charge higher premiums because they insure risks that are usually more costly to cover.

- 6 While the specific requirements of Commission rules can be exempted, under RCW 81.80.190, the Commission must "require the carriers to either procure and file liability and property damage insurance from a company licensed to write such insurance in the state of Washington, or deposit security, for the limits of liability and on terms and conditions that the Commission determines are necessary for the reasonable protection of the public against damage and injury for which the carrier may be liable by reason of the operation of any motor vehicle." Because this is a statutory requirement, the Commission cannot grant the Company an exemption from the obligation to purchase its insurance from a company licensed in Washington. The Office of the Insurance Commissioner (OIC) authorizes insurance companies to write insurance in Washington. RCW 48.15.040 allows surplus lines coverage under certain conditions if insurance from authorized insurers cannot be procured. The licensing requirements for surplus line brokers are found in RCW 48.15.070.
- 7 MP Environmental purchased \$5,000,000 in umbrella liability from Steadfast Insurance Company (Steadfast), which is a subsidiary of Zurich. This policy was purchased through INSURICA CA Insurance Services, Inc. INSURICA is a broker registered with the OIC and authorized to write surplus lines insurance on behalf of Steadfast Insurance Company in Washington. Combined with the policy from parent company of Zurich, this brings MP Environmental's total liability coverage to \$7,000,000.
- 8 MP Environmental purchased the \$5,000,000 in umbrella liability from Steadfast due to additional insurance requirements beyond what the state of Washington requires of a hazardous materials transporter. The Company has additional coverages of \$2,000,000 in pollution liability and \$2,000,000 in professional liability procured through Steadfast. These requirements are not normally covered through admitted insurance carriers and were arranged to be purchased from Steadfast by Zurich. Both the pollution and professional liability policies are further backed by the \$5,000,000 umbrella policy.
- 9 MP Environmental requests an exemption from WAC 480-14-250(1)(a) so that it may meet the insurance requirements as a common carrier of hazardous materials in Washington state while meeting the additional insurance requirements the Company has as a national transporter of hazardous materials.

10 Commission staff (Staff) supports the Company's Petition. The Federal Motor Carrier Safety Administration (FMCSA) accepts surplus lines insurance (CFR Title 49 Part 387/315) and accepted the Company's filing with Steadfast on October 12, 2020. Staff is willing to recommend the use of surplus lines insurance subject to the condition that the Company buys insurance from a highly rated surplus lines company (AM Best A- or above rating) that meets the surplus lines company requirements set out in RCW 48.15.070. Steadfast possesses an AM Best financial strength credit rating of "A+" (superior) and its long-term issuer credit rating is A- (also superior).

DISCUSSION

11 We grant the Company's Petition subject to the condition that Staff recommends. Under WAC 480-07-110(1), the Commission may grant an exemption from any of its rules if doing so is consistent with the public interest, the purposes underlying regulation, and applicable statutes. We find that the Company's Petition meets this standard subject to the condition that the Company must buy insurance from a highly rated surplus lines company (AM Best A- or above rating) that meets the surplus lines company requirements set out in RCW 48.15.070. The purpose of the insurance rule is to protect the public from loss or damage caused by the Company while providing service. Surplus lines insurance responds to that need and is a viable option for high-risk or unique lines of business where risk is less certain. In addition, the FMCSA accepts surplus lines insurance and has accepted the Company's filing with Steadfast. Accordingly, we find that the Petition for exemption is consistent with the public interest, the purposes underlying regulation, and applicable statutes, and conclude that it should be granted.

FINDINGS AND CONCLUSIONS

- 12 (1) The Commission is an agency of the State of Washington vested by statute with the authority to regulate the rules, regulations, and practices, accounts, and affiliated interests of public service companies, including common carrier companies.
- 13 (2) MP Environmental a common carrier of general commodities including hazardous materials (excluding household goods and armored car service) in the state of Washington and is a common carrier company and a public service company subject to Commission jurisdiction.
- 14 (3) This matter came before the Commission at its regularly scheduled meeting on

May 6, 2021.

- 15 (5) Pursuant to WAC 480-07-110(1), the Commission may grant an exemption from any of its rules if doing so is consistent with the public interest, the purposes underlying regulation, and applicable statutes.
- 16 (6) After reviewing MP Environmental's Petition and giving due consideration to all relevant matters and for good cause shown, the Commission finds that granting exemption from WAC 480-14-250(1) meets this standard subject to the condition that the Company must buy insurance from a highly rated surplus lines company (AM Best A- or above rating) that meets the surplus lines company requirements set out in RCW 48.15.070 and at the levels listed within the Company's Petition.

ORDER

THE COMMISSION ORDERS:

- 17 (1) MP Environmental Services, Inc.'s Petition for exemption from WAC 480-14-250(1) is granted subject to the condition that the Company must buy insurance from a highly rated surplus lines company (AM Best A- or above rating) that meets the surplus lines company requirements set out in RCW 48.15.070 and at the levels listed within the Company's Petition.
- 18 (2) The Commission retains jurisdiction over the subject matter and MP Environmental Services, Inc., to effectuate the terms of this Order.

The Commissioners, having determined this Order to be consistent with the public interest, directed the Secretary to enter this Order.

DATED at Lacey, Washington, and effective May 6, 2021.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARK L. JOHNSON
Executive Director and Secretary