

April 28, 2000

**NOTICE OF OPPORTUNITY TO FILE WRITTEN COMMENTS
(May 10, 2000)**

**NOTICE OF CONSTRUCTION, DEMOLITION, AND LAND CLEARING DEBRIS
STAKEHOLDERS WORKSHOP
(1:30 p.m., Monday, May 15, 2000)**

Re: Docket No. TG-990161
Solid Waste Rulemaking: 480-70 WAC

TO INTERESTED PERSONS:

Enclosed for your review are several documents related to the transportation of construction, demolition and land clearing debris ("CDL"). These documents include references to rules and statutes, and correspondence issued by the Commission in the past, and copies of draft proposed rules. Additional documents related to past Commission orders, policy statements, etc., will be available at the meeting. We hope that these documents will help focus your concerns and encourage stakeholder comments on specific draft proposals.

NOTICE IS GIVEN that the Commission will conduct a workshop.

Who: CDL stakeholders
What: Meeting to work on draft rules
When: Monday, May 15, 2000, 1:30 p.m.
Where: Washington Utilities and Transportation Commission
1300 Evergreen Park Dr. SW, Room 206
Olympia, WA

Please call 360-664-1160 if you need directions.

WRITTEN COMMENTS: The Commission also seeks your written input on what changes would improve the draft rules as they apply to CDL. Written comments received by the Commission by May 10, 2000, will be summarized and provided to the persons attending the workshop.

You may submit comments:

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By telephone at: 360-665-1254
By fax at: 360-586-1150
By e-mail to: canderso@wutc.wa.gov
By mail to: W.U.T.C., P O Box 47250, Olympia, WA 98504-7250
Delivered to: 1300 South Evergreen Park Dr. S.W., Olympia, WA
In person at the meeting listed above.

Comments are more useful if they are specific. They should identify proposed rule language with which the commentor agrees or disagrees. Reasons should be provided for recommending for or against proposed rule language. If you disagree with proposed language, we ask that you provide suggested alternate language. If you believe that staff's proposed language does not agree with statute and/or other rules, please provide a citation to the specific statute and/or rule. Likewise, alternate language proposals should, if possible, cite to any statute, rule, policy, etc., which provides a basis for that alternate language.

Staff will use comments received to prepare the next draft of the rules relating to transportation of CDL that will be included in the solid waste draft rules. The solid waste draft rules will be presented to the Commission at an open meeting. If the Commissioners agree that the draft rules should be formally considered as proposed rules, then the draft will be published in the "State Register" as the proposed amended solid waste rules. Following publication in the "State Register," there will be another comment period before there is a final adoption hearing before the Commission. Interested parties may also appear at the adoption hearing and present comments at that time.

If you have questions, feel free to contact Cathie Anderson, rulemaking team leader, at 360-664-1254, or by e-mail at canderso@wutc.wa.gov.

Sincerely,

CAROLE J. WASHBURN
Secretary

Enclosures

Stakeholders' Meeting
Rulemaking Docket TG-990161
Issue of Focus: Transportation of CDL
Commission Hearing Room (206)
May 15, 2000
1:30 - 4:30 p.m.

Information packet – related to transportation of CDL.

1. Rules of interest:

WAC 480-12-990(7) Carriers engaged in dump trucking. This group includes both common and contract carriers engaged in the transportation of sand, gravel, dirt, debris, and other similar commodities, except garbage, cement in bulk, and coal.

NOTE: The operations of this group are usually carried on during the daytime and are local in character. The activities of carriers in this group are somewhat seasonal, especially in connection with building or construction projects. The value of the commodity hauled is usually low.

(This rule was repealed following passage by the Congress of the Federal Aviation Administration Authorization Act (FAAAA) of 1994. That act preempted state regulation of rates, routes, and services of property carriers. It was, however, the rule in effect defining "dump truck operations.")

WAC 480-70-050(7) The phrase "the business of transporting solid waste for collection and/or disposal for compensation" used in RCW 81.77.010 applies only to those carriers who are primarily in the specialized business of transporting solid waste for collection and/or disposal for all potential customers within a specified area. Note: Chapter 81.77 RCW, as amended, was not intended to cover operations of carriers whose business is other than the primary business of transporting solid waste for collection and/or disposal. Permit holders under the provisions of chapter 81.80 RCW, whose primary business is not the collection of solid waste, need not secure a certificate under the provisions of chapter 81.77 RCW. In some instances, carriers may be engaged extensively in both motor freight carrier and in solid waste hauling operations. In cases where such operations are separable, carriers may be required to hold both a certificate and a permit in order to continue both services. In each case it will be within the discretion of the commission to determine whether a carrier is required to hold both a common carrier permit and a certificate.

(WAC 480-70-050 is currently under review in rulemaking docket TG-990161.)

WAC 480-70-050(13) "Solid waste" means the same as defined under RCW 70.95.030, except for the purposes of this chapter solid waste does not include recyclable materials except for source separated recyclable materials collected from residences.

WAC 480-70-050(14) Solid waste collection does not include collecting or transporting recyclable materials from a drop-box or recycling buy-back center, nor collecting or transporting recyclable materials by or on behalf of a commercial or industrial generator of recyclable materials to a recycler for use or reclamation. Transportation of these materials is regulated under chapter 81.80.RCW.

2. Statutes of interest:

RCW 81.77.010(5) "Private carrier" means a person who, in his own vehicle, transports solid waste purely as an incidental adjunct to some other established private business owned or operated by him in good faith: PROVIDED, That a person who transports solid waste from residential sources in a vehicle designed or used

primarily for the transport of solid waste shall not constitute a private carrier.

RCW 81.77.010(8) Solid waste collection does not include collecting or transporting recyclable materials from a drop-box or recycling buy-back center, nor collecting or transporting recyclable materials by or on behalf of a commercial or industrial generator of recyclable materials to a recycler for use or reclamation. Transportation of these materials is regulated under chapter 81.80 RCW; and

RCW 81.77.010(9) "Solid waste" means the same as defined under RCW 70.95.030, except for the purposes of this chapter solid waste does not include recyclable materials except for source separated recyclable materials collected from residences.

RCW 81.77.140 Application of chapter--Collection and transportation of recyclable materials by recycling companies or nonprofit entities--Reuse or reclamation. Nothing in this chapter shall prevent a recycling company or nonprofit entity from collecting and transporting recyclable materials from a buy-back center, drop-box, or from a commercial or industrial generator of recyclable materials, or upon agreement with a solid waste collection company.

Nothing in this chapter shall be construed as prohibiting a commercial or industrial generator of commercial recyclable materials from selling, conveying, or arranging for transportation of such material to a recycler for reuse or reclamation. [1989 c 431 § 31.]

RCW 81.77.110 Temporary certificates.

The commission may with or without a hearing issue temporary certificates to engage in the business of operating a solid waste collection company, but only after it finds that the issuance of such temporary certificate is consistent with the public interest. Such temporary certificate may be issued for a period up to one hundred eighty days where the area or territory covered thereby is not contained in the certificate of any other solid waste collection company. In all other cases such temporary certificate may be issued for a period not to exceed one hundred twenty days. The commission may prescribe such special rules and regulations and impose such special terms and conditions with reference thereto as in its judgment are reasonable and necessary in carrying out the provisions of this chapter. The commission shall collect a fee of twenty-five dollars for an application for such temporary certificate.[1989 c 431 § 26; 1965 ex.s. c 105 § 2.]

RCW 81.77.140 Application of chapter -- Collection and transportation of recyclable materials by recycling companies or nonprofit entities -- Reuse or reclamation. Nothing in this chapter shall prevent a recycling company or nonprofit entity from collecting and transporting recyclable materials from a buy-back center, drop-box, or from a commercial or industrial generator of recyclable materials, or upon agreement with a solid waste collection company.

Nothing in this chapter shall be construed as prohibiting a commercial or industrial generator of commercial recyclable materials from selling, conveying, or arranging for transportation of such material to a recycler for reuse or reclamation.

3. PROPOSED RULES WHICH MAY IMPACT TRANSPORTATION OF CDL

NEW SECTION

WAC 480-70-001 Purpose. The legislature has declared that operating as a solid waste collection company in the state of Washington is a business affected with a public interest and that such companies should be regulated. The purpose of these rules is to administer and enforce Chapter 81.77 RCW by establishing standards for:

- Public safety;
- Fair practices;
- Just and reasonable charges;
- Nondiscriminatory application of rates;

- Adequate and dependable service;
- Consumer protection; and
- Compliance with statutes, rules and commission orders.

NEW SECTION

WAC 480-70-006 Application. (1) These rules apply to any solid waste collection company in the business of collecting and transporting solid waste from points in the state of Washington, for compensation, over the public highways, *except* these rules do not apply to:

(a) The operations of a company under contract for solid waste collection service with a city or town (refer to RCW 81.77.020);

(b) The operations of a city or town that itself provides solid waste collection service (refer to RCW 81.77.020);

(c) The operations of a company under contract with any county, city or town for the collection or transportation of source separated recyclable materials from residences (refer to RCW 81.77.130);

(d) The operations of any city or town which itself provides collection and transportation of source separated recyclable materials from residences (refer to RCW 81.77.130);

(e) The operations of a recycling company or nonprofit entity collecting and transporting recyclable materials from a buy-back center, drop-box, or from a commercial or industrial generator of recyclable materials, or under agreement with a solid waste collection company (refer to RCW 81.77.140); or

(f) The operations of a commercial or industrial generator of commercial recyclable materials in selling, conveying, or arranging for transportation of recyclable materials to a recycler for reuse or reclamation (refer to RCW 81.77.140).

(2) A company in the business of collecting and transporting solid waste from points in the state of Washington is not exempt from ~~state~~ commission regulation under the provisions of:

a. The Interstate Commerce Act, ~~(commission~~ Commission regulation of solid waste collection companies includes regulation of the collection and transportation of solid waste between points in the state of Washington and from points in the state of Washington to out-of-state disposal locations); ~~and~~

b. The Federal Aviation Administration Authorization Act (FAAAA) of ~~1995~~ 1994. ~~(the~~ The FAAAA preempted state regulation of rates, routes and services of *property* carriers, but did not affect state regulation of solid waste collection companies).

NEW SECTION

WAC 480-70-011 ~~Exempt operations~~ Operations exempt from solid waste regulation. The following collection and hauling operations are not regulated by the commission as solid waste:

(1) Private carriers who, in their own vehicles, transport solid waste purely as an incidental adjunct to some other established private business owned or operated by them in good faith. This private carrier exemption does not include companies transporting solid waste from residential sources, such as apartment houses or mobile home parks, in a vehicle designed or used primarily for the transport of solid waste. To provide this service, companies must have a certificate from the commission

(2) Carriers using special equipment, ~~such as septic tank pumpers~~, to transport sewage or cesspool wastes as an incidental part of a septic tank or cesspool cleaning service.

(3) Carriers who occasionally transport to a disposal site and whose primary business is not the collection of solid waste and is conducted under a permit issued by the commission under Chapter 81.80 RCW (motor freight). ~~and is not the collection:~~

~~———— (a) Is conducted under a permit issued by the commission under Chapter 81.80 RCW; and~~

~~———— (b) Is not the collection of solid waste.~~

~~———— For example: Examples of this type of operation include:~~

~~———— (a) A dump truck operator, who as a part of an excavation project performing dump truck operations in conjunction with building or construction projects, hauls an occasional load to a disposal site; or~~

~~———— (b) A household goods carrier who transports to a disposal site the used packing materials from a~~

shipment of household goods that carrier transported.

(4) Carriers collecting or transporting recyclable materials from a drop-box or recycling buy-back center, or collecting or transporting recyclable materials by or on behalf of a commercial or industrial generator of recyclable materials to a recycler for use or reclamation. This type of operation is regulated under chapter 81.80 RCW as transportation of general commodities. ~~For example: A carrier who transports construction, demolition or land clearing debris (CDL) from a commercial or industrial generator to a recycler for use or reclamation.~~

(5) Carriers transporting loads either from a transfer station to a disposal site or between disposal sites are exempt from regulation by the commission under the provisions of RCW 36.58.050.

(6) Carriers transporting commercially salable earth which is used as fill, road ballast, or aggregate are regulated under chapter 81.80 RCW as transporters of general commodities.

NEW SECTION

Status/Comments

Provisions of WAC 480-70-xxx(1) were previously contained in WAC 480-70-050. The rule was also not contained in the original discussion draft provided to stakeholders.

WAC 480-70-XXX Determination of authority required to transport specific commodities or provide specific services. (1) Chapter 81.77 RCW, as amended, was not intended to cover operations of carriers whose business is other than the primary business of transporting solid waste for collection and/or disposal.

(a) Permit holders under the provisions of chapter 81.80 RCW, whose primary business is not the collection of solid waste, normally do not need to obtain a certificate of public convenience and necessity.

(b) In some instances carriers may be engaged extensively in both motor freight carrier and solid waste collection operations. In cases where such operations are separable, carriers may be required to hold both a certificate and a permit in order to continue both services. In each case it will be within the discretion of the commission to determine whether a carrier is required to hold both a common carrier permit and a certificate.

(2) In some instances transportation of specific commodities may be subject to regulation as motor freight under the provisions of 81.80 RCW or as solid waste under the provisions of 81.77 RCW depending on the circumstances surrounding the transportation of that commodity.

(3) In making a determination regarding operations described in paragraphs (1) and (2) above the commission will consider factors including, but not limited to:

(a) The intent of the shipper.

(b) The intended destination of the shipment.

(c) The actual destination of the shipment.

(d) Special handling or conditions placed on the shipment by the shipper and/or receiver.

(e) The value of the commodity being transported.

(f) Whether the carrier is a business primarily engaged in the business of providing solid waste collection.

NEW SECTION

WAC 480-70-XXX Certificates, emergency temporary. The commission may grant emergency temporary authority to meet an immediate and urgent need for service after the commission finds that the issuance of the emergency temporary certificate is consistent with the public interest.

(1) **Determining public interest.** In determining whether the emergency temporary authority is consistent with the public interest, the commission will consider the following factors:

(a) A showing of an immediate and urgent need for the requested service;

(b) The presence or lack of available service capable of meeting the need; and

(c) Any other circumstances indicating that the grant of the emergency temporary certificate is consistent with the public interest.

(2) **Length of authority.** The commission may grant emergency temporary authority for periods of fifteen days or less to serve a specific customer or customers.

(3) **Application for emergency temporary authority.** A company applying for emergency temporary authority must submit the following:

- (a) An application on forms provided by the Commission;
- (b) A statement from a shipper setting forth all pertinent facts relating to that shipper's need for service.
- (c) Proof of insurance showing the company holds insurance coverage in the amounts, and meeting the provisions, prescribed in WAC 480-70-156. Proof may consist of an insurance policy or a certificate of insurance.
- (d) An application fee of \$25.00.
- (e) A statement that the company will comply with all applicable safety regulations including, but not limited to, those related to driver qualification, hours of service, equipment safety, and drug and alcohol testing.

NEW SECTION

WAC 480-70-116 Certificates, competitive commercial services. Service to the satisfaction of the commission, as referred to in RCW 81.77.040, may require that a commercial customer, or class of commercial customers, have access to competitive commercial solid waste collection services.

(1) **Subcategory of solid waste authority.** Competitive commercial service is a subcategory of solid waste authority. An unrestricted solid waste (or garbage and refuse) certificate allows the company holding it to provide competitive commercial services. Persons may apply for, and the commission may restrict grants of solid waste authority to, operations as a competitive commercial services provider. Companies receiving authority to operate solely in competitive commercial service will be considered class C carriers for purposes of regulation.

(2) **Competitive commercial service criteria defined.** The commission may grant a certificate to provide competitive commercial service when a commercial customer's business generates waste in a quantity, or of a nature, that requires the company to provide:

- (a) Alternative or flexible scheduling;
- (b) Specialized equipment, handling, or packaging; or
- (c) Specialized treatment or disposal.

(3) **Grant not a substitute for traditional service.** Grant of competitive commercial service does not replace or diminish the exclusive rights of an existing underlying class A or class B solid waste collection company to provide traditional solid waste service (serving established customers on scheduled routes) to any and all residences or commercial establishments in the operating territory contained in its certificate.

(4) **Application required.** An applicant for competitive commercial service must complete and file an application under the provisions of WAC 480-70-081. The applicant for competitive commercial service must submit:

- (a) A statement describing the proposed service and explaining why the service should be classified or defined as competitive commercial service; and
- (b) Support statements from potential shippers who require competitive commercial services detailing all pertinent facts relating to the need for such service.

(5) **Factors considered.** The commission will consider the fitness of the applicant and the following additional factors when determining if the requested competitive commercial services authority is consistent with the public interest:

- (a) The need for the requested service;
- (b) Whether the requested service meets the criteria for competitive commercial service defined in paragraph (2) of this rule; and
- (c) Any other circumstances indicating that a grant of authority is consistent with the public interest.

(6) **Notice.** The commission will publish notice in its application docket of all:

- (a) Competitive commercial service applications granted;
- (b) Competitive commercial service applications denied; and
- (c) Applications for competitive commercial service which after review were found not to meet the criteria defined in paragraph (2) of this rule and which therefore should be considered as applications for traditional solid waste authority.

(6) **Protests.** Those applications for competitive commercial service that were granted shall be subject to protest for 20 days.

- (a) An existing company may file a protest opposing a competitive commercial service, if the area or

service territory granted is contained in the existing company's certificate. A solid waste collection organization, association, or conference may file a protest on behalf of existing companies.

(b) Protests must:

(i) Be filed with the commission in writing within twenty days after the date the commission mails the application docket.

(ii) Contain a statement of the specific grounds on which the protest is made;

(iii) Contain a statement of the protestant's interest in the proceeding;

(iv) Be served on the applicant; and

(v) Be served on the applicant's representative, if one is stated in the notice.

(c) The commission may grant or deny a protest without hearing.

(d) If the commission grants a protest, the matter will be set for a hearing or brief adjudicative proceeding to resolve the issues.

(7) **Limited benefits.** A certificate authorizing competitive service is not exclusive or franchised authority to serve all potential customers in certificate area, and as such the company is not entitled to the benefits of an exclusive or franchised authority.

4. Commission correspondence and/or orders regarding transportation of CDL or transportation in dump trucks. These documents are provided as illustrative of the Commission's past decisions in this arena of regulation. Additional information and copies of pertinent documents will be available at the meeting.

Letter to Mr. Fred Sears, February 7, 1990

Letter to Mr. Kenneth R. Mitchell, November 8, 1984

Order in Hearing No. GA-805, Murray Z. Fulton

Order in Hearing No. GA-439, Oscar D. Daniels

Order in Hearing No. P-144465