

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

WASTE MANAGEMENT OF
WASHINGTON, INC., d/b/a WASTE
MANAGEMENT - NORTHWEST,
WASTE MANAGEMENT - SOUTH
SOUND, WASTE MANAGEMENT OF
SEATTLE, and
WASTE MANAGEMENT - SNO-KING,

Respondent.

DOCKET TG-121265

ORDER 01

COMPLAINT

- 1 The Washington Utilities and Transportation Commission (“Commission”) on its own motion, and through its Staff, alleges as follows:

I. PARTIES

- 2 The Complainant Commission is an agency of the state of Washington, authorized by RCW 80.01.040(3) and Title 81 RCW to regulate in the public interest, solid waste collection companies as to rates, charges, classifications, rules and regulations; accounts, practices, service and safety of operations; and all other matters affecting the relationship between such companies and the public they serve.
- 3 Respondent Waste Management of Washington, Inc. (“Waste Management” or “Company”) is a corporation providing solid waste collection services in King County, Washington, and Snohomish County, Washington under Certificate of Public Convenience and Necessity G-237 granted by the Commission. The Company’s services include the collection of garbage, recyclable materials and yard waste.

Waste Management provides these services under the registered trade names: Waste Management - Northwest, Waste Management - South Sound, Waste Management of Seattle, and Waste Management - Sno-King.

II. JURISDICTION

- 4 The Commission has jurisdiction over the Company because Waste Management is subject to supervision and regulation by the Commission as a solid waste collection company under RCW 81.77, including RCW 81.77.030; as a common carrier under RCW 81.04.010(11) and RCW 81.28; as a public service company under RCW 81.04.010(16) and RCW 81.04; and as a “person” engaged in the transportation of property within the state of Washington for compensation under RCW 80.01.040(2). The Commission does not have jurisdiction over Waste Management to the extent Waste Management provides solid waste collection services under contract with any city in King and Snohomish counties (“city-contract areas”). RCW 81.77.020.
- 5 The Commission has jurisdiction over the subject matter of this Complaint under the provisions of RCW 80.01, RCW 81.04, RCW 81.28, RCW 81.77, and WAC 480-70. Specific provisions include but are not limited to: RCW 80.01.020, RCW 81.04.070, RCW 81.04.080, RCW 81.04.110, RCW 81.04.380, RCW 81.04.405, RCW 80.04.410, RCW 81.28.010, RCW 81.28.020, RCW 81.28.040, RCW 81.28.050, RCW 81.28.080, RCW 81.28.190, RCW 81.28.240, RCW 81.77.020, RCW 81.77.030, WAC 480-70-236, and WAC 480-70-386. In all instances, the unlawful conduct alleged in this Complaint occurred within areas of King and Snohomish counties where Waste Management does not provide service under contract with a city (“Commission-regulated areas”).

III. BACKGROUND

- 6 Commission statutes and rules prescribe the manner and means by which a solid waste collection company subject to Commission jurisdiction must provide service to customers within the state of Washington. As described in more detail in Section IV of this Complaint, a solid waste collection company subject to Commission jurisdiction must: (1) provide service in accordance with the rates, terms, and conditions contained in tariffs on file with the Commission and in effect (RCW

81.28.080 and WAC 480-70-236); (2) maintain and provide adequate and sufficient facilities and equipment to promptly and properly serve customers in accordance with its tariffs (RCW 81.28.010 and .020); (3) not give any undue or unreasonable preference or advantage to any person, locality or type of traffic in any respect (RCW 81.28.190); (4) provide any reports as may be required by the Commission (RCW 81.04.070, RCW 81.77.030(3) and WAC 480-70-071(2)); (5) timely investigate and report to Staff the results of informal customer complaints referred to the company by the Commission (WAC 480-70-386(b)(i)); and (6) comply with all rules and regulations adopted by the Commission related to the safety of company operations (RCW 81.77.030(2) and WAC 480-70, Part V). Solid waste collection companies that violate these requirements are subject to disciplinary action, including monetary penalties under RCW 81.04.380 and RCW 81.04.405.

7 This Complaint alleges six causes of action for violations of these statutes and rules by Waste Management in Commission-regulated areas of King and Snohomish counties. These allegations arise from a Commission investigation into the business practices of the Company related to service during and immediately following a labor strike from July 25, 2012, through August 2, 2012, that was called by drivers that collect recyclable materials and yard waste and are represented by Teamsters Local 117, and that was honored by drivers that collect garbage and are represented by Teamsters Local 174 (“Labor Strike”). Where noted in this Complaint, these allegations are based on: (1) the Company’s response (“Company Data Response”) to a Commission requirement that Waste Management report certain information regarding its collection services during and after the Labor Strike; (2) the Company’s 2012 Puget Sound Labor Disruption Contingency Plan (“Strike Contingency Plan”); and (3) the results of a Staff inspection of the safety of the Company’s operations during the Labor Strike (“Safety Inspection”).

8 If these allegations are proven, it will be shown that Waste Management violated its legal obligations under Title 81 RCW with respect to rates, services, facilities, and practices. Therefore, Staff asks the Commission to assess monetary penalties against Waste Management under the authority of RCW 81.04.380 and RCW 81.04.405. Staff’s recommended penalties total \$2,146,600. This amount is less than the full amount authorized by law, but within the Commission’s discretion to assess penalties that are justified fairly and reasonably by the facts and circumstances.

IV. ALLEGATIONS AND CAUSES OF ACTION

A. First Cause of Action (Documentation Violations- RCW 81.04.080, RCW 81.04.380, RCW 81.77.030(3), and WAC 480-70-071(2))

9 By letter dated August 24, 2012, the Commission directed Waste Management to report, for each customer for each day of the Labor Strike and for each day thereafter until all collections missed during and subsequent to the strike were made and normal service resumed: (1) the date of each missed pick-up; (2) the date each missed pick-up was collected; and (3) the number of business days between the date of the missed service and the date that service was provided. The Commission issued this directive by and through its Executive Director and Secretary in support of its investigation into the business practices of the Company related to interrupted service during and subsequent to the Labor Strike. The Commission required Waste Management to report this information by September 24, 2012, which the Commission later extended to October 1, 2012.

10 Waste Management failed to report the required information by October 1, 2012, or any date thereafter, up to and including the date of this Complaint. Instead, the Company stated the information is not reasonably available because the Company does not track which specific customers have been served. (Company Data Response at 1 and 3.) This statement, however, is inconsistent with Waste Management's acknowledgement in the same letter that temporary replacement drivers employed during the Labor Strike prepared route sheets, and that a review of the route sheets and follow-up conversations with the drivers would have allowed the Company to determine which customers did not receive service on any particular day of the Labor Strike. (Company Data Response at 1-2.) Moreover, the Company's Strike Contingency Plan stated that each truck would be equipped with a geographic positioning system ("GPS") unit pre-programmed with customer locations for each route. (Strike Contingency Plan at 1.) Data from these GPS units could have allowed Waste Management to determine which customers were not served on each day of the Labor Strike and any subsequent days a GPS unit remained in a given truck.

11 Based on the facts alleged in Paragraphs 9 and 10, Waste Management violated RCW

81.04.380, which requires any public service company to obey, observe and comply with every direction, demand or requirement made by the Commission under the authority of Title 81 RCW, including RCW 81.04.080, RCW 81.77.030(3) and WAC 480-70-071(2), which authorize the Commission to require any solid waste collection company to file special reports concerning any matter the Commission is authorized or required to enforce, inquire into, or keep itself apprised. RCW 81.04.380 states that any public service company is subject to a penalty of up to \$1,000 for each violation of any direction, demand or requirement of the Commission, and that each day of any continuing violation is a separate and distinct offense. Therefore, the Commission alleges 30 violations of RCW 81.04.380, resulting in a penalty of \$30,000 for the First Cause of Action alleged in this Complaint.

B. Second Cause of Action (Tariff Violations - RCW 81.28.080 and WAC 480-70-236)

12 The rates, terms and conditions under which Waste Management was required to provide service during the Labor Strike in Commission-regulated areas of King and Snohomish counties were contained in the following tariffs on file with the Commission and then in effect:

Waste Management - Sno-King (King County)	Tariff No. 15
Waste Management - Northwest (Snohomish County)	Tariff No. 17
Waste Management - South Sound (King County)	Tariff No. 22
Waste Management of Seattle (King County)	Tariff No. 22

The tariffs generally required Waste Management to provide weekly garbage, recycling and yard waste collection services to all residential properties where the occupant is billed directly, including single family dwellings, duplexes, apartments, mobile homes and condominiums (Item 100). The tariffs also generally required weekly garbage, recycling and yard waste collection services for multi-family properties (Item 105), and no less than monthly or every other week service for commercial customers, except where greater frequency was otherwise required or scheduled (Items 240, 245, 255, 260, and 275).

13 Despite the clear requirements of the Company's tariffs and service subscription

schedules regarding frequency of service, Waste Management provided reduced levels of service during and immediately following the Labor Strike. According to the Strike Contingency Plan, the Company would not provide any residential service (garbage, recycling and yard waste) during the first days of the Labor Strike and only reduced service such as every other week service during the first full week of the Labor Strike. Waste Management confirmed this approach by admitting that it failed to provide residential service from July 26, 2012, through July 31, 2012. (Company Data Response at 3.) All such residential customers would have their accumulated materials collected at no extra charge, but that would not occur until their next scheduled pick-up date. (Strike Contingency Plan at 2.)

14 The Company's tariffs do not distinguish between facilities it considers "critical" such as hospitals and nursing homes, and other commercial facilities. Waste Management stated, however, that it would only "begin" service to critical facilities during the first days of the Labor Strike. (Strike Contingency Plan at 2.) Waste Management stated it would serve other commercial and industrial customers during the first full week of the Labor Strike, but would reduce service to some customers that were entitled to multiple pick-ups in one day. Missed commercial customers would have their accumulated materials collected at no extra charge, but not until their next scheduled pick-up date. (Strike Contingency Plan at 2.)

15 The Company provided the actual number of pick-ups in Commission-regulated areas for all services for all customers missed each day of the Labor Strike, for scheduled routes that were excluded in their entirety. This data is summarized as follows:

Date	Missed Pick-ups
July 26	45,689
July 27	43,242
July 28	15
July 30	44,515
July 31	50,001
August 1	25,105
TOTAL	208,567

(Company Data Response at Exhibit 3.)

16 For Commission-regulated areas, the Company also compared the actual tonnage of solid waste collected each day of the Labor Strike to the average tonnage collected on that same day of the week during the three weeks that preceded the Labor Strike. In Waste Management's opinion, this data was the best information available to show the number of made and missed collections on any given day of the Labor Strike. (Company Data Response at 3 and Exhibit 3.) This information allowed Staff to estimate the number of additional missed pick-ups for each day of the Labor Strike where the Company served only a portion of a scheduled route in Commission-regulated areas, as follows:

Date	Estimated Missed Pickups
July 25	25,435
July 27	627
July 30	273
July 31	86
August 1	24,607
August 2	18,627
TOTAL	69,655

17 Moreover, between August 3, 2012, and October 17, 2012, Staff received 136 informal complaints from Waste Management customers who missed service during the Labor Strike in Commission-regulated areas. These customers represented 323 missed service pick-ups during the Labor Strike.

18 The Company stated that its practice during the Labor Strike was similar to the practice it follows during inclement weather events. (Strike Contingency Plan at 2.) That practice, in turn, relies upon a provision (Item 30) of Waste Management's tariffs allowing the Company to miss pick-ups due to inclement weather conditions and stating that any reasonably expected accumulated material will be collected at the customer's next scheduled or available pick-up date at no extra charge. Similar tariff provisions exist for all solid waste collection companies the Commission regulates.

19 Item 30, however, expressly allows missed pick-ups due only to inclement weather or road conditions. It does not apply to missed pick-ups during labor stoppages. In 2010, Staff warned the Company it could not rely on Item 30 during a labor stoppage. On May 18, 2012, the Commission sent a letter to all regulated solid waste collection companies, including Waste Management, reiterating Staff's warning that companies

may not rely on the inclement weather provisions of their tariffs to interrupt service during a labor strike, and advising all companies to revise their tariffs to address strike-related service interruptions.

- 20 Waste Management did not submit tariff revisions to address strike-related service interruptions until June 6, 2012, in Dockets TG-120840, TG-120842 and TG-120843. The proposed tariff revisions were suspended by the Commission pending further investigation by the Commission in those dockets. Thus, the tariff revisions submitted by Waste Management were not in effect during the Labor Strike and are not currently in effect.
- 21 RCW 81.28.080 prohibits every solid waste collection company subject to regulation by the Commission from charging, demanding, collecting, or receiving a greater, less or different compensation for the transportation of property, or for any service in connection with that transportation, than the rates, fares, and charges applicable to such transportation as specified in filed and approved tariffs at the time. A company violates this statute when it reduces the level of service required by its tariffs. This can include less frequent pick-ups of materials than specified in the tariff, even when accumulated materials are collected later at no extra charge to the customer.
- 22 Based on the facts alleged in Paragraphs 12 through 20, Waste Management violated RCW 81.28.080 by failing to provide collection service during the Labor Strike in accordance with the pick-up schedules required by its tariffs, even though the Company did not charge customers additional amounts to collect accumulated materials. The Company's failure to provide the information required by the Commission related to the First Cause of Action of this Complaint prohibited Staff from determining the exact total number of missed pick-ups in Commission-regulated areas each day of the Labor Strike and each day thereafter until full collection service was restored by Waste Management. Nevertheless, the facts alleged in Paragraphs 15 through 17 indicate that Waste Management missed no fewer than 208,890 scheduled pick-ups, which would not be recovered until a customer's next scheduled pick-up. Therefore, the Commission alleges 208,890 violations of RCW 81.28.080 and a penalty under RCW 81.04.380 of \$10 for each such violation, resulting in an overall penalty of \$2,088,900 for the Second Cause of Action alleged in this Complaint.

C. Third Cause of Action (Obligation to Service Violations - RCW 81.28.010 and .020)

23 The Commission re-alleges Paragraphs 12 through 20 as set forth above.

24 The Company's Strike Contingency Plan stated that Waste Management would mitigate customer impact from the Labor Strike by assembling a team of replacement drivers known as the "Green Team" that consists of qualified and professional personnel from across the country that are always prepared to respond to a labor disruption, and are willing to travel and work for as long as needed to provide essential services. Moreover, when planning its response to a labor strike, Waste Management stated that it typically activates over 400 Green Team members depending on circumstances and availability. (Company Data Response at 5.) Even during normal operations without a labor stoppage, the Company deploys an average of 358 drivers per day. (Company Data Response, Exhibit 4 at 1.)

25 The Company, however, failed to deploy sufficient numbers of replacement drivers during the Labor Strike to maintain service in accordance with its tariffs. Waste Management's collective bargaining agreement with Teamsters Local 117 terminated on May 31, 2012, but the Company did not activate the Green Team until the Labor Strike actually began on July 25, 2012, and did not actually deploy any Green Team replacement drivers to any area affected by the Labor Strike until July 27, 2012. (Company Data Response at 5-6.)

26 Moreover, while the Company eventually deployed 228 Green Team members to all areas affected by the Labor Strike (Safety Inspection), this deployment was well below normal operations (358) and the Strike Contingency Plan (400), as shown in the following chart that combines Commission-regulated and city-contract areas:

Date	Number of Drivers Deployed
July 26	0
July 27	9
July 28	24
July 29	0
July 30	79

July 31	84
August 1	166

(Company Data Response at 5-6.) As discussed below in paragraph 31, of the total 228 Green Team members that were deployed by Waste Management during the Labor Strike, only 21 replacement drivers (9 percent) were deployed to Commission-regulated areas. (Safety Inspection.)

- 27 The Company stated that the delay in deploying Green Team members was due to security concerns and the need to orient such members on federal, state and local laws and requirements before they could be dispatched. (Company Data Response at 5-6.) However, this is inconsistent with Company statements that extensive plans and arrangements with local security companies, police, and public agencies had already been developed before the Labor Strike to ensure the safety of employees, customers, facilities, equipment, and the general public. (Strike Contingency Plan at 4.) It is also inconsistent with a statement of Waste Management’s Labor Relations Manager at the Commission’s Open Public Meeting of October 25, 2012, in Docket TG-010374 that the Company “[D]id not pull the trigger on our replacement drivers soon enough. We should have done it earlier, but we thought with only a couple days we’d try to save the costs.”
- 28 RCW 81.28.010 states that every common carrier shall furnish, maintain and provide adequate and sufficient facilities and equipment to enable it to promptly, expeditiously and properly receive, transport, and deliver all property offered or received by it for transportation, and to promote the comfort and convenience of its customers. RCW 81.28.020 states that every common carrier shall under reasonable rules and regulations promptly and expeditiously receive, transport and deliver all property offered to or received by it for transportation.
- 29 Based on the facts alleged in Paragraphs 23 through 27, Waste Management violated RCW 81.28.010 and RCW 81.28.020 by failing to deploy the requisite number of replacement drivers during the Labor Strike to be able to furnish and maintain sufficient and adequate facilities and equipment to satisfy its public service obligations. RCW 81.04.380 states that any public service company will be subject to a penalty of up to \$1,000 for each separate violation of any provision of Title 81

RCW, and that each day of any continuing violation will be a separate and distinct offense. Therefore, the Commission alleges one violation of RCW 81.28.010 for each day of the Labor Strike, and one violation of RCW 81.28.020 for each day of the Labor Strike, resulting in a penalty of up to \$18,000 for the Third Cause of Action set forth in this Complaint.

D. Fourth Cause of Action (Unlawful Preference – RCW 81.28.190)

30 Waste Management serves approximately 130,000 residential customers and 5,000 commercial customers in Commission-regulated areas of King and Snohomish counties. The Company serves approximately the same number of residential customers, and approximately 14,000 commercial customers, in city-contract areas of King and Snohomish counties. Taken together, Waste Management’s garbage, recyclables and yard waste services total is 333,793 services in Commission-regulated areas and 405,604 services in the city-contract areas. Thus, 45 percent of the Company’s service totals provided in King and Snohomish counties are subject to regulation by the Commission. The Company’s Strike Contingency Plan did not distinguish between Commission-regulated areas and city-contract areas.

31 However, a review of replacement driver records during the Safety Inspection shows that only 21 (9 percent) of the total 228 Green Team members were deployed during the Labor Strike to Commission-regulated areas of King and Snohomish counties. (Safety Inspection.) Thus, a majority of missed pick-ups during the Labor Strike occurred in those same areas. (Company Data Response, Exhibits 1 and 2.) A presentation by Waste Management at a Commission Open Public Meeting on August 9, 2012, stated that only 15 percent of serviced critical accounts were located in Commission-regulated areas on July 26, 2012, through July 28, 2012.

32 During the Commission’s Open Public Meeting on August 9, 2012, Waste Management made other representations regarding its success rate in providing scheduled services. For example, the Company stated that approximately 60 percent of all regularly scheduled customers received service on Monday, July 30, 2012. Waste Management was required by the Commission to break down those representations between Commission-regulated areas and city-contract areas. The Company did not provide the required information at any time up to and including the

date of this Complaint.

33 RCW 81.28.190 states that no common carrier subject to regulation by the Commission may make or give any undue or unreasonable preference or advantage to any person, locality or description of traffic in any respect whatsoever, or subject any person, locality or description of traffic to any undue or unreasonable prejudice or advantage in any respect whatsoever. Based on the facts alleged in Paragraphs 30 through 32, Waste Management violated RCW 81.28.190 by focusing its service restoration efforts in city-contract areas of King and Snohomish counties to the exclusion and detriment of its customers in Commission-regulated areas. RCW 81.04.380 states that any public service company will be subject to a penalty of up to \$1,000 for each separate violation of any provision of Title 81 RCW, and that each day of any continuing violation will be a separate and distinct offense. Therefore, the Commission alleges one violation of RCW 81.28.190 for each day of the Labor Strike, resulting in a penalty of up to \$9,000 for the Fourth Cause of Action set forth in this Complaint.

E. Fifth Cause of Action (Consumer Complaint Violations- WAC 480-70-386(b)(i))

34 On October 17, 2012, Staff received an informal complaint from a garbage, recycling and yard waste customer of Waste Management – Northwest. The customer was seeking Commission assistance to receive a bill credit from the Company for missed service during the Labor Strike. Staff assigned No. 115667 to the informal complaint and referred it to Waste Management on October 17, 2012. The Company reported to Staff the results of its investigation into the informal complaint on October 30, 2012. Prior to that report date, Waste Management did not contact Staff to discuss the timing of its report.

35 Based on the facts alleged in Paragraph 33, Waste Management violated WAC 480-70-386(b)(i), which requires every solid waste collection company to investigate any customer informal complaint referred to it by Staff and to report the results of its investigation to Staff within two business days of the referral, which, in this case, was October 19, 2012. The Commission alleges one violation of WAC 480-70-386(b)(i) for each of the seven business days Waste Management was tardy in investigating

and reporting to Staff the results of the Company's investigation of Complaint No. 115667, resulting in a penalty under RCW 81.04.405 of \$700 for the Fifth Cause of Action alleged in this Complaint.

F. Sixth Cause of Action (Safety Compliance)

36 WAC 480-70-201 requires all solid waste collection companies subject to Commission jurisdiction to comply with state and local laws related to vehicle and driver safety, and with Title 49, Code of Federal Regulations ("49 CFR"), Part 391 – Qualification of Drivers, and Part 396 – Inspection, Repair and Maintenance, among other provisions.

37 On September 6, 2012, Commission Motor Carrier Safety Staff met with Waste Management employees responsible for Company compliance with these safety rules and regulations. At that time, Staff reviewed records for Green Team replacement drivers deployed during the Labor Strike to Commission-regulated areas.

38 Staff's Safety Inspection found and the Commission, therefore, alleges, that Waste Management failed to prepare a driver vehicle inspection report for one driver, in violation of 49 CFR Part 396.11. This single violation does not meet federal criteria that penalties are appropriate only if more than one violation is found, and more than ten percent of the records reviewed contained violations.

39 Staff's Safety Inspection also found and the Commission, therefore, alleges, seventeen other rule violations by Waste Management of a technical nature that did not involve repeat offenses for the same driver:

- Waste Management failed to ensure that the online employment application completed by one driver met federal requirements, in violation of 49 CFR Part 396.21 (one driver).
- Waste Management failed to obtain copies of driving records within 30 days of hire, in violation of 49 CFR Part 396.23(b) (eight drivers).
- Waste Management failed to maintain copies of motor vehicle records for the preceding 12 months, in violation of 49 CFR Part 396.2(c)(1) (two drivers).
- Waste Management failed to maintain annual driving record reviews, in violation of 49 CFR Part 391.25(c)(2) (three drivers).

- Waste Management failed to maintain annual certifications of violations of motor vehicle traffic laws and ordinances, in violation of 49 CFR Part 391.27 (three drivers).

40 Therefore, the Commission should not assess monetary penalties for the safety violations alleged in this Sixth Cause of Action, but the Commission should order Waste Management to review carefully these violations to ensure future compliance. The Company should be placed on notice that future violations will result in additional enforcement action, including appropriate penalties.

V. REQUEST FOR RELIEF

41 Staff asks the Commission to find that Respondent Waste Management of Washington, Inc., d/b/a Waste Management - Sno-King Waste Management – Northwest, Waste Management - South Sound and Waste Management of Seattle, has failed to comply with the statutes and rules of the Commission as set forth in the allegations above.

42 Based on all of the allegations in this Complaint, Staff requests that the Commission take the following actions if the allegations are proven:

- (1) The Commission should assess monetary penalties of \$2,146,600 against Waste Management of Washington, Inc., d/b/a Waste Management - Sno-King Waste Management – Northwest, Waste Management - South Sound and Waste Management of Seattle, consistent with RCW 81.04.380 and RCW 81.04.405; and
- (2) The Commission should order such other relief as is appropriate under the circumstances.

VI. PROBABLE CAUSE

43 Based on a review of the matters asserted in this Complaint and consistent with RCW 80.01.060, the Commission finds probable cause exists to issue this Complaint.

DATED at Olympia, Washington, and effective April 23, 2013.

GREGORY J. KOPTA
Director, Administrative Law Division