

COMMISSION STAFF EXHIBIT LIST

Docket TG-181023

NUMBER	WITNESS	A/R	DATE	DESCRIPTION
	Daniel Stein			Docket TG-180181, Staff Investigation Report, dated May, 2018 (21 pages)
				Docket TG-180181, Hearing Transcript, dated 11/29/18 (45 pages)
				Docket TG-180181, Order 02, dated 12/10/18 (11 pages)



Investigation Report

Daniel Stein

d/b/a Seabeck Waste & Recycle

TG-180181

Jason Hoxit
Compliance Investigations

May 2018

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PURPOSE, SCOPE, AND AUTHORITY

Purpose

The purpose of this investigation is to determine if Daniel Stein d/b/a Seabeck Waste & Recycle (Seabeck Waste or company) is advertising, soliciting, offering, or entering into agreements to provide solid waste collection services over the public highways of the state of Washington without the necessary certificate required for such operations by RCW 81.77.040.

Scope

The scope of the investigation focuses on information obtained by staff of the Washington Utilities and Transportation Commission (Commission) relating to Seabeck Waste's operations.

Authority

Staff undertakes this investigation under the authority of the Revised Code of Washington (RCW) 81.01.010, which adopts RCW 80.01, which directs the Commission to regulate solid waste collection companies in the public interest, and to adopt such rules and regulations as may be necessary to do so. In addition, RCW 81.04.510 makes it clear that the Commission is authorized to conduct such an investigation. Appendix A includes copies of the appropriate laws and rules.

Staff

Jason Hoxit, Compliance Investigator
(360) 664-1320
jason.hoxit@utc.wa.gov

BACKGROUND

The Commission regulates “solid waste collection companies.”¹ That term means a “person² ... [that uses] vehicles ... in the business of transporting solid waste for collection and/or disposal, or both, for compensation ... over any public highway in this state ...”³ Every solid waste collection company must have a Commission-issued certificate before operating,⁴ and they must comply with local solid waste management plans and related ordinances.⁵ For Commission purposes, “solid waste” includes what one would normally consider “trash,” as well as “source separated recyclables collected from residences.”⁶

On Jan. 8, 2015, Commission staff (staff) received a complaint from Kitsap County Public Works, Solid Waste Division, alleging that Seabeck Waste was advertising solid waste collection services by distributing flyers to prospective customers in Seabeck, WA.⁷ The Seabeck Waste flyer advertises bi-weekly trash and recycling pick up services and states, “Step 1. Discontinue your current service” and “Step 2. CALL (360) 328-6787.”⁸

On Jan. 9, 2015, staff contacted Seabeck Waste at phone number (360) 328-6787 and provided technical assistance pertaining to solid waste regulations in the state of Washington. During the phone call, Seabeck Waste’s representative refused to provide staff with both the address of the company and the name of the person with whom staff was speaking. During this phone call, Seabeck Waste’s representative stated that the company would not pursue the solid waste business model any further.⁹

On Feb. 10, 2015, staff contacted Seabeck Waste at phone number (360) 328-6787 and posed as a potential customer for solid waste collection service. During this phone conversation, the company offered to provide bi-weekly garbage service from a residence to a landfill for disposal. In addition, Seabeck Waste informed staff that existing garbage services with Waste

¹ RCW 81.77 is the primary source of the Commission’s regulatory authority. Other statutes clarify or restrict that authority.

² “‘Person’ includes individuals, firms, or copartnerships.” RCW 81.04.010(6).

³ RCW 81.77.010(7) (definition of “solid waste collection company”). The two types of Commission-regulated solid waste collection companies are “common carriers” and “contract carriers.” These terms are defined in RCW 81.77.010(3) and (4), respectively.

⁴ RCW 81.77.040.

⁵ RCW 81.77.030(5).

⁶ RCW 81.77.010(9) defines “solid waste” by referring to the definition of “solid waste” in RCW 70.95.030. We commonly use the term “trash” to cover the types of items described in RCW 70.95.030(22), which states: “solid waste ... means all putrescible and nonputrescible solid and semisolid wastes including, but not limited to, garbage, rubbish, ashes, industrial wastes, swill, sewage sludge, demolition and construction wastes, abandoned vehicles or parts thereof, and recyclable materials.” The Commission’s definition of “solid waste” in RCW 81.77.010(9) also includes “source separated recyclables collected from residences”.

⁷ See Appendix A for a copy of the email from Kitsap County to staff, dated Jan. 8, 2015.

⁸ See Appendix B for a copy of the Seabeck Waste flyer.

⁹ See Appendix C for a copy of Pam Smith’s phone conversation notes, dated from Jan. 9, 2015, to Feb. 12, 2015.

Management (WM) would need to be cancelled prior to Seabeck Waste providing solid waste services.¹⁰

On Feb. 12, 2015, Kitsap County Solid Waste Division informed staff that the owner and operator of Seabeck Waste was Daniel Stein, and provided an address of 6070 Minnig NW, Seabeck, WA 98380.¹¹

On Feb. 17, 2015, staff sent Seabeck Waste a compliance letter informing the company that “Until and unless the commission grants a solid waste certificate, Seabeck must **immediately** cease advertising and providing all forms of solid waste collection services.”¹² Staff requested that the company respond in writing by March 4, 2015. Seabeck Waste failed to respond to staff.

On March 16, 2015, staff sent the company a follow-up letter explaining that Seabeck Waste failed to respond to the Feb. 17 compliance letter and that operating as a solid waste collection company without a Commission-issued certificate is illegal. Staff enclosed a copy of the Feb. 17 compliance letter.¹³ Staff requested that Seabeck Waste respond no later than March 26, 2015, to explain how the company plans to proceed. Seabeck Waste failed to respond to staff.

On Dec. 22, 2017, staff received a complaint from a certificated solid waste collection company alleging that Seabeck Waste was sending out flyers to prospective customers in the Seabeck, WA area advertising solid waste collection services.¹⁴ The Seabeck Waste flyer advertises bi-weekly garbage and recycling pick up services and states, “When you have garbage & recycling home pick up service with S.W.R., you never forget to take out the trash! ITS ALREADY OUT!”¹⁵ On the flyer the company provides an address of P.O. Box 480, Seabeck, WA 98380.

Daniel Stein d/b/a Seabeck Waste & Recycle

Seabeck Waste is not registered with the Department of Revenue (DOR), Department of Licensing (DOL), Secretary of State, or the Washington Business Licensing Service through DOR. The company’s location address of 6070 Minnig Lane NW, Seabeck, WA 98380 was provided by Kitsap County on Feb. 12, 2015, and is consistent with Daniel Stein’s registration through DOL.¹⁶ The company’s mailing address of PO Box 480, Seabeck, WA 98380 was provided on the Seabeck Waste flyer, and is registered as Daniel Stein’s current mailing address through DOL.¹⁷

Seabeck Waste does not currently hold a solid waste certificate from the Commission, nor has the company ever held such a certificate.

¹⁰ *Id.*

¹¹ *Id.*

¹² See Appendix D for a copy of the compliance letter sent to Seabeck Waste, dated Feb. 17, 2015.

¹³ See Appendix E for a copy of the follow-up letter sent to Seabeck Waste, dated March 16, 2015.

¹⁴ See Appendix F for a copy of the email from Waste Management to staff, dated Dec. 22, 2017.

¹⁵ See Appendix G for a copy of the Seabeck Waste flyer.

¹⁶ See Appendix H for a copy of Daniel Stein’s registration through Dept. of Licensing, dated Jan. 4, 2018.

¹⁷ *Id.*

INVESTIGATION

By law, a solid waste collection company may not operate for the hauling of solid waste for compensation without first obtaining a solid waste certificate from the Commission. Operating for the hauling of solid waste for compensation includes advertising, soliciting, offering, or entering into an agreement to provide that service. (RCW 81.77.040). Each advertisement reproduced, broadcast, or displayed via a particular medium constitutes a separate violation of the law. (RCW 81.77.090).

RCW 81.77.010(7) defines a solid waste collection company as “...every person...owning, controlling, operating, or managing vehicles used in the business of transporting solid waste for collection or disposal, or both, for compensation, over any public highway in this state...”

A traditional solid waste collection company collects and removes solid waste and recyclable materials from private homes, and/or removes solid waste from commercial establishments, industrial facilities, and other sites. A specialized solid waste collection company provides other than traditional solid waste collection service. Specialized companies generally haul specific waste products for specific customers, provide only on-call or nonscheduled service, or provide accessorial services not normally provided by traditional solid waste collection companies. Unless the company’s certificate is restricted against doing so, a traditional solid waste collection company may also perform specialized solid waste collection service. (WAC 480-70-041).

RCW 79.95.030(22) defines “solid waste” to mean “all putrescible and nonputrescible solid and semisolid wastes including, but not limited to, garbage, rubbish, ashes, industrial wastes, swill, sewage sludge, demolition and construction wastes, abandoned vehicles or parts thereof, and recyclable materials.” Under RCW 81.77.010(9), “‘solid waste’ means the same as defined under RCW 79.95.030, except for the purposes of this chapter [RCW 81.77] solid waste does not include recyclable materials except for source separated recyclable materials collected from residences.” Under WAC 480-70-041, which the Commission adopted to implement RCW 81.77.010(9), solid waste is defined as, but not limited to, all putrescible and non-putrescible solid and semisolid wastes including, but not limited to: garbage, rubbish, refuse, swill, ashes, industrial wastes, sewage sludge, demolition and construction wastes, and source-separated recyclable materials collected from single and multi-family residences.

Complaint - Operations

On Dec. 22, 2017, staff received a complaint from a certificated solid waste collection company that Seabeck Waste was advertising solid waste collection services by distributing flyers to prospective customers in the Seabeck, WA area.

Staff Contact with Seabeck Waste

On Jan. 4, 2018, staff contacted Seabeck Waste at phone number (360) 328-6787 and posed as a potential customer on NW Eagles View Dr. in Seabeck, WA that had received the company’s flyer. Staff requested the company’s pricing, and Seabeck Waste stated that garbage and

recycling services at the location would be \$32 per month for two company-provided collection bins, and stated that pick up service would be bi-weekly.¹⁸

In the same phone conversation, Seabeck Waste inquired about how many people reside in the home. When staff answered that a family of four reside at the location, Seabeck Waste then recommended that staff sign up for bi-weekly garbage and recycling service with three company-provided collection bins for \$40 per month.

Towards the end of the phone conversation, staff explained that it would need to review the most recent WM bill to make sure that signing up for solid waste service with Seabeck Waste would not overlap with any existing service provided by WM. Staff stated that when the billing period with WM has ended, it will cancel the existing service and sign up for garbage and recycling services through Seabeck Waste.

Seabeck Waste explained to staff that when it contacts WM to cancel existing solid waste services, staff should not inform WM that the reason for cancellation is due to finding a different solid waste company. Seabeck Waste advised staff to inform WM that staff will be self-hauling the garbage and recycling to the dump. Staff thanked Seabeck Waste for the information and asked with the company representative for his name. The individual identified himself as Daniel.

¹⁸ See Appendix I for a copy of Jason Hoxit's phone conversation notes, dated Jan. 4, 2018.

STAFF FINDINGS & RECOMMENDATION

Staff has determined that Seabeck Waste operated for the hauling of solid waste for compensation without first obtaining a solid waste certificate from the Commission.

According to RCW 81.77.040, no company may operate for the hauling of solid waste for compensation without first obtaining a solid waste certificate from the commission. Operating for the hauling of solid waste for compensation includes advertising, soliciting, offering, or entering into an agreement to provide that service. (RCW 81.77.040)

RCW 81.04.510 Engaging in business or operating without approval or authority — Procedure, states, in part:

“Whenever the commission believes that any person or corporation is engaged in operations without the necessary approval or authority required by any provision of this title, it may institute a special proceeding requiring such person or corporation to appear before the commission at a location convenient for witnesses and the production of evidence and bring with him books, records, accounts and other memoranda, and give testimony under oath as to his operations or acts, and the burden shall rest upon such person or corporation of proving that his operations or acts are not subject to the provisions of this chapter.”

RCW 81.04.010(11) states that a common carrier “... includes ... solid waste collection companies...”

RCW 81.04.010(16) states that a public service company “... includes every common carrier.”

RCW 81.04.380 Penalties – Violations by public service companies states, in part:

“Every public service company ... shall obey, observe and comply with every order, rule, direction or requirement made by the commission under authority of this title Any public service company which shall violate or fail to comply with any provision of this title, or which fails, omits or neglects to obey, observe or comply with any order, rule, or any direction, demand or requirement of the commission, shall be subject to a penalty of not to exceed the sum of one thousand dollars for each and every offense ...”

The Commission is authorized to file a complaint on its own motion setting forth any act or omission by any public service company that violates any law or any order or rule of the Commission. RCW 81.04.110.

Commission staff believes that Seabeck Waste violated RCW 81.77.040 on two separate occasions by advertising, soliciting, and offering to transport solid waste for compensation without first having obtained a certificate from the Commission. Specifically, Seabeck Waste first violated RCW 81.77.040 when it distributed flyers advertising solid waste collection

services, and again violated RCW 81.77.040 when it offered to provide solid waste collection service to staff on Jan. 4, 2018.

Seabeck Waste knew or should have known that these were violations of Commission rules based on previous technical assistance provided by staff.

Recommendation

Commission staff recommends that the Commission institute a special proceeding under RCW 81.04.110 on its own motion to determine whether Seabeck Waste operated as a solid waste collection company without the necessary certificate required for such operations by RCW 81.77.040.

Staff also recommends that the commission assess a total penalty up to \$2,000 for two violations of RCW 81.77.040 pursuant to its authority under RCW 81.04.380.

Appendices

From: [Ingram, Penny \(UTC\)](#)
To: [Smith, Pam \(UTC\)](#)
Subject: FW: Possible UTC violation in Kitsap
Date: Thursday, January 08, 2015 4:00:59 PM
Attachments: [image003.jpg](#)
[IMG.JPG](#)

Pam, can you take a look at this and get back to Chris?

From: Christopher Piercy [cpiercy@co.kitsap.wa.us]
Sent: Thursday, January 08, 2015 3:16 PM
To: Ingram, Penny (UTC)
Cc: dboening@wm.com; jan.brower@kitsappublichealth.org; Pat Campbell
Subject: Possible UTC violation in Kitsap

Penny,

Please see the attached image. Apparently, this postcard was sent out in the Seabeck area in the last couple days. I'm not sure of the reach of this advertisement, but it does appear to be focused only on Seabeck (Southwestern Kitsap shoreline area). I doubt this company has any authority to provide the service they are advertising, so I thought I should probably bring it to your attention.

Christopher M. Piercy, LEED-AP
Recycling Coordinator
Kitsap County Public Works, Solid Waste Division
614 Division Street, MS-27
Port Orchard, WA 98366
p. 360.337.4898 f.360.337.5678

emaillogo



S.W.R.

THERES A BETTER WAY TO TAKE OUT THE TRASH!

FEBRUARY SPECIAL OFFER!!
Sign-up by January 31 and For the month of February **YOU RECEIVE 25% OFF!!!**

HOW SWEET CAN IT GET!
You get 25% off your bill for the month of February **AND**

DRIVEWAY TRASH PICK-UP!

25% OFF!

STEP 1. Discontinue your current service
STEP 2. CALL (360) 328-6787

Trash and recycle pick-up dates For your road will be starting on Monday February 2 and will continue bi weekly! Please be sure to discontinue your current service at the end of this month

Call by!
Expiration date: 01/31/15

SEABECK WASTE & RECYCLE

1/9/2015 called Seabeck Waste & Recycle 360-328-6787

The person that answered telephone would not provide his name or address. He just started this business. He has not had anyone sign up for the service. He was not aware that the service was not allowed without a SW certificate. I explained he rules and the commission jurisdiction. He was upset that a monopoly was allowed. He told me he would not pursue the business idea any further. He did not want my contact information or the website of the UTC .

2/10/2015 called Seabeck Waste & Recycling using the cell phone.

Explained that I had seen a post card a few weeks ago regarding garbage service. He told me he still provided the service. He said it was a separate service and I needed to cancel my service with WM first. He picked up residential garbage biweekly and took it to the landfill. He picks up garbage on Monday. The rate depended on my location. He asked me what road I lived on, I told him I was not comfortable telling him, I still was a customer of the SW carrier in the area. I told him I would think about it and call him back if I wanted the service.

2/12 called Chris at Kitsap County. left msg. Asked if he had any contact information for Seabeck Waste & Recycling. The person would not provide his name and address to me.

2/12 Chris Kitsap County called. He does not know the name and address. He has not received any complaints from WM that customers are canceling service. He will call me back if he gets more information about the company.

2/12 per Chris Seabeck Trash is Daniel Stein 6070 Minnig NW. Seabeck WA 98380.



STATE OF WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION
1300 S. Evergreen Park Dr. S.W., P.O. Box 47250 • Olympia, Washington 98504-7250
(360) 664-1160 • TTY (360) 586-8203

February 17, 2015

Daniel Stein
Seabeck Waste & Recycle
6070 Minnig N.W.
Seabeck, WA 98380

Dear Mr. Stein:

Staff of the Washington Utilities and Transportation Commission (commission) received information that you were distributing flyers advertising solid waste collection. The flyer shows that your company offers "Driveway Trash Pick-Up".

On January 9, 2015, Compliance Investigator Pam Smith called the telephone number on the Seabeck Waste & Recycle (Seabeck) flyer, 360-328-6787. She informed you providing solid waste collection service was not allowed without a solid waste certificate issued by the commission. You told Ms. Smith that you were not aware of the rules and would stop offering the service. Ms. Smith offered to provide a letter outlining the solid waste collection rules but you refused to provide contact information.

On February 10, 2015 Ms. Smith called again, posing as a potential solid waste customer. You told Ms. Smith you could provide the service, but first she had to cancel her service with the local solid waste collection company. As a result of these two interactions we offer the following information as technical assistance to ensure compliance with commission laws and rules.

The commission regulates "solid waste collection companies."¹ That term means a "person² ... [that uses] vehicles ... in the business of transporting solid waste for collection and/or disposal, or both, for compensation ... over any public highway in this state ..."³ Every solid waste collection company must have a commission-issued certificate before operating,⁴ and they must comply with local solid waste management plans and related ordinances.⁵ For commission purposes, "solid waste" includes what one

¹ RCW 81.77 is the primary source of the UTC's regulatory authority. Other statutes clarify or restrict that authority.

² "'Person' includes individuals, firms, or copartnerships." RCW 81.04.010(6).

³ RCW 81.77.010(7) (definition of "solid waste collection company"). The two types of UTC-regulated solid waste collection companies are "common carriers" and "contract carriers". These terms are defined in RCW 81.77.010(3) and (4), respectively.

⁴ RCW 81.77.040.

⁵ RCW 81.77.030(5)

Seabeck Waste & Recycle
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would normally consider “trash,” as well as “source separated recyclables collected from residences.”⁶ A recycling company may drop off a container at a homeowner’s residence for the homeowner to fill with recyclable materials only if that company has a solid waste certificate from the commission.

State law makes it illegal to advertise, solicit, offer, or enter into an agreement to haul solid waste for compensation without a solid waste certificate from the commission. (RCW 81.77.040) The commission can take enforcement action against suspected non-certificated solid waste collection companies based on advertisements or offers alone. It is important that you understand the following distinctions:

- Advertising, soliciting, offering, or entering into an agreement to haul solid waste for compensation requires a solid waste certificate from the commission.
- Solid waste collection includes residential and commercial garbage, residential recycling, yard waste and drop box service as described above.

Until and unless the commission grants a solid waste certificate, Seabeck must **immediately** cease advertising and providing all forms of solid waste collection services. A solid waste certificate application is enclosed. The commission will only grant new solid waste authority if the existing certificated company is determined to be unfit, unwilling, or unable to provide the service. Your services may fall under the definition of “specialized solid waste collection company,” as defined by WAC 480-70-041:

“Specialized solid waste collection company” means a company providing other than traditional solid waste collection service. Specialized companies generally haul specific waste products for specific customers, provide only on-call or nonscheduled service, or provide accessorial services not normally provided by traditional solid waste collection companies.

Your application would be subject to a public protest period and you would have to demonstrate that the existing solid waste company is not currently providing the services you propose to offer.

By March 4, 2015, please respond in writing and advise how you plan to proceed. Please direct your written response to Pam Smith, Compliance Investigator, Washington State Utilities and Transportation Commission, by email to psmith@utc.wa.gov or by regular mail to PO Box 47250, Olympia, WA 98504. If you have questions, Ms. Smith can be reached at (360) 664-1320.

Sincerely,



David Pratt
Assistant Director, Transportation Safety

Enclosure

⁶ RCW 81.77.010(9) defines “solid waste” by referring to the definition of “solid waste” in RCW 70.95.030. We commonly use the term “trash” to cover the types of items described in RCW 70.95.030(22), which states: “solid waste ... means all putrescible and nonputrescible solid and semisolid wastes including, but not limited to, garbage, rubbish, ashes, industrial wastes, swill, sewage sludge, demolition and construction wastes, abandoned vehicles or parts thereof, and recyclable materials.” The UTC’s definition of “solid waste” in RCW 81.77.010(9) also includes “source separated recyclables collected from residences.”

March 16, 2015

Daniel Stein
Seabeck Waste & Recycle
6070 Minnig N.W.
Seabeck, WA 98380

Re: **Solid Waste Collection**

Dear Mr. Stein:

On February 17, 2015, I sent a letter to you at the above address. The letter provided technical assistance regarding the solid waste laws in Washington and informed you that until a solid waste certificate was granted you cannot haul solid waste for compensation. A written response advising the commission how you plan to proceed was due by March 2, 2015. To date, no response has been received. Please provide a written response **no later than March 26, 2015**.

Operating as a solid waste collection company, which includes advertising, soliciting, offering, or entering into an agreement to haul solid waste for compensation, without a certificate from the commission is illegal. (RCW 81.77.040). Failure to respond can result in enforcement action. For your reference, I have enclosed a copy of the original letter.

If you have further questions, please contact Pam Smith, Compliance Investigator, by email to psmith@utc.wa.gov or by telephone 360-664-1320.

Sincerely,

David Pratt,
Assistant Director, Transportation Safety

Enclosure

From: [Pellecchia, Joseph](#)
To: [Hoxit, Jason \(UTC\)](#)
Cc: [Pellecchia, Joseph](#)
Subject: Seabeck waste and recycling
Date: Friday, December 22, 2017 10:10:51 AM
Attachments: [IMG_0065.jpg](#)

Hello Jason –

Mike Weinstein is on vacation so he asked me to reach out to you directly about the attachment (company). Our customers in the Seabeck area of Kitsap County brought this flyer to our attention. It appears to be a waste hauler trying to provide service outside of their jurisdiction. I am not sure if they are trying to provide full service but I wanted to let you know of the possible infraction.

Please let me know if you have any questions or comments.

Thanks and Happy Holidays!

Joey Pellecchia
District Manager
Brem-Air Disposal - WM
jpellecc@wm.com

Waste Management
9300 SW Barney White Rd
Bremerton, WA 98312
Office 360 415 2751
Cell 425 471 1096

Recycling is a good thing. Please recycle any printed emails.

SEABECK WASTE & RECYCLE

THERE IS A BETTER WAY TO TAKE OUT THE TRASH!



HOME PICK-UP

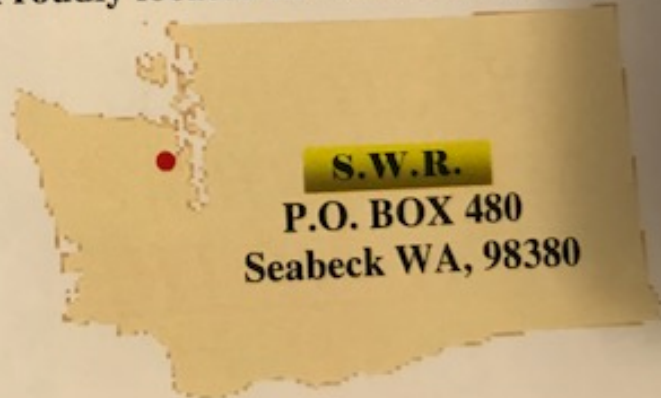
NEVER TOUCH YOUR GARBAGE CANS AGAIN! When you have garbage & recycling home pick up service with **S.W.R.**, you never forget to take out the trash! ITS ALREADY OUT!

*Bi-weekly ***HOME PICK-UP!***

*Cans provided at ***NO CHARGE!***

*Monthly invoice with ***PAID POSTAGE!***

Proudly located in Seabeck Washington



[DOL Home Page](#)
[Help](#)

Driver and Plate Search

- [Home](#)
- [Driver Search](#)
- [Vehicle Search](#)

[Back](#)

Selected Driver

PIC:	[REDACTED]				
Last:	STEIN	Suffix:			
First:	DANIEL				
Middle:	JOHN				
SSN:	[REDACTED]	Date of birth:	[REDACTED]	Gender:	M
Height:	[REDACTED]	Weight:	[REDACTED]	Eye color:	[REDACTED]
Street:	6070 MINNIG LN NW	City:	SEABECK	State:	WA
Zip code:	98380 -9769	County:	Kitsap	Country:	USA
Out of state:		Return to WA:			
CDL class:	[REDACTED]	License info:	[REDACTED]		
Last trans:	[REDACTED]				
Expires:	[REDACTED]	Last update:	10/14/2016 12:00:00 AM		

Driver Endorsements

Code Info	Code Desc	Code Detail
[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	

Driver Restrictions

Code Info	Code Desc	Code Detail
[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	

Ignition Interlock (IIL) Information

Effective date	Expiration date	Reason for license
[REDACTED]	[REDACTED]	

CDL Certification Information

CDL self-certification	Self-certification date	Medical certification
[REDACTED]	[REDACTED]	

Driver CDL Waiver Information

Waiver type	Issue date	Effective date	Status
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Driver History

Related PIC	Name	City	Birth date	Relation	Last update
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Driver Comments

Code Info	Sequence ID	Last update	Effective	Comment info
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Driver Address History

Street	City	County	State	Address type	Request date	Last update
PO BOX 480	SEABECK	County-00	WA	Current Mailing	05/19/2015	10/14/2016 12:00:00 AM

Driver Transactions

PIC	Transaction code	Previous transaction code	Transaction date
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Related Vehicles

License plate	Model year	Make	Series body	Primary color	Secondary color	VIN	Old plate	New plate
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

The information contained in this system is confidential.
 Inappropriate access or use of this information may result in civil and or criminal actions.

Title: Called and spoke with Seabeck Waste & Recycle

Activity Date: 2018-01-04

Time: 9:50 A.M.

Contact: Daniel Stein

Contact Phone: (360) 328-6787

Description: Called from the UTC cell phone number of (360) 810-1281 and spoke with David Stein of Seabeck Waste & Recycle at (360) 328-6787. When Mr. Stein answered the phone call, I asked if the phone number I called was for Seabeck Waste & Recycle, and he stated yes.

I explained that I received one of the company's flyers regarding garbage and recycling services for my address in Seabeck, and that I wanted to know what the pricing was since the prices weren't provided. Mr. Stein asked which road I lived on and I replied NW Eagles View Dr. Mr. Stein hesitated and asked me to explain how I received one of his company's flyers (I assume because flyers weren't distributed to the NW Eagles View Dr. area). I explained that my mother who also lives in Seabeck, WA, was the one who actually received the flyer; and explained that she provided me with a copy of the flyer to see if I could save some money on my garbage service. Mr. Stein asked me if by chance my mom's name was Linda and I replied yes. Mr. Stein then went on to talk about how Linda was a really nice lady.

Mr. Stein stated that his garbage and recycling services for my location would be \$32 per month for two cans, and that pick-up would be every other week. I asked Mr. Stein if one bin is designated for garbage and the other bin is designated for recycle. Mr. Stein stated that it didn't matter and that I could use both for recycle, both for garbage, or use both for mixed recycle/garbage.

I asked Mr. Stein how big the cans are since the flyer advertised that it provides the cans at no charge. Mr. Stein stated that he provides 45 gallon cans. I stated that I didn't know how big a 45 gallon can was, and Mr. Stein stated that a 32 gallon can is the common size cans that are sold at Home Depot. Mr. Stein then asked me how many people live in the home, and I replied that there are four of us: myself, wife, and two small children. Mr. Stein stated that with four people in the house, he would recommend that I have three collection cans. I asked what the charge for three cans was, and Mr. Stein stated that it would be \$40 per month for three cans with pick-up being every other week.

I explained to Mr. Stein that I would need to look over my current Waste Management invoice to see which dates I've already been billed for. I explained that I will cancel my service with WM and then sign up for his garbage services once I can confirm that I won't be paying for two garbage companies during the same time period.

Mr. Stein stated that when I call WM to cancel my garbage and recycling services, that I shouldn't tell WM that it's due to me finding another company. Mr. Stein stated that I should just tell WM that I will be hauling all of my own garbage and recycling to the dump. Mr. Stein's tone changed when he explained to not inform WM of going with another company, and Mr. Stein sounded uncomfortable providing that information.

I thanked Mr. Stein for the information and the call, and apologized that I hadn't gotten his name. When I asked him for his name, Mr. Stein stated that his name is Daniel. The phone conversation was then mutually ended.

Document Count: 0

Docket No. TG-180181 - Vol. I

In the Matter of: Daniel Stein d/b/a Seabeck
Waste & Recycle

November 29, 2018



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Docket No. TG-180181 - Vol. I

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BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of Determining) DOCKET NO. TG-180181
the Proper Carrier Classification)
of, and Complaint for Penalties)
Against:)
DANIEL STEIN d/b/a SEABECK)
WASTE & RECYCLE)

BRIEF ADJUDICATIVE PROCEEDING, VOLUME I
Pages 1-44
ADMINISTRATIVE LAW JUDGE LAURA CHARTOFF

November 29, 2018
1:30 P.M.

Washington Utilities and Transportation Commission
1300 South Evergreen Park Drive Southwest
Olympia, Washington 98504

REPORTED BY: TAYLER GARLINGHOUSE, CCR 3358

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A P P E A R A N C E S

ADMINISTRATIVE LAW JUDGE:

LAURA CHARTOFF
Washington Utilities and
Transportation Commission
1300 South Evergreen Park Drive SW
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FOR SEABECK WASTE &
RECYCLE:

DANIEL STEIN
Seabeck Waste & Recycle
PO Box 480
Seabeck, Washington 98380

ALSO PRESENT:

JASON HOXIT
Staff Witness

TENA HOPPER
Seabeck Waste & Recycle Witness

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OLYMPIA, WASHINGTON; NOVEMBER 29, 2018

1:30 P.M.

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P R O C E E D I N G S

JUDGE CHARTOFF: Okay. Let's be on the record. Today is Thursday, November 29th, 2018, and the time is a little after 1:30 p.m. This docket is TG-180181, which is captioned In the Matter of Determining the Proper Carrier Classification of, and Complaint for Penalties Against Daniel Stein, doing business as Seabeck Waste & Recycle.

My name is Laura Chartoff. I am the administrative law judge presiding over today's brief adjudicative proceeding.

Let's start by taking short appearances from the parties starting with Staff.

MR. FUKANO: Good morning, Judge Chartoff. I am Harry Fukano, Assistant Attorney General, with the Utilities and Transportation Commission division here on behalf of Commission Staff.

JUDGE CHARTOFF: Thank you.

And for the respondent, Daniel Stein, doing business as Seabeck Waste & Recycle?

MR. STEIN: I am Daniel Stein, doing

1 business as.

2 JUDGE CHARTOFF: Can you please also provide
3 your business address, phone number, and business email
4 if you have one?

5 MR. STEIN: I -- there is none. There was a
6 PO Box that I'd used. There was no website or -- yeah.

7 JUDGE CHARTOFF: Okay.

8 MR. STEIN: And I'm sorry, that was PO Box
9 480, Seabeck, Washington 98380. I'm sure that's kinda
10 what you were looking for.

11 JUDGE CHARTOFF: Thank you. Yeah, I assumed
12 it was the one that we had in the record.

13 Okay. So this a classification hearing that
14 was brought by the Commission based on Staff's finding
15 that Mr. Stein is operating as a solid waste collection
16 company without the required certificate from the
17 Commission. And if we determine today that Mr. Stein
18 was engaging in such conduct, we will issue an order
19 requiring him to cease and desist from engaging in such
20 conduct unless and until he obtains a certificate from
21 the Commission.

22 We also have a complaint for penalties, and
23 the complaint for penalties alleges that the business
24 violated RCW 81.77.040 on two occasions by operating as
25 a solid waste collection company without a certificate

1 of public convenience and necessity. And Staff is
2 requesting penalties of up to \$1,000 for each violation.

3 So at this time, I wanted to ask, Mr. Stein,
4 are you planning to admit the violations today or to
5 contest that they occurred? Just briefly.

6 MR. STEIN: Yeah, yeah, just briefly, I
7 just -- I want it to be known that I can see where I
8 went wrong. I didn't -- I do admit that I was outside.
9 I spoke a little bit with Jason Hoxit on the phone. I
10 clearly see when I was served this paperwork. So yes, I
11 was in violation of -- of that law, of the
12 RCW 81.77.040, so I was.

13 I don't know if it was -- I don't know if it
14 was gone about the right way with the seven days.
15 There's a seven calendar day. That's under
16 RCW 34.05.110 where there's a seven calendar day to
17 serve me of the violation to be corrected. But with all
18 of that aside, what I want to do is I don't want to
19 fight. So I would like to work with the UTC and with
20 the score hand in hand. That's my goal here today.
21 It's not to come down and raise my arms and, you know,
22 cry injustice. So I -- I do admit. So I'm not sure
23 exactly if I want to say that I'm guilty at this point
24 right now given the RCW stated.

25 JUDGE CHARTOFF: Okay.

1 MR. STEIN: There's a procedure that's
2 supposed to be followed in these matters, but I -- I
3 don't want to fight. So I just want to be clear with
4 that. I can clearly see where I was wrong.

5 JUDGE CHARTOFF: Okay. Okay. I was asking
6 because I wanted to see if the respondent was willing to
7 stipulate to the facts of what occurred, but since -- it
8 sounds like perhaps you should go ahead and present your
9 case; does that sound...

10 MR. FUKANO: I think it does. I mean, it
11 sounds as though Mr. Stein is willing to acknowledge
12 what had occurred. But if the judge -- if you would
13 prefer, then we will proceed.

14 JUDGE CHARTOFF: We'll just go ahead and
15 have you present your case so I have it all on the
16 record.

17 So before you get started, so here's how
18 this will go. Staff will present their case first today
19 and then you will have the opportunity to present your
20 side of the story. When I call on each party to
21 testify, I will swear you in with the oath of witness so
22 that anything you tell the Court will be under oath and
23 can be considered sworn testimony.

24 And for the court reporter's benefit, please
25 speak slowly and clearly, and also please be sure to use

1 the microphone on the table in front of you. And once
2 you are sworn in, you can present your testimony.

3 MR. FUKANO: Judge, if I may, can I have a
4 brief moment to speak with Staff, just two minutes in
5 the hallway?

6 JUDGE CHARTOFF: Of course, yes. Yeah,
7 we'll take a brief recess.

8 (Recess taken from 1:38 p.m.
9 until 1:43 p.m.)

10 JUDGE CHARTOFF: We're back on the record.

11 MR. FUKANO: And, Judge, I have placed two
12 copies of our proposed Exhibit JH-1 on the bench, one
13 for you, one for records.

14 JUDGE CHARTOFF: Okay. And did you provide
15 a copy -- or you'll provide when you introduce the
16 exhibit?

17 MR. FUKANO: Yes, we will.

18 JUDGE CHARTOFF: Okay. Okay. You can
19 proceed when you're ready.

20 MR. FUKANO: RCW 81.77.010 states that --
21 defines a solid waste collection company as every person
22 owning, controlling, operating, or managing vehicles
23 used in the business of transporting solid waste for
24 collection or disposal or both for compensation, except
25 septic tank pumpers, over any public highway in the

1 state. That same statute defines a common -- or excuse
2 me -- as a common carrier or as a contract carrier.
3 That same statute defines a common carrier as any person
4 who collects or transports solid waste or for disposal
5 by motor vehicle for compensation whether over regular
6 or irregular routes or by regular or irregular
7 schedules.

8 RCW 81.77.010 also states that solid waste
9 has the same meaning as in RCW 70.95.030, which in turn
10 defines solid waste in part as all putrescible and
11 nonputrescible solid and semisolid wastes including, but
12 not limited to, garbage, rubbish, ashes, industrial
13 waste, soil sewage sludge, demolition and construction
14 waste of any vehicle parts or vehicles or parts thereof.

15 Under RCW 81.77.020, no person shall engage
16 in the business of operating a solid waste company in
17 this state except in accordance with RCW 81.77. RCW
18 81.77.040 states that a solid waste company shall not
19 operate for the hauling of solid waste for compensation
20 without first having obtained from the Commission a
21 certificate declaring that public convenience and
22 necessity requires such operation.

23 The same statute further states that
24 operating for the hauling of solid waste includes
25 advertising, soliciting, offering, or entering into an

EXAMINATION OF HOXIT / FUKANO

1 agreement to provide that service.

2 Staff intends to present evidence that
3 Seabeck Waste & Recycling operated as a solid waste
4 collection company on two separate instances, by
5 advertising and/or soliciting solid waste collection
6 business and by offering to provide solid waste
7 collection services without authorization from the
8 Commission. Staff will present evidence through
9 Mr. Jason Hoxit, who will testify about Staff's
10 investigation of and determinations regarding Seabeck
11 Waste & Recycle. Thank you.

12 JUDGE CHARTOFF: Thank you.

13 MR. FUKANO: And I would like to call Jason
14 Hoxit.

15 (Jason Hoxit sworn.)

16 JUDGE CHARTOFF: Thank you. Please be
17 seated.

18
19 E X A M I N A T I O N

20 BY MR. FUKANO:

21 Q. Would you please state your name and spell your
22 last name for the record?

23 **A. Jason Hoxit, H-o-x-i-t.**

24 Q. And what is your current occupation?

25 **A. Compliance investigator.**

EXAMINATION OF HOXIT / FUKANO

1 Q. And how long have you been in that position?

2 **A. Over four years.**

3 Q. And what does that position involve?

4 **A. It involves investigating the business practices**
5 **of permitted companies, but also into the business**
6 **practices of nonpermitted companies.**

7 Q. I would like to discuss the matter that is at
8 issue at today's hearing. Are you familiar with the
9 matter involving Seabeck?

10 **A. Yes, I am.**

11 Q. And how are you familiar?

12 **A. I was emailed a complaint by Waste Management in**
13 **December of 2017 alleging that Seabeck Waste was**
14 **distributing flyers in the Seabeck, Washington area**
15 **soliciting service for solid waste collection.**

16 Q. And I'm showing you what has been labeled as
17 Exhibit JH-1.

18 MR. FUKANO: And, Judge, may I approach the
19 witness?

20 JUDGE CHARTOFF: Yes.

21 MR. FUKANO: Or approach opposing?

22 JUDGE CHARTOFF: Yes.

23 MR. FUKANO: This is JH-1.

24 BY MR. FUKANO:

25 Q. What is this exhibit, Mr. Hoxit?

EXAMINATION OF HOXIT / FUKANO

1 **A. Which page are you referring to?**

2 Q. Just the exhibit in general.

3 **A. This is Staff's investigations report of Seabeck**

4 **Waste.**

5 Q. And are you familiar with this exhibit?

6 **A. Yes, I am.**

7 Q. And how did you become familiar with this

8 exhibit?

9 **A. I am the investigator that drafted this report.**

10 Q. And do you agree with the information contained

11 in this report?

12 **A. Yes, I do.**

13 Q. And would you have any changes to make to this

14 report?

15 **A. I would not.**

16 MR. FUKANO: At this time, I would offer

17 proposed Exhibit JH-1 into evidence.

18 JUDGE CHARTOFF: Mr. Stein, do you have an

19 objection?

20 MR. STEIN: Yeah, I believe that this was

21 the same as what I was served with in the packet. So

22 there is some conflicting -- briefly if I may have a

23 moment?

24 JUDGE CHARTOFF: So you disagree with some

25 of the statements in there?

EXAMINATION OF HOXIT / FUKANO

1 MR. STEIN: Just a few statements, yeah.
2 Everything in -- I'm gonna say 95 percent of this is 100
3 percent correct. There's a few things that it stated
4 that happened if this is the same that I'm looking at
5 that I don't -- I --

6 JUDGE CHARTOFF: Okay.

7 MR. STEIN: Yeah.

8 JUDGE CHARTOFF: I am going to admit Exhibit
9 JH-1; however, when it's your turn to provide testimony,
10 you can explain -- you will have the opportunity to
11 explain what parts -- what facts in there that you
12 disagree with.

13 MR. STEIN: Thank you.

14 JUDGE CHARTOFF: Okay.

15 (Exhibit JH-1 admitted.)

16 BY MR. FUKANO:

17 Q. Mr. Hoxit, I would like to ask you some
18 additional questions about the investigation detailed in
19 the report. You mentioned that you initially received a
20 complaint, do you recall what that complaint stated?

21 **A. Yes, the complaint stated that customers in the**
22 **Seabeck area of Kitsap County brought this flyer,**
23 **referring to Appendix G -- sorry, let me -- which will**
24 **also be page 18 of the exhibit, to our attention. (As**
25 **read) It appears that a waste hauler is trying to**

EXAMINATION OF HOXIT / FUKANO

1 provide service outside their jurisdiction.

2 And Waste Management goes on to say, (as read)

3 I'm not sure if they're trying to provide full service,

4 but I wanted to let you know of the possible infraction.

5 Q. And you mentioned an Appendix G, what is -- are
6 you familiar with Appendix G?

7 **A. Yes, I am.**

8 Q. And what is Appendix G?

9 **A. This is the flyer that was provided to me at the**
10 **time of the complaint.**

11 Q. And how do you know that this flyer pertains to
12 Seabeck?

13 **A. It is titled "Seabeck Waste & Recycle" as well**
14 **as the PO Box address at the bottom location matches the**
15 **mailing address on Daniel Stein's driver's license as**
16 **reported by Department of Licensing.**

17 Q. And what did Staff do in response to the
18 complaint that it received?

19 **A. Staff contacted the company and posed as a**
20 **potential customer in the Seabeck, Washington area.**

21 Q. And what did that -- what did that process
22 entail?

23 **A. I called the phone number that's found on the**
24 **2015 flyer for Seabeck Waste, which is going to be page**
25 **12 of the exhibit, and the phone number on there, area**

EXAMINATION OF HOXIT / FUKANO

1 code 360-328-6787, which is the number that is also
2 associated with Daniel Stein.

3 Q. And how did Seabeck respond?

4 **A. Seabeck Waste answered the phone, and when I**
5 **posed as a potential customer, they offered me**
6 **originally two 45-gallon garbage containers at \$32 per**
7 **month and that would be for every other week service.**
8 **Daniel Stein later inquired as to how large the family**
9 **was. I informed him of four members, and at that time,**
10 **he recommended that I have three 45-gallon containers at**
11 **a price of \$40 a month, and that would also be for every**
12 **other week service.**

13 Q. And did Staff determine who had answered the
14 phone call when you called Seabeck?

15 **A. Yes.**

16 Q. Who answered the phone?

17 **A. The man identified himself as Daniel.**

18 Q. Did Staff determine who runs or operates
19 Seabeck?

20 **A. Yes.**

21 Q. Who runs or operates Seabeck?

22 **A. Daniel Stein.**

23 Q. And how did Staff make that determination?

24 **A. As addressed earlier, the PO Box on the 2017**
25 **flyer matches Daniel Stein's mailing address, and the**

EXAMINATION OF HOXIT / FUKANO

1 phone number on the 2015 flyer matched the phone number
2 associated with Daniel Stein.

3 Q. And I'd like to talk a bit about the required
4 operating authority that one would need to operate a
5 solid waste collection company.

6 What does a company need in order to operate as
7 a solid waste collection company?

8 **A. A certificate issued from the Commission.**

9 Q. Does Seabeck Waste & Recycle have a certificate
10 from the Commission authorizing it to operate as a solid
11 waste collection company?

12 **A. No, they do not.**

13 Q. May a company operate as a solid waste
14 collection company without a Commission certificate?

15 **A. No.**

16 Q. Does Staff have a recommendation as to the
17 classification of Seabeck?

18 **A. Yes, it does.**

19 Q. And what is that recommendation?

20 **A. Staff recommends that the Commission classify**
21 **the company as a solid waste collection company.**

22 Q. Does Staff have a recommendation as to a
23 penalty?

24 **A. Yes. Staff recommends a penalty of \$1,000 per**
25 **violation, so for two violations a penalty of \$2,000.**

EXAMINATION OF HOXIT / FUKANO

1 Q. And is there any other conditions Staff would
2 attach to that recommendation?

3 **A. Yes, if Mr. Stein, d/b/a Seabeck Waste & Recycle**
4 **agrees to cease and desist as a solid waste collection**
5 **company, Staff would recommend that we suspend 1,000 of**
6 **the \$2,000 penalty on the conditions that the company**
7 **cease from operations.**

8 Q. And to clarify for the record, which two
9 violations is Staff asserting?

10 **A. One violation is for the advertisement for solid**
11 **waste collection and the other violation is for the**
12 **offer for solid waste service.**

13 Q. And specifically, which advertisement would that
14 be?

15 **A. The 2017 advertisement.**

16 Q. And is that contained in JH-1?

17 **A. Yes, it is, page 12. Oh, I apologize. Page 18.**

18 MR. FUKANO: Thank you. No further
19 questions at this time.

20 JUDGE CHARTOFF: Okay. Mr. Stein, do you
21 have any questions for Mr. Hoxit?

22 MR. STEIN: I wish I were a lawyer. I wish
23 I had a better understanding of all this, but I'm going
24 to do my best here.

25 JUDGE CHARTOFF: And I'll -- I'll just

1 explain since you're not a lawyer. So here you would --
2 this would be the time where you just ask him questions
3 about his testimony. Later on, you will have the
4 opportunity to just testify as to everything you want to
5 tell me.

6 MR. STEIN: Okay.

7 JUDGE CHARTOFF: So does that make sense?

8 MR. STEIN: It does.

9 JUDGE CHARTOFF: Okay.

10 MR. STEIN: Thank you.

11 I believe the only questions that I would
12 have for Mr. Hoxit at this time, (as read) On
13 February 17th, 2015 -- this is back to Exhibit JH-1.
14 This is a couple of pages in. It states in there, (as
15 read) On February 17th, 2015, Staff sent Seabeck Waste a
16 compliance letter informing the company that until and
17 unless the Commission grants a solid waste certificate,
18 Seabeck must immediately cease advertising, providing
19 all forms of solid waste collection service. Staff
20 requested that the company respond in writing by
21 March 4th, 2015. Seabeck Waste failed to respond to
22 Staff.

23 And I don't know if this is appropriate at
24 this time, Your Honor, but stop me if it is. I did not
25 receive that letter in the mail.

EXAMINATION OF HOXIT / STEIN

1 The next line down, (as read)
2 March 16th, 2015, Staff sent the company a follow-up
3 letter explaining that Seabeck Waste failed to respond
4 to the February 17th compliance letter and that
5 operating as a solid waste collection company without
6 the Commission-issued certificate is illegal. Staff
7 enclosed a copy of the February 17th compliance letter.
8 Staff requested that Seabeck Waste respond no later than
9 March 26th, 2016, to explain how the company plans to
10 proceed. Seabeck Waste failed to respond to Staff.

11 Also did not receive that letter.

12 JUDGE CHARTOFF: Okay. So yeah, that's --

13 MR. STEIN: Okay. I apologize. I
14 apologize.

15 JUDGE CHARTOFF: I think we're -- yeah,
16 that's not a question.

17 MR. STEIN: Apologize.

18 JUDGE CHARTOFF: So -- okay.

19 MR. STEIN: Well, if I may, then, I
20 understand. Okay. I got it.

21

22 E X A M I N A T I O N

23 BY MR. STEIN:

24 Q. So, Mr. Hoxit, at this time, can you confirm
25 that you did, in fact, send two letters, both on

EXAMINATION OF HOXIT / STEIN

1 February 17th, 2015, and the other letter on
2 March 16th, 2015?

3 **A. On both instances, the investigator would have**
4 **been Pam Smith, who was the solid waste investigator at**
5 **the time and is no longer with the Commission. So I**
6 **can't speak directly to receiving any correspondence**
7 **back.**

8 Q. Would there be any receipt or would there be any
9 way that you could prove that such a letter was sent?

10 **A. I can say that in the records that Commission**
11 **Staff has, there was no record of a returned letter.**

12 Q. Mr. Hoxit, are you aware of RCW 34.05.110(1),
13 basically here, the notice must be given to a small
14 business about violations and their provisions for
15 waiving any fines after proper notice is given,
16 specifically the relevant part of RCW 34.05.110?

17 **A. I do not have that in front of me, and I do not**
18 **have recollection of that off the top of my head.**

19 Q. RCW 34.05.110, it does state that there must be
20 at least seven calendar days of the agency as the UTC to
21 serve an individual performing outside of that law.

22 MR. FUKANO: Your Honor, I'm not quite sure
23 this is a question.

24 JUDGE CHARTOFF: Yeah, I -- I think that's
25 correct. I -- I think what you're trying to present may

1 be better presented in -- as testimony when it's your
2 turn.

3 MR. STEIN: I apologize. I have no
4 questions for Mr. Hoxit.

5 JUDGE CHARTOFF: Okay. Do you have any
6 redirect?

7 MR. FUKANO: Not at this time, but I may
8 recall Mr. Hoxit.

9 JUDGE CHARTOFF: Okay. Okay. So -- okay.
10 So, Mr. Stein, it's your turn to present testimony. I
11 assume you're going to speak as a witness for -- so I
12 will swear you in.

13 (Daniel Stein sworn.)

14 JUDGE CHARTOFF: And who -- who do you
15 intend to call as a witness including yourself?

16 MR. STEIN: I intend to call a witness -- as
17 we can see, we have a pretty full room, and I don't want
18 to monopolize the entire Court's time here. I know
19 everyone's got things to do.

20 So if anybody that happened to have come
21 with me today would like to testify, if you would please
22 raise your hand.

23 UNIDENTIFIED SPEAKER: I actually have a
24 question, but maybe that can wait for another time.

25 UNIDENTIFIED SPEAKER: Are we allowed to ask

1 questions?

2 JUDGE CHARTOFF: No.

3 Okay. So what -- what would be the content
4 of what they would want to present, just generally?

5 MR. STEIN: I believe the content of what
6 they would want to present today would be an urgent need
7 for somebody, just somebody, to come and pick up their
8 garbage. A lot of these people have an extremely hard
9 time, some of which are not able to pick up their
10 garbage at all and nobody will help them. And when
11 someone does show up to help them, then that person that
12 helps them asked them if they would come to Olympia with
13 them. So I guess it would be under maybe -- maybe a
14 small form of character witness, but also an urgent
15 need. These people have been kind of left -- left in
16 the dark.

17 JUDGE CHARTOFF: Okay. I'm not sure if
18 that's relevant to the legal issue, but this is what
19 I'll -- I'm going to suggest. I think you should give
20 your testimony first.

21 MR. STEIN: Sure.

22 JUDGE CHARTOFF: So we'll have you speak,
23 and then Staff will ask you questions, and then you'll
24 be able to speak a bit more. And then we'll take a
25 short recess, and I think you should choose one person

1 who can speak for the group. And I'm going to give you,
2 you know, five, ten minutes to talk about that. Do you
3 think that would work?

4 MR. STEIN: I don't think it would work. I
5 think we could probably narrow the field down from the
6 amount of people that are here that would want to speak,
7 but -- and the reason for that is, is there are
8 different circumstances, yes, the common thread being
9 that people do have a hard time moving their garbage.
10 But every person in every situation is specific, so I --
11 I do think that, you know, we've all traveled a long
12 way, and I do think that some people here would like to
13 speak. And I think that they could add -- they could
14 add something to this proceeding that I think would be
15 valuable.

16 JUDGE CHARTOFF: Okay. I -- I'm not -- I'm
17 pretty sure that what they are going to say is not going
18 to be relevant to the legal issue, but I will -- let's
19 go ahead and do your testimony and then you can -- I'll
20 allow you to call a witness and we'll -- we'll move on
21 from there.

22 MR. STEIN: Sure.

23 JUDGE CHARTOFF: Okay. So what is your
24 response to the allegations against you?

25 MR. STEIN: My response to the allegations

1 before me today, the two counts of operating -- or
2 excuse me, for soliciting customers without the proper
3 certification is true. It is true. It's a hundred
4 percent true, and Jason's got it right and this Court
5 knows it. You know, I've -- as I've told even all my
6 customers, you know, or customers, yeah, I get it. I
7 was wrong. I got it. I see that clearly now.

8 As far as -- this -- this would be time to
9 bring up the procedural actions, correct? There are --

10 JUDGE CHARTOFF: Oh, sure.

11 MR. STEIN: This would be correct? Okay.

12 Thank you. As I stated before, RCW 34.05.110 clearly
13 states that there needs to be presentation to the small
14 business seven calendar days as to so the correction can
15 be corrected. And I was presented with nothing. So I'm
16 just throwing that out there.

17 JUDGE CHARTOFF: Are -- are you talking
18 about -- are you saying you were not served?

19 MR. STEIN: Correct. I got a phone -- so I
20 got a phone call -- I got a phone call how this all
21 started. It was from Pam Smith and it was kind of a
22 heated exchange. This is how it all started and I --
23 she identified herself as Pam Smith with the UTC. I had
24 no idea who Pam Smith was. I had no idea who UTC was.
25 This all sounds make up -- make-believe to me. It did.

1 And that's not a -- that's not a cut against the UTC, it
2 just -- it sounded made up. What I thought it was, is I
3 thought it was Waste Management coming in and posing as
4 a certain way and trying to scare me off basically.

5 Then from there, it was stated in this
6 packet of JH where I was served all of -- all of these
7 packets of paperwork, I would assume, or letters, it
8 says letters. I have not received any of those. So if
9 procedure hasn't been followed on -- on the UTC side to
10 show evidence supporting that they followed
11 RCW 34.05.110, then we're kind of spinning our wheels
12 here.

13 So ultimately, yes, I was wrong. I see it.
14 I was served this packet that was set up brilliantly, if
15 I may add. I showed up to do a job, you know, and then
16 I got served paperwork. So it's kind of a mixed
17 blessing, though, because what it did was is, it showed
18 me in this intense packet that I was served it -- it --
19 it lined everything right out. It was what you need,
20 where you went wrong, and it was -- it was like having a
21 breath of fresh air.

22 So from there, I -- I -- I found empowerment
23 in this, being served all this information. I realized
24 then that the UTC is an actual thing, and yes, they're
25 definitely after my butt. There's no doubt about it.

1 So from there, I put in action plans to counter
2 everything that has happened, basically, the damage that
3 I have done to myself, but more importantly to the
4 people that you see sitting behind me. These people
5 that you see sitting behind me -- this is my time to
6 give my testimony -- are so left in the dark, it's --
7 it's horrible.

8 I get calls, you know, because my name is --
9 is put out there, you know, Please would you come over
10 and help me move my garbage? I come over and there's
11 someone in a wheelchair and they got -- they're on chemo
12 and they're dying, you know. It's horrible. And here
13 they are and they've got 11-plus garbage cans sitting
14 outside their garage, and these are not -- I don't want
15 to be rude, these are not dirty, sloppy people. These
16 are good people. And they got rats, and they look at me
17 and they said please help.

18 So I'm not going to say no. I'm going to do
19 it. So I did. This all started with my friend, Chris
20 Lane, who came down with cancer, was sick, he couldn't
21 move his garbage cans. He asked me if I'd help his
22 family, and I said, Of course. You know, it's no big
23 deal.

24 And then my friend down the street, Mike and
25 Tena Hopper, Mike came to me and said, Would you please

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1 help? We're having a hard time getting our garbage out.

2 I said, Absolutely. I said, No problem.

3 That's how it started. That's literally exactly how it
4 started.

5 And then from there, just knowing so many
6 people, and so many people knowing me, just well-known
7 in the community, it was -- it was brought out like,
8 Hey, you know, Dan will take your garbage, you know.
9 It's like oh, jeez, and before you knew it, you know --
10 you know, I wasn't going after anybody. You know, they
11 were coming after me like please do this. I said, Okay,
12 I will do it.

13 And then before I knew it, I saw that there
14 was a serious need. I saw that there was more -- there
15 was a whole group of people that -- and I knew nothing
16 about -- I knew nothing about this law, I knew nothing
17 about the UTC. I realized. So I was like, Okay. Well,
18 my goodness, I'm wanted. I'll do it. I'll help. I'll
19 help.

20 So I made up these flyers, and I put these
21 flyers out there, and I didn't really -- I didn't really
22 have the -- the goal wasn't really necessarily a
23 business. The goal was is to reach out there to the
24 community, people that I don't know that are suffering
25 and relieve them. So that I -- when I show up, you

1 know, on the doorstep, you can't just be like, Hey, my
2 name's Dan and I want to take your garbage, you know.
3 It's kind of a hard sell. I had to put something kind
4 of to it so people wouldn't look at me like just some
5 dude getting garbage. I had to present it in such a way
6 that they felt comfortable and they felt safe with it.
7 And they -- they might not know who I am, but it was
8 very clear that like, okay. All right.

9 So then from there, it -- it just -- it kind
10 of bloomed. It did bloom. And then I was served with
11 this packet of paperwork, and I realized, okay.
12 Getting, you know, kind of back to where I kind of
13 started this, the UTC is a real organization. I
14 actually started reading the law and digested this to
15 the best of my understanding. I can't afford an
16 attorney. So I just do it to the best of my ability.

17 And through all this, I knew that this -- it
18 says right in here cease and desist, you know. Problem
19 is, is that they can't move their garbage. So what do
20 you do. So I continued on after the cease and desist
21 order, after I was served this, and I did this as stated
22 before by Jason Hoxit in RCW 81.77.1 -- or excuse me,
23 010, and RCW 81.77.010 and 81.77.040, it all states the
24 same. It has a common -- commonality to it, that no
25 solid waste company individual entity of any kind -- if

1 I may read it. (As read) The term common carrier in the
2 context of solid waste collection means any person who
3 collects and transports solid waste for disposal by
4 motor vehicle for compensation whether over regular or
5 irregular routes or by regular or irregular schedules.

6 So basically what I've been doing for the
7 last two months is I have been collecting garbage as I
8 historically have; however, there has been no exchange
9 of compensation. I have not collected any money, nobody
10 has given me any form of compensation except for
11 cookies, because I've gotten some cookies and they're
12 pretty awesome.

13 So I -- I can't stress enough to you, I'll
14 do whatever it takes. I don't want to say the UTC has
15 failed to meet their obligation of meeting the public's
16 best interest, but I will inform the UTC now, here, on
17 the record, that there is a serious public need out
18 there. It's really bad. We start having rodents come
19 in and health and public is -- is in jeopardy, and I see
20 it. I'm here to just tell you that.

21 I would like for the record further, one
22 more time, and if I haven't beat on this enough, that
23 procedure was not followed by the UTC under
24 RCW 34.05.110. I don't know who I want to call up here.

25 JUDGE CHARTOFF: Okay. Well, before then, I

EXAMINATION OF STEIN / CHARTOFF

1 have a couple of questions and then Mr. Fukano may have
2 some questions for you.

3

4 EXAMINATION

5 BY JUDGE CHARTOFF:

6 Q. I'm just looking at the letter in Exhibit JH-1,
7 it looks like the letter, the February 17th letter, was
8 mailed to 6070 Minnig Northwest, Seabeck, Washington;
9 was that your address at the time?

10 **A. No, that was my mailing -- or excuse me, that**
11 **was my physical but not my mailing address.**

12 Q. And you don't receive mail at your physical?

13 **A. Correct.**

14 Q. Okay.

15 **A. I have problems with break-ins.**

16 Q. Okay. And the phone call that Mr. Hoxit
17 testified about, do you recall that phone call?

18 **A. Yeah, I -- I -- I do remember numerous phone**
19 **calls. I -- I have had a chance to read through this**
20 **previously, and I remember pretty much all of these**
21 **conversations. I don't think there was a one**
22 **conversation that's -- that didn't happen. I do contest**
23 **to little bit on the Pam Smith initial conversation, the**
24 **one that started all of this, but, you know -- but it**
25 **happened. It did happen.**

EXAMINATION OF STEIN / FUKANO

1 JUDGE CHARTOFF: Okay. Mr. Fukano, do you
2 have any questions for Mr. Stein?

3 MR. FUKANO: Just briefly.
4

5 E X A M I N A T I O N

6 BY MR. FUKANO:

7 Q. So, Mr. Stein, I would just like to clarify, you
8 had said earlier that you would admit that the
9 allegations in the complaint were true, in that there
10 was nothing wrong with that aside from the issue
11 involving 34.05.110?

12 **A. Correct.**

13 MR. FUKANO: Okay. Thank you. No further
14 questions for cross on Staff.
15

16 E X A M I N A T I O N

17 BY JUDGE CHARTOFF:

18 Q. Okay. And did -- so you said you continued to
19 provide -- you are continuing to provide the service --

20 **A. Correct.**

21 Q. -- at this point for compensation or --

22 **A. For no compensation.**

23 Q. For no compensation.

24 And Staff mentioned in their recommendation that
25 they would be willing to recommend waiving or suspending

EXAMINATION OF STEIN / CHARTOFF

1 a portion of the penalty if you agreed to cease
2 operating; is that something you're willing to do? Or
3 is that -- sounds like you need to think about it?

4 **A. There's really nothing too much to think about.**

5 **It's -- I mean, don't tell me to cease and desist.**

6 **Don't look at me and ask me to do that, look at them.**

7 Q. Okay. Please direct your comments --

8 **A. I -- I'm directing it -- I'm directing it**
9 **accordingly.**

10 **JUDGE CHARTOFF: Okay. Okay. So I will**
11 **allow you to call -- so we'll take -- in a minute, we'll**
12 **take a short recess. I will allow you to call two**
13 **people for a maximum of ten minutes, so five minutes per**
14 **person. But I do want to caution you that each person**
15 **who speaks is probably going to provide evidence of**
16 **another violation for which, you know, are violations**
17 **are -- for which you may be subject to penalties. So**
18 **you need to -- you should think about that, but if you**
19 **want to get their -- and I have concerns about whether**
20 **they're relevant to the legal issue. I know they're**
21 **important to you.**

22 MR. STEIN: Sure.

23 JUDGE CHARTOFF: And so I'm going to -- I'm
24 willing to let you get this on the record. So do you
25 have a --

EXAMINATION OF STEIN / FUKANO

1 MR. FUKANO: I just had a -- one follow-up
2 cross-question that occurred to me if you would permit.

3 JUDGE CHARTOFF: Okay. I'll let you do your
4 cross-question.

5 Then we'll take a short recess where you can
6 decide who -- what witnesses to call, and then we'll
7 move on.

8 Okay. So go ahead.

9
10 EXAMINATION

11 BY MR. FUKANO:

12 Q. Mr. Stein, in addition to the information in the
13 complaint, would you agree with the information
14 contained in Mr. Hoxit's narrative of your phone
15 conversation on page 21, I believe?

16 **A. What specifically?**

17 Q. I was asking if you agreed with all the
18 information in the complaint -- or in the -- excuse me,
19 in the narrative on page 21. As you had -- you had
20 agreed with the complaint, and so I wanted to just make
21 sure.

22 **A. I believe so. No, no, I don't agree with all of**
23 **that.**

24 Q. And what parts do you not agree with?

25 **A. In the opening line, in the opening line, says,**

EXAMINATION OF STEIN / FUKANO

1 (as read) Called from the UTC, called phone number
2 360 -- oh, used a cell number of 810-1281 [sic], okay,
3 and spoke with David Stein, so clerical error there.

4 Q. Yes.

5 **A. Would be Daniel Stein.**

6 Q. Apologies, yes.

7 **A. I don't recollect. I can't say for sure exactly**
8 **if everything in this is stated correctly. So I can't**
9 **say out of recollection.**

10 Q. So you're -- you're not quite sure?

11 **A. I can't -- yeah, I can't say --**

12 Q. Does -- oh, sorry.

13 **A. Yeah, if it is word for word, I mean...**

14 Q. But nothing jumps out to you as being wrong
15 aside from the clerical error?

16 **A. Other than my name.**

17 Q. Okay. Thank you.

18 **A. But I'm not sure.**

19 **JUDGE CHARTOFF: Okay. So at this time,**
20 **we'll take a short recess, and I'll give you a chance to**
21 **think about who you want to call as a witness. And we**
22 **will take five minutes; is that acceptable?**

23 MR. FUKANO: Acceptable to Staff.

24 MR. STEIN: Yes.

25 JUDGE CHARTOFF: Okay. All right. We are

1 in recess.

2 (Recess taken from 2:28 p.m.

3 until 2:39 p.m.)

4 JUDGE CHARTOFF: Okay. So we are back on
5 the record. Would you like to call a witness?

6 MR. STEIN: Yes, I'd like to call a witness
7 pertaining to acquiring without -- without giving an
8 advertisement basically. I know -- I know that we're
9 here for two charges for advertising. So I'd like to
10 call Tena Hopper.

11 JUDGE CHARTOFF: Okay. Ms. Hopper, please
12 come forward and I'll swear you in.

13 (Tena Hopper sworn.)

14 JUDGE CHARTOFF: Thank you. Please have a
15 seat. Make sure your microphone is turned on.

16 MS. HOPPER: Are we good?

17 JUDGE CHARTOFF: Oh, yeah, you're good.

18 So please state your name, spelling your
19 last name for the court reporter.

20 MS. HOPPER: Tena Hopper. It's T-e-n-a,
21 H-o-p-p-e-r.

22 JUDGE CHARTOFF: And so you can ask her
23 questions or she can just --

24 You can just speak.

25 MR. STEIN: You want to just go?

EXAMINATION OF HOPPER / STEIN

1 MS. HOPPER: Hmm?

2 MR. STEIN: You want to just go?

3 MS. HOPPER: Daniel -- my husband came down
4 with cancer and passed away in 2015, and Daniel's been
5 picking up my trash for me at no charge ever since. I
6 give him cookies, that's it. He's a good man. That's
7 pretty much it in a nutshell, because I can't do it
8 myself.

9 MR. STEIN: Would it be okay if I asked Tena
10 some questions?

11 JUDGE CHARTOFF: Mm-hmm.

12

13 EXAMINATION

14 BY MR. STEIN:

15 Q. Tena, have I ever approached you for garbage
16 service?

17 **A. Have you what?**

18 Q. Have I approached you for garbage service?

19 **A. Approached me, no.**

20 Q. Did you come to me because you had heard about
21 me through just the friend group or through the
22 grapevine so to speak?

23 **A. No.**

24 Q. So --

25 **A. I'm having a hard time hearing you. I got**

EXAMINATION OF HOPPER / FUKANO

1 hearing issues.

2 Q. I'm sorry.

3 So did I -- did I give -- did I give you any

4 flyers or --

5 **A. No.**

6 Q. -- or any advertisements --

7 **A. No.**

8 Q. -- of any kind? Okay.

9 **A. A Christmas card and some trash bags.**

10 Q. Oh, yeah.

11 **A. Does that count?**

12 MR. STEIN: I have no further questions.

13 JUDGE CHARTOFF: Okay.

14 THE WITNESS: That's -- that's it?

15 JUDGE CHARTOFF: Mr. Fukano, do you have any

16 questions for Ms. Hopper?

17 MR. FUKANO: Just a brief -- very brief

18 question.

19

20 **EXAMINATION**

21 **BY MR. FUKANO:**

22 Q. Before Mr. Stein was -- began helping you with

23 waste disposal services, were you served or had waste

24 disposal services through another company?

25 **A. No, no.**

EXAMINATION OF HOPPER / FUKANO

1 Q. So who removed your waste prior to Mr. Stein?

2 **A. My husband.**

3 Q. And --

4 **A. Used our vehicle, drove to the waste site.**

5 Q. I see. Thank you.

6 **A. The one on Dickey Road.**

7 MR. FUKANO: No further questions.

8 THE WITNESS: It was a long time ago.

9 MR. FUKANO: Thank you.

10 JUDGE CHARTOFF: Okay. Thank you.

11 THE WITNESS: Is that it?

12 JUDGE CHARTOFF: Don't have anything
13 further. Do you have another witness?

14 THE WITNESS: I make great cookies too by
15 the way.

16 MR. STEIN: She does make great cookies.

17 I have no other witnesses.

18 JUDGE CHARTOFF: No further witnesses.

19 Okay. Is there anything further?

20 MR. FUKANO: I would like to call, recall
21 Mr. Hoxit to the stand for a brief question.

22 JUDGE CHARTOFF: Okay. Go ahead.

23 ////

24 ////

25 ////

EXAMINATION OF HOXIT / FUKANO

1 EXAMINATION

2 BY MR. FUKANO:

3 Q. Mr. Hoxit, do you know whether a company
4 currently serves the general Seabeck area for solid
5 waste collection services?

6 **A. Yes.**

7 Q. And what company would that be?

8 **A. Waste Management.**

9 MR. FUKANO: Thank you. No further
10 questions.

11 MR. STEIN: Would I have the ability to
12 answer -- or excuse me, question Mr. Hoxit on the same
13 line of questioning?

14 JUDGE CHARTOFF: Yes.

15 MR. STEIN: Thank you.

16

17 EXAMINATION

18 BY MR. STEIN:

19 Q. Mr. Hoxit, are you familiar with the tariff for
20 Waste Management for -- about pack out service in
21 particular?

22 **A. No, I'm not.**

23 Q. Were you aware of their 50-foot rule as far as
24 walking goes?

25 **A. Not specific to that service territory, no.**

1 MR. STEIN: Thank you.

2 JUDGE CHARTOFF: Okay. So is there anything
3 further from either party?

4 MR. STEIN: I would like to add, if I could,
5 what my intentions are moving forward.

6 JUDGE CHARTOFF: Okay.

7 MR. STEIN: Would that be okay?

8 MR. FUKANO: Perhaps in closing.

9 JUDGE CHARTOFF: Okay. Why don't you make a
10 closing statement and then Mr. Fukano can make one if he
11 chooses.

12 MR. STEIN: Number one, my apologies to the
13 Court. I know this hasn't gone as smoothly as I'm sure
14 these things go. I'm not a lawyer obviously, and I -- I
15 would like to thank you, Your Honor, for allowing all of
16 the support to stay in the room. I know it's -- it's a
17 little bit uncomfortable, so I would like to thank you
18 personally.

19 My intentions moving forward, since I've
20 been served this packet of information from the UTC, it
21 has lined out everything that needs to be done. I went
22 to the UTC website, I have obtained the tariff form that
23 is a part of the application process. I understand what
24 the application is. This will be a big bombshell for
25 the WRRRA in the back room, but I plan on applying for a

1 G certificate under special conditions as stated in the
2 UTC website that it can be done. I want to work hand in
3 hand with the UTC. I want to be transparent a hundred
4 percent.

5 Knowing now moving into this that I can
6 plainly see why these rules exist. As silly as they
7 might be at first, they make a lot of sense, and it is
8 for the public's best interest. And I believe the UTC,
9 I believe that they -- they want to take care of the
10 public. They want to fulfill what -- what their -- what
11 their job description is. I do firmly believe that. I
12 really do.

13 I have gotten a DOT number for my truck,
14 I've obtained an LLC, I've obtained a business license.
15 I have obtained so much knowledge probably being the
16 most and a clearer understanding. I want to help
17 people, and a lot of these people are behind me right
18 now. There's a real need out there. This isn't just
19 make-believe, and I would like that to be on the record
20 that there's human beings involved here, you know.

21 So I will do whatever it takes. I will work
22 with the UTC happily to change, and I -- I know that the
23 WRRRA is present, I know that this could go either way
24 with them, and I know that I'm exposing myself to a lot
25 of not so nice things to come down the pike as far as a

1 court battle with Waste Management. I know that that's
2 coming. Of course they're going to -- they're going to
3 fight me, but I'm willing to -- I am willing to do it.
4 It's going to help others, number one, and in the end,
5 it'll help myself. Thank you.

6 JUDGE CHARTOFF: Thank you.

7 MR. FUKANO: So you've heard today from
8 Mr. Stein that he agrees with the information contained
9 in the complaint and he agrees that violations that are
10 alleged there did occur. And I wanted to follow up on
11 the reference to RCW 34.05.110. Mr. Stein has cited
12 Subsection 1, and I would also like to cite Subsection 6
13 of that same statute which states, (as read) Nothing in
14 this section may be construed to diminish the
15 responsibility for any citizen or business to apply for
16 and obtain a permit, license, or authorizing document
17 that is required to engage in a regulated activity or
18 otherwise comply with State and Federal law.

19 That -- notwithstanding that, Staff is --
20 would welcome further cooperation from Mr. Stein, and we
21 would encourage Mr. Stein to speak with Staff to further
22 along these developments. Therefore, based on the
23 evidence presented to your Honor, Staff would ask --
24 Staff asks that the Commission classify Seabeck Waste &
25 Recycle as a solid waste collection company subject to

1 the Commission's authority and to impose a \$2,000
2 penalty with \$1,000 suspended pending further compliance
3 with this Commission's order. Thank you.

4 JUDGE CHARTOFF: Thank you.

5 Okay. With that, I will take this under
6 advisement. I will issue a decision within ten days,
7 and we are off the record and in recess. Thank you.

8 (Adjourned at 2:51 p.m.)
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C E R T I F I C A T E

STATE OF WASHINGTON

COUNTY OF THURSTON

I, Tayler Garlinghouse, a Certified Shorthand
Reporter in and for the State of Washington, do hereby
certify that the foregoing transcript is true and
accurate to the best of my knowledge, skill and ability.

Tayler Garlinghouse, CCR 3358

Service Date: December 10, 2018

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

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

DANIEL STEIN d/b/a SEABECK
WASTE & RECYCLE

DOCKET TG-180181

ORDER 02

INITIAL ORDER CLASSIFYING
RESPONDENT AS A SOLID WASTE
COLLECTION CARRIER;
ORDERING RESPONDENT TO
CEASE AND DESIST; IMPOSING
AND SUSPENDING PENALTIES ON
CONDITION OF FUTURE
COMPLIANCE

BACKGROUND

- 1 **Nature of the Proceeding.** The Washington Utilities and Transportation Commission (Commission) initiated this special proceeding to determine if Daniel Stein d/b/a Seabeck Waste and Recycle (Seabeck Waste or Respondent) has engaged, and continues to engage, in hauling solid waste as a solid waste collection company in the state of Washington without first obtaining a certificate of public convenience and necessity (certificate) from the Commission.
- 2 **Procedural History.** On September 21, 2018, the Commission entered Order 01, Order Instituting Special Proceeding; and Notice of Brief Adjudicative Proceeding (Order 01), initiating this docket on its own motion. Order 01 alleges that Respondent violated RCW 81.77.040 on two occasions by offering and by advertising for the hauling of solid waste as a solid waste collection company without first obtaining a certificate from the Commission. In addition, Staff requests that the Commission, pursuant to its authority under RCW 81.71.380, assess penalties of up to \$1,000 for each violation of RCW 81.77.040 and RCW 81.77.090(2). Staff further requests that the Commission order Seabeck Waste to cease and desist activities subject to regulation under Title 81 RCW until it has obtained the necessary authority from the Commission. Also on September 21, 2018, the Commission issued a *Subpoena Ducus Tecum for Production of Documents* (Subpoenas) to the Respondent commanding Daniel Stein to appear before the

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

**DOCKET TG-180181
ORDER 02**

PAGE 2

Commission at the special proceeding referenced in Order 01 and scheduled on November 29, 2018, and to bring the documents specified in the Subpoenas.

- 3 **Hearing.** The Commission convened a brief adjudicative proceeding before Administrative Law Judge Laura Chartoff on November 29, 2018. At the proceeding, Staff presented evidence and testimony from Commission compliance investigator, Jason Hoxit. Daniel Stein testified for Seabeck Waste. Tena Hopper, a customer of Seabeck Waste, also testified for Respondent.
- 4 Staff's evidence shows that the Commission received a complaint on January 8, 2015, from Kitsap County Public Works, Solid Waste Division, alleging that Seabeck Waste was advertising solid waste collection services by distributing flyers to prospective customers in Seabeck, Washington.¹ Then, on January 9, 2015, Commission compliance investigator Pam Smith called Seabeck Waste at the phone number on the flyer and explained that providing solid waste collection services without a certificate violates the law.² Staff's evidence shows that Ms. Smith asked Mr. Stein for his mailing address so she could send him more information, but he refused to provide it.³ Then on February 27, 2015, and March 16, 2015, Commission records show that Staff sent letters explaining the law to Mr. Stein at his residence.⁴ Mr. Hoxit testified that the letters, sent via first class mail, were not returned to the Commission.
- 5 Staff's evidence further shows that on December 22, 2017, Staff received a complaint from a certificated solid waste collection company alleging that Seabeck Waste was sending out flyers advertising solid waste collection services to prospective customers in Seabeck, Washington.⁵ The flyers advertised bi-weekly garbage and recycling home pick-up service.⁶ Mr. Hoxit testified that he posed as a Seabeck resident and called Mr. Stein to request garbage service. Mr. Hoxit testified that Mr. Stein offered to pick up two cans every other week for \$32 a month. Staff's evidence shows that Mr. Stein told Mr.

¹ Exh JH-1, Appendices A and B.

² *Id.*, Appendix C.

³ *Id.*, Appendices C and D.

⁴ *Id.*, Appendices D and E.

⁵ *Id.*, Appendix F.

⁶ *Id.*, Appendix G.

Hoxit that he should not disclose that he would be using Seabeck Waste when he called the certificated carrier to cancel service. Mr. Stein told Mr. Hoxit to tell the certificated carrier he would be taking his own garbage and recycling to the dump.⁷

6 In his testimony, Mr. Stein admitted he advertised solid waste collection services and that he offered to provide solid waste collection services to Staff. Mr. Stein also acknowledged that the advertising flyers appended to Staff's Investigation report were his. Mr. Stein admitted to the phone call with Mr. Hoxit and did not dispute Mr. Hoxit's summary of the call, which is documented in Appendix I of Staff's investigation report.

7 Mr. Stein argued that the Commission cannot impose a fine or administrative sanction because RCW 34.05.110 requires the Commission to first provide him a copy of the agency rule and allow him at least 7 days to correct the violation. Mr. Stein testified that he was first notified of the violation when he was served with Order 01. Mr. Stein admitted that he received a phone call from Ms. Smith in 2015, but claimed that he had not heard of the Commission and did not believe Ms. Smith. Mr. Stein also testified that he did not receive the two letters the Commission sent him in 2015, claiming he receives mail at a post office box and that his mail service is unreliable.

8 Finally, Mr. Stein testified that he is providing a valued service to residents of Seabeck who claim they are not adequately served by the certificated carrier. Tena Hopper, a customer, testified that she uses Seabeck Waste because she is no longer physically able to transport her garbage to the dump on her own.

9 **Appearances.** Harry Fukano, Assistant Attorney General, Olympia, Washington, represents Staff. Daniel Stein, Seabeck, Washington, represents Daniel Stein d/b/a Seabeck Waste and Recycle, *pro se*.

DISCUSSION AND DECISION

10 **Classification.** RCW 81.04.510 authorizes this special proceeding to determine whether Seabeck Waste is conducting business as a solid waste collection company in the state of Washington without the requisite authority. The statute provides that: "Where or not any person or corporation is conducting business requiring operating authority, or has

⁷ *Id.*, Appendix I.

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performed or is performing any act requiring approval of the commission without securing such approval, shall be a question of fact to be determined by the commission.” The statute places the burden of proof on the Respondent to demonstrate that its acts or operations are not subject to the provisions of RCW Chapter 81.

- 11 RCW 81.77.010(7) defines “solid waste collection company” as “every person . . . owning, controlling, operating, or managing vehicles used in the business of transporting solid waste for collection or disposal, or both, for compensation, . . . over any public highway in this state as a ‘common carrier’ or as a ‘contract carrier.’”
- 12 RCW 81.77.010(3) defines the term “common carrier” as “any person who collects and transports solid waste for disposal by motor vehicle for compensation, whether over regular or irregular routes, or by regular or irregular schedules.”
- 13 The term “solid waste” includes garbage and “source separate recyclable material collected from residences.” RCW 70.95.030(22); RCW 81.77.010(9).
- 14 RCW 81.77.040 provides that “A solid waste collection company shall not operate for the hauling of solid waste for compensation without first having obtained from the commission a certificate declaring that public convenience and necessity require such operation. Operating for the hauling of solid waste for compensation includes advertising, soliciting, offering, or entering into an agreement to provide that service.”
- 15 Upon proof of unauthorized operations, RCW 81.04.510 authorizes the Commission to order the unpermitted 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, or any order or rule of the Commission.
- 16 In this case, the undisputed evidence shows that Seabeck Waste distributed fliers advertising residential garbage and recycling pickup service for compensation in Washington, and that Seabeck Waste offered to provide residential garbage and recycling pickup service to Staff for compensation in Washington. We therefore conclude that Seabeck Waste meets the statutory definition of hauling of solid waste for compensation as a solid waste collection company. As Seabeck Waste does not have authority to conduct business as a solid waste collection company, Seabeck Waste’s conduct violates RCW 81.77.040.

- 17 **RCW 35.05.110 - Violations of State Law or Agency Rule by a Small Business.** Mr. Stein concedes that Seabeck Waste violated RCW 81.77.040, but argues that RCW 34.05.110(1) prevents the Commission from imposing a penalty or administrative sanction on a small business without notice and an opportunity to correct the violation. RCW 34.05.110(1) provides in part: “Agencies must provide to a small business a copy of the state law or agency rule that a small business is violating and a period of at least seven calendar days to correct the violation before the agency may impose any fines, civil penalties, or administrative sanctions for a violation of a state law or agency rule by a small business.” Mr. Stein argues that Order 01, served on September 21, 2018, was the first time he was provided a copy of the state law or agency rule that he is violating. He argues that the commission must give him seven days from September 21 to correct the violation before imposing any fines or administrative sanctions, and that he cannot be penalized for violations occurring before that date.
- 18 We disagree, and conclude RCW 34.05.110(1) does not apply for several reasons. First RCW 34.05.110(1), quoted above, must be read together with RCW 34.05.110(6), which provides: “Nothing in this section may be construed to diminish the responsibility for any citizen or business to apply for and obtain a permit, license, or authorizing document that is required to engage in a regulated activity, or otherwise comply with state or federal law.” We interpret RCW 34.05.110(6) as creating an exception for agency actions where a person is engaging in regulated activity without a certificate. In other words, the notice requirements in 34.05.110(1) were not intended to apply where a person is engaged in regulated activity without a certificate.
- 19 Furthermore, even if the statute applies here and requires the Commission to provide notice and an opportunity to correct the violation, we conclude the Commission did provide notice to Seabeck Waste in 2015. The term “provide” is not defined in statute and therefore has its ordinary meaning which is “to make something available to.”⁸ The undisputed evidence shows that Compliance Investigator Pam Smith called Mr. Stein in 2015 and explained to him that his business operations required a permit from the Commission. The evidence further shows that Pam Smith asked Mr. Stein for his contact address so she could provide him a copy of the laws and rules, and that he refused to provide contact information. Following the phone call, the Commission mailed two compliance letters, explaining the applicable laws and rules, to Mr. Stein’s residence

⁸ <https://www.merriam-webster.com/dictionary/provide> (last visited Dec. 7, 2018)

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address, and that those letters were not returned. Mr. Stein testified that he did not believe Ms. Smith, claiming he found it incredible that his business activities could be illegal. He further testified that he did not receive the letters. Regardless of whether Mr. Stein believed Ms. Smith, or received or read the letters, we find that the Commission, through its multiple attempts to provide technical assistance to Mr. Stein, made the rules and laws available to Seabeck Waste. To the extent that RCW 34.05.011(1) requires notice and an opportunity to correct, we find that Staff provided the Respondent copies of relevant rules and laws in 2015, well in advance of this proceeding. Accordingly, we reject Mr. Stein's argument that he received inadequate notice.

20 Finally, there is at least one exception to seven day notice requirement that applies here. RCW 34.05.110(3)(b) provides that the notice requirement does not apply when "the violation involves a knowing or willful violation." Here, there is substantial evidence that Mr. Stein knew he was violating Commission rules. There is undisputed evidence that Mr. Stein instructed Mr. Hoxit to lie to the certificated carrier about why he was cancelling service so as not to disclose that he was switching to Seabeck Waste. This evidence creates a reasonable inference that Mr. Stein knew he was operating illegally. Accordingly, the notice requirements in RCW 34.05.110(1) do not apply.

21 We conclude that Seabeck Waste should be ordered to cease and desist operations without first obtaining the required certificate from the Commission. We now turn to the issue of penalties.

22 **Penalty.** Any solid waste collection company operating for the hauling of solid waste for compensation without the necessary permit is subject to a penalty of up to \$1,000 per violation. If the basis for the violation is advertising, each advertisement reproduced, broadcast, or displayed via a particular medium constitutes a separate violation.⁹

23 Seabeck Waste violated RCW 81.77.040 at least once when it offered to Staff to provide solid waste collection services for compensation. In addition, Seabeck Waste violated RCW 81.77.040 at least once by distributing flyers advertising a bi-weekly residential garbage and recycling pickup service for compensation.

24 When deciding the amount of the penalty to be imposed for engaging in business as a solid waste carrier without the required permit, the Commission considers the carrier's

⁹ RCW 81.77.090(2).

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willingness to comply with the requirements of the solid waste collection carrier rules and the carrier's history of compliance with the same provisions. The Commission may also consider a number of additional factors, including whether the violations were intentional, how harmful the violations are to the public, whether the company was cooperative and responsive in the course of Staff's investigation, and whether the company promptly corrected the violations once notified.

- 25 The evidence establishes that Seabeck Waste has been operating in Washington in violation of applicable law for many years, and with knowledge that it was operating in violation of Commission rules. Seabeck Waste ignored Staff's previous attempts to contact the company and provide technical assistance.
- 26 Mr. Stein testified that he continues to operate, but claims he is no longer accepting compensation other than cookies. Mr. Stein further testified he intends to submit an application to become a certificated solid waste carrier. He stated he was aware that there is a certificated carrier serving Seabeck, Washington, who will likely object to his application. Mr. Stein did not state he would cease operations if he was not granted a certificate.
- 27 Mr. Stein argued that his business is in the public interest because the certificated carrier is not meeting the needs of his senior citizen and/or infirm customers. We disagree and conclude that it is not in the public interest for an unregulated solid waste carrier to operate in violation of the law.
- 28 At the hearing, Staff recommended the Commission impose a penalty of \$1,000 for each of the two violations alleged in the Complaint, for a total penalty of \$2,000. Staff further recommended the Commission suspend a \$1,000 portion of the penalty for a period of two years, and then waive it, subject to the condition that the Company refrains from hauling solid waste as a solid waste collection carrier in the state of Washington without first obtaining a permit.
- 29 Overall, Seabeck Waste has demonstrated very little ability or willingness to comply with Commission regulations. In light of each of the factors discussed above, the Commission finds that Seabeck Waste should be penalized \$1,000 for each of the violations alleged in the complaint, for a total penalty of \$2,000. In light of the Mr. Stein's stated intent to cease operating for compensation and to obtain its permit to operate legally, we agree with Staff's recommendation to suspend a \$1,000 portion of the penalty for a period of two years, and then waive it, subject to the condition that Seabeck Waste permanently

ceases and desists from hauling solid waste as a solid waste collection company without first obtaining a permit.

FINDINGS AND CONCLUSIONS

- 30 (1) The Commission is an agency of the state of Washington, vested by statute with authority to regulate rates, rules, regulations, and practices of public service companies, including solid waste collection companies, and has jurisdiction over the parties and subject matter of this proceeding.
- 31 (2) On at least two occasions, Seabeck Waste has advertised, solicited, or offered to transport solid waste for compensation within the state of Washington without first having obtained from the Commission a certificate declaring that public convenience and necessity require such operation, in violation of 81.77.040.
- 32 (3) Seabeck Waste has not obtained a permit from the Commission authorizing the Company to haul solid waste as a solid waste collection company.
- 33 (4) Under RCW 81.77.040, it is unlawful to haul solid waste as a solid waste collection company in Washington without first obtaining the required permit from the commission.
- 34 (5) Upon proof of unauthorized operation, RCW 81.04.510 authorizes the Commission to order an unpermitted solid waste collection company to cease and desist its activities. Seabeck Waste should be directed to cease and desist from providing solid waste collection company services in Washington as required by RCW 81.04.510.
- 35 (6) Seabeck Waste operated as a solid waste collection carrier with knowledge that it operated in violation of Commission rules.
- 36 (7) Any solid waste collection company operating for the hauling of solid waste for compensation without the necessary permit is subject to a penalty of up to \$1,000 per violation.
- 37 (8) Seabeck Waste should be penalized \$2,000 for two violations of RCW 81.77.040, a \$1,000 portion of which should be suspended for a period of two years, and then waived, provided the Respondent ceases and desists from operating for the hauling of solid waste for compensation without first obtaining the required

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permit from the Commission. Seabeck Waste should pay the remaining \$1,000 portion of the penalty no later than 20 days from the effective date of this order.

- 38 (9) RCW 34.05.110(1) does not prevent the Commission from imposing penalties and ordering Seabeck Waste to cease and desist its unauthorized operations.

ORDER

THE COMMISSION ORDERS:

- 39 (1) Daniel Stein d/b/a Seabeck Waste and Recycle is classified as a solid waste collection carrier.
- 40 (2) Daniel Stein d/b/a Seabeck Waste and Recycle is ordered to immediately and permanently cease and desist operations as a solid waste collection carrier within the state of Washington without first obtaining a certificate from the Commission.
- 41 (3) Daniel Stein d/b/a Seabeck Waste and Recycle is assessed a penalty of \$2,000. A \$1,000 portion of the penalty is suspended for a period of two years from the date of this Initial Order, and waived thereafter, provided Daniel Stein d/b/a Seabeck Waste and Recycle ceases and desists from further operations as a solid waste collection carrier in the state of Washington without first obtaining the required certificate from the Commission. Daniel Stein d/b/a Seabeck Waste and Recycle must pay the remaining \$1,000 penalty no later than 20 days from the effective date of this Order.
- 42 (4) If Daniel Stein d/b/a Seabeck Waste fails to comply with any of the above conditions, the suspended penalty amount will become immediately due and payable without further Commission order.
- 43 (5) The Commission retains jurisdiction over the subject matter and the parties to this proceeding to effectuate the terms of this Order.

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DATED at Olympia, Washington, and effective December 10, 2018.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

LAURA CHARTOFF
Administrative Law Judge

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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 twenty-one (21) days after the entry of this Initial Order to file a *Petition for Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-610(7)(b). WAC 480-07-610(7)(c) states that any party may file a *Response* to a Petition for review within seven (7) days after service of the Petition.

WAC 480-07-830 provides that before entry of a Final Order any party may file a Petition to Reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such answer.

RCW 80.01.060(3) 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 fails to 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). Any Petition or Response filed must also be electronically served on each party of record as required by WAC 480-07-140(1)(b).