

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of Penalty Assessment
against TRASHBUSTERS OF
WASHINGTON STATE, LLC in the
amount of \$100

DOCKET TG-091024

DECLARATION OF
SHERI HOYT

SHERI HOYT, under penalty of perjury under the laws of the state of Washington, declares as follows:

1. I am over 18 years of age, a citizen of the United States, a resident of the state of Washington, and competent to be a witness.
2. I am employed by the Washington Utilities and Transportation Commission (Commission) as a Compliance Investigator in the Compliance Investigations Section. I have been employed at the Commission for over 17 years, holding various positions. As a Compliance Investigator, my responsibilities include conducting investigations regarding the business practices of regulated utility or transportation companies. As part of those duties, I investigate solid waste carriers that may be operating in violation of Commission statute or rule.
3. On July 17, 2009, Trashbusters of Washington State, LLC (Trashbusters), filed with the Commission a Request for Hearing (Hearing Request) in Docket TG-091024. I have read the Hearing Request.
4. This Hearing Request arises from a Notice of Penalties Incurred and Due for Violations of Laws and Rules issued by the Commission on June 29, 2009, in Docket TG-091024. In that notice, the Commission issued a penalty of \$100 for a violation of Washington Administrative Code 480-70-071, which requires solid waste companies to file annual reports with the Commission by May 1 each year.
5. Before recommending the Commission issue penalties, as part of my job, I conducted an investigation of Trashbusters' records. My investigation resulted in an investigation report titled "Staff Investigation - 2008 Annual Reports"¹. I identified the violation in this case from records maintained by the Commission.

¹ A true and accurate copy of the investigation report is attached to this declaration as Attachment A.

Specific Issues Addressed by Trashbusters in its Hearing Request

Trashbusters stated that its industry appears to operate in an unregulated environment and that the company has 15 to 20 competitors which operate without a permit and have not faced any sanctions from the state.

- 6. In its Hearing Request, Trashbusters states that its industry appears to operate in an unregulated environment and that the company has 15 to 20 competitors which operate without a permit and have not faced any sanctions from the state. The company wants to know why it must be registered and pay fees while its competitors do not.
- 7. Commission records indicate Trashbusters received the penalty assessment order on June 30, 2009, via certified mail.² The mitigation application, page three of the order, stated the hearing request must be filed within 15 days of receipt. The deadline for the request for hearing was Wednesday, July 15, 2009. Trashbusters' Hearing Request was received by the Commission on July 17, 2009.

Staff Recommendation

- 8. Because Trashbusters failed to timely file its Hearing Request, Staff recommends that the Hearing Request be denied.

DATED at Olympia, Washington, and effective July ____, 2009.

SHERI HOYT

² A true and accurate copy of the signed certified mail card is attached to this declaration as Attachment B.

Attachment A

Solid Waste Carriers Staff Investigation – 2008 Annual Reports June 9, 2009

Purpose

The purpose of this investigation is to determine if five solid waste carriers¹ are in violation of Washington Administrative Code (WAC) 480-70-071. WAC 480-70-071 requires solid waste carriers to furnish a complete and accurate annual report to the commission no later than May 1 each year.

Background

This investigation was prompted by commission staff's yearly review of annual reports for solid waste carriers certificated in the state of Washington.

On March 2, 2009, the commission mailed 2008 Annual Report forms and 2009 Regulatory Fee packets to solid waste carriers certificated with it. A letter from Executive Director and Secretary David W. Danner instructed companies to file annual reports and pay regulatory fees by May 1, 2009.² Further, the letter stated failure to file the annual report by May 1 could result in a penalty. Those companies wishing to request an extension to file the annual report were asked to do so prior to May 1, providing a reason for the requested extension. Only one carrier, Points Recycling and Refuse, LLC (Points), requested an extension.

On March 27, 2009, the commission mailed a notice to all solid waste carriers reminding them that 2008 annual reports and 2009 regulatory fees were due by May 1, 2009.³

Investigation

The five solid waste carriers listed in attached Appendix A failed to file their 2008 annual reports by the May 1 deadline. On May 15, 2009, the commission sent letters to those companies that had not yet filed their reports. The letter, signed by David Danner, gave an extension to companies to file their reports by May 29, 2009.⁴ In the letter, Mr. Danner stated the commission would not seek a fine or move to revoke the registration of any company with a report received by the commission postmarked no later than May 29.

In docket TG-090555, filed April 20, 2009, Points requested a 60 day extension to file its 2008 annual report. The company stated its reason for the extension to be that it was still in the process of closing the 2008 financial reports. Further, the company cited a substantial data request made of the company by commission staff. The company said the delay was necessary to comply with the commission's data request and additional data requests the company was expecting to receive. Points included its \$900.00 2009 regulatory fee payment with its request for a 60 day extension. On April 30, 2009, the commission granted Points a 30 day extension to file the 2008 annual report. The extension was granted to June 1, 2009. However, Points failed to file its 2008 annual report by June 1, 2009. As of the date of this report, the commission has not received Points' report, nor has the commission received a request for an additional extension to file to be granted to Points.

¹ See Appendix A for a list of the solid waste carriers.

² See Appendix B for a copy of the March 2, 2009, letter sent to solid waste carriers.

³ See Appendix C for a copy of the March 27, 2009, reminder notice sent to solid waste carriers.

⁴ See Appendix D for a copy of the May 15, 2009, letter sent to delinquent solid waste carriers.

Points also failed to file its 2005, 2006 and 2007 annual reports. In docket TG-061052, the commission issued Points a \$100 penalty assessment for failure to file its 2005 annual report by May 1, 2006. Points requested mitigation of the penalty and was denied. It paid the penalty in full on November 6, 2006. In docket TG-071244, the commission issued Points a \$200 penalty assessment for failure to file its 2006 annual report by May 1, 2007. The company paid the penalty in full on February 29, 2008.

In docket TG-080770, the commission issued Points a \$300 penalty assessment for failure to file its 2007 annual report by August 14, 2008. On May 1, 2008, the company requested an extension to file until July 1, 2008, citing that it had not yet closed its books for 2007. The commission granted the request. On July 11, 2008, Points filed a petition requesting additional time to file the report, until August 14, 2008. On July 31, 2008, the commission granted Points further extension to file its 2008 annual report, until August 14, 2008. The commission received Points' 2007 annual report on September 3, 2008. Points paid the \$300 penalty assessment, issued September 12, 2008, in full on September 13, 2008.

Recommendation:

Staff recommends the commission issue a \$100 penalty assessment each to the five solid waste carriers, except Points, listed in Appendix A for failure to file a complete 2008 annual report by May 1, 2009.

Staff recommends the commission issue Points a \$600 penalty assessment for failure to file its 2008 annual report by the extension deadline of June 1, 2009, granted in docket TG-080555. Staff finds it appropriate that Points receives an escalating penalty due to continued violations of WAC 480-70-071. RCW 81.04.405 allows penalties of \$100 for every such violation. Each and every such violation is a separate and distinct offense and in case of a continuing violation every day's continuance shall be and be deemed to be a separate and distinct violation.

APPENDIX A

	Company Name	Report Received Yes or No	If yes, Date Received	Recommended Penalty Amount
1.	DB Hauling, LLC	No		\$100
2.	Emerald Services, Inc.	No		\$100
3.	Ludtke – Pacific Trucking, Inc.	No		\$100
4.	Points Recycling and Refuse, LLC	No		\$600
5.	Trashbusters of Washington State, LLC	No		\$100

APPENDIX B

March 2, 2009

Dear Regulated Company:

Subject: Your 2008 Annual Report and 2009 Regulatory Fees are Due May 1, 2009

State law requires you to file an annual report and pay regulatory fees to the Washington Utilities and Transportation Commission (UTC).

What is required of me?

By May 1, you must:

- Complete and file one paper copy or electronic version of the enclosed 2008 annual report form
- Pay your 2009 regulatory fees

What happens if I do not file a completed annual report by May 1?

If you do not file your company's annual report by May 1 commission staff will recommend a financial penalty between \$100 and \$800 depending on whether you have filed late in the past. If you have repeatedly filed late, the penalty will be higher. Staff will also recommend a \$100 financial penalty if your annual report is incomplete, *i.e.*, not signed or lacking requested information, even if it is filed on time. Staff may also recommend revocation of your authority to operate in Washington.

What happens if I do not pay my regulatory fees by May 1?

If you do not pay your company's regulatory fee by May 1, you will incur:

- a 2 percent penalty on the amount due; and
- a 1 percent monthly interest charge on the unpaid balance.

May I request an extension of time if I am unable to file the annual report by May 1?

Yes, however, you must make the request in writing, including a valid reason for the extension, no later than May 1. We will notify you whether your request is approved or denied. You will still be liable for penalty and interest payments if you fail to pay your regulatory fees by May 1. If you are late filing your annual report or fail to file, you could incur additional penalties.

May I designate any information that I submit in my annual report as confidential?

Yes, however, you must meet two conditions. You may only request confidential treatment if your company is regulated under Title 80 RCW, that is, if you operate an electric, natural gas, telecommunications, or water company. Transportation companies, regulated under Title 81 RCW, may not request confidential treatment of documents because the authority for such treatment is found only in RCW 80.04.095. If a Title 81 company files their annual report or fee sheet as confidential, we will not treat it as confidential.

Second, you must follow the requirements for filing confidential documents in WAC 480-07-160. You may find this rule at the UTC Website, www.utc.wa.gov. Locate "Quick Links" on the right side of the home page then select "2008 annual reports."

Please note: The regulatory fee sheet portion of your report is not a confidential document and will not be accorded confidential treatment under the rule. We will not, however, disclose credit card information you list on the fee sheet.

Where do I mail my completed annual report form and regulatory fee payment?

Washington Utilities and Transportation Commission
PO Box 47250
Olympia, WA 98504-7250

May I file my report electronically?

Yes. You may file your report from the UTC's Website – <http://utc.wa.gov>. From the home page, select the “document” tab at the top of the page and then locate and select “electronic filing” from the colored bar on the left side of the page. Alternatively you may go directly to the electronic filing page by entering <http://utc.wa.gov/e-filing> into your browser.

Where may I obtain an electronic version of the annual report form?

Forms are available on our website at www.utc.wa.gov. Locate “Quick Links” on the right side of the home page and then select “2008 annual reports.”

Is there additional information I should file?

- If you are a gas distribution company, please also file both a paper and electronic copy of your Federal Energy Regulatory Commission Form 2.
- If you are an electric company, please also file both a paper and electronic a copy of your Federal Energy Regulatory Commission Form 1.
- If you are a class 1 Railroad, please also file a copy of your Surface Transportation Board Form R-1 - including statistics specific to the state of Washington.

Who do I contact if I have questions?

You may call 360-664-1152 or e-mail us at: annualreports@utc.wa.gov. If you need this letter or an annual report form in an alternate format, please call 360-664-1133. The TTY Toll Free phone number is 1-800-416-5289.

Sincerely,

David W. Danner
Secretary

Enclosures

APPENDIX C

Reminder! **Annual Reports and Regulatory Fees are due May 1, 2009**

On February 27, we sent you a 2008 annual report form and 2009 regulatory fee form. This is just a friendly reminder that your company's completed annual report and payment of your regulatory fees are due, postmarked, no later than May 1.

If you already mailed your annual report and regulatory fees, **thank you!** Please disregard this notice. If you have not yet filed, please be sure not to miss this deadline

You may mail your completed annual report form and regulatory fee payment to:

Washington Utilities and Transportation Commission
PO Box 47250
Olympia, WA 98504-7250

You may also file your report electronically via the UTC's Web filing portal. From the UTC's home page, www.utc.wa.gov, select the "document" tab at the top of the page and then locate and select "electronic filing" from the colored bar on the left side of the page. Alternatively you may go directly to the electronic filing page by entering <http://utc.wa.gov/e-filing> into your browser.

You may obtain an electronic version of the annual report and regulatory fee sheet at our Website; locate "Quick Links" on the homepage and then select "2008 annual reports".

If you fail to pay your regulatory fee or file your company's completed annual report, postmarked by May 1, UTC staff will recommend the commission issue a financial penalty. Staff may also recommend that the commission cancel your authority to operate in Washington.

Please don't let either happen. If you have questions about your report or fee or need assistance, please contact me at 360-664-1152 or e-mail me at rcarnes@utc.wa.gov.

Sincerely,

Rae Lynn Carnes,
Revenue Accountant

APPENDIX D

May 15, 2009

Attention:

Your annual report to the Utilities and Transportation Commission (commission) was due May 1 as required by law. You are now subject to enforcement action by the commission, including financial penalties. This letter tells you what you can do to avoid this. **If you have already submitted your annual report, please disregard this notice.**

Commission staff mailed you a 2008 annual report form and fee calculation sheet on February 29, 2009. On March 27, 2009, staff mailed a reminder to file your report and pay your fees. Commission records indicate that you have not yet filed the completed report form.

Commission staff will file for enforcement action against your company unless your completed report is received postmarked no later than May 29. Enforcement action in this matter may include penalties of up to \$100 for each day it is late and cancellation of your authority to provide solid waste collection services in Washington. If your annual report was late last year and you received a penalty, the penalty this year will be incrementally higher.

If the commission receives the report **postmarked no later than May 29**, commission staff will not seek a fine or move to revoke your certificate.

Annual report forms are available on the commission's Web site at www.utc.wa.gov. If you have questions or require additional information, please contact Sheri Hoyt, Compliance Investigator, at (360) 664-1149 or shoyt@utc.wa.gov.

Sincerely,



David W. Danner
Executive Director and Secretary

Attachment B

TG-091024

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature <input checked="" type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee</p>	
	<p>B. Received by (Printed Name) <i>Carl Pollock</i></p>	<p>C. Date of Delivery <i>6/30/09</i></p>
<p>1. Article Addressed to:</p> <p>Trashbusters of Washington State, LLC PO Box 2530 Blaine, WA 98231-2530</p>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If YES, enter delivery address below: <i>RMS</i></p>	
	<p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>	
	<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	
<p>2. Article Number (Transfer from service label) <u>7007 0710 0000 5793 4442</u></p>		
<p>PS Form 3811, February 2004 <i>0129</i> Domestic Return Receipt <i>Perally</i> <i>ECJH</i> 102595-02-M-1540</p>		