

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

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JAN 22 2020

STATE OF WASH.
UTIL. & TRANSP. COMMISSION

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

DOCKET TG-190969

ORDER 02

DAVID THEODORE KUNTZ,
D/B/A DK DUMPERS

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

BACKGROUND

Synopsis. *This is an Administrative Law Judge's Initial Order that is not effective unless approved or allowed to become effective as described in the notice at the end of this Order. This Initial Order is based upon a stipulation presented by the parties. If this Initial Order becomes final, David Theodore Kuntz, d/b/a DK Dumpers, (DK Dumpers or Company) will be assessed a financial penalty in the amount of \$2,000 for two violations of RCW 81.77.040. A \$1,900 portion of the penalty will be suspended for a period of two years from the date of this order, then waived, subject to the condition that DK Dumpers refrains from further operation as solid waste collection company without first obtaining the required certificate from the Washington Utilities and Transportation Commission (Commission). In addition, if this Initial Order becomes final, DK Dumpers will be classified as a solid waste collection company and required to permanently cease and desist from operating as a solid waste collection company without first obtaining a certificate from the Commission.*

- 1 **Nature of Proceeding.** The Commission initiated this special proceeding to determine if DK Dumpers has engaged, and is engaging, in unlawful operations without first obtaining a solid waste collection company certificate.
- 2 **Procedural History.** On December 5, 2019, the Commission entered Order 01, Order Instituting Special Proceeding; Complaint Seeking to Impose Penalties; and Notice of

Mandatory Appearance at Hearing, pursuant to RCW 81.04.510, initiating this docket on its own motion. The Complaint alleges that DK Dumpers violated RCW 81.77.040 by:

- (1) offering on at least one occasion to provide solid waste collection service in the state of Washington; and
- (2) advertising solid waste collection services within the state of Washington on at least one occasion

without having a certificate required for such operations. On the same date, the Commission issued a *Subpoena and Subpoena Duces Tecum For Production of Documents* (Subpoenas) to the Company commanding David Theodore Kuntz, owner of DK Dumpers, to appear before the Commission at a special proceeding scheduled to convene at 9 a.m. on January 22, 2020, in the Commission's offices at 621 Woodland Square Loop SE, Lacey, Washington, and to bring the documents specified in the *Subpoenas*.

3 On December 15, 2019, the Commission personally served (via legal messenger) the Complaint and Order Instituting Special Proceeding and Subpoenas on DK Dumpers in Puyallup, Washington.

4 **Hearing.** On January 22, 2020, the hearing convened as scheduled in Lacey, Washington, before Administrative Law Judge Rayne Pearson.

5 **Appearances.** Kathryn McPherson, Compliance Investigator, Lacey, Washington, represents the Commission's regulatory staff (Commission Staff).¹ David Theodore Kuntz, Puyallup, Washington, represents the Company, *pro se*.

¹ In adjudications the Commission's regulatory staff participates like any other party, while an administrative law judge or the Commissioners make the decision. To assure fairness, the Commissioners and the presiding administrative law judge do not discuss the merits of the proceeding with regulatory staff or any other party without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

DISCUSSION

6 **Applicable Law.** 81.77.010(7) defines “solid waste collection company” as:

every person or his or her lessees, receivers, or trustees, owning, controlling, operating, or managing vehicles used in the business of transporting solid waste for collection or disposal, or both, for compensation.

7 RCW 70.95.030(23) defines “solid waste handling” as:

the management, storage, collection, transportation, treatment, utilization, processing, and final disposal of solid wastes, including the recovery and recycling of materials from solid wastes, the recovery of energy resources from solid wastes or the conversion of the energy in solid wastes to more useful forms or combinations thereof.

8 RCW 81.77.040 defines “conduct any operations” as:

Operating for the hauling of solid waste for compensation includes advertising, soliciting, offering, or entering into an agreement to provide that service.

9 WAC 480-70-081 requires a person to have a certificate of public convenience and necessity from the Commission before operating as a solid waste collection company in the state of Washington. Upon proof of unauthorized operations, RCW 81.04.510 authorizes the Commission to order the non-certificated 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, order, or rule of the Commission.

10 RCW 81.04.380 subjects persons who conduct operations as a solid waste collection company in violation of RCW 81.77.040 a penalty of up to \$1,000 for each violation.

11 **Stipulation Presented by Parties.** At hearing, David Theodore Kuntz agreed that the Company has conducted operations in the state of Washington prior to first obtaining the required certificate. The Company offered to provide solid waste collection on at least one occasion in the state of Washington and also advertised to operate as a solid waste collection company in the state of Washington on at least one occasion.

- 12 On October 3, 2019, DK Dumpers was notified by Commission Staff that a certificate of convenience and necessity is required to operate as a solid waste collection company. The letter informed DK Dumpers that it must cease all operations as a solid waste collection company without a certificate.
- 13 David Theodore Kuntz agreed to permanently shut down and cease operations as a solid waste collection company, as defined by RCW 81.77.010, without first obtaining a certificate from the Commission.
- 14 Under RCW 81.04.380, Commission Staff is authorized to seek a penalty of up to \$2,000 against the Company. Based upon the above-noted stipulation, Staff now seeks to have \$1,900 of the penalty suspended for two years, then waived, on the condition that the Company honors its pledge of future compliance by permanently staying out of the industry without first obtaining a certificate from the Commission.
- 15 The parties agree that the Company's expressed willingness to cease its unlawful operations is a positive factor, mitigating in favor of a lowered penalty amount to be paid now. The parties also agree that the Company's compliance history is a negative factor, making a penalty appropriate as a tool to ensure DK Dumpers does not re-enter the solid waste collection company business without first obtaining the required certificate.

FINDINGS AND CONCLUSIONS

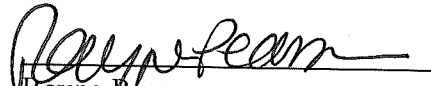
- 16 (1) The Commission is an agency of the state of Washington vested by statute with authority to regulate persons conducting operations as a solid waste collection company for compensation over public roads in Washington.
- 17 (2) The Commission has jurisdiction over the subject matter of this proceeding and over DK Dumpers.
- 18 (3) On at least one occasion, DK Dumpers offered to conduct operations prior to first obtaining a certificate from the Commission in violation of RCW 81.77.040.
- 19 (4) On at least one occasion, DK Dumpers advertised to conduct operations prior to obtaining a certificate from the Commission in violation of RCW 81.77.040.

ORDER

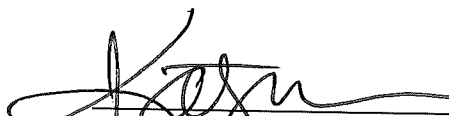
THE COMMISSION ORDERS:

- 20 (1) David Theodore Kuntz, d/b/a DK Dumpers, is classified as a solid waste collection company within the state of Washington, pursuant to RCW 81.77.040 and WAC 480-70-081.
- 21 (2) David Theodore Kuntz, d/b/a DK Dumpers, is ordered to immediately cease and desist operations as a solid waste collection company within the state of Washington without first obtaining a certificate from the Commission.
- 22 (3) David Theodore Kuntz, d/b/a DK Dumpers, is assessed a penalty of \$2,000. The Commission suspends \$1,900 of the penalty for a period of two years from the date of this Order, and waives it thereafter, provided David Theodore Kuntz, d/b/a DK Dumpers, refrains permanently from further operations as a solid waste collection company in the state of Washington without first obtaining the required certificate from the Commission. The remainder of the penalty, \$100, is due and payable today.
- 23 (4) The Commission retains jurisdiction over the subject matter and the parties to this proceeding to effectuate the terms of this Order.

DATED at Lacey, Washington, and effective January 22, 2020.


Kayne Pearson
Administrative Law Judge

Agreed for Entry:


Kathryn McPherson
Utilities and Transportation
Commission


David Theodore Kuntz
DK Dumpers

NOTICE TO THE 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 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this initial order to file a petition for administrative review (Petition). Section (2)(b) of the rule identifies what you must include in any Petition as well as other requirements for a Petition. WAC 480-07-825(2)(c) states that any party may file a response to a Petition within 10 days after service of the Petition.

WAC 480-07-830 provides that before the Commission enters 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 with due diligence at the time of hearing, or for other good and sufficient cause. The Commission will give other parties in the proceeding an opportunity to respond to a motion to reopen the record, unless the Commission determines that it can rule on the motion without hearing from the other parties.

WAC 480-07-825(1) 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).