

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

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

SEAN SMITH

DOCKET TG-190488

ORDER 01

ORDER INSTITUTING SPECIAL
PROCEEDING; COMPLAINT SEEKING
TO IMPOSE PENALTIES; NOTICE OF
HEARING

(Set for November 26, 2019, at 9 a.m.)

INTRODUCTION

- 1 The Washington Utilities and Transportation Commission (Commission), pursuant to RCW 81.77.040, institutes this special proceeding on its own motion to determine whether Sean Smith (Sean Smith or Company) has engaged, and is engaging, in unlawful operations without a solid waste carrier certificate in violation of RCW 81.77.260.
- 2 The Commission has information from which it believes and therefore alleges that Sean Smith has advertised, solicited, offered, or entered into one or more agreements to provide solid waste collection service within the state of Washington without first having obtained from the Commission a solid waste carrier certificate.
- 3 Pursuant to RCW 81.04.380, upon proof of these allegations, the Commission is authorized to issue an order requiring Sean Smith to cease and desist activities subject to regulation under Title 81 RCW. In addition, RCW 81.04.110 authorizes the Commission to file a complaint on its own motion setting forth any act or omission by Sean Smith that violates any law, or any order or rule of the Commission. The Commission may impose financial penalties of up to \$1,000 for each violation.
- 4 At the hearing in this special proceeding that will be conducted pursuant to Part IV of the Administrative Procedure Act (APA), RCW 34.05, of which notice is given here, the Commission will also consider its Complaint against Sean Smith alleging violations of law as specified below and will decide whether the Company should be penalized.

ORDER AND NOTICE OF HEARING

5 The Commission has jurisdiction to institute a special proceeding to determine whether Sean Smith is conducting business requiring operating authority, or has performed or is performing any act requiring Commission approval without securing such approval pursuant to RCW 80.01.040, RCW 80.01.010, and RCW 81.04.510. In addition to the foregoing statutes, this matter involves Titles 80 and 81 RCW, including but not limited to RCW 80.01.010; RCW 81.04.020; and RCW 81.77.040. This matter also involves the administrative rules set forth in WAC 480-70 and WAC 480-07.

6 **THE COMMISSION ORDERS that Sean Smith appear before the Commission in this special proceeding, conducted under the authority of RCW 81.04.510, at 9 a.m. on November 26, 2019, in the Commission’s Richard Hemstad Hearing Room at 621 Woodland Square Loop SE, Lacey, Washington, to give testimony and evidence under oath as to its operations.**

7 The burden of proving that the alleged operations are not subject to the provisions of Title 81 RCW shall be upon Sean Smith, as provided by RCW 81.04.510.

8 **THE COMMISSION GIVES NOTICE THAT ANY PARTY WHO FAILS TO ATTEND OR PARTICIPATE IN THE HEARING SET BY THIS NOTICE, OR ANY OTHER STAGE OF THIS PROCEEDING, MAY BE HELD IN DEFAULT IN ACCORDANCE WITH RCW 34.05.440 AND WAC 480-07-450.**

9 If a limited English-speaking or hearing-impaired party needs an interpreter, a form is attached to this notice to be filled out and returned as indicated, so that a qualified interpreter may be appointed at no cost to the party or witness.

10 The names and mailing addresses of all parties and their known representatives are shown as follows:

Carrier: Sean Smith
3425 North Dale Road
Millwood, WA 99212

Representative: Unknown

Commission: Washington Utilities and
Transportation Commission
621 Woodland Square Loop SE
Lacey, WA 98504
P.O. Box 47250
Olympia, WA 98504-7250
(360) 664-1160

Representative: Kathryn McPherson
Compliance Investigator
621 Woodland Square Loop SE
Lacey, WA 98503
P.O. Box 47250
Olympia, WA 98504-7250
(360) 664-1108
Kathryn.McPherson@utc.wa.gov

COMPLAINT SEEKING PENALTIES

PARTIES

- 11 Complainant, the Commission, is an agency of the state of Washington, authorized by state law to regulate the rates, services, facilities, and practices of public service companies, including charter and excursion carriers, under the provisions of Title 81 RCW.
- 12 Respondent, Sean Smith, is a solid waste carrier operating without a certificate in the state of Washington.

JURISDICTION

- 13 The Commission has jurisdiction over this matter pursuant to RCW 80.01.040, RCW 81.04.110, RCW 80.01.010, RCW 81.04.160, RCW 81.04.460, and RCW 81.77.

BACKGROUND

- 14 According to the Declaration of the Commission Compliance Investigator, presented to the undersigned administrative law judge¹ under penalty of perjury, the following facts establish probable cause for the Commission to complain against the activities of Sean Smith and to seek penalties in accordance with applicable law.
- 15 According to Facebook Marketplace advertisements, viewed on April 18, 2019, Sean Smith has been operating as a solid waste carrier within the state of Washington without a certificate.
- 16 On or about May 23, 2019, Sean Smith offered to provide solid waste services without first having obtained a certificate from the Commission.

APPLICABLE LAW AND REGULATION

- 17 Under state law, the definition of “solid waste common carrier” includes “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.” RCW 81.77.010(3).
- 18 Under state law, the definition of “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.
- 19 A person must have a certificate of public convenience and necessity from the Commission before operating as a solid waste collection company in the state of Washington. WAC 480-70-081(1). The Commission is authorized to administer and enforce laws and rules regulated to solid waste collection companies, including but not limited to actions where necessary to ensure compliance with statutes, rules, and Commission orders. The Commission will pursue administrative actions that the Commission believes will best ensure future compliance by the violating company. WAC 480-70-216.
- 20 Any person who engages in business as a solid waste carrier in the state of Washington without a certificate is subject to a penalty of up to \$1,000 per violation. RCW 81.04.380.

¹ Administrative law judges appointed by the Commission are empowered, among other things, to “make findings of probable cause and issue complaints in the name of the commission.” RCW 80.01.060(1).

If the basis for the violation is advertising, each advertisement reproduced, broadcast, or displayed via a particular medium constitutes a separate violation. RCW 81.70.260(1).

- 21 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.

COMPLAINT

- 22 The Commission, through its Staff, re-alleges the statements contained in paragraphs 11 through 16 above.
- 23 Sean Smith violated RCW 81.77.010(3) at least once by offering solid waste services for compensation without a certificate issued by the Commission.
- 24 Sean Smith violated RCW 81.77.040 at least once by advertising to transport solid waste without a certificate issued by the Commission.

REQUEST FOR RELIEF

- 25 Staff requests that the Commission, pursuant to its authority under RCW 81.04.380, assess penalties of up to \$1,000 per violation against Sean Smith. Staff will present testimonial evidence at hearing to address the factors for determining an appropriate penalty amount. Further, Staff may request that some portion of any penalty actually imposed be suspended for a period of time sufficient to demonstrate the Company's intent to comply with all applicable laws and rules governing the solid waste industry.

PROBABLE CAUSE

- 26 Based on a review of the Declaration of the Commission Compliance Investigator assigned to this matter, and consistent with RCW 80.01.060 and WAC 480-07-307, the Commission finds probable cause exists to issue this Complaint.

NOTICE OF HEARING

- 27 **THE COMMISSION GIVES NOTICE THAT it will conduct a hearing concerning this Complaint concurrently with the special proceeding noticed above, which will commence at 9 a.m. on November 26, 2019, in the Commission's Richard Hemstad Hearing Room, 621 Woodland Square Loop SE, Lacey, Washington.**

28 Administrative Law Judge Laura Chartoff, from the Commission's Administrative Law Division is designated to preside at the hearing of these matters.²

DATED at Lacey, Washington, and effective October 2, 2019.

/s/ Rayne Pearson
RAYNE PEARSON
Administrative Law Judge
Director, Administrative Law Division

Inquiries should be addressed to:

Mark L. Johnson
Executive Director and Secretary
Washington Utilities and Transportation Commission
621 Woodland Square Loop SE
Lacey, WA 98503
P. O. Box 47250
Olympia, WA 98504-7250
(360) 664-1160

² Judge Chartoff can be reached by telephone at (360) 664-1130 or by email at laura.chartoff@utc.wa.gov.

NOTICE

PLEASE NOTE: The hearing facilities are accessible to interested people with disabilities; that smoking is prohibited; and, if limited English-speaking or hearing-impaired parties or witnesses are involved in a hearing and need an interpreter, a qualified interpreter will be appointed at no cost to the party or witness.

The information needed to provide an appropriate interpreter or other assistance should be stated below and returned to Washington Utilities and Transportation Commission, Attention: Mark L. Johnson, Executive Director and Secretary, 621 Woodland Square Loop SE, Lacey, WA 98503, P.O. Box 47250, Olympia, WA 98504-7250. (PLEASE SUPPLY ALL REQUESTED INFORMATION)

Docket: _____

Case Name: _____

Hearing Date: _____ Hearing Location: _____

Primary Language: _____

Hearing Impaired: (Yes) _____ (No) _____

Do you need a certified sign language interpreter?

Visual _____ Tactile _____

Other type of assistance needed: _____

English-speaking person who can be contacted if there are questions:

Name: _____

Address: _____

Phone No.: (____) _____