



# ATTORNEY GENERAL OF WASHINGTON

Public Counsel

800 Fifth Ave • Suite 2000 • MS TB-14 • Seattle WA 98104-3188 • (206) 464-7744

April 27, 2020

**SENT VIA WUTC WEB PORTAL**

Mark L. Johnson  
Executive Director and Secretary  
Washington Utilities and Transportation Commission  
621 Woodland Square Loop SE  
Lacey, WA 98503

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UTIL. AND TRANSP.  
COMMISSION

Re: *Applicability of WAC 480-70-201 and CFR 49 Section 391.45 to Commission Regulated Solid Waste Collection Company Drivers and Vehicles,*  
Docket TG-191050, Initial Comments of Public Counsel

Dear Mr. Johnson:

The Public Counsel Unit of the Washington State Attorney General's Office ("Public Counsel") respectfully submits these comments following the February 27, 2020, Workshop. These comments are in response to the inquiry into (1) whether the Washington Utilities and Transportation Commission ("Commission") has jurisdiction to regulate vehicles weighing 10,001-26,000 pounds operated by regulated solid waste collection companies that are used to transport empty solid waste containers to and from customers; and (2) whether WAC 480-70-201, which adopts by reference 49 C.F.R. Section 391.45(a), should require empty waste container vehicle drivers to be medically certified.

The inquiry arises from Docket TG-190495, in which the Commission issued a penalty assessment against Waste Management Company for 477 violations of WAC 480-70-201, and 49 CFR Section 391.45.<sup>1</sup> The Company responded to the penalty assessment contesting 253 violations of 49 C.F.R. Part 391.45(a), which requires drivers of commercial motor vehicles above 10,001 pounds to be medically certified. Waste Management claimed that the Commission does not have jurisdiction under RCW 81.77 to enforce safety requirements on its waste container vehicle drivers because the containers are empty, and that the Commission interpreted WAC 480-70-201 incorrectly by requiring drivers of empty waste container vehicles to be medically certified.<sup>2</sup> In Final Order 03 in Docket TG-190495 the Commission dismissed the violations relating to the medical certification requirements, citing a potential conflict in the regulations for solid waste company drivers versus commercial carrier drivers of vehicles of the

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<sup>1</sup> Joe Dallas, TR. 6:20-7:3.

<sup>2</sup> See *id.*, TR. 7:4-7.

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same weight classification that are regulated by the Washington State Patrol (WSP).<sup>3</sup> The Commission directed Staff to engage with regulated solid waste collection companies and WSP about the regulation of drivers and vehicles used to transport empty solid waste containers to and from customers.<sup>4</sup> WSP regulations apply to commercial vehicles that are not regulated by the UTC.

Public Counsel believes that the Commission has authority under RCW 81.77 to regulate empty waste container vehicles of regulated solid waste companies. Additionally, Public Counsel believes that WAC 480-70-201 requires waste container vehicle drivers to be medically certified.

### **The Commission Has Jurisdiction**

Public Counsel believes the Commission has jurisdiction to regulate waste container vehicles of regulated solid waste companies, even if the vehicle is not being used to transport solid waste. We believe this aspect of solid waste collection company operations falls squarely within the Commission's statutory authority as provided in RCW 81.77.030. The Commission emphasized this in Docket TG-190495, stating "the Commission has broad regulatory authority over waste management, the safety of its operations, all matters affecting the relationship between the Company and its customers, and the comfort and convenience of Washington residents...."<sup>5</sup>

The Washington State Legislature defines motor vehicles of solid waste collection companies in RCW 81.77.010 as those "used for the purpose of" solid waste collection or transportation. The solid waste containers in question, whether empty or full, exist to enable the collection and transportation of solid waste. Also, it is unclear that the containers in question would be devoid of all solid waste, even though they are described as "empty."<sup>6</sup> Whether waste containers are empty or full, Public Counsel views their regulation as within the UTC's statutory authority in RCW 81.77. It is nonsensical to regulate the container when it is full, but not when it is empty.

### **Medical Certifications Promote Road Safety at Small Cost**

Pursuant to 49 C.F.R Section 391.45(a), drivers operating a commercial motor vehicle must be medically examined and certified. The Commission adopted this requirement by reference in its solid waste collection company regulations at WAC 480-70-201(1). The Commission applies

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<sup>3</sup> See *id.*, TR. 7:20-8:22; *In the Matter of a Penalty Assessment Against Waste Mgmt. of Washington, Inc. in the amount of \$47,700*, Docket TG-190495, Order 03: Final Order Granting Petition, in Part; Dismissing Violations; Assessing Penalty for Violations (Nov. 14, 2019).

<sup>4</sup> *In the Matter of a Penalty Assessment Against Waste Mgmt. of Washington, Inc. in the amount of \$47,700*, Docket TG-190495, Order 03: Final Order Granting Petition, in Part; Dismissing Violations; Assessing Penalty for Violations (Nov. 14, 2019).

<sup>5</sup> *In the Matter of a Penalty Assessment Against Waste Mgmt. of Washington, Inc. in the amount of \$47,700*, Docket TG-190495, Order 03: Final Order Granting Petition, in Part; Dismissing Violations; Assessing Penalty for Violations (Nov. 14, 2019); see Dallas, TR. 7:9-15.

<sup>6</sup> See Ann Paisner and Andrew Kenefick, TR. 19:23-21:20.

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similar requirements to household goods carriers in WAC 480-15. Public Counsel is extremely interested in this Docket because it presents a significant public safety issue. We believe failing to impose the medical certification requirements on drivers of these vehicles, which weigh more than 10,001 pounds, would pose a significant safety risk to Washingtonians.<sup>7</sup>

Additionally, the cost to get these medical certifications seems small in comparison to the potential safety benefit. Recently in Docket TV-200086, the Commission denied a petition to repeal similar medical certification requirements for drivers of household goods carrier vehicles in the 10,001-26,000-pound weight class.<sup>8</sup> In rejecting the petition, the Commission noted the Federal Motor Carrier Safety Administration's estimate of 3,000 trucks per year that are involved in crashes that result in a fatality or serious injury due to driver medical events, such as a heart attack or seizure.<sup>9</sup> The Commission observed that the application of medical examination and certification requirements on drivers of vehicles with a maximum gross vehicle weight rating of more than 10,000 pounds is designed to reduce such incidents in the interest of public safety.<sup>10</sup> The Commission also noted that the cost per driver for annual medical examination and certification was about \$100 plus lost revenue for the time it takes to undergo a physical exam.<sup>11</sup> Public Counsel believes that the benefits of requiring all drivers of vehicles above the 10,001-pound threshold to carry a valid medical certification far surpass the small cost to obtain them.

Continuing to impose the medical certification requirement for drivers of waste container vehicles weighing 10,001 pounds or more is consistent with how the Commission regulates household goods carriers. Such requirements would be consistent with the federal government's regulations of these vehicles in 49 CFR 391.45, along with other U.S. states that impose the same requirement on all commercial vehicles weighing 10,001 pounds or more.<sup>12</sup> Public Counsel

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<sup>7</sup> Mathew Perkinson, Jason Sharp, Kevin Valentine, Kenefick, and Dallas, TR. 22:3-26:22.

<sup>8</sup> See *In the Matter of the Petition of Washington Movers Conf., to Amend Washington Admin. Code 480-15-570, Driver Safety Requirements*, Docket TV-200086, Order 01: Denying Petition (Feb. 20, 2020).

<sup>9</sup> *Id.*, ¶ 8; see also Perkinson and Sharp, TR. 22:12-23:20.

<sup>10</sup> Perkinson, Sharp, and Dallas, TR. 22:12-23:20, 26:7-22, 27:15-18.

<sup>11</sup> *In the Matter of the Petition of Washington Movers Conf., to Amend Washington Admin. Code 480-15-570, Driver Safety Requirements*, Docket TV-200086, Order 01: Denying Petition, ¶ 13 (Feb. 20, 2020).

<sup>12</sup> See Perkinson and Sharp, TR. at 11. Public Counsel would like to clarify a statement it made during the February 27, 2020 Workshop. Public Counsel stated that "a large number of states, if not a majority of other states" require drivers of commercial vehicles in the 10,001 to 26,000 pound weight range to obtain medical certifications. Upon further research, Public Counsel confirmed that five U.S. states—Alabama, Arizona, California, New Jersey, and Utah—require medical certifications of intrastate drivers of all commercial vehicles weighing above the 10,001 pound threshold, and one state—Colorado—imposes this requirement on all commercial vehicles weighing 16,001 pounds or more. See Paisner, TR. 5; Ala. Admin. Code r. 760-X-1-16 (Alabama); A.A.C. R17-5-202 (Arizona); 13 C.C.R. §§ 28.18, 1200(b), 1201(b) (California); N.J.A.C. 13:60-2.1 (New Jersey); U.A.C. R909-1-2 (Utah); 8 C.C.R. §1507-1 (Colorado) (commercial vehicle threshold weight is 16,001 pounds). However, Public Counsel found that a large number of additional states impose the medical certification requirement on drivers of only specific categories of commercial trucks in the 10,001 to 26,000-pound weight range, such as certain passenger vehicles and vehicles carrying hazardous substances, consistent with the Commercial Motor Vehicle Safety Act of 1986. See also 17 A.A.C. 25.210 (Alaska); A.C.A. §§ 27-23-103(4), 27-23-129 (Arkansas); C.G.S.A. §§ 14-1(19),

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believes the medical certification requirements should be applied consistently across the UTC's regulated industries and consistent with the federal government and other states.

At the February 27, 2020, workshop, WSP expressed interest in amending its regulations to lower the threshold weight for commercial vehicle driver medical certification requirements to 10,001 pounds.<sup>13</sup> Public Counsel would support this effort, which would make these requirements more consistent across industries in Washington. Staff also noted an uptick in the number of accidents in Washington that involved commercial trucks, lending further support for the need to impose medical certification requirements on truck drivers in Washington.<sup>14</sup>

### **Lack of Data from Companies**

While the workshop was beneficial, Public Counsel believes that stakeholders and the Commission would benefit from more information. We did not get firm data from regulated solid waste companies across the state on the questions the Commission posed in the January 24, 2020 Notice of Workshop. Additionally, during the workshop, the use of third party contractors to transport these empty containers was discussed only briefly.<sup>15</sup> Based on the workshop discussion, companies are using contractors for this work to some extent, and these contractor drivers may not have valid medical certifications.<sup>16</sup> Public Counsel thinks this issue should be further explored, and that third party contractors should also be required to have medical certifications due to the safety risk of driving these heavy vehicles.

We appreciate the opportunity to submit comments. If you have any questions about this filing, please contact the undersigned or Sarah Laycock at (206) 389-3879 or via e-mail at [Sarah.Laycock@atg.wa.gov](mailto:Sarah.Laycock@atg.wa.gov).

Sincerely,

/s/ *Ann Paisner*  
Ann Paisner, WSBA No. 50202  
Assistant Attorney General  
Public Counsel Unit  
(206) 573-1127

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14-44c(a)(5) (Connecticut); 2 Del. Admin. Code 2213-4.0; 21 Del.C. § 2626 (Delaware); 15 F.A.C. 15a-7.001, 15a-7; F.S.A. § 316.302(1)(b) (Florida); 40 Ga. Code Ann. §§ 40-5-142, 40-5-148.3 (Georgia); COMAR 11.17.03.01B(3); 11.21.01.04B(3) (Maryland) (incorporating by reference 49 C.F.R. § 390.5).

<sup>13</sup> Valentine, TR. 24:15-25:15.

<sup>14</sup> Perkinson, TR. 39:16-40:8.

<sup>15</sup> Brad Lovaas, Kenefick, Paisner, Valentine, and Teimouri, TR. 32:17-36:21, 41:2-43:5.

<sup>16</sup> Kenefick, TR. 34:7-35:11.