

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

<p>In the Matter of the Petition of</p> <p>ASH GROVE CEMENT COMPANY,</p> <p>Petitioner,</p> <p>Seeking Exemption from the Provisions of WAC 480-60-040 Relating to Overhead Clearances and WAC 480-60-050 Relating to Side Clearances.</p>	<p>DOCKET TR-230821</p> <p>ORDER 01</p> <p>GRANTING PERMANENT EXEMPTION FROM RULES</p>
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BACKGROUND

- 1 On October 5, 2023, Ash Grove Cement Company (Ash Grove Cement or Company), filed with the Washington Utilities and Transportation Commission (Commission) a petition (Petition) requesting exemption from WAC 480-60-040, which requires railroad companies to maintain an overhead clearance of at least 22 feet 6 inches from the top of the rail, and WAC 480-60-050, which requires railroad companies to maintain a side clearance of at least 8 feet 6 inches from the centerline of the track to the nearest structure.
- 2 Ash Grove Cement operates a facility at 1312 North Thierman Road, Spokane Valley, in an industrial park served by BNSF Railway Company, Inc. (BNSF). BNSF delivers rail cars to Ash Grove Cement using a 712-foot spur track that runs from north to south. An existing roof structure is 68 feet long and is supported on the east side by three vertical steel columns located 7 feet 3 inches east of the centerline of Ash Grove Cement’s spur track. In its petition, Ash Grove Cement proposes to extend the existing roof structure an additional 32 feet to the north, adding a fourth vertical steel column in line with the three existing columns. The new addition will accommodate additional car unloading equipment and will have an overhead clearance of approximately 21 feet above the top of the rail. The existing structure and proposed modifications create restricted clearances requiring exemption from Commission rules.
- 3 The Company proposes to replace the existing non-standard “Narrow Clearance – No Riders” sign located north of the facility with a vertical “No Clearance” sign conforming to BNSF standard plans, drawing 3044, Figure 2, as included with the Company’s Petition. This sign will be attached to the northern-most metal column facing approaching

rail traffic. The Company will provide overhead illumination for operations occurring during hours of darkness. BNSF will notify its employees in writing of the restricted clearances through its employee timetable or special instructions.

4 Commission Staff (Staff) reviewed the request and recommended granting Ash Grove Cement’s request for exemption, subject to the following conditions:

- (a) Ash Grove Cement must install a vertical “No Clearance” sign, conforming to the BNSF standard plans, on the northern-most metal column facing rail traffic approaching from the north.
- (b) Ash Grove Cement must maintain overhead illumination during operations occurring during hours of darkness.
- (c) BNSF must provide written notification of the restricted clearance to its employees, and must provide a copy of this notification to Staff within 60 days of the date of this order.

DISCUSSION

5 WAC 480-60-040 prescribes a general minimum overhead clearance of 22 feet 6 inches from the top of the rail to an overhead structure. WAC 480-60-050 prescribes a general minimum side clearance of 8 feet 6 inches from the centerline of the track to an adjacent structure. These general clearance requirements apply to the Ash Grove Cement facility and permanent exemption from these rules is required for any structures not meeting these requirements.

6 Under WAC 480-60-020(3), the Commission may grant an exemption from the provisions of any rule in WAC 480-60 if doing so is consistent with the public interest, the purposes underlying regulation, and applicable statutes.

7 Although train crewmembers have no reason to ride a rail car at this location, any clearance exemption should be conditioned upon a prohibition against riding on the side of a rail car and clearly signing the location as having reduced side clearances.

8 The Commission determines that Ash Grove Cement’s request for clearance exemptions for its Spokane Valley facility is consistent with the public interest, the purposes of WAC 480-60-040, WAC 480-60-050, and the applicable statutes. The Commission grants the exemption subject to Staff’s recommended conditions listed in paragraph 4.

FINDINGS AND CONCLUSIONS

- 9 (1) The Commission is an agency of the State of Washington having jurisdiction over public service companies, including railroad companies, within the state of Washington. RCW 80.01.040, Chapter 81.01 RCW, Chapter 81.04 RCW, and Chapter 81.53 RCW.
- 10 (2) BNSF is engaged in the business of providing railroad services within the state of Washington and is a public service company subject to Commission jurisdiction.
- 11 (3) BNSF is subject to WAC 480-60-040, which requires railroad companies to maintain an overhead clearance of 22 feet 6 inches from the top of the rail to overhead structures, and WAC 480-60-050, which requires railroad companies to maintain a side clearance of at least 8 feet 6 inches from the center of the track to adjacent structures.
- 12 (4) Under WAC 480-60-020(3), the Commission may grant an exemption from the provisions of any rule in WAC 480-60, if consistent with the public interest, the purposes underlying regulation, and applicable statutes. See also WAC 480-07-110.
- 13 (5) A restricted clearance can exist, and safety can be maintained, if Ash Grove Cement maintains an approved warning sign on the north side of its facility facing approaching rail traffic and provides illumination during operation occurring during hours of darkness, and if BNSF provides written notification of the restricted clearances to its employees.
- 14 (6) Staff investigated the request and recommends that the permanent exemption be granted.
- 15 (7) This matter came before the Commission at its regularly scheduled meeting on October 26, 2023.
- 16 (8) After review of the Petition filed by Ash Grove Cement on October 5, 2023, and giving due consideration, the Commission finds that the exemption is in the public interest, is consistent with the purposes underlying the regulation and applicable statutes, and should be granted.

ORDER

THE COMMISSION ORDERS:

- 17 (1) After the effective date of this Order, Ash Grove Cement Company is granted exemption from WAC 480-60-040 relating to overhead clearances, and WAC 480-60-050 relating to side clearances.
- 18 (2) This exemption is subject to the following conditions:
- (a) Ash Grove Cement Company must install a vertical “No Clearance” sign, conforming to the BNSF Railway Company, Inc. standard plans, on the northern-most metal column facing rail traffic approaching from the north.
 - (b) Ash Grove Cement Company must maintain overhead illumination during operations occurring during hours of darkness.
 - (c) BNSF Railway Company, Inc. must provide written notification of the restricted clearance to its employees, and must provide a copy of this notification to Staff within 60 days of the date of this order.
- 19 (3) The Commission retains jurisdiction over the subject matter and BNSF Railway Company, Inc. to effectuate the provisions of this Order.
- 20 The Commissioners, having determined this Order to be consistent with the public interest, directed the Secretary to enter this Order.

DATED at Lacey, Washington, and effective October 26, 2023.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

KATHY HUNTER
Acting Executive Director and Secretary