



STATE OF WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

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July 7, 2020

NOTICE CLOSING DOCKET

RE: *In the Matter of Notice of Inquiry and Workshop to Discuss the Applicability of WAC 480-70-201 and CFR 480-07-201 and CFR 49 § 391.45 and Commission Regulated Solid Waste Collection Company Drivers and Vehicles*
Docket TG-191050

TO ALL INTERESTED PERSONS:

On July 10, 2019, the Commission issued a penalty assessment (Penalty Assessment) against Waste Management of Washington, Inc., (Waste Management or Company) in Docket TG-190495 for 477 violations of Title 49 Code of Federal Regulations (C.F.R.) § 391.45(a), which requires that employees who operate commercial motor vehicles be medically examined and certified.¹ The Company responded to the penalty assessment on July 25, 2019, contesting 253 of the violations and requesting mitigation of the penalty.² On August 28, 2019, the Commission entered Order 01, denying the Company's contest of the violations and upholding the penalty.³

On September 9, 2019, the Company petitioned for administrative review of Order 01.⁴ Waste Management contested 253 of the 274 violations of 49 C.F.R. § 391.45(a), which were cited on the basis that Waste Management permitted employees who were not medically examined and certified to operate commercial vehicles for the purpose of transporting empty solid waste containers to and from customers' homes and businesses. Waste Management argues that 49 C.F.R. § 391.45(a) should not apply to drivers who operate commercial motor vehicles solely for

¹ *In the Matter of a Penalty Assessment Against Waste Management of Washington, Inc. (Certificate G-237) in the Amount of \$47,700*, Docket TG-190495, Notice of Penalties Incurred and Due for Violations of Laws and Rules (Aug. 28, 2019).

² Docket TG-190495, Waste Management of Washington, Inc. (Certificate G-237) Response to Penalty Assessment (July 25, 2019).

³ Docket TG-190495, Order 01.

⁴ Docket TG-190495, Petition for Administrative Review (Sept. 9, 2019).

the purpose of transporting empty solid waste containers. Specifically, Waste Management argued: (1) that the Commission does not have jurisdiction to regulate commercial motor vehicles that transport empty solid waste containers because such vehicles are not “transporting solid waste”; and (2) that the Commission should thus determine that 49 CFR § 391.45(a) does not apply to drivers operating vehicles that transport empty solid waste containers.

In its response, Staff made several legal and policy arguments that 49 CFR § 391.45(a) should be interpreted to apply to Waste Management’s transport of empty solid waste containers. Staff argued that the Commission has explicit jurisdiction to regulate public service companies, including the operations of tariffed solid waste collection companies, and that such jurisdiction is not limited to only a subset of vehicles that those companies own and/or operate. Further, Staff argued that RCW 81.77.030 gives the Commission clear jurisdiction to regulate the “*safety of operations*” of solid waste collection companies and “*all other matters affecting the relationship between them and the public which they serve.*”⁵

On November 14, 2019, the Commission issued its Final Order 03 in Docket TG-190495.⁶ Order 03 held that the Commission retains jurisdiction over Waste Management and has “broad regulatory authority over Waste Management, the safety of their operations, all matters affecting the relationship between the company and their customers, and the comfort and convenience of Washington residents using Waste Management services.”⁷

Further, in Final Order 03, the Commission recognized that vehicles transporting empty solid waste containers pose a significant risk to the public if operated unsafely. The Commission acknowledged, however, that Waste Management’s Petition raised issues of potential conflicting regulations due to overlapping enforcement authority with Washington State Patrol (WSP). Because those issues apply not just to Waste Management, but to all solid waste collection companies the Commission regulates, the Commission exercised its discretion to reserve judgment until Staff was able to compile sufficient additional information from other regulated solid waste companies, stakeholders, and WSP. Accordingly, the Commission dismissed the violations against Waste Management and instructed Staff to coordinate among stakeholders and file a report with the Commission on how to best regulate the transportation of empty solid waste containers by certificated solid waste companies.

Staff subsequently opened Docket TG-191050 and convened a workshop with all interested stakeholders on February 27, 2020. The workshop participants generally agreed that the financial

⁵ Docket TG-190495, Commission Staff’s Response to Waste Management Washington’s Petition at ¶ 13 (Oct. 11, 2019).

⁶ Docket TG-190495, Final Order 03 (Nov. 14, 2019).

⁷ Docket TG-190495, Final Order 03 at ¶ 9.

impact of requiring drivers who transport empty solid waste containers to be medically certified is relatively small. Further, there was general consensus that the public safety benefits of such a requirement significantly outweigh the negligible financial impact.⁸

Additionally, most of the workshop participants agreed that it is in the public interest for the Commission to interpret 49 C.F.R. 391.45(a) to apply to drivers of vehicles transporting empty solid waste containers. Participants also supported consistency between state and federal laws that govern motor carrier safety to reduce inconsistent regulatory overlap.⁹ Currently, WSP regulations regarding medical certification are less stringent than both the Commission rules and federal regulations. During the workshop, a WSP representative stated that the agency is currently in the process of revising its regulations to provide consistency with the existing Commission and Federal Motor Carrier Administration rules and regulations.¹⁰

On May 7, 2020, Staff issued its report in Docket TG-191050, which contained the following four recommendations regarding the regulation of the transportation of empty solid waste containers:

1. The Commission should continue to carry out its current enforcement policy and require its Motor Carrier Safety program to conduct safety interventions at the solid waste collection company's principal place of business.
2. The Commission should support a uniform safety enforcement approach consistent with other state and federal regulations.
3. The Commission should instruct its Motor Carrier Safety program to continue discussions with WSP related to potential overlap between rules and regulations that may be in conflict or may be inconsistently applied across agencies.
4. The Commission should issue an interpretive policy statement outlining the Commission's preferred enforcement approach on the central issue in this Docket (whether or not drivers employed and/or contracted by regulated solid waste collection companies who transport empty solid waste containers to and from residences in trucks ranging from 10,000 to 26,000 pounds gross vehicle weight should be required to have medical certification.)¹¹

After considering the feedback from various stakeholders and reviewing Staff's memo, the Commission adopts Staff's first three recommendations for the reasons discussed below.

⁸ *In the Matter of Notice of Inquiry and Workshop to Discuss the Applicability of WAC 480-70-201 and CFR 480-07-201 and CFR 49 § 391.45 and Commission Regulated Solid Waste Collection Company Drivers and Vehicles*, Docket TG-191050, Staff Report and Recommendations at 14 (May 7, 2020).

⁹ *Id.* at 13-14.

¹⁰*Id.* at 9.

¹¹*Id.* at 7.

First, the Commission will continue to abide by its current enforcement policy and require its Motor Carrier Safety Program to conduct safety interventions at the solid waste collection company's principle place of business. Motor Carrier Safety staff should continue to sample records of regulated solid waste collection companies to ensure compliance with safety laws and rules, including those vehicles used to transport empty solid waste containers. To be clear, the Motor Carrier Safety program should continue to follow its current enforcement policies and procedures as it has in the past.

Second, the Commission is a regulatory agency responsible for ensuring intrastate solid waste companies operate in the interest of the public. To that end, the Commission adopts by reference in WAC 480-70-201(1) portions of the federal driver qualification requirements contained in Title 49 CFR § 391. This includes 49 CFR. § 391.45(a), which requires drivers of commercial motor vehicles to be medically examined and certified. The adoption by reference of these CFRs further aligns the state with the federal safety regulations adopted by the Federal Motor Carrier Safety Administration (FMCSA).¹²

The FMCSA was established within the Department of Transportation on January 1, 2000, pursuant to the Motor Carrier Safety Improvement Act of 1999 (49 U.S.C. 113) . Its primary mission is to prevent commercial motor vehicle-related fatalities and injuries. This is accomplished through strong enforcement of safety regulations; targeting high-risk carriers and commercial motor vehicle drivers; improving safety information systems and commercial motor vehicle technologies; strengthening commercial motor vehicle equipment and operating standards; and increasing safety awareness. FMCSA depends on its partnership with Federal, State, and local agencies to carry out its safety mandate.¹³ A uniform safety enforcement approach is also required to ensure continued federal funding for portions of the Commission's Motor Carrier Safety Program relating to the regulation of motor carriers.¹⁴

Third, the Commission sees value in continuing discussions between its Motor Carrier Safety program and WSP regarding transportation safety rules and regulatory overlap. Accordingly, we require Staff to continue to meet regularly with WSP to ensure that regulation is collaborative rather than duplicative.

The Commission appreciates the time, effort, and collaboration between Staff and various Stakeholders. In light of the information gathered from the workshop and provided by Staff, we

¹² See <https://www.transportation.gov/transition/fmcsa-understanding-federal-motor-carrier-safety-administration>.

¹³ *Id.*

¹⁴ Docket TG-191050, Staff Report and Recommendations at 14.

determine that it is not in the public interest to change our enforcement practices and procedures. Accordingly, we reaffirm our longstanding interpretation of 49 C.F.R. § 391.45(a) and thus determine it is unnecessary to issue a separate interpretive and policy statement. The Commission interprets 49 C.F.R. § 391.45(a) to apply to all solid waste company employees who operate vehicles for any purpose in the course of providing tariffed service. The Commission therefore directs its Motor Carrier Safety Program to resume recording violations and assessing penalties for violations of WAC 480-70-201 and CFR 49 § 391.45(a) as it has done in the past.

THE COMMISSION GIVES NOTICE That Docket TG-191050 is closed.

DAVID W. DANNER, Chair

ANN E. RENDAHL, Commissioner

JAY M. BALASBAS, Commissioner