

Service Date: December 10, 2018

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

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

DANIEL STEIN d/b/a SEABECK
WASTE & RECYCLE

DOCKET TG-180181

ORDER 02

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

BACKGROUND

- 1 **Nature of the Proceeding.** The Washington Utilities and Transportation Commission (Commission) initiated this special proceeding to determine if Daniel Stein d/b/a Seabeck Waste and Recycle (Seabeck Waste or Respondent) has engaged, and continues to engage, in hauling solid waste as a solid waste collection company in the state of Washington without first obtaining a certificate of public convenience and necessity (certificate) from the Commission.
- 2 **Procedural History.** On September 21, 2018, the Commission entered Order 01, Order Instituting Special Proceeding; and Notice of Brief Adjudicative Proceeding (Order 01), initiating this docket on its own motion. Order 01 alleges that Respondent violated RCW 81.77.040 on two occasions by offering and by advertising for the hauling of solid waste as a solid waste collection company without first obtaining a certificate from the Commission. In addition, Staff requests that the Commission, pursuant to its authority under RCW 81.71.380, assess penalties of up to \$1,000 for each violation of RCW 81.77.040 and RCW 81.77.090(2). Staff further requests that the Commission order Seabeck Waste to cease and desist activities subject to regulation under Title 81 RCW until it has obtained the necessary authority from the Commission. Also on September 21, 2018, the Commission issued a *Subpoena Ducus Tecum for Production of Documents* (Subpoenas) to the Respondent commanding Daniel Stein to appear before the

**Pursuant to RCW 80.01.060(3)
This packet is the final
Order in this docket.**

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Commission at the special proceeding referenced in Order 01 and scheduled on November 29, 2018, and to bring the documents specified in the Subpoenas.

- 3 **Hearing.** The Commission convened a brief adjudicative proceeding before Administrative Law Judge Laura Chartoff on November 29, 2018. At the proceeding, Staff presented evidence and testimony from Commission compliance investigator, Jason Hoxit. Daniel Stein testified for Seabeck Waste. Tena Hopper, a customer of Seabeck Waste, also testified for Respondent.
- 4 Staff's evidence shows that the Commission received a complaint on January 8, 2015, from Kitsap County Public Works, Solid Waste Division, alleging that Seabeck Waste was advertising solid waste collection services by distributing flyers to prospective customers in Seabeck, Washington.¹ Then, on January 9, 2015, Commission compliance investigator Pam Smith called Seabeck Waste at the phone number on the flyer and explained that providing solid waste collection services without a certificate violates the law.² Staff's evidence shows that Ms. Smith asked Mr. Stein for his mailing address so she could send him more information, but he refused to provide it.³ Then on February 27, 2015, and March 16, 2015, Commission records show that Staff sent letters explaining the law to Mr. Stein at his residence.⁴ Mr. Hoxit testified that the letters, sent via first class mail, were not returned to the Commission.
- 5 Staff's evidence further shows that on December 22, 2017, Staff received a complaint from a certificated solid waste collection company alleging that Seabeck Waste was sending out flyers advertising solid waste collection services to prospective customers in Seabeck, Washington.⁵ The flyers advertised bi-weekly garbage and recycling home pick-up service.⁶ Mr. Hoxit testified that he posed as a Seabeck resident and called Mr. Stein to request garbage service. Mr. Hoxit testified that Mr. Stein offered to pick up two cans every other week for \$32 a month. Staff's evidence shows that Mr. Stein told Mr.

¹ Exh JH-1, Appendices A and B.

² *Id.*, Appendix C.

³ *Id.*, Appendices C and D.

⁴ *Id.*, Appendices D and E.

⁵ *Id.*, Appendix F.

⁶ *Id.*, Appendix G.

Hoxit that he should not disclose that he would be using Seabeck Waste when he called the certificated carrier to cancel service. Mr. Stein told Mr. Hoxit to tell the certificated carrier he would be taking his own garbage and recycling to the dump.⁷

6 In his testimony, Mr. Stein admitted he advertised solid waste collection services and that he offered to provide solid waste collection services to Staff. Mr. Stein also acknowledged that the advertising flyers appended to Staff's Investigation report were his. Mr. Stein admitted to the phone call with Mr. Hoxit and did not dispute Mr. Hoxit's summary of the call, which is documented in Appendix I of Staff's investigation report.

7 Mr. Stein argued that the Commission cannot impose a fine or administrative sanction because RCW 34.05.110 requires the Commission to first provide him a copy of the agency rule and allow him at least 7 days to correct the violation. Mr. Stein testified that he was first notified of the violation when he was served with Order 01. Mr. Stein admitted that he received a phone call from Ms. Smith in 2015, but claimed that he had not heard of the Commission and did not believe Ms. Smith. Mr. Stein also testified that he did not receive the two letters the Commission sent him in 2015, claiming he receives mail at a post office box and that his mail service is unreliable.

8 Finally, Mr. Stein testified that he is providing a valued service to residents of Seabeck who claim they are not adequately served by the certificated carrier. Tena Hopper, a customer, testified that she uses Seabeck Waste because she is no longer physically able to transport her garbage to the dump on her own.

9 **Appearances.** Harry Fukano, Assistant Attorney General, Olympia, Washington, represents Staff. Daniel Stein, Seabeck, Washington, represents Daniel Stein d/b/a Seabeck Waste and Recycle, *pro se*.

DISCUSSION AND DECISION

10 **Classification.** RCW 81.04.510 authorizes this special proceeding to determine whether Seabeck Waste is conducting business as a solid waste collection company in the state of Washington without the requisite authority. The statute provides that: "Where or not any person or corporation is conducting business requiring operating authority, or has

⁷ *Id.*, Appendix I.

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performed or is performing any act requiring approval of the commission without securing such approval, shall be a question of fact to be determined by the commission.” The statute places the burden of proof on the Respondent to demonstrate that its acts or operations are not subject to the provisions of RCW Chapter 81.

- 11 RCW 81.77.010(7) defines “solid waste collection company” as “every person . . . owning, controlling, operating, or managing vehicles used in the business of transporting solid waste for collection or disposal, or both, for compensation, . . . over any public highway in this state as a ‘common carrier’ or as a ‘contract carrier.’”
- 12 RCW 81.77.010(3) defines the term “common carrier” as “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.”
- 13 The term “solid waste” includes garbage and “source separate recyclable material collected from residences.” RCW 70.95.030(22); RCW 81.77.010(9).
- 14 RCW 81.77.040 provides that “A solid waste collection company shall not operate for the hauling of solid waste for compensation without first having obtained from the commission a certificate declaring that public convenience and necessity require such operation. Operating for the hauling of solid waste for compensation includes advertising, soliciting, offering, or entering into an agreement to provide that service.”
- 15 Upon proof of unauthorized operations, RCW 81.04.510 authorizes the Commission to order the unpermitted 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, or any order or rule of the Commission.
- 16 In this case, the undisputed evidence shows that Seabeck Waste distributed fliers advertising residential garbage and recycling pickup service for compensation in Washington, and that Seabeck Waste offered to provide residential garbage and recycling pickup service to Staff for compensation in Washington. We therefore conclude that Seabeck Waste meets the statutory definition of hauling of solid waste for compensation as a solid waste collection company. As Seabeck Waste does not have authority to conduct business as a solid waste collection company, Seabeck Waste’s conduct violates RCW 81.77.040.

- 17 **RCW 35.05.110 - Violations of State Law or Agency Rule by a Small Business.** Mr. Stein concedes that Seabeck Waste violated RCW 81.77.040, but argues that RCW 34.05.110(1) prevents the Commission from imposing a penalty or administrative sanction on a small business without notice and an opportunity to correct the violation. RCW 34.05.110(1) provides in part: “Agencies must provide to a small business a copy of the state law or agency rule that a small business is violating and a period of at least seven calendar days to correct the violation before the agency may impose any fines, civil penalties, or administrative sanctions for a violation of a state law or agency rule by a small business.” Mr. Stein argues that Order 01, served on September 21, 2018, was the first time he was provided a copy of the state law or agency rule that he is violating. He argues that the commission must give him seven days from September 21 to correct the violation before imposing any fines or administrative sanctions, and that he cannot be penalized for violations occurring before that date.
- 18 We disagree, and conclude RCW 34.05.110(1) does not apply for several reasons. First RCW 34.05.110(1), quoted above, must be read together with RCW 34.05.110(6), which provides: “Nothing in this section may be construed to diminish the responsibility for any citizen or business to apply for and obtain a permit, license, or authorizing document that is required to engage in a regulated activity, or otherwise comply with state or federal law.” We interpret RCW 34.05.110(6) as creating an exception for agency actions where a person is engaging in regulated activity without a certificate. In other words, the notice requirements in 34.05.110(1) were not intended to apply where a person is engaged in regulated activity without a certificate.
- 19 Furthermore, even if the statute applies here and requires the Commission to provide notice and an opportunity to correct the violation, we conclude the Commission did provide notice to Seabeck Waste in 2015. The term “provide” is not defined in statute and therefore has its ordinary meaning which is “to make something available to.”⁸ The undisputed evidence shows that Compliance Investigator Pam Smith called Mr. Stein in 2015 and explained to him that his business operations required a permit from the Commission. The evidence further shows that Pam Smith asked Mr. Stein for his contact address so she could provide him a copy of the laws and rules, and that he refused to provide contact information. Following the phone call, the Commission mailed two compliance letters, explaining the applicable laws and rules, to Mr. Stein’s residence

⁸ <https://www.merriam-webster.com/dictionary/provide> (last visited Dec. 7, 2018)

address, and that those letters were not returned. Mr. Stein testified that he did not believe Ms. Smith, claiming he found it incredible that his business activities could be illegal. He further testified that he did not receive the letters. Regardless of whether Mr. Stein believed Ms. Smith, or received or read the letters, we find that the Commission, through its multiple attempts to provide technical assistance to Mr. Stein, made the rules and laws available to Seabeck Waste. To the extent that RCW 34.05.011(1) requires notice and an opportunity to correct, we find that Staff provided the Respondent copies of relevant rules and laws in 2015, well in advance of this proceeding. Accordingly, we reject Mr. Stein's argument that he received inadequate notice.

20 Finally, there is at least one exception to seven day notice requirement that applies here. RCW 34.05.110(3)(b) provides that the notice requirement does not apply when "the violation involves a knowing or willful violation." Here, there is substantial evidence that Mr. Stein knew he was violating Commission rules. There is undisputed evidence that Mr. Stein instructed Mr. Hoxit to lie to the certificated carrier about why he was cancelling service so as not to disclose that he was switching to Seabeck Waste. This evidence creates a reasonable inference that Mr. Stein knew he was operating illegally. Accordingly, the notice requirements in RCW 34.05.110(1) do not apply.

21 We conclude that Seabeck Waste should be ordered to cease and desist operations without first obtaining the required certificate from the Commission. We now turn to the issue of penalties.

22 **Penalty.** Any solid waste collection company operating for the hauling of solid waste for compensation without the necessary permit is subject to a penalty of up to \$1,000 per violation. If the basis for the violation is advertising, each advertisement reproduced, broadcast, or displayed via a particular medium constitutes a separate violation.⁹

23 Seabeck Waste violated RCW 81.77.040 at least once when it offered to Staff to provide solid waste collection services for compensation. In addition, Seabeck Waste violated RCW 81.77.040 at least once by distributing flyers advertising a bi-weekly residential garbage and recycling pickup service for compensation.

24 When deciding the amount of the penalty to be imposed for engaging in business as a solid waste carrier without the required permit, the Commission considers the carrier's

⁹ RCW 81.77.090(2).

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willingness to comply with the requirements of the solid waste collection carrier rules and the carrier's history of compliance with the same provisions. The Commission may also consider a number of additional factors, including whether the violations were intentional, how harmful the violations are to the public, whether the company was cooperative and responsive in the course of Staff's investigation, and whether the company promptly corrected the violations once notified.

- 25 The evidence establishes that Seabeck Waste has been operating in Washington in violation of applicable law for many years, and with knowledge that it was operating in violation of Commission rules. Seabeck Waste ignored Staff's previous attempts to contact the company and provide technical assistance.
- 26 Mr. Stein testified that he continues to operate, but claims he is no longer accepting compensation other than cookies. Mr. Stein further testified he intends to submit an application to become a certificated solid waste carrier. He stated he was aware that there is a certificated carrier serving Seabeck, Washington, who will likely object to his application. Mr. Stein did not state he would cease operations if he was not granted a certificate.
- 27 Mr. Stein argued that his business is in the public interest because the certificated carrier is not meeting the needs of his senior citizen and/or infirm customers. We disagree and conclude that it is not in the public interest for an unregulated solid waste carrier to operate in violation of the law.
- 28 At the hearing, Staff recommended the Commission impose a penalty of \$1,000 for each of the two violations alleged in the Complaint, for a total penalty of \$2,000. Staff further recommended the Commission suspend a \$1,000 portion of the penalty for a period of two years, and then waive it, subject to the condition that the Company refrains from hauling solid waste as a solid waste collection carrier in the state of Washington without first obtaining a permit.
- 29 Overall, Seabeck Waste has demonstrated very little ability or willingness to comply with Commission regulations. In light of each of the factors discussed above, the Commission finds that Seabeck Waste should be penalized \$1,000 for each of the violations alleged in the complaint, for a total penalty of \$2,000. In light of the Mr. Stein's stated intent to cease operating for compensation and to obtain its permit to operate legally, we agree with Staff's recommendation to suspend a \$1,000 portion of the penalty for a period of two years, and then waive it, subject to the condition that Seabeck Waste permanently

ceases and desists from hauling solid waste as a solid waste collection company without first obtaining a permit.

FINDINGS AND CONCLUSIONS

- 30 (1) The Commission is an agency of the state of Washington, vested by statute with authority to regulate rates, rules, regulations, and practices of public service companies, including solid waste collection companies, and has jurisdiction over the parties and subject matter of this proceeding.
- 31 (2) On at least two occasions, Seabeck Waste has advertised, solicited, or offered to transport solid waste for compensation within the state of Washington without first having obtained from the Commission a certificate declaring that public convenience and necessity require such operation, in violation of 81.77.040.
- 32 (3) Seabeck Waste has not obtained a permit from the Commission authorizing the Company to haul solid waste as a solid waste collection company.
- 33 (4) Under RCW 81.77.040, it is unlawful to haul solid waste as a solid waste collection company in Washington without first obtaining the required permit from the commission.
- 34 (5) Upon proof of unauthorized operation, RCW 81.04.510 authorizes the Commission to order an unpermitted solid waste collection company to cease and desist its activities. Seabeck Waste should be directed to cease and desist from providing solid waste collection company services in Washington as required by RCW 81.04.510.
- 35 (6) Seabeck Waste operated as a solid waste collection carrier with knowledge that it operated in violation of Commission rules.
- 36 (7) Any solid waste collection company operating for the hauling of solid waste for compensation without the necessary permit is subject to a penalty of up to \$1,000 per violation.
- 37 (8) Seabeck Waste should be penalized \$2,000 for two violations of RCW 81.77.040, a \$1,000 portion of which should be suspended for a period of two years, and then waived, provided the Respondent ceases and desists from operating for the hauling of solid waste for compensation without first obtaining the required

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permit from the Commission. Seabeck Waste should pay the remaining \$1,000 portion of the penalty no later than 20 days from the effective date of this order.

- 38 (9) RCW 34.05.110(1) does not prevent the Commission from imposing penalties and ordering Seabeck Waste to cease and desist its unauthorized operations.

ORDER

THE COMMISSION ORDERS:

- 39 (1) Daniel Stein d/b/a Seabeck Waste and Recycle is classified as a solid waste collection carrier.
- 40 (2) Daniel Stein d/b/a Seabeck Waste and Recycle is ordered to immediately and permanently cease and desist operations as a solid waste collection carrier within the state of Washington without first obtaining a certificate from the Commission.
- 41 (3) Daniel Stein d/b/a Seabeck Waste and Recycle is assessed a penalty of \$2,000. A \$1,000 portion of the penalty is suspended for a period of two years from the date of this Initial Order, and waived thereafter, provided Daniel Stein d/b/a Seabeck Waste and Recycle ceases and desists from further operations as a solid waste collection carrier in the state of Washington without first obtaining the required certificate from the Commission. Daniel Stein d/b/a Seabeck Waste and Recycle must pay the remaining \$1,000 penalty no later than 20 days from the effective date of this Order.
- 42 (4) If Daniel Stein d/b/a Seabeck Waste fails to comply with any of the above conditions, the suspended penalty amount will become immediately due and payable without further Commission order.
- 43 (5) The Commission retains jurisdiction over the subject matter and the parties to this proceeding to effectuate the terms of this Order.

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DATED at Olympia, Washington, and effective December 10, 2018.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

LAURA CHARTOFF
Administrative Law Judge

NOTICE TO 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 480-07-610(7) provides that any party to this proceeding has twenty-one (21) days after the entry of this Initial Order to file a *Petition for Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-610(7)(b). WAC 480-07-610(7)(c) states that any party may file a *Response* to a Petition for review within seven (7) days after service of the Petition.

WAC 480-07-830 provides that before entry of 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 at the time of hearing, or for other good and sufficient cause. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such answer.

RCW 80.01.060(3) 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). Any Petition or Response filed must also be electronically served on each party of record as required by WAC 480-07-140(1)(b).