

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

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

INTERNATIONAL RESOURCE
MANAGEMENT, INC. D/B/A
WASTEXPRESS AND D/B/A
WASTEXPRESS HAZARDOUS WASTE
DISPOSAL

DOCKET TG-200131

ORDER 01

ORDER INSTITUTING SPECIAL
PROCEEDING; COMPLAINT
SEEKING TO IMPOSE
PENALTIES; NOTICE OF
VIRTUAL PREHEARING
CONFERENCE (Set for August 20,
2020,
at 1:30 p.m.)

1 The Washington Utilities and Transportation Commission (Commission), on its own motion, and through its regulatory staff (Staff), alleges as follows:

I. PARTIES

2 The Commission is an agency of the state of Washington authorized by statute to regulate the rates, services, facilities, and practices of public service companies, including solid waste collection companies.

3 International Resource Management, Inc., d/b/a WasteXpress and WasteXpress Hazardous Waste Disposal, (WasteXpress or Company) is an Oregon entity registered with the Oregon Secretary of State (OSS) under Registry Nos. 66720989 and 132050592, respectively. WasteXpress does not hold a Commission-issued common carrier permit allowing it to engage in business as a motor freight carrier of general commodities nor does it hold a certificate from the Commission declaring that public convenience and necessity require its operation, pursuant to RCW 81.77.040.

II. BACKGROUND

4 The following allegations are based on the Staff Investigation Report filed in this docket.

5 WasteXpress is an Oregon corporation registered with the OSS under Registry No. 66720989. The Company lists its Business Activity as "Hazardous Waste Recycling." The Company's primary place of business is 11618 N. Lombard Street, Portland, OR, 97203. Arthur Marx is listed as the Company's Authorized Representative, and

International Resource Management, Inc., (OSS Registry No. 17828781) is the designated Registrant/Owner.

- 6 Additionally, International Resource Management, Inc., operates as WasteXpress Hazardous Waste Disposal (WHWD) under OSS Registry No. 132050592. WHWD states the following as its Business Activity: “This is a DBA for International Resource Management and we do hazardous waste disposal.” WHWD lists its primary place of business as 7133 N. Lombard Street, Portland, Oregon, 97203. International Resource Management, Inc., (OSS Registry No. 17828781) is listed as WHWD’s Authorized Representative (Patrick Moore signed the filing as “Authorized Representative”), and is also the designated Registrant/Owner.
- 7 Washington State Department of Revenue (DOR) records show that WasteXpress is registered with the State of Washington Business Licensing Service under UBI 602-640-857. Jeremy Komp and Arthur Marx are Governing Persons for the business. DOR’s records list the Company’s physical address as 11618 N. Lombard Street, Portland, Oregon, 97203, and the Company’s mailing address as P.O. Box 31100, Portland, Oregon, 97231. Staff has no record that the Company has registered with the Washington Secretary of State.
- 8 On August 26, 2019, Staff received an inquiry from Troy Rowan, Waste Management Environmental Health Specialist, Tacoma-Pierce County Health Department (TPCHD). Rowan identified WasteXpress as a solid waste collection company that was in the process of seeking a permit from TPCHD to transport medical waste. Specifically, Rowan inquired as to whether the Company possessed a certificate from the Commission declaring that public convenience and necessity require its operation, pursuant to RCW 81.77.040. Staff determined that WasteXpress did not possess a solid waste certificate, and that the Commission indeed had no record of the Company.
- 9 On August 27, 2019, Staff sent a compliance letter to the Company. Staff stated that it “believes your company is engaged in services that require a solid waste certificate from the commission.” The letter provided technical assistance concerning Washington law and the Commission’s solid waste rules, and instructed the Company to “immediately cease advertising and providing forms of solid, biomedical, and/or hazardous waste collection services.” The letter additionally instructed the Company to “explain the nature of your company’s operations in detail.”
- 10 On September 4, 2019, Staff participated in a teleconference with WasteXpress. Staff explained the Commission’s solid waste enforcement program, and clarified specific operations that require a solid waste certificate from the Commission. On the call, Company representatives told Staff that the Company transports non-hazardous industrial waste, and that it planned to transport medical waste. Staff conveyed that industrial waste

is solid waste under Washington law and the Commission's rules, and followed up thereafter with additional technical assistance via email.

- 11 On September 9, 2019, the Company responded to Staff's August 27, 2019, compliance letter. The Company stated, in part:

“WasteXpress transports ‘solid waste’ (as we understand the definition at RCW 70.95.030(22), particularly including ‘industrial wastes’) under individual contracts with waste generators as its generator-clients require. As I understand the term, WasteXpress is not a ‘common carrier’ for purposes of RCW 81.77 and, therefore, is not a ‘public service’ company for purposes of RCW 81.04.380 . . .”

The Company went on to assert that it is not required to obtain a certificate of convenience and necessity from the Commission because, according to the Company:

“[T]he definition of ‘solid waste collection’ at WAC 480-70-041 . . . does not include collection from industrial customers . . . If my understanding is correct, WasteXpress needs a certificate of necessity only if it collects ‘industrial waste’ from ‘residential or commercial customers’. WasteXpress serves almost exclusively industrial customers.”

The Company's email did not include a description of the Company's services and operations.

- 12 On September 17, 2019, Staff emailed the Company, directed it to Commission rules, and again clarified for the Company that the definition of “solid waste” includes “industrial wastes.” WAC 480-70-041. Staff also noted that:

“WAC 480-70-041 Definitions also refers to ‘industrial generators’ under the definition of commercial authority. ‘Commercial Authority’ means authority to provide solid waste collection service to business, institutional or industrial generators.”

- 13 On September 25, 2019, Staff received an email from the Company reiterating its argument that “WasteXpress is not a ‘Solid Waste Collection Company’ subject to WAC 480-70 (because ‘solid waste collection’ does not include collecting from industrial customers).” The Company's email, again, did not provide a description of the services that the Company provides as requested by Staff, such as the specific materials the Company transports, whom they transport for, or the destination of the materials for disposal.

- 14 On September 26, 2019, Staff emailed WasteXpress and again directly asked the Company to provide operational information about its shipments, needed by Staff and the Commission in order to classify the Company. Specifically, Staff asked that the Company address the factors set forth in WAC 480-70-016(4), which are applied to determine whether a Company's operations require a solid waste certificate or a motor carrier permit.¹
- 15 On November 6, 2019, the Company responded to Staff's email. Rather than provide the requested information, however, the Company continued to argue that:
- “[T]he ‘factors’ of WAC 480-70-016(4) are irrelevant where RCW 81.77.040 does not apply, as here, because WasteXpress does not serve ‘residential or commercial customers as referenced at WAC 480-70-041 You would be correct to say that WasteXpress transports ‘solid waste’ to the extent the definition of ‘solid waste’ includes ‘industrial wastes’, but as I have stated it is the nature of the customer, not the nature of the waste, that implicates the requirement of a ‘certificate of convenience and necessity’ under RCW 81.77 and WAC 480.70.”
- 16 On November 18, 2019, Staff again asked for answers to its September 26, 2019, requests and clarified for the Company, once again, that “[i]f your company is transporting solid waste, as defined by our definition – and includes medical waste and industrial waste, a certificate of necessity is required.”
- 17 On November 26, 2019, the Company requested a telephone conference with Staff.
- 18 On December 5, 2019, Staff participated in another teleconference with the Company. Staff again explained the definitions of solid waste and reiterated that industrially generated waste is considered solid waste. Staff explained that WasteXpress could consider requesting exemptions from rules after the Company applied for a certificate from the Commission. The Company informed Staff that WasteXpress had withdrawn its request from TPCHD for a medical waste permit. The Company stated that, after three transports, it decided it was too much effort to transport medical waste in that county and decided to stop.
- 19 On December 9, 2019, Staff contacted TPCHD to confirm that WasteXpress had indeed withdrawn its application. TPCHD confirmed that the Company previously withdrew its application to TPCHD on October 8, 2019.
- 20 On April 8, 2020, Staff visited the Company's website at www.wastex.com and discovered the Company actively advertising solid waste collection services in the Seattle

¹ See *infra*, ¶ 34.

and Tacoma areas. For example, the Company's webpage contained a separate page for "Tacoma Hazardous Waste Disposal Services," displaying a picture of Downtown Tacoma and listing an address of 2602 S. 38th Street, Tacoma, WA 98409, and stating, in part:

Since WasteXpress was founded in 1989 in Portland, Oregon. We have continued to grow and expand our horizons in the waste disposal industry. From Portland, WasteXpress Environmental expanded into Seattle, Washington and began to service Seattle and the greater Puget Sound area with its waste disposal needs. As the greater Seattle metro area continues to grow, our company continues to grow. With that, WasteXpress has recently opened an office in Tacoma, Washington so we can better service the needs of our growing client base there . . . When choosing your waste disposal route in the city of Tacoma or surrounding areas, WasteXpress Environmental is the reliable, friendly and trusted choice for you and your company.

21 The Company also maintains on its website a separate page for "Seattle Hazardous Waste Disposal Services," displaying a picture of Downtown Seattle and stating, in part:

Our Seattle operation offers a variety of hazardous waste disposal solutions to Seattle and surrounding metro businesses. WasteXpress can provide reasonable cost effective solutions for:

- Solvents
- Corrosives (acid or basic / caustic)
- Oxidizers
- Flammables
- Disposal of Paint
- WTO2 waste
- Latex
- Investigative and Derived Waste (IDW)
- Non – RCRA special waste
- Contaminated heavy metal laden soil
- Off specification water
- Environmental consulting
- Tank cleaning
- Chemical disposal
- Bulk Waste Hauling
- Oil and Coolant Recycling
- Vactron Tank Pumping Services
- Roll off Drop Box's
- Bio-Hazardous Waste Disposal

- Universal waste Disposal

- 22 On April 9, 2020, TPCHD verified for Staff the names of three sites from which WasteXpress transported medical waste: (1) City MD – Puyallup; (2) City MD – University Place; and (3) One-Stop Dentistry – Tacoma. According to TPCHD, “City MD was exclusively bio-medical waste (sharps) and the dental practice was a one-time shipment of dental wastes (spent fixer, lead foils, dental amalgam) and sharps.” Also on April 9, 2020, TPCHD sent Staff documents in its possession pertaining to the Company. Included in the documents was a shipping label dated November 19, 2018, with WasteXpress identified as the Carrier, City MD – Puyallup (12005 Meridian E., Puyallup, WA 98373) identified as the Shipper, and International Resource Management, Inc., listed as the Consignee. Under “Basic Description,” the label states “Regulated Medical Waste . . . (sharps & bandages)” along with other information. The shipping label was executed by representatives from both WasteXpress and City MD – Puyallup.
- 23 WasteXpress does not hold a certificate of convenience and public necessity issued by the Commission authorizing it to operate for the hauling of solid waste for compensation on public highways within Washington.

III. JURISDICTION

- 24 The Commission has jurisdiction over the subject matter of this complaint under chapter 34.05 RCW, RCW 80.01.040, RCW 80.01.060, RCW 81.01.010, RCW 81.04.010, RCW 81.04.020, RCW 81.04.110, RCW 81.04.380, RCW 81.04.460, RCW 81.04.510, RCW 81.77.040, and WAC 480-70-081.

IV. APPLICABLE LAW

- 25 The Commission regulates public service corporations pursuant to a delegation of authority from the legislature. RCW 80.01.040(2); RCW 81.01.010.
- 26 Solid waste collection companies are public service corporations, *see* RCW 81.04.010(11), subject to regulation by the Commission. RCW 80.01.040(2), RCW 81.01.010, RCW 81.77.010-.210.
- 27 Under state law, the term “‘solid waste collection company’ means every person . . . owning, controlling, operating, or managing vehicles used in the business of transporting solid waste for collection or disposal, or both, for compensation, except septic tank pumpers, over any public highway in [Washington] as a ‘common carrier’ or as a ‘contract carrier.’” RCW 81.77.010(7).
- 28 The term “common carrier,” as used within chapter 81.77 RCW, means “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).

- 29 The term “person” includes corporations. WAC 480-70-041.
- 30 The term “solid waste” includes “all putrescible and nonputrescible solid and semisolid wastes including, but not limited to, garbage, rubbish, ashes, industrial wastes, swill, sewage sludge, demolition and construction wastes, [and] abandoned vehicles.” RCW 70.95.030(22); RCW 81.77.010(9). The term does not include recyclable materials “except for source separated recyclable materials collected from residences.” RCW 70.95.030(22); RCW 81.77.010(9). Similarly, the Department of Ecology defines “Solid waste” as “all putrescible and nonputrescible solid and semisolid wastes including, but not limited to, garbage, rubbish, ashes, industrial wastes, swill, sewage sludge, demolition and construction wastes, abandoned vehicles or parts thereof, and recyclable materials.” RCW 70.95.030(22). “Commercial authority” means “authority to provide solid waste collection service to business, institutional, or industrial generators.” WAC 480-70-041. “Commercial service” means “solid waste collection service provided to a business, institutional, or industrial generator.” *Id.*
- 31 Under state law, “[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.” RCW 81.77.040. Additionally, “[o]perating for the hauling of solid waste for compensation includes advertising, soliciting, offering, or entering into an agreement to provide that service.” *Id.*
- 32 The Commission may file a complaint upon 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.
- 33 The Commission may institute a special proceeding to determine whether a person is conducting business requiring operating authority, or has performed or is performing any act requiring Commission approval without first securing that approval. RCW 81.04.510. Whether the person has done so is a question of fact for the Commission. *Id.*
- 34 To determine whether operations require a solid waste certificate or a motor carrier permit, the Commission will consider factors including, but not limited to: (a) the intent of the shipper; (b) the intended destination of the shipment; (c) the actual destination of the shipment; (d) special handling or conditions placed on the shipment by the shipper and/or receiver; (e) the value of the commodity being transported; (f) whether the carrier is primarily engaged in the business of providing solid waste collection or is primarily engaged in the business of providing a service other than the collection of solid waste;

and (g) whether the carrier holds itself out to the public as a transporter of solid waste. WAC 480-70-016(4).

35 If the Commission determines at a special proceeding that a person is operating or has operated without the necessary authority, it must order them to cease and desist. RCW 81.04.510.

36 Any solid waste collection company operating without the certificate required by RCW 81.77.040 is subject to a penalty of up to \$1,000 per violation. RCW 81.04.380.

V. CAUSE OF ACTION

37 The Commission alleges that WasteXpress violated RCW 81.77.040 at least two times between November 19, 2018, and April 8, 2020, by operating for the hauling of solid waste for compensation without first having obtained a certificate of public convenience and necessity from the Commission authorizing it to do so.

VI. REQUEST FOR RELIEF

38 Staff requests that the Commission, pursuant to its authority under RCW 81.04.380, assess penalties of up to \$1,000 for each violation of RCW 81.77.040.

39 Staff requests that the Commission order WasteXpress to cease and desist from transporting solid waste until it has obtained a certificate of convenience and public necessity authorizing it to operate for the hauling of solid waste.

40 Staff further requests that the Commission order such other or further relief as is appropriate under the circumstances.

VII. PROBABLE CAUSE

41 Based on a review of Staff's investigation report and all supporting documents, and consistent with RCW 80.01.060 and WAC 480-07-307, the Commission finds probable cause exists to issue this complaint.

VIII. NOTICE OF PREHEARING CONFERENCE

42 The Commission will hear this matter under the Administrative Procedure Act (APA), particularly Part IV of RCW 34.05 relating to adjudications. The provisions of the APA that relate to this proceeding include, but are not limited to RCW 34.05.413, RCW 34.05.422, RCW 34.05.431, RCW 34.05.440, RCW 34.05.449, and RCW 34.05.452. The Commission will also follow its procedural rules in WAC 480-07 in this proceeding.

- 43 **THE COMMISSION GIVES NOTICE** that it will hold a virtual prehearing conference in this matter at 1:30 p.m. on August 20, 2020. To participate by phone, please call (360) 407-3810 and enter the conference ID 3831584. To participate via Skype, please use the following link: <https://lync.wa.gov/utc.wa.gov/meet/aldcalendar/6RW3PWJN>.
- 44 The purpose of the prehearing conference is to consider requests for intervention, resolve scheduling matters including establishing dates for distributing evidence, identify the issues in the proceeding, and determine other matters to assist the Commission in resolving the matter, as listed in WAC 480-07-430.
- 45 **INTERVENTION:** Persons who wish to intervene should file a petition to intervene in writing at least three business days before the date of the prehearing conference. *See* WAC 480-07-355(a). The Commission will consider oral petitions to intervene during the conference, but strongly prefers written petitions to intervene. Party representatives must file a notice of appearance with the Commission no later than the business day before the conference. *See* WAC 480-07-345(2). Parties with more than one representative must identify one individual as the “lead” for purposes of official service. Any party or witness in need of an interpreter or other assistance should fill out the form attached to this notice and return it to the Commission. The Commission will set the time and place for any evidentiary hearings at the prehearing conference, on the record of a later conference or hearing session, or by later written notice.
- 46 **THE COMMISSION GIVES NOTICE** that any party who fails to attend or participate in the prehearing conference set by this Notice, or any other stage of this proceeding, may be held in default under RCW 34.05.440 and WAC 480-07-450.
- 47 The names and mailing addresses of all known parties and their known representatives are as follows:

Carrier: International Resource Management, Inc. d/b/a
WasteXpress
Arthur Marx
Authorized Representative
11618 N. Lombard Street
Portland, OR, 97203

International Resource Management, Inc. d/b/a
WasteXpress Hazardous Waste Disposal
Patrick Moore
Authorized Representative
7133 N. Lombard Street
Portland, OR, 97203

Representative: Thomas R. Benke
Attorney and Managing Member
The Environmental Compliance Organization LLC
P.O. Box 83706
Portland, OR 97283
trbenke@env-compliance.com

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

Representative: Daniel J. Teimouri
Office of the Attorney General
621 Woodland Park Loop SE
P.O. Box 40128
Olympia, WA 98504-7250
(360) 664-1189
daniel.teimouri@utc.wa.gov

48 Administrative Law Judge Michael Howard, from the from the Commission's
Administrative Law Division, will preside during this proceeding.²

49 The Commission will give parties notice of any other procedural phase of the proceeding
in writing or on the record, as appropriate during this proceeding.

DATED at Lacey, Washington, and effective June 11, 2020.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ Rayne Pearson

RAYNE PEARSON

Director, Administrative Law Division

² Judge Howard can be reached by email at michael.howard@utc.wa.gov or by phone at (360) 664-1139.

Inquiries may be addressed to:

Mark L. Johnson
Executive Director and Secretary
621 Woodland Square Loop S.E.
P.O. Box 47250
Olympia, WA 98504-7250
(360) 664-1160

NOTICE

Hearing facilities are accessible to persons with disabilities. Smoking is prohibited. If limited English-speaking, 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.

If you need an interpreter, or have other special needs, please fill out and return this form to:

Washington Utilities and Transportation Commission
Attention: Mark L. Johnson
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 (_____) _____