

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MURREY'S DISPOSAL COMPANY, INC.

Complainant,

v.

WASTE MANAGEMENT OF WASHINGTON,  
INC., WASTE MANAGEMENT DISPOSAL  
SERVICES OF OREGON, INC., AND MJ  
TRUCKING & CONTRACTING, INC.

Respondents.

NO.

COMPLAINT

**I. PRELIMINARY STATEMENT**

*I* Murrey's Disposal Company, Inc., 4822 70<sup>th</sup> Avenue E, Fife, WA 98424 , (hereinafter "Murrey's" or "Complainant"), a Washington corporation, and holder of Certificate of Public Convenience and Necessity ("Certificate") No. G-009, by and through its counsel, Blair I. Fassburg and David W. Wiley of Williams Kastner, Suite 4100, Two Union Square, 601 Union Street, Seattle, Washington 98101, and pursuant to RCW 81.04.110 and 81.77.030, brings this Complaint against Waste Management of Washington, Inc, ("WMW") Waste Management Disposal Services of Oregon, Inc., ("WMDSO") (WMW and WMDSO shall be collectively referred to as "WM") and MJ

**COMPLAINT - 1**

**Williams, Kastner & Gibbs PLLC**  
Two Union Square, Suite 4100 (98101-2380)  
Mail Address: P.O. Box 21926  
Seattle, Washington 98111-3926  
(206) 628-6600

Trucking & Contracting, Inc. (“MJ”) (WM and MJ shall be collectively referred to as “Respondents”) asking the Washington Utilities and Transportation Commission (“Commission” or “WUTC”), to issue a Cease and Desist Order directing Respondents to cease and desist from engaging in the collection and transportation of solid waste from the McKinley Paper Company (“McKinley”) in Port Angeles, Clallam County for disposal without certificated authority and finding that certain intermodal motor carrier transportation services offered by WMW or WMDSO between McKinley and the Olympic View Transfer Station in Port Orchard, Washington are not preempted under 49 CFR § 1090.2.

## **II. JURISDICTION / STATUTE AND RULES AT ISSUE**

2 The Commission has jurisdiction over this Complaint and the Respondents’ activities described herein under RCW 81.04.110, 81.77.040, RCW 34.05.413, WAC 480-70-006, 041 and various other laws and rules cited herein.

## **III. STATEMENT OF FACTS**

3 Complainant is the holder of WUTC Certificate G-009, attached hereto as Exhibit A, which authorizes Complainant to collect solid waste in, among other places, Clallam County.

4 The City of Port Angeles, which is located in Clallam County, has elected to provide municipal solid waste collection service, including residential collection service and commercial and industrial facilities excepting residential recycling service, which is offered under a franchise agreement, as well as service to certain commercial and industrial facilities. Pursuant to Port Angeles Municipal Code, those commercial facilities within the city limits that do not receive municipal solid waste service may

receive service only from a private hauler with a Certificate authorizing solid waste collection service in Clallam County, including Port Angeles. The Port Angeles Municipal Code is silent as to service requirements for industrial facilities and the City's municipal service to such facilities is limited to 90 or 300 gallon containers.

5 Waste Management, Inc. owns, either directly or indirectly, several affiliated operating companies in the Pacific Northwest, including WMW and WMDSO.

6 Respondent WMW is a solid waste collection company that holds Certificate G-237, as well as an authorized motor carrier with authority issued by the United States Department of Transportation under MC-330587 and USDOT Number 1967746. Certificate G-237 does not authorize WMW to provide solid waste collection service in any portion of Clallam County, Washington. Additionally, WMW has not contracted with the City of Port Angeles to provide solid waste collection service within the city limits.

7 Respondent WMDSO owns and operates the Columbia Ridge landfill in Arlington, Oregon. WMDSO does not hold motor carrier authority from the USDOT or common carrier authority from the WUTC. It does not hold a Certificate authorizing solid waste collection from the Commission. On information and belief, WMDSO also does not hold a broker's license or freight forwarder authority from any regulatory agency.

8 Respondent MJ is a motor carrier operating under USDOT Number 935162 and Commission-issued Common Carrier Permit CC030132. Respondent MJ does not hold a Certificate authorizing solid waste collection.

9 To Complainant's knowledge and belief, WMW and WMDSO have repeatedly engaged in the collection and transportation of solid waste over the public highways of

the state, as defined by WAC 480-70-041, from McKinley, which is located within the limits of the City of Port Angeles, to the Olympic View Transfer Station, which is operated by WMW under a license from Kitsap County.

- 10 On information and belief, under contract from WMW and/or WMDSO, MJ collects and transports solid waste from McKinley solely for disposal.
- 11 On information and belief, although it does not hold a Certificate issued under RCW 81.77.040, WMDSO holds itself out as providing solid waste collection service to certain industrial solid waste generators Washington.
- 12 On information and belief, WMDSO directly, or through McKinley in an attempt to avoid the application of state solid waste collection regulations, subcontracts with MJ to transport solid waste from industrial paper mills to the Olympic View transfer station in Port Orchard, Washington, where solid waste is loaded by WMW employees onto Union Pacific Railroad (“UP”) railcars.<sup>1</sup> WMW pays a license fee to Kitsap County for each container it transloads and an intercompany credit is then transferred from WMDSO to WMW.
- 13 WMDSO further subcontracts part of hauling of solid waste for disposal at the WMDSO site in Oregon to UP.
- 14 To Complainant’s knowledge and belief, MJ provides a through bill of lading for transportation from the paper mill to the Olympic View transfer station in Kitsap County, Washington, while UP provides a second bill of lading upon the delivery of the solid waste to the WMDSO landfill in Arlington, Oregon.

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<sup>1</sup> Additionally, on information and belief, some loads may be delivered to and loaded on rail cars at an alternative site owned by North Mason Fiber in Mason County.

15 There is no market value for OCC rejects, and to Complainant's knowledge and belief,  
16 WMDSO does not recycle them, but instead disposes of OCC rejects as solid waste.

#### IV. BASIS FOR COMPLAINT

16 RCW 81.77.040 requires a solid waste collection company to obtain a certificate of  
public convenience and necessity from the Commission to operate for the hauling of  
solid waste for compensation authorizing service in a particular area. By statute,  
operating for the collection and transportation of solid waste for compensation includes  
advertising, soliciting, offering, or entering into an agreement to provide that service.

17 RCW 81.77.020 excepts from RCW 81.77.040 service offered through a contract with a  
municipality or offered directly by a municipality. Because the service at issue is not  
offered under contract with the City of Port Angeles or by the City of Port Angeles, the  
Commission has jurisdiction over this Complaint.

18 Under RCW 81.77.090, every person who violates or fails to comply with, or who  
procures, aids, or abets in the violation of any provisions of RCW 81.77, *et seq.*, or who  
fails to obey, or comply with any rule, regulation, or requirement of the commission, or  
any part or provision thereof, is guilty of a gross misdemeanor.

19 On information and belief, WMDSO held itself out as a solid waste collection company  
and/or contracted with McKinley to provide solid waste collection service in Clallam  
County, Washington in violation of RCW 81.77.040.

20 Alternatively and without waiving the allegation in paragraph 18, the arrangement of  
solid waste collection service through subcontracts with MJ and UP by WMDSO serves  
as a subterfuge for the collection and transportation of solid waste by WMW in an area  
for which Certificate G-237 does not authorize such service. Because OCC rejects are

solid waste as defined in RCW 70.95.03(22) and do not constitute recyclable materials under RCW 70.95.03(17), such service by WMW violates RCW 81.77 *et seq.*

21 By collecting and transporting solid waste from McKinley, MJ unlawfully provides solid waste collection service in violation of RCW 81.77 *et seq.*

22 WM offers solid waste collection service relying upon the exceptions of certain types of TOFC/COFC service set forth in 49 CFR § 1090.2 and its use of UP to substitute a portion of its solid waste collection transportation service. The service offered by WMDSO is not preempted under federal law and Respondents carry the burden of proof in establishing preemption. Complainant nonetheless contends WM's service is not preempted under 49 CFR § 1090.2, nor otherwise exempt from state economic regulation which section provides:

**§ 1090.2 Exemption of rail and highway TOFC/COFC service.**

Except as provided in 49 U.S.C. 10502(e) and (g) and 13902, rail TOFC/COFC service and highway TOFC/COFC service provided by a rail carrier either itself or jointly with a motor carrier as part of a continuous intermodal freight movement is exempt from the requirements of 49 U.S.C. subtitle IV, regardless of the type, affiliation, or ownership of the carrier performing the highway portion of the service. Motor carrier TOFC/COFC pickup and delivery services arranged independently with the shipper or receiver (or its representative/agent) and performed immediately before or after a TOFC/COFC movement provided by a rail carrier are similarly exempt. Tariffs heretofore applicable to any transportation service exempted by this section shall no longer apply to such service. The exemption does not apply to a motor carrier service in which a rail carrier participates only as the motor carrier's agent (Plan I TOFC/COFC), nor does the exemption operate to relieve any carrier of any obligation it would otherwise have, absent the exemption, with respect to providing contractual terms for liability and claims.

23 Complainant further alleges that because WMW and WMDSO have individually and/or jointly assumed the overall degree of responsibility for the collection, transportation

and disposal of solid waste, WMW and WMDSO are subject to joint and/or several regulation under Chapter 81.77 as solid waste collection companies.

24 Because Respondent operates a similar scheme with the Port Townsend Paper Company in Jefferson County, the Commission should consider Complainant's motion to consolidate the separate Complaint initiated by Murrey's to resolve in a consolidated proceeding whether WMDSO and/or WMW's collection and transportation of solid waste from the Port Townsend Paper Company industrial paper mill to the Olympic View transfer station is also in violation of RCW 81.77, *et seq* or preempted under 49 CFR § 1090.2.

25 Complainant also alleges that WMDSO's arranging and paying for shipments of freight without motor carrier authority constitutes providing transportation as a service for WMW in an effort to avoid regulation by the Commission under RCW 81.77 *et seq*.

#### **V. PRAYER FOR RELIEF**

26 WHEREFORE, Complainant prays for an order directing Respondents to Cease and Desist from engaging in the collection and transportation of solid waste from the McKinley industrial paper mill located in Port Angeles, Clallam County, and finding, on the facts to be adduced on this record, that the collection and transportation of solid waste for disposal from McKinley industrial paper mill in Port Angeles, Clallam County is subject to the provisions of RCW 81.77.040 and cannot be transported over the public highways of the State of Washington without a certificate of public convenience and necessity issued under Chapter 81.77 RCW, and moreover that certain intermodal motor carrier transportation services offered by WMW and/or WMDSO

between McKinley and the Olympic View Transfer Station in Port Orchard,  
Washington are not preempted under 49 CFR § 1090.2.

RESPECTFULLY SUBMITTED this 14<sup>th</sup> day of July, 2020.

WILLIAMS, KASTNER & GIBBS PLLC

*s/ Blair I. Fassburg*

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Company, Inc.*



WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

**For the Operation of Motor Propelled Vehicles**

pursuant to the provisions of Chapter 81 RCW

THIS IS TO CERTIFY that authority is granted to operate as a MOTOR CARRIER in the transportation of the commodities and in the territory described herein to

MURREY'S DISPOSAL COMPANY, INC.  
d/b/a OLYMPIC DISPOSAL  
4622 70<sup>TH</sup> AVENUE EAST  
Puyallup, WA 98371

Cert. No.  
G-9

GARBAGE AND REFUSE COLLECTION SERVICE In that portion of Pierce County described as follows: Beginning in Section 30, Township 21 North, Range 4 E.W.M. at the point of intersection of the northeast Tacoma city limits and the Pierce County-King County line; thence south along the Tacoma city limits as they exist on April 1, 1974, to the intersection of the said Tacoma city limits with 72nd Street East; thence east on the centerline of 72nd Street East to Waller Road; thence south on the centerline of Waller Road to 112th Street; thence east along centerline on 112th Street to Meridian; thence south on the centerline of Meridian to the Kapowsin Highway; thence east on the centerline of the Kapowsin Highway to its intersection with Electron County Road; thence east along the centerline of Electron County Road to the southwest corner of Section 33 Township 18 North, Range 5 E.W.M.; thence continuing east along the centerline of the Section line between Township 17 North and 18 North, to its intersection with the East boundary line of Mt. Rainier National Park; thence south along said boundary to its intersection with the Pierce County-Yakima County boundary line; thence north along the Pierce County-Yakima County boundary to the intersection of the Pierce County-Yakima County-Kittitas County-King County line; thence west along said line to its intersection with the northeast boundary of the City of Tacoma, situated in Section 30, Township 21 North, Range 4 E.W.M. the point of beginning.

Also in that portion of Pierce County described as follows: Starting at the point where the N.E. corporate limits of Tacoma intersects with the shoreline of Commencement Bay in Section 21, T. 21 N., R. 3 E.; thence following said shoreline in a clockwise direction to the point of intersection with the King-Pierce County line; thence southeasterly on said county line to the corporate limits of Tacoma (south line of Section 14, T. 21 N., R. 3 E.); thence following said corporate limits westerly in a counter-clockwise direction to the point of intersection with the shoreline of Commencement Bay in Section 21, T. 21 N., R. 3 E., the place of beginning.

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WASHINGTON UTILITIES AND TRANSPORTATION  
COMMISSION

By *Carolyn Shallen*



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Continuation

Also that portion of Pierce County beginning with the intersection at the Pierce County-Kitsap County-Mason County line; thence south along the Pierce County-Mason County line to its point of intersection with the shoreline of Rocky Bay; thence generally south along the east shoreline of Rocky Bay and North Bay including Heron Island to the southwest point of Drayton Passage; thence northerly along the shoreline of Drayton Passage and Henderson Bay to the most northern point of Henderson Bay; thence southerly along the east shoreline of Henderson Bay including the islands of Henderson Bay, but excluding McNeil, Anderson and Ketron Islands to the northeast point of Hale Passage; thence easterly along the north shoreline of Hale Passage including Fox Island to the southwest point of the Narrows; thence northerly along the west shoreline of the Narrows to its point of intersection with the west shoreline of West Passage; thence northerly along the west shoreline of West Passage to its point of intersection with the Kitsap County-Pierce County line; thence westerly along the Kitsap County-Pierce County line to the intersection of the Pierce County-Mason County-Kitsap County line to the intersection of the Pierce County-Mason County-Kitsap County line, the point of beginning.

Also all areas within the boundaries of Pierce County occupied by United States Government installations.

The following authority was obtained by transfer of Certificate No. G-112, standing in the name of David James Murrey, d/b/a Points Garbage Service.

**GARBAGE AND REFUSE COLLECTION SERVICE** In that portion of Pierce County described as follows: Starting at the intersection of the east corporate limits of Tacoma as they exist on April 1, 1974, and the centerline of 72nd St. East; thence east on the centerline of 72nd St. East to Waller Road; thence on the centerline of Waller Road South to 96th St. East; thence east on E. 96th St. to its intersection with the west corporate limits of Puyallup to a line projected from south to north located 1/2 mile west of SSH-5B; thence north on said projected line to the south corporate limits of Milton; thence following the limits of Milton in a clockwise direction to the point of intersection with the north line of Section 6, T. 20 N., R. 4 E.; thence west on the north line of said section projected to the east corporate limits of Tacoma; thence following said corporate limits southerly and westerly to 72nd St. East, the place of beginning.

Also in that portion of Pierce County described as follows: Starting at the point where the N.E. corporate limits of Tacoma intersects with the shoreline of Commencement Bay in Section 21, T. 21 N., R. 3 E.; thence following said shoreline in a clockwise direction to the point of intersection with the King-Pierce County line; thence southeasterly on said county line to the corporate limits of Tacoma (south line of Section 14, T. 21 N., R. 3 E.); thence following said corporate limits westerly in a counter-clockwise direction to the point of intersection with the shoreline of Commencement Bay in Section 21, T. 21 N., R. 3 E., the place of beginning.

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GARBAGE COLLECTION SERVICE in Pierce County described as follows: Beginning at the point where Stewart Rd. in Pierce County projected west intersects SR-99 (PSH-1); thence north along the centerline of SR-99 to the intersection of the Pierce County line projected west; thence east along the King/Pierce County line to the N.E. corner of Section 3, T. 20 N., R. 5 E.; thence south along the east line of said line of said Section 3 extended to the N.E. corner of Section 8, T. 20 N., Section 3 to the S.E. corner of said Section 3; thence west along the south 1 R. 5 E.; thence south along the east line of said Section 8, to the S.E. corner of said Section 8; thence west along the south line of said Section 8 extended to SR-167 (PSH-5); thence north on SR-167 (PSH-5) to the intersection of Stewart Road extended east; thence west along Stewart Road extended to the intersection with SR-99 (PSH-1), the point of beginning.

REFUSE AND DEBRIS COLLECTION SERVICE In those portions of King and Pierce Counties described as follows: Starting at the S.E. corner of Sec. 20, T. 20 N., R. 6 E.; thence west on the south line of said section projected to the east limits of the City of Tacoma (as of Sept. 6, 1960); thence north on a line projected from this point to the shoreline of Puget Sound; thence following said shoreline easterly and northerly to the point of intersection with the north line of Sec. 6, T. 22 N., R. 4 E.; thence east on the north line of said section projected to the N.E. corner of Sec. 5, T. 22 N., R. 6 E.; thence south on the east line of said section projected to the S.E. corner of Sec. 20, T. 20 N., R. 6 E., the place of beginning: EXCLUDING the City of Tacoma as the point of origin and destination of the same shipment, and EXCLUDING the City of Puyallup as the point of origin and destination for the same shipment, and excluding the King County portion.

The following authority was obtained by transfer of Certificate No. G-28, standing in the name of Olympic Disposal, Inc.

GARBAGE COLLECTION SERVICE in that portion of Clallam and Jefferson Counties described as follows: Starting at the intersection of the west shoreline of the Hood Canal and the south line of Section 31, T. 25 N., R. 2 W., (the Jefferson-Mason County line); thence west on the south line of said Section 31, and the Jefferson-Mason County line to the Olympic National Park boundary (as of September 6, 1960) approximately the S.E. corner of Section 32, T. 25 N., R. 4 W.; thence following the Olympic National Park boundary in a northerly and westerly direction to the north-south centerline of Section 17, T. 29 N., R. 5 W.; thence south on said centerline projected to the Clallam-Jefferson County line; thence west on said county line to the S.W. corner of Section 31, T. 28 N., R. 9 W.; thence north along the west line of said Section 31 extended to the S.E. corner of Section 36, T. 31 N., R. 10 W.; thence west along the south line of said Section 36, extended to the N.E. corner of Section 1, T. 30 N., R. 15 W.; thence south along the east line of said Section 1 extended to the S.E. corner of Section 36, T. 30 N., R. 15 W.; thence west along the south line of said Section 36, extended to the Pacific Ocean; thence north along the shoreline of the Pacific Ocean, around the point of Cape Flattery, easterly along the shoreline of the Strait of Juan De Fuca, along the shorelines of Sequim Bay, Port Discovery Bay, Port Townsend Bay and including Indian and Marrowstone Islands; thence southerly along the west shoreline of Hood Canal, around Oak Head,

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Continuation

along the shorelines of Dabob Bay and Quilcene Bay; thence southerly again along the shoreline of Hood Canal to the intersection of the west shoreline of Hood Canal and the south line of Section 31, T. 25 N., R. 2 W., (the Jefferson-Mason County line); the point of beginning.

GARBAGE AND REFUSE COLLECTION SERVICE in that portion of Jefferson and Grays Harbor Counties described as follows: Starting at the point where the Clallam-Jefferson County line intersects the shoreline of the Pacific Ocean; thence following said county line east to the point of intersection with the Olympic National Park boundary; thence following said boundary south to the intersection with the east boundary of R. 12 W., in T. 24 N.; thence south on said boundary line to the point of intersection with State Route 101; thence northwesterly along said highway 101 to the intersection with the Jefferson-Grays Harbor County line; thence following the said county line westerly to its intersection again with State Route 101; thence southerly, westerly, then northerly along said State Route 101 to the intersection once again with the Jefferson-Grays Harbor County line; thence west along said county line to the shoreline of the Pacific Ocean; thence northerly along said shoreline to the intersection of the Clallam-Jefferson County line; the point of beginning.

GARBAGE AND REFUSE COLLECTION SERVICE at the Makah Air Force Base, Neah Bay, under contract with THE U.S. GOVERNMENT and in the Olympic National Park, Port Angeles under contract with THE U.S. NATIONAL PARK SERVICE.

GARBAGE, REFUSE AND RUBBISH COLLECTION SERVICE in that portion of Clallam County described as follows: Beginning at the S.E. corner of Section 36, T. 28 N., R. 10 W., (Clallam-Jefferson County line); thence west along the south line of said Section 36 (and county line) extended to the shoreline of the Pacific Ocean; thence northerly along said shoreline to the intersection of the north line of Section 6, T. 29 N., R. 15 W.; thence east along said north line of Section 6 extended to the S.W. corner of Section 31, T. 30 N., R. 14 W.; thence north along the west line of said Section 31 extended to the N.W. corner of Section 6, T. 30 N., R. 14 W.; thence east along the north line of said Section 6 extended to the N.E. corner of Section 1, T. 30 N., R. 10 W.; thence south along the east line of said Section 1 extended to the S.E. corner of Section 36, T. 28 N., R. 10 W.; the point of beginning.

TG-030688

05-16-03

