

**BEFORE THE WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

WASTE MANAGEMENT OF
WASHINGTON, INC.

Respondent.

DOCKET TG-210689

COMPLAINT

and

NOTICE OF VIRTUAL
PREHEARING CONFERENCE
**(Set for December 14, 2021,
at 2 p.m.)**

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

I. OVERVIEW

- 2 The Commission complains against Waste Management of Washington, Inc., (Waste Management or Company) for violations of state law and administrative rule when the Company missed yard waste and recycling pickups in Kitsap County in July and August 2021. Commission staff (Staff) seeks an order finding violations and assessing monetary penalties against Waste Management.

II. PARTIES

- 3 The Washington Utilities and Transportation Commission is an agency of the State of Washington, authorized by state law to regulate the rates, services, facilities, and practices of public service companies, including solid waste collection companies, under the provisions of Title 81 Revised Code of Washington (RCW).
- 4 Waste Management is a corporation doing business in the state of Washington. Waste Management holds a solid waste collection company certificate issued by the Commission (Certificate No. G-236) that authorizes the Company to collect solid waste within its certificated territory in Washington.

III. JURISDICTION

5 The Commission has jurisdiction over this matter pursuant to RCW 80.01.040; RCW
81.01.010; Chapter 81.04 RCW including RCW 81.04.110, RCW 81.04.380, and RCW
81.04.460; Chapter 81.28 RCW including RCW 81.28.080; Chapter 81.77 RCW
including RCW 81.77.030; and Chapter 480-70 of the Washington Administrative Code
(WAC).

IV. FACTUAL ALLEGATIONS

6 Waste Management operates as a solid waste collection company in the state of
Washington under Certificate No. G-237.

7 Waste Management d/b/a Brem-Air Disposal provides service pursuant to its Tariff No.
20 in portions of Kitsap County.

8 Tariff No. 20 is on file with the Commission.

9 Item 100 of Tariff No. 20 provides rates for the collection of residential yard waste and
residential recycling and specifies every-other-week collection as the frequency of
service for all sizes and numbers of containers.

10 Item 30 of Tariff No. 20 sets forth the limitations of service including the conditions that
excuse missed collection service.

11 Waste Management failed to pick up residential yard waste on regularly scheduled
collection days during the week of July 15, 2021, and again during the week of July 29,
2021.

12 In the month of August 2021, Waste Management failed to pick up residential recycling
on regularly scheduled collection days during the week of August 8.

13 According to Waste Management, the Company did not collect yard waste and recycling
during these times because the Company had an insufficient number of drivers.
Insufficient personnel is not a condition under Item 30 of Tariff No. 20 that excuses
missed collection service.

14 Kitsap County prescribes minimum service levels in Ordinance 9.48.030 for the
collection of yard waste and recycling. The minimum service levels in unincorporated
Kitsap County include the collection of yard waste and recycling at least every other
week.

15 The Commission received a letter dated October 8, 2021, from the Kitsap County Board of Commissioners (Kitsap Board) commenting on its perception of the adequacy of service provided by Waste Management – Brem-Air Disposal under Certificate No. G-237. In the letter, the Kitsap Board state that, according to Kitsap County Solid Waste Division staff, Waste Management is currently providing inadequate services in unincorporated areas of the county. The letter describes areas in need of improvement by Waste Management, which include driver shortages, missed collections, customer outreach, container supply and quality, and customer service.

V. APPLICABLE LAW

- 16 Pursuant to RCW 81.77.030, the Commission is tasked with supervising and regulating solid waste collection companies that operate in the state of Washington. This task includes fixing rates, charges, classifications, rules and regulations; regulating the accounts, service, and safety of operations; requiring compliance with local solid waste management plans and related implementation ordinances; and supervising and regulating carriers in all other matters affecting the relationship between them and the public which they serve.
- 17 Solid waste collection companies are under a general statutory duty set forth at RCW 81.28.010 to construct, furnish, maintain, and provide safe, adequate, and sufficient service facilities and equipment to enable it to conduct its transportation services promptly, expeditiously, safely, and properly.
- 18 Under RCW 81.28.040, solid waste collection companies must file tariffs with the Commission showing the rates, charges, and classification of their services.
- 19 The Commission’s rules, at WAC 480-70-236, explain that no company may provide solid waste collection service until it files, and the commission approves, a tariff.
- 20 RCW 81.28.080 prohibits common carriers, including solid waste collection companies, from charging, demanding, collecting, or receiving a greater or less or different compensation for solid waste collection, or for any related service, than the rates and charges specified in a company’s tariff. See also WAC 480-70-236.
- 21 Under RCW 81.04.110, the Commission, on its own motion, may make a complaint in writing, “setting forth any act or thing done or omitted to be done by any public service company . . . in violation . . . of any provision of law or of any order or rule of the Commission.”
- 22 Pursuant to RCW 81.04.380, the Commission may penalize a public service company

that violates or fails to comply with any provision of Title 81 RCW or any order, rule, direction, demand, or requirement of the Commission up to \$1,000 for each and every offense. Every violation is a separate and distinct offense.

- 23 The Commission is further authorized, under RCW 81.28.240, after a hearing, to order a solid waste collection company to remedy inadequate or insufficient rules, regulations, practices, equipment, appliances, facilities, or service.

VI. CLAIMS AND CAUSES OF ACTION

Violation of RCW 81.28.080 and WAC 480-70-236 – charging published rates and complying with the provisions of approved tariffs

- 24 The Commission, through its Staff, re-alleges the allegations contained in paragraphs 1 through 23, above.
- 25 RCW 81.28.080 and WAC 480-70-236 prohibit a certificated solid waste collection company from charging, demanding, collecting, or receiving a greater or less or different compensation for solid waste collection services, than the rates and charges specified in the company’s tariff filed and in effect at the time. A company violates this statute and this rule when it reduces the level of service required by its tariff.
- 26 Waste Management’s applicable tariff, Tariff No. 20, sets forth rates for every-other-week collection of residential yard waste and recycling.
- 27 RCW 81.04.380 authorizes the Commission to penalize a solid waste collection company that violates or fails to comply with any provision of Title 81 RCW or any order, rule, direction, demand, or requirement of the Commission up to \$1,000 for each and every offense. Every violation is a separate and distinct offense.
- 28 Waste Management failed to collect residential yard waste from 1,905 customers for two consecutive collection periods: the week of July 11 and the week of July 25, 2021. These failures resulted in 3,810 missed collections.
- 29 Waste Management failed to collect residential recycling from 12,820 customers during the week of August 8, 2021.
- 30 When Waste Management failed to collect yard waste 3,810 times during the weeks of July 11 and 25 and failed to collect recycling 12,820 times during the week of August 8, the Company committed 16,630 violations of RCW 81.28.080 and WAC 480-70-236.

VII. REQUEST FOR RELIEF

- 31 Staff requests that the Commission find that Waste Management violated the terms of
Tariff No. 20 when it failed to collect yard waste and recycling according to the service
levels set forth in the tariff.
- 32 Staff further requests that the Commission find that Waste Management committed
16,630 violations of state law and Commission rule as set forth in the allegations above.
- 33 For the violations of RCW 81.28.080 and WAC 480-70-236, Staff requests that the
Commission impose monetary penalties on Waste Management pursuant to RCW
81.04.380 of up to \$1,000 for each violation.
- 34 Finally, Staff requests that the Commission order such other or further relief as
appropriate under the circumstances.

VIII. PROBABLE CAUSE

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

IX. NOTICE OF PREHEARING CONFERENCE

- 36 The Commission will hear this matter under the Administrative Procedure Act (APA),
particularly Part IV of chapter 34.05 RCW 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.
- 37 **THE COMMISSION GIVES NOTICE That it will hold a virtual prehearing
conference in this matter at 2 p.m. on December 14, 2021. To attend by phone, call
(253) 215-8782 and enter the Meeting ID: 977 4344 1969# and the Passcode:
560741#. To participate via Zoom, please use the following link: [Click here to join
meeting.](#)**
- 38 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.

- 39 **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.
- 40 **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.**
- 41 The names and mailing addresses of all known parties and their known representatives are as follows:

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

Representative: Jennifer Cameron-Rulkowski
Office of the Attorney General
621 Woodland Square Loop SE
P.O. Box 40128
Olympia, WA 98504-0128
(360) 664-1186
Jennifer.cameron-rulkowski@utc.wa.gov

Respondent: Waste Management of Washington, Inc.
720 4th Ave., Suite 400
Kirkland, WA 98033-8136
mweinstein@wm.com

Representative: Mike Weinstein
Waste Management of Washington, Inc.
720 4th Ave., Suite 400
Kirkland, WA 98033-8136
(425) 814-7840
mweinstein@wm.com

42 Administrative Law Judge Andrew O’Connell, from the Commission’s Administrative Law Division, will preside during this proceeding.¹

43 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 November 15, 2021.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ Rayne Pearson
RAYNE PEARSON
Administrative Law Judge
Director, Administrative Law Division

Inquiries may be addressed to:

Amanda Maxwell
Executive Director and Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, WA 98504-7250
(360) 664-1160

¹ Judge O’Connell can be reached by email at andrew.j.oconnell@utc.wa.gov or by phone at (360) 664-1285.

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: Amanda Maxwell
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 (_____) _____