

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

BOBBY WOLFORD TRUCKING & SALVAGE, INC. d/b/a BOBBY WOLFORD TRUCKING & DEMOLITION, INC.

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DOCKET TG-151573

PETITION FOR ADMINISTRATIVE REVIEW OF ORDER 02, ORDER OF CONSOLIDATION; ORDER CLASSIFYING RESPONDENT AS A SOLID WASTE CARRIER; ORDER IMPOSING SUSPENDED PENALTY; ORDER IMPOSING AND SUSPENDING PENALTIES

DOCKET TG-143802 (*consolidated*)

PETITION FOR ADMINISTRATIVE REVIEW OF ORDER 03, ORDER OF CONSOLIDATION; ORDER CLASSIFYING RESPONDENT AS A SOLID WASTE CARRIER; ORDER IMPOSING SUSPENDED PENALTY; ORDER IMPOSING AND SUSPENDING PENALTIES

**I. STAFF'S PETITION FOR ADMINISTRATIVE REVIEW**

1 Staff of the Washington Utilities and Transportation Commission ("Staff") requests the Washington Utilities and Transportation Commission ("Commission") conduct administrative review of Order 02 and Order 03 ("Initial Order") in Dockets TG-151573 and TG-143802, respectively.<sup>1</sup> Staff respectfully disagrees with the amount of the Administrative Law Judge's penalty assessment and asks the Commission to assess a larger penalty against Bobby Wolford Trucking & Salvage, Inc. ("Company"). Thus, Staff

<sup>1</sup> Order 02 and Order 03 are in fact the same document/initial order. The Commission, through its designated presiding officer, consolidated Dockets TG-151573 and TG-143802 at the time the Initial Order was issued. *In the Matter of Determining the Proper Carrier Classification of, and Complaint for Penalties against Bobby Wolford Trucking & Salvage, Inc. d/b/a Bobby Wolford & Trucking Demolition, Inc.*, Docket TG-151573 (consolidated) Order 02, May 16, 2016 and *In the Matter of Determining the Proper Carrier Classification of, and Complaint for Penalties against Bobby Wolford Trucking & Salvage, Inc. d/b/a Bobby Wolford & Trucking Demolition, Inc.*, Docket TG-143802 (consolidated), Order 03, May 16, 2016 ("Initial Order").

respectfully requests the Commission review and amend the penalty assessment amount in the Initial Order's Finding and Conclusions number (6)<sup>2</sup> and Order number (6).<sup>3</sup>

## II. APPLICABLE RULES

2 Under WAC 480-07-825, a party who wishes to challenge an initial order may file a petition for administrative review. Petitions for administrative review must be clear and specific. Petitions must clearly identify the specific basis of any challenge, showing the legal or factual justification for that challenge. Petitions for administrative review must also cite the pertinent page numbers or part of the record being challenged and the correlated findings of fact or conclusions of law included in an initial order.

## III. REQUESTED CHANGES TO THE INITIAL ORDER

3 As noted above, Staff's respectful disagreement with the Administrative Law Judge focuses only on the reasonableness of the penalty assessed in the Initial Order. The Initial Order's Findings and Conclusions number (6) assesses a total penalty of \$50,000 for 170 violations of RCW 81.77.040, with that entire penalty suspended for a period of two years and then waived if the Company refrains from providing solid waste service within that two-year period. Order number (6) effectuates the applicable Finding and Conclusion. Staff recommends the Commission penalize the Company \$170,000 for 170 violations of RCW 81.77.040, with \$85,000 suspended for two years and then waived on the condition the Company refrain from operating as a solid waste carrier during that two-year period, and the remaining \$85,000 due and payable immediately or in compliance with a mutually agreed payment plan.

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<sup>2</sup> Initial Order at 8 ¶¶ 35.

<sup>3</sup> Initial Order at 8 ¶¶ 41.

#### IV. REASONS FOR STAFF'S RECOMMENDATION

**A. The facts in this case show the Company should face a much higher penalty.**

4 The Company did not dispute the underlying facts in this case. Indeed, the Company stipulated to the violations during the hearing: there is no factual dispute that the Company hauled 170 loads of solid waste without a solid waste certificate. Staff simply believes the circumstances merit a higher penalty assessment than provided in the Initial Order.

5 This is not the Company's first offense. Bobby Wolford Trucking & Salvage, Inc., knowingly violated a Commission order in docket TG-143802. Limiting penalties in this case, as proposed in the Initial Order, will send a message to unregulated haulers that violating Commission laws and rules multiple times does not result in meaningful sanctions. Staff recommends the Commission practice progressive discipline, meaning continuing or repeat violations result in increased, not decreased, penalty amounts. The Company's prior violations ended in a \$41,183.30 penalty, with \$21,183.30 suspended. The Company's second violation of the same rules should increase non-suspended penalties further.

6 The Company did not self-report or cease unregulated activity on its own. The Company was ordered to cease and desist or obtain a permit. The Company submitted an application for solid waste authority on November 18, 2015, after Staff initiated its investigation into the new violations, but now, six months later, has yet to provide all the required information. The Company is not serious about compliance.

7 The Company's owner, Bobby Wolford, took no responsibility during the hearing. He stated that he could not even remember the previous penalty or its amount. Mr. Wolford claimed a penalty would put him out of business, but when submitting an application for solid waste authority on November 18, 2015, in response to this case, he revealed over \$3

million in assets. The Company has been, at best, disingenuous with both Staff and the Commission.

8           The previous penalty does not appear to have been a deterrent to the Company's unregulated activity. The suspended \$21,186.30 of the previous penalty also does not appear to have been an effective deterrent. Mr. Wolford's company hauled *170 loads* for the Mukilteo Pier in violation of a Commission order.

**B. Traditional penalty-assessment standards show the Commission should impose a larger penalty on the Company.**

9           Staff follows the 11 factors listed in the agency's enforcement policy.<sup>4</sup> Those factors and their corresponding application to this case also indicate a larger penalty is warranted.

**1. How serious or harmful the violation is to the public**

10           Unregulated solid waste hauling undermines the entire solid waste regulatory regime. Unregulated hauling infringes on the regulated practitioners' territories granted by the Commission. Regulated haulers thus lose revenue, and the illegal hauling increases rates for the general public.

**2. Whether the violation is intentional.**

11           The Company's actions appear to have been intentional, or at least willful, as it knew or should have known from prior violations, that it could not haul solid waste without regulatory approval. The Company also violated the settlement agreement to which it agreed in docket TG-143802.

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<sup>4</sup> Docket A-120061, last updated Jan. 7, 2013.

**3. Whether the company self-reported the violation**

12 As noted above, the Company did not reach out to the Commission or Staff to ask  
about this particular job. A regulated hauler reported the Company's unlawful activities.

**4. Whether the company was cooperative and responsive**

13 The Company violated the previous settlement agreement to which it agreed less  
than a year earlier. The Company has also sought temporary authority, but has not provided  
all of the requisite information.

**5. Whether the company promptly corrected the violations**

14 The Company stopped this job because Staff contacted the jobsite contractor and  
informed that contractor that the Company did not have solid waste hauling authority.  
Pacific Pile, the contractor, ordered the Company to stop hauling from the project site.

**6. The number of violations**

15 The Company hauled at least 170 loads. That is at least 170 violations.

**7. The number of customers affected**

16 This action potentially affected every customer served by Republic Services as their  
rates may have been impacted by depriving the regulated carrier of revenue.

**8. The likelihood of recurrence**

17 These 170 violations occurred less than a year after the previous 191 violations, and  
with full knowledge that any additional violations in that year would cause the suspended  
\$21,186.30 penalty amount to become immediately due and payable. Without meaningful  
additional penalties, continuing to haul solid waste without a license will remain a profitable  
endeavor. Therefore, recurrence is highly likely.

**9. The company's past performance regarding compliance, violations, and penalties**

18 Based on the previous case in 2014, the Company appears unwilling to comply or at  
least unwilling to take compliance seriously. The Company also did not take any  
responsibility during the hearing. Company officers did not hesitate to agree to a project  
hauling solid waste and sought to attribute their actions to an email from a Snohomish  
County official to the contractor. The Company did not have the proper authority and was  
under a cease and desist order from the Commission for a very similar transaction.

**10. The company's existing compliance program**

19 It appears the Company does not have a compliance program.

**11. The size of the company**

20 In an application submitted on November 18, 2015, the Company reported total  
assets of just over \$3 million.

**V. CONCLUSION**

21 Staff respectfully requests this Commission accept administrative review of the  
Initial Order in this case. The relevant circumstances and traditional penalty-assessment  
standards merit a larger penalty. Staff recommends the Commission replace the Initial  
Order's \$50,000 penalty that is entirely suspended and instead impose a \$170,000 total  
penalty, with \$85,000 suspended for two years and waived if the Company refrains from

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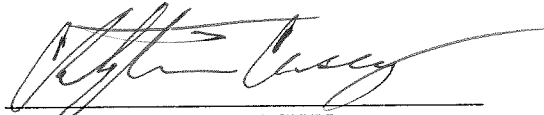
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22 future violations in that time period, and \$85,000 due and payable immediately or under a mutually agreed payment plan.

DATED this 3<sup>rd</sup> day of June 2016.

Respectfully submitted,

ROBERT W. FERGUSON  
Attorney General

A handwritten signature in black ink, appearing to read "Christopher Casey", written over a horizontal line.

CHRISTOPHER CASEY  
Assistant Attorney General  
Counsel for Washington Utilities and  
Transportation Commission Staff