

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

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

CASCADE RECYCLING INC.

DOCKET TG-210102

ORDER 02

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

BACKGROUND

- 1 **Nature of Proceeding.** The Washington Utilities and Transportation Commission (Commission) initiated this special proceeding to determine if Cascade Recycling Inc. (Cascade Recycling or Company) has engaged, and continues to engage, in business as a solid waste collection company for compensation within the state of Washington without first obtaining a certificate of public convenience and necessity from the Commission required to conduct such operations.
- 2 **Procedural History.** On June 22, 2021, the Commission entered Order 01, Order Instituting Special Proceeding; Complaint Seeking to Impose Penalties; and Notice of Virtual Hearing, pursuant to RCW 81.04.510, initiating this docket on its own motion. The Complaint alleges that Cascade Recycling violated RCW 81.77.040 by transporting solid waste to a disposal site on more than an occasional basis without the necessary certificate required for such operations and set the special proceeding to convene at 1:30 p.m. on July 19, 2021. The Commission subsequently rescheduled the hearing multiple times and ultimately convened this special proceeding on November 16, 2021.
- 3 **Hearing.** On November 16, 2021, the Commission convened a virtual hearing as scheduled before Administrative Law Judge Samantha Doyle. At the proceeding, Commission staff (Staff) presented evidence and testimony from Commission compliance investigator Kathryn McPherson. Dan Dolsmeth, Company owner, testified

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

for Cascade Recycling. Both parties stipulated to the entry of the investigation report and images of the Company's website into the record.

4 Staff's investigation shows that the Commission received a complaint on August 9, 2020, from a private citizen alleging that Cascade Recycling collects large amounts of solid waste.¹ Staff investigated the Company's operations and documented the following:

1. Between August 1, 2020, and August 15, 2020, Cascade Recycling collected comingled commercial recycling materials totaling 641.28 tons.²
2. During the same period, Cascade Recycling transported 16 loads of solid waste to the Cowlitz County Solid Waste Facility totaling 376.59 tons.³
3. The inferential average amount of solid waste collected and transported for disposal totaled at least 59 percent over a two-week period.
4. Cascade Recycling received technical assistance in September 2019 regarding a similar situation involving comingled materials dumped at the Alpine Recycling Co., LLC, (Alpine Recycling) facility.

5 Staff also testified that Cascade Recycling and Alpine Recycling are both owned by Dan Dolsmeth.

6 At hearing, Dolsmeth stipulated to the facts in Staff's investigation report but claimed the Company was not holding itself out as a solid waste collector and did not intend to collect solid waste. At the time of the infractions, Dolsmeth explained the Company mistakenly believed that Cascade Recycling and Alpine Recycling could share vehicles in certain circumstances. Dolsmeth further testified that he was experiencing health issues that impaired his ability to manage the situation. The Company requested mitigation of the penalty based on these factors.

¹ Exh. KM-1, p. 4

² *Id.* Attachment M – Cascade Recycling inbound ticket log.

³ *Id.* Attachment N – Cowlitz County Data for incoming loads from Cascade.

7 **Appearances.** Jennifer Cameron-Rulkowski, Assistant Attorney General, Lacey, Washington, represents Staff.⁴ Michael Johns, Robert Johns & Hemphill, PLLC, Gig Harbor, Washington, represents the Company.

DISCUSSION

8 **Classification Proceeding.** RCW 81.77.010 defines “solid waste collection company” [for the purposes of chapter 81.77 RCW] as

every person or his or her lessees, receivers, or trustees, 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.’⁵

RCW 81.77.040 prohibits solid waste removal companies from operating for compensation in Washington without first obtaining the required certificate of public convenience from the Commission.⁶ 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.

9 The Commission’s solid waste collection rules exempt certain operations from Commission regulation. WAC 480-70-011(1) provides that the collection and hauling operations of “a recycling company . . . collecting and transporting recyclable materials from a buy-back center, drop box, or from a commercial or industrial generator of recyclable materials *when those recyclable materials are being transported for use other than disposal or incineration*” are not regulated by the Commission (emphasis added). Pursuant to WAC 480-70-011(2), the collection and hauling operations of a permitted motor freight carrier “that *occasionally transports to a disposal site*, but whose primary

⁴ In adjudications the Commission’s regulatory staff participates like any other party, while an administrative law judge or the Commissioners make the decision. To assure fairness, the Commissioners and the presiding administrative law judge do not discuss the merits of the proceeding with regulatory staff or any other party without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

⁵ *See also* WAC 480-70-041.

⁶ *See also* WAC 480-70-081.

business is not the collection of solid waste,” are not regulated by the Commission as solid waste transportation (emphasis added).

- 10 Pursuant to WAC 480-70-016(1), “[p]ersons holding permits issued by the commission under the provisions of chapter 81.80 RCW, whose primary business is not the collection of solid waste, normally will also need to obtain a certificate of public convenience and necessity if they *transport solid waste to a disposal site on more than an occasional basis*” (emphasis added). WAC 480-70-016(2) provides that “carriers may be required to hold both a solid waste certificate under the provisions of chapter 81.77 RCW and a motor carrier permit under the provisions of chapter 81.80 RCW in order to provide both services” and that “[i]n each case it is within the discretion of the commission to determine whether a carrier is required to hold both.”
- 11 In WAC 480-70-016(4), the Commission sets forth factors to consider in determining whether operations require a solid waste certificate or a motor carrier permit, including the intent of the shipper, the destination of the shipment, and 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.
- 12 In this case, the evidence shows that Cascade Recycling transported loads of solid waste to the Cowlitz County Solid Waste Facility on at least 16 occasions. Cascade Recycling does not dispute that this conduct occurred. Regardless of whether Cascade Recycling intended to operate as a solid waste collection company, the evidence shows that the Company transported solid waste on more than an occasional basis. We therefore conclude that Cascade Recycling meets the statutory definition of hauling of solid waste for compensation as a solid waste collection company. Because Cascade Recycling does not have authority to conduct business as a solid waste collection company, we find that Cascade Recycling’s conduct violates RCW 81.77.040.
- 13 We conclude that Cascade Recycling should be ordered to cease and desist operations as a solid waste collection carrier without first obtaining the required certificate from the Commission and turn now to Staff’s recommended penalty.
- 14 **Penalties.** Pursuant to RCW 81.04.380, the Commission may penalize a public service company that violates any provision of Title 81 RCW or any rule of the Commission up to \$1,000 for each and every offense. Every violation is a separate and distinct offense.

- 15 Under RCW 81.04.380, Staff seeks the maximum penalty of \$16,000 against the Company. 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 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.
- 16 Because we find that Cascade Recycling operated as a solid waste collector in the state of Washington without the required permit when the Company transported solid waste to the Cowlitz Landfill on at least 16 occasions, thus violating RCW 81.77.040, and conclude that it is not in the public interest for an unregulated solid waste carrier to operate in violation of the law, we agree with Staff that imposing the maximum penalty of \$16,000 is appropriate.
- 17 In any enforcement proceeding, however, the Commission's ultimate goal is to obtain compliance. We thus exercise our discretion to suspend an \$8,000 portion of the penalty for two years, and then waive it, subject to the condition that Cascade Recycling refrain from operating as a solid waste collection carrier without first obtaining a certificate from the Commission for the reasons explained below.
- 18 At hearing, Cascade Recycling agreed to permanently shut down and cease operations as a solid waste collection company, as defined by WAC 480-70, without first obtaining a certificate from the Commission. The Company also demonstrated a willingness to work with Staff by providing requested documentation. Finally, Cascade credibly explained that the violations were unintentional. We also recognize that the economy and small businesses are facing unprecedented conditions due to the ongoing COVID-19 pandemic. These factors weigh in favor of suspending an \$8,000 portion of the penalty subject to the condition that the Company refrain from operating without a solid waste carrier certificate. Suspending a portion of the provides a strong incentive for the Company to cease and desist its unauthorized operations without creating an insurmountable financial burden. Staff and the Company may work together to establish a mutually agreeable payment plan for the \$8,000 portion of the penalty that is not suspended.

FINDINGS AND CONCLUSIONS

- 19 (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.
- 20 (2) On at least 16 occasions, Cascade Recycling provided solid waste collection within the state of Washington without first having obtained a certificate from the Commission in violation of RCW 81.77.040.
- 21 (3) On more than an occasional basis, Cascade Recycling provided solid waste collection 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.
- 22 (4) Cascade Recycling has not obtained a certificate from the Commission authorizing the Company to haul solid waste as a solid waste collection company.
- 23 (5) 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.
- 24 (6) Upon proof of unauthorized operations, RCW 81.04.510 authorizes the Commission to order an unpermitted solid waste collection company to cease and desist its activities. Cascade Recycling should be directed to cease and desist from providing solid waste collection company services in Washington as required by RCW 81.04.510.
- 25 (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.
- 26 (8) The Commission should impose a \$16,000 penalty for 16 violations of RCW 81.77.040, an \$8,000 portion of which should be suspended for a period of two years, and then waived, provided Cascade Recycling ceases and desists from

operating for the hauling of solid waste for compensation without first obtaining a certificate from the Commission. Staff and the Company may work together to establish a mutually agreeable payment plan for the \$8,000 portion of the penalty that is not suspended.

ORDER

THE COMMISSION ORDERS:

- 27 (1) Cascade Recycling Inc. is classified as a solid waste collection company within the state of Washington.
- 28 (2) Cascade Recycling Inc. is ordered to immediately cease and desist operations as a solid waste collection company within the state of Washington without first obtaining the required certificate from the Commission.
- 29 (3) Cascade Recycling Inc. is assessed a penalty of \$16,000. An \$8,000 portion of the penalty is suspended for a period of two years from the date of this Order, and waived thereafter, provided Cascade Recycling Inc. refrains permanently from further operations as a solid waste collection company in the state of Washington without first obtaining the required certificate from the Commission. Cascade Recycling Inc. must pay the remaining \$8,000 penalty or file jointly with Staff a proposed payment plan no later than 20 days from the effective date of this Order.
- 30 (4) If Cascade Recycling Inc. fails to comply with any of the above conditions, the suspended penalty will become immediately due and payable without further Commission order.
- 31 (5) The Commission retains jurisdiction over the subject matter and the parties to this proceeding to effectuate the terms of this Order.

DATED at Lacey, Washington, and effective December 16, 2021.

/s/ Samantha Doyle
SAMANTHA DOYLE
Administrative Law Judge

NOTICE TO THE 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 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this initial order to file a petition for administrative review (Petition). Section (2)(b) of the rule identifies what you must include in any Petition as well as other requirements for a Petition. WAC 480-07-825(2)(c) states that any party may file a response to a Petition within 10 days after service of the Petition.

WAC 480-07-830 provides that before the Commission enters 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 with due diligence at the time of hearing, or for other good and sufficient cause. The Commission will give other parties in the proceeding an opportunity to respond to a motion to reopen the record, unless the Commission determines that it can rule on the motion without hearing from the other parties.

WAC 480-07-825(1) 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).