

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment
Against

WASTE MANAGEMENT OF
WASHINGTON, INC.
(CERTIFICATE G-237)

in the amount of \$47,700

DOCKET TG-190495

COMMISSION STAFF’S RESPONSE
TO WASTE MANAGEMENT
WASHINGTON’S REQUEST FOR
REVIEW OF THE
EXECUTIVE SECRETARY’S
ORDER

I. INTRODUCTION

I On August 28, 2019, the Executive Secretary issued Order 01 denying Waste Management of Washington, Inc.’s (“WMW” or “Company”) challenge to 253 of 274 violations of Washington Administrative Code (“WAC”) 480-70-201, which adopts by reference Parts of Title 49 Code of Federal Regulations (“C.F.R.”).¹ WAC 480-70-201 specifically adopts Part 391—which requires (among other things) that drivers of commercial motor vehicles be medically certified.² WMW’s Request for Review of the Executive Secretary’s Order challenges the jurisdiction of the Washington Utilities and Transportation Commission (“Commission”) to regulate its waste container vehicles, which WMW contends are not used “for the purpose of transporting solid waste.”³ WMW further argues that the Executive Secretary erred in interpreting WAC 480-70-201 to require waste container vehicle drivers to be medically certified.⁴

¹ TG-190495, Order 01 (Denying Contest of Violations; Granting Mitigation; Suspending Penalty; In Part).

² 49 C.F.R. § 391.45(a).

³ See Waste Mgmt. of Wash., Inc. Petition for Review, ¶¶ 14.

⁴ See *id.*

2 The Commission should affirm the order of the Executive Secretary because: (1) the Commission has jurisdiction to regulate solid waste collection companies, including their waste container vehicles; and (2) the Executive Secretary correctly interpreted the term “motor vehicle” (as defined in WAC 480-70-041) to apply to all WMW’s vehicles that are used to provide waste services outlined in the Company’s tariff, including vehicles used strictly to transport empty waste containers to and from customers.

II. BACKGROUND

3 In March 2019, Commission staff (“Staff”) initiated a safety investigation into WMW for the purpose of determining the safety fitness of the Company as set forth in WAC 480-70-201—which adopts by reference Parts of Title 49 C.F.R.⁵

4 On June 11, 2019, Staff notified the Company of the following violations discovered during Staff’s investigation and included in Staff’s investigative report.⁶ The report documented: (1) 199 acute violations of 49 C.F.R. Part 383.37(a) (Knowingly allowing, requiring, permitting, or authorizing an employee to operate a commercial motor vehicle during any period in which the driver does not have a current commercial driver license or does not have a commercial driver license with the proper class or endorsements); (2) 274 critical violations of 49 C.F.R. Part 391.45(a) (Using a driver not medically examined and certified); (3) one violation of 49 C.F.R. Part 391.51(b)(2) (Failing to maintain general requirements for driver qualification file); and (4) four violations of 49 C.F.R. Part 396.3(a)(1) (Parts and accessories shall be in safe and proper operating condition at all times).⁷

⁵ See Declaration of Jason Sharp ¶ 3 (June 11, 2019).

⁶ *Id.* at ¶ 5.

⁷ *Id.* at ¶ 6.

5 On July 10, 2019, the Commission issued a Notice of Penalties Incurred and Due for
Violations of Laws and Rules (“Notice”).⁸ In the Notice, the Commission assessed the above-
described violations and a \$47,000 penalty against the Company.⁹ The \$47,000 penalty
amount reflected: (1) a \$19,900 penalty for the 199 violations of 49 C.F.R Part 383.37(a); (2)
a \$27,400 penalty for the 274 violations of 49 C.F.R. Part 391.45(a); and (3) a \$400 penalty
for the four violations of 49 C.F.R. Part 396.3(a)(1).¹⁰

6 On July 25, 2019, the Company filed its Response to Penalty Assessment. The
Company’s response did not contest the violations of 49 C.F.R. Parts 383.37(a), 391.51(b)(2),
or 396.3(a)(1), but admitted the violations and asked the Commission to mitigate penalties.
However, the Company contested 253 of the 274 violations of 49 C.F.R. Part 391.45(a)—
which requires drivers of commercial motor vehicles be medically certified. The Company
contested these violations based on definition of “motor vehicle” WAC 480-70-041:

‘Motor vehicle’ means any truck, trailer, semitrailer, tractor, or any self-
propelled or motor driven vehicle used upon any public highway of this state
for the purpose of transporting solid waste, for the collection or disposal, or
both, of solid waste.¹¹

WMW argued that the Commission’s driver medical certification requirements did not apply
to its drivers for the 253 contested trips because the vehicles driven, weighing between 10,001
and 26,000 pounds, carried loads of empty waste containers rather than solid waste.¹² On this
basis, WMW argued that those 253 trips were not “for the purpose of transporting solid
waste,” and the trucks therefore did not fit within the definition of “motor vehicles” that are
subject to Chapter 81.77 RCW and the Commission’s driver safety requirements.

⁸ TG-190494, Notice of Penalties Incurred and Due for Violations of Laws and Rules.

⁹ *Id.*

¹⁰ *Id.*

¹¹ RCW 81.77.010(1).

¹² *See id.* at ¶ 2.

7 On August 8, 2019, Staff filed a Reply to WMW’s Response to Penalty Assessment. In the reply, Staff disputed the Company’s contention that container trucks are not “motor vehicles” pursuant to WAC 480-70-041. Staff outlined that the provision and collection of waste containers is an essential and express component of the Company’s Tariff No. 23 – Naming Rates for the Collection, Transportation, and Disposal of Solid Waste, and if noted, Recycling and Yardwaste (“Tariff”) and is, therefore, a regulated function subject to the Commission’s driver safety requirements and other applicable rules.

8 On August 28, 2019, the Commission issued Order 01 – Denying Contest of Violations; Granting Mitigation; Suspending Penalty, In Part (“Order 01”). In Order 01, the Commission rejected the Company’s definitional argument:

We reject the Company’s narrow interpretation of the definition of ‘motor vehicle’ and agree with Staff that the Company transports waste containers ‘for the purpose of transporting solid waste.’ The Commission has authority to supervise and regulate every solid waste collection company, including by regulating the safety of its operations. Containers are a necessary component of the Company’s tariff, and, therefore, transporting the containers to customers is a regulated function. Accordingly we conclude the container trucks are used ‘for the purpose of transporting solid waste’ and constitute ‘motor vehicles’ as defined in WAC 450-70-041.¹³

9 On September 9, 2019, WMW filed a Request for Review of the Executive Secretary’s Order pursuant to WAC 480-07-904(4).

10 On September 13, 2019, Staff filed a Motion for 20-day Extension of Time to Respond, that counsel for WMW did not oppose. The Commission granted Staff’s motion on September 16, 2019.

¹³ TG-190495, Order 01 at ¶ 17.

III. DISCUSSION

11 WMW argues that the Executive Secretary erred in: (1) finding that the Commission has jurisdiction to enforce safety requirements on its waste container vehicle drivers; and (2) interpreting WAC 480-70-201 to require the drivers of WMW's waste container vehicles to be medically certified. The Commission should reject the arguments set forth in WMW's petition for review because: (1) the Commission has clear jurisdiction to regulate solid waste collection companies; and (2) the Executive Secretary correctly interpreted the *unambiguous* safety standards in WAC 480-70-201 to require drivers of waste container vehicles to be medically certified. However, if the Commission were to find WAC 480-70-201 *ambiguous*, Staff requests that the Commission use the deference it is afforded by appellate courts in interpreting ambiguous rules to interpret WAC 480-70-201 to require waste container vehicle drivers to be medically certified.

A. The Commission has Jurisdiction to Regulate Waste Management's Operations—Including those Pertaining to its Waste Container Vehicles.

12 WMW claims the Executive Secretary erred when it found the Commission had jurisdiction to regulate its waste container vehicles: "The Commission cannot adopt regulations nor issue orders exceeding its legal authority."¹⁴ WMW specifically claims that the Commission lacks jurisdiction to enforce the safety requirements in WAC 480-70-201 to require its waste container vehicle drivers to be medically certified.¹⁵ The Executive Secretary explicitly found that the Commission has jurisdiction to regulate these vehicles:

The Commission has authority to supervise and regulate every solid waste collection company, including by regulating the safety of its operations.

¹⁴ Waste Mgmt. of Wash., Inc. Petition for Review p. 6 (removed capitalization).

¹⁵ See Waste Mgmt. of Wash., Inc. Petition for Review p. 6. WAC 480-70-201 adopts by reference the safety requirements within various chapter of Title 49 C.F.R. This includes the requirements 49 C.F.R. § 391.45(a)—which requires drivers of *commercial motor vehicles* to be medically certified.

Containers are a necessary component of the Company's tariff, and, therefore, transporting the containers to customers is a regulated function.¹⁶

13 Staff agrees with the Executive Secretary's finding, and believes this finding should be affirmed by the Commission on administrative review. The Commission has explicit jurisdiction to regulate public service companies—which include tariffed solid waste collection companies like WMW. The applicable statutes make clear that the Commission has jurisdiction *to regulate solid waste collection companies*—not just an enumerated list of vehicles that a solid waste collection company may own and/or operate. Furthermore, pursuant to RCW 81.77.030, the Commission also has explicit jurisdiction to regulate the “*safety of operations*” of solid waste collection companies and “*all other matters affecting the relationship between them and the public which they serve.*”¹⁷ Given this broad grant of statutory authority by the Legislature, the Commission has been granted jurisdiction to regulate the safety of operations of solid waste collection companies (like WMW)—which includes the jurisdiction to require that the drivers of waste container vehicles be medically certified.

14 Pursuant to RCW 81.04.160, the Commission has jurisdiction to regulate public service companies:

The commission *may adopt rules that pertain to the comfort and convenience of the public using the services of public service companies* that are subject to regulation by the commission as to services provided.¹⁸

15 Public service companies are defined as all *common carriers* within RCW 81.04.010.

Common carriers are defined as:

¹⁶ TG-190495, Order 01 at ¶ 17.

¹⁷ (Emphasis added).

¹⁸ (Emphasis added).

[A]ll railroads, railroad companies, street railroads, street railroad companies, commercial ferries, motor freight carriers, auto transportation companies, charter party carriers and excursion service carriers, private nonprofit transportation providers, *solid waste collection companies*,¹⁹ household goods carriers, hazardous liquid pipeline companies, and every corporation, company, association, joint stock association, partnership, and person, their lessees, trustees, or receivers appointed by any court whatsoever, and every city or town, owning, operating, managing, or controlling any such agency for public use in the conveyance of persons or property for hire within this state.²⁰

16 It is uncontested that WMW is a tariffed solid waste collection company subject to the regulatory authority of the Commission. Solid waste collection companies fall under the definition of public service companies. Accordingly, the Commission has vast jurisdiction to “adopt rules that pertain to the *comfort and convenience of the public* using the services of public service companies.”²¹ This rule does not limit the Commission’s jurisdiction to an enumerated list of vehicles that a public service company may own and/or operate. Pursuant to this jurisdiction, the Commission has implemented a wide variety of regulations in WAC Chapter 480-70—that are *not* limited to particular types of vehicles that solid waste collection companies may own and/or operate.

17 Furthermore, pursuant to RCW 81.77.030:

The commission shall supervise and regulate every solid waste collection company in this state: . . .

. . . (2) By regulating the accounts, service, *and safety of operations*;

. . . (4) By supervising and regulating such persons or companies in *all other matters affecting the relationship between them and the public which they serve* . . .

¹⁹ Solid waste collection companies are defined within RCW 81.77.010 defined 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, except septic tank pumpers, over any public highway in this state as a “common carrier” or as a “contract carrier.”

²⁰ RCW 81.04.010(11).

²¹ RCW 81.04.160.

Therefore, the Commission has explicit jurisdiction to regulate the *safety of operations* of solid waste collection companies and *all other matters affecting the relationship between them and the public which they serve*. The requirement that waste container vehicle drivers—employed by a tariffed solid waste collection company like WMW— be medically certified relates to WMW’s “safety of operations” and “*all other matters* affecting the relationship between [WMW] and the public they serve.”²² It is Staff’s position that WMW’s waste container vehicles are commercial motor vehicles which pose a risk to the public—if the drivers of these vehicles are not medically certified.²³ Given the vast jurisdiction afforded by the Legislature, the Commission should find it has jurisdiction to enforce WAC 480-70-201—as to require WMW’s waste container truck drivers to be medically certified.²⁴

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WMW claims that because its waste container vehicles are regulated by the Washington State Patrol (“WSP”),²⁵ the Commission lacks jurisdiction to regulate its waste container vehicles. WMW states: “These violations should be rescinded because the ... (WSP), not the Commission is responsible for regulating vehicles and driver safety for WMW’s container delivery drivers and vehicles.”²⁶ This argument is also not persuasive. WMW cites no legal authority for the proposition that the vehicles of a solid waste collection

²² RCW 81.77.030 (emphasis added).

²³ See Declaration of Jason Sharp ¶¶ 8–9 (June 11, 2019).

²⁴ The Commission’s jurisdiction to regulate solid waste collection companies— is further supported by RCW 80.01.040, which states that the Commission must “exercise all the powers and perform all the duties prescribed by this title and by Title 81 RCW, or by any other law” and among other responsibilities, “regulate in the public interest, as provided by the public service laws, the rates, services, facilities, and practices of *all persons engaging within this state in the business of supplying any utility service or commodity to the public for compensation.*” RCW 80.01.040 (emphasis added). Further, Powers that are expressly granted to administrative agencies and those “necessarily implied from their statutory delegation of authority” give the Commission wide jurisdiction to regulate solid waste companies within Washington. *Tuerk v. State, Dep’t of Licensing*, 123 Wn. 2d 120, 124–25, 864 P.2d 1382 (1994) (citing *Mun. of Metro. Seattle v. Pub. Empl. Relations Comm’n*, 118 Wn.2d 621, 633, 826 P.2d 158 (1992)).

²⁵ See RCW Chapter 446-65 WAC.

²⁶ See Waste Mgmt. of Wash., Inc. Petition for Review ¶ 1.

company can only be subject to regulation by a single administrative agency.²⁷ As discussed above, the applicable statutes give the Commission the discretionary power to regulate solid waste collection companies in the public interest and enforce safety requirements as necessary.²⁸ The mere overlap of regulating authority between WSP and the Commission—does not preclude the Commission from implementing more stringent driver and vehicle requirements. Companies routinely operate in the state of Washington with the understanding that multiple agencies oversee their business operations. If the Legislature wanted to limit the jurisdiction of the Commission, it could have excluded the Commission’s jurisdiction—like it did within RCW Chapter 81.70.²⁹ In conclusion, the Commission should affirm the Executive Secretary’s Order 01 because the controlling statutes unambiguously authorize jurisdiction for the Commission to regulate the safety of operations of a solid waste collection company—including requiring its drivers to be medically certified.³⁰

²⁷ See Waste Mgmt. of Wash., Inc. Petition for Review p.13. WAC 480-07-825(2)(b) (“A petition that challenges a conclusion of law must cite the statute, rule, case law, or other legal authority on which the petitioner relies to support its challenge. . . .”).

²⁸ See e.g., RCW 80.01.040 - General Powers and Duties of Commission. RCW 81.77.030 - Supervision and Regulation by Commission.

²⁹ See RCW 81.70.030:

This chapter does not apply to:

. . . .

(2) Limousine charter party carriers of passengers under chapter 46.72A RCW.

³⁰ The Commission must exercise its discretion within the limits set by its enabling statutes. *State v. Munson*, 23 Wn. App. 522, 525-26, 597 P.2d 440 (1979) (citing *Winslow v. Fleischer*, 112 Or. 23, 228 P. 101 (1924); *State v. Thompson*, 111 Wn. 525, 191 P. 620 (1920) (agency can neither suspend a statute by order nor make lawful by order conduct that the legislature has deemed unlawful)); RCW 80.01.040(2) (requiring the Commission to regulate as provided by the public service laws); RCW 81.01.010. These statutes require any person wishing to engage in jurisdictional activity to meet vehicle and driver safety requirements set by the Commission. RCW 80.01.040; WAC 480-70-201. The Commission requires that any person who engages in jurisdictional activity must have drivers medically examined. WAC 480-70-201. WMW engages in jurisdictional activity: it engages in business as a solid waste collection company—and its drivers and vehicles are within the Commission’s jurisdiction and its safety rules. Executive Secretary’s Order 01 ¶¶ 14–18. Accordingly, the Commission should affirm the order of the Executive Secretary finding it has jurisdiction to regulate WMW as a solid waste collection company.

B. The Commission Correctly Interpreted WAC 480-70-201 to Require Drivers of Waste Container Vehicles to be Medically Certified.

19 If the Commission affirms that it has jurisdiction to regulate solid waste collection companies (including waste container vehicles owned and/or operated by a solid waste collection company), it should affirm the Executive Secretary’s interpretation of 49 C.F.R. § 391.45(a) (as adopted by reference in WAC 480-70-201)—which requires drivers of *commercial motor vehicles* to be medically certified. The term commercial motor vehicle is defined in WAC 480-70-196:

For the purposes of the rules in Part 5—Equipment and Drivers, “commercial motor vehicle” means any self-propelled or towed *motor vehicle* used on a highway when the vehicle:

- (1) Has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, of ten thousand and one pounds or more, whichever is greater . . .

20 The term “motor vehicle” (within the definition of commercial motor vehicle) is defined in WAC 480-07-041:

‘Motor vehicle’ means any truck, trailer, semitrailer, tractor, or any self-propelled or motor driven vehicle used upon any public highway of this state *for the purpose of transporting solid waste*, for the collection or disposal, or both, of solid waste.³¹

21 WMW argues that the Executive Secretary erred in interpreting the term “motor vehicle” in WAC 480-07-041 to include waste container vehicles.³² The Executive Secretary rejected similar arguments made by WMW in Order 01:

We reject the Company’s *narrow interpretation* of the definition of ‘motor vehicle’ and agree with Staff that the Company transports waste containers ‘for the purpose of transporting solid waste.’ . . . Containers are a necessary component of the Company’s tariff, and, therefore, transporting the containers to customers is a regulated function. Accordingly we conclude the container

³¹ RCW 81.77.010(1) (emphasis added).

³² See Waste Mgmt. of Wash., Inc. Petition for Review pp. 1–2.

trucks are used ‘for the purpose of transporting solid waste’ and constitute ‘motor vehicles’ as defined in WAC 480-70-041.³³

22 Staff agrees with the Executive Secretary’s interpretation, and believes that this interpretation should be affirmed in this administrative review. As Staff previously contended, the phrase “for the purpose of” directly preceding “transporting solid waste” in RCW 81.77.010(1) serves to broaden the scope of covered activities to those necessarily involved in or done in furtherance of transporting solid waste. The addition of the phrase “for the purpose of” should be given due consideration in interpreting the statute as a whole because “statutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous.”³⁴

23 The Executive Secretary applied a correct interpretation of the *unambiguous* term “for the purpose of transporting solid waste” in Order 01 when it found that “containers are a necessary component of the Company’s tariff and, therefore, transporting the containers is a regulated function.”³⁵ This interpretation aligns with the “ordinary meaning of the language used in the context of the entire statute in which the particular provision is found, related statutory provisions, and the statutory scheme as a whole.”³⁶

24 The term “motor vehicle” is a subset within the definition of “commercial motor vehicle” and therefore violations of 49 C.F.R. Part 391.45(a) would require the vehicle be used “*for the purpose of transporting solid waste.*”³⁷ Under WMW’s interpretation, only

³³ TG-190495, Order 01 at ¶ 17 (emphasis added).

³⁴ *State v. Roggenkamp*, 153 Wn.2d 614, 624, 106 P.3d 196 (2005) (citing *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003); quoting *Davis v. Dep’t of Licensing*, 137 Wn.2d 957, 963, 977 P.2d 554 (1999); quoting *Whatcom Cty. v. City of Bellingham*, 128 Wn.2d 537, 546, 909 P.2d 1303 (1996)).

³⁵ TG-190495, Order 01 ¶17.

³⁶ *Bostain v. Food Exp., Inc.*, 159 Wn.2d 700, 708, 153 P.3d 846 (2007).

³⁷ RCW 81.77.010(1) (emphasis added).

vehicles transporting solid waste are subject to the medical certification requirement. This argument requests the Commission read the statute and corresponding regulations so narrowly as to constrain its authority to a small category of vehicles that would create absurd results.³⁸

25 Under this reading, the contents of a vehicle at any given time would dictate which regulations apply. For example, a full truck would be subject to regulations, but upon unloading its contents, would fall outside of the Commission’s jurisdiction. Staff has expressed serious safety concerns about vehicles over 10,001 pounds being operated by drivers who are not medically examined and certified—regardless of the content these vehicles may be hauling.³⁹ The Commission’s driver safety rules—including the standards for determining when a driver must be medically certified—are consistent with and adopted by reference from the well-established Federal Motor Carrier Safety Administration’s rules and standards.⁴⁰

26 For the above reasons, the Executive Secretary was correct in interpreting WAC 480-70-201 when it found that “containers are a necessary component” of WMW’s Tariff. Furthermore, the Executive Secretary was correct when it concluded: “transporting the containers to customers is a regulated function” and container vehicles are used “for the purpose of transporting solid waste” meeting the definition of “motor vehicle” under WAC 450-70-041.⁴¹ Accordingly, the Executive Secretary was correct when it interpreted WAC 480-70-201 to require waste container vehicle drivers to be medically certified.

³⁸ “Legislation must be read to give effect to every word and not to render any language superfluous or absurd.” *State v. Reid*, 144 Wn.2d 621, 630, 30 P.3d 465 (2001) (citing *City of Seattle v. Williams*, 128 Wn.2d 341, 349, 908 P.2d 359 (1995); *In re Personal Restraint of Robles*, 63 Wn. App. 208, 216, 817 P.2d 419 (1991)).

³⁹ See Declaration of Jason Sharp ¶¶ 8–9 (June 11, 2019).

⁴⁰ See WAC 480-70-201.

⁴¹ Executive Secretary’s Order 01 ¶ 17.

C. If the Commission Finds Ambiguity within WAC 480-70-201, Judicial Review Would Afford Substantial Deference to the Commission’s Interpretation.

27 If the Commission determines that WAC 480-70-201 is ambiguous—as to whether it requires drivers of waste container vehicles to be medically certified—the Commission should exercise the discretion it is afforded by appellate courts to interpret the rule to apply to drivers of waste container vehicles.⁴² The Commission would be granted discretion by appellate courts in its interpretation of ambiguous rules on review.⁴³ This is because WAC 480-70-201 is within the Commission’s area of expertise. As the Washington Supreme Court has stated: “[w]here a statute is within [an] agency’s special expertise, the agency’s interpretation is accorded great weight, provided that the statute is ambiguous. . . . [D]eference to an agency’s interpretation of its own regulations is also appropriate.”⁴⁴

28 Staff maintains that a plain reading of the phrase “for the purpose of transporting solid waste” (in WAC 480-07-041) includes vehicles providing necessary tariffed services for waste removal and collection. Accordingly, Staff requests that the Commission affirm Order 01 of the Executive Secretary. However, if the Commission concludes there is ambiguity, it should use its discretion to interpret the phrase “for the purpose of transporting solid waste” (within WAC 480-07-041) to include waste container vehicles. Such an interpretation would effectuate the purpose of the rule (*i.e.*, public safety from physical injury and property damage

⁴² *Dep’t of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 12, 43 P.3d 4 (2002) (“[If a] statute remains susceptible to more than one reasonable meaning, the statute is ambiguous. . . .”).

⁴³ *See Port of Seattle v. Pollution Control*, 151 Wn.2d 568, 593, 90 P.3d 659 (2004) (“[W]here a statute is within [an] agency’s special expertise, the agency’s interpretation is accorded great weight, provided that the statute is ambiguous. . . . Finally, deference to an agency’s interpretation of its own regulations is also appropriate.”) (internal citations and quotation marks omitted). *See also Inland Empire Distrib. Sys., Inc. v. Util. & Transp. Comm’n*, 112 Wn.2d 278, 770 P.2d 624, 626 (1989) (Washington Supreme Court upholding and deferring to the UTC’s interpretation of an ambiguous statute.). WMW also seems to acknowledge that the Commission has discretion in the interpretation of the laws it administers, within its Petition for Review. *See Waste Mgmt. of Wash., Inc. Petition for Review* ¶ 27 (“The Commission may have discretion in how it interprets the statutes it administers . . .”).

⁴⁴ *See Port of Seattle*, 151 Wn.2d at 593.

from commercial motor vehicles exceeding 10,001 pounds) and avoid an absurd result.⁴⁵ The same reasons to require drivers of garbage collection trucks to be medically certified applies equally to drivers of waste container vehicles. The fact that one driver is hauling waste and the other driver is hauling empty containers has no impact on the safety concerns these large vehicles pose to the public. To reiterate, just as policy dictates one would not want a medically ineligible person driving a garbage truck—policy would equally cut against that same person driving a waste container truck. Accordingly, if the Commission determines there is an ambiguity, Staff requests that the Commission exercise its discretion to interpret WAC 480-70-201 to require waste container vehicle drivers to be medically certified.

IV. CONCLUSION

29 Staff requests that the Commission affirm the Executive Secretary’s Order 01. This is because the Executive Secretary was correct in determining that the Commission has jurisdiction to regulate solid waste collection companies—including the drivers of waste collection vehicles employed by these companies. The Executive Secretary was also correct in interpreting WAC 480-70-201 to require the drivers of waste container vehicles to be medically certified. However, if the Commission determines WAC 480-70-201 is ambiguous,

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⁴⁵ *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003) (“[A] reading that results in absurd results must be avoided because it will not be presumed that the legislature intended absurd results.”).

Staff requests that the Commission exercise the discretion (it is afforded on appellate review) to interpret the rule to require the drivers of waste container vehicles to be medically certified.

DATED this 9th day of October 2019.

Respectfully submitted,

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