

**BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of	)	DOCKET TR-091344
	)	
TESSENDERLO KERLEY, INC.,	)	ORDER 01
	)	
Petitioner,	)	
	)	
Seeking Exemption from the	)	
Provisions of WAC 480-60-040	)	ORDER GRANTING
Relating to overhead clearance rules	)	EXEMPTION FROM RULE
.....	)	

**BACKGROUND**

- 1 On August 21, 2009, Tessengerlo Kerley, Inc. (Tessengerlo or Company) filed with the Washington Utilities and Transportation Commission (Commission) a petition requesting exemption from WAC 480-60-040, which requires railroad companies to maintain an overhead clearance of at least twenty-two feet six inches from the top of the rail to the nearest structure.
  
- 2 Tessengerlo’s petition relates to construction of a rail tank car loading rack at their manufacturing plant in Kennewick, Washington. BNSF Railway (BNSF) provides rail service to this facility. Tessengerlo does not currently have a rail car loading station at this location. Currently, Tessengerlo employees climb up and down the sides of tank cars using the ladders attached to the cars. A loading rack will greatly improve the safety of loading operations by reducing injuries related to falls while ascending or descending the tank car ladders.
  
- 3 A fall protection safety cage will also be attached to the loading rack gangway, which employees will use to move between the rack to the rail tank car. The loading rack gangway will automatically lower onto the top of the tank car for employee safety. Use of the loading rack gangway will eliminate having to use the ladder to access the tank car. The gangway is also designed to remain as level as possible during use which will minimize the possibility of an employee slipping or tripping due to a slope created by the rail rack being lower or higher than the tank car. Finally, a canopy will cover the entire loading rack and provide protection from the elements for employees.
  
- 4 The safety cage, in its retracted and upright position, is nineteen feet one-eighth inch above the top of the rail and its installation and use would require a permanent exemption

from the vertical clearance rule. The safety cage will have eighteen feet vertical clearance in the lowered position.

- 5 BNSF supports the waiver and is requiring Tessengerlo to implement additional safety precautions including “blue-flagging” the track the rail car is parked on. Blue-flagging ensures that no person will enter the track or move the rail car until the blue flag is removed by the person who placed it after loading or unloading. In addition, a derail system with double lock-out will be installed. One lock is for the BNSF switch crew and the second lock is for Tessengerlo employees. The double lock-out ensures that both parties are ready for the removal and placement of tank cars. BNSF proposes to issue train bulletins to all train crews operating at the facility prohibiting the practices of riding on the top of any on-track equipment when approaching or leaving the loading rack. Commission Staff supports all BNSF’s requirements.
- 6 In addition, Tessengerlo must post and maintain a sign stating “No auto racks, high cubes or other tall cars due to 18’ vertical clearance”. Tessengerlo will add a section to their loading procedures outlining the requirements for raising the gangway and safety cage when the loading has been completed.

### **FINDINGS AND CONCLUSIONS**

- 7 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington having jurisdiction over railroad clearance requirements. *RCW 80.28.010 and WAC 480-60.*
- 8 (2) Under WAC 480-60-020(3), the Commission may grant an exemption from the provisions of any rule in WAC 480-60, if consistent with the public interest, the purposes underlying regulation and applicable statutes. *See also WAC 480-07-110.*
- 9 (3) Commission Staff investigated the request and recommended that it be granted. The permanent exemption will support a safer loading environment, which will improve safety for Tessengerlo employees. The addition of the loading rack, canopy, fall protection safety cage, blue-flagging, double lock-out derail system and issuance of bulletins to train crews operating at the facility all contribute to increased overall safety during loading operations.

- 10 (4) This matter came before the Commission at its regularly scheduled meeting on September 24, 2009.
- 11 (5) After reviewing Tessengerlo's petition filed in Docket TR-091344 on August 21, 2009, and giving due consideration, the Commission finds that the exemption is reasonable and should be granted.

**ORDER**

**THE COMMISSION ORDERS:**

- 12 (1) After the effective date of this Order, Tessengerlo Kerley, Inc. is granted a permanent exemption from WAC 480-60-040, relating to overhead clearances.
- 13 (2) This exemption is subject to the following conditions:
- (a) Tessengerlo Kerley, Inc. will blue-flag the track when a rail car is at the loading rack.
  - (b) Tessengerlo Kerley, Inc. will install a derail system with double lock-out for use during loading or unloading operations.
  - (c) Tessengerlo Kerley, Inc. will install a cautionary sign on the railroad approach to the loading rack indicating the overhead clearance is less than the required distance. The sign must be reflectorized, designed, and placed so as to be highly visible and clearly indicative of the point of close clearance.
  - (d) Tessengerlo Kerly, Inc. must notify Commission Staff after installing the sign. Acceptance of installation of the sign is subject to inspection by Commission Staff for compliance with requirements contained in this order.
  - (e) Tessengerlo Kerly, Inc. will add a section to their loading procedures outlining the requirements for raising the gangway and safety cage when the loading has been completed.

- (f) BNSF Railway will issue bulletins to all train crews operating at the facility prohibiting the practice of riding on the top of any on-track equipment when approaching or leaving the loading rack.

14 The Commissioners, having determined this Order to be consistent with the public interest, the purposes underlying regulation and applicable statutes, directed the Secretary to enter this Order.

DATED at Olympia, Washington, and effective September 24, 2009.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Executive Director and Secretary