

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

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

DANIEL STEIN d/b/a SEABECK WASTE
& RECYCLE

DOCKET TG-180181

ORDER 01

ORDER INSTITUTING SPECIAL
PROCEEDING; COMPLAINT
SEEKING TO IMPOSE PENALTIES

AND

NOTICE OF BRIEF ADJUDICATIVE
PROCEEDING (**Set for November 29,
2018 at 1:30 p.m.**)

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

I. PARTIES

2 The Commission is an agency of Washington State authorized by state law to regulate the
rates, services, facilities, and practices of public service companies, including motor freight
carriers, household goods carriers, and solid waste collection companies under the provisions
of Title 81.

3 Daniel Stein d/b/a Seabeck Waste & Recycle (Seabeck Waste) is an individual allegedly
conducting business as a solid waste hauler in the state of Washington.

II. BACKGROUND

4 The Commission has information from which it believes and therefore alleges that Daniel
Stein d/b/a Seabeck Waste & Recycle on two occasions violated provisions in Title 81 RCW
that forbid operating for the hauling solid waste for compensation without first obtaining a
certificate of public convenience and necessity from the Commission.

5 Upon proof of these allegations, RCW 81.04.510 authorizes the Commission to issue an order
requiring Seabeck Waste to cease and desist activities subject to regulation under Title 81
RCW. In addition, RCW 81.04.110 authorizes the Commission to file a complaint on its own
motion setting forth any act or omission by Seabeck Waste that violates any law or any order

or rule of the Commission. The Commission may impose financial penalties of up to \$1,000 for each instance that Seabeck Waste operated for the hauling of solid waste without a Commission-issued certificate of public convenience and necessity.

- 6 At the hearing in this special proceeding the Commission notices here, the Commission will also consider its Complaint against Seabeck Waste alleging violations of law as specified below and whether to impose penalties.
- 7 The following facts, set forth in Staff's publicly-docketed Investigation Report, establish probable cause for the Commission to complain against the activities of Seabeck Waste and to seek penalties in accordance with applicable law.
- 8 Seabeck Waste has never held a certificate of public convenience and necessity from the Commission authorizing it to operate as a solid waste collection company.
- 9 On January 8, 2015, Kitsap County Public Works contacted Staff and alleged that an entity known as Seabeck Waste & Recycle was issuing flyers in the Seabeck, Washington area and advertising unauthorized solid waste collection service for hire. The flyer provided to Staff advertised a 25 percent discount and "Driveway Trash Pick-up!" The flyer also stated, "STEP 1. Discontinue your current service Step 2. CALL (360) 328-6787." Kitsap County Public Works provided Staff with what the County stated was Seabeck Waste's physical address.
- 10 On December 22, 2017, a certificated solid waste hauler contacted Staff and complained that Seabeck Waste was issuing flyers to solid waste customers in the Seabeck, Washington area. The flyer advertises Seabeck Waste as providing bi-weekly garbage and recycling pick up services for hire. The 2017 flyer provided a PO Box mailing address for Seabeck Waste & Recycle.
- 11 On January 4, 2018, Staff posed as a potential customer and contacted Seabeck Waste at the phone number 360-328-6787. Staff claimed to have seen Seabeck's Waste's then-recent flyer and inquired about solid waste service. The Seabeck Waste representative identified himself as Daniel and quoted Staff a \$32-per-month price for bi-weekly solid waste and recycling pick up service. Seabeck Waste also provided instructions for cancelling solid waste service with the certificated solid waste hauler in the Seabeck area.
- 12 In the course of its investigation, Staff confirmed that the mailing address Kitsap County Public works provided to Staff in 2015 matches the physical address the Washington state Department of Licensing (DOL) has on file for Mr. Daniel Stein. The PO Box mailing address on Seabeck Waste's December 2017 flyer also matches the mailing address the DOL has on file for Mr. Stein's driver's license.

III. JURISDICTION

13 The Commission has jurisdiction over the subject matter of this complaint under RCW 80.01.040, RCW 80.01.060, RCW 81.01.010, RCW 81.04.020, RCW 81.04.110, RCW 81.04.160, RCW 81.04.460, RCW 81.04.510, chapter 81.77 RCW, chapter 81.80 RCW, and chapter 34.05 RCW.

IV. APPLICABLE LAWS AND REGULATIONS

14 Solid waste collection companies are common carriers. RCW 81.04.010(11). For the purposes of Title 81 RCW, every common carrier is a public service company and therefore subject to Commission regulation. *See* RCW 80.01.040(2); RCW 81.01.010.

15 Under state law, the definition of “solid waste collection company” includes every person “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.’” RCW 81.77.010(7).

16 The term “common carrier,” in the context of solid waste collection, means “any person who collects and transports solid waste for disposal by motor vehicle for compensation, whether over regular or irregular routes, or by regular or irregular schedules.” RCW 81.77.010(3).

17 The term “person” includes an “individual, firm, corporation, association, partnership, lessee, receiver, trustee, consortium, joint venture, or commercial entity.” WAC 480-70-041.

18 “Solid waste” includes “all putrescible and nonputrescible solid and semisolid wastes including, but not limited to, garbage, rubbish, ashes, industrial wastes, swill, sewage sludge, demolition and construction wastes, [and] abandoned vehicles”; solid waste does not include recyclable materials “except for source separated recyclable materials collected from residences.” RCW 70.95.030(22); RCW 81.77.010(9).

19 “Operating for the hauling of solid waste for compensation includes advertising, soliciting, offering, or entering into an agreement to provide” such services. RCW 81.77.040.

20 No solid waste collection company may operate for the hauling of solid waste for compensation without first obtaining a certificate of public convenience and necessity from the Commission. RCW 81.77.040.

21 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. RCW 81.04.380. Where alleged violation concerns advertising, each advertisement reproduced,

broadcast, or displayed by a particular medium constitutes a separate violation. RCW 81.77.090(2).

22 The Commission is authorized to file a complaint on its own motion setting forth any act or omission by any public service company that violates any law or any order or rule of the Commission. RCW 81.04.110.

V. COMPLAINT

23 The Commission, through its Staff, re-alleges the allegations contained in paragraphs 8 through 12, above.

24 The Commission alleges that Seabeck Waste violated RCW 81.77.040 on two occasions by operating for the hauling of solid waste without first having obtained from the Commission a certificate of public convenience and necessity. Specifically, Seabeck Waste committed a violation in December 2017 by distributing flyers advertising a bi-weekly solid waste and recycling service for compensation. Seabeck Waste committed a second violation when the Company offered to provide solid waste collection services for \$32 per month in a phone conversation with Staff.

VI. REQUEST FOR RELIEF

25 In addition, Staff requests that the Commission, pursuant to its authority under RCW 81.04.380, assess penalties of up to \$1,000 against Seabeck Waste for each violation of RCW 81.77.040 and RCW 81.77.090(2).

26 Staff further requests that the Commission order Seabeck Waste to cease and desist activities subject to regulation under Title 81 RCW until it has obtained the necessary authority from the Commission.

27 Finally, Staff requests that the Commission order such other or additional relief as is appropriate under the circumstances.

VII. PROBABLE CAUSE

28 Based on a review of the Staff Investigation Report documenting the violations alleged above, and consistent with RCW 80.01.060 and WAC 480-07-307, the Commission finds probable cause exists to issue this Complaint.

VIII. ORDER AND NOTICE OF BRIEF ADJUDICATIVE PROCEEDING

29 The Commission has jurisdiction to institute a special proceeding to determine whether Seabeck Waste is conducting business requiring operating authority, or has performed or is

performing any act requiring Commission approval without securing such approval pursuant to RCW 80.01.040, RCW 81.01.010, and RCW 81.04.510. In addition to the foregoing statutes, this matter involves Title 81 RCW, including but not limited to RCW 81.04.020; RCW 81.04.380, RCW 81.77.010, RCW 81.77.040, RCW 81.77.090, and RCW 81.80.010. This matter also involves the administrative rules set forth in chapters 480-07 and 480-70 WAC.

30 Pursuant to RCW 34.05.482 and WAC 480-07-610, the Commission determines that a brief adjudicative proceeding is appropriate for resolving the issues in this docket.

31 **THE COMMISSION ORDERS Seabeck Waste to appear before the Commission in this special proceeding conducted under the authority of RCW 81.04.510 at 1:30 p.m. on November 29, 2018, in Room 206, Richard Hemstad Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington, to give testimony and evidence under oath as to its operations. The burden of proving that the alleged operations are not subject to the provisions of Title 81 RCW shall be upon Seabeck Waste as provided by RCW 81.04.510.**

32 **THE COMMISSION GIVES NOTICE THAT it will conduct a brief adjudicative proceeding concerning this Complaint concurrently with the special proceeding noticed above, which will commence at 1:30 p.m. on November 29, 2018, in Room 206, Richard Hemstad Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington.**

33 Administrative law judge Laura Chartoff from the Commission's Administrative Law Division will preside at the brief adjudicative proceeding.

34 **THE COMMISSION GIVES NOTICE THAT ANY PARTY WHO FAILS TO ATTEND OR PARTICIPATE IN THE HEARING OR ANY OTHER STAGE OF THIS PROCEEDING MAY BE HELD IN DEFAULT IN ACCORDANCE WITH RCW 34.05.440 AND WAC 480-07-450.**

35 If a limited English-speaking or hearing-impaired party needs an interpreter, a form is attached to this notice to be filled out and returned as indicated, so that the Commission may appoint a qualified interpreter at no cost to the party or witness.

36 The names and mailing addresses of all parties and their known representatives are shown as follows:

Carrier: Daniel Stein
d/b/a Seabeck Waste & Recycling
P.O. Box 480
Seabeck, WA 98380

Commission Washington Utilities and
Transportation Commission
1300 S. Evergreen Park Drive SW
Olympia, WA 98504-7250
(360) 664-1160

Representative: Harry Fukano
Assistant Attorney General
1400 S Evergreen Park Drive SW
PO Box 40128
Olympia, WA 98504-0128
(360) 664-1225

DATED this 12th day of September, 2018.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ Rayne Pearson

RAYNE PEARSON
Administrative Law Director
Administrative Law Division

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 this form and return it to Washington State Utilities and Transportation Commission, Attention: Mark L. Johnson, 1300 S. Evergreen Park Drive SW, 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 No.: (____) _____