

**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.

DOCKET TG-151573  
(*Consolidated*)

ORDER 02

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

ORDER OF CONSOLIDATION;  
ORDER CLASSIFYING  
RESPONDENT AS A SOLID  
WASTE CARRIER; ORDER  
IMPOSING SUSPENDED  
PENALTY; ORDER IMPOSING  
AND SUSPENDING PENALTIES

**BACKGROUND**

- 1 On February 26, 2015, the Washington Utilities and Transportation Commission (Commission) entered Order 02, Initial Order Approving Settlement Agreement (Order 02), in Docket TG-143802. Order 02 assessed penalties against Bobby Wolford Trucking & Salvage, Inc. d/b/a Bobby Wolford Trucking & Demolition, Inc. (Bobby Wolford Trucking or Company) for operating as a solid waste carrier without the required Commission-issued certificate. Specifically, the Commission assessed a \$41,186.30 penalty, a \$21,186.30 portion of which was suspended for a period of one year on the condition that Bobby Wolford Trucking complies with Order 02, which expressly prohibits the Company from providing solid waste collection services regulated by the Commission.
- 2 On February 24, 2016, the Commission entered Order 01 in Docket TG-151573, Order Instituting Special Proceeding; Complaint Seeking to Impose Penalties (Complaint) and Notice of Brief Adjudicative Proceeding. In the Complaint, Commission staff (Staff)

alleges that Bobby Wolford Trucking violated Order 02 a total of 170 times, and that those violations form the basis of the Complaint.

3 On March 4, 2016, Staff filed a Motion to Consolidate Proceedings (Staff’s Motion), requesting the Commission schedule a brief adjudicative proceeding in Docket TG-143802 concurrent with the brief adjudicative proceeding scheduled in Docket TG-151573.

4 On March 30, 2016, the Commission issued a Notice of Brief Adjudicative Proceeding in Docket TG-143802. The Notice advised the parties that Staff’s Motion would be addressed at the brief adjudicative proceeding.

5 The Commission conducted a brief adjudicative proceeding in both dockets on April 27, 2016, before Administrative Law Judge Rayne Pearson. The Company did not object to Staff’s Motion. Staff’s Motion was granted, and Dockets TG-151573 and TG-143802 were consolidated.

6 The Company stipulated to the violations, which limited the scope of the hearing to Staff’s recommended penalties and the Company’s request for mitigation.

7 Staff presented testimony from Pam Smith, compliance investigator, and David Pratt, assistant director, Transportation Safety. Ms. Smith testified briefly about how the 170 violations alleged in the Complaint were discovered and calculated. According to Staff’s investigation report, Bobby Wolford Trucking was hired by Pacific Pile and Marine (Pacific Pile) to haul creosote-soaked pilings from the City of Mukilteo pier demolition project site. Bobby Wolford Trucking transported the pilings in its large end-dump trailers from Pacific Pile’s facility in Seattle to a disposal facility in Snohomish County.

8 Mr. Pratt presented testimony and evidence related to the Commission’s enforcement policy and the Company’s history of compliance. Staff recommends the Commission impose the \$21,186.30 suspended penalty in Docket TG-143802 because the Company violated Order 02 by operating as a solid waste carrier without a certificate. In addition, Staff recommends the Commission assess the maximum penalty of \$1,000 per violation for each of the violations alleged in the Complaint, for a total penalty of \$170,000. Staff recommends the Commission suspend an \$85,000 portion of the penalty for a period of two years, and then waive it, subject to the condition that the Company refrains from conducting business as a solid waste carrier without first obtaining a Commission-issued

certificate. Mr. Pratt testified that Staff believes an escalated penalty is warranted in this case because the Company appears to have been undeterred by the \$41,186.30 penalty assessed in Order 02.

- 9 The Company argues that no penalty should be assessed in either docket for the violations alleged in the Complaint. First, the Company points to a May 22, 2015, email from Bernard Myers, planner for Snohomish County Solid Waste, to Neil Williams, project manager for Pacific Pile, informing him that Pacific Pile could contract with any company it chose to dispose of the pilings. The Company claims it relied on this communication as clearance for any authority it might need to work on the project, and that it did not intend to violate Commission rules. The Company also claims it served an important public need by transporting the pilings because the certificated company that serves the area, Republic Services, was unable to provide the service and likely would have subcontracted the work to the Company anyway. According to Bobby Wolford Trucking, no local provider has the special equipment – 33-foot end-dump trailers – necessary to perform the work.
- 10 The Company presented testimony from Robert Wolford, owner of Bobby Wolford Trucking, and Scott Miller, the Company’s project manager and estimator. Mr. Wolford testified that Bobby Wolford Trucking ceased providing hauling services for Pacific Pile as soon as the Commission contacted the Company and inquired about the work being performed. The Company immediately filed an application for temporary authority, which was denied by the Commission, followed by an application for limited authority, which is currently pending.
- 11 Mr. Wolford further testified that the Company has already paid the \$20,000 penalty imposed by Order 02, and that any additional penalty would put the Company out of business. On cross examination, Mr. Wolford acknowledged that the Mukilteo Pier demolition project was very similar to the project that led to the violations cited in Order 02, and that the Company did not contact Commission Staff prior to accepting the Mukilteo Pier project to determine whether the scope of work would violate the terms of Order 02. Mr. Wolford further testified that the project was completed by Washington State Trucking, which hauled Republic Services’ containers to the transfer station.
- 12 Mr. Miller testified that the Company did not intend to violation Commission rules, but instead relied on the May 22, 2015, email from Mr. Myers as granting the Company

authority to perform the work. Mr. Miller echoed Mr. Wolford's statements that a penalty would be financially devastating for the Company.

- 13 Christopher Casey, Assistant Attorney General, Olympia, represents Commission Staff (Staff). Elizabeth Alvord, Staff Counsel, Seattle, represents Bobby Wolford Trucking.

### DISCUSSION AND DECISION

- 14 **Classification as a Solid Waste Carrier.** RCW 81.04.510 authorizes this special proceeding to determine whether Bobby Wolford Trucking is operating, or has operated, as a solid waste carrier in Washington without the requisite authority. Because Bobby Wolford Trucking stipulated to the 170 violations alleged in the Complaint, the undisputed facts establish that the Company operated as a solid waste carrier without the required Commission-issued certificate. Accordingly, the Commission orders Bobby Wolford Trucking to cease and desist such conduct, as required by RCW 81.04.510.
- 15 **Suspended Penalty in Docket TG-143802.** Order 02 approved the settlement agreement proposed jointly by Staff and Bobby Wolford Trucking (Settlement Agreement) to address the violations in Docket TG-143802 and provide an incentive for the Company to comply with Commission rules going forward. Both the Settlement Agreement and Order 02 required Bobby Wolford Trucking to refrain from providing all forms of solid waste collection service that require a certificate from the Commission.
- 16 Order 02 also assessed a penalty of \$41,186.30, a \$21,186.30 portion of which was suspended for a period of one year on the condition that the Company complies with the terms of Order 02. Because the Company stipulated to the violations alleged in the Complaint, we find that the Company violated the terms of the Order 02 and impose the \$21,186.30 suspended penalty. Bobby Wolford Trucking must either pay the \$21,186.30 penalty or work with Staff to establish a proposed payment plan within 10 days of the effective date of this order.
- 17 **Penalty in Docket TG-151573.** At hearing, Staff recommended the Commission impose the maximum penalty of \$1,000 for each of the 170 violations of RCW 81.77.040 alleged in the Complaint, for a total penalty of \$170,000. Staff further recommended the Commission suspend an \$85,000 portion of the penalty for a period of one year, and then waive it, subject to the condition that the Company refrain from operating as a solid waste carrier without a certificate.

18 The Commission may consider a number of factors when determining the level of penalty to impose, including, but not limited to:

- How serious or harmful the violations are to the public
- Whether the violations were intentional
- Whether the company was cooperative and responsive in the course of Staff's investigation
- Whether the company promptly corrected the violations once notified
- The likelihood the violations will recur
- Whether the Company has an existing compliance program
- The size of the company.<sup>1</sup>

19 At hearing, Staff addressed each of these factors in turn. First, Staff argues that the violations were particularly harmful because the Company's conduct undermined the regulated solid waste system by taking business away from Republic Services, the certificated carrier who operates in the service territory at issue. Bobby Wolford Trucking argues that no regulated carrier has the specialized equipment necessary to provide this particular service, and that the Company likely would have contracted with Republic Services to haul the debris had it not contracted with Pacific Pile directly.

20 Second, Staff argues that the violations were intentional because the Company knew or should have known – based on its past experience and the terms of both the Settlement Agreement and Order 02 – that it could not haul debris from a construction site to a solid waste transfer station without a solid waste certificate. The Company, however, claims it relied on the May 22, 2015, email from Mr. Myers as the only authorization it needed to haul the debris. The Company contends that this reliance was reasonable and the violations were not intentional.

21 Next, Staff argues that while the Company was responsive during Staff's investigation and promptly corrected the violations, Staff views the Company's failure to honor the terms of the Settlement Agreement as inherently uncooperative. The Company notes that it promptly ceased hauling when it received notification from the Commission that its conduct violated Commission rules, and immediately filed an application for temporary

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<sup>1</sup> Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission (January 7, 2013).

authority. When that application was denied, the Company filed a second application for limited authority.

- 22 Staff also contends that the Company is likely to incur repeat violations because the penalty assessed in Order 02 apparently did not deter the Company from operating as a solid waste carrier without the required certificate. Bobby Wolford Trucking claims that its dispatcher made a split second decision to accept the job from Pacific Pile, and, after further consideration, the Company concluded it had been granted the authority by Snohomish County Solid Waste to perform the work.
- 23 Next, Mr. Pratt testified that he is not aware of whether the Company has an existing compliance program, but notes that the Company blamed its dispatcher in both instances for not knowing that the Company may not haul debris to a transfer station without a solid waste certificate. The Company again reiterated that it relied on the email from Mr. Myers and maintains its position that it acted in good faith.
- 24 Finally, Staff argues that the Company is good sized, with 40 to 50 employees and approximately \$3 million in assets. Conversely, Bobby Wolford Trucking argues that it is a small company that will be forced to shut down completely if the Commission imposes a penalty.
- 25 **Decision.** While we agree with Staff that the Company should be penalized for its conduct, we are not convinced that Staff’s recommendation to impose the maximum penalty of \$1,000 per violation is warranted. Although the Company’s actions technically harmed the certificated carrier by encroaching on its service territory, the violations themselves were neither serious nor harmful to the public.
- 26 On the other hand, the Company’s argument that it should not be penalized because it was the only carrier that could perform the work – and thus meet an important public need – is unpersuasive. Bobby Wolford Trucking notes that Republic Services likely would have contracted with the Company to perform the work for Pacific Pile had the Company not contracted with Pacific Pile directly, and that Republic Services ultimately contracted with another trucking company to complete the project. Both of these factors undermine the Company’s claim that its contract with Pacific Pile was the only means by which the project could be accomplished.

- 27 We are similarly unpersuaded by Bobby Wolford Trucking’s assertion that it was reasonable to rely on Mr. Myers’s email as granting the Company authority to haul debris for Pacific Pile; the Company knew or should have known that the scope of work requested by Pacific Pile was nearly identical to the scope of the work that gave rise to the violations cited in Order 02. Accordingly, the Company should have been well-versed in what it could and could not do based on the terms of the Settlement Agreement, which expressly provides that the Company must refrain from “transporting solid waste materials for compensation from a demolition project to a transfer station, unless such service is an incidental part of a clean-up or site restoration service provided by the Company.”<sup>2</sup> In the event the Company was still uncertain, it should have contacted Staff to inquire about whether accepting the contract with Pacific Pile violated Commission rules.
- 28 We do, however, appreciate that the Company immediately ceased hauling debris for Pacific Pile when it was contacted by the Commission, and that the Company has since applied for limited authority to operate as a solid waste carrier. Ultimately, the Commission’s goal is to bring Bobby Wolford Trucking into compliance, not to create an insurmountable financial burden for the Company. To that end, we find that a \$50,000 penalty, the entire amount of which will be suspended for a period of two years on the condition that Bobby Wolford Trucking cease and desist from providing solid waste collection services without first obtaining a certificate from the Commission, is sufficient to deter the Company from incurring repeat violations. The suspended penalty, coupled with the \$21,186.30 now due and payable, is substantial but not unduly punitive.
- 29 We also require Staff to conduct a follow-up investigation of Bobby Wolford Trucking within two years from the effective date of this Order to determine the Company’s compliance with the terms of this Order. Based on its review, Staff will make a recommendation about whether the \$50,000 suspended penalty should be waived or imposed.

## **FINDINGS AND CONCLUSIONS**

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<sup>2</sup> Docket TG-143802, Order 02 ¶ 3 (February 26, 2015).

- 30 (1) The Washington Utilities and Transportation 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 companies.
- 31 (2) The Commission has jurisdiction over the subject matter of this proceeding and over Bobby Wolford Trucking.
- 32 (3) On 170 occasions, Bobby Wolford Trucking transported solid waste without the required Commission-issued certificate in violation of RCW 81.77.040.
- 33 (4) Bobby Wolford Trucking should be directed to cease and desist from providing solid waste services in Washington, as required by RCW 81.04.510.
- 34 (5) Bobby Wolford Trucking should be required to pay the \$21,186.30 penalty suspended in Order 02 in Docket TG-143802 for violating the terms of Order 02 and the Settlement Agreement. The Company should either pay the penalty or file jointly with Staff a proposed payment plan within 10 days of the effective date of this Order.
- 35 (6) Bobby Wolford Trucking should be penalized \$50,000 for 170 violations of RCW 81.77.040. The entire penalty should be suspended for a period of two years, and then waived, provided the Company refrains from providing solid waste collection services without first obtaining a certificate from the Commission.
- 36 (7) Within two years from the effective date of this Order, Staff should conduct a follow-up investigation of Bobby Wolford Trucking's operations and make a recommendation about whether the suspended penalty should be waived or imposed.

## **ORDER**

### **THE COMMISSION ORDERS That**

- 37 (1) Bobby Wolford Trucking & Salvage, Inc. d/b/a Bobby Wolford Trucking & Demolition, Inc. is classified as a solid waste carrier within the state of Washington.
- 38 (2) Bobby Wolford Trucking & Salvage, Inc. d/b/a Bobby Wolford Trucking & Demolition, Inc. is ordered to immediately cease and desist providing all forms of solid waste collection services in the state of Washington without first obtaining a certificate from the Commission.



- 39 (3) Bobby Wolford Trucking & Salvage, Inc. d/b/a Bobby Wolford Trucking & Demolition, Inc. has not complied with the conditions under which the Commission suspended \$21,186.30 of the \$41,186.30 penalty assessed in Order 02 in Docket TG-143802. The full penalty of \$41,186.30, less the \$20,000 paid to date, is now due and payable. Bobby Wolford Trucking & Salvage, Inc. d/b/a Bobby Wolford Trucking & Demolition, Inc. must either pay the \$21,186.30 penalty or file jointly with Commission Staff a proposed payment plan within 10 days of the effective date of this Order.
- 40 (5) Bobby Wolford Trucking & Salvage, Inc. d/b/a Bobby Wolford Trucking & Demolition, Inc. is assessed a penalty of \$50,000 for 170 violations of RCW 81.77.040. The entire penalty is suspended for a period of two years from the effective date of this Order on the condition that Bobby Wolford Trucking & Salvage, Inc. d/b/a Bobby Wolford Trucking & Demolition, Inc. complies with the terms of this Order.
- 41 (6) Within two years from the effective date of this Order, Commission Staff shall conduct a review of the operations of Bobby Wolford Trucking & Salvage, Inc. d/b/a Bobby Wolford Trucking & Demolition, Inc. to determine its compliance with the terms of this Order. If Bobby Wolford Trucking & Salvage, Inc. d/b/a Bobby Wolford Trucking & Demolition, Inc. has complied, the Commission will waive the penalty. If Bobby Wolford Trucking & Salvage, Inc. d/b/a Bobby Wolford Trucking & Demolition, Inc. has not complied with the terms of this Order, the suspended \$50,000 penalty will become immediately due and payable.
- 42 (7) The Commission retains jurisdiction to effectuate the terms of this Order.

DATED at Olympia, Washington, and effective May 16, 2016.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

RAYNE PEARSON  
Administrative Law Judge

### NOTICE TO 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*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-825(3). WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review within ten (10) days after service of the Petition.

WAC 480-07-830 provides that before entry of 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 at the time of hearing, or for other good and sufficient cause. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such answer.

RCW 80.01.060(3) 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.

One copy of any Petition or Answer filed must be served on each party of record with proof of service as required by WAC 480-07-150(8) and (9). An Original and **five (5)** copies of any Petition or Answer must be filed by mail delivery to:

Attn: Steven V. King, Executive Director and Secretary  
Washington Utilities and Transportation Commission  
P.O. Box 47250  
Olympia, Washington 98504-7250