

## OAJ Trucking Safety Section Article October 2015

### Is the Intrastate Transportation of Waste Subject to PUCO Regulation and the FMCSR?

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For the purpose of this article presume a truck is a motor vehicle within the meaning of ORC 4921.01 and is owned by a motor carrier as defined in OAC 4901:2-5-01(O). This truck is used exclusively for hauling non-hazardous waste and the driver of this truck causes a collision with your client. The truck only operates in Ohio and does not cross state lines.

Immediately after being retained by your client, you issued a preservation letter to the owner of the truck, the motor carrier and the truck driver. Knowing that the liability insurance carriers will not take you seriously until you show them this is not a typical motor vehicle collision you filed the law suit. Your complaint alleged causes of action including both negligence and statutory violations applicable to motor carriers and commercial motor vehicle drivers and as provided in the CFR, ORC and OAC. You then served your first set of Interrogatories and Request for Production of Documents framed upon violation of the rules and regulations alleged in the complaint. You are then surprised by the defense attorney's discovery response. A typical Interrogatory and a defense attorney's response:

#### **Interrogatory 14.**

*Please provide the entire qualifications file of (driver), including but not limited to documents maintained pursuant to 49 CFR 391.51 and as adopted by the PUCO pursuant to Ohio Administrative Code 4901:2-5-03.*

#### **Response:**

*Defendant objects to any suggestion or contention that it has any obligation to maintain any documents pursuant to 49 CFR 391.51. Specifically, 49 CFR 391 is inapplicable to the Defendant's activities because it is not a motor carrier as it is in the business of hauling waste, not property. Pursuant to OAC 4901-5-12, Defendant is not subject to regulation by the PUCO.*

This is the same response defense counsel asserts to every interrogatory and document request framed upon the applicable CFR and FMCSR.

#### **How can this be?**

Is the intrastate transportation of waste excluded from regulation by the PUCO? Do the CFR and FMCSR not apply to these waste haulers? Can a 60,000 pound garbage truck run essentially unregulated in the state of Ohio?

## **Ohio Regulation of Truck Drivers and Trucking Companies**

Ohio laws governing commercial motor vehicles (CMV) are found in Title 49 of the Ohio Revised Code (ORC). The specific regulations that enforce these laws are found in Title 4901:2 of the Ohio Administrative Code (OAC). The Public Utilities Commission of Ohio (PUCO) pursuant to OAC 4901:2-5-03(A) has adopted certain provisions of the Federal Motor Carrier Safety Regulations (FMCSR). These regulations of the U.S. Department of Transportation are contained in the Code of Federal Regulations (CFR) and include 49 C.F.R. 40, 367, 380, 382, 383, 385, 386, 387, and 390 to 397, unless specifically excluded or modified by a rule of the PUCO. The PUCO has also adopted portions of the regulations contained in 49 C.F.R. 107, subparts f and g, and 171 to 180 which pertain to transportation of hazardous materials.

### **OAC 4901-5-12 Transportation of Waste Products**

The General Assembly has authorized the PUCO to adopt rules to implement provisions of the ORC including statutes governing Motor Carriers and Commercial Motor Vehicles. OAC 4901-5-12 pertaining to transportation of waste products was adopted by the PUCO.

OAC 4901-5-12 Transportation of waste products provides:

#### **(A) Definition of waste.**

(1) The term "waste," as used in this chapter, includes, but is not restricted to, industrial, commercial, and residential garbage, cesspool or septic tank cleanings, and any commodity or substance discarded by the owner thereof with the purpose of abandonment. "Waste" is not included in the term "property" as used in Chapters 4921. and 4923. of the Revised Code when defining transportation for hire subject to regulation by the commission.

(2) The term "waste" does not include industrial or commercial scrap or by-products transported for recycling, reclamation, or reuse in any form where the shipper retains an interest or title in the property.

#### **(B) Transportation of waste.**

The transportation of waste as defined in paragraph (A)(1) of this rule is not subject to regulation by the commission.

#### **(C) Transportation of valuable scrap or by-products.**

The for-hire transportation of commodities or substances of the types described in paragraph (A)(2) of this rule is subject to the criteria established by law for obtaining a certificate .

#### **(D) Safety regulation of waste transportation.**

Nothing in this rule shall exempt from safety regulation by the commission the transportation of waste by a motor carrier.

### **How Does OAC 4901-5-12 Apply to For-hire and Private Motor Carriers?**

ORC 4921.01 (B) defines "For-hire motor carrier" as a person engaged in the business of transporting persons or property by motor vehicle for compensation. This section goes on to exclude certain types of transporters such as taxis, school buses, ambulances, farm equipment, mulch haulers and others. Nowhere does this statute exempt for-hire transportation of waste from PUCO regulation or the FMCSR.

Division (D) of ORC 4923.01 defines "Private motor carrier" as a person who is not a for-hire motor carrier but is engaged in the business of transporting persons or property by motor vehicle. ORC 4923.02 provides exemptions for private motor carriers which are similar to those pertaining to for-hire motor carriers. Nowhere does ORC 4923.02 exempt the private transportation of waste from PUCO regulation or the FMCSR.

For-hire motor carriers hauling exclusively waste by virtue of OAC 4901-5-12 are not required to obtain a certificate of public convenience and necessity as required by ORC 4921.03 and therefor are not required to:

- File a complete and accurate application that includes a certification that (a) the person understands and is in compliance with the applicable service, operation, and safety laws of this state and (b) the person meets the (insurance) requirements of ORC 4921.09
- Display a PUCO number
- Pay applicable registration fees and taxes under sections 4921.11 and 4921.19 of the ORC

The PUCO has authority to regulate the safe transportation of waste even though waste transportation is not subject to all of the regulations established by the Commission. Since the PUCO adopted certain FMCSR as embodied in the CFR, those regulations are enforced by the PUCO. Motor carriers, whether for-hire or private, transporting waste must therefore abide by these safety regulations and as contemplated in OAC 4901-5-12 (D). OAC Chapter 4901:2-5 Safety Standards provides definitions and a detailed listing of these safety regulations. Drivers transporting waste are also not exempt from the obligation requiring the appropriate Commercial Driver License pursuant to 49 CFR 383 and ORC 4506.

### **Evidence of Regulation**

The PUCO web site provides the ability to search company names. A search of for-hire motor carriers who are in the business of transporting waste shows Driver/Vehicle Examination Reports. These reports list violations of the FMCSR as applied to both the driver and the vehicle

as the vehicles are subject to inspection. Citations are issued citing the CFR number specific to the violation. Fines can be levied upon both drivers and motor carriers. The PUCO then sends letters notifying the trucking company and driver of the violations and any fines assessed to them. These letters are subject to discovery and may also be obtained through a request to the PUCO.

## **Conclusion**

While transporters of waste by for-hire motor carriers are not subject to the general regulation of the Public Utilities Commission, they are regulated to provide for the safety of the motoring public. There are no exemptions for private motor carriers hauling waste and they too are required to follow the Federal Motor Carrier Safety Regulations adopted by the Commission and as provided for in OAC Chapter 4901:2-5.