

# TRI-CITY & OLYMPIA RAILROAD CO, LLC

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## SWITCHING TARIFF 8100 (Supersedes TCRY 8000 and All Supplements to TCRY 8000)

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### RULES, REGULATIONS AND CHARGES GOVERNING SWITCHING AT AND BETWEEN STATIONS ON THE TRI-CITY & OLYMPIA RAILROAD CO, LLC

This tariff is also applicable on intrastate traffic, except where expressly provided to the contrary in connection with particular items.

## SWITCHING AND MISCELLANEOUS TARIFF

ISSUED: August 16, 2007

EFFECTIVE: August 30, 2007

### ISSUED BY

Randolph Peterson, General Manager  
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2579 Stevens Drive  
Richland, WA 99354

(The provisions published herein, if effective, will not result in an effect on the quality of the human environment.)

## **SWITCHING RATES, SERVICES AND CHARGES**

### **APPLICATION**

Switching rates, herein to and from the Interchange Points on all TCRY lines, cover the handling of cars loaded in one direction. If cars are loaded in both directions, regular switching charge per car will be made for each loaded movement in each direction. Non-loaded cars delivered to or from any TCRY line that are received or delivered as a revenue movement by the delivering road or destination road will incur the same switch rate as defined herein.

### **CHARGES-Primary Yard Switching**

Applicable for all Interchanges that occur at any of the TCRY interchanges at Richland Jct. (Station 00200 or 00201) North to primary Richland yard facility (Station 300), as well as to and from the Interchange Point at Olympia, WA (Station 900)(excluding placarded rail cars containing hazardous material):

In the case where railcars are interchanged to TCRY without prior rates authorized or specifically listed below in Part B or Part C, TCRY will provide the switching service and charge the standard TCRY default rate of \$500.00 [NC] on cars with a gross rail load capacity of 285,999 lbs. On cars with a gross rail load capacity exceeding 285,999 lbs. the standard default rate of \$750.00 will apply for all Interchanges occurring at and south of the Richland Yard (Station 300).

In addition to the above switch rates, an additional \$100.00 fee will be assessed on all railcars which exceed 100 feet in length, regardless of rail load capacity.

### **CHARGES-Non-Primary Yard Switching**

For any railcar, interchange service occurring north of the Richland Yard (Station 300) or not at the Olympia Main Yard (Station 900), contact the TCRY prior to shipment and/or delivery for switching charge rates. These switching rates will be provided by TCRY in either letter authority or electronic format.

### **PART B SPECIALTY PRODUCT RATES**

Locomotives placed, spotted or pulled from industries other than TCRY-All Industries South of Station 300 & Station 900 a standard default rate of \$1500.00 per locomotive will apply.

### **PART C HAZARDOUS/RADIOACTIVE MATERIALS RATES**

Switching charges of \$8,000.00 per railcar will apply on all cars placed, spotted, or pulled which contain hazardous materials and/or waste.

Switching charges of \$20,000.00 per railcar will apply on all cars placed, spotted, or pulled which contain radioactive materials and/or waste.

Prior to shipment and/or delivery, contact the TCRY to request switching charge rates on all other rail cars placarded as containing hazardous materials. (See Hazardous Material Addendum Below).

### **ADDITIONAL CHARGES**

The above referenced fees are for switching charges only, and do not include additional fees for demurrage, mileage, fuel surcharges, re-spot fees, storage, or other miscellaneous assessments. Please see the separate tariffs for each of these non-switching charges.

## **Transportation of Hazardous and Radioactive Waste**

1. TCRY shall provide line-haul transportation and switching services over Railroads' lines, of Customer's Waste in shipper or carrier supplied Equipment from Origin(s) to Destination(s) Via Specified Routing as such terms are defined herein.
2. "Waste" or "Chemical Waste" bearing STCC 48-series commodity code identification numbers (herein referred to as "Waste") shall mean:
  - A. All waste defined or characterized as hazardous waste under the Resource Conservation and Recovery Act (RCRA) 42 U.S.C S. 6901 et seq., or the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C S. 9601 et seq., as each may be amended from time to time, and regulations promulgated there under;
  - B. All polychlorinated biphenyl (PCB) or PCB-contaminated waste; and
  - C. All waste defined or characterized as hazardous, chemical, industrial, radioactive, or special waste by either the principal agency of any state of the United States having jurisdiction over hazardous waste transported, or the principal agency of any foreign jurisdiction with respect to hazardous waste generated from outside the United States and transported; PROVIDED, HOWEVER, that the term "Waste" is intended to mean and include those substances which are not normally expected to be disposed of by employing generally accepted sanitary landfill disposal methods. It shall be construed to have the broader, more encompassing definition where there exists a conflict in the definitions employed by two or more governmental agencies having concurrent or overlapping jurisdiction over waste transported. It shall also encompass:
    1. Materials in drums, containers, intermediate bulk containers, bulk bags, or bulk of thorium in the form of sands, tailings, sludges and sediments, or
    2. Materials in the form of inorganic rubble from building removals, or
    3. Materials in the form of site soils and other materials; or
    4. Materials are, at maximum, DOT classifications, "Radioactive Materials" or "Low Specific Activity (LSA)" as defined in 49 C.F.R. Subpart 173.
    5. Radioactive material subject to DOT HMR as a Class 7 material.

## **Liability Provisions**

1. Each bill of lading shall contain all information required by all applicable state and federal laws and regulations governing the transportation of the Waste.
2. No claims will be filed for loss or damage to the Waste or for delay in delivery and TCRY shall not be liable for any damages for waste loss, damage or delay.
3. TCRY shall have no obligation with regard to disposition of Waste tendered to it for transportation other than to deliver it to Customer, or to a landfill operator or other person designated or deemed to have been designated by Customer, at a Destination site.

## **Indemnity**

1. TCRY shall save, indemnify, defend and hold harmless customer and its directors, officers and employees from and against any and all claim, loss, damages (including special and consequential damage or damages caused by sudden accidental pollution), suit, liability and expense arising from Railroad's negligence in the performance of transportation service; provided, however, that such indemnification and hold harmless obligations shall not apply to any claim, loss, damages, suit, liability or expense caused by the sole or concurring negligence of customer.
2. Customer shall save, indemnify, defend and hold harmless TCRY and its directors, officers and employees from and against any and all claim, loss, damages (including special and consequential damages), suit, liability and expense arising from or in any way connected with the transportation, transfer, delivery, treatment, dumping, storage or disposal of waste by customer, or any other act or omission of customer, or of a landfill operator or other person designated by customer to receive, transfer, deliver, treat, dump, store or dispose of waste, including, but not limited to, damages caused by sudden accidental pollution or the containment of waste by hazardous commodities, and any fines, penalties or suits resulting from alleged or actual violation of federal, state or local environmental or other law, statute, ordinance, code or regulation; provided, however, that such indemnification and hold harmless obligations shall not apply to any claim, loss, damages, suit, liability or expense caused by the sole or concurring negligence of TCRY.
3. In particular, but without limiting the foregoing, if customer, knowingly or unknowingly, tenders or ships any non-conforming waste acceptance or tender of waste, customer shall save, indemnify, defend and hold harmless TCRY and its directors, officers and employees from and against any and all claim, loss, damages (including special and consequential damages), suit, liability and expense arising out of the transportation, transfer, delivery, treatment, dumping, storage or disposal of the hazardous waste, including, but not limited to, any and all clean up or decontamination costs, any environmental fines or penalties, and any liability pursuant to section 107(a) and (b) of CERCLA and any amendments thereto, and for any similar liability pursuant to state or local laws which may hold a transporter of waste liable for any release of waste.
4. Further, and without limiting the foregoing, customer shall indemnify and hold TCRY harmless from any and all cost, fine, penalty, claim or other expense incurred by TCRY (including attorneys' fees and other legal or investigative expenses) resulting from any order or directive of any governmental body or agency or any court prohibiting, regulating, restricting or requiring movement of a loaded, or prohibiting, regulating or restricting delivery of the waste at destination or at origin if the waste is returned to origin pursuant to the returned shipments section hereof. Such costs shall include, but are not limited to transportation costs (including applicable charges for any transportation service performed by railroad), dumping, storage, transfer, delivery, treatment or other costs direct and indirect, incurred by railroad in disposing of the waste or incurred as a result of any such order or directive.

## **Indemnification**

1. Upon delivery to receiver/consignee of the waste transported TCRY shall be relieved from any further obligation with regard to its disposition. Customer hereby agrees to indemnify and hold TCRY harmless from and against any and all loss, damage (including special and consequential damages), suits, liability and expenses (including, but not limited to, environmental costs, reasonable investigation and legal expenses) arising out of any claim for loss and damage to property, including, without limitation, Customer's, Railroad's or third party's property, including natural resources and injuries to or death of persons, including, without limitation, Customer's or Railroad's employees, caused by, resulting from or growing out of the acts or omissions of Customer, its agent(s), contractor(s) or employees, or for any equipment provided to TCRY for transportation of waste hereunder, which includes, but is not limited to, damages caused by sudden pollution and shall, at the option of Railroad, defend Railroad at Customer's sole expense in any litigation involving same.
2. THE INDEMNIFICATION SHALL APPLY EVEN IF TCRY IS ACCUSED OR ALLEGED TO HAVE CAUSED INJURY THROUGH ITS OWN NEGLIGENCE, NEGLIGENCE PER SE, OR STRICT LIABILITY.

## **Loading/Unloading Hazardous Shipments**

1. Customer shall have the sole responsibility, at its sole expense, for properly packaging, labeling, marking, blocking, bracing, placarding, loading and unloading the waste into or out of equipment to be transported. Customer shall comply with the loading rules of the Association of American Railroads and applicable federal and state loading rules or other loading rules as modified to meet the needs of customer subject to approval of TCRY, as well as applicable federal and state requirements regarding the handling of the Waste.
2. Customer shall further be responsible for insuring that the load limits of any equipment used for transporting the waste are not exceeded. In the event it is discovered that equipment has been overloaded, TCRY may set out such equipment at a location convenient to TCRY and notify the customer by telephone, confirmed in writing, of the location of the overloaded equipment. TCRY may either (1) contact Customer in which event Customer shall have 48 hours to remove excess weight; or (2) move the overloaded equipment back to origin for removal of the excess weight. In any event, the customer shall be responsible for performing and bearing all costs for movement of the overloaded railcar and removal of excess weight or for replacing or repairing and covering material while shipment is being transported by TCRY. TCRY will move the affected equipment to destination in such manner and time as is practicable after TCRY receives notice from the customer that excess weight has been properly removed.
3. Customer shall have the sole responsibility, at its sole expense, to ensure that loaded equipment to be transported pursuant is securely covered with a tarp or hard cover, as appropriate, such that it is able to withstand the dynamics and forces associated with rail shipments that will prevent Waste from being released into the environment.

ADDITIONALLY, CUSTOMER ASSUMES ALL LIABILITY FOR ENSURING:

ALL MEASUREABLE WASTE RESIDUES IS REMOVED FROM THE EQUIPMENT IN COMPLIANCE WITH THE REQUIREMENTS FOR CONTAMINATION CONTROL DESCRIBED IN 49 CFR 173.443 PRIOR TO RELEASE OF SAID EQUIPMENT TO TCRY AND TO ENSURE SAID EQUIPMENT IS SECURELY TARPED/COVERED TO PREVENT ANY WASTE RESIDUE REMAINING IN THE EQUIPMENT FROM BEING RELEASED INTO THE ENVIRONMENT DURING THE RETURN EMPTY MOVEMENT.

4. In the event TCRY determines that equipment does not comply with the above requirements, TCRY will immediately notify the customer of the existing condition. The customer shall be responsible for performing and bearing all costs for movement of any railcar(s) requiring repair, replacement or installation of any tarp material or hard cover, or that requires additional unloading to remove excess waste residue from an un-tarped/covered railcar. TCRY will move the affected equipment to destination in such manner and time as is practicable after TCRY receives notice from the customer that repair, replacement, installation of tarp or hard cover is complete. TCRY assumes no liability for covering tarp material or hard covers.

#### **Documentation of Waste**

Waste transported shall be accurately described by the customer. Such waste shall be accompanied by all required shipping documents and shall be properly marked, labeled and placarded as required by applicable federal, state and local laws and regulations. Such waste shall also be accompanied by hazardous waste manifests as required by applicable federal, state and local laws and regulations. In particular, but without limiting the generality of the foregoing, the following federal hazardous wastes manifest recordkeeping and reporting obligations shall apply:

1. 40 C.F.R. Part 262 Subparts B and D;
2. 40 C.F.R. Part 263 Subpart B3;
3. 40 C.F.R. Part 264 Subpart E or Part 265 Subpart E;
4. 49 C.F.R. S. 172.205,
5. 49 C.F.R. Part 174,
6. With regard to polychlorinated biphenyls: (PCBs), C.F.R. Part 761.

In addition to manifests and other documentations, Customer shall, upon TCRY's request, provide TCRY with accurate and descriptive chemical and physical data on the character of the waste to be transported, prior to actual shipment.

#### **Storage of Customer's Waste**

Customer understands, acknowledges, and agrees that TCRY will not store any shipment of waste on its property. It is further understood that TCRY is not in the business of storing waste on its property and does not have EPA or state waste permits allowing it to do so.

TCRY shall have no obligation with regard to disposition of Waste tendered to it for transportation other than to deliver it to customer, or to a landfill operator or other person designated or deemed to have been designated by customer, at a destination site.