



STATE OF WASHINGTON

UTILITIES AND TRANSPORTATION COMMISSION

1300 S. Evergreen Park Dr. S.W., P.O. Box 47250 • Olympia, Washington 98504-7250

(360) 664-1160 • [www.utc.wa.gov](http://www.utc.wa.gov)

June 9, 2014

Steven V. King, Executive Director and Secretary  
Utilities and Transportation Commission  
1300 S. Evergreen Park Dr. SW  
P.O. Box 47250  
Olympia, WA 98504-7250

RE: *Washington Utilities and Transportation Commission v. Jeffery K. Cummins*

Commission Staff's Response to Application for Mitigation of Penalties TG-141009

Dear Mr. King:

On May 22, 2014, the Utilities and Transportation Commission issued a \$1,000 Penalty Assessment in Docket TG-141009 against Jeffery K. Cummins for 10 violations of Washington Administrative Code (WAC) 480-70-071, which requires solid waste companies to furnish annual reports to the commission no later than May 1 each year.<sup>1</sup>

On June 2, 2014, Jeffery K. Cummins wrote the commission requesting mitigation of penalties (Mitigation Request).<sup>2</sup> In its Mitigation Request, Jeffery K. Cummins does not dispute that the violation occurred. The company states, "The penalty does not match the offence: If I charged my customers a 270% per day late fee, that rate would never be allowed. I see a double standard. To whom do I complain about this policy?"

It is the company's responsibility to ensure that the regulatory fee is paid and the annual report is filed by the May 1 deadline. On February 28, 2014, Annual Report packets were mailed to all regulated solid waste companies. The instructions for annual report completion page of the annual report informed the regulated company that it must complete the annual report form, pay the regulatory fees, and return the materials by May 1, 2014, to avoid enforcement action.

<sup>1</sup>See attachment A for a copy of the penalty assessment sent on May 22, 2014

<sup>2</sup>See attachment B for a copy of Jeffery K. Cummins' Mitigation Request received on June 2, 2014

On May 15, 2014, Jeffery K. Cummins filed the 2013 annual report and paid the required regulatory fees. Jeffery K. Cummins has not previously missed the deadline for filing its annual report and paying its regulatory fees. Despite the company not presenting any new or compelling information, commission staff supports the company's request for mitigation solely based on the companies past filing history. Staff recommends a reduced penalty assessment of \$25 per day for a total assessed penalty of \$250.

If you have any questions regarding this recommendation, please contact Amy Andrews, Regulatory Analyst, at (360) 664-1157, or [aandrews@utc.wa.gov](mailto:aandrews@utc.wa.gov).

Sincerely,

*Handwritten signature: Sandy S Lal on behalf of Sondra Walsh*

Sondra Walsh, Director  
Administrative Services

<sup>1</sup>See attachment A for a copy of the penalty assessment sent on May 22, 2014

<sup>2</sup>See attachment B for a copy of Jeffery K. Cummins' Mitigation Request received on June 2, 2014

ATTACHMENT A

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

NOTICE OF PENALTIES INCURRED AND DUE  
FOR VIOLATIONS OF LAWS AND RULES

PENALTY ASSESSMENT: TG-141009  
PENALTY AMOUNT: \$1,000

Cummins, Jeffery K.  
157 Black Bird Lane  
Chehalis, WA 98532

According to Washington Utilities and Transportation Commission (Commission) records, you have violated Washington Administrative Code (WAC) 480-70-071, which requires solid waste companies to file their annual report and pay regulatory fees each year by May 1. You did not file an annual report or pay regulatory fees by May 1, 2014.

Revised Code of Washington (RCW) 81.04.080 authorizes the Commission to assess penalties of \$100 for violations of Commission rules. Each violation is a separate and distinct offense and, in the case of a continuing violation, every day's continuance is a separate and distinct violation. The Commission interprets noncompliance with WAC 480-70-071 beyond May 1 as a continuing violation, and assesses penalties of \$100 for each day a company fails to file its report or pay its regulatory fees after that date.

As a result, the Commission has assessed penalties against you in the amount of \$1,000 on the following basis:

On February 28, 2014, the Commission mailed the 2013 annual report forms and the 2014 regulatory fee packets to all solid waste companies registered in Washington. The instructions page for the annual report form instructed these companies to file annual reports and pay regulatory fees by May 1, 2014. The instructions page also stated that failure to file the annual report by May 1 would result in penalties. The deadline for requesting an extension to file your annual report was April 17. You did not request an extension.

As of May 15, 2014, Jeffery K. Cummins has not filed its 2013 annual report or paid its 2014 regulatory fee. May 15 is 10 business days from May 1, resulting in a total penalty of \$1,000.

Your penalty is due and payable now. If you believe the violation did not occur, you may request a hearing to contest the penalty assessment. The Commission will grant that request only if material issues of law or fact require consideration of evidence and resolution in a hearing. A request for a hearing must include a written statement of the reasons supporting that request.

<sup>1</sup>See attachment A for a copy of the penalty assessment sent on May 22, 2014

<sup>2</sup>See attachment B for a copy of Jeffery K. Cummins' Mitigation Request received on June 2, 2014



Failure to provide such a statement will result in denial of the request. If there is a reason for the violation that you think should excuse or reduce the penalty, you may ask for mitigation (reduction) of this penalty through evidence presented at a hearing or in writing. A request for mitigation must include a written statement of the reasons supporting that request. Failure to provide such a statement will result in denial of the request. See RCW81.04.405.

If you properly present your request for a hearing and the Commission grants that request, the Commission will review the evidence supporting your dispute of the violation or application for mitigation in a Brief Adjudicative Proceeding, before an administrative law judge. The administrative law judge will consider the evidence and will notify you of his or her decision.

**You must act within 15 days after receiving this notice to do one of the following:**

- Pay the amount due.
- Request a hearing to contest the occurrence of the violations.
- Request mitigation to contest the amount of the penalty.

Please indicate your selection on the enclosed form and send it to the Washington Utilities and Transportation Commission, Post Office Box 47250, Olympia, Washington 98504-7250, within **FIFTEEN (15) days** after you receive this notice.

**If you do not act within 15 days**, the Commission may refer this matter to the Office of the Attorney General for collection, which may file suit in state court to collect the penalty. The Commission may also initiate proceedings under WAC 480-70-071 to cancel your certificate to operate as a solid waste company in Washington.

DATED at Olympia, Washington, and effective May 22, 2014.

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GREGORY J. KOPTA  
Administrative Law Judge

<sup>1</sup>See attachment A for a copy of the penalty assessment sent on May 22, 2014

<sup>2</sup>See attachment B for a copy of Jeffery K. Cummins' Mitigation Request received on June 2, 2014

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

PENALTY ASSESSMENT TG-141009

**PLEASE NOTE:** You must complete and sign this document, and send it to the Commission within 15 days after you receive the penalty assessment. Use additional paper if needed.

I have read and understand RCW 9A.72.020 (printed below), which states that making false statements under oath is a class B felony. I am over the age of 18, am competent to testify to the matters set forth below and I have personal knowledge of those matters. I hereby make, under oath, the following statements.

1. **Payment of penalty.** I admit that the violations occurred. I have:
- Enclosed \$ \_\_\_\_\_ in payment of the penalty
  - Submitted my payment of \$ \_\_\_\_\_ online at [www.utc.wa.gov](http://www.utc.wa.gov). My confirmation number is \_\_\_\_\_.
2. **Request for a hearing.** I believe that one or more of the alleged violations did not occur, for the reasons I describe below, and I request a hearing based on those reasons for a decision by an administrative law judge:
3. **Application for mitigation.** I admit the violations, but I believe that the penalty should be reduced for the reasons set out below:
- a) I ask for a hearing to present evidence on the information I provide above to an administrative law judge for a decision
  - OR  b) I ask for a Commission decision based solely on the information I provide above.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing, including information I have presented on any attachments, is true and correct.

Dated: \_\_\_\_\_ [month/day/year], at \_\_\_\_\_ [city, state]

\_\_\_\_\_  
Name of Respondent (company) – please print

\_\_\_\_\_  
Signature of Applicant

RCW 9A.72.020:

"Perjury in the first degree. (1) A person is guilty of perjury in the first degree if in any official proceeding he makes a materially false statement which he knows to be false under an oath required or authorized by law. (2) Knowledge of the materiality of the statement is not an element of this crime, and the actor's mistaken belief that his statement was not material is not a defense to a prosecution under this section. (3) Perjury in the first degree is a class B felony."

<sup>1</sup>See attachment A for a copy of the penalty assessment sent on May 22, 2014

<sup>2</sup>See attachment B for a copy of Jeffery K. Cummins' Mitigation Request received on June 2, 2014



ATTACHMENT B

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

PENALTY ASSESSMENT TG-141009

2014 JUN -2 AM 8:29

PLEASE NOTE: You must complete and sign this document, and send it to the Commission within 15 days after you receive the penalty assessment. Use additional paper if needed.

I have read and understand RCW 9A.72.020 (printed below), which states that making false statements under oath is a class B felony. I am over the age of 18, am competent to testify to the matters set forth below and I have personal knowledge of those matters. I hereby make, under oath, the following statements.

[ ] 1. Payment of penalty. I admit that the violations occurred. I have:

[ ] Enclosed \$ \_\_\_\_\_ in payment of the penalty

[ ] Submitted my payment of \$ \_\_\_\_\_ online at www.utc.wa.gov. My confirmation number is \_\_\_\_\_.

[ ] 2. Request for a hearing. I believe that one or more of the alleged violations did not occur, for the reasons I describe below, and I request a hearing based on those reasons for a decision by an administrative law judge:

X 3. Application for mitigation. I admit the violations, but I believe that the penalty should be reduced for the reasons set out below: *The offence: IF I charged my customers a 270% Per Day Late Fee, That Rate would never be allowed. I see a Double standard.*

[ ] a) I ask for a hearing to present evidence on the information I provide above to an administrative law judge for a decision

OR X b) I ask for a Commission decision based solely on the information I provide above.

*To whom do I complain about this Policy?*

I declare under penalty of perjury under the laws of the State of Washington that the foregoing, including information I have presented on any attachments, is true and correct.

Dated: 5/28/14 [month/day/year], at Chehalis, WA [city, state]

Community Waste & Recycling  
Name of Respondent (company) - please print

[Signature]  
Signature of Applicant

RCW 9A.72.020:

"Perjury in the first degree. (1) A person is guilty of perjury in the first degree if in any official proceeding he makes a materially false statement which he knows to be false under an oath required or authorized by law. (2) Knowledge of the materiality of the statement is not an element of this crime, and the actor's mistaken belief that his statement was not material is not a defense to a prosecution under this section. (3) Perjury in the first degree is a class B felony."

<sup>1</sup>See attachment A for a copy of the penalty assessment sent on May 22, 2014

<sup>2</sup>See attachment B for a copy of Jeffery K. Cummins' Mitigation Request received on June 2, 2014