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July 25, 2019

VIA E-MAIL ONLY

Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, WA 98504-7250

VIA Web Portal

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UTIL. AND TRANSP.
COMMISSION

**RE: Waste Management of Washington, Inc. (Certificate G-237)
Response to Penalty Assessment TG-190495**

Dear Sir or Madam:

Enclosed please find Waste Management of Washington, Inc.’s (“WMW”) Response to the above-referenced Penalty Assessment. Please note that WMW is (1) contesting 253 of the 271 alleged violations of 40 CFR § 391.45(a), and (2) requesting mitigation of the proposed penalties assessed for all violations of 49 CFR §§ 383.37, 391.45(a), and 396.3(a)(1).

Insofar as WMW is both contesting certain violations and seeking mitigation of others, WMW is checking both items 2 and 3 on the WUTC form.

Sincerely,

Imaged signature.

Andrew M. Kenefick

Attachments

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TG-190495

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 and enclose \$47,700 in payment of the penalty.

2. **Contest the violation(s).** I believe that the alleged violation(s) did not occur for the reasons I describe below **(if you do not include reasons supporting your contest here, your request will be denied):**

Please see enclosed letter from Jason S. Rose, President, Waste Management of Washington, Inc.

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.

3. **Application for mitigation.** I admit the violations, but I believe that the penalty should be reduced for the reasons set out below **(if you do not include reasons supporting your application here, your request will be denied):**

Please see enclosed letter from Jason S. Rose, President, Waste Management of Washington, Inc.

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: July 25, 2019 [month/day/year], at Kirkland, WA [city, state]

Waste Management of Washington, Inc.
Name of Respondent (company) – please print



Signature of Applicant
Andrew M. Kenefick, Senior Legal Counsel



720 Fourth Avenue, Suite 400
Kirkland, WA 98033
(425) 823-6164

Jason S. Rose

Area Vice President

July 25, 2019

VIA E-MAIL ONLY

Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, WA 98504-7250

VIA Web Portal

**RE: Waste Management of Washington, Inc. (Certificate G-237)
Response to Penalty Assessment TG-190495**

Dear Sirs:

The Washington Utilities and Transportation Commission (“Commission”) conducted a Safety Investigation on June 11, 2019 of Waste Management of Washington, Inc.’s (“WMW” or the “Company”) operations. The Safety Investigation resulted in a proposed safety rating of “Satisfactory.” On July 10, 2019, WMW received the *Notice of Penalties Incurred and Due for Violations of Laws and Rules* (“Notice of Penalties”) from the Commission. The Notice of Penalties alleged the following four violations (hereinafter “Counts”), listed the numbers of days or instances when each of the alleged violations occurred, and assigned a penalty to each:

- Count 1 – Driving with Downgraded CDL (\$19,900)
 - Count 2 – Driving without Medical Certificate (\$27,400)
 - Count 3 – Incomplete Driver Qualification Files (\$0)
 - Count 4 – Vehicle Maintenance (\$400)
- Total Proposed Penalty: \$47,700

As discussed in detail below, WMW contests some violations, admits others, and requests mitigation of penalties. Specifically, WMW does not contest the violations alleged in Counts 1 and 4, but requests mitigation of the penalties assessed. With respect to Count 2, WMW disputes 253 of the violations alleged; WMW does not contest the remaining 21 violations, but requests mitigation of the proposed penalties. As the Commission has not assessed a penalty for Count 3, WMW neither disputes it nor seeks mitigation.

WMW takes our driver and vehicle safety responsibilities extremely seriously. The Company’s current Safety Measurement Systems (“SMS”) scores as of July 10, 2019 are: (1) Unsafe Driving – 6%; (2) Hours-of-Service Compliance – 0.0%; (3) Driver Fitness – 0.9%; (4) Controlled Substance and Alcohol – (no violations within one year); (5) Vehicle Maintenance – 50%; (6) Hazardous Materials – N/A; and (7) Crash Indicator –13%. In addition to these SMS scores, WMW has an accident rate of 0.38 accidents per million miles.

In response to the identified violations and as demonstrated by WMW's extensive corrective action set forth in attached **Exhibit 1**, WMW has corrected all alleged violations and implemented additional processes to prevent recurrence. Additionally, as noted in the Notice of Penalties, WMW does not have a history of safety violations. As demonstrated by the Company's SMS scores and low accident rate, WMW's drivers are professional and well-trained, and the Company maintains a focused and strong commitment to safety. WMW submits that with enhanced processes surrounding driver qualifications and counselling from its experienced corporate safety department, WMW's already strong safety culture will be further strengthened.

A. Corrective Action.

WMW is requesting mitigation of the penalties assessed for three of the four Counts based on its development and prompt implementation of an aggressive Safety Management Plan (the "Plan"), a copy of which is attached hereto as **Exhibit 1**, that corrects the violations identified and should help to ensure on-going compliance with the Federal Motor Carrier Safety Regulations ("FMCSRs") and Washington's corresponding requirements. In light of the proposed "Satisfactory" rating and the Counts identified in the Notice of Penalties, WMW acknowledges that this Plan is not required. Nonetheless, WMW has prepared the Plan to demonstrate its commitment to compliance with the FMCSRs and the Commission's transportation safety standards.

B. Specific Violations Contested and Mitigation Requested.

In accordance with the Notice of Penalties, WMW is contesting certain violations, is not contesting others, and requests mitigation of all penalty amounts based on the factors under the Commission's *Enforcement Policy*, WUTC Docket No. A-120061 (Jan. 4, 2013) (the "Enforcement Policy"), in particular, the prompt and aggressive corrective actions taken. The following sections address each of the four Counts, with Count 2 divided into two subparts – *i.e.*, those violations being contested and those violations for which only mitigation is being requested.

1. Count 1 (Request for Mitigation – 49 CFR § 383.37(a) – Driving with Downgraded CDL.

WMW does not contest this violation but requests that the Commission mitigate the penalty based on WMW's prompt and aggressive corrective action, including its Safety Management Plan (**Exhibit 1**).

Description of Breakdown in Safety Management Controls: Between November 11, 2018 and March 25, 2019, WMW driver Troupe drove on 73 occasions with a downgraded CDL. While Mr. Troupe possessed a valid medical card and medical certification during the time period at issue, Mr. Troupe failed to update the State of Washington with his updated medical card received on September 20, 2018 with an expiration date of September 20, 2020. Similarly, between September 14, 2018 and March 25, 2019, WMW driver Penhollow drove with a downgraded CDL on 126 occasions. Mr. Penhollow also possessed a valid medical card and medical certification during the time period at issue, Mr. Penhollow failed to update the State of Washington with his updated medical card received on August 30, 2018 with an expiration date of August 30, 2020. In both cases, however, the driver had a valid medical card, but had failed to update his record with the State of Washington.

Without intentionally doing so, WMW permitted these drivers to operate CMVs with downgraded CDLs. The root cause of this failure was the absence of a formal process by which WMW

would ensure that no active drivers are allowed to perform safety-sensitive functions during any time in which their CDL is downgraded. Prior to the investigation, the Company notified drivers of medical card expiration dates, but did not ensure these medical cards were obtained with sufficient time to be updated by the State of Washington and avoid any potential downgrade of a driver's CDL.

WMW has implemented corrective actions designed to prevent recurrence, as described in **Exhibit 1**. In particular, WMW is working on a process with its vendor to manage all driver qualification items, to assume the tracking responsibilities of medical card expirations, and to ensure the appropriate reporting of these results to avoid any future downgraded CDLs. WMW is also providing focused training to its operations employees regarding compliant driver qualification standards. WMW believes that these action steps will prevent recurrence and represent an effective and prompt response to this Count and warrant significant penalty mitigation. Furthermore, insofar as these violations were the result of a failure to update records – rather than a lack of a valid medical card altogether – they should not be considered violations that were “serious or harmful to the public” for purposes of assessing penalties under the Enforcement Policy.

2. Count 2 (Contested) – 49 CFR § 391.45(a) – Using a driver not medically examined and certified.

WMW contests 253 of the 274 violations alleged in Count 2 because the Commission's driver medical certificate requirements do not apply to drivers operating vehicles that are not used for “the purpose of transporting solid waste, for the collection or disposal, or both.” WAC 480-70-201 requires all regulated solid waste collection companies to ensure that their “vehicles” comply with all state and local laws governing vehicle and driver safety and with certain enumerated federal regulations governing “vehicle” safety. The statute and regulations specifically restrict the definition of “vehicles” and “motor vehicles” to those vehicles that are used for the purpose of transporting solid waste:

“Motor vehicle” means any truck, trailer, semitrailer, tractor, or any self-propelled or motor driven vehicle used upon any public highway of this state **for the purpose of transporting solid waste, for the collection or disposal, or both**, of solid waste. RCW 81.77.010(1); WAC 480-70-041 (emphasis added).

“Vehicle” means every device capable of being moved upon a public highway and in, upon, or **by which any solid waste is or may be transported or drawn upon a public highway**, except devices moved by human or animal power or used exclusively upon stationary rail or tracks. RCW 81.77.010(6); WAC 480-70-04 (emphasis added).

Thus, by definition, the only vehicles subject to Chapter 81.77 RCW are those vehicles that are used for transporting solid waste. Vehicles not used for transporting solid waste are not included, nor are those persons who operate such vehicles.

Three of the drivers cited in the Penalty Notice (Garcia, Petereit, and Phillips) were driving container delivery vehicles – *i.e.*, commercial motor vehicles with a gross vehicle weight rating (GVWR) between 10,001 and 26,000 pounds.¹ that carried only empty containers to or from customers.²

¹ See **Exhibit 2** for pictures of these vehicles

² See **Exhibit 3** for pictures of empty containers.

For example, if a customer wants to change its collection service from a 35-gallon container to 90-gallon container, a WMW driver will deliver the larger container to the customer and retrieve the smaller container. Because each of the container delivery vehicles was not transporting solid waste, it was not a “motor vehicle” within the definition of RCW 81.77.010(1) and (6). As such, the Commission’s transportation safety requirements would not apply.

Although the Commission’s transportation safety requirements do not apply to these container delivery vehicles, the Washington State Patrol’s (WSP) regulations do. The WSP has adopted by reference most of the federal regulations governing motor carriers used in intrastate or interstate commerce. WAC 446-65-010(1) (“The Washington state patrol hereby adopts the following parts of Title 49 Code of Federal Regulations (C.F.R.), as they exist on October 1, 2017, for motor carriers used in intrastate or interstate commerce in their entirety”). Notably, however, and unlike the Commission, the WSP expressly did not adopt certain federal regulations governing the qualifications of drivers operating vehicles, such as WMW’s container delivery vehicles with GVWRs between 10,001 and 26,000 pounds, including Subpart E:

... 49 C.F.R. 391 subpart D (Tests), and **E (Physical Qualifications and Examinations)** **do not apply** to motor carriers operating vehicles with gross vehicle weight rating between 10,001 lbs. and 26,000 lbs. operating intrastate, and not used to transport hazardous materials in a quantity requiring placarding.

WAC 446-65-010(1)(r) (emphasis added).

Subpart E includes 40 CFR § 391.4(a) – the federal regulation that the Commission alleges WMW violated because its container delivery drivers had driven without having been medically examined and certified. Moreover, prior to the Safety Investigation, WMW had contacted the WSP and was informed that Washington State does not require medical cards for drivers of vehicles within the 10,001 to 26,000-pound GVWR range. WMW justifiably relied on the advice of the WSP that these drivers did not require medical cards.³

Based on a straightforward reading of applicable regulations, WMW believes the Commission improperly cited 253 instances under Count 2 for these three drivers. These 253 instances of alleged violations should be withdrawn, and the proposed penalty reduced by \$25,300 (*i.e.*, 253 violations x \$100/violation).⁴

³ Although WMW contests this violation and believes these 253 instances should be removed, in the interim and until the Commission makes its decision, WMW directed these three drivers to be examined and medically certified. WMW understands that the Commission can verify the current status of these medical cards through the Department of Licensing online databases. For privacy reasons, WMW is not providing copies of the relevant medical cards, but can do so if requested by the Commission.

⁴ In the event the Commission does not withdraw the 253 violations, WMW requests mitigation of the penalties assessed for these violations. Given that the WSP does not require medical cards for drivers of these kinds of vehicles, the lack of a medical card for the container delivery drivers should not be considered “serious or harmful to the public” under the Enforcement Policy.

3. Count 2 (Request for Mitigation) – 49 CFR § 391.45(a) – Using a driver not medically examined and certified.

Except for the 253 violations addressed above in Section 2, WMW does not contest the remaining 21 violations alleged in Count 2. WMW has thoroughly investigated these violations, does not contest them, and requests that the Commission mitigate the penalty downward based on the prompt and aggressive corrective action WMW has undertaken, which is described in attached **Exhibit 1**.

Description of Breakdown in Safety Management Controls: Between March 1, 2019 and March 25, 2019, WMW drivers Crandall, Ellington, and Hutchinson operated CMVs exceeding 26,000 pounds GVWR with an expired medical card on 21 different occasions. This failure resulted because of a lack of a formal process within our safety management controls to ensure that medical card expirations are tracked and managed in a timely and accurate manner. Corrective actions designed to prevent further occurrences of this violation are set forth in attached **Exhibit 1**.

4. Count 3 (Not Contested; No Mitigation Requested) – 49 CFR §391.51(b)(2) – Incomplete Driver Qualification Files (\$0)

WMW admits this violation and does not request mitigation as there was no penalty assessed. However, WMW wants to assure the Commission that this violation has been corrected as demonstrated in the corrective action for Counts 1 and 2 above. WMW can provide the Commission additional information on corrective action taken if requested.

5. Count 4 (Request for Mitigation) – 49 CFR § 396.3(a)(1) – Vehicle Maintenance

Description of Breakdown in Safety Management Controls: During four separate inspections, WMW's CMVs were placed out-of-service as the result of vehicles not being in safe and proper operating condition. One vehicle was placed out of service as a result of the left tire on axle one contacting the drag link when turning right. Three additional vehicles were placed out of service as a result of 20% or more of the vehicles' service brakes in a defective condition. WMW recognizes the breakdown in safety management controls that lead to non-compliant condition of these vehicles. The root cause of this failure was the absence of proper pre-trip inspections being conducted by drivers.

Corrective Action: WMW has communicated with maintenance personnel on these issues. Maintenance personnel will closely monitor these types of mechanical issues. Additionally, all drivers will receive communication in proper pre and post trip inspections to identify these types of issues and ensure they are corrected prior to using the vehicle.

C. Conclusion

WMW takes very seriously all safety-related violations and continuously seeks to ensure that all of its operations comply with local, Washington State, and federal transportation safety requirements. In response to the violations identified through the Commission's Safety Investigation, WMW has implemented improvements in its safety program to correct the problems identified and ensure that they will not be repeated. WMW believes that it has taken aggressive, prompt, and effective corrective actions that merit significant penalty mitigation.

Notwithstanding WMW's recognition of the necessary improvements to its transportation safety program, the Company does not agree with the majority of the violations alleged under Count 2 and

requests that the Commission withdraw the 253 violations relating to those vehicles that were not operating on public highways “for the purpose of transporting solid waste for the collection or disposal.”

In summary, WMW is requesting the following:

- Count 1 – Driving with Downgraded CDL (\$19,900)
 - Mitigate penalty downward.
- Count 2 – Driving without Medical Certificate (\$27,400)
 - Withdraw 253 violations/reduce penalty by \$25,300, and
 - Mitigate remaining penalty downward on 21 violations.
- Count 3 – Incomplete Driver Qualification Files (\$0)
 - No mitigation requested.
- Count 4 – Vehicle Maintenance (\$400)
 - Mitigate penalty downward.

In summary, WMW believes that the proposed penalty, before mitigation, should be no more than \$22,400, but should be mitigated further based on the factors to be considered under the Commission’s Enforcement Policy. In addition to the corrective actions taken, none of the violations presented a serious or harmful risk to the public, none were intentional, the Company was very cooperative and responsive, programs have been implemented to prevent recurrence, and the Company has a strong safety record and compliance program. All of these factors warrant significant mitigation of the penalties assessed.

Thank you for your consideration of this letter and the attached exhibits.

Sincerely,

WASTE MANAGEMENT OF WASHINGTON, INC.



Jason S. Rose, President

Exhibits 1-3



**Waste Management of Washington, Inc.
Safety Management Plan
July 25, 2019**

This Safety Management Plan (the “Plan”) is submitted in support of Waste Management of Washington’s (“WMW” or the “Company”) response to the *Notice of Penalties Incurred and Due for Violations of Laws and Rules* from the Washington Utilities and Transportation Commission received on July 10, 2019.

The Company has carefully reviewed its Driver Qualification processes and had implemented enhanced processes and controls to achieve increased compliance with federal, state and local laws.

1. WMW plans to have its third-party vendor track medical card expirations and to ensure the appropriate reporting to avoid any future downgraded CDLs. In doing so, WMW will be able to avoid the downgrading of driver CDLs in the future.
 2. Additionally, WMW will require that drivers obtain their medical cards at least 30 days prior to expiration. By requiring that drivers obtain updated medical cards at least 30 days prior to their expiration, the state will have updated the renewed medical cards in time to ensure no downgrade to driver CDLs occurs. In the time prior to WMW’s vendor providing notifications of medical card expirations as well as thereafter, a dedicated Operations Specialist will run a weekly report identifying all medical card expirations to occur within the next 90 days and will notify all District Managers of these results. The District Managers will then notify drivers and instruct that medical cards must be obtained at least 30 days prior to the expiration of the medical card. If the driver does not obtain an updated medical card within at least 10 days prior to its expiration, that driver will be prevented from performing safety-sensitive functions until the updated medical card is obtained. Once the Operations Specialist receives the copy of an updated medical card, this individual is responsible for sending it to the state agency.
 3. Recent communication went to Company leadership detailing enhanced DOT compliance initiatives by hauling district (site). A DOT compliance team has been established to focus on those districts where the impact will be the greatest.
- Each District has identified one “go-to” person responsible for DOT compliance concerns, questions and training:
 - This role will be an additional key contact for compliance communication with Waste Management’s Corporate DOT Compliance Team.
 - Those individuals identified as responsible for DOT compliance will receive in-depth DOT compliance training from the DOT Compliance Team.
 - A directive was announced that site level responsibility for DOT compliance must be followed:

- The DOT Compliance Team will provide monthly training for new managers, Operations Specialists, and others who have responsibility for DOT compliance,
- The DOT Compliance Team is currently providing immediate retraining (by webcast) for all Company safety and operations personnel (District Managers, Route Managers, and Operations Specialists) on the Annual MVR Review and Medical Certificate MVR process. Thirty training sessions are scheduled for August 8 and 14, 2019.
- Any district struggling with compliance will be provided additional focused training.
- Compliance results will be communicated with greater frequency:
 - Corporate Security will increase and streamline its compliance reports from a specific “DOT Alert” email box and escalate communications to the Area Vice President, Area Safety Director, and Area Human Resources Director to help achieve greater compliance.
 - Going forward, Area leadership can expect periodic updates on compliance status/ progress, training and vendor implementation, etc.
 - The Company will work to build an appropriate escalation process to ensure any items not handled in a timely manner are escalated up the chain to ensure compliance.

With these new procedures in place, WMW submits that it has demonstrated sufficient corrective action in this area. When the vendor assumes additional DOT compliance functions, the Company’s compliance processes will be even further enhanced.

EXHIBIT 2



EXHIBIT 3

