



STATE OF WASHINGTON

UTILITIES AND TRANSPORTATION COMMISSION

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February 8, 2018

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

RE: *Washington Utilities and Transportation Commission v. Rubatino Refuse Removal, Inc.*
Commission Staff's Response to Application for Mitigation of Penalties
Docket TG-171220

Dear Mr. King:

On January 4, 2018, Motor Carrier Safety Investigator Wayne Gilbert conducted a routine safety investigation of Rubatino Refuse Removal, Inc. (Rubatino or Company). A safety investigation is an in-depth examination of the motor carrier's compliance with regulations that the FMCSA has identified as "acute" or "critical."¹ Acute regulations are identified where non-compliance is so severe as to require immediate corrective action regardless of the overall safety posture of the motor carrier. Violations of critical regulations are generally indicative of breakdowns in a carrier's management controls.

Non-compliance with acute regulations and patterns of non-compliance with critical regulations are quantitatively linked to inadequate safety management controls and unusually higher than average accident rates.² Mr. Gilbert documented six violations of critical regulations, all of which were first-time violations, resulting in a satisfactory safety rating.

The Washington Utilities and Transportation Commission's (Commission) Enforcement Policy provides that some requirements are so essential to safe operations that the Commission may issue penalties for a first-time violation, even if Commission Staff (Staff) has not previously provided technical assistance on specific issues. The Commission will assess penalties for any repeat violations of critical regulations, including for each occurrence of a repeat violation.³

Revised Code of Washington (RCW) 81.04.405 allows penalties of one hundred dollars for each violation of Title 49 CFR Parts 382 and 393. RCW 81.04.530 allows penalties of five hundred dollars for each violation of motor vehicle driver controlled substance and alcohol testing requirements. In

¹ Code of Federal Regulations, Appendix B to Part 385—Explanation of safety rating process

² *Id.*

³ Docket A-120061 – Enforcement Policy of the Washington Utilities & Transportation Commission – Section V.

the case of an ongoing violation, every day's continuance is considered a separate and distinct violation.

On January 16, 2018, the Commission issued a penalty assessment under Docket TG-171220 against Rubatino in the amount of \$700 for six critical violations of Washington Administrative Code (WAC) 480-70-201 Vehicle and Driver Safety Requirements, which requires solid waste carriers to comply with Title 49 Code of Federal Regulations (CFR) Part 382 – Controlled Substances and Alcohol Use and Testing, and CFR Part 393 – Parts and Accessories Necessary For Safe Operation, as follows:

- **One violation of Title 49 CFR Part 382.301(a) – Using a driver before the motor carrier has received a negative pre-employment controlled substance test result.** Rubatino used Michael Rairdin as a driver prior to receiving a negative pre-employment control substance test result. Mr. Rairdin drove on August 7, 2017, but the Company did not receive a negative pre-employment controlled substance test result until August 11, 2017.
- **Four violations of Title 49 CFR Part 382.305(b)(1) – Failing to conduct random alcohol testing at an annual rate of not less than the applicable annual rate of the average number of driver positions.** Rubatino failed to conduct at least four random alcohol tests required to meet the standard of testing ten percent of the average number of driver positions for the calendar year.
- **One violation of Title 49 CFR Part 393.209(d) – Worn steering system components.** Commission staff discovered one commercial motor vehicle with worn steering system components. Staff placed this vehicle out-of-service.

On February 2, 2018, Rubatino filed with the Commission its application for mitigation of penalties. In its application, Ed Rubatino, president of Rubatino, admitted the violations but failed to provide any explanation or supporting documentation of the corrective action steps taken by the Company. Instead, Mr. Rubatino asked for “a reduction similar to that granted to Mr. Wolford when fined for illegal hauls from Boeings [*sic*].” Staff found the Company’s response to be incomplete and irrelevant to the safety violations identified in Docket TG-171220. Nevertheless, Staff provides its response below:

- **Mitigation Request: Title 49 CFR Part 382.301(a) – Using a driver before the motor carrier has received a negative pre-employment controlled substance test result.** Rubatino’s request for mitigation did not address this violation. However, in the Company’s 15-day response letter to the Commission, Rubatino stated that it will comply with FMCSA regulations and will only use new drivers once a negative pre-employment controlled substance test result has been received.

Staff response: It is Rubatino’s responsibility to ensure that it has received a negative pre-employment controlled substance test result for its drivers prior to allowing its employees to operate a commercial motor vehicle. The Company failed to provide any supporting documentation, nor mention any procedural changes that would ensure future compliance with this fundamental safety requirement. However, Rubatino has an established history of compliance with the Commission.

The assessed penalty is \$500 for one occurrence of this violation. Staff recommends the penalty be reduced by half, for a total of \$250.

- **Mitigation Request: Title 49 CFR Part 382.305(b)(1) – Failing to conduct random alcohol testing at an annual rate of not less than the applicable annual rate of the average number of driver positions.** Rubatino's request for mitigation did not address this violation. However, in the Company's 15-day response letter to the Commission, Rubatino stated that the violation occurred because the Company included non CDL drivers in its random alcohol testing pool. The company has since deleted the non CDL drivers from that pool.

Staff response: Rubatino promptly corrected these first-time violations, and informed the Commission of its procedural change to comply with this safety requirement.

The assessed penalty is \$100 for one violation of this type. Staff recommends no mitigation of this penalty.

- **Mitigation Request: Title 49 CFR Part 393.209(d) – Worn steering system components.** Rubatino's request for mitigation did not address this violation, nor did the Company address this violation in its 15-day response letter.

Staff response: It is Rubatino's responsibility to ensure that its commercial motor vehicles are free of defects that may potentially put the traveling public at risk.

The assessed penalty is \$100 for one occurrence of this violation. Staff recommends no mitigation of this penalty.

Rubatino is a large company with 43 drivers and 44 commercial motor vehicles. The Company reported \$20,017,170 in gross revenue and 740,543 miles traveled in 2016. Staff recommends that the penalty of \$700 be reduced to \$450.

If you have any questions, please contact Jason Hoxit, Compliance Investigator, Consumer Protection, at 360-664-1320, or by e-mail at jason.hoxit@utc.wa.gov.

Sincerely,



Bridgit Feeser
Assistant Director, Consumer Protection