



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 • TTY (360) 586-8203

October 26, 2017

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. Methow Valley Sanitation Service, Inc., d/b/a Wastewise Methow*  
Commission Staff's Response to Application for Mitigation of Penalties  
Docket TG-170987

Dear Mr. King:

In August 2017, Motor Carrier Safety Investigator Wayne Gilbert conducted a compliance review investigation on Methow Valley Sanitation, Inc. d/b/a Wastewise Methow (Wastewise Methow). A compliance review investigation is an in-depth examination of a company's compliance with regulations that the Federal Motor Carrier Safety Administration has identified as "acute" or "critical."<sup>1</sup> 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.<sup>2</sup> Mr. Gilbert documented 149 violations of critical regulations, all of which were first-time violations, resulting in a conditional safety rating.

The Washington Utilities and Transportation Commission's (Commission) Enforcement Policy provides that some Commission requirements are so essential to safe operations that the Commission may issue penalties for a first-time violation, even if Commission staff has not previously provided technical assistance on specific issues. The Commission will assess

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

<sup>2</sup> *Id.*

penalties for any repeat violations of critical regulations, including for each occurrence of a repeat violation.<sup>3</sup>

Revised Code of Washington (RCW) 81.04.405 allows penalties of one hundred dollars for each violation. RCW 81.04.530 allows penalties of \$500 for each driver employed who is not in compliance with the motor vehicle driver drug and alcohol testing requirements. In the case of an ongoing violation, every day's continuance is considered a separate and distinct violation.

On Oct. 2, 2017, the Commission issued a penalty against Wastewise Methow in the amount of \$15,100 for 149 critical violations of WAC 480-70-201 Vehicle and Driver Safety Requirements, which requires solid waste carriers to comply with Title 49 CFR Part 382 – Controlled Substances and Alcohol Use and Testing and Part 391 – Qualifications of Drivers, as follows:

- **One-hundred forty-five violations of Title 49 CFR Part 391.45(a) – Using a driver not medically examined and certified.** Wastewise Methow allowed employees Jeremiah Smith and Robert Yoakum to drive on 145 separate occasions without having been medically examined and certified.
- **Three violations of Title 49 CFR Part 391.51(a) – Failing to maintain a driver qualification file for each driver it employs.** Wastewise Methow failed to maintain a driver qualification file for drivers Casey Bouchard, Jeremiah Smith, and Robert Yoakum.
- **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.** Wastewise Methow hired driver Jeremiah Smith in 2013 and failed to conduct a pre-employment test.

On Oct. 13, 2017, the Commission received an application for mitigation of penalties from Wastewise Methow. In the application, company Vice-President Casey Bouchard admitted the violations and stated that the violations have been corrected.

- **Mitigation Request: Title 49 CFR Part 391.45(a) – Using a driver not medically examined and certified.** Wastewise Methow stated that its drivers had current medical certificates but the doctor who performed the medical examinations was not listed in the National Registry. The doctor who performed the examinations believed that the National Identifier number she documented on the certification was the same as the National Registry number. This was incorrect. Upon learning of these violations company corrected the violations immediately.

**Staff response:** The company admitted these violations and corrected them immediately. Staff also believes the company made a good-faith effort to comply with these regulations. Staff recommends mitigation of the \$14,500 penalty to \$7,250.

- **Mitigation Request: Title 49 CFR Part 391.51(a) – Failing to maintain a driver qualification file for each driver it employs.** Wastewise Methow states that it was unaware of the driver qualification file requirements prior to the compliance review but has since created and currently maintains a driver qualification file for each of its drivers. The company also created a process to ensure that files are created for new drivers and that all files are reviewed and updated annually.

**Staff response:** Wastewise Methow promptly corrected these first-time violations and provided supporting documentation, confirming compliance 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 Part 382.301(a) – Using a driver before the motor carrier has received a negative pre-employment controlled substance test result.** Wastewise Methow stated that driver Jeremiah Smith qualified for the pre-employment exception under Title 49 Part 383.301(b), however, admitted not having supporting documentation of the exception in the driver's file. The company corrected the violation by obtaining the documentation and adding it to Mr. Smith's file.

**Staff response:** This was a record-keeping oversight. The company admitted the violation and made corrections immediately. Staff recommends mitigation of the \$500 penalty to \$100.

Staff appreciates the company's willingness to admit and correct these critical violations. In consideration of the company's actions, staff recommends mitigation of the original \$15,100 penalty to \$7,450.

Staff also recommends that \$3,950 of the penalty be suspended for two years, then dismissed with conditions:

1. Commission staff must conduct a follow-up safety investigation of Wastewise Methow and note no repeat critical violations; and
2. Wastewise Methow must pay the remaining \$3,500 penalty, or submit a proposed payment plan, within 15 days.

If you have any questions, please contact Kristi Ferguson, Compliance Investigator, Consumer Protection, at (360) 664-1108, or by email at [kferguso@utc.wa.gov](mailto:kferguso@utc.wa.gov).

Sincerely,



Bridgit Feeser  
Assistant Director, Consumer Protection