



STATE OF WASHINGTON

UTILITIES AND TRANSPORTATION COMMISSION

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January 30, 2019

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COMMISSION

Mark L. Johnson, Executive Director and Secretary
Washington 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. Cummins, Jeffery K. d/b/a
Community Waste & Recycling*
Commission Staff's Response to Application for Mitigation of Penalties
Docket TG-180957

Dear Mr. Johnson:

On December 20, 2018, the Washington Utilities and Transportation Commission (Commission) issued a penalty assessment against Cummins, Jeffery K. d/b/a Community Waste & Recycling (Community Waste or Company) in the amount of \$4,100 for violations of Washington Administrative Code (WAC) 480-70-201, Vehicle and Driver Safety Requirements, which adopts Title 49 Code of Federal Regulations (CFR) Part 391 – Qualifications of Drivers, Part 395 – Hours of Service of Drivers, and Part 396 – Inspection, Repair, and Maintenance, as follows:

- **Thirty-nine violations of Title 49 CFR Part 391.45(a) – Using a driver not medically examined and certified.** Community Waste allowed employee Jeffery Cummins to drive on 39 separate occasions without having been medically examined and certified. The violations occurred between May 8, 2018, and October 3, 2018.
- **Sixty violations of Title 49 CFR Part 395.8(a) – Failing to require a driver to prepare a record of duty status using appropriate method.** Community Waste allowed employees Jeffery Cummins, and Joel Cummins to drive without making a record of duty status on 60 occasions between August 1, 2018, and August 30, 2018.
- **One violation of Title 49 CFR Part 396.3(b) – Failing to keep minimum records of inspection and vehicle maintenance.** Community Waste failed to keep minimum records of inspection and vehicle maintenance.

On January 4, 2019, Community Waste filed with the Commission its application for mitigation of penalties. In the request for mitigation, Jeffery Cummins, owner of Community Waste, admitted the violations, and requested that the penalty be reduced; however, the Company failed to provide any relevant information in support of its request for mitigation. Companies are required to include reasons supporting the requests for mitigation, otherwise, the Commission can deny the request.

Commission staff (staff) finds the Company's request for mitigation to be non-compelling, and under normal circumstances would recommend that the Commission deny the Company's request for mitigation. However, on November 21, 2018, the Company submitted to staff a corrective action safety plan in which the Company acknowledged the violations and described steps taken to correct the violations and prevent future occurrences. For this reason staff recommends mitigation of the penalties as follows:

- **Mitigation Request: Title 49 CFR Part 391.45(a) – Using a driver not medically examined and certified.** Community Waste states that it scheduled medical appointments, received referrals for tests, passed the exams, and Jeffery Cummins obtained medical certification.
- **Staff response:** It is Community Waste's responsibility to ensure its drivers have current medical certificates, and that the Company not allow its drivers to operate a commercial motor vehicle when medical certification cannot be verified; however, Community Waste corrected these first-time violations. The assessed penalty is \$3,900 for 39 occurrences of this violation. Staff recommends the penalty be reduced to \$2,900.
- **Mitigation Request: Title 49 CFR Part 395.8(a) – Failing to require a driver to prepare a record of duty status using appropriate method.** Community Waste states that it now has driver daily logs in the truck for the two drivers, and maintains the records in a file.
- **Staff response:** Community Waste corrected these first-time violations and established new procedures to prevent future occurrences of this safety requirement. Because the assessed penalty is \$100 for one violation of this type, staff recommends no further mitigation of this penalty.
- **Mitigation Request: Title 49 CFR Part 396.3(b) – Failing to keep minimum records of inspection and vehicle maintenance.** Community Waste states that it developed a preventative maintenance schedule, created a vehicle maintenance log for its commercial motor vehicle, and maintains the records of inspection and vehicle maintenance in a file.
- **Staff response:** Community Waste corrected this first-time violation and established new procedures to prevent future occurrences of this safety requirement. Because the assessed penalty is \$100 for one violation of this type, staff recommends no further mitigation of this penalty.

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Community Waste is a small company with two drivers and one commercial motor vehicle. The Company reported \$84,665 in gross revenue for 2017.

Staff recommends the penalty of \$4,100 be reduced to \$3,100. Staff is also sensitive to the Company's financial situation and understands the impact a significant penalty has on a small business. For these reasons, staff further recommends that \$2,100 of the reduced penalty be suspended for a period of two years before being waived, on the conditions that: 1) staff conducts a follow-up safety investigation in two years or as soon thereafter as practicable to review the Company's safety management practices, 2) the Company not incur any repeat violations of critical regulations, and 3) Community Waste pays the \$1,000 portion of the penalty that is not suspended.

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

Sincerely,



Bridgit Feeser
Assistant Director, Consumer Protection