

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment
Against

RENZENBERGER, INC., D/B/A
HALLCON

in the amount of \$26,800

DOCKET TH-220108

ORDER 01

ORDER GRANTING MITIGATION;
IMPOSING AND SUSPENDING
PENALTIES

BACKGROUND

- 1 On March 8, 2022, the Washington Utilities and Transportation Commission (Commission) assessed a \$26,800 penalty (Penalty Assessment) against Renzenberger, Inc., d/b/a Hallcon (Hallcon or Company) for 286 violations of Washington Administrative Code (WAC) 480-62-278, which adopts by reference sections of Title 49 Code of Federal Regulations (C.F.R.).¹ The Penalty Assessment includes a \$26,800 penalty for 286 violations of 49 C.F.R. § 391.45(a) for allowing a driver without a valid medical certificate to operate a motor vehicle on 286 occasions between September 1, 2021, and January 19, 2022.
- 2 On March 22, 2022, Hallcon responded to the Penalty Assessment admitting the violations and requesting mitigation of the penalty based on the written information provided. The Company provided a comprehensive response to the violations, including descriptions of corrective measures it took to prevent repeat violations.
- 3 On March 30, 2022, Commission staff (Staff) filed a response recommending the Commission grant the Company's request for mitigation, in part. Because the Company has taken significant steps to ensure compliance going forward, Staff recommends the Commission reduce the assessed penalty from \$26,800 to \$20,000. Staff further recommends that \$10,000 of the reduced penalty be suspended for a period of two years, and then waived, subject to the conditions that: (1) Staff conducts a focused review of the Company's compliance with 49 C.F.R. § 391 in two years or as soon thereafter as

¹ WAC 480-62-278 adopts by reference sections of Title 49 C.F.R. Accordingly, Commission safety regulations with parallel federal rules are hereinafter referenced only by the applicable provision of 49 C.F.R.

practicable, (2) the Company must not incur any repeat violations of 49 C.F.R. § 391.45(a), and (3) Hallcon timely pays the \$10,000 portion of the penalty that is not suspended.

DISCUSSION AND DECISION

- 4 Washington law requires contract crew transportation companies to comply with federal safety requirements and undergo routine safety inspections. In some cases, Commission requirements are so fundamental to safe operations that the Commission will issue penalties for first-time violations.² Violations defined by federal law as “critical,” which are indicative of a breakdown in a carrier’s management controls, meet this standard.³ Critical violations discovered during safety inspections are subject to penalties of \$100 per violation.⁴
- 5 The Commission considers several factors when entertaining a request for mitigation, including whether the company introduces new information that may not have been considered in setting the assessed penalty amount, or explains other circumstances that convince the Commission that a lesser penalty will be equally or more effective in ensuring the company’s compliance.⁵
- 6 The Penalty Assessment includes a \$26,800 penalty for 286 violations of 49 C.F.R. Part 391.45(a) because Hallcon allowed its employees to operate a commercial motor vehicle without a valid medical certificate on 286 occasions between September 1, 2021, and January 19, 2022. In its response, the Company acknowledged the violations and the oversight. The Company provided evidence that the violations had been corrected and explained that it has taken steps to improve its medical re-certification scheduling to ensure future compliance.
- 7 Staff recommends the Commission reduce the penalty to \$20,000. We agree with Staff’s recommendation and assess a reduced penalty of \$20,000. Mitigation of this portion of the penalty is appropriate because Hallcon promptly corrected the violations and took steps to prevent reoccurrence.

² Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission ¶12 (Jan. 7, 2013) (Enforcement Policy).

³ 49 C.F.R. § 385, Appendix B.

⁴ See RCW 81.04.405.

⁵ Enforcement Policy ¶19.

8 **Suspended Penalty.** The Commission considers several factors when determining whether to suspend a portion of a penalty, including whether it is a first-time penalty for the same or similar violations, and whether the company has taken specific actions to remedy the violations and avoid the same or similar violations in the future, such as purchasing new technology, making system changes, or training company personnel.⁶ Another factor we consider is whether the company agrees to a specific compliance plan that will guarantee future compliance in exchange for suspended penalties.⁷

9 In this case, Hallcon promptly corrected the violations and took action to prevent the violations from reoccurring. Suspending a portion of the penalty with the conditions proposed by Staff will both increase compliance and provide an incentive to avoid violations in the future. Accordingly, we agree with Staff's recommendation and suspend a \$10,000 portion of the penalty for a period of two years, and then waive it, subject to the following conditions:

- Staff will conduct a focused review in two years or as soon thereafter as practicable to review the Company's compliance with 49 C.F.R. § 391;
- Waste Management must not incur any repeat violations of § 391.45(a) upon reinspection, and;
- The Company must pay the \$10,000 portion of the penalty that is not suspended within 10 days of the effective date of this Order.

FINDINGS AND CONCLUSIONS

- 10 (1) The Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, and practices of public service companies, including contract crew transportation companies, and has jurisdiction over the parties and subject matter of this proceeding.
- 11 (2) Hallcon is a contract crew transportation company subject to Commission regulation.
- 12 (3) Hallcon violated violated 49 C.F.R. § 391.45(a) when its employee drove its commercial motor vehicle on 286 occasions without a valid medical certificate.

⁶ *Id.* at ¶20.

⁷ *Id.*

- 13 (4) The Commission should penalize Hallcon \$20,000 for 286 violations of 49 C.F.R. § 391.45(a).
- 14 (5) The Commission should suspend a \$10,000 portion of the penalty for two years, and then waive it, subject to the conditions set out in paragraph 9, above.

ORDER

THE COMMISSION ORDERS:

- 15 (1) Renzenberger, Inc., d/b/a Hallcon's request for mitigation of the \$26,800 penalty is GRANTED, in part, and the penalty is reduced to \$20,000.
- 16 (2) The Commission suspends a \$10,000 portion of the penalty for a period of two years, and then waives it, subject to the conditions set out in paragraph 9, above.
- 17 (3) The \$10,000 portion of the penalty that is not suspended is due and payable within 10 days of the effective date of this Order.
- 18 The Secretary has been delegated authority to enter this order on behalf of the Commissioners under WAC 480-07-904(1)(h).

DATED at Lacy, Washington, and effective April 6, 2022.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

AMANDA MAXWELL
Executive Director and Secretary

NOTICE TO PARTIES: This is an order delegated to the Executive Secretary for decision. As authorized in WAC 480-07-904(3), you must file any request for Commission review of this order no later than 14 days after the date the decision is posted on the Commission's website.