



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

February 3, 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. Empire Disposal Inc.*
Commission Staff's Response to Application for Mitigation of Penalties
Docket TG-161282

Dear Mr. King:

On December 23, 2016, the Washington Utilities and Transportation Commission (Commission) issued a Penalty Assessment under docket TG-161282 against Empire Disposal Inc. (Empire Disposal) in the amount of \$5,300 for violations of WAC 480-70-201 Vehicle and Driver Safety Requirements, which requires solid waste haulers to comply with CFR Part 383 – Commercial Driver's License Standards; Requirements and Penalties, and Part 391 – Qualifications of Drivers, as follows:

1. **Fifty-two violations of CFR 383.37(b) – Allowing, requiring, permitting, or authorizing an employee to operate a commercial motor vehicle during any period in which the driver's commercial learning permit or license disqualified by a state, has lost the right to operate a commercial motor vehicle in a state or has been disqualified from operating a commercial motor vehicle.** Empire Disposal allowed employee Milroy Manner to drive with a disqualified commercial driver's license on 52 occasions during the six months prior to the compliance review. Mr. Manner drove on 12 days in August, 22 days in September, and 18 days in October, 2016.
2. **One violation of CFR 391.51(b)(2) – Failing to maintain inquiries into driver's driving record in driver's qualification file.** Empire Disposal failed to maintain inquiries into the driving records of four employees: John Hall, Brian Johnson, Troy Scott, and Daniel Young.

On January 27, 2017, Aaron Lawhead, Operations Manager for Empire Disposal, filed with the commission its application for mitigation of penalties (Mitigation Request).

Empire Disposal operates as a solid waste hauler under permit number G-75. In October 2016 Motor Carrier Safety Investigator Sandi Yeomans conducted a compliance review investigation, 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 noncompliance is so severe as to require immediate corrective actions 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 Ms. Yeomans found 71 violations, 53 of which were critical violations.

The commission's Enforcement Policy, however, provides that some commission requirements are so critical to safe operations that the commission may issue penalties for a first-time violation, even if staff has not previously provided technical assistance on specific issues.³ Of the 71 violations found, all were first-time violations.

In the Mitigation Request, Mr. Lawhead admitted the violations of CFR 383.38(b), allowing a disqualified driver to operate a company vehicle, but disputed the violation of CFR 391.51(b)(2) relating to maintaining driver record inquiries. In his request for mitigation, Mr. Lawhead addressed both violations. Staff's response is included below.

1. **Mitigation request:** CFR 383.37(b) – Allowing, requiring, permitting, or authorizing an employee to operate a commercial motor vehicle during any period in which the driver has a commercial learning permit or commercial driver license disqualified by a state, has lost the right to operate a commercial motor vehicle in the state, or has been disqualified from operating a commercial motor vehicle.

Empire Disposal stated that its employee Milroy Manner renewed his driver's license on August 16, 2016, but did not renew his commercial license. Mr. Manner did not report this to Empire Disposal. On September 6, 2016, Empire Disposal obtained driver records on all its drivers, including Mr. Manner. Empire Disposal failed to notice that Mr. Manner no longer had a CDL and allowed him to continue driving. Empire Disposal became aware of the violation during the compliance review on October 26, at which

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.

time the company reassigned Mr. Manner to non-driving duties. Empire Disposal admits this violation, but accepts responsibility only for those occurrences from September 6 and later, after it had obtained current driver abstracts.

Staff response: Each carrier must maintain proper management controls to ensure that only qualified drivers operate its vehicles. Companies should have a strictly-enforced policy requiring drivers to maintain their CDL status, and report any changes in qualification status to the company. Empire Disposal, to its credit, did obtain driver abstracts on all drivers on September 6, but failed to recognize that Mr. Manner he was no longer CDL-qualified and allowed him to continue driving.

Because Empire Disposal accepted responsibility for the majority of occurrences of this violation, staff recommends mitigation of this penalty from \$5,200 to \$2,600.

2. **Mitigation request:** CFR 391.51(b)(2) – Failing to maintain inquiries into driver’s driving record in driver’s qualification file. Empire Disposal failed to maintain inquiries into driving records in the driver qualification files of four employees: John Hall, Brian Johnson, Troy Scott, and Daniel Young.

Empire Disposal disputes this violation. The company states that it maintains complete driver qualification files online and that Investigator Yeomans, was not specific as to which documents were required to be available when she requested driver files.

Staff response: During the compliance review, Ms. Yeomans did review the electronic driver files for drivers John Hall, Brian Johnson, Troy Scott and Daniel Young. Ms. Yeomans observed driver’s licenses and medical certificates for each driver, but did not observe inquiries into each driver’s driving record.

This company was purchased by Waste Connections in May 2004. At the company’s most recent compliance review and technical assistance in 2008, no similar violations were noted. Staff believes the company knew, or should have known about the content requirements for driver qualification files. Although four files were found to be in violation, the penalty in this case is \$100 for only one violation of this type. Staff recommends no further mitigation of this penalty.

Empire Disposal is a medium-sized operation, with 16 commercial vehicles, four service trucks and 10 commercial drivers. The company traveled 305,000 miles and reported \$2,933,310 in gross revenue for 2015. The company was cooperative and responsive, and is taking steps to correct all violations and stay in compliance. Staff recommends mitigation of the \$5,300 penalty to \$2,700.

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If you have any questions, please contact Mike Turcott, Compliance Investigator, Transportation Safety, at 360-664-1174, or by e-mail at miturcot@utc.wa.gov.

Sincerely,



David Pratt
Assistant Director, Transportation Safety