

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment
Against

PETLAND CEMETERY, INC. D/B/A
PETLAND “THE HUMANE
ALTERNATIVE”,

in the amount of \$12,900

DOCKET TG-220737

ORDER 01

ORDER GRANTING MITIGATION TO
\$8,000; IMPOSING AND SUSPENDING
PENALTIES

BACKGROUND

- 1 On October 19, 2022, the Washington Utilities and Transportation Commission (Commission) assessed a \$12,900 penalty (Penalty Assessment) against Petland Cemetery, Inc., d/b/a Petland “The Humane Alternative,” (Petland or Company) for 131 violations of Washington Administrative Code (WAC) 480-70-201, which adopts by reference sections of Title 49 Code of Federal Regulations (C.F.R.).¹ The Penalty Assessment includes:
 - a \$12,700 penalty for 127 violations of 49 C.F.R. § 391.45(a) for allowing a driver without a valid medical certificate to operate a motor vehicle on 127 occasions between March 7 and August 30, 2022;
 - a \$100 penalty for one violation of 49 C.F.R. § 393.41 for operating a commercial motor vehicle (CMV) with a defective parking brake system; and
 - a \$100 penalty for three violations of 49 C.F.R. § 396.17(a) for operating three CMVs that had not been inspected annually.
- 2 On November 14, 2022, Petland responded to the Penalty Assessment admitting the violations and requesting mitigation of the penalty based on the written information provided. In its response, the Company referred to corrective actions Petland took during and after the safety investigation and requests that the penalties be reduced.

¹ WAC 480-15-560 and -570 adopt 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.

3 On November 18, 2022, Commission staff (Staff) filed a response recommending the Commission grant the Company's request for mitigation, in part. Because the Company provided Staff with evidence that Petland has taken significant steps to ensure compliance going forward, Staff recommends the Commission reduce the assessed penalty from \$12,900 to \$8,000. Staff further recommends that \$4,000 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 safety investigation of compliance with 49 C.F.R. § 391.45(a) two years or as soon thereafter as practicable, (2) the Company not incur any repeat violations, and (3) Petland timely pays the \$4,000 portion of the penalty that is not suspended.

DISCUSSION AND DECISION

4 Washington law requires solid waste collection carriers 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 We address each violation category in turn.

6 **49 C.F.R. § 391.45(a).** The Penalty Assessment also includes a \$12,700 penalty for 127 violations of 49 C.F.R. § 391.45(a) because Petland allowed driver Scott Lockey to operate a commercial motor vehicle without a valid medical certificate on 127 occasions between March 7 and August 30, 2022. In its response, the Company stated that the driver had obtained a valid medical certificate, but that his doctor's office had lost the

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.

medical records required to prove the certification, and the company failed to retain a copy.

7 Staff recommends the Commission reduce this penalty to \$7,800. We agree with Staff's recommendation and assess a reduced penalty of \$7,800. Mitigation of this portion of the penalty is appropriate because Petland promptly corrected the violations and took steps to prevent reoccurrence.

8 **49 C.F.R. § 393.41.** The Penalty Assessment also includes a \$100 penalty for one violation of 49 C.F.R. § 393.41 because Petland's CMV had a defective parking brake system. In its response, the Company states that the parking brake was fixed the day after the inspection.

9 Staff recommends no mitigation of this portion of the penalty. We agree. This is a critical, out-of-service safety violation that puts the public at risk. Accordingly, we conclude that assessing a \$100 penalty for this violation is appropriate.

10 **49 C.F.R. § 396.17(a).** The Penalty assessment also includes a \$100 penalty for three violations of 49 C.F.R. § 396.17(a) because Petland failed to have an annual inspection performed on three CMVs. In its response, the Company states that the annual inspections had been scheduled and postponed several times due to inspection availability.

11 Staff recommends no mitigation of this portion of the penalty. We agree. The Penalty Assessment imposed a minimum "per category" penalty for these three critical violations, and therefore no further mitigation is warranted.

12 **Suspended Penalty.** The Commission considers several factors in 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

13 In this case, Petland promptly corrected the violations and has taken action to prevent the violations from reoccurring. In any enforcement proceeding, the Commission's goal is to

⁶ *Id.* at ¶20.

⁷ *Id.*

obtain compliance, not create an insurmountable financial burden for a regulated company.

14 Suspending a portion of the penalty with the conditions proposed by Staff will both increase compliance and provide a strong incentive to avoid violations in the future. Accordingly, we agree with Staff's recommendation and suspend a \$4,000 portion of the penalty for a period of two years, and then waive it, subject to the following conditions:

- Staff conducts a focused review in two years or as soon thereafter as practicable to review the Company's driver qualifications;
- Petland does not incur any repeat violations of critical or acute regulations, and;
- The Company pays the \$4,000 portion of the penalty that is not suspended within 10 days of the effective date of this order.

FINDINGS AND CONCLUSIONS

- 15 (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 solid waste collection carriers, and has jurisdiction over the parties and subject matter of this proceeding.
- 16 (2) Petland is a solid waste collection carrier subject to Commission regulation.
- 17 (3) Petland violated 49 C.F.R. § 391.45(a) when its employee drove its commercial motor vehicle on 127 occasions without a valid medical certificate.
- 18 (4) The Commission should penalize Petland \$7,800 for 127 violations of 49 C.F.R. § 391.45(a).
- 19 (5) Petland violated 49 C.F.R. § 393.41 when it operated a CMV with a defective parking brake system.
- 20 (6) The Commission should penalize Petland \$100 for one violation of 49 C.F.R. § 393.41.
- 21 (7) Petland violated 49 C.F.R. § 396.17(a) when it failed to have three of its CMVs annually inspected.
- 22 (8) The Commission should penalize Petland \$100 for three violations of 49 C.F.R. § 396.17(a).

- 23 (9) The Commission should suspend a \$4,000 portion of the penalty for two years, and then waive it, subject to the conditions set out in paragraph 14, above.

ORDER

THE COMMISSION ORDERS:

- 24 (1) Petland Cemetery, Inc., d/b/a Petland “The Humane Alternative’s” request for mitigation of the \$12,900 penalty is GRANTED, in part, and the penalty is reduced to \$8,000.
- 25 (2) The Commission assesses a \$8,000 penalty against Petland Cemetery, Inc., d/b/a Petland “The Humane Alternative.” The Commission suspends a \$4,000 portion of the penalty for a period of two years, and then waives it, subject to the conditions set out in paragraph 14, above.
- 26 (3) The \$4,000 portion of the penalty that is not suspended is due and payable within 10 days of the effective date of this Order.

27 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 December 14, 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.