

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment
Against

METHOW VALLEY SANITATION
SERVICE, INC. d/b/a WASTEWISE
METHOW

in the amount of \$15,100

DOCKET TG-170987

ORDER 01

ORDER GRANTING MITIGATION, IN
PART; IMPOSING AND SUSPENDING
PENALTIES

BACKGROUND

- 1 On October 2, 2017, the Washington Utilities and Transportation Commission (Commission) assessed a \$15,100 penalty (Penalty Assessment) against Methow Valley Sanitation Service, Inc. d/b/a Wastewise Methow (Wastewise Methow or Company) for 149 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 \$14,500 penalty for 145 violations of 49 C.F.R. Part 391.45(a) related to medical examination and certification; a \$100 penalty for three violations of 49 C.F.R. Part 391.51(a) related to driver qualification files; and a \$500 penalty for one violation of 49 C.F.R. Part 382.301(a) related to controlled substance and alcohol use and testing.
- 2 On October 13, 2017, the Company responded to the Penalty Assessment, admitting the violations and requesting mitigation of the penalty based on the written information provided. The Company explained that it was unaware of the violations prior to the compliance review, and that it promptly corrected the violations and implemented procedures to prevent them from reoccurring. The Company also provided documentation of its corrective actions.
- 3 On October 26, 2017, Commission staff (Staff) filed a response recommending the Commission grant the Company's request for mitigation, in part. Because the Company admitted and corrected the violations, Staff recommends the Commission reduce the assessed penalty from \$15,100 to \$7,450. Staff further recommends the Commission suspend a \$3,950 portion of the reduced penalty for a period of two years, and then waive

¹ WAC 480-70-201 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.

it, subject to the conditions that: (1) the Company does not incur any repeat violations of Commission safety regulations, and (2) the Company pays the \$3,500 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. Violations discovered during safety inspections are subject to penalties ranging from \$100 to \$1,000 per violation depending on the nature and severity of the company's conduct.² In some cases, Commission requirements are so fundamental to safe operations that the Commission will issue penalties for first-time violations.³ Violations defined by federal law as "acute" or "critical" meet this standard.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. Part 391.45(a).** The Penalty Assessment includes a \$14,500 penalty for 145 violations of 49 C.F.R. Part 391.45(a) because the Company allowed employees Jeremiah Smith and Robert Yoakum to drive on 145 separate occasions without being medically examined and certified. The Company explains that its drivers mistakenly obtained medical certificates from a doctor who was not listed in the National Registry of Certified Medical Examiners, and therefore not qualified to examine and certify drivers. The Company provided a letter from the examining doctor explaining she mistakenly believed she was qualified. Upon learning of the violations, the Company promptly obtained valid medical certificates for both drivers. The Company further explains it implemented a process to ensure this violation is not repeated.

² See RCW 81.04.380 and RCW 81.04.405.

³ Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission ¶12 (Jan. 7, 2013) (Enforcement Policy).

⁴ 49 C.F.R. § 385, Appendix B.

⁵ Enforcement Policy ¶19.

- 7 Staff recommends the Commission reduce the penalty by half, to \$7,250, because the Company admitted the violations and corrected them promptly. Staff also believes the Company made a good faith effort to comply with the regulations. We agree with Staff's recommendation and assess a reduced penalty of \$7,250. Mitigation of this portion of the penalty is appropriate because these are first time violations and the Company corrected them prior to receiving the Penalty Assessment.
- 8 **49 C.F.R. Part 391.51(a).** The Penalty Assessment also includes a \$100 penalty for three violations of 49 C.F.R. 391.51(a) because the Company failed to maintain driver qualification files for employees Casey Bouchard, Mr. Smith, and Mr. Yoakum. The Company explains it was unaware of this requirement prior to Staff's compliance review, but has since created and currently maintains driver qualification files 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.
- 9 Staff recommends no mitigation of this portion of the penalty. We agree. The Commission could have assessed a \$300 penalty for these violations. Because these were first-time violations, however, the Commission assessed a "per category" rather than a "per violation" penalty. Accordingly, we conclude no further penalty reduction is warranted.
- 10 **49 C.F.R. Part 382.301(a).** The Penalty Assessment also includes a \$500 penalty for one violation of 49 C.F.R. Part 382.301(a) because the Company used a driver before receiving a negative pre-employment controlled substance test result. The Company explains that Mr. Smith qualified for the pre-employment exception under 49 C.F.R. Part 382.301(b), but that it did not maintain documentation of the exemption in the driver file. Upon learning of the violation, the Company corrected it by obtaining the documentation and adding it to Mr. Smith's file.
- 11 Staff recommends the Commission reduce the penalty to \$100 because this was a record-keeping oversight, and because the Company admitted the violation and immediately corrected it. We agree with Staff's recommendation and assess a reduced penalty of \$100. Mitigation of this portion of the penalty is appropriate because this was a first time violation and the Company corrected it prior to receiving the Penalty Assessment.
- 12 **Suspended Penalty.** Because these are first time violations, the Company has taken prompt remedial action, and the Company has created procedures to prevent the violations from recurring, Staff recommends the Commission suspend a portion of the penalties. We agree and exercise our discretion to suspend a \$3,950 portion of the penalty for a period of two years, and then waive it, subject to the following conditions: 1) the

Company may not incur any repeat violations of WAC 480-70, and Title 49 C.F.R., and 2) the Company must pay the remaining \$3,500 penalty within 20 days of the effective date of this Order. Staff will conduct a follow-up inspection within two years to verify compliance with Commission safety regulations. The Company may work with Staff to establish a mutually agreeable payment arrangement to pay the \$3,500 portion of the penalty that is not suspended.

FINDINGS AND CONCLUSIONS

- 13 (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.
- 14 (2) Wastewise Methow is a solid waste collection carrier subject to Commission regulation.
- 15 (3) Wastewise Methow violated 49 C.F.R. Part 391.45(a) when its employees drove on 145 occasions without having been medically examined and certified.
- 16 (4) The Commission should penalize Wastewise Methow \$7,250 for 145 violations of 49 C.F.R. Part 391.45(a).
- 17 (5) Wastewise Methow violated 49 C.F.R. Part 391.51(a) when it failed to maintain driver qualification files for its employees.
- 18 (6) The Commission should penalize Wastewise Methow \$100 for three violations of 49 C.F.R. Part 391.51(a).
- 19 (7) Wastewise Methow violated 49 C.F.R. Part 382.301(a), when it used a driver before it received a negative pre-employment controlled substance test result.
- 20 (8) The Commission should penalize Wastewise Methow \$100 for one violation of 49 C.F.R. Part 382.301(a).
- 21 (9) The Commission should assess a total penalty of \$7,450 for 149 violations of WAC 480-70 and Title 49 C.F.R. A \$3,950 portion of the penalty should be suspended for a period of two years, and then waived, subject to the conditions set out in paragraph 12, above.

- 22 (10) Wastewise Methow should be permitted to file jointly with Staff a mutually agreeable arrangement for paying the \$3,500 portion of the penalty that is not suspended.

ORDER

THE COMMISSION ORDERS:

- 23 (1) Methow Valley Sanitation Service, Inc.'s request for mitigation of the \$15,100 penalty is GRANTED, in part, and the penalty is reduced to \$7,450.
- 24 (2) The Commission suspends a \$3,950 portion of the penalty for a period of two years, and then waives it, subject to the following conditions: 1) Methow Valley Sanitation Service, Inc. may not incur any repeat critical or acute violations of WAC 480 70 and Title 49 C.F.R., and 2) Methow Valley Sanitation Service, Inc. must pay the remaining \$3,500 penalty, or file jointly with Staff a mutually agreeable payment arrangement within 20 days of the effective date of this Order.
- 25 (3) Commission Staff will conduct a follow-up inspection within two years to verify compliance with Commission safety regulations.
- 26 The Secretary has been delegated authority to enter this order on behalf of the Commissioners under WAC 480-07-904(1)(h).

DATED at Olympia, Washington, and effective October 31, 2017.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

STEVEN V. KING
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.