

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment
Against

JEFFERY K. CUMMINS d/b/a
COMMUNITY WASTE &
RECYCLING

in the amount of \$4,100

DOCKET TG-180957

ORDER 01

GRANTING MITIGATION TO
\$3,050; IMPOSING AND SUSPENDING
PENALTIES

BACKGROUND

1 On December 20, 2018, the Washington Utilities and Transportation Commission (Commission) assessed a \$4,100 (Penalty Assessment) against Jeffery K. Cummins d/b/a Community Waste & Recycling (Community Waste or Company) for 100 critical 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 \$3,900 penalty for 39 violations of 49 C.F.R. Part 391.45(a) for using a driver not medically examined and certified;
- A \$100 penalty for 60 violations of 49 C.F.R. Part 396.8(a) for failing to require Company drivers to make records of duty status; and
- A \$100 penalty for one violation of 49 C.F.R. Part 396.3(b) for failing to keep minimum records of inspection and vehicle maintenance.

2 On January 4, 2019, Community Waste 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 explained that the violations occurred due to the owner's "depression and frustration," and stated that the penalty would create a financial hardship.

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.

3 On January 30, 2019, Commission staff (Staff) filed a response recommending the Commission grant the Company's request for mitigation, in part. Although Staff finds the Company's request for mitigation unpersuasive, the Company submitted to Staff a corrective action safety plan on November 21, 2018, that describes the steps the Company has taken to correct the violations and prevent future occurrences. Based on the Company's prompt corrective action, Staff recommends the Commission reduce the penalties assessed for violations of 49 C.F.R. Part 391.45(a) to \$2,900, resulting in a total penalty of \$3,100. Staff further recommends that \$2,100 of the reduced penalty be suspended for a period of two years, and then waived, subject to the following conditions: 1) the Company may not incur any repeat violations of critical regulations, and 2) the Company must pay the \$1,000 portion of the penalty that is not suspended. Staff will conduct a follow-up investigation in approximately two years to review the Company's safety management practices.

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.

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.

6 **49 C.F.R. Part 391.45(a).** The Penalty Assessment includes a \$3,900 penalty for 39 violations of 49 C.F.R. Part 391.45(a) because Company owner Jeffery Cummins drove without being medically examined and certified on 39 occasions. In its corrective action safety plan, the Company explained that Mr. Cummins has since obtained a medical certificate.

7 Because these are first-time violations, Staff recommends the Commission assess a reduced penalty of \$2,900. We agree with Staff’s recommendation. Mitigation of this portion of the penalty is appropriate because Community Waste promptly corrected the violations prior to receiving the penalty assessment and has implemented compliance measures to prevent the violations from reoccurring.

8 **49 C.F.R. Part 395.8(a).** The Penalty Assessment also includes a \$100 penalty for 60 violations of 49 C.F.R. Part 395.8(a) because Community Waste failed to require its drivers to make records of duty status. In its corrective action safety plan, the Company explained that it has established new procedures to prevent this violation from reoccurring.

9 Staff recommends no mitigation of this portion of the penalty because the Penalty Assessment assessed a \$100 penalty for 60 violations of this type. The Commission could have assessed a \$6,000 penalty, but, because these are first-time violations, assessed a “per category” rather than “per violation” penalty. In light of these circumstances, we agree that no further penalty reduction is warranted, and decline to mitigate this portion of the penalty.

10 **WAC 480-30-221, 49 C.F.R. Part 396.3(b).** The Penalty Assessment also includes a \$100 penalty for one violation of 49 C.F.R. Part 396.3(b) because Community Waste failed to maintain minimum inspection and maintenance records for its commercial vehicle. In its corrective action safety plan, the Company explained that it has developed a preventative maintenance schedule, created a vehicle maintenance log, and created a file for inspection and maintenance records.

11 Staff recommends no mitigation of this portion of the penalty because “the assessed penalty is \$100 for one violation of this type.” We disagree with Staff’s recommendation and assess a reduced penalty of \$50. Mitigation of this portion of the penalty is appropriate because Community Waste promptly corrected the violations prior to receiving the penalty assessment and has implemented compliance measures to prevent the violations from reoccurring.

12 **Penalty Suspension.** The Commission considers several factors in determining whether to suspend a portion of a penalty, including whether the penalty was assessed for first-time violations and whether the company has taken specific actions to remedy the violations and avoid the same or similar violations in the future.⁶ We agree with Staff that suspending a portion of the penalty is appropriate in the circumstances presented here.

13 In this case, penalties were assessed for first time violations. In addition, the Company has taken action to prevent each of the violations from reoccurring. Suspending a portion of the penalty subject to the conditions proposed by Staff will provide a strong incentive to prevent future violations from occurring. Accordingly, we suspend a \$2,050 portion of the penalty for two years, and then waive it, subject to the following conditions: (1) the Company may not incur any repeat violations of critical regulations; and (2) the Company must pay the \$1,000 portion of the penalty that is not suspended. Staff will conduct a follow-up safety investigation in approximately two years to review the Company's safety management practices. If the Company fails to comply with either of the conditions, the suspended penalty will become immediately due and payable without further Commission order.

FINDINGS AND CONCLUSIONS

- 14 (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.
- 15 (2) Community Waste is a solid waste collection carrier subject to Commission regulation.
- 16 (3) Community Waste violated 49 C.F.R. Part 391.45(a) when its employee drove on 39 occasions without a valid medical certificate.
- 17 (4) The Commission should penalize Community Waste \$2,900 for 39 violations of 49 C.F.R. Part 391.45(a).

⁶ *Id.* at ¶20.

- 18 (5) Community Waste violated 49 C.F.R. Part 395.8(a) by failing to require its drivers to make records of duty status on 60 occasions.
- 19 (6) The Commission should penalize Community Waste \$100 for 60 violations of 49 C.F.R. Part 395.8(a).
- 20 (7) Community Waste violated 49 C.F.R. Part 396.3(b) by failing to maintain minimum inspection and maintenance records its commercial vehicle.
- 21 (8) The Commission should penalize Community Waste \$50 for one violation of 49 C.F.R. Part 396.3(b).
- 22 (9) The Commission should assess a total penalty of \$3,050 for 100 critical violations of Title 49 C.F.R.
- 23 (10) The Commission should suspend a \$2,050 portion of the penalty for a period of two years, and then waive it, subject to the conditions set out in paragraph 13, above.

ORDER

THE COMMISSION ORDERS:

- 24 (1) Jeffery K. Cummins d/b/a Community Waste & Recycling's request for mitigation of the \$4,100 penalty is GRANTED, in part, and the penalty is reduced to \$3,050.
- 25 (2) The Commission suspends a \$2,050 portion of the penalty for a period of two years, and then waives it, subject to the following conditions: (1) Jeffery K. Cummins d/b/a Community Waste & Recycling must either pay the \$1,000 portion of the penalty that is not suspended or file jointly with Staff a proposed payment arrangement within 10 days of the effective date of this Order; and (2) Jeffery K. Cummins d/b/a Community Waste & Recycling may not incur any repeat violations of critical regulations.
- 26 (3) Commission Staff will conduct a follow-up safety investigation in two years, or as soon thereafter as practicable, to review Jeffery K. Cummins d/b/a Community Waste & Recycling's safety management practices.

- 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 Olympia, Washington, and effective February 4, 2019.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARK L. JOHNSON
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.