

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment
Against

LEE A. LAMB d/b/a LAMB'S
DISPOSAL

in the amount of \$1,000

DOCKET TG-190469

ORDER 01

ORDER GRANTING MITIGATION TO
\$500; IMPOSING AND SUSPENDING
PENALTY

BACKGROUND

1 On July 2, 2019, the Washington Utilities and Transportation Commission (Commission) assessed a \$1,000 penalty (Penalty Assessment) against Lee A. Lamb d/b/a Lamb's Disposal (Lamb's Disposal or Company) for critical-type safety violations discovered during a June 2019 compliance review conducted by Commission staff (Staff).¹ The Penalty Assessment includes:

- a \$700 penalty for seven violations of 49 CFR § 391.45(a) for using a driver not medically examined and certified;
- a \$100 penalty for one violation of 49 C.F.R. § 391.51(a) for failing to maintain a driver qualification file for its driver;
- a \$100 penalty for 30 violations of 49 C.F.R. § 395.8(a)(1) for failing to require its driver to prepare records of duty status using the appropriate method; and
- a \$100 penalty for one violation of 49 C.F.R. § 396.3(b) for failing to keep minimum records of vehicle inspection and maintenance.

2 On August 1, 2019, Lamb's Disposal 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 requested the Commission assess a reduced penalty because the violations have been corrected, and because the penalty would create

¹ The Penalty Assessment cites violations of Washington Administrative Code (WAC) 480-15-555, WAC 480-15-560, and WAC 480-15-570. WAC 480-15-560 and -570 adopt by reference sections of Title 49 Code of Federal Regulations (C.F.R.). Accordingly, Commission safety regulations with parallel federal rules are hereinafter referenced only by the applicable provision of Title 49 C.F.R.

a financial burden due to the Company's small size. The Company provided detailed explanations of the steps it took to correct each violation.

- 3 On August 13, 2019, Commission staff (Staff) filed a response recommending the Commission grant the Company's request for mitigation, in part. Because the violations are first-time offenses and the Company has taken significant steps to ensure compliance going forward, Staff recommends the Commission reduce the assessed penalty from \$1,000 to \$500. Due to the Company's small size, Staff recommends suspending a \$250 portion of the penalty for a period of two years, and then waiving it, subject to the condition that the Company not commit any repeat violations of the safety regulations cited in the Penalty Assessment.

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
- 6 Here, the Company has corrected each of the violations at issue and put controls in place to ensure that they will not reoccur. In light of these circumstances, we agree with Staff's recommendation and find that assessing a reduced penalty of \$500 will be equally effective in ensuring the Company's compliance going forward.

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.

7 We also agree with Staff's recommendation to suspend a \$250 portion of the penalty subject to the condition that the Company does not commit any repeat violations of the safety regulations cited in the Penalty Assessment. Lamb's Disposal is small company that reported \$35,522 in gross revenue for 2018. The Commission's goal in any enforcement proceeding is to increase compliance, not to create an insurmountable financial burden for a small company. Accordingly, we suspend a \$250 portion of the penalty for a period of two years, and then waive it, subject to the condition that the Company not commit any repeat violations of 49 CFR § 391.45(a), 49 C.F.R. § 391.51(a), 49 C.F.R. § 395.8(a)(1), or 49 C.F.R. § 396.3(b).

FINDINGS AND CONCLUSIONS

- 8 (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.
- 9 (2) Lamb's Disposal is a solid waste collection carrier subject to Commission regulation.
- 10 (3) Lamb's Disposal violated 49 CFR § 391.45(a) when its employee drove on seven occasions without a valid medical certificate.
- 11 (4) Lamb's Disposal violated 49 CFR § 391.51(a) by failing to maintain a driver qualification file for its driver.
- 12 (5) Lamb's Disposal violated 49 C.F.R. § 395.8(a)(1) when it failed to require its driver to prepare records of duty status using the appropriate method on 30 occasions.
- 13 (6) Lamb's Disposal violated 49 C.F.R. § 396.3(b) by failing to keep minimum records of vehicle inspection and maintenance.
- 14 (7) Lamb's Disposal has corrected each of the violations cited in the Penalty Assessment, and has put controls in place to prevent each of the violations from reoccurring.
- 15 (8) The Commission should assess a \$500 penalty against Lamb's Disposal for 39 violations of Title 49 C.F.R.
- 16 (9) Lamb's Disposal is a small company that reported \$35,522 in gross revenue for 2018.

- 17 (10) Due to the Company's small size, the Commission should suspend a \$250 portion of the penalty for a period of two years, and then waive it, subject to the condition that Lamb's Disposal does not commit any repeat violations of 49 CFR § 391.45(a), 49 C.F.R. § 391.51(a), 49 C.F.R. § 395.8(a)(1), or 49 C.F.R. § 396.3(b).

ORDER

THE COMMISSION ORDERS:

- 18 (1) Lee A. Lamb d/b/a Lamb's Disposal's request for mitigation of the \$1,000 penalty is GRANTED, in part, and the penalty is reduced to \$500.
- 19 (2) The Commission suspends a \$250 portion of the penalty for a period of two years, and then waives it, subject to the condition that Lee A. Lamb d/b/a Lamb's Disposal does not commit any repeat violations of 49 CFR § 391.45(a), 49 C.F.R. § 391.51(a), 49 C.F.R. § 395.8(a)(1), or 49 C.F.R. § 396.3(b).
- 20 (3) Lee A. Lamb d/b/a Lamb's Disposal must pay the \$250 portion of the penalty that is not suspended within 10 days of the effective date of this Order.
- 21 The Secretary has been delegated authority to enter this order on behalf of the Commissioners under WAC 480-07-903(2)(e).

DATED at Lacey, Washington, and effective August 19, 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.