

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment Against	DOCKET TG-190830
SOUND DISPOSAL, INC.	ORDER 01
in the amount of \$500	GRANTING MITIGATION TO \$250

BACKGROUND

- 1 On October 23, 2019, the Washington Utilities and Transportation Commission (Commission) assessed a \$500 penalty (Penalty Assessment) against Sound Disposal, Inc. (Sound Disposal or Company), for one violation of Washington Administrative Code (WAC) 480-70-201, which adopts by reference Title 49 Code of Federal Regulations (C.F.R.) Part 382 – Controlled Substance and Alcohol Use and Testing. The Penalty Assessment includes a \$500 penalty for one violation of 49 C.F.R. § 382.301(a) for using a driver before receiving a negative pre-employment controlled substance test result.
- 2 On October 30, 2019, Sound Disposal responded to the Penalty Assessment admitting the violations and requesting mitigation of the penalty based on the written information provided.
- 3 On November 6, 2019, Commission staff (Staff) filed a response recommending the Commission assess a reduced penalty of \$250.

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.¹ Violations defined by federal law as “critical” meet this standard.²

5 Violations classified as “critical” are indicative of a breakdown in a carrier’s management controls. Critical violations are subject to penalties of \$100 per violation.³ Violations of Title 49 C.F.R. § 382 are subject to an additional \$500 for each motor vehicle driver employed by the carrier who is not in compliance with the motor vehicle driver testing requirements.⁴

6 The Commission will, however, consider 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 The Commission also considers whether the violations were promptly corrected, a company’s history of compliance, and the likelihood the violation will recur.⁶

7 The Penalty Assessment assessed a \$500 penalty for one violation of 49 C.F.R. § 382.301(a) because the Company allowed an employee to operate a commercial vehicle prior to receiving a negative pre-employment controlled substance test result. In its response, the Company explained that it mistakenly believed its driver had received a controlled substance test when she obtained a physical exam. The Company has now received results from a controlled substance test for its employee, and has implemented new procedures to prevent future occurrences of this violation.

8 Staff recommends the penalty be reduced by half because this is a first-time violation and the Company immediately corrected the violation and implemented new procedures to prevent recurrence. Staff further states that the violation is not consistent with the Company’s past performance related to controlled substance and alcohol testing requirements. We agree with Staff’s recommendation and assess a reduced penalty of \$250. In addition to the factors identified by Staff, the Company explained in its

¹ Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission ¶12 (Jan. 7, 2013) (Enforcement Policy).

² 49 C.F.R. § 385, Appendix B.

³ See RCW 81.04.405.

⁴ See RCW 81.04.580.

⁵ Enforcement Policy ¶19.

⁶ Enforcement Policy ¶15.

mitigation application that the violation was overlooked because the Company's office manager passed away. This extraordinary circumstance creates an additional basis for assessing a reduced penalty.

FINDINGS AND CONCLUSIONS

- 9 (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.
- 10 (2) Sound Disposal is a solid waste collection carrier subject to Commission regulation.
- 11 (3) Sound Disposal violated 49 C.F.R. § 382.301(a) when it allowed a driver to operate a commercial vehicle before receiving a negative pre-employment controlled substance test result.
- 12 (4) Sound Disposal should be penalized \$250 for one violation of 49 C.F.R. § 382.301(a).

ORDER

THE COMMISSION ORDERS:

- 13 (1) Sound Disposal, Inc.'s, request for mitigation of the \$500 penalty is GRANTED, in part, and the penalty is reduced to \$250.
- 14 (2) Sound Disposal, Inc., must pay the penalty no later than November 27, 2019.
- 15 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 November 14, 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.