

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment
Against

BAINBRIDGE DISPOSAL, INC.,

in the amount of \$7,000

DOCKET TG-210587

ORDER 01

ORDER GRANTING MITIGATION TO
\$3,600

BACKGROUND

1 On September 13, 2021, the Washington Utilities and Transportation Commission (Commission) assessed a \$7,000 penalty (Penalty Assessment) against Bainbridge Disposal, Inc., (Bainbridge Disposal or Company) for 70 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 \$2,000 penalty for 20 violations of 49 C.F.R. § 383.23(a) for allowing drivers to operate a commercial motor vehicle without a valid commercial driver’s license (CDL) on 20 occasions between June 2 and 22, 2021;
- a \$4,900 penalty for 49 violations of 49 C.F.R. § 391.45(a) for allowing a driver without a valid medical certificate to operate a motor vehicle on 49 occasions between April 1 and June 23, 2021; and
- a \$100 penalty for one violation of 49 C.F.R. § 396.3(a)(1) for operating a motor vehicle with broken and loose brake chambers.

2 On September 23, 2021, Bainbridge 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 explained that the violations were unintentional and occurred inadvertently. The Company provided a comprehensive response to each violation, including descriptions of corrective measures the Company took to prevent repeat violations.

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 October 1, 2021, Commission staff (Staff) filed a response recommending the Commission grant the Company's request for mitigation, in part. Because the Company has taken significant steps to ensure compliance going forward, Staff recommends the Commission reduce the assessed penalty from \$7,000 to \$3,600. Staff further recommends that \$2,000 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 review in two years or as soon thereafter as practicable to review the Company's driver qualifications, (2) the Company not incur any repeat violations of critical or acute regulations, and (3) Bainbridge Disposal timely pays the \$1,600 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. § 383.23(a).** The Penalty Assessment includes a \$2,000 penalty for 20 violations of 49 C.F.R. § 383.23(a) because Bainbridge Disposal allowed drivers Craig Peterson and Kurt Strickland to operate a commercial motor vehicle with a downgraded commercial driver's license (CDL) on 20 occasions between June 2 and 22, 2021. In its response, the Company explained that it unintentionally and inadvertently failed to renew

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.

its employees CDLs due to a misunderstanding regarding changes to Department of Licensing requirements. The Company further explained that it has since implemented extensive measures to ensure employees' CDLs are valid going forward.

7 Staff recommends the Commission reduce the penalty to \$1,000. We agree with Staff's recommendation and assess a reduced penalty of \$1,000. Mitigation of this portion of the penalty is appropriate because Bainbridge Disposal promptly corrected the violations by updating the employee licenses and immediately implemented compliance measures to prevent the violations from reoccurring.

8 **49 C.F.R. § 391.45(a).** The Penalty Assessment also includes a \$4,900 penalty for 49 violations of 49 C.F.R. Part 391.45(a) because Bainbridge Disposal allowed driver Evan Edwards to operate a commercial motor vehicle without a valid medical certificate on 49 occasions between April 1, 2021, and June 23, 2021. In its response, the Company explained that not only was it shorthanded as a result of the ongoing COVID-19 pandemic, but it was unaware of the regulations requiring a driver of the vehicle at issue to have a valid medical card. The Company further explained that Evan Edwards has obtained his certified medical card and that the Company has taken further measures, including hiring a new safety/fleet manager, to ensure future compliance.

9 Staff recommends the Commission reduce this penalty to \$2,500. We agree with Staff's recommendation and assess a reduced penalty of \$2,500. Mitigation of this portion of the penalty is appropriate because Bainbridge Disposal promptly corrected the violations and took steps to prevent reoccurrence.

10 **49 C.F.R. § 396.3(a)(1).** The Penalty Assessment also includes a \$100 penalty for one violation of 49 C.F.R. § 396.3(a)(1) because Bainbridge Disposal's commercial motor vehicle had broken and loose brake chambers on each side of an axle. In its response, the Company states that the damage occurred undetected in the four day period between a regular inspection and the Commission's inspection, and that the vehicle was afterwards placed out of service until it could be fixed.

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

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, Bainbridge Disposal promptly corrected the violations and has taken action to prevent the violations from reoccurring. In any enforcement proceeding, the Commission's goal is to 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 \$2,000 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;
- Bainbridge Disposal does not incur any repeat violations of critical or acute regulations, and;
- The Company pays the \$1,600 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) Bainbridge Disposal is a solid waste collection carrier subject to Commission regulation.

17 (3) Bainbridge Disposal violated 49 C.F.R. § 383.23(a) when its employees drove its commercial motor vehicle on 20 occasions with downgraded CDLs.

18 (4) The Commission should penalize Bainbridge Disposal \$1,000 for 20 violations of 49 C.F.R. § 383.23(a).

⁶ *Id.* at ¶20.

⁷ *Id.*

- 19 (5) Bainbridge Disposal violated 49 C.F.R. § 391.45(a), when its employee drove its commercial motor vehicle on 49 occasions without a valid medical certificate.
- 20 (6) The Commission should penalize Bainbridge Disposal \$2,500 for 49 violations of 49 C.F.R. § 391.45(a).
- 21 (7) Bainbridge Disposal violated 49 C.F.R. § 396.3(a)(1) when its commercial motor vehicle had broken and loose brake chambers on each side of axle number three.
- 22 (8) The Commission should penalize Bainbridge Disposal \$100 for one violation of 49 C.F.R. § 396.3(a)(1).
- 23 (9) The Commission should suspend a \$2,000 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) Bainbridge Disposal, Inc.'s request for mitigation of the \$7,000 penalty is GRANTED, in part, and the penalty is reduced to \$3,600.
- 25 (2) The Commission assesses a \$3,600 penalty against Bainbridge Disposal, Inc. The Commission suspends a \$2,000 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 \$1,600 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 Lacey, Washington, and effective October 13, 2021.

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.