

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment Against  EMPIRE DISPOSAL INC.  in the amount of \$5,300	DOCKET TG-161282  ORDER 01  ORDER GRANTING MITIGATION TO \$2,700
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**BACKGROUND**

- 1 On December 23, 2016, the Washington Utilities and Transportation Commission (Commission) assessed a \$5,300 penalty (Penalty Assessment) against Empire Disposal Inc. (Empire or Company) for 53 critical violations of Washington Administrative Code (WAC) 480-30-221, which adopts by reference 49 C.F.R. Part 383 related to commercial driver's license standards and Part 391 related to driver qualifications.
- 2 On January 17, 2017, Empire filed a response to the Penalty Assessment admitting the violations and requesting a hearing. The Company did not provide any written explanation or documentation to support its request.
- 3 On January 20, 2017, the Commission issued a Notice Denying Request for Hearing and Notice of Opportunity to file a Written Response (Notice). The Notice allowed the Company to provide a written response to explain how the violations occurred and why it believes the penalty should be reduced.
- 4 On January 27, 2017, Empire filed a written response to the Notice, admitting the violations related to commercial driver's license standards, disputing the violations related to driver qualifications, and requesting mitigation of the penalty based on the information provided. Specifically, the Company admits that its employee drove without a valid Commercial Driver's License (CDL), but denies that its driver qualification files were incomplete.
- 5 On February 3, 2017, Commission staff (Staff) filed a response recommending the Commission grant the Company's request for mitigation, in part. The Penalty Assessment includes a \$5,200 penalty for 52 violations of 49 C.F.R. Part 383.37(b) and a \$100

penalty for one violation of 49 C.F.R. Part 391.51(b)(2). Because these are first-time violations and the Company promptly corrected them, Staff recommends the Commission reduce the assessed penalty from \$5,300 to \$2,700.

### DISCUSSION AND DECISION

- 6 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.<sup>1</sup> Violations defined by federal law as “critical,” which are indicative of a breakdown in a carrier’s management controls, meet this standard.<sup>2</sup> Critical violations discovered during safety inspections are subject to penalties of \$100 per violation.<sup>3</sup>
- 7 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.<sup>4</sup> We address each violation category in turn.
- 8 **WAC 480-30-221, 49 C.F.R. Part 383.37(b).** The Penalty Assessment includes a \$5,200 penalty for 52 violations of 49 C.F.R. Part 383.37(b) because Company employee Melroy Manner drove on 52 occasions with an expired CDL. In its response, Empire explained that Mr. Manner did not notify the Company when his CDL expired on August 16, 2016. On September 6, 2016, Empire obtained a driving record for Mr. Manner, but failed to notice his CDL status and continued to allow him to drive. Empire accepts responsibility for the violations that occurred after Mr. Manner’s driving record was obtained on September 6.

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

<sup>2</sup> 49 C.F.R. § 385, Appendix B.

<sup>3</sup> See RCW 81.04.405.

<sup>4</sup> Enforcement Policy ¶19.

- 9 Because these are first-time violations, Staff recommends the Commission reduce the penalty by half, to \$2,600. We agree with Staff's recommendation and assess a reduced penalty, but reject the Company's claim that it is not responsible for the violations that occurred prior to September 6, 2016. Empire, not its employees, is ultimately responsible for ensuring each of the Company's drivers has a valid CDL. We nevertheless find that mitigation of this portion of the penalty is appropriate because Empire promptly corrected the violations by reassigning Mr. Manner to non-driving duties as soon as it became aware of his CDL status.
- 10 **WAC 480-30-221, 49 C.F.R. Part 391.51(b)(2).** The Penalty Assessment also includes a \$100 penalty for four violations of 49 C.F.R. Part 391.51(b)(7) because Empire failed to maintain driving record inquiries in the driver qualification files for employees John Hall, Brian Johnson, Troy Scott, and Daniel Young. In its response, the Company disputes that these violations occurred and explains that it did not provide the driving record inquiries during the compliance review because Staff did not specifically request them. The Company claims that these documents are maintained online only.
- 11 In its response, Staff explains that it reviewed complete electronic files for each of the four drivers, and none contained driving record inquiries as required. Staff recommends no mitigation of this portion of the penalty because the Penalty Assessment assessed a reduced penalty of \$100 for four violations.
- 12 As a preliminary matter, we deny the Company's contest of the violations. Staff indicates in its response that it conducted a full review of each employee's electronic file, not just their paper personnel files, as the Company claims. We find Staff's response credible, and conclude that Empire violated 49 C.F.R. Part 391.51(b)(2).
- 13 We also find that no further penalty reduction is warranted. The Commission could have assessed a \$400 penalty, but, because these are first-time violations, assessed a "per category" rather than "per violation" penalty. Accordingly, we decline to mitigate this portion of the penalty.

### 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) Empire is a solid waste collection carrier subject to Commission regulation.

16 (3) Empire violated WAC 480-30-221, which adopts by reference 49 C.F.R. 383.37(b), when its employee drove on 52 occasions with an invalid CDL.

17 (4) The Commission should penalize Empire \$2,600 for 52 violations of WAC 480-30-221, which adopts by reference 49 C.F.R. 383.37(b).

18 (5) Empire violated WAC 480-30-221, which adopts by reference 49 C.F.R. Part 391.51(b)(2), when it failed to maintain driving record inquiries in driver qualification files for four employees.

19 (6) The Commission should penalize Empire \$100 for four violations of WAC 480-30-221, which adopts by reference 49 C.F.R. Part 391.51(b)(2).

### **ORDER**

#### **THE COMMISSION ORDERS:**

20 (1) Empire Disposal Inc.'s request for mitigation of the \$5,300 penalty is GRANTED, in part, and the penalty is reduced to \$2,700.

21 (2) Empire Disposal Inc. must pay the \$2,700 penalty no later than February 24, 2017.

22 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 10, 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.**