

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment Against	DOCKET TG-171220
RUBATINO REFUSE REMOVAL, INC.	ORDER 01
in the amount of \$700	GRANTING MITIGATION TO \$450

**BACKGROUND**

- 1 On January 16, 2018, the Washington Utilities and Transportation Commission (Commission) assessed a \$700 penalty (Penalty Assessment) against Rubatino Refuse Removal, Inc. (Rubatino or Company) for six critical violations of Washington Administrative Code (WAC) 480-70-201, which adopts by reference sections of 49 C.F.R.<sup>1</sup> The Penalty Assessment includes a \$500 penalty for one violations of 49 C.F.R. Part 382.301(a) related to pre-employment controlled substances testing; a \$100 penalty for four violations of 49 C.F.R. Part 391.305(b)(1) related to random alcohol testing; and a \$100 penalty for one violation of 49 C.F.R. Part 393.209(d) related to worn steering system components.
- 2 On February 2, 2018, the Company responded to the Penalty Assessment, admitting the violations and requesting mitigation of the penalty based on the written information provided. The Company did not provide any reasons for mitigation other than to request a reduction of the penalty similar to that granted to another transportation company.
- 3 On February 8, 2018, Commission staff (Staff) filed a response recommending the Commission grant the Company's request for mitigation, in part. Staff recommends the Commission reduce the assessed penalty from \$700 to \$450 because the Company admitted the violations, has an established history of compliance with the Commission, and stated in its 15-day response letter to the Commission that it will comply with FMCSA regulations.

---

<sup>1</sup> 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.

## DISCUSSION AND DECISION

- 4 Washington law requires solid waste collection carriers to comply with federal safety requirements and undergo routine safety inspections. Violations discovered during safety inspections are subject to penalties of \$100 per violation.<sup>2</sup> In some cases, Commission requirements are so fundamental to safe operations that the Commission will issue penalties for first-time violations.<sup>3</sup> Violations defined by federal law as “critical” meet this standard.<sup>4</sup>
- 5 In addition, RCW 81.04.530 imposes penalties for violations of 49 C.F.R. Part 382 related to controlled substances and alcohol use testing. A carrier that fails to comply with 49 C.F.R. Part 382 is subject to a penalty “of up to one thousand five hundred dollars and up to an additional five hundred dollars for each motor vehicle driver employed by the person or employer who is not in compliance with the driver testing requirements.”<sup>5</sup>
- 6 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>6</sup> We address each violation category in turn.
- 7 **49 C.F.R. Part 382.301(a).** The Penalty Assessment includes a \$500 penalty for one violation of 49 C.F.R. Part 382.301(a) because the Company allowed one employee to drive on one occasion prior to receiving a negative pre-employment test result. The Company admitted the violation but did not explain why the penalty should be mitigated.
- 8 Staff recommends that the Commission reduce the penalty from \$500 to \$250 because the Company admitted the violation and has an established compliance history. Staff also notes that the Company stated in its 15-day response letter to the Commission that it will comply with FMCSA regulations. We agree with Staff’s recommendation and assess a reduced penalty of \$250. Mitigation of this penalty is appropriate because this is a first-time violation and the Company promptly corrected the violation.

---

<sup>2</sup> See RCW 81.04.405.

<sup>3</sup> Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission ¶12, 15 (Jan. 7, 2013) (Enforcement Policy).

<sup>4</sup> 49 C.F.R. § 385, Appendix B.

<sup>5</sup> RCW 81.04.530.

<sup>6</sup> Enforcement Policy ¶19.

9 **49 C.F.R. Part 382.305(b)(1).** The Penalty Assessment also includes a \$100 penalty for four violations of 49 C.F.R. 382.305(b)(1) because the Company failed to conduct at least four random alcohol tests required to meet the standard of testing ten percent of the average number of driver positions for the calendar year. The Company's request for mitigation did not address this violation. However, Staff explained that the Company's 15-day response letter to the Commission states that the violation occurred because the Company mistakenly included non-CDL drivers in its random alcohol testing pool, and the Company has since deleted the non-CDL drivers from that pool.

10 Staff recommends no mitigation of this portion of the penalty. We agree. Because these were first-time violations, the Commission assessed a penalty per type of violation rather than per occurrence. We conclude no further penalty reduction is warranted.

11 **49 C.F.R. Part 393.209.** The Penalty Assessment also includes a \$100 penalty for one violation of 49 C.F.R. Part 393.209 because Staff discovered one commercial motor vehicle with worn steering system components and placed the vehicle out-of-service.

12 Staff recommends no mitigation of this portion of the penalty. We agree. Operating a commercial vehicle with worn steering system components may put the traveling public at risk. The Commission assessed \$100 for one violation, and we conclude no further penalty reduction is warranted.

### FINDINGS AND CONCLUSIONS

13 (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.

14 (2) Rubatino is a solid waste collection carrier subject to Commission regulation.

15 (3) Rubatino violated 49 C.F.R. Part 382.301(a), when one employee drove on one occasion prior to receiving a negative pre-employment controlled substance test result.

16 (4) The Commission should penalize Rubatino \$250 for one violation of 49 C.F.R. Part 382.301(a),

17 (5) Rubatino violated 49 C.F.R. Part 382.305(b)(1), when it failed to conduct at least four random alcohol tests require to meet the standard of testing ten percent of the average number of driver positions for the calendar year.

- 18 (6) The Commission should penalize Rubatino \$100 for four violations of  
49 C.F.R. 382.305(b)(1).
- 19 (7) Rubatino violated 49 C.F.R. Part 393.209(d) when Staff discovered one  
commercial motor vehicle with worn steering system components
- 20 (8) The Commission should penalize Rubatino \$100 for one violation of  
49 C.F.R. Part 393.209(d).
- 21 (9) The Commission should assess a total penalty of \$450 for six violations of  
WAC 480-70 and Title 49 C.F.R.
- 22 (10) Rubatino paid \$450 toward the Penalty Assessment on February 23, 2018.

**ORDER**

THE COMMISSION ORDERS:

- 23 (1) Rubatino Refuse Removal, Inc.'s request for mitigation of the \$700 penalty is  
GRANTED, in part, and the penalty is reduced to \$450.
- 24 (2) Rubatino paid the penalty in full on February 23, 2018. No further payment is  
due.
- 25 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 March 9, 2018.

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.**