

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment  
Against

WASTE MANAGEMENT OF  
WASHINGTON, INC.,

in the amount of \$19,600

DOCKET TG-210621

ORDER 01

ORDER GRANTING MITIGATION TO  
\$10,500

**BACKGROUND**

1 On September 13, 2021, the Washington Utilities and Transportation Commission (Commission) assessed a \$19,600 penalty (Penalty Assessment) against Waste Management of Washington, Inc., (Waste Management or Company) for 225 violations of Washington Administrative Code (WAC) 480-70-201, which adopts by reference sections of Title 49 Code of Federal Regulations (C.F.R.).<sup>1</sup> The Penalty Assessment includes:

- a \$7,600 penalty for 76 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 76 occasions between November 9, 2020, and March 8, 2021;
- a \$100 penalty for one violation of 49 C.F.R. § 391.23(c) for failing to investigate a driver's background within 30 days of employment;
- a \$10,600 penalty for 106 violations of 49 C.F.R. § 391.45(a) for allowing a driver without a valid medical certificate to operate a motor vehicle on 106 occasions between October 14, 2020, and April 9, 2021;
- A \$100 penalty for two violations of 49 C.F.R. § 391.51(b)(2) for failing to maintain inquiries into a driver's driving record in the driver's qualification file;
- a \$100 penalty for two violations of 49 C.F.R. § 391.51(b)(4) for failing to maintain the responses of each state agency to the annual driver record inquiry required by 49 C.F.R. §391.25(a);

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<sup>1</sup> 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.

- a \$100 penalty for one violation of § 391.51.(b)(5) for failing to maintain a note relating to the annual review of a driver's driving record as required by 49 C.F.R. § 391.25(c)(2);
- a \$100 penalty for 21 violations of § 391.51(b)(6) for failing to maintain a list or certificate relating to violations of motor vehicle laws and ordinances required by 49 C.F.R. § 391.27;
- a \$100 penalty for three violations of § 391.51(b)(9) for failing to place a note related to the verification of the medical examiner's listing on the National Registry of Certified Medical Examiners required by 49 C.F.R. §391.23(m) in driver qualification files;
- a \$200 penalty for two violations of § 49 C.F.R. 392.9(a)(2) for failing to secure vehicle equipment;
- a \$100 penalty for one violation of 49 C.F.R. § 393.45(b)(2) for operating a commercial motor vehicle with a fraying axle brake hose;
- a 100 penalty for one violation of 49 C.F.R. § 393.51 for operating a commercial motor vehicle with a defective air pressure gauge;
- a \$200 penalty for two violations of 49 CFR § 396.3(a)(1) for operating two commercial motor vehicles with a tire contacting the brake hose;
- a \$100 penalty for one violation of 49 C.F.R. § 396.3(a)(1) for operating a motor vehicle with a tire contacting its hydraulic air line; and
- a \$100 penalty for six violations of 49 CFR § 396.11(a)(3)(ii) for failing to certify that repairs were made or not necessary on six occasions between February 12, 2021, and April 30, 2021.

2 On September 28, 2021, Waste Management responded to the Penalty Assessment admitting the violations and requesting mitigation of the penalty based on the written information provided. The Company provided a comprehensive response to each violation, including descriptions of corrective measures it took to prevent repeat violations. Waste Management additionally requested mitigation of the suspended penalty imposed in Docket TG-190495 as a result of the repeat violations discovered during Staff's investigation in this Docket.

3 On October 5, 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 \$19,600 to \$10,500. Staff further recommends that \$5,500 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 of

Company compliance with 49 C.F.R. §§ 383 and 391 in two years or as soon thereafter as practicable, (2) the Company must not incur any repeat violations of critical regulations, and (3) Waste Management timely pays the \$5,000 portion of the penalty that is not suspended. Staff recommends that the Commission decline to further mitigate the \$6,500 suspended penalty imposed in Docket TG-190495.

### 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.<sup>2</sup> Violations defined by federal law as “critical,” which are indicative of a breakdown in a carrier’s management controls, meet this standard.<sup>3</sup> Critical violations discovered during safety inspections are subject to penalties of \$100 per violation.<sup>4</sup>
- 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.<sup>5</sup> We address each violation category in turn.
- 6 **Out-of-Service Violations: 49 C.F.R. § 392.9(a)(2) 49 CFR § 393.45(b)(2), 49 CFR § 393.51, 49 CFR § 396.3(a)(1), and 49 CFR § 396.3(a)(1).** The Penalty Assessment includes \$700 in penalties for two violations of 49 CFR § 392.9(a)(2) and one violation each of 49 CFR § 393.45(b)(2), 49 CFR § 393.51, 49 CFR § 396.3(a)(1), and 49 CFR § 396.3(a)(1) for vehicle maintenance issues. In its response, the Company explained that it immediately addressed the violations and took steps to prevent reoccurrence.
- 7 Staff recommends no mitigation of this portion of the penalty. We agree. These are critical safety violations that put the traveling public at risk. Accordingly, we conclude that assessing a \$100 penalty for each out-of-service violation is appropriate.

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<sup>2</sup> Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission ¶12 (Jan. 7, 2013) (Enforcement Policy).

<sup>3</sup> 49 C.F.R. § 385, Appendix B.

<sup>4</sup> See RCW 81.04.405.

<sup>5</sup> Enforcement Policy ¶19.

8 **“Per Category” Penalties: 49 CFR § 391.23(c), 49 CFR § 391.51(b)(2), 49 CFR § 391.51(b)(4), 49 CFR § 391.51(b)(5), 49 CFR § 391.51(b)(6), 49 CFR § 391.51(b)(9), and 49 CFR § 396.11(a)(3)(ii).** The Penalty Assessment includes \$700 in penalties for: (1) one violation of 49 CFR § 391.23(c) for failing to timely investigate driver’s background; (2) two violations of 49 CFR § 391.51(b)(2) for failing to maintain inquiries into driver’s driving record in driver’s qualification file; (3) two violations of 49 CFR § 391.51(b)(4) for failing to maintain the responses of each state agency to the annual driver record inquiry required; (4) one violation of 49 CFR § 391.51(b)(5) for failing to maintain a note relating to the annual review of the driver’s driving record as required; (5) 21 violations of 49 CFR § 391.51(b)(6) for failing to maintain a list or certificate relating to violations of motor vehicle laws and ordinances required; (6) three violations of 49 CFR § 391.51(b)(9) for failing to place a note related to the verification of the medical examiner’s listing on the National Registry of Certified Medical Examiners in driver qualification files; and (7) six violations of 49 CFR § 396.11(a)(3)(ii) for failing to certify that repairs were made or were not necessary. In its response, the Company acknowledged each violation and explained in detail the new systems and procedures that it has implemented to prevent reoccurrence.

9 Staff recommends no mitigation of this portion of the penalty. We agree. Each of these are repeat violations for which the Commission assessed the minimum “per category” penalty. Accordingly, we conclude that assessing a \$100 penalty per violation type for these repeat violations is appropriate.

10 **49 C.F.R. § 383.23(a).** The Penalty Assessment also includes a \$7,600 penalty for 76 violations of 49 C.F.R. §383.23(a) because the Company allowed its employee to operate a commercial motor vehicle without a valid CDL on 76 occasions. In its response, the Company explained the circumstances that resulted in the violations and stated that it immediately made corrections. The Company further stated that it has implemented an automated alert system to ensure that no active drivers are allowed to operate commercial motor vehicles with downgraded CDLs.

11 Staff recommends the Commission reduce the penalty for these violations to \$3,800. We agree with Staff’s recommendation and assess a reduced penalty of \$3,800. Mitigation of this portion of the penalty is appropriate because Waste Management promptly corrected the violations and immediately implemented compliance measures to prevent the violations from reoccurring.

12 **49 C.F.R. § 391.45(a).** The Penalty Assessment also includes a \$10,600 penalty for 106 violations of 49 C.F.R. Part 391.45(a) because Waste Management allowed its employees

to operate a commercial motor vehicle without a valid medical certificate on 106 occasions between October 14, 2020, and April 9, 2021. In its response, the Company acknowledged the violations and the oversight. The Company explained that it has taken steps to improve its file management controls to ensure future compliance.

13 Staff recommends the Commission reduce this portion of the penalty to \$5,300. We agree with Staff's recommendation and assess a reduced penalty of \$5,300. Mitigation of this portion of the penalty is appropriate because Waste Management promptly corrected the violations and took steps to prevent reoccurrence.

14 **Suspended Penalty.** The Commission considers several factors when 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.<sup>6</sup> Another factor we consider is whether the company agrees to a specific compliance plan that will guarantee future compliance in exchange for suspended penalties.<sup>7</sup>

15 In this case, Waste Management promptly corrected the violations and took action to prevent the violations from reoccurring. Suspending a portion of the penalty with the conditions proposed by Staff will both increase compliance and provide an incentive to avoid violations in the future. Accordingly, we agree with Staff's recommendation and suspend a \$5,500 portion of the penalty for a period of two years, and then waive it, subject to the following conditions:

- Staff will conduct a focused review in two years or as soon thereafter as practicable to review the Company's compliance with 49 C.F.R. §§ 383 and 391;
- Waste Management must not incur any repeat violations of critical or acute regulations, and;
- The Company must pay the \$5,000 portion of the penalty that is not suspended within 10 days of the effective date of this Order.

16 **Suspended Penalty in Docket TG-190495.** In its request for mitigation, the Company also requests mitigation of the suspended penalty imposed in Docket TG-190495 due to the repeat violations discovered during Staff's investigation in this Docket. Although the

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<sup>6</sup> *Id.* at ¶20.

<sup>7</sup> *Id.*

Company should have properly filed its request in Docket TG-190945, we address it in this Order because Staff provided responsive information.

- 17 We agree with Staff's recommendation and deny the Company's request to mitigate the penalties assessed in Docket TG-190945 a second time. In that case, the Commission suspended a \$6,500 portion of the penalty subject to certain conditions, which were nearly identical to the conditions imposed by this Order. The Company was aware of the conditions it was required to meet to avoid imposition of the suspended penalty and nevertheless violated them. We thus decline to afford the Company leniency a second time. Additionally, the Company has offered no additional information that would support mitigation of the penalty imposed in that docket.

### FINDINGS AND CONCLUSIONS

- 18 (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.
- 19 (2) Waste Management is a solid waste collection carrier subject to Commission regulation.
- 20 (3) Waste Management violated 49 C.F.R. § 383.23(a) when its employees drove its commercial motor vehicle on 76 occasions with downgraded CDLs.
- 21 (4) The Commission should penalize Waste Management \$3,800 for 76 violations of 49 C.F.R. § 383.23(a).
- 22 (5) Waste Management violated 49 CFR § 391.23(c) when it failed to investigate a driver's background within 30 days of employment.
- 23 (6) The Commission should penalize Waste Management \$100 for one violation of 49 CFR § 391.23(c).
- 24 (7) Waste Management violated 49 C.F.R. § 391.45(a) when its employee drove its commercial motor vehicle on 106 occasions without a valid medical certificate.
- 25 (8) The Commission should penalize Waste Management \$5,300 for 106 violations of 49 C.F.R. § 391.45(a).

- 26 (9) Waste Management violated 49 CFR § 391.51(b)(2) when it failed to maintain inquiries into two drivers' driving records in those drivers' qualification files.
- 27 (10) The Commission should penalize Waste Management \$100 for two violations of 49 CFR § 391.51(b)(2).
- 28 (11) Waste Management violated 49 CFR § 391.51(b)(4) when it twice failed to maintain the responses of each state agency to the annual driver record inquiry required by 49 CFR § 391.25(a).
- 29 (12) The Commission should penalize Waste Management \$100 for two violations of 49 CFR § 391.51(b)(4).
- 30 (13) Waste Management violated 49 CFR § 391.51(b)(5) when it failed to maintain a note relating to the annual review of a driver's driving record as required by 49 C.F.R. §391.25(c)(2).
- 31 (14) The Commission should penalize Waste Management \$100 for one violation of 49 CFR § 391.51(b)(5).
- 32 (15) Waste Management violated 49 CFR § 391.51(b)(6) when it failed to maintain a list or certificate relating to violations of motor vehicle laws and ordinances required by 49 C.F.R. §391.27 for 21 of its employees.
- 33 (16) The Commission should penalize Waste Management \$100 for 21 violations of 49 CFR § 391.51(b)(6).
- 34 (17) Waste Management violated 49 CFR § 391.51(b)(9) when it failed to place a note related to the verification of the medical examiner's listing on the National Registry of Certified Medical Examiners required by 49 CFR § 391.23(m) in the driver qualification files of three of its employees.
- 35 (18) The Commission should penalize Waste Management \$100 for three violations of 49 CFR § 391.51(b)(9).
- 36 (19) Waste Management violated 49 CFR § 392.9(a)(2) when it failed to secure vehicle equipment on two occasions.
- 37 (20) The Commission should penalize Waste Management \$200 for two violations of 49 CFR § 392.9(a)(2).

- 38 (21) Waste Management violated 49 CFR § 393.45(b)(2) when its commercial motor vehicle had a frayed brake tube.
- 39 (22) The Commission should penalize Waste Management \$100 for one violation of 49 CFR § 393.45(b)(2).
- 40 (23) Waste Management violated 49 CFR § 393.51 when its commercial motor vehicle had a defective primary air pressure gauge.
- 41 (24) The Commission should penalize Waste Management \$100 for one violation of 49 CFR § 393.51.
- 42 (25) Waste Management violated 49 C.F.R. § 396.3(a)(1) when two of its commercial motor vehicles had tires contacting the brake hose.
- 43 (26) The Commission should penalize Waste Management \$200 for two violations of 49 C.F.R. § 396.3(a)(1).
- 44 (27) Waste Management violated 49 C.F.R. § 396.3(a)(1) when its commercial motor vehicle had a tire contacting the hydraulic air line.
- 45 (28) The Commission should penalize Waste Management \$100 for one violation of 49 C.F.R. § 396.3(a)(1).
- 46 (29) Waste Management violated 49 CFR § 396.11(a)(3)(ii) when it failed to certify that repairs were made or were not necessary on six occasions.
- 47 (30) The Commission should penalize Waste Management \$100 for six violations of 49 CFR § 396.11(a)(3)(ii).
- 48 (31) The Commission should suspend a \$5,500 portion of the penalty for two years, and then waive it, subject to the conditions set out in paragraph 15, above.

### ORDER

#### THE COMMISSION ORDERS:

- 49 (1) Waste Management of Washington, Inc.'s request for mitigation of the \$19,600 penalty is GRANTED, in part, and the penalty is reduced to \$10,500.



- 50 (2) The Commission suspends a \$5,500 portion of the penalty for a period of two  
years, and then waives it, subject to the conditions set out in paragraph 15, above.
- 51 (3) The \$5,000 portion of the penalty that is not suspended is due and payable within  
10 days of the effective date of this Order.
- 52 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 26, 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.**