



STATE OF WASHINGTON

UTILITIES AND TRANSPORTATION COMMISSION

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January 10, 2017

Steven V. King, Executive Director and Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Dr. SW
P. O. Box 47250
Olympia, Washington 98504-7250

RE: *Washington Utilities and Transportation Commission v. Carroll-Naslund Disposal Service Inc.*
Commission Staff's Response to Application for Mitigation of Penalties
Docket TE-161281

Dear Mr. King:

On December 21, 2016, the Washington Utilities and Transportation Commission (Commission) issued a Penalty Assessment under docket TE-161281 against Carroll-Naslund Disposal Service Inc. (Carroll-Naslund) in the amount of \$12,600, for violations of WAC 480-70-201 Vehicle and Driver Safety Requirements, which requires solid waste haulers to comply with CFR Part 390 – Federal Motor Carrier Safety Regulations; General, Part 391 – Qualifications of Drivers and Part 396 – Inspection, Repair and Maintenance, as follows:

- **One-hundred twenty-four violations of CFR 390.35 – Fraudulently acquiring or falsifying a commercial driver's license.** Carroll-Naslund Disposal allowed its driver Jerry Fuller to drive with a fraudulent commercial driver's license on 124 occasions during the six months prior to the compliance review. Mr. Fuller drove on four days in April; 21 days in May; 21 days in June; 19 days in July; 19 days in August; 22 days in September; and 18 days in October, 2016.
- **One violation of CFR 391.51(b)(7) – Failing to maintain medical examiner's certificate in driver's qualification file.** The company failed to maintain medical certificates in the driver files of Brett Jurries, Michael Cone, and Jerry Fuller.

- **One violation of CFR 396.3(b) – Failing to maintain minimum records of inspection and vehicle maintenance.** The company failed to keep minimum service and inspection records for its eight commercial vehicles.

On January 4, 2017, Carroll-Naslund filed with the commission its application for mitigation of penalties (Mitigation Request). James H. Naslund, president of Carroll-Naslund, admitted the violations, provided evidence that the violations has been corrected, and asked that the penalties be reduced.

Carroll-Naslund operates as a solid waste hauler under permit number G-37. On October 26, 2016 Motor Carrier Safety Investigator Sandi Yeomans conducted a compliance review investigation, an in-depth examination of the motor carrier's compliance with regulations that the FMCSA has identified as “acute” or “critical.”¹ Acute regulations are identified where noncompliance is so severe as to require immediate corrective actions regardless of the overall safety posture of the motor carrier. Violations of critical regulations are generally indicative of breakdowns in a carrier's management controls. Non-compliance with acute regulations and patterns of non-compliance with critical regulations are quantitatively linked to inadequate safety management controls and unusually higher than average accident rates.² Ms. Yeomans found 184 violations, all of which were first-time violations.

The commission's Enforcement Policy, however, provides that some commission requirements are so critical to safe operations that the commission may issue penalties for a first-time violation, even if staff has not previously provided technical assistance on specific issues.³ Of the 184 violations found, 126 were of critical regulations.

In the Mitigation Request, Mr. Naslund admitted the violations and stated that the violations have been corrected. Mr. Naslund also provided evidence of each correction as well as measures taken to prevent future violations. Staff's response is included below.

1. **Mitigation request:** CFR 390.35 – Fraudulently acquiring or falsifying a commercial driver's license. Upon learning of the fraudulent driver's license Carroll-Naslund immediately terminated the employee and instituted additional administrative controls to prevent future violations. Instead of having the employees provide their own annual driving abstracts, in the future, Carroll-Naslund's office manager will do so. Carroll-Naslund will also obtain driver abstracts randomly throughout the year, familiarize itself with the license formats from various states, obtain and keep copies of employees' licenses as they are renewed, and require its employees to register their medical cards with the Department of Licensing.

Staff response: The company, to its credit, did have some measures in place to attempt to verify its drivers' CDL status. But by allowing employees to submit their own driver abstracts, the company unknowingly allowed a unqualified employee to drive on numerous occasions. In

1 Code of Federal Regulations, [Appendix B to Part 385—Explanation of safety rating process](#)

2 *Id.*

3 Docket A-120061 – Enforcement Policy of the Washington Utilities & Transportation Commission – Section V.

consideration of the company's overall safety management efforts and willingness to immediately correct this violation, staff recommends mitigation of this penalty from \$12,400 to \$6,200.

2. **Mitigation request:** CFR 391.51(b)(7) – Failing to maintain medical examiner's certificate in driver's qualification file. Carroll-Naslund now maintains copies of each driver's medical certificate, has obtained copies of previous medical certificates to the extent they were available, and has instituted a tracking control to know when an employee's medical certificate needs to be updated.

Staff response: Staff found that three of the four driver files examined were missing the required driver's medical certificate. However, as a first-time critical violation, Carroll-Naslund was penalized \$100 for only one violation of this type. Staff recommends no further mitigation of this penalty.

3. **Mitigation request:** CFR 396.3(b) Failing to maintain minimum records of inspection and vehicle maintenance. Carroll-Naslund corrected this violation by designating one employee to manage all vehicle records, and by creating individual files for each vehicle.

Staff Response: Staff found that none of the five vehicles examined had files containing the required minimum records of inspection and vehicle maintenance. However, as a first-time critical violation, Carroll-Naslund was penalized \$100 for only one violation of this type. Staff recommends no further mitigation of this penalty.

Carroll-Naslund is a small solid waste hauling company with eight vehicles and four drivers. The company traveled 54,580 miles and reported \$1,237,256 in gross revenue for 2015. The company was cooperative and responsive, and took immediate steps to correct all violations and stay in compliance. Staff recommends mitigation of the \$12,600 penalty to \$6,400.

If you have any questions, please contact Mike Turcott, Compliance Investigator, Transportation Safety, at 360-664-1174, or by e-mail at miturcot@utc.wa.gov.

Sincerely,



David Pratt
Assistant Director, Transportation Safety

Enclosures

