

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Investigation of
WASTE MANAGEMENT OF
WASHINGTON, INC.

DOCKET TG-190495
DECLARATION OF
JASON SHARP

I, JASON SHARP, under penalty of perjury under the laws of the state of Washington, declares as follows:

- 1 I am over 18 years of age, a citizen of the United States, a resident of the state of Washington, and competent to be a witness.
- 2 I am employed by the Washington Utilities and Transportation Commission (Commission) as a Supervisor in the Motor Carrier section. As a Supervisor, my responsibilities include assigning and reviewing the work of the Motor Carrier Safety investigators and providing recommendations based on Commission rules and the Motor Carrier Safety Enforcement Policy as a result of safety investigation outcomes.
- 3 On March 13, 2019, special investigator Wayne Gilbert (initiated a routine safety investigation of Waste Management of Washington, Inc. (WM or Company). The purpose of the investigation was to determine the safety fitness of the Company as determined in 49 C.F.R. Part 385.
- 4 On June 4, I reviewed the report submitted by Investigator Gilbert (dated 6/11/2019) and, based on the report, issued my recommendation for administrative penalties based on violations that Mr. Gilbert discovered during the investigation. A true and correct copy of this report is attached to my declaration as Attachment 1.
- 5 On June 11, Mr. Gilbert notified the Company of the violations discovered in the investigative report at the closing interview. The report resulted in a satisfactory safety rating.
- 6 On July 10, the Commission issued a penalty assessment against the Company in the amount of \$47,700 in alignment with the Commission's Enforcement Policy¹ as a result of the following violations discovered:
- a. 199 acute violations of 49 C.F.R. 383.37(a) for knowingly allowing, requiring, permitting, or authorizing an employee to operate a commercial motor vehicle during any period in which the driver does not have a current commercial driver license or does not have a commercial driver license with the proper class or endorsements. WM was issued a penalty of \$19,900.
 - b. 274 critical violations of 49 C.F.R. 391.45(a) for using a driver not medically examined and certified. WM was penalized \$27,400.

¹ Docket A-120061 – Enforcement Policy of the Washington Utilities and Transportation Commission – Section V.

- c. Four out-of-service violations of 49 C.F.R. 396.3(a)(1) for failing to ensure that vehicles parts and accessories be in safe and proper operating conditional at all times. WM was penalized \$400.

7 On July 25, WM submitted its response to the penalty assessment into Docket TG-190495. The Company's response noted that WM was contesting 253 of the 271 violations of 49 C.F.R. 391.45(a), and requested mitigation of the remaining proposed violations of 49 C.F.R. 383.37, 391, 45(a), and 396.3(a)(1). WM noted that:

In the event the Commission does not withdraw the 253 violations, WMW requests mitigation of the penalties assessed for these violations. Given that the WSP does not require medical cards for drivers of these kinds of vehicles, the lack of a medical card for the container delivery drivers should not be considered "serious or harmful to the public" under the Enforcement Policy.²

8 Since joining the Commission in November 2016, it has been my understanding that container trucks as solid waste vehicles are regulated by the Commission. The rules for equipment and drivers are identified in Part V of WAC 480-70 and define "commercial motor vehicle" as any self-propelled or towed motor vehicle used on a highway when the vehicle has a gross vehicle weight rating of ten thousand and one pounds or more.³ This interpretation is consistent with how the Commission regulates other industries, such as household goods companies.

9 The Commission and the Federal Motor Carrier Safety Administration utilize the same vehicle threshold for commercial motor vehicles of ten thousand and one pounds or greater gross vehicle weight rating when applying the medical certification requirement to drivers. Staff historically recommends penalties for using commercial vehicle drivers who have not been medically examined and certified, as allowing a driver with an undetected medical condition presents a serious safety concern.

10 In regards to the Company's response to the penalty assessment, I enter this response on behalf of staff. Staff believes that the penalty assessment issued to the Company in Docket TG-190495 is accurate and Staff does not agree with the Company's argument that the commercial motor vehicles identified during the investigation do not fall under the Commission's regulation.

11 WM provided Staff with a thorough response to the violations identified during the safety investigation and, despite the difference in interpretation of applicability leading to the Company contesting 253 violations of 49 C.F.R. Part 391.45(a), Staff finds that the Company's response, as illustrated in its safety management plan, shows that the WM took immediate corrective action in addressing each violation noted in the penalty assessment.

12 Staff's recommendation is for all violations identified in the penalty assessment as follows:

² Response to Penalty Assessment and Request for Mitigation, on behalf of Waste Management of Washington, Inc., from Andrew Kenefick.

³ WAC 480-70-196.

- Mitigation request: 199 acute violations of C.F.R. Part 383.37(a) for a total of \$19,900.

Staff response: The Company had admitted and corrected the violations, and taken steps to prevent future occurrences. Staff recommends mitigation of this penalty from \$19,900 to \$9,950.

- Mitigation request: 274 critical violations of Title 49 C.F.R. Part 391.45(a) for a total of \$27,400.

Staff response: Though the Company has contested 253 of the identified violations, WM directed three container truck drivers to be examined and medically certified.⁴ Staff further understands that the Company interprets its container service to fall under common carrier authority whose safety regulations are enforced by the Washington State Patrol (WSP). While Staff disagrees with the Company's interpretation, Staff does not believe that WM knowingly violated this safety requirement and acknowledges that the Company sought guidance from WSP in regards to common carrier safety requirements for medical certification. Staff recommends mitigation of this penalty from \$27,400 to 13,700.

- Mitigation request: Four violations of Title 49 C.F.R. Part 396.3(a)(1) for a total of \$400.

Staff response: The Company has admitted and corrected the violations. WM states that it has communicated with maintenance personnel as well provide training to drivers on proper pre and post trip inspection procedures. Staff recommends mitigation of this penalty from \$400 to \$200.

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Staff's recommendation to mitigation request: WM is a large company that operated 489 commercial motor vehicles, employed 525 drivers and reported a gross revenue of \$146,686,777 in 2018. Staff takes into consideration the Company's prompt corrective action to address the identified violations. Staff recommends mitigation of the assessed penalty from \$47,700 to \$23,850. Staff further recommends suspension of \$13,850 of the penalty for a period of two years before being waived, on the conditions that (1) Staff conducts a focused safety investigation of Parts 383 and 391 in two years or as soon thereafter as practical to review the Company's compliance; (2) the Company not incur any repeat acute of critical violations; (3) WM pays the \$10,000 portion of the penalty that is not suspended.

DATED this 6th day of August, 2019, at Lacey, Washington.



JASON SHARP

⁴ Response to Penalty Assessment and Request for Mitigation, on behalf of Waste Management of Washington, Inc., from Andrew Kenefick.