

Service Date: October 9, 2020

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment Against PENINSULA SANITATION SERVICES, INC., in the amount of \$20,800	DOCKET TG-200756 ORDER 01 ORDER GRANTING MITIGATION TO \$10,400
--	--

BACKGROUND

- 1 On September 2, 2020, the Washington Utilities and Transportation Commission (Commission) assessed a \$20,800 penalty (Penalty Assessment) against Peninsula Sanitation Service, Inc., (Peninsula Sanitation or Company) for 212 critical violations of Washington Administrative Code (WAC) 480-70-201, which adopts by reference sections of Title 49 Code of Federal Regulations (C.F.R.).¹ Specifically, 49 C.F.R. Part 383 – Commercial Driver’s License Standards; Requirements and Penalties and 49 C.F.R. Part 391 – Qualification of Drivers.
- 2 On September 29, 2020, Peninsula Sanitation responded to the Penalty Assessment, admitting the violations and requesting mitigation of the penalty based on the written information provided. In its response, the Company explained that the violations were unintentional and occurred inadvertently. The Company provided a comprehensive response to each violation, including descriptions of corrective measures the Company took to prevent repeat violations.
- 3 On October 2, 2020, Commission staff (Staff) filed a response recommending the Commission grant the Company’s request for mitigation, in part. The Penalty Assessment includes a \$20,700 penalty for 207 violations of 49 C.F.R. § 383.37(a) and a \$100 penalty for five violations of 49 C.F.R. § 391.51(b)(7). Because the Company has taken significant steps to ensure compliance going forward, Staff recommends the Commission reduce the assessed penalty from \$20,800 to \$10,400. Staff further recommends that

¹ 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.

\$5,200 of the reduced penalty be suspended for a period of two years before being waived, on the conditions that: (1) Staff conducts a focused review in two years or as soon thereafter as practicable to review the Company's driver qualifications, (2) the Company not incur any repeat violations of critical or acute regulations, and (3) Peninsula Sanitation pays the \$5,200 portion of the penalty that is not suspended.

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.² Violations defined by federal law as "critical," which are indicative of a breakdown in a carrier's management controls, meet this standard.³ Critical violations discovered during safety inspections are subject to penalties of \$100 per violation.⁴
- 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.⁵ We address each violation category in turn.
- 6 **49 C.F.R. § 383.37(a).** The Penalty Assessment includes a \$20,700 penalty for 207 violations of 49 C.F.R. § 383.37(a) because Peninsula Sanitation allowed drivers Chad Palmer, Jarrett Anglin, and Scott Cox to operate a commercial motor vehicle with a downgraded commercial driver's license (CDL) on 207 occasions between October 1, 2019, and February 28, 2020. In its response, the Company explained that it unintentionally and inadvertently failed to renew its employees CDLs. The Company further explained that it has since implemented extensive measures to ensure employees'

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

³ 49 C.F.R. § 385, Appendix B.

⁴ See RCW 81.04.405.

⁵ Enforcement Policy ¶19.

CDLs are valid going forward.

- 7 Staff recommends the Commission reduce the penalty to \$10,300. We agree with Staff's recommendation and assess a reduced penalty of \$10,300. Mitigation of this portion of the penalty is appropriate because Peninsula Sanitation promptly corrected the violations by updating the employee licenses and immediately implemented compliance measures to prevent the violations from reoccurring.
- 8 **49 C.F.R. § 391.51(b)(7).** The Penalty Assessment also includes a \$100 penalty for five violations of 49 C.F.R. Part 391.51(b)(7) because Peninsula Sanitation failed to obtain motor vehicle records containing the medical certificate statuses for drivers Chad Palmer, Jarrett Anglin, Scott Cox, Pam Hall, and Johnny Phillips. The Company provided Staff with copies of driver abstracts that contain the medical certificate statuses for all five drivers.
- 9 Staff recommends no mitigation of this portion of the penalty because the Penalty Assessment assessed a \$100 penalty for five violations of this type. The Commission could have assessed a \$500 penalty, but, because these are first-time violations, assessed a "per category" rather than "per violation" penalty. We agree that no further penalty reduction is warranted, and decline to mitigate this portion of the penalty.
- 10 **Suspended Penalty.** The Commission considers several factors in 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.⁶ Another factor we consider is whether the company agrees to a specific compliance plan that will guarantee future compliance in exchange for suspended penalties.⁷
- 11 In this case, Peninsula Sanitation promptly corrected the violations and has taken action to prevent the violations from reoccurring. In any enforcement proceeding, the Commission's goal is to obtain compliance, not create an insurmountable financial burden for a regulated company.

⁶ *Id.* at ¶20.

⁷ *Id.*

12 Suspending a portion of the penalty with the conditions proposed by Staff will both increase compliance and provide a strong incentive to avoid violations in the future. Accordingly, we agree with Staff's recommendation and suspend a \$5,200 portion of the penalty for a period of two years, and then waive it, subject to the following conditions:

- Staff conducts a focused review in two years or as soon thereafter as practicable to review the Company's driver qualifications;
- Peninsula Sanitation does not incur any repeat violations of critical or acute regulations, and;
- The Company pays the \$5,200 portion of the penalty that is not suspended.

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) Peninsula Sanitation is a solid waste collection carrier subject to Commission regulation.
- 15 (3) Peninsula Sanitation violated 49 C.F.R. § 383.37(a), when its employees drove on 207 occasions with invalid CDLs.
- 16 (4) The Commission should penalize Peninsula Sanitation \$10,300 for 207 violations of 49 C.F.R. § 383.37(a).
- 17 (5) Peninsula Sanitation violated 49 C.F.R. § 391.51(b)(7), when it failed to obtain motor vehicle records containing the medical certificate statuses for five employees.
- 18 (6) The Commission should penalize Peninsula Sanitation \$100 for five violations of 49 C.F.R. § 391.51(b)(7).
- 19 (7) Peninsula Sanitation does not dispute that the violations occurred.

- 20 (8) The Commission should suspend a \$5,200 portion of the penalty for two years, and then waive it, subject to the conditions set out in paragraph 12, above.

ORDER

THE COMMISSION ORDERS:

- 21 (1) Peninsula Sanitation Service, Inc.'s request for mitigation of the \$20,800 penalty is GRANTED, in part, and the penalty is reduced to \$10,400.
- 22 (2) The Commission assesses a \$10,400 penalty against Peninsula Sanitation Service, Inc. The Commission suspends a \$5,200 portion of the penalty for a period of two years, and then waives it, subject to the conditions set out in paragraph 12, above.
- 23 (3) The \$5,200 portion of the penalty that is not suspended is due and payable within 10 days of the effective date of this Order.
- 24 The Secretary has been delegated authority to enter this order on behalf of the Commissioners under WAC 480-07-904(1)(h).

DATED at Lacy, Washington, and effective October 9, 2020.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ Mark Schutter on behalf of
MARK L. JOHNSON
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.