

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment Against CARROLL-NASLUND DISPOSAL, INC. in the amount of \$12,600	DOCKET TG-161281 ORDER 01 ORDER GRANTING MITIGATION TO \$6,400
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BACKGROUND

- 1 On December 21, 2016, the Washington Utilities and Transportation Commission (Commission) assessed a \$12,600 penalty (Penalty Assessment) against Carroll-Naslund Disposal Service, Inc. (Carroll-Naslund or Company) for 126 critical violations of Washington Administrative Code (WAC) 480-30-221, which adopts by reference 49 C.F.R. Part 390 related to general federal motor carrier safety regulations; Part 391 related to driver qualifications; and Part 396 related to vehicle inspection, repair, and maintenance.
- 2 On January 4, 2017, Carroll-Naslund 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 occurred because the Company “let things fall through the cracks.” The Company provided a comprehensive response to each violation, including descriptions of corrective measures the Company took to prevent repeat violations.
- 3 On January 10, 2017, Commission staff (Staff) filed a response recommending the Commission grant the Company’s request for mitigation, in part. The Penalty Assessment includes a \$12,400 penalty for 124 violations of 49 C.F.R. Part 390.35; a \$100 penalty for three violations of 49 C.F.R. Part 391.51(b)(7); and a \$100 penalty for eight violations of 49 C.F.R. Part 396.3(b). Because the violations are first-time offenses and the Company has taken significant steps to ensure compliance going forward, Staff recommends the Commission reduce the assessed penalty from \$12,600 to \$6,400.

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.¹ Violations defined by federal law as “critical,” which are indicative of a breakdown in a carrier’s management controls, meet this standard.² Critical violations discovered during safety inspections are subject to penalties of \$100 per violation.³
- 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.⁴ We address each violation category in turn.
- 6 **WAC 480-30-221, 49 C.F.R. Part 390.35.** The Penalty Assessment includes a \$12,400 penalty for 124 violations of 49 C.F.R. Part 390.35 because Company employee Jerry Fuller drove on 124 occasions with an invalid commercial driver’s license (CDL). In its response, the Company explained that it relied on forged documents that Mr. Fuller provided, including a falsified Idaho driving abstract and CDL. Mr. Fuller was immediately terminated when the Company discovered the violations. The Company further explained that it has since implemented extensive measures to ensure employees’ CDLs are valid going forward, including independently obtaining driver abstracts both annually and randomly throughout the year.
- 7 Because these are first-time violations, Staff recommends the Commission reduce the penalty by half, to \$6,200. We agree with Staff’s recommendation and assess a reduced penalty of \$50 per violation, or \$6,200. Mitigation of this portion of the penalty is appropriate because Carroll-Naslund promptly corrected the violations by terminating the

¹ Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission ¶12 (Jan. 7, 2013) (Enforcement Policy).

² 49 C.F.R. § 385, Appendix B.

³ See RCW 81.04.405.

⁴ Enforcement Policy ¶19.

employee who submitted falsified documents, and immediately implemented compliance measures to prevent the violations from reoccurring.

8 **WAC 480-30-221, 49 C.F.R. Part 391.51(b)(7).** The Penalty Assessment also includes a \$100 penalty for three violations of 49 C.F.R. Part 391.51(b)(7) because Carroll-Naslund failed to maintain medical examination certificates in driver qualification files for employees Brett Jurries, Michael Cone, and Jerry Fuller. In its response, the Company explains that it recently obtained three years of past medical certificates for each employee file and set calendar reminders for certificate renewals going forward.

9 Staff recommends no mitigation of this portion of the penalty because the Penalty Assessment assessed a \$100 penalty for three violations of this type. The Commission could have assessed a \$300 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 **WAC 480-30-221, 49 C.F.R. Part 396.3(b).** The Penalty Assessment also includes a \$100 penalty for eight violations of 49 C.F.R. Part 396.3(b) because Carroll-Naslund failed to maintain minimum inspection and maintenance records for each of its eight vehicles. In its response, the Company explained that its general manager located maintenance records for the past year and placed them in newly-created files for each vehicle. The general manager will continue to perform periodic file checks.

11 Staff recommends no mitigation of this portion of the penalty because the Penalty Assessment assessed a \$100 penalty for eight violations of 49 C.F.R. Part 396.3(b). The Commission could have assessed an \$800 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.

FINDINGS AND CONCLUSIONS

12 (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.

- 13 (2) Carroll-Naslund is a solid waste collection carrier subject to Commission regulation.
- 14 (3) Carroll-Naslund violated WAC 480-30-221, which adopts by reference 49 C.F.R. 390.35, when its employee drove on 124 occasions with an invalid CDL.
- 15 (4) The Commission should penalize Carroll-Naslund \$6,200 for 124 violations of WAC 480-30-221, which adopts by reference 49 C.F.R. 390.35.
- 16 (5) Carroll-Naslund violated WAC 480-30-221, which adopts by reference 49 C.F.R. Part 391.51(b)(7), when it failed to maintain three years of medical examination certificates in driver qualification files for three employees.
- 17 (6) The Commission should penalize Carroll-Naslund \$100 for three violations of WAC 480-30-221, which adopts by reference 49 C.F.R. Part 391.51(b)(7).
- 18 (7) Carroll-Naslund violated WAC 480-30-221, which adopts by reference 49 C.F.R. Part 396.3(b), when it failed to maintain minimum inspection and maintenance records for any of the eight vehicles inspected by Staff.
- 19 (8) The Commission should penalize Carroll-Naslund \$100 for eight violations of WAC 480-30-221, which adopts by reference 49 C.F.R. Part 396.3(b).
- 20 (9) Carroll-Naslund must either pay the \$6,400 penalty or file jointly with Staff a proposed payment plan within ten days of the date of this Order.

ORDER

THE COMMISSION ORDERS:

- 21 (1) Carroll-Naslund Disposal Service, Inc.'s request for mitigation of the \$12,600 penalty is GRANTED, in part, and the penalty is reduced to \$6,400.
- 22 (2) Carroll-Naslund Disposal Service, Inc. must either pay the penalty or file jointly with Staff a proposed payment arrangement no later than January 27, 2017.

- 23 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 January 17, 2017.

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.