



- RESIDENTIAL CARTS
- COMMERCIAL CONTAINERS
- INDUSTRIAL DROP BOXES
- RECYCLING FACILITY

EFFICIENT PUNCTUAL SERVICE

October 4, 2017

Washington Utilities and Transportation Commission
 PO Box 47250
 Olympia WA 98504-7250

Waste Control
 PO Box 148
 Kelso, WA 98626

PenaltyAssessment : TG-170724
 Penalty Amount: \$100.00

WUTC Commission:

I guess we have already sent in the check but I would like to discuss the rest of this letter with someone please Thank you.

2017 OCT -9 AM 8:24
 RECEIVED
 PROPERTY MANAGEMENT
 STATE OF WASHINGTON
 WUTC ADMINISTRATION

Enclosed is the check for \$100.00 for the penalty assessed to us for this infraction. We have never been opposed to paying this fine. Our disagreement is in the wording of your Notice of Penalty that you sent us on July 11th, 2017. In this assessment on page 2 subpart 10 you wrote that Waste Control has no formal compliance program. This is absolutely not true and makes us look like we do not care about safety. In reality, the opposite is true. We have a very stringent Safety program. We have a retired Washington State Trooper whom we have contracted to check our vehicles twice a week and run safety programs every 6 months with our drivers. We meet monthly to discuss all safety concerns and regulations that we need to meet. We believe we go above the norm for safety.

All we would like to see happen with this assessment is for the wording to be changed to reflect that we do indeed have a formal compliance program.

On page 2 subpart 3 you wrote that the company did not self-report the violation. While this is true, when added to the statement on subpart 10 it makes it sound as if we don't care about safety again. The brake lights worked during the pretrip and would have been caught during his post trip but was caught before his route was over for that day. We would have caught this violation and repaired it that same day.

OFFICE:
 1150 3rd Avenue
 Longview, WA 98632


BILLING:
 P.O. Box 148
 Kelso, WA 98626

We would like you to consider rewording the official assessment to say that we do indeed have a formal compliance program.

I would love to talk with someone further about this situation. Please give me a call at 1-431-0255 at your convenience.

I have enclosed the letter that we sent to Steven V King on September 1, 2017 that explains our disagreement with the commission.

Thank you for your time in this matter.

A handwritten signature in black ink, appearing to read "Rick Ensign", with a stylized flourish extending to the right.

Rick Ensign
Transportation Manager
Waste Control

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

**NOTICE OF PENALTIES INCURRED AND DUE
FOR VIOLATIONS OF LAWS AND RULES**

PENALTY ASSESSMENT: TG-170724
PENALTY AMOUNT: \$100

Waste Control, Inc.
1150 3rd Avenue
Longview, WA 98632

The Washington Utilities and Transportation Commission (Commission) believes that Waste Control, Inc. (Waste Control) has committed violations of Washington Administrative Code (WAC) 480-70-201 Vehicle and Driver Safety Requirements, which requires solid waste hauling carriers to comply with Title 49 CFR, Part 393 – Parts and Accessories Necessary for Safe Operation.

RCW 81.04.405 allows penalties of one hundred dollars for each violation of Title 49 CFR Part 393. In the case of an ongoing violation, every day's continuance is considered a separate and distinct violation.

In May 2017, Commission Motor Carrier Investigator Francine Gagne conducted a compliance review of Waste Control and documented the following violation:

- **One violation of Title 49 CFR Part 393.25(f) – Stop Lamp Violations.** The stop lamps on unit #24 were inoperative due to a blown fuse.

The Commission considered the following factors in determining the appropriate penalty for this violation:

1. **How serious or harmful the violation is to the public.** The violation noted is serious and potentially harmful to the public. Companies that operate vehicles with defective equipment put the traveling public at risk. A vehicle without working brake lights presents serious safety concerns.
2. **Whether the violation is intentional.** Considerations include:
 - Whether the company ignored Commission staff's previous technical assistance; and
 - Whether there is clear evidence through documentation or other means that shows the company knew of and failed to correct the violation.

Waste Control received solid waste hauling authority in 2002, has received seven compliance review investigations and has never been penalized for this violation. Staff believes the company is familiar with the requirement to have operating brake lights on all of its vehicles.

3. **Whether the company self-reported the violation.** The company did not self-report these violations.
4. **Whether the company was cooperative and responsive.** Waste Control was cooperative and responsive throughout the investigation
5. **Whether the company promptly corrected the violations and remedied the impacts.** The company corrected the violation immediately.
6. **The number of violations.** The number of violations is insignificant.
7. **The number of customers affected.** The company traveled 194,641 miles in 2016. A significant number of customers, as well as the traveling public, were potentially affected by this safety violation.
8. **The likelihood of recurrence.** The Commission does not know if it is likely to repeat the violation, but the company was cooperative and receptive of staff's assistance, and corrected the violation immediately.
9. **The company's past performance regarding compliance, violations, and penalties.** This is the company's first safety penalty and eighth compliance review since receiving its certificate in 2002.
10. **The company's existing compliance program.** Waste Control has no formal compliance program.
11. **The size of the company.** Waste Control operates seven commercial vehicles and has eight drivers. The company reported \$4,259,223 in gross revenue and 194,641 miles traveled in 2016.

The Commission's Enforcement Policy provides that some Commission requirements are so fundamental to safe operations that the Commission will issue mandatory penalties for each occurrence of a first-time violation.¹ The Commission generally will assess penalties per type of violation, rather than per occurrence, for other first-time violations of critical regulations that do not meet the criteria for mandatory penalties. The Commission will assess penalties for any repeat violations of critical regulations found in future compliance investigations, including for each occurrence of a repeat violation.

The Commission has considered these factors and determined that it should penalize Waste Control \$100 for violation of WAC 480-70-201 Vehicle and Driver Safety Requirements, which adopts Title 49 CFR Parts 383 calculated as follows:

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

- One violation of Title 49 CFR Part 392.25(f) – Stop light violations. The Commission assesses a penalty of \$100 for this violation.

This information, if proven at a hearing and not rebutted or explained, is sufficient to support the penalty assessment.

Your penalty is due and payable now. If you believe any or all of the violations did not occur, you may deny committing the violation(s) and contest the penalty assessment through evidence presented at a hearing or in writing. The Commission will grant a request for hearing only if material issues of law or fact concerning the violation(s) require consideration of evidence and resolution in a hearing. Any contest of the penalty assessment must include a written statement of the reasons supporting that contest. Failure to provide such a statement will result in denial of the contest.

If there is a reason for any or all of the violations that you believe should excuse you from the penalty, you may ask for mitigation (reduction) of this penalty through evidence presented at a hearing or in writing. The Commission will grant a request for hearing only if material issues of law or fact require consideration of evidence and resolution in a hearing. Any request for mitigation must include a written statement of the reasons supporting that request. Failure to provide such a statement will result in denial of the request. See RCW 81.04.405.

If you properly present your request for a hearing and the Commission grants that request, the Commission will review the evidence supporting your dispute of the violation(s) or application for mitigation in a Brief Adjudicative Proceeding before an administrative law judge. The administrative law judge will consider the evidence and will notify you of his or her decision.

You must act within 15 days after receiving this notice to do one of the following:

- Pay the amount due.
- Contest the occurrence of the violations.
- Request mitigation to contest the amount of the penalty.

Please indicate your selection on the enclosed form and send it to the Washington Utilities and Transportation Commission, Post Office Box 47250, Olympia, Washington 98504-7250, **within FIFTEEN (15) days** after you receive this notice.

If you do not act within 15 days, the Commission may take additional enforcement action, including but not necessarily limited to suspending or revoking your certificate to provide regulated service, assessing additional penalties, or referring this matter to the Office of the Attorney General for collection.

DATED at Olympia, Washington, and effective July 11, 2017.

/s/ Gregory J. Kopta
GREGORY J. KOPTA
Administrative Law Judge

RCW 9A.72.020:

“Perjury in the first degree. (1) A person is guilty of perjury in the first degree if in any official proceeding he makes a materially false statement which he knows to be false under an oath required or authorized by law. (2) Knowledge of the materiality of the statement is not an element of this crime, and the actor’s mistaken belief that his statement was not material is not a defense to a prosecution under this section. (3) Perjury in the first degree is a class B felony.”

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TG-170724

PLEASE NOTE: You must complete and sign this document, and send it to the Commission within 15 days after you receive the penalty assessment. Use additional paper if needed.

I have read and understand RCW 9A.72.020 (printed below), which states that making false statements under oath is a class B felony. I am over the age of 18, am competent to testify to the matters set forth below and I have personal knowledge of those matters. I hereby make, under oath, the following statements.

1. **Payment of penalty.** I admit that the violation occurred and enclose \$ _____ in payment of the penalty.

2. **Contest the violation.** I believe that the alleged violation did not occur for the reasons I describe below (if you do not include reasons supporting your contest here, your request will be denied):

a) I ask for a hearing to present evidence on the information I provide above to an administrative law judge for a decision

OR b) I ask for a Commission decision based solely on the information I provide above.

3. **Application for mitigation.** I admit the violation, but I believe that the penalty should be reduced for the reasons set out below (if you do not include reasons supporting your application here, your request will be denied):

a) I ask for a hearing to present evidence on the information I provide above to an administrative law judge for a decision

OR b) I ask for a Commission decision based solely on the information I provide above.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing, including information I have presented on any attachments, is true and correct.

Dated: 7/25/17 [month/day/year], at Kelso, WA [city, state]

Waste Control Inc
Name of Respondent (company) – please print

Rick Edmiston
Signature of Applicant

CC: Odine H. Husemoen
Attorney at Law

RECEIVED
JULY 25 9 AM 8:22
COMMUNICATIONS SECTION

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment
Against

WASTE CONTROL, INC.

in the amount of \$100

DOCKET TG-170724

ORDER 01

DENYING REQUEST FOR HEARING;
DENYING CONTEST OF VIOLATION;
DENYING MITIGATION

2017 OCT -9 AM 8:22
RECEIVED
PROGRAMS MANAGEMENT

BACKGROUND

- 1 On July 11, 2017, the Washington Utilities and Transportation Commission (Commission) assessed a \$100 penalty (Penalty Assessment) against Waste Control, Inc. (Waste Control or Company) for one violation of Washington Administrative Code (WAC) 480-70-201, which adopts by reference 49 C.F.R. Part 393 related to parts and accessories necessary for safe operation.
- 2 On July 27, 2017, Waste Control responded to the Penalty Assessment, contesting the violation and requesting a hearing. In its response, the Company states, "There was no violation. Our normal daily post trip inspection would have corrected the issue timely."
- 3 On August 3, 2017, Commission staff (Staff) filed a response recommending the Commission deny the Company's request for mitigation because the violation at issue puts the safety of the traveling public at risk. The Penalty Assessment includes a \$100 penalty for one violation of 49 C.F.R. Part 393.25(f).

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 Equipment violations that meet the Federal Motor

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

Carrier Safety Administration's "out-of-service" criteria meet this standard, and are subject to penalties of \$100 per violation.

5 As a preliminary matter, we deny the Company's request for a hearing. The Commission's penalty assessment advised the Company that a request for hearing will only be granted if material issues of law or fact require consideration of evidence and resolution in hearing. Here, no issues of law or fact are in dispute. The Company acknowledges that the violation occurred, but disagrees that it should be penalized for its conduct. The facts, therefore, are undisputed, and the law is clear. Accordingly, the Company's request for a hearing is denied.

6 The Commission also denies the Company's contest of the violations. Waste Control acknowledges that the violation occurred. The Company thus violated the law.

7 We will, however, construe the Company's submission as a request for mitigation. 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.²

8 The Penalty Assessment assessed a \$100 penalty for one violation of 49 C.F.R. Part 393.25(f) because the brake lights on one of the Company's vehicles were inoperative. Once discovered, the Company's employee replaced the blown fuse. Staff recommends no mitigation of the penalty because the Company did not provide any new or compelling information for the Commission to consider. We agree. Waste Control failed to introduce any additional circumstances not previously considered that would warrant mitigation of the penalty. Moreover, as noted in the Penalty Assessment, inoperative brake lights present serious safety concerns that create a risk of harm to the public. Accordingly, we deny the Company's request for mitigation of the penalty.

FINDINGS AND CONCLUSIONS

9 (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

² Enforcement Policy ¶19.

companies, including solid waste collection carriers, and has jurisdiction over the parties and subject matter of this proceeding.

- 10 (2) Waste Control is a solid waste collection carrier subject to Commission regulation.
- 11 (3) Waste Control violated WAC 480-70-201, which adopts by reference 49 C.F.R. 393.25(f), when it allowed its vehicle to operate without working brake lights.
- 12 (4) The Commission should penalize Waste Control \$100 for one violation of WAC 480-70-201, which adopts by reference 49 C.F.R. 393.25(f).
- 13 (5) Waste Control must pay the \$100 penalty within ten days of the effective date of this Order.


ORDER

THE COMMISSION ORDERS:

- 14 (1) Waste Control, Inc.'s request for mitigation of the \$100 penalty is DENIED.
- 15 (2) Waste Control, Inc. must pay the \$100 penalty within 10 days of the effective date of this Order.
- 16 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 September 5, 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.



EFFICIENT PUNCTUAL SERVICE

September 1, 2017

Steven V. King, Executive Director and Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive Southwest
PO Box 47250
Olympia, WA 98504-7250

Re: Washington Utilities and Transportation Commission V. Waste Control, Inc.
1150 3rd Avenue, Longview, WA 98632
Waste Control's response to Contest of Violation
Docket TG-170724

Dear Mr. King:

Please be advised that Waste Control disagrees with the assessment of Kathy Hunter in her letter of August 3, 2017. The purpose of contesting this citation is that it leaves your file with false facts and conclusions. We want the original citation removed from our records or amended to correct the facts:

1. We have a compliance and inspection policy. The citation says we do not.
2. We have a retired Washington State Trooper acting as a trainer and Safety inspection officer.
3. The blown fuse occurred after the drivers pretrip inspection and would have been discovered at the end of his shift during his post trip inspection.

Thank you for your consideration in this matter. If you have any questions you can reach me at 360-425-4302 ext 11, or by email at riensign@wcrecvcling.com.

Sincerely

Rick Ensign
Transportation Manager
WCI.

OFFICE:
1150 3rd Avenue
Longview, WA 98632

BILLING:
P.O. Box 148
Kelso, WA 98626