

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TG-170714

PENALTY AMOUNT: \$1,700

West Waste & Recycling, Inc.
272 LaPush Road
Forks, WA 98331

The Washington Utilities and Transportation Commission (Commission) believes that West Waste & Recycling, Inc. (West Waste) 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 382 – Controlled Substances and Alcohol Use and Testing, Part 391 – Qualifications of Drivers, and Part 396 Inspection, Repair and Maintenance.

Revised Code of Washington (RCW) 81.04.530 allows penalties of \$500 for each motor vehicle driver employed by the company who is not in compliance with the motor vehicle driver testing requirements. RCW 81.04.405 allows penalties of one hundred dollars for each violation of Title 49 CFR Parts 391 and 396. 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 Jason Sharp conducted a compliance review of West Waste and documented the following violations:

- **Three violations of Title 49 CFR Part 382.301(a) – Using a driver before the motor carrier has received a negative pre-employment controlled substance test result.** Waste West used drivers Michael McReynolds and William Calhoun before the company received a negative pre-employment test. Waste West used driver Jason Goakey without the employee ever being tested.
- **Three violations of Title 49 CFR Part 391.51(b)(2) – Failing to maintain inquiries into driver's driving record in driver's qualification file.** Waste West failed to maintain inquiries into driver's driving record in driver's qualification file for Brent Gagnon, Alan King, and William Calhoun.
- **Four violations of Title 49 CFR Part 396.17(a) – Using a commercial motor vehicle not periodically inspected.** None of the company's four commercial motor vehicles had been periodically inspected.

The Commission considered the following factors in determining the appropriate penalties for these violations:

1. **How serious or harmful the violation is to the public.** The violations noted are serious and potentially harmful to the public. Companies that employ drivers who do not have

required pre-employment controlled substances tests or who have unknown driving histories, or that use commercial motor vehicles not periodically inspected put the traveling public at risk. An impaired or disqualified driver, or an undetected vehicle defect 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.

West Waste first acquired solid waste hauling authority in 1993. The company was penalized in 1997 for failing to implement an alcohol and controlled substances testing program. In a 2003 compliance review, staff documented one violation of using a driver prior to having received a negative pre-employment test. The most recent compliance review was in 2007 and no similar violations were noted. The company knew, or should have known, about these requirements.

3. **Whether the company self-reported the violation.** The company did not self-report these violations.
4. **Whether the company was cooperative and responsive.** West Waste was cooperative and responsive throughout the investigation
5. **Whether the company promptly corrected the violations and remedied the impacts.** The company responded to staff's technical assistance and began to correct violations immediately.
6. **The number of violations.** These are serious violations, however for a company the size of West Waste, the number of violations is unremarkable.
7. **The number of customers affected.** The company traveled 115,520 miles and reported \$1,365,313 in gross revenue for 2016. A significant number of customers, as well as the traveling public, were likely affected by these safety violations.
8. **The likelihood of recurrence.** The Commission does not know if it is likely to repeat these violations, but the company was cooperative and receptive of staff's assistance, and indicated it wished to avoid future violations.
9. **The company's past performance regarding compliance, violations, and penalties.** The company was penalized in 1997 for failing to implement an alcohol and controlled substances testing program. In a 2003 compliance review, staff documented one violation of using a driver prior to having received a negative pre-employment test. The most recent compliance review was in 2007 and no similar violations were noted.

10. **The company's existing compliance program.** West Waste has no formal compliance program.
11. **The size of the company.** West Waste operates four commercial vehicles and has five drivers. The company reported \$1,365,313 in gross revenue and 115,250 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 West Waste \$1,700 for violations of WAC 480-70-201 Vehicle and Driver Safety Requirements, which adopts Title 49 CFR Parts 382, 391, and 396 calculated as follows:

- Three violations of Title 49 CFR Part 382.301 – Using a driver before the motor carrier has received a negative pre-employment controlled substance test result. The Commission assesses the statutory penalty of \$500 for each driver not in compliance, for a total of \$1,500.
- Three violations of Title 49 CFR Part 391.51(b)(2) – Failing to maintain inquiries into driver's driving record in driver's qualification file. As first-time violations, the Commission assesses a penalty of \$100 for one violation of this type.
- Four violations of Title 49 CFR Part 396.17(a) – Using a commercial motor vehicle not periodically inspected. As first-time violations, the Commission assesses a penalty of \$100 for one violation of this type.

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.

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

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 June 27, 2017.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TG-170714

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: _____ [month/day/year], at _____ [city, state]

Name of Respondent (company) – please print

Signature of Applicant

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.”