

## WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TG-170987

PENALTY AMOUNT: \$15,100

Methow Valley Sanitation Service, Inc.  
d/b/a Wastewise Methow  
115 Highway 20 #A-2  
Twisp, WA 98856

The Washington Utilities and Transportation Commission (Commission) believes that Methow Valley Sanitation Service, Inc. d/b/a Wastewise Methow (Wastewise Methow) has committed violations of Washington Administrative Code (WAC) 480-70-201 Vehicle and Driver Safety Requirements, which adopts Title 49 Code of Federal Regulations (CFR) Part 391 – Qualifications of Drivers and Part 382 Controlled Substances and Alcohol Use and Testing.

Revised Code of Washington (RCW) 81.04.405 allows penalties of one hundred dollars for each violation. RCW 81.04.530 allows penalties of \$500 for each driver employed who is not in compliance with the motor vehicle driver drug and alcohol testing requirements. In the case of an ongoing violation, every day's continuance is considered a separate and distinct violation.

In August 2017, Commission Motor Carrier Investigator Wayne Gilbert conducted a compliance review of Wastewise Methow and documented the following violations:

- **One-hundred forty-five violations of Title 49 CFR Part 391.45(a) – Using a driver not medically examined and certified.** During the six months preceding the compliance review, Wastewise Methow allowed its employees Jeremiah Smith and Robert Yoakum to drive on 145 occasions without having been medically examined and certified.<sup>1</sup>
  - Jeremiah Smith drove on 114 occasions: six times in February; 18 times in March; 16 times in April; 20 times in May; 22 times in June; 21 times in July; and 11 times in August, 2017.
  - Robert Yoakum drove on 31 occasions: twice in February; four times in March; five times in April; six times in May; five times in June; four times in July; and five times in August, 2017.
- **Three violations of Title 49 CFR Part 391.51(a) – Failing to maintain a driver qualification file for each driver it employs.** Wastewise Methow failed to maintain driver qualification files for its drivers Casey Bouchard, Jeremiah Smith and Robert Yoakum.

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<sup>1</sup> Both drivers had been examined by a medical examiner who was not listed on the National Registry, rendering the certifications invalid.

- **One violation 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.** The carrier hired driver Jeremiah Smith in 2013 and failed to conduct a pre-employment test, or any random tests since then.

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 use drivers not medically examined and certified or not tested for drug or alcohol use, or that fail to document driver qualifications put the traveling public at risk. An impaired driver, or one with an undetected medical condition or unknown qualifications 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.

In its 2013 notification to the Commission regarding acquisition of control, Chad Peterson, president of Methow Valley Sanitation Service stated that he has considerable experience managing commercial truck fleets. Mr. Patterson stated he holds a Class A Commercial Drivers' License, has experience supervising commercial drivers and mechanics and complying with state and federal safety requirements, including drug and alcohol testing requirements.

Staff believes 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.** Wastewise Methow was cooperative and responsive throughout the entire scope of the investigation.
5. **Whether the company promptly corrected the violations and remedied the impacts.** The company took immediate action to correct the violations found during the compliance review, and submitted a 15-day compliance letter to staff, documenting the corrections made.
6. **The number of violations.** The number of violations is significant for a company the size of Wastewise Methow.
7. **The number of customers affected.** The company traveled 41,418 miles and reported \$846,312 in gross revenue for 2016. A significant number of customers, as well as members of the traveling public, were likely affected by these safety violations.

8. **The likelihood of recurrence.** The Commission does not know if Wastewise Methow is likely to repeat these safety violations. However, the company was cooperative and responsive to staff, and has taken the appropriate steps to correct the safety violations documented in the compliance review.
9. **The company's past performance regarding compliance, violations, and penalties.** This is the company's first compliance review under new ownership. The company under its current management has no history of violations or penalties.
10. **The company's existing compliance program.** Wastewise Methow does not have a formal compliance program.
11. **The size of the company.** Wastewise Methow is a small company with four full-time drivers and four commercial vehicles.

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.<sup>2</sup> The Commission generally will assess penalties per type of violation, rather than per occurrence, for first-time violations of those critical regulations that do not meet the requirements for mandatory penalties. The Commission will assess penalties for any equipment violation meeting the Federal Motor Carrier Safety Administration's "out-of-service" criteria and also for repeat violations of critical regulations found in future compliance investigations, including each occurrence of a repeat violation.

The Commission has considered these factors and determined that it should penalize Wastewise Methow \$15,100 for violations of WAC 480-15-570 Driver Safety Requirements, calculated as follows:

- One-hundred forty-five violations of Title 49 CFR Part 391.45(a) – Using a driver not medically examined and certified. These are first-time violations, but they are violations of fundamental safety requirements. The Commission assesses penalties at the statutory amount of \$100 per occurrence, for a total of \$14,500.
- Three violations of Title 49 CFR Part 391.51(a) – Failing to maintain a driver qualification file for each driver it employs. This is a first-time violation, and thus the Commission assesses penalties at the statutory amount of \$100 per violation type, for a total of \$100.
- One violation 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. The Commission assesses a penalty at the statutory amount of \$500 per occurrence, for a total of \$500.

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<sup>2</sup> Docket A-120061 – Enforcement Policy of the Washington Utilities & Transportation Commission – Section V.

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 October 2, 2017.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION  
PENALTY ASSESSMENT TG-170987

**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.”