

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

**PENALTY ASSESSMENT: TG-171220
PENALTY AMOUNT: \$700**

Rubatino Refuse Removal, Inc.
PO Box 1029
Everett, WA 98206

The Washington Utilities and Transportation Commission (Commission) believes that Rubatino Refuse Removal, Inc. (Rubatino or Company) 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 382 – Controlled Substances and Alcohol Use and Testing, and CFR Part 393 – Parts and Accessories Necessary For Safe Operation.

Revised Code of Washington (RCW) 81.04.405 allows penalties of one hundred dollars for each violation of a Commission rule. RCW 81.04.530 allows penalties of five hundred dollars for each violation of motor vehicle driver testing requirements. In the case of an ongoing violation, every day's continuance is considered a separate and distinct violation.

On January 4, 2018, Commission Motor Carrier Investigator Wayne Gilbert completed a routine safety investigation of Rubatino and documented the following violations:

- **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.** Rubatino used Michael Rairdin as a driver prior to receiving a negative pre-employment control substance test result. Mr. Rairdin drove on August 7, 2017, but the Company did not receive a negative pre-employment controlled substance test result until August 11, 2017.
- **Four violations of Title 49 CFR Part 382.305(b)(1) – Failing to conduct random alcohol testing at an annual rate of not less than the applicable annual rate of the average number of driver positions.** Rubatino failed to conduct at least four random alcohol tests required to meet the standard of testing ten percent of the average number of driver positions for the calendar year.
- **One violation of Title 49 CFR Part 393.209(d) – Worn steering system components.** Commission staff discovered one commercial motor vehicle with worn steering system components.¹ This vehicle was placed out-of-service.

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

¹ Fleet number D7.

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 a driver prior to receiving a negative pre-employment controlled substance test result, fail to conduct random alcohol testing, and allow the operation of a commercial motor vehicle that is in need of repairs put the traveling public at risk. A potentially impaired driver or a commercial motor vehicle operated in a condition likely to cause an accident or a breakdown of the vehicle 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.

Commission staff has conducted two routine safety investigations of Rubatino since October 2004, with the most recent safety investigation dating back to June 2008. Commission staff has provided technical assistance pertaining to motor carrier safety regulation on numerous occasions. 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.** Rubatino 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 steps to correct the violations.
6. **The number of violations.** The number of violations is insignificant for a company the size of Rubatino.
7. **The number of customers affected.** The Company traveled 740,543 miles and reported \$20,017,170 in gross revenue for 2016. A significant number of customers, as well as members of the traveling public may have been affected by these safety violations.
8. **The likelihood of recurrence.** The Commission does not know if Rubatino is likely to repeat these safety violations, however, the Company was cooperative and responsive to Commission staff, and has taken the appropriate steps to correct the safety violations documented in the safety investigation.
9. **The company's past performance regarding compliance, violations, and penalties.** This is the Company's first routine safety investigation since 2008, and the first time the Commission has assessed penalties for transportation safety violations.

10. **The company's existing compliance program.** Rubatino has a formal compliance program under the supervision of its route foreman Tim Shriver.
11. **The size of the company.** Rubatino is a large company with 43 drivers and 44 commercial motor 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.² 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 Rubatino \$700 for violations of WAC 480-70-201 Vehicle and Driver Safety Requirements, calculated as follows:

- 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. This is a first-time violation, but it is a violation of a fundamental safety requirement. The Commission assesses a penalty at the statutory amount of \$500 per occurrence, for a total of \$500.
- Four violations of Title 49 CFR Part 382.305(b)(1) – Failing to conduct random alcohol testing at an annual rate of not less than the applicable annual rate of the average number of driver positions. This is a first-time violation, and thus the Commission assesses a penalty at the statutory amount of \$100 per violation type, for a total of \$100.
- One violation of Title 49 CFR Part 393.209(d) – Worn steering system components. This is a first-time violation, but it is a violation of a fundamental safety requirement. The Commission assesses a penalty at the statutory amount of \$100 per occurrence, for a total of \$100.

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

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

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 January 16, 2018.

/s/ Gregory J. Kopta
GREGORY J. KOPTA
Director, Administrative Law Division

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TG-171220

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.”