

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

**PENALTY ASSESSMENT: TG-180119
PENALTY AMOUNT: \$100**

AMERICAN DISPOSAL COMPANY, INC.
D/B/A VASHON DISPOSAL
4822 70th Ave East
Fife, WA 98424

The Washington Utilities and Transportation Commission (Commission) believes that American Disposal Company, Inc. d/b/a Vashon Disposal (Vashon Disposal) 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 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. In the case of an ongoing violation, every day's continuance is considered a separate and distinct violation.

In January 2018, Commission Motor Carrier Investigator Sandi Yeomans conducted a routine safety investigation of Vashon Disposal and documented the following violation:

- **One violation of Title 49 CFR Part 393.40 – Inadequate brake system on a commercial motor vehicle.** Staff determined that vehicle number 409 had an inadequate brake system, due to a violation of the 20 percent criterion in the North American Standard Out-of-Service Criteria.

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. A large commercial motor vehicle with inadequate brakes puts the traveling public at risk.
2. **Whether the violation is intentional.** Considerations include:
 - Whether the company ignored previous technical assistance
 - Whether the company committed previous violations of the same law or regulation; and
 - Whether there is clear evidence through documentation or other means that shows the company knew of and failed to correct the violation.

Vashon Disposal began solid waste operations in 1966. The company's last Safety Investigation was on April 7, 2009. Both safety investigations resulted in a satisfactory rating. In the current investigation, staff inspected eight vehicles and observed no similar violation. Staff believes that 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.** Vashon Disposal was very cooperative and responsive throughout the entire scope of the investigation and corrections of violations were made throughout the investigation process.
5. **Whether the company promptly corrected the violations and remedied the impacts.** The company corrected violations and made repairs at the time of discovery.
6. **The number of violations.** In total, staff identified eight violation types with a total of 114 occurrences, none of which were acute or critical violations.
7. **The number of customers affected.** The company reported 392,302 miles traveled in 2016. A significant number of customers, as well as members of the traveling public, were potentially affected by these safety violations.
8. **The likelihood of recurrence.** The Commission does not know if Vashon Disposal is likely to repeat these safety violations. However, the company was very cooperative and responsive to staff and took immediate action to correct the violations documented in the safety investigation.
9. **The company's past performance regarding compliance, violations, and penalties.** The company has no previous violations of this type.
10. **The company's existing compliance program.** District Manager Mark Gingrich is responsible for compliance with safety regulations.
11. **The size of the company.** Vashon Disposal is a medium-sized company with 144 drivers and 26 vehicles. The company reported \$10,661,733 in gross revenue for 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 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"

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

criteria and also for repeat violations of critical regulations found in future compliance investigations, including each occurrence of a repeat violation.

The Commission considered these factors and determined that it should penalize Vashon Disposal \$100 for one violation of WAC 480-70-201, Vehicle and Driver Safety Requirements, calculated as follows:

- One violation of Title 49 CFR Part 393.40 – Inadequate brake system on a commercial motor vehicle. The Commission assesses a penalty of \$100 for one occurrence of 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 the violation did not occur, you may deny committing the violation 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 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 the violation 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 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 violation.
- Request mitigation to contest the amount of the penalty.

Please indicate your selection on the enclosed form and submit it electronically through the Commission's web portal **within FIFTEEN (15) days** after you receive this notice. If you are unable to use the web portal, you may submit it via email to records@utc.wa.gov. If you are unable to submit the form electronically, you may send a paper copy to the Washington Utilities and Transportation Commission, Post Office Box 47250, Olympia, Washington 98504-7250.

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 March 6, 2018.

/s/ Rayne Pearson
RAYNE PEARSON
Director, Administrative Law Division

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TG-180119

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.”