

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TG-180957

PENALTY AMOUNT: \$4,100

Cummins, Jeffery K.
d/b/a Community Waste & Recycling
157 Black Bird Lane
Chehalis, WA 98532

The Washington Utilities and Transportation Commission (Commission) believes that Cummins, Jeffery K. d/b/a Community Waste & Recycling (Community Waste or Company) violated 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, Part 395 – Hours of Service of Drivers, and Part 396 – Inspection, Repair, and Maintenance.

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.

On November 9, 2018, Commission Motor Carrier Investigator Edward Steiner completed a routine safety investigation of Community Waste and documented the following violations:

- **Thirty nine violations of Title 49 CFR Part 391.45(a) – Using a driver not medically examined and certified.** Community Waste allowed employee Jeffery Cummins to drive on 39 separate occasions without having been medically examined and certified. The violations occurred between May 8, 2018, and October 3, 2018.
- **Sixty violations of Title 49 CFR Part 395.8(a) – Failing to require a driver to prepare a record of duty status using appropriate method.** Community Waste allowed employees Jeffery Cummins and Joel Cummins to drive without making a record of duty status on 60 occasions between August 1, 2018, and August 30, 2018.
- **One violation of Title 49 CFR Part 396.3(b) – Failing to keep minimum records of inspection and vehicle maintenance.** Community Waste failed to keep minimum records of inspection and vehicle maintenance.

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 very serious and potentially harmful to the public. Companies that use drivers not medically examined and certified, fail to create records of duty status, or fail to keep records of inspection and vehicle maintenance put the traveling public at risk. A driver with an

undiagnosed medical condition, a fatigued driver, or a vehicle with an unknown equipment defect all present very 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 (Staff) has conducted two routine safety investigations of Community Waste since November 1999, most recently in June 2007. 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.** Community Waste was initially hesitant to provide the required information, but eventually cooperated.
5. **Whether the company promptly corrected the violations and remedied the impacts.** On November 21, 2018, the Company notified Staff that it had obtained the required medical certificates, had its vehicles inspected, and updated its driver qualification files. Community Waste accepts responsibility for the violations.
6. **The number of violations.** Staff identified 15 violation types with a total of 116 occurrences.
7. **The number of customers affected.** The Company reported 6,700 miles traveled in 2017. 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 Community Waste is likely to repeat these safety violations.
9. **The company's past performance regarding compliance, violations, and penalties.** This is Community Waste's third routine safety investigation, and the Company has no history of safety penalties. In May 2014, the Commission penalized Community Waste \$250 for failing to file its 2013 annual report or pay 2014 regulatory fees.
10. **The company's existing compliance program.** Owner Jeffery Cummins is responsible for the Company's safety compliance program.
11. **The size of the company.** Community Waste is a small company with two drivers and one commercial motor vehicle. The Company reported \$84,665 in gross revenue in 2017.

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" criteria and also for repeat violations of critical regulations, including each occurrence of a repeat violation.

The Commission has considered these factors and determined that it should penalize Community Waste \$4,100 for violations of WAC 480-70-201, Vehicle and Driver Safety Requirements, which adopts Title 49 CFR Parts 391, 395, and 396, calculated as follows:

- Thirty nine violations of Title 49 CFR Part 391.45(a) – Using a driver not medically examined and certified. These are first-time violations of a fundamental safety requirement. The Commission assesses penalties in the amount of \$100 per occurrence, for a total of \$3,900.
- Sixty violations of Title 49 CFR Part 395.8(a) – Failing to require a driver to prepare a record of duty status using appropriate method. These are first-time violations. The Commission assesses penalties in the amount of \$100 per violation type, for a total of \$100.
- One violation of Title 49 CFR Part 396.3(b) – Failing to keep minimum records of inspection and vehicle maintenance. This is a first-time violation. The Commission assesses a penalty in the amount 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 through evidence presented at a hearing or in writing. Or, 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 the 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 to contest the violation or for mitigation of the penalty 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

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

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 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, PO 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 December 20, 2018.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
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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 violations occurred and enclose \$4,100 in payment of the penalty.
- 2. **Contest the violations.** I believe that some or all of the alleged violations 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 violations, 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.”