

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TG-190089

PENALTY AMOUNT: \$1,000

Fiorito Enterprises, Inc., & Rabanco Companies
d/b/a Republic Services of Kent
18500 N. Allied Way
Phoenix, AZ 85054

The Washington Utilities and Transportation Commission (Commission) believes that Fiorito Enterprises, Inc., & Rabanco Companies d/b/a Kent-Meridian Disposal, Allied Waste Services of Kent, and Republic Services of Kent (Republic Services 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 383 – Commercial Driver’s License Standards; Part 393 – Parts and Accessories Necessary for Safe Operation; and Part 396 – Inspection, Repair, and Maintenance.

Revised Code of Washington (RCW) 81.04.405 allows penalties of \$100 for each violation. In the case of an ongoing violation, every day’s continuance is considered a separate and distinct violation.

On January 23, 2019, Commission Motor Carrier Investigator Wayne Gilbert completed a routine safety investigation of Republic Services and documented the following violations:

- **Eight violations of Title 49 CFR Part 383.37(a) – Knowingly allowing, requiring, permitting, or authorizing an employee to operate a commercial motor vehicle during any period in which the driver does not have a current commercial driver license or does not have a commercial driver license with the proper class or endorsements.** The carrier allowed driver Ramon C. Perez to drive with a downgraded commercial driver license on eight occasions in December 2018.
- **One violation of Title 49 CFR Part 393.47(a) – Inadequate brakes for safe stopping.** The right side, axle one brake was heavily contaminated with grease.¹ This commercial motor vehicle was placed out of service as a result of this violation.
- **One violation of Title 49 CFR Part 396.3(a)(1) – Tires (general): Parts and accessories shall be in safe and proper operating condition at all times.** The left side tire on axle one was making contact with the drag link when turning right.² This commercial motor vehicle was placed out of service as a result of this violation.

¹ Company vehicle number 2487.

² Company vehicle number 2456.

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

1. **How serious or harmful the violations are to the public.** The violations noted are very serious and potentially harmful to the public. Solid waste companies that fail to ensure their drivers are medically examined and certified put their customers as well as the traveling public at risk. A driver who potentially has an unknown medical condition presents serious safety concerns. Additionally, solid waste companies that have vehicles with inadequate brakes or tires mounted in a way that allows for contact with any part of the vehicle put the traveling public at risk.
2. **Whether the violations were 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.

Republic Services began operations and received its current solid waste permit from the Commission in 1988. In its application for authority, Republic Services acknowledged its responsibility to comply with applicable safety laws and regulations. In April 2009, staff completed a routine safety investigation and the Company received a "Satisfactory" safety rating. Republic Services knew or should have known about these requirements.

3. **Whether the Company self-reported the violations.** Republic Services did not self-report these violations.
4. **Whether the Company was cooperative and responsive.** Republic Services was cooperative throughout the investigation, and expressed a desire to come into compliance with applicable safety regulations.
5. **Whether the Company promptly corrected the violations and remedied the impacts.** A check with the Commercial Driver's License Information System shows that Mr. Perez's commercial driver license has been upgraded following the submittal of his current medical certificate. It is unknown if the Company has corrected the vehicle out-of-service violations.
6. **The number of violations.** Commission staff identified 38 violation types with a total of 45 individual occurrences.
7. **The number of customers affected.** Republic Services employs 64 drivers and operates 53 straight trucks classified as commercial vehicles. In 2018, Republic Services traveled 1,359,628 miles. A significant number of customers, as well as the traveling public, were potentially affected by these safety violations.
8. **The likelihood of recurrence.** The Commission does not know if Republic Services is likely to repeat these safety violations. However, Republic Services was very cooperative

with Staff, willingly accepted technical assistance, and took steps to correct the violations.

9. **The Company's past performance regarding compliance, violations, and penalties.** Republic Services has no history of previous violations or penalties.
10. **The Company's existing compliance program.** Mr. Greg Hale, General Manager, is responsible for Republic Services' safety compliance program.
11. **The size of the Company.** Republic Services currently operates 53 straight trucks with 64 drivers. The Company reported \$9,775,384.00 in gross revenue for 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.³ 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 Republic Services \$1,000 for violations of WAC 480-70-201, Operation of Motor Vehicles, which adopts Title 49 CFR Part 383, Part 393, and Part 396, calculated as follows:

- Eight violations of Title 49 CFR Part 383.37(a) – Knowingly allowing, requiring, permitting, or authorizing an employee to operate a commercial motor vehicle during any period in which the driver does not have a current commercial driver license or does not have a commercial driver license with the proper class or endorsements. The Commission assesses a penalty of \$100 for each occurrence of this critical violation, for a total of \$800.
- One violation of Title 49 CFR Part 393.47(a) – Inadequate brakes for safe stopping. This is a first-time violation of a fundamental safety requirement. The Commission assesses a penalty of \$100 per occurrence, for a total of \$100.
- One violation of Title 49 CFR Part 396.3(a)(1) – Tires (general): Parts and accessories shall be in safe and proper operating condition at all times. This is a first-time violation of a fundamental safety requirement. The Commission assesses a penalty 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.

³ Docket A-120061 – Enforcement Policy of the Washington Utilities & Transportation Commission – Section V.

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. Alternatively, 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 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 April 11, 2019.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TG-190089

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 \$800 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