

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TG-190332

PENALTY AMOUNT: \$1,500

Zippy Disposal Services, Inc.
P.O. Box 1717
Chelan, Washington 98816

The Washington Utilities and Transportation Commission (Commission) believes that Zippy Disposal Services, Inc., (Zippy Disposal 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 391 – Qualifications of Drivers, and Part 395 – Hours of Service of Drivers.

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 April 30, 2019, Commission Motor Carrier Investigator Edward Steiner completed a routine safety investigation of Zippy Disposal Services and documented the following violations:

- **Thirteen violations of Title 49 CFR Part 391.45(a) – Using a driver not medically examined and certified.** The carrier allowed its drivers Glen Austin and David Emler to drive on a total of 13 occasions without first having been medically examined and certified.
- **Two violations of Title 49 CFR Part 391.51(a) – Failing to maintain driver qualification on each driver employed.** The carrier failed to maintain driver qualifications for its employees Glen Austin and David Emler.
- **Ninety violations of Title 49 CFR Part 395.8(a)(1) – Failure to require a driver to prepare a record of duty status using appropriate method.** The carrier failed to require its drivers Glen Austin, David Elmer, and Allen Tilbury to complete records of duty status on 90 occasions.

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 serious and potentially harmful to the public. Solid waste companies that: 1) use drivers not medically examined and certified, 2) fail to maintain driver qualification files, and 3) fail to require drivers to record hours of service put the traveling public at risk. These violations all present serious safety concerns.

2. **Whether the violations were intentional.** Considerations include:

- Whether the Company ignored Commission staff's (Staff) 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.

Zippy Disposal Services began solid waste operations in Chelan, Washington, in March of 1975. In its October 21, 1992, application to extend its authority, Zippy Disposal Services acknowledged its responsibility to comply with applicable safety laws and regulations. In addition, Staff provided technical assistance to the Company in 2004 and 2010. Zippy Disposal Services knew or should have known about these requirements.

3. **Whether the Company self-reported the violations.** Zippy Disposal Services did not self-report these violations.
4. **Whether the Company was cooperative and responsive.** Zippy Disposal Services was cooperative throughout the investigation and expressed a desire to come into compliance with the safety regulations.
5. **Whether the Company promptly corrected the violations and remedied the impacts.** The Company worked with Staff to develop a safety management plan that corrects each violation and is intended to prevent future occurrences.
6. **The number of violations.** Staff identified 10 violation types with a total of 115 individual occurrences.
7. **The number of customers affected.** In 2018, Zippy Disposal Services traveled 132,556 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 Zippy Disposal Services is likely to repeat these safety violations. However, Zippy Disposal Services was cooperative with Staff and willingly accepted technical assistance.
9. **The Company's past performance regarding compliance, violations, and penalties.** Staff conducted safety investigations of Zippy Disposal Services in 2004 and 2010 and documented minor violations. The Company has no other history of penalties.
10. **The Company's existing compliance program.** Mr. Glen Austin, Company Controller, is responsible for Zippy Disposal Services' safety compliance program.
11. **The size of the Company.** Zippy Disposal Services currently operates 12 commercial motor vehicles with nine drivers. The Company reported \$2,591,828 in gross revenue for 2018.

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 Zippy Disposal Services \$1,500 for violations of WAC 480-70-201, Operation of Motor Vehicles, which adopts Title 49 CFR Parts 391 and 395, calculated as follows:

- **Thirteen violations of Title 49 CFR Part 391.45(a) – Using a driver not medically examined and certified.** The Commission assesses a penalty of \$100 for each occurrence of this critical violation, for a total of \$1,300.
- **Two violations of Title 49 CFR Part 391.51(a) – Failing to maintain driver qualification on each driver employed.** The Commission assesses a "per category" penalty of \$100 for two occurrences of this first time critical violation, for a total of \$100.
- **Ninety violations of Title 49 CFR Part 395.8(a)(1) – Failure to require a driver to prepare a record of duty status using appropriate method.** The Commission assesses a "per category" penalty of \$100 for 90 occurrences of this first time critical 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. 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(s) 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.

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

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 June 4, 2019.

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

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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 \$1,500 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