

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TG-190469

PENALTY AMOUNT: \$1,000

Lee A. Lamb
d/b/a Lamb's Disposal
404 Silver Crown Avenue
Northport, WA 99157

The Washington Utilities and Transportation Commission (Commission) believes that Lee A. Lamb d/b/a Lamb's Disposal (Lamb's Disposal 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 \$100 for each violation. In the case of an ongoing violation, every day's continuance is considered a separate and distinct violation.

On June 3, 2019, Commission Motor Carrier Investigator Sandra Yeomans completed a routine safety investigation of Lamb's Disposal and documented the following violations:

- **One violation of CFR 391.45(a) – Using a driver not medically examined or certified.** The Company allowed driver Michael Lamb to drive while his medical card was lapsed between March 13, 2019, and April 29, 2019. Michael Lamb drove on a total of seven occasions, as follows: March 14, March 21, March 28, April 4, April 11, April 18, and April 25, 2019.
- **One violation of CFR 391.51(a) – Failing to maintain driver qualification files.** Lamb's Disposal did not have driver qualifications on file for its driver, Michael Lamb.
- **Thirty violations of CFR 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 driver Michael Lamb to prepare records of duty status using the appropriate method.
- **One violation of CFR 396.3(b) – Failing to keep minimum records of inspections and vehicle maintenance.** Lamb's Disposal failed to maintain maintenance records for the Company's vehicle.

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 who are not medically examined and certified, (2) fail to maintain driver qualification files, (3) fail to require a driver to prepare a record of duty status accurately, and (4) fail to keep minimum records of inspections and vehicle maintenance put the traveling public and their property at risk. The violations discovered during the safety investigation 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.

Lamb's Disposal began solid waste operations in March 2011. Lamb's Disposal is a garbage and refuse company operating in Northport, Washington. In the Company's March 3, 2011, application, Lamb's Disposal acknowledged its responsibility to comply with applicable safety laws and regulations. Lamb's Disposal knew or should have known about these requirements.

3. **Whether the Company self-reported the violations.** Lamb's Disposal did not self-report these violations.
4. **Whether the Company was cooperative and responsive.** Lamb's Disposal was cooperative throughout the investigation and expressed a desire to come into compliance with safety regulations.
5. **Whether the Company promptly corrected the violations and remedied the impacts.** The Company submitted a 15-day letter that describes the corrective actions taken to remedy each of the violations discovered.
6. **The number of violations.** Staff identified six violation types with a total of 41 individual occurrences.
7. **The number of customers affected.** In 2018, Lamb's Disposal traveled 7,644 miles. The community the Company serves, as well as the traveling public, were potentially affected by these safety violations.
8. **The likelihood of recurrence.** The Commission does not know if Lamb's Disposal is likely to repeat these safety violations. Lamb's Disposal was cooperative with Staff and willingly accepted technical assistance.
9. **The Company's past performance regarding compliance, violations, and penalties.** This is the Company's first safety investigation. Lamb's Disposal was penalized on July 11, 2012, and August 5, 2013, for not filing an annual report in violation of WAC 480-70-17.

10. **The Company's existing compliance program.** Ms. Lee A. Lamb, Owner, is responsible for the Company's safety compliance program.

11. **The size of the Company.** Lamb's Disposal currently operates one motor vehicle with one driver. The Company reported \$35,520 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 Lamb's Disposal \$1,000 for violations of Washington Administrative Code (WAC) 480-70-201, Vehicle and Driver Safety Requirements, calculated as follows:

- **One violation of CFR 391.45(a) – Using a driver not medically examined or certified.** The Commission assesses a penalty of \$100 per occurrence for seven occurrences of this first-time critical type violation for a total of \$700.
- **One violation of CFR 391.51(a) – Failing to maintain driver qualification files.** The Commission assesses a penalty of \$100 for this first-time critical violation.
- **Thirty violations of CFR 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 30 occurrences of this first-time critical violation, for a total of \$100.
- **One violation of CFR 396.3(b) - One violations of CFR 396.3(b) – Failing to keep minimum records of inspections and vehicle maintenance.** The Commission assesses a penalty of \$100 for this first-time critical type violation, 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 through evidence presented at a hearing or in writing. Alternatively, if there is a reason for any or all of the violations that you

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

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 their 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 July 2, 2019.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TG-190469

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 \$1,000 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