

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TG-190495

PENALTY AMOUNT: \$47,700

Waste Management of Washington, Inc.
720 4th Avenue, Suite 400
Kirkland, WA 98034

The Washington Utilities and Transportation Commission (Commission) believes that Waste Management of Washington, Inc.,¹ (Waste Management 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 391 – Qualifications 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 11, 2019, Commission Motor Carrier Investigator Wayne Gilbert completed a routine safety investigation of Waste Management and documented the following violations:

- **199 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.** Reese Penhollow drove with a downgraded commercial driver license on 126 occasions between September 14, 2018, and March 25, 2019. Jason Troupe drove with a downgraded commercial driver license on 73 occasions between November 11, 2018, and March 25, 2019.
- **274 violations of Title 49 CFR Part 391.45(a) – Using a driver not medically examined and certified.** The Company allowed six of its drivers to drive without having been medically examined and certified. Scott Crandall drove a total of nine times without

¹ Waste Management of Washington, Inc., d/b/a Waste Management of Ellensburg; Waste Management of Greater Wenatchee; Waste Management of Spokane; Waste Management-Rainier; Waste Management-Northwest; Waste Management-Sno-King; Waste Management of Kennewick; North Cascade Disposal; Recycle America; Rural Skagit Sanitation; Federal Way Disposal; Nick Raffi Garbage; R.S.T. Disposal; Tri-Star Disposal; Western Refuse; Port-O-Let; Stanwood Camano Disposal; Waste Management; Waste Management of Seattle; Waste Management of Skagit County; Waste Management of Yakima; Washington Waste Hauling & Recycling; Brem-Air Disposal; Olson's Sanitation Service; Valley Garbage; Waste Management - South Sound; Waste Management of Addy; WM Healthcare Solutions of Washington; Waste Management - North Sound; Waste Management – Marysville.

a medical certificate between March 4, 2019, and March 25, 2019. Errin Ellington drove a total of eight times without a medical certificate between November 20, 2018, and November 29, 2018. Arnulfo Garcia drove a total of 115 times without a medical certificate between October 1, 2018, and April 3, 2019. Adam Petereit drove a total of 76 times without a medical certificate between November 26, 2018, and April 3, 2019. Donald Phillips, Jr. drove a total of 62 times without a medical certificate between January 3, 2019, and April 15, 2019. Aaron Hutchison drove a total of four times without a medical certificate on January 14, 15, 16, and 17, 2019.

- **One violation of Title 49 CFR Part 391.51(b)(2) – Failing to maintain general requirements for driver qualification file.** The Company failed to maintain inquiries into the driver’s driving record in the driver’s qualification file for one of its drivers.
- **Four violations of Title 49 CFR Part 396.3(a)(1) – Parts and accessories shall be in safe and proper operating condition at all times.** Four vehicles were placed out of service. One vehicle was placed out-of-service because the left tire on axle one was making contact with the drag link when turning right.² Three vehicles were placed out-of-service because 20 percent or more of each vehicle’s service brakes were defective.³

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 without valid commercial driver licenses, 2) use drivers not medically examined and certified, and 3) use commercial motor vehicles that are in need of repairs put their customers as well as the traveling public at risk. These violations present serious safety concerns.
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.

Waste Management began operations as a solid waste carrier operating and servicing various cities and counties throughout the state of Washington in 1992. Waste Management records on file date back to February 1, 1993. Waste Management operates 10 regulated sites statewide, and has acknowledged its responsibility to comply with applicable safety laws and regulations in each application filed with the Commission. In December 2010, Commission staff (Staff) completed a routine safety investigation and

² Company equipment identification number 103468.

³ Company equipment identification numbers 103347, 264701, and 208172.

the Company received a “Satisfactory” safety rating. Waste Management knew or should have known about these requirements.

3. **Whether the Company self-reported the violations.** Waste Management did not self-report these violations.
4. **Whether the Company was cooperative and responsive.** Waste Management 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 corrected the violations as they were identified by Staff.
6. **The number of violations.** Commission staff identified 26 violation types with a total of 582 individual occurrences.
7. **The number of customers affected.** Waste Management employs 525 drivers and operates 489 trucks classified as commercial vehicles. In 2018, Waste Management traveled 13,010,926 miles. These safety violations presented a significant public safety risk.
8. **The likelihood of recurrence.** The Commission does not know if Waste Management is likely to repeat these safety violations. Waste Management was 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.** Waste Management has no history of previous penalties for safety violations.
10. **The Company’s existing compliance program.** Mr. Gerald Ginter, Area Safety Manager, is responsible for Waste Management’s safety compliance program.
11. **The size of the Company.** Waste Management currently operates 489 straight trucks with 525 drivers. The Company reported \$146,686,777 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.⁴ 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.

⁴ Docket A-120061 – Enforcement Policy of the Washington Utilities & Transportation Commission – Section V.

The Commission has considered these factors and determined that it should penalize Waste Management \$47,700, calculated as follows:

- 199 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 acute violation, for a total of \$19,900.
- 274 violations of Title 49 CFR Part 391.45(a) – Using a driver not medically examined and certified. The Commission assesses a penalty of \$100 per occurrence, for a total of \$27,400.
- Four violations of Title 49 CFR Part 396.3(a)(1) –Parts and accessories shall be in safe and proper operating condition at all times. This is a violation of a fundamental safety requirement. The Commission assesses a penalty of \$100 per occurrence, for a total of \$400.

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 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 violation(s).
- Admit the violations but request mitigation of the penalty amount.

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 Lacey, Washington, and effective July 10, 2019.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TG-190495

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 \$47,700 in payment of the penalty.

2. **Contest the violation(s).** I believe that the alleged violation(s) 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