

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

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

**PENALTY ASSESSMENT: TG-190860  
PENALTY AMOUNT: \$400**

Basin Disposal Inc.  
P.O. Box 3850  
Pasco, WA 99302-3850

The Washington Utilities and Transportation Commission (Commission) believes Basin Disposal Inc. (Basin Disposal or Company) violated Washington Administrative Code (WAC) 480-70-201, Vehicle and Driver Safety Requirements, which adopts Title 49 Code of Federal Regulations (49 CFR) Part 383 – Commercial Driver’s License Standards; Requirements and Penalties, and 49 CFR 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 October 15, 2019, Commission Motor Carrier Investigator Wayne Gilbert completed a routine safety investigation of Basin Disposal and documented the following violations:

- **One violation of 49 CFR § 383.37(a) – Knowingly allowing, requiring, permitting, or authorizing an employee to operate a Commercial Motor Vehicle (CMV) during any period in which the driver does not have a current commercial driver’s license (CDL) or does not have a CDL with the proper class or endorsements. An employer may not use a driver to operate a CMV who violates any restriction on the driver’s CDL.** Basin Disposal allowed driver Ivan Snyder to operate a commercial motor vehicle with a downgraded CDL.
- **Two violations of 49 CFR § 396.3(a)(1) – Brake system pressure loss.** Commission staff (Staff) discovered two commercial motor vehicles with braking systems that were unable to maintain air pressure.<sup>1</sup> These two commercial motor vehicles were placed out-of-service.
- **One violation of 49 CFR § 396.3(a)(1) – Number of defective brakes is equal to or greater than 20 percent of the service brakes on the vehicle or combination.** Staff discovered a commercial motor vehicle with three brakes at full defect on both sides of axle two and on the right side of axle three.<sup>2</sup> This commercial motor vehicles was placed out-of-service.

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<sup>1</sup> Equipment Identification Numbers 120 and 132.

<sup>2</sup> Equipment Identification Number 132.

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. Companies that allow drivers with a downgraded CDL to operate commercial motor vehicles, and that use commercial motor vehicles that are in need of repairs, put the traveling public at risk. These violations present public 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.

Basin Disposal began its operations in 1941. Staff has completed three routine safety investigations of the Company since May 2009, where technical assistance was provided pertaining to motor carrier safety regulations.

On December 14, 2016, Staff completed a routine safety investigation of Basin Disposal and documented one out-of-service violation of 49 CFR § 396.3(a)(1) for brake system pressure loss on a commercial motor vehicle.<sup>3</sup>

The Company knew or should have known about these requirements.

3. **Whether the Company self-reported the violations.** Basin Disposal did not self-report these violations.
4. **Whether the Company was cooperative and responsive.** Basin Disposal was cooperative throughout the safety 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 corrected the violation of 49 CFR § 383.37(a) prior to the conclusion of the safety investigation. Basin Disposal has not provided Staff with evidence that it corrected the violations of 49 CFR § 396.3(a)(1).
6. **The number of violations.** Staff identified 12 violation types with a total of 30 individual occurrences.
7. **The number of customers affected.** The Company employs 42 drivers and operates 43 commercial motor vehicles. Basin Disposal traveled 1,251,350 miles in 2018. These safety violations presented a significant public safety risk.

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<sup>3</sup> Equipment Identification Number 117.

8. **The likelihood of recurrence.** Staff provided technical assistance with specific remedies to help the Company assess how well its safety management controls support safe operations and how to begin improving its safety performance. The Company was cooperative with Staff, and expressed a desire to come into compliance. In light of these factors, Staff believes the likelihood of recurrence is low.
9. **The Company's past performance regarding compliance, violations, and penalties.** On July 7, 2017, Basin Disposal was penalized \$200 in Docket TG-170566 for failing to file a complete annual report and pay regulatory fees by May 1, 2017. The Company has no history of penalties for safety violations.
10. **The Company's existing compliance program.** Booker Nagely, Operations Manager for Basin Disposal, is responsible for the Company's safety compliance program.
11. **The size of the Company.** Basin Disposal currently operates 43 commercial motor vehicles and employs 42 drivers. The Company reported \$17,738,672 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.<sup>4</sup> 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 Basin Disposal \$400, calculated as follows:

- One violation of 49 CFR § 383.37(a) – Knowingly allowing, requiring, permitting, or authorizing an employee to operate a CMV during any period in which the driver does not have a current CDL or does not have a CDL with the proper class or endorsements. An employer may not use a driver to operate a CMV who violates any restriction on the driver's CDL. The Commission assesses a penalty of \$100 for this acute violation.
- Two violations of 49 CFR § 396.3(a)(1) – Brake system pressure loss. The Commission assesses a penalty of \$100 for each occurrence of these out-of-service violations, for a total of \$200.
- One violation of 49 CFR § 396.3(a)(1) – Number of defective brakes is equal to or greater than 20 percent of the service brakes on the vehicle or combination. The Commission assesses a penalty of \$100 for this out-of-service violation.

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

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.

**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 October 28, 2019.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION  
PENALTY ASSESSMENT TG-190860

**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 \$400 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