

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

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

**PENALTY ASSESSMENT: TG-190895  
PENALTY AMOUNT: \$100**

Waste Management of Washington, Inc.  
720 4<sup>th</sup> Avenue, Suite 400  
Kirkland, WA 98033

The Washington Utilities and Transportation Commission (Commission) believes Waste Management of Washington, Inc.,<sup>1</sup> (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 (49 CFR) Part 396 – Inspection, Repair and Maintenance.

Revised Code of Washington (RCW) 81.04.530 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 2, 2019, Commission Motor Carrier Investigator Francine Gagne completed a destination check at the Bow Hill Weigh Station and documented the following violation:

- **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.** Commission staff (Staff) discovered a commercial motor vehicle with two defective brakes on axle three.<sup>2</sup> This commercial motor vehicle was placed out-of-service.

The Commission considered the following factors in determining the appropriate penalty for this violation:

1. **How serious or harmful the violations are to the public.** The violation noted is serious and potentially harmful to the public. Companies that use commercial motor vehicles

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<sup>1</sup> 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.

<sup>2</sup> Equipment Identification Number 264738.

with defective brakes put the traveling public at risk. This violation presented a serious safety concern.

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

- Whether the Company ignored 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 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.

On June 11, 2019, Staff completed a routine safety investigation and the Company received a "Satisfactory" safety rating. During this review, Staff discovered four violations of 49 CFR § 396.3(a)(1).

Waste Management knew or should have known about this requirement.

3. **Whether the Company self-reported the violations.** Waste Management did not self-report this violation.
4. **Whether the Company was cooperative and responsive.** The Company's driver was cooperative throughout the inspection.
5. **Whether the Company promptly corrected the violations and remedied the impacts.** The Company corrected the violation onsite prior to driving the vehicle on a public road.
6. **The number of violations.** Staff identified three violation types with a total of three individual occurrences.
7. **The number of customers affected.** The Company employed 585 drivers and operated 489 commercial motor vehicles in 2018. Waste Management traveled 13,010,926 miles in 2018. This safety violation presented a public safety risk.
8. **The likelihood of recurrence.** The Company committed a repeat violation despite receiving past technical assistance. Absent a significant commitment to prioritize safe operations, the violations are likely to reoccur.
9. **The Company's past performance regarding compliance, violations, and penalties.** On July 10, 2019, Waste Management was penalized \$47,700 in Docket TG-190495 for safety violations of WAC 480-70-201. Prior to Docket TG-190495, the Company had no history of violations or penalties with the Commission.
10. **The Company's existing compliance program.** Gerald Ginter, Area Safety Manager, is responsible for the Company's safety compliance program.

11. **The size of the Company.** Waste Management operated 489 commercial motor vehicles and employed 585 drivers in 2018. 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.<sup>3</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 Waste Management \$100, calculated as follows:

- One violation of Title 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.

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 the violation did not occur, you may deny committing the violation and contest the penalty through evidence presented at a hearing or in writing. Alternatively, if there is a reason for the violation 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 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.
- Admit the violation but request mitigation of the penalty amount.

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

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](mailto: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 November 7, 2019.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION  
PENALTY ASSESSMENT TG-190895

**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 \$100 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