

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TG-200756

PENALTY AMOUNT: \$20,800

Peninsula Sanitation Service, Inc.
P.O. Box A
Ilwaco, WA 98624

The Washington Utilities and Transportation Commission (Commission) believes Peninsula Sanitation Service, Inc., (Peninsula Sanitation 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 391 – Qualification 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 August 20, 2020, Commission Motor Carrier Investigator Francine Gagne completed a routine safety investigation of Peninsula Sanitation and documented the following violations:

- **Two hundred seven violations of 49 CFR § 383.37(a) – Allowing, requiring, permitting, or authorizing a driver to operate a commercial motor vehicle during any period in which the driver does not have a current commercial learner’s permit (CLP) or commercial driver’s license (CDL) or does not have a CLP or CDL with the proper class or endorsements. An employer may not use a driver to operate a commercial motor vehicle who violates any restriction on the driver’s CLP or CDL.** Peninsula Sanitation allowed drivers Chad Palmer, Jarrett Anglin, and Scott Cox to operate a commercial motor vehicle with a downgraded CDL on 207 occasions between October 1, 2019, and February 28, 2020.
- **Five violations of 49 CFR § 391.51(b)(7) – Failing to maintain medical examiner’s certificate in driver’s qualification file.** The Company failed to obtain motor vehicle records containing the medical certificate statuses for drivers Chad Palmer, Jarrett Anglin, Scott Cox, Pam Hall, and Johnny Phillips.

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 to operate commercial motor vehicles with downgraded CDLs and fail to maintain medical examiner’s certificates in driver qualification files put their customers and the traveling public at risk. These violations present significant safety concerns.

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.

Peninsula Sanitation began its operations in 1954 and has been subject to numerous safety investigations conducted by Staff. The Company knew or should have known about these requirements; however, there is no evidence that suggests Peninsula Sanitation ignored Staff's previous technical assistance.

3. **Whether the Company self-reported the violations.** Peninsula Sanitation did not self-report these violations.
4. **Whether the Company was cooperative and responsive.** The Company was cooperative throughout the safety investigation and expressed a desire to come into compliance with motor carrier safety regulations.
5. **Whether the Company promptly corrected the violations and remedied the impacts.** Peninsula Sanitation has not provided Staff with evidence that it corrected the violations.
6. **The number of violations.** Staff identified eight violation types with a total of 230 individual occurrences.
7. **The number of customers affected.** The Company employs eight drivers and operates six straight trucks and four truck tractors. Peninsula Sanitation reported 167,319 miles traveled in 2019. These safety violations present a public safety risk.
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. Peninsula Sanitation was cooperative throughout the safety investigation 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 December 10, 2019, Peninsula Sanitation was penalized \$34,700 in Docket TG-190476 for violations related to its business practices. The Commission suspended a \$29,700 portion of the penalty for two years, subject to conditions. The Company paid the \$5,000 non-suspended portion of the penalty in full.

The Company has no history of penalties for safety violations.

10. **The Company's existing compliance program.** Jay Alexander, owner of Peninsula Sanitation, is responsible for the Company's safety compliance program.

11. **The size of the Company.** Peninsula Sanitation currently operates six straight trucks, four truck tractors, and employs eight drivers. The Company reported \$3,628,731 in gross revenue for 2019.

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 Peninsula Sanitation \$20,800, calculated as follows:

- Two hundred seven violations of 49 CFR § 383.37(a) – Allowing, requiring, permitting, or authorizing a driver to operate a commercial motor vehicle during any period in which the driver does not have a current CLP or CDL or does not have a CLP or CDL with the proper class or endorsements. An employer may not use a driver to operate a commercial motor vehicle who violates any restriction on the driver's CLP or CDL. The Commission assesses a penalty of \$100 for each occurrence of this acute violation, for a total of \$20,700.
- Five violations of 49 CFR § 391.51(b)(7) – Failing to maintain medical examiner's certificate in driver's qualification file. The Commission assesses a "per category" penalty of \$100 for these first-time violations.

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

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

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 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 September 2, 2020.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TG-200756

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 \$20,800 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 B felony.”