

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

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

**PENALTY ASSESSMENT: TG-210133  
PENALTY AMOUNT: \$300**

Jeffery K. Cummins,  
d/b/a Community Waste & Recycling  
157 Black Bird Lane  
Chehalis, WA 98532

The Washington Utilities and Transportation Commission (Commission) believes Jeffery K. Cummins, d/b/a Community Waste & Recycling, (Community Waste 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 382 – Controlled Substance and Alcohol Use and Testing, 49 CFR Part 391 – Qualification of Drivers, 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 February 25, 2021, Commission Motor Carrier Investigator Edward Steiner completed a follow-up safety investigation of Community Waste and documented the following violations:

- **One violation of 49 CFR § 382.305(i)(2) – Failing to ensure that each driver subject to random alcohol and controlled substances testing has an equal chance of being selected each time selections are made.** Community Waste failed to ensure that each driver had an equal chance of being selected to random alcohol and controlled substances testing by listing a non-driving employee in the testing pool with the consortium.
- **One violation of 49 CFR § 391.23(m)(1) – Failing to verify the medical examiner is registered with the National Registry of Certified Medical Examiners.** The Company failed to verify the driver was certified by a medical examiner listed on the National Registry of Certified Medical Examiners.
- **One violation of 49 CFR § 396.17(a) – Using a commercial motor vehicle not periodically inspected.** Community Waste failed to have an annual inspection performed on its commercial motor 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 collection companies that: (1) fail to ensure drivers have an equal chance of being selected to random alcohol and

controlled substances testing, (2) fail to verify medical examiner's registry on the National Registry of Certified Medical Examiners, and (3) use commercial motor vehicles that have not been periodically inspected put the traveling public at risk. These violations present 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.

On November 9, 2018, Staff completed a routine safety investigation of Community Waste and documented violations of 49 CFR § 382.305(i)(2), 49 CFR § 391.23(m)(1), and 49 CFR § 396.17(a). The Company knew or should have known about these requirements.

3. **Whether the Company self-reported the violations.** Community Waste 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.** The Company had its commercial motor vehicle inspected on January 28, 2021. Community Waste has not provided Staff with evidence that it corrected the other violations.
6. **The number of violations.** Staff identified five violation types with a total of five individual occurrences.
7. **The number of customers affected.** Community Waste traveled 8,000 miles in 2020. These safety violations presented a public safety risk.
8. **The likelihood of recurrence.** The Company incurred repeat violations despite prior technical assistance and a suspended penalty to encourage compliance with safety regulations. 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 May 22, 2014, Community Waste was penalized \$1,000 in Docket TG-141009 for failing to file a complete annual report and pay regulatory fees by the due date. On August 4, 2014, the Commission entered Order 01, which reduced the penalty to \$250. The Company paid the penalty in full.

On December 20, 2018, Community Waste was penalized \$4,100 in Docket TG-180957 for safety violations of WAC 480-70-201. On February 4, 2019, the Commission entered Order 01, which reduced the penalty to \$3,050 and suspended a \$2,050 portion of the reduced penalty for a period of two years, subject to the conditions that: (1) Community Waste paid the \$1,000 portion of the penalty that is not suspended, and (2) the Company not incur any repeat violations of critical regulations. Community Waste paid the entire \$1,000 portion of the penalty that was not suspended but did incur repeat violations of critical regulations.

10. **The Company's existing compliance program.** Jeffery Cummins is responsible for the Company's safety compliance program.
11. **The size of the Company.** Community Waste currently operates one commercial motor vehicle and employs one driver. The Company reported \$84,000 in gross revenue for 2020.

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>1</sup> The Commission generally will assess penalties by violation category, 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 Community Waste \$300, calculated as follows:

- One violation of 49 CFR § 382.305(i)(2) – Failing to ensure that each driver subject to random alcohol and controlled substances testing has an equal chance of being selected each time selections are made. The Commission assesses a penalty of \$100 for this repeat violation.
- One violation of 49 CFR § 391.23(m)(1) – Failing to verify the medical examiner is registered with the National Registry of Certified Medical Examiners. The Commission assesses a penalty of \$100 for this repeat violation.
- One violation of 49 CFR § 396.17(a) – Using a commercial motor vehicle not periodically inspected. The Commission assesses a penalty of \$100 for this repeat violation.

This information, if proven at a hearing and not rebutted or explained, is sufficient to support the penalty assessment.

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

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 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](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 March 15, 2021.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION  
PENALTY ASSESSMENT TG-210133

**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 \$300 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.”