

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

**PENALTY ASSESSMENT: TG-210310
PENALTY AMOUNT: \$300**

Harold Lemay Enterprises, Inc.,
d/b/a Butlers Cove Refuse Service; City Sanitary Co., et al.
4111 192nd St. E
Tacoma, WA 98446

The Washington Utilities and Transportation Commission (Commission) believes Harold Lemay Enterprises, Inc., d/b/a Butlers Cove Refuse Service; City Sanitary Co., et al., (Harold Lemay 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) 81.04.405 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 April 29, 2021, Commission Motor Carrier Investigator Francine Gagne completed a routine safety investigation of Harold Lemay and documented the following violations:

- **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 one defective brake on the right side of axle two.¹ This commercial motor vehicle was placed out-of-service.
- **Two violations of 49 CFR § 396.3(a)(1) – Tire in contact with another part of the vehicle.** Staff discovered two commercial motor vehicles with tires in contact with other parts of the vehicle. One commercial motor vehicle's right front tire was contacting the auto lube line hose when turned to full right,² and another commercial motor vehicle's tire was contacting the grease line when turned to full right.³ These commercial motor vehicles were placed out-of-service.

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

¹ Equipment Identification Number 1062.

² Equipment Identification Number 3706.

³ Equipment Identification Number 3695.

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 operate vehicles in need of repair put the traveling public at risk. These violations present public 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 violations.

Harold Lemay began its operations as a solid waste carrier in 1958 and has been subject to numerous safety investigations conducted by Staff. The Company knew or should have known about these requirements.

3. **Whether the Company self-reported the violations.** Harold Lemay did not self-report these violations.
4. **Whether the Company was cooperative and responsive.** Harold Lemay was cooperative throughout the investigation and expressed a desire to come into compliance.
5. **Whether the Company promptly corrected the violations and remedied the impacts.** The Company corrected the violations immediately after they were discovered.
6. **The number of violations.** Staff identified 12 violation types with a total of 32 individual occurrences.
7. **The number of customers affected.** Harold Lemay traveled 3,984,038 miles in 2020. These safety violations presented 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. The Company was cooperative throughout the safety investigation, expressed a desire to come into compliance, and immediately took corrective action. In light of these factors, Staff believes that the likelihood of recurrence is low.
9. **The Company's past performance regarding compliance, violations, and penalties.** On May 26, 2015, Harold Lemay was penalized \$100 in Docket TG-150968 for failing to file a complete annual report and pay regulatory fees.

On April 10, 2018, Harold Lemay was penalized \$200 in Docket TG-180253 for safety violations of WAC 480-70-201. The Company paid the penalty in full.

10. **The Company's existing compliance program.** The carrier utilizes a program to electronically maintain vehicle records and track services due. There are different safety contacts at each of the Company's facilities.

11. **The size of the Company.** Harold Lemay currently operates 270 commercial motor vehicles and six trailers and employs 251 drivers. The Company reported \$82,500,000 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.⁴ 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 Harold Lemay \$300, calculated as follows:

- 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.
- Two violations of 49 CFR § 396.3(a)(1) – Tire in contact with another part of the vehicle. The Commission assesses a penalty of \$100 for each occurrence of this out-of-service violation, for a total of \$200.

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 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.

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

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 permit 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 May 21, 2021.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TG-210310

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