

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TG-210621

PENALTY AMOUNT: \$19,600

Waste Management of Washington, Inc.
720 4th Ave., Ste. 400
Kirkland, WA 98034

The Washington Utilities and Transportation Commission (Commission) believes Waste Management of Washington, Inc.,¹ (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 383 – Commercial Driver’s License Standards; 49 CFR Part 391 – Qualification of Drivers; 49 CFR Part 392 – Driving of Motor Vehicles; 49 CFR Part 393 – Parts and Accessories Necessary for Safe Operation; 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 August 5, 2021, Commission Motor Carrier Investigator Tracy Cobile completed a follow-up safety investigation of Waste Management and documented the following violations:

- **Seventy-six violations of 49 CFR § 383.23(a) – Operating a commercial motor vehicle without a valid commercial driver’s license (CDL).** Waste Management allowed driver Clifton Pollatz to operate a commercial motor vehicle without a valid CDL on 76 occasions between November 9, 2020, and March 8, 2021.
- **One violation of 49 CFR § 391.23(c) – Failing to investigate driver’s background within 30 days of employment.** The Company failed to investigate Chadwick Nunley’s driving background within 30 days of employment. Chadwick Nunley was hired on May 30, 2017, and the driver’s background investigation was conducted on July 5, 2017.

¹ 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 Raffo 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.

- **One hundred six violations of 49 CFR § 391.45(a) – Using a driver not medically examined and certified.** Waste Management allowed drivers Amanda Driesen and Lester Rano operate a commercial motor vehicle without a valid medical certificate on 106 occasions between October 14, 2020, and April 9, 2021.
- **Two violations of 49 CFR § 391.51(b)(2) – Failing to maintain inquiries into driver’s driving record in driver’s qualification file.** The Company failed to maintain inquiries into the driving records of Amanda Driesen and Lester Rano.
- **Two violations of 49 CFR § 391.51(b)(4) – Failing to maintain the responses of each state agency to the annual driver record inquiry required by 49 CFR § 391.25(a).** Waste Management failed to maintain annual driver abstracts for Bryn Erdman and Amanda Driesen.
- **One violation of 49 CFR § 391.51(b)(5) – Failing to maintain a note relating to the annual review of the driver’s driving record as required by 49 CFR § 391.25(c)(2).** The Company failed to maintain a note relating to the review of Vincent Olsen’s driving record.
- **Twenty-one violations of 49 CFR § 391.51(b)(6) – Failing to maintain a list or certificate relating to violations of motor vehicle laws and ordinances required by 49 CFR § 391.27.** The Company failed to maintain a list or certificate of all violations of motor vehicle traffic laws and ordinances for drivers Thomas Furin, James Thomas, Peter Clark, James Smith, Frederick Brown, Corey Glader, Eric Crowder, Darrell George Jr., Chadwick Nunley, Calvin Rusho, Gregory Thomas, Scott Crandall, Hugo Macias, Joe Saythavy, James Peters, Amanda Driesen, Shayne Meuli, Leo Bachand, Gilberto Ocampo Jr., Robert Main, and Vincent Olsen.
- **Three violations of 49 CFR § 391.51(b)(9) – Failing to place a note related to the verification of the medical examiner’s listing on the National Registry of Certified Medical Examiners required by 49 CFR § 391.23(m) in driver qualification file(s).** Waste Management failed to verify the medical examiners listed on the medical certificates of drivers Lester Rano, Anthony Brandenburg, and Todd Stewart with the national registry.
- **One violation of 49 CFR § 392.9(a)(2) – Failing to secure vehicle equipment.** Commission staff (Staff) discovered a commercial motor vehicle with a pair of orange chocks on the battery box loose and not secured.² This commercial motor vehicle was placed out-of-service.

² Equipment Identification Number 417647.

- **One violation of 49 CFR § 392.9(a)(2) – Failing to secure vehicle equipment.** Staff discovered a commercial motor vehicle with vehicle equipment loose and unsecured inside the hydraulic arm tub.³ This commercial motor vehicle was placed out-of-service.
- **One violation of 49 CFR § 393.45(b)(2) – Brake hose or tubing chafing and/or kinking.** Staff discovered a commercial motor vehicle with the right-side axle brake hose or tubing frayed.⁴ This commercial motor vehicle was placed out-of-service.
- **One violation of 49 CFR § 393.51 – No or defective brake warning device or pressure gauge.** Staff discovered a commercial motor vehicle with a defective primary air pressure gauge.⁵ This commercial motor vehicle was placed out-of-service.
- **Two violations of 49 CFR § 396.3(a)(1) – Tire in contact with brake hose.** Staff discovered two commercial motor vehicles with a tire contacting the brake hose.⁶ These commercial motor vehicles were placed out-of-service.
- **One violation of 49 CFR § 396.3(a)(1) – Tire in contact with another part of the vehicle.** Staff discovered a commercial motor vehicle with its tire contacting the hydraulic air line.⁷ This commercial motor vehicle was placed out-of-service.
- **Six violations of 49 CFR § 396.11(a)(3)(ii) – Failing to certify that repairs were made or were not necessary.** Waste Management failed to certify whether repairs were made or not necessary on six occasions between February 12, 2021, and April 30, 2021.

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) allow drivers to operate commercial motor vehicles without valid CDLs, (2) fail to investigate drivers' backgrounds within 30 days of employment, (3) use drivers that are not medically examined and certified, (4) fail to maintain inquiries into the driving records of its drivers, (5) fail to maintain annual driver abstracts, (6) fail to maintain notes relating to the review of drivers' driving records, (7) use drivers with unknown traffic convictions, (8) fail to verify whether medical examiners are qualified to issue medical certificates, (9) operate commercial motor vehicles in need of repair, and (10) fail to certify whether repairs were made or not necessary put their customers and the traveling public at risk. These violations present significant safety concerns.

³ Equipment Identification Number 212093.

⁴ Equipment Identification Number 103597.

⁵ Equipment Identification Number 633392.

⁶ Equipment Identification Numbers 103599 and 266307.

⁷ Equipment Identification Number 264761.

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 its operations in 1992 and has been subject to numerous safety investigations conducted by Staff. On June 11, 2019, Staff completed a routine safety investigation of Waste Management and documented violations of 49 CFR § 391.23(c), 49 CFR § 391.51(b)(2), 49 CFR § 391.51(b)(4), 49 CFR § 391.51(b)(5), 49 CFR § 391.51(b)(6), 49 CFR § 391.51(b)(9), and 49 CFR § 396.11(a)(3)(ii). The Company knew or should have known about these requirements.

3. **Whether the Company self-reported the violations.** Waste Management 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.** Waste Management has not provided Staff with evidence that it corrected the violations.
6. **The number of violations.** Staff identified 41 violation types with a total of 324 individual occurrences during the follow-up safety investigation of Waste Management. Of those violations, Staff identified 13 violation types with a total of 225 individual occurrences that warrant penalties in accordance with the Commission's Enforcement Policy.
7. **The number of customers affected.** Waste Management reported traveling 13,000,000 miles in 2020. These safety violations present a significant public safety risk.
8. **The likelihood of recurrence.** The Company incurred repeat violations despite prior technical assistance and suspended penalties 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 November 14, 2019, Waste Management was penalized \$11,200 for safety violations in Final Order 03 in Docket TG-190495. The Commission suspended a \$6,500 portion of the penalty for a period of two years, subject to the conditions that Waste Management pay the portion that was not suspended and not incur any repeat violations of acute or critical regulations. Waste Management paid the \$4,700 portion of the penalty that was not suspended but did incur repeat violations of critical regulations.
10. **The Company's existing compliance program.** Gerald Ginter, Area Safety Manager of Waste Management, is responsible for the Company's safety compliance program.

11. **The size of the Company.** Waste Management operates 497 commercial motor vehicles and employs 550 drivers. The Company reported \$163,523,159 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.⁸ 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 Waste Management \$19,600, calculated as follows:

- Seventy-six violations of 49 CFR § 383.23(a) – Operating a commercial motor vehicle without a valid CDL. The Commission assesses a penalty of \$100 for each occurrence of this violation, for a total of \$7,600.
- One violation of 49 CFR § 391.23(c) – Failing to investigate driver's background within 30 days of employment. The Commission assesses a penalty of \$100 for this repeat violation.
- One hundred six violations of 49 CFR § 391.45(a) – Using a driver not medically examined and certified. The Commission assesses a penalty of \$100 for each occurrence of this violation, for a total of \$10,600.
- Two violations of 49 CFR § 391.51(b)(2) – Failing to maintain inquiries into driver's driving record in driver's qualification file. The Commission assesses a "per category" penalty of \$100 for these repeat violations.
- Two violations of 49 CFR § 391.51(b)(4) – Failing to maintain the responses of each state agency to the annual driver record inquiry required by 49 CFR § 391.25(a). The Commission assesses a "per category" penalty of \$100 for these repeat violations.
- One violation of 49 CFR § 391.51(b)(5) – Failing to maintain a note relating to the annual review of the driver's driving record as required by 49 CFR § 391.25(c)(2). The Commission assesses a penalty of \$100 for this repeat violation.
- Twenty-one violations of 49 CFR § 391.51(b)(6) – Failing to maintain a list or certificate relating to violations of motor vehicle laws and ordinances required by 49 CFR § 391.27. The Commission assesses a "per category" penalty of \$100 for these repeat violations.

⁸ Docket A-120061 – Enforcement Policy of the Washington Utilities & Transportation Commission – Section V.

- Three violations of 49 CFR § 391.51(b)(9) – Failing to place a note related to the verification of the medical examiner’s listing on the National Registry of Certified Medical Examiners required by 49 CFR § 391.23(m) in driver qualification file(s). The Commission assesses a “per category” penalty of \$100 for these repeat violations.
- One violation of 49 CFR § 392.9(a)(2) – Failing to secure vehicle equipment. The Commission assesses a penalty of \$100 for this out-of-service violation.
- One violation of 49 CFR § 392.9(a)(2) – Failing to secure vehicle equipment. The Commission assesses a penalty of \$100 for this out-of-service violation.
- One violation of 49 CFR § 393.45(b)(2) – Brake hose or tubing chafing and/or kinking. The Commission assesses a penalty of \$100 for this out-of-service violation.
- One violation of 49 CFR § 393.51 – No or defective brake warning device or pressure gauge. 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 brake hose. The Commission assesses a penalty of \$100 for each occurrence of this out-of-service violation, for a total of \$200.
- One violation of 49 CFR § 396.3(a)(1) – Tire in contact with another part of the vehicle. The Commission assesses a penalty of \$100 for this out-of-service violation.
- Six violations of 49 CFR § 396.11(a)(3)(ii) – Failing to certify that repairs were made or were not necessary. The Commission assesses a “per category” penalty of \$100 for these repeat 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 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 13, 2021.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TG-210621

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 \$19,600 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.”