

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TG-230911

PENALTY AMOUNT: \$11,800

Bainbridge Disposal, Inc.
PO BOX 10699
Bainbridge Island, WA 98110

The Washington Utilities and Transportation Commission (Commission) believes Bainbridge Disposal, Inc., (Bainbridge Disposal or Company) violated Administrative Code (WAC) 480-70-201, Vehicle and Driver Safety Requirements, which adopts Title 49 Code of Federal Regulations (49 C.F.R.) Part 383 – Commercial Driver’s License Standards; and 49 C.F.R. 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 November 1, 2023, Commission Motor Carrier Investigator Tracy Cobile completed a follow-up safety investigation of Bainbridge Disposal and documented the following violations:

- **One hundred seventeen violations of 49 C.F.R. § 383.23(a) – Operating a commercial motor vehicle without a valid commercial driver's license (CDL).** Bainbridge Disposal allowed driver Robert Foss to operate a commercial motor vehicle without a valid CDL on 117 occasions between April 17, 2023, and October 16, 2023.
- **Five violations of 49 C.F.R. § 391.21(a) - Using a driver who has not completed and furnished an employment application.** The Company failed to complete or furnish an employment application for drivers Robert Foss, Shad Hogan, Ian Madayag, Alex Russell, and Forrest Thibeault.

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

1. **How serious or harmful the violation is to the public.** The violations noted are serious and potentially harmful to the public. Solid waste collection companies that allow drivers to operate commercial motor vehicles without valid CDLs and use drivers that have not completed employment applications put their customers and the traveling public at risk. These violations present significant safety concerns.
2. **Whether the violation was 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.

Bainbridge Disposal began its operations in 1974 and has been subject to numerous safety investigations conducted by Staff.

On July 27, 2021, Staff completed a routine safety investigation of the Company and identified violations of 49 C.F.R. § 383.23(a) and 49 C.F.R. § 391.21(a). The Company knew or should have known about these requirements.

3. **Whether the Company self-reported the violation.** Bainbridge Disposal did not self-report these violations.
4. **Whether the Company was cooperative and responsive.** The Company was cooperative throughout the safety investigation.
5. **Whether the Company promptly corrected the violation and remedied the impacts.** Bainbridge Disposal corrected some of the violations immediately and expressed a desire to come into compliance with Federal Motor Carrier Safety Regulations.
6. **The number of violations.** Staff identified five violation types with a total of 133 individual occurrences during the routine safety investigation of Bainbridge Disposal. Of those violations, Staff identified two violation types with 122 individual occurrences that warrant a penalty in accordance with the Commission's Enforcement Policy.
7. **The number of customers affected.** Bainbridge Disposal reported 356,685 miles traveled in 2022. These safety violations present a public safety risk.
8. **The likelihood of recurrence.** The Company incurred repeat violations despite prior technical assistance and suspended penalties. 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 September 13, 2021, the Commission issued Bainbridge Disposal a penalty of \$7,000 in Docket TG-210587 for safety violations of WAC 480-70-201.

On October 13, 2021, the Commission entered Order 01 in Docket TG-210587, which granted the Company's request for mitigation, assessed a reduced penalty of \$3,600, and suspended a \$2,000 portion of the reduced penalty for a period of two years, subject to conditions. Bainbridge Disposal paid the \$1,600 non-suspended portion of the penalty in full.

10. **The Company's existing compliance program.** Heather Church, President, and Danny Vansickle, General Manager, are responsible for the Company's safety compliance program.

11. **The size of the Company.** The Company employs 23 drivers and operates 27 commercial motor vehicles. The Company reported \$6,900,000 in gross revenue in 2022.

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 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 Bainbridge Disposal \$11,800 (Penalty Assessment), calculated as follows:

- One hundred seventeen violations of 49 C.F.R. § 383.23(a) – Operating a commercial motor vehicle without a valid commercial driver's license. The Commission assesses a penalty of \$100 for each occurrence of this repeat critical violation, for a total of \$11,700.
- Five violations of 49 C.F.R. § 391.21(a) - Using a driver who has not completed and furnished an employment application. The Commission assesses a "per category" 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.

Your penalty is due and payable now. If you believe 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 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.

¹ 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.
- Admit the violation 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 at <https://efiling.utc.wa.gov/Form> **within FIFTEEN (15) days** after you receive this Penalty Assessment.² 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 wish to make a payment online, please use this link: [Make a Payment Now \(wa.gov\)](#).³

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 17, 2023.

/s/ Michael Howard
MICHAEL HOWARD
Director, Administrative Law Division

² <https://efiling.utc.wa.gov/Form>.

³ <https://www.utc.wa.gov/documents-and-proceedings/online-payments/make-payment-now>

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TG-230911

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.

Enclose \$11,800 in payment of the penalty.

OR Attest that I have paid the penalty in full through the Commission’s payment portal.

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 or she makes a materially false statement which he or she 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 or her 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.