

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

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

PENALTY ASSESSMENT: TG-240057  
PENALTY AMOUNT: \$800

Nooksack Valley Disposal, Inc.  
PO Box 267  
Lynden, WA 98264

The Washington Utilities and Transportation Commission (Commission) believes Nooksack Valley Disposal, Inc., (Nooksack Valley Disposal or Company) violated Washington Administrative Code (WAC) 480-70-201, Vehicle and Driver Safety Requirements, which adopts Title 49 Code of Federal Regulations (49 C.F.R.) Part 382 - Controlled Substance and Alcohol Use and Testing, 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 January 23, 2024, Commission Motor Carrier Investigator Leonard McLaughlin completed a routine safety investigation of Nooksack Valley Disposal and documented the following violations:

- **Two violations of 49 C.F.R. § 382.305(b)(2) - Failing to conduct random controlled substances testing at an annual rate of not less than the applicable annual rate of the average number of driver positions.** The Company failed to conduct the minimum required random controlled substances tests for calendar year 2022.
- **Five violations of 49 C.F.R. § 383.37(a) - Allowing, requiring, permitting, or authorizing a driver to operate a CMV 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 CMV who violates any restriction on the driver's CLP or CDL.** Nooksack Valley Disposal allowed driver Caleb Zandstra to operate a commercial motor vehicle (CMV) following a downgrade to the driver's CDL on April 29, 2023. During the review period, Staff determined that the Company allowed Zandstra to operate a CMV on five occasions between June 12, and June 16, 2023.
- **One violation of 49 C.F.R. § 383.37(b) - Allowing, requiring, permitting, or authorizing an employee to operate a CMV during any period in which the driver has a CLP or CDL disqualified by a State, has lost the right to operate a CMV in a State, or has been disqualified from operating a CMV.** The Company allowed driver Caleb Zandstra to operate a CMV with a suspended CDL.

- **One violation of 49 C.F.R. § 391.45(a) - Using a driver not medically examined and certified.** Nooksack Valley Disposal allowed driver Caleb Zandstra to operate a CMV without a valid medical certificate on January 3, 2023.

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

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 conduct random controlled substances tests, (2) allow drivers to operate CMVs with downgraded CDLs, (3) allow drivers to operate CMVs without having a valid CDL, and (4) use drivers who are not medically examined and certified 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 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 violations.

Nooksack Valley began its operations in 1971 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 Nooksack Valley Disposal ignored Staff's previous technical assistance.

3. **Whether the Company self-reported the violations.** Nooksack Valley 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 violations and remedied the impacts.** Nooksack Valley Disposal has not provided Staff with evidence that it corrected the violations.
6. **The number of violations.** Staff identified 15 violation types with a total of 40 individual occurrences during the routine safety investigation of Nooksack Valley Disposal. Of those violations, Staff identified four violation types with 9 individual occurrences that warrant a penalty in accordance with the Commission's Enforcement Policy.
7. **The number of customers affected.** Nooksack Valley Disposal last reported traveling 288,694 miles for 2022. These safety violations present a public safety risk.

8. **The likelihood of recurrence.** The Company was cooperative throughout the safety investigation and was 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. In light of these factors, Staff believes the likelihood of recurrence is low.
9. **The Company's past performance regarding compliance, violations, and penalties.** The Company has no history of penalties for safety violations.
10. **The Company's existing compliance program.** Calvin Den Hartog, general manager, is responsible for the Company's safety compliance program.
11. **The size of the Company.** The Company employs 13 drivers and operates 15 CMVs. The Company reported \$6,369,173 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.<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 Nooksack Valley Disposal \$800 (Penalty Assessment), calculated as follows:

- Two violations of 49 C.F.R. § 382.305(b)(2) - Failing to conduct random controlled substances testing at an annual rate of not less than the applicable annual rate of the average number of driver positions. The Commission assesses a \$100 "per category" penalty for these first-time critical violations.
- Five violations of 49 C.F.R. § 383.37(a) - Allowing, requiring, permitting, or authorizing a driver to operate a CMV 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 CMV 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 \$500.
- One violation of 49 C.F.R. § 383.37(b) - Allowing, requiring, permitting, or authorizing an employee to operate a CMV during any period in which the driver has a CLP or CDL disqualified by a State, has lost the right to operate a CMV in a State, or has been

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

disqualified from operating a CMV. The Commission assesses a penalty of \$100 for this acute violation.

- One violation of 49 C.F.R. § 391.45(a) - Using a driver not medically examined and certified. The Commission assesses a \$100 penalty for each occurrence of these critical-type violations for a total of \$100.

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 violation did not occur, you may deny committing the violation and contest the penalty through evidence presented at a hearing or in writing. Alternatively, if there is a reason for the violation 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 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.

**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.<sup>2</sup> 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 wish to make a payment online, please use this link: [Make a Payment Now \(wa.gov\)](https://www.utc.wa.gov/documents-and-proceedings/online-payments/make-payment-now).<sup>3</sup>

**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

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<sup>2</sup> <https://efiling.utc.wa.gov/Form>.

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

regulated service, assessing additional penalties, or referring this matter to the Office of the Attorney General for collection.

DATED at Lacey, Washington, and effective February 29, 2024.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION  
PENALTY ASSESSMENT TG-240057

**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 \$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.