

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

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

**PENALTY ASSESSMENT: TG-210720  
PENALTY AMOUNT: \$600**

Gary's Garbage Services, LLC  
P.O. Box 729  
Ione, WA 99139

The Washington Utilities and Transportation Commission (Commission) believes Gary's Garbage Service, LLC, (Gary's Garbage 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 391 - Qualification of Drivers, 49 CFR Part 393 – Parts and Accessories Necessary for Safe Operation, 49 CFR Part 395 - Hours of Service 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 September 15, 2021, Commission Motor Carrier Investigator Edward Steiner completed a routine safety investigation of Gary's Garbage and documented the following violations:

- **One violation of 49 CFR § 391.51(a) – Failing to maintain driver qualification file on each driver employed.** Gary's Garbage failed to maintain a driver qualification file for driver Gary Maupin as required.
- **One violation of 49 CFR § 393.9(a) – Lamps operable, prohibition of obstructions of lamps and reflectors.** Commission staff (Staff) discovered a commercial motor vehicle with an inoperative driver's side rear turn signal.<sup>1</sup> The vehicle was placed out-of-service.
- **One violation of 49 CFR § 393.51 – Warning signals, air pressure and vacuum gauges.** Staff discovered a commercial motor vehicle with no visual or audible low air warning.<sup>2</sup> The vehicle was placed out-of-service.
- **Thirty violations of 49 CFR § 395.8(a)(1) – Failing to require a driver to prepare a record of duty status.** The Company failed to require driver Gary Maupin to prepare record of duty status on 30 occasions between July 1 and July 30, 2021.

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<sup>1</sup> Vehicle Identification Number 4VMHCMBE7XN772278

<sup>2</sup> Vehicle Identification Number 1XPZL50X3JD703495

- **Five violations of 49 CFR § 396.3(b) – Failing to keep minimum records of inspection and vehicle maintenance.** The Company failed to maintain minimum records of inspection and vehicle maintenance for five commercial motor vehicles.
- **Five violations of 49 CFR § 396.17(a) – Using a commercial motor vehicle not periodically inspected.** The Company operated five commercial motor vehicles that were not periodically inspected.

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 maintain driver qualification files, (2) operate vehicles with inoperative turn signals, (3) operate vehicles with inoperable air pressure warning devices, (4) fail to require drivers to prepare record of duty status, (5) fail to keep minimum records of inspection and vehicle maintenance, and (6) use commercial motor vehicles that have not been periodically inspected put the traveling public at risk. These violations present significant 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 violation.

On January 28, 2013, the Commission received an application for the transfer of solid waste collection authority from Robert L. Nichols d/b/a B & N Sanitary to Gary's Garbage Services, LLC. In the application, Gary Maupin, owner of Gary's Garbage, acknowledged the Company's responsibility to understand and comply with applicable motor carrier safety rules. The Company knew or should have known about these requirements.

3. **Whether the Company self-reported the violations.** Gary's Garbage 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.** The Company has not provided Staff with evidence that the violations have been corrected.
6. **The number of violations.** Staff identified 11 violation types with a total of 56 individual occurrences during the safety investigation of Gary's Garbage. Of those violations, Staff identified six violation types with 43 individual occurrences that warrant penalties in accordance with the Commission's Enforcement Policy.

7. **The number of customers affected.** Gary's Garbage traveled 8,000 miles in 2020. These safety violations present 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 and expressed a desire to come into compliance. 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.** This is the Company's first routine safety investigation. Gary's Garbage has no history of violations or penalties with the Commission.
10. **The Company's existing compliance program.** Gary Maupin is responsible for the Company's safety compliance program.
11. **The size of the Company.** Gary's Garbage currently operates five commercial motor vehicles and employs one driver. The Company reported \$253,313 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>3</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 Gary's Garbage \$600, calculated as follows:

- One violation of 49 CFR § 391.51(a) – Failing to maintain driver qualification file on each driver employed. The Commission assesses a penalty of \$100 for this violation.
- One violation of 49 CFR § 393.9(a) – Lamps operable, prohibition of obstructions of lamps and reflectors. The Commission assesses a penalty of \$100 for this out-of-service violation.
- One violation of 49 CFR § 393.51 – Warning signals, air pressure and vacuum gauges. The Commission assesses a penalty of \$100 for this out-of-service violation.

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<sup>3</sup> Docket A-120061 – Enforcement Policy of the Washington Utilities & Transportation Commission – Section V.

- Thirty violations of 49 CFR § 395.8(a)(1) – Failing to require a driver to prepare a record of duty status. The Commission assesses a “per category” penalty of \$100 for these critical violations.
- Five violations of 49 CFR § 396.3(b) – Failing to keep minimum records of inspection and vehicle maintenance. The Commission assesses a “per category” penalty of \$100 for these critical violations.
- Five violations of 49 CFR § 396.17(a) – Using a commercial motor vehicle not periodically inspected. The Commission assesses a “per category” penalty of \$100 for these critical 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 October 5, 2021.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION  
PENALTY ASSESSMENT TG-210720

**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 \$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.”