

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment
Against

WASTE MANAGEMENT OF
WASHINGTON, INC.
(CERTIFICATE G-237)

in the amount of \$47,700

DOCKET TG-190495

ORDER 01

DENYING CONTEST OF
VIOLATIONS; GRANTING
MITIGATION; SUSPENDING
PENALTY, IN PART

BACKGROUND

1 On July 10, 2019, the Washington Utilities and Transportation Commission (Commission) assessed a \$47,700 penalty (Penalty Assessment) against Waste Management of Washington, Inc., (Waste Management or Company) for 477 violations of Washington Administrative Code (WAC) 480-70-201, which adopts by reference sections of Title 49 Code of Federal Regulations (C.F.R.).¹ The Penalty Assessment includes:

- a \$19,900 penalty for 199 acute violations of 49 C.F.R. § 383.37(a) for allowing, requiring, permitting, or authorizing an employee to operate a commercial motor vehicle without a current commercial driver’s license (CDL), or with a CDL lacking the proper class or endorsements;
- a \$27,400 penalty for 274 critical violations of 49 C.F.R. § 391.45(a) for using a driver not medically examined and certified; and
- a \$400 penalty for four out-of-service violations of 49 C.F.R. § 382.396.3(a)(1) for not having parts and accessories in safe and proper operating condition at all times.

¹ WAC 480-70-201 adopts by reference sections of Title 49 C.F.R. Accordingly, Commission safety regulations with parallel federal rules are hereinafter referenced only by the applicable provision of 49 C.F.R.

- 2 On July 25, 2019, the Company filed a response to the Penalty Assessment, contesting 253 of the violations of 49 C.F.R. § 391.45(a), and requesting mitigation of the entire penalty based on the written information provided and without a hearing.
- 3 The Company contested 253 of the medical certificate violations, arguing that the driver and vehicle safety rules do not apply to the trips at issue. The Company asserted that “motor vehicle” and “vehicle” are defined in RCW 81.77 and WAC 480-70 to include only vehicles used for transporting solid waste. The Company argued that in 253 of the cited trips, the drivers were operating container trucks that carried only empty waste containers to and from customers. The Company reasoned, “Because each of the container delivery vehicles was not transporting solid waste, it was not a ‘motor vehicle’ within the definition of RCW 81.77.010(1) and (6). As such the Commission’s transportation safety requirements would not apply.”
- 4 The Company also requested mitigation of the entire penalty. In the Response, the Company identified the root cause for each category of violations and explained the corrective actions it has taken to prevent recurrence. With respect to the medical certificate violations, the Company argued that it reasonably believed its container service fell under common carrier authority, for which safety regulations are enforced by the Washington State Patrol (WSP). The Company argued it contacted WSP prior to the safety investigation and was informed that Washington State does not require medical cards for drivers of vehicles within the 10,001 to 26,000 pound Gross Vehicle Weight Rating (GVWR). The Company argued that this penalty should be mitigated because it justifiably relied on WSP’s advice.
- 5 On August 12, 2019, Commission staff (Staff) filed a response recommending the Commission uphold the violations, but grant mitigation of the assessed penalty.
- 6 Staff disputed the Company’s argument that container trucks are not motor vehicles under WAC 480-70. Staff argued that the container trucks are motor vehicles as defined in RCW 81.77.010(1) because they are used “for the purpose of transporting solid waste.” Staff explained that providing containers to customers is an essential component of the Company’s tariffs, and, therefore, a regulated function subject to the Commission’s rules. In addition and alternatively, Staff argued that the driver safety rules set forth a specific definition of “commercial motor vehicle” that does not require a vehicle to be used “for the purpose of transporting solid waste” in order to mandate compliance with the Commission’s driver safety regulations. Because the container trucks are “commercial motor vehicles” under WAC 480-70-196, Staff asserted that the driver and vehicle safety rules apply.

- 7 However, Staff agreed with the Company that the penalty should be mitigated, and recommended that the penalty be reduced by half, from \$47,700 to \$23,850. Staff argued that mitigation is appropriate because the Company admitted to the uncontested violations, corrected all of the violations, and took steps to prevent future occurrences. While the Company disputed 253 of the medical certificate violations, it nonetheless corrected the violations by directing the three container truck drivers to be medically examined and certified, and took steps to prevent reoccurrence. Finally Staff believes that the Company relied on WSP's advice, and therefore, the Company did not knowingly violate the medical certificate requirement.
- 8 Staff further recommended that a \$13,850 portion of the reduced penalty be suspended for a period of two years, and then waived, subject to the following conditions: (1) the Company may not incur any repeat violations of acute or critical regulations; (2) Staff will conduct a follow-up safety investigation within two years to evaluate the Company's safety fitness; and, (3) the Company must pay the \$10,000 portion of the penalty that is not suspended.

DISCUSSION AND DECISION

- 9 Washington law requires solid waste collection companies to comply with federal safety requirements and undergo routine safety inspections. In some cases, Commission requirements are so fundamental to safe operations that the Commission will issue penalties for first-time violations.² Violations defined by federal law as "acute" or "critical" meet this standard.³
- 10 Violations are considered "acute" when non-compliance is so severe that immediate corrective action is required regardless of the overall safety posture of the company.⁴ Violations classified as "critical" are indicative of a breakdown in a carrier's management controls.⁵ Typically, acute violations discovered during safety inspections are subject to

² Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission ¶¶ 12, 15 (Jan. 7, 2013) (Enforcement Policy).

³ 49 C.F.R. Part 385, Appendix B.

⁴ *Id.*

⁵ *Id.*

penalties of up to \$1,500 per violation and critical violations are subject to penalties of \$100 per violation.⁶

- 11 The Commission considers several factors when entertaining a request for mitigation, including whether the company introduces new information that may not have been considered in setting the assessed penalty amount, or explains other circumstances that convince the Commission that a lesser penalty will be equally or more effective in ensuring the company's compliance.⁷

1. Contest of Violations

- 12 At the outset, we reject the Company's contest of the medical certificate violations, and conclude that the Commission's driver and vehicle safety rules adopted by reference in WAC 480-70-201 apply where a solid waste company operates trucks that are used to transport empty containers to and from customers.
- 13 WAC 480-70-201 explains that Solid Waste Collection Companies must comply with all state and local laws and rules governing vehicle and driver safety, and must also comply with the parts of Title 49 C.F.R. that are adopted by reference.
- 14 The medical certificate requirement is a driver safety rule in 49 CFR § 391.45 that was adopted by reference. It provides that drivers must be medically examined and certified as physically qualified to operate a "commercial motor vehicle."
- 15 The term "commercial motor vehicle" means "any self-propelled or towed motor vehicle on a highway when the vehicle" has a GVWR of 10,001 pound or more, or is used in transporting hazardous material.⁸ The container trucks at issue are each more than 10,001 pounds and are therefore commercial motor vehicles as defined here. Thus, the medical exam requirement plainly applies to the trips in the container trucks.
- 16 The Company cites the definitions of "motor vehicle" and "vehicle" in RCW 81.77.010 and WAC 480-70-041 to argue that only trucks hauling solid waste are subject to Commission regulation. WAC 480-70-041 defines "Motor vehicle" as "any truck, trailer, semi-trailer, tractor, or any self-propelled or motor driven vehicle used on any public highway of this state *for the purpose of transporting solid waste for collection or*

⁶ RCW 81.04.530; 49 C.F.R. Part 385, Appendix B; *see* RCW 81.04.405.

⁷ Enforcement Policy ¶ 19.

⁸ WAC 450-70-196.

disposal, or both, of solid waste.” The Company argues that “motor vehicle” therefore includes only trucks hauling solid waste, and that hauling containers would be subject to regulation as a common carrier under Washington State Patrol regulations, if at all.

17 We reject the Company’s narrow interpretation of the definition of “motor vehicle” and agree with Staff that the Company transports waste containers “for the purpose of transporting solid waste.” The Commission has authority to supervise and regulate every solid waste collection company, including by regulating the safety of its operations. Containers are a necessary component of the Company’s tariff, and, therefore, transporting the containers to customers is a regulated function. Accordingly we conclude the container trucks are used “for the purpose of transporting solid waste” and constitute “motor vehicles” as defined in WAC 450-70-041.

18 For the above reasons, we conclude that the drivers of container trucks are subject to Commission driver and vehicle safety regulation, and that the penalty assessment accurately cited those driver trips as violations. We now turn to the issue of penalty mitigation.

2. Penalty Mitigation.

19 **49 C.F.R. § 391.45(a).** The Commission assessed a \$27,400 penalty for 274 critical violations of 49 C.F.R. § 391.45(a) for using a driver not medically examined and certified. Here, the Company contested 253 of the violations, and in the alternative requests mitigation of all 274 violations.

20 The Company determined that the violations occurred because it lacked a formal process to ensure medical card expirations are tracked and managed. The Company represents it took corrective action to prevent further occurrences of this violation. The Company also argued that it reasonably relied on WSP’s advice that medical certificates were not required.

21 Staff recommends the Commission mitigate the penalty to \$13,700. While the Company contested the violations, it nonetheless directed those drivers to be medically examined and certified. Staff also believes that the Company did not knowingly violate this safety requirement, but relied in error on WSP’s advice. We agree with Staff’s recommendation. The Company analyzed the root cause of the safety management failure, and is taking focused steps to prevent future violations. Accordingly, we assess a \$13,700 penalty for 274 violations of 49 C.F.R § 391.45(a).

22 **49 C.F.R. § 383.37(a).** The Commission assessed a \$19,900 penalty for 199 acute violations of 49 C.F.R. § 383.37(a) for allowing, requiring, permitting, or authorizing an

employee to operate a commercial motor vehicle without a current commercial driver's license (CDL), or a CDL with the proper class or endorsements.

- 23 Here, the Company admitted and corrected the violations, and explained the steps it took to prevent future occurrences. Specifically, the Company explained that two drivers' CDLs were downgraded because they failed to update the state of Washington regarding their updated medical cards. The Company admits that it permitted these drivers to operate commercial motor vehicles with downgraded CDLs and that it did not have a process to ensure no active drivers were allowed to perform safety-sensitive functions during any time in which their CDL was downgraded.
- 24 The Company explained that it implemented corrective actions designed to prevent recurrence. Specifically, the Company is working on a process with its vendor to manage all driver qualification items, which, among other things, will assume the tracking responsibilities of medical card expirations and ensure appropriate reporting of the results to avoid any future downgraded CDLs. The Company is also providing focused training to its employees.
- 25 Staff recommends mitigation of the penalty to \$9,950 because the Company admitted and corrected the violation and took steps to prevent future occurrences. We agree with Staff. The Company analyzed the root cause of the safety management failure, and is taking focused steps to prevent future violations. Accordingly, we assess a \$9,950 mitigated penalty for 199 violations of 49 C.F.R. § 383.37(a).
- 26 **49 C.F.R. § 396.3(a)(1).** The Commission found 4 violations of 49 C.F.R. § 396.3(a)(1) for failure to ensure motor vehicle parts and accessories are in safe and proper operating condition at all times.
- 27 The Company admits the vehicles were not in proper operating condition and determined that the root cause of this failure was the absence of proper pre-trip inspections conducted by drivers. The Company instructed its maintenance personnel to monitor the vehicles for the types of mechanical issues found in the investigation. In addition, the Company will educate its drivers on proper pre- and post-trip inspections to ensure they are conducted.
- 28 Staff recommends mitigation of the penalty to \$200 because the Company admitted and corrected the violations. We agree with Staff. The Company communicated with its maintenance personnel and provided training to its drivers on pre- and post-trip inspections to prevent these violations from recurring. Accordingly, we assess a \$200 mitigated penalty for 4 violations of 49 C.F.R. § 396.3(a)(1).

29 We also agree with Staff that suspending a portion of the penalty is appropriate in light of
the circumstances. The Company acknowledged and took responsibility for the
violations, promptly corrected each violation, and took steps to prevent future
occurrences. Accordingly, we suspend a \$13,850 portion of the \$23,850 mitigated
penalty for a period of two years, and then waive it, subject to the following conditions:
(1) the Company may not incur any repeat violations of acute or critical regulations; (2)
Staff will conduct a follow-up safety investigation within two years to evaluate the
Company's safety fitness; and (3) the Company must pay the \$10,000 portion of the
penalty that is not suspended.

FINDINGS AND CONCLUSIONS

- 30 (1) The Commission is an agency of the state of Washington, vested by statute with
authority to regulate rates, rules, regulations, and practices of public service
companies, including solid waste collection companies, and has jurisdiction over
the parties and subject matter of this proceeding.
- 31 (2) Waste Management is a solid waste collection company subject to Commission
regulation.
- 32 (3) Waste Management violated 49 C.F.R. § 391.45(a) on 274 occasions when it used
a driver not medically examined and certified.
- 33 (4) The Commission should penalize Waste Management \$13,700 for 274 critical
violations of 49 C.F.R. § 391.45(a).
- 34 (5) Waste Management violated 49 C.F.R. § 385.37(a) on 199 occasions when it
allowed an employee to operate a commercial motor vehicle without a current
commercial driver's license (CDL), or a CDL without the proper class or
endorsements.
- 35 (6) The Commission should penalize Waste Management \$9,950 for 199 acute
violations of 49 C.F.R. § 385.37(a).
- 36 (7) Waste Management violated 49 C.F.R. § 396.3(a)(1) on 4 occasions for not
having parts and accessories in safe and proper condition at all times.
- 37 (8) The Commission should penalize Waste Management \$200 for four out-of-
service violations of 49 C.F.R. Part 396.3(a)(1).

- 38 (9) The Commission should assess a total penalty of \$23,850 for 477 violations of WAC 480-70 and Title 49 C.F.R.
- 39 (10) The Commission should suspend a \$13,850 portion of the penalty for a period of two years, and then waive it, subject to the conditions set out in paragraph 29, above.

ORDER

THE COMMISSION ORDERS:

- 40 (1) Waste Management, LLC's request for mitigation of the \$47,700 penalty is GRANTED, in part, and the penalty is reduced to \$23,850.
- 41 (2) The Commission suspends a \$13,850 portion of the penalty for a period of two years, and then waives it, subject to the following conditions: (1) Waste Management, LLC, may not incur any repeat violations of acute or critical regulations; and (2) Waste Management, LLC, must pay the \$10,000 portion of the penalty that is not suspended or file jointly with Staff a proposed payment arrangement within 10 days of the effective date of this Order.
- 42 (3) Commission Staff will conduct a follow-up review of Waste Management, LLC's operations in two years from the effective date of this Order.
- 43 (4) If Waste Management, LLC, fails to comply with any condition in paragraph 41 of this Order, or fails to comply with the terms of a payment arrangement, if applicable, the entire unpaid balance of the \$23,850 penalty will become immediately due and payable without further Commission order.
- 44 The Secretary has been delegated authority to enter this Order on behalf of the Commissioners under WAC 480-07-904(1)(h).

DATED at Olympia, Washington, and effective August 28, 2019.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARK L. JOHNSON
Executive Director and Secretary

NOTICE TO PARTIES: This is an order delegated to the Executive Secretary for decision. As authorized in WAC 480-07-904(3), you must file any request for Commission review of this Order no later than 14 days after the date the decision is posted on the Commission's website.