

EXHIBITS

In the Matter of the Penalty Assessment
Against
WASTE MANAGEMENT OF
WASHINGTON, INC.

DOCKET TG-190495

**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.

**BEFORE
THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Penalty Assessment
against

WASTE MANAGEMENT OF
WASHINGTON, INC.

In the amount of \$47,700.

DOCKET TG-190495

DECLARATION OF
GERALD GINTER

I, Gerald Ginter, under penalty of perjury under the laws of the State of Washington, declare as follows

1 I am over the age of 18 years of age, a citizen of the United States, a resident of the State of Washington, and competent to testify as a witness.

2 I am the Area Safety Director for Waste Management of Washington, Inc. (WMW).

3 I am familiar with this matter and participated in the Commission's March 2019 safety investigation of WMW's safety fitness and compliance with the FMCSA regulations.

4 When WMW starts, changes, or ends service for a customer, WMW must deliver or retrieve its garbage containers to or from its customers. To do so, WMW will either use its own drivers and "container delivery trucks" ("CDTs") or will contract with a third party. These CDTs are not garbage trucks, but are typically vans, panel trucks, or pick-up trucks with "gross vehicle weight ratings" ("GVWR") in the 10,001-to-26,000 pound range.

5 During a review of the safety requirements in the summer of 2017, WMW investigated whether the medical exam/certification requirements – sometimes called the medical card requirement – under 49 CFR Part 391 applied to WMW's drivers who operate trucks with a

GVWR of 10,001 to 26,000 pounds. WMW contacted the Washington State Patrol (WSP) office in Spokane, Washington.

6 In response to WMW's inquiry, a WSP compliance review officer told WMW's representative that the medical card requirements do not apply to drivers of vehicles in the 10,001-26,000-pound GVWR range, unless that driver crosses state lines or the load being transported crosses state lines.

7 Notwithstanding WMW's understanding that the WSP did not require medical cards for drivers of commercial vehicles in the 10,001-26,000-pound GVWR range, the Commission's investigator cited WMW for 253 violations of the Commission's rules because three WMW CDT drivers did not have current medical cards while driving on certain days.

8 WMW has reviewed its records for these three drivers and has determined that the drivers cited (Garcia, Petereit, and Phillips) were driving CDTs on the days alleged in the Commission's Notice of Penalties and they were not driving garbage trucks and not transporting solid waste.

Dated this 6th day of September 2019, at Kirkland, Washington.



GERALD GINTER



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(425) 823-6164

Andrew M. Kenefick

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Admitted in Washington
Direct (425) 825-2003 Fax (866) 863-7961
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July 25, 2019

VIA E-MAIL ONLY

Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, WA 98504-7250

VIA Web Portal

**RE: Waste Management of Washington, Inc. (Certificate G-237)
Response to Penalty Assessment TG-190495**

Dear Sir or Madam:

Enclosed please find Waste Management of Washington, Inc.'s ("WMW") Response to the above-referenced Penalty Assessment. Please note that WMW is (1) contesting 253 of the 271 alleged violations of 40 CFR § 391.45(a), and (2) requesting mitigation of the proposed penalties assessed for all violations of 49 CFR §§ 383.37, 391.45(a), and 396.3(a)(1).

Insofar as WMW is both contesting certain violations and seeking mitigation of others, WMW is checking both items 2 and 3 on the WUTC form.

Sincerely,

A handwritten signature in black ink that reads "Andrew M. Kenefick". The signature is written in a cursive style.

Imaged signature.

Andrew M. Kenefick

Attachments

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TG-190495

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 \$47,700 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):**
- Please see enclosed letter from Jason S. Rose, President, Waste Management of Washington, Inc.
- 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):**
- Please see enclosed letter from Jason S. Rose, President, Waste Management of Washington, Inc.
- 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: July 25, 2019 [month/day/year], at Kirkland, WA [city, state]

Waste Management of Washington, Inc.
 Name of Respondent (company) – please print


 Signature of Applicant
 Andrew M. Kenefick, Senior Legal Counsel



720 Fourth Avenue, Suite 400
Kirkland, WA 98033
(425) 823-6164

Jason S. Rose

Area Vice President

July 25, 2019

VIA E-MAIL ONLY

Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, WA 98504-7250

VIA Web Portal

**RE: Waste Management of Washington, Inc. (Certificate G-237)
Response to Penalty Assessment TG-190495**

Dear Sirs:

The Washington Utilities and Transportation Commission (“Commission”) conducted a Safety Investigation on June 11, 2019 of Waste Management of Washington, Inc.’s (“WMW” or the “Company”) operations. The Safety Investigation resulted in a proposed safety rating of “Satisfactory.” On July 10, 2019, WMW received the *Notice of Penalties Incurred and Due for Violations of Laws and Rules* (“Notice of Penalties”) from the Commission. The Notice of Penalties alleged the following four violations (hereinafter “Counts”), listed the numbers of days or instances when each of the alleged violations occurred, and assigned a penalty to each:

- Count 1 – Driving with Downgraded CDL (\$19,900)
 - Count 2 – Driving without Medical Certificate (\$27,400)
 - Count 3 – Incomplete Driver Qualification Files (\$0)
 - Count 4 – Vehicle Maintenance (\$400)
- Total Proposed Penalty: \$47,700

As discussed in detail below, WMW contests some violations, admits others, and requests mitigation of penalties. Specifically, WMW does not contest the violations alleged in Counts 1 and 4, but requests mitigation of the penalties assessed. With respect to Count 2, WMW disputes 253 of the violations alleged; WMW does not contest the remaining 21 violations, but requests mitigation of the proposed penalties. As the Commission has not assessed a penalty for Count 3, WMW neither disputes it nor seeks mitigation.

WMW takes our driver and vehicle safety responsibilities extremely seriously. The Company’s current Safety Measurement Systems (“SMS”) scores as of July 10, 2019 are: (1) Unsafe Driving – 6%; (2) Hours-of-Service Compliance – 0.0%; (3) Driver Fitness – 0.9%; (4) Controlled Substance and Alcohol – (no violations within one year); (5) Vehicle Maintenance – 50%; (6) Hazardous Materials – N/A; and (7) Crash Indicator –13%. In addition to these SMS scores, WMW has an accident rate of 0.38 accidents per million miles.

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In response to the identified violations and as demonstrated by WMW's extensive corrective action set forth in attached **Exhibit 1**, WMW has corrected all alleged violations and implemented additional processes to prevent recurrence. Additionally, as noted in the Notice of Penalties, WMW does not have a history of safety violations. As demonstrated by the Company's SMS scores and low accident rate, WMW's drivers are professional and well-trained, and the Company maintains a focused and strong commitment to safety. WMW submits that with enhanced processes surrounding driver qualifications and counselling from its experienced corporate safety department, WMW's already strong safety culture will be further strengthened.

A. Corrective Action.

WMW is requesting mitigation of the penalties assessed for three of the four Counts based on its development and prompt implementation of an aggressive Safety Management Plan (the "Plan"), a copy of which is attached hereto as **Exhibit 1**, that corrects the violations identified and should help to ensure on-going compliance with the Federal Motor Carrier Safety Regulations ("FMCSRs") and Washington's corresponding requirements. In light of the proposed "Satisfactory" rating and the Counts identified in the Notice of Penalties, WMW acknowledges that this Plan is not required. Nonetheless, WMW has prepared the Plan to demonstrate its commitment to compliance with the FMCSRs and the Commission's transportation safety standards.

B. Specific Violations Contested and Mitigation Requested.

In accordance with the Notice of Penalties, WMW is contesting certain violations, is not contesting others, and requests mitigation of all penalty amounts based on the factors under the Commission's *Enforcement Policy*, WUTC Docket No. A-120061 (Jan. 4, 2013) (the "Enforcement Policy"), in particular, the prompt and aggressive corrective actions taken. The following sections address each of the four Counts, with Count 2 divided into two subparts – *i.e.*, those violations being contested and those violations for which only mitigation is being requested.

1. Count 1 (Request for Mitigation – 49 CFR § 383.37(a) – Driving with Downgraded CDL.

WMW does not contest this violation but requests that the Commission mitigate the penalty based on WMW's prompt and aggressive corrective action, including its Safety Management Plan (**Exhibit 1**).

Description of Breakdown in Safety Management Controls: Between November 11, 2018 and March 25, 2019, WMW driver Troupe drove on 73 occasions with a downgraded CDL. While Mr. Troupe possessed a valid medical card and medical certification during the time period at issue, Mr. Troupe failed to update the State of Washington with his updated medical card received on September 20, 2018 with an expiration date of September 20, 2020. Similarly, between September 14, 2018 and March 25, 2019, WMW driver Penhollow drove with a downgraded CDL on 126 occasions. Mr. Penhollow also possessed a valid medical card and medical certification during the time period at issue, Mr. Penhollow failed to update the State of Washington with his updated medical card received on August 30, 2018 with an expiration date of August 30, 2020. In both cases, however, the driver had a valid medical card, but had failed to update his record with the State of Washington.

Without intentionally doing so, WMW permitted these drivers to operate CMVs with downgraded CDLs. The root cause of this failure was the absence of a formal process by which WMW

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would ensure that no active drivers are allowed to perform safety-sensitive functions during any time in which their CDL is downgraded. Prior to the investigation, the Company notified drivers of medical card expiration dates, but did not ensure these medical cards were obtained with sufficient time to be updated by the State of Washington and avoid any potential downgrade of a driver's CDL.

WMW has implemented corrective actions designed to prevent recurrence, as described in **Exhibit 1**. In particular, WMW is working on a process with its vendor to manage all driver qualification items, to assume the tracking responsibilities of medical card expirations, and to ensure the appropriate reporting of these results to avoid any future downgraded CDLs. WMW is also providing focused training to its operations employees regarding compliant driver qualification standards. WMW believes that these action steps will prevent recurrence and represent an effective and prompt response to this Count and warrant significant penalty mitigation. Furthermore, insofar as these violations were the result of a failure to update records – rather than a lack of a valid medical card altogether – they should not be considered violations that were “serious or harmful to the public” for purposes of assessing penalties under the Enforcement Policy.

2. Count 2 (Contested) – 49 CFR § 391.45(a) – Using a driver not medically examined and certified.

WMW contests 253 of the 274 violations alleged in Count 2 because the Commission's driver medical certificate requirements do not apply to drivers operating vehicles that are not used for “the purpose of transporting solid waste, for the collection or disposal, or both.” WAC 480-70-201 requires all regulated solid waste collection companies to ensure that their “vehicles” comply with all state and local laws governing vehicle and driver safety and with certain enumerated federal regulations governing “vehicle” safety. The statute and regulations specifically restrict the definition of “vehicles” and “motor vehicles” to those vehicles that are used for the purpose of transporting solid waste:

“Motor vehicle” means any truck, trailer, semitrailer, tractor, or any self-propelled or motor driven vehicle used upon any public highway of this state **for the purpose of transporting solid waste, for the collection or disposal, or both**, of solid waste. RCW 81.77.010(1); WAC 480-70-041 (emphasis added).

“Vehicle” means every device capable of being moved upon a public highway and in, upon, or **by which any solid waste is or may be transported or drawn upon a public highway**, except devices moved by human or animal power or used exclusively upon stationary rail or tracks. RCW 81.77.010(6); WAC 480-70-04 (emphasis added).

Thus, by definition, the only vehicles subject to Chapter 81.77 RCW are those vehicles that are used for transporting solid waste. Vehicles not used for transporting solid waste are not included, nor are those persons who operate such vehicles.

Three of the drivers cited in the Penalty Notice (Garcia, Petereit, and Phillips) were driving container delivery vehicles – *i.e.*, commercial motor vehicles with a gross vehicle weight rating (GVWR) between 10,001 and 26,000 pounds.¹ that carried only empty containers to or from customers.²

¹ See **Exhibit 2** for pictures of these vehicles

² See **Exhibit 3** for pictures of empty containers.

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For example, if a customer wants to change its collection service from a 35-gallon container to 90-gallon container, a WMW driver will deliver the larger container to the customer and retrieve the smaller container. 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.

Although the Commission’s transportation safety requirements do not apply to these container delivery vehicles, the Washington State Patrol’s (WSP) regulations do. The WSP has adopted by reference most of the federal regulations governing motor carriers used in intrastate or interstate commerce. WAC 446-65-010(1) (“The Washington state patrol hereby adopts the following parts of Title 49 Code of Federal Regulations (C.F.R.), as they exist on October 1, 2017, for motor carriers used in intrastate or interstate commerce in their entirety”). Notably, however, and unlike the Commission, the WSP expressly did not adopt certain federal regulations governing the qualifications of drivers operating vehicles, such as WMW’s container delivery vehicles with GVWRs between 10,001 and 26,000 pounds, including Subpart E:

... 49 C.F.R. 391 subpart D (Tests), and **E (Physical Qualifications and Examinations)** **do not apply** to motor carriers operating vehicles with gross vehicle weight rating between 10,001 lbs. and 26,000 lbs. operating intrastate, and not used to transport hazardous materials in a quantity requiring placarding.

WAC 446-65-010(1)(r) (emphasis added).

Subpart E includes 40 CFR § 391.4(a) – the federal regulation that the Commission alleges WMW violated because its container delivery drivers had driven without having been medically examined and certified. Moreover, prior to the Safety Investigation, WMW had contacted the WSP and was informed that Washington State does not require medical cards for drivers of vehicles within the 10,001 to 26,000-pound GVWR range. WMW justifiably relied on the advice of the WSP that these drivers did not require medical cards.³

Based on a straightforward reading of applicable regulations, WMW believes the Commission improperly cited 253 instances under Count 2 for these three drivers. These 253 instances of alleged violations should be withdrawn, and the proposed penalty reduced by \$25,300 (*i.e.*, 253 violations x \$100/violation).⁴

³ Although WMW contests this violation and believes these 253 instances should be removed, in the interim and until the Commission makes its decision, WMW directed these three drivers to be examined and medically certified. WMW understands that the Commission can verify the current status of these medical cards through the Department of Licensing online databases. For privacy reasons, WMW is not providing copies of the relevant medical cards, but can do so if requested by the Commission.

⁴ In the event the Commission does not withdraw the 253 violations, WMW requests mitigation of the penalties assessed for these violations. Given that the WSP does not require medical cards for drivers of these kinds of vehicles, the lack of a medical card for the container delivery drivers should not be considered “serious or harmful to the public” under the Enforcement Policy.

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3. Count 2 (Request for Mitigation) – 49 CFR § 391.45(a) – Using a driver not medically examined and certified.

Except for the 253 violations addressed above in Section 2, WMW does not contest the remaining 21 violations alleged in Count 2. WMW has thoroughly investigated these violations, does not contest them, and requests that the Commission mitigate the penalty downward based on the prompt and aggressive corrective action WMW has undertaken, which is described in attached **Exhibit 1**.

Description of Breakdown in Safety Management Controls: Between March 1, 2019 and March 25, 2019, WMW drivers Crandall, Ellington, and Hutchinson operated CMVs exceeding 26,000 pounds GVWR with an expired medical card on 21 different occasions. This failure resulted because of a lack of a formal process within our safety management controls to ensure that medical card expirations are tracked and managed in a timely and accurate manner. Corrective actions designed to prevent further occurrences of this violation are set forth in attached **Exhibit 1**.

4. Count 3 (Not Contested; No Mitigation Requested) – 49 CFR §391.51(b)(2) – Incomplete Driver Qualification Files (\$0)

WMW admits this violation and does not request mitigation as there was no penalty assessed. However, WMW wants to assure the Commission that this violation has been corrected as demonstrated in the corrective action for Counts 1 and 2 above. WMW can provide the Commission additional information on corrective action taken if requested.

5. Count 4 (Request for Mitigation) – 49 CFR § 396.3(a)(1) – Vehicle Maintenance

Description of Breakdown in Safety Management Controls: During four separate inspections, WMW's CMVs were placed out-of-service as the result of vehicles not being in safe and proper operating condition. One vehicle was placed out of service as a result of the left tire on axle one contacting the drag link when turning right. Three additional vehicles were placed out of service as a result of 20% or more of the vehicles' service brakes in a defective condition. WMW recognizes the breakdown in safety management controls that lead to non-compliant condition of these vehicles. The root cause of this failure was the absence of proper pre-trip inspections being conducted by drivers.

Corrective Action: WMW has communicated with maintenance personnel on these issues. Maintenance personnel will closely monitor these types of mechanical issues. Additionally, all drivers will receive communication in proper pre and post trip inspections to identify these types of issues and ensure they are corrected prior to using the vehicle.

C. Conclusion

WMW takes very seriously all safety-related violations and continuously seeks to ensure that all of its operations comply with local, Washington State, and federal transportation safety requirements. In response to the violations identified through the Commission's Safety Investigation, WMW has implemented improvements in its safety program to correct the problems identified and ensure that they will not be repeated. WMW believes that it has taken aggressive, prompt, and effective corrective actions that merit significant penalty mitigation.

Notwithstanding WMW's recognition of the necessary improvements to its transportation safety program, the Company does not agree with the majority of the violations alleged under Count 2 and

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requests that the Commission withdraw the 253 violations relating to those vehicles that were not operating on public highways “for the purpose of transporting solid waste for the collection or disposal.”

In summary, WMW is requesting the following:

- Count 1 – Driving with Downgraded CDL (\$19,900)
 - Mitigate penalty downward.
- Count 2 – Driving without Medical Certificate (\$27,400)
 - Withdraw 253 violations/reduce penalty by \$25,300, and
 - Mitigate remaining penalty downward on 21 violations.
- Count 3 – Incomplete Driver Qualification Files (\$0)
 - No mitigation requested.
- Count 4 – Vehicle Maintenance (\$400)
 - Mitigate penalty downward.

In summary, WMW believes that the proposed penalty, before mitigation, should be no more than \$22,400, but should be mitigated further based on the factors to be considered under the Commission’s Enforcement Policy. In addition to the corrective actions taken, none of the violations presented a serious or harmful risk to the public, none were intentional, the Company was very cooperative and responsive, programs have been implemented to prevent recurrence, and the Company has a strong safety record and compliance program. All of these factors warrant significant mitigation of the penalties assessed.

Thank you for your consideration of this letter and the attached exhibits.

Sincerely,

WASTE MANAGEMENT OF WASHINGTON, INC.



Jason S. Rose, President

Exhibits 1-3



**Waste Management of Washington, Inc.
Safety Management Plan
July 25, 2019**

This Safety Management Plan (the “Plan”) is submitted in support of Waste Management of Washington’s (“WMW” or the “Company”) response to the *Notice of Penalties Incurred and Due for Violations of Laws and Rules* from the Washington Utilities and Transportation Commission received on July 10, 2019.

The Company has carefully reviewed its Driver Qualification processes and had implemented enhanced processes and controls to achieve increased compliance with federal, state and local laws.

1. WMW plans to have its third-party vendor track medical card expirations and to ensure the appropriate reporting to avoid any future downgraded CDLs. In doing so, WMW will be able to avoid the downgrading of driver CDLs in the future.
 2. Additionally, WMW will require that drivers obtain their medical cards at least 30 days prior to expiration. By requiring that drivers obtain updated medical cards at least 30 days prior to their expiration, the state will have updated the renewed medical cards in time to ensure no downgrade to driver CDLs occurs. In the time prior to WMW’s vendor providing notifications of medical card expirations as well as thereafter, a dedicated Operations Specialist will run a weekly report identifying all medical card expirations to occur within the next 90 days and will notify all District Managers of these results. The District Managers will then notify drivers and instruct that medical cards must be obtained at least 30 days prior to the expiration of the medical card. If the driver does not obtain an updated medical card within at least 10 days prior to its expiration, that driver will be prevented from performing safety-sensitive functions until the updated medical card is obtained. Once the Operations Specialist receives the copy of an updated medical card, this individual is responsible for sending it to the state agency.
 3. Recent communication went to Company leadership detailing enhanced DOT compliance initiatives by hauling district (site). A DOT compliance team has been established to focus on those districts where the impact will be the greatest.
- Each District has identified one “go-to” person responsible for DOT compliance concerns, questions and training:
 - This role will be an additional key contact for compliance communication with Waste Management’s Corporate DOT Compliance Team.
 - Those individuals identified as responsible for DOT compliance will receive in-depth DOT compliance training from the DOT Compliance Team.
 - A directive was announced that site level responsibility for DOT compliance must be followed:

- The DOT Compliance Team will provide monthly training for new managers, Operations Specialists, and others who have responsibility for DOT compliance,
- The DOT Compliance Team is currently providing immediate retraining (by webcast) for all Company safety and operations personnel (District Managers, Route Managers, and Operations Specialists) on the Annual MVR Review and Medical Certificate MVR process. Thirty training sessions are scheduled for August 8 and 14, 2019.
- Any district struggling with compliance will be provided additional focused training.
- Compliance results will be communicated with greater frequency:
 - Corporate Security will increase and streamline its compliance reports from a specific “DOT Alert” email box and escalate communications to the Area Vice President, Area Safety Director, and Area Human Resources Director to help achieve greater compliance.
 - Going forward, Area leadership can expect periodic updates on compliance status/ progress, training and vendor implementation, etc.
 - The Company will work to build an appropriate escalation process to ensure any items not handled in a timely manner are escalated up the chain to ensure compliance.

With these new procedures in place, WMW submits that it has demonstrated sufficient corrective action in this area. When the vendor assumes additional DOT compliance functions, the Company’s compliance processes will be even further enhanced.



