

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TG-160177
PENALTY AMOUNT: \$3,600

PETLAND CEMETERY, INC
DBA PETLAND "THE HUMANE ALTERNATIVE"
2212 ROOSEVELT STREET
ABERDEEN, WA 98520

The Washington Utilities and Transportation Commission (Commission) believes that you have committed violations of Washington Administrative Code (WAC) 480-70-201 – Vehicle and Driver Safety Requirements, which requires solid waste and/or refuse collection companies to comply with Title 49 Code of Federal Regulations (CFR) Part 391 Qualifications of Drivers, Part 395 Hours of Service of Drivers, and Part 396 Inspection, Repair and Maintenance. Revised Code of Washington (RCW) 81.04.405 allows penalties of one hundred dollars for every such violation. In the case of an ongoing violation every day's continuance is considered a separate and distinct violation.

On January 19, 2016, Commission Motor Carrier Investigator Wayne Gilbert conducted a compliance review of Petland Cemetery, dba Petland "The Humane Alternative" (Petland) and documented the following violations of critical regulations:

- **10 violations of CFR Part 391.45(b)(1) – Using a driver not medically examined and certified during the preceding 24 months.** On ten occasions over a six-month period, Petland used two drivers not medically certified. Driver Kyle Schumacher drove on three occasions without a valid medical certificate. Driver Jason Duval drove on seven occasions without a valid medical certificate.
- **24 violations of CFR Part 395.8(a) – Failing to require a driver to make a record of duty status.** On 24 occasions between August 22 and September 27, 2015, Petland failed to require three drivers to make a record of duty status. Scott Lockey drove on ten occasions, Kaleb Lockey drove on three occasions, and Jason Duval drove on eleven occasions. On all 24 occasions the drivers failed to make a record of duty status.
- **Two violations of CFR Part 396.11(a) – Failure to require driver to prepare daily driver vehicle inspection reports (DVIR)** Petland failed to require its drivers to complete DVIRs for two reportable defects involving the 2010 Isuzu: a loss of brakes on September 23, 2015, and a loss of power on November 24, 2015.

The Commission considered the following factors in determining the appropriate penalties for these violations:

1. **How serious or harmful the violation is to the public.** The violations noted are serious and potentially harmful to the public. Companies that permit their employees to perform safety-sensitive functions prior to being medically examined and certified or without documentation of qualifications or rest periods put the traveling public at risk. An undocumented medical condition or a fatigued driver could present serious safety concerns. In addition, vehicles in which safety defects go unreported could potentially harm the public in the event of a malfunction or mechanical problem during transit.
2. **Whether the violation is intentional.** Considerations include:
 - Whether the company ignored Commission Staff's (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.

Staff provided initial technical assistance to Petland in 1999. This technical assistance covered driver qualifications, hours of service and inspection, repair, and maintenance.

Staff conducted a compliance review on May 13, 2003, during which Staff noted violations of CFR 395.8(a) Record of Duty Status and CFR 396.11(a) Driver Vehicle Inspection Report. Staff provided technical assistance regarding these requirements. The company responded with a written compliance plan.

Staff conducted a compliance review on April 28, 2004, during which Staff noted violations of CFR 395.8(a) Record of Duty Status. Staff provided technical assistance regarding these requirements. The company responded with a written compliance plan.

The company knew, or should have known, about these requirements.

3. **Whether the company self-reported the violation.** The company did not self-report these violations.
4. **Whether the company was cooperative and responsive.** Historically, Petland has been cooperative. This was also true during the most recent compliance review in which the company expressed its sincere desire to come into compliance.
5. **Whether the company promptly corrected the violations and remedied the impacts.** The company has corrected many of the violations and submitted the required 15-day letter.
6. **The number of violations.** The number of critical violations noted is significant.
7. **The number of customers affected.** The company is a solid waste hauler. Customers were not put at risk by these violations.

8. **The likelihood of recurrence.** Similar violations were noted in previous compliance reviews. Unless the company makes lasting changes to its safety management controls these, or similar violations are likely to reoccur.
9. **The company's past performance regarding compliance, violations, and penalties.** As noted above, the company has had previous compliance reviews with violations documented. The Commission penalized the company \$100 in 2006 for failing to submit annual its annual report.
10. **The company's existing compliance program.** The company's existing compliance program is inadequate in its ability to ensure compliance with critical safety regulations.
11. **The size of the company.** Petland operates two commercial vehicles with four drivers. The company reported \$850,000 in gross revenue for 2014 and logged 90,000 miles.

Some critical violations noted in Staff's January 2016 compliance review were first-time violations, but the Commission's Enforcement Policy provides that some Commission requirements are so fundamental to safe operations that the Commission will issue penalties for a first-time violation, regardless of whether or not staff has previously provided technical assistance on specific issues.¹ In other cases, the Commission may assess penalties for critical violation types when the same violations were noted in previous compliance reviews and Staff provided the company with technical assistance to avoid future violations.

The Commission has considered these factors and determined that Petland should be penalized \$3,600 -- \$100 for each of the 36 violations of WAC 480-70-201, which adopts CFR Parts 391, 395 and 396, as follows:

- 10 violations of CFR Part 391.45(b)(1) – Using a driver not medically examined and certified during the preceding 24 months. These are first-time violations, but the Commission grants no leeway with this type of violation. Drivers who are not medically examined and certified put the traveling public at risk.
- 24 violations, twenty-four occurrences violations of CFR Part 395.8(a) – Failing to require a driver to make a record of duty status. This represents a pattern of unlawful behavior. Staff noted the same violation in both the 2003 and 2004 compliance reviews and provided technical assistance each time. Driver fatigue is a contributing factor in many commercial vehicle crashes and puts the traveling public at risk.
- Two violations of CFR Part 396.11(a) – Failure to require driver to prepare daily driver vehicle inspection reports (DVIR). Staff noted this violation during the 2003 compliance

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

review and provided technical assistance. Again, the full penalty amount is appropriate in these circumstances.

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 and contest the penalty assessment 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 concerning the violation require consideration of evidence and resolution in a hearing. Any contest of the penalty assessment must include a written statement of the reasons supporting that contest. Failure to provide such a statement will result in denial of the contest.

If there is a reason for the violations that you think should excuse you from the penalty, you may ask for mitigation (reduction) of this 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 for mitigation 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 his or her 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 violations.
- Request mitigation to contest the amount of the penalty.

Please indicate your selection on the enclosed form and send it to the Washington Utilities and Transportation Commission, Post Office Box 47250, Olympia, Washington 98504-7250, **within FIFTEEN (15) days** after you receive this notice.

If you do not act within 15 days, the Commission may refer this matter to the Office of the Attorney General for collection. The Commission may then sue you to collect the penalty.

DATED at Olympia, Washington, and effective February 22, 2016.



GREGORY J. KOPTA
Administrative Law Judge

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TG-160177

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 violation occurred and enclose \$ _____ in payment of the penalty.

2. **Contest the violation.** I believe that the alleged violation did not occur for the reasons I describe below:

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 violation, but I believe that the penalty should be reduced for the reasons set out below:

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.”