

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TG-161282

PENALTY AMOUNT: \$5,300

Empire Disposal Inc.
905 North Sumner Street
Colfax, WA 99111-0649

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 haulers to comply with Title 49 CFR Part 383 – Commercial Driver’s License Standards; Requirements and Penalties, and Part 391 – Qualifications of Drivers.

Revised Code of Washington (RCW) 81.04.405 allows penalties of one hundred dollars for each violation of Title 49 CFR Part 383 and 391. In the case of an ongoing violation, every day's continuance is considered a separate and distinct violation.

In October 2016, Commission Motor Carrier Investigator Sandi Yeomans conducted a compliance review of Empire Disposal Inc. (Empire Disposal) and documented the following violations of acute and critical regulations:

- **Fifty-two violations of CFR 383.37(b) – Allowing, requiring, permitting, or authorizing an employee to operate a commercial motor vehicle during any period in which the driver’s commercial learning permit or license disqualified by a state, has lost the right to operate a commercial motor vehicle in a state or has been disqualified from operating a commercial motor vehicle.** Empire Disposal allowed employee Melroy Manner to drive with a disqualified commercial driver’s license on 52 occasions during the six months prior to the compliance review. Mr. Manner drove on 12 days in August, 22 days in September, and 18 days in October, 2016.
- **One violation of CFR 391.51(b)(2) – Failing to maintain inquiries into driver’s driving record in driver’s qualification file.** Empire Disposal failed to maintain inquiries into driver’s driving record in the driver qualification files of John Hall, Brian Johnson, Troy Scott, and Daniel Young.

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 use a driver without a valid commercial driver license or that fail to keep complete driver qualification files put the traveling public at risk. An unqualified driver, or a driver with an unknown history presents serious safety concerns.

2. **Whether the violation is intentional.** Considerations include:
- Whether the company ignored Commission 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.

This company was purchased by Waste Connections in May 2004 and currently operates 16 commercial vehicles and four service trucks with 10 commercial drivers. At the company's most recent compliance review and technical assistance in 2008, no similar violations were noted. 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.** The staff at Empire Disposal was helpful throughout the investigation. The site manager, Aaron Lawhead was receptive to the violations and technical assistance and interested in making corrections.
5. **Whether the company promptly corrected the violations and remedied the impacts.** The company was cooperative and responsive, and stated it intends to correct these violations.
6. **The number of violations.** For a company this size, the number of critical violations noted is significant.
7. **The number of customers affected.** The company traveled 305,000 miles and reported \$2,933,310 in gross revenue for 2015. A significant number of members of the travelling public were likely put at risk.
8. **The likelihood of recurrence.** The Commission does not know if the company is likely to repeat these violations.
9. **The company's past performance regarding compliance, violations, and penalties.** The company's most recent compliance review investigation was in 2008. There is no record of similar violations or penalties.
10. **The company's existing compliance program.** Empire Disposal has no formal compliance program.
11. **The size of the company.** Empire Disposal is a medium-sized operation, with 16 commercial vehicles, four service trucks and 10 commercial drivers. The company traveled 305,000 miles and reported \$2,933,310 in gross revenue for 2015.

These are 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 mandatory penalties for each occurrence of a first-time violation.¹ The Commission generally

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

will assess penalties per type of violation, rather than per occurrence, for other first-time violations of critical regulations that do not meet the criteria for mandatory penalties. The Commission will assess penalties for any repeat violations of critical regulations found in future compliance investigations, including for each occurrence of a repeat violation.

The Commission has considered these factors and determined that it should penalize Empire Disposal \$5,300 for violations of WAC 480-70-201 Vehicle and Driver Safety Requirements, which adopts CFR Part 383 and Part 391, calculated as follows:

- Fifty-two violations of CFR 383.37(b) – Allowing, requiring, permitting, or authorizing an employee to operate a commercial motor vehicle during any period in which the driver has a commercial learning permit or license disqualified by a state, has lost the right to operate a commercial motor vehicle in a state or has been disqualified from operating a commercial motor vehicle. The Commission assesses a penalty of \$100 for each of these critical violations, for a total of \$5,200.
- One violation of CFR 391.51(b)(2) – Failing to maintain inquiries into driver's driving record in driver's qualification file. The Commission assesses a penalty of \$100 for one critical violation of this type.

This information, if proved 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 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(s) 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 any or all of the violations that you believe 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(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 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 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 Olympia, Washington, and effective December 23, 2016.


GREGORY J. KOPTA *for*
Administrative Law Judge

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TG-161282.

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.”