

## WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TG-161283

PENALTY AMOUNT: \$200

Basin Disposal of Yakima, LLC  
2021 North Commercial Avenue  
Pasco, WA 99301

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 382 – Controlled Substances and Alcohol Use and Testing.

Revised Code of Washington (RCW) 81.04.405 allows penalties of one hundred dollars for each violation of Title 49 CFR Part 382. In the case of an ongoing violation, every day's continuance is considered a separate and distinct violation.

In September 2016, Commission Motor Carrier Investigator Sandi Yeomans conducted a compliance review of Basin Disposal of Yakima, LLC (Basin Disposal of Yakima) and documented the following violations of critical regulations:

- **Violation of CFR 382.305(b)(1) – Failing to conduct random alcohol testing at an annual rate of not less than the applicable annual rate of the average number of driver positions.** Basin Disposal of Yakima was required to conduct two random alcohol tests in 2015. None were conducted. These two missing tests are first-time violations, which the Commission views as a single violation of this type for penalty assessment purposes.
- **Violation of CFR 382.305(b)(2) – Failing to conduct random controlled substances testing at an annual rate of not less than the applicable annual rate of the average number of driver positions.** Basin Disposal of Yakima was required to conduct nine random controlled substances tests in 2015. Six were conducted. These three missing tests are first-time violations, which the Commission views as a single violation of this type for penalty assessment purposes.

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 fail to conduct the required number of random alcohol or controlled substances tests put the traveling public at risk. A driver impaired by alcohol or controlled substances 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.

Basin Disposal acquired certificate G-45 in 2006 and received a compliance review with technical assistance in 2009. No similar violations were noted during the 2009 review. 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 employees at Basin Disposal of Yakima were cooperative and receptive to the technical assistance provided.
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 unremarkable.
7. **The number of customers affected.** Basin Disposal of Yakima traveled 366,904 miles in 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 2009, with no record of similar violations. The company has received no penalties of any kind.
10. **The company's existing compliance program.** Basin Disposal of Yakima has no formal compliance program.
11. **The size of the company.** Basin Disposal of Yakima is a medium-sized operation, with 17 commercial vehicles and 12 drivers. The company traveled 366,904 miles and reported \$3,218,508 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.<sup>1</sup> The Commission generally 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

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



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 \$200 for violations of WAC 480-70-201 Vehicle and Driver Safety Requirements, which adopts CFR Part 382, calculated as follows:

- One violation of CFR 382.305(b)(1) – Failing to conduct random alcohol testing at an annual rate of not less than the applicable annual rate of the average number of driver positions. As a first-time violation, the Commission assesses a penalty of \$100 for a single violation of this type.
- One violation of CFR 382.305(b)(2) – Failing to conduct random controlled substances testing at an annual rate of not less than the applicable annual rate of the average number of driver positions. As a first-time violation, the Commission assesses a penalty of \$100 for a single 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.

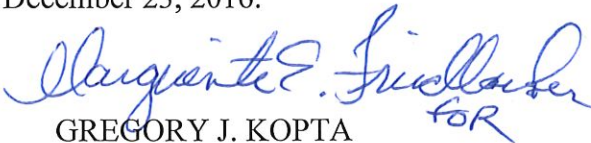
**You must act within 15 days after receiving this notice** to do one of the following:

- 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.

A handwritten signature in blue ink, appearing to read "Gregory J. Kopta". To the right of the signature, the word "FOR" is written in blue ink.

GREGORY J. KOPTA  
Administrative Law Judge

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION  
PENALTY ASSESSMENT TG-161283.

**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.”