

**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

FINAL ORDER 03

GRANTING PETITION, IN PART;
DISMISSING VIOLATIONS;
ASSESSING PENALTY FOR
VIOLATIONS

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.).
- 2 On July 25, 2019, the Company filed a response to the Penalty Assessment, contesting 253 of the violations and requesting mitigation of the entire penalty based solely on the written information provided.
- 3 On August 28, 2019, the Commission entered Order 01, Denying Contest of Violations; Granting Mitigation; Suspending Penalty, in Part (Order 01).
- 4 On September 9, 2019, Waste Management filed with the Commission a Petition for Administrative Review (Petition). The Company requested review “of only one part of the Order, specifically the 253 alleged violations of 49 CFR § 391.45(a) and the \$12,650 penalty assessed for these violations.”¹ The Company disputes that 49 C.F.R. § 391.45(a) applies to its drivers of vehicles that meet the regulatory weight requirements, but which

¹ Petition at 1, ¶ 1.

only transport empty solid waste containers to and from customers.² The Company contends that the vehicles at issue do not fall within the Commission’s jurisdiction as “vehicles” or “motor vehicles” as defined by statute and Commission rule. The Company, therefore, requests that the penalty for those 253 violations be waived.³

5 On September 16, 2019, the Commission entered Order 02, which granted Commission staff’s (Staff) motion and extended the date for responses to Waste Management’s Petition until October 9, 2019.

6 On October 9, 2019, Staff filed with the Commission a Response to Waste Management’s Request for Review of the Executive Secretary’s Order (Response), requesting that the Commission affirm Order 01 and its reasoning.

DISCUSSION AND DECISION

7 We grant Waste Management’s Petition, in part, and dismiss the 253 violations at issue. Waste Management argues that 49 C.F.R. § 391.45(a),⁴ which requires that drivers operating a commercial motor vehicle (CMV) be medically examined and certified, does not apply to its drivers of vehicles that transport empty solid waste containers to and from customers. For the reasons discussed below, we conclude that resolving this issue requires a broader examination of the Commission’s jurisdiction on this issue relating not just to the Company, but all solid waste collection companies subject to the Commission’s authority.

8 The Company’s Petition, which requests that the Commission reach a legal conclusion that it does not have, or should not exercise, regulatory authority over certain CMVs, more closely resembles a petition for declaratory order than it does a petition for administrative review contesting violations and penalties. The record here, however, presents only limited information pertaining to a single regulated company, which we find is insufficient to make the industry-wide determination that Waste Management

² Exhibit C attached to Petition at 6 (numbered at bottom of page as “3”); Exhibit C Exh. 2; Exhibit C Exh. 3; *see* Petition at 1-3, 5, 8-11, ¶¶ 1, 4-5, 10, 16-20.

³ Petition at 13-14, ¶ 25.

⁴ WAC 480-70-201 adopts by reference 49 C.F.R. § 391.45(a) and various other provisions of Title 49 C.F.R.

seeks. As such, we grant Waste Management’s Petition in part and conclude that this proceeding is not the proper forum to resolve this issue.

9 The Commission has broad regulatory authority over Waste Management, the safety of its operations, all matters affecting the relationship between the Company and its customers, and the comfort and convenience of Washington residents using Waste Management’s services.⁵

10 The Commission adopted by reference in WAC 480-70-201(1) portions of the federal driver qualification requirements contained in Title 49 C.F.R. Part 391. This includes 49 C.F.R. § 391.45(a), which requires drivers of commercial motor vehicles to be medically examined and certified.

11 The vehicles at issue in this case are, according to the Company’s Petition, used to “deliver and retrieve empty solid waste and recyclable containers to and from the residents and businesses [the Company] serves.”⁶ It is undisputed that the vehicles in question weigh more than 10,001 pounds.⁷ These vehicles, therefore, are large and pose a significant risk to the travelling public if operated in an unsafe manner.

12 The Washington State Patrol (WSP) is a general authority Washington law enforcement agency that exercises the powers and duties prescribed it by law.⁸ WSP has authority to inspect a commercial motor vehicle with respect to vehicle equipment, hours of service,

⁵ RCW 80.01.040 provides that the utilities and transportation commission shall:

(1) Exercise all the powers and perform all the duties prescribed by this title and by Title 81 RCW, or by any other law.

(2) Regulate in the public interest, as provided by the public service laws, all persons engaging in the transportation of persons or property within this state for compensation.

(3) Regulate in the public interest, as provided by the public service laws, the rates, services, facilities, and practices of all persons engaging within this state in the business of supplying any utility service or commodity to the public for compensation.

(4) Make rules and regulations necessary to carry out its other powers and duties.

See also RCW 81.04.160; RCW 81.04.010; RCW 81.77.030.

⁶ Petition at 2, ¶ 2.

⁷ WAC 480-70-196; *see* Exhibit C attached to Petition at 6 (numbered at bottom of page as “3”); Exhibit C Exh. 2; Exhibit C Exh. 3; Petition at 1-3, 5, 8-11, ¶¶ 1, 4-5, 10, 16-20.

⁸ RCW 10.93.020; RCW 43.43.040.

and driver qualifications.⁹ WSP adopted federal regulations for intrastate motor carriers, including driver qualifications found in Title 49 C.F.R. Part 391, but not subparts D and E, which include 49 CFR § 391.45(a).¹⁰ With respect to subparts D and E, the Commission's commercial motor vehicle requirements are more stringent than WSP's.

13 As Waste Management notes in its Petition, the Commission and WSP both regulate the safety of CMVs, and both agencies have jurisdiction over aspects of Waste Management's operations. The Commission is familiar with overlapping regulatory authority, particularly as it relates to motor vehicles transporting persons or property intrastate. The Department of Licensing (DOL) has authority that overlaps with the Commission's authority regarding certain vehicles, such as stretch limousines. While the Commission has authority to regulate passenger charter and excursion carriers with motor vehicles that seat 7 passengers or more, excluding the driver, our authority overlaps with DOL's authority to regulate limousines, certain categories of which are defined as having a seating capacity of up to 14 passengers.¹¹ Similarly, WSP's inspection authority in Chapter 46.32 RCW concerning commercial motor vehicles used to transport more than eight passengers including the driver overlaps with Commission authority to regulate those same vehicles when used by a passenger charter or excursion carrier.¹²

14 Waste Management's Petition raises issues of potential conflicting regulations that apply not just to the Company, but to all solid waste collection companies subject to the Commission's authority. We acknowledge that regulatory authority over the vehicles at issue may be unclear, and it would not be in the public interest to determine this question in the narrow proceeding before us. Therefore, we determine that it is appropriate to dismiss the 253 violations of 49 C.F.R. § 391.45(a) and the \$12,650 penalty assessed for those violations. While we decline to find here that the vehicles at issue fall outside the scope of the Commission's jurisdiction, this question cannot be resolved in this case. Accordingly, we exercise our discretion to reserve judgment until we have sufficient information concerning this question as it applies to all regulated solid waste collection companies.

⁹ RCW 46.32.010.

¹⁰ WAC 446-65-010; *see* RCW 46.32.020.

¹¹ RCW 81.70.020; WAC 308-83-010; RCW 46.04.274.

¹² RCW 46.32.005; RCW 81.70.020.

15 To that end, we direct Staff to coordinate with regulated solid waste collection companies and with WSP to determine how to best regulate the transportation of empty solid waste containers to and from customers. At the conclusion of those discussions, we direct Staff to file a report with the Commission containing Staff's findings and recommendations.

16 For the reasons discussed above, we dismiss the 253 violations of 49 C.F.R. § 391.45(a) cited in the Penalty Assessment, as well as the \$12,650 in penalties associated with those violations.

17 We modify Order 01 only as it relates to the 253 violations of 49 C.F.R. § 391.45(a) and the \$12,650 in penalties associated with those violations. Order 01 mitigated the initial penalty amount of \$47,700 to \$23,850 for 477 violations of Chapter 480-70 WAC and Title 49 C.F.R. and suspended a \$13,850 portion of the penalty for period of two years, and then waived 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. Removing the \$12,650 portion of the total mitigated penalty results in an adjusted mitigated penalty of \$11,200. Further, we agree with the Company that it is appropriate to suspend a \$6,500 portion of the total adjusted mitigated penalty.

18 Accordingly, we assess a total penalty of \$11,200 for 244 violations of Chapter 480-70 WAC and Title 49 C.F.R. and suspend a \$6,500 portion of the penalty for 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 \$4,700 portion of the penalty that is not suspended.

FINDINGS AND CONCLUSIONS

19 (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.

20 (2) Waste Management is a solid waste collection company subject to Commission regulation.

- 21 (3) WAC 480-70-201 adopts by reference 49 C.F.R. § 391.45(a), which requires that
a driver of a commercial motor vehicle be medically examined and certified.
- 22 (4) A commercial motor vehicle is defined as “any self-propelled or towed motor
vehicle used on a highway when the vehicle: (1) [h]as a gross vehicle weight
rating or gross combination weight rating, or gross vehicle weight or gross
combination weight, of ten thousand and one pounds or more, whichever is
greater”¹³
- 23 (5) Waste Management operates vehicles weighing more than 10,001 pounds to
transport empty solid waste containers to and from customers. These vehicles, if
operated in an unsafe manner, pose a threat to the safety of the travelling public.
- 24 (6) Waste Management’s Petition raises an issue of potential conflicting regulation,
which impacts all solid waste collection companies under the Commission’s
jurisdiction.
- 25 (7) The Commission requires additional information to make a fully-informed
decision about the issue presented in this case.
- 26 (8) The Commission should fully resolve this question by exercising its authority and
discretion to direct Staff to engage with regulated solid waste collection
companies and with WSP about the regulation of vehicles used to transport empty
solid waste containers to and from customers. Within six months of the effective
date of this Order, Staff should be required to file a report of its findings and
recommendations.
- 27 (9) The Commission should grant, in part, Waste Management’s Petition by
dismissing the 253 violations of 49 C.F.R. § 391.45(a) and the \$12,650 in
penalties associated with those violations.
- 28 (10) The Commission should adjust the mitigated penalty issued in Order 01 to a total
of \$11,200 for 244 violations of Chapter 480-70 WAC and Title 49 C.F.R.

¹³ WAC 480-70-196.

- 29 (11) The Commission should suspend a \$6,500 portion of the penalty for a period of two years, and then waive it, subject to the following conditions: (1) Waste Management 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 Waste Management's compliance with safety regulations; and (3) Waste Management must pay the \$4,700 portion of the penalty that is not suspended.

ORDER

THE COMMISSION ORDERS:

- 30 (1) Waste Management of Washington, Inc.'s Petition for Administrative Review is granted, in part.
- 31 (2) Commission staff is directed to engage with regulated solid waste collection companies and with the Washington State Patrol about the regulation of drivers and vehicles used to transport empty solid waste containers to and from customers, and to file a report of its findings and recommendations within 6 months of the effective date of this Order.
- 32 (3) Waste Management of Washington, Inc., is assessed a penalty of \$11,200 for 244 violations of Chapter 480-70 WAC and Title 49 C.F.R.
- 33 (4) The Commission suspends a \$6,500 portion of the penalty for a period of two years, and then waives it, subject to the following conditions: (1) Waste Management of Washington, Inc. may not incur any repeat violations of acute or critical regulations; and (2) Waste Management of Washington, Inc. must pay the \$4,700 portion of the penalty that is not suspended within 10 days of the effective date of this Order.
- 34 (5) Commission Staff will conduct a follow-up review of Waste Management of Washington, Inc.'s operations in two years from the effective date of this Order.

- 35 (6) If Waste Management of Washington, Inc., fails to comply with any condition in paragraph 33 of this Order, the entire unpaid balance of the \$11,200 penalty will become immediately due and payable without further Commission order.

DATED at Lacey, Washington, and effective November 14, 2019.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chair

ANN E. RENDAHL, Commissioner

JAY M. BALASBAS, Commissioner