



Investigation Report

PENINSULA SANITATION SERVICE, INC.

TG-190476

Susie Paul
Compliance Investigations

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Table of Contents

Purpose, Scope and Authority.....	3
Executive Summary	4
Background.....	6
Investigation.....	6
Data Request	6
Customer Deposits	6
Drive-In Fees.....	8
Customer Complaints	11
Recommendations.....	12
Attachments	14

PURPOSE, SCOPE AND AUTHORITY

Purpose

The purpose of this investigation is to determine if Peninsula Sanitation Service, Inc., (Peninsula or Company) is in compliance with commission laws and rules outlined in Revised Code of Washington (RCW) 81.77, Washington Administrative Code (WAC) 480-70, and Peninsula's Tariff No. 16, Certificate No. G-011, on file at the commission.

Scope

The scope of this investigation includes Peninsula's business practices related to deposit charges to customers for solid waste service, drive-in fees charged to customers for service on private roads, and customer complaint records.

Authority

Staff undertakes this investigation pursuant to RCW 81.04.070. Washington Administrative Code (WAC) 480-70-216 authorizes the commission to administer and enforce laws and rules relating to solid waste collection companies.

Staff

Susie Paul, Compliance Investigator
(360) 664-1105
Susie.Paul@utc.wa.gov

EXECUTIVE SUMMARY

Commission staff (staff) conducted this investigation to evaluate Peninsula's business practices. This investigation focused on Peninsula's practice of charging customers deposits for establishing service, drive-in fees, and customer complaints. This investigation is a follow-up to an informal consumer complaint related to deposit fees required by the Company for service.¹

An informal complaint was filed in March 2016, and investigated by a Consumer Protection complaint investigator. In the complaint, Peninsula charged the consumer a deposit based on the service address and did not allow the consumer an opportunity to establish credit and thereby avoid paying a security deposit. The informal complaint was consumer upheld. In response, the company stated it would discontinue requiring a deposit based on where a customer lived.

On Jan. 9, 2019, commission staff issued a data request requiring Peninsula to produce copies of its procedures related to customer deposits for service and customer refunds. Staff also requested Peninsula provide a list of all customers who have been charged a drive-in fee from June 1, 2016, through Jan. 1, 2019, and a copy of its customer complaint record from Jan. 1, 2018, through Jan. 1, 2019.

Staff's investigation into the business practices of Peninsula found that the company has corrected its procedure of requiring deposits for service from customers residing in specific residential areas. Staff found no violations related to the customer deposits the company collected; however, staff found that the company failed to include accrued interest when deposits for service was credited back to the customer.

During the timeframe of this investigation, staff found a total of 12,824 drive-in fees charged to customers outside of the company's tariffed rates, impacting 669 individual customers. These fees resulted in \$82,406.22 in revenue for the company.

In addition, the company states it does not have a list of customer complaints for the time period requested and states that it tries to deal with complaints in a timely manner. Consumer Protection Complaint Investigations has not recorded any informal complaints filed during this review period; therefore, staff could not determine if the company has failed to record customer complaints as required.

During this investigation, staff found the company in violation of the following rules and laws enforced by the commission:

- Failure to bill customers drive-in rates according to the company's tariff, in violation of RCW 81.28.080 and WAC 480-70-236(2).
- Failure to include accrued interest when refunding customer deposits in violation of WAC 480-70-411(6).

¹ A copy of redacted consumer complaint CAS-08516-C3W0J0 is attached as Appendix A

Staff Recommendation

Staff recommends the commission issue a formal complaint against Peninsula and assess penalties in the amount of \$34,450 for the following violations:

- Up to \$50 for each of the 669 violations of RCW 81.28.080 and WAC 480-70-236(2) for failure to charge 669 individual customers drive-in rates according to the company's tariff for a total of up to \$33,450. While staff may recommend up to \$1,000 per violation, staff believes that the full penalty would likely create a financial hardship and provides a significant incentive for the Company to avoid repeat violations in the future.
- Up to \$1,000 for the 12 violations of WAC 480-70-411(6) for failure to pay customers the accrued interest on deposits paid by the customer for service.

Staff also recommends that Peninsula be required to calculate the interest payments as described in WAC 480-70-411(6) for each of the 12 customers and apply a credit or provide a refund to the customers' accounts as appropriate.

Finally, staff recommends that Peninsula file a general rate case to socialize its drive-in charges as a normal function of performing solid waste service to its customers.

BACKGROUND

Company Information

Peninsula is a for-profit company based in Ilwaco, Washington. Washington Secretary of State records indicate that Jay Alexander is president, and Teresa Alexander is vice president.²

Peninsula provides solid waste collection services in Pacific and Wahkiakum counties under certificate of public convenience and necessity from the commission, G-011, and has been in operation since 1954. Peninsula lists two disposal transfer sites in their tariff: Royal Heights Transfer Site, located in Raymond, WA, and Pacific Solid Waste Disposal, Inc., in Long Beach, WA. Pacific Solid Waste Disposal, Inc., is operated by Jay Alexander and Teresa Alexander, according to Washington Secretary of State records.³

Based on Peninsula's 2018 annual report, the company services 5,194 customers. Recent annual reports filed with the commission by Peninsula reflect the following customer base and annual gross revenue:

Report Year	Regulated Customers	Gross Revenue
2016	5,744	\$3,119,456.03
2017	3,035	\$3,056,432.57
2018	5,194	\$3,190,883.00

A review of Peninsula's complaint history reveals eight consumer complaints against the company between April 2014 and June 2017. Three of the complaints were consumer upheld, four were company upheld, and one was company upheld with violations.

INVESTIGATION

Data Request

On Jan. 9, 2019, commission staff issued a data request requiring Peninsula to provide its procedures for requiring customer deposits for service and the company's procedures for refunding customer deposits.

The Company was also requested to provide a list of all customers charged a drive-in fee from June 1, 2016, through Jan. 1, 2019, and a list of the company's complaint record received from Jan. 1, 2018, through Jan. 1, 2019.⁴

Investigation – Procedures for Requiring Deposits for Solid Waste Service

In the Jan. 9, 2019, data request, staff requested that the company provide its procedure for requiring customer deposits and requested the following information and documentation:

- A list that includes each customer charged a deposit for service from June 1, 2016, through Jan. 1, 2019;
- The service address of each customer charged a deposit;
- The reason each customer was charged a deposit for service;

² See Attachment B for a copy of WA Secretary of State record, printed on July 1, 2019.

³ See Attachment C for a copy of WA Secretary of State record, printed on May 16, 2019.

⁴ See Attachment D for a copy of data request, dated Jan. 9, 2019.

- The date the customer received a credit or refund of the deposit, if applicable; and
- The amount of the credit or refund to the customer including accrued interest.

On Jan. 16, 2019, Peninsula provided an Excel spreadsheet of its customer deposit record spanning from June 2017 through November 2018. The list documents 12 customers who were charged a deposit fee for service.⁵ The list also provided the date the of the deposit, customer name, account number and service address, deposit amount, date the deposit was applied to the customer's account, and the reason for requiring a deposit.

The company failed to provide staff with the company's procedures for requiring customer deposits for service and for refunding the deposits. On Jan. 16, 2019, staff sent the company an email and again requested its procedures. The company responded on the same date and stated:

The only list that we have I sent to you. It had dates, names, account #'s, etc. The reason listed for getting a deposit was no valid id and this was started a few years back by the previous co-owner of this company. The reason we collected a 2 month deposit, which we held for 6 months, then applied directly to their account was if they had no valid id and if we had to send them to collection we needed a valid id. I am the new co-owner and I called our collection company in November and asked them what they now required and it was an either or type of id which is very easy to get from our customers and we immediately stopped collecting the 2 month deposit. As noted in the list I sent you we had only collected 4 deposits in 2018.⁶

Findings – Procedures for Requiring Deposits for Solid Waste Service

WAC 480-70-411 allows companies to require a deposit under specific circumstances. The WAC addresses the deposit requirements, deposit amount, transfer of deposit, interest on deposits, and when a refund of deposit is required.

Staff found that the company has discontinued its practice of requiring deposits for service based on the customers' residential location. According to company records, the deposits have been applied to the customers' accounts within the allowable time specified in WAC 480-70-411.

Staff did find violations of WAC 480-70-411(6), which requires companies that collect customer deposits to pay interest on the deposits. The WAC also outlines how the interest is to be calculated. Staff finds that Peninsula failed to calculate and refund the accrued interest on customer deposits held for establishment of service.

Recommendation – Procedures for Requiring Deposits for Solid Waste Service

Staff recommends the following penalties:

- Up to \$1,000 for 12 violations of WAC 480-70-411(6) for failure to include accrued interest when refunding customer deposits.

⁵ See Attachment E for a copy of redacted customer deposit list.

⁶ See Attachment F for a copy of email related to company procedures, dated Jan. 16, 2019.

Staff also recommends that Peninsula be required to calculate the interest payments as described in WAC 480-70-411(6) for each of the 12 customers and apply a credit or provide a refund to the customers' accounts as appropriate.

Investigation – Drive-In Fees

On Jan. 9, 2019, staff requested Peninsula provide a list of all customers charged drive-in fees from June 1, 2016, through Jan. 1, 2019. On Jan. 17, 2019, Peninsula provided an Excel spreadsheet that documented 12,824 separate drive-in charges, generally ranging from \$1.70 to \$7.36 a month, impacting 669 individual customers during the reviewed timeframe.

Peninsula's Tariff G-011, Item 80, specifies the rate the company may charge for drive-ins:⁷

ITEM 80	Rate	
	Residential Per Unit, Per Pickup	Commercial Per Unit, Per Pickup
Charge for Drive-ins (per pickup)		
Drive-in on driveways of over 125 feet, but less than 250	\$1.70	\$1.70
Drive-ins on driveways of over 250 feet, But less than 1/10 mile	\$.50	\$.50
For each 1/10 mile over 1/10 mile	\$.50	\$.50

As shown in the above table, Peninsula is required to charge customers drive-in fees according to a tiered rate. Peninsula's tariff, Item 75 – Flat Monthly Charges addresses what services the company may charge customers using a flat rate. The flat rate applies to many of its services, but does not include Item 80, drive-in charges.⁸

Staff asked the company about the customers who were charged a \$1.70 drive-in fee versus customers charged a \$7.36 drive-in fee. The company explained the \$1.70 drive-in fee is for once a month service and that the \$7.36 drive-in fee is for weekly service, calculated by multiplying \$1.70 by 4.33 for a weekly service rate. From June 6, 2016, through Jan. 1, 2019, Peninsula collected \$82,406.22 in drive-in fees.

Staff spoke with the company's vice president on May 16, 2019, and asked how the company determines which customers will be charged drive-in fees. The company responded that when a customer requests service to an address designated as a "lane," the customer is charged a drive-in fee; and addresses designated as a "road, place, street, or avenue," are not charged drive-in fees. In Peninsula's service area, roads designated as a lane are considered private roads and are maintained by the developer(s) or homeowner(s). The company states that when a customer service address is designated as a lane or is a private road, it always offers the customer the opportunity to haul its totes to an eligible location to avoid paying a drive-in fee.

Staff pointed out that addresses designated as place, road, court, street, and avenue were all included on the document the company provided that shows drive-in fees, such as 163rd Place and Richter Road. The company looked up the addresses on a map and said that those addresses "shoot off of a lane." The company also stated that its drivers have been with the company a long

⁷ See Attachment G for a copy of Peninsula's Tariff, Item 80 – Carry-out Service, Drive-Ins.

⁸ See Attachment H for a copy of Peninsula's Tariff, Item 75 – Flat Monthly Charges

time and that they will notify the company if service is being provided on a road that is not designated as a lane, but is a private road and the customers should be charged a drive-in fee.

Peninsula asserts that because the lanes are maintained by the homeowners or developers, they are private roads, and thereby eligible to be charged drive-in fees.

WAC 480-70-041 defines “Private road” as a road not normally available for use by the public. Unless gated, most of the roads on the company’s routes allow public access. If private roads are not accessible to the public, Peninsula would be required to obtain permission from the homeowners to drive on the roads to provide service. When staff asked how many customers have provided permission to access the private roads, the company stated it does not have written permission to drive on private roads from any customer, but that it does get verbal permission from the customers to drive on the lanes (private roads). Without driving Peninsula’s entire service routes, it is impossible to know how many roads are truly private, but with the exception of a gated community, none of the roads staff drove on had restricted access and were available to the public.

Pacific County Ordinance 146, Section 3.3 defines private roads as a “vehicle access route serving four (4) or more buildings owned by separate individuals.” Every private road will be uniquely and concisely named with a “LANE” suffix designation. New private roads also must be signed and maintained according to the requirements of the Engineer at the expense of the property owner(s) and/or the developer(s) served.⁹

On May 21, 2019, staff went to Peninsula’s Sanitation’s facility and was provided both a tour of the facility and a route map of the Ilwaco area service locations.¹⁰ To get a better understanding of the drive-in charges, staff went to some of the locations that had been designated as being charged a drive-in fee.

Staff drove to the Discovery Heights development, which is on Peninsula’s Cape Disappointment North Head route. Discovery Heights is a gated community on paved, well-maintained private roads. Peninsula states its driver is provided a code for the gate and does not charge a gate fee. There are fourteen homes on Overlook Loop Road and Lighthouse Keeper Road that are being charged drive-in fees. Overlook Loop Road, as the name implies, is a loop that connects to the Lighthouse Keeper Road. The driveways are very close to the road and the development has a turnaround large enough for Peninsula Sanitation to maneuver its trucks as shown below:

⁹ See Attachment I for a copy of Pacific County’s Ordinance 146.

¹⁰ See Attachment J for a copy of Peninsula’s Ilwaco Route.



Lighthouse Keeper Road – Discovery Heights Turnaround – Discovery Heights

When Peninsula charges its customers a drive-in fee, it is done so at a flat rate. The first customer on a road designated as a drive-in pays the same fee as the customer at the end of the road without regard to distance. Many of the drive-ins are on long gravel roads, some maintained and some not, but the roads staff drove on had multiple homes connected to each road.

Peninsula’s tariff does not include a definition for drive-ins, but does state in Item 80 that driveways are not considered improved access roads commonly available for public use. Staff chose four additional solid waste companies to review Item 80, Drive-In charges. None of the reviewed companies charge drive-in fees if a driveway provides access to multiple residences or accounts.

Company	Tariff	Item 80 Drive-In
Peninsula	G-011 Tariff No.16	Driveways are not considered improved access roads commonly available for public use.
Ada-Lin Waste Systems	G-104 Tariff No. 10.1	For the purpose of assessing drive-in fees, a driveway is defined as providing access to a single residence. If a driveway provides access to multiple residences or accounts, no drive-in fees will be assessed.
Mason County Garbage Co.	G-88 Tariff No. 13	For the purpose of assessing drive-in fees, a driveway is defined as providing access to a single residence. If a driveway provides access to multiple residences or accounts, no drive-in fees will be assessed.
Fiorito Enterprises, Inc. & Rabanco Companies, d/b/a Kent-Meridian Disposal Company	G-60 Tariff No. 27	For the purpose of assessing drive-in fees, a driveway is defined as providing access to a single residence. If a driveway provides access to multiple residences or accounts, no drive-in fees will be assessed.
Rabanco LTD d/b/a Republic Services, Rebanco Companies, Sea Tac Disposal	G-12 Tariff No. 26	For the purpose of assessing drive-in fees, a driveway is defined as providing access to a single residence. If a driveway provides access to multiple residences or accounts, no drive-in fees will be assessed.

Findings – Drive-In Fees

Staff finds that Peninsula is in violation of RCW 81.77 and WAC 480-70-236(2) for failure to charge customers drive-in rates according to the company's tariff. The company admitted to staff that it has not measured any drive-in to charge rates in accordance with its tariff.

Many, if not most, of the roads designated as private drive-ins are actually accessible to the public, delivery trucks, mail trucks, etc., and there are no restrictions from driving on the road with the exception of a gated community. The company confirmed that it does not have written permission to access the private roads, but that they receive verbal approval when setting up service. Peninsula also said that some customers opt to take their totes to the nearest eligible road for pickup to avoid a drive-in fee.

Recommendation – Drive in Fees

Staff recommends that Peninsula be ordered to bill its customers drive-in fees as specified in its tariff; however, staff also recommends that Peninsula be required to revise its tariff to be consistent with similar solid waste companies which defines a driveway as providing access to a single residence for the purpose of assessing drive-in fees. If a driveway provides access to multiple residences or accounts, no drive-in fee will be assessed.

Finally, staff recommends that Peninsula file a general rate case to socialize its drive-in charges as a normal function of operation and performing solid waste service to its customers.

Investigation – Customer Complaint Records

WAC 480-70-386, provides that a company must keep a record of all complaints concerning service or rates for at least one year. The record of complaints and rates must be made readily available for commission review. The record must contain the complainant's name and address, date and nature of the complaint, action taken, and the final result.

On Jan. 9, 2019, commission staff requested Peninsula to provide a list of the company's complaints received from Jan. 1, 2018, through Jan. 1, 2019. The company responded and stated it does not have a list of customer complaints for the time requested and that it tries to deal with complaints in a timely manner. Consumer Protection Complaint Investigations has not recorded any informal complaints filed at the commission during this review period.

Findings - Customer Complaint Records

While the company states that it does not have a list of customer complaints and that it "tries to deal with complaints in a timely manner," it suggests that the company may not be handling customer complaints as required by WAC 480-70-386.

Recommendation – Customer Complaint Records

Staff finds no violations but recommends that Peninsula consider this report as technical assistance related to customer complaints. Specifically, the company must keep a record of all complaints concerning service or rates for at least one year, and the record of complaints and rates must be made readily available for commission review.

RECOMMENDATIONS

Staff believes that many of Peninsula's actions are in conflict with the company's tariff. Accordingly, staff believes the following information supports the recommended penalties:

- 1. How serious or harmful the violation is to the public**

The violations are both serious and harmful to the public. Rates that have been set by Peninsula and approved by the commission are not being charged correctly to customers in accordance with its tariff. Peninsula is not in alignment with similar solid waste companies related to drive-in fees and staff believes that the company is charging a large amount of customers a fee that should be considered part of its normal operation.
- 2. Whether the violation is intentional**

Staff has to believe the violation is intentional. The company states that it is very familiar with its tariff and "reads it all the time." Staff pointed out to the company that it is charging a flat rate for drive-in fees when the tariff provides for a tiered rate. Tariff No. 16, Item 80 clearly speaks to drive-in fees and how customers are to be charged. The vice president of the company stated that the previous co-owner is now retired and that the drive-in fees have been in place for a long time. The company admitted that it has not measured any drive-in to determine what the appropriate rate the customer should be charged. The drive-in charges resulted in \$82,406.22 in revenue for the company within the time frame of this investigation.
- 3. Whether the company self-reported the violation**

The company did not self-report the violations discussed in this report. This investigation was initiated because of a follow-up on deposit fees.
- 4. Whether the company was cooperative and responsive**

Staff found the company to be cooperative and responsive to requests for data and information.
- 5. Whether the company promptly corrected the violations and remedied the impacts**

The violations noted in this report have not been corrected.
- 6. The likelihood of recurrence**

Staff believes that the company will correct violations brought to the company's attention; however, staff also recommends that the company be ordered to revise its tariff related to drive-in fees to be in alignment with similar solid waste companies. If staff's recommendation is accepted, Peninsula will file a general rate case and socialize the costs of drive-ins as part of its normal routes and the cost of performing solid waste service to its customers.
- 7. The company's past performance regarding compliance, violations and penalties**

Peninsula has not had previous actions taken against them.
- 8. The company's existing compliance program**

Staff is not aware of any compliance program.

9. The size of the company

Peninsula reported gross operating revenue of \$3,190,883.00 for the 2018 reporting period.

Staff Recommendation

Staff recommends the commission issue a formal complaint against Peninsula and assess penalties in the amount of \$34,450 for the following violations:

- Up to \$50 for each of the 669 violations of RCW 81.28.080 and WAC 480-70-236(2) for failure to charge 669 individual customers drive-in rates according to the company's tariff for a total of up to \$33,450. While staff may recommend up to \$1,000 per violation, staff believes that the full penalty would likely create a financial hardship and provides a significant incentive for the Company to avoid repeat violations in the future.
- Up to \$1,000 for the 12 violations of WAC 480-70-411(6) for failure to pay customers the accrued interest on deposits paid by the customer for service.

Staff also recommends that Peninsula be required to calculate the interest payments as described in WAC 480-70-411(6) for each of the 12 customers and apply a credit or provide a refund to the customers' accounts as appropriate.

Finally, staff recommends that Peninsula file a general rate case to socialize its drive-in charges as a normal function of performing solid waste service to its customers.