

Service Date: October 23, 2019

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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OCT 30 2019

WASH. UT. & TP. COMM

Sound Disposal, Inc.
P.O. Box 487
Edmonds, WA 98020

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

RECEIVED
RECORDS MANAGEMENT

OCT 30 2019

STATE OF WASH.
UTIL. & TRANSP. COMMISSION

PENALTY ASSESSMENT: TG-190830
PENALTY AMOUNT: \$500

The Washington Utilities and Transportation Commission (Commission) believes Sound Disposal, Inc., (Sound Disposal or Company) violated Washington Administrative Code (WAC) 480-70-201, Vehicle and Driver Safety Requirements, which adopts Title 49 Code of Federal Regulations (49 CFR) Part 382 – Controlled Substance and Alcohol Use and Testing.

Revised Code of Washington (RCW) 81.04.530 allows penalties of \$500 for each motor vehicle driver not in compliance with the motor vehicle driver testing requirements. In the case of an ongoing violation, every day's continuance is considered a separate and distinct violation.

On October 2, 2019, Commission Motor Carrier Investigator Sandra Yeomans completed a routine safety investigation of Sound Disposal and documented the following violation:

- **One violation of 49 CFR § 382.301(a) – Using a driver before the motor carrier has received a negative pre-employment controlled substance test result.** Sound Disposal allowed driver Kayla Alstad to operate a commercial motor vehicle before the Company received a negative drug test result.

The Commission considered the following factors in determining the appropriate penalty for this violation:

1. **How serious or harmful the violations are to the public.** The violation noted is serious and potentially harmful to the public. Companies that allow drivers to operate commercial motor vehicles prior to receiving negative pre-employment controlled substance test results put the traveling public at risk. This violation presented a serious safety concern.
2. **Whether the violations were intentional.** Considerations include:
 - Whether the Company ignored Commission staff's (Staff) 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.

The Company began its operations in 1997. On April 1, 2003; November 9, 2005; and July 7, 2011, Staff completed routine safety investigations of Sound Disposal. The

Company was provided technical assistance during each safety investigation, and should have known about these safety requirements.

3. **Whether the Company self-reported the violations.** Sound Disposal did not self-report this violation.
4. **Whether the Company was cooperative and responsive.** Sound Disposal was cooperative and made corrections throughout the safety investigation.
5. **Whether the Company promptly corrected the violations and remedied the impacts.** The Company corrected the violations prior to the conclusion of the safety investigation.
6. **The number of violations.** Staff identified 13 violation types with a total of 24 individual occurrences.
7. **The number of customers affected.** The Company employs five drivers and operates seven commercial motor vehicles. Sound Disposal traveled 56,955 miles in 2018. This safety violation presented a public safety risk.
8. **The likelihood of recurrence.** Staff provided technical assistance with specific remedies to help the Company assess how well its safety management controls support safe operations and how to begin improving its safety performance. The Company was cooperative with Staff, and took immediate action to correct the violations. In light of these factors, Staff believes the likelihood of recurrence is low.
9. **The Company's past performance regarding compliance, violations, and penalties.**

On August 5, 2013, Sound Disposal was penalized \$25 in Docket TG-130880 for failing to file a timely annual report and pay regulatory fees.

On July 5, 2017, Sound Disposal was penalized \$200 in Docket TG-170574 for failing to file a complete annual report and pay regulatory fees by May 1, 2017.

The Company has no history of penalties for safety violations.
10. **The Company's existing compliance program.** Norman Nicholson, Operation Manager of Sound Disposal, is responsible for the Company's safety compliance program.
11. **The size of the Company.** Sound Disposal currently operates seven commercial motor vehicles and employs five drivers. The Company reported \$1,512,377 in gross revenue for 2018.

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 will assess penalties per type of

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

violation, rather than per occurrence, for first-time violations of those critical regulations that do not meet the requirements for mandatory penalties. The Commission will assess penalties for any equipment violation meeting the Federal Motor Carrier Safety Administration's "out-of-service" criteria and also for repeat violations of critical regulations, including each occurrence of a repeat violation.

The Commission has considered these factors and determined that it should penalize Sound Disposal \$500, calculated as follows:

- One violation of 49 CFR § 382.301(a) – Using a driver before the motor carrier has received a negative pre-employment controlled substance test result. The Commission assesses a penalty of \$500 for this first-time critical violation.

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 violation did not occur, you may deny committing the violation and contest the penalty through evidence presented at a hearing or in writing. Alternatively, if there is a reason for the violation that you believe should excuse you from the penalty, you may ask for mitigation (reduction) of the 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 to contest the violation or for mitigation of the penalty 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 violation.
- Admit the violation but request mitigation of the penalty amount.

Please indicate your selection on the enclosed form and submit it electronically through the Commission's web portal **within FIFTEEN (15) days** after you receive this notice. If you are unable to use the web portal, you may submit it via email to records@utc.wa.gov. If you are unable to submit the form electronically, you may send a paper copy to the Washington Utilities and Transportation Commission, PO Box 47250, Olympia, Washington 98504-7250.

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 Lacey, Washington, and effective October 23, 2019.

/s/ Rayne Pearson
RAYNE PEARSON
Director, Administrative Law Division

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TG-190830

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 violations occurred and enclose \$500 in payment of the penalty.

2. **Contest the violation(s).** I believe that the alleged violation(s) did not occur for the reasons I describe below (if you do not include reasons supporting your contest here, your request will be denied):

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 violations, but I believe that the penalty should be reduced for the reasons set out below (if you do not include reasons supporting your application here, your request will be denied):

Our existing employee Kayla, advanced within the company to obtain her CDL permit, and we sent her to Concentra urgent care in Lynnwood where we send our drivers to get her DOT physical. We assumed that normal procedure would be followed and she would be drug tested. However this was not completed, and we were unaware this was not done. Reason for this lapse is that our office manager at the time, passed away, and follow-up wasn't completed. (OVER)

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: 10/28/2019 [month/day/year], at Edmonds, WA [city, state]

Norman Nicholson
Name of Respondent (company) – please print

Norman Nicholson
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

(continued) After the death of our office manager we became aware of this lapse. We now have policies in place to prevent any future lapse. Kayla has only driven under direct supervision of management, and she has since passed her pre-employment drug testing.