

Service Date: November 23, 2022

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

NOTICE OF PENALTIES INCURRED AND DUE
FOR VIOLATIONS OF LAWS AND RULESPENALTY ASSESSMENT: TG-220849
PENALTY AMOUNT: \$200

Peninsula Sanitation Service, Inc.
P.O. Box A
Ilwaco, WA 98624

The Washington Utilities and Transportation Commission (Commission) believes Peninsula Sanitation Service, Inc., (Peninsula Sanitation or Company) violated Washington Administrative Code (WAC) 480-70-201, Vehicle and Driver Safety Requirements, which adopts Title 49 Code of Federal Regulations (49 C.F.R.) Part 391 – Qualification of Drivers.

Revised Code of Washington (RCW) 81.04.405 allows penalties of \$100 for each violation. In the case of an ongoing violation, every day's continuance is considered a separate and distinct violation.

On November 9, 2022, Commission Motor Carrier Investigator Francine Gagne completed a follow-up safety investigation of Peninsula Sanitation and documented the following violations:

- **Four violations of 49 C.F.R. § 391.23(m)(2)(i)(a) – Using the Commercial Driver's License Information System (CDLIS) motor vehicle record obtained from the current licensing state, the motor carrier failed to verify and document in the driver qualification file the type of operation the driver self-certified that they will perform in accordance with 49 C.F.R. § 383.71(b)(1) and 49 C.F.R. § 383.71(g).** Peninsula Sanitation failed to verify and document the type of operation the driver will perform in the driver qualification files of Joseph Deese, Pam Hall, Robert Jetland, and Zach Woolcock.
- **Four violations of 49 C.F.R. § 391.51(b)(9) – Failing to place a note related to the verification of the medical examiner's listing on the National Registry of Certified Medical Examiners required by 49 C.F.R. § 391.23(m) in driver qualification file(s).** Peninsula Sanitation failed to verify the medical examiners listed on the medical certificates of drivers Joseph Deese, Pam Hall, Robert Jetland, and Zach Woolcock with the national registry.

The Commission considered the following factors in determining the appropriate penalties for these violations:

1. **How serious or harmful the violations are to the public.** The violations noted are potentially harmful to the public. Solid waste collection companies that fail to document and verify driver operations and fail to verify medical examiner's certificates with the national registry potentially put the traveling public at risk.

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.

On August 20, 2020, Staff completed a routine safety investigation of Peninsula Sanitation and documented violations of 49 C.F.R. § 391.23(m)(2)(i)(a) and 49 C.F.R. § 391.51(b)(9). On August 31, 2020, the Company notified Staff that it had corrected the violations. The Company knew or should have known about these requirements.

3. **Whether the Company self-reported the violations.** Peninsula Sanitation did not self-report these violations.
4. **Whether the Company was cooperative and responsive.** The Company was cooperative and responsive throughout the safety investigation.
5. **Whether the Company promptly corrected the violations and remedied the impacts.** Peninsula Sanitation has not provided Staff with evidence that it corrected the violations.
6. **The number of violations.** Staff identified five violation types with a total of 12 individual occurrences during the follow-up safety investigation of Peninsula Sanitation. Of those violations, Staff identified two violation types with a total of eight individual occurrences that warrant penalties in accordance with the Commission's Enforcement Policy.
7. **The number of customers affected.** Peninsula Sanitation reported traveling 315,170 miles in 2021. These safety violations presented a potential public safety risk.
8. **The likelihood of recurrence.** Peninsula Sanitation committed repeat violations despite prior technical assistance. Absent a commitment to prioritize safe operations, the violations of 49 C.F.R. § 391.23(m)(2)(i)(a) and 49 C.F.R. § 391.51(b)(9) are likely to reoccur.
9. **The Company's past performance regarding compliance, violations, and penalties.** On December 10, 2019, Peninsula Sanitation was penalized \$34,700 in Docket TG-190476 for violations related to its business practices. The Commission suspended a \$29,700 portion of the penalty for two years, subject to conditions. The Company paid the \$5,000 non-suspended portion of the penalty in full.

On September 2, 2020, Peninsula Sanitation was penalized \$20,800 in Docket TG-200756 for safety violations of WAC 480-70-201. On October 9, 2020, the Commission reduced the penalty to \$10,400 and suspended a \$5,200 portion of the penalty for a period of two years, subject to conditions. The Company paid the \$5,200 non-suspended portion of the penalty in full.

10. **The Company's existing compliance program.** Joseph Deese, Site Manager for Peninsula Sanitation, is responsible for the Company's safety compliance program.
11. **The size of the Company.** Peninsula Sanitation operates 12 commercial motor vehicles, two trailers, and employs 13 drivers. The Company reported \$3,840,738 in gross revenue for 2021.

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 by violation category, 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 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 Peninsula Sanitation \$200 (Penalty Assessment), calculated as follows:

- Four violations of 49 C.F.R. § 391.23(m)(2)(i)(a) – Using the CDLIS motor vehicle record obtained from the current licensing state, the motor carrier failed to verify and document in the driver qualification file the type of operation the driver self-certified that they will perform in accordance with 49 C.F.R. § 383.71(b)(1) and 49 C.F.R. § 383.71(g). The Commission assesses a "per category" penalty of \$100 for these repeat violations.
- Four violations of 49 C.F.R. § 391.51(b)(9) – Failing to place a note related to the verification of the medical examiner's listing on the National Registry of Certified Medical Examiners required by 49 C.F.R. § 391.23(m) in driver qualification file(s). The Commission assesses a "per category" penalty of \$100 for these repeat violations.

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 any or all the violations did not occur, you may deny committing the violation(s) and contest the penalty through evidence presented at a hearing or in writing. Alternatively, if there is a reason for any or all the violations 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(s) or for mitigation of the penalty

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

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 their 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(s).
- Admit the violations 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 Penalty Assessment. 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 November 23, 2022.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TG-220849

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 \$200 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**):

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: 12/06/2022 [month/day/year], at Ilwaco WA [city, state]

Peninsula Sanitation Service
Name of Respondent (company) – please print

Joseph Deese Digitally signed by Joseph Deese
Date: 2022.12.06 10:11:14 -08'00'
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 or she makes a materially false statement which he or she 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 or her 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.