



TG-210719
TG-210720

STATE OF WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

621 Woodland Square Loop S.E. • Lacey, Washington 98503
P.O. Box 47250 • Olympia, Washington 98504-7250
(360) 664-1160 • TTY (360) 586-8203

Received
Records Management
10/18/21 13:22
State Of WASH.
UTIL. AND TRANSP.
COMMISSION

Date: October 18, 2021
To: Samantha Doyle, Administrative Law Judge, Administrative Law Division
From: Mathew Perkinson, Assistant Director, Transportation Safety Division
Re: **TG-210719 and TG-210720 Gary’s Garbage Services, LLC**
Evaluation of Safety Management Plan, Recommendations regarding the company’s safety rating, and the cancellation of solid waste operating authority (G-000122)

On September 15, 2021, Commission staff (Staff) completed a routine safety investigation of Gary’s Garbage Services, LLC (Gary’s Garbage or Company) which resulted in a proposed unsatisfactory safety rating.

Commission rules prohibit motor carriers from operating beginning on the 61st day after the date of the notice of a proposed unsatisfactory rating. A company may request a change in its safety rating based on evidence that it has taken corrective actions to address the identified violations, and that its operations currently meet the safety standard and factors in 49 C.F.R. § 385.5 and 385.7. In this case, Gary’s Garbage has until November 12, 2021, to come into compliance with applicable laws and rules by obtaining commission approval of a safety management plan.

The proposed unsatisfactory safety rating was based on three violations of critical regulations – 49 C.F.R. § 395.8(a)(1), 396.3(b), and 396.17(a).

“Critical” regulations are those identified as such where non-compliance relates to management and operational controls. These are indicative of breakdowns in a company’s management controls. Patterns of non-compliance with a critical regulation are linked to inadequate safety management controls and higher than average accident rates.

Critical violations discovered during investigation:

1. Thirty violations of Title 49 C.F.R. § 395.8(a)(1) – Failing to require a driver to prepare a record of duty status.
2. Five violations of Title 49 C.F.R. § 396.3(b) – Failing to keep minimum records of inspection and vehicle maintenance.
3. Five violations of Title 49 C.F.R. § 396.17(a) – Using a commercial motor vehicle not periodically inspected.

In an October 4, 2021, Notice of Intent to Cancel, the Commission instructed Gary's Garbage to submit its proposed safety management plan no later than October 15, 2021.

On October 5, 2021, the Commission issued a penalty assessment against Gary's Garbage in the amount of \$600 because of violations discovered during the follow-up safety investigation.¹ The penalty includes:

1. A \$100 penalty for one violation of 49 C.F.R. § 391.51(a) for failing to maintain driver qualification file on each driver employed.
2. A \$100 penalty for one violation of 49 C.F.R. § 393.9(a) for using a commercial motor vehicle with an inoperative rear turn signal, creating an out-of-service condition.²
3. A \$100 penalty for one violation of 49 C.F.R. § 393.51 for using a commercial motor vehicle with no visual or audible low air warning device, creating an out-of-service condition.³
4. A \$100 penalty for thirty violations of 49 C.F.R. § 395.8(a)(1) for failing to require driver to prepare a records of duty status using the appropriate method.
5. A \$100 violation for five violations of 49 C.F.R. § 396.3(b) for failing to keep minimum records of inspection and vehicle maintenance.
6. A \$100 penalty for five violations of 49 C.F.R. § 396.17(a) for using a commercial motor vehicle not periodically inspected.

On October 13, 2021, the Company paid the \$600 penalty in full.

On October 15, 2021, Gary's Garbage submitted a safety management plan addressing each violation noted during the investigation. Staff only recommends approving a safety management plan that addresses the following seven items:

1. The plan must address each acute, critical, or serious violation discovered during the most recent investigation. It must also include corrective actions that address other violations noted during the investigation.
2. Identify why the violations were permitted to occur.
3. Discuss the actions taken to correct the deficiency or deficiencies that allowed the violations to occur. Include actual documentation of this corrective action.
4. Outline actions taken to ensure that similar violations do not reoccur in the future. The plan must demonstrate that the company's operations currently meet the safety standard and factors specified in 49 C.F.R. § 385.5 and 385.7. To do so, the plan must demonstrate the company now has adequate safety management controls in place which function effectively to ensure acceptable compliance with applicable safety requirements.

¹ TG-210720

² Vehicle Identification Number 4VMHCMBE7XN772278

³ Vehicle Identification Number 1XPZL50X3JD703495

5. If the request includes actions that will be conducted in the near future, such as training, reorganization of departments, purchasing of computer programs, etc., companies must include a detailed description of the activity or training and a schedule of when that activity will commence and when it will be completed.
6. Include any additional documentation relating to motor carrier safety and the prevention of crashes that the company believes supports its request.
7. Include a written statement certifying the company will operate within federal and state regulations and the company's operation currently meets the safety standard and factors specific in 49 C.F.R. § 385.5 and 385.7. A corporate officer, partner, or the owner of the company must sign the statement.

Summary and Recommendations

Staff reviewed Gary's Garbage's safety management plan and concludes it is acceptable and meets the requirements of 49 C.F.R. § 385. The plan demonstrates that the Company has taken appropriate action to develop a compliant safety program and implemented a system, that if followed, should prevent future repeat violations. Staff recommends that Dockets TV-210719 and TV-210720 be consolidated.

Documentation of driver qualifications, vehicle maintenance, and hours of service records were included in the plan. The Company supplied Staff with evidence that it created a compliance tracking system along with calendar reminders for future compliance dates.

Staff recommends the Commission accept the Company's safety management plan, upgrade its safety rating to conditional, and not cancel Gary's Garbage's solid waste permit.

Staff confirmed with the Company that it waived its right to a hearing and recommends that the brief adjudicative proceeding scheduled for October 28, 2021, be cancelled.