



STATE OF WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION
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May 4, 2018

Mark L. Johnson, Executive Director and Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Dr. SW
P. O. Box 47250
Olympia, Washington 98504-7250

RE: *Washington Utilities and Transportation Commission v. Harold LeMay Enterprises, Inc.*
Commission Staff's Response to Harold LeMay Enterprises, Inc., Contest to "Notice of Penalties" and Request for Hearing
Docket TG-180253

Dear Mr. Johnson:

On March 20, 2018, Motor Carrier Safety Investigator Sandi Yeomans completed vehicle inspections of two Harold LeMay Enterprises, Inc., (LeMay or Company) vehicles, numbers 1044 and 3571, during a destination check. During the inspections staff discovered the front driver side tire of vehicle 1044 made contact with the pitman arm, an out-of-service violation of Title 49 CFR Part 396.3(a)(1). Staff discovered a second out-of-service violation while inspecting vehicle 3571 when the vehicle's brake lights were inoperable, a violation of Title 49 CFR Part 393.11. Upon discovery, staff placed both vehicles out-of-service per the North American Standard Out-of-Service Criteria handbook (OOS Criteria).

The Washington Utilities and Transportation Commission's (Commission) Enforcement Policy provides that some Commission requirements are so critical to safe operations that it may issue penalties for a first-time violation, even if staff has not previously provided technical assistance on specific issues. The Commission also will assess penalties for any repeat violations of critical regulations, including for each occurrence of a repeat violation.¹

On April 10, 2018, in Docket TG-180253, the Commission issued a penalty against LeMay in the amount of \$200 for two violations of WAC 480-70-201 Vehicle and Driver Safety Requirements, which requires solid waste carriers to comply with Title 49 CFR Part 393 - Parts

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

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and Accessories Necessary for Safe Operation, and Part 396 – Inspection, Repair, and Maintenance as follows:

- **One violation of Title 49 CFR Part 393.11 – Lamps and reflective devices.** Staff discovered the brake lights on vehicle 3571 were inoperable.
- **One violation of Title 49 CFR Part 396.3(a)(1) – Inspection, repair, and maintenance – tires (general).** Commission staff discovered a tire rubbing against the pitman arm on the front left steering axle of vehicle 1044.

On April 25, 2018, LeMay’s attorney filed with the Commission a *Contest to “Notice of Penalties” and Request for Hearing Penalty Assessment: TG-180253*. LeMay contests the violations discovered by staff and states the Notice of Penalties must be rescinded and requests a hearing before an administrative law judge to present evidence.

LeMay states vehicle 1044 should not have been placed out-of-service and adds “. . . Investigator Yeomans claimed that she saw paint worn off of the Pitman arm of Mr. Marsh’s truck. She said that she assumed that the paint was rubbing off of the Pitman arm due to the Pitman arm coming into contact with the front tire. However, investigator Yeomans did not witness the Pitman arm come into contact with the front tire. In fact, she was not observed testing the turning radius at the time to determine whether the tire came into contact with the Pitman arm. Instead, investigator Yeomans claimed there was a violation, and placed Mr. March’s truck out-of-service . . .”

In contestation of the out-of-service violation of vehicle 3571, LeMay claims that Investigator Yeomans observed that the brake lights were not operational. The Company claims that the “. . . brake light fuse might have popped immediately prior to the inspection causing the brake lights to no longer be operational. . .” LeMay claims its trucks are required to drive over a large speed bump in its yard that could have “popped” the brake light fuse just before the vehicle inspection. The Company notes its mechanic immediately installed a new brake light fuse and the brake lights became operational. LeMay claims the vehicle should not have been placed out-of-service because the lights were operational prior to the out-of-service sticker being placed on the truck.

The Company claims both vehicles did not meet the criteria of the North American Uniform Out-of-Service Criteria when Investigator Yeomans placed them out-of-service.

Staff response: Staff does not find Lemay’s claims that its vehicles did not meet the OOS Criteria to be accurate. Staff refutes the claim that Ms. Yeomans did not observe the out-of-service violation but put vehicle 1044 out-of-service based on assumption. LeMay put forward no information suggesting that the out-of-service violation of vehicle 3571 should be removed.

The OOS Criteria was established by the Commercial Vehicle Safety Alliance (CVSA) to improve uniformity in commercial motor vehicle safety and enforcement. The OOS Criteria states that a vehicle should be placed out-of-service if any tire on any front steering axle of a power unit is so mounted or inflated that it comes in contact with any part of the vehicle. Ms.

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Yeomans confirmed that she instructed the driver to turn the steering wheel and witnessed the front driver side tire make contact with vehicle 1044.

The OOS Criteria states a vehicle shall be placed out-of-service at any time – day or night, if the vehicle does not have at least one operative stop lamp on the rear of a single unit vehicle. At the time of inspection the brake lights on vehicle 3571 were inoperable. Because the Company corrected the violation prior to receiving the Out-of-Service decal at the conclusion of the inspection is immaterial. At the time of inspection the vehicle had an out-of-service defect.

All inspections performed by certified CVSA inspectors and investigators are uploaded to the Federal Motor Carrier Safety Administration's (FMCSA) website and subject to a "DataQ" or challenge via the FMCSA's website at dataqs.fmcsa.dot.gov. If challenged staff would find no reason to eliminate the violations that were recorded.

If you have any questions, please contact Jason Sharp, Motor Carrier Safety Supervisor, Transportation Safety at (360) 664-1238 or at Jason.Sharp@utc.wa.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Mathew Perkinson', is written over a faint, light blue circular stamp or watermark.

Mathew Perkinson

Motor Carrier Safety Manager, Transportation Safety