

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TE-160224  
PENALTY AMOUNT: \$2,600

JIMMY'S DISCOUNT MUFFLER BRAKE & RADIATOR  
DBA JIMMY'S LIMOUSINE  
4524 PACIFIC AVENUE SOUTHEAST  
LACEY, WA 98503

The Washington Utilities and Transportation Commission (Commission) believes that you have committed violations of Washington Administrative Code (WAC) 480-30-221 Vehicle and Driver Safety Requirements, which requires charter and excursion carriers to comply with Title 49 Code of Federal Regulations (CFR) Part 382 Controlled Substance and Alcohol Use and Testing, Part 383 Commercial Driver's License Standards, Part 391 Qualifications of Drivers, and Part 395 Driver Hours of Service of Drivers.

Revised Code of Washington (RCW) 81.04.530 allows a penalty of one thousand five hundred dollars for failing to comply with the controlled substances and alcohol use and testing requirements of Title 49 CFR Part 382. RCW 81.04.405 allows penalties of one hundred dollars for each violation. In the case of an ongoing violation, every day's continuance is considered a separate and distinct violation

On January 13, 2016, Commission Motor Carrier Investigator Wayne Gilbert conducted a compliance review of Jimmy's Discount Muffler Brake & Radiator, d/b/a Jimmy's Limousine (Jimmy's Limousine) and documented the following violations of critical regulations:

- **One violation of CFR Part 382.115(a) – Failing to implement an alcohol and/or controlled substances testing program.** Jimmy's Limousine does not have a current drug and alcohol testing program.
- **Four violations of CFR Part 383.37(b) – Allowing disqualified driver to operate a commercial motor vehicle.** Jimmy's Limousine allowed driver Robert DeHart to operate a commercial motor vehicle on four occasions while Robert DeHart's commercial driver's license was invalid.
- **Six violations of CFR Part 391.45(a) – Using a driver not medically examined and certified.** Jimmy's Limousine used three drivers not medically examined and certified on six occasions.

- **One violation of CFR Part 396.3 – Failure to maintain vehicle inspection and maintenance records.** Jimmy's limousine keeps no records of vehicle inspections or maintenance.

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

1. **How serious or harmful the violation is to the public.** The violations noted are serious and potentially harmful to the public. Companies that disregard requirements for drug and alcohol testing, commercial driver's license qualifications or medical examination and certification requirements, or who fail to maintain vehicle inspection and maintenance records put the traveling public at risk. An undocumented medical condition or vehicle defect, or an impaired or unqualified driver present serious safety concerns.
2. **Whether the violation is intentional.** Considerations include:
  - Whether the company ignored staff's 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.

In its application for authority dated October 13, 2005, Jim Palmer, the owner of Jimmy's Limousine, acknowledged his responsibility to understand and comply with applicable motor carrier safety rules.

Staff conducted a compliance review in 2009 and noted similar violations in CFR Parts 382, 383, 391 and 396. Staff conducted an additional compliance review in 2010 and found no violations.

The company knew, or should have known about these requirements.

3. **Whether the company self-reported the violation.** The company did not self-report these violations.
4. **Whether the company was cooperative and responsive.** Jimmy's Limousine was cooperative and appeared interested in coming into compliance.
5. **Whether the company promptly corrected the violations and remedied the impacts.** Jimmy's Limousine responded with a written compliance plan and has taken steps to correct many of the violations.
6. **The number of violations.** The number of critical violations noted is notable.
7. **The number of customers affected.** The company reported 8,308 revenue miles in 2014, so it is reasonable to assume that a significant number of customers were potentially affected by these safety violations.

8. **The likelihood of recurrence.** It is unknown if this company is likely to repeat these violations, however the company is small and appears to be making steps toward correcting the violations noted.
9. **The company's past performance regarding compliance, violations, and penalties.** Staff has conducted two previous compliance reviews, one of which identified similar violations. No penalties were assessed.
10. **The company's existing compliance program.** Jimmy's Limousine has no formal compliance program.
11. **The size of the company.** Jimmy's Limousine operates one commercial vehicle with four drivers, and reported \$39,675 in gross revenue and 8,308 miles travelled for 2014.

Some of the critical violations noted in the compliance review are first-time violations, however the Commission's Enforcement Policy provides that certain Commission requirements are so fundamental to safe operations that the Commission will issue penalties for a first-time violation, regardless of whether or not staff has previously provided technical assistance on specific issues.<sup>1</sup> Within these first-time violations are regulations so critical to public safety that statute (RCW 81.04.405) and enforcement policy penalize each occurrence.

**The Commission has considered these factors and determined that Jimmy's Limousine should be penalized \$2,600 for violations of WAC 480-30-221 Driver Safety Requirements, which adopts CFR Parts 382, 383, 391, and 396, calculated as follows:**

- One violation of CFR Part 382.115(a) at the authorized statutory penalty amount of \$1,500.
- Four violations of CFR Part 383.37(b) – Allowing disqualified driver to operate a commercial motor vehicle, at the statutory rate of \$100 per violation for a total of \$400.
- Six violations of CFR Part 391.45(a) – Using a driver not medically examined and certified, at the statutory penalty of \$100 per violation for a total of \$600.
- One violation of CFR Part 396.3 – Failure to maintain vehicle inspection and maintenance records, at the statutory rate of \$100 per violation for a total of \$100.

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 violations did not occur, you may deny committing the violation and contest the penalty assessment through evidence presented at a

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

hearing or in writing. The Commission will grant a request for hearing only if material issues of law or fact concerning the violation require consideration of evidence and resolution in a hearing. Any contest of the penalty assessment must include a written statement of the reasons supporting that contest. Failure to provide such a statement will result in denial of the contest.

If there is a reason for the violations that you believe should excuse you from the penalty, you may ask for mitigation (reduction) of this 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 for mitigation 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 violations.
- Request mitigation to contest the amount of the penalty.

Please indicate your selection on the enclosed form and send it to the Washington Utilities and Transportation Commission, Post Office Box 47250, Olympia, Washington 98504-7250, **within FIFTEEN (15) days** after you receive this notice.

**If you do not act within 15 days**, the Commission may refer this matter to the Office of the Attorney General for collection. The Commission may then sue you to collect the penalty.

DATED at Olympia, Washington, and effective February 29, 2016.

  
for  
GREGORY J. KOPTA  
Administrative Law Judge

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION  
PENALTY ASSESSMENT TE-160224

**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 violation occurred and enclose \$ \_\_\_\_\_ in payment of the penalty.

2. **Contest the violation.** I believe that the alleged violation did not occur for the reasons I describe below:

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 violation, but I believe that the penalty should be reduced for the reasons set out below:

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: \_\_\_\_\_ [month/day/year], at \_\_\_\_\_ [city, state]

\_\_\_\_\_  
Name of Respondent (company) – please print

\_\_\_\_\_  
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 B felony.”