

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TE-170905
PENALTY AMOUNT: \$200

San Juan Transit Tours & Charter, LLC
10 Front Street – Cannery Landing #24
Friday Harbor, WA 98250

The Washington Utilities and Transportation Commission (Commission) believes that San Juan Transit Tours & Charter, LLC (San Juan Transit) has committed violations of Washington Administrative Code (WAC) 480-30-221, Vehicle and Driver Safety Requirements, which adopts Title 49 Code of Federal Regulations (CFR) Part 393 – Parts and Accessories for Safe Operation.

Revised Code of Washington (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 August 11, 2017, Commission Motor Carrier Investigator Wayne Gilbert conducted Level 1 inspections on two San Juan Transit vehicles. Mr. Gilbert documented the following violations:

- **Two violations of Title 49 CFR Part 393.83(d) – Improper exhaust – bus (diesel).**
 - The exhaust tail pipe on San Juan Transit vehicle “New 1” (2007 GMC bus) was rusted through near the center of the bus, creating an exhaust leak.
 - The exhaust tail pipe on San Juan Transit vehicle “K40” (1988 Ford bus) was missing, releasing exhaust under the vehicle near axle #3.

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 operate charter vehicles with equipment defects place their passengers, as well as their employees at risk. An exhaust defect, in particular, creates an extreme risk to the health and safety of passengers.
2. **Whether the violation is intentional.** Considerations include:
 - Whether the company ignored Commission 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.

The requirement to maintain an exhaust system free of defects is not unique to commercial passenger carriers. Under the federal safety regulations adopted by the Commission, San Juan Transit is required to conduct daily and periodic vehicle inspections. Such inspections should have identified these defects. Staff believes this is a fundamental safety requirement, and that the company knew, or should have known about it.

3. **Whether the company self-reported the violation.** The company did not self-report these violations.
4. **Whether the company was cooperative and responsive.** Both San Juan Transit employees were cooperative and responsive during the inspections.
5. **Whether the company promptly corrected the violations and remedied the impacts.** Kraig Hansen, owner of San Juan Transit, committed to correct the violations immediately.¹
6. **The number of violations.** Staff identified out-of-service violations on two of three San Juan Transit vehicles inspected. This is a significant number of violations.
7. **The number of customers affected.** San Juan Transit reported 70,225 miles travelled and \$210,333 in gross revenue for 2016. A significant number of passengers were likely affected by these safety violations.
8. **The likelihood of recurrence.** The Commission does not know if San Juan Transit is likely to repeat these safety violations, however the employees contacted and the company owner all were cooperative and responsive to staff.
9. **The company's past performance regarding compliance, violations, and penalties.** San Juan Transit began operations and received technical assistance in 2014. Staff identified a large number of critical and critical-type violations during a 2016 compliance review. This review resulted in penalties assessed and a proposed unsatisfactory safety rating.² Staff conducted a follow up review in August 2017 and identified additional acute and critical violations. The equipment violations cited here are first-time violations.
10. **The company's existing compliance program.** San Juan Transit has no formal compliance program.
11. **The size of the company.** San Juan Transit is a medium-sized charter company with seven vehicles and 12 drivers.

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

¹ Companies self-certify that repairs are made and are not required to submit proof of correction to staff.

² The Commission upgraded the company's safety rating to "conditional" and it was allowed to continue operations.

occurrence of a first-time violation.³ The Commission generally will assess penalties per type of 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 found in future compliance investigations, including each occurrence of a repeat violation.

The Commission has considered these factors and determined that it should penalize San Juan Transit \$200 for violations of WAC 480-30-221 Vehicle and Driver Safety Requirements, which adopts Title 49 CFR Part 393, calculated as follows:

- Two violations of Title 49 CFR Part 393.83(d) – Improper exhaust – bus (diesel). Under its enforcement policy, the Commission assesses a penalty of \$100 each for both of these federal out-of-service violations, for a total of \$200.

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 of the violations did not occur, you may deny committing the violation(s) and contest the penalty assessment 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 concerning the violation(s) 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 any or all of 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(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 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.

³ Docket A-120061 – Enforcement Policy of the Washington Utilities & Transportation Commission – Section V.

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 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 Olympia, Washington, and effective October 2, 2017

/s/ Gregory J. Kopta
GREGORY J. KOPTA
Administrative Law Judge

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TE-170905

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 (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 violation, 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: _____ [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.”