

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

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

PENALTY ASSESSMENT: TE-171193

PENALTY AMOUNT: \$1,500

BML Investments LLC  
d/b/a Wenatchee Valley Shuttle  
400 South Wenatchee Avenue  
Wenatchee, WA 98801

The Washington Utilities and Transportation Commission (Commission) believes that BML Investments LLC, d/b/a Wenatchee Valley Shuttle (Wenatchee Valley Shuttle) 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 382 – Controlled Substances and Alcohol Use and Testing.

Revised Code of Washington (RCW) 81.04.530 allows a penalty of one thousand five hundred dollars for a company operating without a controlled substance and alcohol testing program that is in compliance with the requirements of Title 49 CFR Part 382.

In December 2017, Commission Motor Carrier Investigator Francine Gagne completed a routine safety investigation of Wenatchee Valley Shuttle and documented:

- **One violation of Title 49 CFR Part 382.305(a) – Failing to implement a random controlled substance and/or alcohol testing program.** Wenatchee Valley Shuttle had no controlled substance testing program until April of 2017.

The Commission considered the following factors in determining the appropriate penalty for this violation:

1. **How serious or harmful the violation is to the public.** The violation noted is serious and potentially harmful to the public. Passenger transportation companies that fail to implement a controlled substance and/or alcohol testing program put the traveling public at risk. An impaired driver presents serious safety concerns.
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.

Wenatchee Valley Shuttle applied for passenger transportation authority in 2012. In its application, the company's chief executive officer Monique Lott, and the chief financial officer Byron Lott acknowledged their responsibility for understanding and complying

with applicable state and federal safety regulations. Staff also provided new entrant technical assistance at that time.

Since 2012, Commission staff has conducted five safety investigations of Wenatchee Valley Shuttle. Staff believes that 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.** Wenatchee Valley Shuttle was cooperative and responsive throughout the entire investigation.
5. **Whether the company promptly corrected the violation and remedied the impact.** Wenatchee Valley Shuttle corrected the violation in April 2017, prior to the safety investigation.
6. **The number of violations.** In total, staff identified 18 violation types with a total of 61 occurrences. This is a significant number of violations for a company the size of Wenatchee Valley Shuttle.
7. **The number of customers affected.** The company traveled 455,000 miles and reported \$853,300 in gross revenue for 2016. A significant number of customers as well as members of the traveling public were potentially affected by these safety violations.
8. **The likelihood of recurrence.** The Commission does not know if Wenatchee Valley Shuttle is likely to repeat these safety violations. However, the company was cooperative with staff and appeared interested in coming into compliance with safety regulations.
9. **The company's past performance regarding compliance, violations, and penalties.** This is the company's fifth safety investigation. The Commission penalized Wenatchee Valley Shuttle in 2012 for safety violations and for operation in violation of a Commission order, and in 2013 for failure to file its annual report or pay its regulatory fee.
10. **The company's existing compliance program.** Chief Executive Officer Monique Lott is responsible for the carrier's safety compliance program.
11. **The size of the company.** Wenatchee Valley Shuttle is a small company with eleven drivers and eight commercial vehicles.

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.<sup>1</sup> The Commission generally will assess penalties per type of

---

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



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 Wenatchee Valley Shuttle \$1,500 for violations of WAC 480-30-221 Vehicle and Driver Safety Requirements, calculated as follows:

- One violation of Title 49 CFR Part 382.305(a) – Failing to implement a random controlled substance and/or alcohol testing program. The Commission assesses a penalty at the statutory amount of \$1,500 for this violation.

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 violation did not occur, you may deny committing the violation 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 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 violation 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 violation.
- 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 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 January 5, 2018.

*/s/ Gregory J. Kopta*  
GREGORY J. KOPTA  
Director, Administrative Law Division

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION  
PENALTY ASSESSMENT TC-171193

**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.”