

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

**PENALTY ASSESSMENT: TE-180064
PENALTY AMOUNT: \$100**

Transportation Demand Management LLC
9801 Martin Luther King Jr Way S
Seattle, WA 98118

The Washington Utilities and Transportation Commission (Commission) believes that Transportation Demand Management LLC (Transportation Demand Management) 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 396 – Inspection, Repair, and Maintenance.

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.

In January 2018, Commission Motor Carrier Investigator Wayne Gilbert completed a vehicle inspection of Transportation Demand Management during a destination check and documented:

- **One violation of Title 49 CFR Part 396.5(b) – Hubs – oil and/or grease leaking from hub.** Staff discovered a leaking outer wheel hub on axle number 2, right side.

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. A leaking wheel hub can contaminate a vehicles braking system and increase the risk of an axle failure which could contribute to an accident. This puts the traveling public at risk and 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.

There is no evidence to suggest that Transportation Demand Management ignored staff's technical assistance or otherwise was aware of and failed to correct the violation.

3. **Whether the company self-reported the violation.** The company did not self-report these violations.

4. **Whether the company was cooperative and responsive.** Transportation Demand Management was cooperative and responsive throughout the vehicle inspection.
5. **Whether the company promptly corrected the violation and remedied the impact.** Staff placed the vehicle out of service and directed Transportation Demand Management to correct the violation.
6. **The number of violations.** In total, staff identified one violation and placed the vehicle out of service.
7. **The number of customers affected.** The company traveled 2,147,930 miles in 2016. A significant number of customers as well as members of the traveling public were potentially affected by this safety violation.
8. **The likelihood of recurrence.** The Commission does not know if Transportation Demand Management is likely to repeat this safety violation, 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.** The company has had no previous penalties or violations of this type.
10. **The company's existing compliance program.** Gladys T. Gillis, Chief Executive Officer for Transportation Demand Management is responsible for the carrier's safety compliance program.
11. **The size of the company.** Transportation Demand Management is a large company that operates a fleet of approximately 106 coaches and mini-buses and employs 125 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 occurrence of a first-time violation.¹ 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 Transportation Demand Management \$100 for violation of WAC 480-30-221 Vehicle and Driver Safety Requirements, calculated as follows:

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

- One violation of Title 49 CFR Part 396.5(b) – Hubs – oil and/or grease leaking from hub. The Commission assesses a penalty at the statutory amount of \$100 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 February 5, 2018.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TE-180064

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.”