

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TE-190589

PENALTY AMOUNT: \$2,500

AC Checker LLC
d/b/a VIP Arrivals
1101 3rd Street NE
East Wenatchee, WA 98802

The Washington Utilities and Transportation Commission (Commission) believes that AC Checker LLC, d/b/a VIP Arrivals (VIP Arrivals or Company) violated Washington Administrative Code (WAC) 480-30-221, Vehicle and Driver Safety Requirements, which adopts Title 49 Code of Federal Regulations (CFR) Part 391 – Qualifications of Drivers; Part 395 – Hours of Service of Drivers; and Part 396 – Inspection, Repair, and Maintenance.

Revised Code of Washington (RCW) 81.04.405 allows penalties of \$100 for each violation. In the case of an ongoing violation, every day's continuance is considered a separate and distinct violation.

On July 10, 2019, Commission Motor Carrier Investigator Jason Sharp completed a routine safety investigation of VIP Arrivals and documented the following violations:

- **Twenty-one violations of Title 49 CFR Part 391.45(a) – Using a driver not medically examined and certified.** The Company allowed two of its drivers to drive without having been medically examined and certified. Aaron Griffith drove a total of 15 times without a medical certificate between March 2, 2019, and June 8, 2019. Paul Clemens drove a total of six times without a medical certificate between May 27, 2019, and June 15, 2019.
- **Two violations of Title 49 CFR Part 391.51(a) – Failing to maintain driver qualification file on each driver employed.** The Company failed to maintain driver qualification files for drivers Aaron Griffith and Paul Clemens.
- **Sixty violations of Title 49 CFR Part 395.8(a)(1) – Failing to require driver to prepare a record of duty status using the appropriate method.** The Company failed on 60 occasions to require drivers Aaron Griffith and Paul Clemens to make a record of duty status.
- **One violations of Title 49 CFR Part 396.17(a) – Using a commercial motor vehicle not periodically inspected.** The Company failed to have an annual inspection performed on its commercial motor vehicle, VIP 1.

- **One violations of Title 49 CFR Part 393.62(a) – No or defective bus emergency exits.** The Company’s commercial motor vehicle was placed out-of-service when an emergency exit window would not open.¹

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

1. **How serious or harmful the violations are to the public.** The violations noted are serious and potentially harmful to the public. Companies that: (1) use drivers not medically examined and certified, (2) fail to maintain driver qualification files, (3) fail to require drivers to create a record of duty status, (4) use commercial motor vehicles that have not been annually inspected, and (5) use commercial motor vehicles that are in need of repairs put their customers as well as the traveling public at risk. These violations present serious safety concerns.
2. **Whether the violations were 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.

On March 14, 2016, the Commission received the Company’s application for charter and excursion carrier authority. Aaron Griffith, owner of VIP Arrivals, acknowledged the Company’s responsibility to understand and comply with applicable motor carrier safety rules in the application.

On April 5, 2016, Commission Motor Carrier Investigator Sandi Yeomans provided technical assistance during VIP Arrivals’ new entrant examination. Company representative Joe Nichols documented that training was provided.

The Company knew or should have known about these requirements.

3. **Whether the Company self-reported the violations.** VIP Arrivals did not self-report these violations.
4. **Whether the Company was cooperative and responsive.** VIP Arrivals was cooperative throughout the investigation and expressed a desire to come into compliance with the safety regulations.
5. **Whether the Company promptly corrected the violations and remedied the impacts.** The closing interview took place on July 10. The Company has 15 days from that date to submit a letter to the Commission describing the actions it has taken in response to the investigation to ensure it is complying with Motor Carrier Safety Regulations. To date, the Company has not submitted such a letter.

¹ Company equipment identification number VIP 1.

6. **The number of violations.** Commission staff identified 14 violation types with a total of 94 individual occurrences.
7. **The number of customers affected.** VIP Arrivals employs two drivers and operates one bus classified as a commercial motor vehicle. In 2018, VIP Arrivals traveled 4,150 miles. These safety violations presented a significant public safety risk.
8. **The likelihood of recurrence.** The Commission does not know if VIP Arrivals is likely to repeat these safety violations. VIP Arrivals was cooperative with Staff, willingly accepted technical assistance, and took steps to correct the violations.
9. **The Company's past performance regarding compliance, violations, and penalties.** This is VIP Arrivals' first routine safety investigation. The Company has no history of safety penalties.

On June 12, 2017, the Commission penalized VIP Arrivals \$250 for failure to furnish an annual report to the Commission by the May 1 deadline.

On May 31, 2019, the Commission penalized VIP Arrivals \$250 for failure to furnish an annual report to the Commission by the May 1 deadline.
10. **The Company's existing compliance program.** Owner Aaron Griffith is responsible for VIP Arrivals' safety compliance program.
11. **The size of the Company.** VIP Arrivals currently operates one party bus with two drivers. The Company reported \$11,200 in gross revenue for 2018.

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.² 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, including each occurrence of a repeat violation.

The Commission has considered these factors and determined that it should penalize VIP Arrivals \$2,500, calculated as follows:

- 21 violations of Title 49 CFR Part 391.45(a) – Using a driver not medically examined and certified. The Commission assesses a penalty of \$100 for each occurrence of this critical violation, for a total of \$2,100.

² Docket A-120061 – Enforcement Policy of the Washington Utilities & Transportation Commission – Section V.

- Two violations of Title 49 CFR Part 391.51(a) – Failing to maintain driver qualification file on each driver employed. The Commission assesses a “per category” penalty of \$100 for this first-time critical violation.
- 60 violations of Title 49 CFR Part 395.8(a)(1) – Failing to require driver to prepare a record of duty status using the appropriate method. The Commission assesses a “per category” penalty of \$100 for 60 occurrences of this first-time critical violation.
- One violations of Title 49 CFR Part 396.17(a) – Using a commercial motor vehicle not periodically inspected. The Commission assesses a penalty of \$100 for this first-time critical type violation.
- One violations of Title 49 CFR Part 393.62(a) – No or defective bus emergency exits. The Commission assesses a penalty of \$100 for this out-of-service 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 any or all of the violations did not occur, you may deny committing the violation(s) and contest the penalty through evidence presented at a hearing or in writing. Alternatively, 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 the 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 to contest the violation or for mitigation of the penalty 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 violation(s).
- Admit the violations but request mitigation of the penalty amount.

Please indicate your selection on the enclosed form and submit it electronically through the Commission’s web portal **within FIFTEEN (15) days** after you receive this notice. If you are unable to use the web portal, you may submit it via email to records@utc.wa.gov. If you are unable to submit the form electronically, you may send a paper copy to the Washington Utilities and Transportation Commission, PO Box 47250, Olympia, Washington 98504-7250.

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 Lacey, Washington, and effective July 22, 2019.

/s/ Rayne Pearson
RAYNE PEARSON
Director, Administrative Law Division

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TE-190589

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 violations occurred and enclose \$2,500 in payment of the penalty.
- 2. **Contest the violation(s).** I believe that the alleged violation(s) 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 violations, 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

“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