

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TE-190685

PENALTY AMOUNT: \$1,500

A+ Transportation NW, Inc.,
d/b/a Eastern Washington Transportation
2526 S. 12th Avenue
Yakima, WA 98903

The Washington Utilities and Transportation Commission (Commission) believes that A+ Transportation NW, Inc., d/b/a Eastern Washington Transportation (A+ Transportation 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.

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 25, 2019, Commission Motor Carrier Investigator Sandra Yeomans completed a routine safety investigation of A+ Transportation and documented the following violations:

- **Five violations of 49 CFR § 391.21(a) – Using a driver who has not completed and furnished an employment application.** The Company failed to complete or furnish an employment application for drivers Wanda Guzman, Juan Carlos Marroquin, Phyllis Pitts, Jason Ashley, and Sandra Bullock.
- **Thirteen violations of 49 CFR § 391.45(a) – Using a driver not medically examined and certified.** A+ Transportation allowed its drivers Wanda Guzman, Juan Carlos Marroquin, Phyllis Pitts, Jason Ashley, and Sandra Bullock to drive without having been medically examined and certified on 13 occasions between March 22, 2019, and June 27, 2019.
- **Five violations of 49 CFR § 391.51(b)(6) – Failing to maintain a list or certificate relating to violations of motor vehicle laws and ordinances required by 391.27.** The Company failed to maintain a list or certificate of all violations of motor vehicle traffic laws and ordinances for drivers Wanda Guzman, Juan Carlos Marroquin, Phyllis Pitts, Jason Ashley, and Sandra Bullock.

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 use drivers not medically

examined and certified and drivers with unknown traffic convictions 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 (Staff) 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 February 21, 2006, the Commission received the Company's application for charter and excursion service authority. In the application, Randy Ammerman, President of A+ Transportation, acknowledged the Company's responsibility to understand and comply with applicable motor carrier safety rules.

On July 20, 2015, Staff completed a routine safety investigation of A+ Transportation, which resulted in a proposed "Satisfactory" safety rating. During the review, Staff discovered violations of 49 CFR § 391.21(a), 49 CFR § 391.45(a), and 49 CFR § 391.51(b)(6).

The Company knew or should have known about these requirements.

3. **Whether the Company self-reported the violations.** A+ Transportation did not self-report these violations.
4. **Whether the Company was cooperative and responsive.** The Company was cooperative and made corrections throughout the safety investigation.
5. **Whether the Company promptly corrected the violations and remedied the impacts.** The Company corrected the violations as they were identified by Staff.
6. **The number of violations.** Staff identified 12 violation types with a total of 42 individual occurrences.
7. **The number of customers affected.** The Company employs 10 drivers and operates seven commercial vehicles. A+ Transportation traveled 59,489 miles in 2018. These safety violations presented a public safety risk.
8. **The likelihood of recurrence.** Staff identified process breakdowns within A+ Transportation. Staff provided specific remedies to help the Company assess how well its safety management controls support safe operations and how to begin improving its safety performance. The Company was cooperative with Staff, and took immediate action to correct the violations; however, these violations are repeat violations from the July 20, 2015, safety investigation. There is a moderate chance of recurrence.
9. **The Company's past performance regarding compliance, violations, and penalties.** On March 4, 2013, A+ Transportation was penalized \$75 in Docket TE-130186 for failing to file a timely annual safety report and pay regulatory fees.

On June 8, 2015, the Company was penalized \$900 in Docket TE-150995 for failing to file its annual report and pay regulatory fees by May 1.

On June 15, 2017, A+ Transportation was penalized \$200 in Docket TE-170591 for failing to file a complete annual report and pay regulatory fees by May 1.

The Company has no history of penalties for safety violations.

10. The Company's existing compliance program. Shannon Boitano, General Manager of A+ Transportation, is responsible for the Company's safety compliance program.

11. The size of the Company. A+ Transportation currently operates seven vehicles and employs 10 drivers. The Company reported \$23,615 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.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, including each occurrence of a repeat violation.

The Commission has considered these factors and determined that it should penalize A+ Transportation \$1,500, calculated as follows:

- Five violations of 49 CFR § 391.21(a) – Using a driver who has not completed and furnished an employment application. The Commission assesses a "per category" penalty of \$100 for this repeat violation.
- Thirteen violations of 49 CFR § 391.45(a) – Using a driver not medically examined and certified. This is a repeat violation of a fundamental safety requirement. The Commission assesses a penalty of \$100 for each occurrence of this violation, for a total of \$1,300.
- Five violations of 49 CFR § 391.51(b)(6) – Failing to maintain a list or certificate relating to violations of motor vehicle laws and ordinances required by 391.27. The Commission assesses a "per category" penalty of \$100 for this repeat 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

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

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(s) 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 August 30, 2019.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TE-190685

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 \$1,500 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

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