

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TE-190996

PENALTY AMOUNT: \$2,500

Tri Cities Limo LLC,
d/b/a Tri Cities Limo
P.O. Box 4792
Pasco, WA 99301

The Washington Utilities and Transportation Commission (Commission) believes Tri Cities Limo LLC, d/b/a Tri Cities Limo, (Tri Cities Limo or Company) violated Washington Administrative Code (WAC) 480-30-191, Bodily Injury and Property Damage Liability Insurance; and WAC 480-30-221, Vehicle and Driver Safety Requirements, which adopts Title 49 Code of Federal Regulations (49 CFR) Part 382 – Controlled Substance and Alcohol Use and Testing, 49 CFR Part 391 – Qualifications of Drivers, and 49 CFR 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. RCW 81.04.530 allows penalties of \$500 for each motor vehicle driver not in compliance with the motor vehicle driver testing requirements.

On December 3, 2019, Commission Motor Carrier Investigator Sandra Yeomans completed a routine safety investigation of Tri Cities Limo and documented the following violations:

- **Seventeen violations of WAC 480-30-191 – Motor vehicles that have a passenger seating capacity of sixteen or more (including the driver) must have \$5,000,000 combined single limit coverage.** Tri Cities Limo operated a commercial motor vehicle on 17 occasions between February 23 and July 20, 2019, without having the required minimum levels of insurance.
- **One violation of 49 CFR § 382.301(a) – Using a driver before the motor carrier has received a negative pre-employment controlled substance test result.** Tri Cities Limo allowed driver Martha Padilla to operate a commercial motor vehicle before the Company received a negative pre-employment controlled substance test result.
- **Four violations of 49 CFR § 391.51(b)(7) – Failing to maintain medical examiner's certificate in driver's qualification file.** The Company failed to maintain medical examiner's certificates in the driver qualification files of employees James Garner, Anita Thomas, Ronald Wycaver, and David Nielsen.

- **Three violations of 49 CFR § 396.3(b) – Failing to keep minimum records of inspection and vehicle maintenance.** Tri Cities Limo failed to keep minimum records of inspection and vehicle maintenance for its three commercial motor vehicles.
- **Fourteen violations of 49 CFR § 396.11(a) – Failing to require driver to prepare driver vehicle inspection report.** The Company failed to require drivers James Garner, Ronald Wycaver, Martha Padilla, and David Nielsen to prepare a driver vehicle inspection report on 14 occasions.

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) allow drivers to operate commercial motor vehicles prior to receiving negative pre-employment controlled substance test results, (2) operate commercial motor vehicles without the required minimum levels of insurance, (3) fail to maintain medical examiner's certificates in driver qualification files, (4) fail to keep minimum records of inspection and vehicle maintenance, and (5) fail to require drivers to prepare driver vehicle inspection reports put 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 July 2, 2014, the Commission received a joint application to transfer all rights under certificate CH-63560. In the application, Melanie Weber, managing member of Tri Cities Limo, acknowledged the Company's responsibility to understand and comply with applicable motor carrier safety regulations.

On January 8, 2015, Tri Cities Limo filed with the Commission an application that its corporate name had changed. In the application, Melanie Weber acknowledged the Company's responsibility to understand and comply with applicable motor carrier safety regulations.

The Company knew or should have known about these requirements.

3. **Whether the Company self-reported the violations.** Tri Cities Limo did not self-report these violations.
4. **Whether the Company was cooperative and responsive.** Tri Cities Limo was cooperative in providing Staff with requested documentation and access to vehicles.

5. **Whether the Company promptly corrected the violations and remedied the impacts.** Corrections of the violations were made throughout the investigation process.
6. **The number of violations.** Staff identified 18 violation types with a total of 79 individual occurrences.
7. **The number of customers affected.** The Company employs five commercial drivers and operates three commercial motor vehicles. Tri Cities Limo traveled 16,489 miles in 2018. These safety violations presented a public safety risk.
8. **The likelihood of recurrence.** Staff provided technical assistance with 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 mostly cooperative with Staff and corrected violations throughout the investigation process. In light of these factors, Staff believes the likelihood of recurrence is low.
9. **The Company's past performance regarding compliance, violations, and penalties.** Tri Cities Limo has no history of violations or penalties with the Commission.
10. **The Company's existing compliance program.** Melanie Weber is responsible for the Company's safety compliance program.
11. **The size of the Company.** Tri Cities Limo currently operates three commercial motor vehicles and employs five drivers. The Company reported \$110,064 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 Tri Cities Limo \$2,500, calculated as follows:

- Seventeen violations of WAC 480-30-191 – Motor vehicles that have a passenger seating capacity of sixteen or more (including the driver) must have \$5,000,000 combined single limit coverage. The Commission assesses a penalty of \$100 for each occurrence of this acute violation, for a total of \$1,700.

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

- One violation of 49 CFR § 382.301(a) – Using a driver before the motor carrier has received a negative pre-employment controlled substance test result. The Commission assesses a penalty of \$500 for this violation.
- Four violations of 49 CFR § 391.51(b)(7) – Failing to maintain medical examiner’s certificate in driver’s qualification file. The Commission assesses a “per category” penalty of \$100 for these first-time violations.
- Three violations of 49 CFR § 396.3(b) – Failing to keep minimum records of inspection and vehicle maintenance. The Commission assesses a “per category” penalty of \$100 for these first-time violations.
- Fourteen violations of 49 CFR § 396.11(a) – Failing to require driver to prepare driver vehicle inspection report. The Commission assesses a “per category” penalty of \$100 for these first-time violations.

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(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 December 27, 2019.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TE-190996

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

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.”