

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TG-191001
PENALTY AMOUNT: \$400

Mountain Barge Services, LLC
P.O. Box 2638
Chelan, WA 98816

The Washington Utilities and Transportation Commission (Commission) believes Mountain Barge Services, LLC, (Mountain Barge Services or Company) violated Washington Administrative Code (WAC) 480-70-201, Vehicle and Driver Safety Requirements, which adopts Title 49 Code of Federal Regulations (49 CFR) Part 391 – Qualifications of Drivers, 49 CFR Part 393 – Parts and Accessories Necessary for Safe Operation, 49 CFR Part 395 – Hours of Service 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.

On December 3, 2019, Commission Motor Carrier Investigator Sandra Yeomans completed a routine safety investigation of Mountain Barge Services and documented the following violations:

- **Three violations of 49 CFR § 391.51(b)(2) – Failing to maintain inquiries into driver's driving record in driver's qualification file.** Mountain Barge Services failed to maintain a driving record inquiry in the driver qualification files for Christopher Cleman, Thomas Courtney, and Reed Courtney.
- **One violation of 49 CFR § 393.209(b) – Excessive steering wheel lash.** Commission staff (Staff) discovered a commercial motor vehicle with an 18-inch wheel lash on a 20-inch wheel. This commercial motor vehicle was placed out-of-service.¹
- **Thirty violations of 49 CFR § 395.8(a) – Failing to require driver to make a record of duty status.** The Company failed to require its driver Thomas Courtney to prepare a record of duty status on 30 occasions between August 1 and August 30, 2019.
- **One violation of 49 CFR § 396.5(b) – Oil and/or grease leaking from wheel hub.** Staff discovered a commercial motor vehicle with oil leaking from the right and left wheel seals of axle number two, causing the brakes to be contaminated. This commercial motor vehicle was placed out-of-service.²

¹ Equipment Identification Number 405.

² *Id.*

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) fail to maintain driving record inquiries, (2) fail to require drivers to create records of duty status, and (3) use motor vehicles that are in need of repairs put the traveling public at risk. These violations present serious safety concerns.
2. **Whether the violations were intentional.** Considerations include:
 - Whether the Company ignored 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 August 5, 2013, Tom H. Courtney, d/b/a Stehekin Maintenance and Machinery (Stehekin), and Mountain Barge Services filed a joint application with the Commission requesting authority to transfer all rights under certificate G-191 from Stehekin to Mountain Barge Services. In the application, Thomas Courtney, Managing Member of Mountain Barge Services, 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.** Mountain Barge Services did not self-report these violations.
4. **Whether the Company was cooperative and responsive.** The Company was cooperative throughout the safety investigation, and corrected the violations as they were identified by Staff.
5. **Whether the Company promptly corrected the violations and remedied the impacts.** Mountain Barge Services corrected the violations during the safety investigation.
6. **The number of violations.** Staff identified 20 violation types with a total of 68 individual occurrences.
7. **The number of customers affected.** The Company employs three drivers and operates one commercial motor vehicle. Mountain Barge Services traveled 20,252 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 cooperative with Staff, and made corrections as violations were identified by Staff. In light of these factors, Staff believes the likelihood of recurrence is low.
9. **The Company's past performance regarding compliance, violations, and penalties.** On July 7, 2017, Mountain Barge Services was penalized \$1,000 in Docket TG-170573

for failing to file a complete annual report and pay regulatory fees by May 1, 2017. The Company paid the penalty in full.

On September 1, 2017, Mountain Barge Services was issued a Notice of Intent to Cancel Solid Waste Collection Certificate in Docket TG-170916 for failing to file an annual report and pay required regulatory fees. On November 29, 2017, the Commission issued a letter acknowledging that the Company came into compliance, and closed the docket without further action.

The Company has no history of safety violations with the Commission.

10. **The Company's existing compliance program.** Warren Courtney, Project Manager of Mountain Barge Services, is responsible for the Company's safety compliance program.
11. **The size of the Company.** Mountain Barge Services currently operates one motor vehicle and employs three drivers. The Company reported \$2,017,719 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.³ 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 Mountain Barge Services \$400, calculated as follows:

- Three violations of 49 CFR § 391.51(b)(2) – Failing to maintain inquiries into driver's driving record in driver's qualification file. The Commission assesses a "per category" penalty of \$100 for these first-time violations.
- One violation of 49 CFR § 393.209(b) – Excessive steering wheel lash. The Commission assesses a penalty of \$100 for this out-of-service violation.
- Thirty violations of 49 CFR § 395.8(a) – Failing to require driver to make a record of duty status. The Commission assesses a "per category" penalty of \$100 for these first-time violations.
- One violation of 49 CFR § 396.5(b) – Oil and/or grease leaking from wheel hub. The Commission assesses a penalty of \$100 for this out-of-service violation.

³ Docket A-120061 – Enforcement Policy of the Washington Utilities & Transportation Commission – Section V.

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 13, 2019.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TG-191001

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 \$400 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.”