

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TV-200144
PENALTY AMOUNT: \$100

Evergreen Transfer & Storage, Inc.
8576 SW Warrior Ave.
Bremerton, WA 98312

The Washington Utilities and Transportation Commission (Commission) believes Evergreen Transfer & Storage, Inc., (Evergreen Transfer or Company) violated Washington Administrative Code (WAC) 480-15-570, Driver Safety Requirements, which adopts Title 49 Code of Federal Regulations (49 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 February 25, 2020, Commission Motor Carrier Investigator Francine Gagne completed a routine safety investigation of Evergreen Transfer and documented the following violations:

- **Five violations of 49 CFR § 391.51(b)(2) – Failing to maintain inquiries into driver's driving record in driver's qualification file.** The Company did not maintain the initial driver abstract for drivers Timothy Katona, Michael Powers, Waynetta Burpo, Daniel Tumulty, and DeAndre Summers.

The Commission considered the following factors in determining the appropriate penalty 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 fail to maintain inquiries into driver's driving records put their customers' belongings and the traveling public at risk. These violations present public 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 violations.

On April 19, 2005, the Commission received Evergreen Transfer's application for Timothy Katona and Kimberly Katona to acquire control of the Company through the purchase of corporate stock. In the application, Evergreen Transfer acknowledged its responsibility to understand and comply with applicable motor carrier safety regulations.

On September 28, 2005, Staff completed a routine safety investigation of the Company resulting in a “satisfactory” safety rating, wherein violations were identified and technical assistance was provided.

The Company knew or should have known about these requirements.

3. **Whether the Company self-reported the violations.** Evergreen Transfer did not self-report these violations.
4. **Whether the Company was cooperative and responsive.** Evergreen Transfer was cooperative throughout the investigation and expressed a desire to come into compliance.
5. **Whether the Company promptly corrected the violations and remedied the impacts.** Evergreen Transfer corrected the violations by obtaining motor vehicle reports for its drivers.
6. **The number of violations.** Staff identified nine violation types with a total of 36 individual occurrences.
7. **The number of customers affected.** The Company employs 17 drivers and operates 16 commercial motor vehicles. Evergreen Transfer traveled 17,150 intrastate 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 expressed a desire to come into compliance. In light of these factors, Staff believes that the likelihood of recurrence is low.
9. **The Company’s past performance regarding compliance, violations, and penalties.** On June 5, 2014, Evergreen Transfer was penalized in Docket TV-140957 after failing to file a complete annual report and pay regulatory fees by the due date. The Company has no history of penalties for safety violations.
10. **The Company’s existing compliance program.** Timothy Katona, President and Owner of Evergreen Transfer, is responsible for the Company’s safety compliance program.
11. **The size of the Company.** Evergreen Transfer currently operates 16 commercial motor vehicles and employs 17 drivers. The Company reported \$2,105,310 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

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

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 Evergreen Transfer \$100, calculated as follows:

- Five 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.

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 their 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 amounts.

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 March 13, 2020.

/s/ Rayne Pearson

RAYNE PEARSON

Director, Administrative Law Division

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TV-200144

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 \$100 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