

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TE-210189

PENALTY AMOUNT: \$1,200

JPH International, Inc.,
d/b/a A&A Airport Limousine Service; A Bus Service Seattle
6705 NE 175th St.
Kenmore, WA 98028

The Washington Utilities and Transportation Commission (Commission) believes JPH International, Inc., d/b/a A&A Airport Limousine Service; A Bus Service Seattle, (JPH International or Company) violated Washington Administrative Code (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 and 49 CFR Part 391 – Qualification 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. RCW 81.04.530 allows penalties of \$500 for each motor vehicle driver not in compliance with the motor vehicle driver testing requirements.

On March 18, 2021, Commission Motor Carrier Investigator Sandra Yeomans completed a routine safety investigation of JPH International and documented the following violations:

- **One violation of 49 CFR § 382.105 – Using a Department of Transportation (DOT) custody and control form to perform a non-DOT test.** The Company used a DOT custody form for a pre-employment test for driver Wendi Dworak, who is a non-DOT driver.
- **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.** JPH International allowed driver Nathnael Gemechu to drive on February 24, 2020, before receiving a negative controlled substance test result on March 9, 2020.
- **Six violations of 49 CFR § 382.601(b) – Failing to provide to employees a written policy on misuse of alcohol and controlled substances that meets the requirements of 382.601(b) 1-11.** The Company failed to provide drivers Roger Johnson, Edwin Lyle, John Newcomer, Mark Ronan Sr., Jasbir Sandhu, and Stewart Thompson with a current written controlled substance and alcohol policy as required.
- **Three violations of 49 CFR § 391.45(a) – Using a driver not medically examined and certified.** JPH International allowed Randall Corcoran to drive with an expired medical certificate on three occasions between December 31, 2020, and January 13, 2021.

- **Two violations of 49 CFR § 391.51(b)(2) – Failing to maintain inquiries into driver’s driving record in driver’s qualification file.** The Company failed to maintain initial driver records in the driver qualification files for Jasbir Sandhu and Stewart Thompson.
- **Eight violations of 49 CFR § 391.51(b)(9) – Failing to place a note related to the verification of the medical examiner’s listing on the National Registry of Certified Medical Examiners required by 391.23(m) in driver qualification file.** The Company failed to verify and note that the medical examiner is on the national registry of medical examiners for drivers Randall Corcoran, Wendi Dworak, Roger Johnson, Edwin Lyle, John Newcomer, Mark Ronan Sr., Jasbir Sandhu, and Stewart Thompson.

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

1. **How serious or harmful the violations are to the public.** The violations noted are serious and potentially harmful to the public. Passenger transportation companies that: (1) fail to use appropriate and current paperwork, (2) allow drivers to operate commercial motor vehicles without receiving pre-employment drug tests, (3) fail to inform drivers of its controlled substance and alcohol policy, (4) allow drivers to operate commercial motor vehicles with expired medical certificates, (5) fail to maintain inquiries into driver’s driving records, and (6) fail to verify medical examiners are listed on the national registry put their customers 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 25, 2008, the Commission received the Company’s application for charter and excursion authority. In the application, Jasbir Sandhu, vice president of operations of JPH International, acknowledged the Company’s responsibility to understand and comply with applicable safety laws and regulations.

On May 20, 2008, Staff provided new entrant safety regulation training to JPH International, where Staff acknowledged providing training pertaining to these violations.

On May 31, 2017, Staff completed a routine safety investigation of JPH International and documented three violations of 49 CFR § 382.301(a), one violation of 49 CFR § 382.105, one violation of 49 CFR § 382.601(b), and eight violations of 49 CFR § 391.51(b)(9).

The Company knew or should have known about these requirements.

3. **Whether the Company self-reported the violations.** JPH International did not self-report these violations.

4. **Whether the Company was cooperative and responsive.** JPH International 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.** The Company corrected the violations immediately as they were discovered.
6. **The number of violations.** Staff identified 21 violation types with a total of 72 individual occurrences.
7. **The number of customers affected.** JPH International traveled 72,645 miles in 2020. 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. While the Company was cooperative with Staff and expressed a desire to come into compliance, four of the violations were identified during the 2017 routine safety investigation. Absent a commitment to prioritize safe operations, the violations are likely to reoccur.
9. **The Company's past performance regarding compliance, violations, and penalties.** On June 9, 2015, JPH International was penalized \$300 in Docket TE-151026 for failing to file a complete annual report and pay regulatory fees.

On October 19, 2017, JPH International was penalized \$1,700 in Docket TE-170986 for safety violations of WAC 480-30-221. On December 1, 2017, the Commission entered Order 01, which reduced the penalty to \$700. The Company paid the penalty in full.

On December 19, 2018, JPH International was penalized \$1,000 in Docket TE-180895 for safety violations of WAC 480-30-221. The Company paid the penalty in full.
10. **The Company's existing compliance program.** Jasbir Sandhu is responsible for the Company's safety compliance program.
11. **The size of the Company.** JPH International currently operates 30 commercial motor vehicles and employs 31 drivers. The Company reported \$1,014,742 in gross revenue for 2020.

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 by violation category, 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"

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

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 JPH International \$1,200, calculated as follows:

- One violation of 49 CFR § 382.105 – Using a DOT custody and control form to perform a non-DOT test. The Commission assesses a penalty of \$100 for this repeat violation.
- 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 repeat violation.
- Six violations of 49 CFR § 382.601(b) – Failing to provide to employees a written policy on misuse of alcohol and controlled substances that meets the requirements of 382.601(b) 1-11. The Commission assesses a “per category” penalty of \$100 for these repeat violations.
- Three violations of 49 CFR § 391.45(a) – Using a driver not medically examined and certified. The Commission assesses a penalty of \$100 for each occurrence of this violation, for a total of \$300.
- Two 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.
- Eight violations of 49 CFR § 391.51(b)(9) – Failing to place a note related to the verification of the medical examiner’s listing on the National Registry of Certified Medical Examiners required by 391.23(m) in driver qualification file. The Commission assesses a “per category” penalty of \$100 for these repeat 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 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 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 permit 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 April 7, 2021.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TE-210189

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 \$1,200 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