

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TE-210843

PENALTY AMOUNT: \$7,300

ABM Associates, Inc.,
d/b/a Salon Monte Carlo
1827 W Court St., Ste. B
Pasco, WA 99301

The Washington Utilities and Transportation Commission (Commission) believes ABM Associates, Inc., d/b/a Salon Monte Carlo (ABM Associates 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 C.F.R.) Part 382 – Controlled Substance and Alcohol Use and Testing, 49 C.F.R. Part 383 – Commercial Driver’s License Standards, and 49 C.F.R. Part 391 – Qualification of Drivers.

Revised Code of Washington (RCW) 81.04.405 allows penalties of \$100 for each violation. RCW 81.04.530 allows a penalty of \$1,500 for commercial motor vehicle (CMV) operations that fail to implement a controlled substance and alcohol testing program. In the case of an ongoing violation, every day’s continuance is considered a separate and distinct violation.

On November 1, 2021, Commission Motor Carrier Investigator Sandra Yeomans completed a routine safety investigation of ABM Associates and documented the following violations:

- **Thirty-eight violations of WAC 480-30-191 – Operating a motor vehicle without having in effect the required minimum levels of financial responsibility coverage.** ABM Associates operated a CMV on 38 occasions without having the required minimum levels of insurance. The Company maintained \$2,000,000 in auto liability coverage instead of the required \$5,000,000 in auto liability coverage.
- **One violation of 49 C.F.R. § 382.115(a) – Failing to implement an alcohol and/or controlled substances testing program on the date the employer begins CMV operations.** ABM Associates failed to implement an alcohol and controlled substances testing program for all its commercial drivers.
- **Eighteen violations of 49 C.F.R. § 383.37(a) – Knowingly allowing, requiring, permitting, or authorizing an employee to operate a CMV during any period in which the driver does not have a current commercial learner’s permit (CLP) or commercial driver’s license (CDL) or does not have a CLP or CDL with the proper class or endorsements. An employer may not use a driver to operate a CMV who violates any restriction on the driver’s CLP or CDL.** ABM Associates allowed drivers Andy Ramirez and Jose Zepeda to operate a CMV without the required CDL or passenger endorsement on 18 occasions between April 10 and September 4, 2021.

- **Two violations of 49 C.F.R. § 391.45(a) – Using a driver not medically examined and certified.** The Company allowed driver Andy Ramirez to operate a CMV without a valid medical certificate on two occasions between August 6 and August 20, 2021.

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 very serious and potentially harmful to the public. Passenger transportation companies that: (1) fail to implement a random controlled substance and alcohol testing program, (2) operate CMVs without the required minimum levels of insurance, (3) use drivers that are not medically examined and certified, and (4) allow drivers to operate CMVs without the required licenses or endorsements put their customers and the traveling public at risk. These violations present significant 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 29, 2016, the Commission received the Company's application for charter and excursion service authority. In the application, Andy Ramirez, President of ABM Associates, acknowledged the Company's responsibility to understand and comply with applicable motor carrier safety regulations.

On August 3, 2016, Staff provided new entrant safety regulation training to ABM Associates, and Andy Ramirez acknowledged receiving training pertaining to drug and alcohol testing, CDL and passenger endorsements, and medical certification.

On July 23, 2019, Staff provided extensive technical assistance to ABM Associates at the Company's place of business. The Company knew or should have known about these requirements.

3. **Whether the Company self-reported the violations.** ABM Associates did not self-report these violations.
4. **Whether the Company was cooperative and responsive.** The Company was unavailable throughout the safety investigation and did not express any interest in coming into compliance with applicable safety regulations.
5. **Whether the Company promptly corrected the violations and remedied the impacts.** The Company has not provided Staff with evidence that it corrected the violations.
6. **The number of violations.** Staff identified 16 violation types with a total of 74 individual occurrences during the routine safety investigation of ABM Associates. Of

those violations, Staff identified four violation types with a total of 59 individual occurrences that warrant penalties in accordance with the Commission's Enforcement Policy.

7. **The number of customers affected.** ABM Associates reported traveling zero miles in 2020.
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. ABM Associates did not prioritize availability to Staff during the safety investigation and did not appear interested in coming into compliance with applicable safety regulations. Absent a commitment to prioritize safe operations, the violations are likely to reoccur.
9. **The Company's past performance regarding compliance, violations, and penalties.** This is the Company's first routine safety investigation. ABM Associates has no history of penalties for safety violations with the Commission.
10. **The Company's existing compliance program.** Andy Ramirez is responsible for the Company's safety compliance program.
11. **The size of the Company.** ABM Associates operates three CMVs and employs three part-time drivers. The Company reported no 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" 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 ABM Associates \$7,300, calculated as follows:

- Thirty-eight violations of WAC 480-30-191 – Operating a motor vehicle without having in effect the required minimum levels of financial responsibility coverage. The Commission assesses a penalty of \$100 for each occurrence of this acute violation, for a total of \$3,800.

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

- One violation of 49 C.F.R. § 382.115(a) – Failing to implement an alcohol and/or controlled substances testing program on the date the employer begins CMV operations. The Commission assesses a penalty of \$1,500 for this acute violation.
- Eighteen violations of 49 C.F.R. § 383.37(a) – Knowingly allowing, requiring, permitting, or authorizing an employee to operate a CMV during any period in which the driver does not have a current CLP or CDL or does not have a CLP or CDL with the proper class or endorsements. An employer may not use a driver to operate a CMV who violates any restriction on the driver’s CLP or CDL. The Commission assesses a penalty of \$100 for each occurrence of this acute violation, for a total of \$1,800.
- Two violations of 49 C.F.R. § 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 \$200.

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 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 November 23, 2021.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TE-210843

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 \$7,300 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.”