

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TV-210940

PENALTY AMOUNT: \$7,700

Kastl Express LLC
314 Jadwin Ave.
Richland, WA 99352

The Washington Utilities and Transportation Commission (Commission) believes Kastl Express LLC (Kastl Express or Company) violated Washington Administrative Code (WAC) 480-15-555, Criminal Background Checks for Prospective Employees; WAC 480-15-560, Equipment Safety Requirements, which adopts Title 49 Code of Federal Regulations (49 C.F.R.) Part 393 – Parts and Accessories Necessary for Safe Operation and 49 C.F.R. Part 396 – Inspection, Repair and Maintenance; and WAC 480-15-570, Driver Safety Requirements, which adopts 49 C.F.R. 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.

On November 30, 2021, Commission Motor Carrier Investigator Wayne Gilbert completed a routine safety investigation of Kastl Express and documented the following violations:

- **Five violations of WAC 480-15-555 – Failing to conduct or retain paperwork containing criminal background check or hiring an individual with a disqualifying conviction for a household goods carrier in the state of Washington.** Kastl Express failed to conduct a criminal background check prior to hiring employees Robert Bowen, Sean Clayton, Colbey Howard, Paul Traver, and Richard Pourier.
- **Sixty-seven violations of 49 C.F.R. § 391.45(a) – Using a driver not medically examined and certified.** The Company allowed drivers Robert Bowen, Jonathan Camarillo, Zack Mitchell, Colbey Howard, and Paul Traver to operate a commercial motor vehicle (CMV) without a valid medical certificate on 67 occasions between May 25 and October 12, 2021.
- **Five violations of 49 C.F.R. § 391.51(a) – Failing to maintain driver qualification file on each driver employed.** Kastl Express failed to maintain driver qualification files for Robert Bowen, Jonathan Camarillo, Zack Mitchell, Colbey Howard, and Paul Traver.
- **One violation of 49 C.F.R. § 393.45(b)(2) – Brake hose or tubing chafing and/or kinking.** Commission staff (Staff) discovered a CMV with a brake hose on the right-side

of axle one rubbing against the front tire when turned all the way to the right.¹ This CMV was placed out-of-service.

- **One violation of 49 C.F.R. § 396.3(a)(1) – Brakes out of service.** Staff discovered a CMV with the number of defective brakes equal to or greater than 20 percent of the service brakes on the vehicle.² This CMV was placed out-of-service.
- **Two violations of 49 C.F.R. § 396.3(b) – Failing to keep minimum records of inspection and vehicle maintenance.** Kastl Express failed to maintain a vehicle maintenance file for two CMVs.
- **Two violations of 49 C.F.R. § 396.17(a) – Using a CMV not periodically inspected.** The Company failed to have an annual inspection performed on two CMVs.

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. Household goods moving companies that: (1) fail to conduct criminal background checks on their employees, (2) use drivers that are not medically examined and certified, (3) fail to maintain driver qualification files, (4) fail to keep minimum records of inspection and vehicle maintenance, (5) use CMVs that have not been inspected, and (6) use CMVs in need of repair, put their customers, their customers' belongings, and the traveling public at risk. These violations present significant 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 September 26, 2019, the Commission received the Company's application for household goods moving authority. In the application, Max Kastl, owner of Kastl Express, acknowledged the Company's responsibility to understand and comply with applicable motor carrier safety laws and regulations.

On August 7, 2019, Max Kastl attended household goods training provided by Staff and acknowledged receiving training pertaining to motor carrier safety regulations. The Company knew or should have known about these requirements.

¹ Vehicle Identification Number 1FVABSAK12HK06740.

² *Id.*

3. **Whether the Company self-reported the violations.** Kastl Express did not self-report these violations.
4. **Whether the Company was cooperative and responsive.** The Company was cooperative throughout the safety investigation and expressed a desire to come into compliance with motor carrier safety regulations.
5. **Whether the Company promptly corrected the violations and remedied the impacts.** Kastl Express corrected the violations of 49 C.F.R. § 391.45(a) during the safety investigation. The Company has not provided Staff with evidence that it corrected the other violations.
6. **The number of violations.** Staff identified 17 violation types with a total of 102 individual occurrences during the routine safety investigation of Kastl Express. Of those violations, Staff identified seven violation types with a total of 83 individual occurrences that warrant penalties in accordance with the Commission’s Enforcement Policy.
7. **The number of customers affected.** Kastl Express reported traveling 13,000 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. Kastl Express was cooperative during the safety investigation and expressed a desire to come into compliance with applicable safety regulations. Staff believes the likelihood of recurrence is low if the Company prioritizes safe operations.
9. **The Company’s past performance regarding compliance, violations, and penalties.** This is the Company’s first routine safety investigation. Kastl Express has no history of penalties for safety violations with the Commission.
10. **The Company’s existing compliance program.** Max Kastl is responsible for the Company’s safety compliance program.
11. **The size of the Company.** Kastl Express operates three CMVs and employs two drivers. The Company reported \$185,207 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.³ 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”

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

criteria and 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 Kastl Express \$7,700 (Penalty Assessment), calculated as follows:

- Five violations of WAC 480-15-555 – Failing to conduct or retain paperwork containing criminal background check or hiring an individual with a disqualifying conviction for a household goods carrier in the state of Washington. The Commission assesses a penalty of \$100 for each occurrence of this critical violation, for a total of \$500.
- Sixty-seven 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 critical violation, for a total of \$6,700.
- Five violations of 49 C.F.R. § 391.51(a) – Failing to maintain driver qualification file on each driver employed. The Commission assesses a “per category” penalty of \$100 for these critical violations.
- One violation of 49 C.F.R. § 393.45(b)(2) – Brake hose or tubing chafing and/or kinking. The Commission assesses a penalty of \$100 for this out-of-service violation.
- One violation of 49 C.F.R. § 396.3(a)(1) – Brakes out of service. The Commission assesses a penalty of \$100 for this out-of-service violation.
- Two violations of 49 C.F.R. § 396.3(b) – Failing to keep minimum records of inspection and vehicle maintenance. The Commission assesses a “per category” penalty of \$100 for these critical violations.
- Two violations of 49 C.F.R. § 396.17(a) – Using a CMV not periodically inspected. The Commission assesses a “per category” penalty of \$100 for these critical 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 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 Penalty Assessment. 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 28, 2021.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TV-210940

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 \$7,700 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.”