

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

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

PENALTY ASSESSMENT: TV-220418

PENALTY AMOUNT: \$1,900

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, and WAC 480-15-570, 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 395 – Hours of Service 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 June 1, 2022, Commission Motor Carrier Investigator Wayne Gilbert completed a follow-up safety investigation of Kastl Express and documented the following violations:

- **One violation 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 for employee Eric Noggles prior to conducting a household goods move on April 25, 2022.
- **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 Company failed to implement an alcohol and controlled substances testing program for its commercial drivers.
- **Two violations of 49 C.F.R. § 383.23(a) – Operating a CMV without a valid commercial driver’s license (CDL).** Kastl Express allowed driver Eric Noggles to operate a CMV without a valid CDL on May 25 and May 26, 2022.
- **Seven violations of 49 C.F.R. § 395.8(a)(1) – Failing to require driver to prepare a record of duty status using the appropriate method.** The Company failed to require Paul Traver, Gregory Carter, and Eric Noggles to prepare a complete and accurate record of duty status on seven occasions between April 1 and May 25, 2022.

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) fail to implement a random controlled substance and alcohol testing program, (3) allow drivers to operate CMVs without valid CDLs, and (4) fail to maintain complete and accurate records of duty status, 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 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 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.

On November 30, 2021, Staff completed a routine safety investigation of Kastl Express and discovered violations of WAC 480-15-555 and 49 C.F.R. § 395.8(a)(1). The Company knew or should have known about these requirements.

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 violation of WAC 480-15-555 by completing a criminal background check for employee Eric Noggles on April 28, 2022, and corrected the violations of 49 C.F.R. § 382.115(a) and 49 C.F.R. § 383.23(a) by no longer operating a CMV with a gross vehicle weight rating of more than 26,001 pounds.
6. **The number of violations.** Staff identified eight violation types with a total of 15 individual occurrences during the follow-up safety investigation of Kastl Express. Of those violations, Staff identified four violation types with a total of 11 individual

occurrences that warrant penalties in accordance with the Commission's Enforcement Policy.

7. **The number of customers affected.** Kastl Express reported traveling 20,000 miles in 2021. 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. 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.** On December 16, 2021, the Commission issued a Notice of Intent to Cancel the Company's household goods carrier permit in Docket TV-210939, after Staff's safety investigation of Kastl Express resulted in a proposed conditional safety rating. On December 28, 2021, the Company was penalized \$7,700 in Docket TV-210940 for safety violations of WAC 480-15-555, WAC 480-15-560, and WAC 480-15-570.  
  
On January 25, 2022, the Commission entered Order 01, which consolidated Dockets TV-210939 and TV-210940; approved the Company's safety management plan; extended the Company's provisional period; mitigated the penalty to \$3,850; and suspended a \$2,000 portion of the reduced penalty for a period of two years, subject to conditions.
10. **The Company's existing compliance program.** Richard Pourier and Sean Clayton are responsible for the Company's safety compliance program.
11. **The size of the Company.** Kastl Express operates four CMVs and employs three drivers. The Company reported \$112,462 in gross revenue for 2021.

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.<sup>1</sup> 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 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 \$1,900 (Penalty Assessment), calculated as follows:

- One violation 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

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

household goods carrier in the state of Washington. The Commission assesses a penalty of \$100 for this violation.

- 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.
- Two violations of 49 C.F.R. § 383.23(a) – Operating a CMV without a valid CDL. The Commission assesses a penalty of \$100 for each occurrence of this violation, for a total of \$200.
- Seven violations of 49 C.F.R. § 395.8(a)(1) – Failing to require driver to prepare a record of duty status using the appropriate method. The Commission assesses a “per category” penalty of \$100 for these 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 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 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 June 13, 2022.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION  
PENALTY ASSESSMENT TV-220418

**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 \$1,900 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 or she makes a materially false statement which he or she 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 or her 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.