

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TE-230473
PENALTY AMOUNT: \$100

Evergreen Escapes, LLC,
d/b/a EGX; Explorers 3; et al.
2960 4th Ave. S, Ste. 115
Seattle, WA 98134

The Washington Utilities and Transportation Commission (Commission) believes Evergreen Escapes, LLC, d/b/a EGX; Explorers 3; et al., (Evergreen Escapes or Company) violated Washington Administrative Code (WAC) 480-30-221, Vehicle and Driver Safety Requirements, which adopts Title 49 Code of Federal Regulations (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 June 7, 2023, Commission Motor Carrier Investigator Tracy Cobile completed a follow-up safety investigation of Evergreen Escapes and documented the following violation:

- **One violation of 49 C.F.R. § 391.51(b)(4) – Failing to maintain the responses of each state agency to the annual driver record inquiry required by 49 C.F.R. § 391.25(a).** The Company failed to maintain the annual driving record for Marjorie McWilliams in the driver qualification file.

The Commission considered the following factors in determining the appropriate penalties for this violation:

1. **How serious or harmful the violation is to the public.** The violation noted is serious and potentially harmful to the public. Passenger transportation companies that fail to maintain the annual driving records of their drivers put their customers and the traveling public at risk. This violation presents a safety concern.
2. **Whether the violation was 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 February 10, 2014, the Commission received the Company's application for charter and excursion authority. In the application, Jake Hauptert, owner of Evergreen Escapes, acknowledged the Company's responsibility to understand and comply with applicable motor carrier safety regulations. On February 13, 2014, Staff provided new entrant safety regulation training to the Company.

On February 17, 2021, Staff completed a routine safety investigation of Evergreen Escapes and documented three violations of 49 C.F.R. § 391.51(b)(4).

On May 12, 2023, the Commission received an application to change the Company's name from Explorers 3, LLC, d/b/a Evergreen Escapes to Evergreen Escapes, LLC, d/b/a EGX; Explorers 3; et al. In the application, Kenzi Lacey, general manager of Evergreen Escapes, acknowledged the Company's responsibility to understand and comply with applicable motor carrier safety regulations.

The Company knew or should have known about this requirement.

3. **Whether the Company self-reported the violation.** Evergreen Escapes did not self-report this violation.
4. **Whether the Company was cooperative and responsive.** The Company was cooperative throughout the safety investigation, made corrections, and expressed a desire to come into compliance.
5. **Whether the Company promptly corrected the violation and remedied the impacts.** The Company corrected the violation of 49 C.F.R. § 391.51(b)(4) by acquiring the annual driving record for Marjorie McWilliams.
6. **The number of violations.** Staff identified six violation types with a total of six individual occurrences during the follow-up safety investigation of Evergreen Escapes. Of those violations, Staff identified one violation type with one occurrence that warrants a penalty in accordance with the Commission's Enforcement Policy.
7. **The number of customers affected.** Evergreen Escapes reported traveling 164,497 miles in 2022. This violation 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, took corrective actions, and expressed a desire to come into compliance with motor carrier safety regulations. In light of these factors, Staff believes the likelihood of recurrence is low.
9. **The Company's past performance regarding compliance, violations, and penalties.** On April 21, 2014, the Commission suspended the Company's authority to provide

charter and excursion carrier services for failing to file acceptable proof of insurance in Docket TE-140655. The suspension was lifted on April 22, 2014.

On August 16, 2016, the Commission assessed a \$5,500 penalty against Evergreen Escapes in Docket TE-160946 for safety violations of WAC 480-30-221. On September 7, 2016, the Commission entered Order 01, which reduced the penalty to \$3,000. The Company paid the penalty in full.

On June 20, 2017, the Commission assessed a \$250 penalty against Evergreen Escapes in Docket TE-170616 for failing to file an annual report and pay regulatory fees by the due date. The Company paid the penalty in full.

On March 3, 2021, the Commission assessed a \$2,000 penalty against Evergreen Escapes in Docket TE-210120 for safety violations of WAC 480-30-221. On April 2, 2021, the Commission entered Order 01, which reduced the penalty to \$1,100 and suspended a \$600 portion of the reduced penalty for a period of two years, and then waived it, subject to conditions. The Company paid the \$500 non-suspended portion of the penalty in full.

10. The Company's existing compliance program. Kenzi Lacey is responsible for the Company's safety compliance program.

11. The size of the Company. Evergreen Escapes employs 19 drivers and operates seven commercial motor vehicles. The Company reported \$1,336,692 in gross revenue in 2022.

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 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 Escapes \$100 (Penalty Assessment), calculated as follows:

- One violation of 49 C.F.R. § 391.51(b)(4) – Failing to maintain the responses of each state agency to the annual driver record inquiry required by 49 C.F.R. § 391.25(a). The Commission assesses a penalty of \$100 for this repeat violation.

This information, if proven at a hearing and not rebutted or explained, is sufficient to support the Penalty Assessment.

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

Your penalty is due and payable now. If you believe the violation did not occur, you may deny committing the violation and contest the penalty through evidence presented at a hearing or in writing. Alternatively, if there is a reason for the violation 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 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.
- Admit the violation 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 at <https://efiling.utc.wa.gov/Form> **within FIFTEEN (15) days** after you receive this Penalty Assessment.² 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 wish to make a payment online, please use this link: [Make a Payment Now \(wa.gov\)](#).³

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 20, 2023.

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

² <https://efiling.utc.wa.gov/Form>.

³ <https://www.utc.wa.gov/documents-and-proceedings/online-payments/make-payment-now>

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TE-230473

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 violation occurred.
 - Enclose \$100 in payment of the penalty.
 - OR Attest that I have paid the penalty in full through the Commission’s payment portal.

- 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 violation, 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.