

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

**PENALTY ASSESSMENT: TE-230643
PENALTY AMOUNT: \$1,600**

Butler Transportation LLC
PO Box 77793
Seattle, WA 98177

The Washington Utilities and Transportation Commission (Commission) believes Butler Transportation LLC (Butler Transportation 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 382 – Controlled Substance and Alcohol Use and Testing; 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. 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 commercial motor vehicle (CMV) driver testing requirements.

On August 2, 2023, Commission Motor Carrier Investigator Tracy Coble completed a routine safety investigation of Butler Transportation and documented the following violations:

- **Three violations of 49 C.F.R. § 382.301(a) – Using a driver before the motor carrier has received a negative pre-employment controlled substance test result.** Butler Transportation allowed drivers Hunter LeFavour, Cari McLean, and Rickey Posey to drive a CMV prior to receiving a negative controlled substance test.
- **Twenty-nine violations of 49 C.F.R. § 395.8(a)(1) – Failing to require a driver to prepare a record of duty status using the appropriate method.** The Company failed to require drivers Rodney Childress and Stephen Bard to complete a record of duty status on 29 occasions between June 15 and July 15, 2023.

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. Passenger transportation companies that: (1) use commercial drivers without first verifying a negative controlled substance test, and (2) fail to require drivers to make a record of duty status, put their customers and the traveling public at risk. These violations present serious 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 November 10, 2009, the Commission received the Company's application for charter and excursion authority. In the application, Jeremy Butler, president of Butler Transportation, acknowledged the Company's responsibility to understand and comply with applicable motor carrier safety laws and regulations.

On July 18, 2011, Staff completed a routine safety investigation of Butler Transportation that resulted in the Company achieving a satisfactory safety rating.

The Company knew or should have known about these requirements.

3. **Whether the Company self-reported the violations.** Butler Transportation 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.
5. **Whether the Company promptly corrected the violations and remedied the impacts.** Butler Transportation provided Staff with evidence that it corrected the violations.
6. **The number of violations.** Staff identified 19 violation types with a total of 93 individual occurrences during the routine safety investigation of Butler Transportation. Of those violations, Staff identified two violation types with 32 individual occurrences that warrant penalties in accordance with the Commission's Enforcement Policy.
7. **The number of customers affected.** Butler Transportation traveled 140,000 miles in 2022. These violations presented a public safety risk.
8. **The likelihood of recurrence.** The Company was cooperative throughout the safety investigation and was 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. 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 June 9, 2015, Butler Transportation was penalized \$1,000 in Docket TE-151012 for failing to file its annual report and pay regulator fees by the deadline. The penalty was later reduced to \$250, and the Company paid the penalty in full.

Butler Transportation has no history of penalties for safety violations.

10. **The Company's existing compliance program.** Jeremy Butler, vice president for Butler Transportation, is responsible for the Company's safety compliance program.

11. **The size of the Company.** The Company employs 31 drivers and operates 16 CMVs. The Company reported \$2,530,294 in gross revenue for 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 Butler Transportation \$1,600 (Penalty Assessment), calculated as follows:

- Three violations of 49 C.F.R. § 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 each occurrence of this violation, for a total of \$1,500.
- Twenty-nine of 49 C.F.R. § 395.8(a)(1) – Failing to require a driver to prepare a record of duty status using the appropriate method. The Commission assesses a \$100 "per category" penalty 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 either or both 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 either or both 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.

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

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 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 September 1, 2023.

/s/Michael Howard
MICHAEL HOWARD
Administrative Law Judge

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-230643

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.
 - [] Enclose \$1,600 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 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.