

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TN-230940

PENALTY AMOUNT: \$400

Okanogan County Transportation & Nutrition
d/b/a Okanogan County Transportation
PO Box 471
Okanogan, WA 98840

The Washington Utilities and Transportation Commission (Commission) believes Okanogan County Transportation & Nutrition, d/b/a Okanogan County Transportation (Okanogan County Transportation or Company) violated Washington Administrative Code (WAC) 480-31-100, Equipment - Safety, which adopts Title 49 Code of Federal Regulations (49 C.F.R.) Part 396 – Inspection, Repair and Maintenance and WAC 480-31-130, Operation of Motor Vehicles, which adopts 49 C.F.R. Part 391– Qualifications of Drivers 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.

On November 2, 2023, Commission Motor Carrier Investigator Sandra Yeomans completed a routine safety investigation of Okanogan County Transportation and documented the following violations:

- **One violation of 49 C.F.R. § 391.45(a) – Using a driver not medically examined and certified.** Okanogan County Transportation allowed driver Frank Osborne to operate a motor vehicle without a valid medical certificate on July 31, 2023.
- **Four violations of 49 C.F.R. § 391.51(b)(2) - Failing to maintain inquiries into driver's driving record in driver's qualification file.** The Company failed to maintain inquiries into the driving records of Charles Brown, Terry Davis, Frank Osborne, and William Nearants.
- **Sixty violations of 49 C.F.R. § 395.8(a)(1) - Failing to require driver to make a record of duty status.** The Company failed to require drivers Charles Brown and Roger Dennison to prepare a record of duty status on 60 occasions between July 1 and July, 30, 2023.
- **Three violations of 49 C.F.R. § 396.17(a) - Using a commercial motor vehicle not periodically inspected in accordance with minimum standards.** Okanogan County Transportation failed to annually inspect its commercial motor vehicles.

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 violations noted are serious and potentially harmful to the public. Private, nonprofit transportation providers that: (1) use drivers who are not medically examined and certified (2) fail to maintain inquiries into drivers' driving records (3) use drivers who fail to create records of duty status, and (4) use commercial motor vehicles not periodically inspected, put their customers and the traveling public at risk. These violations present significant safety concerns.
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.

Okanogan County Transportation began its operations in March of 2004 and has been subject to previous safety investigations conducted by Staff. The Company knew or should have known about these requirements; however, there is no evidence that suggests Okanogan County Transportation ignored Staff's previous technical assistance.

3. **Whether the Company self-reported the violation.** Okanogan County Transportation did not self-report these violations.
4. **Whether the Company was cooperative and responsive.** The Company was cooperative throughout the safety investigation.
5. **Whether the Company promptly corrected the violation and remedied the impacts.** Okanogan County Transportation completed corrections of violations as violations were discovered.
6. **The number of violations.** Staff identified 13 violation types with a total of 99 individual occurrences during the routine safety investigation of Okanogan County Transportation. Of those violations, Staff identified four violation types with 68 individual occurrences that warrant a penalty in accordance with the Commission's Enforcement Policy.
7. **The number of customers affected.** Okanogan County Transportation reported 339,470 miles traveled in 2022. These safety violations present 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 July 7, 2017, Okanogan County Transportation was penalized \$1000 in Docket TN-170586 for failing to file a complete annual report and pay regulatory fees by the May 1 deadline. The Commission suspended a \$750 portion of the penalty and then waived it after the Company met conditions. The Company has no history of penalties for safety violations.
10. **The Company's existing compliance program.** Bobby Watkins (Director of Transportation) is responsible for the Company's safety compliance program.
11. **The size of the Company.** The Company employs 15 drivers and operates 14 commercial motor vehicles. The Company reported \$ \$2,920,469 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 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 Okanogan County Transportation \$400 (Penalty Assessment), calculated as follows:

- One violation of 49 C.F.R. § 391.45(a) – Using a driver not medically examined and certified. The Commission assesses a penalty of \$100 for this critical-type violation, for a total of \$100.
- Four violations of 49 C.F.R. § 391.51(b)(2) - Failing to maintain inquiries into driver's driving record in driver's qualification file. The Commission assesses a "per category" penalty of \$100 for these first-time critical violations.
- Sixty violations of 49 C.F.R. § 395.8(a)(1) - Failing to require driver to make a record of duty status. The Commission assesses a "per category" penalty of \$100 for these first-time critical violations.
- Three violations of 49 C.F.R. § 396.17(a) - Using a commercial motor vehicle not periodically inspected in accordance with minimum standards. The Commission assesses a "per category" penalty of \$100 for these first-time critical violations.

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

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 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 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 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 November 30, 2023.

/s/ Michael Howard
MICHAEL HOWARD
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 TN-230940

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 \$400 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.