

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TR-240254
PENALTY AMOUNT: \$500

BNSF Railway Co.
2650 Lou Menk Drive
Fort Worth, TX

The Washington Utilities and Transportation Commission (Commission) believes BNSF Railway Co. (BNSF or Company) violated Washington Administrative Code (WAC) 480-62-225 – Crossing Surfaces, which requires railroad companies to maintain highway-rail grade crossing surfaces in a state of repair.

On December 22, 2022, Commission Grade Crossing Specialist Andy McMahon issued defect notice number 10692 to BNSF related to the crossing surface at the 80th Avenue South crossing near South 186th Place in Kent, identified as USDOT 085615C. The crossing surface contained potholes and other damaged asphalt creating a rough crossing for vehicle traffic.

BNSF acknowledged the defect notice and committed to correcting the defects by June 30, 2023. When Commission staff (Staff) contacted BNSF in July 2023 to confirm that the defects were corrected, BNSF requested additional time to December 31, 2023 to correct the defects. Staff granted the extension request. In January 2024, BNSF requested a third extension of time to February 28, 2024, to correct the defects.

On March 7, 2024, Mr. McMahon reinspected the crossing and found the defects had not been corrected. That same day, Staff received a written complaint from a member of the public regarding conditions at the crossing that detailed repeated contacts with BNSF, over a period of seven months, attempting to get the crossing repaired.

On March 26, 2024, Staff sent a compliance letter directing BNSF to either provide photos of the corrected defects or provide a detailed plan for correcting the defects by April 10, 2024.

After receiving no response, Staff re-inspected the crossing on April 15, 2024, and observed that the defects had not been corrected.

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. The violation continued for five days after the deadline of April 10, 2024, identified on Staff's compliance letter, until Staff inspected the crossing on April 15, 2024. Accordingly, the Commission hereby notifies you that it is assessing a penalty against you in the amount of \$500.

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 violation(s) 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 violation(s) 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 violation(s) 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. 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 your payment online, please use this link: [Make a Payment Now \(wa.gov\)](#),¹ or you may reach out to Financial Services staff at (360) 664-1349.

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 April 24, 2024.

/s/ Michael Howard
MICHAEL HOWARD
Director, Administrative Law Division

¹ <https://www.utc.wa.gov/documents-and-proceedings/online-payments/make-payment-now>.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TR-240254

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(s) occurred.
 [] Enclose \$500 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(s), 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.