

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TE-240662

PENALTY AMOUNT: \$4,600

San Juan Transit Tours & Charters, LLC
P.O. Box 2809
Friday Harbor, WA 98250

The Washington Utilities and Transportation Commission (Commission) believes San Juan Transit Tours & Charters, LLC (San Juan Transit or Company) violated Washington Administrative Code (WAC) 480-30-221, Vehicle and Driver Safety Requirements, which adopts the following regulatory provisions: 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; Requirements and Penalties; 49 C.F.R. Part 391 - Qualification of Drivers; 49 C.F.R. Part 395 - Hours of Service of Drivers; and 49 C.F.R. Part 396 - Inspection, Repair, and Maintenance.

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 motor vehicle driver testing requirements.

On August 6, 2024, Commission Motor Carrier Safety Investigator Sandra Yeomans completed a routine safety inspection of San Juan Transit and documented the following violations:

- **One violation 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 Company allowed commercial driver's license (CDL) driver Missy Kness to drive a commercial motor vehicle (CMV) prior to receiving a verified negative pre-employment controlled substance test.
- **Two violations of 49 C.F.R. § 382.601(b) - Failing to provide to employees a written policy on misuse of alcohol and controlled substances that meets the requirements of 382.601(b) 1-11.** The Company failed to provide proof of receipt of a drug and alcohol testing policy for drivers Jeri King and Schyler Kringle.
- **Three violations of 49 C.F.R. § 382.701(a) - Failing to perform a pre-employment query through the FMCSA clearinghouse.** San Jaun Transit failed to perform a pre-employment clearinghouse query prior to any driver performing a safety sensitive function for the company.

- **One violation of 49 C.F.R. § 382.701(b)(1) - Carrier is required to acquire an annual query from FMCSA clearinghouse for all drivers performing duties that require a commercial driver's license.** The Company failed to acquire an annual query from the FMCSA clearinghouse for driver Ruth Finney.
- **One violation of 49 C.F.R. § 382.711(a) - Each employer and service agent must register with the clearinghouse before accessing or reporting information in the clearinghouse.** The Company failed to register with the Drug and Alcohol Clearinghouse as required.
- **Two violations of 49 C.F.R. § 383.23(a) - Operating a commercial motor vehicle without a valid commercial driver's license.** San Juan Transit allowed driver Jeri King to operate a CMV without a valid CDL on two occasions between May 2, 2024, and July 30, 2024.
- **Four violations of 49 C.F.R. § 391.21(a) - Using a driver who has not completed and furnished an employment application.** San Juan Transit failed to obtain completed driver applications for drivers Don Adams, Jeri King, Missy Kness, and Schyler Kringle.
- **One violation of 49 C.F.R. § 391.23(a)(2) - Failing to investigate driver's performance history with Department of Transportation regulated employers during the preceding three years.** The Company failed to investigate driver Jeri King's performance history with Department of Transportation regulated employers during the preceding three years.
- **Twenty-eight violations of 49 C.F.R. § 391.45(a) - Using a driver not medically examined and certified.** San Juan Transit allowed drivers Don Adams and Jeri King to operate a motor vehicle without a valid medical certificate on 28 occasions between May 2, 2024, and August 7, 2024.
- **Two violations of 49 C.F.R. § 391.53(b)(1) - Failing to maintain in Driver Investigation History file a copy of the driver's written authorization for the motor carrier to seek information about a driver's alcohol and controlled substances history as required under 391.23(d).** The Company failed to maintain a written authorization for the carrier to seek information about a driver's alcohol and controlled substances history for drivers Jeri King and Missy Kness.
- **Eight 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 Don Adams, Ruth Finney, Jeri King, Missy Kness, and Schyler Kringle to prepare a record of duty status.
- **Two violations of 49 C.F.R. § 396.3(b) - Failing to keep minimum records of inspection and vehicle maintenance.** The Company failed to maintain minimum records of inspection and vehicle maintenance for two of its CMVs.

- **Two violations of 49 C.F.R. § 396.17(a) - Using a commercial motor vehicle not periodically inspected.** San Juan Transit failed to annually inspect two of its CMVs.
- **Five violations of 49 C.F.R. § 396.3(b)(2) - Failing to have a means of indicating the nature and due date of the various inspection and maintenance operations to be performed.** The Company failed to maintain a preventative maintenance program for five CMVs.

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) allow drivers to operate CMVs prior to receiving negative pre-employment controlled substance test results; (2) fail to inform drivers of required information in its controlled substance and alcohol policy; (3) fail to perform pre-employment clearinghouse queries; (4) fail to acquire an annual query from the FMCSA clearinghouse; (5) fail to register with the Drug and Alcohol Clearinghouse; (6) allow drivers to operate CMVs without valid CDLs; (7) use drivers that have not completed employment applications; (8) fail to investigate driver's performance history with Department of Transportation regulated employers; (9) use drivers who are not medically certified; (10) fail to maintain driver's written authorization to seek alcohol and controlled substances history; (11) fail to require drivers to create a record of duty status; (12) fail to keep minimum records of inspection and vehicle maintenance; (13) use CMVs not periodically inspected; and (14) fail to implement preventative maintenance programs for CMVs put their customers 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 violations.

On November 8, 2013, the Commission received the Company's application for transfer of San Juan Transit, Inc.'s auto transportation authority. In the application, Kraig Hansen, owner of San Juan Transit and Tours, LLC acknowledged the Company's responsibility to understand and comply with applicable motor carrier safety rules.

On April 17, 2014, Staff provided technical assistance to Kraig Hansen, including the review of relevant safety regulations.

On May 22, 2014, the Commission received the Company's application requesting to extend its service territory. In the application, Kraig Hansen acknowledged the Company's responsibility to understand and comply with applicable motor carrier safety rules.

On November 8, 2016, Staff completed a routine safety investigation of San Juan Transit and documented four violations of 49 C.F.R. § 382.301(a) and one violation of 382.601(b).

On July 28, 2017, Staff completed a follow-up safety investigation of San Juan Transit and documented three repeat violations of 49 C.F.R. § 382.301(a).

On November 29, 2018, Staff completed a follow-up safety investigation of San Juan Transit and documented five violations of 49 C.F.R. § 391.21(a), one violation of 49 C.F.R. § 395.8(a)(1), and five violations of 49 C.F.R. § 396.3(b)(2).

On November 3, 2021, Staff completed a follow-up safety investigation of San Juan Transit and documented one violation of 49 C.F.R. § 382.301(a), one violation of 49 C.F.R. § 382.601(b), four violations of 49 C.F.R. § 382.701(a), one violation of 49 C.F.R. § 382.701(b)(1), one violation of 49 C.F.R. § 382.711(a), four violations of 49 C.F.R. § 391.21(a), three violations of 49 C.F.R. § 391.23(a)(2), 13 violations of 49 C.F.R. § 391.45(a), three violations of 49 C.F.R. § 391.53(b)(1), 36 violations of 49 C.F.R. § 395.8(a)(1), and five violations of 49 C.F.R. § 396.3(b)(2).

The company knew or should have known about these requirements.

3. **Whether the Company self-reported the violations.** San Juan Transit did not self-report these violations.
4. **Whether the Company was cooperative and responsive.** The Company was cooperative throughout the safety inspection.
5. **Whether the Company promptly corrected the violations and remedied the impacts.** San Juan Transit has not provided staff with evidence of correction.
6. **The number of violations.** Staff identified 26 violation types with a total of 96 individual occurrences during the routine safety investigation of San Juan Transit. Of those violations, Staff identified 14 violation types with 62 individual occurrences that warrant a penalty in accordance with the Commission's Enforcement Policy.
7. **The number of customers affected.** San Juan Transit last reported traveling 61,966 miles for 2023. These safety violations present a public safety risk.
8. **The likelihood of recurrence.** The Company incurred repeat violations despite prior technical assistance and suspended penalties. Absent a significant commitment to prioritize safe operations, the violations are likely to reoccur.
9. **The Company's past performance regarding compliance, violations, and penalties.** On December 5, 2016, the Commission assessed a \$3,900 penalty against San Juan Transit in Docket TE-161224 for safety violations of WAC 480-30-221. On December 6, 2016, the Commission issued a Notice of Intent to Cancel and Notice of Brief Adjudicative Proceeding in Docket TE-161225. On January 12, 2017, the Commission

entered Order 01, which consolidated Dockets TE-161224 and TE-161225, upgraded the Company's safety rating, and suspended a \$2,800 portion of the penalty for a period of two years, subject to conditions. On January 20, 2017, the Company paid the \$1,400 unsuspended portion of the penalty in full. On October 25, 2017, the Commission entered Order 02 imposing the \$2,500 suspended portion of the penalty for failing to comply with the conditions outlined in Order 01 by incurring repeat violations of WAC 480-30-221 in docket TE-161225. On May 29, 2017, the Company paid the \$2,500 previously suspended portion of the penalty in full.

On October 2, 2017, the Commission assessed a \$200 penalty against San Juan Transit in Docket TE-170905 for safety violations of WAC 480-30-221. On October 10, 2017, the Company paid the \$200 penalty in full.

On December 19, 2018, the Commission assessed a \$100 penalty against San Juan Transit in Docket TE-180987 for safety violations of WAC 480-30-221. On February 21, 2019, the Company paid the \$100 penalty in full.

On November 23, 2021, the Commission assessed a \$1,200 penalty against San Juan Transit in Docket TE-210844 for safety violations of WAC 480-30-221. In December 2021, the Company paid the \$1,200 penalty in full.

10. The Company's existing compliance program. Kraig Hansen is responsible for the Company's safety compliance program.

11. The size of the Company. The Company employs seven drivers and operates six commercial motor vehicles. The Company reported \$195,926 in gross revenue in 2023.

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 San Juan Transit \$4,600 (Penalty Assessment), calculated as follows:

- One violation 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 this repeat critical-type violation.

¹ Docket A-12,00061 – Enforcement Policy of the Washington Utilities & Transportation Commission – Section V.

- Two violations of 49 C.F.R. § 382.601(b) - Failing to provide to employees a written policy on misuse of alcohol and controlled substances that meets the requirements of 382.601(b) 1-11. The Commission assesses a \$100 “per category” penalty for these repeat violations.
- Three violations of 49 C.F.R. § 382.701(a) - Failing to perform a pre-employment query through the FMCSA clearinghouse. The Commission assesses a \$100 “per category” penalty for these repeat violations.
- One violation of 49 C.F.R. § 382.701(b)(1) - Carrier is required to acquire an annual query from FMCSA clearinghouse for all drivers performing duties that require a commercial driver's license. The Commission assesses a penalty of \$100 for this repeat violation.
- One violation of 49 C.F.R. § 382.711(a) - Each employer and service agent must register with the clearinghouse before accessing or reporting information in the clearinghouse. The Commission assesses a penalty of \$100 for this repeat violation.
- Two violations of 49 C.F.R. § 383.23(a) - Operating a commercial motor vehicle without a valid commercial driver's license. The Commission assesses a penalty of \$100 for each occurrence of these repeat critical-type violations, for a total of \$200.
- Four violations of 49 C.F.R. § 391.21(a) - Using a driver who has not completed and furnished an employment application. The Commission assesses a \$100 “per category” penalty for these repeat violations.
- One violation of 49 C.F.R. § 391.23(a)(2) - Failing to investigate driver's performance history with Department of Transportation regulated employers during the preceding three years. The Commission assesses a penalty of \$100 for this repeat violation.
- Twenty-eight violations of 49 C.F.R. § 391.45(a) - Using a driver not medically examined and certified. The Commission assesses a penalty of \$100 for each occurrence of these repeat critical violations, for a total of \$2,800.
- Two violations of 49 C.F.R. § 391.53(b)(1) - Failing to maintain in Driver Investigation History file a copy of the driver's written authorization for the motor carrier to seek information about a driver's alcohol and controlled substances history as required under 391.23(d). The Commission assesses a \$100 “per category” penalty for these repeat violations.
- Eight 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 \$100 “per category” penalty for these repeat critical-type violations.

- Two violations of 49 C.F.R. § 396.17(a) - Using a commercial motor vehicle not periodically inspected. The Commission assesses a \$100 “per category” penalty for these repeat critical violations.
- Two violations of 49 C.F.R. § 396.3(b) - Failing to keep minimum records of inspection and vehicle maintenance. The Commission assesses a \$100 “per category” penalty for these repeat critical violations
- Five violations of 49 C.F.R. § 396.3(b)(2) - Failing to have a means of indicating the nature and due date of the various inspection and maintenance operations to be performed. The Commission assesses a \$100 “per category” penalty for these repeat 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 the violations did not occur, you may deny committing the violations 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 violations 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 violations 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 violations.
- 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

² <https://efiling.utc.wa.gov/Form>.

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 19, 2024.

/s/ James E. Brown II
JAMES E. BROWN II
Interim Director, Administrative Law
Division

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TE-240662

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, 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 \$4,600 in payment of the penalty.
 OR Attest that I have paid the penalty in full through the Commission's payment portal.
2. **Contest the violations.** I believe that the alleged violations 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 they make a materially false statement which they know 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 their 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.