

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

**AMENDED PENALTY ASSESSMENT: TG-180253
PENALTY AMOUNT: \$200**

HAROLD LEMAY ENTERPRISES, INC.
4111 192nd ST E
Tacoma, WA 98446

The Washington Utilities and Transportation Commission (Commission) believes that Harold LeMay Enterprises, Inc. (LeMay) has committed violations of Washington Administrative Code (WAC) 480-70-201 Vehicle and Driver Safety Requirements, which adopts Title 49 Code of Federal Regulations (CFR) Part 396 – Inspection, Repair, and Maintenance, and Part 393 – Parts and Accessories Necessary for Safe Operation.

Revised Code of Washington (RCW) 81.04.405 allows penalties of one hundred dollars for each violation. In the case of an ongoing violation, every day's continuance is considered a separate and distinct violation.

In March 2018, Commission Motor Carrier Investigator Sandra Yeomans completed a vehicle inspection of two LeMay vehicles, number 1044 and 3571, during a destination check and documented the following violations:

- **One violation of Title 49 CFR Part 396.3(a)(1) – Inspection, repair, and maintenance – tires (general).** Staff discovered a tire rubbing against the Pitman arm on the front left steering axle of vehicle 1044.
- **One violation of Title 49 CFR Part 393.9(a) – Lamps operable.** Staff discovered the brake lights on vehicle 3571 were inoperable.

The Commission considered the following factors in determining the appropriate penalties for these violations:

1. **How serious or harmful the violations is to the public.** The violations noted are serious and potentially harmful to the public. Companies that fail to maintain critical vehicle safety components such as tires and brake lights put the traveling public at risk. A poorly maintained vehicle presents serious safety concerns.
2. **Whether the violations were intentional.** Considerations include:
 - Whether the company ignored Commission staff's 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.

Commission staff has conducted several routine safety investigations of LeMay since January 1996, with the most recent safety investigation dating back to August 2011. The company knew, or should have known about these requirements, however there is no evidence that the company disregarded staff's previous technical assistance.

3. **Whether the company self-reported the violations.** The company did not self-report the violations.
4. **Whether the company was cooperative and responsive.** The drivers were cooperative and responsive throughout the inspection.
5. **Whether the company promptly corrected the violations and remedied the impacts.** Staff placed both vehicles out of service and directed the company to correct the violations. The company corrected one violation upon discovery.
6. **The number of violations.** Staff identified two violation types, one occurrence on both vehicles and placed the vehicles out of service.
7. **The number of customers affected.** The company reported 6,634,546 miles traveled in 2016. A significant number of customers, as well as members of the traveling public, were potentially affected by these safety violations.
8. **The likelihood of recurrence.** The Commission does not know if the company is likely to repeat these safety violations, however the drivers were cooperative with staff during the inspection.
9. **The company's past performance regarding compliance, violations, and penalties.** The company has no prior violations of these types.
10. **The company's existing compliance program.** Mr. Shawn Mandel (Vice President, Safety and Risk Management) is responsible for the carrier's safety and compliance program.
11. **The size of the company.** LeMay is a large company with 268 drivers operating in multiple counties of Washington. The company reported \$75,659,299 in gross revenue for 2016.

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 per type of violation, 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"

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

criteria and also for repeat violations of critical regulations found in future compliance investigations, including each occurrence of a repeat violation.

The Commission has considered these factors and determined that it should penalize LeMay \$200 for violations of WAC 480-70-201 Vehicle and Driver Safety Requirements, which adopts Title 49 CFR Parts 393 and 396, calculated as follows:

- One violation of Title 49 CFR Part 396.3(a)(1) – Inspection, repair, and maintenance – tires (general) – tire rubbing against the Pitman arm on the front left steering axle.
- One violation of Title 49 CFR Part 393.9(a) – Lamps operable – brake lights inoperable.

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 did not occur, you may deny committing the violation and contest the penalty assessment 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 concerning the violation require consideration of evidence and resolution in a hearing. Any contest of the penalty assessment must include a written statement of the reasons supporting that contest. Failure to provide such a statement will result in denial of the contest.

If there is a reason for any the violation that you believe should excuse you from the penalty, you may ask for mitigation (reduction) of this 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 for mitigation 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 his or her 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.
- Request mitigation to contest the amount of the penalty.

Please indicate your selection on the enclosed form and submit it electronically through the Commission's web portal **within FIFTEEN (15) days** after you receive this notice. 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, Post Office Box 47250, Olympia, Washington 98504-7250.

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 Olympia, Washington, and effective August 13, 2018.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TG-180253

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 and enclose \$_____ in payment of the penalty.

2. **Contest the violation.** I believe that the alleged violation 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 makes a materially false statement which he 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 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.”