

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TE-130191

PENALTY AMOUNT: \$1,800

BERNARD R. CASEY
BRC DEVELOPMENTS LLC
PO BOX 1583
AUBURN, WA 98071

According to the Washington Utilities and Transportation Commission (Commission) records, you have committed violations of two Commission rules: (1) Washington Administrative Code (WAC) 480-30-071, which requires Charter and Excursion companies to file annual safety reports with the Commission by December 31 each year; and (2) WAC 480-30-076, which requires such companies to pay regulatory fees annually on that date. You are classified as a Charter and Excursion company. Commission records show that you did not file an annual safety report or pay annual regulatory fees by December 31, 2012.

Revised Code of Washington (RCW) 81.04.405 authorizes the Commission to assess penalties of \$100 for violations of Commission rules. Each and every such violation shall be a separate and distinct offense and, in the case of a continuing violation, every day's continuance shall be and be deemed to be a separate and distinct violation. The Commission interprets noncompliance with WAC 480-30-071 and WAC 480-30-076 as continuing violations, giving rise to penalties of \$100 for each day a company fails to make each requisite filing after the date on which it was due.

As a result, the Commission hereby notifies you that it has assessed penalties against you in the amount of \$1,800 on the following basis:

On November 15, 2012, the Commission mailed 2012 Annual Safety Report forms and 2013 Regulatory Fee packets to Charter and Excursion companies registered in Washington state. A letter from the Commission's Assistant Director for Transportation Safety, David Pratt, instructed these companies to file annual reports and pay regulatory fees by December 31, 2012. The letter stated failure to file the annual report by December 31 would result in a penalty and possible cancellation of the company's permit to operate in Washington. Those companies wishing to request an extension to file the annual report were asked to do so prior to December 31, providing a reason for the requested extension. No extension was requested.

On January 7, 2013, the Commission issued a notice to companies that had not yet filed their annual report and paid regulatory fees, informing these companies that they were subject to enforcement action, including the assessment of penalties beginning to accrue on that date. Companies that filed their annual reports and paid regulatory fees after January 7, 2013, but on or before January 18, 2013, are subject to penalties that the Commission uses its discretion to mitigate to \$25 per

day if the company had not made these filings late in prior years. Companies that were late in prior years are subject to an additional \$25 per day for each year in which they were late up to a total of \$100 per day. For first time late-filers who filed their report after January 18, the Commission will mitigate the penalties to 50 percent of the maximum permissible amount. No further mitigation will be granted unless the company provides new information that is unrelated to these factors. Mitigation will not be granted on the basis that a company was unaware a report must be filed.

As of January 31, 2013, BRC Developments LLC, has failed to file its 2012 Annual Safety Report and pay its 2013 Regulatory Fees. That date is 18 business days past the January 7, 2013, notice date when penalties began to accrue, resulting in a potential penalty assessment of \$1,800 (\$100 per day times 18 days). BRC Developments LLC, is not a first time late-filer, having received a penalty for violations of WAC 480-30-071 in 2010. BRC Developments LLC, therefore, is not eligible for mitigation and is subject to the full penalty assessment of \$1,800.

Your penalty is due and payable now. If you believe the violation did not occur, you may request a hearing to contest the penalty assessment. If there is a reason for the violation that you believe should excuse you from the penalty, you may ask for mitigation (reduction) of this penalty. See RCW 81.04.405.

You have the right to present your request for review or mitigation at a hearing, but you are not required to do so. If you do, the Commission will review the evidence supporting your request in an informal hearing, called a Brief Adjudicative Proceeding, before an administrative law judge. The administrative law judge will consider your plea and 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;
- Request a hearing to contest the occurrence of the violations; or
- Request mitigation to contest the amount of the penalty.

Please indicate your selection on the enclosed form and send it to the Washington Utilities and Transportation Commission, Post Office Box 47250, Olympia, Washington 98504-7250, **within FIFTEEN (15) days** after you receive this notice.

If you do not act within 15 days, the Commission may refer this matter to the Office of the Attorney General for collection. The Commission will then sue you to collect the penalty.

DATED at Olympia, Washington, and effective March 4, 2013.



GREGORY J. KOPTA
Administrative Law Judge

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TE-130191

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. I have:
- Enclosed \$1,800 as payment of the penalty.
 - Submitted my payment of \$1,800 online at www.utc.wa.gov. My confirmation number is _____.
2. **Request for a hearing.** I believe that one or more of the alleged violations did not occur, based on the following information, and request a hearing, which is a process that allows an affected person to present argument to an administrative law judge for a decision by an administrative law judge:
3. **Application for mitigation.** I admit the violations, but I believe that the penalty should be reduced for the reason(s) set out below.
- a) I ask for a hearing for a decision by an administrative law judge based on the information presented above.
- OR
- b) I waive a hearing and ask for an administrative decision on the information I present directly 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.”