

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TV-160179
PENALTY AMOUNT: \$600

AMERICA'S ELITE, INC
532 VOGT ROAD
PORT ANGELES, WA 98362

The Washington Utilities and Transportation Commission (Commission) believes that you have committed violations of Washington Administrative Code (WAC) 480-15-570 Driver Safety Requirements, which requires household goods carriers to comply with Title 49 Code of Federal Regulations (CFR) Part 391 Qualifications of Drivers and Part 395 Hours of Drivers Service. RCW 81.04.405 allows penalties of one hundred dollars for every such violation. In the case of an ongoing violation every day's continuance is considered a separate and distinct violation.

On January 13, 2016, Commission Motor Carrier Investigator John Foster conducted a compliance review of America's Elite, Inc. (America's Elite), and documented the following violations of critical regulations:

- **Three violations of CFR Part 391.45(a) – Using a driver not medically examined and certified.** On three occasions over a six-month period, America's Elite used two drivers not medically certified. Company president Sean Ryan drove on July 1, 2015, and manager Robert Porrizzo drove on September 4 and 5, 2015. Neither driver had been medically examined and certified at the times they drove.
- **Two violations of CFR Part 391.51(a) – Failing to maintain driver qualification files.** America's Elite employs two drivers. The company failed to maintain driver qualification files for either driver.
- **One violation of CFR Part 395.8(a) – Failing to require driver to make a record of duty status.** Robert Porrizzo drove on September 4 and 5, 2015, and failed to make a record of duty status on either date.

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

1. **How serious or harmful the violation is to the public.** The violations noted are serious and potentially harmful to the public. Companies that permit their employees to perform safety-sensitive functions prior to being medically examined and certified or without documentation of driver qualifications or driver rest put the traveling public at risk. An

undocumented medical condition, or unqualified or fatigued driver could present serious safety concerns.

2. **Whether the violation is intentional.** Considerations include:

- Whether the company ignored Commission Staff's (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 violation.

In its application for authority dated February 11, 2014, America's Elite acknowledged its responsibility to comply with the requirements of Title 49 CFR Part 391 regarding minimum driver qualification requirements, including driver qualification files, and Part 395 regarding driver hours of service.

On March 12, 2014, manager Robert Porrazzo attended training provided by the Commission to familiarize new household goods movers with the regulatory requirements of the industry, including Title 49 CFR Parts 391 and 395.

The company knew, or should have known, about these requirements.

3. **Whether the company self-reported the violation.** The company did not self-report these violations.

4. **Whether the company was cooperative and responsive.** America's Elite was cooperative and responded quickly to correct the violations. The company expressed its sincere desire to come into compliance.

5. **Whether the company promptly corrected the violations and remedied the impacts.** The company promptly submitted a medical certificate for manager Robert Porrazzo. President Sean Ryan will no longer drive. The company willingly accepted additional technical assistance and is committed to being fully compliant. The company submitted a 15-day letter to correct the violations.

6. **The number of violations.** The number of critical violations noted is small.

7. **The number of customers affected.** The company is a household goods mover. While the customers themselves were not placed at risk, their household goods potentially were. A driver not medically certified, or with undocumented qualifications or rest periods presents potential safety concerns.

8. **The likelihood of recurrence.** Staff has no information to indicate whether this company is likely to repeat these violations, but the company is small and appears to be making significant steps toward correcting the small number of violations noted.

9. **The company's past performance regarding compliance, violations, and penalties.** There have been no previous compliance reviews, violations, or penalties.
10. **The company's existing compliance program.** The company has submitted a 15-day letter that satisfactorily addresses the violations.
11. **The size of the company.** America's Elite operates one commercial vehicle with two (now only one) drivers. The company reported \$19,925 in gross revenue for 2014 and logged 1,906 miles.

The critical violations noted in the compliance review are first-time violations, but the Commission's Enforcement Policy provides that some Commission requirements are so fundamental to safe operations that the Commission will issue penalties for a first-time violation, regardless of whether Staff has previously provided technical assistance on specific issues.¹ Within these first-time violations are regulations so critical to public safety that statute (RCW 81.04.405) and enforcement policy penalize each occurrence.

The Commission has considered these factors and determined that America's Elite should be penalized \$600 -- \$100 for each of the following six violations of WAC 480-15-570 Driver Safety Requirements, which adopts CFR Parts 391 and 395:

- Three violations of CFR Part 391.45(a) – Using a driver not medically examined and certified. These are first-time violations, but the Commission grants no leeway with this type of violation. Drivers who are not medically examined and certified put the traveling public at risk.
- Two violations of CFR Part 391.51(a) – Failing to maintain a driver qualification file on each driver employed.
- One violation of CFR Part 395.8(a) – Failing to require driver to make a record of duty status.

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 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.

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

If there is a reason for the violations that you think 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 violations.
- 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 may then sue you to collect the penalty.

DATED at Olympia, Washington, and effective February 22, 2016.



GREGORY J. KOPTA
Administrative Law Judge

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TV-160179

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:
 - 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:

- 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.”