

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TE-220268
PENALTY AMOUNT: \$3,400

Creative Bus, LLC
PO Box 4053
Renton, WA 98055

The Washington Utilities and Transportation Commission (Commission) believes Creative Bus, LLC, (Creative Bus or Company) violated Washington Administrative Code (WAC) 480-30-221, Vehicle and Driver Safety Requirements, which adopts 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; and 49 C.F.R. Part 391 – Qualification of Drivers.

Revised Code of Washington (RCW) 81.04.405 allows penalties of \$100 for each violation. RCW 81.04.530 allows penalties of \$500 for each motor vehicle driver not in compliance with the motor vehicle driver testing requirements and allows penalties of up to \$1,500 for an employer who begins or conducts commercial motor vehicle operations without having a controlled substance and alcohol testing program that is in compliance with the requirements of Title 49 C.F.R. Part 382. In the case of an ongoing violation, every day’s continuance is considered a separate and distinct violation.

On April 13, 2022, Commission Motor Carrier Investigator Wayne Gilbert completed a routine safety investigation of Creative Bus and documented the following violations:

- **One violation of 49 C.F.R. § 382.115(a) – Failing to implement an alcohol/controlled substances testing program on the date the employer begins commercial motor vehicle (CMV) operations.** The Company failed to ensure a random drug and alcohol testing program was in place.
- **Three violations 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 failed to ensure drivers Charmage Bell, Kathryn Major, and Geordan Newbill had received a negative pre-employment controlled substance test prior to operating a CMV.
- **One violation of 49 C.F.R. § 383.37(b) – Knowingly allowing, requiring, permitting or authorizing a driver to operate a CMV during any period in which the driver has a current commercial learner’s permit (CLP) or commercial driver’s license (CDL) disqualified by a State, has lost the right to operate a CMV in a State, or has been disqualified from operating a CMV.** The Company allowed driver Brian Green to operate a CMV with a suspended CDL.

- **Three violations of 49 C.F.R. § 391.45(a) – Using a driver not medically examined and certified.** The Company allowed driver Michael Langdon to operate a CMV without having a valid medical certificate on three occasions between October 9 and 16, 2021.

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) fail to implement drug and alcohol testing programs, (2) fail to receive pre-employment controlled substance tests prior to allowing drivers to operate CMVs, (3) allow drivers to operate CMVs without having a valid CDL, and (4) allow drivers to operate CMVs without having a valid medical certificate, 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 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.

On July 7, 2006, the Commission received Michael Contrell Langdon d/b/a Creative Bus' application for charter and excursion authority. In the application, Michael Langdon, owner of Creative Bus, acknowledged the Company's responsibility to understand and comply with applicable motor carrier safety rules.

On July 19, 2010, the Commission received an application to change the company's name to Creative Bus, LLC. In the application Michael Langdon acknowledged the Company's responsibility to understand and comply with applicable motor carrier safety rules.

The Company knew or should have known about these requirements.

3. **Whether the Company self-reported the violations.** Creative Bus did not self-report these violations.
4. **Whether the Company was cooperative and responsive.** The Company was cooperative throughout the safety investigation and expressed a desire to come into compliance.
5. **Whether the Company promptly corrected the violations and remedied the impacts.** Creative Bus has corrected the discovered violations.
6. **The number of violations.** Staff identified 15 violation types with a total of 33 individual occurrences during the safety investigation of Creative Bus. Of those violations, Staff identified four violation type with eight individual occurrences that warrant penalties in accordance with the Commission's Enforcement Policy.

7. **The number of customers affected.** Creative Bus traveled 4,500 miles in 2021. These safety violations presented a public safety risk.
8. **The likelihood of recurrence.** Staff provided technical assistance with specific remedies to help the Company assess how well its safety management controls support safe operations and how to begin improving its safety performance. The Company was cooperative throughout the safety investigation and expressed a desire to come into compliance. In light of these factors, Staff believes that the likelihood of recurrence is low.
9. **The Company's past performance regarding compliance, violations, and penalties.** On February 20, 2009, the Commission assessed a \$200 penalty against Creative Bus for failing to file an annual safety report by December 31, 2008, in Docket TE-090226. The Company paid the penalty in full on April 9, 2009.

On June 19, 2017, the Commission assessed a \$1,000 penalty against Creative Bus for failing to file an annual report and pay regulatory fees in Docket TE-170610. The Company paid regulatory fees in full on December 11, 2017.

On February 4, 2021, Creative Bus's charter and excursion certificate was cancelled for failing to file acceptable proof of insurance in Docket TE-210076. The Company's certificate was reinstated on March 8, 2021.
10. **The Company's existing compliance program.** Michael and Ranjana Langdon are responsible for the Company's safety compliance program.
11. **The size of the Company.** Creative Bus currently operates four CMVs and employs 10 drivers. The Company reported \$100,000 in gross revenue for the fiscal year ending December 31, 2021.

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 Creative Bus \$3,400 (Penalty Assessment), calculated as follows:

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

- One violation of 49 C.F.R. § 382.115(a) – Failing to implement an alcohol/controlled substances testing program on the date the employer begins commercial motor vehicle (CMV) operations. The Commission assesses a penalty of \$1,500 for this acute violation.
- Three violations 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 \$500 penalty for each occurrence of these critical violations for a total of \$1,500.
- One violation of 49 C.F.R. §383.37(b) – Knowingly allowing, requiring, permitting or authorizing a driver to operate a CMV during any period in which the driver has a current CLP or CDL disqualified by a State, has lost the right to operate a CMV in a State, or has been disqualified from operating a CMV. The Commission assesses a penalty of \$100 for this acute violation.
- Three violations of 49 C.F.R. § 391.45(a) – Using a driver not medically examined and certified. The Commission assesses a \$100 penalty for each occurrence of these critical-type violations for a total of \$300.

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 any or all of the violations 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 any or all of 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 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 Penalty Assessment to do one of the following:

- Pay the amount due.
- Contest the occurrence of the violation(s).
- 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 **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, PO 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 Lacey, Washington, and effective May 6, 2022.

/s/Michael Howard
on behalf of
RAYNE PEARSON
Director, Administrative Law Division

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TE-220268

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 and enclose \$3,400 in payment of the penalty.
- 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 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):

Coming back from pandemic I was unaware our DOT testing location was not back active and continue as is thus no random was done. However soon as aware I started a new account to assure all DOT testing was setup. I had set up all new messages and installed all recommendations. I am truly sorry for not following through and missing information.

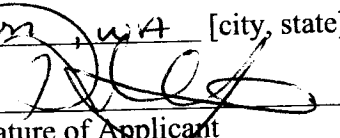
a) I ask for a hearing to present evidence on the information I provide above to an administrative law judge for a decision.

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: 05/09/22 . [month/day/year], at Renton WA [city, state]

Ranjana Langdon
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.”