

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TE-240486

PENALTY AMOUNT: \$700

Traxx America Inc
811 SW Grady Way
Renton, WA 98057

The Washington Utilities and Transportation Commission (Commission) believes Traxx America Inc (Traxx America 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 and 49 C.F.R. Part 395 - Hours of Service of Drivers.

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 June 18, 2024, Commission Motor Carrier Safety Investigator Sandra Yeomans completed a routine safety investigation of Traxx America 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 CDL driver John Brehmer to drive a commercial motor vehicle (CMV) prior to conducting a controlled substance test and receiving a verified negative pre-employment test result.
- **Two-hundred-ten violations of 49 C.F.R. § 395.8(a)(1) - Failing to require a driver to prepare a record of duty status using the appropriate method.** The Company failed to require drivers Gerald Barnett, Nicholas Delvaux, Joe Fisher, Elihu Israel, Rulana Pendragon, Robert Wedmeyer, and Angela Wilcox to prepare a record of duty status on 210 occasions between April 1, 2023, and April 30, 2023.
- **Four violations of 49 C.F.R. § 395.5(b)(2) - Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after having been on duty 70 hours in 8 consecutive days.** The Company allowed driver Robert Wedemeyer to drive over 70 consecutive hours in eight days on four occasions.

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 maintain records of duty status, and (3) require their drivers to drive beyond their hourly limits 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.

Traxx America began its operations in 2019.

On February 24, 2022, Staff provided new entrant training to Traxx America. Lonnie Bartel signed the new entrant Verification of Training and acknowledged receiving training pertaining to motor carrier safety regulations.

The Company knew or should have known about these requirements.

3. **Whether the Company self-reported the violations.** Traxx America did not self-report these violations.
4. **Whether the Company was cooperative and responsive.** The Company was cooperative throughout the safety investigation.
5. **Whether the Company promptly corrected the violations and remedied the impacts.** Traxx America made corrections of violations as they were discovered during the investigation.
6. **The number of violations.** Staff identified 14 violation types with a total of 235 individual occurrences during the routine safety investigation of Traxx America. Of those violations, Staff identified three violation types with 215 individual occurrences that warrant a penalty in accordance with the Commission's Enforcement Policy.
7. **The number of customers affected.** Traxx America last reported traveling 4,940,169 miles for 2023. These safety violations present a public safety risk.
8. **The likelihood of recurrence.** The Company was cooperative throughout the safety investigation and was 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. In light of these factors, Staff believes the likelihood of recurrence is low.

9. **The Company's past performance regarding compliance, violations, and penalties.** The Company has no history of penalties for safety violations
10. **The Company's existing compliance program.** Graham Horne, Safety Compliance Manager, is responsible for the Company's safety compliance program.
11. **The size of the Company.** The Company employs 17 drivers and operates 17 commercial motor vehicles. The Company reported \$1,543,590 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 Traxx America \$700 (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 first-time critical violation.
- Two-hundred-ten violations of 49 C.F.R. § 395.8(a)(1) -Failing to require a driver to prepare a record of duty status using the appropriate method. The Commission assesses a \$100 "per category" penalty for these first-time critical violations.
- Four violations of 49 C.F.R. § 395.5(b)(2) - Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after having been on duty 70 hours in 8 consecutive days. The Commission assesses a \$100 "per category" penalty for these first-time critical 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

¹ Docket A-12 0061 – Enforcement Policy of the Washington Utilities & Transportation Commission – Section V.

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 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 July 16, 2024.

/s/ Michael Howard
MICHAEL HOWARD
Director, Administrative Law Division

² <https://efiling.utc.wa.gov/Form>.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TE-240486

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 \$700 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

Graham Horne

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.