

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TE-152319
PENALTY AMOUNT: \$2,900

BREMERTON-KITSAP AIRPORTER, INC.
PO BOX 1255
PORT ORCHARD, WA 98366

The Washington Utilities and Transportation Commission (Commission) believes that you have committed violations of Washington Administrative Code (WAC) 480-30-221, Vehicle and driver safety requirements. The WAC requires passenger transportation companies to comply with Title 49, Code of Federal Regulations (C.F.R.), Part 391 – Qualifications of Drivers.

On November 24, 2015, Motor Carrier Safety Inspectors Mathew Perkinson and Francine Gagne conducted a destination check at SeaTac Airport. Ms. Gagne found that a driver for Bremerton-Kitsap Airporter, Inc. (Bremerton-Kitsap or Company), Mike Reser, was operating a passenger-carrying vehicle without a valid medical certificate. During the destination check Mr. Reser was placed out-of-service.

On December 2, 2015, Mr. Perkinson visited Bremerton-Kitsap to conduct a focused compliance review of Mr. Reser's driving records for the previous six months. Mr. Perkinson found that Mr. Reser operated a passenger-carrying vehicle without a valid medical certificate on 29 days within that period, and each day is a separate violation of a critical regulation:

29 violations of 49 C.F.R. Part 391.45(b)(1) – Using a driver not medically examined and certified. Driver Mike Reser drove 29 days from June 5 – November 24, 2015 without a valid medical certificate. The specific dates on which Mr. Reser drove are: June 5, June 6, June 7, June 14, June 15, June 17, June 21, June 28, July 5, July 9, July 19, July 22, July 23, July 26, July 31, Aug. 2, Sept. 5, Sept. 11, Sept. 12, Sept. 17, Sept. 27, Oct. 7, Oct. 14, Oct. 18, Oct. 20, Oct. 24, Oct. 29, Nov. 21, and Nov. 24.

The Commission hereby notifies you that it has assessed a penalty against the Company in the amount of \$2,900 for 29 violations of 49 C.F.R. Part 391.45(b)(1). The Commission finds that the maximum penalty of \$100 for each violation is appropriate based on consideration of the following factors:

1. **How serious or harmful the violation is to the public.** The violations noted are serious and potentially harmful to the public. Drivers who are not medically certified put the traveling public at risk. An undocumented medical condition could result in serious safety issues.

2. **Whether the violation is 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 show the Company knew of and failed to correct the violation. The violations appear to be based on lack of Company oversight and not to be intentional.
3. **Whether the Company self-reported the violation.** Bremerton-Kitsap did not self-report these violations.
4. **Whether the Company was cooperative and responsive.** Bremerton-Kitsap has been cooperative with Staff. Mr. Reser did not operate a commercial motor vehicle after he was placed out-of-service on November 24, 2015. On November 25, 2015, Mr. Reser obtained a new medical certificate.
5. **Whether the Company promptly corrected the violations and remedied the impacts.** Mr. Reser obtained a new medical certificate November 25, 2015, one day after the destination check.
6. **The number of violations.** 29 violations within a six month period is significant because they involve qualifications of drivers, which are critical violations. Critical violations are generally indicative of breakdowns in a carrier's management controls. Patterns of non-compliance with critical regulations are quantitatively linked to inadequate safety management controls and usually higher than average accident rates.¹
7. **The number of customers affected.** The violations did not affect any customers.
8. **The likelihood of recurrence.** The chance of recurrence is unlikely for Mr. Reser, who obtained a new medical certificate one day after the destination check on November 25, 2015, but recurrence is likely for other drivers if the Company does not improve its safety management practices.
9. **The Company's past performance regarding compliance, violations, and penalties.** In June 2015 (Docket TE-150531) the Commission assessed Bremerton-Kitsap a penalty of \$1,000 for using drivers prior to receiving a negative pre-employment controlled substance and alcohol use test result. On June 11, 2015, Bremerton-Kitsap contested those violations and requested Commission review of the penalty assessment. On August 5, 2015, the Commission entered final Order 02 upholding the penalty. On November 13, 2015, Bremerton-Kitsap requested the Commission rescind the penalty. The Commission has not done so. As of this date, the Company has not paid the \$1,000 penalty assessment.
10. **The Company's existing compliance program.** The Commission is concerned that there is a lack of oversight by management to track and keep driver qualifications current.

¹ 49 C.F.R. Part 385, Appendix B – Explanation of safety rating process.

11. The size of the Company. Bremerton-Kitsap reported approximately \$3,100,000 in gross intrastate operating revenue for 2014.

The Commission has weighed these factors and determined that Bremerton-Kitsap should be penalized \$100 for each of the 29 violations for a total of \$2,900. These are first-time violations, but the Commission grants no leeway with this type of violation.² Drivers who are not medically certified put the traveling public at risk. The maximum penalty is particularly appropriate under the circumstances presented here to provide the Company with an incentive to improve its safety management practices and comply with driver qualification regulations.

This information, if proved 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.

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; or
- Request mitigation to contest the amount of the penalty.

² The Commission's Enforcement Policy provides that the Commission generally will not assess penalties for first-time violations but states that some Commission requirements are so fundamental to safe operations that the Commission may issue penalties for such violations. Docket A-120061, Enforcement Policy, Section V.

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 December 24, 2015.

GREGORY J. KOPTA
Administrative Law Judge

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

PENALTY ASSESSMENT TE-152319

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.”