

Service Date: November 9, 2022

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TR-220802
PENALTY AMOUNT: \$3,000

BNSF Railway Co.
2650 Lou Menk Drive
Fort Worth, TX

The Washington Utilities and Transportation Commission (Commission) believes BNSF Railway Co. (BNSF or Company) violated Washington Administrative Code (WAC) 480-62-225 – Crossing Surfaces, which requires railroad companies to maintain highway-rail grade crossing surfaces in a state of repair.

On June 21, 2021, Commission Grade Crossing Specialist Andy McMahon issued defect notice number 8360 to BNSF related to the crossing surface at the 24th Street Southeast crossing near Sumner, identified as USDOT 085675L. The crossing surface contained deteriorated asphalt between the two mainline tracks and created an uneven surface for roadway users. BNSF acknowledged the defect notice on October 14, 2021, and committed to providing photos of the completed repairs by October 22, 2021. Commission staff (Staff) did not receive photographs from BNSF.

On November 18, 2021, Staff sent a compliance letter directing BNSF to either provide photos of the corrected defect or provide a detailed plan for correcting the defect. No response was received.

On June 2, 2022, Staff inspected the crossing, observed that the crossing surface had not been repaired, and issued a second defect notice (defect 9139). Staff followed up with BNSF by email on July 5, inquiring about the status of the defect correction. Staff received no response from BNSF to either the second defect notice or Staff's July 5, 2022, email. Staff re-inspected the crossing on July 13, 2022, and observed that the defect remained uncorrected and the crossing surface had not been repaired.

On August 3, 2022, Staff sent a second compliance letter directing BNSF to correct the defect by September 3, 2022. The letter also informed BNSF that Staff would inspect the crossing after September 3, 2022, and would recommend Commission enforcement action if the defect was not corrected.

Staff re-inspected the 24th Street Southeast crossing on September 13 and October 20, 2022, and observed that the defect remained uncorrected and the crossing surface had not been repaired.

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. The violation continued for thirty days from the date of Staff's second compliance letter through the deadline for compliance. Accordingly, the Commission hereby notifies you that it is assessing a penalty against you in the amount of \$3,000.

Received
Records Management

12/02/2022

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COMMISSION

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 violation did not occur, you may deny committing the violation and contest the penalty through evidence presented at a hearing or in writing. Alternatively, if there is a reason for the violation 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 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 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 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 November 9, 2022.

/s/ Rayne Pearson
RAYNE PEARSON
Director, Administrative Law Division

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TR-220802

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 \$3,000 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**):

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 or she makes a materially false statement which he or she 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 or her 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.