

FEB 15 2017

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
NOTICE OF PENALTIES INCURRED AND DUE
FOR VIOLATIONS OF LAWS AND RULES

PENALTY ASSESSMENT: TE-170082

PENALTY AMOUNT: \$10,200

A Crystal Coach Limousine Service Inc.
18809 SE 109th Street
Issaquah, WA 98027

The Washington Utilities and Transportation Commission (Commission) believes you have committed violations of Washington Administrative Code (WAC) 480-30-221 Vehicle and Driver Safety Requirements, which requires charter and excursion carriers to comply with Title 49 CFR Part 382 - Controlled Substances and Alcohol Use and Testing, Part 383 - Commercial Driver's License Standards, Requirements and Penalties, Part 391 - Qualifications of Drivers, and Part 396 - Inspection, Repair, and Maintenance.

Revised Code of Washington (RCW) 81.04.530 allows a penalty of \$1,500 for failing to comply with the controlled substances and alcohol use and testing requirements of Title 49 CFR Part 382. RCW 81.04.405 allows penalties of \$100 for each violation of Parts 383, 391, and 396. In the case of an ongoing violation, every day's continuance is considered a separate and distinct violation.

In January 2017, Commission Motor Carrier Investigator Sandi Yeomans conducted a compliance review of A Crystal Coach Limousine Service Inc. (Crystal Coach) and documented the following violations of acute and critical regulations:

- **One violation of CFR Part 382.115(a) – Failing to implement an alcohol and/or controlled substances testing program on the date the employer begins commercial motor vehicle operations.** Crystal Coach does not have an alcohol and/or controlled substances testing program.
- **Forty-two violations of CFR 383.37(a) – Allowing, requiring, or authorizing a driver to operate a commercial motor vehicle during any period in which the driver does not have a current commercial driver's license with the proper class or endorsements.** Driver Eric Rossman drove on 42 occasions during the six months preceding the compliance review without the required passenger vehicle endorsement on his commercial driver's license. Mr. Rossman drove five times in July, thirteen times in August, four times in September, eight times in October, five times in November, and seven times in December, 2016.
- **Forty-three violations of CFR 391.45(a) – Using a driver not medically examined and certified.** Two Crystal Coach employees drove 43 times after their medical examination certificates had expired. Larry Meeks drove one time in August, 2016. Eric

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Rossman drove five times in July, thirteen times in August, four times in September, eight times in October, five times in November, and seven times in December, 2016.

- **One violation of CFR 391.51(a) – Failing to maintain medical examiner’s certificate in driver’s qualification file.** Crystal Coach failed to maintain certificates of medical examination for three years in any of its four drivers’ qualification files.
- **One violation of CFR 396.11(a) – Failing to require driver to prepare driver vehicle inspection report.** Crystal Coach drivers failed to prepare driver vehicle inspection reports for seven trips in the 90 days previous to the compliance review.

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 do not have an alcohol and/or controlled substances testing program, that employ unqualified drivers or drivers not medically examined and certified, or use vehicles not regularly inspected place the traveling public at risk. A driver who is under the influence of alcohol or a controlled substance, not properly licensed or medically examined and certified, or an unknown vehicle defect present serious safety concerns.
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 shows the company knew of and failed to correct the violation.

In its June 2011 application for charter and excursion authority, the company acknowledged its responsibility to understand and comply with applicable motor carrier safety rules. Staff provided new-entrant technical assistance to the company in July 2011 and conducted a compliance review in February 2012, in which no similar violations were noted. 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.** Crystal Limousine was very cooperative and responsive.
5. **Whether the company promptly corrected the violations and remedied the impacts.** The company took immediate steps to begin correcting these violations.
6. **The number of violations.** The compliance review identified 43 acute violations, 45 critical violations and 37 other violations. For a small company like Crystal Coach, the number of violations is very significant.

7. **The number of customers affected.** Crystal Coach reported 245,000 miles travelled in 2015. A significant number of passengers, as well as members of the traveling public were potentially put at risk by these violations.
8. **The likelihood of recurrence.** The Commission does not know if the company is likely to repeat these violations, but the company was receptive to technical assistance and has taken immediate steps to correct the violations and prevent future occurrences.
9. **The company's past performance regarding compliance, violations, and penalties.** Crystal Coach had one previous compliance review investigation in 2012. No similar violations were noted.
10. **The company's existing compliance program.** Crystal Coach has no formal compliance program.
11. **The size of the company.** Crystal Coach is a small company, operating one commercial vehicle with four drivers. In addition, the company operates a small fleet of limousines not regulated by the Commission. In 2016, the company reported \$559,099 in gross revenue and 245,000 miles travelled.

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 Otherwise, the Commission generally will assess penalties per type of violation, rather than per occurrence, for other first-time violations of critical regulations that do not meet the criteria for mandatory penalties. The Commission will assess penalties for any repeat violations of critical regulations found in future compliance investigations, including for each occurrence of a repeat violation.

The Commission has considered these factors and determined that it should penalize Crystal Coach \$10,200 for violations of WAC 480-30-221 Vehicle and Driver Safety Requirements, which adopts CFR Parts 382, 383, 391, and 396, calculated as follows:

- One violation of CFR Part 382.115(a) – Failing to implement an alcohol and/or controlled substances testing program on the date the employer begins commercial motor vehicle operations. The Commission assesses the statutory penalty amount of \$1,500 for this acute violation, per RCW 81.04.530.
- Forty-two violations of CFR 383.37(a) – Allowing, requiring, or authorizing a driver to operate a commercial motor vehicle during any period in which the driver does not have a current commercial driver's license with the proper class or endorsements. The Commission assesses a penalty of \$100 for each occurrence of this acute violation for a total of \$4,200.

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

- Forty-three violations of CFR 391.45(a) – Using a driver not medically examined and certified. The Commission assesses a penalty of \$100 for each occurrence of this critical violation for a total of \$4,300.
- One violation of CFR 391.51(a) – Failing to maintain medical examiner's certificate in driver's qualification file. The Commission assesses a penalty of \$100 for one critical violation of this type.
- One violation of CFR 396.11(a) – Failing to require driver to prepare driver vehicle inspection report. The Commission assesses a penalty of \$100 for one critical violation of this type.

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 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(s) 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 any or all of the violations that you believe 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(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 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 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 Olympia, Washington, and effective February 13, 2017.

A handwritten signature in black ink, appearing to read 'G. Kopta', written in a cursive style.

GREGORY J. KOPTA
Administrative Law Judge

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
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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: 2/27/17 [month/day/year], at Renton, WA [city, state]

A. Crystal Code H Limonsine
Name of Respondent (company) – please print [Signature]
Signature of Applicant

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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.”

