

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment Against	DOCKET TE-160911
SINO-M INTERNATIONAL, LLC d/b/a SEATTLE MAY TRAVEL	ORDER 01
in the amount of \$6,900	ORDER IMPOSING AND SUSPENDING PENALTIES

BACKGROUND

- 1 On August 3, 2016, the Washington Utilities and Transportation Commission (Commission) assessed a \$6,900 penalty (Penalty Assessment) against Sino-M International, LLC d/b/a Seattle May Travel (Seattle May Travel or Company) for 83 critical violations of Washington Administrative Code (WAC) 480-30-221, which adopts by reference 49 C.F.R. Part 391 related to driver qualifications, and Part 396, related to vehicle inspection, repair, and maintenance.
- 2 On August 19, 2016, Seattle May Travel responded to the Penalty Assessment, admitting the violations and requesting mitigation of the penalty based on the written information provided. In its response, the Company stated that it now has medically examined drivers; it keeps maintenance files for all commercial vehicles; it has created driver vehicle inspection reports (DVIRs); and it now understands that annual US Department of Transportation (USDOT) inspections are needed for each of its vehicles. The Company did not include any supporting documentation with its response.
- 3 On August 24, 2016, Commission staff (Staff) filed a response recommending the Commission grant the Company's request for mitigation, in part, and assess a reduced penalty of \$3,900. Staff did not provide an explanation for its recommendation. The Penalty Assessment includes a \$6,500 penalty for 65 violations of 49 C.F.R. Part 391.45(a); a \$100 penalty for one violation of 49 C.F.R. Part 391.51(a); a \$100 penalty for one violation of 49 C.F.R. Part 396.3(b); a \$100 penalty for one violation of 49 C.F.R. Part 396.11(a); and a \$100 penalty for seven violations of 49 C.F.R. Part 396.17(a).

DISCUSSION AND DECISION

- 4 Washington law requires auto transportation carriers to comply with federal safety requirements and undergo routine safety inspections. In some cases, Commission requirements are so fundamental to safe operations that the Commission will issue penalties for first-time violations.¹ Violations defined by federal law as “critical” meet this standard.² Violations classified as “critical” are indicative of a breakdown in a carrier’s management controls, and are subject to penalties of \$100 per violation.³
- 5 The Commission considers several factors when entertaining a request for mitigation, including whether the company introduces new information that may not have been considered in setting the assessed penalty amount, or explains other circumstances that convince the Commission that a lesser penalty will be equally or more effective in ensuring the company’s compliance.⁴ The Commission also considers whether the violations were promptly corrected, a company’s history of compliance, and the likelihood the violation will recur.⁵ We address each violation category in turn.
- 6 **WAC 480-30-221, 49 C.F.R. Part 391.45(a).** The Penalty Assessment includes a \$6,500 penalty for 65 violations of 49 C.F.R. Part 391.45(a) because Seattle May Travel allowed five drivers who were not medically examined and certified to drive on 65 occasions. In its response, the Company stated that it now has medically examined drivers and keeps copies of their medical certificates in its driver qualification files.
- 7 Staff notes in its response that the Company failed to provide copies of its drivers’ medical certificates or provide information about how the Company intends to comply with this requirement going forward. Nevertheless, Staff recommends assessing a reduced penalty of \$3,500 for these violations.
- 8 We decline to mitigate this portion of the penalty. It is the Company’s responsibility to ensure compliance with Commission rules; Seattle May Travel failed to demonstrate that

¹ Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission ¶12 (Jan. 7, 2013) (Enforcement Policy).

² 49 C.F.R. § 385, Appendix B.

³ See RCW 81.04.405.

⁴ Enforcement Policy ¶19.

⁵ Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission (January 7, 2013).

it has either corrected these violations or developed a plan for ongoing compliance. The Company also failed to provide any information that would warrant a reduction of the penalty. Because these are first time violations, however, we will suspend a \$3,000 portion of the penalty for two years, and then waive it, subject to the following conditions: 1) Seattle May Travel must maintain a “conditional” safety rating, 2) Seattle May Travel may not incur any repeat violations of WAC 480-30-221, and 3) Seattle May Travel must comply with all other terms of this Order.

- 9 **WAC 480-30-221, 49 C.F.R. Part 391.51(a).** The Penalty Assessment also includes a \$100 penalty for one violation of 49 C.F.R. Part 391.51(a) because Seattle May Travel failed to maintain driver qualification files for each of its five drivers. The Company did not address this violation in its response. Staff recommends no mitigation for this portion of the penalty because the Company did not acknowledge the violations or provide any documentation related to whether or how they have been corrected. We agree with Staff’s recommendation and decline to mitigate this portion of the penalty.
- 10 **WAC 480-30-221, 49 C.F.R. Part 396.3(b).** The Penalty Assessment also includes a \$100 penalty for three violations of 49 C.F.R. Part 396.3(b) because Seattle May Travel failed to maintain vehicle inspection and maintenance records for its three commercial vehicles. In its response, the Company stated that it has created vehicle inspection and maintenance records for all of its vehicles.
- 11 Staff recommends no mitigation for this portion of the penalty because the Company failed to explain how the violations occurred and failed to describe any steps it has taken to prevent the violations from recurring. The Commission could have assessed a \$300 penalty, but, because these are first-time violations, assessed a “per category” rather than “per violation” penalty. Accordingly, we find that no further reduction is warranted, and decline to mitigate this portion of the penalty.
- 12 **WAC 480-30-221, 49 C.F.R. Part 396.11(a).** The Penalty Assessment also includes a \$100 penalty for 67 violations of 49 C.F.R. Part 396.11(a) because the Company failed to require its drivers to prepare DVIRs on 67 occasions. In its response, the Company explained that it has created DVIR forms that will be completed both pre-trip and post-trip, and each form will be maintained for a minimum of 90 days.
- 13 Staff recommends the Commission deny the Company’s request to mitigate this portion of the penalty because the Company failed to provide a copy of its DVIR form, a list of

what is included on its DVIR form, or any description of the steps it has taken to prevent repeat violations. We agree with Staff and decline to mitigate this portion of the penalty. It is the Company's responsibility to demonstrate that it has come into compliance when violations are identified.

- 14 **WAC 480-30-221, 49 C.F.R. Part 396.17(a).** The Penalty Assessment also includes a \$100 penalty for three violations of 49 C.F.R. Part 396.17(a) because none of Seattle May Travel's three commercial vehicles were periodically inspected as required. In its response, the Company explained that its vehicles are maintained by the Mercedes dealership, which the Company believed exceeded the requirements for annual inspections. The Company stated that it now understands that separate USDOT annual inspections are required, and that it intends to comply.
- 15 Staff recommends no mitigation of this portion of the penalty. The Commission could have assessed a \$300 penalty, but, because these are first-time violations, assessed a "per category" rather than "per violation" penalty. Accordingly, we find that no further reduction is warranted, and decline to mitigate this portion of the penalty.

FINDINGS AND CONCLUSIONS

- 16 (1) The Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, and practices of public service companies, including auto transportation carriers, and has jurisdiction over the parties and subject matter of this proceeding.
- 17 (2) Seattle May Travel is an auto transportation carrier subject to Commission regulation.
- 18 (3) Seattle May Travel violated WAC 480-30-221, which adopts by reference 49 C.F.R. Part 391.45(a), when it allowed five drivers who were not medically examined and certified to drive on a total of 65 occasions.
- 19 (4) Seattle May Travel should be penalized \$6,500 for 65 violations of WAC 480-30-221, which adopts by reference 49 C.F.R. Part 391.45(a). A \$3,000 portion of the penalty should be suspended for a period of two years, and then waived, subject to the following conditions: 1) Seattle May Travel must maintain a "conditional" safety rating, 2) Seattle May Travel may not incur any repeat violations of WAC

480-30-221, and 3) Seattle May Travel must comply with all other terms of this Order.

- 20 (5) Seattle May Travel violated WAC 480-30-221, which adopts by reference 49 C.F.R. Part 391.51(a), when it failed to maintain driver qualification files for each of its five drivers.
- 21 (6) Seattle May Travel should be penalized \$100 for five violations of WAC 480-30-221, which adopts by reference 49 C.F.R. Part 391.51(a).
- 22 (7) Seattle May Travel violated WAC 480-30-221, which adopts by reference 49 C.F.R. Part 396.3(b), when it failed to maintain vehicle inspection and maintenance records for its three commercial vehicles.
- 23 (8) Seattle May Travel should be penalized \$100 for three violations of WAC 480-30-221, which adopts by reference 49 C.F.R. Part 396.3(b).
- 24 (9) Seattle May Travel violated WAC 480-30-221, which adopts by reference 49 C.F.R. Part 396.11(a) when it failed to require its drivers to complete DVIRs on 67 occasions.
- 25 (10) Seattle May Travel should be penalized \$100 for 67 violations of WAC 480-30-221, which adopts by reference 49 C.F.R. Part 396.11(a).
- 26 (11) Seattle May Travel violated WAC 480-30-221, which adopts by reference 49 C.F.R. Part 396.17(a) when it failed to have its three commercial vehicles periodically inspected.
- 27 (12) Seattle May Travel should be penalized \$100 for three violations of WAC 480-30-221, which adopts by reference 49 C.F.R. Part 396.17(a).

ORDER

THE COMMISSION ORDERS:

- 28 (1) Sino-M International, LLC d/b/a Seattle May Travel's request for mitigation of the \$6,900 penalty is GRANTED, in part. A \$3,000 portion of the penalty is suspended for a period of two years, and then waived, subject to the following conditions: 1) Sino-M International, LLC d/b/a Seattle May Travel must maintain

a “conditional” safety rating, 2) Sino-M International, LLC d/b/a Seattle May Travel may not incur any repeat violations of WAC 480-30-221, and 3) Sino-M International, LLC d/b/a Seattle May Travel must comply with all other terms of this Order.

29 (2) Sino-M International, LLC d/b/a Seattle May Travel must either pay the \$3,900 portion of the penalty that is not suspended or file jointly with Staff a proposed payment plan no later than September 12, 2016.

30 The Secretary has been delegated authority to enter this order on behalf of the Commissioners under WAC 480-07-904(1)(h).

DATED at Olympia, Washington, and effective August 29, 2016.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

STEVEN V. KING
Executive Director and Secretary

NOTICE TO PARTIES: This is an order delegated to the Executive Secretary for decision. As authorized in WAC 480-07-904(3), you must file any request for Commission review of this order no later than 14 days after the date the decision is posted on the Commission’s website.