



STATE OF WASHINGTON

UTILITIES AND TRANSPORTATION COMMISSION

1300 S. Evergreen Park Dr. S.W., P.O. Box 47250 • Olympia, Washington 98504-7250

(360) 664-1160 • TTY (360) 586-8203

March 24, 2017

Steven V. King, Executive Director and Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive Southwest
P.O. Box 47250
Olympia, WA 98504-7250

Re: *Washington Utilities and Transportation Commission v. A Crystal Coach Limousine Service Inc.*
Commission Staff's Response to Application for Mitigation of Penalties
Docket TE-170082

Dear Mr. King:

On January 12, 2017, Motor Carrier Safety Investigator Sandi Yeomans conducted a compliance review investigation of A Crystal Coach Limousine Service Inc. (Crystal Coach). A compliance review is an in-depth examination of the motor carrier's compliance with regulations that the Federal Motor Carrier Safety Administration has identified as "acute" or "critical."¹ Acute regulations are identified where non-compliance is so serious as to require immediate corrective actions regardless of the overall safety posture of the carrier. Violations of critical regulations are generally indicative of breakdowns in a carrier's management controls. Non-compliance with acute regulations and patterns of non-compliance with critical regulations are quantitatively linked to inadequate management controls and unusually higher than average accident rates.² Ms. Yeomans found 134 violations, all of which were first-time violations.

The Commission's enforcement policy provides that some requirements are so critical to safe operations that the Commission may issue penalties for a first-time violation, even if staff has not

¹ Title 49 CFR Part 385, Appendix B – Explanation of Safety Rating Process

² *Id.*

previously provided technical assistance on specific issues.³ Of the 134 violations found, 97 were of acute or critical regulations.⁴

On February 13, 2017, the Commission issued a penalty assessment under docket TE-170082 against Crystal Coach in the amount of \$10,200 for violations of 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, as follows:

1. **One violation of 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 did not have an alcohol and/or controlled substances testing program.
2. **Forty-two violations of Part 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 endorsement.** 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.
3. **Forty-three violations of Part 391.45(a) – Using a driver not medically examined and certified.** During the six months preceding the compliance review, driver Eric Rossman drove on 42 occasions and driver Larry Meeks drove on one occasion, during which time neither driver was medically examined and certified.
4. **One violation of Part 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.
5. **One violation of Part 396.11(a) – Failing to require driver to prepare driver vehicle inspection report.** Crystal Coach failed to require its drivers to prepare driver vehicle inspection reports for seven trips in the 90 days preceding the compliance review.

On March 6, 2017, Crystal Coach filed with the Commission a hearing request for mitigation of penalties. In his correspondence, Crystal Coach President Anthony C. Devino admitted the violations, described corrective steps taken, and requested the penalties be reduced by an unspecified amount. Mr. Devino also stated the company has sold its two buses⁵ and wished to surrender its charter authority.

³ Docket A-120061 – Enforcement Policy of the Washington Utilities and Transportation Commission, Section V.

⁴ Although Investigator Yeomans identified 97 acute and critical violations, the Commission’s enforcement policy specifies that certain first-time violation types be penalized as a single violation, even if multiple occurrences are discovered. In this case, the penalty assessment cited 88 violations of acute or critical regulations.

⁵ During the compliance review, staff determined Crystal Coach was operating one commercial passenger vehicle (bus).

On March 6, 2017, the Commission issued a notice denying the company's request for hearing and providing the company an opportunity to file a written response with additional information in support of its request for mitigation.

On March 10, 2017, Mr. Devino provided additional correspondence requesting mitigation of the penalty to \$1,000 with the balance of the penalty deferred. In his response, Mr. Devino suggests that certain violations cited in the penalty assessment were duplicative. Staff disagrees. Although some of the 21 violation types identified in the compliance review are related, each is a separate and distinct violation. As for the penalty assessment, each of the five acute and critical violations cited also is separate and distinct. To suggest that multiple penalties were assessed for the same violation is not accurate.

In the mitigation request, Crystal Coach admitted the violations, provided an explanation of how the violations occurred, and listed any corrective steps taken.

1. **Mitigation request: 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 company stated it was not aware of the requirement for an alcohol and/or controlled substances testing program but has now opened an account at Alliance 2020 in Renton for all further testing of drivers.⁶

Staff response: In its 2011 application for charter and excursion authority, Crystal Coach acknowledged its responsibility to understand and comply with applicable motor carrier safety rules. Staff provided new-entrant technical assistance in July 2011 and conducted a compliance review in February 2012. In the 2012 compliance review, staff noted Crystal Coach was enrolled with a drug testing consortium, and provided additional technical assistance specific to the alcohol and controlled substances testing requirements. Crystal Coach also operates as a limousine company and is required to have an alcohol and controlled substances program under limousine regulations. Crystal Coach should have known about the requirements for alcohol and controlled substances testing.

The company provided no documentation or evidence of its newly implemented testing program. The Commission assessed the statutory penalty of \$1,500 per RCW 81.04.530. Staff recommends no mitigation of this penalty.

2. **Mitigation request: Part 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.** Crystal Coach assumed but did not verify that its drivers were properly licensed and endorsed. The company now has a tracking system in place to prevent future occurrences

⁶ Alliance 2020 is located in Renton, WA and provides a variety of services including drug testing, employment screening, credit reports, etc.

of this violation. The company also provided evidence that the employee in question has taken steps toward obtaining the passenger endorsement on his CDL.

Staff response: On account of the company's actions to correct this violation and avoid future occurrences staff recommends mitigation of the \$4,200 penalty to \$2,100.

- Mitigation request: Part 391.45(a) – Using a driver not medically examined and certified.** Crystal Coach failed to track expiration dates of its employees' medical certificates. Two employees drove with expired medical certificates. The company now has a tracking system in place for medical certificate expiration dates.

Staff response: On account of the company's actions to correct this violation and avoid future occurrences staff recommends mitigation of the \$4,200 penalty to \$2,100.⁷

- Mitigation request: Part 391.51(a) – Failing to maintain medical examiner's certificate in driver's qualification file.** Crystal Coach acknowledges that it failed to review drivers' qualification files for required contents, but has recently implemented a tracking system to ensure that files are complete in the future.

Staff response: Even though all four of its drivers' files were in violation, under its enforcement policy, the Commission assessed the minimum penalty of \$100 for one violation of this type. Staff acknowledges the company's actions to correct this violation however recommends no further mitigation of the \$100 penalty.

- Mitigation request: Part 396.11 – Failing to require driver to prepare driver vehicle inspection report.** Crystal Coach acknowledges that drivers failed to complete daily vehicle inspection reports, and that office and maintenance staff failed to notice this shortcoming. The company has implemented a new procedure that requires the report be submitted daily, and is tracked by dispatch staff.

Staff response: Even though this violation occurred seven times, under its enforcement policy, the Commission assessed the minimum penalty of \$100 for one violation of this type. Staff acknowledges the company's actions to correct this violation however recommends no further mitigation of the \$100 penalty.

Crystal Coach is a small limousine company which until recently operated a charter bus with four drivers. In 2016 the company reported \$559,000 in gross revenue and 245,000 miles traveled. Crystal Coach recently submitted a request to voluntarily surrender its charter and excursion authority, has sold their buses, and will only operate as a limousine service going forward.

⁷ Crystal Coach employee Eric Rossman drove 42 times with an expired medical certificate, and has subsequently obtained a current certificate. Employee Larry Meeks drove one time with an expired medical certificate. The company has provided no evidence that Mr. Meeks has obtained a current certificate.

Steven King
March 24, 2017
Page 5

The company was cooperative and responsive, and has provided documentation that many of these violations have been corrected. Staff recommends mitigation of the \$10,200 penalty to \$6,000.

If you have any questions, please contact Mike Turcott, Compliance Investigator, Transportation Safety, at (360) 664-1174 or by e-mail at miturcot@utc.wa.gov.

Sincerely,

A handwritten signature in blue ink that reads "David Pratt". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

David Pratt
Assistant Director, Transportation Safety

Enclosures

