



ATTORNEY GENERAL OF WASHINGTON

Public Counsel

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May 28, 2021

SENT VIA WUTC WEB PORTAL

Mark L. Johnson
Executive Director and Secretary
Washington Utilities and Transportation Commission
621 Woodland Square Loop SE
Lacey, WA 98503

Re: Petition for Exemption from WAC 480-30-191(1)(a) to use surplus lines insurance instead of an admitted insurance company authorized to write policies in the state of Washington and application for new Charter/Excursion certificate, Docket TE-210118

Dear Mr. Johnson:

The Public Counsel Unit of the Washington State Attorney General's Office ("Public Counsel") respectfully submits these comments in advance of the June 3, 2021, Open Meeting. These comments are in response to Alaska Amphibious Tours, LLC d/b/a Seattle Splash Tours ("Seattle Splash Tours" or "Company") application for a new Charter/Excursion certificate. We will not be addressing the petition for exemption from WAC 480-30-191(1)(a).

Public Counsel's Recommendation

If the Washington Utilities and Transportation Commission ("Commission") approves Seattle Splash Tours' application for certificate, Public Counsel recommends that the Commission direct Staff to adopt an accelerated, annual driver qualification compliance, vehicle inspection and maintenance file, and Coast Guard compliance investigation schedule with the Company for the first five years of operation, beginning six months after the start of operation.

Public Counsel takes interest in this application because it is the first amphibious vehicle certificate application since the devastating Seattle crash in 2015 that resulted in five fatalities and dozens injured.¹ While it would not be fair to pre-emptively judge Seattle Splash Tours based on the mistakes of previous Washington companies and others throughout the country,

¹ *Wash. Utils. & Transp. Comm'n v. Ride the Ducks of Seattle*, Docket TE-151906, Complaint for Violations of Vehicle Safety Rules, ¶ 3 (Sept. 29, 2015).

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Public Counsel finds it especially necessary to analyze the Company critically in order to ensure the highest level of safety in Washington.

A. Background on Amphibious Vehicles

Amphibious vehicles — vehicles that can operate on both land and water — originate from World War II. In 1942, soldiers stationed overseas were in need of supplies and reinforcements, but the military ships could not get close enough to land to reach the troops because of tattered harbors. In response, General Motors developed the DUKW, a military-grade vehicle able to operate on both land and water. After the war ended in 1945, the military made surplus supplies available for purchase. Two friends in Wisconsin purchased a DUKW vehicle and saw the opportunity for a tourist attraction. They launched Wisconsin Ducks in 1946 in the Wisconsin Dells.² From there, other tourist amphibious vehicle companies popped up throughout the country in both rural and urban areas.

Until recently, most companies offering amphibious vehicle tours operated the decommissioned WWII DUKW vehicle. However, they have recently been scrutinized for a number of accidents, including a 2015 accident in Seattle, after an axle failure caused a DUKW boat to crash into a bus, resulting in five fatalities and numerous injuries. In Branson, Missouri, a tourist duck boat capsized on a lake, killing 17 people. Pedestrians have been struck and killed in Philadelphia and Boston.³

B. Analysis

Public Counsel has analyzed this filing and other information available to us. It appears that there are differences with the proposed operations. First, the Company *will not* operate DUKW vehicles. Instead, the Company uses the *Hydra-Terra* vehicle, manufactured by Cool Amphibious Manufacturers International. This vehicle is specifically made for tourism and is claimed to be “unsinkable”. While Public Counsel takes no position on whether these vehicles are “unsinkable,” part of the design includes buoyant material built into the hull, which was not present in DUKW vehicles. Additionally, the vehicles receive annual inspections by the U.S. Coast Guard and daily inspections and services by a certified master mechanic.⁴

² Ellie Anzilotti, *A Brief History of Duck Boat Tours: How amphibious vehicles came to roam the streets of major cities worldwide*, BLOOMBERG CITYLAB (Mar. 2016) <https://www.bloomberg.com/news/articles/2016-03-10/how-duck-boat-tours-made-a-splash-in-the-urban-tourism-industry>.

³ *A Timeline of Deadly Duck Boat-Related Accidents*, ABC7 (July 2018) <https://abc7news.com/a-timeline-of-deadly-duck-boat-related-accidents/3793587/> (last visited May 27, 2021).

⁴ *Safety Information*, ALASKA AMPHIBIOUS TOURS, <https://akduck.com/safety/> (last visited May 27, 2021).

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Public Counsel reviewed publically available information regarding the accident that took place in Branson, Missouri involving a DUKW vehicle. The accident appears to be the result of turbulence from 65mph winds. The Certificate of Inspection from the Coast Guard states that the Company will not operate beyond a certain wind or wave threshold. The Company states that it closely monitors the weather via NOAA operations/dispatch. Any wind warning triggers automatic cancellation. The Company states that it also cancels routes when visibility is less than one quarter of a mile.⁵

We approached Staff and requested that Staff determine how many crew members will be on board during the tours and their respective responsibilities, the Company's safety record and accident history, the Company's maintenance history, and the year of manufacture for the vehicles to be operated in Seattle. We appreciate Staff's collaboration throughout this filing and believe that these inquiries were made.

C. Determination

Public Counsel does not take a position regarding whether the Commission should approve the certificate for application. Instead, we focus our comments on what should happen if the Commission determines that it should grant the Company's application. Currently, the Commission investigates transportation companies on a three-year schedule. Given the history of amphibious vehicles in the area and the newness of this Company in Washington, Public Counsel believes that heightened oversight is appropriate and necessary. Public Counsel recommends that the Commission direct Staff to accelerate its review of Seattle Splash Tours' operations during the first five years of operation in Washington. This accelerated review should start six months after the application is granted, then continue each year thereafter for the first five years. The accelerated review should focus on driver qualification compliance, vehicle inspection and maintenance file compliance, and compliance with Coast Guard requirements.

Public Counsel appreciates the opportunity to submit these comments. If you have any questions about this filing, please contact Shay Bauman at (206) 389-3040 or via e-mail at Shay.Bauman@atg.wa.gov.

Sincerely,

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/s/
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⁵ *Id.*