

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TE-170026
PENALTY AMOUNT: \$12,500

Seattle Ocean Travel LLC
d/b/a Seattle Ocean Travel
14717 SE 15th Place
Bellevue, WA 98007

The Washington Utilities and Transportation Commission (Commission) believes that 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 391 – Qualification of Drivers, and Part 396 – Inspection, Repair, and Maintenance.

Revised Code of Washington (RCW) 81.04.405 allows penalties of one hundred dollars for each violation of Title 49 CFR Part 391 and Part 396. In the case of an ongoing violation, every day's continuance is considered a separate and distinct violation.

On December 19, 2016, Commission Motor Carrier Investigators Sandi Yeomans and Jason Sharp conducted a compliance review of Seattle Ocean Travel LLC d/b/a Seattle Ocean Travel (Seattle Ocean Travel or company) and documented the following violations of critical regulations:

- **One hundred twenty-four violations of CFR 391.45(a) – Using a driver not medically examined and certified.** Seattle Ocean Travel allowed Yang He to drive on 124 occasions from August 12 to December 14, 2016 without having been medically examined and certified.
- **One violation of CFR 396.17(a) – Using a commercial motor vehicle not periodically inspected.** The company's only commercial motor vehicle had not been periodically inspected, despite being subject to a mandatory state inspection program.

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 use a driver who has not been medically examined and certified, or that use a commercial motor vehicle not periodically inspected put the traveling public at risk. A driver with an undetected medical condition, or a potentially defective vehicle, present very serious safety concerns.

2. **Whether the violation is intentional.** Considerations include:

- Whether the company ignored Commission staff's 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.

Seattle Ocean Travel applied for charter and excursion authority in July 2015. In the application, Seattle Ocean Travel co-owner Jing Guo acknowledged her responsibility to understand and comply with applicable motor carrier safety rules and regulations. Commission staff provided new entrant technical assistance to Seattle Ocean Travel on July 29, 2015. 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.** Seattle Ocean Travel was very cooperative and responsive throughout the entire investigation.
5. **Whether the company promptly corrected the violations and remedied the impacts.** The company has corrected these violations. Seattle Ocean Travel had its commercial motor vehicle inspected, and Yang He has been medically examined and certified since the closing of the investigation.
6. **The number of violations.** For a company this size, the number of critical violations noted is significant.
7. **The number of customers affected.** The company traveled 8,680 miles and reported \$134,733 in gross revenue for 2015, which suggests that a significant number of passengers and other members of the traveling public were potentially at risk by these safety violations.
8. **The likelihood of recurrence.** The Commission does not know if the company is likely to repeat these violations.
9. **The company's past performance regarding compliance, violations, and penalties.** This is Seattle Ocean Travel's first compliance review. The company has no history of violations or penalties.
10. **The company's existing compliance program.** Seattle Ocean Travel has no formal compliance program.
11. **The size of the company.** Seattle Ocean Travel is a small one-vehicle, one-driver operation. The company reported \$134,733 in gross revenue and 8,680 miles traveled for 2015.

These are first-time violations, but 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 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 Seattle Ocean Travel \$12,500 for violations of WAC 480-30-221 Vehicle and Driver Safety Requirements, which adopts CFR Part 391 and Part 396, calculated as follows:

- One hundred twenty-four violations of CFR 391.45(a) – Using a driver not medically examined and certified. These are first-time violations of fundamental safety requirements, and thus the Commission assesses penalties at the statutory amount of \$100 per occurrence, for a total of \$12,400.
- One violation of CFR 396.17(a) – Using a commercial motor vehicle not periodically inspected. This is a first-time violation at the penalty amount of \$100 per violation, for a total of \$100.

This information, if proved 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 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 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.

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.

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

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.
- 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 January 18, 2017.



GREGORY J. KOPTA
Administrative Law Judge

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TE-170026.

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: _____ [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 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.”