

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TN-170226

PENALTY AMOUNT: \$11,300

Sound Generations
2208 Second Avenue
Seattle, WA 98121

The Washington Utilities and Transportation Commission (Commission) believes that you have committed violations of Washington Administrative Code 480-31-100 Equipment – Safety, and 480-31-130 Operation of Motor Vehicles, which adopt Title 49 Code of Federal Regulations (CFR) Parts 391, and 396.

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

In February 2017, Commission Motor Carrier Investigator Sandi Yeomans conducted a compliance review of Sound Generations and documented the following critical violations:

- **Three violations (112 occurrences) of CFR Part 391.45(a) – Using a driver not medically examined and certified.** Sound Generations allowed three of its drivers, Nickolas Adams, Lorri Engbaum, and Manuel Fernandez to drive on 112 occasions during which time the drivers were not medically examined and certified. Mr. Adams drove twice in April 2016. Ms. Engbaum drove six times in May and June 2016. Mr. Fernandez drove 89 times in 2016 (21 times in August, 19 times in September, 20 times in October, 16 times in November, 13 times in December), and 15 times in January 2017.
- **Eight violations of CFR 396.17(a) – Using a commercial motor vehicle not periodically inspected.** Sound Generations operated eight commercial motor vehicles which had not been periodically inspected.

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. Transportation providers put the traveling public at risk by using drivers not medically examined and certified and by using vehicles not periodically inspected. An undetected medical condition or vehicle defect both present 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.

Sound Generations began operations as Senior Services in 1967. In its April 2016 application for name change, Sound Generations vice-president Joanne Donahue acknowledged the company's responsibility to understand and comply with applicable motor carrier safety rules. Prior to the name change, Commission staff most recently provided technical assistance to the company in October 2004. 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.** Sound Generations cooperated with the investigation and provided Staff with requested documentation.
5. **Whether the company promptly corrected the violations and remedied the impacts.** The company demonstrated its interest in gaining compliance by correcting violations as they were identified during the compliance review investigation.
6. **The number of violations.** For a company this size, the number of critical violations noted is insignificant.
7. **The number of customers affected.** The company traveled 549,727 miles and reported \$14,000,000 in gross revenue for 2016. These safety violations likely affected a significant number of customers as well as members of the traveling public.
8. **The likelihood of recurrence.** The Commission does not know if the company is likely to repeat these violations, but the company is cooperative and has taken steps to correct these violations and prevent future occurrences.
9. **The company's past performance regarding compliance, violations, and penalties.** This is the company's first compliance review in many years. The company has no recent history of previous violations or penalties.
10. **The company's existing compliance program.** Sound Generations has no formal compliance program.
11. **The size of the company.** Sound Generations is a large company, with 67 drivers and 47 commercial vehicles. In 2016 the company reported 549,727 miles traveled and \$14,000,000 in gross revenue.

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 Sound Generations \$11,300 for violations of WAC 480-31-100 Equipment – Safety, and 480-31-130 Operation of Motor Vehicles, which adopt Title 49 CFR Parts 391 and 396, calculated as follows:

- One hundred twelve violations of CFR Part 391.45(a) – Using a driver not medically examined and certified. The Commission assesses a penalty of \$100 for each occurrence of these critical violations of requirements that are fundamental to safe operations, for a total of \$11,200.
- Eight violations of CFR 396.17(a) – Using a commercial motor vehicle not periodically inspected. The Commission assesses a penalty of \$100 for one critical violation of this type, rather than assessing a penalty per occurrence.

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 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

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

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 April 17, 2017.



GREGORY J. KOPTA
Administrative Law Judge

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TN-170226

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.”