

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TE-180197

PENALTY AMOUNT: \$1,800

Earl Alexander
d/b/a Puget Sound Tours
13001 SE 28th Place
Bellevue, WA 98005

The Washington Utilities and Transportation Commission (Commission) believes that Earl Alexander d/b/a Puget Sound Tours (Puget Sound Tours or Company) has committed violations of Washington Administrative Code (WAC) 480-30-221 – Vehicle and Driver Safety Requirements, which adopts Title 49 Code of Federal Regulations (CFR) Part 382 – Controlled Substances and Alcohol Use and Testing, Part 391 – Qualification of Drivers, and Part 396 Inspection, Repair, and Maintenance.

Revised Code of Washington (RCW) 81.04.530 allows a penalty of \$1,500 for failing to comply with the controlled substances and alcohol use and testing requirements of Title 49 CFR Part 382. RCW 81.04.405 allows penalties of one hundred dollars for each violation of Title 49 CFR Parts 391 and 396. In the case of an ongoing violation, every day's continuance is considered a separate and distinct violation.

On March 2, 2018, Commission Motor Carrier Investigator Wayne Gilbert completed a routine safety investigation of Puget Sound Tours and documented the following violations:

- **One violation of Title 49 CFR 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.** Puget Sound Tours failed to implement a random drug and alcohol testing program for calendar year 2017.
- **One violation of Title 49 CFR Part 391.51(b)(2) – Failing to maintain inquiries into driver's driving record in driver's qualification file.** The Company failed to retain a copy of the original driver's abstract, required to have been obtained within 30 days of employment.
- **One violation of Title 49 CFR Part 396.3(b) – Failing to keep minimum records of inspection and vehicle maintenance.** The Company failed to maintain required vehicle records.
- **One violation of Title 49 CFR Part 396.17(a) – Using a commercial motor vehicle not periodically inspected.** The Company failed to ensure that its vehicle was 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. Companies that fail to implement a drug and alcohol testing program, maintain required driver and vehicle records, or that fail to conduct period vehicle inspections place the traveling public at risk. An impaired or unqualified driver, or a vehicle with an undetected mechanical problem, 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.

Puget Sound Tours began operations in 2015, at which time staff provided new entrant technical assistance. In January 2017, staff conducted a routine safety investigation and provided technical assistance regarding these requirements. In the Company's application for charter authority, Mr. Alexander acknowledged his Company's responsibility to understand and comply with applicable motor carrier safety rules. Staff believes Puget Sound Tours knew or should have known of 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.** Puget Sound Tours was cooperative and responsive throughout the entire investigation.
5. **Whether the company promptly corrected the violations and remedied the impacts.** Staff is not aware of specific corrections made with respect to these violations.
6. **The number of violations.** Staff identified five violation types with a total of five occurrences.
7. **The number of customers affected.** The Company reported 9,300 miles traveled in 2017. A significant number of customers, as well as members of the traveling public, were potentially affected by these safety violations.
8. **The likelihood of recurrence.** Commission staff does not know if Puget Sound Tours is likely to repeat these safety violations.
9. **The company's past performance regarding compliance, violations, and penalties.** This is Puget Sound Tours' second safety investigation. The Commission penalized the Company in 2016, and again in 2017, for failure to timely file an annual report. This is the Company's first safety penalty.

10. **The company's existing compliance program.** Earl Alexander, owner, is responsible for the Company's safety and compliance program.
11. **The size of the company.** Puget Sound Tours is a small company with one driver and one commercial vehicle. The Company reported \$45,600 in gross revenue for 2017.

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 first-time violations of those critical regulations that do not meet the requirements for mandatory penalties. The Commission will assess penalties for any equipment violation meeting the Federal Motor Carrier Safety Administration's "out-of-service" criteria and also for repeat violations of critical regulations found in future compliance investigations, including each occurrence of a repeat violation.

The Commission has considered these factors and determined that it should penalize Puget Sound Tours \$1,800 for violations of WAC 480-30-221 – Vehicle and Driver Safety Requirements, which adopts Title 49 CFR Parts 382, 391, and 396, calculated as follows:

- One violation of Title 49 CFR 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 Commission assesses a penalty at the statutory amount of \$1,500 for this violation.
- One violation of Title 49 CFR Part 391.51(b)(2) – Failing to maintain inquiries into driver's driving record in driver's qualification file. The Commission assesses a penalty at the statutory amount of \$100 for this critical type violation.
- One violation of Title 49 CFR Part 396.3(b) – Failing to keep minimum records of inspection and vehicle maintenance. The Commission assesses a penalty at the statutory amount of \$100 for this critical type violation.
- One violation of Title 49 CFR Part 396.17(a) – Using a commercial motor vehicle not periodically inspected. The Commission assesses a penalty at the statutory amount of \$100 for this critical type violation.

This information, if proven 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

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

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 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 submit it electronically through the Commission's web portal **within FIFTEEN (15) days** after you receive this notice. If you are unable to use the web portal, you may submit it via email to records@utc.wa.gov. If you are unable to submit the form electronically, you may send a paper copy to the Washington Utilities and Transportation Commission, Post Office Box 47250, Olympia, Washington 98504-7250.

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 4, 2018.

/s/ Rayne Pearson
RAYNE PEARSON
Director, Administrative Law Division

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TE-180197

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 violations occurred and enclose \$_____ in payment of the penalty.

[] 2. **Contest the violations.** I believe that the alleged violations did not occur for the reasons I describe below (**if you do not include reasons supporting your contest here, your request will be denied**):

[] 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 violations, but I believe that the penalty should be reduced for the reasons set out below (**if you do not include reasons supporting your application here, your request will be denied**):

[] 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.”