

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

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

**PENALTY ASSESSMENT: TE-180958  
PENALTY AMOUNT: \$400**

Northwest Smoking & Curing, Inc.  
d/b/a SeaTac Direct  
PO Box 2976  
Bellingham, WA 98227

The Washington Utilities and Transportation Commission (Commission) believes that Northwest Smoking & Curing, Inc. d/b/a SeaTac Direct (SeaTac Direct or Company) has committed violations of Washington Administrative Code (WAC) 480-30-221, Vehicle and Driver Safety Requirements, which adopts Title 49 CFR Part 391 – Qualifications of Drivers, Part 395 – Hours of Service of Drivers, and Part 396 – Inspection, Repair, and Maintenance.

Revised Code of Washington (RCW) 81.04.405 allows penalties of \$100 for each violation. In the case of an ongoing violation, every day's continuance is considered a separate and distinct violation.

On November 16, 2018, Commission Motor Carrier Investigator Jason Sharp completed a comprehensive intrastate investigation of SeaTac Direct and documented the following violations:

- **Two violations 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 maintain inquiries into driving records in the driver qualification files for Joel Kronenberg and Robin Holbert.
- **Sixty violations of Title 49 CFR Part 395.8(a) – Failing to require driver to make a record of duty status.** The Company failed to require drivers Joel Kronenberg and Robin Holbert to make a record of duty status on 60 occasions.
- **Seven violations of Title 49 CFR Part 396.11(a) – Failing to require driver to prepare driver vehicle inspection report.** The Company failed to require its drivers to prepare vehicle inspection reports on seven occasions.
- **Three violations of Title 49 CFR Part 396.17(a) – Using a commercial motor vehicle not periodically inspected.** The Company used three commercial motor vehicles not periodically inspected.

The Commission considered the following factors in determining the appropriate penalties for this violation:

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 keep records of driver qualifications, driver duty status, and vehicle inspections put the traveling public at risk. An unqualified or fatigued driver, or undocumented vehicle defect, 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.

In its April 30, 2013, application for auto transportation authority, owner Joel Kronenberg acknowledged the Company's responsibility to understand and comply with applicable laws and regulations. In July 2014, Commission staff provided new entrant technical assistance. The Company knew or should have known about these requirements.

3. **Whether the company self-reported the violation.** The Company did not self-report the violation.
4. **Whether the company was cooperative and responsive.** SeaTac Direct was cooperative throughout the investigation.
5. **Whether the company promptly corrected the violations and remedied the impacts.** The Company was responsive to technical assistance and provided evidence of immediate correction upon notification of the violations.
6. **The number of violations.** In total, staff identified 11 violation types and a total of 86 individual occurrences.
7. **The number of customers affected.** The Company traveled 8,750 miles in the last 12 months. A significant number of customers as well as members of the traveling public were potentially affected by these violations.
8. **The likelihood of recurrence.** It is unknown if SeaTac Direct is likely to repeat this violation, however the Company was very cooperative with staff and took appropriate steps to correct the safety violations documented in the report.
9. **The company's past performance regarding compliance, violations, and penalties.** This is the Company's first routine safety investigation. The Company has had no

previous safety penalties. The Commission penalized the Company in 2016 for failing to submit a timely annual report and pay regulatory fees.

10. **The company's existing compliance program.** Mr. Kronenberg is responsible for the Company's safety compliance program.

11. **The size of the company.** SeaTac Direct is a small company with three drivers and three vehicles. The Company reported \$46,421.50 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.<sup>1</sup> 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 SeaTac Direct \$400 for violations of WAC 480-30-221, Vehicle and Driver Safety Requirements, which adopts Title 49 CFR Part 391 – Qualifications of Drivers and Longer Combination Vehicle Driver Instructors, Title 49 CFR Part 395 – Hours of Service of Drivers, and Title 49 CFR Part 396 – Inspection, Repair, and Maintenance., calculated as follows:

- Two violations of Title 49 CFR Part 391.51(b)(2) – failing to maintain inquiries into driving record in driver's qualification file. As first-time violations, the Commission assesses a penalty of \$100 for one occurrence of this critical violation.
- Sixty violations of Title 49 CFR Part 395.8(a) – failing to require driver to make a record of duty status. As first-time violations, the Commission assesses a penalty of \$100 for one occurrence of this critical violation.
- Seven violations of Title 49 CFR Part 396.11(a) – failing to require driver to prepare vehicle inspection report. As first-time violations, the Commission assesses a penalty of \$100 for one occurrence of this critical violation.
- Three violations of Title 49 CFR Part 396.17(a) – using a commercial motor vehicle not periodically inspected. As a first-time violation, the Commission assesses a penalty of \$100 for one occurrence of this critical violation.

This information, if proven at a hearing and not rebutted or explained, is sufficient to support the penalty assessment.

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

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 through evidence presented at a hearing or in writing. Or, 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 the 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 to contest the violation(s) or for mitigation of the penalty 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](mailto: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 December 6, 2018.

RAYNE PEARSON  
Director, Administrative Law Division

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION  
PENALTY ASSESSMENT TE-180958

**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 \$400 in payment of the penalty.

2. **Contest the violation(s).** I believe that the alleged violation(s) 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.”