

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

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

**PENALTY ASSESSMENT: TE-200117  
PENALTY AMOUNT: \$700**

ATS Trans, LLC,  
d/b/a Around-The-Sound Transportation Specialists  
2220 S. Tacoma Way, Suite B  
Tacoma, WA 98409

The Washington Utilities and Transportation Commission (Commission) believes ATS Trans, LLC, d/b/a Around-The-Sound Transportation Specialists, (ATS or Company) violated Washington Administrative Code (WAC) 480-30-221, Vehicle and Driver Safety Requirements, which adopts Title 49 Code of Federal Regulations (49 CFR) Part 383 – Commercial Driver’s License Standards; Requirements and Penalties, and 49 CFR Part 391 – Qualification of Drivers.

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 February 3, 2020, Commission Motor Carrier Investigator Wayne Gilbert completed a routine safety investigation of ATS and documented the following violations:

- **One violation of 49 CFR § 383.37(a) – Knowingly allowing, requiring, permitting, or authorizing an employee to operate a commercial motor vehicle during any period in which the driver does not have a current commercial learner’s permit (CLP) or commercial driver’s license (CDL) or does not have a CLP or CDL with the proper class or endorsements. An employer may not use a driver who violates any restriction on the driver’s CLP or CDL to operate a commercial motor vehicle.** ATS allowed driver Brent Scott to operate a commercial motor vehicle with a downgraded CDL on a single occasion.
- **Five violations of 49 CFR § 391.45(a) – Using a driver not medically examined and certified.** The Company allowed driver Jeanie Henson to operate a commercial motor vehicle without a valid medical certificate on five occasions between August 10 and August 23, 2019.
- **Four violations of 49 CFR § 391.51(b)(9) – Failing to place a note related to the verification of the medical examiner’s listing on the National Registry of Certified Medical Examiners required by 391.23(m) in driver qualification file(s).** ATS failed to verify the medical examiners listed on the medical certificates of drivers Bruce Neihart, James Sauls, Brent Scott, and Dennis Short with the national registry.

The Commission considered the following factors in determining the appropriate penalties for these violations:

1. **How serious or harmful the violations are to the public.** The violations noted are serious and potentially harmful to the public. Companies that: (1) allow drivers to operate commercial motor vehicles with downgraded commercial licenses, (2) use drivers that are not medically examined and certified, and (3) fail to verify whether medical examiners are qualified to issue medical certificates put their customers and the traveling public at risk. These violations present significant safety concerns.
2. **Whether the violations were intentional.** Considerations include:
  - Whether the Company ignored Commission staff's (Staff) 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.

On August 22, 2008, the Commission received the Company's application for charter and excursion carrier service. In the application, ATS acknowledged its responsibility to understand and comply with applicable motor carrier safety regulations. On September 26, 2008, Staff provided new entrant safety regulation training to ATS.

On January 14, 2010, and July 16, 2015, Staff completed routine safety investigations of ATS, both resulting in "satisfactory" safety ratings. In the 2015 safety investigation, Staff documented five violations of 49 CFR § 391.51(b)(9) for failing to verify the medical examiner's listing on the national registry.

The Company knew or should have known about these requirements.

3. **Whether the Company self-reported the violations.** ATS did not self-report these violations.
4. **Whether the Company was cooperative and responsive.** The Company was cooperative throughout the safety investigation, expressed a desire to come into compliance with safety regulations, and made corrections during the investigation process.
5. **Whether the Company promptly corrected the violations and remedied the impacts.** ATS corrected the violations throughout the safety investigation.
6. **The number of violations.** Staff identified 13 violation types with a total of 28 individual occurrences.
7. **The number of customers affected.** The Company employs 19 drivers, operates three commercial motor vehicles, and traveled 48,603 miles in 2018. These safety violations present a public safety risk.

8. **The likelihood of recurrence.** Staff provided technical assistance with specific remedies to help the Company assess how well its safety management controls support safe operations and how to begin improving its safety performance. The Company was cooperative with Staff, expressed a desire to come into compliance, and made corrections during the safety investigation. In light of these factors, Staff believes the likelihood of recurrence is low.
9. **The Company's past performance regarding compliance, violations, and penalties.** On June 20, 2016, ATS was penalized \$1,000 in Docket TE-160681 for failing to file a complete annual report by the deadline. On August 5, 2016, the Commission entered Order 01, which granted full mitigation of the penalty. The Company has no history of penalties for safety violations.
10. **The Company's existing compliance program.** Robert Gummere, Bianca Moya-Winegar, and Brandon Taylor are responsible for the Company's safety compliance program.
11. **The size of the Company.** ATS currently operates three commercial motor vehicles that fall under the Commission's regulation, and an additional 75 motor vehicles operating under various contracts with Federal Transit Administration and Veterans Affairs. The Company employs 19 drivers, and reported a gross revenue of \$71,000 in 2018 for Commission-regulated operations.

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, including each occurrence of a repeat violation.

The Commission has considered these factors and determined that it should penalize ATS \$700, calculated as follows:

- One violation of 49 CFR § 383.37(a) – Knowingly allowing, requiring, permitting, or authorizing an employee to operate a commercial motor vehicle during any period in which the driver does not have a current CLP or CDL or does not have a CLP or CDL with the proper class or endorsements. An employer may not use a driver who violates any restriction on the driver's CLP or CDL to operate a commercial motor vehicle. The Commission assesses a penalty of \$100 for this acute violation.

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

- Five violations of 49 CFR § 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, for a total of \$500.
- Four violations of 49 CFR § 391.51(b)(9) – Failing to place a note related to the verification of the medical examiner’s listing on the National Registry of Certified Medical Examiners required by 391.23(m) in driver qualification file(s). The Commission assesses a “per category” penalty of \$100 for these repeat violations of a non-critical regulation.

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 through evidence presented at a hearing or in writing. Alternatively, 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 their 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 violation(s).
- Admit the violations but request mitigation of the penalty amount.

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, PO 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 Lacey, Washington, and effective February 27, 2020.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION  
PENALTY ASSESSMENT TE-200117

**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 \$700 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.”