

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TE-200175

PENALTY AMOUNT: \$800

NW Tours.net LLC
1914 75th St. SE
Everett, WA 98203

The Washington Utilities and Transportation Commission (Commission) believes NW Tours.net LLC (NW Tours 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 391 – Qualification of Drivers, 49 CFR Part 395 – Hours of Service of Drivers, and 49 CFR 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 March 12, 2020, Commission Motor Carrier Investigator Sandra Yeomans completed a routine safety investigation of NW Tours and documented the following violations:

- **Four violations of 49 CFR § 391.45(a) – Using a driver not medically examined and certified.** NW Tours allowed driver Joel Paone-Kiehn to operate a commercial motor vehicle without a valid medical certificate on four occasions between September 28 and December 7, 2019.
- **One violation of 49 CFR § 391.51(a) – Failing to maintain driver qualification file on each driver employed.** The Company failed to maintain a driver qualification file for Joel Paone-Kiehn.
- **Thirty violations of 49 CFR § 395.8(a) – Failing to require driver to make a record of duty status.** NW Tours failed to require driver Joel Paone-Kiehn to make a record of duty status on 30 occasions between December 1 and December 30, 2019.
- **One violation of 49 CFR § 396.3(b) – Failing to keep minimum records of inspection and vehicle maintenance.** The Company failed to keep the minimum required vehicle maintenance records for its one commercial motor vehicle.
- **One violation of 49 CFR § 396.17(a) – Using a commercial motor vehicle not periodically inspected.** NW Tours failed to have an annual inspection performed on its one commercial motor vehicle.

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) use drivers that are not medically examined and certified, (2) fail to maintain driver qualification files, (3) fail to maintain records of duty status, (4) fail to keep minimum records of inspection and vehicle maintenance, and (5) use commercial motor vehicles that have not been inspected put their customers and the traveling public at risk. These violations present 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 February 1, 2018, the Commission received the Company's application for charter and excursion authority. In the application, Madeson Olander, owner of NW Tours, acknowledged the Company's responsibility to understand and comply with applicable motor carrier safety regulations.

On April 18, 2018, Staff provided new entrant safety regulation training to NW Tours, where Donna Paone, manager of NW Tours, acknowledged receiving training pertaining to 49 CFR § 391.45, 49 CFR § 391.51, 49 CFR § 395.8, 49 CFR § 396.3, and 49 CFR § 396.17.

The Company knew or should have known about these requirements.

3. **Whether the Company self-reported the violations.** NW Tours did not self-report these violations.
4. **Whether the Company was cooperative and responsive.** The Company was cooperative throughout the safety investigation.
5. **Whether the Company promptly corrected the violations and remedied the impacts.** NW Tours has not provided Staff with evidence that it has corrected the violations. On March 21, 2020, the Company submitted a corrective action safety plan in which NW Tours described steps it has taken to prevent future violations.
6. **The number of violations.** Staff identified eight violation types with a total of 40 individual occurrences.
7. **The number of customers affected.** The Company employs one driver and operates one commercial motor vehicle. NW Tours traveled 777 miles in 2019. 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, and expressed a desire to come into compliance. In light of these factors, Staff believes the likelihood of recurrence is low.
9. **The Company's past performance regarding compliance, violations, and penalties.** NW Tours has no history of violations or penalties with the Commission.
10. **The Company's existing compliance program.** Donna Paone is responsible for the Company's safety compliance program.
11. **The size of the Company.** NW Tours currently operates one commercial motor vehicle and employs one driver. The Company reported \$1,800 in gross revenue for 2019.

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, including each occurrence of a repeat violation.

The Commission has considered these factors and determined that it should penalize NW Tours \$800, calculated as follows:

- Four 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 this violation, for a total of \$400.
- One violation of 49 CFR § 391.51(a) – Failing to maintain driver qualification file on each driver employed. The Commission assesses a penalty of \$100 for this violation.
- Thirty violations of 49 CFR § 395.8(a) – Failing to require driver to make a record of duty status. The Commission assesses a "per category" penalty of \$100 for these first-time violations.
- One violation of 49 CFR § 396.3(b) – Failing to keep minimum records of inspection and vehicle maintenance. The Commission assesses a penalty of \$100 for this violation.
- One violation of 49 CFR § 396.17(a) – Using a commercial motor vehicle not periodically inspected. The Commission assesses a penalty of \$100 for this violation.

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

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. 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 March 30, 2020.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TE-200175

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 \$800 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.”