

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

**PENALTY ASSESSMENT: TC-220365
PENALTY AMOUNT: \$300**

Northwest Smoking & Curing, Inc.,
d/b/a SeaTac Direct
PO Box 2976
Bellingham, WA 98226

The Washington Utilities and Transportation Commission (Commission) believes Northwest Smoking & Curing, Inc., d/b/a SeaTac Direct (SeaTac Direct or Company) violated Washington Administrative Code (WAC) 480-30-221, Vehicle and Driver Safety Requirements, which adopts Title 49 Code of Federal Regulations (49 C.F.R.) Part 391 – Qualification of Drivers and 49 C.F.R. Part 393 – Parts and Accessories Necessary for Safe Operation.

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 May 19, 2022, Commission Motor Carrier Investigator Wayne Gilbert completed a routine safety investigation of SeaTac Direct and documented the following violations:

- **Two violations of 49 C.F.R. § 391.25(a) – Failing to make an inquiry into the driving record of each driver to the appropriate agencies for each state in which the driver held a commercial motor vehicle (CMV) operator’s license at least once every 12 months.** The Company failed to obtain drivers Joel Kronenberg and Robin Holbert’s annual driving record at least once every 12 months.
- **One violation of 49 C.F.R. § 391.45(a) – Using a driver not medically examined and certified.** The Company allowed driver Robin Holbert to operate a CMV without having a valid medical certificate on December 19, 2021.
- **One violation of 49 C.F.R. § 393.9(a) – Inoperable required lamp.** Commission Staff (Staff) discovered a CMV with inoperable brake lights.¹ This vehicle was placed out-of-service.

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. Passenger transportation companies that: (1) fail to inquire into drivers annual driving record, (2) allow drivers to operate a CMV

¹ Equipment ID 1

without having a valid medical certificate and, (3) operate vehicles with inoperable brake lights, 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 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.

On May 7, 2013, the Commission received SeaTac Direct's application for auto transportation authority. In the application, Joel Kronenberg, President of SeaTac Direct, acknowledged the Company's responsibility to understand and comply with applicable motor carrier safety rules.

On June 11, 2014, Staff provided new entrant safety regulation training to SeaTac Direct.

On November 12, 2014, the Commission received SeaTac Direct's application for extension of the Company's auto transportation authority. In the application, Joel Kronenberg acknowledged the Company's responsibility to understand and comply with applicable motor carrier safety rules.

On February 27, 2015, the Commission received SeaTac Direct's application for charter and excursion carrier service authority. In the application, Joel Kronenberg, acknowledged the Company's responsibility to understand and comply with applicable motor carrier safety rules.

On June 4, 2015, the Commission received SeaTac Direct's application for extension of the Company's auto transportation authority. In the application, Joel Kronenberg acknowledged the Company's responsibility to understand and comply with applicable motor carrier safety rules.

The Company knew or should have known about these requirements.

3. **Whether the Company self-reported the violations.** SeaTac Direct 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.** SeaTac Direct has corrected the discovered violations.
6. **The number of violations.** Staff identified four violation types with a total of six individual occurrences during the safety investigation of SeaTac Direct. Of those violations, Staff identified three violation type with four individual occurrences that warrant penalties in accordance with the Commission's Enforcement Policy.

7. **The number of customers affected.** SeaTac Direct reported traveling 7,786 miles in 2021. These safety violations presented 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 throughout the safety investigation and expressed a desire to come into compliance. Despite one repeat violation of 49 C.F.R. § 391.25(a), Staff believes that the likelihood of recurrence is low.
9. **The Company's past performance regarding compliance, violations, and penalties.** On June 17, 2016, the Commission assessed a \$1,000 penalty against SeaTac Direct for failing to file an annual safety report by May 2, 2016, in Docket TE-160659. The penalty was mitigated to \$250, and on July 27, 2016, the Company paid the penalty in full.

On December 6, 2018, the Commission assessed a \$400 penalty against SeaTac Direct in Docket TE-180958. On December 17, 2018, the Company paid the penalty in full.

On August 19, 2019, SeaTac Direct's auto transportation and charter and excursion certificates were cancelled for failing to file acceptable proof of insurance in Docket TC-190688. The Company's certificate was reinstated on January 21, 2020.
10. **The Company's existing compliance program.** Joel Kronenberg is responsible for the Company's safety compliance program.
11. **The size of the Company.** SeaTac Direct currently operates two CMVs and employs two drivers. The Company reported \$75,535 in gross revenue for the fiscal year ending December 31, 2021.

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.² The Commission generally will assess penalties by violation category, 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 SeaTac Direct \$300 (Penalty Assessment), calculated as follows:

- Two violations of 49 C.F.R. § 391.25(a) – Failing to make an inquiry into the driving record of each driver to the appropriate State agencies in which the driver held a CMV

² Docket A-120061 – Enforcement Policy of the Washington Utilities & Transportation Commission – Section V.

operator's license at least once every 12 months. The Commission assesses a "per category" penalty of \$100 for these repeat violations.

- One violation of 49 C.F.R. § 391.45(a) – Using a driver not medically examined and certified. The Commission assesses a penalty of \$100 for this violation.
- One violation of 49 C.F.R. § 393.9(a) – Inoperable required lamp. The Commission assesses a penalty of \$100 for this 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 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 Penalty Assessment 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 June 15, 2022.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TC-220365

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 \$300 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 or she makes a materially false statement which he or she 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 or her 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.