

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TE-220489

PENALTY AMOUNT: \$2,100

Lucky Limousine & Towncar Service LLC
11824 NE Ainsworth Circle Ste B
Portland, OR 97220

The Washington Utilities and Transportation Commission (Commission) believes Lucky Limousine & Towncar Service LLC (Lucky Limousine 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 382 – Controlled Substance and Alcohol Use and Testing, 49 CFR Part 391 – Qualification of Drivers, and 49 C.F.R. Part 395 – Hours of Service 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. RCW 81.04.530 allows penalties of \$500 for each motor vehicle driver not in compliance with the motor vehicle driver testing requirements.

On June 16, 2022, Commission Motor Carrier Investigator Tracy Cobile completed a routine safety investigation of Lucky Limousine and documented the following violations:

- **Three violations of 49 C.F.R. § 382.301(a) – Using a driver before the motor carrier has received a negative pre-employment substance test result.** The Company allowed CDL driver William Raff to drive a commercial motor vehicle (CMV) on March 8, 2020, allowed CDL driver Thomas Hayes to drive a commercial motor vehicle (CMV) on March 8, 2020, and allowed driver Joseph Mupo to perform a safety sensitive function on August 23, 2021, prior to conducting a controlled substance test and receiving a verified negative pre-employment test result.
- **Four violations of 49 C.F.R. § 391.21(a) – Using a driver who has not completed and furnished an employment application.** The Company failed to properly complete the employment applications for employees William Raff, Robert Ramano, Mattio Argle, and Robert Schelb.
- **Four violations of 49 C.F.R. § 391.51(b)(4) – Failing to maintain the responses of each State agency to the annual driver record inquiry required by 49 C.F.R. § 391.25(a).** The Company failed to properly maintain the annual driver abstract in the driver qualification file of drivers William Raff, Robert Romano, Andrew Smith, and Robert Schelb.
- **Four violations of 49 C.F.R. § 391.51(b)(5) – Failing to maintain a note pertaining to the annual driving record review in driver's qualification file.** The Company failed to

properly maintain a note pertaining to the annual driving record review in driver's qualification file of drivers William Raff, Robert Romano, Andrew Smith, and Robert Schelb.

- **Three violations of 49 C.F.R. §391.51(b)(6) – Failing to maintain a list or certificate relating to violations of motor vehicle laws and ordinances required by 49 C.F.R. § 391.27.** The Company failed to properly maintain a list or certificate relating to the violations of motor vehicle laws in the driver qualification file for drivers Robert Romano, Andrew Smith, and Robert Schelb.
- **Two violations of 49 C.F.R. §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 (National Registry) required by C.F.R. §391.23(m).** The Company failed to place a note related to the verification of the medical examiner's listing on the National Registry in the driver qualification file for drivers William Raff and Mattio Argle.
- **Sixty violations of 49 C.F.R. §395.8(a)(1) – Failing to require driver to make a record of duty status.** The Company failed to require drivers Mattio Argle and Robert Schelb to make a record of duty status on 60 occasions.

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) allow drivers to perform safety sensitive functions before conducting a pre-employment controlled substance test and receiving verified results, (2) use drivers who have not properly completed employment applications, (3) fail to properly maintain driver qualification files, and (4) fail to require drivers to make record of duty statuses, 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 April 28, 2014, the Commission received Lucky Limousine's application for charter and excursion authority. In the application, Steve Killough, General Manager of Lucky Limousine, acknowledged the Company's responsibility to understand and comply with applicable motor carrier safety rules.

On July 13, 2017, during a routine safety investigation, Staff found violations of 49 C.F.R. § 391.21(a), 391.25(a), 391.51(b)(5), 391.51(b)(6), and 391.51(b)(9).

The Company knew or should have known about these requirements.

3. **Whether the Company self-reported the violations.** Lucky Limousine 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.** Lucky Limousine has corrected the discovered violations.
6. **The number of violations.** Staff identified 25 violation types with a total of 240 individual occurrences during the safety investigation of Lucky Limousine. Of those violations, Staff identified seven violation type with 80 individual occurrences that warrant penalties in accordance with the Commission's Enforcement Policy.
7. **The number of customers affected.** Lucky Limousine reported traveling 7,786 miles in 2021. These safety violations presented a public safety risk.
8. **The likelihood of recurrence.** The Company was cooperative throughout the safety investigation and was 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 expressed a desire to come into compliance, but due to the number of repeat violations, Staff believes there is at least some likelihood the violations will reoccur.
9. **The Company's past performance regarding compliance, violations, and penalties.** On September 3, 2014, Lucky Limousine's charter and excursion certificate was suspended for failing to file acceptable proof of insurance in Docket TE-143244. The Company's certificate suspension was lifted on September 11, 2014.

On June 20, 2017, the Commission assessed a \$1,000 penalty against Lucky Limousine for failing to file an annual report and pay regulatory fees in Docket TE-170628. A \$750 portion of the penalty was suspended subject to conditions The Company paid regulatory fees and the \$250 portion of the penalty in full on June 23, 2017.
10. **The Company's existing compliance program.** Gregg Webber is responsible for the Company's safety compliance program.
11. **The size of the Company.** Lucky Limousine currently operates 11 CMVs and employs 34 drivers. The Company reported \$30,518 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.¹ 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 Lucky Limousine \$2,100 (Penalty Assessment), calculated as follows:

- Three violations of 49 C.F.R. § 382.301(a) – Using a driver before the motor carrier has received a negative pre-employment substance test result. The Commission assesses a penalty of \$1,500 for these critical violations.
- Four violations of 49 C.F.R. § 391.21(a) – Using a driver who has not completed and furnished an employment application. The Commission assesses a “per category” penalty of \$100 for these repeat violations.
- Four violations of 49 C.F.R. § 391.51(b)(4) – Failing to maintain the responses of each State agency to the annual driver record inquiry required by 49 C.F.R. § 391.25(a). The Commission assesses a “per category” penalty of \$100 for these repeat violations.
- Four violations of 49 C.F.R. §391.51(b)(5) – Failing to maintain a note pertaining to the annual driving record review in driver’s qualification file. The Commission assesses a “per category” penalty of \$100 for these repeat violations.
- Three violations of 49 C.F.R. §391.51(b)(6) – Failing to maintain a list or certificate relating to violations of motor vehicle laws and ordinances required by 49 C.F.R. § 391.27. The Commission assesses a “per category” penalty of \$100 for these repeat violations.
- Two violations of 49 C.F.R. §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 (National Registry) required by C.F.R. §391.23(m) The Commission assesses a “per category” penalty of \$100 for these repeat violations.
- Sixty violations of 49 C.F.R. §395.8(a)(1) – Failing to require driver to make a record of duty status. The Commission assesses a “per category” penalty of \$100 for these critical violations.

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

¹ 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. 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 July 22, 2022.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TE-220489

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 \$2,100 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.