

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TE-240476
PENALTY AMOUNT: \$800

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

The Washington Utilities and Transportation Commission (Commission) believes ATS Trans, LLC d/b/a Around-The-Sound Transportation Specialists (ATS Trans 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 June 17, 2024, Commission Motor Carrier Safety Investigator Traci Cobile completed a routine safety investigation of ATS Trans and documented the following violations:

- **One violation of 49 C.F.R. § 390.19(b)(2) - Failing to file the appropriate form under 390.19(a) (MCS-150, 150B, or 150C) every 24 months according to the schedule.** The Company failed to update its MCS-150 with correct information at the time of the biennial update or as a routine update.
- **One violation of 49 C.F.R. § 391.45(a) - Using a driver not medically examined and certified.** The Company allowed driver Bruce Neihart to operate a commercial motor vehicle (CMV) without a valid medical certificate.
- **Two violations of 49 C.F.R. § 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 the driving records of James Sauls and Dennis Smith.
- **Two 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 391.25(a).** The Company failed to maintain the annual driving record for drivers Bruce Neihart and Dennis Smith in their driver qualification files.
- **Four violations of 49 C.F.R. § 391.51(b)(5) - Failing to maintain a note relating to the annual review of the driver's driving record as required by 391.25(c)(2).** The Company failed to maintain a copy of the original abstract in the driver qualification files of Bruce Neihart, Gary Moore, James Sauls, and Dennis Smith within 30 days of employment.

- **One violation of 49 C.F.R. § 393.41 - Brake - Inoperative or missing parking brake on power unit.** Commission staff (Staff) discovered one motor vehicle operating with a defective parking brake system. The vehicle was placed out-of-service.¹
- **Two violations of 49 C.F.R. § 393.62 - Buses - Marked emergency exit is inoperative (does not open, close, and/or secure as designed).** The Company used two motor vehicles with emergency exits that were not properly marked and were inoperable. The vehicles were placed out-of-service.²

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 provide timely data in their Motor Carrier Identification Report, (2) use drivers not medically examined and certified, (3) fail to maintain inquiries into drivers' driving records, (4) fail to maintain the annual driving records of their drivers, (5) fail to timely investigate driver's motor vehicle records, (6) operate motor vehicles in need of repair, and (7) use motor vehicles with deficient emergency exits 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.

ATS Trans began operating in 1998 and has been subject to previous safety investigations conducted by Staff.

On February 3, 2020, Staff completed a routine safety investigation of ATS Trans and documented violations of 49 C.F.R. § 390.19(b)(2), 391.45(a), 391.51(b)(4), and 391.51(b)(5).

The Company knew or should have known about these requirements.

3. **Whether the Company self-reported the violations.** ATS Trans did not self-report these violations.
4. **Whether the Company was cooperative and responsive.** The Company was cooperative throughout the safety investigation.

¹ Vehicle Identification Number (VIN) 1FD4E4FS8HDC27514

² VIN 1FD4E4FS8HDC27514 and VIN 1FDXE45S75HB49107

5. **Whether the Company promptly corrected the violations and remedied the impacts.** ATS Trans made corrections to violations as they were discovered during the investigation.
6. **The number of violations.** Staff identified 19 violation types with a total of 109 individual occurrences during the routine safety investigation of ATS Trans. Of those violations, Staff identified seven violation types with 13 individual occurrences that warrant a penalty in accordance with the Commission’s Enforcement Policy.
7. **The number of customers affected.** ATS Trans last reported traveling 7,934 miles for 2023. These safety violations present a public safety risk.
8. **The likelihood of recurrence.** The Company incurred repeat violations despite previous technical assistance from Staff. Absent a commitment to prioritize safe operations, the violations are likely to reoccur.
9. **The Company’s past performance regarding compliance, violations, and penalties.** On February 27, 2020, the Commission issued the Company a penalty in the amount of \$700 in docket TE-200117.

On March 20, 2020, the Commission entered Order 01 granting mitigation of the penalty to the amount of \$400.

On July 1, 2020, the Company paid the \$400 penalty in full.
10. **The Company’s existing compliance program.** David Smith, Safety Director, is responsible for the Company’s safety compliance program.
11. **The size of the Company.** The Company employs 12 drivers and operates 8 regulated CMVs. The Company reported \$5,131,960 in gross revenue in 2023.

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.³ 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 ATS Trans \$800 (Penalty Assessment), calculated as follows:

³ Docket A-12,00061 – Enforcement Policy of the Washington Utilities & Transportation Commission – Section V.

- One violation of 49 C.F.R. § 390.19(b)(2) - Failing to file the appropriate form under 390.19(a) (MCS-150, 150B, or 150C) each 24 months according to the schedule. The Commission assesses a penalty of \$100 for this repeat violation.
- 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 repeat violation.
- Two violations of 49 C.F.R. § 391.51(b)(2) - Failing to maintain inquiries into driver's driving record in driver's qualification file. The Commission assesses a \$100 “per category” penalty for these first-time critical violations.
- Two 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 391.25(a). The Commission assesses a \$100 “per category” penalty for these repeat violations.
- Four violations of 49 C.F.R. § 391.51(b)(5) – Failing to maintain a note relating to the annual review of the driver's driving record as required by 391.25(c)(2). The Commission assesses a \$100 “per category” penalty for these repeat violations.
- One violation of 49 C.F.R. § 393.41 - Brake - Inoperative or missing parking brake on power unit. The Commission assesses a penalty of \$100 for each occurrence of this out-of-service violation, for a total of \$100.
- Two violations of 49 C.F.R. § 393.62 - Buses - Marked emergency exit is inoperative (does not open, close and/or secure as designed). The Commission assesses a penalty of \$100 for each occurrence of this out-of-service violation, for a total of \$200.

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 the violations did not occur, you may deny committing the violations and contest the penalty through evidence presented at a hearing or in writing. Alternatively, if there is a reason for 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 violations 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 violations 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.
- Admit the violation 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 at <https://efiling.utc.wa.gov/Form> **within FIFTEEN (15) days** after you receive this Penalty Assessment.⁴ 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 wish to make a payment online, please use this link: [Make a Payment Now \(wa.gov\)](#).⁵

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 3, 2024.

/s/ Michael Howard
MICHAEL HOWARD
Director, Administrative Law Division

⁴ <https://efiling.utc.wa.gov/Form>.

⁵ <https://www.utc.wa.gov/documents-and-proceedings/online-payments/make-payment-now>

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TE-240476

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, 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.
 Enclose \$800 in payment of the penalty.
 OR Attest that I have paid the penalty in full through the Commission's payment portal.
2. **Contest the violations.** I believe that the alleged violations 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.