

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Penalty Assessment)	DOCKET TE-060868
Against)	
)	ORDER 01
SEATAC MOTOR COACHES, LLC,)	
)	
in the Amount of \$2,900)	ORDER DENYING MITIGATION
.....)	

1 **Penalty:** On July 27, 2006, the Washington Utilities and Transportation Commission (Commission) assessed a penalty in the amount of \$2,900 against SeaTac Motor Coaches, LLC (SeaTac) for alleged violations of WAC 480-30-221¹. This regulation adopts, by reference, Part 395 of Title 49 Code of Federal Regulations (CFR) regarding hours of service of drivers and the maintenance of drivers' records of duty status. Specifically, the Commission alleged that SeaTac required or allowed its drivers to drive more consecutive hours than are allowed under Commission rules and required or allowed its drivers to falsify records to cover up these violations.

2 The penalty assessment stated that the deadline to file a petition for mitigation is 15 days after receipt of the penalty assessment.

3 **Factual Basis:** On May 2 and 8, 2006, the Motor Carrier Safety Section Staff (Staff) conducted a carrier review, based on an anonymous complaint, of drivers' daily records of duty status (log books), payroll records, driver work orders, and fuel receipts. Staff determined that SeaTac was in violation of Commission rules regarding drivers' hours of service. Staff concluded that there were seven violations of requiring or permitting a passenger commercial motor vehicle driver to drive more than 10 hours following eight consecutive hours off duty. Staff also found five violations of requiring or permitting a passenger commercial motor vehicle driver to drive after 15 hours on duty following eight consecutive hours off day. Finally, Staff discovered seventeen violations of requiring or permitting a driver to make false reports of records of duty status.

¹ The penalty assessment referenced WAC 480-40-070 rather than WAC 480-30-2221, which went into effect shortly before the penalty assessment was issued. However, the substance of both rules contains the identical compliance requirements.

- 4 **Petition for Mitigation:** On September 5, 2006, Ruthann Bacon filed an application for mitigation and waived a hearing on behalf of SeaTac. Ms. Bacon asserted that she had only recently found the penalty assessment because it had been hidden by a former employee, John Brehmer, who served as SeaTac’s safety and training Manager. Ms. Bacon asserted that she and other drivers did not have the training and knowledge to accurately complete the log book. Ms. Bacon admitted that “ignorance is no excuse” but requested that the penalty be mitigated because SeaTac is a small company and has recently taken efforts to ensure future compliance with applicable regulations including requesting Staff training on the proper procedure to complete log books and hiring a knowledgeable employee.
- 5 If the Commission denied the request for mitigation, SeaTac requested permission to make payments.
- 6 **Answer:** On September 20, 2006, Commission Staff responded to the petition for mitigation. Staff asserted that the application should be denied because the registered agent of SeaTac, Paul Fanson, signed the certified mail receipt on behalf of SeaTac on July 31, 2006. However, the application for mitigation was filed more than three weeks past the deadline.
- 7 Staff further contended that SeaTac must ensure that its employees are knowledgeable of, and adhere to, applicable safety regulations as required by the federal government. Staff asserted that Ms. Bacon did not state sufficient justification to mitigate the penalty because no effort was made to contact the Commission or other individuals within SeaTac to obtain the technical guidance necessary to properly complete the log books.
- 8 Staff did not oppose the request to discharge any penalty obligation in payments over time. Staff recommended that the Commission allow SeaTac to pay its penalty over a one-year period, in twelve equal monthly installments.
- 9 **Commission Decision:** The Commission denies the application for mitigation for two reasons. First, the application was untimely filed. According to WAC 480-30-036(2), an “agent” means “a person authorized to transact business for, and in the

name of, another.” In this case, Mr. Fanson is the registered agent for SeaTac. Mr. Fanson received the penalty assessment on July 31, 2006. The fact that the employment of another individual, Mr. Brehmer, was terminated and his duties were assumed by Ms. Bacon does not excuse the registered agent from taking action to file an application for mitigation on behalf of SeaTac in a timely manner.

- 10 Second, SeaTac did not present good cause for mitigating the penalty. The applicable portions of 49 CFR §395.5 provide that “[N]o motor carrier shall permit or require any driver used by it to drive a passenger-carrying commercial vehicle, nor shall any such driver drive a passenger-carrying commercial motor vehicle . . . “ in violation of the maximum driving times for passenger-carrying vehicles. This regulation is mandatory, not discretionary. It does not excuse either an employer or a driver from compliance with the maximum driving times due to ignorance or negligence.
- 11 The applicable portions of 49 CFR §395.8 provide that drivers shall record their duty status for each 24 hour period. Duty status includes times off duty, driving, on duty, not driving, and others. The importance of keeping an accurate record of duty status is emphasized in 49 CFR 395.8(e) which provides that the “. . . making of false reports in connection with such duty activities shall make the driver and/or the carrier liable to prosecution.” This regulation is also mandatory, not discretionary.
- 12 The facts are not in dispute. More than one driver exceeded the maximum number of driving hours permitted by the regulation and was either required or permitted to make false reports of their records of duty status.
- 13 Compliance with maximum driving hours regulations and accurately reporting duty status are not ministerial functions. They are an integral part of providing commercial motor carrier service in a safe and responsible manner. Commercial motor carriers must conduct their business in a way that protects the public. The public includes not only those individuals who choose to avail themselves of passenger transportation service but also the members of the public who may be traversing public roadways at the same time as the commercial motor carriers. Allowing drivers to exceed maximum driving hours and maintain inaccurate driving logs are serious violations. As such, it is appropriate to assess a penalty in the amount of \$2,900.

- 14 SeaTac requested permission to pay the penalty in installments if the application for mitigation was denied. Staff did not object and recommended a payment plan. The request to pay the penalty in installments is granted. SeaTac may discharge its penalty assessment in twelve equal monthly installments in the amount of \$242.00 each, due on the first of each month commencing November 1, 2006, until the penalty is paid in full.
- 15 It is so ordered.

DATED at Olympia, Washington, and effective October 2, 2006.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

CAROLE J. WASHBURN
Executive Secretary