

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TE-160713

PENALTY AMOUNT: \$4,500

KUSH TOURISM LLC
DBA KUSH TOURISM
1300 SOUTH DEARBORN STREET
SEATTLE, WA 98144

The Washington Utilities and Transportation Commission (Commission) believes that you have committed violations of Washington Administrative Code (WAC) 480-30-221 Vehicle and Driver Safety Requirements, which requires charter and excursion carriers to comply with Title 49 Code of Federal Regulations (CFR) Part 391 - Qualifications of drivers and Part 395 - Hours of service of drivers.

RCW 81.04.405 allows penalties of one hundred dollars for each violation. In the case of an ongoing violation, every day's continuance is considered a separate and distinct violation.

On March 15, 2016, Commission Motor Carrier Investigator Sandi Yeomans conducted a compliance review of Kush Tourism LLC d/b/a Kush Tourism (Kush Tourism) and identified the following violations of critical regulations:

- **Forty-four violations of CFR Part 391.45(a) – Using a driver not medically examined and certified.** Kush Tourism allowed employees Charles Nobles, Michael Gordon, and Shane Owens to drive on a total of forty-four occasions between October 2015 and March 2016. None of the drivers had been medically examined and certified prior to driving.
- **One violation of CFR Part 395.8(a) – Failing to require driver to make a record of duty status.** Kush Tourism allowed employees Charles Nobles, Michael Gordon, and Shane Owens to drive without making a record of duty status on thirteen occasions between October 2015 and March 2016.

The Commission considered the following factors in determining the appropriate penalties for these violations:

1. **How serious or harmful the violation is to the public.** The violations noted are serious and potentially harmful to the public. Companies that disregard requirements for medical examination and certification, or that fail to document drivers' hours of service put the traveling public at risk. An undocumented medical condition or a potentially fatigued driver presents serious safety concerns.

2. **Whether the violation is 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.

In its initial application for charter and excursion authority submitted on June 24, 2014, Charles Nobles, chief operating officer and part owner of Kush Tourism, acknowledged his responsibility to understand and comply with applicable motor carrier safety rules.

Staff conducted a new entrant compliance review on June 27, 2014 and provided technical assistance with regard to safety regulations and provided the company with a safety guide.

The company knew, or should have known, about these requirements.

3. **Whether the company self-reported the violation.** The company did not self-report these violations.
4. **Whether the company was cooperative and responsive.** Kush Tourism was cooperative and appeared interested in coming into compliance.
5. **Whether the company promptly corrected the violations and remedied the impacts.** Kush Tourism responded with a written compliance plan and has taken steps to correct many of the violations.
6. **The number of violations.** The number of critical violations noted is notable.
7. **The number of customers affected.** The company traveled 3,173 miles and reported \$269,000 in gross revenue in 2015, operating one vehicle. Due to the number of violations noted, these safety violations potentially affected a significant number of customers.
8. **The likelihood of recurrence.** The company was very cooperative and seemed committed to correcting the violations. The company has hired a consultant to ensure compliance with FMCSR standards.
9. **The company's past performance regarding compliance, violations, and penalties.** The company has had one previous compliance review as a new entrant. There have been no similar violations noted and no previous penalties assessed.
10. **The company's existing compliance program.** Kush Tourism had no formal compliance program, however, Kush Tourism has hired a consultant to ensure compliance with regulations.
11. **The size of the company.** Kush Tourism operates one commercial vehicle with four drivers and reported \$269,000 in gross revenue and 3,173 miles traveled in 2015.

All of the critical violations noted in the compliance review are first-time violations, but the Commission's Enforcement Policy provides that certain Commission requirements are so fundamental to safe operations that the Commission will issue penalties for a first-time violation, regardless of whether staff has previously provided technical assistance on specific issues.¹ Within these first-time violations are regulations so critical to public safety that the applicable statute (RCW 81.04.405) and the Enforcement Policy penalize each occurrence. Other first-time violations are penalized once for each violation type.

The Commission has considered these factors and determined that Kush Tourism should be penalized \$4,500 for violations of WAC 480-30-221 Driver Safety Requirements, which adopts CFR Part 391 and Part 395, calculated as follows:

- Forty-four violations of CFR Part 391.45(a) – Using a driver not medically examined and certified, at the penalty amount of \$100 per violation, for a total of \$4,400.
- One violation of CFR Part 395.8(a) – Failing to require driver to make a record of duty status, at the penalty amount of \$100 per violation type, for a total of \$100.

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 assessment 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 concerning the violation(s) require consideration of evidence and resolution in a hearing. Any contest of the penalty assessment must include a written statement of the reasons supporting that contest. Failure to provide such a statement will result in denial of the contest.

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 this 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 for mitigation 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 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 his or her decision.

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

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 violations.
- Request mitigation to contest the amount of the penalty.

Please indicate your selection on the enclosed form and send it to the Washington Utilities and Transportation Commission, Post Office Box 47250, Olympia, Washington 98504-7250, **within FIFTEEN (15) days** after you receive this notice.

If you do not act within 15 days, the Commission may refer this matter to the Office of the Attorney General for collection. The Commission may then sue you to collect the penalty.

DATED at Olympia, Washington, and effective June 3, 2016.



GREGORY J. KOPTA
Administrative Law Judge

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TE-160713

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 violation occurred and enclose \$ _____ in payment of the penalty.
2. **Contest the violation.** I believe that the alleged violation did not occur for the reasons I describe below:
- 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 violation, but I believe that the penalty should be reduced for the reasons set out below:
- 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.”