

STAFF INVESTIGATION

SeaTac Motor Coaches, LLC

TE-071432

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PURPOSE, SCOPE, AND AUTHORITY

Purpose

The purpose of this investigation is to determine if SeaTac Motor Coaches, LLC (SeaTac) is operating a passenger charter service with repeated and continued violations of laws and rules pertaining to the operations of passenger transportation companies as evidenced by information obtained by the Washington Utilities and Transportation Commission (commission).

Scope

The scope of the investigation focuses on information obtained by commission staff relating to the passenger transportation operations of SeaTac.

Authority

Staff undertakes this investigation under the authority of the Revised Code of Washington (RCW) 81.01.010, which adopts RCW 80.01, which directs the Commission to regulate transportation companies in the public interest, and to adopt such rules and regulations as may be necessary to do so. In addition, RCW 81.04.070 makes it clear that the Commission is authorized to conduct such an investigation.¹

¹ See Appendix A for copies of laws and rules.

EXECUTIVE SUMMARY

The commission granted SeaTac authority to operate as both a charter party and excursion service carrier of passengers in January 2005. Since that time, the commission's motor carrier safety staff has inspected SeaTac's operations five times. The results of those inspections demonstrate the company's history of non-compliance with the commission's laws and rules related to motor carrier safety.

Commission staff's most recent inspection of SeaTac's operations shows a 33 percent increase in vehicle and driver safety violations and a 50 percent increase in overall violations since the company went into business in 2005.

SeaTac continues to commit serious safety violations despite receiving specific, in-person technical assistance on how to comply from commission staff and previous penalties from the commission. The company's 25 repeated violations related to vehicle and driver safety indicate a disregard for public safety.

In addition, commission staff has serious concerns about SeaTac's fitness to continue operations due to financial problems. During the most recent inspection, commission staff found the company operating its vehicles with expired vehicle registrations, a violation of commission rule. SeaTac had not renewed the registrations due to a lack of funds.² Commission staff also found SeaTac unable to meet its payroll and other financial obligations. The company's recent bank records indicate numerous instances of non-sufficient funds and overdraft charges. At present, the company has an outstanding balance with the commission of \$2,416 from a July 2006 penalty assessment. Though it requested and received a payment plan from the commission, the company has made only two penalty payments to date.³

Recommendation

Commission staff recommends the commission issue a complaint to revoke the certificates and operating authority of SeaTac, as provided under RCW 81.04.110.

² See Appendix G - June 2007 inspection report - SeaTac properly registered its vehicles as of July 11, 2007.

³ Docket TE-060868.

INVESTIGATION

Company Information

SeaTac is located at 5401 85th Avenue East, B-6, Puyallup, Washington, 98371.

In January 2005, the commission issued SeaTac two certificates:

- Certificate CH-466⁴ granted the company authority to operate as a Charter Party Carrier of Passengers.
- Certificate ES-183⁵ granted the company authority to operate as an Excursion Service Carrier of Passengers.

Both certificates subject the company to the provisions of RCW 81.70 and WAC 480-30.

Compliance History

Commission motor carrier safety employees conduct safety audits of regulated firms, generally at the company's terminal. These audits involve inspecting records related to vehicle maintenance, driver qualifications, drug and alcohol testing and inspecting vehicles used to provide service to the public. Motor carrier safety employees also investigate complaints from the public about a company's operations or practices and help company operators understand and comply with state and federal safety requirements that apply to carriers of persons and property.

Motor carrier safety staff has inspected SeaTac's operations five times since the company received its authority to operate in 2005. The results of those inspections are discussed below.

1. May 2005 - Unsatisfactory Safety Rating. On May 2, 2005, after inspecting SeaTac's vehicles and records, motor carrier safety investigator Tom McVaugh noted violations related to controlled substance and alcohol testing, driver qualifications and hours of service.

The 28 violations of WAC 480-30-221⁶ included:

- Five violations – CFR Part 40.25(b)/382.105, Failing to request information from previous Dept. of Transportation regulated employers of driver applicant for the two years prior to the date of application or transfer.
- Two violations – CFR Part 382.301(a), Using a driver before the motor carrier has received a negative pre-employment controlled substance test result.
- Five violations – CFR Part 382.601(a), Failing to provide educational materials explaining requirements of Part 382 and employer's policies.
- One violation – CFR Part 382.603, Failing to ensure persons designated to determine that drivers undergo reasonable suspicion testing receive 60 minutes training for alcohol and/or 60 minutes of training for controlled substances.
- Four violations – CFR Part 391.21(a), Using a driver who has not completed and furnished an employment application.

⁴ Docket TE-050034 - See Appendix B.

⁵ Docket TE-050054 - See Appendix B.

⁶ WAC 480-30-221, Vehicle and driver safety requirements, states, in part:

“(1) Companies must comply with all state and local laws and rules governing licensing, vehicle safety, and driver safety. Companies must also comply with the parts of Title 49, Code of Federal Regulations (49 CFR) adopted by reference...”

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- Two violations – CFR Part 391.45(b)(1), Using a driver not medically certified during the preceding 24 months.
- Five violations – CFR Part 391.51(b)(2), Failing to maintain inquiries into driver’s driving record in driver’s qualification file.
- One violation – CFR Part 391.51(b)(7), Failing to maintain medical examiner’s certificate in driver’s qualification file.
- Three violations – CFR Part 395.8(a), Failing to require driver to make a record of duty status.

On the basis of these violations, SeaTac received an unsatisfactory safety rating at the conclusion of the May 2005 carrier review.⁷

2. Re-check of May 2005 Inspection. Mr. McVaugh conducted a re-check inspection on May 9, 2005. SeaTac had corrected the violations found in the previous review and received a satisfactory safety rating.
3. January 2006 – Routine Compliance Review. Mr. McVaugh conducted a routine safety inspection at the request of the company and provided specific technical assistance on CFR Parts 393, 395, and 396. No violations were found.
4. May 2006 - Hours of Service Violations. On April 28, 2006, Mr. McVaugh was contacted by an unidentified caller who reported that management at SeaTac was requiring drivers to violate the hours of service rules administered by the commission. Specifically, the caller stated that John Brehmer, safety and training manager for SeaTac, was ordering drivers to exceed the maximum driving and on-duty limits governed by CFR Part 395. In addition, the caller stated that Mr. Brehmer was requiring drivers for SeaTac to falsify their records of duty status in order to cover up these violations. Mr. McVaugh later identified this caller as an employee of SeaTac.

On May 2 and 8, 2006, Mr. McVaugh conducted an inspection at SeaTac’s office. Mr. McVaugh inspected the company’s records for March and April 2006. He reviewed drivers’ daily records of duty status (log books), payroll records, driver work orders and fuel receipts.

Mr. McVaugh determined that SeaTac violated commission rules regarding drivers’ hours of service.⁸ The 29 violations of WAC 480-30-221 included:

- Seven violations - CFR 395.5(a)(1), Requiring or permitting a passenger commercial motor vehicle driver to drive more than 10 hours following eight consecutive hours off duty.
- Five violations - CFR 395.5(a)(2), Requiring or permitting a passenger commercial motor vehicle driver to drive after 15 hours on duty following eight consecutive hours off duty.
- Seventeen violations - CFR 395.8(e), Requiring or permitting a driver to make false reports of records of duty status.

⁷ See Appendix C – May 2005 inspection report.

⁸ See Appendix D – May 2006 inspection report.

On July 27, 2006, the commission issued a Notice of Penalties in the amount of \$2,900 in Docket TE-060868 to SeaTac for these violations.⁹ The company requested mitigation of the penalty which commission staff opposed.

The commission denied the mitigation request but allowed a payment plan of twelve monthly installments of \$242.00, beginning on November 1, 2006.¹⁰ According to the commission's records, to date SeaTac Motor Coaches has made only two payments and has an outstanding penalty balance of \$2,416.

5. June 2007 - Conditional Safety Rating. On June 13, 18 and 19, Motor Carrier Safety staff John Foster and Tom McVaugh conducted a routine compliance review of SeaTac. During the review the staff discovered a total of 56 violations relating to controlled substance and alcohol testing, driver qualifications, hours of service and other violations.¹¹

Mr. Foster and Mr. McVaugh noted a total of 42 violations of WAC 480-30-221 during the review, as follows:

- One violation - CFR Part 382.305(b)(1), Failing to conduct random alcohol testing at an annual rate of not less than the applicable annual rate of the average number of driver positions.
- Two violations - CFR Part 382.305(b)(2), Failing to conduct random controlled substances testing at an annual rate of not less than the applicable annual rate of the average number of driver positions.
- One violation - CFR Part 382.601(a), Failing to provide educational materials explaining requirements of Part 382 and employer policies.
- One violation - CFR Part 382.603, Failing to ensure persons designated to determine that drivers undergo reasonable suspicion testing receive 60 minutes of training for alcohol and/or 60 minutes of training for controlled substances.
- Five violations - CFR Part 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 commercial motor vehicle operator's license at least once every 12 months.
- Five violations - CFR 391.25(b), Failing to review the driving record of each driver to determine whether that driver meets minimum requirements for safe driving or is disqualified to drive.
- Fourteen violations¹² - CFR Part 391.45(b)(1), Using a driver not medically examined and certified during the preceding 24 months.
- Three violations - CFR Part 391.51(b)(2), Failing to maintain inquiries into driver's driving record in driver's qualification file.
- Four violations - CFR Part 391.51(b)(6), Failing to maintain a list or certificate relating to violations of motor vehicle laws and ordinances required by Part 391.27.
- One violation - CFR Part 395.5(a)(1), Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive more than 10 hours.
- Two violations¹³ - CFR Part 395.5(a)(2), Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after having been on duty 15 hours.

⁹ See Appendix E – Notice of Penalties.

¹⁰ See Appendix F – Order Denying Mitigation.

¹¹ See Appendix G – June 2007 inspection report.

¹² Represents the number of days two of the company's drivers operated a vehicle while in violation.

¹³ Represents the number of days one company driver operated a vehicle after having been on duty 15 hours.

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- Three violations - CFR Part 395.8(a), Failing to require a driver to make a record of duty status.

The violations resulted in the company receiving a conditional safety rating.

Mr. Foster and Mr. McVaugh also noted 14 violations¹⁴ of WAC 480-30-206, Operating vehicles not licensed in accordance with state licensing laws (RCW 46.16.010), for the company's expired vehicle registrations.

The inspection also raised serious questions as to the carrier's fitness due to financial problems. Commission staff found SeaTac was unable to meet its payroll and other financial obligations. At the time of the review, SeaTac did not have funds to renew vehicle registrations on its motor coaches.¹⁵ SeaTac's bank statements revealed numerous non-sufficient funds and overdraft charges.¹⁶ The carrier's mechanic, Gary Miller, informed commission staff that at times he had to use his own funds to purchase parts to maintain the carrier's motor coaches. Mr. Miller also has an agreement on a motor coach he leases to SeaTac. According to Mr. Miller, SeaTac currently owes him over \$30,000.¹⁷

¹⁴ Represents the number of days the company's motor coaches were operated while in violation.

¹⁵ See Appendix G – June 2007 Inspection Report. SeaTac Motor Coaches subsequently renewed its vehicle registrations on June 22, 2007. The company also made its insurance payment.

¹⁶ See Appendix H – SeaTac bank statements

¹⁷ See Appendix I – Information from Gary Miller.

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Violation Summary

The following table shows the history of violations by SeaTac from 2005 to 2007. Repeated violations are shaded.

Violations	# of Violations		
	May 2005	May 2006	June 2007
WAC 480-30-221 - Vehicle & Driver Safety Requirements			
CFR Part 40.25(b)/382.105, Failing to request information from previous Dept. of Transportation regulated employers of driver applicant for the two years prior to the date of application or transfer.	5	0	0
CFR Part 382.301(a), Using a driver before the motor carrier has received a negative pre-employment controlled substance test result.	2	0	0
CFR Part 382.305(b)(1), Failing to conduct random alcohol testing at an annual rate of not less than the applicable annual rate of the average number of driver positions.	0	0	1
CFR Part 382.305(b)(2), Failing to conduct random controlled substances testing at an annual rate of not less than the applicable annual rate of the average number of driver positions.	0	0	2
CFR Part 382.601(a), Failing to provide educational materials explaining requirements of Part 382 and employer policies.	5	0	1
CFR Part 382.603, Failing to ensure persons designated to determine that drivers undergo reasonable suspicion testing receive 60 minutes of training for alcohol and/or 60 minutes of training for controlled substances.	1	0	1
CFR Part 391.21(a), Using a driver who has not completed and furnished an employment application.	4	0	0
CFR Part 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 commercial motor vehicle operator's license at least once every 12 months.	0	0	5
CFR 391.25(b), Failing to review the driving record of each driver to determine whether that driver meets minimum requirements for safe driving or is disqualified to drive.	0	0	5
CFR Part 391.45(b)(1), Using a driver not medically examined and certified during the preceding 24 months.	2	0	14
CFR Part 391.51(b)(2), Failing to maintain inquiries into driver's driving record in driver's qualification file.	5	0	3
CFR Part 391.51(b)(6), Failing to maintain a list or certificate relating to violations of motor vehicle laws and ordinances required by Part 391.27.	0	0	4
CFR Part 391.51(b)(7), Failing to maintain medical examiner's certificate in driver's qualification file.	1	0	0
CFR Part 395.5(a)(1), Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive more than 10 hours	0	7	1
CFR Part 395.5(a)(2), Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after having been on duty 15 hours.	0	5	2
CFR Part 395.8(a), Failing to require driver to make a record of duty status.	3	0	3
CFR 395.8(e), Requiring or permitting a driver to make false reports of records of duty status.	0	17	0
Vehicle & Driver Safety Requirements Violations	28	29	42
WAC 480-30-206 – Vehicle Licensing			
Requires companies to ensure that each vehicle it operates is in compliance with all appropriate state vehicle licensing laws, commission rules, and commission orders.	0	0	14
Total Violations	28	29	56

CONCLUSIONS

WAC 480-30-221, Vehicle and driver safety requirements, states, in part:

“(1) Companies must comply with all state and local laws and rules governing licensing, vehicle safety, and driver safety. Companies must also comply with the parts of Title 49, Code of Federal Regulations (49 CFR), adopted by reference...”

As stated by the commission in its August 2006 Order Denying Mitigation of the penalty assessment against SeaTac,

“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 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.”¹⁸

SeaTac Motor Coaches, in the short time the company has been in business, has a history of non-compliance with the commission’s laws and rules related to motor carrier safety. The results of the company’s most recent compliance review show a 33 percent increase in vehicle and driver safety violations and a 50 percent increase in overall violations since the company went into business in 2005.

SeaTac continues to commit serious safety violations despite receiving specific, in-person technical assistance on how to comply from commission staff and previous penalties from the commission. The company’s 25 repeated violations related to vehicle and driver safety indicate a disregard for public safety.

In addition, commission staff has serious concerns about SeaTac’s fitness to continue operations due to financial problems. During the most recent inspection, commission staff found the company operating its vehicles with expired vehicle registrations, a violation of commission rule. SeaTac had not renewed the registrations due to a lack of funds.¹⁹ Commission staff also found SeaTac unable to meet its payroll and other financial obligations. The company’s recent bank records indicate numerous instances of non-sufficient funds and overdraft charges. At present, the company has an outstanding balance with the commission of \$2,416 from a July 2006 penalty assessment. Though it requested and received a payment plan from the commission, the company has made only two penalty payments to date.²⁰

Recommendation

Commission staff recommends the commission issue a complaint to revoke the certificates and operating authority of SeaTac, as provided under RCW 81.04.110.

¹⁸ See Appendix F – Order Denying Mitigation.

¹⁹ See Appendix G - June 2007 inspection report. SeaTac properly registered its vehicles as of July 11, 2007.

²⁰ Docket TE-660868.