

Service Date: February 27, 2024

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Received
Records Management
Feb 29, 2024NOTICE OF PENALTIES INCURRED AND DUE
FOR VIOLATIONS OF LAWS AND RULES

PENALTY ASSESSMENT: TE-240070

PENALTY AMOUNT: \$800

Scenic Bound Tours Co.
d/b/a Seattle Tours; Mt. Rainier Tours; Tours Northwest
8219 7th Ave S.
Seattle, WA 98108

The Washington Utilities and Transportation Commission (Commission) believes Scenic Bound Tours Co., d/b/a Seattle Tours, d/b/a Mt. Rainier Tours, d/b/a Tours Northwest (Scenic Bound Tours 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 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 February 1, 2024, Commission Motor Carrier Investigator Sandra Yeomans completed a routine safety investigation of Scenic Bound Tours and documented the following violations:

- **One violation of 49 C.F.R. § 382.305(i)(2) - Failing to assure all drivers have equal chance of being selected for random testing.** Scenic Bound Tours failed to ensure that each driver had an equal chance of being selected to random alcohol and controlled substances testing.
- **One violation of 49 C.F.R. § 382.601(b) - Failing to provide employees a written policy on misuse of alcohol and controlled substances that meets the requirements of 382.601(b) 1-11.** The Company failed to provide its drivers a drug and alcohol policy containing information identifying the designated employee representative and information related to the Drug and Alcohol Clearinghouse.
- **Four violations of 49 C.F.R. § 391.21(a) - Using a driver who has not completed and furnished an employment application.** Scenic Bound Tours failed to obtain completed driver applications for drivers Tyler Caruso, Amalia Larson, Kenneth Nielsen, and Richard Puffert.
- **One violation of 49 C.F.R. § 391.45(a) - Using a driver not medically examined and certified.** The Company allowed driver Kenneth Nielsen to operate a commercial motor vehicle (CMV) without a valid medical certificate.

- **Four violations of 49 C.F.R. § 393.62 - Using a CMV with emergency exits not properly marked.** The Company operated four CMVs with emergency exits not properly marked at the time of inspection.¹ The vehicles were placed out-of-service.

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 ensure drivers have an equal chance of being selected to random alcohol and controlled substances testing, (2) fail to inform drivers of required information in its controlled substance and alcohol policy, (3) use drivers that have not completed employment applications, (4) use drivers not medically examined and certified, and (5) use CMVs with unmarked 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 Commission staff's (Staff) 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 violations.

Scenic Bound Tours began its operations in 1992 and has been subject to previous safety investigations conducted by Staff.

On August 29, 2018, Staff completed a routine safety investigation of Scenic Bound Tours and documented violations of 49 C.F.R. § 382.305(i)(2), 382.601(b), and 391.21(a).

The Company knew or should have known about these requirements.

3. **Whether the Company self-reported the violations.** Scenic Bound Tours 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.** Scenic Bound Tours made corrections for violations as they were discovered during the investigation.
6. **The number of violations.** Staff identified 11 violation types with a total of 21 individual occurrences during the routine safety investigation of Scenic Bound Tours. Of

¹ Vehicle Identification Number (VIN) 1FDXE45S88DB47992, VIN 1GBE5VIG76F415617, VIN 1FDXE4FS6CDB22032, and VIN 1FDXE4FS7FDA12398

those violations, Staff identified five violation types with 11 individual occurrences that warrant a penalty in accordance with the Commission's Enforcement Policy.

7. **The number of customers affected.** Scenic Bound Tours last reported traveling 141,811 miles for 2022. 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.** The Company has no history of penalties for safety violations.
10. **The Company's existing compliance program.** Dan Malmanger, President, is responsible for the Company's safety compliance program.
11. **The size of the Company.** The Company employs 24 drivers and operates 20 CMVs. The Company reported \$1,700,000 in gross revenue in 2022.

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.² 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 Scenic Bound Tours \$800 (Penalty Assessment), calculated as follows:

- One violation of 49 C.F.R. § 382.305(i)(2) - Failing to assure all drivers have equal chance of being selected for random testing. The Commission assesses a penalty of \$100 for this repeat violation.
- One violation of 49 C.F.R. § 382.601(b) - Failing to provide employees a written policy on misuse of alcohol and controlled substances that meets the requirements of 382.601(b) 1-11. The Commission assesses a penalty of \$100 for this repeat violation.
- 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 \$100 "per category" penalty for these repeat violations.

² Docket A-12,00061 – Enforcement Policy of the Washington Utilities & Transportation Commission – Section V.

- 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 critical-type violation.
- Four violations of 49 C.F.R. § 393.62 - Using a CMV with emergency exits not properly marked. The Commission assesses a penalty of \$100 for each occurrence of these out-of-service violations, for a total of \$400.

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 violation did not occur, you may deny committing the violation and contest the penalty through evidence presented at a hearing or in writing. Alternatively, if there is a reason for the violation 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 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 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.³ 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 \(wa.gov\)](#).⁴

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

³ <https://efiling.utc.wa.gov/Form>.

⁴ <https://www.utc.wa.gov/documents-and-proceedings/online-payments/make-payment-now>

regulated service, assessing additional penalties, or referring this matter to the Office of the Attorney General for collection.

DATED at Lacey, Washington, and effective February 27, 2024.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TE-240070

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.
 - 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 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: 2/29/2024 [month/day/year], at Seattle, WA [city, state]

Scenic Bound Tours Co.
Name of Respondent (company) – please print


Signature of Applicant
Peter Malmanger

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.