

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

Received
Records Management
Feb 27, 2024

PENALTY ASSESSMENT: TN-240080
PENALTY AMOUNT: \$200

Sound Generations

d/b/a Northshore Adult Day Health Center; Northshore Senior Center; Northwest Senior Activity Center; Senior Services Minor Home Repair; Sno-Valley Senior Center; Southeast Seattle Senior Center; Sno Valley Adult Day Health Center
2208 2nd Ave #100
Seattle, WA 98121

The Washington Utilities and Transportation Commission (Commission) believes Sound Generations, d/b/a Northshore Adult Day Health Center, d/b/a Northshore Senior Center, d/b/a Northwest Senior Activity Center, d/b/a Senior Services Minor Home Repair, d/b/a Sno-Valley Senior Center, d/b/a Southeast Seattle Senior Center, d/b/a Sno Valley Adult Day Health Center (Sound Generations or Company) violated Washington Administrative Code (WAC) 480-31-130, Operation of Motor Vehicles, which adopts Title 49 Code of Federal Regulations (49 C.F.R.) Part 391– Qualifications of Drivers.

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 7, 2024, Commission Motor Carrier Investigator Arber Demiri completed a routine safety investigation of Sound Generations and documented the following violations:

- **One violation of 49 C.F.R. § 391.45(a) - Using a driver not medically examined and certified.** Sound Generations allowed driver Thai-Hong Le to operate a motor vehicle without a valid medical certificate.
- **Seven 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 Jennifer Austin, Shannon Davis, Lori Engbaum, Kevin Hurdlow, Thai-Hong Le, Thom Roe, and Orth Vilaythong.

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. Private, nonprofit transportation providers that: (1) use drivers who are not medically examined and certified, and (2) fail to maintain inquiries into drivers’ driving records 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.

Sound Generations began operations as Senior Services in 1967.

In April of 2016, Sound Generations completed an application for corporate name change. In the application, vice-president Joanne Donahue acknowledged the company's responsibility to understand and comply with applicable motor carrier safety rules.

In February of 2017, Staff completed a routine safety investigation of Sound Generations and documented violations of 49 C.F.R. § 391.45(a).

The Company knew or should have known about these requirements.

3. **Whether the Company self-reported the violations.** Sound Generations 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.** Sound Generations corrected violations as they were discovered during the investigation.
6. **The number of violations.** Staff identified 12 violation types with a total of 57 individual occurrences during its routine safety investigation of Sound Generations. Of those violations, Staff identified two violation types with eight individual occurrences that warrant penalties in accordance with the Commission's Enforcement Policy.
7. **The number of customers affected.** Sound Generations reported traveling 438,267 miles in 2023. These safety violations presented a public safety risk.
8. **The likelihood of recurrence.** The Company was cooperative throughout the safety investigation and was provided technical assistance with specific remedies to help the Company assess how well its safety management controls support safe operations and how to begin improving its safety performance. The company provided Staff with evidence that it corrected the violations. In light of these factors, Staff believes the likelihood of recurrence is low.
9. **The Company's past performance regarding compliance, violations, and penalties.** On May 15, 2017, Sound Generations was penalized \$1,100 in docket TN-170226 for violations of 49 C.F.R. § 391.45(a) and 49 C.F.R. § 396.17(a). On May 24, 2017, the Company paid the penalty in full.

10. **The Company's existing compliance program.** Cliff Perry is responsible for the Company's safety compliance program.

11. **The size of the Company.** The Company employs 37 drivers and operates 49 motor vehicles. The Company reported \$4,597,958.60 in gross revenue for 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.¹ 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 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 Sound Generations \$200 (Penalty Assessment), calculated as follows:

- 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, for a total of \$100.
- Seven 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 "per category" penalty of \$100 for these first-time critical violations.

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 the violations did not occur, you may deny committing the violation(s) and contest the penalty through evidence presented at a hearing or in writing. Alternatively, if there is a reason for any or all 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 violation(s) 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(s) 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.

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 violation(s).
- Admit the violations 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.² 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 \(wa.gov\)](#).³

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 February 23, 2024.

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

² <https://efiling.utc.wa.gov/Form>.

³ <https://www.utc.wa.gov/documents-and-proceedings/online-payments/make-payment-now>

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TN-240080

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 \$200 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: _____ [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.