



STATE OF WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

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Date: January 18, 2022

To: Andrew J. O'Connell, Administrative Law Judge, Administrative Law Division

From: Jason Sharp, Motor Carrier Safety Supervisor, Transportation Safety Division

Re: **TV-210939 and TV-210940 Kastl Express LLC**

Evaluation of Safety Management Plan, Recommendations regarding the company's safety rating, and the cancellation of provisional household goods mover operating authority (THG-068958)

On November 30, 2021, Commission staff (Staff) completed a routine safety investigation of Kastl Express LLC, (Kastl Express or Company) which resulted in a proposed conditional safety rating.

Provisional household goods companies must achieve a satisfactory safety rating prior to receiving permanent status. As the Company has yet to achieve a satisfactory safety rating, the Commission afforded Kastl Express the same opportunity as companies that receive a proposed unsatisfactory safety rating to provide evidence, in the form of an approved safety management plan, showing that the company took corrective action to address the identified violations.

Commission rules prohibit motor carriers from operating beginning on the 61st day after the date of the notice of a proposed unsatisfactory rating. A company may request a change in its safety rating based on evidence that it has taken corrective actions to address the identified violations, and that its operations currently meet the safety standard and factors in 49 C.F.R. § 385.5 and 385.7. In this case, Kastl Express has until January 28, 2022, to come into compliance with applicable laws and rules by obtaining commission approval of a safety management plan.

The proposed conditional safety rating was based on five violations of critical regulations – 49 C.F.R. § 391.45(a), 391.51(a), 396.3(b), 396.17(a), and WAC 480-15-555.

“Critical” regulations are those identified as such where non-compliance relates to management and operational controls. These are indicative of breakdowns in a company's management controls. Patterns of non-compliance with a critical regulation are linked to inadequate safety management controls and higher than average accident rates.

Critical violations discovered during investigation:

1. Sixty-seven violations of Title 49 C.F.R. § 391.45(a) – Using a driver not medically examined and certified.
2. Five violations of Title 49 C.F.R. § 391.51(a) – Failing to maintain driver qualification file on each driver employed.
3. Two violation of Title 49 C.F.R. § 396.3(b) – Failing to keep minimum records of inspection and vehicle maintenance.
4. Two violation of Title 49 C.F.R. § 396.17(a) – Using a commercial motor vehicle (CMV) not periodically inspected.
5. Two violations of WAC 480-15-555 – Failing to conduct or retain paperwork containing criminal background check for a household goods carrier in the state of Washington as required.

In a December 16, 2021, Notice of Intent to Cancel, the Commission instructed Kastl Express to submit its proposed safety management plan no later than January 5, 2022.

On December 28, 2021, the Commission issued a penalty assessment against Kastl Express in the amount of \$7,700 because of violations discovered during the safety investigation.¹ The penalty includes:

1. A \$500 penalty for five violations of WAC 480-15-555 for failing to conduct or retain paperwork containing criminal background check or hiring an individual with a disqualifying conviction for a household goods carrier in the state of Washington.
2. A \$6,700 penalty for 67 violations of 49 C.F.R. § 391.45(a) for using a driver not medically examined and certified.
3. A \$100 penalty for five violations of 49 C.F.R. § 391.51(a) for failing to maintain driver qualification file on each driver employed.
4. A \$100 penalty for one violation of 49 C.F.R. § 393.45(b)(2) for using a CMV with a brake hose or tubing chafing. This CMV was placed out-of-service condition.
5. A \$100 penalty for one violation of 49 C.F.R. § 396.3(a)(1) for using a CMV with defective brakes equal to or greater than 20 percent of the service brakes on the vehicle. This CMV was placed out-of-service.
6. A \$100 penalty for two violations of 49 C.F.R. § 396.3(b) for failing to keep minimum records of inspection and vehicle maintenance.

¹ TV-210940

7. A \$100 penalty for two violations of 49 C.F.R. § 396.17(a) for using a CMV not periodically inspected.

On January 18, 2022, Kastl Express filed with the Commission its application for mitigation of penalties. In the request for mitigation, the Company admitted the violations and believed that the penalty should be reduced. Kastl Express requested the Commission decide on its request for mitigation based on the information the Company provided in its corrective action documents.

On January 18, 2022, Kastl Express submitted a safety management plan addressing each violation noted during the investigation. Staff only recommends approving a safety management plan that addresses the following seven items:

1. The plan must address each acute, critical, or serious violation discovered during the most recent investigation. It must also include corrective actions that address other violations noted during the investigation.
2. Identify why the violations were permitted to occur.
3. Discuss the actions taken to correct the deficiency or deficiencies that allowed the violations to occur. Include actual documentation of this corrective action.
4. Outline actions taken to ensure that similar violations do not reoccur in the future. The plan must demonstrate that the company's operations currently meet the safety standard and factors specified in 49 C.F.R. § 385.5 and 385.7. To do so, the plan must demonstrate the company now has adequate safety management controls in place which function effectively to ensure acceptable compliance with applicable safety requirements.
5. If the request includes actions that will be conducted in the near future, such as training, reorganization of departments, purchasing of computer programs, etc., companies must include a detailed description of the activity or training and a schedule of when that activity will commence and when it will be completed.
6. Include any additional documentation relating to motor carrier safety and the prevention of crashes that the company believes supports its request.
7. Include a written statement certifying the company will operate within federal and state regulations and the company's operation currently meets the safety standard and factors specific in 49 C.F.R. § 385.5 and 385.7. A corporate officer, partner, or the owner of the company must sign the statement.

Summary and Recommendations

Staff reviewed Kastl Express' safety management plan and concludes it is acceptable and meets the requirements of 49 C.F.R. § 385. The plan demonstrates that the Company has taken appropriate action to develop a compliant safety program and implemented a system, that if followed, should prevent future repeat violations.

Staff recommends that Dockets TV-210939 and TV-210940 be consolidated.

Documentation of driver qualifications, maintenance, hours of service records, and criminal background documents were included in the plan.

The Company took all the required steps to bring its safety operations into compliance with Commission regulations. Kastl Express submitted a safety management plan that addresses each violation, identifies how the violations occurred, describes the steps taken to correct them, and put controls in place to ensure the Company maintains compliance.

Staff recommends the Commission accept the Kastl Express' safety management plan, not cancel the Company's permit, and extend the provisional operating authority for good cause, until such a time that the Company receives a satisfactory safety rating.

In response to the request for mitigation, the Company corrected each violation and took steps to prevent future occurrences. Staff recommends reducing the assessed penalty of \$7,700 to \$3,850. Staff further recommends that \$2,000 of the reduced penalty be suspended for a period of two years before being waived, on the conditions that: (1) Staff conducts a follow-up safety investigation at least six months from the date of the Order, (2) the Company may not incur any repeats critical violations, and (3) Kastl Express pay the \$1,850 portion of the penalty that is not suspended within 10 days of the Order or enters into a mutually agreeable payment arrangement with Staff.

Staff confirmed with the Company that it waives its right to a hearing and recommends that the brief adjudicative proceeding scheduled for January 19, 2022, be cancelled.