



STATE OF WASHINGTON

UTILITIES AND TRANSPORTATION COMMISSION

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May 16, 2019

Mark L. Johnson
Executive Director and Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Dr. SW
P.O. Box 47250
Olympia, WA 98504-7250

RE: *Washington Utilities and Transportation Commission v. Whidbey Logistics LLC d/b/a Whidbey Moving and Storage*
Commission Staff's Response to Application for Mitigation of Penalties
Docket TV-190111

Dear Mr. Johnson:

On April 10, 2019, the Washington Utilities and Transportation Commission (commission) issued a penalty assessment against Whidbey Logistics LLC d/b/a Whidbey Moving and Storage (Whidbey or company) in the amount of \$6,800 for violations of Washington Administrative Code (WAC) 480-15-555, Criminal Background Checks for Prospective Employees; WAC 480-15-560, Equipment Safety Requirements, which adopts Title 49 CFR Part 393 – Parts and Accessories Necessary for Safe Operations and Title 49 CFR Part 396 – Inspection, Repair, and Maintenance; and WAC 480-15-570, Driver Safety Requirements, which adopts Title 49 CFR part 383 – Commercial Driver's License Standards; Requirements, and Employer Responsibilities, Title 49 CFR Part 391 – Qualifications of Drivers, and Title 49 CFR Part 395 – Hours of Service of Drivers, as follows:

- **Four violations of WAC 480-15-555 – Failing to acquire criminal background checks of prospective employees.** The company failed to acquire criminal background checks on four prospective employees: Randy Lawson, John Tharp, Brandi Avance, and Blake Smith.
- **Twenty-four violations of Title 49 CFR Part 383.37(a) – Employer knowingly allowed an employee to operate a commercial motor vehicle (CMV) when the driver does not have a current commercial learner's permit or commercial driver license**

(CDL). The company allowed driver Randal Lawson to drive without a current CDL on 24 occasions during the six months preceding the safety investigation.

- **Thirty-six violations of Title 49 CFR Part 391.45(a) – Using a driver not medically examined and certified.** The company allowed its drivers Randal Lawson and John Tharp to drive without having been medically examined and certified on 36 occasions during the six months preceding the safety investigation.
- **Two violations of Title 49 CFR Part 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 driving records for Randal Lawson and John Tharp in their driver qualification files.
- **One violation of Title 49 CFR Part 393.9(a) – Having a vehicle with an inoperable required lamp.** Staff discovered that a semi-trailer did not have an operative turn signal on each side of the trailer. Staff placed this vehicle out-of-service.
- **Thirty violations of Title 49 CFR Part 395.8(a)(1) – Failing to require driver to prepare a record of duty status.** The company allowed its driver, John Tharp, to drive on 30 occasions without preparing records of duty status.
- **Three violations of Title 49 CFR Part 396.17(a) – Using a commercial motor vehicle not periodically inspected.** The company failed to ensure that three commercial motor vehicles had a completed Department of Transportation periodic inspection.

On April 23, 2019, Whidbey filed with the commission its application for mitigation of penalties. In the request for mitigation, Matthew Freeborn, president of Whidbey, admitted the violations, stated he believed that the penalty should be reduced, and asked for a commission decision based solely on the information provided. Mr. Freeborn also filed a Safety Management Plan that addressed each violation and the corrective actions taken.

Companies are required to submit a request for mitigation within 15 days of receiving the notice of penalties, and must provide reasons to support the request for mitigation or hearing, otherwise the commission can deny the request.

Commission staff (staff) believes the company’s request for mitigation is warranted. Staff recommends mitigation of the penalties as follows:

- **Mitigation Request: WAC 480-15-555 – Failing to acquire criminal background checks on prospective employees.** Whidbey stated that these violations occurred because the company was not aware of the requirements. The company corrected these violations by acquiring the missing background checks and will avoid future occurrences by incorporating this requirement into their new employee procedures.

Staff response: The company corrected these violations and has taken steps to prevent future occurrences. The assessed penalty is \$400 for four occurrences of this violation. Staff recommends the penalty be reduced by half, to \$200.

- **Mitigation Request: Title 49 CFR Part 383.37(a) - Allowing an employee to operate a CMV when the driver does not have a current CDL.** Whidbey stated that these violations occurred because the company was not aware of the requirements. The company corrected these violations by requiring its employee to bring the CDL current, and will avoid future occurrences by creating calendar reminders to self-audit for compliance.

Staff response: The company has corrected these violations and taken steps to prevent future occurrences. The assessed penalty is \$2,400 for 24 occurrences of this violation. Staff recommends the penalty be reduced by half, to \$1,200.

- **Mitigation Request: Title 49 CFR Part 391.45(a) – Using a driver not medically examined and certified.** Whidbey stated that these violations occurred because the company was not aware of the requirements. The company corrected these violations by requiring its drivers to acquire current medical certificates and will avoid future occurrences by creating calendar reminders to self-audit for compliance.

Staff response: The company has corrected these violations and taken steps to prevent future occurrences. The assessed penalty is \$3,600 for 36 occurrences of this violation. Staff recommends the penalty be reduced by half, to \$1,800.

- **Mitigation Request: Title 49 CFR Part 391.51(b)(2) – Failing to maintain inquiries into driver’s driving record in driver’s qualification file.** Whidbey stated that these violations occurred because the company was not aware of the requirements. The company corrected these violations by obtaining the missing driver inquiries and adding them to the drivers’ qualification files, and will avoid future occurrences by creating calendar reminders to self-audit for compliance.

Staff response: The company has corrected these violations and taken steps to prevent future occurrences. The assessed penalty is \$100 for two occurrences of this violation. Because this is a “per category” penalty, staff recommends no mitigation.

- **Mitigation Request: Title 49 CFR Part 393.9(a) – Having a vehicle with an inoperable required lamp.** Whidbey stated that the lamp has been fixed.

Staff response: The company corrected this violation and staff recommends mitigation of the \$100 penalty to \$50.

- **Mitigation Request: Title 49 CFR Part 395.8(a)(1) – failing to require driver to prepare a record of duty status.** Whidbey stated that these violations occurred because

the company was not aware of the requirements. The company will avoid future occurrences by requiring all drivers to record their on-duty time using the time clock and driver log books.

Staff response: While it is not possible to create missing records of duty status, Whidbey has taken steps to prevent future occurrences. The penalty is \$100 for 30 occurrences of this violation. Because this is a “per category” penalty, staff recommends no mitigation.

- **Mitigation Request: Title 49 CFR Part 396.17(a) – Using a commercial motor vehicle not periodically inspected.** Whidbey stated that these violations occurred because the company was not aware of the requirements. The company corrected these violations by having the three vehicles inspected, and will avoid future occurrences by creating calendar reminders to have the vehicles periodically inspected in the future.

Staff response: The company has corrected these violations and taken steps to prevent future occurrences. The penalty is \$100 for three occurrences of this violation. Because this is a “per category” penalty, staff recommends no mitigation.

Whidbey is a small company with two drivers and four commercial motor vehicles. The company reported \$430,000 in gross revenue for 2018, but suffered a net loss of \$20,000.

It is Whidbey’s responsibility to be aware of all requirements. In its application for a household goods permit, the company acknowledged its responsibility to understand and comply with applicable regulations. Nevertheless, the company corrected each violation and took steps to prevent future occurrences. Therefore, staff recommends the penalty of \$6,800 be reduced to \$3,550.

Staff is also sensitive to the company’s financial situation and understands the impact a significant penalty has on a small business. For these reasons, staff further recommends that \$1,775 of the reduced penalty be suspended for a period of two years before being waived, on the conditions that:

1. Staff conducts a focused non-rated follow-up safety investigation of each critical violation identified in two years or as soon thereafter as practicable;
2. The company does not incur any repeat critical violations; and
3. The company pays the \$1,775 portion of the penalty that is not suspended.

If you have any questions, please contact Brian Braun, Compliance Investigator, Consumer Protection, at (360) 664-1129, or by email at brian.braun@utc.wa.gov.

Sincerely,



Bridgit Feeser
Assistant Director, Consumer Protection