

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

**PENALTY ASSESSMENT: TV-170834
PENALTY AMOUNT: \$100**

Cherish Moving LLC
13804 NE 33rd Circle
Vancouver, WA 98682

The Washington Utilities and Transportation Commission (Commission) believes that you have committed violations of Washington Administrative Code (WAC) 480-15-560 Equipment Safety Requirements, which adopts Title 49 Code of Federal Regulations (CFR) Part 396 – Inspection, Repair, and Maintenance.

Revised Code of Washington (RCW) 81.04.405 allows penalties of one hundred dollars for each violation. In the case of an ongoing violation, every day's continuance is considered a separate and distinct violation.

On June 7, 2017, Commission Motor Carrier Investigators Wayne Gilbert and Jason Sharp conducted a compliance review of Cherish Moving LLC (Cherish Moving or company) and documented the following violations of critical regulations:

- **Three violations of CFR Part 396.17(a) – Using a commercial motor vehicle not periodically inspected.** None of the company's three commercial motor vehicles had received a periodic inspection.

The Commission considered the following factors in determining the appropriate penalties for these violations:

1. **How serious or harmful the violation is to the public.** The violations noted are serious and potentially harmful to the public. Companies that use commercial motor vehicles not periodically inspected put the traveling public at risk, as a potentially defective vehicle presents serious safety concerns.
2. **Whether the violation is 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 violation.

In the company's February 2016 application for household goods moving authority, Emily Landis, owner and manager of Cherish Moving, acknowledged her company's responsibility to understand and comply with applicable motor carrier safety rules.

In addition, on August 11, 2016, employees representing Cherish Moving attended household goods training provided by Staff. The attendees, Emily Landis and Miki Landis, acknowledged that training was received pertaining to motor carrier safety regulations. The company knew, or should have known about these requirements.

3. **Whether the company self-reported the violation.** The company did not self-report these violations.
4. **Whether the company was cooperative and responsive.** The company was very cooperative throughout the entire scope of the investigation and expressed a desire to comply with motor carrier safety regulations.
5. **Whether the company promptly corrected the violations and remedied the impacts.** Cherish Moving has corrected the critical violations discovered in the compliance review. The company's three commercial motor vehicles received a periodic inspection prior to the compliance review closing interview conducted on July 20, 2017.
6. **The number of violations.** For a company this size, the number of critical violations noted is insignificant.
7. **The number of customers affected.** The company traveled 106,075 miles in 2015 and did not update its vehicle miles traveled for 2016. Cherish Moving reported \$280,162 in gross revenue for 2016. A significant number of the traveling public were likely affected by these safety violations.
8. **The likelihood of recurrence.** The Commission does not know if the company is likely to repeat these violations, however the company has corrected the critical violations outlined in the compliance review to prevent future occurrences.
9. **The company's past performance regarding compliance, violations, and penalties.** This is the company's first compliance review. The company has no history of previous violations or penalties.
10. **The company's existing compliance program.** Cherish Moving has no formal compliance program.
11. **The size of the company.** Cherish Moving is a small company with two drivers and three commercial motor vehicles. In 2016, the company reported \$280,162 in gross revenue. Cherish Moving traveled 106,075 miles in 2015 and did not update its vehicle miles traveled for 2016.

These are first-time violations, but 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

¹ Docket A-120061 – Enforcement Policy of the Washington Utilities & Transportation Commission – Section V.

will assess penalties per type of violation, rather than per occurrence, for other first-time violations of critical regulations that do not meet the criteria for mandatory penalties. The Commission will assess penalties for any repeat violations of critical regulations found in future compliance investigations, including for each occurrence of a repeat violation.

The Commission has considered these factors and determined that it should penalize Cherish Moving \$100 for violations of WAC 480-15-560 Equipment Safety Requirements, which adopts Title 49 CFR Part 396, calculated as follows:

- Three violations of CFR Part 396.17(a) – Using a commercial motor vehicle not periodically inspected. These are first-time violations, and thus the Commission assesses penalties at the statutory amount of \$100 per violation type, for a total of \$100.

This information, if proved 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 of the violations did not occur, you may deny committing the violation(s) and contest the penalty assessment 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 concerning the violation(s) require consideration of evidence and resolution in a hearing. Any contest of the penalty assessment must include a written statement of the reasons supporting that contest. Failure to provide such a statement will result in denial of the contest.

If there is a reason for any or all of the violations that you believe should excuse you from the penalty, you may ask for mitigation (reduction) of this 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 for mitigation 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 his or her 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 violations.
- Request mitigation to contest the amount of the penalty.

Please indicate your selection on the enclosed form and send it to the Washington Utilities and Transportation Commission, Post Office Box 47250, Olympia, Washington 98504-7250, **within FIFTEEN (15) days** after you receive this notice.

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 Olympia, Washington, and effective August 8, 2017.

/s/ Gregory J. Kopta
GREGORY J. KOPTA
Administrative Law Judge

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TV-170834

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 violation occurred and enclose \$ _____ in payment of the penalty.
- 2. **Contest the violation.** I believe that the alleged violation did not occur for the reasons I describe below:
 - 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 violation, but I believe that the penalty should be reduced for the reasons set out below:
 - 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 makes a materially false statement which he 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 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.”