

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TV-170904
PENALTY AMOUNT: \$600

Three Brothers Moving LLC
1395 George Washington Way
Richland, WA 99354

The Washington Utilities and Transportation Commission (Commission) believes that you have committed violations of Washington Administrative Code (WAC) 480-15-560 Equipment Safety Requirements, and WAC 480-15-570 Driver Safety Requirements, which adopt Title 49 Code of Federal Regulations (CFR) Part 391 Qualifications of Drivers and 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.

In July 2017, Commission Motor Carrier Investigator Wayne Gilbert conducted a compliance review of Three Brothers Moving LLC (Three Brothers Moving) and documented the following violations of critical regulations:

- **Four violations of Title 49 CFR Part 391.45(a) – Using a driver not medically examined and certified.** Employee Anthony Campos operated a commercial motor vehicle without a valid medical certificate four times during the previous six months.
- **Two violations of Title 49 CFR Part 391.51(a) – Failing to maintain driver qualification file on each driver employed.** The company had no driver qualification files for two of its drivers.
- **Three violations of Title 49 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 employ drivers not medically examined and certified, or without documentation of qualifications, or that use commercial motor vehicles not periodically inspected put the traveling public at risk. An unknown medical condition, unqualified driver or undetected vehicle defect all present 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 initial application in September 2015, and in its February 2016 application to transfer its authority, Angela Campos, owner and member of Three Brothers Moving, acknowledged her company's responsibility to understand and comply with applicable motor carrier safety rules.

In November 2015 Angela Campos and Abel Campos, representing Three Brothers Moving, attended household goods training provided by Staff. The attendees acknowledged receiving training 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.** Three Brothers Moving promptly corrected all violations.
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 21,226 miles in 2016 and reported \$234,696 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 noted in the compliance review, and was cooperative and responsive.
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.** Three Brothers Moving has no formal compliance program.
11. **The size of the company.** Three Brothers Moving is a small company with three drivers and three commercial motor vehicles. In 2016, the company reported 21,226 miles traveled and \$234,696 in gross revenue.

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 per type of violation, 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 found in future compliance investigations, including each occurrence of a repeat violation.

The Commission has considered these factors and determined that it should penalize Three Brothers Moving \$600 for violations of WAC 480-15-560 Equipment Safety Requirements, and WAC 480-15-570 Driver Safety Requirements, which adopt Title 49 CFR Parts 391 and 396, calculated as follows:

- Four violations of Title 49 CFR Part 391.45(a) – Using a driver not medically examined and certified. The Commission assesses penalties of \$100 for each occurrence of this critical violation, for a total of \$400.
- Two violations of Title 49 CFR Part 391.51(a) – Failing to maintain driver qualification file on each driver employed. This is a first-time violation, therefore the Commission assesses penalties of \$100 per violation type, for a total of \$100.
- Three violations of Title 49 CFR Part 396.17(a) – Using a commercial motor vehicle not periodically inspected. This is a first-time violation, therefore the Commission assesses penalties 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.

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

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 September 27, 2017.


For GREGORY J. KOPTA
Administrative Law Judge

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TV-170904

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.”