

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TV-180095

PENALTY AMOUNT: \$1,100

ANC Movers Inc.
5305 NE 121st Ave
Vancouver, WA 98682

The Washington Utilities and Transportation Commission (Commission) believes that ANC Movers Inc. (ANC Movers) has committed violations of Washington Administrative Code (WAC) 480-15-555 – Criminal Background Checks for Prospective Employees, WAC 480-15-560 – Equipment Safety Requirements, and WAC 480-15-570 – Driver Safety Requirements which adopts Title 49 Code of Federal Regulations (CFR) Part 391 – Qualification 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 January 2018, Commission Motor Carrier Investigator Wayne Gilbert conducted a safety investigation of ANC Movers and documented the following violations:

- **Nine violations of WAC 480-15-555 – Criminal background checks for prospective employees.** ANC Movers failed to conduct and keep evidence of criminal background checks on nine employees: Brian Haack, Cole Young, Elijah Phillips, Erin Lawson, Jennifer Alexander, Joshua Egan, Nathan Stiles, Tyler Stephens, and Tyler Tunnell.
- **Two violations of Title 49 CFR Part 391.51(b) – Failing to maintain inquiries into driver's driving record in driver's qualification file.** ANC Movers failed to retain inquiries into driving records in the driver's qualification files of two employees, Brian Gibbens and Seth Copeland.
- **Two violations of Title 49 CFR Part 396.3(b) – Failing to keep minimum records of inspection and vehicle maintenance.** ANC Movers failed to keep required records on its two commercial motor vehicles.

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. Household goods moving companies that hire workers without conducting required background checks and fail to maintain driver and vehicle records place the traveling public, as well as their customers and their customers' belongings, at risk. Drivers with unknown qualifications, or vehicles with an unknown

maintenance history present serious safety concerns. In addition, employees with an unknown criminal history raise concerns about the security of the customer and their belongings.

2. **Whether the violation is intentional.** Considerations include:

- Whether the company ignored Commission staff's 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.

ANC Movers applied for a household goods moving permit in July 2016. In the company's application, owner Peter Clarke of ANC Movers, acknowledged his company's responsibility to understand and comply with applicable motor carrier safety rules.

When the Commission granted temporary household goods moving authority to ANC Movers in September 2016, staff advised the company in writing of its responsibility to attend the Commission's free household goods training offered quarterly and to complete criminal background checks on all potential employees. Staff included a copy of WAC 480-15 with its letter. To date no ANC Movers company representative has attended the household goods training.

Staff believes ANC Movers knew or should have known of these requirements and ignored its responsibility to attend the training.

3. **Whether the company self-reported the violation.** The company did not self-report these violations.
4. **Whether the company was cooperative and responsive.** ANC Movers was cooperative and responsive throughout the entire scope of the investigation.
5. **Whether the company promptly corrected the violations and remedied the impacts.** ANC Movers terminated one employee found to have prohibited criminal conduct within the past five years.
6. **The number of violations.** Staff identified four violation types with a total of 15 occurrences.
7. **The number of customers affected.** The company reported 22,577 miles traveled and \$430,112 in gross revenue for 2017. A significant number of customers, as well as members of the traveling public, were likely affected by these safety violations.
8. **The likelihood of recurrence.** The Commission does not know if ANC Movers is likely to repeat these safety violations.

9. **The company's past performance regarding compliance, violations, and penalties.**
This is ANC Movers' first safety investigation. The Commission penalized ANC Movers in 2017 for failing to file its annual report. The company has had no other violations or penalties.
10. **The company's existing compliance program.** Ms. Erin Lawson (Safety Trainer), Mr. Little, and Mr. Minneker (CDS Safety & Compliance LLC, Safety Consultant) are responsible for the carrier's safety and compliance program.
11. **The size of the company.** ANC Movers is a small company with two drivers and two vehicles.

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 ANC Movers \$1,100 for violations of WAC 480-15-555 Criminal Background Checks for Prospective Employees, WAC 480-15-560 Equipment Safety Requirements, and WAC 480-15-570 Driver Safety Requirements, calculated as follows:

- Nine violations of WAC 480-15-555 – Criminal background checks for prospective employees. These are violations of a fundamental Commission requirement for household good movers. The Commission assesses a penalty of \$100 for each occurrence, for a total of \$900.
- Two violations of Title 49 CFR Part 391.51(b) – Failing to maintain inquiries into driver's driving record in driver's qualification file. As first-time violations, the Commission assesses a penalty of \$100 for one violation of this type.
- Two violations of Title 49 CFR Part 396.3(b) – Failing to keep minimum records of inspection and vehicle maintenance. As first-time violations, the Commission assesses a penalty of \$100 for one violation of this type.

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 of the violations did not occur, you may deny committing the violation(s) and contest the penalty assessment through evidence

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

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 submit it electronically through the Commission's web portal **within FIFTEEN (15) days** after you receive this notice. 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, Post Office Box 47250, Olympia, Washington 98504-7250.

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 February 22, 2017.

/s/ Gregory J. Kopta
GREGORY J. KOPTA
Director, Administrative Law Division

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TV-180095

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 (**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 violation, 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 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.”