

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

**PENALTY ASSESSMENT: TV-180160
PENALTY AMOUNT: \$800**

MVP Moving and Storage, LLC
d/b/a MVP Moving
19219 68th Avenue South M111
Kent, WA 98032

The Washington Utilities and Transportation Commission (Commission) believes that MVP Moving and Storage, LLC, d/b/a MVP Moving (MVP Moving) has committed violations of Washington Administrative Code (WAC) 480-15-570 – Driver Safety Requirements, which adopts Title 49 Code of Federal Regulations (CFR) Part 391 – Qualification of Drivers.

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 February 2018, Commission Motor Carrier Investigator Sandra Yeomans conducted a follow-up safety investigation of MVP Moving from docket TV-170039 and documented the following repeat violations:

- **Two violations of Title 49 CFR Part 391.23(c) – Failing to investigate driver's background within 30 days of employment.** MVP Moving failed to acquire motor vehicle report (driving records) for new employees Isidro Bacalzo and Juan Carlos Molina-Cerna.
- **One violation of Title 49 CFR Part 391.25(a) – Failing to make an inquiry into the driving record of each driver to the appropriate state agencies in which the driver held a commercial motor vehicle operator's license at least once every 12 months.** MVP Moving failed to obtain driver's driving record for employee Marvin Britton.
- **Two violations of Title 49 CFR Part 391.45(a) – Using a driver not medically examined and certified.** MVP Moving allowed its employee Juan Carlos Molina-Cerna to drive on two occasions without current medical examination and certification. Mr. Molina-Cerna drove on November 4 and 6, 2018, during a lapse in his medical certification.
- **One violation of Title 49 CFR Part 391.51(b)(6) – Failing to maintain a list or certificate relating to violations of motor vehicle laws and ordinances required by 391.27.** MVP Moving failed to require its employee Marvin Britton to complete a self-certification of traffic violations each year.

- **Two violations of Title 49 CFR Part 391.51(b)(9) – Failing to place a note related to the verification of the medical examiner’s listing on the National Registry of Certified Medical Examiners.** MVP Movers failed to note verification of the medical examiners’ listing in the National Registry in the driver qualification files of employees Isidro Bacalzo and Dean Steklenburg.

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 drivers who are not medically examined and certified place the traveling public at risk. A driver with an undiagnosed medical condition presents serious safety concerns. The remaining violations involve record-keeping. A motor carrier that fails to maintain accurate and complete driver records runs the risk of employing an unsafe or unqualified driver. This, too, presents serious safety concerns.
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.

MVP Moving applied for a transfer of household goods moving authority in April 2015. In the company’s application, Aaron Sumii, Manager of Operations, acknowledged his company’s responsibility to understand and comply with applicable motor carrier safety rules.

MVP Moving’s three owners, Erik Hawkins, Jason Garcia, and Aaron Sumii, each attended household goods training provided by the Commission in 2014 and 2015.

Commission staff conducted a routine safety investigation of MVP Moving in February 2017. In that investigation, staff noted 15 violation types, with a total of 161 individual occurrences. Each of the violation types noted in the present case are repeat violations from February 2017. Staff also provided extensive technical assistance at that time.

Staff believes MVP Moving knew or should have known of 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.** MVP Moving was cooperative and responsive throughout the entire scope of the investigation.
5. **Whether the company promptly corrected the violations and remedied the impacts.** Staff is not aware of specific corrections made with respect to these violations.

6. **The number of violations.** Staff identified 11 violation types with a total of 18 occurrences.
7. **The number of customers affected.** The company reported 10,000 miles traveled and \$500,000 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.** Commission staff does not know if MVP Moving is likely to repeat these safety violations.
9. **The company's past performance regarding compliance, violations, and penalties.** This is MVP Moving's second safety investigation. In 2017 the Commission penalized MVP Moving for safety violations (docket TV-170038) and for failing to file its annual report (docket TV-170536).
10. **The company's existing compliance program.** Jason Garcia, owner and managing partner, is responsible for the company's safety and compliance program.
11. **The size of the company.** MVP Moving is a small company with four drivers and three commercial 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 MVP Moving \$800 for violations of WAC 480-15-570 – Driver Safety Requirements which adopts Title 49 CFR Part 391 – Qualification of Drivers, calculated as follows:

- Two violations of Title 49 CFR Part 391.23(c) – Failing to investigate driver's background within 30 days of employment. These are repeat occurrences of non-critical type violations cited in a previous safety investigation. As repeat violations, the Commission assesses a penalty of \$100 for each occurrence, for a total of \$200.
- One violation of Title 49 CFR Part 391.25(a) – Failing to make an inquiry into the driving record of each driver to the appropriate state agencies in which the driver held a commercial motor vehicle operator's license at least once every 12 months. This is a repeat occurrence of a non-critical type violation cited in a previous safety investigation.

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

As a repeat violation, the Commission assesses a penalty of \$100 for each occurrence, for a total of \$100.

- Two violations of Title 49 CFR Part 391.45(a) – Using a driver not medically examined and certified. These are repeat occurrences of a critical type violation cited in a previous safety investigation. Regardless of previous occurrences, under its enforcement policy, the Commission assesses a penalty of \$100 for each occurrence, for a total of \$200.
- One violation of Title 49 CFR Part 391.51(b)(6) – Failing to maintain a list or certificate relating to violations of motor vehicle laws and ordinances required by 391.27. This is a repeat occurrence of a non-critical type violation cited in a previous safety investigation. As a repeat violation, the Commission assesses a penalty of \$100 for each occurrence, for a total of \$100.
- Two violations of Title 49 CFR Part 391.51(b)(9) – Failing to place a note related to the verification of the medical examiner’s listing on the National Registry of Certified Medical Examiners. These are repeat occurrences of non-critical type violations cited in a previous safety investigation. As repeat violations, the Commission assesses a penalty of \$100 for each occurrence, for a total of \$200.

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 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 March 2, 2018.

/s/ Rayne Pearson
RAYNE PEARSON
Director, Administrative Law Division

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TV-180160

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 violations occurred and enclose \$_____ in payment of the penalty.

2. **Contest the violations.** I believe that the alleged violations 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 violations, 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.”