

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

**PENALTY ASSESSMENT: TV-180286
PENALTY AMOUNT: \$200**

Elmer's Express, LLC
d/b/a Elmer's Express Delivery
7608 75th Drive NE
Marysville, WA 98270

The Washington Utilities and Transportation Commission (Commission) believes that Elmer's Express d/b/a Elmer's Express Delivery (Elmer's Express or Company) has committed violations of Washington Administrative Code (WAC) 480-15-555, Criminal Background Checks for Prospective Employees.

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 Jason Sharp completed a routine safety investigation of Elmer's Express and documented the following violations:

- **Two violations of WAC 480-15-555 – Failing to acquire criminal background check of prospective employee.** The Company failed to acquire criminal background checks on two prospective employees, Luis Santos Gavidia and Ricardo Hernandez.

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. Moving companies that fail to conduct criminal background checks on prospective employees place customers and their belongings at risk.
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.

In its May 2, 2010, application for household goods moving authority, Adela Rodriguez, officer manager, on behalf of Elmer Rodriguez, owner of Elmer's Express, acknowledged the Company's responsibility to understand and comply with applicable motor carrier safety rules.

On July 16, 2014, Elmer Rodriguez and Adela Rodriguez attended household goods training provided by Commission staff. Elmer Rodriguez and Adela Rodriguez 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.** Elmer's Express was cooperative and responsive throughout the entire investigation.
5. **Whether the company promptly corrected the violations and remedied the impacts.** Upon receiving notice of these violations, Elmer's Express took immediate action to correct them and come into compliance.
6. **The number of violations.** In total staff identified one critical violation type and a total of two individual occurrences.
7. **The number of customers affected.** The Company traveled 79,943 miles in 2017. A significant number of customers were likely affected by these safety violations.
8. **The likelihood of recurrence.** The Commission does not know if Elmer's Express is likely to repeat these safety violations. However, the Company was cooperative and responsive to staff and has already taken the appropriate steps to correct the safety violations documented in staff's report.
9. **The company's past performance regarding compliance, violations, and penalties.** This is the Company's second routine safety investigation. The last safety investigation was in December of 2011, and no violations were discovered during that review.
10. **The company's existing compliance program.** Elmer Rodriguez is responsible for the Company's compliance program.
11. **The size of the company.** Elmer's Express is a small company with three drivers and four vehicles. The Company reported \$287,283 in gross revenue in 2017.

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"

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

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 Elmer's Express \$200 for violations of WAC 480-15-555, Criminal Background Checks for Prospective Employees, calculated as follows:

- Two violations of WAC 480-15-555 – Failing to acquire criminal background check for prospective employees. The Commission assesses a penalty of \$100 for each occurrence of this critical violation, 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 either or both 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 either or both 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 April 19, 2018.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TV-180286

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 \$200 in payment of the penalty.

[] 2. **Contest the violation(s).** I believe that the alleged violation(s) 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.”