

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

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

PENALTY ASSESSMENT: TV-190111

PENALTY AMOUNT: \$6,800

Whidbey Logistics LLC  
d/b/a Whidbey Moving and Storage  
1083 SE 4<sup>th</sup> Avenue  
Oak Harbor, WA 98277

The Washington Utilities and Transportation Commission (Commission) believes Whidbey Logistics LLC d/b/a Whidbey Moving and Storage (Whidbey or Company) violated Washington Administrative Code (WAC) 480-15-555, Criminal Background Checks for Prospective Employees; WAC 480-15-560, Equipment Safety Requirements, which adopts Title 49 CFR Part 393 – Parts and Accessories Necessary for Safe Operations and Title 49 CFR Part 396 – Inspection, Repair, and Maintenance; and WAC-480-15-570, Driver Safety Requirements, which adopts Title 49 CFR part 383 – Commercial Driver’s License Standards; Requirements, and Employer Responsibilities, Title 49 CFR Part 391 – Qualifications of Drivers, and Title 49 CFR Part 395 – Hours of Service of Drivers.

Revised Code of Washington (RCW) 81.04.405 allows penalties of \$100 for each violation. In the case of an ongoing violation, every day’s continuance is considered a separate and distinct violation.

On February 21, 2019, Commission Motor Carrier Investigator Wayne Gilbert completed a routine safety investigation of Whidbey and documented the following violations:

- **Four violations of WAC 480-15-555 – Failing to acquire criminal background checks of prospective employees.** The Company failed to acquire criminal background checks on four prospective employees: Randy Lawson, John Tharp, Brandi Avance, and Blake Smith.
- **Twenty-four violations of Title 49 CFR Part 383.37(a) – Employer knowingly allowed an employee to operate a commercial motor vehicle (CMV) when the driver does not have a current commercial learner’s permit or commercial driver license (CDL).** The Company allowed driver Randal Lawson to drive without a current CDL on 24 occasions during the six months preceding the safety investigation.
- **Thirty-six violations of Title 49 CFR Part 391.45(a) – Using a driver not medically examined and certified.** The Company allowed its drivers Randal Lawson and John Tharp to drive without having been medically examined and certified on 36 occasions during the six months preceding the safety investigation.
- **Two violations of Title 49 CFR Part 391.51(b)(2) – Failing to maintain inquiries into driver’s driving record in driver’s qualification file.** The Company failed to maintain

inquiries into driving records for Randal Lawson and John Tharp in their driver qualification files.

- **One violation of Title 49 CFR Part 393.9(a) – Having a vehicle with an inoperable required lamp.** Staff discovered that a semi-trailer did not have an operative turn signal on each side of the trailer. Staff placed this vehicle out-of-service.
- **Thirty violations of Title 49 CFR Part 395.8(a)(1) – Failing to require driver to prepare a record of duty status.** The Company allowed its driver, John Tharp, to drive on 30 occasions without preparing records of duty status.
- **Three violations of Title 49 CFR Part 396.17(a) – Using a commercial motor vehicle not periodically inspected.** The Company failed to ensure that three commercial motor vehicles had a completed Department of Transportation periodic inspection.

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

1. **How serious or harmful the violations are to the public.** The violations noted are very serious and potentially harmful to the public. Companies that: 1) fail to conduct criminal background checks on their employees, 2) fail to ensure that drivers are licensed, 3) use drivers that are not medically examined and certified, 4) fail to maintain driver qualifications, 5) operate vehicles in need of repair, 6) fail to monitor employees' hours of service, and 7) fail to properly inspect vehicles, put their customers as well as the traveling public at risk. These violations present serious safety concerns.
2. **Whether the violations were 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.

The Company applied for a household goods moving authority in 1981 and has been under current ownership since September of 2016. In its application for authority, the Company's general manager, John Tharp, acknowledged his responsibility to comply with applicable safety laws and regulations. The Company knew or should have known about these requirements.

3. **Whether the company self-reported the violations.** The Company did not self-report these violations.
4. **Whether the company was cooperative and responsive.** Whidbey was cooperative throughout the investigation and did express a desire to come into compliance. On

February 21, 2019, Company Owner Matthew Freeborn attended household goods training provided by Commission staff.

5. **Whether the company promptly corrected the violations and remedied the impacts.** The Company corrected some of the violations before the closing review of the investigation.
6. **The number of violations.** Commission staff identified 17 violation types with a total of 120 individual occurrences.
7. **The number of customers affected.** The Company employs two drivers and operates four motor vehicles. In 2017, the Company traveled 4,000 miles. A significant number of customers, as well as members of the traveling public, were potentially affected by these safety violations.
8. **The likelihood of recurrence.** The Commission does not know if Whidbey is likely to repeat these safety violations. However, the Company was very cooperative with staff, willingly accepted technical assistance, and took immediate steps to correct some violations prior to the closing of the investigation.
9. **The company's past performance regarding compliance, violations, and penalties.** This is the Company's first routine safety investigation under the current owner. The last safety investigation conducted by the Commission was in September 2013 and the carrier received a "Satisfactory" safety rating.
10. **The company's existing compliance program.** Mr. Tharp is responsible for the Company's safety compliance program.
11. **The size of the company.** Whidbey is a small company with two drivers and four vehicles. The Company reported \$430,000 in gross revenue for 2018.

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.<sup>1</sup> 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, including each occurrence of a repeat violation.

The Commission has considered these factors and determined that it should penalize Whidbey \$6,800 for violations of WAC 480-15-555, Criminal Background Checks for Prospective Employees; WAC 480-15-560, Equipment Safety Requirements, which adopts Title 49 CFR Part 393 – Parts and Accessories Necessary for Safe Operation, and Title 49 CFR Part 396 –

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

Inspection, Repair, and Maintenance; and WAC-480-15-570, Driver Safety Requirements, which adopts Title 49 CFR part 383 – Commercial Driver’s License Standards; Requirements and Employer Responsibilities, Title 49 CFR Part 391 – Qualifications of Drivers, and Title 49 CFR Part 395 – Hours of Service of Drivers, calculated as follows:

- Four violations of WAC 480-15-555 – failing to acquire criminal background checks on prospective employees. The Commission assesses a penalty of \$100 for each occurrence of this violation, for a total of \$400.
- Twenty-four violations of Title 49 CFR Part 383.37(a) - allowing an employee to operate a CMV when the driver does not have a current CDL. The Commission assesses a penalty of \$100 for each occurrence of this acute violation, for a total of \$2,400.
- Thirty-six violations of Title 49 CFR Part 391.45(a) – using a driver not medically examined and certified. The Commission assesses a penalty of \$100 for each occurrence of this critical violation, for a total of \$3,600.
- Two violations of Title 49 CFR Part 391.51(b)(2) – failing to maintain inquiries into driver’s driving record in driver’s qualification file. The Commission assesses a “per category” penalty of \$100 for two occurrences of this first time critical violation.
- One violation of Title 49 CFR Part 393.9(a) – having a vehicle with an inoperable required lamp. The Commission assesses a penalty of \$100 for this out-of-service violation.
- Thirty violations of Title 49 CFR Part 395.8(a)(1) – failing to require driver to prepare a record of duty status. The Commission assesses a “per category” penalty of \$100 for 30 occurrences of this first time critical violation.
- Three violations of Title 49 CFR Part 396.17(a) – using a commercial motor vehicle not periodically inspected. The Commission assesses a “per category” penalty of \$100 for three occurrences of this first time critical violation.

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 through evidence presented at a hearing or in writing. Alternatively, 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 the 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 to contest the violation(s) or for mitigation of the penalty 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](mailto: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, PO 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 10, 2019.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION  
PENALTY ASSESSMENT TV-190111

**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 \$6,800 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.”