

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TV-190326

PENALTY AMOUNT: \$16,200

Merchants Parcel Delivery, Inc.
d/b/a Merchants Moving & Storage Co.
4901 Auto Center Blvd.
Bremerton, WA 98312

The Washington Utilities and Transportation Commission (Commission) believes Merchants Parcel Delivery, Inc., d/b/a Merchants Moving & Storage Co. (Merchants Moving or Company) violated Washington Administrative Code (WAC) 480-15-555, Criminal Background Checks for Prospective Employees; and WAC 480-15-570, Driver Safety Requirements, which adopts Title 49 Code of Federal Regulations (CFR) Part 390 – Federal Motor Carrier Safety Regulations; General, and Title 49 CFR Part 391 – Qualifications 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 March 26, 2019, Commission Motor Carrier Investigator Sandra Yeomans completed a routine safety investigation of Merchants Moving and documented the following violations:

- **Sixteen violations of WAC 480-15-555 – Failing to complete a criminal background check for every person the carrier intends to hire.** The Company failed to acquire criminal background checks for 16 prospective employees: Justin Bart, Kenneth Carter, Clifton Chesser, Mathew Chesser, Kyler Cunningham, Darrell Franck, Dylan Hansen, Tony Lewis, Joette Marchisella, Jeri McNeven, Antonio Ortega, Mason Robertson, Michael Sammeli, Richard Setten, Chance Shurwin, and Eric Worfe.
- **One violation of Title 49 CFR 390.35 – Making or causing to make fraudulent or intentionally false statements, fraudulent or intentionally false entries on records, and/or reproducing records for fraudulent purposes.** Merchants Moving signed a document attesting that an annual driver review and evaluation of driver Michael Sammeli was complete prior to receiving Mr. Sammeli's annual motor vehicle report.
- **One hundred forty-four violations of Title 49 CFR 391.45(a) – Using a driver not medically examined and certified.** The Company allowed its drivers Mason Robertson, Mathew Chesser, and Justin Bart to drive without having been medically examined and certified on 144 occasions during the six months preceding the safety investigation.
- **Two violations of Title 49 CFR 391.51(a) – Failing to maintain driver qualification file on each driver employed.** Merchants Moving failed to maintain driver qualification files for drivers Mathew Chesser and Mason Robertson.

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) make false statements or entries on driver records, 3) use drivers that are not medically examined and certified, and 4) fail to maintain driver qualifications 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 began its operations in 1920, and the Commission's earliest record of Merchants Moving's household goods operating authority dates back to 1935.

On September 15, 2005, Commission Motor Carrier Investigator Tom McVaugh completed a routine safety investigation of Merchants Moving, which resulted in a "Satisfactory" safety rating. Staff provided technical assistance to the Company during this investigation.

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.** Merchants Moving was cooperative and responsive throughout the investigation.
5. **Whether the company promptly corrected the violations and remedied the impacts.** The Company corrected the violations as they were identified by Commission staff.
6. **The number of violations.** Commission staff identified 13 violation types with a total of 175 individual occurrences.
7. **The number of customers affected.** The Company employs six drivers and operates nine commercial motor vehicles. In 2018, the Company traveled 46,861 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 Merchants Moving is likely to repeat these safety violations; however, the Company was cooperative, willingly accepted technical assistance, and took immediate steps to correct the violations.

9. **The company's past performance regarding compliance, violations, and penalties.** Commission staff previously conducted a safety investigation of Merchants Moving in September 2005, and the Company received a "Satisfactory" safety rating. Merchants Moving has no history of penalties.
10. **The company's existing compliance program.** Darrell Franck, operations manager of Merchants Moving, is responsible for the Company's safety compliance program.
11. **The size of the company.** Merchants Moving is a small company with six drivers and nine commercial motor vehicles. The Company reported \$936,289 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.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, including each occurrence of a repeat violation.

The Commission has considered these factors and determined that it should penalize Merchants Moving \$16,200 for violations of WAC 480-15-555, Criminal Background Checks for Prospective Employees; and WAC 480-15-570, Driver Safety Requirements, which adopts Title 49 CFR Part 390 – Federal Motor Carrier Safety Regulations; General, and Title 49 CFR Part 391 – Qualifications of Drivers, calculated as follows:

- Sixteen violations of WAC 480-15-555 – Failing to complete a criminal background check for every person the carrier intends to hire. The Commission assesses a penalty of \$100 for each occurrence of this critical violation, for a total of \$1,600.
- One violation of Title 49 CFR 390.35 – Making or causing to make fraudulent or intentionally false statements, fraudulent or intentionally false entries on records, and/or reproducing records for fraudulent purposes. The Commission assesses a penalty of \$100 for one occurrence of this acute violation, for a total of \$100.
- One hundred forty-four violations of Title 49 CFR 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 \$14,400.
- Two violations of Title 49 CFR 391.51(a) – Failing to maintain driver qualification file on each driver employed. The Commission assesses a "per category" penalty of \$100 for two occurrences of this first time critical violation.

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

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 any or all 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, 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 May 16, 2019.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TV-190326

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 \$16,200 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.”