

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TV-190705

PENALTY AMOUNT: \$2,700

WA Big Guys Movers LLC,
d/b/a WA Big Guys Movers;
WABGM
9008 160th Street Court E
Puyallup, WA 98375

The Washington Utilities and Transportation Commission (Commission) believes that WA Big Guys Movers LLC, d/b/a WA Big Guys Movers; WABGM, (WA Big Guys Movers or Company) violated Washington Administrative Code (WAC) 480-15-555, Criminal Background Checks for Prospective Employees; WAC 480-15-570, Driver Safety Requirements, which adopts Title 49 Code of Federal Regulations (49 CFR) Part 391 – Qualification of Drivers and 49 CFR Part 395 – Hours of Service of Drivers; and WAC 480-15-560, Equipment Safety Requirements, which adopts 49 CFR Part 396 – Inspection, Repair and Maintenance.

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 August 16, 2019, Commission Motor Carrier Investigator Edward Steiner completed a routine safety investigation of WA Big Guys Movers and documented the following violations:

- **Five violations of WAC 480-15-555 – Failing to acquire criminal background check of prospective employee.** The Company failed to obtain a criminal background check for prospective employees Quinn Bell, Garrett Ricks, Michel Harde, Vaieli Mila, and Robert Spivey.
- **Eighteen violations of 49 CFR § 391.45(a) – Using a driver not medically examined and certified.** The Company allowed drivers Quinn Bell, Joel Watson, and Jeremiah Newbill to drive without having been medically examined and certified for commercial driving on 18 occasions between February 15 and June 26, 2019.
- **Two violations of 49 CFR § 391.51(a) – Failing to maintain driver qualification files on each driver employed.** The Company failed to maintain driver qualification files for drivers Quinn Bell and Joel Watson.
- **Two violations of 49 CFR § 391.51(b)(2) – Failing to maintain inquiries into driver's driving record in driver's qualification files.** The Company failed to investigate the motor vehicle records of drivers Chad Porter and Jeremiah Newbill.

- **Twenty-three violations of 49 CFR § 395.8(a)(1) – Failing to require a driver to prepare a record of duty status using the appropriate method.** The Company failed to require drivers Quinn Bell, Joel Watson, Chad Porter, and Jeremiah Newbill to prepare a record of duty status using the appropriate method on 23 occasions between February 15 and June 30, 2019.
- **One violation of 49 CFR § 396.3(b) – Failing to keep minimum records of inspection and vehicle maintenance.** The Company failed to keep the minimum required vehicle maintenance records for its one commercial motor vehicle.

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 serious and potentially harmful to the public. Household goods moving companies that: (1) fail to conduct criminal background checks on their employees, (2) fail to require their drivers to be medically examined and certified, (3) fail to maintain driver qualification files, (4) fail to maintain inquiries into drivers' driving records, (5) fail to require drivers to prepare a record of duty status, and (6) fail to keep minimum records of inspection and vehicle maintenance put their customers and their customers' belongings, 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 (Staff) 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.

On November 23, 2016, the Company applied for household goods moving authority. In the application, Tory Friend, owner of WA Big Guys Movers, acknowledged the Company's responsibility to understand and comply with applicable safety laws and regulations.

On November 8, 2017, and August 8, 2019, Ms. Friend attended household goods training provided by Staff, and acknowledged receiving training pertaining to motor carrier safety regulations.

On April 2, 2019, two employees representing WA Big Guys Movers attended household goods training provided by Staff. Attendees Preston McDonald and Craig Kalenze 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 violations.** The Company did not self-report these violations.

4. **Whether the Company was cooperative and responsive.** WA Big Guys Movers was cooperative throughout the investigation.
5. **Whether the Company promptly corrected the violations and remedied the impacts.** WA Big Guys Movers has not provided Staff with evidence that it has corrected these violations.
6. **The number of violations.** Staff identified 11 violation types with a total of 59 individual occurrences.
7. **The number of customers affected.** In 2018, WA Big Guys Movers traveled 20,732 miles. These safety violations presented a significant public safety risk.
8. **The likelihood of recurrence.** Staff identified process breakdowns within WA Big Guys Movers. Staff provided specific remedies to help the Company assess how well its safety management controls support safe operations and how to begin improving its safety performance. The Company was cooperative with Staff; however, the Commission does not know if WA Big Guys Movers is likely to repeat these safety violations.
9. **The Company's past performance regarding compliance, violations, and penalties.** WA Big Guys Movers has no history of previous safety violations or penalties.
10. **The Company's existing compliance program.** Tory Friend is responsible for WA Big Guys Movers' safety compliance program.
11. **The size of the Company.** The Company currently operates one vehicle with two drivers. The Company reported \$172,485 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 WA Big Guys Movers \$2,700, calculated as follows:

- Five 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 violation, for a total of \$500.

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

- Eighteen violations of 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 violation, for a total of \$1,800.
- Two violations of 49 CFR § 391.51(a) – Failing to maintain driver qualification files on each driver employed. The Commission assesses a “per category” penalty of \$100 for this first-time violation.
- Two violations of 49 CFR § 391.51(b)(2) – Failing to maintain inquiries into driver’s driving record in driver’s qualification files. The Commission assesses a “per category” penalty of \$100 for this first-time violation.
- Twenty-three violations of 49 CFR § 395.8(a)(1) – Failing to require a driver to prepare a record of duty status using the appropriate method. The Commission assesses a “per category” penalty of \$100 for this first-time violation.
- One violation of 49 CFR § 396.3(b) – Failing to keep minimum records of inspection and vehicle maintenance. The Commission assesses a penalty of \$100 for this first-time 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 violation(s).
- Admit the violations but request mitigation of the penalty amount.

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 Lacey, Washington, and effective September 9, 2019.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TV-190705

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 \$2,700 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