

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

**PENALTY ASSESSMENT: TV-210040
PENALTY AMOUNT: \$300**

Whidbey Logistics LLC,
d/b/a Whidbey Moving and Storage
1083 SE 4th Ave.
Oak Harbor, WA 98277

The Washington Utilities and Transportation Commission (Commission) believes Whidbey Logistics LLC, d/b/a Whidbey Moving and Storage, (Whidbey 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 (49 CFR) Part 391 – Qualification 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 January 15, 2021, Commission Motor Carrier Investigator Wayne Gilbert completed a focused safety investigation of Whidbey Moving and documented the following violations:

- **Two violations of WAC 480-15-555 – Failing to conduct or retain paperwork containing criminal background check for a household goods carrier in the state of Washington as required.** Whidbey Moving failed to conduct criminal background checks for employees Jared Wooley and Ryan Fortuna. Both employees were convicted of assault within the past five years.
- **One violation of 49 CFR § 391.45(a) – Using a driver not medically examined and certified.** The Company allowed driver Jared Wooley to operate a commercial motor vehicle without a valid medical certificate.

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 fail to conduct criminal background checks on their employees and use drivers that are not medically examined and certified put their customers, their customers' belongings, and the traveling public at risk. These violations present 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 February 20, 2019, Matthew Freeborn, owner of Whidbey Moving, attended household goods training provided by Staff and acknowledged receiving training pertaining to motor carrier safety regulations.

On February 21, 2019, Staff completed a routine safety investigation of Whidbey Moving and documented 36 violations 49 CFR § 391.45(a) and four violations of WAC 480-15-555.

On April 17, 2019, Dmitriy Staroverov, general manager of Whidbey Moving, attended household goods training provided by Staff and 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.** Whidbey Moving did not self-report these violations.
4. **Whether the Company was cooperative and responsive.** The Company was cooperative throughout the safety investigation and expressed a desire to come into compliance with motor carrier safety regulations.
5. **Whether the Company promptly corrected the violations and remedied the impacts.** Whidbey Moving has not provided Staff with evidence that it corrected the violations.
6. **The number of violations.** Staff identified four violation types with a total of seven individual occurrences.
7. **The number of customers affected.** Whidbey Moving traveled 6,200 miles in 2020. These safety violations presented a public safety risk.
8. **The likelihood of recurrence.** The Company incurred repeat violations despite prior technical assistance and suspended penalties to encourage compliance with safety regulations. Absent a significant commitment to prioritize safe operations, the violations are likely to reoccur.
9. **The Company's past performance regarding compliance, violations, and penalties.** On April 10, 2019, Whidbey Moving was penalized \$6,800 in Docket TV-190111 for safety violations of WAC 480-15-555, WAC 480-15-560, and WAC 80-15-570.

On May 17, 2019, the Commission entered Order 01 in Docket TV-190111, which reduced the penalty to \$3,550 and suspended a \$1,775 portion of the reduced penalty for

a period of two years, subject to the conditions that: (1) Whidbey Moving pays the \$1,775 portion of the penalty that is not suspended, and (2) the Company does not incur any repeat violations of critical regulations. Whidbey Moving paid the entire \$1,775 portion of the penalty that was not suspended but did incur repeat violations of critical regulations.

10. **The Company's existing compliance program.** Dmitriy Staroverov is responsible for the Company's safety compliance program.

11. **The size of the Company.** Whidbey Moving currently owns six commercial motor vehicles and employs three drivers. The Company reported \$440,102 in gross revenue for 2019.

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 Whidbey Moving \$300, calculated as follows:

- Two violations of WAC 480-15-555 – Failing to conduct or retain paperwork containing criminal background check for a household goods carrier in the state of Washington as required. The Commission assesses a penalty of \$100 for each occurrence of this repeat violation, for a total of \$200.
- One violation of 49 CFR § 391.45(a) – Using a driver not medically examined and certified. The Commission assesses a penalty of \$100 for this repeat 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

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

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 their 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 February 4, 2021.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TV-210040

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 \$300 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.”