

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TV-210742

PENALTY AMOUNT: \$36,000

Established Moving & Storage of Seattle, Inc.,
d/b/a Established Moving & Storage
1201 SW 4th Ct.
Boca Raton, FL 33432

The Washington Utilities and Transportation Commission (Commission) believes Established Moving & Storage of Seattle, Inc., d/b/a Established Moving & Storage, (Established Moving Seattle 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 and 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 September 21, 2021, Commission Motor Carrier Investigator Tracy Coble completed a routine safety investigation of Established Moving Seattle and documented the following violations:

- **Five violations of WAC 480-15-555 – Failure to complete a criminal background check for every person the carrier intends to hire.** Established Moving Seattle failed to conduct criminal background checks for employees Jorge Delgado Rangel, Juan Sanchez Valdez, Erick Alvarez, Alberto Rico Almaguer, and Brian Contreras prior to employment.
- **Three hundred fifty-four violations of 49 CFR § 391.45(a) – Using a driver not medically examined and certified.** The Company allowed drivers Jorge Delgado Rangel, Juan Sanchez Valdez, Erick Alvarez, and Alberto Rico Almaguer to operate a commercial motor vehicle without a valid medical certificate on 354 occasions between March 24, 2021, and August 24, 2021.
- **Thirteen violations of 49 CFR § 395.3(b)(2) – Requiring or permitting a property-carrying commercial motor vehicle driver to drive after having been on duty 70 hours in eight consecutive days.** Established Moving Seattle allowed drivers Jorge Delgado Rangel, Juan Sanchez Valdez, and Alberto Rico Almaguer to operate a commercial motor vehicle after having been on duty for 70 hours in eight consecutive days on 13 occasions between April 12, 2021, and June 23, 2021.

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) use drivers that are not medically examined and certified, and (3) allow drivers to operate commercial motor vehicles after having been on duty 70 hours in eight consecutive days put their customers, their customers' belongings, and the traveling public at risk. These violations present significant 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 16, 2017, the Commission received the Company's application for household goods moving authority. In the application, Jason Crossen, owner of Established Moving Seattle, acknowledged the Company's responsibility to understand and comply with applicable motor carrier safety regulations.

On February 15, 2018, Jason Crossen 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.** Established Moving Seattle did not self-report these violations.
4. **Whether the Company was cooperative and responsive.** Established Moving Seattle was slow to provide requested documentation and was confrontational during the early stages of the safety investigation; however, the Company became cooperative and expressed a desire to come into compliance with applicable motor carrier safety regulations.
5. **Whether the Company promptly corrected the violations and remedied the impacts.** The Company completed criminal background checks for Jorge Delgado Rangel, Juan Sanchez Valdez, Erick Alvarez, Alberto Rico Almaguer, and Brian Contreras. The Company has not provided Staff with evidence that it corrected the other violations.
6. **The number of violations.** Staff identified 17 violation types with a total of 407 individual occurrences during the routine safety investigation of Established Moving Seattle. Of those violations, Staff identified three violation types with a total of 372 individual occurrences that warrant penalties in accordance with the Commission's Enforcement Policy.

7. **The number of customers affected.** Established Moving Seattle reported traveling 280,000 miles in 2020. These safety violations presented a public safety risk.
8. **The likelihood of recurrence.** Staff provided technical assistance with specific remedies to help the Company assess how well its safety management controls support safe operations and how to begin improving its safety performance. Established Moving Seattle was cooperative during the safety investigation and expressed a desire to come into compliance with applicable safety regulations. In light of these factors, Staff believes the likelihood of recurrence is low.
9. **The Company's past performance regarding compliance, violations, and penalties.** This is the Company's first routine safety investigation. Established Moving Seattle has no history of violations or penalties with the Commission.
10. **The Company's existing compliance program.** Jason Crossen is responsible for the Company's safety compliance program.
11. **The size of the Company.** Established Moving Seattle operates six commercial motor vehicles and employs nine drivers. The Company reported \$2,680,911 in gross revenue for 2020.

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 by violation category, 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 Established Moving Seattle \$36,000, calculated as follows:

- Five violations of WAC 480-15-555 – Failure 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 violation, for a total of \$500.
- Three hundred fifty-four 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 critical violation, for a total of \$35,400.
- Thirteen violations of 49 CFR § 395.3(b)(2) – Requiring or permitting a property-carrying commercial motor vehicle driver to drive after having been on duty 70 hours in

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

eight consecutive days. The Commission assesses a “per category” penalty of \$100 for these critical violations.

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 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 October 5, 2021.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TV-210742

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 \$36,000 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.”