

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TV-220348

PENALTY AMOUNT: \$2,900

Western Van Lines, Inc.,
d/b/a Western Van & Storage Co.
8521 S 190th St.
Kent, WA 98031

The Washington Utilities and Transportation Commission (Commission) believes Western Van Lines, Inc., d/b/a Western Van & Storage Co. (Western Van 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 Code of Federal Regulations (49 C.F.R.) Part 393 – Parts and Accessories Necessary for Safe Operation, WAC 480-15-570, Driver Safety Requirements which adopts 49 C.F.R. Part 382 – Controlled Substance and Alcohol Use and Testing and 49 CFR Part 391 – Qualifications of Driver.

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. RCW 81.04.530 allows penalties of \$500 for each motor vehicle driver not in compliance with the motor vehicle driver testing requirements.

On May 13, 2022, Commission Motor Carrier Investigator Wayne Gilbert completed a routine safety investigation of Western Van and documented the following violations:

- **Four violations of WAC 480-15-555(2) – Failing to retain paperwork containing criminal background check for each employee the carrier intended to hire for a household goods carrier in the state of Washington.** The Company failed to maintain criminal background checks for employees Ross Brasel, Jordan McClain-Skeen, Gino Lopez, and Douglas Brewington.
- **One violation of 49 C.F.R. § 382.301(a) – Using a driver before the motor carrier has received a negative pre-employment controlled substance test result.** The Company allowed driver Ross Brasel to operate a commercial motor vehicle (CMV) without first having a negative pre-employment controlled substance test on file.
- **Nineteen violations of 49 C.F.R. § 391.45(a) – Using a driver not medically examined and certified.** The Company allowed driver Douglas Brewington to operate a CMV without a valid medical certificate on 19 occasions between December 1, 2021, and April 20, 2022.
- **One violation of 49 C.F.R. § 393.75(a)(3) – Tire flat and/or audible air leak.** Commission staff (Staff) discovered a CMV with a passenger side front tire with a nail

imbedded and tire inflation of 37 psi, less than 50 percent of the maximum inflation pressure marked as 80 psi.¹ The vehicle was placed out-of-service.

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 retain criminal background checks, (2) allow drivers to operate CMVs prior to receiving pre-employment controlled substance test results, (3) allow drivers to operate CMVs without valid medical certificates, and (4) operate vehicles with flat tires put their customers, their customers' belongings, and the traveling public at risk. These violations present serious safety concerns.
2. **Whether the violations were intentional.** Considerations include:
 - Whether the Company ignored 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 operations in the area in 1997. There is no indication that anyone involved with the Company has attended household goods moving training with the Commission.

3. **Whether the Company self-reported the violations.** Western Van did not self-report these violations.
4. **Whether the Company was cooperative and responsive.** The Company was cooperative throughout the safety investigation.
5. **Whether the Company promptly corrected the violations and remedied the impacts.** Western Van has corrected the discovered violations.
6. **The number of violations.** Staff identified 17 violation types with a total of 53 individual occurrences during the routine safety investigation of Western Van. Of those violations, Staff identified four violation types with 25 individual occurrences that warrant penalties in accordance with the Commission's Enforcement Policy.
7. **The number of customers affected.** Western Van reported traveling 139,843 miles in 2021. These violations presented a public safety risk.
8. **The likelihood of recurrence.** The Company was cooperative throughout the safety investigation and was provided technical assistance with specific remedies to help the Company assess how well its safety management controls support safe operations and

¹ Equipment ID 22379

how to begin improving its safety performance. Considering these factors, Staff believes the likelihood of recurrence is low.

The Company's past performance regarding compliance, violations, and penalties.

On July 24, 2012, the Commission assessed a \$325 penalty against Western Van for failing to file an annual report and pay regulatory fees in Docket TV-120952. The Company filed an annual report and paid regulatory fees on July 27, 2012.

On June 6, 2014, the Commission assessed a \$1,000 penalty against Western Van for failing to file an annual report and pay regulatory fees in Docket TV-140997. The Company filed an annual report and paid regulatory fees on June 26, 2014.

On June 29, 2016, the Commission assessed a \$1,000 penalty against Western Van for failing to file an annual report and pay regulatory fees in Docket TV-160794. The Company filed an annual report and paid regulatory fees on July 26, 2016.

Western Van has no history of penalties for safety violations.

9. **The Company's existing compliance program.** Matthew DiJulio and Chad Ramseur are responsible for the Company's safety compliance program.
10. **The size of the Company.** The Company employs 16 drivers and operates 15 commercial motor vehicles. The Company reported \$722,267 in gross revenue in 2021.

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.² 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 Western Van \$2,900 (Penalty Assessment), calculated as follows:

- Four violations of WAC 480-15-555(2) – Failing to retain paperwork containing criminal background check for each employee the carrier intended to hire for a household goods carrier in the state of Washington. The Commission assesses a penalty of \$100 for each occurrence of these critical violations, for a total of \$400.

² Docket A-120061 – Enforcement Policy of the Washington Utilities & Transportation Commission – Section V.

- One violation of 49 C.F.R. § 382.301(a) – Using a driver before the motor carrier has received a negative pre-employment controlled substance test result. The Commission assesses a penalty of \$500 for this violation.
- Nineteen violations of 49 C.F.R. § 391.45(a) – Using a driver not medically examined and certified. The Commission assesses a penalty of \$100 for each occurrence of these critical violations, for a total of \$1,900.
- One violation of 49 C.F.R. § 393.75(a)(3) – Tire flat and/or audible air leak. The Commission assesses a penalty of \$100 for this out-of-service 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 their decision.

You must act within 15 days after receiving this Penalty Assessment 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 Penalty Assessment. 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 June 8, 2022.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TV-220348

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 \$2,900 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 or she makes a materially false statement which he or she 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 or her 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.