

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TV-220592

PENALTY AMOUNT: \$1,600

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; WAC 480-15-560, Equipment Safety Requirements, which adopts Title 49 Code of Federal Regulations (49 C.F.R.) Part 390 – Federal Motor Carrier Safety Regulations, General, and 49 C.F.R. Part 396 – Inspection, Repair, and Maintenance; and WAC 480-15-570, Driver Safety Requirements, which adopts 49 C.F.R. Part 391 – Qualification of Drivers and 49 C.F.R. 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 August 2, 2022, Commission Motor Carrier Investigator Tracy Cobile completed a follow-up safety investigation of Established Moving Seattle and documented the following violations:

- **Two violations of WAC 480-15-555 – Failing to conduct or retain paperwork containing criminal background checks.** Established Moving Seattle failed to conduct a criminal background check for prospective employees Jose Padilla and Jose Tello.
- **One violation of 49 C.F.R. § 390.19(b)(2) – Failing to file the MCS-150 registration form each 24 months according to the schedule.** The Company failed to file the required MCS-150 registration form with current driver and vehicle count information.
- **One violation of 49 C.F.R. § 391.21(a) – Using a driver who has not completed and furnished an employment application.** Established Moving Seattle failed to furnish a complete employment application for driver Jose Salvador Diaz Sandoval.
- **Eleven violations of 49 C.F.R. § 395.8(a)(1) – Failing to require driver to make a record of duty status.** The Company failed to require Brian Contreras, Jose Salvador Diaz Sandoval, Erick Alvarez, and Juan Valdez to complete a record of duty status on 11 occasions between March 1 and June 30, 2022.
- **One violation of 49 C.F.R. § 396.9(d)(3) – Failing to maintain completed inspection form for 12 months from the date of inspection at the carrier's principal place of**

business or where the vehicle is housed. Established Moving Seattle failed to maintain completed roadside inspection forms for 12 months from the date of inspection.

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 provide accurate data in their Motor Carrier Identification Report, (3) use drivers without first completing employment applications, (4) fail to maintain records of duty status, and (5) fail to maintain completed roadside inspection forms, 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.

On September 21, 2021, Staff completed a routine safety investigation of Established Moving Seattle and discovered violations of WAC 480-15-555, 49 C.F.R. § 390.19(b)(2), 49 C.F.R. § 391.21(a), 49 C.F.R. § 395.8(a)(1), and 49 C.F.R. § 396.9(d)(3). On October 28, 2021, Established Moving Seattle submitted a safety management plan addressing each violation noted during the safety investigation.

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.** 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.** Established Moving Seattle has not provided Staff with evidence that it corrected the violations.
6. **The number of violations.** Staff identified 15 violation types with a total of 43 individual occurrences during the follow-up safety investigation of Established Moving Seattle. Of those violations, Staff identified five violation types with a total of 16 individual occurrences that warrant penalties in accordance with the Commission's Enforcement Policy.
7. **The number of customers affected.** Established Moving Seattle reported traveling 250,000 miles in the 12 months preceding the safety investigation. These safety violations presented a public safety risk.
8. **The likelihood of recurrence.** The Company incurred repeat violations despite prior technical assistance, suspended penalties, and an approved safety management plan. 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 October 5, 2021, the Commission issued a Notice of Intent to Cancel the Company's household goods moving permit in Docket TV-210741 after the safety investigation of Established Moving Seattle resulted in a proposed conditional safety rating. Also on October 5, the Company was penalized \$36,000 in Docket TV-210742 for safety violations of WAC 480-15-555 and WAC 480-15-570.

On November 10, 2021, the Commission entered Order 01, which consolidated Dockets TV-210741 and TV-210742, approved the Company's safety management plan, extended Established Moving Seattle's provisional period until the Company achieves a satisfactory safety rating, assessed a reduced penalty of \$15,000, and suspended a \$10,000 portion of the penalty for a period of two years, subject to conditions.

The Company has paid \$4,500 of the \$5,000 non-suspended portion of the penalty in accordance with the approved payment schedule but failed to comply with the condition in Order 01 to not incur any repeat acute or critical violation of Chapter 480-15 WAC upon re-inspection.

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 four commercial motor vehicles and employs four drivers. The Company reported \$2,245,397 in gross revenue for 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.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 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 \$1,600 (Penalty Assessment), calculated as follows:

- Two violations of WAC 480-15-555 – Failing to conduct or retain paperwork containing criminal background checks or hiring an individual with a disqualifying conviction for a household goods carrier in the state of Washington. The Commission assesses a penalty of \$100 for each occurrence of this repeat critical violation, for a total of \$200.
- One violation of 49 C.F.R. § 390.19(b)(2) – Failing to file the MCS-150 registration form each 24 months according to the schedule. The Commission assesses a penalty of \$100 for this repeat violation.
- One violation of 49 C.F.R. § 391.21(a) – Using a driver who has not completed and furnished an employment application. The Commission assesses a penalty of \$100 for this repeat violation.
- Eleven violations of 49 C.F.R. § 395.8(a)(1) – Failing to require driver to make a record of duty status. The Commission assesses a penalty of \$100 for each occurrence of this repeat violation, for a total of \$1,100.
- One violation of 49 C.F.R. § 396.9(d)(3) – Failing to maintain completed inspection form for 12 months from the date of inspection at the carrier's principal place of business or where the vehicle is housed. 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 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 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 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 August 17, 2022.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TV-220592

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 \$1,600 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.