

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

**PENALTY ASSESSMENT: TV-220611
PENALTY AMOUNT: \$200**

Smooth Moves LLC
516 E. 1st Ave., Ste. C
Kennewick, WA 99336

The Washington Utilities and Transportation Commission (Commission) believes Smooth Moves LLC (Smooth Moves or Company) violated Washington Administrative Code (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 and 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 4, 2022, Commission Motor Carrier Investigator Edward Steiner completed a follow-up safety investigation of Smooth Moves and documented the following violations:

- **One violation of 49 C.F.R. § 393.9(a) – Inoperative turn signal.** Commission staff (Staff) discovered a commercial motor vehicle (CMV) with its left rear turn signal inoperable.¹ This CMV was placed out-of-service.
- **One violation of 49 C.F.R. § 396.3(a)(1) – Brakes out of service.** Staff discovered a CMV with the number of defective brakes equal to or greater than 20 percent of the service brakes on the vehicle.² This CMV 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 use CMVs in need of repair put 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 Staff's previous technical assistance; and

¹ Vehicle Identification Number JALB4B14447001237.

² Vehicle Identification Number 3ALACWDT7GDGV9110.

- Whether there is clear evidence through documentation or other means that shows the Company knew of and failed to correct the violation.

On February 25, 2011, the Commission received the Company's application for household goods moving authority. In the application, Kenneth Teasdale, owner of Smooth Moves, acknowledged the Company's responsibility to understand and comply with applicable motor carrier safety laws and regulations.

On April 26, 2011, Kenneth Teasdale attended household goods training provided by Staff and acknowledged receiving training pertaining to motor carrier safety regulations.

On October 11, 2011, Staff completed a routine safety investigation of Smooth Moves, resulting in a "Satisfactory" safety rating. Staff provided technical assistance to the Company during this safety investigation.

On July 16, 2014, Kenneth Teasdale attended household goods training provided by Staff and acknowledged receiving training pertaining to motor carrier safety regulations.

On November 8, 2021, Staff completed a routine safety investigation of Smooth Moves and discovered out-of-service violations of 49 C.F.R. § 393.9(a) and 49 C.F.R. § 396.3(a)(1). The Company knew or should have known about these requirements.

3. **Whether the Company self-reported the violations.** Smooth Moves 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.** Smooth Moves has not provided Staff with evidence that it corrected the out-of-service violations.
6. **The number of violations.** Staff identified 13 violation types with a total of 141 individual occurrences during the follow-up safety investigation of Smooth Moves. Of those violations, Staff identified two violation types with a total of two individual occurrences that warrant penalties in accordance with the Commission's Enforcement Policy.
7. **The number of customers affected.** Smooth Moves reported traveling 85,497 miles in 2021. These safety violations presented a public safety risk.
8. **The likelihood of recurrence.** The Company incurred repeat violations despite prior technical assistance. 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 29, 2011, Smooth Moves was penalized \$10,000 in Docket TV-101916 for

operating as a household goods carrier prior to obtaining the required permit. The Commission suspended the entire penalty for a period of one year, subject to the conditions that Smooth Moves maintained its household goods permit and complied with all applicable laws and regulations. Due to the Company's compliance, the \$10,000 suspended penalty was waived on May 16, 2012.

On November 24, 2021, the Commission issued a Notice of Intent to Cancel the Company's household goods moving permit in Docket TV-210861 after the safety investigation of Smooth Moves resulted in a proposed unsatisfactory safety rating. On December 1, 2021, the Company was penalized \$16,300 in Docket TV-210862 for safety violations of WAC 480-15-555, WAC 480-15-560, and WAC 480-15-570.

On December 30, 2021, the Commission entered Order 01, which consolidated Dockets TV-210861 and TV-210862, approved the Company's safety management plan, upgraded the Company's safety rating to conditional, assessed a reduced penalty of \$8,100, and suspended a \$5,500 portion of the penalty for a period of two years, subject to conditions. The Company has paid \$1,820 of the \$2,600 non-suspended portion of the penalty in accordance with the approved payment schedule.

10. The Company's existing compliance program. Kenneth Teasdale is responsible for the Company's safety compliance program.

11. The size of the Company. Smooth Moves operates five CMVs and employs three drivers. The Company reported \$893,150 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.³ 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 Smooth Moves \$200 (Penalty Assessment), calculated as follows:

- One violation of 49 C.F.R. § 393.9(a) – Inoperative turn signal. The Commission assesses a penalty of \$100 for this out-of-service violation.
- One violation of 49 C.F.R. § 396.3(a)(1) – Brakes out of service. The Commission assesses a penalty of \$100 for this out-of-service violation.

³ Docket A-120061 – Enforcement Policy of the Washington Utilities & Transportation Commission – Section V.

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 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 23, 2022.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TV-220611

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 \$200 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.