

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TV-220961
PENALTY AMOUNT: \$15,300

Sound Moving NW LLC
d/b/a Sound Moving NW
1620 9th St.
Marysville, WA 98270

The Washington Utilities and Transportation Commission (Commission) believes Sound Moving NW LLC d/b/a Sound Moving NW (Sound Moving NW 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 C.F.R.) 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 December 15, 2022, Commission Motor Carrier Investigator Sandra Yeomans completed a routine safety investigation of Sound Moving NW and documented the following violations:

- **Fifteen violations of WAC 480-15-555 – Failure to complete a criminal background check for every person the carrier intends to hire.** Sound Moving NW failed to conduct a criminal background check prior to hiring employees Austin Cundy, Chase Bigger, Patrick Dalton, Nigel Easton, Sean Forrest, David Frisbie, Benjamin Jablonsky, Dawn James, Korey Kemper, Brandon Lamphier, Derrick Lockhart, Andrew Morgan, John Myrick, Noah Ribar, and John Spencer.
- **One hundred thirty-eight violations of 49 C.F.R. § 391.45(a) – Using a driver not medically examined and certified.** The Company allowed drivers Austin Cundy, Dawn James, Noah Ribar, and Jonathan Frisbie to operate a commercial motor vehicle (CMV) without a valid medical certificate on 138 occasions between June 2 and November 30, 2022.

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 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 February 17, 2021, Daniel James, owner of Sound Moving NW, and Benjamin Jablonsky, manager of Sound Moving NW, attended household goods training provided by Staff and both acknowledged receiving training pertaining to motor carrier safety regulations.

On March 5, 2021, the Commission received the Company's application for household goods moving authority. In the application, Benjamin Jablonsky acknowledged the Company's responsibility to understand and comply with applicable motor carrier safety regulations.

The Company knew or should have known about these requirements.

3. **Whether the Company self-reported the violations.** Sound Moving NW 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.** Sound Moving NW has not provided Staff with evidence that it corrected the violations.
6. **The number of violations.** Staff identified 16 violation types with a total of 194 individual occurrences during the routine safety investigation of Sound Moving NW. Of those violations, Staff identified two violation types with 153 individual occurrences that warrant penalties in accordance with the Commission's Enforcement Policy.
7. **The number of customers affected.** Sound Moving NW reported traveling 40,382 miles in 2021. 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. Staff believes the likelihood of recurrence is low if the Company prioritizes safe operations.
9. **The Company's past performance regarding compliance, violations, and penalties.** This is the Company's first routine safety investigation. Sound Moving NW has no history of penalties for safety violations with the Commission.

10. **The Company's existing compliance program.** Daniel James is responsible for the Company's safety compliance program.

11. **The size of the Company.** The Company employs eight drivers and operates two CMVs. The Company reported \$556,473 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 Sound Moving NW \$15,300 (Penalty Assessment), calculated as follows:

- Fifteen 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 critical violation, for a total of \$1,500.
- One hundred thirty-eight 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 this critical violation, for a total of \$13,800.

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.

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

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 January 4, 2023.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TV-220961

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 \$15,300 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 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.