

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

**PENALTY ASSESSMENT: TV-230343
PENALTY AMOUNT: \$100**

Mr. Muscles Moving Company LLC
9440 Olson Pl. SW
Seattle, WA 98106

The Washington Utilities and Transportation Commission (Commission) believes Mr. Muscles Moving Company LLC (Mr. Muscles Moving 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 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 May 8, 2023, Commission Motor Carrier Investigator Tracy Cobile completed a follow-up safety investigation of Mr. Muscles Moving and documented the following violation:

- **One violation of 49 C.F.R. § 396.17(a) – Using a commercial motor vehicle (CMV) not periodically inspected.** The Company failed to have an annual inspection performed on its CMV.

The Commission considered the following factors in determining the appropriate penalties for this violation:

1. **How serious or harmful the violation is to the public.** The violation noted is serious and potentially harmful to the public. Household goods moving companies that use CMVs that have not been inspected put their customers' belongings and the traveling public at risk. This violation presents a serious safety concern.
2. **Whether the violation was 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 May 14, 2020, the Commission received the Company's application for household goods moving authority. In the application, Alexander Conner, owner of Mr. Muscles Moving, acknowledged the Company's responsibility to understand and comply with the inspection, repair, and maintenance of CMVs.

On November 24, 2021, the Commission received the Company's application to reinstate its household goods moving authority. In the application, Alexander Conner acknowledged the Company's responsibility to understand and comply with the inspection, repair, and maintenance of CMVs.

On June 1, 2022, Staff completed a routine safety investigation of Mr. Muscles Moving and identified a violation of 49 C.F.R. § 396.17(a). On July 28, 2022, the Company submitted a safety management plan (SMP) addressing the violation of 49 C.F.R. § 396.17(a).

On August 24, 2022, Alexander Conner attended household goods training provided by Staff and acknowledged receiving training pertaining to periodic vehicle inspections. The Company knew or should have known about this requirement.

3. **Whether the Company self-reported the violation.** Mr. Muscles Moving did not self-report this violation.
4. **Whether the Company was cooperative and responsive.** The Company was cooperative during the safety investigation and corrected some of the identified violations.
5. **Whether the Company promptly corrected the violation and remedied the impacts.** The Company has not provided Staff with evidence that it corrected the violation of 49 C.F.R. § 396.17(a).
6. **The number of violations.** Staff identified nine violation types with a total of nine individual occurrences during the follow-up safety investigation of Mr. Muscles Moving. Of those violations, Staff identified one violation type with one individual occurrence that warrants a penalty in accordance with the Commission's Enforcement Policy.
7. **The number of customers affected.** Mr. Muscles Moving reported traveling 3,000 miles in 2022. This violation presented a public safety risk.
8. **The likelihood of recurrence.** The Company incurred the repeat violation despite prior technical assistance and an approved safety management plan. Absent a significant commitment to prioritize safe operations, the violation is likely to reoccur.
9. **The Company's past performance regarding compliance, violations, and penalties.** On November 5, 2021, the Commission canceled the Company's household goods moving permit in Docket TV-210846 for failing to file acceptable proof of insurance. The Company's permit was reinstated on January 10, 2022, in Docket TV-210917.

On June 28, 2022, the Commission issued a Notice of Intent to Cancel; Notice of Hearing; Complaint for Penalties; and Notice of Prehearing Conference in Docket TV-220417, after the safety investigation of Mr. Muscles Moving resulted in a proposed conditional safety rating. On July 29, 2022, the Commission entered Order 01, which

approved the Company's safety management plan, extended the Company's provisional period until Mr. Muscles Moving achieves a satisfactory safety rating, assessed an \$8,000 penalty against Mr. Muscles Moving, and suspended a \$6,000 portion of the penalty for a period of two years, before being waived, subject to conditions.

10. The Company's existing compliance program. Alexander Conner is responsible for the Company's safety compliance program.

11. The size of the Company. The Company employs one driver and operates one CMV. The Company reported \$25,000 in gross revenue for 2022.

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 Mr. Muscles Moving \$100 (Penalty Assessment), calculated as follows:

- One violation of 49 C.F.R. § 396.17(a) – Using a CMV not periodically inspected. 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 the violation did not occur, you may deny committing the violation and contest the penalty through evidence presented at a hearing or in writing. Alternatively, if there is a reason for the violation 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 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 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.
- Admit the violation 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 at <https://efiling.utc.wa.gov/Form> **within FIFTEEN (15) days** after you receive this Penalty Assessment.² 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 wish to make a payment online, please use this link: [Make a Payment Now \(wa.gov\)](#).³

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 May 15, 2023.

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

² <https://efiling.utc.wa.gov/Form>.

³ <https://www.utc.wa.gov/documents-and-proceedings/online-payments/make-payment-now>

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TV-230343

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 violation occurred.
 - Enclose \$100 in payment of the penalty.
 - OR Attest that I have paid the penalty in full through the Commission’s payment portal.

- 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 violation, 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.