

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TV-220303
PENALTY AMOUNT: \$41,400

PMC Moving, LLC
2100 196th St. SW #110
Lynnwood, WA 98036

The Washington Utilities and Transportation Commission (Commission) believes PMC Moving, LLC, (PMC Moving 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 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.

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 April 28, 2022, Commission Motor Carrier Investigator Sandra Yeomans completed a routine safety investigation of PMC Moving and documented the following violations:

- **Twenty-one violations of WAC 480-15-555 – Failure to complete a criminal background check for every person the carrier intends to hire.** PMC Moving failed to conduct a criminal background check for employees Tyler Prall, Nickolas Urbach, Paul Freeman, John Mitchell, James Furtado, Brady Dickinson, Guillermo Barragan, Max Menacher, Richard Ried, Oscar Rodriguez, Will Strong, Draisil Helzer, Spencer, Brandan, Alex, Brian, Stephen, Matt, Isaac, Brendan, and Ceaser.¹
- **Three hundred ninety violations of 49 C.F.R. § 391.45(a) – Using a driver not medically examined and certified.** The Company allowed drivers Tyler Prall, Nickolas Urbach, Paul Freeman, John Mitchell, and James Furtado to operate a commercial motor vehicle (CMV) without a valid medical certificate on 390 occasions between September 1, 2021, and February 28, 2022.
- **Five violations of 49 C.F.R. § 391.51(a) – Failing to maintain driver qualification file on each driver employed.** PMC Moving failed to maintain driver qualification files for Tyler Prall, Nickolas Urbach, Paul Freeman, John Mitchell, and James Furtado.

¹ The Company was unable to provide the last names of all employees.

- **One violation of 49 C.F.R. § 393.48(a) – Inoperative/defective brakes.** Commission staff (Staff) discovered a CMV with both rear brake pushrods inoperable when applying the brakes.² This CMV was placed out-of-service.
- **Four violations of 49 C.F.R. § 396.3(b) – Failing to keep minimum records of inspection and vehicle maintenance.** PMC Moving failed to maintain a vehicle maintenance file on four CMVs.

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) use drivers that are not medically examined and certified, (3) fail to maintain driver qualification files, (4) operate CMVs in need of repair, and (5) fail to keep minimum records of inspection and vehicle maintenance, 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 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.

On April 5, 2010, the Commission received the Company's application for household goods moving authority. In the application, John Lutz, part owner of PMC Moving, acknowledged the Company's responsibility to understand and comply with applicable motor carrier safety laws and regulations.

On January 19, 2011, John Lutz and John Donoghue, owners of PMC Moving, attended household goods training provided by Staff and acknowledged receiving training pertaining to motor carrier safety regulations.

On July 29, 2014, Staff completed a routine safety investigation of PMC Moving and discovered violations of 49 C.F.R. § 391.45(a).

The Company knew or should have known about these requirements.

3. **Whether the Company self-reported the violations.** PMC Moving did not self-report these violations.

² Vehicle Identification Number 1HTMMAAL97H484186.

4. **Whether the Company was cooperative and responsive.** The Company was cooperative throughout the safety investigation and expressed a desire to come into compliance.
5. **Whether the Company promptly corrected the violations and remedied the impacts.** The Company has not provided Staff with evidence that it corrected the violations.
6. **The number of violations.** Staff identified 18 violation types with a total of 512 individual occurrences during the routine safety investigation of PMC Moving. Of those violations, Staff identified five violation types with a total of 421 individual occurrences that warrant penalties in accordance with the Commission's Enforcement Policy.
7. **The number of customers affected.** PMC Moving reported traveling 48,000 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.** On December 15, 2014, PMC Moving was penalized \$4,500 in Docket TV-143221 for safety violations of WAC 480-15-560 and WAC 480-15-570. The Company paid the penalty in full.
10. **The Company's existing compliance program.** John Lutz is responsible for the Company's safety compliance program.
11. **The size of the Company.** PMC Moving operates four CMVs and employs six drivers. The Company reported \$1,000,000 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 PMC Moving \$41,400 (Penalty Assessment), calculated as follows:

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

- Twenty-one 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 \$2,100.
- Three hundred ninety 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 \$39,000.
- Five violations of 49 C.F.R. § 391.51(a) – Failing to maintain driver qualification file on each driver employed. The Commission assesses a “per category” penalty of \$100 for these critical violations.
- One violation of 49 C.F.R. § 393.48(a) – Inoperative/defective brakes. The Commission assesses a penalty of \$100 for this out-of-service violation.
- Four violations of 49 C.F.R. § 396.3(b) – Failing to keep minimum records of inspection and vehicle maintenance. The Commission assesses a “per category” penalty of \$100 for these critical violations.

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 May 9, 2022.

/s/Michael Howard
on behalf of
RAYNE PEARSON
Director, Administrative Law Division

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TV-220303

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 \$41,400 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 makes a materially false statement which he 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 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.”