

# WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TV-143221  
PENALTY AMOUNT: \$5,900

PMC MOVING, LLC  
14928 19<sup>TH</sup> AVENUE WEST  
LYNNWOOD, WA 98087

The Washington Utilities and Transportation Commission (Commission) believes that you have committed one or more violations of Washington Administrative Code (WAC) 480-15-560 – Equipment safety requirements, which requires household goods carriers to comply with parts of Title 49, Code of Federal Regulations (CFR), Part 396 - Inspection, repair and maintenance, and WAC 480-15-570 – Driver safety requirements, which requires household goods carriers to comply with CFR Part 391 – Qualification of drivers.

On July 29, 2014, Motor Carrier Safety Inspector Alan Dickson conducted a compliance review inspection of PMC Moving, LLC (PMC Moving or Company). Mr. Dickson found 168 total violations, all of which were first-time violations for which the Commission generally provides technical assistance rather than assess penalties.

The Commission's Enforcement Policy, however, provides that some Commission requirements are so critical to safe operations that the Commission may issue penalties for a first-time violation, even if staff has not previously provided technical assistance on specific issues.<sup>1</sup> Of the 168 violations Mr. Dickson found, 61 were violations of critical regulations as follows:

- **Three violations of CFR Part 396.17(a)** – Using a commercial motor vehicle not periodically inspected. None of PMC Moving's three vehicles received a periodic inspection in the past 12 months.
- **58 violations of CFR Part 391.45(a)** – Using a driver not medically examined and certified. None of the company's three drivers had current medical

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

certification. In June 2014, driver Nickolas Urbach drove on 17 days, driver Julian Lave drove on 20 days, and driver Tyler Prall drove on 21 days, for a total of 58 days.

Although authorized to assess \$6,100 in penalties for these critical violations, the Commission finds that a slightly lesser penalty would be more appropriate based on consideration of the following factors:

1. **How serious or harmful the violation is to the public.** The violations noted are serious and potentially harmful to the public. Drivers who are not medically certified put the traveling public at risk. If there is an undocumented medical condition, this could present serious safety concerns. In addition, vehicles that are not periodically inspected could potentially harm the public in the event of a malfunction or mechanical problem during transit.
2. **Whether the violation is intentional.** Considerations include:
  - Whether the Company ignored staff's previous technical assistance; and
  - Whether there is clear evidence through documentation or other means that show the Company knew of and failed to correct the violation.

In January 2011, John Lutz and John Donohue, PMC Moving's owners, attended the Commission's household goods industry training. The training covered equipment and driver safety requirements and both Mr. Lutz and Mr. Donohue verified receiving this training. Commission staff does not believe that the Company ignored previous technical assistance. Rather, Staff believes the violations are based on lack of oversight by the Company owners and do not appear to be intentional.

3. **Whether the Company self-reported the violation.** PMC Moving did not self-report these violations.
4. **Whether the Company was cooperative and responsive.** PMC Moving cooperated with Commission staff during the compliance review. However, Staff asked the Company to provide a compliance plan for addressing each violation to ensure future compliance within 15 days. As of September 10, 2014, the Company had not provided such a plan.
5. **Whether the Company promptly corrected the violations and remedied the impacts.** PMC Moving assured staff that it would correct the violations noted in the July 2014 compliance review; however, the Company has not provided a compliance plan within 15 days as directed by staff.

6. **The number of violations.** Staff is concerned with the high number of critical violations noted in the compliance review. While the Company received a satisfactory safety rating, staff will re-inspect the drivers and the vehicles in six months to ensure the Company has corrected the violations.
7. **The number of customers affected.** Customers were not affected by these violations.
8. **The likelihood of recurrence.** Commission staff will conduct a follow-up inspection in six months. Staff expects the Company to improve its safety management controls and avoid recurrence of these critical violations.
9. **The company's past performance regarding compliance, violations, and penalties.** This is PMC Moving's first compliance review, and the Company has no previous history of violations or penalties.
10. **The Company's existing compliance program.** Because the Company has not submitted a compliance plan as directed, Commission staff is unaware of the existence or contents of any existing compliance program.
11. **The size of the Company.** PMC Moving reported approximately \$356,000 in gross intrastate operating revenue for 2013.

The Commission has weighed these factors and determined that PMC Moving should be penalized \$5,900 as follows:

- **\$100 for one violation of WAC 480-15-560 – Using a commercial motor vehicle not periodically inspected.** While none of PMC Moving's three vehicles received a periodic inspection in the past 12 months, these are first-time violations, so we assess a penalty of \$100 for one violation of this type. Future violations of this regulation will result in penalties assessed for each violation.
- **\$5,800 for 58 violations of WAC 480-15-570 – Using a driver not medically examined and certified.** The Company's three drivers drove a total of 58 days without medical certification. These are first-time violations, but the Commission grants no leeway with this type of violation. Drivers who are not medically certified put the traveling public at risk.

This information, if proved 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 violations did not occur, you may request a hearing to contest the penalty assessment. The Commission will grant that request only if material issues of law or fact require consideration of evidence and resolution in a hearing. A request for a hearing must include a written statement of the reasons supporting that request. Failure to provide such a statement will result in denial of the request. If there is a reason for the violations that you think should excuse you from the penalty, you may ask for mitigation (reduction) of this penalty through evidence presented at a hearing or in writing. A request for mitigation 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 his or her decision.

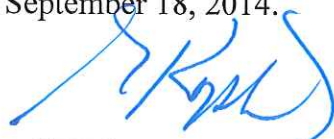
**You must act within 15 days after receiving this notice** to do one of the following:

- Pay the amount due.
- Request a hearing to contest the occurrence of the violations.
- Request mitigation to contest the amount of the penalty.

Please indicate your selection on the enclosed form and send it to the Washington Utilities and Transportation Commission, Post Office Box 47250, Olympia, Washington 98504-7250, **within FIFTEEN (15) days** after you receive this notice.

**If you do not act within 15 days**, the Commission may refer this matter to the Office of the Attorney General for collection. The Commission may then sue you to collect the penalty.

DATED at Olympia, Washington, and effective September 18, 2014.



GREGORY J. KOPTA  
Administrative Law Judge

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION  
PENALTY ASSESSMENT TV-143221

**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 and enclose \$\_\_\_\_\_ in payment of the penalty.
- 2. **Request for a hearing.** I believe that the alleged violation did not occur for the reasons I describe below, and I request a hearing based on those reasons for a decision by an administrative law judge:
- 3. **Application for mitigation.** I admit the violation, but I believe that the penalty should be reduced for the reasons set out below:

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

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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.”