

Service Date: April 4, 2022

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

TV-220148

PENALTY ASSESSMENT: TV-220148
PENALTY AMOUNT: \$13,800

Martinson Piano Moving, LLC
3231 Broadway, Suite E
Everett, WA 98201

The Washington Utilities and Transportation Commission (Commission) believes Martinson Piano Moving, LLC, (Martinson Piano 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; 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 March 3, 2022, Commission Motor Carrier Investigator Francine Gagne completed a routine safety investigation of Martinson Piano and documented the following violations:

- **One hundred and thirty-six violations of 49 C.F.R. § 391.45(a) – Using a driver not medically examined and certified.** The Company allowed drivers Darin Gable, Eric Martinson, and Michael Martinson to operate a commercial motor vehicle (CMV) without a valid medical certificate on 136 occasions between August 9, 2021, and February 9, 2022.
- **Three violations of 49 C.F.R. § 391.51(a) – Failing to maintain driver qualification file on each driver employed.** The Company failed to maintain the required driver qualification files for Darin Gable, Eric Martinson, and Michael Martinson.
- **Two violations of 49 C.F.R. § 396.17(a) – Using a CMV not periodically inspected.** The Company failed to have two CMVs periodically inspected.

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) allow drivers to operate CMVs without valid medical certificates, (2) fail to maintain driver qualification files, and (3) operate CMVs that have not been periodically inspected put their customers, their customers' belongings, and the traveling public at risk. These violations present serious safety concerns.

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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.

The Company began operations in 1988. On December 4, 2004, the Commission received the Company's application for transfer of household goods moving authority from Eric Martinson to Martinson Piano Moving, LLC. In the application, Eric Martinson, owner of Martinson Piano, acknowledged the Company's responsibility to understand and comply with applicable motor carrier safety rules.

On November 3, 2005, Staff completed a routine safety investigation of Martinson Moving and discovered the Company failed to maintain complete driver qualification files and used drivers not medically examined or certified.

On January 20, 2006, Staff completed a follow-up investigation and found that the Company had complete driver qualification files and all drivers were medically examined and certified. The Company received a satisfactory safety rating.

3. **Whether the Company self-reported the violations.** Martinson Piano 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.** The Company has either corrected or was in the processes of correcting the violations at the conclusion of the safety investigation.
6. **The number of violations.** Staff identified five violation types with a total of 143 individual occurrences during the routine safety investigation of Martinson Piano. Of those violations, Staff identified three violation types with 141 individual occurrences that warrant penalties in accordance with the Commission's Enforcement Policy.
7. **The number of customers affected.** Martinson Piano reported traveling 82,148 miles in 2021. These violations presented a public safety risk.
8. **The likelihood of recurrence.** The Company was cooperative throughout the safety investigation and was 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. In light of these factors, Staff believes the likelihood of recurrence is low.
9. **The Company's past performance regarding compliance, violations, and penalties.** On December 1, 2009, Martinson Moving's household goods moving permit was

suspended for failing to file acceptable proof of insurance in Docket TV-091849. The Company's permit suspension was lifted on December 2, 2009.

On February 19, 2013, Martinson Moving's household goods moving permit was suspended for failing to file acceptable proof of insurance in Docket TV-130252. The Company's permit suspension was lifted on February 21, 2013.

On August 7, 2013, the Commission assessed a \$25 penalty against Martinson Moving for failing to file an annual report and pay regulatory fees in Docket TV-130985. The Company filed an annual report and paid regulatory fees on August 14, 2013.

Martinson Moving has no history of penalties for safety violations.

10. **The Company's existing compliance program.** Eric Martinson is responsible for the Company's safety compliance program.
11. **The size of the Company.** The Company employs three drivers and operates four CMVs. The Company reported \$803,868 in gross revenue in 2020.

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 Martinson Piano \$13,800 (Penalty Assessment), calculated as follows:

- One hundred and thirty-six 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 these violations, for a total of \$13,600.
- Three 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.
- Two violations of 49 C.F.R. § 396.17(a) – Using a CMV not periodically inspected. The Commission assesses a "per category" penalty of \$100 for these critical violations.

¹ 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 of 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 of 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 Penalty Assessment** 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 April 4, 2022.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TV-220148

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 \$13,800 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: 4/12/2022 [month/day/year], at Everett, WA [city, state]

Martinson Piano Moving
Name of Respondent (company) – please print

Eri Martinson
Signature of Applicant

UTC

April 12, 2022

Rayne Pearson,

I'm writing this letter first to take responsibility for not having my documentation

And driver medical cards current but also to explain that I have since my appointment with Francine Gagne, had all drivers get medical cards, create files for our vehicles with maintenance schedules and repair information and sent in my safety plan.

Our goal for Martinson Piano Moving is to have all our records current for the next inspection so we can achieve a satisfactory rating with the UTC. In addition, our drivers have at all times been full been fully insured, had good driving records and have been covered by health insurance.

In regards to the penalty assessed for Martinson Piano Moving – I would like to add that after suffering loss of revenue in 2020 due to the pandemic, and slowly coming back from that during 2021, our company is still struggling to get up to pre-pandemic workload and income levels.

Hiring new employees has been difficult and has also impacted our bottom line. It would be a huge burden for our company to have to come up with the \$13,600.00 in fines.

I hope that the commission, after reviewing my letter, can find a way to at least reduce the penalty we've been assessed.

Thank you for your consideration.

Sincerely,

Eric Martinson
Martinson Piano Moving

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