



Merchants Moving & Storage

Interstate Agent for Bekins Van Lines, Inc.

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May 31, 2019

Washington Utilities and Transportation Commission
Motor Carrier Safety
1300 S. Evergreen Park Drive SW
PO Box 47250
Olympia, WA 98504-7250
Attn: Rayne Pearson, Director Administrative Law Division

Reference: Penalty Assessment: TV-190326

Dear Mr. Pearson.

This letter is in response to the penalty assessment against Merchants Parcel Delivery, Inc. d/b/a Merchants Moving & Storage Company in Bremerton, WA.

As stated on March 26, 2019, Commission Motor Carrier Investigator Sandra Yeomans completed her routine safety investigation of Merchants Moving & Storage as indicated. In her research she did discover multiple violations at the time; **Merchants does not dispute any of them**, but there is an explanation for them occurring at all. Merchants realizes that the explanation **in no way excuses or dismisses her findings**.

In Mrs. Yeomans report, it is stated that on September 15, 2005, Commission Motor Carrier Investigator Tom McVaugh completed a routine safety investigation of Merchants Moving & Storage resulting in a "Satisfactory" safety rating.

In 2005, Mr. Joseph Oswald, Sr. was the owner and manager of the business. I assume he was present during the inspection but I cannot confirm this. On August 1, 2011, I was hired by his son Michael Oswald, (the current manager at the time), to be the Office Manager, Bookkeeper. (My previous experience **did not include** a business background pertaining to Transportation). When my employment began I had less than one week of training. The training I did receive pertained to Merchants current bookkeeping and business contacts.

Michael Oswald spent minimal time in the office and offered no training or insight. He never spoke about the business. In March 2012, Mr. Oswald, Sr. (who was retired) released Michael Oswald of his duties and left the running of Merchants Moving & Storage to Darrell Franck, (then warehouse manager) and myself to run the everyday functions of the business. Mr. Franck has worked for Merchants since 1991. Mr. Oswald, Sr. came to the office periodically and was always available by phone if we had a specific question. Between Mr. Franck and myself we turned a then failing business into a viable business. We applied our skills and

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knowledge to everyday functions and continue to implement changes and improvements as they become available. Neither Mr. Franck nor I were aware of the previous inspection and what was required. We are both self-taught.

Both Mr. Franck and I found the inspection to be very helpful and informative. We recognized that our everyday functions were not complete and welcome Mrs. Yeomans findings. In fact, all violations have been corrected and changes were implemented immediately; some while she continued to audit our records.

Included in our response, we are submitting Examples of our working relationships with outside vendors and copies of internal changes.

Our response to the Penalties' are as follows:

WAC 480-15-555

Failing to complete a criminal background check for every person the carrier intends to hire.

Our entire crew never had a Background check. The owners of Merchants Moving and Storage had not done Background checks in the past. I am not sure if they were aware that they were required to. Merchants has been owned by the same family for the past 55 years and prior to Mr. Oswald's death, he conducted business as he always had which was "old school".

After comparing several background check businesses, Merchants entered into a working relationship with Clear Screening Technologies LLC out of Colorado. All sixteen Background Checks were completed by the time the Compliance Review was presented to Merchants on March 26, 2019. The Background Check goes back seven years on a national level as well as local jurisdictions. Merchants has also paid for monthly updates to be done on all employees which is renewable on an annual basis.

The new policy will be to run a Background check on every potential new hire, (regardless of the position they are applying for at Merchants) if they are under serious consideration for hire. This is outlined in our revised Application for Employment. (See Example # 1)

Title 49 CFR 390.35

Making or causing to make a fraudulent or intentionally false statements, fraudulent or intentionally false entries on records, and/or reproducing records for fraudulent purposes.

The form in question is a Wheaton/Bekins Annual Violations Report that is generated annually from headquarters in Indianapolis, Indiana for the CDL driver to complete and have the agency mail in. Each qualified CDL driver who is a full time or intermittent driver hauling HHG for the Van Lines must complete this form around their birthday anniversary stating if they have had any violations over the past year. The form is then submitted to the Safety Department at Bekins for review at which time Bekins would run an abstract. If there were any violations not reported by the driver, Bekins would notify Merchants of the discrepancy and the driver could be fined, suspended or released as a driver from the fleet depending on the violation that was not reported.

As Co-Manager of the Agency, I have to sign the form and submit it to the Safety Department at Bekins Van Lines. I keep a copy of the form in the Driver's file. In order to be in compliance with the UTC, this process has been modified. Merchants cannot assume that information filled out by the driver is correct but must and will verify the information by obtaining a current Abstract from the Department of Licensing (independent of Bekins) and compare the information from the Abstract to the completed drivers form. Example of completed form and driving abstract for driver is included for review. (See Example # 2 & # 3)

Prior to notification from Sandy Yeomans of the UTC that this process was misleading and could be construed as being fraudulent; Merchants viewed this form as an internal document only. In no way was it meant to be Fraudulent.

Title 49 CFR 391.45 (a)

Using a driver not medically examined and certified.

All three drivers, Justin Bart, Mathew Chesser (Interim Driver) and Mason Robertson (Interim Driver) do not hold a CDL and were driving vehicles under 26,000 GVW. I was not aware that All driver's driving a commercial vehicle, even if it is under 26,000 GVW must have a current Medical Certificate.

Upon learning that our driver's required a Medical Certificate, I immediately called The Doctor's Clinic Occupational Health office in Silverdale, WA. with whom Merchants Moving and Storage has an account with. I made the first available appointments for all three gentlemen, which they went too and now all three are certified.

I understand for the safety of others, including the Drivers well-being; that **all** potential drivers in the future **must and will** have a Medical Certificate before they are able to drive any of the commercial vehicles. (See Example # 4)

Had I been aware that a Medical Certificate was needed, I guarantee **none** of the One Hundred forty-four violations would have occurred.

New Policy & Procedure for drivers.

- 1) Complete Employment Application which includes an additional "Drivers Only" section.
- 2) Order Driving Abstract
- 3) Verify previous Employment including driving information that is allowable.
- 4) Send potential new hire to the Doctor's Clinic for a Medical Certificate.
- 5) If items 1-4 are approved, then applicant will be required to take a Road Test with our Operations Manager on the type of truck he/she will be driving.

Title 49 CFR 391.51 (a)

Failing to maintain driver qualification file on each driver employed.

Merchants had maintained a driver qualification file for the three CDL drivers we employed but did not for Non-CDL drivers. The only requirement that Merchants had for Non-CDL drivers was that they had an acceptable drivers abstract to meet the insurance companies Metrix.

All drivers, CDL and Non-CDL alike, have Driver Files. They include a Driver's Application, Current Driving Abstract, a Medical Certificate along with a copy of the National Registry of Certified Medical Examiners Search verifying the Medical Examiner's Name, National Registry Number and Medical Examiner's State License number and a seven year National and Local Criminal Background Check with monthly updates for any Criminal Activity that may have occurred after the initial background check.

In closing, Merchants Moving & Storage, going forward, will continue to comply with State and Federal Regulations and will continue to strive to be the best Moving Company on the Kitsap Peninsula.

Deepest Regards,



Joette Marchisella
Co-Manager/Office Manager
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WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TV-190326

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 \$16,200 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):

SEE Attached.

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: 5/31/19 [month/day/year], at Bremerton, WA [city, state]

JOETTE MARCHISELLA
Name of Respondent (company) – please print

Joette Marchisella
Signature of Applicant