

Service Date: July 22, 2019

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TV-190540
PENALTY AMOUNT: \$300

Phillip E. Pettinger
d/b/a Pettinger Family Movers
4304 E. 41st St.
Spokane, WA 98223

RECEIVED
AUG 12 2019
WASH. UT. & TP. COMM

The Washington Utilities and Transportation Commission (Commission) believes Phillip E. Pettinger d/b/a Pettinger Family Movers (Pettinger Movers or Company) violated Washington Administrative Code (WAC) 480-15-560, Equipment Safety Requirements, which adopts Title 49 CFR Part 393 – Parts and Accessories Necessary for Safe Operations, and Part 396 – Inspection, Repair, and Maintenance; and WAC 480-15-570, Driver Safety Requirements, which adopts Title 49 CFR Part 391 – Qualifications 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 June 27, 2019, Commission Motor Carrier Investigator Sandi Yeomans completed a routine safety investigation of Pettinger Movers and documented the following violations:

- **One violation of Title 49 CFR Part 391.51(a) – Failing to maintain driver qualification file on each driver employed.** The Company failed to maintain a driver qualification file for driver Phillip Pettinger.
- **Two violations of Title 49 CFR Part 396.3(b) – Failing to keep minimum records of inspection and vehicle maintenance.** The Company failed to keep minimum records of inspection and maintenance for either of its two vehicles.
- **One violation of Title 49 CFR Part 393.47(a) – Inadequate brakes for safe stopping.** Commission Staff (Staff) discovered a commercial motor vehicle with brake fluid contaminating the brake friction material on the left inside dual tire of axle two.¹ This commercial motor vehicle was placed out of service.

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. Companies that: (1) fail to maintain driver qualifications, (2) fail to keep records of inspection and vehicle maintenance, and (3) use commercial motor vehicles in need of repair put their customers and their customers'

¹ Equipment Identification Number 002

belongings, as well as the traveling public, at risk. These violations present serious 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.

The Company applied for household goods moving authority on September 26, 2011. In its application, the Company's owner, Phil Pettinger, acknowledged his responsibility to comply with applicable safety laws and regulations.

On May 23, 2013, Commission Motor Carrier Investigator Alan Dickson completed a safety investigation of Pettinger Movers, which resulted in a satisfactory safety rating.

The Company's household goods permit was canceled on October 27, 2014, for failure to submit an annual report and pay regulatory fees. The Company applied again for household goods moving authority on February 11, 2016. In its application, Mr. Pettinger acknowledged the Company's responsibility to comply with applicable safety laws and regulations.

On May 19, 2016, Mr. Pettinger and Reggie Martin attended household goods training provided by Staff.

On May 7, 2017, Commission Motor Carrier Investigator Sandi Yeomans completed a safety investigation of Pettinger Movers, which resulted in a satisfactory safety rating. Staff provided technical assistance to the Company during this investigation.

The Company knew or should have known about these requirements.

3. **Whether the company self-reported the violations.** The Company did not self-report these violations.
4. **Whether the company was cooperative and responsive.** Pettinger Movers was cooperative throughout the investigation, and expressed a desire to come into compliance.
5. **Whether the company promptly corrected the violations and remedied the impacts.** The Company corrected some of the violations, and has been asked to submit a Safety Management Plan.
6. **The number of violations.** Staff identified eight violation types with a total of nine individual occurrences.
7. **The number of customers affected.** The Company employs one driver, operates two commercial motor vehicles, and reported 50,000 miles traveled in 2018. Members of the traveling public were put at risk by these safety violations.

8. **The likelihood of recurrence.** The Commission does not know if Pettinger Movers is likely to repeat these safety violations. However, past performance can be an indicator of future violations. On June 6, 2017, Pettinger Movers was penalized in Docket TV-170679 for 113 violations of using a driver not medically examined and certified. The Commission suspended a portion of the penalty subject to the condition that the Company must not repeat that same violation. Pettinger Movers satisfied that condition.

During all safety investigations, Pettinger Movers has been cooperative with Staff and willingly accepted technical assistance.

9. **The company's past performance regarding compliance, violations, and penalties.** This is the Company's third routine safety investigation. The Company was penalized \$1,000 twice for failure to file its annual report and pay its regulatory fees.² The Company had its permit cancelled in Docket TV-143238 after being held in default for failure to file its annual report and pay its regulatory fees. The Company was penalized \$6,300 in Docket TV-170679 for 113 violations of using a driver not medically examined and certified.³ All penalties were paid in full.
10. **The company's existing compliance program.** Mr. Pettinger is responsible for the Company's safety compliance program.
11. **The size of the company.** Pettinger Movers is a small company with one driver and two vehicles. The Company reported \$85,000 in gross revenue for 2018.

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.⁴ The Commission generally will assess penalties per type of violation, 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 Pettinger Movers \$300, calculated as follows:

- One violation of Title 49 CFR Part 391.51(a) – failing to maintain a driver qualification file on each driver employed. The Commission assesses a penalty of \$100 for this first-time critical violation.

² Docket TV-130992 and TV-140982

³ In Docket TV-170679, the Commission assessed a reduced penalty of \$6,300, a \$3,300 portion of which was suspended and ultimately waived. The Company paid the \$3,000 penalty due in full.

⁴ Docket A-120061 – Enforcement Policy of the Washington Utilities & Transportation Commission – Section V.

- One violation of Title 49 CFR Part 393.47(a) – inadequate brakes for safe stopping. The Commission assesses a penalty of \$100 for this out-of-service violation.
- Two violations of Title 49 CFR Part 396.3(b) – failing to keep minimum records of inspection and vehicle maintenance. The Commission assesses a penalty of \$100 for this first-time critical 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 any or all 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 or all 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 his or her 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 violations.
- Request mitigation to contest the amount of the penalty.

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 notice. 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 July 22, 2019.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TV-190540

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 \$300 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: 7-26-2009 [month/day/year], at SPOKANE, WA [city, state]

Phillip E. PETTINGER
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.”