

Service Date: September 23, 2019

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TV-190761
RECEIVED PENALTY AMOUNT: \$4,700

OCT 07 2019

WASH. UT. & TP. COMM

Clutter, Inc.
21402 24th Ave S. Suite A
Des Moines, WA 98198

The Washington Utilities and Transportation Commission (Commission) believes that Clutter, Inc., (Clutter or Company) violated Washington Administrative Code (WAC) 480-15-570, Driver Safety Requirements, which adopts Title 49 Code of Federal Regulations (49 CFR) 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 September 10, 2019, Commission Motor Carrier Investigator Edward Steiner completed a routine safety investigation of Clutter and documented the following violations:

- **Forty-seven violations of 49 CFR § 391.45(a) – Using a driver not medically examined and certified.** The Company allowed drivers Joshua Gamble, Spencer Emry, Ibijoke Idowu, and Josue Lopez Madrid to drive a commercial motor vehicle without having been medically examined and certified on 47 occasions between April 27 and July 31, 2019.

The Commission considered the following factors in determining the appropriate penalty 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 use drivers not medically examined and certified put their customers, customers' belongings, and the traveling public at risk. These violations present serious safety concerns.
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 violations.

On November 29, 2016, the Commission received the Company's application for household goods moving authority. In the application, Travis Eagles-Soukup, Director of Seattle Operations, acknowledged the Company's responsibility to understand and comply with applicable safety laws and regulations.

On November 7, 2017, and August 7, 2019, employees representing Clutter attended household goods training provided by Staff. The employees acknowledged receiving training pertaining to motor carrier safety regulations.

The Company knew or should have known about this requirement.

3. **Whether the Company self-reported the violations.** Clutter did not self-report these violations.
4. **Whether the Company was cooperative and responsive.** Clutter was cooperative throughout the investigation.
5. **Whether the Company promptly corrected the violations and remedied the impacts.** Clutter presented evidence to Staff that the violations have been corrected.
6. **The number of violations.** Staff identified five violation types with a total of 55 individual occurrences.
7. **The number of customers affected.** The Company employs 17 drivers and operates 26 motor vehicles. Clutter traveled 8,500 miles in 2018. These safety violations presented a public safety risk.
8. **The likelihood of recurrence.** Staff identified process breakdowns within Clutter's operations. 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. 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 October 15, 2018, the Commission entered a complaint in Docket TV-180772 against Clutter for failing to file a complete annual report and pay regulatory fees. On December 5, 2018, the Commission dismissed the complaint against Clutter after the Company filed its annual report and paid regulatory fees.

On June 14, 2019, Clutter was penalized \$250 for failing to file a timely annual report and pay regulatory fees by May 1, 2019. The Company paid the \$250 penalty in full on July 12, 2019.

Clutter has no history of penalties for safety violations.
10. **The Company's existing compliance program.** Sean Winter, Clutter's Field Supervisor, is responsible for the Company's safety compliance program.
11. **The size of the Company.** The Company currently leases 26 vehicles and employs 17 drivers. The Company reported \$1,383,813 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.¹ 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 Clutter \$4,700, calculated as follows:

- Forty-seven violations of 49 CFR § 391.45(a) – Using a driver not medically examined and certified. The Commission assesses a penalty of \$100 for each occurrence of this violation, for a total of \$4,700.

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 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 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

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

regulated service, assessing additional penalties, or referring this matter to the Office of the Attorney General for collection.

DATED at Lacey, Washington, and effective September 23, 2019.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TV-190761

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 \$4,700 in payment of the penalty.
- 2. **Contest the violations.** I believe that the alleged violations 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):

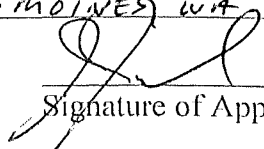
a) I ask for a hearing to present evidence on the information I provide above to an administrative law judge for a decision.

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: 9/27/2019 [month/day/year], at DES MOINES WA [city, state]

JOHN JENKINS
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