**Board of Towing and Recovery Operators**
**Joint Compliance and Consumer Affairs and Administrative Affairs Committee Meeting**
**April 29, 2010, 10:00 am**
**Department of State Police**
**Police Academy Room 335**
**7700 Midlothian Turnpike, Richmond, VA**

**Members Present:**

Woody Herring – Chairman
Adan Rangel
Mark Sawyers
Roy Boswell
Ron Miner
Brock Cole – Designee of the Commissioner of the Department of Motor Vehicles

**Members Absent:**

Charlie Brown
Ken Mitchell

**Board Counsel:**

Jeff Spencer – Senior Assistant Attorney General

**Staff Present:**

Marc Copeland
Barbara Drudge
Kara Corso

**Called to Order:**

The meeting was called to order at 10:07 am.

**Public Comment:**

Henri Stein-McCartney, of the Fairfax County Consumer Protection Division, commented on the changes that Fairfax submitted on the compliance monitoring and enforcement practices, and said that she apologizes for any changes that may distort the intent of those particular sections, and to ignore them if they do so.

**Approval of Minutes:**

Mr. Miner moved to approve the minutes from the January 27, 2010 Joint Committees meeting. Mr. Alvarez seconded that motion, and all were in favor.

**Review of Certain Compliance Policies and Procedures:**

Mr. Copeland stated that Board counsel has reviewed the compliance policies and procedures and there were some formatting and authority issues that needed to be

addressed. He stated that they have been condensed into summary statements in order to allow more discretion for the Board.

Mr. Spencer stated that the previous compliance policies and procedures tied the hands of the Board and that the procedures are there to give guidance, and that by setting out the Board's powers and duties in the introduction of these procedures, it will clarify the Board's aim. He further stated that action needs to be taken whether on a complaint or an investigation, and that the Board is required to follow the statute. He expressed the importance of using the least coercive methods to bring people into compliance, which will occur voluntarily. He stated that voluntary compliance is less expensive, less time-consuming, and less difficult to implement. He mentioned that the policies and procedures are internal procedures within the agency, and therefore they do not have the status of regulations and guidelines which makes them more flexible.

Chairman Herring and Mr. Boswell expressed their concerns for the summarization of the policies and procedures after they had worked on them for over two days. Mr. Boswell further expressed his concern about the coercive powers that may be given to BTRO, and how much power is given to the compliance officer.

Ms. Drudge stated that she tries to bring towers into compliance, and that she doesn't mention to the towers the power to suspend or revoke their license, and that BTRO tries to bring them into compliance versus taking a heavy hand with them.

Mr. Copeland stated that non-compliant towers understand in the end that they need to be compliant, and that some are not aware of what the Board is capable of yet, but that is part of having a new Board. He further stated that no suspension or revocation would occur without first having Board approval.

Mr. Boswell agreed that the towers are not aware of the procedure for their license suspension or revocation.

Ms. Drudge stated that it was her intention to make the policies and procedures consistent, and that taking out the details will allow for discretion.

Mr. Alvarez suggested using a penalty matrix, which works for his agency and may give the Board some guidelines.

Ms. Drudge stated that everything in the first three documents of the policies and procedures is still included in this version, but has been summarized.

Mr. Miner stated that he is for having a simpler version of the policies and procedures. He then asked if the document was living and if changes could be made later as needed. Mr. Spencer said that it is, and that changes can be made, like adding a penalty schedule, and expressed his concerns for having a strict civil penalty schedule until you know what kinds of situations are at hand.

Chairman Herring requested a motion to review the policies and procedures with edits by the Fairfax representatives. Mr. Miner moved to review the document edited by Fairfax, and Mr. Cole seconded that motion. All were in favor except Mr. Rangel and Mr. Boswell.

**Review of the Compliance Policies and Procedures:**

Beginning with the introduction, the Joint Committee reviewed and discussed the policies and procedures with edits by the Fairfax representative.

A discussion ensued on the requirement of the compliance officer to report to the executive director in which Mr. Copeland clarified that delegation does occur between him and the compliance officer for information purposes.

Mr. Boswell asked if BTRO has the authority to issue a civil penalty for not refunding money to a customer. Mr. Miner stated that his interpretation is that returning money to a customer is not a civil penalty. Mr. Copeland stated that the Board has no authority to demand that any operator refund money, but they will try to mediate the situation, and that major issues will go through the Board.

Mr. Alvarez expressed his concern that the corrective action plan is a formal document, and may prevent flexibility, and suggested using a dispute resolution approach. Mr. Copeland clarified that the corrective action plan is not for every situation that arises, and that it is for those who are not compliant.

Ms. Drudge stated that a running report would be kept for the corrective action plans that are in place and that the Board could be notified via e-mail as suggested by Mr. Boswell and Mr. Copeland stated that he will inform the Board about what is going on with the corrective action plans as they arise.

Mr. Boswell asked if the corrective action plan will let the violator know the consequences if they do not agree or comply with it. Ms. Drudge confirmed this, and that for each notice sent out, she is required by law to include the rights and remedies under the Administrative Process Act.

Mr. Alvarez began a discussion on the use of certified mail, and Mr. Copeland pointed out that it is not required, but suggested adding it as a requirement in the corrective action plan.

Chairman Herring asked if complaint hearings were public and whether the subject of the action would be able to defend themselves, and Mr. Spencer confirmed and stated that it would be public, but that it is not a “hearing”. He went on to say that appeals to the full Board’s decision would go to the courts, and that hearings require witnesses.

Mr. Alvarez stated that there is a mechanism in place for checks and balances for the subject of the action to defend themselves, and Mr. Cole stated that the Board would not be able to stop the subject of the action from making public comment.

Mr. Copeland stated that complaints would be forwarded to local jurisdictions that have towing codes. Mr. Alvarez then asked about forwarding complaints to local towing advisory boards. Ms. Drudge then stated that complaints that can be resolved in a matter of minutes will not be forwarded, and Mr. Spencer mentioned the need to work with localities, but that towing advisory board's do not have regulatory power.

Mr. Miner asked if the violator was required to comply with the laws and regulations while their appeal is pending in court. Mr. Spencer stated that the appeal is with the Board not the courts, and that the subject of action is required to comply during that appeal process. He went on to say that if the corrective action plan is appealed, the appeal would go to the Compliance and Consumer Affairs and Administrative Affairs Committees and then to the full Board for a decision, and to court if the violator feels the need to go further.

Chairman Herring requested a motion to adopt the changes made to the policies and procedures. Mr. Minor moved to adopt all changes made to the policies and procedures. Mr. Cole seconded that motion. Mr. Alvarez and Mr. Boswell expressed their concerns that the document be reviewed by the Joint Committee before approval. Mr. Spencer stated that the motion was to accept the changes, and recommended outlining that in the motion.

Mr. Miner amended his motion and moved that the corrections be made and e-mailed to the Joint Committee members by Thursday of the following week and returned if further changes needed to be made. Mr. Copeland stated that once he receives any comments, he can transmit them to the Joint Committee but they are not to be discussed outside of a meeting. Mr. Spencer reiterated that it is a living document. Mr. Alvarez withdrew his comment, and stated that he understands that the document will reflect the changes made and may not require another meeting on the issue. Mr. Copeland stated that as counsel has indicated, and once the members receive the document he will notify the Joint Committee chairs, and decide whether there is a need to have another meeting. Mr. Miner continued his motion. Mr. Rangel seconded the motion and all were in favor.

**Meeting Adjournment:**

Chairman Herring requested a motion for adjournment. Mr. Miner so moved and all were in favor. The meeting adjourned at 12:17 pm.