

**Compliance and Consumer Affairs Committee and
Administrative Affairs Committee**

Virginia Board of Towing and Recovery Operators

May 25, 2010 – 9:30 AM

**Department of State Police
Police Academy Room 317
7700 Midlothian Turnpike
Richmond, Virginia 23235**

MEETING AGENDA

1. Call to order
2. Finalize and approve Compliance Monitoring and Enforcement Practices (draft copy included below)
3. Adjournment

Instructions for Meeting Location

1. When you enter State Police Headquarters on Midlothian Turnpike, stay to the right until you come to a gate.
2. If the gate is not up upon arrival, press button number 3 and the # button, and the duty sergeant will answer.
3. Inform him that you are attending the Board of Towing and Recovery Operators meeting, and they will buzz you in.
4. The Academy is all the way to back of the campus on a hill. The State Trooper statute is standing in front of the Academy.
5. Once inside the Academy, you will see the stairs. Proceed to the top floor; bear right before the double doors, turn right and Room 317 is located at the end of the hall.

Board of Towing and Recovery Operators

Compliance Monitoring and Enforcement Practices

Introduction

Virginia law has established the Board of Towing and Recovery Operators (the “Board”) in Chapter 28 of Title 46.2 of the Code of Virginia, and has provided in Chapter 28 that the Board shall have the power and the duty to enforce compliance with the requirements of Chapter 28 relating to towing and recovery operators (“operators”) and tow truck drivers (“drivers”). Specifically, the Board is given the power and duty to: (1) “revoke, suspend, or fail to renew a license” for violations of Chapter 28 or regulations promulgated under it; (2) to receive complaints concerning the conduct of persons and businesses licensed by the Board and take appropriate disciplinary action, if warranted; (3) establish means and procedures by which members or employees of the Board may attempt to mediate and resolve in an expedited manner, complaints filed against those licensed or otherwise regulated by the Board; (4) assess civil penalties not to exceed \$1,000 for any single violation against any person violating any provision of Chapter 28; (5) bring an action to enjoin any violation of Chapter 28; and (6) do all things necessary and convenient for carrying into effect the provisions of Chapter 28 or the regulations promulgated under it.

Those powers are designed to allow the Board to guide operators and drivers into compliance with a significant number of requirements set out in Chapter 28 and the regulations promulgated under it, including requirements that all operators be licensed and all drivers have a driver authorization document (“DAD”), that operators employ only drivers with a DAD, that operators maintain records, display their license, post their fees for services, accept credit cards, and many other requirements set out in detail in Chapter 28 and in the Board’s regulations at 24 VAC 27-30.

The powers granted to the Board provide a wide range of options for encouraging, facilitating, compelling, and finally coercing compliance with the requirements of Chapter 28. The sanctions and tools available range from relatively mild to rather harsh. It is the intent of this policy document that, in general, the Board will attempt to utilize the least coercive methods available to enforce compliance, reserving the harsher, more coercive powers for situations in which noncompliance appears to be recurring, willful or of such a serious nature that lesser measures would be unavailing to protect the public.

Process Summary

- I. The Board has mechanisms in place to monitor compliance with laws and regulations of the Board, including:
 - a. Information obtained by Board staff from law enforcement officials, governmental officials, businesses, and other entities, from inspections and investigations performed by Board staff, and from self-reporting by licensed operators and drivers.
 - b. Complaints received by Board staff
 - c. Information obtained through complaint processing and negotiation of complaint resolution.

- II. Once the Board receives or obtains information indicating that a violation of law or regulation may have occurred, research and analysis is performed, as necessary, to determine (1) if the Board has authority over the matter, and (2) whether there is evidence that a violation of the requirements of Chapter 28 or Board regulations has occurred. If there are no findings of a violation at this stage, then the investigation is closed, and if it was result of a complaint, the complainant is notified in writing of the results of the investigation.
- III. If information appears to be sufficient to justify an investigation and the Compliance Officer or designee finds that the matter is within its jurisdiction, then the Compliance Officer or designee will contact the complainant or other source of information, the operator or driver, and any other person involved. The Compliance Officer or designee will also gather copies of any documents relevant to the matter for evaluation purposes. If the Compliance Officer or designee determines that compliance or enforcement action is not warranted, and that determination is affirmed by the Executive Director, the matter will be closed by issuing a closing letter. If there is evidence of minor non-compliance, the Compliance Officer will notify the operator or driver of its findings in writing for future compliance purposes, and will retain a record of such findings for such purposes and for reporting to the Compliance and Consumer Affairs Committee.
- IV. If there are findings of violations of requirements in Chapter 28 or the regulations, the Compliance Officer or designee will recommend to the Executive Director the sanctions, including, but not limited to: (1) a written reprimand, (2) a monetary civil penalty, (3) a Corrective Action Plan and continued monitoring, (4) suspension of a license, or (5) revocation of a license; the recommendation will also include details supporting the recommendation. If the Compliance Officer or designee recommends a Corrective Action Plan, then a draft Corrective Action Plan will be provided to the Executive Director for review and consideration. If the Executive Director agrees with a recommendation for a monetary penalty, or the suspension or revocation of a license, the Executive Director will forward the recommendation to the Compliance and Consumer Affairs Committee for review and consideration. If the Compliance and Consumer Affairs Committee does not approve the recommendation, then the matter will be referred back to the Executive Director for further consideration or action as directed by the Compliance and Consumer Affairs Committee. If the Compliance and Consumer Affairs Committee approves a monetary penalty, or a suspension or revocation, then the recommendation will be forwarded to the Board for approval. Factors used to determine the amount of a civil penalty assessment or level of sanction include:
 - a. The seriousness of the violation.
 - b. Whether the violation was willful or intentional.
 - c. Whether the operator or driver was acting in good faith to avoid and/or lessen the seriousness of the violation or to correct the violation after it became apparent.
 - d. Whether the operator or driver previously engaged in similar violations.
 - e. The level of sanction necessary to prevent future violations.
 - f. Any other matter that fairness mandates.
- V. If a Corrective Action Plan is issued by the Executive Director, uncontested by the operator or driver, and signed and returned by the licensee to the Board, then the Compliance Officer or designee will monitor the terms and conditions of the Corrective Action Plan for compliance purposes. If the terms are contested in writing, then the Executive Director will evaluate the request and either (1) amend the Corrective Action Plan, or (2) uphold the original Corrective Action Plan. If the operator or driver fails to sign or comply with the Corrective Action Plan,

then the matter will be forwarded to the Compliance and Consumer Affairs Committee for further review and action. Additionally, violations under the Corrective Action Plan will be reported to the Executive Director for further action, including forwarding to the Compliance and Consumer Affairs Committee for review and consideration. Any recommendations by the Executive Director or the Compliance and Consumer Affairs Committee to impose a monetary civil penalty, or to suspend or revoke a license, require final Board approval.

- VI. This policy will assist Board staff in determining a suitable response to compliance matters, in determining anticipated sanctions, and for settling administrative matters. The measures identified and described in this document are intended solely for the use of Board staff, and are not intended and cannot be relied upon to create rights, substantive or procedural, enforceable by any party.

Definitions

Board of Towing and Recovery Operators	Virginia Board providing oversight of all towing and recovery operators and drivers in the Commonwealth of Virginia.
Board of Towing and Recovery Operators – Statutory and Regulatory Authority	Chapter 28 of Title 46.2 (Section 46.2-2800, <i>et seq.</i>) of the Code of Virginia, and Chapter 30 – General Regulations for Towing and Recovery operators, 24 VAC 27-30-10, <i>et seq.</i>
Compliance and Consumer Affairs Committee	The Board Committee created to provide oversight of compliance and consumer matters of the Board consisting of six Board members.
Corrective Action Plan	A formal disciplinary process intended to direct an operator or driver back in compliance with the statutory and regulatory requirements of the Board, during which for a specified period of time, restrictions and/or civil penalties for non-compliance may apply.
Driver	A person who drives or is in actual physical control of a tow truck. A driver is required to have obtained an authorization document issued by the Board in order to drive a tow truck while providing towing or recovery services.
Minor Non-Compliance	An operator or driver with reported incidents, or events, which are not serious or continuing non-compliance. A Board finding of minor non-compliance may include a determination of what appropriate corrective action, if any, should be put into action.
Non-Compliance	Failing to carry out or abide by applicable laws or regulations governing the operation, management, or conduct of operators or drivers. May vary in nature, severity, and frequency
Operator	Any person offering services involving the use of a tow truck and services incidental to use of a tow truck; this term does not include a franchised motor vehicle dealer as defined in § 46.2-1500 using a tow truck owned by a dealer when transporting a vehicle to or from a repair facility owned by the dealer when the

dealer does not receive compensation from the vehicle owner for towing of the vehicle or when transporting a vehicle in which the dealer has an ownership or security interest.

Overview

I. Operator and Driver Standards

Operators and drivers will be expected to cooperate, in good faith, to facilitate the Board's efforts to effect compliance and will be required to:

- a. Observe, follow, and comply with the laws and regulations governing operators and drivers.
- b. Observe accepted professional standards of care, conduct, competence, practices and reputation.
- c. Continue to satisfy Board licensing requirements.

II. Receipt of Complaint

- a. The Compliance Officer or designee will receive and investigate complaints against those licensed or otherwise regulated by the Board. In the case of complaints filed against those licensed or otherwise regulated by the Board that allege a specific statutory or regulatory violation, the Compliance Officer or designee will conduct all pertinent investigations and, if appropriate, seek compliance with the statute and the regulations. Complaints that do not fall within the specific jurisdiction of the Board will be shared with the appropriate federal, state, or local departments or agencies.
- b. During the information gathering practice, the Compliance Officer or designee may contact the complainant, driver, or operator to discuss the details of the complaint and to obtain any other information that may be available. The Compliance Officer or designee will conclude the initial evaluation of documents submitted and information obtained regarding the complaint.
- c. If the findings reveal minor non-compliance, the Compliance Officer or designee will send a letter or email, as applicable, to the complainant and the affected operator or driver outlining the findings. If the findings reveal more than minor non-compliance, the Compliance Officer or designee will provide a synopsis and direction taken to moderate or otherwise resolve the issues. The Compliance Officer or designee will review the findings with the Executive Director if more serious non-compliance is found, with recommendations to cure the compliance issues.

Resolution Options

I. Corrective Action Plan

- a. If the Compliance Officer or designee recommends to the Executive Director a Corrective Action Plan, then the Compliance Officer or designee will prepare a draft Corrective Action Plan for review and consideration by the Executive Director. If a Corrective Action Plan is issued by the Executive Director, uncontested by the operator or driver, and signed and returned by the licensee to the Board, then the Compliance Officer or designee will

monitor the terms and conditions of the Corrective Action Plan for compliance purposes. The Compliance and Consumer Affairs Committee will be notified in writing of all Corrective Action Plans issued.

- b. If the operator or driver does not agree with the terms of a Corrective Action Plan, then they will notify the Executive Director in writing. The Executive Director will evaluate the request and either (1) amend the Corrective Action Plan, or (2) uphold the original Corrective Action Plan. If the operator or driver fails to sign or comply with the Corrective Action Plan, then the matter will be forwarded to the Compliance and Consumer Affairs Committee for further review and action. Additionally, violations under the Corrective Action Plan will be reported to the Executive Director for further action, including forwarding to the Compliance and Consumer Affairs Committee for review and consideration. Any actions by the Compliance and Consumer Affairs Committee to suspend or revoke a license require final Board approval.
- c. If the finding is that a serious violation is involved, then the Compliance Officer or designee, upon recommendation of the Executive Director after review, will forward the complaint to the Chairman of the Compliance and Consumer Affairs Committee for review at its next regularly scheduled meeting or at a special meeting called to consider the matter.
- d. The Compliance and Consumer Affairs Committee will evaluate the complaint to determine if intervention is most likely to provide improvements in compliance with the statute and regulations, or whether other administrative or disciplinary action is needed, and evaluate issuance of a Corrective Action Plan and/or penalty assessment, or the suspension or revocation of a license. The Compliance and Consumer Affairs Committee will articulate and explain in any written recommendation, or decision, factors that are especially emphasized or relied upon in reaching a recommendation or decision.
- e. If the decision is that disciplinary action should be imposed, the Compliance and Consumer Affairs Committee will confer with the Board at its next regularly scheduled meeting or at a special meeting called to consider the matter prior to the issuance by the Board of any administrative or disciplinary action.
- f. The Compliance and Consumer Affairs Committee will forward its recommendation for sanction(s) to the Board, and a vote will be taken on the recommendation. The Board will notify the complainant, operator, or driver in writing within ten business days of the compliance action, if any, ordered by the Board, by U.S. Certified Mail.
- g. An operator or driver may appeal a Corrective Action Plan by submitting a written statement of their position within 30 calendar days of receipt of the notice of the imposed Corrective Action Plan. The Compliance and Consumer Affairs Committee will consider the appeal and may continue, modify, or reverse the Corrective Action Plan, at its discretion. The operator or driver may participate in the deliberations, and may appeal the Compliance and Consumer Affairs Committee's final decision. The Committee will forward its findings to the Board at its next regularly scheduled meeting or at a special meeting called to consider the matter. If, after reviewing the appeal, the findings are reversed and the Corrective Action Plan is rescinded and terminated, there is no further obligation by the operator or driver to follow the Corrective Action Plan. If the Board either upholds the Corrective Action Plan in its original terms, or modifies the terms of the Corrective Action Plan, the operator or driver must comply with the Corrective Action Plan as modified.

II. Civil Penalty Assessment

- a. At the discretion of the Board, an operator or driver found in violation of a statute or regulation may be assessed a civil penalty by the Board in an amount not to exceed \$1,000 per occurrence. Each violation of the applicable laws or regulations may be assessed separately. In cases of continued violation, a civil penalty may be assessed separately for each day of violation beginning with the day of notification of the violation and ending with the date the violation ceases.
- b. The Executive Director will make recommendations for a civil penalty assessment to the Compliance and Consumer Affairs Committee. If the Compliance and Consumer Affairs Committee concurs, then the matter is forwarded to the Board for final action. Any recommendations by the Compliance and Consumer Affairs Committee to impose a monetary civil penalty, or to suspend or revoke a license require final Board approval. If the Board approves a recommendation to impose a monetary civil penalty, then the operator or driver will be given the opportunity to request an informal fact finding proceeding at which he may contest imposition of the penalty
- c. In determining the amount of a civil penalty, the previous history of the operator or driver may be considered by the Compliance and Consumer Affairs Committee. The demonstrated good faith of the operator or driver in attempting to achieve timely compliance after notification may be taken into consideration in determining a civil penalty assessment.
- d. Payments of penalty assessments are due 30 calendar days from the notice date of the assessment, unless otherwise specified by the Board. Each notice will include a notice of the person's ability to appeal a final decision by the Board to the courts in accordance with Article 5 of the Administrative Process Act and Part 2:A of the Rules of the Virginia Supreme Court, pertinent provisions of which will be summarized. Each notice will also include a statement informing the penalized party that failure to pay any assessment within the designated time period may result in the automatic suspension or revocation of an operators license or driver authorization document, absent timely appeal notice under the Administrative Process Act.

Compliance Monitoring

The Board may conduct compliance monitoring that may include an administrative or field review for compliance purposes to determine if the operator or driver complies with the laws and regulations.