



STATE OF WASHINGTON  
**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**  
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**Date:** October 24, 2016

**To:** Judge Rayne Pearson

**From:** David Pratt, Assistant Director for Transportation Safety

**Re:** TE-161020 & TE-161021 – Leavenworth Shuttle and Taxi LLC  
Evaluation of Safety Management Plan and recommendations regarding the company's safety rating, the cancellation of its Charter and Excursion operating authority (Permit CH-65060), and associated penalties.

In July 2016, staff completed a compliance investigation of Leavenworth Shuttle and Taxi LLC (Leavenworth Shuttle). The investigation resulted in a proposed *unsatisfactory* safety rating effective October 25, 2016.

**The factors that led to the proposed unsatisfactory rating were violations of three critical regulations (334 occurrences).**

The investigation also resulted in penalty recommendations (TE-161020) against the company due to the large number of critical violations discovered.

“Critical” regulations are those identified as such where noncompliance relates to management and/or operational controls. These are indicative of breakdowns in a carrier's management controls. Patterns of noncompliance with a critical regulation are quantitatively linked to inadequate safety management controls and usually higher-than-average accident rates.

The critical violations discovered during the investigation are as follows:

1. **Two violations of CFR 382.301(a) – Using a driver before the motor carrier has received a negative pre-employment controlled substance test.** Leavenworth Shuttle allowed employees Sally Boyce and Hilary Mason to drive prior to receiving a negative controlled substance test result.
2. **Three violations (187 occurrences) of CFR 391.45(a) – Using a driver not medically examined and certified.** Leavenworth Shuttle allowed employees Mike

Kaelin, David Witt, and Jeff Miland to drive on 187 occasions between February and June 2016 without a current medical certificate.

3. **One violation (145 occurrences) of CFR 396.11(a) – Failing to require driver to prepare driver vehicle inspection report.** Leavenworth Shuttle does not require completion of driver vehicle inspection reports. Staff discovered 145 occurrences within a 90-day sample period in which Leavenworth Shuttle employees drove company vehicles and failed to complete driver vehicle inspection reports.

Companies that receive a proposed unsatisfactory safety rating have 45 days to request and receive a change to the proposed unsatisfactory safety rating by submitting a safety management plan. The plan must provide evidence that the company has taken corrective action to address the violations identified and that company operations currently meet the safety fitness standard as specified in 49 CFR Parts 385.5 and 385.7.

Leavenworth Shuttle received notice of its proposed unsatisfactory safety rating on September 7, 2016, and the 45 day period to request and receive a safety rating upgrade ends on October 24, 2016. The company also received a packet of information explaining the requirements it was to meet in its safety management plan.

In a September 28, 2016, Notice of Intent to Cancel Certificate, the commission instructed the company to submit its proposed safety management plan no later than 5:00 p.m. Monday, October 10, 2016.

The company failed to submit its safety management plan by October 10, 2016. Instead, David Witt, owner of Leavenworth Shuttle LLC, provided his plan to the commission during a hearing on October 20, 2016. Judge Pearson instructed staff to review the company's plan and provide its recommendations by Monday, October 24, 2016, by 10:00 a.m.

The safety management plan submitted by David Witt on October 20 was not complete. Staff provided Mr. Witt with its feedback late in the day on the 20<sup>th</sup> and gave him until 4:00 p.m. Friday, October 21 to submit a revised safety management plan that met all the requirements. Mr. Witt made revisions to his plan and re-submitted it at 4:00 p.m. on Friday, October 21, 2016.

### **Evaluation of Safety Management Plan**

1. The plan must address each acute, critical, or serious violation discovered during the most recent Compliance Investigation. Corrective actions to address other violations noted during the investigation must also be included.
  - The safety management plan addressed each of the violations. Mr. Witt took personal responsibility for allowing the violations to occur and stated "*I understand it is my responsibility to comply and run this company under UTC rules, I fully acknowledge that and will never have this happen again.*" Mr. Witt repeatedly stated the violations occurred because of his ignorance of

the safety requirements. The plan did include specific remedies for each of the critical and non-critical violations.

2. Identify why the violations were permitted to occur.
  - Mr. Witt's plan states the violations were permitted to occur because of his ignorance of the safety regulations. He went on to say, "... *my deficiencies are not done out of disrespect for the rules of the road, but because I was uneducated in what I need to have in place to run this company.*" Staff believes Mr. Witt has taken responsibility for allowing the violations to occur.
3. Discuss the actions taken to correct the deficiency or deficiencies that allowed the violations to occur. Include actual documentation of this corrective action. (For example: documentation may include items such as new policies and procedures, training programs and sign-in lists, or copies of new forms.
  - The company has taken several steps to ensure the violations were corrected. Policies have been put into place that provide guidance on compliance. Outlook calendar reminders have been set up and new files have been created for all personnel and vehicles to assist in documenting compliance.
  - The company has hired a new consortium to manage their alcohol and controlled substance testing program. Mr. Witt also completed the required 60 minutes of reasonable suspicion training for both Alcohol and Controlled Substances.
  - All drivers have received negative test results from alcohol and controlled substance testing. Documentation was provided.
  - All drivers obtained medical certification from a medical provider on the National Registry. Documentation was provided.
  - The company created a pre-employment checklist to ensure all requirements are met prior to an employee performing safety sensitive duties.
  - The company has implemented a driver vehicle inspection report (DVIR) for capturing required information and provided examples of its use.
4. Outline actions taken to ensure that similar violations do not reoccur in the future. **YOU MUST DEMONSTRATE THAT YOUR OPERATIONS CURRENTLY MEET THE SAFETY STANDARD AND FACTORS SPECIFIED IN 49 CFR 385.5 and 385.7.** To do so, you must demonstrate that you now have adequate safety management controls in place which function effectively to ensure acceptable compliance with applicable safety requirements.
  - Mr. Witt's plan explains the new policies and procedures that have been put in place. He implemented the use of several new forms to gather and track important safety information. He replaced his Alcohol and Controlled Substance consortium and took the required training to ensure he understands what is required. He has ensured all of his current drivers have medical certification and also received negative alcohol and controlled substance test results for each. He has implemented several new controls.

5. If your request includes actions that will be conducted in the near future, such as training, reorganization of departments, purchasing of computer programs, etc, include a detailed description of the activity or training and a schedule of when that activity will commence and when it will be completed.
  - Leavenworth Shuttle has already implemented the majority of the changes outlined in its plan. Other controls are in place. Mr. Witt has pledged to be more diligent in the future and to ensure his company is in compliance with safety requirements.
6. Include any additional documentation relating to motor carrier safety and the prevention of crashes that you believe supports your request.
  - Leavenworth Shuttle reported no DOT-recordable accidents in the past year.
7. Include a written statement certifying the carrier will operate within federal and state regulations and the carrier's operation currently meets the safety standard and factors specific in 49 CFR 385.5 and 385.7. A corporate officer; partner, or the owner of the company must sign the statement.
  - Mr. Witt included a statement "*I understand it is my responsibility to comply and run this company under UTC rules, I fully acknowledge that and will never have this happen again.*" He signed the statement as the owner of the company. Throughout his plan, he identifies how he will maintain compliance.

## Summary and Recommendations:

- Leavenworth Shuttle submitted a safety management plan that addresses each violation, identifies how they occurred, describes the steps taken to correct them, and put controls in place to ensure the company maintains compliance. Documentation of obtaining medical certification and alcohol and controlled substance testing for all of its drivers was included. Examples of a new DVIR were provided.
- Staff reviewed Leavenworth Shuttle proposed safety management plan and concludes it is acceptable and meets the requirements of 49 CFR, Part 385. The reasons for staff's position are listed above.
- Staff recommends the commission upgrade Leavenworth Shuttle's Charter and Excursion operating authority (Permit CH-65060) to *conditional*, effective Tuesday, October 25, 2016.
- Staff also recommends that a follow-up non-rated compliance investigation be conducted on Leavenworth Shuttle in six months (May 2017).

## Penalty Recommendation:

- The Commission issued a penalty assessment of \$19,800 in docket TE-161020.
  - The company has taken steps to bring its' operations into compliance. Company owner, David Witt, has made a commitment to adhere to safety rules, both now and in the future. His safety management plan outlines how he will maintain compliance.
  - Because of the company's actions, staff recommends a penalty of \$14,800 with \$10,000 suspended for a period of 2 years - with conditions.
    - The \$4,800 penalty is due and payable immediately.
    - If any repeat violations of critical regulations are found in the compliance investigation in May 2017, or any other compliance investigation within 2 years, the entire suspended penalty (\$10,000) should be assessed.