

Date: April 5, 2019

From: Douglas H. Hayden, Executive Director

White Pass Community Services Coalition

PO Box 789

Morton, WA 98356-0789

To: Washington Utilities & Transportation Commission

1300 S. Evergreen Park Dr. S.W

PO Box 47250

Olympia, WA 98504-7250

Received
Records Management
04/05/19 16:56
State Of WASH.
UTIL. AND TRANSP.
COMMISSION

Subject: Request for Commission Review regarding TN-190036 (Consolidated)

Commissioners:

Request:

This request for review is a request for reconsideration for a substantially reduced financial penalty, as well as, an elimination of the (2) two year probationary period with the potential for further financial penalties as noted in "Order 01 – GRANTING MITIGATION, IN PART; IMPOSING AND SUSPENDING PENALTY" dated March 22, 2019.

Overview:

Before beginning my narrative, I'd like to draw your attention to the "Comparative Matrix" file attached. Comparing the outcomes with similar violations of 49 C.F.R 391.45(a) between White Pass Community Services Coalition WPCSC TN-190036 and Coastal Community Action Program CCAP TN-190048.

My hope is that this reduces the verbiage and more clearly shows the issues that I will raise in this request for Review. This is a comparative look at the penalty (amounts), which I believe, was a result of differing methodology, which when used, identified substantially different numbers of violations between WPCSC and CCAP in their respective financial penalty assessments.

Specific Issue – Large variations regarding Number of Violations.

Line #4 - As shown in Matrix line #4, WPCSC had two drivers cited while CCAP had four drivers cited for same violation. So how does 2 (WPCSC) drivers rack up 72 violations while 4 (CCAP) drivers rack up only 4 violations since at the time of both field investigations all 6 drivers were not medically certified and in violation of 49 CFR Part 391.45(a)?

Line 7 – The field investigator for WPCSC, Wayne Gilbert, reviewed the past six months of driver records as is noted in the PENALTY ASSESSMENT: TN-190036.

While the field investigator for CCAP, Sandy Yeomans, is silent in the PENALTY ASSESSMENT:TN-190048 on identifying the time frame reviewed that produced only 4 violations for CCAP.

Summary of Issue

A. Different methodology Substantially Impacted Financial Impact of Penalties WPCSC:

I was told by a CCAP staff the field investigator just cited them for not having valid medical cards in each of their (4) driver's files. So each file represented just one violation. So, their 4 drivers represented just four violations which equaled an assessed total organizational penalty of just \$400.00 dollars for CCAP.

On the other hand, our field investigator went back 6 months (available from our accessible and comprehensive driver's trip sheet documentation) on each of our two drivers and found one driver to have driven 68 times or \$6,800 dollar penalty and our second driver drove 4 times for \$400 dollar penalty; Thus, a total of \$7,200 organizational penalty assessment for WPCSC.

Conclusion: Had WPCSC's violations of 49 CFR Part 391.45(a), would have had the same or equal methodology applied, as was applied to CCAP in identifying how their total violations were categorized, identified and assessed, and applied over the time frame, we believe that our total number of violation of 49 CFR Part 391.45(a) would have been just 2 violations for a total assessed penalty of \$200.00.

B. Probationary Period Added to Penalty:

As can be seen in line #9, both WPCSC & CCAP immediately corrected the violations related to 49 CFR Part 391.45(a). Both agencies also implemented processes that would prevent these violations from re-occurring. Yet Line #10 shows that an additional probationary period was applied to WPCSC and not to CCAP.

Absent any discussion as to why this probationary period was included within the Penalty Assessment of WPCSC TN-1900036, we are assuming it is in relationship to the total number of violation (972) of 49 CFR Part 391.45(a) and the corresponding financial penalty of \$7,200 reduced to \$1,800.

Thus we believe that the unequal methodology application between WPCSC and CCAP's field investigators directly led to substantial financial penalties that continue to place a financial burden on our organization. This increased financial penalty on WPCSC, thus, directly to an additional probationary period for WPCSC, not applied to CCAP. We are asking the probationary period for WPCSC be deleted.

Thank you for your consideration of our request.

Sincerely,

Douglas H. Hayden

- PS: My intentions for having a comparative Matrix between WPCSC and CCAP is not to malign any of the field investigators or anyone from CCAP. But when we saw the differences in how penalties were applied and assessed for violation of 49 CFR Part 391.45(a) between WPCSC TN-190036 and CCAP TN-190048 an appearance of fairness was raised. I hope I've been able to shed some light on issues that might at the least start a conversation about consistency and at the best outcome reduce our financial penalty obligations.
- I've also enclosed a file of your current Annual Motor Carrier Safety Certification and wanted to thank you for breaking out the safety rules for Seven to 15 passenger vehicles and 16 or more passenger vehicles.
- I also appreciate U.T.C. staff reaching out to WSDOT Public Transportation staff to have a sit down to discuss your regulatory issues that may apply to their Grantees.