



U.S. Department
of Transportation

Federal Motor Carrier
Safety Administration

Southern Service Center

1800 Century Boulevard
Suite 1700
Atlanta, GA 30345

Phone: (404) 327-7400

Fax: (404) 327-7349

UPS

Certified Receipt Number: UPS

March 19, 2012

Dorian Ayache, President
Edwin Ayache
dba Three Angels Farms
151 Mill Rd
Lebanon, TN 37090

NOTICE OF CLAIM¹ -- Violations of 49 CFR § 382.301(a); 396.11(a).

CIVIL PENALTY: \$2,000

Case Number: TN-2012-0050-US0856

US DOT Number: 2100311

Dear Mr. Ayache:

A compliance review was conducted at Lebanon, Tennessee on February 23, 2012. The purpose of this review was to determine your compliance with the Federal Motor Carrier Safety Regulations (FMCSR), the Federal Hazardous Materials Regulations (HMR), and the Federal Motor Carrier Commercial Regulations (FMCCR).

As a result of this review, violations were discovered. This letter constitutes a Notice of Claim by the United States Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA) against Three Angels Farms for the amount of \$2,000.

Unless settled or otherwise resolved in a manner set forth below, the FMCSA can recover these penalties, with interest and costs, in a civil action brought in a United States District Court. Additional collection efforts may include, but are not limited to: Internal Revenue Service offsets against tax refunds, and the referral to and the use of collection agencies to collect penalties. **Also, under 49 Code of Federal Regulations (CFR) §§ 386.83 and 386.84, once a final order has been issued, the FMCSA may prohibit Three Angels Farms from operating in interstate commerce until the civil penalty is paid in full and, if applicable, your FMCSA registration will be suspended.**

1) A Notice of Claim is the official charging document used by the Federal Motor Carrier Safety Administration to initiate a civil action for violations of Federal Laws.

SUMMARY OF VIOLATIONS

Your company is charged with:

1. One (1) violation of 49 CFR § 382.301(a)- Using a driver before the motor carrier has received a negative pre-employment controlled substance test result.
2. One (1) violation of 49 CFR § 396.11(a)- Failing to require driver to prepare driver vehicle inspection report.

A copy of the documentary evidence collected during the investigation is available from this office. Upon request, the FMCSA will forward a copy of this evidence within a reasonable period of time. For additional details see the attached "Statement of Charges."

NOTICE OF ABATEMENT

This letter also constitutes a Notice of Abatement of all violations. In order to ensure that these violations cease, your company must take the following actions:

1. Do not allow a driver to perform a safety-sensitive function until the driver submits to a pre-employment controlled substances test and a negative test result is obtained, in accordance with 49 CFR Part 382.
2. Require all drivers to prepare a written vehicle inspection report at the end of each day's operation. Ensure each report is signed by the driver, that all safety related defects noted are repaired prior to operation of the motor vehicle, and that certification of repairs has been made if defects were reported. Keep all driver vehicle inspection reports, signed, certified, and reviewed, on file for at least 90 days in accordance with 49 CFR Part 396.

Failure to Abate Cited Violations

Failure to abate the cited violations could cause penalties to be increased in future enforcement actions.

PENALTY

Penalty Factors for Violations of Safety and Hazardous Materials Regulations

In accordance with 49 USC §§ 521(b)(2)(D) and 5123(c), the FMCSA must, before proposing or claiming a civil penalty, take into consideration the nature, circumstances, extent, and gravity of the violation committed and with respect to the violator, the degree of culpability, history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice and public safety may require. The civil penalty proposed shall be calculated to induce compliance. These factors will not be considered, however, for violations subject to the Section 222 provision described above.

Penalty Factors for Violations of Commercial Regulations

In the case of violations of the commercial regulations FMCSA also is not required by statute to consider the Section 521 factors. However, before proposing penalties for violations of the commercial regulations (more specifically the transportation of household goods), 49 U.S.C. § 14901 (c) requires FMCSA to take into consideration the degree of culpability, any prior history of such conduct, the degree of harm to shippers, ability to pay, the effect on ability to do business, whether the shipper has been adequately compensated before institution of the civil penalty proceeding, and such other matters as fairness may require.

Discovered Versus Charged Violations

Violations of either safety or hazardous materials regulations discovered during the course of the compliance review, but not proposed for penalty in this Notice of Claim, may have increased the civil penalty claimed for the violations charged in this Notice of Claim. The violations found in Table 1, as attached to this Notice of Claim, detail the violations discovered during our review/inspection.

Section 222 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA)

A pattern of and/or repeated violations of the same or related acute or critical regulations will result in the maximum penalties allowed by law to be assessed under Section 222 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA). A pattern of violations means two or more violations of acute and/or critical regulations in three or more Parts of Title 49, Code of Federal Regulations discovered during an investigation. Repeated violations means violation(s) of an acute regulation of the same Part of Title 49, Code of Federal Regulations discovered in an investigation after one or more closed enforcement actions within a six year period and/or violation(s) of a critical regulation in the same Part of Title 49, Code of Federal Regulations discovered in an investigation after two or more closed enforcement actions within a six year period. Any violations with a checkmark in the “§ 222 Applied” column in the penalty table below are subject to the “Section 222” provision and maximum penalties have been assessed pursuant to statute. See 49 USC § 521 note, 49 USC § 521(b), 49 USC § 5123, 49 USC Chapter 149, and 49 CFR Part 386, Appendix A.

A listing of the statutes governing maximum and minimum penalties for violations of specific regulations is enclosed.

Given the statutorily mandated items listed above, the FMCSA is proposing a civil penalty as follows:

<u>VIOLATION</u>	<u>TYPE OF VIOLATION²</u>	<u>NUMBER OF COUNTS</u>	<u>ASSESSMENT PER COUNT</u>	<u>§222 APPLIED</u>	<u>TOTAL</u>
382.301(a)	NR	1	\$1,250.00		\$1,250.00
396.11(a)	R	1	\$750.00		\$750.00

Accordingly, the total amount assessed by the Federal Government as the result of these violations is \$2,000.

HOW TO REPLY TO THE NOTICE OF CLAIM

2) CDL Commercial Driver's License; FR Financial Responsibility; HM Hazardous Materials (the total penalty assessed is per citation, not per number of counts); NO Notice and Orders; NR Nonrecordkeeping; R Recordkeeping; COM Commerical Regulations; E Employee.

Under 49 CFR Part 386, "Rules of Practice for Motor Carrier, Broker, Freight Forwarder, and Hazardous Materials Proceedings," you have specific rights with respect to this Notice of Claim. You are advised to carefully read Part 386 and follow the course of action appropriate for you in this case. A copy of Part 386 is attached to this Notice of Claim for your information. You may wish to seek legal counsel for answers to any questions in reference to this Notice of Claim or procedures under Part 386. DO NOT call the FMCSA Service Center or the Chief Counsel's office for advice or assistance in your defense. You may pursue the following courses of action:

(1) PAYMENT OF PENALTY: Within 30 days of service of this Notice of Claim: (a) Pay the assessed penalty in full, or (b) Establish a monthly payment plan by contacting an Enforcement Specialist (NOTE: A payment plan may be available for respondents who demonstrate financial difficulty), or (c) Contact an Enforcement Specialist outlining in writing compelling reasons why the assessed penalty should be reduced and discuss potential settlement. You may be required to submit a current, certified balance sheet or other evidence of assets and liabilities. An Enforcement Specialist can be reached at (404) 327-7400. If you pay the full penalty within thirty (30) days of service of this Notice of Claim, you do not need to file a written Reply to the Notice of Claim.

You may pay the fine electronically through our SAFER website at <<http://safer.fmcsa.dot.gov>> by selecting "Online Fine Payment."

Alternatively, you may pay by cashier's check, certified check, or money order made payable to the FMCSA and mailed to:

United States Department of Transportation
Federal Motor Carrier Safety Administration
Southern Service Center
1800 Century Boulevard
Suite 1700
Atlanta, GA 30345

Personal or company checks will not be accepted and will be returned.

Payment of the penalty will constitute admission of the violation(s) set forth in the Notice Claim and these violations shall constitute prior offenses under either 49 USC § 521(b)(2)(D) (for violations of the Federal Motor Carrier Safety Regulations), 49 USC § 14901(c) (for violations of the Federal Motor Carrier Commercial Regulations involving transportation of household goods) or 49 USC § 5123(c) (for violations of the Hazardous Materials Regulations) unless you proceed under the provisions of 49 C.F.R. § 386.18(c). These offenses may lead to higher penalties in future enforcement actions and adverse future SafeStat rankings.

(2) REQUEST FOR ADMINISTRATIVE ADJUDICATION: You may contest the claim and request Administrative adjudication. If you choose this course of action, you must carefully follow the provisions within 49 CFR § 386.14, including filing a written Reply within thirty (30) days after service of this Notice of Claim.

Your Reply must be in writing, and clearly state the grounds for contesting the Notice of Claim, and must state any affirmative defenses you intend to assert. You must separately admit or deny each violation alleged in this Notice of Claim. Any allegations in the Notice of Claim not specifically denied in the Reply will be deemed admitted. A general denial of the claim is insufficient and may result in a default being entered by the Assistant Administrator. Your Reply must include a statement

selecting one of the options for administrative adjudication available under 49 CFR § 386.14(d)(1) (iii). Once you select an adjudication option, you are bound by that selection.

You must serve your reply on all persons listed in the Certificate of Service attached to this Notice of Claim and in accordance with the requirements of 49 CFR § 386.6.

(3) REQUEST FOR BINDING ARBITRATION: If you dispute **only** the amount of the civil penalty and/or the length of time to pay, you can select to have the civil penalty amount adjudicated through FMCSA's binding arbitration program. You should notify the FMCSA of your request in writing when you submit your Reply. The Assistant Administrator will determine if your case is appropriate for binding arbitration. You will be notified in writing of the Assistant Administrator's decision regarding your request. You may choose binding arbitration if the only issues that you dispute are the amount of the civil penalty and/or the length of time to pay. FMCSA's guidance on the use of binding arbitration is available through the following link: <<http://www.fmcsa.dot.gov/>>. You can also request a copy of the guidelines from the Service Center.

YOU MUST CERTIFY THAT YOUR REPLY HAS BEEN SERVED IN ACCORDANCE WITH THE REQUIREMENTS CONTAINED WITHIN 49 CFR § 386.6.

THE SPECIFIC RIGHTS PROVIDED FOR IN 49 CFR § 386.14 MAY BE WAIVED IF YOU FAIL TO SUBMIT A WRITTEN REPLY WITHIN THIRTY (30) DAYS AFTER THE SERVICE OF THIS NOTICE OF CLAIM.

FAILURE TO REPLY TO THE NOTICE OF CLAIM IN THE **EXACT** MANNER SPECIFIED IN 49 CFR § 386.14 MAY BE TREATED AS IF NO REPLY HAS BEEN FILED. UNDER 49 CFR § 386.14(c), A FAILURE TO REPLY MAY CAUSE THE FMCSA TO ISSUE A NOTICE OF DEFAULT AND FINAL AGENCY ORDER THIRTY (30) DAYS AFTER THIS NOTICE OF CLAIM IS SERVED. THE NOTICE OF DEFAULT AND FINAL AGENCY ORDER WILL DECLARE YOU TO BE IN DEFAULT AND DECLARE THE NOTICE OF CLAIM, INCLUDING THE CIVIL PENALTY PROPOSED IN THE NOTICE OF CLAIM, TO BE THE FINAL AGENCY ORDER IN THE PROCEEDINGS. THE FINAL AGENCY ORDER WILL BECOME EFFECTIVE FIVE (5) DAYS AFTER THE NOTICE OF DEFAULT AND FINAL AGENCY ORDER IS SERVED. THE DEFAULT WILL CONSTITUTE AN ADMISSION OF ALL FACTS ALLEGED IN THE NOTICE OF CLAIM AND A WAIVER OF YOUR OPPORTUNITY TO CONTEST THE CLAIM.

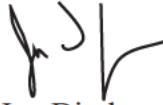
A GENERAL DENIAL DOES NOT MEET THE REQUIREMENTS OF 49 CFR § 386.14(d)(1). UNLESS YOUR REPLY COMPLIES WITH THE REQUIREMENTS OF 49 CFR § 386.14(d)(1), THE ASSISTANT ADMINISTRATOR MAY ENTER A DEFAULT AGAINST YOU.

IF YOU DO NOT UNDERSTAND OR ARE CONFUSED ABOUT YOUR RIGHTS AND OBLIGATIONS AS OUTLINED WITHIN THIS NOTICE OF CLAIM, YOU MAY WISH TO SEEK LEGAL ADVICE.

Case Number: TN-2012-0050-US0856

Copies of the procedural regulations, applicable statutes and the Service List are enclosed.

Sincerely,

A handwritten signature in black ink, appearing to read 'JD', with a stylized flourish extending to the right.

Jon Dierberger
Division Administrator
Federal Motor Carrier Safety Administration

Enclosures

APPLICABLE STATUTES

Section 521(b)(2)(A) of 49 USC provides that any person who is determined to have committed an act that is a violation of regulations issued under subchapter III of chapter 311 (49 USC §§ 31131 et seq.)(except sections 31138 and 31139) or 49 USC §§ 31301 and 31306, or section 31502 of 49 USC, shall be liable for a civil penalty in an amount not to exceed \$11,000 for each offense. No civil penalty shall be assessed under this section against an employee for a violation in an amount exceeding \$2,750 (49 USC § 521(b)(2)(A) and 68 Fed. Reg. 15381 (March 31, 2003)).

Section 5123(a) of 49 USC provides that any person who is determined to have committed an act that is a violation of regulations issued under chapter 51 shall be liable for a civil penalty in an amount not to exceed \$50,000 (71 FR 8487; February 17, 2006) for each offense. If the violation results in death, serious illness, or severe injury to any person, or in substantial destruction of property, the civil penalty may be increased to not more than \$105,000 for each offense (72 FR 55102; September 28, 2007).

Section 521(b)(2)(B)(ii) of 49 USC provides for a maximum civil penalty of \$10,000 for anyone who knowingly falsifies, destroys, mutilates, or changes a required report or record, knowingly files a false report with the Secretary, knowingly makes or causes or permits to be made a false or incomplete entry in a record about an operation or business fact or transaction, or knowingly makes, prepares or preserves a record in violation of a regulation or order of the Secretary, if any such action can be shown to have misrepresented a fact that constitutes a violation other than a reporting or recordkeeping violation. (49 USC § 521(b)(2)(B)(ii); August 10, 2005).

Section 521(b)(2)(B)(i) of 49 USC provides for a maximum civil penalty of \$1,000 for each recordkeeping offense, (including the failure to make a required report; or making a required report that does not specifically, completely, and truthfully answer a required question; or does not make, prepare, or preserve a record in the form and manner prescribed), and each day of the violation shall constitute a separate offense. The maximum of all civil penalties assessed against any violator for all offenses related to any single violation shall not exceed \$10,000 (49 USC § 521(b)(2)(B)(i); August 10, 2005).

STATEMENT OF CHARGES

Violation 1 --- 49 CFR 382.301(a) - Using a driver before the motor carrier has received a negative pre-employment controlled substance test result.

CHARGE #1:

On or about January 18, 2012, Edwin Ayache (Three Angels Farms) allowed its driver, (b)(6); (b)(7)(C), to perform a safety-sensitive function in that the driver drove a commercial motor vehicle with a gross vehicle weight rating/gross combination weight rating greater than 26,001 pounds in interstate commerce from Lebanon, TN to Weatherford, TX and Three Angels Farms did not receive a negative pre-employment controlled substances test result.

Driver was hired on (b)(6); (b)(7)(C) The carrier did not ensure that they had a negative pre-employment drug test prior to allowing (b)(6); (b)(7)(C) to operate a commercial motor vehicle under their control in interstate commerce.

Violation 2 --- 49 CFR 396.11(a) - Failing to require driver to prepare driver vehicle inspection report.

CHARGE #1:

On or about January 7, 2012, Edwin Ayache (Three Angels Farms), allowed its driver, (b)(6); (b)(7)(C), to perform a safety-sensitive function in that the driver drove a commercial motor vehicle company #1 and listed as a 2003 Freightliner with VIN #1FUBAHCG43LL07437 with a gross vehicle weight rating/gross combination weight rating greater than 10,001 pounds in interstate commerce from Abeline, TX to Lebanon, TN. At the time of this transportation Edwin Ayache (Three Angels Farms), did not require this driver to complete or submit a drivers daily vehicle inspection report for this day

Signed statement from Dorian Ayache, President for Edwin Ayache (Three Angels Farms), stated that the carrier did not require there drivers to complete or submit drivers daily vehicle inspection reports. There were no drivers daily vehicle inspection reports conducted on this vehicle per 396.11(a).

SERVICE LIST

This is to certify that on March 19, 2012, the undersigned sent, by the method indicated, the designated number of copies of the Notice of Claim to each of the parties listed below.

Each party listed below must receive the designated number of copies of each filing made in this proceeding in the future.

Dorian Ayache, Presidnt
Edwin Ayache
dba Three Angels Farms
151 Mill Rd
Lebanon, TN 37090

Original
UPS

Jon Dierberger, Division Administrator
U.S. Department of Transportation
Federal Motor Carrier Safety Administration
640 Grassmere Park
Suite 111
Nashville, TN 37211

One Copy
Personal Delivery

U.S. Department of Transportation
Federal Motor Carrier Safety Administration
FMCSA Docket Clerk
Southern Service Center
1800 Century Boulevard
Suite 1700
Atlanta, GA 30345

One Copy
U.S. Mail or Electronic Mail

U.S. Department of Transportation
Federal Motor Carrier Safety Administration
Debra Stanziano, Attorney
1800 Century Boulevard
Suite 1700
Atlanta, GA 30345

One Copy
U.S. Mail or Electronic Mail
