

Appendix F-3 ► Sample Part 16 Corrective Action Acceptance

Richard S. Lawyer, Esq.
Office of the City Attorney
XXX Business Route Road
City, State XX245

Dear Mr. Lawyer:

Re: Docket No. 16-0X-XX Corrective Action Plan

Thank you for your letter of March 30, 2009, setting forth the City's Corrective Action Plan to address the Order contained in the Director's Determination (DD) Complainant v. Respondent, FAA Docket 16-0X-XX, dated March 1, 2009.

The DD ordered the City to submit, within 30 days, a corrective action plan explaining how it intends to eliminate the violations outlined in the DD, including the projected timeframe for completion. The DD also stated that the City should reassess the manner in which it classifies fuelers in a manner consistent with the FAA's policy on self-fueling, and reassess its insurance requirements to ensure the coverage required reflects the level of risk that is reasonable in terms of type of aircraft, amount of fuel dispensed, and type of fuel facility.

In its corrective action plan, the City proposes four (4) actions addressing the Order in the DD. These proposed actions and the FAA's response to each proposed action are discussed below.

Proposed Action 1: The City proposes to reduce the \$1 million additional ability to pay "to the amount of the total deductible or self-insured retention of the particular applicant for the insurance policies the fueling permit holder is required to carry." In addition, the City will "continue to offer a variety of ways this requirement can be met, including but not limited to an unconditional letter of credit, binding, or personal guaranty from a company or individual with sufficient assets."

FAA Response: The FAA concurs with limiting the additional ability to pay to the amount of a deductible and to permit applicants to meet the requirement through a variety of methodologies. The City must, however, ensure that this requirement is applied uniformly to all similarly situated users.

Proposed Action 2: The City indicates that AeroTenant, LLC will be required to provide liability insurance coverage at the same level as Transport Co. and the fixed-base operator (FBO). Although the City "feels that the current \$5 million requirement is appropriate for the existing fueling permit holders," it adds that all comparable self-fuelers will be required to provide the same level of liability insurance, regardless of when they entered into a lease agreement with the City but the City will be able to establish a lower minimum required insurance level through a variance procedure.

FAA Response: The FAA has no objection to this proposed action provided the FAA's comments with regards to Proposed Action 4 are addressed.

Proposed Action 3: The City intends to include in its new Fueling Rules and Regulations a provision allowing for an evaluation of the level of insurance coverage every two (2) years.

FAA Response: The FAA has no objection to this proposed action.

Proposed Action 4: The City proposes to institute a "variance procedure to permit a relaxation of applicable requirements in particular circumstances" and that this "variance procedure will permit the City to provide a fueling permit with a minimum liability insurance requirement lower than \$5 million if the characteristics of the particular fueling facility justify a variance." The City adds that the "variance procedure would allow the applicant to present reasons justifying the requested relaxation of the particular requirement and require the City to make specific findings of fact and conclusions for each determination."

FAA Response: In the Director's Determination, the FAA stated that "a \$5 million in liability coverage applied to a single-engine Cessna 172 may not be available from insurance companies. This would make the requirement essentially unreasonable for aircraft such as a Cessna 172" and that "the City should reassess its insurance requirements to ensure the coverage required reflects the level of risk that is reasonable in terms of type of aircraft, amount of fuel dispensed, and type of fuel facility." In other words, the FAA's position is that the \$5 million in liability coverage should not be the basic standard for all fueling at the Airport. In addition, although the concept of a variance is generally consistent with the Order in the Director's Determination, the variance in and by itself, must not become an impediment to self-fueling at the Airport.

Therefore, in order to reduce the likelihood of another complaint, as part of its variance process and the new Fueling Rules and Regulations, the City must:

- (1) Recognize that a \$5 million liability requirement imposed on all aircraft and especially upon small aircraft, is inherently unreasonable;
- (2) Ensure that the variance procedures are not unnecessarily burdensome and unattainable;
- (3) Ensure that the terms and conditions for the variance are part of the City's new Fueling Rules and Regulations and are readily available to the public; and
- (4) Ensure that the overall variance process is not arbitrary and is uniformly applied to similarly situated fuelers.

Based on the above, the FAA conditionally accepts the City's corrective action plan, including the proposed 90-day timeframe, provided that the FAA concerns outlined under Proposed Action 4, are incorporated in the City's new Fueling Rules and Regulations. In addition, we request that the City provide this office with a draft of its new Fueling Rules and Regulations before adoption.

09/30/2009

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Appendix F

If you have any questions or require assistance, please contact Manager, Airport Compliance Division at (202) 267-XXXX.

Sincerely,

Director,
Office of Airport Compliance
and Field Operations

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