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Kansas Corporation Commission

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

Before Commissioners: Jay Scott Emler, Chairman
Shari Feist Albrecht
Pat Apple

In the Matter of the Emergency Suspension of Operating Authority of **Jacob Hefner, d/b/a Hefner Motorsports of Oakley, Kansas**, for Failure to Comply with New Entrant Safety Requirements as Required by the Motor Carrier Safety Statutes, Rules and Regulations.	)	Docket No. 17-TRAM-240-OOS

EMERGENCY SUSPENSION OF OPERATING AUTHORITY ORDER

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) on its own motion. Having examined its files and records, and being duly advised in the premises, the Commission finds and concludes as follows:

I. JURISDICTION AND BACKGROUND

1. Pursuant to K.S.A. 2015 Supp. 66-1,108b, 66-1,111, 66-1,112, 66-1,114, 66-1,114b and 66-1,115, the Commission is given full power, authority and jurisdiction to supervise and control motor carriers, as defined in K.S.A. 2015 Supp. 66-1,108, doing business or procuring business in Kansas, and is empowered to do all things necessary and convenient for the exercise of such power, authority, and jurisdiction.

2. Pursuant to K.S.A. 2015 Supp. 66-1,129a, 66-1,130, and 66-1,142b, the Commission may suspend operations, revoke, or amend certificates, and initiate sanctions or fines against every motor carrier and every person who violates any provision of Kansas law in regard to the regulation of such motor carriers and persons, or who fails to obey any order, decision, or regulation of the Commission.

3. Pursuant to K.S.A. 2015 Supp. 66-1,129(a)(7), the Commission has adopted motor carrier transportation regulations (K.A.R. 82-4-1 *et seq.*) consistent with the federal motor carrier safety assistance program and other federal requirements concerning transportation of hazardous waste.

4. K.S.A. 2015 Supp. 77-536 governs the use of emergency proceedings. The statute provides in part as follows:

> (a) A state agency may use emergency proceedings: (1) In a situation involving an immediate danger to the public health, safety or welfare requiring immediate state agency action or (2) as otherwise provided by law.
> (b) The state agency may take only such action as is necessary: (1) To prevent or avoid the immediate danger to the public health, safety or welfare that justifies use of emergency adjudication or (2) to remedy a situation for which use of emergency adjudication is otherwise provided by law.

II. FINDINGS OF FACTS

5. Jacob Hefner, d/b/a Hefner Motorsports (Respondent) is a motor carrier as defined in K.S.A. 2015 Supp. 66-1,108 that operates commercial motor vehicle(s) in both intrastate and interstate commerce in a manner that requires authority.

6. Respondent is registered as a motor carrier with the U.S. Department of Transportation (USDOT), and operates under USDOT Number 2823922.

7. On September 30, 2016, the Federal Motor Carrier Safety Administration (FMCSA) forwarded a notice of violation(s) of the federal motor carrier safety regulations to Respondent, wherein Respondent was given 60 days to comply with the regulations.

8. As of December 1, 2016, FMCSA records indicate Respondent had not complied with new entrant requirements. As a result, the FMCSA issued Respondent an

Order to Revoke "New Entrant" Registration and Cease All Interstate Transportation. FMCSA's Order is attached hereto.

III. STAFF'S RECOMMENDATIONS

9. Staff asks the Commission to find that Respondent received sufficient notice from the FMCSA of the violation(s) of motor carrier safety rules and regulations, and a requisite opportunity to correct the violation(s) and to obtain compliance.

10. Staff asks the Commission to find that Respondent failed to act upon the FMCSA's notice.

11. Staff asks the Commission to find that Respondent's failure to comply with requirements of a new entrant audit is sufficient evidence of unsafe motor carrier operations and as such poses a potential immediate threat to the safety and welfare of the public of the state of Kansas.

12. Based on the presented facts, Staff recommends the Commission issue an Emergency Suspension of Operating Authority Order until such time as Respondent takes the necessary steps to obtain compliance with the federal and state motor carrier safety rules and regulations. After Respondent submits verifiable evidence of the same to Staff, Staff will recommend that the Commission enter an order reinstating the Respondent's motor carrier operating authority.

13. Furthermore, Staff recommends the Commission order Respondent to attend a Commission-sponsored safety seminar within the next ninety (90) days, and to provide Staff with written proof of attendance.

IV. CONCLUSIONS OF LAW

14. The Commission finds it has jurisdiction over Respondent as the Respondent is a motor carrier as defined in K.S.A. 2015 Supp. 66-1,108.

15. The Commission finds Respondent received sufficient notice from the FMCSA of violation(s) of motor carrier safety rules and regulations and a requisite opportunity to correct the violation(s) and obtain compliance.

16. The Commission finds Respondent failed to act upon this notice.

17. The Commission also finds Respondent's failure to comply with requirements of a new entrant audit is sufficient evidence of unsafe motor carrier operations, and as such poses a potential immediate threat to the safety and welfare of the public of the state of Kansas. Therefore, this Commission orders the Respondent to suspend all intrastate motor carrier operations, other than such motor carrier operations excepted from the Commission's regulation under K.S.A. 2015 Supp. 66-1,129, until such time as the carrier takes the necessary steps to become compliant. This includes submitting to Staff verifiable evidence of the correction of the violation(s) noted in FMCSA's December 1, 2016 Order including, but not limited to, proof of federal reinstatement and attendance of a Commission-sponsored safety seminar within the next ninety (90) days. A schedule of dates and locations for the safety seminar can be found at the Commission's website http://www.kcc.state.ks.us/trans/safety_meetings.htm.

THE COMMISSION THEREFORE ORDERS THAT:

A. Jacob Hefner, d/b/a Hefner Motorsports of Oakley, Kansas is to be immediately suspended from all intrastate commercial motor carrier operations, other than such motor carrier operations excepted from the Commission's regulation under

K.S.A. 2015 Supp. 66-1,129, until such time as Respondent presents to Staff verifiable evidence, including, but not limited to, proof of federal reinstatement documenting the correction of the safety concerns identified in the FMCSA's December 1, 2016 Order to Revoke "New Entrant" Registration and Cease All Interstate Transportation. This Emergency Suspension of Operating Authority Order may also attach and apply to the operations of successor entities, including any motor carrier entity or entities established or used to avoid the consequences of any Order to cease operations or suspend operating authority.

B. Jacob Hefner, d/b/a Hefner Motorsports of Oakley, Kansas, is hereby ordered to attend a Commission-sponsored safety seminar within the next ninety (90) days and provide Staff with written proof of attendance.

C. **Pursuant to K.S.A. 2015 Supp. 77-537 and K.S.A. 2015 Supp. 77-542, any party may request a hearing on the above issues by submitting a written request, setting forth the specific grounds upon which relief is sought, to the Commission's Secretary, at 1500 S.W. Arrowhead Road Topeka, Kansas 66604, within fifteen (15) days from the date of service of this Order.** If service is by certified mail, return receipt requested, service of this order is complete when Jacob Hefner, d/b/a Hefner Motorsports signs the Domestic Return Receipt. If service is by regular U.S. mail, service is complete upon the date of mailing plus three (3) days. Pursuant to K.S.A. 2015 Supp. 66-1,129a, hearings will be held within ten (10) days upon written request. Failure to timely request a hearing will result in a waiver of Respondent's right to a hearing, and this Order will become a Final Order against Respondent, suspending Respondent's motor carrier operations, ordering Respondent to

attend a Commission-sponsored safety seminar within the next ninety (90) days and provide Staff with written proof of attendance.

D. Attorneys for all parties shall enter their appearances in Commission proceedings by giving their names and addresses for the record. For civil penalties exceeding $500, a corporation shall appear before the Commission by its attorney, unless waived by the Commission for good cause shown and a determination that such waiver is in the public interest. K.S.A. 77-515(c); K.A.R. 82-1-228(d)(2); K.A.R. 82-1-202(a). For civil penalties of $500 or less, a corporation may appear by a duly authorized representative of the corporation. K.S.A. 2015 Supp. 66-1,142b(e) and amendments thereto.

E. Failure to comply with the provisions of this Order may result in further sanctions to include, but not limited to, the assessment of civil penalties and/or the impoundment of commercial motor vehicles found operating in violation of this Order and any other remedies available to the Commission by law, without further notice.

F. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further orders, as necessary.

BY THE COMMISSION IT IS SO ORDERED.

Emler, Chairman; Albrecht, Commissioner; Apple, Commissioner

Dated: DEC 15 2016

Amy L. Green
Secretary to the Commission

AAL

Order Mailed Date
DEC 16 2016

U.S. Department of Transportation
Federal Motor Carrier Safety Administration

1200 New Jersey Ave., S.E.
Washington, DC 20590

December 1, 2016

In reply refer to:
USDOT No.: 2823922

JACOB HEFNER
OWNER
JACOB W HEFNER
HEFNER MOTORSPORTS
711 E 7TH
OAKLEY, KS 67748

ORDER TO REVOKE "NEW ENTRANT" REGISTRATION AND CEASE ALL INTERSTATE TRANSPORTATION U.S. DOT Number: 2823922

This Order is issued pursuant to 49 CFR 385.325(b). On September 30, 2016 JACOB W HEFNER was notified that its USDOT New Entrant registration would be revoked and its interstate operations placed out of service unless JACOB W HEFNER took action to remedy its safety management practices and submit in writing evidence of necessary corrective action within 60 days. Because JACOB W HEFNER has failed to submit sufficient evidence of the necessary corrective action, JACOB W HEFNER's USDOT New Entrant registration is hereby revoked and its interstate operations placed out of service, effective immediately. JACOB W HEFNER must immediately cease all Interstate motor carrier operations in the United States.

Failure to comply with this Order may subject the carrier to penalty provisions in 49 USC 521(b) (2) (A) not to exceed $11,000 for each offense.

In accordance with 49 CFR 385.327, JACOB W HEFNER may request an administrative review if it believes Federal Motor Carrier Safety Administration (FMCSA) has committed an error in determining that its basic safety management controls are inadequate and/or that its corrective action under section 385.319(c) is insufficient. Under section 385.327(c) (1), the request must be submitted within 90 days of the date of the notice of FMCSA determining that its basic safety management controls are inadequate resulting in failure of the safety audit or under section 385.327(e) (2) within 90 days of the date that of the notice that FMCSA determined that the corrective actions are insufficient. The request for administrative review must include a description of the error(s) believed made by FMCSA in its determination and include a list of all factual and procedural issues disputed and any supporting information or documentation. The Field Administrator's decision will constitute final agency action. A request for administrative review must be submitted to:

WILLIAM PADEN
U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION
MIDWESTERN SERVICE CENTER
4749 LINCOLN MALL DRIVE, SUITE 300A
MATTESON, IL 60443
Email: MSCCAP@DOT.GOV
Phone: 708-283-3564
Fax: 877-547-0381

Under section 385.329, JACOB W HEFNER may reapply for USDOT New Entrant registration no earlier than 30 days from the date of this Order. In order to reapply JACOB W HEFNER must begin the application process from the beginning, submit an updated Motor Carrier Identification Report (MCS-150), submit adequate evidence that the violations that resulted in the USDOT New Entrant registration revocation and adequate basic safety management controls have been established, and restart the 18-month new entrant monitoring period. Reapplication may be made via the FMCSA web site (http://safer.fmcsa.dot.gov) or by submitting a MCS-150 form. The form may be obtained by calling FMCSA's technical support at 1-800-832-5660 or via the FMCSA web site at www.fmcsa.dot.gov.

Contact your local FMCSA office if you have questions about what corrective actions must be submitted and where to submit them.

Sincerely,

Joseph P. DeLorenzo, Director, Office of Enforcement and Compliance

CERTIFICATE OF SERVICE

17-TRAM-240-OOS

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of first class mail/hand delivered on DEC 15 2016.

JACOB HEFNER, OWNER
JACOB HEFNER
D/B/A HEFNER MOTORSPORTS
711E 7TH ST
OAKLEY, KS 67748

AHSAN LATIF, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604-4027
Fax: 785-271-3354
a.latif@kcc.ks.gov

/S/ DeeAnn Shupe
DeeAnn Shupe

Order Mailed Date

DEC 16 2016