

**THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

In the Matter of the General Investigation)
of **Benfer Enterprises II LLC of**) Docket No. 17-GIMM-269-KHP
Independence, Missouri, Pursuant to the)
Kansas Highway Patrol Issuance of a)
Notice of Violation(s) and Invoice for the)
Violations of the Kansas Motor Carrier)
Safety Statutes, Rules and Regulations.)

**DIRECT TESTIMONY
OF
TROOPER JASON MILLS
ON BEHALF OF
THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

March 31, 2017

1 **Q. Please state your full name and business address.**

2 A. Technical Trooper Mills

3 700 SW Jackson, Suite 704, Topeka, Kansas 66603

4 **Q. By whom and in what capacity are you employed?**

5 A. I am employed by the Kansas Highway Patrol as a State Trooper.

6 **Q. Please summarize your educational and professional background.**

7 A. In July 2001, I attended the Kansas Highway Patrol Training Academy in Salina, KS.
8 During the 22-week residential academy, I received nearly 1,000 hours of instruction,
9 both classroom and hands-on. I successfully completed the training academy and
10 graduated. Following the training academy, I was assigned to Troop F, Sedgwick County
11 in December 2001. I performed duties as a road trooper which included the enforcement
12 of traffic and criminal laws on the roadways of Kansas, with a specific focus on
13 interstate, US and Kansas highways. My primary duties were traffic enforcement and the
14 investigation of traffic collisions, assisting motorists, making custodial arrests, collecting
15 evidence, testifying in court and preparing written reports. I attended the North
16 American Standard (NAS) Level I inspection course at the Kansas Highway Patrol
17 Training Academy. The course is a two week course, broken up into the NAS Part A,
18 which is the driver credential inspection, completed during initial 22-week academy, and
19 the second week is the NAS Part B, the vehicle portion, completed in August 2003. The
20 course is 40 hours for each week, for a total of an 80 hour course. The course includes
21 both classroom and hands-on inspection of commercial motor vehicles in the field during
22 Part B. Following the course, each student is required to complete 32 “on the job
23 training” inspections with another certified inspector. I completed more than the

1 minimum number of both Level I and Level II inspections to complete the certification
2 process. In December 2008, I transferred to the Kansas Highway Patrol's Troop I, Motor
3 Carrier Safety Assistance Program, or Commercial Vehicle Enforcement Troop. After
4 my transfer, I was recertified to a Level I inspection as I had been certified as Level II
5 during my time as a road trooper. In February 2011, I successfully passed the
6 Performance Based Brake Testing course, which certified me to operate the VIS brand
7 PBBT. The PBBT is an instrument used to measure braking force as a percentage of
8 gross weight of a vehicle. In March 2010, I attended the 40-hour General Hazardous
9 Materials course and successfully passed it. Following the class, I completed at least 16
10 "on the job training" supervised inspections to complete the certification process. In May
11 2011, I attended the Cargo Tank Inspection 40-hour course and successfully passed it.
12 Following the class, I completed at least 16 "on the job training" supervised inspections
13 to complete the process. In June 2011, I attended the Other Bulk Packaging 40-hour
14 course and successfully passed it. Following the class, I completed at least 16 "on the job
15 training" supervised inspections to complete the process. In July 2011, I attended the
16 Level 6 Radioactive Materials Transportation 40-hour course and successfully passed it,
17 attending recertification every 2 years. In March 2014, I was certified to instruct the
18 General Hazardous Materials course as an associate staff instructor.

19 **Q. Please explain your duties and responsibilities in your current position.**

20 A. In addition to maintaining public safety by enforcing traffic and other laws of the state of
21 Kansas, I am a MCSAP Trooper responsible for inspecting commercial motor vehicles,
22 and enforcing the federal motor carrier laws and regulations. I have presented countless
23 safety presentations to the trucking industry, public entities, other law enforcement, fire

1 department and EMS personnel. Since 2015, I have been responsible for answering
2 “DataQs” for the Kansas Highway Patrol. Each year, KHP receives 700-800 DataQs. I
3 am currently one of two primary reviewers of all DataQs. Those duties include
4 reviewing inspections and collision reports for accuracy when challenged by carriers,
5 making a determination as to the violations, responding to requests in a timely manner,
6 preparing responses back to the requestor making changes to the inspection or collision
7 reports when necessary. In addition, I frequently work with new inspectors to complete
8 the certification process for their initial CVSA courses, or any of the haz-mat or
9 passenger carrier inspection courses.

10 **Q. Have you previously testified before this Commission?**

11 A. Yes.

12 **Q. Please explain circumstances leading to the September 27, 2016, stop and the**
13 **subsequent inspection of the commercial motor vehicle.**

14 A. Several members of Troop I, Zone A were assisting the Roeland Park Police Department
15 with a driver’s license checklane at 48th and Roe. The purpose of the lane was for
16 member of RPPD to stop all drivers and check their driver’s license. The Kansas
17 Highway Patrol MCSAP troop was requested to stand by in the event a commercial
18 motor vehicle came through the lane and an inspection was deemed necessary. The three
19 Benfer tow trucks in question were called to the scene by RPPD prior to the checklane to
20 stand by to tow vehicles of drivers who were caught driving without a license per their
21 department policy. I noticed the tow trucks displayed Missouri registrations which
22 seemed odd to me initially that a Kansas agency would be using Missouri tow trucks. At
23 the conclusion of the lane Technical Trooper Wright, Technical Trooper Beabout and I

1 walked over to the three tow trucks and saw obvious critical violations. Technical
2 Trooper Wright ran the USDOT number displayed on the trucks, which returned to
3 “Benfer Enterprises II LLC.” Technical Trooper Wright advised that the carrier did not
4 have UCR fees paid for calendar years 2014, 2015 or 2016. Since we had observed
5 critical violations and the UCR violation, I decided an inspection was necessary. Once
6 the lane was over we inspected the three trucks. Each trooper completed one inspection.

7 **Q. Are you familiar with the challenge raised by Benfer Enterprises II LLC in this**
8 **matter?**

9 A. In his request for hearing, Benfer Enterprises questions our reasons for conducting the
10 inspections and specific issues with some of the citations.

11 **Q. Did you formally document the September 27, 2016, inspection?**

12 A. Yes. This inspection is documented in the Driver/Vehicle Examination Report Number
13 KSHHP02520638. A true and correct copy of this report is attached hereto as Mills
14 Attachment “A”.

15 **Q. Please describe the vehicle involved in this stop.**

16 A. The vehicle was a 2000 Chevy truck with Missouri plate 88B3BB with a Gross Vehicle
17 Weight Rating of 25,950 lbs., and a vehicle identification number ending in 25105

18 **Q. Who was the driver operating the vehicle at the time of the stop?**

19 A. The driver was Stacy M. Tabor.

20 **Q. Can you please explain the Kansas Highway Patrol’s authority as it relates to the**
21 **stop and inspection of commercial motor vehicles?**

22 A. K.S.A. 74-2108 gives the Kansas Highway Patrol the authority to require the driver of
23 any motor vehicle operated by any motor carrier to stop and submit to an inspection to

1 determine compliance with the laws, rules and regulations relating to motor carriers.
2 Additionally, K.A.R. 82-4-2a gives the Kansas Highway Patrol the authority to examine
3 motor carrier equipment operating on the highways in Kansas, and examine the manner
4 of the motor carrier's conduct as it relates to the public safety and the operation of
5 commercial motor vehicles in Kansas.

6 **Q. At the time of the inspection, how did you determine that the vehicle and its driver**
7 **were subject to the Federal Motor Carrier Safety Administration's (FMCSA) rules**
8 **and regulations?**

9 A. The gross combined weight rating of the vehicle was 25,950, which exceeds the 10,001
10 pound threshold definition of Commercial Motor Vehicle under K.A.R. 82-4-1 and 49
11 C.F.R. 390.5 as adopted by K.A.R. 82-4-3f.

12 **Q. Is there any additional information that helped you determine this trip was subject**
13 **to the FMCSA's rules and regulations?**

14 A. Upon speaking with the driver, I confirmed that they were there to tow vehicles from
15 Roeland Park, KS to Independence, MO, indicating this vehicle was involved in for-hire
16 transportation subject to FMCSA and Commission regulation. During the lane, while
17 standing to the side of the roadway, one of the drivers who was being cited for no license
18 asked me where her vehicle would be towed. I asked one of the tow truck operators
19 where their tow lot was located and he told me Independence, Missouri. Again, this
20 indicated to me the first leg in the continuation of an interstate movement since the towed
21 vehicle would be taken back across the state line.

22 **Q. For the sake of clarification, where did the inspection take place?**

1 A. The inspection took place at a parking lot at 48th and Roe Parkway in Johnson County,
2 Kansas.

3 **Q. What type of inspection did you conduct? Please explain.**

4 A. I conducted a Level I Walk-Around inspection. This inspection includes at a minimum,
5 examination of the driver's license, medical examiner's certificate and Skills
6 Performance Evaluation Certificate (if applicable); alcohol and drugs; driver's record of
7 duty status as required; hours of service; seat belt systems; frames; fuel systems; lighting
8 devices (headlamps, tail lamps, stop lamps, turn signals and lamps/flags on projecting);
9 securement of cargo; steering mechanisms; suspensions; tires; van and open-top trailer
10 bodies; wheels, rims and hubs; windshield wipers; emergency exits and/or electrical
11 cables and systems in engine and battery compartments (buses), and Hazardous
12 Materials/Dangerous Goods (HM/DG) requirements as applicable. HM/DG required
13 inspection items will be inspected by certified HM/DG inspectors. It is contemplated that
14 the walk-around driver/vehicle inspection will include only those items, which can be
15 inspected without physically getting under the vehicle.

16 **Q. Did you identify any out of service violations during the September 27, 2017, Level I**
17 **Inspection?**

18 A. Yes, I identified one (1) out of service violation of motor carrier safety rules and
19 regulations. The violation was identified as "Tire-other tread depth less than 2/32 of
20 inch: Axle #1 right tire measured less than 2/32 in all 4 tread grooves across width of tire.
21 (two measured 0/32; two measured 1/32)."

22 **Q. Please explain the rule relevant to tread depth.**

1 A. According to 49 C.F.R. 393.76(c) the “tires shall have a tread groove pattern depth of at
2 least 2/32 of an inch when measured in a major tread groove.”

3 **Q. Is there anything further you wish to add to aid the Commission in its decision?**

4 A. Not at this time.

5 **Q. Thank you, Trooper Mills. Does this conclude your testimony?**

6 A. Yes, it does

ATTACHMENT "A"

DRIVER/VEHICLE EXAMINATION REPORT

Kansas Highway Patrol
MOTOR CARRIER SAFETY ASSISTANCE
 700 SW Jackson, Ste 704
 Topeka, KS 66603
 Phone #: (785)296-7189 Fax #: (785)296-2858
 truckinspection@khp.ks.gov

Report Number: KSHIP02520638
 Inspection Date: 9/27/2016 Certification Date:
 Time Started: 07:68 Time Ended: 09:10
 Inspection Level: I - Full Inspection
 HM Inspection Type: No HM Inspection

BENFER ENTERPRISES II LLC

ORRICK, MO 64077
 USDOT #: 02405874 Phone #: (816)836-4200
 MC/MX #: State #: Fax #: (816)836-2116

Driver: TABOR, STACY M
 License #: State: MO
 Date of Birth:

Location: JOHNSON COUNTY - 091 MilePost:
 Highway: 48TH & ROE LN Origin: INDEPENDENCE, MO Bill of Lading: NONE
 County: JOHNSON Destination: ROELAND PARK, KS Cargo: EMPTY
 Shipper: CARRIER

VEHICLE IDENTIFICATION:

Unit	Type	Make	Year	State	License#	Equipment ID	Unit VIN	GVWR	CVSA #	CVSA Issued #	OOS Str.#
1	TR	CHEV	2000	MO			525105	25,950			141523

BRAKE ADJUSTMENTS:

Axle #	1	2
Right	N/A	N/A
Left	N/A	N/A
Chamber	HYDR	HYDR

VIOLATIONS :

Vio Code	Section	Unit	OOS	State Citation Number	Verify*	Crash	Violation Description
393.75C	393.75(c)	1	Y		U	N	Tire - other tread depth less than 2/32 of inch: Axle #1 right tire measured less than 2/32 in all 4 tread grooves across width of tire. (two measured 0/32; two measured 1/32)
396.5A-HNLOW	396.5(a)	1	N		N	N	Hubs - No visible or measurable lubricant showing in the hub - outer wheel; Axle #1 right outer hub leaking fluid
393.209E	393.209(e)	1	N		N	N	Power steering violations: Fluid leaking from power steering gear box
392.2UCR	392.2	1	N		N	N	Failure to pay UCR Fee: None paid for 2014, 2015, & 2016
390.21B	390.21(b)	1	N		N	N	Carrier name and/or USDOT Number not displayed as required: Carrier name should read "BENFER ENTERPRISES II LLC"; displaying "BENFER'S TOWING AUTO & COLLISION"
393.81	393.81	1	N		N	N	Horn inoperative: Horn Inop
392.7A	392.7(a)	D	N		N	N	Driver failing to conduct pre-trip inspection: Driver stated that he did not complete a pre-trip inspection
391.41A	391.41(a)	D	N		N	N	No medical certificate in driver's possession: Non-commercial class DL; driver has no med cert in possession

* U - Unknown; N - Non-OOS or Driver OOS Violation

HazMat: No HM Transported. Placard: NA Cargo Tank:

Special Checks:

<input type="checkbox"/> Alcohol/Controlled Substance Check	<input type="checkbox"/> Traffic Enforcement	<input type="checkbox"/> Post Crash Inspection
<input type="checkbox"/> Conducted by Local Jurisdiction	<input type="checkbox"/> PASA Conducted Inspection	<input type="checkbox"/> PRBT Inspection
<input type="checkbox"/> Size and Weight Enforcement	<input type="checkbox"/> Drug Interdiction Search	Arrests:
<input type="checkbox"/> EScreening		

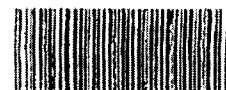
Inspection Notes:

Report Prepared By:
 J.L. Mills

Badge #:
 0262

Copy Received By:
 TABOR, STACY M

Page 1 of 2



KSHIP02520638

X

X

DRIVER/VEHICLE EXAMINATION REPORT

Kansas Highway Patrol
MOTOR CARRIER SAFETY ASSISTANCE
700 SW Jackson, Ste 704
Topeka, KS 66603
Phone #: (786)296-7189 Fax #: (786)296-2868
truckinspection@khp.ks.gov

Report Number: KSHPO2520638
Inspection Date: 9/27/2016 Certification Date:
Time Started: 07:58 Time Ended: 09:10
Inspection Level: I - Full Inspection
HM Inspection Type: No HM Inspection

BENFER ENTERPRISES II LLC

Driver: TABOR, STACY M
License #: [REDACTED] State: MO
Date of Birth: [REDACTED]

ORRICK, MO 64077

USDOT #: 02405874

Phone #: [REDACTED]

MC/MX #:

Fax #: [REDACTED]

State #:

Special Study Fields:

Special Study1: Special Study6:
Special Study2: Special Study7:
Special Study3: Special Study8:
Special Study4: Special Study9:
Special Study5: Special Study10:

* Pursuant to the authority contained in Title 49, CFR; K.S.A. 88-1,129; K.C.C. Reg. 82-4-3, I hereby declare the above marked unit(s) as "OUT OF SERVICE". No person and/or carrier shall permit and/or require the removal of the "OUT OF SERVICE" stickers or the operation of this motor vehicle until ALL out of service defects have been corrected. This Out of Service condition may result in the assessment of a Civil Penalty being issued against the Carrier indicated on this report. Driver Initials _____

W DRIVER: THIS FORM IS REQUIRED TO BE RETURNED TO THE CARRIER BY REGULATION. **/** ** *CARRIER CERTIFICATION: All defects on this sheet must be corrected or acknowledged PRIOR TO RE-DISPATCH and then certified by a responsible carrier official who must sign below. RETURN THIS FORM WITHIN 15 DAYS to the Motor Carrier Division of the KANSAS HIGHWAY PATROL at the address listed at the top of this form.

Signature of Carrier Official: X _____ Date: _____

* NOTE TO MECHANIC: The undersigned certifies that all mechanical defects listed on this report HAVE BEEN CORRECTED at the time of signature.

Signature of Repairer: X _____ Facility: _____ Date: _____

Report Prepared By:
J.L. Mills

Badge #:
0262

Copy Received By:
TABOR, STACY M

X _____

X _____



KSHPO2520638

CERTIFICATE OF SERVICE

17-GIMM-269-KHP

I, the undersigned, certify that a true and correct copy of the above and foregoing Direct Testimony of Trooper Jason Mills on Behalf of the State Corporation Commission of the State of Kansas was placed in the United States mail, postage prepaid, or hand-delivered this 3rd day of April, 2017, to the following:

BILL BENFER, MANAGING MEMBER
BENFER ENTERPRISES II LLC
10047 E WILSON RD
INDEPENDENCE, MO 64053

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



Vicki Jacobsen