

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

Before Commissioners: Andrew J. French, Chairperson  
Dwight D. Keen  
Susan K. Duffy

In the Matter of the Investigation of )  
**Brian J. Nisly, d/b/a Nisly** )  
**Construction of Partridge, Kansas,** )  
Regarding the Violation of the Motor )  
Carrier Safety Statutes, Rules and ) Docket No. 20-TRAM-009-PEN  
Regulations and the Commission's )  
Authority to Impose Penalties, Sanctions )  
and/or the Revocation of Motor Carrier )  
Authority.

**ORDER SUSPENDING INTRASTATE MOTOR CARRIER OPERATIONS**

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and determination. 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. 66-1,111, 66-1,112g, and 66-1,115, the Commission is given full power, authority and jurisdiction to supervise and control motor carriers, as defined in K.A.R. 82-4-3f, 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. 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. 66-1,129(a)(7), the Commission has adopted motor carrier transportation regulations (K.A.R. 82-4-3f) consistent with the federal motor carrier safety assistance program and other federal requirements concerning transportation of hazardous waste.

## **II. FINDINGS OF FACTS**

4. On February 24, 2021, Commission Staff filed a Motion to Suspend Intrastate Motor Carrier Operations due to the Carrier's failure to respond to several attempts to schedule a safety compliance review on its motor carrier operations.

5. Brian J. Nisly, d/b/a Nisly Construction of Partridge, Kansas (Carrier) is a motor carrier as defined in K.A.R. 82-4-3f, that operates commercial motor vehicle(s) in intrastate commerce.

6. Carrier operates under USDOT Number 3315141.

7. On July 11, 2019, Carrier was issued a penalty assessment for a violation(s) of the Kansas Motor Carrier Safety Statutes, Rules and Regulations discovered during a compliance review conducted on June 21, 2019, by Kansas Corporation Commission Special Investigator Doug Handy. The Commission's Penalty Order is incorporated herein by reference and made a part of this Order.

8. The Penalty Order at ordering clause B., stated, "Further, Brian J. Nisly, d/b/a Nisly Construction must submit to one follow-up safety compliance review within the next 18 months.

9. Special Investigator Verna Jackson has made numerous attempts to contact Carrier to facilitate a follow-up off-site safety compliance review on its operations as a motor carrier.

10. Ahsan Latif, Litigation Counsel, wrote and mailed Carrier a letter on August 28, 2020, informing Carrier that should it continue to resist by failing to respond, the Commission may suspend its motor carrier operations, revoke or amend certificates, and/or initiate sanctions or fines against Carrier. The letter gave Carrier ten (10) days from the date of the letter to respond.

11. As of February 24, 2021, Special Investigator Verna Jackson and Litigation Counsel Ahsan Latif have not heard from Carrier to schedule a follow-up motor carrier safety compliance review.

### **III. CONCLUSIONS OF LAW**

12. The Commission finds it has jurisdiction over Carrier as the Carrier is a motor carrier as defined in K.A.R. 82-4-3f.

13. The Commission finds Carrier received sufficient notices of the need to schedule a follow-up safety compliance review of its motor carrier operations. The Commission finds Carrier intentionally failed to act upon these notices.

14. The Commission finds Carrier's failure to respond to Staff's attempts to contact is intentional and therefore this Commission orders the Carrier to suspend all intrastate motor carrier operations other than such motor carrier operations excepted from the Commission's regulation under K.S.A. 66-1,129, until such time as the carrier takes the necessary steps to become compliant.

**THE COMMISSION THEREFORE ORDERS THAT:**

A. Brian J. Nisly, d/b/a Nisly Construction of Partridge, 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. 66-1,129, until such time as Carrier contacts Special Investigator Verna Jackson or Litigation Counsel Ahsan Latif to schedule a safety compliance review. This Suspension of Intrastate Motor Carrier Operations 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 suspending operating authority.

B. **Pursuant to K.S.A. 77-537 and K.S.A. 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.** Failure to timely request a hearing will result in a waiver of Carrier's right to a hearing, and this Order will become a Final Order against Carrier, suspending Carrier's motor carrier operations, ordering Carrier to attend a Commission-sponsored safety seminar within the next ninety (90) days and provide Staff with written proof of attendance.

C. 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.

**BY THE COMMISSION IT IS SO ORDERED.**

French, Chairperson; Keen, Commissioner; Duffy, Commissioner

Dated: 03/02/2021



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Lynn M. Retz  
Executive Director

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**CERTIFICATE OF SERVICE**

20-TRAM-009-PEN

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of  
first class mail/hand delivered on 03/02/2021.

BRIAN J. NISLY, OWNER  
BRIAN J. NISLY  
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/S/ DeeAnn Shupe  
DeeAnn Shupe