1500 SW Arrowhead Road Topeka, KS 66604-4027 Kansas Corporation Commission

Phone: 785-271-3100 Fax: 785-271-3354 http://kcc.ks.gov/

Sam Brownback, Governor

Shari Feist Albrecht, Chair Jay Scott Emler, Commissioner Pat Apple, Commissioner

October 2, 2014

NOTICE OF PENALTY ASSESSMENT 15-TRAM-109-PEN

Kevin Courtney, Financial Analyst Husqvarna Construction Products North America, Inc. 17400 W 119th St Olathe, Kansas 66061

This is a notice of a penalty assessment for violation of Kansas Motor Carrier Safety Statutes, Rules, and Regulations discovered during a compliance review conducted on September 3, 2014, by Kansas Corporation Commission Special Investigator Verna Jackson. For a full description of the penalty and process please refer to the Order that is attached to this notice.

IF YOU ACCEPT THE PENALTY:

You have been assessed a \$250 penalty. You have thirty (30) days from service of this Penalty Order to pay the fine amount. <u>Check or money order must be made payable to the Kansas Corporation</u> <u>Commission.</u> Payment is to be mailed to the Fiscal Section of the Kansas Corporation Commission at 1500 S.W. Arrowhead Road, Topeka, Kansas 66604, and must include a reference to the docket number of this proceeding. Credit card payment may be made by calling the Fiscal Office at 785-271-3113.

You must attend a Commission-sponsored safety seminar within the next ninety (90) days and provide Staff with written proof of attendance. A schedule of dates and locations for the safety seminar can be found at the Commission's website <u>http://www.kcc.state.ks.us/trans/safety_meetings.htm</u>.

You must submit to one follow-up safety compliance review within the next 18 months. Staff will contact you at a later date to determine an appropriate time for this review.

IF YOU CONTEST THE PENALTY:

You have the right to request a hearing. <u>A request for hearing must be made in writing, setting</u> forth the specific grounds upon which relief is sought. Respondent must submit an original and seven (7) copies of the request to the Commission's Executive Director at 1500 S.W. Arrowhead Road, Topeka, Kansas 66604 within fifteen (15) days from the date stamped on the last page of the Penalty Order. K.A.R. 82-1-215; K.S.A. 2013 Supp. 77-542.

IF YOU FAIL TO ACT:

Failure to pay the fine amount within thirty (30) days of service of the Penalty Order, or in the alternative, provide a written request for a hearing within fifteen (15) days from service of the Penalty Order will result in the attached Order becoming a Final Order and may result in the additional sanction of suspension and/or revocation of your motor carrier operating authority.

Respectfully,

Michael J. Duene

Michael J. Duenes Litigation Counsel (785) 271-3181

2014.10.02 13:43:57 Kansas Corporation Commission

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

Before Commissioners:

Shari Feist Albrecht, Chair Jay Scott Emler Pat Apple

In the Matter of the Investigation of Husqvarna) Construction Products North America, Inc.,) of Olathe, Kansas, Regarding the Violation of) the Motor Carrier Safety Statutes, Rules and) Docket No. 15-TRAM-109-PEN Regulations and the Commission's Authority to) Impose Penalties. Sanctions and/or the) Revocation of Motor Carrier Authority.

PENALTY ORDER

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The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission). The Commission, having been briefed on the issue by the Director of the Commission's Transportation Division, finds and concludes as follows:

L JURISDICTION

1. Pursuant to K.S.A. 2013 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. 2013 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. 2013 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. The Commission has the authority, pursuant to K.A.R. 82-1-237, to investigate an entity under the Commission's jurisdiction and order a hearing on the Commission's own motion when the Commission believes the entity is in violation of the law or any order of the Commission.

II. BACKGROUND

4. Husqvarna Construction Products North America, Inc. (Husqvarna Construction) obtained private operating authority from the Commission on November 14, 2012, and operates under KSMCID number 169165 and USDOT number 2088561.

5. Kevin Courtney attended a Commission-sponsored Motor Carrier Education and Instructional Meeting on November 13, 2012, on behalf of Husqvarna Construction.

6. Husqvarna Construction is a private motor carrier which primarily hauls power equipment for demonstration purposes at construction sites and to various trade shows and conventions in interstate and intrastate commerce.

III. STATEMENT OF FACTS

7. Pursuant to the jurisdiction and authority cited above, on September 3, 2014, Commission Staff (Staff) Special Investigator Verna Jackson conducted a compliance review of the operations of Husqvarna Construction. A copy of the safety compliance review is included in this Penalty Order as Attachment "A" and is hereby incorporated by reference. As a result of this investigation, Ms. Jackson identified one (1) violation of the Motor Carrier Safety Regulations.

a. On June 29, 2014, Husqvarna Construction required or permitted its driver, James Davitz, to operate a commercial motor vehicle, a 2012 Ford 350, VIN ending in 83805, pulling a 2012 Gooseneck Trailer, VIN ending

in 290008, in interstate commerce from Union Grove, Wisconsin to Olathe, Kansas. This trip is evidenced by Driver's Daily Log, dated June 29, 2014, a copy of which is attached hereto as Attachment "B" and is hereby incorporated by reference. At the time of this transportation, driver, Mr. Davitz, drove after more than eight (8) hours had passed since the end of the driver's last off-duty or sleeper-berth period of at least 30 minutes. *See* Mr. Davitz' Driver's Daily Log, a copy of which is attached hereto as Attachment "B". The special investigator found three (3) violations of this type. Husqvarna Construction's failure to provide "rest breaks" to its drivers if more than eight (8) hours have passed since the end of the driver's last off-duty or sleeper-berth period of at least 30 minutes is a violation of 49 C.F.R. 395.3(a)(3)(ii), as adopted by K.A.R. 82-4-3, and as implemented by K.S.A. 2013 Supp. 66-1,129. Staff recommends a fine of \$250.

IV. STAFF'S RECOMMENDATIONS

8. Based upon the available facts, Staff recommends the Commission find Husqvarna Construction committed one (1) violation of Kansas law that governs motor carriers, including various provisions of the Federal Motor Carrier Safety Regulations (FMCSRs), as adopted by the Kansas Administrative Regulations, and is therefore subject to sanctions or fines imposed by the Commission.

9. Additionally, Staff recommends a civil penalty of \$250 for one (1) violation of the Motor Carrier Safety Statutes, Rules and Regulations.

10. Staff further recommends that Husqvarna Construction be required to attend a Commission-sponsored safety seminar within the next ninety (90) days and provide Staff with written proof of attendance. A schedule of the dates and locations for the safety seminar can be found on the Commission's website at http://kcc.ks.gov/trans/safety_meetings.htm.

11. Finally, Staff recommends that Husqvarna Construction submit to one follow-up safety compliance review within the next eighteen (18) months. Staff will contact the motor carrier at a later date to determine an appropriate time for this review.

V. CONCLUSIONS OF LAW

12. The Commission finds it has jurisdiction over Husqvarna Construction because it is a motor carrier as defined in K.S.A. 2013 Supp. 66-1,108.

13. The Commission finds Husqvarna Construction committed one (1) violation of Kansas law that govern motor carriers, including various provisions of the Federal Motor Carrier Safety Regulations (FMCSRs), as adopted by the Kansas Administrative Regulations, and is therefore subject to sanctions or fines imposed by the Commission.

THE COMMISSION THEREFORE ORDERS THAT:

A. Husqvarna Construction Products North America, Inc., of Olathe, Kansas is hereby assessed a \$250 civil penalty for one (1) violation of Kansas law governing the regulation of motor carriers, the Kansas Administrative Regulations and provisions of the Federal Motor Carrier Safety Regulations, as adopted by the Kansas Administrative Regulations.

B. Husqvarna Construction is hereby ordered to attend a Commission-sponsored safety seminar within the next ninety (90) days and is to provide Staff with written proof of attendance. Further, Husqvarna Construction is ordered to submit to one follow-up safety compliance review within the next eighteen (18) months.

C. <u>Pursuant to K.S.A. 2013 Supp. 77-537 and K.S.A. 77-542, any party may</u> 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 Executive Director, at <u>1500 S.W. Arrowhead Road, Topeka, Kansas 66604 within fifteen (15) days from the date</u> of service of this Order. If service is by certified mail, service is complete upon the date delivered shown on the Domestic Return Receipt. Hearings will be scheduled only upon written request. Failure to timely request a hearing will result in a waiver of Husqvarna Construction's right to a hearing, and this Penalty Order will become a Final Order assessing a \$250 civil penalty against Husqvarna Construction, and ordering Husqvarna Construction to attend a Commission-sponsored safety seminar within the next ninety (90) days and provide Staff with written proof of attendance, and to submit to a safety compliance review within eighteen (18) months from the date of service of this Order.

D. Attorneys for all parties shall enter their appearances in Commission proceedings by giving their names and addresses for the record. A corporation shall not be permitted to enter an appearance, except by its attorney.

E. If you do not request a hearing, the payment of the civil penalty is due in thirty (30) days from date of service of this Order. Checks and Money Orders shall be payable to the Kansas Corporation Commission. For credit card payments, include type of card (Visa, MasterCard, Discover, or American Express), account number and expiration date. Payments shall be mailed to the Fiscal Section of the Kansas Corporation Commission, 1500 S.W. Arrowhead Road, Topeka, Kansas 66604. *The payment shall include a reference to the docket number of this proceeding*.

F. Failure to pay the \$250 civil penalty within thirty (30) days of the service of this Penalty Order, and/or failure to comply with the provisions of this Order, may result in

revocation of Husqvarna Construction's motor carrier operating authority without further notice. Additionally, the Commission may impose further sanctions to include, but not limited to, the issuance and enforcement of out-of-service and/or cease and desist orders, and any other remedies available to the Commission by law, without further notice.

G. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further order or orders as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

Albrecht, Chair; Emler, Com.; Apple, Com.

Dated: OCT 0 2 2014

ORDER MAILED OCT 014

Thomas A. Day Acting Executive Director

MJD

ATTACHMENT "A"

US DOT # Legal: HUSQVARNA CONSTRUCTION PRODUCTS NORTH AMERICA INC 2088561 Operating (DBA):										
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Ì	HUSQVARNA CONSTRUCTION PROD U.S. DOT #: 2088561	DUCTS NORTH AMERICA INC State #:	Review Date: 09/03/2014
		Part A	
	ESTIONS regarding this report or the Federation zardous Materials rules may be addressed	eral Motor Carrier Safety or I to the Kansas Corporation Commission at:	
	1500 SW Arrowhead Topeka, Kansas 66604 Telephone 785-271-3104		
	This report will be	e used to assess your safety compliance.	
	Interviewed		
Name: K Name:	Kevin Courtney	Title: Financial Analyst Title:	

HUSQVARNA CONSTRUCTION PRODUCTS NORTH AMERICA INC

U.S. DOT #: 2088561

State #:

Part B Violations

1 FEDERAL	Primary: 395.3(a)(3)(ii)		Discovered	Checked	Drivers/V In Violation	Checked		
the end of the Example June 29, 2014 James Davitz Carrier driver of the driver's las drove until 6 pr Safety Fitness	Bescription Requiring or permitting a property-carrying commercial motor vehicle driver to drive after more than 8 hours have passed since the end of the driver's last off duty or sleeper berth period of at least 30 minutes. Example June 29, 2014							
			Number of Vehicle	•	•			
Your proposed safety rating is :								
This Review is not Rated.								

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HUSQVARNA CONSTRUCTION PRODUCTS NORTH AMERICA INC

State #:

09/03/2014

U.S. DOT #: 2088561

Safety Management Process Breakdowns and Remedies

FMCSA recently announced planned improvements to the Carrier Safety Measurement System (SMS) which was
implemented in December 2010 as part of the Agency's broader Compliance, Safety, Accountability (CSA) initiative.
A preview of these improvements is currently available to motor carriers. The system changes are scheduled to be
available to the public in July 2012. There will be additional opportunity for public comment on the changes after the
preview period ends in July 2012.

The improvements to SMS are based on ongoing analysis and feedback from enforcement personnel, the motor carrier industry, and other stakeholders. The changes more effectively identify and prioritize high-risk and other unsafe motor carriers for enforcement interventions designed to reduce commercial motor vehicle crashes and hazardous materials incidents.

Motor carrier's currently have the ability to preview how the improvements impact their individual safety data in SMS. These improvements include: (1) Changes to the SMS methodology that identify higher risk carriers while addressing industry biases; (2) better applications of SMS results for Agency interventions by more accurately identifying safety sensitive carriers (i.e., carriers transporting people and carriers hauling hazardous materials (HM)), so that such firms can be selected for CSA interventions at more stringent levels; and, (3) more specific fact-based displays of SMS results on the SMS Web site.

The data preview may be found at http://csa.fmcsa.dot.gov/. During the data preview period, the Agency requests comments on the impacts of the changes.

2. HOS COMPLIANCE BASIC PROCESS BREAKDOWN: Training and Communication

DESCRIPTION OF PROCESS BREAKDOWN: Carrier is not requiring drivers to take a 30 minute break within 8 hours of coming on duty from an off-duty or sleeper berth of at least 30 minutes. Carrier needs to train the employees of the ruling and monitor the drivers accordingly.

BASIC SPECIFIC RECOMMENDED REMEDIES

Implement Safety Improvement Practices: The following are recommended practices related to Communication and Training.

• Convey expectations to all applicable staff for adhering to Hours-of-Service (HOS) regulations and company policies and procedures, and for executing responsibilities by providing new-hire and refresher training, and establish communication channels such as newsletters and/or meetings focused on conflicts between scheduling and HOS rules.

Inform drivers that management will be monitoring and tracking Records of Duty Status (RODS).

Ensure that managers and dispatchers encourage fatigued drivers to pull over and take a nap.

• Communicate the carrier's HOS Compliance percentile to all staff, and explain to them individually what they can do to help the carrier improve the percentile.

• Ensure that managers and supervisors communicate their ongoing commitment to abiding by Hours-of-Service (HOS) regulations and to not driving when fatigued for any reason, including illness.

Ensure that all staff (drivers, dispatchers, sales) involved in the Hours-of-Service (HOS) process receives training as required by regulations and/or company policies.

• Train managers, supervisors, and dispatchers on how to track and communicate drivers' Hours of Service (HOS), including checking the prior seven-day duty statement for intermittent drivers.

• Train the safety director and dispatchers on how to schedule routes that can be completed within Hours-of-Service (HOS) regulations.

• Train dispatchers and drivers to understand that drivers cannot be assigned a run if illness impairs their ability and/or alertness.

• Train all staff who are required to monitor and track Hours of Service (HOS) on appropriate company policies, including those related to discipline and incentives.

• Provide training/testing program to current drivers on proper log completion, how to achieve proper rest on trips by instructing them on the difference between on-duty not driving, for example a driver waits while trailer is loaded, and off-duty, and the importance of proper rest between shifts.

• Train drivers on the proper use of sleeper berths, including the correct procedure for entering time spent in a berth as a co-driver on the driver's Record of Duty Status (RODS).

Page 1 of 3

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HUSQVARNA CONSTRUCTION PRODUCTS NORTH AMERICA INC

State #:

U.S. DOT #: 2088561

Safety Management Process Breakdowns and Remedies

• Ensure that drivers are trained in driver Out-of-Service (OOS) rules, their responsibilities in adhering to those rules, and the carrier's procedures for reporting OOS violations and communicating appropriately with other personnel.

• Provide hiring officials with guidance on how best to attract, screen, and qualify applicants who are most likely to adhere to Hours-of-Service (HOS) regulations and company policies and procedures.

• Reinforce training about Hours-of-Service (HOS) policies, procedures, and responsibilities to drivers, dispatchers, and other employees, using job aids, post-training testing, and/or refresher training. Encourage informal feedback among them so that they can help each other to improve.

Seek Out Resources:

• You are encouraged to review your company's record at the following website: http://ai.fmcsa.dot.gov/SMS. You will need to use your PIN Number that has been provided by the FMCSA.

Contact industry associations to get resources and ideas on safety improvement practices from other carriers in the industry.

- 3. Driving is not permitted if more than 8 hours have passed since the end of the driver's last off-duty or sleeper-berth period of at least 30 minutes. Drivers must take 30 minutes off-duty or in the sleeper-berth to meet this requirement.
- 4. For all Investigations:

• Understand Why Compliance Saves Time and Money: Compliance with FMCSRs will not only save lives, but also saves your business time and money. Tracking how much your business spends on non-compliance activities can help you understand the many benefits of compliance to your business and why safety is good business.

• Document and Follow Through on Action Plans: Document and follow through on action plans to ensure the actions you are taking are creating improvement in safety management and compliance.

• NOTICE: A pattern and/or repeated violations of the same or related acute or critical regulations (violations of the same Part in Title 49, Code of Federal Regulations) will cause 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 any eligible 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.

• NOTICE: 49 CFR Part 391.23 requires prospective employers to, at a minimum, investigate a driver's employment information, crash record, and alcohol and controlled substances history from all employers the driver worked for within the previous 3 years.

The Pre-Employment Screening Program (PSP) is a screening tool that assists motor carriers in investigating crash history and roadside safety performance of prospective drivers. The PSP allows motor carriers to purchase 5 years of crash data and 3 years of roadside inspection data from the Federal Motor Carrier Safety Administration's (FMCSA) Motor Carrier Management Information System (MCMIS). Records are available 24 hours a day via Web request. Motor carriers should visit the following website for more information: http://www.psp.fmcsa.dot.gov/Pages/default.aspx

• All motor carriers and truck drivers are needed to fight against terrorism and hijacking. You could be a target. Protect yourself, your trucks, your cargo, and your facilities.

KCC requires that you prepare a corrective action letter, addressing the measures taken to correct the violations identified within this report. submit this letter within 15 days and any additional evidence necessary to prove that the corrective action has been taken to:

Kansas Corporation Commission

9/4/2014 10:15:06 AM





State #:

Safety Management Process Breakdowns and Remedies

Attn: Gary Davenport 1500 SW Arrowhead Rd Topeka KS 66604-4027

5. I acknowledge that the requirements and/or recommendations resulting from this off-site, focused review have been discussed with me and my questions have been answered. I further acknowledge that KCC recommendations only cover the scope of this focused review, and that areas not reviewed by the KCC have not necessarily been endorsed as compliant. I understand that failure to satisfactorily remedy the above-listed requirements, and/or failure to comply with Kansas Motor Carrier Safety Statutes and Regulations could result in the suspension of Husqvarna Construction Products North America Inc's operating authority and/or the impoundment of Husqvarna Construction Products North America Inc's vehicles.

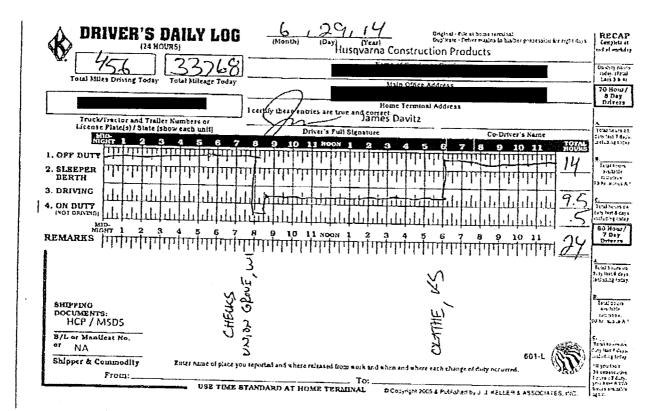
Carrier Representative

Date

After reviewing these Requirements and/or Recommendations, please sign and date where indicated, and return to the Kansas Corporation Commission, ATTN Verna Jackson, Transportation Division, 1500 SW Arrowhead Rd, Topeka, Kansas 66604-4027, or fax 785-271-3124.

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ATTACHMENT "B"



PLEASE FORWARD THE ATTACHED DOCUMENT (S) ISSUED IN THE ABOVE-REFERENCED DOCKET TO THE FOLLOWING:

	NO.	NO.
	CERT	PLAIN
NAME AND ADDRESS	COPIES	COPIES

KEVIN COURTNEY, FLEET MANAGER HUSQVARNA CONSTRUCTION PRODUCTS NORTH AMERICA, IN 17400 W 119TH ST OLATHE, KS 66061

MICHAEL DUENES, LITIGATION COUNSEL KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD RD TOPEKA, KS 66604-4027 ***Hand Delivered***

ORDER MAILED OCT C 3 2014

The Docket Room hereby certified that on this day of , 20 , it caused a true and correct copy of the attached ORDER to be deposited in the United States Mail, postage prepaid, and addressed to the above persons.