

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

Before Commissioners:      Shari Feist Albrecht, Chair  
                                 Jay Scott Emler  
                                 Dwight D. Keen

In the Matter of the Investigation of      )  
**Erickson Excavating of Ozawkie,**      )  
**Kansas,** Regarding the Violation of the      )  
Motor Carrier Safety Statutes, Rules and      )  
Regulations and the Commission's      )      Docket No. 19-TRAM-052-OOS  
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. 2017 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. 2017 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. 2017 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. 2017 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.

## **II. FINDINGS OF FACTS**

4. Erickson Excavating of Ozawkie, Kansas (Respondent) is a motor carrier as defined in K.S.A. 2017 Supp. 66-1,108, that operates commercial motor vehicle(s) in intrastate commerce.

5. Respondent operates under USDOT Number 2958725.

6. Special Investigator Jared Smith has made numerous attempts to contact Respondent to facilitate a follow-up off-site safety compliance review on its operations as a motor carrier.

7. Ahsan Latif, Litigation Counsel, wrote and mailed Respondent a letter on July 17, 2018, informing Respondent that should it continue to resist by failing to respond to Special Investigator Jared Smith scheduling a compliance review, the Commission may suspend its motor carrier operations, revoke or amend certificates, and/or initiate sanctions or fines against Respondent. The letter advised Respondent that Special Investigator Jared Smith would be at its place of business on August 2, 2018, at 9:00 a.m. to conduct the safety compliance review. Respondent did not show.

8. On April 3, 2018, Commission Staff filed a Motion to Suspend Intrastate Motor Carrier Operations due to the carrier's failure to respond.

### III. CONCLUSIONS OF LAW

9. The Commission finds it has jurisdiction over Respondent as the Respondent is a motor carrier as defined in K.S.A. 2017 Supp. 66-1,108.

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

11. The Commission finds Respondent's failure to respond to Staff's attempts to contact is intentional and 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. 2017 Supp. 66-1,129, until such time as the carrier takes the necessary steps to become compliant.

#### **THE COMMISSION THEREFORE ORDERS THAT:**

A. Erickson Excavating of Ozawkie, 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. 2017 Supp. 66-1,129, until such time as Respondent contacts Special Investigator Jared Smith 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. Service of this order will be by certified mail, return receipt requested, Receipt No. 70161970000105745629, and service is complete when Respondent signs

the Domestic Return Receipt. Pursuant to K.S.A. 66-1,129a, hearings will be held within ten (10) days upon written request.

C. **Pursuant to K.S.A. 2017 Supp. 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 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. 2017 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.**

Albrecht, Chair; Emler, Commissioner; Keen, Commissioner

Dated: 08/09/2018 \_\_\_\_\_



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Lynn M. Retz  
Secretary to the Commission

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## CERTIFICATE OF SERVICE

19-TRAM-052-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 08/10/2018.

BRIANNA ERICKSON, PRESIDENT  
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/S/ DeeAnn Shupe  
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DeeAnn Shupe