

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

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

In the Matter of the Emergency Suspension of)
Authority of **Durango Trucking LLC of**)
Oakley, Kansas Regarding the Violation of) Docket No. 19-TRAM-342-OOS
the Motor Carrier Safety Statutes, Rules and)
Regulations and the Commission's Authority)
to Impose Penalties, Sanctions and/or the)
Revocation of Motor Carrier Authority.)

**EMERGENCY ORDER SUSPENDING ALL INTRASTATE MOTOR CARRIER
OPERATIONS**

The above-captioned matter comes on for consideration and determination by the State Corporation Commission of the State of Kansas (Commission) upon its own motion. The Commission, being fully advised in the premises, finds as follows:

I. JURISDICTION

1. Pursuant to K.S.A. 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.. 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. 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 regulations 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 issue an order on the Commission's own motion when the Commission believes the entity is in violation of the law or any order of the Commission.

4. K.S.A. 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.

5. K.A.R. 82-1-232 grants the Commission the authority to issue interim emergency orders. The regulation provides in part as follows:

- (B)(i) Interim emergency orders may be issued by the commission upon its own initiative, or upon a request, if there has been a showing of good cause.
- (ii) An interim order may be issued by any commissioner. All parties affected by the order shall comply, except that as soon as possible after the order is issued, the order shall be approved or revoked by a majority of the commission.
- (iii) Unless a different period of time is otherwise specified by statute, an interim order shall not be effective for a period longer than 30 days if the matter is determined and the order is issued without a hearing on the merits.

6. K.S.A. Supp. 66-1,129a(a) provides that: "at any time for good cause shown the Commission may suspend the operation of any motor carrier subject to economic or safety rules and regulations adopted by the Commission."

II. FINDINGS OF FACTS

7. Commission records indicate that Durango Trucking LLC of Oakley, Kansas, operates as a common motor carrier which primarily hauls dirt and shale.

8. Durango Trucking LLC is registered as a motor carrier with the U.S. Department of Transportation (USDOT) and operates under USDOT Number 3064458.

9. Pursuant to the jurisdiction and authority cited above, on February 20, 2019, Commission Staff (Staff) Special Investigator Penny Fryback conducted a compliance review of the operations of Durango Trucking LLC. SI Fryback's review revealed numerous violations of the motor carrier rules and regulations established and enforced by this Commission.

10. Commission Staff ("Staff") submitted a Report and Recommendation regarding concerns stemming from the violations, management practices and continuing unlawful operations by Durango Trucking LLC, dated February 21, 2019.

11. Based on the findings contained in Staff's R&R, Staff recommended that the Commission issue an Interim Emergency Order Suspending All Intrastate Motor Carrier Operations against Durango Trucking LLC to protect the motoring public until such time as a follow-up order could be issued at a subsequent Commission Business Meeting.

12. On February 22, 2019, the Commission issued its Interim Emergency Order Suspending All Intrastate Motor Carrier Operations ("Interim Order"), which is attached hereto and made a part hereof by reference. The Interim Order was signed by Chair Dwight D. Keen pursuant to K.A.R. 82-1-232(B)(ii) with the expectation that the Commission would issue an order making the suspension permanent at a subsequent Commission Business Meeting.

III. CONCLUSIONS OF LAW

13. The Commission reiterates the Interim Order's findings that the failure of Durango Trucking LLC to maintain safe operations constitutes grounds for an emergency proceeding, as provided for in K.S.A. 77-536 and K.S.A. Supp. 66-1,129a (a) and the Commission properly acted pursuant to the regulations relating to interim emergency proceedings, as provided for in K.A.R. 82-1-232.

14. The Commission further reiterates the Interim Order's findings that Respondent's failure to comply with the applicable motor carrier safety statutes, rules and regulations 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. 66-1,129, until such time as the carrier takes the necessary steps to become compliant.

15. Durango Trucking LLC may not operate with a suspended authority. Any such operation is considered an intentional and willful violation of the motor carrier statutes, orders, and regulations, subject to a fine of up to \$5,000 per day pursuant to K.S.A. 66-1,142b.

16. The Commission finds and concludes that the Interim Order was properly issued and should be made permanent, until such time that Respondent presents to Staff verifiable evidence of its compliance with federal and state motor carrier rules and regulations or until a further Commission order in this docket.

THE COMMISSION THEREFORE ORDERS THAT:

A. The Interim Emergency Order Suspending All Intrastate Motor Carrier Operations of Durango Trucking LLC is made permanent. Durango Trucking LLC 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.

The emergency suspension will remain in effect until such time as Respondent presents to Staff verifiable evidence of its compliance with federal and state motor carrier safety rules and regulations. or until a further Commission order in this docket. 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. Durango Trucking LLC 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. 2018 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.** If service is by certified mail, return receipt requested, service of this order is complete when Durango Trucking LLC 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. 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.

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. 2018 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.

Keen, Chair; Albrecht, Commissioner; Emler, Commissioner.

Dated: 02/16/2019 _____



Lynn M. Retz
Secretary to the Commission

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THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

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2. Pursuant to K.S.A. 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 regulations 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 issue an order on the Commission's own motion when the Commission believes the entity is in violation of the law or any order of the Commission.

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- (ii) An interim order may be issued by any commissioner. All parties affected by the order shall comply, except that as soon as possible after the order is issued, the order shall be approved or revoked by a majority of the commission.
- (iii) Unless a different period of time is otherwise specified by statute, an interim order shall not be effective for a period longer than 30 days if the matter is determined and the order is issued without a hearing on the merits.

6. K.S.A. Supp. 66-1,129a(a) provides that: "at any time for good cause shown the Commission may suspend the operation of any motor carrier subject to economic or safety rules and regulations adopted by the Commission."

II. FINDINGS OF FACTS

7. Commission records indicate that Durango Trucking LLC of Oakley, Kansas, operates as a common motor carrier which primarily hauls dirt and shale.

8. Durango Trucking LLC is registered as a motor carrier with the U.S. Department of Transportation (USDOT) and operates under USDOT Number 3064458.

9. Pursuant to the jurisdiction and authority cited above, on February 20, 2019, Commission Staff (Staff) Special Investigator Penny Fryback conducted a compliance review of the operations of Durango Trucking LLC. SI Fryback's review revealed numerous violations of the motor carrier rules and regulations established and enforced by this Commission.

10. Commission Staff ("Staff") submitted a Report and Recommendation regarding concerns stemming from the violations, management practices and continuing unlawful operations by Durango Trucking LLC, dated February 21, 2019, attached hereto and made a part hereof by reference.

11. Based on the findings contained in Staff's R&R, Staff recommends that the Commission issue an Interim Emergency Order Suspending All Intrastate Motor Carrier Operations against Durango Trucking LLC to protect the motoring public. The Interim Order would be followed by another order issued at a subsequent Commission business meeting.

12. During Staff's compliance review and a recent Federal Motor Carrier Safety Administration Safety Audit of Durango Trucking LLC's operations, Staff discovered multiple serious safety violations including, among other things:

- a. Operation of vehicles in poor and deteriorating conditions, including defective steering wheels, inoperative or defective brakes and cracked frames.
- b. Operating without obtaining insurance.
- c. Failure to obtain or maintain proper identification or valid commercial driver's licenses (CDLs) for its drivers.
- d. Failure to institute pre-employment drug and alcohol testing on all drivers or to maintain a drug and alcohol testing program.
- e. Failure to maintain valid driver qualification files for drivers, including failure to keep applications, motor vehicle records, medical examination certificates or retain a copy of a CDL if one was possessed.
- f. Hauling loads well over the gross weight allowed in Kansas despite not possessing an overweight permit or operating the equipment necessary to obtain such a permit.
- g. Operating vehicles without proper tags or markings or under the markings of a different unrelated company.
- h. Attempting to operate as a chameleon carrier, reincarnating as 3E Trucking LLC.

III. STAFF'S RECOMMENDATION'S

13. Staff requested the Commission find that Durango Trucking LLC's safety violations discovered during the February 20, 2019 compliance review and the findings outlined in Staff's R&R are sufficient evidence of unsafe motor carrier operations and as such pose a potential immediate threat to the safety and welfare of the public of the state of Kansas.

14. Based on the presented facts, Staff recommends the Commission issue an Interim Emergency Order Suspending All Intrastate Motor Carrier Operations until an Order can be

issued at a subsequent Commission business meeting. The Interim Order would remain in effect for thirty days, unless 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.

III. CONCLUSIONS OF LAW

15. The Commission finds that the failure of Durango Trucking LLC to maintain safe operations constitutes grounds for an emergency proceeding, as provided for in K.S.A. 77-536 and K.S.A. Supp. 66-1,129a (a) and an interim emergency proceeding, as provided for in K.A.R. 82-1-232.

16. The Commission also finds Respondent's failure to comply with the applicable motor carrier safety statutes, rules and regulations 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. 66-1,129, until such time as the carrier takes the necessary steps to become compliant.

17. Durango Trucking LLC may not operate with a suspended authority. Any such operation is considered an intentional and willful violation of the motor carrier statutes, orders, and regulations, subject to a fine of up to \$5,000 per day pursuant to K.S.A. 66-1,142b.

THE COMMISSION THEREFORE ORDERS THAT:

A. Durango Trucking LLC 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. 66-1,129, until such time as Respondent presents to Staff verifiable evidence of its compliance with federal and state motor carrier safety rules and regulations. This Interim Emergency Order Suspending All Intrastate Motor Carrier Operations is effective for 30 days or until further Order of the Commission and 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. Durango Trucking LLC 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. 2018 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. If service is by certified mail, return receipt requested, service of this order is complete when Durango Trucking LLC 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. 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.

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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.

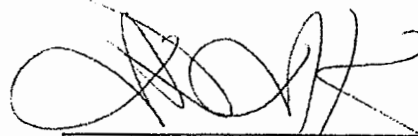
E. Failure to comply with the provisions of this Order may result in further sanctions to include, but not limited to, the assessment of civil penalties and/or the impoundment of commercial motor vehicles found operating in violation of this Order and any other remedies available to the Commission by 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.

Keen, Chair; Albrecht, Commissioner (not participating); Emler, Commissioner (not participating)

Dated: 2-22-2019



Dwight D. Keen
Chair of the Commission

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CERTIFICATE OF SERVICE

19-TRAM-342-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 02/27/2019.

OMAR ESPINO, MANAGING MEMBER
DURANGO TRUCKING LLC
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OAKLEY, KS 67748

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/S/ DeeAnn Shupe

DeeAnn Shupe