

**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 Emergency Suspension of)
Operating Authority of **Francisco Hernandez**,)
d/b/a Diamond Transport of Ulysses, Kansas,) Docket No. 14-TRAM-455-OOS
for Failure to Comply with New Entrant Safety)
Requirements as Required by the Motor Carrier)
Safety Statutes, Rules and Regulations.)

ORDER REINSTATING MOTOR CARRIER OPERATING AUTHORITY

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. 2013 Supp. 66-1,108b, 66-1,111, 66-1,112, 66-1,114, 66-1,114b and 66-1,115, and amendments thereto, 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, and amendments thereto, 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. 2013 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. BACKGROUND

4. Francisco Hernandez, d/b/a Diamond Transport is a motor carrier as defined in K.S.A. 2013 Supp. 66-1,108 that operates commercial motor vehicle(s) in both intrastate and interstate commerce in a manner that requires authority.

5. Francisco Hernandez, d/b/a Diamond Transport is registered as a motor carrier with the U.S. Department of Transportation (USDOT) and operates under USDOT Number 2454367.

6. The Commission received notice from the U.S. Department of Transportation, Federal Motor Carrier Safety Administration that Francisco Hernandez, d/b/a Diamond Transport's New Entrant Registration had been revoked effective April 7, 2014 for failure to comply with safety requirements.

7. Pursuant to the above authority, on April 17, 2014, the Commission entered an Emergency Suspension of Operating Authority Order on Francisco Hernandez, d/b/a Diamond Transport in the above-referenced docket, until such time that Staff recommended reinstatement.

III. STAFF'S RECOMMENDATION

8. On May 9, 2014, the Staff of the Transportation Division of the Kansas Corporation Commission (Staff) received notice from the U.S. Department of Transportation, Federal Motor Carrier Safety Administration, that Francisco Hernandez, d/b/a Diamond Transport has submitted evidence of compliance with safety requirements as required in 49 C.F.R. 385.329. As a result, the carrier's reapplication for New Entrant registration under USDOT No. 2454367 has been approved and the carrier's authority to operate in interstate operations has been reinstated. See attached FMCSA reinstatement documentation.

9. Based on the Federal Motor Carrier Safety Administration's reinstatement, it is Staff's recommendation to reinstate Francisco Hernandez, d/b/a Diamond Transport's motor carrier operating authority in Kansas.

IV. CONCLUSIONS OF LAW

10. The Commission finds it has jurisdiction over Francisco Hernandez, d/b/a Diamond Transport because it is a motor carrier as defined in K.S.A. 2013 Supp. 66-1,108.

11. Based on the available facts, the Commission finds that Staff's recommendation to reinstate Francisco Hernandez, d/b/a Diamond Transport's operating authority in Kansas is reasonable.

THE COMMISSION THEREFORE ORDERS THAT:

(A) Francisco Hernandez, d/b/a Diamond Transport's certificate, permit or license that is necessary to carry on the business of a private and/or public motor carrier in Kansas is hereby reinstated.

(B) Francisco Hernandez, d/b/a Diamond Transport remains obligated to attend a Commission-sponsored safety seminar pursuant to the Emergency Suspension of Operating Authority Order at paragraph B., entered on April 17, 2014.

(C) The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further Orders as it may deem necessary and proper.

BY THE COMMISSION IT IS SO ORDERED.

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

Dated: MAY 15 2014


ORDER MAILED MAY 16 2014

Kim Christiansen
Executive Director

REV



U.S. Department
of
Transportation

**Federal Motor
Carrier Safety
Administration**

FRANCISCO HERNANDEZ
OWNER
FRANCISCO HERNANDEZ
DIAMOND TRANSPORT
1124 E ILLINOIS AVE
ULYSSES, KS 67880-3017

1200 New Jersey Ave., S.E.
Washington, DC 20590
May 9, 2014

In reply refer to:
USDOT Number: 2454367
MC Number: MC847479

Action Required: Call to schedule a Safety Audit.

According to Federal Motor Carrier Safety Administration's (FMCSA) records thirty days have elapsed since FRANCISCO HERNANDEZ's USDOT New Entrant registration was revoked on April 7, 2014, and that FRANCISCO HERNANDEZ has reapplied in accordance with 49 CFR 385.329. This is to inform FRANCISCO HERNANDEZ that FRANCISCO HERNANDEZ's reapplication for USDOT New Entrant registration has been approved.

A safety audit has not yet been conducted; FRANCISCO HERNANDEZ should contact your local State Motor Carrier Safety Assistance Program (MCSAP) office 785-296-7189 as soon as possible to schedule a safety audit. In accordance with 49 CFR section 385.337, failure to permit a safety audit to be performed may result in the revocation of FRANCISCO HERNANDEZ's USDOT New Entrant registration and FRANCISCO HERNANDEZ's interstate operation being placed out of service. Additionally, the refusal to submit to a safety audit may also subject a new entrant motor carrier to the penalty provisions in 49 U.S.C. 521(b) (2) (A), as adjusted by inflation.

FRANCISCO HERNANDEZ's 18-month new entrant safety monitoring period restarts as of May 9, 2014. FMCSA will continue to monitor and evaluate FRANCISCO HERNANDEZ's safety management practices and on-road performance to ensure FRANCISCO HERNANDEZ has basic safety management controls that are operating effectively and is complying with Federal requirements including the Federal Motor Carrier Safety Regulations (FMCSRs) and applicable Federal Hazardous Materials Regulations (HMRs). Failure to comply with applicable requirements may result in the revocation of FRANCISCO HERNANDEZ's USDOT New Entrant or permanent registration.

FRANCISCO HERNANDEZ's USDOT number can be found in the upper right hand corner of this letter. This USDOT number should be marked on commercial motor vehicles operated by FRANCISCO HERNANDEZ as required by 49 CFR section 390.21. A copy of the FMCSRs, including this regulation, may be found on the FMCSA web site, <http://safer.fmcsa.dot.gov>.

Sincerely,

Joseph P. DeLorenzo, Director, Office of
Enforcement and Compliance

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

| NAME AND ADDRESS | NO. CERT. COPIES | NO. PLAIN COPIES |
|------------------|------------------------|------------------------|
|------------------|------------------------|------------------------|

FRANCISCO HERNANDEZ, OWNER
D/B/A DIAMOND TRANSPORT
1124 E ILLINOIS AVE
ULYSSES, KS 67880-3017

ROBERT VINCENT, LITIGATION ATTORNEY
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604-4027

Hand Delivered

ORDER MAILED **MAY 16 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.