

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

Before Commissioners: Mark Sievers, Chairman
Ward Loyd
Thomas E. Wright

In the Matter of the Emergency Suspension of)
Operating Authority of **Town & Country**)
Sheetmetal, Inc. of Shawnee, Kansas, for)
Failure to Comply with New Entrant Safety) Docket No. 12-TRAM-039-OOS
Requirements as Required by the Motor Carrier)
Safety Statutes, Rules and Regulations.)

EMERGENCY SUSPENSION OF OPERATING AUTHORITY ORDER

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) on its own motion. 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. 66-1,108b, 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. 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. 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. 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.

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.

II. FINDINGS OF FACTS

5. Town & Country Sheetmetal, Inc. (Respondent) is a motor carrier as defined in K.S.A. 66-1,108 that operates commercial motor vehicle(s) in both intrastate and interstate commerce in a manner that requires authority.

6. Respondent is registered as a motor carrier with the U.S. Department of Transportation (USDOT) and operates under USDOT Number 2071927.

7. On May 5, 2011, the Federal Motor Carrier Safety Administration (FMCSA) forwarded a notice of violation(s) of the federal motor carrier safety regulations to Respondent, wherein Respondent was given 60 days to comply with the regulations.

8. As of July 11, 2011, FMCSA records indicate Respondent had not complied with new entrant requirements. As a result, the FMCSA issued Respondent an Order to Revoke "New Entrant" Registration And to Cease All Interstate Transportation. FMCSA's Order is attached hereto.

III. STAFF'S RECOMMENDATIONS

9. Staff asks the Commission to find Respondent received sufficient notice from FMCSA of violations of motor carrier safety rules and regulations and requisite opportunity to correct the violations and to obtain compliance.

10. Staff asks that the Commission find Respondent failed to act upon FMCSA's notice.

11. Staff asks the Commission find that Respondent's failure to comply with requirements of a new entrant audit 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.

12. Based on the presented facts, Staff recommends the Commission issue an Emergency Suspension of Operating Authority Order until such time as Respondent takes the necessary steps to obtain compliance with the federal and state motor carrier safety rules and regulations and submits verifiable evidence of the same to Staff, at which time Staff will recommend to the Commission to enter an order of reinstatement of motor carrier operating authority.

13. Furthermore, Staff recommends the Commission order Respondent to attend a Commission-sponsored safety seminar within the next ninety (90) days, and to provide Staff with written proof of attendance.

IV. CONCLUSIONS OF LAW

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

15. The Commission finds Respondent received sufficient notice from FMCSA of violations of motor carrier safety rules and regulations and requisite opportunity to correct the violations and come into compliance.

16. The Commission finds Respondent failed to act upon this notice.

17. The Commission also finds Respondent's failure to comply with requirements of a new entrant audit 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 and therefore this Commission orders the Respondent to suspend all intrastate motor carrier operations until such time as the carrier takes the necessary steps to become compliant, to include submitting to Staff verifiable evidence of the correction of the violation noted in FMCSA's July 11, 2011 Order, including, but not limited to, proof of federal reinstatement and attend a Commission-sponsored safety seminar within the next ninety (90) days. A schedule of dates and locations for the safety seminar can be found at the Commission's website http://www.kcc.state.ks.us/trans/safety_meetings.htm.

THE COMMISSION THEREFORE ORDERS THAT:

A. Town & Country Sheetmetal, Inc. of Shawnee, Kansas to immediately suspend all intrastate commercial motor carrier operations until such time as Respondent presents verifiable evidence, including, but not limited to, proof of federal reinstatement, to Staff documenting the correction of the safety concerns identified in FMCSA's July 11, 2011 Order to Revoke "New Entrant" Registration And Cease All Interstate Transportation.

B. Town & Country Sheetmetal, Inc. of Shawnee, 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. 66-118b, K.S.A. 66-1,105 and K.S.A. 77-529(a)(1), and amendments thereto, 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 Executive Director, at 1500 S.W. Arrowhead Road Topeka, Kansas 66604 within thirty (30) days from the date of service of this Order. If service is by mail, service is complete upon mailing and three (3) days shall be added to the above time frame. Hearings will be scheduled only upon written request. 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. A corporation shall not be permitted to enter an appearance, except by its attorney.

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 order or orders as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

Sievers, Chmn; Loyd, Com.; Wright, Com.

Dated: JUL 21 2011

A handwritten signature in black ink, appearing to read "Patrice Petersen-Klein", written over a horizontal line.

Patrice Petersen-Klein
Executive Director

JJ:vj



U.S. Department
of Transportation

**Federal Motor
Carrier Safety
Administration**

1200 New Jersey Ave., S.E.
Washington, DC 20590

July 11, 2011

In reply refer to:
USDOT No.: 2071927

VINCE WOHLTZ
PRESIDENT
TOWN & COUNTRY SHEETMETAL INC
6423 VISTA DRIVE
SHAWNEE, KS 66218

**ORDER TO REVOKE "NEW ENTRANT" REGISTRATION AND CEASE ALL INTERSTATE
TRANSPORTATION U.S. DOT Number: 2071927**

This Order is issued pursuant to 49 CFR 385.325(b). On May 5, 2011 TOWN & COUNTRY SHEETMETAL INC was notified that its USDOT New Entrant registration would be revoked and its interstate operations placed out of service unless TOWN & COUNTRY SHEETMETAL INC took action to remedy its safety management practices and submit in writing evidence of necessary corrective action within 60 days. Because TOWN & COUNTRY SHEETMETAL INC has failed to submit sufficient evidence of the necessary corrective action, TOWN & COUNTRY SHEETMETAL INC's USDOT New Entrant registration is hereby revoked and its interstate operations placed out of service, effective immediately. TOWN & COUNTRY SHEETMETAL INC must immediately cease all Interstate motor carrier operations in the United States.

Failure to comply with this Order may subject the carrier to penalty provisions in 49 USC 521(b) (2) (A) not to exceed \$11,000 for each offense.

In accordance with 49 CFR 385.327, TOWN & COUNTRY SHEETMETAL INC may request an administrative review if it believes Federal Motor Carrier Safety Administration (FMCSA) has committed an error in determining that its basic safety management controls are inadequate and/or that its corrective action under section 385.319(c) is insufficient. Under section 385.327(c) (1), the request must be submitted within 90 days of the date of the notice of FMCSA determining that its basic safety management controls are inadequate resulting in failure of the safety audit or under section 385.327(e) (2) within 90 days of the date that of the notice that FMCSA determined that the corrective actions are insufficient. The request for administrative review must include a description of the error(s) believed made by FMCSA in its determination and include a list of all factual and procedural issues disputed and any supporting information or documentation. The Field Administrator's decision will constitute final agency action. A request for administrative review must be submitted to:

DARIN G. JONES
U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION
MIDWESTERN SERVICE CENTER
4749 LINCOLN MALL DRIVE, SUITE 300A
MATTESON, IL 60443
Email: MSCCAP@DOT.GOV
Phone: 708-283-3564
Fax: 877-547-0381

Under section 385.329, TOWN & COUNTRY SHEETMETAL INC may reapply for USDOT New Entrant registration no earlier than 30 days from the date of this Order. In order to reapply TOWN & COUNTRY SHEETMETAL INC must begin the application process from the beginning, submit an updated Motor Carrier Identification Report (MCS-150), submit adequate evidence that the violations that resulted in the USDOT New Entrant registration revocation and adequate basic safety management controls have been established, and restart the 18-month new entrant monitoring period. Reapplication may be made via the FMCSA web site (<http://safer.fmcsa.dot.gov>) or by submitting a MCS-150 form. The form may be obtained by calling FMCSA's technical support at 1-800-832-5660 or via the FMCSA web site at www.fmcsa.dot.gov.

Contact your local FMCSA office if you have questions about what corrective actions must be submitted and where to submit them.

Sincerely,

John Van Steenburg, 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
JUDY JEWSOME, LITIGATION COUNSEL KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD ROAD TOPEKA, KS 66604-4027 ***Hand Delivered***		
Vince Wohletz, PRESIDENT Town & Country Sheetmetal, Inc. 6423 Vista Drive Shawnee, KS 66218		

ORDER MAILED JUL 22 2011

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.