

UNITED STATES DEPARTMENT OF TRANSPORTATION  
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

C & D TRANSPORTATION, INC.

USDOT 2096634

) Order No.: IL-2013-5000-IMH  
)  
) Service  
) Date: 11-23-2012  
)  
) Time: 2:35 PM CST  
)  
) Person  
) Served: Mengxiong Yang, MANAGER  
)

**IMMINENT HAZARD**  
**OPERATIONS OUT-OF-SERVICE ORDER**

This is an Imminent Hazard Operations Out-of-Service Order (“ORDER”) by the Secretary of Transportation (the “Secretary”) pursuant to 49 U.S.C. § 521(b)(5)(A), 49 U.S.C. §§ 13905(f), 31144(c)(1), and 31144(c)(5), and 49 C.F.R. § 386.72(b)(1) pursuant to a delegation of authority to the Field Administrator, Midwestern Service Center, Federal Motor Carrier Safety Administration (FMCSA), United States Department of Transportation (USDOT), Matteson, Illinois. This ORDER applies to C & D TRANSPORTATION, INC., USDOT number 2096634 (referred to herein as “you,” “your,” and /or “C & D TRANSPORTATION, INC.”).

The Secretary and the FMCSA finds your commercial motor vehicle operations constitute an **imminent hazard**. This finding means that based upon your present state of unacceptable safety compliance, your operation of any commercial motor vehicles poses an **imminent hazard** to public safety.

**EFFECTIVE IMMEDIATELY, YOU MUST CEASE ALL COMMERCIAL MOTOR VEHICLE OPERATIONS, INCLUDING ALL INTERSTATE OR INTRASTATE TRANSPORTATION FROM ALL DISPATCHING LOCATIONS OR TERMINALS.**

Commercial motor vehicles and their drivers now in interstate or intrastate commerce may proceed to their next immediate destination, which is defined as the next scheduled stop for vehicles already in motion where the cargo on board can be safely secured. (See 49 C.F.R. § 386.72(b)(4) and (5)).

**THE COMMERCIAL MOTOR VEHICLES MAY NOT BE OPERATED IN INTERSTATE OR INTRASTATE COMMERCE WHILE THIS ORDER IS IN EFFECT. A COMMERCIAL MOTOR VEHICLE MAY BE MOVED TO A LOCATION TO BE REPAIRED ONLY UPON APPROVAL FROM THE FIELD ADMINISTRATOR, FMCSA MIDWESTERN SERVICE CENTER.**

#### **I. JURISDICTION**

C & D TRANSPORTATION, INC. is a motor carrier engaged in interstate commerce and is therefore subject to the Federal Motor Carrier Safety Regulations (“FMCSRs”), 49 C.F.R. Parts 350-399, as well as the Orders of the USDOT and FMCSA. (See 49 U.S.C. §§ 506, 507, 13501, 31133 and 31136). C & D TRANSPORTATION, INC. is required to comply, and to ensure its drivers comply, with the FMCSRs. 49 C.F.R. § 390.11.

**THE PROHIBITIONS ON OPERATION IN THIS ORDER APPLY TO C & D TRANSPORTATION, INC. AS WELL AS ANY AND ALL OF ITS OFFICERS, DIRECTORS, MANAGERS, SUCCESSORS, ASSIGNS AND CLOSELY AFFILIATED COMPANIES.**

#### **II. BASIS FOR ORDER**

The basis for determining that C & D TRANSPORTATION, INC.’s motor carrier operations pose an imminent hazard to the public is that C & D TRANSPORTATION, INC., has engaged in and continues to engage in a pattern and practice of blatantly ignoring and/or violating significant provisions of the Federal Motor Carrier Safety Regulations. C & D

TRANSPORTATION, INC. has willfully violated an out-of-service order and continued to operate by renting vehicles on the effective date of the out-of-service order, one of which crashed; has failed to ensure that its drivers comply with commercial driver's license requirements, English proficiency requirements, and vehicle weight limits; and has committed records of duty status violations. C & D TRANSPORTATION, INC.'s flagrant disregard for compliance with safety regulations poses an ongoing and continuing imminent hazard to safety which substantially increases the likelihood of serious injury or death if not discontinued immediately.

C & D TRANSPORTATION, INC. entered the New Entrant Program on November 19, 2010. Pursuant to 49 C.F.R. §385.307, a new entrant carrier is subject to the new entrant safety monitoring period of 18 months. During this 18 month period, the carrier's roadside activity is closely monitored to ensure that the carrier has basic safety management controls that are operating effectively. The FMCSA has identified seven violations that subject a new entrant carrier to an expedited safety audit or compliance review if cited during a roadside inspection. These seven violations include using a driver not possessing a valid commercial driver's license to operate a commercial motor vehicle as defined under § 383.5.

Since June 2012, various State police departments conducted roadside inspections of C & D TRANSPORTATION, INC.'S commercial motor vehicles. Based on these inspections, police departments cited C & D TRANSPORTATION, INC.'S drivers at least four times for lacking a required commercial driver's license (49 C.F.R. § 383.23), at least six times for exceeding vehicle weight limits (49 C.F.R. § 392.2), and at least six times for the out-of-service violation of failing to meet English proficiency requirements (49 C.F.R. § 391.11(b)(2)).

On October 4, 2012, FMCSA served C & D TRANSPORTATION, INC. with an "expedited action letter" demanding that C & D TRANSPORTATION, INC. respond to three

types of violations discovered through several roadside inspections that occurred between December 13, 2011 and September 17, 2012. The violations were: seven instances of using drivers not possessing, or operating without, a valid commercial driver's license (49 C.F.R. § 385.308(a)(1)), one instance of operating a commercial motor vehicle that has been placed out-of-service for violations of the Federal Motor Carrier Safety Regulations or compatible State laws and regulations without making the required repairs (49 C.F.R. § 385.308(a)(2)), and one instance of having a driver or vehicle out-of-service rate of 50 percent or more based upon at least three inspections occurring within the 90-day period prior to October 4, 2012 (49 C.F.R. § 385.308(a)(7)). The out-of-service violations included in the inspections giving rise to the 49 C.F.R. § 385.308(a)(2) violation include: 49 C.F.R. § 391.11(b)(2), lack of English proficiency; 49 C.F.R. § 393.9, inoperative turn signal, right side rear; 49 C.F.R. § 395.8(k)(2), failing to retain records of duty status for previous seven days; and 49 C.F.R. § 393.75, weight carried exceeds tire load limit.

On October 10, 2012, FMCSA served C & D TRANSPORTATION, INC. with a second expedited action letter. In this letter, FMCSA demanded that C & D TRANSPORTATION, INC. respond to an additional instance of using a driver not possessing, or operating without, a valid commercial driver's license (49 C.F.R. § 385.308(a)(1)).

On October 26, 2012, FMCSA served C & D TRANSPORTATION, INC. with a third expedited action letter. In this letter, FMCSA demanded that C & D TRANSPORTATION, INC. respond to another instance of having a driver or vehicle out-of-service rate of 50 percent or more based upon at least three inspections occurring within the 90- day period prior to October 26, 2012 (49 C.F.R. § 385.308(a)(7)). These inspections included a violation of 49 C.F.R. § 395.8(a), failure to retain records of duty status.

On or about November 2, 2012, C & D TRANSPORTATION submitted a written

response to the October 4, 2012 expedited action letter. Around November 2, 2012, FMCSA informed C & D TRANSPORTATION, INC. in writing that its response to the October 4, 2012 expedited action letter did not constitute acceptable corrective action and that C & D TRANSPORTATION would be placed out of service on November 6, 2012 if it did not supplement its response with additional information. On November 8, 2012, FMCSA placed C & D TRANSPORTATION, INC. out-of-service because it failed to respond to the October 4, 2012 expedited action letter with acceptable corrective action.

On November 11, 2012, a commercial motor vehicle operated by C & D TRANSPORTATION, INC. was involved in a one-vehicle accident in Girard, Pennsylvania. The accident report notes that the driver of this vehicle failed to stop at a stop sign and overturned the vehicle. The Pennsylvania State Police cited the driver for failing to possess a driver's record of duty status (49 C.F.R. § 395.8(a)), operating in violation of an FMCSA out-of-service order (49 C.F.R. § 385.308(d)), and an English proficiency violation (49 C.F.R. § 391.11(b)(2)). The vehicle involved in the crash was one of five vehicles that C & D TRANSPORTATION, INC. rented from a Ryder vehicle rental facility between November 6, 2012 and November 9, 2012.

By failing to meet its commitment to remedy the violations noted by the various inspection reports and expedited action letters, and violating the out-of-service order by renting vehicles to continue to operate, C & D TRANSPORTATION, INC. has demonstrated that it is not willing to comply with state and Federal safety regulations. Cumulatively, the ongoing violations cited in the inspection reports and the expedited action letters substantially increase the likelihood of serious injury or death to C & D TRANSPORTATION, INC'S drivers and the motoring public.

### III. BACKGROUND

Based on roadside inspections and other data compiled by FMCSA, C & D TRANSPORTATION, INC. has a Safety Measurement System (“SMS”)<sup>1</sup> score of 93.8% in the Unsafe Driving BASIC (Behavior Analysis and Safety Improvement Category), 97.4% in the Fatigued Driving (Hours of Service) BASIC, and 99.9% in the Driver Fitness BASIC. Each of these SMS scores indicates that C & D TRANSPORTATION, INC. significantly exceeds the FMCSA intervention threshold and that the motor carrier may be therefore prioritized for further monitoring.

C & D TRANSPORTATION, INC. repeatedly uses drivers in interstate commerce who do not possess valid commercial driver’s licenses. The primary objective of the commercial driver’s license requirements in 49 C.F.R. Part 383 is to ensure that drivers are qualified to safely operate the type of vehicle they will drive. The requirements include a driving test and an assessment of the driver’s knowledge of the rules and regulations governing the operation of vehicles on the highways. C & D TRANSPORTATION, INC.’S noncompliance in allowing its drivers to drive commercial motor vehicles without commercial driver’s licenses clearly endangers the driving public because its drivers have not demonstrated that they can safely operate these vehicles.

C & D TRANSPORTATION, INC. allows its drivers to drive commercial motor vehicles that are overweight. The danger to the public here is obvious – an overloaded truck is

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<sup>1</sup> The SMS is a tool for assessing available roadside performance data and ranking an entity’s relative performance in any of the six Behavior Analysis and Safety Improvement Categories (BASICS). The SMS quantifies the on-road safety performance of individual entities to identify entities with significant safety problems, determine the specific safety problems an entity exhibits, and monitor safety problems through the Intervention Process. The SMS calculates a percentile for each BASIC using a time-weighted methodology, and assigns a percentile rank to each BASIC, on a 0-100 scale, with 100 indicating the worst performance. C & D TRANSPORTATION, INC.’S scores in the mid to upper 90s were well beyond the Agency’s intervention threshold in three of the six BASICS.

more likely to experience problems with braking, handling, and damaged tires. These conditions could cause catastrophic results.

In addition, C & D TRANSPORTATION, INC. employs drivers that cannot speak the English language sufficiently to converse with the general public. A lack of English skills sufficient to respond to the commands of law enforcement officers is in itself an out-of-service violation under the CVSA North American Standard Out-of-Service Criteria, see 49 C.F.R. § 390.5, and can easily be life threatening in emergency situations.

#### **IV. REMEDIAL ACTION**

To eliminate this imminent hazard, and before C & D TRANSPORTATION, INC. will be permitted to resume operations placed out of service by this Order, C & D TRANSPORTATION, INC. must take specific steps to ensure and demonstrate compliance with the FMCSRs.

#### **YOU MUST COMPLY WITH ALL PROVISIONS OF THIS ORDER**

- 1. C & D TRANSPORTATION, INC. must comply with all Orders issued by FMCSA and must submit to the Field Administrator a plan detailing how C & D TRANSPORTATION, INC. will: (i) hire a sufficient number of drivers for its operations with commercial driver's licenses, (ii) not dispatch commercial motor vehicles with drivers who lack commercial driver's licenses, (iii) not dispatch overweight commercial motor vehicles, and (iv) ensure that each driver can read and speak the English language sufficiently to converse with the general public, to understand highway traffic signs and signals in the English language, to respond to official inquiries, and to make entries on reports and records.**
- 2. C & D TRANSPORTATION, INC. must implement a policy to insure that prior to the dispatch of any motor vehicles in interstate commerce, the weight of the loaded vehicle**

is checked to determine whether the vehicle meets or does not meet the definition of commercial motor vehicle in 49 C.F.R. § 383.5. Further, C & D TRANSPORTATION, INC. must implement a policy to ensure that all drivers of commercial motor vehicles meeting the definition in 49 C.F.R. § 383.5 possess valid commercial driver's licenses.

3. C & D TRANSPORTATION, INC. must implement a policy to ensure that prior to the dispatch of any commercial motor vehicle in interstate commerce, the weight of the loaded vehicle is checked to determine whether the vehicle complies with Federal and local laws and regulations covering the maximum weight of commercial motor vehicles, as required by 49 C.F.R. § 392.2.

4. C & D TRANSPORTATION, INC. must obtain the services of a third-party provider that will train drivers to read and speak the English language sufficiently to converse with the general public, to understand highway traffic signs and signals in the English language, to respond to official inquiries, and to make entries on reports and records. C & D TRANSPORTATION, INC. must present this training program curriculum to the Field Administrator, Midwestern Service Center, for approval prior to using the program to train any drivers.

5. C & D TRANSPORTATION, INC. must ensure that each driver cited in a roadside inspection for a violation of § 391.11(b)(2), insufficient English language proficiency, receives the training described in paragraph 4 above.

6. A summary report must be prepared and submitted that documents English proficiency examinations and training conducted by a suitable provider for each driver employed by C & D TRANSPORTATION, INC. The report must include at a minimum the following: (i) reason for the exam or training (new hire, roadside violation, etc.), (ii)

employee name, (iii) start and completion date of training, (iv) examination and final result, and (v) driver's current employment status (driving, employed but not driving, etc.).

7. C & D TRANSPORTATION, INC. shall ensure that each of its drivers records his or her duty status for each 24-hour period in accordance with 49 C.F.R. § 395.8. C & D TRANSPORTATION, INC. shall ensure that each of its drivers complies with the hours of service rules in 49 C.F.R. § 395. C & D TRANSPORTATION, INC. shall maintain each record of duty status for a minimum of six months in accordance with 49 C.F.R. § 395.8.

8. C & D TRANSPORTATION, INC. must provide a detailed description of how C & D TRANSPORTATION, INC. will ensure vehicle maintenance is performed. C & D TRANSPORTATION, INC. must also ensure it has qualified inspectors performing maintenance on vehicles in accordance with 49 C.F.R. § 396.19(a)(3) and all drivers are properly trained to conduct pre- and post-trip inspections.

9. C & D TRANSPORTATION, INC. must ensure that all drivers are adequately trained in the requirements of the FMCSRs and that they are able to conduct motor carrier operations consistent with those regulations.

## **V. RESCISSION OF ORDER**

Before resuming motor carrier operations C & D TRANSPORTATION, INC. must comply with the provisions of this Order, eliminate the problems constituting the imminent hazard that its operations pose, and adequately demonstrate to the Field Administrator, Midwestern Service Center, Federal Motor Carrier Safety Administration, United States Department of Transportation, the actions taken to eliminate the safety problems. C & D TRANSPORTATION, INC. cannot avoid this Operations Out-of-Service Order by continuing operations under the name of another person or company or by renting or leasing different or

additional commercial motor vehicles. Any sale, lease, or other transfer of equipment and/or direct assignment of contracts or other agreements for service by C & D TRANSPORTATION, INC. requires the written approval of the Midwestern Service Center Field Administrator. Any such action taken in anticipation of this Operations Out-of-Service Order must cease immediately. C & D TRANSPORTATION, INC. must have the Order rescinded by the Midwestern Service Center Field Administrator before it may continue interstate or intrastate operations.

Prior to rescission of the Order, C & D TRANSPORTATION, INC. will be required to:

- 1. IDENTIFY THE CAUSE FOR ITS NONCOMPLIANCE.**
- 2. DEVELOP A DETAILED PLAN OF ACTION THAT ADDRESSES EACH AREA OF NON-COMPLIANCE, THE STEPS IT INTENDS TO TAKE TO OVERCOME ITS NON-COMPLIANCE AND A TIME TABLE FOR THESE STEPS (THE SAFETY MANAGEMENT PLAN).**
- 3. DEVELOP AND CERTIFY THE COMMITMENT OF C & D TRANSPORTATION, INC. TO COMPLY WITH THE FMCSRs.**
- 4. EXECUTE THE SAFETY MANAGEMENT PLAN AND PROVIDE CERTIFICATION BY ALL OWNERS AND COMPANY OFFICIALS. FOR PURPOSES OF THIS PARAGRAPH, "OWNERS AND COMPANY OFFICIALS" MEANS ANY PERSON OWNING MORE THAN A 10 PERCENT SHARE IN C & D TRANSPORTATION, INC., ALL REGISTERED CORPORATE OFFICERS AND ANY INDIVIDUAL RESPONSIBLE FOR OR PERFORMING HIRING, QUALIFYING, OR SCHEDULING OF DRIVERS OR SCHEDULING OR DIRECTING VEHICLE INSPECTION, REPAIR AND/OR MAINTENANCE.**

Any request to rescind this ORDER, and documentation demonstrating satisfaction of the Remedial Action requirements must be directed to the Field Administrator, Midwestern Service Center with a copy to the Division Administrator, Illinois Division, at the following addresses:

Field Administrator, Midwestern Service Center  
Federal Motor Carrier Safety Administration  
4749 Lincoln Mall Drive, Suite 300A  
Matteson, Illinois 60443

Division Administrator, Illinois Division  
Federal Motor Carrier Safety Administration  
3250 Executive Park Drive  
Springfield, IL 62703-4514

## **VI. FAILURE TO COMPLY**

Failure to comply with this Operations Out-of-Service Order may subject C & D TRANSPORTATION, INC. to an action by the United States Attorney in the United States District Court for equitable relief and punitive damages. C & D TRANSPORTATION, INC. may be assessed civil penalties of up to \$25,000 per day for each day it continues to operate commercial motor vehicles (as defined in 49 C.F.R. § 390.5) in or affecting interstate commerce after the effective date and time of this Order. (49 U.S.C. § 521(b)(2)(F); Moving Ahead for Progress in the 21st Century Act, Pub. L. 112-141, § 32503). If violations are determined to be willful, criminal penalties may be imposed, including a fine of up to \$25,000 or imprisonment for a term not to exceed one year, or both. (49 U.S.C. § 521(b)(6)(A)).

## **VII. ADDITIONAL PENALTIES FOR OTHER VIOLATIONS**

Any motor carrier that violates Federal requirements, including the FMCSRs, and/or permits its employee(s) to violate Federal requirements is subject to civil and/or criminal penalty provisions. Penalty provisions for violations of Federal statutes and regulations are separate and distinct from this ORDER. Penalties may be assessed for the violations of Federal requirements,

including the FMCSRs, previously discovered, discovered after the service of this ORDER, and/or discovered during subsequent investigations.

### VIII. RIGHT TO REVIEW

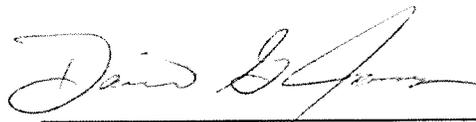
You have the right to an administrative review in accordance with 5 U.S.C. § 554 pursuant to 49 C.F.R. § 386.72(b)(4). If requested, administrative review shall occur within 10 working days of the issuance of this ORDER. (49 U.S.C. § 521(b)(5) and 49 C.F.R. § 386.72(b)(4)). A request for review must be addressed to the Assistant Administrator, United States Department of Transportation, Federal Motor Carrier Safety Administration, with a copy sent to the Field Administrator, Midwestern Service Center at the following addresses:

Assistant Administrator  
Federal Motor Carrier Safety Administration  
1200 New Jersey Avenue, S.E.  
Washington, D.C. 20590

Field Administrator, Midwestern Service Center  
Federal Motor Carrier Safety Administration  
4749 Lincoln Mall Drive, Suite 300A  
Matteson, Illinois 60443

The request must state the material facts at issue which you believe dispute or contradict the finding that C & D TRANSPORTATION, INC.'S operation constitutes an “**imminent hazard**” to the public. **A REQUEST FOR REVIEW DOES NOT IN ANY WAY DELAY YOUR DUTY TO COMPLY WITH THIS ORDER IMMEDIATELY.**

Date: 11-23-2012



Darin G. Jones, Field Administrator  
United States Department of Transportation  
Federal Motor Carrier Safety Administration