

**UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

)	Order No.: NC-2013-5000-IMH
)	
HENRY T. DAYE)	Service
dba TWO DAYES TRANSPORT)	Date: <u>12/13/2012</u> 1:15 pm.
USDOT 2349333)	
)	
KYLE LASALLE DAYE)	Service
dba TWO DAYES TRUCKING)	Date: <u>12/13/2012</u> 1:15 pm.
USDOT 2112248)	
)	
HENRY T. DAYE,)	Service
Individually)	Date: <u>12/13/2012</u> 1:15 pm.
)	
KYLE LASALLE DAYE,)	Service
Individually)	Date: <u>12/13/2012</u> 1:15 pm.
)	

IMMINENT HAZARD
OPERATIONS OUT-OF-SERVICE ORDER

This notice is an Imminent Hazard Operations Out-of-Service Order ("Order") issued by the Secretary of Transportation pursuant to 49 U.S.C. § 521(b)(5)(A), 49 U.S.C. § 31144(c)(1) and (5), and 49 C.F.R. § 386.72(b)(1), and pursuant to a delegation of authority to the Field Administrator, Southern Service Center, Federal Motor Carrier Safety Administration ("FMCSA"), United States Department of Transportation ("USDOT"), Atlanta, Georgia. This Order applies to Henry Daye dba Two Dayes Transport (USDOT# 2349333), Kyle Lasalle Daye dba Two Dayes Trucking (USDOT# 2112248), Henry T. Daye, individually, and Kyle Lasalle Daye, individually (referred to collectively herein as "you," "your," "Two Dayes Transport," and /or "Two Dayes Trucking") and to the commercial motor vehicles described herein.

The Secretary and FMCSA find your commercial motor vehicle operations and the

continued operations of your commercial motor vehicles (VIN 2HSCNAPR24C027053 and VIN 2HSCNAPR16C292016, herein “commercial motor vehicles,” “motor vehicles,” and/or “vehicles”) 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 AND INTRASTATE TRANSPORTATION OF VEHICLES AND/OR GOODS BY DRIVERS. FURTHER THE COMMERCIAL MOTOR VEHICLES IDENTIFIED IN THIS ORDER ARE PROHIBITED FROM BEING OPERATED IN INTERSTATE OR INTRASTATE COMMERCE BY ANY OTHER MOTOR CARRIER OR ANY DRIVER.

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 can be safely secured. (*See* 49 C.F.R. § 386.72(b)(4) and (5)).

NO ADDITIONAL CARGO MAY BE LOADED OR TRANSPORTED, NOR MAY COMMERCIAL MOTOR VEHICLES 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 SOUTHERN SERVICE CENTER.

I. JURISDICTION

Two Days Transport and Two Days Trucking operate as for-hire motor carriers as

defined in 49 U.S.C. § 13102 transporting property in interstate commerce using commercial motor vehicles and are therefore subject to the jurisdiction of the FMCSA and Federal motor carrier safety statutes and regulations, including 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). Henry T. Daye and Kyle Lasalle Daye are individuals who own, manage, control, direct or otherwise oversee the operations of Two Dayes Transport and/or Two Dayes Trucking. Two Dayes Transport and Two Dayes Trucking are required to comply with, and to ensure that their drivers comply with, applicable federal statutes and regulations including 49 C.F.R. Parts 40 and 350-399. (*See* 49 C.F.R. §§ 390.3 and 390.11).

THE PROHIBITIONS ON OPERATION IN THIS ORDER APPLY TO TWO DAYES TRANSPORT AND TWO DAYES TRUCKING, AS WELL AS ANY AND ALL OF THEIR OFFICERS, DIRECTORS, PARTNERS, MANAGERS, SUCCESSORS, ASSIGNS AND CLOSELY AFFILIATED COMPANIES, INCLUDING HENRY T. DAYE AND KYLE LASALLE DAYE. THIS ORDER APPLIES TO ALL MOTOR CARRIER OPERATIONS AND ALL VEHICLES OWNED, LEASED, RENTED OR OTHERWISE OPERATED BY TWO DAYES TRANSPORT AND/OR TWO DAYES TRUCKING, INCLUDING BUT NOT LIMITED TO THE COMMERCIAL MOTOR VEHICLES IDENTIFIED IN THIS ORDER.

II. BASIS FOR ORDER

The basis for determining that Two Dayes Transport’s and Two Dayes Trucking’s motor carrier operations pose an imminent hazard to the public is that Two Dayes Transport’s and Two Dayes Trucking’s operational structure and deficient safety management controls substantially increase the likelihood of serious injury or death if not discontinued immediately. Two Dayes

Trucking continues to operate its commercial motor vehicles after being ordered out-of-service by FMCSA and does not have valid and active operating authority or the proper statutorily required level of bodily injury and property damage (“BIPD”) insurance coverage for transporting property in interstate commerce. Further, Two Dayes Transport and Two Dayes Trucking do not have adequate safety management controls in place to ensure acceptable compliance with applicable safety requirements and are continuing to commingle their operations, using the same facility, vehicles, drivers, documents and files. Two Dayes Transport and Two Dayes Trucking are currently operating commercial motor vehicles in knowing, substantial and flagrant disregard of the Federal requirements on vehicle maintenance and repair, drivers’ hours of service, qualification of drivers, and controlled substances and alcohol use. Individually and cumulatively, these violations and conditions of operation substantially increase the likelihood of serious injury or death to Two Dayes Transport and Two Dayes Trucking drivers and to the motoring public.

III. BACKGROUND

On November 12, 2012, a commercial motor vehicle (“CMV”) operated by Two Dayes Trucking was involved in a fatal crash when the driver of a second vehicle collided with, and became wedged underneath, the CMV. The Two Dayes Trucking CMV was dangerously backing across a hilly section of US 258 at 5:50 p.m. and was attempting to park in Two Dayes Trucking’s residential driveway. The visibility of the CMV was obscured by the dirt covering its reflective tape.¹ On the date of this fatal crash, Two Dayes Trucking was operating in violation of a FMCSA Order that had revoked Two Dayes Trucking’s New Entrant registration

¹ The relevant regulation, 49 C.F.R. § 392.33(a), states in pertinent part: “No commercial motor vehicle shall be driven when any of the lamps or reflective devices/material required by subpart B of part 393 of this title are obscured...by dirt....”

and had placed the carrier out-of-service for failure to permit a FMCSA safety audit.²

A subsequent FMCSA investigation uncovered another carrier, Two Dayes Transport, operating as an incarnate of Two Dayes Trucking out of the same business location. The investigation further revealed that Two Dayes Trucking and Two Dayes Transport have amalgamated operations³ and are operating CMVs in disregard of vital safety regulations and in willful violation of the FMCSA out-of-service order. Two Dayes Trucking continues to currently operate its CMVs in interstate commerce without BIPD insurance and operating authority.

Two Dayes Trucking and Two Dayes Transport do not have a vehicle maintenance program in place to prevent the operation of unsafe CMVs and do not have any vehicle records identifying the CMVs that are currently being operated, including company number, make, serial number, year, and tire size. Two Dayes Trucking and Two Dayes Transport have no mechanism for recording the nature and due dates of vehicle inspections and maintenance operations to be performed and do not have any maintenance receipts showing that repairs have ever been made on their CMVs.

In addition, Two Dayes Trucking and Two Dayes Transport have failed to follow FMCSA driver qualification requirements to ensure that its drivers are qualified to operate a

² A FMCSA safety auditor contacted Two Dayes Trucking on three separate occasions to schedule a requisite New Entrant safety audit. However, Two Dayes Trucking failed to respond to the safety auditor's contacts and failed to respond to a subsequent notice from FMCSA advising that Two Dayes Trucking's registration would be revoked and operations placed out-of-service unless it agreed in writing, within 10 days from the notice, to permit a safety auditor to conduct the safety audit required under Part 385. Pursuant to 49 C.F.R. § 385.337, a new entrant carrier's refusal to permit a safety audit to be performed will result in its operations being placed out-of-service and its registration revoked.

³ Two Dayes Trucking and Two Dayes Transport evidence commonality of ownership, officers and management personnel; identity of business address and telephone numbers; identity of motor vehicle equipment; commonality of liability insurance policies; commonality of drivers; and continuity of nature and scope of operations. *See* 49 C.F.R. § 386.73

commercial motor vehicle. Two Dayes Trucking and Two Dayes Transport have not implemented an alcohol or controlled substances testing program to ensure that its drivers are able to safely operate its CMVs. Indeed Two Dayes Trucking and Two Dayes Transport have no drug and alcohol testing program whatsoever, and none of its two current drivers have passed a pre-employment drug test, as required under Federal regulations. Further, Two Dayes Trucking and Two Dayes Transport do not monitor their drivers' hours of service to ensure that the drivers do not violate hours-of-service regulations. Two Dayes Trucking and Two Dayes Transport do not require its drivers to prepare and submit all records of duty status. Two Dayes Trucking's and Two Dayes Transport's negligent oversight of its drivers results in drivers operating CMVs at a time when they may be fatigued because of driving in excess of the maximum driving time, driving after the maximum on-duty time, and/or other hours-of-service regulations. Two Dayes Trucking's and Two Dayes Transport's continued and blatant disregard for the FMCSRs establishes an imminently hazardous and potentially deadly risk for its drivers and the motor public.

IV. REMEDIAL ACTION

To eliminate this imminent hazard, and before Two Dayes Transport and Two Dayes Trucking will be permitted to resume operations placed out-of-service by this Order, Two Dayes Transport and Two Dayes Trucking must take specific steps to ensure and demonstrate compliance with the FMCSRs.

TWO DAYES TRANSPORT AND TWO DAYES TRUCKING MUST COMPLY WITH ALL PROVISIONS OF THIS ORDER

- 1. The commercial motor vehicles identified in this Order (VIN 2HSCNAPR24C027053 and VIN 2HSCNAPR16C292016) may not be operated in interstate and/or intrastate**

commerce by any entity or by any individual until Two Dayes Transport and Two Dayes Trucking have fully complied with the Remedial Actions set forth in this section.

2. Two Dayes Transport and Two Dayes Trucking must ensure and demonstrate that its vehicles are in a safe operating condition, are in full compliance with 49 C.F.R. Part 393 (Parts and Accessories Necessary for Safe Operations) and Part 396 (Vehicle Maintenance), and there is an adequate maintenance program in place to ensure compliance with the FMCSRs.

3. Two Dayes Transport and Two Dayes Trucking must require its drivers to prepare Daily Driver Vehicle Inspection Reports at the end of each day, implement a procedure so that its drivers can report safety defects and/or deficiencies and establish procedures to ensure that reported safety defects and/or deficiencies are repaired immediately before the commercial motor vehicle is operated again. Two Dayes Transport and Two Dayes Trucking must train its drivers and ensure all drivers understand the meaning of a roadside out-of-service order and comply with roadside out-of-service orders.

4. Two Dayes Transport and Two Dayes Trucking must ensure that it maintains driver qualification files, as required by 49 C.F.R. Part 391. Two Dayes Transport and Two Dayes Trucking must ensure that every driver it uses has completed and furnished an employment application. Two Dayes Transport and Two Dayes Trucking must investigate each driver's background within 30 days of employment, and must maintain a copy of the response from each State agency in the driver's qualification file. Two Dayes Transport and Two Dayes Trucking must ensure that an annual list of traffic violations is obtained from each driver, an annual Motor Vehicle Record is obtained, and that an annual review is performed on each driver's driving record. Two Dayes Transport and Two Dayes

Trucking must ensure that a three-year previous employment check is performed on its drivers prior to their operating a commercial motor vehicle, in accordance with 49 C.F.R. § 391.23. Two Dayes Transport and Two Dayes Trucking must ensure each driver possesses a DOT medical examiners certificate as well as a copy in the driver qualification file.

5. Two Dayes Transport and Two Dayes Trucking must establish a DOT controlled substance and alcohol testing program in compliance with 49 C.F.R. Parts 40 (Procedures for Transportation Workplace Drug and Alcohol Testing Programs) and 382 (Controlled Substances and Alcohol Use and Testing) and provide evidence of this program to the Southern Service Center Field Administrator. Two Dayes Transport and Two Dayes Trucking must use only those laboratories certified by the U.S. Department of Health and Human Services' Substance Abuse and Mental Health Services Administration for the analysis of urine specimens. Two Dayes Transport and Two Dayes Trucking must implement a policy on the misuse of alcohol and controlled substances that conforms to 49 C.F.R. § 382.601(b). Two Dayes Transport and Two Dayes Trucking must ensure that driver supervisors undergo at least 60 minutes of training on alcohol misuse as well as an additional 60 minutes of training on controlled substance use that conforms to 49 C.F.R. § 382.603.

6. Two Dayes Transport and Two Dayes Trucking must ensure that each driver selected for random controlled substances or alcohol testing has an equal chance of being selected each time selections are made. Two Dayes Transport and Two Dayes Trucking must ensure that it has received a negative pre-employment controlled substances test for each driver before using that driver to perform safety-sensitive functions.

7. Two Dayes Transport and Two Dayes Trucking must implement a dispatch system

that ensures that no driver will be dispatched on any trip unless the driver has the necessary available hours of service to complete the trip in accordance with 49 C.F.R. Part 395.

8. Two Dayes Transport and Two Dayes Trucking 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.

9. Two Dayes Transport and Two Dayes Trucking must ensure that each of its drivers records his or her duty status for each 24-day period in accordance with 49 C.F.R. § 395.8. Two Dayes Transport and Two Dayes Trucking must ensure that each of its drivers complies with the hours of service rules in 49 C.F.R. § 395.8. Two Dayes Transport and Two Dayes Trucking must maintain each record of duty status for a minimum of six months in accordance with 49 C.F.R. § 395.8.

10. Two Dayes Transport and Two Dayes Trucking must submit paperwork and obtain approval for operating authority and must provide proof of requisite BIPD insurance coverage.

11. Two Dayes Transport and Two Dayes Trucking must mark, in accordance with 49 CFR § 390.21, any commercial motor vehicles owned by Two Dayes Transport and Two Dayes Trucking with the appropriate carrier name and US DOT number.

12. Two Dayes Transport and Two Dayes Trucking must comply with all Orders issued by FMCSA.

V. RESCISSION OF ORDER

Before resuming motor carrier operations Two Dayes Transport and Two Dayes Trucking 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, Southern Service Center, Federal Motor Carrier Safety Administration, United States Department of Transportation, the actions taken to eliminate the safety problems. Two Dayes Transport and Two Dayes Trucking cannot avoid this Order by continuing operations under the name of another person or company. Any sale, lease, or other transfer of equipment and/or direct assignment of contracts or other agreements for service by Two Dayes Transport and Two Dayes Trucking requires the written approval of the Southern Service Center Field Administrator. Any such action taken in anticipation of this Order must cease immediately. Two Dayes Transport and Two Dayes Trucking must have the Order rescinded by the Southern Service Center Field Administrator before it may continue interstate or intrastate operations.

Prior to rescission of the Order, Two Dayes Transport and Two Dayes Trucking 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 TWO DAYES TRANSPORT AND TWO DAYES TRUCKING 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 TWO DAYES**

TRANSPORT AND/OR TWO DAYES TRUCKING, 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, Southern Service Center with a copy to the Division Administrator, North Carolina Division, at the following addresses:

Field Administrator, Southern Service Center
Federal Motor Carrier Safety Administration
1800 Century Blvd., NE, Suite 1700
Atlanta, Georgia 30345

Division Administrator, North Carolina Division
Federal Motor Carrier Safety Administration
310 New Bern Avenue, Suite 468
Raleigh, North Carolina 27601

VI. FAILURE TO COMPLY

Failure to comply with the provisions of this Order may subject Two Dayes Transport and Two Dayes Trucking to an action by the United States Attorney in the United States District Court for equitable relief and punitive damages. Two Dayes Transport and Two Dayes Trucking may be assessed civil penalties of up to \$16,000 per day for each day it continues the proscribed interstate or intrastate operations after the effective date and time of this Order. (49 C.F.R. Part 386 App. A. § IV(g)). 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, Southern Service Center at the following addresses:

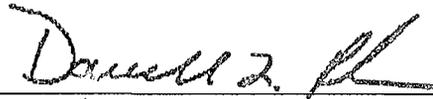
Assistant Administrator
Federal Motor Carrier Safety Administration
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

Field Administrator, Southern Service Center
Federal Motor Carrier Safety Administration
1800 Century Blvd., NE, Suite 1700
Atlanta, Georgia 30345

The request must state the material facts at issue which you believe dispute or contradict the finding that Two Dayes Transport's and Two Dayes Trucking'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. YOUR RESPONSE TO THIS
ORDER WILL NOT ALTER THE PROPOSED “UNSATISFACTORY” SAFETY
FITNESS RATING THAT RESULTED FROM THE COMPLIANCE REVIEW
CONDUCTED ON OR ABOUT DECEMBER 13, 2012.**

Date: December 13, 2012



Darrell Ruban, Field Administrator
United States Department of Transportation
Federal Motor Carrier Safety Administration

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

) Order No.: NC-2013-5000-IMH
)

HENRY T. DAYE
dba TWO DAYES TRANSPORT
USDOT 2349333
)

KYLE LASALLE DAYE
dba TWO DAYES TRUCKING
USDOT 2112248
)

HENRY T. DAYE,
Individually
)

KYLE LASALLE DAYE,
Individually
)

CERTIFICATE OF SERVICE

This is to certify that on the 13th day of December, 2012 the undersigned hand delivered one copy of the above-styled IMMEDIATE HAZARD OPERATIONS OUT-OF-SERVICE ORDER by serving in hand the individual listed below at the address shown below:

Mrs. Donna Daye, Treasurer
Individual Served for Kyle Lasalle Daye dba Two Dayes Trucking

Address: 10339 U.S Hwy. 258
Murfreesboro, NC 27855

WEM - T. Bell
Safety Investigator
Federal Motor Carrier Safety Administration

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

) Order No.: NC-2013-5000-IMH

HENRY T. DAYE)
dba TWO DAYES TRANSPORT)
USDOT 2349333)

KYLE LASALLE DAYE)
dba TWO DAYES TRUCKING)
USDOT 2112248)

HENRY T. DAYE,)
Individually)

KYLE LASALLE DAYE,)
Individually)

CERTIFICATE OF SERVICE

This is to certify that on the 13th day of December, 2012 the undersigned hand delivered one copy of the above-styled IMMEDIATE HAZARD OPERATIONS OUT-OF-SERVICE ORDER by serving in hand the individual listed below at the address shown below:

Mrs. Donna Daye, Treasurer
Individual Served for Henry T. Daye, Individually

Address: 10339 US HWY 258
Murfreesboro, NC 27855

William J. Bell
Safety Investigator
Federal Motor Carrier Safety Administration

