

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

**E & K TRUCKING, INC.
USDOT 604546**

)
) **Order No.: CO-2013-5001-IMH**
)
) **Service**
) **Date:** 6-14-13
)
) **Time:** 3:34pm
)

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

This is an Imminent Hazard Operations Out-of-Service Order (“ORDER”) issued by the Secretary of the United States Department of Transportation (the “Secretary”) pursuant to 49 U.S.C. § 521(b)(5)(A), 49 U.S.C. § 13905(f), 49 U.S.C. § 31144(c)(1), (2), and (5), and 49 C.F.R. § 386.72(b)(1), and pursuant to a delegation of authority to the Field Administrator, Western Service Center, Federal Motor Carrier Safety Administration (FMCSA), United States Department of Transportation (USDOT), Lakewood, Colorado. This ORDER applies to E & K TRUCKING, INC. (USDOT No. 604546) and to its officers, agents, and employees, (referred to herein as “you,” “your”, and/or “E & K TRUCKING”) and the operation of its commercial motor vehicles.

The Secretary and the FMCSA find your operations and your continued operation of commercial motor vehicles (herein “commercial motor vehicles,” “vehicles,” and/or “motor vehicles”) in the United States constitute an **imminent hazard**. This finding means that based upon your present state of unacceptable safety compliance, your operation of the commercial motor vehicle(s) poses an **imminent hazard** to public safety.

EFFECTIVE IMMEDIATELY

**YOU MUST CEASE OPERATING ALL COMMERCIAL MOTOR VEHICLES IN
INTERSTATE AND INTRASTATE TRANSPORTATION**

Effective immediately, you must cease operating any commercial motor vehicles, specifically including the commercial motor vehicles listed in Appendix A, to this ORDER. “Operate” or “Operating” includes without limitation all interstate and intrastate transportation by drivers from all dispatching locations or terminals. E & K TRUCKING’s commercial motor vehicles, specifically including the commercial motor vehicles listed in Appendix A to this ORDER, may not be operated in interstate or intrastate commerce by any other motor carrier or any driver; such commercial motor vehicles may not be operated – even empty. Any movement of E & K TRUCKING’s commercial motor vehicles, specifically including the commercial motor vehicles identified in Appendix A of this ORDER, to any storage or repair or other location for the purposes of repair, sale, or final destination must be accomplished only by towing, such that the commercial motor vehicle itself is not driven or operated; E & K TRUCKING’s commercial motor vehicles may be moved only upon the written approval of the Field Administrator for FMCSA’s Western Service Center.

Your commercial motor vehicles and their drivers now in interstate or intrastate commerce may proceed to their next immediate destination. (*See* 49 C.F.R. § 386.72(b)(4) and (5)). You may not load or transport any additional freight.

Within eight (8) hours of the service of this ORDER, you must submit to the Field Administrator in writing by fax and/or electronic mail (email) the location of each of the commercial motor vehicles identified in Appendix A of this ORDER. Your submission must be sent to:

Field Administrator
(303) 407-2339 (fax)
WSCENF@dot.gov (electronic mail)

I. JURISDICTION

E & K TRUCKING is a motor carrier engaged in interstate and intrastate transportation of property in commerce in the United States using commercial motor vehicles and employing drivers and is therefore subject to the Federal Motor Carrier Safety Regulations (“FMCSRs”), 49 C.F.R. Parts 350-399, and the alcohol and controlled substances regulations at 49 C.F.R. Part 40, as well as the Orders of the USDOT and FMCSA. (*See* 49 U.S.C. §§ 506, 507, 13501, 31133, 31136, and 31144.)

E & K TRUCKING is required to comply, and to ensure its drivers comply, with the FMCSRs and Orders of the USDOT and FMCSA. (49 C.F.R. § 390.11). This ORDER shall have the force and effect of any other Order issued by the FMCSA and is binding upon E & K TRUCKING, as well as any and all of its officers, members, directors, successors, assigns and closely affiliated companies.

II. BASIS FOR ORDER

The basis for determining that E & K TRUCKING’s motor carrier operations and the continued operation of commercial motor vehicles pose an imminent hazard to the public is that E & K TRUCKING fails to ensure that its commercial motor vehicles are systematically and properly inspected, repaired and maintained. E & K TRUCKING fails to repair or cause to be repaired in a competent manner its commercial motor vehicles. E & K TRUCKING fails to ensure that the commercial motor vehicles it operates meet minimum safety standards, and E & K TRUCKING operates commercial motor vehicles with significant safety defects resulting in failed safety inspections.

E & K TRUCKING also uses drivers that do not possess valid commercial driver's licenses and drivers that have not been medically examined and certified. Additionally, E & K TRUCKING uses drivers despite not having ensured the driver is qualified to operate a commercial motor vehicle, including drivers where E & K TRUCKING has not made required checks into the drivers' driving record.

Moreover, E & K TRUCKING continues to transport property in and affecting interstate commerce despite being subject to an Unsatisfactory safety rating, an FMCSA Order to Cease Operations, and the revocation of its operating authority registration. E & K TRUCKING has conducted nearly daily trips transporting property in commercial motor vehicles in interstate and intrastate commerce after the effective date of the Unsatisfactory safety rating, FMCSA Order to Cease, and registration revocation. Investigators have verified that E & K TRUCKING is aware of its final Unsatisfactory safety rating, and FMCSA's Order to Cease and revocation of authority; E & K TRUCKING has indicated to investigators that it has no plans or intentions of ceasing transportation operations.

Individually and cumulatively, these violations and conditions of operation substantially increase the likelihood of serious injury or death to E & K TRUCKING's drivers and the motoring public.

III. BACKGROUND

On October 1, 2012, an FMCSA safety investigator completed a compliance review on the motor carrier operations of E & K TRUCKING. During the compliance review the investigator discovered serious violations of the FMCSRs, including patterns of violations of critical regulations. The Investigator also documented E & K Trucking's Unsatisfactory accident rate and Unsatisfactory vehicle out-of-service rate. Specifically, the compliance review disclosed that E & K TRUCKING has used drivers without valid commercial driver's

licenses, and fails to ensure its drivers are properly qualified to operate commercial motor vehicles, including failing to ensure that its drivers are medically examined and certified, or checking to ensure that the drivers do not have poor driving records.

Additionally, E & K TRUCKING fails to ensure that its commercial motor vehicles are inspected, maintained and repaired as required to ensure that the vehicles are safe to operate. Commercial motor vehicles operated by the carrier are repeatedly put out-of-service for multiple serious safety violations. The carrier's current vehicle out-of-service rate is 81%; of the last 21 inspections conducted of the carrier's vehicles in operation, 17 of those inspections revealed serious safety violations requiring the vehicles to be ordered out-of-service. Further, the carrier has an Unsatisfactory accident rate.

The October 2012 compliance review resulted in a proposed Unsatisfactory safety rating; FMCSA issued written notification of the proposed Unsatisfactory safety rating to E & K TRUCKING on October 4, 2012. E & K TRUCKING did not take necessary steps to correct the deficiencies in its safety management controls and improve its safety rating, and the Unsatisfactory safety rating became final and effective on December 4, 2012; FMCSA issued an Order to Cease all Transportation in Interstate and Intrastate Commerce to E & K TRUCKING which remains in effect, and FMCSA revoked E & K TRUCKING's Federal operating authority registration. Additionally, FMCSA has taken multiple enforcement actions against E & K Trucking for violations of the FMCSRs. In the enforcement case, resulting from the October 2012 compliance review, E & K TRUCKING breached the settlement agreement, and FMCSA served the carrier with an Order to cease all interstate transportation effective May 30, 2013, based on its failure to pay the civil penalties associated with these safety violations.

Despite the Unsatisfactory safety rating, multiple FMCSA Orders to cease and revocation of its Federal operating authority registration, E & K TRUCKING continues to

operate as a motor carrier of property in violation of Federal statutes and regulations and has failed to take action to correct its serious safety management deficiencies.

Moreover, recent inspections of E & K TRUCKING's commercial motor vehicles during its continuing transportations reveal ongoing serious safety violations. During the most recent inspections conducted in June 2013, each commercial motor vehicle inspected was ordered out-of-service for serious safety violations. E & K TRUCKING fails to have basic safety management controls to ensure that its commercial motor vehicles are systematically inspected, maintained and repaired, and that the commercial motor vehicles it operates meet minimum safety standards.

E & K TRUCKING's continuing operations after the Unsatisfactory safety rating and FMCSA Orders to cease, lack of safety management controls, and ongoing serious safety violations demonstrate a continuing and flagrant general disregard for compliance with the FMCSRs and indifference to motor carrier safety. E & K TRUCKING's actions, its lack of basic safety management controls, and the noncompliant, unsafe and dangerous condition of E & K TRUCKING's commercial motor vehicles substantially increases the likelihood of serious injury or death. This condition of operations is an imminently hazardous and potentially deadly risk for E & K TRUCKING's drivers and for the motoring public.

IV. REMEDIAL ACTION

To eliminate this imminent hazard, and before E & K TRUCKING will be permitted to resume operation of commercial motor vehicles, E & K TRUCKING must take specific steps to ensure and demonstrate compliance with the FMCSRs.

A. E & K TRUCKING must ensure and demonstrate that each and every commercial motor vehicle it operates or intends to operate is in a safe operating condition and in full compliance with 49 C.F.R. Part 393 (Parts and Accessories Necessary for Safe Operation) and

Part 396 (Inspection, Repair and Maintenance), and that all defects and deficiencies have been corrected and repaired.

B. E & K TRUCKING must establish safety management controls and procedures that ensure that each and every commercial motor vehicle it operates or intends to operate is systematically and properly inspected, maintained and repaired as required by 49 C.F.R. Part 396, and that documentation of inspections, maintenance and repair are obtained and maintained as required.

C. E & K TRUCKING must ensure that its employees, contractors and/or agents used to inspect and maintain each and every commercial motor vehicle it operates are trained and qualified to conduct such inspections, maintenance and repairs, and documentation of training and qualifications is maintained in accordance with 49 C.F.R. Part 396.

D. E & K TRUCKING must require its drivers to conduct pre- and post-trip commercial motor vehicle inspections, and must require its drivers to prepare Driver Vehicle Inspection Reports at the end of each day and establish procedures to ensure that reported safety defects and/or deficiencies are repaired immediately and before the vehicle is again operated as required by 49 C.F.R. Part 396.

E. E & K TRUCKING must ensure that each and every commercial motor vehicle it operates is periodically inspected as required and in accordance with 49 C.F.R. Part 396 and Appendix G to Subchapter B of Chapter III, and that such periodic inspections are conducted by qualified inspectors.

F. E & K TRUCKING must establish safety management controls and procedures to ensure that defects and deficiencies discovered during inspections of its commercial motor vehicles are repaired prior to the vehicle being operated. E & K TRUCKING must ensure that no commercial motor vehicle that fails, or has failed, a safety inspection is used for the

transportation of property prior to necessary repairs being made and the vehicle passing an appropriate safety inspection.

G. E & K TRUCKING must contact FMCSA's Colorado Division Administrator and arrange for inspection of each of its commercial motor vehicles by an FMCSA inspector or an inspector designated by FMCSA.

H. E & K TRUCKING must establish safety management controls and procedures to ensure that each and every driver it uses has a valid commercial driver's license and is qualified to operate a commercial motor vehicle and that it has obtained and maintains all required documentation showing the qualification of each driver as required by 49 C.F.R. Part 391. E & K TRUCKING must ensure that each and every driver it uses to operate a commercial motor vehicle has been medically examined and certified as required, and must provide medical certificates for each and every driver to the Field Administrator for FMCSA's Western Service Center. E & K TRUCKING must check the driving record of each and every driver it uses to operate a commercial motor vehicle and obtain copies of the driving records for each driver. E & K TRUCKING must provide copies of driver records for each and every driver to the Field Administrator for FMCSA's Western Service Center.

I. E & K TRUCKING must ensure that all of its employees, including 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

You are subject to this ORDER unless and until the ORDER is rescinded in writing by FMCSA. Unless and until this ORDER is rescinded, E & K TRUCKING is prohibited from operating any commercial motor vehicle, specifically including but not limited to the vehicles listed in Appendix A of this ORDER, in interstate and/or intrastate commerce. This ORDER

will not be rescinded until the Field Administrator for FMCSA's Western Service Center has determined that the Remedial Action requirements specified in Paragraph IV of this ORDER have been fully satisfied and acceptable documentation submitted.

Before this ORDER may be rescinded E & K TRUCKING must comply with the provisions of this ORDER, eliminate the problems constituting the imminent hazard that its operations and vehicles pose, and adequately demonstrate to the Field Administrator for FMCSA's Western Service Center the actions taken to eliminate the safety problems. E & K TRUCKING cannot avoid this ORDER by continuing operations under the name of another person or company. Any sale, lease or other transfer of any commercial motor vehicle by E & K TRUCKING requires the written approval of the Western Service Center Field Administrator. Any such action taken in anticipation of this ORDER must cease immediately.

Prior to rescission of this ORDER, E & K TRUCKING will be required to:

1. Identify the cause for its noncompliance.
2. Develop a detailed Safety Management 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.
3. Execute the Safety Management Plan and provide certification by all owners, and officers.

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

Terry D. Wolf, Field Administrator
Western Service Center
Federal Motor Carrier Safety Administration
12600 West Colfax Avenue, Suite B-300
Lakewood, Colorado 80215

Steve Kleszczynski, Division Administrator
Colorado Division
Federal Motor Carrier Safety Administration
12300 W. Dakota Avenue
Lakewood, Colorado 80228

Rescission of this ORDER does not constitute a reinstatement of E & K TRUCKING's Federal operating authority registration or its USDOT Number. In order for E & K TRUCKING to resume motor carrier operations transporting property in interstate or intrastate commerce, E & K TRUCKING will be required to apply to reactivate its USDOT number registration, apply for new operating authority registration, and demonstrate that it is fit and willing and able to comply with: 1) the statutory and regulatory registration requirements; 2) applicable safety regulations including the FMCSRs; 3) the commercial motor vehicle safety requirements of employers and employees set forth in 49 U.S.C. § 31135; 4) the safety fitness requirements set forth in 49 U.S.C. § 31144; and 5) minimum financial responsibility requirements established under 49 U.S.C. §§ 13906 and 31138.

VI. FAILURE TO COMPLY

Failure to comply with the provisions of this ORDER may subject E & K TRUCKING to an action in the United States District Court for equitable relief and punitive damages. E & K TRUCKING may be assessed civil penalties of up to \$25,000 for a violation of this ORDER. (49 U.S.C. § 521(b)(2)(F) and 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 and imprisonment for a term not to exceed one year. (49 U.S.C. § 521 (b)(6)(A)).

VII. PENALTIES FOR 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 and Orders of the FMCSA, previously discovered, discovered after the service of this ORDER, and/or discovered during subsequent investigations.

VIII. RIGHT TO REVIEW

You have the right to 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 days. (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 Adjudications Counsel, at the following addresses:

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

Adjudications Counsel (MC-CCA)
Federal Motor Carrier Safety Administration
Office of Chief Counsel
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

A copy of any request for administrative review should also be sent to the Field Administrator at the following address:

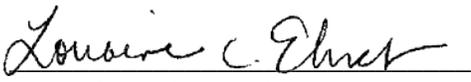
Field Administrator, Western Service Center
Federal Motor Carrier Safety Administration
12600 West Colfax Avenue, Suite B-300
Lakewood, Colorado 80215

The request must state the material facts at issue which you believe dispute or contradict the finding that E & K TRUCKING's operation of its commercial motor vehicles in interstate or intrastate commerce constitutes an imminent hazard to the public.

**A REQUEST FOR ADMINISTRATIVE REVIEW DOES NOT IN ANY WAY
SUSPEND OR DELAY YOUR DUTY TO COMPLY WITH THIS ORDER**

IMMEDIATELY. This ORDER is separate and independent from all other orders or actions that may be issued by FMCSA, and does not amend or modify any other such orders or actions, and any request for administrative review of this ORDER does not attach to or apply to any other order or action.

Date: 6/14/2013


for Terry D. Wolf, Field Administrator
United States Department of Transportation
Federal Motor Carrier Safety Administration

APPENDIX A

Vehicle Description	VIN/Partial VIN Number
TT LIC Plate CO-702XFK	VIN 1XKTDR9X7WJ769768
TT LIC Plate OK-2NX387	VIN 4VG7DARN0WN756903
TT LIC Plate OK-2NX386	VIN 1FUYSSEB5VL797444
TT LIC Plate OK-2NX636	VIN 1FUYSZB2XPA16419
TT LIC Plate OK-2NQ414	VIN 1FUPCSZB9YPB43582
TT LIC Plate OK-2NX635	VIN 1FUPCSZB7YPF01892
TT LIC Plate OK-Y76760	VIN 1XKTDR9X7WJ769768
TT LIC Plate CO-701XFK	VIN 4V1WDBCH3SN705829
TT LIC Plate OK-EXPN24377	VIN 4V4NP33JJ5YN24377
TT LIC Plate OK-2NQ414	VIN 4V4ND3JJ5YN243776
TT LIC Plate OK-2NX121	VIN 1FUYSSEBXYL985347
ST LIC Plate OK-6205JK	VIN 13N1482C3K1545794
ST LIC Plate CO-891UKY	VIN1GRDM9026FM017002
ST LIC Plate CO-257DGE	VIN ID114590COLO
ST LIC Plate OK-5352GT	VIN 5C2BB38B16M004877
ST LIC Plate OK-6206JK	VIN 216742
ST LIC Plate CO-696THM	VIN ID1041072CO
ST LIC Plate CO-690THM	VIN 565516
ST LIC Plate OK-4421GW	VIN 1L01B4225B1058608
ST LIC Plate OK-4422GW	VIN 1GRDM9622DM032701
ST LIC Plate OK-4423GW	VIN 1GREX9624KM025001
ST LIC Plate OK-4427GW	VIN 1G934392X6S770995
ST LIC Plate OK-4429GW	VIN 1JJF482F8W5457853
ST LIC Plate OK-5679GX	VIN 5C2BB38BX6M004876
ST LIC Plate CO-684THM	VIN ID112712COLO
ST LIC Plate OK-4418GW	VIN 1L01C3825Y1144265
ST LIC Plate CO-344MFF	VIN ID01041616CO
ST LIC Plate CO-084PVI	VIN IDTL008710AA
ST LIC Plate CO-552DGG	VIN 9969
ST LIC Plate CO-116NPS	VIN 162971
ST LIC Plate CO-057HKU	VIN 1L01C3829V1126265
ST LIC Plate CO-597KHT	VIN 216742



U.S. Department
Of Transportation
Federal Motor Carrier
Safety Administration

Colorado Division
12300 W. Dakota Ave., Suite 130
Lakewood, CO 80228
(720) 963-3130

CERTIFICATE OF SERVICE

I, Steve Kleszczynski, certify that the **IMMINENT HAZARD OPERATIONS OUT-OF-SERVICE ORDER** issued by the United States Department of Transportation, Federal Motor Carrier Safety Administration was served this 14th day of June 2013 at 3:34 o'clock p.m. by personally handing it to:

Corina Klingbell (name)
President (title)

at the location of:

5431 Kiamera Street
Commerce City Co 80022

[Signature]
(signature)

Steve Kleszczynski
(name)

Division Administrator
(title)

12300 West Dakota Ave Suite 130
(business address)

Lakewood Co 80228

720-963-3149
(office telephone number)