

- 1. REPORT DATE: 00/00/00
- 2. BUREAU: TAS
- 3. SECTION(S):
- 5. APPROVED BY: DIRECTOR: SUPERVISOR:
- 6. PERSON IN CHARGE: WILSON
- 8. DOCKET NO: A-00117548C0601
- 4. PUBLIC MEETING DATE: 00/00/00
- 7. DATE FILED: 11/22/06
- 9. EFFECTIVE DATE: 00/00/00

PARTY/COMPLAINANT: TRANSPORTATION & SAFETY, BUREAU OF

RESPONDENT/APPLICANT: T R TRUCKING & EXCAVATING, INC

COMP/APP COUNTY:

UTILITY CODE: 704836

ALLEGATION OR SUBJECT

TAS COMPLAINT AGAINST TR TRUCKING & EXCAVATING INC FOR VARIOUS VIOLATIONS.

**DOCKETED**

NOV 29 2006

**DOCUMENT  
FOLDER**

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DOCKETED  
NOV 29 2006

PENNSYLVANIA PUBLIC UTILITY  
COMMISSION, BUREAU OF TRANSPORTATION  
AND SAFETY

V.

DOCKET NO. A-00117548C 0601

TR Trucking & Excavating, Inc.

COMPLAINT

The Pennsylvania Public Utility Commission (Commission) is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate public utilities within the Commonwealth. The Commission has delegated its authority to initiate proceedings which are prosecutory in nature to the Bureau of Transportation and Safety and other bureaus with enforcement responsibilities. Pursuant to that delegated authority and Section 701 of the Public Utility Code, the Bureau of Transportation and Safety Prosecutory Staff hereby represents as follows:

1. That TR Trucking & Excavating, Inc., respondent, maintains a principal place of business at 420 Burns Lane, Ruffs Dale, PA 15679.

2. That respondent was issued a Certificate of Public Convenience by this Commission on June 28, 2001, at Application Docket No. A-00117548.

3. That on September 7, 2006, District Manager Denise H. Cohen and Enforcement Officer John Addison, duly authorized officers of this Commission, performed a safety audit at respondent's facility at 420 Burns Lane, Ruffs Dale, PA 15679, and the following violations were noted:

- (a) Permitting driver, Mark Dobrick on July 23, 26, 27, 28, 29, 30, 31, August 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, 23, 24, 25, 26, 27, 28, 30, 31, and September 1, 2004, to operate a motor vehicle after he has tested positive for a controlled substance.

SECRETARY'S BUREAU

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- (b) Failing to require a driver to undergo a return to duty controlled substance test with a negative result. Mark Dobrick drove on July 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31, August 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, 23, 24, 25, 26, 27, 28, 30, 31, September 1, 2, 3, 4, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 27, October 2, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, November 1, 2, 3, 4, 5, 6, 8, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 22, 23, 24, 29, 30, December 1, 2, 3, 4, 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 27, 28, 29, 30, 2004, January 4, 5, 6, 7, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 24, 25, 26, 27, 28, 30, 31, February 1, 2, 3, 4, 9, 21, 22, 23, 24, 25, March 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 21, 22, 24, 25, 28, April 2, 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, May 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 23, 24, 25, 26, June 1, 2, 3, 10, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 28, 29, 30, July 1, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, August 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, and 26, 2005.
- (c) Making, or causing to make fraudulent or intentionally false statements, entries or records, and/or reproducing fraudulent records. Driver Richard Stevey had an altered Medical Certificate on June 8, 2005, MCSAP No. PAUCI40000099.
- (d) Permitting a person, who does not possess a valid driver's license including proper class and appropriate endorsement, to operate a motor vehicle. Driver Jeffrey A. Kite, suspended driver's license from July 26, 2005 to September 7, 2005.
- (e) Failing to require a driver to undergo a pre-employment controlled substance prior to the driver operating a motor vehicle.
1. William Kealey drove on December 30, 2003.
  2. Larry Nichols drove from May 17, 2004 to May 26, 2004.
  3. Mark Dobrick drove from July 13, 2004 to July 19, 2004.
  4. Allen McKinney, Jr. drove from May 2, 2004 to May 4, 2004.
  5. Steven R. Phillips drove from June 24, 2004 to July 26, 2004.
  6. Jeffrey Kite drove from January 3, 2005 to January 7, 2005
- (f) Failing to ensure driver, Randall Kildow, who was involved in a fatality on March 16, 2005, has undergone post-accident testing for alcohol and/or controlled substances. No documentation of test or documentation relating to the testing process.

- (g) Permitting a driver to operate a motor vehicle, after engaging in conduct prohibited by Subpart B, without being evaluated by a substance abuse professional. Mark Dobrick drove on July 23, 24, 26, 27, 28, 29, 30, 31, August 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, 23, 24, 25, 26, 27, 28, 30, 31, September 1, 2, 3, 4, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 27, October 1, 2, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, November 1, 2, 3, 4, 5, 6, 8, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 22, 23, 24, 29, 30, December 1, 2, 3, 4, 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 27, 28, 29, 30, 2004, January 4, 5, 6, 7, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 24, 25, 26, 27, 28, 30, 31, February 1, 2, 3, 4, 9, 21, 22, 23, 24, 25, March 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 21, 22, 24, 25, 28, 29, 30, 31, April 1, 2, 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, May 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 23, 24, 25, 26, June 1, 2, 3, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 28, 29, 30, July 1, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, August 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, 26, 2005.
- (h) Permitting a driver, who is not medically examined and certified, to operate a motor vehicle. Driver Richard Stevey had an expired medical certificate from March 26, 2005 to June 29, 2005.
- (i) Permitting a driver, who is not medically examined and certified, to operate a motor vehicle. Driver William Kealey had an expired medical certificate from June 20, 2005 to June 27, 2005.
- (j) Failing to maintain records related to the alcohol and controlled substance collection process and training for two years. No individual in the carrier's agency had supervisory training for drug and alcohol program.
- (k) Failing to maintain an accident register for a period of one year after an accident containing the information required by 390.15. Carrier failed to record a fatality involving driver Randall D. Kildow on March 16, 2005 in the county of Westmoreland.

(l) Failing to require a driver to make a record of duty (dates missing) for each 24 hour period.

1. Jeffrey Kite drove on June 21, 22, 29, 2005 & July 17, 2005 to August 9, 2005 & August 11 & 26, 2005.
  2. Allen McKinney drove from June 26, 2005 to August 6, 2005, August 8, 11, & 18, 2005 and August 22, 2005 to August 26, 2005.
  3. Mark Dobrick drove from July 3, 2005 to July 9, 2005.
  4. Larry Nichols drove from August 7, 2005 to August 27, 2005.
  5. William Kealey drove from August 22, 2005 to August 26, 2005.
  6. William Kohuth drove from August 21, 2005 to August 27, 2005.
- Drivers worked in excess of 12 hours on these days and no logs used. Time records only.

(m) Failing to retain copies of roadside driver/vehicle inspection reports for 12 months. 32 MCSAP's for previous year. There were 12 not available. (State and report numbers missing on vehicle maintenance checklist.)

4. That respondent, by permitting a driver to operate a motor vehicle after the driver had tested positive for a controlled substance, violated 52 Pa. Code §37.204(1) and 49 CFR §382.215. The penalty is \$1000.00 for each violation for a total of \$33,000.00.

5. That respondent, by failing to require a driver to undergo a return-to-duty controlled substance test with a negative result, violated 52 Pa. Code §37.204(1) and 49 CFR §382.309(b). The penalty is \$1000.00 for each violation for a total of \$280,000.00.

6. That respondent by making, or causing to make fraudulent or intentionally false statements, entries or records, and/or reproducing fraudulent record, violated 52 Pa. Code §37.204(a) and 49 CFR §390.35. The penalty is 1000.00.

7. That respondent, by permitting a person, who does not possess a valid driver's license, including proper class and appropriate endorsement, to operate a motor vehicle, violated 52 Pa. Code §37.204(3) and 49 CFR §391.11(b)(7). The penalty is \$1,000.00.

8. That respondent by, failing to require a driver to undergo a pre-employment controlled substance test prior to the driver operating the motor vehicle, violate 52 Pa. Code §382.301(a). The penalty is \$500 for each violation for a total of \$3000.00.

9. That respondent, by failing to ensure a driver had undergone post-accident testing for alcohol and/or controlled substances, violated 52 Pa. Code §37.204(1) and 49 CFR §382.303(a). The penalty is \$500.00.

10. That respondent, by permitting a driver to operate a motor vehicle, after engaging in conduct prohibited by Subpart B, without being evaluated by a substance abuse professional, violated 52 Pa. Code §37.204(1) and 49 CFR §382.503. The penalty is \$500.00 for each violation for a total of \$142,500.00.

11. That respondent, by permitting a driver, who is not medically examined and certified, to operate a motor vehicle, violated 52 Pa. Code §37.204(3) and 49 CFR 391.45(a). The penalty is \$500.00 per violation for a total of \$1,000.00.

12. That respondent, by failing to maintain records related to the alcohol and controlled substance collection process and training for two years, violated 52 Pa. Code §37.204(1) and 49 CFR §382.401(b)(2).

13. That respondent, by failing to maintain an accident register for a period of one year after an accident, containing the information required by 49 CFR §390.15, violated 52 Pa. Code §37.204(2) and 49 CFR §390.15(b)(1).

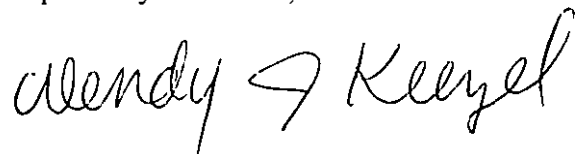
14. That respondent, by failing to require a driver to make a record of duty (dates missing) for each 24 hour period, violated 52 Pa. code §37.204(6) and 49 CFR 395.8(a)(1).

15. That respondent, by failing to retain copies of roadside driver/vehicle inspection reports for 12 months, violated 52 Pa. Code §37.204(7) and 49 CFR §396.9(d)(3)(ii).

16. The penalty for paragraphs 12 through 15 is \$100.00 for the first group of three, plus \$100.00 for each subsequent violation, for a total of \$700.00.

WHEREFORE, the Bureau of Transportation and Safety Prosecutory Staff hereby requests that the Commission fine T R Trucking & Excavating, Inc., the sum of four hundred sixty two thousand seven hundred dollars (\$462,700.00) for the illegal activity described in this complaint and order such other remedy as the Commission may deem to be appropriate.

Respectfully submitted,



Wendy J. Keezel, Chief of Enforcement  
Motor Carrier Services & Enforcement Division  
Bureau of Transportation and Safety  
P.O. Box 3265  
Harrisburg, PA 17105-3265

VERIFICATION

I, Wendy J. Keezel, Chief of Enforcement for the Motor Carrier Services and Enforcement Division of the Bureau of Transportation and Safety, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect that the Bureau will be able to prove same at any hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

Date: 11-16-06

Wendy J. Keezel  
Wendy J. Keezel, Chief of Enforcement  
Motor Carrier Services and Enforcement Division  
Bureau of Transportation and Safety

## NOTICE

A. You must file an Answer within twenty (20) days of the date of service of this Complaint. The date of service is the mailing date as indicated at the top of the Secretarial Cover Letter for this complaint and notice, 52 Pa. Code §1.56(a). An Answer is a written explanation of circumstances wished to be considered in determining the outcome. The Answer shall raise all factual and legal arguments that you wish to claim in your defense and must include the reference number of this Complaint. Your Answer must be verified and the original and three (3) copies sent to:

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

B. If you fail to answer this complaint within twenty (20) days of the date of service, the Bureau of Transportation and Safety will request that the Commission issue an Order imposing a penalty, which will include the revocation of your Certificate of Public Convenience.

C. You may elect not to contest this Complaint by paying the fine proposed in this Complaint by certified check or money order. Payment must be made to the **Commonwealth of Pennsylvania** and should be forwarded to:

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Your payment is an admission that you committed the alleged violation and an agreement to cease and desist from further violations. Upon receipt of your payment, the complaint proceeding shall be closed.

D. If you file an answer which admits or fails to deny the allegations of the complaint, the Bureau of Transportation and Safety will request that the Commission issue an order imposing a penalty, which may include the cancellation of your Certificate of Public Convenience.

E. If you file an answer which contests the complaint, the matter will be assigned to an Administrative Law Judge for hearing and decision. The judge is not bound by the optional fine set forth above.

F. Alternative formats of this material are available, for persons with disabilities, by contacting the Compliance Office at (717) 787-1227.

COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG PA 17105-3265

Date of Service: November 29, 2006  
Docket Number: A-00117548C0601

TR TRUCKING & EXCAVATING INC  
420 BURNS LANE  
RUFFS DALE PA 15679

Pennsylvania Public Utility Commission Bureau of Transportation and Safety  
v.  
TR TRUCKING & EXCAVATING INC

Dear Sir/Madam:

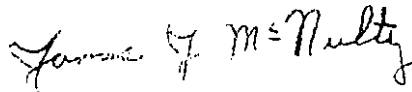
The Pennsylvania Public Utility Commission has delegated its authority to initiate prosecutory proceedings to several bureaus in the Commission with enforcement responsibilities.

Pursuant to this delegated authority and Section 701 of the Public Utility Code, the Bureau of Transportation and Safety Prosecutory Staff has filed the attached complaint against you.

Please refer to the Notice page at the conclusion of this complaint for detailed instructions on how to proceed. Alternative formats of this material are available for persons with disabilities.

Any questions may be directed to the Technical Review Section of the Bureau of Transportation and Safety at (717) 787-1168.

Very truly yours,



James J. McNulty  
Secretary

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