UNITED STATES DEPARTMENT OF TRANSPORTATION FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

) Order No.: TN-2012-5001-IMH
)
THERESA C. VINCENT) Service
dba TERRI'S FARM) Date:
USDOT 2324670)
THERESA C. VINCENT,)) Service
Individually) Date:
LARRY T. MONTGOMERY,)) Service
Individually) Date:

IMMINENT HAZARD OPERATIONS OUT-OF-SERVICE ORDER

This notice is an Imminent Hazard Operations Out-of-Service Order by the United States pursuant to 49 U.S.C. § 521(b)(5)(A), 49 U.S.C. § 31144(c)(1) and (2), 49 U.S.C. § 31144(c)(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.

For the reasons set forth below, the Imminent Hazard Operations Out-of-Service Order served on June 29, 2012 (June 29 IH Order) against Edwin Ayache dba Three Angels Farms, Edwin Ayache, Individually, and Dorian Ayache, Individually, applies to Theresa C. Vincent dba Terri's Farm, USDOT number 2324670, Theresa C. Vincent, Individually, and Larry T. Montgomery, Individually, as well as any and all officers, directors, successors, assigns and closely affiliated companies (Theresa C. Vincent dba Terri's Farm, Theresa C. Vincent, and Larry T. Montgomery, referred to collectively herein as "Terri's Farm," "you," and/or "your"). This

Imminent Hazard Operations Out-of-Service Order ("Imminent Hazard Order") applies to all motor carrier operations by Terri's Farm and all vehicles owned, leased, rented or otherwise operated by Terri's Farm, including but not limited to commercial motor vehicles, VIN 1FUYDZYBXSP597825, VIN 1FUBAHCG43LL07437, and VIN 1FUYDSEB7SP35946. Further, the June 29 IH Order is attached hereto and incorporated by reference herein and remains in full force and effect.

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
THE 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 STORED OR
REPAIRED ONLY UPON APPROVAL FROM THE FIELD ADMINISTRATOR,
FMCSA SOUTHERN SERVICE CENTER.

I. JURISDICTION

Terri's Farm is a private 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). Theresa C. Vincent and Larry T. Montgomery are individuals who own, manage, control, direct or otherwise oversee the operations of Terri's Farm. Terri's Farm is required to comply, and to ensure its drivers comply, with the FMCSRs. (49 C.F.R. § 390.11).

II. BASIS FOR ORDER

With the issuance of the June 29 IH Order, Edwin Ayache dba Three Angels Farms ("Three Angels Farms") was ordered to immediately cease all commercial motor vehicle operations and prohibited from continuing to operate through use of lessees, lessors, owner-operators, affiliates, assigns or other commercial motor vehicles or motor carriers. Three Angels Farms, located at 151 Mill Road, Lebanon, Tennessee 37090, is owned, managed and controlled by two brothers, Dorian Ayache and Edwin Ayache. The June 29 IH Order also applies to Edwin Ayache, Individually, and Dorian G. Ayache, Individually. The June 29 IH Order prohibits these persons from engaging in commercial motor vehicle operations until such time as the conditions leading to the issuance of the June 29 IH Order are eliminated and the June 29 IH Order is rescinded.

FMCSA's continued investigation of motor carrier activities by Three Angels Farms and Dorian Ayache from the 151 Mill Road, Lebanon, Tennessee 37090 location shows Dorian G. Ayache and other persons are operating in violation of the June 29 IH Order. Dorian G. Ayache, joined by Theresa C. Vincent and Larry T. Montgomery, are continuing commercial motor vehicle operations of Three Angels Farms and Dorian G. Ayache under the name "Theresa C.

Vincent dba Terri's Farm" in violation of the June 29 IH Order.

III. BACKGROUND

On June 29, 2012, FMCSA issued an IH Order to Three Angels Farms, finding violations of the FMCSRs so widespread as to demonstrate a continuing and flagrant general disregard for compliance with the FMCSRs and creating an imminent hazard to public safety. Dorian G. Ayache and Edwin Ayache owned, managed and controlled Three Angels Farms.¹

Terri's Farm is managed and controlled by Dorian G. Ayache and owned by his friend of over twenty years, Theresa C. Vincent. Terri's Farm is located at 401 Alsup Mill Road, Murfreesboro, Tennessee 37130. Terri's Farm² employs four drivers.³ Two of the drivers, Dorian G. Ayache and Arlin T. Martin, previously employed by Three Angels Farms, are not presently authorized to drive a commercial motor vehicle.⁴ Terri's Farm also uses three commercial motor vehicles previously owned and operated by Three Angels Farms.⁵ The Certificates of Title for the three commercial motor vehicles used by Terri's Farm have been

¹ On November 17, 2010, the FMCSA ordered Dorian G. Ayache dba Three Angels Farm to cease all interstate transportation as a result of a failed New Entrant Safety Audit. Thereafter, Dorian G. Ayache and his brother formed a second company, Edwin Ayache dba Three Angels Farms. On June 29, 2012, the FMCSA issued an IH Order against the second company and ordered the carrier to immediately cease all interstate and intrastate commercial motor vehicle operations.

² Terri's Farm was formed on July 16, 2012 and owns three commercial motor vehicles.

³ Dorian Ayache, Arlin T. Martin, Theresa Vincent, and Larry T. Montgomery acknowledge driving for Terri's Farms. Mr. Montgomery is the only individual holding a valid commercial driver's license. Ms. Vincent, has an instructional commercial driver's permit and is therefore required to have a properly licensed operator in the passenger seat while she is driving.

⁴ The June 29 IH Order prohibits Dorian G. Ayache from operating a commercial motor vehicle and Arlin T. Martin is not presently qualified to operate a commercial motor vehicle.

⁵ These commercial motor vehicles are still subject to the Jun 29 IH Order which prohibits any motor carrier from operating these vehicles in interstate or intrastate commerce absent FMCSA approval.

transferred to Theresa Vincent with Dorian G. Ayache as the lien holder. Dorian G. Ayache physically holds the three Certificates of Title and there is no record of any payment from Terri's Farm for the vehicles. FMCSA has not authorized sale of these vehicles to Terri's Farm as required by the June 29 IH Order. Only one of these vehicles is kept at the Terri's Farm location, while the other two commercial motor vehicles are located at Three Angels Farms.

Three Angels Farms was placed out-of-service pursuant to the June 29 IH Order. Terri's Farm began motor carrier operations on July 16, 2012 according to the MCS-150 form filed on that date. Terri's Farm operates the same commercial motor vehicles and performs the same business as Three Angels Farms – transporting horses bound for a slaughter yard in Mexico from Lebanon, Tennessee to Presidio, Texas. FMCSA investigator interviews revealed that Dorian G. Ayache assisted Theresa C. Vincent in setting up the company and transferred title to the three commercial motor vehicles owned by Three Angels Farms to Ms. Vincent.

Terri's Farm continues, in all significant aspects, the operations of Three Angels Farms. Dorian G. Ayache manages and controls Terri's Farm and is assisted by Theresa C. Vincent, Owner, and Larry T. Montgomery, Vice President, of Terri's Farm. Dorian G. Ayache is Terri Farm's only customer. According to witnesses, Dorian G. Ayache dispatches all vehicles and receives his customers' payments through direct deposits into his bank account. Mr. Ayache is responsible for paying the drivers in cash for delivering the horses to Presidio, Texas after taking out his deductions. All drivers are paid by Dorian G. Ayache. The drivers use Dorian G. Ayache's credit card to pay for fuel and the drivers follow the route plans he provides for operating the vehicles between Lebanon, Tennessee and Presidio, Texas.

At times, Dorian G. Ayache will dispatch Theresa C. Vincent and Larry T. Montgomery as drivers. When contacted by Mr. Ayache, Ms. Vincent and Mr. Montgomery will drive a truck

to Three Angels Farms and hook up a trailer located in the Three Angels Farms livestock pen to load the horses. Per Mr. Ayache's instructions, Ms. Vincent and Mr. Montgomery always depart from Three Angels Farms in the evening, unloading the horses at an empty lot in Presido, Texas and leaving paperwork from Dorian G. Ayache in the unattended barn.

Mr. Ayache also dispatches himself as well as Arlin T. Martin⁶ to drive horses from Lebanon, Tennessee to Presidio, Texas. On July 27, 2012, the Tennessee Department of Safety placed Arlin T. Martin out-of-service while driving back from Presidio, Texas to Lebanon, Tennessee because his vehicle had defective brakes and because he had a false record of duty status and was driving over 70 hours. Similarly, on July 20, 2012, Dorian G. Ayache was stopped and cited by the Tennessee Department of Safety because of vehicle defects and because he did not maintain a driver's log book. Dorian G. Ayache and Arlin T. Martin were operating vehicles subject to the June 29 IH Order.

Terri Farm's operational structure and safety management controls are a continuation of the inadequate safety management controls of Three Angels Farms. These inadequate safety management controls fail to ensure acceptable compliance with applicable safety requirements to reduce associated risks. By continuing to operate in this manner and in violation of previous FMCSA Orders, Terri's Farm attempts to evade safety regulations and accountability. Terri's Farm is a disguised reincarnation of Three Angels Farms. Terri's Farm is currently being used by Dorian G. Ayache, Theresa C. Vincent and Larry T. Montgomery to circumvent the June 29 IH

⁶ Mr. Martin informed investigators that Dorian G. Ayache told him that he was now employed by Terri's Farm. However, Mr. Martin acknowledged that he never filled out any employee paperwork for Terri's Farm and admitted that he considered himself to be Dorian G. Ayache's employee. Theresa C. Vincent informed investigators that she had never met driver Arlin T. Martin.

⁷ On July 21, 2012, Mr. Arlin T. Martin was stopped by the Arkansas Department of Public Safety and cited for defective windshield wipers, lamp, wheel fasteners, and tires.

Order and continue the operations of Three Angels Farms' operations without addressing the safety violations and deficiencies identified in the June 29 IH Order. In sum, Terri's Farm operations violate the June 29 IH Order. The deficiencies cited in the June 29 IH Order resulted in violations which substantially increase the likelihood of serious injury or death to commercial motor vehicle drivers and the motoring public. These violations have not been abated. FMCSA has therefore determined that Terri's Farm continued operations constitute an imminent hazard under 49 U.S.C. § 521(b)(5)(A) and 49 C.F.R. § 386.72(b)(1). Accordingly, Terri's Farm must cease all motor carrier operations immediately.

IV. RESCISSION OF ORDER

Before resuming motor carrier operations, you must comply with the provisions of this Imminent Hazard Order as well as the remedial action set forth in the June 29 IH Order, eliminate the problems constituting the imminent hazard that your 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. You cannot avoid this Imminent Hazard 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 Terri's Farm requires the written approval of the Southern Service Center Field Administrator. Any such action taken in anticipation of this Imminent Hazard Order must cease immediately. You must have the Imminent Hazard Order rescinded by the Southern Service Center Field Administrator before you may continue interstate or intrastate operations.

Prior to rescission of the Imminent Hazard Order, Terri's Farm 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 YOU INTEND TO TAKE TO OVERCOME NON-COMPLIANCE AND A TIME TABLE FOR THESE STEPS (THE SAFETY MANAGEMENT PLAN).
- 3. DEVELOP AND CERTIFY THE COMMITMENT OF TERRI'S FARM 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 THE COMPANY, 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 Imminent Hazard 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, Tennessee 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, Tennessee Division Federal Motor Carrier Safety Administration 640 Grassmere Park, Suite 111 Nashville, TN 37211

V. FAILURE TO COMPLY

Failure to comply with the provisions of this Imminent Hazard Order may subject you to an action by the United States Attorney in the United States District Court for equitable relief and punitive damages. You 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)).

VI. 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 Imminent Hazard Order. Penalties may be assessed for the violations of Federal requirements, including the FMCSRs, previously discovered, discovered after the service of this Imminent Hazard Order, and/or discovered during subsequent investigations.

VII. 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 Imminent Hazard 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 your operation constitutes an imminent hazard to the public.

A REQUEST FOR REVIEW DOES NOT IN ANY WAY DELAY YOUR DUTY TO COMPLY WITH THIS IMMINENT HAZARD ORDER IMMEDIATELY.

Date: 8 28 12

Darrell Ruban, Field Administrator

United States Department of Transportation Federal Motor Carrier Safety Administration

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