

In the Matter of the Request for an)
Administrative Hearing filed by Sam) Case No: 22-1193-TR-CVF
Peterson on behalf of Kenneth Swogger.)

On December 27, 2022, what purports to be a joint motion to reopen the above-captioned matter was filed on the behalf of American Demolition, Inc. (Company) and Kenneth Swogger (Respondent). However, the motion was filed by a representative of the Company (Sam Peterson) – not by the Respondent. The motion asserts that the Company and Respondent did not know the potential issues with simply paying the forfeiture. The Inspection Report cites the Respondent for two disqualifying violations. The motion claims neither violation is listed on page 2 of the Inspection Report as a disqualifying offense. The motion further states that had the Company and Respondent known that the violations were disqualifying offenses they would not have paid the forfeiture. Attorney, Colin Maher, has filed a notice of appearance for this matter, but it is unclear from the notice whether he represents the Company or the Respondent given that the notice doesn't specifically name either as the client.

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offense. However, the violation of C.F.R. 2-5-07D is listed as a disqualifying offense.¹

Only the first page of the Inspection Report is attached to the motion. Also attached to the motion is the Notice of Disqualification, which states that the Respondent's disqualification ends on July 17, 2023.

Staff's opposes reopening the hearing for several reasons. First, Staff asks that the Commission not reopen the matter because the alleged good cause stated for the motion is not true and is unsupported (second page of the Inspection Report was not included with the motion). Second, the Company has no standing to request the matter be reopened.² Third, the motion was filed by the Company's representative (Sam Peterson) on the behalf of the Respondent, which is the unauthorized practice of law. Fourth, the matter will be moot by the time that the Commission makes a ruling, given the Respondent's disqualification ends on July 17, 2023.

¹ See Attachment A (Inspection Report), highlight added to page 2.

² At the very least, the Company needs to file a motion to intervene.

Respectfully submitted,

Dave Yost
Ohio Attorney General

John Jones
Section Chief

/s/ Robert Eubanks

Robert Eubanks
Assistant Attorney General
Public Utilities Section
30 East Broad Street, 26th Floor
Columbus, OH 43215
Telephone: 614. 644.8669
Fax: 866. 820.6050
Robert.Eubanks@OhioAGO.gov

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **Memorandum Contra** was served by electronic mail to the following parties of record, this 28th day of June, 2023.

/s/ Robert Eubanks

Robert Eubanks

Assistant Attorney General

PARTIES OF RECORD:

Colin Maher

The Maher Law Firm, LLC.
1335 Dublin Road #214A
Columbus OH 43215

Kenneth Swogger

336 36TH ST NW
Canton OH 44709

DRIVER/VEHICLE EXAMINATION REPORT



Public Utilities Commission of Ohio
180 East Broad Street
Transportation Department
Columbus, OH 43215
Phone #: (614)466-0429 Fax #: (614)752-9274

Report Number: OH3285015571
Inspection Date: 11/10/2022 Certification Date:
Time Started: 10:58 Time Ended: 11:26
Inspection Level: II - Walk-Around
HM Inspection Type No HM Inspection

AMERICAN DEMOLITION INC
4600 AMERICAN PARKWAY
MADISON, WI 53718

Driver: SWOGGER, KENNETH K
License #: [REDACTED] State: OH
Date of Birth: [REDACTED]

USDOT #: 01046622 Phone #: (330)588-9250
MC/MX #: 00268560 Fax #:
State #:

Location: ROADSIDE MilePost: 8
Highway: SR43 Origin: CANTON, OH Bill of Lading:
County: JEFFERSON Destination: MINGO JUNCTION, OH Cargo: EMPTY
Shipper:

VEHICLE IDENTIFICATION:

Unit	Type	Make	Year	tate	License#	Equipment ID	Unit VIN	GVWR	CVSA #	CV	A Issued #	OO	tkr #
1	TR	MACK	1999	OH	[REDACTED]		1M2P267C2XM048559	70,000					

BRAKE ADJUSTMENTS: No brake measurements recorded.

VIOLATIONS :

Vio Code	Section	Unit	OOS	State Citation Number	Verify*	Crash	Violation Description
392.16	392.16(a)	D	N		N	N	Failing to use seat belt while operating a CMV: NOT WEARING IT. DRIVER SAID HE JUST FOR GOT TO PUT IT ON.
391.11B4-DEN	391.11(b)(4)	D	Y		N	N	Driver operating a CMV without proper endorsements or in violation of restrictions.: REQUIRES CORRECTIVE LENSES. DRIVER DID NOT HAVE HIS GLASSES ON WHILE DRIVING
390.21TB	390.21T(b)	1	N		N	N	Carrier name and/or USDOT Number not displayed as required: NO NAME ON THE RIGHT SIDE OF THE TRUCK.
2-5-07D	392.2	1	N		N	N	Operating vehicle after Driver or Vehicle declared out of service: PAST INSPECTION FOR DRIVING WITH OUT CORRECTIVE LENSES ON 08-10-2021 REPORT # OH3253014843

* N - Non-OOS or Driver OOS Violation

HazMat: No HM Transported. **Placard:** NA **Cargo Tank**

Special Checks:

<input type="checkbox"/> Alcohol/Controlled Substance Check	<input type="checkbox"/> Traffic Enforcement	<input type="checkbox"/> Post Crash Inspection
<input type="checkbox"/> Conducted by Local Jurisdiction	<input type="checkbox"/> PASA Conducted Inspection	<input type="checkbox"/> PBBT Inspection
<input type="checkbox"/> Size and Weight Enforcement	<input type="checkbox"/> Drug Interdiction Search	Arrests:
<input type="checkbox"/> ESscreening		

Inspection Notes: REQUIRES CORRECTIVE LENSES. DRIVER DID NOT HAVE HIS GLASSES ON WHILE DRIVING.

Special Study Fields:

Special Study1:	Special Study6:
Special Study2:	Special Study7:
Special Study3:	Special Study8:
Special Study4:	Special Study9:
Special Study5:	Special Study10:

Locally Defined Fields:

For-Hire Carrier: Y;Driver Address: 336 36TH ST NW;Driver City: CANTON;Driver State: OH;Driver Zip: 44709;Photos Taken (Y/N): Y;Reason Code: OBVI;FMCSA Credentials Verified-Y/N: Y;CDL Verified (Y/N): Y;FMCSA OOS Order Issued(Y/N): N;Driver Address Verified (Y/N): Y;ISS Score: 72

I hereby declare KENNETH K. SWOGGER "Out of Service". This driver MAY NOT DRIVE any commercial motor vehicle nor may any carrier permit or require this driver to drive any commercial motor vehicle until:DRIVER PUTS ON HIS CORRECTIVE LENSES.

Report Prepared By:
D E Shaffer

Badge #
3285

Copy Received By:
SWOGGER, KENNETH K

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OH3285015571

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AMERICAN DEMOLITION INC
4600 AMERICAN PARKWAY
MADISON, WI 53718

Driver: SWOGGER, KENNETH K
License #: RQ336670 State: OH
Date of Birth: 5/30/1958

USDOT #: 01046622 Phone #: (330)588-9250
MC/MX #: 00268560 Fax #:
State #:

All violations of the FHMR and FMCSR or Title 49 of the Ohio Revised Code will be reviewed by the PUCO's Transportation Department to determine whether civil forfeitures should be assessed against any responsible parties in accordance with the penalty provisions of Title 49 of the Ohio Revised Code. If civil forfeitures are assessed, you will receive a separate notice by mail. These penalties may be assessed to motor carriers, shippers, and/or drivers. Any civil forfeiture assessed may be paid or challenge initiated online at <https://puco.ohio.gov/wps/portal/gov/puco/transportation/trucking/resources/motor-carrier-safety-online-services>.

ATTENTION MOTOR CARRIER: The motor carrier must examine this report and repair all the vehicle defects/violations noted above -AND- The motor carrier must sign the Certification of Repairs below and return the signed form to: Public Utilities Commission of Ohio, T ASD - 4th floor, 180 E Broad St, Columbus, OH 43215-3793 -OR- Fax (614) 752-9274 within 15 days of the inspection. You may also certify repairs online by registering for the PUCO Community at <https://puco.ohio.gov/wps/portal/gov/puco/transportation/trucking/resources/motor-carrier-safety-online-services>.

Failure to return this report with the required certification can result in penalties up to \$1,000 per day for each day the violation continues, up to a total of \$10,000.

If "No Violations Were Discovered" you do not need to return this report.

Signature of Carrier Official: X Date: _____

ATTENTION DRIVER: This report must be sent to the motor carrier whose name appears at the top of this inspection report within 24 hours. If the inspection report cannot be delivered within 24 hours the driver must mail or fax the inspection report to the motor carrier.

***** POSSIBLE CDL DISQUALIFICATION *****

If this roadside inspection identified an alleged violation of one or more of the below noted regulations, your CDL may be disqualified. If the PUCO finds you committed a violation of any of these regulations, the violation will be treated as a conviction for the purposes of federal and state law and notice of such conviction will be forwarded to the Ohio Bureau of Motor Vehicles (BMV). The BMV may disqualify you from operating a commercial motor vehicle for a minimum of 60 days. Any BMV sanction is in addition to sanctions imposed by the Public Utilities Commission of Ohio (PUCO).

177.804(b)(1), 177.804(b)(2), 177.804(b)(3), 177.804(c), 4901:2-5-07D, 383.23(a)(2), 383.51(a), 383.51A-NSIN, 383.51A-NSOUT, 383.51A-SIN, 383.51A-SOUT, 383.91(a), 383.93(b)(1), 383.93(b)(2), 383.93(b)(3), 383.93(b)(4), 383.93(b)(5), 391.15(a), 391.15A-NSIN, 391.15A-NSOUT, 391.15A-SIN, 391.15A-SOUT, 392.10(a)(1), 392.10(a)(2), 392.10(a)(3), 392.10(a)(4), 392.11, 392.12, 392.4(a), 392.5(a)(2), 392.5A2-UI, 392.5(c)(2), 392.80(a), 392.82(a)(1), 395.13(d), 396.9(c)(2).

MOTOR CARRIER CERTIFICATION OF COMPLETED REPAIRS: The undersigned certifies that all violations noted on this report have been corrected and action taken to assure compliance with the Federal Motor Carrier Safety & Hazardous Materials Regulations insofar as they are applicable to motor carriers and drivers. A false certification of repairs is required to be prosecuted with penalties up to \$10,000.

Signature of Repairer: X Facility: _____ Date: _____

Report Prepared By:
D E Shaffer

Badge #:
3285

Copy Received By:
SWOGGER, KENNETH K

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OH3285015571

**This foregoing document was electronically filed with the Public Utilities
Commission of Ohio Docketing Information System on**

6/28/2023 9:10:55 AM

in

Case No(s). 22-1193-TR-CVF

Summary: Memorandum Staff's Memorandum Contra Respondent's Motion to Reopen the Case electronically filed by Mrs. Kimberly M. Naeder on behalf of PUCO.