

ATTACHMENT B



Dora
Department of Regulatory Agencies

Public Utilities Commission

Ronald J. Binz, Chairman
James K. Tarpey, Commissioner
Matt Baker, Commissioner
Doug Dean, Director

Bill Ritter, Jr.
Governor

Barbara J.
Kelley
Executive
Director

November 10, 2010

Paul H. Epler
DBA Action Towing
305 A Juanita Street
Colorado Springs, Colorado 80909

RE: Towing Carrier Permit No. T-2601 of Paul H. Epler
Doing Business as Action Towing

Dear Mr. Epler;

Pursuant to § 40-13-102, C.R.S., and Commission Rule 4 *Code of Colorado Regulations* 723-6-6502, towing carriers are subject to the jurisdiction of and regulation by the Colorado Public Utilities Commission. Providers of towing carrier services are required to comply with all applicable Colorado statutes, Public Utilities Commission rules and regulations, and Commission orders at all times.

The Staff of the Colorado Public Utilities Commission (Staff) has reviewed Commission records and District Court records related to a complaint that was filed. Staff is investigating compliance with all Colorado statutes and Commission orders relating to providers of towing carrier services in the State of Colorado. Staff's investigation reflects that on September 25, 2009, you were convicted of theft per § 18-4-401, C.R.S., a class 4 felony, in El Paso County District Court, Case No. 2009CR000917. Pursuant to § 40-13-103, C.R.S., the Commission may revoke a towing carrier permit if such carrier has been convicted of a felony as defined by title 18, C.R.S.

The purpose of this letter is to give written notice of the facts and/or conduct that may warrant holding a Formal Complaint hearing before the Commission to determine whether your permit should be revoked as a result of a felony conviction and/or for violation of, failure to observe and comply with, any applicable Colorado statute, any Commission order, rule, or regulation.

1560 Broadway, Suite 250, Denver, Colorado 80202 303-894-2000
TTY Users 711 (Relay Colorado) www.dora.state.co.us/puc Fax 303-894-2065
Permit and Insurance (Outside Denver) 1-800-888-0170 Transportation Fax 303-894-2071
Consumer Affairs 303-894-2070 Consumer Affairs (Outside Denver) 1-800-456-0858

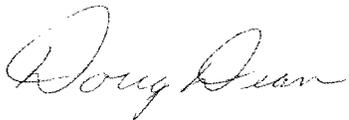


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Pursuant to § 24-4-104, C.R.S., you are afforded the opportunity to submit to the Commission written data, views, and arguments concerning the revocation of your permit, unless the right to such submission has been previously waived. Such submission of material will be considered by the Commission prior to a determination by the Commission of whether to institute Formal Complaint proceedings as set forth in the attached Proposed Formal Complaint and Notice of Hearing. You have 30 days from the date of this letter to submit any material you wish to be considered by the Commission.

Please contact Ted Barrett of my staff at 303-894-2846 if you have any questions relating to this matter.

Sincerely,

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean
Director

Decision No. C10-

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 10F-

IN THE MATTER OF THE ALLEGED VIOLATION OF THE STATUTES AND RULES
REGULATING TOWING CARRIERS BY RESPONDENT PAUL H. EPLER, D/B/A ACTION
TOWING.

**[PROPOSED] FORMAL COMPLAINT
AND NOTICE OF PROCEEDING**

Mailed Date:

Adopted Date:

I. BY THE COMMISSION

A. Statement

1. This Complaint was initiated pursuant to §§ 40-13-109 and 40-6-108(1)(a), C.R.S., on the basis of an investigation conducted by Trial Advocacy Staff of the Public Utilities Commission of the State of Colorado (Staff or Complainant). The violations alleged in this Complaint are founded on the statements in the Affidavit attached hereto as Attachment A.

2. Respondent Paul H. Epler, doing business as Action Towing provides towing carrier services to Colorado consumers. Providers of towing carrier services are required to comply with all applicable Colorado statutory requirements as well as compliance with Commission orders, rules, and regulations. *See generally*, §§ 40-13-101 through 40-13-112, C.R.S., and Rules 4 *Code of Colorado Regulations* (CCR) 723-6-6001 through 723-6-6017 and Rules 4 CCR 723-6-6500 through 723-6-6514.

3. The operation of towing carriers is regulated by the Commission under the authority conferred by article 13 of title 40 of the Colorado Revised Statutes and § 40-13-102,

C.R.S., in particular. No person shall operate as a towing carrier on the public ways of Colorado without having obtained a permit from the Commission, except in accordance with the provisions of § 40-13-103, C.R.S.

4. The Commission has adopted rules to implement the provisions of article 13 of title 40 C.R.S. pursuant to the authority conferred in §§ 40-13-107 and 40-13-110, C.R.S. The rules regulating towing carriers are found in the 6500 series of 4 CCR 723-6.

5. The term “towing carrier” is defined in § 40-13-101(3), C.R.S., to mean a person whose primary function or one of whose primary functions consists of commercially offering services on the public ways of the state whereby motor vehicles are towed or otherwise moved by use of a towing vehicle; and if provided, the storing of such towed motor vehicles.

6. Section 40-13-109, C.R.S., permits the filing of a complaint by any interested party, any person, or upon the Commission’s own motion, to revoke, suspend, alter, or amend any towing carrier permit. Commission Rule 4 CCR 723-1-1302(h) permits the Trial Advocacy Staff to present a proposed Complaint against any regulated entity. The term “regulated entity” is defined in the Commission’s rules to mean “any entity subject to regulation pursuant to Title 40, C.R.S.” *See* 4 CCR 723-1-1004(aa)

7. The regulation of public utilities as well as those carriers affected with a public interest, such as towing carriers, serves the important purpose of protecting the public of this state. For towing carriers in particular, there is an added requirement for the protection of the property of the public per § 40-13-106, C.R.S. The Commission accomplishes this purpose by implementing the provisions of title 40, C.R.S., and the rules promulgated pursuant to those statutes.

8. Section § 40-13-103, C.R.S., provides in relevant part, that:

(3) The commission may revoke or deny a towing carrier permit if such carrier has, within five years, been convicted of, or pleaded guilty or nolo contendere to, a felony as defined by title 18, C.R.S.

9. Commission Rule 4 CCR 723-6-6008(c)(I)(A) allows for the Commission to revoke, suspend, alter, or amend a towing carrier's permit for a violation of, or failure to comply with, any statute or regulation concerning towing carriers. The facts alleged in the Affidavit effectively raise the issue of whether Respondent has been convicted of a felony as defined by title 18, C.R.S.

10. Commission Rule 4 CCR 723-6-6008(d) requires that a towing carrier whose permit has been revoked, "shall be ineligible to be issued another operating right for at least one year from the date of such revocation or for such additional period of time as the Commission may in its discretion determine to be appropriate." Such period of ineligibility shall also apply to all principals, officers, and directors of the entity. *See* 4 CCR 723-6-6008(d)(III).

11. Based on the investigation and information described in the Affidavit, Respondent has operated and continues to operate as a towing carrier as defined by statute. The Commission finds that Paul H. Epler, doing business as Action Towing may have been convicted of a felony as defined by title 18, C.R.S. Accordingly, sufficient cause exists to hold a hearing to determine the facts of the matter, to hear material arguments, to receive evidence and testimony, and to determine what order or requirement, if any, shall be imposed by the Commission.

12. If the Commission determines that it is appropriate to do so, the Commission may issue a decision including but not limited to: revocation of Respondent's permit to operate as a

towing carrier for conviction of a felony, for a minimum of one year or for such additional period of time as the Commission deems appropriate.

II. ORDER

A. The Commission Orders That:

1. Consistent with the above discussion, this Complaint is approved for issuance and assigned Docket No. _____. The Commission’s Trial Advocacy Staff shall appear in support of the Complaint, and Respondent Paul H. Epler, doing business as Action Towing (Respondent) shall have the opportunity to appear before the Commission to address why the Commission should not take action and enter an order including, but not limited to: revocation of Respondent’s permit to operate as a towing carrier for conviction of a felony, for a minimum of one year or for such additional period of time as the Commission deems appropriate.

2. An evidentiary hearing shall be convened as follows:

DATE: _____

TIME: _____

PLACE: Colorado Public Utilities Commission
1560 Broadway, Suite 250
Denver, Colorado

3. The Respondent shall file its answer within 20 days of service of this Order.

4. This Order is effective on its Mailed Date.

B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
_____ , 2010.

(SEAL)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

RONALD J. BINZ

JAMES K. TARPEY

MATT BAKER

Commissioners