##### BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS

##### STATE OF GEORGIA

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| BURKHALTER SPECIALIZED  TRANSPORT, LLC, Company  JAMES VANCE, Driver  Petitioners,  v.  DEPARTMENT OF PUBLIC SAFETY,  Respondent. |  | :  :  :  :  :  :  :  : |  | DOCKET NUMBER:  OSAH-DPS-OWOS-1405544-15-Teate  Citation No.: 901-13-000479 |

**FINAL DECISION**

**I. Introduction**

Burkhalter Specialized Transport, LLC (“Burkhalter”) appealed an assessment issued on May 10, 2013 by the Department of Public Safety (“DPS”). At a hearing on September 18, 2013, Christine Calloway, Esq. represented DPS and Carlos Fernandez appeared as Burkhalter’s representative. James Vance, the Driver, did not appear. For the reasons given below, the assessment is **AFFIRMED**.

A copy of Petitioner’s Georgia Single Trip Permit #M0482751 is admitted into the record as ALJ Exhibit 1 subject to objection within the 10-day reconsideration period.

**II. Findings of Fact**

1. Burkhalter is a transport company with its corporate office in Columbus, Mississippi. DPS issued to it a Single Trip Permit, #M0482751. The permit authorized Burkhalter to operate a vehicle with a gross weight of 89,000 pounds from May 4 to May 15, 2013 to transport an empty trailor. The permit was valid from May 4, 2013 to May 15, 2013 and authorized gross weight of 89,000 pounds on seven axles with route of travel on Interstates 20, 285 and 85 from the Alabama line to the South Carolina line. The copy of the permit presented is neither signed nor dated. The permit indicates that the permit must be signed and dated in blue ink or it is not valid. The permit did not authorize travel on Interstate 95. (Testimony of Carlos Fernandez; ALJ Exhibit 1).
2. On May 10, 2013, James Vance, the driver drove the vehicle northbound on Interstate 95 in McIntosh County when he stopped to have his vehicle weighed at a weigh station. (Respondent Exhibit 1; Testimony of Crystal King).
3. Although the gross weight of the vehicle weighed within routine interstate allowable limits at 79,380 pounds on a motion scale, Crystal King, a DPS Weight Inspector, elected to also weigh the vehicle on a static scale which registers the weight of each individual axle. The static scales were calibrated and in good working order at the time. A weight of 26,500 pounds was measured for the seventh axle of that vehicle, which exceeds the statutory weight limit of 25,000 allowed for a single axle by 1,540.00 pounds. (Respondent Exhibits 1 and 2; Testimony of Crystal King).
4. Ms. King afforded Mr. Vance an opportunity to shift the vehicle load but the load could not be shifted. (Testimony of Crystal King).
5. Inspector King issued the above referenced overweight assessment citation for the seventh axle’s excess weight of 1,500 pounds that per calculations or DPS charts indicated an assessment was $96.25. On or about June 20, 2013, Petitioner requested a hearing and a reimbursement for the assessment.
6. Mr. Fernandez acknowledged that the issuance of the assessment prompted an evaluation of Axle 7 that indicated a malfunction that was immediately corrected. (Testimony of Carlos Fernandez).

**III. Conclusions of Law**

1. Georgia law prescribes specific weight limitations for vehicles, including limitations on the weight borne by a single axle. O.C.G.A. § 32-6-26 (b) (2) (2013). Anyone who violates these limitations shall be conclusively presumed to have damaged the roads and owes the state compensation O.C.G.A. § 32-6-27 (a) (2013).
2. Upon appropriate application DPS is authorized to issue a single trip permit that allows a load to exceed routine limits up to a weight specified; however, such permits are valid only on the route indicated. O.C.G.A. § 32-6-28 (a) and (b) (5) (2013). As applied, the driver in this case was not permitted to operate on I-95. Inasmuch as the driver was operating on an unauthorized route, the permit was appropriately revoked and the Inspector was free to require a second scale reading on the static scales even though the driver was within allowable gross weight interstate limits even without the permit.

1. DPS demonstrated that the weight of the vehicle’s seventh axle exceeded that authorized by the provisions of O.C.G.A. § 32-6-26 (b) (2) by 1,540 pounds. Road damage is presumed. O.C.G.A. § 32-6-27 (a) (2013). Inasmuch as the vehicle had a permit issued pursuant to O.C.G.A. § 32-6-28, assessment is 125% of the 5% assessment that would otherwise be calculated. O.C.G.A. § 32-6-27 (a) (2) (A) (2013). 125% of the 5% assessment of $77.00 was appropriately calculated as $96.25.
2. In overweight assessment case, DPS has the initial burden of proof in this matter and the party assessed has the burden to present any affirmative defenses raised.. Comp. R. & Regs. 616-1-2-.07 (a) (2010).

**IV. Decision**

**IT IS ORDERED** that the overweight assessment citation #901-13-000479 issued by DPS in the amount of $96.25 is **AFFIRMED**.

**SO ORDERED,** this 25th day of September 2013.

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Steven W. Teate

Administrative Law Judge