

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS  
STATE OF GEORGIA**

**ELITE TOWING, LLC,  
Petitioner,**

v.

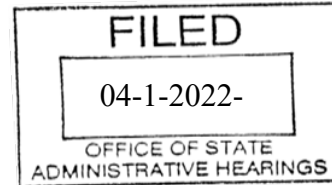
**DEPARTMENT OF PUBLIC SAFETY,  
Respondent.**

**Docket No.: 2219784  
2219784-OSAH-DPS-OWOS-60-Teate**

**Agency Reference No.: OW-0041379**

**FINAL DECISION**

**I. Introduction**



The Petitioner requested a hearing pursuant to O.C.G.A. § 32-6-27 after the Respondent issued a citation (Citation No. OW-0041379 to one of its driver's on November 1, 2021, for causing an overweight vehicle and/or load to be operated, on a public road of this state. The hearing took place on March 11, 2022, before the undersigned administrative law judge. Paul Trembath represented Petitioner and Jacob Taylor, Esq. represented Respondent. Official notice is taken of all Department of Public Safety ("DPS") and Georgia Department of Transportation ("GDOT") regulations.

After considering all of the admissible evidence and the arguments of the parties, the Respondent's action is **REVERSED** for the reasons stated below.

**II. Findings of Fact**

1. On November 1, 2021, the Petitioner caused a vehicle to be operated on an interstate highway (I-95 SB MP113) and Petitioner entered a fixed weigh station, Chatham SB Station 16. (Testimony of Karen Adams, Weight Inspector; Respondent Exhibits 1 and 2).

2. The static scales used to weigh the vehicle were calibrated and in good working order. On the citation, overall vehicle length was reported as 78 feet and the external bridge length was 67 feet 7 inches. Gross vehicle weight (GVW) was reported as 89,840 pounds with respective weights

for each of the 5 axles as follows: 7,400 for Axle 1; 24,120 for Axle 2; 24,180 for Axle 3; 17,180 for Axle 4; and 16,960 for Axle 5. Bridge lengths were calculated as follows: 24 feet 2 inches for Axle 1 – 2; 4 feet 6 inches for Axle 2 – 3; 34 feet five inches for Axle 3-4 and 4 feet 6 inches for Axle 4-5. The screening report from which the citation is generated reflected some weights that varied from those indicated on the citation: 87,380 pounds GVW; 7,700 for Axle 1; 22,400 for Axle 2; 23,500 for Axle 3; 16,180 for Axle 4; and 17,600 for Axle 6. (Testimony of Inspector Adams; Respondent Exhibits 2, 3, 4 and 6).

3. Petitioner’s driver presented an Annual Commercial Wrecker Permit for Gross Weight valid for 1/28/2021 to 1/1/2022. The permit was interchangeable for vehicles of Petitioner because tractor make, license and trailer license were marked as “N/A.” The permit noted overall dimensions of: 12 feet width; 14 feet 6 inches height; and 125.00 feet length. A notation for gross weight indicated “Gross Weight: 135,000 on 7 axles.” The “Special Circumstances” section on the permit contains a verbatim quote of O.C.G.A. § 32-6-28(b)(3) regarding the duration of permits for a commercial wrecker emergency tow permit.<sup>1</sup> Inspector Karen Adams declined this overweight permit; inasmuch as, the wrecker was operating on 5 axles. She noted on the citation: “Annual Permit for 7 axles, Towing with 5 axles / lift axle up.” (Testimony of Inspector Adams;

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<sup>1</sup> Inspector Adams also opined that she would have declined the permit upon learning that the vehicle was being transported to a repair facility in Jacksonville, Florida, a destination more than 50 miles from the weigh station. It appears that Inspector Adams opined incorrectly inasmuch as the definition of “Emergency Towing” appears to have been revised in 2016 to delete the specification of a 50 mile radius.

The prior version is as follows:

“Emergency Towing: When a tractor/trailer combination becomes disabled, an authorized permitted wrecker may transport the disabled tractor/trailer within a 50 mile radius to a repair facility or a safe location to dismantle the tractor/trailer. . . .” Ga. Comp. R. & Regs. 672-2-.01(d) (2015).

In contrast, the current version is as follows:

“Emergency Towing: When a tractor/trailer combination becomes disabled, an authorized permitted wrecker may transport the disabled tractor/trailer to a repair facility or a safe location to dismantle the tractor/trailer. . . .” Ga. Comp. R. & Regs. 672-2-.01(d).

Respondent Exhibit 5).

4. After she declined the permit presented, Inspector Adams assessed reviewed weight data and issued an overweight citation to Petitioner's driver. The Gross Weight of 89,840 pounds exceeded an allowable Gross Weight of 80,000 pounds by 9,840 pounds.<sup>2</sup> The weight of 82,440 pounds on axles 2 to 5 was 82,440 pounds (48,300 pounds for Axles 2 to 3 and 24,140 pounds for 3 to 4 which exceeded the authorized weight of 68,000 pounds (for two tandems at 34,000 each), for an overage of 14,440 pounds. An inspector is required to select the greater of overages in such a circumstance. Accordingly, Inspector Davis issues a fine of .05 per pound yielding a fine of \$722.00. (Testimony of Inspector Adams; Respondent Exhibit 2).

5. Paul Trembath, Petitioner's principal, obtained the permit to cover the possibility of towing multiple combination of tractor trailer, box truck and bobtail tractors, all of which have different axle combinations. Per his discussions with Respondent's permit office, his understanding was that the notation "135,000 on 7 axles" was inclusive for any number of axles up to and including 7 axles and provided that no axle on the vehicle exceeded 25,000 pounds on a single axle or 50,000 pounds on one tandem or 38,000 pounds on a secondary tandem axle. (Testimony of Paul Trembath).

### **III. Conclusions of Law**

1. For vehicles that would otherwise be subject to fines for being overweight, the Commissioner of GDOT is authorized to issue permits for variances. O.C.G.A. § 32-6-28(a). Included in that authority is a variance to allow an annual commercial wrecker emergency tow

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<sup>2</sup> See O.C.G.A. § 32-6-26(d)(1)(A) ("On all highways within this state which are interstate highways, the maximum total gross weight authorized for any vehicle and load shall not exceed 80,000 pounds . . .").

permit. O.C.G.A. § 32-6-28 (b)(3). Georgia Department of Public Safety is responsible for the Oversize Permit Unit that issues such permits. See

<http://www.dot.ga.gov/PS/Permits/OversizePermits>.

2. Pursuant to O.C.G.A. § 32-6-28 (b)(3), the Commissioner may issue an annual permit for vehicles towing disabled, damaged, abandoned, or wrecked commercial vehicles, including combination vehicles, even though such wrecker or its load exceeds the maximum limits specified in this article. Once issued, an annual commercial wrecker emergency tow permit shall not authorize the operation of a vehicle:

(A) Whose single axle weight exceeds 25,000 pounds;

(B) Whose load on one tandem axle exceeds 50,000 pounds and whose load on any secondary tandem axle exceeds 38,000 pounds; or

(C) Whose total load length exceeds 125 feet.

O.C.G.A. § 32-6-28 (b)(3). As applied, Petitioner correctly asserts that his vehicle was compliant.

These requirements are also reflected on GDOT's website with weight and axle as follow:

Effective July 1, 2013, due to the passage of HB218,<sup>3</sup> Georgia will offer a new emergency tow permit replacing the old permit. Upon renewal, the new permit will be issued. Permits will be issued for 135,000 lbs on 7 axles. Please see the legislation below for the new requirements.

- Official Code of Georgia Annotated – Chapter 32-6-28
- Duration and limits of permits.
- Annual Commercial wrecker emergency tow permit. Pursuant to this code section, the commission may issue an annual permit for vehicles towing disable, damaged, abandoned or wrecked commercial vehicles, including combination vehicles, even though such wrecker or its load exceed the maximum limits specified in this article. An annual commercial wrecker emergency tow permit shall not authorize the operation of a vehicle:
  1. Whose single axle weight exceeds 25,000 pounds
  2. Whose load on one tandem axle exceeds 50,000 pounds and whose load on any secondary tandem axle exceeds 38,000 pounds; or

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<sup>3</sup> The Court's research indicates that the legislation was Senate Bill 218, not House Bill 218.

3. Whose total load exceeds 125 feet.

See <http://www.dot.ga.gov/PS/Permits/OversizePermits#tab-2>).

The application for a wrecker emergency tow permit itself does not request information regarding axles and reads as follows:

ANNUAL COMMERCIAL WRECKER EMERGENCY TOW - \$500.00

Width -12'

Height -14'6"

Length – 125'

Weight – 135,000 lbs.

Number of Permits \_\_\_ x \$500.00 = \$ \_\_\_\_\_

See <https://www.dot.ga.gov/PartnerSmart/permits/Documents/FaxApplication-Annual.pdf>. As applied, Petitioner's argument that the 135,000 lbs. 7 axles notation is reasonably read as up to a maximum of 135,000 lbs. and up to 7 axles provided none of the other limitations indicated above were present that would void the permit.

4. Respondent has the initial burden of proof in this matter. Ga. Comp. R. & Regs. 616-1-2-.07(1). The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4). In response to Respondent's evidence that the permit was invalid, Petitioner's assertions that the permit was valid are reasonable and are not rebutted by any convincing evidence to the contrary. Inasmuch as the annual commercial wrecker permit for emergency towing is here determined to authorize the load, the presumption of damage is essentially rebutted

#### IV. Decision

**IT IS HEREBY ORDERED** that the Respondent's issuance of overweight assessment citation number OW-0041379 is **REVERSED**. Accordingly, Respondent is directed to refund the overweight assessment in the amount of \$722.00 to Petitioner.

**SO ORDERED**, this 1<sup>st</sup> day of April 2022.



**Steven W. Teate, Administrative Law Judge**