UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

KP TRUCKING LLC,

Petitioner,

v.

UNITED STATES DEPARTMENT OF TRANSPORTATION; FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION (FMCSA), No. 20-9508 (FMCS No. 0258)

Respondents.

ORDER AND JUDGMENT*

Before BACHARACH, Circuit Judge, LUCERO, Senior Circuit Judge, and PHILLIPS, Circuit Judge.

This case involves administrative regulation of the trucking industry.

Under these regulations, safety violations by two companies can be

Our order and judgment does not constitute binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel. But the order and judgment may be cited for its persuasive value if otherwise appropriate. *See* Fed. R. App. P. 32.1(a); 10th Cir. R. 32.1(A).

FILED United States Court of Appeals Tenth Circuit

March 9, 2021

Christopher M. Wolpert Clerk of Court

^{*} The parties have waived oral argument, and it would not materially help us to decide the petition for review. See Fed. R. App. P. 34(a)(2)(C); 10th Cir. R. 34.1(G). So we have decided the petition for judicial review based on the record and the parties' briefs.

combined when one of the companies changes its name or structure to skirt the consequences of prior violations. 49 C.F.R. § 386.73(b).

Invoking this authority, federal regulators suspended a trucking company, Eagle Iron & Metal. When Eagle was suspended, another entity (KP Trucking, LLC) expanded its operations. Regulators viewed KP's expansion as an effort to continue Eagle's operations in order to bypass penalties and start anew on a fresh slate. KP disagrees and petitions for judicial review.¹ We deny the petition.

1. KP emerges when Eagle is suspended.

Trucking companies can operate only when granted operating authority by the Federal Motor Carrier Safety Administration. *See* 49 C.F.R. pt. 385. This authority had been granted to Eagle. But the Safety Administration cited Eagle for safety violations, imposed a penalty, and suspended Eagle's registration. Upon Eagle's suspension, KP quickly filled the void by taking the steps necessary to obtain reinstatement of its operating authority.

KP soon drew its own citations for safety violations. The Safety Administration directed both KP and Eagle to suspend operations and ordered consolidation of the two companies' records, finding that KP had

¹ Regulators also found that another entity, Kenney Balthrop d/b/a KP's Trucking, was used to avoid the suspension and penalties imposed on Eagle. But this finding is not at issue here.

continued Eagle's operations under a new identity in order to avoid Eagle's civil penalty, suspension, and poor compliance history. KP challenges this finding.

2. The Safety Administration had substantial evidence to find that KP was merely continuing Eagle's business for an improper purpose.

Under the petition for review, we must consider whether KP was merely continuing Eagle's operations for an improper purpose. To consider this issue, we regard the Safety Administration's finding as presumptively valid and will grant KP's petition only if the finding is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law or unsupported by substantial evidence." *Andalex Res., Inc. v. Mine Safety* & *Health Admin.*, 792 F.3d 1252, 1257 (10th Cir. 2015). To overcome this presumption of validity, KP bears the burden of proof. *Midwest Crane* & *Rigging, Inc. v. Fed. Motor Carrier Safety Admin.*, 603 F.3d 837, 840 (10th Cir. 2010).

The Safety Administration concluded that KP had acted only to continue Eagle's operations and had expanded for an improper purpose. KP challenges the evidentiary basis for these findings.

A. Substantial evidence existed for the finding of continuity of Eagle's operations.

To determine whether KP served merely to continue Eagle's operations, the Safety Administration could consider

- the businesses' management structures,
- their asset purchases or transfers and the related title history,
- employee records, and
- any other information related to the businesses' general operations.

49 C.F.R. § 386.73(d). The Safety Administration based its determination in part on the existence of common ownership, finding that one person (Kenney Balthrop) owned KP and had an ownership interest in Eagle. KP does not dispute that Mr. Balthrop is its owner, but does challenge the finding that he had an ownership interest in Eagle. For this finding, the Safety Administration could reasonably rely on two pieces of evidence.

First, Eagle had submitted a form in 2010, stating that Mr. Balthrop was an owner.

2.3 J.8 Department of Transportation ederal Motor Carrier afterty Administration			MOTOR CARRIER IDENTIFICATION REPORT (Application for U.S. DOT NUMBER)													
REASON FOR FILING	(Chr	ck Only	One)							-						
NEW APPLICATION		UPDATE	ORCH	NGES	🗌 OUT	OF BUS	INESS	NOTIFICATION		APPLI	CATI	ON (AFTER REVOC	ATION OF	NEW ENTRANT)		
1. NAME OF MOTOR CA	RRIER							2 TRADE OR	DDA (DO	NO DI	10216-1	ESS AS) NAME				
EAGLE IRON & METAL	LLC							2. TRADE DR	0.0.4. (00	140 8	2314	ieaa nay nawie				
3. PRINCIPAL STREET ADDRESS/ROUTE NUMBER 4302 HIGHWAY 29						5. MAILING ADDRESS (P O BOX)				6. MAILING CITY						
			MAR	MARLOW			4302 HIGH	WAY 29			MARLOW					
7. STATE/PROVINCE 8. ZIP CODE		DE + 4		9.00	9.COLONIA (MEXICO ONLY)			10. STATE/PROVINCE			-	11. ZIP CODE+4	12 COI	COLONIA (MEXICO ONLY)		
OKLAHOMA								OKLAHO				73055		LOODONIN (MEXICO DIALT)		
13. PRINCIPAL BUSINESS PHONE NUMBER (580) 658-6410				100 C 200	RINCIPAL C 580) 512-790		LULAR PHONE	NUMBER		1	15. PRINCIPAL (580) 658-64		SINESS FAX NUMBER			
6. USDOT NO.	17. MC O	R MX N	0.	18. D	UN & BRAD	STREET	FNO.	19. IRS/TAX ID NO.				20.	INTERN	TERNET E-MAIL ADDRESS		
1844562										SSN#			weege	implynet.net		
A Interstate Carrier 2. CARRIER MILEAGE (1	B, Intras o nearest 10,		mat Ca		C. Intrastate lar Year)	Non-Ha	azmat (Carrier D. YEAR	Interstate Si	ilpper		E. Intrastate Ship	per F	. Vehicle Registrant Or		
22. CARRIER MILEAGE (1 23. OPERATION CLASSIF A, Authorized For-Hire	D DEBREST 10, FICATION	tate Haz 000 mile (Circle /	rmat Ca es for Li All that . e Passe	ast Calenc Apply) ingers (Bu	lar Year) Isiness)	Non-Ha	G.	YEAR		Ipper	1	J. Local Gov	emment	, Vehicle Registrant Or		
22. CARRIER MILEAGE (1 23. OPERATION CLASSIF A. Authorized For-Hire B. Exempt For-Hire	D REAREST 10, TICATION E	tate Haz 000 mile (Circle / . Private . Private	All that a Passe Passe	ast Calenc Apply) ingers (Bu	lar Year)	Non-Ha	G. H.	YEAR U. S. Mail Federal Governr	nent	lipper	3	J. Local Gov K. Indian Trit	emment	, Vehicle Registrant Or		
22. CARRIER MILEAGE (1 23. OPERATION CLASSIF A, Authorized For-Hire	D REAREST 10, TICATION E	tate Haz 000 mile (Circle /	All that a Passe Passe	ast Calenc Apply) ingers (Bu	lar Year) Isiness)	Non-Ha	G. H.	YEAR	nent	lipper	1	J. Local Gov	emment	, Vehicle Registrant Or		
CARRIER MILEAGE (1 OPERATION CLASSIF Authorized For-Hire Exempt For-Hire Private Property	D REAREST 10, TICATION E F	tate Haz 000 mile (Circle / . Private . Private	ernal Ca es for Li All that , e Passe e Passe nt	ast Calenc Apply) ingers (Bu ingers (No	lar Year) Isiness)	Non-Ha	G. H.	YEAR U. S. Mail Federal Governr	nent	lipper	1	J. Local Gov K. Indian Trit	emment	, Vehicle Registrant Or		
CARRIER MILEAGE (1 OPERATION CLASSIF Authorized For-Hire Rempt For-Hire Private Property A CARGO CLASSIFICAT A GENERAL	ICATION CATION E F NONS (1 F. LOGS.P.	(Circle / (Circle /), Private , Private , Migrar Dirole All DLES,	ernal Ca es for Li All that , e Passe e Passe nt	ast Calenc Apply) ingers (Bu ingers (No oply)	lar Year) Isiness)		G. H.	YEAR U. S. Mail Federal Governr	nent	v		J. Local Gov K. Indian Trit	emment be	BB. CONSTRUCTION		
2. CARRIER MILEAGE (1 3. OPERATION CLASSIF 4. Authorized For-Hire 9. Exempt For-Hire 9. Private Property 4. CARGO CLASSIFICAT 4. GENERAL FREIGHT	D REAREST 10, TICATION E F TIONS (1	tate Haz 000 mile (Circle /), Private , Private , Migrar Dirole All DLES, .UMBER	ernal Ca es for Li All that , e Passe e Passe nt	Apply) Ingers (Bu Ingers (No Ingely) J.	dar Year) Isiness) In-Business)	DUCE	G. H.	YEAR U. S. Mail Federal Governme State Governme	nent		co	J. Local Gov K. Indian Trit L. Other	emment be 			
2. CARRIER MILEAGE (1 2. OPERATION CLASSIF A. Authorized For-Hire Private Property 4. CARGO CLASSIFICAT 4. GENERAL FREIGHT B. HOUBEHOLD GOODS	ICATION CATION E F IONS ((F, LOGS,P) BEAMS, I G, BUILDING MATERIA	(Circle / (Circle / , Private , Private , Migrar Dirole All DLES, UMBER 3	ernal Ca es for Li All that , e Passe e Passe nt	Apply) Ingers (Bungers (Bungers (No Ingers (No Ingers), J. K.	isiness) on-Business) FRESH PROI	DUCE	G. H.	YEAR U. S. Mail Federal Governme State Governme P. GRAIN, FEE	nent	 v.	CC	J. Local Gov K. Indian Trit L. Other	emment be 	BB CONSTRUCTION		
2. CARRIER MILEAGE (1 2. OPERATION CLASSIF A. Authorized For-Hire Private Property 4. CARGO CLASSIFICAT 4. GENERAL PREIGHT 5. HOUSEHCLD GOODS 6. METAL: SHEETS; COILS: ROLLS	ICATION E F NONS (° F. LOGS,P BEAMS, 1 G. BUILDING MATERIA H. MOBILE 1	(Circle / (Circle /), Private , Private , Private , Migrar Dirole All DLES, UMBER , A	ernal Ca es for Li All that , e Passe e Passe nt	Apply) ingers (Bu ingers (No pply) J. K. L.	isiness) on-Business) FRESH PROI	DUCE IES	G. H.	YEAR U. S. Mail Federal Governme State Governme P. GRAIN, FEEI Q. GOAL/CÓKE R. MEAT	nent nt D, HAY	v. v. x.	CO . RE BE	J. Local Gov K. Indian Trit L. Other MMODITIES DRY B FRIGERATED FOOI VERAGES	emment be 	BB. CONSTRUCTION CC WATER WELL		
2. CARRIER MILEAGE (1 3. OPERATION CLASSIF A. Authorized For-Hire B. Example For-Hire Private Property 4. CARGO CLASSIFICAT A. GENERAL FREIGHT B. HOUSEHOLD GOODS C. METAL; SHEETS; COLLS ROLLS	ICATION CATION E F IONS ((F, LOGS,P) BEAMS, I G, BUILDING MATERIA	(Circle / (Circle /). Private , Migrar Dirole All DLES, UMBER 3 LS ROMES RY,	ernal Ca es for Li All that , e Passe e Passe nt	Apply) ingers (Bu ingers (No poly) J. K. L. M.	Isiness) on-Business) FRESH PROI LIQUIDS/GAS INTERMODA	DUCE IES L CONT. S	G. Н. I	YEAR J. S. Mail Federal Governme State Governme P. GRAIN, FEE Q. GOAL/COKE R. MEAT S. GARBAGE, F	nent nt D, HAY	V. V. X. 3H Y.	CO RE BE	J. Local Gov K. Indian Trit L. Other MMODITIES DRY B FRIGERATED FOOI VERAGES PER PRODUCTS	emment be 	BB. CONSTRUCTION CC WATER WELL CONTHER		
22. CARRIER MILEAGE (I 23. OPERATION CLASSIF 24. Authorized For-Hire 25. Private Property 24. CARGO CLASSIFICAT 24. CARGO CLASSIFICAT 25. HOUSERALD 26. MOTAL: SHEETS; 26. CONSR VEHICLES 26. ORTOR VEHICLES 26. ORTOR 25. PORE 25. ORTOR 2	CATION CATION E F NONS (% F. LOGS,P BEAMS,I G. BUILDING MATERIA H. MOBILE I I. MACHINE	(Circle / (Circle /). Private , Migrar Dirole All DLES, UMBER 3 LS ROMES RY,	ernal Ca es for Li All that , e Passe e Passe nt	Apply) ingers (Bu ingers (No ingers (No inge	Isiness) In-Bushess) FRESH PROI LIQUIDS/GAS INTERMODA PASSENGER	DUCE IES L CONT. S	G. Н. I	YEAR U. S. Mail Federal Governme State Governme P. GRAIN, FEEI Q. GOAL/CÓKE R. MEAT	nent nt D, HAY	V. W X. SH Y.	CO RE BE PA UT	J. Local Gov K. Indian Trit L. Other MMODITIES DRY B FRIGERATED FOOI VERAGES	emment be 	BB. CONSTRUCTION CC WATER WELL CONTHER		
2. CARRIER MILEAGE (1 2. OPERATION CLASSIF A. Authorized For-Hire Private Property 4. CARGO CLASSIFICAT 4. CARGO CLASSIFICAT 4. GENERAL FREIGHT 8. HOUGENOLD GOODS 0. METAL: SHEETS; COILS; ROLLS D. MOTOR VEHICLES E. DRIVE MANYTONAWAY	D NEWFEST 10, ICATION E F NONS (0 F, LOGS, Pr BUILDING MOTERIA MOTERIA LARGE 0	tate Haz 000 mile (Circle / Private Private Migrar Dirole All DLES UMBER 3 LS HOMES RY, BJECTS	rmal Ca es for Li All that , e Passe e Passe e Passe nt	Apply) ingers (Bu ingers (No aply) J. K. L. M. N. O.	Isiness) m-Business) m-Business) Intershopa Intershopa PASSENGER OIL FIELD EC LIVESTOCK	DUCE IES L CONT. S IUIPMEN	G. Н. I. I.	YEAR J. S. Mail Federal Governme State Governme P. GRAIN, FEEI Q. COAL/COKE R. MEAT S. GARBAGE, F T. U.S. MAIL U. CHEMICALS	nent nt D, HAY REFUSE, TRA	V. W X SH Y. Z	CC RE BE PA UT	J. Local Gov K. Indian Trit L. Other MMMODITIES DRV B FRIGERATED FOOI VERAGES PER PRODUCTS ILITY	emment be ULK D	BB CONSTRUCTION CC WATER WELL OTHER SCRAP METAL		
22. CARRIER MILEAGE (I 23. OPERATION CLASSIF 24. Authorized For-Hire 25. Private Property 24. CARGO CLASSIFICAT 24. CARGO CLASSIFICAT 25. HOUSERALD 26. MOTAL: SHEETS; 26. CONSR VEHICLES 26. ORTOR VEHICLES 26. ORTOR 25. PORE 25. ORTOR 2	D REAREST 10, ICATION E F DONS (0 F, LOGS P BUILDING MATERIA H. MOBILE I. MACHANICA LARGE 0 ALS CARRIE	tate Haz 000 mile (Circle / Private Private Migrar Dirole All DLES UMBER 3 LS HOMES RY, BJECTS	rmal Ca es for Li All that , e Passe e Passe e Passe nt	Apply) ingers (Buingers (Buingers (No apply) J. K. L. M. N. O. O. (Circle	Isiness) Isiness) In-Business) FRESH PROL LIQUIDS/GAS INTERMODA PASSENGER OIL FIELD EC LIVESTOCK All that Appl	DUCE ES CONT. S NUIPMEN	G. H. I.	YEAR J. S. Mail Federal Governme State Governme P. GRAIN, FEEI Q. COAL/COKE R. MEAT S. GARBAGE, F T. U.S. MAIL U. CHEMICALS	nent nt EFUSE, TRA B(BULK) -	V. W X. SH Y. Z. A	CC RE BE PA UT A, FA	J. Local Gov K. Indian Trit L. Other MMODITIES DRY B FRIGERATED FOOL VERAGES PER PRODUCTS ILITY RM SUPPLIES TANKS NB(NON	emment be ULK D	BB. CONSTRUCTION CC WATER WELL OOTHER SCRAP METAL		
2. CARRIER MILEAGE (I 2. OPERATION CLASSIF A. Authorized For-Hire Private Property 4. CARGO CLASSIFICAT 4. GENERAL GENERAL 6. HOUSEIGLD 3. GOOLS COLLS COLLS 1. MOTOR VEHICLES E. DRIVE AMAYTONAWAAY 5. HAZARDOUS MATERI	D NEAREST 10, ICATION E F HONS ((F, LOGS, P) BEAMS, G, BUILDING MATERIK, H, MOBILE L, MACHNIL LARGE C ALS CARRIE B N	tate Haz 000 mile (Circle / Private Private Migrar Dices UMBER S LS Contes RY, BJECTS DOR S	rmal Ca es for Li All that , e Passe e Passe e Passe nt I that Aj	Apply) ingers (Buingers (Buingers (No apply) J. K. L. M. N. O. O. (Circle	Iar Year) Isiness) Dn-Bushess) FRESH PROI LIQUIDSGAS INTERMODA PASSENGER OIL FIELD EC LIVESTOCK All that Appl 2A (Ammonia	DUCE ES LCONT. S IUIPMEN V) C-C a) B NI	G. H. I.	YEAR U. S. Mail Federal Governme P. GRAIN, FEEI Q. GOAUCOKE R. MEAT S. GARBAGE, F T. U.S. MAIL U. CHEMICALS ED S-SHIPPED	nent nt REFUSE, TRA B(BULK) - 1 2 B	V. W X. SH Y. Z. A	CO RE PA UT A, FA	J. Local Gov K. Indian Trit L. Other MMMODITIES DRY B FRIGERATED FOOL VERACES PER PRODUCTS ILITY RM SUPPLIES	emment pe ULK D	BB CONSTRUCTION CC WATER WELL OTHER SCRAP METAL		
22. CARRIER MILEAGE (I 23. OPERATION CLASSIF A. Authorized For-Hire Private Property 4. CARGO CLASSIFICAT A. GENERAL PREISHT B. HOUSEHCLD GOODS COLLS: ROLLS D. MOTOR VEHICLES E. DRIVE AVXAYTOWNWAY 5. HAZARODUS MATERI C. S. A. DIV 1.1 C. S. B. DIV 1.2 C. S. C. DIV 1.3	D NEAREST 10, ICATION E F IONS () F. LOGS N BEAMS, G. BUILDIN MATERIK MATERIK ALS CARRIE B N B N	tate Haz 000 mile (Circle / Private Private Migrar Dirole All DLES, UMBER S LS 10MES RY, BJECTS D OR S IB C	Innel Ca ss for L All that J All that A e Passe e Passe nt I that A I that A S	Apply) angers (Burngers (Burngers (Nor apply) J. K. L. M. N. O. D. (Circle K. DIV 2.3	International Applead	DUCE ES LCONT. S IUIPMEN V) C-C a) B NI		YEAR J. S. Mail Federal Governme State Governme P. GRAIN, FEEI Q. COAL/COKE R. MEAT S. GARBAGE, F T. U.S. MAIL U. CHEMICALS ED S-SHIPPED S. U. DIV 4, S. W. DIV 5, W. DIV 4, S. W. DIV 5, S. W. DIV 5	nent nt EFUSE, TRA B(BULK) - 2 B 3 B 1 B	V. W SH Y. Z. A N CAF NB NB	CO RE PA UT A, FA	J. Local Gov K. Indian Trit L. Other MMODITIES DRV B FRIGERATED FOO VERAGES PER PRODUCTS ILITY RN SUPPLIES TANKS NB(NDN S E. HRCQ	ULK D 	BB CONSTRUCTION CC WATER WELL CONTER SCRAP METAL IN PACKAGE B NB		
22. CARRIER MILEAGE (I 23. OPERATION CLASSIF 24. Adhotized For-Hire 25. Private Property 24. CARGO CLASSIFICAT 25. Private Property 24. CARGO CLASSIFICAT 25. ROLLS 26. OCIDS: ROLLS 26. MORENCLD 27. SOUTH CLES 27. SO	DINERTEST 10, DINERTEST 10, DINERT	tate Haz Coo mile (Circle / , Private , Private , Migrar Circle All Circle All Cir	International Cases for Line of the second s	Apply) ingers (Bungers (Bungers (Bungers (No sply) J. K. L. N. N. O. C. (Circle K. DIV 2.3 L. DIV 2.3 N. DIV 2.3 N. DIV 2.3 N. DIV 2.3 N. DIV 2.3 N.	ar Year) Isiness) nn-Business) FRESH PROI Liquids/GAS INTERMODA PASSENGER OIL FIELD EC LIVESTOCK All that Appl 3A 3B 3C	DUCE IES L CONT. S ULIPMEN B N B N B N B N B N	G. H. I. I. B C CARRII B C C B C C	YEAR U. S. Mail Federal Governme State Governme P. GRAIN, FEE Q. COAL/COKE R. MEAT S. GARBAGE, F T. U.S. MAIL U. CHEMICALS D. SHI-PPED D. SHI-PPED S. U. DIV 4, S. V. DIV 4, S. V. DIV 4, S. X. DIV 5, S. X. D	hent ht B(BULK) - B B(BULK) - C B B B B B B B B B B B B B C B B	V. W X SH Y. Z A N D N CAF NB NB NB	CO RE PA UT C C	J. Local Gov K. Indian Trit L. Other PRIGERATED FOO VERASES PER PRODUCTS LITY RM SUPPLIES TANKS NBINON S EE. HRCQ S FF. CLASS	emment be ULK D	BB CONSTRUCTION CC WATER WELL OTHER SCRAP METAL IN PACKAGE B NB B NB		
22. CARRIER MILEAGE (I 23. OPERATION CLASSIF A. Authorized For-Hire Private Property 4. CARGO CLASSIFICAT A. GENERAL PREISHT B. HOUSEHCLD GOODS COLLS: ROLLS D. MOTOR VEHICLES E. DRIVE AVXAYTOWNWAY 5. HAZARODUS MATERI C. S. A. DIV 1.1 C. S. B. DIV 1.2 C. S. C. DIV 1.3	D NERREST 10, D NERREST 10, D NONS () F. LOGS P BEAMS, G. BULLDING MATERIA LARGE C ALS CARRIE B N B N B N B N	(Circle / J (Circle / J). Private). Private). Migrar Circle All UMBER J. B. BLES COMES	mail Ca ss for L All that e Passe e Passe e Passe s Passe S S S S S S S S S	Apply) ingers (Bungers (Bungers (No apply) J. K. L. N. O. C. (Circle K. DIV 2.1 M. DIV 2.1 M. DIV 2.1 M. DIV 2.1	FRESH PROI LIQUIDS/GAS INTERMODA PASSINGER OIL FIELD EC LIVESTOCK All that Appl 3A 3C 3D	DUCE LCONT. S V) C-C B N B N S		YEAR J. S. Mail Federal Governme State Governme P. GRAIN, FEEI Q. COAL/COKE R. MEAT S. GARBAGE, F T. U.S. MAIL U. CHEMICALS ED S-SHIPPED S. U. DIV 4, S. W. DIV 5, W. DIV 4, S. W. DIV 5, S. W. DIV 5	hent ht B(BULK) - 2 B 1 B 2 B 2 B	V, W XX SH Y, Z NCAF NB NB NB NB NB	CO RE BE PA UT A FA	J. Local Gov K. Indian Tritt L. Other MMMODITIES DRV B FRIGERATED FOOL VERAGES PER PRODUCTS ILITY TANKS NBJNON S EE. HRCQ S FF. CLASS S GG. CLASS	emment be ULK b HBUEK) -	BB. CONSTRUCTION CC WATER WELL COTHER SCRAP METAL IN PACKAGE B NB B NB B NB B NB B NB B NB B NB		

1. KENNY BALTHROP, OWNER

	Straight		Trailer	Hazmat	Hazmat Cargo		School Bus		Mini-bus	Van		Limousine			
	Trucks	Tractors	1	Cargo	Tank Trailers	Coach		Numbe	of vehi	icles carrying n	umber of pa	sengers (including the driver) below		w	
	1 1			Tank Trucks	1		1-8	9-15	16+	16+	1-8	9-15	1-8	9-15	181
OWNED		6	1	6			1	1							
TERM LEASED			1				-	1							
TRIP LEASED															-
27. DRIVER INFO	RMATION			INTERSTATE	INTE	RASTATE	1		TOTA	L DRIVERS		Т	OTAL CE	L DRIVERS	-
Within	100-Mile Ra	adlus													
Beyond	d 100-Mile R	adius	1.		_					1					
lf Yes, enter your	r U.S. DOT N	umber.								anie and a			Yes	No	x
If Yes, enter your	NAME(S)	SOLE PROF					ESIDENT		URER, C	DENERAL PAR	TNER, LIMIT	ED PARTNE		No	<u>×</u>
29. PLEASE ENTER	NAME(S) OF	SOLE PROF	RIETOR(S)				ESIDENT	T, TREAS	URER, C	GENERAL PAR	TNER, LIMIT			No	<u>×</u>
If Yes, enter your 29. PLEASE ENTER 1. KENNY BAL 30. CERTIFICATION 1. WES BALTH	NAME(S) OF LTHROP, O STATEMENT IROP (Pi	SOLE PROF WNER Please print (to be comp ease print)	RIETOR(S), Name)	OFFICERS OR P	ARTNERS AND TI	FLES (e.g. PR I am familiar v alfias of perjud d complete	ESIDENT 2 . <u>W</u> with the F	T, TREAS	URER, C	GENERAL PAR	ease print f	Name) Federal Haz	R) erdous Via	terials Reculs	-
If Yes, enter you 29 PLEASE ENTER 1. KENNY BAL 30. CERTIFICATION	NAME(S) OF LTHROP, O STATEMENT IROP (P BALTHROP	SOLE PROF WNER Please print (to be comp ease print)	RIETOR(S), Name)	OFFICERS OR P	ARTNERS AND TI	TLES (o.g. PR I am familiar alfies of perju	ESIDENT 2 . <u>W</u> with the F	T, TREAS	URER, C	DENERAL PAR DP, (P ier Safety Regu tion entered on	lease print f	Name) Federal Haz	R) erdous Ma	terials Reculs	-

Record at 113.

Second, Eagle stated in 2018 that Mr. Balthrop was an owner of Eagle:



Part C

Review Date

09/19/2018

The Oklahoma Secretary of State has record of Eagle Iron & Metal DOT# 1844562.

Eagle Iron & Metal DOT# 1844562 owns 7 truck tractors and 7 trailers.

Drivers are paid \$150 a load intrastate and up to \$500 a load interstate.

Fuel is paid with Amerifuel card issued to drivers. Each card has a unique number and a PIN is required

Eagle Iron Eagle Iron

Eagle Iron & Metal DOT#1844562 was familiar with and has been using the FMCSA website.

FINANCIAL CONDITION: Eagle Iron & Metal DOT# 1844562 financial condition appears to be good.

OFFICERS:

Wes Balthrop-- owner Tommy Balthrop-owner Kenney Balthrop-owner/manager Jerry Rogers-DOT & Safety director

PRIOR CONTACT:

Compliance Review conducted 10/12/11 resulting in a Conditional safety rating with violations in Part 382, 391, and 395. Enforcement 12/9/11 Violations 382.305, and 391.51(b) (2), Settlement amount \$4,150 case #OK-2012-0005-US0357

Compliance Review conducted 7/19/12 resulting in a Conditional safety rating with violations in Part 382, 390, 391, 392,395, and 396.

Enforcement 8/15/12 Violations 382.301(a), and 391.51(b) (2), Settlement amount \$6,390 case # OK-2012-0176-US1239

Compliance Review conducted 4/2/15 resulting in a Non rated review with violations in Part 382, 391, and 396. Enforcement 8/14/15 Violations 382.301(a), and 382.305(b) (2), Settlement amount \$16,470 case #OK-2015-0099-US0357

SHIPPERS/BROKERS Sims CMC

EMERGENCY RELIEF EFFORT: Eagle Iron & Metal DOT# 1844562 was not involved in any emergency relief efforts within the last 365 days.

PRE-INVESTIGATION:

Prior to the review Eagle Iron & Metal DOT# 1844562 was contacted via phone on 08/22/2018 at 580-255-6400 and spoke to Wes Balthrop. The review was scheduled for 8/28/18. The items needed for compliance review list was emailed (wess@simplynet.net) prior to the review to have prepared.

CDLIS (DRIVER LICENSE) CHECK:

All of Eagle Iron & Metal DOT# 1844562 drivers licenses were checked in CDLIS after arriving at the carrier since they didn't provide a driver list prior to my arrival. All drivers had valid licenses with the proper endorsements.

INVESTIGATION:

PART 382: CONTROLLED SUBSTANCES AND ALCOHOL TESTING A full review of Eagle Iron & Metal DOT# 1844562 controlled substances and alcohol program was reviewed. Eagle Iron & Metal DOT# 1844562 is currently enrolled in a consortium with J. J. Keller & Associates Inc. 1 spoke to Christopher Nobbe (920-727-7220 email cnobbe@jjkeller.com), Client Service Specialist I- Driver and Employee Services for J. J. Keller.

Christopher Nobbe sent me a copy of Eagle Iron & Metal DOT# 1844562 driver roster that they provided to J. J. Keller for

Id. at 144.

In finding that KP was used to continue Eagle's operations, the Safety Administration relied not only on common ownership but also on findings as to the two companies'

- use of the same drivers, vehicles, shippers, telephone numbers, mailing addresses, and email addresses,
- common management, and
- proximity to each another.

KP does not dispute these findings of commonality.

In addition to proximity and commonality in operations, the Safety Administration relied on KP's acquisition of Eagle's assets without any payment. KP insists that it did pay for Eagle's assets, pointing to a contract to buy trucks from Eagle. But in the administrative proceeding, KP never mentioned or presented this contract.

KP seeks to supplement the administrative record with this contract. We deny this request. When we review an agency's decision, we must focus on the administrative record that already exists, not a newly created record. *Camp v. Pitts*, 411 U.S. 138, 142 (1973) (per curiam).

In seeking to expand the administrative record, KP relies on Federal Rule of Appellate Procedure 16(b). This rule allows the parties to stipulate to the addition of a document inadvertently omitted from the agency's record. But KP does not suggest that the contract was supposed to be in the administrative record and inadvertently omitted; KP instead asks us to

consider the document even though it was never part of the administrative record. Even if Rule 16(b) were applicable in this situation, KP has not justified expansion of the record with the contract. *See Am. Mining Cong. v. Thomas*, 772 F.2d 617, 626–27 (10th Cir. 1985) (identifying exceptions to the rule against the use of extra-record materials).

If we were to consider the contract, we would be evaluating the factual findings based on evidence that the Safety Administration had no opportunity to consider. We thus deny the motion to supplement the record. *See N.M. Env't Improvement Div. v. Thomas*, 789 F.2d 825, 835–36 (10th Cir. 1986) (declining to review information that the petitioner had not presented during the administrative process).

Even if we were to consider the contract, the Safety Administration could reasonably have found that KP had not paid for the trucks. According to the contract, KP bought two trucks from Eagle on May 23, 2018. The vehicle identification number of one of these trucks was 1FUPCXYB81LG61890. During a compliance review roughly four months later, however, Eagle provided maintenance records for that same truck, suggesting that it was still in Eagle's fleet. Given these records, the Safety Administration could reasonably infer that Eagle had never parted with either truck identified in the contract.

B. Substantial evidence existed for the finding of an improper purpose.

The Safety Administration found not only a continuity in operations but also an improper purpose, relying primarily on the timing of Eagle's suspension and KP's reinstatement.

In November 2018, the Safety Administration stated that Eagle had an "unsatisfactory" safety record based on numerous violations. Those violations led to civil penalties and an order for Eagle to halt operations. Eagle admitted to some of the violations and entered a settlement agreement, which allowed continuation of operations only if Eagle made installment payments on the civil penalties. After one installment, Eagle stopped paying. As a result, its operations were suspended in May 2019.

Meanwhile, KP twice had its own operating authority suspended for failing to carry liability insurance. The first suspension order came in September 2018, and KP did not make efforts to get reinstated until January 2019—four days before Eagle made its only installment payment. The second insurance-related suspension came in August 2019, after Eagle's operations had been suspended for non-payment of its penalties. This time, however, KP quickly obtained the required insurance and restoration of its operating authority.



Given Eagle's inaction when suspended and assessed civil penalties, the Safety Administration could reasonably regard KP's quick corrective action as a ploy for Eagle to

- continue operations through a newly reinstated KP and
- avoid payment of the previously assessed civil penalties.

KP questions the Safety Administration's inferences from the timing. KP points out that it too was hit with civil penalties, insisting that if Mr. Balthrop's goal was to avoid payment, he would have created a third business entity to start again on a fresh slate.

KP did not raise this argument when petitioning for review by the Safety Administration. And KP's payment of its own penalties does not undermine the Safety Administration's conclusion that KP was operating as a reincarnation of Eagle. A factfinder might have accepted an innocent explanation for the timing. But a factfinder could also have reasonably inferred that Mr. Balthrop had decided to resume operations through the newly reinstated KP to skirt Eagle's civil penalties, but declined to form a third entity when KP was assessed its own civil penalties.

* * *

We conclude that the Safety Administration reasonably found that KP was continuing Eagle's operations for an improper purpose, so we deny the petition for judicial review. We also deny KP's motion to supplement the record with the contract to buy Eagle's trucks.

Entered for the Court

Robert E. Bacharach Circuit Judge