

- THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

4. The parties signed a Stipulated Settlement Agreement and submitted a Joint Motion for its approval to the Commission on October 26, 2017. In the Stipulated Settlement Agreement, Respondent stipulates to the violations as set out in the Commission's Penalty Order. Respondent further agrees to pay the civil penalty of \$4,400 in monthly payments. The Respondent will submit the first payment of \$2,200 on or before October 31, 2017. The remaining \$2,200 will be paid by the Respondent in monthly installments of \$550 beginning November 30, 2017, with the last payment being due on or before February 28, 2018.

5. Respondent understands and agrees that failure to make one (1) payment will result in the entire remaining balance becoming due in full at that time, and in the immediate suspension of its authority without further notice.

6. Respondent further agrees to submit to one follow-up safety compliance review within 18 months of the date of this Order.

7. Respondent agrees to attend a Commission-sponsored safety seminar within 90 days of the date of this Order and will provide Litigation Counsel with proof of attendance. In signing the Stipulated Settlement Agreement, the parties agree that the Agreement constitutes a reasonable and fair resolution of the outstanding issues raised in this proceeding.

II. FINDINGS AND CONCLUSIONS

8. The Commission finds that the terms and provisions of the Stipulated Settlement Agreement and the payment agreement of the civil penalty contained therein constitute a reasonable and appropriate final resolution of this matter.

9. The Commission concludes that settlements are favored by the law. *Bright v. LSI Corp.*, 254 Kan. 853, 869 P.2d 686 (1994). A settlement of issues, all or part, with or without unanimous agreement, will be entertained by the Commission.

10. The Commission further concludes that pursuant to K.S.A. 2016 Supp. 66-1,108b, 66-1,111, 66-1,112, 66-1,114, 66-1,114b and 66-1,115, the Commission is given full power, authority and jurisdiction to supervise and control motor carriers, as defined in K.S.A. 2016 Supp. 66-1,108b, doing business or procuring business in Kansas, and is empowered to do all things necessary and convenient for the exercise of such power, authority and jurisdiction. The Commission may fine, sanction, suspend, cancel or revoke a carrier's authority in accordance with K.S.A. 2016 Supp. 66-1,129a, 66-1,130 and 66-1,142b. Further, the Commission has the authority to investigate a party in accordance with K.A.R. 82-1-237.

11. The Commission has reviewed the Stipulated Settlement Agreement attached to the Joint Motion for Approval of Stipulated Settlement Agreement of the parties and concludes that the terms and provisions therein are an appropriate and reasonable disposition of this matter. The Commission therefore adopts and incorporates by reference the terms of the Agreement.

THE COMMISSION THEREFORE ORDERS THAT:

A. The Joint Motion to Approve the Stipulated Settlement Agreement entered into by Neal Concrete, Inc. and Staff is hereby granted. The terms of the Stipulated Settlement Agreement are approved and are hereby incorporated by reference.

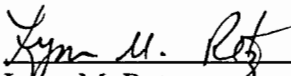
B. The parties have fifteen (15) days, plus three (3) days if service of this order is by mail, from the date this order was received in which to petition the Commission for reconsideration of any issue or issues decided herein. K.S.A. 66-118b; K.S.A. 2016 Supp. 77-529(a)(1).

C. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further order or orders as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

Apple, Chairman; Albrecht, Commissioner; Emler, Commissioner

Dated: OCT 31 2017



Lynn M. Retz
Secretary to the Commission

AAL

Order Mailed Date

NOV 01 2017

**THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

Before Commissioners: Pat Apple, Chairman
 Shari Feist Albrecht
 Jay Scott Emler

In the Matter of the Investigation of Neal)
Concrete, Inc., of Wichita, Kansas, Regarding)
the Violation of the Motor Carrier Safety) Docket No. 18-TRAM-135-PEN
Statutes, Rules and Regulations and the)
Commission's Authority to Impose Penalties,)
Sanctions and/or the Revocation of Motor)
Carrier Authority.

STIPULATED SETTLEMENT AGREEMENT

This Stipulated Settlement Agreement (Agreement) is entered into by and between the Staff of the Corporation Commission of the State of Kansas (Staff and Commission, respectively), and Neal Concrete, Inc., (Respondent). Its effective date will be the date the Commission enters an order approving or amending the terms of the Agreement.

I. JURISDICTION

1. Pursuant to K.S.A. 2016 Supp. 66-1,108b, 66-1,111, 66-1,112, 66-1,114, 66-1,114b and 66-1,115, and amendments thereto, the Commission is given full power, authority and jurisdiction to supervise and control motor carriers, as defined in K.S.A. 2016 Supp. 66-1,108, doing business or procuring business in Kansas, and is empowered to do all things necessary and convenient for the exercise of such power, authority and jurisdiction.

2. Pursuant to K.S.A. 2016 Supp. 66-1,129a, 66-1,130 and 66-1,142b, and amendments thereto, the Commission may suspend operations, revoke or amend certificates, and initiate ~~sanctions or fines against every motor carrier and every person who violates any provision of~~

Kansas law in regard to the regulation of such motor carriers and persons, or who fails to obey any order, decision or regulation of the Commission.

3. The Commission has the authority, pursuant to K.A.R. 82-1-237, to investigate a party under its jurisdiction.

II. BACKGROUND

1. Under the above jurisdiction and authority, on August 30, 2017, Commission Staff (Staff) Special Investigator Gary Goeller conducted a compliance review on Respondent's motor carrier operations. As a result of the review, Investigator Goeller identified six (6) violations of the Motor Carrier Safety Regulations.

2. On September 21, 2017, the Commission issued a Penalty Order in this docket assessing a \$4,400 civil penalty against Respondent.

3. To date, Respondent's unpaid balance on the civil penalty assessed in the above Penalty Order is \$2,200.

4. On Wednesday, October 20, 2017, Kelli Neal, of Neal Concrete, Inc., and Ahsan Latif, Litigation Counsel for Staff (Staff), informally discussed the possibility of a settlement. During the informal discussions, Staff and Respondent were able to reach mutually agreeable terms in anticipated settlement of the issues. It was agreed that Staff would subsequently reduce the terms to writing and forward the draft to Respondent for approval and signature.

III. TERMS OF THE STIPULATED SETTLEMENT AGREEMENT

5. The parties agree that the Commission has jurisdiction and authority over this matter.

6. The parties also agree that adoption of this Agreement is in the public interest and that the Commission should approve the stipulations as set forth below.

7. Respondent stipulates to the violations as listed in the Commission's Penalty Order, which are hereby incorporated by reference.

8. Respondent stipulates that he has submitted a corrective action plan to bring the motor carrier operation into compliance with both state and federal motor carrier safety regulations and will maintain such compliance into the future.

9. Respondent, therefore, agrees to pay fines totaling \$4,400 for the above violations. Staff agrees to extend the timeline for total payments due to February 28, 2018, to be repaid as follows: Respondent will make one \$2,200 payment on or before October 31, 2017. The remaining \$2,200 will be paid in four payments of \$550, each due before the last day of each month until February 28, 2018. Payments shall be made payable to the Kansas Corporation Commission and mailed to the Kansas Corporation Commission, Legal Division, 1500 S.W. Arrowhead Road, Topeka, Kansas, 66604-4027. ***Respondent shall include the docket number of these proceedings (18-TRAM-135-PEN) in the memo field of the payment. Respondent understands and agrees that failure to make the payment will result in the entire remaining balance becoming due in full at that time, as well as the immediate suspension of the carrier's operating authority (if then applicable) without further notice.***

10. Respondent acknowledges that at least one safety compliance review will be conducted within 18 months from the date this Agreement is approved or amended pursuant to entry of an order by the Commission. Staff will contact Respondent at a later date to determine an appropriate time for this review.

11. Respondent further agrees to attend a Commission-sponsored safety seminar within the next ninety (90) days from the date this Agreement is approved or amended pursuant to entry of an order by the Commission. Respondent agrees to provide Litigation Counsel with written proof

of attendance. A schedule of dates and locations for the safety seminar can be found at the Commission's website at http://www.kcc.state.ks.us/trans/safety_meetings.htm.

12. Respondent understands that failure to pay the stipulated civil penalty as set out in ¶ 9 above, could result in the suspension of its authority without further notice and the Commission could submit the matter for judicial enforcement or enforcement through the Kansas Attorney General's Office.

13. Staff agrees to recommend to the Commission that this Agreement be approved. Staff further agrees that upon approval by the Commission, and barring default proceedings pursuant to K.S.A. 2016 Supp. 77-520, as described in ¶ 9 above, this Agreement shall constitute a final resolution of this matter.

IV. RESERVATIONS

14. This Stipulated Settlement Agreement fully resolves issues specifically addressed between the parties. The terms of this Agreement constitute a fair and reasonable resolution of the issues addressed herein.

15. The terms and provisions of this Agreement have resulted from negotiations between the signatories and are interdependent. In the event the Commission does not approve the terms of the Agreement in total, any party has the option to terminate this Agreement and, if so terminated, none of the signatories hereto shall be bound by, prejudiced, or in any way affected by any of the terms or provisions hereof, unless otherwise provided herein.

16. Unless (and only to the extent) otherwise specified in this Agreement, the signatories to this Agreement shall not be prejudiced, bound by, or affected in any way by the terms of this Agreement: (1) in any future Commission or court proceeding; (2) in any proceeding currently pending before the Commission under a separate docket; and/or (3) in this proceeding, if the

Commission decides not to approve this Agreement in total or in any way conditions its approval of the same. This paragraph is not meant to limit future enforcement of this Agreement, should either party fail to fulfill all terms and provisions.

17. Unless (and only to the extent) otherwise specified in this Agreement, this Agreement does not prejudice or waive any party's legal rights, positions, claims, assertions or arguments in any proceedings in this docket, or any other proceeding before the Commission or in any court.


18. If the Commission approves this Agreement in its entirety and incorporates the same into a final order in this docket, the parties agree to be bound by its terms and the Commission's order incorporating its terms as to all issues addressed herein, and will not appeal the Commission's order.

19. This Stipulated Settlement Agreement shall be binding on all parties upon signing.

IN WITNESS WHERETO, the parties hereby execute and approve this Stipulated Settlement Agreement by subscribing their signatures below.

By: 
Ahsan A. Latif, S.Ct. #24709
Litigation Counsel
Kansas Corporation Commission
1500 S.W. Arrowhead Road
Topeka, Kansas 66604-4027
Phone: 785-271-3118
Fax: 785-271-3124
Email: a.latif@kcc.ks.gov

Attorney for Commission Staff

By: 
Brian R. Neal, Vice President
Neal Concrete, Inc.
1906 W. 69th N.
Wichita, Kansas 67024

Respondent

CERTIFICATE OF SERVICE

18-TRAM-135-PEN

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of first class mail/hand delivered on OCT 31 2017.

AHSAN LATIF, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604-4027
Fax: 785-271-3354
a.latif@kcc.ks.gov

BRIAN R. NEAL, VICE PRESIDENT
NEAL CONCRETE, INC.
1906 W 69TH N
WICHITA, KS 67204-1055
captainconcrete0472@yahoo.com

/S/ DeeAnn Shupe

DeeAnn Shupe

Order Mailed Date

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