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Kansas Corporation
Commission
Phone: 785-271-3100
Fax: 785-271-3354
<http://kcc.ks.gov/>

1500 SW Arrowhead Road
Topeka, KS 66604-4027

Andrew J. French, Chairperson
Dwight D. Keen, Commissioner
Annie Kuether, Commissioner

Laura Kelly, Governor

NOTICE OF PENALTY ASSESSMENT
24-TRAM-657-PEN

April 23, 2024
Kerry Blake Long, Sr.
Why Not Us Transport, LLC
305 S. Washington Street
Council Grove, Kansas 66846

This is a notice of a penalty assessment against Why Not Us Transport LLC, (Why Not Us) for violations of Kansas Motor Carrier Safety Statutes, Rules, and Regulations discovered during a compliance review conducted March 29, 2024, by Kansas Corporation Commission Special Investigator Wade Patterson. Penalties are assessed in accordance with the FY 2024 Uniform Penalty Assessment Matrix, approved by the Commission on June 29, 2023. For a full description of the penalty(s) and terms and obligations please refer to the Order attached to this notice.

IF YOU ACCEPT THE PENALTY: Why Not Us has been assessed a \$150 penalty. You have thirty (30) days from the date of service of the Penalty Order to pay the penalty. Please remit payment of \$150, through your personal account with the Kansas Corporation Commission's Kansas Trucking Regulatory Assistance Network (KTRAN) system located at <https://puc.kcc.ks.gov/ktran/>. If you have not received a letter from the Transportation Division assigning you a PIN, please contact that Division at 785-271-3145. You must have an account through KTRAN to pay the penalty owed.

The attached Order requires a representative of Why Not Us to attend a Commission-sponsored safety seminar within ninety (90) days from the date of the Order and to provide the undersigned Litigation Counsel with written proof of attendance. A schedule of dates and locations for safety seminars can be found at the Commission's website http://www.kcc.state.ks.us/trans/safety_meetings.htm.

IF YOU CONTEST THE PENALTY ORDER: You have the right to request a hearing. A request for a hearing must be made in writing, setting forth the specific grounds upon which relief is sought. Why Not Us must file, within fifteen (15) days from the date of service of this Order, the request for hearing with the Commission's electronic filing system found at <https://puc.kcc.ks.gov/e-filing/e-express/>, and mail a copy of the request for hearing to the undersigned at the above address. If you do not have access to the internet, you can mail an original and seven copies of the request to the Executive Director at 1500 S.W. Arrowhead Road, Topeka, Kansas 66604, and mail a copy to the undersigned Litigation Counsel.¹

IF YOU FAIL TO ACT: Failure to pay the penalty of \$150 within thirty (30) days from the date of service of the Penalty Order or failure to comply with the terms of the Order, or in the alternative, failure to provide a timely written request for a hearing, will result in the Order becoming final and may result in additional sanctions of suspension and/or revocation of your motor carrier operating authority.

Respectfully,
/s/ Brett Berry
Brett Berry
Litigation Counsel
(785) 271-3287
b.berry@kcc.ks.gov

¹ K.A.R. 82-1-215; K.S.A. 77-542.

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

Before Commissioners: Andrew J. French, Chairperson
 Dwight D. Keen
 Annie Kuether

In the Matter of the Investigation of **Why Not**)
Us Transport, LLC, of Council Grove,)
Kansas. Regarding the Violation(s) of the Motor)
Carrier Safety Statutes, Rules and Regulations) Docket No. 24-TRAM-657-PEN
and the Commission’s Authority to Impose)
Penalties, Sanctions and/or the Revocation of)
Motor Carrier Authority.)

PENALTY ORDER

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (“Commission”). Having examined its files and records, and being duly advised in the premises, the Commission finds and concludes as follows:

1. On March 29, 2024, Commission Staff Special Investigator (SI) Wade Patterson completed a safety compliance investigation of the operations of Why Not Us Transport, LLC, (Why Not Us or Carrier). Why Not Us is a motor carrier as defined in 49 C.F.R. 390.5, and operates under USDOT number 3740051.

2. On March 29, 2024, Staff submitted its Report and Recommendation (“R&R”), attached hereto as Attachment “A” and is hereby incorporated by reference, recommending a penalty of \$150 to be issued to Why Not Us based on the frequency, timeline and severity of the violation discovered. Staff’s R&R indicates that as a result of the safety compliance investigations, SI Wade Patterson identified one (1) violation, accounting for one (1) count, of

the Motor Carrier Safety Regulations (MCSRs), which carry a penalty according to the FY2024 Uniform Penalty Assessment Matrix.²

3. Additionally, Staff recommends that Why Not Us be required to have a representative responsible for the Carrier's safety compliance attend a Commission-sponsored safety seminar within ninety (90) days from the date of this Order, and provide Litigation Counsel with written proof of attendance.³ A schedule of the dates and locations for safety seminars can be found on the Commission's website at http://kcc.ks.gov/trans/safety_meetings.htm.

4. Staff further recommends Why Not Us submit a written, comprehensive corrective action plan (CAP) to Transportation Staff within thirty (30) days of the date of this order, documenting the violation(s) described in this Penalty Order, including specific and detailed information explaining Carrier's efforts and concrete steps taken to ensure the violation(s) do not occur in the future.⁴

5. Finally, Staff recommends that Why Not Us submit to one follow-up safety compliance review within eighteen (18) months from the date of this Order.⁵ Transportation Staff will contact the motor carrier at a later date to determine an appropriate time for this review.

6. Pursuant to K.S.A 66-1,108b, 66-1,111, 66-1,112, and 66-1,114b, the Commission is given full power, authority and jurisdiction to supervise and control motor carriers, as defined in 49 C.F.R. Part 390.5 as adopted by K.A.R. 82-4-3f, doing business or

² Order Designating Guidance Document and Approving Staff's Use of the Transportation Division's Uniform Penalty Assessment Table, pp. 11 – 26 (Jun. 29, 2023) ("Penalty Matrix").

³ See Staff's Report and Recommendation, p. 2 (Mar. 29, 2024).

⁴ *Id.*

⁵ *Id.*

procuring business in Kansas, and is empowered to do all things necessary and convenient for the exercise of such power, authority and jurisdiction.

7. Pursuant to K.S.A. 66-1,129a, 66-1,130 and 66-1,142b, 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.

8. The Commission has the authority, pursuant to K.A.R. 82-1-237, to investigate an entity under the Commission's jurisdiction and issue an order on the Commission's own motion when the Commission believes the entity is in violation of the law or any order of the Commission.

IT IS THEREFORE, BY THE COMMISSION ORDERED THAT:

A. Why Not Us Transport, LLC, of Council Grove, Kansas is hereby assessed a \$150 civil penalty for one (1) violation, accounting for one (1) count, of Kansas law governing the regulation of motor carriers, the Kansas Administrative Regulations and provisions of the Federal Motor Carrier Safety Regulations, as adopted by the Kansas Administrative Regulations.

B. Why Not Us is hereby ordered to have a representative responsible for the Carrier's safety compliance attend a Commission-sponsored safety seminar within ninety (90) days from the date of this Order, and is to provide Litigation Counsel with written proof of attendance.

C. Why Not Us is hereby ordered to submit a written, comprehensive corrective action plan (CAP) to Transportation Staff within thirty (30) days of the date of this order, documenting the violation(s) described in this Penalty Order, including specific and detailed

information explaining Carrier's efforts and concrete steps taken to ensure the violation(s) do not occur in the future.

D. Why Not Us is ordered to submit to one follow-up safety compliance review within eighteen (18) months from the date of this Order. Transportation Staff will contact the Carrier to set up the appointment.

E. Pursuant to K.S.A. 77-537 and K.S.A. 77-542, any party may request a hearing on the above issue(s) by submitting a written request setting forth the specific grounds upon which relief is sought. The request may be electronically filed with the Commission's electronic filing system at <https://puc.kcc.ks.gov/e-filing/e-express/>, within fifteen (15) days from the date of service of this Order, and a copy of the request mailed to the Litigation Division. If you do not have access to the internet, you can mail an original and seven copies of the request to the Executive Director at 1500 S.W. Arrowhead Road, Topeka, Kansas 66604, and mail a copy of the request to Litigation Counsel. A hearing will be scheduled only upon written request. Failure to timely request a hearing will result in a waiver of Why Not Us' right to a hearing, and this Penalty Order will become a Final Order.

F. If a request for hearing is filed, attorneys for all parties shall enter their appearances in Commission proceedings by giving their names and addresses for the record. For civil penalties of \$500 or less, a corporation may appear by a duly authorized representative of the corporation.⁶

G. If you do not request a hearing, the payment of the civil penalty of \$150 is due in thirty (30) days from the date of service of this Order. Payment of \$150 must be made through your personal account with the Kansas Corporation Commission's Kansas Trucking Regulatory

⁶ K.S.A. 66-1,142b(e) and amendments thereto.

Assistance Network (KTRAN) system located at <https://puc.kcc.ks.gov/ktran/>. You must have an account through KTRAN to pay the penalty.

H. Failure to pay the \$150 civil penalty within thirty (30) days from the date of service of this Penalty Order and/or failure to comply with the provisions of this Order may result in suspension of Why Not Us' motor carrier operating authority without further notice.⁷ Additionally, the Commission may impose further sanctions to include, but not limited to, the issuance and enforcement of revocation of authority and/or cease and desist orders, and any other remedies available to the Commission by law, without further notice.

BY THE COMMISSION IT IS SO ORDERED.

French, Chairperson; Keen, Commissioner; Kuether, Commissioner

Dated: 04/23/2024



Lynn M. Retz
Executive Director

BWB

⁷ K.S.A. 66-1,105.

ATTACHMENT “A”

Andrew J. French, Chairperson
Dwight D. Keen, Commissioner
Annie Kuether, Commissioner

Laura Kelly, Governor

**REPORT AND RECOMMENDATION
TRANSPORTATION DIVISION**

TO: Andrew J. French, Chairperson
Dwight D. Keen, Commissioner
Annie Kuether, Commissioner

FROM: Gary Davenport, Deputy Director of Transportation
Jared Smith, Public Service Executive

DATE: March 29, 2024

SUBJECT: Docket No. 24-TRAM-657-PEN
In the Matter of the Investigation of Why Not Us Transport LLC of Council Grove, Kansas Regarding the Violation of the Motor Carrier Rules and Regulations and the Commission's Authority to Impose Penalties, Sanctions and/or the Revocation of Motor Carrier Authority

EXECUTIVE SUMMARY:

Why Not Us Transport LLC is a motor carrier (MC) possessing public for-hire operating authority from the Commission, primarily hauling general freight. Why Not Us Transport LLC operates under USDOT 3740051. On March 29, 2024, Commission Staff Special Investigator (SI) Wade Patterson completed a safety compliance investigation of the operations of Why Not Us Transport LLC. A copy of the safety compliance report is attached hereto as **Exhibit 1** and is hereby incorporated by reference. As a result of this investigation, the SI identified one (1) violation, accounting for one (1) specific count, of the Motor Carrier Safety Regulations (MCSRs), which carries a penalty according to the FY2024 Uniform Penalty Assessment Matrix approved by the Commission. Based on the frequency, timeline and severity of the violations discovered by the SI, staff recommends penalty of \$150 be issued to the MC.

DISCUSSION AND ANALYSIS:

On March 29, 2024, Commission Staff SI Wade Patterson conducted a safety compliance investigation of the operations of Why Not Us Transport LLC. The investigation covers a 365 day period. Each specific count is detailed below.

Count One: (1 of 1)

Jurisdiction: 49 C.F.R. 382.701(b), adopted by K.A.R. 82-4-3c, and authorized by K.S.A. 66-1,129.

Intent of Law: The MC must conduct an annual inquiry into its drivers with the FMCSA Drug and Alcohol Clearinghouse (DACH).

Supporting Documentation: On August 25, 2023, Why Not Us Transport LLC required or permitted its driver, Kerry Blake Long Sr., to operate a commercial driver's license (CDL) required commercial motor vehicle (CMV), a 2023 GMC truck, VIN ending 4864, pulling a 2022 Caliber Trailer, VIN ending 8241, in interstate commerce from Council Grove Kansas to Norfolk, Virginia. This trip is evidenced by a bill of lading. At the time of this trip and during this investigation, the MC failed to conduct the annual query in the Drug and Alcohol Clearinghouse. The bill of lading for this trip is attached hereto as **Exhibit 2** and the Clearinghouse Query Report is attached hereto as **Exhibit 3**. The report states that a pre-employment query was completed into this driver on March 27, 2024, well after the date of this transport.

Violation: Why Not Us Transport LLC failed to conduct a DACH annual query into its driver (**Exhibit 1, Page 3**). One (1) violation was discovered.

Recommendation: Staff recommends a fine of \$150.

RECOMMENDATION:

Transportation Staff recommends the Commission find Why Not Us Transport LLC committed one (1) violation accounting for one (1) specific count of Kansas law that governs MCs, including various provisions of the Federal Motor Carrier Safety Regulations (FMCSRs), as adopted by the Kansas Administrative Regulations (K.A.R.s), and is therefore subject to sanctions or fines imposed by the Commission.

Due to the frequency, timeline and severity of the violations, Staff recommends a civil penalty of \$150 for one (1) violation of the MC Safety Statutes, Rules and Regulations, in accordance with the recommended penalties listed in the applicable Uniform Penalty Assessment Matrix.

Staff further recommends Why Not Us Transport LLC require a representative responsible for the company's safety to attend a Commission-sponsored safety seminar within ninety (90) days from the date of the Order, and provide Litigation Counsel with written proof of attendance. A schedule of the dates and locations for safety seminars can be found on the Commission's website at http://kcc.ks.gov/trans/safety_meetings.htm.

Staff further recommends Why Not Us Transport LLC submit a written, comprehensive Corrective Action Plan (CAP) to Transportation Staff within thirty (30) days of the date of this order, documenting the violation described in the Penalty Order, including specific and detailed information explaining the carrier's efforts and concrete steps taken to ensure the violation do not occur in the future.

Finally, Staff recommends that Why Not Us Transport LLC submit to one follow-up safety compliance review within eighteen (18) months from the date of the Penalty Order. Transportation Staff will contact the motor carrier at a later date to determine an appropriate time for the review.

EXHIBIT 1

UNITED STATES DEPARTMENT OF TRANSPORTATION



U.S. DOT#: 3740051
MC/MX#: 0

Legal: WHY NOT US TRANSPORT LLC
Operating (DBA):

Investigation Date:
03/29/2024

Investigation Type: Onsite Comprehensive Investigation

Location of Investigation: Company principal place of business (PPOB)

Extent of Operations: Entire Operation

Physical Address

305 S WASHINGTON ST
COUNCIL GROVE, KS 66846
United States

Mailing Address

305 S WASHINGTON ST
COUNCIL GROVE, KS 66846-0176
United States

Contact Information

Contact Name: KERRY LONG
Email: oldcar_lover@hotmail.com
Phone: (785)577-4933 **Cell:** () - **Fax:** (620)767-6254

Business and Financial

Business Type: Limited Liability Corporation
Name of Gross Revenue Provider: Kerry Long
Title of Gross Revenue Provider: Owner/Operator
Gross Revenue: ██████████ **For Year Ending:** 12/31/2023
Federal Tax ID: ██████████

Operation Classification and Type

Type of Operation: Non-HM Interstate Carrier

Cargo

General Freight

Operation Classification

For-Hire Motor Carrier
Property
Other Non-Hazardous Freight

Equipment

	Owned	Term Leased	Trip Leased	Drivers	Intrastate	Interstate
Straight Trucks	1					
Trailers	1					
				> = 100 Miles		1

Power units used in the U.S.: 1

Percentage of time used in the U.S.: 100%

Average trip leased driver/month: 0
Drivers with CDL: 1
Total Drivers: 1

Person(s) Interviewed

Name: KERRY LONG

Title: OWNER

Questions

Questions about this report or the Federal Motor Carrier Safety or Hazardous Materials regulations may be addressed to the Federal Motor Carrier Safety Administration at:	1303 SW FIRST AMERICAN PL STE 200 TOPEKA, KS 66604-4040 Phone: (785) 271-1260 Fax: (877) 547-0378
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This report will be used to assess your safety compliance.

Violations

1. Primary: 382.701 (b)(1)

Failing to conduct an annual query.

Violations Discovered

Fed	State	Total
1		1

Checked

Fed	State	Total
1		1

Example/Notes:

On 08/25/2023, Why Not Us Transport LLC had driver Kerry Blake Long Sr. operate a CDL required vehicle combination (2023 GMC Truck VIN# ending 4864 and 2022 Caliber Trailer VIN# ending 8241) in interstate commerce. Mr. Long operated this vehicle combination from Council Grove Kansas to Norfolk Virginia. This trip is evidenced by a bill of lading. At the time of this trip and during this investigation, carrier failed to conduct the annual query in the Drug and Alcohol Clearinghouse.

Drivers/Vehicles in Violation

Fed	State	Total
1		1

Checked

Fed	State	Total
1		1

Safety Fitness Rating

Your proposed safety rating is: **SATISFACTORY** 0 UNSATISFACTORY rating factors and 2 or fewer CONDITIONAL rating factors. Corrective actions must be taken for any violations (deficiencies) identified in this report. See below for more information.

RATING FACTORS	RATING	ACUTE	CRITICAL
Factor 1: General = Parts 387 and 390	Satisfactory	0	0
Factor 2: Driver = Parts 382, 383 and, 391	Satisfactory	0	0
Factor 3: Operational = Parts 392 and 395	Satisfactory	0	0
Factor 4: Vehicle = Parts 393 and 396 OOS Vehicles (CR): 0 Number of Vehicles Inspected (CR): 0 OOS Vehicles (MCMIS): 0 Number of Vehicles Inspected (MCMIS): 0 OOS Rate: 0%	Satisfactory		
Factor 5: Haz. Mat. = Parts 397, 171, 177 and, 180	N/A	N/A	N/A
Factor 6: Accident Factor = Recordable Rate Total Miles Operated: 9,363 Recordable Accidents: 0 Recordable Accidents/Million Miles: 0.00	Satisfactory	N/A	N/A

You must take corrective actions for any violations (deficiencies) identified in the Violations section of this report.

DataQs: If you dispute the violations recorded in the Violations section of this investigation report, and the violations were not used in the calculation of your safety rating, you may submit a Request for Data Review (RDR) through DataQs. The DataQs system is the method to remove violations that did not affect your safety rating. DataQs is an online system that allows a motor carrier or driver to request and track a review of Federal and State issued data that it believes to be incomplete or incorrect. To submit an RDR, go to <https://dataqs.fmcsa.dot.gov>.

Process Breakdown and Remedies

BASIC: Controlled Substances/Alcohol

Process Breakdown: Training and Communication

Specific Recommended Remedies

To implement Safety Improvement Practices, the following list are recommended practices related to Training and Communication:

1. Reinforce training about controlled-substance and alcohol policies, procedures, and responsibilities to drivers, controlled-substance and alcohol-testing personnel, and other employees, using job aids, post-training testing, and/or refresher training. Encourage informal feedback among all involved with the testing so that they can help each other to improve.

Recommendations

1. **Additional Information**

Please visit the CSA outreach site for additional guidance: <https://csa.fmcsa.dot.gov>.

2. **Drug and Alcohol Clearinghouse**

Find out your responsibilities and requirements for FMCSA's Drug and Alcohol Clearinghouse by visiting <https://clearinghouse.fmcsa.dot.gov> .

3. **Clearinghouse Registration - Owner/Operator**

As a registered Owner/Operator you must designate a C/TPA in the Clearinghouse to comply with the employer requirements related to your own drug and alcohol program compliance. You may continue to perform the employer functions for any other drivers that you employ who are subject to the requirements of 49 CFR Part 382.

4. **Clearinghouse Annual Query**

Ensure annual queries are conducted in the Clearinghouse at least once per year. You may conduct a full or limited query to fulfill this requirement.

EXHIBIT 2



TQL RATE CONFIRMATION FOR PO# 25370758

FIND YOUR NEXT LOAD BY VISITING
CARRIERDASHBOARD.TQL.COM

TO ENSURE PROMPT PAYMENT, SUBMIT THIS RATE CONFIRMATION, COMPLETE BOL(S)/POD, RECEIPTS AND OTHER APPLICABLE PAPERWORK WITHIN 24 HOURS OF DELIVERY TO CINVOICES@TQL.COM. FOR OTHER OPTIONS, SEE NEXT PAGE.

TQL CONTACT INFO

Name	Phone	Email	Fax
Jason Rubendall	800-580-3101 x58450	JRubendall@TQL.com	5136886822

CARRIER CONTACT

Office Staffed 24/7

MC#/DOT#	Name	Phone	Terms	Fax
1323595 / 3740051	Why Not Us Transport, Llc (ks)	785-577-4933	28DAYS	620-767-6254

Address
 TAFS PO BOX 872632 KANSAS CITY, MO 64187-2632

Dispatcher	Driver	Truck #	Trailer #
anthony	Kerry, Arnold	1	1

LOAD INFORMATION

Rate	Type	Unit	Quantity	Total
\$6,600.00	Line Haul	Flat	1	\$6,600.00

Rates that are based on weight or count will be calculated from the quantities loaded.

Total: \$6,600.00 USD

Mode	Trailer Type	Trailer Size	Linear Feet	Temperature	Pallet/Case Count	Hazmat	Load Requirements
FTL	Flat Team	48 ft or 53 ft			0 pallets/0 cases	Non-Hazardous	
Special Temp Instructions						LxWxH	

Pick-up Location	Date	Time
Norfolk, VA	8/25/2023	FCFS 09:00 to 14:00

Commodities:

Pick Up #	Quantity	Unit	Commodity	Notes
1	1	Truckload	Food preparation machinery	

Delivery Location	Date	Time
Moses Lake, WA	8/28/2023	FCFS 09:00 to 10:00

CARRIER RESPONSIBLE FOR

Unloading	None w/ valid unloading receipt	Pallet Exchange	None	Estimated Weight	16000
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Note to Carrier	40ft container meet drayage truck unhook your flatbed hook to dryayage truck load bring back trailer
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EXHIBIT 3

Queries History

All Queries

Report Generated on : 03/29/2024 04:35

Key	First Name	Last Name	Country	State	Number
QUERY.2QDM KERRY		LONG	US	KS	

Disclaimer:**This document contains sensitive information and is for official use only. Improper handling of this information could negatively affect individuals. Handle and secure this information according to Federal Motor Carrier Safety Administration privacy and security guidelines. Properly dispose of this document according to agency policy when this document is no longer needed.**

Employer Conducting Query	DBA	DOT Number
WHY NOT US TRANSPORT LLC		3740051

Query Status	Query Result	Conducted By
Completed	Driver Not Prohibited	US Compliance Services

Query Type	Query Submitted	Query Completed
Pre-employment	Manually	3/27/2024

CERTIFICATE OF SERVICE

24-TRAM-657-PEN

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of
04/23/2024
first class mail and electronic service on _____.

BRETT W. BERRY, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
b.berry@kcc.ks.gov

Kerry Long, OWNER
Why Not Us Transport LLC
305 S Washington St
Council Grove, KS 66846
oldcar_lover@hotmail.com

/S/ KCC Docket Room
KCC Docket Room
