

1500 SW Arrowhead Road  
Topeka, KS 66604-4027

Pat Apple, Chairman  
Shari Feist Albrecht, Commissioner  
Jay Scott Emler, Commissioner



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

Sam Brownback, Governor

## NOTICE OF PENALTY ASSESSMENT

17-TRAM-443-PEN

April 6, 2017

Diana Chambers, Office Manager  
Mac's Fence, Inc.  
6037 Speaker  
Kansas City, Kansas 66111

**Certified Mail No. 7016 1970 0001 0574 1089**

This is a notice of a penalty assessment against Mac's Fence, Inc. for violation(s) of Kansas Motor Carrier Safety Statutes, Rules, and Regulations discovered during a compliance review conducted on March 27, 2017, by Kansas Corporation Commission Special Investigator(s) Verna Jackson. Penalty amounts are assessed in accordance with the FY 2017 Uniform Penalty Assessment Matrix, approved by the Commission on August 18, 2016. For a full description of the penalty(s) and terms and obligations please refer to the Order that is attached to this notice.

**IF YOU ACCEPT THE PENALTY:** Mac's Fence has been assessed a \$500 penalty. You have thirty (30) days from the date of service of this Penalty Order to pay the fine amount. A check must be made payable to the Kansas Corporation Commission. Payment is to be mailed to the Transportation Division of the Kansas Corporation Commission at 1500 S.W. Arrowhead Road, Topeka, Kansas 66604, and must include a reference to the docket number of this proceeding. Credit card payment may be made by faxing your credit card information to the Transportation Office at 785-271-3124, using the KCC's credit card payment form found at <http://kcc.ks.gov/trans/creditcard.pdf>.

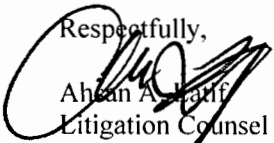
You must attend a Commission-sponsored safety seminar within ninety (90) days from the date of the attached Order and provide Staff with written proof of attendance. A schedule of dates and locations for the safety seminar can be found at the Commission's website [http://www.kcc.state.ks.us/trans/safety\\_meetings.htm](http://www.kcc.state.ks.us/trans/safety_meetings.htm).

You must submit to one follow-up safety compliance review within 18 months from the date of the attached Order. Transportation Staff will contact you at a later date to determine an appropriate time for this review.

**IF YOU CONTEST THE PENALTY ORDER:** You have the right to request a hearing. A request for hearing must be made in writing, setting forth the specific grounds upon which relief is sought. Mac's Fence 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 must 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 (7) copies of the request to the Commission's Secretary at 1500 S.W. Arrowhead Road, Topeka, Kansas 66604 within fifteen (15) days from the date of service of this Penalty Order and mail a copy to the undersigned Litigation Counsel. K.A.R. 82-1-215; K.S.A. 2016 Supp. 77-542.

**IF YOU FAIL TO ACT:** Failure to pay the penalty of \$500 within thirty (30) days from the date of service of the Penalty Order or failure to comply with the terms of the attached Penalty Order, or in the alternative, failure to provide a written request for a hearing within fifteen (15) days from the date of service of this Penalty Order, will result in the attached Order becoming a Final Order and may result in additional sanctions of suspension and/or revocation of your motor carrier operating authority.

Respectfully,

  
Ahdan A. Jarrif  
Litigation Counsel  
(785) 271-3118

**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 **Mac's** )  
**Fence, Inc., of Kansas City, Kansas**, Regarding )  
the Violation of the Motor Carrier Safety )  
Statutes, Rules and Regulations and the ) Docket No. 17-TRAM-443-PEN  
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). The Commission, having been briefed on the issue by the Director of the Commission's Transportation Division, finds and concludes as follows:

**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, 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, 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 an entity under the Commission's jurisdiction and order a hearing on the Commission's own motion when the Commission believes the entity is in violation of the law or any order of the Commission.

## **II. BACKGROUND**

4. Mac's Fence, Inc. (Mac's Fence) obtained private operating authority from the Commission on August 12, 2013, and operates under KSMCID number 169767 and USDOT number 721496.

5. Steven R. Cowell attended a Commission-sponsored Motor Carrier Education and Instructional Meeting on July 29, 2013, on behalf of Mac's Fence.

6. Mac's Fence is a private motor carrier which primarily hauls building materials, machinery, large objects, construction and fence materials.

## **III. STATEMENT OF FACTS**

7. Pursuant to the jurisdiction and authority cited above, on March 27, 2017, Commission Staff (Staff) Special Investigator(s) Verna Jackson conducted a compliance review of the operations of Mac's Fence. A copy of the safety compliance review is included in this Penalty Order as Attachment "A" and is hereby incorporated by reference. As a result of this investigation, Ms. Jackson identified two (2) violation(s) of the Motor Carrier Safety Regulations.

- a. On November 4, 2016, Mac's Fence required or permitted its driver, Tobias Sandoval, to operate a CDL-required commercial motor vehicle, a 1994 Ford F-800, VIN ending in 14189, GVWR 33,200 lbs., in interstate commerce from Kansas City, Missouri to Kansas City, Kansas. This trip

is evidenced by a letter dated November 11, 2016, a copy of which is attached hereto as Attachment "B" and is hereby incorporated by reference. At the time of this transportation, Mac's Fence did not have a signed receipt verifying that driver Tobias Sandoval received the carrier's substance and alcohol abuse policy and educational materials. Mac's Fence's failure to provide alcohol and controlled substance use educational materials that complies with 49 C.F.R. 382.601(b) to each of its drivers subsequent to hiring or testing and failing to obtain a signed receipt from the drivers is a violation of 49 C.F.R. 382.601(a)(1), adopted by K.A.R. 82-4-3c, and authorized by K.S.A. 2016 Supp. 66-1,129. Staff recommends a fine of \$250.

- b. During the transportation described in paragraph a., above, Mac's Fence had not maintained the driver's motor vehicle record (MVR) from each State in his driver qualification file. The special investigator found three (3) violations of this type. Mac's Fence's failure to maintain a copy of the motor vehicle record(s) received from each State in the driver qualification file is a violation of 49 C.F.R. 391.51(b)(2), adopted by K.A.R. 82-4-3, and authorized by K.S.A. 66-1,129. Staff recommends a fine of \$250.

#### **IV. STAFF'S RECOMMENDATIONS**

- 8. Based upon the available facts, Staff recommends the Commission finds Mac's Fence committed two (2) violation(s) of Kansas law that governs motor carriers, including various provisions of the Federal Motor Carrier Safety Regulations (FMCSRs), as adopted by the

Kansas Administrative Regulations, and is therefore subject to sanctions or fines imposed by the Commission.

9. Additionally, Staff recommends a civil penalty of \$500 for two (2) violation(s) of the Motor Carrier Safety Statutes, Rules and Regulations.

10. Staff further recommends that Mac's Fence be required to attend a Commission-sponsored safety seminar within ninety (90) days from the date of this Order, and provide Transportation Staff with written proof of attendance. A schedule of the dates and locations for the safety seminar can be found on the Commission's website at [http://kcc.ks.gov/trans/safety\\_meetings.htm](http://kcc.ks.gov/trans/safety_meetings.htm).

11. Finally, Staff recommends that Mac's Fence submit to one follow-up safety compliance review within eighteen (18) months from the date of this Order. Transportation Staff will contact the motor carrier at a later date to determine an appropriate time for this review.

#### **V. CONCLUSIONS OF LAW**

12. The Commission finds it has jurisdiction over Mac's Fence because it is a motor carrier as defined in K.S.A. 2016 Supp. 66-1,108.

13. The Commission finds Mac's Fence committed two (2) violation(s) of Kansas law that governs motor carriers, including various provisions of the Federal Motor Carrier Safety Regulations (FMCSRs), as adopted by the Kansas Administrative Regulations, and is therefore subject to sanctions or fines imposed by the Commission.

#### **THE COMMISSION THEREFORE ORDERS THAT:**

A. Mac's Fence, Inc., of Kansas City, Kansas is hereby assessed a \$500 civil penalty for two (2) violation(s) 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. Mac's Fence is hereby ordered to attend a Commission-sponsored safety seminar within ninety (90) days from the date of this Order, and is to provide Transportation Staff with written proof of attendance.

C. Mac's Fence 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.

D. Pursuant to K.S.A. 2016 Supp. 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 (7) copies of the request to the Commission's Secretary, at 1500 S.W. Arrowhead Road, Topeka, Kansas 66604, and mail a copy of the request to Litigation Counsel, within fifteen (15) days from the date of service of this Order. On April 4, 2017, this Penalty Order was mailed to Mac's Fence via Certified Mail, Return Receipt Requested, No. 7016 1970 0001 0574 1089. Service of this Order is complete upon the date delivered shown on the Domestic Return Receipt. A hearing will be scheduled only upon written request. Failure to timely request a hearing will result in a waiver of Mac's Fence's right to a hearing, and this Penalty Order will become a Final Order assessing a \$500 civil penalty against Mac's Fence, and ordering Mac's Fence to attend a Commission-sponsored safety seminar within ninety (90) days

from the date of this Order and provide Transportation Staff with written proof of attendance, and to submit to a safety compliance review within eighteen (18) months from the date of this Order.

E. Attorneys for all parties shall enter their appearances in Commission proceedings by giving their names and addresses for the record. For civil penalties exceeding \$500, a corporation shall appear before the Commission by its attorney, unless waived by the Commission for good cause shown and a determination that such waiver is in the public interest. K.S.A. 77-515(c); K.A.R. 82-1-228(d)(2); K.A.R. 82-1-202(a). For civil penalties of \$500 or less, a corporation may appear by a duly authorized representative of the corporation. K.S.A. 2016 Supp. 66-1,142b(e) and amendments thereto.

F. If you do not request a hearing, the payment of the civil penalty of \$500 is due in thirty (30) days from the date of service of this Order. A check shall be made payable to the Kansas Corporation Commission and submitted for payment. For credit card payments, include type of card (Visa, MasterCard, Discover, or American Express), account number and expiration date. Payment shall be mailed to the Transportation Division of the Kansas Corporation Commission, 1500 S.W. Arrowhead Road, Topeka, Kansas 66604. *The payment shall include a reference to the docket number of this proceeding.*

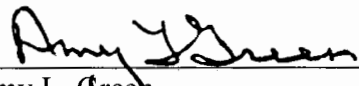
G. Failure to pay the \$500 civil penalty within thirty (30) days from the date of service of this Penalty Order, *see* K.S.A. 66-1,105, and/or failure to comply with the provisions of this Order, may result in suspension of Mac's Fence's motor carrier operating authority without further notice. Additionally, 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.

H. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further orders, as necessary.

**BY THE COMMISSION IT IS SO ORDERED.**

Apple, Chairman; Albrecht, Commissioner; Emler, Commissioner

Dated: APR 06 2017

  
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Amy L. Green  
Secretary to the Commission





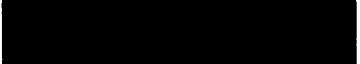
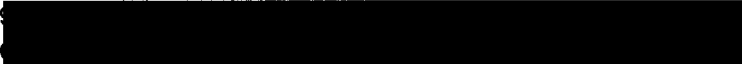

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Order Mailed Date

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## **ATTACHMENT “A”**

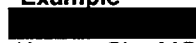




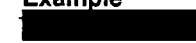



	<b>US DOT #</b> 721496	<b>Legal:</b> MAC'S FENCE INC <b>Operating (DBA):</b>			
<b>MC/MX #:</b>		<b>State #:</b> 		<b>Federal Tax ID:</b>  (EIN)	
<b>Review Type:</b> Non-ratable Review - CSA					
<b>Scope:</b> Principal Office		<b>Location of Review/Audit:</b> CSA Off-site			<b>Territory:</b>
<b>Operation Types</b>		<b>Interstate</b>	<b>Intrastate</b>		
<b>Carrier:</b>	Non-HM	Non-HM	<b>Business:</b> Corporation		
<b>Shipper:</b>	N/A	N/A	<b>Gross Revenue:</b>  for year ending: 12/31/2015		
<b>Cargo Tank:</b>	N/A				
<b>Company Physical Address:</b> 					
<b>Contact Name:</b> Diana Chambers					
<b>Phone numbers: (1)</b> 					
<b>E-Mail Address:</b> 					
<b>Company Mailing Address:</b> 6037 SPEAKER KANSAS CITY, KS 66111-2235					
<b>Carrier Classification</b> Private Property					
<b>Cargo Classification</b> Building Materials      Machinery, Large Objects      Construction Other: Fence Materials					
<b>Equipment</b>					
	<b>Owned</b>	<b>Term Leased</b>	<b>Trip Leased</b>		<b>Owned</b> <b>Term Leased</b> <b>Trip Leased</b>
Truck	11	0	0	Trailer	9      0      0
Power units used in the U.S.: 11					
Percentage of time used in the U.S.: 100					
<b>Does carrier transport placardable quantities of HM?</b> No					
<b>Is an HM Permit required?</b> N/A					
<b>Driver Information</b>					
	<b>Inter</b>	<b>Intra</b>	<b>Average trip leased drivers/month:</b> 0		
< 100 Miles:	5		<b>Total Drivers:</b> 5		
>= 100 Miles:			<b>CDL Drivers:</b> 4		

	<b>MAC'S FENCE INC</b> U.S. DOT #: 721496	Review Date: 03/20/2017				
<b>Part A</b>						
<p>QUESTIONS regarding this report or the Federal Motor Carrier Safety or Hazardous Materials rules may be addressed to the Kansas Corporation Commission at:</p> <p style="text-align: center;">1500 SW Arrowhead Topeka, Kansas 66604 Telephone 785-271-3104</p>						
<b>This report will be used to assess your safety compliance.</b>						
<b><u>Person(s) Interviewed</u></b> <table border="0" style="width: 100%;"><tr><td style="width: 50%;"><b>Name:</b> Diana Chambers</td><td style="width: 50%;"><b>Title:</b> Office Manager</td></tr><tr><td><b>Name:</b></td><td><b>Title:</b></td></tr></table>			<b>Name:</b> Diana Chambers	<b>Title:</b> Office Manager	<b>Name:</b>	<b>Title:</b>
<b>Name:</b> Diana Chambers	<b>Title:</b> Office Manager					
<b>Name:</b>	<b>Title:</b>					



	<b>MAC'S FENCE INC</b>	State #: 	Review Date:
	U.S. DOT #: 721496		03/20/2017

### Part B Violations

1 FEDERAL	Primary: 382.601(d)	Discovered 2	Checked 2	Drivers/Vehicles In Violation 2	Checked 2
<b>Description</b> Failed to maintain the original certificate of receipt signed by the driver verifying the driver received the substance abuse and alcohol policy and educational materials. <b>Example</b>  11/4/2016, drove Unit #8, a 1994 Ford F-800, VIN  14189, GVWR 33,200, from the PPOB, to Kansas City, MO.  did not have provided to him a form to sign signifying he received the substance abuse/alcohol policy and any educational material.					
2 FEDERAL	Primary: 391.51(b)(4)	Discovered 3	Checked 3	Drivers/Vehicles In Violation 3	Checked 3
<b>Description</b> Failing to maintain the responses of each State agency to the annual driver record inquiry required by 391.25(a). <b>Example</b>  11/4/2016, drove Unit #8, a 1994 Ford F-800, VIN  14189, GVWR 33,200, from the PPOB, to Kansas City, MO. Mac's Fence Inc provided the driver's MVR with the date of 1/29/2015.					
3 FEDERAL	Primary: 391.51(b)(5)	Discovered 3	Checked 3	Drivers/Vehicles In Violation 3	Checked 3
<b>Description</b> Failing to maintain a note relating to the annual review of the driver's driving record as required by 391.25(c)(2). <b>Example</b>  11/4/2016, drove Unit #8, a 1994 Ford F-800, VIN  14189, GVWR 33,200, from the PPOB, to Kansas City, MO. Mac's Fence Inc provided a note relating to the annual review for this investigation dated 3/9/2015.					
4 FEDERAL	Primary: 391.51(b)(6)	Discovered 3	Checked 3	Drivers/Vehicles In Violation 3	Checked 3
<b>Description</b> Failing to maintain a list or certificate relating to violations of motor vehicle laws and ordinances required by 391.27. <b>Example</b>  11/4/2016, drove Unit #8, a 1994 Ford F-800, VIN  4189, GVWR 33,200, from the PPOB, to Kansas City, MO. Mac's Fence Inc provided the list or certificate relating to violations of the MVR that was dated 3/9/2015.					
<b>Safety Fitness Rating Information:</b> Total Miles Operated 72,082 Recordable Accidents 0		OOS Vehicle (CR): 0 Number of Vehicle Inspected (CR): 0 OOS Vehicle (MCMIS): 0 Number of Vehicles Inspected (MCMIS): 0			

Your proposed safety rating is :

**This Review is not Rated.**





**MAC'S FENCE INC**  
U.S. DOT #: 721496

State #: 

Review Date:  
03/20/2017

## Safety Management Process Breakdowns and Remedies

1. FMCSA recently announced planned improvements to the Carrier Safety Measurement System (SMS) which was implemented in December 2010 as part of the Agency's broader Compliance, Safety, Accountability (CSA) initiative. A preview of these improvements is currently available to motor carriers. The system changes are scheduled to be available to the public in July 2012. There will be additional opportunity for public comment on the changes after the preview period ends in July 2012.

The improvements to SMS are based on ongoing analysis and feedback from enforcement personnel, the motor carrier industry, and other stakeholders. The changes more effectively identify and prioritize high-risk and other unsafe motor carriers for enforcement interventions designed to reduce commercial motor vehicle crashes and hazardous materials incidents.

Motor carrier's currently have the ability to preview how the improvements impact their individual safety data in SMS. These improvements include: (1) Changes to the SMS methodology that identify higher risk carriers while addressing industry biases; (2) better applications of SMS results for Agency interventions by more accurately identifying safety sensitive carriers (i.e., carriers transporting people and carriers hauling hazardous materials (HM)), so that such firms can be selected for CSA interventions at more stringent levels; and, (3) more specific fact-based displays of SMS results on the SMS Web site.

The data preview may be found at <http://csa.fmcsa.dot.gov/>. During the data preview period, the Agency requests comments on the impacts of the changes.

2. The MCS-150 (Motor Carrier Identification Report) is required to be updated bi-annually. As required under 49 CFR 390.19(a) and 390.19(b), the carrier must file Form MCS-150 before it begins operations and every 24 months according to the schedule noted in 390.19(b)(2). Depending on the next to the last digit of the USDOT#, the carrier will be responsible for updating the USDOT# in either the even or odd number year. Example: The next to the last number in the USDOT# is 2, the carrier would need to update the MCS150 in an even numbered year. On the same hand, the last number of the USDOT# is the qualifier for the month in which the update must occur. If the last number of the USDOT# is 4, the USDOT# must be updated by the end of April. The required form must be filed with FMCSA Office of Information Management. The USDOT number needs to be filed electronically according to the instructions at the Agency's ([www.fmcsa.dot.gov](http://www.fmcsa.dot.gov)) Web site.

The USDOT number was last updated 3/11/2015 and is needing to be updated by June of 2017.

3. DRIVER FITNESS BASIC PROCESS BREAKDOWN: Monitoring and Tracking


DESCRIPTION OF PROCESS BREAKDOWN: Mac's Fence Inc failed to make the inquiry into the driver's driving record every 12 months. Mac's Fence Inc failed to maintain the annual review certification and review of the driver's driving record. Without obtaining the driver's driving record and conducting the review of the driver's driving record, Mac's Fence Inc cannot validate the drivers have a valid license.

### BASIC SPECIFIC RECOMMENDED REMEDIES

Implement Safety Improvement Practices: The following are recommended practices related to Monitoring and Tracking Processes.

- Implement an effective process for monitoring and documenting all drivers' job functions, training, qualifications, renewal dates, disclosed medical conditions, and operational restrictions, including those of drivers on a waiver program or with impairments that may be satisfied by a Skill Performance Evaluation certificate, to ensure that assignments are covered by qualified drivers.
- Review and retain each driver's Motor Vehicle Record (MVR) at least annually to ensure compliance with company policies, Federal regulations, and State and local laws and ordinances related to driver fitness. If a driver seems to have numerous violations, the MVR should be reviewed more often. Random MVR checks in addition to annual checks are also effective. File the MVR in each driver's driver qualification file after review.
- Maintain each driver's investigation history file in a secure location with limited and controlled access for as long as the driver is employed and for three years thereafter.
- Maintain roadside inspection reports, moving violation records, training records, the Commercial Driver's License (CDL), the dispatch schedule, bills of lading, and the medical report to help evaluate the performance of all staff



	<b>MAC'S FENCE INC</b> U.S. DOT #: 721496	State #: <span style="background-color: black; color: black;">XXXXXXXXXX</span>	Review Date: 03/20/2017
<b>Safety Management Process Breakdowns and Remedies</b>			

involved in qualifying drivers (dispatchers and managers) and the effectiveness of the policies and procedures.

- Evaluate personnel who are monitoring driver fitness performance by making sure they are reviewing driver-assignment and qualification files; applying the performance standards fairly, consistently, and equitably; and documenting the evaluations.
- Regularly evaluate the company's driver fitness-related inspection results via the Federal Motor Carrier Safety Administration's (FMCSA) website at <http://ai.fmcsa.dot.gov/SMS>. Assess violations for process breakdowns and how to remedy them. Use data to help implement an effective process beyond self-reporting to monitor, document, and evaluate compliance with driver-fitness regulations and company policies.
- When monitoring and tracking any driver-fitness-related issue, always assess whether it is individual or represents a systemic breakdown in one of the Safety Management Processes (Policies and Procedures, Roles and Responsibilities, etc.).

#### Seek Out Resources:

- You are encouraged to review your company's record at the following website: <http://ai.fmcsa.dot.gov/SMS>. You will need to use your PIN Number that has been provided by the FMCSA.
- Contact industry associations to get resources and ideas on safety improvement practices from other carriers in the industry.

4. As required by 391.25(a), motor carriers shall, at least once every 12 months, make an inquiry to obtain the motor vehicle record of each driver it employs, covering at least the preceding 12 months, to the appropriate agency of every State in which the driver held a commercial motor vehicle operator's license or permit during the time period.
5. The starting date for alcohol and/or controlled substance testing programs must be implemented no later than the date the employer begins commercial motor vehicle operations per 49 CFR 382.115(a).

#### 6. CONTROLLED SUBSTANCES AND ALCOHOL BASIC PROCESS BREAKDOWN: Training and Communication

**DESCRIPTION OF PROCESS BREAKDOWN:** Mac's Fence Inc failed to ensure that each driver is required to sign a statement certifying the receipt of the carrier's substance abuse and alcohol policy and the receipt of educational material on substance abuse and alcohol. Failing to have the signed receipt from the driver indicates that the driver did not participate with training and that the driver did not receive a copy of the policy.

#### BASIC SPECIFIC RECOMMENDED REMEDIES

**Implement Safety Improvement Practices:** The following are recommended practices related to Communication and Training.

- Convey expectations to all applicable staff for adhering to controlled substance and alcohol regulations and to company policies and procedures, and for executing responsibilities by providing new-hire and refresher training. Establish communication channels such as newsletters and/or meetings focused on resolving conflicts: for example, for drivers, between testing requirements and lifestyle decisions with regard to controlled substance and alcohol abuse or misuse.
- Encourage disclosure of personal problems with controlled substances and alcohol within a safe environment by having an open-door policy with management or using an Employee Assistance Program (EAP). An EAP enables drivers to alert management of concerns about other personnel and to seek help for their own substance abuse and/or alcohol problems.
- After selection of drivers for random testing, the program coordinator should send confidential correspondence to whoever is informing the selected drivers, noting the selection date, selected names, proper notification procedure, testing location, and when test results need to be completed. Drivers should be reminded that refusal to take the test will be equivalent to a positive result.
- Ensure that managers and supervisors regularly communicate and demonstrate their ongoing commitment to abiding by regulations and company policies regarding controlled-substance and alcohol use.
- Communicate the carrier's Controlled Substances and Alcohol BASIC percentile to all staff, and explain to them individually what they can do to help improve compliance.
- Provide new-hire and refresher training, to all drivers, managers, other designated personnel, and the designated employer representative (DER), on controlled-substance and alcohol regulations and related company policies and procedures, including those pertaining to prohibited behavior; testing protocols and monitoring, for example, on





**MAC'S FENCE INC**  
U.S. DOT #: 721496

State #: 

Review Date:  
03/20/2017

## Safety Management Process Breakdowns and Remedies

grounds of "reasonable suspicion"; the consequences of a positive test result; referral to a Substance Abuse Professional (SAP); and confidentiality requirements in relation to recordkeeping.



- Ensure that personnel in safety-sensitive positions receive required training on the importance of responsible lifestyle behaviors and personal choices regarding controlled-substance and alcohol use.
- Train all staff who are required to monitor and track controlled-substance and alcohol compliance on the appropriate company policies, including those related to discipline and incentives.
- Ensure that drivers are trained on driver Out-of-Service (OOS) rules, their responsibility in adhering to them, and the carrier's procedures for reporting OOS violations and communicating appropriately with other personnel.
- 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.
- Provide hiring officials with guidance on how best to attract, screen, and qualify applicants who are most likely to adhere to controlled-substance and alcohol-use regulations and related company policies and procedures.

### Seek Out Resources:

- You are encouraged to review your company's record at the following website: <http://ai.fmcsa.dot.gov/SMS>. You will need to use your PIN Number that has been provided by the FMCSA.
- Contact industry associations to get resources and ideas on safety improvement practices from other carriers in the industry.

7. 382.601(d) - Each employer shall ensure that each driver is required to sign a statement certifying that he or she has received a copy of these materials described in this section. Each employer shall maintain the original of the signed certificate and may provide a copy of the certificate to the driver.
8. 391.21 - A person shall not drive a commercial motor vehicle unless he/she has completed and furnished the motor carrier that employs him/her with an application for employment that meets the requirements of paragraph (b) of this section.
9. This review contains violations that are serious in nature and will result in a penalty assessment against the company and/or drivers.
10. For all Investigations:
  - Understand Why Compliance Saves Time and Money: Compliance with FMCSRs will not only save lives, but also saves your business time and money. Tracking how much your business spends on non-compliance activities can help you understand the many benefits of compliance to your business and why safety is good business.
  - Document and Follow Through on Action Plans: Document and follow through on action plans to ensure the actions you are taking are creating improvement in safety management and compliance.
  - NOTICE: A pattern and/or repeated violations of the same or related acute or critical regulations (violations of the same Part in Title 49, Code of Federal Regulations) will cause the maximum penalties allowed by law to be assessed under Section 222 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA). A pattern of violations means two or more violations of acute and/or critical regulations in three or more Parts of Title 49, Code of Federal Regulations discovered during any eligible investigation. Repeated violations means violation(s) of an acute regulation of the same Part of Title 49, Code of Federal Regulations discovered in an investigation after one or more closed enforcement actions within a six year period and/or violation(s) of a critical regulation in the same Part of Title 49, Code of Federal Regulations discovered in an investigation after two or more closed enforcement actions within a six year period.
  - NOTICE: 49 CFR Part 391.23 requires prospective employers to, at a minimum, investigate a driver's employment information, crash record, and alcohol and controlled substances history from all employers the driver worked for within the previous 3 years.



	<b>MAC'S FENCE INC</b>	State #: 	Review Date:
	U.S. DOT #: 721496		03/20/2017
<b>Safety Management Process Breakdowns and Remedies</b>			

The Pre-Employment Screening Program (PSP) is a screening tool that assists motor carriers in investigating crash history and roadside safety performance of prospective drivers. The PSP allows motor carriers to purchase 5 years of crash data and 3 years of roadside inspection data from the Federal Motor Carrier Safety Administration's (FMCSA) Motor Carrier Management Information System (MCMIS). Records are available 24 hours a day via Web request. Motor carriers should visit the following website for more information:  
<http://www.psp.fmcsa.dot.gov/Pages/default.aspx>

- All motor carriers and truck drivers are needed to fight against terrorism and hijacking. You could be a target. Protect yourself, your trucks, your cargo, and your facilities.

For all Investigations that could result in a Penalty Order:

- PLEASE NOTE: The violations discovered during this compliance review may affect the civil penalty proposed in any subsequent Penalty Order. In addition, your history of prior violations of the Federal Motor Carrier Safety Regulations, Federal Hazardous Material Regulations or the Federal Motor Carrier Commercial Regulations may also affect the civil penalty proposed in any subsequent Penalty Order. Your signature for receipt of this report acknowledges your understanding that the violations discovered by the KCC during this review may be used to calculate any civil penalty proposed as a result of this review. Your signature is not an admission of the violations identified.

For all Investigations that did not result in a Cooperative Safety Plan:

The KCC requires that you prepare a corrective action letter, addressing the measures taken to correct the violations identified within this report. Submit this letter within 30 days outlining the carrier's updated changes to their policies and procedures regarding all listed violations. Explain in detail how, as a carrier representative, you will rectify these deficiencies and prevent their reoccurrence going forward. Include any supporting documentation and evidence as indicated in the recommendations above, (example: vehicle inspections performed, proof of drug and alcohol testing in place, etc.) necessary to prove that corrective action has been taken. Mail the letter along with copies of your supporting evidence to:

Kansas Corporation Commission  
 Attn: Gary Davenport  
 1500 SW Arrowhead Rd  
 Topeka, KS 66604-4027

11. I acknowledge that the requirements and/or recommendations resulting from this off-site, focused review have been discussed with me and my questions have been answered. I further acknowledge that KCC recommendations only cover the scope of this focused review, and that areas not reviewed by the KCC have not necessarily been endorsed as compliant. I understand that failure to satisfactorily remedy the above-listed requirements, and/or failure to comply with Kansas Motor Carrier Safety Statutes and Regulations could result in the suspension of [motor carrier's] operating authority and/or the impoundment of [motor carrier's] vehicles.

\_\_\_\_\_  
 Carrier Representative


\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Printed name and Title

After reviewing these Requirements and/or Recommendations, please sign and date where indicated, and return to the Kansas Corporation Commission, ATTN Verna Jackson, Transportation Division, 1500 SW Arrowhead Rd, Topeka, Kansas 66604-4027, or fax 785-271-3124.





	<b>MAC'S FENCE INC</b> U.S. DOT #: 721496	State #: <span style="background-color: black; color: black;">XXXXXXXXXX</span>	Review Date: 03/20/2017
<b>Safety Management Process Breakdowns and Remedies</b>			

12. I understand that monetary penalties will be assessed as a result of violations found in this compliance investigation.  
The penalty schedule can be found at this web site: [http://kcc.ks.gov/trans.penalty\\_assessment\\_table.htm](http://kcc.ks.gov/trans.penalty_assessment_table.htm)

Carrier Name

Carrier Official



## **ATTACHMENT “B”**



6037 Speaker Rd  
Kansas City, KS 66111  
913-287-6174 \* \* 913-287-7274

November 11, 2016

Kansas Corporation Commission  
Attn: Verna Jackson  
1500 SW Arrowhead Rd.  
Topeka, KS 66604-4027

RE: FEIN# [REDACTED]  
Compliance Review

Verna:

I have enclosed the documents that you have requested that I have.

I do not have documentation for the following:

- Documentation signed by all CDL drivers indicating the receipt of the policy and educational materials.
- Copy of investigation of the driver's safety performance history for Ezequiel Castro, who is no longer employed by Mac's Fence.

Per our conversation today Truck #1 is not a truck that is ever driven, therefore your suggestion was to include another vehicle, I included #4 along with Trailer #2's inspection.

The last interstate trip was by Tobias Sandoval on 11/4/2016, he drove to 3501 Nicholson Road, Kansas City, MO from 6037 Speaker Rd., Kansas City, KS which is 13 miles each direction. This was done in truck #8

If I can be of any further assistance, please feel free to contact me.

Respectfully Submitted

A handwritten signature in black ink, appearing to read 'Diana Chambers', written in a cursive style.

Diana Chambers

**CERTIFICATE OF SERVICE**

17-TRAM-443-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 APR 06 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

DIANA CHAMBERS, OFFICE MANAGER  
MAC'S FENCE, INC.  
6037 SPEAKER RD  
KANSAS CITY, KS 66111-2235  
Fax: 913-287-7274  
office\_manager@macfence.com

/S/ DeeAnn Shupe  
\_\_\_\_\_  
DeeAnn Shupe

Order Mailed Date  
APR 07 2017