



20170711163109  
Kansas Corporation Commission

1500 SW Arrowhead Road  
Topeka, KS 66604-4027

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

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

Sam Brownback, Governor

## NOTICE OF PENALTY ASSESSMENT

18-TRAM-005-PEN

July 11, 2017

Todd A. Ebberts, President  
Ebberts Construction Cleanup Inc.  
35201 W 247th  
Paola, Kansas 66071

**Certified Mail No. 70161970000105740402**

This is a notice of a penalty assessment against Ebberts Construction Cleanup Inc. for violation(s) of Kansas Motor Carrier Safety Statutes, Rules, and Regulations discovered during a compliance review conducted on June 28, 2017, by Kansas Corporation Commission Special Investigator(s) Michael Heenan. Penalty amounts are assessed in accordance with the FY 2018 Uniform Penalty Assessment Matrix, approved by the Commission on June 27, 2017. 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:** Ebberts Construction has been assessed a \$100 penalty. You have thirty (30) days from the date of service of this Penalty Order to pay the fine amount. Please remit payment of \$100, through your personal account with the Kansas Corporation Commission's KTRAN application 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.

You must attend a Commission-sponsored safety seminar within ninety (90) days from the date of the attached Order and provide the undersigned 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 [http://www.kcc.state.ks.us/trans/safety\\_meetings.htm](http://www.kcc.state.ks.us/trans/safety_meetings.htm). You also 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. Ebberts Construction 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 \$100 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,

  
Aleksan A. Luff  
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 **Ebberts**     )  
**Construction Cleanup Inc., of Paola, Kansas,**     )  
Regarding the Violation of the Motor Carrier     )  
Safety Statutes, Rules and Regulations and the     ) Docket No. 18-TRAM-005-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. Ebberts Construction Cleanup Inc. (Ebberts Construction) has private operating authority and operates under USDOT number 606656.

5. Ebberts Construction is a private motor carrier which primarily hauls garbage, refuse and trash.

## **III. STATEMENT OF FACTS**

6. Pursuant to the jurisdiction and authority cited above, on June 28, 2017, Commission Staff (Staff) Special Investigator(s) Michael Heenan conducted a compliance review of the operations of Ebberts Construction. 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, Mr. identified one (1) violation(s) of the Motor Carrier Safety Regulations.

- a. On May 30, 2017, Ebberts Construction required or permitted its driver, Todd A. Ebberts, to operate a CDL-required commercial motor vehicle, a 2015 Dodge truck, VIN ending in 5757758, GVWR 12,500 lbs., pulling a 2014 Maxey dump trailer, VIN ending in 033487, GVWR 14,000 lbs., in intrastate commerce from Paola, Kansas to Leawood, Kansas. This trip is

evidenced by a copy of a calendar page, dated May 30, 2017, a copy of which is attached hereto as Attachment "B" and is hereby incorporated by reference. At the time of this transportation, Ebberts Construction failed to provide educational materials to its driver explaining the requirements for a controlled substance and alcohol testing program pursuant to the motor carrier regulations. The carrier'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 CDL drivers subsequent to hiring or testing and having the driver sign an acknowledgement page to retain in the driver's qualification file 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 \$100.

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

7. Based upon the available facts, Staff recommends the Commission finds Ebberts Construction committed one (1) 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.

8. Additionally, Staff recommends a civil penalty of \$100 for one (1) violation(s) of the Motor Carrier Safety Statutes, Rules and Regulations.

9. Staff further recommends that Ebberts Construction be required to 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. 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).

10. Finally, Staff recommends that Ebberts Construction 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**

11. The Commission finds it has jurisdiction over Ebberts Construction because it is a motor carrier as defined in K.S.A. 2016 Supp. 66-1,108.

12. The Commission finds Ebberts Construction committed one (1) 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. Ebberts Construction Cleanup Inc., of Paola, Kansas is hereby assessed a \$100 civil penalty for one (1) 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. Ebberts Construction is hereby ordered to 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. Ebberts Construction 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 July 11, 2017, this Penalty Order was mailed to Ebberts Construction via Certified Mail, Return Receipt Requested, No. 70161970000105740402. 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 Ebberts Construction's right to a hearing, and this Penalty Order will become a Final Order assessing a \$100 civil penalty against Ebberts Construction, and ordering Ebberts Construction to 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, 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 \$100 is due in thirty (30) days from the date of service of this Order. Payment of \$100, must be made through your personal account with the Kansas Corporation Commission's KTRAN application 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.

G. Failure to pay the \$100 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 Ebberts Construction'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:       **JUL 11 2017**      

  
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Lynn M. Retz  
Secretary to the Commission

AAL

Order Mailed Date

**JUL 12 2017**

**ATTACHMENT "A"**

**Kansas Corporation Commission**

	<b>US DOT #</b> 606656	<b>Legal:</b> EBBERTS CONSTRUCTION CLEAN UP INC <b>Operating (DBA):</b>					
<b>MC/MX #:</b>		<b>Federal Tax ID:</b> [REDACTED] (EIN)					
<b>Review Type:</b> Compliance Review (CR)							
<b>Scope:</b> Principal Office		<b>Location of Review/Audit:</b> Company facility in the U. S.		<b>Territory:</b> C			
<b>Operation Types</b> Interstate Intradate							
<b>Carrier:</b> Non-HM Non-HM		<b>Business:</b> Corporation					
<b>Shipper:</b> N/A N/A		<b>Gross Revenue:</b> [REDACTED]		<b>for year ending:</b> 12/20/2016			
<b>Cargo Tank:</b> N/A							
<b>Company Physical Address:</b> [REDACTED]							
<b>Contact Name:</b> [REDACTED]							
<b>Phone numbers: (1)</b> [REDACTED]		<b>Fax</b>					
<b>E-Mail Address:</b> [REDACTED]							
<b>Company Mailing Address:</b> 35201 W 247TH PAOLA, KS 66071							
<b>Carrier Classification</b> Private Property							
<b>Cargo Classification</b> Garbage, Refuse, Trash							
<b>Equipment</b>							
	<b>Owned Term Leased Trip Leased</b>			<b>Owned Term Leased Trip Leased</b>			
Truck	1	0	0	Trailer	1	0	0
Power units used in the U.S.: 1 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				
<b>&lt; 100 Miles:</b>	1		<b>Total Drivers:</b> 1				
<b>&gt;= 100 Miles:</b>			<b>CDL Drivers:</b> 1				





**EBBERTS CONSTRUCTION CLEAN UP INC**  
U.S. DOT #: 606656

Review Date:  
06/28/2017

**Part A**

QUESTIONS regarding this report or the Federal Motor Carrier Safety or Hazardous Materials rules may be addressed to the Office of Motor Carriers at:

Kansas Corporation Commission  
1500 SW Arrowhead Rd  
Topeka, Ks 66604-4027 1-785-271-3145

**This report will be used to assess your safety compliance.**

**Person(s) Interviewed**

Name: Todd A Ebberts

Title: President

Name:

Title:





**EBBERTS CONSTRUCTION CLEAN UP INC**  
U.S. DOT #: 606656

Review Date:  
06/28/2017

**Part B Violations**

1 STATE	Primary: 382.601(b) CFR Equivalent: 382.601(b)	Discovered 1	Checked 1	Drivers/Vehicles In Violation 0	Checked 0
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**Description**

Failing to provide to employees a written policy on misuse of alcohol and controlled substances that meets the requirements of 382.601(b) 1-11.

**Example**

Driver name: [REDACTED]

Trip date: 5/30/17

The carrier consortium, US Healthworks of Valencia Ca. Stated in the carrier membership letter that the carrier was responsible for drug policy and supervisor training. The carrier stated that he made several calls to the Consortium, but they stated that they refused to provide that to their carriers.

**Safety Fitness Rating Information:**

**Total Miles Operated** 39,650  
**Recordable Accidents** 0  
**Recordable Accidents/Million Miles** 0.00

**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 :

**SATISFACTORY**

Rating Factors		Acute	Critical
Factor 1:	S	0	0
Factor 2:	S	0	0
Factor 3:	S	0	0
Factor 4:	S	0	0
Factor 5:	N	0	0
Factor 6:	S	-	-

Corrective actions must be taken for any violations (deficiencies) identified on Part B of this report.





EBBERTS CONSTRUCTION CLEAN UP INC

U S DOT # 606656

Review Date

06/25/2012

Part B Requirements and/or Recommendations

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

Carrier Signature

*[Handwritten Signature]*

Investigator Signature

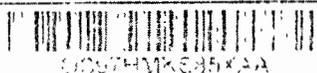
*[Handwritten Signature]* 8213

- 2. 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 carriers 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.
- 3. Provide employees and owner operators with a drug and alcohol policy. The policy will provide a signature page to verify the employee or owner operator has been given a copy of the policy to read and does in fact understand its contents.
- 4. 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 following 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 recurrence 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 Davidson





EBBERTS CONSTRUCTION CLEAN UP INC  
U S DOT # 606656

Review Date  
06/28/2017

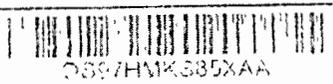
Part B Requirements and/or Recommendations

1500 SW Arrowhead Rd  
Topeka, KS 66604-4027

5. I acknowledge that these requirements and/or recommendations have been discussed with me and my questions have been answered. 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 [Ebberts Construction Clean Up Inc.] operating authority and/or the impoundment of [Ebberts Construction Clean Up Inc.] vehicles.

Carrier Signature *[Signature]*

Investigator Signature *[Signature]* 9213



**ATTACHMENT "B"**

29

Monday

10506<sup>w</sup> 159<sup>th</sup> / R.S. Leewood

Memorial Day (U)

6:00

1:30

good

7 1/2 hrs

30

Tuesday

16221 slator / Carpet Leewood

6:00

2:00

8 hrs

9126<sup>w</sup> 178<sup>th</sup> / Carpet Leewood

good

31

Wednesday

16208 melrose / room Leewood

6:00

3:00

9 hrs

OK

1

Thursday

13413<sup>w</sup> 170<sup>th</sup> / Scarp<sup>th</sup> Leewood

6:00

1:00

7 hrs

KLK / Scarp

KLK / Roub. Swings

flat

Feb  
Mar  
Apr  
May  
Jun

**CERTIFICATE OF SERVICE**

18-TRAM-005-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     **JUL 11 2017**    .

TODD A. EBBERTS, PRESIDENT  
EBBERTS CONSTRUCTION CLEANUP INC.  
35201 W 247TH  
PAOLA, KS 66071  
ebbertscleanup@gmail.com

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

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

Order Mailed Date

**JUL 12 2017**