

1500 SW Arrowhead Road
Topeka, KS 66604-4027



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

Mark Sievers, Chairman
Ward Loyd, Commissioner
Thomas E. Wright, Commissioner

Sam Brownback, Governor

NOTICE OF PENALTY ASSESSMENT

March 23, 2012

Lloyd W. Modlin, Jr., Owner
Lloyd W. Modlin, Jr., d/b/a Western Sales Co
4098 193rd Rd
Bunker Hill, Kansas 67626

This is a notice of a penalty assessment for violation of Kansas Motor Carrier Safety Statutes, Rules, and Regulations discovered during a compliance review conducted on February 17, 2012, by Kansas Corporation Commission Special Investigator Carrie Padgett. For a full description of the penalty and process please refer to the Order that is attached to this notice.

IF YOU ACCEPT THE PENALTY:

You have been assessed a \$6,000 penalty. You have thirty (30) days from service of this Penalty Order to pay the fine amount. Check or money order must be made payable to the Kansas Corporation Commission. Payment is to be mailed to the Fiscal Section 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 calling the Fiscal Office at 785-271-3274.

You must attend a Commission-sponsored safety seminar within the next ninety (90) days 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.

You must submit to one follow-up safety compliance review within the next 12 months. Staff will contact you at a later date to determine an appropriate time for this review.


IF YOU CONTEST THE PENALTY:

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. Respondent must submit an original and seven (7) copies of the request to the Commission's Executive Director at 1500 S.W. Arrowhead Road, Topeka, Kansas 66604 within fifteen (15) days from the date stamped on the last page of the Penalty Order. K.A.R. 82-1-215.

IF YOU FAIL TO ACT:

Failure to pay the fine amount within thirty (30) days of service of the Penalty Order, or in the alternative, provide a written request for a hearing within fifteen (15) days from service of the Penalty Order will result in the attached Order becoming a Final Order and may result in the additional sanction of suspension and/or revocation of your motor carrier operations.

Sincerely,


Amber Whitlock
Litigation Counsel
(785) 271-3301

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

Before Commissioners: Mark Sievers, Chairman
 Ward Loyd
 Thomas E. Wright

In the Matter of the Investigation of **Lloyd W.)
Modlin, Jr., d/b/a Western Sales Co, of)
Bunker Hill, Kansas,** Regarding the Violation)
of the Motor Carrier Safety Statutes, Rules and) Docket No. 12-TRAM-679-PEN
Regulations 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). The Commission, being duly advised in the premises, and after having examined its files and records, finds and concludes as follows:

I. JURISDICTION

1. Pursuant to K.S.A. 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. 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. 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 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. Lloyd W. Modlin, Jr., d/b/a Western Sales Co (Western Sales Co) operates under USDOT number 658052.

5. Western Sales Co operates in intrastate commerce as a private motor carrier.

6. Western Sales Co primarily hauls machinery, large objects, and garbage/refuse.

III. STAFF'S STATEMENT OF FACTS

7. Pursuant to the jurisdiction and authority cited above, on February 17, 2012, Commission Staff (Staff) Special Investigator Carrie Padgett conducted a compliance review of the operations of Western Sales Co. 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. Padgett identified four (4) violations of the Motor Carrier Safety Regulations.

- a. On February 9, 2012, Western Sales Co required or permitted its driver, Dennis Bland, to operate a commercial motor vehicle, a 2001 Mack, VIN [REDACTED] (GVWR 54,000), on an intrastate trip from Bunker Hill, Kansas to Russell, Kansas. This trip is evidenced by Driver/Vehicle Examination Report No. KS00UA001518, dated February 9, 2012, a copy attached hereto as Attachment "B". At the time of this transportation, Western Sales Co failed to require its driver complete a record of duty status. Special Investigator Carrie Padgett found 60

violations of no record duty status within the sample reviewed. Western Sales Co was cited for the same violation during a compliance review conducted on August 12, 2009, and therefore had knowledge of the necessity to require its drivers to complete records of duty status. Western Sales Co's failure to require its drivers to record records of duty status for each 24-hour period, or in the alternative to maintain and retain time records described in Title 49 C.F.R. 395.1(e) under the short haul exemption, using the method described in Title 49 C.F.R. 395.8(a) and to submit the original record to the motor carrier within 13 days of creation is a violation of 49 C.F.R. 395.8(a) as adopted by K.A.R. 82-4-3a and authorized by K.S.A. 2010 Supp. 66-1,129. Staff recommends an enhanced fine in the amount of \$2,000.

- b. During the trip described in paragraph a., above, Western Sales Co failed to maintain a driver qualification file on its driver, Dennis Bland. Special Investigator Carrie Padgett found two violations of no driver qualification files within the sample reviewed. The carrier was cited for the same violation during a compliance review conducted on August 12, 2009, and therefore had knowledge of the requirement to maintain driver qualification files. Western Sales Co's failure to maintain a driver qualification file is a violation of 49 C.F.R. 391.51(a), as adopted by K.A.R. 82-4-3g, and as authorized by K.S.A. 2010 Supp. 66-1,129. Staff recommends an enhanced fine of \$1,500.

- c. During the trip described in paragraph a., above, Western Sales Co failed to maintain a maintenance file on the commercial motor vehicle. The carrier was cited for the same violation during a compliance review conducted on August 12, 2009, and therefore had knowledge of the requirement to maintain maintenance files on commercial motor vehicles. Western Sales Co's failure to maintain the required vehicle inspection records and vehicle maintenance records for 30 days is in violation of 49 C.F.R. 396.3(b), as adopted by K.A.R. 82-4-3 and as authorized by K.S.A. 66-1,129. Staff recommends an enhanced fine of \$1,000.
- d. During the trip described in paragraph a., above, Western Sales Co failed to ensure its driver, Dennis Bland, was included in a random drug and alcohol testing program. The carrier was cited for the same violation during a compliance review conducted on August 12, 2009, and therefore had knowledge of the requirement to include its drivers in random drug and alcohol testing program. Western Sales Co's failure to require its drivers to be enrolled in a random alcohol and controlled substance testing is a violation of 49 C.F.R. § 382.305(i)(2), as adopted by K.A.R. 82-4-3c, and authorized by K.S.A. 2010 Supp. 66-1,129. Staff recommends an enhanced fine of \$1,500.

IV. STAFF'S RECOMMENDATIONS

8. Based upon the available facts, Staff recommends the Commission find Western Sales Co committed four (4) violations of Kansas law that governs motor carriers, including various provisions of the Federal Motor Carrier Safety Regulations (FMCSR), 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 \$6,000 for four (4) violations of the Motor Carrier Safety Statutes, Rules and Regulations.

10. Staff further recommends that Western Sales Co be required to attend a Commission-sponsored safety seminar within the next ninety (90) days and provide 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.

11. Finally, Staff recommends that Western Sales Co submit to one follow-up safety compliance review within the next twelve (12) months. 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 Western Sales Co because it is a motor carrier as defined in K.S.A. 66-1,108.

13. The Commission finds Western Sales Co committed four (4) violations of Kansas law that govern motor carriers, including various provisions of the Federal Motor Carrier Safety Regulations (FMCSR), 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. Lloyd W. Modlin, Jr., d/b/a Western Sales Co, of Bunker Hill, Kansas is hereby assessed a \$6,000 civil penalty for four (4) violations 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. Western Sales Co is hereby ordered to attend a Commission-sponsored safety seminar within the next ninety (90) days and is to provide Staff with written proof of attendance. Further, Western Sales Co is ordered to submit to one follow-up safety compliance review within the next twelve (12) months.

C. Pursuant to K.S.A. 77-537 and K.S.A. 77-542, and amendments thereto, any party may request a hearing on the above issues by submitting a written request, setting forth the specific grounds upon which relief is sought, to the Commission's Executive Director, at 1500 S.W. Arrowhead Road, Topeka, Kansas 66604 within fifteen (15) days from the date of service of this Order. If service is by certified mail, service is complete upon the date delivered shown on the Domestic Return Receipt. Hearings will be scheduled only upon written request. Failure to timely request a hearing will result in a waiver of Western Sales Co's right to a hearing, and this Penalty Order will become a Final Order assessing a \$6,000 civil penalty against Western Sales Co, and ordering Western Sales Co to attend a Commission-sponsored safety seminar within the next ninety (90) days and provide Staff with written proof of attendance, and to submit to a safety compliance review within twelve (12) months from the date of service of this Order.

D. Attorneys for all parties shall enter their appearances in Commission proceedings by giving their names and addresses for the record. A corporation shall not be permitted to enter an appearance, except by its attorney.

E. If you do not request a hearing, the payment of the civil penalty is due in thirty (30) days from date of service of this Order. Checks and Money Orders shall be payable to the Kansas Corporation Commission. For credit card payments, include type of card (Visa, MasterCard, Discover, or American Express), account number and expiration date. Payments shall be mailed to the Fiscal Section 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.*

F. Failure to pay the \$6,000 civil penalty within thirty (30) days of the service of this Penalty Order, and/or failure to comply with the provisions of this Order, may result in revocation of Western Sales Co'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 out-of-service and/or cease and desist orders, and any other remedies available to the Commission by law, without further notice.

G. 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.

Sievers, Chmn; Loyd, Com.; Wright, Com.

Dated: MAR 23 2012



ORDER MAILED MAR 26 2012

Patrice Petersen-Klein
Executive Director

AW

ATTACHMENT "A"

Kansas Corporation Commission

US DOT # 658052	Legal: LLOYD W MODLIN JR Operating (DBA): WESTERN SALES CO
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MC/MX #: **State #:** 00000 **Federal Tax ID:** [REDACTED] **SSN)**

Review Type: Compliance Review (CR) - Receipt

Scope: Principal Office **Location of Review/Audit:** Company facility in the U. S. **Territory:**

Operation Types	Interstate	Intrastate	Business: Corporation
Carrier: N/A	HM		Gross Revenue: [REDACTED] for year ending: 12/31/2010
Shipper: N/A	N/A		
Cargo Tank: N/A			

Company Physical Address:

[REDACTED ADDRESS]

Contact Name: JR Modlin [REDACTED]
Phone numbers: (1) [REDACTED] (2) [REDACTED] **Fax**
E-Mail Address:

Company Mailing Address:

4098 193 STREET
 BUNKER HILL, KS 67626

Report Summary

Report	# of Pages
Part A - General	<u>2</u>
Part B - Violations	<u>2</u>
Part B - Recommendations	<u>2</u>
Review/Audit Receipt Page	<u>1</u>
Total Pages	<u>7</u>

Disclaimer: By signing below, I acknowledge that I have received a copy of this review/audit and agree with the total number of pages indicated (above) for each document. My signature does not imply agreement with the findings of the review/audit, however they have been discussed in detail with me.

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

1500 Arrowhead Drive
 Topeka, Kansas
 785-483-0212

This report will be used to assess your safety compliance.

Person(s) Interviewed	
Name: JR Modlin	Title: Owner
Name: [Signature]	Title:
Reported By: [Signature]	Title: SF Code: KS8218 Date: 2/17/2012
Received By: [Signature]	Title:



Kansas Corporation Commission

US DOT # 658052	Legal: LLOYD W MODLIN JR Operating (DBA): WESTERN SALES CO		
MC/MX #:	State #: 00000	Federal Tax ID [REDACTED] (SSN)	
Review Type: Compliance Review (CR)			
Scope:	Principal Office	Location of Review/Audit: Company facility in the U. S.	Territory:
Operation Types	Interstate	Intrastate	
Carrier: N/A	HM		Business: Corporation
Shipper: N/A	N/A		Gross Revenue: [REDACTED] for year ending: 12/31/2010
Cargo Tank: N/A			
Company Physical Address: [REDACTED] [REDACTED]			
Contact Name: JR Modlin			
Phone numbers: (1) [REDACTED]		(2)	Fax
E-Mail Address:			
Company Mailing Address: 4098 193 STREET BUNKER HILL, KS 67626			
Carrier Classification Private Property			
Cargo Classification Machinery, Large Objects Garbage, Refuse, Trash			
Hazardous Materials 9 Miscellaneous HM Carried Non-Bulk			
Does carrier transport placardable quantities of HM? No			
Is an HM Permit required? N/A			
Driver Information			
	Inter	Intra	
< 100 Miles:		2	Average trip leased drivers/month: 0
>= 100 Miles:			Total Drivers: 2
			CDL Drivers: 1
Equipment			
	Owned	Term Leased	Trip Leased
Truck	2	0	0
			Truck Tractor
			1 0 0
Power units used in the U.S.: 3			
Percentage of time used in the U.S.: 100			



	WESTERN SALES CO (LLOYD W MODLIN JR dba) U.S. DOT #: 658052	State #: 00000	Review Date: 02/17/2012
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: 1500 Arrowhead Drive Topeka, Kansas 785-483-0212			
This report will be used to assess your safety compliance.			
<u>Person(s) Interviewed</u>			
Name: JR Modlin		Title: Owner	
Name:		Title:	



WESTERN SALES CO (LLOYD W MODLIN JR dba) U.S. DOT #: 658052		State #: 00000		Review Date: 02/17/2012	
Part B Violations					
1 FEDERAL	Primary: 382.305(i)(2)	Discovered 1	Checked 2	Drivers/Vehicles In Violation 1	Checked 2
Description Failing to ensure that each driver selected for random alcohol and controlled substances testing has an equal chance of being selected each time selections are made. Example Dennis Bland 2/9/12 roadside					
2 FEDERAL	Primary: 383.23(a)	Discovered 1	Checked 2	Drivers/Vehicles In Violation 1	Checked 2
Description Operating a commercial motor vehicle without a valid commercial driver's license. Example Dennis Bland 2/9/12 roadside					
3 STATE	Primary: 390.19(i) CFR Equivalent: 390.19(a)(2)	Discovered 1	Checked 1	Drivers/Vehicles In Violation 0	Checked 0
Description Failing to file a Motor Carrier Identification Report, Form MCS-150 every 12 months in accordance with the specified schedule. Example 10/10/10 last update					
4 STATE	Primary: 391.51(a) CFR Equivalent: 391.51(a)	Discovered 2	Checked 2	Drivers/Vehicles In Violation 2	Checked 2
Description Failing to maintain driver qualification file on each driver employed. Example Dennis Bland 2/9/12 roadside					
5 STATE	Primary: 395.8(a) CFR Equivalent: 395.8(a)	Discovered 60	Checked 60	Drivers/Vehicles In Violation 2	Checked 2
Description Failing to require driver to make a record of duty status. Example Dennis Bland 2/9/12					



	WESTERN SALES CO (LLOYD W MODLIN JR dba) U.S. DOT #: 658052	Review Date: 02/17/2012
Part B Requirements and/or Recommendations		

1. Accident Countermeasures is a set of defensive strategies designed to reduce preventable accidents. The strategies and forms for implementing accident countermeasures can be found on the FMCSA website at:
<http://www.fmcsa.dot.gov/forms/print/accident.htm>
2. Copies of the regulations, forms, interpretations, and manuals are available from a variety of sources. Check the FMCSA website for a current list of suppliers. www.fmcsa.dot.gov/safety-security/eta/index.htm
3. A copy of your carrier profile can be obtained for \$20 from the SAFER website (<http://safer.fmcsa.dot.gov>) or by calling 800-832-5660 or 703 280-4001. You can also write: Computing Technologies Inc. P.O. Box 3248, Merrifield, VA 22116-3248. Profile cost if ordered by mail or phone is \$27.50.
4. Operating a vehicle 10,001 pounds or more requires a CDL
5. Carrier is required to retain all CVSA roadside inspections for a period of 12 months.
6. Establish a system to control passenger-carrying drivers' hours of service. Do not dispatch drivers who do not have adequate hours available to complete assigned trips legally. Do not allow drivers to exceed the 11, 14, and 60/70-hour limits.
7. 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.

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.

8. Within 15 days send a letter to the Kansas Corporation Commission c/o Gary Davenport describing what actions you



	WESTERN SALES CO (LLOYD W MODLIN JR dba) U.S. DOT #: 658052	Review Date: 02/17/2012
Part B Requirements and/or Recommendations		

have taken in response to this review to ensure that you are complying with the Federal Motor Carrier Safety Regulations. The address is 1500 SW Arrowhead Drive, Topeka, Kansas 66604

9. DRIVER FITNESS BASIC PROCESS BREAKDOWN: Policies and Procedures

DESCRIPTION OF PROCESS BREAKDOWN

BASIC SPECIFIC RECOMMENDED REMEDIES

Implement Safety Improvement Practices: The following are recommended practices related to Policies and Procedures.

- Develop a policy for the timely review (at least twice per year) of driver qualification files. The motor carrier should not rely on third-party sources such as insurance agencies. The procedure should include controls to ensure that documents requiring renewals are in place, to remind drivers of expiration dates on medical certificates so they can schedule another physical examination in advance, and to prevent falsification of documents related to driver qualification.
- Establish a policy requiring drivers to submit copies of all vehicle and roadside inspections and moving violations to carrier management within 24 hours, and to notify management of suspended or revoked Commercial Driver's Licenses (CDLs) immediately following notification of suspension/revocation.
- Establish a policy requiring all new (since 2003) Commercial Driver's License (CDL) drivers to submit documentation of entry-level driver training in - for example, driver qualification requirements, Hours of Service (HOS), driver wellness, and whistleblower protection - or to take entry-level training provided by the carrier.
- Develop a policy for document retention and recordkeeping, including documents that are to be in the possession of the driver as proof of credentials.
- Develop a process to ensure that operations will always have the proper amount of fit drivers. This process would address how to deal with issues such as sick leave, vacation, training, suspension, and termination.
- Develop a written, progressive disciplinary policy comprising warning letters, suspensions, and fines, and ultimately leading to termination, focused on taking corrective action to ensure that drivers comply with driver-fitness regulations and company policies. This policy should also specify consequences for any carrier official who knowingly and willfully allows driver-fitness violations.
- 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

10. CONTROLLED SUBSTANCES AND ALCOHOL BASIC PROCESS BREAKDOWN: Monitoring and Tracking

DESCRIPTION OF PROCESS BREAKDOWN

BASIC SPECIFIC RECOMMENDED REMEDIES

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

- Evaluate personnel who are monitoring drivers against performance standards related to controlled-substance and alcohol regulations and company policies to ensure that they are applying standards fairly, consistently, and equitably, and are documenting evaluations.
- 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 controlled substances and alcohol. 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.
- Monitor and adjust the testing program to ensure proper annual driver sampling.
- Ensure that all test records are monitored for adherence to retention dates and nondisclosure requirements.
- Implement a system for keeping accurate records of controlled-substance and alcohol completed training needs and completed training, via software, checklist in the driver's file, and/or another appropriate method.
- Implement an effective process for monitoring and tracking drivers' removal from safety-sensitive functions and



Part B Requirements and/or Recommendations

their return to duty according to controlled-substance and alcohol regulations and related company policies and procedures.

- Provide adequate oversight of all personnel hiring and training processes, including qualification of service agents, to ensure adherence to controlled-substance and alcohol regulations and company policies and procedures.
- Maintain the following documents to help evaluate the performance of all staff (drivers and managers) involved in controlled-substance and alcohol testing and the effectiveness of the policies and procedures: Motor Vehicle Record (MVR); records related to testing, the designated employer representative (DER), return to duty, and dispatch; lists of drivers removed due to a history of controlled-substance and/or alcohol misuse and those disqualified for personal driving under the influence (DUI); substance-abuse professional (SAP) letters; and for each test type, include selection criteria, the eligibility-pool list, and the statistical laboratory summary.
- Regularly evaluate the company's controlled-substance and alcohol-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 controlled-substance and alcohol regulations and company policies.
- When monitoring and tracking issues regarding controlled substances and alcohol use, always assess whether they are individual or represent a systemic breakdown in one of the Safety Management Processes (Policies and Procedures, Roles and Responsibilities, etc.).
- 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.

11. UNSAFE DRIVING BASIC PROCESS BREAKDOWN: Monitoring and Tracking

DESCRIPTION OF PROCESS BREAKDOWN

BASIC SPECIFIC RECOMMENDED REMEDIES

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

- Ensure that the safety director/dispatchers ascertain that all routes can be completed within speed limits.
- Maintain roadside inspection reports, moving violation records, and "How am I driving?" complaints to help evaluate the performance of all staff (drivers and managers) involved in safe driving and the effectiveness of the policies and procedures.
- 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 safe driving. If a driver seems to have license-related problems, 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.
- Ensure that dispatchers and/or the safety manager monitor drivers' speed for violations with use of an electronic or manual movement record that is, that they track driver movements via driver reports, global positioning systems (GPS), and travel receipts.
- Evaluate personnel who are monitoring drivers' safety performance by making sure they are using inspections and other data; applying performance standards fairly, consistently, and equitably; and documenting evaluations.
- Place a "How am I driving?" sticker on every truck to get feedback from the public on drivers exhibiting unsafe behaviors on the road. Assess feedback for safety implications.
- Regularly evaluate the company's unsafe-driving-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 unsafe-driving regulations and company policies.
- Implement a system for keeping accurate records of employee driving-safety training needs and completed training, via software, a checklist in the driver's file, and/or another appropriate method.
- When monitoring and tracking any unsafe-driving-related issues, always assess whether an issue is individual or represents a systemic breakdown in one of the Safety Management Processes (Policies and Procedures, Roles and Responsibilities, etc.).



	WESTERN SALES CO (LLOYD W MODLIN JR dba) U.S. DOT #: 658052	State #: 00000	Review Date: 02/17/2012
Part B Requirements and/or Recommendations			

- 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.



ATTACHMENT “B”

DRIVER/VEHICLE EXAMINATION REPORT

Aspen 2.13.2.4



Kansas Highway Patrol
MOTOR CARRIER SAFETY ASSISTANCE
700 SW Jackson, Ste 704, Topeka, KS 66603
Phone: (785)296-7189 Fax: (785)296-2858
truckinspection@khp.ks.gov

Report Number: KS00UA001518
Inspection Date: 02/09/2012
Start: 10:02:00 AM CT End: 12:19:00 PM CT
Inspection Level: II - Walk-Around
HM Inspection Type: None

LLOYD W MODLIN JR
4098 193 STREET
BUNKER HILL, KS 67626
USDOT#: 00658052
MC/MX#: 351708
State#:

Phone#: [REDACTED]
Fax#: [REDACTED]

Driver: BLAND, DENNIS L
License# [REDACTED] State: KS
Date of Birth: [REDACTED]
CoDriver:
License#: [REDACTED] State:
Date of Birth: [REDACTED]

Location: RUSSELL COUNTY - 167
Highway: 184TH ST. S. OF 15TH ST.
County: RUSSELL, KS

MilePost:
Origin: RUSSELL, KS
Destination: BUNKER HILL, KS
Shipper: LLOYD W MODLIN JR.
Bill of Lading: NONE
Cargo: MACHINERY, (BOB CAT)

VEHICLE IDENTIFICATION

Unit	Type	Make	Year	State	Plate #	Equipment ID	VIN	GVWR	CVSA #	CVSA Issued #	OOS Sticker
1	TR	MACK	1999	KS	[REDACTED]	[REDACTED]	[REDACTED]	33,000			112282

BRAKE ADJUSTMENTS: No Brake Measurements Required For Level 2

VIOLATIONS

Section	Type	Unit	OOS	Citation #	Verify	Crash	Violations Discovered
383.23(a)(2)	F	D	Y	4403855	N	N	Operating a CMV without a CDL--REVOKED, 07/28/2008.
391.41(a) CT	F	D	N	4403856	N	N	No medical certificate in driver's possession.
398.17(c) CA	F	1	N		N	N	Operating a CMV without periodic inspection.
392.2 -	F	1	N		N	N	State vehicle License Plate violation--TAG DISPLAYED ON FRONT OF TRUCK AND REQUIRED TO BE DISPLAYED ON REAR (8-133).
392.2 -	F	1	N		N	N	State vehicle registration violation--OPERATE OVER REGISTERED GROSS WT. (SHOWING REGISTERED WT. OF 24,000 LBS. CHECKED WT. AT 47,000 LBS).
393.75(a)(3)	F	1	Y		U	N	Tire-flat and/or audible air leak--AXLE #4 LEFT OUTSIDE TIRE CHECKED @ 30PSI (RATED: 120PSI) & INSIDE TIRE CHECKED @ 48PSI (RATED: 105PSI).
393.95(a)	F	1	N		N	N	Unsecured fire extinguisher--LATCH IS BROKEN.
396.5(b)	F	1	N		N	N	Oil and/or grease leak--HYDROLIC CYLINDER LEFT SIDE IS LEAKING OIL FROM FITTING.
393.9(a) -	F	1	N		N	N	Inoperable required lamp--LEFT REAR ID. LAMP IS INOP.

HazMat: No HM Transported.

Placard: No Cargo Tank:

Special Checks: Size & Weight

* Pursuant to the authority contained in Title 48, CFR; K.S.A. 66-1,129; K.C.C. Reg. 82-4-3, I hereby declare DENNIS BLAND "OUT OF SERVICE". No person and/or carrier shall permit and/or require this driver to operate any commercial vehicle until: Has a Valid Commercial Driver's License. This Out of Service condition may result in the assessment of a Civil Penalty being issued against the Carrier indicated on this report. Driver Initials _____

* Pursuant to the authority contained in Title 49, CFR; K.S.A. 66-1,129; K.C.C. Reg. 82-4-3, I hereby declare the above marked unit(s) as "OUT OF SERVICE". No person and/or carrier shall permit and/or require the removal of the "OUT OF SERVICE" stickers or the operation of this motor vehicle until ALL out of service defects have been corrected. This Out of Service condition may result in the assessment of a Civil Penalty being issued against the Carrier indicated on this report. Driver Initials _____

* NOTE TO MECHANIC: The undersigned certifies that all mechanical defects listed on this report HAVE BEEN CORRECTED at the time of signature.

Signature Of Repairer X: _____ Facility: _____ Date: _____

"I" DRIVER: THIS FORM IS REQUIRED TO BE RETURNED TO THE CARRIER BY REGULATION. "I" CARRIER CERTIFICATION: All defects on this sheet must be corrected or acknowledged PRIOR TO RE-DISPATCH and then certified by a responsible carrier official who must sign below. RETURN THIS FORM WITHIN 15 DAYS to the Motor Carrier Division of the KANSAS HIGHWAY PATROL at the address listed at the top of this form.

Signature Of Motor Carrier X: _____ Title: _____ Date: _____

(aer) 57,000 2001 MACK - 279EBY

Report Prepared By:
B. WERTH

Badge #:
9202

Copy Received By:
DENNIS BLAND

Page 1 of 1



00658052 KS KS00UA001518

X _____

X _____

IN RE: DOCKET NO. 12-TRAM-679-PEN

DATE MAR 23 2012

PLEASE FORWARD THE ATTACHED DOCUMENT (S) ISSUED IN THE ABOVE-REFERENCED DOCKET
TO THE FOLLOWING:

NAME AND ADDRESS	NO. CERT. COPIES	NO. PLAIN COPIES
AMBER WHITLOCK, LITIGATION COUNSEL KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD ROAD TOPEKA, KS 66604-4027 ***Hand Delivered***		
LLOYD W MODLIN JR LLOYD W. MODLIN, JR. D/B/A WESTERN SALES CO. 4098 193RD ST BUNKER HILL, KS 67626		

ORDER MAILED MAR 26 2012

The Docket Room hereby certified that on this _____ day of _____, 20_____, it caused a true and correct copy of the attached ORDER to be deposited in the United States Mail, postage prepaid, and addressed to the above persons.