

STATE OF KANSAS



CORPORATION COMMISSION
1500 SW ARROWHEAD ROAD
TOPEKA, KS 66604-4027

PHONE: 785-271-3100
FAX: 785-271-3354
<http://kcc.ks.gov/>

GOVERNOR JEFF COLYER, M.D.

SHARI FEIST ALBRECHT, CHAIR | JAY SCOTT EMLER, COMMISSIONER | DWIGHT D. KEEN, COMMISSIONER

NOTICE OF PENALTY ASSESSMENT
19-TRAM-208-PEN

December 4, 2018

Erik Enger, Owner
d/b/a A & E Tree
7500 College Blvd Ste 500A
Overland Park, KS 66210

This is a notice of a penalty assessment against Erik Enger, d/b/a A & E Tree (A & E Tree) for violation(s) of Kansas Motor Carrier Safety Statutes, Rules, and Regulations discovered during a compliance review conducted on October 30, 2018, by Kansas Corporation Commission Special Investigator Wade Patterson. Penalties are assessed in accordance with the FY 2019 Uniform Penalty Assessment Matrix, approved by the Commission on August 7, 2018. For a full description of the penalty(s) and terms and obligations please refer to the Order attached to this notice.

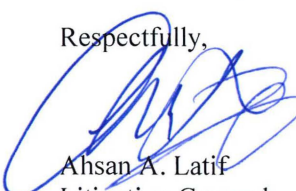
IF YOU ACCEPT THE PENALTY: A & E Tree has been assessed a \$750 penalty. You have thirty (30) days from the date of service of the Penalty Order to pay the penalty. Please remit payment of \$750, through your personal account with the Kansas Corporation Commission's KTRAN system located at <https://puc.kcc.ks.gov/ktran/>. If you have not received a letter from the Transportation Division assigning you a PIN, please contact that Division at 785-271-3145. You must have an account through KTRAN to pay the penalty owed.

The attached Order requires a representative of A & E Tree to attend a Commission-sponsored safety seminar within ninety (90) days from the date of the Order and to provide the undersigned Litigation Counsel with written proof of attendance. A schedule of dates and locations for safety seminars can be found at the Commission's website http://www.kcc.state.ks.us/trans/safety_meetings.htm. The Order also requires your company to submit to one follow-up safety compliance review within 18 months from the date of the Order. Transportation Staff will contact your company 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. A & E Tree must file, within fifteen (15) days from the date of service of this Order, the request for hearing with the Commission's electronic filing system found at <https://puc.kcc.ks.gov/e-filing/e-express/>, and mail a copy of the request for hearing to the undersigned at the above address. If you do not have access to the internet, you can mail an original and seven copies of the request to the Secretary to the Commission at 1500 S.W. Arrowhead Road, Topeka, Kansas 66604, and mail a copy to the undersigned Litigation Counsel. K.A.R. 82-1-215; K.S.A. 2017 Supp. 77-542.

IF YOU FAIL TO ACT: Failure to pay the penalty of \$750 within thirty (30) days from the date of service of the Penalty Order or failure to comply with the terms of the Order, or in the alternative, failure to provide a timely written request for a hearing, will result in the Order becoming final and may result in additional sanctions of suspension and/or revocation of your motor carrier operating authority.

Respectfully,


Ahsan A. Latif
Litigation Counsel
(785) 271-3118

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

Before Commissioners: Shari Feist Albrecht, Chair
 Jay Scott Emler
 Dwight D. Keen

In the Matter of the Investigation of **Erik Enger,**)
d/b/a A & E Tree, of Overland Park, KS,)
Regarding the Violation of the Motor Carrier)
Safety Statutes, Rules and Regulations and the) Docket No. 19-TRAM-208-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). Having examined its files and records, and being duly advised in the premises, the Commission finds and concludes as follows:

I. JURISDICTION

1. Pursuant to K.S.A. 2017 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. 2017 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. 2017 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 issue an order on the Commission's own motion when the Commission believes the entity is in violation of the law or any order of the Commission.

II. BACKGROUND

4. Erik Enger, d/b/a A & E Tree (A & E Tree) operates using USDOT number 2451352.

5. Erik Enger attended a Commission-sponsored Motor Carrier Education and Safety Instructional Meeting on March 13, 2017, on behalf of A & E Tree.

6. A & E Tree is a private motor carrier which primarily hauls tree debris.

III. STATEMENT OF FACTS

7. Pursuant to the jurisdiction and authority cited above, on October 30, 2018, Commission Staff (Staff) Special Investigator Wade Patterson conducted a safety compliance review of the operations of A & E Tree. 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, the special investigator identified one (1) violation(s) of the Motor Carrier Safety Regulations.

- a. On August 22, 2018, A & E Tree required or permitted its driver, Andrew Enger, to operate a CDL-required commercial motor vehicle, a 2003 International, VIN ending in 016294, GVWR 54,000 lbs., in interstate commerce from Kansas City, Missouri to Overland Park, Kansas. This

trip is evidenced by e-mail communication, dated October 25, 2018, a copy of which is attached hereto as Attachment “B” and is hereby incorporated by reference. At the time of this transportation, A & E Tree was utilizing a commercial motor vehicle that had not been periodically (annually) inspected since September 28, 2016. The special investigator discovered four (4) violations of this type. The carrier’s failure to conduct periodic (annual) inspections on commercial motor vehicles is a violation of 49 C.F.R. 396.17(c), adopted by K.A.R. 82-4-3j, and authorized by K.S.A. 2017 Supp. 66-1,129. Staff recommends a fine of \$750.

IV. STAFF’S RECOMMENDATIONS

8. Based upon the available facts, Staff recommends the Commission finds A & E Tree 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.

9. Additionally, Staff recommends a civil penalty of \$750 for one (1) violation(s) of the Motor Carrier Safety Statutes, Rules and Regulations.

10. Staff further recommends that a representative from A & E Tree 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 safety seminars can be found on the Commission’s website at http://kcc.ks.gov/trans/safety_meetings.htm.

11. Finally, Staff recommends that A & E Tree 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 A & E Tree because it is a motor carrier as defined in K.S.A. 2017 Supp. 66-1,108.

13. The Commission finds A & E Tree 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. Erik Enger, d/b/a A & E Tree, of Overland Park, KS is hereby assessed a \$750 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. A & E Tree 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. A & E Tree 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. 2017 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 copies of the request to the Secretary to the Commission, at 1500 S.W. Arrowhead Road, Topeka, Kansas 66604, and mail a copy of the request to Litigation Counsel. A hearing will be scheduled only upon written request. Failure to timely request a hearing will result in a waiver of A & E Tree's right to a hearing, and this Penalty Order will become a Final Order assessing a \$750 civil penalty against A & E Tree, and ordering a representative from A & E Tree 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 18 months from the date of this Order.

E. If a request for hearing is filed, attorneys for all parties shall enter their appearances in Commission proceedings by giving their names and addresses for the record. For civil penalties 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 less than \$500, a corporation may appear by a duly authorized representative of the corporation. K.S.A. 2017 Supp. 66-1,142b(e) and amendments thereto.

F. If you do not request a hearing, the payment of the civil penalty of \$750 is due in thirty (30) days from the date of service of this Order. Payment of \$750 must be made through your personal account with the Kansas Corporation Commission's KTRAN system located at <https://puc.kcc.ks.gov/ktran/>. You must have an account through KTRAN to pay the penalty.

G. Failure to pay the \$750 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 A & E Tree'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.

Albrecht, Chair; Emler, Commissioner; Keen, Commissioner






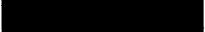

Dated: 12/04/2018




Lynn M. Retz
Secretary to the Commission

AAL

ATTACHMENT “A”

	US DOT # 2451352	Legal: A & E TREE Operating (DBA):
MC/MX #:		Federal Tax ID:  (EIN)
Review Type: Non-ratable Review - CSA		Focused Investigation
Scope: Principal Office	Location of Review/Audit: Company facility in the U. S. Territory:	
Operation Types	Interstate Intrastate	
Carrier: Non-HM N/A	Business: Corporation	
Shipper: N/A N/A	Gross Revenue:  for year ending: 12/31/2017	
Cargo Tank: N/A		
Company Physical Address:		
 OVERLAND PARK, KS 66210		
Contact Name:	Erik Enger	
Phone numbers: (1) 	(2)	Fax
E-Mail Address:		
Company Mailing Address:		
 OVERLAND PARK, KS 66210		
Carrier Classification		
Private Property		
Cargo Classification		
Other Tree Debris		
Equipment		
	Owned	Term Leased Trip Leased
Truck	4	0 0
Power units used in the U.S. 4		
Percentage of time used in the U.S. 100		
Does carrier transport placardable quantities of HM? No		
Is an HM Permit required? N/A		
Driver Information		
	Inter	Intra
< 100 Miles:		
>= 100 Miles:	4	
Average trip leased drivers/month: 0		
Total Drivers: 4		
CDL Drivers: 1		



	A & E TREE U.S. DOT #. 2451352	Review Date 10/30/2018
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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

This report will be used to assess your safety compliance.

Person(s) Interviewed

Name: Erik Enger

Title: Owner

Name:

Title:



	A & E TREE	Review Date 10/30/2018
	U.S. DOT # 2451352	

Part B Violations

1 FEDERAL	Primary 396.17(a)	Discovered 4	Checked 4	Drivers/Vehicles In Violation 4	Checked 4
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Description

Using a commercial motor vehicle not periodically inspected.

Example

On 08/22/2018 A & E Tree had driver Andrew Enger (MO CDL# [REDACTED]) operate a CDL required commercial motor vehicle (2003 International 7400 VIN# [REDACTED] 016294) in interstate commerce. This vehicle has a gross vehicle weight rating of 54,000 lbs. Driver operated this vehicle from Wyandotte Missouri to Overland Park Kansas. At the time of this trip, carrier was utilizing a commercial motor vehicle not periodically inspected.

Safety Fitness Rating Information:

Total Miles Operated 10,000
Recordable Accidents 0


OOS Vehicle (CR): 0
Number of Vehicle Inspected (CR): 0
OOS Vehicle (MCMIS):
Number of Vehicles Inspected (MCMIS):

Your proposed safety rating is :

This Review is not Rated.

If this was a focused investigation, which will be noted in the Review Type on the first page of this report (Part A), some factors shown above may be marked "SATISFACTORY" even if they were not reviewed. A focused investigation does not include review of all regulatory parts and factors as set forth in 49 C.F.R. Part 385, Appendix B's safety rating methodology and cannot therefore result in a SATISFACTORY safety rating. It may, however, result in a less than SATISFACTORY rating if sufficient violations are discovered in the parts and factors examined to result in a CONDITIONAL or UNSATISFACTORY rating.



	A & E TREE U.S. DOT #. 2451352	Review Date 10/30/2018
Safety Management Process Breakdowns and Remedies		

1. 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. Discuss with your employees/drivers the "Security Measures for Truck Drivers and Companies" which were provided and reviewed with motor carrier official. Motor carriers should visit the following website for more information:
<http://www.fmcsa.dot.gov/documents/Hijacking-Brochure.pdf>

For all Investigations that could result in a Notice of Claim


- PLEASE NOTE: The violations discovered during this compliance review may affect the civil penalty proposed in any subsequent Notice of Claim. 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 Notice of Claim. Your signature for receipt of this report acknowledges your understanding that the violations discovered by the FMCSA during this review may be used to calculate any civil penalty proposed as a result of this review.

Information on your compliance status, roadside inspections, regulatory changes, accident countermeasures and hazardous material incident prevention manual is available on the Internet at the Federal Motor Carrier Safety Administration's web site at <http://www.fmcsa.dot.gov/> and <http://www.safer.fmcsa.dot.gov/>.

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



	A & E TREE U.S. DOT #: 2451352	Review Date 10/30/2018
Safety Management Process Breakdowns and Remedies		

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

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. VEHICLE MAINTENANCE BASIC - INSPECTION-REPAIR-MAINTENANCE PROCESS BREAKDOWN Roles and Responsibilities

DESCRIPTION OF PROCESS BREAKDOWN:


A & E Tree's violations occurred due to a breakdown regarding the roles and responsibilities elements of compliance within this section. Carrier neglected to maintain records of periodic annual inspections for his commercial motor vehicle fleet. It is your responsibility to conduct these inspections annually and to maintain the current and previous inspections (14 months). These duties and the documents verifying their completion require continued monitoring and tracking by carrier officials to ensure compliance. Utilize the documents and instructions provided to you during this review to assist you in correcting the deficiencies.

BASIC SPECIFIC RECOMMENDED REMEDIES

Implement Safety Improvement Practices: The following are recommended practices related to Roles and Responsibilities.

- Define and document responsibilities of managers, supervisors, drivers, dispatchers, mechanics, and technicians as related to vehicle inspection, repair, and maintenance policies, including the monitoring and documentation of defects and repairs.
- Define and document roles and responsibilities of mechanics and technicians for differentiating between safety-related defects and other defects and for taking unsafe vehicles Out-of-Service (OOS).
- Empower the person who is in charge of fixing trucks with the authority to complete tasks, such as the purchasing of new parts when needed.
- Define and document roles and responsibilities for checking daily completion of Driver Vehicle Inspection Records (DVIRs) and certifying repair before the next assignment.
- Define and document dispatcher responsibilities for planning, scheduling, monitoring, and adjusting fleet operations in accordance with repair and maintenance requirements.



	A & E TREE U.S. DOT #. 2451352	Review Date: 10/30/2018
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Safety Management Process Breakdowns and Remedies

- Define driver responsibilities for informing managers, supervisors, and mechanics/technicians of safety-related defects and repair requirements prior to vehicle operation, including those resulting from vehicle Out-of-Service (OOS) orders.

Seek Out Resources:

- You are encouraged to review your company's record at the following website [http //ai.fmcsa.dot.gov/SMS](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”

Wade Patterson

From: Erik Enger <[REDACTED]>
Sent: Thursday, October 25, 2018 5:02 PM
To: Wade Patterson
Subject: Re. Information Request

This is an EXTERNAL EMAIL. Think before clicking a link or opening attachments.

Hi Wade ,

International 7400 - Year 2003 - GVWR - 54,000
Freight Liner M2- Year 2003- GVWR- 26,001
International 4300- Year 2005-GVWR- 25,999
Ford F-750- Year 2003 - GVWR -26,001

Interstate Trip (International 7400 - Driver : Andrew Enger)
8/22/18

From : [REDACTED] Wyandotte St. Kansas City, MO 64145 | Departure Time 815am
To: [REDACTED] W 156th St. Overland Park, KS | Arrival Time 910am

Please let me know if you need anything further.

Best Regards,
Erik Enger



A&E Tree Service

[REDACTED]
Overland Park, KS 66210

Erik Enger | *President & Arborist*

Direct [REDACTED]
[REDACTED]

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CERTIFICATE OF SERVICE

19-TRAM-208-PEN

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of
electronic service on 12/04/2018.

ERIK ENGER, OWNER
ERIK ENGER
D/B/A A & E TREE
7500 COLLEGE BLVD STE 500A
OVERLAND PARK, KS 66210
erik@aetree.com

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

/S/ DeeAnn Shupe

DeeAnn Shupe