

1500 SW Arrowhead Road
Topeka, KS 66604-4027

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



20170425024756
Kansas Corporation Commission

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

Sam Brownback, Governor

NOTICE OF PENALTY ASSESSMENT

April 25, 2017

17-TRAM-465-PEN

Alexandra C. Vail, Office Manager
Vailway Transport LLC
1214 E 570th Ave
Pittsburg, Kansas 66762

Certified Mail No. 70161970000105740945

This is a notice of a penalty assessment against Vailway Transport LLC for violation(s) of Kansas Motor Carrier Safety Statutes, Rules, and Regulations discovered during a compliance review conducted on April 5, 2017, by Kansas Corporation Commission Special Investigator(s) Michael Heenan. 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: Vailway Transport has been assessed a \$250 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.

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. Vailway Transport 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. 2015 Supp. 77-542.

IF YOU FAIL TO ACT: Failure to pay the penalty of \$250 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,


Ahsan A. Latif
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 **Vailway**)
Transport LLC, of Pittsburg, Kansas,)
Regarding the Violation of the Motor Carrier)
Safety Statutes, Rules and Regulations and the) Docket No. 17-TRAM-465-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. 2015 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. 2015 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. 2015 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. Vailway Transport LLC (Vailway Transport) obtained private and common operating authority from the Commission on November 6, 2014, and operates under KSMCID number 170673 and USDOT number 1481035.

5. Alexandra Vail attended a Commission-sponsored Motor Carrier Education and Instructional Meeting on November 4, 2014, on behalf of Vailway Transport.

6. Vailway Transport is a private and common motor carrier which primarily hauls grain, feed and hay.

III. STATEMENT OF FACTS

7. Pursuant to the jurisdiction and authority cited above, on April 5, 2017, Commission Staff (Staff) Special Investigator(s) Michael Heenan conducted a compliance review of the operations of Vailway Transport. 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. Heenan identified one (1) violation(s) of the Motor Carrier Safety Regulations.

- a. On February 6, 2017, Vailway Transport required or permitted its driver, James J. Sahr, to operate a CDL-required commercial motor vehicle, a 2009 Peterbilt, VIN ending in 783387, GVWR 48,000 lbs., pulling a 2005 Cornhusker grain trailer, VIN ending in 0007824, GVWR 65,000 lbs., in

interstate commerce from Purdy, Missouri to Chanute, Kansas. This trip is evidenced by Driver's Daily Log, dated February 6, 2017, a copy of which is attached hereto as Attachment "B" and is hereby incorporated by reference. At the time of this transportation, Vailway Transport 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 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. 2015 Supp. 66-1,129. Staff recommends a fine of \$250.

IV. STAFF'S RECOMMENDATIONS

8. Based upon the available facts, Staff recommends the Commission finds Vailway Transport 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 \$250 for one (1) violation(s) of the Motor Carrier Safety Statutes, Rules and Regulations.

10. Staff further recommends that Vailway Transport 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.

11. Finally, Staff recommends that Vailway Transport 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 Vailway Transport because it is a motor carrier as defined in K.S.A. 2015 Supp. 66-1,108.

13. The Commission finds Vailway Transport 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. Vailway Transport LLC, of Pittsburg, Kansas is hereby assessed a \$250 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. Vailway Transport 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. Vailway Transport 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. 2015 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 25, 2017, this Penalty Order was mailed to Vailway Transport via Certified Mail, Return Receipt Requested, No. 70161970000105740945. 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 Vailway Transport's right to a hearing, and this Penalty Order will become a Final Order assessing a \$250 civil penalty against Vailway Transport, and ordering Vailway Transport 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. 2015 Supp. 66-1,142b(e) and amendments thereto.

F. If you do not request a hearing, the payment of the civil penalty of \$250 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.*

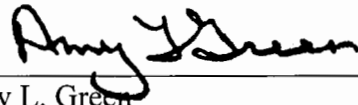
G. Failure to pay the \$250 civil penalty within thirty (30) days from the date of service of this Penalty Order, *see* K.S.A. 66-1,105, and/or failure to comply with the provisions of this Order, may result in suspension of Vailway Transport's motor carrier operating authority without further notice. 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 25 2017


A handwritten signature in black ink, appearing to read "Amy L. Green". The signature is written in a cursive style with a large, stylized "A" and "G".

Amy L. Green
Secretary to the Commission

AAL

ATTACHMENT “A”

Kansas Corporation Commission

	US DOT # 1481035	Legal: VILWAY TRANSPORT LLC					
		Operating (DBA):					
MC/MX #: 799717		State #: [REDACTED]	Federal Tax ID: [REDACTED] (EIN)				
Review Type: Compliance Review (CR)							
Scope: Principal Office		Location of Review/Audit: Company facility in the U. S.		Territory: C			
Operation Types Interstate Intrastate							
Carrier: Non-HM Non-HM		Business: Corporation					
Shipper: N/A N/A		Gross Revenue: [REDACTED] for year ending: 12/31/2016					
Cargo Tank: N/A							
Company Physical Address:							
[REDACTED]							
Contact Name: Alexandra C Vail							
Phone numbers: (1) [REDACTED]		Fax					
E-Mail Address: [REDACTED]							
Company Mailing Address:							
1214 EAST 570TH AVE PITTSBURG, KS 66762-8718							
Carrier Classification							
Authorized for Hire		Private Property					
Cargo Classification							
Grain, Feed, Hay							
Equipment							
	Owned Term Leased Trip Leased			Owned Term Leased Trip Leased			
Truck Tractor	1	0	0	Trailer	1	0	0
Power units used in the U.S.: 1							
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	Average trip leased drivers/month: 0				
< 100 Miles:			Total Drivers: 2				
>= 100 Miles:	2		CDL Drivers: 2				





VAILWAY TRANSPORT LLC

U.S. DOT #: 1481035

State #: [REDACTED]

Review Date:

04/05/2017

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: Alexandra C Vail

Title: Office Manager

Name: [REDACTED]





VAILWAY TRANSPORT LLC
U.S. DOT #: 1481035

State # [REDACTED]

Review Date:
04/05/2017

Part B Violations

1 FEDERAL	Primary: 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: 2-6-17

Carrier had a written drug and alcohol policy for drivers. It was signed by the owner [REDACTED] only and the driver [REDACTED] had not signed a drug policy. The carrier stated he signed to verify that he approved of the policy and was unaware that the drivers were supposed to sign the policy to acknowledge the policy.

Safety Fitness Rating Information:

Total Miles Operated 55,535
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.





VAILWAY TRANSPORT LLC

U.S. DOT #: 1481035

State #: [REDACTED]

Review Date:

04/05/2017

Part B Requirements and/or Recommendations

1. 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

2. 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.

3. FMCSA recently announced planned improvements to the Carrier Safety Measurement System (SMS) which was





VAILWAY TRANSPORT LLC
U.S. DOT #: 1481035

State #: [REDACTED]

Review Date:
04/05/2017

Part B Requirements and/or Recommendations

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.

4. 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.
5. "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"

Carrier Signature

Alexandra Stail

Investigator Signature

M.W. Hansen 8213

6. 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 [Vailway Transport LLC] operating authority and/or the impoundment of [Vailway Transport LLC] vehicles.

Carrier Signature

Alexandra Stail

Investigator Signature

M.W. Hansen 8213

ATTACHMENT “B”

VAILWAY TRANSPORT, LLC

4447 E 85th Street

Pittsburg, KS 66762

DRIVER'S DAILY LOG

I certify these entries are true and correct.

(Driver's Signature in full)

TRUCK: 01 TRAILER: T-37

2 - 6 - 17

MONTH DAY YEAR

	MID-NIGHT	1	2	3	4	5	6	7	8	9	10	11	NOON	1	2	3	4	5	6	7	8	9	10	11	Total Hours
1: OFF DUTY																									10 ³ / ₄
2: SLEEPER BERTH																									3.75
3: DRIVING																									7 ¹ / ₂
4: ON DUTY (not Driving)																									5 ¹ / ₂
REMARKS																									24

KS 9+25+76=22485
MO 72+67
AR 63
OK 193

George's SPR 769534
Fletcher 769431
Westville 769554
Fletcher 769676

IF IT, KS 769230-769221 9
Lucy 769302-769230 72
26 AR 769365-769302 63

BEGINNING ODOMETER: 769,221
STATELINE: MO ODMETER: 769,230 = 9 KS.
AR 769,302 = 71 MO. 72
MO. 769,365 = 63 AR.
KS 769,432 = 67 MO.
OK. 769,457 = 25 KS.
KS. 769,650 = 193 OK.
ENDING ODOMETER: 769,676 = 26 KS.

Fletcher MO 769432-769365 67
FB KS 769457-769432 25
F. 11 OK 769650-769457 193
Clint KS 769676-769650 26
KS 60 AR 63
TO MO 202139 OK 193

CERTIFICATE OF SERVICE

17-TRAM-465-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 26 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

ALEXANDRA C. VAIL, MEMBER
VAILWAY TRANSPORT, LLC
1214 E 570TH AVE
PITTSBURG, KS 66762-8718
alexandravail@yahoo.com

/S/ DeeAnn Shupe

DeeAnn Shupe

Order Mailed Date
APR 26 2017