

1500 SW Arrowhead Road
Topeka, KS 66604-4027

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



20180301121005
Kansas Corporation Commission

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

Governor Jeff Colyer, M.D.

NOTICE OF PENALTY ASSESSMENT
18-TRAM-361-PEN

March 1, 2018

Greg Gathers, President
Custom Tree Care, Inc.
4504 SW Burlingame Rd
Topeka, Kansas 66611

Certified Mail No. 70161970000105744110

This is a notice of a penalty assessment against Custom Tree Care, Inc. (Customer Tree Care) for violation(s) of Kansas Motor Carrier Safety Statutes, Rules, and Regulations discovered during a compliance review conducted on February 15, 2018, by Kansas Corporation Commission Special Investigator Jared Smith. Penalties 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 attached to this notice.


IF YOU ACCEPT THE PENALTY: Customer Tree Care has been assessed a \$3000 penalty. You have thirty (30) days from the date of service of the Penalty Order to pay the penalty. Please remit payment of \$3000, 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 Customer Tree Care 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. Customer Tree Care 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. 2016 Supp. 77-542.

IF YOU FAIL TO ACT: Failure to pay the penalty of \$3000 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

Before Commissioners: Shari Feist Albrecht, Chair
Jay Scott Emler
Pat Apple

In the Matter of the Investigation of **Custom Tree**)
Care, Inc., of Topeka, Kansas, Regarding the)
Violation of the Motor Carrier Safety Statutes,)
Rules and Regulations and the Commission's) Docket No. 18-TRAM-361-PEN
Authority to Impose Penalties, Sanctions and/or)
the Revocation of Motor Carrier Authority.)
)

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:

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 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. Custom Tree Care, Inc. (Customer Tree Care) has private operating authority with the Commission and further operates USDOT number 1347949.

5. Customer Tree Care provides tree removal and tree maintenance primarily in the Topeka and Kansas City areas. It owns 14 trucks, 1 truck tractor and 8 trailers and employs 21 drivers, 10 of which are licensed CDL drivers.

6. Customer Tree Care is a private motor carrier which primarily hauls tree debris.

III. STATEMENT OF FACTS

7. Pursuant to the jurisdiction and authority cited above, on February 15, 2018, Commission Staff (Staff) Special Investigator Jared Smith conducted a compliance review of the operations of Customer Tree Care. 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 four (4) violation(s) of the Motor Carrier Safety Regulations.

- a. On January 23, 2018, Custom Tree Care required or permitted its driver, Layton Harris, to operate a CDL-required commercial motor vehicle, a 1998 International, VIN ending in 520083, GVWR 33,000 lbs., in intrastate commerce from Topeka, Kansas to Lawrence, Kansas. This trip is

evidenced by Driver/Vehicle Examination Report Number KSHP92221488, dated January 23, 2018, a copy of which is attached hereto as Attachment "B" and is hereby incorporated by reference. At the time of this transportation, Custom Tree Care failed to include driver Harris on the list for CDL-drivers subject to random alcohol and controlled substances testing, not allowing him an equal chance of being selected at the time selections are made. The carrier's failure to ensure that each driver selected for random alcohol and controlled substance testing has an equal chance of being selected each time selections are made is in violation of 49 C.F.R. 382.305(i)(2), adopted by K.A.R. 82-4-3c and authorized by K.S.A. 2016 Supp. 66-1,129. Staff recommends a fine of \$1,000.

- b. On January 29, 2018, Custom Tree Care required or permitted its driver, Nathan McDonald, to operate a CDL-required commercial motor vehicle, a 2006 International, VIN ending in 28726, GVWR 25,999 lbs., in interstate commerce from Kansas City, Kansas to Kansas City, Missouri. This trip is evidenced by Driver/Vehicle Examination Report Number MO00K7013306, dated January 29, 2018, a copy of which is attached hereto as Attachment "C" and is hereby incorporated by reference. At the time of this transportation, Custom Tree Care failed to keep a record of inspection, repairs and maintenance on the commercial motor vehicles indicating their date and nature. The special investigator discovered five (5) violations of this type. The carrier's failure to maintain the required records of vehicle inspection, maintenance, and repair on the commercial motor

vehicles owned for 30 days is in violation of 49 C.F.R. 396.3(b), adopted by K.A.R. 82-4-3j, and authorized by K.S.A. 2016 Supp. 66-1,129. Staff recommends a fine of \$750.

- c. During the transportation described in paragraph a., above, Custom Tree Care failed to require its driver to prepare a Driver Vehicle Inspection Report (DVIR) on the commercial motor vehicle operated. The special investigator discovered 60 violations of this type. The carrier's failure to require its drivers to prepare a DVIR in writing, at the completion of each day's work, on each vehicle operated and to submit copies of the reports to the motor carrier for action and record retention is a violation of 49 C.F.R. 396.11(a)(1), adopted by K.A.R. 82-4-3j, and authorized by K.S.A. 2016 Supp. 66-1,129. Staff recommends a fine of \$500.
- d. During the transportation described in paragraph b., above, Custom Tree Care used a commercial motor vehicle that was not periodically (annually) inspected. The special investigator discovered two (2) 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. 2016 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 Customer Tree Care committed four (4) 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 \$3000 for four (4) violation(s) of the Motor Carrier Safety Statutes, Rules and Regulations.

10. Staff further recommends that a representative from Customer Tree Care 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 Customer Tree Care 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 Customer Tree Care because it is a motor carrier as defined in K.S.A. 2016 Supp. 66-1,108.

13. The Commission finds Customer Tree Care committed four (4) 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. Custom Tree Care, Inc., of Topeka, Kansas is hereby assessed a \$3000 civil penalty for four (4) 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. Customer Tree Care 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. Customer Tree Care 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. On March 1, 2018, this Penalty Order was mailed to Customer Tree Care via Certified Mail, Return Receipt Requested, Receipt Number 70161970000105744110. Service of this Order is complete upon the date delivered shown on the Domestic Return Receipt.

E. 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 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 Customer Tree Care's right to a

hearing, and this Penalty Order will become a Final Order assessing a \$3000 civil penalty against Customer Tree Care, and ordering a representative from Customer Tree Care 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.

F. 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. 2016 Supp. 66-1,142b(e) and amendments thereto.

G. If you do not request a hearing, the payment of the civil penalty of \$3000 is due in thirty (30) days from the date of service of this Order. Payment of \$3000 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.

H. Failure to pay the \$3000 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 Customer Tree Care'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.

I. 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; Apple, Commissioner







Dated: March 1, 2018

A handwritten signature in cursive script, reading "Lynn M. Retz".

Lynn M. Retz
Secretary to the Commission

AAL

ATTACHMENT “A”

	US DOT # 1347949	Legal: CUSTOM TREE CARE, INC. 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		Business: Corporation		
Carrier: HM	HM	Gross Revenue:  for year ending: 12/31/2017		
Shipper: N/A	N/A			
Cargo Tank:	N/A			
Company Physical Address: 				
Contact Name: Greg Gathers				
Phone numbers: (1) 				
E-Mail Address: 				
Company Mailing Address: 4504 SW BURLINGAME RD TOPEKA, KS 66611				
Carrier Classification Private Property				
Cargo Classification Other: Tree debris, MOT				
Hazardous Materials 9 Miscellaneous HM : Carried : Non-Bulk				
Equipment				
	Owned	Term Leased	Trip Leased	
Truck	14	0	0	Truck Tractor
Trailer	8	0	0	
Power units used in the U.S. 15 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:			Average trip leased drivers/month: 0	
>= 100 Miles:	21		Total Drivers: 21	
			CDL Drivers: 10	



	CUSTOM TREE CARE INC U.S. DOT # 1347949	Review Date 02/21/2018
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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: Greg Gathers

Title: Owner

Name: [REDACTED]



	CUSTOM TREE CARE INC U S. DOT #. 1347949	Review Date 02/21/2018
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Part B Violations

1 STATE	Primary 382.305(i)(2)	Discovered 1	Checked 10	Drivers/Vehicles In Violation	Checked 10
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Description

Failing to ensure that each driver subject to random alcohol and controlled substances testing has an equal chance of being selected each time selections are made

Example

On 1/23/2018 Custom Tree Care Inc. had driver [REDACTED] operate a 1998 International (Unit # 83- VIN # [REDACTED] 520083.) This vehicle has a gross vehicle weight rating of 33,000 lbs. Driver [REDACTED] operated in commerce on an intrastate trip from Topeka, Kansas to Lawrence, Kansas. This trip is evidenced by Level II roadside inspection performed by M. Marnach (KS9222) with the Kansas Highway Patrol. At the time of this trip carrier was found to be in violation of failing to ensure that each driver subject to random alcohol and controlled substances testing has an equal chance of being selected each time selections are made.

2 FEDERAL	Primary 390.19(b)(2)	Discovered 1	Checked 1	Drivers/Vehicles In Violation	Checked
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Description

Failing to file the appropriate form under 390.19(a) (MCS-150, 150B, or 150C) each 24 months according to the schedule

Example

On 1/29/2018 Custom Tree Care Inc. had driver [REDACTED] operate a 2006 International (Unit # 326-VIN # [REDACTED] 28726.) This vehicle has a gross vehicle weight rating of 25,999 lbs. Driver [REDACTED] operated in commerce on an interstate trip from Kansas City, Kansas to Kansas City, Missouri. This trip is evidenced by a level II roadside inspection performed by R. Davis (MO3986) with the Missouri Highway Patrol. At the time of this trip carrier was found to be in violation of failing to file the appropriate form under 390.19(a) (MCS-150, 150B, or 150C) each 24 months according to the schedule. Update was last completed on 1/7/2016, update needed to be completed in September of 2016

3 FEDERAL	Primary 396.3(b)(3)	Discovered 5	Checked 5	Drivers/Vehicles In Violation	Checked 5
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Description

Failing to keep a record of inspection, repairs and maintenance indicating their date and nature.

Example

On 1/29/2018 Custom Tree Care Inc. had driver [REDACTED] operate a 2006 International (Unit # 326-VIN # [REDACTED] 16H28726.) This vehicle has a gross vehicle weight rating of 25,999 lbs. Driver [REDACTED] operated in commerce on an interstate trip from Kansas City, Kansas to Kansas City, Missouri. This trip is evidenced by a level II roadside inspection performed by R. Davis (MO3986) with the Missouri Highway Patrol. At the time of this trip carrier was found to be in violation of failing to keep a record of inspection, repairs and maintenance indicating their date and nature

4 STATE	Primary 396.11(a)	Discovered 60	Checked 120	Drivers/Vehicles In Violation	Checked 5
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Description

Failing to require driver to prepare driver vehicle inspection report.

Example

On 1/23/2018 Custom Tree Care Inc. had driver [REDACTED] operate a 1998 International (Unit # 83- VIN # [REDACTED] 520083.) This vehicle has a gross vehicle weight rating of 33,000 lbs. Driver [REDACTED] operated in commerce on an intrastate trip from Topeka, Kansas to Lawrence, Kansas. This trip is evidenced by Level II roadside inspection performed by M. Marnach (KS9222) with the Kansas Highway Patrol. At the time of this trip carrier was found to be in violation of failing to require driver to prepare driver vehicle inspection report.



	CUSTOM TREE CARE INC	Review Date
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Part B Violations

5 FEDERAL	Primary 396.17(a)	Discovered 2	Checked 5	Drivers/Vehicles In Violation 2	Checked 5
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Description

Using a commercial motor vehicle not periodically inspected.

Example

On 1/29/2018 Custom Tree Care Inc. had driver [REDACTED] operate a 2006 International (Unit # 326-VIN # [REDACTED] 16H28726.) This vehicle has a gross vehicle weight rating of 25,999 lbs. Driver [REDACTED] operated in commerce on an interstate trip from Kansas City, Kansas to Kansas City, Missouri. This trip is evidenced by a level II roadside inspection performed by R. Davis (MO3986) with the Missouri Highway Patrol. At the time of this trip carrier was found to be in violation of using a commercial motor vehicle not periodically inspected.

Safety Fitness Rating Information:

Total Miles Operated 50,000
Recordable Accidents 1

OOS Vehicle (CR): 0
Number of Vehicle Inspected (CR): 0
OOS Vehicle (MCMIS): 3
Number of Vehicles Inspected (MCMIS): 5

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.





CUSTOM TREE CARE INC
U.S. DOT #: 1347949

Review Date
02/21/2018

Safety Management Process Breakdowns and Remedies

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

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

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

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

2. 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.

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



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Safety Management Process Breakdowns and Remedies		

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

3. CONTROLLED SUBSTANCES AND ALCOHOL BASIC PROCESS BREAKDOWN. Monitoring and Tracking

DESCRIPTION OF PROCESS BREAKDOWN Carrier failed to ensure that all CDL operators were in the random selection pool. Driver Layton Harris was not in the random pool. This was the only violation discovered in this section of the regulations. Overall, the files were orderly and found to be in compliance.

BASIC SPECIFIC RECOMMENDED REMEDIES Implement an effective process for monitoring and tracking drivers in your random selection pool. Make sure that prior to operating commercial motor vehicle you add newly hired CDL operators to your random selection pool. Additionally make sure that when a CDL operator's employment is terminated that you remove them from the testing pool immediately.

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 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://a1.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.).





CUSTOM TREE CARE INC
U.S. DOT # 1347949

Review Date
02/21/2018

Safety Management Process Breakdowns and Remedies

Seek Out Resources

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

4. VEHICLE MAINTENANCE BASIC - INSPECTION-REPAIR-MAINTENANCE PROCESS BREAKDOWN Policies and Procedures

DESCRIPTION OF PROCESS BREAKDOWN Custom Tree Care Inc. failed to keep a record of inspection repairs and maintenance indicating their date and nature. Carrier also failed to have current annual inspections on all units and failed to have drivers complete daily vehicle inspection reports. Carrier violations occurred due to a lack of policies and procedures. Carrier must create the policies and procedures necessary to effectively maintain the fleet. Follow the directions given to you at the time of our review. All of the required maintenance documents were provided to you from the "Red Book". 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 Make sure that all drivers complete DVIR's at the end of the shift and have a supervisor review these daily. Make sure to track the repairs and maintenance being completed. Make sure that all annual inspections are current prior to utilizing a truck or trailer. Utilize the provided forms to assist you in these responsibilities. If you have any questions or needs, please don't hesitate to contact me.

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

- Develop a system of preventive maintenance for compliant, safe, and efficient fleet operations, including a schedule for periodic maintenance, inspection, and record keeping. This system should be attuned to manufacturer recommendations, the carrier's own experience, and regulatory requirements.
- Develop a procedure ensuring that vehicle defects that impact safety and/or safety compliance are reported, repaired, and certified before the vehicle is operated.
- Develop procedures to ensure that management is notified of vehicle defects through the use of Driver Vehicle Inspection Records (DVIRs) and other communication channels, such as driver call-in and e-mail from mechanics.
- Develop a policy ensuring that drivers are qualified to complete thorough and timely Driver Vehicle Inspection Records (DVIRs) by the end of the day of the trip and prior to a subsequent assignment.
- Establish a policy requiring drivers to submit copies of all roadside inspections to carrier management within 24 hours
- Develop policies and procedures requiring drivers to immediately notify appropriate management of any roadside vehicle Out-of-Service (OOS) order.
- Develop a written and progressive disciplinary policy focused on taking corrective action to ensure drivers comply with regulations and policies. A progressive disciplinary policy could include, among other things, written warnings, suspensions, or work restrictions, monetary penalties, and termination. This policy should also specify consequences for any carrier official who knowingly and willfully allows vehicle maintenance violations

Seek Out Resources

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

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 Custom Tree Care, Inc operating authority and/or the impoundment of Custom Tree Care, Inc's commercial motor vehicles.





CUSTOM TREE CARE INC
U.S. DOT #: 1347949

Review Date
02/21/2018

Safety Management Process Breakdowns and Remedies

Carrier Representative

Date



ATTACHMENT “B”

DRIVER/VEHICLE EXAMINATION REPORT

Query Central 3 4

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

Report Number: KSHP92221488
Inspection Date: 01/23/2018
Start: 11 49 AM CT End: 12 41 PM CT
Inspection Level: II - Walk-Around
HM Inspection Type: None

CUSTOM TREE CARE INC

TOPEKA, KS 66611
USDOT#: 01347949
MC/MX#:
State#:

Phone#:
Fax#:

Driver: HARRIS III, LAYTON H

License#:
Date of Bi
CoDriver:
License#:
Date of Birth:

State: KS

State:

Location: SHAWNEE COUNTY - 177
Highway: I-470
County: SHAWNEE, KS

MilePost: 6 EB
Origin: TOPEKA,KS
Destination: LAWRENCE,KS

Shipper: CARRIER
Bill of Lading:
Cargo: EMPTY

VEHICLE IDENTIFICATION

Unit	Type	Make	Year	State	Plate #	Equipment ID	VIN	GVWR	CVSA #	New CVSA #	OOS#
1	TR	INTL	1998	KS		083		520083	33,000		

BRAKE ADJUSTMENTS No Brake Measurements Required For Level 2

VIOLATIONS

Vio Code	Section	Unit	OOS	Citation #	Verify	Crash	Violations Discovered
391.11B5-DEN	391.11(b)(5)	D	Y		N	N	Driver operating a CMV without proper endorsements or in violation of restrictions.: HAS a class E restriction (Manual Transmission) - veh has manual transmission
396 17C	396 17(c)	1	N		N	N	Operating a CMV without proof of a periodic inspection
393 9	393 9(a)	1	N		N	N	Inoperable Required Lamp identification lamp #3 front and rear are inoperable Rear also missing lense cover
393 203C	393 203(c)	1	N		N	N	Hood not securely fastened driver side unsecured
393 60C	393 60(c)	1	N		N	N	Damaged or discolored windshield intersecting cracks
393.51	393.51	1	Y		U	N	No or defective brake warning device: no light or buzzer

HazMat: No HM Transported

Placard: No **Cargo Tank:**

Special Checks:

Report Prepared By
M D Marnach

Badge #
9222

Copy Received By
LAYTON HARRIS III

Page 1 of 2



01347949 KS KSHP92221488

X _____

X _____

DRIVER/VEHICLE EXAMINATION REPORT

Query Central 3 4

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

Report Number: KSHP92221488
Inspection Date: 01/23/2018
Start: 11:49 AM CT End: 12:41 PM CT
Inspection Level: II - Walk-Around
HM Inspection Type: None

CUSTOM TREE CARE INC

TOPEKA, KS 66611
USDOT#: 01347949
MC/MX#:
State#:

Phone#:
Fax#:

Driver: HARRIS III, LAYTON H

License#: State: KS
Date of Birth:
CoDriver:
License#: State:
Date of Birth:

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 driver identified on this report "OUT OF SERVICE". No person and/or carrier shall permit and/or require this driver to operate any commercial vehicle until his/her eligibility to drive has been reestablished. 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 the 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 _____

DRIVER: This form is to be sent to the carrier identified on this report within 24 hours of receipt.

MOTOR CARRIER CERTIFICATION: All defects identified on this report 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. If no violations were discovered, you are not required to sign and return a copy.

NOTE: Challenges to violations may be submitted through the Federal Motor Carrier Safety Administration (FMCSA)'s Data Q Challenge process, at <https://dataqs.fmcsa.dot.gov>

Signature Of Motor Carrier X _____ Title _____ Date _____

Signature Of Motor Carrier X _____ Title _____ Date _____

Report Prepared By
M D Marnach

Badge #
9222

Copy Received By
LAYTON HARRIS III

Page 2 of 2



01347949 KS KSHP92221488

X _____

X _____

ATTACHMENT “C”

DRIVER/VEHICLE EXAMINATION REPORT

Missouri State Highway Patrol
Commercial Vehicle Enforcement Division
Post Office Box 568
Jefferson City, MO 65102-0568
Phone: (816)482-8286 Fax: (573)526-4637

Report Number: MO00K7013306
Inspection Date: 01/29/2018
Start: 9 06 AM CT End: 9 30 AM CT
Inspection Level: II - Walk-Around
HM Inspection Type: None

CUSTOM TREE CARE INC

Driver: MCDONALD, NATHAN E

State: KS

TOPEKA, KS, 66610

License#:

Date of Birth:

USDOT: 1347949

Phone#:

CoDriver:

MC/MX#:

Fax#:

License#:

State:

State#:

Date of Birth:

Location: LINWOOD AND VAN BRUNT

Milepost: Shipper: N/A

Highway: I-70

Origin: KANSAS CITY, KS

Bill of Lading: N/A

County: JACKSON

Destination: KANSAS CITY, MO

Cargo: OTHER

VEHICLE IDENTIFICATION

Unit	Type	Make	Year	State	Plate	Equipment ID	VIN	GVWR	CVSA #	Issued #	OOS Sticker
1	TR	INTL	2006	KS		326		287326 25999			

BRAKE ADJUSTMENTS: No brake measurements required for level II or level III

VIOLATIONS

Section	Type	Unit	OOS	Citation #	Verify	Crash	Violations Discovered
392.16	F	D	N		N	N	Failing to use seat belt while operating a CMV
392.9A2	F	1	Y		U	N	Failing to secure vehicle equipment
396.17C	F	1	N		N	N	Operating a CMV without proof of a periodic inspection
392.2IN	F	1	N		N	N	State Insurance Violation

HazMat: No HM transported

Placard:

Cargo Tank:

Special Checks:

Alcohol/Controlled Substance Check
X Conducted by Local Jurisdiction
Size and Weight Enforcement
eScreen Inspection

Traffic Enforcement
PASA Conducted Inspection
Drug Interdiction Search

Post Crash Inspection
PBBT Inspection

* I hereby declare the above vehicle(s)/drivers as "OUT OF SERVICE". No person shall remove the "OUT OF SERVICE" sticker(s) applied to this/these vehicle(s) or operate such vehicle(s) until the OUT-OF-SERVICE defect(s) has/have been repaired and vehicle(s) restored to a safe operating condition

I certify that the above violation(s) was/were corrected.

Signature Of Repairer X _____ Facility _____ Date _____

NOTICE TO DRIVER/MOTOR CARRIER The motor carrier name that appears on this report must sign the certification and fax, mail to the Missouri State Highway Patrol, Commercial Vehicle Enforcement Division, P.O. Box 568, Jefferson City, MO 65102-0568 or Email to cvmal@mshp.dps.mo.gov within 15 days IF NO VIOLATIONS WERE DISCOVERED, YOU ARE NOT REQUIRED TO SIGN AND RETURN A COPY OF THE REPORT

Signature Of Motor Carrier X _____ Title _____ Date _____

Report Prepared By. R. DAVIS
Badge #. 3986

Copy Received By. NATHAN MCDONALD

X

X



CERTIFICATE OF SERVICE

18-TRAM-361-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 March 1, 2018.

GREG GATHERS, PRESIDENT
CUSTOM TREE CARE, INC.
4504 SW BURLINGAME RD
TOPEKA, KS 66611
Fax: 785-478-4195
customtreecare@hotmail.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