

1500 SW Arrowhead Road  
Topeka, KS 66604-4027



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

Dwight D. Keen, Chair  
Shari Feist Albrecht, Commissioner  
Susan K. Duffy, Commissioner

Laura Kelly, Governor

## NOTICE OF PENALTY ASSESSMENT

September 26, 2019

20-TRAM-138-PEN

David Milner, Owner  
d/b/a Milner Hay & Cattle  
15367 Kentucky Rd  
Welda, KS 66091

This is a notice of a penalty assessment against David Milner, d/b/a Milner Hay & Cattle (Milner Hay & Cattle) for violation(s) of Kansas Motor Carrier Safety Statutes, Rules, and Regulations discovered during a compliance review conducted on September 4, 2019, by Kansas Corporation Commission Special Investigator Michael Heenan. Penalties are assessed in accordance with the FY 2020 Uniform Penalty Assessment Matrix, approved by the Commission on July 16, 2019. 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:** Milner Hay & Cattle has been assessed a \$300 penalty. You have thirty (30) days from the date of service of the Penalty Order to pay the penalty. Please remit payment of \$300, 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 Milner Hay & Cattle 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](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. Milner Hay & Cattle 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 Executive Director 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. 2018 Supp. 77-542.

**IF YOU FAIL TO ACT:** Failure to pay the penalty of \$300 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:      Dwight D. Keen, Chair  
                                     Shari Feist Albrecht  
                                     Susan K. Duffy

In the Matter of the Investigation of **David**   )  
**Milner, d/b/a Milner Hay & Cattle, of Welda,**   )  
**KS,** Regarding the Violation of the Motor   )  
Carrier Safety Statutes, Rules and Regulations   ) Docket No. 20-TRAM-138-PEN  
and the Commission's Authority to Impose   )  
Penalties, Sanctions and/or the Revocation of   )  
Motor Carrier Authority.                           )

**PENALTY ORDER**

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission). 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 2018 Supp. 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 49 C.F.R. Part 390.5 as adopted by K.A.R. 82-4-3f., 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. 2018 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. David Milner, d/b/a Milner Hay & Cattle (Milner Hay & Cattle) operates under USDOT number 1250982.

5. Milner Hay & Cattle is a private motor carrier which primarily hauls farm supplies, grain, feed, hay and livestock.

## **III. STATEMENT OF FACTS**

6. Pursuant to the jurisdiction and authority cited above, on September 4, 2019, Commission Staff (Staff) Special Investigator Michael Heenan conducted a safety compliance review of the operations of Milner Hay & Cattle. 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 the date of this review, Milner Hay & Cattle had not paid its 2018 and 2019 Unified Carrier Registration (UCR) fees to operate interstate commerce. The carrier was contacted by letters several times and also by e-mail at least once monthly regarding its delinquent UCR fees for 2018 and 2019. Milner Hay & Cattle is registered as a motor carrier engaged in

interstate commerce according to its USDOT Number 1250982. The motor carrier advised Special Investigator Heenan that it plans to continue to operate interstate. The carrier's failure to annually register its commercial motor vehicle(s) operating in interstate commerce and to pay the appropriate Unified Carrier Registration (UCR) fees as set out in 49 C.F.R. 367.60, is a violation of K.A.R. 82-4-30a, authorized by K.S.A. 66-1,139a and K.S.A. 66-1,129. Staff recommends a fine of \$300.

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

7. Based upon the available facts, Staff recommends the Commission finds Milner Hay & Cattle committed one (1) violation(s) of Kansas law that governs motor carriers, including various provisions of the Federal Motor Carrier Safety Regulations (FMCSRs), as adopted by the Kansas Administrative Regulations, and is therefore subject to sanctions or fines imposed by the Commission.

8. Additionally, Staff recommends a civil penalty of \$300 for one (1) violation(s) of the Motor Carrier Safety Statutes, Rules and Regulations.

9. Staff further recommends that a representative from Milner Hay & Cattle 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](http://kcc.ks.gov/trans/safety_meetings.htm).

10. Finally, Staff recommends that Milner Hay & Cattle submit to one follow-up safety compliance review within eighteen (18) months from the date of this Order.

Transportation Staff will contact the motor carrier at a later date to determine an appropriate time for this review.

## **V. CONCLUSIONS OF LAW**

11. The Commission finds it has jurisdiction over Milner Hay & Cattle because it is a motor carrier as defined in 49 C.F.R. Part 390.5 as adopted by K.A.R. 82-4-3f.

12. The Commission finds Milner Hay & Cattle 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. David Milner, d/b/a Milner Hay & Cattle, of Welda, KS is hereby assessed a \$300 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. Milner Hay & Cattle 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. Carrier is hereby ordered to submit a written, comprehensive corrective action plan (CAP) to Transportation Staff within thirty (30) days of the date of this order.

D. Milner Hay & Cattle 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.

E. Pursuant to K.S.A. 2018 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 Executive Director 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 Milner Hay & Cattle's right to a hearing, and this Penalty Order will become a Final Order assessing a \$300 civil penalty against Milner Hay & Cattle, and ordering a representative from Milner Hay & Cattle 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. 2018 Supp. 66-1,142b(e) and amendments thereto.

G. If you do not request a hearing, the payment of the civil penalty of \$300 is due in thirty (30) days from the date of service of this Order. Payment of \$300 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 \$300 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 Milner Hay & Cattle'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.**

Keen, Chair; Albrecht, Commissioner; Duffy, Commissioner

Dated: 09/26/2019



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Lynn M. Retz  
Executive Director

AAL



## **ATTACHMENT “A”**



# UNITED STATES DEPARTMENT OF TRANSPORTATION



U.S. DOT#: 1250982  
MC/MX#:

Legal: DAVID MILNER  
Operating (DBA): MILNER HAY & CATTLE

Investigation Date:  
09/04/19

Investigation Type: Onsite Investigation

Location of Investigation: Company principal place of business  
(PPOB)

Extent of Operations: Entire Operation

## Physical Address

15367 KENTUCKY RD  
WELDA, KS 66091  
United States

## Mailing Address

15367 Kentucky RD  
WELDA, KS 66091  
United States

## Contact Information

Contact Name: DAVID MILNER

Email:

Phone:

Fax: ()

## Business and Financial

Business Type: Sole Proprietorship

Gross Revenue: For Year Ending: 12/31/18

Federal Tax ID: (SN)

## Operation Classification and Type

Type of Operation: Non-HM Interstate Carrier, Non-HM  
Intrastate Carrier

Farm Supplies, Grain, Feed, Hay, Livestock

## Operation Classification

Private Motor Carrier

Property – Non-Hazardous Materials

## Equipment

Owned

Term Leased

Trip Leased

Truck Tractors 1

Trailers 2

## Driver Information

Drivers

Intrastate

Interstate

< 100 Miles

1

>= 100 Miles

Power units used in the U.S.: 1

Percentage of time used in the U.S.: 100.0%

Average trip leased driver/month: 0

Drivers with CDL: 1

Total Drivers: 1

**Person(s) Interviewed****Name:** DAVID MILNER**Title:** OWNER**Questions**

Questions about this report or the Federal Motor  
Carrier Safety or Hazardous Materials regulations may  
be addressed to the Federal Motor Carrier Safety  
Administration at

1500 SW Arrowhead Rd  
Topeka, KS 66604-4027  
Phone (785) 271-3051

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

## Violations

### 1. Primary: 367.30

No UCR

#### Violations Discovered

Fed	State	Total
1		1

#### Violations Checked

Fed	State	Total
1		1

#### Example/Notes:

Carrier had a Interstate USDOT for over 20 years

#### Drivers/Vehicles

In Violation	Checked
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## Safety Fitness Rating

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Your proposed safety rating is: **SATISFACTORY** 0 UNSATISFACTORY rating factors and 2 or fewer CONDITIONAL rating factors  
Corrective actions must be taken for any violations (deficiencies) identified in this report. See below for more information.

RATING FACTORS	RATING	ACUTE	CRITICAL
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You must take corrective actions for any violations (deficiencies) identified in the Violations section of this report.

**DataQs.** If you dispute the violations recorded in the Violations section of this investigation report, and the violations were not used in the calculation of your safety rating, you may submit a Request for Data Review (RDR) through DataQs. The DataQs system is the method to remove violations that did not affect your safety rating. DataQs is an online system that allows a motor carrier or driver to request and track a review of Federal and State issued data that it believes to be incomplete or incorrect. To submit an RDR, go to <https://dataqs.fmcsa.dot.gov>

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## Process Breakdown and Remedies

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None

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## Recommendations

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1. **Additional Information**

Please visit the CSA outreach site for additional guidance. <https://csa.fmcsa.dot.gov>

2. **No UCR**

If the carrier has a active interstate USDOT they are required to purchase a valid UCR registration for their interstate USDOT.

3. **MCS-150 biennial updates**

Is Your Registration Information Current?

FMCSA requires carriers to update their registration data via a MCS-150 form every 24 months. Please review, verify and update your contact information, Vehicle Miles Travelled (VMT) and Power Unit (PU) data to ensure that it is current and accurate, since it is used in the new Carrier Safety Measurement System. You should access the system, review all the information and press the submit button. Once you've done this, the system will record that you've reviewed the information and you will be in compliance with the biennial update requirement.

[https://li-public.fmcsa.dot.gov/LIVIEW/PKG\\_REGISTRATION\\_prc\\_option](https://li-public.fmcsa.dot.gov/LIVIEW/PKG_REGISTRATION_prc_option)

4. **State of Kansas Corrective Action Plan**

For all Investigations that did not result in a Cooperative Safety Plan:

The KCC requires that you prepare a corrective action letter plan (CAP), addressing the measures taken to correct all 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 Submit the letter along with copies of your supporting evidence to:

e-mail: [g.davenport@kcc.ks.gov](mailto:g.davenport@kcc.ks.gov);

FAX: 785.271.3124;

or mail.

Kansas Corporation Commission

Attn: Gary Davenport

1500 SW Arrowhead Rd

Topeka, KS 66604-4027

5. **Acknowledgement of Review and Penalties**

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 David Milner dba Milner Hay and Cattle operating authority and/or the impoundment of David Milner dba Milner Hay and Cattle vehicles.

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 web site: [http://kcc.ks.gov/trans/penalty\\_assessment\\_table.htm](http://kcc.ks.gov/trans/penalty_assessment_table.htm)

x David C. Milner  
Printed

x David C. Milner



Signed

X M.W. Heenan 8213  
Investigator Printed

X M.W. Heenan 8213  
Investigator(s) Signed

## **CERTIFICATE OF SERVICE**

20-TRAM-138-PEN

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of  
first class mail/hand delivered on 09/27/2019.

DAVID MILNER, OWNER  
DAVID MILNER  
D/B/A MILNER HAY & CATTLE  
15367 KENTUCKY RD  
WELDA, KS 66091

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  
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DeeAnn Shupe