

1500 SW Arrowhead Road
Topeka, KS 66604-4027



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

Andrew J. French, Chairperson
Dwight D. Keen, Commissioner
Susan K. Duffy, Commissioner

Laura Kelly, Governor

NOTICE OF PENALTY ASSESSMENT
22-TRAM-078-PEN

August 12, 2021

Donald Fischer, President
Fischer Well Service Inc.
PO Box 773
Hays, KS 67601

This is a notice of a penalty assessment against Fischer Well Service Inc. (Fischer) for violation(s) of Kansas Motor Carrier Safety Statutes, Rules, and Regulations discovered during a compliance review conducted on August 6, 2021, by Kansas Corporation Commission Special Investigator Gregory Askren. Penalties are assessed in accordance with the FY 2022 Uniform Penalty Assessment Matrix, approved by the Commission on June 29, 2021. 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: Fischer has been assessed a \$200 penalty. You have thirty (30) days from the date of service of the Penalty Order to pay the penalty. Please remit payment of \$200, through your personal account with the Kansas Corporation Commission's Kansas Trucking Regulatory Assistance Network (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 Fischer 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.

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. Fischer 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.¹

IF YOU FAIL TO ACT: Failure to pay the penalty of \$200 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,
/s/ Ahsan A. Latif
Ahsan A. Latif
Litigation Counsel
(785) 271-3118
a.latif@kcc.ks.gov

¹ K.A.R. 82-1-215; K.S.A. 77-542.

2. Pursuant to K.S.A. 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. Fischer Well Service Inc. (Fischer or Carrier) has private operating authority with the Commission and further operates under USDOT number 1064184.

5. Stacy Fischer attended the Procedures for Safety Compliance Seminar presented by the Kansas Corporation Commission, on November 25, 2019, on behalf of Fischer.

6. Fischer is a private motor carrier which primarily hauls oil field equipment.

III. STATEMENT OF FACTS

7. Pursuant to the jurisdiction and authority cited above, on August 6, 2021, Commission Staff (Staff) Special Investigator Gregory Askren conducted a safety compliance review of the operations of Fischer. 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 two (2) violation(s) of the Motor Carrier Safety Regulations.

- a. On June 16, 2021, Fischer required or permitted its driver, Steven Plante, to operate a CDL-required commercial motor vehicle, a 2002 Sterling, VIN ending in 63650, GVWR 66,000 lbs., in intrastate commerce near Quinter, Kansas. This trip is evidenced by the driver log, dated June 18,

2021, a copy of which is attached hereto as Attachment “B” and is hereby incorporated by reference. At the time of this transportation, Fischer failed to ensure the designated person to determine that drivers undergo reasonable suspicion testing received 60 minutes of alcohol training and 60 minutes of controlled substance training. The Carrier’s inability to produce documentation of this training and its failure to have a designated person to attend 60 minutes of training on alcohol misuse and an additional 60 minutes of training on controlled substances use is a violation of 49 C.F.R. 382.603, adopted by K.A.R. 82-4-3c, and authorized by K.S.A. 66-1,129. Staff recommends a fine of \$100.

- b. During the transportation described in paragraph a., above, Fischer failed to maintain the responses of each state agency to the annual driver record inquiry required by 49 C.F.R.391.25(a). The Carrier’s failure to maintain the required responses to the annual driver record inquiry is in violation of 49 C.F.R. 391.51(b)(4), adopted by K.A.R. 82-4-3g, and authorized by K.S.A. 66-1, 129. Staff recommends a fine of \$100.

IV. STAFF’S RECOMMENDATIONS

8. Staff submitted a Report and Recommendation (R&R), dated August 6, 2021, attached hereto as Attachment “C” and is hereby incorporated by reference. In its R&R, Staff made recommendation regarding the above-mentioned violations.

9. Based upon the available facts, Staff recommends the Commission finds Fischer committed two (2) 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.

10. Additionally, Staff recommends a civil penalty of \$200 for two (2) violation(s) of the Motor Carrier Safety Statutes, Rules and Regulations.

11. Staff further recommends that a representative from Fischer 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.

12. Staff further recommends Fischer submit a written, comprehensive corrective action plan (CAP) to Transportation Staff within thirty (30) days of the date of this order, documenting the violation(s) described in this Penalty Order, including specific and detailed information explaining Carrier's efforts and concrete steps taken to ensure the violation(s) do not occur in the future.

13. Finally, Staff recommends that Fischer 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

14. The Commission finds it has jurisdiction over Fischer pursuant to K.S.A. 66-1,108b 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.

15. The Commission finds Fischer committed two (2) 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. Fischer Well Service Inc., of Hays, KS is hereby assessed a \$200 civil penalty for two (2) 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. Fischer 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, documenting the violation(s) described in this Penalty Order, including specific and detailed information explaining Carrier's efforts and concrete steps taken to ensure the violation(s) do not occur in the future.

D. Fischer 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. 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 Fischer's right to a hearing, and this Penalty Order will become a Final 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 less than \$500, a corporation may appear by a duly authorized representative of the corporation.²

G. If you do not request a hearing, the payment of the civil penalty of \$200 is due in thirty (30) days from the date of service of this Order. Payment of \$200 must be made through your personal account with the Kansas Corporation Commission's Kansas Trucking Regulatory Assistance Network (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 \$200 civil penalty within thirty (30) days from the date of service of this Penalty Order and/or failure to comply with the provisions of this Order may result in suspension of Fischer's motor carrier operating authority without further notice.³ 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.

² K.S.A. 66-1,142b(e) and amendments thereto.

³ K.S.A. 66-1,105.

BY THE COMMISSION IT IS SO ORDERED.

French, Chairperson; Keen, Commissioner; Duffy, Commissioner

Dated: 08/12/2021



Lynn M. Retz
Executive Director

AAL

ATTACHMENT “A”

UNITED STATES DEPARTMENT OF TRANSPORTATION



U.S. DOT#: 1064184
MC/MX#: 0

Legal: FISCHER WELL SERVICE INC
Operating (DBA):

Investigation Date:
08/06/21

Investigation Type: Onsite Comprehensive Investigation

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

Extent of Operations: Entire Operation

Physical Address

1316 CENTRAL STREET
HAYS, KS 67601
United States

Mailing Address

PO BOX 773
HAYS, KS 67601
United States

Contact Information

Contact Name: STACY FISCHER

Email: [REDACTED]

Phone: [REDACTED] **Cell:** [REDACTED] **Fax:** ()-

Business and Financial

Business Type: Corporation

Gross Revenue: \$ [REDACTED] **For Year Ending:** 12/31/20

Federal Tax ID: [REDACTED]

Operation Classification and Type

Type of Operation: Non-HM Intrastate Carrier

Operation Classification

Private Motor Carrier

Property – Non-Hazardous Materials

Cargo

Oil Field Equipment

Equipment

| | Owned | Term Leased | Trip Leased |
|-----------------|-------|-------------|-------------|
| Straight Trucks | 5 | | |

Power units used in the U.S.: 5

Percentage of time used in the U.S.: 100%

Driver Information

Drivers

| | Intrastate | Interstate |
|--------------|------------|------------|
| < 100 Miles | 1 | |
| >= 100 Miles | | |

Average trip leased driver/month: 0

Drivers with CDL: 1

Total Drivers: 1

Person(s) Interviewed**Name:** STACY FISCHER**Title:** SECRETARY**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:

1303 SW FIRST AMERICAN PL STE 200
TOPEKA, KS 66604-4040
Phone: (785) 271-1260
Fax: (877) 547-0378

This report will be used to assess your safety compliance.

Violations

1. Primary: 382.603

Failing to ensure person designated to determine that drivers undergo reasonable suspicion testing receive 60 minutes training for alcohol and/or 60 minutes of training for controlled substances.

Violations Discovered

| Fed | State | Total |
|-----|-------|-------|
| 1 | | 1 |

Checked

| Fed | State | Total |
|-----|-------|-------|
| 1 | | 1 |

Example/Notes:

Driver name: Steve Plante

Trip date: 6/16/2021

Supervisor/Company official not trained.: Stacy Fischer/Don Fischer

Drivers/Vehicles

| In Violation | Checked |
|--------------|---------|
| | |

2. Primary: 391.51(a)

Failing to maintain driver qualification file on each driver employed.

Violations Discovered

| Fed | State | Total |
|-----|-------|-------|
| | 1 | 1 |

Checked

| Fed | State | Total |
|-----|-------|-------|
| | 1 | 1 |

Example/Notes:

Driver name, Jason Brin

Trip date. 2-12-2021

Discription of violation: Failing to maintain driver qualification file on each driver employed. The company has 1 driver that left employment in Feb. of 2021 and have no DQ files on him. Jason Brin

Drivers/Vehicles

| In Violation | Checked |
|--------------|---------|
| 1 | 1 |

3. Primary: 391.51(b)(4)

Failing to maintain the responses of each State agency to the annual driver record inquiry required by 391.25(a).

Violations Discovered

| Fed | State | Total |
|-----|-------|-------|
| | 1 | 1 |

Checked

| | <table><tr><th>Fed</th><th>State</th><th>Total</th></tr><tr><td></td><td>1</td><td>1</td></tr></table> | Fed | State | Total | | 1 | 1 |
|---|--|--------------|---------|-------|---|---|---|
| Fed | State | Total | | | | | |
| | 1 | 1 | | | | | |
| Example/Notes: Driver name, Steve Plante Trip date. 6-16-2021 Discription of violation; Failing to maintain the responses of each State agency to the annual driver record inquiry required by 391.25(a). | Drivers/Vehicles <table><tr><th>In Violation</th><th>Checked</th></tr><tr><td>1</td><td>1</td></tr></table> | In Violation | Checked | 1 | 1 | | |
| In Violation | Checked | | | | | | |
| 1 | 1 | | | | | | |

| <div>4. Primary: 391.51(b)(5)</div> <div>Failing to maintain a note relating to the annual review of the driver's driving record as required by 391.25(c)(2).</div> | <div>Violations Discovered</div> <table><tr><th>Fed</th><th>State</th><th>Total</th></tr><tr><td></td><td>1</td><td>1</td></tr></table> <div>Checked</div> <table><tr><th>Fed</th><th>State</th><th>Total</th></tr><tr><td></td><td>1</td><td>1</td></tr></table> | Fed | State | Total | | 1 | 1 | Fed | State | Total | | 1 | 1 |
|---|---|--------------|---------|-------|---|---|---|-----|-------|-------|--|---|---|
| Fed | State | Total | | | | | | | | | | | |
| | 1 | 1 | | | | | | | | | | | |
| Fed | State | Total | | | | | | | | | | | |
| | 1 | 1 | | | | | | | | | | | |
| <div>Example/Notes:</div> <div>Driver name, Steve Plante</div> <div>Trip date.; 6-16-2021</div> <div>Description of violation: Failing to maintain a note relating to the annual review of the driver's driving record as required by 391.25(c)(2).</div> | <div>Drivers/Vehicles</div> <table><tr><th>In Violation</th><th>Checked</th></tr><tr><td>1</td><td>1</td></tr></table> | In Violation | Checked | 1 | 1 | | | | | | | | |
| In Violation | Checked | | | | | | | | | | | | |
| 1 | 1 | | | | | | | | | | | | |

| <div>5. Primary: 391.51(b)(6)</div> <div>Failing to maintain a list or certificate relating to violations of motor vehicle laws and ordinances required by 391.27.</div> | <div>Violations Discovered</div> <table><tr><th>Fed</th><th>State</th><th>Total</th></tr><tr><td></td><td>1</td><td>1</td></tr></table> <div>Checked</div> <table><tr><th>Fed</th><th>State</th><th>Total</th></tr><tr><td></td><td>1</td><td>1</td></tr></table> | Fed | State | Total | | 1 | 1 | Fed | State | Total | | 1 | 1 |
|---|---|--------------|---------|-------|---|---|---|-----|-------|-------|--|---|---|
| Fed | State | Total | | | | | | | | | | | |
| | 1 | 1 | | | | | | | | | | | |
| Fed | State | Total | | | | | | | | | | | |
| | 1 | 1 | | | | | | | | | | | |
| <div>Example/Notes:</div> <div>Driver name,; Steve Plante</div> <div>Trip date.: 6/16/2021</div> <div>Discription of violation: Failing to maintain a list or certificate relating to violations of motor vehicle laws and ordinances required by 391.27.</div> | <div>Drivers/Vehicles</div> <table><tr><th>In Violation</th><th>Checked</th></tr><tr><td>1</td><td>1</td></tr></table> | In Violation | Checked | 1 | 1 | | | | | | | | |
| In Violation | Checked | | | | | | | | | | | | |
| 1 | 1 | | | | | | | | | | | | |

Safety Fitness Rating

This Investigation is Not Rated

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>.

Process Breakdown and Remedies

BASIC: Driver Fitness

Process Breakdown: Policies and Procedures

The company failed to do the annual MVR, review and certification required by law.

Specific Recommended Remedies

To implement Safety Improvement Practices, the following list are recommended practices related to Policies and Procedures:

1. Develop a policy for the periodic review (at least twice per year) of driver qualification files. The motor carrier should not rely on third-party sources, such as insurance agencies. The procedure should include controls to ensure that documents requiring renewals are in place, to remind drivers of expiration dates on medical certificates, so they can schedule another physical examination in advance, and to prevent falsification of documents related to driver qualification.
2. Establish a policy requiring all new (since 2003) Commercial Driver's License (CDL) drivers to submit documentation of entry-level driver training in - for example, driver qualification requirements, Hours of Service (HOS), driver wellness, and whistleblower protection - or to take entry-level training provided by the carrier.
3. Establish a policy requiring drivers to submit copies of all vehicle and roadside inspections and moving violations to carrier management within 24 hours, and to notify management of suspended or revoked Commercial Driver's Licenses (CDLs) immediately following notification of suspension/revocation.
4. Develop a policy for document retention and recordkeeping, including documents that are to be in the possession of the driver as proof of credentials.
5. 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 Driver Fitness Violations.

BASIC: Driver Fitness

Process Breakdown: Monitoring and Tracking

Develop policy to monitor and track required policy to adhere to law.

Specific Recommended Remedies

To implement Safety Improvement Practices, the following list are recommended practices related to Monitoring and Tracking:

1. Implement an effective process for monitoring and documenting all drivers' job functions, training, qualifications, renewal dates, disclosed medical conditions, and operational restrictions, including those of drivers on a waiver program or with impairments that may be satisfied by a Skill Performance Evaluation certificate, to ensure that assignments are covered by qualified drivers.
2. 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 driver fitness. 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.

3. Maintain each driver's investigation history file in a secure location with limited and controlled access for as long as the driver is employed and for three years thereafter.
4. Evaluate personnel who are monitoring driver fitness performance by making sure they are reviewing driver-assignment and qualification files; applying the performance standards fairly, consistently, and equitably; and documenting the evaluations.
5. Regularly evaluate the company's driver fitness-related inspection results via the Federal Motor Carrier Safety Administration's (FMCSA) website at <http://ai.fmcsa.dot.gov/SMS>. Assess violations for process breakdowns and how to remedy them. Use data to help implement an effective process beyond self-reporting to monitor, document, and evaluate compliance with driver-fitness regulations and company policies.

Recommendations

1. **Additional Information**

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

2. **For all Investigations not Unsat.**

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>

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.

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 or email the letter along with copies of your supporting evidence to:
Kansas Corporation Commission
Attn: Gary Davenport
1500 SW Arrowhead Rd
Topeka, KS 66604-4027
g.davenport@kcc.ks.gov

3. **Obtain copies of the regulations, forms, interpretations, manuals.**

Copies of the regulations, forms, interpretations, and manuals are available from a variety of sources. Check the FMCSA website for a current list of suppliers. www.fmcsa.dot.gov/safety-security/eta/index.htm

4. **A copy of your profile can be obtained by accessing the Portal.**

A copy of your carrier profile can be obtained at no cost from the FMCSA Portal (<https://portal.fmcsa.dot.gov/login>).

5. **DQ File Required**

Each motor carrier shall maintain a driver qualification (DQ) file for each driver it employs. A driver's qualification file may be combined with his/her personnel file. The DQ file must include: driver's application for employment completed in accordance with 391.21; a copy of the motor vehicle record received from each State within 30 days of the hire date pursuant to 391.23(a)(1); certificate of the driver's road test issued to the driver [391.31(e)] or a copy of the CDL license [391.33]; copy of the annual motor vehicle record received from each State agency [391.25(a)]; note relating to the annual review of the driver's driving record [391.25(c)(2)]; list or certificate relating to violations of motor vehicle laws and ordinances of the annual review of the driver's driving record [391.27]; copy of the medical examiner's certificate [391.43(g)]; a note relating to the verification of medical examiner listing on the National Registry of Certified Medical Examiners [391.23(m)]; and a Skill Performance Evaluation Certificate if applicable [391.49].

6. **Employers are responsible for the compliance of 49 CFR Part 40.**

Employers are responsible for their officers', employees', agents', consortia, and/or contractors' compliance with the requirements of 49 CFR Parts 40 and 382.

7. **Maintain all required controlled substance testing records.**

Maintain all required alcohol and controlled substance testing records including yearly summaries, quarterly summaries, test information, test results, records of training etc., as required by 49 CFR Parts 40 and 382 of the FMCSR .

8. **Driver drug tests required.**

Ensure that all drivers subject to pre-employment, random, reasonable cause, post accident, return to duty, and/or follow-up controlled substance testing are tested as required by 49 CFR Parts 40 and 382 of the FMCSR.

9. **Drug and Alcohol Testing Company Policy (Educational Materials)**

Provide employees with a written controlled substance and alcohol testing policy that complies with all the requirements noted in Part 382.601(b). Also, ensure you maintain a certificate signed by the employee certifying they have received your company drug and alcohol testing policy.

10. **New Hires**

Ensure that applicants for safety-sensitive positions do not have a current controlled-substance and/or alcohol problem by querying them and checking with their previous employers regarding controlled-substance and alcohol violations, related background, conditions and behaviors indicative of controlled-substance and/or alcohol abuse or misuse, and by conducting pre-employment testing as required by regulation and company policy. Create a detailed written record of each inquiry.

Review and evaluate driver applicants' gaps in employment, frequent job changes, and incomplete applications. Require applicants to explain reasons for any gaps in their employment record in order to allay suspicion of controlled-substance and/or alcohol abuse or misuse.

11. **Drug and Alcohol Clearinghouse**

Find out your responsibilities and requirements for FMCSA's Drug and Alcohol Clearinghouse by visiting <https://clearinghouse.fmcsa.dot.gov> .

12. **DQ retained 3 yrs after termination**

Per 391.51(c), Except as provided in paragraph (d) of this section, each driver's qualification file shall be retained for as long as a driver is employed by that motor carrier and for three years thereafter.

13. **MC verify Nal Registry**

As per 391.51(b)(9), The qualification file must include a note relating to verification of medical examiner listing on the National Registry of Certified Medical Examiners required by 391.23(m).

14. **Reasonable Suspicion Training**

Ensure that all persons designated to supervise CDL drivers receive at least 60 minutes of training on alcohol misuse and receive at least an additional 60 minutes of training on controlled substance use.

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

Email: 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

Failure to submit the plan & attend a KCC safety presentation within 30 days of the closing of the compliance review can result in further penalties in a follow up review. Carrier Fischer Well Service Date 8-06-21

I acknowledge that these requirements/violations 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 Fischer Well Service Inc. vehicles operating authority and/or the impoundment of Fischer Well Service Inc. vehicles.

Signed Stacy Fischer Date 8-06-21

I understand that monetary penalties will be assessed as a result of violations found in this compliance review. Carrier representative: Stacy Fischer Date: 8-06-21

ATTACHMENT “B”

Time Sheet

Month: JuneYear: 2021Name: Steve Plante

| Date | FROM | | TO | | Daily Hrs | Running Hrs | Comments |
|-------------------|---------|------------|----------|------------|-----------|-------------|--|
| | ON DUTY | | OFF DUTY | | | | Hours carried forward from previous week |
| 6/14 | 8:00 | (AM) PM | 3:00 | AM (PM) | 7 | | |
| 6/15 | 7:00 | (AM) PM | 8:00 | AM (PM) | 13 | | |
| 6/16 | 8:00 | (AM) PM | 4:30 | AM (PM) | 8 1/2 | | |
| 6/17 | 7:00 | (AM) PM | 6:00 | AM (PM) | 11 | | |
| 6/18 | 7:00 | (AM) PM | 6:00 | AM (PM) | 11 | | |
| | | AM PM | | AM PM | | | |
| | | AM PM | | AM PM | | | |
| Carry Forward Hrs | | | | | | | |

Notes:

Signature: Steve PlanteDate: 6/18/2021

*Remember HOS: 11 hrs driving in a 14 hr day, 10 hrs off duty,

STAPLE LOGS TO TIMESHEET BEFORE TURNING IN

*CDL drivers must do a log for each day over 12 hours; non-CDL drivers need to do a log for each day over 14 hours

*A log is required any day over 100 miles from your home base for CDL drivers or 150 miles for non-CDL drivers or not returning to home base at end of work day



1316 CENTRAL STREET
P.O. BOX 773
HAYS, KS 67601
PHONE 785.628.3837
CELL 785.623.6816

WORK TICKET

NEW WELL ☐

OLD WELL ☒

RIG # 01

11891

DATE 6-16-21

COMPLETE ☒

INCOMPLETE ☐

COMPANY Patterson Energy

JOB TYPE

LEASE Oberly T

WELL # 1

ADDRESS

SEC

TWP

RNG

CITY / STATE

ZIP CODE

COUNTY

Gove

STATE KS

| POSITION | NAME | HRS | REVENUE | TRAVEL | NON REVENUE | TOTAL HRS WKT |
|--------------|-------|-----|---------|--------|-------------|---------------|
| OPERATOR | Steve | | | | | 7 1/2 |
| DERRICK HAND | Alex | | | | | |
| FLOOR HAND | Gage | | | | | |

| JTS | PULLED | WELL EQUIPMENT | JTS | RAN |
|-----|-------------------|-----------------|-----|-----|
| 3 | 3/4 | RODS | | |
| | | RODS | | |
| 1 | 2'x 3/4 | PONY RODS | | |
| 1 | 16'x 1 1/4 | POLISHED RODS | | |
| 1 | 2'x 1 1/2 x 1 1/4 | PUMP / VALVES | | |
| | | TUBING | | |
| | | PUPS | | |
| | | SN / BBL | | |
| | | ANCHOR / PACKER | | |
| | | OTHER | | |

DESCRIPTION OF WORK BEING PERFORMED

Drove to location and rigged-up. unhung well and pulled rods and pump. Rigged down for tubing. Got tubing out of slips and couldn't get Anchor catcher to release. Worked tubing. Couldn't find free spot or get tubing to turn. Called for water truck. Pumped about 20 bbl's down back side and worked tubing. Wouldn't move. Pumped about 20 bbl's down tubing while working tubing. Couldn't get it to move. Put slips back in and set tubing in head. Packed it off and tore down.

| | | | | |
|-------------------------|------------------|----------|----------|---------|
| Double Drum Rig w/2 Men | 7 1/2 Hrs @ 225- | Per Hour | Total | 1687.50 |
| Travel Time | Hrs @ | Per Hour | Total | |
| Swab Cups No. | Size | Type | Per Each | Total |
| Swab Cups No. | Size | Type | Per Each | Total |
| Misc | | | | Total |
| Misc | | | | Total |
| Misc | | | | Total |
| Misc | | | | Total |
| x | | | TAX | 118.13 |
| | | | TOTAL | 1805.63 |

Company Representative

Date

ATTACHMENT “C”

Andrew J. French, Chairperson
Dwight D. Keen, Commissioner
Susan K. Duffy, Commissioner

Laura Kelly, Governor

REPORT AND RECOMMENDATION TRANSPORTATION DIVISION

TO: Andrew J. French, Chairperson
Dwight D. Keen, Commissioner
Susan K. Duffy, Commissioner

FROM: Mike Hoeme, Director of Transportation
Gary Davenport, Deputy Director of Transportation

DATE: August 6, 2021

SUBJECT: Docket No. 22-TRAM-078-PEN
In the Matter of the Investigation of Fischer Well Service Inc. of Hays, Kansas
Regarding the Violation of the Motor Carrier Rules and Regulations and the
Commission's Authority to Impose Penalties, Sanctions and/or the Revocation of
Motor Carrier Authority.

EXECUTIVE SUMMARY:

Fischer Well Service Inc. (Fischer or Carrier) is a motor carrier possessing private operating authority from the Commission, primarily hauling oil field equipment. Fischer operates under USDOT 1064184. On August 6, 2021, Commission Staff Special Investigator Gregory Askren conducted a safety compliance review of the operations of Fischer. As a result of this investigation, the special investigator identified two (2) violation(s) of the Motor Carrier Safety Regulations, resulting in a recommended penalty of \$200.

DISCUSSION AND ANALYSIS:

On 8/6/2021, Commission Staff Special Investigator Gregory Askren conducted a safety compliance review of the operations of Fischer. As a result of this investigation, the special investigator identified two (2) violation(s) of the Motor Carrier Safety Regulations.

Violation One (1 of 2)

On June 16, 2021, Fischer required or permitted its driver, Steven Plante, to operate a CDL-required commercial motor vehicle, a 2002 Sterling, VIN ending in 63650, GVWR 66,000 lbs., in intrastate commerce near Quinter, Kansas. This trip is evidenced by the driver log, dated June 18, 2021. At the time of this transportation, Fischer failed to ensure the designated person to determine that drivers undergo reasonable suspicion testing received 60 minutes of alcohol training and 60 minutes of controlled substance training. The Carrier's inability to produce documentation of this training and its failure to have a designated person to attend 60 minutes of training on alcohol

misuse and an additional 60 minutes of training on controlled substances use is a violation of 49 C.F.R. 382.603, adopted by K.A.R. 82-4-3c, and authorized by K.S.A. 66-1,129. Staff recommends a fine of \$100.

Violation Two (2 of 2)

During the transportation described in Violation One, above, Fischer failed to maintain the responses of each state agency to the annual driver record inquiry required by 49 C.F.R.391.25(a). The Carrier's failure to maintain the required responses to the annual driver record inquiry is in violation of 49 C.F.R. 391.51(b)(4), adopted by K.A.R. 82-4-3g, and authorized by K.S.A. 66-1, 129. Staff recommends a fine of \$100.

RECOMMENDATION:

Transportation Staff recommends the Commission find Fischer committed two (2) 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.

Additionally, Staff recommends a civil penalty of \$200 for two (2) violation(s) of the Motor Carrier Safety Statutes, Rules and Regulations, in accordance with the recommended penalties listed in the applicable Uniform Penalty Assessment Matrix.

Staff further recommends that a representative from Fischer be required to attend a Commission-sponsored safety seminar within ninety (90) days from the date of the 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.

Staff further recommends Fischer submit a written, comprehensive Corrective Action Plan (CAP) to Transportation Staff within thirty (30) days of the date of this order, documenting the violation(s) described in the Penalty Order, including specific and detailed information explaining the carrier's efforts and concrete steps taken to ensure the violation(s) do not occur in the future.

Finally, Staff recommends that Fischer submit to one follow-up safety compliance review within eighteen (18) months from the date of the Penalty Order. Transportation Staff will contact the motor carrier at a later date to determine an appropriate time for the review.

CERTIFICATE OF SERVICE

22-TRAM-078-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 and electronic service on 08/12/2021.

DONALD FISCHER, OWNER/RESIDENT AGENT
FISCHER WELL SERVICE, INC.
PO BOX 773
HAYS, KS 67601-0773

AHSAN LATIF, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
a.latif@kcc.ks.gov

/S/ DeeAnn Shupe
DeeAnn Shupe