

1500 SW Arrowhead Road
Topeka, KS 66604-4027



20190507145505
Kansas Corporation Commission

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<http://kcc.ks.gov/>

Dwight D. Keen, Chair
Shari Feist Albrecht, Commissioner

Laura Kelly, Governor

NOTICE OF PENALTY ASSESSMENT
19-TRAM-444-PEN

May 7, 2019

Robert Smiley, Manager
Smiley Concrete LLC
10153 W 5th Street
Pratt, KS 67124

This is a notice of a penalty assessment against Smiley Concrete LLC (Smiley Concrete) for violation(s) of Kansas Motor Carrier Safety Statutes, Rules, and Regulations discovered during a compliance review conducted on April 4, 2019, by Kansas Corporation Commission Special Investigator Doug Handy. Penalties are assessed in accordance with the FY 2019 Uniform Penalty Assessment Matrix, approved by the Commission on August 7, 2018. For a full description of the penalty(s) and terms and obligations please refer to the Order attached to this notice.

IF YOU ACCEPT THE PENALTY: Smiley Concrete has been assessed a \$2,950 penalty. You have thirty (30) days from the date of service of the Penalty Order to pay the penalty. Please remit payment of \$2,950, 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 Smiley Concrete 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. Smiley Concrete 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. 2018 Supp. 77-542.

IF YOU FAIL TO ACT: Failure to pay the penalty of \$2,950 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: Dwight D. Keen, Chair
Shari Feist Albrecht

PENALTY ORDER

I. 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. Smiley Concrete LLC (Smiley Concrete) operates under USDOT number 2480349.

5. Smiley Concrete is a private motor carrier which primarily hauls construction.

III. STATEMENT OF FACTS

6. Pursuant to the jurisdiction and authority cited above, on April 4, 2019, Commission Staff (Staff) Special Investigator Doug Handy conducted a safety compliance review of the operations of Smiley Concrete. 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 five (5) violation(s) of the Motor Carrier Safety Regulations.

- a. On January 28, 2019, Smiley Concrete required or permitted its driver, Chris C. Freeman, to operate a CDL-required commercial motor vehicle, a 2015 GMC, VIN ending in 551728, GVWR 13,025 lbs., pulling a PJ trailer, VIN ending in 1197818, GVWR 14,000 lbs., in intrastate commerce from Wichita, Kansas to Pratt, Kansas. This trip is evidenced by Driver/Vehicle Examination Report Number KSHP00932887, dated

January 28, 2019, a copy of which is attached hereto as Attachment “B” and is hereby incorporated by reference. At the time of this transportation, Smiley Concrete had not implemented an alcohol and controlled substance testing program for its CDL drivers. The carrier’s failure to establish an alcohol and controlled substances testing program for its CDL drivers that complies with the procedures established in 49 C.F.R. 382.105 as adopted by K.A.R. 82-4-3c is a violation of 49 C.F.R. 382.115(a), adopted by K.A.R. 82-4-3c, and authorized by K.S.A. 2018 Supp. 66-1,129. Staff recommends a fine of \$650.

- b. During the transportation described in paragraph a, above, Smiley Concrete failed to make an inquiry every 12 months into the annual motor vehicle record (MVR) of its driver and maintain the response(s) of each state agency in the driver qualification file. The special investigator discovered two (2) violations of this type. The carrier’s failure to inquire into its driver’s MVR at least once every 12 months and maintain a copy of the MVR in the driver qualification file is a violation of 49 C.F.R. Part 391.25(a) and (c)(1), adopted by K.A.R. 82-4-3g, and authorized by K.S.A. 2018 Supp. 66-1,112. Staff recommends a fine of \$250.
- c. During the transportation described in paragraph a, above, Smiley Concrete failed to require its driver to make a record of duty status indicating start time, end time and total hours worked. This carrier operates within a 100 mile radius of the city limits of Pratt, Kansas and requires a driver to make a record of duty status. The special investigator

discovered 44 violations of this type. Smiley Concrete's failure to require its drivers to keep records of duty status for each 24-hour period, or in the alternative to maintain and retain time records described in 49 C.F.R. 395.1(e) under the short haul exemption, using the method described in 49 C.F.R. 395.8(a), and to submit the original record to the motor carrier within 13 days of creation is a violation of 49 C.F.R. 395.8(a), adopted by K.A.R. 82-4-3a, and authorized by K.S.A. 2018 Supp. 66-1,129. Staff recommends a fine of \$1,000.

- d. During the transportation described in paragraph a, above, Smiley Concrete failed to require its driver to complete a Driver Vehicle Inspection Report (DVIR) on the commercial motor vehicles operated for the day. The special investigator discovered four (4) violations of this type. The carrier's failure to require its driver 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. 2018 Supp. 66-1,129. Staff recommends a fine of \$300.
- e. During the transportation described in paragraph a, above, Smiley Concrete failed to obtain and document a successful periodic (annual) inspection on the commercial motor vehicle during the preceding 12-month period. The special investigator discovered five (5) 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. 2018 Supp. 66-1,129. Staff recommends a fine of \$750.

IV. STAFF'S RECOMMENDATIONS

7. Based upon the available facts, Staff recommends the Commission finds Smiley Concrete committed five (5) 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 \$2,950 for five (5) violation(s) of the Motor Carrier Safety Statutes, Rules and Regulations.

9. Staff further recommends that a representative from Smiley Concrete 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.

10. Finally, Staff recommends that Smiley Concrete 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 Smiley Concrete because it is a motor carrier as defined in K.A.R. 82-4-1.

12. The Commission finds Smiley Concrete committed five (5) 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. Smiley Concrete LLC, of Pratt, KS is hereby assessed a \$2,950 civil penalty for five (5) 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. Smiley Concrete 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. Smiley Concrete is ordered to submit to one follow-up safety compliance review within eighteen (18) months from the date of this Order. Transportation Staff will contact the carrier to set up the appointment.

D. Pursuant to K.S.A. 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 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 Smiley Concrete's right to a hearing, and this Penalty Order will become a Final Order assessing a \$2,950 civil penalty against Smiley Concrete, and ordering a representative from Smiley Concrete to attend a Commission-sponsored safety seminar within ninety (90) days from the date of this Order and provide Litigation Counsel with written proof of attendance, and to submit to a safety compliance review within 18 months from the date of this Order.

E. If a request for hearing is filed, attorneys for all parties shall enter their appearances in Commission proceedings by giving their names and addresses for the record. For civil penalties exceeding \$500, a corporation shall appear before the Commission by its attorney, unless waived by the Commission for good cause shown and a determination that such waiver is in the public interest. K.S.A. 77-515(c); K.A.R. 82-1-228(d)(2); K.A.R. 82-1-202(a). For civil penalties less than \$500, a corporation may appear by a duly authorized representative of the corporation. K.S.A. 2018 Supp. 66-1,142b(e) and amendments thereto.

F. If you do not request a hearing, the payment of the civil penalty of \$2,950 is due in thirty (30) days from the date of service of this Order. Payment of \$2,950 must be made through your personal account with the Kansas Corporation Commission's KTRAN system located at <https://puc.kcc.ks.gov/ktran/>. You must have an account through KTRAN to pay the penalty.

G. Failure to pay the \$2,950 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 Smiley Concrete's motor carrier operating authority without further notice. Additionally, the Commission may impose further sanctions to include,

but not limited to, the issuance and enforcement of revocation of authority and/or cease and desist orders, and any other remedies available to the Commission by law, without further notice.

H. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further orders, as necessary.

BY THE COMMISSION IT IS SO ORDERED.

Keen, Chair; Albrecht, Commissioner

Dated: 05/07/2019


A handwritten signature in dark ink, appearing to read "Lynn M. Retz", is written above a horizontal line.

Lynn M. Retz
Secretary to the Commission

AAL

ATTACHMENT “A”

KANSAS CORPORATION COMMISSION

	US DOT #	Legal: SMILEY CONCRETE LLC				
	2480349					Operating (DBA):
MC/MX #:		Federal Tax ID: [REDACTED] (EIN)				
Review Type: Compliance Review (CR)						
Scope: Principal Office		Location of Review/Audit: Company facility in the U. S.			Territory: F	
Operation Types		Business: Corporation Gross Revenue: [REDACTED] for year ending: 12/31/2018				
Interstate Intrastate						
Carrier: N/A	Non-HM					
Shipper: N/A	N/A					
Cargo Tank: N/A						
Company Physical Address:						
10153 WEST 5TH STREET PRATT, KS 67124						
Contact Name: Robert F. Smiley						
Phone numbers: (1) [REDACTED] Fax						
E-Mail Address: [REDACTED]						
Company Mailing Address:						
10153 WEST 5TH STREET PRATT, KS 67124						
Carrier Classification						
Private Property						
Cargo Classification						
Construction						
Equipment						
	Owned Term Leased Trip Leased			Owned Term Leased Trip Leased		
Truck	1	0	0	Trailer	4	0 0
Power units used in the U.S.: 1						
Percentage of time used in the U.S.: 100						
Does carrier transport placardable quantities of HM? No						
Is an HM Permit required? N/A						
Driver Information						
	Inter	Intra	Average trip leased drivers/month: 0 Total Drivers: 2 CDL Drivers: 2			
< 100 Miles:		2				
>= 100 Miles:						





SMILEY CONCRETE LLC
U.S. DOT #: 2480349

Review Date:
04/04/2019

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:

1500 SW Arrowhead Rd.
Topeka, Ks. 66604-4027

This report will be used to assess your safety compliance.

Person(s) Interviewed

Name: Robert F. Smiley

Title: Managing Member

Name: Shari Jacobs

Title: Office Manager





SMILEY CONCRETE LLC
U.S. DOT #: 2480349

Review Date:
04/04/2019

Part B Violations

1 FEDERAL	Primary: 382.115(a)	Discovered 1	Checked 1	Drivers/Vehicles In Violation Checked
Description Failing to implement an alcohol and/or controlled substances testing program on the date the employer begins commercial motor vehicle operations. Example Driver Name: Chris Freeman Trip Date: 01/28/2019 Hire Date: [REDACTED] Ks. Level 1 Roadside Inspection #KSHP00932887 Carrier failed to ever implement an alcohol/controlled substance testing program.				
2 STATE	Primary: 391.25(a) CFR Equivalent: 391.25(a)	Discovered 2	Checked 2	Drivers/Vehicles In Violation Checked 2 2
Description Failing to make an inquiry into the driving record of each driver to the appropriate State agencies in which the driver held a commercial motor vehicle operator's license at least once every 12 months. Example Driver Name: Chris Freeman Trip Date: 01/28/2019 Hire Date: [REDACTED] Ks. Level 1 Roadside Inspection #KSHP00932887 Carrier failed to obtain an MVR 2018. Carrier provided MVR that was obtained on 03/29/2019 after initial contact with carrier on 03/07/2019.				
3 STATE	Primary: 391.51(b)(5) CFR Equivalent: 391.51(b)(5)	Discovered 2	Checked 2	Drivers/Vehicles In Violation Checked 2 2
Description Failing to maintain a note relating to the annual review of the driver's driving record as required by 391.25(c)(2). Example Driver Name: Chris Freeman Trip Date: 01/28/2019 Hire Date: [REDACTED] Ks. Level 1 Roadside Inspection #KSHP00932887 Carrier had no record of the annual review in the driver qualification file.				
4 STATE	Primary: 391.51(b)(6) CFR Equivalent: 391.51(b)(6)	Discovered 2	Checked 2	Drivers/Vehicles In Violation Checked 2 2
Description Failing to maintain a list or certificate relating to violations of motor vehicle laws and ordinances required by 391.27. Example Driver Name: Chris Freeman Trip Date: 01/28/2019 Hire Date: [REDACTED] Ks. Level 1 Roadside Inspection #KSHP00932887 Carrier had no record of the certification of violations in the driver qualification file.				





SMILEY CONCRETE LLC
U.S. DOT #: 2480349

Review Date:
04/04/2019

Part B Violations

5 STATE	Primary: 395.8(a) CFR Equivalent: 395.8(a)	Discovered 44	Checked 60	Drivers/Vehicles In Violation 2	Checked 2
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Description

Failing to require driver to make a record of duty status.

Example

Driver Name: Chris Freeman

Trip Date: 01/28/2019

Hire Date: [REDACTED]

Ks. Level 1 Roadside Inspection #KSHP00932887

Carrier operates within a 100 air mile radius of the city limits of Pratt. Carrier was unable to provide time records with a start time, end time, and total hours for each day applicable to the hours of service.

6 STATE	Primary: 396.9(d)(3) CFR Equivalent: 396.9(d)(3)	Discovered 2	Checked 2	Drivers/Vehicles In Violation 2	Checked 2
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Description

Failing to maintain completed inspection form for 12 months from the date of inspection at the carrier's principal place of business or where vehicle is housed.

Example

Driver Name: Chris Freeman

Trip Date: 01/28/2019

Hire Date: [REDACTED]

Ks. Level 1 Roadside Inspection #KSHP00932887

Carrier was placed OOS during the roadside inspection.

On 07/05/2018 driver was involved in a Ks. Level 1 inspection #KSHP02760557 with violations discovered during the inspection that required corrective action from the carrier. The carrier was unable to provide the corrected violation copy of the inspections.

7 STATE	Primary: 396.11(a) CFR Equivalent: 396.11(a)	Discovered 4	Checked 4	Drivers/Vehicles In Violation 2	Checked 2
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Description

Failing to require driver to prepare driver vehicle inspection report.

Example

Driver Name: Chris Freeman

Trip Date: 01/28/2019

Hire Date: [REDACTED]

Ks. Level 1 Roadside Inspection #KSHP00932887

Carrier operated 4 days in the month of January 2019 where they were applicable to complete the DVIR report.

8 STATE	Primary: 396.17(a) CFR Equivalent: 396.17(a)	Discovered 5	Checked 5	Drivers/Vehicles In Violation 5	Checked 5
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Description

Using a commercial motor vehicle not periodically inspected.

Example

Driver Name: Chris Freeman

Trip Date: 01/28/2019

Hire Date: [REDACTED]

Ks. Level 1 Roadside Inspection #KSHP00932887

Carrier provided 3 annual inspections that were performed on 02/06/19. There were no previous annual inspections performed prior to 2/06/2019. The remaining 2 trailers failed to ever have been annually inspected as required by the regulations.





SMILEY CONCRETE LLC
U.S. DOT #: 2480349

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04/04/2019

Part B Violations

Safety Fitness Rating Information:

Total Miles Operated 40,000
Recordable Accidents 0

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

Your proposed safety rating is :

This Review is not Rated.





SMILEY CONCRETE LLC
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04/04/2019

Part B Requirements and/or Recommendations

1. 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
2. A copy of your carrier profile can be obtained at no cost from the FMCSA Portal (<https://portal.fmcsa.dot.gov/login>).
3. If you want some drivers to use the 100 air-mile radius exemption, make sure that the drivers meet all terms of the exemption, including being released from duty no more than 12 hours from when they report for duty. Logs must be prepared if a driver does not meet the 12 hour requirement.
4. Keep all driver vehicle inspection reports, signed, certified, and reviewed as required on file for at least 90 days.
5. Ensure that the persons or entities that perform preventative maintenance inspections on your equipment are abiding by agreed time or mileage intervals. Ensure that records are kept of such periodic preventative maintenance inspections. Take corrective action, if schedules are not being adhered to.
6. HOS COMPLIANCE BASIC PROCESS BREAKDOWN: Policies and Procedures

DESCRIPTION OF PROCESS BREAKDOWN- Smiley Concrete, LLC operates under 100 air mile exemption and failed to provide time records with a start time, end time, and total hours. They had received 2 level 1 roadside inspections with correctable violations discovered. Had no copy of the inspection on file with the corrective action being taken.

BASIC SPECIFIC RECOMMENDED REMEDIES

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

- Develop a policy and procedure describing how management will monitor and track logs for falsification.
- Establish a policy that prohibits dispatchers from assigning a load to drivers without hours available to complete the load on time.
- Develop a policy stating that drivers should not violate their Hours-of-Service (HOS) Out-of-Service (OOS) order under any circumstances, and immediately contact the carrier when a driver is placed OOS.
- Develop a policy requiring drivers to report their available hours to dispatch during "check-in" calls.
- Develop policies and procedures for ensuring proper retention of Record of Duty Status (RODS) according to regulations.
- Establish a policy requiring drivers to submit copies of all roadside inspections to carrier management within 24 hours.
- Develop a policy stating that drivers are required to submit all Records of Duty Status (RODS) and supporting documentation, such as expense receipts, within 13 days of the end of the trip.
- Establish a policy stating that drivers are required to check with their supervisor, manager, or dispatcher to review their "fit-for-duty" status before starting a job, and that drivers who are ill to the extent that their ability and/or alertness is impaired are prohibited from working on safety-sensitive assignments.
- 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 Hours-of-Service (HOS) 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.

7. VEHICLE MAINTENANCE BASIC - INSPECTION-REPAIR-MAINTENANCE PROCESS BREAKDOWN: Monitoring and Tracking





SMILEY CONCRETE LLC
U.S. DOT #: 2480349

Review Date:
04/04/2019

Part B Requirements and/or Recommendations

DESCRIPTION OF PROCESS BREAKDOWN- Smiley Concrete, LLC operated CMV's without having the vehicles periodically inspected.

BASIC SPECIFIC RECOMMENDED REMEDIES

Implement Safety Improvement Practices: The following are recommended practices related to Monitoring and Tracking Processes.

- Check all inspections and relevant records, such as Driver Vehicle Inspection Records (DVIRs), pre-trip and annual inspections, and maintenance and repair records, to ensure that company inspection, repairing, and maintenance policies and procedures are adhered to and properly documented.
- Ensure that Driver Vehicle Inspection Records (DVIRs) are effectively coordinated with maintenance and operations, result in timely corrective measures, and are verified during pre-trip inspections as applicable.
- Require mechanics to note whether parts came from inventory or were ordered, to ensure accuracy of maintenance records.
- Monitor and track roadside inspection results to ensure that vehicle defects are repaired and documented promptly and to prevent Out-of-Service (OOS) vehicles from operating prior to being repaired.
- Monitor manufacturer recalls through <http://www.nhtsa.dot.gov> and consult with manufacturer service representatives to keep current with service bulletins for proactive maintenance.
- Implement a system for keeping accurate records of employee inspection, repair, and maintenance training needs, including updates on a carrier's fleet or equipment and completed training, via software, a checklist in the driver's file, and/or another appropriate method.
- Regularly evaluate the company's vehicle-maintenance-related inspection results via the Federal Motor Carrier Administration's (FMCSA) website at <http://ai.fmcsa.dot.gov/SMS>. Assess violations for process breakdowns and how to remedy them.
- Maintain inspection, repair, maintenance, vehicle identification, and communication records to help evaluate the performance of all staff (drivers, dispatchers, mechanics, and managers) involved in fleet maintenance and the effectiveness of compliance with vehicle maintenance policies, procedures, and regulations.
- Evaluate personnel who are monitoring vehicle maintenance performance by making sure they are using Driver Vehicle Inspection Records (DVIRs), roadside inspections, and other data; applying performance standards fairly, consistently, and equitably; and documenting evaluations.
- When monitoring and tracking vehicle maintenance issues, always assess whether an issue is individual or represents a systemic breakdown in one of the Safety Management Processes (Policies and Procedures, Roles and Responsibilities, etc.).

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.

8. CONTROLLED SUBSTANCES AND ALCOHOL BASIC PROCESS BREAKDOWN: Policies and Procedures

DESCRIPTION OF PROCESS BREAKDOWN- Smiley Concrete, LLC had no alcohol/controlled testing program.

BASIC SPECIFIC RECOMMENDED REMEDIES

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

- Develop a written company policy incorporating by reference all regulations regarding controlled substances and alcohol use, testing, training, and records retention for all employees.
- Develop a policy requiring drivers to submit copies of all citations for moving violations to carrier management within 24 hours.
- Establish a process to ensure that drivers who are randomly tested can be immediately removed if they are found to be positive and that they do not return to safety-sensitive duties until they have complied with the "return-to-duty" process.
- Establish written policies and procedures that promote, verify, and enforce adherence to all controlled-substance





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Part B Requirements and/or Recommendations

and alcohol rules and regulations. Procedures should be tailored to company operations and should provide specific checks and guidelines for interacting with a consortium, if applicable.

- Establish a process to ensure that test results are properly safeguarded from unauthorized disclosure to prospective employers without specific written consent and from disclosure under any circumstances to insurance companies and other nonqualified parties, in accordance with regulations.
- Develop a policy to ensure that all alcohol testing is conducted immediately before or after the period that employees are performing a safety-sensitive function. Drivers can be tested on their day off only for controlled substances. Once notified of their selection, drivers must proceed immediately to the testing facility. If a driver refuses to go, this should be considered as equivalent to a positive result.
- Consider developing a driver selection protocol that uses valid random-number-generator software on a monthly basis to select, by driver identification number, 5 to 8 percent of drivers for controlled-substance testing and 2 to 5 percent for alcohol testing. This will ensure selection of 50 percent of drivers for controlled-substances testing and 10 percent for alcohol testing per year, given fluctuations in the driver workforce over the course of the year.
- 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 controlled-substance and alcohol 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.

9. DRIVER FITNESS BASIC PROCESS BREAKDOWN: Policies and Procedures

DESCRIPTION OF PROCESS BREAKDOWN- Smiley Concrete, LLC failed to obtain MVR, certificate of violations and annual reviews annually on each driver as required by the regulations.

BASIC SPECIFIC RECOMMENDED REMEDIES

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

- 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.
- 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.
- 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.
- Develop a policy for document retention and recordkeeping, including documents that are to be in the possession of the driver as proof of credentials.
- Develop a process to ensure that operations will always have the proper amount of fit drivers. This process would address how to deal with issues such as sick leave, vacation, training, suspension, and termination.
- 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.

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





SMILEY CONCRETE LLC
U.S. DOT #: 2480349

Review Date:
04/04/2019

Part B Requirements and/or Recommendations

the industry

10. This report contains citations of regulations that are deemed serious in nature and could result in penalties against your company and/or your drivers.

11. 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 could result in a Penalty Order:

- **PLEASE NOTE:** The violations discovered during this compliance review may affect the civil penalty proposed in any subsequent Penalty Order. In addition, your history of prior violations of the Federal Motor Carrier Safety Regulations, Federal Hazardous Material Regulations or the Federal Motor Carrier Commercial Regulations may also affect the civil penalty proposed in any subsequent Penalty Order. Your signature for receipt of this report acknowledges your understanding that the violations discovered by the KCC during this review may be used to calculate any civil penalty proposed as a result of this review. Your signature is not an admission of the violations identified.

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





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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

12. 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 Smiley Concrete, LLC operating authority and/or the impoundment of Smiley Concrete, LLC vehicles.

Robert F. Smiley
Carrier Representative

4-4-19
Date

Robert F Smiley Owner Operator
Printed name and Title

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: KSHP00932887
Inspection Date: 01/28/2019
Start: 1:55 PM CT **End:** 02:25 PM CT
Inspection Level: I - Full
HM Inspection Type: Non-Bulk

SMILEY CONCRETE LLC
10153 WEST 5TH STREET
PRATT, KS 67124
USDOT#: 02480349
MC/MX#: 00000000
State#:

Phone#: [REDACTED]
Fax#: [REDACTED]

Driver: FREEMAN, CHRIS C
License#: K [REDACTED] **State:** KS
Date of Birth: 0 [REDACTED]
CoDriver:
License#: **State:**
Date of Birth:

Location: SEDGWICK COUNTY - 173
Highway: US 54
County:

MilePost: 192
Origin: WICHITA, KS
Destination: PRATT, KS

Shipper: CARRIER
Bill of Lading:
Cargo: BLDG MTRL, GASOLINE

VEHICLE IDENTIFICATION

Unit	Type	Make	Year	State	Plate #	Equipment ID	VIN	GVWR	CVSA #	New CVSA #	OOS#
1	TR	GMC	2015	KS	648896		[REDACTED] 551728	13,025		26762724	
2	SB	UNK	2013	KS	643342		[REDACTED] 1197818	15,680			OUT

BRAKE ADJUSTMENTS

Axle #	1	2	3	4
Right	N/A	N/A	N/A	N/A
Left	N/A	N/A	N/A	N/A
Chamber	HYDR	HYDR	ELEC	ELEC

VIOLATIONS

Vio Code	Section	Unit	OOS	Citation #	Verify	Crash	Violations Discovered
392.2MI	392.2MI	D	N		N	N	Miscellaneous Traffic Law Violation: SAFETY CHAINS NOT ATTACHED TO TRUCK. HANGING FROM TOP OF TRAILER.
390.21B	390.21B	1	N		N	N	Carrier name and/or USDOT Number not displayed as required: NEITHER DISPLAYED ON EITHER SIDE
396.17C	396.17C	1	N		N	N	Operating a CMV without proof of a periodic inspection: NONE LOCATED
393.43	393.43	2	Y		A	N	No/improper breakaway or emergency braking: CABLE NOT ATTACHED TO TRUCK. HOOKED TO TRAILER SAFETY CHAIN AND HANGING FROM TOP OF TRAILER
396.17C	396.17C	2	N		N	N	Operating a CMV without proof of a periodic inspection: NONE LOCATED
393.43D	393.43D	2	Y		U	N	No or defective automatic trailer brake: INOPERABLE. LADEN TRAILER WEIGHS 5,800 lbs
393.205C	393.205C	2	N		N	N	Wheel fasteners loose and/or missing: #4 AXLE, DRIVER'S SIDE, MISSING ONE ON EIGHT POSITION WHEEL

HazMat:

Placard: No **Cargo Tank:**

Special Checks:

Report Prepared By:
B.J. Lies

Badge #:
0093

Copy Received By:
CHRIS FREEMAN

Page 1 of 3



02480349 KS KSHP00932887

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: KSHP00932887
Inspection Date: 01/28/2019
Start: 1:55 PM CT End: 02:25 PM CT
Inspection Level: I - Full
HM Inspection Type: Non-Bulk

SMILEY CONCRETE LLC
10153 WEST 5TH STREET
PRATT, KS 67124
USDOT#: 02480349
MC/MX#: 00000000
State#:

Phone#:
Fax#:

Driver: FREEMAN, CHRIS C
License#:
Date of Birth:
CoDriver:
License#:
Date of Birth:

State: KS

State:

* 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 this 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 REQUIRED TO BE RETURNED TO THE CARRIER BY REGULATION. **//** *CARRIER CERTIFICATION: All defects on this sheet 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.

Signature Of Motor Carrier X: _____ Title: _____ Date: _____

Report Prepared By:
B.J. Lies

Badge #:
0093

Copy Received By:
CHRIS FREEMAN

Page 2 of 3



02480349 KS KSHP00932887

X _____

X _____

DRIVER/VEHICLE EXAMINATION REPORT

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SMILEY CONCRETE LLC
10153 WEST 5TH STREET
PRATT, KS 67124
USDOT#: 02480349
MC/MX#: 00000000
State#:

Phone#: [REDACTED]
Fax#: [REDACTED]

Driver: FREEMAN, CHRIS C
License#: [REDACTED] State: KS
Date of Birth: [REDACTED]
CoDriver:
License#: State:
Date of Birth:

Inspection Notes

I AM OUT OF OOS STICKERS. NONE WAS PLACED ON THE TRIALE.R CIVIL ASSESSMENT.

Special Studies No Special Study Data Recorded

Report Prepared By:
B.J. Lies

Badge #:
0093

Copy Received By:
CHRIS FREEMAN

Page 3 of 3



02480349 KS KSHP00932887

X _____

X _____

CERTIFICATE OF SERVICE

19-TRAM-444-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 05/08/2019.

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

ROBERT F. SMILEY, MANAGER
SMILEY CONCRETE LLC
10153 W 5TH STREET
PRATT, KS 67124
jayhawksmiley@yahoo.com

/S/ DeeAnn Shupe

DeeAnn Shupe