

STATE OF KANSAS



CORPORATION COMMISSION
1500 SW ARROWHEAD ROAD
TOPEKA, KS 66604-4027

PHONE: 785-271-3100
FAX: 785-271-3354
<http://kcc.ks.gov/>

GOVERNOR JEFF COLYER, M.D.

SHARI FEIST ALBRECHT, CHAIR | JAY SCOTT EMLER, COMMISSIONER | DWIGHT D. KEEN, COMMISSIONER

NOTICE OF PENALTY ASSESSMENT

19-TRAM-153-PEN

October 30, 2018

David Haynes, Managing Member
Keller Trucking, LLC
111 E Key
Salina, KS 67401

This is a notice of a penalty assessment against Keller Trucking, LLC (Keller Trucking) for violation(s) of Kansas Motor Carrier Safety Statutes, Rules, and Regulations discovered during a compliance review conducted on September 26, 2018, by Kansas Corporation Commission Special Investigator Jared Smith. 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: Keller Trucking has been assessed a \$250 penalty. You have thirty (30) days from the date of service of the Penalty Order to pay the penalty. Please remit payment of \$250, 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 Keller Trucking 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. Keller Trucking 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. 2017 Supp. 77-542.

IF YOU FAIL TO ACT: Failure to pay the penalty of \$250 within thirty (30) days from the date of service of the Penalty Order or failure to comply with the terms of the 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,

A handwritten signature in blue ink, appearing to read "Ahsan A. Latif".

Ahsan A. Latif
Litigation Counsel
(785) 271-3118

Before Commissioners: Shari Feist Albrecht, Chair
Jay Scott Emler
Dwight D. Keen

PENALTY ORDER

I. JURISDICTION

2. Pursuant to K.S.A. 2017 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. Keller Trucking, LLC (Keller Trucking) has private and common operating authority with the Commission and further operates USDOT number 1607686.

5. Keller Trucking owns one truck, four truck tractors and four trailers, and employs three CDL drivers.

6. Keller Trucking is a private and common motor carrier which primarily hauls rock and gravel.

III. STATEMENT OF FACTS

7. Pursuant to the jurisdiction and authority cited above, on September 26, 2018, Commission Staff (Staff) Special Investigator Jared Smith conducted a compliance review of the operations of Keller Trucking. 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 April 26, 2018, Keller Trucking required or permitted its driver, Sheldone Smith, to operate a CDL-required commercial motor vehicle, a 2007 Freightliner, VIN ending in 156660, GVWR 52,000 lbs., in intrastate

commerce from Salina, Kansas to Junction City, Kansas. This trip is evidenced by a hand-written statement, a copy of which is attached hereto as Attachment "B" and is hereby incorporated by reference. At the time of this transportation, Keller Trucking 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 three (3) 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. 2017 Supp. 66-1,112. Staff recommends a fine of \$250.

IV. STAFF'S RECOMMENDATIONS

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

9. Additionally, Staff recommends a civil penalty of \$250 for one (1) violation(s) of the Motor Carrier Safety Statutes, Rules and Regulations.

10. Staff further recommends that a representative from Keller Trucking be required to attend a Commission-sponsored safety seminar within ninety (90) days from the date of this Order, and provide Litigation Counsel with written proof of attendance. A schedule of the dates

and locations for safety seminars can be found on the Commission's website at http://kcc.ks.gov/trans/safety_meetings.htm.

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

V. CONCLUSIONS OF LAW

12. The Commission finds it has jurisdiction over Keller Trucking because it is a motor carrier as defined in K.S.A. 2017 Supp. 66-1,108.

13. The Commission finds Keller Trucking 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. Keller Trucking, LLC, of Salina, KS is hereby assessed a \$250 civil penalty for one (1) violation(s) of Kansas law governing the regulation of motor carriers, the Kansas Administrative Regulations and provisions of the Federal Motor Carrier Safety Regulations, as adopted by the Kansas Administrative Regulations.

B. Keller Trucking 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. Keller Trucking 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. 2017 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 Keller Trucking's right to a hearing, and this Penalty Order will become a Final Order assessing a \$250 civil penalty against Keller Trucking, and ordering a representative from Keller Trucking 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. 2017 Supp. 66-1,142b(e) and amendments thereto.

F. If you do not request a hearing, the payment of the civil penalty of \$250 is due in thirty (30) days from the date of service of this Order. Payment of \$250 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 \$250 civil penalty within thirty (30) days from the date of service of this Penalty Order, *see* K.S.A. 66-1,105, and/or failure to comply with the provisions of this Order, may result in suspension of Keller Trucking'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.

Albrecht, Chair; Emler, Commissioner; Keen, Commissioner





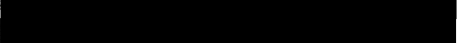


Dated: 10/30/2018




Lynn M. Retz
Secretary to the Commission

AAL

ATTACHMENT “A”

	US DOT # 1607686	Legal: DAVID HAYNES Operating (DBA): KELLER TRUCKING LLC		
MC/MX #:		Federal Tax ID:  (EIN)		
Review Type: Non-ratable Review - CSA				
Scope: Principal Office		Location of Review/Audit: CSA Off-site		Territory:
Operation Types Interstate IntraState				
Carrier: N/A Non-HM Shipper: N/A N/A Cargo Tank: N/A		Business: Corporation Gross Revenue:  for year ending: 12/31/2017		
Company Physical Address:				
 SALINA, KS 67401				
Contact Name: David Haynes				
Phone numbers: (1) 		Fax		
E-Mail Address: 				
Company Mailing Address:				
 SALINA, KS 67401				
Carrier Classification				
Exempt for Hire		Private Property		
Cargo Classification				
Other: rock, gravel				
Equipment				
	Owned	Term Leased	Trip Leased	
Truck	1	0	0	Truck Tractor
Trailer	4	0	0	
Owned Term Leased Trip Leased				
Truck	4	0	0	Truck Tractor
Trailer	4	0	0	
Power units used in the U.S. 5				
Percentage of time used in the U.S. 100				
Does carrier transport placardable quantities of HM? No				
Is an HM Permit required? N/A				
Driver Information				
	Inter	Intra		
< 100 Miles:			Average trip leased drivers/month: 0	
>= 100 Miles:		3	Total Drivers: 3	
			CDL Drivers: 3	



	KELLER TRUCKING LLC (DAVID HAYNES dba) U.S. DOT # 1607686	Review Date: 09/26/2018
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Part A

QUESTIONS regarding this report or the Federal Motor Carrier Safety or Hazardous Materials rules may be addressed to the Office of Motor Carriers at:

This report will be used to assess your safety compliance.

<u>Person(s) Interviewed</u>	
Name: David Haynes	Title: Owner
Name:	Title:



	KELLER TRUCKING LLC (DAVID HAYNES dba)	Review Date.
	U.S. DOT # 1607686	09/26/2018

Part B Violations

1 STATE	Primary. 391.51(b)(4) CFR Equivalent: 391.51(b)(4)	Discovered 3	Checked 3	Drivers/Vehicles In Violation Checked 3 3
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Description

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

Example

On April 26, 2018 David Haynes dba Keller Trucking LLC had driver Sheldone Smith (KS CDL# [REDACTED]) operate a 2007 Freightliner, (Unit # 48, VIN # [REDACTED] 15660) This vehicle has a gross vehicle weight rating of 52,000 lbs. Driver Sheldone Smith operated in commerce on an intrastate trip from Salina, KS to Junction City, Kansas. At the time of this trip carrier was found to be in violation of failing to maintain the responses of each State agency to the annual driver record inquiry required by 391.25(a).

2 STATE	Primary 391.51(b)(5) CFR Equivalent 391.51(b)(5)	Discovered 3	Checked 3	Drivers/Vehicles In Violation Checked 3 3
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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

On April 26, 2018 David Haynes dba Keller Trucking LLC had driver Sheldone Smith (KS CDL# [REDACTED]) operate a 2007 Freightliner, (Unit # 48, VIN # [REDACTED] 15660.) This vehicle has a gross vehicle weight rating of 52,000 lbs. Driver Sheldone Smith operated in commerce on an intrastate trip from Salina, KS to Junction City, Kansas. At the time of this trip carrier was found to be in violation of failing to maintain a note relating to the annual review of the driver's driving record as required by 391.25(c)(2).

3 STATE	Primary 391.51(b)(6) CFR Equivalent. 391.51(b)(6)	Discovered 3	Checked 3	Drivers/Vehicles In Violation Checked 3 3
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Description

Failing to maintain a list or certificate relating to violations of motor vehicle laws and ordinances required by 391.27.

Example

On April 26, 2018 David Haynes dba Keller Trucking LLC had driver Sheldone Smith (KS CDL# [REDACTED]) operate a 2007 Freightliner, (Unit # 48, VIN # [REDACTED] 15660.) This vehicle has a gross vehicle weight rating of 52,000 lbs. Driver Sheldone Smith operated in commerce on an intrastate trip from Salina, KS to Junction City, Kansas. At the time of this trip carrier was found to be in violation of failing to maintain a list or certificate relating to violations of motor vehicle laws and ordinances required by 391.27.

Safety Fitness Rating Information:		OOS Vehicle (CR): 0	
Total Miles Operated	493,036	Number of Vehicle Inspected (CR): 0	
Recordable Accidents	0	OOS Vehicle (MCMIS): 0	
		Number of Vehicles Inspected (MCMIS): 0	

Your proposed safety rating is :

This Review is not Rated.



Safety Management Process Breakdowns and Remedies

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

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

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

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

2. For all Investigations.

- Understand Why Compliance Saves Time and Money Compliance with FMCSRs will not only save lives, but also saves your business time and money. Tracking how much your business spends on non-compliance activities can help you understand the many benefits of compliance to your business and why safety is good business.

Document and Follow Through on Action Plans: Document and follow through on action plans to ensure the actions you are taking are creating improvement in safety management and compliance.

- NOTICE A pattern and/or repeated violations of the same or related acute or critical regulations (violations of the same Part in Title 49, Code of Federal Regulations) will cause the maximum penalties allowed by law to be assessed under Section 222 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA). A pattern of violations means two or more violations of acute and/or critical regulations in three or more Parts of Title 49, Code of Federal Regulations discovered during any eligible investigation. Repeated violations means violation(s) of an acute regulation of the same Part of Title 49, Code of Federal Regulations discovered in an investigation after one or more closed enforcement actions within a six year period and/or violation(s) of a critical regulation in the same Part of Title 49, Code of Federal Regulations discovered in an investigation after two or more closed enforcement actions within a six year period.

- NOTICE 49 CFR Part 391.23 requires prospective employers to, at a minimum, investigate a driver's employment information, crash record, and alcohol and controlled substances history from all employers the driver worked for within the previous 3 years.


The Pre-Employment Screening Program (PSP) is a screening tool that assists motor carriers in investigating crash history and roadside safety performance of prospective drivers. The PSP allows motor carriers to purchase 5 years of crash data and 3 years of roadside inspection data from the Federal Motor Carrier Safety Administration's (FMCSA) Motor Carrier Management Information System (MCMIS). Records are available 24 hours a day via Web request. Motor carriers should visit the following website for more information:
<http://www.psp.fmcsa.dot.gov/Pages/default.aspx>

- All motor carriers and truck drivers are needed to fight against terrorism and hijacking. You could be a target. Protect yourself, your trucks, your cargo, and your facilities.

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

The KCC requires that you prepare a corrective action letter, addressing the measures taken to correct the violations identified within this report. Submit this letter within 30 days outlining the carrier's updated changes to their



	KELLER TRUCKING LLC (DAVID HAYNES dba) U.S. DOT #: 1607686	Review Date: 09/26/2018
Safety Management Process Breakdowns and Remedies		

policies and procedures regarding all listed violations. Explain in detail how, as a carrier representative, you will rectify these deficiencies and prevent their reoccurrence going forward. Include any supporting documentation and evidence as indicated in the recommendations above, (example: vehicle inspections performed, proof of drug and alcohol testing in place, etc.) necessary to prove that corrective action has been taken. Mail the letter along with copies of your supporting evidence to

Kansas Corporation Commission
 Attn: Gary Davenport
 1500 SW Arrowhead Rd
 Topeka, KS 66604-4027

3. DRIVER FITNESS BASIC PROCESS BREAKDOWN Monitoring and Tracking

DESCRIPTION OF PROCESS BREAKDOWN Keller Trucking LLC's violations occurred due to a breakdown regarding the monitoring and tracking elements within this section. It is the carrier's responsibility to execute all annual requirements and to verify that all drivers are qualified to operate commercial motor vehicles.

BASIC SPECIFIC RECOMMENDED REMEDIES: Motor Vehicle Reports (MVR) need to be obtained within 365 days from the date of the previous MVR. Additionally, make sure that you have drivers complete a listing of driver violations when you run the MVR's. Then sign the certificate qualifying them for another year if they meet the standards. Utilize the documents provided to you at the time of this investigation.


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

- 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.
- 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.
- 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.
- Maintain roadside inspection reports, moving violation records, training records, the Commercial Driver's License (CDL), the dispatch schedule, bills of lading, and the medical report to help evaluate the performance of all staff involved in qualifying drivers (dispatchers and managers) and the effectiveness of the policies and procedures.
- Implement a system for keeping accurate records of employee driver fitness training needs, such as entry-level and HAZMAT training, and completed training, via software, a checklist in the driver's file, and/or another appropriate method.
- 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.
- 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.
- When monitoring and tracking any driver-fitness-related issue, always assess whether it 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.



	KELLER TRUCKING LLC (DAVID HAYNES dba) U.S. DOT # 1607686	Review Date: 09/26/2018
Safety Management Process Breakdowns and Remedies		

4. I acknowledge that the requirements and/or recommendations resulting from this off-site, focused review have been discussed with me and my questions have been answered. I further acknowledge that KCC recommendations only cover the scope of this focused review, and that areas not reviewed by the KCC have not necessarily been endorsed as compliant. 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 Haynes dba Keller Trucking LLC's operating authority and/or the impoundment of David Haynes dba Keller Trucking LLC's commercial motor vehicles.

Carrier Representative Date

After reviewing these Requirements and/or Recommendations, please sign and date where indicated, and return to the Kansas Corporation Commission, ATTN Verna Jackson, Transportation Division, 1500 SW Arrowhead Rd, Topeka, Kansas 66604-4027, or fax 785-271-3124.



ATTACHMENT “B”

Last Intrastate Trip

Apr 26, 2018

Sheldone Smith

Truck # 48

Salvia Ks - loaded @ Abilene Ks dumped
load @ Junction City Ks Returned to
Salvia Ks -

CERTIFICATE OF SERVICE

19-TRAM-153-PEN

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of first class mail/hand delivered on 10/31/2018.

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

DAVID HAYNES, MANAGING MEMBER
KELLER TRUCKING, LLC
111E KEY
SALINA, KS 67401
davedeb111@aol.com

/S/ DeeAnn Shupe
DeeAnn Shupe