

1500 SW Arrowhead Road  
Topeka, KS 66604-4027

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



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

Sam Brownback, Governor

## NOTICE OF PENALTY ASSESSMENT

March 26, 2015

15-TRAM-392-PEN

Eugene R. Wells, Co-Owner  
Eugene R. Wells and Gail R. Wells  
d/b/a Wells Trucking  
1704 Glenellen Dr.  
Garden City, Kansas 67846

This is a notice of a penalty assessment for violation of Kansas Motor Carrier Safety Statutes, Rules, and Regulations discovered during a compliance review conducted on January 28, 2015, by Kansas Corporation Commission Special Investigator M.P. McAvoy. For a full description of the penalty and process please refer to the Order that is attached to this notice.

### **IF YOU ACCEPT THE PENALTY:**

You have been assessed a \$100 penalty. You have thirty (30) days from service of this Penalty Order to pay the fine amount. Check or money order must be made payable to the Kansas Corporation Commission. Payment is to be mailed to the Transportation Division of the Kansas Corporation Commission at 1500 S.W. Arrowhead Road, Topeka, Kansas 66604, and must include a reference to the docket number of this proceeding. Credit card payment may be made by faxing your credit card information to the Transportation Office at 785-271-3124, using the KCC's credit card payment form found at <http://kcc.ks.gov/trans/creditcard.pdf>.

You must attend a Commission-sponsored safety seminar within the next ninety (90) days and provide Staff with written proof of attendance. A schedule of dates and locations for the safety seminar can be found at the Commission's website [http://www.kcc.state.ks.us/trans/safety\\_meetings.htm](http://www.kcc.state.ks.us/trans/safety_meetings.htm).

You must submit to one follow-up safety compliance review within the next 18 months. Staff will contact you at a later date to determine an appropriate time for this review.

### **IF YOU CONTEST THE PENALTY:**

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. Respondent must submit an original and seven (7) copies of the request to the Commission's Acting Secretary at 1500 S.W. Arrowhead Road, Topeka, Kansas 66604 within fifteen (15) days from the date stamped on the last page of the Penalty Order. K.A.R. 82-1-215; K.S.A. 2014 Supp. 77-542.

### **IF YOU FAIL TO ACT:**

Failure to pay the fine amount within thirty (30) days of service of the Penalty Order, or in the alternative, provide a written request for a hearing within fifteen (15) days from service of the Penalty Order will result in the attached Order becoming a Final Order and may result in the additional sanction of suspension and/or revocation of your motor carrier operating authority.

Respectfully,

Michael J. Duenes  
Litigation Counsel  
(785) 271-3181



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 order a hearing 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. Eugene R. Wells and Gail R. Wells, d/b/a Wells Trucking (Wells Trucking) obtained common' operating authority from the Commission on July 30, 2012, and operates under KSMCID number 169218 and USDOT number 2318213.

5. Eugene Wells attended a Commission-sponsored Motor Carrier Education and Instructional Meeting on July 2, 2012, on behalf of Wells Trucking.

6. Wells Trucking is a common' motor carrier which primarily hauls grain, feed and hay.

## **III. STATEMENT OF FACTS**

7. Pursuant to the jurisdiction and authority cited above, on January 28, 2015, Commission Staff (Staff) Special Investigator M.P. McAvoy conducted a compliance review of the operations of Wells 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, Mr. McAvoy identified one (1) violation of the Motor Carrier Safety Regulations.

- a. On December 10, 2014, Wells Trucking required or permitted its driver, Eugene R. Wells, to operate a commercial motor vehicle, a 2010 Peterbilt, in intrastate commerce from Scott City, Kansas to Garden City, Kansas.

This trip is evidenced by Driver's Time Record, a copy of which is attached hereto as Attachment "B" and is hereby incorporated by reference. At the time of this transportation, Wells Trucking had not made inquiry into the motor vehicle record (MVR) of its driver within the preceding 12 months nor retained a copy of the MVR in the driver's qualification file. Wells Trucking'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), as adopted by K.A.R. 82-4-3g, as authorized by K.S.A. 2014 Supp. 66-1,112. Staff recommends a fine of \$100.

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

8. Based upon the available facts, Staff recommends the Commission find Wells Trucking committed one (1) violation 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 \$100 for one (1) violation of the Motor Carrier Safety Statutes, Rules and Regulations.

10. Staff further recommends that Wells Trucking be required to attend a Commission-sponsored safety seminar within the next ninety (90) days and provide Staff with written proof of attendance. A schedule of the dates and locations for the safety seminar can be found on the Commission's website at [http://kcc.ks.gov/trans/safety\\_meetings.htm](http://kcc.ks.gov/trans/safety_meetings.htm).

11. Finally, Staff recommends that Wells Trucking submit to one follow-up safety compliance review within the next eighteen (18) months. 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 Wells Trucking because it is a motor carrier as defined in K.S.A. 2014 Supp. 66-1,108.

13. The Commission finds Wells Trucking committed one (1) violation 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. Eugene R. Wells and Gail R. Wells, d/b/a Wells Trucking, of Garden City, Kansas is hereby assessed a \$100 civil penalty for one (1) violation 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. Wells Trucking is hereby ordered to attend a Commission-sponsored safety seminar within the next ninety (90) days and is to provide Staff with written proof of attendance. Further, Wells Trucking is ordered to submit to one follow-up safety compliance review within the next eighteen (18) months.

C. **Pursuant to K.S.A. 2014 Supp. 77-537 and K.S.A. 77-542, any party may request a hearing on the above issues by submitting a written request, setting forth the specific grounds upon which relief is sought, to the Commission's Acting Secretary, at 1500 S.W. Arrowhead Road, Topeka, Kansas 66604 within fifteen (15) days from the date of**

**service of this Order.** If service is by certified mail, service is complete upon the date delivered shown on the Domestic Return Receipt. Hearings will be scheduled only upon written request. Failure to timely request a hearing will result in a waiver of Wells Trucking's right to a hearing, and this Penalty Order will become a Final Order assessing a \$100 civil penalty against Wells Trucking, and ordering Wells Trucking to attend a Commission-sponsored safety seminar within the next ninety (90) days and provide Staff with written proof of attendance, and to submit to a safety compliance review within eighteen (18) months from the date of service of this Order.

D. Attorneys for all parties shall enter their appearances in Commission proceedings by giving their names and addresses for the record. 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).

E. If you do not request a hearing, the payment of the civil penalty is due in thirty (30) days from date of service of this Order. Checks and Money Orders shall be payable to the Kansas Corporation Commission. For credit card payments, include type of card (Visa, MasterCard, Discover, or American Express), account number and expiration date. Payments shall be mailed to the Transportation Division of the Kansas Corporation Commission, 1500 S.W. Arrowhead Road, Topeka, Kansas 66604. *The payment shall include a reference to the docket number of this proceeding.*

F. Failure to pay the \$100 civil penalty within thirty (30) days of the service of this Penalty Order, and/or failure to comply with the provisions of this Order, may result in revocation of Wells 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 out-of-service and/or cease and desist orders, and any other remedies available to the Commission by law, without further notice.

G. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further order or orders as it may deem necessary.

**BY THE COMMISSION IT IS SO ORDERED.**

Albrecht, Chair; Emler, Commissioner; Apple, Commissioner

Dated: MAR 26 2015



ORDER MAILED MAR 27 2015

Neysa Thomas  
Acting Secretary

MJD

## **ATTACHMENT “A”**





US DOT #  
2318213

Legal: EUGENE R WELLS AND GAIL R WELLS  
Operating (DBA): WELLS TRUCKING

MC/MX #: 000000 State #: 169218 Federal Tax ID: 45-5622874 (EIN)

Review Type: Compliance Review (CR)

Scope: Principal Office Location of Review/Audit: Company facility in the U. S. Territory: F

Operation Types Interstate Intrastate

Carrier: N/A Non-HM  
Shipper: N/A N/A  
Cargo Tank: N/A

Business: Individual

Gross Revenue: [REDACTED] for year ending: 12/31/2014

Company Physical Address:

2218 W Mary Street  
Garden City, KS 67846

Contact Name: Eugene R Wells

Phone numbers: [REDACTED] (2) Fax

E-Mail Address:

Company Mailing Address:

1704 Glenellen Dr  
Garden City, KS 67846

Carrier Classification

Authorized for Hire

Cargo Classification

Grain, Feed, Hay

Equipment

	Owned	Term Leased	Trip Leased		Owned	Term Leased	Trip Leased
Truck Tractor	1	0	0	Trailer	2	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	
< 100 Miles:		1	Average trip leased drivers/month: 0
>= 100 Miles:			Total Drivers: 1
			CDL Drivers: 1





WELLS TRUCKING (EUGENE R WELLS AND GAIL R WELLS dba)

U.S. DOT #: 2318213

State #:

Review Date:

01/28/2015

**Part A**

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

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

**Person(s) Interviewed**

Name: Eugene R Wells

Title: Owner

Name:


Title:



	<b>WELLS TRUCKING (EUGENE R WELLS AND GAIL R WELLS dba)</b>		Review Date:
	U.S. DOT #: 2318213	State #:	01/28/2015

### Part B Violations

1 STATE	Primary: 390.19(i)	Discovered 1	Checked 1	Drivers/Vehicles In Violation 0	Checked 0
<b>Description</b> Kansas is a PRISM state and Kansas based carriers are required to update MCS-150 every 12 months as adopted by K.A.R 82-4-3f(a)(7)(g) <b>Example</b> Last MCS-150 update conducted 12 July 2012, Kansas a PRISM requires annual updates.					
2 STATE	Primary: 391.51(b)(1) CFR Equivalent: 391.51(b)(1)	Discovered 1	Checked 1	Drivers/Vehicles In Violation 1	Checked 1
<b>Description</b> Failing to maintain driver's employment application in driver's qualification file. <b>Example</b> Driver _____ Trip date 10 Dec. 2014 No application for employment					
3 STATE	Primary: 391.51(b)(4) CFR Equivalent: 391.51(b)(4)	Discovered 1	Checked 1	Drivers/Vehicles In Violation 1	Checked 1
<b>Description</b> Failing to maintain the responses of each State agency to the annual driver record inquiry required by 391.25(a). <b>Example</b> Driver _____ Trip date 10 Dec. 2014 Fail to obtain MVR annually as required					
4 STATE	Primary: 391.51(b)(5) CFR Equivalent: 391.51(b)(5)	Discovered 1	Checked 1	Drivers/Vehicles In Violation 1	Checked 1
<b>Description</b> Failing to maintain a note relating to the annual review of the driver's driving record as required by 391.25(c)(2). <b>Example</b> Driver _____ Trip date 10 Dec. 2014 Fail to have on file notation of driver's driving record as required					
5 STATE	Primary: 391.51(b)(6) CFR Equivalent: 391.51(b)(6)	Discovered 1	Checked 1	Drivers/Vehicles In Violation 1	Checked 1
<b>Description</b> Failing to maintain a list or certificate relating to violations of motor vehicle laws and ordinances required by 391.27. <b>Example</b> Driver _____ Trip date 10 Dec. 2014 Fail to certify violations of drivers driving record kept on file by carrier					

	<b>WELLS TRUCKING (EUGENE R WELLS AND GAIL R WELLS dba)</b>		Review Date:
	U.S. DOT #: 2318213	State #:	01/28/2015

### Part B Violations

6 STATE	Primary: 396.3(b)(1)	Discovered	Checked	Drivers/Vehicles	
	CFR Equivalent: 396.3(b)(1)	3	3	In Violation	Checked
				3	3

**Description**

Failing to keep a maintenance record which identifies the vehicle, including make, serial number, year, and tire size.

**Example**

Units 62, 1, & 2

7 STATE	Primary: 396.3(b)(2)	Discovered	Checked	Drivers/Vehicles	
	CFR Equivalent: 396.3(b)(2)	3	3	In Violation	Checked
				3	3

**Description**

Failing to have a means of indicating the nature and due date of the various inspection and maintenance operations to be performed.

**Example**

Units 62, 1, & 2

8 STATE	Primary: 396.19(b)	Discovered	Checked	Drivers/Vehicles	
	CFR Equivalent: 396.19(b)	1	1	In Violation	Checked
				0	0

**Description**

Failing to maintain evidence of inspector's qualifications.

**Example**

Inspector  
Inspection date 7/14  
Vehicle Unit 62 (power unit)  
Trip date 12/10/2014

9 STATE	Primary: 396.25(e)	Discovered	Checked	Drivers/Vehicles	
	CFR Equivalent: 396.25(e)	1	1	In Violation	Checked
				0	0

**Description**

Failing to retain evidence of brake inspector's qualifications.

**Example**

Brake Inspector  
9 May 2014  
Unit 2  
19 Aug. 2014

<b>Safety Fitness Rating Information:</b> Total Miles Operated 25,000 Recordable Accidents 0		OOS Vehicle (CR): 0 Number of Vehicle Inspected (CR): 0 OOS Vehicle (MCMIS): 0 Number of Vehicles Inspected (MCMIS): 0
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Your proposed safety rating is :

**This Review is not Rated.**



**WELLS TRUCKING (EUGENE R WELLS AND GAIL R WELLS dba)**  
U.S. DOT #: 2318213

State #:

Review Date:  
01/28/2015

### Part B Requirements and/or Recommendations

1. Within 15 days send a letter to our office explaining your actions taken to remedy a non-compliance status.

Mail to: Kansas Corporation Commission, 1500 SW Arrowhead Rd., Topeka, Ks. 66604-4027

2. Ensure all drivers are fully and properly qualified before operating in inter/intrastate commerce. Maintain a complete file for each driver documenting the qualification process, be sure to check driver back ground history for three years prior to employment.
3. Ensure that all drivers are fully and properly qualified before operating in interstate commerce. Maintain a complete file as required for each driver, documenting the qualification process.
4. 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.
5. This report contains citations of regulations that are deemed serious in nature and could result in penalties against your company and/or your drivers.
- 6.

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





WELLS TRUCKING (EUGENE R WELLS AND GAIL R WELLS dba)

U.S. DOT #: 2318213

State #:

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01/28/2015

### Part B Requirements and/or Recommendations

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.

7. 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 Wells Trucking, Eugene R Wells, Owner Eugene R Wells, operating authority and or the impoundment of Wells Trucking, Eugene R. Wells Owner Eugene R Wells vehicles.



## **ATTACHMENT “B”**

# DRIVER'S TIME RECORD

Driver's Name (print) Gene Wells Employee No. \_\_\_\_\_ Month Dec Year 2014

DRIVERS MAY PREPARE THIS REPORT INSTEAD OF "DRIVERS DAILY LOG" IF THE FOLLOWING APPLIES:

- \*Operates within 100 air-mile radius of headquarters.
- \*Returns to headquarters and is released from work within 12 consecutive hours
- \*At least 8 hours off duty for passenger carriers and 10 hours off duty for property carriers.

## INTERMITTENT DRIVERS

Shall complete this form for 7 days preceding any day driving is performed. This includes the preceding month.

Date	Start Time	End Time	Total Hours	Truck Number	Trip Information TO - FROM
1	6:00	9:30	3 1/2		
2	10:00	1:30	3 1/2		
3					Scott City
4	6:00	9:30	3 1/2		
5					
6					Reeve cattle
7					
8	6:00	9:30	3 1/2		Garden City
9					
10	9:00	12:30	3 1/2		
11					
12	6:00	10:00	4		
13					
14					
15					
16	6:00	9:30	3 1/2		
17					
18	6:00	9:30	3 1/2		
19					
20					
21					
22					
23	6:00	10:30	4 1/2		
24					
25					
26	6:00	9:30	3 1/2		
27					
28					
29	6:00	4:30	3 1/2		
30					
31					

☐ To be prepared monthly by each DOT certified driver unless time record is exclusively kept on Driver's Daily Log. Indicate "days off." Check box if no driving is performed during this month and the first 7 days of the following month. Mail this report to your Division Manager of Administration.



PLEASE FORWARD THE ATTACHED DOCUMENT (S) ISSUED IN THE ABOVE-REFERENCED DOCKET  
TO THE FOLLOWING:

NAME AND ADDRESS	NO. CERT. COPIES	NO. PLAIN COPIES
EUGENE R. WELLS, CO-OWNER EUGENE R. WELLS AND GAIL R. WELLS D/B/A WELLS TRUCKING 1704 GLENELLEN DR GARDEN CITY, KS 67846		
MICHAEL DUENES, LITIGATION COUNSEL KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD RD TOPEKA, KS 66604-4027 ***Hand Delivered***		

ORDER MAILED MAR 27 2015

The Docket Room hereby certified that on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, it caused a true and correct copy of the attached ORDER to be deposited in the United States Mail, postage prepaid, and addressed to the above persons.