PHONE: 785-271-3100

Fax: 785-271-3354

http://kec.ks.gov/

STATE OF KANSAS



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

GOVERNOR JEFF COLYER, M.D.

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

NOTICE OF PENALTY ASSESSMENT

November 1, 2018

19-TRAM-170-PEN

Jose E. Orellana, Owner d/b/a J & R Towing 2300 Emmett Ave Haysville, KS 67060

This is a notice of a penalty assessment against Jose E. Orellana, d/b/a J & R Towing (J & R Towing) for violation(s) of Kansas Motor Carrier Safety Statutes, Rules, and Regulations discovered during a compliance review conducted on June 22, 2018, by Kansas Corporation Commission Special Investigator Gary Goeller. 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: J & R Towing has been assessed a \$500 penalty. You have thirty (30) days from the date of service of the Penalty Order to pay the penalty. Please remit payment of \$500, 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 J & R Towing 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. J & R Towing 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 \$500 within thirty (30) days from the date of service of the Penalty Order or failure to comply with the terms of the Order, or in the alternative, failure to provide a timely written request for a hearing, will result in the Order becoming final and may result in additional sanctions of suspension and/or revocation of your motor carrier operating authority.

Respectfully,

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

THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS

Before Commissioners:

Shari Feist Albrecht, Chair

Jay Scott Emler Dwight D. Keen

In the Matter of the Investigation of Jose E.)
Orellana, d/b/a J & R Towing, of Haysville,
KS, Regarding the Violation of the Motor)
Carrier Safety Statutes, Rules and Regulations) Docket No. 19-TRAM-170-PEN and the Commission's Authority to Impose)
Penalties, Sanctions and/or the Revocation of)
Motor Carrier Authority.

PENALTY ORDER

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission). Having examined its files and records, and being duly advised in the premises, the Commission finds and concludes as follows:

I. JURISDICTION

- 1. Pursuant to K.S.A. 2017 Supp. 66-1,108b, 66-1,111, 66-1,112, 66-1,114, 66-1,114b and 66-1,115, the Commission is given full power, authority and jurisdiction to supervise and control motor carriers, as defined in K.S.A. 2017 Supp. 66-1,108, doing business or procuring business in Kansas, and is empowered to do all things necessary and convenient for the exercise of such power, authority and jurisdiction.
- 2. Pursuant to K.S.A. 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. Jose E. Orellana, d/b/a J & R Towing (J & R Towing) has private and common operating authority with the Commission as of June 7, 2018, and further operates USDOT number 2190349.
- 5. Jose Orellana attended a Commission-sponsored Motor Carrier Education and Safety Instructional Meeting on July 16, 2018, on behalf of J & R Towing.
- 6. J & R Towing is a private and common motor carrier which primarily hauls motor vehicles.

III. STATEMENT OF FACTS

- 7. Pursuant to the jurisdiction and authority cited above, on June 22, 2018, Commission Staff (Staff) Special Investigator Gary Goeller conducted a compliance review of the operations of J & R Towing. 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 10, 2018, J & R Towing required or permitted its driver, Jose E. Orellana, to operate a commercial motor vehicle, a 2002 International,

VIN ending in 548812, GVWR 19,501 lbs., in intrastate commerce from Haysville, Kansas to Wichita, Kansas. This trip is evidenced by Road Service Ticket 9206, dated April 10, 2018, a copy of which is attached hereto as Attachment "B" and is hereby incorporated by reference. At the time of this transportation, J & R Towing did not have proper Kansas Corporation Commission motor carrier authority to operate a commercial motor vehicle from point-to-point in the state of Kansas. The carrier's commercial operations of motor vehicles prior to obtaining and maintaining proper Commission authority is a violation of K.S.A. 2017 Supp. 66-1,111 and 49 C.F.R. 392.2, adopted by K.A.R. 82-4-3h, and authorized by K.S.A. 2017 Supp. 66-1,129. Staff recommends a fine of \$500.

IV. STAFF'S RECOMMENDATIONS

- 8. Based upon the available facts, Staff recommends the Commission finds J & R Towing 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 \$500 for one (1) violation(s) of the Motor Carrier Safety Statutes, Rules and Regulations.
- 10. Staff further recommends that a representative from J & R Towing 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 J & R Towing 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 J & R Towing because it is a motor carrier as defined in K.S.A. 2017 Supp. 66-1,108.
- 13. The Commission finds J & R Towing 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. Jose E. Orellana, d/b/a J & R Towing, of Haysville, KS is hereby assessed a \$500 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. J & R Towing 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. J & R Towing 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 J & R Towing's right to a hearing, and this Penalty Order will become a Final Order assessing a \$500 civil penalty against J & R Towing, and ordering a representative from J & R Towing 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 \$500 is due in thirty (30) days from the date of service of this Order. Payment of \$500 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 \$500 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 J & R Towing'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

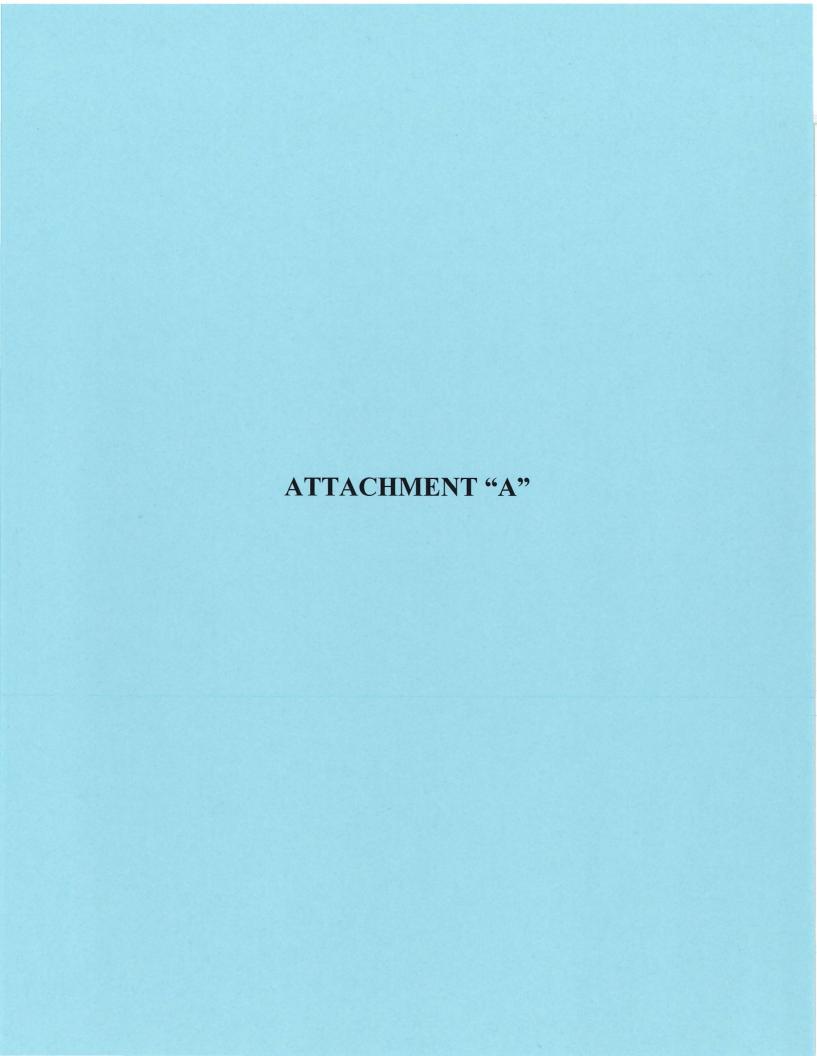
Dated: 11/01/2018

Lynn M. Retz

Secretary to the Commission

Lynn M. Reg

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US DOT # Legal: JOSE E			_				
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J & R TOWING (JOSE E ORELLANA dba)

U.S. DOT #: 2190349

State #:

Review Date: 10/15/2018

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: Jose Orellana

Title: Owner

Name: Title:



J & R TOWING (JOSE E ORELLANA dba)

U.S. DOT #: 2190349

State #: 168509

Review Date: 10/15/2018

Part B Violations

1 STATE	Primary: 391.51(b)(5)			Discovered	Checked	Drivers/V In Violation	
	CFR Equivalent: 391	.51(b)(5)		1	11	1 1	1
Example Jose Orellana Trip Date 04.10 Carrier failed to	itain a note relating to th	ne annual review of the		ompleted on 12.	27.2017	91.25(c)(2).	chita KS
	S transporting a motor v		10012, 100	wg# www y	· · · · · · · · · · · · · · · · · · ·		onna, 110
2 STATE	Primary: 392.2 Secondary: 66-1330			Discovered	Checked 1	Drivers/V In Violation	
Example Jose Orellana Trip Date 04.10	a state without wrecker a 0.2018 02 International KS VIN		19912 VC	oott Too	anus 40 504 an	a o Asia Groom VAP	abita 1/0
to Haysville, K	S transporting a motor v		18812, KS	ag# Esses , g	VWF 19,501 OF	a trip from Wi	chita, KS
Safety Fitness Rating Information: Total Miles Operated 50,000 Recordable Accidents 0			OOS Vehicle (CR): 0 Number of Vehicle Inspected (CR): 0 OOS Vehicle (MCMIS): 0				
	no moducints	V	Numi	per of Vehicles			
	safety rating is :	-	Numi				

Your proposed safety rating is:

This Review is not Rated.





J & R TOWING (JOSE E ORELLANA dba) U.S. DOT #: 2190349

State #: 168509

Review Date: 06/22/2018

Part B Requirements and/or Recommendations

1. For all Investigations:

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

Document and Follow Through on Action Plans: Document and follow through on action plans to ensure

the actions you are taking are creating improvement in safety management and compliance.

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

NOTICE: 49 CFR Part 391.23 requires prospective employers to, at a minimum, investigate a driver's employment information, crash record, and alcohol and controlled substances history from all employers the driver

worked for within the previous 3 years.

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

All motor carriers and truck drivers are needed to fight against terrorism and hijacking. You could be a target. Protect yourself, your trucks, your cargo, and your facilities. Discuss with your employees/drivers the "Security Measures for Truck Drivers and Companies" which were provided and reviewed with motor carrier official.

Motor carriers should visit the following website for more information:

http://www.fmcsa.dot.gov/documents/Hijacking-Brochure.pdf

FMCSA recently announced planned improvements to the Carrier Safety Measurement System (SMS) which was implemented in December 2010 as part of the Agency's broader Compliance, Safety, Accountability (CSA) initiative. A preview of these improvements is currently available to motor carriers. The system changes are scheduled to be available to the public in July 2012. There will be additional opportunity for public comment on the changes after the preview period ends in July 2012. The improvements to SMS are based on ongoing analysis and feedback from enforcement personnel, the motor carrier industry, and other stakeholders. The changes more effectively identify and prioritize high-risk and other unsafe motor carriers for enforcement interventions designed to reduce commercial motor vehicle crashes and hazardous materials incidents. Motor 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 blases; (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.gev/. During the data preview period, the Agency requests comments on the impacts of the changes.

This lefter should be submitted as soon as possible.

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

PAKGM6KS85OAA



J & R TOWING (JOSE E ORELLANA dba)

U.S. DOT #: 2190349

State #: 168509

Review Date: 06/22/2018

Part B Requirements and/or Recommendations

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 66804-4027

- 2. A copy of your carrier profile can be obtained at no cost from the FMCSA Portal (https://portal.fmcsa.dot.gov/login).
- 3. Copies of the regulations, forms, interpretations, and manuals are available from a variety of sources. Check the FMCSA website for a current list of suppliers, www.fmcsa.dot.gov/safety-security/eta/index.htm
- 4. Ensure that all drivers are fully and properly qualified before operating in intrastate commerce. Maintain a complete file as required for each driver, documenting the qualification process.
- 5. I acknowledge that these requirements/violations and/or recommendations have been discussed with me and my questions have been answered. I understand that failure to satisfactorily remedy the above-listed requirements, and/or failure to comply with Kansas Motor Carrier Safety Statutes and Regulations could result in the suspension of Jose E Orellana dba JR Towing's vehicles operating authority and/or the impoundment of Jose E Orellana dba JR Towing's vehicles.

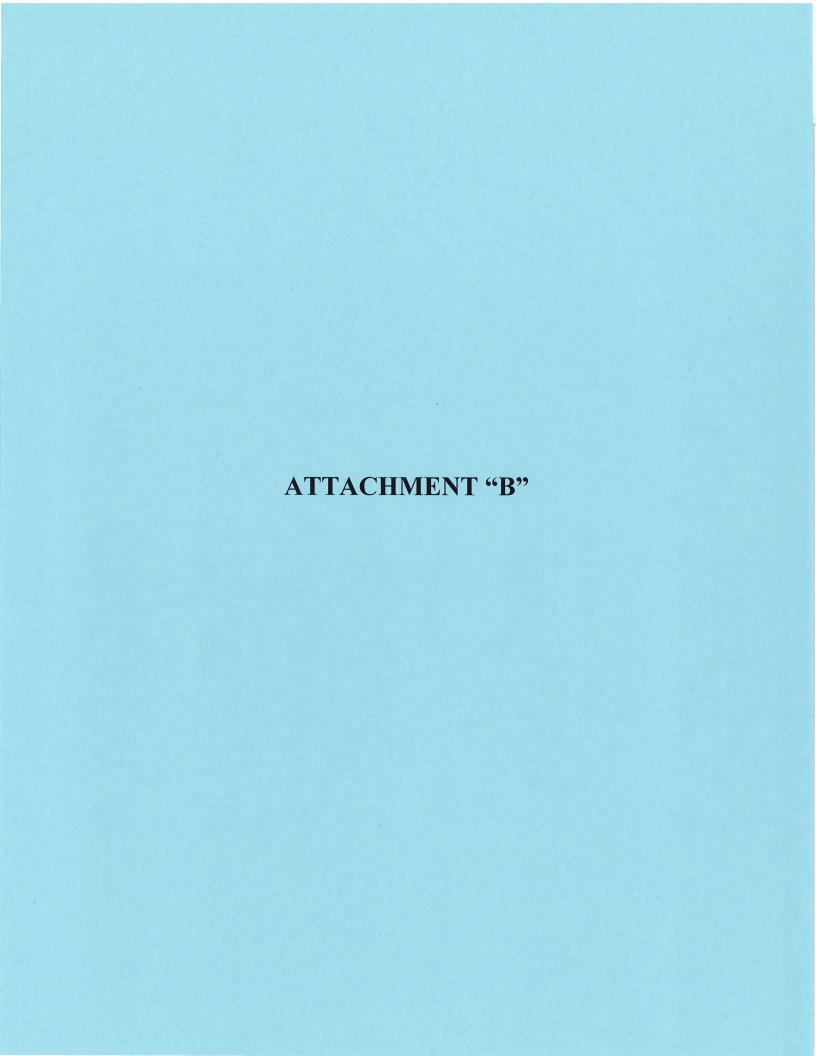
Signed 6/22/18

6. I understand that monetary penalties will be assessed as a result of violations found in this compliance review. The penalty schedule can be found at this website: http://kcc.ks.gov/transportation/safety-information

Carrier representative:

Date 6/22/18

7. Stay in contact with your KCC Investigator for any questions or issues with continued safety compliance. You may contact me: KCC Special Investigator Gary Goeller at 785-623-0541 or email at g.goeller@kcc.ks.gov





J&R TOWING INC

ROAD SERVICE

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We cannot be responsible for damage caused by faulty tires, bumper brackets, etc. This company assumes no responsibility for loss or damage by their, fire or any other cause beyond our control to any vehicle placed with them for storage or repair.

THANK YOU!

PRODUCT 8760-3

CERTIFICATE OF SERVICE

19-TRAM-170-PEN

I, the undersigned, certify that the t	rue copy of the attached	Order has been sei	rved to the following	parties by means of
first class mail/hand delivered on _	11/02/2018	·		

JOSE E. ORELLANA, OWNER JOSE E. ORELLANA D/B/A J & R TOWING 2300 EMMETT AVE HAYSVILLE, KS 67060 Fax: 316-522-6878 orellanaj7@hotmail.com AHSAN LATIF, LITIGATION COUNSEL KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD RD TOPEKA, KS 66604 Fax: 785-271-3354 a.latif@kcc.ks.gov

/S/ DeeAnn Shupe

DeeAnn Shupe