

**THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

Before Commissioners: Jay Scott Emler, Chairman
Shari Feist Albrecht
Pat Apple

In the Matter of the Investigation of)
Midwest Shotcrete Inc., d/b/a Midwest)
Pools of Pleasanton, Kansas,)
Regarding the Violation of the Motor)
Carrier Safety Statutes, Rules and) Docket No. 16-TRAM-536-PEN
Regulations and the Commission's)
Authority to Impose Penalties, Sanctions)
and/or the Revocation of Motor Carrier)
Authority.

ORDER SUSPENDING INTRASTATE MOTOR CARRIER OPERATIONS

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

I. JURISDICTION AND BACKGROUND

1. Pursuant to K.S.A. 2015 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. 2015 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. 2015 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. Pursuant to K.S.A. 2015 Supp. 66-1,129(a)(7), the Commission has adopted motor carrier transportation regulations (K.A.R. 82-4-1 *et seq.*) consistent with the federal motor carrier safety assistance program and other federal requirements concerning transportation of hazardous waste.

II. FINDINGS OF FACTS

4. Midwest Shotcrete Inc., d/b/a Midwest Pools of Pleasanton, Kansas (Respondent) is a motor carrier as defined in K.S.A. 2015 Supp. 66-1,108, that operates commercial motor vehicle(s) in intrastate commerce.

5. Respondent operates under USDOT Number 1040563.

6. On June 7, 2016, Respondent was issued a penalty assessment for violations of the Kansas Motor Carrier Safety Statutes, Rules and Regulations discovered during a compliance review conducted on May 11, 2016, by Kansas Corporation Commission Special Investigator Michael Heenan. The Commission's Penalty Order is incorporated herein by reference and made a part of this Order.

7. The Penalty Order was mailed to Respondent via certified mail, return receipt requested, on June 7, 2016. A Proof of Service of the Penalty Order was filed on July 18, 2016, indicating the Respondent was served with the Penalty Order on June 20, 2016.

8. As of July 25, 2016, Commission records indicate Respondent has not complied with requirements of the Penalty Order in that Respondent had thirty (30) days from service to pay the fine amount of \$300, and Transportation Division records indicate

the fine is unpaid. Further, Respondent was mailed a letter dated July 8, 2016, to the carrier's mailing address, notifying it of its unpaid fine and lack of compliance with the above-referenced Penalty Order, giving the Respondent ten (10) days from the date of the collection letter to pay the penalty amount.

9. On July 25, 2016, Commission Staff filed a Motion to Suspend Intrastate Motor Carrier Operations due to the carrier's failure to pay.

III. CONCLUSIONS OF LAW

9. The Commission finds it has jurisdiction over Respondent as the Respondent is a motor carrier as defined in K.S.A. 2015 Supp. 66-1,108.

10. The Commission finds Respondent received sufficient notice of the Commission's Penalty Order and the requirement to pay the fine within 30 days of the Order.

11. The Commission finds Respondent failed to act upon this notice.

12. The Commission finds Respondent's failure to comply with the requirements of the Penalty Order is intentional and therefore this Commission orders the Respondent to suspend all intrastate motor carrier operations other than such motor carrier operations excepted from the Commission's regulation under K.S.A. 2015 Supp. 66-1,129, until such time as the carrier takes the necessary steps to become compliant.

THE COMMISSION THEREFORE ORDERS THAT:

A. Midwest Shotcrete Inc., d/b/a Midwest Pools of Pleasanton, Kansas is to be immediately suspended from all intrastate commercial motor carrier operations other than such motor carrier operations excepted from the Commission's regulation under K.S.A. 2015 Supp. 66-1,129, until such time as Respondent pays the penalty amount of

\$300 and brings its motor carrier operation into compliance with motor carrier safety statutes, rules and regulations. This Suspension of Intrastate Motor Carrier Operations Order may also attach and apply to the operations of successor entities, including any motor carrier entity or entities established or used to avoid the consequences of any Order to cease operations or suspending operating authority.

B. **Pursuant to K.S.A. 2015 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 Secretary, at 1500 S.W. Arrowhead Road Topeka, Kansas 66604 within fifteen (15) days from the date of service of this Order.** Service of this order will be by certified mail, return receipt requested, and service is complete when Respondent signs the Domestic Return Receipt. Pursuant to K.S.A. 66-1,129a, hearings will be held within ten (10) days upon written request. Failure to timely request a hearing will result in a waiver of Respondent's right to a hearing, and this Order will become a Final Order against Respondent, suspending Respondent's motor carrier operations, ordering Respondent to attend a Commission-sponsored safety seminar within the next ninety (90) days and provide Staff with written proof of attendance.

C. 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 of \$500 or less, a corporation may appear by a duly authorized

representative of the corporation. K.S.A. 2015 Supp. 66-1,142b(e) and amendments thereto.

D. Failure to comply with the provisions of this Order may result in further sanctions to include, but not limited to, the assessment of civil penalties and/or the impoundment of commercial motor vehicles found operating in violation of this Order and any other remedies available to the Commission by law, without further notice.

E. 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.

Emler, Chair; Albrecht, Commissioner; Apple, Commissioner

Dated: AUG 16 2016



Amy L. Green
Secretary to the Commission

AAL

Order Mailed Date
AUG 17 2016

1500 SW Arrowhead Road
Topeka, KS 66604-4027

Jay Scott Emier, Chairman
Shari Feist Albrecht, Commissioner
Pat Apple, Commissioner



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

Sam Brownback, Governor

NOTICE OF PENALTY ASSESSMENT
16-TRAM-536-PEN

June 7, 2016

Emily E. Thies, Treasurer
Midwest Shotcrete Inc, d/b/a Midwest Pools
16349 Young Rd
Pleasanton, Kansas 66075

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 May 11, 2016, by Kansas Corporation Commission Special Investigator Michael Heenan. 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 \$300 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.

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.

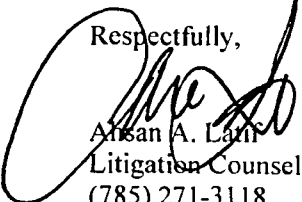
IF YOU CONTEST THE PENALTY:

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 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. 2015 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,



Arlan A. Lamm
Litigation Counsel
(785) 271-3118

**THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

Before Commissioners: Jay Scott Emler, Chairman
Shari Feist Albrecht
Pat Apple

In the Matter of the Investigation of **Midwest**)
Shotcrete Inc, d/b/a Midwest Pools, of)
Pleasanton, Kansas, Regarding the Violation of)
the Motor Carrier Safety Statutes, Rules and) Docket No. 16-TRAM-536-PEN
Regulations 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). The Commission, having been briefed on the issue by the Director of the Commission's Transportation Division, finds and concludes as follows:

I. JURISDICTION

1. Pursuant to K.S.A. 2015 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. 2015 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. 2015 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 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. Midwest Shotcrete Inc, d/b/a Midwest Pools (Midwest Pools) operates under USDOT number 1040563.

5. Midwest Pools is an intrastate carrier with truck and trailer GVWR under 26,000 lbs. However, the status of their USDOT number reflects them as being an interstate carrier.

6. Midwest Pools is a private motor carrier which primarily hauls motor vehicles.

III. STATEMENT OF FACTS

7. Pursuant to the jurisdiction and authority cited above, on May 11, 2016, Commission Staff (Staff) Special Investigator Michael Heenan conducted a compliance review of the operations of Midwest Pools. 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. Heenan identified one (1) violation of the Motor Carrier Safety Regulations.

- a. On May 11, 2016, this carrier was reviewed due to the fact they are listed as an interstate carrier under USDOT number 1040563. The Unified Carrier Registration System (UCR) printout showed Midwest Pools had not paid its UCR fees for the year 2016. *See* Attachment "B". Midwest Pools' failure to annually register its commercial motor vehicle(s) operating in interstate commerce over the highways of this state and to pay the appropriate Unified Carrier Registration (UCR) fees as set out in 49

C.F.R. 367.30, is a violation of K.A.R. 82-4-30a as authorized by K.S.A.

2015 Supp. 66-1,139a and K.S.A. 2015 Supp. 66-1,129. Staff recommends a fine of \$300.

IV. STAFF'S RECOMMENDATIONS

8. Based upon the available facts, Staff recommends the Commission find Midwest Pools 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 \$300 for one (1) violation of the Motor Carrier Safety Statutes, Rules and Regulations.

10. Staff further recommends that Midwest Pools 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.

11. Finally, Staff recommends that Midwest Pools 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 Midwest Pools because it is a motor carrier as defined in K.S.A. 2015 Supp. 66-1,108.

13. The Commission finds Midwest Pools 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. Midwest Shotcrete Inc, d/b/a Midwest Pools, of Pleasanton, Kansas is hereby assessed a \$300 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. Midwest Pools 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, Midwest Pools is ordered to submit to one follow-up safety compliance review within the next eighteen (18) months.

C. Pursuant to K.S.A. 2015 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 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 Midwest Pools's right to a hearing, and this Penalty Order will become a Final Order assessing a \$300 civil penalty against Midwest Pools, and ordering Midwest Pools 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. 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 of \$500 or less, a corporation may appear by a duly authorized representative of the corporation. K.S.A. 2015 Supp. 66-1,142b(e) and amendments thereto.

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.*

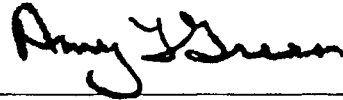
F. Failure to pay the \$300 civil penalty within thirty (30) days of the service of this Penalty Order, *see* K.S.A. 66-1,105, and/or failure to comply with the provisions of this Order, may result in suspension of Midwest Pools's motor carrier operating authority without further notice. Additionally, 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 orders, as necessary.

BY THE COMMISSION IT IS SO ORDERED.

Emler, Chairman; Albrecht, Commissioner; Apple, Commissioner

Dated: JUN 07 2016



Amy L. Green
Secretary to the Commission


AAL

Order Mailed Date

JUN 08 2016

ATTACHMENT “A”

Kansas Corporation Commission

	US DOT #	Legal: MIDWEST SHOTCRETE INC			
	1040563	Operating (DBA):MIDWEST POOLS			
MC/MX #:		Federal Tax ID: [REDACTED] (EIN)			
Review Type: Non-ratable Review - CSA					
Scope: Principal Office		Location of Review/Audit: Company facility in the U. S.			Territory: C
Operation Types		Interstate	Intrastate		
Carrier: HM		HM		Business: Corporation	
Shipper: N/A		N/A		Gross Revenue: \$ [REDACTED] for year ending: 12/31/2015	
Cargo Tank: N/A					
Company Physical Address:					
[REDACTED]					
Contact Name: Emily E Thies					
Phone numbers: (1)		[REDACTED]		Fax	
E-Mail Address: [REDACTED]					
Company Mailing Address:					
16349 YOUNG ROAD PLEASANTON, KS 66075-8320					
Carrier Classification					
Private Property					
Cargo Classification					
Motor Vehicles					
Hazardous Materials					
9 Miscellaneous HM		Carried	Non-Bulk		
Equipment					
	Owned	Term Leased	Trip Leased		Owned Term Leased Trip Leased
Truck	1	0	0	Trailer	1 0 0
Power units used in the U.S.: 1					
Percentage of time used in the U.S.:					
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		
< 100 Miles:	1		Total Drivers: 1		
>= 100 Miles:			CDL Drivers: 1		





MIDWEST POOLS (MIDWEST SHOTCRETE INC dba)
U S DOT #: 1040563

Review Date
05/11/2016

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

Kansas Corporation Commission
1500 SW Arrowhead Rd
Topeka, Ks 66604-4027 1-785-271-3145

This report will be used to assess your safety compliance.

Person(s) Interviewed

Name: Emily E Thies
Name:

Title: Treasurer
Title:





MIDWEST POOLS (MIDWEST SHOTCRETE INC dba)
U.S. DOT #: 1040563

Review Date
05/11/2016

Part B Violations

1 STATE	Primary: 367 30	Discovered 1	Checked 1	Drivers/Vehicles In Violation 0	Checked 0
Description Failure to Pay Unified Carrier Registration Example Carrier at the time of this review, had USDOT 1040563 that was listed as an interstate USDOT Registration. The carrier had proof of 2007 and 2015 registration but no 2016 UCR Registration.					
Safety Fitness Rating Information:					
Total Miles Operated	46,000	OOS Vehicle (CR): 0			
Recordable Accidents	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.





MIDWEST POOLS (MIDWEST SHOTCRETE INC dba)
U.S. DOT #. 1040563

Review Date
05/11/2016

Safety Management Process Breakdowns and Remedies

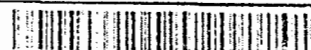
1. Within 15 days send a letter to our office explaining your actions taken to remedy a non-compliance status. Mail to Kansas Corporation Commission, 1500 SW Arrowhead RD., Topeka, KS 66604-4027
Attention: Gary Davenport
2. "I understand that monetary penalties will be assessed as a result of violations found in this compliance review. The penalty schedule can be found at this website
http://kcc.ks.gov/trans/penalty_assessment_table.html"

Carrier Signature: _____

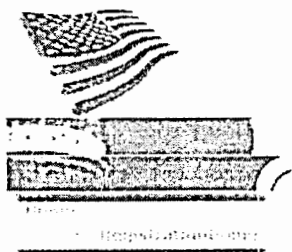
Investigator Signature: _____

3. 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 [Midwest Pools Inc.] operating authority and/or the impoundment of [Midwest Pool Inc.] vehicles

Carrier Signature: _____



ATTACHMENT “B”



UNIFIED CARRIER REGISTRATION SYSTEM

[...] [...] [...]

Unified Carrier Registry

USDOT	Year	MC	MX	FF	Legal Name	Total Fee Paid	More Info
1040563	2007				MIDWEST SHOTCRETE INC	\$39.00	More Info
1040563	2015				MIDWEST SHOTCRETE INC	\$76.00	More Info

Get Acrobat
Adobe Reader

CERTIFICATE OF SERVICE

16-TRAM-536-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 **JUN 07 2016**.

AHSAN LATIF, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604-4027
Fax: 785-271-3354
a.latif@kcc.ks.gov

EMILY E. THIES, TREASURER
MIDWEST SHOTCRETE INC
D/B/A MIDWEST POOLS
16349 YOUNG RD
PLEASANTON, KS 66075-8320
midwestpoolsinc@aol.com

/S/ DeeAnn Shupe
DeeAnn Shupe

Order Mailed Date
JUN 08 2016

CERTIFICATE OF SERVICE

16-TRAM-536-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 AUG 16 2016.

AHSAN LATIF, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604-4027
Fax: 785-271-3354
a.latif@kcc.ks.gov

EMILY E. THIES, TREASURER
MIDWEST SHOTCRETE INC
D/B/A MIDWEST POOLS
16349 YOUNG RD
PLEASANTON, KS 66075-8320
midwestpoolsinc@aol.com

/S/ DeeAnn Shupe

DeeAnn Shupe

Order Mailed Date

AUG 17 2016