

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

In the Matter of the Investigation of **Concrete**)
Service Co., Inc. of Great Bend, Kansas,)
Regarding the Violation of the Motor Carrier)
Safety Statutes, Rules and Regulations and the) Docket No. 20-TRAM-171-PEN
Commission's Authority to Impose Penalties,)
Sanctions and/or the Revocation of Motor)
Carrier Authority.)

**JOINT MOTION FOR APPROVAL OF
STIPULATED SETTLEMENT AGREEMENT**

The Staff of the State Corporation Commission of the State of Kansas (Staff and Commission, respectively), and Concrete Service Co., Inc. (Respondent), file this Joint Motion requesting the Commission issue an order approving the attached Stipulated Settlement Agreement.

In support of its Motion, Staff and Respondent state as follows:

1. On October 7, 2019, Commission Staff (Staff) Special Investigator Verna Jackson conducted a compliance review on Respondent's motor carrier operations. As a result of the review, Investigator Smith identified one (1) violations of the Motor Carrier Safety Regulations.

2. On October 17, 2019, the Commission issued a Penalty Order in this docket assessing a \$100 civil penalty against Respondent.

3. On October 29, 2019, Concrete Service Co., Inc. filed its Request for Hearing with the Commission.

4. On November 7, 2019, Dale Westhoff, Vice President of Concrete Service Co., Gary Davenport, Deputy Division Director, and Ahsan Latif, Litigation Counsel for Staff (Staff), informally discussed the possibility of a settlement. During the informal discussions, Staff and Respondent were able to reach mutually agreeable terms in anticipated settlement of the issues. It

was agreed that Staff would subsequently reduce the terms to writing and forward the draft to Respondent for approval and signature.

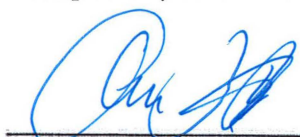
5. The resulting signed Stipulated Settlement Agreement is attached hereto and is hereby incorporated by reference. This Agreement resolves all issues in this proceeding between Staff and Respondent. The parties believe that the Agreement represents a reasonable and fair resolution of this matter and that the Commission should approve the Agreement.

6. Should the Commission accept the terms of the attached Stipulated Settlement Agreement, the parties waive their respective rights to cross-examine witnesses and present oral arguments or written briefs to the Commission. The parties also waive their rights to request reconsideration of the Commission order approving the Agreement and waive their rights to seek judicial review of said order.

WHEREFORE, for the reasons set forth herein, Staff and Jeff Stewart, d/b/a Stewart Roofing Company request this Joint Motion be granted, and that the attached Stipulated Settlement Agreement be approved.

Respectfully Submitted,

By:



Ahsan A. Latif S.Ct. #24709
Litigation Counsel
Kansas Corporation Commission
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Attorney for Commission Staff

By:



Dale Westhoff, Vice President
Vice President
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Vice President for Respondent

VERIFICATION

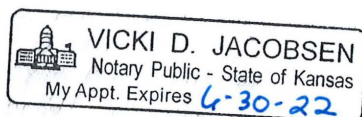
STATE OF KANSAS)
) ss.
COUNTY OF SHAWNEE)

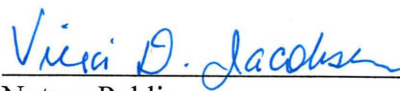
Ahsan A. Latif, of lawful age, being duly sworn upon his oath deposes and states that he is Litigation Counsel for the State Corporation Commission of the State of Kansas; that he has read and is familiar with the foregoing *Joint Motion for Approval of Stipulated Settlement Agreement* and attests that the statements therein are true and correct to the best of his knowledge, information and belief.



Ahsan A. Latif, S. Ct. # 24709
Litigation Counsel
The State Corporation Commission
of the State of Kansas

SUBSCRIBED AND SWORN to before me this 10th day of December, 2019.





Notary Public

My Appointment Expires: June 30, 2022

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

Before Commissioners: Dwight D. Keen, Chairman
 Shari Feist Albrecht
 Susan K. Duffy

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Safety Statutes, Rules and Regulations and the)
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STIPULATED SETTLEMENT AGREEMENT

This Stipulated Settlement Agreement (Agreement) is entered into by and between the Staff of the Corporation Commission of the State of Kansas (Staff and Commission, respectively), and Concrete Service Co., Inc., (Respondent). Its effective date will be the date the Commission enters an order approving or amending the terms of the Agreement.

I. JURISDICTION

1. Pursuant to K.S.A. 2018 Supp. 66-1,108b, 66-1,111, 66-1,112, 66-1,114, 66-1,114b and 66-1,115, and amendments thereto, the Commission is given full power, authority and jurisdiction to supervise and control motor carriers, as defined in K.S.A. 2018 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. 2018 Supp. 66-1,129a, 66-1,130 and 66-1,142b, and amendments thereto, 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 a party under its jurisdiction.

II. BACKGROUND

4. Under the above jurisdiction and authority, on October 7, 2019, Commission Staff (Staff) Special Investigator Verna Jackson conducted a compliance review on Respondent's motor carrier operations. As a result of the review, Investigator Smith identified one (1) violations of the Motor Carrier Safety Regulations.

5. On October 17, 2019, the Commission issued a Penalty Order in this docket assessing a \$100 civil penalty against Respondent.

6. On October 29, 2019, Concrete Service Co., Inc. filed its Request for Hearing with the Commission.

7. On November 7, 2019, Dale Westhoff, Vice President of Concrete Service Co., Inc. Gary Davenport, Deputy Division Director, and Ahsan Latif, Litigation Counsel for Staff (Staff), informally discussed the possibility of a settlement. During the informal discussions, Staff and Respondent were able to reach mutually agreeable terms in anticipated settlement of the issues. It was agreed that Staff would subsequently reduce the terms to writing and forward the draft to Respondent for approval and signature.

III. TERMS OF THE STIPULATED SETTLEMENT AGREEMENT

8. The parties agree that the Commission has jurisdiction and authority over this matter.

9. The parties also agree that adoption of this Agreement is in the public interest and that the Commission should approve the stipulations as set forth below.

10. Staff recommends waiver of the \$100 civil penalty at their discretion after conducting negotiations with Respondent. Thus, Staff recommends \$100 of Respondent's original \$100 civil penalty assessed in this docket be waived, bringing Respondent's total civil penalty to \$0.

11. During negotiations with Respondent, Respondent agreed in the future that, upon hiring a new driver or terminating a driver's employment, Respondent will promptly update the driver lists to ensure each driver selected for random alcohol and controlled substance testing has an equal chance of being selected each time selections are made.

12. Respondent stipulates that he has submitted a corrective action plan to bring the motor carrier operation into compliance with both state and federal motor carrier safety regulations and will maintain such compliance into the future.

13. Respondent acknowledges that at least one safety compliance review will be conducted within 18 months from the date this Agreement is approved or amended pursuant to entry of an order by the Commission. Staff will contact Respondent at a later date to determine an appropriate time for this review.

14. Respondent further agrees to attend a Commission-sponsored safety seminar within the next ninety (90) days from the date this Agreement is approved or amended pursuant to entry of an order by the Commission. Respondent agrees to provide Litigation Counsel with written proof of attendance. A schedule of dates and locations for the safety seminar can be found at the Commission's website at http://www.kcc.state.ks.us/trans/safety_meetings.htm.

15. Staff agrees to recommend to the Commission that this Agreement be approved. Staff further agrees that upon approval by the Commission, and barring default proceedings pursuant to K.S.A. 2018 Supp. 77-520, as described in ¶ 9 above, this Agreement shall constitute a final resolution of this matter.

IV. RESERVATIONS

16. This Stipulated Settlement Agreement fully resolves issues specifically addressed between the parties. The terms of this Agreement constitute a fair and reasonable resolution of the issues addressed herein.

17. The terms and provisions of this Agreement have resulted from negotiations between the signatories and are interdependent. In the event the Commission does not approve the terms of the Agreement in total, any party has the option to terminate this Agreement and, if so terminated, none of the signatories hereto shall be bound by, prejudiced, or in any way affected by any of the terms or provisions hereof, unless otherwise provided herein.

18. Unless (and only to the extent) otherwise specified in this Agreement, the signatories to this Agreement shall not be prejudiced, bound by, or affected in any way by the terms of this Agreement: (1) in any future Commission or court proceeding; (2) in any proceeding currently pending before the Commission under a separate docket; and/or (3) in this proceeding, if the Commission decides not to approve this Agreement in total or in any way conditions its approval of the same. This paragraph is not meant to limit future enforcement of this Agreement, should either party fail to fulfill all terms and provisions.

19. Unless (and only to the extent) otherwise specified in this Agreement, this Agreement does not prejudice or waive any party's legal rights, positions, claims, assertions or arguments in any proceedings in this docket, or any other proceeding before the Commission or in any court.

20. If the Commission approves this Agreement in its entirety and incorporates the same into a final order in this docket, the parties agree to be bound by its terms and the Commission's

order incorporating its terms as to all issues addressed herein, and will not appeal the Commission's order.

21. This Stipulated Settlement Agreement shall be binding on all parties upon signing.

IN WITNESS WHERETO, the parties hereby execute and approve this Stipulated Settlement Agreement by subscribing their signatures below.

By:



Ahsan A. Latif S.Ct. #24709
Litigation Counsel
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Attorney for Commission Staff

By:



Dale Westhoff, Vice President
Vice President
Concrete Service Co., Inc.
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Great Bend, KS 67530
Phone: 620-792-2558
Fax: 620-793-9245
Email: dalewesthoff@hotmail.com

Vice President for Respondent

CERTIFICATE OF SERVICE

20-TRAM-171-PEN

I, the undersigned, certify that a true and correct copy of the above and foregoing Joint Motion for Approval of Stipulated Settlement Agreement was served via electronic service this 10th day of December, 2019, to the following:

DALE WESTHOFF, VICE PRESIDENT
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Vicki Jacobsen