

1500 SW Arrowhead Road  
Topeka, KS 66604-4027



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

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

Sam Brownback, Governor

## NOTICE OF PENALTY ASSESSMENT

March 5, 2015

15-TRAM-361-PEN

Angela Shellito, Office Manager  
Shamburg Feed Service, LLC  
2986A US 24 Hwy  
Beloit, Kansas 67420

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 21, 2015, by Kansas Corporation Commission Special Investigator Carrie Padgett. 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 an \$1,100 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. 2013 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

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

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

In the Matter of the Investigation of **Shamburg**      )  
**Feed Service, LLC, of Beloit, Kansas,**      )  
Regarding the Violation of the Motor Carrier      )  
Safety Statutes, Rules and Regulations and the      ) Docket No. 15-TRAM-361-PEN  
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. 2013 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. 2013 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. 2013 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. Shamburg Feed Service, LLC (Shamburg Feed Service) operates under USDOT number 2104968.

5. Michael Shamburg attended a Commission-sponsored Motor Carrier Education and Instructional Meeting on October 31, 2011, on behalf of Shamburg Feed Service.

6. Shamburg Feed Service 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 21, 2015, Commission Staff (Staff) Special Investigator Carrie Padgett conducted a compliance review of the operations of Shamburg Feed Service. 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, Ms. Padgett identified three (3) violations of the Motor Carrier Safety Regulations.

- a. On December 1, 2014, Shamburg Feed Service required or permitted its driver, Bill Wendell, to operate a commercial motor

vehicle, a 2002 Sterling, VIN ending in 178916, in intrastate commerce from Beloit, Kansas to Glen Elder, Kansas. This trip is evidenced by Shamburg Feed Service, LLC Invoice No. 15728, dated December 1, 2014, a copy of which is attached hereto as Attachment "B" and is hereby incorporated by reference. At the time of this transportation, Shamburg Feed Service had not implemented a random drug and alcohol testing program for its drivers. The carrier's failure to require its driver to be enrolled in a random alcohol and controlled substance testing program is a violation of 49 C.F.R. § 382.305(a) and (i)(2), as adopted by K.A.R. 82-4-3c, and authorized by K.S.A. 2013 Supp. 66-1,129. Staff recommends a fine of \$500.

- b. During the transportation described in paragraph a., above, Shamburg Feed Service had not made inquiry into the driver's motor vehicle record (MVR) within the preceding 12 months and maintain the record in the driver's qualification file. The last MVR on file was dated 2011. Shamburg Feed Service's failure to inquire into the driving record of each of its drivers at least once every 12 months and to maintain the MVR in the driver's 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. 2013 Supp. 66-1,129. Staff recommends a fine of \$100.

c. During the transportation described in paragraph a., above, Shamburg Feed Service did not have proper Kansas Corporation Commission motor carrier operating authority to operate from point-to-point in the state of Kansas. The carrier's prior authority under KSMCID No. 168447 was cancelled on January 19, 2015, due to the carrier's failure to renew. Shamburg Feed Service's commercial operation of motor vehicles prior to obtaining and maintaining proper Commission authority is a violation of K.S.A. 2013 Supp. 66-1,111 and 49 C.F.R. 392.2, as adopted by K.A.R. 82-4-3h and authorized by K.S.A. 2013 Supp. 66-1,129. Staff recommends a fine of \$500.

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

8. Based upon the available facts, Staff recommends the Commission find Shamburg Feed Service committed three (3) violations 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 \$1,100 for three (3) violations of the Motor Carrier Safety Statutes, Rules and Regulations.

10. Staff further recommends that Shamburg Feed Service 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 Shamburg Feed Service 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 Shamburg Feed Service because it is a motor carrier as defined in K.S.A. 2013 Supp. 66-1,108.

13. The Commission finds Shamburg Feed Service committed three (3) violations 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. Shamburg Feed Service, LLC, of Beloit, Kansas is hereby assessed a \$1,100 civil penalty for three (3) violations 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. Shamburg Feed Service 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, Shamburg Feed Service is ordered to submit to one follow-up safety compliance review within the next eighteen (18) months.

C. Pursuant to K.S.A. 2013 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 Shamburg Feed Service's right to a hearing, and this Penalty Order will become a Final Order assessing a \$1,100 civil penalty against Shamburg Feed Service, and ordering Shamburg Feed Service 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 \$1,100 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 Shamburg Feed Service'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 05 2015




ORDER MAILED MAR 06 2015

Neysa Thomas  
Acting Secretary

MJD



## **ATTACHMENT “A”**

	<b>US DOT #</b> 2104968		<b>Legal:</b> KEITH SHAMBURG <b>Operating (DBA):</b> SHAMBURG FEED SERVICE	
	<b>MC/MX #:</b>	<b>State #:</b>	<b>Federal Tax ID:</b>	<b>(EIN)</b>
<b>Review Type:</b> Compliance Review (CR)				
<b>Scope:</b>	<b>Principal Office</b>		<b>Location of Review/Audit:</b> Company facility in the U. S. <b>Territory:</b>	
<b>Operation Types</b>				
	<b>Interstate</b>	<b>Intrastate</b>		
<b>Carrier:</b>	N/A	Non-HM	<b>Business:</b> Corporation	
<b>Shipper:</b>	N/A	N/A	<b>Gross Revenue:</b> for year ending: 12/31/2013	
<b>Cargo Tank:</b>	N/A			
<b>Company Physical Address:</b>				
<b>Contact Name:</b> Angela Shellito				
<b>Phone numbers:</b> (1)      (2) <b>Fax</b>				
<b>E-Mail Address:</b>				
<b>Company Mailing Address:</b>				
2986A US 24 HWY BELOIT, KS 67420				
<b>Carrier Classification</b>				
Authorized for Hire      Exempt for Hire				
<b>Cargo Classification</b>				
Grain, Feed, Hay				
<b>Equipment</b>				
	<b>Owned</b>	<b>Term Leased</b>	<b>Trip Leased</b>	<b>Owned   Term Leased   Trip Leased</b>
Truck	1	0	0	
<b>Power units used in the U.S.:</b> 1				
<b>Percentage of time used in the U.S.:</b> 100				
<b>Does carrier transport placardable quantities of HM?</b> No				
<b>Is an HM Permit required?</b> N/A				
<b>Driver Information</b>				
	<b>Inter</b>	<b>Intra</b>	<b>Average trip leased drivers/month:</b> 0	
< 100 Miles:		1	<b>Total Drivers:</b> 1	
>= 100 Miles:			<b>CDL Drivers:</b> 1	





SHAMBURG FEED SERVICE (KEITH SHAMBURG dba)

U.S. DOT #: 2104968

State #:

Review Date:

01/21/2015

**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: Angela Shellito

Title: Office Manager

Name:

Title:





SHAMBURG FEED SERVICE (KEITH SHAMBURG dba)

U.S. DOT #: 2104968

State #:

Review Date:

01/21/2015

## Part B Violations

1 STATE	Primary: 382.305(a) CFR Equivalent: 382.305(a)	Discovered 1	Checked 1	Drivers/Vehicles In Violation 0	Checked 0
<b>Description</b> Failing to implement a random controlled substance and/or an alcohol testing program. Every driver shall submit to random alcohol and controlled substances testing as required by this section. <b>Example</b> 12-1-14					
2 STATE	Primary: 391.25(c)(2) CFR Equivalent: 391.25(c)(2)	Discovered 1	Checked 1	Drivers/Vehicles In Violation 1	Checked 1
<b>Description</b> Failing to maintain record of annual review in driver's qualification file. <b>Example</b> 12-1-14					
3 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> 12-1-14					
4 STATE	Primary: 391.51(b)(2) CFR Equivalent: 391.51(b)(2)	Discovered 1	Checked 1	Drivers/Vehicles In Violation 1	Checked 1
<b>Description</b> Failing to maintain inquiries into driver's driving record in driver's qualification file. <b>Example</b> 12-1-14 last year filed was 2011					
5 STATE	Primary: 392.2 Secondary: 66-1.112g	Discovered 1	Checked 1	Drivers/Vehicles In Violation 0	Checked 0
<b>Description</b> Operating without proper intrastate authority <b>Example</b> 12-1-14					
Safety Fitness Rating Information: 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			





SHAMBURG FEED SERVICE (KEITH SHAMBURG dba)

U.S. DOT #: 2104968

State #:

Review Date:

01/21/2015

**Part B Violations**

Your proposed safety rating is :

**This Review is not Rated.**





SHAMBURG FEED SERVICE (KEITH SHAMBURG dba)

U.S. DOT #: 2104968

State #:

Review Date:

01/21/2015

## Part B Requirements and/or Recommendations

1. 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 Shamburg Feed Service LLC operating authority and/or the impoundment of Shamburg Feed Service LLC vehicles.

### 2. UNSAFE DRIVING BASIC PROCESS BREAKDOWN: Monitoring and Tracking

#### DESCRIPTION OF PROCESS BREAKDOWN

#### BASIC SPECIFIC RECOMMENDED REMEDIES

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

- Ensure that the safety director/dispatchers ascertain that all routes can be completed within speed limits.
- Maintain roadside inspection reports, moving violation records, and "How am I driving?" complaints to help evaluate the performance of all staff (drivers and managers) involved in safe driving and the effectiveness of the policies and procedures.
- 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 safe driving. If a driver seems to have license-related problems, 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.
- Ensure that dispatchers and/or the safety manager monitor drivers' speed for violations with use of an electronic or manual movement record—that is, that they track driver movements via driver reports, global positioning systems (GPS), and travel receipts.
- Evaluate personnel who are monitoring drivers' safety performance by making sure they are using inspections and other data; applying performance standards fairly, consistently, and equitably; and documenting evaluations.
- Place a "How am I driving?" sticker on every truck to get feedback from the public on drivers exhibiting unsafe behaviors on the road. Assess feedback for safety implications.
- Regularly evaluate the company's unsafe-driving-related inspection results via the Federal Motor Carrier Safety Administration's (FMCSA) website at <http://ai.fmcsa.dot.gov/CSI>. 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 unsafe-driving regulations and company policies.
- Implement a system for keeping accurate records of employee driving-safety training needs and completed training, via software, a checklist in the driver's file, and/or another appropriate method.
- When monitoring and tracking any unsafe-driving-related issues, always assess whether an issue 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/CSI](http://ai.fmcsa.dot.gov/CSI). You will need to use your PIN Number that has been provided by the FMCSA. This website contains helpful safety resources. Please refer to the following resource numbers in the "Guidance" Section of the CSI web page that connects you with the reference materials in this website.
  - Resource Number: 15013
- Contact industry associations to get resources and ideas on safety improvement practices from other carriers in the industry.

3. Ensure that all drivers are fully and properly qualified before operating in interstate/intrastate commerce. Maintain a complete file as required for each driver, documenting the qualification process. Included in the driver qualification file is application for employment, previous employer inquiries, copy of the medical examination certificate, road test and certificate of violations and annual review.



## **ATTACHMENT “B”**

[REDACTED]

✓

✓

Bill To
JOHN CUNNINGHAM
[REDACTED]

Description	Amount
ROLLING	18.81
EX. GROWER 40-16 B400	341.36
SWEET 45 LITE	45.72
MIXING	17.28
DELIVERY FEE	35.00T
FREIGHT	24.75
Out-of-state sale, exempt from sales tax	0.00
<p>↓</p> <p>Quickbooks software glitch driver did not operate out of state</p>	
<p><b>Total</b> \$482.92</p>	



IN RE: DOCKET NO. **15-TRAM-361-PEN**

DATE **MAR 05 2015**

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

NAME AND ADDRESS	NO. CERT. COPIES	NO. PLAIN COPIES
MICHAEL DUENES, LITIGATION COUNSEL KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD RD TOPEKA, KS 66604-4027 ***Hand Delivered***		
ANGELA SHELLITO, OFFICE MANAGER SHAMBURG FEED SERVICE, LLC 2986A US 24 HWY BELOIT, KS 67420		

ORDER MAILED **MAR 06 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.