

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

In the Matter of the Investigation of **BMS**)
Transportation Company, Inc. of Platte)
City, Missouri, Pursuant to the Kansas)
Highway Patrol Issuance of a Notice of) Docket No. 15-GIMM-212-KHP
Violation(s) and Invoice for the Violations of)
the Kansas Motor Carrier Safety Statutes,)
Rules and Regulations

**DIRECT TESTIMONY
OF
KANSAS HIGHWAY PATROL
TROOPER JASON MILLS
ON BEHALF OF
THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

January 30, 2015

1 **Q. Please state your full name.**

2 A. Jason Mills.

3 **Q. By whom and in what capacity are you employed?**

4 A. I am a Technical Trooper employed by the Kansas Highway Patrol (KHP).

5 **Q. Where is your employer located?**

6 A. The Troop headquarters that I report to (Troop I) is located at 700 SW Jackson, Suite
7 704, Topeka, KS 66603.

8 **Q. How long have you been with the Kansas Highway Patrol?**

9 A. I have been with the KHP for almost 14 years, since July of 2001.

10 **Q. Please summarize your educational and professional background.**

11 A. After being hired by the Patrol, I attended a 22-week training at the Highway Patrol
12 Training Academy in Salina, KS. That training included a certification through
13 Commercial Vehicle Safety Alliance (CVSA) to complete level III driver inspections.
14 Level III inspections are inspections of the driver and paperwork only. Since graduating
15 from the academy I have become certified as a Level I inspector. Level I inspections
16 cover the driver, paperwork and the entire vehicle, including crawling underneath the
17 truck and checking the chassis and the drive train and everything underneath the truck. I
18 have also gained certifications to complete inspections in hazardous materials, cargo
19 tanks, other bulk packaging and radioactive materials. Since 2010, I have been instructing
20 general hazardous materials transportation, receiving my instructor certification through

1 the National Training Center in 2013. I completed Level III inspections until 2002, when
2 I obtained my Level II certification. Level II inspections are essentially Level I
3 inspections without checking all the brakes. From 2002 until 2010, I completed the
4 required minimum 50 Level II CVSA inspections per year. Beginning in 2010, I achieved
5 my Level I certification, at which time I was required 720 truck inspections per year. In
6 2013, I attended training in Commercial Motor Vehicle Post-Crash Investigation from the
7 Nebraska State Patrol.

8 **Q. Have you previously testified before this Commission?**

9 A. No.

10 **Q. Please explain the circumstances giving rise to the roadside inspection of the vehicle**
11 **of BMS Transportation Company, Inc. on June 23, 2014.**

12 A. On that evening I was riding with Technical Trooper Shawn Hines. As we were pulling
13 from a parking lot onto US-59 highway, in Garnett, Central Dispatch broadcast an
14 attempt to locate for a truck tractor, semi-trailer that was spilling its load. At the same
15 time, this BMS combination passed by us northbound on US-59. Based on the
16 description - a red in color truck pulling a trailer leaking product, given by the reporting
17 party, location, and direction of travel - we were able to locate and determine that this
18 BMS truck was the vehicle involved in the attempt to locate. We pursued the truck and
19 stopped it for inspection on US-59, at approximately milepost 111. The stop occurred at
20 approximately 2020 hours, i.e., 8:20 p.m.

1 **Q. What was your role in the stop and inspection?**

2 A. I completed the walk around, hazardous materials inspection, cargo tank inspection, and
3 inspection report.

4 **Q. Are you familiar with the challenge raised by BMS Transportation Company, Inc.**
5 **in this matter?**

6 A. Yes. They are challenging the fine for the out-of-service violation for brakes.

7 **Q. Did you formally document the June 23, 2014 stop and inspection?**

8 A. Yes. I documented the inspection in Inspection Report Number KS00PR000571

9 **Q. Please describe the vehicle or vehicles involved in this stop.**

10 A. The tractor was a red in color 2007 Kenworth truck, marked with USDOT number
11 1074225. It was pulling a 1977 Fruehauf MC-306 cargo tank that was displaying class 3
12 placards, with ID number UN1999.

13 **Q. Did this vehicle meet the definition of a commercial motor vehicle? Please explain?**

14 A. Yes. It did meet the definition of a commercial motor vehicle in two ways. In the
15 definition under 49 C.F.R. 390.5, the combination was in interstate commerce, over
16 10,001 lbs. gross vehicle weight rating and gross vehicle weight. It was also transporting
17 an amount of hazardous materials that required placards to be displayed.

18 **Q. Please explain the Kansas Highway Patrol's authority as it relates to the stop and**
19 **inspection of commercial motor vehicles.**

1 A. Several Kansas statutes and administrative regulations, as well as case law, give us the
2 authority to stop and complete inspections on commercial motor vehicles and the drivers
3 of such vehicles. KSA 74-2108 authorizes and directs members of the Highway Patrol to
4 stop and inspect private and public motor carriers to ensure that they are in compliance
5 with the rules and regulations.

6 **Q. At the time of the stop, how did you determine that the vehicle and its driver were**
7 **subject to the Federal Motor Carrier Safety Administration's (FMCSA's) rules and**
8 **regulations?**

9 A. Using the definition, and speaking with the driver we were able to determine that it was
10 in commerce and subject to the Federal Motor Carrier Safety Regulations (FMCSRs).

11 **Q. What type of inspection did you conduct on the vehicle-in-question? Please explain.**

12 A. We completed a CVSA Level I, hazardous materials, and cargo tank inspection. The
13 Level I inspection included a 37-step process, including the driver and vehicles. The
14 hazardous materials and cargo tank inspections included ensuring compliance with the
15 Hazardous Material Regulations (HMRs).

16 **Q. Did you identify any violations during the June 23, 2014, stop and inspection?**

17 A. We identified 26 violations of the FMCSRs and HMRs.

18 **Q. The issue in contention in this matter is the out-of-service determination for**
19 **defective brakes. Describe in detail how you determined that three of the vehicle-in-**
20 **question's brakes were out of adjustment beyond acceptable limits?**

1 A. Technical Trooper Hines completed the inspection of the brakes that evening. I did not
2 look at the brakes. During Trooper Hines' inspection of the brakes, I wrote down the
3 measurements that he was taking. After his inspection of the brakes, we simply discussed
4 that the combination was out of service.

5 **Q. Please explain the rule relevant to putting a vehicle out-of-service for defective**
6 **brakes.**

7 A. The North American Standard Out-of-Service Criteria, as printed by CVSA, determines
8 which violations apply to the number of defective brakes that would place the vehicle(s)
9 out-of-service based on the number of required brakes on the vehicle(s). If twenty
10 percent (20%) or more of the brakes are defective, the vehicle(s) meet the out-of-service
11 condition. Brakes that are out of adjustment count toward a defective brake. This
12 combination, having ten brakes, would meet the out-of-service condition with two
13 defective brakes. It was determined to have three out of adjustment, therefore, exceeding
14 the twenty percent (20%) threshold.

15 **Q. Regarding other violations, how did you determine that there was oil leaking on the**
16 **vehicle's outer wheel on the driver's side?**

17 A. From the presence of oil/grease on the axle end hub assembly and on the inside of wheel
18 rim.

19 **Q. Were there other oil and/or grease leaks that you found on the vehicle?**

20 A. Yes, there was oil leaking from the engine onto the ground during the inspection.

21 **Q. Please explain the rule that applies to oil and grease leaks.**

1 A. 49 C.F.R. 396.5 states, "Every motor carrier shall ensure that each motor vehicle subject
2 to its control is—(a) Properly lubricated; and (b) Free of oil and grease leaks."

3 **Q. How did you determine that the vehicle-in-question had placarding violations?**

4 A. I observed that the required placards were damaged, faded, folded over, torn and
5 obscured.

6 **Q. Please explain the rules relevant to these placarding violations.**

7 A. 49 C.F.R. 172.516 states that all placards must be visible from the direction that they
8 face. They may not be damaged, deteriorated, or obscured.

9 **Q. Was the vehicle-in-question hauling hazardous materials? Please explain.**

10 A. It was hauling an elevated temperature material as defined in 49 C.F.R. 171.8, "(1) Is in a
11 liquid phase and at a temperature at or above 100° C (212° F)." A check of the
12 temperature gauge on the side of the cargo tank showed that it was at a temperature of
13 approximately 280° F.

14 **Q. How did you determine that the vehicle-in-question had a violation for leaking these
15 hazardous materials?**

16 A. From the reporting party in the initial attempt to locate, and from observing that there
17 were materials leaking from around a valve on the rear of the cargo tank.

18 **Q. Please explain the rule that applies to the leaking of hazardous materials.**

19 A. 49 C.F.R. 173.24 states, "b) Each package used for the shipment of hazardous materials
20 under this subchapter shall be designed, constructed, maintained, filled, its contents so

1 limited, and closed, so that under conditions normally incident to transportation. (1)
2 Except as otherwise provided in this subchapter, there will be no identifiable (without the
3 use of instruments) release of hazardous materials to the environment.”

4 **Q. During your inspection, did you discover any other hazardous materials related**
5 **violations?**

6 A. We discovered several other hazardous material violations, including no Pipeline and
7 Hazardous Materials Safety Administration (PHMSA) copy of PHMSA registration as
8 required by 49 C.F.R. 107.601, the drain holes in the overturn protection on the cargo
9 tank plugged, in violation of 49 C.F.R. 178.340-8C; the cargo tank was not marked with
10 test date markings, as required by 49 C.F.R. 180.415; no piping protection for piping on
11 the MC-306, as required by 49 C.F.R. 178.340-8; piping failing to be 6 inches inboard of
12 rear end protect, as required by 49 C.F.R. 178.340-8; marking on left side of cargo tank
13 not square on point, as required in 49 C.F.R. 172.325; and the basic description of
14 hazardous materials listed on shipping paper were not in the proper sequence, as required
15 in 49 C.F.R. 172.202.

16 **Q. Please explain the rules that apply to these violations.**

17 A. See above.

18 **Q. Is there anything further you wish to add to aid the Commission in its decision?**

19 A. I do have pictures and video of several of the violations, including the leaking hazardous
20 materials. Also, I found that the overall condition of the tractor trailer combination was
21 very poor. It appeared that maintenance was not being kept up or even completed. The

1 driver didn't seem to care about the condition of the vehicle either. When asked if he had
2 completed the required pre-trip inspection, he stated that he did do the inspection, knew
3 that the materials were leaking, and still chose to drive. I only received this statement
4 because I caught him in a lie.

5 **Q. Does this conclude your testimony?**

6 **A.** Yes it does.

CERTIFICATE OF SERVICE

15-GIMM-212-KHP

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing docket was placed in the United States mail, postage prepaid, or hand-delivered this 30th day of January, 2015, to the following:

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