

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

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

In the Matter of the Investigation of)
David Milner, d/b/a Milner Hay &)
Cattle of Welda, Kansas, Regarding the)
Violation of the Motor Carrier Safety)
Statutes, Rules and Regulations and the) Docket No. 20-TRAM-138-PEN
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.A.R. 82-4-1b, 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.A.R. 82-4-3f, 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, 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. 2018 Supp. 66-1,129(a)(7), the Commission has adopted motor carrier transportation regulations (K.A.R. 82-4-3f) consistent with the federal motor carrier safety assistance program and other federal requirements concerning transportation of hazardous waste.

II. FINDINGS OF FACTS

4. On December 18, 2019, Commission Staff filed a Motion to Suspend Intrastate Motor Carrier Operations due to the carrier's failure to pay.

5. Staff advised that David Milner, d/b/a Milner Hay & Cattle of Welda, Kansas (Respondent) is a motor carrier as defined in K.A.R. 82-4-3f, which operates commercial motor vehicle(s) in intrastate commerce and operates under USDOT Number 1250982.

6. On September 26, 2019, Respondent was issued a penalty assessment of \$300 for violations of the Kansas Motor Carrier Safety Statutes, Rules and Regulations discovered during a compliance review conducted on September 4, 2019, by Kansas Corporation Commission Special Investigator(s) Michael Heenan. The Commission's Penalty Order is incorporated herein by reference and made a part of this Order.

7. The Respondent was served with the Penalty Order on October 28, 2019, and had 30 days from that date to pay the penalty amount.

8. Respondent was mailed a collection letter dated December 4, 2019, 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. The Respondent did not respond to the collection letter.

9. As of December 18, 2019, Commission records indicate Respondent has not complied with requirements of the Penalty Order in that Respondent had thirty (30) days from the date of service to pay the fine of \$300, and Transportation Division records indicate the fine is unpaid.

10. Staff recommends the Commission place David Milner, d/b/a Milner Hay & Cattle out-of-service due to its failure to comply with the Commission's Penalty Order.

III. CONCLUSIONS OF LAW

11. The Commission finds it has jurisdiction over Respondent as it is a motor carrier as defined in K.A.R. 82-4-3f.

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

13. The Commission finds Respondent's failure to comply with the requirements of the Penalty Order is intentional and therefore this Commission finds the Respondent should be suspended from all intrastate motor carrier operations other than such motor carrier operations excepted from the Commission's regulation under K.S.A. 2018 Supp. 66-1,129, until such time as the carrier takes the necessary steps to become compliant.

14. The Commission finds Respondent is to attend a Commission-sponsored safety seminar within 90 days from the date of this Order, and it is to provide proof of attendance to Litigation Counsel.

THE COMMISSION THEREFORE ORDERS THAT:

A. David Milner, d/b/a Milner Hay & Cattle of Welda, Kansas is 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. 2018 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. David Milner, d/b/a Milner Hay & Cattle of Welda, Kansas is hereby ordered to attend a Commission-sponsored safety meeting within 90 days of the date of this Order, and to provide Litigation Counsel with written proof of attendance.

C. **Pursuant to K.S.A. 2018 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 Executive Director, at 1500 S.W. Arrowhead Road Topeka, Kansas 66604 within fifteen (15) days from the date of service of this Order.** 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 ninety (90) days of

the date of this Order, and it is to provide Litigation Counsel with written proof of attendance.

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. 2018 Supp. 66-1,142b(e) and amendments thereto.

E. 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.

F. 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.

Keen, Chair; Albrecht, Commissioner; Duffy, Commissioner

Dated: 12/31/2019



Lynn M. Retz
Executive Director

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CERTIFICATE OF SERVICE

20-TRAM-138-PEN

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of
first class mail/hand delivered on 01/02/2020.

DAVID MILNER, OWNER
DAVID MILNER
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/S/ DeeAnn Shupe

DeeAnn Shupe