

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

Sam Brownback, Governor

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

# NOTICE OF PENALTY ASSESSMENT

September 27, 2016

17-TRAM-106-PEN

Patrick Connolly, President PMC, Inc., d/b/a KC Scaffold 316 Shawnee Ave Kansas City, Kansas 66105

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 September 13, 2016, by Kansas Corporation Commission Special Investigator Verna Jackson. 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 \$500 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 <a href="http://www.kcc.state.ks.us/trans/safety\_meetings.htm">http://www.kcc.state.ks.us/trans/safety\_meetings.htm</a>.

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.

Ansan A. Laur 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 PMC, Inc.,	)	
d/b/a KC Scaffold, of Kansas City, Kansas,	)	
Regarding the Violation of the Motor Carrier	)	
Safety Statutes, Rules and Regulations and the	)	Docket No. 17-TRAM-106-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. 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. PMC, Inc., d/b/a KC Scaffold (KC Scaffold) operates USDOT number 339313.
- 5. KC Scaffold operates interstate and intrastate and owns four straight trucks and employs 5 non-CDL drivers.
- 6. KC Scaffold is a private motor carrier which primarily hauls building materials and scaffold materials.

#### III. STATEMENT OF FACTS

- 7. Pursuant to the jurisdiction and authority cited above, on September 13, 2016, Commission Staff (Staff) Special Investigator Verna Jackson conducted a compliance review of the operations of KC Scaffold. 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. Jackson identified one (1) violation of the Motor Carrier Safety Regulations.
  - a. On April 12, 2016, KC Scaffold required or permitted its driver, Shawn McEwen, to operate a commercial motor vehicle, a 2012 HINO, VIN ending in 54054, GVWR 25,900 lbs., in interstate commerce from Kansas City, Kansas to Kansas City, Missouri. This trip is evidenced by Driver/Vehicle Examination Report No. MO00K6010536, dated April 12, 2016, a copy of which is attached hereto as Attachment "B" and is hereby incorporated by reference. At the time of this trip, KC Scaffold failed to

make an inquiry every 12 months into the annual motor vehicle record (MVR) of its driver and maintain the response(s) of each state agency in the driver qualification file. The special investigator found three (3) violations of this type. KC Scaffold was also cited with this same violation in a compliance review conducted on December 31, 2014. The carrier's failure to inquire into its driver's MVR at least once every 12 months and maintain a copy of the MVR in the driver qualification file is a violation of 49 C.F.R. Part 391.25(a) and (c)(1), as adopted by K.A.R. 82-4-3g, as authorized by K.S.A. 2015 Supp. 66-1,112. Staff recommends an enhanced fine of \$500.

#### IV. STAFF'S RECOMMENDATIONS

- 8. Based upon the available facts, Staff recommends the Commission find KC Scaffold 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 \$500 for one (1) violation of the Motor Carrier Safety Statutes, Rules and Regulations.
- 10. Staff further recommends that KC Scaffold 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 KC Scaffold 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 KC Scaffold because it is a motor carrier as defined in K.S.A. 2015 Supp. 66-1,108.
- 13. The Commission finds KC Scaffold 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. PMC, Inc., d/b/a KC Scaffold, of Kansas City, Kansas is hereby assessed a \$500 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. KC Scaffold 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, KC Scaffold is ordered to submit to one follow-up safety compliance review within the next eighteen (18) months.
- C. <u>Pursuant to K.S.A. 2015 Supp. 77-537 and K.S.A. 77-542, any party may</u> 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 KC Scaffold's right to a hearing, and this Penalty Order will become a Final Order assessing a \$500 civil penalty against KC Scaffold, and ordering KC Scaffold 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 \$500 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 KC Scaffold'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

Amy L. Oree

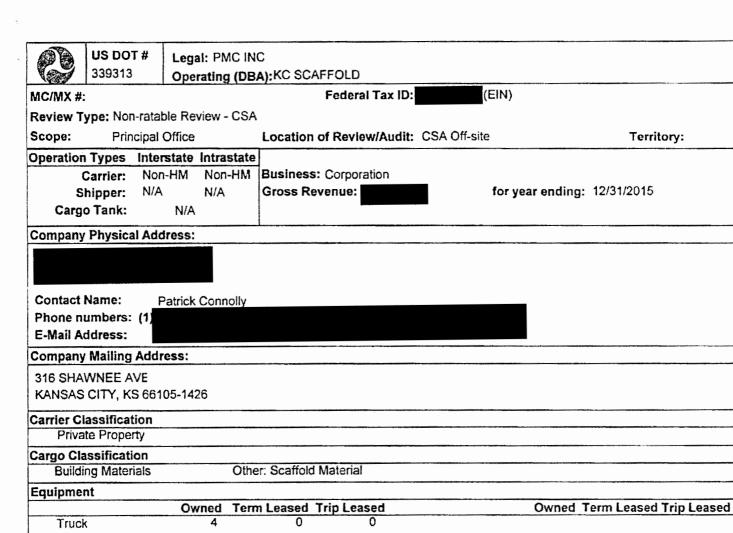
Secretary to the Commission

**AAL** 

Order Mailed Date

SEP 30 2016





Power units used in the U.S.: 4

Percentage of time used in the U.S.: 100

Does carrier transport placardable quantities of HM? No N/A

>= 100 Miles:

Is an HM Permit required?

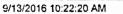
**Driver Information** 

Inter Intra < 100 Miles: 5

Average trip leased drivers/month: 0

**Total Drivers:** 5

**CDL Drivers:** 









U.S. DOT #: 339313

Review Date: 09/13/2016

## Part A

QUESTIONS regarding this report or the Federal Motor Carrier Safety or Hazardous Materials rules may be addressed to the Kansas Corporation Commission at:

1500 SW Arrowhead Topeka, Kansas 66604 Telephone 785-271-3104

This report will be used to assess your safety compliance.

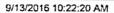
Person(s) Interviewed

Name: Patrick Connolly

Name:

Title: President

Title:









U.S. DOT #: 339313

Review Date: 09/13/2016

# Part B Violations

1	Primary: 391.51(b)(4)			Drivers/V	ehicles
FEDERAL		Discovered	Checked	In Violation	Checked
		3	3	3	3

Description

Failing to maintain the responses of each State agency to the annual driver record inquiry required by 391.25(a).

Example

4/12/2016

Kansas City KS to Kansas City MO

Carrier relied on Insurance company to obtain DL Checks. MVR responses were not maintained in the driver qualification file.

Safety Fitness Rating Information:

**Total Miles Operated Recordable Accidents**  55,000

0

Number of Vehicle Inspected (CR): 0

OOS Vehicle (MCMIS): 2

OOS Vehicle (CR): 0

Number of Vehicles Inspected (MCMIS): 3

Your proposed safety rating is :

This Review is not Rated.



U.S. DOT #: 339313

Review Date 09/13/2016

# Safety Management Process Breakdowns and Remedies

FMCSA recently announced planned improvements to the Carrier Safety Measurement System (SMS) which was
implemented in December 2010 as part of the Agency's broader Compliance. Safety, Accountability (CSA) initiative.
A preview of these improvements is currently available to motor carriers. The system changes are scheduled to be
available to the public in July 2012. There will be additional opportunity for cubic comment on the changes after the
preview period ends in July 2012.

The improvements to SMS are based on ongoing analysis and feedback from enforcement personnel, the motor carrier industry, and other stakeholders. The changes more effectively identify and prioritize high-risk and other unsafe motor carriers for enforcement interventions designed to reduce commercial motor vehicle crashes and hazardous materials incidents.

Motor carrier's currently have the ability to preview how the improvements impact their individual safety data in SMS. These improvements include: (1) Changes to the SMS methodology that identify higher risk carriers while addressing industry biases; (2) better applications of SMS results for Agency interventions by more accurately identifying safety sensitive carriers (i.e., carriers transporting people and carriers hauling hazardous materials (HM)), so that such firms can be selected for CSA interventions at more stringent levels; and, (3) more specific fact-based displays of SMS results on the SMS Web site.

The data preview may be found at http://csa.fmcsa.dot.gov/. During the data preview period, the Agency requests comments on the impacts of the changes.

#### 2. DRIVER FITNESS BASIC PROCESS BREAKDOWN: Monitoring and Tracking

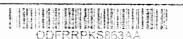
DESCRIPTION OF PROCESS BREAKDOWN: PMC Inc dba KC Scatfold failed to obtain the responses to the driver's license checks. The carrier provided the information to the insurance carrier for validation but did not conduct the inquiry themselves.

#### BASIC SPECIFIC RECOMMENDED REMEDIES

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

- Implement an effective process for monitoring and documenting all drivers' job functions, training, qualifications, renewal dates, disclosed medical conditions, and operational restrictions, including those of drivers on a waiver program or with impairments that may be satisfied by a Skill Performance Evaluation certificate, to ensure that assignments are covered by qualified drivers.
- 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 driver fitness. If a driver seems to have numerous violations, 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.
- Maintain each driver's investigation history file in a secure location with limited and controlled access for as long as the driver is employed and for three years thereafter.
- Maintain roadside inspection reports, moving violation records, training records, the Commercial Driver's License (CDL), the dispatch schedule, bills of lading, and the medical report to help evaluate the performance of all staff involved in qualifying drivers (dispatchers and managers) and the effectiveness of the policies and procedures.
- Evaluate personnel who are monitoring driver fitness performance by making sure they are reviewing driver-assignment and qualification files; applying the performance standards fairly, consistently, and equitably; and documenting the evaluations.
- Regularly evaluate the company's driver fitness-related inspection results via the Federal Motor Carrier Safety
  Administration's (FMCSA) website at http://ai.fmcsa.dot.gov/SMS. 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 driver-fitness regulations and company policies.
- When monitoring and tracking any driver-fitness-related issue, always assess whether it is individual or represents a systemic breakdown in one of the Safety Management Processes (Policies and Procedures, Roles and Responsibilities, etc.).

Seek Out Resources





U.S. DOT #: 339313

Review Date 09/13/2016

# Safety Management Process Breakdowns and Remedies

- You are encouraged to review your company's record at the following website: http://ai.fmcsa.dot.gov/SMS. You will need to use your PIN Number that has been provided by the FMCSA.
- Contact industry associations to get resources and ideas on safety improvement practices from other carriers in the industry.
- 3. As required by 391.25(a), motor carriers shall, at least once every 12 months, make an inquiry to obtain the motor vehicle record of each driver it employs, covering at least the preceding 12 months, to the appropriate agency of every State in which the driver held a commercial motor vehicle operator's license or permit during the time period.
- 4. Per 49 CFR 391.51(b)(5) and (b)(6), the motor carrier is required to process and annual review and certification of the driver's driving record - 391.51(b)(5) A note relating to the annual review of the driver's driving record as required by 391.25(c)(2); 391.51(b)(6) A list or certificate relating to violations of motor vehicle laws and ordinances required by 391.27.
- 5. For all Investigations:
  - Understand Why Compliance Saves Time and Money: Compliance with FMCSRs will not only save lives, but also saves your business time and money. Tracking how much your business spends on non-compliance activities can help you understand the many benefits of compliance to your business and why safety is good business.
  - Document and Follow Through on Action Plans: Document and follow through on action plans to ensure the actions you are taking are creating improvement in safety management and compliance.
  - NOTICE: A pattern and/or repeated violations of the same or related acute or critical regulations (violations of the same Part in Title 49, Code of Federal Regulations) will cause the maximum penalties allowed by law to be assessed under Section 222 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA). A pattern of violations means two or more violations of acute and/or critical regulations in three or more Parts of Title 49, Code of Federal Regulations discovered during any eligible investigation. Repeated violations means violation(s) of an acute regulation of the same Part of Title 49, Code of Federal Regulations discovered in an investigation after one or more closed enforcement actions within a six year period and/or violation(s) of a critical regulation in the same Part of Title 49, Code of Federal Regulations discovered in an investigation after two or more closed enforcement actions within a six year period.
  - NOTICE: 49 CFR Part 391.23 requires prospective employers to, at a minimum, investigate a driver's employment information, crash record, and alcohol and controlled substances history from all employers the driver worked for within the previous 3 years.

The Pre-Employment Screening Program (PSP) is a screening tool that assists motor carriers in investigating crash history and roadside safety performance of prospective drivers. The PSP allows motor carriers to purchase 5 years of crash data and 3 years of roadside inspection data from the Federal Motor Carrier Safety Administration's (FMCSA) Motor Carrier Management Information System (MCMIS). Records are available 24 hours a day via Web request. Motor carriers should visit the following website for more information: http://www.psp.fmcsa.dot.gov/Pages/default.aspx

 All motor carriers and truck drivers are needed to fight against terrorism and hijacking. You could be a target. Protect yourself, your trucks, your cargo, and your facilities.

For all Investigations that could result in a Penalty Order:

• PLEASE NOTE: The violations discovered during this compliance review may affect the civil penalty proposed in any subsequent Penalty Order. In addition, your history of prior violations of the Federal Motor Carrier Safety Regulations, Federal Hazardous Material Regulations or the Federal Motor Carrier Commercial Regulations may also affect the civil penalty proposed in any subsequent Penalty Order. Your signature for receipt of this report acknowledges your understanding that the violations discovered by the KCC during this review may be used to calculate any civil penalty proposed as a result of this review. Your signature is not an admission of the violations



U.S. DOT #: 339313

Review Date 09/13/2016

# Safety Management Process Breakdowns and Remedies

identified.

For all Investigations that did not result in a Cooperative Safety Plan:

The KCC requires that you prepare a corrective action letter, addressing the measures taken to correct the violations identified within this report. Submit this letter within 30 days outlining the carrier's updated changes to their policies and procedures regarding all listed violations. Explain in detail how, as a carrier representative, you will rectify these deficiencies and prevent their reoccurrence going forward. Include any supporting documentation and evidence as indicated in the recommendations above, (example: vehicle inspections performed, proof of drug and alcohol testing in place, etc.) necessary to prove that corrective action has been taken. Mail the letter along with copies of your supporting evidence to:

Kansas Corporation Commission Attn: Gary Davenport 1500 SW Arrowhead Rd Topeka, KS 66604-4027

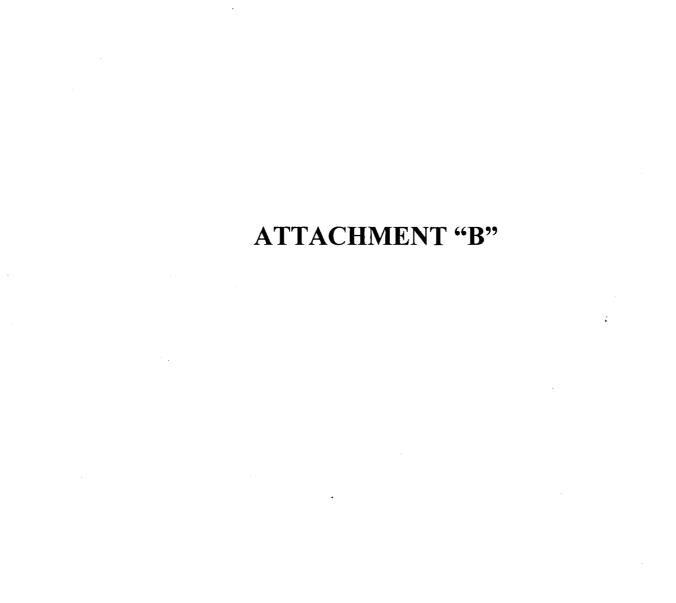
6. I acknowledge that the requirements and/or recommendations resulting from this off-site, focused review have been discussed with me and my questions have been answered. I further acknowledge that KCC recommendations only cover the scope of this focused review, and that areas not reviewed by the KCC have not necessarily been endorsed as compliant. 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 PMC Inc dba KC Scaffold's operating authority and or the impoundment of PMC Inc dba KC Scaffold's vehicles.

rier Representative

Printed name and Title

After reviewing these Requirements and/or Recommendations, please sign and date where indicated, and return to the Kansas Corporation Commission, ATTN Verna Jackson, Transportation Division, 1500 SW Arrowhead Rd, Topeka, Kansas 66604-4027, or fax 785-271-3124.

ODERREKS863AA



# DRIVER/VEHICLE EXAMINATION REPORT

Missouri State Highway Patrol Commercial Vehicle Enforcement D Post Office Box 568 Jefferson City, MO 65102-0568 Phone: (816)482-8286 Fax: (573)526		in S In		04/12/2016 End: 9:25 AM CT III - Driver/Credential
PMC INC		river: MCEWEN, SHAV	VN M	
	L	icense#:	_	State: KS
KANSAS CITY, KS, 66105-1426		ate of Birth		
USDOT: 339313 Phone#: MC/MX#: Fax#:		oDriver: Icenso#:		State:
State#:		ate of Birth:		· ·
Location: FRONT AND N. CENTURY				
Highway: I-435		ANSAS CITY, KS	Bill of Ladin	
County: JACKSON	Destinati	on: KANSAS CITY, MO	Cargo: MET	AL POLES
	Equipment ID	<u>VIN</u> <u>GVWR</u> 54054 25900	CVSA# Is	sued# QOS Sticker
1 TR HINO 2012 KS				
BRAKE ADJUSTMENTS:No brake m	easurements require	ed for level II or level III		
VIOLATIONS: No violations were disc	overed			
HazMat: No HM transported		Placard:	C	argo Tank:
Special Checks: Alcohol/Controlle	d Substance Check	Traffic Enforcement		Post Crash Inspection
X Conducted by Lo	cal Jurisdiction	PASA Conducted Insp	ection	PBBT Inspection
Size and Weight		Drug Interdiction Sear	ch	
eScreen Inspecti	on			
I certify that the above violation(s) was/were cor	rected.			
Signature Of Repairer X:		Facility	:	Date:
NOTICE TO DRIVER/MOTOR CARRIER: The State Highway Patrol, Commercial Vehicle Enfowithin 15 days. IF NO VIOLATIONS WERE DISSIgnature Of Motor Carrier X:	rcement Division, P.O. B	ppears on this report must sig ox 568, Jefferson City, MO 65 OT REQUIRED TO SIGN AN	n the certification and	fax, mail to the Missouri
Report Prepared By: D. REILLY	<u>Badge #:</u> 3264	Copy Received By: SHAWN MCEWEN	00339313 MC	MO00K6010536

# **CERTIFICATE OF SERVICE**

# 17-TRAM-106-PEN

the undersigned, certify that the true copy of the attached Copy is the attached Copy in the structure of the copy of the attached Copy is the copy of the copy is the copy	order has been served to the following parties by means of
AHSAN LATIF, LITIGATION COUNSEL KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD RD TOPEKA, KS 66604-4027 Fax: 785-271-3354 a.latif@kcc.ks.gov	PATRICK CONNOLLY, PRESIDENT PMC, INC. D/B/A KANSAS CITY SCAFFOLD 316 SHAWNEE KANSAS CITY, KS 66105 Fax: 913-233-1738 kcscaffold@gmail.com
	/S/ DeeAnn Shupe

DeeAnn Shupe

Order Mailed Date

SEP 3 0 2016