1 500 SW Arrowhead Road Topeka, KS 66604-4027

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

April 7, 2015

Kansas Corporation Commission

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

Sam Brownback, Governor

NOTICE OF PENALTY ASSESSMENT 15-TRAM-442-PEN

Donald Taylor, Fleet Manager Wil Fischer Distributing of Kansas, L.L.C. 17501 W 98th St #18-49 Lenexa, Kansas 66219

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 February 9, 2015, by Kansas Corporation Commission Special Investigator Wade Patterson. 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 \$100 penalty. You have thirty (30) days from service of this Penalty Order to pay the fine amount. <u>Check or money order must be made payable to the Kansas Corporation</u> <u>Commission.</u> Payment is to be mailed to the Transportation Division of the Kansas Corporation <u>Commission at 1500 S.W. Arrowhead Road, Topeka, Kansas 66604, and must include a reference to the</u> <u>docket number of this proceeding.</u> <u>Credit card payment may be made by faxing your credit card</u> <u>information to the Transportation Office at 785-271-3124, using the KCC's credit card payment form</u> <u>found at http://kcc.ks.gov/trans/creditcard.pdf.</u>

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 <u>http://www.kcc.state.ks.us/trans/safety_meetings.htm</u>.

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. <u>A request for hearing must be made in writing, setting</u> 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. 2014 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. Dueve

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 **Wil Fischer**) Distributing of Kansas, L.L.C., of Lenexa,) Kansas, Regarding the Violation of the Motor) Carrier Safety Statutes, Rules and Regulations) Docket No. 15-TRAM-442-PEN and the 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. 2014 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. 2014 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. 2014 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. Wil Fischer Distributing of Kansas, L.L.C. (Wil Fischer Distributing) obtained private operating authority from the Commission on March 13, 2014, and operates under KSMCID number 170222 and USDOT number 2479621.

5. Danny Hicks attended a Commission-sponsored Motor Carrier Education and Instructional Meeting on February 10, 2014, on behalf of Wil Fischer Distributing.

6. Wil Fischer Distributing is a private motor carrier which primarily hauls beverages.

III. STATEMENT OF FACTS

7. Pursuant to the jurisdiction and authority cited above, on February 9, 2015, Commission Staff (Staff) Special Investigator Wade Patterson conducted a compliance review of the operations of Wil Fischer Distributing. 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, Mr. Patterson identified one (1) violation of the Motor Carrier Safety Regulations.

> a. On January 19, 2015, Wil Fischer Distributing required or permitted its driver, Dakota Freeman, to operate a commercial motor vehicle, a 2003 Peterbilt, VIN ending in 585614, in intrastate commerce from Lenexa, Kansas to Wyandotte County, Kansas. This trip is evidenced by a Sales

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Summary Report, dated January 19, 2015, a copy of which is attached hereto as Attachment "B" and is hereby incorporated by reference. Wil Fischer Distributing required or permitted this transportation prior to first designating a person to supervise staff for the purposes of making reasonable suspicion determinations regarding alcohol and drug usage. This designated person must then undergo reasonable suspicion training to include 60 minutes of alcohol training and 60 minutes of controlled substance training. Wil Fischer Distributing's inability to produce documentation of this training and its failure to have a designated person to attend 60 minutes of training on alcohol misuse and an additional 60 minutes of training on controlled substances use is a violation of 49 C.F.R. 382.603, as adopted by K.A.R. 82-4-3c and as authorized by K.S.A. 2014 Supp. 66-1,129. Staff recommends a fine of \$100.

IV. STAFF'S RECOMMENDATIONS

8. Based upon the available facts, Staff recommends the Commission find Wil Fischer Distributing 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 \$100 for one (1) violation of the Motor Carrier Safety Statutes, Rules and Regulations.

10. Staff further recommends that Wil Fischer Distributing be required to attend a Commission-sponsored safety seminar within the next ninety (90) days and provide Staff with

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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 Wil Fischer Distributing 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 Wil Fischer Distributing because it is a motor carrier as defined in K.S.A. 2014 Supp. 66-1,108.

13. The Commission finds Wil Fischer Distributing 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. Wil Fischer Distributing of Kansas, L.L.C., of Lenexa, Kansas is hereby assessed a \$100 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. Wil Fischer Distributing 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, Wil Fischer Distributing is ordered to submit to one follow-up safety compliance review within the next eighteen (18) months.

C. <u>Pursuant to K.S.A. 2014 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

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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 Wil Fischer Distributing's right to a hearing, and this Penalty Order will become a Final Order assessing a \$100 civil penalty against Wil Fischer Distributing, and ordering Wil Fischer Distributing to attend a Commissionsponsored 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 \$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 Wil Fischer Distributing'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: _____APR 0 7 2015

ORDER MAILED APR 0 8 2015

Neysa Thomas Acting Secretary

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ATTACHMENT "A"

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Operation	Types	Inter	state	Intrastate								
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S	hipper:	N/A		N/A	Gross Rev	enue:		for ye	ar ending	12/31/2014		
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WIL FISCHER DISTRIBUTING OF KANSAS LLC U.S. DOT #: 2479621

State #:

Part A

QUESTIONS regarding this report may be addressed to the Kansas Corporation Commission at:

1500 SW Arrowhead Road Topeka, Kansas 66604 Telephone (785)640-9132

This report will be used to assess your safety compliance.

Person(s) Interviewed Name: Donald Taylor Name: Danny Hicks

Title: Fleet Manager Title: Director of Retail Execution



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U.S	U.S. DOT #: 2479621 State #:				
<u> </u>	Part B Violatio	ons			
1 FEDERAL	DERAL Primary: 382.603 Discovered Checked In Violat				
Description Failing to ensu- training for alc Example	ure person designated to determine that drivers underg ohol and/or 60 minutes of training for controlled substa	lo reasonable susp Inces.	icion testing r	eceive 60 m	inutes
	Freeman drove unit #39 a 2003 Peterbilt VIN# 1 on route D0604.	585614 in	commerce. D	river make o	delivery to
2 FEDERAL	Primary: 391.21(a)	Discovered 5	Checked 5		s/Vehicles on Checked 5
Example 01/19/2015, Driver Dakota	who has not completed and furnished an employment Freeman drove unit #39 a 2003 Peterbilt VIN#; 1 on route D0604.		commerce. D	river make o	delivery to
3 FEDERAL	Primary: 391.23(c)	Discovered 2	Checked 5		s/Vehicles on Checked 5
Example 01/19/2015, Driver Dakota	stigate driver's background within 30 days of employm Freeman drove unit #39 a 2003 Peterbilt VIN# 1 on route D0604.		commerce. D	river make o	delivery to
4 FEDERAL	Primary: 391.51(b)(5)	Discovered 5	Checked 5		s/Vehicles on Checked 5
Description Failing to main Example	ntain a note relating to the annual review of the driver's	driving record as	required by 39	91.25(c)(2).	
	Freeman drove unit #39 a 2003 Peterbilt VIN# 1 on route D0604.	585614 in	commerce. D	Priver make o	delivery to

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	WIL FISCHER DISTRIBUTING OF KANSAS LLC U.S. DOT #: 2479621 State #:					Review Date: 02/11/2015	
Part B Violations							
5 FEDERA	Primary: 391.51(b)(6)		Discovered 5				
Description Failing to maintain a list or certificate relating to violations of motor vehicle laws and ordinances required by 391.27. 01/19/2015,							
Walmart	kota Freeman drove unit #39 #1151 on route D0604. ness Rating Information:	a 2003 Peterbilt VIN#2	585614 in	COMMERCE. D		felivery to	
Total Miles Operated 90,380 Number of Vehicle Inspected (CR): 0 Recordable Accidents 0 OOS Vehicle (MCMIS): 0 Number of Vehicles Inspected (MCMIS): 0 Number of Vehicles Inspected (MCMIS): 0							
Your proposed safety rating is : This Review is not Rated.							

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Part B Requirements and/or Recommendations

 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. Repeated violations means violation(s) of an acute regulation of the same Part 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 identified.

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

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 15 days and any additional evidence necessary to prove the corrective action has been taken to:

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

2. Ensure that all persons designated to supervise CDL drivers receive at least 60 minutes of training on alcohol misuse and receive at least an additional 60 minutes of training on controlled substance use.

2/11/2015 1:49:26 PM

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WIL FISCHER DISTRIBUTING OF KANSAS LLC U.S. DOT #: 2479621

State #:

Part B Requirements and/or Recommendations

3. DRIVER FITNESS BASIC PROCESS BREAKDOWN: Qualification and Hiring

DESCRIPTION OF PROCESS BREAKDOWN

Applications are missing information and are incomplete. Additionally, one driver didn't have an application on file.

Failing to investigate driver's background within 30 days of employment.

BASIC SPECIFIC RECOMMENDED REMEDIES

Ensure that all driver's have completed and furnished complete applications in accordance with FMCSR's.

Ensure that all drivers have been thouroughly investigated and vetted before starting operations with the company. You have 30 days to complete this initial investigation.

Implement Safety Improvement Practices: The following are recommended practices related to Qualification and Hiring.

• Ensure that Motor Vehicle Records (MVRs) from States issuing Commercial Driver's Licenses (CDLs) are reviewed for driver-fitness-related violations of all prospective drivers for the last three years.

• Ensure that drivers are qualified by querying applicants, checking with previous employers and references, and obtaining necessary documents regarding driver fitness, such as those pertaining to previous violations, Commercial Driver's License (CDL), medical qualifications, operational qualifications from training, and relevant experience.

• Review and evaluate gaps in employment, frequent job changes, incomplete applications, within-company applications and reassignments, operational limitations such as those pertaining to long-combination vehicles (LCVs) and HAZMAT, physical impairments, and controlled-substance and alcohol involvement.

• Require that drivers fill out the long form for the medical card and be examined by the carrier's preferred doctor to ensure that their medical gualifications are accurate.

• Ensure that the employment application captures all information required by the Federal Motor Carrier Safety Regulations (FMCSRs), such as whether the driver can handle the physical requirements of the job.

• Enhance the recruitment process to identify and attract qualified applicants for the positions of safety director, dispatcher, and driver by using outside resources such as industry affiliations, recruiters, and consultants for employee searches and referrals.

HAZMAT Carrier Only:

• Ensure that drivers can meet physical requirements and are able to handle the additional stress associated with multiple HAZMAT-transportation responsibilities.

Passenger Carriers Only:

• Check the Motor Vehicle Record (MVR) to ensure that drivers have the proper class of license and "P" or "S" endorsement, and to see if the applicable endorsement on the license has a specific restriction, such as an air-brake restriction.

Seek Out Resources:

• 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.

- 4. 391.51 states that each motor carrier shall maintain a driver qualification file for each driver it employs. A driver's qualification file may be combined with his/her personnel file. The qualification file for a driver must include a note relating to the annual review of the driver's driving record as required by 391.25(c)(2). Going forward, ensure this is completed for every driver annually as directed by the FMCSR's.
- 5. 391.51 states that each motor carrier shall maintain a driver qualification file for each driver it employs. A driver's

Page 2 of 3

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WIL FISCHER DISTRIBUTING OF KANSAS LLC

U.S. DOT #: 2479621

State #:

Part B Requirements and/or Recommendations

qualification file may be combined with his/her personnel file. The qualification file for a driver must include a list or certificate relating to violations of motor vehicle laws and ordinances required by 391.27. Going forward, ensure this is completed for every driver annually as directed by the FMCSR's.

6. 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 Wil Fischer Distributing of Kansas LLC's operating authority and/or the impoundment of Wil Fischer Distributing of Kansas LLC's vehicles.

X.

Donald Taylor



ATTACHMENT "B"

Date: 1/19/15 12:03 PM	Route:	D0604	Salesrep:	Dako	ta Freeman
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·		Totals	63*0 0*0		\$1,414.83

Total Sales/Rtrns:	\$1,414.83
Total A/R:	\$0.00
Total Cases Ending Inventory:	0
Total Cases Load:	63
Load Back Percentage:	0

ORIGINAL

Sales Rep: _____

Checker:

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Page 1 of 1

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

	NO.	NO.
	CERT.	PLAIN
NAME AND ADDRESS	COPIES	COPIES

MICHAEL DUENES, LITIGATION COUNSEL KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD RD TOPEKA, KS 66604-4027 ***Hand Delivered***

DONALD TAYLOR, FLEET MANAGER WIL FISCHER DISTRIBUTING OF KANSAS, L.L.C. 17501 W 98TH ST #18-49 LENEXA, KS 66219-1735

ORDER MAILED APR C 82015

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.