

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

Before Commissioners: Dwight D. Keen, Chair
 Shari Feist Albrecht
 Jay Scott Emler

In the Matter of the Investigation of)
Wichita Tree LLC of Wichita,)
Kansas, Regarding the Violation of the)
Motor Carrier Safety Statutes, Rules and)
Regulations and the Commission's) Docket No. 19-TRAM-254-PEN
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. 82-4-1, 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. 82-4-1 *et seq.*) consistent with the federal motor carrier safety assistance program and other federal requirements concerning transportation of hazardous waste.

II. FINDINGS OF FACTS

4. Wichita Tree LLC of Wichita, Kansas (Respondent) is a motor carrier as defined in K.A.R. 82-4-1, that operates commercial motor vehicle(s) in intrastate commerce.

5. Respondent operates under USDOT Number 3134849.

6. On January 10, 2019, Respondent was issued a penalty assessment of \$400 for violations of the Kansas Motor Carrier Safety Statutes, Rules and Regulations discovered during a compliance review conducted on December 11, 2018, by Kansas Corporation Commission Special Investigator(s) Gary Goeller. The Commission's Penalty Order is incorporated herein by reference and made a part of this Order.

7. The Respondent was attempted to be served with the Penalty Order via certified mail, return receipt requested, on January 10, 2019. The parcel was returned as "unclaimed." The Penalty Order was mailed to the Respondent via regular U.S. mail on February 12, 2019, with a service date calculated as February 15, 2019. The Respondent had 30 days from the date served to pay the civil penalty of \$400.

8. Respondent was mailed a collection letter dated April 3, 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 April 12, 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 \$400, and Transportation Division records indicate the fine is unpaid.

10. On April 12, 2019, Commission Staff filed a Motion to Suspend Intrastate Motor Carrier Operations due to the carrier's failure to pay.

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. 82-4-1.

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. Wichita Tree LLC of Wichita, 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 \$400 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. Wichita Tree LLC of Wichita, 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 Commission's Secretary, 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; Emler, Commissioner

Dated: 04/18/2019



Lynn M. Retz
Secretary to the Commission

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CERTIFICATE OF SERVICE

19-TRAM-254-PEN

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of first class mail/hand delivered on 04/19/2019.

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/S/ DeeAnn Shupe

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