



Rob McKenna

ATTORNEY GENERAL OF WASHINGTON

Utilities and Transportation Division

1400 S Evergreen Park Drive SW • PO Box 40128 • Olympia WA 98504-0128 • (360) 664-1183

May 22, 2006

Carole J. Washburn, Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Dr. SW
P. O. Box 47250
Olympia, Washington 98504-7250

RECEIVED
RECORDS SECTION
06 MAY 22 PM 3:04
STATE OF WASHINGTON
UTILITY AND TRANSPORTATION
COMMISSION

Re: *WUTC v. Kelley's Transportation, Inc. – Penalty Assessment*
Docket No. TE-060395

Dear Ms. Washburn:

Enclosed for filing in the referenced docket are an original and nine copies of Staff's Response to Kelley's Transportation, Inc.'s Application for Mitigation, and Certificate of Service.

Sincerely,

MICHAEL A. FASSIO
Assistant Attorney General

MAF:emd
Enclosure
cc: Parties



BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of PENALTY ASSESSMENT
AGAINST KELLEY'S
TRANSPORTATION, INC. in the amount
of \$1,500

DOCKET NO. TE-060395

COMMISSION STAFF'S
RESPONSE TO KELLEY'S
TRANSPORTATION, INC.'S
APPLICATION FOR MITIGATION

RECEIVED
MAY 22 PM 3:04
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

1 Pursuant to WAC 480-07-370(1)(c), Commission Staff submits this response to
Kelley's Transportation, Inc.'s Application for Mitigation.

I. BACKGROUND

2 The Washington Utilities and Transportation Commission (Commission) assessed
penalties totaling \$1,500 against Kelley's Transportation, Inc. (Kelley's) in a Notice of
Penalties Incurred served on March 31, 2005 and received by Kelley's on May 1, 2006. The
Commission assessed penalties for a violation of RCW 81.04.530, which requires
transportation companies to implement a controlled substances and alcohol testing program.
On May 2, 2006, Kelley's filed an Application for Mitigation of Penalties (Application).

3 Kelley's operates in Washington as a charter passenger carrier under Permit No. CH-
395.¹ On March 7, 2006, the Motor Carrier Safety Section Staff (Staff) conducted a
compliance review and safety inspection of Kelley's, including terminal safety records and
equipment.² This inspection culminated in a March 7, 2006 Compliance Report.³ The
inspection found that Kelley's Transportation employed three Commercial Driver Licensed
Class B drivers and one Commercial Driver Licensed Class A driver.⁴ The inspection

¹ See Declaration of Leon Macomber, Attachment A (Compliance Review of Kelley's Transportation, Inc.) at 5.

² Declaration of Leon Macomber at ¶ 5, and Attachment A at 4, et seq.

³ *Id.*

⁴ Penalty Assessment, Declaration of Leon Macomber at ¶ 8, and Attachment A at 9.

further found that Kelley's Transportation is operating without a controlled substances and alcohol testing program.⁵ This violated RCW 81.04.530, which adopts by reference Title 49, Code of Federal Regulations (CFR), §382.115(a). Because RCW 81.04.530 allows penalties up to \$1,500 dollars for conducting a commercial motor vehicle operation without having a controlled substances and alcohol testing program in place, the Commission issued a \$1,500 penalty.⁶

II. ARGUMENT

5 In its Application for Mitigation of Penalties, Kelley's requests a mitigation of the penalty, with two arguments: First, that it initially had a testing program in place, and reestablished a program after Staff's recent inspection; and second, that the use of independent contractors by Kelley's Transportation, Inc. does not impose on the company an obligation of an employer as provided by 49 CFR §382.115. Staff opposes waiving or mitigating the assessed penalty.

A. The Penalty Assessed for Conducting Operations without Having a Controlled Substances and Alcohol Testing Program is Appropriate.

In its Application for Mitigation of Penalties, Kelley's states that the penalty should be mitigated because it initially had a controlled substances and alcohol testing program in place for employees, but discontinued the program as not applicable to it, and has now reinstated the testing program the same day it was notified of the violation.⁷ This argument should be rejected.

6 The federal statute concerning drug and alcohol testing for motor carriers, as put forth in 49 CFR §382.103(a), applies to every person and to all employers of such persons

⁵ Penalty Assessment.

⁶ *Id.*

⁷ Application for Mitigation of Penalties.

who operate a commercial vehicle in commerce in any state. The penalty against Kelley's was assessed for violation of 49 CFR §382.115(a), which states that "all domestic-domiciled employers must implement the requirements of this part concerning a controlled substances and alcohol testing program on the date the employer begins commercial motor vehicle operations." The effective date of these regulations was July 11, 1997.⁸ Kelley's currently operates four 16-passenger vehicles, which are commercial motor vehicles as defined under 49 CFR §383.5. These vehicles are operated by three drivers with a Class B Commercial Driver's License and one driver with a Class A Commercial Driver's License. Because each of the four vehicles is a commercial motor vehicle, Kelley's is subject to these regulations.⁹ There was no testing program in place for the drivers of these vehicles.¹⁰ Kelley's acknowledges that it has been regulated by the Commission as a motor carrier for approximately ten years and explains that it discontinued an initial testing program for its drivers by choice until the date Staff conducted a safety inspection and discovered the non-compliance.¹¹ A penalty is warranted under RCW 81.04.530 for conducting operations without a program. Kelley's is responsible for understanding and complying with the statute by which it is regulated. The penalty is appropriate.

7 In addition, in its Application for Mitigation of Penalties, Kelley's requests that the penalty be mitigated because it is a "reasonable inference" from the regulations that in order to be an employer, a company must have employees; because Kelley's has only "independent contractors" it has no "employees." Therefore, Kelley's argues, it is not

⁸ Declaration of Leon Macomber at ¶ 7.

⁹ Declaration of Leon Macomber at ¶ 8.

¹⁰ *Id.*, Attachment A at 9.

¹¹ Application for Mitigation of Penalties.

required by the statute to implement a controlled substances and alcohol testing program.¹²

This argument should also be rejected.

8 First, Staff is not convinced that Kelley's drivers are independent contractors. In order for a driver to be considered an independent contractor, that driver must have its own state-issued permit that authorizes him or her to transport passengers. Kelley's drivers do not have such individual authority.¹³ Therefore, they should be considered employees of Kelley's, operating under Kelley's permit authority.

9 Second, Kelley's has complied with related federal motor carrier regulations from 49 CFR §390 to §399, and therefore has demonstrated that it considers its drivers to be employees. These regulations include requirements for driver qualifications, hours of service, vehicle inspection and maintenance, and more.¹⁴ Kelley's compliance clearly shows its control over its drivers and the means and methods of their work, consistent with an employer-employee relationship. Kelley's argument that its drivers are simply independent contractors who need no testing is invalid when it has selectively chosen to comply with regulations governing employees.

10 Third, even if its drivers are independent contractors, Kelley's is still required to include them in a controlled substances and alcohol testing program.¹⁵ The statute, in 49 CFR §382.107, defines an employer as "a person or entity employing one or more employees...that is subject to DOT agency regulations requiring compliance with this part" and as "the entity responsible for overall implementation of DOT drug and alcohol testing requirements." The statute contains no express exemptions for employers who use

¹² *Id.*

¹³ Declaration of Leon Macomber at ¶ 11.

¹⁴ *Id.* at ¶ 12.

¹⁵ *Id.* at ¶ 11.

independent contractors as drivers. In addition, 49 CFR §382 does not independently define the term “employee.” Rather, a general definition of “employee” is provided in 49 CFR §390.5, which expressly applies to the entire chapter and subchapter. Here, an “employee” includes “any driver of a commercial motor vehicle, including independent contractors.” Thus, Kelley’s is required to have an alcohol testing program in place for its drivers regardless of how it chooses to classify them, and the penalty is appropriate.


11 Finally, public policy supports denying the company’s request for mitigation. The federal statute requiring a drug and alcohol testing program, incorporated into state law, furthers the safety goals of reducing crashes, fatalities, and injuries. Motor carriers have a paramount responsibility of safety to the public they serve, and should know about the requirements for testing. Consequently, the penalty associated with this matter is appropriate.

III. CONCLUSION

12 Staff does not support mitigating the assessed penalty. Accordingly, Staff requests that the Commission deny Kelley’s Application for Mitigation of Penalties.

Dated this 22nd day of May, 2006.

ROB MCKENNA
Attorney General



MICHAEL FASSIO
Assistant Attorney General
Counsel for Washington Utilities and
Transportation Commission
(360) 664-1192

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of PENALTY
ASSESSMENT AGAINST Kelley's
Transportation, Inc. in the amount of
\$1,500.00

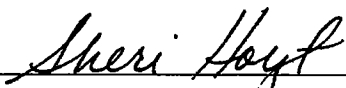
DOCKET NO. TE-060395

DECLARATION OF
SHERI HOYT

SHERI HOYT, under penalty of perjury under the laws of the state of Washington, declares as follows:

1. I am over 18 years of age, a citizen of the United States, a resident of the state of Washington, and competent to be a witness.
2. I am employed by the Washington Utilities and Transportation Commission (Commission) as a Compliance Specialist in the Business Practices Investigations Section. I have been employed at the Commission for over 14 years, holding various positions. As a Compliance Specialist, my responsibilities include producing penalty assessments for signature by the commissioners. As part of those duties, I receive compliance reviews or other inspections or investigations where staff has recommended penalties and draft orders for consideration by the commission.
3. On March 13, 2006, I received the Kelley's Transportation, Inc., compliance review with a staff recommendation for a penalty of \$1,500 for violation of controlled substance and alcohol testing requirements. I drafted the order for the commission's consideration. The commissioners signed the penalty assessment order on March 31, 2006.

DATED this 22nd day of May, 2006 at Olympia, Washington.



SHERI HOYT

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of PENALTY
ASSESSMENT AGAINST Kelley's
Transportation, Inc. in the amount of
\$1,500.00

DOCKET NO. TE-060395

DECLARATION OF
LEON MACOMBER

I, LEON MACOMBER, under penalty of perjury under the laws of the state of Washington, declare as follows:

1. I am over 18 years of age, a citizen of the United States, a resident of the state of Washington, and competent to be a witness.
2. I am employed by the Washington Utilities and Transportation Commission (Commission) as a Special Investigator in the Motor Carrier Safety Section. I have been employed at the Commission for over 30 years, holding various positions. As a Special Investigator, my responsibilities include conducting investigations regarding the motor carrier safety practices of regulated transportation companies. As part of those duties, I conduct in-depth and complex audits, perform carrier reviews of terminal safety records and equipment, including driver and vehicle safety requirements and issue safety ratings.
3. On May 2, 2006, Kelley's Transportation, Inc. (Kelley's) filed with the Commission an Application for Mitigation of Penalties (Mitigation Request) in Docket No. TE-060395. I have read the Mitigation Request.
4. This Mitigation Request arises from a Notice of Penalties Incurred and Due for Violations of Laws, Rules and Regulations issued by the Commission on March 31, 2006, in Docket No. TE-060395. In that Notice, the Commission issued penalties of \$1,500.00 for a violation of RCW 81.04.530, which adopts by reference Title 49, Code of Federal Regulations (CFR) 382.115(a), requiring transportation companies to implement a controlled substances and alcohol testing program.

5. Before recommending the Commission issue penalties, I, as part of my job, conducted a carrier review on March 7, 2006, of Kelley's Transportation, Inc., including terminal safety records and equipment. A true and accurate copy of the Compliance Review report is attached to this declaration as Attachment A.

Specific Issues Addressed by Kelley's in its Mitigation Request

Company Had a Testing Program in Place for Many Years

6. In its Mitigation Request, Kelley's stated it had a controlled substance and alcohol testing program in place for many years, however, upon advice from its attorney it discontinued the program. The company reinstated the testing program the same day it was notified it was in violation.
7. CFR 49.382.103(a) states that Part 382 applies to every person and to all employers of such persons who operate a commercial motor vehicle in commerce in any state. In addition, CFR 49.382.115(a) states that all domestic-domiciled employers must implement the requirements of this part on the date the employer begins commercial motor vehicle operations. The effective date for these rules was July 11, 1997.
8. Kelley's currently operates four 16-passenger vehicles. All are commercial motor vehicles by definition under CFR 49.383.5. Kelley's 16-passenger vehicles are operated by three drivers with a Class B Commercial Driver's License and one driver with a Class A Commercial Driver's License. Because each of the four vehicles is considered commercial motor vehicles, Kelley's is subject to the federal regulations requiring companies to implement and maintain a controlled substances and alcohol testing program.

Company Does Not Have Any Employees, Only Independent Contractors


9. In addition, Kelley's stated that it is a "reasonable inference" from the regulations that in order to be an employer, a company must have employees. Kelley's reports it has no employees. It states that all individuals who drive Kelley's Transportation's vehicles are independent contractors.
10. Staff believes the company's request for mitigation is not valid for several reasons.

11. Staff is not convinced the drivers of the vehicles are independent contractors. In order to be independent contractors, each driver must have its own state-issued permit that authorizes him or her to transport passengers. Kelley's Transportation drivers do not have such authority. Even if the drivers are independent contractors, Kelley's Transportation is still required to include them in controlled substance and alcohol testing program. CFR 49.390 establishes general applicability and definitions for Chapter 49. Part 390.5 states that, "unless specifically defined elsewhere, in this subchapter ..employee" ...includes any driver of a commercial motor vehicle, including independent contractors. Since CFR 49.382 does not independently adopt a definition of "employee" it falls under the general definition, which includes independent contractors.
12. In addition, the company complied with other federal regulations, from CFR 49.390 to CFR 49.399. It appears the company did not consider its drivers independent contractors for the purposes of these regulations, which include requirements for driver qualifications, hours of service, vehicle inspection and maintenance, and more. I find its argument that the drivers are independent contractors invalid when there is evidence that it complied with some regulations under CFR 49 and not others.
13. The violation associated with this matter is appropriate and I do not recommend mitigation based on the company's request.


DATED this ^{22nd} day of May, 2006 at Olympia, Washington.


LEON MACOMBER

Attachment A

	KELLEY'S TRANSPORTATION INC		Review Date:
	U.S. DOT #:	State #:	03/07/2006
Part B Violations			
1 STATE ACUTE	Primary: 382.115(a) CFR Equivalent: 382.115(a)	Discovered 1	Checked 1
		Drivers/Vehicles In Violation	Checked 1
Description Falling to implement an alcohol and/or controlled substances testing program. Example Kelley's Transportation, Inc. does not have an alcohol and/or controlled substances testing program. Drivers Tuan D. Vo, Clifton L. Seals, Eddie L. Washington and Mark Vedmed are Class A and Class B CDL drivers.			
2 STATE CRITICAL	Primary: 382.301(a) CFR Equivalent: 382.301(a)	Discovered 4	Checked 4
		Drivers/Vehicles In Violation	Checked 4
Description Using a driver before the motor carrier has received a negative pre-employment controlled substance test result. Example Drivers Tuan D. Vo, Clifton L. Seals, Eddie L. Washington and Mark Vedmed did not received a negative pre-employment controlled substance test result prior to driving for Kelley's Transportation, Inc..			
3 STATE CRITICAL	Primary: 391.45(a) Secondary: 391.11(a) CFR Equivalent: 391.45(a)	Discovered 5	Checked 7
		Drivers/Vehicles In Violation	Checked 7
Description Using a driver not medically examined and certified. Example Drivers Oleg A. Eleznov, Daniel H. Brown, Clifton L. Seals, Barry A. Lober and Mark Vedmed were not medically examined and certified.			
4 STATE CRITICAL	Primary: 391.51(a) CFR Equivalent: 391.51(a)	Discovered 7	Checked 7
		Drivers/Vehicles In Violation	Checked 7
Description Failing to maintain driver qualification file on each driver employed. Example Drivers Tuan D. Vo, Oleg A. Eleznov, Daniel H. Brown, Clifton L. Seals, Eddie L. Washington, Barry A. Lober and Mark Vedmed do not have a complete driver's qualification file.			
5 STATE	Primary: 396.3(a)(1) CFR Equivalent: 396.3(a)(1)	Discovered 3	Checked 6
		Drivers/Vehicles In Violation	Checked 6
Description Failing to inspect and maintain vehicle to ensure safe and proper operating condition. Example Performed Level 5 terminal safety inspections on 6 of 6 vehicles currently operated by Kelley's Transportation, Inc.. 3 of 6 vehicles were found with defects (50% Defect Ratio). 0 of 6 vehicles inspected were placed out-of-service (0% Out-of-Service Ratio). Specific defects can be seen by referencing my Uniform Driver/Vehicle Inspection Report forms #1224614 thru #1224618.			
Safety Fitness Rating Information:			
Total Miles Operated	12,000	OOS Vehicle (CR):	0
Recordable Accidents	0	Number of Vehicle Inspected (CR):	6
Recordable Accidents/Million Miles	0.000	OOS Vehicle (MCMIS):	0
		Number of Vehicles Inspected (MCMIS):	0

Washington Utilities & Transportation Commission

	US DOT #	Legal: KELLEY'S TRANSPORTATION INC		
		Operating (DBA):		
MC/MX #:		State #: CH-395	Federal Tax ID: 20-1719935 (EIN)	
Review Type: Compliance Review (CR)				
Scops: Principal Office		Location of Review/Audit: Company facility in the U. S.		Territory:
Operation Types		Interstate	Intrastate	
Carrier:	N/A		Non-HM	Business: Corporation
Shipper:	N/A		N/A	Gross Revenue: \$22,000.00
Cargo Tank:	N/A			for year ending: 12/31/2005
Company Physical Address:				
11022 E Marginal Way Seattle, WA 98168				
Contact Name: Alex Milman				
Phone numbers: (1) 206-764-0938 (2) 206-391-5454 Fax 425-454-8904				
E-Mail Address: kelleylmo.com				
Company Mailing Address:				
11022 E Marginal Way Seattle, WA 98168				
Carrier Classification				
Other: Passenger				
Cargo Classification				
Passengers				
Does carrier transport placardable quantities of HM? No				
is an HM Permit required? N/A				
Driver Information				
	Inter	Intra	Average trip leased drivers/month: 0	
< 100 Miles:		7	Total Drivers: 7	
>= 100 Miles:			CDL Drivers: 4	
Equipment				
	Owned	Term Leased	Trip Leased	
Minibus, 16+	4	0	0	Van, 9-15
				Owned Term Leased Trip Leased
				2 0 0
QUESTIONS regarding this report or the Federal Motor Carrier Safety Regulations should be address to: Washington Utilities & Transportation Commission P.O. Box 47250, Olympia, WA. 98504-7250 Attention: Leon Macomber (360) 664-1236 Office, (360) 412-8614 Pager				
This report will be used to assess your safety compliance.				
Person(s) Interviewed				
Name: Alex Milman		Title: President		
Name: Igor Milman		Title: Manager		
Reported By: <i>Leon Macomber</i>	Title: <i>MCU Special Inv.</i>		Code: WA0526	Date: 3/7/2006
Received By: <i>[Signature]</i>	Title: <i>MAR</i>			



KELLEY'S TRANSPORTATION INC

U.S. DOT #:

State #: CH-395

Review Date:

03/07/2006


Part B Violations

Your proposed safety rating is :

CONDITIONAL

Rating Factors		Acute	Critical
Factor 1:	S	0	0
Factor 2:	U	1	3
Factor 3:	S	0	0
Factor 4:	S	0	0
Factor 5:	N	0	0
Factor 6:	S	-	-




	KELLEY'S TRANSPORTATION INC		Review Date:
	U.S. DOT #:	State #: CH-395	03/07/2006
Part B Requirements and/or Recommendations			

1. Send response letter to WUTC within 15 days addressed to WUTC P.O. Box 47250, Olympia, Washington 98504-7250, Attention: Carolyn Caruso
2. Ensure that all drivers subject to pre-employment, random, reasonable cause, post accident, return to duty, and/or follow-up controlled substance testing are tested as required by 49 CFR Parts 40 and 382 of the FMCSR.
3. Do not allow drivers to drive intrastate unless they have been physically re-examined each 24 months.
4. Ensure that all drivers are fully and properly qualified before operating in intrastate commerce. Maintain a complete file as required for each driver, documenting the qualification process.



Washington Utilities & Transportation Commission

	US DOT #	Legal: KELLEY'S TRANSPORTATION INC	
		Operating (DBA):	
MC/MX #:	State #: CH-395	Federal Tax ID: 20-1719935 (EIN)	
Review Type: Compliance Review (CR) - Receipt			
Scope:	Principal Office	Location of Review/Audit: Company facility in the U. S.	Territory:
Operation Types	Interstate	Intrastate	
Carrier:	N/A	Non-HM	Business: Corporation
Shipper:	N/A	N/A	Gross Revenue: \$22,000.00
Cargo Tank:	N/A		for year ending: 12/31/2005
Company Physical Address:			
11022 E Marginal Way Seattle, WA 98168			
Contact Name:	Alex Milman		
Phone numbers:	(1) 206-764-0938	(2) 206-391-5454	Fax 425-454-8904
E-Mail Address:	kelleylimo.com		
Company Mailing Address:			
11022 E Marginal Way Seattle, WA 98168			
Report Summary			
	Report	# of Pages	
	Part A - General	<u>1</u>	
	Part B - Violations	<u>4</u>	
	Part B - Recommendations	<u>1</u>	
	Review/Audit Receipt Page	<u>1</u>	
	Total Pages	<u>5</u>	
<p>Disclaimer: By signing below, I acknowledge that I have received a copy of this review/audit and agree with the total number of pages indicated (above) for each document. My signature does not imply agreement with the findings of the review/audit, however they have been discussed in detail with me.</p>			
<p>QUESTIONS regarding this report or the Federal Motor Carrier Safety Regulations should be address to: Washington Utilities & Transportation Commission P.O. Box 47250, Olympia, WA. 98504-7250 Attention: Leon Macomber (360) 664-1236 Office, (360) 412-8614 Pager</p>			
<p>This report will be used to assess your safety compliance.</p>			
Person(s) Interviewed			
Name:	Alex Milman	Title:	President
Name:	Igor Milman	Title:	Manager
Reported By:	<i>Leon Macomber</i>	Title:	<i>MCU Special Agent</i>
Received By:	<i>[Signature]</i>	Title:	<i>MCA</i>
		Code:	WA0526
		Date:	3/7/2006



	KELLEY'S TRANSPORTATION INC			Review Date:
	U.S. DOT #:	State #:	CH-395	03/07/2006

Part C

Reason for Review: Other Assign# 106046
 Planned Action: Compliance Monitoring
 Safestat Category:

Parts Reviewed Certification:

325	382	383	387	390	391	392	393	395	396	397	398	399	171	172	173	177	178	180
	✓	✓		✓	✓	✓	✓	✓	✓									

Prior Reviews Prior Prosecutions

Special Study Information:

Unsat/Unfit Information

Does passenger vehicle transport more than 15 passengers, including driver? Yes - Intrastate
 Does carrier transport placardable quantities of hazardous materials?
 Unsat/Unfit rule: Not Applicable

Corporate Contact: Alex Milman
 Corporate Contact Title: President

Remarks:

Kelley's Transportation, Inc. CH-395
 11022 E. Marginal Way S.
 Tukwila, WA. 98168

On March 7, 2006 I contacted Mr. Alex Milman, President of Kelley's Transportation, Inc., concerning a carrier review "CR" of their terminal safety records and equipment.

I also interviewed Mr. Igor Milman, Manager of Kelley's Transportation, Inc., at this time.

I performed Level 5 terminal safety inspections of six of six vehicles currently operated by Kelley's Transportation, Inc. with the following results:

- Six of Six vehicles currently operated by Kelley's Transportation, Inc. were inspected
- Three of Six vehicles inspected were found with defects (50% Defect Ratio)
- Zero of Six vehicles inspected were placed out-of-service (0% Out-of-Service Ratio)

Specific defects can be seen by referencing my Uniform Driver/Vehicle Inspection Report forms #1224610 thru #1224614 and #1224618. CVSA stickers were affixed to all six vehicles.

Kelley's Transportation, Inc. operates four 16-passenger vehicles and two 11-passenger vehicles. All four 16-passenger vehicles require at least Class C CDL drivers and currently Kelley's Transportation, Inc. has three Class B CDL drivers and one Class A CDL driver and three non-CDL drivers.

Given the 16-passenger configuration of their four vehicles, Kelley's Transportation, Inc. is required to implement an alcohol and/or controlled substances testing program which they do not have in violation of CFR 382.115(a).

In addition, all four CDL drivers did not receive a negative pre-employment controlled substances test result prior to driving for Kelley's Transportation, Inc. in violation of CFR 382.301(a).

All seven driver's qualification files were examined and found to be in-complete in violation of CFR 391.51(a).

All seven driver's hours of service records were examined from February 1, 2006 thru February 28, 2006 and I found no





KELLEY'S TRANSPORTATION INC

U.S. DOT #:

State #: CH-395

Review Date:

03/07/2006

Part C

apparent violations of 10 hour, 15 hour and/or 60-7day and 70-8day rules.

Driver vehicle inspection reports, "DRIR's", were well maintained and retained beyond the 90-day requirement on all six vehicles.

Vehicle inspection, repair and maintenance records were well maintained with regard to daily repair records and all six vehicles are inspected at least once a month on a scheduled basis.

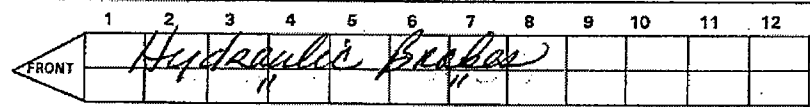
This carrier review "CR" terminal safety inspection of records and equipment did result in a "Conditional Safety Rating" and all violations were discussed with Mr. Alex Milman, President, and Mr. Igor Milman, Manager, and considerable technical, educational assistance and forms were given.

Principal Reviewer Signature <i>Alex Milman</i>	WA0526	Upload Authorized: Yes No
Assistant Reviewers Signature(s)		Authorized by: Date:
		Uploaded: Yes No Failure Code:
		Verified by: Date:



WSPC Washington State Patrol ASSIGN #106046 PERMIT Special Project WA-395
UNIFORM DRIVER/VEHICLE INSPECTION REPORT 1224610

PERSONNEL NO. <u>J526</u>		DIST / DET		LEVEL: 1 ____ 2 ____ 3 ____ 4 ____ 5 X				
GENERAL				HAZARDOUS MATERIALS				
DATE <u>03/01/06</u>	TIME (MILITARY) BEGUN <u>1000</u>	TIME (MILITARY) FINISHED <u>1015</u>	HAZARD CLASS / DIVISION NO.					
LOCATION: SR/MP <u>TERMINAL</u>	SCALEHOUSE NO. <u>—</u>		CNTY CODE <u>17</u>		REPORTABLE QTY? Y <input type="checkbox"/> N <input type="checkbox"/>	HAZARDOUS WASTE? Y <input type="checkbox"/> N <input type="checkbox"/>	PLACARD REQUIRED? Y <input type="checkbox"/> N <input type="checkbox"/>	
CARRIER								
CARRIER NAME (Include DBA when applicable) <u>KELLEY'S TRANSPORTATION INC.</u>								
ADDRESS <u>11022 E. MARGINAL WAY S.</u>								
CITY <u>TUUKWILA</u>	STATE <u>WA</u>	ZIP CODE <u>98168</u>	INTERSTATE YES <input checked="" type="radio"/> NO <input type="radio"/>	DOT NO.		ICC NO.		
DRIVER								
DRIVER NAME				LICENSE NO.		STATE	EXP. YEAR	
DATE OF BIRTH	MED. CERT. Y <input type="checkbox"/> N <input type="checkbox"/>	SHIPPER NAME		SHIPPING NO.				
	WAIVER Y <input type="checkbox"/> N <input type="checkbox"/>							
VEHICLE								
REGISTERED OWNER NAME/ADDRESS <u>STEWART, MARK GREGORY</u>				G.V.W. <u>16 PASS</u>		PBT RATE		
UNIT	TYPE	YEAR/MAKE	CO. UNIT NO.	LICENSE NO. / VIN NO.		STATE		
1	<u>VN</u>	<u>95/HILTI</u>	<u># H1</u>	<u>545LBB</u>		<u>WA</u>		
2								
3								
4								



CFR	VIOLATIONS	D	1	2	3	4	Unit #	OS	Complet.

CYSA DECAY LIMIT 2104155 UNIT 2 UNIT 3 UNIT 4 NOIC NO.

Vehicle may not be operated until O/S defects noted above are repaired.
 Driver may not drive until in compliance.

DRIVER SIGNATURE: James B. Cannon
 OFFICER SIGNATURE: Steven Macomber

WSPC
Washington State Patrol

ASSIGN# 100046

RECMIT
Special Project

CH-345

UNIFORM DRIVER/VEHICLE INSPECTION REPORT

1224611

PERSONNEL NO. J326	DIST / DET	LEVEL: 1 ___ 2 ___ 3 ___ 4 ___ 5 <u>X</u>					
GENERAL			HAZARDOUS MATERIALS				
DATE 030706	TIME (MILITARY) BEGUN 1025	TIME (MILITARY) FINISHED 1035	HAZARD CLASS / DIVISION NO.				
LOCATION: SR/MP TERMINAL	SCALEHOUSE NO.	CRTY CODE 17	REPORTABLE QTY? Y N	HAZARDOUS WASTE? Y N	PLACARD REQUIRED? Y N	CARGO TANKS? Y N	
CARRIER NAME (include DBA when applicable) KELLEY'S TRANSPORTATION, INC.							
ADDRESS 11022 E. MARGINAL WAY S.							
CITY TUKWILA	STATE WA	ZIP CODE 98168	INTERSTATE YES () NO (X)	DOT NO.	ICC NO.		
DRIVER							
DRIVER NAME			LICENSE NO.	STATE	EXP. YEAR		
DATE OF BIRTH	MED. CERT. Y N WAIVER Y N	SHIPPER NAME	SHIPPING NO.				
VEHICLE							
REGISTERED OWNER NAME/ADDRESS CHUCKER TRANSPORTATION			G.V.W. 16 PASS	PBT RATE			
UNIT	TYPE	YEAR/MAKE	CO. UNIT NO.	LICENSE NO. / VIN NO.	STATE		
1	VN	98/LINCOLN	#2	A11047X	WA		
2							
3							
4							

	1	2	3	4	5	6	7	8	9	10	11	12
FRONT	Hydraulic Brakes											

CFR	VIOLATIONS					D	1	2	3	4	Unit # DIS	Complie

CVSA DECALS	UNIT 1 2924756	UNIT 2	UNIT 3	UNIT 4	NOIC NO.
DRIVER SIGNATURE James G. ...					
OFFICER SIGNATURE John Macomber					

— Vehicle may not be operated until O / S defects noted above are repaired.
— Driver may not drive until in compliance.

WSP/TC
Washington State Patrol

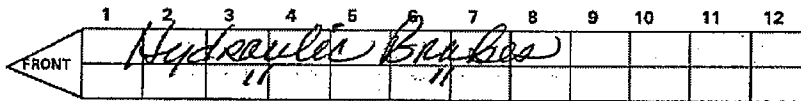
ASSIGN # 106046

PERMIT
Special District CH-392

UNIFORM DRIVER/VEHICLE INSPECTION REPORT

1224612

PERSONNEL NO. J526	DIST / DET	LEVEL: 1 ___ 2 ___ 3 ___ 4 ___ 5 <input checked="" type="checkbox"/>				
GENERAL			HAZARDOUS MATERIALS			
DATE 03/01/06	TIME (MILITARY) 1040	TIME (MILITARY) FINISHED 1050	HAZARD CLASS / DIVISION NO. _____			
LOCATION: SRMP TERMINAL	SCALEHOUSE NO.	CNTY CODE 17	REPORTABLE QTY? Y N	HAZARDOUS WASTE? Y		
CARRIER NAME (include DBA when applicable) KELLEY'S TRANSPORTATION, INC.			PLACARD REQUIRED? Y N	CARGO TANKS? Y		
ADDRESS 11022 E. MARGINAL WAY S.						
CITY TUKWILA	STATE WA	ZIP CODE 98168	INTERSTATE YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	DOT NO. ____	ICC NO. ____	
DRIVER						
DRIVER NAME		LICENSE NO.	STATE	EXP. YEAR		
DATE OF BIRTH / /	MED. CERT. Y N WAIVER Y N	SHIPPER NAME		SHIPPING NO.		
VEHICLE						
REGISTERED OWNER NAME/ADDRESS CHECKER TRANSPORTATION			G.V.W. 16PASS	PBT RATE		
UNIT	TYPE	YEAR/MAKE	CO. UNIT NO.	LICENSE NO. / VIN NO.	STATE	
1	VN	96/TOYO	#3	CHEKRIO	WA	
2						
3						
4						



CFR	VIOLATIONS	D	1	2	3	4	Units # O/S	Compl.

CVSA DECALS UNIT 1 2924151 UNIT 2 UNIT 3 UNIT 4 NOIC NO.

DRIVER SIGNATURE: *James B. Connor*

OFFICER SIGNATURE: *Ston Macomber*

Vehicle may not be operated until O/S defects noted above are repaired.
Driver may not drive until in compliance.

3000-150-160 R. (2/99)

WSPC
Washington State Patrol

ASSIGN# 106046

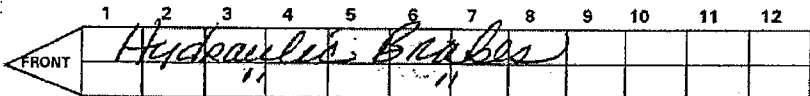
OSDMT
Special Project

CH-395

UNIFORM DRIVER/VEHICLE INSPECTION REPORT

1224613

PERSONNEL NO. J526		DIST / DET		LEVEL: 1 ___ 2 ___ 3 ___ 4 ___ 5 <u>X</u>				
GENERAL				HAZARDOUS MATERIALS				
DATE	TIME (MILITARY) BEGUN	TIME (MILITARY) FINISHED	HAZARD CLASS / DIVISION NO.					
030106	1055	1105						
LOCATION: SRAMP	SCALEHOUSE NO.	CNTY CODE	REPORTABLE QTY?	HAZARDOUS WASTE?	PLACARD REQUIRED?	CARGO TANKS?		
TERMINAL		17	Y	N	Y	Y		
CARRIER NAME (Motor DBA when applicable) KELLEY'S TRANSPORTATION, INC. ADDRESS 11022 E. MARGINAL WAY S. CITY TUKWILA WA 98168 INTERSTATE YES () NO () DOT NO. ICC NO.								
DRIVER								
DRIVER NAME			LICENSE NO.		STATE	EXP. YEAR		
DATE OF BIRTH		MED. CERT. Y N	SHIPPER NAME		SHIPPING NO.			
/ /		WAVR Y N						
VEHICLE								
REGISTERED OWNER NAME/ADDRESS MILMAN, ALEXANDR				G.V.V.	PBT RATE			
				11-PASS				
UNIT	TYPE	YEAR/MAKE	CO. UNIT NO.	LICENSE NO. / VIN NO.	STATE			
1	VN	84/ROSR	#	CHEK 9	WA			
2								
3								
4								



CFR	VIOLATIONS	D	1	2	3	4	Unit #	Comp
393.95A	FIRE EXTINGUISHER NEED TO BE MOUNTED.		W					

CVSA SCALE UNIT 1 204738 UNIT 2 UNIT 3 UNIT 4 NOIC NO.
DRIVER SIGNATURE: James B. Connor
OFFICE SIGNATURE: Don Macomber

Vehicle may not be operated until D / S defects noted above are repaired.
Driver may not drive until in compliance.

WUTC
Washington State Patrol

ASSIGN # 106046

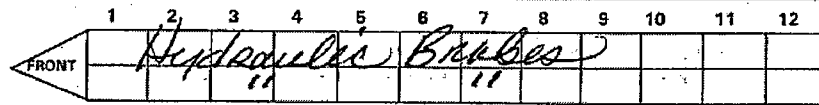
PERMIT
Special Project

CH-305

UNIFORM DRIVER/VEHICLE INSPECTION REPORT

1224614

PERSONNEL NO. JS26	DIST / DET.	LEVEL: 1 ____ 2 ____ 3 ____ 4 ____ 5 X
GENERAL		HAZARDOUS MATERIALS
DATE 03.01.06	TIME (MILITARY) BEGUN 1110	TIME (MILITARY) FINISHED 1130
LOCATION: SR/MP TERMINAL	SCALEHOUSE NO. 17	CNTY CODE
CARRIER NAME (In blue OBA when applicable) KELLEY'S TRANSPORTATION, INC.		
ADDRESS 11022 E. MARGINAL WAY S.		
CITY TUKWILA	STATE WA	ZIP CODE 98168
INTERSTATE YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		DOT NO.
DRIVER		
DRIVER NAME		LICENSE NO.
DATE OF BIRTH		STATE
MED. CERT. Y <input type="checkbox"/> N <input type="checkbox"/>		EXP. YEAR
SHIPPER NAME		SHIPPING NO.
WAVAR Y <input type="checkbox"/> N <input type="checkbox"/>		
VEHICLE		
REGISTERED OWNER NAME/ADDRESS CHECKER TRANSPORTATION		G.V.W. 16,000
PBT RATE		
UNIT	TYPE	YEAR/MAKE
1	VN	98 LINCOLN # 5
2		
3		
4		
LICENSE NO. / VIN NO. A129782		STATE WA



CFR	VIOLATIONS	D	1	2	3	4	Units # O/S	Complet
393.95A	FLY-TINE INSURE NEEDED TO BE MOUNTED.							

CVSA RECALLS UNIT 1 **2924759** UNIT 2 UNIT 3 UNIT 4 NOIC NO.

DRIVER SIGNATURE: *James G. Cameron*

OFFICER SIGNATURE: *Don Macomber*

Vehicle may not be operated until O/S defects noted above are repaired.
Driver may not drive until in compliance.

WSPC
Washington State Patrol

ASSIGN # 106046

HEMTT
Special Project CH-395

UNIFORM DRIVER/VEHICLE INSPECTION REPORT

1224618

PERSONNEL NO. 3526 DIST / DET _____ LEVEL: 1 _____ 2 _____ 3 _____ 4 _____ 5 X

GENERAL HAZARDOUS MATERIALS

DATE 030706 TIME (MILITARY) BEGUN 1125 FINISHED 1135 HAZARD CLASS / DIVISION NO. _____
LOCATION: SRMP TERMINAL SCALEHOUSE NO. 17 REPORTABLE QTY? Y N HAZARDOUS WASTE? Y N
PLACARD REQUIRED? Y N CARGO TANKS? Y N

CARRIER NAME (Include DBA when applicable)
KELLEY'S TRANSPORTATION, INC.
ADDRESS
11022 E. MARGINAL WAY

CITY SEATTLE STATE WA ZIP CODE 98168 INTERSTATE YES NO DOT NO. _____ ICC NO. _____

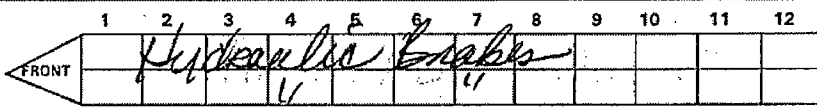
DRIVER

DRIVER NAME _____ LICENSE NO. _____ STATE _____ EXP. YEAR _____
DATE OF BIRTH _____ MED. CERT. Y N SHIPPER NAME _____ SHIPPING NO. _____
WAVEN Y N

VEHICLE

REGISTERED OWNER NAME/ADDRESS CHECKER TRANSPORTATION G.V.W. 11-PASS PBT RATE _____

UNIT	TYPE	YEAR/MAKE	CO. UNIT NO.	LICENSE NO. / VIN NO.	STATE
1	<u>VN</u>	<u>01/CHRY</u>	<u>#6</u>	<u>A06093M</u>	<u>WA</u>
2					
3					
4					



CFR	VIOLATIONS	D	1	2	3	4	Units Dis	Completed
<u>393.95A</u>	<u>FIRE EXTINGUISHER NEEDS TO BE MOUNTED.</u>		<u>U</u>					

CVSA DECALS UNIT 1 2424760 UNIT 2 _____ UNIT 3 _____ UNIT 4 _____ NOIC NO. _____

Vehicle may not be operated until O / S defects noted above are repaired.
Driver may not drive until in compliance.

DRIVER SIGNATURE James B. Connor
OFFICER SIGNATURE Dean Macomber

2006 MCSAP DATA SHEET

Assignment #:	MCSP06/106046
Date of CR/Inspection:	March 7, 2006
Carrier Name:	Kelley's Transportation, Inc.
DBA:	
Permit #:	CH-395
DOT #:	
MC #:	
MotCar #:	43276

COMPLIANCE REVIEW DATA:

Safety Rating:	Conditional
Number of Vehicles Operated:	6
Number of Drivers Operated:	7
Total Miles for Prior Year:	12,000
Recordable Accidents for Prior Year:	0
Accident Ratio:	0%

PART B VIOLATIONS:

Part 382/Part 40	2
Part 383	
Part 387	
Part 390	
Part 391	2
Part 392	
Part 395	
Part 396	1
Part 397	

2006 MCSAP DATA SHEET (cont):

VEHICLE INSPECTION DATA:

Vehicle Type:	MC	MB 1-15	MB 16+	SB 1-8	SB 9-15	SB 16+	VAN 1-8	VAN 9-15	TRK	TT	TRA
# of Vehicle Inspections:			4					2			
# of Defective Vehicles:			1					2			
Defective Vehicle Ratio:	LEAVE BLANK - RATIO COMPUTER GENERATED										
# of OOS Vehicles:			0					0			
OOS Vehicle Ratio:	LEAVE BLANK - RATIO COMPUTER GENERATED										
Location of Inspection:	Seattle, Washington										
Level of Inspection:			5					5			

VEHICLE INSPECTION VIOLATIONS

Vehicle Type:	MC	MB 1-15	MB 16+	SB 1-8	SB 9-15	SB 16+	VAN 1-8	VAN 9-15	TRK	TT	TRA
Brakes											
Steering											
Lights											
Tires/Wheels/Rims											
Horn											
Windshield/Wipers											
Mirrors											
Emergency Equipment/Exits			1					2			
Coupling Devices											
Frame											
Suspension											
Exhaust											
Other											

Leon Macomber, J526

Inspector(s): _____

Docket No. TE-060395
CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing Staff's Response to Kelly's Transportation, Inc.'s Application for Mitigation upon the persons and entities listed on the Service List below by depositing a copy of said document in the United States mail, addressed as shown on said Service List, with first class postage prepaid.

DATED at Olympia, Washington this 22nd day of May, 2006.



ELIZABETH M. DeMARCO

For Kelley's Transportation, Inc.

Alexander D. Milman, President
11022 E. Marginal Way South
Tukwila, WA 98168
Phone: 206-391-5454
Fax:
E-mail: