

1500 SW Arrowhead Road
Topeka, KS 66604-4027



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

Mark Sievers, Chairman
Ward Loyd, Commissioner
Thomas E. Wright, Commissioner

Sam Brownback, Governor

NOTICE OF PENALTY ASSESSMENT

April 23, 2012

Jason Penner, Owner
d/b/a Penner Lawn Service
62 Random Road
Hutchinson, Kansas 67502

12-TRAM-744-PEN

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 March 23, 2012, by Kansas Corporation Commission Special Investigator Doug Handy. 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 \$300 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 Fiscal Section 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 calling the Fiscal Office at 785-271-3274.

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

You must submit to one follow-up safety compliance review within the next 12 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 Executive Director 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.

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 operations.

Sincerely,

Amber Smith
Litigation Counsel
(785) 271-3301

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. Jason Penner, d/b/a Penner Lawn Service (Penner Lawn Service) obtained private operating authority from the Commission on December 10, 2010, and operates under KSMCID number 167910 and USDOT number 2065719.

5. David Walker attended a Commission-sponsored Motor Carrier Education and Instructional Meeting on March 16, 2010, on behalf of Penner Lawn Service.

6. Penner Lawn Service is a private motor carrier which primarily hauls lawn equipment.

III. STAFF'S STATEMENT OF FACTS

7. Pursuant to the jurisdiction and authority cited above, on March 23, 2012, Commission Staff (Staff) Special Investigator Doug Handy conducted a compliance review of the operations of Penner Lawn Service. 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. Handy identified one (1) violation of the Motor Carrier Safety Regulations.

- a. On January 5, 2012, Penner Lawn Service required or permitted its driver, Jason Penner, to operate a commercial motor vehicle, a 1987 GMC 3500, VIN [REDACTED], in intrastate commerce from Hutchinson, Kansas to various points in Reno County, Kansas. This transportation is

evidenced by Jason Penner's time record, a copy attached hereto as Attachment "B". At the time of this transportation, Penner Lawn Service had not made inquiry into the driving record (MVR) of Jason Penner within the preceding 12 months. The carrier initially obtained Mr. Penner's MVR on August 12, 2010, and did not make inquiry again until March 20, 2012. See copies of MVRs attached hereto as Attachment "C". This violation was discovered with two out of two drivers. Penner Lawn Service'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 Title 49 C.F.R. Part 391.25(a) and (c), as adopted by K.A.R. 82-4-3g, as authorized by K.S.A. 2010 Supp. 66-1,112. Staff recommends a fine of \$300.

IV. STAFF'S RECOMMENDATIONS

8. Based upon the available facts, Staff recommends the Commission find Penner Lawn Service committed one (1) violation of Kansas law that governs motor carriers, including various provisions of the Federal Motor Carrier Safety Regulations (FMCSR), 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 \$300 for one (1) violation of the Motor Carrier Safety Statutes, Rules and Regulations.

10. Staff further recommends that Penner Lawn Service 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 Penner Lawn Service submit to one follow-up safety compliance review within the next twelve (12) 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 Penner Lawn Service because it is a motor carrier as defined in K.S.A. 66-1,108.

13. The Commission finds Penner Lawn Service committed one (1) violation of Kansas law that govern motor carriers, including various provisions of the Federal Motor Carrier Safety Regulations (FMCSR), 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. Jason Penner, d/b/a Penner Lawn Service, of Hutchinson, Kansas is hereby assessed a \$300 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. Penner Lawn Service 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, Penner Lawn Service is ordered to submit to one follow-up safety compliance review within the next twelve (12) months.

C. **Pursuant to K.S.A. 77-537 and K.S.A. 77-542, and amendments thereto, 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 Executive Director, 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 Penner Lawn Service's right to a hearing, and this Penalty Order will become a Final Order assessing a \$300 civil penalty against Penner Lawn Service, and ordering Penner Lawn Service 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 twelve (12) 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 not be permitted to enter an appearance, except by its attorney.

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 Fiscal Section 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 \$300 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 Penner Lawn Service'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.

Sievers, Chmn; Loyd, Com.; Wright, Com.

Dated: APR 24 2012


ORDER MAILED APR 24 2012
Patrice Petersen-Klein
Executive Director

AS

ATTACHMENT "A"

Kansas Corporation Commission

	US DOT # 2065719	Legal: JASON PENNER Operating (DBA): PENNER LAWN CARE
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MC/MX #: _____ State #: 167910 Federal Tax ID: _____ (EIN)

Review Type: Compliance Review (CR) - Receipt

Scope: Principal Office Location of Review/Audit: Other Territory: F

Operation Types Carrier: N/A HM Shipper: N/A N/A Cargo Tank: N/A	Business: Individual Gross Revenue: _____ for year ending: 12/31/2011
---	--

Company Physical Address:

Contact Name: Jason Penner
 Phone numbers: (1) _____ (2) _____ Fax _____
 E-Mail Address: _____

Company Mailing Address:

62 RANDOM ROAD
 HUTCHINSON, KS 67502

Report Summary

Report	# of Pages
Part A - General	2
Part B - Violations	1
Part B - Recommendations	1
Review/Audit Receipt Page	1
Total Pages	5

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.

QUESTIONS regarding this report or the Federal Motor Carrier Safety or Hazardous Materials rules may be addressed to the Office of Motor Carriers at:

1500 SW Arrowhead Road
 Topeka, KS 66604-4027

This report will be used to assess your safety compliance.


Person(s) Interviewed
 Name: Jason Penner Title: Owner
 Name: Mike Harp Title: Safety Consultant

Reported By: _____ Title: _____ Code: KS8211 Date: 3/23/2012

Received By: _____ Title: **OWNER**



Kansas Corporation Commission

	US DOT # 2065719	Legal: JASON PENNER Operating (DBA):PENNER LAWN CARE
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MC/MX #:	State #: 167910	Federal Tax ID [REDACTED] (EIN)
Review Type: Compliance Review (CR) - Receipt		
Scope: Principal Office	Location of Review/Audit: Other	Territory: F

Operation Types Interstate Intrastate Carrier: N/A HM Shipper: N/A N/A Cargo Tank: N/A	Business: Individual Gross Revenue: [REDACTED] for year ending: 12/31/2011
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Company Physical Address:

[REDACTED]
[REDACTED]

Contact Name: Jason Penner
 Phone numbers: (1) [REDACTED] (2) [REDACTED] Fax [REDACTED]
 E-Mail Address: [REDACTED]

Company Mailing Address:

62 RANDOM ROAD
 HUTCHINSON, KS 67502

Report Summary

Report	# of Pages
Part A - General	2
Part B - Violations	1
Part B - Recommendations	1
Review/Audit Receipt Page	1
Total Pages	5

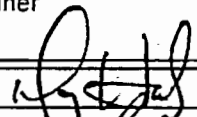
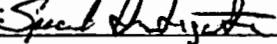
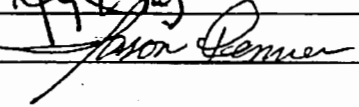
Disclaimer: By signing below, I acknowledge that I have received a copy of this review/audit and agree with the total number of pages indicated (above) for each document. My signature does not imply agreement with the findings of the review/audit, however they have been discussed in detail with me.

QUESTIONS regarding this report or the Federal Motor Carrier Safety or Hazardous Materials rules may be addressed to the Office of Motor Carriers at:
 1500 SW Arrowhead Road
 Topeka, KS 66604-4027

This report will be used to assess your safety compliance.

Person(s) Interviewed

Name: Jason Penner	Title: Owner
Name: Mike Harp	Title: Safety Consultant

Reported By: 	Title: 	Code: KS8211	Date: 3/23/2012
Received By: 	Title: OWNER		

Kansas Corporation Commission

	US DOT # 2065719	Legal: JASON PENNER Operating (DBA):PENNER LAWN CARE
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MC/MX #:	State #: 167910	Federal Tax ID [REDACTED] (EIN)	
Review Type: Compliance Review (CR)			
Scope:	Principal Office	Location of Review/Audit: Other	Territory: F

Operation Types	Interstate	Intrastate	
Carrier:	N/A	HM	Business: Individual
Shipper:	N/A	N/A	Gross Revenue: [REDACTED] for year ending: 12/31/2011
Cargo Tank:	N/A		

Company Physical Address:
 [REDACTED]
 [REDACTED]

Contact Name: Jason Penner
 Phone numbers: (1) [REDACTED] (2) [REDACTED] Fax [REDACTED]
 E-Mail Address: [REDACTED]

Company Mailing Address:
 62 RANDOM ROAD
 HUTCHINSON, KS 67502

Carrier Classification
 Private Property

Cargo Classification
 Machinery, Large Objects Other: Lawn Equipment

Hazardous Materials
 9 Miscellaneous HM Carried Non-Bulk

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:		2		Total Drivers: 2
>= 100 Miles:				CDL Drivers:

Equipment

	Owned	Term Leased	Trip Leased		Owned	Term Leased	Trip Leased
Truck	1	0	0	Trailer	1	0	0

Power units used in the U.S.:1
 Percentage of time used in the U.S.:100



PENNER LAWN CARE (JASON PENNER dba)
U.S. DOT #: 2065719

State #: 167910

Review Date:
03/23/2012

Part A

QUESTIONS regarding this report or the Federal Motor Carrier Safety or
Hazardous Materials rules may be addressed to the Office of Motor Carriers at:

1500 SW Arrowhead Road
Topeka, KS 66604-4027

This report will be used to assess your safety compliance.

Person(s) Interviewed

Name: Jason Penner

Title: Owner

Name: Mike Harp

Title: Safety Consultant





PENNER LAWN CARE (JASON PENNER dba)
U.S. DOT #: 2065719

State #: 167910

Review Date:
03/23/2012

Part B Violations

1 STATE	Primary: 391.25(a)	Discovered 2	Checked 2	Drivers/Vehicles	
	CFR Equivalent: 391.25(a)			In Violation 2	Checked 2

Description

Failing to make an inquiry into the driving record of each driver to the appropriate State agencies in which the driver held a commercial motor vehicle operator's license at least once every 12 months.

Example

Driver name Jason Penner
Trip Date 01/05/2012
Carrier failed to obtain an MVR of each driver in 2011.

2 STATE	Primary: 391.51(b)(5)	Discovered 2	Checked 2	Drivers/Vehicles	
	CFR Equivalent: 391.51(b)(5)			In Violation 2	Checked 2

Description

Failing to maintain a note relating to the annual review of the driver's driving record as required by 391.25(c)(2).

Example

Driver name Jason Penner
Trip Date 01/05/2012
Carrier failed to obtain annual review of each driver in 2011.

3 STATE	Primary: 391.51(b)(6)	Discovered 2	Checked 2	Drivers/Vehicles	
	CFR Equivalent: 391.51(b)(6)			In Violation 2	Checked 2

Description

Failing to maintain a list or certificate relating to violations of motor vehicle laws and ordinances required by 391.27.

Example

Driver name Jason Penner
Trip Date 01/05/2012
Carrier failed to conduct a certification of violations of each driver in 2011.

Safety Fitness Rating Information:		OOS Vehicle (CR): 0
Total Miles Operated	10,000	Number of Vehicle Inspected (CR): 0
Recordable Accidents	0	OOS Vehicle (MCMIS): 0
		Number of Vehicles Inspected (MCMIS): 0

Your proposed safety rating is :

This Review is not Rated.





PENNER LAWN CARE (JASON PENNER dba)
U.S. DOT #: 2065719

State #: 167910

Review Date:
03/23/2012

Part B Requirements and/or Recommendations

1. A copy of your carrier profile can be obtained for \$20 from the SAFER website (<http://safer.fmcsa.dot.gov>) or by calling 800-832-5660 or 703 280-4001. You can also write: Computing Technologies Inc. P.O. Box 3248, Merrifield, VA 22116-3248. Profile cost if ordered by mail or phone is \$27.50.
2. Obtain a copy of each driver's driving record and review it annually.
3. 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.

Information on your compliance status, roadside inspections, regulatory changes, accident countermeasures and hazardous material incident prevention manual is available on the Internet at the Federal Motor Carrier Safety Administration's web site at <http://www.fmcsa.dot.gov/> and <http://www.safer.fmcsa.dot.gov/>.
4. This report contains citations of regulations that are deemed serious in nature and could result in penalties against your company and/or your drivers.
5. Within 15 days send a letter to our office explaining your actions taken to remedy a non-compliance status. Mail to Kansas Corporation Commission Attn: Gary Davenport 1500 SW Arrowhead Rd., Topeka, Ks. 66604-4027



ATTACHMENT "B"

NAME: Penner Lawn Care
62 Random Rd
Hutchinson, Ks 67502

WEEK OF:	01/01/12	Jason Penner	Jess Penner
SUNDAY	on		
	off		
	on		
	off		
	total hrs	0:00	0:00
MONDAY	on	8:30	8:30
	off	12:30	12:30
	on	13:00	13:00
	off	15:30	15:30
	total hrs	6:30	6:30
TUESDAY	on	8:00	8:00
	off	11:00	11:00
	on	11:30	11:30
	off	15:00	15:00
	total hrs	6:30	6:30
WEDNESDAY	on	9:00	9:00
	off	12:00	12:00
	on	12:30	12:30
	off	16:00	15:00
	total hrs	6:30	5:30
THURSDAY	on	9:00	13:00
	off	15:15	15:15
	on		
	off		
	total hrs	6:15	2:15
FRIDAY	on	9:00	9:00
	off	16:30	14:00
	on		
	off		
	total hrs	7:30	5:00
SATURDAY	on		
	off		
	on		
	off		
	total hrs	0:00	0:00

WEEKLY TOTAL 33:15:00 25:45:00

WEEK OF:	1/8/12	Jason Penner	Jess Penner
SUNDAY	on		
	off		
	on		
	off		
	total hrs	0:00	0:00
MONDAY	on	8:00	9:00
	off	12:00	12:00
	on	12:30	12:30
	off	15:45	15:45
	total hrs	7:15	6:15
TUESDAY	on	8:00	8:00
	off	12:00	12:00
	on	12:30	12:30
	off	17:00	17:00
	total hrs	8:30	8:30
WEDNESDAY	on	9:00	
	off	10:45	
	on		
	off		
	total hrs	1:45	0:00
THURSDAY	on	9:00	
	off	14:00	
	on		
	off		
	total hrs	5:00	0:00
FRIDAY	on		
	off		
	on		
	off		
	total hrs	0:00	0:00
SATURDAY	on		
	off		
	on		
	off		
	total hrs	0:00	0:00

WEEKLY TOTAL 22:30:00 14:45:00

ATTACHMENT "C"

Kansas.gov: the Official Web site of the State of Kansas



A partnership of the KANSAS DEPT. OF MOTOR VEHICLES & INFORMATION NETWORK of KANSAS, INC.

MVR LTD Search	Driving Record Codes 126 KB PDF	Helpful Hints	Contact Info	KDMV Web site	Kansas Web site
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Logout of Session (Mike Harp)

Motor Vehicle Record Search Results

WARNING: If you select ANY of the links on this page or hit refresh you will not be able to return to this record without paying again!

Certificate of Acceptable Use Information:

Name: Mike Harp
 Title: Safety Compliance
 Organization: CSC, Inc.
 Address: [REDACTED]
 Phone: [REDACTED]
 Email: [REDACTED]

Section I: B - I have written consent from the individual to whom the requested information pertains, to obtain records on their behalf.

Drivers License search on:

Name: Jason Penner
 Date of Birth: [REDACTED]
 DL Number: [REDACTED]

*** Opt Out Record ***

```

PENNER JASON W          DOB/[REDACTED]  VALID DL#[REDACTED]
SEX/M EYE/BLU HGT/507 WGT/170 IMG/P    OLD DL#[REDACTED]
STATUS: REG:VALID KANSAS  CDL:          SOC/
OLN [REDACTED] TYPE/REGULAR  CLASS/C  CDLCLASS/  PREV OLN/[REDACTED]
EXP [REDACTED]  SS/03302010 EXP [REDACTED] RENEWAL/02022010 OIS/[REDACTED]

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RSTR:B :CORRECTIVE LENSES :

RECORD CLEAR

Issue another search or if you are done please logout of your session (Mike Harp)

Go to the [Driving Record Codes 126 KB PDF](#) document for code explanations.
03/20/2012 08:42 AM CDT

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

NAME AND ADDRESS	NO. CERT. COPIES	NO. PLAIN COPIES
Jason Penner, OWNER D/B/A Penner Lawn Care 62 Random Road Hutchinson, KS 67502		
AMBER SMITH, LITIGATION COUNSEL KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD ROAD TOPEKA, KS 66604-4027 ***Hand Delivered***		

ORDER MAILED **APR 24 2012**

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.