

1500 SW Arrowhead Road
Topeka, KS 66604-4027



20180227165010
Kansas Corporation Commission

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

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

Governor Jeff Colyer, M.D.

NOTICE OF PENALTY ASSESSMENT

February 27, 2018

18-TRAM-345-PEN

Abe Peters, President
Heavy Metal Recyclers Inc.
511 Pedigo Drive
Pratt, Kansas 67124

Certified Mail No. 70161970000105744219

This is a notice of a penalty assessment against Heavy Metal Recyclers Inc. (Heavy Metal Recyclers) for violation(s) of Kansas Motor Carrier Safety Statutes, Rules, and Regulations discovered during a compliance review conducted on January 18, 2018, by Kansas Corporation Commission Special Investigator Doug Handy. Penalties are assessed in accordance with the FY 2018 Uniform Penalty Assessment Matrix, approved by the Commission on June 27, 2017. For a full description of the penalty(s) and terms and obligations please refer to the Order attached to this notice.


IF YOU ACCEPT THE PENALTY: Heavy Metal Recyclers has been assessed a \$650 penalty. You have thirty (30) days from the date of service of the Penalty Order to pay the penalty. Please remit payment of \$650, through your personal account with the Kansas Corporation Commission's KTRAN system located at <https://puc.kcc.ks.gov/ktran/>. If you have not received a letter from the Transportation Division assigning you a PIN, please contact that Division at 785-271-3145. You must have an account through KTRAN to pay the penalty owed.

The attached Order requires a representative of Heavy Metal Recyclers to attend a Commission-sponsored safety seminar within ninety (90) days from the date of the Order and to provide the undersigned Litigation Counsel with written proof of attendance. A schedule of dates and locations for safety seminars can be found at the Commission's website http://www.kcc.state.ks.us/trans/safety_meetings.htm. The Order also requires your company to submit to one follow-up safety compliance review within 18 months from the date of the Order. Transportation Staff will contact your company at a later date to determine an appropriate time for this review.

IF YOU CONTEST THE PENALTY ORDER: 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. Heavy Metal Recyclers must file, within fifteen (15) days from the date of service of this Order, the request for hearing with the Commission's electronic filing system found at <https://puc.kcc.ks.gov/e-filing/e-express/>, and mail a copy of the request for hearing to the undersigned at the above address. If you do not have access to the internet, you can mail an original and seven copies of the request to the Secretary to the Commission at 1500 S.W. Arrowhead Road, Topeka, Kansas 66604, and mail a copy to the undersigned Litigation Counsel. K.A.R. 82-1-215; K.S.A. 2016 Supp. 77-542.

IF YOU FAIL TO ACT: Failure to pay the penalty of \$650 within thirty (30) days from the date of service of the Penalty Order or failure to comply with the terms of the Order, or in the alternative, failure to provide a timely written request for a hearing, will result in the Order becoming final and may result in additional sanctions of suspension and/or revocation of your motor carrier operating authority.

Respectfully,


Ahsan Ali Latif
Litigation Counsel
(785) 271-3118

Before Commissioners: Shari Feist Albrecht, Chair
Jay Scott Emler
Pat Apple

PENALTY ORDER

I. JURISDICTION

2. Pursuant to K.S.A. 2016 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 issue an order 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. Heavy Metal Recyclers Inc. (Heavy Metal Recyclers) has private operating authority with the Commission and further operates USDOT number 2202561.

5. Ashley N. Swearingen attended a Commission-sponsored Motor Carrier Education and Safety Instructional Meeting on June 19, 2017, on behalf of Heavy Metal Recyclers.

6. Heavy Metal Recyclers is a private motor carrier which primarily hauls metal, sheets, coils, rolls and scrap iron.

III. STATEMENT OF FACTS

7. Pursuant to the jurisdiction and authority cited above, on January 18, 2018, Commission Staff (Staff) Special Investigator Doug Handy conducted a compliance review of the operations of Heavy Metal Recyclers. 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, the special investigator identified one (1) violation(s) of the Motor Carrier Safety Regulations.

- a. On July 11, 2017, Heavy Metal Recyclers required or permitted its driver, Thomas Bussiere, to operate a CDL-required commercial motor vehicle, a 1983 Mack truck, VIN ending in 02303, GVWR 52,000, in intrastate commerce in and around the area of Great Bend, Kansas. This trip is

evidenced by Driver's Time Record (100 air-mile radius), dated July 11, 2017, a copy of which is attached hereto as Attachment "B" and is hereby incorporated by reference. At the time of this transportation, driver Thomas Bussiere was involved in a DOT recordable accident that resulted in a fatality. The driver performed a post-accident controlled substance test three (3) hours after the accident, as required. However, Heavy Metal Recyclers failed to conduct a post-accident alcohol test within eight (8) hours after the accident, as required by the regulations. The carrier's failure to test its driver for alcohol within eight (8) hours following a DOT recordable accident is a violation of 49 C.F.R. 382.303(a) and (b), adopted by K.A.R. 82-4-3, and authorized by K.S.A. 2016 Supp. 66-1,129. Staff recommends a fine of \$650.

IV. STAFF'S RECOMMENDATIONS

8. Based upon the available facts, Staff recommends the Commission finds Heavy Metal Recyclers committed one (1) violation(s) 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 \$650 for one (1) violation(s) of the Motor Carrier Safety Statutes, Rules and Regulations.

10. Staff further recommends that a representative from Heavy Metal Recyclers be required to attend a Commission-sponsored safety seminar within ninety (90) days from the date of this Order, and provide Litigation Counsel with written proof of attendance. A schedule of the

dates and locations for safety seminars can be found on the Commission's website at http://kcc.ks.gov/trans/safety_meetings.htm.

11. Finally, Staff recommends that Heavy Metal Recyclers submit to one follow-up safety compliance review within eighteen (18) months from the date of this Order. Transportation 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 Heavy Metal Recyclers because it is a motor carrier as defined in K.S.A. 2016 Supp. 66-1,108.

13. The Commission finds Heavy Metal Recyclers committed one (1) violation(s) 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. Heavy Metal Recyclers Inc., of Pratt, Kansas is hereby assessed a \$650 civil penalty for one (1) violation(s) 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. Heavy Metal Recyclers is hereby ordered to attend a Commission-sponsored safety seminar within ninety (90) days from the date of this Order, and is to provide Litigation Counsel with written proof of attendance.

C. Heavy Metal Recyclers is ordered to submit to one follow-up safety compliance review within eighteen (18) months from the date of this Order. Transportation Staff will contact the carrier to set up the appointment.

D. On February 27, 2018, this Penalty Order was mailed to Heavy Metal Recyclers via Certified Mail, Return Receipt Requested, Receipt Number 70161970000105744219. Service of this Order is complete upon the date delivered shown on the Domestic Return Receipt.

E. Pursuant to K.S.A. 2016 Supp. 77-537 and K.S.A. 77-542, any party may request a hearing on the above issue(s) by submitting a written request setting forth the specific grounds upon which relief is sought. The request may be electronically filed with the Commission's electronic filing system at <https://puc.kcc.ks.gov/e-filing/e-express/>, within fifteen (15) days from the date of service of this Order, and a copy of the request mailed to the Litigation Division. If you do not have access to the internet, you can mail an original and seven copies of the request to the Secretary to the Commission, at 1500 S.W. Arrowhead Road, Topeka, Kansas 66604, and mail a copy of the request to Litigation Counsel. A hearing will be scheduled only upon written request. Failure to timely request a hearing will result in a waiver of Heavy Metal Recyclers's right to a hearing, and this Penalty Order will become a Final Order assessing a \$650 civil penalty against Heavy Metal Recyclers, and ordering a representative from Heavy Metal Recyclers to attend a Commission-sponsored safety seminar within ninety (90) days from the date of this Order and provide Litigation Counsel with written proof of attendance, and to submit to a safety compliance review within 18 months from the date of this Order.

F. If a request for hearing is filed, 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 less

than \$500, a corporation may appear by a duly authorized representative of the corporation. K.S.A. 2016 Supp. 66-1,142b(e) and amendments thereto.

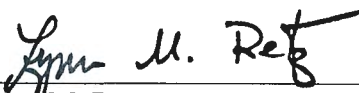
G. If you do not request a hearing, the payment of the civil penalty of \$650 is due in thirty (30) days from the date of service of this Order. Payment of \$650 must be made through your personal account with the Kansas Corporation Commission's KTRAN system located at <https://puc.kcc.ks.gov/ktran/>. You must have an account through KTRAN to pay the penalty.

H. Failure to pay the \$650 civil penalty within thirty (30) days from the date of service of this Penalty Order, *see* K.S.A. 66-1,105, and/or failure to comply with the provisions of this Order, may result in suspension of Heavy Metal Recyclers'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 revocation of authority and/or cease and desist orders, and any other remedies available to the Commission by law, without further notice.

I. 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.**

Albrecht, Chair; Emler, Commissioner; Apple, Commissioner


Dated: Feb. 27, 2018



Lynn M. Retz
Secretary to the Commission

AAL

ATTACHMENT “A”

	US DOT # 2202561	Legal: HEAVY METAL RECYCLERS INC Operating (DBA): RECYCLERS		
MC/MX #:		State #:	Federal Tax ID:	
Review Type: Compliance Review (CR)				
Scope: Principal Office		Location of Review/Audit: Company facility in the U. S.		Territory: F
Operation Types: Interstate Intrastate				
Carrier: Non-HM Non-HM Shipper: N/A N/A Cargo Tank: N/A		Business: Corporation Gross Revenue: for year ending: 12/31/2016		
Company Physical Address: <div style="background-color: black; height: 30px; width: 100%;"></div>				
Contact Name: Abe Peters Phone numbers: (1) Fax E-Mail Address:				
Company Mailing Address: 511 PEDIGO DR PRATT, KS 67124-3602				
Carrier Classification Private Property				
Cargo Classification Metal: Sheets, Coils, Rolls Other: scrap iron				
Equipment				
	Owned	Term Leased	Trip Leased	
Truck	1	0	0	Truck Tractor
Trailer	3	0	0	
Owned Term Leased Trip Leased				
	2	0	0	
Power units used in the U.S.: 3 Percentage of time used in the U.S.: 100				
Does carrier transport placardable quantities of HM? No Is an HM Permit required? N/A				
Driver Information				
	Inter	Intra		
< 100 Miles:	1	1	Average trip leased drivers/month: 0	
>= 100 Miles:			Total Drivers: 2	
			CDL Drivers: 2	



RECYCLERS (HEAVY METAL RECYCLERS INC dba)
U.S. DOT #: 2202561

State #: [REDACTED]

Review Date:
01/18/2018

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: Kansas Corporation Commission

1500 SW Arrowhead Road
Topeka, Ks. 66604-4027

This report will be used to assess your safety compliance.

Person(s) Interviewed

Name: Abe Peters

Title: President

Name: [REDACTED]





RECYCLERS (HEAVY METAL RECYCLERS INC dba)

U.S. DOT #: 2202561

State #: [REDACTED]

Review Date:

01/18/2018

Part B Violations

1 FEDERAL	Primary: 382.303(a)	Discovered 1	Checked 1	Drivers/Vehicles In Violation 1	Checked 1																												
Description Failing to conduct post accident alcohol testing on driver following a recordable crash. Example Driver Name: [REDACTED] Hire Date 02/13/2017 Accident Date 07/11/2017 Case #KS2017E13492 Driver involved in DOT Recordable accident which resulted in a fatality. Carrier had no record of the driver performing a post accident alcohol test as required by the regulations.																																	
2 FEDERAL	Primary: 382.303(d)(1)	Discovered 1	Checked 1	Drivers/Vehicles In Violation 1	Checked 1																												
Description Failing to prepare and maintain on file a record stating the reasons the alcohol post-accident test was not properly administered. Example Driver Name: [REDACTED] Hire Date 02/13/2017 Accident Date 07/11/2017 Case #KS2017E13492 Driver involved in DOT Recordable accident which resulted in a fatality. Carrier had no record of the driver performing a post accident alcohol test as required by the regulations. Carrier failed to provide the documentation as to why the test post accident test was not conducted within the 8 hrs as required by the regulations. Accident occurred at 1613 hrs. per the Barton County Sheriff Dept. accident report. The driver performed a post accident controlled substance test at the Great Bend Regional Hospital that was collected at 1949 hours.																																	
Safety Fitness Rating Information: Total Miles Operated 31,543 Recordable Accidents 1 Recordable Accidents/Million Miles 31.70		OOS Vehicle (CR): 0 Number of Vehicle Inspected (CR): 0 OOS Vehicle (MCMIS): 0 Number of Vehicles Inspected (MCMIS): 0																															
Your proposed safety rating is : SATISFACTORY		<table border="1"><thead><tr><th>Rating Factors</th><th></th><th>Acute</th><th>Critical</th></tr></thead><tbody><tr><td>Factor 1:</td><td>S</td><td>0</td><td>0</td></tr><tr><td>Factor 2:</td><td>S</td><td>0</td><td>0</td></tr><tr><td>Factor 3:</td><td>S</td><td>0</td><td>0</td></tr><tr><td>Factor 4:</td><td>S</td><td>0</td><td>0</td></tr><tr><td>Factor 5:</td><td>N</td><td>0</td><td>0</td></tr><tr><td>Factor 6:</td><td>S</td><td>-</td><td>-</td></tr></tbody></table>				Rating Factors		Acute	Critical	Factor 1:	S	0	0	Factor 2:	S	0	0	Factor 3:	S	0	0	Factor 4:	S	0	0	Factor 5:	N	0	0	Factor 6:	S	-	-
Rating Factors		Acute	Critical																														
Factor 1:	S	0	0																														
Factor 2:	S	0	0																														
Factor 3:	S	0	0																														
Factor 4:	S	0	0																														
Factor 5:	N	0	0																														
Factor 6:	S	-	-																														

Corrective actions must be taken for any violations (deficiencies) identified on Part B of this report.





RECYCLERS (HEAVY METAL RECYCLERS INC dba)
U.S. DOT #: 2202581

State #:

Review Date:
01/18/2018

Part B Requirements and/or Recommendations

1. Copies of the regulations, forms, interpretations, and manuals are available from a variety of sources. Check the FMCSA website for a current list of suppliers. www.fmcsa.dot.gov/safety-security/eta/index.htm
2. A copy of your carrier profile can be obtained at no cost from the FMCSA Portal (<https://portal.fmcsa.dot.gov/login>).
3. CONTROLLED SUBSTANCES AND ALCOHOL BASIC PROCESS BREAKDOWN: Roles and Responsibilities

DESCRIPTION OF PROCESS BREAKDOWN- Heavy Metal Recyclers, Inc. failed to have driver post-accident tested after a DOT Recordable Accident that resulted in a fatality.

BASIC SPECIFIC RECOMMENDED REMEDIES

Implement Safety Improvement Practices: The following are recommended practices related to Roles and Responsibilities.

- Ensure that managers are responsible for ascertaining that employees receive training concerning controlled substances and alcohol in accordance with State or Federal regulations and company policy.
- Ensure that managers are responsible for telling employees of a failed test and its implications.
- Regardless of carrier membership in a consortium, ensure that the carrier defines and documents the role and responsibilities of the designated employer representative (DER) in monitoring test procedures and checking results.
- If the carrier elects to join a consortium, ensure that the respective roles and responsibilities of the carrier and the consortium for controlled-substance and alcohol testing and reporting are defined and documented.

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. CRASH INDICATOR BASIC PROCESS BREAKDOWN: Roles and Responsibilities

DESCRIPTION OF PROCESS BREAKDOWN- Heavy Metal Recyclers, Inc. failed to document the reason the post alcohol test was not performed within the 8 hrs required by the regulations.

BASIC SPECIFIC RECOMMENDED REMEDIES

Implement Safety Improvement Practices: The following are recommended practices related to Roles and Responsibilities.

- Ensure managers role includes being responsible for making certain that employees receive safe driving training in accordance with State or Federal regulations and company policy, including safe-driving procedures while carrying HAZMAT (if applicable) - for example, counteracting sloshing in cargo tanks.
- Identify, clearly define, and document roles and responsibilities of drivers, managers, and supervisors with respect to the carrier's policies and procedures on safe driving and the timely reporting of inspection violations, citations and crash involvement.
- Establish roles and responsibilities for managers and experienced drivers to provide oversight and instruction to newer drivers.
- Identify, clearly define, and document role of managers and supervisors for implementing safe-driving policies and practices, and monitoring compliance in accordance with regulatory reporting and company policies and procedures.
- Define and document driver roles and responsibilities associated with compliance with Federal, State, and local laws and ordinances related to unsafe driving.

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





Capit 6.8.10.2



RECYCLERS (HEAVY METAL RECYCLERS INC dba)

U.S. DOT #: 2202561

State #: [REDACTED]

Review Date:

01/18/2018

Part B Requirements and/or Recommendations

Kansas Corporation Commission

Attn: Gary Davenport

1500 SW Arrowhead Rd

Topeka, KS 66604-4027

6. This report contains citations of regulations that are deemed serious in nature and could result in penalties against your company and/or your drivers.
7. This review will result in a Safety Rating.
8. 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 the Kansas Motor Carrier Safety Statutes and Regulations could result in suspension of Heavy Metal Recyclers, Inc. operating authority and/or the impoundment of Heavy Metal Recyclers, Inc. vehicles.



Date

Jake Peters, Secretary Treasurer

1/18/2018

ATTACHMENT “B”

DRIVER'S TIME RECORD (100 air-mile radius)

Driver's Name (print) THOMAS BUSSTIANO Employee No. 7017 Month Year 17

DRIVERS MAY PREPARE THIS REPORT INSTEAD OF "DRIVERS DAILY LOG" IF THE FOLLOWING APPLIES:

- *Operates within 100 air-mile radius of the normal work reporting location.
- *Returns to normal work reporting location and is released from work within 12 consecutive hours.
- *At least 10 consecutive hours off duty separate each 12 hours on duty.

INTERMITTENT DRIVERS

Shall complete this form for 7 days preceding any day driving is performed. This includes the preceding month.

Date	Start Time	End Time	Total Hours	Truck Number	Trip Information TO - FROM
1			0		
2			0		
3			0		
4			0		
5			0		
6	8:00	4:00	8	MACK	TO G.B.
7	8:00	1:00	5		
8			0		
9			0		
10	8:00	5:00	9	MACK	ROCKFORD CITY - LOCAL -
11	8:00	4:30	8.5	MACK	TO G.B. - INVOLVED IN
12	ACCIDENT AT APX 4:15 PM IRL GREAT BEKID 7-11-17.				
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To be prepared monthly by each DOT certified driver unless time record is exclusively kept on Driver's Daily Log. Indicate "days off." Check box if no driving is performed during this month and the first 7 days of the following month. Mail this report to your Division Manager of Administration.

CERTIFICATE OF SERVICE

18-TRAM-345-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 Feb. 27, 2018.

ABE PETERS, PRESIDENT
HEAVY METAL RECYCLERS INC
511 PEDIGO DR
PRATT, KS 67124-3602
abeheavymetal@gmail.com

AHSAN LATIF, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604-4027
Fax: 785-271-3354
a.latif@kcc.ks.gov

/S/ DeeAnn Shupe

DeeAnn Shupe