20191114155237 Kansas Corporation Commission



1500 SW Arrowhead Road Topeka, KS 66604-4027

Dwight D. Keen, Chair Shari Feist Albrecht, Commissioner Susan K. Duffy, Commissioner

November 14, 2019

Lori M. Holthaus, Treasurer Extru-Tech, Inc. PO Box 8 Sabetha, KS 66534 Phone: 785-271-3100 Fax: 785-271-3354 http://kcc.ks.gov/

Laura Kelly, Governor

NOTICE OF PENALTY ASSESSMENT 20-TRAM-203-PEN

This is a notice of a penalty assessment against Extru-Tech, Inc. (Extru-Tech) for violation(s) of Kansas Motor Carrier Safety Statutes, Rules, and Regulations discovered during a compliance review conducted on September 27, 2019, by Kansas Corporation Commission Special Investigator B.T. Scott. Penalties are assessed in accordance with the FY 2020 Uniform Penalty Assessment Matrix, approved by the Commission on July 16, 2019. 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: Extru-Tech has been assessed a \$900 penalty. You have thirty (30) days from the date of service of the Penalty Order to pay the penalty. Please remit payment of \$900, 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 Extru-Tech 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 <u>http://www.kcc.state.ks.us/trans/safety_meetings.htm</u>. 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. Extru-Tech 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 Executive Director 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. 2018 Supp. 77-542.

IF YOU FAIL TO ACT: Failure to pay the penalty of \$900 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 A. Latif

Litigation Counsel (785) 271-3118

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

Before Commissioners:	Dwight D. Keen, Chair Shari Feist Albrecht Susan K. Duffy
In the Matter of the Investiga Inc., of Sabetha, KS, Regar	ding the Violation of)

the Motor Carrier Safety Statutes, Rules and) Regulations and the Commission's Authority to) Docket No. 20-TRAM-203-PEN Sanctions and/or Impose Penalties. the Revocation of Motor Carrier Authority.

PENALTY ORDER

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The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission). Having examined its files and records, and being duly advised in the premises, the Commission finds and concludes as follows:

I. **JURISDICTION**

1. Pursuant to K.S.A 2018 Supp. 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 49 C.F.R. Part 390.5 as adopted by K.A.R. 82-4-3f., 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. 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. Extru-Tech, Inc. (Extru-Tech) has private operating authority with the Commission and further operates under USDOT number 804668.

5. Extru-Tech is a private motor carrier which primarily hauls machinery and large objects.

III. STATEMENT OF FACTS

6. Pursuant to the jurisdiction and authority cited above, on September 27, 2019, Commission Staff (Staff) Special Investigator B.T. Scott conducted a safety compliance review of the operations of Extru-Tech. 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 four (4) violation(s) of the Motor Carrier Safety Regulations.

a. On August 2, 2019, Extru-Tech required or permitted its driver, Gary Delome, to operate a commercial motor vehicle, a 2012 Ford F350, VIN ending in 56901, GVWR 10,600 lbs., in interstate commerce from Sabetha, Kansas to Zanesville, Ohio. This trip is evidenced by Bill of Sale, a copy of which is attached hereto as Attachment "B" and is hereby

incorporated by reference. At the time of this transportation, Extru-Tech had not paid its Unified Carrier Registration (UCR) fee for 2019. The carrier's failure to annually register its commercial motor vehicle(s) operating in interstate commerce and to pay the appropriate Unified Carrier Registration (UCR) fees as set out in 49 C.F.R. 367.60, is a violation of K.A.R. 82-4-30a, authorized by K.S.A. 66-1,139a and K.S.A. 66-1,129. Staff recommends a fine of \$300.

- b. During the transportation described in paragraph a, above, Extru-Tech used a driver that was not medically examined and certified as physically fit to operate a commercial motor vehicle in the previous 12 months. The carrier's failure to confirm that its driver is medically examined and certified prior to requiring or permitting the operation of a commercial motor vehicle and maintaining documentation of the medical certificate in the driver qualification file is a violation of 49 C.F.R. 391.41(a)(1)(i), adopted by K.A.R. 82-4-3g, and authorized by K.S.A. 2018 Supp. 66-1,129. Staff recommends a fine of \$250.
- c. During the transportation described in paragraph a, above, Extru-Tech failed to make an inquiry every 12 months into the annual motor vehicle record (MVR) of its driver and maintain the response(s) of each state agency in the driver qualification file. The carrier'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 49 C.F.R. Part

391.25(a) and (c)(1), adopted by K.A.R. 82-4-3g, and authorized by K.S.A. 2018 Supp. 66-1,112. Staff recommends a fine of \$100.

d. During the transportation described in paragraph a, above, Extru-Tech failed to require its driver to make a record of duty status while involved in interstate commerce. The special investigator discovered two (2) violations of this type. The carrier's failure to require its driver to keep records of duty status for each 24-hour period using the method described in 49 C.F.R. 395.8(a) and to submit the original record to the motor carrier within 13 days of creation is in violation of 49 C.F.R. 395.8(a), adopted by K.A.R. 82-4-3a, and authorized by K.S.A. 2018 Supp. 66-1,129. Staff recommends a fine of \$250.

IV. STAFF'S RECOMMENDATIONS

7. Based upon the available facts, Staff recommends the Commission finds Extru-Tech committed four (4) 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.

8. Additionally, Staff recommends a civil penalty of \$900 for four (4) violation(s) of the Motor Carrier Safety Statutes, Rules and Regulations.

9. Staff further recommends that a representative from Extru-Tech 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.

10. Finally, Staff recommends that Extru-Tech 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

11. The Commission finds it has jurisdiction over Extru-Tech because it is a motor carrier as defined in 49 C.F.R. Part 390.5 as adopted by K.A.R. 82-4-3f.

12. The Commission finds Extru-Tech committed four (4) 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. Extru-Tech, Inc., of Sabetha, KS is hereby assessed a \$900 civil penalty for four
(4) 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. Extru-Tech 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. Carrier is hereby ordered to submit a written, comprehensive corrective action plan (CAP) to Transportation Staff within thirty (30) days of the date of this order.

D. Extru-Tech 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.

E. Pursuant to K.S.A. 2018 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 Executive Director 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 Extru-Tech's right to a hearing, and this Penalty Order will become a Final Order assessing a \$900 civil penalty against Extru-Tech, and ordering a representative from Extru-Tech 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. 2018 Supp. 66-1,142b(e) and amendments thereto.

G. If you do not request a hearing, the payment of the civil penalty of \$900 is due in thirty (30) days from the date of service of this Order. Payment of \$900 must be made through your personal account with the Kansas Corporation Commission's KTRAN system located at <u>https://puc.kcc.ks.gov/ktran/</u>. You must have an account through KTRAN to pay the penalty.

H. Failure to pay the \$900 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 Extru-Tech'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.

Keen, Chair; Albrecht, Commissioner; Duffy, Commissioner

Dated: _____

Lynn M. Ret

Lynn M. Retz Executive Director

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ATTACHMENT "A"

- UNITED STATES DEPARTMENT OF TRANSPORTATION

	DOT#: 804668 /MX#:	-	Legal: EXTRU-TECH INC Operating (DBA):			stigation Date: 8/19
nvestigation T	ype: Onsite Co	omprehensive Inves	tigation	Location of Invest (PPOB) Extent of Operatic		principal place of business
Physical Addre	SS		.	Mailing Address		
100 AIRPORT Ri SABETHA, KS 66 United States				P O BOX 8 SABETHA, KS 66534 United States	1	
Contact Inform	nation	haden – Anne Yan (1993) en der eine eine Anne Anne Anne Anne Anne Anne			an a	
Contact Name Email: Phone: Business and F		HAUS				
Business Type: Gross Revenue Federal Tax ID Operation Clas			ing: 12/31/18	Cargo		
Type of Opera Intrastate Carrie		Interstate Carrier, N	Non-HM	Machinery, Large C	bjects	
Operation Clas Private Motor C Property – N		s Materials				
Equipment				Driver Informatio	n	
	Owned	Term Leased	Trip Leased	Drivers		
Straight Trucks	1			·	Intrastate	Interstate
•••				< 100 Miles		
Power units us Percentag <mark>e</mark> of		: 1 he U.S.: 100.0%		>= 100 Miles		2
				Average trip lease Drivers with CDL: Total Drivers: 2		

Person(s) Interviewed		
Name: LISA M HOLTHAUS		Title: TREASURER
Name: JOHN MENOLD		Title: FIELD SERVICE MGR
Questions		
Questions about this report or the Federal Motor Carrier Safety or Hazardous Materials regulations may be addressed to the Federal Motor Carrier Safety Administration at:	ТОРЕКА, К	FIRST AMERICAN PLACE, SUITE 200 S 66604-4040 IS) 271-1260 228-9725
This report will b	, `	ssess your safety compliance.

Violations

		Violations Discovered			
1. Primary: 367.5	Fed	State	Total		
2019 UCR - Failed to pay Unified Carrier Registration (UCR) fee when classified as an Interstate Motor Carrier Operation.	1		1		
		Violations Checked			
	Fed	State	Total		
	1	1	1		
Example/Notes:	Drivers	/Vehicles			
	In Violat	tion Cł	necked		
Gary Delome 8/2/2019	1	 1	-anna an anna an anna an anna an anna an an		
Sabetha, KS - Zanesville, OH	L				

2. P_{1} = 201. F_{1} (b) (4)	Violatio	ns Discove	ered
2. Primary: 391.51(b)(4)	Fed	State	Total
Failing to maintain the responses of each State agency to the annual driver record inquiry required by 391.25(a).	1		1
	Violatio	ns Checke	d
	Fed	State	Total
	2		2
Example/Notes:	Drivers/	Vehicles	
Gary Delome	In Violati	ion	Checked
8/2/2019	1		2
No MVR - Failing to maintain the responses of each State agency to the annual driver record inquiry required by 391.25(a).			

	Violatio	ns Discovere	ed
3. Primary: 391.51(b)(5) Failing to maintain a note relating to the annual review of the driver's driving record as	Fed	State	Total
required by 391.25(c)(2).	1		1
	Violatio	ns Checked	

· · · · · · · · · · · · · · · · · · ·	Fed	State	Total
	Drivers/Ve	hicles	2
Example/Notes: Gary Delome	In Violation	Check	(ed
8/2/2019 Failing to maintain a note relating to the annual review of the driver's driving record as required by 391 25(c)(2).	1	2	

	Violatio	ns Discover	ed
4. Primary: 391.51(b)(6) Failing to maintain a list or certificate relating to violations of motor vehicle laws and ordinances required by 391.27.	Fed 1 Violation Fed 2	State ns Checked State	Total 1 Total 2
Example/Notes:	Drivers	/Vehicles	
Gary Delome 8/2/2019 Failing to maintain a list or certificate relating to violations of motor vehicle laws and ordinances required by 391.27.	In Violat	ion C	Shecked

	Violatio	ns Discovere	ed	
5. Primary: 391.51(b)(7) Failing to maintain medical examiner's certificate in driver's qualification file.	Fed	State	Total	
	1		1	
	Violatio	ns Checked	I	ر
	Fed	State	Total	
	2		2	
Example/Notes:	Drivers	/Vehicles		
Gary Delome	In Violat	ion _i Ch	ecked	

			· · · · · · · · · · · · · · · · · · ·	
	8/2/2019	1	2	
Contraction of the local division of the loc	Failing to maintain medical examiner's certificate in driver's qualification file.		L	

	Violatio	ns Discovere	ed
6. Primary: 395.8(a)(2)	Fed	State	Total
Driver failed to create a record of duty status.	2		2
	Violatio	ns Checked	l
	Fed	State	Total
	31		31
			···
Example/Notes:	Drivers	/Vehicles	
Gary Delome	In Violat	ion ⁽ Cł	necked
8/2/2019	1	2	
Sabetha, KS to Zanesville, OH		L	

Safety Fitness Rating

Your proposed safety rating is: SATISFACTORY 0 UNSA Corrective actions must be taken for any violations (deficient			
RATING FACTORS	RATING	ACUTE	CRITICAL
Factor 1: General = Parts 387 and 390	Satisfactory		
Factor 2. Driver = Parts 382, 383 and, 391	Satisfactory		
Factor 3: Operational = Parts 392 and 395	Satisfactory		
Factor 4: Vehicle = Parts 393 and 396 OOS Vehicles (CR): 0 Number of Vehicles Inspected (CR): 1 OOS Vehicles (MCMIS) 0 Number of Vehicles Inspected (MCMIS): 0 OOS Rate: 0%	Satisfactory		
Factor 5: Haz. Mat. = Parts 397, 171, 177 and, 180	Not Rated		
Factor 6: Accident Factor = Recordable Rate Total Miles Operated: 6,000 Recordable Accidents: 0 Recordable Accidents/Million Miles: 0.00	Satisfactory	N/A	N/A

You must take corrective actions for any violations (deficiencies) identified in the Violations section of this report.

DataQs: If you dispute the violations recorded in the Violations section of this investigation report, and the violations were not used in the calculation of your safety rating, you may submit a Request for Data Review (RDR) through DataQs. The DataQs system is the method to remove violations that did not affect your safety rating. DataQs is an online system that allows a motor carrier or driver to request and track a review of Federal and State issued data that it believes to be incomplete or incorrect. To submit an RDR, go to https://dataqs.fmcsa.dot.gov.

Process Breakdown and Remedies

BASIC: Hours-of-Service Compliance Process Breakdown: Training and Communication

Carrier was not aware that a Non CDL motor vehicle required hours of service.

Specific Recommended Remedies

To implement Safety Improvement Practices, the following list are recommended practices related to Training and Communication:

1. Convey expectations to all applicable staff for adhering to Hours-of-Service (HOS) regulations and company policies and procedures, and for executing responsibilities by providing new-hire and refresher training, and establish communication channels such as newsletters and/or meetings focused on conflicts between scheduling and HOS rules.

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2. Train all staff who are required to monitor and track Hours of Service (HOS) on appropriate company policies, including those related to discipline and incentives.

BASIC: Driver Fitness

Process Breakdown: Roles and Responsibilities

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Gary Delome's Driver Qualification file was missing and MVR, Med Card, Certification of Violations and Annual Review of Driving Record.

Specific Recommended Remedies

To implement Safety Improvement Practices, the following list are recommended practices related to Roles and Responsibilities:

- 1. Define and document roles and responsibilities of managers and supervisors in providing training and maintaining qualifications for all employees according to driver-fitness regulations and company policies and procedures.
- 2. Designate a manager to collect and evaluate all driver-fitness-related customer complaints and their safety implications.

1. Additional Information

Please visit the CSA outreach site for additional guidance: https://csa.fmcsa.dot.gov.

2. UCR (Unified Carrier Registration)

The UCR Application form can be obtained from https://www.ucr.in.gov.

3. SMS website

You are encouraged to review your company's SMS results and take action to make the roads safer for everyone. Your public safety records are available at the following website: http://ai.fmcsa.dot.gov/sms. Also visit https://portal.fmcsa.dot.gov which provides real time data and the opportunity to review you safety data. You will need to use your PIN number that has been provided by FMCSA. Registration and access is free.

Table 1: Violations Discovered During Review/Inspection

Violation	Date	Identifying Information	Description
367.5 - 20 Operation		y Unified Carrier Registration (UCR) fee wh	en classified as an Interstate Motor Carrier
operation			
1	08/02/19	Gary Delome	Fail to Pay UCR
391.51(b)	(4) - Inquiries into dri	ving record not kept in qualification file	
1	08/02/19	Driver: Gary Delome	No MVR
391.51(b)	(5) - Failing to mainta	in notation of annual review	
1	08/02/19	Driver: Gary Delome	No Annual Review
391.51(b)	(6) - Failing to mainta	in list or certificate of violations	
1	08/02/19	Driver. Gary Delome	No certification of violations
395.8(a)(a	2) - Failing to have a r	ecord of duty status. (DRIVER)	
1	08/02/19	Gary Delome	No Log Book when required
2	08/03/19	Gary Delome	No Log Book when required
391.51(b)	(7) - No medical certi	ficate in qual. file	
1	08/02/19	Driver: Gary Delome	No Med Cert in file

ATTACHMENT "B"

Approved

ID: 48944880

Policy: Extru-Tech Technical Service

Gary D. Ralston Zanesville

\$438.82

G Fr	rom Gary Delome (gdelome@extru-techinc.com)	> Reimbursab	e: \$0.00
To To	0	Non-Reimbursab	e: \$438.82
δ ν	/icky Adams (vickya@extru-techinc.com)	Billab	e: \$215.24

Date Aug 2, 2019 to Aug 3, 2019

Customer Name	Location		
Ralston Purina	Zanesville, OH		
Purpose of Trip	Customer PO# - mark "X" non-billable		
Parts Delivery	4561011014 - SO# 56023		
Miles company car only - "X" if not used			

1568				

Gasoline - \$223.58

DATE	MERCHANT		TOTAL
Aug 2	Pilot	2	\$77.63 [†]
Aug 3	Circle K	≡]6	\$70.05 [†]
Aug 3	Shell	9	\$75.90 [†]
			\$223.58

Hotel - \$148.51

DATE	MERCHANT		TOTAL
Aug 2 [§]	Holiday Inn	≡1	\$148.51 ^{8†}
			\$148.51

Meals - \$66.73

	DATE	MERCHANT		TOTAL
(<u>199</u>	Aug 2	Burger King	۵	\$7.23 ^{B†}
	Aug 2	Casey's	≣ 5	\$6.63 ^{8†}
	Aug 2	Loves		\$8.32 ^{B†}
	Aug 3	Olive Garden	≡]7	\$35.69 ^{B†}
1757	Aug 3	Pilot	≡.8	\$6.83 ^{8†}
(<u>19</u> 11)	Aug 3	Speedway	or [=	\$2.03 ^{B†}
				\$66.73



CERTIFICATE OF SERVICE

20-TRAM-203-PEN

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of

first class mail/hand delivered on _____11/15/2019

LORI M. HOLTHAUS, TREASURER EXTRU-TECH, INC. PO BOX 8 SABETHA, KS 66534 AHSAN LATIF, LITIGATION COUNSEL KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD RD TOPEKA, KS 66604 Fax: 785-271-3354 a.latif@kcc.ks.gov

/S/ DeeAnn Shupe DeeAnn Shupe