

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of a Settlement Agreement )  
between the Public Utilities Commission of ) Case No. 08-554-TR-CVF  
Ohio and Max Trucking Express, Inc. )  
 )

## FINDING AND ORDER

**The Commission finds:**

- (1) Sections 4919.79 and 4921.04, Revised Code, authorize the Commission to adopt safety rules applicable to interstate and intrastate highway transportation and the offering for transportation of hazardous materials. Pursuant to this authority, the Commission adopted in Rule 4901:2-5-02, Ohio Administrative Code (O.A.C.), the provisions of the Federal Motor Carrier Safety Regulations and Hazardous Material Regulations of the U.S. Department of Transportation contained in Title 49, Parts 40, 382, 383, 385, 387, 390 through 397, and Parts 171 through 180, Code of Federal Regulations (CFR). Sections 4905.83, 4919.99 and 4921.99, Revised Code, authorize the Commission to assess forfeitures against any person who violates these rules. Pursuant to this authority, the Commission adopted the civil forfeiture and compliance proceeding rules contained in Rules 4901:2-7-01 through 4901:2-7-22, O.A.C. This action is brought pursuant to those rules and regulations.
- (2) On January 10, 2008, Staff conducted a compliance review of a facility operated by Max Trucking Express, Inc. (Max Trucking, Respondent) located at Cleveland, Ohio.
- (3) During the compliance review, Staff discovered apparent violations of the CFR, including:

49 CFR §382.301(a)	Using a driver before receiving a negative pre-employment controlled substance test result.	\$600.00
49 CFR §391.23(a)(2)	Failing to investigate driver's previous employment record and/or safety performance history.	\$600.00

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| 49 CFR §391.51(b)(2) | Failing to maintain driver's driving record in driver's qualification file.           | \$800.00  |
| 49 CFR §395.8(a)     | Failing to make record of duty status.  | \$5100.00 |
| 49 CFR §395.8(k)(1)  | Failing to preserve driver's record of duty status supporting documents for 6 months. | \$2600.00 |
| 49 CFR §396.3(b)     | Failing to keep minimum records of inspection and vehicle maintenance.                | \$550.00  |
| 49 CFR §396.11(a)    | Failing to require driver to prepare vehicle inspection report.                       | \$1725.00 |
- (4) Respondent requested a conference pursuant to Rule 4901:2-7-10, O.A.C. The matter was discussed and the Respondent had a full opportunity to present any evidence that the violations did not occur as alleged, mitigating circumstances regarding the amount of the forfeiture and any other information relevant to the action proposed to be taken by Staff.
- (5) As a result of this conference, Staff and Respondent entered into a settlement agreement to resolve these inspections. Among the terms of the settlement agreement, the Respondent agreed to make payment of \$5987.50 in consecutive monthly payments. The first eight consecutive equal monthly payments shall be \$675.00 each, followed by one consecutive monthly payment of \$587.50, with the first such payment due within 30 days after the effective date of this settlement agreement.
- (6) Respondent further agrees to grant consensual access to the Staff to conduct compliance reviews, without notice, of all its facilities located in the state of Ohio, at any time during the period of one year from the effective date of this settlement agreement.
- (7) In the event that the Respondent fails to fulfill its obligations under this agreement or in the event that compliance reviews of the facilities or roadside inspections of vehicles operated by Respondent, conducted

during the period of one year following the effective date of the settlement agreement reveals a pattern of violations of the Hazardous Materials Regulations 49 CFR Parts 171-180, or the Federal Motor Carrier Safety Rules, 49 CFR Parts 382, 383, 387, 390 through 397, by the Respondent, the Respondent agrees to make payment of an additional civil forfeiture of \$5987.50.

- (8) Respondent agreed that the findings of violations enumerated above will be included in the Respondent's Safety-Net record and in Respondent's history of violations insofar as they may be relevant for purposes of determining future penalties.
- (9) Rule 4901.2-7-11(C), O.A.C., provides that settlement agreements providing for the payment of civil forfeitures of one thousand dollars or more for any violation shall not be effective until approved by and made the order of the Commission.
- (10) The settlement agreement entered into between Staff and Respondent represents an equitable settlement of the matter and should be approved and adopted by the Commission.

It is, therefore,

ORDERED, That the terms and conditions of the settlement agreement entered into between Staff and Max Trucking be approved and adopted by the Commission by this Finding and Order. It is, further,

ORDERED, That Max Trucking pay \$5987.50, in the manner set forth in Finding 5 above, with the first payment being made within 30 days after the effective date of this Finding and Order. Payments should be made payable to "Treasurer, State of Ohio" and mailed to PUCO, Attention Fiscal Division, 13<sup>th</sup> Floor, 180 East Broad Street, Columbus, Ohio 43215. In order to assure proper credit, Max Trucking is directed to write the case number on the face of the check. It is, further,

ORDERED, That in the event that Max Trucking fails to fulfill its obligation under the settlement agreement, or in the event that compliance reviews of the facilities or roadside inspections of vehicles operated by Max Trucking, conducted during the period of one year following the effective date of the settlement agreement, reveals a pattern of violations of the Hazardous Materials Regulations contained in 49 CFR Parts 171 through 180, or the Federal Motor Carrier Safety Rules, 49 CFR Parts 171 through 180, or the Federal Motor Carrier Safety Rules, 49 CFR Parts 382, 383, 387, 390 through 397, by

Max Trucking, Max Trucking agrees to make payment of an additional civil forfeiture of \$5987.50. It is further,

ORDERED, That the Commission's Docketing Division serve a copy of this Finding and Order on Max Trucking Express, Inc.

THE PUBLIC UTILITIES COMMISSION OF OHIO



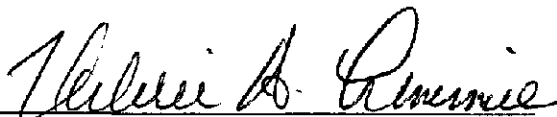
Alan R. Schriber, Chairman



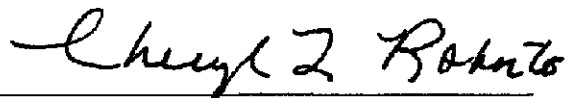
Paul A. Centolella



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Cheryl L. Roberto

REM:js

Entered in the Journal

**MAY 14 2008**



Renee J. Jenkins  
Secretary