

THE PUBLIC UTILITIES COMMISSION OF OHIO

FINDING AND ORDER

- (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 49 CFR § 391.51(a) 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 April 2, 2007, Staff conducted a compliance review of a facility operated by Stanley Miller Construction (Stanley Miller, Respondent) located at East Sparta, 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 pre-employment result.	\$400.00
49 CFR § 391.51(a)	Failing to maintain driver qualification file on each driver.	\$500.00
	2 violations	\$600.00

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| 49 CFR § 395.8(a) | Failing to require driver to make record of duty status. | \$700.00 |
| | 2 violations | \$2500.00 |
| 49 CFR § 396.3(b) | Failing to keep minimum records of inspections and vehicle maintenance. | \$425.00 |
| 49 CFR § 396.11(a) | Failing to require driver to prepare driver vehicle inspection report. | \$925.00 |
| 49 CFR § 396.17(a) | Using a commercial motor vehicle not periodically inspected. | \$450.00 |
| 49 CFR § 177.800(c) | Failing to train hazardous material employee as required. | \$500.00 |
| 49 CFR § 177.817(a) | Transporting hazardous materials not accompanied by a properly prepared shipping paper. | \$600.00 |
- (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 this case. Among the terms of the settlement agreement, the Respondent agreed to make payment of a civil forfeiture of \$3800.00 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. In the event that the

Respondent fails to fulfill its obligations under this agreement or in the event that compliance reviews conducted during the period of one year following the effective date of this 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, 390-397, by the Respondent, the Respondent agrees to make payment of an additional civil forfeiture of \$3800.00.

- (7) 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.
- (8) 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,

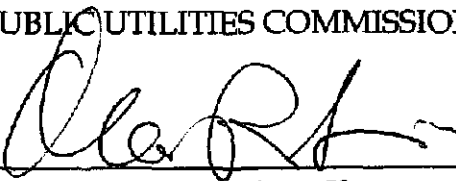
ORDERED, That the terms and conditions of the settlement agreement entered into between Staff and Stanley Miller Construction be approved and adopted by the Commission by this Finding and Order. It is, further,

ORDERED, That Stanley Miller Construction pay a total civil forfeiture of \$3800.00, with such payment due within 30 days after the effective date of this Finding and Order. Payment should be made payable to "Treasurer, State of Ohio" and mailed to PUCO, Attention Fiscal Division, 13th Floor, 180 East Broad Street, Columbus, Ohio 43215. In order to assure proper credit, Stanley Miller Construction is directed to write the case number on the face of the check. It is, further,

ORDERED, That Stanley Miller Construction pay an additional civil forfeiture of \$3800.00 should it fail to fulfill its obligations under this settlement agreement as set forth in Finding 6 above. It is, further,

ORDERED, That the Commission's Docketing Division serve a copy of this Finding and Order on Stanley Miller Construction.

THE PUBLIC UTILITIES COMMISSION OF OHIO



Alan R. Schriber, Chairman



Paul A. Centolella



Ronda Hartman Fergus



Valerie A. Lemmie

Cheryl L. Roberto

REM:js

Entered in the Journal

JUL 02 2008



Renee J. Jenkins
Secretary