

**BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of Cogan's Wrecker :  
Service, Inc., Notice of Apparent :  
Violation and Intent to Assess :  
Forfeiture. :

Case No. 08-0693-TR-CVF  
(CR08H072)

---

**SETTLEMENT AGREEMENT**

---

**I. Introduction**

Pursuant to Rule 4901:2-7-11 of the Ohio Administrative Code (O.A.C.), Cogan's Wrecker Service, Inc. (Respondent), and the Staff of the Transportation Department of the Public Utilities Commission of Ohio (Staff) enter into this Settlement Agreement and urge the Commission to adopt the same.

It is understood by the Respondent and the Staff that this Settlement Agreement is not binding upon the Public Utilities Commission of Ohio (Commission). This agreement however, is based on the Respondent's and the Staff's desire to arrive at a reasonable result considering the law, facts and circumstances. Accordingly, the Respondent and the Staff believe that the Commission should adopt this Settlement Agreement.

This Settlement Agreement is submitted on the condition that the Commission adopts the agreed upon terms. The Parties agree that if the Commission rejects all or any part of this Settlement Agreement or otherwise materially modifies its terms, either Party shall have the right, within thirty (30) business days of the Commission's order, either to file an application for rehearing or to terminate and withdraw from this

This is to certify that the images appearing are an  
accurate and complete reproduction of a case file  
document delivered in the regular course of business  
technician Ann Date Processed 3/9/11

RECEIVED-BOOKETING DIV.  
2011 MAR -9 AM 11:52  
FUCO

agreement by filing a notice with the Commission. If an application for rehearing is filed, and if the Commission does not, on rehearing, accept the Settlement Agreement without material modification, either Party may terminate and withdraw from this agreement by filing a notice with the Commission within ten (10) business days of the Commission's order or entry on rehearing. In such an event, a hearing shall go forward, and the Parties shall be afforded the opportunity to present evidence through witnesses, to cross-examine all witnesses, to present rebuttal testimony, and to file briefs on all issues.

## **II. Procedural History**

- A. On March 18, 2008, a Compliance Review was conducted by Staff at the Respondent's facility at 162 Township Road 616, South Point, Ohio. The inspection resulted in the discovery of ten apparent violations of the Federal Motor Carrier Safety Regulations. All of the apparent code violations contained repeat or multiple violations. The apparent violations in this case are:

- |                         |  |
|-------------------------|--|
| 49 C.F.R. §382.301(a)   | Using a driver before the motor carrier has received a negative pre-employment controlled substance test result. |
| 49 C.F.R. §391.23(a)(2) | Failing to investigate a driver's previous employment record and/or safety performance history.                  |
| 49 C.F.R. §391.51(b)(1) | Failing to maintain driver's employment application in driver's qualification file.                              |
| 49 C.F.R. §391.51(b)(4) | Failing to maintain the response of each State agency to the annual driver record inquiry required by 391.25(a). |

- 49 C.F.R. §391.51(b)(5) Failing to maintain a note relating to the annual review of the driver's driving record as required by 391.25(c)(2).
- 49 C.F.R. §391.51(b)(6) Failing to maintain a list or certificate relating to violations of motor vehicle laws and ordinances required by 391.27.
- 49 C.F.R. §391.23(i)(1) Failing to provide driver with written notification that he/she has the right to review safety performance history information provided by [previous employers, have any errors in information corrected, and have a rebuttal statement attached if previous employer and driver cannot agree upon correction of errors.
- 49 C.F.R. §395.8(a) Failing to require driver to make a record of duty status.
- 49 C.F.R. §396.11(a) Failing to require driver to prepare driver vehicle inspection report.
- 49 C.F.R. §396.11(b) Failing to ensure driver vehicle inspection report is complete and accurate.

B. Respondent was timely served with a notice of preliminary determination in accordance with Ohio Admin Code. §4901:2-7-12 for Case No. CR08H072. The preliminary determination assessed Respondent \$10,950.00 for all violations, to wit:

49 C.F.R. §382.301(a)	\$1,300.00
49 C.F.R. §391.23(a)(2)	\$0.00
49 C.F.R. §391.51(b)(1)	\$0.00
49 C.F.R. §391.51(b)(4)	\$0.00
49 C.F.R. §391.51(b)(5)	\$0.00
49 C.F.R. §391.51(b)(6)	\$0.00
49 C.F.R. §391.23(i)(1)	\$0.00
49 C.F.R. §395.8(a)	\$7,700.00
49 C.F.R. §396.11(a)	\$1,950.00

- C. Respondent made a timely formal request for an administrative hearing pursuant to Ohio Admin. Code §4901:2-7-13.
- D. The Parties have negotiated this Settlement Agreement, which the Parties believe resolves all the issues raised in the notice of preliminary determination.

### **III. Settlement Agreement**

The Parties hereto agree and recommend that the Commission find as follows:

- A. Respondent and Staff agree that Respondent shall pay \$5,475.00 of the total \$10,950.00 forfeiture amount. Respondent and Staff further agree that Respondent may pay the \$5,475.00 in monthly payments, with the first such payment to be made within thirty days following Commission approval of this agreement, over a 12-month period. Respondent shall submit payment by certified check or money order to "Treasurer State of Ohio," and mail to: PUCO FISCAL, 180 E. Broad St., 4<sup>th</sup> Floor, Columbus, Ohio 43215-3793.
- B. In light of the information presented by Respondent to Staff's satisfaction, Respondent and the Staff agree that the balance of the total \$10,950.00 forfeiture amount (\$5,475.00) will be waived. Specifically, Respondent underwent a subsequent compliance review, conducted at the same facility, during the pendency of this action. Staff notes that none of the violations found in this case were found in the subsequent compliance

review, and that Respondent had taken all necessary and appropriate corrective actions to eliminate such violations.

- C. The parties agree that nothing in this Settlement Agreement shall prevent Staff from assessing new civil forfeitures pursuant to Ohio Admin. Code Chapter 4901:2-7, as the result of future compliance reviews being made by Staff. The parties also agree that nothing in this Settlement Agreement shall prevent Staff from proposing that the Commission make a Compliance Order pursuant to Ohio Admin. Code Chapter 4901:2-7, as the result of future compliance reviews being made by Staff.
- D. For purposes of settlement, and not as an admission or evidence that the violations occurred, Respondent agrees that the violation in Paragraph A of this Settlement Agreement may be included in the Respondent's Safety-Net record and history of violations insofar as they may be relevant for purposes of determining future penalty actions.
- E. This Settlement Agreement shall not become effective until adopted by an Opinion and Order of the Commission. The date of the entry of the Commission order adopting the Settlement Agreement shall be considered the effective date of the Settlement Agreement.
- F. This Settlement Agreement is made in settlement of all factual or legal issues in this case. It is not intended to have any affect whatsoever in any other case or proceeding.

### III. Conclusion

The Signatory Parties agree that this Settlement Agreement is in the best interest of all Parties, and urge the Commission to adopt the same. The undersigned respectfully request that the Commission issue an entry in accordance with the terms set forth in this Settlement Agreement.

The Parties have manifested their consent to the Settlement Agreement by affixing their signatures below on this 17<sup>th</sup> day of December, 2010.

On behalf of Cogan's Wrecker  
Service, Inc.



Deborah A. Broughton  
Manager  
Cogan's Wrecker Service, Inc.  
162 Township Rd. 616  
South Point, OH 45680

**Respondent**

On behalf of the Staff of the Public  
Utilities Commission of Ohio



Werner L. Mangard III  
Assistant Attorney General  
Public Utilities Section  
180 East Broad Street, 9<sup>th</sup> Floor  
Columbus, OH 43215-3793

**Counsel for Staff**