

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of Alloyd Supply, Inc., Notice)
of Apparent Violation and Intent to Assess) Case No. 11-4911-TR-CVF
Forfeiture.) (OH3272008424C)

OPINION AND ORDER

The Commission, considering the evidence of record, the arguments of the parties, and the applicable law, and being otherwise duly advised, hereby issues its opinion and order in this matter.

APPEARANCES:

Thomas M. Wolfe, 5734 Webster Street, P.O. Box 13476, Dayton, Ohio 45414, on behalf of Alloyd Supply, Inc..

Mike DeWine, Ohio Attorney General, by Stephen A. Reilly, Assistant Attorney General, 180 East Broad Street, Columbus, Ohio 43215, on behalf of the staff of the Public Utilities Commission.

NATURE OF THE PROCEEDING:

On April 14, 2011, the Ohio Highway Patrol (Highway Patrol) stopped and inspected a commercial motor vehicle (CMV), operated by Alloyd Supply, Inc. (Alloyd Supply or company) and driven by David R. Thompson, in the state of Ohio. The Highway Patrol found the following violations of the Code of Federal Regulations (C.F.R.):

<u>Code</u>	<u>Violation</u>
393.48(a)	Inoperative or defective brakes - axle 3 on right side.
396.3(a)(1)(B)	Brakes (general) emergency side supply line between Unit 1 and Unit 2 unhooked.
396.3(a)(1)	Inspection, repair and maintenance of parts & accessories - electrical lines missing from under vehicle front to rear.

Alloyd Supply was timely served a Notice of Preliminary Determination in accordance with Rule 4901:2-7-12, Ohio Administrative Code (O.A.C.). In this notice, Alloyd Supply was notified that Staff intended to assess a civil monetary forfeiture totaling \$250.00 for violation of 49 C.F.R. Section 393.48(a) (Section 393.48(a)), 49 C.F.R.

Section 396. 3(a)(1)(B) (Section 396.3(a)(1)(B)), and 49 C.F.R. Section 396.3(a)(1) (Section 396.3(a)(1)). A prehearing teleconference was conducted in the case. The parties, however, failed to reach a settlement agreement during the conference. Subsequently, a hearing was convened on February 16, 2012.

Background:

The inspection in this case took place near Dixie Drive in the city of Vandalia, Montgomery County, Ohio. At the time of the inspection, Alloyd Supply's truck was running empty from Dayton, Ohio, to Vandalia, Ohio.

Issue in the Case:

Staff maintains that Inspector Douglas A. Staudt, a motor carrier enforcement inspector with the Highway Patrol, observed Alloyd Supply's truck being operated with the air hoses to its trailer brakes uncoupled. Inspector Staudt then stopped and inspected the truck, and cited Alloyd Supply for the violations in this case. Alloyd Supply maintained that it should not be held liable because parts had been stolen from its truck, and the truck was being driven to a maintenance and repair facility for replacement parts.

DISCUSSION:

In this case, Inspector Staudt testified that he stopped and inspected the Alloyd Supply truck after noticing that the air supply lines from the tractor were not connected to the trailer. He noted that, because of the air-actuated braking system on the truck, the trailer had no brakes. Inspector Staudt's inspection revealed that the air supply lines and electrical wiring were missing from the trailer. Inspector Staudt testified that Alloyd Supply's driver informed him that the missing parts had been stolen and that he was taking the truck to a nearby facility to be repaired. After the inspection, Inspector Staudt listed the violations involving the missing parts to the trailer on the Driver/Vehicle Examination report (Staff Exhibit 1) and placed the truck out of service. (Tr. at 9-32.)

Thomas Forbes, a staff member with the Commission's Transportation Department (Staff), testified that a Notice of Preliminary Determination (Staff Exhibit 2), was issued to Alloyd Supply notifying the company that Staff intended to assess a \$250.00 forfeiture for the violations in this case. Mr. Forbes testified that the monetary value of the fine for Alloyd Supply's violations was determined by using a fine schedule (Staff Exhibit 3) and that the violations are indicated by violation group numbers in the schedule that refer to the amount of the fine for each violation. Mr. Forbes further testified that the dollar amount of the fines and the procedure used in determining the fines in the fine schedule are consistent with the standards set by the Commercial Vehicle Safety Alliance. (Tr. at 46-57.)

Thomas M. Wolfe, president of Alloyd Supply, testified that the company's driver was in route to the Transportation Supply Depot, where Alloyd Supply's trailer was going to be repaired. Mr. Wolfe testified that someone had stolen the copper air lines and electrical wiring from the trailer. He also stated that the driver traveled on secondary roads and did not use the interstate highways. (Tr. at 64-65.)

The Commission initially observes that the transportation safety regulations, Section 393.48(a), Section 396.3(a)(1)(B), and Section 396.3(a)(1), mandate that a CMV must have operable brakes and properly operating parts and accessories at all times. In this case, the company's trailer had inoperative brakes and lighting due to missing brake lines and electrical wiring. Alloyd Supply did not deny that the violations occurred. The company, however, maintained that it should not be held liable because the brake lines and electrical wiring had been stolen from its trailer. The Commission disagrees. The company knew that its trailer had no brakes or lighting (Tr. at 35, 58-59), but nevertheless operated the CMV, with its diminished stopping potential (Tr. at 12-13, 48, 62-63) and visibility (Tr. at 36-37), over the highway. Whether the route to the repair facility traversed interstate highways or adjacent roadways, the proper procedure for getting the company's trailer repaired, which was noted by Staff at hearing (Tr. at 56), would have been either to have the trailer towed or transported on a flat-bed tow truck to the repair facility. After a review of the testimony and evidence submitted in the case, the Commission believes that the record is clear regarding violations of Section 393.48(a), Section 396.3(a)(1)(B), and Section 396.3(a)(1). The Commission is of the opinion that Inspector Staudt first saw Alloyd Supply's truck operating with uncoupled air hoses to its trailer brakes and, after the inspection, properly cited the company for the violations in this case. Alloyd Supply's arguments at hearing were not sufficient to demonstrate that the company should not be held liable for the civil forfeiture assessed for violation of Section 393.48(a), Section 396.3(a)(1)(B), and Section 396.3(a)(1). Accordingly, the Commission finds that Alloyd Supply was in violation of Section 393.48(a), Section 396.3(a)(1)(B), and Section 396.3(a)(1).

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) On April 14, 2011, the Highway Patrol stopped and inspected a motor vehicle operated by Alloyd Supply in the state of Ohio. Staff found the following violation of the Code of Federal Regulations (C.F.R.):

<u>Code</u>	<u>Violation</u>
393.48(a)	Inoperative or defective brakes - axle 3 on right side.

396.3(a)(1)(B) Brakes (general) emergency side supply line between Unit 1 and Unit 2 unhooked.

396.3(a)(1) Inspection, repair and maintenance of parts & accessories - electrical lines missing from under vehicle front to rear

- (2) Alloyd Supply was timely served a Notice of Preliminary Determination that set forth a civil forfeiture of \$250.00 for violation of Section 393.48(a), Section 396.3(a)(1)(B), and Section 396.3(a)(1).
- (3) A hearing in this matter was convened on February 16, 2012.
- (4) Staff demonstrated at hearing, by a preponderance of the evidence, that Alloyd Supply violated Section 393.48(a), Section 396.3(a)(1)(B), and Section 396.3(a)(1). Further, the procedure used in determining the forfeiture in this matter is consistent with the standards set by the Commercial Vehicle Safety Alliance.
- (5) Alloyd Supply's arguments at hearing were not sufficient to demonstrate that the company should not be held liable for the civil forfeiture assessed for violation of Section 393.48(a), Section 396.3(a)(1)(B), and Section 396.3(a)(1).
- (6) Pursuant to Section 4905.83, Revised Code, Alloyd Supply must pay the State of Ohio the civil forfeiture assessed for violation of Section 393.48(a), Section 396.3(a)(1)(B), and Section 396.3(a)(1). Alloyd Supply shall have 30 days from the date of this order to pay the assessed forfeiture of \$250.00.

It is, therefore,

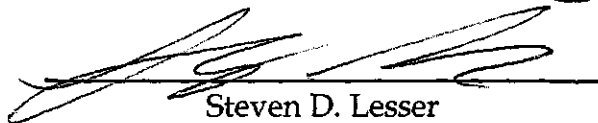
ORDERED, That Alloyd Supply pay the assessed amount of \$250.00 for violation of Section 393.48(a), Section 396.3(a)(1)(B), and Section 396.3(a)(1), as set forth in Finding (6). Payment should be made payable to "Treasurer, State of Ohio" and mailed or delivered to Public Utilities Commission of Ohio, Attention: Fiscal Department, 180 East Broad Street, 4th Floor, Columbus, Ohio 43215-3793. In order to assure proper credit, Alloyd Supply is directed to write the case number (OH3272008424C) on the face of the check. It is, further,

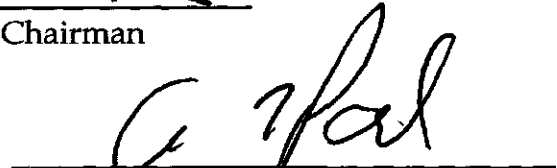
ORDERED, That the Attorney General of Ohio take all legal steps necessary to enforce the terms of this opinion and order. It is, further,


ORDERED, That a copy of this opinion and order be served upon each party of record.

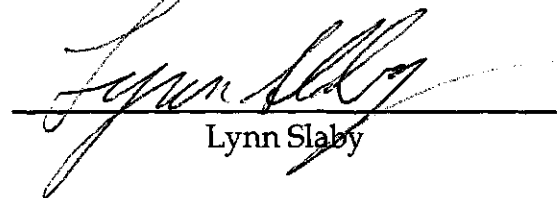
THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitchler, Chairman


Steven D. Lesser

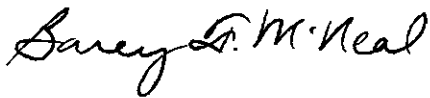

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MAY 30 2012


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Secretary