

FILE

5

RECEIVED-DOCKETING DIV

2014 AUG 27 PM 1:15

PUCO

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of Airgas USA, LLC, : Case No. 14-951-TR-CVF
Notice of Apparent Violation and Intent : (OH3210302144S2)
to Assess Forfeiture. :

SETTLEMENT AGREEMENT

I. Introduction

Pursuant to Rule 4901:2-7-11 of the Ohio Administrative Code (O.A.C.), Airgas USA, LLC (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. In the event the Commission rejects any part of the settlement agreement, or adds to, or otherwise materially modifies its terms, either party shall have the right, within thirty days of the date of the Commission's entry or

† 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 SM Date Processed AUG 27 2014

order, to file an application for rehearing that includes a request to terminate and withdraw from the Settlement Agreement. Upon the application for rehearing and request to terminate and withdraw from the Settlement Agreement being granted by the Commission, the Settlement Agreement shall immediately become null and void. In such event, the parties shall proceed to a hearing as if this Settlement Agreement had never been executed.

II. Procedural History

- A. On March 11, 2014 a vehicle operated by Tuttle Construction, Inc. and driven by Michael G. Bellamy was inspected within the State of Ohio. The inspector discovered the following violation:

<u>Code</u>	<u>Violation</u>
49 C.F.R. § 172.504(a)	Vehicle not placarded as required/shipper failed to offer placards as required

- B. Respondent was timely served with a notice of preliminary determination in accordance with Rule 4901:2-7-12 O.A.C. for Case No. OH3210302144S2. The preliminary determination assessed Respondent \$780.00 for the violation.
- C. Respondent made a timely formal request for an administrative hearing pursuant to 4901:2-7-13, O.A.C.

- 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 agrees to the violation listed above and recognizes that the violation may be included in the Respondent's Safety-Net Record and Respondent's history of violations insofar as they may be relevant for purposes of determining future penalty actions.
- B. For purposes of settlement only, Staff agrees to reduce the civil forfeiture from \$780.00 to \$546.00. This 30% reduction is premised upon Staff's recognition that the Respondent has implemented corrective measures. Such measures include retraining all Respondent's associates on internal company policies and the regulatory requirements of shippers of hazardous materials.
- C. Respondent shall pay the \$546.00 civil forfeiture within 30 days of the Commission's order approving this settlement agreement. Payment should be made by check or money order to "Treasurer State of Ohio," and mailed to: PUCO FISCAL, 180 East Broad St., 4th Floor, Columbus,

OH 43215-3793. The case number (OH3210302144S2) shall appear on the face of the check.

- D. Respondent and Staff agree that nothing in this settlement agreement shall prevent Staff from assessing civil forfeitures pursuant to Chapter 4901:2-7, O.A.C., as the result of future compliance reviews or roadside inspections.
- E. This settlement agreement shall not become effective until adopted by an Opinion and Order of the Commission. The date of the entry or of the Commission 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 of only this case. It is not intended to have any effect 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 this Settlement Agreement by affixing their signatures below on this 27th day of August, 2014.

On behalf of Airgas USA, LLC

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

Bernie Lozar 8-26-14

Bernie Lozar
Director of DOT Compliance
Airgas USA, LLC
6055 Rockside Woods Blvd.
Independence, Ohio 44131

Thomas G. Lindgren

Thomas G. Lindgren
Assistant Attorney General
Public Utilities Section
180 East Broad Street, 6th Floor
Columbus, OH 43215-3793