

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of Burch Thomas Oil Co., :  
Notice of Apparent Violation and Intent :  
to Assess Forfeiture :

Case No. 14-1301-TR-CVF  
(CR201404210321)

Respondent. :

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**SETTLEMENT AGREEMENT**

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**I. Introduction**

Pursuant to Rule 4901:2-7-11 of the Ohio Administrative Code (O.A.C.), Burch Thomas Oil Company, (Carrier or Respondent) and the Staff of the Transportation Department of the Public Utilities Commission of Ohio (Staff) enter into this Settlement Agreement and urge the Public Utilities Commission of Ohio (Commission) to adopt the Agreement.

The Respondent and the Staff understand that this Settlement Agreement is not binding upon the 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 of the case. 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 Agreement's terms. If the Commission rejects any part of the Settlement

Agreement, adds to the Agreement, or otherwise materially modifies the Agreement's terms, each party will have the right, within thirty days of the Commission's order, to file an application for rehearing that includes a request to terminate and withdraw from the Settlement Agreement. When the Commission grants the application for rehearing and the request to terminate/withdraw from the Settlement Agreement, the Settlement Agreement will immediately become null and void. In such event, the parties shall proceed to a hearing as if the parties had never executed the Settlement Agreement.

## **II. Procedural History**

- A. On April 21, 2014, a compliance review of Burch Thomas Oil Company's facility was conducted by Staff.
- B. As a result of the compliance review, Respondent was timely served with a Notice of Preliminary Determination in accordance with Rule 4901:2-7-12, O.A.C. The notice of preliminary determination notified Respondent that Staff intended to assess a civil forfeiture in the amount of \$8,875.00 for the following thirteen violations:
  - (1) 49 C.F.R. 177.817(a) (Transporting a shipment of hazardous materials not accompanied by a properly prepared shipping paper) (\$600),
  - (2) 49 C.F.R. 382.305 (Failing to implement a random controlled substance and/or an alcohol testing program) (\$1,000),
  - (3) 49 C.F.R. 396.17(a) (Using a commercial motor vehicle not periodically inspected) (\$450),

(4) 49 C.F.R. 391.21(a) (Using a driver who has not completed and furnished an employment application) (\$0),

(5) 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) (\$0),

(6) 49 C.F.R. 395.8(a) (Failing to require driver to make a record of duty status) (\$2,400),

(7) 49 C.F.R. 172.800(b) (Offering for transportation or transporting one or more hazardous materials listed without developing and adhering to a security plan that conforms to the requirements of 49 C.F.R. Subpart 1) (\$1,000),

(8) 49 C.F.R. 180.407(a) (Transporting a hazardous material in a DOT specification cargo tank for which a test or inspection specified in this section has become due in accordance with 180.407(c)) (\$400),

(9) 49 C.F.R. 107.620(a) (Failing to maintain at principal place of business for 3 years from the date of issuance copies of the registration statement filed with PHMSA and the Certification of Registration issued by PHMSA. (Cargo Tank)) (\$0),

(10) 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)) (\$0),

(11) 49 C.F.R. 396.11(a) (Failing to require driver to prepare driver vehicle inspection report) (\$2,625),

(12) 49 C.F.R. 180.417(a)(1) (Failing to retain a cargo tank manufacturer's data report, certificate and related papers, as required) (\$400), and

(13) 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) (\$0).

- C. In response to the Notice of Preliminary Determination, Respondent made a timely formal request for an administrative hearing pursuant to Rule 4901:2-7-13, O.A.C.
- D. The parties have negotiated this Settlement Agreement which the parties believe resolves all the issues in the case.

### **III. Settlement Agreement**

The parties agree and recommend that the Commission find as follows:

- A. For purposes of settlement only, and not as an admission that the violations occurred as alleged, Respondent agrees that the violations may be included in its history of violations, insofar as it may be relevant for purposes of determining future penalty actions.
- B. Staff agrees, for purposes of settlement only, to a reduced civil forfeiture amount of \$6,513.00 which reflects a 30% reduction of the original assessment, except for the violation of 49 C.F.R. 382.305. The forfeiture

amount for the violation of 49 C.F.R. 382.305 (failing to implement a random controlled substance and/or alcohol testing program) (\$1,000) will not be reduced. The reduction is premised upon a recognition that the Respondent has undertaken corrective actions including: correcting necessary documents so they conform to regulations, implementing proper inspection procedures, and implementing a controlled substance and alcohol testing program.

- C. Respondent shall pay the forfeiture amount over the course of a year. Payments shall be made monthly. Within 30 days of the effective date of the Settlement Agreement, Respondent shall make its first payment of \$542.75. Respondent shall then pay \$542.75 each month after until the forfeiture amount (\$6,513.00) is paid in full. Payments shall be made by check or money order payable to: "Treasurer State of Ohio," and mailed to PUCO Fiscal, 180 E. Broad St., 4<sup>th</sup> Floor, Columbus, Ohio 43215-3793. The Respondent should write the case number (CR201404210321) on the face of the payment.
- D. This Settlement Agreement shall not become effective until the Commission adopts it through an Opinion and Order. The date of the entry of the Commission order adopting the Settlement Agreement will be the Settlement Agreement's effective date.
- E. This Settlement Agreement settles all factual and legal issues in this case. The parties do not intend the Settlement Agreement to have any affect in any other case or proceeding.

#### IV. Conclusion

This Settlement Agreement, which is subject to the Rules of the Commission, constitutes the entire agreement of the parties. The parties agree that this Settlement Agreement is in the best interest of all parties, and urge the Commission to adopt the Settlement Agreement and issue an entry in accordance with the terms of the Settlement Agreement.

The parties consent to the Settlement Agreement by signing the Agreement below.

On behalf of the Respondent:



Date: 10-20-14

**Sandy DiFiore**

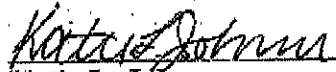
President

Burch Thomas Oil Company

P.O. Box 9188

Akron, OH 44305

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



Date: 10/15/2014

**Katie L. Johnson**

Assistant Attorney General

Public Utilities Section

Ohio Attorney General Mike DeWine

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**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

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**in**

**Case No(s). 14-1301-TR-CVF**

Summary: Agreement /Settlement Agreement submitted by Assistant Attorney General Katie Johnson on behalf of the Staff of the Public Utilities Commission of Ohio. electronically filed by Kimberly L Keeton on behalf of Public Utilities Commission of Ohio