

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of Cardinal Asphalt	:	
Company, Notice of Apparent	:	Case No. 19-2240-TR-CVF
Violation and Intent to Assess	:	(20-CR-316153)
Forfeiture.	:	

SETTLEMENT AGREEMENT

I. Introduction

Pursuant to Ohio Adm.Code 4901:2-7-11(C), Cardinal Asphalt Company (Respondent) and the Staff of the Transportation Department of the Public Utilities Commission of Ohio (Staff) enter into this settlement agreement and request the approval of the Commission.

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

This Settlement is conditioned upon adoption of the Settlement by the Commission in its entirety and without material modification. Each Signatory Party has the right, in its sole discretion, to determine whether the Commission's approval of this Settlement constitutes a "material modification" thereof. If the Commission rejects or

materially modifies all or any part of this Settlement, any Signatory Party shall have the right to apply for rehearing. If the Commission does not adopt the Settlement without material modification upon rehearing, or if the Commission makes a material modification to any Order adopting the Settlement pursuant to any reversal, vacation and/or remand by the Supreme Court of Ohio, then within thirty (30) days of the Commission's Entry on Rehearing or Order on Remand any Signatory Party may withdraw from the Settlement by filing a notice with the Commission ("Notice of Withdrawal"). No Signatory Party shall file a Notice of Withdrawal without first negotiating in good faith with the other Signatory Parties to achieve an outcome that substantially satisfies the intent of the Settlement. If a new agreement achieves such an outcome, the Signatory Parties will file the new agreement for Commission review and approval. If the discussions to achieve an outcome that substantially satisfies the intent of the Settlement are unsuccessful, and a Signatory Party files a Notice of Withdrawal, then the Commission will convene an evidentiary hearing to afford that Signatory Party the opportunity to contest the Settlement by presenting evidence through witnesses, to cross examine witnesses, to present rebuttal testimony, and to brief all issues that the Commission shall decide based upon the record and briefs. If the discussions to achieve an outcome that substantially satisfies the intent of the Settlement are successful, then some or all of the Signatory Parties shall submit the amended Settlement to the Commission for approval after a hearing if necessary.

II. Procedural History

- A. On October 18, 2019, Staff conducted a compliance review of Cardinal Asphalt Company at 1380 Orlen Ave., Cuyahoga Falls, OH 44221. The compliance review resulted in the discovery of six (6) violations of the Federal Motor Carrier Safety Administration regulations. The violations were: (1) failing to implement an alcohol and/or drug testing program in violation of 49 C.F.R. §382.115(a); (2) failing to maintain an accident register in violation of 49 C.F.R. §390.15(b); (3) failing to maintain driver qualification file on each driver in violation of 49 C.F.R. §391.51(a); (4) failing to require a driver to prepare a record duty of status in violation of 49 C.F.R. §395.8(a)(1); (5) failing to keep minimum records of inspection and maintenance in violation of 49 C.F.R. §396.3(b); and (6) using a commercial motor vehicle (CMV) not periodically inspected in violation of 49 C.F.R. §396.17(a). Due to the violations described above and in accordance with Ohio Adm.Code 4901:2-7-07, Staff sent respondent a Notice of Intent to Assess a Forfeiture in the amount of \$8,800.00
- B. Pursuant to Ohio Adm.Code 4901:2-7-10, Respondent made a timely request for conference. A conference was held on December 18, 2019, where Respondent had the opportunity to present reasons why the violations did not occur as alleged, mitigating circumstances regarding the amount of the forfeiture, reasons why the compliance order may be unjustified, or any other information relevant to the action proposed to be

taken. Respondent has demonstrated that the company has taken steps to maintain proper documentation and train employees on the proper documentation for hours of service.

- C. The parties have negotiated this settlement agreement which the parties believe resolves all the issues raised in the notice of apparent violation. Because the civil forfeiture exceeds five thousand dollars, this settlement agreement is submitted for the Commission's approval in accordance with Ohio Adm.Code 4901:2-7-11(C).

III. Settlement Agreement

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

- A. Respondent acknowledges that pursuant to the October 19, 2019 review, Cardinal Asphalt Company was found in violation of 49 C.F.R. §382.115(a); 49 C.F.R. §390.15(b); 49 C.F.R. §391.51(a); 49 C.F.R. §395.8(a)(1); 49 C.F.R. §396.3(b); and 49 C.F.R. §396.17(a).
- B. Respondent recognizes that the violations set forth in paragraph (A) will 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.
- C. Pursuant to Ohio Adm.Code 4901:2-7-11, this settlement agreement shall not become effective until approved 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.

- D. The Respondent agrees to make payment of a civil forfeiture of four thousand four hundred dollars (\$4,400.00) within thirty days after the effective date of this settlement agreement.
- E. Payment shall be made payable to “Treasurer State of Ohio,” and it shall be mailed to PUCO, Attn: CF Processing, 180 E. Broad St., 4th floor, Columbus, OH 43215-3793. The case number (20-CR-316153) should appear on the face of each check.
- F. The Respondent agrees to grant reasonable 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.
- G. In the event that the Respondent fails to fulfill its obligations under this settlement agreement or in the event that compliance reviews of facilities conducted pursuant to paragraph III.F. reveals a violation of any regulation specifically identified in paragraph III.A. as one that resulted in the assessment of a civil forfeiture in this case, for a period of one year from the effective date of this Agreement, the Respondent agrees to make payment of an additional civil forfeiture of two thousand sixty dollars (\$2,060.00).

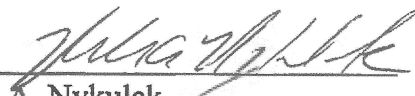
- H. Respondent and Staff agree that nothing in this settlement agreement shall prevent Staff from assessing civil forfeitures pursuant to Ohio Adm.Code Chapter 4901:2-7, as the result of future compliance reviews or roadside inspections. Respondent and Staff further agree that nothing in this settlement agreement shall prevent Staff from proposing that the Commission make a Compliance Order pursuant to Ohio Adm.Code Chapter 4901:2-7, as the result of future compliance reviews or roadside inspections.
- I. In accordance with Ohio Adm.Code 4901:2-7-14(D), if the Respondent fails to comply with the provisions of this settlement agreement for a period exceeding 30 days, Respondent shall be in default and shall be deemed to have admitted the occurrence of the violation and waived all further right to contest liability for the forfeiture proposed in the notice of intent to assess forfeiture.
- J. This settlement agreement is made in settlement of all factual or legal issues in 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 approve the same. The undersigned respectfully request that the Commission issue an entry in accordance with the terms set

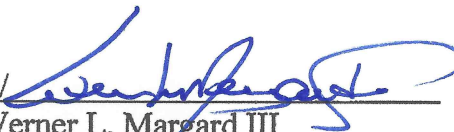
forth in this Settlement Agreement. The parties have manifested their consent to the Settlement Agreement by affixing their signatures below.

On behalf of Cardinal Asphalt Company

/s/ 
Nick A. Nykulak
Ross, Brittain & Schonberg Co., L.P.A.
6480 Rockside Woods Blvd. S., Suite 350
Cleveland, Ohio 44131

Date: 10/20/20

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

/s/ 
Werner L. Margard III
Assistant Attorney General
Public Utilities Section
30 East Broad Street, 16th Floor
Columbus, OH 43215

Date: 10/20/2020

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Case No(s). 19-2240-TR-CVF

Summary: Agreement Settlement Agreement electronically filed by Mrs. Kimberly M Naeder
on behalf of PUCO