

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Default of Various)
Hazardous Materials Carriers, Shippers and) Case No. 95-583-TR-UNC
Drivers for Civil Forfeitures Pursuant to) Case No. 97-1398-TR-UNC
Rule 4901:2-7-14(A), Ohio Administrative)
Code.)

ENTRY

The Commission finds:

- (1) Sections 4919.79(C), 4921.04(E), 4923.03(C), 4923.20(C), Revised Code, authorize the Commission to adopt safety rules consistent with, and equivalent in scope, coverage, and content to, the federal regulations governing the highway transportation and offering for transportation of hazardous materials. Pursuant to this authority, the Commission adopted in Rule 4901:2-5-02, Ohio Administrative Code (O.A.C.), the provisions of the federal motor carrier safety rules and the hazardous materials rules of the U.S. Department of Transportation contained in Title 49, Parts 383, 387, 390 through 397, and Parts 171 through 180, Code of Federal Regulations (C.F.R.).
- (2) Section 4905.83(A), Revised Code, authorizes the Commission to assess a civil forfeiture of not more than ten thousand dollars per day for each violation against hazardous materials carriers and shippers who are found to be in violation of the federal hazardous materials regulations. Pursuant to this statutory authority, the Commission adopted the civil forfeiture and compliance procedural rules contained in Chapter 4901:2-7, O.A.C. These rules require that a Respondent be afforded reasonable notice and opportunity for a hearing where the Commission Staff finds a violation of the regulations adopted in Rule 4901:2-5-02, O.A.C. Specifically, Rule 4901:2-7-07, O.A.C., requires that Staff serve, by certified mail, a Notice of Intent to Assess Forfeiture to a respondent within ninety days after the discovery of a violation but no more than one year following the violation.
- (3) Pursuant to Rule 4901:2-7-14(A), O.A.C., a Respondent upon whom a Notice of Intent to Assess Forfeiture has been served who fails within thirty days to pay the amount of the forfeiture stated in the notice or to serve upon Staff a request for conference shall be in default. A Respondent in default shall be deemed to have waived all further right to contest liability for the forfeiture described in the notice. Pursuant to Rule

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4901:2-7-14(D), O.A.C., if a Respondent is in default, the Commission may, on its own motion and without prior notice, order payment of the amount indicated in the notice.

- (4) Once the Commission has found a party to be in default, Rule 4901:2-7-15, O.A.C., states that a party may be removed from default in accordance with Rule 60 of the Ohio Rules of Civil Procedure. Rule 60 establishes five grounds for relief from judgment; 1) mistake, inadvertence, surprise or excusable neglect; 2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial; 3) fraud, misrepresentation or other misconduct of an adverse party; 4) the judgment has been satisfied, released or discharged; or 5) any other reason justifying relief from judgment.
- (5) By previous Entry in these dockets, the Commission ordered 468 hazardous materials carriers to pay the default civil forfeiture amount and Staff to forward the Attachment to the Attorney General for collection purposes. Industry response to this Entry was significant and the Commission received payment of \$93,675.75 from various Respondents. In addition, the Commission received 33 requests for relief from judgment. The Commission reviewed each request to determine if Respondent presented a valid reason, in accordance with Rule 60 of the Ohio Rules of Civil Procedure, as to why it failed to respond to the Notice. Pursuant to that review, the Commission has determined that the 30 carriers identified in Attachment A should be removed from default because they were able to prove that the judgement had already been satisfied, made a request for conference within 30 days from receipt of the Notice, and/or presented circumstances that would otherwise justify relief from judgment. The Commission finds that the carriers listed in Attachment A should be granted relief from judgment.
- (6) With respect to the remaining three cases, the Commission denies these motions because the Respondents were unable to demonstrate a proper ground for relief from judgment. The first two motions, filed by Pjax and Dana Transport, indicate that their safety departments were going through organizational changes and should be relieved from judgment. Finally, Altom Transport, Inc. filed a motion for relief from judgment on the grounds that its shipper orally agreed to accept responsibility for the violation by paying the civil forfeiture assessed against Altom, and Respondent's oral communications with Staff after receipt of the Notice of Intent to Assess Forfeiture and the most

recent Entry in this proceeding. Respondent failed to file a written request for a settlement conference in accordance with Rule 4901:2-7-10, O.A.C. The Commission finds that these three Respondents have not shown good cause for relief from judgment.

It is, therefore,

ORDERED, That the Respondents identified in Attachment A be granted relief from judgment for the inspections identified in Attachment A. It is, further,

ORDERED, That Pjax, Dana Transport, and Altom Transport, Inc.'s motions for relief from judgment be denied. It is, further,

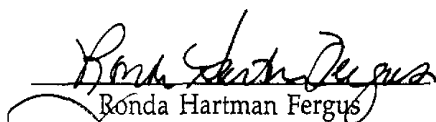
ORDERED, That the Commission Staff forward Attachment A to the Attorney General which would remove the Respondents from default and any further collection efforts. It is, further,

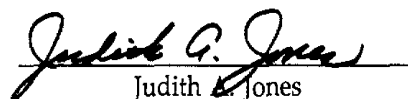
ORDERED, That Case Numbers 95-583-TR-UNC and 97-1398-TR-UNC be closed of record. It is, further,

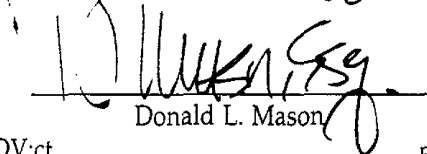
ORDERED, That a copy of this Entry be served upon each Respondent identified in Attachment A, Pjax, Dana Transport, and Altom Transport, Inc.

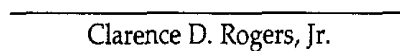
THE PUBLIC UTILITIES COMMISSION OF OHIO


Alan R. Schriber, Chairman


Ronda Hartman Fergus


Judith A. Jones


Donald L. Mason

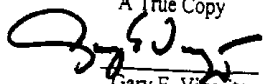

Clarence D. Rogers, Jr.

DV:ct

Entered in the Journal

MAY 17 2001

A True Copy


Gary E. Vigorito
Secretary

ATTACHMENT A

1. Jerry Cornwell
Dyno Nobel Transportation, Inc.
RR 6 Box 254 EE
Carthage, MO 644836
Inspection No. 0A170718C
2. Paul Baute, Safety Director
Grammer Industries, Inc.
2617 Illinois Street
Columbus, IN 47201
Inspection No. 0A161158C
3. Dale Bower, Safety Director
Circleville Oil Company
PO Box 189
Circleville, OH 43113
Inspection No. 0A163348C
4. William Millhoan, Safety Director
PPG Industries
760 Pittsburgh Drive
Delaware, OH 43015
Inspection Nos. 0A161134S,
0A162797S
5. Christina L. Diaz, Senior Counsel
Atofina Chemicals, Inc.
2000 Market Street
Philadelphia, PA 19103-3222
Inspection Nos. CS100011S,
0A162526S, 0A163159S
6. Russell R. Karney, Area Operations
Manager
Van Waters & Rogers, Inc.
1686 East Highland Road
Twinsburg, OH 44087
Inspection No. OHCR94B-275
7. Ron Teufel,
Union Carbide Corp.
10235 West Little York
Houston, TX 77-040-3229
Inspection No. CS000320S
8. David A. Turano, Esq.
KLLM, Inc.
941 Chatham Lane
Suite 201
Columbus, OH 43221-2416
Inspection Nos. 0A167609C,
0A168846C, 0A162894C, and
0A167378C
9. Cheryl Sountain
Mark VII Trucking
5310 St. Joseph Avenue
St. Joseph, MO 64505
Inspection No. 0A179583C
10. Palmer International
PO Box 8
Worcester, PA 19490
Inspection No. 0A172369S
11. Alexia Georgopoulos
Hukill Chemical Corp.
7013 Krick Road
Bedford, OH 4416-4493
Inspection No. 0A162442S
12. Amy Lantz,
Safeway Chemical Transp., Inc.
2200 Concord Pike
Wilmington, DE 19803
Inspection No. CU000201C
13. Wes Achauer
Putnam Truckload Direct
1705 Moxahala Avenue
Zanesville, OH 43701
Inspection No. 0A165801C
14. Donald Stark,
USF Holland, Inc.
750 E. 40th Street
Holland, MI 49423
Inspection Nos. 0A160822C,
0A165051C

ATTACHMENT A

15. Sig Huber
Toyota Motor Manufacturing North
America, Inc.
25 Atlantic Avenue
Erlanger, KY 41018
Inspection Nos. 0A170286S,
0A161316S
16. James D. Pierson
6720 Deer Meadow Road
Huber Heights, OH 45424
Inspection No. CY000021D
17. Larry Dillon, Director of Safety
Gasel Transportation Services, Inc.
PO Box 1199
Marietta, OH 45750
Inspection No. 0A171364C
18. Miguel Vergara III, President
Mike Vergara Transportation, Inc.
2626 N. Mesa 93
El Paso, TX 79902
Inspection No. CE000265C
19. Michael Flory
3685 Mile Ridge Road
Apple Grove, WV 25502
Inspection No. CS000314D
20. Greg Allen
Eastman Chemical Co
PO Box 431
200 Wilcox Drive
Building 280
Kingsport, TN 37662
0A168644S
21. Eldon Conway, Traffic Supervisor
Mallinckrodt Chemical
PO Box 800
US Route 68 ByPass
Paris, KY 40361
Inspection No. 0A1609715S
22. Fred Thayer
CN-R.E. West, Inc.
1600 Powell Grove Road
Lebanon, TN 37087
Inspection No. 0A152733C
23. Vicki Gregory
Clark Transportation
PO Box 3427
Dalton, GA 30719
Inspection No. 0A15997C
24. Bob Cantrell
For Atlantic Inland Carriers
PO Box 351
Remington, IN 47977
Inspection No. AB001076C
25. Pamela Bogutz, Law Dept.
Ashland, Inc.
5200 Blazer Parkway
Dublin, OH 43017
Inspection Nos. 0A159958C,
0A173370C
26. Suzanne Trowbridge
For American Alloys, Inc.
PO Box 2107
Charleston, WV 25328
Inspection Nos. 0A156150S,
0A162657S
27. Terence P. Neville, Vice President
Acton Technologies, Inc.
100 Thompson Street
PO Box 726
Pittston, PA 18640
Inspection No. CS000300S
28. Gus Dattilo
Diversy Corp.
3630 E. Kemper Road
Cincinnati, OH 45241
Inspection Nos. 0A167649S,
0A151238S

ATTACHMENT A

29. Fisher Scientific Company LLC

Steve Schulte
2000 Park Lane Drive
Pittsburgh, PA 15275-1126
Inspection No. CS100051S

30. Interstate Carrier Xpress, Inc.

June Freeman
3820 Wismann Lane
Quincy, IL 62301
Inspection No. 0A169685