

FILE

BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO

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PUCO

In the Matter of Cherry's Propane : Case No. 06-1333-TR-CVF  
Service, Ltd., Notice of Apparent : (CR06H188)  
Violation and Intent to Assess :  
Forfeiture.

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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.), Bradley Cherry, President of Cherry's Propane Service, Ltd. (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, each party shall have the right, within thirty days of the Commission's order, to either file an

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application for rehearing or terminate and withdraw the Settlement Agreement by filing notice with the Commission. Upon rehearing, any party shall have the right within fifteen days of the Commission's order on rehearing to file a notice of termination or withdrawal of the Settlement Agreement. Upon notice of termination or withdrawal by either party, pursuant to the above provisions, 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 May 25, 2006, a compliance review was conducted at the Respondent's facility. The Respondent is a private intrastate carrier and shipper of hazardous materials (propane) with its principle place of business in Ottawa, OH. This is a small family business. As a result of violations discovered by Staff, the Respondent was sent a forfeiture notice for: 1) Offering or transporting without a security plan that conforms to the subpart requirements in violation of 49 C.F.R. 172.800(b) with an assessment of \$1000.00; 2) Failing to ensure that each delivery hose used on a cargo tank is permanently marked with the unique identification number and maximum working pressure in violation of 49 C.F.R. 180.416(b) with an assessment of \$400.00; and 3) Using a driver before the motor carrier has received a negative pre-employment controlled substance test result in violation of 49 C.F.R. 382.301(a) with an assessment of \$400.00.

- B. Commission Staff timely served Respondent with a notice of preliminary determination in accordance with Rule 4901:2-07-12 of the O.A.C. for Case No. CR06H188. The Total Forfeiture Staff assessed Respondent was \$1,800.00 for the three alleged violations.
- 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. The Commission Staff and Respondent agree that Respondent does not contest the 49 C.F.R. 172.800(b) violation of offering or transporting without a security plan that conforms to the subpart requirements of this section and the 49 C.F.R. 382.301(a) violation of using a driver before the motor carrier has received a negative pre-employment controlled substance test result. The Commission Staff and Respondent agree that Respondent will pay a civil forfeiture in the amount of \$400.00 for the pre-employment controlled substance test violation. As to the security plan violation, the Commission Staff and Respondent agree that Respondent will have a revised security plan prepared by Motor Carrier Compliance & Safety Co. or another qualified consultant, which shall contain a written

risk assessment of possible transportation security risk areas specific to Respondent's business and location, and that addresses the vulnerabilities in that particular location. The new security plan will be submitted to Inspector Kelly Hedglin for review and approval within sixty-days of this settlement agreement being executed and filed with Docketing of the Commission. The Commission Staff will accept Respondent's new security plan that complies with 49 C.F.R. 172.800(b) in lieu of a civil forfeiture in the amount of \$1000.00. After reviewing and approving Respondent's revised security plan, Inspector Kelly Hedglin will in a timely manner supplement the record and this settlement agreement by filing a letter with Docketing of the Commission indicating that Respondent has taken the necessary remedial action to bring his security plan into compliance with 49 C.F.R. 172.800(b). Respondent's security plan that constituted the violation in this Compliance Review was prepared by a consultant, but it was deficient in terms of having a written risk assessment specific to his location. Respondent has cooperated fully with Commission Staff and wants to be in full compliance with all Hazardous Materials Regulations.

- B. The Commission Staff and Respondent agree that Inspector Kelly Hedglin conducted a re-inspection of Respondent's delivery hose on a cargo tank and determined Respondent was not in violation of 49 C.F.R. 180.416(b). The Inspector found the delivery hose was permanently marked, but

slightly faded, with the unique identification number and maximum working pressure. Respondent agreed to make the numbers more visible on the delivery hose by using a metal band. Based on the results of the re-inspection of Respondent's delivery hose showing compliance with this regulation and Respondent's cooperation in making the information on the hose more clearly visible by using a metal band, Commission Staff withdraws the 49 C.F.R. 180.416(b) violation and notice of forfeiture in the amount of \$400.00.

- C. For purposes of settlement, and not as an admission or evidence that the violations above occurred, Respondent agrees that the citations for the security plan and using a driver before receiving a negative pre-employment controlled substance test result above may be included in the Respondent's Safety-Net record and history of violations insofar as they may be relevant for purposes of determining future penalty actions.
- D. This settlement agreement shall not become effective until adopted 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.
- E. Respondent shall have thirty-days from the entry of the Commission order adopting the Settlement Agreement to pay the \$400.00 forfeiture for the pre-employment controlled substance test result violation of 49 C.F.R. 382.301(a), which shall be paid using a certified check or money order

payable to: "Treasurer State of Ohio," and mail to: PUCO Fiscal, 180 E. Broad St., 13<sup>th</sup> Floor, Columbus, Ohio 43215-3793.

- F. This Settlement Agreement is made in settlement of all factual or legal issues in this case. It is not intended to have any affect whatsoever in any other case or proceeding.

#### IV. Conclusion

This agreement, which is subject to the Rules of the Commission, constitutes the entire agreement of the parties. 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.

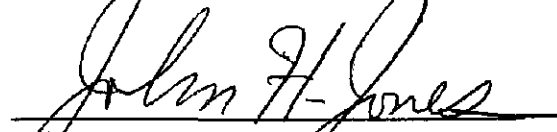
The parties have manifested their consent to the Settlement Agreement by affixing their signatures below on this 30<sup>th</sup> day of March, 2007.

On behalf of the Respondent



**Bradley Cherry**  
President  
Cherry's Propane Service, Ltd.  
5393 SR 224  
Ottawa, Ohio 45875  
(419) 456-3198

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



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