

FILE

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

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In the Matter of Rockmill Machinery : Case No. 07-18-TR-CVF
Transfer, Inc., Notice of Apparent : (OH290002764C)
Violation and Intent to Assess :
Forfeiture.

SETTLEMENT AGREEMENT

I. Introduction

Pursuant to Rule 4901:2-7-11 of the Ohio Administrative Code (O.A.C.), Rockmill Machinery Transfer, Inc., (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 file an application

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for rehearing that includes a request to terminate and withdraw from the Settlement Agreement. Upon the application for rehearing and request to terminate/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 April 26, 2006, Respondent's vehicle was stopped and inspected by Staff of the Department of Public Safety. During the course of the inspection the Inspector cited the carrier for not having a unit number on both sides of the power unit under 49 C.F.R. 392.2, which is a requirement of Rule 4901:2-5-10 of the O.A.C. The carrier was also cited for no or defective brake warning device, no audible or visual warning under 49 C.F.R. 393.51. As a result of the violations discovered, the Respondent Rockmill Machinery Transfer, Inc. was assessed a \$150.00 civil forfeiture by the Compliance Division.
- 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. OH3290002764C. The Total Forfeiture Staff assessed Respondent was \$150.00 for the alleged violations.
- C. Respondent made a timely formal request for an administrative hearing pursuant to Rule 4901:2-7-13 of the 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. 393.51 violation of no or defective brake warning device, no audible or visual warning. The Commission Staff and Respondent agree that Respondent will pay a civil forfeiture in the amount of \$50.00 for the no or defective brake-warning violation. The Commission Staff and Respondent agree that the violation for company markings, as required by 49 C.F.R. 392.2 and Rule 4901:2-5-10 of the O.A.C., should be dismissed with no civil forfeiture being assessed.
- B. For purposes of settlement, and not as an admission or evidence that the violations above occurred, Respondent agrees that the citations for the no or defective brake warning device and no company markings on the power unit 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.
- C. 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.

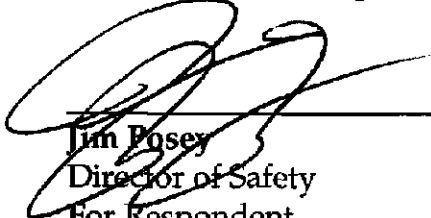
- D. Respondent shall have thirty-days from the entry of the Commission order adopting the Settlement Agreement to pay the \$50.00 forfeiture for the no or defective brake warning device violation of 49 C.F.R. 393.51, which shall be paid using a certified check or money order payable to: "Treasurer State of Ohio," and mail to: PUCO Fiscal, 180 E. Broad St., 13th Floor, Columbus, Ohio 43215-3793.
- E. 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 ^{24th}~~27~~ day of July, 2007.

On behalf of the Respondent



Jim Posey
Director of Safety
For Respondent
Rockmill Machinery Transfer, Inc.
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On behalf of the Staff of the Public
Utilities Commission of Ohio



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