

FILE

BEFORE

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THE PUBLIC UTILITIES COMMISSION OF OHIO

2007 DEC -4 AM 8:52

In the Matter of a Settlement Agreement )  
Between the Public Utilities Commission of )  
Ohio and E. Pence Trucking )

Case No. 07-1159-TR-UNC

PUCO

SETTLEMENT AGREEMENT

- 1) This agreement was reached between E. Pence Trucking, the Respondent in Staff Case No. CR07C078, and the Staff of the Public Utilities Commission of Ohio (Staff), pursuant to Rule 4901:2-7-11(A), Ohio Administrative Code (O.A.C.).
- 2) On November 22, 2006, a compliance review of the Respondent's facility located at 1142 Millville Shandon Road, Hamilton, Ohio, was conducted by Staff. As the result of discovery of the following apparent violations of Rule 4901:2-5-02, O.A.C., Staff timely notified Respondent pursuant to Rule 4901:2-7-07, O.A.C., that it intended to make a civil monetary assessment against Respondent in the following amounts:

<u>Code</u>	<u>Violation</u>	<u>Forfeiture</u>
49 C.F.R. § 387.7(d)	Failing to maintain at principal place of business required proof of financial responsibility.	\$ 700.00
49 C.F.R. § 391.25(c)(2)	Failing to maintain a record of annual review in driver's qualification file.	\$ 00.00
49 C.F.R. § 391.25(c)(2)	Failing to maintain a record of annual review in driver's qualification file.	\$ 00.00
49 C.F.R. § 391.45(b)(1)	Using a driver not medically examined.	\$ 400.00
49 C.F.R. § 391.45(b)(1)	Using a driver not medically examined.	\$ 500.00
49 C.F.R. § 391.51(b)(2)	Failing to maintain inquiries into driver's driving record in driver's qualification file.	\$ 600.00
49 C.F.R. § 391.51(b)(4)	Failing to maintain the responses of each State agency to the annual driver record inquiry.	\$ 00.00
49 C.F.R. § 391.51(b)(4)	Failing to maintain the responses of each State agency to the annual driver record inquiry.	\$ 00.00
49 C.F.R. § 391.51(b)(6)	Failing to maintain a list or certificate relating to violations of motor vehicles laws and ordinances.	\$ 00.00
49 C.F.R. § 391.51(b)(6)	Failing to maintain a list or certificate relating to violations of motor vehicles laws and ordinances.	\$ 00.00
49 C.F.R. § 392.9a(a)	Operating a commercial motor vehicle without the required operating authority.	\$ 875.00
49 C.F.R. § 396.11(a)	Failing to require driver to prepare driver vehicle inspection report.	\$ 00.00

- 3) A conference was conducted pursuant to Rule 4901:2-7-10(B), O.A.C., at which the Respondent had a full opportunity to present any reasons why the violations did not occur as alleged, mitigating circumstances regarding the amount of any forfeiture, and any other information relevant to the action proposed to be taken by Staff.
- 4) For purposes of settlement, and not as an admission or evidence that the violations occurred, Respondent agrees that the findings of violations enumerated in paragraph two of this agreement may be included in

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the Respondent's Safety-Net record, and in Respondent's history of violations insofar as they may be relevant for purposes of determining future penalty actions.

- 5) The Respondent agrees to make payment of a civil forfeiture of one thousand one hundred dollars (\$1,100.00) within thirty days after the effective date of this settlement agreement.
- 6) The Respondent agrees to grant consensual 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.
- 7) In the event that the Respondent fails to fulfill its obligations under this settlement agreement, or in the event that compliance reviews of facilities or roadside inspections of vehicles operated by the Respondent, conducted during the period of one year following the effective date of this settlement agreement, reveals a pattern of violations of the Hazardous Materials Regulations, 49 C.F.R. Parts 171 through 180, or the Federal Motor Carrier Safety Rules, 49 C.F.R. Parts 382, 383, 387, 390 through 397, by the Respondent, the Respondent agrees to make payment of an additional civil forfeiture of one thousand one hundred dollars (\$1,100.00).
- 8) Respondent and Staff agree that nothing in this settlement agreement shall prevent Staff from assessing civil forfeitures pursuant to Chapter 4901:2-7, O.A.C., 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 Chapter 4901:2-7, O.A.C., as the result of future compliance reviews or roadside inspections.
- 9) This agreement shall not become effective until adopted by and made the order of the Commission pursuant to Rule 4901:2-7-11(C), O.A.C. The date of any entry or order of the Commission adopting this settlement agreement shall be considered the effective date of this settlement agreement. Respondent further waives its right to rehearing in accordance with Rule 4901-1-35, O.A.C.
- 10) Respondent understands that this agreement may be adopted by the Commission as its order without notice pursuant to Rule 4901:2-7-11(D), O.A.C. If Respondent defaults in its obligations under this agreement, the Commission may set this agreement aside and order the Respondent to pay the amount indicated in the Notice of Intention to Assess Forfeiture served in this case, pursuant to Rule 4901:2-7-11(E), O.A.C.
- 11) This agreement, which is subject to the Rules of the Commission, constitutes the entire agreement of the parties.

Orville E. Pence

Orville E. Pence, Owner  
For E. Pence Trucking

6-22-07

Date

Robert E. Marvin

Robert E. Marvin, Director  
Transportation Department  
Public Utilities Commission of Ohio  
cc: Commission agenda/CR07C078

6/27/07

TF