

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of a Settlement Agreement )  
Between the Public Utilities Commission of ) Case No. 07-1159-TR-CVF  
Ohio and E. Pence Trucking. )

## FINDING AND ORDER

### The Commission finds:

- (1) Sections 4919.79 and 4921.04 of the Revised Code authorize the Commission to adopt safety rules applicable to interstate and intrastate highway transportation and the 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 Regulations and the Hazardous Materials Regulations of the U.S. Department of Transportation contained in Title 49, Parts 40, 382, 383, 385, 387, 390 through 397, and Parts 171 through 180, Code of Federal Regulations (C.F.R.). Sections 4905.83, 4919.99 and 4921.99 of the Revised Code authorize the Commission to assess forfeiture against any person who violates these rules. Pursuant to this statutory authority, the Commission adopted the civil forfeiture and compliance proceeding rules contained in Rules 4901:2-7-01 through 4901:2-7-22, O.A.C. This action is brought pursuant to those rules and regulations.
- (2) On November 22, 2006, Staff conducted a compliance review of a facility operated by E. Pence Trucking, located at 1142 Millville Shandon Road, Hamilton, Ohio.
- (3) During the compliance review, staff discovered apparent violations of the Code of Federal Regulations including:

49 C.F.R. §387.7(d)	Failing to maintain proof of financial liability	\$700.00
49 C.F.R. §391.45(b)(1)	Using a driver not medically qualified	\$400.00
49 C.F.R. §391.45(b)(1)	Using a driver not medically examined	\$500.00

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49 C.F.R. §391.51(b)(2)	Failing to maintain inquiries into driver's record	\$600.00
49 C.F.R. §392.9a(a)	Operating a commercial motor vehicle without the required operating authority.	\$875.00

- (4) Respondent requested a conference pursuant to Rule 4901:2-7-10, O.A.C. The matter was discussed, and the Respondent had a full opportunity to present any evidence that the violations did not occur as alleged, mitigating circumstances regarding the amount of the forfeiture, and any other information relevant to the action proposed to be taken by Staff.
- (5) As the result of this conference, Staff and Respondent entered into a settlement agreement to resolve these inspections. Among the terms of the settlement agreement, the Respondent agreed to make payment of \$1,100.00 within thirty days after the effective date of this Finding and Order. The eight hundred and seventy-five dollar fine associated with failure to obtain operating authority was waived after Respondent obtained its authority.
- (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 Finding and Order.
- (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. 171 through 180, or the Federal Motor Carrier Safety Rules, 49 C.F.R. 382, 383, 387, 390 through 397, by the Respondent, the Respondent agrees to make a payment of an additional civil forfeiture of \$1,100.00.
- (8) Respondent agrees that the findings of violations enumerated above will be included in the Respondent's Safety-Net record and in Respondent's history of violations insofar as they may be relevant for purposes of determining future penalties.
- (9) Rule 4901:2-7-11(C), O.A.C., provides that settlement agreements providing for the payment of civil forfeitures of one thousand

dollars or more for any violation shall not be effective until approved by and made the order of the Commission.

- (10) The settlement agreement entered into between Staff and Respondent represents an equitable settlement of the matter and should be approved and adopted by the Commission.

It is, therefore,

ORDERED, That the terms and conditions of the settlement agreement entered into between Staff and E. Pence Trucking be approved and adopted by the Commission by this Finding and Order. It is, further,

ORDERED, That the Respondent pay \$1,100.00 within 30 days from the effective date of this Finding and Order. It is, further,

ORDERED, That the Commission's Docketing Division serve a copy of this Finding and Order on Respondent, E. Pence Trucking.

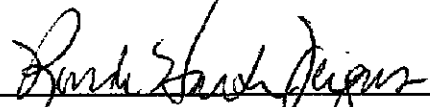
THE PUBLIC UTILITIES COMMISSION OF OHIO

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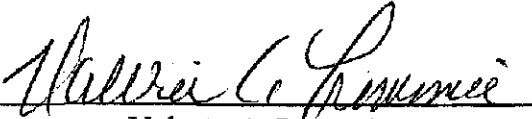
Alan R. Schriber, Chairman



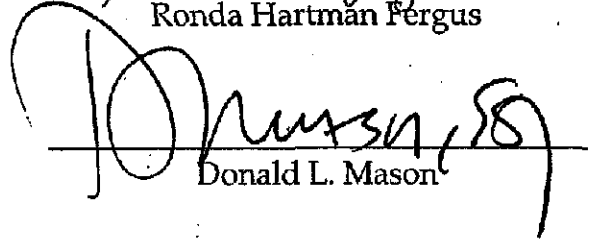
Paul A. Centolella



Ronda Hartman Fergus



Valerie A. Lemmie



Donald L. Mason

EW:sm

Entered in the Journal

DEC 05 2007



Renee J. Jenkins  
Secretary