

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of a Settlement Agreement)
Between the Public Utilities Commission of) Case No. 08-38-TR-CVF
Ohio and Marietta Industrial Enterprises, Inc.)

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 December 27, 2006, Staff conducted a compliance review of a facility operated by Marietta Industrial Enterprises, Inc. and located at 17943 State Route 7, Marietta, Ohio.
- (3) During the compliance review, staff discovered apparent violations of the Code of Federal Regulations including:

49 C.F.R. §382.115(a)	Failing to implement an alcohol and drug testing program	\$1,000.00
49 C.F.R. §391.51(b)(2)	Failing to prepare records of duty status	\$ 800.00
49 C.F.R. §396.17(a)	Using a commercial vehicle not inspected	\$ 575.00

49 C.F.R. §172.800(b)

Transporting hazardous materials
without a security plan

\$1,000.00

- (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 \$1,428.50 within thirty days of the effective date of the settlement agreement.
- (6) Respondent agrees to grant consensual access to the Staff to conduct compliance reviews, without notice, of all of its facilities located in the state of Ohio, at any time during the period of one year from the effective date of the settlement agreement.
- (7) In the event that the Respondent fails to fulfill its obligation under the settlement agreement, or in the event that compliance reviews of the facilities or roadside inspections of vehicles operated by Respondent, conducted during the period of one year following the effective date of the settlement agreement, reveals a pattern of violations of the Hazardous Materials Regulations contained in 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 Respondent, the Respondent agrees to make payments of an additional civil forfeiture of \$1,428.50.
- (8) Respondent agreed 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.

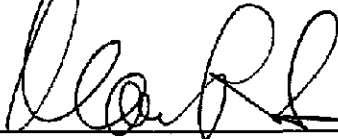
It is, therefore,

ORDERED, That the terms and conditions of the settlement agreement entered into between Staff and Marietta Industrial Enterprises, Inc. be approved and adopted by the Commission by this Finding and Order. It is, further,

ORDERED, That the Respondent pay \$1,428.50 within thirty days after the effective date of this Finding and Order. Payment should be sent to "Treasurer, State of Ohio", and mailed to the PUCO, Attention Fiscal Division, 13th Floor, 180 East Broad Street, Columbus, Ohio, 43215. In order to assure proper credit, the Respondent must write the inspection number on the face of the check. It is, further,

ORDERED, That the Commission's Docketing Division serve a copy of this Finding and Order on Respondent, Marietta Industrial Enterprises, Inc.

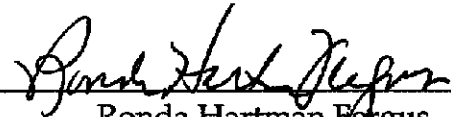
THE PUBLIC UTILITIES COMMISSION OF OHIO



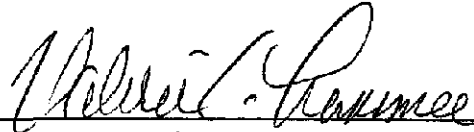
Alan R. Schriber, Chairman



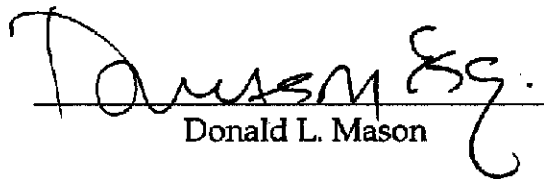
Paul A. Centolella



Ronda Hartman Fergus



Valerie A. Lemmie

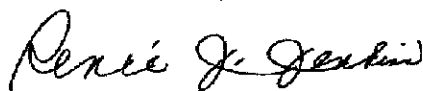


Donald L. Mason

EW:sm

Entered in the Journal

JAN 23 2008



Renee J. Jenkins
Secretary