

BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Request of The : Case No. 08-337-TR-CVF
Sherwin-Williams Company for an : (3204302124S)
Administrative Hearing. : Case No. 05-770-TR-CVF
 : (8016002216)
 : Case No. 05-170-TR-CVF
 : (3206300383)
 : (3236300095)
 : (3258001312)

FILE

RECEIVED-DOCKETING
2008 SEP -5 PM 3:08
PUCO

SETTLEMENT AGREEMENT

I. Introduction

Pursuant to Rule 4901:2-7-11 of the Ohio Administrative Code (O.A.C.), The Sherwin-Williams Company aka the Consumer Group (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 settlement of disputed claims 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 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,

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business
Technician *[Signature]* Date Processed 9-5-08

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. Respondent was cited five separate times, under 49 C.F.R. 173.30, for loading and shipping unsecure packages of hazardous material in trailers of transport commercial motor vehicles. A shipper of packaged paint products, Respondent was subjected to five different load inspections on five different dates at five separate locations in Ohio. As a result of those five inspections, Inspectors discovered an unsecure load, each time, of Respondent's packaged product. Those occasions were June 9, 2004; August 27, 2004; October 8, 2004; July 6, 2004; and August 27, 2007.
- 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. in each of these consolidated cases:

Inspection Date	Inspection No.	Commission Docket No.
June 9, 2004	3206300383	05-0170-TR-CVF
August 27, 2004	3236300095	05-0170-TR-CVF
October 8, 2004	3258001312	05-0170-TR-CVF
July 6, 2004	8016002216	05-770-TR-CVF
August 27, 2007	3204302124	08-0337-TR-CVF

The Total Forfeiture Staff assessed Respondent was \$2,490.00 for the alleged violations for all five of these inspections.

- C. Respondent made a timely formal request for an administrative hearing pursuant to Rule 4901:2-7-13 of the O.A.C. in each of these consolidated cases, and has disputed that the loads were unsecured and/or that Respondent is responsible for load securement after the load leaves its facility.
- D. Nevertheless, the parties have negotiated this Settlement Agreement which the parties believe resolves all the disputed issues raised in the notices 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 to a 50% reduction of the total civil forfeiture in lieu of a protracted litigation battle that both parties believe would present many evidentiary and logistical challenges. As a result, Respondent and Staff agree to a total civil forfeiture of \$1,245.00 that Respondent will pay for the alleged violations of 49 C.F.R. 173.30 in each of the consolidated cases set forth above.
- B. 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.
- C. Within 30 days of the effective date of the Settlement Agreement, Respondent shall make payment of \$1,245.00. Payment shall be made 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.

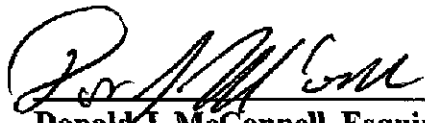
D. This Settlement Agreement is made in settlement of all factual or legal issues in this case. It is not intended to have any affect whatsoever in any other case or proceeding. Neither this Agreement, nor any of its terms shall constitute or be construed as, or be used as evidence of, an admission of fact or law or an acknowledgment of a violation of any law or regulation.

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 29th day of August, 2008.

On behalf of the Respondent


Donald J. McConnell, Esquire
The Sherwin-Williams Company
101 Prospect Ave., NW
1100 Midland Building
Cleveland, Ohio 44115-1075
(216) 566-3741

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


John H. Jones
Werner L. Margard
Thomas G. Lindgren
Assistant Attorneys General
Public Utilities Section
180 East Broad Street, 9th Floor
Columbus, Ohio 43215-3793
(614) 466-4395


Ralph E. Cascarilla, Esquire
Walter & Haverfield LLP
The Tower at Erieview
1301 E. Ninth Street, Suite 3500
Cleveland, Ohio 44114
(216) 781-1212

Counsel for The Sherwin-Williams
Company