BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of a Settlement Agreement between the Public Utilities Commission of Ohio and Strikeleather Enterprise.

Case No. 08-1013-TR-CVF CR08C193

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 highway transportation and the offering for intrastate 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 40,383, 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 March 14, 2008, Staff conducted a compliance review of a facility operated by Strikeleather Enterprises (Strikeleather, Respondent) located at Greenville, Ohio.
- (3) During the compliance review, staff discovered apparent violations of the Code of Federal Regulations including but not limited to:

49 CFR. §382.115(a)	Failing to implement an alcohol	
	and/or controlled substance test	
	program.	\$400.00

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49 CFR. §391.23(a)(2)	Failing to investigate driver's previous employment record and/or safety performance history.	\$900.00
49 CFR §391.23(b)	Failing to obtain a copy of the driver's driving record.	\$800.00
49 CFR §391.45(a)	Using a driver not medically examined.	\$700.00
49 CFR §395.8(a)	Failing to make record of duty status.	\$2100.00
49 CFR §395.8(a)	Failing to make record of duty status.	\$2 100.00
49 CFR §396.11(a)	Failing to require driver to prepare driver vehicle report.	\$21 00.00

- (4) Respondent requested a conference pursuant to Rule 4901:2-7-10, OAC. 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. At conference, Respondent notified staff that it had implemented new policies in order to comply with the regulations at issue in this matter. Those new company policies included: subjecting all drivers to employment record checks, drug testing and alcohol testing; obtaining and retaining a copy of all drivers' driving records; requiring a medical examination and certification for all drivers; and requiring all drivers to prepare and submit vehicle inspection reports and records of duty status. Because of the mitigating measures taken after the compliance review and based on its history with the Commission, Staff offered to settle this matter with Respondent by agreeing to accept payment of \$4,865.00 within 30 days and holding a payment of the same amount in abeyance, pending a follow-up audit within 12 months.
- (5) As the result of this conference, Staff and Respondent entered into a settlement agreement to resolve this case. Among the terms of the

settlement agreement, the Respondent agreed to make payment of \$4865.00. Respondent requested that it be allowed to pay over a five-month period. Staff has agreed to the requested payment plan.

- (6) Respondent further 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. In the event that the respondent fails to fulfill its obligations under this agreement or in the event that compliance reviews conducted during the period of one year following the effective date of this agreement reveal a pattern of violations of the Hazardous Materials Regulations 49 CFR Parts 171-180, or the Federal Motor Carrier Safety Rules, 49 CFR Parts 382, 383, 387, 390-397, by the Respondent, Strikeleather Enterprises agrees to make payment of an additional civil forfeiture of \$4865.00.
- (7) 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.
- (8) 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 Strikeleather Enterprise be approved and adopted by the Commission by this Finding and Order. It is, further,

ORDERED, That Strikeleather Enterprise pay \$4865.00 according to the payment plan set forth in the settlement agreement. Payments should be made payable 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, Strikeleather Enterprise must write the inspection number (CR08C193) 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 Strikeleather Enterprise.

THE PUBLIC UTILITIES COMMISSION OF OHIO Alan R. Schriber, Chairman

Paul A. Centolella

Ronda Hartman Fergus

Valerie A. Lemmie

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REM:js

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Reneé J. Jenkins Secretary