

FILE

BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO

RECEIVED-DOCKETING DIV

7/19/09 PM 4:46

In the Matter of Donald G. Hill,  
Notice of Apparent Violation and  
Intent to Assess Forfeiture.

:  
:  
:

Case No. 08-1259-TR-EVE  
(OH3202304545D)

PUCO

---

SETTLEMENT AGREEMENT

---

**I. Introduction**

Pursuant to Rule 4901:2-7-11 of the Ohio Administrative Code (O.A.C.), Donald G. Hill (Respondent) and the Staff of the Transportation Department of the Public Utilities Commission of Ohio (Staff) enter into this Settlement Agreement and urge the Public Utilities Commission of Ohio (Commission) to adopt the same.

It is understood by the Respondent and the Staff that this Settlement Agreement is not binding upon the Commission. This agreement, however, is based on the Respondent's and the Staff's desire to arrive at a reasonable result 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 date of the Commission's entry or order, to file an application for rehearing that includes a request to terminate and withdraw from

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 TEN Date Processed 8/11/2009

the Settlement Agreement. Upon the application for rehearing and request to terminate and withdraw from the Settlement Agreement being granted by the Commission, 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. On August 15, 2008, a vehicle owned by Old Dominion Freight Line, Inc. and driven by Respondent was observed failing to stop at a railroad crossing within the State of Ohio by a hazardous material inspector for Ohio. At the time, the vehicle was placarded as carrying class 8 hazardous materials. As a result, the driver was cited for the apparent violation:  
Failing to stop at railroad crossing-placarded class 8, in violation of 49 C.F.R 392.10(a)(3).
- B. The Staff timely served the Respondent with a notice of preliminary determination in accordance with O.A.C. Rule 4901:2-7-12 for Case No. OH3251007533C. The notice preliminary determination notified Respondent that Staff intended to assess a \$75.00 civil forfeiture against the Respondent for the apparent violation.
- C. The Respondent made a timely formal request for an administrative hearing pursuant to O.A.C. Rule 4901:2-7-13.

## **III. Settlement Agreement**

The parties hereto agree and recommend that the Commission find as follows:

- A. The Staff and the Respondent agree that Respondent withdraws his hearing request and agrees to pay the civil forfeiture identified in the notice of preliminary determination.
- B. The civil forfeiture shall be paid by certified check or money order made payable to "Treasure State of Ohio", and it shall be mailed to PUCO Fiscal, 180 E. Broad St., 10th floor, Columbus, OH 43215-3793; the case number should appear on the face of the check.
- C. The Staff and the Respondent agree that the citation may be included in the Respondent's Safety-Net record and history of violations insofar as it may be relevant for purposes of determining future penalty actions.
- D. This Settlement Agreement shall not become effective until adopted by the Commission. The date of the entry or order of the Commission adopting the Settlement Agreement shall be considered the effective date of the Settlement Agreement.
- E. This Settlement Agreement is made in settlement of all factual or legal issues in this case. It is not intended to have any effect whatsoever in any other case or proceeding.

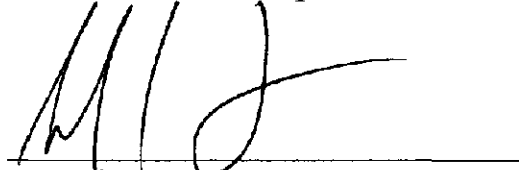
#### **IV. Conclusion**

This Settlement 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 or order in accordance with the terms set forth in this Settlement Agreement.

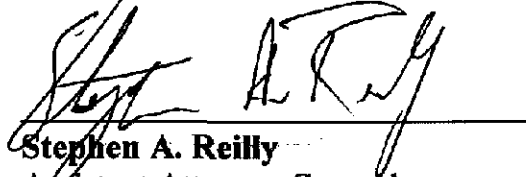
The parties have manifested their consent to the Settlement Agreement by affixing their signatures below.

On behalf of the Respondent:



**Michael J. Yenc, Jr.**  
Attorney at Law  
Yenc Law Offices  
600 South High St, Ste. 204  
Columbus, Ohio 43215  
(614) 228-2699.

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



**Stephen A. Reilly**  
Assistant Attorney General  
Public Utilities Section  
180 East Broad Street, 9th Floor  
Columbus, Ohio 43215-3793  
(614) 466-4396