

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of Fechko Excavating, Inc.,)	Case No. 10-292-TR-CVF
Notice of Apparent Violation and Intent to)	(CR10H001)
Assess Forfeiture.)	

FINDING AND ORDER

The Commission finds:

- (1) On October 1, 2009, Staff conducted a compliance review at the premises of Fechko Excavating, Inc. (Fechko), 865 W. Liberty Street, Suite 120, Medina, Ohio. The compliance review resulted in the discovery of the following alleged violations of Title 49, Code of Federal Regulations:

177.800(c)	Failure to train hazardous materials employees
180.417(a)(2)	Failure to maintain copies of required cargo tank certificates
382.305(b)(1)	Failure to conduct random alcohol testing of employees
382.305(b)(2)	Failure to conduct random drug testing of employees
391.23(a)(2)	Failure to investigate a driver's prior employment
391.45(a)	Using a driver not medically examined and certified
391.45(b)(1)	Using a driver not medically examined during prior 24 months
395.8(a)	Failure to require driver to make a record of duty status
396.3(b)	Failure to keep records of vehicle inspection, repair, maintenance

396.11(a) Failure to require driver to prepare daily vehicle inspection report

396.17(a) Using a CMV not periodically inspected

- (2) On February 10, 2010, Fechko was served with a Notice of Preliminary Determination (NPD), in accordance with Rule 4901:2-7-12, Ohio Administrative Code (O.A.C.). The NPD notified Fechko that Staff intended to make a civil monetary assessment against Fechko of \$12,925.00 for the violations found.
- (3) On March 9, 2010, Fechko made a formal request for an administrative hearing pursuant to Rule 4901:2-7-13, O.A.C.
- (4) On April 29, 2010, the parties filed a settlement agreement. On May 26, 2010, the parties filed an amended settlement agreement which, in the parties' opinion, resolves all issues raised in the NPD. In the amended settlement agreement, Staff and Fechko agree, and recommend that the Commission find, as follows:
 - (a) Staff examined Fechko's current financial condition and determined that Fechko's ability to pay the original assessment of \$12,925.00 is impacted. As a result, Staff recommends a fifty percent reduction in the assessed forfeiture to \$6,462.50.
 - (b) For purposes of settlement, Fechko agrees to the assessment of a civil forfeiture of \$6,462.50 for the alleged violations.
 - (c) Staff and Fechko also agree that the balance of the total \$12,925.00 forfeiture amount, \$6,462.50, will be held in abeyance for one year following Staff's February 10, 2010, NPD to Fechko, which provided a detailed breakdown of all the violations and forfeiture amounts assessed against Fechko in this case. If Staff determines, as a result of a compliance review at the same facility within that one year period, that Fechko is operating with the same type of violations found in the NPD, then the entire amount held in abeyance, \$6,462.50, shall be forfeited and paid by Fechko. If no violations of the same type are found within that one year period, the abeyance will automatically expire and have no further effect. Fechko did not have a history of violations with the Commission, and as a

result of this case, Fechko has reenrolled its employees in a drug testing consortium.

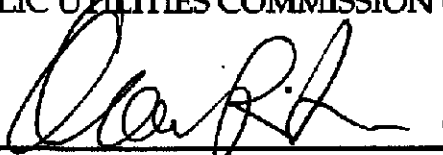
- (d) For purposes of settlement, Fechko agrees that the alleged violations may be included in its Safety-Net record.
 - (e) The forfeiture shall be paid over a period of twelve months in eleven monthly payments of \$538.54 and one monthly payment of \$538.56, so that the total agreed forfeiture of \$6,462.50 will be paid in full by twelve months from the date of the Commission's adoption of this Settlement Agreement. Payment shall be made using a certified check or money order payable to "Treasurer, State of Ohio" and mailed to The Public Utilities Commission of Ohio, Attention: Finance and Services Department, 180 East Broad Street, 4th Floor, Columbus, Ohio 43215-3793. Case Number 10-292-TR-CVF and "CR10H001" should be written on the check or money order.
 - (e) The amended settlement agreement shall not become effective until adopted by an opinion and order of the Commission. The date of the Commission order adopting the settlement agreement shall be considered the effective date of the settlement agreement.
 - (f) The amended settlement agreement is made in settlement of all factual or legal issues in this case. It is not intended to have any effect in any other case or proceeding.
- (5) The Commission finds that the amended settlement agreement submitted in this case is reasonable. Therefore, the amended settlement agreement should be approved and adopted in its entirety.

It is, therefore,

ORDERED, That the amended settlement agreement submitted in this case be approved and adopted in its entirety. It is, further,

ORDERED, That a copy of this Finding and Order be served upon Fechko Excavating, Inc., and all other interested parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO



Alan R. Schriber, Chairman



Paul A. Centolella



Valerie A. Lemmie



Steven D. Lesser



Cheryl L. Roberto

JML/dah

Entered in the Journal

JUN 09 2010



Renee J. Jenkins
Secretary