



file an application for rehearing or to terminate and withdraw from this agreement by filing a notice with the Commission. If an application for rehearing is filed, and if the Commission does not, on rehearing, accept the Settlement Agreement without material modification, either Party may terminate and withdraw from this agreement by filing a notice with the Commission within ten (10) business days of the Commission's order or entry on rehearing. In such an event, a hearing shall go forward, and the Parties shall be afforded the opportunity to present evidence through witnesses, to cross-examine all witnesses, to present rebuttal testimony, and to file briefs on all issues.

## **II. PROCEDURAL HISTORY**

A. On March 31, 2008, a Compliance Review was conducted by Staff at the Respondent's facility at 836 Broadway Avenue, Cleveland, Ohio. The inspection resulted in the discovery of nine apparent violations of the Federal Motor Carrier Safety and Hazardous Materials Regulations. Some of the apparent code violations contained repeat or multiple violations. The apparent violations in this case are:

- |                         |   |
|-------------------------|---|
| 49 C.F.R. § 172.704(a)  | Failing to train hazardous materials employees as required.                         |
| 49 C.F.R. §172.800(b)   | Offering or transporting hazardous materials without a security plan.               |
| 49 C.F.R. §391.45(b)(I) | Using a driver not medically examined and certified during the preceding 24 months. |

- 49 C.F.R. §391.51(b)(4) Failing to maintain the responses of each State agency to the annual driver record inquiry required by 391.25(a).
- 49 C.F.R. §391.51(b)(5) Failing to maintain a note relating to the annual review of the driver's driving record as required by 391.25(c)(2).
- 49 C.F.R. §391.51(b)(6) Failing to maintain a list or certificate relating to violations of motor vehicle laws and ordinances required by 391.27.
- 49 C.F.R. §395.8(a) Failing to require driver to make a record of duty status.
- 49 C.F.R. §396.11(a) Failing to require driver to prepare vehicle inspection reports.
- 49 C.F.R. §396.17(a) Using a commercial motor vehicle that is not periodically inspected.

B. Respondent was timely served with a notice of preliminary determination in accordance with Ohio Admin. Code §4901:2-7-12 on July 16, 2010. The notice of preliminary determination assessed Respondent \$3,100.00 for all violations, to wit:

- 49 C.F.R. §172.800(b) \$ 1,000.00
- 49 C.F.R. §391.45(b)(1) \$ 400.00
- 49 C.F.R. §395.8(a) \$ 700.00
- 49 C.F.R. §396.11(a) \$ 600.00
- 49 C.F.R. §396.17(a) \$ 400.00

C. Respondent made a timely formal request for an administrative hearing pursuant to Ohio Admin. Code §4901:2-7-13.

- D. Subsequently, Respondent paid \$2,100.00 to pay the assessments for the violations of 49 C.F.R. §§ 391.45(b)(1), 395.8(a), 396.11(a), and 396.17(a). Respondent maintained its request for hearing on the alleged violation of 49 C.F.R. §172.800(b).
- E. The parties have negotiated this Settlement Agreement, which the parties believe resolves all the issues raised in the notice of preliminary determination.

### **III. SETTLEMENT AGREEMENT**

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

- A. Respondent agrees to the assessment of a civil forfeiture of \$1,000.00 for the violation of 49 C.F.R. §172.800(b). One-half of this total (\$500.00), shall be due and payable by Respondent within 30 days of a Commission order adopting this Settlement Agreement. Respondent shall submit payment by certified check or money order to "Treasurer State of Ohio," and mail to: PUCO Fiscal, 180 E. Broad St., 4<sup>th</sup> Floor, Columbus, Ohio 43215.
- B. Respondent and Staff also agree that the balance of the forfeiture (\$500.00) will be held in abeyance for a period of one (1) year following the effective date of this Settlement Agreement. This Settlement Agreement is premised upon a recognition by the parties that the operations of Respondent that gave rise to the violation are no longer subject to the applicable regulation. However, if Staff determines, as a result of a compliance review at the same

facility within that one (1) year period, that Respondent's operations come within the purview of 49 C.F.R. §172.800(b), and Respondent is found not to be in compliance with that regulation, the entire amount held in abeyance (\$500.00) shall be forfeited and paid by Respondent.

- C. For purposes of settlement, Respondent agrees that the violation of 49 C.F.R. §172.800(b) 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 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 this 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 affect whatsoever in any other case or proceeding.

#### **IV. CONCLUSION**

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.

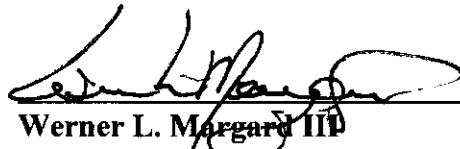
The parties have manifested their consent to the Settlement Agreement by affixing their signatures below on this 30<sup>th</sup> day of January 2012.

On behalf of Respondent,  
Cleveland Black Oxide



**Ken Schulz**  
Vice President  
Cleveland Black Oxide  
836 Broadway Avenue  
Cleveland, OH 44115

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



**Werner L. Margard III**  
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