

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Request of Cleveland)
Black Oxide for an Administrative) Case No. 10-1270-TR-CVF
Hearing.) (CR08H058)

FINDING AND ORDER

The Commission finds:

- (1) On March 31, 2008, a compliance review was conducted by Staff at the facility of the respondent, Cleveland Black Oxide.
- (2) As a result of the compliance review, Cleveland Black Oxide was timely served, on July 16, 2010, with a notice of preliminary determination (NPD), in accordance with Rule 4901:2-7-12, Ohio Administrative Code (O.A.C.). The NPD assessed Cleveland Black Oxide \$3,100 for alleged violations of the Commission's transportation regulations, as follows:
 - \$1,000 for violation of 49 C.F.R. § 172.800(b) Offering or transporting hazardous materials without a security plan.
 - \$700 for violation of 49 C.F.R. § 395.8(a) Failing to require driver to make a record of duty status.
 - \$600 for violation of 49 C.F.R. § 396.11(a) Failing to require driver to prepare vehicle inspection reports.
 - \$400 for violation of 49 C.F.R. § 391.45(b)(1) Using driver not medically examined and certified during the preceding 24 months.
 - \$400 for violation of 49 C.F.R. § 396.17(a) Using a commercial motor vehicle that is not permanently inspected.
- (3) On September 1, 2010, the respondent filed a request for an administrative hearing, pursuant to Rule 4901:2-7-13, (O.A.C.). Subsequently, the respondent paid \$2,100 to pay the assessments for all but the first of the above-listed violations, namely, the violations of 49 C.F.R §§ 395.8(a), 396.11(a), 391.45(b)(1), and

396.17(a). The respondent maintained its request for hearing on the alleged violation of 49 C.F.R. § 172.800(b).

- (4) On February 6, 2012, the parties filed a settlement agreement which, in the parties' opinion, resolves all of the issues raised in the NPD.
- (5) In the settlement agreement, the parties agree and recommend that the Commission find:
 - (a) The respondent agrees to the assessment of a civil forfeiture of \$1,000 for the violation of 49 C.F.R. § 172.800(b). One-half of this total (i.e., \$500), shall be due and payable by the respondent within 30 days of a Commission order adopting the submitted settlement agreement. The respondent shall submit payment by certified check or money order to "Treasurer, State of Ohio" and mail to: PUCO Fiscal, 180 East Broad Street, 4th Floor, Columbus, Ohio 43215.
 - (b) The respondent and Staff also agree that the balance of the total \$1,000 forfeiture amount, namely \$500, will be held in abeyance for a period of one year following the effective date of the settlement agreement. The settlement agreement is premised upon a recognition by the parties that the operations of the 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 year period, that the respondent's operations come within the purview of 49 C.F.R. § 172.800(b), and the respondent is found not to be in compliance with that regulation, the entire amount held in abeyance (\$500) shall be forfeited and paid by the respondent.
 - (c) For purposes of the settlement, the 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) The 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) The 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.
- (6) The Commission finds that the settlement agreement submitted in this case is reasonable. Therefore, the settlement agreement is hereby approved and adopted in its entirety.

It is, therefore,

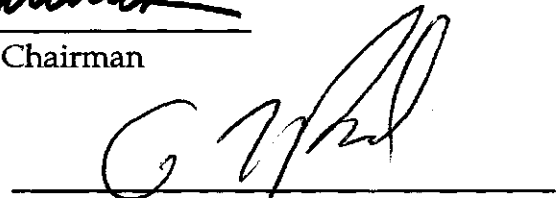
ORDERED, That the settlement agreement submitted in this case be approved and adopted in its entirety. It is, further,

ORDERED, That a copy of this finding and order be served on each party of record.

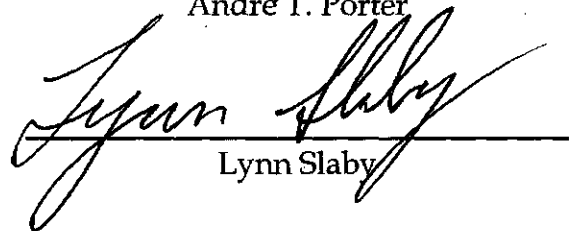
THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitchler, Chairman


Steven D. Lesser


Andre T. Porter

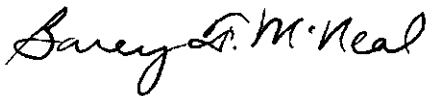

Cheryl L. Roberto


Lynn Slaby

DEF/dah

Entered in the Journal

APR 18 2012



Barcy F. McNeal
Secretary