

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of Roeder Cartage Company,)
Incorporated, Notice of Apparent Violation) Case No. 14-331-TR-CVF
and Intent to Assess Forfeiture.) (OH3214301526C)

OPINION AND ORDER

The Commission, considering the evidence of record, issues its opinion and order in this matter.

APPEARANCES:

Sanborn, Brandon, Duvall & Bobbitt, by L. Christopher Bobbitt, 2515 West Granville Road, Columbus, Ohio 43235, on behalf of Roeder Cartage Company, Inc.

Mike DeWine, Attorney General of Ohio, by Werner L. Margard, III, Assistant Attorney General, 180 East Broad Street, Columbus, Ohio 43215, on behalf of the Staff of the Public Utilities Commission.

NATURE OF THE PROCEEDING:

On August 14, 2013, Hazardous Materials Specialist Kelly Hedglin of the Staff inspected a motor vehicle operated by Roeder Cartage Company, Incorporated (Roeder Cartage or Company), and driven by Guy Royer (Mr. Royer), in the state of Ohio. Specialist Hedglin found the following violations of the Code of Federal Regulations (C.F.R.):

49 C.F.R. 177.817(a) – No shipping papers (carrier), Driver transporting a cargo tank with a residue shipment of UN1830, Sulfuric Acid 8, II; enroute to reload.¹

¹ 49 C.F.R. 177.817(a) provides, in part, that: A person may not accept a hazardous material for transportation or transport a hazardous material by highway unless that person has received a shipping paper prepared in accordance with part 172 of this subchapter or the material is excepted from shipping paper requirements under this subchapter. A subsequent carrier may not transport a hazardous material unless it is accompanied by a shipping paper * * * *.

49 C.F.R. 171.2(f) - Transporting hazardous materials not in accordance with special permit 12930 - not carried aboard vehicle as required.²

Roeder Cartage was timely served a Notice of Preliminary Determination (NPD) in accordance with Ohio Adm.Code 4901:2-7-12. In this notice, the Company was notified that Staff intended to assess civil monetary forfeitures of \$720.00 and \$360.00 for the 49 C.F.R. 177.817(a) and 49 C.F.R. 171.2(f) violations, respectively. A prehearing teleconference was conducted in the case. The parties, however, failed to reach a settlement agreement during the conference. Subsequently, a hearing was convened on May 27, 2014. At hearing, the forfeiture amounts were re-calculated to \$660.00 for the 49 C.F.R. 177.817(a) violation and \$330.00 for the 49 C.F.R. 171.2(f) violation.

Background:

The inspection in this case took place at the west-bound rest area on US Route 30 in Allen County, Ohio. At the time of the inspection, the truck operated by Roeder Cartage contained a residue of sulfuric acid (Staff Exhibit 1), i.e., the Company's cargo tank contained a residue from a previous shipment, and the driver was enroute to pick up another load. After the inspection, Roeder Cartage was cited under 49 C.F.R. 177.817(a) for not having a shipping paper, an out-of-service violation, and under 49 C.F.R. 171.2(f) for not having a special permit, which is not an out-of-service violation. The driver contacted Roeder Cartage's office and a Company employee brought a type of shipping paper, a document called a residue sheet, to the inspection site. The out-of-service restriction on the Roeder Cartage's truck for the shipping paper violation then was lifted, and the driver was allowed to continue on to his destination.

Issues in the Case:

As argued by Staff, Specialist Hedglin determined that Roeder Cartage's driver had no bill of lading or shipping paper in his possession. Further, the driver did not produce a copy of the special permit that is required for the cargo tank trailer of the Company's truck. Roeder Cartage maintained at hearing that a Company employee did bring a residue sheet, which listed the required information, to the inspection site, and it was accepted by Specialist Hedglin as the shipping paper. Roeder Cartage also maintained that there was no special permit violation because the required special permit for the

² 49 C.F.R. 171.2(f) provides, in part, that: No person may transport a hazardous material in commerce unless the hazardous material is transported in accordance with applicable requirements of this subchapter, or an exemption or special permit, approval, or registration * * * *
A special permit allows a carrier to transport a hazardous materials product in a trailer and not be required to have it internally inspected during a vehicle inspection (Tr. at 60).

Company's tank trailer was present at the inspection site, contained in a document receptacle called a "permit box" on the side of the trailer.

Summary of the Evidence:

After interviewing Roeder Cartage's driver, Mr. Royer, and conducting her inspection, Specialist Hedglin recorded the following in her inspection notes:

Driver stopped for inspection at west-bound rest area on US 30 in Lima, Ohio. Driver just left yard on North Dixie Highway in Lima with a cargo tank (U-2145) that contained a residue shipment of UN1830 Sulfuric Acid 8, II, and was enroute to Chemtrade in Cairo, Ohio to reload. Cargo tank was displaying class 8 placards with 1830 markings on all four sides. Driver was asked for bill of lading or shipping paper from last load. He stated that it was turned in at carrier and that he did not have it. He checked truck to see if he had an old shipping paper or something that met the requirements of 172.200. The only thing he could produce was a MSDS³ for Sulfuric Acid. Driver called carrier and an employee from Roeder brought to the inspection location a shipping paper with the proper shipping information. Driver was allowed to continue. The cargo tank, a 1995 MC 312 Brenner, is transported under SP-12930. The driver could not produce a copy of the special permit that is required to be carried under the modal requirement in section 10 of the permit. SP number shown on right side of cargo tank.

(Staff Ex. 1)

Specialist Hedglin testified that Mr. Royer was not able to produce a copy of either a shipping paper or the special permit when she requested them at the inspection site (Tr. at 12-13, 15, 20-21). She stated that, if the driver had been able to produce a copy of the special permit, by whatever means, she would have accepted it and that, if there had been a copy of the special permit in the permit box on the trailer, and if the driver had gone back to the trailer and produced it, she would have accepted it. Specialist Hedglin noted that no one, at any time, directed her to the location of a special permit, or told her where a special permit could be found. She stated that a special permit is not like a shipping paper, which is required to be kept within arm's reach while the driver is behind the

³ An MSDS is a material data safety sheet, a document that contains specific safety information about a hazardous materials load (Tr. at).

controls of the vehicle. Specialist Hedglin noted that a special permit is not required to be kept in the cab of the truck and that, as long as the driver can produce it, a special permit is acceptable. Further, she testified that she did not tell the driver that the special permit had to be in the cab of the truck. (Tr. at 12-13, 15, 20-24.)

Jonathan Frye, chief of the Commission's Motor Carrier Compliance Division, testified that the monetary values of the fines for Roeder Cartages' violations were determined by using a civil forfeiture violations chart and that the violations listed in this case are indicated by violation group numbers in the chart that refer to the amounts of the forfeitures. He testified that the forfeitures in this case for lack of a shipping paper and the special permit violation are listed in the chart and that the correct forfeiture amounts for the shipping paper and special permit violations are \$660.00 and \$330.00, respectively. Mr. Frye noted that the procedure used in connection with the fine schedule is uniform for similar offenses and that the criteria in the violations chart are consistent with the standards set by the Commercial Vehicle Safety Alliance. Mr. Frye further testified that even though a qualifying document was produced at the inspection in lieu of a shipping paper, there would still be a violation. Lastly, he noted that the assessed value of that violation was determined using the inspection report and the violations chart. (Tr. at 30-47.)

Mr. Royer testified that, when he was stopped by Specialist Hedglin, he had no shipping paper to give her. He stated that, instead, he gave her a material safety data sheet and, later in the inspection, a copy of an old bill of lading. He noted that this old bill of lading, which was similar to the bill of lading introduced into evidence as Respondent's Exhibit 4, was not for the current load that he had in the trailer of Roeder Cartage's truck, but it was for the type of product that was in the trailer. However, Specialist Hedglin would not accept the old shipping paper because the date on it was more than a year old. Mr. Royer testified that an employee from Roeder Cartage then brought him a residue sheet, which was similar to the generic residue sheet that was introduced into evidence as Respondent's Exhibit 5. The residue sheet that was brought to the inspection site did not have a date on it, and Specialist Hedglin accepted it as the shipping paper. (Tr. at 53-56; Respondent's Exs. 4 and 5.)

Mr. Royer testified that the required special permit for Roeder Cartage's tank trailer was located on the trailer during the inspection. He testified that Specialist Hedglin requested a copy of the special permit and that he told her there was a special permit on the trailer. He stated that he did not offer to get the special permit from the trailer. Mr. Royer also testified that, because Specialist Hedglin implied that the special permit had to be in the tractor of the truck, he just told her that he did not have one in the tractor. Further, Mr. Royer noted that, when Specialist Hedglin showed him a copy of her rule book, she was adamant that the special permit had to be in the motor vehicle. According to Mr. Royer, Specialist Hedglin implied, and he assumed, that she meant the tractor of the

truck. Therefore, it did not matter that there was a special permit on the trailer. Mr. Royer testified that, since he did not have a special permit in the tractor, the one on the trailer was of no use, and he did not argue with Specialist Hedglin. (Tr. at 56 - 66.)

Robert Mitchell, director of safety and training for Roeder Cartage, testified that the photographs comprising Respondent's Exhibits 2 and 3 depict the Roeder Cartage tank trailer involved in the inspection in this case. Mr. Mitchell noted that the photographs were taken in preparation for the hearing. He stated that a copy of the special permit was on the trailer during the July 14, 2013 inspection and that he knew this because, when Mr. Royer returned to Roeder Cartage's terminal after the inspection, he personally checked and saw the special permit in the permit box on the trailer. Moreover, after reading the requirements in Section 10 of Roeder Cartage's special permit and the definition of cargo tank motor vehicle contained in 49 C.F.R. 171.8,⁴ Respondent's Exhibits 1 and 6, respectively, Mr. Mitchell stated that a copy of the special permit was located on Roeder Cartage's cargo tank motor vehicle, which included the tank trailer, at the time of the August 14, 2013 inspection. (Tr. at 67 - 75; Respondent's Exhibits 1, 2, 3, and 6.)

Mr. Mitchell testified that, during a conversation with Mr. Royer at Roeder Cartage's terminal after the inspection, there was no discussion about Mr. Royer not producing a copy of the special permit for Specialist Hedglin. Further, Mr. Mitchell testified that he did not remember such a discussion. On re-direct examination, however, Mr. Mitchell testified that, according to the conversation he had with Mr. Royer, the reason Mr. Royer did not produce the special permit during the inspection was because Specialist Hedglin told him it had to be in the tractor of the truck. (Tr. at 76 - 78.)

⁴ Section 10 of Roeder Cartage's special permit reads: MODAL REQUIREMENTS: A current copy of this special permit must be carried aboard each cargo tank motor vehicle used to transport materials covered by this special permit.

49 C.F.R. 171.8 reads, in part, as follows:

Cargo tank means a bulk packaging that: (1) Is a tank Intended primarily for the carriage of liquids or gases and includes appurtenances, reinforcements, fittings, and closures (for the definition of a tank, see 49 CFR 178.320, 178.337-1, or 178.338-1, as applicable); (2) Is permanently attached to or forms a part of a motor vehicle, or Is not permanently attached to a motor vehicle but which, by reason of its size, construction or attachment to a motor vehicle is loaded or unloaded without being removed from the motor vehicle.

Cargo tank motor vehicle means a motor vehicle with one or more cargo tanks permanently attached to or forming an integral part of the motor vehicle.

Motor vehicle includes a vehicle, machine, tractor, trailer, or semitrailer, or any combination thereof, propelled or drawn by mechanical power and used upon the highways in the transportation of passengers or property. It does not include a vehicle, locomotive, or car operated exclusively on a rail or rails, or a trolley bus operated by electric power derived from a fixed overhead wire, furnishing local passenger transportation similar to street-railway service.

Discussion and Conclusion:

In this case, the driver/vehicle examination report (Staff Exhibit 1), completed by Specialist Hedglin at the scene of the inspection of Roeder Cartage's truck, lists a 49 C.F.R. 177.817(a) violation for not having a shipping paper. The Commission initially notes that the parties' testimony differed with respect to whether or not an out-of-date shipping paper was offered by Mr. Royer to Specialist Hedglin during the inspection - with Specialist Hedglin's testimony and her inspection notes stating that no shipping paper, only a material data safety sheet, was produced by Mr. Royer, and Mr. Royer testifying that he did offer Specialist Hedglin a year-old shipping paper that she did not accept. The Commission, however, also notes that Mr. Royer admitted that he had no shipping paper to give to Specialist Hedglin (Tr. at 53). Roeder Cartage, though, seemed to indicate through its examination of witnesses that, because a Roeder Cartage employee brought a document called a residue sheet from the Company's terminal to the inspection site, and that document was accepted by Specialist Hedglin as the shipping paper, then there was no shipping paper violation. The implication put forth by Roeder Cartage at hearing is that the 49 C.F.R. 177.817(a), shipping-paper violation had been "healed" by the Company's action in providing the required shipping-paper information on the residue sheet. The Commission believes, however, that a violation, once committed, cannot retroactively be corrected to expunge the original occurrence of the violation. So, even though Specialist Hedglin ultimately accepted the late-arriving residue sheet, and thereby allowed the out-of-service restriction for the shipping paper violation to be lifted on Roeder Cartage's truck, the violation still exists. The Commission, therefore, finds that Roeder Cartage is liable for the shipping paper violation.

With regard to the 49 C.F.R. 171.2(f), special permit violation, the Commission observes that there also was some disparity in the testimony presented by the parties. Mr. Royer testified that he told Specialist Hedglin there was a special permit located in the permit box on Roeder Cartage's tank trailer and that Specialist Hedglin implied that the special permit had to be located in the cab of the truck's tractor to be acceptable. Further, Mr. Royer testified that Specialist Hedglin read to him, from her book of transportation regulations, a regulation stating that a special permit for a hazardous materials tank trailer must be kept in the cab of the truck. Specialist Hedglin, for her part, did not testify anywhere in the record whether she did or did not read to Mr. Royer from a book of hazardous materials regulations. She did testify that Mr. Royer could not produce a copy of the special permit when asked for one and that she did not tell the driver that the special permit had to be in the cab of the truck. With regard to this difference in testimony, the Commission would speculate that, if Specialist Hedglin did read to Mr. Royer, she may have been reading about 49 C.F.R. 177.817(e).⁵ That section of the

⁵ 49 C.F.R. Section 177.817(e) provides, in part, that: A driver of a motor vehicle containing hazardous material, and each carrier using such a vehicle, shall ensure that the shipping paper required by this section is readily available to, and recognizable by, authorities in the event of accident or inspection.

hazardous materials regulations does require that a *shipping paper* (emphasis added) be kept within the driver's reach in the cab of the truck. Perhaps that purported exchange between Mr. Royer and Specialist Hedglin is where Mr. Royer got the idea that a special permit had to be kept with the driver. Be that as it may, there was no disagreement between the parties on this point - Specialist Hedglin requested the special permit from Mr. Royer during the inspection and Mr. Royer did not produce one (Tr. at 15, 20-21, 64).

With regard to Mr. Mitchell's testimony about the special permit, the Commission notes that it relates to his visual observation of a special permit in the permit box on the trailer while the truck was parked at Roeder Cartage's terminal - after the inspection. There was no corroborating testimony presented at hearing to substantiate Mr. Royer's contention that a special permit was located on the trailer at the inspection site. Moreover, we would note that confirming the existence of a special permit miles from the scene of an inspection or a hazardous materials incident would be of no help to authorities either in enforcing the hazardous materials safety regulations or in dealing with a hazardous materials spill.

At the time of the inspection, the record discloses that no special permit for the Company's tank trailer was produced for Specialist Hedglin, or even pointed out to her, by Mr. Royer. Neither Mr. Royer's testimony that a special permit was on the trailer at the inspection site, nor Mr. Mitchell's testimony that a special permit was observed later at Roeder Cartage's terminal, alters that fact. Because no special permit was seen by Specialist Hedglin, much less examined by her, during the inspection, the Commission believes that, for purposes of the inspection, Mr. Royer's failure to produce a special permit equates to not having one at all. Therefore, the Commission finds that Roeder Cartage is liable for the special permit violation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) On August 14, 2013, Commission Staff inspected a motor vehicle operated by Roeder Cartage, and driven by Guy Royer, in the state of Ohio. Staff found the following violations of the Code of Federal Regulations (C.F.R.):

Specifically, the driver and the carrier shall: (1) Clearly distinguish the shipping paper, if it is carried with other shipping papers or other papers of any kind, by either distinctively tabbing it or by having it appear first; and (2) Store the shipping paper as follows:

- (i) When the driver is at the vehicle's controls, the shipping paper shall be: (A) Within his immediate reach while he is restrained by the lap belt; and (B) either readily visible to a person entering the driver's compartment or in a holder which is mounted to the inside of the door on the driver's side of the vehicle.

49 C.F.R. 177.817(a) - No shipping papers (carrier), Driver transporting a cargo tank with a residue shipment of UN1830, Sulfuric Acid 8, II; enroute to reload.

49 C.F.R. 171.2(f) - Transporting hazardous materials not in accordance with special permit 12930 - not carried aboard vehicle as required.

- (2) Roeder Cartage was served with an NPD that set forth civil forfeitures for the violations in this case, \$360.00 for the 49 C.F.R. 177.817(a) violation and \$720.00 for the 49 C.F.R. 171.2(f) violation. At hearing, the forfeiture amounts were recalculated to \$660.00 for the 49 C.F.R. 177.817(a) violation and \$330.00 for the 49 C.F.R. 171.2(f) violation.
- (3) A hearing in this matter was convened on May 27, 2014.
- (4) Staff demonstrated at hearing, by a preponderance of the evidence, that Roeder Cartage violated 49 C.F.R. 177.817(a) and 49 C.F.R. 171.2(f).
- (5) Roeder Cartage's arguments at hearing were not sufficient to demonstrate that the Company should not be held liable for the civil forfeitures assessed for the 49 C.F.R. 177.817(a) and 49 C.F.R. 171.2(f) violations.
- (6) Pursuant to R.C. 4923.99, Roeder Cartage must pay the State of Ohio the civil forfeitures assessed for the 49 C.F.R. 177.817(a) and 49 C.F.R. 171.2(f) violations. Roeder Cartage shall have 30 days from the date of this order to pay the total assessed amount of \$990.00 for the assessed forfeitures.

It is, therefore,

ORDERED, That Roeder Cartage pay the total assessed amount of \$990.00 for the 49 C.F.R. 177.817(a) and 49 C.F.R. 171.2(f) violations, as set forth in Finding (6). Payment should be made payable to "Treasurer, State of Ohio" and mailed or delivered to Public Utilities Commission of Ohio, Attention: Fiscal Department, 180 East Broad Street, 4th Floor, Columbus, Ohio 43215-3793. In order to assure proper credit, Roeder Cartage is directed to write the case number (OH3214301526C) on the face of the check or money order. It is, further,

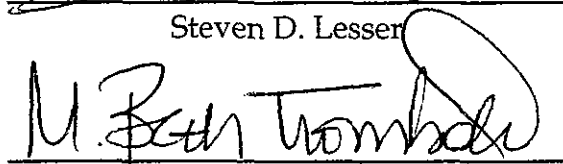
ORDERED, That the Attorney General of Ohio take all legal steps necessary to enforce the terms of this Opinion and Order. It is, further,

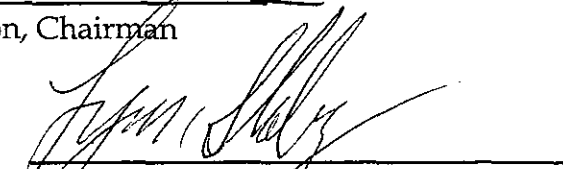
ORDERED, That a copy of this Opinion and Order be served upon each party of record.

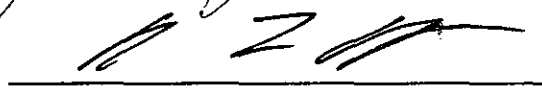
THE PUBLIC UTILITIES COMMISSION OF OHIO


Thomas W. Johnson, Chairman


Steven D. Lesser

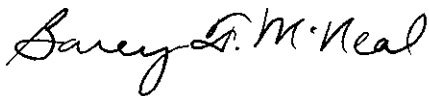

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Secretary