

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of Wallseye Concrete, Notice )  
of Apparent Violation and Intent to Assess ) Case No. 15-885-TR-CVF  
Forfeiture. ) (CR201501150137)

FINDING AND ORDER

The Commission finds:

- (1) R.C. 4923.04 provides that the Commission shall adopt rules applicable to the transportation of persons or property by motor carriers operating in interstate and intrastate commerce. Pursuant to Ohio Adm.Code 4901:2-5-03(A), the Commission adopted the Federal Motor Carrier Safety Regulations for the purpose of governing transportation by motor vehicle in the state of Ohio. Further, R.C. 4923.99 authorizes the Commission to assess a civil forfeiture of up to \$25,000 per day against any person who violates the safety rules adopted by the Commission.
- (2) On January 15, 2015, a compliance review was conducted at the facility of Wallseye Concrete (Respondent), located at 400 Lowell Street, Elyria, Ohio. The inspection resulted in the discovery of the following violations: 49 C.F.R. 391.23 (a) (failing to investigate driver's background, \$ 900.00); 49 C.F.R. 391.25 (a) (failing to make inquiry into driving record of each driver to the appropriate State agencies in which the driver held a commercial motor vehicle operator's license at least once every 12 months, \$0.00); 49 C.F.R. 391.11 (a) (using a driver not medically examined and certified during the preceding 24 months, \$500.00); 49 C.F.R. 396.11 (a) (failing to require driver to prepare driver vehicle inspection report, \$475.00); 49 C.F.R. 3892.301 (a) (using a driver before the motor carrier has received a negative pre-employment controlled substance test result, \$400.00); 49 C.F.R. 49 C.F.R. 396.17 (a) (using a commercial motor vehicle not periodically inspected, \$475.00); 49 C.F.R. 396.3 (a) (failing to systematically inspect, repair, and maintain, or cause to be systematically inspected, repaired, and maintained, all motor vehicles and intermodal equipment subject to your control, \$0.00); 49 C.F.R. 396.3 (b) (failing to keep minimum records of inspection and vehicle maintenance,

\$425.00); 49 C.F.R. 391.11 (b)(6) (failing to require driver to furnish list of motor vehicle traffic violations each 12 months, \$0.00); 49 C.F.R. 390.15 (b) (failing to maintain, for a period of three years after an accident occurs, an accident register, \$0.00); 49 C.F.R. 391.51 (B)(7) (failing to maintain medical examiner's certificate in driver's qualification file, \$400.00); 49 C.F.R. 382.603 (failing to ensure person designated to determine that drivers undergo reasonable suspicion testing receive 60 minutes training for alcohol and/or 60 minutes of training for controlled substances, \$0.00); 49 C.F.R. 391.51 (b)(2) (failing to maintain inquiries into driver's driving record in driver's qualification file, \$700.00); 49 C.F.R. 391.25 (b) (failing to review the driving record of each driver to determine whether that driver meets minimum requirements for safe driving or is disqualified to drive, \$0.00). The total forfeiture for all violations is \$4,275.00.

- (3) Staff timely served respondent with a notice of preliminary determination (NPD) in accordance with Ohio Adm.Code 4901:2-7-12. This notice indicated Staff's intention to assess civil forfeitures totaling \$4,275.00 for the alleged violations.
- (4) On May 5, 2015, Respondent requested an administrative hearing, thereby initiating this case.
- (5) A prehearing conference was conducted in this matter on June 18, 2015. Thereafter, by Entry dated June 23, 2015, a hearing was scheduled on August 13, 2015.
- (6) On July 21, 2015, the parties filed a settlement agreement which, in the parties' opinion, resolves all issues raised in the NPD. The following is a summary of the provisions agreed to by the parties and is not intended to replace or supersede the settlement agreement. The settlement agreement included, inter alia, the following provisions:
  - (a) For purposes of settlement, and not as an admission or evidence that the violations above occurred, Respondent agrees that all of the violations may be included in Respondent's Safety-Net record and history of violations insofar as they may be relevant for purposes of determining future penalty actions.

- (b) Respondent has implemented extensive corrective measures that address each of the listed violations following Staff's compliance review of Respondent's business. In addition, Respondent has a new full-time compliance officer to assure these problems and issues will not be repeated in the future.
  - (c) The parties have negotiated this settlement agreement which the parties believe resolves all of the issues raised in this case. Therefore, taking into consideration Respondent's corrective measures, the parties agree to a 30 percent reduction of the total forfeiture amount in paragraph two of this settlement agreement. Accordingly, the parties agree that Respondent is to make payment of a civil forfeiture of \$2,992.50, in 11 monthly installment payments of \$249.38 and 1 monthly installment payment of \$249.32. The first installment payment is due no later than 30 days after the effective date of this settlement agreement. Respondent shall submit payment by check or money order, payable to "Treasurer State of Ohio," and mail to: PUCO Fiscal, 180 E. Broad Street, 4th Floor, Columbus, OH 43215-3793. The case number (CR201501150137) must appear on the face of each payment.
  - (d) This settlement agreement shall not become effective until adopted by the Commission. The date of the Commission order 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 affect whatsoever in any other case or proceeding.
- (7) The Commission finds that the settlement agreement submitted in this case is reasonable. Therefore, the settlement agreement should be 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 Respondent pay a civil forfeiture of \$2,992.50 in accordance with the provisions of the settlement agreement. Payment shall be made by check or money order payable to "Treasurer, State of Ohio," and mailed to: PUCO Fiscal, 180 East Broad Street, 4th Floor, Columbus, Ohio 43215-3793. In order to assure proper credit, Respondent is directed to write the case number (CR201501150137) on the face of each check or money order. 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

  
Andre T. Porter, Chairman

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Lynn Slaby

  
M. Beth Trombold

  
Asim Z. Haque

  
Thomas W. Johnson

KKS/vrm

Entered in the Journal

**DEC 02 2015**



Barcy F. McNeal  
Secretary