

# THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF CARDINAL ASPHALT  
COMPANY, NOTICE OF APPARENT  
VIOLATION AND INTENT TO ASSESS  
FORFEITURE.

CASE NOS. 19-2240-TR-CVF  
(20-CR-316153)

20-692-TR-CVF  
(20-CR-3161535)

## FINDING AND ORDER

Entered in the Journal on December 2, 2020

### I. SUMMARY

{¶ 1} The Commission finds reasonable and approves the settlement agreement filed between Staff and Cardinal Asphalt Company regarding violations of the Commission's transportation rules.

### II. DISCUSSION

{¶ 2} R.C. 4923.04(A)(1) mandates that the Commission 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 (FMCSR), published in the Code of Federal Regulations (C.F.R.), 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, per violation, against any person who violates the safety rules adopted by the Commission.

{¶ 3} Pursuant to Ohio Adm.Code 4901:2-7-11(C) settlement agreements providing for the payment of forfeitures of \$5,000 or more for any violation must be approved by order of the Commission.

{¶ 4} On October 18, 2019, Staff conducted a compliance review of the facility of Cardinal Asphalt Company (Respondent). The inspection resulted in the discovery of six alleged violations of the FMCSR.

{¶ 5} Pursuant to Ohio Adm.Code 4901:2-7-07, Staff timely served Respondent with a Notice of Intent to Assess a Forfeiture (NIA). The NIA assessed Respondent a total civil forfeiture of \$8,800 for the six alleged violations.

{¶ 6} Pursuant to Ohio Adm.Code 4901:2-7-10, Respondent made a timely request for conference, which was held on December 18, 2019. Case No. 19-2240-TR-CVF was opened after the parties reached an initial settlement of this matter.

{¶ 7} Before a settlement agreement could be finalized, however, Respondent sought the advice of counsel and on April 2, 2020, filed a request for administrative hearing. As a result of this filing, the Commission's Docketing division opened Case No. 20-692-TR-CVF.

{¶ 8} Ultimately, the parties did reach a settlement concerning the alleged violations resulting from the October 18, 2019 inspection. On October 21, 2020, the parties filed, in Case No. 19-2240-TR-CVF, a settlement agreement (Settlement Agreement) that, in the parties' opinions, resolves the issues raised in this case. Staff and Respondent filed the Settlement Agreement in accordance with Ohio Adm.Code 4901:2-7-11(C), which requires settlement agreements providing for the payment of forfeitures of \$5,000 or more for any violation to be approved by order of the Commission. The following is a summary of the conditions agreed to by the parties; it is not intended to replace or supersede the Settlement Agreement.

- A. Respondent acknowledges that pursuant to the October 18, 2019 inspection, Respondent was found in violation of: 49 C.F.R. 382.115(a); 49 C.F.R. 390.15(b); 49 C.F.R. 391.51(a); 49 C.F.R. 395.8(a)(1); 49 C.F.R. 396.3(b); and 49 C.F.R. 396.17(a). Respondent further acknowledges that the violations listed above may be included in Respondent's Safety-Net record and history of violations insofar as they may be relevant for the purposes of determining penalty actions for future violations.

- B. The civil forfeiture assessed is \$4,400.
- C. Respondent accepts the violations and forfeitures as written.
- D. Pursuant to Ohio Adm.Code 4901:2-7-11, the Settlement Agreement shall not become effective until adopted by the Commission. The date of the Commission's order shall be the effective date of the Settlement Agreement.
- E. Respondent agrees to make payment of the civil forfeiture of \$4,400 within 30 days after the issuance of the Commission's order approving the Settlement Agreement. Payment shall be made by certified check or money order payable to "Treasurer State of Ohio," and mailed to PUCO, Attn: CF Processing, 180 E. Broad St., 4th Floor, Columbus, Ohio 43215-3793. The case number 20-CR-316153 should appear on the face of the check or money order.
- F. Respondent agrees to grant reasonable access to Staff to conduct compliance reviews, without notice, of all of Respondent's facilities located in the State of Ohio, at any time during the period of one year from the effective date of the Settlement Agreement.
- G. For one year from the effective date of the Settlement Agreement, Respondent agrees to make an additional civil forfeiture payment of \$2,060 if either of the following occur:
  - a. Respondent fails to fulfill its obligations under the Settlement Agreement; or
  - b. Compliance reviews of facilities conducted pursuant to the Settlement Agreement reveal a violation of any

regulation specifically identified in the Settlement Agreement as having been accepted by Respondent.

- H. In accordance with Ohio Adm.Code 4901:2-7-14(D), if the Respondent fails to comply with the provisions of the Settlement Agreement for a period exceeding 30 days, Respondent shall be in default and shall be deemed to have admitted the occurrence of the violations and waived all further right to contest liability for the forfeiture proposed in the NIA.
- I. The Settlement Agreement is intended to resolve factual or legal issues raised in this case; it is not intended to have any effect on any other case or proceeding.

{¶ 9} On November 10, 2020, Staff filed, in the dockets for both above-captioned cases, a motion to consolidate the cases. Because these dockets involve the same matter, Staff requests that the two cases be consolidated and that the Settlement Agreement filed in Case No. 19-2240-TR-CVF be treated as having been submitted in the consolidated case. Staff represents that Respondent has no objection to granting the motion, nor any objection to Staff's request that the motion be given expedited consideration.

{¶ 10} Having reviewed Staff's motion, the Commission finds that the motion to consolidate is reasonable and should be granted. The Commission finds that the above-captioned cases should be consolidated and that the Settlement Agreement filed in Case No. 19-2240-TR-CVF shall be treated as having been submitted in the consolidated case.

{¶ 11} The Commission further finds that the Settlement Agreement submitted in this case is reasonable. Therefore, the Settlement Agreement shall be approved and adopted in its entirety.

### III. ORDER

{¶ 12} It is, therefore,

{¶ 13} ORDERED, That the motion to consolidate be granted as stated in Paragraph 10. It is, further,

{¶ 14} ORDERED, That the Settlement Agreement submitted in this matter be approved and adopted in its entirety and that both above-captioned cases be closed of record. It is, further,

{¶ 15} ORDERED, That Respondent pay the civil forfeiture of \$4,400 in accordance with the Settlement Agreement. Payment shall be made by check or money order payable to "Treasurer State of Ohio," and mailed to PUCO, Attn: CF Processing, 180 E. Broad St., 4th Floor, Columbus, Ohio 43215-3793. In order to assure proper credit, Respondent is directed to the write case number 20-CR-316153 on the face of the check or money order. It is, further,

{¶ 16} ORDERED, That a copy of this Finding and Order be served upon Respondent and all other interested parties of record.

#### COMMISSIONERS:

##### *Approving:*

M. Beth Trombold  
Lawrence K. Friedeman  
Daniel R. Conway  
Dennis P. Deters

DMH/kck

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

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**in**

**Case No(s). 19-2240-TR-CVF, 20-0692-TR-CVF**

Summary: Finding & Order approving the settlement agreement filed between Staff and Cardinal Asphalt Company regarding violations of the Commission's transportation rules. electronically filed by Kelli C. King on behalf of The Public Utilities Commission of Ohio