

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of a Request for	:	
Approval of the Settlement Between	:	Case No. 21-364-TR-CVF
Staff and American Citizens Transport	:	(21-CR-423256)
LLC.	:	

SETTLEMENT AGREEMENT

I. Introduction

Pursuant to Ohio Adm.Code 4901:2-7-11(C), American Citizens Transport LLC (Respondent) and the Staff of the Transportation Department of the Public Utilities Commission of Ohio (Staff) enter into this settlement agreement and request the approval of the Commission.

It is understood by the Respondent and Staff (jointly, Signatory Parties) that this Settlement Agreement is not binding upon the Public Utilities Commission of Ohio (Commission). This Settlement Agreement, however, is based on the Signatory Parties' desire to arrive at a reasonable result considering the law, facts and circumstances. Accordingly, the Signatory Parties believe that this Settlement Agreement should be approved by the Commission.

This Settlement Agreement is submitted on the condition that the Commission adopts the agreed upon terms in their entirety and without material modification. The Signatory Parties agree that if the Commission rejects all or any part of this Settlement Agreement or otherwise materially modifies its terms, either Signatory Party shall have

the right, within thirty (30) business days of the Commission's order, either to file an application for rehearing or to terminate and withdraw from this Settlement Agreement by filing a notice with the Commission. If an application for rehearing is filed, and if the Commission does not adopt the Settlement Agreement without material modification, or if the Commission makes a material modification to any Order adopting the Settlement Agreement pursuant to any reversal, vacation and/or remand by the Supreme Court of Ohio, then either signatory part may terminate and withdraw from this agreement by filing a notice with the Commission within ten (10) days of the Commission's Entry on Rehearing or Order. In such an event, a hearing shall go forward, and the Signatory 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 January 26, 2021, Staff conducted a compliance review of American Citizens Transport LLC at 11603 State Route 362, Minster, Ohio 45865. The compliance review resulted in the discovery of thirty-two (32) violations of the Federal Motor Carrier Safety Administration regulations; fourteen (14) violations of the Ohio Administrative Code; and one (1) violation of the Ohio Revised Code. The violations were:
- (1) requiring or permitting a property-carrying commercial motor vehicle (CMV) driver to drive after 14 hours on duty in violation of 49 C.F.R. 395.3(a)(2);

- (2) requiring or permitting a property-carrying CMV driver to drive more than 11 hours in violation of 49 C.F.R. 395.3(a)(3)(i);
- (3) requiring or permitting a CMV driver to drive without a 30-minute break in violation of 49 C.F.R. 395.3(a)(3)(ii);
- (4) failure to require a driver to prepare a record of duty status in violation of 49 C.F.R. 395.8(a)(1);
- (5) false reports of records of duty status in violation of 49 C.F.R. 395.8(e)(1);
- (6) failure to prepare records in the form and manner prescribed by the regulations in violation of 49 C.F.R. 395.8(f);
- (7) using a CMV without periodical inspection in violation of 49 C.F.R. 396.17(a);
- (8) failure to maintain motor vehicles in the fleet in violation of 49 C.F.R. 396.3(a);
- (9) failure to keep minimum records of inspection and maintenance in violation of 49 C.F.R. 396.3(b);
- (10) operation of a vehicle likely to cause an accident or breakdown in violation of 49 C.F.R. 396.7(a);
- (11) failure to keep roadside inspection form for 12 months at carrier's principal place of business in violation of 49 C.F.R. 396.9(d)(3);

- (12) failure to provide initial or recurrent hazardous material employee training in violation of 49 C.F.R. 177.800(c);
- (13) failure to maintain a copy of driver's training certificate in violation of 49 C.F.R. 380.509(b);
- (14) use of a driver prior to receiving a pre-employment test result in violation of 49 C.F.R. 382.301(a);
- (15) failure to conduct post-accident alcohol testing on a driver in violation of 49 C.F.R. 382.303(a);
- (16) failure to conduct post-accident testing on a driver for controlled substances in violation of 49 C.F.R. 382.303(b);
- (17) failure to keep a record of reasons for not promptly administering an alcohol test after an accident in violation of 49 C.F.R. 382.303(d)(1);
- (18) failure to keep a record of reasons for not promptly administering a test for controlled substances after an accident in violation of 49 C.F.R. 382.303(d)(2);
- (19) failure to ensure that each driver has an equal chance at random alcohol and controlled substance testing in violation of 49 C.F.R. 382.305(i)(2);
- (20) failure to get a "reasonable suspicion" designee 60 minutes of training in violation of 49 C.F.R. 382.603;

- (21) failure to conduct a pre-employment query in violation of 49 C.F.R. 382.701(a);
- (22) driver operating a CMV without a current and properly endorsed commercial driver's license in violation of 49 C.F.R. 383.37(a);
- (23) allowing a driver to drive while disqualified in violation of 49 C.F.R. 383.37(b);
- (24) failure to keep an accident register in the form and manner prescribed by the regulations in violation of 49 C.F.R. 390.15(b)(1);
- (25) failure to keep an annual list of traffic violations in violation of 49 C.F.R. 391.11(b)(6);
- (26) incomplete or no employment application in violation of 49 C.F.R. 391.21(a);
- (27) failure to investigate a driver's background in violation of 49 C.F.R. 391.23(a);
- (28) failure to obtain a driver's driving record every 12 months in violation of 49 C.F.R. 391.25(a);
- (29) failure to review the driving record of each driver in violation of 49 C.F.R. 391.25(b)
- (30) use of a driver not medically examined and certified in violation of 49 C.F.R. 391.45(a);

- (31) use of a driver not medically examined during the preceding 24 months in violation of 49 C.F.R. 391.45(b)(1);
- (32) failure to note verification of medical examiner in the driver qualification file in violation of 49 C.F.R. 391.51(b)(9);
- (33) use of a driver not medically examined and certified in violation of Ohio Adm.Code 4901:2-5-03;
- (34) incomplete or no employment application in violation of Ohio Adm.Code 4901:2-5-03;
- (35) failure to require a driver to prepare a record of duty status in violation of Ohio Adm.Code 4901:2-5-03;
- (36) requiring or permitting a CMV driver to drive without a 30-minute break in violation of Ohio Adm.Code 4901:2-5-03;
- (37) use of a driver not medically examined during the preceding 24 months in violation of Ohio Adm.Code 4901:2-5-03;
- (38) failure to review the driving record of each driver in violation of Ohio Adm.Code 4901:5-03;
- (39) failure to investigate driver's background in violation of Ohio Adm.Code 4901:5-03;
- (40) failure to keep roadside inspection form for 12 months at principal place of business in violation of Ohio Adm.Code 4901:5-03;

- (41) false reports of records of duty status in violation of Ohio
Adm.Code 4901:2-5-03;
- (42) failure to prepare records of duty status in the form and manner
prescribed by the rules in violation of Ohio Adm.Code 4901:2-
5-03;
- (43) failure to keep an annual list of traffic violations in violation of
Ohio Adm.Code 4901:2-5-03;
- (44) failure to obtain driver's driving record every 12 months in
violation of Ohio Adm.Code 4901:2-5-03;
- (45) requiring or permitting property-carrying CMV driver to drive
after 14 hours on duty in violation of Ohio Adm.Code 4901:2-
5-03;
- (46) requiring or permitting property-carrying CMV driver to drive
more than 11 hours in violation of Ohio Adm.Code 4901:2-5-
03;
- (47) operating in intrastate commerce without a current and valid
certificate of public convenience and necessity in violation of
R.C. 4921.03(A);

B. Due to the violations described above and in accordance with Ohio
Adm.Code 4901:2-7-07, Staff sent Respondent a Notice of Apparent
Violation and Intent to Assess Forfeiture in the amount of \$14,525.00 on
January 28, 2021.

- C. Pursuant to Ohio Adm.Code 4901:2-7-10, Respondent made a timely request for conference to present mitigating circumstances. A conference was held on April 7, 2021, where Respondent, with the assistance of a safety consultant, had the opportunity to present mitigating circumstances regarding the amount of the forfeiture, reasons why the compliance order may be unjustified, or any other information relevant to the action proposed to be taken. Respondent also provided a corrective action statement and safety management plan to Staff during the conference.
- D. The Signatory Parties have negotiated this settlement agreement which the Signatory Parties believe resolves all the issues raised in the notice of apparent violation. Because the civil forfeiture exceeds five thousand dollars, this settlement agreement is submitted for the Commission's approval in accordance with Ohio Adm.Code 4901:2-7-11(C).

III. Settlement Agreement Terms

The Signatory Parties agree and recommend that the Commission find as follows:

- A. Respondent agrees to violations of the Federal Motor Carrier Safety Administration regulations, the Ohio Administrative Code, and the Ohio Revised Code, as specified in paragraph II.A of this Settlement Agreement. Respondent recognizes that they may be included in Respondent's Safety-Net Record and Respondent's history of violations insofar as they may be relevant for purposes of determining future penalty actions. Respondent

agrees to adhere to and implement the safety management plan that Respondent provided to Staff in its corrective actions statement.

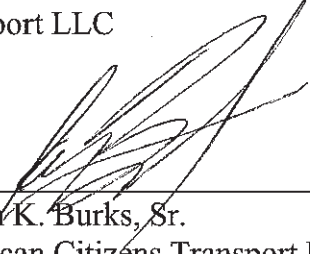
- B. Pursuant to Ohio Adm.Code 4901:2-7-11, this settlement agreement shall not become effective until approved by an Opinion and Order of the Commission. The date of the entry of the Commission order adopting the settlement agreement shall be considered the effective date of the settlement agreement.
- C. The Respondent agrees to make payment of a civil forfeiture of \$11,307.50 for the violations listed in paragraph II.A.
- D. Payment shall be made in twelve (12) monthly payments, with the first payment beginning thirty (30) days from the Commission approval of this Settlement Agreement.
- E. Payment shall be made payable to "Public Utilities Commission of Ohio," and it shall be mailed to PUCO FISCAL, 180 E. Broad St., 4th floor, Columbus, OH 43215-3793. Case Nos. 21-CR-423256 and 21-364-TR-CVF should appear on the face of the check.
- F. This Settlement Agreement is made in settlement of all factual or legal issues in this case. It is not intended to have any effect whatsoever in any other case or proceeding, except as described in paragraph A.

III. Conclusion

The Signatory Parties agree that this Settlement Agreement is in the best interest of all parties, and urge the Commission to approve 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 12 day of MAY 2021.

On behalf of American Citizens
Transport LLC

/s/ 

Joseph K. Burks, Sr.
American Citizens Transport LLC
11603 State Route 362
Minster, OH 45865

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

/s/ Thomas M. Shepherd

Thomas M. Shepherd
Assistant Attorney General
Public Utilities Section
30 East Broad Street, 26th Floor
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This foregoing document was electronically filed with the Public Utilities

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in

Case No(s). 21-0364-TR-CVF

Summary: Agreement Settlement Agreement electronically filed by Mrs. Kimberly M Naeder
on behalf of PUCO