

**BEFORE THE  
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

In the Matter of

**PREDATOR TRUCKING COMPANY  
3181 TRUMBULL AVE  
MCDONALD, OH 44437**

) **Case No. OH-2014-0143-US1463**  
) **US DOT No. 401385**  
)

**SETTLEMENT AGREEMENT**

The Parties to this agreement are:

**PREDATOR TRUCKING COMPANY** (hereinafter called **RESPONDENT**);

and

The **FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION** of the Department of Transportation (hereinafter called **FMCSA**).

The Parties agree as follows:

1. A. The FMCSA has a pending claim against **RESPONDENT** for violations of Federal statutes and regulations, including the Federal Motor Carrier Safety Regulations, (hereinafter referenced as FMCSRs), Hazardous Materials Regulations (hereinafter referenced as the HMRs) and/or the Federal Motor Carrier Commercial Regulations (hereinafter referenced as the FMCCRs) as follows:

In Case Number **OH-2014-0143-US1463** FMCSA has a claim for **\$130,980.00** against **RESPONDENT** for the following violations:

Thirty-Three (33) violation(s) of 49 CFR § 395.8(e) - False reports of records of duty status.

One (1) violation(s) of 49 CFR § 382.303(a) - Failing to conduct post accident alcohol testing on driver following a recordable crash.

One (1) violation(s) of 49 CFR § 392.2 - Operating a commercial motor vehicle not in accordance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated - Unsafe Driving.

- B. This claim was served to **RESPONDENT** on **October 1, 2014**

2. **RESPONDENT** is subject to the jurisdiction of the FMCSA. The statutory basis for the claim as set forth and detailed in the above-referenced civil penalty proceeding is found in 49 USC Subtitle III, General and Intermodal Programs; 49 USC Subtitle IV, Interstate Transportation, Part B, Motor Carriers, Water Carriers, Brokers, and Freight Forwarders; 49 USC Subtitle VI, Motor Vehicle and Driver Programs, Part B, Commercial; including, but not limited to, 49 USC § 521 ("Civil Penalties"); 49 USC § 5123(c) ("Civil Penalty"); and 49 USC § 14901 ("General Civil Penalties").
3. Pursuant to the Federal Claims Collection Act of 1966, 31 USC Chapter 37, Subchapter II, and the regulations of the FMCSA in 49 CFR Part 386, the parties desire to settle the claim. This agreement for settlement of the claims is made pursuant to 49 CFR § 386.22. The Parties stipulate this settlement agreement ("Agreement") resolves only the claim set forth in Paragraph 1 of this Agreement. **Further, the Parties stipulate nothing in this Agreement shall be construed to relieve or limit RESPONDENT's duty to comply with all applicable U.S. Department of Transportation statutes and implementing regulations, including the FMCSRs, HMRs, and the FMCCRs.**
4. Through this Agreement the Parties stipulate that FMCSA will conditionally hold in abeyance **\$90,980.00** of the **\$130,980.00** civil penalty in Case Number **OH-2014-0143-US1463** subject to **RESPONDENT'S** compliance with the terms and conditions set forth below. The Parties further stipulate that this Agreement is a contract voluntarily entered, upon the consideration stated herein, which may be enforced.

- A. **RESPONDENT'S** successful compliance with 49 CFR Part(s) 382, 392 and 395. Successful compliance with 49 CFR Part(s) 382, 392 and 395 means that, at the conclusion of any investigation conducted within the next two (2) year(s) from the date of execution of this Agreement by a Field Administrator, no violations of acute regulations and/or no violations of critical regulations at a violation rate equaling or exceeding a 10% in 49 CFR Part(s) 382, 392 and 395 is/are discovered. Acute and critical violations are listed in 49 CFR Part 385, Appendix B, section VII.

Discovery of a violation of an acute regulation in 49 CFR Part(s) 382, 392 and 395 during any investigation, including but not limited to compliance review, roadside inspection and/or on- or off-site investigation, and may result in further enforcement action.

Discovery of a violation of a critical regulation in 49 CFR Part(s) 382, 392 and 395 at a critical violation rate during any investigation, including but not limited to compliance review, roadside inspection and/or on- or off-site investigation conducted within the next two (2) year(s) from the date of execution of this Agreement by a Field Administrator and may result in further enforcement action. A violation rate that equals or exceeds 10% for critical regulations in 49 CFR Part(s) 382, 392 and 395 will constitute a critical violation rate (a critical violation rate is determined by dividing the number of violations discovered by the number of documents examined).

- B. **RESPONDENT** pays the portion of the civil penalty not held in abeyance in accordance with the terms of this Agreement, including all due dates and procedures for payment.
- C. Except as to payment of the portion of the assessed civil penalty not held in abeyance, and subject to the terms and conditions of this Agreement, the terms related to the civil penalties held in abeyance shall terminate two (2) years from the date of execution of this Agreement by a Field Administrator. If at the conclusion of the two (2) year period **RESPONDENT** has complied completely with all terms and conditions of this Agreement, the civil penalties held in abeyance will be permanently forgiven.
5. In consideration of the settlement of the above-described claim, and subject to the terms and conditions of this Agreement, **RESPONDENT** agrees to pay the FMCSA, and FMCSA agrees to accept the civil penalties not held in abeyance in the amount of **\$40,000.00**, in ten (10) payment(s).
6. Payment may be made electronically through the SAFER website at <http://safer.fmcsa.dot.gov> by selecting the "Online Fine Payment" option under the FMCSA Services section. Alternatively, payments may be made by mailing a **cashier's check, certified check or money order** payable to the **Federal Motor Carrier Safety Administration**. To expedite processing and ensure proper credit, checks should be annotated with the FMCSA Case Number. **RESPONDENT** acknowledges that payments not received by FMCSA or late payments may result in a breach of this Agreement. **RESPONDENT** further acknowledges that it may document mailed payments by using a trackable method (such as certified mail or commercial delivery service such as Federal Express or United Parcel Service) if **RESPONDENT** does not make its payments electronically through the SAFER website. Mailed payments must be sent to:

Federal Motor Carrier Safety Administration  
Midwestern Service Center  
4749 Lincoln Mall Drive, Suite 300A  
Matteson, IL 60443

The first payment of **\$4,000.00** is due no later than **03/05/2015**.  
The second payment of **\$4,000.00** is due no later than **04/05/2015**.  
The third payment of **\$4,000.00** is due no later than **05/05/2015**.  
The fourth payment of **\$4,000.00** is due no later than **06/05/2015**.  
The fifth payment of **\$4,000.00** is due no later than **07/05/2015**.  
The sixth payment of **\$4,000.00** is due no later than **08/05/2015**.  
The seventh payment of **\$4,000.00** is due no later than **09/05/2015**.  
The eighth payment of **\$4,000.00** is due no later than **10/05/2015**.  
The ninth payment of **\$4,000.00** is due no later than **11/05/2015**.  
The tenth payment of **\$4,000.00** is due no later than **12/05/2015**.

7. Failure to pay in accordance with the terms of this Agreement and/or failure to comply with the terms and conditions of this Agreement shall be considered a breach of this Agreement and may result in the reinstatement of any penalties held in abeyance and may also result in the loss of any reduction in civil penalties asserted in the Notice of Claim, in which case the original amount asserted in the Notice of Claim (less any payments previously made) will be due immediately. Failure to comply with the terms and conditions of this Agreement shall also void and vacate any payment plan set forth in this Agreement. Failure to make an installment payment on schedule voids any payment plan set forth in this Agreement and the entire debt is payable immediately. **If the entire amount is not paid within ninety (90) days of the missed due date for the installment payment, RESPONDENT will be prohibited from operating in interstate commerce and, if applicable, RESPONDENT'S registration will be suspended or revoked in accordance with 49 CFR §§ 386.83 and 386.84.** In addition, the remaining debt is subject to interest, penalties, and administrative charges at the maximum allowable rate and in accordance with FMCSA procedures. Any payment(s) made after a breach of any term and/or condition of this Agreement, including failure to pay in accordance with the terms of this Agreement, will be applied toward the balance of the original amount claimed, and shall not affect any right of FMCSA to pursue any remedy for breach of this Agreement.
8. The Parties stipulate the claim set forth in the above-described Notice of Claim is valid. Any forbearance by FMCSA in exercising any right or remedy under this Agreement or provided by law, including, without limitation, FMCSA's acceptance of late payment(s) or payment(s) in amounts less than the amount due, shall not act as a waiver of or preclude the exercise of any right or remedy hereunder or otherwise available by law, nor shall it in any way affect the validity of this Agreement or any part thereof.
9. This Agreement is to be executed by **RESPONDENT** and returned to FMCSA. This Agreement is not binding upon FMCSA until executed by a Field Administrator. Prior to the execution of this agreement by a Field Administrator, this agreement is an offer in compromise by **RESPONDENT** and may not be withdrawn for a period of thirty (30) days after it is executed by **RESPONDENT**. If this Agreement requires approval by the Assistant Administrator or an Administrative Law Judge, neither party may withdraw its consent to the Agreement for a period of thirty (30) days from the date a Field Administrator signs the agreement. This Agreement becomes the Final Agency Order in this proceeding as provided by 49 CFR § 386.22(c)-(e).
10. **RESPONDENT** acknowledges that it has received adequate notice of FMCSA's claim and waives any and all rights it may have to further notice or to further details of the allegations that gave rise to the claim. Further, **RESPONDENT** expressly acknowledges that FMCSA had a reasonable basis in law and fact and was substantially justified in pursuing the claim against **RESPONDENT**.
11. Execution of this Agreement will constitute admission of the violation(s) set forth in this agreement and these violations shall constitute prior offenses under 49 USC § 521, and/or 14901, and/or 5123, which will lead to higher penalties in future enforcement actions and adverse future safety management assessment scores and rankings.
12. This Agreement, including all enumerated conditions held in abeyance of a portion of the assessed penalty, shall apply to, be binding upon, and enforceable against **RESPONDENT** and **RESPONDENT'S** successors and assigns, including but not limited to, subsequent purchasers, transferees, and/or successor entity(ies).
13. This Agreement may be executed in counterparts, all of which when taken together shall constitute a fully executed original. A facsimile signature on this Agreement shall constitute an original signature for purposes of execution.
14. This Agreement shall be considered jointly drafted by the Parties, and constitutes the final and exclusive agreement between the Parties in this proceeding. All prior and contemporaneous agreements, representations, negotiations and understandings of the Parties, oral or written, are hereby superseded. Notwithstanding this provision, the Notice of Claim, as referenced in Paragraph 1 of this Agreement, is incorporated by reference in this Agreement.

- 15. **RESPONDENT** hereby acknowledges, represents, and warrants that **RESPONDENT** has carefully read and understands this Agreement, all of its terms and conditions, and its final and binding effect, and has been afforded sufficient time and opportunity to review this Agreement with legal counsel of its choosing, has had an opportunity to negotiate with regard to the terms of this Agreement, is fully competent to enter into this Agreement, and has signed this Agreement knowingly, freely, and voluntarily. Each signatory acting on behalf of a partnership, corporation, limited liability company, or other entity represents and warrants that he or she is authorized to act on behalf of, and bind the entity in the signing of this Agreement.
- 16. Should any provision of this Agreement be held invalid or illegal, such illegality shall not invalidate the whole Agreement, but, rather, the Agreement shall be construed as if it did not contain the invalid or illegal part, and the rights and obligations of the Parties shall be construed and enforced accordingly.
- 17. **RESPONDENT**, through this Agreement, specifies the facsimile number by which it will accept service of documents by facsimile, and agrees and consents to service by facsimile by FMCSA of any and all documents, including but not limited to correspondence, motions, pleadings, and orders, in, and related to the above-described civil penalty proceeding. **RESPONDENT** agrees that service of any document in, or related to the above-described matter by FMCSA to the facsimile number specified by **RESPONDENT** in this Agreement shall constitute valid service pursuant to 49 CFR § 386.6(b). **RESPONDENT** further agrees that nothing in this Agreement shall require FMCSA to use facsimile service. FMCSA, at its discretion, may serve any document by any method set forth in 49 CFR § 386.6.


**PREDATOR TRUCKING COMPANY**  
 Case No. OH-2014-0143-US1463  
 USDOT No. 401385

BY:  Date: Feb 3, 2015

**PLEASE FAX THE SIGNED AGREEMENT TO: (708) 283-3565.**

Motor Carrier Docket Clerk  
 Federal Motor Carrier Safety Administration  
 Midwestern Service Center  
 4749 Lincoln Mall Drive, Suite 300A  
 Matteson, IL 60443

U.S. Department of Transportation  
 Federal Motor Carrier Safety Administration  
 Midwestern Service Center

BY:  Date: 2/06/2015  
**Darin G Jones**  
**Field Administrator**