

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement	:	
	:	
v.	:	C-2018-3002010
	:	
Fazio Construction and Excavating, Inc.	:	

INITIAL DECISION

Before
Joel H. Cheskis
Deputy Chief Administrative Law Judge

INTRODUCTION

This decision grants a formal complaint filed by the Commission’s Bureau of Investigation and Enforcement finding that substantial evidence demonstrates that the respondent motor carrier violated the Public Utility Code by operating without having provided evidence of insurance to the Commission. This decision imposes a civil penalty on the respondent of \$500 as a result of the violation.

HISTORY OF THE PROCEEDING

On May 23, 2018, the Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement (I&E), filed a formal complaint at the Commission against Fazio Construction and Excavating Inc., (Fazio), docket number C-2018-3002010. In its complaint, I&E averred that Fazio maintains a principal place of business at 406 Willow Street, Dunmore, PA and was issued a certificate of public convenience by the Commission on July 12, 2017. I&E added that Fazio has failed to maintain evidence of liability insurance on file with the Commission in violation of Section 32.2(c) and 32.11(a), 32.12(a) or 32.13(a) of the

Commission's regulations. 52 Pa. Code §§ 32.2(c), 32.11(a), 32.12(a), 32.13(a). I&E proposed a civil penalty for this violation of \$500 and cancellation of Fazio's certificate.

On August 10, 2018, Joseph Fazio, on behalf of respondent, filed an answer to I&E's complaint indicating that his license has been suspended since April 2018 and that he is in the process of getting his license restored and his operating authority back. Mr. Fazio added that the truck is parked and has not been used since the end of May and that he would like some time to work through this matter with his attorney.

On March 6, 2020, the Commission issued a hearing notice scheduling an initial telephonic hearing for this matter for Thursday, May 14, 2020 and assigning me as the presiding officer. A prehearing order dated March 9, 2020 was issued setting forth various rules that would govern that hearing. Of note, the hearing notice stated that a party may lose the case if it does not take part in the hearing and present facts on the issues raised. Similarly, the prehearing order stated, among other things, that: "If a party fails to participate in the hearing, the hearing may proceed without that party and a decision may be entered against that party." Both the hearing notice and the prehearing order were sent to Fazio via first-class mail.

On March 10, 2020, Matthew Fallings, Esquire entered his appearance on behalf of I&E.

Due to the Covid-19 pandemic, a hearing cancellation/reschedule notice was issued on May 6, 2020 cancelling the hearing scheduled for May 14, 2020 and rescheduling the hearing for Tuesday, July 21, 2020. The hearing notice again stated that if a party fails to participate in the hearing, they may lose the case.

The hearing convened on July 21, 2020, as scheduled. Mr. Fallings appeared on behalf of I&E and presented one witness who sponsored three exhibits that were admitted into the record. No one appeared on behalf of Fazio. A transcript of 18 pages was created.

The record in this case closed on August 19, 2020, the day the transcript of the July 21, 2020 hearing was submitted to the Commission. For the reasons discussed below, the

complaint will be sustained and a civil penalty of \$500 will be imposed.

FINDINGS OF FACT

1. The complainant in this case is the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement.
2. The respondent in this case is Fazio Construction and Excavating, Inc.
3. Fazio maintains a principal place of 406 Willow St, Dunmore, PA.
4. No one called into the hearing on behalf of Fazio at the time of the hearing as instructed on the hearing notices and in the prehearing order. Tr. 4.
5. The hearing was delayed approximately ten minutes to accommodate any delay at the hearing on behalf of Fazio. Tr. 1.
6. Fazio received notice of the hearing when it was sent a hearing notice on May 6, 2020. Tr. 5.
7. Both the hearing notice and the prehearing order indicated that a party may lose the case if they do not appear and take part in the hearing.
8. Counsel for I&E indicated during the hearing the numerous efforts that I&E took to provide Fazio with notice of the hearing and to settle the matter. Tr. 16.
9. Tatjana Roth is employed by the Commission's Bureau of Technical Utility Services, motor carrier division, as a compliance office supervisor. Tr. 8.
10. Part of Ms. Roth's job duties involves supervising persons who review insurance filings and compliance with provisions, regulations and statutes. Tr. 8.

11. I&E Exhibit Number 1 is a Commission Form E, Uniform Motor Carrier Bodily Injury and Property Damage Liability Certificate of Insurance, submitted by Fazio on August 3, 2017 effective July 12, 2017. I&E Exh. No. 1; Tr. 9-10.

12. I&E Exhibit Number 2 is a Commission Form K, Uniform Notice of Cancellation of Motor Carrier Insurance Policies, submitted to the Commission on April 4, 2018 cancelling Fazio's policy as of May 8, 2018. I&E Exh. No. 2; Tr. 11.

13. I&E Exhibit Number 3 is a standard suspension letter mailed to Fazio dated May 5, 2018 giving Fazio three days to provide proof of insurance or a complaint may be filed against Fazio and the Commission operating authority may be cancelled. I&E Exh. No. 3; Tr. 12.

14. Fazio's certificate of public convenience has been cancelled. Tr. 13.

DISCUSSION

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). As a matter of law, a complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. Patterson v. Bell Tel. Co. of Pa., 72 Pa. PUC 196 (1990). "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 364 Pa. 54, 70 A.2d 854 (1950). The offense must be a violation of the Public Utility Code, the Commission's regulations or an outstanding order of the Commission. 66 Pa.C.S. § 701. In this proceeding, I&E averred that Fazio operated without having evidence of insurance on file at the Commission in violation of the Commission's regulations and that a \$500 civil penalty should be imposed on Fazio as result of such violation. I&E, therefore, has the burden of proof in this proceeding.

If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a

preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a complainant. Milkie v. Pa. Pub. Util. Comm'n, 768 A.2d 1217 (Pa.Cmwlth. 2001); *see also*, Burleson v. Pa. Pub. Util. Comm'n, 443 A.2d 1373 (Pa.Cmwlth. 1982).

The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n, 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 166 A.2d 96 (Pa.Super. 1961); and Murphy v. Pa. Dept. of Public Welfare, White Haven Center, 480 A.2d 382 (Pa.Cmwlth. 1984).

Also relevant to this proceeding is section 512 of the Public Utility Code. This section provides:

The commission may, as to motor carriers, prescribe, by regulation or order, such requirements as it may deem necessary for the protection of persons or property of their patrons and the public, including the filing of surety bonds, the carrying of insurance, or the qualifications and conditions under which such carriers may act as self-insurers with respect to such matters.

66 Pa.C.S. § 512.

In addition, in this case, Fazio failed to appear for the hearing. Administrative agencies, such as the Commission, are required to provide due process to the parties appearing before them. Schneider v. Pa. Pub. Util. Comm'n, 479 A.2d 10 (Pa.Cmwlth. 1984). This due process requirement is satisfied when the parties are afforded notice and the opportunity to be heard. Id. Commission regulations address circumstances when a party fails to appear in a proceeding. Section 5.245 provides:

§ 5.245. Failure to appear, proceed or maintain order in proceedings.

(a) After being notified, a party who fails to be represented at a scheduled conference or hearing in a proceeding will:

- (1) Be deemed to have waived the opportunity to participate in the conference or hearing.
- (2) Not be permitted thereafter to reopen the disposition of a matter accomplished at the conference or hearing.
- (3) Not be permitted to recall witnesses who were excused for further examination.

52 Pa.Code § 5.245(a).

The prehearing order and first hearing notice were sent to Fazio by regular first-class mail. Although one document was returned as “unclaimed, unable to forward” from the United States Postal Service, Fazio filed an answer to the complaint on August 10, 2018. In addition, parties are required to apprise the Commission promptly of changes to their address. 52 Pa.Code § 1.53(d). Accordingly, it must be presumed that these documents sent to Fazio in the ordinary course of business were received by Fazio. Berkowitz v. Mayflower Securities, Inc., 455 Pa. 531, 317 A.2d 584 (1974); Meierdierck v. Miller, 394 Pa. 484, 147 A.2d 406 (1959); Samaras v. Hartwick, 698 A.2d 71 (Pa. Super. 1997); Judge v. Celina Mutual Ins. Co., 303 Pa. Super. 221, 449 A.2d 658 (1982). Of note, the hearing notices and the prehearing order stated that, if a party fails to participate in the hearing, the hearing may proceed without that party and a decision may be entered against that party. Furthermore, counsel for I&E indicated during the hearing the efforts that it took to provide Fazio with notice of the hearing. Tr. 16. As such, Fazio had notice and an opportunity to be heard in this proceeding but chose not to appear. Therefore, Fazio’s due process rights have been fully protected. Sentner v. Bell Tel. Co. of Pa., Docket No. F-00161106 (Order entered October 25, 1993); *see also*, 52 Pa.Code § 5.245(a).

During the hearing, I&E presented the testimony of Tatjana Roth, a compliance office supervisor in the Commission’s Bureau of Technical Utility Services, motor carrier division. Ms. Roth testified regarding the Commission’s various attempts to ensure that Fazio had the proper

insurance coverage to provide its certificated service. *See*, I&E Exh. Nos. 1-3; Tr. 9-12. Ultimately, however, the Commission determined to revoke Fazio's certificate of public convenience. Tr. 12.

Section 32.2 and 32.11 of the Commission's regulations provide that:

§ 32.2. Insurance forms and procedures.

- (c) *Filing and copies.* An original of each certificate of insurance, surety bond and notice of cancellation shall be filed with the Commission. An approved copy will be returned to sender if a self-addressed, stamped envelope is enclosed with the filing.

§ 32.11. Passenger carrier insurance.

- (a) A common carrier or contract carrier of passengers may not engage in intrastate commerce and a certificate or permit will not be issued, or remain in force, except as provided in § 32.15 (relating to applications to self-insure) until there has been filed with and approved by the Commission a certificate of insurance by an insurer authorized to do business in this Commonwealth, to provide for the payment of valid accident claims against the insured for bodily injury to or the death of a person, or the loss of or damage to property of others resulting from the operation, maintenance or use of a motor vehicle in the insured authorized service.

52 Pa. Code §§ 32.2(c) and 32.11(a).

As a result, based on Ms. Roth's testimony and accompanying exhibits, which were not refuted, substantial record evidence demonstrates that Fazio violated Sections 32.2(c) and 32.11(a) of the Commission's regulations regarding requirements of motor carriers to have proof of insurance on file with the Commission. Having found that Fazio violated these sections, it is also necessary to determine whether a civil penalty should be imposed for such violations.

The Commission's authority for imposing civil penalties can be found at 66 Pa.C.S. § 3301 which provides in pertinent part:

§ 3301. Civil penalties for violation.

(a) General rule. – If any public utility or any other person or corporation subject to this part, shall violate any of the provisions of this part, or shall do any matter or thing herein prohibited; or shall fail, omit, neglect, or refuse to perform any duty enjoined upon it by this part; or shall fail, omit, neglect or refuse to obey, observe, and comply with any regulation or final direction, requirement, determination or order made by the commission, such public utility, person or corporation . . . shall forfeit and pay to the Commonwealth a sum not exceeding \$1,000 to be recovered by an action of assumpsit instituted in the name of the Commonwealth.

66 Pa.C.S. § 3301(a).

Furthermore, Section 69.1201 of the Commission’s regulations provides a Policy Statement regarding factors and standards to be used when determining if a fine for violating a Commission order, regulation or statute is appropriate, as well as if a proposed settlement for a violation is reasonable and approval of the settlement agreement is in the public interest. 52 Pa.Code § 69.1201(a). These factors and standards are as follows:

- (1) Whether the conduct at issue was of a serious nature. When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty.
- (2) Whether the resulting consequences of the conduct at issue were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.
- (3) Whether the conduct at issue was deemed intentional or negligent. This factor may only be considered in evaluating litigated cases. When conduct has been deemed intentional, the conduct may result in a higher penalty.
- (4) Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. These modifications may include activities such as training and improving company techniques and supervision. The amount of time it took the utility

to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered.

(5) The number of customers affected and the duration of the violation.

(6) The compliance history of the regulated entity which committed the violation. An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty.

(7) Whether the regulated entity cooperated with the Commission's investigation. Facts establishing bad faith, active concealment of violations, or attempts to interfere with Commission investigations may result in a higher penalty.

(8) The amount of the civil penalty or fine necessary to deter future violations. The size of the utility may be considered to determine an appropriate penalty amount.

(9) Past Commission decisions in similar situations.

(10) Other relevant factors.

52 Pa.Code § 69.1201(c); *see also*, Rosi v. Bell Atlantic-Pa., Inc. and Sprint Communications Co., Docket No. C-0092409 (Final Order entered February 10, 2000).

When applying these factors to the facts of this case, it is clear that a \$500 civil penalty is appropriate and supported by record evidence.

With regard to factor number 1, whether the conduct was of a serious nature, this factor supports a higher civil penalty. Although the violation was not willful fraud or misrepresentation, operating without proper insurance is of a serious nature involving public safety concerns. To the extent that an accident would have occurred during the relevant time period, there would have been significant financial repercussions and the public would have been harmed; therefore, this requires a determination that the conduct was of a serious nature. This factor warrants a higher civil penalty.

With regard to factor number 2, whether the resulting consequences of the conduct at issue were of a serious nature, again, although there is no evidence of any accidents occurring while Fazio was not insured, to the extent that an accident would have occurred during the relevant time period, the repercussions would have been significant and public harm would have been caused. No personal injury or property damage would occur as a result of Fazio not being properly insured but significant financial injury could result. This factor warrants a lower civil penalty.

With regard to factor number 3, whether the conduct was deemed intentional or negligent, there is no record evidence that Fazio intended not to have evidence of proper insurance on file with the Commission but Fazio is obligated to ensure that it is in compliance with all Commission regulations. This factor supports a lower civil penalty.

With regard to factor number 4, whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future, Fazio no longer has a certificate of public convenience to provide service. Therefore, this factor will not be considered.

With regard to factor number 5, the number of customers affected and the duration of the violation, the record evidence does not indicate how many customers Fazio had during the time it did not have evidence of insurance on file with the Commission. Furthermore, the duration of the violation appears to be short. As a result, this factor supports a lower civil penalty.

With regard to factor number 6, the compliance history of the regulated entity, there is no evidence of record that demonstrates that Fazio has failed to comply with these regulations or any other Commission regulations in the past. This factor, therefore, support a lower civil penalty.

With regard to factor number 7, whether the regulated entity cooperated with the Commission's investigation, there was no formal investigation in this matter.

Counsel for I&E, however, indicated that he attempted several times to reach Mr. Fazio in an attempt to settle the matter but was unable to reach him. Nor did Mr. Fazio appear for the hearing, despite having notice and an opportunity to be heard. Such actions are not the equivalent of bad faith, active concealment of actions or attempts to interfere with the Commission investigation, as noted in Section 69.1201. Therefore, this factor supports neither a higher nor a lower civil penalty.

With regard to factor number 8, the amount of civil penalty necessary to deter future violations, this factor warrants a higher civil penalty be imposed. Operating a certificated vehicle without having evidence of proper insurance for such actions is a significant violation of the Commission's regulations and the public trust. A customer of such a carrier assumes, by virtue of the certificate of operation, that the motor carrier has complied with all Commission regulations, including Sections 32.2 and 32.11. Fazio's failure to abide by the Commission's regulations must be deterred. This factor warrants a higher penalty.

With regard to factor number 9, past Commission decisions, I&E witness Roth testified that a \$500 civil penalty is the "standard fine" and that she is aware of past Commission decisions that have requested a similar civil penalty. Tr. 13. Although Ms. Roth did not identify such decisions, Ms. Roth's statement is uncontested and, therefore, it will be considered that past Commission decisions support a \$500 civil penalty in this case.

With regard to factor number 10, other relevant factors, the impact on the public is an important relevant factor. To the extent that an accident were to have occurred while Fazio was uninsured, more than just the customer could have been impacted. For example, if the accident involved more than one vehicle, Fazio also may be liable for personal injury and property damage suffered by a member of the public. This factor is not recognized in the other factors articulated in Section 69.1201 but should be considered in this case. These factors support a higher civil penalty.

In total, when considering all factors in the Section 69.1201 analysis, the record evidence demonstrates that it is reasonable to impose a total civil penalty of \$500 for Fazio's failure to comply with the Commission's regulations regarding insurance coverage.

In conclusion, the formal complaint filed by I&E against Fazio will be sustained. Substantial record evidence demonstrates that Fazio violated Sections 32.2 and 32.11 of the Public Utility Code that require Fazio to have evidence of insurance coverage on file with the Commission and that a \$500 civil penalty is appropriate.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa.C.S. § 701.

2. Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a).

3. A complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. Patterson v. Bell Tel. Co. of Pa., 72 Pa. PUC 196 (1990).

4. "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 364 Pa. 54, 70 A.2d 854 (1950).

5. The offense must be a violation of the Public Utility Code, the Commission's regulations or an outstanding order of the Commission. 66 Pa.C.S. § 701.

6. If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going

forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a complainant. Milkie v. Pa. Pub. Util. Comm'n, 768 A.2d 1217 (Pa.Cmwlth. 2001); *see also*, Burleson v. Pa. Pub. Util. Comm'n, 443 A.2d 1373 (Pa.Cmwlth. 1982).

7. The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704.

8. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n, 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 194 Pa.Super. 278, 166 A.2d 96 (1961); and Murphy v. Pa. Dept. of Public Welfare, White Haven Center, 85 Pa.Cmwlth. 23, 480 A.2d 382 (1984).

9. The Commission may, as to motor carriers, prescribe, by regulation or order, such requirements as it may deem necessary for the protection of persons or property of their patrons and the public, including the filing of surety bonds, the carrying of insurance, or the qualifications and conditions under which such carriers may act as self-insurers with respect to such matters. 66 Pa.C.S. § 512.

10. Administrative agencies, such as the Commission, are required to provide due process to the parties appearing before them. Schneider v. Pa. Pub. Util. Comm'n, 479 A.2d 10 (Pa.Cmwlth. 1984). This due process requirement is satisfied when the parties are accorded notice and the opportunity to be heard. Id.

11. After being notified, a party who fails to be represented at a scheduled conference or hearing in a proceeding will: 1) be deemed to have waived the opportunity to participate in the conference or hearing; 2) not be permitted thereafter to reopen the disposition of a matter accomplished at the conference or hearing; and 3) not be permitted to recall witnesses who were excused for further examination. 52 Pa.Code § 5.245(a).

12. Parties are required to apprise the Commission promptly of changes to their address. 52 Pa.Code § 1.53(d).

13. Fazio's due process rights have been fully protected. Sentner v. Bell Tel. Co. of Pa., Docket No. F-00161106 (Order entered October 25, 1993); 52 Pa.Code § 5.245(a).

14. Motor carriers are required to maintain an original of each certificate of insurance, surety bond and notice of cancellation on file with the Commission. 52 Pa. Code § 32.2(c).

15. A common carrier or contract carrier of passengers may not engage in intrastate commerce and a certificate or permit will not be issued, or remain in force, except as provided in § 32.15 (relating to applications to self-insure) until there has been filed with and approved by the Commission a certificate of insurance by an insurer authorized to do business in this Commonwealth, to provide for the payment of valid accident claims against the insured for bodily injury to or the death of a person, or the loss of or damage to property of others resulting from the operation, maintenance or use of a motor vehicle in the insured authorized service. 52 Pa. Code § 32.11(a).

16. If any public utility or any other person or corporation subject to this part, shall violate any of the provisions of this part, or shall do any matter or thing herein prohibited; or shall fail, omit, neglect, or refuse to perform any duty enjoined upon it by this part; or shall fail, omit, neglect or refuse to obey, observe, and comply with any regulation or final direction, requirement, determination or order made by the commission, such public utility, person or corporation . . . shall forfeit and pay to the Commonwealth a sum not exceeding \$1,000 to be recovered by an action of assumpsit instituted in the name of the Commonwealth. 66 Pa.C.S. § 3301.

17. The Commission's regulations provide a Policy Statement regarding factors and standards to be used when evaluating litigated and settled proceedings. 52 Pa.Code

§ 69.1201; *see also*, Rosi v. Bell Atlantic-Pa., Inc. and Sprint Communications Co., Docket No. C-0092409 (Final Order entered February 10, 2000).

18. I&E has satisfied its burden of proving that Fazio violated Sections 32.2(c) and 32.11(a) of the Commission's regulations and that a \$500 civil penalty should be imposed.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal complaint filed by the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement against Fazio Construction and Excavating, Inc at docket number C-2018-3002010 on May 23, 2018 is sustained.

2. That Fazio Construction and Excavating, Inc. shall pay a civil penalty of \$500 due to the violation of Sections 32.2(c) and 32.11(a) of the Commission's regulations. 52 Pa. Code §§ 32.2(c) and 32.11(a).

3. That Fazio Construction and Excavating, Inc. shall pay a total of \$500 by sending a certified check or money order payable to the Commonwealth of Pennsylvania, within thirty (30) days from the entry of the Final Commission Order to:

Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

4. That Fazio Construction and Excavating, Inc. shall cease and desist from further violations of the Public Utility Code or any regulations of the Public Utility Commission.

5. That this matter be marked closed upon payment by Fazio Construction and Excavating, Inc. of the \$500 civil penalty.

Date: October 20, 2020

/s/
Joel H. Cheskis
Deputy Chief Administrative Law Judge