

IN THE SUPREME COURT OF THE STATE OF MONTANA

Case No. DA-12-0484

LARRY COLEMAN,

Plaintiff/Appellant,

vs.

THE STATE OF MONTANA, acting by and through THE MONTANA
DEPARTMENT OF TRANSPORTATION,

Defendant/Appellee.

APPENDIX TO APPELLANT'S BRIEF

ON APPEAL FROM THE FIRST JUDICIAL DISTRICT COURT,
LEWIS AND CLARK COUNTY,
THE HONORABLE KATHY SEELEY, PRESIDING

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Filed: _____, 2012
_____, Clerk

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EXHIBIT 1

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MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY

LARRY COLEMAN, Appellant, v. THE DEPARTMENT OF TRANSPORTATION OF THE STATE OF MONTANA, Appellee.	Cause No. CDV-2010-1074 ORDER ON PETITION FOR JUDICIAL REVIEW
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On November 15, 2010, Larry Coleman filed a petition for judicial review of a decision by the State Tax Appeal Board (STAB) affirming a final decision and order by the Montana Department of Transportation (MDT) that Coleman violated Section 15-70-330, MCA, by operating a truck transporting property on a public highway fueled with non-taxed red dyed diesel fuel.¹

Coleman was cited while driving his 1999 International Harvester truck on U.S. Highway 212 near Charlo, Montana, on November 28, 2008. Coleman's truck was manufactured to burn diesel fuel. A sample of the fuel from Coleman's

¹ The statute prohibits the use of dyed special fuels in vehicles operated on public highways unless the use is permitted by rules adopted by the MDT. Violation is subject to a fine of up to \$1,000 for a first offense.

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1 vehicle was tested at the MDT chemistry laboratory and showed a concentration of
2 17.2 parts per million of red dye, which exceeds the legal limit allowed in vehicles
3 designed to transport persons or property on the state's public roads and highways.

4 Coleman requested a formal review of the citation. A hearing was
5 conducted before a hearing examiner. Testimony was taken and exhibits offered by
6 Coleman and the MDT. The hearing examiner concluded that Coleman violated
7 Section 15-70-330, MCA. The hearing examiner's proposed findings, conclusions,
8 and order were adopted as the final decision of the MDT on April 21, 2010. Coleman
9 then appealed the decision to STAB, which affirmed that decision.

10 STANDARD OF REVIEW

11 The Montana Administrative Procedure Act governs district court
12 review of an administrative agency's decision. Section 2-4-704(2), MCA, establishes
13 the standard of review:

14 The court may not substitute its judgment for that of the agency
15 as to the weight of the evidence on questions of fact. The court may
16 affirm the decision of the agency or remand the case for further
17 proceedings. The court may reverse or modify the decision if substantial
18 rights of the appellant have been prejudiced because:

19 (a) the administrative findings, inferences, conclusions, or
20 decisions are:

- 21 (i) in violation of constitutional or statutory provisions;
- 22 (ii) in excess of the statutory authority of the agency;
- 23 (iii) made upon unlawful procedure;
- 24 (iv) affected by other error of law;
- 25 (v) clearly erroneous in view of the reliable, probative, and
substantial evidence on the whole record;
- (vi) arbitrary or capricious or characterized by abuse of discretion
or clearly unwarranted exercise of discretion.

26 The Montana Supreme Court has adopted a three-part test to determine
27 if a finding is clearly erroneous. *Weitz v. Mont. Dep't of Natural Res. & Conservation*,
28 284 Mont. 130, 133, 943 P.2d 990, 992 (1997). First, the Court will review the record
29 to see if the findings are supported by substantial evidence. *Id.* Second, if the

1 discovery requests but failed to disclose. MDT objected to Coleman's requests on the
2 basis that they were too broad. Coleman asserts that he independently discovered the
3 information about these cases subsequent to the STAB decision. MDT responds that
4 it made a legitimate objection to the discovery requests and that Coleman never
5 followed up with a Rule 37, M.R.Civ.P., motion to compel or any other attempt to
6 develop the information he had requested but was not given.

7 The Montana Supreme Court recently addressed a similar situation in
8 *Arlington v. Miller's Trucking, Inc.*, 2012 MT 89, 364 Mont. 534, 277 P.3d 1198.
9 That case involved a wage claim dispute between a logging truck driver and his
10 employer. Arlington claimed he and Miller's Trucking, his employer, had orally
11 agreed that he was to be paid a salary between \$60,000 and \$70,000. Miller's
12 Trucking, however, asserted that they agreed to payment based on a load percentage.

13 Arlington filed a wage claim with the Montana Department of Labor
14 and Industry, which was dismissed. During the administrative process, Arlington filed
15 a motion for production of information from his employer relating to what other
16 drivers had been paid. Arlington also requested evidence of job orders and media
17 advertisements by Miller's Trucking. Miller's Trucking opposed the motion on
18 grounds that the request was overly broad and unduly burdensome. The hearings
19 officer entered findings and conclusions, dismissing Arlington's petition. Arlington
20 then sought review from the district court which affirmed the decision of the
21 Department. As part of his petition for review, Arlington again sought leave to
22 present the additional evidence that he claimed supported his claim. The court denied
23 the request. *Arlington*, ¶¶ 10-15.

24 As with the instant case, one of the grounds raised by the respondent for
25 failing to provide the information requested by Arlington was that Arlington had

1 failed to file a motion to compel pursuant to Rule 37, M.R.Civ.P. However, in
2 reversing the district court decision on appeal, the Montana Supreme Court did not
3 find this argument persuasive, stating:

4 Given that Arlington made concerted efforts within the discovery
5 rules to secure the documents to support his case, we conclude that
6 refusing him relief because he failed to file a motion to compel
7 constitutes an overly rigid application of the rules of discovery.
8 Arlington's efforts were neither an "abuse [of] the dignity of the
9 courtroom" nor a matter of prejudice to Miller's. We therefore conclude
10 that in failing to require Miller's to produce the duly requested material
11 and excluding the tendered job listings for Arlington's failure to file a
12 motion to compel, the Hearing Officer acted arbitrarily and capriciously,
13 prejudicing the substantial rights of Arlington. Section 2-4-704(2)
14 (a)(vi), MCA. We further conclude that the District Court likewise
15 abused its discretion in affirming the exclusion of evidence and in
16 refusing to admit the tendered evidence pursuant to its authority under §
17 2-4-703, MCA.

18 *Arlington*, ¶ 25 (citations omitted).

19 As the above-quoted provision makes clear, Arlington's case was
20 pursued according to the provisions of the Montana Administrative Procedures Act,
21 which permits the district court to return the case to the administrative agency for
22 presentation of additional evidence if the court deems it appropriate. Section 2-4-703,
23 MCA.

24 Coleman requests alternatively that the Court remand the case to the
25 MDT for full discovery and rehearing. However, the situation is somewhat different
in an appeal of a STAB case because the district court is not confined to the record
and may order addition evidence presented during its consideration of the case, as the
supreme court noted in *O'Neill v. Dep't of Revenue*, 227 Mont. 226, 739 P.2d 456
(1987):

[J]udicial review of *MAPA* contested cases under Section 2-7-704,
MCA, is *limited* to the record, but judicial review of STAB contested
cases under Section 15-2-303(4), MCA, allows the court to *supplement*

1 the record. Under Section 15-2-303(4), MCA, the court reviewing a
2 STAB decision may, on its own initiative or upon motion of a party, find
3 good cause and allow additional evidence to be introduced before the
4 court.

4 *O'Neill*, 277 Mont. at 231, 739 P.2d at 459.

5 Nonetheless, the Court does not believe the situation here requires
6 receipt of additional evidence for purposes of resolving the petition for judicial
7 review. The information requested by Coleman is substantially less pertinent than the
8 evidence requested in *Arlington*. In *Arlington*, the information sought would bear
9 directly on the employer's pay arrangements with other drivers, thus either supporting
10 or refuting *Arlington's* wage claim. In a case involving an issue of whether dyed
11 special fuel use was legitimate, the design or configuration of the vehicle and its
12 principal use are matters unique to each case, and the evidence would be of little value
13 where the record clearly establishes the violation. The Court finds that further
14 discovery involving other citations would not produce information relevant to
15 resolution of the issue. Consequently, the Court need not resolve the issue of whether
16 MDT engaged in discovery abuses.²

17 Section 15-70-330(3)(a), MCA, states:

18 A special fuel user may not use dyed special fuel to operate a
19 motor vehicle upon the public roads and highways of this state unless
20 the use is permitted pursuant to rules adopted under subsection (3)(b).
21 The purposeful or knowing use of dyed special fuel in a motor vehicle
operating upon the public roads and highways of this state in violation
of this subsection is subject to the civil penalty imposed under
15-70-372(2). Each use is a separate offense.

22 Subsection (3)(b) of the above-referenced statute authorizes the MDT to adopt rules
23 for the exercise of its responsibilities. In this regard, Section 18-10-110(1), ARM,
24 provides:

25 _____
² Although the discovery requests were made at the administrative level, there is no discussion of the
issue in the findings and conclusions of the hearing officer or the STAB decision.

1 For the purpose of this rule, an "off-highway or off-road vehicle"
2 is defined as a vehicle not designed to transport persons or property
3 upon the public roads and highways of this state, including special
4 mobile (SM) plated vehicles and vehicles with physical characteristics
5 intended for primary use in an off-road manner which may or may not
6 be licensed as special equipment. These vehicles may occasionally
7 move on the public road for purposes such as movement between job
8 sites or repair.

9 During the administrative hearing, Coleman admitted to using dyed fuel
10 in his truck. He had made modifications to the manufactured version of vehicle so
11 that it could be used for feeding livestock on his ranch. However, he acknowledged
12 that the truck was originally designed for highway use and that he was in fact driving
13 it on the highway when he was stopped by the MDT officer.


14 He offered exhibits during the hearing that depicted the configuration of
15 the truck. Exhibit A consists of several color photographs of the truck in use on
16 Coleman's ranch. While the truck has what appears to be a large dump box, it is
17 otherwise configured like other trucks equipped for highway use. Coleman testified at
18 the hearing that when he was ticketed, he was driving on a public highway to Charlo
19 to pick up a load of corn which he would then transport to his ranch. The offered
20 exhibits and testimony presented during the administrative hearing indicate that the
21 vehicle's alterations simply enhanced its capability to transport property, whether on a
22 public highway or on a ranch.

23 The Court finds that the hearing examiner's findings and conclusions,
24 the decision of the MDT, and the order of the STAB are supported by substantial
25 evidence and are not arbitrary, capricious, or characterized by an abuse of discretion.
It further finds that STAB did not misapprehend the effect of the evidence. Finally,
the Court finds that the conclusions of STAB are not erroneous in view of the reliable,
probative, and substantial evidence on the whole record.

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Based on the foregoing, IT IS HEREBY ORDERED that the decision of
the State Tax Appeal Board is AFFIRMED.

DATED this 13 day of July 2012.


KATHY SEELLEY
District Court Judge

pc: Elizabeth A. O'Halloran
Eli Z. Clarkson/Edward G. Beaudette

T/KS/coleman v mdot or pet j review.wpd

EXHIBIT 2

STATE REC'D 2-17-10
FILE NO. 11677/4 ATTY Beth
REVIEWED BY: BOV
FILED BY:

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

IN THE MATTER OF THE)
MOTOR FUELS CIVIL PENALTY) CASE NO. MF-09-0008
OF LARRY COLEMAN)

FINDINGS OF FACT, CONCLUSIONS OF LAW

On March 12, 2009, the Montana Department of Transportation (MDOT) received a written request for a hearing to appeal a decision made at an informal review by Robert Turner, Bureau Chief for the Montana Fuel Tax Bureau, of a citation given to Larry Coleman for improper use of Dyed Fuel. Such request is to be conducted as a Contested Case under the Montana Administrative Procedure Act. Mr. Coleman received Civil Citation #DFS 5640522. The MDOT requested the appointment of a Hearings Officer.

Pursuant to the request, on May 19, 2009, Norman C. Peterson of the Montana Department of Justice, Agency Legal Services Bureau, was appointed by the MDOT to act as hearings examiner. A Prehearing questionnaire was sent to the parties at the addresses provided by each party, and both responded.

A hearing date of December 8, 2009, was set to take place at the offices of Agency Legal Services Bureau (ALSB) in Helena, Montana. Notice of the hearing was served on the parties.

On December 8, 2009, a hearing was held at the offices of ALSB. Mr. Edward Beaudette appeared on behalf of MDOT. Ms. Elizabeth O'Halloran of Missoula, Montana represented Mr. Coleman.

Mr. and Mrs. Coleman appeared and Mr. Coleman was sworn and testified. The following witnesses were sworn in on behalf of MDOT: Russell Leu, Chemist with MDOT and Joseph Lavadure; Motor Carriers Officer with the MDOT. Mr. Lavadure testified. All witnesses were found to be credible.

2/16

CC CLIENT

2-17-10

1 vehicles that may be entitled to a legal special exemption. This hearing examiner
2 found him to be a credible witness and his testimony as noted on the record and
3 found below is found to be fact.

4 2. He received a tip that a vehicle may be in use on the public highways
5 that was unlicensed or registered and using dyed red fuel. Upon investigation, he in
6 fact saw, on U.S. Highway 212 near Charlo, Montana, a vehicle matching the
7 description given to him and made a stop. The vehicle, a 1999 International
8 Harvester truck, was not licensed or registered and was being driven by Mr.
9 Coleman. He asked Mr. Coleman if he could take a sample of the fuel in the tank of
10 the truck and received permission to do so. He observed that the fuel appeared to be
11 dyed red, took a sample of the fuel in the vehicle, and sent it to MDOT for analysis.

12 3. He received back from MDOT a chemical analysis of the fuel sample
13 which stated it was dyed diesel fuel and in excess of the legal concentration allowed
14 to be in a fuel tank in a non-exempt vehicle being driven on a public highway. It is
15 noted that in response to a discovery question, Mr. Coleman admitted to placing
16 untaxed dyed diesel fuel in the truck in question and he was aware that he was
17 consuming such fuel on the day he was stopped by Mr. Lavadure. Mr. Coleman was
18 cited for a violation of Montana law.

19 4. Mr. Lavadure testified that "special mobile equipment", not designed
20 to carry passengers, such as a pump truck, back-hoe, or the like are generally used
21 off road and are allowed to use dyed fuel in such off road capacity. Such vehicles
22 could be used on public highways using dyed diesel fuel but only for such
23 occasional use as traveling from one part of a ranch to another, the travel being
24 necessary to transport the vehicle for use at the other location. According to Mr.
25 Lavadure, he did not find that the truck in question was classified as "special mobile
26 equipment."

27

1 5. According to the VIN number taken from the truck, it was defined as a
2 truck, and appeared to be a vehicle designed to carry loads and passengers. He
3 testified that he found no exemption that would apply to this vehicle, and which
4 would allow it to be used on public highways and using dyed diesel fuel. It was, in
5 his opinion, and based on his training and experience, neither "off road equipment"
6 nor a defined "special mobile equipment". In his opinion, if the vehicle was to be
7 used on public highways, it could not use dyed untaxed diesel fuel that was in a
8 concentration in excess of the legal limit.

9 6. On cross examination by Ms. O'Halloran he did agree that on
10 occasion a vehicle that is designed as a truck could be considered as "off road
11 equipment", but in such instances, the truck could not be operated on public
12 highways, unless in occasional or allowed use, while burning dyed diesel fuel in a
13 concentration in excess of that allowed by law.

14 7. While Ms. O'Halloran cross examined Mr. Lavadure as to his
15 understanding of the definitions of "off road equipment" and "special mobile
16 equipment", the ultimate determination of whether this truck met either definition is
17 a matter of law, and will be addressed later in this decision.

18 8. Mr. Coleman testified on his own behalf. He is a self-employed
19 rancher and his ranch is located near Charlo, Montana. His ranch is not in one
20 location, but is divided into several sections. To get from one portion to another he
21 on occasion has to use the public highways. Generally speaking, this is to transport
22 feed, or to use the public highways to move equipment from one part of his ranch to
23 the other.

24 9. The vehicle in question was a specially modified truck; a vehicle that
25 he paid to have converted. He referenced his Exhibits to indicate the modifications
26 and how the truck was being used in his ranching operation; generally showing the
27

1 off road use of the truck in hauling and distributing feed for his cattle. He admits to
2 using 100% dyed diesel fuel in the truck.

3 10. He had other trucks that were used by the ranch, including gas
4 powered vehicles. He testified he does not use the vehicle in question in this case
5 for ranch trips to Ronan or other towns in the area, but see also his testimony in
6 paragraphs 11-13. He obtained the truck for agricultural purposes and used it for
7 those purposes on his ranch.

8 11. On cross examination he stated he used the truck to haul dirt and to
9 haul feed for his cattle. He admitted it could be used to haul grain or fertilizer if he
10 needed to do so. He admitted that he understood that an off road vehicle such as a
11 hay baler or the like could be used on a public highway while fueled with non-taxed
12 dyed diesel fuel but only if the public highway was used for taking the vehicle from
13 one portion of his ranch to another portion of his ranch. He did admit that his
14 vehicle was a truck originally designed for use on the highway. He did admit that
15 when he stopped he was on a public road.

16 12. In this instance, he admitted he started from his ranch land with his
17 unloaded truck, and drove on the public highway with the express purpose of
18 driving into Charlo to pick up a load of corn and transport it to his ranch. The corn
19 was loaded into his truck from the railroad area in Charlo, and he drove the truck
20 using city, county, or State roads to haul it to another part of his ranch. If he had not
21 been using the truck to haul feed on the day in question, he would not have been on
22 public roads. His only purpose for using the vehicle that day and being on a public
23 highway was to pick up material from Charlo and transport it to his ranch.

24 13. Mr. Coleman testified as to the special modifications made to his truck
25 to allow it to be used for feed, including a removable side. He stated that the photos
26 showing the use of his truck were all taken while the truck was being used on his
27 ranch, which is how he primarily used the truck. He did state that he used the truck

1 to go to Charlo on the day in question because this truck was equipped to be used
2 for this purpose. He had no other trucks available that were using either gas or non-
3 dyed diesel.

4 CONCLUSIONS OF LAW

5 1. The State of Montana has enacted MCA § 15-70-330, making it illegal
6 to operate a vehicle on the public highways when the vehicle is fueled with dyed
7 diesel fuel (special fuel) that has not been taxed pursuant to MCA § 15-70-321.
8 MDOT is the State Department designated to be responsible for the enforcement of
9 the above legislation.

10 2. MDOT has the authority to inspect diesel-powered vehicles. MCA
11 § 61-10-141. A "Special Fuels User" is defined as "a person who consumes in this
12 state special fuel for the operation of motor vehicles owned or controlled by the
13 person upon the highways of this state." MCA § 15-70-301. There is specific
14 monetary tax on special fuels. MCA § 15-70-321 (2). The statute places
15 responsibility on the operator of a vehicle, and there are specific monetary penalties
16 that may be imposed on the operator of a vehicle who purposefully and knowingly
17 uses untaxed dyed special fuels on Montana's public highways. MCA §§ 15-70-
18 330, 372.

19 3. In addition to the civil penalty, MDOT may assess the appropriate
20 amount of tax owed for such fuel that is being used in a vehicle on a public
21 highway. ARM 18.10.108. MDOT has enacted certain numerical limits for the
22 levels of dyed fuels that may be found in a vehicle's fuel tank, and if the limits
23 exceed a concentration of 2.0 milligrams per liter or greater, a violation of the MCA
24 § 15-70-330 exists. ARM 18.10.112.

25 4. The first violation of the statute is a civil violation, subject to the
26 above fine and tax. A subsequent violation is criminal and the penalties in MCA
27

1 § 15-70-336 may be imposed. The case at hand was a first violation case, and thus
2 the criminal penalties do not apply.

3 5. MDOT proceeded in proper fashion in offering Mr. Coleman the
4 opportunity for and holding an informal review of the citation. Likewise Mr.
5 Coleman, after participating in the informal review and receiving a decision, timely
6 requested a hearing on the citation.

7 6. MDOT appointed a hearing examiner and all parties present at the
8 hearing were given the full opportunity to appear, to present exhibits, to present
9 testimony, and to argue their respective position. Therefore, since a hearing having
10 been held, both parties had the opportunity to present witness testimony and
11 exhibits, and both parties submitted post hearing briefs as requested by the Hearings
12 Officer: the matter is ready for decision.

13 **THE HEARING OFFICER FINDS:** Based on the witness testimony
14 presented at the hearing, the evidence received at the hearing and review of the
15 briefs that Mr. Larry Coleman has violated MCA § 15-70-330. As such he may be
16 fined in accordance with MCA § 15-70-330(a) and MCA § 15-70-372. He may also
17 be assessed the tax owed in accordance with MCA § 15-70-330 (4).

18 **DISCUSSION OF LEGAL ISSUE**

19 The thrust of Mr. Coleman's brief and testimony at the hearing was that he is
20 entitled to an exemption under Mont. Admin. R. 10.10.110 (1) and (2). Mr.
21 Coleman believes that the modifications of the truck in question affect its "design"
22 and have made it now a vehicle "primarily" for use as an agricultural vehicle and in
23 an "off road" capacity. Mr. Coleman testifies that he uses it primarily for use on his
24 ranch, and not for use on public roads.

25 The MDOT did not contest that the vehicle may now be used "primarily" as
26 an agricultural vehicle; nor does it contest that its modifications make its present
27 best use as an off road vehicle; nor does it contest that it is used "primarily" off the

1 public roads and on the ranch. The MDOT's position is that the rules cited above
2 require that the vehicle, to meet the definition of an "off-highway or off-road
3 vehicle" and thus entitled to an exemption, must be: "a vehicle not designed to
4 transport persons or property upon the public roads and highways of this state".
5 Mont. Admin. R. 10.105 (1).

6 In the view of the MDOT, the fact that the truck has had modifications for
7 other purposes does not affect its original design. Indeed, as the MDOT noted,
8 those modifications in fact make it even better for the use that Mr. Coleman
9 admitted he used it for while traveling on a public highway: the moving of property
10 from the city of Charlo to his ranch property.

11 While the administrative rule does not say "originally designed", this
12 Hearings Officer believes the MDOT's position is a more reasonable construction of
13 its own rules than the interpretation made by Mr. Coleman. Indeed, even if it were
14 not more reasonable, this Hearings Officer recognizes the discretion of MDOT to
15 interpret its own rules in such a manner, and if reasonable, this Hearing Officer
16 must defer to the MDOT in doing so. In this case, the Hearings Officer finds the
17 MDOT construction to be reasonable. See: Montana Power Co. v. Cremer, (1979)
18 182 Mont. 277, 280, 596 P.2d 483, 485 and Montana Power Co. Montana Public
19 Service Comm'n, 2001 MT 102, 305 Mont. 260, 26 P.3d 91.

20 In addition, Mr. Coleman himself testified that he used the truck, fueled with
21 non-taxed dyed diesel fuel, on a public highway to transport his property from
22 Charlo to his ranch. This is different than from using a public highway to, for
23 instance, transport a hay baler from one part of his ranch, where it was being used,
24 to another part where it will be once again used. The truck in this case was used to
25 transport property on the public highway, a different matter altogether. And when
26 fueled with non-taxed dyed diesel fuel, a use that is prohibited by law.

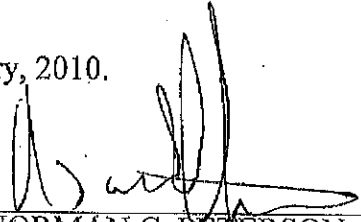
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1 The Hearing Examiner finds that the financial fines/penalties ordered in this
2 case were appropriate under the law.

3 **PROPOSED ORDER**

4 Mr. Larry Coleman violated MCA § 15-70-330, when a motorized vehicle, a
5 truck owned by him, was driven on a public highway and such vehicle had an
6 amount of special dyed diesel fuel in its fuel tank in excess of the amount allowed
7 by the State of Montana. ARM 18-10.112. That violation is subject to a penalty
8 under MCA § 15-70-372 and a motor fuel tax owed under MCA § 15-70-330 and
9 ARM 18.10.108.

10 DATED this 16th day of February, 2010.

11
12 
13 NORMAN C. PETERSON
14 Hearing Examiner
15 Agency Legal Services Bureau
16 1712 Ninth Avenue
17 P.O. Box 201440
18 Helena, MT 59620-1440

17 **CERTIFICATE OF SERVICE**

18 I hereby certify that I caused a true and accurate copy of the foregoing
19 Findings of Fact, Conclusions of Law to be mailed to:

20 Mr. Eli Z. Clarkson
21 Mr. Edward G. Beaudette
22 Legal Services
23 Montana Department of Transportation
24 P.O. Box 201001
25 Helena, MT 59620-1001

24 Ms. Elizabeth A. O'Halloran
25 Milodragovich, Dale, Steinbrenner & Nygren, P.C.
26 620 High Park Way
27 P.O. Box 4947
Missoula, MT 59806

27 DATED: 2/16/10

FINDINGS OF FACT, CONCLUSIONS OF LAW

PAGE 9

App. p. 17

EXHIBIT 3

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**BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA**

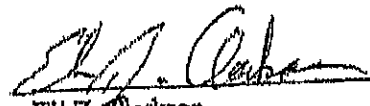
IN THE MATTER of The Motor Fuels Civil Penalty
of Robert G. Propp

CASE NO. MF 2007-0015

**STIPULATION OF
SETTLEMENT**

COMES NOW, the Montana Department of Transportation, by and through its attorney of record, Eli Z. Clarkson and Appellant Robert G. Propp, through his attorney Gary L. Jackson and hereby stipulate and agree to the SETTLEMENT of the above-captioned case.

This Stipulation is based upon the agreement that due to the significant and permanent modifications of the 2006 International Harvester at issue in this case, the vehicle can and should be considered an off-highway vehicle as defined under Montana law. This determination is specific to the facts of this case and does not create a precedent applicable in all cases involving "feed trucks".


Eli Z. Clarkson
Staff Attorney
Montana Department of Transportation
Date 3/21/08



Gary L. Jackson
Attorney at Law
P.O. Box 1368
Sidney, MT 59270-1368
Date 3/21/08

EXHIBIT 4

