

## 1           BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

2                               - - -

3   In the Matter of:                       :

4                               :

5   Richard Hess, a Civil                   :

Case No. 06-1141-TR-CVF

6                               :

7   Forfeiture Violation.                 :

8                               - - -

## 9                               PROCEEDINGS

10   before Mr. Kerry K. Sheets, Hearing Examiner, at the  
11   Public Utilities Commission of Ohio, 180 East Broad  
12   Street, Room 11-B, Columbus, Ohio, called at 10 a.m.  
13   on Thursday, February 8, 2007.

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7 And Ms. Anne Hammerstein  
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11 On behalf of the Staff of the PUCO.

12 Mr. Ken Turowski  
13 88 South Portage Path  
14 Akron, Ohio 44303

15 On behalf of the Respondent.

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1 Thursday Morning Session,  
2 February 8, 2007.

3 - - -

4 ATTORNEY EXAMINER SHEETS: Okay. The  
5 Public Utilities Commission of Ohio has set for  
6 hearing at this time and place Case No.  
7 06-1141-TR-CVF, in the Matter of Richard Hess, a  
8 Civil Forfeiture Violation.

9 My name is Kerry Sheets and I am an  
10 Attorney Examiner for the Commission and I have been  
11 assigned to hear this case.

12 May I now have the appearances of the  
13 parties, please.

14 MR. JONES: Your Honor, on behalf of  
15 Staff, Attorney General Marc Dann, Senior Deputy  
16 Attorney Duane Luckey, also Anne Hammerstein, John  
17 Jones, Assistant Attorneys General, 180 East Broad  
18 Street, Columbus, Ohio on behalf of Staff.

19 MR. TUROWSKI: Attorney Ken Turowski  
20 present with Mr. Hess.

21 ATTORNEY EXAMINER SHEETS: Would you give  
22 your --

23 MR. TUROWSKI: The address? The address  
24 is 88 South Portage Path, Akron, Ohio 44303.

1                   ATTORNEY EXAMINER SHEETS: Do we have any  
2 preliminary matters to take care of this morning?

3                   MR. JONES: None, your Honor.

4                   ATTORNEY EXAMINER SHEETS: Okay. We will  
5 proceed with the first witness.

6                   MR. JONES: Your Honor, Staff would like  
7 to have sworn in as a witness Officer Doug Bell.

8                   (Witness sworn.)

9                   MR. JONES: Thank you, your Honor.

10   - - -

11   DOUG BELL

12 called as a witness on behalf of the Staff, being  
13 first duly sworn, testified as follows:

14   DIRECT EXAMINATION

15 By Mr. Jones:

16                   Q. Officer Bell, would you please state your  
17 employment, please.

18                   A. I am a Motor Carrier Investigator with  
19 the state of Ohio.

20                   Q. Okay. And your title?

21                   A. Motor Carrier Enforcement Investigator.

22                   Q. Okay. And how long have you been so  
23 employed in that position?

24                   A. 21 years.

1           Q.    Okay.  And could you please describe what  
2   your duties and responsibilities are in that  
3   position.

4           A.    We enforce the Federal Motor Carrier  
5   Safety Regulations.

6           Q.    Okay.  And could you please cover for us  
7   your training and education that qualifies you for  
8   your position.

9           A.    We have continuous in-service courses,  
10   Federal and North American Level 1 Roadside  
11   Inspection Courses.

12          Q.    Okay.  As a result of taking those  
13   courses, were there any certifications that were  
14   issued to you?

15          A.    Yes.

16          Q.    And what were those certifications?

17          A.    Enable you to do a Roadside Level 1  
18   Inspection.

19          Q.    Okay, okay.  So as part of your training,  
20   did you have -- besides classroom training, did you  
21   have on-the-job training as well?

22          A.    Yes, sir, six months.

23          Q.    Okay.  What did that entail?  I mean,  
24   were you assigned with somebody?

1           A.    Yes, sir, supervisor.

2           Q.    Okay.  And how did that -- how did that  
3 happen?  I mean, as far as what did you -- what did  
4 you do?  Did you like shadow someone on the job for  
5 doing inspections?

6           A.    Yes, sir.

7           Q.    Okay.  All right.  And in order to do  
8 your job what equipment is issued to you for carrying  
9 out your duties and responsibilities?

10          A.    Computer, Federal Motor Carrier  
11 Regulation books, state policies, state regulation  
12 books, creeper, chalk, just a whole list of stuff.

13          Q.    How about a vehicle, a vehicle as well?

14          A.    A vehicle, yes.

15          Q.    Okay.  And a uniform?

16          A.    Yes, sir, uniform, vehicle.

17          Q.    I see you are here today in a uniform.  
18 Is this the uniform of the day for your job?

19          A.    Yes, sir.

20          Q.    Okay.  And for your area what -- what  
21 district are you assigned to?  How big is your  
22 jurisdiction?

23          A.    I am assigned to District 3 which is a  
24 seven-county area up in northeast Ohio.



1           Q.    Okay.  Officer Bell, I want to refer your  
2 attention to the date of January 31, 2006.  Did you  
3 have occasion to come in contact with one Mr. Richard  
4 Hess?

5           A.    Yes, sir.

6           Q.    And how did that happen?

7           A.    I pulled his vehicle over for a safety  
8 inspection.

9           Q.    Okay.  And what was the -- what was the  
10 purpose for the stop to do the inspection?

11          A.    When he drove past me, I believe I  
12 noticed a clearance light out.

13          Q.    Okay.  Let me ask you what -- can you  
14 please kind of give us an overview of what a typical  
15 inspection is for your job.

16          A.    Yeah, walk around the vehicle, check all  
17 the lights, the tires, the brakes, and the springs,  
18 and you -- then you go underneath it and check the  
19 brakes for -- to be sure they are all adjusted down.

20          Q.    Okay.  And after you complete an  
21 inspection, what paperwork is generated as a result  
22 of the inspection?

23          A.    A vehicle inspection report is generated.

24          Q.    And how is that report generated?

1           A.    Put all the information into the computer  
2 in my car and program it.

3           Q.    Okay. And what I have placed before you  
4 is marked as Staff Exhibit A. Could you please  
5 identify that exhibit for the record, please.

6           A.    This is a vehicle inspection report that  
7 I did on January 31.

8           Q.    And who -- who -- what was the subject of  
9 the investigation for the report?

10          A.    Elmer Drum Company.

11          Q.    And this was the carrier?

12          A.    Yes, sir.

13          Q.    Okay. And who was identified as the  
14 driver in the report?

15          A.    Richard E. Hess.

16          Q.    Okay. All right. I want to kind of walk  
17 you through the information that's contained in your  
18 report. I see at the top there is a report number  
19 that's provided. Where does that report number come  
20 from?

21          A.    The computer.

22          Q.    Okay. And I see that this report  
23 describes an inspection, level 1 inspection. Could  
24 you please describe what type of inspection a level 1

1 inspection would be.

2 A. That's a full inspection where you go  
3 underneath the vehicle and check all the brakes and  
4 all that.

5 Q. Okay. And I see some additional  
6 information up here. It says no HM Insp. What does  
7 that mean?

8 A. He wasn't hauling hazardous material.

9 Q. Okay. All right. And I see then for the  
10 next block in the report it provides information as  
11 you just mentioned as to the carrier and the driver;  
12 is that correct?

13 A. Yes, sir.

14 Q. And where did you get this information  
15 from to put in the report?

16 A. From his USDOT number on the side of the  
17 door and his logbook.

18 Q. How about the information on the driver,  
19 Mr. Hess?

20 A. From his driver's license.

21 Q. Okay. Could you -- could you identify  
22 for the record the Mr. Hess that you stopped for this  
23 inspection on January 31, 2006? Is he here in the  
24 courtroom today?

1 A. I really don't remember him.

2 Q. Okay. That's fair.

3 A. I presume it's him over there.

4 Q. Okay. How many inspections do you  
5 conduct on an annual basis roughly estimating?

6 A. About 13, 14 hundred a year.

7 Q. Okay.

8 MR. TUROWSKI: Pardon me for  
9 interrupting. May I make a motion to dismiss at this  
10 point for his failure to be able to identify Mr. Hess  
11 at this time?

12 ATTORNEY EXAMINER SHEETS: Is that your  
13 motion?

14 MR. TUROWSKI: Yes.

15 ATTORNEY EXAMINER SHEETS: Okay. Motion  
16 will be denied at this time.

17 Proceed.

18 Q. Now, let me go back to this information  
19 that is in block 2 of your examination report. Now,  
20 this information you have on the driver, you say  
21 you -- where did you get this information from?

22 A. From his driver's license.

23 Q. Okay. And for the record do you want to  
24 put what information is provided for his license

1 number on the report? For the record would you  
2 please state the license number.

3 A. Oh, okay. It's 24111482 and that's  
4 Pennsylvania.

5 Q. Okay. And date of birth?

6 A. 9-18, 1945.

7 Q. Okay. All right. And then looking at  
8 the next block of information for the report, what's  
9 described there?

10 A. Where I stopped him, the vehicle,  
11 highway, the county.

12 Q. Okay. And where is the location?

13 A. It's in Richfield.

14 Q. What county?

15 A. Summit County.

16 Q. And what -- what kind of cargo was  
17 Mr. Hess drive -- hauling?

18 A. He was empty at that particular time.

19 Q. Okay. Now, then the next block of  
20 information that's provided in the report, what  
21 information is identified there?

22 A. The vehicles, the tractor and the trailer  
23 that he was operating.

24 Q. Okay. And, again, where did you get this

1 information from to put in your report?

2 A. I got it from the registrations, and also  
3 I ran the plates through LEADS.

4 Q. Okay. And so the identification of the  
5 information provided in this part of the report, it  
6 was registered to -- to this carrier and this driver?

7 A. I'm not sure.

8 Q. Okay.

9 A. We don't put down companies. We just put  
10 down the VINs and --

11 Q. Okay. Very good.

12 A. And the plates.

13 Q. So moving on to the next block of  
14 information, brake adjustments, what's provided  
15 there?

16 A. Those are the adjustments for the brakes  
17 that are on the vehicle.

18 Q. Okay. Now, I see that there is certain  
19 columns of information provided horizontally. It  
20 starts out with axle No. 1, 2, 3, 4, 5. Could you  
21 break that down for us, please?

22 A. That's the number of axles that's on the  
23 vehicle, first axle is the steer axle and then you  
24 have two drive axles and that's the tractor and axles

1 No. 4 and 5 will be the trailer.

2 Q. Okay. Now, I see that there is some  
3 numbers that are bolded out there. What's the  
4 purpose of that?

5 A. Those are the brakes that went over the  
6 adjustment limits.

7 Q. Okay. So I see that under column 1,  
8 correct?

9 A. Yes, sir.

10 Q. And that was the right front?

11 A. Yes, sir.

12 Q. Okay. And then the other one was in  
13 column 5?

14 A. Yes, sir.

15 Q. And that was the left -- was that left  
16 rear or what is that?

17 A. Yes, sir, left rear trailer.

18 Q. Okay. So, now, moving on down to the  
19 next block of information that provides for  
20 violations, what information is provided there?

21 A. What we found on -- during the inspection  
22 to be in -- not in compliance with the federal  
23 regulations.

24 Q. Okay. So, now, this is all the

1 information that you provided after you completed  
2 your inspection?

3 A. Yes, sir.

4 Q. Okay. And these are all the violations  
5 that you noted from that inspection?

6 A. Yes, sir.

7 Q. Okay. And if we could understand, here,  
8 I see that going from, again, left to right, what's  
9 provided first for that first column under section  
10 code?

11 A. That's the section codes for that  
12 particular violation.

13 Q. Okay. All right. And this is from the  
14 Federal Motor Carrier Safety Regulations?

15 A. Yes, sir.

16 Q. Okay. Now, moving to the right the next  
17 column under unit, what's that pertain to?

18 A. Unit 1 is the tractor, and unit 2 is the  
19 trailer.

20 Q. So that would match the box above where  
21 it says vehicle identification as to what unit we are  
22 referring to?

23 A. Yes, sir.

24 Q. Okay. All right. Looking to the right



1 of the column of unit under violations, what's OOS  
2 stand for?

3 A. Out of service.

4 Q. Okay. And what information -- what are  
5 the letters that are provided underneath that column?

6 A. We have a Y for yes and an N for no.

7 Q. Okay.

8 A. That particular violation was noted.

9 Q. Now, under the next column verify, what  
10 does that mean? There are letters provided there as  
11 well.

12 A. The U represents unknown, that it -- I  
13 was unable to verify that violation had been  
14 corrected or not.

15 Q. Okay.

16 A. And then the N is no.

17 Q. Okay. And then the next column crash?

18 A. That's if it was in a crash.

19 Q. Okay.

20 A. Tractor was involved in a crash.

21 Q. That's not applicable here, right?

22 A. No, sir.

23 Q. All right. And then finally the last  
24 column violation description, what information is

1 provided there?

2 A. That violation that we noted and a brief  
3 description of what it is.

4 Q. Okay. So that's like a summary  
5 description of the violation from the code section  
6 that's listed to the left?

7 A. Yes, sir, generic -- generic and then we  
8 put in a brief description.

9 Q. Okay. Now, looking at the list of  
10 violations that are noted here and the description  
11 provided, how many of the offenses were marked for  
12 out of service?

13 A. Four of them.

14 Q. Okay. And that pertained to what type of  
15 violation?

16 A. All four of them were brakes.

17 Q. Okay. All right. Then there is a second  
18 page to your report; is that correct?

19 A. Yes, sir.

20 Q. Okay. And what information is provided  
21 here on the second page?

22 A. The top part is the same as the front,  
23 the date and the times and report number and who the  
24 carrier is and then has inspection notes, down

1 locally defined fields is the driver's address.

2 Q. Looking at that field the driver's  
3 address, where did you get this information from?

4 A. Once again, off of his license and  
5 through LEADS.

6 Q. And would you please state for the record  
7 what that address shows there in your report?

8 A. It is 8350 Route 405 North, P.O. Box -- I  
9 can't really read that. It's Milton, Pennsylvania,  
10 and the zip code 17847.

11 Q. Okay. And there is something else here,  
12 RSN code, what does that mean?

13 A. The reason why we stopped the vehicle.

14 Q. Okay. What's OBVI stand for?

15 A. Obvious violation which I noted up in the  
16 inspection notes as being the left front clearance  
17 light.

18 Q. Okay. So noticed the left front  
19 clearance light.

20 A. Not working when he went past me.

21 Q. That was the reason then for stopping him  
22 and doing --

23 A. Doing an inspection.

24 Q. Okay. All right. Now, looking at this

1 report, I see that there is signature lines that are  
2 provided at the bottom of the first page and the  
3 bottom of the second page. What then after such  
4 time -- well, let me first ask you when did you fill  
5 this information into your report in conjunction to  
6 doing the inspection? How soon after the inspection?

7 A. Right after I do the inspection, I go  
8 back to my car and put the information in the  
9 computer.

10 Q. Okay. And how long did the inspection  
11 take? Does the report reveal that?

12 A. Yes, sir. It was up in the right top  
13 corner. It was an hour and -- an hour and 11  
14 minutes.

15 Q. And the time started and ended?

16 A. 11:20 a.m. started and ended at 12:31  
17 p.m.

18 Q. Okay. And then after you printed this --  
19 you say you printed this out inside your cruiser?

20 A. Yes, sir.

21 Q. This is from your laptop?

22 A. Yes, sir.

23 Q. And then after you did that, what did you  
24 do?

1           A.    Took the copy of the report and all the  
2 paperwork and gave the driver back his paperwork and  
3 explained the inspection report to the driver and put  
4 out-of-service stickers on the truck and the trailer.

5           Q.    Okay, okay. Let's go for the first part  
6 first. You printed this out and gave the driver,  
7 Mr. Hess, back his papers; is that correct?

8           A.    Yes, sir.

9           Q.    What papers did you give him back?

10          A.    His registration, his driver's license,  
11 that's about all I had.

12          Q.    Okay. Then after you did that, what did  
13 you do as far as the report?

14          A.    I go over the report with him, each  
15 violation that we found, and then kind of take care  
16 of this vehicle report.

17          Q.    Okay. And what did you cover with him as  
18 to the out-of-service violations that were noted in  
19 the report?

20          A.    That he was out of service there at the  
21 rest area until the out-of-service violations were  
22 fixed and then that he could take the vehicle back  
23 and correct IT after -- before he gets redispached,  
24 that the other violations need to be taken care of

1 before the truck and trailer get redispached.

2 Q. Okay. Now, what did you go over as far  
3 as, you know, for Mr. Hess's understanding that  
4 knowing when he could go back into service from  
5 repairs being made to the out-of-service violations?

6 A. Once all the out-of-service violations  
7 were corrected on the tractor then the tractor could  
8 go back in service, and once all the out-of-service  
9 violations on the trailer were corrected then the  
10 tractor could go back into service.

11 Q. So you told him all the violations had to  
12 be corrected before it went back into service?

13 A. Yes, sir.

14 Q. Okay. And then did you sign this report  
15 and have Mr. Hess sign the report?

16 A. Yes, sir.

17 Q. And this was done after you had gone over  
18 the report with Mr. Hess?

19 A. Yes, sir.

20 Q. Okay. And is this Exhibit A an accurate  
21 representation of all the information that was  
22 provided in the inspection of Mr. Hess, the driver,  
23 and the inspection that was done on January 31, 2006?

24 A. Yes, sir.

1           Q.    Okay.  And is this a document that's kept  
2           in the ordinary course of business to discharge your  
3           duties as the inspector for the State Highway Patrol?

4           A.    I don't understand the question.

5           Q.    I mean, is this a record that you  
6           normally have to do all the time in order to do your  
7           duties?  You always -- after you do an inspection,  
8           you always generate one of these reports?

9           A.    Yes, sir, after the inspection.

10          Q.    So this would be like a business record  
11          for your business being a state inspector?

12          A.    Yes, sir.

13          Q.    Okay.  Now, after then, you had -- you  
14          signed this report and Mr. Hess signed this report.  
15          Obviously this is not the report that was signed,  
16          right, but it's an accurate representation of what  
17          was given to Mr. Hess?

18          A.    Yes, sir.

19          Q.    Okay.  Now, what -- after you had issued  
20          him the report, what took place next?  You put the  
21          stickers on the truck and then what?

22          A.    Yes, sir.

23          Q.    Where did you place the stickers for out  
24          of service?

1           A.    The tractor one I put on the windshield  
2 right next to the driver, and the trailer I put on  
3 the corner there, the left front corner.

4           Q.    How big of a sticker is this and is there  
5 any information on the sticker?

6           A.    Yes, sir.

7           Q.    Can you describe that for the record?

8           A.    It says that the vehicle is placed out of  
9 service and no one is to take off the stickers unless  
10 all the out-of-service items are taken care of.

11          Q.    Okay. And these stickers are placed in a  
12 conspicuous place on both units?

13          A.    Yes, sir.

14          Q.    Okay. And you say that this location  
15 where both units were placed out of service was in a  
16 rest area?

17          A.    Yes, sir.

18          Q.    Okay. Now, what -- what happened next?  
19 What -- did you hang around at that point or what did  
20 you do next?

21          A.    No, sir. I usually get in my car and go.

22          Q.    Okay.

23          A.    And look for another vehicle to check.

24          Q.    Okay. Any -- as to your memory, any



1 further conversation with Mr. Hess at that point  
2 before you left?

3 A. No, sir.

4 Q. Okay. So then subsequently on that same  
5 day did you have occasion to come in contact with  
6 Mr. Hess yet again?

7 A. Yes, sir.

8 Q. Okay. And do you recall what the purpose  
9 of that occasion was?

10 A. I was sitting up north of the rest area  
11 where I put him out of service, and I saw his truck  
12 going north when the first inspection was south.

13 Q. We are talking the opposite lane of  
14 travel?

15 A. Yes, the opposite direction, yeah.

16 Q. About how far of a distance would you  
17 say?

18 A. It was about a half mile, mile north of  
19 where I put him out of service at.

20 Q. And where were you sitting?

21 A. North of the rest area at the 9 mile  
22 marker.

23 Q. Okay. And at that point what -- what did  
24 you see?

1           A.    I saw that vehicle driving past, and I  
2 was wondering what he was doing up north when he  
3 was -- usually when they get fixed, they just  
4 continue on their way. And I wanted to check the  
5 out-of-service violations, so I went after him to  
6 check the out-of-service violations to make sure they  
7 were corrected.

8           Q.    Okay. All right. So then you -- how did  
9 you execute your stop then? What did you do?

10          A.    I turned my lights on and he pulled over  
11 and.

12          Q.    And then you made contact with the  
13 driver?

14          A.    Yes, sir.

15          Q.    And who was that driver?

16          A.    Mr. Hess.

17          Q.    Okay. Now, I want to refer your  
18 attention to Staff Exhibit B in the packet there.

19          A.    Okay.

20          Q.    And what -- what did you do after you got  
21 Mr. Hess stopped a second time? Did you -- what did  
22 you do?

23          A.    Well, I asked him if he had everything  
24 fixed and that I was going to check the front steer

1 brakes there and make sure they were fixed. I went  
2 over and we checked the front steer brakes and the  
3 right one was still out of adjustment.

4 Q. Okay. And looking at your report, Staff  
5 Exhibit B, is this the information then provided in  
6 this report?

7 A. Yes, sir.

8 Q. Okay. So then you conducted another --  
9 another full inspection of the vehicle for repairs;  
10 is that correct?

11 A. Yes, sir.

12 Q. Okay. And as a result of doing that  
13 inspection, then you generated this -- this  
14 examination report which is Staff Exhibit B?

15 A. Yes, sir.

16 Q. Okay. Now, looking starting at the top  
17 is all the information basically the same information  
18 that was provided from the first report, Staff  
19 Exhibit A?

20 A. Yes, sir.

21 Q. Okay. However, on Staff Exhibit B what  
22 time is indicated on Staff Exhibit B?

23 A. 3:05 p.m. until 4:06 p.m.

24 Q. Okay. And, again, in the second block

1 it's all the same information as to identification of  
2 the carrier and driver and was noted as Mr. Hess  
3 being the driver again; is that correct?

4 A. Yes, sir.

5 Q. Okay. Now, looking at the next box of  
6 information here, the location, what's noted this  
7 time for location as to where you are conducting your  
8 second inspection of Mr. Hess?

9 A. Well, it's the same location. I took him  
10 back to the same rest area there instead of doing a  
11 complete inspection alongside the road.

12 Q. Okay. So you had him follow you back to  
13 the rest area where the first inspection occurred?

14 A. Yes, sir.

15 Q. Okay. And then looking at the vehicle  
16 identification information, that's all the same  
17 information that was provided in the first report?

18 A. Yes, sir.

19 Q. Same two units that you inspected  
20 earlier?

21 A. Yes, sir.

22 Q. Okay. Now, looking at the brake  
23 adjustments category here for your report, your  
24 second report, what information is provided there as

1 to brake adjustments?

2 A. There is one brake out of adjustment and  
3 it's the right steer axle.

4 Q. Okay.

5 A. Column 1.

6 Q. Okay. And, now, this is the same axle  
7 and tire that was placed out of service in Staff  
8 Exhibit A?

9 A. Yes, sir.

10 Q. Okay. And looking then as to violations  
11 what's noted here for Staff Exhibit B?

12 A. Well, the top violation is operating an  
13 out-of-service vehicle without fixing all  
14 out-of-service items.

15 Q. So that's a new violation?

16 A. Yes, sir.

17 Q. That's different from the first  
18 inspection report?

19 A. Yes, sir.

20 Q. Okay. Now, let's start there. For the  
21 first section -- code section that's listed, what's  
22 listed here for the new violation that you had on the  
23 violation? What's the code section?

24 A. 392.2.

1           Q.    Again, this refers to the Federal Motor  
2 Carrier Safety Regulations; is that correct?

3           A.    Yes, sir.

4           Q.    Okay. And what's provided under --  
5 what's ST stand for?

6           A.    That's a state regulation.

7           Q.    Okay. And under unit D what's that refer  
8 to?

9           A.    That's a driver violation.

10          Q.    Okay. And under out of service?

11          A.    No.

12          Q.    Okay. And then there's a description  
13 that's provided there. Can you please read that for  
14 the record, what description for that code section?

15          A.    "Operating out of service vehicle without  
16 fixing all out of service items on the original  
17 inspection report 0H3274004432, right steer brake not  
18 adjusted."

19          Q.    Now, the number that's provided in that  
20 description, does that match the number that's  
21 provided in Staff Exhibit A --

22          A.    Yes, sir.

23          Q.    -- at the top? All right. I am looking  
24 at the top of Staff Exhibit B. What report number is

1 provided at the top of this exhibit?

2 A. It's OH3274004435.

3 Q. Okay. So this report number is different  
4 than the report number provided on Staff Exhibit A;  
5 is that correct?

6 A. Yes.

7 Q. Okay. And, again, you have other  
8 violations listed here. Are these violations that  
9 were noted from the first inspection?

10 A. Yes, sir.

11 Q. Okay. And, now, you have the next code  
12 section here, what's provided there, the next one  
13 under violations?

14 A. That is 396.3A1BA, was brake adjustment.

15 Q. Okay. And going to the right, what  
16 information is provided under unit and out of  
17 service?

18 A. Unit No. 1 out of service is a Y.  
19 Verification is a U, and crash is an N and then  
20 violation description "brake out of adjustment - see  
21 chart above right steer brake" and "1R" and then I  
22 got "out of service on report number OH3274004432."

23 Q. Okay. That number again correlates to  
24 the number that was provided from Staff Exhibit A as

1 to that examination report number; is that correct?

2 A. Yes, sir.

3 Q. Okay. And the unit is the tractor -- 1  
4 is the tractor as to up above vehicle identification?

5 A. Yes, sir. It's the first axle right side  
6 on the tractor.

7 Q. Okay. And the Y under out of service,  
8 that represents that it was previously placed out of  
9 service, correct?

10 A. Well, it represents we are placing it  
11 back out of service.

12 Q. Again, okay. Okay. Now, again, for this  
13 examination report when did you -- when did you  
14 provide -- when did you put this information into  
15 your report relevant to your second inspection?

16 A. After we got done inspecting the vehicle,  
17 after I got done.

18 Q. Okay. And then after you put this  
19 information in, what did you do next? Entered into  
20 your laptop, what did you do next?

21 A. Printed out a copy and then took the  
22 driver his stuff and a copy of the report.

23 Q. Okay. Now, I noticed again you have a  
24 second page to your examination report. And, again,



1 the information that's provided at the top and as to  
2 the carrier and driver, all this information is the  
3 same information from the first page of this report;  
4 is that correct?

5 A. Yes, sir.

6 Q. Okay. Now, there appears to be  
7 information that's under your next category  
8 inspection notes. Can you please tell us what's  
9 provided there?

10 A. Just a brief description of why I went  
11 over and stopped the vehicle.

12 Q. Okay. And could you please read into the  
13 record what notes are provided as to what's going on  
14 with the two inspections.

15 A. Okay. "Saw driver driving the vehicle at  
16 the 9 mile marker. Placed driver out of service on  
17 271 Southbound rest area 8 mile marker earlier.  
18 Pulled driver over to check out of service items and  
19 wondering how he got north of the southbound rest  
20 area. Driver said he drove the truck with the out of  
21 service stickers on to the repair shop to get fixed.  
22 Fixed everything except right steer push rod travel.  
23 Still out of adjustment from earlier report number  
24 OH3274004432. Driver said he knew he wasn't supposed

1 to drive to the repair shop to get out of service  
2 items fixed. Mechanic out here before I was done  
3 with the report. Driver said slack adjustor is bad.  
4 Has to replace."

5 Q. Okay. Now, that last little piece you  
6 just read there about the mechanic, are you referring  
7 to this -- the second time or the first time?

8 A. The second time.

9 Q. The second time. Okay. All right. And,  
10 again, the number that's provided in your notes here  
11 is referring to the number of examination Staff  
12 Exhibit A; is that correct, for that inspection?

13 A. Yes, sir. That OH32, yeah.

14 Q. All right. Okay. So you put this  
15 information into your report right after you  
16 completed the second inspection; is that correct?

17 A. Yes, sir.

18 Q. So the information was still fresh in  
19 your memory when you made this report?

20 A. Yes, sir.

21 Q. Okay. Now, as to the out-of-service  
22 violation -- violations that were noted from Staff  
23 Exhibit A, is there -- is there an admission here by  
24 Mr. Hess from the second inspection as to driving the

1 vehicle while out of service?

2 A. Yes. He said that he drove the vehicle  
3 to the repair shop --

4 Q. Okay.

5 A. -- from the rest area.

6 Q. Okay. And is it your opinion this  
7 constitutes a violation of that code section --

8 A. Yes.

9 Q. -- for being out of service?

10 A. Yes, sir.

11 Q. Now, again, before you provided a copy of  
12 this Staff Exhibit B to Mr. Hess, was there  
13 signatures provided for this report as well?

14 A. Yes, sir.

15 Q. Okay. By who?

16 A. You are talking about Exhibit B?

17 Q. Yes.

18 A. The report?

19 Q. Yes.

20 A. Mr. Hess and myself.

21 Q. Okay. And, again, is this Staff Exhibit  
22 B an accurate representation of the information as to  
23 the inspection that you conducted on January 31,  
24 2006 --

1           A.    Yes, sir.

2           Q.    -- for Mr. Hess for the second  
3 inspection?

4           A.    Yes, sir.

5           Q.    Okay. And would the only change be here  
6 as to how you provided that report to Mr. Hess was  
7 that there were signatures on this -- on this report  
8 that -- that's what the difference is between what  
9 this exhibit represents and what was provided to  
10 Mr. Hess?

11          A.    Yes, sir.

12          Q.    Okay. And, again, is this also a  
13 business record?

14          A.    Yes, sir.

15          Q.    Okay. Now, I've also provided here Staff  
16 Exhibit C for identification. And could you please  
17 identify what this exhibit is, what it represents.

18          A.    This is North American Standard Vehicle  
19 Out-of-Service Criteria.

20          Q.    Okay. And this appears to be a copy from  
21 some type of source. What source did this page --  
22 was it copied from?

23          A.    The Commercial Vehicle Safety Alliance.

24          Q.    Okay. And as to what -- what is the

1 policy as for out-of-service violations and repairs?

2 A. That all out-of-service violations shall  
3 be repaired before the vehicle is placed back in  
4 service.

5 Q. Okay. And is that indicated here in  
6 Staff Exhibit C?

7 A. Yes, sir.

8 Q. Okay. So this page references that all  
9 repairs should be made, all the mechanical conditions  
10 that are marked for out of service?

11 A. Yes, sir.

12 Q. Could you read for me just for the record  
13 here down as to -- on the out-of-service portion of  
14 this document starting in the middle of that  
15 paragraph where it says "Out of service" -- I'm  
16 sorry, "No motor carrier shall"?

17 A. Okay. It says, "No motor carrier shall  
18 require nor shall any person operate any commercial  
19 motor vehicle declared and marked 'Out-of-Service'  
20 until all repairs required by the 'Out-of-Service  
21 notice' have been satisfactorily completed."

22 Q. Okay. And what's that next sentence  
23 underneath there?

24 A. "No person shall remove the

1 'Out-of-Service Vehicle' sticker from any motor  
2 vehicle prior to completion of all repairs required  
3 by the 'Out-of-Service Notice.'

4 Q. Okay. Now, when you stopped Mr. Hess the  
5 second time for the second inspection, were the  
6 out-of-service stickers still on units 1 and 2?

7 A. No, sir.

8 Q. Okay. And as to Staff Exhibit C, is this  
9 an accurate representation of the information  
10 provided from the Commercial Vehicle Safety Alliance  
11 as to a policy statement on out of service and  
12 repairs being made?

13 A. Yes, sir.

14 Q. Okay. Now, referring to the next  
15 exhibit, Staff Exhibit D, could you please identify  
16 this exhibit for the record, please.

17 A. This is the patrol's policy on  
18 out-of-service vehicles and repairs.

19 Q. Okay. Is this something that -- what's  
20 provided there as to the policy under required  
21 repairs for out-of-service notices? What's provided?

22 A. You want me to read it?

23 MR. TUROWSKI: Are you referring to, I'm  
24 sorry, Exhibit D?

1 MR. JONES: Exhibit D, Staff Exhibit D.

2 A. It says, "Inspectors shall not release  
3 vehicles and/or drivers from an out-of-service notice  
4 until all repairs required by the out-of-service  
5 notice have been satisfactorily completed to where a  
6 violation no longer exists."

7 Q. Okay. And from looking at this document,  
8 Staff Exhibit D, when did this policy go into effect?

9 A. There is a date on here someplace. There  
10 it is, October, 2002.

11 Q. Okay. Was this the policy that was  
12 provided for your district as well?

13 A. Yes, sir.

14 Q. Okay. So you were aware of this policy  
15 and following this policy since it was implemented in  
16 2002; is that correct?

17 A. Yes, sir.

18 Q. And when you conducted your first  
19 inspection of Mr. Hess and his tractor and trailer on  
20 January 31, 2006, that you made it clear to Mr. Hess  
21 when you placed him out of service that all repairs  
22 had to be made prior to going back into service,  
23 before driving it?

24 A. Yes, sir.

1           Q.    Okay.  Also I have for you, Officer Bell,  
2   Staff Exhibit G.  Could you please identify that  
3   record -- that document for the record, please.

4           A.    This is just an out-of-service procedure  
5   policy that they passed out to us.

6           Q.    Okay.  And what does it pertain to as far  
7   as procedure for out of service?

8           MR. TUROWSKI:  I have to object.  I don't  
9   think he is qualified to testify where this is from  
10  other than it was something handed to me.  It doesn't  
11  seem to have any statute number attached to it, so we  
12  don't know what it is other than it was a document he  
13  was handed.

14          MR. JONES:  Let me try and lay a  
15  foundation for this.  May I, your Honor?

16          ATTORNEY EXAMINER SHEETS:  Proceed.

17          Q.    Okay.  Are you familiar with the  
18  Commercial Vehicle Safety Alliance?

19          A.    Yes, sir.

20          Q.    Okay.  Have you reviewed that manual?

21          A.    Yes, sir.

22          Q.    Okay.  Is this document, Staff Exhibit G,  
23  a copy from that manual?

24          A.    Yes, sir.



1           Q.    This is a manual that's provided for you  
2   to be knowledgeable about and to help you execute the  
3   duties of your position in being an inspector for the  
4   state of Ohio?

5           A.    Yes, sir.

6           Q.    So you are familiar with this page as a  
7   page being from the Commercial Vehicle Safety  
8   Alliance?

9           A.    Yes, sir.

10          Q.    Okay.  And this page provides information  
11   on the procedure for out-of-service violations?

12          A.    Yes, sir.

13          Q.    And for the record what information is  
14   provided for the procedure for handling  
15   out-of-service violations?

16          A.    You want me to read that?

17          Q.    Yes, please.

18               MR. TUROWSKI:  Once again, I have to  
19   object.  If it's a handbook, there is no statutory  
20   connection to this case.  Absent that it's just  
21   rather than a page he was handed, it was a manual he  
22   was handed.  It has no basis in this case.  That was  
23   used as a training item, which it appears to be, that  
24   has no -- the training has no basis in the substance

1 of this case. I don't think it has any bearing on  
2 the violations that have been alleged.

3 MR. JONES: Your Honor, I would say that  
4 it is relevant because it does go to his training.  
5 It shows that this is the procedure that the State  
6 Highway Patrol follows in handling their inspections  
7 and what steps they go through to make clear to  
8 drivers as to violations that occur for out of  
9 service that, you know, there is a distinction  
10 between all repairs being made or, you know, a  
11 substantial compliance of repairs being made and I  
12 anticipate this is going to be their defense. They  
13 are going to say they had substantial compliance here  
14 with the repairs in the out-of-service violations so  
15 this is relevant and goes to the heart of that.  
16 There has been testimony by Officer Bell this comes  
17 from a manual that is followed by the State Highway  
18 Patrol for its practice and procedure in carrying out  
19 the duties of being an inspector for the State  
20 Highway Patrol, so I would say it is relevant.

21 ATTORNEY EXAMINER SHEETS: Okay. I agree  
22 with you, Mr. Jones.

23 Your objection is overruled.

24 MR. TUROWSKI: Thank you.

1 MR. JONES: Thank you, your Honor.

2 Q. Would you please state what the procedure  
3 is.

4 A. It says, "Follow the appropriate  
5 procedures when placing a driver or vehicle out of  
6 service. Verify that out-of-service violations have  
7 been corrected, when possible. And emphasize to the  
8 driver that vehicle cannot be operated until all  
9 out-of-service violations have been corrected."

10 Q. Okay. And then on January 31, 2006,  
11 involving the first inspection, Staff Exhibit A, did  
12 you follow this procedure with Mr. Hess?

13 A. Yes, sir.

14 Q. So you emphasized to Mr. Hess the vehicle  
15 cannot be operated until all out-of-service  
16 violations have been corrected?

17 A. Yes, sir.

18 MR. JONES: Your Honor, if I could just  
19 have a second.

20 Your Honor, that's all the questions I  
21 have of Officer Bell. I would move for the admission  
22 of Staff Exhibits A, B, C, D, and G subject to  
23 cross-examination.

24 ATTORNEY EXAMINER SHEETS: Okay.

1 Mr. Turowski.

2 MR. TUROWSKI: Do you want me to save my  
3 objections for the exhibits to a later time?

4 ATTORNEY EXAMINER SHEETS: Go ahead and  
5 state them.

6 MR. TUROWSKI: I have no objection to the  
7 introduction of A and B. C to the extent that it may  
8 have been a training tool. D is hearsay and that  
9 can't be admitted. Is there another one, John?

10 MR. JONES: G.

11 MR. TUROWSKI: And G for the reasons  
12 previously stated. There is an objection to G as  
13 well.

14 ATTORNEY EXAMINER SHEETS: I will reserve  
15 ruling on those until you are done with your  
16 cross-examination.

17 MR. TUROWSKI: Understood. Thank you.

18 - - -

19 CROSS-EXAMINATION

20 By Mr. Turowski:

21 Q. Is it Officer? Is that how you prefer to  
22 be addressed? Officer? Inspector?

23 A. Just Inspector is fine.

24 Q. Inspector. Inspector, you had indicated

1 you can't identify Mr. Hess as being the person whom  
2 you had dealings with on the date in question.  
3 Without your report in front of you do you have -- of  
4 course, it has been a long time and nobody would  
5 fault you, do you have independent recollection of  
6 this vehicle without your report?

7 A. Yes.

8 Q. Do you?

9 A. Yes.

10 Q. And what is that independent  
11 recollection?

12 A. Well, not -- I might get one or two  
13 out-of-service violations being operated per year,  
14 and you sort of remember those because it's  
15 different.

16 Q. Understood. You had indicated that you  
17 placed both the tractor as well as the trailer out of  
18 service; is that correct?

19 A. Yes, sir.

20 Q. Okay. Is there -- would it refresh your  
21 memory if we indicated that the brakes on the trailer  
22 were adjusted while you were still present and that  
23 you did not mark the trailer out of service?

24 A. If -- could you repeat that again?

1           Q.    Yes.  Would it refresh your memory if you  
2   were told that the trailer brakes were adjusted while  
3   you were still on the scene and that that unit being  
4   the trailer was not put out of service?

5                   MR. JONES:  Your Honor, I guess I just  
6   have to object to the characterization of the  
7   question as to refresh memory as if that actually was  
8   fact here.  I am going to object to that  
9   characterization.

10                  MR. TUROWSKI:  If you would prefer, I can  
11   rephrase.

12                  MR. JONES:  It has a presumption that  
13   that was actually refreshing your memory.

14                  ATTORNEY EXAMINER SHEETS:  Why don't you  
15   rephrase the question.

16           Q.    If I would suggest the facts I just  
17   alluded to, would that change your opinion as to  
18   whether or not you had put the trailer out of  
19   service?

20           A.    No.  That trailer would have been marked  
21   out of service because the violation during the  
22   inspection.

23           Q.    Do you recall whether or not any  
24   adjustments were made while you were present?

1 A. No, sir.

2 Q. You don't recall?

3 A. No, sir.

4 Q. Okay. Just so the record is clear you  
5 don't recall or there were no adjustments?

6 A. I don't recall if there was any  
7 adjustments, if the driver adjusted it or not during  
8 the inspection.

9 Q. I understand. Now, I note from your two  
10 reports which are Staff Exhibits A and B that  
11 regarding the brake violations in Staff Exhibit A  
12 you've listed four, on Staff Exhibit B I see one  
13 listed. Is that -- am I interpreting that correctly,  
14 there was only one violation, brake violation, on  
15 Exhibit B?

16 A. Yes, sir.

17 Q. Okay. So does that mean that the three  
18 other violations had been corrected?

19 A. Yes, sir.

20 Q. Okay. And did you check the other three  
21 violations as well?

22 A. Yes, sir.

23 Q. And they had been, in fact, corrected?

24 A. Yes, sir.

1           Q.    And you had indicated that the reason  
2   that you pulled the truck over the second time was  
3   you recognized it --

4           A.    Yes, sir.

5           Q.    -- as being the one you spent an hour on?

6           A.    Placed out of service.

7           Q.    The one you spent an hour on earlier in  
8   the day?

9           A.    Yes, sir.

10          Q.    In your discussions with Mr. Hess, did he  
11   indicate to you he, in fact, had the truck at the  
12   repair shop?

13          A.    Yes, sir.

14          Q.    And that that's where the other brake  
15   violations that you had listed were corrected?

16          A.    Yes, sir.

17          Q.    Okay. Did he give you any paperwork or  
18   receipts to verify that?

19          A.    I don't recall that.

20          Q.    Okay. Have you checked any files to see  
21   if repair orders have been mailed in to comply with  
22   your report?

23          A.    No, sir.

24          Q.    You didn't check?



1           A.    No, sir.

2           Q.    Could those compliance reports and those  
3 compliance receipts and work orders be in a file  
4 somewhere that you are unaware of?

5           A.    They could be. I don't know. I don't  
6 think they would be down at the Commission.

7           Q.    Maybe I am putting the cart ahead of the  
8 horse here a little bit. When this examination  
9 report is given to the defendant showing the  
10 violations, how are these violations proved to be  
11 corrected?

12          A.    The carrier signs off on them and mails  
13 them in --

14          Q.    Okay.

15          A.    -- as far as I know.

16          Q.    Okay.

17          A.    Now, whether or not they are required to  
18 send a receipt with them.

19          Q.    Is there something required from the  
20 repair shops that the problems listed on this report  
21 have been cured?

22          A.    Yes, sir.

23          Q.    Okay. Has that occurred?

24          A.    I just got copies of this and nothing is

1 on them.

2 Q. Do you know whether or not any such  
3 documents exist in your possession or in a file  
4 somewhere that may be -- may be kept by the Staff or  
5 by the State Highway?

6 A. I don't know.

7 Q. Okay. Well, let me ask you this, how do  
8 you follow up to see if these violations have been  
9 cured?

10 A. I don't.

11 Q. Okay. Does someone in your department?

12 A. I'm not sure.

13 Q. Okay.

14 A. They might get audited when the company  
15 gets audited, then they will take our reports and  
16 that kind of stuff.

17 Q. How do you or your department ever know  
18 that these problems have been cured?

19 A. I can only speak for myself. I don't  
20 know.

21 Q. Okay.

22 A. I just inspect the vehicles and send in  
23 the reports.

24 Q. Okay. You're obviously very familiar

1 with trucks; is that a fair statement?

2 A. Yes, sir.

3 Q. Okay. With the remaining item, brake  
4 item, now I am referring to on Exhibit B, can you  
5 tell -- you personally can you tell whether or not a  
6 repair was attempted?

7 A. No, sir.

8 Q. Okay. So is it possible that the matter  
9 was repaired badly and still existed?

10 A. Could you repeat that?

11 Q. Sure. Is it possible -- you said that  
12 you could not tell whether or not a repair had been  
13 attempted on the brake violation listed in Staff  
14 Exhibit B.

15 A. Uh-huh.

16 Q. Correct?

17 A. Uh-huh.

18 Q. Is it possible that when the other three  
19 items at the same time that was in the shop being  
20 fixed with the other three items that an attempt was  
21 being made to repair the remaining brake item in  
22 Exhibit B and it was just done poorly and did not  
23 meet the standard that you require? It's possible,  
24 is it not?

1           A.    I guess.

2           Q.    Is there any specific reason prior to  
3 this hearing why a check was not made as to whether  
4 or not compliance reports had been submitted  
5 indicating these repairs which you acknowledge took  
6 place?

7           A.    I don't understand.

8           Q.    Is there any reason that you -- you  
9 personally in preparation for this hearing would not  
10 check to see if compliance was done for these two  
11 reports you wrote?

12          A.    Are you saying that there is any reason I  
13 wouldn't check to see if these were --

14          Q.    Fixed?

15          A.    -- fixed?

16          Q.    Right.

17          A.    There's no possible way to check to see  
18 if they were fixed.

19          Q.    Okay. Now, I thought we had discussed  
20 earlier, and correct me if I am wrong, I thought that  
21 the driver or the company is responsible to send in  
22 proof that these have been cured; am I incorrect in  
23 that?

24          A.    No. They are required to send in copies

1 of their reports, yes, sir.

2 Q. And is there some reason you did not  
3 check those reports to see if, in fact, these  
4 violations had been cured?

5 A. It had no bearing on my case.

6 Q. Okay. Did you do any follow up -- first  
7 of all, you had a conversation with Mr. Hess on the  
8 second stop as well, correct?

9 A. Yes, sir.

10 Q. And he had indicated he had the vehicle  
11 in to be serviced to correct the problem --

12 A. To correct the out-of-service items, yes,  
13 sir.

14 Q. Did you do any follow up with the -- I  
15 presume since it was so close in time between stops 1  
16 and 2 that it had to be a very nearby repair shop.  
17 Would you agree with that?

18 A. Yeah.

19 Q. Okay. Did you do any follow up with the  
20 repair shop that Mr. Hess gave you the name of to see  
21 if, in fact, they did attempt a repair on this -- the  
22 remaining brake item listed in Exhibit B? Did you do  
23 any follow up with the repair shop?

24 A. No, sir.

1 Q. Okay. Do you ever do any such follow  
2 ups? I know these out --

3 A. No, sir.

4 Q. Did he -- did Mr. Hess indicate anything  
5 to you like I gave him the report, told him what to  
6 fix on the report, and the dummy just didn't do it?

7 A. Yes, sir.

8 Q. Is that pretty much accurate to what he  
9 said?

10 A. No, sir.

11 Q. What did he say?

12 A. He said that the slack adjustor was bad  
13 on that steering thing, on the push rod, and that his  
14 boss wasn't going to get it fixed there. They wanted  
15 him to bring the truck back to fix it over there.

16 Q. He didn't say the repair shop just didn't  
17 do it, overlooked it, or did it badly?

18 A. No, he didn't.

19 MR. TUROWSKI: Nothing further of this  
20 witness.

21 ATTORNEY EXAMINER SHEETS: Mr. Jones.

22 MR. JONES: Yes. I just have a few  
23 questions.

24 - - -

REDIRECT EXAMINATION

1  
2 By Mr. Jones:

3 Q. Officer Bell, looking back to Staff  
4 Exhibit A for a second before you, the -- under the  
5 violations section here that -- for the first four  
6 code section violations that you listed in your  
7 report and the out-of-service violations, the column  
8 we have verified, that U goes to unknown as to  
9 verifying the repairs of those violations --

10 A. Yes.

11 Q. -- by yourself? Okay. That's what that  
12 stands for?

13 A. Yes, sir.

14 Q. Okay. And let me understand that. After  
15 you issue the driver vehicle examination reports to  
16 Mr. Hess being Staff Exhibits A and B, then how does  
17 the Commission receive a copy of your reports?

18 A. We download them through the internet  
19 through the computer.

20 Q. So the Commission receives your reports  
21 electronically?

22 A. Yes, sir.

23 Q. And do you do that pretty close in time  
24 after such time as the inspection has concluded?

1 A. At the end of the day.

2 Q. At the end of the day?

3 A. Yes, sir.

4 Q. So all inspections that you have done  
5 that day and all the reports that you have generated  
6 are then sent electronically to the Public Utilities  
7 Commission of Ohio?

8 A. Yes, sir.

9 Q. Okay. And so then as to any follow-up  
10 certifications by the carrier or any person who makes  
11 repairs of any violations that were noted in those  
12 reports, that -- that certification of repairs and  
13 acknowledgment by the carrier that has to be sent to  
14 the Public Utilities Commission?

15 A. Yes, sir.

16 Q. So any follow up and verification is done  
17 through the Commission; is that correct?

18 A. Yes, sir.

19 Q. And their compliance department?

20 A. Yes, sir.

21 Q. Okay. And you have no involvement in  
22 those steps, right, those follow-up steps?

23 A. No, sir.

24 Q. Okay. Likewise, for instance, this case



1 here, there's an assessment for driving while out of  
2 service. You had nothing to do with the assessment  
3 as to how much the assessment would be or that the  
4 State is asking for in this case for the violation of  
5 being out of service, that's not a number that you've  
6 provided for this case; is that correct?

7 A. Correct.

8 Q. And, again, is it something that's  
9 generated from the compliance department of the  
10 Public Utilities Commission of Ohio?

11 A. Yes, sir.

12 MR. JONES: No other questions.

13 ATTORNEY EXAMINER SHEETS: Anything on  
14 recross?

15 MR. TUROWSKI: No, thank you, your Honor.

16 ATTORNEY EXAMINER SHEETS: Okay. At this  
17 time we would admit all the Staff's exhibits  
18 presented so far. I believe they are all relevant  
19 and admissible.

20 (EXHIBITS ADMITTED INTO EVIDENCE.)

21 ATTORNEY EXAMINER SHEETS: Do we have  
22 another witness?

23 MS. HAMMERSTEIN: Yes, your Honor. I  
24 will be presenting Jonathan Frye on behalf of Staff.

1 JONATHAN FRYE  
2 called as a witness on behalf of the Staff, being  
3 first duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 By Ms. Hammerstein:

6 Q. Good morning.

7 A. Good morning.

8 Q. Would you please state and spell your  
9 name for the record.

10 A. Certainly. Jonathan, J-O-N-A-T-H-A-N,  
11 Frye, F-R-Y-E.

12 Q. And what's your business address,  
13 Mr. Frye?

14 A. 180 East Broad Street, Columbus, Ohio  
15 43215.

16 Q. And your employer is?

17 A. The Public Utilities Commission  
18 Transportation Department.

19 Q. And what is your capacity in that  
20 department?

21 A. Sure. I am the chief of the compliance  
22 division.

23 Q. Okay. And could you please briefly  
24 describe some of the duties you perform in that

1 position.

2 A. Sure. Primarily to assess fines that are  
3 discovered as a result of roadside inspections.

4 Q. Okay. And about how long have you worked  
5 in that position?

6 A. As chief of the division, approximately  
7 five years.

8 Q. Okay. And do you hold any certifications  
9 or have any special training?

10 A. I've trained in the North American  
11 Out-of-Service Criteria.

12 Q. Okay. And could you briefly describe  
13 what that is.

14 A. Sure. It's the primary training you get  
15 in order to determine whether or not a vehicle is --  
16 should be placed out of service, and it also involves  
17 training over the Federal Motor Carrier Safety  
18 Regulations.

19 Q. Thank you. And what type of information  
20 do you process in your position?

21 A. Motor vehicle inspection reports, they  
22 are uploaded into our system and those are the ones  
23 that get processed.

24 Q. Okay. And in the course and scope of

1 your duties have you had an opportunity to review the  
2 file in this case?

3 A. Yes.

4 Q. Okay. With respect to the respondent  
5 Mr. Hess?

6 A. Yes, uh-huh.

7 Q. Now, you have before you Staff Exhibits A  
8 and B; is that correct?

9 A. Yes, sir.

10 Q. And do you recognize those reports?

11 A. Yes, I do.

12 Q. And did you prepare those reports?

13 A. No, I didn't prepare the reports. They  
14 are the reports that are uploaded into our system by  
15 the roadside field investigators, and it will  
16 generate this report for my staff.

17 Q. Okay. And when did this particular --  
18 when did these particular inspections occur?

19 A. Sure.

20 Q. And you can address Exhibit A first, if  
21 you would like.

22 A. Sure. Staff Exhibit A, it indicates that  
23 the report was generated on January 31, 2006. And  
24 Staff Exhibit B was generated as well on January 31,

1 2006.

2 Q. Okay. And can you tell us which  
3 inspector prepared those two reports?

4 A. Sure.

5 Q. Exhibit A and Exhibit B?

6 A. Sure. DA Bell, B-E-L-L, prepared both  
7 Staff Exhibit Reports A and B.

8 Q. All right. And if you will look at the  
9 section labeled violations in the middle of the page  
10 on the two reports?

11 A. Sure, yes.

12 Q. There is a column marked OOS and that  
13 stands for?

14 A. Out of service.

15 Q. And could you explain what that means  
16 briefly.

17 A. Sure. That means that the inspector has  
18 found certain violations and the violations that were  
19 discovered correlate to the North American  
20 Out-of-Service Criteria. And as a result of that,  
21 the violations that were discovered meet the  
22 out-of-service criteria.

23 MS. HAMMERSTEIN: Okay. And, your Honor,  
24 could I have marked as Staff Exhibit F a document

1 that's titled Fine Schedule Out of Service  
2 Violations?

3 ATTORNEY EXAMINER SHEETS: You may.

4 MS. HAMMERSTEIN: Thank you.

5 (EXHIBIT HEREBY MARKED FOR  
6 IDENTIFICATION PURPOSES.)

7 Q. Mr. Frye, do you have in front of you  
8 what has just been identified as Staff Exhibit F?

9 A. Yes.

10 Q. Okay. And do you recognize this  
11 document?

12 A. Yes, I do.

13 Q. And could you please explain what it is.

14 A. Yes. It's the fine schedule that we use  
15 here to determine how much a fine is based upon the  
16 violation that's discovered out on the roadway.

17 Q. Okay. And is this a document that's  
18 regularly maintained by the Commission as a part of  
19 its files?

20 A. Yes.

21 Q. Okay. And can you please explain how a  
22 civil forfeiture is calculated --

23 A. Sure.

24 Q. -- for violations of the Motor Carrier

1 Safety Regulations?

2 A. Sure. Our fine schedules are grouped  
3 into four separate groups, groups 1, 2, 3, and 4, and  
4 it's based upon the severity of the types of  
5 violations that are discovered. Group 1 violations  
6 are generally more severe than groups 2, 3, and 4.  
7 The fine schedule is based upon the Commercial  
8 Vehicle Safety Alliance recommended fine schedule.

9 Q. Okay. I'm sorry. Were you finished?

10 A. And, for example, a group 1 violation  
11 indicates that one violation found in a group 1 type  
12 of violation, it's a \$100 fine. However, for  
13 violation of out-of-service notices it's a \$1,000  
14 fine.

15 Q. And into what group did the particular  
16 violation at issue here fall?

17 A. It fell into a group 1 violation as noted  
18 on page 1 of Staff Exhibit F. In the box it has  
19 violation of out-of-service notice \$1,000.

20 Q. Okay. And why did this particular  
21 violation fall into group 1?

22 A. Right. Because we determined that this  
23 violation -- again, it's based upon the recommended  
24 fine schedule, the Commercial Vehicle Safety

1 Alliance. And we've determined that this is one of  
2 the -- those types of violations that are so severe  
3 that it should receive the maximum fine.

4 Q. Okay. And are the dollar amounts that  
5 are listed in this schedule consistent with those  
6 recommended fines or the penalty schedule adopted by  
7 the Commercial Safety Vehicle Alliance?

8 A. Yes.

9 Q. And so the procedure that you described,  
10 is that also consistent with what's recommended by  
11 the schedule adopted by the Commercial Motor Safety  
12 Vehicle -- excuse me, Commercial Vehicle Safety  
13 Alliance?

14 A. Yes.

15 Q. Okay. And is this procedure applied for  
16 all carriers and individuals?

17 A. That's correct, yes.

18 Q. Okay. Did you reach any conclusions as a  
19 result of reviewing the inspection reports marked  
20 Staff Exhibits A and B?

21 A. That the fine that was assessed for the  
22 violation noted in the inspection report, that it was  
23 a \$1,000 fine.

24 Q. Okay. And could you please identify what



1 violations are at issue in this case.

2 A. Yes. It indicates that the violation was  
3 violating an out-of-service notice as noted in the  
4 inspector's report which is Staff Exhibit B where the  
5 inspector had noted operating an out-of-service  
6 vehicle without fixing all the -- all the  
7 out-of-service items.

8 Q. And could you tell us why some civil  
9 forfeitures are assessed for certain violations and  
10 not for others?

11 A. Right. We typically will assess fines  
12 for those violations in which the vehicle is placed  
13 out -- the vehicle and/or driver is placed out of  
14 service. Those are the types of fines that we  
15 typically will assess a fine for.

16 Q. Okay.

17 MS. HAMMERSTEIN: Could I have just one  
18 moment, please, your Honor?

19 Q. Mr. Frye, were you here in the room when  
20 there was a discussion between counsel for Mr. Hess  
21 and Officer Bell regarding respondent's mailing in  
22 information that shows that any out-of-service  
23 violations had been corrected?

24 A. Yes.

1           Q.    Okay.  And could you please explain for  
2 the record the procedure that's required to take care  
3 of those situations.

4           A.    Right.  Once -- once the inspector finds  
5 the violations or discovers the violations on the  
6 back of the inspection report there's an area that  
7 has -- the company official or mechanic has to sign  
8 off verifying that the violations have been  
9 corrected.  That information is sent to our office to  
10 our data management division to certify that the  
11 violations had been corrected.  You will note that on  
12 Staff Exhibit A and Staff Exhibit B up in the top  
13 right corner there is a certification date that  
14 indicates that -- that the items or the information  
15 was sent into our office on February 28, 2006,  
16 indicating that the repairs had been made.

17          Q.    Okay.  Would -- under the circumstances  
18 in this case if the repairs had been made or the  
19 indication the repairs were made, correct?

20          A.    Yes, uh-huh.

21          Q.    Okay.  Thank you, Mr. Frye.

22                MS. HAMMERSTEIN:  Could I have one  
23 second, please, your Honor?

24                MR. JONES:  Could we go off the record

1 for one second, your Honor?

2 ATTORNEY EXAMINER SHEETS: Yes.

3 (Discussion off the record.)

4 MS. HAMMERSTEIN: Your Honor, I would  
5 like to have marked as Staff Exhibit H a document  
6 titled Notice of Preliminary Determination. Sorry I  
7 ran it through the copier upside-down, so the staple  
8 is on the wrong corner.

9 (EXHIBIT HEREBY MARKED FOR  
10 IDENTIFICATION PURPOSES.)

11 Q. Okay. Mr. Frye, could you please  
12 identify what's just been marked as Staff Exhibit H.

13 A. Right. It's the -- it's the Notice of  
14 Preliminary Determination letter. And it's the  
15 letter that -- that we generate as a result of the  
16 driver in this particular case having a conference  
17 with someone here in our office and -- with a Wanda  
18 Williams here at our office. And as a result of our  
19 office being unable to reach a resolution of the  
20 case, we will generate a Notice of Preliminary  
21 Determination letter advising the driver of the next  
22 step in the hearing process.

23 Q. Okay. And this is a document or record  
24 that's generated in the normal course of business and

1 kept in the files of the Commission?

2 A. That's correct, yes.

3 Q. And could you please tell us for the  
4 record what violation is noted on the Notice of  
5 Preliminary Determination?

6 A. It's operating an out-of-service vehicle.

7 Q. And the forfeiture associated with that,  
8 is that on the document?

9 A. Yes. It's \$1,000.

10 Q. Okay. And the case number noted here,  
11 could you please tell us what that is?

12 A. Yes. OH3274004435 which is the case  
13 number that's referenced also on Staff Exhibit B.

14 Q. Okay. And this particular Staff Exhibit  
15 H was addressed to the respondent in this case,  
16 Mr. Hess?

17 A. Yes. It was sent to the address  
18 that's -- that's noted in Staff Exhibit B and, again,  
19 it advised Mr. Hess of his right to make a request  
20 for an administrative hearing.

21 MS. HAMMERSTEIN: Okay. Thank you,  
22 Mr. Frye.

23 Your Honor, subject to cross-examination  
24 I would move Staff Exhibit F and Staff Exhibit H into

1 evidence.

2 MR. TUROWSKI: Without objection.

3 ATTORNEY EXAMINER SHEETS: Good. I will  
4 admit those into evidence at this time.

5 (EXHIBITS ADMITTED INTO EVIDENCE.)

6 ATTORNEY EXAMINER SHEETS: Do you have  
7 any cross-examination?

8 MR. TUROWSKI: Just one question.

9 - - -

10 CROSS-EXAMINATION

11 By Mr. Turowski:

12 A. That's kept in our data management  
13 division. I am in the compliance division.

14 Q. Those exist in your -- PUCO has them.  
15 They just aren't here for this hearing?

16 A. Yes. They should -- PUCO should have  
17 them, yes.

18 Q. Is there a reason they are not at this  
19 hearing? I don't know if there is or not. Do you  
20 know of any reason why they are not here?

21 A. No. I don't know of any reason.

22 MR. TUROWSKI: All right. Do you know if  
23 those -- well, strike that.

24 No further questions. Thank you.

1 ATTORNEY EXAMINER SHEETS: Very good.

2 MS. HAMMERSTEIN: Can I have just a  
3 moment, please, your Honor?

4 ATTORNEY EXAMINER SHEETS: Why don't we  
5 take a 5-minute break here before we proceed with  
6 respondent's side of the case.

7 (Recess taken.)

8 MR. JONES: The Staff doesn't have any  
9 more witnesses, your Honor.

10 MR. TUROWSKI: Are you resting? Am I  
11 stealing your lines?

12 MS. HAMMERSTEIN: No, no.

13 MR. TUROWSKI: In view of Staff Exhibits  
14 A and B I am going to object to those as not being  
15 the original documents which are in existence. There  
16 are documents signed by both the inspector as well as  
17 signed by Mr. Hess so based upon that -- and not only  
18 that but more importantly the originals will also  
19 have the signature of the repair -- who conducted the  
20 repairs in between the first and second stops and  
21 those were mailed into -- mailed and faxed into this  
22 department. So those issues would be dispositive of  
23 the case and since they have not been offered or made  
24 available I am going to object to Exhibits A and B in

1   toto.

2                   MR. JONES: Your Honor, we could always  
3   substitute the ones that have the signatures provided  
4   for these reports. But there was testimony that  
5   these exhibits accurately reflect the information  
6   that was obtained and reported in the examination  
7   report that was provided to Mr. Hess, so it is a  
8   reasonable presentation -- I even clarified that the  
9   signatures for Staff Exhibits A and B, that's the  
10  only difference between the original and these copies  
11  is the fact that the signatures were not present. So  
12  if necessary, we could always substitute these  
13  exhibits for the ones that have signatures.

14                  ATTORNEY EXAMINER SHEETS: Why don't we  
15  do that, Mr. Jones. Why don't we file a late-filed  
16  exhibit of Staff Exhibits A and B. I will admit  
17  these, the ones that were offered here, into  
18  evidence, but in order to clarify them with any  
19  possible signatures that were added at the time, you  
20  can file them as a late-filed exhibit.

21                  MR. TUROWSKI: Well, the other issue I  
22  have, if I may, there were documents referred to in  
23  Mr. Frye's testimony which are not here claiming that  
24  they are not in his particular bailiwick or his

1 particular department. Those documents will show --  
2 obviously the trooper -- the trooper -- the inspector  
3 testified that three of the four repairs had been  
4 made and it is our contention that those records  
5 which that repairman would have signed in between  
6 stops 1 and 2 did the repair, signed the report that  
7 was handed to him that Mr. Hess had from the  
8 inspector, and without those -- that file signed by  
9 that repairman, that's depositive of the case, so I  
10 am not sure why those records have been omitted and  
11 not presented at this time but without those I don't  
12 think -- I don't think there is a case to be had.

13 MS. HAMMERSTEIN: Well, your Honor,  
14 honestly if counsel for the respondent felt that  
15 those documents were important to his case, he should  
16 have made them an exhibit in his case. You know, we  
17 are not trying to hide anything. He was able to  
18 request those documents if he needed them and to make  
19 his case. And I would submit, you know, we can put  
20 Mr. Frye back on to demonstrate, you know, whether or  
21 not those documents would show that the repairs were  
22 done.

23 Officer Bell has already testified what  
24 he stopped the vehicle for and the facts of that



1 situation in the second stop which is reflected in  
2 Exhibit B. And, you know, whether or not the repairs  
3 were made, you know, the facts of the situation at  
4 the time of Exhibit B coming into existence would  
5 demonstrate there was a violation.

6 MR. TUROWSKI: I would throw this idea  
7 out since we are talking rather than have Mr. Frye  
8 try to interpret these documents why don't we have  
9 Mr. Frye secure and present the originals that were  
10 sent in that he referred to that exist. Those will  
11 show that the repair -- repairman signed off in  
12 between repairs 1 and 2. That was the reason that  
13 the stickers were not on the truck. That's why the  
14 truck was on the road. It is, in fact, depositive of  
15 the entire case.

16 MR. JONES: Well, your Honor, I guess if  
17 I could chime in here a little bit too, it's a matter  
18 of timing of when the repairs were made and I am  
19 holding the originals in my hands right here and  
20 obviously the repairs were made after the second stop  
21 because the mechanic signed off the second -- on the  
22 second report for the repairs being made on  
23 January 31, 2006, so obviously the truck was taken to  
24 the repair shop and it appears to be the signature of

1 the mechanic making the repairs and he signed --

2 MR. TUROWSKI: What are these and why am  
3 I seeing these for the first?

4 MR. JONES: That is Exhibit A and Exhibit  
5 B, that's the original signatures -- or copies of the  
6 signatures.

7 MR. TUROWSKI: Not what was given to me.  
8 I was given two pages. These are -- these are brand  
9 spanking new to me.

10 MR. JONES: It's the second page of  
11 Exhibit A and second page of Exhibit B. That's the  
12 same page.

13 MR. TUROWSKI: Okay. It's not the same  
14 thing. You can clearly see it's not the same thing.

15 MR. JONES: Maybe that one you have got  
16 to line up the numbers.

17 MR. TUROWSKI: These have the Ohio State  
18 Patrol logo. Nothing exists on this. I understand  
19 what you are saying. This goes with this. These  
20 weren't attached to those reports. Is there any  
21 reason that didn't happen?

22 MR. JONES: Because that's an accurate  
23 representation. There is no reason why, no.

24 MR. TUROWSKI: These -- I am not saying

1     that these --

2                   MR. JONES:  Those are the ones he mailed  
3     in to the PUCO.

4                   MR. TUROWSKI:  I am not suggesting to you  
5     that these are -- is the same thing, just these are  
6     signed and these are not.  These are different  
7     documents.

8                   MR. JONES:  This is what I got internally  
9     and that's what he mailed in so I was going with what  
10    I got internally.  I am not trying to sandbag anybody  
11    here.  I am just saying that, you know, the  
12    testimony, he hasn't even testified yet as to whether  
13    these repairs were made, so we are still with half a  
14    record here so.

15                  MR. TUROWSKI:  Let me back up one.  I am  
16    troubled that these were not included and given to me  
17    when you gave me those reports.  I am troubled by  
18    that.

19                  Secondly, I would indicate that when you  
20    say clearly these repairs were done after the second  
21    stop, the officer testified that three out of the  
22    four were done in between the two stops so what do  
23    you have to base that --

24                  MR. JONES:  He assumed that.  He said

1 possibly so. If we go back and look at the record,  
2 he said that --

3 MR. TUROWSKI: He checked them on the  
4 second stop, and he said three of those things were  
5 cured, three of the brake problems were cured.

6 MR. JONES: I understand, Ken, but I am  
7 just saying right there there is -- there is the  
8 signatures and they are --

9 MR. TUROWSKI: Yes. Signed by the  
10 repairman on the 31st.

11 MR. JONES: But I don't know who they  
12 were presented to. Who were they presented to?

13 MR. TUROWSKI: You have them. You tell  
14 me how you got them.

15 MR. JONES: He sent them days, months  
16 later when he is going through the process with the  
17 Commission. They were sent when you asked for your  
18 administrative hearing. Ask him.

19 ATTORNEY EXAMINER SHEETS: Okay. Are we  
20 going to admit these into evidence?

21 MR. JONES: We don't have any objection  
22 to those being admitted into evidence.

23 MR. TUROWSKI: Yeah, I would.

24 MR. JONES: He has copies of the

1 documents too, Ken. He got issued them. We are not  
2 sandbagging anybody here.

3 ATTORNEY EXAMINER SHEETS: Let's go off  
4 the record at this time.

5 (Discussion off the record.)

6 ATTORNEY EXAMINER SHEETS: Do you have a  
7 statement to make, Mr. Jones?

8 MR. JONES: Yes, your Honor. Your Honor,  
9 on behalf of Staff I would like to recall Officer  
10 Doug Bell and Jonathan Frye for the purposes of  
11 substituting for the record Exhibit A and Exhibit B  
12 copies that provide for signatures of Officer Bell  
13 and Mr. Hess on the driver examination reports making  
14 up Exhibits A and B, so it would be limited. Recall  
15 is limited to substituting these documents for the  
16 exhibits that contain signatures and as to a third  
17 page that goes with the exhibits. And that's what  
18 the testimony will be.

19 ATTORNEY EXAMINER SHEETS: These are  
20 Joint Exhibits A and B.

21 MR. JONES: These are joint exhibits.

22 MR. TUROWSKI: I will object to their  
23 being substituted. I would like the original A and  
24 B, Staff Exhibits A and B, to remain part of the

1 record.

2 ATTORNEY EXAMINER SHEETS: Is there any  
3 objection?

4 MR. JONES: No objection.

5 ATTORNEY EXAMINER SHEETS: That will be  
6 fine. We can do it that way.

7 MR. JONES: May I begin, your Honor?

8 ATTORNEY EXAMINER SHEETS: Go ahead.

9 - - -

10 DOUG BELL

11 previously called as a witness on behalf of the  
12 Staff, being previously duly sworn, testified further  
13 as follows:

14 FURTHER DIRECT EXAMINATION

15 By Mr. Jones:

16 Q. Officer Bell.

17 A. Yes, sir.

18 Q. I've handed you what's marked as Joint  
19 Exhibit A and Joint Exhibit B to replace Staff  
20 Exhibits -- I'm sorry, we are not replacing. We are  
21 adding to the record here as to Joint Exhibits A and  
22 B. Could you please identify those documents for the  
23 record, please.

24 A. These are the vehicle -- two vehicle

1 inspections in which I did on carrier Elmer Drum, the  
2 driver Richard E. Hess 1-31-06.

3 Q. Okay. Now, would you take a moment,  
4 please, and compare Joint Exhibit A with Staff  
5 Exhibit A, and then after you've done that review,  
6 would you please tell us what differences appear in  
7 those exhibits for the record.

8 A. Yeah. The signatures on the bottom, my  
9 signature and the copy received by from the driver  
10 Richard Hess's signature is on here. Then there is a  
11 signature of repair on the second section on here and  
12 on the third and final page a signature of the  
13 repairer.

14 Q. Okay. Now, looking at Joint Exhibit A,  
15 what is different about that exhibit as to what you  
16 presented to Mr. Hess? What was -- is there anything  
17 that wasn't there as to signatures on Joint Exhibit  
18 A?

19 A. Yeah. Could you repeat that again?

20 Q. Yeah. As to Joint Exhibit A, were those  
21 signatures that you just described on Joint Exhibit  
22 A, were they there when you gave that to Mr. Hess?

23 A. Mine was and then Mr. Hess signed it.

24 Q. Okay. How about the signature of the

1 repair person?

2 A. On the first one they weren't there  
3 because it wasn't repaired yet.

4 Q. If you could be more clear what you mean  
5 the first one.

6 A. On Exhibit A when I first stopped him, I  
7 just got done with the inspection report, and no  
8 repairer was out there yet to repair the vehicle.

9 Q. So with the exception of the signature of  
10 the repairer that's presented in Joint Exhibit A, is  
11 everything else accurate as to the information that  
12 was generated by you and inputted by you into that  
13 report including your signature and the signature of  
14 Mr. Hess?

15 A. Yes, sir.

16 Q. Okay. Now, if you would look at -- let  
17 me ask you here, there seems to be some type of  
18 markings on Joint Exhibit A up in the left-hand  
19 corner. It looks like it's in pencil or pen. Did  
20 you put those markings there?

21 A. No, sir.

22 Q. And what's that marking reflect as to  
23 what you can read it to be?

24 A. A No. 1.



1 Q. And that's on the first page?

2 A. Yes, sir.

3 Q. How about the second page?

4 A. Yes, sir, and the third page.

5 Q. So there is markings in the left-hand  
6 corner of all three pages.

7 MR. TUROWSKI: I would object to this.  
8 He said he doesn't know what they were about, and he  
9 said he didn't make them.

10 MR. JONES: That's the whole point. It's  
11 making the record clear he didn't make the notations.

12 ATTORNEY EXAMINER SHEETS: Let's proceed  
13 if he doesn't know what they are about.

14 Q. You didn't make those markings, correct?

15 A. No, sir.

16 Q. Okay. All right. And, again, these are  
17 business records that are kept in the ordinary course  
18 of business for you to discharge the duties of your  
19 position as an inspector?

20 A. Yes, sir.

21 Q. Okay. And this is the way that these  
22 reports would have appeared absent the signature of  
23 the repairer when you would have issued them to  
24 Mr. Hess?

1           A.    Yes, sir.

2           Q.    Okay. Did at any time on -- for Joint  
3 Exhibit A did you receive -- did you receive this  
4 report back with the signature of the repairer?

5           A.    I received the report back, but I  
6 couldn't tell you if the signature of the repairer  
7 was on there.

8           Q.    When did you receive the report back?

9           A.    During the second inspection.

10          Q.    All right. So on the second inspection  
11 you are referring to Staff Exhibit B?

12          A.    Yes, sir.

13          Q.    Okay. Before we go there let's compare  
14 Staff Exhibit B to Joint Exhibit B. Okay. Now, if  
15 you would take a moment and look and compare both of  
16 those documents and then please describe what's  
17 different between these two exhibits for the record.

18          A.    The signatures once again are on the  
19 Joint Exhibit B and also the section code number on  
20 the first violation of -- is a different section code  
21 number.

22          Q.    Where are you reading that from?

23          A.    Right here.

24          Q.    Under violations it has the code section.

1           A.    Yes, sir.

2           Q.    And for -- where are you saying there is  
3 a difference here?

4           A.    4901 2-5-07D is operating a vehicle out  
5 of service. 392.2 says that in the federal book --  
6 regulation book says that must comply with all state  
7 and federal -- state and local laws. And that's how  
8 this comes out through the computer. It just says  
9 they have to obey all state laws and local laws and  
10 that's a PUCO regulation.

11          Q.    So -- also would you look through the  
12 rest of Joint Exhibit B for any other differences  
13 between Exhibit -- Staff Exhibit B and Joint Exhibit  
14 B.

15          A.    Just there is a No. 2 up in the left-hand  
16 corner and a signature on the second page of a  
17 mechanic.

18          Q.    Okay. Now, the signatures that appear at  
19 the bottom of Joint Exhibit B, whose signatures are  
20 they?

21          A.    They are my signature and Richard Hess's  
22 signature.

23          Q.    Okay. And are these -- is that your  
24 signature at the bottom?

1           A.    Yes, sir.

2           Q.    Okay.  You wrote that?

3           A.    Yes, sir.

4           Q.    Okay.  And the signature of Mr. Hess, did  
5 you recognize that as his signature?

6           A.    That's his signature.  He signed it in  
7 front of me.

8           Q.    He signed it in front of you.

9           A.    You know, I recognize his handwriting.

10          Q.    Is that the way it appears from the time  
11 that you had prepared this document and served it on  
12 him absent -- absent the signature of the repairer  
13 and the notations in the left-hand corner at the top  
14 for numeric No. 2?

15          A.    Yes, sir.

16          Q.    Okay.  And with the exception you are  
17 saying -- well, that's the way you served it with the  
18 code section; is that correct?

19          A.    Yes, sir.

20          Q.    And I am saying the code section on --  
21 under the violations; is that correct?

22          A.    Over here?

23          Q.    Yes.

24          A.    Yes.

1 Q. That's the way you would have served --

2 A. Yes.

3 Q. -- what you would have served on

4 Mr. Hess.

5 A. Yes, sir.

6 Q. Okay. But, now, looking at Staff Exhibit  
7 B, there's a different code section --

8 A. Yes, sir.

9 Q. -- that's listed there for the operating  
10 out of service?

11 A. Yes, sir.

12 Q. And that's something that would have  
13 changed after you would have submitted this  
14 electronically --

15 A. Yes, sir.

16 Q. -- to the Commission?

17 A. Yes, sir.

18 Q. Okay. The Joint Exhibit B contains a  
19 third page.

20 A. Yes, sir.

21 Q. Is there a third page provided for Staff  
22 Exhibit B?

23 A. Yes, sir -- oh, on Staff --

24 Q. Staff Exhibit B.

1           A.    -- B?

2           Q.    This is Staff exhibit here.

3           A.    Well, basically there is.  It's just  
4 condensed.  They came out with a new form since we.

5           Q.    Refer to Staff Exhibit B.  Is the third  
6 page there?

7           A.    I just see two pages.

8           Q.    Okay.  And this third page on Joint  
9 Exhibit B, this is a page that would have been  
10 provided to Mr. Hess along with the first two pages  
11 of Joint Exhibit B?

12          A.    Yes, sir.

13          Q.    And that would have been a form that  
14 was -- there was no writing on that page when you  
15 submitted it to Mr. Hess?  I mean, other than what's  
16 in printed form but, I mean, anything else?

17          A.    Well, I put the parentheses around this  
18 stuff and underlined within 15 days.

19          Q.    Okay.  So the markings that we see here  
20 on the third page of Joint Exhibit B are markings  
21 that you had made --

22          A.    Yes, sir.

23          Q.    -- at the time you had provided this to  
24 Mr. Hess?

1 A. Yes, sir.

2 Q. On January 31, 2006?

3 A. Yes, sir.

4 Q. Okay. And that was for the purpose of  
5 emphasizing to him this needed to be returned in 15  
6 days?

7 A. Yes, sir.

8 Q. Okay. All right. And likewise there is  
9 a third page for Joint Exhibit A and likewise this  
10 page was provided to Mr. Hess?

11 A. Yes, sir.

12 Q. Now, in addition to the markings that you  
13 would have provided, is there additional markings on  
14 this page on Joint Exhibit A?

15 A. It's just those numbers up in the top  
16 left corner and the repairer signature.

17 Q. Okay. So at the time you provided  
18 Mr. Hess this document, Joint Exhibit A, the third  
19 page, it didn't have the signatures of the repairer;  
20 is that correct?

21 A. Correct.

22 Q. But it did have the markings that  
23 surround the area --

24 A. Correct.

1           Q.    -- of the certification? Okay. Did you  
2 at any time -- you guys go back -- now, you've  
3 testified on the second inspection that there was  
4 information provided to you as to repairs being made,  
5 or was there something from Joint Exhibit A or Joint  
6 Exhibit B that was provided back to you? I guess it  
7 would be from Joint Exhibit A.

8           A.    I don't understand what you are.

9           Q.    During the second inspection was any part  
10 of Joint Exhibit A that you had previously given to  
11 him from the first inspection, was anything tendered  
12 back to you from Mr. Hess?

13          A.    He had the inspection report.

14          Q.    And what was different about the  
15 inspection report that he submitted back to you at  
16 the second inspection?

17          A.    I don't recall anything.

18          Q.    Well, I am getting to was there a  
19 repair -- was there a repairer's signature showing?

20          A.    I don't recall if there was there or not.

21          Q.    Okay.

22          A.    I didn't bother looking to tell you the  
23 truth.

24               MR. JONES: Okay.



1 MR. TUROWSKI: Just to expedite the  
2 matter, this may be out of order by time, but I am  
3 going to make a motion to dismiss based on that last  
4 statement.

5 A. Well, it was irrelevant to my inspection.

6 Q. Because your testimony is that not all  
7 the repairs were made; is that correct, at the second  
8 time, the second inspection?

9 A. Correct.

10 ATTORNEY EXAMINER SHEETS: Okay. I will  
11 overrule your motion at this time. Let's proceed.

12 Do you have any other questions?

13 MR. JONES: Nothing else. We're finished  
14 with the recall of Officer Bell. We just have some  
15 follow-up questions or recall for Jonathan Frye.

16 ATTORNEY EXAMINER SHEETS: Okay. I will  
17 let -- do you have some questions?

18 MR. TUROWSKI: Just a couple for the  
19 inspector.

20 - - -

21 FURTHER CROSS-EXAMINATION

22 By Mr. Turowski:

23 Q. Inspector, Joint Exhibits A and B are  
24 different from Staff Exhibits A and B by virtue of

1 the third page, correct?

2 A. Correct.

3 Q. All right. Is there any reason while  
4 testifying to Staff's Exhibits A and B you didn't  
5 mention that there was missing a third page?

6 A. Is there what?

7 Q. Was there a reason you didn't mention  
8 when you were identifying Staff Exhibits A and B that  
9 only have two pages that, in fact, they should have  
10 three pages?

11 A. No. Actually the first two pages are the  
12 actual inspection report. We print out a separate  
13 page for that certification repair.

14 Q. Am I correct that all three pages in  
15 Joint Exhibit A and all three pages in Joint Exhibit  
16 B were given to Mr. Hess --

17 A. Yes.

18 Q. -- at the time of those inspections?

19 A. Yes, sir.

20 Q. Okay. My question again is there a  
21 reason why in identifying Staff Exhibits A and B you  
22 didn't mention that a third page was missing?

23 A. Well, no, sir.

24 Q. Okay. And is there a reason why you

1 didn't indicate that that third page that was missing  
2 might include exculpatory evidence?

3 MR. JONES: Objection. There's no  
4 foundation for that statement.

5 ATTORNEY EXAMINER SHEETS: I am going to  
6 have you rephrase that.

7 Q. Yes. You said that you were given --  
8 that the driver gave you back at the time of the  
9 second stop --

10 A. Yes, sir.

11 Q. -- a copy of the inspection from the  
12 first stop, correct?

13 A. Yes, sir.

14 Q. Okay. Why would he do that but for to  
15 prove that it had been signed by the repairman?

16 A. Because I asked him for it.

17 Q. Okay. And you don't recall something as  
18 important as the repair signature being on there?

19 A. That third page is for when all the  
20 violations are taken care of, all the non-out of  
21 service and all the others.

22 Q. But you don't recall whether it was  
23 signed at that time?

24 A. I don't recall.

1                   MR. JONES: I object to the assumption  
2 that it was signed at that time. There is no proof  
3 of that in the record.

4                   ATTORNEY EXAMINER SHEETS: I will let the  
5 question stand. If he doesn't know, he doesn't know.

6                   Q. And since we are on that point one final  
7 question, you do agree that repairs were instituted  
8 on the brakes between stops 1 and 2?

9                   A. On three of the four, yes.

10                  Q. Correct.

11                  A. Yes.

12                  Q. Thank you. Why would you ask for the  
13 first report back?

14                  A. Because it has a lot of the information  
15 instead of getting his registration again.

16                  Q. Don't you have --

17                  A. It's got that right there.

18                  Q. Don't you have that on your computer?

19                  A. Well, I am on a screen. I would have to  
20 go to the last report, and then it's not set up that  
21 way.

22                         MR. TUROWSKI: Okay. No further  
23 question, your Honor. Thank you.

24                         MR. JONES: I have one follow-up

1 question, your Honor.

2

- - -

3

FURTHER REDIRECT EXAMINATION

4

By Mr. Jones:

5

6

7

8

Q. Officer Bell, you said that the third page of the three-page report, that's actually a separate -- that doesn't go with the inspection; is that correct?

9

10

A. Correct. It's a separate certification page that we give the drivers.

11

12

Q. Which the driver has to give to the carrier, correct?

13

14

15

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20

A. Correct, and once all the violations are corrected then the signature making the repairs, on all the repairs, not just the out-of-service but the non-out-of-service repairs, and then the carrier signs off there. The certification for the repairs on the out-of-service items is on page 2, certification of repairer on the out-of-service page, that's what page 2 is.

21

22

Q. So page 2 is the certification for the repairer, correct?

23

24

A. For the out-of-service items.

Q. For the out-of-service items?

1           A.    And page 3 is for all the other items  
2   which is a separate.

3           Q.    So page 3 doesn't go to the  
4   out-of-service repairs?

5           A.    No.  It goes to the carrier.  Once he  
6   completes all the lights and all the other  
7   violations, then whoever fixes those violations would  
8   sign off stating that all violations on the  
9   inspection report have been repaired.

10           MR. JONES:  Nothing else, your Honor.

11           MR. TUROWSKI:  One, if I may, one follow  
12   up just for the record.

13                               - - -

14                               REXCROSS-EXAMINATION

15   By Mr. Turowski:

16           Q.    Inspector, on Joint Exhibit A, the second  
17   page to be signed by the repairer is signed as --

18           A.    Yes, sir.

19           Q.    As is the third page, that is signed  
20   also, correct?

21           A.    Yes, sir.

22           Q.    Okay.  Those are dated 1-31-06; is that  
23   correct?

24           A.    Yes, sir.

1           Q.    All right.  And when we were off the  
2 record, these Joint Exhibits A and B were not  
3 together.  They were separate sheets.  I believe you  
4 indicated you couldn't tell which third sheet went  
5 with which exhibit; is that correct?

6           A.    Correct.

7           MR. TUROWSKI:  Okay.  Thank you.  That's  
8 all I have.

9           ATTORNEY EXAMINER SHEETS:  All right.  
10 You are excused.

11                  We have another witness?

12           MS. HAMMERSTEIN:  We would like to recall  
13 Mr. Jonathan Frye.

14                                 - - -

15                                 JONATHAN FRYE

16 previously called as a witness on behalf of the  
17 Staff, being previously duly sworn, testified further  
18 as follows:

19                                 FURTHER DIRECT EXAMINATION

20 By Ms. Hammerstein:

21           Q.    Mr. Frye, I am handing you what has been  
22 marked Joint Exhibits A and B.  Can you tell me what  
23 those documents are?

24           A.    Yes.  It's -- A as well as B, it's the

1 driver vehicle examination report. There's three  
2 pages to each.

3 Q. Okay. And do you still have copies of  
4 Staff Exhibit A and Staff Exhibit B?

5 A. Yes, I do.

6 Q. And can you explain for me what the  
7 differences are between Staff Exhibit A and Joint  
8 Exhibit A? Well, from your perspective. There's a  
9 difference.

10 A. On Staff -- the difference between Staff  
11 Exhibit A and Joint Exhibit A is on Joint Exhibit A  
12 there is three pages; on Staff Exhibit A there is two  
13 pages. And on Joint Exhibit A there are now  
14 signatures on pages 2 and 3. And on Staff Exhibit A  
15 there's no signature. There's no signatures at all.  
16 And actually on Joint Exhibit A there's a signature  
17 on pages 1, 2, and 3, whereas, there are no  
18 signatures on Staff Exhibit A. And the same thing  
19 for Staff Exhibit B and Joint Exhibit B, there are no  
20 signatures on Joint Exhibit B -- excuse me. There  
21 are signatures on Joint Exhibit B on all -- on pages  
22 1, 2, and 3.

23 Q. Okay. Can I direct your attention to  
24 Staff Exhibit A.



1           A.    Yes.

2           Q.    The upper right under driver vehicle  
3 examination report?

4           A.    Yes.

5           Q.    Okay.  And then if you also look at Joint  
6 Exhibit A under the same heading on the upper right,  
7 what is the difference between those two blocks of  
8 information on Joint Exhibit A and Joint Exhibit --  
9 excuse me, and Staff Exhibit A?

10          A.    There is on -- on Staff Exhibit A up in  
11 the right there's a certification date that's now  
12 listed as 2-28, 2006, and on Joint Exhibit A there is  
13 no -- there is no certification date.

14          Q.    And why does that difference exist  
15 between the two forms?

16          A.    On -- on Staff Exhibit A it shows that at  
17 some point a record was sent into our data management  
18 division indicating that we have indeed received  
19 information that the repairs -- information had been  
20 signed off on.

21          Q.    Okay.  And can the same distinction be  
22 made between Staff Exhibit A -- excuse me, B and  
23 Joint Exhibit B, that is, regarding the certification  
24 information and date?

1 A. Yes, yes.

2 Q. Let me direct your attention back to  
3 Joint Exhibit B, Mr. Frye.

4 A. Uh-huh.

5 Q. And if you look under the portion of the  
6 report titled violations?

7 A. Uh-huh.

8 Q. What is listed as the specific code for  
9 the first violation listed there?

10 A. It has 2-5-07D.

11 Q. Okay. And if you look at Staff Exhibit  
12 B.

13 A. Uh-huh.

14 Q. Under the same part of the report  
15 entitled violations, what is the first section --  
16 what is the section code listed there?

17 A. 392 point -- 392.2.

18 Q. Okay. And can you tell us what the  
19 difference there is, if any, between those two?

20 A. All right. On Joint Exhibit A as well  
21 as -- excuse me. On Joint Exhibit A when a violation  
22 code is written as a state violation as it is in this  
23 particular case, 2-5-07D, that's the -- this is the  
24 actual -- Joint Exhibit B is the actual printout of

1 what was given to the driver at the time of the  
2 inspection and the actual violation that's written.  
3 The software that's in the computer when it gets  
4 uploaded into our computer system, it cannot read the  
5 state code type of violation, so it generates a  
6 facsimile which is Staff Exhibit B that will convert  
7 that into a federal code because it's a federal  
8 software and it will read it as a 392.2 violation, as  
9 violation of federal or state violation. And this is  
10 a working copy that we utilize, a facsimile. The  
11 actual copy of the violation that's written is what's  
12 contained on the -- with the inspector and driver's  
13 signature.

14           Additionally when we sent out the fine  
15 letter, it's the actual state code cite of a 2-5-07D  
16 violation that's sent out. Staff Exhibits A and B,  
17 this is a facsimile or a working copy, an internal  
18 copy that we utilize.

19           MS. HAMMERSTEIN: I have no further  
20 questions, your Honor.

21           ATTORNEY EXAMINER SHEETS: Do you have  
22 any questions?

23           MR. TUROWSKI: Nothing. Thank you.

24           ATTORNEY EXAMINER SHEETS: You're

1 excused.

2           Shall we proceed with the Respondent's  
3 side of the case?

4           MR. TUROWSKI: Are you resting?

5           MR. JONES: We are resting.

6           ATTORNEY EXAMINER SHEETS: Okay. I will  
7 additionally admit all these exhibits into evidence.

8           (EXHIBITS ADMITTED INTO EVIDENCE.)

9           ATTORNEY EXAMINER SHEETS: Let's proceed.

10          MR. TUROWSKI: \*\*I have a number of  
11 motions to make at this time. First and foremost, I  
12 am going to again request a complete dismissal at  
13 this point per the anyone -- any witness from the  
14 Staff's side being able to identify the defendant.  
15 There's been absolutely no identification whatsoever.  
16 The case should be thrown out on that.

17          Secondly -- and this is a unique point in  
18 that there are two separate stops. If you recall as  
19 far back as this was today, the officer testified  
20 that the reason for the original stop was that he saw  
21 a ground light was out and, of course, at that time  
22 he testified that he was in a marked vehicle and in  
23 uniform of the day. For the second stop no such  
24 testimony was elicited as to any violation. He said

1 he recognized the vehicle. That is not sufficient  
2 culpable cause to make a stop nor was there testimony  
3 at that stop that he was still in the uniform of the  
4 day and marked vehicle.

5 Absent those items the case has to be  
6 thrown out on probable cause issues. The Staff  
7 brought it up initially on the first charge because  
8 they know they have to have that. They have to have  
9 probable cause. There has to be a uniform and a  
10 marked vehicle. They neglected to do that on the  
11 second charge, and obviously we're here based upon  
12 that second charge, so everything involving the  
13 second report has to be thrown out at this point.

14 ATTORNEY EXAMINER SHEETS: I disagree. I  
15 overrule your motions.

16 Let us proceed with your side of the  
17 case.

18 MR. TUROWSKI: Very good.

19 Mr. Hess, state your full name for the  
20 record, please.

21 MR. HESS: Richard E. Hess.

22 MR. TUROWSKI: Your residence address.

23 (Witness sworn.)

24 - - -

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RICHARD HESS

called as a witness on his own behalf, being first  
duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Turowski:

Q. Full name.

A. Richard E. Hess.

Q. Address?

A. P.O. Box 56, Milton, Pennsylvania;  
physical address is 8350 Route 405.

Q. All right. Would you describe the events  
of January 31, please, '06.

A. On January 31, I was coming south on 271  
when I was pulled over by the officer and the  
inspection was done on my vehicle that I was driving.

Q. He told you why he pulled you over?

A. I don't recall.

Q. Okay. Continue.

A. When he did the inspection on the  
vehicle, he told me what was wrong with it and all  
and what had to be done. I went up to the rest area  
there. There was a person there that was cleaning,  
in charge of cleaning it, asked if they had a phone  
book so I could call, find someone to get it

1 repaired.

2           When I opened the phone book, I seen an  
3 ad for truck parts. I figured, okay, I will call  
4 them up and see who was near. They gave me the  
5 mechanic's company that was near. I called them up,  
6 told them, hey, I was shut down, you know. The  
7 problem was, you know -- gave them the list. I said  
8 the trailer brake, I adjusted that while the officer  
9 was in his car finishing up the reports.

10           The mechanic came out. He raised the  
11 hood. I wasn't watching everything he did. He --  
12 the S cam on the front wheel had rotated which had,  
13 therefore, made it ineffective. He rotated that  
14 back, and I didn't -- was not watching what else he  
15 had done. He was, you know -- knew what was wrong  
16 with the front tires, you know, both front wheels.  
17 The -- also he needed to have brake linings replaced.  
18 I had adjusted the back one. He asked me to drive to  
19 his garage. I had assumed that he had calibrated or  
20 adjusted the front brakes to where they were  
21 operational.

22           Q. Did he tell you that he had done that?

23           A. I gave him the list of what was wrong. I  
24 wasn't watching what he did.

1 Q. Continue.

2 A. I then proceeded to his garage where he  
3 put new brake lining on that vehicle. He came back  
4 with the list first violation thing. He said okay.  
5 You are all done here. Got new brake lining on it.  
6 Front is all done. I have to check your work because  
7 I am the one signing off on it. No problem. Check  
8 the trailer. He went back, got underneath the  
9 trailer, checked that. Okay, it's fine. I paid the  
10 man. I went back down the road.

11 Q. Okay. First of all, did he sign at that  
12 time the areas that are listed in Joint Exhibit A?  
13 Did he sign off on pages 2 and 3 where it lists the  
14 repairman?

15 A. Yes, he did.

16 Q. Thank you. Continue.

17 A. I went back down the road. I seen the  
18 same officer sitting there. I went by him, you know,  
19 headed south down the road again. And he pulled me  
20 over again and did a reinspection. He found that the  
21 right front brake was still not operating properly.  
22 The man had been paid -- the mechanic had been paid  
23 to do the work.

24 Let me correct one thing here. As we



1 talked, I was mad not at the officer but I was mad  
2 the mechanic did not do the work that I had paid him  
3 to do. There was no -- Mr. Jones never mentioned to  
4 me about not wanting to have that work done. I was  
5 paying for that work out of my own pocket. Then I  
6 would be reimbursed later from Mr. Drum. There was  
7 never any mention about that. There was never any  
8 out-of-service sticker put on the trailer. There was  
9 an out-of-service sticker put on the tractor. I did  
10 scrape the out-of-service sticker off the tractor  
11 because I wasn't paying this mechanic \$95 an hour was  
12 what he was charging me to strip the sticker off the  
13 tractor.

14 Q. Did you scrape that off after he had  
15 signed off on the repairs?

16 A. He had done the repairs and checked the  
17 work.

18 Q. Very good. Continue.

19 A. I received, you know, another citation,  
20 another shutdown. I called him up rather irritated.  
21 The same mechanic would not come out the second time.  
22 He sent someone else out, put another slack adjustor  
23 on the tractor because the one that was on there was  
24 not able to be adjusted. So he came out and put

1 another slack adjustor on it. That's why there is a  
2 different mechanic's signature on the second sheet  
3 for the repairs.

4 Q. Did you show the inspector the signed  
5 repair order from the first stop when you were  
6 stopped the second time?

7 A. Yes, I did.

8 Q. Did you ask him why he was writing you up  
9 if you had that signed order?

10 A. I asked him if it still was not repaired  
11 and so he had to shut me down for the second time.

12 Q. Anything else that you feel impacts this  
13 case today that you want to say right now?

14 A. It's -- I relied on the mechanic and also  
15 let me clarify something else too. This is going  
16 around when I faxed this information to -- when I was  
17 notified I was going to have -- you know, could have  
18 a telephone conference, I'm the one that put No. 1  
19 and No. 2 on there to signify No. 1 stop and No. 2  
20 stop. I faxed in that. I faxed in the letter. I  
21 faxed in the bills that I had paid, you know, prior  
22 to this original telephone conversation, telephone  
23 conferences they wish to call it.

24 Q. Do you have anything else?

1           A.    I was not -- it's immaterial, I know, but  
2 I have got to say it. I wasn't trying to beat the  
3 system on this. There is some way I could have got  
4 around and got out of there and I didn't. I wanted  
5 the thing repaired. There was bills sent in, paid  
6 bills sent in from this shop. So I faxed in.

7                   The reason I do not have that information  
8 is there was -- there was a situation where there was  
9 some people that were employed there that are no  
10 longer employed there anymore and there is paperwork  
11 that came up missing. That's why I can't have a copy  
12 of what I sent you. You know, it was sent in to  
13 the --

14           Q.    You are indicating you paid receipts  
15 wherein all four of the brake items were paid for?

16           A.    Yeah. They were paid in cash out of my  
17 pocket.

18           Q.    Thank you. Anything further?

19           A.    Not at this time.

20                   MR. TUROWSKI: Your witness.

21                   MR. JONES: Thank you, Ken.

22                               - - -

23

24

1 CROSS-EXAMINATION

2 By Mr. Jones:

3 Q. Mr. Hess, you are not denying then that  
4 you were stopped twice on January 31, 2006, and had  
5 an inspection done of both your tractor and trailer  
6 on that date and by this inspector, correct?

7 A. No, I am not denying that.

8 Q. Okay. Now, you testified, and I just  
9 want to clarify that after you were stopped the first  
10 time for the first inspection, after the completion  
11 of the first inspection, you then drove the tractor  
12 with the trailer to the repair shop; is that correct,  
13 from the rest area?

14 A. Can I clarify that? What happened --

15 Q. Just answer my question.

16 A. The mechanic came out --

17 MR. TUROWSKI: Give a full answer.

18 THE WITNESS: What I started to say?

19 MR. TUROWSKI: Yes.

20 A. The mechanic came out to the site, to the  
21 rest area, and adjusted the brakes on the front  
22 there. I adjusted the trailer brake on the front.  
23 After he had done the adjustments and rolled the S  
24 cam back over, then I drove to the shop to have new

1 brake lining put on. The left front needed new brake  
2 lining.

3 Q. But all the items that were marked for  
4 out of service for all the brake adjustments weren't  
5 repaired at the rest area, correct? They were  
6 repaired at the repair shop?

7 A. The brake for adjustment was repaired to  
8 my knowledge at the rest area. The repair shop was  
9 to put on new brake lining on the left front.

10 Q. Well, the mechanic didn't sign anything  
11 at the rest area, did he?

12 A. He had not completed the work at that  
13 time.

14 Q. And you never inspected what repairs were  
15 made, correct, at the rest area?

16 A. Not the repairs he made, no. I relied on  
17 his knowledge and his ability.

18 Q. So without having inspected the repairs  
19 for yourself, then you didn't know if the repairs  
20 were made at the rest area, correct?

21 A. No, I did not because I relied -- there  
22 again, I relied on his expertise, knowledge, and  
23 ability.

24 Q. Did you take the out-of-service sticker

1 off the tractor when you left the rest area?

2 A. The out-of-service sticker was taken off  
3 at the garage.

4 Q. So you drove it with the out-of-service  
5 sticker on the tractor from the rest area to the  
6 garage, correct?

7 A. Yes, I did.

8 Q. And you drove it not knowing if all the  
9 repairs had been made, correct?

10 A. To my knowledge, the repairs had been  
11 done.

12 Q. What's that knowledge based on?

13 A. It was based on the fact he said he had  
14 adjusted them. He told me what he had done. He  
15 turned the S cam back so it was operational and took  
16 up -- adjusted the slack adjustors.

17 Q. But there were further repairs to be made  
18 on the brakes at the repair shop, correct?

19 A. There was new brake lining to be put on  
20 the left front. It's noted in the -- on the report  
21 there about brake lining needed to be replaced. It  
22 was wore down.

23 Q. Isn't it true, Mr. Hess, you stated to  
24 Officer Bell that you drove the truck with the

1 out-of-service stickers on to the repair shop to get  
2 fixed; isn't that correct?

3 A. There was no out of service on the  
4 trailer. I did drive it to the shop with that on the  
5 tractor, but the repairs had been done supposedly  
6 there. A lot of companies do not require the driver  
7 to actually inspect the brakes and stuff like that.  
8 You do a walk around.

9 Q. Well, one of the violations that placed  
10 you out of service, Mr. Hess, was inadequate brake  
11 lining for safe stopping, left steer brake lining  
12 worn below one quarter of an inch to one eighth of an  
13 inch and that's the repair that wasn't made you just  
14 testified to, correct?

15 A. Yes.

16 Q. Okay. That repair was made at the  
17 garage, correct?

18 A. Right. The gentleman stated that he  
19 needed to have other equipment to do the repairs.

20 Q. Okay. Isn't it also true, Mr. Hess, that  
21 at the time of the second inspection that you had  
22 stated to Officer Bell that the right steer brake  
23 slack adjustment would not be repaired until you got  
24 back to your main shop?

1           A.    No, that is not true.

2           Q.    Because the owner didn't want to repair  
3 it --

4           A.    That is not true.

5           Q.    Wasn't it true, Mr. Hess, at the time of  
6 the second inspection that, in fact, the -- that the  
7 right steer brake had not been repaired; is that  
8 correct, at the time of the second inspection?

9           A.    Yes.

10          Q.    Okay. So you are not contesting that.

11          A.    I am not contesting that, no.

12          Q.    Okay.

13          A.    What I am stating is I was told by a  
14 mechanic and he charged me for it and signed off on  
15 it that he had done the work on the right front  
16 steer.

17          Q.    And, Mr. Hess, you have had a chance to  
18 look at these exhibits, the Staff Exhibits A and B  
19 and the Joint Exhibits A and B, and the information  
20 pertaining to your personal information is all  
21 correct as to your name and address and license  
22 number?

23               MR. TUROWSKI: I will object to this at  
24 this point. The State has been unable -- I will



1 object at this point. At this juncture the State has  
2 been unable on its own case to prove identity. It  
3 cannot bring it in at this juncture.

4 ATTORNEY EXAMINER SHEETS: I will  
5 overrule your objection.

6 A. I don't see my address on there.

7 MR. BELL: It's on the second page down  
8 where it says special checks, no data, just unit,  
9 state information.

10 Q. Are you looking at Joint Exhibit 1 or  
11 which one?

12 A. Second page. Okay. I see it now.  
13 Excuse me. Yeah, I see it there. That is correct.

14 MR. JONES: Okay. All right. No further  
15 questions, your Honor.

16 ATTORNEY EXAMINER SHEETS: Anything on  
17 redirect?

18 - - -

19 REDIRECT EXAMINATION

20 By Mr. Turowski:

21 Q. Mr. Hess, I am going to ask you to take a  
22 look at Staff Exhibits A and B and Joint Exhibits A  
23 and B and take a look through all those exhibits.  
24 Those are all the copies of the inspections. Does

1 the inspector at any time write in his narrative or  
2 anywhere else on any of those four reports that your  
3 employer said he would not pay for the repair? This  
4 is what I am asking you.

5 A. There's nothing on there that states  
6 that.

7 MR. TUROWSKI: Thank you. No further  
8 questions.

9 MR. JONES: Nothing further.

10 ATTORNEY EXAMINER SHEETS: You're  
11 excused.

12 Does anyone have anything more?

13 MR. TUROWSKI: Nothing further. We would  
14 move the joint two exhibits to be admitted. We have  
15 no further evidence on behalf of Mr. Hess.

16 ATTORNEY EXAMINER SHEETS: Very good.  
17 Those will be admitted at this time.

18 Let's go off the record here briefly.

19 (Discussion off the record.)

20 ATTORNEY EXAMINER SHEETS: The parties  
21 have decided that we will file simultaneous briefs on  
22 April 6. Thank you. I consider this submitted on  
23 the record.

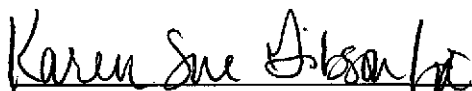
24 (Thereupon, the hearing was concluded at

1 12:55 p.m.)

2 - - -

3 CERTIFICATE

4 I do hereby certify that the foregoing is  
5 a true and correct transcript of the proceedings  
6 taken by me in this matter on Thursday, February 8,  
7 2007, and carefully compared with my original  
8 stenographic notes.

9  
10   
11 Karen Sue Gibson, Registered  
Merit Reporter.

12 (KSG-4619)

13 - - -

COMPLIANCE DIVISION

EFFECTIVE JANUARY 3, 2005

**FINE SCHEDULE  
OUT OF SERVICE VIOLATIONS**

**GROUP 1**

VIOLATIONS		MAXIMUM FINE
Braking Action Absent	Steering Gear Box	1 Violation = \$100
Missing or Broken Brake Component	Steering Modification	
Air Drop Test	Steering Wheel Play	2 Violations = \$250
Safety Devices-Chains or Hooks	Coupling, Towing Devices	
Tires, Retreads – on Buses	Frame	3 Violations = \$400*
Steering Column	Tire, Front Axle	
Other Steering Components	Safe Loading	
Record of Duty Status-		
10 Hour Violation		
15 Hour Violation		
60 in 7, or 70 in 8		
None in Possession/Not Current		
Falsification of Record of Duty Status (Intentional)		\$300
Violation of Out of Service Notice (Each Notice, Not Each Offense)		\$1,000

**GROUP 2**

VIOLATIONS		MAXIMUM FINE
Braking Pad	Lamps on the Rear	1 Violation = \$50
Brake Hose, Tube	Lamps on Projecting Load	
Parking Brake	Turn Signal-Rear	2 Violations = \$150
Low Air Warning Device	Fuel Tank Not Secure	
Air Reservoir	Adjustable Axle	3 Violations = \$250*
Brake Adjustment	Wheels and Rims	
Headlamp Inoperative	Front End Structure	
Stop Lamp Inoperative	Suspension	
Violation of Out of Service Notice (Each Notice, Not Each Offense)		\$1,000
<b>Note:</b> Fines will only be issued for a combination of two or more Violations from Group 2 or Group 3.		

**GROUP 3**

VIOLATIONS		MAXIMUM FINE
Fuel Tank Cap Missing	Audible Air Leak	1 Violation = \$40
Fuel System	Exhaust System	
Windshield Glazing	Tires, Other Axles	2 Violations = \$90
Windshield Wipers	Waiver of Physical	
Disqualification	License-Improper Class	3 Violations = \$150*
Radio Active Material – Training Certificate		
Violation of Out of Service Notice (Each Notice, Not Each Offense)		\$1,000
<b>Note:</b> Fines will only be issued for a combination of two or more Violations from Group 2 or Group 3.		

**GROUP 4**

VIOLATIONS	MAXIMUM FINE
No Operating Authority (intrastate)	\$500
Failure to Register (intrastate)	\$100
Age Under 21 (Interstate)	\$250
Intoxicants – Under the Influence	\$500
Intoxicants – Possession	\$100
Insurance Violations (intrastate)	\$1,000
SSRS Registration (Receipt)	\$100
Failure to Display Correct Ohio-Cab Card Stamp (ICC Exempt)	\$100
Failure to Display Tax Decal on Vehicle	\$100
Not Using Seat Belt	\$100
Radar Detectors	\$100
Medical Certificate (Driver)	\$ 50
Disqualifying Offenses	\$500
Drugs – Under the Influence	\$500
Drugs – Possessing	\$500

\* Over three violations in any group will result in a review by Commission Staff to determine additional fine amount.

Any questions in regards to this fine schedule please contact:  
Public Utilities Commission of Ohio  
Compliance Division  
180 East Broad St.  
Columbus, Ohio 43215  
(614) 466-0351

CODE	VIOLATION DESCRIPTION	GROUP
391.11B1	AGE UNDER 21 (INTERSTATE)	4
391.11B7	OPERATORS LICENSE, NO VALID	4
391.15	DISQUALIFIED DRIVER	\$500
391.41	MEDICAL CERTIFICATE, NO VALID	\$50
391.49	MEDICAL WAIVER, NOT IN POSSESSION	4
392.3	ILL OR FATIGUED DRIVER	2
392.4	DRUGS, USING OR POSSING THOSE SPECIFIED	4
392.4A	OPERATING WHILE UNDER THE INFLU OF DRUGS	\$500
392.5	INTOXICATING BEVERAGES, USING OR POSSESSIN	4
392.5A2	OPERATING WHILE UNDER INFLU OF AN INTOX.	\$500
392.5A3	OPERATING VEH WHILE IN POSSESSION OF INTOX	\$500
392.9A1	INSECURE CARGO	1
392.9A2	INSECURE PARTS & ACCESSORIES	1
392.16	SEAT BELT	4
393.100	CARGO SHIFTING OR FALLING LOADING TO PVNT.	1
393.102	SECUREMENT SYSTEMS	1
393.104	IMPROPER BLOCKING/BRACING	1
393.106	HEADERBOARD OR SIMILAR DEVICE	1
393.11PL	PROJECTING LOAD, LAMP ON MISSING ETC.	2
393.11S	STOP LIGHT MISSING ETC.	2
393.11T	TAIL LIGHT MISSING ETC.	2
393.11TS	TURN SIGNAL MISSING ETC.	2
393.201	FRAME VIOLATIONS	1
393.203	CAB AND BODY COMPONENTS	1
393.205A	CRACKED OR BROKEN WHEEL OR RIM	2
393.205B	BOLT HOLE ELONGATED, WHEELS	2
393.205C	NUT OR BOLT LOOSE OR MISSING, WHEEL	2
393.207A	AXLES-POSITIONING PART CRACKED, BROKEN,	2
393.207B	ADJUSTABLE AXLE-SLIDER PIN MISSING/DISENG	2
393.207C	SPRING, LEAF-CRACKED, BROKEN, MISSING/SHIFT	2
393.207D	SPRING, COIL-CRACKED OR BROKEN	2
393.207E	TORSION BAR-CRACKED OR BROKEN	2
393.207F	AIR SUSPENSION DEFECTIVE	2
393.209A	WHEEL, STEERING INSECURE, SPOKES CRACKED	1
393.209B	LASH, STEERING EXCEEDS STANDARS	1
393.209C	COLUMN, STEERING INSECURE	1
393.209D	SYSTEM COMPONENT, STEERING LOOSE OR DEFC.	1
393.209E	POWER COMPONENT, STEERING DEFECTIVE	1
393.41.1	PARKING BRAKE SYSTEM INOPERATIVE	2
393.42	NO BRAKE WHEN REQUIRED	1
393.42B1	FRONT WHEEL BRAKE, NONE	1
393.43	TRACTOR PROTECTION VALVE, MISSING OR INOP	2
393.46	HOSE OR TUBING LEAK & DEFECT AT CONNECTIO	2
393.46B	BRAKE HOSES IMPROPERLY JOINED	2

393.47	BRAKE LINING OR PAD INADEQUATE	2
393.48A	INOPERATIVE BRAKE	1
393.50	VACUUM SYSTEM, DEFECT IN BRAKE	2
393.51	LOW AIR PRESSURE WARNING DEVICE	2
393.61	WINDOW, PUSH-OUT, CONSTRUCTION & OPERATI.	1
393.62	WINDOW, PUSH-OUT, OBSTRUCTING	1
393.65	FUEL TANK NOT SECURE	2
393.67	FUEL LEAK	3
393.70	FIFTH WHEEL DEFECT	1
393.71	COUPL. DEV IN DRIVEWAY TOWAWAY OPER. DEF	1
393.75A	FAB/CORD EXPO. THRU TIRE TREAD OR SIDEWAL	3
393.75A1	EXPOSED FABRIC/CORD THRU TREAD/SIDEWALL	3
393.75A2	SEPARATION OF ANY TREAD OR SIDEWALL	3
393.75A3	FLAT TIRE OR AUDIBLE LEAK	3
393.75A4	CUT IN TREAD/SIDEWALL EXPOSING FABRIC/COR.	3
393.75B	TREAD ON STEERING AXLE TIRE LESS THAN 4/32"	1
393.75C	TREAD ON TIRE LESS THAN 2/32"	3
393.75D	BUS TIRE, RECAP ON STEERING AXLE	1
393.75F	LOAD LIMIT, WEIGHT CARRIED EXCEEDS TIRE	3
393.78	WIPER, WHINDSHIELD	3
393.83B	EXHAUST, IMPROPER (BUS)	3
393.83C	EXHAUST SYSTEM	3
395.3A1	DRIVING MORE THAN 10 HOURS	1
395.3A2	DRIVING AFTER HAVING BEEN ON DUTY 15 HRS.	1
395.3B	DRIVING AFTER ON DUTY 60/70HRS. IN 7/8 DAYS	1
395.8A	LOG BOOK, NONE IN DRIVERS POSSESSION	1
395.8E	LOG BOOK, FALSE ENTRIES	1
395.8F1	LOG BOOK NOT CURRENT, TIME LAST CHNG OF D.	1
395.8K2	LOG BOOK NOT POSS. RECORD FOR PRIOR 7 DAYS	1
396.3A1B	AIR RESERVIOIR LOOSE	2
396.3A1BA	ADJUSTMENT, BRAKE OUT OF (PUSH ROD)	2
396.3A1BC	AIR COMPRESSOR, VIOLATIONS	2
396.3A1BD	DRUM OR DISK VIOLATIONS	1
396.3A1BH	HOSE OR TUBING DAMAGED/LEAKING	2
396.3A1BL	LEAK AIR RESULTING IN RESERVOIR PRESS. LOSS	2
396.3A1H	HYDRAULIC SYSTEM, DEFECTS IN	2
396.3A1T	OTHER TIRE VIOLATION	3
396.3A1W	OTHER WHEEL VIOLATION	2

## ECONOMIC VIOLATIONS

CODE	VIOLATION DESCRIPTION	
2-1-04 (B)	FAILURE TO PRESENT PUCO TAX RECEIPT (INTER)	\$100
2-1-06	FAILURE TO DISPLAY PUCO TAX DECAL ON VEH.	\$100
2-15-05	NO SINGLE STATE REGISTRATION	\$100
2-15-05(E)	FAILURE TO MAINTAIN SSRS REGISTRATION	\$100
2-17-02	INTERSTATE-EXEMPT NOT REGISTERED IN OHIO	\$500
2-17-04	FAIL TO DISPLAY CORRECT CAB CARD OR STAMP	\$100
2-17-05	INTERSTATE-EXEMPT-LIABILITY INSURANCE	\$1000
2-5-04	AGE UNDER 18 (Intrastate)	\$250
2-5-10	MARKING, COMPANY INTRASTATE	\$100
2-5-7D	OPERATING OUT OF SERVICE VEHICLE	\$1000
4921.07	OPERATING WITH NO AUTHORITY (INTER)	\$500



Take appropriate enforcement and out-of-service action.

Instruct the driver on the disposition of the report and the corrective action(s) of any defect(s).

#### OUT-OF-SERVICE PROCEDURE

Follow the appropriate procedures when placing a driver or vehicle out of service.

Verify that out-of-service violations have been corrected, when possible.

Emphasize to the driver that vehicle cannot be operated until all out-of-service violations have been corrected.

Advise the driver when they may drive again.

#### QUALIFYING FOR CVSA DECALS

The North American Standard Level I and/or Level V are the only inspections that may result in issuance of a CVSA decal. To qualify for a CVSA decal, a vehicle must not have any violations of the items contained in this operational policy and *North American Standard Out-of Service Criteria*.

Inspections must be performed by and CVSA decals affixed by North American Standard Level I and/or Level V certified inspectors. The term "certified" as used in this section means the government employee performing inspections and/or affixing CVSA decals must have first successfully completed a training program approved by the Alliance. CVSA decals, when affixed, shall remain valid for a period not to exceed three consecutive months. Vehicles displaying a valid CVSA decal generally will not be subject to re-inspection.

However, nothing shall prevent re-inspection of a vehicle or combination of vehicles bearing valid CVSA decals, under the conditions specified in the section titled, "Re-inspection".



## The Public Utilities Commission of Ohio

Monitoring marketplaces and enforcing rules to assure  
safe, adequate, and reliable utility services.

Bob Taft, Governor  
Alan R. Schriber, Chairman

Commissioners

Ronda Hartman Fergus  
Judy A. Jones  
Valerie A. Lemmie  
Donald L. Mason, Esq.

AUGUST 16, 2006

MR RICHARD HESS

8350 RT 405 N  
MILTON, PA 17847

RE: NOTICE OF PRELIMINARY DETERMINATION

Case No. OH3274004435D

Officer: WW

Dear MR HESS:

On January 31, 2006, a vehicle operated by ELMER DRUM, and driven by RICHARD E HESS, was inspected within the State of Ohio. As the result of discovery of the following apparent violation the Staff timely notified Respondent pursuant to Rule 4901:2-7-07, O.A.C., that it intended to make a civil monetary assessment against Respondent in the following amount:

Code	Violation
2-5-07D	Operating out of service vehicle without fixing al

Total Forfeiture Assessed : \$1000.00

A conference was conducted pursuant to Rule 4901:2-7-10(B), O.A.C., at which the Respondent had a full opportunity to present any reasons why the violation did not occur as alleged, mitigating circumstances regarding the amount of any forfeiture, and any other information relevant to the action proposed to be taken by Staff.

(continued)



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Alan R. Schriber, Chairman

### Commissioners

Ronda Hartman Fergus  
Judy A. Jones  
Valerie A. Lemmie  
Donald L. Mason, Esq.

AUGUST 16, 2006  
MR RICHRD HESS

OH3274004435D

PAGE -2

As a result of the conference, Staff has made a Preliminary Determination that the Commission should make a civil monetary assessment against RICHARD E HESS in the following forfeiture:

Code	Violation
2-5-07D	Operating out of service vehicle without fixing al

Total Forfeiture Agreed : \$1000.00

Please include a certified check or money order for the total forfeiture Agreed, made payable to "Treasurer State of Ohio," and mail to: PUCO FISCAL, 180 E. Broad St, 13th floor, Cols. OH 43215-3793. FOR PROPER CREDIT, BE SURE TO PUT THE CASE NUMBER ON THE FACE OF THE CHECK.

Please consult the enclosed additional information concerning this Notice of Preliminary Determination.

Robert E. Marvin, Director  
Transportation Department  
Public Utilities Commission of Ohio

Joint Ex. A



OHIO STATE HIGHWAY PATROL  
MOTOR CARRIER ENFORCEMENT  
MASSILLON DISTRICT 3 HEADQUARTERS  
TELEPHONE: (330) 833-1056  
Return certification to agency listed below

DRIVER/VEHICLE EXAMINATION REPORT  
Report Number: OH3274004432  
Inspection Date: 01/31/2006  
Start Time: 11:20 AM End Time: 12:31 PM  
Insp. Level: 1-Full.

ELMER DRUM  
8855 ROUTE 405 HIGHWAY  
MONTGOMERY, PA 17752

Phone#: (800)324-8903 Fax#:   
(USNOT#: 00605255 ICC#: 289745  
State#:

Driver: HESS, RICHARD E  
License#: 24111482 State: PA  
Date of Birth: 09/18/1945  
CoDriver:  
License#: State:  
Date of Birth:

Location: RICHFIELD  
Highway: 271  
County: SUMMIT

MilePost: 8  
Origin:  
Destination:

Shipper:  
Bill of Lading:  
Cargo: EMPTY

VEHICLE IDENTIFICATION

Unit	Type	Make	Year	State	License #	Company #	Vin #	GVWR	CVSA #	OOS#
1	TT	FRHT	2001	PA	AE52981	93	1FUJAPCK61LH03458	80,000		Y
2	ST	GDAN	1986	ME	A305423	822	1GRAA9827GS035802			Y

BRAKE ADJUSTMENTS: Highlighted brake measurements are out of adjustment.

Axle #	1	2	3	4	5
Right	2 1/4	1 3/8	1	1 5/8	1 1/2
Left	0	1 5/8	1 1/2	2	2 1/2
Chamber	C-20	C-30	C-30	C-30	C-30

VIOLATIONS

Section Code	St	Unit	OOS	Citation #	Verify	Crash	Violations Discovered
396.3A1BA		1	Y		U	N	Brake(s) out of adjustment - see chart above, right steer brake 1R
393.48(a)		1	Y		U	N	Inoperative/defective brake, left steer brake, absence of effective braking action upon application of service brake, brake lining failing to move 1L
393.47		1	Y		U	N	Inadequate brake lining for safe stopping, left steer brake lining worn below 1/4 inch, worn to 1/8th inch 1L
393.48(a)		2	Y		U	N	Inoperative/defective brake, left rear trailer brake, linings failing to contacting braking surface upon application 5L
396.3A1BA		2	N		N	N	Brake(s) out of adjustment - see chart above, left rear trailer brake 6L
393.9T		1	N		N	N	Inoperable tail lamp, left rear tractor
393.9T		1	N		N	N	Inoperable tail lamp, right rear tractor
393.9		1	N		N	N	Inoperable lamp (other than head/tail) left rear tractor turn signal
393.9		1	N		N	N	Inoperable lamp (other than head/tail) left rear tractor brake light
393.95(a)		1	N		N	N	unsecured fire extinguisher, extinguisher sitting on the floor next to the drivers seat not secured
393.46(b)		2	N		N	N	Brake connections with leaks, emer. line leaking at the front trailer glad hand connection
393.9		2	N		N	N	Inoperable lamp (other than head/tail) left front trailer clearance light
393.9		2	N		N	N	Inoperable lamp (other than head/tail) license plate light on the rear of the trailer
393.45(a)(4)		2	N		N	N	Brake hose/tubing chaffing, left front trailer brake hose rubbing the brake hose mounting bracket, missing rubber gromet
393.45(a)(4)		2	N		N	N	Brake hose/tubing chaffing, right rear trailer brake hose rubbing the brake hose mounting bracket, missing rubber gromet
393.75(c)		1	N		N	N	Tire-other tread depth less than 2/32 of inch 0/32 tread depth across 1 major tread groove, left front inside drive tire 2LI
393.75(c)		1	N		N	N	Tire-other tread depth less than 2/32 of inch 0/32 tread depth across 1 major tread groove, left rear inside drive tire 3LI

Report Prepared By: BELL, D. A. Badge #: 3274  
X [Signature]

Copy Received By: HESS, RICHARD E  
X [Signature]



Joint Ex A

#1



OHIO STATE HIGHWAY PATROL  
MOTOR CARRIER ENFORCEMENT  
MASSILLON DISTRICT 3 HEADQUARTERS  
TELEPHONE: (330) 833-1056  
Return certification to agency listed below

DRIVER/VEHICLE EXAMINATION REPORT  
Report Number: OH3274004132  
Inspection Date: 01/31/2006  
Start Time: 11:20 AM End Time: 12:31 PM  
Insp. Level: 1-Full

ELMER DRUM  
8855 ROUTE 405 HIGHWAY  
MONTGOMERY, PA 17752  
Phone#: (800)324-8903 Fax#:  
USDOT#: 00605255 ICC#: 289745  
State#:

Driver: HESS, RICHARD E  
License#: 24111482 State: PA  
Date of Birth: 09/18/1945  
CoDriver:  
License#: State:  
Date of Birth:

Haz Mat: No HM Transported.

Placard: No Cargo Tank:

Special Checks: No Data for Special Checks.

State Information:

For-Hire Carrier: Y; Driver Address: 8350 RT 405 N PO BOX 56; Driver City: MILTON; Driver State: PA; Driver Zip: 17847; RSN Code: OBVI;

\* Pursuant to authority contained in Title 49, Code of Federal Regulations, Section 396.9, I hereby declare vehicles with defects followed by an "Y" in the "Out of Service" column in the violations discovered section of this report OUT OF SERVICE. No person shall remove the out of service stickers applied to these vehicles, or operate such vehicles until the out of service defects have been repaired and the vehicles have been restored to safe operating condition.

NOTE TO DRIVER: This report must be furnished to the motor carrier whose name appears at the top of this report.

NOTE TO MOTOR CARRIERS: Please sign the below certification and return this report to the address which appears on the reverse side of this report within fifteen (15) days. Failure to return this report with the required certification can result in penalties up to \$500.

RETURN SIGNED CERTIFICATIONS TO THE AGENCY LISTED AT THE BOTTOM OF THIS INSPECTION.

Signature Of Repairer: [Signature] Facility: 2F3 Date: 1/31/06

CARRIER CERTIFICATION: The undersigned certifies that all violations noted on this report have been corrected and action taken to assure compliance with the Federal Motor Carrier Safety and Hazardous Materials Regulations insofar as they are applicable to motor carriers and drivers. False certifications of the required repairs are required to be prosecuted with penalties up to \$10,000.

RETURN SIGNED CERTIFICATIONS TO THE AGENCY LISTED AT THE BOTTOM OF THIS INSPECTION.

Signature Of Motor Carrier X: \_\_\_\_\_ Date: \_\_\_\_\_

Report Prepared By:

BELL, D. A.

Badge #:

3274

Copy Received By:

HESS, RICHARD E

Page 2 of 2



ASPEN v2.5.1 1/31/06 12:21 PM

Joint Ex. A

Q #1

Ohio State Highway Patrol  
Vehicle Inspection Report  
INFORMATION AND INSTRUCTIONS TO DRIVER AND CARRIER

The vehicle listed on the reverse side of this form has been inspected by the Ohio State Highway Patrol (OSHP). The following explanations pertain to sections which may not be self-evident.

**Citation Number:** A number on this line refers to a separate court citation document (the citation will indicate the cited violation) which has been issued as a result of this inspection. These citations are issued into the Municipal or County Court nearest the inspection site, and any follow-up action regarding the citation will be indicated on the citation form. Citations may be issued only on violations including, but not limited to, speeding, overweight, fuel permit, etc. All other safety violations and hazardous materials violations are handled by the PUCO as explained below.

**Violation Code:** Numbers in a 170 or 300 series (for example, 173.24 or 395.8) refer to section numbers in Title 49 of the Code of Federal Regulations (CFR), commonly known as the Federal Hazardous Materials Regulations (FHMR) and the Federal Motor Carrier Safety Regulations (FMCSR). Copies of these regulations may be obtained from various trade associations and commercial supply firms. Some section numbers may have suffixes beyond those in the CFR; these are used for data collection purposes. Numbers in a format such as 2-5-11 refer to rules of the PUCO contained in Chapter 4901 of the Ohio Administrative Code. Numbers in a format such as 4919.78 OR 4511.19 refer to sections in the Ohio Revised Code.

**OOS:** Indicates whether the vehicle or driver was placed out-of-service (Yes or No) at the time of inspection, in accordance with criteria of the Federal Highway Administration. An out-of-service vehicle may not be driven until repairs have been made. A driver is out-of-service for a specified time or until certain problems are corrected. This may be determined from the nature of the violation or annotations in the "declaration of out-of-service" section of this form.

**VERIFY:** Indicates the status of the out of service vehicle at the completion of the inspection. "A" indicates the out-of-service violations were corrected during the inspection; "B" indicates the out-of-service vehicle was towed/escorted to a facility for repairs; and "U" indicates that the out-of-service violations still existed at the completion of the inspection and it was "unknown" to the Inspector what actions were to be taken to make repairs.

**VIOLATIONS DISCOVERED:** A brief description of the violation may be included. Abbreviations may be used to show the location of brake, tire, and light violations.

**ACTION REQUIRED**

**DRIVER:**

If your vehicle has been placed "out-of-service" it may not be driven until required repairs have been made. You are required to return this form to the carrier responsible for this shipment within 24 hours of inspection, even if that requires you to mail the form to them. Unless advised otherwise by the carrier, the person making any required repairs should complete the certification below before returning this form to the carrier.

**CARRIER AND DRIVER:**

- (1) If a citation number is listed on the Citation Number line above the "Violations" section, any follow-up action required will be shown on the separate court citation document which has been issued. All communications regarding the citation should be with the Court listed.
- (2) All violations of the FHMR and FMCSR or Title 49 of the Ohio Revised Code will be reviewed by the PUCO's Transportation Department to determine whether civil forfeitures should be assessed against any responsible parties in accordance with the penalty provisions of Title 49 of the Ohio Revised Code. If civil forfeitures are assessed, you will receive a separate notice by mail. These penalties may be assessed to carriers and/or drivers.
- (3) If any entries in the "Violations" section show a number in the "Unit" column (referring to the tractor or one of the trailers), the Certificate of Repair shown below must be completed and returned by the carrier to the address indicated below within 15 days following inspection. This is required even if the driver or a mechanic made the repairs at the time of the inspection.

(Do Not Detach)

**CERTIFICATION OF COMPLETED REPAIRS**

"I certify that each mechanical defect for which a violation is listed on this inspection report has been repaired satisfactorily."

Butch TAPPA  
Signature of Person Making Repairs  
Butch TAPPA  
Printed Name

11/31/06  
Date Repairs Made  
2958 BRACKSVILLE RD  
Address

"I certify that all violations listed on this inspection report have been satisfactorily corrected."

\_\_\_\_\_  
Signature of Carrier's Officer / Agent  
\_\_\_\_\_  
Printed/Typed Name  
\_\_\_\_\_  
Name of Carrier

\_\_\_\_\_  
Date Signed  
\_\_\_\_\_  
Title

Any intentional false statement on this inspection form or willful misrepresentation relative thereto may be a violation of Federal Law punishable by a fine not more than \$10,000 or imprisonment of not more than five years or both (18 U.S.C. 1001).

RETURN THIS FORM TO:  
PUBLIC UTILITIES COMMISSION OF OHIO - TRANSPORTATION DEPARTMENT  
DATA MANAGEMENT DIVISION  
180 E BROAD ST  
COLUMBUS, OH 43215-3793

Joint Ex B

#2



OHIO STATE HIGHWAY PATROL  
- MOTOR CARRIER ENFORCEMENT  
MASSILLON DISTRICT 3 HEADQUARTERS  
TELEPHONE: (330) 833-1056  
Return certification to agency listed below

DRIVER/VEHICLE EXAMINATION REPORT  
Report Number: OH3274004435  
Inspection Date: 01/31/2006  
Start Time: 03:05 PM End Time: 04:06 PM  
Insp. Level: 1-Full,

ELMER DRUM  
8855 ROUTE 405 HIGHWAY  
MONTGOMERY, PA 17752  
Phone#: (800)324-8903  
USDOT#: 00605255  
State#:

Fax#:  
ICC#: 289745

Driver: HESS, RICHARD E  
License#: 24111482  
Date of Birth: 09/18/1945  
CoDriver:  
License#:  
Date of Birth:

State: PA  
State:

Location: RICHFIELD  
Highway: 271  
County: SUMMIT

MilePost: 8  
Origin:  
Destination:

Shipper:  
Bill of Lading:  
Cargo: EMPTY

VEHICLE IDENTIFICATION

Unit	Type	Make	Year	State	License #	Company #	Vln #	GVWR	CVSA #	OOS#
1	TT	FRHT	2001	PA	AE52981	93	1FUJAPCK61LH03458	80,000		
2	ST	GDAN	1988	ME	A305423	822	1GRAA9627GS035802			

BRAKE ADJUSTMENTS: Highlighted brake measurements are out of adjustment.

Axle #	1	2	3	4	5
Right	2 1/4	1 3/8	1	1 5/8	1 1/2
Left	1 5/8	1 5/8	1 1/2	2	1
Chamber	C-20	C-30	C-30	C-30	C-30

VIOLATIONS

Section Code	St	Unit	OOS	Citation #	Verify	Crash	Violations Discovered
2-5-07D	X	D	N		N	N	Operating out of service vehicle without fixing all out of service items on the original inspection report # oh3274004432, right steer brake not adjusted
398.3A1BA		1	Y		U	N	Brake(s) out of adjustment - see chart above right steer brake 1R. o/s on report # oh3274004432
393.9T		1	N		N	N	Inoperable tail lamp, left rear tractor
393.9T		1	N		N	N	Inoperable tail lamp, right rear tractor
393.9		1	N		N	N	Inoperable lamp (other than head/tail) left rear tractor turn signal
393.9		1	N		N	N	Inoperable lamp (other than head/tail) left rear tractor brake light
393.95(a)		1	N		N	N	unsecured fire extinguisher, extinguisher sitting on the floor next to the drivers seat not secured
393.46(b)		2	N		N	N	Brake connections with leaks, emer. line leaking at the front trailer glad hand connection
393.9		2	N		N	N	Inoperable lamp (other than head/tail) left front trailer clearance light
393.9		2	N		N	N	Inoperable lamp (other than head/tail) license plate light on the rear of the trailer
393.45(a)(4)		2	N		N	N	Brake hose/tubing chaffing, left front trailer brake hose rubbing the brake hose mounting bracket, missing rubber gromet 4L
393.46(c)(4)		2	N		N	N	Brake hose/tubing chaffing, right rear trailer brake hose rubbing the brake hose mounting bracket, missing rubber gromet 5R
393.75(c)		1	N		N	N	Tire-other tread depth less than 2/32 of inch 0/32 tread depth across 1 major tread groove, left front inside drive tire 2LI
393.75(c)		1	N		N	N	Tire-other tread depth less than 2/32 of inch 0/32 tread depth across 1 major tread groove, left rear inside drive tire 3LI

Haz Mat: No HM Transported.

Placard: No Cargo Tank:

Special Checks: No Data for Special Checks.

Report Prepared By:  
BELL, D. A.

Badge #:  
3274

Copy Received By:  
HESS, RICHARD E



#2



OHIO STATE HIGHWAY PATROL  
MOTOR CARRIER ENFORCEMENT  
MASSILLON DISTRICT 3 HEADQUARTERS  
TELEPHONE: (330) 833-1056  
Return certification to agency listed below

DRIVER/VEHICLE EXAMINATION REPORT  
Report Number: OH3274004435  
Inspection Date: 01/31/2006  
Start Time: 03:05 PM End Time: 04:06 PM  
Insp. Level: 1-Full

ELMER DRUM  
8855 ROUTE 405 HIGHWAY  
MONTGOMERY, PA 17752

Phone#: (800)324-8903

Fax#:

USDOT#: 00805255

ICC#: 289745

State#:

Driver: HESS, RICHARD E

License#: 24111482

Date of Birth: 08/18/1945

CoDriver:

License#:

Date of Birth:

State: PA

State:

#### State Information:

For-Hire Carrier: Y; Driver Address: 8350 RT 405N PO BOX 58; Driver City: MILTON; Driver State: PA; Driver Zip: 17847; RSN Code: OBVI;

\* Pursuant to authority contained in Title 49, Code of Federal Regulations, Section 396.9, I hereby declare vehicles with defects followed by an "Y" in the "Out of Service" column in the violations discovered section of this report OUT OF SERVICE. No person shall remove the out of service stickers applied to these vehicles, or operate such vehicles until the out of service defects have been repaired and the vehicles have been restored to safe operating condition.

NOTE TO DRIVER: This report must be furnished to the motor carrier whose name appears at the top of this report.

NOTE TO MOTOR CARRIERS: Please sign the below certification and return this report to the address which appears on the reverse side of this report within fifteen (15) days. Failure to return this report with the required certification can result in penalties up to \$500.

RETURN SIGNED CERTIFICATIONS TO THE AGENCY LISTED AT THE BOTTOM OF THIS INSPECTION.

Signature Of Repairer: [Signature]

Facility: \_\_\_\_\_

Date: 1/31/06

CARRIER CERTIFICATION: The undersigned certifies that all violations noted on this report have been corrected and action taken to assure compliance with the Federal Motor Carrier Safety and Hazardous Materials Regulations insofar as they are applicable to motor carriers and drivers. False certifications of the required repairs are required to be prosecuted with penalties up to \$10,000.

RETURN SIGNED CERTIFICATIONS TO THE AGENCY LISTED AT THE BOTTOM OF THIS INSPECTION.

Signature Of Motor Carrier X: \_\_\_\_\_

Date: \_\_\_\_\_

Report Prepared By:

BELL, D. A.

Badge #:

3274

Copy Received By:

HESS, RICHARD E

Page 2 of 2



ASPEN v2.5.1 1/31/06 4:02 PM



#2

Joint Ex B

Ohio State Highway Patrol  
Vehicle Inspection Report  
INFORMATION AND INSTRUCTIONS TO DRIVER AND CARRIER

The vehicle listed on the reverse side of this form has been inspected by the Ohio State Highway Patrol (OSHP). The following explanations pertain to sections which may not be self-evident.

**Citation Number:** A number on this line refers to a separate court citation document (the citation will indicate the cited violation) which has been issued as a result of this inspection. These citations are issued into the Municipal or County Court nearest the inspection site, and any follow-up action regarding the citation will be indicated on the citation form. Citations may be issued only on violations including, but not limited to, speeding, overweight, fuel permit, etc. All other safety violations and hazardous materials violations are handled by the PUCO as explained below.

**Violation Code:** Numbers in a 170 or 300 series (for example, 173.24 or 395.8) refer to section numbers in Title 49 of the Code of Federal Regulations (CFR), commonly known as the Federal Hazardous Materials Regulations (FHMR) and the Federal Motor Carrier Safety Regulations (FMCSR). Copies of these regulations may be obtained from various trade associations and commercial supply firms. Some section numbers may have suffixes beyond those in the CFR; these are used for data collection purposes. Numbers in a format such as 2-5-11 refer to rules of the PUCO contained in Chapter 4901 of the Ohio Administrative Code. Numbers in a format such as 4919.78 OR 4511.19 refer to sections in the Ohio Revised Code.

**OOS:** Indicates whether the vehicle or driver was placed out-of-service (Yes or No) at the time of inspection, in accordance with criteria of the Federal Highway Administration. An out-of-service vehicle may not be driven until repairs have been made. A driver is out-of-service for a specified time or until certain problems are corrected. This may be determined from the nature of the violation or annotations in the "declaration of out-of-service" section of this form.

**VERIFY:** Indicates the status of the out of service vehicle at the completion of the inspection. "A" indicates the out-of-service violations were corrected during the inspection; "B" indicates the out-of-service vehicle was towed/escorted to a facility for repairs; and "U" indicates that the out-of-service violations still existed at the completion of the inspection and it was "unknown" to the Inspector what actions were to be taken to make repairs.

**VIOLATIONS DISCOVERED:** A brief description of the violation may be included. Abbreviations may be used to show the location of brake, tire, and light violations.

**ACTION REQUIRED**

**DRIVER:**

If your vehicle has been placed "out-of-service" it may not be driven until required repairs have been made. You are required to return this form to the carrier responsible for this shipment within 24 hours of inspection, even if that requires you to mail the form to them. Unless advised otherwise by the carrier, the person making any required repairs should complete the certification below before returning this form to the carrier.

**CARRIER AND DRIVER:**

(1) If a citation number is listed on the Citation Number line above the "Violations" section, any follow-up action required will be shown on the separate court citation document which has been issued. All communications regarding the citation should be with the Court listed.

(2) All violations of the FHMR and FMCSR or Title 49 of the Ohio Revised Code will be reviewed by the PUCO's Transportation Department to determine whether civil forfeitures should be assessed against any responsible parties in accordance with the penalty provisions of Title 49 of the Ohio Revised Code. If civil forfeitures are assessed, you will receive a separate notice by mail. These penalties may be assessed to carriers and/or drivers.

(3) If any entries in the "Violations" section show a number in the "Unit" column (referring to the tractor or one of the trailers), the Certificate of Repair shown below must be completed and returned by the carrier to the address indicated below within 15 days following inspection. This is required even if the driver or a mechanic made the repairs at the time of the inspection.

(Do Not Detach)

**CERTIFICATION OF COMPLETED REPAIRS**

"I certify that each mechanical defect for which a violation is listed on this inspection report has been repaired satisfactorily".

Signature of Person Making Repairs

Date Repairs Made

Printed Name

Address

"I certify that all violations listed on this inspection report have been satisfactorily corrected."

Signature of Carrier's Officer/Agent

Date Signed

Printed/Typed Name

Title

Name of Carrier

Any intentional false statement on this inspection form or willful misrepresentation relative thereto may be a violation of Federal Law punishable by a fine not more than \$10,000 or imprisonment of not more than five years or both (18 U.S.C. 1001).

RETURN THIS FORM TO:  
PUBLIC UTILITIES COMMISSION OF OHIO - TRANSPORTATION DEPARTMENT  
DATA MANAGEMENT DIVISION  
180 E BROAD ST  
COLUMBUS, OH 43215-3793

Public Utilities Commission of Ohio  
180 East Broad Street  
Transportation Department  
Columbus, OH 43215  
Phone #: (614)466-0429 Fax #: (614)752-9274  
robert.leader@puc.state.oh.us

## DRIVER VEHICLE EXAMINATION REPORT

Report Number: OH3274004432  
Inspection Date: 1/31/2006 Certification Date: 02/28/2006  
Time Started: 11:20 Time Ended: 12:31  
Inspection Level: 1 - Full Inspection No HM Insp.

ELMER DRUM  
8855 ROUTE 405 HIGHWAY  
MONTGOMERY, PA 17752

Phone #: (800)324-8903 Fax #: 289745  
USDOT #: 605255 MC/MX #: 289745  
State #:

Driver: HESS, RICHARD E  
License #: 24111482 State: PA  
Date of Birth: 09/18/1945

Location: RICHFIELD  
Highway: 271  
County: SUMMIT  
Shipper:

MilePost: 8  
Origin:  
Destination:

Bill of Lading:  
Cargo: EMPTY

### VEHICLE IDENTIFICATION:

Unit	Type	Make	Year	State	License #	Company #	Unit VIN	GVWR	CVSA #	OOS#
1	TT	FRHT	2001	PA	AE52981	93	1FUJAPCK61LH03458	80,000		Y
2	ST	GDAN	1981	ME	A305423	822	1GRAA9627GS035802	0		Y

### BRAKE ADJUSTMENTS:

Axle #	1	2	3	4	5
Right	2-1/4	1-3/8	1	1-5/8	1-1/2
Left	0	1-5/8	1-1/2	2	2-1/2
Chamber	C-20	C-30	C-30	C-30	C-30

**STAFF EXHIBIT A**

### VIOLATIONS:

Section Code	St	Unit	OOS	Citation #	Verify*	Crash	Violation Description
396.3A1BA		1	Y		U	N	Brake(s) out of adjustment - see chart above, right steer brake 1R
393.48(a)		1	Y		U	N	Inoperative/defective brake, left steer brake, absence of effective braking action upon application of service brake, brake lining failing to move 1L
393.47		1	Y		U	N	Inadequate brake lining for safe stopping, left steer brake lining worn below 1/4 inch, worn to 1/8th inch 1L
393.48(a)		2	Y		U	N	Inoperative/defective brake, left rear trailer brake, linings failing to contact braking surface upon application 5L
396.3A1BA		2	N		N	N	Brake(s) out of adjustment - see chart above, left rear trailer brake 5L
393.9T		1	N		N	N	Inoperable tail lamp, left rear tractor
393.9T		1	N		N	N	Inoperable tail lamp, right rear tractor
393.9(a)		1	N		N	N	Inoperable lamp (other than head/tail) left rear tractor turn signal
393.9(a)		1	N		N	N	Inoperable lamp (other than head/tail) left rear tractor brake light
393.95(a)		1	N		N	N	unsecured fire extinguisher, extinguisher sitting on the floor next to the drivers seat not secured
393.46B		2	N		N	N	Brake connections with leaks, emer. line leaking at the front trailer glad hand connection
393.9(a)		2	N		N	N	Inoperable lamp (other than head/tail) left front trailer clearance light
393.9(a)		2	N		N	N	Inoperable lamp (other than head/tail) license plate light on the rear of the trailer
393.45A4		2	N		N	N	Brake hose/tubing chaffing, left front trailer brake hose rubbing the brake hose mounting bracket, missing rubber gramet
393.45A4		2	N		N	N	Brake hose/tubing chaffing, right rear trailer brake hose rubbing the brake hose mounting bracket, missing rubber gramet
393.75(c)		1	N		N	N	Tire-other tread depth less than 2/32 of inch 0/32 tread depth across 1 major tread groove, left front inside drive tire 2LI
393.75(c)		1	N		N	N	Tire-other tread depth less than 2/32 of inch 0/32 tread depth across 1 major tread groove, left rear inside drive tire 3LI

\* U - Unknown; N - Non-OOS or Driver OOS Violation

Report Prepared By:  
Bell, D A

Badge #:  
3274

Copy Received By:  
HESS, RICHARD E

X

X

Public Utilities Commission of Ohio  
180 East Broad Street  
Transportation Department  
Columbus, OH 43215  
Phone #: (614)466-0429 Fax #: (614)752-9274  
robert.leader@puc.state.oh.us

## DRIVER VEHICLE EXAMINATION REPORT

Report Number: OH3274004432  
Inspection Date: 1/31/2006 Certification Date: 02/28/2006  
Time Started: 11:20 Time Ended: 12:31  
Inspection Level: 1 - Full Inspection No HM Insp.

ELMER DRUM  
8855 ROUTE 405 HIGHWAY  
MONTGOMERY, PA 17752  
Phone #: (800)324-8903 Fax #:  
USDOT #: 605255 MC/MX #: 289745  
State #:

Driver: HESS, RICHARD E  
License #: 24111482 State: PA  
Date of Birth: 09/18/1945

HazMat: No HM transported. Placard: NA Cargo Tank:

Special Checks: ☐ Alcohol/Controlled Substance Check ☐ Traffic Enforcement  
☐ Conducted by Local Jurisdiction ☐ Drug Interdiction Search Arrests:  
☐ Size and Weight Enforcement ☐ Post Crash Inspection

Inspection Notes: left front clearance light

Special Study Fields: Special Study 1: Special Study 4:  
Special Study 2: Special Study 5:  
Special Study 3:

### Locally Defined Fields:

For-Hire Carrier: Y Driver Address: 8350 RT 405 N PO BOX Driver City: MILTON  
Driver State: PA Driver Zip: 17847 RSN Code: OBVI

\* Pursuant to authority contained in Title 49, Code of Federal Regulations, Section 396.9, I hereby declare vehicles with defects followed by an "Y" in the "Out of Service" column in the violations discovered section of this report OUT OF SERVICE. No person shall remove the out of service stickers applied to these vehicles, or operate such vehicles until the out of service defects have been repaired and the vehicles have been restored to safe operating condition.

CARRIER CERTIFICATION: The undersigned certifies that all violations noted on this report have been corrected and action taken to assure compliance with the Federal Motor Carrier Safety and Hazardous Materials Regulations insofar as they are applicable to motor carriers and drivers. False certifications of the required repairs are required to be prosecuted with penalties up to \$10,000.

Signature of Carrier Official: X Date:

NOTE TO DRIVER: This report must be furnished to the motor carrier whose name appears at the top of this report. NOTE TO MOTOR CARRIERS: Please sign the below certification and return this report to the address which appears at the top of this report within fifteen (15) days. Failure to return this report with the required certification can result in penalties up to \$500.

Signature of Repairer: X Facility: Date:

Report Prepared By:  
Bell, D A

Badge #:  
3274

Copy Received By:  
HESS, RICHARD E

X

X

Public Utilities Commission of Ohio  
180 East Broad Street  
Transportation Department  
Columbus, OH 43215  
Phone #: (614)466-0429 Fax #: (614)752-9274  
robert.leader@puc.state.oh.us

## DRIVER VEHICLE EXAMINATION REPORT

Report Number: OH3274004435  
Inspection Date: 1/31/2006 Certification Date: 02/28/2006  
Time Started: 15:05 Time Ended: 16:06  
Inspection Level: 1 - Full Inspection No HM Insp.

ELMER DRUM  
8855 ROUTE 405 HIGHWAY  
MONTGOMERY, PA 17752  
Phone #: (800)324-8903 Fax #: 289745  
USDOT #: 605255 MC/MX #: 289745  
State #:

Driver: HESS, RICHARD E  
License #: 24111482 State: PA  
Date of Birth: 09/18/1945

Location: RICHFIELD MilePost: 8  
Highway: 271 Origin:  
County: SUMMIT Destination:  
Shipper: Bill of Lading:  
Cargo: EMPTY

### VEHICLE IDENTIFICATION:

Unit	Type	Make	Year	State	License #	Company #	Unit VIN	GWWR	CVSA #	OOS#
1	TT	FRHT	2001	PA	AE52981	93	1FUJAPCK61LH03458	80,000		Y
2	ST	GDAN	1986	ME	A305423	822	1GRAA9627GS035802	0		

### BRAKE ADJUSTMENTS:

Axle #	1	2	3	4	5
Right	2-1/4	1-3/8	1	1-5/8	1-1/2
Left	1-5/8	1-5/8	1-1/2	2	1
Chamber	C-20	C-30	C-30	C-30	C-30

**STAFF EXHIBIT B**

### VIOLATIONS :

Section Code	St	Unit	OOS	Citation #	Verify*	Crash	Violation Description
392.2	X	D	N		N	N	Operating out of service vehicle without fixing all out of service items on the original inspection report # oh3274004432, right steer brake not adjusted
396.3A1BA		1	Y		U	N	Brake(s) out of adjustment - see chart above right steer brake 1R. o/s on report # oh3274004432
393.9T		1	N		N	N	Inoperable tail lamp, left rear tractor
393.9T		1	N		N	N	Inoperable tail lamp, right rear tractor
393.9(a)		1	N		N	N	Inoperable lamp (other than head/tail) left rear tractor turn signal
393.9(a)		1	N		N	N	Inoperable lamp (other than head/tail) left rear tractor brake light
393.95(a)		1	N		N	N	unsecured fire extinguisher, extinguisher sitting on the floor next to the drivers seat not secured
393.46B		2	N		N	N	Brake connections with leaks, emer. line leaking at the front trailer glad hand connection
393.9(a)		2	N		N	N	Inoperable lamp (other than head/tail) left front trailer clearance light
393.9(a)		2	N		N	N	Inoperable lamp (other than head/tail) license plate light on the rear of the trailer
393.45A4		2	N		N	N	Brake hose/tubing chaffing, left front trailer brake hose rubbing the brake hose mounting bracket, missing rubber gramet 4L
393.45A4		2	N		N	N	Brake hose/tubing chaffing, right rear trailer brake hose rubbing the brake hose mounting bracket, missing rubber gramet 5R
393.75(c)		1	N		N	N	Tire-other tread depth less than 2/32 of inch 0/32 tread depth across 1 major tread groove, left front inside drive tire 2L
393.75(c)		1	N		N	N	Tire-other tread depth less than 2/32 of inch 0/32 tread depth across 1 major tread groove, left rear inside drive tire 3L

\* N - Non-OOS or Driver OOS Violation; U - Unknown

HazMat: No HM transported. Placard: NA Cargo Tank:

Report Prepared By:  
Bell, D A

Badge #:  
3274

Copy Received By:  
HESS, RICHARD E

X

X

Public Utilities Commission of Ohio  
180 East Broad Street  
Transportation Department  
Columbus, OH 43215  
Phone #: (614)466-0429 Fax #: (614)752-9274  
robert.leader@puc.state.oh.us

## DRIVER VEHICLE EXAMINATION REPORT

Report Number: OH3274004435  
Inspection Date: 1/31/2006 Certification Date: 02/28/2006  
Time Started: 15:05 Time Ended: 18:06  
Inspection Level: 1 - Full Inspection No HM Insp.

ELMER DRUM  
8855 ROUTE 405 HIGHWAY  
MONTGOMERY, PA 17752

Phone #: (800)324-8903 Fax #:  
USDOT #: 605255 MC/MX #: 289745  
State #:

Driver: HESS, RICHARD E  
License #: 24111482 State: PA  
Date of Birth: 09/18/1945

### Special Checks:

☐ Alcohol/Controlled Substance Check  
☐ Conducted by Local Jurisdiction  
☐ Size and Weight Enforcement

☐ Traffic Enforcement  
☐ Drug Interdiction Search  
☐ Post Crash Inspection

Arrests:

### Inspection Notes:

SAW DRIVER DRIVING THE VEHICLE AT THE 9MM. PLACED DRIVER O/S ON 271 SB RESTAREA 8MM EARLIER. PULLED DRIVER OVER TO CHECK O/S ITEMS AND WONDERING HOW HE GOT NORTH OF THE SB RA. DRIVER SAID HE DROVE THE TRUCK WITH THE O/S STICKERS ON TO THE REPAIR SHOP TO GET FIXED. FIXED EVERYTHING EXCEPT RIGHT STEER PUSH ROD TRAVEL. STILL OUT OF ADJUSTMENT FROM EARLIER REPORT NUMBER OH3274004432. DRIVER SAID HE KNEW HE WASN'T SUPPOSE TO DRIVE TO THE REPAIR SHOP TO GET O/S ITEMS FIXED. mechanic out here before i was done with the report driver said slack adjuster is bad. has to replace

### Special Study Fields:

Special Study 1:  
Special Study 2:  
Special Study 3:

Special Study 4:  
Special Study 5:

### Locally Defined Fields:

For-Hire Carrier: Y Driver Address: 8350 RT 405N PO BOX Driver City: MILTON  
Driver State: PA Driver Zip: 17847 RSN Code: OBVI

\* Pursuant to authority contained in Title 49, Code of Federal Regulations, Section 396.9, I hereby declare vehicles with defects followed by an "Y" in the "Out of Service" column in the violations discovered section of this report OUT OF SERVICE. No person shall remove the out of service stickers applied to these vehicles, or operate such vehicles until the out of service defects have been repaired and the vehicles have been restored to safe operating condition.

CARRIER CERTIFICATION: The undersigned certifies that all violations noted on this report have been corrected and action taken to assure compliance with the Federal Motor Carrier Safety and Hazardous Materials Regulations insofar as they are applicable to motor carriers and drivers. False certifications of the required repairs are required to be prosecuted with penalties up to \$10,000.

Signature of Carrier Official: X

Date:

NOTE TO DRIVER: This report must be furnished to the motor carrier whose name appears at the top of this report. NOTE TO MOTOR CARRIERS: Please sign the below certification and return this report to the address which appears at the top of this report within fifteen (15) days. Failure to return this report with the required certification can result in penalties up to \$500.

Signature of Repairer: X

Facility:

Date:

Report Prepared By:  
Bell, D A

Badge #:  
3274

Copy Received By:  
HESS, RICHARD E

X

X

## Part II

### NORTH AMERICAN STANDARD VEHICLE OUT-OF-SERVICE CRITERIA

#### POLICY STATEMENT

The purpose of this part is to identify critical vehicle inspection items and provide criteria for placing vehicles Out-of-Service subsequent to a safety inspection.

Except where state, provincial, or federal laws preclude enforcement of a named item, motor carrier safety enforcement personnel and their jurisdictions shall comply with these Out-of-Service violation standards.

**NOTE: Decal Qualification:** Each vehicle (bus, truck, truck tractor, semi-trailer, trailer, etc.) must "pass" inspection to qualify for a decal. "Pass Inspection" means that during a Level I or Level V inspection no regulatory violations/defects are found of the following critical inspection items: brake systems; coupling devices; exhaust systems; frame; fuel systems; lighting devices (turn signals, brake lamps, tail lamps and head lamps); safe loading; steering mechanism; suspension; tires; van and open-top trailer bodies; wheels and rims; windshield wipers; and emergency exits for buses. For the purpose of decal issuance, if no regulatory violations are detected during a Level I or Level V inspection due to a hidden part, which includes the vehicle inspection items listed above, a decal shall be applied.

The decal criteria applies only to the condition of the vehicle, not the driver. It is possible for a driver to be Out-of-Service and still have vehicle(s) qualify for a decal. If each vehicle, whether used singly or in a combination, passes inspection, a current CVSA decal shall be affixed and no other CVSA decals shall be visible.

**OUT-OF-SERVICE:** Authorized personnel shall declare and mark "Out-of-Service" any motor vehicle which by reason of its mechanical condition or loading would be likely to cause an accident or breakdown. An "Out-of-Service Vehicle" sticker shall be used to mark vehicles "Out-of-Service." No motor carrier shall require nor shall any person operate any commercial motor vehicle declared and marked "Out-of-Service" until all repairs required by the "Out-of-Service notice" have been satisfactorily completed.

No person shall remove the "Out-of-Service Vehicle" sticker from any motor vehicle prior to completion of all repairs required by the "Out-of-Service Notice."

Violations, other than Out-of-Service conditions, detected during the inspection process will not preclude the completion of the current trip or dispatch. However, such violations must be corrected or repaired prior to redispach.

These criteria are neither suited nor intended to serve as vehicle maintenance or performance standards.

FMCSR code references in the Out-of-Service Criteria are simply recommendations to help inspectors find an appropriate citation. Other codes may be more suitable for a specific condition.

#### STAFF EXHIBIT C

HP 22  
10-0128.00  
OHP 0128  
Rev. 1-1-01

## INTER-OFFICE COMMUNICATION

Date October 15, 2002



File No. 3-LCS

To All District Commanders Attention CEC Sergeants/MCE Supervisors  
From Major R. E. Brooks, Commander, Office of Licensing and Commercial Standards  
Subject Out of Service Vehicles: Returning to service

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Previous Ohio policy concerning when an out of service vehicle could be placed back in service permitted the vehicle to return to service if it no longer met the out of service criteria. This led to vehicles being allowed to return to service with defective brakes, lights, tires, etc.

Effective immediately, Ohio's policy shall be the following:

### **REQUIRED REPAIRS FOR OUT OF SERVICE NOTICES**

**Inspectors shall not release vehicles and/or drivers from an out of service notice until all repairs required by the out of service notice have been satisfactorily completed to where a violation no longer exists.**

This change in policy now requires each and every defect that caused or contributed to the commercial motor vehicle being declared out of service must be repaired before the vehicle may be returned to service and permitted to travel on public roads.

For example:

1. Vehicle has two brakes out of adjustment and one brake inoperative. Both brakes must be readjusted and the inoperative brake fixed before returning the vehicle to service.
2. One tire of a dual set is flat and its mate has less than 1/32 inch tread depth. In this circumstance, "singling out" the flat tire is not sufficient. The "less than 1/32 inch tread" tire must also be replaced.
3. Both stop lights are inoperative on the rear of the vehicle. Both must be operational before returning the vehicle to service.

Refer any questions to MCE Manager J. R. Feddern or Lieutenant B. L. Dodd.

REB/JRF/oosrepairs101502

**STAFF EXHIBIT D**

To PUC of Ohio.  
Compliance Division  
180 East Broad Street 14 Floor  
Columbus, Ohio 43215-3793  
Fax 614-466-2753  
att Wanda Williams  
compliance division

STAFF EXHIBIT E

Re: case # 0H32700044350

On 1-31-06 I was inspected by staff of the Ohio State Patrol. The units that I was operating were found to have 2 brakes out of adjustment. I asked the patrolman if I could adjust the trailer brake to bring it in compliance and he said yes. He was in his car behind the unit during this time. After it was adjusted the mechanic arrived and looked at the front brake and asked me to follow him to his garage. The mechanic repaired unit #2 brakes and checked the trailer brake. I left the garage and was pulled over again and inspected. The officer found one brake out of adjustment and shut me down again. I was under the impression when I left the garage that All Brakes were



now in compliance with DOT regulations. I had given the mechanic the values of violations that was given to me and he signed off on the Examination Report. This implied to me that he had fixed the front brakes and the unit was in compliance with D.O.T regulations. I had 90% of my brakes working which is allowed so I feel I should not have been shut down, also the mechanic had signed off on the repairs so I was under the impression that he had repaired or adjusted both of the steer brakes. I am requesting a conference on this and this can be discussed by telephone

contact #

Richard Hess 570-412-2596 cell  
570-742-3355 home leave message

Office of Drum Trucking

570-547-1938

ASK for Misty or Jake re: Richard Hess