

**FILE**

Date of Hearing: 1-21

Case No. 08-1133 - TR-CVF

PUCO Case Caption: \_\_\_\_\_

\_\_\_\_\_ In the Matter of: \_\_\_\_\_  
\_\_\_\_\_ Denver M. Beck. \_\_\_\_\_

\_\_\_\_\_ Notice of Apparent Violation \_\_\_\_\_  
\_\_\_\_\_ and Intent to Assess Forfeiture. \_\_\_\_\_

List of exhibits being filed:

- \_\_\_\_\_ 1 - Driver/Vehicle Examination Report \_\_\_\_\_
- \_\_\_\_\_ 2 - Sketch of Intersection \_\_\_\_\_
- \_\_\_\_\_ 4 - Civil Forfeiture Violations Chart \_\_\_\_\_
- \_\_\_\_\_ 5 - Forfeiture Assessment Matrix \_\_\_\_\_
- \_\_\_\_\_ 6 - Notice of Apparent Violation and \_\_\_\_\_  
\_\_\_\_\_ Intent to Assess Forfeiture \_\_\_\_\_
- \_\_\_\_\_ 7 - Notice of Preliminary Determination \_\_\_\_\_

Reporter's Signature:   
Date Submitted: 2-10-08

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BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

In the Matter of: :  
Denver M. Beck. : Case No.. 08-1133-TR-CVF  
:  
Notice of Apparent :  
Violation and Intent to :  
Assess Forfeiture. :  
- - -

PROCEEDINGS

before Mr. Kerry H. Sheets, Attorney Examiner, at the  
Public Utilities Commission of Ohio, 180 East Broad  
Street, Room F, Columbus, Ohio, called at 10:00 a.m.  
on Wednesday, January 21, 2009.

- - -

2-11-09 Transcript docketed electronically

ARMSTRONG & OKEY, INC.  
222 East Town Street, Second Floor  
Columbus, Ohio 43215-5201  
(614) 224-9481 - (800) 223-9481  
Fax - (614) 224-5724

- - -



Public Utilities Commission of Ohio  
180 East Broad Street  
Transportation Department  
Columbus, OH 43215  
Phone #: (614)466-0429 Fax #: (614)752-9274

# Staff Exhibit No. 1

## DRIVER/VEHICLE EXAMINATION REPORT

Report Number: OH3210301303  
Inspection Date: 3/4/2008 Certification Date:  
Time Started: 07:50 Time Ended: 08:26  
Inspection Level: II - Walk-Around Bulk HM Insp.

### PORTS PETROLEUM COMPANY INC

PO BOX 1048

WOOSTER, OH 44691-9705

Phone #: (330)264-1885

USDOT #: 14529

State #:

Fax #:

MC/MX #: 574489

Driver: BECK JR, DENVER M

License #: B200139590482

State: MI

Date of Birth: 06/24/1950

Location: BREESE RD @ DIXIE HWY  
Highway: BREESE ROAD W/B  
County: ALLEN  
Shipper: SUNOCO LOGISTICS-TOLEDO

MilePost: NONE  
Origin: TOLEDO, OH  
Destination: LIMA, OH

Bill of Lading: 0178145  
Cargo: HAZ MAT (ALL)

### VEHICLE IDENTIFICATION:

Unit	Type	Make	Year	State	License #	Company #	Unit VIN	GVWR	CVSA #	OOS#
1	TT	KW	2007	OH	PVJ2865	267	1XKWDB9X97J162745	0		
2	ST	POLA	2007	OH	TNY9191	264	1PMA2442275006098	0		

### BRAKE ADJUSTMENTS: No brake measurements recorded.

### VIOLATIONS:

Section Code	St	Unit	OOS	Lvl	Citation #	Verify*	Crash	Violation Description
392.10(a)(4)		D	N	N	406	N	N	Failing to stop at railroad crossing-HM cargo CT CMV CONTAINING FLAMMABLE CLASS 3 RESIDUE, UN ID# 1203, FAILED TO STOP PRIOR TO CROSSING MAINLINE RR CROSSING.

\* N - Non-OOS or Driver OOS Violation

HazMat: 3 Flammable,

Placard: Yes Cargo Tank: 406

### Special Checks:

- ☐ Alcohol/Controlled Substance Check  
☐ Conducted by Local Jurisdiction  
☐ Size and Weight Enforcement

- ☐ Traffic Enforcement  
☐ Drug Interdiction Search  
☐ PASA Conducted Inspection

- ☐ Post Crash Inspection  
Arrests:

### Inspection Notes:

I was stationary on Breese Road just west of IS-75 and adjacent to a mainline north-south rail line / grade crossing (equipped with lights & gates). I observed the carrier come up the southbound IS-75 exit ramp to Breese Road and stop in traffic at the stop sign at the top of the ramp. The CMV was 2nd in line from the stop sign behind a passenger car. The passenger car pulled from the stop sign and the CMV followed without first stopping at the stop sign. The CMV proceeded west on Breese Road towards me and failed to stop prior to crossing the grade crossing. The speed over the crossing was estimated at approximately 5-10 mph, but no faster than that. The CMV was immediately lit up and stopped. The Spec 406 CT was displaying class 3 flammable placards and marked with ID# 1203. It was determined the CMV contained only residue as the driver was en route to the Lima loading rack to load. No other violations were discovered.

### Special Study Fields:

Special Study 1:  
Special Study 2:  
Special Study 3:

Special Study 4:  
Special Study 5:

### Locally Defined Fields:

Loaded by Carrier (Y/N): Y  
Ship Doc Prep by Shipper(Y/N): Y  
Packing Group A: II  
HW (A): N  
Packing Group B: III  
HW (B): N  
Driver Address: 177 WEST VIENNA RD  
Driver Zip: 48182-9328  
Replacement Seal: N/A

Loaded by Shipper (Y/N): N  
Haz Class A: 3  
Gross Weight A: RESIDUE  
Haz Class B: 3  
Gross Weight B: RESIDUE  
For-Hire Carrier: Y  
Driver City: TEMPERANCE  
Photos Taken (Y/N): N  
FMCSA Credentials Verified-Y/N: Y

Ship Docs Prep by Carrier(Y/N): N  
ID # A: NA1203  
RQ (A): N  
ID # B: NA1993  
RQ (B): N  
Fatalities (Y/N): N  
Driver State: MI  
Reason Code: MUNI  
CDL Verified (Y/N): Y

Report Prepared By:

R J Barrett

Badge #:

3210

Copy Received By:

BECK JR, DENVER M





Public Utilities Commission of Ohio  
180 East Broad Street  
Transportation Department  
Columbus, OH 43215  
Phone #: (614)466-0429 Fax #: (614)752-9274

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License #: B200139590482 State: MI  
Date of Birth: 06/24/1950

PORTS PETROLEUM COMPANY INC

PO BOX 1046

WOOSTER, OH 44691-9705

Phone #: (330)264-1885

Fax #:

USDOT #: 14529

MC/MX #: 574489

State #:

FMCSA OOS Order Issued(Y/N): N

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 motor carriers, shippers, and/or drivers.

ATTENTION DRIVER: This report must be sent to the motor carrier whose name appears at the top of this inspection report within 24 hours. If the inspection report cannot be delivered within 24 hours the driver must mail or fax the inspection report to the motor carrier.

ATTENTION MOTOR CARRIER: The motor carrier must examine this report and repair all the vehicle defects/violations noted above -AND- The motor carrier must sign the Certification of Repairs below and return the signed form to: Public Utilities Commission of Ohio-TASD; 180 E. Broad St.; Columbus, Oh; 43215-3793 -OR- Fax (614) 752-9274 within 15 days of the inspection. If "No Violations Were Discovered" then you do not need to return this report. Failure to return this report with the required certification can result in penalties of up to \$500.

MOTOR CARRIER CERTIFICATION OF COMPLETED REPAIRS: 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 & Hazardous Materials Regulations insofar as they are applicable to motor carriers and drivers. A false certification of repairs is required to be prosecuted with penalties up to \$10,000.

Signature of Carrier Official: X

Title:

Date:

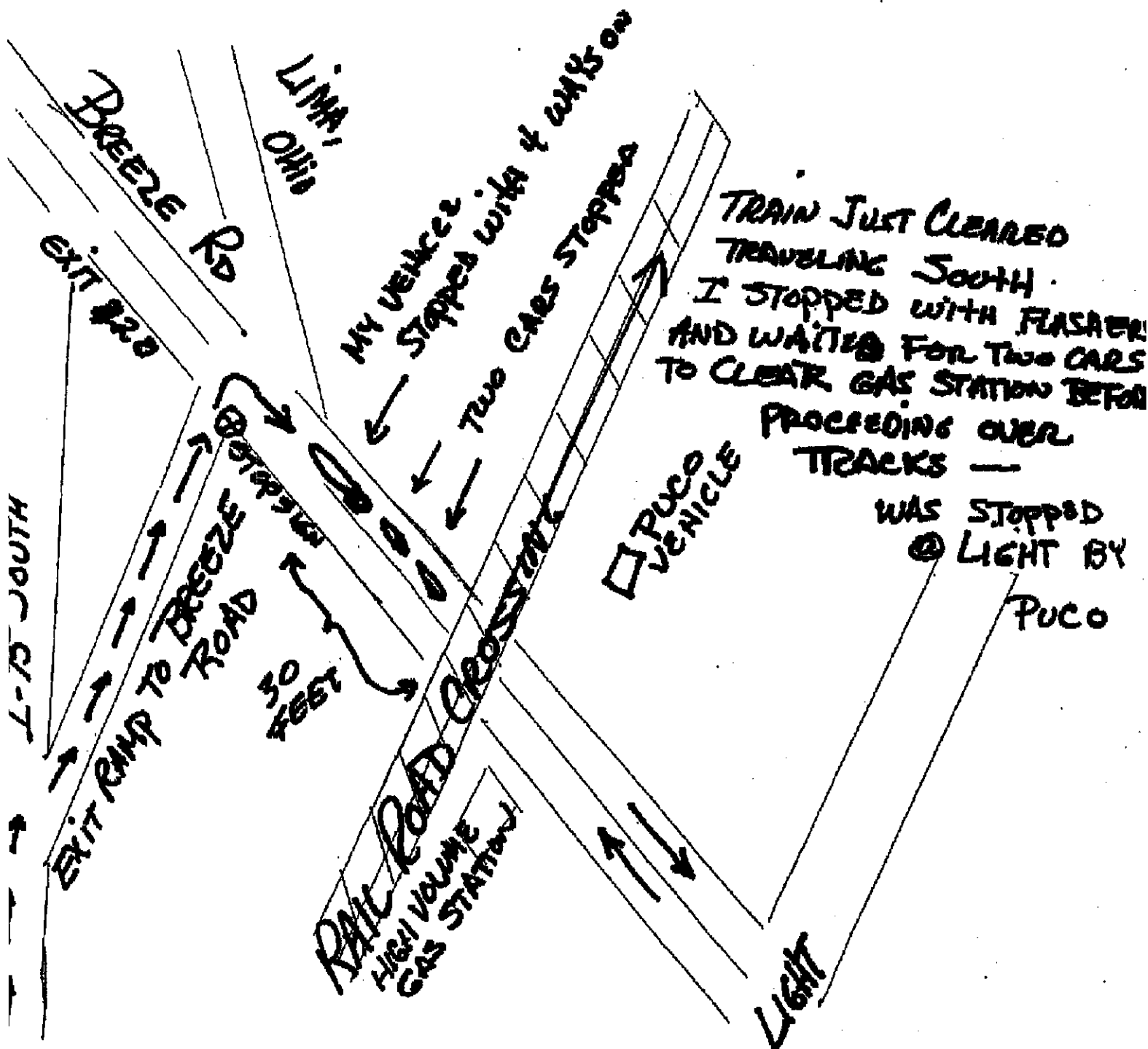
Report Prepared By:  
R J Barrett

Badge #:  
3210

Copy Received By:  
BECK JR, DENVER M



Staff Ex. No. 2



**Civil Forfeiture Violations Chart  
Nature & Gravity Points**

**10 points      Leaking Container Violations**

- 10      Package integrity failure  
Package valves and closures not securely closed

**6-8 points      Packaging, Segregation, & Handling Violations**

- 8      Segregation & Loading  
Non-specification or non-performance packaging  
HM Vehicle attendance  
Relative motion among HM packages  
Over 5% outage in propane home storage tank in transportation
- 6      Specification/performance packaging does not meet req.  
(CT Double bulkhead drain/vent plugged 3 Pts)  
Packaging qualification and maintenance violations – CT test marking not displayed or CT tests not completed (Cargo Tanks: 6 points for first test/insp. Not Conducted OR DISPLAYED; +1 extent for each additional cargo tank Test/inspection not conducted OR DISPLAYED)  
LPG Cargo Tank handheld remote shutoff inoperable  
Violation of PHSMA Special Permit requirements  
CT manual remote shutoff inoperable  
Fail to have a HM Safety Permit on file as required.  
HM Training Not As Required  
(-2 extent for each completed, ie. Awareness)

**6 points      Hazard Communication Violations**

- 6      Proper HM placards not offered/affixed  
(+6 for each additional hazard class missing)  
(1 not affixed=NAV, +1 extent for each additional)
- Proper HM markings not offered/affixed  
(+6 for each additional hazard class missing)  
(1 not affixed=NAV, +1 extent for each additional)
- No proper HM shipping paper  
(+1 extent 172.203 violations for PIH, DWW; +3  
For each technical names per 172.203 (c) or (k)  
\*\*each element worth 1 point  
\*\*If 1 element missing = NAV
- Packages offered/accepted without proper HM markings  
(+1 for required additional info)
- Packages offered/accepted without proper HM labels

(+6 for subsidiary hazard class)  
Hazardous waste manifest not as required  
Misrepresenting hazmat present on vehicle

**4 Points      Hazardous Material Handling Violations**

- 4      Failure to secure packages (no movement)

**3 Points      Hazardous Communications Violations**

- 3      HM shipping papers – no technical names per 172.203 (c) or (k)  
HM Marking – no technical name  
Emergency response information (Subpart G) not as required  
    \*\* No Written ER info  
    \*\* No telephone no.  
No emergency marking on CT emergency remote shutoff  
Package not marked with special permit number when required  
No emergency discharge procedure with LPG CT  
Fail to maintain a copy of the HM safety Permit on the vehicle when required

**2 Points      Hazardous Communications Violations**

- 2      Displaying a sign (drive safely, ect.) that could be confused with a Placard, as per 172.502 –NAV if only 1

**3 Points      Shipping Paper/ER Information Accessibility**

- 3      Shipping papers/ER information not accessible  
HM shipping papers not tabbed or first  
HM entries not distinguished

**0 Points      Minor Hazard Communication Violations**

- 0      Placard/markings/labeling visibility & display  
No Ltd. Qty, RQ, DOT-E on shipping papers  
Unauthorized abbreviation used in proper shipping name  
Tech. Name not in association with proper shipping name – (out of sequence, not in parenthesis)  
Minor shipping description sequence  
“UN” instead of “NA”  
Minor typographical errors  
One placard visibility & display  
CT Part 180 marking not properly placed

**1-5 Points      FMCSR Handling Violations**

- 5      No route plan for radioactive materials or explosives  
No emergency plan for radioactive materials
- 4      Failure to comply with local routing requirements  
Locking devices on an intermodal container not secure while transporting hazardous materials
- 2      Railroad grade crossing violations – Only cite carrier for 2<sup>nd</sup> RR violation within a 12 month period. Issue NAV for first violation.
- 1      Failure to comply with local or state laws

**2-3 Points      FMCSR Violations (Must meet specific CVSA OOS Criteria)**

- 3      Inoperative brake OOS  
Hours of service violation  
Ill or fatigued driver  
Unauthorized passenger  
Failure to have proper Commercial Drivers License  
– Includes improper class, endorsement or operating in violation of restriction or in violation of learners permit
- 2      Slider handle assembly-Pin OOS; missing/broken OOS  
5<sup>th</sup> wheel OOS Violation  
Frame stress cracks OOS  
Air brakes system OOS
- 1      Brake/Pushrod adjustment  
If 20% of brakes out of adjustment = 1 point violation  
If > 20 % out of adjust., +1 extent for each full brake out of adjust.  
Broken leaf spring or spring hanger OOS  
Defective air suspension system - OOS  
Inoperative low air warning device OOS violation
- 0      Driver Smoking  
Log Book Violations

**0-1 Points      FMCSR Violations (Must be 2 or more OOS Violations) –**

- 1      Brake pad violations OOS  
Cracked wheel/tire rim OOS  
Other OOS Suspension Violations  
Cut tire OOS  
Worn tire, cord showing, OOS Violation, 4/32" & 2/32"



Lug nuts missing, OOS violation

- 0
  - Stoplights out OOS
  - Emergency brake inoperable
  - Improperly attached cargo tank appurtenance
  - No emergency equipment
  - Failure to carry Part 397 on vehicle placarded Class 1
  - Flat tire, OOS violation
  - Leaking tire OOS violation
  - Blocking and bracing of non-HM

**1-4 points      FMCSR Driver Violations**

- 4
  - Failure to comply with routing designation
  - Failure to stop at check point
  - Driving after consumption of alcohol or controlled substance
  - Driving while disqualified
- 3
  - Improperly parked HM vehicle
  - Possession of alcohol or controlled substance upon a CMV
- 1
  - No log book OOS
  - Falsification of log book OOS
  - Late log book OOS
  - No or improper commercial driver's license –
  - Driver smoking
  - Seat belt violation
  - Radar detector in use/possession
  - Unauthorized passenger
  - Failure to stop at railroad grade crossing

**ADDITIONAL ASSESSMENTS**

Insurance violation	\$500.00 - C
Scope & Authority violation	\$500.00 - C
Avoiding or Bypass inspection	\$500.00 - D
Uniform HM Permit violation	\$500.00 - C
Uniform HW Permit violation	\$1,000.00 - C
Driving after being placed out of service	\$1,000.00 - D

Chart Effective Date: Any Assessments Assessed After January 1, 2008

## MATERIAL HAZARD CHART

<u>POINTS</u>	<u>HAZARD CLASS/DIV.</u>
1.5	1.1 2.3 6.1 7 Any PIH
1.3	1.2 1.3 4.3
1.1	2.1 3 4.1 4.2
0.9	5.1 5.2 8
0.7	1.4 1.5
0.5	1.6 2.2 PGIII (Combustible Liq.) 6.2 9 ORM-D

### Point Modifiers

PGI = + .3

PGII = 0.0

PGIII = - .3

Hazardous Waste = +.1

Hazardous Substance = + .1

MARPOL = + .1

## HAZARDOUS AMOUNT CHART

<u>POINTS</u>		<u>AMOUNT (WEIGHT)</u> Pounds/Kilograms
1.0		35,000+ lbs 15,876+ kg (Cargo Tank w/flammable – Class 3 & 2.1)
0.6		10,000 – 34,999 lb. 4,536 – 15,875 kg
0.4		1,000 – 9,999 lb. 454 – 4,535 kg
0.2		<1,000 lb < 454 kg Residue (Not Flammable)
Less		
0.1	If package < 100 lb./45 kg	
0.2	If package < 5 lb./2 kg	

# FORFEITURE ASSESSMENT

REPORT #

3210301303

COMPLETED BY T FORBES

REPORT DATE :

March 4, 2008

DATE ASSESSED

03/12/08

RESPONDENT :

Denver M Beck Jr

DRIVER CITED  
CARRIER CITED

Ports Petroleum Company Inc

	VIOLATION CODE/ DESCRIPTION	392.10A4 Fail to stop at RR crossing - HM - CT			
	NATURE GRAVITY 0 - 10 PTS.	1	0	0	0
	EXTENT OF VIOL. '-10 TO +10 PTS.'	0	0	0	0
	ACTUAL HARM 0 - 20 PTS.	0	0	0	0
	OTHER CIRCUMST. '-10 TO +10 PTS.'	0	0	0	0
(A)	SUBTOTAL POINTS 0-50 PTS.	1	0	0	0
(B)	MATERIAL HAZARD	1.1	0	0	0
(C)	AMOUNT OF MATERIAL	1	0	0	0
(D)	SUBTOTAL POINTS = A*(B+C)	2.10	0.00	0.00	0.00
(E)	RESPONDENT CULPABILITY	1	1	1	1
(F)	RESPONDENT HISTORY 1,2,OR 4	1	1	1	1
(G)	TOTAL POINTS = D*E*F	2.10	0.00	0.00	0.00
	FORFEITURE ASSESSED AMOUNT = G * \$75.00	\$157.50	\$0.00	\$0.00	\$0.00



Staff Ex. No. 6

## The Public Utilities Commission of Ohio

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

Ted Strickland, Governor  
Alan R. Schriber, Chairman

Commissioners

Ronda Hartman Fergus  
Donald L. Mason, Esq.  
Valerie A. Lemmie  
Paul A. Centolella

March 13, 2008

3210301303D  
DENVER M BECK  
177 WEST VIENNA ROAD  
TEMPERANCE, MI 48182-9328

RE: NOTICE OF APPARENT VIOLATION  
AND INTENT TO ASSESS FORFEITURE  
Case No. 3210301303D

Dear Sir or Madame:

On March 4, 2008, a vehicle operated by PORTS PETROLEUM COMPANY INC, was inspected within the State of Ohio by staff of the Transportation Department of the Public Utilities Commission of Ohio. As the result of discovery of the following apparent violation, of rule 4901:2-5-02, O.A.C., the Commission intends to make a civil monetary assessment against DENVER M BE in the following amount:

CODE	UNIT	VIOLATION	FORFEITURE
392.10A4	D	FAILED TO STOP RR-HM CARGO/TNK	\$ 157.50

Within 30 days, you must pay the forfeiture or send a written request for conference. Failure to pay the forfeiture or send a written request for a conference within 30 days will result in this forfeiture amount being referred to the Attorney General's office for collection, and may adversely affect your authority with the Public Utilities Commission of Ohio.

Please review the enclosed information concerning this notice.

"NOTICE REGARDING OFFENSES 392.10A3 AND 392.10A4.

If you pay this assessment, fail to dispute the charges, or are found guilty of the offense, your commercial vehicle driving privileges MAY BE DISQUALIFIED for a length of time specified by law."

Sincerely,  
Jonathan Frye, Chief  
Compliance Division  
Public Utilities Commission of Ohio  
614-466-0351

TF





## The Public Utilities Commission of Ohio

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

Staff Ex. No. 7

Ted Strickland, Governor  
Alan R. Schriber, Chairman

Commissioners

Ronda Hartman Fergus  
Valerie A. Lemmie  
Paul A. Centolella  
Cheryl Roberto

September 15, 2008

MR DAVID RICE

9042 LEWIS AVENUE  
PO BOX 490  
TEMPERANCE, MI 48182

RE: NOTICE OF PRELIMINARY DETERMINATION

Case No. 3210301303D

Officer:

Dear MR RICE:

On March 4, 2008, a vehicle operated by PORTS PETROLEUM COMPAN and driven by DENVER M BECK, 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	
392.10A4	FAILED TO STOP RR-HM CARGO/TNK	\$ 157.50

Total Forfeiture Assessed :

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)



## The Public Utilities Commission of Ohio

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

Ted Strickland, Governor  
Alan R. Schriber, Chairman

### Commissioners

Ronda Hartman Fergus  
Valerie A. Lemmie  
Paul A. Centolella  
Cheryl Roberto

September 15, 2008  
MR DAVID RICE

3210301303D

PAGE -2

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

Code	Violation	
392.10A4	FAILED TO STOP RR-HM CARGO/TNK	\$ 157.50

Total Forfeiture Agreed :

Please include a certified check or money order for the N.P.D. forfeiture total, made payable to "Treasurer State of Ohio," and mail to: PUCO FISCAL, 180 E. Broad St, 10th 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