

1       BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

2                       - - -

3  
4       In the Matter of Digger               :  
5       Specialities, Inc. Notice of       : Case No.  
6       Apparent Violation and Intent: 11-1912-TR-CVF  
7       to Assess Forfeiture.               :

8                       - - -

9                       PROCEEDINGS

10       Before Katie Stenman, Attorney Examiner, held at  
11       the offices of the Public Utilities Commission  
12       of Ohio, 180 East Broad Street, Hearing Room  
13       11-D, Columbus, Ohio, on Wednesday, June 22,  
14       2011, at 10:00 A.M.

15                       - - -

16  
17  
18  
19  
20  
21  
22                       Armstrong & Okey, Inc.  
23                       222 East Town Street, 2nd Floor  
24                       Columbus, Ohio 43215  
25                       (614) 224-9481 - (800) 223-9481  
                      Fax - (614) 224-5724

                      - - -

APPEARANCES:

Mr. William L. Wright  
and  
Mr. Devin D. Parram  
Assistant Attorneys General  
180 East Broad Street  
6th Floor  
Columbus, Ohio 43215

On behalf of the Staff of the  
Public Utilities Commission  
of Ohio.

Mr. Michael J. Yemc, Jr.  
600 South High Street  
Columbus, Ohio 43215

On behalf of the Respondent.

- - -

1 Wednesday Morning,  
2 June 22, 2011.

3 - - -

4 ATTORNEY EXAMINER: Let's go on the  
5 record. The Public Commission of Ohio has  
6 assigned for hearing at this time and place Case  
7 No. 11-1912-TR-CVF being in the matter of Digger  
8 Specialities, Inc. notice of apparent violation  
9 and intent to assess forfeiture.

10 My name is Katie Stenman, I am an  
11 Attorney Examiner assigned by the Commission to  
12 hear this case. At this time I will take the  
13 appearances for the parties beginning with the  
14 Staff.

15 MR. PARRAM: Thank you, Your Honor.  
16 On behalf of the Staff of the Public Utilities  
17 Commission of Ohio Mike DeWine, Ohio Attorney  
18 General, William L. Wright, Section Chief, Devin  
19 D. Parram, Assistant Attorney General, Public  
20 Utilities Section, 180 East Broad Street, 6th  
21 Floor, Columbus, Ohio 43215.

22 ATTORNEY EXAMINER: On behalf of the  
23 Respondent.

24 MR. YEMC: Yes. Thank you, Your  
25 Honor. Michael Yemc, Supreme Court No. 0065390.

1 I am here today with the driver for Digger  
2 Specialties, Dennis Crouse. The plant manager  
3 is also in Columbus, but he is at the parking  
4 garage waiting for this to be wrapped up because  
5 he knew it wasn't going to be going forward. So  
6 he is waiting.

7 ATTORNEY EXAMINER: Okay. Are we  
8 ready to go forward?

9 MR. PARRAM: Your Honor, Staff  
10 witness -- Staff's primary witness in this case,  
11 Trooper Frank Bennett, called me this morning,  
12 or his supervisor gave me a call and let me know  
13 that he has a sinus infection, called me around  
14 45 minutes ago to let me know that he would not  
15 be able to show up here today.

16 I notified opposing counsel as soon  
17 as I heard and let him know that I would be  
18 requesting a continuance today.

19 Trooper Bennett was our primary  
20 witness in this case as it relates to the  
21 inspection and violation in this case, so based  
22 upon the fact that this was unforeseen  
23 circumstances, just heard about it this morning,  
24 I would be requesting a continuance to another  
25 date to have a full hearing with our witnesses

1 in place.

2 ATTORNEY EXAMINER: And just for  
3 clarity of the record when you say you were  
4 notified about 45 minutes ago, you are talking  
5 about 9:20?

6 MR. PARRAM: Around 9:20 this  
7 morning.

8 ATTORNEY EXAMINER: Okay. Do you  
9 have a response?

10 MR. YEMC: Yes, I do, Your Honor.  
11 Digger Specialties would, of course, object to  
12 this continuance request, and ask that this  
13 matter be summarily dismissed for want of  
14 prosecution.

15 My clients are here from Indiana and  
16 at not only great expense on their own part for  
17 missing work today, the driver here is not  
18 getting paid because he is not driving a load.

19 The plant manager is here today and  
20 is not at the plant running the plant. Also  
21 they are paying for me to be here today.

22 If, Your Honor, is not willing to  
23 grant that request for a dismissal, I don't know  
24 if you have the ability to award attorney fees  
25 for my expenses here today so my client doesn't

1 have to incur those. Thank you.

2 ATTORNEY EXAMINER: Does the  
3 Attorney General have a response?

4 MR. PARRAM: Yes, I do. And I  
5 understand counsel's objection, although this  
6 was a completely unforeseen circumstance. We  
7 have not asked for any type of continuances  
8 beforehand. This is the very first one.

9 And also I am not 100 percent sure  
10 what authority he would be asking for, what  
11 would be a basis or authority asking for  
12 attorney fees.

13 Since this is the first time we are  
14 asking for a continuance, the unforeseen  
15 circumstances, we believe that we have  
16 substantial amount of evidence that the Trooper  
17 would have been able to put on to substantiate  
18 and prove the violation in the case. Just  
19 because of illness, which we couldn't control,  
20 we would ask to move this to another date.

21 ATTORNEY EXAMINER: Okay. And  
22 before you object, I am going to ask you the  
23 same question, assuming that this would go  
24 forward to a hearing what evidence would you  
25 expect to present, and what would be the amount

1 of the fine?

2 MR. PARRAM: The amount of fine  
3 would be \$100. The evidence that we were  
4 planning on presenting would be first  
5 the testimony of Trooper Bennett. He would  
6 explain the violation. The violation in this  
7 case was securement violation, failure to secure  
8 cargo. Specifically loose tie-downs.

9 Trooper Bennett was going to testify  
10 and set forth the information within his  
11 inspection report where he put pretty sufficient  
12 detailed notes of at least I believe eight  
13 separate violations for each separate tie-downs  
14 which he took numerous photographs which  
15 specifically show that there were loose  
16 tie-downs.

17 Trooper Bennett will then testify to  
18 the facts of the report. Based upon his  
19 testimony and the report it's readily apparent,  
20 and the photographs, that the tie-downs were  
21 loose in this case; that Mr. Crouse, the driver  
22 in this case, was in transit with loose truck  
23 tie-downs, and the \$100 violation is valid and  
24 should be assessed.

25 ATTORNEY EXAMINER: Okay. And for

1 the Respondent, what evidence would you expect  
2 to present?

3 MR. YEMC: Just testimony from  
4 the driver with regards to those loose tie-downs  
5 and that he was in the process of already  
6 stopping and, you know, making sure that the  
7 load was secure as he is required to under the  
8 Federal Code.

9 And that the officer actually didn't  
10 pull him over, he was stopped prior to the  
11 officer pulling him over.

12 ATTORNEY EXAMINER: Okay. The  
13 motion for a continuance and also the motion to  
14 dismiss will be taken under advisement and the  
15 Commission's order will be coming.

16 MR. YEMC: That you.

17 ATTORNEY EXAMINER: Thank you.

18 MR. PARRAM: Thank you, Your Honor.

19 - - -

20 At 10:10 A.M. the hearing was  
21 concluded)

22 - - -

23

24

25



CERTIFICATE

I do hereby certify that the foregoing  
is a true and correct transcript of the  
proceedings taken by me in this matter on June  
22, 2011, and carefully compared with my  
original stenographic notes.

---

Michael O. Spencer,  
Registered Professional  
Reporter.

- - -

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**7/7/2011 12:50:03 PM**

**in**

**Case No(s). 11-1912-TR-CVF**

Summary: Transcript Transcript of Digger Specialities, Inc. hearing held on 06/22/11 electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Spencer, Michael O. Mr.