

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of: : Case No.  
Stony Run Enterprises, Inc. : 14-561-TR-CVF

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PROCEEDINGS

Before Kerry Sheets, Attorney Examiner, held at  
the offices of the Public Utilities Commission  
of Ohio, 180 East Broad Street, Hearing Room No.  
11-C, Columbus, Ohio, on Wednesday, July 23,  
2014, at 10:00 A.M.

- - -

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2 Beery & Spurlock  
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6 On behalf of the Respondent.

7 Mr. Devin D. Parram  
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10 6th Floor  
11 Columbus, Ohio 43215

12 On behalf of the Staff of the  
13 Public Utilities Commission  
14 of Ohio.

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Wednesday Morning,  
July 23, 2014.

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ATTORNEY EXAMINER: The Public  
Utilities Commission of Ohio has set for hearing  
at this time and place Case No. 14-561-TR-CVF in  
the of matter of Stony Run Enterprises, Inc.

My name is Kerry Sheets and I am the  
Attorney Examiner the Commission has assigned to  
hear this case. We will now have the  
appearances of the parties, please, starting  
with the Staff.

MR. PARRAM: Your Honor, on behalf  
of the Staff of the Public Utilities Commission  
of Ohio, Ohio Attorney General Mike DeWine, by  
Public Utilities Commission Section Chief  
William Wright, by Assistant Attorney General  
Devin Parram, 180 East Broad Street, 6th Floor,  
Columbus, Ohio 43215.

MR. TURANO: Your Honor, let  
the record show the appearance of David A.  
Turano, law firm of Beery & Spurlock, Co., 275  
East State Street, Columbus, Ohio 43215,  
appearing on behalf of Stony Run Enterprises.

ATTORNEY EXAMINER: Thank you. Do

1 we have any preliminary matters to take care of  
2 this morning?

3 MR. PARRAM: No, your Honor.

4 ATTORNEY EXAMINER: Do you have  
5 witnesses to call?

6 MR. PARRAM: Yes, your Honor. The  
7 Staff would like to call Inspector Kevin Swartz  
8 to the stand, your Honor.

9 (WITNESS SWORN)

10 ATTORNEY EXAMINER: Be seated.

11 - - -

12 KEVIN SWARTZ

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

15 DIRECT EXAMINATION

16 By Mr. Parram:

17 Q. Good morning.

18 A. Good morning.

19 Q. Please state your name spelling your  
20 name for the record, please?

21 A. Kevin Michael Swartz, S-W-A-R-T-Z.

22 Q. Where are you employed?

23 A. Public Utilities Commission of Ohio.

24 Q. What is your position there?

25 A. Transportation Examiner.

1 Q. And how long have you been with the  
2 Public Utilities Commission of Ohio?

3 A. Five months.

4 Q. What position were you in before?

5 A. Ohio State Patrol as a Motor Carrier  
6 Enforcement Inspector.

7 Q. And how long did you do that?

8 A. Approximately four years.

9 Q. And what are your duties in your  
10 current capacity?

11 A. Current capacity I am a  
12 Transportation Examiner. Any trucking business,  
13 company starts a new business they have to have  
14 a mandatory audit. Pre-safety, go over the log  
15 books, insurance, all the duties, everything a  
16 trucking company needs we go through it as an  
17 audit, pass or fail the audit for the Federal  
18 Motor Carrier Safety Administration.

19 Q. Prior to being a Transportation  
20 Examiner what were your duties then as an  
21 inspector?

22 A. As Motor Carrier Enforcement  
23 inspector my job was to inspect trucks and buses  
24 for the State of Ohio and Federal Motor Carrier  
25 Administration. We looked at everything from



1 log books, safety equipment, brakes, hazmats,  
2 passenger carriers.

3 Q. As an inspector you would have  
4 inspection duties; is that correct?

5 A. Correct. Certified as I was with  
6 the State Highway Patrol.

7 Q. What certifications?

8 A. North America A, North America B,  
9 general hazmat, cargo tank, other bulk and  
10 passenger.

11 Q. And what other education do you have  
12 in relation to your duties as an inspector?

13 A. Just on the job duties of writing  
14 4,000 plus inspections and ongoing training.

15 Q. Could you please describe generally  
16 what the inspection process is for hazmat  
17 vehicles?

18 A. Could you be more specific as to  
19 level?

20 Q. Well, what are the different levels  
21 for a hazmat inspection?

22 A. Okay. Different levels for hazmat  
23 inspection, Level 1 which is a full inspection,  
24 driver, vehicle, brakes.

25 Level 2 is driver and walk around

1 the vehicle.

2 And Level 3 would be driver's  
3 information only, being just license, insurance  
4 paperwork.

5 Q. And just generally was is the reason  
6 for hazmat inspections?

7 A. Hazmat is no different than any  
8 other truck. It's stuff we enforce. We  
9 consider that a commercial motor carrier, just  
10 the cargo happens to be hazmat.

11 Q. You say hazmat is no different.  
12 There is no distinction between hazmat and other  
13 vehicles or --

14 A. As far as vehicles, no. We just  
15 look at load securement. With hazmat we do a  
16 few more steps in the process to make sure it's  
17 the proper package, it's not leaking, it has  
18 the proper paperwork, shipping papers, things  
19 like that for general safety.

20 Q. There is no particular safety  
21 concerns for hazmat different from other  
22 inspections?

23 A. There are safety concerns for myself  
24 and for the general public depending on what was  
25 stopped. If I see a Class 8 corrosive I need to

1 know if the container is right, if it's leaking,  
 2 if it has got an odor to it, if it's corrosive.  
 3 I don't know, so I have to make those  
 4 assumptions, go up to the truck, get  
 5 the paperwork, start my inspection as part of  
 6 the pre-inspection process, get all the  
 7 information on what is being carried on that  
 8 vehicle whether it's a hazmat vehicle or a  
 9 flatbed truck.

10 Q. Do you recall performing a hazmat  
 11 inspection on November 8th of 2013?

12 A. Yes.

13 Q. And do you recall preparing a report  
 14 on this hazmat inspection?

15 A. Yes.

16 MR. PARRAM: Your Honor, I would  
 17 like to have marked for purposes of  
 18 identification a Driver/vehicle Inspection  
 19 Report from November 8th, 2013 marked as Staff  
 20 Exhibit 1.

21 ATTORNEY EXAMINER: Very well.

22 (EXHIBIT HEREBY MARKED FOR  
 23 IDENTIFICATION PURPOSES)

24 MR. PARRAM: May I approach  
 25 the witness, your Honor?

1 ATTORNEY EXAMINER: You may.

2 Q. Inspector Schwartz, do you have  
3 Staff Exhibit 1 in front of you?

4 A. Yes.

5 Q. What is Staff Exhibit 1?

6 A. Staff Exhibit 1 is a report that is  
7 created due to an inspection on a vehicle.

8 Q. Are you familiar with this  
9 particular report?

10 A. Yes.

11 Q. What is this report?

12 A. This is a report done on November  
13 8th, 2013 on Stony Run Enterprises that took  
14 place at 12:49 to 13:45 P.M. and took place at  
15 the Harrison scales on I-74 mile post 2. The  
16 driver was Robert Updike.

17 And we had two vehicles, tractor and  
18 trailer, and a Level 1 inspection with actual  
19 brakes and the violation was 173.24(b)(1), that  
20 is leaking package onto the ground. He was  
21 carrying about 31,980 pounds of Class 8 packing  
22 Group 3.

23 Q. Inspector Swartz, thank you very  
24 much for your thorough answer. I want to go a  
25 little deeper than that.

1           A.     Okay.

2           Q.     But that was a good answer.     So  
3     let's start at the very top of Driver/vehicle  
4     Examination Report over to the right-hand side.  
5     There is a report number which --

6           A.     Correct.   That comes up from my  
7     computer which obviously generated it on there.  
8     It's OH328 is the number and 5035 is the report  
9     number that goes along with that.

10          Q.     And inspection date indicates what?

11          A.     The date that the inspection was  
12     done 11-18-2013.

13          Q.     And as you already indicated what  
14     time was this inspection?

15          A.     12:49 P.M. to 13:45 P.M.

16          Q.     And inspection Level 1, what does  
17     that mean?

18          A.     Leave 1 inspection is full, highest  
19     level of inspection that we do.   It involves  
20     checking the driver's paperwork, checking  
21     the vehicle, walk around, and also includes  
22     looking at the brakes.

23          Q.     And HM inspection type, what does  
24     that mean?

25          A.     Hazmat inspection type was bulk

1 inspection. That means it was a container cargo  
2 tank or anything over 119 gallons.

3 Q. Let's move done to the next section.  
4 Could you please identify what is in this  
5 section?

6 A. Left side, Stony Run Enterprises  
7 Incorporated. They are according to their DOT  
8 number that they have filed with the Federal  
9 Government 100733. They are located at 3772 Old  
10 Oxford Road, Hamilton, Ohio 450134.

11 Q. Stony Run is who?

12 A. The carrier.

13 Q. And the driver was?

14 A. Robert Updike.

15 Q. And how did you determine who the  
16 carrier was?

17 A. By the DOT number and the writing on  
18 the side of the truck. Also has it on the  
19 shipping papers.

20 Q. Going down to the next section it  
21 has location. Where is the Harrison scales?

22 A. Harrison scales is on I-74 westbound  
23 mile marker 2 just inside the Ohio line.

24 Q. And where was this vehicle  
25 originating from?

1 A. Greensburg, Indiana.

2 Q. And where was it going?

3 A. Trenton, North Carolina.

4 Q. And who was the shipper?

5 A. Syngenta, I believe. I have got to  
6 find it. Yes.

7 Q. How did you determine all this  
8 information regarding the origin and shipper?

9 A. Bill of lading and driver interview.

10 Q. What specific bill of lading in this  
11 case? What was the bill of lading number?

12 A. There is a bill of lading No.  
13 1745719. That was the shipping number.

14 Q. And you get the shipping number and  
15 the bill of lading directly from the bill?

16 A. Correct.

17 Q. And the cargo, what is that section?

18 A. It's a general hazmat. The whole  
19 shipment was hazmat, and that is something that  
20 pops up. Pre-populated.

21 Q. And let's jump down to the middle of  
22 the Staff Exhibit 1, first page where it  
23 indicates violations. What specific violation  
24 is indicated here?

25 A. The violation is under Section

1 173.24(b)(1) and general release of hazardous  
2 materials from package. And then my writing  
3 after that in upper case letters states "Bulk  
4 tank leaking from under tank storage/transfer  
5 pump through bolt onto ground."

6 Q. Now, for your description, when did  
7 you prepare that particular description?

8 A. After the inspection.

9 Q. About how long after the inspection?

10 A. I would say approximately 40 minutes  
11 after I had done the whole inspection, assessed  
12 the situation, seen the unsafe condition, and  
13 typed it and gave it to the driver at  
14 approximately 13:45.

15 Q. If you move down right to the next  
16 section it has the indication hazmat. 8  
17 corrosive. What does that mean?

18 A. There are nine levels of placarding  
19 on a vehicle. 8 is corrosive material. It's  
20 the number on it. Also a symbol. There is a  
21 universal symbol.

22 Q. And you say universal symbol. What  
23 do you mean?

24 A. It's a, I don't know how to say it,  
25 it's federally known there that is what they are



1 required to have. And corrosive material would  
2 be No. 8.

3 Q. I would like to jump down to the  
4 section of the document that says "Locally  
5 Defined Fields." Could you explain what these  
6 different indications mean in this particular  
7 section?

8 A. Okay. Loaded by carrier, sometimes  
9 the carriers load the stuff. Drivers sometimes  
10 do that. That would be yes or no.

11 Shipping documents prepared by  
12 carrier, yes or no. The truck driver doesn't  
13 necessarily prepare the documents. The company  
14 that picks up from the company prepared that.

15 The hazmat class, like I talked  
16 about earlier, is Class 8, package group III.  
17 It is shown on the bill of lading and also cross  
18 referenced in our hazmat material book that we  
19 look at.

20 RQ is required quantity. That is  
21 the section we look at in the hazmat book. If  
22 it's more volume and different placards and  
23 different things. It could be 100 gallons, it  
24 could be a thousand gallons.

25 The driver's address. State was in

1 Ohio. Photos taken, yes. I did take photos.

2 Loaded by shipper, yes. Shipping  
3 documents prepared by shipper, yes.

4 Identification number is the Class 8 bulk  
5 packages have to have a number on them showing  
6 it's a significant amount of hazmat.

7 There was 31,000 pounds is what it  
8 had to have so it was UN1760 is in the hazmat  
9 book and it gives the particulars of everything,  
10 what it is generically to what type of package  
11 it could be after you cross reference and look  
12 at what type container you are allowed to have  
13 because of the corrosive material can be  
14 reactive with stainless versus aluminum. And it  
15 was not hazardous waste.

16 There were no fatalities involved in  
17 this. The driver was from Okeana. And driver  
18 zip 45033. And reason code for stop was  
19 Universal Selection Standard Process.

20 Q. Now, when it says USSP, what does  
21 that mean?

22 A. That means like I was working the  
23 scales that day, it was early in our fiscal year  
24 where we have to have so many inspections to get  
25 certified. And I like to get that done within

1 the first two months. So I was like, okay, I  
2 need hazmat and pull up the 5th that is a bulk  
3 that goes by, the 5th cargo tank that is a  
4 hazmat truck that pulls by.

5 Q. And at the bottom of this section  
6 it says report prepared by K. Swartz.

7 A. That is me and my unit number with  
8 the Highway Patrol.

9 Q. Now, just generally, Driver/vehicle  
10 Examination Reports, is this something that you  
11 typically use in your role as an inspector?

12 A. Yes.

13 Q. This type of document?

14 A. Every stop, every inspection has one  
15 of those documents.

16 Q. And when you prepared this  
17 particular driver examination report which is  
18 Staff Exhibit 1, you remember preparing this?

19 A. Yes

20 Q. And you prepare such a report  
21 pursuant to your legal duties?

22 A. Correct.

23 Q. And this document is in essentially  
24 the same condition as when you initially  
25 prepared it?

1           A.    The only thing different is my  
2           original report has the State Highway Patrol on  
3           here and when it comes to the Public Utilities  
4           Commission it looks like this with all  
5           the information.

6           Q.    So the way the process works is  
7           initially when you prepare the document it is in  
8           a different form with all the different  
9           information?

10          A.    Correct.

11          Q.    But substantially the same?

12          A.    The same information, yes.

13          Q.    And you prepared all this  
14          information that is placed in Staff Exhibit No.  
15          1 at the same time essentially when you did your  
16          inspection?

17          A.    Correct. The very top was done  
18          prior to the inspection. The rest was done  
19          after the inspection. And this was given to the  
20          driver at the end of the inspection.

21                And before we move on let's go back  
22          to the violations section and I want you to just  
23          sort of clarify some language for me. When you  
24          say bulk tank what does that mean again?

25          A.    Anything over 119 gallons.

1           Q.   And undertank storage, what does  
2           that mean specifically?

3           A.   Okay.  If you picture a tanker,  
4           gasoline tanker, 9,000 gallons approximately,  
5           whole semi-trailer, underneath there was a  
6           container, boxed in that had a transfer pump in  
7           it to get material off and/or onto the vehicle.  
8           Top load or side load then the transfer pump is  
9           for transferring it to different places.

10          Q.   And transfer pump, what is that?

11          A.   Transfer pump, say on this  
12          particular load he had 31,000 pounds on there,  
13          and I don't think at this time he had, but he  
14          could of had say top loaded and had 15,000  
15          pounds in one place and 15,000 in another.

16                 So this transfer pump pulls out of  
17          the container around through a flow meter and  
18          counts the gallons being off loaded and sent to  
19          the storage tank somewhere else.

20          Q.   Okay.  Now, backing away from Staff  
21          Exhibit 1 I would like you to just generally  
22          explain what happened in your inspection in this  
23          particular case.

24          A.   Okay.  The driver came across the  
25          scales, the green light was on there, we got on

1 the PA system, told him to go around back.

2 I went up to the truck, made my  
3 approach to the driver. Hi, I am going to do a  
4 Level 1 inspection today, hazmat carrier. I  
5 need your license, medical card, registration,  
6 shipping papers, anything like that. Told him  
7 we are doing a Level 1 today, hope to get him  
8 out of here quick. Probably an hour.

9 And got that information from him.  
10 Asked a few questions, where are you going to,  
11 where are you coming from. Just general  
12 information.

13 And the driver interview, paperwork  
14 looked pretty defined. Took about 15 minutes  
15 there. All the general information. The loaded  
16 times, the company, DOT numbers. Look up 1760,  
17 he had 1760 there, we go to the hazmat book  
18 and look up 1760, corrosive, like we talked  
19 about earlier, the reportable quantity.

20 Go to the cargo tank section. I  
21 have to make sure they utilized the proper cargo  
22 tank. It could be aluminum or not, make sure  
23 the correct tank basically.

24 Do all that. Run the driver's  
25 license to make sure he is not wanted. Get all

1 the general information. I have a few  
2 questions, talk to the driver, hey, did you load  
3 this, did you not load this. General  
4 information to feel comfortable with what I had.

5 Then get my creeper that has wheels  
6 that can go underneath the truck and look. And  
7 go back up to Mr. Updike and do the inspection.  
8 We talk, okay, pump down on the brake, make sure  
9 the braking system is correct, make sure the  
10 fire extinguisher is there and current and  
11 secure. Look at so many things.

12 Get done with that stuff inside and  
13 going outside. Turn on the lights on high beam,  
14 low beam, and signals. The driver had been  
15 through this before, they know this. Start at  
16 the front of the vehicle, do the lights, make  
17 sure. Check the steering in the front, walk  
18 down the driver's side of the vehicle and check  
19 the tires, check the lug nuts, rims, listen for  
20 air leaking, look for leaks.

21 Check the hoses. Get to the back  
22 between the tractor and trailer area to make  
23 sure the lines, there is no air leaks.

24 I check the tank certification  
25 dates. Each tank has to be certified for

1 different things every so often. There is five  
2 different things that has to be checked for.  
3 Check those dates to make sure they are in  
4 compliance.

5 Check the drive tires inside,  
6 outside, make sure they are not flat. Lugs and  
7 bolts missing, any rusty areas that stick out.  
8 Maybe something moving. Cracked.

9 The lights on the back of  
10 the tractor. Inspect the tank as you are  
11 walking through to make sure proper safety  
12 equipment on there.

13 Q. Thank you.

14 A. A lot of stuff.

15 Q. And for this particular inspection,  
16 doing all that, how did you proceed? How did  
17 you observe the violation?

18 A. After I got around back of the truck  
19 I came up to the passenger side, walking on the  
20 passenger side, looking at the whole truck,  
21 looking at different things and looked on the  
22 ground and there was a spot on the ground. It  
23 could have been oil from another truck. I  
24 didn't know what it could be.

25 But it got my attention. So not



1 knowing if it was hazmat, I have to worry about  
2 safety, I don't know if I need specific  
3 equipment on like a respirator, I don't have  
4 anything like that. So I have to be cautious  
5 for myself.

6 So I saw this, saw it underneath the  
7 box area where the transfer pump would be. So  
8 I opened the box to investigate because I saw  
9 something and I opened it up and I see a  
10 blue-ish green liquid in the bottom of the tank,  
11 approximately several gallons I would estimate.

12 And I backed away, backed away  
13 and went up to the driver and said, hey, there  
14 is stuff puddled, blue-ish green material.  
15 Okay. We have an issue.

16 Gets out of the truck, let's walk  
17 back there and see what is going on. We look at  
18 it, yes, something in there, it's leaking  
19 probably from a pump, leaking onto the ground.  
20 Going to receive a violation.

21 I am a pretty laid back inspector.  
22 I treat people like a human being. Said, you  
23 know, unfortunately this is going to be a  
24 writeable offense, going to be out of service  
25 violation, I have to do it. I hate to do it

1 because it's going to cost him time and money.

2 And I talked to him about it. Told  
3 me it was just weed killer. Okay. Probably  
4 corrosive. I said, well, get this cleaned up,  
5 if I clean it up will that work for you? I said  
6 that should work if it's done properly.

7 He said he had some diapers or some  
8 absorbent pads there and get it all clean and is  
9 that something that will work. Yes.

10 He worked on that. At the time as I  
11 was going through talking to the driver, I  
12 assessed the situation, talked to the driver  
13 because I am not the expert and I wanted more  
14 specifics on the stuff they haul.

15 I didn't feel there was an initial  
16 safety risk to myself. Inspector Mowen finished  
17 his inspection at the scale, pulled up, and  
18 which is normal when we do see something that  
19 doesn't happen a lot or something unique. Doug,  
20 come and see what is leaking from this hazmat  
21 package.

22 Doug came over, I showed him what I  
23 saw, how I handled things, what we did, what was  
24 leaking, what the driver was going to do. And  
25 how we were going from there.

1           Q.    You said a lot there so I want to  
2           clarify some things.  You indicated that you saw  
3           a spot on the ground underneath the box where  
4           the transfer pump is contained; is that correct?

5           A.    Yes.

6           Q.    And after you saw that spot you  
7           opened up the container that has the transfer  
8           pump inside of it?

9           A.    Correct.

10          Q.    And you indicated that you saw a  
11          blue-ish green liquid?

12          A.    Correct.

13          Q.    Now, you have indicated that you are  
14          not the expert and the driver is.  Can you  
15          explain what you mean by that?

16          A.    Usually drivers of hazmat carriers  
17          haul the same stuff a lot of the time like  
18          gasoline and they know diesel and gasoline.  
19          Specific companies haul specific stuff usually.

20                I don't know, I see 1760 inside a  
21          truck, I know a bulk package, I know lots of it  
22          is Class 8 corrosive.  That is about all I know.

23                At the time of a road inspection I  
24          can't be sure at that particular time what I am  
25          dealing with so I talk to the driver.  The

1 driver is usually trained, usually more current  
2 on what exactly they have and maybe some  
3 different things the driver can verify.

4 Q. So you went to the driver, Mr.  
5 Updike, and indicated to him -- what did you  
6 indicate to him again?

7 A. I indicated that I saw a blue-ish  
8 green liquid in the back there. Is that what  
9 you are hauling? He said yes.

10 Q. And then you took him back to the  
11 transfer pump area. What did he say to you?

12 A. That is stuff we are hauling.

13 Q. And what did he say about the leak?

14 A. He didn't really say a whole lot  
15 about the leak. He said it was coming out of  
16 the transfer pump somewhere there and wasn't  
17 really that bad as it was a weed killer.

18 Q. He acknowledged that it was leaking  
19 onto the ground?

20 A. I showed him it was leaking onto the  
21 ground, yes.

22 Q. What did he say?

23 A. Yes.

24 Q. And then so after that he proceeded  
25 to clean it up?

1           A.     Right.  We talked about it when I  
2           determined that it wasn't a risk as far as I  
3           didn't need to call the fire department or  
4           hazmat crew, wasn't that bad of stuff.  It was  
5           packing Group 3 which usually isn't that bad.  
6           The driver was confident it wasn't that bad.  
7           And he easily satisfied me that he could do  
8           the job.

9           Q.     Did he put gloves on to clean it up?

10          A.     Yes.

11          Q.     What did he use to clean it up?

12          A.     Absorbent pads.

13          Q.     Okay.  Now, on Staff Exhibit 1 it  
14          indicates that you had photographs taken of  
15          the inspection.  Do you recall taking  
16          photographs during the inspection?

17          A.     Yes.

18                 MR. PARRAM:  Your Honor, I would  
19          like to have marked as Staff Exhibit 2 through 8  
20          photographs taken during the inspection.

21                 ATTORNEY EXAMINER:  Very well.  So  
22          marked.

23                 MR. PARRAM:  May I approach  
24          the witness?

25                 ATTORNEY EXAMINER:  You may.

1 (EXHIBITS HEREBY MARKED FOR  
2 IDENTIFICATION PURPOSES)

3 Q. Inspector, do you have Exhibit 2  
4 through 8 in front of you?

5 A. Yes.

6 Q. All right. What are Staff Exhibits  
7 2 through 8?

8 A. Staff Exhibit 2 through 8 are  
9 pictures that I took at the time of  
10 the inspection on November 8th.

11 Q. So you took these pictures?

12 A. Yes.

13 Q. And do these pictures accurately  
14 represent what you observed during  
15 the inspection on November 8th?

16 A. Yes.

17 Q. Starting with Staff Exhibit 2, what  
18 is Staff Exhibit 2?

19 A. Staff Exhibit 2 is a picture of the  
20 side of the truck showing the company, the DOT  
21 number, the MC number.

22 Q. And Staff Exhibit 3?

23 A. 3 is a close-up view of the transfer  
24 pump in a box that was showing the green-ish  
25 blue liquid.

1           Q.    Inspector Swartz, Staff Exhibit 3  
2           is what you observed that actually resulted in  
3           the violation in this case; is that correct?

4           A.    Yes.

5           Q.    And this picture was taken before it  
6           was cleaned up?

7           A.    Yes.

8           Q.    And did you take the picture?    Was  
9           the driver with you when you took the picture?

10          A.    I don't recall.  He was in the area.  
11          I don't know when I took it if he was with me or  
12          not.

13          Q.    And Staff Exhibit 4, do you have  
14          that in front of you?

15          A.    Yes.

16          Q.    What is Staff Exhibit 4?

17          A.    Staff Exhibit 4 is a farther back  
18          picture of Staff Exhibit 3 showing the transfer  
19          pump and the whole box attached to the side of  
20          the truck but not as detailed as the close-up.

21          Q.    Staff Exhibit 4 shows the product or  
22          the fluid on the ground?

23          A.    Yes.

24          Q.    Okay.  And where is that about in  
25          the picture?

1           A.    About a third of the way from the  
2 left side approximately an inch and a half from  
3 the top.

4           Q.    An inch and a half from the bottom?

5           A.    Bottom.

6           Q.    Or depending where you are looking  
7 at. Okay. So on Staff Exhibit 3 you can see on  
8 the ground there is a circle on the ground  
9 there?

10          A.    Yes.

11          Q.    And your understanding or  
12 recollection is that is the spot that you saw  
13 initially that prompted you to open up the  
14 container to see there was a leak inside?

15          A.    Yes.

16          Q.    And Staff Exhibit 5, do you have  
17 that in front of you?

18          A.    Yes.

19          Q.    Staff Exhibit 5, what does that  
20 show?

21          A.    Exhibit 5 is the underneath view of  
22 the box. If you look at Staff Exhibit 4 you see  
23 the green or blue pump on the left side, blue  
24 metal area. And that is the bolt that goes down  
25 and directly below that is the spot underneath



1 the truck showing the bolt underneath the box  
2 where it was leaking.

3 Q. So Staff Exhibit 5, you took this  
4 from -- where did you take this picture from?

5 A. Under the truck.

6 Q. And taking the picture upwards?

7 A. Correct.

8 Q. And this picture shows that there  
9 was a green material coming through the bolts?

10 MR. TURANO: Objection to that  
11 characterization.

12 MR. PARRAM: Withdraw the question,  
13 your Honor.

14 ATTORNEY EXAMINER: Okay.

15 Q. What does Staff Exhibit 5 indicate  
16 to you?

17 A. Staff Exhibit 5 was from  
18 the underneath side of the truck shot upwards  
19 directly above the spot on the ground.

20 Q. And what was your understanding of  
21 the green coloring on the bolts?

22 A. I physically watched the trip from  
23 the bolt to the ground when I took the picture.  
24 And the blue or green coloring on the end of the  
25 bolt at the nut is the pooled liquid.

1           Q.    So, while taking the pictures,  
2               specifically Staff Exhibit 5, you saw something  
3               dripping through?

4           A.    Correct.

5           Q.    And the something you saw was green?

6           A.    Correct.

7           Q.    Staff Exhibit 6, what is Staff  
8               Exhibit 6, Inspector Swartz?

9           A.    Staff Exhibit 6 was the placard that  
10               is required on all four sides of the vehicle  
11               showing Class 8 corrosive material, 1760.

12          Q.    Staff Exhibit 7, what is that a  
13               picture of?

14          A.    Staff Exhibit 7 is a picture of the  
15               ground directly below the transfer pump box of  
16               the material that was leaking on the ground.

17          Q.    Is Staff Exhibit 7 the spot on the  
18               ground that prompted you to open up the  
19               container for the transfer pump?

20          A.    Yes.

21          Q.    Staff Exhibit 8, what is Staff  
22               Exhibit 8?

23          A.    That is the license plate of the  
24               tractor of the truck that was stopped.

25          Q.    Have you cited other vehicles or

1 carriers for 173.24(b)(1)?

2 A. Yes.

3 Q. Now, you indicated earlier that you,  
4 during your inspection, you reviewed the  
5 driver's documents that the driver had as  
6 relates to the material he was shipping; is that  
7 correct?

8 A. Yes.

9 Q. And this also included the bill of  
10 lading?

11 A. Yes.

12 Q. And on Staff Exhibit 1, which is the  
13 Driver/vehicle Examination Report, did you  
14 indicate what the bill of lading number was?

15 A. Yes. Actually use shipping number.  
16 1745719.

17 Q. And Syngenta again is who?

18 A. It is the shipper.

19 Q. And the Driver/vehicle Examination  
20 Report was Staff Exhibit No. 1. That indicates  
21 that the destination was where?

22 A. Trenton, North Carolina.

23 MR. PARRAM: Your Honor, I would  
24 like to have marked as Staff Exhibit No. 9 the  
25 bill of lading regarding this inspection.

1 ATTORNEY EXAMINER: You may.

2 Q. Staff Exhibit 9 is what?

3 A. It's a reprint of a bill of lading  
4 from the company Syngenta showing who the  
5 carrier is, what the bill of lading number is,  
6 what the shipping number is, product  
7 description, the UN number, all the information  
8 required for a hazmat shipment. Shipping  
9 information going from, to.

10 Most of the information on there was  
11 on Staff Exhibit 1. That is where -- between  
12 this paperwork and the driver examination is  
13 where all the information came from.

14 Q. Now about that Exhibit 9? Does this  
15 indicate specifically what product the carrier  
16 was carrying in this case?

17 A. It does. It's a UN1760 corrosive  
18 liquid. In other words specified Class 8 PGIII  
19 shows Gramoxone SL 2.0 BL.

20 Q. So Gramoxone SL 2.0 is a specific  
21 type of product?

22 A. Correct.

23 Q. So that is more detailed knowledge  
24 showing corrosive material. This bill of lading  
25 indicates what specific material was being

1 carried?

2 A. Correct.

3 Q. And the bill of lading indicates the  
4 amount of gallons that are being shipped?

5 A. Correct.

6 Q. What does it indicate?

7 A. 1,997 gallons.

8 Q. Are you familiar with the material  
9 safety data sheet?

10 A. Yes.

11 Q. In general what is a material safety  
12 data sheet?

13 A. It is a more defined -- gives exact  
14 information on like Gramoxone, gives the  
15 characteristics on what personal protective  
16 equipment you need, respirator, goggles, gives  
17 the characteristics of color, odor. It's the  
18 chemical breakdown and everything you need.

19 Q. In your typical duties as an  
20 inspector do you use material safety data sheets  
21 to find out information about particular  
22 hazardous materials?

23 A. Yes.

24 Q. And how are you familiar with that  
25 information?

1           A.     Usually it's with the shipping  
2 papers. In case there is an accident, get on  
3 the computer and do a search for it, between  
4 that and also my hazmat book.

5           Q.     Do you ever contact the shipper  
6 and ask for information?

7           A.     Yes.

8           Q.     And the shippers have the MSDS or  
9 material safety data sheets?

10          A.     Yes.

11          Q.     And they typically provide that to  
12 you if you need that information?

13          A.     Yes. It's required.

14          Q.     And the material safety data sheet  
15 as relates to the Gramoxone SL 2.0 in this case,  
16 did you obtain the material safety data sheet as  
17 relates to the Gramoxone SL 2.0?

18          A.     Yes.

19          Q.     And who did you obtain that from?

20          A.     Syngenta.

21                 MR. PARRAM: Your Honor, I would  
22 like to have marked for purposes of  
23 identification Staff Exhibit 10 which is the  
24 material safety data sheet of Syngenta.

25                 ATTORNEY EXAMINER: Very good.

1           Q.    Inspector Swartz, you have Staff  
2   Exhibit 10 in front of you?

3           A.    Yes.

4           Q.    What is Staff Exhibit 10?

5           A.    Staff Exhibit 10 is the MSDS from  
6   Syngenta on the product Gramoxone SL 2.0.

7           Q.    And if you go to No. 2, Hazards  
8   Identification, what health and environmental  
9   hazards are related to Gramoxone SL 2.0?

10          A.    Fatal if inhaled. Harmful if  
11   swallowed. May be harmful in contact with skin.  
12   Irritating to eyes and skin.

13          Q.    Okay. And for hazardous  
14   decomposition products what does it indicate?

15          A.    Combustion products of dry material:  
16   Carbon dioxide, carbon monoxide, chlorine,  
17   hydrogen chloride, possible trace amounts of  
18   phosgene, nitrogen oxides, ammonia, and other  
19   toxic and noxious fumes.

20          Q.    Under physical properties, what does  
21   that indicate?

22          A.    It shows the appearance of a bluish  
23   green liquid and odor of characteristics of  
24   strong.

25          Q.    And when you observed the hazardous

1 material during your inspection what color was  
2 it?

3 A. Bluish green.

4 MR. PARRAM: That is all, Your  
5 Honor.

6 ATTORNEY EXAMINER: Any questions?

7 MR. TURANO: Yes. Several, Your  
8 Honor.

9 CROSS-EXAMINATION

10 By Mr. Turano:

11 Q. Inspector Swartz, you are currently  
12 Transportation Examiner with the PUCO?

13 A. Correct.

14 Q. And you have been in that position  
15 for about five months. So that indicate at the  
16 time of this inspection you were with the Ohio  
17 Highway Patrol as a Motor Carrier Safety  
18 Inspector?

19 A. Enforcement Inspector, correct.

20 Q. Enforcement Inspector. Okay. What  
21 is the distinction between the two other than  
22 one is PUCO or motor carrier?

23 A. As far as inspections and  
24 certifications they are exactly the same. My  
25 job as Transportation Examiner with the PUCO, I



1 can work a stationary area like scales and then  
 2 I also go to the companies. So I am one step  
 3 above what they do. So go behind the scenes and  
 4 look at everything from insurance and to make  
 5 sure they have all the paperwork right as a  
 6 company as far as a driver and inspection on  
 7 the road.

8 Q. Okay. And how long were you with  
 9 the Ohio Highway Patrol as a Motor Carrier  
 10 Safety Inspector?

11 A. Just over four years.

12 Q. Four years. Now, on the incident in  
 13 question you indicated that there are three  
 14 levels of inspections that one did. And No. 1  
 15 being the most thorough, if you will, and the  
 16 incident in question was in fact a No. 1?

17 A. Correct.

18 Q. Correct? And you testified that,  
 19 you lost me here, but were you randomly  
 20 selecting a carrier for a Level 1 inspection?

21 A. We don't random, we have a universal  
 22 standard selection process. So I needed  
 23 hazmats. We start our certificates on October  
 24 1st. So we like to be certified by the end of  
 25 October, so we have to have so many Level 1

1 inspections, so many hazmat inspections, so many  
2 bus inspections.

3 So that day I was looking for  
4 hazmats so as they would come in and, okay, the  
5 5th truck was a cargo tank.

6 Q. The 5th vehicle that transported  
7 hazmat?

8 A. Correct. Bulk hazmat that day.

9 Q. That is what you were specifically  
10 looking for. So there were four other vehicles  
11 that went through that inspection at that scale?

12 A. Correct.

13 Q. You required hazmat bulk carriers  
14 and then the Stony Run vehicle came and you  
15 pulled that one out for a full inspection?

16 A. Correct.

17 Q. So, as I understand what you did,  
18 you directed the driver to go to the parking  
19 area at the scales?

20 A. Behind the scales.

21 Q. Behind the scales. And then you  
22 drove up and introduced yourself to the driver?

23 A. Correct.

24 Q. Indicate what you were about to do;  
25 right?

1           A.     Correct.

2           Q.     All right. Was Mr. Updike, the  
3 driver, cooperative?

4           A.     Yes.

5           Q.     Now, he stayed in the tractor?

6           A.     When I initially came up to him,  
7 yes. Then I got the paperwork out and I wanted  
8 to make sure everything was okay, and during  
9 the inspection until I got him he stayed in the  
10 truck.

11          Q.     You undertook the inspection as you  
12 indicated, and your exhibit indicates the  
13 inspection took about an hour. Is a Level 1  
14 usually about an hour?

15          A.     Yes.

16          Q.     Okay. And it's a very thorough  
17 process from head to toe and looking at a number  
18 of things. One is equipment itself, the  
19 tractor-trailer, and there is a whole series of  
20 things you look at; correct?

21          A.     Yes.

22          Q.     And you went through that I assume  
23 in your testimony?

24          A.     Yes.

25          Q.     And you proceeded to do that with

1 this particular unit of equipment that was  
2 operated by Stony Run; correct?

3 A. Yes.

4 Q. All right. Aside from the issue  
5 with the box did you discover anything else in  
6 your inspection?

7 A. No.

8 Q. The other equipment seemed to be  
9 satisfactory?

10 A. Yes.

11 Q. Good condition?

12 A. Yes.

13 Q. All right. So that was  
14 the equipment. Then you do another inspection  
15 of -- this inspection involves the driver  
16 qualifications?

17 A. Yes

18 Q. What did that involve? What were  
19 you looking for there?

20 A. Make sure first of all he has a  
21 valid driver's license, hazmat endorsement,  
22 cargo tank, make sure the plates are valid, make  
23 sure he is not wanted.

24 Q. Things of that nature?

25 A. Yes.

1           Q.    And did Mr. Updike pass those as  
2    well?

3           A.    Yes.

4           Q.    No issues there?

5           A.    No issues there.

6           Q.    At all. Okay. Then there is  
7    paperwork issues that you were looking at too;  
8    right?

9           A.    Right.

10          Q.    And again you were looking for what?

11          A.    We were looking at registrations, we  
12    were looking at bill of lading, we were looking  
13    at any information he has, MSDS. Just drew a  
14    blank. Hazmat book. That is information, it's  
15    a quick reference that they are required to  
16    have.

17                   Just any paperwork we need of  
18    certifications and inspections to make sure  
19    the truck has an annual inspection, all  
20    the paperwork needed to be properly going down  
21    the road.

22          Q.    Did he have all of that?

23          A.    Yes.

24          Q.    Everything was in order?

25          A.    Yes.

1           Q.    Now, somewhere in the process you  
2           were walking around the unit itself?

3           A.    Yes.

4           Q.    And you observed the spot on the  
5           ground?

6           A.    Yes.

7           Q.    Back towards the rear of  
8           the trailer?

9           A.    Towards the middle.

10          Q.    Towards the middle of the truck  
11          here. Okay. And had you seen that spot  
12          before? I mean, didn't notice it before?

13          A.    He just pulled up on the side of  
14          the vehicle.

15          Q.    How long a period of time from when  
16          you began the inspection?

17          A.    Twenty minutes.

18          Q.    Twenty minutes into it? Okay. So,  
19          you see a spot. What did you do at that point?

20          A.    It drew my attention. It has a  
21          cargo tank, obviously know there is liquid, I  
22          don't know what it is, that something is going  
23          on. I am also looking at the whole truck.

24                        So I come to the back of the truck.  
25          I am looking at the tires, checking the lugs and

1 nuts, looking at the individual stuff. And also  
2 looking up and looking on the ground and see  
3 the spot. And that drew my attention. We have  
4 to look a little closer.

5 Q. So, you proceeded to look a little  
6 closer. And what did you do?

7 A. I opened up the doors for the cargo  
8 tank.

9 Q. Was there a latch seal on that box  
10 by any chance?

11 A. Seal.

12 Q. Was it sealed shut?

13 A. No.

14 Q. It wasn't locked?

15 A. No.

16 Q. It was open?

17 A. Right.

18 A. More than one door?

19 A. Yes.

20 Q. Okay. And you opened it up  
21 and observed some material in the bottom of that  
22 storage container box?

23 A. Storage box, yes.

24 Q. Did you look at the transfer pump  
25 and --

1           A.    Yes.

2           Q.    Okay.  And so you noticed some  
3 material there.  That is when you went to the  
4 driver?

5           A.    That is when I went to the driver.  
6 Backed away because I know nothing about what it  
7 is.  I went to the driver, hey, there is a  
8 bluish substance.  Yes, come on down, we need to  
9 talk.

10          Q.    So you specifically asked Mr. Updike  
11 if he was hauling a bluish green substance?

12          A.    Yes.

13          Q.    So he got out of the tractor and  
14 proceeded with you around to the rear of the  
15 trailer?

16          A.    Yes.

17          Q.    And observed this situation;  
18 correct?

19          A.    Yes.

20          Q.    All right.  What happened next?

21          A.    I talked to him about this stuff,  
22 yes.  What is it?  Bad?  Do we need to run,  
23 to call the fire department?  Just weed killer,  
24 not that bad.  So looked on the ground and could  
25 see that.



1                   He explained what a transfer pump  
2                   was and we noticed it wasn't the main cargo tank  
3                   and wasn't leaking down from there. So know it  
4                   was just contained in that area. Explained the  
5                   transfer pump process. We talked about that.

6                   And he said he could clean it up.  
7                   And talked to say, hey, I truly hate to write  
8                   you up for a leak for hazmat, not a lot here,  
9                   but we have issues. It's leaking, write you up  
10                  and go from there.

11                  We talked about how to clean it up.  
12                  Asked if he could get it cleaned up, he could do  
13                  that. And proceeded to clean it up. And while  
14                  he was doing that I talked to Inspector Mowen,  
15                  come over and looked to see what was going on.

16                  Q.    Now, he used some absorbent pads you  
17                  talked about?

18                  A.    Yes.

19                  Q.    And you originally said you thought  
20                  there was how much material in there?

21                  A.    I am guessing a couple gallons.

22                  Q.    A couple gallons?

23                  A.    That is a guesstimate.

24                  Q.    Well, I am looking at the three  
25                  pictures, and you say these pictures were taken

1       -- Exhibit 3, Exhibit 4, these were taken by  
2       you?

3               A.     Yes.

4               Q.     Prior to the time that the driver  
5       used the pads to absorb the material; correct?

6               A.     Yes.

7               Q.     So, this was I guess as soon as you  
8       talked to the driver you took the pictures or --

9               A.     After I got stuff done and made sure  
10      everything was safe.

11              Q.     When did pictures 3 and 4 get taken?

12              A.     Three and four?

13              Q.     Yes.

14              A.     Well, after I talked to the driver.

15              Q.     But before he used these absorbent  
16      pads?

17              A.     That is what I recall, yes.

18              Q.     That you recall there may have been  
19      material in there and you are telling me he used  
20      the absorbent pads to clean it up. So obviously  
21      they had to have been taken beforehand; correct?

22              A.     Correct.

23              Q.     All right. Now, that looks like  
24      three or four gallons of material there?

25              A.     No. I said problem 1, maybe 2.

1 Q. Maybe 2?

2 A. Yes.

3 ATTORNEY EXAMINER: What picture  
4 are you looking at?

5 MR. TURANO; Exhibit 3 and Exhibit  
6 4, Your Honor. I apologize.

7 A. I am just -- it doesn't make a lot  
8 of difference. I mean, we have got a box that  
9 is approximately three foot wide, two foot deep,  
10 approximately three-quarters of an inch deep.  
11 Okay. If I take and spill a gallon of milk what  
12 would that be? How would that look?

13 Q. That is your impression?

14 A. Correct.

15 Q. Okay. Now, I am looking at Exhibit  
16 3 and 4 again. And do you have those? There is  
17 a spot on the ground below that in that same  
18 spot?

19 A. Yes.

20 Q. Is that the spot you observed?

21 A. Yes.

22 Q. Is that spot shown in Exhibit 7?  
23 Just a closer up view?

24 A. Yes.

25 Q. Looks to be maybe three inches in

1 diameter, do you think?

2 A. I don't recall. Three to five at  
3 the most.

4 Q. Did you testify that you physically  
5 saw material drop from the container box onto  
6 the ground?

7 A. Yes.

8 Q. You did?

9 A. Yes.

10 Q. When did you observe that?

11 A. Sometime after we assessed the  
12 situation and saw that was leaking from that  
13 pump.

14 Q. Where was it leaking from? I mean,  
15 was the pump leaking?

16 A. No.

17 Q. Where was it coming from?

18 A. Okay. If you look at picture  
19 Exhibit 3.

20 Q. Exhibit 3. Okay.

21 A. Okay. You see the blue object?  
22 Right here.

23 Q. Yes.

24 A. Okay. On the bolt.

25 ATTORNEY EXAMINER: Okay.

1           A.    You see the bolt right there.  So  
2           that is part of the mounting unit for  
3           the transfer pump.

4                   ATTORNEY EXAMINER:  What are you  
5           pointing to there?

6                   THE WITNESS:  Here.  And I am  
7           showing the bolt.

8                   ATTORNEY EXAMINER:  What are these  
9           things here inside?  Do you know?

10          A.    I am showing the area here and that  
11          bolt.

12                   ATTORNEY EXAMINER:  Okay.  Go ahead.

13          Q.    All right.  Go ahead.

14          A.    All right.  So that whole unit side  
15          box is mounted to the bottom of the box.

16          Q.    Correct.

17          A.    So that bolt goes through that  
18          bracket, through the bottom of the box and has  
19          nuts underneath holding it up.

20          Q.    That is the bolt shown in Exhibit 5?

21          A.    Correct.

22          Q.    From underneath.  You are on the  
23          creeper or whatever it is?

24          A.    Yes.

25          Q.    Okay.  That is the same bolt, but I

1 am saying this accumulation of material had to  
2 come from somewhere; correct?

3 A. Correct.

4 Q. Out of the tank somehow. Did you  
5 observe any leakage of material from the tank  
6 itself?

7 A. I did not see leakage from the tanks  
8 that went down to the pump. There was no leak  
9 from the main tank onto the ground.

10 Q. Did you observe any leakage from the  
11 pump?

12 A. I did not.

13 Q. You observed material that was  
14 sitting in the bottom of that box?

15 A. Correct.

16 Q. And Mr. Updike proceeded to use  
17 absorbent pads to clean that up. Did you see  
18 how long it was before he left?

19 A. After the inspection?

20 Q. After he completed the absorbent  
21 pads, what happened after that point?

22 A. To the best of my knowledge he had  
23 cleaned it up. And I told him if he got it  
24 cleaned up and not leaking any more you can sign  
25 the paper book that he cleaned it up. There is

1 a section on there. Staff Exhibit 1, that side,  
2 okay, it wasn't leaking and proceed on the road.

3 Q. All right. So what period of time  
4 are we talking about? You agree he used  
5 absorbent pads to clean up the accumulation of  
6 material in the bottom of the box. Okay?

7 A. Right.

8 Q. And I assume you took a look to see  
9 it looked fine?

10 A. No, not unless --

11 Q. You didn't look at it?

12 A. We don't have to.

13 Q. I don't understand that. You  
14 thought you had a leaking situation and yet  
15 after he cleaned it you didn't want to confirm  
16 it was no longer leaking?

17 A. That is not a requirement.

18 Q. That is not a requirement?

19 A. No. If we stop you, for example, on  
20 the road with a flat tire, we don't sit and wait  
21 for an hour for someone to come and replace  
22 the tire.

23 Q. We are talking about hazardous now,  
24 cleaning hazardous material. He has cleaned it  
25 up. If you have got a leaking situation you are

1     telling me you don't want to confirm that it is  
2     no longer leaking before you let him proceed?  
3     We are not talking about an hour to clean it up.  
4     You wait some reasonable period of time, and  
5     then there is no more accumulation of material,  
6     he is free to go.  Isn't that what happens?

7             A.    Yes.

8             Q.    Okay.  So there was some period of  
9     time?

10            A.    There was some period of time.  I  
11    don't remember.

12            Q.    There was no more accumulation of  
13    material in that period of time?

14            A.    Not that I recall.

15            Q.    Not that you recall.  So he was free  
16    to go?

17            A.    Correct.

18            Q.    All right.  Now, do you carry what  
19    is called hazardous material safety test strips?

20            A.    No.

21            Q.    Why not?

22            A.    It's not required.

23            Q.    How did you in fact know that was a  
24    hazardous material in there, in the box?  You  
25    didn't see it leaking from the tank where the



1 material was?

2 A. Correct.

3 Q. You just assumed that is where it  
4 came from?

5 A. I have a tank containing 1760. I  
6 have got a transfer pump that is hooked to that  
7 tank. That transfer pump isn't hooked to  
8 anything else. And I have liquid verified by  
9 the driver that it is the material that he is  
10 hauling and a corrosive hazardous material and I  
11 don't know enough about it for my safety.

12 Q. So you are telling me the driver  
13 told you that it was hazardous material?

14 A. He was hauling that stuff, correct.  
15 He said it was weed killer.

16 Q. Again you saw no evidence of leakage  
17 from the tank?

18 A. No.

19 Q. Now, there is a close-up in Exhibit  
20 7. You don't see a green cast on that?

21 A. I do not.

22 Q. Why wouldn't that have a green cast  
23 to it?

24 A. Diluted on the asphalt.

25 Q. Diluted by what?

1           A.    By space.

2           Q.    Now, the storage box, did you  
3 examine the box?

4           A.    Yes.

5           Q.    Outside of it. Did it appear to be  
6 water tight to you, or were there openings?

7           A.    It did not have openings. I looked  
8 at it to make sure the box was not leaking, and  
9 then went to the bolt which I watched the drip.

10          Q.    The drip did you see only after  
11 what period of time?

12          A.    I saw two drips while I was around  
13 the truck. I didn't stay there and watch it the  
14 whole time. I observed two drips.

15          Q.    Two drips?

16          A.    Yes.

17          Q.    Of whatever material was in the box?

18          A.    Correct.

19          Q.    Now, you have brought to the hearing  
20 two additional exhibits, 9 and 10, Exhibit 9  
21 being the bill of lading and Exhibit 10 being  
22 the material safety data sheet. Both of those  
23 documents as I understand were secured from  
24 Syngenta?

25          A.    Correct.

1           Q.    So you contacted Syngenta at what  
2 point?

3           A.    Approximately two weeks ago my  
4 partner called.

5           Q.    Excuse me?

6           A.    Approximate two weeks ago my partner  
7 called.

8           Q.    Your partner called?

9           A.    Yes.

10          Q.    Okay. You didn't call?

11          A.    No. I made a call. We played phone  
12 tag. I called the guy, he called me.

13          Q.    This was in anticipation of the  
14 hearing?

15          A.    Yes.

16          Q.    So, somebody decided we need a copy  
17 of the bill of lading, or you were going to call  
18 Syngenta, and you have the bill of lading  
19 number; correct?

20          A.    Yes.

21          Q.    So that is how you can get a copy of  
22 the bill of lading?

23          A.    Yes.

24          Q.    Did you make the call to Syngenta?

25          A.    No. My partner.

1 Q. Your partner is?

2 A. Scott Kiser.

3 Q. When you say partner what do you  
4 mean by that?

5 A. We work in the same office.

6 Q. Work?

7 A. Actually Hazmat Material Specialist  
8 too. Works for the PUCO. He is more hazmat  
9 certified than me.

10 Q. Okay. Do you do inspections  
11 together?

12 A. Yes.

13 Q. Was he present for this particular  
14 inspection?

15 A. No.

16 Q. Why not?

17 A. He works for the Highway Patrol.

18 Q. You worked for the Highway Patrol.  
19 I apologize for that. So there was no PUCO  
20 hazmat inspector at the scene?

21 A. Not that I recall.

22 Q. You said there was another officer  
23 there?

24 A. Yes.

25 Q. That is this gentleman here?

1 A. Yes.

2 Q. What was his function there?

3 A. He was doing inspections also. There  
4 are at times three or four inspectors there.  
5 We are all doing our own individual things.  
6 He finished his inspection.

7 Q. All right. So, you decide at some  
8 point prior to the hearing you need a copy of  
9 the bill of lading and material safety data  
10 sheet, and you got those through Syngenta.  
11 Scott made the call or you made the call?

12 A. Scott made the initial call. I  
13 made the call and Scott is the one that received  
14 the phone call.

15 Q. Anything contained in Exhibit 9, the  
16 bill of lading, that is inconsistent with the  
17 information you have from your inspection  
18 report?

19 A. The only thing that is inconsistent  
20 in my report is based on the bill of lading  
21 number, where on here it gives Syngenta's order  
22 number, not bill of lading, but the numbers  
23 coincide.

24 Q. Okay. But I mean as far as what  
25 the material was, origin, destination was all

1 consistent?

2 A. That I recall all matched to my  
3 report, yes.

4 Q. Now, when you were with the Patrol  
5 doing motor vehicle inspections and came across  
6 a hazmat situation did you have the ability to  
7 call for a PUCO hazmat specialist?

8 A. I could call if I needed the fire  
9 department, PUCO, if I had any need to.

10 Q. But have you called them?

11 A. I have called the fire department  
12 before.

13 Q. Did you make any calls this time?

14 A. No.

15 Q. Not that big of a deal; was it?

16 A. I thought I had the situation under  
17 control.

18 Q. Okay. You felt it was remedied when  
19 Mr. Updike used the absorbent pads to clean up  
20 the material?

21 A. Yes.

22 MR. PARRAM: Your Honor, could I  
23 have the last question reread?

24 (QUESTION READ)

25 MR. PARRAM: Thank you.

1           Q.    Let me just take a quick look at  
2           some of the pictures.   Exhibit 2, Staff Exhibit  
3           2, which is just merely the side of the vehicle;  
4           is that correct?

5           A.    Correct.   Make sure we have  
6           the proper vehicle, DOT number, that the proper  
7           person is on the report being inspected.

8           Q.    We talked about 3 and 4 and 5.   6 is  
9           again to identify the material according to the  
10          regulations; correct?

11          A.    That was --

12          Q.    And again you found that it was  
13          properly identified?

14          A.    Correct.

15          Q.    Again 7 is just a picture of the  
16          spot.   And 8 is the tractor license number?

17          A.    Yes.

18          Q.    And again that is for identification  
19          purposes only?

20          A.    Correct.

21          Q.    Now, on the material safety data  
22          sheet that you secured from Syngenta, you went  
23          through that with counsel and talked about some  
24          of the hazardous identification terms and  
25          mentioned bluish green liquid color and odor

1 characteristic is strong. What odor did you  
2 detect?

3 A. I personally did not get close  
4 enough. I saw the material and training was to  
5 back away and go from there.

6 Q. Well, how far away were you from the  
7 box?

8 A. The box I was next to.

9 Q. And you opened the box?

10 A. I opened the box, right.

11 Q. What did you see?

12 A. I saw the liquid and I backed off  
13 approximately five to ten feet if I recall  
14 correctly.

15 Q. All right. But when you opened the  
16 box you didn't sense any strong odor from  
17 the material?

18 A. Nothing at that time that I recall.

19 Q. Not that you recall. Nothing like  
20 sulfur or anything; right?

21 A. No.

22 Q. But, I mean, according to the  
23 material safety data sheet it says has strong  
24 characteristic of odor, but you don't recall any  
25 strong characteristic of odor emitting from the



1 box?

2 A. Correct.

3 Q. Take a look at Exhibit 3. Again a  
4 picture, close-up of the box.

5 A. Yes.

6 Q. Do you see the red strap, strap red  
7 in color?

8 A. Yes.

9 Q. And just to the immediate right of  
10 that is kind of white. Do you see that in the  
11 picture?

12 A. The aluminum color?

13 Q. No. Let me point it out to you.

14 MR. TURANO: May I approach the  
15 witness, Your Honor?

16 Q. This item here (indicating). Do you  
17 know what that is?

18 A. I do not.

19 ATTORNEY EXAMINER: What are you  
20 pointing to?

21 Q. It appears to be maybe a half inch  
22 wide strip of paper perhaps that is probably,  
23 what, four inches, maybe three or four inches.

24 You don't recall anything about  
25 that?

1           A.    No.

2           Q.    All right.  Correct me if I am  
3   wrong, but it appears that during the course of  
4   the inspection you did nothing other than talk  
5   to the driver to confirm what the material was  
6   in the box.  You did no testing?

7           A.    Correct.

8           Q.    You are going based on what the  
9   driver told you and what you observed and  
10   reading the bill of lading?

11          A.    Correct.

12          Q.    You did no independent sample of the  
13   pump or anything?

14          A.    No.

15          Q.    Again you didn't have access to a  
16   hazardous material strip?

17          A.    Correct.

18               MR. TURANO:  I have no other  
19   questions.

20               ATTORNEY EXAMINER:  Do you have any  
21   questions?

22               MR. PARRAM:  Just a couple  
23   questions, your Honor.

24               ATTORNEY EXAMINER:  Redirect.

25               REDIRECT EXAMINATION

1 By Mr. Parram:

2 Q. Mr. Turano asked you a question  
3 about if you observed liquid leaking from the  
4 tank into the transfer pump area. Do you recall  
5 that?

6 A. Yes.

7 Q. And you indicated that you didn't  
8 specifically see a leak from the tank to the  
9 transfer pump area.

10 A. Correct.

11 Q. But you did see a drip from the  
12 transfer pump area to the ground?

13 A. Correct.

14 Q. Okay. And the violation in this  
15 case is 173.24 (b)(1) which is release of  
16 hazardous material from a package; is that  
17 correct?

18 A. Correct.

19 Q. And is it your opinion that a  
20 dripping of hazardous material from the transfer  
21 pump area to the ground constitutes a release of  
22 hazardous material from the package?

23 A. Correct.

24 Q. And Mr. Turano asked you a question  
25 regarding the amount of gallons that were inside

1 of the transfer pump container. Do you remember  
2 that question?

3 A. Yes.

4 Q. Would you still have cited the  
5 Respondent under the same section if it was half  
6 a gallon within the transfer pump area?

7 A. That regulation reads any leaking  
8 from the package. It could be one drip leaking  
9 if the package is not secured.

10 Q. So, the amount of gallons within the  
11 transfer pump container is irrelevant to the  
12 violation in this case?

13 A. Correct.

14 MR. PARRAM: Okay. That is all I  
15 have, your Honor.

16 ATTORNEY EXAMINER: Any recross?

17 RECROSS-EXAMINATION

18 By Mr. Turano:

19 Q. But you designated the violation,  
20 the CFR regulation violation, that was your  
21 choice?

22 A. Yes.

23 Q. Okay. And you said you could see a  
24 leak from the package. What package are you  
25 talking about?

1           A.    The whole trailer package itself.

2           Q.    But you didn't see any leaking from  
3 the trailer?

4           A.    The trailer, the transfer pump is  
5 attached to the trailer. That material leaks  
6 somewhere, that material that is being hauled on  
7 that trailer is leaking, regardless where it's  
8 leaking from that hazardous material that is  
9 contained on that trailer is leaking.

10          Q.    Well, I hate to get into an  
11 argument, but you didn't see the source of  
12 the leak; did you?

13          A.    That is not my job.

14          Q.    It was not your job?

15          A.    I don't have to determine --

16               MR. PARRAM:  Objection, Your Honor.  
17 Now that is argument.

18               MR. TURANO:  He says there is a  
19 leak, but he observed no leak. There is no  
20 leakage from the trailer.

21               ATTORNEY EXAMINER:  Okay.

22          Q.    There was no leakage coming from the  
23 trailer. Can you answer that question?

24          A.    Okay. I did see leakage from the  
25 trailer.

1 Q. You saw leakage in the storage box?

2 A. Yes.

3 Q. An accumulation of material in that  
4 box?

5 A. Which is part of the trailer.

6 Q. You saw leakage from the trailer  
7 itself or leakage from the transfer pump?

8 A. No.

9 Q. Did you examine those?

10 A. No.

11 Q. You didn't examine the pump?

12 A. No. That is not my job.

13 Q. Not your job? You didn't care  
14 where the source of the leak was?

15 A. It is not my job to fix. I am not a  
16 mechanic. My job is to find the problem if  
17 there is a leaking package and it has to be  
18 taken care of.

19 Q. And your definition of the package  
20 is the trailer?

21 A. Correct.

22 Q. And transfer box?

23 A. Because the pump, okay, you have the  
24 transfer pump that is connected to the trailer  
25 somehow; correct?

1 Q. I understand that.

2 A. So that whole thing is the package.

3 MR. TURANO: No further questions.

4 ATTORNEY EXAMINER: You are  
5 excused. Do you have other witnesses?

6 MR. PARRAM: I have two more  
7 witnesses, your Honor, and I am probably done  
8 outside of Staff would like to reserve the right  
9 to call rebuttal witnesses if necessary. We  
10 have not made that determination yet, but I  
11 wanted to indicate that.

12 ATTORNEY EXAMINER: Yes, you can do  
13 that.

14 MR. PARRAM: And Staff would move  
15 the admission of Staff Exhibits 1 through 10,  
16 your Honor.

17 ATTORNEY EXAMINER: Those will be  
18 admitted into evidence at this time.

19 (EXHIBITS ADMITTED INTO EVIDENCE)

20 ATTORNEY EXAMINER: Call your next  
21 witness, please.

22 MR. PARRAM: Thank you, Your, Honor.  
23 Staff would like to call Inspector Doug Mowen to  
24 the stand.

25 (WITNESS SWORN)

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DOUGLAS MOWEN

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

DIRECT EXAMINATION

By Mr. Parram:

Q. Please state your name and spell  
your last name for the record.

A. Douglas Mowen, M-O-W-E-N.

Q. Mr. Mowen, what is your position?

A. I am a Motor Carrier Enforcement  
Officer with the Ohio State Highway Patrol.

Q. How long have you been in that  
position?

A. I have been doing that for a year  
and a half, year and six months.

Q. What are your duties?

A. Inspecting semis, buses, hazardous  
materials, tanker trucks. A lot of the same  
things that officer or Inspector Swartz said.

Q. And did you observe a hazardous  
material inspection that has been discussed at  
the hearing today that took place on November  
8th, 2013?

A. Yes, I did.



1           Q.    And what do you recall from that  
2           inspection?

3           A.    I had just finished an inspection of  
4           my own and pulled up to the scale house and  
5           Inspector Swartz called my name and said, hi,  
6           because at that point I had only been doing this  
7           about nine months, and said, hey, do you want to  
8           see a hazardous leak we have here.

9                     We do a lot, and for newer people,  
10           showing people different things they may see in  
11           the future to know what to kind of be looking  
12           for.

13                    So I walked over, the doors were  
14           open to the transfer pump box and there was  
15           greenish, bluish substance in the bottom, liquid  
16           I should say, in the bottom. And said, oh, wow,  
17           how did you catch that? He said see that spot  
18           down there? He saw it, or saw the spot on the  
19           ground so he opened this then saw the substance  
20           in the area.

21                    I said okay. We were standing there  
22           and it actually dripped. And the driver was  
23           standing right there and saw the drip too.

24                    And then, you know, because talking  
25           about it at the very moment. And it was my very

1 first hazardous inspection and I hadn't seen  
2 that before.

3 Q. And do you have the exhibits up  
4 there?

5 A. Yes.

6 Q. Now, on Staff Exhibit 1 if you could  
7 go down to the section, the third section down  
8 where it has Harrison scales. Do you see that?

9 A. Yes.

10 Q. Where are the Harrison scales?

11 A. It's on the Indiana-Ohio line about  
12 mile marker 2 scale house. And we do a lot of  
13 inspections there because you can do Level 1  
14 there and in a very safe area, not alongside  
15 the road. We can pull the truck around and do  
16 the inspections there.

17 Q. Okay. And it was the Harrison  
18 scales where you observed the inspection at  
19 issue here today?

20 A. Yes.

21 Q. And you indicated that you heard  
22 the driver say, yes, that is dripping?

23 A. The drip was coming from underneath.  
24 I mean, I saw it drip and come from underneath  
25 and hit the ground in the spot and he saw it.

1           Q.     Underneath the container that holds  
2     the transfer pump?

3           A.     Transfer box, correct.

4           Q.     Okay.     Do you remember seeing the  
5     driver clean it up?

6           A.     No.     Shortly thereafter I went back  
7     because I had more inspections I needed to get  
8     done that day myself.

9           Q.     Did you put gloves on?

10          A.     No.

11          Q.     Do you have the Staff exhibits, the  
12     photographs?

13          A.     Yes.

14          Q.     If you go to Staff Exhibit 3.     Does  
15     Exhibit 3 look like what you observed that day?

16          A.     Exactly what I saw, yes.

17          Q.     And Staff Exhibit 4.     Does that look  
18     like what you observed that day?

19          A.     Yes.

20          Q.     You didn't stay there; correct?

21          A.     No.     As I say shortly -- I mean, he  
22     showed it to me, I saw it, saw the drip then I  
23     had other things to do.     Kevin had things under  
24     control as far as I was concerned.

25          Q.     On Staff Exhibit 4 there is a spot

1 on the ground there. Do you see that?

2 A. Yes.

3 Q. Do you recall seeing that spot?

4 A. Yes.

5 Q. Do you recall seeing the dripping  
6 down from the transfer pump down?

7 A. Yes. Yes.

8 Q. Staff Exhibit 7, are you looking at  
9 that?

10 A. Yes.

11 Q. Do you recall seeing that?

12 A. Yes.

13 Q. Is that the same spot that you saw  
14 the drips coming down from?

15 A. Yes.

16 Q. The same spot that is in Staff  
17 Exhibit 4?

18 A. Yes.

19 MR. PARRAM: I have no other  
20 questions, your Honor.

21 ATTORNEY EXAMINER: Any cross?

22 MR. TURANO: Yes.

23 CROSS-EXAMINATION

24 By Mr. Turano:

25 Q. Officer Mowen, did you say that

1       Officer Swartz called you over to observe?

2               A.    Yes.  He didn't call to observe,  
3       just called me over to -- a lot of times with  
4       newer motor carrier officers, and I do it today,  
5       if I see something that is not the norm, you  
6       know, not another flat tire, maybe something  
7       different, call so if you experience it in the  
8       future if you ever run into something.

9               Q.    So you walked over there and  
10       observed the leakage and looked at the transfer  
11       box and you observed what we are seeing in  
12       Exhibit 3 and 4 essentially; correct?

13              A.    Yes.

14              Q.    Where was the driver at this point?

15              A.    He was standing right out too.

16              Q.    I understand.  By the box?

17              A.    Right out there with us, with Kevin.  
18       And when I walked over he was there as well.

19              Q.    All right.  And the material in  
20       there, Officer Swartz said maybe three or four  
21       gallons.  Was there that much?

22              A.    There was a lot, but I don't know  
23       how much was there.  I seen a heavy amount of  
24       liquid, that green-ish color when I looked in  
25       the box.  I wouldn't guess how much was in

1       there.

2               Q.     But you didn't do any cleaning up  
3       activities, just took a look and --

4               A.     As I said I saw it drip. If it kept  
5       dripping I couldn't say. I went back and  
6       started doing my thing.

7               Q.     You saw how many drips?

8               A.     I saw a trip.

9               Q.     A drip?

10              A.     I saw it drip. That is all, yes.

11              Q.     Drip?

12              A.     Right. It wasn't running.

13              Q.     What period of time were you there?

14              A.     Two or three minutes. Maybe more.  
15       I don't know.

16              Q.     But the drip appeared to be coming  
17       from the material?

18              A.     Underneath the box, correct.

19              Q.     Did you observe any other valves,  
20       anything else leaking during the inspection?

21              A.     No. I didn't do an inspection. I  
22       looked at what he was showing me.

23              Q.     Okay. And do you know for a fact  
24       what material was in this box?

25              A.     No.

1 Q. Okay.

2 A. No.

3 Q. You don't know what material --

4 A. He told me it was a hazmat leak is  
5 what he told me. I went to look at it.

6 MR. TURANO: Those are all  
7 the questions I have.

8 ATTORNEY EXAMINER: Any redirect?

9 MR. PARRAM: No, your Honor.

10 ATTORNEY EXAMINER: You are excused.  
11 Do you have other witnesses?

12 MR. PARRAM: Can we go off the  
13 record a second, your Honor?

14 ATTORNEY EXAMINER: You may.

15 (DISCUSSION OFF THE RECORD)

16 ATTORNEY EXAMINER: Mr. Parram.

17 MR. PARRAM: Your Honor, Staff would  
18 like to call Jonathan Frye to the stand

19 (WITNESS SWORN)

20 - - -

21 JOHATHAN FRYE

22 called as a witness on behalf of the State,  
23 being first duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 By Mr. Parram:

1           Q.    Please state your name for the  
2    record.

3           A.    Jonathan Frye, F-R-Y-E

4           Q.    And by whom are you employed?

5           A.    Public Utilities Commission of Ohio,  
6    Transportation Department.

7           Q.    How long have you been in that  
8    position?

9           A.    Approximately 20 years.

10          Q.    What are your duties at the PUCO?

11          A.    To review the work product of  
12    employees to assure that the fines are assessed  
13    correctly.

14          Q.    And can you explain how forfeiture  
15    amounts are determined in hazmat cases just  
16    generally?

17          A.    Sure. The violations are uploaded  
18    in our system. We utilize a matrix chart where  
19    we assign a violation to the type of violation  
20    that is discovered. And we also factor in  
21    hazmat that is being transported as well as  
22    the amount of material that is transported.  
23    And we use those numbers to make a determination  
24    of how much the fine should be.

25          Q.    And that is the process used in



1 every hazmat case?

2 A. Yes.

3 Q. You use the same process every time?

4 A. That's correct.

5 Q. And is that the process used  
6 uniformly through all Staff members?

7 A. That's correct.

8 Q. And the process is applied uniformly  
9 on all carriers?

10 A. That's correct.

11 Q. Okay. And as far as you are aware  
12 how long has the Commission applied this  
13 process?

14 A. For at least the past 20 years.

15 Q. As long as you have been around?

16 A. Yes.

17 Q. All right. And are you aware if a  
18 Notice of Preliminary Determination was -- what  
19 is a Notice of Preliminary Determination first  
20 of all?

21 A. The carrier, the respondent, they  
22 make a request for a conference to discuss the  
23 case. In the event that we are unable to reach  
24 a resolution of the case our department will  
25 issue a Notice of Preliminary Determination

1 which is to allow the Respondent to proceed to  
2 the next level to contest the violation.

3 Q. And in your role you either draft  
4 the Notice of Preliminary Determination or  
5 review them or supervise others that issue those  
6 Notices of Preliminary Determination?

7 A. That's correct, yes.

8 Q. And are you aware if a Notice of  
9 Preliminary Determination was issued in this  
10 particular case?

11 A. Yes, it was.

12 MR. PARRAM: Your Honor, I would  
13 like to have marked as Staff Exhibit 11 the  
14 Notice of Preliminary Determination dated March  
15 19th, 2014.

16 ATTORNEY EXAMINER: So marked.

17 (EXHIBIT HEREBY MARKED FOR  
18 IDENTIFICATION PURPOSES)

19 Q. Mr. Frye, what is Staff Exhibit 11?

20 A. It is the Notice of Preliminary  
21 Determination that was issued on Case No.  
22 OH3280005035C.

23 Q. And the forfeiture violation at  
24 issue in this case is what violation?

25 A. Release of hazardous material from a

1 package.

2 Q. And what was the forfeiture amount  
3 indicated on Staff Exhibit 11?

4 A. \$1,600.

5 Q. Before we get to that, was Staff  
6 Exhibit 11 prepared by you or under your  
7 direction?

8 A. That's correct.

9 Q. And this is a document that  
10 the Commission keeps as a record?

11 A. Yes.

12 Q. And to your understanding it's kept  
13 in the usual course of business?

14 A. Yes.

15 Q. And is the forfeiture amount in  
16 Staff Exhibit 11 the correct forfeiture amount?

17 A. It's incorrect.

18 Q. Could you explain why?

19 A. Yes. There are several factors that  
20 we take into consideration when we are doing an  
21 assessment. One of the factors that we take  
22 into consideration is the amount of material  
23 that is being transported.

24 In this particular case the  
25 compliance officer imputed the wrong amount for

1 the amount of material that is being  
2 transported. She utilized a 1 when in fact it  
3 should be a .6. And as a result the violation  
4 was over-assessed.

5 Q. When you say the amount, the amount  
6 of what?

7 A. The amount of hazardous material  
8 being transported. The wrong numerical amount  
9 was used by the compliance officer.

10 Q. Okay. What was the amount of  
11 hazardous material being transported?

12 A. The amount was I think approximately  
13 31,000 pounds. And anything greater than 35,000  
14 pounds should be a numerical value of 1.  
15 Anything less -- anything greater than 10,000  
16 but less than 35,000 should be a numerical value  
17 of a .6.

18 Q. Okay. So because what was being  
19 transported here was less than 35,000 it should  
20 be .6?

21 A. That's correct.

22 Q. If that change would be made, or  
23 correction, what would be the recommended  
24 forfeiture amount?

25 A. \$1,200.

1 MR. PARRAM: And, your Honor, may I  
2 have marked as Staff Exhibit 12 a Hazmat  
3 Assessment Worksheet?

4 ATTORNEY EXAMINER: You may.

5 (EXHIBIT HEREBY MARKED FOR  
6 IDENTIFICATION PURPOSES)

7 MR. PARRAM: May I approach?

8 ATTORNEY EXAMINER: You may.

9 Q. Mr. Frye, do you have Staff Exhibit  
10 12 in front of you?

11 A. Yes.

12 Q. What is Staff Exhibit 12?

13 A. It is the hazmat assessment  
14 worksheet.

15 Q. And the specific hazmat assessment  
16 worksheet that was prepared regarding this case?

17 A. That's correct, yes.

18 Q. And does this hazmat worksheet  
19 indicate the 1,600 amount?

20 A. Yes, it does.

21 Q. Does this Staff Exhibit 12 indicate  
22 the amount of material calculation that you were  
23 previously discussing?

24 A. Yes. In the square box it says  
25 Assessment Details, and in that box it has the

1 amount of material on the left side of the box,  
2 but within the side box it says amount of  
3 material assessed as 1.

4 Q. And you are satisfied that the 1.  
5 should be assessed at .6?

6 A. .6.

7 Q. Okay. That would be the only change  
8 in this calculation; correct?

9 A. That's correct.

10 Q. And the way the calculation works is  
11 that after you have the amount of material,  
12 which should be a .6 in this case, you apply  
13 that to or add that to another portion?

14 A. Right. Yes. There are three issues  
15 that we typically look at. The amount of  
16 material, which should be .6, and we also look  
17 at the material hazard. And in this case the  
18 material hazard was, according to the chart that  
19 we use, come up with .6.

20 So those two numbers are added  
21 together and come up to a 1.2.

22 Q. Okay. And for the material hazard  
23 how is that determined? What will be the  
24 designation? What specifically says this  
25 particular material would be .6?

1           A.    We have a hazmat chart, and based  
2           upon a variety of hazmat that can be  
3           transported. So, there was a corrosive  
4           material, on our chart we have a spot that will  
5           appoint the valve for corrosive. Something that  
6           was flammable has a higher point value or  
7           something was radioactive would be even higher.  
8           And it's based on the severity of hazmat that  
9           has been transported.

10          Q.    Since you mentioned the chart, that  
11          is the chart that addresses the material, hazmat  
12          designation, what level for the amount of  
13          material and also addresses certain levels of  
14          gravity of violation?

15          A.    Right, exactly. Based upon the type  
16          of violation that is discovered we will also  
17          assess a point value to that point as well.  
18          And then Staff Exhibit 12 within that box there  
19          is a gravity section and it's based upon  
20          the type of violation that is discovered.

21                   In this particular case it received  
22          a 10 point value because we considered the  
23          release of hazmat into the environment a severe  
24          violation.

25          Q.    You said the civil forfeiture

1 formula specifically designates that as severe?

2 A. Very severe violation.

3 Q. Specifically that 10.00?

4 A. That's correct.

5 Q. And 10.00 is also listed on Staff  
6 Exhibit 12?

7 A. That's correct.

8 Q. Okay. And so the formula applies  
9 the amount of material and adds the specific  
10 material hazard?

11 A. That's correct.

12 Q. And then at that point there is  
13 multiplication regarding what the gravity is?

14 A. That's correct. So the 1.2 gets  
15 multiplied by a gravity, and in this case it's a  
16 10, which would bring the total amount,  
17 numerical amount, to a 12.

18 Q. Then that 12 should have been a 12  
19 here. Then ultimately how did you get to  
20 \$1,200?

21 A. That numerical value of 12 gets  
22 multiplied by a standard dollar amount of \$100.  
23 That is consistent with any hazmat violation,  
24 \$100 multiplier, so 12 times \$100 comes up to  
25 \$1,200.



1           Q.    All right.  And \$1,200 is what the  
2   forfeiture should have been in this case?

3           A.    That's correct.

4           Q.    And when you say \$100 is the base  
5   amount, that is the same base amount that is  
6   applied in all cases?

7           A.    That's correct.

8                   MR. PARRAM:  Okay.  And since we  
9   already discussed it, your Honor, if I could  
10   have marked the Civil Forfeiture Violations  
11   Chart as Staff Exhibit 13.

12                   ATTORNEY EXAMINER:  You may.  So  
13   marked.

14                   (EXHIBIT MARKED FOR THE PURPOSE OF  
15   IDENTIFICATION)

16           Q.    Mr. Frye, what is Staff Exhibit 13?

17           A.    It is the Civil Forfeiture  
18   Violations Chart.

19           Q.    And is this a document typically  
20   used by the Commission Staff in hazmat or civil  
21   forfeiture cases?

22           A.    Yes.

23           Q.    And is this document also kept in  
24   the ordinary course of business?

25           A.    Yes.

1           Q.    And is it a Commission record that  
2   the Commission maintains?

3           A.    Yes.

4           Q.    And how long has the Commission used  
5   this particular chart?

6           A.    For at least the past 20 years.

7           Q.    And is the same chart used in every  
8   single case?

9           A.    That's correct.

10          Q.    Now, on the first page of Staff  
11   Exhibit 13 the very top says "Leaking Container  
12   Violations 10 points." And it says "Package  
13   valves and closures not securely closed."

14                So 10 points for leaking containers.  
15   Is that the section that was applicable here?

16          A.    Yes. That's correct.

17          Q.    Okay. If you go to page 4 of Staff  
18   Exhibit 13.

19          A.    Yes.

20          Q.    Are you with me? At the top of the  
21   document in the box Material Hazard Chart. How  
22   did this particular chart apply in this case?

23          A.    The inspector or inspection report  
24   indicated that the product that was being  
25   transported was a Class 8 material. If you go

1 to the point section under .9, to the right of  
2 .9 you will see a Class 8, corrosive, that was  
3 being transported.

4 So the initial starting point for a  
5 Class 8 should have received a 9 point value.  
6 But also there is a point multiplier on page 4  
7 and it says this is a Package Group 3, then  
8 subtract .3 from the point value.

9 So in this particular case we start  
10 off with a point 9 and we modify based upon  
11 the packing group, which is minus a 3, .3, which  
12 takes our value down to a .6 for material hazard  
13 that is being transported.

14 Q. And the box Hazardous Amount Chart,  
15 how was hazardous amount chart applied in this  
16 case?

17 A. Yes. In the beginning on the  
18 Driver/vehicle Examination Report the officer  
19 had indicated that the amount of material that  
20 was being transported was a little over 31,000  
21 pounds of material. Looking at the chart it  
22 indicates that amounts between 10,000 and 34,999  
23 should receive a point value of .6.

24 Q. And do you have Staff Exhibit 1 up  
25 there?

1 A. Yes.

2 Q. If you go to Staff Exhibit 1 all the  
3 way to the bottom of the document on page 1 it  
4 has locally defined fields.

5 A. Yes.

6 Q. On the right-hand side there is a  
7 section that says gross weight.

8 A. Yes.

9 Q. And three is 31,980.

10 A. That's correct.

11 Q. So that is the pounds, the weight,  
12 that should be put into the hazardous amount  
13 chart; correct?

14 A. That's correct.

15 Q. And putting that in the hazardous  
16 amount chart you should come to .6?

17 A. That's correct.

18 Q. Because it is between 10,000 and  
19 34,999?

20 A. That's correct.

21 Q. Okay. And so using the material  
22 hazard chart, hazardous amount chart, and the  
23 nature and gravity points on page 1 of Staff  
24 Exhibit 13 you will ultimately come up with the  
25 12?

1           A.     That's correct.

2           Q.     And then 12 multiplied by base  
3     amount which you indicated was 100?

4           A.     That's correct.

5           Q.     And then ultimately lead to  
6     forfeiture amount of \$1,200?

7           A.     That's correct.

8           Q.     Okay.  So just to tie everything  
9     together here, what is Staff's recommendation as  
10    relates to the forfeiture amount in this case?

11          A.     \$1,200.

12          Q.     Does Staff believe that forfeiture  
13    amount is reasonable?

14          A.     Yes.

15          Q.     Does staff believe the forfeiture  
16    amount is consistent with the formula used in  
17    every single civil forfeiture case?

18          A.     That's correct.

19                 MR. PARRAM:  Your Honor, that is all  
20    the questions I have.

21                 ATTORNEY EXAMINER:  Do you have any  
22    questions?

23                 MR. TURANO:  Just a couple  
24    questions, your Honor.

25                         CROSS-EXAMINATION

1 By Mr. Turano:

2 Q. Mr. Frye, basically what you  
3 clarified is an error in the original forfeiture  
4 amount; correct?

5 A. That's correct.

6 Q. Okay. Which in fact reduces the  
7 forfeiture from 1,600 to 1,200 using the matrix  
8 system?

9 A. That's correct.

10 Q. All right. Now, looking at Exhibit  
11 12, Staff Exhibit 12, and you indicated that you  
12 assigned a value of 10 for the gravity which is  
13 the most or highest number you get; correct?

14 A. Yes.

15 Q. Highest point total, and is that  
16 based on release of material?

17 A. Yes. That is based upon the release  
18 of material into the environment.

19 Q. And is that regardless of amount?

20 A. Yes. Regardless of amount.

21 Q. So if we have a drip it's as bad as  
22 if we have a major spill?

23 A. Yes. That is the starting point.  
24 If there is a major spill then there is an  
25 extent that is listed. Take a look at Staff

1 Exhibit 12. There is an extent box that can be  
2 utilized if there is a major spill.

3 Q. Okay. There is zero extent box,  
4 zero actual harm. Respondent history there is  
5 1. How do you get 1?

6 A. There is a -- 1 is our base level.  
7 For any carrier, the carrier has a history of  
8 violations. In order to qualify -- well, in  
9 order to qualify for a history a carrier would  
10 have to have more than 25 or more inspections  
11 during a year. If they don't meet that criteria  
12 their history automatically defaults to 1 which  
13 means that the dollar amount that we come up  
14 with gets multiplied by 1.

15 The carrier's history, if their  
16 history ranking is at the bottom five percent  
17 their history would be a 4. The violation would  
18 go out at 4 times the dollar amount.

19 So if the carrier had a history of 4  
20 the dollar amount would have gone out as \$4,800.  
21 But since they don't have a history it's a one  
22 multiplier and it goes out with a base amount of  
23 \$1,200.

24 Q. So that is the starting point.  
25 Start with 1?

1           A.    Yes.  But we also reward carriers  
2   who, for certain types of violations, more in  
3   the top five percent, we reward them by having a  
4   multiplier of zero.  So some carriers based upon  
5   the type of violations would not receive a fine  
6   at all.

7           Q.    And your I guess position is to  
8   really review these reports with your staff and  
9   to determine the appropriate amount of  
10  forfeiture that is involved then begin the  
11  process?

12          A.    That's correct.

13          MR. TURANO:  I have no further  
14  questions.

15          ATTORNEY EXAMINER:  Redirect?

16          MR. PARRAM:  No, your Honor.

17          ATTORNEY EXAMINER:  You are excused.

18   Let's at this point take a 15-minute break to  
19   give Mike a chance to get a drink of water.  
20   And we will be back in 15 minutes.

21                (RECESS TAKEN)

22          ATTORNEY EXAMINER:  Back on the  
23  record.

24          MR. PARRAM:  Your Honor, we have no  
25  other witnesses.



1                   ATTORNEY EXAMINER: Are you ready to  
2 proceed with Respondent's side of the case?

3                   MR. TURANO: Your Honor, we will  
4 call our first witness. Mr. Updike.

5                   (WITNESS SWORN)

6                   MR. PARRAM: I can't remember if I  
7 moved for the admission of Staff Exhibits 11  
8 through 13. I wasn't sure.

9                   MR. TURANO: No objection.

10                  ATTORNEY EXAMINER: Let's proceed.

11                                 - - -

12                                 ROBERT UPDIKE  
13 called as a witness on behalf of the Respondent,  
14 being first duly sworn, testified as follows:

15                                 DIRECT EXAMINATION

16 By Mr. Turano:

17                   Q. Sir, please state your name for  
18 the record and spell your last name.

19                   A. Robert Bret Updike, U-P-D-I-K-E.

20                   Q. Mr. Updike, would you give us your  
21 business address?

22                   A. Business address would be 3772 Old  
23 Oxford Road, Hamilton, Ohio 45013.

24                   Q. And, Mr. Updike, where are you  
25 employed?

1           A.    Larry Miller Trucking.

2           Q.    Okay.  And do you also have a  
3           position or association with Stony Run  
4           Enterprises?

5           A.    I am safety director.

6           Q.    What is the relationship between  
7           Stony Run Enterprises and Larry Miller Trucking?

8           A.    Stony Run Enterprises is the one  
9           that has all the rights and authority, and then  
10          Larry Miller Trucking is leased to Stony Run  
11          Enterprises.

12          Q.    Now, you have been present in the  
13          hearing room throughout the proceeding today?

14          A.    Yes, sir.

15          Q.    And you heard the testimony?

16          A.    Yes, sir.

17          Q.    Mr. Updike, you have copies of all  
18          the exhibits, I believe, in front of you?

19          A.    Yes, sir.

20          Q.    Okay.  Staff Exhibit 1, the  
21          Driver/vehicle Examination Report, it mentions  
22          here the driver of the vehicle was Robert B.  
23          Updike.  Was that you?

24          A.    Yes, sir.

25          Q.    All right.  So in fact you were

1 driving the vehicle on the date in question?

2 A. That's correct, sir.

3 Q. Tell us about how your day began and  
4 to the point of the inspection.

5 A. Arrived at work, inspected the  
6 truck. Drove to Greensburg, Indiana which they  
7 loaded me there.

8 Upon the return trip crossing back  
9 over into Ohio at the scales I was directed to  
10 go around back. And that is where I met Officer  
11 Swartz.

12 Q. Now, Greensburg, Indiana is  
13 the loading point?

14 A. That is correct.

15 Q. And who is the shipper there?

16 A. Syngenta.

17 Q. And you were there to pick up a load  
18 of material?

19 A. That's correct.

20 Q. What was the material?

21 A. Gramoxone SL 2.0.

22 Q. Now, according to this Exhibit 1 it  
23 says the origin was Greensburg, Indiana,  
24 destination Trenton, North Carolina. Was it  
25 your intent to travel to Trenton, North

1 Carolina?

2 A. No, sir. What I was doing was  
3 loading that because we had a driver that was  
4 coming in off his break. We loaded the trailer,  
5 on the way back to the terminal and which once  
6 it got to his time when he needed to leave then  
7 he would take the load on down.

8 Q. Take us through the inspection. You  
9 were directed to the area adjacent to the  
10 scales.

11 A. That's correct.

12 Q. What happened?

13 A. Pulled right in just past the scale  
14 house, almost right back towards the road, and  
15 Officer Swartz pulled up beside me in the  
16 vehicle. So he was right beside my driver's  
17 door.

18 There was also other I believe, if I  
19 remember correctly, another DOT officer, which I  
20 do not remember seeing out of the vehicle, I  
21 know he was in that vehicle, which might have  
22 been in and out, because I was with him. But,  
23 as far as I remember he was in the vehicle just  
24 kind of just to my left.

25 Q. And did officer Swartz proceed to

1 tell you he was going to do an inspection?

2 A. Yes. He was very friendly, nice,  
3 proceeded to tell me he was going to do a Level  
4 1. So Level 1 I know, been through quite a few  
5 times. I know to get the log books, my permit  
6 books, your medical card, my license. Got all  
7 that ready.

8 And then needed to get  
9 the registration off of the trailer. So got  
10 out, I do not remember which side, driver's side  
11 or passenger's side, but proceeded to go get  
12 that and brought them back to give to Mr.  
13 Swartz, which I believe was in his car at the  
14 time, but I am not going to swear to that.

15 Gave him those and then went to do  
16 his paperwork in the car.

17 Q. And what did you do at that point?

18 A. Sat in the driver's seat.

19 Q. You got back in the cab?

20 A. Got back in the cab.

21 Q. And then Officer Swartz testified  
22 that inspections take about an hour. Is that  
23 your experience?

24 A. Usually an hour, hour and a half  
25 average.

1 Q. So he proceeded to do an inspection.

2 First take the documentation, driver

3 qualifications material?

4 A. Correct.

5 Q. Then he proceeded to inspect the

6 equipment?

7 A. Correct.

8 Q. All right. And then in the mean

9 time you were just in the cab?

10 A. Sat there and waiting patiently and

11 be observant.

12 Q. What happened next?

13 A. Once he finished up his paperwork I

14 believe he come around and started to go around

15 the truck to check the lights and brakes. And

16 then somewhere along the line when he was in

17 that he came back up to the truck and asked me

18 what I was hauling. And I may have told him

19 Gramoxone, and I don't remember if he asked was

20 the color green, or if he asked what color, but

21 I did say it was green. And then that was the

22 point he said we need to go back to the back.

23 Q. So you got out of the tractor at

24 that point?

25 A. Got out of the tractor and went

1 around to the passenger side and went back to  
2 the meter box.

3 Q. And the meter box is toward the rear  
4 of the trailer?

5 A. It is right in front of the rear  
6 axle, correct.

7 Q. And tell us about the meter box.  
8 What is it there for, what does it do?

9 A. The meter box was designed to house  
10 the hydraulic pump, the air eliminator, the  
11 meter, is all in there. And it's designed that  
12 if anything was ever to leak or whatever you  
13 have a catch basin, you have a containment area.

14 So the box is also designed, can't  
15 quite see it in the picture, right where the  
16 liquid they claim was, material, there is a  
17 little valve on the outside that you can  
18 actually drain into a bucket, so if there is a  
19 spill we can drain that the proper way and still  
20 contain everything. Or you can use the  
21 absorbent pads and dispose of them properly.

22 Q. Now, when you went to the back of  
23 the trailer over to the area in question with  
24 Officer Swartz, what did you observe?

25 A. There was a small amount of greenish

1 liquid which would be in the right rear corner.

2 Q. Did you detect any odor?

3 A. No.

4 Q. Do you know what Gramoxone smells  
5 like?

6 A. Yes. It's as very strong pungent  
7 odor I do not like.

8 Q. Did you smell odor when you went to  
9 the back of the truck?

10 A. Not to my recollection, no.

11 Q. Now, let's go to some of these  
12 pictures. Do you have those?

13 A. Yes.

14 Q. They are all marked. Exhibit 2 is  
15 just the markings on your tractor; is that  
16 correct.

17 A. That's correct.

18 Q. Exhibit 3 and Exhibit 4 are I guess  
19 similar shots, different shot of the same  
20 situation. But perhaps you can explain for  
21 the Examiner and for the record what all this  
22 configuration shows with a little bit more  
23 clarity.

24 Let's start with the Exhibit 4  
25 because that is a farther back shot, more view.



1 Let's start over on the far left going to the  
2 right. There is a blue device there.

3 A. That is air eliminator.

4 Q. Excuse me?

5 A. Air eliminator.

6 Q. What does the air eliminator do?

7 A. It is designed to take out any air,  
8 because the meter is designed to actually shut  
9 them off. That way it does not register any air  
10 when pumping product out for the customer.

11 Q. Let's go to there is a red strap.

12 A. That is just an orange safety strap  
13 to put around the hose in the areas you are  
14 pumping over. That way there is no chance of it  
15 falling and discharging.

16 Q. And next going towards the right,  
17 the blue and silver devise, what is that?

18 A. The blue devise is the electronic  
19 part of the meter which goes through and puts in  
20 all the different calibrations of what product  
21 you have and how -- you would think to meter  
22 water and the same product would be similar, but  
23 it's not. It all depends on the gravity, and I  
24 am not a scientist, but it does change.

25 Q. Now to the right, what is that?

1           A.     That is an electronic air valve.  
2     You see there is black and red on the top.     It  
3     will rotate and goes to green which lets the  
4     driver know the valve is open and operating,  
5     and which the meter has to be running.

6                     Then if you look above that meter  
7     head there is a little silver, little gray box  
8     there.     If you don't have paper in the printer  
9     this thing will not work.

10           Q.     And what is to the right of that,  
11     the red hose?

12           A.     The red hoses, see the valve is  
13     almost kind of cut off.     Those are to blow the  
14     lines out so you don't leave 3, 5 gallons in  
15     each hose.     In other words, when you are done  
16     bumping there is a red line there.     We blow to  
17     the customer then close this valve then bleed  
18     that back out so we don't have pressure.

19                     Then also there is another air line  
20     here.     We blow product all the way back so the  
21     trailer is not going down the road with product  
22     in the lines.

23           Q.     Now, is this configuration used for  
24     delivery of product?

25           A.     Yes, sir.

1           Q.    So the valve there at the far right  
2 is where the product comes out?

3           A.    Correct. Right there.

4           Q.    For delivery?

5           A.    It has got a little wire hanging  
6 down there. You hook to the customer's tank and  
7 meter over the appropriate amount.

8           Q.    Are these devices unique to your  
9 company, or are they common to the industry, if  
10 you know?

11          A.    There are other companies that do  
12 use them as well. There is a similar device  
13 that is used in the oil industry. So, there is  
14 a lot of them out there.

15          Q.    Now, both Exhibit 3 and Exhibit 4  
16 there appears to be an accumulation of some  
17 material in the bottom of the box. Do you see  
18 that?

19          A.    Yes, sir.

20          Q.    That seems to be the issue today.  
21 And it seems to have a greenish color. Did you  
22 observe that material?

23          A.    Yes, sir.

24          Q.    And what was the discussion between  
25 you and Officer Swartz at that time?

1           A.    When we returned back there and he  
2           asked about the greenish material and I  
3           basically started to proceed to tell him what  
4           the box was designed for, designed to catch any  
5           drips or any leaks or anything like that.   And  
6           pretty much left it at that.

7           Q.    Do you see and the hear  
8           the testimony about this spot on the ground  
9           which is shown both in 3 and 4 and apparently  
10          blow-up, a little closer view of it in Exhibit  
11          7. Do you see that?

12          A.    Yes, sir.

13          Q.    Did you see that spot? When did you  
14          first observe that?

15          A.    I observed that when Officer Swartz  
16          took me back there and showed me.

17          Q.    Did he point it out to you?

18          A.    He pointed it out to me.

19          Q.    And did you observe any material  
20          leaking from the box to the ground?

21          A.    I did not actually see any leaks.  
22          After I explained also what the box was used for  
23          I explained to him that the Gramoxone was weed  
24          killer, it is used to spray on fields, even on  
25          different products. All the time to me, not a

1 corrosive, it will burn you, but it's used all  
2 the time on food products.

3 Q. So you saw some material. What  
4 happened next?

5 A. I asked if he wanted me to clean it  
6 up. First he said yes. Then he asked me to  
7 hold for little bit so I went back to the truck.  
8 And I do believe he took pictures. And then  
9 after he got done with that he told me I could.

10 I came back, I put my safety glasses  
11 on and put some rubber gloves on and used three  
12 or possibly four of those absorbent pads which  
13 you see in the picture. As a matter of fact  
14 they are on top of the cabinet, there is one  
15 laying there.

16 Q. Wait a minute. Referring to the  
17 picture, referring to Exhibit 4?

18 A. Exhibit 4.

19 Q. Okay. And where are these absorbent  
20 pads?

21 A. There is one laying on the top of  
22 the box in the right corner of the pictures.  
23 And there is also one laying between the air  
24 valve at the meter head. It's because I started  
25 to do it and Officer Swartz held me up because

1 he wanted to take pictures.

2 Q. Okay. All right. So proceed.

3 A. So after he does his pictures he  
4 told me to go ahead. And if you look on Exhibit  
5 4, right above the product valve there is a red  
6 line. If you look real hard to the right there  
7 is like a little white area. What that is is a  
8 one gallon jug like a Rotella container and they  
9 are cleaned and cut the tops out of them. It  
10 stays there and slides around. It's hard to  
11 see, I am not going to lie. But, you can see  
12 it. It's a one-gallon jug. I wanted to point  
13 that out to you.

14 MR. PARRAM: Do you mind pointing  
15 that out?

16 Q. Exhibit 4.

17 A. It's Exhibit 4. Hard to see. It's  
18 right here. It's in the dark. Just a  
19 one-gallon oil jug laid on its side that has the  
20 top out of it. Sets right underneath the hose.

21 If anything drips the pads goes into  
22 that. Usually absorbent pads in the bottom.  
23 And showed him that as well.

24 It is hard to see, but right here.  
25 Usually sits right here and if it drips put the

1 pad in there. And that is what it's used for to  
2 put the three or four absorbent pads.

3 Q. How long would it take you to do  
4 that process?

5 A. Three to five minutes. Wasn't very  
6 long.

7 Q. What happened at that point?

8 A. I went back up to the truck, and if  
9 I remember once we looked, finished the  
10 inspections and we did the brake check and the  
11 slack adjusters and everything else, if I  
12 remember correctly, but it was a few minutes he  
13 was doing something, but I do not remember what.

14 Q. And so there was a period of time  
15 after you completed cleaning that up using the  
16 absorbent pads in the box; correct?

17 A. Correct.

18 Q. And did you look at that box again  
19 afterwards?

20 A. I did before he left because once I  
21 got done with everything I asked Officer Swartz,  
22 he said sign this and everything was done and,  
23 yes, it was clean. So I signed that and then  
24 went back to the terminal.

25 Q. Now, there is a question here about

1 the material. Obviously you have seen the  
2 material. It's --

3 A. Very dark, dark green.

4 Q. Not like this picture?

5 A. A lot darker.

6 Q. As there is a distinct odor to it?

7 A. Yes.

8 Q. What is your explanation as to what  
9 that material would have been then?

10 A. I didn't think of it. I was kind of  
11 shocked, wasn't expecting it. When the truck  
12 got back I talked to him, he was running in the  
13 rain, which I can see. If you look to the right  
14 there is a black hose behind the red hose, and  
15 actually two of them as you go down between  
16 there and hydraulic lines going to the dry pump.

17 They run right in front of that box,  
18 which probably two and a half, 3 inch hole going  
19 through each one of them, and it runs all the  
20 way to the front of the trailer which we hook up  
21 from the tractor, when we go to unload, which is  
22 the only time they are hooked is unloading,  
23 otherwise they are capped off and put back in  
24 the truck and trailer and just stays there.

25 So, rain water could get on them,



1       yes. You have a return line and pressure line  
2       basically is what that is.

3               Q.     Now, did you examine all the valves  
4       on the trailer? I mean, could you determine  
5       there was actually a leak of material coming  
6       from the tanker itself?

7               A.     I did not see any leaks present.  
8       Even the pictures of the bolts and --

9               Q.     Wait just a second. Referring to  
10      Exhibit No. 5?

11              A.     Exhibit No. 5. Once I got back to  
12      the terminal I took them totally apart. We used  
13      silicone base and then we completely redid them.  
14      That way there isn't any chance of any leaks.  
15      It's taken care of.

16              Q.     Now, your testimony is the vehicle  
17      was not placed out of service? You are familiar  
18      with the term out of service?

19              A.     I thought it said here. That is  
20      why --

21              Q.     Referring to Staff Exhibit 1?

22              A.     Staff Exhibit 1. I am trying to  
23      remember if it said on here. But I know I went  
24      up and asked him and he said you are done, sign  
25      here and go.

1           Q.    You weren't advised that you were  
2 put out of service?

3           A.    No.

4           Q.    Following the inspection?

5           A.    And even put -- they put a -- I  
6 can't think of the initials on the sticker that  
7 is on the window of the tractor was good. And  
8 he said the only reason I didn't get that was  
9 because of the liquid coming from the trailer,  
10 but everything was good.

11          Q.    How far were you from the terminal  
12 at this point?

13          A.    Let's see. From the line to the  
14 terminal is right around 29 or 30 miles. So we  
15 are basically 27 miles from the terminal.

16          Q.    Okay. So, you proceeded to go back  
17 to the terminal?

18          A.    Correct.

19          Q.    And then you did the items you  
20 talked about?

21          A.    Correct.

22          Q.    And you found no leakage in the  
23 container itself?

24          A.    Correct.

25          Q.    Now, Exhibit 7, which is the spot,

1 close-up of the spot on the ground, you say that  
2 you didn't know it was there until it was  
3 pointed out to you by Officer Swartz?

4 A. That is correct.

5 Q. But again you did not see it  
6 dripping in that box onto the ground?

7 A. Not a drip, but he did point that  
8 out.

9 Q. And did you observe the color of it?

10 A. I did.

11 Q. Green color?

12 A. Not on this exhibit, no. On Exhibit  
13 7.

14 Q. Now, you say your position is Safety  
15 Director for the company?

16 A. Yes, sir.

17 Q. And what do you do as Safety  
18 Director?

19 A. Ensure we do the background check on  
20 hiring, we have hazmat training, we don't drink,  
21 we have phone call policy. About two days of  
22 movies and different tests they all do. They do  
23 a written exam. Also have called a straight  
24 truck that has two compartments. I take each  
25 individual and they learn how to transfer water

1 from one to the other, safety device using  
2 water. They actually physically do that all day  
3 long where they know how to transfer from one  
4 place to the other. And if there is any  
5 incidents they get wet. So it's physically  
6 doing it.

7 Q. Do you have a specific educational  
8 background in hazardous materials handling,  
9 certifications of any type?

10 A. Yes. I have done a 40-hour hazmat  
11 course, I have done 16-hour, 32-hour. I was a  
12 fireman as well, I have military background.  
13 I was on-scene leader in biological and nuclear,  
14 all military.

15 So I do have some background. I  
16 have had 22 or 23 years as a driver. Got my  
17 license '92, so whatever that adds up you.

18 Q. And based on your background and  
19 training and experience do you feel this  
20 situation we have discussed and talked about was  
21 handled adequately? I mean, everything was done  
22 appropriately?

23 A. That is a tough question. The only  
24 thing different, I would have done tested it to  
25 see what it was for sure.

1 MR. TURANO: I have no further  
2 questions at this point.

3 ATTORNEY EXAMINER: Do you have  
4 cross?

5 MR. PARRAM: Yes, Your Honor.

6 CROSS-EXAMINATION

7 By Mr. Parram:

8 Q. Good afternoon, Mr. Updike.

9 A. How are you, sir?

10 Q. I am doing okay. Now, you would  
11 admit what you were hauling that day was green;  
12 correct?

13 A. Correct. It was dark green, very  
14 dark.

15 Q. You admit it was Gramoxone?

16 A. That is what I was hauling, yes.

17 Q. And you admit there was green liquid  
18 in the transfer box?

19 A. Yes, sir. There was light liquid.

20 Q. And it is not your testimony that  
21 that liquid was 100 percent rain water?

22 A. Say again.

23 Q. It is not your testimony that that  
24 green liquid was 100 rain water?

25 A. No. Do I think rain water possibly

1 got to the dye or into it? There might have  
2 been a drip and it turned green. I do know if  
3 you take that chemical, like farm coops will add  
4 a small little bit, you take the whole container  
5 and it will turn green with just a minute  
6 amount.

7 Q. Just trying to clarify.

8 A. I know there is dark green dye that  
9 is added.

10 Q. It is not your position that the  
11 green liquid in the transfer box was 100 percent  
12 rain water?

13 A. I have no way of proving that.

14 Q. You just testified that it may have  
15 mixed with dye. You don't know whether rain  
16 mixed with dye?

17 A. For a fact 100 percent, no. I have  
18 no way of testing it.

19 Q. You are speculating?

20 A. I am speculating.

21 Q. You are guessing?

22 A. I am guessing. Are you asking me to  
23 guess?

24 Q. Well, if you say you are not 100  
25 percent sure that means you are either

1       guessing --

2               A.     If I had to put a percentage on it I  
3       would say I am 99 percent sure, but I can't be  
4       100 percent sure that it didn't have a drop of  
5       something else in it.

6               Q.     You said you are 99 percent sure  
7       that it is what?

8               A.     Probably rain water that has got  
9       mixed with a drop or two of something that was  
10      in there.

11              Q.     The dye would come from the  
12      Gramoxone?

13              A.     That's correct.

14              Q.     Gramoxone is hazardous material?

15              A.     That's correct.

16              Q.     Have you cleaned up Gramoxone  
17      before?

18              A.     Yes.

19              Q.     When you clean it up do you put on  
20      gloves?

21              A.     Correct.

22              Q.     Do you put on any other material?  
23      Goggles?

24              A.     Goggles depending on what I am  
25      doing.  If you are talking about just a little

1     like we have got there, you know, the gloves,  
2     the goggles.

3             Q.     When you cleaned this material up  
4     you put on gloves?

5             A.     Correct.   Rubber gloves.

6             Q.     You put on goggles?

7             A.     I put on safety glasses.

8             Q.     And you are trained in handling the  
9     material you are shipping to wear some type of  
10    productive material?

11            A.     Correct.

12            Q.     And you indicated that you didn't  
13    think about the fact that it may potentially be  
14    rain water until you were already driving away?

15            A.     I did not know it went through rain  
16    water.   Another driver dropped it off at the  
17    terminal.   So I did not know it was in rain  
18    water before until I got back.   No, I did not.

19            Q.     So --

20            A.     So I looked into it.   Did I know on  
21    the scene?   No.   Did I admit to him that it was  
22    rain water at the site or anything?   No.   I only  
23    know that after the fact and after  
24    investigation.

25            Q.     So when you say it was rain again



1       you don't know for a fact? You are speculating?

2               A.     I would venture I am 99 percent.

3               Q.     Not 100 percent?

4               A.     Not 100 percent.

5               Q.     Okay. I think we are on the same  
6       page. Now, who owns this device, the transfer  
7       box? This equipment?

8               A.     Okay.

9                     ATTORNEY EXAMINER: What are you  
10      looking at now?

11              Q.     Let's look at Staff Exhibit 4.

12              A.     Okay. What do you want to know?  
13      On which one?

14              Q.     Sure. All this equipment, who owns  
15      this? All this equipment?

16              A.     The trailer is owned by Larry Miller  
17      Trucking. The pump is owned by Larry Miller  
18      Trucking. The hydraulic pump, specify that.  
19      And the stainless pump, the meter part is owned  
20      by Syngenta.

21              Q.     And what parts are you responsible  
22      for inspecting in Staff Exhibit 4? What role do  
23      you have before the pre-trip inspection? Do you  
24      inspect any of this equipment?

25              A.     Yes.

1 Q. What parts do you inspect?

2 A. As far as in pre-trip? Or what?

3 Q. Let's start with the pre-trip. What  
4 parts do you inspect? Do you inspect all of  
5 this?

6 A. Nearly. A lot of times these are  
7 sealed, these boxes, because you have to seal it  
8 before we go in to reload. So you can't  
9 actually look inside this box once you get  
10 the loading done. So essentially it requires we  
11 seal it. We will not reload until it is sealed,  
12 until you have it cleaned out again.

13 Q. So --

14 A. You can't look in those boxes until  
15 you are at the customer for delivery. So that  
16 is not always an option.

17 Q. So when you indicated earlier that  
18 you got back and you tightened some bolts --

19 A. Correct.

20 Q. And do you have Staff Exhibit 5 in  
21 front of you?

22 A. Yes, sir.

23 Q. You tightened these bolts in  
24 particular?

25 A. I took them totally apart. We then

1 put silicone in around there and retightened it.  
2 That way there wasn't any chance for anything to  
3 leak. It's out of the question, it's done.

4 In other words, when I sign that  
5 paper that we are doing everything we are  
6 supposed to do, even if there was no leak,  
7 assume there is a leak, you always go through  
8 and check it to the best of your ability if  
9 there was or wasn't.

10 Q. And you have to admit that the bolts  
11 in Staff Exhibit 5 have that green substance on  
12 them; don't you?

13 A. They have a green stain, yes.

14 Q. Okay. And you saw the green stain;  
15 didn't you?

16 A. Yes.

17 Q. And let's look at Staff Exhibit 3.

18 A. Okay.

19 Q. You testified that was dark green?

20 A. Correct.

21 Q. To the left of the transfer pump  
22 which is on the left side of this picture which  
23 is closer to where the door latch opens up and  
24 closes, that is dark green?

25 A. That's correct.

1           Q.    That is what you saw when during  
2   the inspection?

3           A.    You have got to take into  
4   consideration that is the darkest corner. Part  
5   of that has already been stained from where it's  
6   been on before because work on it as it comes in  
7   and out. If you actually look right in the same  
8   picture you see an orange strap. It is very  
9   dark. Well, this is the lowest point in the  
10   corner of this box because right where that  
11   valve is.

12           ATTORNEY EXAMINER: You are pointing  
13   to the lower corner?

14           A.    See, that is the pump, that stain on  
15   that metal, that is dark. And then the metal  
16   back there, it's dark where the --

17           ATTORNEY EXAMINER: Left in the  
18   picture?

19           A.    In fact, pure Gramoxone, if you  
20   leave it against stainless it turns it purple.  
21   These trailers are lined. They do not need a  
22   liner, they were not lined to protect the  
23   trailer from the material, they are lined to  
24   protect the material from the trailer. Because  
25   I got with Mr. Kiser, Brent Kiser, we went

1 through, which needed to have a liner sticker.  
 2 We were out in the shop, and it was determined  
 3 by the PUCO that, no, we do not need that  
 4 because it's not a corrosive material that is  
 5 going to damage that trailer or that stainless.

6 But stainless will actually damage  
 7 the product. It will turn it a dark purple.  
 8 So, that is why you see like these almost look  
 9 burned. It's costic. Other corrosive material  
 10 will do the same thing. It doesn't hurt, but  
 11 just looking like it's burned. If you leave  
 12 Gramoxone in stainless it will turn it purple.

13 Q. So Gramoxone is corrosive, it will  
 14 turn metal purple?

15 A. Not metal, the material itself will  
 16 go from a dark green to a bright, brilliant  
 17 purple.

18 Q. Okay.

19 A. If it sits in metal long enough,  
 20 which is usually not a very long time.

21 Q. During your pre-trip inspection you  
 22 testified that some of the tubes can potentially  
 23 get water in them. Rain water?

24 A. Yes. It will run down.

25 Q. You said some of these lines will

1 have water in them?

2 A. No, not in them, but you have water  
3 on it. Just runs back and kind of drip in  
4 there. You have got the trailer tank, front and  
5 back, you have got finders, lines all the way  
6 back and then dip down and go right into there.  
7 That is why you see in Exhibit 4 there is a  
8 black hose that is right there where it comes in  
9 and goes down that pump (indicating). Then  
10 there is a second one kind of outside, but you  
11 see right below it. It's a little bit longer  
12 than the other one.

13 Then it goes right inside and gets  
14 water, rain while you are running down the road  
15 and it will fall to the back end of the trailer.

16 Q. When you opened it up like in Staff  
17 Exhibit 4 you didn't see rain on those hoses  
18 during this inspection? You did not see rain  
19 on those tubes during this inspection?

20 A. No. It was a bright, sunny day.

21 Q. So a bright, sunny day all day long?

22 A. To my recollection, my memory, yes.

23 Q. And you had I believe testified  
24 about out of service sticker that was placed on  
25 the vehicle?

1           A.    It's not an out of service sticker.  
2           It's an inspection sticker that says -- you have  
3           to place them on the passenger side of the  
4           windshield.  So, in other words, the driver goes  
5           through the scales they can look and see, yes,  
6           been inspected.  But has got different colors,  
7           and I don't know for month or years or stickers.

8           Q.    Right.  I am sorry.  I wasn't clear  
9           if an out of service sticker was placed on the  
10          trailer.

11          A.    No.  There is not an out of service.  
12          It's an inspection sticker.  Everything was  
13          fine.  And if I remember correctly Officer  
14          Swartz also said he didn't want to write us up  
15          but his supervisor told him that he had to.

16               MR. PARRAM:   That is all I have,  
17          your Honor, thank you.

18               ATTORNEY EXAMINER:  Redirect?

19               REDIRECT EXAMINATION

20          By Mr. Turano:

21               Q.    You said that pure Gramoxone when it  
22          comes in contact with metal it will turn purple?

23               A.    It turns purple.

24               Q.    The box that is depicted in Exhibit  
25          3, 4, actually 3 and 4, is that stainless steel

1 or metal box?

2 A. That is stainless.

3 Q. If this were pure Gramoxone in there  
4 would you have expected that to be purple in  
5 color?

6 A. Yes. It would turn even darker  
7 color. Bright purple if it's pure.

8 MR. TURANO: No other questions.

9 MR. PARRAM: No questions, Your  
10 Honor.

11 ATTORNEY EXAMINER: You are excused.  
12 Do you have another witness?

13 MR. TURANO: Yes, Your Honor. If I  
14 could have a couple minutes.

15 ATTORNEY EXAMINER: Okay.

16 (RECESS TAKEN)

17 MR. TURANO: Your Honor, I call Mr.  
18 Miller.

19 (WITNESS SWORN)

20 - --

21 LARRY MILLER

22 called as a witness on behalf of the Respondent,  
23 being first duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 By Mr. Turano:



1           Q.    Sir, would you state your name for  
2   the record, please?

3           A.    Larry Miller.

4           Q.    Mr. Miller, what is your business  
5   address?

6           A.    3772 Old Oxford Road, Hamilton, Ohio  
7   45013.

8           Q.    Mr. Miller, are you associated in any  
9   way with Stony Run Enterprises?

10          A.    Yes, sir.

11          Q.    What is your association?

12          A.    I am Vice President of Stony Run  
13   Enterprises.

14          Q.    And are you affiliated in any  
15   capacity with Larry Miller Trucking?

16          A.    Yes, sir. I am President of Larry  
17   Miller Trucking.

18          Q.    What is the affiliation or  
19   connection between Larry Miller Trucking and  
20   Stony Run Enterprises?

21          A.    I own all the equipment as an  
22   individual. My lawyer set this up. I  
23   personally own all the equipment myself. I  
24   lease the equipment to Larry Miller Trucking  
25   which has 40 years background of working on

1 chemical equipment. And, therefore, leased to  
2 Stony Run Enterprises. My wife and I owns that.  
3 She is president of that. And that is all  
4 the relationships.

5 Q. So you are founder of both of those  
6 companies?

7 A. Yes, sir.

8 Q. You and your wife?

9 A. Yes, sir. I have been in the  
10 transportation business since I was 16 years  
11 old. I drove a water truck.

12 Q. Just to Stony Run Enterprises, just  
13 give the Examiner an idea what size company are  
14 we? How many trucks do you run?

15 A. We run about 20 trucks, and got 24  
16 trailers. We run strictly hazmat. We run 48  
17 states any day, trucks, from California to  
18 Florida.

19 Q. And your domicile is located in  
20 Hamilton, Ohio?

21 A. Yes.

22 Q. Is that your only terminal location?

23 A. Yes, sir.

24 Q. You have been present in the hearing  
25 room throughout this proceeding?

1           A.    Yes, sir.

2           Q.    For the testimony?

3           A.    Yes, sir.

4           Q.    And when did you become aware of the  
5 particular citation?

6           A.    When he returned. Got a call. I  
7 was out making a sales call so I went back and  
8 said we have to test for a leak. We have been  
9 doing this since '02, and we never had a leak of  
10 any kind. Since I have been in the trucking  
11 business I never had a hazmat spill.

12                   I don't have this certification, I  
13 don't have the degree that he does, but I have  
14 been doing this for other companies for 20 years  
15 or longer and never had a spill.

16           Q.    You are talking about Mr. Updike?

17           A.    Yes, my son-in-law, Bret.

18           Q.    He drives, he is safety director,  
19 and also your son-in-law?

20           A.    Yes, sir.

21           Q.    Okay. So how did you get involved  
22 in this?

23           A.    He called me and said they got green  
24 material. You can look on the exhibit. We  
25 looked at it and got the racks out.

1                   ATTORNEY EXAMINER: What are you  
2 referring to?

3                   A. I don't know what number this is,  
4 sir. 3. You can see, now, can I approach,  
5 sir? You can see here.

6                   Q. Referring to Exhibit 3.

7                   A. This stain here, sir, this is the  
8 corner and this metal has been stained. Any  
9 time that we do work on this stuff and comes up  
10 green, all this stained, this is all stainless  
11 steel, all has to be. And that is why I say it  
12 looks green. If you get water on this up here  
13 it will look green. But, down here the reason  
14 it doesn't show up green --

15                  ATTORNEY EXAMINER: Please show the  
16 Staff Attorney what you are talking about.

17                  A. I will show him this too. You can  
18 see this on pure -- talking at the corner here,  
19 this is all -- see this area here, very little  
20 material here and this material here is not  
21 green at all, because you can see a different  
22 color. That is water after it comes out here,  
23 not green.

24                  MR. PARRAM: Okay.

25                  Q. So, you became involved in this I

1 guess citation, and did you represent the  
2 company initially with dealing with the Staff?

3 A. Yes, sir. Talked to a young lady, I  
4 can't pronounce the name.

5 Q. All right.

6 A. We talked about it and she didn't  
7 understand about water getting in there and  
8 where it stained on here, and how that -- so she  
9 said, well, you have to come and file for a  
10 hearing, and that is what I did.

11 Q. Now, you testified that the company  
12 in your 20 years of experience has not had a  
13 hazmat spill?

14 A. None.

15 Q. And does your company have a safety  
16 rating?

17 A. Yes, sir.

18 Q. With DOT and --

19 A. DOT and FMCA.

20 Q. What is your rating? Do you know?

21 A. I don't know what the rate is. It's  
22 satisfactory, I know that. And only give two,  
23 but we have been inspected as a small company  
24 several times. We have had brakes out of  
25 adjustment here and there, but with this new

1 FMCA got to check everything closer. And that  
2 has helped us because the driver has got to  
3 check it every day.

4 But, with Syngenta, they put seals  
5 on this. The stuff is very expensive. That is  
6 the meter and stuff, it's got to be well  
7 protected. And you have to have seals on that.  
8 And that is what I asked Bret, did you break  
9 the seal and he said, no, I didn't break it.

10 Q. Now, let me ask you, what is the  
11 cost of one of these trailers?

12 A. The trailer itself costs over  
13 100,000. And pumps and meters is about 20,000.  
14 Syngenta has their own meters until they -- in a  
15 year I think they are going to make me buy them.  
16 But they own the pumps and meters, and own all  
17 the pumps which is around about \$10,000. They  
18 are all stainless grade pump, stainless steel.

19 Q. And again Syngenta is a good  
20 customer?

21 A. My biggest customer.

22 Q. Biggest customer. How much of this  
23 type of equipment do you have?

24 A. We have five trailers like this.  
25 And they are from '02s, '04s to '06. And we

1 can't lose them. We just discovered that is  
2 where the water was coming.

3 And we looked up, the trailer was  
4 running in rain coming in the night before.  
5 And that is what I tried to explain to them  
6 before, this is water and the reason it's not  
7 green is because it's the color of water. This  
8 shows up green in here because this is stained  
9 and this is not.

10 MR. TURANO: I have no further  
11 questions for this witness.

12 ATTORNEY EXAMINER: Does the Staff  
13 have any questions?

14 MR. PARRAM: Yes, a few.

15 CROSS-EXAMINATION

16 By Mr. Parram:

17 Q. Good afternoon.

18 A. Good afternoon, sir.

19 Q. You were not at the actual  
20 inspection?

21 A. No, sir, I was not.

22 Q. So you didn't actually observe  
23 anything that happened that relates to the Staff  
24 Report of Examination?

25 A. No.

1           Q.    Okay.  And just to be clear, the  
2   trailer, the tractor-trailer was operating under  
3   Stony Run's authority; is that correct?

4           A.    Yes, sir.

5           Q.    Thank you.  And you indicated that  
6   although you weren't there you referred to a  
7   specific spot that was on the ground just a  
8   couple seconds ago.

9           A.    Yes, sir.

10          Q.    So, and what you said was that you  
11   agree something was dripping from the transfer  
12   pump box, but just your position that what it  
13   was wasn't hazardous material?

14          A.    Right.  It was water.

15          Q.    Okay.  So we are in agreement that  
16   something was dripping from the transfer box  
17   onto the ground?

18          A.    Yes, sir.

19                MR. PARRAM:  Okay.  I have no  
20   further questions, Your Honor.

21                ATTORNEY EXAMINER:  Redirect?

22                MR. TURANO:  No further questions.

23                ATTORNEY EXAMINER:  You are excused.

24                THE WITNESS:  Thank you, sir.

25                MR. TURANO:  One more witness.



1                   ATTORNEY EXAMINER: Call your  
2                   witness.

3                   (WITNESS SWORN)

4                   (EXHIBITS MARKED FOR THE PURPOSE OF  
5                   IDENTIFICATION)

6                   - - -

7                   PATRICIA MILLER  
8                   called as a witness on behalf of the Respondent,  
9                   being first duly sworn, testified as follows:

10                  DIRECT EXAMINATION

11                  By Mr. Turano:

12                  Q. Please state your name for the  
13                  record.

14                  A. Patricia Miller.

15                  Q. Mrs. Miller, would you give your  
16                  business address?

17                  A. 3772 Old Oxford Road, Hamilton, Ohio  
18                  45013.

19                  Q. And do you have a position with the  
20                  Respondent, Stony Run Trucking Company?

21                  A. Stony Run Enterprises is a carrier.  
22                  I am president.

23                  Q. And you are also the wife of Larry  
24                  Miller, the prior witness?

25                  A. Yes.

1 Q. And you are active with the company  
2 on a day-to-day basis?

3 A. Yes, sir.

4 Q. And you have been active for  
5 whatever number of years it's been in business?

6 A. Several years, yes.

7 Q. You have been here in the hearing  
8 room today and heard the testimony of  
9 the witnesses?

10 A. Yes.

11 Q. There has been some testimony  
12 regarding this particular trailer, you were not  
13 involved directly at the site of the inspection?

14 A. No, sir.

15 Q. Okay. There was a question about  
16 whether there was rain water accumulation in  
17 this vehicle. And were you asked to determine  
18 what the prior use of the vehicle was?

19 A. Yes, sir

20 Q. Do you have what is identified as  
21 Exhibit 1, Respondent's Exhibit 1?

22 A. Yes, sir.

23 Q. Multipage document. About six or  
24 seven pages long. Is this information contained  
25 in the books and records of the company?

1           A.    Yes, sir.

2           Q.    Explain what Exhibit No. 1 is  
3 intended to demonstrate.

4           A.    It shows the previous load that was  
5 hauled on this trailer, amounts that were loaded  
6 in.

7           Q.    First of all how do you know this is  
8 the trailer?

9           A.    Because it's 804 marked on where it  
10 says trailer number.

11          Q.    Go ahead.

12          A.    I am sorry. It shows there was  
13 product Gramoxone on the trailer that was going  
14 from Greensburg, Indiana to Rochelle, Georgia.

15          Q.    What were the dates?

16          A.    It doesn't have a date on the front  
17 on date of delivery, just the gallons. But, it  
18 looks like it's the 4th of November in Dillsboro  
19 which is close to where the product was picked  
20 up.

21                   And the second delivery, it looks  
22 like it was made on the 6th of November in  
23 Rochelle, Georgia.

24          Q.    So this was a situation where the  
25 trailer was involved in I guess multiple

1 deliveries? Two stops?

2 A. Two stops.

3 Q. Loaded in Greensburg, Indiana with a  
4 stop in Dillsboro, Indiana, and a final stop in  
5 Georgia.

6 A. Yes, sir.

7 Q. Okay. Then what other documents are  
8 on the second page?

9 A. Second page?

10 Q. Second page of this exhibit.

11 A. That is the original bill of lading  
12 for what was loaded.

13 Q. And there is a weigh ticket which is  
14 the third page. What does that show you?

15 A. That shows how much was loaded on  
16 this trailer, the date and the number of gallons  
17 and the bill of lading number.

18 Q. And this originated at Greensburg?

19 A. Yes, sir.

20 Q. And then the following page, what  
21 does that show us?

22 A. It's a delivery sheet for  
23 Greensburg, Indiana for delivery to Dillsboro,  
24 Indiana.

25 Q. And this is signed by the company at

1 the time of delivery?

2 A. It's got the driver's signature.

3 The shipper doesn't have a signature.

4 Q. Typically?

5 A. Yes. It could be so light you can't  
6 see it because this is a copy.

7 Q. And what is the next page of this  
8 exhibit intended to show?

9 A. I believe it's the weight ticket.  
10 It's a weight ticket of Gramoxone and how much  
11 was delivered there.

12 Q. And the final page is?

13 A. A delivery order for Rochelle,  
14 Georgia.

15 Q. So when the vehicle completes its  
16 delivery in Rochelle, Georgia what happened?

17 A. It came back to our terminal.

18 Q. Hamilton?

19 A. Yes, sir.

20 Q. So, your testimony represents  
21 the last prior use of the vehicle?

22 A. Yes, sir.

23 Q. Of the trailer?

24 A. Yes.

25 Q. In question. Now, do you have a

1 copy of what is identified as Respondent's  
2 Exhibit 2?

3 A. Yes, sir.

4 Q. And tell us what Exhibit 2 is  
5 intended to portray. First of all was this done  
6 by you or by someone under your direction and  
7 control?

8 A. Our dispatcher. I asked for a copy  
9 of the previous load, that dispatch.

10 Q. Okay.

11 A. She gave me this printout and it  
12 shows the trailer number, loaded in Greensburg,  
13 Indiana; in Dillsboro, Indiana; and then  
14 Rochelle, Georgia.

15 Q. What is the second page? It's a  
16 map.

17 A. That is the route that he took to  
18 deliver from Dillsboro, Indiana to Rochelle,  
19 Georgia. You can see he went through Lexington,  
20 Knoxville, came through Georgia.

21 Q. And the next page I guess shows the  
22 mileage; correct?

23 A. Right.

24 Q. What did you do after that?

25 A. We looked up the weather website to

1 see if there had been any rain in the areas at  
2 the time he was in that area. We were trying to  
3 figure out how the water got in the box.

4 Q. And explain how you interpret this.

5 A. Well, if you see in Cincinnati on  
6 the 6th and 7th, which probably went down on the  
7 6th and came back on the 7th, there was a .3  
8 inches of rain on the 6th and .03 inches of rain  
9 on the 7th.

10 Then if you look in the Greensburg  
11 area, .30 inches of rain on the 6th and zero on  
12 the 7th.

13 Then Greensburg, Indiana on the 6th  
14 and 7th was .37 inches of rain and .08 inches of  
15 rain.

16 And then look at Lexington, Kentucky  
17 on the 6th was .49 inches of rain and the 7th  
18 was .19 inches of rain.

19 For Knoxville, Tennessee, there was  
20 0.41 on the 7th. Chattanooga, Tennessee on the  
21 6th was .02 inches of rain. And on the 7th  
22 there was .40 inches of rain.

23 And later in Georgia on the 6th was  
24 zero. And on the 7th was .1.

25 Then in Rochelle, Georgia on the 6th

1 was zero rain, and on the 7th was zero.

2 Q. What does this information tell you?

3 A. If he traveled down on the 6th and  
4 traveled back on the 7th he entered rain in both  
5 directions in several of these cities.

6 Q. Now, there has also been testimony  
7 today regarding the Gramoxone material, and  
8 the colorization of Gramoxone. Do you remember  
9 that testimony?

10 A. Yes, sir.

11 Q. And in anticipation of today's  
12 hearing did you have someone take photographs of  
13 some of this material?

14 A. Yes, sir, I did.

15 MR. TURANO: Your Honor, I have six  
16 photographs. I am assuming I will mark these 3,  
17 4, 5, 6 and 7.

18 (EXHIBITS HEREBY MARKED FOR  
19 IDENTIFICATION PURPOSES)

20 Q. Now, do you have copies of what we  
21 have identified as Exhibits 3 through 7?

22 A. Yes, sir.

23 Q. And are those photographs that you  
24 personally took?

25 A. Yes, sir.



1 Q. These were taken when?

2 A. Monday.

3 Q. And were they done in anticipation  
4 of the hearing?

5 A. Yes, sir.

6 Q. And where were they taken at?

7 A. I asked them to check to get a  
8 small --

9 Q. Where were they taken at? What  
10 location?

11 A. In my office.

12 Q. Your office. Okay. Let's go  
13 through them quickly. Give some background on  
14 what is Exhibit 3.

15 A. It's a 3 inch jar of Gramoxone.

16 Q. Three inch jar of Gramoxone. How  
17 did you get a 3 inch jar of Gramoxone?

18 A. It's a Beachnut jar.

19 Q. Okay. Where did the Gramoxone come  
20 from?

21 A. I asked the mechanic to get a small  
22 amount of Gramoxone in the jar.

23 Q. And where did you take the picture?

24 A. I took the picture.

25 Q. Where in the offices?

1           A.    The conference room in our office,  
2    yes.

3           Q.    And is Exhibit 4 the next picture?

4           A.    Yes.

5           Q.    Essentially the same jar.  Different  
6    angle?

7           A.    Yes.

8           Q.    And it appears to be a dark color of  
9    material.

10          A.    Yes, very dark.

11          Q.    What about Exhibit 5?  What does  
12   that show?

13          A.    That is a picture of a jar in the  
14   window sill.  There is light, some light coming  
15   through that window.  And this substance is so  
16   dark you can't see through the material.

17          Q.    Now we have Exhibit No. 6.  It looks  
18   like the jar is opened.

19          A.    Yes, sir.

20          Q.    What was that intended to show?

21          A.    That showed the green Gramoxone in  
22   the lid.  And this is a white piece of paper  
23   that was dipped in the Gramoxone over an  
24   absorbent pad.

25          Q.    Who is holding that piece of paper?

1 A. Pretty sure that is Robert Updike.

2 Q. And Exhibit 7 appears to be a  
3 similar picture maybe. What is that?

4 A. It's the same picture. It's just I  
5 didn't know how well the first one turned out,  
6 what it showed.

7 MR. TURANO: I believe that is all  
8 the questions I have.

9 ATTORNEY EXAMINER: Staff have any  
10 questions?

11 MR. PARRAM: Yes, Your Honor.

12 CROSS-EXAMINATION

13 By Mr. Parram:

14 Q. Do you have Respondent's Exhibit 2  
15 in front of you?

16 A. Yes, I do.

17 Q. And if you could turn to starting on  
18 the 4th page.

19 A. Yes, sir. The Cincinnati area.

20 Q. Who pulled this information, or  
21 prepared this information?

22 A. I had our dispatcher. She had all  
23 these apps or her computer and in case there  
24 is -- when sending a driver say into where there  
25 might be a hurricane coming in she would pull up

1 that area to see the temperature or anything  
2 because we need to know what the drivers are  
3 going in to as far as weather.

4 But I asked her to pull up this  
5 report and ran it for, you know, like the whole  
6 month of November of the precipitation and  
7 temperature.

8 Q. You indicated that you pulled this  
9 information after the inspection in this case;  
10 correct?

11 A. To see why there was water in the  
12 box.

13 Q. And you say water in the box. You  
14 never actually saw water in the box; did you?

15 A. No, I did not see water in the box,  
16 but that is the report I got from the driver and  
17 the mechanic. That is the only reason they  
18 could figure out why there was water in the box

19 Q. So when you testified as relates to  
20 water being in the box you are not basing that  
21 on anything that you personally saw?

22 A. No, I didn't testify to that.

23 Q. And your dispatcher that pulls this  
24 information, is it typical for her to pull  
25 weather reports for you?

1           A.   Any time that she is asked to, yes.

2           Q.   That is something that she does  
3 often in her role?

4           A.   As needed.  If we have got someone  
5 going to the area that possibly could have  
6 weather we wouldn't want trucks in she would  
7 pull that up.

8           Q.   When she pulls that she prints that  
9 information out?

10          A.   Some she does.  Sometimes I don't  
11 know.  I know she has pulled and printed lots of  
12 reports for me.

13          Q.   And after pulling these reports and  
14 printing them for you she keeps them?

15          A.   She keeps them?

16          Q.   Keeps them after the trip is done?  
17 Keep a history of --

18          A.   She runs one for every load.

19          Q.   Okay.  Do you know as to a  
20 particular load what she would do with those  
21 documents?

22          A.   Depends why she pulled them.

23          Q.   Does she keep a history of weather  
24 reports for each load?

25          A.   Depends on a certain incident.

1           Q.    So, on certain incidents you keep a  
2 history of weather for that particular trip?

3           A.    I asked her to pull it for this  
4 particular trip, not one I do for every trip.

5           Q.    And about how often do you do it for  
6 trips?

7           A.    As needed.

8           Q.    As needed?

9           A.    There was a possibility of some  
10 liquid in the box that was rain. And they said,  
11 you know, going with what everybody testified  
12 to, that they felt that was rain water, not  
13 Gramoxone.

14                   We were trying to find out why there  
15 was water in there and we needed to know if that  
16 trailer had been through rain on the 6th and  
17 7th.

18           Q.    I understand the position of  
19 the testimony. What I am asking specifically  
20 is, excluding this particular case, when  
21 the dispatcher pulls weather reports for you how  
22 often does she pull weather reports for you?

23           A.    When there is an incident. I can  
24 give you an example. We had a driver that  
25 claimed that he physically slipped and fell.

1 We pull the weather report. He claimed it was  
2 on ice.

3 We pulled the weather report. It  
4 had been like 50 degrees in that area for 30  
5 days. And it rained every day before. So there  
6 could not have been any ice physically where he  
7 was at.

8 Q. And that particular circumstance  
9 after you found out the weather report did you  
10 print that information out?

11 A. Yes. It's printed here.

12 Q. The weather record in this  
13 particular case about the slip and fall.

14 A. With that case, not this one.

15 Q. With that case, the slip and fall  
16 case, when you printed out that information, did  
17 you print that information out?

18 A. Yes, I did.

19 Q. Okay. And you currently keep that  
20 as a record?

21 A. Yes, sir.

22 Q. Okay. How often do you do that in  
23 your business?

24 A. Whenever there is an incident.

25 Q. How often are there incidents?

1           A.    Not many

2           Q.    So it's not typical for you to print  
3 out weather reports?

4           A.    No.

5           Q.    And it's not typical to keep those  
6 weather reports in your business?

7           A.    No.

8           Q.    Do you have Staff Exhibit 3 in front  
9 of you?

10          A.    Yes, sir.

11          Q.    Yes. And also Respondent's 6 or 7.  
12 Those are your pictures.

13          A.    I know what you are saying.

14               MR. PARRAM: May I approach, Your  
15 Honor?

16               ATTORNEY EXAMINER: Yes.

17          Q.    Respondent's Exhibit 6 and Staff  
18 Exhibit 3. Do you have those two documents in  
19 front of you?

20          A.    Yes, sir.

21               MR. PARRAM: Okay. Now may I  
22 approach?

23               ATTORNEY EXAMINER: You may.

24          Q.    Now, in Respondent's Exhibit 6  
25 there is a piece of paper and it has the paper



1 colored green.

2 A. Yes, sir.

3 Q. And if you look at Staff Exhibit 3  
4 there is a piece of paper and the piece of paper  
5 is green?

6 A. Very light green.

7 Q. Okay. And there is a cap on  
8 Respondent's Exhibit 6, and that top has  
9 Gramoxone; is that correct?

10 A. This is the jar lid to this jar.

11 Q. And that is --

12 A. Dark green.

13 Q. That is green?

14 A. Yes. Dark green.

15 Q. And that color green is essentially  
16 the same as the clear green in Staff Exhibit 3?

17 A. No. This is light green. This is a  
18 dark green.

19 Q. Okay. And who is holding the paper  
20 in Staff exhibit --

21 A. Robert Updike.

22 Q. -- 3?

23 A. That is Gramoxone on the paper, not  
24 water.

25 Q. And that is pure Gramoxone?

1 A. Yes, sir.

2 Q. Do you typically handle Gramoxone  
3 without gloves?

4 A. No.

5 Q. Why would you hold this without  
6 gloves?

7 A. Because it was a piece of paper that  
8 didn't touch the Gramoxone.

9 Q. Okay. So Respondent's Exhibit 4,  
10 it's a very, very dark color?

11 A. Yes, sir.

12 Q. And it's almost black would you say?

13 A. Yes, sir. Almost looks black in the  
14 jar. And that is with the sun coming through  
15 it.

16 Q. But on Respondent's Exhibit 6 you  
17 actually see it on the piece of paper, it's much  
18 lighter?

19 A. It's what?

20 Q. Lighter.

21 A. It's a small amount of Gramoxone on  
22 the paper.

23 Q. Well, that piece of paper is a  
24 different color than what is in the jar.

25 A. You are correct on that, yes.

1           Q.    So whether it's on a piece of paper  
2 outside of the jar you can see actually  
3 the darkish green color?

4           A.    But that is if you can see there is  
5 a lighter green on that piece of paper and  
6 darker area on that piece of paper that is all  
7 Gramoxone.

8           Q.    So the lighter green on the piece of  
9 paper is Gramoxone?

10          A.    Right.

11          Q.    And the darker area on the piece of  
12 paper is Gramoxone?

13          A.    Yes.

14          Q.    Do you still have Staff Exhibit 3 in  
15 front of you?

16          A.    Yes.

17          Q.    So there is lighter green in Staff  
18 Exhibit 3; correct?

19          A.    Very pale green.

20          Q.    And there is a darker green in Staff  
21 Exhibit 3; correct?

22          A.    That is darkness. I can't tell what  
23 color it looks like to me.

24               MR. PARRAM: That is all, Your  
25 Honor.

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ATTORNEY EXAMINER: Any redirect?

MR. TURANO: No additional questions

ATTORNEY EXAMINER: You are excused.

THE WITNESS: Thank you.

ATTORNEY EXAMINER: Anything else?

MR. TURANO: Your Honor, move for admission of Respondent's Exhibits 1 through 7.

MR. PARRAM: Your Honor, I do have one objection.

ATTORNEY EXAMINER: I will admit all the exhibits at this time.

(EXHIBITS HEREBY ADMITTED INTO EVIDENCE)

ATTORNEY EXAMINER: Let's go off the record here for a moment.

(DISCUSSION OFF THE RECORD)

ATTORNEY EXAMINER: It's been agreed to have simultaneous briefs on September 12th.

MR. TURANO: Your Honor, is the brief going to be limited in scope or just --

ATTORNEY EXAMINER: Try to keep it 10 pages or so, not treatises.

MR. TURANO: All issues involved in the case?

1 ATTORNEY EXAMINER: Yes, sir.

2 MR. TURANO: Okay.

3 MR. PARRAM: Reply briefs, Your  
4 Honor, or just initial briefs?

5 ATTORNEY EXAMINER: Make them  
6 simultaneous and --

7 MR. PARRAM: Reply briefs after  
8 the initial brief?

9 ATTORNEY EXAMINER: I don't think we  
10 need reply briefs. One set of briefs unless,  
11 you know, we need the concept of reply briefs.  
12 I think one set of briefs would be sufficient,  
13 unless you really want a reply brief.

14 MR. PARRAM: The only reason is  
15 because I know we have had previous discussions  
16 about different positions in this case and I  
17 want to be sure if certain positions come out in  
18 those initial briefs there might be a  
19 reservation of rights to, if there is agreement  
20 or not agreement, to Staff to have the ability  
21 to reply.

22 MR. TURANO: Well, not just one side  
23 can reply. So two weeks if we so desire.

24 MR. PARRAM: If we choose, yes.

25 ATTORNEY EXAMINER: All right. How

1 about the 26th for rely briefs?

2 MR. PARRAM: Okay.

3 ATTORNEY EXAMINER: That make  
4 everybody happy? Okay.

5 MR. PARRAM: I don't enjoy briefs,  
6 just trying to --

7 ATTORNEY EXAMINER: Okay. Thank you  
8 all for coming.

9 (At 1:50 P.M. the hearing was  
10 concluded)

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CERTIFICATE

I do hereby certify that the foregoing  
is a true and correct transcript of the  
proceedings taken by me in this matter on July  
22, 2014, and carefully compared with my  
original stenographic notes.

---

Michael O. Spencer,  
Registered Professional  
Reporter.

- - -

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Summary: Transcript in the matter of Stony Run Enterprises, Inc. hearing held on 7/23/14 electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Spencer, Michael O. Mr.