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1 APPEARANCES:

2 Thomas G. Lindgren
3 Assistant Attorney General
4 30 East Broad Street
5 16th Floor
6 Columbus, Ohio 43215

7 On behalf of the Staff of the
8 Public Utilities Commission
9 Of Ohio.

10 Michael J. Yemc
11 Attorney at Law
12 600 South Pearl Street
13 Columbus, Ohio 43206

14 On behalf of the Respondent.

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STAFF'S EXHIBITS

IDENTIFIED

1 Driver/Vehicle Examination
Report

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RESPONDENT'S EXHIBITS

A DOT Inspection Form
(1/2)

17

B DOT Inspection Form
(2/2)

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- - -

Thursday Morning,
December 13, 2018.

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ATTORNEY EXAMINER: The Public Utilities
Commission of Ohio has assigned for hearing at this
time and place Case No. 18-1092-TR-CVF being in the
matter of Edgar G. Combs Notice of Apparent
Violation and Intent to Assess Forfeiture.

My name is Stacy Cathcart, I am the
Attorney Examiner assigned by the Commission to
hear this case. At this time, I would like to take
appearances of the parties, beginning with Staff.

MR. LINDGREN: On behalf of the Commission
Staff Ohio Attorney General Mike Dewine, by Thomas
G. Lindgren, Assistant Attorney General at 30 East
Broad Street, 16th floor, Columbus, Ohio 43215.

ATTORNEY EXAMINER: Thank you.

MR. YEMC: Good morning. On behalf of the
Respondent Michael Yemc, address is 600 South Pearl
Street, Columbus, Ohio. Thank you.

ATTORNEY EXAMINER: Thank you. Staff, are
you ready to proceed?

MR. LINDGREN: Yes. Your Honor, thank
you. The staff calls Phil Haskins to the stand.

(WITNESS WAS SWORN)

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PHILLIP HASKINS

called as a witness, being first duly sworn,
testified as follows:

DIRECT EXAMINATION

BY MR. LINDGREN:

Q. Good morning, sir.

A. Good morning.

Q. Could you please state your full name for
the record?

A. Phillip Haskins.

Q. And what is your business address?

A. My business address is, 180 East Broad
Street, 12th floor, Transportation Department,
Columbus, Ohio, 43215.

Q. Thank you. Where are you employed?

A. Public Utilities Commission of Ohio,
Transportation Department.

Q. And what is your position there?

A. I am employed as a hazardous materials
inspector, for 32 years.

Q. Thank you. And what are your duties in
that position?

A. My duties include conducting inspections
to verify compliance with the Federal Motor Carrier

1 Safety Regulations and the Federal Hazardous
2 Materials Regulations on motor carriers and
3 shippers in the State of Ohio.

4 Q. Thank you. What training have you
5 received for this position?

6 A. Extensive training with annual
7 certifications required to be able to complete
8 these inspections.

9 Q. Thank you. Do you recall inspecting a
10 vehicle driven by the Respondent, Edgar Combs, on
11 May 1st of 2018?

12 A. I do.

13 Q. And what was the reason for this
14 inspection?

15 A. I conducted a hazardous materials
16 inspection on the vehicle after I observed the
17 vehicle failing to stop at a railway crossing.

18 Q. And where was this railway crossing?

19 A. It was in Hamilton County, on US Route 50,
20 at the intersection of Valley Junction Road.

21 Q. And where were you when you observed the
22 vehicle not stop at this crossing?

23 A. I was parked on the railroad property of
24 the Central Indiana Railroad Company's property.

25 Q. Thank you. Could you describe this

1 crossing and the road, please?

2 A. I was parked adjacent to Route 50, south
3 of the highway with a unobstructed view of the
4 vehicle and the crossing. As I observed the
5 vehicle driven by the Respondent, I noticed his
6 vehicle transporting hazardous materials, placarded
7 it accordingly, and as it approached the crossing
8 it slowed, the speed slowed, and the driver did
9 activate the hazards signals, however, did not stop
10 at the -- at the intersection of the grade
11 crossing.

12 Q. Thank you. And was there anything you
13 observed on the other side of the grade crossing?

14 A. Well, the crossing is, it's kind of
15 unique, it's about 60 yards from the -- from the
16 actual grade crossing is a traffic light and
17 traffic does approach the crossing and as I came on
18 to the highway, I got stopped by the traffic light
19 however, the commercial vehicle did not have to
20 stop at the traffic light because it had the green
21 light.

22 Q. Thank you. Did the driver make any
23 statement to you? Do you recall?

24 A. No. I don't -- not recall any specific
25 statements to the violation.

1 Q. Thank you. Did you prepare a report that
2 reflects the results of your inspection?

3 A. I did -- I did complete an inspection
4 report.

5 MR. LINDGREN: May I approach the witness?

6 ATTORNEY EXAMINER: You may.

7 MR. LINDGREN: Let the record reflect that
8 I am handing the witness what I've marked for
9 identification, as Staff's Exhibit 1.

10 ATTORNEY EXAMINER: So marked.

11 BY MR. LINDGREN:

12 Q. Mr. Haskins, do you recognizing this
13 document?

14 A. I do.

15 Q. And what is it?

16 A. It is a business replica, copy, of the
17 actual inspection report I completed on the day in
18 question.

19 Q. Thank you. Does it accurately reflect the
20 results of you inspection?

21 A. It does.

22 Q. Thank you. And did you prepare this at
23 the time or soon after your inspection?

24 A. I did.

25 Q. Thank you. And does it appear to have

1 been altered in any way since you entered in the
2 information?

3 A. No.

4 Q. And is this a record that's usually, well,
5 regularly, used in the course of your business?

6 A. It is.

7 Q. Thank you. And Mr. Haskins, how did you
8 know that this vehicle was carrying hazardous
9 materials?

10 A. It displayed warning placards on all four
11 sides of the transport unit.

12 Q. Thank you. And do you know what it was
13 carrying?

14 A. It was carrying a poisonous material.

15 MR. LINDGREN: Thank you. Thank you. I
16 have no further questions for this witness.

17 ATTORNEY EXAMINER: Thank you. Any cross-
18 examination?

19 MR. YEMC: Yes. Thank you.

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21 CROSS-EXAMINATION

22 BY MR. YEMC:

23 Q. Now, Officer Haskins, when did you prepare
24 this report? Staff's Exhibit 1?

25 A. I prepared it at the time of inspection.

1 Q. And did you serve this upon the
2 Respondent?

3 A. I provided him a copy of the inspection
4 report.

5 Q. You personally served this upon him that
6 day?

7 A. Yes.

8 Q. You're sure you didn't leave this at the
9 guard shack?

10 A. At the only facility where the driver
11 returned, there was further inspection required to
12 the package, and the inspection was continued at
13 the -- facility, and there, I presented the
14 inspection to the driver at the guard shack.

15 Q. You presented it to him while he was at
16 the guard shack?

17 A. Yes.

18 Q. And this is the same report you presented
19 to him that day?

20 A. It is a replica of the inspection report.

21 Q. Now the tote the Respondent was hauling,
22 it was empty, correct?

23 A. It contained a residue of the hazardous
24 material shipment.

25 Q. It was empty, it wasn't fully loaded?

1 A. Empty isn't the proper term, residue means
2 it contained the residue of a bulk shipment, so.

3 Q. I'm not saying it was scrubbed or cleaned,
4 I'm just saying it was empty, it wasn't a full
5 load?

6 A. It was not fully loaded.

7 MR. YEMC: I have no further questions.

8 ATTORNEY EXAMINER: Thank you. Any
9 redirect?

10 MR. LINDGREN: Thank you, your Honor.

11 REDIRECT EXAMINATION

12 BY MR. LINDGREN:

13 Q. Mr. Haskins, do you know if a vehicle is
14 required to stop at a railroad grade crossing even
15 though it's carrying residue of a hazardous
16 material?

17 A. In this instance, the transportation of a
18 bulk hazardous material requires, placarding and
19 marking which does require it to stop at grade
20 crossings.

21 MR. LINDGREN: No further questions.

22 ATTORNEY EXAMINER: Thank you.

23 MR. YEMC: No re-cross.

24 ATTORNEY EXAMINER: Thank you.

25 MR. LINDGREN: Your Honor, Mr. Yemc and I

1 have agreed to stipulate that the appropriate
2 forfeiture for this violation would be \$500, in the
3 event that the Commission finds that the Respondent
4 committed the violation.

5 MR. YEMC: That is correct, your Honor.

6 ATTORNEY EXAMINER: Thank you. Would you
7 like to move your exhibit?

8 MR. LINDGREN: Yes, your Honor. We'll
9 move for admission of Staff Exhibit 1.

10 ATTORNEY EXAMINER: Any objection?

11 MR. YEMC: No.

12 ATTORNEY EXAMINER: So moved.

13 MR. LINDGREN: Your Honor, Staff rests its
14 direct case.

15 ATTORNEY EXAMINER: Thank you. Mr. Yemc,
16 would you like to call your first witness?

17 MR. YEMC: Yes. Thank you. We'll call
18 the Respondent to the stand.

19 (WITNESS WAS SWORN)

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21 EDGAR G. COMBS

22 called as a witness, being first duly sworn,
23 testified as follows:

24 DIRECT EXAMINATION

25 BY MR. YEMC:

1 Q. Can you please state your name and address
2 for the record, please?

3 A. Yes. Edgar Combs, Stillwell Beckett,
4 Oxford, Ohio. I recently moved, it's now 2737
5 Chapel Road, Okeana, Ohio.

6 Q. Mr. Combs, what is your occupation?

7 A. I'm a chemical hauler for Hazmat
8 Environmental out of Buffalo, New York.

9 Q. Okay. How long have you been hauling
10 hazardous material?

11 A. This year -- this month makes 40 years.

12 Q. Okay. And on May 1st of 2018, this year,
13 were you in the State of Ohio hauling a load?

14 A. Yes, I was returning from a customer in
15 Augustus, South Carolina, returning a tote to the
16 shipper.

17 Q. And where was this shipper located at?

18 A. North Bend, Ohio on Brower Road.

19 Q. And could you described for this tribunal
20 what happened that day?

21 A. Well, I parked -- I was parked at a Kroger
22 parking lot because I run out of time to make it to
23 the shipper. And that's where I took my break
24 which, they allow truck parking, and I left and was
25 headed to the shipper. There's railroad tracks by

1 Kilby Road, I stopped at the railroad tracks, then
2 crossed the tracks. About the length of the truck
3 and trailer, is this red light. I waited at the
4 red light and when it turned green, I proceeded
5 down the road.

6 Q. How do you know you stopped at those
7 crossings?

8 A. I turned my four-ways on, I slowed down,
9 I had to stop because that's regulations, and there
10 were cars sitting in front of me at the red light.

11 Q. And then what happened after you waited
12 for the red light to cycle?

13 A. I went through the light when it turned
14 green and proceeded down the road, west on Route
15 50, and then the PUCO officer pulled me over on the
16 side of the road.

17 Q. How long was that after you went over the
18 railroad crossing, did he pull you over?

19 A. He pulled me over by that south -- it was
20 about two miles down the road, on the right, before
21 the traffic light.

22 Q. And what happened after the stop?

23 A. He walked back to my truck, he asked me
24 for my hazardous waste manifest which I didn't haul
25 hazardous waste, and he asked for my bills, I

1 showed him my bills, he took the bills, went to the
2 back of the trailer, opened up the doors, climbed
3 in the trailer, inspected the tote, got out, went
4 to his car, got his camera, then climbed back in
5 the trailer, and took pictures of the tote.

6 Then he asked me if he can -- where the shipper
7 was at, and I told him right down the road, and he
8 asked if he can go to the shipper and talk to the
9 shipper.

10 Q. And what happened after you proceed to the
11 shipper?

12 A. He met with Frank Harden and Henry Sparks
13 of Veolia. He was concerned about some kind of
14 inspection on the tank -- the tote, and they had to
15 provide documentation saying they were
16 grandfathered in from the Federal Government that
17 they didn't have -- need an inspection, as he
18 claimed. I went inside the plant and was loading
19 it and going to Michigan.

20 Q. Okay. What happened after you came out of
21 the plant?

22 A. The other security guard, Captain Carl,
23 called me on the phone and said that the PUC
24 officer left a letter there for me, and when I got
25 back from Michigan, I seen what the letter was

1 about.

2 Q. Okay, so when you left the facility, you
3 didn't know about this violation?

4 A. No. He was talking to the people from
5 Veolia.

6 Q. So when you got back what did you receive?
7 You recall?

8 A. What do you -- you mean, I got that --
9 that --

10 Q. You stopped at the guard shack, correct?

11 A. Yeah, they -- you have to, every time you
12 pull in there they inspect you, but yeah, they
13 called me and told me he left that there for me,
14 and I got it when I got back from Michigan.

15 MR. YEMC: Now if -- your Honor, if I may
16 approach the witness. I'm going to apologize, I
17 didn't expect to have to use this as an exhibit so
18 I did not make copies. I'll be happy to do so, if
19 somebody can point me in the direction -- of what
20 my client received after he stopped back at the
21 guard shack.

22 ATTORNEY EXAMINER: I think, Donny says
23 he's willing to make copies.

24 MR. YEMC: Man, you're the best.

25 (OFF THE RECORD)

1 BY MR. YEMC:

2 Q. Sir, I'm going to hand you what's going to
3 be marked as Respondent's Exhibit A, as in apple,
4 so we can keep it clear and different.

5 ATTORNEY EXAMINER: As so marked.

6 BY MR. YEMC:

7 Q. And sir, could you describe what this is?

8 A. It's the DOT inspection form.

9 Q. Now is -- sir, is this the form that you
10 got when you stopped back at the guard shack? When
11 you got back into Ohio?

12 A. Yes, that's what Carl handed me when I
13 pulled in, to check back in, to go inside the
14 plant.

15 Q. Okay. So now on the examination report
16 that you received from Carl, at the plant, was that
17 the next day or a couple of days after? What was
18 it?

19 A. It was the next day cause I had to
20 deliver that morning in Michigan, in Kalamazoo.

21 Q. Okay. Now, about the center of that
22 examination report, how many violations do you see?

23 A. Just one.

24 Q. Okay. Now, I'm going to hand you a copy
25 of what was marked as Staff's Exhibit 1. Now, this

1 is purported to be the same examination report that
2 you were personally served that day which you
3 indicated you were not. How many violations are on
4 the report, sir?

5 A. Two.

6 Q. Okay. Have you ever seen that report
7 prior to today?

8 A. No. All I've ever seen is this one, what
9 the guard at Veolia handed me.

10 Q. Thank you, sir. Sir, you heard Officer
11 Haskins testify that you did not stop at the
12 railroad crossing and were not detained by the red
13 light; is that accurate?

14 A. No, I turned my emergency four-ways on,
15 slowed down, stopped at the railroad tracks, went
16 across the tracks and was sitting at the red light
17 waiting for it to turn green, with the rest of the
18 traffic.

19 Q. And you heard Officer Haskins state that
20 he personally served you with a copy of this report
21 on the day of the alleged offense; is that
22 accurate?

23 A. No, it is not.

24 MR. YEMC: Thank you, very much. I have
25 no further questions.

1 ATTORNEY EXAMINER: Thank you. Any cross-
2 examination?

3 MR. LINDGREN: Yes. Thank you, your
4 Honor.

5 CROSS-EXAMINATION

6 BY MR. LINDGREN:

7 Q. Mr. Combs, on Respondent's Exhibit A, do
8 you see the notation at the top that says, P 2/2?

9 A. I don't know -- I don't see it, where I'm
10 looking.

11 Q. Upper right corner.

12 A. On this one?

13 Q. Yes. Does it -- in the upper right
14 corner, does it say P 2/2?

15 A. I'm sorry, if you can point it out to me.

16 MR. LINDGREN: May I approach the witness?

17 ATTORNEY EXAMINER: You may.

18 THE WITNESS: Oh. Okay, yeah.

19 MR. LINDGREN: Thank you.

20 THE WITNESS: I'm sorry, I thought you
21 were saying "T".

22 BY MR. LINDGREN:

23 Q. No, I'm sorry. So do you understand that
24 to mean that this is page two, out of two?

25 A. Not 'til you just told me, sir.

1 Q. Okay. Well, is it possible that there was
2 another page that was supposed to go with this?

3 A. Maybe, sir. But this is the only one that
4 the Veolia guard gave me when I got back.

5 Q. Thank you. I believe you testified that
6 you took a break, in the Kroger parking lot,
7 shortly before you were stopped; is that right?

8 A. Yes. I had to take my 10 hour break cause
9 my 14 hours was up.

10 Q. And so were you sleeping while you were in
11 the parking lot?

12 A. Yes, sir.

13 Q. Thank you. How much before this time, did
14 you wake up?

15 A. Well, about an hour.

16 Q. An hour.

17 A. I had to do my 15 minute inspection and
18 stuff before I could leave the parking lot.

19 Q. Thank you. And there was a traffic light
20 on the other side of this grade crossing; is that
21 correct?

22 A. Yes, sir.

23 Q. Thank you. So is it possible you were in
24 a hurry to get over this grade crossing, to make
25 the green light on the other side?

1 A. No, sir, I mean -- well, when I got up to
2 the railroad tracks the light was red; so I
3 couldn't have went through the tracks to get
4 through the light. I wasn't going to run a red
5 light.

6 Q. And where did you say you were delivering
7 this load too?

8 A. I was taking the empty tote back to the
9 shipper. I picked it up at the shipper and
10 delivered in Halocarbon and Augustus, South
11 Carolina that prior morning, and was returning it
12 back to the shipper.

13 Q. Thank you. And was the shipper expecting
14 this tote back at a certain time?

15 A. No, it was whenever I got back.

16 MR. LINDGREN: Thank you. Thank you. I
17 have no further questions.

18 ATTORNEY EXAMINER: Thank you. Any
19 redirect?

20 MR. YEMC: I do but can we take another
21 break for one more copy, again?

22 ATTORNEY EXAMINER: Donny, would you mind?

23 MR. YEMC: It goes to the page. It's
24 silly but I just want to clarify.

25 ATTORNEY EXAMINER: Okay. Thank you.

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(OFF THE RECORD)

REDIRECT EXAMINATION

BY MR. YEMC:

Q. Sir, I'm going to hand you what's been marked as Respondent's Exhibit B. In the upper right hand corner, can you describe what is located up there?

A. Do you mean the P 1/2?

Q. That's exactly what I mean. Now, sir, is that P 1/2, does that go -- was that the first page of P 1/2 and P 1/ -- P 2-2? Is that a fax that you sent my office?

A. Yes, sir.

Q. Okay. So that's -- there was no additional page to the report that you received at the guard station, correct?

A. No.

MR. YEMC: Thank you. That's all the clarification I wanted to make.

ATTORNEY EXAMINER: Thank you. You may be excused.

MR. YEMC: There's no further witnesses. I'll just move to have exhibits, Respondent's Exhibits A and B, admitted into evidence.

ATTORNEY EXAMINER: Any objections?

1 MR. LINDGREN: No objections.

2 ATTORNEY EXAMINER: Exhibit's A and B,
3 will be moved into the record. Are there any other
4 matters that need to be addressed?

5 MR. LINDGREN: Your Honor, may we -- Staff
6 have a moment?

7 ATTORNEY EXAMINER: Yes.

8 MR. LINDGREN: Thank you. Your Honor, are
9 we still on the record?

10 ATTORNEY EXAMINER: We are.

11 MR. LINDGREN: The staff would like to
12 recall Phil Haskins to the stand on rebuttal.

13 (WITNESS WAS SWORN)

14 - - -

15 PHIL HASKINS

16 called as a witness, being first duly sworn,
17 testified as follows:

18 REDIRECT EXAMINATION

19 BY MR. LINDGREN:

20 Q. Hello, again, Mr. Haskins. Could you
21 explain why the driver would have received a copy
22 of the inspection report that only reflected one
23 violation while Staff Exhibit 1, lists two
24 violations? Can you explain that difference?

25 A. Yes, the second violation, dealing with

1 the package, required further investigation.
 2 That's why I followed the vehicle to the shippers'
 3 location, to further inspect the packaging because
 4 it wasn't -- it wasn't corrosive gas and poison
 5 gas.

6 I wanted to take the necessary steps to be safe
 7 and follow the vehicle to the consignment, to where
 8 the inspection could further be completed on the
 9 package, therefore, I discovered that the marking
 10 was not proper on the package, after further
 11 inspection, and added the second violation later,
 12 after I documented and took photos of the package,
 13 at the shippers' facility -- at the receivers'
 14 facility.

15 Q. Thank you. Mr. Haskins, would the second
 16 violation concerning the package markings apply to
 17 the driver?

18 A. No, it would not.

19 MR. LINDGREN: Thank you. I have no
 20 further questions.

21 ATTORNEY EXAMINER: Thank you. Any
 22 re-cross examination?

23 MR. YEMC: Yes. Thank you.

24 - - -

25 RE-CROSS EXAMINATION

1 BY MR. YEMC:

2 Q. Now, Officer Haskins, why weren't you able
3 to serve this new report upon the Respondent?

4 A. It required further investigation of the
5 regulations, and these regulations, on the old
6 portal tanks, aren't maintained at any volume so I
7 had to return to my office and verify that section
8 number was accurate, later that afternoon.

9 MR. LINDGREN: Thank you.

10 ATTORNEY EXAMINER: Any redirect?

11 MR. LINDGREN: None, your Honor.

12 ATTORNEY EXAMINER: Thank you. You may be
13 excused. Any rebuttal, Mr. Yemc? No? So are
14 there any other matters that need to be addressed
15 at this time?

16 MR. LINDGREN: No, your Honor.

17 MR. YEMC: No, your Honor.

18 ATTORNEY EXAMINER: Hearing none, this
19 case is submitted on the record and this hearing is
20 adjourned.

21 (At 10:29 a.m. the hearing was 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 December 13, 2018,
and carefully compared with my original
stenographic notes.

Romaine James
Romaine James
Court Reporter

- - -



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12/28/2018 10:55:37 AM

in

Case No(s). 18-1092-TR-CVF

Summary: Transcript In the Matter of Edgar G. Combs, Notice of Apparent Violation and Intent to Assess Forfeiture, hearing held on December 13, 2018. electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and James, Romaine