

FILE

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

In the Matter of the Rye :  
Gentry Trucking, Inc. : Case No. 06-1280-TR-CVF

- - -

PROCEEDINGS

before Mr. Kerry K. Sheets, Attorney Examiner, at the  
Public Utilities Commission of Ohio, 180 East Broad  
Street, Room 11-B, Columbus, Ohio, called at 10 a.m.  
on Thursday, February 22, 2007.

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ORIGINAL

## 1 APPEARANCES:

2 Marc Dann, Ohio Attorney General  
3 By Mr. Duane W. Luckey,  
4 Senior Deputy Attorney General  
5 By Mr. Werner L. Margard III  
6 and Mr. John H. Jones,  
7 Assistant Attorneys General  
8 Public Utilities Section  
9 180 East Broad Street, 9th Floor  
10 Columbus, Ohio 43215

11 On behalf of the Transportation Staff of  
12 the PUCO.

## 13 ALSO PRESENT:

14 Ms. Vanessa Green, Rey Gentry Trucking, Inc.  
15 Ms. Corinna Coker, Motor Carrier Enforcement.  
16 Mr. R.D. Divjak, Motor Carrier Enforcement.

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Thursday Morning Session,  
February 22, 2007.

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ATTORNEY EXAMINER SHEETS: The Public  
Utilities Commission of Ohio has set for hearing at  
this place and time Case No. 06-1280-TR-CVF in the  
Matter of the Rye Gentry Trucking, Inc.

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

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

MR. MARGARD: Thank you, your Honor. On  
behalf of the Transportation Staff of the Public  
Utilities Commission of Ohio -- why don't we go off  
the record.

ATTORNEY EXAMINER SHEETS: Let's go off  
the record.

(Discussion off the record.)

ATTORNEY EXAMINER SHEETS: Go ahead.

MR. MARGARD: Thank you, your Honor. On  
behalf of the Transportation Staff of the Public  
Utilities Commission of Ohio, Marc Dann, Ohio  
Attorney General, Duane Luckey, Senior Deputy

1 Attorney General, entering the appearance this  
2 morning of Assistant Attorney General Werner L.  
3 Margard, III, and John H. Jones, 180 East Broad  
4 Street, Columbus, Ohio.

5 ATTORNEY EXAMINER SHEETS: Thank you,  
6 Mr. Margard.

7 Do you wish to make an appearance, ma'am?

8 MS. GREEN: I am Vanessa Green  
9 representing Rye Gentry of Warren, Michigan. The  
10 terminal is located at 6134 West Jefferson in  
11 Detroit.

12 ATTORNEY EXAMINER SHEETS: Very good. Do  
13 we have any preliminary matters to take care of  
14 today?

15 MR. MARGARD: The only thing I would  
16 note, your Honor, is the Respondent is incorporated  
17 in the State of Michigan. And Ms. Green was advised  
18 of the Commission's rule, so with respect to the need  
19 for counsel for this kind of a hearing she's also  
20 aware of her opportunity to be able to make factual  
21 statements as part of the hearing.

22 But I would just request that you take  
23 administrative notice of the Director of the State of  
24 Michigan noting the corporate status of the

1 corporation.

2 ATTORNEY EXAMINER SHEETS: I will do  
3 that, I would take administrative notice. With that  
4 said let's proceed with the case.

5 MR. MARGARD: Thank you, your Honor, and  
6 my first witness would be Officer Rob Divjak.

7 - - -

8 ROBERT DIVJAK

9 called as a witness on behalf of Staff, being first  
10 duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 By Mr. Margard:

13 Q. Please state your full name.

14 A. Robert Divjak.

15 Q. And by whom are you employed?

16 A. Ohio State Highway Patrol.

17 Q. And what is your business address,  
18 please?

19 MS. COKER: 3201.

20 A. 3201 North Main Street, Findlay, Ohio.

21 Q. And in what capacity are you employed  
22 with the Highway Patrol?

23 A. Motor Carrier Enforcement Inspector.

24 Q. And how long have you been employed in

1       that capacity?

2             A.     Since 1986.

3             Q.     Prior to 1986 by whom were you employed?

4             A.     Automotive industries, truck mechanic.

5             Q.     Thank you. Do you have any special  
6       training with respect to Motor Carrier Enforcement?

7             A.     All the regulations through the federal  
8       government and the state government pertaining to  
9       commercial enforcement.

10            Q.     Do you have a working familiarity with  
11       the regulations then?

12            A.     Yes, sir.

13            Q.     Were you on your job as -- as an  
14       inspector as an Enforcement Officer on April 25,  
15       2006?

16            A.     Yes, sir.

17            Q.     And in the course of your duties on that  
18       date, did you have an opportunity to inspect a  
19       vehicle operated by Rye Gentry Trucking?

20            A.     Yes, sir.

21            Q.     And as a result of that inspection, did  
22       you -- did you prepare a report?

23            A.     Yes, sir.

24            Q.     Officer Divjak, I am handing you what has

1       been marked for identification purposes as Staff  
2       Exhibit 1 and ask if you can identify that document  
3       for me, please.

4             A.     Yes.   That's my inspection report.

5             Q.     And this is a copy of the inspection  
6       report that you prepared at the time of the  
7       inspection?

8             A.     Yes, sir.

9             Q.     And this was prepared indeed at the time  
10       of the inspection?

11            A.     Yes, sir.

12            Q.     I note that it indicates an inspection  
13       level of 2, a walk-around inspection.   Can you  
14       briefly explain the circumstances of this inspection  
15       and how you conducted it, please?

16            A.     Yes.   You check the truck for safety, the  
17       lights and underneath, the brakes, just visual, and  
18       as far as the truck goes, it's what you can visibly  
19       see.   It's called a walk-around inspection.

20            Q.     Was this at a weigh station?

21            A.     No, the side of the road.

22            Q.     This is roadside?

23            A.     Roadside inspection.

24            Q.     Was there a specific reason why you



1 stopped this vehicle? Do you recall?

2 A. It will be on the report. I don't recall  
3 at the time. Yes, obvious violation.

4 Q. Do you recall what the obvious violation  
5 was?

6 A. It would have been the lights.

7 Q. Okay. Do you have -- before we go  
8 further do you remember this inspection?

9 A. I remember the inspection, yes.

10 Q. You do have an independent recollection  
11 of this as you sit here today?

12 A. Yes, I do.

13 Q. Can you describe what kind of vehicle  
14 this was for me, please?

15 A. It was a Kenworth conventional tractor  
16 and a cargo container box trailer.

17 Q. In the report there is a section noted  
18 violations about the middle of the page. Do you see  
19 that section?

20 A. Yes, sir.

21 Q. There are a number of different  
22 violations noted there. There are also units and the  
23 unit, I presume, is the portion of the vehicle --

24 A. Correct.

1           Q.    -- that had the violation.  And so unit 1  
2           would be the tractor and unit 2 would be the  
3           container.

4           A.    Correct.

5           Q.    The next column says OOS.  Your  
6           understanding that stands for out of service?

7           A.    Correct.

8           Q.    And what does out of service mean?

9           A.    Out of service means they are taken out  
10          of service for safety violations, unsafe to be  
11          driven.

12          Q.    And the vehicle then can be placed back  
13          in service once the violation has been corrected; is  
14          that correct?

15          A.    Correct, uh-huh.

16          Q.    In this instance you found one out of  
17          service violation for this vehicle; is that correct?

18          A.    Correct.

19          Q.    And what was that violation, please?

20          A.    The cargo container wasn't secured  
21          properly to the chassis.

22          Q.    And can you explain to me exactly what  
23          you found when you inspected the vehicle in terms of  
24          how it was attached to the chassis?

1           A.   Where they are locked in they have pins  
2   that come out and then they got a latch that comes  
3   down, latches it in place, and then the latch, it's  
4   got a hole where you put a tie strap through, wrap it  
5   around, and then it can't go anywhere. It can't come  
6   unlatched. It didn't have any of those in it so  
7   those latches, a lot of them make this swing free,  
8   and I've had situations where they've come unlatched,  
9   so then your cargo container can come off, unsecure.

10          Q.   Let me make sure I understand exactly  
11   what we are talking about. There is a pin that a  
12   latch comes down on top of; is that correct?

13          A.   The -- there's different styles but.

14          Q.   We are all using hand motions, and I want  
15   to make sure it is as clear as we can be.

16          A.   The latch turns into place and they have  
17   got an arm that comes out, as this spins, the arm  
18   spins around in place, and then there's the lever  
19   that comes down that you wrap your tie strap through,  
20   and then that holds that in place.

21          Q.   The arm that you are talking about.

22          A.   Yes.

23          Q.   Holds the arm in place.

24          A.   If that's not secure, these work loose.

1 They will come out, and they will rest on top of it.  
2 I have seen them like that and I have seen them  
3 behind them and I have seen those come loose and  
4 there's times where you can move it with just one  
5 finger and unlatch that. It all depends. Each  
6 situation is different.

7 Q. Do you have any experience fastening  
8 these latches on this type of vehicle? Do you know  
9 how that is done?

10 A. Yes. They -- the industry, the biggest  
11 majority of them use tie straps, the plastic tie  
12 straps. Like I said, you just go through that hole,  
13 wrap it around that latch, and zip it. It can't go  
14 nowhere. It's locked in place. Some of them, they  
15 use wire, whatever is handy enough to -- strong  
16 enough to keep them from moving to hold it in place.

17 Q. Have you ever inspected an intermodal  
18 vehicle that has been secured with tie straps where  
19 the latch has come loose?

20 A. No.

21 Q. Have you had occasion to inspect  
22 intermodal carrier vehicles that have not been tied  
23 down where the latches have, in fact, come loose?

24 A. Yes.

1           Q.    And the consequence of a latch coming  
2 loose is that the container then can come off of the  
3 chassis; is that correct?

4           A.    Yes.

5           Q.    Have you ever had an experience of an  
6 intermodal vehicle where the container has come off  
7 because it was improperly secured?

8           A.    Not stopping them but I've had them where  
9 they've been shifted out of position where they could  
10 fall off.

11          Q.    In this case, in the instance of this  
12 inspection, am I correct in understanding that all  
13 four corners were latched; is that correct?

14          A.    Correct.

15          Q.    Were any of the corners tied down as you  
16 have described this in any fashion at all?

17          A.    No.

18          Q.    So none of the four corners were tied  
19 down?

20          A.    Correct.

21          Q.    Did you instruct the driver to correct  
22 the violation at the scene?

23          A.    Yes, I did.

24          Q.    And did the driver do that?

1 A. Yes, he did.

2 Q. And did you have an opportunity to  
3 reinspect the vehicle?

4 A. Yes, I did.

5 Q. And what did you find under the  
6 inspection?

7 A. He corrected the out of service  
8 violation.

9 Q. He had the latches tied down?

10 A. Yes, he did.

11 Q. Do you recall how he had them tied down?

12 A. No, I don't.

13 Q. But in your opinion at that point it was  
14 secure and --

15 A. Yes.

16 Q. -- you were safe to release him.

17 A. Yes.

18 Q. Let me ask you briefly about this report.  
19 Let me ask you how you prepare this report at the  
20 scene. Do you have a computer or some sort of device  
21 that you use?

22 A. Correct. We have a computer in our car.

23 Q. And what do you note on the computer in  
24 order to prepare this report specifically with

1     respect to the violations? Do you put in the section  
2     number? Do you put in a description? How is the  
3     information that appears in the violation section  
4     generated?

5             A.     You go in and you hit the section number  
6     or what the violation is. There's a violation  
7     section and it brings up which one you hit for  
8     chassis or suspension, driver violation, and it goes  
9     into category and you go up and it has the section  
10    there.

11            Q.     It has a series of drop-down menus?

12            A.     Yes, yes.

13            Q.     And then you select the appropriate  
14    violation?

15            A.     Correct.

16            Q.     Do you have any input yourself in terms  
17    of putting that in or do you just select the options  
18    that the computer gives you?

19            A.     It automatically brings it up. But then  
20    you can add to it or change it to suit what you have.

21            Q.     Okay. Did you make any other notes in  
22    the course of this inspection, anything else  
23    extraordinary about this inspection in your  
24    recollection?

1           A.    No, just the inspection, nothing beyond  
2   the inspection.

3           Q.    Again, this is a complete and accurate  
4   copy of the inspection that you conducted as you  
5   conducted it?

6           A.    Yes, sir.

7           Q.    Now, after you are done with your report,  
8   what do you do with that information?

9           A.    I give a copy to the driver, and I  
10   explain the inspection to the driver. And if they  
11   have any questions on any of the violations, I always  
12   show them in the book the regulations if they have  
13   questions. I always make it a point to ask them if  
14   they have any questions about everything and do they  
15   understand everything. And the copies that I give  
16   them, they would circle on the back all the  
17   information so they don't forget or get mixed up. So  
18   they get a copy and then what's in the computer is  
19   downloaded to Columbus then.

20          Q.    Okay. The signatures at the bottom of  
21   the first page of this document, that's your  
22   signature on the line?

23          A.    Yes, sir.

24          Q.    And did you see the driver sign this



1 document as well?

2 A. Yes, I did.

3 MR. MARGARD: That's all the questions I  
4 have for you, Officer Divjak.

5 ATTORNEY EXAMINER SHEETS: Let's go off  
6 the record here briefly.

7 (Discussion off the record.)

8 ATTORNEY EXAMINER SHEETS: Let's go back  
9 on the record at this point.

10 MR. MARGARD: Thank you, your Honor. For  
11 purposes of clarifying Ms. Green prior to the hearing  
12 had provided Staff with copies of photographs taken  
13 of a comparable vehicle to the one that is the  
14 subject of the inspection here and specifically of  
15 the locking mechanism that Trooper Divjak has been  
16 describing for us. And to the extent it would be  
17 useful for us to be able to better describe what that  
18 mechanism looks like, we've agreed that these are not  
19 of the vehicle in question but are the comparable  
20 vehicle and that we would ask Officer Divjak to take  
21 a look at it and see if that helps him to clarify his  
22 understanding of what happened at the time.

23 A. Yes, these are comparable.

24 Q. These are on numbered pages and I think

1 perhaps just to aid us in being able to keep them  
2 separate, if you can refer to the photograph by the  
3 page number, if you want to go through those and  
4 identify the different pieces, parts that you were  
5 describing to us earlier or if there is anything else  
6 you might be able to add to help us more fully  
7 understand what this looked like.

8 A. Okay. On this particular one --

9 Q. And, again --

10 A. Page 2 of 10, the space between this, it  
11 should be -- this area should be tight against here.

12 ATTORNEY EXAMINER SHEETS: Okay. What  
13 are you pointing to?

14 THE WITNESS: The gap between it.

15 ATTORNEY EXAMINER SHEETS: The gap  
16 between what? What is this?

17 THE WITNESS: This is the chassis and --

18 ATTORNEY EXAMINER SHEETS: Chassis is on  
19 the left; the container is on the right.

20 THE WITNESS: The space in between here,  
21 it shouldn't be here. You have got movement. This  
22 should be tight against.

23 ATTORNEY EXAMINER SHEETS: And there's  
24 something that needs to be threaded through there?

1 THE WITNESS: It's supposed to be --

2 MS. COKER: Flushed up.

3 THE WITNESS: -- tight against that. And  
4 page 3 of 10, the arm, it looks like it's bent. This  
5 should be up higher. You will see it's angled down.  
6 It should be straight across and this hole here, it  
7 should be below this and that's where you take your  
8 strap through that hole and you secure it to that arm  
9 here and that secures it all together.

10 ATTORNEY EXAMINER SHEETS: Okay.

11 THE WITNESS: Right now, this hinges on  
12 that bolt and this is loose.

13 MS. COKER: It goes back and forth.

14 THE WITNESS: Dangles freely, this right  
15 here, and then this would be able to spin and unlatch  
16 up here.

17 ATTORNEY EXAMINER SHEETS: And that --  
18 part that you pointed out, you said up here, is that  
19 part of the truck body?

20 THE WITNESS: Yeah. This is actually the  
21 latch part that secures the container to the chassis,  
22 this mechanism.

23 Q. And before leaving this particular  
24 picture, you were indicating at least in this picture

1 the arm is not in the proper position.

2 A. It looks like it appears to be bent out  
3 of shape. They get beat in the rail yards.

4 Q. You don't have any recollection of that  
5 being the case with this vehicle that you inspected  
6 though, do you?

7 A. No.

8 Q. Okay. I am just trying to make sure that  
9 I have differentiated it.

10 A. Page 4 of 10, I believe this would be  
11 your latch here. It's hard to see with this one, but  
12 you would have a hole in this latch that would come  
13 around. There's a hole in this one and it secures  
14 that together so that can't move. The way this is  
15 looks like this one is set up to move either left or  
16 right so if that vibrates loose, it would come open  
17 just that easy and there's times where you can take  
18 these latches and move them with one finger.

19 MS. COKER: Just lift up.

20 THE WITNESS: Push them real easy and  
21 they come unlatched.

22 ATTORNEY EXAMINER SHEETS: What you  
23 called an armature before, is that the latch?

24 THE WITNESS: This arm comes up to the

1     latching mechanism up here. Page 5 of 10, this shows  
2     you that this is inside the container. This is where  
3     it latches. That arm when it spins, it spins inside  
4     of here and this would be unlatched if it was facing  
5     towards you. See, it's locked over the container  
6     here. So you can see all this movement in here how  
7     easy that could come unlatched. There's nothing real  
8     tight about it in this position.

9             ATTORNEY EXAMINER SHEETS: You are  
10    pointing to that dark space --

11            THE WITNESS: Correct.

12            ATTORNEY EXAMINER SHEETS: -- in the  
13    lower left-hand corner.

14            THE WITNESS: Yes, all this underneath of  
15    here. This gives you a better view, page 7 of 10, of  
16    the latch, how it's latching the container down when  
17    it's in this position, and they can just pick it up  
18    off of there.

19            MS. COKER: I'm not sure what that is.

20            THE WITNESS: I am not sure which  
21    direction that's supposed to be.

22            ATTORNEY EXAMINER SHEETS: What page is  
23    that?

24            THE WITNESS: Page 9 of 10. I can't

1 tell.

2 MS. COKER: I don't know what that is  
3 either.

4 ATTORNEY EXAMINER SHEETS: Okay. You  
5 can't identify 10 either?

6 MS. COKER: I don't know what that is.

7 THE WITNESS: Okay. Page 1 of 10, the  
8 same thing with this here --

9 ATTORNEY EXAMINER SHEETS: Pointing to  
10 the --

11 THE WITNESS: This is a different style  
12 than what we was looking at in the previous pages.  
13 This would be secured to this. It comes up and over.  
14 This is just a different style.

15 ATTORNEY EXAMINER SHEETS: So that's part  
16 of a latch there you are pointing out?

17 THE WITNESS: Yes, and this has to be  
18 secured together to secure this.

19 ATTORNEY EXAMINER SHEETS: There are two  
20 bars or armatures there, you are saying?

21 THE WITNESS: Yes, yes, they must be  
22 secured together.

23 ATTORNEY EXAMINER SHEETS: And you are  
24 saying tie down or some sort of rope would be used

1     for that?

2                 THE WITNESS:   Yes.   The industry, the  
3     biggest majority of them use plastic tie straps to  
4     secure them together.

5                 Q.    With respect to page 1 of 10 that you  
6     just said was a different style, of the photographs  
7     that we've been looking at here, are you indicating  
8     that page 1 of 10 would not have been representative  
9     of the vehicle that you looked at?  Is it possible  
10    that you would have different style latches on the  
11    same chassis?

12                A.    Could very well be.  The fronts, there's  
13    different styles of latches on these.  Just page 3 of  
14    10, it looks like the bar itself is bent out of shape  
15    and this is all free to where the bar should be above  
16    the position of this latch so that that goes  
17    underneath and comes up the other side and goes  
18    through that side of the latch, secures it all  
19    together.  It goes -- this bar should be up here.  
20    This is bent in so it's like this.  The bar is here,  
21    the strap goes through that eye, up through this eye,  
22    and it secures it all together.

23                ATTORNEY EXAMINER SHEETS:  Okay.  Do you  
24    have any more questions?

1 MR. MARGARD: Are these photographs  
2 sufficient, your Honor, to be able to describe?

3 ATTORNEY EXAMINER SHEETS: I think they  
4 might prove useful, Mr. Margard.

5 MR. MARGARD: No. I have no further  
6 questions. I think perhaps we ought to mark this  
7 document or a copy of the document of 10 pages, the  
8 10 photographs in question here, and I would propose  
9 that we have a couple of other documents premarked  
10 here, so I guess I would propose that we mark this as  
11 Staff Exhibit No. 4.

12 ATTORNEY EXAMINER SHEETS: Okay.

13 MR. MARGARD: And I would move for the  
14 admission of both --

15 MR. JONES: Do you want this to be a  
16 joint since it's your document?

17 MS. GREEN: I am just letting Mr. Margard  
18 talk, but I thought about that too.

19 ATTORNEY EXAMINER SHEETS: Why don't we  
20 make it a joint exhibit.

21 MR. MARGARD: Joint Exhibit 1.

22 ATTORNEY EXAMINER SHEETS: You just want  
23 the photos without the text or?

24 MR. MARGARD: I was just looking at the



1 text, your Honor. I think in as much as we've all  
2 agreed this is not necessarily the vehicle in  
3 question but is representative, I'm not that  
4 concerned about the substance of the text, so we can  
5 either use this document, or we can substitute  
6 another document of the same 10 pages in the same  
7 order. It is not significant to me one way or the  
8 other, but we certainly can identify this as Joint  
9 Exhibit 1 and move for that admission as well.

10 ATTORNEY EXAMINER SHEETS: Well, let's  
11 label that as Joint Exhibit 1.

12 (EXHIBIT HEREBY MARKED FOR  
13 IDENTIFICATION PURPOSES.)

14 MR. JONES: Your Honor, would it be best  
15 to remove the pages that could not be identified so  
16 it's a little bit clearer exhibit?

17 ATTORNEY EXAMINER SHEETS: I kind of -- I  
18 don't think those are relevant if you can't identify  
19 them.

20 MR. MARGARD: Inasmuch as he has  
21 described them in his testimony, your Honor, at least  
22 he indicated he can't identify them, I am kind of  
23 reluctant to take them out.

24 ATTORNEY EXAMINER SHEETS: Let's keep

1       them intact then.

2                   Do you have another witness, Mr. Margard?

3                   MR. MARGARD: Yes, your Honor, Mr. Forbes  
4       on behalf of the Staff, and Mr. Jones will be  
5       conducting his examination.

6                   MR. JONES: Mr. Forbes.

7                   - - -

8                   TOM FORBES

9       called as a witness on behalf of Staff, being first  
10      duly sworn, testified as follows:

11                   DIRECT EXAMINATION

12      By Mr. Jones:

13                  Q.    Good morning, Mr. Forbes.

14                  A.    Good morning, Mr. Jones.

15                  Q.    Could you state your name for the record,  
16      please.

17                  A.    Tom Forbes, F-O-R-B-E-S.

18                  Q.    And could you please state where you are  
19      employed.

20                  A.    I am employed by the Public Utilities  
21      Commission of Ohio, 180 East Broad Street, 14th  
22      Floor, Columbus, Ohio 43215.

23                  Q.    And what department of the Commission do  
24      you work in?

1           A.    I work in the Civil Forfeiture Compliance  
2 Division.

3           Q.    And what is your job title?

4           A.    I am a Hazardous Materials Investigator  
5 and Compliance Officer.

6           Q.    Okay. What are your job duties and  
7 responsibilities in that position?

8           A.    As a Compliance Officer, I review  
9 inspection reports to determine forfeiture  
10 calculations. I handle telephone and in person  
11 conferences with the respondents, reference their  
12 cases. I handle technical calls from motor carriers,  
13 drivers, and shippers about the regulations, and I am  
14 also a Certified Inspector, and I do roadside  
15 inspections to maintain all my levels of  
16 certification.

17          Q.    And let's go through a little bit of your  
18 background, your education, and training for your  
19 qualifications.

20          A.    Since I have been with the Commission I  
21 have attended the North American Level 1 driver and  
22 vehicle training, bulk packages, and cargo tank  
23 training, hazardous materials, compliance reviews,  
24 and level 6 radioactive inspections training. Prior

1 to my time with the Commission I spent 14 years with  
2 an environmental company as a shipper and carrier of  
3 hazardous materials. Prior to that I spent eight  
4 years with the state fire marshall's office in the  
5 hazardous materials and underground tank sections.

6 Q. And how long have you been with the  
7 Compliance Division of the Commission?

8 A. About a year and a half.

9 Q. Okay. All right. And have you had the  
10 opportunity to make yourself familiar with the --  
11 this case and this file involving Rye Gentry  
12 Trucking, Incorporated?

13 A. Yes, sir.

14 Q. And I want to hand you -- I think I gave  
15 you a copy of what's marked as Staff Exhibit 2.

16 A. I have that Exhibit 2.

17 Q. Maybe you didn't get that. Did I give  
18 you that?

19 A. I have got 2, yes, sir.

20 Q. All right. Could you please identify  
21 that document for the record, please.

22 A. This is a Notice of Preliminary  
23 Determination letter that was mailed by the  
24 Commission to Ms. Green of Rye Gentry Trucking on

1 September 26, 2006.

2 Q. Okay. And what date was that letter sent  
3 out?

4 A. September 26 of 2006.

5 Q. Okay. And what information is provided  
6 on this document, Staff Exhibit 2?

7 A. The mailing address and Respondent's name  
8 as well as the case number, the compliance officer,  
9 description of the violation and forfeiture amount,  
10 the fact that the Respondent had an opportunity for  
11 conference, and the outcome of the conference was  
12 that the forfeiture amount remained the same.

13 Q. Okay. How does this document  
14 cross-reference the Staff Exhibit 1 which is the  
15 examination report?

16 A. The case number in the center of Staff  
17 Exhibit 2 should be the same as the inspection number  
18 on Staff Exhibit 1 with the addition of a C to  
19 indicate it as a carrier violation.

20 Q. Okay. And, further, what's provided here  
21 as to the code and violation noted and the amount of  
22 the forfeiture that's assessed in this case?

23 A. The code was 393.126(b). The violation  
24 was all four corners unsecure securement devices, and

1 the total forfeiture was \$200.

2 Q. Okay. And is this a record kept in the  
3 ordinary course of business for your department?

4 A. Yes, sir.

5 Q. Okay. And, now, let me understand for  
6 the record how do you receive copies of the  
7 examination report from the field when an inspection  
8 is done?

9 A. Once the field inspector's completed an  
10 inspection on a frequent basis they upload those  
11 inspections electronically into a system called  
12 Safety Net, and the Safety Net system captures all  
13 the data, continues to upload it to the federal  
14 government, and also passes it off to the Civil  
15 Forfeiture Division electronically.

16 Q. Okay. All right. And then please walk  
17 us through the process as to when your department  
18 receives one of these examination reports and note it  
19 for the code and violation number, how the assessment  
20 is then applied.

21 A. Okay. Once the inspection report is  
22 transferred to the Civil Forfeiture Division for  
23 non-hazardous material inspections a computer program  
24 generates the forfeiture amount based on the

1 violation code or codes listed on the inspection  
2 report. And there are four groups of forfeitures for  
3 non-Hazmat violations based on the severity of the  
4 violation.

5 Q. Okay. Now, take us to the next exhibit I  
6 have before you, Staff Exhibit 3. Could you please  
7 identify that document for the record, please.

8 A. Yes. Staff Exhibit 3 is the fine  
9 schedule for violations for non-hazardous material  
10 violations.

11 Q. Okay. And this is a schedule that's --  
12 schedule that's developed by who?

13 A. The Compliance Division.

14 Q. Okay. And as to this particular schedule  
15 here, what was the date this was developed, this  
16 schedule?

17 A. This was effective January 2, 2005.

18 Q. Okay. And as to your review of this  
19 examination report in this case and knowing the  
20 inspection date, is this the -- the applicable  
21 schedule that would apply to this case based on the  
22 date of the inspection in this case?

23 A. Yes, sir.

24 Q. Okay. Now, could you please describe the

1 process for this particular case in checking as to  
2 the assessment made in this case was -- how was this  
3 done from using this fine schedule that you double  
4 checked to make sure the assessment was correct?

5 A. The securement violations are group 1  
6 violations falling under the safe loading category.  
7 And if there is one violation of a group 1, it is a  
8 \$100 forfeiture. If there are two violations on one  
9 inspection of a group 1, it is a \$250 forfeiture.  
10 And if there are three group 1 violations, it would  
11 be a \$400 forfeiture.

12 Q. Okay. So you are referring to the first  
13 group box on page 1 of Staff Exhibit 3?

14 A. Yes, sir, group 1 where it's marked  
15 group 1.

16 Q. And under group 1 violations there is a  
17 notation there for safe loading; is that correct?

18 A. Yes, sir.

19 Q. Okay. And in this case we have one  
20 violation per this group 1?

21 A. That is true.

22 Q. Okay. And so that's a \$100 violation as  
23 indicated in the maximum fine boxes to that group?

24 A. Based on the fine schedule, yes.



1           Q.    Okay.  And why in this case do we have a  
2   \$200 assessment?

3           A.    Rye Gentry Trucking has -- is a history  
4   carrier with the Commission.  And if you are a  
5   history carrier, that would double the forfeiture  
6   amount up to \$1,000 for a non-Hazmat violation.  No  
7   violations can exceed \$1,000 non-Hazmat.

8           Q.    Okay.

9           A.    So it doubled the one violation of \$100  
10  to \$200.

11          Q.    Okay.  And this was done automatically  
12  through the software Safety Net program?

13          A.    Yes, sir.

14          Q.    Okay.  And you have double checked this  
15  information to make sure that was a correct  
16  calculation?

17          A.    Yes.

18          Q.    So in doing that you checked the history  
19  of Rye Gentry as to past violations within the past  
20  12 months from this inspection?

21          A.    We looked at the computer and identified  
22  they were a history carrier at that time.

23          Q.    Okay.  So is it your opinion then that  
24  the assessment for the forfeiture in this case, the

1 \$200, is the correct amount that should be applied in  
2 compliance with the Staff Exhibit 3, the fine  
3 schedule?

4 A. Yes, sir.

5 Q. Okay. And the fine schedule that we  
6 have, Staff Exhibit 3, again, this is a record kept  
7 in the ordinary course of business?

8 A. Yes, sir.

9 Q. To conduct business in your section?

10 A. Yes, sir.

11 Q. Okay. And, further, is this fine  
12 schedule consistent with the Commercial Vehicle  
13 Safety Alliance?

14 A. Yes, sir.

15 Q. Okay. And is the state of Ohio a partner  
16 in that federation of states making up the Commercial  
17 Vehicle Safety Alliance Group?

18 A. Yes. The state of Ohio is a member of  
19 the CVSA.

20 Q. Okay. So in this case then we have in  
21 your opinion an accurate assessment for the  
22 forfeiture in this case for the violation and the  
23 past history being taken into account; is that  
24 correct?

1           A.     That is correct.

2           MR. JONES:   Your Honor, I have no further  
3     questions of this witness. I would move for  
4     admission subject to cross-examination of Staff  
5     Exhibits 2 and 3 to the record.

6           ATTORNEY EXAMINER SHEETS:   Very good. I  
7     will admit all of Staff's exhibits in the record at  
8     this time.

9           (EXHIBITS ADMITTED INTO EVIDENCE.)

10          ATTORNEY EXAMINER SHEETS:   And, now, we  
11     have no more witness, Mr. Margard?

12          MR. MARGARD:   None, your Honor. Thank  
13     you.

14          ATTORNEY EXAMINER SHEETS:   We will  
15     proceed with the Respondent's side of the case.

16          Ms. Green.

17          MS. GREEN:   My only concern about all of  
18     this and the whole reason I am here is that nowhere  
19     in 393.126 does it require additional tie downs of  
20     any kind for an intermodal chassis in addition to  
21     what is already factory made. And I agree with  
22     Trooper Divjak to the nth degree. Yes, they get  
23     beaten. That's why the Federal Motor Carrier is now  
24     going after people who supply these things because we

1 all use each other's equipment. But my only concern  
2 is that this was locked down, and I do understand his  
3 concern that, yes, the container can get lost, I  
4 agree, but there's nothing in 393.126(b) that says  
5 anything in addition needs to be used.

6 And when I went through the telephone  
7 conference, the safety investigator that I had on the  
8 telephone in the telephone conference with Ms. Wanda  
9 Williams told me he didn't want them zip tied down  
10 because it looks like it's being tampered with. So  
11 if this is something specific to the state of Ohio,  
12 if I can get something in writing, I would be  
13 eternally grateful, and I would put this out to my  
14 drivers in a minute to make sure that they are doing  
15 what you want them to do.

16 ATTORNEY EXAMINER SHEETS: Okay. Does  
17 that state your position?

18 MS. GREEN: Yes, sir.

19 ATTORNEY EXAMINER SHEETS: Okay.

20 Mr. Margard, do you have any questions?

21 MR. MARGARD: No questions, your Honor.

22 ATTORNEY EXAMINER SHEETS: Okay. At this  
23 point let's go off the record briefly here.

24 (Discussion off the record.)

1           ATTORNEY EXAMINER SHEETS: We had a brief  
2 discussion off the record about filing briefs, and  
3 Mr. Margard and Ms. Green, we have all agreed that  
4 March 30 should be a date for filing briefs in the  
5 case. Ms. Green, of course, will file a letter  
6 instead of a brief.

7           And if there is nothing more to add, I  
8 will consider this case submitted on the record.

9           MR. MARGARD: Nothing further.

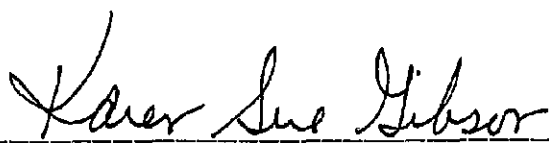
10          ATTORNEY EXAMINER SHEETS: Thank you for  
11 coming.

12          (Thereupon, the hearing was concluded at  
13 10:50 a.m.)

14                               - - -

## CERTIFICATE

I do hereby certify that the foregoing is  
a true and correct transcript of the proceedings  
taken by me in this matter on Thursday, February 22,  
2007, and carefully compared with my original  
stenographic notes.

  
Karen Sue Gibson, Registered  
Merit Reporter.

(KSG-4626)

- - -

# EXHIBITS

# Staff Exhibit 1



OHIO STATE HIGHWAY PATROL  
MOTOR CARRIER ENFORCEMENT  
DISTRICT 1 HEADQUARTERS  
TELEPHONE: (419) 423-1414

Return certification to agency listed on back

06 MAY -2 PM 1:54

## DRIVER/VEHICLE EXAMINATION REPORT

Report Number: OH3265003416

Inspection Date: 04/25/2008

Start Time: 06:56 AM End Time: 07:53 AM

Insp. Level: 2-Walk-Around, No HM Insp.

RYE GENTRY TRUCKING INC

12804 LUTZ AVE

WARREN, MI 48088-1833

USDOT#: 00303014

Phone#: (313)843-2588

MC/MX#: 186155

Fax#:

State#:

Location: ROADSIDE

Highway: 24

County: DEFIANCE, OH

Driver: AVRAM, VIOREL

License#: A165847015678

State: MI

Date of Birth: 08/31/1967

CoDriver:

License#:

State:

Date of Birth:

MilePost: 10

Shipper: CANADIAN PACIFIC RAILWAY

Origin: DETROIT, MI

Bill of Lading: B1W

Destination: INDIANAPOLIS, IN

Cargo: General Freight

### VEHICLE IDENTIFICATION

Unit	Type	Make	Year	State	License #	Company #	Vin #	GVWR	CVSA #	OOS#
1	TT	KW	1996	MI	RU3857	1447	1XKADB9X5TJ669260			
2	ST	AJAX	1999	OR	HR85088	811107	1AJCS4023XH000965			Y

BRAKE ADJUSTMENTS: No Brake Measurements Required For Level 2

### VIOLATIONS

Section Code	St	Unit	OOS	Citation #	Verify	Crash	Violations Discovered
393.126(b)		2	Y		U	N	ALL 4 CORNERS UNSECURE SECUREMENT DEVICES
393.203(e)		1	N		N	N	Cab front bumper UNSECURE CRACKED AT MOUNTS AND R SIDE BRACKET MISSING
393.83(g)		1	N		N	N	Exhaust leak under truck sleeper
393.11		1	N		N	N	WITH L TURN SIGNAL ON -BOTH L AND R REAR LAMPS FLASH
393.9(a)		1	N		N	N	R REAR TURN SIGNAL INOP
393.203(d)		1	N		N	N	Cab seats not securely mounted BOTH SEATS LOOSE DRIVER SEAT LOOSE AT FLOOR AREA

HazMat: No HM Transported.

Placard: No

Cargo Tank:

Special Checks: No Data for Special Checks.

### State Information:

Driver City: DEARBORN; RSN Code: OBVI; Driver Zip: 48125; Driver State: MI; Driver Address: 4989 EDGEWOOD ST; For-Hire Carrier: Y;

Report Prepared By:

DIVJAK,R.D.

Badge #:

3265

Copy Received By:

AVRAM, VIOREL

Page 1 of 2



OH3265003416

X

X



2

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

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

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

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

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

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

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

**ACTION REQUIRED**

**DRIVER:**

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

**CARRIER AND DRIVER:**

(1) If a citation number is listed on the Citation Number line above the "Violations" section, any follow-up action required will be shown on the separate court citation document which has been issued. All communications regarding the citation should be with the Court listed.

(2) All violations of the FHMR and FMCSR or Title 49 of the Ohio Revised Code will be reviewed by the PUCO's Transportation Department to determine whether civil forfeitures should be assessed against any responsible parties in accordance with the penalty provisions of Title 49 of the Ohio Revised Code. If civil forfeitures are assessed, you will receive a separate notice by mail. These penalties may be assessed to carriers and/or drivers.

(3) If any entries in the "Violations" section show a number in the "Unit" column (referring to the tractor or one of the trailers), the Certificate of Repair shown below must be completed and returned by the carrier to the address indicated below within 15 days following inspection. This is required even if the driver or a mechanic made the repairs at the time of the inspection.

(Do Not Detach)

**CERTIFICATION OF COMPLETED REPAIRS**

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

Signature of Person Making Repairs

*Vionel Durum*  
Printed Name

*4.26.06*  
Date Repairs Made

*4989 Edgemoor Dr. Columbus, OH 43212*  
Address

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

Signature of Carrier's Officer / Agent

*Shirley S. Green*  
Printed / Typed Name

*Ryc. Gentry Trucking, Inc.*  
Name of Carrier

*4/24/06*  
Date Signed

*Safety Mgr.*  
Title

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

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



## The Public Utilities Commission of Ohio

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

September 26, 2006

MS VANESSA GREEN  
RYE GENTRY TRUCKING INC  
12804 LUTZ AVE  
WARREN, MI 48093

Bob Taft, Governor  
Alan R. Schriber, Chairman

Commissioners  
Ronda Hartman Fergus  
Judy A. Jones  
Donald L. Mason  
Clarence D. Rogers, Jr.

RE: NOTICE OF PRELIMINARY DETERMINATION

Case No. OH3265003416C

Officer: WW

Dear MS GREEN:

On April 25, 2006, a vehicle operated by RYE GENTRY TRUCKING INC, and driven by VIOREL AVRAM, was inspected within the State of Ohio. As the result of discovery of the following apparent violation the Staff timely notified Respondent pursuant to Rule 4901:2-7-07, O.A.C., that it intended to make a civil monetary assessment against Respondent in the following amount:

Code	Violation
393.126B	ALL 4 CORNERS UNSECURE SECUREMENT DEVICES

Total Forfeiture Assessed : \$200.00

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

(continued)



## The Public Utilities Commission of Ohio

Monitoring marketplaces and enforcing rules to  
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Bob Taft, Governor

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Commissioners

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Judy A. Jones

Donald L. Mason

Clarence D. Rogers, Jr.

September 26, 2006

MS VANESSA GREEN

RYE GENTRY TRUCKING INC

OH3265003416C

PAGE -2

As a result of the conference, Staff has made a Preliminary Determination that the Commission should make a civil monetary assessment against RYE GENTRY TRUCKING INC in the following forfeiture:

Code	Violation
393.126B	ALL 4 CORNERS UNSECURE SECUREMENT DEVICES

Total Forfeiture Agreed : \$200.00

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

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

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

COMPLIANCE DIVISION

EFFECTIVE JANUARY 2, 2005

**FINE SCHEDULE  
OUT OF SERVICE VIOLATIONS**

**GROUP 1**

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

**GROUP 2**

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

**GROUP 3**

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

**GROUP 4**

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

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

Any questions in regards to this fine schedule please contact:

Public Utilities Commission of Ohio

Compliance Division

180 East Broad St.

Columbus, Ohio 43215

(614) 466-0351

**Vanessa Green**

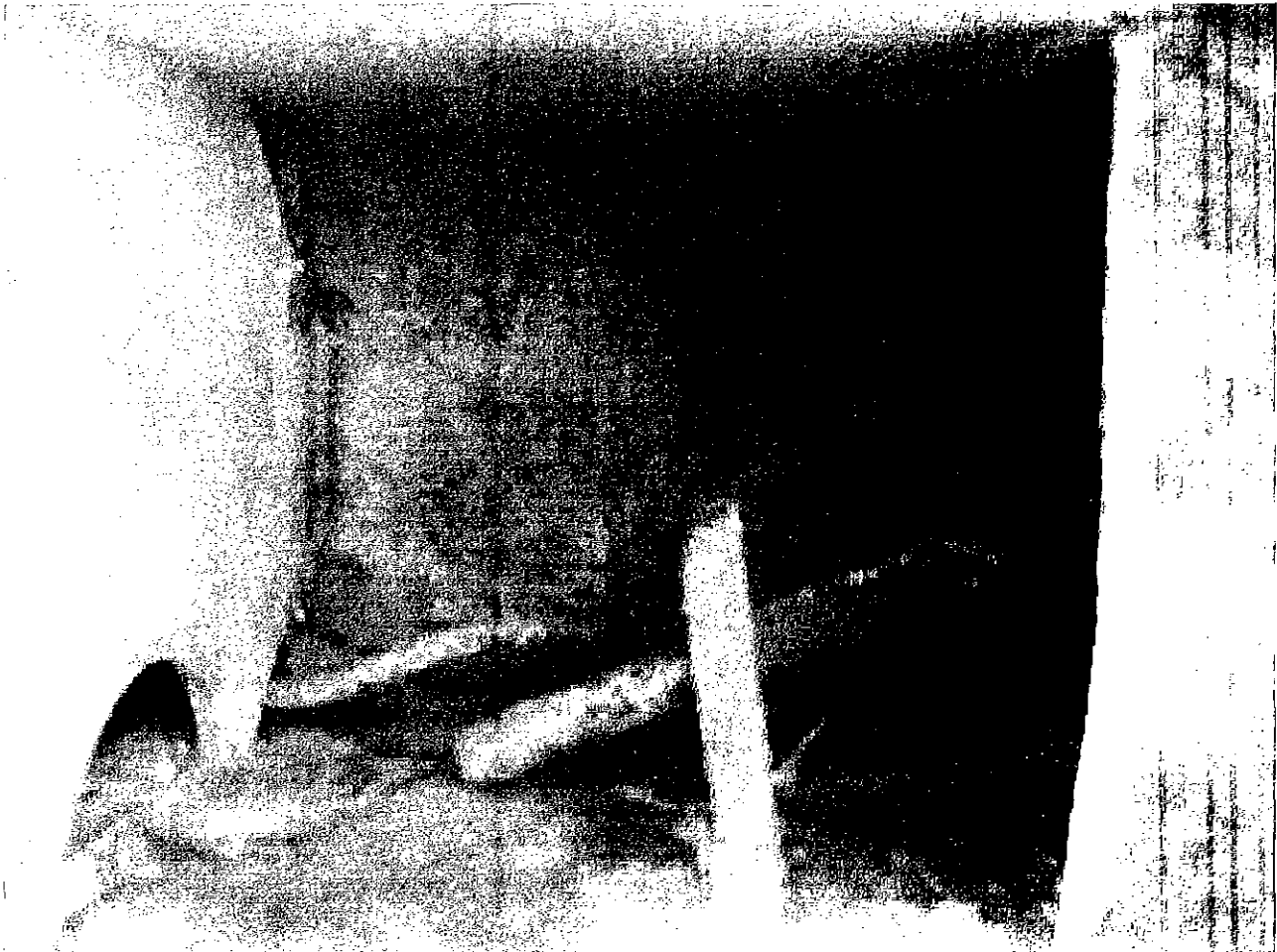
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**From:** "Vanessa Green" <vgreen@ryegentry.com>  
**To:** <werner.margard@puc.state.oh.us>  
**Sent:** Friday, December 08, 2006 12:49 PM  
**Attach:** 2006\_12080191.JPG; 2006\_12080192.JPG; 2006\_12080193.JPG; 2006\_12080194.JPG; 2006\_12080195.JPG;  
2006\_12080196.JPG; 2006\_12080197.JPG; 2006\_12080198.JPG; 2006\_12080199.JPG; 2006\_12080200.JPG  
**Subject:** Attached Files

Mr. Margard,

Attached are photos of the way that the container is supposed to look when it is locked down to the chassis with the turn-locks in the locked position. I took photos of each corner of the container and chassis. If have any questions, please feel free to contact me at the office at (313) 843-2588 or e-mail me at [vgreen@ryegentry.com](mailto:vgreen@ryegentry.com). Thank you for your time and attention to this matter.

Vanessa K. Green  
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Joint Exhibit | 2/16/2007

