

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of: :  
National Safe T Propane. : Case No. 08-24-TR-CVF  
:  
Notice of Apparent :  
Violation and Intent to :  
Assess Forfeiture. :  
- - -

PROCEEDINGS

before Mr. Gregory Price, Attorney Examiner, at the  
Public Utilities Commission of Ohio, 180 East Broad  
Street, Room G, Columbus, Ohio, called at 1:30 p.m.  
on Tuesday, October 27, 2009.

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1 APPEARANCES:

2 Richard Cordray, Ohio Attorney General  
3 Duane W. Luckey, Senior Deputy  
4 Attorney General  
5 Public Utilities Section  
6 Mr. Thomas Lindgren  
7 Ms. Sarah Parrot  
8 180 East Broad Street, 9th Floor  
9 Columbus, Ohio 43215-3793

10 On behalf of the Transportation Staff of  
11 the Public Utilities Commission.

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## WITNESS

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Thomas Forbes

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1 Tuesday Afternoon Session,  
2 October 27, 2009.

3 - - -

4 THE ATTORNEY EXAMINER: Good afternoon.  
5 The Public Utility Commission of Ohio has set for  
6 hearing at this time and place case No. 08-24-TR-CVF,  
7 In the Matter of the Request for National Safe-T  
8 Propane, Inc. My name is Gregory Price, an  
9 attorney-examiner for the Commission assigned to hear  
10 this case.

11 May I have appearances, starting with the  
12 staff.

13 MR. LINDGREN: Thank you, your Honor.  
14 On behalf of the Commission, Ohio Attorney General  
15 Richard Cordray, Duane Luckey, section chief, my name  
16 is Thomas Lindgren and Sarah Parrot, assistant  
17 attorneys general, Public Utility Commission Section,  
18 180 East Broad street, Sixth Floor, Columbus, Ohio  
19 43215.

20 THE HEARING EXAMINER: The record will  
21 reflect that the Respondent is not in attendance at  
22 today's hearing. Further, Respondent's counsel  
23 called the attorney-examiner before the hearing  
24 to indicate that although they are aware of the  
25 hearing and have been served with the letter

1 scheduling the hearing, they are declining to  
2 attend and not requesting a continuance of the  
3 hearing.

4 Further, we have a pending motion. On  
5 October 5, 2009, the Respondent filed a motion to  
6 dismiss the case. Staff filed a motion contra to  
7 dismiss. In considering the contra motion to  
8 dismiss, it is denied at this time.

9 Mr. Lindgren, Ms. Parrot, will you call  
10 the next witness.

11 MS. PARROT: Your Honor, at this time we  
12 call Tom Forbes to the witness stand.

13 THE ATTORNEY EXAMINER: Please state your  
14 name and business address for the record.

15 THE WITNESS: Tom Forbes, Public Utility  
16 Commission of Ohio, 180 East Broad Street 14th Floor,  
17 Columbus, Ohio 43215.

18 THE HEARING EXAMINER: Off the record.

19 (Discussion off record.)

20 THE HEARING EXAMINER: Ms. Parrot.

21 MS. PARROT: Thank you, your Honor.

22 - - -  
23  
24  
25

1 THOMAS FORBES

2 being first duly sworn, as prescribed by law, was  
3 examined and testified as follows:

4 DIRECT EXAMINATION

5 By Ms. Parrot:

6 Q. Good afternoon, Mr. Forbes. You  
7 mentioned your address as being at the Public Utility  
8 Commission of Ohio. Is that also your employer?

9 A. Yes, ma'am.

10 Q. How long have you been employed with the  
11 Public Utility Commission?

12 A. Approximately four and a half years.

13 Q. And what is your role with the  
14 Commission?

15 A. I am a compliance officer in the  
16 Transportation Department.

17 Q. And would you please tell us what your  
18 job duties are?

19 A. It includes reviewing field inspections  
20 and compliance reviews, preparing charts, entering  
21 the fine amounts in the computer, and sending mailing  
22 markers to have letters sent to the respondents,  
23 conducting settlement conferences with the  
24 respondents, and answering technical questions with  
25 motor carriers on the hazardous materials and motor

1 carrier regulations.

2 I conduct enough inspections to keep my  
3 certifications current, attend in-service training,  
4 and testify at hearings.

5 Q. Thank you. You mentioned certifications  
6 and training. Please elaborate on that.

7 A. I have my North American Standard  
8 Level I driver and vehicle inspection training, along  
9 with hazardous material inspection, cargo tank  
10 inspections, and bulk package inspections, compliance  
11 review, level 6 radioactive inspections, and cylinder  
12 inspections, and maintenance training.

13 Q. Thank you, Mr. Forbes. This case  
14 involves a commercial motor vehicle inspection that  
15 occurred on August 14, 2007 involving the motor  
16 carrier National Safe-T Propane. Are you familiar  
17 with this case?

18 A. Yes, ma'am.

19 Q. Have you had the opportunity to review  
20 the staff's file for the case?

21 A. Yes, ma'am.

22 MS. PARROT: May I approach, your Honor?

23 THE HEARING EXAMINER: You may.

24 MS. PARROT: Your Honor, I'd like to have  
25 documented marked as Staff Exhibit No. 1 for

1 identification purposes.

2 THE HEARING EXAMINER: It is so marked.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 Q. Mr. Forbes, do you have Staff  
5 Exhibit 1 before you?

6 A. Yes, ma'am.

7 Q. Do you recognize the document?

8 A. Yes.

9 Q. Would you please identify it for us?

10 A. It is the driver/vehicle Inspection  
11 Report that was completed August 14, 2007 with the  
12 motor carrier being National Safe-T Propane, Inc.

13 Q. Mr. Forbes, are you familiar with these  
14 driver/vehicle examination reports?

15 A. Yes.

16 Q. And in the course of your job duties,  
17 have you had the opportunity to review these reports  
18 as part of your official duties?

19 A. Yes.

20 Q. Was this report prepared by you?

21 A. No, ma'am.

22 Q. Who prepared the report, please?

23 A. Trooper John Asbrock.

24 Q. How do you know that?

25 A. By the name and unit number at the bottom



1 of the page.

2 Q. Thank you. Please briefly provide an  
3 overview of the report for us. Start in the upper  
4 right-hand corner.

5 A. The upper right-hand corner has the  
6 report number, OH158002209. That is the inspector's  
7 unit number, and the last four digits are the  
8 sequential inspection numbers that he had completed  
9 to this date. The date is listed as 8/14/2007. The  
10 time started was 8:10 a.m. and it ended at 9:01 a.m.  
11 It was a Level I inspection, and it was a hazardous  
12 material inspection.

13 Q. Would you please tell us what a Level I  
14 inspection means?

15 A. A Level I inspection includes all driver  
16 aspects, licenses, all books, medical cards, a  
17 walk-around of the vehicle and equipment, and then  
18 the Level I also includes actually going under the  
19 vehicle looking at the undercarriage, measuring the  
20 brakes, looking at frames.

21 Q. Okay. Thank you. Moving down to the  
22 next section of the report, would you please tell us  
23 what we find there?

24 A. On the left side is the name and address  
25 and phone number and USDOT number of the carrier, in

1 this case, National Safe-T Propane, Inc., and on the  
2 right side of that section is the name of the driver  
3 as well as his date of birth and commercial vehicle  
4 license number.

5 Q. And moving down to the location section.

6 A. The location is where the inspection was  
7 completed, was on State Route 122 in Warren County,  
8 and it was at milepost 6. It indicates that the load  
9 started in Middletown, Ohio, and was en route to  
10 Miamisburg, Ohio. It also indicates that the cargo  
11 was hazardous material.

12 Q. Thank you. I see we also have vehicle  
13 identification information and brake adjustment  
14 information as well.

15 A. Yes.

16 Q. Okay. Let's move forward to the  
17 violations section in the middle of the page. Do you  
18 see that?

19 A. I do.

20 Q. Would you please tell us what the  
21 inspector noted there?

22 A. The inspector noted a violation of code  
23 Section 177.834(a) A on Unit 1, and it was an  
24 out-of-service violation, and the violation  
25 description says: "Package not secured in

1 vehicle/two 20 pound cylinders not secured to prevent  
2 movement/1 of which has fallen over and capable or  
3 movement."

4 Q. Thank you. Below that I see there it  
5 indicates there's a hazardous material section.  
6 Would you please tell us what we see there?

7 A. There it shows it is a Class 2.1,  
8 liquified petroleum gas, and the truck was required  
9 to be placarded.

10 THE HEARING EXAMINER: Can you tell me  
11 what characteristics makes it a 2.1 hazardous  
12 material?

13 THE WITNESS: Flammability.

14 THE HEARING EXAMINER: Thank you.

15 Thank you, Ms. Parrot.

16 Q. And at the bottom of the page I see again  
17 that it indicates that Trooper Asbrock prepared the  
18 report; is that correct?

19 A. Yes, ma'am.

20 Q. And also that a copy of the report was  
21 received by Herbert Marshall, the driver; is that  
22 correct?

23 A. Yes, ma'am.

24 Q. Thank you for walking us through that.  
25 Is this report regularly maintained by the Compliance

1 Division staff in the ordinary course of business?

2 A. Yes, ma'am.

3 Q. Would you please tell us how the report  
4 reaches the Compliance Division?

5 A. Upon conclusion in the field, the trooper  
6 in the case electronically transfers this to the  
7 SafetyNet system, and the Safety Net system is housed  
8 at the Commission, and then we electronically access  
9 it through our desktop computers.

10 Q. And what did you do as a result of having  
11 received this particular examination report?

12 A. I reviewed the inspection report. The  
13 violation listed is a violation we assess a  
14 forfeiture for, and I completed a forfeiture  
15 assessment worksheet, and ultimately mailed a  
16 forfeiture to the Respondent.

17 Q. Would you please tell us generally how  
18 you use the forfeiture worksheet that you just  
19 mentioned?

20 A. There is a list of violations, hazardous  
21 material violations, and motor carrier violations  
22 that the Commission assesses forfeitures for. For  
23 each of those violations there's a point value  
24 assigned to that. It is plugged into a matrix that  
25 includes the nature and gravity of the violation, the

1 hazardous materials being transported, the hazards of  
2 those, as well as the material amount, any history  
3 with the carrier, and in this case it was multiplied  
4 by a base fine of \$75 to come up with the fine that  
5 was sent to the Respondent.

6 Q. Thank you, Mr. Forbes.

7 MS. PARROT: Your Honor, may I approach.

8 THE HEARING EXAMINER: You may.

9 Mr. Forbes, can you tell the bench what  
10 consideration was given for respondent's history?

11 THE WITNESS: Their history was normal.  
12 It was a 1.

13 THE HEARING EXAMINER: There were no  
14 aggravating circumstances?

15 THE WITNESS: There were no mitigating or  
16 aggravating circumstances.

17 THE HEARING EXAMINER: Thank you.

18 MS. PARROT: Your Honor, I would like to  
19 mark this document Staff Exhibit 2 for identification  
20 purposes and also Staff Exhibit 3, which I'll get to  
21 in a minute.

22 THE ATTORNEY EXAMINER: So marked.

23 (EXHIBITS MARKED FOR IDENTIFICATION.)

24 Q. Mr. Forbes, start with Staff Exhibit  
25 No. 2. Do you recognize this document?

1 A. Yes, ma'am.

2 Q. Would you please tell us what this is?

3 A. It is the nature and gravity point chart  
4 for hazardous material and motor carrier violations  
5 for hazardous material inspections.

6 Q. Is this document regularly maintained by  
7 the Compliance Division staff in the ordinary course  
8 of business?

9 A. Yes, ma'am.

10 Q. And was this civil forfeiture violations  
11 chart in effect for inspections occurring on  
12 August 14, 2007?

13 A. Yes, ma'am. This chart was in effect  
14 October 31, 2006.

15 Q. And you're referring to the fourth page  
16 of Staff Exhibit No. 2 for that information; is that  
17 correct?

18 A. Yes, ma'am, fourth page at the bottom.

19 Q. Thank you. Would you please tell us how  
20 the civil forfeiture violations chart is used to  
21 assess a forfeiture in a hazardous materials case?

22 A. Yes. This chart is used to come up with  
23 nature and gravity points to be plugged into the  
24 matrix for specific violations that the Commission  
25 assesses for. This particular case dealt with a

1 securement violation that involved relative motion  
2 between packages and an 8 point value was assigned.

3 If you look at page 1, sixth item down  
4 from the top, it talks about relative motion among  
5 hazardous material packages, and it shows the value  
6 of 8 points assigned to it. There are various other  
7 violations and point values on this chart dealing  
8 with hazardous materials, motor carrier violations to  
9 be assessed against carriers, shippers, or drivers as  
10 appropriate.

11 Q. I believe you mentioned that the  
12 information is used with a matrix --

13 A. Yes, ma'am.

14 Q. -- I think you termed it. Would you  
15 please turn your attention to what has been marked as  
16 Staff Exhibit No. 3?

17 A. Yes, ma'am.

18 Q. Would you please identify this for us?

19 A. This is the forfeiture assessment matrix  
20 used for hazardous material violations with  
21 forfeitures being assessed.

22 Q. And this matrix was prepared for this  
23 particular violation in this case?

24 A. Yes, ma'am.

25 Q. Would you please take us through Staff

1 Exhibit No. 3 and tell us how the amount of the  
2 forfeiture was determined?

3 A. Yes. Starting at the top you will see  
4 the report number matches the inspection number in  
5 Staff Exhibit No. 1, 0158002209. It was completed by  
6 myself. It shows the date of the report being  
7 August 14, 2007. The assessment was completed  
8 September 14, 2007. It lists the Respondent as  
9 National Safe-T Propane. It lists the violation code  
10 that was assessed on Staff Exhibit 1.

11 And then going down the chart it shows  
12 the nature and gravity of the 8 points from the chart  
13 for the relative motion among hazardous materials.  
14 There was no additional extensive violation or actual  
15 harm or other circumstances that added to those  
16 points, so in line A it subtotals up to 8.

17 The material hazard is 1.1. That is  
18 determined by the next-to-the-last page, which would  
19 be page 5 of Staff Exhibit 2. 2.1 materials listed  
20 on the right side under hazard class or division gets  
21 a point value of 1.1 assigned to those. The amount  
22 of material is listed at .6.

23 From Staff Exhibit 1 it shows there were  
24 10,000 pounds of material present, and if you go to  
25 the last page of the chart, 10,000 to 34,999 pounds,



1 a value of .6 is assigned.

2 Q. That's on the last page of Staff Exhibit  
3 No. 2?

4 A. Yes, ma'am.

5 Q. Thank you.

6 A. And Items B and C are added together and  
7 multiplied times A to come with the subtotal value of  
8 13.60. There was no aggravating culpability or  
9 aggravating history, so both of those are a 1, and  
10 you multiply 13.60 times 1 and come up with the total  
11 value of 13.60. That point value is multiplied times  
12 the base fine of \$75 to come up with a forfeiture of  
13 \$1,020 for this violation in this case.

14 Q. Thank you very much for explaining that  
15 to us. Is Staff Exhibit No. 3 regularly maintained  
16 by the Commission staff in the ordinary course of  
17 business?

18 A. Yes, ma'am.

19 Q. Thank you. The process that you just  
20 described for us, the civil forfeiture violations  
21 chart that is Staff Exhibit No. 2 and the matrix that  
22 is Staff Exhibit No. 3, are those documents used  
23 consistently for all carriers and drivers that have  
24 been assessed in a hazardous materials violation?

25 A. Yes.

1           Q.    And are the procedures and penalties that  
2   you just described, are those consistent with the  
3   standards of the Ohio Administrative Code?

4           A.    Yes, ma'am.

5           Q.    And in your opinion was the forfeiture  
6   that's been determined in the case, is it properly  
7   determined?

8           A.    Yes.

9           Q.    And is it also reasonable in your  
10   opinion?

11          A.    Yes.

12          Q.    Thank you.  I believe you mentioned as  
13   part of your job duties you also send notices to  
14   carriers and drivers; is that correct?

15          A.    Yes, ma'am.

16          Q.    And were the notices that were required  
17   in this case, were they sent to the motor carrier  
18   National Safe-T Propane?

19          A.    They were.

20          Q.    Thank you.

21                MS. PARROT:  May I approach, your Honor?

22                THE HEARING EXAMINER:  You may.

23                MS. PARROT:  Your Honor, I'd like to mark  
24   for identification purposes Staff Exhibit 4.

25                THE HEARING EXAMINER:  So marked.

1 (EXHIBIT MARKED FOR IDENTIFICATION.)

2 Q. Mr. Forbes, do you have Staff Exhibit  
3 No. 4 before you?

4 A. Yes, ma'am.

5 Q. Would you please identify it for us?

6 A. This in is a Notice of Apparent Violation  
7 and Intent to Assess Forfeiture that was sent to  
8 National Safe-T Propane referencing the violation  
9 noted on the previously mentioned inspection.

10 Q. Is this an accurate representation of the  
11 actual notice that was mailed to National Safe-T  
12 Propane?

13 A. Yes, ma'am.

14 Q. And what options does this notice give to  
15 the motor carrier for where a violation has been  
16 found?

17 A. With this Notice of Apparent Violation  
18 and Intent to Assess Forfeiture, an instruction sheet  
19 is also mailed to the Respondent that explains how to  
20 either pay the forfeiture or request a telephone  
21 conference.

22 Q. Okay. Thank you.

23 MS. PARROT: Your Honor, at this time I'd  
24 like to mark for identification purposes Staff  
25 Exhibit No. 5.

1 THE HEARING EXAMINER: So marked.

2 (EXHIBIT MARKED FOR IDENTIFICATION.)

3 Q. Mr. Forbes, you have Staff Exhibit No. 5,  
4 if you could turn your attention to that, please.

5 A. Yes, ma'am.

6 Q. Would you identify it for us?

7 A. This is a Notice of Preliminary  
8 Determination referencing the same case that was  
9 mailed to National Safe-T Propane on September 28,  
10 2007.

11 Q. And what is the purpose of this notice?

12 A. The Respondent requested a telephone  
13 conference -- excuse me. The Respondent requested an  
14 in-person conference. They canceled the conference  
15 the first time and failed to show up to the  
16 conference the second time. Once you miss two  
17 conferences, a Notice of Preliminary Determination is  
18 sent to you advising you that the staff believes the  
19 violation is a viable violation and the civil  
20 forfeiture is appropriate.

21 Q. And then what options are given to the  
22 motor carrier?

23 A. A Notice of Preliminary Determination is  
24 sent and an instruction sheet to explain how to  
25 either pay the forfeiture or to request an

1 administrative hearing.

2 Q. Is Staff Exhibit No. 5 an accurate  
3 representation of the notice that was mailed to  
4 National Safe-T Propane, Inc.?

5 A. Yes.

6 Q. Are Staff Exhibits 4 and 5 maintained by  
7 the Commission staff in the ordinary course of  
8 business?

9 A. Yes, ma'am.

10 MS. PARROT: I believe we have no further  
11 questions, your Honor.

12 THE HEARING EXAMINER: Thank you.

13 Mr. Forbes, you're excused.

14 MS. PARROT: Your Honor at this time we  
15 move for Staff Exhibits 1 through 5.

16 THE HEARING EXAMINER: Seeing no  
17 opposition, Staff Exhibits 1 through 5 will be  
18 admitted.

19 (EXHIBITS ADMITTED INTO EVIDENCE.)

20 MS. PARROT: Staff also moves for default  
21 a judgment given that neither Respondent nor its  
22 counsel has appeared.

23 THE HEARING EXAMINER: Thank you. We  
24 will take that under advisement. The Commission will  
25 rule on the motion for default judgment at the

1 appropriate time. Thank you all.

2 (The hearing adjourned at 1:53 p.m.)

3 - - -

CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Tuesday, October 27, 2009, and carefully compared with my original stenographic notes.

---

Rosemary Foster Anderson,  
Professional Reporter and  
Notary Public in and for  
the State of Ohio.

My Commission expires April 5, 2014.  
(RFA-8353)

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

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Summary: Transcript Transcript from hearing on 10/27/09 electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Anderson, Rosemary Foster Mrs.